

AI in the courtroom: Canadian Judicial Council's new guidelines

By **Delila Bikic**

Law360 Canada (November 15, 2024, 1:43 PM EST) -- With the rapid advancement of artificial intelligence (AI) technology, Canadian courts are under increasing pressure to address its impact. While some view AI as a possible threat to the rule of law and democracy within Canada's justice system, AI also holds promise for enhancing court operations, reducing workloads, supporting judicial functions and improving access to justice.

In response to AI's growing presence, the Canadian Judicial Council (CJC) recently published the *2024 Guidelines for the Use of Artificial Intelligence in Canadian Courts* (the Guidelines). The full text of the CJC's Guidelines is available [here](#).



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Founded in 1971, the CJC is made up of chief justices and associate chief justices from courts across Canada's provinces, territories and federal judiciary. The CJC's core mission is to uphold judicial excellence and maintain public trust in the judiciary.

The Guidelines aim to establish a framework for implementing AI tools that support and enhance judicial functions while also raising awareness about the risks AI poses in judicial decision-making. Emphasizing the core principles that form the ethical backbone of Canadian judicial conduct, the Guidelines address the ethical, legal and operational implications of AI and duly consider the principles of judicial independence and transparency.

Additionally, the Guidelines remind judges and legal practitioners that AI can offer innovative solutions to longstanding challenges in the justice system while acknowledging that it cannot replace judicial independence in decision-making, as doing so would risk eroding public confidence in our courts.

Key principles in the Guidelines

The CJC's Guidelines revolve around the following key principles:

- 1. Transparency and explainability:** AI tools used to support or enhance the judicial role must be transparent. In particular, as Canadian courts discover more ways to deploy AI tools to improve efficiency in case management and alternative dispute resolution, judges, court staff and the public need to understand how AI systems reach conclusions and provide explanations for their output. This, in turn, will assist judges in providing reasoned explanations for their decisions in law. Explainability is vital for ensuring accountability in judicial decision-making.
- 2. Maintaining judicial independence and ethics:** The planning, procurement and deployment of generative AI in Canadian courts must firmly uphold the fundamental principle of judicial independence. AI tools should assist but never override human judgment. Judges maintain the ultimate responsibility for their decisions and need to oversee the use of AI, alongside other stakeholders such as the executive branch of government and court administration. This proposed *modus operandi* will preserve judicial independence, preventing an overreliance on AI in resolving disputes.
- 3. Reducing bias and preserving impartiality:** Recognizing that AI systems can reflect biases present in their data outputs, the CJC encourages thorough vetting and evaluation of AI tools. Judges and court staff are urged to monitor for potential biases that can arise against marginalized groups to preserve equality and fairness. By carefully assessing AI algorithms, the judiciary can preserve impartiality, which is one of the cornerstones of the justice system.
- 4. Bolstering privacy and data security:** There is a risk that the integration of AI tools in Canadian courts brings unique information security challenges and requires strict privacy protections. In their use of AI, judges must ensure that the systems comply with all relevant data protection laws and have the capacity to handle sensitive information securely. This focus on confidentiality is essential for preserving public trust in the court system and safeguarding the privacy rights of individuals involved in legal proceedings.
- 5. Improving judicial education and training:** To maximize the responsible use of AI, the CJC encourages judges and court staff to engage in ongoing education on AI's functionality, benefits and risks. A combined approach to training of judges and the provision of technical support for AI integration in court administration will ensure that the judiciary is well-equipped with best practices for interacting with the technology and identifying potential risks.

Overall, the Guidelines offer a road map for the judiciary and legal professionals to navigate the complexities of AI. Utilizing AI tools — whether for research, case analysis or decision-making — has the potential to enhance legal practice. As the AI transformation continues, it is crucial for all parties to understand the technology's valuable applications as well as its potential risks.

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