LAW360™ Canada

Law360 Canada | 111 Gordon Baker Road, Suite 900 | Toronto, ON, M2H 3R1 Canada | www.law360.ca
Phone: (800) 668-6481 | customerservice@lexisnexis.ca

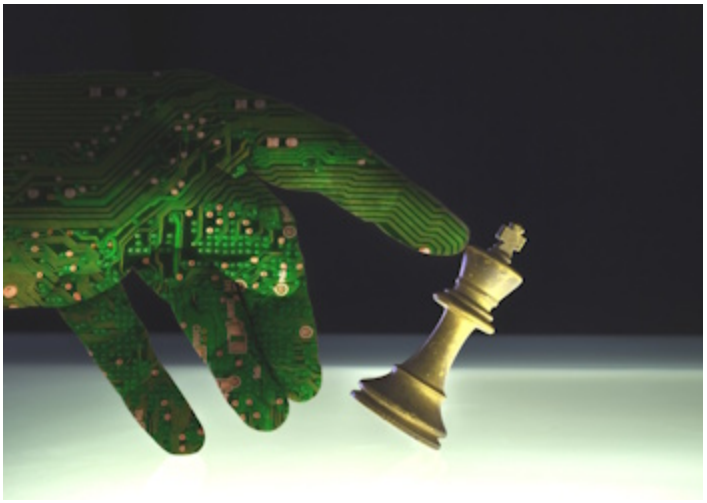
Is generative AI a threat to the integrity of the justice system?

By **Stephen A. Thiele**

Law360 Canada (July 25, 2025, 11:22 AM EDT) -- The use of generative artificial intelligence in the legal profession is continuing to grow. Although its application may have value in some areas of practice, its use in litigation has raised significant ethical questions because of the tendency for AI platforms to hallucinate cases. In circumstances where a court relies on fake cases to influence a decision, the integrity of the administration of justice and the legal profession can be irreparably tarnished.

Stephen A. Thiele

The U.S. case of *Shahid v. Esaam*, 2025 Ga. App. LEXIS 299 *; 2025 LX 214277 represents perhaps one of the first stains on the justice system.



JohnDWilliams: ISTOCKPHOTO.COM

In this case, the parties were involved in a matrimonial dispute, with a husband obtaining a divorce without having personally served the necessary court documents on his wife. Instead, the husband obtained the divorce based on service by publication of his complaint.

Service by publication is a process that permits a document to be served on an opposing party through publication in an advertisement in a newspaper of general circulation.

Upon learning of the final judgment for divorce, the wife brought a motion to set the divorce aside and then defend the complaint on the grounds that her husband had failed to use reasonable diligence to determine her whereabouts before being permitted to serve his complaint by publication.

Following the parties' separation, the wife had moved from Georgia to Texas.

The wife's motion was denied based on the trial judge's reliance on two fictitious cases that were presented to the court by the husband's lawyer. These cases were cited in the judge's order.

On appeal, the wife argued that the order denying her motion to reopen the complaint was "void on

its face."

In responding to the appeal, the husband's lawyer cited 11 additional fictitious cases, which, among other things, supported legal propositions that had nothing to do with those propositions.

The husband's lawyer also sought "attorney's fees on appeal," relying on a case that the Georgia Court of Appeals was unable to find either by case name, citation or its purported holding.

In contrast to the husband's position that he was entitled to fees on appeal, the court explained that Georgia courts had clearly held that the rule relied upon by the husband did not authorize the imposition of attorney fees and expenses of litigation for proceedings before an appellate court.

The Georgia Court of Appeals found the use of fictitious cases before both the trial judge and the appellate court extremely troubling.

The court awarded costs against the husband's lawyer in the amount of $2,500, and commented as follows on the severity of the potential impacts on the justice system by the use of fictitious cases:

> Indeed, [m]any harms flow from the submission of fake opinions. The opposing party wastes time and money in exposing the deception. The Court's time is taken from other important endeavors. The client may be deprived of arguments based on authentic judicial precedents. There is potential harm to the reputation of judges and courts whose names are falsely invoked as authors of the bogus opinions and to the reputation of a party attributed with fictional conduct. It promotes cynicism about the legal profession and the American judicial system. And a future litigant may be tempted to defy a judicial ruling by disingenuously claiming doubt about its authenticity.

The court further cautioned that based on a study by researchers at Stanford University, which measured more than 200,000 legal questions on Open AI's ChatGPT 3.5, Google's PaLM 2 and Meta's Llama 2, these large-language models hallucinated at least 75 per cent of the time when answering questions about a court's ruling.

In the circumstances, the wife's appeal was allowed because the court was unable to meaningfully review the trial judge's decision. The court found that the wife had rebutted the presumption of regularity in the trial judgment because the use of two fake cases in denying her petition to reopen the case rendered the judgment defective on its face.

The trial judgment was vacated, and the complaint was remanded for further proceedings, including a new hearing on the wife's motion to reopen, consistent with the opinion of the Georgia Court of Appeals.

This case should set off alarm bells for the justice system and the legal profession. Media embarrassment of lawyers who rely upon fakes cases to support their arguments and personal costs awards are arguably an insufficient deterrent to prevent the use of AI-generated fictitious cases in our courts. Lawyers are officers of the court and are ethically bound to not mislead it. Yet, the reliance upon fictitious cases is an act of misleading the court. Accordingly, law societies should begin commencing disciplinary proceedings against members who use fake cases before the courts. Relatively small personal costs awards against lawyers are merely a slap on the wrist for the serious indiscretion of misleading the court.

[Note from the author: This article has not been generated using AI.]

Stephen A. Thiele is the director of legal research at Gardiner Roberts LLP. He primarily works closely with dispute resolution lawyers, providing advice, value-added analysis and opinions on a wide range of litigation matters. He is the co-author of A Practical Guide to the Law of Defamation *(2024: LexisNexis).*

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the author's firm, its clients, LexisNexis Canada, Law360 Canada or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

Interested in writing for us? To learn more about how you can add your voice to Law360 Canada, contact Analysis Editor Richard Skinulis at Richard.Skinulis@lexisnexis.ca or call 437-828-6772.

All Content © 2003-2025, Law360 Canada