AI and Legal Ethics: What Would You Do?

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Introduction & Objectives

- Familiarize yourself with the Law Society of BC Guidance on Professional Responsibility and Generative AI
- Encourage reflection on the different ways AI may influence your practice, your decision-making and your professional obligations
- Consider how AI may transform the practice of law

SCENARIO 1

Removing the client's name

A lawyer wants help drafting an opinion. Before entering the facts into AI, they remove the client's name but leave a distinctive combination of facts, locations, relationships and events.

Has the confidentiality problem been solved?

- **A** Yes, because the client's name was removed
- **B** Probably, provided no names were entered
- **C** Not necessarily
- **D** Yes, if the lawyer tells the AI not to retain the information

SCENARIO 1 · DISCUSSION

Answer C: not necessarily

Why not A or B

The duty covers all information about the client's affairs, not just their name. A distinctive mix of facts, places and relationships can still point to the client, especially in a small community or a reported dispute.

Why not D

Telling the chatbot to forget changes nothing. Retention, logging, human review and training are set by the provider's terms and the account settings, not by what you type in the prompt.

What actually helps

An approved tool with contractual confidentiality, real de-identification (generalize the facts, don't just delete names), and client consent where the risk calls for it.

SCENARIO 2

It’s Just a Summary

Counsel has a lengthy file and wants help getting oriented quickly. They upload witness statements and other case materials into a generative AI tool and ask:

“Summarize the key evidence, identify inconsistencies between witnesses, and suggest areas I should investigate further.”

The AI produces an excellent summary.

What is your FIRST concern?

- **A** How accurate is the summary?
- **B** What information was uploaded?
- **C** What AI system was used?
- **D** Whether counsel independently reviewed the original material
- **E** All of the above

SCENARIO 2 · DISCUSSION

Answer E: all of the above

A · Is it accurate?

An excellent summary can still miss, merge or invent inconsistencies. Check it against the record.

B · What was uploaded?

Witness statements can carry privilege, third parties' personal information and discovery documents.

C · Which system?

Consumer or enterprise? Retention, training, human review and data residency decide what happened to the file.

D · Did counsel review it?

Judgment can not be delegated. The AI leads are a starting point, not a substitute for reading the file.

SCENARIO 3

AI Did It Better

A lawyer has spent years drafting a particular type of application. Using AI, a first draft that ordinarily takes considerable lawyer time can now be generated very quickly. The lawyer reviews it carefully and makes corrections.

Which ethical issue is easiest to overlook here?

- **A** Competence
- **B** Confidentiality
- **C** Billing
- **D** Copyright
- **E** Supervision

SCENARIO 3 · DISCUSSION

Answer C: billing

Professional Responsibility

BC Code Rule 3.6-1 and related commentary: requires that lawyers only charge fair and reasonable fees in a timely fashion

Commentary [1]: lists factors that help inform what is fair and reasonable

Commentary [2]: sets out that the fiduciary duty between the lawyer and client requires full disclosure in all financial dealings and prohibits the acceptance by the lawyer of any hidden fees

Commentary [3]: lawyers should provide clients with timely, written notice of as much information regarding fees and disbursements and interest.

Commentary [4]: ready to explain the basis of the fees and disbursement charged to the client

How do you ethically factor in AI efficiencies?

- Commentary [1](a): the time and effort required and spent
- The word “spent” in [1](a) is highly relevant to this question. If an AI tool drafts an argument in 20 minutes that used to take four hours, then you bill 20 minutes plus the time it takes you to review it and make revisions. Billing the four hours it used to take you would be inconsistent with this rule.
- If AI completes work in less time, then the cost savings go to the client unless the retainer agreement includes a fee arrangement on a different basis.
- Consider value-based fees that factor in the difficulty (whether special skill or service required) and other relevant considerations, like a results-based fee. See commentary [1](b-d) and(h-i).

What about billing on fixed block fees?

- Legal Aid BC
  - Not aware of a formal AI compliance policy
  - Client Services Compliance Policy: audit and investigative powers

- Legal Aid Ontario
  - Does have an AI compliance policy
  - May decline payment for work that is unreasonable

- Inaccurate AI-generated materials has resulted in cost consequences
  - See *Zhang v Chen*, 2024 BCSC

What about allocating the cost of AI to your client?

- Fair and reasonable in the circumstances of your file?
- Was the use of AI disclosed in a timely fashion?
- Did you bill the amount it *actually cost* vs. what you estimated the cost to be?
- Billing time to review AI generated materials provided by your client

SCENARIO 4

I Asked AI About What My Lawyer Told Me

Jordan is charged with a criminal offence and retains defence counsel. After meeting with counsel, Jordan is worried about the case and wants a second perspective.

At home, Jordan opens a publicly available generative AI tool and enters:

“My lawyer told me that the biggest weakness in my defence is…”

Jordan then describes the advice received from counsel, confidential facts previously shared with counsel, and possible defence strategies. Jordan continues the conversation with the AI over several days.

Later, during the investigation, police lawfully obtain Jordan's electronic device and discover records of the AI conversations.

SCENARIO 4 …Continued

Has Jordan waived solicitor-client privilege by putting the information into an AI tool?

A Yes

B No

C It depends

D There is currently no sufficiently clear Canadian authority to give a categorical answer

SCENARIO 4 · DISCUSSION

Answer C and D:

To date, no court in British Columbia, or elsewhere in Canada, has directly addressed whether AI use affects privilege

- From the US – It depends

  Examples:
  United States v. Heppner **
  Warner v. Gilbarco, Inc.
  Archie Morgan v. V2X, Inc

- Solicitor-client privilege considerations AND litigation privilege considerations.

SCENARIO 4 …Continued

Has Jordan waived solicitor-client privilege by putting the information into an AI tool?

Change one fact:

Jordan didn't type out the lawyer's advice. Instead, Jordan asked the AI: "Based on these facts, what defence should I raise?"

Does that change your answer?

- **A** Yes
- **B** Maybe
- **C** No
- **D** The entire AI conversation is automatically privileged

SCENARIO 4 · DISCUSSION

Answer B:

Maybe.

- US examples demonstrate different outcomes depending on circumstances.
- Tips until we have more guidance from Canadian courts:
    - Discuss the risks with clients – if they enter information about their case into a public AI, tool they may be waiving privilege.
    - You have to be careful as well; do not enter client confidential information into public AI tools; and before you do so with closed systems, be certain of the confidentiality terms and conditions and ensure you have discussed your use of AI with your client.
    - Comes back to competency

SCENARIO 5

The Case Looks Perfect

AI generates a legal argument for an application you are preparing for and cites a BC case suggesting it is directly on point.

What should lawyers be expected to verify when using AI-assisted legal research?

- **A** The case and citation are authentic
- **B** The case and citation are authentic, and you have conducted a meaningful review of the entire case to ensure it supports the proposition for which it is being relied upon
- **C** It depends on whether the AI tool is specifically designed for legal research

SCENARIO 5 · DISCUSSION

Answer B: you are responsible for the authenticity and accuracy of all of your materials

-AI use requires oversight. You always need to verify that a case or material you rely on is accurate

-*Zhang v. Chen* 2024 BCSC 285

> [46] As this case has unfortunately made clear, generative AI is still no substitute for the professional expertise that the justice system requires of lawyers. Competence in the selection and use of any technology tools, including those powered by AI, is critical. The integrity of the justice system requires no less.

-*Wu v. Murray* 2025 BCCA 365 at paras 11-15

-*Hussein v. Canada (Immigration, Refugees and Citizenship)* 2025 FC 1060

SCENARIO 6

I Didn’t Use AI. My Assistant Did.

A lawyer assigns research and first-draft preparation to an assistant. The assistant uses generative AI extensively but does not tell the lawyer.

The lawyer reviews the draft, thinks it looks good and uses it.

An error is subsequently discovered.

Does it matter that the lawyer did not personally use AI?

A Yes

B No

SCENARIO 6 · DISCUSSION

Answer B: no.

What does competence mean when lawyers know that clients or anyone else involved with a file used AI, even if they did not?

A Few Resources

-Law Society of BC – Guidance on Professional Responsibility and Generative AI
-Law Society of BC dedicated webpage: Artificial Intelligence and the Legal Profession
-Lawyers Indemnity Fund Information: Generative AI: What Lawyers Need to Know

-BC Provincial Court website: Conducting legal research | Provincial Court of British Columbia
-BC Court of Appeal, Registrar's Filing Directive
-Government of Canada: Guide on the Use of Generative Artificial Intelligence
-Federal Court: Artificial Intelligence Principles and Guidelines

-CBA toolkit: Ethics of Artificial Intelligence for the Legal Practitioner
-Lexis+ - Ethics, Self-Regulation and the Case for "Governance with Teeth"

-Law Commission of Ontario, October 2026: AI in Criminal Justice
-BC Law Institute, April 2024: Report on Artificial Intelligence and Civil Liability

-Law Society BC LawCast BC Podcast, April 2026 – How AI is Powering Legal Research at CanLII
-Courthouse Libraries BC webinar, Dec. 2025: Ethics in Criminal Practice

-Lexis+ - Artificial Intelligence and the Law in Canada
-Lexis+ Practical Guidance Resource Kit on Artificial Intelligence
-*The Legal Compliance Handbook to Artificial Intelligence*, 2026 Imran Ahmad (currently on order by Courthouse Libraries BC)

Questions?