



AI in Criminal Practice: Duties, Dangers and Future Directions

12:45pm – 2:00pm

# **Use of Generative AI in your practice: *Ethical and Professional Considerations***

*Criminal Defense Advocacy Society*  
*December 3, 2025*

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*Law Society of British Columbia*

# Generative AI in your Practice

- **Focus is on Ethics and Professional Responsibility:**
  - *The Code of Professional Conduct for British Columbia*
  - The Law Society Rules
  
- **Outside the scope of this talk are issues of substantive law, including:**
  - Privacy
  - Copyright/Plagiarism
  - Privilege

# Ethics and Professional Responsibility

- **A few thoughts/caveats:**
  - The Law Society does not approve specific technology products
  - The Law Society released a Practice Resource: [“Guidance on Professional Responsibility and Generative AI”](#) which covers today’s topics
  - LIF (Lawyers’ Indemnity Fund) has also released a great resource geared more toward professional liability: [“Generative AI: What Lawyers Need To Know | LIF”](#)
  - Topics chosen from vantage point as a practice advisor, not on the basis of complaints
  - Not a deep dive into legal ethics, but a focus on practical tips
  - Lots of nuance and context that we can talk about in detail when you call a Practice Advisor
  - Practice Advisors do not opine on behalf of the Law Society

# Ethically speaking, why might we be thinking about using Generative AI?

## ■ Competence

- Otherwise **adapting** to changing professional requirements, standards, techniques and practices (Code rule 3.1-1(k))
- To maintain the required level of competence, **a lawyer should develop an understanding of, and ability to use, technology relevant to the nature** and area of the lawyer's practice and responsibilities (Code rule 3.1-2, Commentary [4.1])

## ■ Quality of Service

- The quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, **efficient** and civil (Code rule 3.2-1)
- A lawyer has a duty to provide a quality of service **at least equal to that which lawyers generally expect of a competent lawyer in a like situation** (Code rule 3.2-1, Commentary [2])

## ■ Fair and Reasonable Fees

- A lawyer must not charge or accept a fee or disbursement, including interest, unless it is **fair and reasonable** and has been disclosed in a timely fashion (Code rule 3.6-1)

**BUT...**

If {When} we use generative AI in our practice,  
**ethically speaking** we also need  
**GUARDRAILS**

# Ethics and Professional Responsibility

**The use of generative AI by lawyers engages a number of ethical and professional responsibilities, including:**

- Competence / technological competence (Code rule 3.1-2)
- Quality of service (Code rule 3.2-1)
- Honesty and candour (Code rule 3.2-2)
- Confidentiality (Code rule 3.3-1, 3.3-2)
- Information security (LSBC Rules 10-3 and 10-4)
- Responsibility for supervision (Code rule 6.1-1)
- Reasonable fees and disbursements (Code rule 3.6-1)
- Obligations to courts and tribunals; lawyers as advocates (Code rules 2.1-2, 5.1-1, 5.1-2, 5.1-4)
- Duty to not facilitate dishonesty, crime or fraud (Code rule 3.2-7)

# Technological competence

- Lawyers must perform all legal services undertaken on a client's behalf to the **standard of a competent lawyer** (Code rule 3.1-2)
- March 2024 amendments to the Code specifically address competent use of technology, Code rule 3.1-2, Commentaries [4.1] and [4.2]:

**[4.1]** To maintain the required level of competence, a lawyer should **develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities**. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer's duty to protect confidential information set out in section 3.3.

**[4.2]** The required level of technological competence **will depend upon whether the use or understanding of technology is necessary to the nature and area of the lawyer's practice and responsibilities and whether the relevant technology is reasonably available to the lawyer**. In determining whether technology is reasonably available, consideration should be given to factors including:

- (a) the lawyer's or law firm's practice areas;
- (b) the geographic locations of the lawyer's or firm's practice; and
- (c) the requirements of clients.

## **TIPS**

*Due diligence on any tool is a must*

*Seek out training before introducing a tool into your work*

*Practice, practice, practice!*

*Try using generative AI on non-client work to see what it can and cannot do*

# Honesty and Candour

- **Lawyers must be honest and candid** with their client and must inform the client of all information known to the lawyer that may affect their client's interests (Code rule 3.2-2)
- **A lawyer should disclose to the client all the circumstances** of the lawyer's relations to the parties and interest in or connection with the matter, **if any that might influence whether the client selects or continues to retain the lawyer** (Code rule 3.2-2, Commentary [1])
- Similar to a lawyer's duty to maintain client confidentiality, it is prudent to **make sure your client is aware** of how you plan to use any generative AI tools

## **TIPS**

*If you want to use AI for client matters, you may want to inform your client on how you are planning to use it*

*Clients may be excited by the benefits that AI can provide*

*Consider updating your retainer agreements*

*Record and document how you use AI for each client matter*

# Confidentiality (in addition to privacy and privilege)

- Lawyers have a **duty to maintain strict client confidentiality** with limited exceptions (Code rule 3.3-1)
- Before supplying confidential information to a generative AI tool, understand how information is used, stored, and disclosed by the tool
  - Consider whether you need to omit confidential information or obtain client consent
- For publicly accessible or free generative AI tools:
  - Client confidential information, including identifying information, should be omitted
  - If redacting is not possible, then you could **explore gaining client consent** to use the tool
    - “consent” and “disclosure” are defined in Code rule 1.1-1

## **TIPS**

*Consider carefully what information **needs** to be supplied to generative AI*

*Be confident in how confidential information is treated, and the risks it may pose, so you can explain the risks to your client*

*Do not enter any information that is confidential before determining whether prior client consent is required*

# What about Privilege?

# Information Security

- Using generative AI tools requires you to understand how information is stored, processed and secured
- AI products need to be considered with same thoroughness required when a lawyer chooses other technology software
- Under the Law Society Rules **“storage provider”** means any entity **storing or processing records outside of a lawyer’s office**, whether or not for payment (Rule 10-3(1))
- Rule 10-3(4) sets out requirements for when a lawyer uses a storage provider for their records
- Rule 10-4 requires a lawyer to protect all records related to a lawyer’s practice by making reasonable security arrangements

## **TIPS**

*See ADMA under “Lawyer Technology” for resources on information security and storage*

*As a starting point, always read the terms of service to ensure compliance with professional, ethical, and substantive law obligations*

*Remember your reporting obligations to the LSBC under Rule 10-4*

# Obligations vis-à-vis administration of justice – to courts and tribunals

- Court practice and procedure (outside the scope of Practice Advice):
  - Some courts and tribunals in Canada and elsewhere require lawyers to disclose **when** generative AI was used to prepare their submissions
  - Some require disclosure of **what** tools were used, and **how**
  - Check with the court, tribunal or other relevant decision-maker to verify whether you are required to attribute, and to what degree, prior to your use of generative AI
  - Proactive disclosure in any event may be prudent (*Zhang v. Chen*, 2024 BCSC 285, para [45])
- In addition to any requirements of the court or tribunal, lawyers have ethical obligations (e.g. Code rule 2.1-2 and Ch. 5)
- Subject to confidentiality, certain errors must be fixed (Code rule 5.1-4)

## **TIP**

*Regardless of whether or not you have a duty to disclose to the court or tribunal whether you used AI, it is a good idea to record when and how you use generative AI for each client matter, in case of emerging disclosure requirements*

# Fraud and Deep Fakes

- A lawyer **must be on guard** against becoming the tool or a dupe of an unscrupulous client, or of others (Code rule 3.2-7, Commentary [1])
- There is a potential for generative AI to create deep fakes and there are fraud risks posed by the use of the technology in that manner
- Becoming a dupe based on something created by generative AI can create a myriad of ethical and professional negligence issues

## **TIPS**

*Trust your instincts and ask questions*

*Make reasonable inquiries and record results of inquiries*

*Establish and follow your protocols for verifying instructions*

*Know when to call LIF or Coalition*

# Disclosure of Errors or Omissions

- Code rule 5.1-4:

**A lawyer who has unknowingly done or failed to do something that, if done or omitted knowingly, would have been in breach of the Code rules in section 5.1 (The lawyer as advocate) and who discovers it, must, subject to section 3.3(Confidentiality), disclose the error or omission and do all that can reasonably be done in the circumstances to rectify it.**

## **TIPS**

*Take steps to address the error as early as possible*

*If you are concerned about confidentiality, call a Practice Advisor or trusted colleague to discuss right away*

*Do not ignore the error and know when to call LIF*

# Oversight and Responsibility for Supervision

- Duties around competency and quality of service require **oversight and application of judgment** or deliberation **to all of our work**, whether generated by AI tools or not (as an example Code rule 3.1-1(f))
- Lawyers are **required to supervise** staff and assistants to whom the lawyer delegates tasks and functions (Code rule 6.1-1)
  - Although intended for human-to-human supervision, this rule is a helpful reminder that **some AI tools act as or perform work similar to assistants**, and lawyers are responsible for overseeing the work produced

## *TIPS*

*Review **everything** that the generative AI tool produces*

*Check **all** citations, including quotations, through a separate trusted resource (not the AI tool)*

*Consider creating an internal policy on when and how generative AI can be used*

# Reasonable Fees and Disbursements

- Fees and disbursements must be **fair and reasonable** and disclosed in a timely fashion (Code rule 3.6-1)
- If you are using generative AI to complete work at the fraction of the time it would have taken a lawyer or supervised staff member to complete the work, what impact will that have on your current billing model?
- Reflect on how you will bill for use of generative AI in your practice prior to using it

## **TIPS**

*Your firm may want to create a billing policy for work completed by AI, as well as for the lawyer's review of that work*

*See LSBC Discipline Advisory on proper billing and recording of disbursements*



# AI IS HERE TO STAY

- AI IS EVERYWHERE, AND IT WILL ONLY BECOME MORE WIDELY USED
- MORE INVESTIGATIONS ARE DATA DRIVEN
- POLICE AND LAWYERS ARE HAVING TO DEAL WITH VOLUMES OF DATA
- AI CAN HELP
- AI CAN ALSO HURT IF USED IMPROPERLY

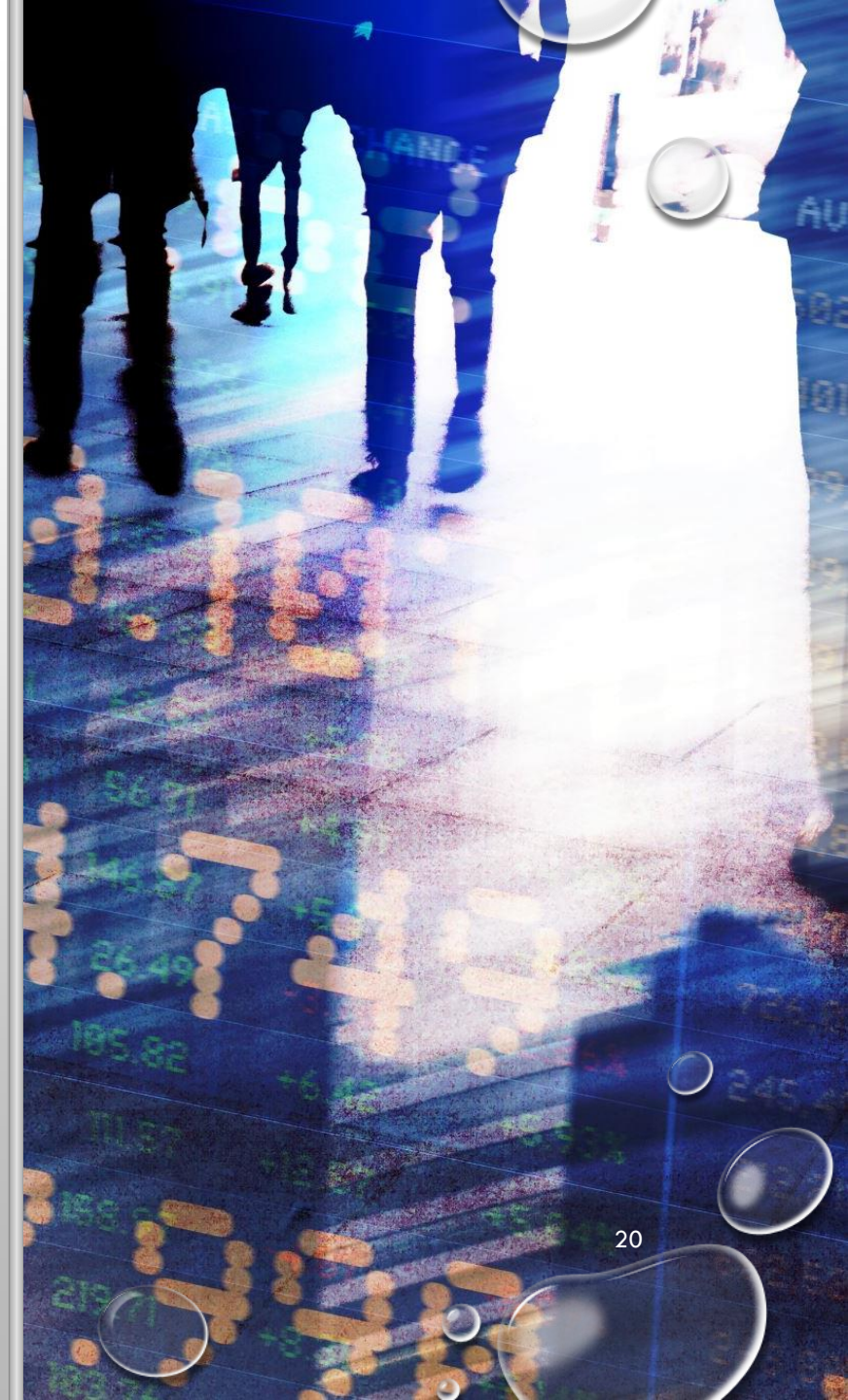


# USING AI IN OUR DAILY WORK?

- ONLY AS GOOD AS THE RESEARCHER
- EFFECTIVE TOOLS FOR EFFICIENCY, TIME-SAVING
  - SUMMARY OF SURVEILLANCE REPORTS
  - SUMMARY OF WITNESS STATEMENTS
  - PRELIMINARY ANALYSIS OF COMPLEX OR VOLUMINOUS DOCUMENTS AND DATA
  - CREATE IMAGES AND TABLES FOR CONCISE PRESENTATION OF INFORMATION

# RISKS OF USING AI

- **SECURITY RISKS**
  - UPLOADING SENSITIVE INFORMATION
    - CLIENTS, WITNESSES, JUSTICE SYSTEM PARTICIPANTS
    - MOSAIC OF INFORMATION THAT CAN COMPROMISE CI PRIVILEGE OR INVESTIGATIVE TECHNIQUES
- **PERPETUATING BIASES**
  - USING PROMPTS THAT ARE NOT IMPARTIAL
- **ERRONEOUS INFORMATION GENERATED**
  - AI HALLUCINATIONS
- **INSUFFICIENT HUMAN REVIEW**





# GOV'T OF CANADA GUIDE TO USING AI: FASTER

- **FAIR:** IMPARTIAL PROMPTS, FREE OF STEREOTYPES
- **ACCOUNTABLE:** ENSURE OUTPUT IS ACCURATE, LEGAL, ETHICAL, COMPLIANT WITH POLICIES FOR USE
- **SECURE:** APPROPRIATE INFRASTRUCTURE AND TOOLS; UNCLASSIFIED MATERIAL ONLY
- **TRANSPARENT:** ACKNOWLEDGE USE OF AI AND HOW IT HAS BEEN USED
- **EDUCATED:** LEARN THE STRENGTHS, LIMITATIONS AND RESPONSIBLE USE OF AI
- **RELEVANT:** MAKE SURE USING AI IS APPROPRIATE IN THE CIRCUMSTANCES

# AI HALLUCINATIONS



Hallucinations are false “facts” that can be generated by AI systems



Why do they occur?



**Only as good as the data they are trained on** → If the AI system is operating on incomplete or inaccurate data sets, accurate results cannot be guaranteed



**Poor or ambiguous prompts** → If the user wording the prompt has drafted a confusing or misworded prompt, or if the question is too vague or poorly structured, the AI can ‘misunderstand’ the user's intent and generate an incorrect response



**Lack of understanding** → We aren't dealing with AI models that have real awareness or consciousness. They are designed to predict the next word or image based on patterns, not to verify facts or understand context like a human



## EXAMPLE AI PROMPT #1

FIND ME A CASE FROM THE BRITISH COLUMBIA SUPREME COURT THAT DID **NOT** EXCLUDE EVIDENCE AFTER A SEARCH WAS FOUND TO BE ILLEGAL FOLLOWING A TRAFFIC STOP

# AI ANSWER

ONE EXAMPLE OF A CASE FROM THE **BRITISH COLUMBIA SUPREME COURT** WHERE EVIDENCE WAS NOT EXCLUDED DESPITE A FINDING THAT A SEARCH FOLLOWING A TRAFFIC STOP WAS ILLEGAL IS ***R. V. GILL, 2011 BCSC 1729***.

IN THIS CASE:

- **THE BREACH:** THE TRIAL JUDGE FOUND THAT THE POLICE OFFICER'S SEARCH OF THE VEHICLE FOLLOWING A LAWFUL TRAFFIC STOP AMOUNTED TO AN **UNREASONABLE SEARCH AND SEIZURE** IN VIOLATION OF THE ACCUSED'S RIGHT UNDER **SECTION 8 OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS**. THE DETENTION OF THE ACCUSED WAS NOT SIMPLY FOR A TRAFFIC STOP PURPOSE.
- **THE EVIDENCE:** THE ILLEGAL SEARCH RESULTED IN THE DISCOVERY OF A LARGE AMOUNT OF CASH AND A QUANTITY OF DRUGS.
- **THE DECISION ON EXCLUSION:** THE COURT, APPLYING THE THREE-PART TEST FROM THE SUPREME COURT OF CANADA DECISION IN ***R. V. GRANT***, ULTIMATELY RULED THAT THE ADMISSION OF THE EVIDENCE **WOULD NOT BRING THE ADMINISTRATION OF JUSTICE INTO DISREPUTE**, AND THEREFORE, THE EVIDENCE WAS **NOT EXCLUDED** UNDER **SECTION 24(2)** OF THE *CHARTER*.

# AI ANSWER

## THE R. V. GRANT ANALYSIS (THE THREE FACTORS)

THE COURT'S DECISION IN **R. V. GILL** TURNED ON BALANCING THE FOLLOWING THREE FACTORS, AS ESTABLISHED IN THE FRAMEWORK:

### 1. SERIOUSNESS OF THE CHARTER-INFRINGING CONDUCT

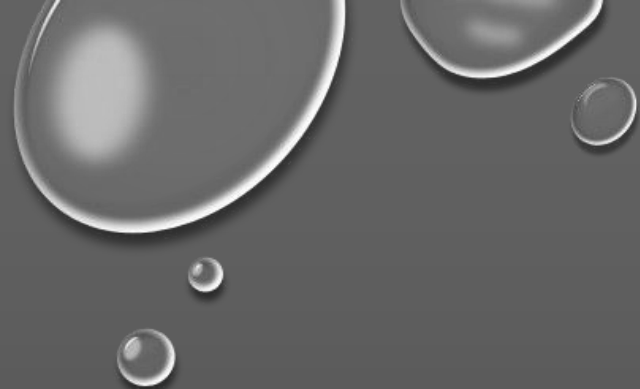
- THE COURT FOUND THE CHARTER VIOLATION TO BE AT THE **LOWER END OF THE SPECTRUM** OF SERIOUSNESS. THE OFFICER WAS PURSUING A REASONABLE INVESTIGATIVE LINE, BUT HIS SEARCH ESCALATED BEFORE HE HAD THE REQUISITE REASONABLE GROUNDS. THERE WAS NO BAD FAITH, FLAGRANT ABUSE, OR DELIBERATE DISREGARD FOR THE ACCUSED'S RIGHTS; RATHER, IT WAS SEEN AS A PRODUCT OF **POOR JUDGMENT OR "HONEST ERROR"** IN THE HEAT OF THE MOMENT, OPERATING IN AN AREA OF LEGAL UNCERTAINTY REGARDING THE SCOPE OF A SEARCH INCIDENTAL TO AN INVESTIGATIVE STOP.

### 2. IMPACT OF THE BREACH ON THE ACCUSED'S CHARTER-PROTECTED INTERESTS

- THE IMPACT ON THE ACCUSED'S LIBERTY AND PRIVACY INTERESTS WAS CONSIDERED **MODERATE**. THE STOP WAS RELATIVELY BRIEF, AND ALTHOUGH THE SEARCH WAS INTRUSIVE (A SEARCH OF THE PERSON AND THEN THE VEHICLE), THE ACCUSED HAD A **LOWER EXPECTATION OF PRIVACY** IN A VEHICLE ON A PUBLIC ROAD COMPARED TO, FOR INSTANCE, A HOME.

### 3. SOCIETY'S INTEREST IN THE ADJUDICATION OF THE CASE ON ITS MERITS

- THIS FACTOR STRONGLY FAVOURED THE ADMISSION OF THE EVIDENCE. THE EVIDENCE (CASH AND DRUGS) WAS **HIGHLY RELIABLE, REAL EVIDENCE** THAT EXISTED INDEPENDENT OF THE BREACH. EXCLUDING IT WOULD PREVENT A TRIAL ON SERIOUS CHARGES (DRUG TRAFFICKING),<sup>25</sup> WHICH WOULD SIGNIFICANTLY HARM **SOCIETY'S INTEREST IN THE TRUTH-SEEKING FUNCTION** OF THE CRIMINAL JUSTICE SYSTEM.

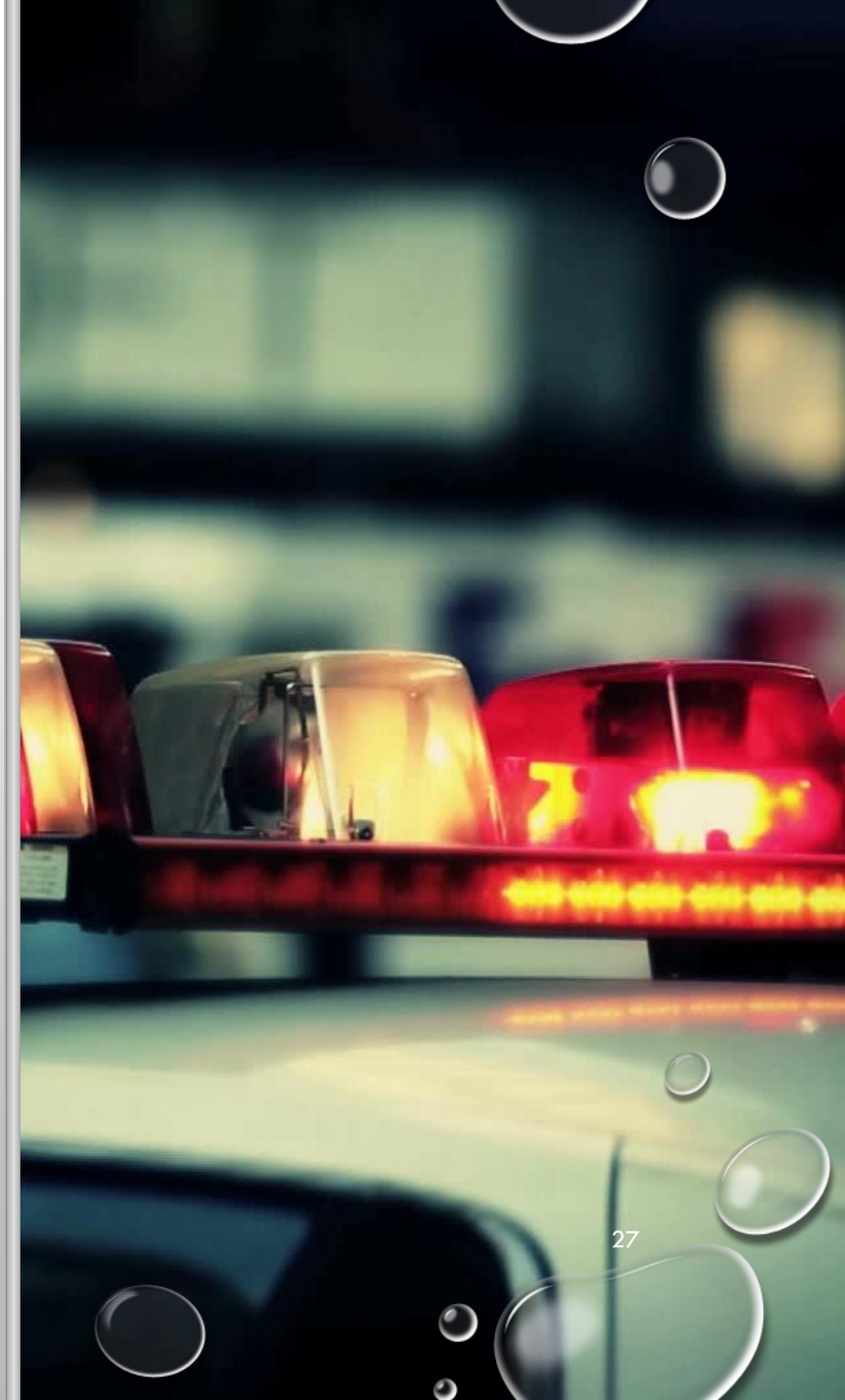


# AI ANSWER

ULTIMATELY, THE COURT FOUND THAT THE LACK OF DELIBERATE POLICE MISCONDUCT AND THE SERIOUSNESS OF THE CHARGES COMBINED WITH THE HIGH RELIABILITY OF THE EVIDENCE OUTWEIGHED THE MODERATE IMPACT ON THE ACCUSED'S CHARTER RIGHTS, LEADING TO THE **ADMISSION OF THE EVIDENCE.**

## EXAMPLE AI PROMPT #2

PROVIDE A CASE FROM BRITISH COLUMBIA WHERE THE POLICE WERE FOUND TO BREACH THE RIGHTS OF A PASSENGER IN A VEHICLE BY INSISTING ON THEIR IDENTIFICATION



# AI ANSWER

That's an excellent request, as the rights of passengers during a traffic stop are a frequent topic of legal challenge.

A very relevant and recent British Columbia case that addresses the breach of a passenger's rights, particularly relating to unlawful detention and search, is **R. v. Anwyll, 2024 BCPC 28**

While the case primarily involved the driver, the Court specifically found that the **passenger's Charter rights were also breached** as a direct result of the police's unlawful actions.

# AI ANSWER

## Key Facts Relevant to the Passenger

- **Unlawful Detention:** The police officer approached a parked vehicle and, after interacting with the driver, discovered she was a prohibited driver. The Court found the initial **traffic stop itself was unlawful** because the officer exceeded their authority under the *Motor Vehicle Act* (MVA).
- **Consequential Detention of the Passenger:** The passenger (a man, only referred to as "the man" in the legal summary) was a third party in the vehicle. As a consequence of the unlawful stop and the driver's arrest, the passenger was also **detained against his will**. The Court concluded this detention was an **arbitrary detention** under **Section 9** of the Charter because it flowed directly from the police's initial unlawful act.
- **Search of the Passenger:** The passenger was subsequently subjected to an **unlawful search** (a search incident to an unlawful arrest/detention), breaching his **Section 8** Charter right to be secure against unreasonable search.

# AI ANSWER

## Crucial Finding on Passenger's Rights

- The Court emphasized that the passenger was **unlawfully detained, handcuffed, and searched**, and that the **cumulative impact of the breaches on the passenger's Charter rights was substantial**.
- While the summary focuses more on the initial unlawful stop rather than an explicit "insistence on ID," the case serves as a powerful example of how a passenger's rights are breached when police action against the driver is found to be unlawful, leading to the **arbitrary detention** of the passenger and subsequent, unjustified searches.

## → The Result

- The judge ultimately applied **Section 24(2)** of the *Charter* and ruled that admitting the evidence obtained from both the driver and the passenger, due to the cumulative seriousness and impact of the Charter breaches, would bring the administration of justice into disrepute. Consequently, **all evidence obtained from the vehicle and from the man (the passenger) was excluded**.



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**What do you think?**

**Was the AI correct?**

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**R. v. Gill**

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**R. v. Anwyll**

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# R. V. GILL, 2011 BCSC 1729?

- [1] THE PARTIES, WHO ARE NOT MARRIED TO EACH OTHER, HAVE BEEN IN A RELATIONSHIP SINCE 1993 OR 1994. THEY ARE THE PARENTS OF TWO GIRLS: R, WHO IS 16, AND C, WHO IS 12.

- [2] MS. M APPLIES UNDER RULE 15-8 FOR AN ORDER THAT THE PARTIES' RESIDENTIAL PROPERTY BE LISTED FOR SALE WITH THE PARTIES HAVING JOINT CONDUCT OF SALE. THE PROCEEDS OF ANY SALE WOULD BE HELD IN TRUST UNTIL FURTHER COURT ORDER.

## IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: K.J.M. v. P.D.A.,  
2011 BCSC 1729

Date: 20111216  
Docket: EI04021  
Registry: Vancouver

Between:

**K.J.M.**

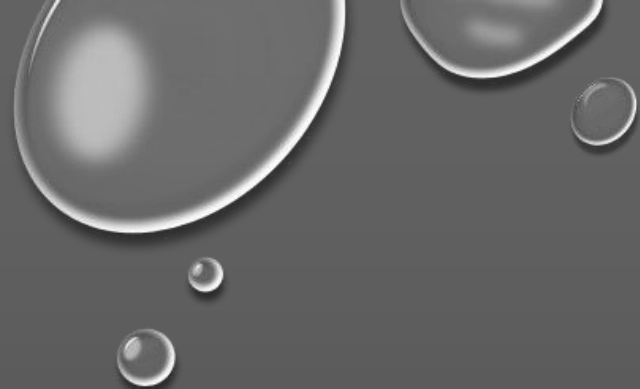
Claimant

And

**P.D.A.**

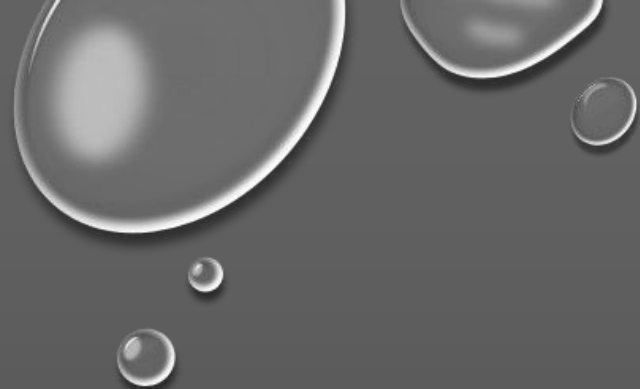
Respondent

Before: Master MacNaughton



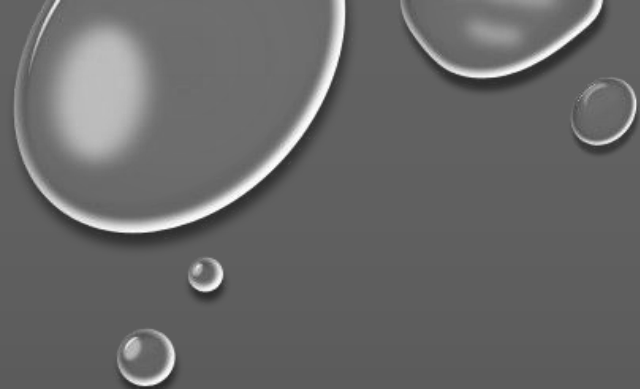
# R. V. ANWYLL, 2024 BCSC 28?

- 2024 BCSC 28 IS NOT THE CORRECT CITATION, BUT
- R. V. ANWYLL, 2025 BCSC 156 DOES EXIST AND IS A RECENT DECISION FROM JUDGE LAYTON WHERE EVIDENCE WAS EXCLUDED BECAUSE IT WAS FOUND TO BE A BREACH OF THE DRIVER'S (MS. ANWYLL) S.9 RIGHTS WHEN THE OFFICER ENGAGED WITH HER, WHILE SHE WAS PARKED AND SITTING IN THE DRIVER'S SEAT OF HER VEHICLE. THE OFFICER/CROWN RELIED ON S. 73(1) OF THE MVA BUT THE COURT RULED THAT SINCE THE OFFICER NEVER SAW MS. ANWYLL DRIVING THE ELANTRA (BECAUSE HE ONLY SAW IT PARKED), THE SECTION OF THE MVA COULD NOT BE USED TO JUSTIFY THE STOP.



R. V.  
ANWYLL,  
2024 BCSC  
28?

- THE ELANTRA IS SEARCHED AFTER MS. ANWYLL'S ARREST AND METHAMPHETAMINE IS FOUND IN THE COVERED CENTRE CONSOLE. THE PASSENGER, MR. FRIESEN (NOT JUST "THE MAN"), IS ARRESTED FOR POSSESSION OF A CONTROLLED SUBSTANCE
- AT TRIAL, ALL PARTIES AGREED THAT MR. FRIESEN'S ARREST WAS A BREACH OF HIS S. 9 *CHARTER* BECAUSE IT WAS BASED ENTIRELY ON EVIDENCE OBTAINED THROUGH AN UNLAWFUL SEARCH OF THE ELANTRA, WHICH CONSTITUTED A FURTHER S. 8 BREACH
- 24(2) ANALYSIS RESULTS IN THE EXCLUSION OF EVIDENCE:  
[PARA 161] IN THIS CASE, I HAVE CONCLUDED THAT FOR BOTH MS. ANWYLL AND MR. FRIESEN THE STATE MISCONDUCT WAS SERIOUS AND HAD A SUBSTANTIAL NEGATIVE IMPACT ON THEIR *CHARTER*-PROTECTED RIGHTS. THE IMPORTANCE OF ENSURING THAT SUCH CONDUCT IS NOT CONDONED BY THE COURTS THEREFORE REQUIRES EXCLUSION OF THE IMPUGNED EVIDENCE.



# HOW THE COURTS VIEW THE USE OF AI

- VERY MUCH A TOPIC THAT IS BEING CONSIDERED BY COURTS ACROSS THE COUNTRY BUT NOT EVERY PROVINCE HAS PRACTICE DIRECTIVES YET

- PRACTICE DIRECTIVE FROM COURT OF KING'S BENCH IN MB:

*WITH THE STILL NOVEL BUT RAPID DEVELOPMENT OF ARTIFICIAL INTELLIGENCE, IT IS APPARENT THAT ARTIFICIAL INTELLIGENCE MIGHT BE USED IN COURT SUBMISSIONS. WHILE IT IS IMPOSSIBLE AT THIS TIME TO COMPLETELY AND ACCURATELY PREDICT HOW ARTIFICIAL INTELLIGENCE MAY DEVELOP OR HOW TO EXACTLY DEFINE THE RESPONSIBLE USE OF ARTIFICIAL INTELLIGENCE IN COURT CASES, THERE ARE LEGITIMATE CONCERNS ABOUT THE RELIABILITY AND ACCURACY OF THE INFORMATION GENERATED FROM THE USE OF ARTIFICIAL INTELLIGENCE. TO ADDRESS THESE CONCERNS, **WHEN ARTIFICIAL INTELLIGENCE HAS BEEN USED IN THE PREPARATION OF MATERIALS FILED WITH THE COURT, THE MATERIALS MUST INDICATE HOW ARTIFICIAL INTELLIGENCE WAS USED.***



# HOW THE COURTS VIEW THE USE OF AI

- TRI-COURT NOTICE IN ALBERTA:

**CAUTION:** THE COURT OF APPEAL OF ALBERTA, COURT OF KING'S BENCH OF ALBERTA, AND ALBERTA COURT OF JUSTICE **URGE PRACTITIONERS AND LITIGANTS TO EXERCISE CAUTION WHEN REFERENCING LEGAL AUTHORITIES OR ANALYSIS DERIVED FROM LLMS IN THEIR SUBMISSIONS.**

**RELIANCE:** FOR **ALL REFERENCES TO CASE LAW, STATUTES OR COMMENTARY** IN REPRESENTATIONS TO THE COURTS, IT IS **ESSENTIAL THAT PARTIES RELY EXCLUSIVELY ON AUTHORITATIVE SOURCES** SUCH AS OFFICIAL COURT WEBSITES, COMMONLY REFERENCED COMMERCIAL PUBLISHERS, OR WELL-ESTABLISHED PUBLIC SERVICES SUCH AS CANLII.

**"HUMAN IN THE LOOP":** IN THE INTEREST OF MAINTAINING THE HIGHEST STANDARDS OF ACCURACY AND AUTHENTICITY, **ANY AI-GENERATED SUBMISSIONS MUST BE VERIFIED WITH MEANINGFUL HUMAN CONTROL.** VERIFICATION CAN BE ACHIEVED THROUGH CROSS-REFERENCING WITH RELIABLE LEGAL DATABASES, ENSURING THAT THE CITATIONS AND THEIR CONTENT HOLD UP TO SCRUTINY. THIS ACCORDS WITH THE LONGSTANDING PRACTICE OF LEGAL PROFESSIONALS.



# HOW THE COURTS VIEW THE USE OF AI

ONTARIO RULES OF CIVIL PROCEDURE:

**A FACTUM SHALL INCLUDE A STATEMENT SIGNED BY THE PARTY'S LAWYER, OR ON THE LAWYER'S BEHALF BY SOMEONE THE LAWYER HAS SPECIFICALLY AUTHORIZED, CERTIFYING THAT THE PERSON SIGNING THE STATEMENT IS SATISFIED AS TO THE AUTHENTICITY OF EVERY AUTHORITY CITED IN THE FACTUM.**



# HOW THE COURTS VIEW THE USE OF AI

## FEDERAL COURT:

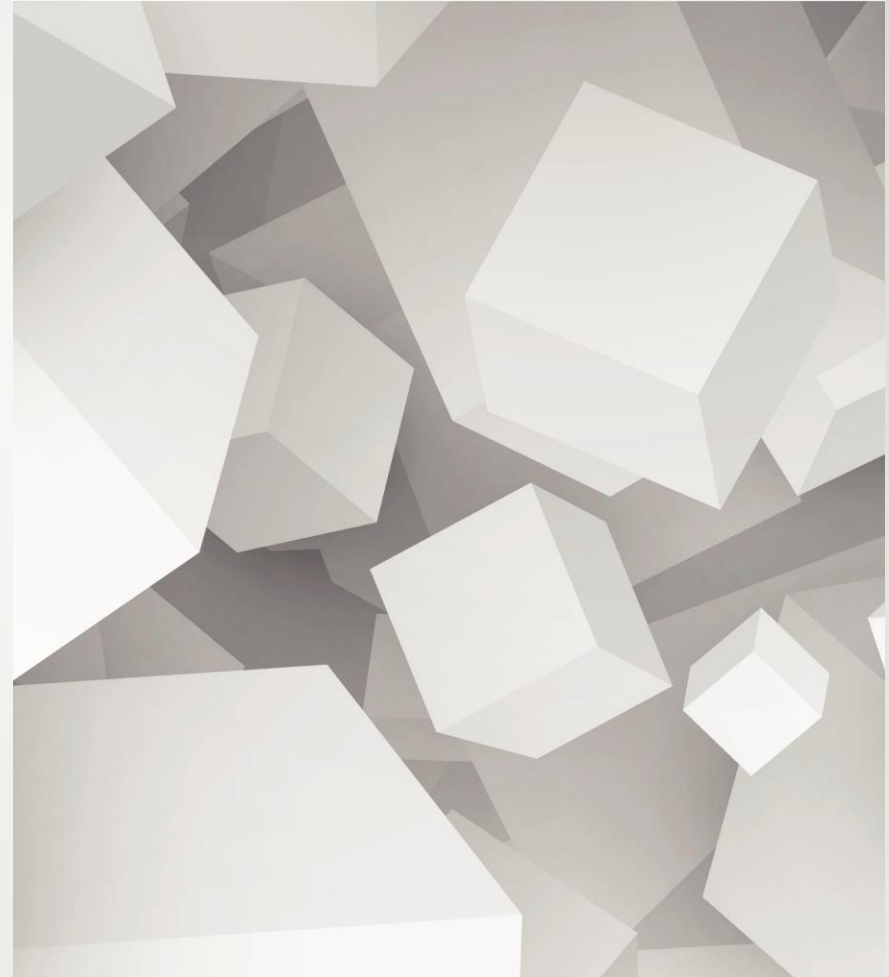
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# Ai and the Judiciary- Ethical Principles

**Justice David M. Masuhara**

**BC Supreme Court**

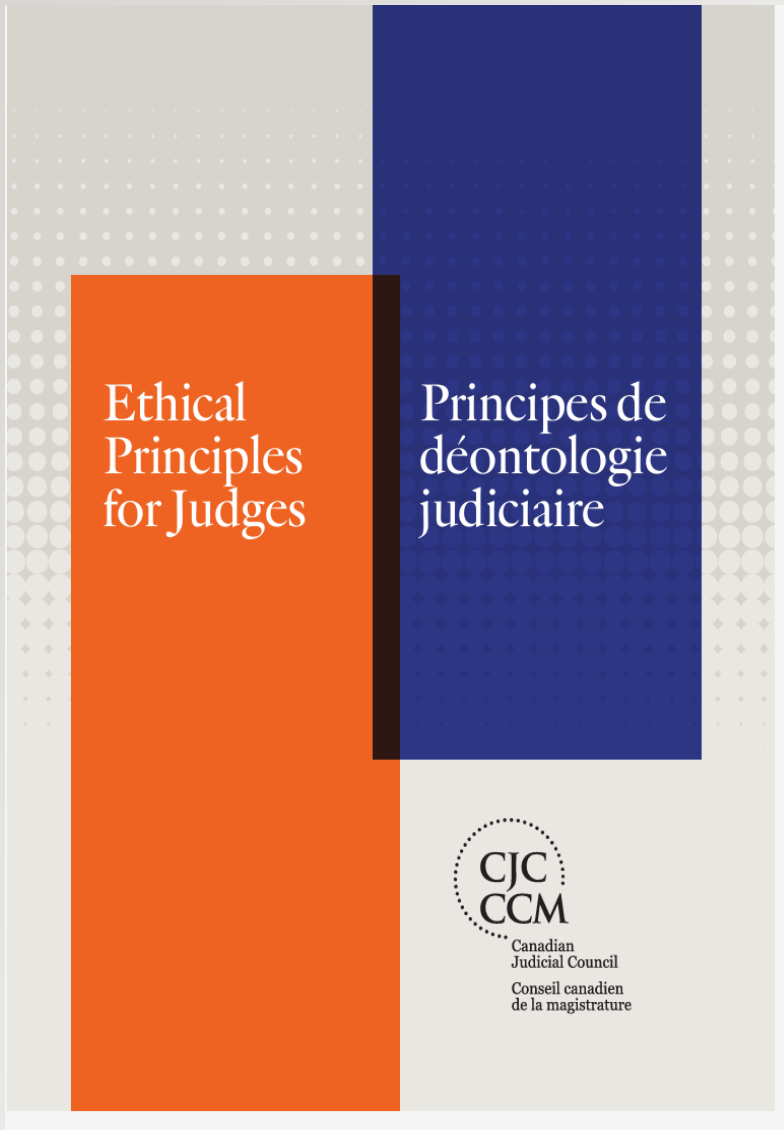
BC Prosecution Service/Criminal  
Defence Advocacy Society Webinar  
December 3, 2025





## Through what lens do we view all of this?

- Rule of Law – integrity of the justice system and public confidence
- Charter for Rights and Freedoms
- Laws and regulations – Privacy, intellectual property, AIDA Bill C-27 (stalled)
- Ethical Principles for Lawyers
- Ethical Principles and Guidelines for Judges
- Courts ability to control its own process – justice and the truth-seeking function
- Rules of Evidence – threshold admissibility: relevance and authenticity etc.
- Access to Justice – a large segment of society have difficulty. Also, are courts overwhelmed?
- Future of the justice system: independent, healthy, and accessible courts and profession



## CJC Ethical Principles

- Judicial Independence
- Integrity and Respect
- Diligence and Respect
- Equality
- Impartiality



# Guidelines for the Use of Artificial Intelligence in Canadian Courts

First Edition, September 2024

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Prepared by Martin Felsky, Ph.D., J.D., and Professor Karen Eltis for the Canadian Judicial Council

## **CJC Guidelines**

Judges hold exclusive responsibility for their decisions. It must be unequivocally understood that no judge is permitted to delegate decision-making authority, whether to law clerk, administrative assistant, or computer program, regardless of capabilities.



# Guidelines for the Use of Artificial Intelligence in Canadian Courts

First Edition, September 2024

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Prepared by Martin Felsky, Ph.D., J.D., and Professor Karen Eltis for the Canadian Judicial Council

## CJC Guidelines

- Protect Judicial Independence
- Ai Consistent with Core Values and Ethical Rules
- Have Regard to Legal Aspects of Ai Use
- Ai Tools to be subject to stringent Security Standards and Output standard
- Ai tool used in court applications must be to provide understandable explanations for decision-making output
- Courts must regularly track the impact of Ai deployments
- Develop a program of education and provide user support



COURT  
INFORMATION  
MANAGEMENT  
POLICY FRAMEWORK  
TO ACCOMMODATE THE  
DIGITAL ENVIRONMENT

Discussion Paper

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For the Canadian Judicial Council

## Core Values

- Equality
- Fairness
- Impartiality
- Independence
- Competence
- Integrity
- Transparency
- Accessibility
- Timeliness
- Certainty

Public Confidence

Human Dignity

Efficiency



## Action Committee on Modernizing Court Operations

USE OF ARTIFICIAL INTELLIGENCE BY COURTS TO ENHANCE COURT OPERATIONS

November 2024

### Orienting Principles

- Ai is a tool, rather than an end in itself
- Ai should support access to justice and a user-centered approach
- Human insight of Ai is essential
- Communication promotes accountability and confidence in the courts
- Appropriate data privacy and cybersecurity measures are needed
- Ai is constantly evolving and requires continuous learning

## Automated *judicial* decision-making? (some arguments)

PROS	CONS
Speed and Efficiency	Lack of humanity – judgment and insight/discretion
Consistency	Inflexibility
Elimination of Bias or no worse than humans	No Accountability
Access to massive data	Loss of Public Confidence in judiciary
Cost Savings	Lack of adaptability to new situations
Objective Application of the law	Dehumanizing of Justice
Increased transparency or no worse than humans	Lack of transparency – proprietary and complexity
Access to Justice – unmet needs of society	Commoditization and downgraded quality of justice

# Existential Questions

**Passivity** – spectators rather than participants

**Decreased Agency** – less participation in the process and less effort results in reduction of our experience of our actions

**Decreased Responsibility** – by abdicating control over the process lessens culpability for consequences negative or positive

**Increased Ignorance** - delegation of tasks can limit our understanding of how a process works

**Detachment** - diminished participation leads to disengagement

**Decreased Independence** – dependency can result in deskilling. We can forget how to perform a task or become less capable of doing it. We can lose our motivation to increase our knowledge and skill.



# Need for Human Engagement and Oversight