

Law Society of Ontario publishes guidance for licensees with respect to the use of generative AI

APRIL 25, 2024 5 MIN READ



Related Expertise

- [Artificial Intelligence](#)
- [Commercial Technology Transactions](#)
- [Technology](#)

Authors: [Sam Ip](#), [Naomi Chernos](#), Deric Mackenzie Feder

Introduction

This week, the Law Society of Ontario (LSO)'s Futures Committee tabled their long anticipated white paper on licensee's use of generative AI [PDF]. The white paper provides guidance for licensees on how the rules of professional conduct apply to the use and adoption of generative AI tools in their delivery of legal services. This guidance is accompanied by other LSO resources, such as a quick-start checklist, best practice tips, and a summary of professional obligations, which will be made available in the LSO's [Technology Resource Centre](#).

This makes Ontario the fifth Canadian law society after [Alberta](#), [Manitoba](#), [Saskatchewan](#) and [British Columbia](#) to release guidance and white papers on the use of generative AI for their licensees. This growing body of guidance will inform licensees across Canada on how to responsibly implement new technologies, as well as ensuring that their existing practices meet the law societies' expectations.

Overview

The white paper defines generative AI as "AI that creates new content (text, code or other media, such as music, art or photos) using generative models." The white paper provides examples of how licensees may use generative AI for various tasks, such as basic legal research, marketing, editing, summarizing and drafting documents.

Furthermore, the white paper identifies some of the key risks of using generative AI in practice, such as the unanticipated spread of confidential information, hallucinations and inaccurate information, bias, licensee-client relationship issues, and provision of legal advice by generative AI. These risks are accompanied by considerations, based on the rules of professional conduct, for the use of generative AI by licensees, including competence, confidentiality, supervision, licensee-client relationships, fees and disbursements, and discrimination and harassment.

Some key risks and considerations identified were:

- **Provision of legal advice:** licensees should be aware that, if generative AI is used to interact directly with the public (i.e., a chatbot), there is a risk that it may be inappropriately or inadvertently providing legal advice and/or providing incorrect legal advice or creating other misunderstandings. Certain tasks will require the input of the licensee and the application of their legal competence and cannot be delegated.
- **Confidentiality:** licensees will need to take care to safeguard client information and be aware of the confidentiality risks that come with the use of generative AI tools. Firms must ensure there are adequate security measures in place where confidential or privileged information may be used as an input.
- **Billing practices:** the report also suggests licensees must be cognizant of their billing practices surrounding the use of generative AI, and that they ensure they only charge for the time actually spent by the licensee on the file, even if a generative AI tool has made the task more efficient. However, the report suggests that licensees may consider alternative fee arrangements that are “fair and reasonable” and otherwise comply with the law, which may include charges used for the technology itself, like any other existing tool.
- **Court practice directions:** the report highlights that licensees must be aware of any practice directions or notices to the profession that have been issued by courts in Canada (such as [that issued by the Federal Court \[PDF\]](#)), which set out the proactive obligations for individuals using documents that have been developed using AI, ensuring that they comply with those requirements.
- **Evolving guidance:** licensees and firms also must stay abreast of any developing legal requirements, such as the *Artificial Intelligence and Data Act*, which is currently being contemplated by Parliament.
- **Disclosure of generative AI use:** importantly, guidance is provided on what licensees ought to consider when choosing whether to disclose to their clients that they intend to use generative AI in the provision of legal services, as there may be instances where a client would reasonably expect this to be communicated. However, the guidance does not create a requirement that the use of generative AI be disclosed in every instance. In this regard, the guidance sets out the following factors to consider
 - whether the use of generative AI will necessarily be disclosed publicly (such as where required by a court)
 - whether the client will reasonably expect that the material being prepared by generative AI would actually be prepared by the licensee
 - whether the use of generative AI would require inputting of the client’s personal or proprietary information
 - whether there is a reputational or other form or risk to the client that might arise from the use of the tool

Practical tools

The white paper is accompanied by three companion documents that provide practical tools to assist licensees in compliance with their professional responsibilities. Specifically:

- **Generative AI: Quick Start Checklist** creates a checklist that offers a clear roadmap, with practical steps and recommendations, on how to integrate AI into legal workflows. Key considerations will include vendor due diligence, data safeguards, audit trails, employee training, and compliance checks. To best ensure these practices are being implemented, firms should develop overarching AI policies that will guide the governance of these tools.
- **8 Best Practice Tips for Using Generative AI** provides key considerations for licensees who are just beginning to enter the space, and how to use existing LSO resources to guide them through it.
- **Generative AI: Your Professional Obligations** provides an overview of how licensees can adapt their practices to ensure that any use of generative AI meets with their existing professional obligations. In a field with many grey areas, this will provide key guidance on how generative AI may impact existing duties of competence, confidentiality, honesty and candor, and supervision, to charge reasonable fees and disbursements, and not to mislead the tribunal.

Conclusion

This new guidance from the LSO is a valuable resource for licensees who are interested in or who already using generative AI in their practice. It offers guidance and insights on how to use generative AI in an informed, productive, and ethical manner, while also encouraging licensees to experiment with the technology and determine how it can benefit their practice and clients.

The LSO acknowledges that generative AI is a rapidly evolving area and invites feedback from licensees on the paper and experiences with the technology. As licensees and firms review this guidance, it will be important to continue to reach out to the LSO and provide input to ensure that standards and guidance evolve in a practical manner alongside existing practice in a way that upholds the integrity of the profession while allowing for innovative client service.