



Consequences for Misuse of Generative AI

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Despite the well-known potential for generative artificial intelligence (“GenAI”) to hallucinate and guidance issued thereon by Canadian law societies¹ and courts², there continues to be new cases where counsel has relied on GenAI without independently verifying the citations. As indicated by the courts, this conduct amounts to a serious breach of a lawyer’s duties and in response, courts have considered holding counsel in contempt of court and imposing cost orders against counsel personally.

In the latest incident, [Hussein v. Canada \(Immigration, Refugees and Citizenship\), 2025 FC 1060](#), the applicants’ counsel submitted materials listing several authorities that could not be located. After two directions to provide the Court with a Book of Authorities, in response to which the applicants delivered an incomplete Book of Authorities, the court directed the applicants to either provide copies or an explanation as to why two specific cases were not being provided. In response to the third direction, the applicants advised that the two cases at issue were “mis-cited” and were replaced with other cases.

The Court directed the applicants to either provide copies of the cases originally relied on, or a thorough and complete explanation as to how those case citations were included in their materials. It was only after this fourth direction that counsel advised the Court of his reliance on Visto.ai, an AI chatbot that helps research and draft Canadian immigration materials, and that he did not independently verify the citations. It is worth noting that the Federal Court requires that counsel disclose in advance if documents they submit to the Court include content created or generated by artificial intelligence.

¹ See, for example, [Alberta](#), [British Columbia](#), [Manitoba](#), [Newfoundland and Labrador](#), [Nova Scotia](#), [Ontario](#), [Saskatchewan](#)

² See, for example, [Alberta](#), [Federal Court](#), [Manitoba](#), [Nova Scotia](#), [Newfoundland and Labrador](#), [Quebec](#), [Yukon](#)

Associate Judge Moore found that concealing the use of generative AI until after the issuance of four directions and describing the hallucinated cases as “mis-cited” was an attempt to mislead the Court. Although costs are not ordinarily awarded in the context of immigration proceedings, there is provision made in section 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* for the imposition of costs on the basis of “special reasons”. The Court stated, at paragraph 43,

I find that the use of generative artificial intelligence not only undeclared but, frankly, concealed from the Court combined with the failure to verify the content amounts to special reasons warranting an award of costs on this motion. I further find that consideration should be given as to whether it would be appropriate to direct Applicants’ counsel to pay any costs awarded on the motion personally. Applicants’ counsel will be afforded an opportunity to be heard on this specific issue.

This is not the first Canadian case where the Court has considered directing counsel to personally pay costs in similar circumstances. In [Zhang v Chen, 2024 BCSC 285](#), Justice Masuhara required the respondent’s counsel to pay costs personally for the additional effort and expense arising from listing two cases “hallucinated” by ChatGPT into the respondent’s Notice of Application. We previously published further [commentary on this case](#).

Justice Myers of the Ontario Superior Court recently considered whether these breaches of a lawyer’s duties may amount to contempt. In [Ko v Li, 2025 ONSC 2766](#), counsel for the applicant submitted a factum created by ChatGPT which contained hallucinated cases that were not verified by counsel and counsel also referred to these cases in her oral submissions. Justice Myers summarized lawyers’ duties not to misstate the law to the court:

[15] All lawyers have duties to the court, to their clients, and to the administration of justice.

[16] It is the lawyer’s duty to faithfully represent the law to the court.

[17] It is the lawyer’s duty not to fabricate case precedents and not to mis-cite cases for propositions that they do not support.

[18] It is the lawyer’s duty to use technology, conduct legal research, and prepare court documents competently.

[19] It is the lawyer’s duty to supervise staff and review material prepared for her signature.

[20] It is the lawyer’s duty to ensure human review of materials prepared by non-human technology such as generative artificial intelligence.

[21] It should go without saying that it is the lawyer's duty to read cases before submitting them to a court as precedential authorities. At its barest minimum, it is the lawyer's duty not to submit case authorities that do not exist or that stand for the opposite of the lawyer's submission.

[22] It is the litigation lawyer's most fundamental duty not to mislead the court.

Counsel was ordered to show cause why she should not be cited for contempt. In a follow up endorsement, [Ko v. Li, 2025 ONSC 2965](#), counsel was ultimately not held in contempt after expressing accountability and regret, withdrawing the offending factum to purge the fake citations, undertaking to take courses in the proper use and risks of AI in practice, and agreeing not to bill the client for the research, factum writing, and attendance at the motion.

Justice Myers found that the proceeding already accomplished the goals of addressing contempt at a show cause hearing, specifically:

[10] ...maintaining the dignity of the court and the fairness of civil justice system, promoting honourable behaviour by counsel before the court, denouncing serious misconduct, deterring similar future misconduct by the legal profession, the public generally, and by Ms. Lee specifically, and rehabilitation.

Justice Myers considered issuing a small fine, but he ultimately found that the public shaming near the end of an otherwise unblemished 30-year career produced an immediate and forthright response beyond any reasonably expected impact of a small fine.

Unfortunately, this issue has also impacted our criminal courts. In, [R. v. Chand, 2025 ONCJ 282](#), the defence submissions contained a case citation which appears to be fictitious. Justice Kenkel directed counsel to prepare a new set of defence submissions and added that "There will be a discussion at the conclusion of the trial about how the defence submissions were prepared, but at this time the court's focus is on concluding the trial in a way that is fair to both parties." As the court is focused on concluding the trial, it remains to be seen how the court will deal with this potentially fictitious case.

Despite the increasing awareness of hallucinations, it appears that serious consequences, both by the Courts and by the regulators of licenced lawyers, are necessary to deter similar future misconduct, which, as Justice Myers notes, can lead to "an outrageous miscarriage of justice".

It is therefore crucial for counsel to understand the appropriate use of technology and the limitations of the tools. As the practice of law evolves, the inability to effectively use technology raises risks for clients and counsel, including cost awards, the possibility of being held in contempt, potential professional discipline, and claims for solicitor's negligence.