

2024 Questionnaire of the 1st Study Commission IAJ-UIM

Canada

“The Effects of Artificial Intelligence on the Judiciary”

Questions:

- 1) **Do judges in your country utilize artificial intelligence technology (“AI”), and how so?**

The use of AI by the judiciary remains uneven, even sporadic, and is left to the discretion of each judge, who may choose to take advantage of it or not, subject to the various directives set out in question 1b).

Most of our magistrates use it for the purposes of legal research, either personally or not through their assistants and researchers, to the extent that the search engines used universally are already based on AI. Our tools such as computers, tablets and mobile phones are obviously also commonly used by the entire judiciary and most of these instruments use AI for actions sometimes as banal as directing emails to the Spam box. Finally, it is also possible to use it to transcribe testimonies. That said, the most advanced version of AI, large language models, would allow judges to carry out more sophisticated research, translate content, summarize a text, write an email, a letter or even write a decision or even generate ideas.

Some magistrates currently use it to summarize voluminous documents such as interrogations or expert opinions. We are not aware of any cases where judges have used it to help write judgments, but it is not excluded.

- a) **If not, have judges in your country considered utilizing AI, and, if so, in what ways?**

Beyond the possibilities mentioned in answer 1, it is possible that the management of the various courts will use AI to classify and prioritize cases or even assign trial summons more quickly and efficiently, based on expertise, affinities or even time constraints and geography.

The judiciary also hopes that the federal and provincial governments will use

AI to open and manage legal files, classify procedures and documents, and also supervise the material and computer environment during a trial through the use of shared screens, recordings, virtual presences, etc.

b) Is the use of AI in legal proceedings regulated?

No legislation or regulations currently govern the use of AI, but some courts have issued instructions or directives on this subject. Here is the summary:

Federal Court

On December 20, 2023, the Federal Court issued the guidelines regarding the use of artificial intelligence according to which it decided not to use AI, particularly automated decision-making tools, to render its judgments and orders, without first holding public consultations and confirming that if a particular tool using AI results in repercussions on the profession or the public, the Court will consult interested parties before adopting it.

Quebec, Alberta, and Nova Scotia

The courts of these three provinces have issued an opinion reminding that any reference to case law, legal texts, or comments in the context of observations made to the court must be based exclusively on sources coming from court websites, commonly referenced commercial publishers or well-established public services.

They also stated that AI-generated submissions must be subject to rigorous human review, including cross-checking with reliable legal databases to confirm that the references and their content stand up to scrutiny. Finally, parties who have used AI must disclose how it was used.

Manitoba and Yukon

The courts in this province and territory have issued a directive requiring that when artificial intelligence is used in the preparation of proceedings, the parties must indicate what type of AI was used and how it was used.

British Columbia

The Supreme Court has issued a directive to the attention of the judiciary of this province recommending refraining from using the ChatGPT platform or any similar platform on the grounds of risks of undermining the integrity of the court and the confidence of the court. public in the justice system.

Finally, it seems that the Canadian Judicial Council (an organization bringing together all the country's chief judges) is possibly planning to issue instructions or guidelines to the attention of the entire Canadian judiciary regarding the use of AI.

c) **Does the use of AI impact the handling of evidence?**

Generally speaking, in Canada, the rules of evidence have not been modified based on the advent of AI. They therefore risk not being fully adapted to new technologies, and it will be up to the judiciary - pending possible legislative or regulatory changes - to apply and interpret the currently existing rules to the various cases of evidence management, linked to the use of AI.

Whether it is a document or a piece of material evidence, AI risks having an impact on the analysis of its admissibility as well as the establishment of the probative value. Indeed, AI could play an important role in establishing or contesting the integrity and authenticity of documents, including photos or videos, submitted to the court. If the integrity of the metadata specific to an electronic document is contested, AI will facilitate their cross-verification.

Finally, AI can help manage very (or too) voluminous evidence, because it will make it possible, for example, to extract certain specifically sought-after information or even summarize the content of various documents.

2) **What are the pros and cons of having judges utilize AI?**

Document management, research and writing assistance appear to constitute the main potential advantages on an individual level. The management of courts, workloads and assignments could be advantageously improved at the level of court administration.

The most likely downsides are issues of credibility and integrity of the justice system, security, privacy, ethics and, possibly, job losses.

a) **What are the possible effects of AI on the administration of justice?**

Possible positive effects are discussed above. Potential negative effects include : impacts on the authenticity and reliability of evidence, but also on the reliability of documents such as factums and briefs, concerns about the integrity and independence of judicial decision-making, problems cybersecurity, the possibility of AI tools being based on discriminatory or biased datasets, and finally, concerns about the use of AI tools in ways that are not transparent to the public.

b) **What are the possible effects of AI on judicial independence?**

First, the case of AI “hallucinations” still constitutes a risk, even a danger, currently. For example, in the case of Zhang v. Chen, 2024 BCSC 285, one party

used AI and submitted fictitious authorities in support of its position. Thus, the inappropriate use of AI can call into question the independence of the judiciary if it is misused and the public risks disengagement.

Then, AI and especially large language models, can play a role in predicting the outcome of a dispute or the tendencies of a particular judge. In both cases, this represents a significant risk for the independence of the judicial authority.

Indeed, automated models for dispensing justice will ignore individual cases and apply probabilities to the detriment of the rights and obligations of individual litigants whose situation may be different and not correspond to the average.

AI can also be used by the public to find trends and biases among certain judges and once this information is revealed, two harmful effects are foreseeable: judges can lose the serenity, independence and impartiality necessary in the exercise of their function by attempting to counter or support the trends emitted by AI and litigants may attempt to engage in “judge-shopping” in justice systems where this is possible.

Finally, AI involves certain intrinsic risks such as the opacity of sources, algorithmic biases, the transgression of privacy, infringement of intellectual property and copyright, the absence of responsibility/accountability and finally, a potential for disinformation and misinformation. All of these elements can have an impact on the independence of the judiciary.

3) **Should there be limits on the use of AI by judges, and, if so, to what extent?**

Yes. Currently, it is a new technology which is neither fully understood nor perfectly mastered and for which it is difficult to predict all the effects. Public trust risks being eroded if we learn that the judiciary is using AI to judge in general or write judgments in particular. The rule of law thus risks being called into question, as does the legitimacy of the courts and ultimately, democracy. It is obvious that today AI lacks both logical and moral reasoning and cannot replace a magistrate.

Therefore, it is important that judges can be adequately educated, and that AI is used judiciously, transparently, and fairly. It would be appropriate to consider guidelines to preserve public confidence in particular.

Proposal for 2025 topic:

Impact of institutional, financial, human, and material resources made available to the judiciary on its independence.

This would involve identifying the origin of the risks and best practices and we could try to establish the minimum or sufficient level of support necessary so as not to affect the independence of the judiciary.

