

Lawyers are Safe from the AI Invasion—For Now! A Brief Consideration of the Use of Artificially Generated Tools in Legal Research in SA and the US

Ciresh Singh

<https://orcid.org/0000-0002-7216-3883>

University of South Africa

singhc@unisa.ac.za

Menelisi Ncube

<https://orcid.org/0000-0003-0910-4570>

University of South Africa

encubem4@unisa.ac.za

Abstract

A legal maxim holds that ‘it is not knowing all the law that counts but knowing where to find the law that makes a good lawyer a great lawyer,’ highlighting the importance of legal research. While technology and artificial intelligence (AI) have transformed research and drafting, they are prone to errors, including fabricated authorities. Courts, especially in the United States (US), have sanctioned misuse and South African courts have raised concerns, though no regulations yet exist. This paper examines AI use in legal research by undertaking a detailed analysis of the recent case law, in the US and South Africa, that has considered this topic. This paper will be divided into five parts: Part 1 serves as an introduction and overview of the topic; Part 2 briefly considers some of the AI tools currently available and their possible application in legal practice; Part 3 investigates how some AI tools have been used in the US; Part 4 considers the use of AI tools in the South African legal system; and Part 5 serves as a conclusion and provides some key recommendations in this area. It is hoped that this discussion will bring to light the need for AI regulation and, possibly, the prompt implementation of guidelines and rules to regulate its use not only in legal practice, but also in society. The article draws on both primary and secondary materials and employs a qualitative desktop research method. This article calls for, inter alia, concerted efforts by the legislature and other relevant stakeholders to comprehensively regulate the use of AI by legal practitioners when conducting legal research in order to retain the integrity of the South African legal profession.

Keywords: artificial intelligence (AI); ChatGPT; hallucination; legal practitioners;



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legal research

Introduction

The industrial revolutions are generally viewed as five phases, progressing from early mechanisation and steam power (First Industrial Revolution) to mass production and electricity (Second Industrial Revolution), and then to computing and automation (Third Industrial Revolution).¹ This was followed by the digital transformation of the Fourth Industrial Revolution (4IR), driven by the Internet of Things (IoT), Artificial Intelligence (AI),² robotics, biotechnology, and big data, and most recently the human-centred Fifth Industrial Revolution (5IR), which emphasises collaboration between humans and intelligent machines.³ The current phase, the 5IR, has completely transformed human lives. Under 5IR, people consistently engage with technology in various facets of their lives, relying on it to perform essential daily functions. Indeed, the use of generative technology in the form of AI has become almost ubiquitous to most urban communities globally.⁴

AI has been widely recognised as a game-changer in many societies,⁵ and is being used to automate various life- and work-related tasks and functions.⁶ Worldwide, AI-generated revenue stood at USD 47 billion in 2020 and was estimated to grow to USD 126 billion by 2025/6.⁷ By 2030, AI-generated revenue is estimated to reach over USD 800 billion globally.⁸ The seamless integration of AI across diverse industries has sparked a paradigm shift in both legal and business processes. From a legal perspective, advances in technology, in the form of AI tools, can now be used to perform a myriad

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- 1 A Sharma and BJ Singh, 'Evolution of Industrial Revolutions: A Review' (2020) 9 International Journal of Innovative Technology and Exploring Engineering 66, 66–68.
 - 2 The Oxford Dictionary broadly defines AI as intelligence or activities such as perception, recognition and decision making, that are usually performed by humans, being exhibited by machines or computer systems.
 - 3 A Saha, 'Human-Centred Innovation in Society 5.0' in B Acharya, M Shukla, C Chowdhury, H Garg (eds) *Society 5.0: A Transformation towards Human-Centered Artificial Intelligence* (1st edn, CRC Press 2025) 143–148.
 - 4 NL Rane, 'ChatGPT and Similar Generative Artificial Intelligence (AI) for Smart Industry: Role, Challenges, and Opportunities for Industry 4.0, Industry 5.0, and Society 5.0' (2024) 2 Innovations in Business and Strategic Management 10, 10.
 - 5 P Zurth, 'Artificial Creativity? A Case Against Copyright Protection for AI-Generated Works' (2020) 25 UCLA Journal of Law and Technology 1, 1–2.
 - 6 A Krausova and V Moravec, 'Disappearing Authorship: Ethical Protection of AI-generated News from the Perspective of Copyright and Other Laws' (2022) 13 Journal of Intellectual Property, Information Technology and Electronic Commerce Law (jipitec) 132, 132; TF Waddell, 'A Robot Write This? How Perceived Machine Authorship Affects News Credibility' (2018) 6 Digital Journalism 236, 242 discusses the use of AI in creating automated journalism.
 - 7 Zurth (n 5) 2.
 - 8 LS Vailshery, 'Artificial Intelligence (AI) Worldwide—Statistics & Facts' (*Statista*, 17 December 2025) <<https://www.statista.com/topics/3104/artificial-intelligence-ai-worldwide/>> accessed 21 February 2026.

legal functions, including analysing contracts, conducting legal research, summarising case law, drafting legal documents and even formulating legal arguments.

While these advances present opportunities for innovation, time and cost effectiveness, they simultaneously pose complex legal challenges. The introduction of AI-generative programs such as ChatGPT in late 2022 and the capability of these programs to undertake legal research and provide legal opinions have raised several issues in law theory and practice.⁹ Recently, there have been several cases in the United States (US),¹⁰ United Kingdom (UK),¹¹ Zimbabwe¹² and South Africa¹³ where judges have spotted the use of AI in legal research and drafting in court documents and expressed deep concern with the ‘hallucinating’ results generated by such tools. An AI hallucination occurs when an AI system generates content that appears credible, but it is totally fabricated.¹⁴ In other words, certain of these AI tools have generated fake or non-existent cases as precedents, which attorneys have subsequently used in their legal arguments before court. This is extremely dangerous in a legal context. These hallucinations do not present as obvious errors but rather appear coherent and convincing with full case citations, judges’ names, and even fictional facts and legal precedents. Research has shown that hallucination rates in AI legal research can range from 50 and 70 per cent while newer models trained on case law still exhibit a 17 per cent hallucination rate.¹⁵ These AI tools often misapply legal precedents, fabricate authority, distort laws, rely on inapplicable laws and even invent fictitious cases. Hence, while AI has offered greater efficiency in legal research, concerns persist

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- 9 H Wang, ‘Authorship of Artificial Intelligence-generated Works and Possible System Improvement in China’ (2023) 14 Beijing Law Review 901, 902; Krausova (n 6) 132.
 - 10 See *Mata v Avianca Inc.* 22-cv-01461-PKC 2023; *Park v Kim No* 22-2057 2024; B Munir, ‘Hallucinations in Legal Practice: A Comparative Case Law Analysis’ (2025) International Journal of Law, Ethics, and Technology 6.
 - 11 MKS Warraich and others, ‘Ethical Governance of Artificial Intelligence Hallucinations in Legal Practice’ (2025) 4 Social Sciences Spectrum 603, 612; R Booth, ‘High court tells UK lawyers to stop misuse of AI after fake case-law citations’ (*The Guardian*, 6 June 2025) <<https://www.theguardian.com/technology/2025/jun/06/high-court-tells-uk-lawyers-to-urgently-stop-misuse-of-ai-in-legal-work>> accessed 16 February 2026; *Ayinde v London Borough of Haringey and Al-Haroun v Qatar National Bank* [2025] EWHC 1383 (Admin).
 - 12 See *Pulserate Investments (Pvt) Ltd v Andrew Zuze and Others* [SC202/25]; Fidelis Munyoro, ‘Zimbabwe’s Supreme Court rejects AI-generated legal submissions citing fictitious cases’ (*The Herald*, 30 October 2025) <<https://www.heraldonline.co.zw/zimbabwes-supreme-court-rejects-ai-generated-legal-submissions-citing-fictitious-cases/>> accessed 12 February 2026.
 - 13 See *Parker v Forsyth NNO and Others* (1585/20) [2023] ZAGPRD 1 (29 June 2023) and *MEC v Mavundla: Department of Co-Operative Government and Traditional Affairs KwaZulu-Natal and Others* 2025 (3) SA 534 (KZP).
 - 14 YA Latif ‘Hallucinations in Large Language Models and their Influence on Legal Reasoning: Examining the Risks of AI-Generated Factual Inaccuracies in Judicial Processes’ (2025) 10 Journal of Computational Intelligence, Machine Reasoning, and Decision-Making 10, 11.
 - 15 See WJ Da Costa ‘Legal hallucinations: fake AI case law plagues court’ (*Independent on Saturday Newspaper* 12 July 2025) 1–2; V Magesh and others, ‘Hallucination Free? Assessing the Reliability of Leading AI Legal Research Tools’ (2025) Journal of Empirical Legal Studies 216.

about its accuracy and application.¹⁶ The hallucinating effects of AI demonstrate that these technological advancements come with substantial legal, ethical and socio-economic risks and concerns.

The reliance on AI for legal research is a novel issue in the legal profession and brings into question not only the risk and reliability of these tools, but also the professional and ethical duties upon legal practitioners when using AI especially considering that legal practitioners have a duty of candour to South African courts.¹⁷ Beyond the efficiency gains associated with AI tools, the so-called ‘black-box’¹⁸ challenge remains a significant drawback when considering AI use. The black-box challenge in AI describes the difficulty humans face in understanding, interpreting or tracing how complex algorithms, particularly deep learning neural networks, arrive at their decisions.¹⁹ Although the inputs and outputs can be observed with much more simplicity, the internal reasoning process remains opaque. This lack of transparency raises concerns about trust, accountability, bias identification and overall system safety.

While South African law does not currently have any rules or guidelines regulating the use of AI in legal practice, its use and the submission of false and unchecked legal precedents violates several ethical and professional rules of conduct for legal practitioners.²⁰

At present, neither the Legal Practice Act²¹ nor the Code of Conduct for all Legal Practitioners, Candidate Legal Practitioners and Juristic Entities,²² addresses technology or AI, nor their regulatory use by legal practitioners for legal research or drafting court documents.

Despite these omissions, it is trite that a miscalculation based on flawed AI data may not only result in a case being dismissed but also expose the legal practitioner to professional liability and severe sanctions for breach of ethical and professional duties. Accordingly, if an AI-generated work is presented in court, without any checks by a human legal mind, there is a huge risk that the work is not legally sound or even legally

16 See D Thaldar, ‘Can AI Think Like a Lawyer? Evaluating Generative AI in South African Law’ (2025) 28 Potchefstroom Electronic Law (PELJ) Journal 1, 1–2; see also Van Eck M, ‘Error 404 or An Error in Judgment: An Ethical Framework for the Use of ChatGPT in the Legal Profession’ (2024) TSAR Reg 469, 470.

17 Van Eck (n 16) 470.

18 CZ Kufakwababa ‘Artificial Intelligence Tools in Legal Work Automation: The Use and Perception of Tools for Document Discovery and Privilege Classification Processes in Southern African Legal Firms’ (MA dissertation, Stellenbosch University 2021) 21.

19 V Hassija and others, ‘Interpreting Black-Box Models: A Review on Explainable Artificial Intelligence’ (2024) 16(1) CILSA 45–74, 46.

20 This may also violate one’s right of access to justice, as provided in s 34 of the Constitution.

21 See s 5g of the Legal Practice Act 28 of 2014 (LPA).

22 Part II of the Code of Conduct for all Legal Practitioners, Candidate Legal Practitioners and Juristic Entities Notice 198 of 2019 (Code of Conduct).

correct, with the legal practitioner being in breach of their professional and ethical duties.

In a South African context, research undertaken by Thaldar and Van Eck has revealed that AI programs often generate hallucinating case law and misapply legal principles, with frequent misinterpretations and fabricated references.²³ Thaldar has undertaken extensive practical research on the use of multiple AI models in the South African context and their ability to correctly undertake research and answer legal questions.²⁴ His findings highlight that AI models frequently, inter alia: misapplied legal precedents, misinterpreted case law principles, omitted key legal elements and incorrectly interpreted or mischaracterised legal principles, which lead to flawed, illogical or vague reasoning and conclusions.²⁵ The responses from AI also provided irrelevant or unrelated case law as authority, incorrect or incomplete citations, and—worst of all—fabricated case law. The research revealed the limitation on AI to engage with nuanced judicial reasoning, interpret legal principles and conduct diligent research.²⁶ The greatest concern with AI was the fabricated case law. Thaldar indicates that these hallucinations pose a serious ethical and professional risk to legal practitioners who rely on AI for research and serve as a reminder that AI-generated references must be carefully reviewed and should not be used without verification.²⁷

Van Eck's research emphasises that the South African Code of Conduct for Legal Practitioners, Candidate Legal Practitioners and Juristic Entities places the duties of skill, care, diligence, confidentiality, honesty and integrity upon all legal practitioners.²⁸ However, neither the common law nor the Code addresses how these duties would apply when using AI (as indicated, the Code is silent on AI altogether).²⁹

Van Eck submits that the ethical and professional duties upon legal practitioners are not static and need to be assessed and updated to be brought in line with the technological age.³⁰ Technology has and will always play an essential function in legal practice. Technology in the form of AI has, however, created some unique challenges for legal

23 See Thaldar (n 16) 1, Van Eck (n 16) and M Van Eck, 'An Ethical Framework for the Use of Artificial Intelligence in the Legal Profession' (2025) TSAR 454.

24 See Thaldar and others, 'Responsible AI Use in South African Legal Practice: A Call for Ethical Guidelines' (July 2025) De Rebus 18, and Thaldar (n 16) 1, where Thaldar undertook research with over five prominent AI models (ChatGPT 4o, Claude 3.7 Sonnet, DeepSeek R1, Gemini 2.0 Flash and Grok3 Beta) by providing each AI with three separate legal scenarios and instructing it to generate a legal response citing authoritative case law. See also D Thaldar, 'How Effectively can ChatGPT-4 Draft Data Transfer Agreements for Health Research?' (2025) 12(1) Humanities and Social Sciences Communications 12, 524 for a discussion of AI use in the health sector for research.

25 See Thaldar (n 16) 9–11.

26 Thaldar (n 16) 14, one of the other critical oversights was AI's failure to engage with and cite any statutory frameworks as authority.

27 Thaldar (n 16) 28.

28 See s 3.11 and 18.4 of the Code of Conduct.

29 Van Eck (n 23) 454–458.

30 Van Eck (n 16) 470.

practitioners and potential risks in breaching their ethical and professional duties. The submission of hallucinated AI information to court by a legal practitioner constitutes a serious breach of ethical and professional duties.

As the adoption of AI in society spreads, and its use in the legal system simultaneously increases, rules may need to be established to govern its correct use on the part of legal practitioners. For the purposes of this article, ‘correct usage’ refers to the reasonable and verified application of AI by legal practitioners, aimed at maintaining the highest professional standards and conduct as required by the Legal Practice Act and the Code of Conduct. Accordingly, the purpose of this paper is to consider the use of AI in legal research and to determine how courts have managed its implementation thus far.³¹ This will be undertaken by briefly considering some of the most popular AI legal tools on the market, and how the courts, in South Africa and the US, have responded to the use of these AI tools in practice. This article will conclude by giving some recommendations for consideration by legislature and other relevant stakeholders on regulating the use of AI by legal practitioners for legal research in South Africa.

Overview of the Use of AI Tools and Programs in the Legal Profession

AI is significantly transforming the legal profession globally by offering varied tools and programs, which enhance efficiency, accuracy and decision making.³² Such tools and programs have been catalytic in enabling lawyers to swiftly conduct legal research, review texts, analyse contracts and draft court documents.³³ Below is an overview of some of the most prominent AI tools and programs that legal practitioners use to conduct legal research.³⁴

Westlaw Edge (Thomson Reuters)

The foundations of Westlaw Edge date back to the 1970s, but it gained prominence in the 1980s during the advent of the global use of computers.³⁵ Westlaw Edge started as

31 This paper will only focus on the use of AI for ‘legal research’. See Thaladar (n 16) 1, J Matthee and G Stopforth, ‘The Importance of Ethical and Responsible AI Training in Law Schools to Avoid Career-Ending Pitfalls for Aspiring Attorneys’ (2025) 50(1) *Journal for Juridical Science* 49, and D Thaladar, ‘How Effectively Can ChatGPT-4 Draft Data Transfer Agreements for Health Research?’ (2025) 12 *Humanities and Social Sciences Communications* 524 for other uses of AI in the legal sector and a discussion of how AI is used in other sectors.

32 SM Babar and others, ‘The Impact of Technology on the Legal System: Exploring How Technology Is Changing the Way Laws Are Created, Enforced, and Interpreted’ (2025) 3(1) *Review Journal of Social Psychology & Social Works* 351, 358.

33 M Bakht, *Artificial Intelligence for Lawyers: Navigating Novel Methods and Practices for the Future of Law* (KU Wheat Law Library 2025) 33.

34 CC Emejio and others, ‘The Impact of Artificial Intelligence on Legal Practice: Enhancing Legal Research, Contract Analysis, and Predictive Justice’ (2025) 14(1) *International Journal of Science and Research Archive* 603, 609. Other AI legal tools such as Lawgeex, Kira Systems, Lex Machina and LegalMation are streamlined to perform tasks such as reviewing and analysing contracts and historical data to better predict the outcome of cases.

35 C Posthoff, *Artificial Intelligence for Everyone* (Springer Nature Switzerland 2024) 192.

a computerised legal database, which provided case law on a continuously published, updated and annotated platform.³⁶ Developed by Thomson Reuters, Westlaw Edge is an advanced legal research platform that incorporates AI, machine learning and data analytics to enhance legal research and case analysis.³⁷ It is devoted to helping legal practitioners by employing advanced natural language processing (NLP) techniques to analyse and understand legal texts, thereby allowing users to swiftly source relevant information.³⁸ Westlaw Edge is generally commended for its strong predictive analytics and deep integration functions, which are fused with its vast case law database.³⁹ Owing to its strong predictive analytics, Westlaw Edge can predict what its user may want to search next.⁴⁰ Its deep integration function connects to other relevant tools and sources that are related to a user's search, saving time, which would otherwise be spent switching from one AI tool to the next.⁴¹ Westlaw Edge is most suited for legal practitioners who specialise in international law, cross-border transactions or UK/US-based matters.⁴² This owes to the fact that Westlaw Edge is not a primary source for purely South African law although it provides tailored, AI-enabled legal resources for South African practitioners operating in a global context.

Lexis+ (by LexisNexis)

Lexis+, from LexisNexis,⁴³ is a legal research platform that combines a personalised AI assistant (Protégé™)⁴⁴ with other AI-powered tools for conducting legal research, drafting, summarisation and analysis, with a view to improving efficiency and outcomes for legal professionals.⁴⁵ Lexis+ uses NLP, machine learning, citation checking and a document comparison feature that allows the retention of other documents likely to be

36 *ibid.*

37 G Fulciniti and others, 'Artificial Intelligence to Analyse Huge Amounts of Juridical Documents via Edge Computing' in *Proceedings of the International Conference on Embedded Wireless Systems and Networks (EWSN)* (2023) 351, 355.

38 MH Al Adwan Saleh, EM Ali Qutieshat and AH Qtaishat, 'Transforming Legal Professional Bodies: The Role of Artificial Intelligence in Modern Legal Practice' (2024) 22(2) *Pakistan Journal of Life & Social Sciences* 17263, 17264. Westlaw Edge uses NLP, which understands complex legal queries whose input is in the normal human language(s) to quickly identify relevant precedents, statutes and opinions.

39 Posthoff (n 35) 192.

40 *ibid.*

41 *ibid.*

42 See Thomas Reuters, 'Legal research tools' <<https://africa.thomsonreuters.com/en/products-services/legal/westlaw.html>> accessed 22 February 2026.

43 LexisNexis, 'Enhancing the Potential of the African Continent by Advancing the Rule of Law' <<https://www.lexisnexis.com/en-za/about/overview>> accessed 8 April 2025, LexisNexis Legal & Professional is a global provider of legal, regulatory and business information and analytics that help customers increase productivity, improve decision making and outcomes and advance the rule of law globally.

44 LexisNexis, 'Protégé™ Your Personalised AI Assistant Now in Lexis+ AI®, Lexis® Create+, and Lex Machina®' <<https://www.lexisnexis.com/en-us/products/protége.page>> accessed 8 April 2025.

45 LexisNexis, 'Lexis+ Transform Your Legal Work' <<https://www.lexisnexis.com/en-us/products/lexis-plus-ai.page>> accessed 8 April 2025.

relevant to the user's prompt.⁴⁶ In addition, Lexis+ evaluates legal briefs and suggests stronger authorities, while incorporating legal language translation and Shepard's Citations⁴⁷ for case validation.⁴⁸ Lexis+ thus assists legal practitioners locate secondary sources and legal precedents faster.⁴⁹ Although it is not free to use, Lexis+ is all inclusive to both domestic and international legal material for legal practitioners.

CoCounsel

CoCounsel, launched by Casetext in 2023 as an AI-powered tool to act as a legal assistant to legal practitioners⁵⁰ performs functions that include conducting legal research, reviewing documents, analysing contracts, writing memoranda and preparing evidence discovery questions.⁵¹ A striking feature of CoCounsel is that it is based on GPT4, the latest version of a language model developed by OpenAI,⁵² which is trained on a vast number of human-like languages enabling it to understand more languages and accommodate a greater audience.⁵³ In addition, CoCounsel has an advanced deep semantic search feature that understands the meaning behind the words used in a search, not just the exact words.⁵⁴ CoCounsel is not a free program; and therefore this presents challenges of access to indigent legal practitioners.

ChatGPT

ChatGPT is two words merged to encapsulate the AI tools' functions. 'Chat' refers to the tool's chatting and interactional function, while 'GPT' stands for generative pre-

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- 46 *ibid*; LF Peoples, 'Artificial Intelligence and Legal Analysis: Implications for Legal Education and the Profession' (2025) *Law Library Journal* 52, 58.
 - 47 Shepard's Citations is a tool that allows researchers to 'shepherdise' or validate legal citations, ensuring that the cases, statutes and other legal materials they are relying on, are still considered 'good law' and have not been overruled or otherwise negatively affected.
 - 48 LexisNexis, 'Lexis+ Brief Analysis Litigation Document Review Software' <<https://www.lexisnexis.com/en-us/products/lexis-plus/document-analysis/brief-analysis.page>> accessed 9 April 2025.
 - 49 LexisNexis, 'Lexis+ South Africa: A New Era in Legal Research' <<https://www.lexisnexis.com/en-za/lexis-plus-south-africa>> accessed 19 August 2025.
 - 50 F Ogunde, 'Legal Large Language Models (LLMs): Legal Dynamos or "Fancifully Packaged ChatGPT?"' (2025) 5 (21) *Discover Artificial Intelligence* 1, 2.
 - 51 J Anderson, 'AI and the Legal Puzzle: Filling Gaps, but Missing Pieces' (2024) 75 *Mercer Law Review* 1521, 1529.
 - 52 A Andhov, 'OpenAI's Transformation: From a Non-profit to a 157 Billion Valuation' (2025) 46(1) *Business Law Review* 2, 2. OpenAI is an American artificial intelligence (AI) research and development company that creates advanced AI models and technologies designed to benefit humanity. To date, it has developed products such as ChatGPT (discussed in more detail later in this article) and OpenAI API.
 - 53 SC Han and others, 'Applications and Case Studies in Natural Language Understanding' in Soyeon Caren Han and others (eds), *Natural Language Understanding in Conversational AI with Deep Learning* (Springer Nature Switzerland 2025) 13–48, 30.
 - 54 *ibid*.

trained transformer.⁵⁵ ChatGPT is generative in that it creates texts based on the user's prompts, which may rework summaries into full reports, and vice versa.⁵⁶ ChatGPT is pre-trained in that it has, before the user starts using it, already learnt from a vast array of information contained in books, articles, websites and other relevant documents.⁵⁷ ChatGPT was not invented to usurp the role of legal practitioners, but rather to serve as their assistant in legal analysis, research, drafting and brainstorming.⁵⁸ Although the free tier of ChatGPT provides significant access to OpenAI's latest models, it is limited by message caps and feature restrictions to prioritise paid users.

Harvey AI

Harvey AI, a legal technology platform built on OpenAI's GPT models and designed specifically for the legal profession,⁵⁹ assists with contract analysis, legal research, predictive analytics and automating routine tasks such as document review, in place of a human legal practitioner.⁶⁰ Harvey AI improves accuracy, saves time and scales well for firms of various sizes.⁶¹ Some of its setbacks include the fact that it is not available for use by the general public, but only by prominent law firms.⁶²

AI Tools in Summation

All five tools discussed above use AI or advanced machine learning to improve legal research, whether through NLP, predictive analytics or document review automation. These tools enhance efficiency and reduce the time spent on legal research, by rapidly retrieving, summarising or analysing large datasets of legal information. In addition, they assist legal practitioners in identifying relevant precedents, statutes and legal arguments. The tools are also user-friendly, providing simplified platforms and multiple ways for users to interact with them. Finally, these AI tools automate the routine tasks

55 I Naik, D Naik and N Naik, 'Chat Generative Pre-trained Transformer (ChatGPT): Comprehending its Operational Structure, AI Techniques, Working, Features and Limitations' (2023) IEEE International Conference on ICT in Business Industry & Government 1, 9.

56 Devadas Menon and K Shilpa, "'Chatting with ChatGPT": Analyzing the Factors Influencing Users' Intention to Use the Open AI's ChatGPT Using the UTAUT Model' (2023) 9 Heliyon 1, 3.

57 A Shaji George and AS Hovan George, 'A Review of ChatGPT AI's Impact on Several Business Sectors' (2023) 1(1) Partners Universal International Innovation Journal 9, 11.

58 A Perlman, 'The Implications of ChatGPT for Legal Services and Society' (2023) 30 Mich Tech L Rev 1, 5-10.

59 B Niero, 'AI-Law Firms of the Future: The Integration of Artificial Intelligence and Other Cutting-Edge Technologies for Value Creation' (2023) <https://www.researchgate.net/profile/Breno-Niero/publication/370716693_AI-Law_Firms_of_the_future_The_integration_of_artificial_intelligence_and_other_cutting-edge_technologies_for_value_creation/links/64ab99718de7ed28ba885c0a/AI-Law-Firms-of-the-future-The-integration-of-artificial-intelligence-and-other-cutting-edge-technologies-for-value-creation.pdf> accessed 12 August 2025 1, 3.

60 *ibid.*

61 *ibid.*

62 *ibid*; W Zheng, 'Research on Generative Artificial Intelligence Legal Profession Substitution' (2023) 4 Modern Legal Research 32, 34.

of legal practitioners, including document drafting, due diligence and case law searches. Notably, these advantages do not take away from the fact that such tools may sometimes suffer from hallucinations. Therefore, increased emphasis must be placed on the need for legal practitioners to exercise extreme caution and verify the veracity of all information retrieved from these tools to uphold the highest standards of legal practice and professional conduct.

The Use of AI Tools and Programs in the Legal Profession in the US

The US is not exempt from the global enthusiasm regarding the assimilation of AI tools in the legal profession to aid in the effective and efficient resolution of cases and the swift conduct of legal research. AI tools help legal professionals to rapidly access case law, statutes and regulations, using natural language queries and predictive analytics; to review, compare and draft contracts; and even to forecast case outcomes, a judge's behaviour as well as opposing counsel's strategies.

Recently, there has been a significant increase in the use of AI tools among legal practitioners in the US in an effort to augment their legal practice through the swift drafting of contracts, analysis of discovery productions and research.⁶³ This use, however, is mired in controversy, with AI hallucinations becoming noticeable for their tendency to produce outputs that are demonstrably false or misleading.⁶⁴ As a result, bar associations in the US have published guidance notes on how AI should be safely and ethically integrated into their members' legal practice.⁶⁵ In addition, presiding officers have issued standing orders instructing attorneys to either disclose or limit the use of AI in averments given in the courtroom.⁶⁶

Despite such bulwarks, several instances of AI misuse have been reported in the US. To elucidate, this paper will now analyse how the US courts have deliberated on cases dealing with the use of AI tools to show what challenges, opportunities and prospects they present for the legal profession.

A review of case law in the US on the use of AI in the legal profession

Mata v Avianca Inc. 22-cv-01461-PKC 2023

In this case, Mata (plaintiff) filed a claim with the Supreme Court of New York after having sustained an injury during a flight, operated by Avianca, the defendant.⁶⁷ The plaintiff subsequently withdrew the case, citing jurisdictional issues and moved it to the US District Court, Southern District of New York.⁶⁸ Steven A Schwartz (who had

63 According to a study by Magesh (n1 5) 216 in January 2024 of the 384 firms studied, 35 per cent were using at least one generative AI tool.

64 *ibid* at 218.

65 *ibid*.

66 *ibid*.

67 *Mata v. Avianca Inc. 22-cv-01461-PKC 2023 (Mata case)* para 1.

68 *Mata case* para 1.

previously been listed to appear on behalf of the plaintiff in the initial court) was not admitted to practise in the district of the US District Court, Southern District of New York.⁶⁹ In his place, Peter LoDuca filed a notice of appearance on behalf of Mata, maintaining that Schwartz had performed all the substantive legal work.⁷⁰

The defendant filed a motion to dismiss the plaintiff's claim based on a time-bar (prescription period).⁷¹ In response, LoDuca filed an affirmation in opposition to the plaintiff's claim, which was authored by Schwartz, and which he 'merely checked for the flow of statements and grammatical errors.'⁷² LoDuca had not conducted any thorough research on the affirmation, nor done any due diligence in confirming or refuting the authenticity of the judicial authorities cited by Schwartz in this affirmation.⁷³

Attorneys for the plaintiff used ChatGPT in drafting a legal brief opposing the defendant's lawsuit motion to dismiss.⁷⁴ The court issued an order directing LoDuca to file an affidavit that annexed copies of the thirteen cases cited in the affirmation in opposition.

In response to the court's order, LoDuca requested an extension of time to respond, deceitfully citing that he was out of office. It became apparent that LoDuca did not author the affidavit.⁷⁵ Instead, Schwartz was the attorney who drafted it and compiled its exhibits.⁷⁶ In contravention of the prescripts of the court orders, counsel for the plaintiff could not provide the full texts of the fictitious cases, but mere excerpts.

The court held that:⁷⁷

By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: ... the claims, defences, and other legal contentions are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law.

Accordingly, a court may sanction an attorney for misrepresenting facts or making frivolous legal arguments.⁷⁸ The court also considered the idea of 'subjective bad faith'

69 *Mata* case para 2.

70 *ibid.*

71 Unification of Certain Rules Relating to International Carriage by Air, on 28 May 1999, reprinted in S. Treaty Doc. 106-45, 1999 WL 33292734 (1999) (Montreal Convention).

72 *Mata* case para 5–6.

73 *Mata* case para 6.

74 *Mata* case para 11.

75 *Mata* case para 20.

76 *ibid.*

77 Rule 11(b)(2) of the Federal Rules of Civil Procedure 2024, as amended.

78 *Mata* case para 51.

in the context of false factual statements, and not unwarranted or frivolous legal arguments.⁷⁹ Subjective bad faith includes the knowing and intentional submission of a false statement of fact.⁸⁰

The court concluded that LoDuca had violated Rule 11 of the Federal Rules of Civil Procedure 2024, by neither reading nor verifying a single case cited in his affirmation in opposition, and taking no other steps on his own to check whether any aspect of the assertions of law were warranted by existing law.⁸¹ The court stated that LoDuca's signing and filing of the affirmation in opposition, without making any inquiry, was a submission made in subjective bad faith.⁸² Moreover, the court contended that LoDuca had lied to the court when seeking an extension by claiming to be out of office.⁸³ Based on this, the court stated that LoDuca had acted in bad faith.⁸⁴

Because both Schwartz and LoDuca were in the employ of Levidow Firm, Rule 11(b)(2) of the Federal Rules of Civil Procedure 2024, warranted the court to jointly and severally find the firm responsible for their violations.⁸⁵ Given that Rule 11 of the Federal Rules of Civil Procedure 2024 is aimed at deterring counsel from acting in bad faith, the court reiterated that:⁸⁶

[a] sanction imposed under [Rule 11] must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include non-monetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

This case serves as a cautionary tale for legal practitioners on the uncritical use of AI tools. While such tools may greatly supplement their work, they might struggle to interpret complex legal nuances as the tools are prone to hallucinations and bias.⁸⁷

Park v Kim No 22-2057 2024

This case concerns an appeal by the appellant, Park, who brought an action against a physician, Kim, alleging medical malpractice in a case previously dismissed by the US District Court for the Eastern District of New York. The reasons for the court a quo's

79 *Mata* case para 17.

80 *ibid.*

81 *Mata* case para 23a.

82 *ibid.*

83 *Mata* case para 23c.

84 *ibid.*

85 *Mata* case para 25.

86 *Mata* case para 28.

87 See B Scott, 'A Case of "AI Hallucination" in the Air' (7 August 2023) Leiden Law Blog <<https://www.leidenlawblog.nl/articles/a-case-of-ai-hallucination-in-the-air>> accessed 30 April 2025.

dismissal were based on the patient's repeated and deliberate failure to comply with multiple discovery orders issued by the district court.⁸⁸

It transpired that counsel for the appellant, without exercising due diligence to confirm the validity of the precedent relied upon, had used a non-existent decision 'sourced' by ChatGPT.⁸⁹ The court emphasised that attorneys have a duty to certify that they have conducted a reasonable inquiry and have determined that all papers filed with the court are well grounded in fact and based in evidence.⁹⁰ This relates to all information they provide to the courts (either AI-generated or generated from the attorney's research conducted in the conventional way). As a result, the court referred the appellant's attorney to the Court's Grievance Panel pursuant to Local Rule 46.2⁹¹ for further investigation and for consideration of a referral to the Committee on Admissions and Grievances.⁹²

This case emphasises the fact that while US courts permit the use of AI in legal research, it is the duty of each individual legal practitioner to verify all case law and any dicta referred to and to provide evidence of their actual existence when probed by the courts.

Kohls v Ellison 24-cv-3754 (LMP/DLM) 2025

In this case, Franson, a Minnesota state representative,⁹³ posted memes on her X, Instagram, Facebook and YouTube accounts of computer-edited or AI-created images and videos featuring the likeness of real politicians for comedic and/or satirical effect.⁹⁴

One of the defendants, Ellison, the Attorney General of Minnesota, sought an injunctive relief.⁹⁵ The second defendant was Larson, a county attorney of Douglas County.

Ellison submitted two expert declarations in opposition to the plaintiff's injunction motion: one by Jevin West, a professor at the University of Washington; and one by Jeff Hancock, a professor of Communication at Stanford University.⁹⁶ These two

88 *Park v Kim* No 22-2057 2024 (*Park* case) para 1.

89 *Park* case para 2.

90 *Park* case para 7.

91 US Court of Appeals for the Second Circuit. Local Rule 46.2 governs attorney discipline, establishing that a 'Grievance Panel' of judges initially handles misconduct allegations, with authority to refer matters for further investigation to the Committee on Admissions and Grievances. It outlines procedures for investigating, prosecuting and disciplining attorneys for misconduct or failure to comply with court rules, including potential suspension or disbarment.

92 *Park* case para 7.

93 *Kohls* case paras 3 and 16.

94 *Kohls* case para 5.

95 *Kohls* case para 18.

96 *ibid.*

declarations proffered backgrounds about AI and deepfakes, especially the dangers of the latter to free speech and democracy.⁹⁷

The plaintiffs discovered that Hancock's declaration inadvertently included citations to two non-existent academic articles and incorrectly cited the authors of a third article owing to his use of GPT-4o in drafting the declaration.⁹⁸ The court was surprised that Hancock, a credentialed expert on the dangers of AI and misinformation had fallen victim to the siren call of relying too heavily on AI, in a case revolving around the dangers of AI, no less.⁹⁹

Consequently, the plaintiffs sought refusal to admit Hancock's declaration stating that the fake citations in the declaration tainted the entirety of his opinions, rendering any opinion by him inadmissible.¹⁰⁰ Hancock admitted that his declaration included the untrue sources.¹⁰¹ The court held that:

[o]ne would expect that greater attention would be paid to a document submitted under penalty of perjury than academic articles. Indeed, the court expected greater diligence from attorneys, let alone an expert in AI misinformation at one of the country's most renowned academic institutions.¹⁰²

The court emphasised that it did not fault Hancock's reliance on the use of AI for research purposes as AI, in many ways, has the potential to revolutionise legal practice for the better.¹⁰³ The court stated unequivocally that when attorneys and experts abdicate their independent judgment and critical thinking skills in favour of ready-made AI-generated answers, the quality of the legal profession and the court's decisional process suffer.¹⁰⁴

This case reiterates the responsible, ethical and sceptical use of AI in the legal profession and the need for vigilance in respect of possible hallucinations. The court reiterated that attorneys need to verify AI-generated content in legal submissions.¹⁰⁵ Although the court commended Ellison for conceding and addressing the errors in Hancock's testimony, it could not accept false statements—innocent or not—in an expert's declaration submitted under penalty of perjury.¹⁰⁶ Therefore, the court ordered that the plaintiffs' motion to exclude expert testimony be granted in part and denied in part. The

97 *ibid.*

98 *ibid* paras 19–20.

99 *ibid.*

100 *ibid.*

101 *ibid.*

102 *ibid.*

103 *ibid.*

104 *ibid.*

105 *ibid.*

106 *ibid.*

motion was granted as to the Hancock declaration and denied as to the West declaration.¹⁰⁷

The court emphasised that citations to fake, AI-generated sources in a declaration—even when helpful, thorough and plausibly explained—shatter the credibility of a witness. This stems from the fact that expert testimonies ought to not only be relevant, but also reliable.¹⁰⁸ Moreover, the court emphatically stated that citing fake sources imposes many harms, including ‘wasting the opposing party’s time and money, the court’s time and resources, and reputational harm to the legal system.’¹⁰⁹

South African Case Law on the Use of AI in the Legal Profession

Generally, South African courts have been pragmatic about the use of technology in the legal profession. This is evident from the implementation of CaseLines¹¹⁰ in Gauteng, which allows for the online filing of court documents, and several judgments where the courts approved the use of technology, be it by confirming that a contract could be concluded with the use of technology (e.g. electronic signatures) or confirming that a notice could be delivered through the use of technology (e.g. email).¹¹¹

107 *ibid.*

108 See *Daubert v Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589 (1993) para 17–21.

109 *Morgan v Cmty Against Violence, No 23-cv-353-WPJ/JMR*, 2023 WL 6976510, para 8 (D.N.M. 23 October 2023).

110 The South African Judiciary, ‘Court online’ <<https://www.judiciary.org.za/index.php/63-caselines?start=3>>, accessed on 26 June 2025, CaseLine refers to an online system that allows judges and legal teams in South Africa to prepare, collate, redact, share and present evidence or legal bundles, documentary and video evidence electronically. Through CaseLine, all parties invited to a case before the court have access to the latest evidence, which is often arranged with automatic page paginations and indexing for ease of referencing. In addition, CaseLine allows all parties invited to a case to share comments or notes relevant to the case in question. Moreover, CaseLine allows counsel to present evidence more fluently by automatically directing the court to specific evidence seamlessly.

111 R Cupido, ‘Online Dispute Resolution as Legal Disruption: What Effect Could It Have on the South African Dispute Resolution Landscape?’ (2024) 27 PELJ 1 at 3. See C Singh, ‘I Notice You Noticing Me—A Critical Analysis of the Section 129 Notice of the National Credit Act, and Recommendations for the Implementation of a “Specialised” Foreclosure Notice’ (2021) 33 SA Mercantile Law Journal 1 56, C Singh, ‘Signed, Sealed and Delivered (Electronically): Embracing the Digital Takeover: A Brief Consideration of Electronic Signing and Delivery in South Africa’ (2023) 33 Stellenbosch Law Review 4 618, C Singh, ‘A “Sign” of the Times: A Brief Consideration of the Validity of E-Signatures in Agreements and Affidavits in South African Law’ (2024) 1 Obiter 38, C Singh, ‘Bye Bye Mr Postman: A Consideration of the Electronic Delivery of Notices in Terms of the National Credit Act 34 of 2005’ (2024) 27 PELJ 49 1, and C Singh, ‘Remote Commissioning: Signing an Affidavit in the Virtual Presence of the Commissioner of Oaths’ (2024) 3 Stellenbosch Law Review 221 for discussions of some of the technological advancements in South African law. See also *VJS v SH* (19578/2024) [2024] ZAWCHC 333 (22 October 2024) and *African Best Foods (Pty Ltd) v ED Food SRL* (A2024/061772) [2025] ZAGPJHC 1008 (29 September 2025) for the most recent examples of South African courts’ adoption of technology in the legal practice.

The use of AI in legal proceedings, however, implies a unique situation and different thinking altogether. With AI, technology is used as much more than just a tool to facilitate legal processes, as most AI produces or generates works autonomously, with minimal or no human involvement. Accordingly, when an attorney initiates a prompt or instruction to an AI tool, the work generated by the AI is, strictly speaking, not the work of the attorney, who has not put any thought, skill or labour into the product. Accordingly, if an AI-generated work is presented in court without any checks by a human legal mind, there is a marked risk that the work will not be legally sound or even correct. This presents a profound risk in the legal context, due to the tendency of AI systems to produce hallucinated outputs. Two reported cases in South Africa considered the use of AI, and these are discussed in detail below.

Parker v Forsyth NNO and Others (1585/20) [2023] ZAGPRD 1 (29 June 2023)

This case involved an application for defamation and injuria against a body corporate and some of its members.¹¹² Both sets of counsel alerted the court and each other to a number of cases in support of the argument that a body corporate could be sued for defamation.¹¹³ Some of the cases listed by the plaintiff could not be accessed. The court requested the parties to source the authorities and report back on their research. Upon return to court, the plaintiff conceded that these cases could not be sourced.¹¹⁴ It came to light that, prior to the matter appearing before the court, both parties had communicated extensively with each other regarding the plaintiffs' case authorities.¹¹⁵ The plaintiffs' attorneys explained that they had sourced the cases through ChatGPT and had accepted its results as accurate, without undertaking any checks. It transpired that these cases did not exist—the names, citations, facts and decisions were all fictitious.¹¹⁶ The plaintiffs had cited the thirteen fictitious cases in their papers. The defendants argued that this conduct by the plaintiffs' attorneys was an attempt to mislead the court and had to be met with a punitive costs order.¹¹⁷

The court found that:¹¹⁸

The plaintiff's legal team did not submit these cases to court as binding authorities, they submitted them to the defendants as being the case they would rely on prior to realising their error. It seems to the court that they placed undue faith in the veracity of the legal research generated by AI and lazily omitted to verify the research. Ordinarily, if the court was satisfied that the attorneys had attempted to mislead the court, the consequences would have been far more grave. Not only would it have attracted a

112 *Parker v Forsyth NNO and Others (1585/20) [2023] ZAGPRD 1 (29 June 2023) (Parker case)*, paras 2–6.

113 *Parker case* para 45.

114 *Parker case* para 80.

115 *Parker case* para 80.

116 *Parker case* para 87.

117 *Parker case* para 88.

118 *Parker case* para 89.

costs order *de bonis propriis* against the relevant attorney, but the court would have been compelled to report the attorney's conduct to the Legal Practice Council. As it happens, the court is quite confident that neither the Plaintiff's attorney nor her counsel attempted to mislead the court. It seems that the attorneys were simultaneously simply overzealous and careless.

The court further held that in an age of instant gratification, this incident served as a timely reminder that when it comes to legal research, the efficiency of technology still needs to be infused with a dose of good old-fashioned independent reading.¹¹⁹ Courts expect lawyers to bring a legally independent and questioning mind to bear, not to merely repeat the unverified research of a chatbot.¹²⁰

Although the plaintiffs' attorneys did not intend to mislead anyone, the inevitable result was that the defendants' attorneys were misled into thinking that these authorities were real. As a result, they would have invested a significant amount of time and effort in their (futile) attempts at tracking down these cases. The costs order sought by the defendants was not unreasonable, and the embarrassment associated with this incident was probably sufficient punishment for the plaintiffs' attorneys.¹²¹

It is submitted that the plaintiffs' attorneys got off lightly in this matter and were very lucky not to be sanctioned by the court. The conduct by the plaintiffs' attorneys, of producing false authority and not verifying the evidence submitted to court, could be considered a serious breach of the rules of conduct of legal practitioners. The leniency of the court may have been due to the novelty of the situation (i.e. the use of AI in legal research).

Despite being a magistrate's court matter, the *Parker* case received a significant degree of media attention and called into question the use of AI when conducting legal research, as well as the professional standards of legal practitioners, with its associated use.¹²² While the *Parker* case did not specifically address the ethical standards of conduct for legal practitioners, the case of *Mavundla* did consider this issue. This case is discussed below.

MEC v Mavundla: Department of Co-Operative Government and Traditional Affairs KwaZulu-Natal and Others 2025 (3) SA 534 (KZP)

The case involved a politician, Mavundla, who had been elected mayor of Umvoti, but was later suspended. He now sought reinstatement. The supplementary notice of application contained several authorities in support of his submissions.¹²³

119 *Parker* case para 90.

120 *ibid.*

121 *Parker* (n 155) para 91.

122 See Van Eck (n 16) 474.

123 *Mavundla* case para 1.

The first cases referred to in the application were *Pieterse v The Public Protector*,¹²⁴ and *Burgers v The Executive Committee of the Municipal Council of the Greater Germiston Municipality*. Upon requesting the citation for the *Burgers* matter, counsel for the applicants advised that she was not able to provide the same and abandoned reliance on that case.¹²⁵ The applicant's counsel and attorneys also referred to the cases of *Dube v Schleich*¹²⁶ and *Municipality of City of Cape Town v Aon South African (Pty) Ltd*, yet no full case citations were provided for these judgments.¹²⁷

While writing the judgment, it came to the judge's attention that the case citation for *Pieterse* was incorrect: no such case was reported in either the South African Law Reports, the All South African Law Reports, or South African Legal Information Institute. No reference could likewise be found for the *Burgers*, *Dube* or *Aon SA* cases. The judge thereafter requested two court law researchers to locate the cases cited. It came to light that, of the nine cases cited, only two existed, albeit that the citation of one was incorrect.¹²⁸ In light of these concerns, the judge afforded the counsel for the applicant an opportunity to provide the authorities relied upon. The applicant's counsel indicated that the case references were provided to her by the article clerk employed by the attorney firm representing the applicant. It further came to light that the clerk had drafted the entire supplementary notice.¹²⁹

The judge adjourned the matter and provided the parties with an opportunity to bring forward the cited cases.¹³⁰ On the return date, the attorneys were unable to provide the cases relied on, and it became clear that the cases did not exist.

Rule 57.1 of the Code of Conduct provides that a legal practitioner should take all reasonable steps to avoid misleading the court. Any practitioner who deliberately misleads the court is unfit to remain in the profession.¹³¹ These principles can be expanded to include the court's reliance on the authorities cited and relied upon by legal practitioners.¹³² In the current matter, counsel, the attorney and the clerk failed to be forthcoming on the sources of their research raising doubts about the correctness or truthfulness of their citations. Their actions prompted serious questions about their conduct, which needed investigation by the Legal Practice Council (LPC).¹³³

124 *Pieterse v The Public Protector* 2014 (3) SA 551.

125 *Mavundla* case paras 9–10.

126 *Dube v Schleich* [2013] ZALC 16.

127 *Mavundla* case para 10.

128 *Mavundla* case para 20.

129 *Mavundla* case para 21.

130 *Mavundla* case para 23.

131 *Mavundla* case para 38, referring to *Incorporated Law Society v Bevan*.

132 *Mavundla* case para 40.

133 *Mavundla* case paras 40–41.

Some legally related use of AI by legal practitioners

In the case of *S v Aliyu*,¹³⁴ the South Gauteng High Court addressed AI misuse from a different perspective—that of judicial impartiality. The magistrate, in an extradition hearing, independently searched for evidence on Google, leading the High Court to review and set aside the decision.¹³⁵ The court held that it was irregular for a judge to seek out evidence not formally presented, as it undermined the neutrality of the judiciary.¹³⁶ This case highlights the growing challenge of ensuring AI and digital tools do not compromise judicial integrity.

In *Makunga v Barlequins Beleggings (Pty) Ltd t/a Indigo Spur*,¹³⁷ a self-represented litigant prepared arguments solely using Google. While the court acknowledged that this did not amount to dishonesty, it emphasised that relying on AI-generated legal research, without verification, is an irregular practice in court proceedings.¹³⁸ The court also warned that ‘lawyers need to watch out for artificial intelligence, as one day soon the computers are coming for our jobs.’¹³⁹ However, considering AI’s tendency to hallucinate and produce fictitious case law, as demonstrated in these cases, we are still years away from AI replacing human legal practitioners. For now, human oversight remains essential in the legal profession. In any case, ‘the law is no longer a brooding omnipresence in the sky; it now dwells in legal-research platforms.’¹⁴⁰

Conclusion

Legal research has always formed an integral part of law and the acquisition of knowledge and information. Such knowledge constructs are closely linked to the quality of the sources used to support legal research.¹⁴¹ Emerging technologies, such as AI, have brought a different dimension to the construction of knowledge, and to the process of acquiring reliable and accurate information in legal research.¹⁴² The reliance on AI tools such as ChatGPT, for legal research, is a novel issue in the legal profession and not only brings into question the risk and reliability of using AI, but also highlights the importance of the ethical and professional duties of legal practitioners when using these tools.¹⁴³

134 *S v Aliyu* (A12/2023) [2023] ZAGPJHC 697 (14 June 2023) (*Aliyu* case) para 31.

135 *ibid.*

136 *ibid.*

137 *Makunga v Barlequins Beleggings (Pty) Ltd t/a Indigo Spur* (19733/2017) [2023] ZAWCHC 332; (1 December 2023) (*Makunga* case) para 30.

138 *Makunga* case para 30.

139 *ibid.*

140 *Thomson Reuters Enterprise Center GmbH v Ross Intelligence Inc* 1:20-cv-613-SB (D Del) 2.

141 Van Eck (n 16) 469.

142 Paul Magrath, ‘The Genie and the Lamp: How Can Artificial Intelligence Help Us Find New Case Law?’ (2022) 22 *Legal Information Management* 114, 118.

143 Van Eck (n 16) 471.

Although several cases, both nationally and internationally, have dealt with the use of AI, none of the domestic cases have provided any guidance on the regulation of its use or the professional duties of legal practitioners when employing AI. Legal practitioners have a duty not to mislead the court, either intentionally or negligently. In *Parker*, the court found that there was no deliberate attempt to mislead the court. However, the court did note that the legal practitioners had been careless in not verifying the cases produced by ChatGPT. This carelessness may amount to negligence. It is our view that the court may have been too lenient in the *Parker* case. Although the consequences for a deliberate act of misleading the court, and one of a mistake, ignorance and carelessness should differ, all constitute serious breaches of the professional conduct expected of a legal practitioner,¹⁴⁴ who may also not ‘recklessly make averments or allegations unsubstantiated by the information.’

Van Eck has reiterated that the failure of legal practitioners to verify the correctness of information sourced from AI represents a deep ethical failure and breach of their professional duties.¹⁴⁵ In concurrence, we contend that the submission of court documents that contain AI-generated, fictitious case law constitutes serious professional misconduct, regardless of whether this occurs knowingly or unknowingly. Such breaches must be referred to the LPC for disciplinary hearing,¹⁴⁶ and the penalties for such conduct should be severe ranging from fines and suspensions to even being struck off the roll, depending on the circumstances and gravity of the misconduct. Beyond formal sanctions, legal practitioners would consequently also face significant reputational damage and embarrassment, which could have long-lasting consequences for their careers and professional standing.¹⁴⁷ These repercussions should serve as a deterrent for other legal practitioners who use AI blindly without undertaking any checks over its result.

It is evident from the case analysis above that the unverified use of AI-generated research and the submission of these sources to court can be seen (whether done intentionally or negligently) as an attempt to mislead the court and accordingly a breach of ethical and professional duties.¹⁴⁸ Legal practitioners have a duty to act with honesty and integrity and not mislead the court by using false information and evidence. Any breach of this duty should incur serious sanctions. Ultimately, legal practitioners remain accountable for the work they produce. Their ethical and professional standards of conduct have not changed simply because of the adoption of new technologies and AI

144 Van Eck (n 16) 483.

145 See Van Eck (23) 454. See also Nunez C ‘Artificial Intelligence and Legal Ethics: Whether AI Lawyers Can Make Ethical Decisions’ (2017) *Tulane Journal of Technology and Intellectual Property* 189 for a detailed discussion on the professional and ethical duties of lawyers when using AI.

146 See Da Costa *Independent on Saturday* 1.

147 See Da Costa *Independent on Saturday* 1 referring to statements from Aziz Ismail, chairperson of the Johannesburg Attorney’s Association.

148 Van Eck (16) 479.

systems. In response to the growing use of generative AI systems, some courts have issued rules relating to pleadings using AI technologies, which include that such documents must be verified by legal practitioners.

Publishing houses (including Taylor & Francis) require authors to read and agree to comply with its AI policy. This policy reads:

I confirm that in accordance with the Taylor & Francis AI Policy, if I have used Generative AI tools (e.g. Chat GPT) or any large language models at any point in the preparation of my manuscript, I have clearly disclosed the use in the manuscript, including the full name of the tool used (with version number), how it was used, and the reason for use.

It is submitted that such a policy goes to show to what extent AI may be used in the legal profession for research purposes. However, its use must be declared, so that its veracity and the extent of usage may be verified.

From a practical perspective, we submit that AI tools will not often give a work the finesse of a seasoned lawyer. In addition, AI does not create the human connections, which are essential for trust and credibility in the legal profession. Often, when we attempted to draft a text with ChatGPT, we ended up spending more time than we would have if we had drafted it ourselves, just because we did not like the sound of it, the tone or the format. What surprised us most, was testing ChatGPT with critical thinking exercises: it answered many questions incorrectly. While AI excels at processing information and summarising it, it struggles with nuanced legal reasoning and complex analysis. This is where the legal human brain remains irreplaceable. AI is an amazing starting point, and it will surely improve with time.

The question remains: Should the law embrace AI fully or proceed with caution? The biggest concern is that AI not only generates phantom cases and fake citations, but it also makes up facts and fictitious judges, which makes identifying its falsity difficult. AI tools might be clever enough to write a convincing legal fiction but are not yet sophisticated enough to replace good old-fashioned legal research. In legal practice, where precision can mean the difference between justice served or justice denied, the abovementioned cases are a valuable reminder to legal practitioners of the skill required for the profession and the talent needed for legal research and the consequences of breaching their legal duties and ethics.

The ethical and professional implications of AI use run deeper than mere academic concerns and are even beyond the scope of this paper. Nevertheless, it is trite that legal practitioners have a fundamental duty to act as officers of the court, bound by the 'duty to be honest and act with integrity.' When AI hallucinations enter legal submissions, they create a form of unintentional deception that is particularly difficult to detect and correct. Unlike a simple misquoted case or an outdated citation, these hallucinations can

create entire lines of false legal reasoning that could, if unchecked, influence judicial decision making and the rule of law.

Recommendations

As noted in the case analysis above, South African courts have taken a somewhat lenient approach with the use of AI for legal research. This may be due to the novelty and the lack of rules to guide courts. In comparison, other jurisdictions, like the US, have sanctioned and fined legal practitioners who have produced fabricated AI resources in court.

Currently, in South Africa, there are no laws or policies that govern the use of AI in the legal system. However, the Law Society Rules and Code of Conduct do sanction legal practitioners for misleading the court and demand a high standard of ethical and professional duties from legal practitioners. These duties, however, do not deal with any of the aspects of use of AI and the challenges it poses. Without clear rules specifically for the use of AI, uncertainty will remain. This gap needs to be addressed, and clear rules need to be established to govern how AI is to be used in the legal profession.

It is noted that there have already been calls for such guidelines and stronger efforts need to be made to implement formal guidelines on the use of AI and development of the Code of Conduct.¹⁴⁹ It is clear that the continued unregulated use of AI has serious ethical concerns and dire consequences for the administration of justice and public confidence in the legal system.¹⁵⁰ Accordingly, there is an urgent need for guidelines to be put in place to regulate this issue to ensure that the integrity and trust in the legal profession is maintained.

We believe that for the South African legal system to navigate appropriately through the 5IR, there is a need for the Code to be updated to cater to the ethical and professional pitfalls of AI use. The Code can be updated (or separate guidelines be implemented) to the effect of requiring legal practitioners to keep abreast of AI technologies, its risks and challenges, and mandate legal practitioners to disclose any use of AI in court papers. The compulsory disclosure on the use of AI will create clarity as to the conduct expected by legal practitioners when undertaking research and submitting AI-generated evidence before the court.

With specific regard to the use of AI for ‘legal research’, it is recommended that the following inclusions be made.

149 See Thaldar and others (n 24) 454.

150 See M Van Eck ‘AI “hallucinations” are threatening the administration of justice in SA’ (*Daily Maverick*, 15 July 2025) <<https://www.dailymaverick.co.za/opinionista/2025-07-15-ai-hallucinations-are-threatening-the-administration-of-justice-in-sa/>> accessed 4 March 2026.

Rules and guidelines on the use of generative AI must be expressly prescribed in the Code specifying that legal practitioners must, at all times, verify the veracity of the information obtained from generative AI systems and keep up to date with legal developments.¹⁵¹ Such verification must be confirmed by way of a signed declaration where AI has been used. Corresponding sanctions for the unethical use of AI must also be expressly prescribed in the Code to retain uniformity and avoid confusion and ambiguity in the courts. Borrowing from the ABA Formal Opinion 512,¹⁵² lawyers using AI must fully consider their professional responsibilities including their competence and comprehension of AI tools used, the confidentiality aspects to clients' information as well as ensuring that their fees remain reasonable taking into account expenses they may have incurred in using AI tools.

In addition to the above and owing to the fact that AI tools are developed in different versions, we recommend that where legal practitioners use them, they must declare not only the tool used, but also the version used. This is informed by the fact that, for example, both the free version and premium (e.g. ChatGPT Plus/Enterprise) are built on similar foundational large language models developed by OpenAI. However, premium versions usually run on newer or more capable model variants (e.g. GPT-4.1, GPT-4.5) compared to the free tier (often GPT-3.5 or an earlier GPT-4 variant). Newer model variants tend to be more accurate, better at reasoning and make fewer mistakes. Also, most scholarly databases require subscriptions for the end user to access the full information. As an example, ChatGPT cannot directly bypass paywalls to access paid, subscription-based scholarly platforms (like JSTOR, ScienceDirect or Sage Journals) on its own. It respects website restrictions, meaning it cannot log into services or access content that requires a paid subscription. Thus, we recommend the use of the latest versions of AI and paid versions of it. This will reduce the probability of inaccurate information presented to courts by legal practitioners whose legal research includes AI.

All institutions of higher learning offering law courses must actively integrate AI into their legal research and academic frameworks. Already, this has been adopted by several universities in South Africa including the University of South Africa (UNISA), University of KwaZulu Natal (UKZN) School of Law and the University of Cape Town (UCT). We recommend that the Council on Higher Education make this mandatory for all universities, in line with the South African National AI Policy Framework. Similar strides are evident within the LPC, which is set to integrate AI competence into its Continuing Professional Development requirements by 2026, aiming to ensure legal practitioners can responsibly use AI tools for research and drafting. This shift

151 D Thaldar and others (n 24) currently, there exists a duty on legal practitioners to remain reasonably abreast of legal developments, applicable laws and regulations, legal theory and the common law, and legal practice in the fields in which they practise. While we appreciate the AI Ethics Guidelines for legal practitioners drafted in mid-2024 and submitted to the Law Society of South Africa's E-Law Committees, we recommend an expedited approach to its adoption.

152 American Bar Association's ethics guidance on AI in legal practice.

accompanies a new 2026 competency-based assessment syllabus for candidate attorneys.

The black-box challenge may well be curtailed and/or resolved by regulating the use of AI in a way that designates responsible parties like developers, operators or general users in hallucination circumstances.¹⁵³ As is, the end user (legal practitioner) bears the brunt for hallucinations by AI tools. Although users engage with AI tools of their own volition, we submit that this approach does little to promote the responsible development of such technologies. Thus, it is recommended that a clear regulatory approach, which will designate responsibility to all parties involved in the development, operation and use of AI tools must be adopted.¹⁵⁴ This approach ensures that the duty to verify the accuracy of AI-generated outputs is shared among all relevant stakeholders, rather than being placed solely on the end user. It is further recommended that regulatory frameworks governing the use of AI require developers to adopt explainable models and ensure transparency in the algorithms deployed within the legal context.¹⁵⁵ In any event, these AI tools are not developed in South Africa and do not offer geographically specific search results tailored to legal practitioners to better serve the South African legal system.

In sum, AI presents immense potential to revolutionise the legal profession by automating administrative tasks, streamlining case analysis and enhancing legal research and drafting. It can also improve efficiency and provide cost-effective legal assistance to legal practitioners. The case discussions above represent the growing reliance by legal practitioners on AI to conduct research in South Africa.¹⁵⁶ However, as shown above, AI cannot always produce reliable and trustworthy results, and the hallucinations it generates are one of its greatest flaws.

It is trite that the risks of using AI are becoming well known, and legal practitioners can no longer use the novelty of AI as an excuse. Legal practitioners have a duty to check the accuracy of their research and a further duty not to mislead the court.¹⁵⁷ It is therefore critical that rules be implemented urgently to regulate the use of AI in legal research, particularly regarding how AI should be used and the sanctions for non-compliance with such rules. This is imperative in ensuring the maintenance of the integrity of the legal profession and justice in the country.

153 T Marwala and LG Mpedi, *Artificial Intelligence and the Law* (Palgrave Macmillan 2024) 17.

154 *ibid*

155 *ibid*.

156 Van Eck (n 150).

157 See M Van Eck, 'Expanding Ethical and Professional Guidelines: The Use of Artificial Intelligence in the Legal Profession' (De Rebus, September 2025) <<https://www.derebus.org.za/expanding-ethical-and-professional-guidelines-the-use-of-artificial-intelligence-in-the-legal-profession/>> accessed 12 February 2026.

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