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*Accountability Mechanisms for a Proper Administration of Algorithmic Justice – A Canadian Perspective**

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ABSTRACT While technology tools and applications are constellating our legal and judicial landscape, the flexible nature of modern technology and varied innovative practices would hardly fit within a rigid rule-based framework. Several actors and stakeholders, from judges and members of legal professions to Crown prosecutors and law enforcement agencies, take part in ensuring the due and proper administration of 'algorithmic justice'. In respect to civil and tortious liability, judicial and prosecutorial immunities bar most claims against judges and Crown attorneys except in egregious bad faith cases. Across Canada, accountability mechanisms rest essentially on judicial appreciation of key principles of natural justice and adjudicating between conflicting fundamental rights on a case-by-case basis. Where AI regulation / litigation is concerned, soft law and ad hoc adjudication have stepped up to the fore, pending a comprehensive and binding regulatory framework yet to come.

KEYWORDS: Algorithmic justice - Accountability - Natural justice - Fundamental rights

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1. *Introduction*

Nowadays technology tools and applications are constellating our legal and judicial landscape, be it for practice or case management, electronic databases for conducting legal research, document review, record-keeping, online payment options, e-filing and discovery, remote access, electronic evidence, teleconferencing, automated transcription, and from virtual offices, meetings, interviews to hybrid or virtual hearings.[1]

Using technology can enhance meaningful access to justice.[2] Proper administration of justice is a matter of wide import that relies on both judges and attorneys. As part of their ethical duties, lawyers across Canada must encourage public respect and try to improve the administration of justice.[3]

Of all the technologies driving these innovations, AI stands out as the most promising and concerning. Across OECD countries, AI has been used in myriad ways, from categorizing incoming cases, to automated document processing, data extraction, anonymizing court decisions, easy access to legal and judicial information, predictive policing and risk assessment tools (e.g. for likelihood of recidivism), as well as monitoring judicial performance and enhancing accountability.[4] While streamlining

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[1] Canadian Bar Association (CBA), *2. Use of AI in Legal Practice: An overview*, in *Ethics of Artificial Intelligence for the Legal Practitioner*. https://cba.org/resources/practice-tools/ethics-of-artificial-intelligence-for-the-legal-practitioner.

[2] On this topic, see the various works and publications of the Cyberjustice Laboratory at www.cyberjustice.ca/en Also K. Benyekhlef *et al.* (eds.), *eAccess to Justice*, University of Ottawa Press, 2016; J. McGill, S. Bouclin and A. Salyzyn, *Mobile and Web-based Legal Apps: Opportunities, Risks and Information Gaps*, in *Canadian Journal of Law and Technology*, vol. 15, no. 2, 2017, 229; H. Westermann, *Using Artificial Intelligence to Increase Access to Justice*, PhD thesis, Université de Montréal, 2023.

[3] Federation of Law Societies of Canada, *Model Code of Professional Conduct*, as amended April 2024, Rule 5.6-1.

[4] OECD, *Governing with Artificial Intelligence: The State of Play and Way Forward in Core Government Functions*, Paris, OECD Publishing, 2025, 265 ff.

the courts' internal operations and proceedings, the use of advanced AI algorithms and sophisticated generative AI systems may result in a lack of transparency and explainability making it difficult to spot or challenge inaccuracies and falsehoods derived from inadequate or skewed data, over-reliance on technological systems and, more recently, AI hallucinations.

Such balancing of risks and opportunities raises the question of how to ensure proper accountability for the administration of justice in the algorithmic era. After a cursory review of the Canada's approach to core digital challenges (2), the crux of our enquiries will be focused on available accountability mechanisms (3).

2. *Canada's Approach to Core Digital Challenges*

Canada's proactive approach to tackle with AI innovation has met with mixed success. Since 2017, notable soft law initiatives and policy instruments have come to fruition such as the Pan-Canadian Artificial Intelligence Strategy (2017), the federal Directive on Automated Decision-Making (2019) and the Algorithmic Impact Assessment (AIA) tool, the Guide on the use of generative artificial intelligence (2025) and AI Strategy for the Federal Public Service 2025-2027.

The Pan-Canadian Artificial Intelligence Strategy (National AI Strategy)[5] was launched in 2017 as the first national AI strategy in the world. Bearing witness to the Government of Canada's efforts to drive the adoption of AI across economy and society, the National AI Strategy has three pillars. Pillar 1 aims at commercialization, with 10-year government funding provided in Budget 2021 to support initiatives by national AI institutes and innovation clusters in promoting the adoption of made-in-Canada AI technologies by businesses in key industries, non-profits and the general public. Pillar 2 relates to standards, with 5-year government funding provided from 2021-22 to advance the development and adoption of standards related to artificial intelligence. Pillar 3 concerns talent and research, and is tied again to multi-annual government funding provided to help retain and attract top academic talent across Canada in the field of artificial intelligence.[6]

The *Directive on Automated Decision-Making* (2019)[7] aims to ensure that automated decision systems are used by federal institutions in a manner compatible with core principles of administrative law, namely, transparency, accountability, legality, and procedural fairness. The Directive is reviewed every two years. In particular, for every automated decision system in production that will be used to make an administrative decision or a related assessment about a client, an algorithmic impact assessment has to be conducted, and the results thereof published in an accessible format on the Open Government Portal. Notice and meaningful explanations have to be provided before decisions should they be made by an automated decision system, or with the assistance thereof. Every system should allow for human involvement, with adequate information provided as to recourse options to challenge the administrative decision. Quality assurance requires testing and monitoring outcomes of every automated decision system to verify compliance with applicable legislation and human rights obligations, and to safeguard against unintended biases, unexpected impacts, and other system failures or unfair outcomes. The specifics for each requirement may vary according to the impact level of the automated decision system, ranging from Level I (little impact) to Level IV (very high impact). For this purpose, the mandatory Algorithmic Impact Assessment (AIA) tool[8] has been developed with assessment scores based on many factors such as the system's design, algorithm, decision type, impact and data.

The year 2019 also saw the creation of the Advisory Council on Artificial Intelligence, as announced by the Canada's Minister of Innovation, Science and Economic Development while in Paris for the G7

https://doi.org/10.1787/795de142-en.

[5] Innovation, Science and Economic Development Canada, *Pan-Canadian Artificial Intelligence Strategy*, 2017. https://ised-isde.canada.ca/site/ai-strategy/en.

[6] Canada, *Budget 2021. A Recovery Plan for Jobs, Growth, and Resilience*, Her Majesty the Queen in Right of Canada, 2021, 148, https://publications.gc.ca/collections/collection_2021/fin/F1-23-3-2021-eng.pdf.

[7] Canada, *Directive on Automated Decision-Making*, 2019. www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=32592.

[8] Canada, *Algorithmic Impact Assessment tool,* www.canada.ca/en/government/system/digital-government/digital-government-innovations/responsible-use-ai/algorithmic-impact-assessment.html.

meeting of Digital Ministers.[9] Composed of leading researchers, academics and business executives, the Advisory Council's mandate is to advise the Minister of Innovation on key issues in AI, such as the state of the AI ecosystem in Canada, developments and best practices with respect to AI governance, considerations related to deployment of AI technologies in the public sector, and broader societal issues related to AI.[10]

Following the release of ChatGPT, the Treasury Board of Canada Secretariat (TBS) issues guidance to federal institutions on their use of generative AI tools. The *Guide on the use of generative artificial intelligence*[11] recommends a risk-based progressive approach urging federal institutions to assess and mitigate risk related to the use of generative AI tools. Examples of higher-risk uses include uses in service delivery, such as deploying a chatbot for use by the public or generating a summary of client information. Federal institutions are encouraged to experiment with low-risk uses (e.g., writing an invite for team-building events or editing a draft document to be further reviewed) before higher-risk uses. Responsible use of generative AI tools should align with the 'FASTER' principles (Fair, Accountable, Secure, Transparent, Educated, Relevant).

More recently, the *AI Strategy for the Federal Public Service 2025-2027*[12] focuses on four priority areas considered to have the greatest potential to advance responsible AI adoption with the federal public service. *Central AI capacity* (Priority 1) recognizes the need for a central hub to support AI project implementation and share knowledge; key actions include establishing an AI Centre of Expertise (AI CoE) for the Government of Canada which complement services offered by existing accelerators (e.g., National Research Council's AI Accelerator and Digital Technologies programs), ensuring the provision of common infrastructure to enable AI adoption, and developing a lighthouse project. *Policy, legislation and governance* (Priority 2) involves the adoption of AI-ready law and policy, with the establishment of common governance and risk management frameworks for the AI lifecycle. *Talent and training* (Priority 3) is dedicated to training, upskilling, and recruitment of AI-knowledgeable public servants, together with more *engagement* in the process of designing and developing government AI systems (Priority 4).

Despite a host of soft law policies and initiatives, Canada's first attempt at comprehensive artificial intelligence regulation halted on January 6, 2025 when the proposed *Artificial Intelligence and Data Act* (AIDA)[13] died on the order paper. AIDA was tabled in June 2022 with a risk-based approach to align with evolving international norms such as the EU AI Act and the OECD AI Principles.

As noted in the *AI Strategy for the Federal Public Service 2025-2027*, AI is being used to improve service delivery in different government departments. At Immigration, Refugees and Citizenship Canada, AI-based models are being used to triage applications for temporary and permanent residence, and to identify fraud patterns in order to strengthen program integrity. Innovation, Science, Economic Development Canada (ISED) developed an AI-based tool to transcribe and summarize parliamentary committee meetings. Shared Services Canada (SSC) is piloting an in-house multilingual conversational chatbot based on generative AI that can support drafting, editing, researching, summarizing, and information and data management. The Canadian Centre for Cyber Security uses machine learning to analyze malicious software and defend critical infrastructure system from cyber threats.

[9] Innovation, Science and Economic Development Canada, *Government of Canada creates Advisory Council on Artificial Intelligence* (news release), 14 May 2019, www.canada.ca/en/innovation-science-economic-development/news/2019/05/government-of-canada-creates-advisory-council-on-artificial-intelligence.html.

[10] Innovation, Science and Economic Development Canada, *Terms of Reference of the Advisory Council on Artificial Intelligence,* https://ised-isde.canada.ca/site/advisory-council-artificial-intelligence/en/terms-reference-government-canada-advisory-council-artificial-intelligence.

[11] Canada, *Guide on the use of generative artificial intelligence*, 2025, www.canada.ca/en/government/system/digital-government/digital-government-innovations/responsible-use-ai/guide-use-generative-ai.html.

[12] Treasury Board of Canada Secretariat, *AI Strategy for the Federal Public Service 2025-2027*, His Majesty the King in Right of Canada, 2025. https://publications.gc.ca/collections/collection_2025/sct-tbs/BT48-55-2025-eng.pdf.

[13] Innovation, Science and Economic Development Canada, *The Artificial Intelligence and Data Act (AIDA) - Companion document,* https://ised-isde.canada.ca/site/innovation-better-canada/en/artificial-intelligence-and-data-act-aida-companion-document.

At about the same time, the Courts Administration Service (CAS) also released its first *Digital Strategy 2025-2027*.[14] The CAS provides administrative services to Canada's National Courts (i.e., the Federal Court of Appeal, the Federal Court, the Court Martial Appeal Court of Canada, and the Tax Court of Canada) at arm's length from the Government of Canada to help safeguard judicial independence. The Digital Strategy promotes the delivery of modern, efficient, and accessible digital services, and pave to way to achieving a successful digital modernization of the National Courts. Roadmap for success includes: converting additional courtrooms to e-courtrooms, stabilizing the courts' proceedings management system, developing an AI solution to help accelerate the translation of decisions, strengthening cybersecurity, implementing a modern evidence management solution to support digital hearings, improving litigant self-service capabilities (e.g., e-filing, electronic access to court records, and scheduling information), and digitizing paper court records. The Office of the Commissioner for Federal Judicial Affairs Canada[15] has also recognized the potential of AI to enhance court operations. At different courts's level as well, AI features (prominently) in strategic plans as part of the courts' digitalization program, alongside electronic courtrooms ad e-access to court records, increased use of web-based video conferencing and webcasting, and online resolution.[16]

Aside from the public sector and the courts, the implementation of these strategies, plans and initiatives requires the input of private and institutional partners from across Canada (e.g., CIFAR, Mila, the Vector Institute, the Digital Research Alliance of Canada).

Digitalization is not all about AI. But there is something concerning, unsettling about AI-driven automation. Alongside promises of increased efficiency lurk significant concerns and risks relating to the use of self-learning algorithms that are no longer based on predefined rules and steps of reasoning. Increased human-independent automation means lesser control as to outcomes and process. Balancing institutional liability and immunity in the algorithmic era is about how to achieve an optimal equilibrium between human oversight and AI-enabled innovation. Core challenges revolve around monitoring individual and societal harms that may result from the use of AI, privacy protection, ensuring a fair process and equitable results, maintaining public confidence in the justice system and the integrity of court processes.

3. *Accountability*

Accountability has a multifaceted nature. At its core, accountability entails an obligation to inform, to justify one's conduct to an authority.[17] There are several ways of holding others accountable for their conduct. In the public sector and the judicial system, proper accountability mechanisms are paramount, all the more so for errors arising from the improper use of information technologies.

In either instance, accountability encompasses not only civil liability (3.1), but also involves professional ethics (3.2), adjudicative accountability growing out of judicial review and appeal mechanisms (3.3), as well as an institutional dimension for implementing a responsible AI governance (3.4).

3.1. *Civil and Tortious Liability*

In the common law tradition, Crown liability has been carved out by statute from the receding background of sovereign immunity (3.1.1). Judicial and prosecutorial immunities have also come to be recognized

[14] Canada, Courts Administration Service, *Digital Strategy 2025-2027.* www.cas-satj.gc.ca/en/pages/publications/digital-strategy-2025-2027 See also the works and publications of the Autonomy Through Cyberjustice Technologies (ACT) multi-annual research partnership project led by Professor Karim Benyekhlef, Director of the Cyberjustice Laboratory, and funded by the Social Sciences and Humanities Research Council (SSHRC), especially the Subproject 9 intitled 'Decision Tools for Legal Practitioners and Adjudicators, Judges and Arbitrators': www.ajcact.org/en/organisation/chantier-9-outils-decisionnels-pour-arbitres-adjudicateurs-et-juges.

[15] Office of the Commissioner for Federal Judicial Affairs Canada (Action Committee on Modernizing Court Operations), *Use of Artificial Intelligence by Courts to Enhance Court Operations*, 2024. www.fja.gc.ca/COVID-19/Use-of-AI-by-Courts-Utilisation-de-lIA-par-les-tribunaux-eng.html

[16] See e.g., Canada, *Federal Court Strategic Plan 2020-2025*, 2020, www.fct-cf.ca/content/assets/pdf/base/2020-07-15%20Strategic%20Plan%202020-2025.pdf.

[17] C. Novelli, M. Taddeo and L. Floridi, *Accountability in artificial intelligence: what it is and how it works*, in *AI & Society*, vol. 39, 1871, 2024, https://doi.org/10.1007/s00146-023-01635-y.

(3.1.2) along the same lines. On the other hand, no common law or statutory immunity benefits law enforcement agencies (3.1.3).

3.1.1. *Crown Liability*

The antiquated common law maxim 'The King can do no wrong'[18] epitomizes the doctrine of Crown or sovereign immunity, first referenced in English cases dating to the beginning of the 17th century. Its most accepted rationale is that the King could not be sued in his own courts.[19] Nowadays, as the Supreme Court of Canada has pointed out, the doctrine of Crown immunity 'seems to conflict with basic notions of equality before the law'.[20] Indeed, '[t]he more active government becomes in activities that had once been considered the preserve of private persons, the less easy it is to understand why the Crown need be, or ought to be, in a position different from the subject'.[21] The fact remains that Crown liability can only be established by statute. As a federal state, Canada has one federal Crown and ten provincial Crowns, such that no less than 11 statutes are required to provide for Crown liability in stated circumstances. Where applicable, Crown immunity generally extends to Crown employees (servants) in Canada acting without malice and within the scope of their duties.[22]

Some government decisions are notably unsuited to judicial review. Policy decisions require '[t]he weighing of social, economic, and political considerations to arrive at a course or principle of action', which is 'the proper role of government, not the courts'.[23] Examples of policy decisions include funding decisions,[24] the adequacy of government actions to address homelessness,[25] directing a particular course of action to combat climate change,[26] or the management of resources to provide the accused with timely bail hearings.[27] A policy decision then, as opposed to an operational decision, cannot give rise to Crown liability or ground an action in tort, unless specifically targeted to harm a party with bad faith intent.[28] As a matter of fact, Canadian courts have found it 'notoriously difficult'[29] to draw the dividing line in varied circumstances.

In this respect, the recently enacted Ontario *Crown Liability and Proceedings Act, 2019*[30] purports to codify what are considered 'policy matters' in respect of which no negligence claim could be made against the Crown. Notably a policy matter immune from liability would include 'the manner in which a program, project or other initiative is carried out'.[31] To date, Ontario courts have declined to adopt an expansive meaning of subsection 11(5) as to encompass 'virtually any step taken by the provincial government in carrying out any 'program, project or other initiative', which would 'result in intolerable outcomes' in exempting all government actions from liability.[32]

While maintaining the existing boundary between policy and operational decisions, a government decision to develop an AI system or to outsource the creation and design of such system would be a policy decision not subject to judicial scrutiny.[33] On the other hand, 'the deployment, use and maintenance of an AI system'[34] would likely be considered operational in nature so to not escape Crown liability.

[18] M.-F. Fortin, *Revisiting the Application of Statutes to the Crown: A Historical Constitutional Approach*, in *Journal of Commonwealth Law*, vol. 3, no. 1, 2021, 271.
[19] P. J. Monahan, W. Wright and E. Chamberlain, *Hogg's Liability of the Crown*, 5th ed., Toronto, Thomson Reuters, 2024.
[20] *R.* v. *Eldorado Nuclear Ltd.; R.* v. *Uranium Canada Ltd.*, [1983] 2 S.C.R. 551, 558.
[21] *R.* v. *Eldorado Nuclear Ltd.; R.* v. *Uranium Canada Ltd.*, [1983] 2 S.C.R. 551, 558.
[22] *Young* v. *McCreary*, 2001 CanLII 4456 (ON CA); J.J. Tokar, *Administrative Law: Injunctive Relief against the Crown*, in *Manitoba Law Journal*, vol. 15, no. 1, 1985, 97.
[23] *R.* v. *Imperial Tobacco Canada Ltd.*, 2011 SCC 42, at para. 87.
[24] *Ontario* v. *Phaneuf*, 2010 ONCA 901.
[25] *Tanudjaja et al.* v. *Canada (Attorney General)*, 2014 ONCA 852, at paras. 34-36.
[26] *Citizens for Public Justice* v. *Saskatchewan*, 2026 SKKB 9; *Dykstra* v. *Saskatchewan Power Corporation*, 2025 SKKB 175.
[27] *Cirillo* v. *Ontario*, 2021 ONCA 353.
[28] *Trillium Power Wind Corporation* v. *Ontario (Natural Resources)*, 2013 ONCA 683.
[29] *R.* v. *Imperial Tobacco Canada Ltd.*, 2011 SCC 42, at para. 78.
[30] *Crown Liability and Proceedings Act, 2019*, S.O. 2019, c. 7, sch. 17.
[31] *Crown Liability and Proceedings Act, 2019*, S.O. 2019, c. 7, sch. 17, ss. 11(4).
[32] *Francis* v. *Ontario*, 2021 ONCA 197, at paras. 127-128. See also E. Chamberlain, *Francis v Ontario: Can the Crown Restore its Own Immunity?* In *The Canadian Bar Review*, vol. 99, no. 3, 2021, 645.
[33] Law Commission of Ontario (LCO), *LCO Final Report. Accountable AI*, 2022, 77, www.lco-cdo.org/wp-content/uploads/2022/06/LCO-Accountable_AI_Final_Report.pdf.
[34] LCO, *LCO Final Report*, 77.

3.1.2. *Judicial and Prosecutorial Immunities*

The doctrine of judicial immunity likewise originated from seventeenth century England. On account of the constitutional principle of judicial independence, judges in Canada are neither servants of the Crown nor government employees.[35] The doctrine of judicial immunity prohibits legal proceedings against judicial actors which are based on their actions as adjudicators or decision-makers.[36] Besides judges, the doctrine has been held to protect also tribunals and other statutory-decision makers (adjudicative immunity).

Crown prosecutors, in their professional capacity, likewise enjoy common law immunity from tort claims alleging recklessness, gross negligence, poor judgment, or incompetence.[37]

From an historical perspective, the functional convergence of the three immunities (judged, grand jurors and Crown prosecutors) has been emphasized in these terms by our Court of Appeal for British Columbia:

> The immunity of a judge for acts within his jurisdiction has roots extending to the earliest days of the common law. (…) The immunity of grand jurors, an almost equally venerable common-law tenet, also has been adopted in this country. Courts that have extended the same immunity to the prosecutor have sometimes remarked on the fact that all three officials – judge, grand juror, and prosecutor – exercise a discretionary judgment on the basis of evidence presented to them. It is the functional comparability of their judgments to those of the judge that has resulted in both grand jurors and prosecutors being referred to as 'quasi-judicial' officers, and their immunities being termed 'quasi-judicial' as well.[38]

The common law tort of malicious prosecution was developed in the eighteenth century, a different time when criminal charges were routinely prosecuted by private litigants. As such, the standard of malice, that is, of a wrongful or improper motive, would be required beyond actual or imputed knowledge so as to encourage private citizens to assist in bringing criminals to justice.[39] Where different customs prevail, it comes as no surprise that scholars have begun to question the stringent tests employed for establishing the private tort of malicious prosecution. Like the Attorney General, Crown prosecutors nowadays occupy an office that is often described as quasi-judicial, in the sense that every decision to prosecute should be based in the public interest.

Indeed, the wind is shifting. In *Henry* v. *British Columbia (Attorney General)* (2015),[40] the Supreme Court of Canada allowed the appeal against the above cited judgment from the Court of Appeal for British Columbia and authorize courts to award damages against the Crown for prosecutorial misconduct absent proof of malice. The case involves a civil suit brought against the Attorney General of British Columbia, seeking damages for harm suffered as a result of ten (10) wrongful convictions for sexual offences and a total of 27-year imprisonment. According to the Notice of civil claim, the Crown failed to make full disclosure of relevant information before, during, and after the trial, despite numerous requests being made for all victim statements as well as medical and forensic reports. At this occasion, the Supreme Court of Canada reframed the test for prosecutorial misconduct for failure to disclose and rests the Crown's liability on two key elements: the prosecutor's *intent* to withhold material information, and their *actual or imputed knowledge* on the consequences thereof as to the accused's ability to make full answer and defence.

Aside from traditional common law immunities, statutory protections may be granted to different administrative actors, such as the Independent Police Review Director.[41] In any event, immunities can be lifted only in the clearest of cases involving malice, bad faith, or abuse of process.

In extreme cases, malicious misuse of AI data and technologies to fabricate deepfake evidence, and reliance on AI-hallucinated fake

[35] *Crowe* v. *Canada (Attorney General)*, 2008 FCA 298, at para. 24.
[36] *Taha* v. *Clements*, 2021 PECA 5.
[37] *Nelles* v. *Ontario*, [1989] 2 S.C.R. 170; *Proulx* v. *Québec (Attorney General)*, 2001 SCC 66; *Miazga* v. *Kvello Estate*, 2009 SCC 51.
[38] *Henry* v. *British Columbia (Attorney General)*, 2014 BCCA 15, at para. 20.
[39] M. Law-Smith, *The Tort of Malicious Prosecution: A Principled Account*, in *McGill Law Journal*, vol. 69, no. 2, 2024, 137.
[40] *Henry* v. *British Columbia (Attorney General)*, 2015 SCC 24.
[41] Ontario, *Police Services Act*, R.S.O. 1990, ch. P.15, ss. 26.1(12).

cases would be novel instances that would warrant, where appropriate, the lifting of prosecutorial immunity and other statutory protections. So far, we know of not yet a recorded Canadian case where lifting such immunity because of misuse of technology is granted, discussed or pleaded. That being said, even the quasi-absolute nature of these immunities in barring civil claims against judges and Crown prosecutors can be counterbalanced by other accountability mechanisms, such as professional and adjudicative accountability (below).

3.1.3. *Law Enforcement*

Of note, Crown and prosecutorial immunities do not extend to police officers. While investigating crimes, they act independently of the control of the executive government,[42] such that their civil liability is to be assessed considering the applicable standard of care while in the performance of their duties.[43]

Numerous concerns have been voiced over the use of predictive policing, that is, the use of algorithmic technologies to predict crime. In their exhaustive survey of AI technologies used by police across Canada,[44] the University of Toronto and the Citizen Lab classify algorithmic policing tools into three categories: location-focused, person-focused, and providing for general algorithmic surveillance. All three categories have been procured, developed and used by police services throughout Canada, and have the potential of infringing fundamental human rights to privacy, equality, non-discrimination, freedom of expression, liberty, and due process. These findings echo with others.[45] In particular, the results of a joint investigation by the federal Office of the Privacy Commissioner (OPC) and provincial authorities show that Clearview's personal information (i.e. scrapes of facial images) collection practices were not compliant with federal and provincial private sector privacy law.[46] Hence, the subsequent collection and use thereof by the Royal Canadian Mounted Police (RCMP) to match photographs of people resulted in billions of people being found in a 24/7 police line-up in contravention of the applicable privacy legislation.[47] The RCMP has since established the National Technology Onboarding Program (NTOP), which is closely monitoring the responsible use by the RCMP staff of three potentially invasive operational technologies, namely, on-device investigative tools, cell-site simulators, and remotely piloted aircraft systems.[48] Clearview, on the other hand, withdrew from the Canadian market in 2020 while the commissioners' investigation were ongoing, and the Court of Appeal for British Columbia ultimately affirmed in early 2026 the commissioners' findings on judicial review.[49] Meanwhile, another city-wide video surveillance program, involving the use of multiple high-resolution intersection cameras that collect video footage of individuals, licence plates, and vehicle identification features with the sole purpose of disclosing such video footage to the RCMP to assist the RCMP in identifying criminal suspects, has been ordered to stop in view of privacy concerns.[50]

In instances of privacy or human right violation where damages are difficult to quantify, enforcement can be entrusted to

[42] *R.* v. *Campbell*, [1999] 1 S.C.R. 565, at para. 29.
[43] *Lacombe* c. *André*, [2003] R.J.Q. 720 (C.A.), at para. 40.
[44] K. Robertson, C. Khoo and Y. Song, *To Surveil and Predict: A Human Rights Analysis of Algorithmic Policing in Canada*, Citizen Lab (Munk School of Global Affairs & Public Policy, University of Toronto) and the International Human Rights Program (Faculty of Law, University of Toronto), 2020.
[45] K. Benyekhlef and G. Lefebvre, *Predicting policing in Canada – National Report*, in *Revue internationale de droit pénal*, vol. 94, 2024, 73.
[46] Office of the Privacy Commissioner of Canada (OPC), Commission d'accès à l'information du Québec (CAI), Information and Privacy Commissioner for British Columbia (OIPC BC), and Information and Privacy Commissioner of Alberta (OIPC AB), *Joint Investigation of Clearview AI, Inc.* PIPEDA Findings #2021-001, 2 February 2021, www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2021/pipeda-2021-001.
[47] Office of the Privacy Commissioner of Canada (OPC), *Police use of Facial Recognition Technology in Canada and the way forward*, Special report to Parliament on the OPC's investigation into the RCMP's use of Clearview AI and draft joint guidance for law enforcement agencies considering the use of facial recognition technology, 10 June 2021, www.priv.gc.ca/en/opc-actions-and-decisions/ar_index/202021/sr_rcmp/#toc1.
[48] Royal Canadian Mounted Police (RCMP), *RCMP National Technology Onboarding Program – Transparency Blueprint: Snapshot of operational technologies*, PS64-231/2024E-PDF, 2024. https://rcmp.ca/en/corporate-information/publications-and-manuals/national-technology-onboarding-program-transparency-blueprint.
[49] *Clearview AI Inc.* v. *British Columbia (Information and Privacy Commissioner)*, 2026 BCCA 67.
[50] *Richmond (City) (Re)*, 2026 BCIPC 1.

different public bodies, such as the privacy commissioners or human rights commissions, with the powers to investigate complaints, conduct audits and pursuing court action within the ambit of their enabling legislation. Beyond monetary compensation, available remedies under these administrative regimes include orders to cease the violations and take measures to prevent recurrence, public apology, and special measures (e.g., programs or policies) to address the root cause of the violations (e.g., systematic discrimination). In this respect, the Québec Court of Appeal has recognized that the Canadian *Charter of human rights and freedoms* is 'quite capable of adjusting to the new forms of discrimination that are likely to emerge from the digital universe'.[51] Where law enforcement is concerned, most of the complaints relate to racial or discriminatory profiling.

Class actions can also serve as an efficient leverage to aggregate individual claims and raise public awareness on institutional shortcomings.[52] To date, class actions are brought across Canada in a wide variety of fields, ranging from mass personal injury, consumer protection to environmental accidents and privacy/security breaches.[53] Against government actors, class actions have been filed for breach of privacy of patient records, institutional abuse in residential schools, inmates held in solitary confinement, and unlawful arrests. To the best of our knowledge, no class action in Canada has yet targeted law enforcement agencies for negligence or other liability claims involving the use of technologies.

3.2. *Professional Ethics*

At the present juncture, 'soft law comprises the majority of algorithmic accountability in Canada'.[54] Soft law comprises a wide range of non-legal instruments which, though not binding in nature, can make their way into our hard law by influencing the meaning given to open-textured legislation, and being endorsed by the courts. Ethics canvasses expected standards of behaviors from professionals, be they judges (3.2.1) or attorneys (3.2.2). Besides binding professional codes of conduct, ethics has become nowadays one of the areas where soft law standards governing the use of (AI) technologies have come to multiply.

3.2.1. *Judicial Ethics*

While foundational ideas of judicial ethics (e.g. independence and impartiality) are part of the constitutional order, judicial ethics are essentially developed through ethical guidelines and case law.[55]

Specifically, the Canadian Judicial Council (CJC) provides a process for ensuring that Canadians have a place where they may raise concerns or questions about the conduct of federally-appointed judges. The judicial conduct review process, amended in 2023, provides a means for the public to voice concerns about judges, while giving those judges an opportunity to respond to those concerns. Except a complaint made by the CJC or an anonymous complaint, every complaint received is first referred to a screening officer.[56] Complaints that may be dismissed at this preliminary stage by the screening officer include ones that are frivolous, vexatious or made for an improper purpose or is an abuse of process.[57] After the screening stage, complaints are referred to reviewing members for further analysis. Under the previous conduct regime, reviewing members had limited options of either dismissing a complaint or referring it to a panel for consideration of judicial removal. The new conduct regime provides review panels with a broader range of options for remedy, including the issuance of a private or public expression of concern, warning, reprimand, an order to apologize or to take specific measures such as attending counselling or a continuous education course.[58]

As a key actor in providing ethical

[51] *Beaulieu* v. *Facebook inc.*, 2022 QCCA 1736, at para. 14.
[52] G.D. Watson, *Class Actions: The Canadian Experience*, in *Duke Journal of Comparative and International Law*, vol. 11, no. 2, 2001, 269.
[53] Law Commission of Ontario, *Class Actions. Objectives, Experiences and Reforms*, Final Report, July 2019, www.lco-cdo.org/wp-content/uploads/2019/07/LCO-Class-Actions-Report-FINAL-July-17-2019.pdf.
[54] P. Daly and B. Orct, *Artificial Intelligence Accountability of Public Administration in Canada*, Country Report for the 2022 General Congress of the International Academy of Comparative Law, 2022, 2.
[55] R. Devlin and A. Dodek, *Judicial Ethics*, in *Lawyers' Ethics and Professional Regulation*, 4th ed., Lexis Nexis Canada, 2021, 763.
[56] Canada, *Judges Act*, R.S.C. 1985, c. J-1, s. 89.
[57] Canada, *Judges Act*, s. 90.
[58] Canada, *Judges Act*, s. 102.

guidance for judges throughout the country, the CJC has published *Ethical Principles for Judges*, which describe the 'high ethical standards that all [federally-appointed] judges thrive to maintain in their professional and personal lives'.[59] These high ethical standards are structured under five core principles: 1. Judicial independence, 2. Integrity and respect, 3. Diligence and competence, 4. Equality, 5. Impartiality. Of note, Rule 3.C.5 states that '[j]udges should develop and maintain proficiency with technology relevant to the nature and performance of their judicial duties'. The bulk of the ethical recommendations regarding technology revolve around social media, the improper use of which can compromise public confidence in the judiciary (Rule 1.B.2), lead to reasonable apprehensions of bias (Rule 5.B.17) or raise fairness issues concerning out-of-court information received related to the parties, witnesses or matters under consideration (Rule 5.B.18).

For judges of provincial courts, the Québec *Judicial code of ethics*,[60] among others, is couched in similarly vague terms.

In addition to the *Ethical Principles*, the CJC released recently a set of *Guidelines for the Use of Artificial Intelligence in Canadian Courts* (2024)[61]. The *Guidelines* provide Canadian judges 'with a principled framework for understanding the extent to which AI tools can be used appropriately to support or enhance the judicial role'.[62] In particular, it should be understood that 'no judge is permitted to delegate decision-making authority, whether to a law clerk, administrative assistant, or computer program, regardless of their capabilities'.[63] That said, judges are not only permitted but are encouraged to leverage available support to assist in their judicial responsibilities which are not akin to judicial decision-making, such as: consulting with a law clerk on legal queries, requesting an administrative assistant to proofread and format draft decisions, utilizing grammar and spell-check features in word processors, employing speech recognition tools for dictation.[64]

Data shows that an overwhelming majority of complaints filed are being dismissed at the screening stage.[65] Among the most common reasons for the dismissal of complaints against judges are complaints that challenge the judge's decision rather than their conduct (which should be addressed at the appellate level) and complaints that question the exercise of judicial discretion.[66]

Besides the CJC, various principles and guidelines on the use of artificial intelligence have been released by different courts and tribunals across the country. The most commonly referenced principles guiding the potential use of AI by members of the court and their law clerks are: accountability (to the public for any potential use of AI in its decision-making function), respect of fundamental rights (e.g., the right to a fair hearing before an impartial decision-maker), non-discrimination, accuracy, transparency, cybersecurity, and 'human in the loop'. Concerning the use of AI by members of the court and their law clerks, the Federal Court of Canada has pledged that the Court 'will not use AI, and more specifically automated decision-making tools, in making its judgments and orders, without first engaging in public consultation'; this includes in the Court's determination of the issues raised by the parties, or any other decision made by the Court in a proceeding.[67]

In the province of Québec, the Superior Court is the first court to officially launch a pilot project using internally developed AI to

[59] Canadian Judicial Council, *Ethical Principles for Judges*, 2021, 6, https://cjc-ccm.ca/sites/default/files/documents/2021/CJC_20-301_Ethical-Principles_Bilingual_Final.pdf

[60] Quebec, *Judicial code of ethics*, RLRQ, c. T-16, r. 1.

[61] Canadian Judicial Council (CJC), *Guidelines for the Use of Artificial Intelligence in Canadian Courts*, September 2024, https://cjc-ccm.ca/sites/default/files/documents/2024/AI%20Guidelines%20-%20FINAL%20-%202024-09%20-%20EN.pdf.

[62] CJC, *Guidelines for the Use of Artificial Intelligence in Canadian Courts*, 4.

[63] CJC, *Guidelines for the Use of Artificial Intelligence in Canadian Courts*, 3.

[64] CJC, *Guidelines for the Use of Artificial Intelligence in Canadian Courts*, 3.

[65] *Canadian Judicial Council Annual Report on the Review of Complaints About Federally Appointed Judges (Reporting Period January-December 2024)*, March 2025, 5, https://cjcccm.ca/sites/default/files/documents/2025/CJC_ComplaintsReview2024_e.pdf.

[66] *Canadian Judicial Council Annual Report … (Reporting Period January-December 2024)*, March 2025, 4.

[67] Canada, Federal Court, *Interim Principles and Guidelines on the Court's Use of Artificial Intelligence*, 29 September 2025, www.fct-cf.ca/en/pages/law-and-practice/artificial-intelligence See also Canada, Federal Court, *NOTICE TO THE PARTIES AND THE PROFESSION. The Use of Artificial Intelligence in Court Proceedings*, 7 May 2024, 4, www.fct-cf.ca/Content/assets/pdf/base/FC-Updated-AI-Notice-EN.pdf.

support and facilitate a subset of administrative, linguistic, and documentary tasks for the judges, namely, to obtain linguistic and terminology support, to perform translations; to identify references in internal documentation and legislation; and to answer technological questions. The pilot project is to be conducted under the guidelines established by the Court's *Artificial intelligence governance framework*, released in September 2025.[68] The Framework stresses the role of AI as a support for – and not a replacement of – the exercise of judicial functions: 'It is in no way intended to automate legal reasoning or replace judges in their decision-making role',[69] such that the AI agents are specifically designed to decline all requests or prompts of this nature. Furthermore, the pilot project does not generate draft judgments in whole or in part, interpret texts, summarize large texts or provide legal opinions. All data fed into the pilot project are encrypted and hosted exclusively in secure sandbox-type environments within Canada. It is strictly prohibited to feed personal, confidential or sensitive information into the AI systems, without their being anonymized in advance. A comprehensive assessment report is expected around April 2026 upon completion of the pilot project.

That said, even judges may be tempted to use generative AI to expedite the judgment delivery process. In one particular 200-page judgment rendered in late November 2025 by the Superior Court of Québec,[70] several inconsistencies have been noted, from irrelevant and inaccurate citations from fictitious caselaw, to allegedly *verbatim* but inexistent quotations from the evidence tendered.[71] Although the judgment is currently under appeal, the frequency of such occurrences in a single judicial document may well call for a disciplinary inquiry, and raise deeper questions about procedural fairness and securing to the litigants a meaningful access to human justice.

3.2.2. *Ethical Duties of Counsels and Prosecutors*

In a digital context, lawyers have to 'productively and responsibly interact with technology in their legal practices.'[72] Proper use of technology leads to more efficient delivery of legal services, and might impact several dimensions of a professional's relationship to clients, such as the quality of service, conflict of interest management, protection of confidential information, reasonable fee arrangements, and the duty of competence.

The duty of competence is a multi-faceted standard that stretches beyond an understanding of legal principles as well as an adequate knowledge of relevant practice and procedures. Indeed, technological competency has become part of the ethical standard of a competent lawyer.[73] Tellingly, aside from being knowledgeable, skilled and capable in the practice of law, the *Model Code of Professional Conduct* developed by the Federation of Law Societies of Canada requires lawyers to acquire an understanding of, and ability to use, technology relevant to the nature and area of their practice and responsibilities. A lawyer should also understand the benefits and risks associated with relevant technology.[74]

As a telling example, the court once pointed out that 'if artificial intelligence sources were employed, no doubt counsel's preparation time would have been significantly reduced'.[75] And plaintiffs may wonder why there would be a legal research fee for case precedents available for free through publicly accessible websites or databases.[76]

The duty of technological competency

[68] Superior Court of Québec, *Artificial intelligence governance framework*, September 2025, https://coursuperieureduquebec.ca/fileadmin/cour-superieure/A_propos/2025-09_Artificial_intelligence_governance_framework_Superior_Court_of_Quebec.pdf.

[69] Superior Court of Québec, *Artificial intelligence governance framework*, 4.

[70] *Entreprises Bertrand Roberge ltée* c. *Giroux*, 2025 QCCS 4157.

[71] Isabelle Hachey, *Un juge a-t-il succombé à la tentation de l'IA?*, in *La Presse*, 6 March 2026, www.lapresse.ca/actualites/justice-et-faits-divers/2026-03-06/fausse-jurisprudence-vrai-malaise/un-juge-a-t-il-succombe-a-la-tentation-de-l-ia.php.

[72] A. Salyzyn and F. Martin-Bariteau, *Legal Ethics in a Digital Context*, The Canadian Bar Association, 5, https://cba.org/getmedia/d68b09a5-d4e6-4393-be6b-7d87e9cd8381/LegalEthicsInaDigitalContext.pdf.

[73] Federation of Law Societies of Canada, *Model Code of Professional Conduct*, as amended April 2024, Rule 3.1-2.

[74] Federation of Law Societies of Canada, *Model Code of Professional Conduct*, Rule 3.1-2, Commentaries [4A] and [4B].

[75] *Cass* v. *1410088 Ontario Inc.*, 2018 ONSC 6959, at para. 34.

[76] *Cass* v. *1410088 Ontario Inc.*, 2018 ONSC 6959, at para. 6.

would mean that counsels must step outside of their comfort zone where appropriate. As the Ontario Superior Court of Justice aptly put it in *WORSOFF* v. *MTCC 1168* (2021), while assessing the balance of convenience of virtual procedures vs an examination in person:

> Efficiency, affordability, and enhanced access to justice trump counsels' comfort and presumptions every time. With the current pace of change, everyone has to keep learning technology. Counsel and the court alike have a duty of technological competency in my respectful view. Older judges and counsel may be behind younger counsel and the rest of society who use computers with greater regularity and sophistication than we do. But everyone in the civil litigation system in Ontario has had to learn to use the Civil Submissions Online portal and Caselines for example. Technological change affects everyone. Once upon a time, I had to learn how to use a Gestetner (Google it) and then a fax machine. I do not accept that in person is just 'better'. It can be in some cases. But if counsel just prefers it because he or she is more comfortable with it, ought we to reject the printer because I liked my Gestetner (and Word Perfect for that matter)? The balance of convenience favours easier and more convenient processes with accompanying cost savings.[77]

In a day-to-day setting, lawyers may consider using digital communication tools other than phone or emails to ensure timely and efficient communication with their clients, with due regard to necessary security and confidentiality measures.[78] At the same time, lawyers should be mindful of not introducing new (technological) barriers to access for remote communities or clients who are either not comfortable with technological tools or cannot afford adequate access to the Internet.

As regards misleading misstatements induced by generative AI,[79] only misstatements 'knowingly' made to deceive a tribunal, influence the course of justice or as to the contents of a document would count as professional misconduct.[80]

The Law Society of Alberta has published *The Generative AI Playbook* (2024).[81] The Playbook identifies keys risks of, as well as opportunities for, using generative AI, coupled with best practices and recommendations. Generative AI is no doubt a powerful technology that can be used in a multitude of ways to improve the client experience, the delivery of legal services and the practice of law. That said, generative AI supplement, but never replace the exercise of professional judgment, legal analysis and expertise. Among the top recommendations the law society urges counsels to be careful with the use of generative AI tools, to inform clients about the use of generative AI, to keep abreast of the relevant rules and the evolving regulatory landscape, and to protect client confidentiality and privacy. Counsels are warned against AI 'hallucinations' that risk putting their reputations and their clients' interest in jeopardy, reliance on 'biased or incomplete source material', and the 'false sense of comfort' induced by human-like chatbots that may lead to an uncritical acceptance of generative AI outputs. The best practices would be to treat generative AI outputs as a 'first draft only', like those produced by 'a law student who requires supervision'. Law firms would also have to make sure that time and budget pressures do not incentivize junior lawyers to rely excessively on generative AI.

Since 2023, different courts and tribunals across Canada have issued notices to the public and legal profession urging those using large language models to exercise caution.[82] Among and heralding others, the Alberta Courts' notice advises that for all references to case law, statutes or commentary in representations to the courts, parties should rely 'exclusively on authoritative sources such as official court websites, commonly referenced commercial publishers, or well-established public services.'[83] Accordingly,

[77] *WORSOFF* v. *MTCC 1168*, 2021 ONSC 6493, at para. 32.
[78] A. Salyzyn and F. Martin-Bariteau, *Legal Ethics in a Digital Context*, 11.
[79] V. Magesh et al., *Hallucination-Free? Assessing the Reliability of Leading AI Legal Research Tools*, in *Journal of Empirical Legal Studies*, 2025, 1.
[80] See Federation of Law Societies of Canada, *Model Code of Professional Conduct*, Rule 5.1-2(e) and (f).
[81] Law Society of Alberta, *The Generative AI Playbook*, last updated January 2024, www.lawsociety.ab.ca/resource-centre/key-resources/professional-conduct/the-generative-ai-playbook.
[82] See also F. Ogunde, *Generative AI in American and Canadian courts: a 'training' approach to regulation*, in *Law, Innovation and Technology*, vol. 16, no. 2, 2024, 715.
[83] Court of Appeal of Alberta, Court of King's Bench of

any AI-generated submissions must be verified with 'meaningful human control.' Some courts and tribunals' internal rules of procedure have also been amended to require either a lawyer to certify that every authority cited in their factum is authentic, or all litigants to ensure the authenticity and accuracy of materials filed with the court.[84] Failing to do so may bring the profession or the administration of justice into disrepute.[85]

Other notices would require disclosure of the use of generative AI by the parties, interveners and the legal profession in creating any content included in a document submitted to the courts. Such disclosure is warranted so that 'the opposing counsel and the Court are on notice and can do the necessary due diligence'.[86] Consistent with the principle of neutrality, the 2024 Federal Court's updated notice clarifies that no adverse inference will be drawn from any use of AI by parties and interveners.[87] Such 'Declaration for AI-generated content' only apply to certain forms of AI, i.e., those that have the creative ability to generative new content from prompts or information provided to the system. AI that only follows pre-set instructions, including voice recognition, system automation or document editing, is not subject to the mandatory disclosure obligation.[88]

3.3. *Adjudicative Accountability*

Aside from professional ethics, errors made in a judicial capacity may be corrected on appeal or judicial review, even within the conduct of trial proceedings. Some key concerns of note are detailed below.

To begin with, recent case law serves as a cautionary tale against the risks of AI-induced abuse of process and breaches of natural justice. The Supreme Court of Canada outlines the doctrine of 'abuse of process' as 'engag[ing] the inherent power of the court to prevent misuse of its proceedings in a way that would be manifestly unfair to a party or would in some way bring the administration of justice into disrepute'.[89] As an open-texture concept, the doctrine of abuse of process stands out by its flexible, highly contextual analysis. It may encompass a wide range of situations, whether they be specific conduct attributable to one party to the proceedings, or stem from institutional shortcomings. Common examples of instances giving rise to an abuse of process include: inordinate delay in the conduct of proceedings,[90] relitigation,[91] or infringement of the accused's constitutional rights to a fair trial.

When an abuse of process is found, (reviewing) courts can order several remedies tailored to the various contexts in which abuse of process occurred. Available remedies can serve the same compensatory purpose as the law of torts – that is, to compensate the plaintiff for harm caused by the abuse –, or to express the court's concern or disapproval relating to the impugned conduct or systematic that had led to the abuse of process. Common remedies include: stay of proceedings, order for a new trial, striking of pleadings, and special costs awarded to the opposing party.

A finding of abuse of process needs not relate to the merits of a party's position. A pleading would result in an abuse of process when an issue of a procedural nature arises in respect of that pleading and is of sufficient gravity to meet the 'manifestly unfair' and 'bring the administration of justice into disrepute' standard. Citing fake cases in court filings and other materials would fall along these lines.

That said, references to AI-generated fictional authorities stem mostly from ignorance rather than deliberate attempts to mislead the courts. In the case of *Zhang* v.

Alberta and Alberta Court of Justice, *Notice to the Public and Legal Profession. Ensuring the Integrity of Court Submissions*, 6 October 2023, https://albertacourts.ca/docs/default-source/qb/npp/tri-court-notice-to-profession-and-public---large-language-models.pdf?sfvrsn=713d5a82_7.

[84] See for instance: Ontario, *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, Rule 4.06.1(2.1); British Columbia Court of Appeal, *Registrar's Filing Directive*, 4 September 2025, Rule 7.3, www.bccourts.ca/Court_of_Appeal/documents/new_rules_filing_directive_how_to_file_materials_final.pdf.

[85] Federation of Law Societies of Canada, *Model Code of Professional Conduct*, Rule 4.1-2.

[86] *Hussein* v. *Canada (Immigration, Refugees and Citizenship)*, 2025 FC 1138, at para. 15.

[87] Canada, Federal Court, *NOTICE TO THE PARTIES AND THE PROFESSION. The Use of Artificial Intelligence in Court Proceedings*, 7 May 2024, 3, https://www.fct-cf.ca/Content/assets/pdf/base/FC-Updated-AI-Notice-EN.pdf

[88] Canada, Federal Court, *NOTICE TO THE PARTIES AND THE PROFESSION. The Use of Artificial Intelligence in Court Proceedings*, 7 May 2024, 3.

[89] *Saskatchewan (Environment)* v. *Métis Nation – Saskatchewan*, 2025 SCC 4, at para. 33.

[90] *Law Society of Saskatchewan* v. *Abrametz*, 2022 SCC 29.

[91] *Behn* v. *Moulton Contracting Ltd.*, 2013 SCC 26.

Chen (2024),[92] the Supreme Court of British Columbia was asked to order special costs personally against a lawyer representing one of the parties in a matrimonial dispute. The cost order arose from the citation of two non-existent cases in the notice of application, which were subsequently discovered to have been invented by ChatGPT. This required extra time, cost, and preparation to file the application response from the opposing party. It is 'an extraordinary step'[93] to award special costs against a lawyer, and a mere mistake, error in judgment or even negligence does not warrant such an order. Considering that the non-existent cases were withdrawn before the hearing of the application and that the lawyer had no intent to deceive, the Court declined the award of special costs. That said, other counsels[94] have been personally ordered to pay modest costs for the non-disclosed use of generative AI which resulted in hallucinated cases being relied upon. Among potential sanctions for the misuse of AI in court proceedings, the Ontario Superior Court of Justice has recently issued consolidated provincial practice directions,[95] which provide the court with the authority to refer counsel to the Law Society of Ontario. So far, we have found at least one such referral to the Law Society of Ontario in a case where counsel explicitly denies having used or relied on AI to generate fake quotations from correctly cited real cases.[96]

Even a self-represented party or who is not a member of regulated professions can be held accountable for an abuse of process in court proceedings. The case *Specter Aviation Limited* c. *Laprade* (2025)[97] exemplifies one such situation involving inappropriate use of generative AI by a self-represented litigant. Before the Superior Court of Québec, the self-represented defendant was challenging the enforcement of an arbitration award rendered by the Paris International Arbitration Chamber. As noted by the plaintiffs' counsel, the written contestation contained several citations to non-existent authorities and case law. When questioned by the Court, the defendant admitted having had recourse to generative AI to back up their contestation and did not deny that some of the inconsistencies may result from AI hallucinating. Even though the defendant is not represented by counsel, the Court is of the opinion that such conduct – that is, attempt to mislead the opposing party and the Court by producing fictitious cases' extracts and other authorities – amounts to a substantial breach in the course of the proceeding. Whether such conduct is deliberate or can be characterized as mere negligence, every litigant is bound to the highest standards with respect to pleadings they file with the Court. As a result, the defendant was ordered to pay $5,000 to the other party as enhanced legal costs.[98]

In another instance involving a self-represented litigant, removal from the Court file of an abusive motion record drafted by AI with a non-existent case and fake citations has been deemed 'necessary to preserve the integrity of the Court's process and the administration of justice'.[99]

Aside from a finding of abuse, another way to hold a person accountable for false citations in pleadings is a citation for contempt of court. One such case involving a legal counsel is *Ko* v. *Li* (2025).[100] Several submissions contained in a memorandum delivered to the Court were found to reference non-existent or fake precedent court cases. The problem came to light during the hearing when the Court could not find any reference online to the cases cited. The counsel in question narrowly avoided a finding of contempt by taking full responsibility and expressing appropriate contrition. That said, the Ontario Superior Court of Justice is careful to reiterate the duty incumbent on counsel to state the law

[92] *Zhang* v. *Chen*, 2024 BCSC 285.
[93] *Zhang* v. *Chen*, 2024 BCSC 285, at para. 26.
[94] *Hussein* v. *Canada (Immigration, Refugees and Citizenship)*, 2025 FC 1138.
[95] Ontario Superior Court of Justice, *New Practice Directions on the Responsible Use of Artificial Intelligence in Court Proceedings*, 12 February 2026.
[96] *Kapahi Real Estate Inc.* v. *Elite Real Estate Club of Toronto Inc*., 2026 ONSC 1438, at para. 43, 50: 'Either [the counsel] used AI and has been untruthful about it, or he made up seven fake paragraphs and chose to present them as actual quotations from precedent cases. (...) In my view, on these facts, the best outcome to determine if there has been either use of AI hallucinations or deliberate falsification of law is for those with the authority to investigate to be left to do so. It will be up to the authorities to decide of charges of one type or another should be brought'.
[97] *Specter Aviation Limited* c. *Laprade*, 2025 QCCS 3521.
[98] Other courts have awarded costs against self-represented litigants across the country for referencing fake AI-generated cases: *J.R.V.* v. *N.L.V.*, 2025 BCSC 1137; *Zou* v. *Miracon Development Inc.*, 2026 BCSC 85.
[99] *Lloyd's Register Canada Ltd.* v. *Choi*, 2025 FC 1233.
[100] *Ko* v. *Li*, 2025 ONSC 2965.

accurately and fairly: 'Misrepresentation of the law by a lawyer poses real risks of causing a miscarriage of justice that undermines the dignity of the court and the fairness of the civil justice system'.[101]

Absent specific legal standards governing the use of AI in proceedings, courts across Canada have drafted limited AI policies of their own.[102] Since 2023, courts and tribunals across Canada have issued notices cautioning about the use of generative AI in court proceedings. Contrary to codes of conduct that apply only to lawyers, these notices apply to all litigants, including those without legal representation.

There is a silver lining though in this cloud of concerns. The case *R.* c. *Pryde* (2024)[103] provides an interesting instance of where the use of artificial intelligence may expedite judgment delivery. Since June 2022, the Québec legislation requires a French version to be attached 'immediately and without delay' to any judgment rendered in writing in English.[104] The additional time required for translating draft English judgments to French would entail several weeks or months of additional delay to the delivery of each final judgment rendered in English. In an attempt to justify the requirement of immediacy, the Attorney General alluded to the possible use of translation software tools and artificial intelligence 'that could hopefully streamline the translation process and make it quick and efficient'.[105] The Court expressed no opinion on this choice made under the government's prerogative:

> 'Whether this is a good or bad idea is not for the Court to decide. Whether this will render legal translators obsolete cannot be the Court's concern. The government is free to opine: if artificial intelligence can write simulations of Drake and Taylor Swift songs, it must be able to accurately translate legal decisions dealing with citizens' liberty interests, right? Ultimately, this is a political decision about administrative operations. Only the electorate can determine the wisdom of this approach or otherwise criticize its appropriateness'.[106]

In any event, in the case at hand, the use of software or artificial intelligence does not allay the concerns raised by the new provisions' 'fundamental incompatibility with the operation of criminal law and the language rights of anglophone accused'.[107] As a result, the words 'immediately and without delay' were declared inoperable in criminal proceedings. Although the order has been reversed by the Court of Appeal for technical reasons,[108] the case illustrates the potential of AI to accelerate simultaneous legal translation in a not so remote future.

On a substantive level, while AI-generated forensic evidence produces promising results for investigative efficiency,[109] the judges' ability to perform core adjudicative functions may be adversely impacted by the rise of deep fakes or heavily doctored evidence, the reliability of which is increasingly difficult to assess by the naked eyes and even with the aid of technologies.[110] Elsewhere in the world, the advent of deepfakes has prompted reflections on strengthening evidential rules to guard against the questionable authenticity of deepfake evidence.[111] At least on one

[101] *Ko* v. *Li*, 2025 ONSC 2965, at para. 17.
[102] Law Commission of Ontario (LCO), *AI in Criminal Justice Project | Paper 4. AI at Trial and on Appeal*, April 2025, 9. www.lco-cdo.org/wp-content/uploads/2025/04/LCO-AI-in-Criminal-Justice-Paper-4-AI-at-Trial.pdf
[103] *R.* c. *Pryde*, 2024 QCCQ 1794.
[104] Québec, *An Act respecting French, the official and common language of Québec*, S.Q. 2022, c. 14, s. 10, amending the *Charter of the French Language*, c. C-11.
[105] *R.* c. *Pryde*, 2024 QCCQ 1794, at para. 163.
[106] *R.* c. *Pryde*, 2024 QCCQ 1794, at para. 164.
[107] *R.* c. *Pryde*, 2024 QCCQ 1794, at para. 174.
[108] *Procureur général du Québec* c. *Pryde*, 2025 QCCA 736.
[109] S. Singh and L. Devi, *Reliability and admissibility of AI-generated forensic evidence in criminal trials*, paper presented at National Seminar on Criminal Law and Justice Reforms, 8 November 2025. https://doi.org/10.48550/arXiv.2601.06048; S. Farber, *AI as a decision support tool in forensic image analysis: A pilot study on integrating large language models into crime scene investigation workflows*, in *Journal of Forensic Sciences*, vol. 70, no. 3, 2025, 932, https://doi.org/10.1111/1556-4029.70035.
[110] A. Dalal et al., *Deepfakes in Court: How Judges Can Proactively Manage Alleged AI-Generated Material in National Security Cases*, In *University of Chicago Legal Forum*, vol. 2024, 2025, Article 3; M. Groh *et al*., *Deepfake detection by human crowds, machines, and machine-informed crowds*, in *Proceedings of the National Academy of Sciences*, vol. 119, no. 1, 2022. https://doi.org/10.1073/pnas.2110013119.
[111] R.A. Delfino, *Deepfakes on Trial: A Call to Expand the Trial Judge's Gatekeeping Role to Protect Legal Proceedings from Technological Fakery*, in *Hastings Law Journal*, vol. 74, 293; R.A. Delfino, *Deepfakes on Trial 2.0: A Revised Proposal for a New Federal Rule of Evidence to Mitigate Deepfake Deceptions in Court*, Loyola Law School, 2025; United States Courts, Advisory Committee on Evidence Rules, *Memorandum*, December 1, 2025, www.uscourts.gov/forms-rules/records-rules-committees/committee-

occasion, the Ontario Court of Justice acknowledged that 'the emergence of 'deepfake' evidence and the ability to manipulate electronic records' means that courts must carefully consider the weight to be given these exhibits.[112] The need to ensure that AI is being used as a support for – and not a replacement of – the exercise of judicial functions raises not only rhetorical questions. It strikes to the core of our judicial accountability. Against the opacity of algorithmic processing, the right to reasons that are adequate and intelligible is a well-entrenched aspect of procedural fairness and secures meaningful appeal / judicial review rights to litigants under the AI era. It wouldn't be enough though to uphold the deception of an unbiased adjudicator.

3.4. *Institutional Accountability*

On an institutional level, reliance on algorithms for decision-making put at risk the collective or institutional dimension of judicial independence and that of the bar. Algorithms are indeed more easily manipulated by others – be it national governments or foreign interference – than judges.

Independence of the judiciary connotes not a state of mind (impartiality) but 'a status or relationship to others, particularly to the executive branch of government, that rests on objective conditions or guarantees'.[113] As the CJC stressed in its *Ethical Principles for Judges*: '[a]t an institutional level, courts require sufficient autonomy to guarantee that the administration of justice is free from any political or other improper influence'.[114] The CJC's Guidelines (2024) make it clear as a fundamental principle that to ensure the independence, impartiality and integrity of the judiciary, a judge should exercise their powers of office without undue or unauthorized reliance upon non-judges.[115] Accordingly, responsibility for information technology security policy with respect to judicial information is a judicial function and, as such, rests with the judiciary. In particular, the 7th edition of the CJC's *Blueprint for the Security of Court Information* (2024) stresses that analytical tools (including those incorporating artificial intelligence) may not be applied to court information, whether anonymized or not, without the advice and approval of the judiciary.[116] The new Policy 24 specifically requires that '[a]ny use of artificial intelligence and machine learning within the court system (…) be accompanied by appropriate security measures to protect against potential vulnerabilities and misuse', e.g., guarding against adversarial attacks that aim to manipulate the system's output and conducting regular compliance audits. Another new Policy recommends court security programs to address emerging threats, including 'more sophisticated ransomware, deepfakes, and state-sponsored attacks' (Policy 4b).

Likewise, the independence of the Bar has been advocated by some Canadian scholars as an unwritten constitutional principle.[117] Hailed in 1982 as 'one of the hallmarks of a free society',[118] an independent bar that is free of influence by public authorities is 'an important component of the fundamental legal framework of Canadian society'.[119] More specifically, the lawyers' duty of commitment to their clients' causes has come to be recognized as a principle of fundamental justice.[120] Independence of the Bar usually refers to independence from undue influence, be it from governments or other sources. As some commentators point out, '[a]s more legal AI tools get built and used – many of which may be running on the same small set of underlying models built by a few AI companies – concerns may arise about the degree to which the legal profession becomes dependent on these AI companies continuing to operate and provide access to their models'.[121]

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[112] *R.* v. *Cheng*, 2025 ONCJ 252, at para. 7.

[113] *Valente* v. *The Queen*, [1985] 2 S.C.R. 673, at para. 15.

[114] CJC, *Ethical Principles for Judges*, 2021, Rule 1.D.3 [our underlining].

[115] CJC, *Guidelines for the Use of Artificial Intelligence in Canadian Courts*, 3.

[116] Canadian Judicial Council, *Blueprint for the Security of Court Information* (7th edition), April 2024, Policy 2b.

[117] Roy Millen, *The Independence of the Bar: An Unwritten Constitutional Principle*, in *Canadian Bar Review*, vol. 84, no. 1, 2005, 107.

[118] *Canada (Attorney General)* v. *Law Society of B.C.*, [1982] 2 S.C.R. 307 at 335.

[119] *Finney* v. *Barreau du Québec*, 2004 SCC 36, at para. 1.

[120] *Canada (Attorney General)* v. *Federation of Law Societies of Canada*, 2015 SCC 7, at para. 84.

[121] Amy Salyzyn, *AI and Legal Ethics 3.0: Looking Beyond Professional Conduct Rules and Towards*

Among all legal professionals, the Attorney General's prosecutors are specially vested with a general responsibility for ensuring the efficient and proper functioning of the criminal justice system, beyond the role of a private counsel advocating individual cases. One constitutional principle applying specifically to Crown prosectors is the independence of the Attorney General, that is, the ability to act independently of political or other external influences.[122] Crown prosecutors are accountable to the Attorney General, who is accountable to Parliament and society for the process through which justice is administered.

4. *Conclusion*

Sure enough, several accountability mechanisms are available for a proper administration of algorithmic justice.

As previously discussed, civil and tortious liability against improper administration of justice does not arise in practice except in the most egregious of cases. To the extent that Judicial and prosecutorial immunities do not extend to police officers, privacy violations in the use of invasive video surveillance tools have been criticized severely. As a result, police forces are urged to institute an internal system of checks and compliance assessment to ensure the responsible implementation and use of technologies for law enforcement purposes.

It is noteworthy that the bulk of algorithmic accountability in Canada rests in soft law regulations, via non-binding guidelines, directives, strategies, and extensive commentaries to key provisions of codes of ethics. Binding professional ethics instruments are typically couched in vague terms which are open to interpretation and allow for judicial appreciation on a case-by-case basis. Indeed, across Canada, the risks of AI-induced abuse of process and breaches of natural justice are mainly dealt with by tribunals as part of the appellate and judicial review process. No doubt the flexible nature of modern technology and varied innovative practices would hardly fit within a rigid rule-based framework.

That said, beyond piecemeal initiatives, public accountability involves implementing effective mechanisms and processes to ensure responsibility and auditability during and after AI development and deployment.[123] As technology tools and applications have become part of our legal and judicial landscape, whether through regulation or litigation such landscape has now to be marked by regulatory, warning or guide signs to ensure safety, a smooth traffic flow, and the rule of law.

Independence of the Bar, in *Slaw (Canada's online legal magazine)*, 19 June 2024, www.slaw.ca/2024/06/19/ai-and-legal-ethics-3-0-looking-beyond-professional-conduct-rules-and-towards-independence-of-the-bar.

[122] *R.* v. *Power*, [1994] 1 S.C.R. 601.

[123] *Cf.* E. Papagiannidis, P. Mikalef and K. Conboy, *Responsible artificial intelligence governance: A review and research framework*, in *The Journal of Strategic Information Systems*, vol. 34, no. 2, June 2025, 101885, https://doi.org/10.1016/j.jsis.2024.101885.