Sana Halwani
416-865-3733
shalwani@litigate.com

Jordana Sanft
416-596-1083
jsanft@litigate.com

Jim Lepore
416-865-2881
jlepore@litigate.com

April 18, 2024

AI in the Courtroom: The Quest for Legal Precedents

The current landscape is inundated with narratives surrounding artificial intelligence and its intersection with the law. From the New York Time's lawsuit launched against OpenAI in December 2023, to the BC lawyer reprimanded for citing fake AI-generated cases, to the lying Air Canada chatbot, the legal and mainstream media is full of stories of AI or people using AI running up against traditional legal doctrine and practice. Yet, amidst this surge of AI-related incidents, Canada finds itself grappling with more questions than answers.

It's evident that Canadian courts will increasingly confront cases involving AI, prompting a pressing need for clarity. Here are the top ten questions (in no particular order) that we hope Canadian courts will address soon regarding AI:

- Under what circumstances does AI-generated content (e.g., deep fakes) infringe on rights of personality, privacy, and/or reputation?
- Can an AI be an author or inventor worthy of copyright or patent protection? Can it or should it be a co-author/inventor with a human? (See here for some previous discussion on this question.)
- Can generative AI companies and/or companies using their products be liable for damages caused by "hallucinations" (incorrect/fake/misleading results)?
- Is the use of a work to train an AI fair dealing? If your work is used to train an AI, what if any compensation should you receive?
- Can AIs be used in court or government decision-making, and under what conditions? (See here for a discussion of AI in administrative decision-making.)
- In areas of the law where consent is required, is disclosure that AI will be used a requirement for that consent to be informed?
- If an AI is a part of a product that causes harm to users, who is liable for that harm?
- Can an AI act as an "expert" witness?
- Is non-explainable AI a form of willful blindness?

Lenczner Slaght

- What standard of care should an AI/AI company be held to? What impact should voluntary codes of conduct have on such a standard?

Which questions are on your list? Do you know of a case making its way through the courts that might answer one or more of these? Please share your insights with us!

In the coming weeks, Lenczner Slaght's expert litigators will explore the nexus of AI and the law in a series of blog posts, which will be added to this page as they become available. Some of them may even use the help of generative AI tools, like this blog did. We invite you to join us on this quest for legal precedents!

This is Part 1 of our 5-Part Series on AI in the Courtroom , which includes the below blogs.

- Part 1 (Introduction) – AI in the Courtroom: The Quest for Legal Precedents
- Part 2 – Bars or Bytes? Exploring the Implications of a Track that Drake Might (or Might Not) Have Created
- Part 3 – On the Horizon: Legal Complexities Intersecting Generative AI, Class Actions, and IP Law
- Part 4 – AI Competence in the Courtroom: Four Things Judges Need to Understand Now About AI
- Part 5 – AI Here, AI There, AI Everywhere: Practical Challenges Litigating in an AI World

Lenczner
Slaght