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The use of artificial intelligence in legal research: A brief review of South African case law and proposals for regulation

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ABSTRACT

Artificial intelligence (AI) is infiltrating nearly every aspect of human life. From a legal perspective, technology has been an essential tool to assist legal practitioners in performing legal research. Advancements in AI, and in particular the use of AI models such as ChatGPT to conduct legal research, have, however, created various challenges in the legal profession. The unchecked use of AI applications for research by legal practitioners in some foreign jurisdictions has been heavily sanctioned by the relevant judiciaries. In South Africa, courts have not yet taken such a strict approach but have raised great concern about the use of AI for legal research. Currently, South Africa has no rules that explicitly govern the use of AI in legal research and drafting, yet as the impact of AI increases and its use in the legal sector grows, clear rules and laws need to be formulated to regulate its proper use in legal research and drafting.

Keywords: artificial intelligence; case law; ChatGPT; hallucination; legal research

1 INTRODUCTION

A well-known 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”.¹ This statement reflects the principle that one of the key elements of proficiency in law and legal practice is diligent legal research. Research skills are the foundation of any legal practitioner and among the skills taught at law school. Legal research has always formed an integral part of the law and the acquisition of knowledge and information. Such knowledge constructs are closely linked to the quality of sources used to support legal research.²

Over the recent decades, advancement in technology has changed the way in which practitioners conduct legal research. Instead of hours being spent in libraries scurrying around for legal textbooks, journal articles and case precedents, technology has allowed legal practitioners to conduct research with the tap of a few buttons from the comfort of their homes or offices. The integration of technology, in particular artificial intelligence (AI), in the legal system has transformed the practice of law, offering unprecedented efficiency, accessibility and innovation.³ Not only can AI be useful for legal research and drafting, but it is also being explored as a tool for developing legal reasoning and arguments.⁴

Yet despite their advantages, AI technologies are not free from error, and there have been many instances, both internationally and nationally, where AI has been used for legal research and ‘hallucinated’ and generated fictitious or fake judicial cases and legal journal articles as legal precedents.⁵ An “AI hallucination” may be described as an instance where an AI system generates information which is either factually incorrect or

¹ This is one of the famous remarks made by Lord Denning in *The road to justice* Stevens & Sons (1955). Denning was a legendary English judge renowned for his poetic and revolutionary judicial language.

² Van Eck M “Error 404 or an error in judgment: An ethical framework for the use of ChatGPT in the legal profession” (2024) *TSAR* 469 at 470.

³ Kok L “Keep ChatGPT out of court” (2 July 2025) available at <https://www.up.ac.za/research-matters/news/keep-chatgpt-out-of-court-0> (accessed 27 November 2025).

⁴ This article will focus only on the use of AI for legal research. For other uses of AI in the legal sector, see Thaldar D “Can AI think like a lawyer? Evaluating generative AI in South African law” (2025) 28 *PER* 1; Matthee J & Stopforth G “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.

⁵ Da Costa WJ “Legal hallucinations: Fake AI case law plagues court” *Independent on Saturday Newspaper* (12 July 2025) at 1–2; Van Eck (2024) at 471.

entirely made up and lacking in any basis in reality. Research has revealed that hallucination rates in AI legal research can range between 50-70 per cent, while newer models trained in case law still hallucinate by 17 per cent.⁶ AI tools often misapply legal precedents, fabricate authority, distort laws, rely on inapplicable laws, or even invent fictitious cases.

Hence, while AI has enabled greater efficiency in legal research, concerns persist about its accuracy and application.⁷ AI hallucinations demonstrate that these technological advancements come with substantial legal, ethical and socio-economic risks and concerns. A miscalculation based on flawed AI data can result not only in a case being dismissed with professional legal liability and severe sanctions against the legal practitioner, but also erode the integrity of, and trust in, the entire justice system.⁸ Accordingly, the use of AI for legal research is a novel issue in the legal profession and brings into focus not only the risks of these tools, but also the professional and ethical duties incumbent on legal practitioners when utilising AI.⁹

In foreign jurisdictions, the unchecked use of AI has been heavily sanctioned by the courts. There have been many cases in the United States of America where the courts have admonished and suspended legal practitioners who have utilised AI applications for legal research and submitted fabricated case law and journal articles to court.¹⁰ From a South African perspective, the courts have not yet taken such a strict approach, which may be due to lack of policy governing the use of AI in South Africa and/or the novelty of the issue in the country.

⁶ Thaldar (2025) at 1; Thaldar D “How effectively can ChatGPT-4 draft data transfer agreements for health research?” (2025) 12 *Humanities and Social Sciences Communications* 524. Thaldar undertook detailed research with more than prominent AI models (ChatGPT 4o, Claude 3.7 Sonnet, DeepSeek R1, Gemini 2.0 Flash, and Grok3 Beta) by providing them with three legal scenarios and instructing them to provide a response citing authoritative case law. For further reflections on the use of AI, see Magesh V et al. “Hallucination free? Assessing the reliability of leading AI legal research tools” (2025) *Journal of Empirical Legal Studies* 216; Da Costa (2025), citing K Dobie, senior manager at the Ethics Institute.

⁷ See Thaldar (2025) at 1–2; Van Eck (2024) 470.

⁸ See “Be warned: The dangers of using AI for legal advice of drafting” *Garlicke Bousfield* available at gb.co.za/2025/10/31 (accessed 27 November 2025).

⁹ Van Eck (2024) at 470.

¹⁰ See *Mata v Avianca* 2023 (No. 22-cv-1461) Dist Court, SD New York; *Park v Kim* 2024 (No. 22-2057) 2nd Circuit; *Kruse v Karien* 2024 (No. ED111172) Mo Court of Appeals.

Accordingly, this article briefly considers the use of AI as a medium for legal research in South Africa and provides recommendations on how its use could be regulated. Section 1 serves to introduce and offer insight into the topic. Section 2 discusses some of the rules regulating legal practitioners and legal research in South Africa. Section 3 will examine key foreign case law, as well as South African cases that have considered the use of AI in legal research. Section 4 serves as a conclusion and provides brief recommendations as to how the current challenges could be addressed.

2 RULES REGULATING LEGAL PRACTITIONERS AND LEGAL RESEARCH

In South Africa, the professional conduct of legal practitioners is governed by, inter alia, the Constitution of South Africa 108 of 1996, the Legal Practice Act 28 of 2014, and the South African Code of Conduct for All Legal Practitioners, Candidate Legal Practitioners and Juristic Persons 168 of 2019 (“the Code”). Although none of these laws make any specific provision in regard to the use of AI in legal research and/or the submission of AI-generated research to court, it is trite that all legal practitioners have a duty to act with the necessary skill, care and diligence, as well as to uphold a high standard of honesty and integrity. Most importantly, legal practitioners have a duty not to mislead the court or present false or fictitious information to it.¹¹ Thus, although the common law and legislation do not provide any specific guidelines on the use of AI by legal practitioners, the ethical and professional duties placed upon legal practitioners may be extrapolated from them when using technology such as AI.¹²

For example, as mentioned, legal practitioners have a duty to act with the highest levels of honesty and integrity and uphold the values of the Constitution by ensuring that justice is administered correctly.¹³ In executing these duties, they must ensure that all information supplied before court is correct and does not in any way mislead or deceive the courts. The submission of false or fictitious evidence, in the form of unchecked AI-

¹¹ Articles 3 and 18 of the Code.

¹² Van Eck M “An ethical framework for the use of artificial intelligence in the legal profession” (2025) *TSAR* 454 at 457.

¹³ Petse I & Phindelo U “The influence of ChatGPT-generated data on the administration of justice in South Africa” (2023) 5 *Turf Law Journal* 1 at 5, referring to section 165 of the Constitution.

generated legal research, to court will not only amount to a breach of duty and violation to the administration of justice but may also amount to an act of perjury.¹⁴

Accordingly, Petse and Phindelo submit that the submission of fake AI-generated information before court may amount to an infringement of the Constitution, in particular to a violation of the administration of justice and an act of bringing distrust to the legal system.¹⁵ As regards the duties of legal practitioners, article 57 of the Code provides that

[a] legal practitioner shall take all reasonable steps to avoid, directly or indirectly, misleading a court or a tribunal on any matter of fact or question of law. In particular, a legal practitioner shall not mislead a court or a tribunal in respect of what is in papers before the court or tribunal, including any transcript of evidence.

Hence, where a legal practitioner uses AI-generated legal research and submits misleading or false cases, either negligently or intentionally, before court, he or may be viewed as misleading the court and breaching his or her ethical and professional duty.¹⁶ It is also important to note that article 3 of the Code provides that

[l]legal practitioners shall –

maintain the highest standards of honesty and integrity;¹⁷

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 practice.¹⁸

The duty of legal practitioners to keep abreast of developments in the field can be translated into a duty on them to keep up with technological issues such as AI and the risks and benefits of its use in the legal sector.¹⁹ Hence, legal practitioners cannot be excused for claiming that they were unaware of the risks of using AI for legal research

¹⁴ Petse & Phindelo (2023) at 4–7.

¹⁵ Petse & Phindelo (2023) at 5–7.

¹⁶ Van Eck (2024) at 483–484. Van Eck submits that although the consequences for a deliberate act of misleading the court and one based on error or negligence should differ, they are all serious breaches of professional conduct deserving sanction.

¹⁷ Article 3(1) of the Code.

¹⁸ Article 3(14) of the Code.

¹⁹ Van Eck (2025) *TSAR* at 467.

when it transpires that such research is false and misleading. Van Eck submits that the Code places the duties of skill, care, diligence, confidentiality, honesty and integrity upon all legal practitioners.²⁰ However, as indicated above, neither the common law nor the Code addresses how these duties would apply in the case of AI use (in fact, the Code is silent on AI altogether).²¹ 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.²² Technology always plays an essential role in legal practice. AI, however, has created unique challenges for legal practitioners that put them at risk of breaching their ethical and professional duties. The submission of hallucinated AI information to court by a legal practitioner constitutes a serious breach of such duties.

Thus, despite the assumption that some of the existing duties of legal practitioners can be merged into the aspects of using AI of legal research, clearer and more specific rules and guidelines are required to cater directly for the issue of whether or not, and/or how, AI should be used in legal research. Currently, none of the South African laws speaks directly to this topic, and it is submitted that the Code should be amended and/or specific rules be implemented to govern the use of AI in legal research to protect the integrity of the justice system and the credibility of the legal profession. Section 4 of this article will provide some recommendations as to how clarity could be established.

3 CASE LAW

3.1 A brief discussion of foreign case law

In recent years, there has been a significant increase worldwide in the use of AI research tools by legal practitioners, who have used these tools to assist them in a variety of tasks, such as drafting contracts, preparing legal arguments, and conducting research. AI use has been mired in controversy, however, notably because AI models are prone to hallucinate and produce outputs that are demonstrably false, misleading, or baseless. The American cases of *Mata v Avianca*²³ and *Park v Kim*²⁴ are the two most prominent judgments so far to have dealt with the issue of AI in legal research. In both of these cases,

²⁰ See articles 3(11) and 18(4) of the Code of Conduct.

²¹ Van Eck (2025) at 458.

²² Van Eck (2024) at 470.

²³ *Mata v Avianca* 2023 (No. 22-cv-1461) Dist Court, SD New York.

²⁴ *Park v Kim* 2024 (No. 22-2057) 2nd Circuit.

the legal practitioners used ChatGPT to undertake legal research, in the course of which it generated several fictitious judgments that were presented before court. In the *Mata* case, the legal practitioners used ChatGPT and cited eight cases to support their arguments:

- *Varghese v China Southern Airlines Co., Ltd.*, 925 F.3d 1339 (11th Cir. 2019) (Varghese);
- *Shaboon v Egyptair*, 2013 IL App (1st) 111279-U (Ill. App. Ct. 2013);
- *Peterson v Iran Air*, 905 F. Supp. 2d 121 (D.D.C. 2012);
- *Martinez v Delta Airlines, Inc.*, 2019 WL 4639462 (Tex. App. Sept. 25, 2019);
- *Estate of Durden v KLM Royal Dutch Airlines*, 2017 WL 2418825 (Ga. Ct. App. June 5, 2017);
- *Ehrlich v American Airlines, Inc.*, 360 N.J. Super. 360 (App. Div. 2003);
- *Miller v United Airlines, Inc.*, 174 F.3d 366, 371-72 (2d Cir. 1999); and
- *In re Air Crash Disaster Near New Orleans, LA*, 821 F.2d 1147, 1165 (5th Cir. 1987). (ECF 25).²⁵

The practitioners were unable to provide the court with copies of these judgments, and it appeared that all of the cases were fictitious. The court held that

[b]y 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.²⁶

The court found that the legal practitioner had acted in bad faith by relying on unchecked AI-generated legal research that cited fabricated case law and had consequently violated Rule 11 of the Federal Rules of Civil Procedure 2024.²⁷ The court held, furthermore, that

²⁵ *Mata* (2023) at para 13.

²⁶ *Mata* (2023) at para 21.

²⁷ Rule 11, entitled “Signing pleadings, motions, and other papers: Representations to the court: Sanctions”, governs the authenticity of submissions made at court.

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.²⁸

Accordingly, in addition to sanctioning the legal practitioner, the court sanctioned the firm of attorneys where the legal practitioner was employed with a USD 5,000 fine. The *Mata* case highlights the risks of using AI and the fact that legal practitioners and the firms they work in may be liable for the improper use of AI.

In *Park v Kim*, the court emphasised that legal practitioners 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.²⁹ In this case, the legal practitioner cited at least two fictitious cases that had been generated by ChatGPT.³⁰ The court held that the practitioner had violated Rule 11 of the Federal Rules of Civil Procedure 2024 by neither reading nor verifying a single case cited in his affirmation, and referred the legal practitioner to the Committee on Admissions and Grievances for disciplinary action.³¹

Likewise, in *Kruse v Karien*³² and *Smith v Farwell*,³³ the legal practitioners used AI to conduct legal research and cited several fake case citations in their court papers. In *Kruse*, the legal practitioner used generative AI to draft their court papers and improperly cited more than 20 non-existent cases. In light of the submission of fictitious cases and several other deficiencies, the court dismissed the matter and sanctioned the legal practitioner with a USD 10,000 fine. Despite the legal practitioner's apologising for the error, the court found that their conduct was a flagrant violation of a legal practitioner's duties to court.

²⁸ *Mata* (2023) at para 90.

²⁹ *Park* (2024) at para 7.

³⁰ *Park* (2024) at para 2.

³¹ The Committee on Admissions and Grievances handles procedures for investigating, prosecuting, and disciplining attorneys for misconduct or failure to comply with court rules, with the consequences including potential suspension or disbarment. This Committee is similar to the LPC in South Africa.

³² *Kruse v Karien* 2024 (No. ED111172) Mo Court of Appeals.

³³ *Smith v Farwell* 2024 (2282CV01197) Suffolk Superior Court.

In *Smith*, it transpired that the legal practitioner had delegated his duties to two law graduates who had used generative AI to conduct legal research and draft the court documents. The AI-generated research cited at least four fictitious cases. Honourable BA Davies held as follows:

This decision and order addresses two disturbing developments that are adversely affecting the practice of law ... The first is the emerging tendency of increasingly popular generative artificial intelligence ("AI") systems, such as ChatGPT and Google Bard, to fabricate and supply false or misleading information. The second is the tendency of some attorneys and law firms to utilize AI in the preparation of motions, pleadings, memoranda, and other court papers, then blindly file their resulting work product in court without first checking to see if it incorporates false or misleading information.³⁴

Despite the legal practitioner's apologies to court, the court held that he could not be exonerated from his legal duties, and a USD 2,000 fine was imposed. Honourable BA Davies further held that

it is imperative that all attorneys practicing in the courts ... understand that they are obligated ... [under the rules] to know whether AI technology is being used in the preparation of court papers that they plan to file in their cases and, if it is, to ensure that appropriate steps are being taken to verify the truthfulness and accuracy of any AI-generated content before the papers are submitted.³⁵

In *Kohls v Ellison*,³⁶ the legal practitioner utilised the evidence of an expert witness (a professor in Communications at Stanford University) as testimony to support their arguments. It transpired that the expert used ChatGPT to formulate his evidence and cited several fake authorities, including journal articles and cases. The court dismissed the witness's testimony as a result of the fictitious AI-generated sources. This case serves as an example of how even experts in the field of AI can fall victim to AI hallucinations, and how the submission of false evidence could result in an act of perjury.³⁷

³⁴ *Smith* (2024) at 1.

³⁵ *Smith* (2024) at 15.

³⁶ *Kohls v Ellison* 24-cv-3754 (LMP/DLM) 2025.

³⁷ *Kohls* (2025) at paras 19–20.

In the English High Court judgment of *Ayinde v The London Borough of Haringey; Al Haroun v Qatar National Bank QPSC*,³⁸ the legal practitioner cited at least five fake cases in his court papers. It was unclear whether the legal practitioner had used AI to assist him with the legal research; however, the court made it clear that in the context of legal research, the risks of using AI are now well known.³⁹ Ritchie J held that

[t]hose who use artificial intelligence to conduct legal research notwithstanding these risks have a professional duty to check the accuracy of such research by reference to authoritative sources, before using it in the course of their professional work.

There are serious implications for the administration of justice and public confidence in the justice system if artificial intelligence is misused. In those circumstances, practical and effective measures must be taken by those within the legal profession with individual leadership responsibilities and by those with the responsibility for regulating the provision of legal services. Those measures must ensure that every individual currently providing legal services understands and complies with their professional and ethical obligations and their duties to the court if using artificial intelligence.⁴⁰

Overall, from an international perspective, it appears that the general position in the United States and United Kingdom is that courts do not prohibit the use of generative AI in legal research and to some extent permit it. What is very clear, though, is that it is the duty of each individual legal practitioner to verify all case law and any authority submitted to court and to provide evidence of their existence in actuality when probed by the courts. There is nothing inherently amiss about legal practitioners' embracing AI as a tool to complement their expertise; however, they remain fully responsible for all submissions made to court – and fully liable should those submissions be false.

³⁸ *Ayinde v The London Borough of Haringey; Al Haroun v Qatar National Bank QPSC* [2025] EWHC 1383 (Admin).

³⁹ *Ayinde* (2025) at para 6.

⁴⁰ *Ayinde* (2025) at paras 7–8.

3.2 A detailed discussion of South African case law

Generally, South African courts have been pragmatic about the use of technology in the law. This is evident from the implementation of CaseLines in Gauteng,⁴¹ as well as several judgments in which the courts have approved of the use of technology, whether by confirming that a contract may be concluded with the use of technology such as electronic signatures or confirming that a legal notice may be delivered by email.⁴² The use of AI in legal proceedings, however, represents a different situation entirely.

With AI, technology is more than just a tool to facilitate the legal process, as many AI applications can produce results autonomously with minimal human involvement or verification. Accordingly, when a legal practitioner prompts or instructs the application, the work generated by the AI is, strictly speaking, not the independent or original work of the legal practitioner. The legal practitioner has not put any legal thought, skill or labour into the product. Accordingly, if an AI-generated work is presented at court without any checks by a human legal mind, there is a substantial risk that the work is not legally sound or even legally correct. This is extremely dangerous in a legal context, given how susceptible AI models are to hallucinations.

In the South African context, research by Thaldar and Van Eck shows that AI models often hallucinate case law and misapply legal principles, in the process making frequent misinterpretations or fabricating references.⁴³ Thaldar has conducted practical research

⁴¹ The South African Judiciary “Court online” available at <https://www.judiciary.org.za/index.php/63-caselines> (accessed 26 June 2025). CaseLines is an online system which allows judges and legal teams in South Africa to prepare, collate, redact, share and present evidence or legal bundles, documentary and video evidence electronically.

⁴² For discussion of some of the technological advancements in South African law, see Singh C “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(1) *SA Mercantile Law Journal* 56; Singh C “Signed, sealed and delivered (electronically): Embracing the digital takeover: A brief consideration of electronic signing and delivery in South Africa” (2023) 33(4) *Stellenbosch Law Review* 618; Singh C “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; Singh C “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* 1; Singh C “Remote commissioning: Signing an affidavit in the virtual presence of the commissioner of oaths” (2024) 3 *Stellenbosch Law Review* 221. For recent examples of South African courts’ adoption of technology in legal practice, see also *VJS v SH* (19578/2024) [2024] ZAWCHC 333 (22 October 2024); *African Best Foods (Pty Ltd) v ED Food SRL* (A2024/061772) [2025] ZAGPJHC 1008 (29 September 2025).

⁴³ Thaldar (2025) at 1; Van Eck (2024); Van Eck (2025) at 454.

on multiple AI models in the South African context and their ability to carry out research correctly and answer legal questions.⁴⁴ His findings were that, among other things, AI models frequently misapplied legal precedents, misinterpreted case-law principles, omitted key legal elements, and mischaracterised legal principles, resulting in vague, illogical or flawed reasoning and conclusions.⁴⁵ AI models also provided irrelevant or unrelated case law as authority, generated incorrect or incomplete citations, and – worst of all – fabricated case law.

The research highlighted AI's limitations in engaging in nuanced judicial reasoning, interpreting legal principles, and conducting research.⁴⁶ The greatest concern was fabricated case law – in this regard, Thaldar notes that 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 reviewed carefully and not be used without verification.⁴⁷

Thus far at the time of writing, three reported cases in South Africa have considered the use of AI in legal research.⁴⁸ These will be discussed in detail below.

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

This case involved an application for defamation and *injuria* against a body corporate and certain of its members.⁴⁹ Both representing counsels alerted the court and each other about a number of cases that could support arguments as to whether a body corporate could be sued for defamation.⁵⁰ However, some cases listed by the plaintiff could not be accessed. The court requested that the parties source the authorities and report back to

⁴⁴ Thaldar et al. "Responsible AI use in South African legal practice: A call for ethical guidelines" *De Rebus* (July 2025) 18; Thaldar (2025). See also Bhambhoria R, Dahan S, Li J & Zhu X "Evaluating AI for law: Bridging the gap with open-source solutions" (2024) *Arxiv*; Magesh et al. (2024).

⁴⁵ Thaldar (2025) at 9–11.

⁴⁶ Thaldar (2025) at 14. One of the other critical oversights was AI's failure to engage with and cite any statutory frameworks as authorities.

⁴⁷ Thaldar (2025) at 28.

⁴⁸ See also Van Eck M "Expanding ethical and professional guidelines: The use of artificial intelligence in the legal profession" (2025) *De Rebus* 39; Van Eck M "AI hallucinations are threatening the administration of justice in SA" (15 July 2025) *Daily Maverick* available at <https://www.dailymaverick.co.za/opinionista/2025-07-15-ai-hallucinations-are-threatening-the-administration-of-justice-in-sa/> (accessed 27 November 2025).

⁴⁹ *Parker* (2023) at paras 2–6.

⁵⁰ *Parker* (2023) at para 45.

it on their research. Upon return to court, the plaintiffs conceded that these cases could not be sourced.⁵¹ The plaintiffs cited the following cases in their papers:

- *The Body Corporate of the Brompton Court v Weenen* [2012] ZAGP JHC 133;
- *The Body Corporate of the Bela Vista v C & C Group Properties CC* [2009] ZAGPPHC 54;
- *Dolphin Whisper Trading 21 (Pty) Ltd v The Body Corporate of La Mer* [2015] ZAKZPHC 23;
- *Bingham v City View Shopping Centre Body Corporate* [2013] ZAGPJHC 77;
- *Body Corporate of Pinewood Park v Behrens* [2013] ZASCA 89;
- *Body Corporate of Empire Gardens v Sithole and Others* [2017] ZAGPJHC 23;
- *Body Corporate of the Island Club v Cosy Creations CC* [2016] ZAWCHC 182; and
- *Body Corporate of Fisherman's Cove v Van Rooyen* [2013] ZAGPHC 43.

The defendants were unable to access any of these cases and the plaintiffs were unable to furnish them with copies of the cases.⁵² It came to light that, prior to the matter's appearing before court, both parties had communicated extensively with each other regarding the plaintiffs' case authorities.⁵³ The plaintiffs' attorneys explained that they had sourced the cases through ChatGPT. They used it to conduct legal research and accepted its results as accurate without undertaking any checks. It emerged that these cases did not exist – the names, citations, facts and decisions were all fictitious.⁵⁴ The defendants argued that this conduct by the plaintiffs' attorneys was an attempt to mislead the court and should be met with a punitive costs order.⁵⁵ The court found as follows:

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

⁵¹ *Parker* (2023) at para 80.

⁵² *Parker* (2023) at para 85.

⁵³ *Parker* (2023) at para 80.

⁵⁴ *Parker* (2023) at para 87.

⁵⁵ *Parker* (2023) at para 88.

have been far more grave. Not only would it have attracted a 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.⁵⁶

The court held, furthermore, that

in this age of instant gratification, this incident serves as a timely reminder that when it comes to legal research, the efficiency of modern technology still needs to be infused with a dose of good old-fashioned independent reading. Courts expect lawyers to bring legally independent and questioning mind to bear, and not to merely repeat unverified research of a chatbot.⁵⁷

Although the plaintiffs' attorneys did not intend to mislead anyone, the inevitable result was that the defendants' attorneys were led into thinking that these authorities were real. As a result, they would have invested a significant amount of time and effort in futile attempts to track down the cases. The costs order sought by the defendants was not unreasonable, and the embarrassment associated with this incident is probably sufficient punishment for the plaintiffs' attorneys.⁵⁸ Although it was a magistrate's court matter, the *Parker* case received widespread media attention and brought the use of AI in legal research into question as well as raising doubts about the professional standards of the legal practitioners concerned.⁵⁹ It is submitted that the plaintiff's attorneys got off lightly in this matter and were lucky not to have been severely sanctioned by the court. Their conduct in adducing false authorities and not verifying the evidence submitted to court could be considered a serious breach of the professional and ethical rules of conduct of legal practitioners. The leniency of the court may have been due to the novelty of the situation (this was the first case in South Africa that considered the use of AI in legal research).

⁵⁶ *Parker* (2023) at para 89.

⁵⁷ *Parker* (2023) at para 90.

⁵⁸ *Parker* (2023) at para 91.

⁵⁹ Van Eck (2024) at 474.

While the *Parker* case did not specifically address the ethical standards of conduct for legal practitioners, *Mavundla* did consider this issue. The case will be discussed in detail below.

3.2.2 *MEC v Mavundla: Department of Co-operative Government & Traditional Affairs KwaZulu-Natal & Others* 2025 (3) SA 534 (KZP)

This case involved a politician, Mr Mavundla, who was suspended as the mayor of Umvoti. Mavundla claimed that the suspension had taken place at an “unlawful meeting” of the council.⁶⁰ Although he secured an interim interdict against Umvoti Municipality, Bezuidenhout J ultimately discharged the interdict and rescinded the order.⁶¹ Mavundla then sought leave to appeal this ruling.⁶²

The supplementary notice of application for the leave to appeal contained additional grounds of appeal and several case authorities in support of these submissions.⁶³ The first cases referred to in the application were *Pieterse v The Public Protector*⁶⁴ and *Burgers v The Executive Committee of the Municipal Council of the Greater Germiston Municipality*, which the applicants used as authority to argue that it was not necessary for the councillors of the municipality to join the current proceedings. Upon requesting the citation for the *Burgers* matter, counsel for the applicants advised that she was not able to provide it and abandoned reliance on that case.⁶⁵ The applicant’s counsel and attorneys also referred to *Dube v Schleich*⁶⁶ and *Municipality of City of Cape Town v Aon South African (Pty) Ltd*; however, no full case citations were provided for these judgments.⁶⁷

During the writing of the judgment, it came to the judge’s knowledge that the case citation for *Pieterse* was incorrect. No such case had been reported in the South African Law Reports, All South African Law Reports, or South African Legal Information Institute

⁶⁰ *Mavundla* (2025) at para 13.

⁶¹ *Mavundla* (2025) at para 2.

⁶² *Mavundla* (2025) at paras 2-9.

⁶³ *Mavundla* (2025) at para 1.

⁶⁴ *Pieterse v The Public Protector* 2014 (3) SA 551. The judge enquired about the jurisdiction of the *Pieterse* case, in response to which counsel for the applicants advised that the matter originated in Johannesburg, Gauteng.

⁶⁵ *Mavundla* (2025) at paras 9–10.

⁶⁶ *Dube v Schleich* [2013] ZALC 16.

⁶⁷ *Mavundla* (2025) at para 10.

(SAFLII); likewise, no reference could be found for the *Burgers, Dube* or *Aon SA* cases. The judge asked two court law researchers to peruse the supplementary notice of appeal and locate the cases cited in it. It was found that, of the nine cases cited, only two existed, albeit the citation of one was incorrect.⁶⁸ In light of these concerns, the judge gave counsel for the applicants an opportunity to provide the authorities relied upon. The applicant's counsel indicated that the case references were provided to her by the articled clerk employed by the firm of attorneys representing the applicants. When it came to light that the clerk had drafted the entire supplementary notice, she was asked to present herself before court to explain the origins of the cases that had been cited.⁶⁹

The clerk duly did so and said she had obtained the cases from law journals by doing research on a university portal. Upon being questioned about which specific law journals were examined, she was unable to respond and asked to go back to her office and look at her search history in order to provide the case references. The judge questioned her as to whether she had used AI tools such as ChatGPT to conduct her research and she denied having done so.⁷⁰ The judge stood the matter down to allow counsel and the clerk to go to the court library and draw the relevant cases that were cited.⁷¹ Upon resumption, the attorney for the law firm (and not the clerk) indicated that it was not possible for them to obtain copies of the cases, as the court librarian wanted to charge him for the copies, a fee he was unwilling to pay. The judge adjourned the matter and gave the attorney a final opportunity to bring forward the cited cases.⁷²

A week later, the attorney appeared before court and claimed he had had difficulty in finding the cases. He claimed he was an elderly man (and technologically challenged) and did not have access to the South African Law Reports or similar resources. No mention was made of how the clerk had previously managed to source the cases.⁷³ The attorney claimed that his clerk had been distressed and believed that her appearance in court was uncalled for. The judge reminded the attorney of the court's oversight of the

⁶⁸ *Mavundla* (2025) at para 20.

⁶⁹ *Mavundla* (2025) at para 21.

⁷⁰ *Mavundla* (2025) at para 21.

⁷¹ *Mavundla* (2025) at para 22.

⁷² *Mavundla* (2025) at para 23.

⁷³ *Mavundla* (2025) at para 24.

conduct of its officers and their duty not to mislead the court.⁷⁴ The judge thereafter dealt with the defects in the cases cited in the supplementary notice:

- *Moseneke and others v The Master of the High Court*: This case had no citation and appeared to be merely a copy of the judgment handed down on 6 December 2000. No such case had been reported in the All South African Law Reports.⁷⁵
- *Citibank NA South Africa Branch v Mercantile Bank Limited*: No citation was provided for this case. It appeared to relate to a case from the Competition Tribunal to do with mergers, and had no relevance or authority in the current matter.
- *Hassan v Coetzee*: No such case was reported in the All South African Law Reports, South African Law Reports, or SAFLII. The attorney conceded he could not find this case.
- *Jordaan v Pienaar*: No such case could be found in the All South African Law Reports.
- *Standard Bank of South Africa v Lethole*: No such case was reported in the All South African Law Reports, South African Law Reports, or SAFLII. The attorney handed up a Government Gazette notice for an advertisement of a sale in execution with the case name *Standard Bank of South Africa v Madhava Golden Lethole* and two other defendants listed in the advertisement. This could not, by any stretch of the imagination, be the same case as the one cited, and the attorney conceded he could not find it.
- *Dube v Schleich*: No such case was reported in SAFLII or any other law report. The attorneys could not provide this case, and no explanation was given as to where the clerk had found it.
- *Municipality of the City of Cape Town v Aon South Africa (Pty) Ltd*: No such case was reported in SAFLII or any other law report. The attorney could have been referring to *Municipality of the City of Cape Town v Aurecon South Africa (Pty) Ltd*, but this case dealt with administrative review and had no relevance to the current matter.
- *Makro Properties (Pty) Ltd v Raal*: No such case was reported in the All South African Law Reports, South African Law Reports, or SAFLII.

⁷⁴ *Mavundla* (2025) at para 24, referring to *Legal Practice Council v Mkhize* 2024 (1) SA 189 (GP) and R Sutherland DJP “The dependence of judges on the ethical conduct by legal practitioners: The ethical duties of disclosure and non-disclosure” (2021) 4 *SAJEJ* 47.

⁷⁵ *Mavundla* (2025) at para 25.

- None of the cases cited made any reference to the relevant page or paragraph of the judgment where the authority was cited.
- No further explanation was provided by the clerk or attorney as to where she located these cases.⁷⁶

It appeared that the case authorities relied upon by the applicant were non-existent and that the attorney did not appreciate the seriousness of this error. Article 57.1 of the Code provides that a legal practitioner should take all reasonable steps to avoid misleading the court. Any practitioner that deliberately misleads the court is unfit to remain in the profession.⁷⁷ These principles may be expanded to include the court's reliance on the authorities cited by legal practitioners.⁷⁸ In the current matter, counsel, the attorney and the clerk failed to be forthcoming about the sources of their research, and there were serious doubts about the correctness or truthfulness of their citations. The sources of the authorities remained unknown even though significant resources had been expended in trying to find them.⁷⁹ Counsel for the respondent confirmed that it, too, was unable to trace any of the cited cases.⁸⁰

By way of experiment, ChatGPT was used and it was found that the *Pieterse* and *Burger* cases did supposedly exist and were applicable, which immediately illustrated the unreliability of AI. In this regard, the court noted that AI applications often generate correct conclusions but tend to make up cases.⁸¹ The question of AI use in legal research (the court held) had not featured much in South African case law except in the *Parker* case; in dealing with the use of AI in research, the court in *Parker* had held that the plaintiff's attorneys did not submit these cases to court as legal authority but, prior to realising the error, submitted them to the defendants as cases they would rely on. They placed undue faith in the veracity of legal research generated by AI and lazily omitted to verify the research. If the court, in *Parker*, had been satisfied that the attorneys had attempted to mislead the court, the consequences would have been far graver than they

⁷⁶ *Mavundla* (2025) at para 33.

⁷⁷ *Mavundla* (2025) at para 38.

⁷⁸ *Mavundla* (2025) at para 40.

⁷⁹ *Mavundla* (2025) at para 50.

⁸⁰ *Mavundla* (2025) at para 35.

⁸¹ *Mavundla* (2025) at para 34.

were. Not only would it have attracted costs *de bonis propriis*, but it would have compelled the court to refer the attorneys' conduct to the Law Practice Council (LPC).⁸²

Unfortunately (so the court continued), the *Parker* case did not provide direction on the ethical and professional use of AI by legal practitioners and overlooked the plaintiff's attorneys' careless conduct, setting a dangerous precedent.⁸³ The circumstances of the current case were different and more serious than those in *Parker*. Bezuidenhout J found that attorneys who used AI research in court proceedings were required to verify the accuracy and correctness of all information and that a failure to do so could result in a breach of their ethical and professional duties and lead to disciplinary sanctions.⁸⁴

Consequently, Bezuidenhout J ordered costs against the applicant's attorneys and instructed the registrar to forward the judgment to the LPC for attention and further action. The attorneys' actions had raised serious questions about their conduct and needed to be investigated by the LPC.⁸⁵

3.2.3 *Northbound Processing (Pty) Ltd v The South African Diamond and Precious Metals Regulator and Others* (2025/072038) [2025] ZAGPJHC 661

This case involved an application for interim relief by Northbound in the form of a mandamus compelling the South African Diamond and Precious Metals Regulator to release a refining licence to Northbound.⁸⁶ Upon detailed consideration of the matter, the court held that Northbound had a *prima facie* right to immediate release of the licence and was successful in its application.⁸⁷

In the course of the judgment, however, the court noted its concern at several non-existent case citations or hallucinations by generative AI in Northbound's heads of argument.⁸⁸ The court initially noted two cited cases that did not exist: *De Beer NO v The*

⁸² *Mavundla* (2025) at paras 34–35. When asked about the issue of costs, the applicant's attorney claimed that the last two appearances had been at the behest of the court and that his client should not be liable for costs. He further claimed that his firm was small and should not be liable for any costs. He failed to admit any wrongdoing for his or his clerk's actions.

⁸³ *Mavundla* (2025) at para 44.

⁸⁴ *Mavundla* (2025) at para 49.

⁸⁵ *Mavundla* (2025) at paras 40–41.

⁸⁶ See *Northbound* (2025) at paras 2–11, 16–20 for a detailed account of the facts of this case.

⁸⁷ *Northbound* (2025) at paras 48, 60 and 72.

⁸⁸ *Northbound* (2025) at para 13.

North Gauteng High Court [2011] ZASCA 117; and *SABC Ltd Mninwa Johannes Mahlangu* [2014] ZAGPPHC.⁸⁹ On being asked to explain these non-existent authorities, counsel for Northbound contended that the error arose because an incorrect draft version of the heads of arguments had been filed, after which counsel submitted the correct citations of the cases to court.⁹⁰ The opposing counsel, though, drew the court's attention to two other incorrect citations, and raised concern as to whether other authorities cited truly existed. The two non-existent cases were *Khumalo v Director-General of Co-operative Governance and Traditional Affairs* 2021 (2) SA 72 (CC) and *N & Z Instrumentation & Control (Pty) Ltd v Groenewald and Another* 1976 (3) SA 565 (T).

The court gave counsel for Northbound another opportunity to respond to these issues, and upon questioning counsel as to whether the incorrect citations were a result of AI hallucinations, counsel confirmed that this appeared to be so. He conceded that, due to time constraints, he had used an online service called Legal Genuis (which claims its AI system was trained exclusively on South African legal judgments and legislation) to undertake his research and drafting.⁹¹ Counsel accepted full responsibility for the mistakes, but emphasised that there was no intention to mislead the court. He further claimed that no one was prejudiced due to the errors in the heads of arguments, and stressed that he had not used the non-existent cases in his oral arguments.⁹²

The court referred to *Mavundla*, in which the court had emphasised the duty upon legal practitioners not to mislead the court whether through negligence or intent. This includes the duty to present honest law and not fictitious or non-existent cases.⁹³ In the current case, the court held that it mattered not that such cases were not presented orally and were contained only in the written heads of argument. The latter are as important as oral arguments and, for practical reasons, are often relied upon more heavily by judges.⁹⁴ The court endorsed the reasoning in *Mavundla*, which is consistent with the English High

⁸⁹ *Northbound* (2025) at para 86.

⁹⁰ *Northbound* at para 87. The correct citations were *De Beer and Another v Director-General of Home Affairs* [2023] ZAGPJHC 711 and *SABC (SOC) Ltd v SABC Pension Fund, Motsoeneng and Others* Case No. 17/29163 (Gauteng Division, Johannesburg).

⁹¹ *Northbound* (2025) at para 89.

⁹² *Northbound* (2025) at para 90.

⁹³ *Northbound* (2025) at para 92, referring to *Mavundla* (2025) at paras 37–47.

⁹⁴ *Northbound* (2025) at para 92.

Court judgment of *Ayinde v The London Borough of Haringey; Al Haroun v Qatar National Bank QPSC*, and held as follows:

The court has a range of powers to ensure that lawyers comply with their duties to the court. Where those duties are not complied with, the courts powers include public admonition of the lawyer, the imposition of a costs order, the imposition of a wasted costs order, striking out a case, referral to a regulator, the initiation of contempt proceedings, and referral to the police. The course of action followed will depend on the circumstances of the case ...⁹⁵

Where a lawyer places false citations before the court (whether because of the use of artificial intelligence without proper checks being made, or otherwise) that is likely to involve a breach of ethical and regulatory requirements, and it is likely to be appropriate for the court to make a reference to the appropriate regulator.⁹⁶

In the current case, AJ Smit held that the above-mentioned principles apply equally in South Africa by virtue of article 16 of the Code of Judicial Conduct, adopted in terms of section 12 of the Judicial Service Commission Act 9 of 1994. These provisions oblige judges to inform the relevant professional body of any serious professional misconduct or gross incompetence of the part of a legal practitioner.⁹⁷ In this case, there was no deliberate attempt by counsel to mislead the court through the use of incorrect case law and his apologies were acknowledged. Nevertheless, in light of *Mavundla*, even negligence may have grave repercussions for the administration of justice and could constitute serious professional misconduct.⁹⁸ Consequently, the court found it appropriate to make the same order as in *Mavundla* and referred the conduct of the legal practitioner to the LPC for investigation.⁹⁹

4 CONCLUSION AND RECOMMENDATIONS

4.1 Summary and conclusion

AI holds immense potential to revolutionise the legal profession by automating

⁹⁵ *Ayinde* (2025) at paras 23–24.

⁹⁶ *Ayinde* (2025) at para 29.

⁹⁷ *Northbound* (2025) at para 94.

⁹⁸ *Northbound* (2025) at para 95.

⁹⁹ *Northbound* (2025) at para 96.

administrative tasks, streamlining case analysis, and enhancing research and drafting. It can also improve efficiency and provide cost-effective assistance to legal practitioners. The case discussions above highlight the growing reliance that legal practitioners in South Africa place on the use of AI-assisted research;¹⁰⁰ however, the discussions also illustrate the fact that AI is prone to hallucination and does not always produce reliable or trustworthy results. It is trite that the risks of using AI are becoming better known and that legal practitioners can no longer use the novelty of AI as an excuse for breaching their professional and ethical duties. They have a duty to check the accuracy of their research and a further duty not to mislead the court.¹⁰¹

In *Parker*, the court cautioned against the dangers of AI-generated misinformation, reprimanding legal practitioners for presenting fabricated case law. In *Mavundla*, it emphasised that all information and citations generated by AI must be checked, and stressed that legal practitioners ultimately bear full responsibility for their work; and in *Northbound*, it is clear that legal practitioners will not be absolved of their legal and ethical duties when using AI. Regrettably, none of the cases discussed above provided any guidance or direction as to how AI should be used in the legal profession, or whether it should even be used at all. Furthermore, the courts failed to expound on the ethical and professional duties of legal practitioners when using AI tools.

It is contended that the submission of court documents that contain fictitious AI-generated 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,¹⁰² and the penalties for such conduct should be severe, ranging from adverse cost orders, fines and suspensions to being struck off the roll, depending on the circumstances and gravity of the misconduct. Beyond formal sanctions, legal practitioners would also face significant reputational damage and embarrassment that could have long-lasting consequences for their careers and professional standing.¹⁰³ These repercussions should serve as a deterrent for other legal practitioners who use AI blindly without undertaking any checks of AI's result. Van Eck has reiterated that the

¹⁰⁰ Van Eck (15 July 2025).

¹⁰¹ Van Eck (2025) *De Rebus* at 39.

¹⁰² Da Costa (2025) at 1.

¹⁰³ Da Costa (2025) at 1, referring to statements from Aziz Ismail, chairperson of the Johannesburg Attorney's Association.

failure of legal practitioners to verify the correctness of information sourced from AI represents a deep ethical failure and a breach of their professional duties.¹⁰⁴

It is evident from the case analyses above that the unverified use of AI-generated research and the submission of these sources to court (whether done intentionally or negligently) can be seen as an attempt to mislead the court and, accordingly, as a breach of ethical and professional duties.¹⁰⁵ 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. To uphold the integrity of the justice system, legal practitioners must exercise diligence and fulfil their professional and ethical duty to verify all information rigorously and ensure that all material, in particular AI-generated material, which is submitted before court is valid and legitimate. The use of fake and non-existent case law could be instrumental to the outcome of a matter, and as such the misuse of AI stands to have serious consequences for the administration of justice and public confidence in the justice system. In short, the unqualified use of AI could have the effect of eroding the entire legal profession – and legal system.¹⁰⁶

4.2 Recommendations

As noted in the case analyses above, South African courts have taken a somewhat lenient approach to the use of AI for legal research, which may be due to the novelty of the issue and the lack of rules to guide courts on how to deal with it. In the South African cases, courts generally granted cost orders against legal practitioners who incorrectly used AI-generated legal research and also referred their conduct to the LPC. In comparison, courts in other jurisdictions, such as the United States, have gone further than that: apart from imposing cost orders and referring legal practitioners to the relevant authorities, they have heavily sanctioned and fined them – and the law firms they are employed in – for

¹⁰⁴ See Van Eck (2025) *TSAR* at 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.

¹⁰⁵ Van Eck (2024) 479.

¹⁰⁶ Van Eck (2025) *De Rebus* at 39. See also Da Costa (2025) at 1 and Kok (2025). Broader risks of AI use relate to intellectual property and data protection and confidentiality, all of which require responsible and ethical use of technology in legal practice. AI-powered legal tools process vast amounts of data, often including sensitive personal information. Without robust security measures and strict compliance with data protection regulations, there is a heightened risk of breaches.

submitting AI fabrications in court. American courts have also considered whether such actions amount to an act of perjury and warrant criminal sanctions.

Moreover, while countries such as the United States, United Kingdom, Canada, Australia and New Zealand have developed regulations and guidelines for legal practitioners in regard to the use of AI,¹⁰⁷ South Africa has been slow to act. These foreign jurisdictions have expressly placed a duty on legal practitioners to keep abreast of technological developments and understand the benefits, risks and ethical implications of AI use. Indeed, some jurisdictions require legal practitioners to disclose the use of AI and verify that sources have been checked and validated, while in Australia, Nigeria, California and New York, legal practitioners must disclose the use of AI to their clients and the court to ensure that legal practitioners do not mislead the court in presenting material that is not their own.¹⁰⁸

Currently, South Africa has no statutes or policies that govern the use of AI in the legal system. 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 conduct by legal practitioners; at present, however, these rules do not deal with any aspects of AI use. Without clear rules that specifically cover AI use, uncertainty will remain. This gap needs to be addressed and clear rules set down to govern how AI is to be used in the legal profession.

There have already been calls for such guidelines, and stronger efforts should be made to adopt formal guidelines on the use of AI and develop the Code of Conduct in this regard.¹⁰⁹ The use of AI in legal practice is currently one of the most prominent topics in the profession. The continued unregulated use of AI raises serious ethical concerns and has dire consequences for both the administration of justice and public confidence in the legal system.¹¹⁰ Accordingly, there is an urgent need for guidelines to be put in place in

¹⁰⁷ See American Bar Association Formal Opinion 512; State Bar of Californian Practical Guidelines, Kentucky Bar Association Ethics Opinion E0457; New York State Bar Association Report on Artificial Intelligence; Law Society of British Columbia Guidance document on AI; UK AI Guidance 2023; Law Society of Ontario Guidelines on Generative AI; Law Society of Queensland Guidance Statement No. 37; New Zealand Law Society Guidelines. It is noted that in Canada, legal practitioners must complete a declaration form confirming whether AI was used in their court documents.

¹⁰⁸ Van Eck (2025) *TSAR* at 463–464.

¹⁰⁹ See Thaldar et al. (July 2025) at 18; Van Eck (2025) *TSAR* at 454.

¹¹⁰ Van Eck (15 July 2025).

order to regulate this issue to ensure that the integrity of, and trust in, the legal profession is maintained.

Van Eck contends that the Code should be aligned with international developments on the use of AI. In concurrence, it is submitted that for the South African legal system to navigate the Fourth Industrial Revolution, there is a need for the Code to be updated to cater to the ethical and professional pitfalls of AI use. In particular, it should be updated so as to require legal practitioners to keep abreast of AI technology, its risks and challenges, and mandate legal practitioners to disclose any use of AI in court papers. The compulsory disclosure of the use of AI would create clarity as to the conduct expected of legal practitioners when undertaking research and submitting AI-generated evidence before the court.

Thus, the following preliminary recommendations are made. It is recommended that either the Code be updated or a separate Guideline be adopted to govern the use of technology and/or AI in legal practice. In regard specifically to the use of AI for legal research, the following inclusions should be made:

- (i) *All and any use of AI in court documents must be disclosed:* This can be done by requiring all legal practitioners to sign a declaration when submitting court papers. If AI was used in the drafting of the court papers, the legal practitioners must disclose what AI tool (the name of the product) was used, what cases or legal authority was generated, and what forms of verification were undertaken to check the accuracy of the AI results. This recommendation would also bring South Africa in line with other jurisdictions where disclosure of AI use has become mandatory.
- (ii) *Adhere to privacy and confidentiality:* Guidelines must make it clear that no personal information may be used or disclosed when utilising AI and that confidentiality and legal privilege are to be fully maintained.
- (iii) *Create a new duty for legal practitioners:* A new duty should be created in the Code requiring legal practitioners to keep abreast of “technological developments” in the legal sector. The legal profession is continually evolving; hence, it is vital for practitioners to keep abreast of forms of modernisation such as developments in technology. This duty must be linked to the current ethical and professional duties in the Code.

It is also recommended that the LPC offer training to legal practitioners when new developments arise, in addition to which law schools should develop compulsory research modules to train law students on the risks and advantages of AI.¹¹¹ It is recommended that all institutions of higher learning offering law courses actively integrate AI in their legal research and academic frameworks. Currently, a number of universities in South Africa appear to be slowly doing so, including the University of South Africa, University of KwaZulu-Natal School of Law, and the University of Cape Town.¹¹² It is recommended that the Council on Higher Education, together with the LPC, make this mandatory for all universities, in line with the South African National AI Policy Framework.¹¹³

(iv) *Impose sanctions:* Should there be a breach of any of the above duties, strict penalties should be imposed. For example, in instances of submitting false case law before court, substantial fines (ranging between R50,000 and R100,000) should be imposed,¹¹⁴ and in the case of repeat offenders, they should be suspended or struck off the roll. This would create clarity and uniformity with the penalties and make legal practitioners fully aware of the consequences of breaching their duties.

In summary, it is clear that AI, at this stage, cannot replace the human legal practitioner. Legal practice requires critical reasoning, understanding, thinking, emotion, and contextual and ethical understanding that the AI cannot replicate. While AI can assist legal practitioners in basic research, human oversight remains critical.¹¹⁵ The depth of knowledge, experience understanding and professional responsibility provided by legal

¹¹¹ See Matthee J & Stopforth G “AI in the courtroom: the dangers of using ChatGTP in legal practice in South Africa” (4 November 2025) *The Conversation* available at <https://theconversation.com/ai-in-the-courtroom-the-dangers-of-using-chatgtp-in-legal-practice-in-south-africa-267691> (accessed 27 November 2025); Matthee & Stopforth (2025). The authors propose that law schools should equip law students on how to use AI to ensure that, when they enter practice, AI is used professionally and ethically.

¹¹² See UNISA “Ethical AI use guidelines and acknowledgment for authors” draft policy 2025; UKZN “Guide for using generative AI in research policy” 2024; “UCT Framework for AI in Education” 2025.

¹¹³ Government Gazette Notice 3880 of 2026.

¹¹⁴ These amounts would be in line with foreign jurisdictions, where penalties of similar monetary value were imposed. In the *Mata*, *Smith* and *Kruse* cases, fines ranging between USD 2,000 and USD 10,000 were imposed. The average of these fines is approximately ZAR 100,000.

¹¹⁵ Thaldar (2025) at 1.

practitioners cannot be replaced by AI. It must be stated that there is nothing wrong with using AI for legal research; however, its results must be verified. Legal research and practice are professional skills and cannot be outsourced. While using AI in legal research is quick and easy, it is risky and cannot be used unchecked.

Accordingly, AI should be used as only a tool to assist legal practitioners in legal research and cannot provide unquestionable authority. It is not a replacement for human thinking or the legal mind, and if it is used, legal practitioners ultimately remain responsible and accountable for the work submitted to court.

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