

Cautionary tale for attorneys: Don't rely on ChatGPT to supply case law

By [Mitho Maphumulo](#)

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In a judgment of 20 February 2024, by the Supreme Court of British Columbia, Canada, a lawyer who had relied on case law generated by ChatGPT dodged a figurative bullet when the court found that, given the circumstances of the case, she should not be slapped with a special cost order in her personal capacity. A brief sum of the said judgment is provided below.

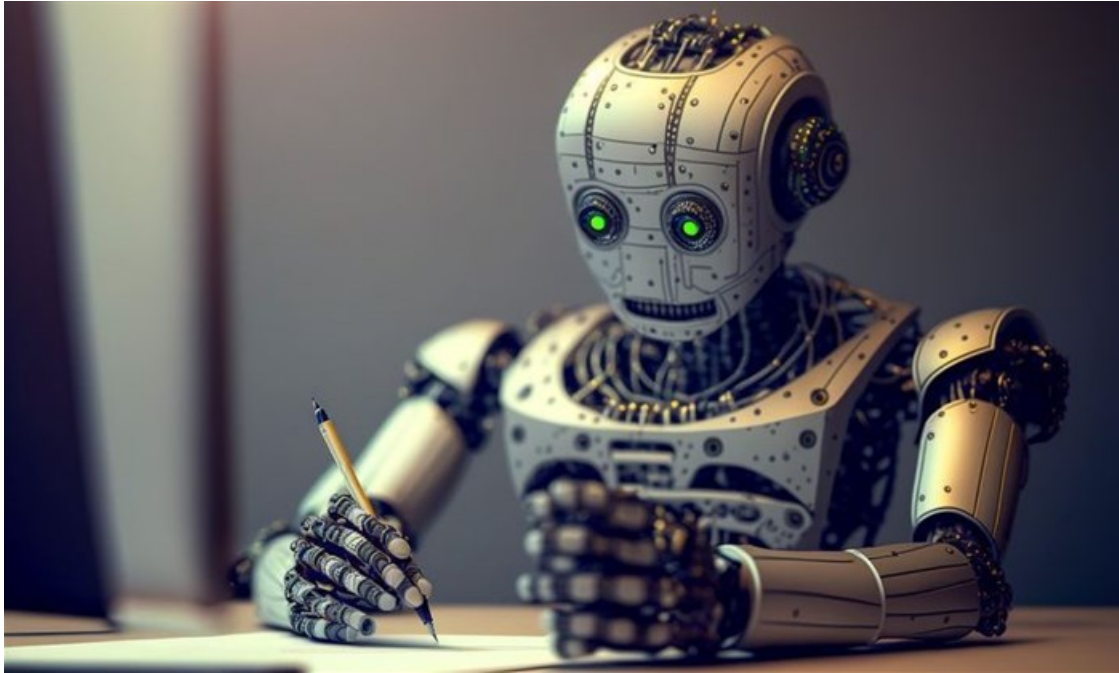


Image source: bpawesome – [123RF.com](#)

This case echoes the warnings that have been given by various stakeholders around the world – schools, universities, places of employment, legal practitioners, law bodies, etc. – regarding the irresponsible use of AI.

Lawyers, like other professionals, have been warned of the dangers associated with the irresponsible usage of AI, and particularly ChatGPT. Given the impact of technological advancements in various sectors and industries, it would be short-sighted to advise lawyers to steer clear of exploring tools and AI platforms – as the takeover by these tools, in the near future, is inevitable.

At this stage, however, it is pivotal that lawyers who dare use ChatGPT, do so responsibly, failing which there may be unpleasant consequences.

Brief synopsis of the case

It is not the aim of this piece to delve into the nitty-gritty of the case, save for the costs' component, as this is linked to the usage of ChatGPT.

One party to the court application relied on two non-existent cases which were generated by ChatGPT. It is pertinent to add that these two cases were used in relation to the core part of the application.



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The opposing lawyer, in preparing a reply, searched for these cases, to no avail. He then addressed correspondence to the relevant lawyer requesting copies of the cases relied on.

Upon searching and not locating the cases, the relevant lawyer responded in an email, and apologised for the cited cases and gave other case citations. Whilst these two cases were never relied on at court by the lawyer, the opposition sought special costs against the relevant lawyer, arguing that a considerable amount of time was spent trying to locate the cited cases, which, had the relevant lawyer not relied on ChatGPT (or not irresponsibly so), would not have happened.

The representatives of the relevant lawyer argued that the special costs order sought in this matter was in connection with the conduct of the relevant lawyer and issues of conduct fell squarely in the realm of the Law Society. Therefore, the court was not suited to rebuke the conduct by awarding a special cost order in the matter.

The relevant lawyer argued that she had committed a mistake in relying on the cases generated by ChatGPT. She further argued that she was not aware of the risks associated with the usage of this platform; she had apologised and rectified the mistake by furnishing the opposition with the correct citations; she had informed the Law Society of her mistake; further, she had no intention to deceive the opposition and/or the court.



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In finding that a special cost order is not justified in this matter, the court considered the following factors: the two non-existent cases were already withdrawn at the time of the hearing; even if the said cases had not been withdrawn at the time of the hearing, they would have likely not been used in court, as there were volumes of other legal sources relied upon by the parties; the opposing party's legal team was well-resourced, eg. it had three counsel and an article clerk, and the chances of these two non-existent cases making way into the court room were almost non-existent; a book of authorities would have been prepared for handing up in court and the non-existent cases would have been exposed.

Whilst the court remarked that it was not shielding the lawyer in question - in fact it found this act alarming - it remarked that these factors underscores that the relevant lawyer had no intent to deceive or misdirect the court.

Conclusion

The particular factors and circumstances of this case influenced the court to find in favour of the relevant lawyer. In a

different case, where circumstances justify, or even with the same/similar facts, but before a different judicial officer, the outcome may be different.

In this case, it can be argued that the judge was lenient and showed empathy for the lawyer. A different judge could adopt a robust stance.

The risk of getting a special costs order against you, as a lawyer, in such cases, remains real. The court also took cognisance of the fact that the lawyer in question, through her conduct, had already attracted bad publicity. This is another associated risk, ie. reputational damage.

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