

Canada

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1. What is the understanding of AI in your jurisdiction?

In recent years, the concept of artificial intelligence (AI) has come to encompass an array of technological advancements in the legal field. Due to the evolving regulatory landscape surrounding AI, there is currently no consensus on what the term entails.

Canada is actively engaging in discussions on a new definition of an 'AI system' at global forums such as the Organisation for Economic Co-operation and Development (OECD) and in discussions at the G7 (Group of Seven intergovernmental political and economic forum) on an international code of conduct for advanced AI systems.¹⁵⁴ As a signatory to the OECD's *Recommendation of the Council on Artificial Intelligence*,¹⁵⁵ Canada has embraced the OECD's definition of an AI system in its proposed AI legislation¹⁵⁶ (further discussed below) and during the work completed by its AI working group.¹⁵⁷

The OECD defines an AI system as:

'a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment.'¹⁵⁸

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¹⁵⁴ Minister of Innovation, Science and Industry, www.ourcommons.ca/content/Committee/441/INDU/WebDoc/WD12751351/12751351/MinisterOfInnovationScienceAndIndustry-2023-11-28-Combined-e.pdf accessed 18 April 2024, p 6.

¹⁵⁵ *Recommendation of the Council on Artificial Intelligence* (OECD), <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449> accessed 18 April 2024.

¹⁵⁶ Bill C-27, Digital Charter Implementation Act, 1st Sess, 44th Parl, 2022 (first reading 16 June 2022). See www.parl.ca/Content/Bills/441/Government/C-27/C-27_1/C-27_1.PDF accessed 18 April 2024.

¹⁵⁷ *Report of the Public Awareness Working Group* (Innovation, Science & Economic Development Canada), <https://ised-isde.canada.ca/site/advisory-council-artificial-intelligence/en/public-awareness-working-group/learning-together-responsible-artificial-intelligence> accessed 18 April 2024.

¹⁵⁸ Stuart Russell, Karine Perset and Marko Grobelnik, *Updates to the OECD's definition of an AI system explained* (OECD, 29 November 2023), <https://oecd.ai/en/work/ai-system-definition-update>; see also ISO/IEC 22989:2022 (International Organisation for Standardisation (ISO)), www.iso.org/standard/74296.html accessed 23 April 2024. The ISO definition of 'AI system' adopts the OECD definition and is referenced in the Office of the Privacy Commissioner's *Principles for responsible, trustworthy and privacy-protective generative AI technologies* (7 December 2023).

This definition, which, as mentioned above, Canada has considered in developing its regulatory framework, underscores the multifaceted nature of AI and its potential impact on society as a whole.

Moreover, the OECD definition, adopted in certain Canadian contexts, is supported by the Law Society of Ontario (LSO) *Technology Task Force Update Report*, which posits that there are at least three generally accepted understandings of AI: (1) it is a branch of computer science that focuses on the simulation of intelligent behaviour in computers; (2) it is a machine's capability of imitating intelligent human behaviour; and (3) it is a collection of processes and techniques.¹⁵⁹ However, recognising the need for a cohesive understanding, the LSO proposed a 'generally acceptable' definition of AI as 'the ability for computers to accomplish tasks normally associated with the intelligent actions of human beings'.¹⁶⁰

Achieving a consensus on the definition of AI remains an ongoing endeavour, particularly concerning the integration of AI within Ontario's legal sector. However, the OECD definition has since become the leading characterisation of AI at the federal level, thus providing a common language to navigate the intersection of AI and the law.

2. In your jurisdiction, besides legal tech tools, are there already actual AI tools or use cases in practice for legal services?

Examples of AI's common uses among legal professionals include:¹⁶¹

- document discovery and due diligence;
- assistance with routine legal or business questions;
- outcome prediction;
- contract analysis;
- legal document generation; and
- judicial analytics.¹⁶²

159 *Technology Task Force Report* (Law Society of Ontario, 2019), <https://lawsocietyontario.azureedge.net/media/lsomedia/about/convocation/2019/technologytaskforce-report-en.pdf>.

160 *Technology Task Force Report* (Law Society of Ontario, 2019), p 7.

161 *Technology Task Force Report* (Law Society of Ontario, 2019), p 9.

162 Jena McGill and Amy Salyzyn, 'Beyond the Numbers: Statistical and Data Literacy, Domain Literacy and Supreme Court of Canada Data Analytics' (SCLR Constitutional Cases Conference, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4568213 accessed 16 April 2024; Sean Rehaag, 'Luck of the Draw III: Using AI to Examine Decision-Making in Federal Court Stays of Removal' (Centre for Refugee Studies, Refugee Law Lab and Osgoode Hall Law School, 11 January 2023), <https://ssrn.com/abstract=4322881>; Wolfgang Alschner, 'AI and Legal Analytics' in Florian Martin-Bariteau and Teresa Scassa (eds), *Artificial Intelligence and the Law in Canada* (Canada: LexisNexis, 2021), <https://ssrn.com/abstract=3733957>; Ignacio Cofone, 'AI and Judicial Decision-Making' in Florian Martin-Bariteau and Teresa Scassa (eds), *Artificial Intelligence and the Law in Canada* (Canada: LexisNexis, 2021), <https://ssrn.com/abstract=3733951> accessed 17 April 2024.

Certain law firms have already begun implementing in-house AI tools and programs to navigate any confidentiality issues that arise by using open-source AI software.¹⁶³

3. If yes, are these AI tools different regarding:

- **independent law firms;**
- **international law firms; and**
- **in-house counsel;**

and what are these differences?

The use cases for different AI tools vary between law firms and in-house counsel primarily due to their differing needs and resources. Smaller law firms often face higher hurdles in adopting AI tools due to significant initial investment costs and the need to configure new technologies to existing systems.¹⁶⁴ These firms may use AI more conservatively, primarily for enhancing legal research and managing large volumes of document review during litigation.¹⁶⁵ For example, AI applications such as predictive coding in electronic discovery would be beneficial in managing extensive electronic record reviews with limited resources.¹⁶⁶ Larger law firms may employ AI tools more extensively, both because they have the resources to invest in them and because the complexity and size of the files they handle can greatly benefit from them. For example, sophisticated AI contract analysis tools are typically used for due diligence in mergers and acquisitions (M&A) transactions. Firms may also make use of predictive analytics tools that assess the potential outcomes of litigation based on historical data and patterns in case law.¹⁶⁷

The use cases for AI tools appear to differ when used by in-house counsel. The use of AI tools in corporate legal departments is primarily helpful for cost reduction and enhancing productivity.¹⁶⁸ Where AI is used by in-house counsel, it would typically be for automating repetitive tasks such as contract review, drafting and compliance monitoring.¹⁶⁹ As is the case with AI adoption and use in the law firm setting, the use cases for in-house applications are expected to be impacted by the budgetary considerations of each entity.

163 Robyn Doolittle, 'McCarthy Tetrault experiments with AI tools expected to reshape how law firms operate' *The Globe and Mail* (Ontario, 3 March 2024), www.theglobeandmail.com/business/article-ai-law-firms-mccarthy-tetrault/ accessed 6 June 2024; Steve Lohr, 'A.I. Is Coming for Lawyers, Again' *The New York Times* (New York, 10 April 2023), www.nytimes.com/2023/04/10/technology/ai-is-coming-for-lawyers-again.html accessed 6 June 2024.

164 Gillian Scott, 'What is Legal Automation? How Law Firms Use AI to Increase Efficiency and Add Value for Clients' (Lexpert, 1 November 2021), www.lexpert.ca/legal-insights/what-is-legal-automation-how-law-firms-use-ai-to-increase-efficiency-and-add-value-for-clients/361108 accessed 6 June 2024.

165 Amy Salyzyn, 'AI and Legal Ethics' in Florian Martin-Bariteau and Teresa Scassa (eds), *Artificial Intelligence and the Law in Canada* (Canada: LexisNexis, 2021), <https://ssrn.com/abstract=3733952> accessed 6 June 2024.

166 Amy Salyzyn, 'AI and Legal Ethics' in Florian Martin-Bariteau and Teresa Scassa (eds), *Artificial Intelligence and the Law in Canada* (Canada: LexisNexis, 2021).

167 Maria Mahmoudian, 'Eclipse of tradition: AI's ascendancy in the legal era' (Law360, 11 April 2024), www.law360.ca/ca/articles/1823826?scroll=1&related=1.

168 *Using AI in Law Departments* (Practical Law Canada), <https://ca.practicallaw.thomsonreuters.com/w-028-6768> accessed 19 April 2024.

169 *Using AI in Law Departments* (Practical Law Canada).

4. What is the current or planned regulatory approach on AI in general?

Regulation of AI in Canada is still at an early stage.¹⁷⁰ However, there are several government initiatives and commitments that offer insight into how Canada is approaching the technology.

In 2019, Canada launched an Advisory Council on Artificial Intelligence¹⁷¹ consisting of researchers, academic scholars and business executives to advise Canada on the future of AI and its impact and opportunities in key economic sectors.¹⁷² The following year, the council published its findings regarding the commercialisation and adoption of AI technology in Canada. The report stated that in order for Canada to fulfil the economic promise of AI (ie, higher productivity, market growth, new products and services and job creation), it must 'act quickly to put in place the right factors for AI sector growth and competitiveness'.¹⁷³

In response to the report, the Canadian Federal Budget in 2021 ('Budget 2021') proposed a renewed commitment and expansion to the Pan-Canadian AI Strategy (PCAIS) which was first launched in 2017. The objectives of PCAIS include collaborating on policy initiatives, both domestic and international, which encourage the responsible, ethical and economic stewardship of AI.¹⁷⁴ In Budget 2021, nearly CA\$440m (approximately US\$351.5m)¹⁷⁵ was allocated to projects initiated by the PCAIS to enable Canada to maintain its leadership in AI.¹⁷⁶

In a similar fashion, the Canadian Government continues to make ongoing investments in AI governance.¹⁷⁷ The Canadian Federal Budget 2024 (Budget 2024) earmarked CA\$5.1m (approximately US\$3.69m)¹⁷⁸ in 2025–26 for the Office of the AI and Data Commissioner to equip it with enforcement resources under

170 Teresa Scassa, 'Regulating AI in Canada: A Critical Look at the Proposed Artificial Intelligence and Data Act' (2023), Vol 101 (No 1) *Canadian Bar Review*, <https://cbr.cba.org/index.php/cbr/article/view/4817/4539> accessed 18 April 2024.

171 *Advisory Council on Artificial Intelligence* (Innovation, Science and Economic Development Canada), <https://ised-isde.canada.ca/site/advisory-council-artificial-intelligence/en> accessed 18 April 2024.

172 *Government of Canada Creates Advisory Council on Artificial Intelligence* (Innovation, Science and Economic Development Canada, 14 May 2019), www.canada.ca/en/innovation-science-economic-development/news/2019/05/government-of-canada-creates-advisory-council-on-artificial-intelligence.html accessed 6 June 2024.

173 *Commercialisation Working Group Final Report* (Advisory Council on Artificial Intelligence, Innovation, Science and Economic Development Canada, February 2020), <https://ised-isde.canada.ca/site/advisory-council-artificial-intelligence/en/commercialisation-working-group/commercialisation-working-group-final-report-february-2020> accessed 6 June 2024.

174 *The Pan-Canadian AI Strategy* (Canadian Institute for Advanced Research (CIFAR), <https://cifar.ca/ai/> accessed 18 April 2024.

175 The currency conversion from CA\$ to US\$ is based on the Bank of Canada exchange rates published 19 April 2021 which is the date Budget 2021 was released by the Government of Canada; www.bankofcanada.ca/rates/exchange/currency-converter/ accessed 30 April 2024.

176 *The Pan-Canadian AI Strategy* (Canadian Institute for Advanced Research (CIFAR).

177 Between 2017–2024, the Government of Canada has invested over CA\$2bn towards AI in Canada. An additional CA\$2.4bn in funding was announced in Budget 2024 for AI investment initiatives related to governance, research and development and innovation across Canada. See *2024 Budget Report, Chapter 4: Economic Growth for Every Generation*, (Government of Canada), <https://budget.canada.ca/2024/report-rapport/chap4-en.html> accessed 18 April 2024.

178 See n 22 above.

the proposed Artificial Intelligence and Data Act (AIDA).¹⁷⁹ The investment aims to guide AI innovation while protecting Canadians from potential risks by ensuring the responsible adoption of AI by businesses.¹⁸⁰ Budget 2024 also included a CA\$3.5m (approximately US\$2.53m)¹⁸¹ investment over two years, starting in 2024–25, to advance Canada’s leadership role with the Global Partnership on Artificial Intelligence (GPAI). The GPAI works with international partners to support responsible AI development and use.¹⁸²

The OECD has recently developed an initiative focused on public safety regulations. The initiative, adopted by Canada, focuses on ensuring: (1) that AI programming benefits the public; (2) that AI programming respects the rule of law, human rights, democratic values and diversity; (3) to maintain transparency and responsible disclosure; (4) to maintain robust, secure and safe functioning of AI systems; and (5) to ensure accountability on behalf of organisations and individuals involved in AI.¹⁸³

In February 2020, the OECD released a framework for classifying AI systems to encourage policy makers and legislators to assess opportunities and weigh the risks of utilising AI systems to inform their national AI strategies.¹⁸⁴ The framework allows programs to be compared for their capabilities and drawbacks to help regulators characterise AI programs in their specific contexts based on their global impact. The goal of the framework is to provide the public with a common understanding of AI and, in particular, risk assessment and AI accountability. The framework dimensions included are:¹⁸⁵

- *data and input*: provenance, collection and nature of data, as well as rights and identifiability (its data source), appropriateness and quality;
- *people and the planet*: determining users of the system and affected stakeholders, addressing any human rights issues (including privacy), that impact wellbeing and environment and the AI’s displacement potential;
- *economic context*: AI’s impact on the industrial sector, its business function and model, critical function, scale and maturity;

179 *2024 Budget Report, Chapter 4: Economic Growth for Every Generation* (Government of Canada).

180 *Securing Canada’s AI Advantage* (Prime Minister of Canada, 7 April 2024), www.pm.gc.ca/en/news/news-releases/2024/04/07/securing-canadas-ai.

181 See n 22 above.

182 *Minister Champagne Presents Global Partnership on Artificial Intelligence Priorities for 2021* (Government of Canada, 30 June 2020), www.canada.ca/en/innovation-science-economic-development/news/2021/06/minister-champagne-presents-global-partnership-on-artificial-intelligence-priorities-for-2021.html accessed 18 April 2024.

183 *Forty-two Countries Adopt New OECD Principles on Artificial Intelligence* (OECD), www.oecd.org/science/forty-two-countries-adopt-new-oecd-principles-on-artificial-intelligence.htm accessed 18 April 2024.

184 *OECD Framework for the Classification of AI Systems: a tool for effective AI policies* (OECD), <https://oecd.ai/en/classification> accessed 18 April 2024.

185 *OECD Framework for the Classification of AI Systems: a tool for effective AI policies* (OECD).

- *AI model*: its characteristics, evolution technique, capabilities and use; and
- *task and output*: the system task, action and autonomy level.

The Government of Canada is credited with providing noteworthy consultation to the OECD for its AI framework initiative, indicating their support for the development of a strong infrastructure for AI growth.¹⁸⁶ Although not legally binding, the recommendations provided by the OECD emphasise the important values of facilitating investment in research and development, fostering accessible AI ecosystems, ensuring policy environments that facilitate the deployment of trustworthy AI systems and cooperating across borders and sectors to ensure responsible stewardship of trustworthy AI.¹⁸⁷

5. What are the current or planned regulations on the general use of AI or machine learning systems?

The Canadian regulatory landscape continues to develop in response to the use of AI technology.

Federal Directive on Automated Decision-Making

In April 2019, the Government of Canada issued its Directive on Automated Decision-Making (the 'Directive'). The Directive was amended in April 2023, following the third review of the instrument.¹⁸⁸ The Directive is aimed at ensuring that automated decision-making systems used by the federal government are 'deployed in a manner that reduces risks to Canadians and federal institutions, and leads to more efficient, accurate, consistent, and interpretable decisions made pursuant to Canadian law'.¹⁸⁹ Notably, the Directive only applies to the federal government's use of systems that provide external services, specifically, federal institutions referenced in the Policy on the Management of Information Technology. It does not apply to the use of AI or machine learning systems in the private sector or to provincial governments directly.

Federal Guidelines on Generative AI

Similar to the Directive, the Government of Canada published its 'Guide on the Use of Generative AI' (Generative AI Guide). The publication provides

186 'OECD Framework for the Classification of AI systems' *OECD Digital Economy Papers No 323*, (OECD Publishing, 2022), <https://doi.org/10.1787/cb6d9eca-en> accessed 18 April 2024.

187 *Forty-two Countries Adopt New OECD Principles on Artificial Intelligence* (OECD).

188 *Responsible Use of AI* (Government of Canada), www.canada.ca/en/government/system/digital-government/digital-government-innovations/responsible-use-ai.html#toc1 accessed 23 April 2024.

189 *Directive on Automated Decision-Making* (Government of Canada), www.tbs-sct.canada.ca/pol/doc-eng.aspx?id=32592 accessed 18 April 2024.

guidance to federal institutions on their use of generative AI tools in the public sector.¹⁹⁰ The Generative AI Guide was released in September 2023 and has since been updated in February 2024 to include feedback from targeted stakeholder engagement and enhanced definitions for FASTER (fair, accountable, secure, transparent, educated and relevant) principles on generative AI.¹⁹¹ The Generative AI Guide addresses several policy considerations and establishes best practices for the use of generative AI tools. For example, the guide applies administrative use of generative AI technology that is otherwise not subject to the Directive on Automated Decision Making.

Government of Canada establishes guiding principles on responsible AI

The federal government sets out 12 guiding principles on 'Responsible use of artificial intelligence' applicable to both the Directive and Generative AI Guide.¹⁹² To ensure the effective and ethical use of AI, the government's core values are:

1. promoting openness about how, why and when AI is used;
2. prioritising the needs of individuals and communities, including Indigenous peoples, and considering the institutional and public benefits of AI;
3. assessing and mitigating the risks of AI to legal rights and democratic norms early in the lifecycle of AI systems and following their launch;
4. ensuring training or other input data used by AI systems is lawfully collected, used and disclosed, taking account of applicable privacy and intellectual property rights;
5. evaluating the outputs of AI systems, including generative tools, to minimise biases and inaccuracies and enabling users to distinguish between AI and human outputs;
6. publishing legal or ethical impact assessments, source code, training data, independent audits or reviews or other relevant documentation about AI systems, while protecting privacy, government and national security and intellectual property;
7. explaining automated decisions to people impacted by them and providing them with opportunities to contest decisions and seek remedies, which could involve human review, where applicable;
8. encouraging the creation of controlled test environments to foster responsible research and innovation;

¹⁹⁰ *Guide on the use of generative AI* (Government of Canada), www.canada.ca/en/government/system/digital-government/digital-government-innovations/responsible-use-ai/guide-use-generative-ai.html accessed 23 April 2024.

¹⁹¹ *Guide on the use of generative AI* (Government of Canada).

¹⁹² *Guide on the use of generative AI* (Government of Canada).

9. establishing oversight mechanisms for AI systems to ensure accountability and foster effective monitoring and governance throughout the lifecycle;
10. assessing and mitigating the environmental impacts of the training and use of AI systems, and where appropriate opting for zero-emissions systems;
11. providing training to civil servants developing or using AI so they understand legal, ethical and operational issues, including privacy and security, and are equipped to adopt AI systems responsibly; and
12. creating processes for inclusive and meaningful public engagement on AI policies or projects with a view to raising awareness, building trust and addressing digital divides.¹⁹³

Existing privacy legislation applicable to AI and proposed reforms

The use of AI is currently regulated through the Personal Information Protection and Electronic Documents Act (PIPEDA), which generally applies to all organisations in the private sector that collect, use or disclose personal information in the context of commercial activities.¹⁹⁴ PIPEDA is ‘technologically neutral’, meaning that AI is ‘governed by the same rules as other forms of processing’.¹⁹⁵ However, PIPEDA was not created specifically to deal with AI or machine learning systems. The Office of the Privacy Commissioner of Canada (OPC) has expressed the view that PIPEDA, in its current iteration, is insufficient to govern the application of AI systems.¹⁹⁶ As such, the OPC has developed principles for the development, provision and use of generative AI systems.¹⁹⁷ In 2020, the OPC made the following 11 proposals for key reforms to PIPEDA:

1. Incorporate a definition of AI within the law that would serve to clarify which legal rules would apply only to it, while other rules would apply to all processing, including AI.
2. Adopt a rights-based approach in the law, whereby data protection principles are implemented as a means of protecting a broader right to privacy – recognised as a fundamental human right and as foundational to the exercise of other human rights.

¹⁹³ *Guide on the use of generative AI* (Government of Canada).

¹⁹⁴ *PIPEDA in brief*, (Office of the Privacy Commissioner of Canada), see www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/pipeda_brief/ accessed 23 April 2024.

¹⁹⁵ *Consultation on the OPC’s Proposals for ensuring appropriate regulation of artificial intelligence* (Office of the Privacy Commissioner of Canada), www.priv.gc.ca/en/about-the-opc/what-we-do/consultations/completed-consultations/consultation-ai/pos_ai_202001 accessed 23 April 2024.

¹⁹⁶ *Consultation on the OPC’s Proposals for ensuring appropriate regulation of artificial intelligence* (Office of the Privacy Commissioner of Canada).

¹⁹⁷ *Principles for responsible, trustworthy and privacy-protective generative AI technologies* (Office of the Privacy Commissioner of Canada), www.priv.gc.ca/en/privacy-topics/technology/artificial-intelligence/gd_principles_ai/ accessed 23 April 2024.

3. Create a right in the law to object to automated decision-making and not to be subject to decisions based solely on automated processing, subject to certain exceptions.
4. Provide individuals with a right to explanation and increased transparency when they interact with, or are subject to, automated processing.
5. Require the application of Privacy by Design and Human Rights by Design in all phases of processing, including data collection.
6. Make compliance with purpose specification and data minimisation principles in the AI context both realistic and effective.
7. Include in the law alternative grounds for processing and solutions to protect privacy when obtaining meaningful consent is not practicable.
8. Establish rules that allow for flexibility in using information that has been rendered non-identifiable, while ensuring there are enhanced measures to protect against re-identification.
9. Require organisations to ensure data and algorithmic traceability, including in relation to datasets, processes and decisions made during the AI system lifecycle.
10. Mandate demonstrable accountability for the development and implementation of AI processing.
11. Empower the OPC to issue binding orders and financial penalties to organisations for non-compliance with the law.¹⁹⁸

Bill C-27 ushers in new era of AI legislation for Canada

As Bill C-27, the Digital Charter Implementation Act, was proposed on 16 June 2022, the proposals to reform PIPEDA may be implemented through legislative reform. If passed, the Bill will repeal PIPEDA with three separate statutes that will govern AI regulation in Canada.

First, there will be a new Consumer Privacy Protection Act (CCPA). The CCPA's aim is to protect the personal information of individuals while acknowledging organisations' need to collect or disclose personal information.¹⁹⁹ For example, the CCPA prescribes that an organisation's policies and practices surrounding the use of any automated decision system, such as AI or machine learning technologies, must

¹⁹⁸ *Principles for responsible, trustworthy and privacy-protective generative AI technologies* (Office of the Privacy Commissioner of Canada).

¹⁹⁹ *Principles for responsible, trustworthy and privacy-protective generative AI technologies* (Office of the Privacy Commissioner of Canada).

be made readily available.²⁰⁰ Under the CPPA, if an automated decision system is used to make a prediction, recommendation or decision about an individual that could have a significant impact, the organisation must provide an explanation upon request.²⁰¹

Second, Bill C-27 will create the Personal Information and Data Protection Tribunal Act (the 'Tribunal Act'), which posits creating a new administrative tribunal responsible for oversight of personal information and data protection. The tribunal established under the act will rule on appeals or penalties made under the CPPA.²⁰² The tribunal's decisions will be final and binding and are not subject to appeal or review by any court other than judicial review.²⁰³

Third, Bill C-27 will implement the Artificial Intelligence and Data Act to regulate the responsible development of AI systems in Canada's marketplace.²⁰⁴ The AIDA will also regulate international and interprovincial trade and commerce in AI by requiring businesses to adopt measures to mitigate risks of harm and biased outputs that could result from high-impact AI systems. The AIDA will further require recordkeeping and public reporting of decision-making measures and reasons related to AI systems.²⁰⁵ The use of an AI system that could result in harm will be prohibited under the AIDA.²⁰⁶

The OPC has put forward 15 recommendations on Bill C-27 with the potential to reform Canada's regulatory approach to AI and data privacy:

1. Recognise privacy as a fundamental right.
2. Protect children's privacy and the best interests of the child.
3. Limit organisations' collection, use and disclosure of personal information to specific and explicit purposes that take into account the relevant context.
4. Expand the list of violations qualifying for financial penalties to include, at a minimum, appropriate purposes violations.
5. Provide a right to disposal of personal information even when a retention policy is in place.

200 CPPA ss 62(1) and 62(2)(c).

201 CPPA ss 63(3) and (4).

202 *Legislative Summary of Bill C-27*, (Library of Parliament), https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/441C27E#a2-4 accessed 21 April 2024.

203 *Legislative Summary of Bill C-27*, (Library of Parliament).

204 *New laws to strengthen Canadians' privacy protection and trust in the digital economy* (Government of Canada), www.canada.ca/en/innovation-science-economic-development/news/2022/06/new-laws-to-strengthen-canadians-privacy-protection-and-trust-in-the-digital-economy.html accessed 18 April 2024; see also *Legislative Summary of Bill C-27* (Library of Parliament).

205 Bill C-27, Digital Charter Implementation Act, 1st Sess, 44th Parl, 2022 (first reading 16 June 2022) s 10.

206 Bill C-27, Digital Charter Implementation Act, 1st Sess, 44th Parl, 2022 (first reading 16 June 2022) s 12.

6. Create a culture of privacy by requiring organisations to build privacy into the design of products and services and to conduct privacy impact assessments for high-risk initiatives.
7. Strengthen the framework for de-identified and anonymised information.
8. Require organisations to explain, on request, all predictions, recommendations, decisions and profiling made using automated decision systems.
9. Limit the government's ability to make exceptions to the law by way of regulations.
10. Provide that the exception for disclosure of personal information without consent for research purposes only applies to scholarly research.
11. Allow individuals to use authorised representatives to help advance their privacy rights.
12. Provide greater flexibility in the use of voluntary compliance agreements to help resolve matters without the need for more adversarial processes.
13. Make the complaints process more expeditious and economical by streamlining the review of the Commissioner's decisions.
14. Amend timelines to ensure that the privacy protection regime is accessible and effective.
15. Expand the Commissioner's ability to collaborate with domestic organisations in order to ensure greater coordination and efficiencies in dealing with matters raising privacy issues.²⁰⁷

These recommendations by the OPC may be implemented in the final form of Bill C-27 since the outcome of the proposed AI legislation is still pending. Initial submissions have been made to the House of Commons Standing Committee on Industry and Technology (INDU).²⁰⁸ The most frequently studied issue during the Bill C-27 consideration in committee by INDU is addressing harms arising from AI.²⁰⁹ However, additional public participation in the legislative process will be required at the Senate stage of the federal parliamentary process before Bill C-27 is finalised.

If passed during the 2024 parliamentary session, the CPPA and Tribunal Act could come into effect in the near future. However, the development of the underlying

207 'Submission of the Office of the Privacy Commissioner of Canada on Bill C-27, the Digital Charter Implementation Act, 2022' (Office of the Privacy Commissioner of Canada, April 2023), www.priv.gc.ca/en/opc-actions-and-decisions/submissions-to-consultations/sub_indu_c27_2304/ accessed 6 June 2024.

208 House of Commons, Standing Committee on Industry and Technology (INDU), www.ourcommons.ca/committees/en/INDU/StudyActivity?studyActivityId=12157763 accessed 23 April 2024.

209 *Bill C-27: Timeline of Developments* (Gowling WLG, February 2024), <https://gowlingwlg.com/en/insights-resources/articles/2024/bill-c27-timeline-of-developments/> accessed 6 June 2024.

AIDA regulations is anticipated to take at least two years following Bill C-27 receiving Royal Assent, meaning much of the AIDA's regulatory authority would not be effective until 2026 at the earliest.²¹⁰

Voluntary AI Code of Conduct for Businesses

In September 2023, the Department of Innovation, Science and Economic Development Canada (ISED) published a Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative Artificial Intelligence Systems (the 'Code'). Following a public consultation on generative AI, the Government of Canada developed the Code using the recommendations and feedback provided by stakeholders and written submissions.²¹¹ The Code establishes commitments for developers and managers of advanced generative systems to achieve outcomes related to: accountability, safety, fairness and equity, transparency, human oversight and monitoring, and validity and robustness.²¹² The measures ensure that generative AI risks are appropriately identified and mitigated in advance of the proposed AIDA requirements under Bill C-27.

Competition Bureau AI Discussion Paper

The Competition Bureau of Canada released a Discussion Paper on 20 March 2024 addressing potential competitive harm from AI, as well as promoting competition in AI markets.²¹³ The paper states that firms involved in supplies for AI chips or cloud systems could warrant additional scrutiny from a merger and acquisition standpoint.²¹⁴ The publication provides an overview of current considerations for AI and competition. Ultimately, it indicates that the Competition Bureau may adopt AI rules and regulations in the future.

210 *Artificial Intelligence and Data Act (AIDA) Companion Document* (Innovation, Science and Economic Development Canada), <https://ised-isde.canada.ca/site/innovation-better-canada/en/artificial-intelligence-and-data-act-aida-companion-document> accessed 21 April 2024.

211 *Frequently asked questions for the Voluntary Code of Conduct on Advanced Generative AI Systems* (Innovation, Science and Economic Development Canada), <https://ised-isde.canada.ca/site/ised/en/frequently-asked-questions-voluntary-code-conduct-advanced-generative-ai-systems> accessed 18 April 2024; see also *What We Heard – Consultation on the development of a Canadian code of practice for generative artificial intelligence systems* (Innovation, Science and Economic Development Canada), <https://ised-isde.canada.ca/site/ised/en/what-we-heard-consultation-development-canadian-code-practice-generative-artificial-intelligence> accessed 18 April 2024.

212 *Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative AI Systems* (Innovation, Science and Economic Development Canada), <https://ised-isde.canada.ca/site/ised/en/voluntary-code-conduct-responsible-development-and-management-advanced-generative-ai-systems> accessed 18 April 2024.

213 *Artificial Intelligence and competition: Discussion Paper* (Competition Bureau Canada, March 2024), <https://ised-isde.canada.ca/site/competition-bureau-canada/en/how-we-foster-competition/education-and-outreach/artificial-intelligence-and-competition> accessed 18 April 2024.

214 *Artificial Intelligence and competition: Discussion Paper* (Competition Bureau Canada, March 2024).

Ontario amends employment legislation regarding the use of AI in hiring

On 21 March 2024, the Ontario Government passed Bill 149 to amend the Employment Standards Act (ESA) with AI-specific requirements for employers.²¹⁵ Under the amended ESA, any publicly advertised job postings that use AI to screen, assess or select applicants must include a statement disclosing the use of AI. The new disclosure requirements related to AI use in the hiring process are not yet in effect. These amendments will come into force at a later date by proclamation of the Lieutenant Governor.²¹⁶

Québec government releases report surrounding responsible use of AI and calls for provincial AI legislation

On 5 February 2024, the Conseil de l'innovation du Québec (CIQ) issued a report entitled *Prêt pour l'IA: Répondre au défi du développement et du déploiement responsables de l'IA au Québec* (available in French only).²¹⁷ This report stems from a consultation process involving 250 experts and civil society organisations urging the adoption of framework legislation to regulate AI development and deployment in Québec.²¹⁸ The proposed law would affect developers and distributors of AI systems in both the public and private sectors. The report addresses various issues and opportunities associated with AI. It also puts forward a series of proposals, including 12 main recommendations supported by 25 complementary recommendations aimed at ensuring the responsible development and use of this technology in Québec, grouped into five areas of focus: regulation, anticipation, education, support and positioning. The resulting regulations would potentially impact the operational standards and compliance obligations of affected businesses operating in Québec. The legislative changes following the CIQ's recommendations are yet to be determined.

Ontario Securities Commission Report seeks to regulate AI in capital markets

The Ontario Securities Commission also published a report on 10 October 2023 titled 'Artificial Intelligence in Capital Markets – Exploring Use Cases in Ontario'

215 *Ontario to Require Employers to Disclose Salary Ranges and AI Use in Hiring* (Government of Ontario, 6 November 2023), <https://news.ontario.ca/en/release/1003758/ontario-to-require-employers-to-disclose-salary-ranges-and-ai-use-in-hiring>; see also Bill 149, *An Act to amend various statutes with respect to employment and labour and other matters*, 1st Sess, 43rd Leg, 2023 Ontario (assented to 21 March 2024) SO 2024 Ch 3, www.ola.org/sites/default/files/node-files/bill/document/pdf/2024/2024-03/b149ra_e_0.pdf accessed 23 April 2024.

216 Bill 149, *An Act to amend various statutes with respect to employment and labour and other matters*, 1st Sess, 43rd Leg, 2023 Ontario (assented to 21 March 2024) SO 2024 Ch 3, www.ola.org/en/legislative-business/bills/parliament-43/session-1/bill-149 accessed 23 April 2024.

217 *AI-Ready Report: Meeting the Challenge of Responsible AI Development and Deployment in Quebec* (Conseil de l'innovation du Québec), https://conseilinnovation.quebec/wp-content/uploads/2024/02/Rapport_IA_CIQ-1.pdf accessed 21 April 2024; see also <https://conseilinnovation.quebec/intelligence-artificielle/publications-de-la-reflexion-collective/> accessed 21 April 2024.

218 *The AI-Ready Recommendations Report is now tabled* (Conseil de l'innovation du Québec, 5 February 2024), <https://conseilinnovation.quebec/pret-pour-lia-est-maintenant-depose/> accessed 21 April 2024.

(the 'OSC Report') regarding the adoption of AI in Ontario's capital markets.²¹⁹ The OSC Report considers how 'oversight, regulation or guidance can facilitate responsible AI innovation and adoption in Canada'.²²⁰ The OSC Report details that the advancement of AI technology holds the promise of delivering notable efficiencies within capital markets and among capital market participants. However, the inherent disruptive capabilities of AI systems have prompted critical inquiries into the necessity of robust regulation and governance.

6. Is free data access an issue in relation to AI?

Free data access is indeed an issue in relation to AI in Canada, particularly as it pertains to the use of AI tools in the legal profession. The quality of AI as a tool in the legal profession relies on access to large volumes of legal data. In Canada, bulk access to legal texts for purposes of data-mining is restricted and inequitable, unlike the United States, where public access to legal data in bulk has been more liberalised.²²¹ The Canadian Legal Information Institute (CanLII) does provide free access to Canadian cases and statutes, however, its terms of use prohibit bulk access, for example through web scraping.²²² Moreover, vast amounts of 'big legal data' in Canada are held by a few large entities, making it difficult for new entrants to compete and limiting the diversity of legal AI tools available (for example, at more affordable price points).²²³

Access to data for the training and use of legal AI tools has also raised concerns in Canada with respect to privacy, confidentiality and data security, especially where client information is inputted into AI tools.²²⁴ Regulators of the legal profession in Canada are actively discussing and educating on these issues.

7. Are there already actual court decisions on the provision of legal services using AI or decisions concerning other sectors that might be applicable to use of AI in the provision of legal services?

Canadian case law on the provision of legal services using AI is sparse, and most of the judgments that do discuss the use of AI only do so in *obiter*. The few cases that mention AI indicate that its use is not unwelcome in Canadian courts, however, it should be used responsibly and with caution.

219 *Artificial Intelligence in Capital Markets* (Ontario Securities Commission), <https://oscinnovation.ca/resources/Report-20231010-artificial-intelligence-in-capital-markets.pdf> accessed 23 April 2024.

220 *Artificial Intelligence in Capital Markets* (Ontario Securities Commission), p 4.

221 Wolfgang Alschner, 'AI and Legal Analytics' in Florian Martin-Bariteau and Teresa Scassa (eds) *Artificial Intelligence and the Law in Canada* (Canada: LexisNexis, 2021).

222 Wolfgang Alschner, 'AI and Legal Analytics' in Florian Martin-Bariteau and Teresa Scassa (eds) *Artificial Intelligence and the Law in Canada* (Canada: LexisNexis, 2021).

223 Wolfgang Alschner, 'AI and Legal Analytics' in Florian Martin-Bariteau and Teresa Scassa (eds) *Artificial Intelligence and the Law in Canada* (Canada: LexisNexis, 2021).

224 *Technology Task Force Report* (Law Society of Ontario, 2019).

A case from the Ontario Superior Court of Justice, *Drummond v The Cadillac Fairview Corp Ltd*,²²⁵ briefly discussed the use of AI within the legal profession. In discussing the parties' cost submission, and after finding technology-assisted research to be a recoverable counsel fee item, the judge shared their views on the future of AI in the practice of law, noting:

'The reality is that computer-assisted legal research is a necessity for the contemporary practice of law and computer assisted legal research is here to stay with further advances in artificial intelligence to be anticipated and to be encouraged. Properly done, computer assisted legal research provides a more comprehensive and more accurate answer to a legal question in shorter time than the conventional research methodologies, which, however, also remain useful and valuable.'²²⁶

In the case of *The Commissioner of Competition v Live Nation Entertainment Inc*,²²⁷ from Canada's Competition Tribunal, the applicants brought a motion seeking an order compelling the respondents to produce additional affidavits of documents. This was because the respondents produced a narrowed number of documents to the applicants after using document review software. In this case, the Tribunal went as far as to endorse the use of AI, stating:

'The Tribunal encourages the use of modern tools to assist in these document-heavy cases where they are as or more effective and efficient than the usual method of document collection and review.'²²⁸

In the more recent case of *Zhang v Chen*,²²⁹ the British Columbia Supreme Court issued a landmark decision addressing the misuse of AI in legal proceedings. In this case, a lawyer had mistakenly submitted a notice of application containing citations to non-existent cases that had been fabricated or 'hallucinated' by ChatGPT. The court ordered the lawyer to pay costs personally, and made the following cautionary statement regarding the use of AI tools:

'The risks of using ChatGPT and other similar tools for legal purposes was recently quantified in a January 2024 study: Matthew Dahl et. al., "Large Legal Fictions: Profiling Legal Hallucinations in Large Language Models" (2024) arXIV:2401.01301. The study found that legal hallucinations are alarmingly prevalent, occurring between 69% of the time with ChatGPT 3.5 and 88% with Llama 2. It further found that large language models ("LLMs") often fail to correct a user's incorrect legal assumptions in a

225 *Drummond v The Cadillac Fairview Corp Ltd* 2018 ONSC 5350 (CanLII), <https://canlii.ca/t/hv321> accessed 24 April 2024.

226 *Drummond v The Cadillac Fairview Corp Ltd* 2018 ONSC 5350 (CanLII) at [10].

227 *The Commissioner of Competition v Live Nation Entertainment Inc* – Reasons for Order and Order re: Commissioner's motion for further and better affidavits of documents, 2018 CACT 17 (CanLII), <https://canlii.ca/t/hvk0d> accessed 24 April 2024.

228 *The Commissioner of Competition v Live Nation Entertainment Inc* 2018 CACT 17 at [15].

229 *Zhang v Chen* 2024 BCSC 285 (CanLII), <https://canlii.ca/t/k314g> accessed 24 April 2024.

contrafactual question setup, and that LLMs cannot always predict, or do not always know, when they are producing legal hallucinations. The study states that “[t]aken together, these findings caution against the rapid and unsupervised integration of popular LLMs into legal tasks”.²³⁰

In a final comment, the court stated:

‘As this case has unfortunately made clear, generative AI is still no substitute for the professional expertise that the justice system requires of lawyers. Competence in the selection and use of any technology tools, including those powered by AI, is critical. The integrity of the justice system requires no less.’²³¹

In a similar vein, many Canadian courts have recently issued practice directions or notices to the profession with respect to the use of generative AI in the preparation of materials filed with the court, including, for example, the Court of King’s Bench of Manitoba,²³² the Supreme Court of Yukon,²³³ the Alberta Courts of King’s Bench and Appeal,²³⁴ the Provincial²³⁵ and Supreme Courts²³⁶ of Nova Scotia and the Federal Court.²³⁷ Many of these directives and notices mandate the disclosure of any reliance on generative AI tools in the preparation of court-filed materials; some go further to require disclosure of *how* such tools were used, while others merely advise lawyers to use caution and ensure human supervision when using AI tools for legal research and court submissions.

Overall, these cases and directives from various Canadian courts suggest that, while they are willing to accept the use of AI in the provision of legal services, it must be done in a cautionary and responsible manner.

230 *Zhang v Chen* 2024 BCSC 285 at [38].

231 *Zhang v Chen* 2024 BCSC 285 at [46].

232 *Practice Direction – Use of Artificial Intelligence in Court Submissions* (Court of King’s Bench (Manitoba), 23 June 2023), www.manitobacourts.mb.ca/site/assets/files/2045/practice_direction_-_use_of_artificial_intelligence_in_court_submissions.pdf accessed 24 April 2024.

233 *Practice Direction – Use of Artificial Intelligence Tools* (Supreme Court of Yukon, 26 June 2023), www.yukoncourts.ca/sites/default/files/2023-06/GENERAL-29%20Use%20of%20AI.pdf accessed 24 April 2024.

234 *Notice to the Public and Legal Profession – Ensuring the Integrity of Court Submissions when Using Large Language Models* (Alberta Courts, 6 October 2023), www.albertacourts.ca/docs/default-source/qb/npp/tri-court-notice-to-profession-and-public---large-language-models.pdf?sfvrsn=713d5a82_7 accessed 24 April 2024.

235 *Use of Artificial Intelligence (AI) and Protecting the Integrity of Court Submissions in Provincial Court* (Provincial Court of Nova Scotia, 27 October 2023), www.courts.ns.ca/sites/default/files/notices/Oct%202023/NSPC_Artificial_Intelligence_Oct_27_2023.pdf accessed 24 April 2024.

236 *Ensuring the Integrity of Court Submissions When Using Generative Artificial Intelligence* (Supreme Court of Nova Scotia, 18 October 2023), https://courts.ns.ca/sites/default/files/notices/Oct%202023/NSSC_Court_Submissions_AI_Oct_18_2023.pdf accessed 24 April 2024.

237 *Notice to the Parties and the Profession – The Use of Artificial Intelligence in Court Proceedings* (Federal Court, 20 December 2023), www.fct-cf.gc.ca/Content/assets/pdf/base/2023-12-20-notice-use-of-ai-in-court-proceedings.pdf accessed 24 April 2024.

8. What is the current status – planned, discussed or implemented – of the sectorial legislation in your jurisdiction on the use of AI in the legal profession or services that are traditionally being rendered by lawyers?

With such a broad scope of application to the legal field, the emergence of AI presents several regulatory and legislative concerns with respect to its usage. In an effort to address these concerns, the LSO formed its Technology Task Force (the 'Task Force'): a group of lawyers, paralegals and publicly appointed lay benchers, whose goal is to review the Law Society's framework and standards to determine whether they are adequately serving the needs of the legal field.²³⁸ To do so, the Task Force has grounded its approach to AI in the Law Society's mandate²³⁹ and foundational principles.²⁴⁰ These principles entail an ongoing focus on facilitating access to justice, evaluating regulatory risks and opportunities and protecting the public interest. This focus must be conducted in a manner that is proportionate to the LSO's regulatory objectives.

Currently, the Task Force has made inquiries into three key topics: (1) defining the scope of how far the LSO's mandate ought to expand to effectively meet its regulatory objectives; (2) determining how the LSO should be structured and who should bear responsibility to ensure these objectives are met; and (3) what steps should the LSO take to better promote innovation and the adoption of emerging technology in an informative way that educates those who use it or are impacted by it.²⁴¹ However, as the regulator of a self-regulating industry, the LSO is faced with the challenge of whether it is appropriately situated and has the resources necessary to effectively regulate persons and entities operating legal tech tools.²⁴² Inevitably, the key barrier to overcoming such a challenge is the necessary technological wherewithal required to regulate such legal tools.

While the inquiries made by the LSO have yet to lead to concrete changes in legislation, the Taskforce is focused on exploring approaches to encourage the technological competence of legal professionals.²⁴³ To date, the LSO Taskforce has made various informational resources on AI available through its Technology Resource Centre for lawyers.²⁴⁴

Moreover, the Law Commission of Ontario (LCO) has conducted extensive research on the use of AI and automated decision-making across the legal system.²⁴⁵

238 *Technology Task Force* (Law Society of Ontario), <https://lso.ca/about-lso/initiatives/technology-task-force> accessed 20 April 2024.

239 *Technology Task Force Report* (Law Society of Ontario, 2019).

240 Law Society Act RSO 1990, c L8, ss 4.1–4.2.

241 *Technology Task Force Report* (Law Society of Ontario, 2019).

242 *Technology Task Force Report* (Law Society of Ontario, 2019).

243 *Technology Task Force Report* (Law Society of Ontario, 2019).

244 *Using Technology* (Law Society of Ontario), <https://lso.ca/lawyers/technology-resource-centre/practice-resources-and-supports/using-technology#notices-1--6> accessed 21 April 2024.

245 *AI, ADM and the Justice System* (Law Commission of Ontario), www.lco-cdo.org/en/our-current-projects/ai-adm-and-the-justice-system/ accessed 21 April 2024.

Most notably, the LCO's *Regulating AI: Critical Issues and Choices* (2021) and *Accountable AI* (2022) reports provide further guidance on the use of AI in the legal profession.²⁴⁶ In the latter, the LCO puts forward 19 recommendations to the provincial government and key stakeholders to ensure the following:

- the use of trustworthy AI in Ontario and ensuring that government's use of AI is properly regulated;
- that government AI systems comply with administrative law requirements;
- the development of new AI-specific *Rules of Civil Procedure* and laws of evidence;
- the development of educational programs and materials for lawyers, judiciary, tribunal members and administrators; and
- the establishment of a working group to analyse, monitor and report on the use of AI algorithms in Ontario's civil and administrative justice systems.²⁴⁷

Although the LCO does not have the same regulatory powers as the LSO, as an independent stakeholder it provides authoritative advice on the complex legal policy issues related to AI.²⁴⁸

9. What is the role of the national bar organisations or other official professional institutions?

In Canada, the role of national and provincial bar organisations regarding the use of AI in the legal profession primarily revolves around regulation, ethical guidance and education. The Federation of Law Societies of Canada (FLSC) is the national body representing the law societies of each province and territory. The FLSC has a Model Code of Professional Conduct (the 'Model Code') that serves as a foundational guideline across the provinces, which have largely aligned their individual codes of professional conduct with the Model Code.

While there are no specific rules in the Model Code (or provincial/territorial codes) that explicitly deal with the adoption or responsible use of AI in a lawyer's practice, several rules intersect with and implicate it.²⁴⁹ For example, rule 3.1-2 in the Model Code sets out the lawyer's duty to be competent. In recent years, the FLSC amended the commentary to rule 3.1-2 to refer specifically to technological competence:²⁵⁰

²⁴⁶ *Regulating AI: Critical Issues and Choices* (Law Commission of Ontario, April 2021), www.lco-cdo.org/wp-content/uploads/2021/04/LCO-Regulating-AI-Critical-Issues-and-Choices-Toronto-April-2021-1.pdf accessed 21 April 2024; see also *Accountable AI* (Law Commission of Ontario, June 2022), www.lco-cdo.org/wp-content/uploads/2022/06/Accountable-AI-reduced-size.pdf accessed 21 April 2024.

²⁴⁷ *Accountable AI* (Law Commission of Ontario, June 2022), www.lco-cdo.org/wp-content/uploads/2022/06/Accountable-AI-reduced-size.pdf accessed 21 April 2024, Appendix A: Recommendations.

²⁴⁸ *About Us* (Law Commission of Ontario), www.lco-cdo.org/en/learn-about-us/ accessed 21 April 2024.

²⁴⁹ See n 12 above.

²⁵⁰ See n 12 above.

'To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognising the lawyer's duty to protect confidential information set out in section 3.3.'²⁵¹

This provision has been incorporated into the codes of professional conduct of various law societies, including Ontario and Alberta.

The Law Society of Ontario (LSO) established a Technology Task Force (the 'Task Force') in 2018 with the mandate to 'consider the role of technologies in the delivery of legal services, and the Law Society's role as a regulator in this changing environment'.²⁵² The Task Force released a 2019 report dealing with this topic.²⁵³ The report recognises and provides guidance on professional conduct rules that are engaged by emerging legal technologies like AI. For example, rule 6.1-1 provides that lawyers must 'assume complete professional responsibility for their practice of law' and 'directly supervise non-lawyers to whom particular tasks and functions are assigned'.²⁵⁴ With respect to rule 6.1-1, the Task Force report states:

'AI-based tools present opportunities for technologies to go beyond merely performing support functions (eg, word processing or traditional dictation software) to now autonomously perform legal service functions. In these circumstances, it may become necessary to re-examine the rules around adequate supervision of non-licensees, and to consider their application to non-person entities.'

The Task Force report goes on to recommend potential approaches the LSO should consider taking on the topic of legal tech like AI, including, among other things, amending professional conduct rules and improving guidance and practice resources on the topic.²⁵⁵ This illustrates the role that the governing bodies of Canada's legal profession can play on this topic.

Aside from the LSO, the FLSC and some of Canada's other law societies have similarly engaged in discussion, ethical guidance and education on the topic.²⁵⁶ For example, in 2023, the FLSC held a conference on the topic of 'Regulating Legal Services in the Age of AI', fuelling discussion and education on the topic in the legal sector.²⁵⁷

251 Model Code of Professional Conduct at rule 3.1-2, Commentary [4A] (Federation of Law Societies of Canada), <https://flsc-s3-storage-pub.s3.ca-central-1.amazonaws.com/Model%20Code%20Oct%202022.pdf>.

252 *Technology Task Force Report* (Law Society of Ontario, 2019).

253 *Technology Task Force Report* (Law Society of Ontario, 2019).

254 *Technology Task Force Report* (Law Society of Ontario, 2019).

255 *Technology Task Force Report* (Law Society of Ontario, 2019).

256 *The Generative AI Playbook: How Lawyers Can Safely Take Advantage of the Opportunities Offered by Generative AI* (Law Society of Alberta), www.lawsociety.ab.ca/resource-centre/key-resources/professional-conduct/the-generative-ai-playbook/ accessed on 30 April 2024.

257 *Fall Schedule* (Federation of Law Societies of Canada), <https://meet2023.flsc.ca/fall-schedule/> accessed 21 April 2024.

In late 2023, the Law Society of British Columbia released its Guidance on Professional Responsibility and Generative AI, which provides guidance to lawyers on compliance with various professional duties related to, for example, confidentiality, honesty and candour, competence and information security, in light of the increased adoption of AI tools in legal practice.

Finally, the Canadian Bar Association (CBA) has published guidelines on ethics and technology. The CBA guidelines include *Practising Ethically with Technology* (2014), *Legal Ethics in a Digital World* (2015) and *Legal Ethics in a Digital Context* (2021).²⁵⁸

258 *Legal Ethics in a Digital Context* (Canadian Bar Association), www.cba.org/getattachment/Sections/Ethics-and-Professional-Responsibility-Committee/Resources/Resources/Legal-Ethics-in-a-Digital-Context/LegalEthicsInaDigitalContext.pdf accessed 21 April 2024.