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FAMILY LAW

Using AI safely in family law

As more family lawyers embrace the potential of an AI-assisted practice, **Michael McKiernan** looks at how they can protect themselves

FOR MANY family lawyers, Fraser MacLean's first encounter with artificial intelligence would have been enough to put them off incorporating the emerging technology in their own practice.

As counsel for the claimant in *Zhang v. Chen*, his team at MacLean Law helped uncover fake cases in a court filing by the respondent that ChatGPT had hallucinated. The subsequent ruling by BC Supreme Court Justice David Masuhara, in which he held MacLean's opposing counsel personally liable for costs, went viral in legal circles in Canada and worldwide.

"Before then, I had little or no experience with AI," MacLean says.

With that spectacularly vivid cautionary tale in mind, MacLean has spent the 18 months or so since experimenting extensively with various AI tools – including legally focused services such as Lexi and other programs with a broader reach – to increase the efficiency of his practice.

In addition to routine tasks such as proof-reading and producing document summaries, MacLean has also begun integrating AI into his litigation preparation process. He bounces around ideas for examining key witnesses or seeks input before a court appearance before a judge, whether at trial or in chambers.

"The other week I ran through my submissions and asked [AI] for the 10 questions a judge is likely to ask me on them. It spat out some pretty good points," he says. "AI may



not say what you want it to say, and you don't have to use it. However, there could be pieces of it that are helpful and brilliant."

Ontario lawyer Russell Alexander was a much earlier adopter of AI and has even authored a book on the subject, documenting the impact of the technology on every aspect of family law practice, from marketing and client intake to the drafting of pleadings and financial briefs.

"I went all-in on AI early on. I think it's an exciting opportunity for the legal profession," Alexander says.

As the technology continues to develop, it's becoming harder for family lawyers to ignore it, he adds.

"Everyone has a foot in the game, and all the major legal service providers have some sort of AI assistant, depending on whatever their niche market is. We're seeing a flood of

software companies claiming they can make your job more efficient," Alexander says.

In fact, as the Nova Scotia Barristers' Society warned in its recently released *AI Guide*, lawyers may even be using AI without realizing, noting, for example, that "Microsoft Copilot is now automatically enabled in Microsoft 365, and Adobe Acrobat requires users to manually disable AI Assistant."

Although family law is not the only area dealing with legal AI, it has been prominent in bringing it to public attention. Soon after BC's *Chen* case, Ontario's family law practitioners got their own AI wake-up call in the divorce case of *Ko v. Li*, when Justice Fred Myers ordered a

show-cause hearing for possible contempt by the applicant's counsel after she cited hallucinated cases in a factum. The same judge later dismissed the hearing, acknowledging the lawyer's immediate apology and the "public shaming" she had endured in the meantime.

At family law boutique Crossroads Law in Vancouver, founder Marcus Sixta explains that it's impossible to say whether family lawyers are uniquely vulnerable to the dangers of AI.

"That would be pure speculation, but what I would say is that family law is an area that can



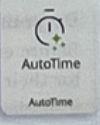
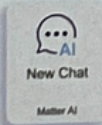
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Fraser MacLean, MacLean Law



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