

## Insights

# FAKE LEGAL AUTHORITIES – AI HALLUCINATION OR PROFESSIONAL NEGLIGENCE?

May 13, 2025

## SUMMARY

Artificial intelligence (“AI”) has the potential to make significant changes to various aspects of the practice of law. It is possible that many lawyers will incorporate AI in doing legal work, one way or the other and to some degree or other, in the foreseeable future.

However, while AI is a powerful tool at lawyers’ disposal, work generated by AI can contain errors, and AI has the potential to “hallucinate”, i.e. make up false information or something that does not in fact exist.

In two recent court cases in Canada and the UK, the lawyers submitted to the courts case authorities that did not exist, leading the other side’s lawyers and the court to suspect that those cases had been (mis-)generated by the use of AI.

## KO V LI

In the recent Canadian<sup>[1]</sup> case of *Ko v Li* (2025 ONSC 2766)<sup>[2]</sup>, the lawyer involved faced contempt of court sanctions for submitting and relying on cases that did not exist.

This case involved matrimonial applications.

In the “factum” (i.e. written arguments) and oral submissions made by the counsel for the applicant, several “Canadian court cases” were relied upon. However, the judge in that case raised several issues about those “cases”:

1. The hyperlink to one case directed the reader to another unrelated case, which had nothing to do with the issue at hand.
2. The hyperlink to another case took the reader to an error message which read “404 Error - Page not found”.

3. Another case, when reviewed and analysed, reached a conclusion opposite to what had been submitted by the applicant's counsel in reliance on it.
4. The hyperlink of one case (Case A) directed the reader to another case (Case B). Case B was unrelated to the issue at hand, and Case A did not exist.

The judge observed that the applicant's factum seemed similar to one which had been drafted by generative AI, like ChatGPT, which sometimes creates fake legal citations, i.e. "hallucinations". The judge therefore noted that it appeared that the factum "*may have been created by AI*" and the applicant's counsel "*might not have checked to make sure the cases were real or supported the propositions of law which she submitted to the court*". When questioned by the judge as to whether her factum had been prepared by AI, the applicant's counsel replied that "*her office does not usually do so but that she would have to check with her clerk*". However, the applicant's counsel was unable to provide the citations to the cases referred to in her factum, or provide copies of those cases from the printed papers or publications.

This unsatisfactory state of affairs led the judge to reiterate several cardinal duties of lawyers, including the fundamental duty not to mislead the court, and the duty to read cases before submitting them to a court as precedent authorities.

Concluding that the applicant's counsel may have committed grave breaches of her duties, the judge ordered her to show cause why she should not be cited for contempt.

## **R V THE LONDON BOROUGH OF HARINGEY**

A similar situation occurred in the English<sup>[3]</sup> case of *R (on the application of Frederick Ayinde) v The London Borough of Haringey* [2025] EWHC 1040 (Admin)<sup>[4]</sup>.

This case involved a judicial review by a homeless person (the claimant) against the London Borough of Haringey (the defendant). An important issue before the court was a wasted costs application made by the defendant against the solicitor's firm and counsel acting on behalf of the claimant.

In support of its wasted costs application, the defendant relied on the fact that the claimant's solicitors and counsel had referred to five "fake cases" (including one Court of Appeal "case") before the court, but had refused to produce copies of those "cases" when requested by the defendant.<sup>[5]</sup>

The defendant's counsel suggested that the fake cases had been referred to the court because the claimant's counsel must have (mis)used AI. The court refrained from making a finding on this point, because the claimant's counsel "*was not sworn and was not cross examined*". However, regardless

of whether AI was used, it was undisputed that the claimant's counsel had put forward fake cases in her submissions.

As such, the court concluded that the claimant's legal team had acted in an improper, unreasonable or negligent manner. In particular, the court was very critical of the claimant's legal team who had asserted that their putting forward the fake cases was caused merely by "*cosmetic errors*". The court also concluded that providing fake descriptions of five fake cases clearly qualified as professional misconduct.

The court ordered both the claimant's solicitors and counsel to pay wasted costs, and ordered that the transcripts of the proceedings be sent to the relevant professional bodies.

## CONCLUSION

While on a basic level the two cases serve to highlight the potential for AI's failings, they also serve as very timely reminders of lawyers' professional duties.

These two cases serve as cautionary tales that, while AI is a potentially powerful tool, like any other tool it requires human oversight and checking.

"Checking", as regards legal research for case authorities, means that both the existence of the source and the contents of the source must be checked. As illustrated above, there are instances where AI might hallucinate about non-existent cases, and there are instances where AI might refer to an actual precedent case but then summarise that case erroneously and misrepresent its relevance.

See also BCLP's recent article on the [Ciarb Guideline on the Use of AI in Arbitration \(2025\)](#), which provides guidance to different stakeholders on the use of AI in the context of arbitration proceedings.

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[1] In the Ontario Superior Court of Justice.

[2] Date of release: 6 May 2025.

[3] In the High Court of Justice, King's Bench Division, Administrative Court.

[4] Date of hearing: 3 April 2025.

[5] Another ground of the wasted costs order application was that the Claimant's solicitors and counsel misrepresented to the court as to whether a statutory provision imposed a mandatory or discretionary duty on the defendant to provide housing.

## RELATED CAPABILITIES

- Litigation & Dispute Resolution
- Business & Commercial Disputes
- International Arbitration

## MEET THE TEAM



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