

Federal Court



Cour fédérale

NOTICE TO THE PARTIES AND THE PROFESSION
The Use of Artificial Intelligence in Court Proceedings
May 7, 2024

The Court expects parties to proceedings before the Court to inform it, and each other, if documents they submit to the Court, that have been prepared for the purposes of litigation, include content created or generated by artificial intelligence (“AI”). This shall be done by a Declaration in the first paragraph stating that AI was used in preparing the document, either in its entirety or only for specifically identified paragraphs (the “Declaration”). For greater certainty, the Declaration is only intended to notify the Court and parties so that they can govern themselves accordingly.

This Notice requires counsel, parties, and interveners in legal proceedings at the Federal Court to make the Declaration, and to consider certain principles (the “Principles”), when using AI to prepare materials filed with the Court. The Court offers below an explanation of why the Declaration and Principles are in the interests of justice, the specific type of AI to which this Notice applies, and how the Court will update its approach to the use of AI at the Court in the future.

1. Declaration for AI-Generated Content

This Notice applies to all materials that are (i) submitted to the Court, and (ii) prepared for the purpose of litigation. For greater certainty, this Notice does not apply to: (i) Certified Tribunal Records submitted by tribunals or other third-party decision-makers, or (ii) Expert reports, which the Court understands ought to require disclosure of the use of AI in the summary of methodology used under subparagraph 3(i) of the Expert Witnesses Code of Conduct as referred to in Rule 52.2 of the *Federal Courts Rules*.

The Court recognizes that AI may offer substantial benefits in the preparation of documents. However, the Court also has obligations to maintain the integrity of judicial proceedings, safeguard public confidence in the justice system, and uphold the rule of law.

To ensure that the Court understands the role AI has played in the preparation of materials for the purpose of litigation, and submitted to the Court by or on behalf of a party or intervener, such materials must include the Declaration whenever they contain content created or generated directly by AI. For clarity, a Declaration is required if content in the material was directly provided by AI, whether or not it was inserted from an external source like a web-based generative AI. However, a Declaration is not required if AI was used to merely suggest changes, provide recommendations, or critique content already created by a human who could then consider and manually implement the changes. A Declaration is required when the role AI plays in the preparation of materials for the purpose of litigation resembles that of a co-author.

The Court understands that when a member of the Bar takes over a matter as counsel from a previous lawyer or Self-Represented Litigant, it may be difficult to ascertain whether materials previously filed with the Court in connection with the matter contain content created or generated by AI. The same may be true with respect to draft materials that have been transferred to such new counsel. In these cases, it is reasonable to expect new counsel to make best efforts to ascertain whether any such content has been included in those materials, and to provide a Declaration in respect of any materials they have reason to believe *may* include such content.

The Declaration shall be made in the first paragraph of the document in question, for instance, the first paragraph of a Memorandum of Fact and Law or Written Representations. An example of the Declaration follows:

Sample Declaration

Artificial intelligence (AI) was used to generate content in this document at paragraphs 20-30.

Exemple d'une déclaration

Ce document contient du contenu créé par l'intelligence artificielle (IA) aux paragraphes 20 à 30.

2. Principles on the Use of AI

The Court recognizes that emerging technologies often bring both opportunities and challenges. Significant concerns continue to be raised regarding the use of AI in Court proceedings, including with respect to “hallucinations”¹ and “deepfakes”², the potential fabrication of legal authorities through AI, and the use of generative decision-making tools by government officials. It is incumbent on the Court and its principal stakeholders to take steps to address such concerns.

Further, the Court understands that there are both ethical and access to justice issues regarding a lawyer’s use of AI when their client may not be familiar with AI and its various applications. Before using AI in a proceeding, the Court encourages counsel to consider providing traditional, human services to clients if there is reason to believe a client may not be familiar with, or may not wish to use, AI.

The following principles are intended to guide the use of AI in documents submitted to the Court:

Caution: The Court urges caution when using legal references or analysis created or generated by AI, in documents submitted to the Court. When referring to jurisprudence, statutes, policies, or commentaries in documents submitted to the Court, it is crucial to use only well-recognized and reliable sources. These

¹ “Hallucination” is a term used to refer to facts, citations, and other content generated by AI that are not true, and have been fabricated by AI in response to a prompt or request.

² “Deepfake” is a term used to refer to AI-generated images of human subjects that either replace one person’s likeness convincingly with that of another, or that do not exist in real life.

include official court websites, commonly referenced commercial publishers, or trusted public services such as CanLII.

"Human in the loop": To ensure accuracy and trustworthiness, it is essential to check documents and material generated by AI. The Court urges verification of any AI-created content in these documents. This kind of verification aligns with the standards generally required within the legal profession.

Neutrality: The Court confirms that the inclusion of a Declaration, in and of itself, will not attract an adverse inference by the Court. Similarly, any use of AI by parties and interveners that does not generate content that falls within the scope of this Notice will not attract any adverse inference. Parties and interveners will continue to be held to the existing standards under the *Federal Courts Rules*. In this regard, the party signing a document submitted to the Court bears responsibility for the accuracy and veracity of its contents. The primary purpose for the Declaration is simply to notify the other party or parties, as well as the Court, that AI has been used to generate content.

3. Explanation of this Notice

Through consultations with the stakeholders, the Court has developed its Declaration and Principles concerning certain uses of AI, including large language models.³ The Court will continue to update this guidance periodically as the Court's understanding of AI evolves.

The Declaration requirement only applies to certain forms of AI, defined as a computer system capable of generating new content and independently creating or generating information or documents, usually based on prompts or information provided to the system. This Notice does not apply to AI that lacks the creative ability to generate new content. For example, this Notice does not apply to AI that only follows pre-set instructions, including programs such as system automation, voice recognition, or document editing. It bears underscoring that this Notice only applies to content that was created or generated by AI.

The Court recognizes that counsel have duties as Officers of the Court. However, these duties do not extend to individuals representing themselves. It would be unfair to place elevated AI-related responsibilities only on these self-represented individuals, and allow counsel to rely on their duties. Therefore, the Court provides this Notice to ensure fair treatment of all represented and self-represented parties and interveners.

The Court recognizes both the risks and benefits of AI, and the potential for bias in AI programs, their underlying algorithms, and data sets. The Court also recognizes that counsel, parties, interveners and the administrative bodies whose decisions they may challenge may increasingly rely on - or be impacted by - AI.

This guidance has benefited from feedback received from various stakeholders. The Court is committed to full transparency and continuing consultations with respect to future iterations of this Notice through the Court's *Artificial Intelligence Working Group*. That group consists of members of the Court, members of the Bar, experts on AI in law, law clerks and other interested stakeholders.

³ The term "large language model" refers to a type of AI capable of processing and generating human-like text based on vast amounts of training data.

For its part, the Court will not use AI, and more specifically automated decision-making tools, to make its decisions or render its judgments, without first engaging in public consultation. For more information, please consult the [*Interim Principles and Guidelines on the Court's Use of Artificial Intelligence*](#).

Paul S. Crampton
Chief Justice