Editor's Note
ESSAR Insurance Services Limited, Managers of the Professional Indemnity Scheme in collaboration with Panel Solicitors **Reynolds Porter Chamberlain**, issue this quarterly bulletin to highlight risk management issues learned from their handling of claims.

GENERATIVE AI IN LEGAL PRACTICE – RISKS AND TIPS

Generative AI and Use in the Legal Profession

Generative AI ("**Gen AI**") is a subset of artificial intelligence ("**AI**") that uses advanced machine learning models to generate tailored content such as - text, image, video, code or other media by identifying patterns across vast datasets.[1] According to LexisNexis' "*2025 Generative AI and the Hong Kong Legal Profession Survey Results*", 69% of the legal practitioners surveyed reported having used Gen AI in their practice.

Key Risks of Using Gen AI

According to the England and Wales' Bar Standards Board: "*AI, while a promising tool, is not a replacement for human responsibility and oversight. A lawyer is answerable for their research, arguments, and representations under their core duties to the Court and to their client. These duties continue to hold true when utilising AI*".[2] Practitioners should be mindful of the following risks.

1. Hallucinations

Hallucinations are when Gen AI creates outputs that appear credible, but are false, inaccurate or misleading. For example, in *Yu Hon Tong Thomas v Centaline Property Agency Limited*,[3] the Court criticised the self-represented claimant for preparing his appeal application using AI-generated content that was devoid of any factual or legal basis, and unsupported by substantive evidence. Similarly, the Court in *Licksun Company Limited v Occupiers of Lot No. 552 in D.D. 85, New Territories, Hong Kong & Yeung Chui Ping* criticised the litigant in person for lodging "*suspicious authorities*" in submissions, most of which were found to be fictitious.[4]

More concerning still, in *R. (on the application of Frederick Ayinde) v Haringey London Borough Council*,[5] a junior barrister admitted to using AI-generated summaries of online search results when drafting her grounds for judicial review, which included five non-existent cases. The Court emphasised that lawyers should clearly understand the risks of using AI without cross-checking results against authoritative sources.

Increasingly, law firms are developing or subscribing to proprietary AI models, which are custom-built models under their exclusive control and ownership. By fine-tuning these models with legal-specific datasets, the proprietary AI models have demonstrated that they can outperform and achieve higher levels of accuracy than generic models trained on public data, which could mitigate the risk of hallucination.

2. Confidentiality

Confidentiality concerns arise at three stages when using Gen AI: (i) inputs – the data and information fed into Gen AI; (ii) prompts – queries or instructions given to Gen AI; and (iii) outputs – Gen AI's responses to prompts.

The use of Gen AI may involve inputting confidential information into the system. This poses a threat to client confidentiality and may constitute a breach of a solicitor's professional duty; particularly, if the Gen AI platform retains such inputs as part of its training data.

3. Legal Professional Privilege

The use of Gen AI creates new categories of documents, such as prompts and AI-generated outputs, that may not be covered under the existing law of privilege.

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[1] Paragraph 1.1, Hong Kong Generative Artificial Intelligence Technical and Application Guideline, Digital Policy Office, April 2025
[2] ChatGPT in the Courts: Safely and Effectively Navigating AI in Legal Practice, England and Wales' Bar Standards Board, October 2023
[3] Paragraph 40, [2025] HKCFI 808
[4] Paragraph 3, [2025] HKDC 1287
[5] Paragraph 69, [2025] EHWC 1383 (Admin)

Inputting privileged client information into Gen AI may also constitute disclosure to a third party. This could result in an inadvertent waiver of legal professional privilege.

Another challenge is that many Gen AI uses involve generating internal content not communicated to the client. Under the *"working papers"* rule, such documents will generally only attract privilege if they betray or "*give a clue*" as to the trend of legal advice being given to the client.[6] In other words, privilege arises only where the documents disclose details as to the instructions supplied and advice given by the solicitors to clients.[7]

Guidance on Use of Gen AI – Summary

While the *Hong Kong Solicitors' Guide to Professional Conduct* does not yet contain specific provisions on the use of AI, it sets out general professional obligations that apply to all forms of legal work. Relevantly, it includes: (i) overriding duty to the Court (SG1.01 and 10.03); (ii) using information communication technology in compliance with all applicable laws, guidelines and practice directions (SG1.07); (iii) principal with ultimate responsibility for work carried out during their practice (SG2.03); (iv) duty to act competently in performing any legal services (SG5.03, 5.12, 5.18 and 6.01); and (v) duty of confidentiality (SG5.13 and 8.01).

The Law Society of Hong Kong (the "**Law Society**") has also published a position paper offering specific guidance on the impact of AI on the legal profession and its professional duties.[8]

Potential Consequences of Misusing Gen AI

Improper use of Gen AI can lead to serious consequences, including:

- Sanctions by the Court: the Court may order indemnity costs against the party relying on inaccurate or non-existent, AI generated authorities.[9] Solicitors may be personally liable for wasted costs orders. In serious cases, the Court may initiate criminal contempt proceedings against a person that deliberately includes fake citations in legal submissions.[10]

- Investigations / Disciplinary Proceedings by the Law Society: Solicitors may face disciplinary proceedings brought by the Law Society for professional misconduct and breach of solicitors' duties.

- Breach of duties to the client: Solicitors may face professional negligence claims from clients if they rely on inaccurate or misleading content generated by AI; particularly, when such reliance results in financial loss.

- Distrust of the public: Practitioners misusing Gen AI may undermine the integrity and reliability of legal proceedings, which can diminish public confidence in the justice system.[11] There is also a risk of serious reputational harm to the individual practitioner, the firm and the wider profession.

Practical Tips for Effective Use of AI and Risk Management

1. What practitioners should do

- Remove confidential or sensitive information from inputs or prompts before entering into Gen AI unless confidentiality can be secured e.g. firm-specific in-house AI tools
- Respect client privacy, inform clients in advance on the potential use of Gen AI during the onboarding process, such as incorporating appropriate language in the engagement letter
- Conduct checks on terms of service level agreement(s) as to whether the client (i) prohibits the use of AI; (ii) requires explicit consent for AI use and to disclose such use; and (iii) permits the use of client data for AI training
- Ensure chat logs and AI work product is not saved for longer than necessary and regularly review the AI tool's data retention settings

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[6] Paragraphs 102, 107, *The RBS Rights Issue Litigation* [2016] EWHC 3161 (Ch)
[7] Paragraphs 1056-1080, Division VIII Confidentiality and Legal Professional Privilege - Professional Conduct of Lawyers in Hong Kong
[8] Position Paper of the Law Society: The Impact of Artificial Intelligence on the Legal Profession, January 2024. The Judiciary has also issued its own "*Guidelines on the Use of Generative Artificial Intelligence for Judges and Judicial Officers and Support Staff*" that practitioners may take reference from
[9] Ibid 4 at paragraphs 30 and 32
[10] Ibid 5 at paragraphs 26-28
[11] SJ's address at Ceremony for Admission of New Senior Counsel, Department of Justice, June 2025

- Check the accuracy of research by reference to authoritative sources, before using it in the course of professional work
- Verify and maintain human oversight and avoid solely relying on and copying AI generated results
- Document the source trail in case of regulator or court enquiry
- Keep up to date with the Law Society information and guidance, e.g. The Secretariat's monthly articles in the "Hong Kong Lawyer", President's weekly letter to members and Circulars[12]

2. What partners and firm management should do

- Choose AI providers with strong compliance, transparency and audit features
- Implement firm guidelines on authorised Gen AI uses and platforms (i.e. prepare and maintain an internal "AI Policy")
- Require mandatory training on what is AI, how Gen AI works and AI models, specific use of AI in law, how to prompt AI and associated risks *before* allowing use of Gen AI
- Regularly educate and train legal teams and non-qualified staff on AI usage, limitations and risks
- Verify and supervise. Ensure supervising lawyers double-check work completed by junior staff, and all citations and source documents are collated and verified
- Ensure employees comply with rules, standards of conduct, policies and legislation
- Monitor regulatory developments by staying updated on evolving guidance from regulators and ensure timely internal dissemination of the same

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[12] For example, see The Secretariat article in "Hong Kong Lawyer", December 2024 ("Professional Obligations in the Use of Gen AI")