



AI forum

ARTIFICIAL INTELLIGENCE *and the* ADVOCATES' PROFESSION

by THE GCB'S AI COMMITTEE

INTRODUCTION

The rise of artificial intelligence (AI) has reached into almost all facets of life, including the legal profession. Whilst there are certainly a number of benefits which AI brings with it, so too are there a number of worries with its use, particularly considering the ethical obligations on counsel.

To ignore AI and its benefits would be to ignore progress and will likely result in the profession being left behind. To unquestioningly embrace AI in its current form would equally lead to disaster for the profession as it will erode the trust that the public puts in us, in the performance of our duties. Both options carry with them existential crises to which special attention needs to be paid.

WHAT IS AI?

As we understand it, AI is a combination of human intelligence and machine learning, which enables it to perform various tasks in a short amount of time. It draws knowledge from online databases to provide answers to prompts given to it by a user. In our context, this manifests itself in chatbots, such as general access platforms of ChatGPT and Grok (amongst others) and specialised platforms such as LexisNexis's Protégé.

AI has quickly turned into a research tool, used by students and professionals alike. But it does have major pitfalls.

From what we understand, the words "I don't know," are not in its vocabulary and it will try and find an answer to any question – even if this answer is littered with inaccuracies.

This is especially poignant in legal research where it is known for hallucinating on cases – which is to provide fictitious (or inaccurate) authorities to demonstrate non-existing legal principles.

A legal practitioner may (and some have already) find him/herself tempted to make use of this research verbatim when drafting under pressure, relying on the notion that due to the vast access to resources it has, the information must surely be accurate.

Such a belief could not be more perilous and, as has been demonstrated in a number of findings, courts take a grim view of references to non-existent citations, quickly retrieved via an AI prompt. A practitioner runs the risk of being reported to the Legal Practice Council, with their reputation stained forever.

Does this mean that AI can never be used at all?

We would like to pause here and reflect on what an advocate is, in the real sense.

An advocate is a legal strategist, independent thinker, problem solver, specialist researcher, and orator. This is what we've been trained on so vigorously during pupillage.

Judges place a high trust on us, believing that our legal submissions are always truthful.

We should not delegate that part of our noble profession to an AI chatbot or use it without question.

Although it can impressively assist in explaining basic legal principles and answering short questions, perhaps providing basic direction when taking on a novel matter, it always remains our duty as advocates and officers of the court to familiarise and fact-check our own work.

One possible solution to counteract undue reliance on AI is to require that the use of AI as a source should be referenced in a footnote, to be upfront that it was indeed used in obtaining such information, in the same manner as one would cite any other sources. It is immediately apparent though that policing such a policy would be nigh impossible.

AI is essentially a tool to be used with care. Doing so correctly may assist and speed up certain tasks, but over-reliance thereon to the detriment of one's own skills will put one's practice at great risk.

ABOUT THE AI COMMITTEE

The GCB had appointed the AI committee to consider the implications of AI on the profession and report to the GCB on the best practices which can be adopted by counsel moving forward.

The committee comprises of the following members:

Michael Collins SC, KwaZulu-Natal Society of Advocates;

David Eades, KwaZulu-Natal Society of Advocates;

Lulamela Mhambi, Mthatha Society of Advocates;

Brendan Smith, Pretoria Society of Advocates.

We are consulting with experts in the field and are in the process of gathering sufficient information to provide the GCB with a comprehensive understanding of the good, the bad (and possibly the ugly) of AI and its use within the profession.

Through this process we aim to articulate the various uses of AI and highlight the pitfalls of using them incorrectly. This introductory article merely aims to explore these talking points in broad strokes, with follow-up observations to follow later on.

We welcome any comment or input which members may have in the performance of our mandate. 