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## OUR PROFESSIONAL LIABILITY & REGULATION EXPERTISE

Lenczner Slaght has one of the leading professional liability practices in Canada, representing clients in diverse fields across a broad landscape of regulatory, civil and quasi-criminal matters. We defend professionals before disciplinary and regulatory tribunals and in all levels of the courts across the country. We also prosecute professional disciplinary cases for many regulatory colleges and governing bodies. In addition, we act as general counsel to several of those bodies.

# Professional Liability

*“While lawyers are permitted to leverage AI tools, we must ‘supervise’ them in the same manner as we would a non-licensee to ensure compliance with professional obligations.”*

## What was the most interesting development of 2024, and why?

The increasing adoption of generative artificial intelligence was an important theme in 2024.

Professionals have embraced this technology and are reaping initial rewards. Health professions, for example, have recently seen growth in the use of AI-scribes, which summarize clinical encounters in detailed notes. These tools show potential to improve efficiency and reduce the administrative burdens faced by professionals. Professional service firms, including law firms, are integrating AI-powered document management, research, and composition tools into practice.

Professional regulators across industries have taken notice of AI adoption and are providing preliminary guidance to members. For example:

- The Chartered Professional Accountants of Ontario published a [case study](#) highlighting the risks presented by “hallucinations” – a phenomenon in which AI generates outputs that are not factual or reliable. CPAO reminds its members to fact-check AI-generated outputs.
- The College of Physicians and Surgeons of Ontario provided [advice](#) to physicians on the use of AI-scribes. This guidance specifically highlights the need to obtain patient consent for the use of these tools, review AI-generated notes for accuracy, and maintain patient privacy.
- The Law Society of Ontario issued a white paper to guide lawyers on the use of generative AI. It reminds lawyers that while they are permitted to leverage AI tools, they must ‘supervise’ them in the same manner as they would a non-licensee to ensure compliance with professional obligations.

## What’s the primary takeaway for businesses from the past year?

While generative AI can provide an effective starting point in professional practice, it is important to keep a “human in the loop”.

[Zhang v Chen](#) is an important reminder to exercise caution when using generative AI. In this case, a lawyer was ordered to pay a portion of her client’s costs personally after relying on two non-existent cases “hallucinated” by ChatGPT in a notice of application. Although the lawyer withdrew these cases, Justice Masuhara ordered her to pay personal costs, reminding the profession that “... generative AI is still no substitute for the professional expertise that the justice system requires of lawyers”. Following Justice Masuhara’s decision in *Zhang*, the Law Society of British Columbia confirmed that it is investigating the lawyer’s conduct. The LSBC reminded the public that it expects lawyers “to comply with the standards of conduct expected of a competent lawyer” when using generative AI.

Professionals are entitled to integrate generative AI into their practices. The appropriate use of these tools stands to improve efficiency and work product to the benefit of the public. However, inadequate oversight in the use of AI can have significant reputational and regulatory consequences.

## What are the trends you are expecting in 2025?

We predict that in 2025, regulators and administrative tribunals will begin adopting generative AI into their processes.

Some groundwork for the use of AI by administrative bodies has already been laid at the federal level in the Treasury Board of Canada’s [Directive on Automated Decision-Making](#), which provides guidance on the steps that ought to be taken prior to incorporating AI into regulatory processes. For example, one important factor to be considered is how directly the process will impact individual rights or economic interests. A more cautious approach to the use of AI is warranted where a process will directly impact such rights and interests.

We are already beginning to see the adoption of AI-assisted automation in “back office” regulatory functions such as case-assignment and data analysis. For example, the US Securities and Exchange Commission has incorporated AI and machine learning into its process for detecting financial reporting fraud through an AI-based tool which detects anomalous patterns in the public financial reporting of corporate securities issuers.

It remains unclear whether there will be a meaningful role for AI technologies in those aspects of administrative justice that directly impact the rights and economic interests of individuals, such as tribunal decision making. However, AI-based tools will undoubtedly present regulators with many opportunities to increase efficiency in fulfilling their mandates with limited resources. The full extent of the use of generative AI in administrative law is still unfolding, and 2025 will be a year to watch.