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OUR AI EXPERTISE

The current landscape is inundated with narratives surrounding AI and its intersection with the law. As advocates focused on the future, we are able to build interdisciplinary teams and bring together subject-matter experts to address new and complex problems, like AI, for our clients.

Artificial Intelligence

"Canadian courts are open for business. They are now hearing AI disputes, and rightsholders have reason for optimism."

What was the most significant development of 2025, and why?

Canadian courts are now hearing AI disputes, and rightsholders have reason for optimism.

In 2025, rightsholders launched several proposed class actions against companies providing AI products, including Apple, OpenAI, Microsoft, Meta, Anthropic, Stability AI, and Google, primarily alleging copyright infringement. Courts have not yet certified any of these proposed proceedings. In parallel, some rightsholders have engaged Canadian courts outside the context of a class proceeding, with many defendants already contesting the jurisdiction of Canadian courts.

In November 2025, the Ontario Superior Court (Commercial List) delivered its decision in *Toronto Star Newspapers Limited v OpenAI Inc* – a watershed moment for AI litigation in Canada. Seven major Canadian media organizations, represented by Lenczner Slaght, sued OpenAI for copyright infringement, breach

of contract, and unjust enrichment over the alleged misappropriation of online content to generate and operate its commercial AI products, including ChatGPT. OpenAI moved to dismiss the case, arguing it should proceed in the United States where similar lawsuits are pending. The Court rejected this, finding that six OpenAI entities carry on business in Ontario through Canadian customers, contracts, and trademarks. The Court also dismissed OpenAI's argument that Canadian courts should defer to pending US litigation: "The fact that similar claims may arise and be pursued in two different jurisdictions that may have different laws is not a reason to block the claims in one jurisdiction from proceeding."

This matters because AI companies have relied heavily on fair use and constitutional pre-emption defences in the United States – neither of which translates easily to Canada. Canadian fair dealing is narrower than American fair use: our doctrine is limited to specific enumerated purposes in the *Copyright Act* and does not recognize transformative use as a factor potentially protecting AI training. As one Canadian court has observed, "what may be transformative, and as a result fair use in the US, may still be copyright infringement in Canada." OpenAI has appealed, but the message is clear: Canadian courts are open for business.

What's the primary takeaway for businesses from the past year?

AI assistance does not reduce responsibility; it may increase it.

In 2025, a striking pattern emerged across courtrooms and regulatory guidance: businesses need to carefully consider their responsibility surrounding the use of AI outputs. This may come as no surprise to those who followed the case in which Air Canada was held to statements its AI customer service chatbot made to a sympathetic customer seeking a modest bereavement refund.

Courts applied similar expectations in 2025, repeatedly condemning counsel's unsupervised use of AI in the context of submitting fictitious authorities. Practicing what they preach, courts established that no judge is permitted to delegate decision-making authority to a computer program regardless of its capabilities.

Beyond the courtroom, employers in Ontario are now required, as of January 1, 2026, to disclose when they use AI in publicly advertised job postings to screen, assess, or select job applicants, enabling hiring decisions to later be evaluated for fairness. This is simply the latest instance of the converging trend: Canada's Directive on Automated Decision-Making (updated in 2025) imposes accountability requirements scaled to risk level. The Office of the Superintendent of Financial Institutions' principles require explainability (how an AI model arrives at its conclusions) in financial AI decisions, and Privacy Commissioners' principles ensure AI output accuracy can be reasonably assessed and validated.

What's one trend you are expecting in 2026?

Ownership of AI-generated content.

In November 2025, an AI-generated country song topped Billboard's Country Digital Song Sales chart and accumulated millions of streams with no human performer. Billboard now reports at least one AI artist charting weekly across genres. This raises a question we've closely tracked: who owns AI-generated outputs? Canada has recognized an AI tool as a co-author of a visual work, but this registration is being challenged, with a Federal Court decision expected in 2026.

As Canadian courts weigh in, we expect that purely AI-generated outputs will be harder to protect. Regardless of industry, documented human involvement may become essential for patent or copyright protection.

Lenczner Slaght