

The risks of AI in family law and what lawyers are now seeing

By **Lorne J. Fine** and **Daniel Dominitz**

Law360 Canada (May 22, 2026, 3:02 PM EDT) -- Artificial intelligence (AI) has already had a profound impact on the Canadian justice and legal system. In the realm of family law especially — where self-represented litigants are especially prevalent — the use of AI has increased sharply.

At this stage, there's certainly no going back: when used responsibly, AI is irresistible for its ability to save vast amounts of time and resources, by performing certain tasks at blinding speed. However, there is also a flip side: its misuse, whether cavalier or deliberate, can actually *waste* the precious time of the courts, litigants and lawyers alike. Family law lawyers must be aware of the risks involved in applying AI to the practice, particularly when litigation is involved.

Turning courts into fact-checkers

Any finger-pointing can begin with (but is certainly not limited to) self-represented litigants.

Long before the AI floodgates opened, Canadian judges were already facing increased burdens associated with litigants who appeared before them without counsel. They have had to patiently provide explanations of court processes and procedural steps, and have had to offer limited guidance — all in the interests of justice. While this kind of judicial hand-holding must be carefully balanced against many other factors, it can amount to an unwarranted and incremental incursion on already-scarce judicial resources when taken to the extreme.

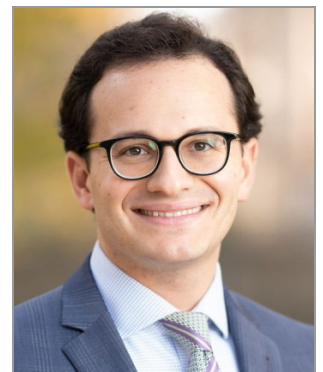
The unrestrained use of AI has only made these challenges worse. When self-represented family litigants appear before the courts with AI-generated materials in hand, it seems that judges must now scrutinize and gatekeep for false (or "hallucinated") information. More to the point, the judiciary must collectively expend time on the verification-related tasks that the litigants should have done themselves — or worse: it must educate them on their basic duties to the courts.

As just one example, in the decision of *Ng (Re)*, 2026 ONSC 1418, the judge dedicated several paragraphs to explaining the self-represented litigant's responsibilities when using AI-generated content in court-filed materials. This included references to sections from the *Rules of Civil Procedure*, and to various court-issued practice directions dedicated to the topic of AI use in court proceedings. At the conclusion of this impromptu "lesson," the judge wrote that the litigant "can no longer plead ignorance of the implications of using AI improperly in future matters, including having Courts finding him to be in contempt."

Likewise, in *X.L. v. Z.L.*, 2025 ONSC 5880, the two self-represented litigants had filed materials with the court that included hallucinated cases. In the subsequent ruling, the judge promptly declared this to be an abuse of process, and went on to painstakingly identify the various references that had been proven to be inaccurate.



Lorne J. Fine



Daniel Dominitz

The judge provided the litigants with an opportunity to address the issue at the costs stage, which they failed to do. At the cost hearing (*X.L. v. Z.L.*, 2026 ONSC 347), the parties did not even acknowledge, much less take responsibility for, their misstep, even though it had prompted what the judge called a “wild goose chase” by the court and opposing lawyers, who had tried to verify the litigants’ non-existent authorities. The judge imposed a \$500 costs order on each party.

The ripple effect of lawyers’ AI misuse

Self-represented litigants are certainly not alone in misusing AI. But when it comes to similar conduct by lawyers, the considerations are a little more nuanced. As before, courts that receive lawyers’ inaccurate materials are unwillingly thrust into the same gatekeeping role; however, additional concerns then arise over whether the blameworthy lawyer has fallen short of his or her professional responsibilities, and whether there has been a breach of duty to the court itself. This can trigger multiple proceedings in an already-stretched justice system.

Case in point: In the now-notorious Ontario case of *Ko v. Li*, 2025 ONSC 6785, a lawyer was found to have unknowingly tendered materials to the court that contained hallucinated case references. She first blamed her staff, but ultimately admitted that she alone had prepared the materials using ChatGPT. She deliberately misled the court out of embarrassment, and out of fear for the consequences.

In the course of subsequent contempt proceedings, the court ultimately denounced what it called her “deception of the court” — but not before initiating a cascade of procedural, prosecutory and regulatory processes. These began with a mid-trial motion hearing to allow the court to investigate whether the cited cases indeed existed; this was followed by court-initiated contempt proceedings, prefaced by a dedicated case conference and initial show-cause hearing.

Since the lawyer had misled the court by perpetuating her admitted lie during the first contempt proceeding, a second contempt proceeding was launched to address new obstruction-of-justice accusations. Carriage of the matter was referred to the Attorney General of Ontario, Crown counsel was called in to prosecute the contempt and *amicus curiae* were appointed to assist with ensuring procedural fairness. The Law Society of Ontario also launched a separate investigation into the lawyer’s conduct, to be assessed from the standpoint of integrity and professional responsibility.

Are traditional remedies sufficient?

In the words of one court, a litigant’s reliance on unverified AI sources may well “lead to a miscarriage of justice” and to inaccuracy that also misleads the Court and results in the waste of scarce resources, both judicial and those of the opposing party (*Arora v. Canadian National Railway*, 2026 FC 82).

But the corollary problem is how courts should use their discretion to properly *redress* it.

One available remedy is court-imposed costs. In the family law case of *Saroya v. Reddy*, 2025 ABCA 322 and *Saroya v. Reddy*, 2026 ABCA 20, it was discovered that nearly half the cases in the *factum* filed by a lawyer were hallucinations. Compounding the matter was the lawyer’s lackadaisical approach to investigating the matter when confronted by opposing counsel, who was left to “search for cases that do not exist and address this issue in its initial *factum*,” as the Appeal Court noted.

The offending lawyer also tried to refile the *factum* with substantive (rather than cosmetic) changes, which required guidance from the case management officer and required a supplementing *factum* from the opposing counsel in response. The lawyer was ordered to personally pay costs of \$17,500, for the extra costs incurred.

Particularly when the offending party is a lawyer, courts can also take the exceptional measure of awarding *special costs*, levied on a personal basis. This option was the focus in *Zhang v. Chen*, 2024 BCSC 285, which started as a family law dispute over parenting time. The matter digressed into a side dispute over whether the lawyer for one of the parties should be personally responsible for paying such special costs, since in her filed materials she was discovered to have referenced two hallucinated cases in support of her client’s position. According to the opposing lawyer, this was not only an egregious affront to the court, but it also required him to expend added effort and expense to

determine whether the cited cases existed or not.

Although the court ultimately declined to impose a special costs award (finding the lawyer's conduct was not sufficiently egregious to invoke that extraordinary sanction), it did expressly recognize that the "insertion of the fake cases and the delay in remedying the confusion they created, opposing counsel has had to take various steps they would not otherwise have had to take." Applying its Rules-based discretion to remedy costs incurred without reasonable cause or through neglect, the court ordered the lawyer to personally bear the cost of the other lawyer's added expense and effort.

Conclusion

It is clear that AI in the legal system cannot be ignored and that it has many benefits. The upshot of AI's emergence as a legal tool is that it creates many opportunities for self-represented parties and lawyers to prepare and present their cases more efficiently, leading to cost and practice management efficiencies. However, without proper tools and safeguards in place, incorporating and relying on AI can lead to unintended consequences, with serious repercussions on all participants in the legal system.

Lorne J. Fine is the principal of Fine & Associates Professional Corporation in Toronto, where his practice is dedicated exclusively to family and divorce law. He has over 30 years of experience representing clients in complex family law matters. Lorne is a qualified arbitrator (Q.Arb) with additional training in negotiation, collaborative law and mediation. He has been regularly featured in media on family law issues, including appearances on Global Television, CHCH and as a recurring legal contributor on AM740's Goldhawk Fights Back.

Daniel Dominitz is a lawyer at Fine & Associates with a focus on family law. Daniel's practice is devoted to all aspects of family law, including divorce, custody and access, child and spousal support, and separation agreements. Daniel has extensive litigation experience, including appearing before the Ontario Court of Justice, the Superior Court of Justice and Ontario Court of Appeal. In addition to representing clients in litigation, Daniel frequently relies on alternative dispute resolution methods to assist clients in resolving their matrimonial matter.

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