

Windsor Yearbook of Access to Justice Recueil annuel de Windsor d'accès à la justice



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Volume 40, 2024

URI: <https://id.erudit.org/iderudit/1115371ar>

DOI: <https://doi.org/10.22329/wyaj.v40.9191>

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Publisher(s)

Faculty of Law, University of Windsor

ISSN

2561-5017 (digital)

[Explore this journal](#)

Cite this article

Ogunde, F. (2024). Generative AI and Access to Justice in Canada: The Case of Self-Represented Litigants [SRLs]. *Windsor Yearbook of Access to Justice / Recueil annuel de Windsor d'accès à la justice*, 40, 211–228.
<https://doi.org/10.22329/wyaj.v40.9191>

Article abstract

This article examines generative AI's influence from the perspective of SRLs, exploring the potential and limitations of Large Language Model [LLM] usage by this category of litigants. The paper argues that LLMs can play a significant role in enabling SRLs present decent cases in court and effectively participate in legal proceedings. However, the inherent deficiencies in LLMs may mean that LLMs do more harm than good to the cause of SRLs, particularly those who lack any form of legal training or knowledge. Ultimately, the ability of SRLs to properly harness the potential of LLMs will depend more on the literacy and understanding of SRLs rather than the availability of the technology.

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Generative AI and Access to Justice in Canada: The Case of Self-Represented Litigants [SRLs]

Fife Ogunde*

This article examines generative AI's influence from the perspective of SRLs, exploring the potential and limitations of Large Language Model [LLM] usage by this category of litigants. The paper argues that LLMs can play a significant role in enabling SRLs present decent cases in court and effectively participate in legal proceedings. However, the inherent deficiencies in LLMs may mean that LLMs do more harm than good to the cause of SRLs, particularly those who lack any form of legal training or knowledge. Ultimately, the ability of SRLs to properly harness the potential of LLMs will depend more on the literacy and understanding of SRLs rather than the availability of the technology.

Cet article examine l'influence de l'intelligence artificielle (IA) générative sous l'angle des plaideurs non représentés [PNR], en examinant le potentiel et les limites de l'utilisation, par cette catégorie de plaideurs, des grands modèles de langage [GML]. L'auteur soutient que les GML peuvent jouer un rôle de premier plan en permettant aux PNR de soumettre une cause acceptable aux tribunaux et de prendre part de manière efficace à une instance judiciaire. Cependant, à cause de leurs lacunes inhérentes, ces modèles font plus de tort que de bien à la cause des PNR, notamment ceux qui n'ont suivi aucune formation en droit ou qui n'ont aucune connaissance dans ce domaine. En fin de compte, la capacité des PNR d'exploiter comme il faut le potentiel des GML dépendra davantage de leur degré de savoir que de la disponibilité de la technologie.

I. INTRODUCTION

Generative Artificial Intelligence [Generative AI],¹ particularly since the introduction of ChatGPT by OpenAI in November 2022, has translated into a major topic of discussion in legal circles, with discussion primarily focused on its impact on lawyers and law practice in general. For the most part, the discussion has oscillated between concern regarding the ethical risks associated with its use and its potential to astronomically increase efficiency in law practice.² However, comparatively little examination has been

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¹ Interchangeably used with Large Language Models (LLMs) in this article.

² See generally Allen Rodriguez, "How ChatGPT Is Revolutionizing the Role of Lawyers" (2023) 37:2 Commercial Law World Magazine 42; Kwan Yuen lu & Vanessa Man-Yi Wong, "ChatGPT by OpenAI: The End of Litigation Lawyers?" (2 February 2023), online: SSRN <ChatGPT by OpenAI: The End of Litigation Lawyers? by Kwan Yuen Iu, Vanessa Man-Yi Wong>; Amy Salyzyn, "The ChatGPT Lawyer: Promises, Perils and Practicalities (23 February 2023), online: SLAW <The ChatGPT Lawyer: Promises, Perils, and Practicalities – Slaw> [Salyzyn, "Promises"]; Andrew Perlman, "The Implications of ChatGPT for Legal Services and Society" (last visited 6 June 2024, online: <http://ala-

conducted into the possible impact of generative AI on another category of participants in the legal system—self-represented litigants [SRLs].³ This article examines generative AI’s influence from the perspective of SRLs, exploring the potential and limitations of Large Language Model [LLM] usage by this category of litigants. Part II briefly highlights SRLs in Canada, acknowledging the limitations and controversies in defining them, particularly because SRLs cut across various spectrums of society. Part III is a brief overview of the introduction of LLMs in the legal profession, using ChatGPT as a primary case reference, partly given its notoriety and accessibility to SRLs. Part IV evaluates the potential contribution of LLMs to the activities of SRLs in legal proceedings as well as the limitations that may be encountered by SRLs. While LLMs can significantly aid the cause of SRLs in presenting decent cases for determination, the influence of market forces in the development and distribution of LLMs may hinder access by SRLs to the more “bespoke” LLMs suited for legal proceedings. Inherent deficiencies in these systems may also hinder rather than aid the cause of SRLs who may be more reliant on the output of these technologies than those with specific legal training. This article ultimately concludes that the significance of LLMs to the cause of SRLs is more dependent on the literacy and understanding of the SRLs than the availability of such technology.

II. WHO ARE CANADIAN SRLS?

Defining the characteristics of SRLs in Canada is hardly a straightforward task. A number of empirical studies have suggested the following: an increase in number of SRLs over the last five years; SRLs are mostly involved in family law proceedings; proceedings involving SRLs are lengthier and more complex; and SRLs experienced reduced success because they find law and litigation difficult.⁴ SRLs have been

presentations.s3.amazonaws.com/2023+Files/ELS/Andrew+Perlman+article.pdf>; Natalie Pierce & Stephanie Goutos, “Why Lawyers must Responsibly embrace Generative AI” (2024) 21:2 Berkeley Business LJ, online: SSRN <Why Lawyers Must Responsibly Embrace Generative AI by Natalie Pierce, Stephanie Goutos :: SSRN>. For empirical research on the adoption and effect of generative AI in law practice, see LawPay, “Legal Industry Trends Report 2024”, online: <LawPay 2024 Legal Industry Trends Report | LawPay x MyCase>; LexisNexis, “International Legal Generative AI report” (22 August 2023), online: <<https://www.lexisnexis.com/pdf/lexisplus/international-legal-generative-ai-report.pdf>>; Thomson Reuters Institute, “ChatGPT and Generative AI within Law Firms” (2023), online, <2023-ChatGPT-Generative-AI-in-Law-Firms.pdf (thomsonreuters.com)> at 9.

³ Those who represent themselves in legal proceedings.

⁴ See generally R Birnbaum, LD Bertrand & N Bala “The rise of Self-Representation in Canada’s family law courts: The complex picture revealed in Surveys of Judges, Lawyers and Litigants” (2013) 91:1 Can Bar Rev 67; R Birnbaum & N Bala, “Views of Ontario Lawyers on Family Litigants Without Representation” (2012) 63 UNBLJ 99; LD Bertrand et al, “Self-Represented Litigants in Family Law Disputes: Views of Alberta Lawyers (December 2012), online: Canadian Research Institute for Law and the Family <content (ucalgary.ca)>; Rachel Birnbaum, Michael Saini & Nicholas Bala, “Growing concerns about the impact of Self-Representation in Family Court: Views of Ontario Judges, Children’s Lawyers and Clinicians” (2018) 37:2 Can Fam LQ 121; John-Paul E Boyd & Lorne D Bertrand, “Comparing the views of judges and lawyers practicing in Alberta and in the Rest of Canada on Selected Issues in Family Law: Parenting, Self-Represented Litigants and Mediation (2016), online: Canadian Research Institute for Law and the Family <Comparing the Views of Judges and Lawyers Practicing in Alberta and in the Rest of Canada on Selected Issues in Family Law: Parenting, Self-represented Litigants and Mediation | CanLII> David Lundgren, “Inaccessible Justice: A qualitative and quantitative analysis into the Demographics, Socioeconomics and Experiences of Self-Represented Litigants”, (2023) online, University of Windsor, Faculty of Law <Inaccessible Justice: A qualitative and quantitative analysis into the Demographics, Socioeconomics, and Experiences of Self Represented Litigants (uwindsor.ca)>.

grouped into various overlapping categories which include among others; low income SRLs, SRLs unable to find a lawyer and in the minority, well-educated SRLs who distrust the legal profession.⁵ These findings and indeed other stereotypical representations have been called into question in other research, in particular, research conducted by Donald Netolitzky on SRL appellant activity at the Supreme Court of Canada.⁶ The counter-narrative insists that the identity and actions are essentially unknown and questioning the data grounding the aforementioned perceptions regarding SRLs.⁷ Controversies regarding the exact characteristics and demographic of Canadian SRLs aside, one can at the very least conclude that there are certain categories of litigants in the Canadian legal system who, for various reasons, represent themselves in legal proceedings. Furthermore, while the available research may not be conclusive for all categories of SRLs, it is representative of the specific data subjects of such research.

Empirical research on the specific demographic of SRLs is sparse and deals with relatively small sample sizes. Majority of the available information in this regard is derived from intake reports of the National Self-Represented Litigants Project [NSRLP].⁸ In the investigation conducted by the National Self-Represented Litigants Projects between July 2021 and September 2023, 44% of respondents are over 50 years of age and 32.7% were between the ages of 30 and 40.⁹ 60.3% indicated that they were the plaintiffs or petitioners in their case.¹⁰ 89.3% of respondents in the survey indicated that the other party was represented by counsel.¹¹ The Majority of the respondents also had decent to high levels of education, with about 68% having a college diploma or higher.¹² Nearly 70% of the respondents indicated having legal representation at some stage over the course of their case.¹³ Data from previous years shows consistency in these demographics.¹⁴

Empirical studies on Canadian SRLs have highlighted the fact that Canadian SRLs have diverse needs as far as access to justice is concerned. Based on insights from a study conducted by Dr. Julie Macfarlane,¹⁵ the following needs have been established: clear and practical legal information, explanation of the difference between legal information and legal advice, a different approach to legal

⁵ Trevor CW Farrow et al, “Addressing the Needs of Self-Represented Litigants in the Canadian Justice System”, (27 March 2012), online: ACCA/AAJC <Microsoft Word - Addressing the Needs of SRLs _ACCA White Paper, March 2012, Final Revised Version_.doc (fcj-fcjc.org)>.

⁶ See e.g. Donald Netolitzky, “The Walking Wounded: Failure of Self-Represented Litigants in 2017 Supreme Court of Canada Leave to Appeal Applications” (2021) 58:4 *Ata L Rev* 837 [Netolitzky, “Walking Wounded”].

⁷ *Ibid.*

⁸ For the intake reports, see Keerthi Chintapalli, “Tracking the Trends of the Self-Represented Litigant Phenomenon: Data from the National Self-Represented Litigants Project, 2021-2023” (January 2024), online: <2021-23-Intake-Report.pdf (representingyourselfcanada.com)> at 5.

⁹ *Ibid.*

¹⁰ *Ibid* at 6.

¹¹ *Ibid* at 8.

¹² *Ibid*

¹³ *Ibid* at 11.

¹⁴ *Ibid* note 8.

¹⁵ See Julie Macfarlane, “The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants” (May 2013), online: <self-represented_project.pdf (azureedge.net)>. On the subject of respect for SRLs, see also Jennifer A Leitch, “Lawyers and Self-Represented Litigants: An Ethical Change of Role” (2017) 95:3 *Can Bar Rev* 669.

services which includes non-lawyer assistance and the desire to be treated with respect.¹⁶ Other identified needs include: assistance with forms, referrals to related services, drafting of court documents and orders and preparation for court proceedings.¹⁷ SRLs are also concerned with “walking into a level playing field” before fair and trustworthy judicial officers.¹⁸ The potential and limitations of LLMs in addressing these needs will be discussed in later sections of this article.

A. Canadian SRLS and the Judiciary

As identified above, one of the identified concerns of Canadians SRLs is operating on a “level playing field” in the court system. This need is not lost on Canadian courts. In 2006, the Canadian Judicial Council adopted a statement of principles on self-represented litigants and accused persons. The statement of principles recognized the need for judges, court administrators, members of the Bar, legal aid organizations and government funding agencies to ensure self-represented persons were provided with fair access and equal treatment by the court. Participants in the justice system are saddled with a responsibility to promote opportunities for all persons to understand and meaningfully present their case.¹⁹ As a result, information required by self-represented persons should be available through the various means used by SRLs to access information including internet searches.²⁰ Under these principles, self-represented persons are expected to familiarize themselves with the relevant legal practices and procedures relating to their case.²¹ SRLs are also expected to prepare their case.²² Court administrators are also expected to provide SRLs with the assistance necessary to initiate or respond to the case.²³

These principles have been endorsed by the Supreme Court of Canada in *Pintea v Johns*²⁴ and have been considered in various circumstances by appellate courts.²⁵ In *Rahman v Windermere Valley Property Mgt. Ltd.*,²⁶ the Court of Appeal for British Columbia upheld a challenge by an SRL against a summary judgment as the trial judge, in failing to recognize the appellant’s status as an SRL, omitted to consider options for receiving her in-court statements in acceptable form.²⁷ In *Jonsson v Lymer*²⁸, the Alberta Court of Appeal allowed an appeal against a vexatious litigant order and a contempt of court sanction. In this instance, the Alberta Court of Appeal acknowledged that being self-represented did not excuse abuse of

¹⁶ *Ibid.*

¹⁷ Farrow et al, *supra* note 5.

¹⁸ Jona Goldschmidt & Loretta Stalans, “Lawyers’ Perceptions of the Fairness of Judicial Assistance to Self-Represented Litigants” (2012) 30:1 Windsor YB Access Just 139 at 158.

¹⁹ See “Statement of Principles on Self-represented Litigants and Accused Persons” (2006) Canadian Judicial Council, available at <C:\Documents and Settings\steve\Local Settings\Temporary Internet Files\Content.IE5\2XCDIHAD\Final Statement of Principles SRL (cjc-ccm.ca)> 2.

²⁰ *Ibid.*

²¹ *Ibid* at 9.

²² *Ibid.*

²³ *Ibid* at 8.

²⁴ 2017 SCC 23.

²⁵ See *Girao v Cunningham* (2020) ONCA 260; *Wright v Sun Life Assurance Company of Canada* (2019) BCCA 18; *Young v Noble* (2017) NLCA 48; *Cabana v Newfoundland and Labrador* (2018) NLCA 52; *Moore v Apollo Health Care* (2017) ONCA 383.

²⁶ 2022 BCCA 258.

²⁷ *Ibid.*

²⁸ (2020) ABCA 167.

court procedures,²⁹ but also distinguished between vexatious and self-represented litigants, noting that self-represented litigants were unfamiliar with court procedures and are inadequately or inaccurately informed about their legal rights and the limitations on such rights.³⁰ By way of assistance, Canadian Courts in certain jurisdictions also permit SRLs to be assisted by a “McKenzie Friend”.³¹ The ability of generative AI to provide assistance to Canadian SRLs will form the crux of this paper and be extensively discussed in later sections of this article. As a prelude, the next section will provide a general overview of generative AI in the legal profession.

III. GENERATIVE AI IN THE LEGAL PROFESSION: A DIFFERENT PROPOSITION

Traditional AI refers to systems designed to respond to a particular set of inputs, capable of learning from data and making decisions or predictions based on that data.³² Generative AI extends beyond traditional AI by creating new data like its training data.³³ It refers to deep-learning models able to take raw data and “learn” to generate statistically probable outputs when prompted.³⁴ Generative AI, while not creating new ideas, creates content and speech in its most basic form, making such content intelligible and useful to human beings.³⁵ Generative AI systems also learn to generate more objects to resemble the data used for its training,³⁶ and can produce a variety of novel content.³⁷

One of the most popular generative AI-models is ChatGPT.³⁸ Built on a large language model which uses deep learning to predict language and generate text in a way that mimics human activity,³⁹ ChatGPT is trained on a large dataset of texts to understand and generate human language, and is able to answer questions or write documents including patterns it has seen in the training data.⁴⁰ This dataset is developed using three primary information sources: publicly available information, licensed third party information

²⁹ *Ibid* at 15.

³⁰ *Ibid*, at 14.

³¹ A person who the court allows to assist a self-represented litigant in a hearing so the self-represented litigant can better present their case. See generally *R v Stephan* (2019) ABQB 611; *Lameman v Alberta* (2011) ABQB 396.

³² Bernard Marr, “The Difference between generative AI and traditional AI: An Easy Explanation for Anyone”, *Forbes* (24 July 2023), online: <<https://www.forbes.com/sites/bernardmarr/2023/07/24/the-difference-between-generative-ai-and-traditional-ai-an-easy-explanation-for-anyone/?sh=37a36843508a>>.

³³ *Ibid*

³⁴ Kim Martineau, “What is Generative AI” (20 April 2023), online: IBM Research <<https://research.ibm.com/blog/what-is-generative-ai>>.

³⁵ David S Levine, “Generative Artificial Intelligence and Trade Secrecy” (2023) 3:2 J Free Speech L 559.

³⁶ See Adam Zewe, “Explained: Generative AI” (9 November 2023), online: MIT News, <Explained: Generative AI | MIT News | Massachusetts Institute of Technology>.

³⁷ Gartner.com, “What is Generative AI” (last visited 4 June 2024), online: <Generative AI: What Is It, Tools, Models, Applications and Use Cases (gartner.com)>.

³⁸ Recorded as reaching 100 million active users just two months after its release. See Krystal Hu, “ChatGPT sets record for fastest-growing user base - analyst note”, *Reuters* (2 February 2023), online: <<https://www.reuters.com/technology/chatgpt-sets-record-fastest-growing-user-base-analyst-note-2023-02-01/>>.

³⁹ Michelle Mohny, “How ChatGPT could Impact Law and Legal Services Delivery” (24 January 2023), online: Northwestern University <How ChatGPT Could Impact Law and Legal Services Delivery | News | Northwestern Engineering>.

⁴⁰ Salyzyn, “Promises”, *supra* note 2.

and information provided by OpenAI users or human trainers.⁴¹ According to its creators, its training makes it possible for ChatGPT to answer follow-up questions, admit mistakes, challenge incorrect premises and reject inappropriate requests.⁴² Examples of functions ChatGPT could potentially perform include writing standard operating procedures, reviewing privacy policies, drafting client e-mails and summarizing long form content.⁴³ Additional research has suggested that ChatGPT has the potential to draft legal documents including pleadings, generate legal arguments and undertake legal research.⁴⁴ Other functions potentially exercised by ChatGPT in a legal services context include conducting due diligence, performing e-discovery and providing legal advice.⁴⁵ It should however be noted that ChatGPT currently lacks the ability to undertake legal research and analysis to the same extent as a competent lawyer.⁴⁶ Some primary challenges associated with the use of ChatGPT include potential for incorrect or misleading information, propagation of bias derived from training data, generalization, limited contextual understanding and factual inaccuracies.⁴⁷

ChatGPT has heralded the emergence of more “bespoke” generative AI software tailored to the legal profession. In January 2023, the no-code bot development company, Law Droid released a new generative AI tool, Lawdroid Co-pilot, designed to assist lawyers in performing various tasks including legal research, provision of simple summaries and drafting of legal correspondence.⁴⁸ In February 2023, Harvey AI, an Open-AI backed artificial intelligence startup, partnered with Allen & Overy, a leading international law firm to integrate its generative AI software into its practice.⁴⁹ Trained with legal and internet data, Harvey AI is built to assist with contract analysis, due diligence, litigation and regulatory compliance.⁵⁰ It can also generate insights, recommendations and predictions based on data.⁵¹ In March 2023, CaseText, a legal research service connected with the legal service provider, Thomson Reuters,

⁴¹ Micheal Schade, “How ChatGPT and Our Language Models are Developed” OpenAI, <How ChatGPT and Our Language Models Are Developed | OpenAI Help Center>.

⁴² OpenAI, “Introducing ChatGPT” (30 November 2022), online: <Introducing ChatGPT (openai.com)>.

⁴³ Rodriguez, *supra* note 2.

⁴⁴ Kwan Yuen lu & Man-Yi Wong, *supra* note 2.

⁴⁵ Partha Partim Ray, “ChatGPT: A comprehensive review on background, applications, key challenges, bias, ethics, limitations, and future scope” (2023) 3 Internet of Things and Cyber-Physical Systems 121 at 136-137.

⁴⁶ Kwan Yuen lu & Man-Yi Wong, *supra* note 2.

⁴⁷ *Supra* note 45 at 140-141.

⁴⁸ The product is currently available by request on an early-access basis (See Bob Ambrogi, “New GPT-based chat app from LawDroid is a lawyer’s ‘Copilot’ for Research, Drafting, Brainstorming and More” (25 January 2023), online: Law Sites <<https://www.lawnext.com/2023/01/new-gpt-based-chat-app-from-lawdroid-is-a-lawyers-copilot-for-research-drafting-brainstorming-and-more.html>>).

⁴⁹ See A&O Shearman, “A&O announces exclusive launch partnership with Harvey” (15 February 2023), online: <A&O announces exclusive launch partnership with Harvey - Allen & Overy (allenoverly.com)>. PwC, the global accounting firm, announced a partnership with the startup in April 2023 (See Lyle Moran, “How PwC will use generative AI to assist with legal work” (25 April 2023), online: Legal Dive <<https://www.legaldive.com/news/pwc-generative-ai-harvey-openai-legal-work-large-language-models/648569/>>).

⁵⁰ Kate Rattray, “Harvey AI: What We know so Far”, (last visited 20 June 2024), online: Clio <<https://www.clio.com/blog/harvey-ai-legal/>>.

⁵¹ *Ibid.*

released Co-Counsel, an AI legal assistant.⁵² Among other things, CoCounsel is able to extract contract data, draft legal correspondence and summarize legal documents.⁵³ In May 2023, LexisNexis, a leading legal technology provider announced the launch of Lexis+ AI, a generative AI platform trained on accurate and exclusive legal content.⁵⁴ Lexis+ AI technology features conversational search, insightful summaries and intelligent drafting capabilities. Lexis+ was made available to customers in the United States in October 2023⁵⁵ and a commercial preview was launched in Canada January 2024.⁵⁶ In the same month, NetDocuments, a document management software company, announced the launch of PatternBuilder MAX, software that includes nine applications designed to automate legal workflows.⁵⁷ Robin AI, a UK-based AI startup also released its generative AI-powered “legal assistant” in May 2023.⁵⁸ ContractPodAI, another legal technology company launched its generative AI-powered “legal co-pilot”, “Leah”, in August 2023.⁵⁹ Generative AI has also been incorporated into legal research platforms such as Westlaw.⁶⁰

Although a discussion of the impact of generative AI in the legal profession is beyond the scope of this paper, it is worth noting that its introduction has generated both positive reactions and ethical concerns.⁶¹ Initial surveys on its adoption by legal professionals suggests high actual or potential usage despite various

⁵² See “Casetext unveils CoCounsel, the Groundbreaking AI Legal Assistant powered by OpenAI Technology”, *PRNewswire* (1 March 2023), online: <Casetext Unveils CoCounsel, the Groundbreaking AI Legal Assistant Powered by OpenAI Technology (prnewswire.com)>.

⁵³ See “The Legal AI you’ve been waiting for”, *Thomson-Reuters* (last visited 20 June 2024), online: <CoCounsel | The First AI Legal Assistant, Made for Lawyers (casetext.com)>.

⁵⁴ See “LexisNexis Announces Launch of Lexis+ AI Commercial Preview, Most Comprehensive Global Legal Generative AI Platform”, (4 May 2023), online: Lexis-Nexis <<https://www.lexisnexis.com/community/pressroom/b/news/posts/lexisnexis-announces-launch-of-lexis-ai-commercial-preview-most-comprehensive-global-legal-generative-ai-platform>>.

⁵⁵ “LexisNexis launches Lexis+AI, a generative AI solution with linked Hallucination-free legal citations” (25 October 2023), online: Lexis-Nexis <<https://www.lexisnexis.com/community/pressroom/b/news/posts/lexisnexis-launches-lexis-ai-a-generative-ai-solution-with-hallucination-free-linked-legal-citations>>.

⁵⁶ See “LexisNexis Announces launch of Lexis+AI Commercial Preview in Canada and the UK, most comprehensive global legal generative AI solution” (11 January 2024), online: LexisNexis <LexisNexis Announces Launch of Lexis+ AI Commercial Preview in Canada and the UK, Most Comprehensive Global Legal Generative AI Solution | LexisNexis PressRoom>.

⁵⁷ See “NetDocuments PatternBuilder MAX Globally Available”, (24 October 2023), online: netdocuments <<https://www.netdocuments.com/press-releases/netdocuments-patternbuilder-max-globally-available>>.

⁵⁸ See Robin AI, “Meet your Legal AI assistant” (16 May 2023) online: <<https://www.robinai.com/post/copilot-your-legal-ai-assistant>>. In October 2023, this Copilot software was made available to Microsoft Word as a free add-in (See Robin AI, Press Release, “Robin AI plugs AI contract Copilot directly into Microsoft Word” (31 October 23), online: <<https://www.robinai.com/post/press-release-robin-ai-plugs-ai-contract-copilot-directly-into-microsoft-word>>.

⁵⁹ See Tom Saunders, “Legal tech teams turn to AI to advance business goals”, *Financial Times* (18 October 2023), online: <<https://www.ft.com/content/9a117ac7-29ae-43fe-b840-a04005b98799>>. The software is trained to review and redraft contracts. For more, see ContractPodAI, “Meet your New AI Legal Assistant, Leah” (last visited 6 June 2024), online: <<https://contractpodai.com/leah-ai-clm/>>.

⁶⁰ See Thomson Reuters, “Thomson Reuters launches Generative AI-Powered Solutions to Transform How Legal Professionals Work” (15 November 2023), online: <Thomson Reuters launches generative AI-powered solutions to transform how legal professionals work | Thomson Reuters>.

⁶¹ Skye Witley, “ChatGPT Tempts Big Law Despite AI Accuracy, Privacy Worries (2)”, *Bloomberg Law* (2 June 2023), <<https://www.bloomberglaw.com/news/2023/06/02/chatgpt-tempts-big-law-despite-ai-accuracy-privacy-worries-2/>>.

uncertainties.⁶² The positive outlook to generative AI adoption also extends to legal aid professionals and public interest lawyers.⁶³

IV. LLMS AND SRLS IN CANADA: POTENTIAL AND LIMITATIONS

A. Potential

From the onset, the potential of generative AI to improve access to justice in general has been considered by different practitioners and scholars. Ryan Fritsch, legal counsel with the Law Commission of Ontario observed a huge demand for tools such as ChatGPT to access justice. This is due to the fact that such software can support unrepresented litigants in preparing court documents and even encourage settlement among unrepresented litigants.⁶⁴ In his observation, the demand for generative AI is not driven by the technology but by the economics and the barriers people have accessing justice.⁶⁵ With this optimism comes a word of caution from Fritsch that the assistance ChatGPT provides to lay persons may distort public understanding of the law as laypersons will be unable to identify obvious gaps in ChatGPT's legal analysis the way lawyers will.⁶⁶ Russell Alexander also notes the access to justice potential of generative AI, noting that generative AI can improve access to justice by guiding the public to legislation and helping them draft documents.⁶⁷ Test cases of generative AI such as ChatGPT and Bard⁶⁸ have demonstrated the potential of generative AI to provide SRLs with a basic understanding of their legal rights, serving as a valuable reference point to help them defend their interests.⁶⁹ Advanced AI tools of

⁶² LexisNexis, "LexisNexis International Legal Generative AI Survey shows Nearly Half of the Legal Profession believe Generative AI will transform the Practice of Law" (22 August 2023), online: <LexisNexis International Legal Generative AI Survey Shows Nearly Half of the Legal Profession Believe Generative AI Will Transform the Practice of Law | LexisNexis PressRoom>.

⁶³ See Colleen V Chien & Miriam Kim, "Generative AI and Legal Aid: Results from a Field Study and 100 Use Cases to Bridge the Access to Justice Gap", UC Berkely Public Law Research Paper (forthcoming), Loy LA L Rev (forthcoming), online: <Generative AI and Legal Aid: Results from a Field Study and 100 Use Cases to Bridge the Access to Justice Gap by Colleen V. Chi>.

⁶⁴ Ryan Fritsch, "Will legal products of the future be accessible to Canadians", *National Magazine* (18 April 2023), online: <National - Will legal products of the future be accessible to Canadians? (nationalmagazine.ca)>; See more generally, Amy J Schmitz & John Zeleznikow, "Intelligent Legal Tech to Empower Self-Represented Litigants (2023) 23 Colum Sci & Tech L Rev 142 at 151-155

⁶⁵ Zena Olijnyk, "ChatGPT may improve access to justice, but won't replace lawyers: Law Commission of Ontario Webinar", *Law Times* (15 March 2023) online: <ChatGPT may improve access to justice, but won't replace lawyers: Law Commission of Ontario webinar | Law Times (lawtimesnews.com)>. Fritsch however notes that "significant errors appear inevitable" in the use of such tools by SRLS.

⁶⁶ See Fritsch, *supra* note 64.

⁶⁷ Aidan McNab, "How artificial intelligence could improve access to justice in Family Law", *Law Times* (1 February 2023), online: <How artificial intelligence could improve access to justice in family law | Law Times (lawtimesnews.com)>.

⁶⁸ Google's LLM chatbot has subsequently been rebranded as "Gemini", See Mobile Syrup, "Google rebrands Bard to Gemini, launches it in Canada" (9 February 2024), online: <Google rebrands Bard to Gemini, launches it in Canada (msn.com)>.

⁶⁹ Alex Heshmaty, "Generative AI and access to justice", *Internet for Lawyers Newsletter* (4 October 2023), online: <Generative AI and access to justice - Internet for Lawyers Newsletter (infolaw.co.uk)>; Richard Crumbley & Peter Church, "ChatGPT- 50 questions to road test its legal advice", (19 December 2022) online: Linklaters <ChatGPT – 50

this nature can also help SRLs build their case and possibly provide guidance to parties in determining whether they have a case and should consider hiring a lawyer.⁷⁰

There is also an increasing body of research that suggests that generative AI is performing well on a number of legal benchmarking tasks.⁷¹ While there is an understanding that ChatGPT may be unable to undertake legal research and analysis to the extent of a competent lawyer,⁷² its promise may be sufficient in convincing self-represented litigants to rely on such software to prepare legal documents such as pleadings,⁷³ particularly considering that LLMs are continuously being fine-tuned to develop better understanding of various industry concepts, including law.⁷⁴ In essence, a combination of interactive tools that assist litigants with clarifying legal issues and populating court forms can assist SRLs with a range of tasks, from decision-making to completion of court forms.⁷⁵ The potential influence of generative AI to transform the legal industry remains a subject of ongoing research.⁷⁶

The potential of LLMs in assisting SRLs is not lost on judges. In reflecting on the impact of generative AI, Judge Stephen Alexander Vaden of the US Court of International Trade notes that the ability of individuals being priced out of good legal representation to have a free option that gives them “hopefully reliable results to basic legal questions is a “welcome pushback against the ever-growing inflation of private practicing lawyer rates”.⁷⁷[Where does this quote end?] (quote ends at “rates”). Similar contemplations are expressed by the Chief Justice of the United States, John Roberts, who considers that AI tools have the “welcome potential to smooth out any mismatch between available resources and urgent

questions to road test its legal advice (linklaters.com)>; Rupert Macey-Dare, “ChatGPT & Generative AI Systems as Quasi-Expert Legal Advice Lawyers- Case Study Considering Potential Appeal against Conviction of Tom Hayes” (30 January 2023), online: SSRN <ChatGPT & Generative AI Systems as Quasi-Expert Legal Advice Lawyers - Case Study Considering Potential Appeal Against Conviction of Tom Hayes by Rupert Macey-Dare :: SSRN>.

⁷⁰ Samuel Dahan & David Liang, “The Case for AI-Powered Legal Aid” (2021) 46:2 Queen’s LJ 415 at 423.

⁷¹ See generally Arianna Trozze, Bennett Kleinberg & Toby Davies, online: “Large Language Models in Cryptocurrency Securities Cases: Can ChatGPT Replace Lawyers?” (22 February 24), online: arXiv <2308.06032.pdf (arxiv.org)>; Rishi Bommasani et al, “On the Opportunities and Risks of Foundation Models”, online: arXiv <2108.07258.pdf (arxiv.org)> at 59-67; Neel Guha et al, “LegalBench: A collaboratively Built Benchmark for Measuring Legal Reasoning in Large Language Models”, (23 August 2023), online: arXiv <2308.11462.pdf (arxiv.org)>.

⁷² Kwan Yuen lu & Man-Yi Wong, *supra* note 2.

⁷³ *Ibid.*

⁷⁴ For more on the implication of improved LLM core capabilities for the legal profession, see John Nay, “Large Language Models as Fiduciaries: A Case Study toward Robustly communicating with Artificial Intelligence through Legal Standards” (13 April 13 2023), online: <Large Language Models as Fiduciaries: A Case Study Toward Robustly Communicating With Artificial Intelligence Through Legal Standards by John Nay :: SSRN>; Jaromir Savelka & Kevin Ashley, “The unreasonable effectiveness of Large Language Models in Zero-Shot Semantic Annotation of Legal Texts” (17 November 2023) 6 *Frontiers in Artificial Intelligence* 1, online: <The Unreasonable Effectiveness of Large Language Models in Zero-Shot Semantic Annotation of Legal Texts by Jaromir Savelka, Kevin Ashley :: SSRN>.

⁷⁵ David Colarusso & Erika J Rickard, “Speaking the Same Language: Data Standards and Disruptive Technologies in the Administration of Justice” (2017) 50:3 *Suffolk U L Rev* 387 at 409

⁷⁶ See generally Margaret Hagan, “Opportunities & Risks for AI, Legal Help, and Access to Justice” (28 June 2023), online: Medium <Opportunities & Risks for AI, Legal Help, and Access to Justice | by Margaret Hagan | Legal Design and Innovation | Medium>.

⁷⁷ Shweta Watwe, “Judges Reflect on GenAI Use One Year after ChatGPT’s Debut”, (28 November 2023), online: Bloomberg Law <Judges Reflect on GenAI Use One Year After ChatGPT’s Debut (bloomberglaw.com)>.

needs in our court system”.⁷⁸ Xavier Rodriguez, a U.S. District Judge in the Western District of Texas makes similar conclusions, postulating that the overall result of the proliferation of AI platforms will be greater access to justice for unrepresented parties.⁷⁹ Paul Grimm, a former U.S District Court Judge, has also observed the potential of generative AI in “ensuring that more people have access to filing decent, legitimate complaints in a way that allows them to be heard”.⁸⁰ Other possible contributions touted by researchers and commentators include generative AI educating SRLs on taking action without involving the legal system and providing information to SRLs on strategies and tactics in legal proceedings.⁸¹ Furthermore, by automating answers to legal questions, generative AI has also been peddled as potentially narrowing the access to justice gap because it is more available, cost-effective, educative and empowering.⁸² This is even more so considering the fact that SRLs may not be as concerned with certain ethical requirements affecting lawyers’ use of generative AI, e.g. privacy and confidentiality of client information.⁸³ In summary, there is great potential for LLMs to in the words of Samuel Dahan, a law professor at Queen’s University, “empower individuals with the ability to pursue their own legal claims without the help of a lawyer”.⁸⁴

B. Limitations/Challenges

1. Challenge 1: Affordability

A potential drawback for SRLs in maximizing LLMs is the price of using generative AI tools, particularly the more “bespoke” versions. While many legal tech firms have not disclosed their pricing, it is envisaged that many bespoke generative AI tools have major cost implications. Casetext for example prices its AI legal assistant at \$400 per month. Alexi, while offering a free trial plan is available for plans ranging from \$499 per month to \$949 per month.⁸⁵ It is highly unlikely that SRLs will be able to access most bespoke legal generative AI software. Even the more generic ChatGPT also has its paid premium version,⁸⁶ which is infinitely more affordable compared to bespoke LLMs, but may still be out of reach for some SRLS. This raises concerns that only those with deep pockets will have access to the best AI

⁷⁸ US, Supreme Court, “2023 Year-End Report on the Federal Judiciary” (31 December 2023), online: <2023year-endreport.pdf (supremecourt.gov)>.

⁷⁹ Xavier Rodriguez, “Artificial Intelligence (AI) and the Practice of Law” (2023) 24 Sedona Conf J 783 [📄](#)

⁸⁰ See Justin Smith, “A Conversation about Generative AI and access to justice with Judge Paul Grimm” (11 January 2024), online: Everlaw <A Conversation About Generative AI and Access to Justice with Judge Paul Grimm | Cloud-Native Ediscovery Software | Everlaw>.

⁸¹ Cas Laskowski, Christopher L Griffin Jr & Samuel Thumma, “Artificial Intelligence and Access to Justice” (1 December 2023), online: <AI-and-Access-to-Justice-Final-White-Paper.pdf (nacmnet.org)>.

⁸² Tom Martin, “Can Generative AI Help to Narrow the Access to Justice Gap?” (15 August 2023), online: LawDroid Manifesto <Can Generative AI Help to Narrow the Access to Justice Gap? (lawdroidmanifesto.com)>; See also, Samuel D Hodge Jr, “Revolutionizing Justice: Unleashing the Power of Artificial Intelligence” (2023) 26:2 SMU Sci & Tech L Rev 217 at 227-231.

⁸³ While the Model Rules of Professional Conduct may not apply to SRLs, they remain subject to Rules of Court in prosecuting their case. Additionally, courts may declare SRLs who repeatedly abuse court process “vexatious litigants” which may impact their access to judicial remedies.

⁸⁴ Mark Whitten, “Applying generative AI to law: Opportunities and risks”, (23 October 2023), online: Queen’s Law <Applying generative AI to law: Opportunities and risks | Queen's Law (queensu.ca)>.

⁸⁵ Steven Lerner, “‘They’re Not Cheap’: Law Firm CIOs On Generative AI Tools” (17 October 2023), online: Law360 <They're Not Cheap': Law Firm CIOs On Generative AI Tools - Law360 Pulse>.

⁸⁶ Open AI, “What is ChatGPT Plus” (last visited 4 June 2024), online: <What is ChatGPT Plus? | OpenAI Help Center>.

technology.⁸⁷ As explained by Marc Galanter about half a century ago, repeat litigation players who engage in a lot of litigation are always able to invest in it in such a manner that gives them an advantage over smaller “one shot” litigants, a category many SRLs will likely fall into.⁸⁸ While this may be solved by creating public AI models with no corporation ownership,⁸⁹ whether this would happen in practice, and the extent (assuming it does) remains unclear.⁹⁰ This is especially considering the fact that development of legal technology is driven by market forces⁹¹ and may not be generated where the needs to be addressed are insufficiently profitable.⁹² Some look at the financial hindrance from a different perspective, considering the fact that legal representatives of minority and low-income groups will lack funds necessary to develop AI technology or contract for AI applications.⁹³ As rightly observed by Taylor-Poppe, market forces shape the design and availability of technology in ways that may not address all needs.⁹⁴ This affordability challenge may cause SRLs to be more dependent on free versions of LLMs, which are less reliable, leading to the next challenge.

2. Challenge 2: Reliability/Accuracy of LLM-Generated Information

Another significant challenge has to do with the limitations of generative AI in providing accurate legal information. While more advanced generative AI models are better-trained and less prone to providing inaccurate information, they are by no means “hallucination-free” and may be cost-prohibitive for SRLs.⁹⁵ The likelihood of inaccurate results is higher in a profession like law that typically differs by jurisdiction. As observed by Nicolas Vermeys, there is a real risk of wrong information being provided by more generic LLMs like ChatGPT where such information relates to jurisdictions under-represented in the legal dataset

⁸⁷ Bob Ambrogi, “12 Thoughts on Promises and Challenges of AI in Legal after Yesterday’s AI Summit at Harvard Law School” (30 September 2023), online: LawSites <12 Thoughts on Promises and Challenges of AI in Legal after Yesterday’s AI Summit at Harvard Law School | LawSites (lawnext.com)>.

⁸⁸ See Marc Galanter, “Why the ‘Haves’ come out Ahead: Speculations on the limits of legal change (1974) 9:1 Law & Soc’y Rev 95.

⁸⁹ *Ibid.* There are promising developments in this area. Researchers at Queen’s University have created OpenJustice, a generative AI tool trained to perform legal tasks and intended to be accessible to the public (See Whitten, *supra* note 84; Samuel Dahan et al, “OpenJustice.ai: A Global Open-source Legal Language Model” (7 Dec 2023), online: <OpenJustice.ai: A Global Open-source Legal Language Model by Samuel Dahan, Rohan Bhambhoria, David Liang, Xiaodan Zhu :: SSRN>. For other developments in social-justice oriented generative AI, see Chris Owen & Mary-Frances Murphy, “Virtual Justice? Exploring AI’s impact on legal accessibility” (November 2023), online: Norton Rose Fulbright <Virtual Justice? Exploring AI’s impact on legal accessibility | Global law firm | Norton Rose Fulbright>.

⁹⁰ There have been concerns raised about the funding gap between those developing legal technology for access to justice purposes and those developing legal technology to serve large law firms, Bob Ambrogi, “The Justice Gap in Legal Tech: A Tale of Two conferences and the implications for A2J” (5 February 2024), online: Law Sites <The Justice Gap in Legal Tech: A Tale of Two Conferences and the Implications for A2J | LawSites (lawnext.com)>.

⁹¹ Dana Remus & Frank Levy, “Can Robots be Lawyers? Computers, Lawyers and the Practice of Law” (2017) 30 Geo J Leg Ethics 501 at 530.

⁹² Emily S Taylor-Poppe, “The Future Is Complicated: AI, Apps & Access to Justice” (2019) 72:1 Okla L Rev 185 at 210.

⁹³ Hassan Kanu, “Artificial intelligence poised to hinder, not help, access to justice”, (25 April 2023), online: *Reuters* <Artificial intelligence poised to hinder, not help, access to justice | Reuters>.

⁹⁴ Taylor-Poppe, *supra* note 92 at 212.

⁹⁵ Cas Laskowski, Christopher L Griffin Jr & Samuel Thumma, “Artificial Intelligence and Access to Justice” Arizona Summit on Artificial Intelligence, Law and the Courts (1December 2023), online: <AI-and-Access-to-Justice-Final-White-Paper.pdf (nacmnet.org)>.

used in their training.⁹⁶ Ryan and Hardie also noted LLMs being confused around jurisdiction as a concern in their research relating to LLMs and access to justice.⁹⁷ They noted how the tested models for example often defaulted to American law, and it was not always explicit that the advice was based on American law, or that the law would differ depending on the country of residence.⁹⁸ Researchers at Queen's University working on a specialized generative AI tool trained to perform legal tasks also made a similar observation in conducting troubleshooting research with ChatGPT and GPT-4, noting problems with the underlying reasoning behind answers provided by ChatGPT to legal queries.⁹⁹ Furthermore, generative AI chatbots still struggle to understand queries that are not expressed clearly, which may prove problematic for SRLs who lack education and struggle with literacy.¹⁰⁰

The accuracy challenge can also be considered from another angle. For the seasoned legal practitioner dealing with hundreds of cases, the ability of LLMs to generate legal information, conduct research and prepare drafts of legal documents boosts efficiency, which is an arguably greater need for the legal practitioner than the SRL who is most likely dealing with just one case.¹⁰¹ The legal practitioner, based on their expertise and experience, has a myriad of tools available at their disposal to conduct the "fact-checking" required to maximize the efficiency advantage provided by LLMs. The SRL in many instances does not have this advantage and is more dependent on LLMs providing the right information. If legal information generated by LLMs remain subject to human verification for accuracy, presumably by those with legal expertise or knowledge, where is the real advantage to the SRL in using LLMs? Perhaps it is in the ability of LLMs to generate drafts of legal documents that SRLs may not otherwise have any idea as to its preparation. As rightly concluded by Savelka and Ashley, the capabilities of LLMs potentially democratize access to the sophisticated legal work traditionally reserved for only a small group of legal operations.¹⁰² Having said that, using LLMs to generate drafts of legal documents may be of limited use to the SRL who lacks the expertise required to convert such an advantage into developing a winnable case, particularly when the opposition is represented by legal counsel.¹⁰³

⁹⁶ Martin Lasalle, "ChatGPT and the law: A useful but imperfect tool" (1 December 2023), online: <ChatGPT and the law: A useful but imperfect tool (techxplore.com)>.

⁹⁷ Ryan and Hardie also noted LLMs being confused about jurisdiction as a concern in their research relating to LLM and access to justice; Francine Ryan & Liz Hardie, "ChatGPT, I have a legal question? The Impact of Gen AI tools on Law Clinics and Access to Justice, online: northumbriajournals.co.uk <ChatGPT_I_have_a_Legal_Question_The_Impact_of_Gene.pdf> or View of ChatGPT, I have a Legal Question? The Impact of Generative AI Tools on Law Clinics and Access to Justice> 189.

⁹⁸ *Ibid*

⁹⁹ See Whitten, *supra* note 84..

¹⁰⁰ Heshmaty, *supra* note 69. On the flip side, LLMs ability to generate information based on key words may also help SRLs to obtain acceptable first drafts of documents with very little information provided by SRLs, aiding the self-help ethos proposed by certain scholars for SRLs.

¹⁰¹ This is not to discount the relevance of efficiency of LLMs to SRLs. In cases where responses to originating documents or notices are time sensitive, the SRL can also benefit from the efficiency of LLMs.

¹⁰² Savelka & Ashley, *supra* note 75 at 12.

¹⁰³ This does not mean SRLs cannot make formidable opponents in litigation, with or without generative AI. (See Jordan Rothman, "Pro se Litigants Can Make Formidable opponents" (30 July 2021), online: *Above the Law* <Pro Se Litigants Can Make Formidable Opponents - Above the Law>.

3. Challenge 3: Over-reliance on LLM-generated Information

Preliminary research on public use of generative AI suggests that many people will over-rely on explanations provided by generative AI tools about the law, even if there are warning disclosures made on such platforms.¹⁰⁴ Due to lack of legal training or knowledge, significant errors appear inevitable in the usage by SRLs of generative AI tools in preparing documents for a court, tribunal, or administrative body. While the generic LLM models all warn users that they do not provide legal advice and recommend obtaining professional assistance, this warning may only be generated in response to relevant prompts asking such models whether they offered legal advice.¹⁰⁵ SRLs may not make such inquiries.

According to Lance Elliot, generative AI is likely to provide an answer to legal questions, doing so without much indication that the answer is shaky and without a proper legal foundation.¹⁰⁶ Elliot also considers it unlikely that a non-lawyer would be able to readily discern real legal insights from fabricated ones.¹⁰⁷ Since there is no curation of information provided by LLMs such as ChatGPT, SRLs, particularly non-lawyers, may not know whether a response provided by ChatGPT to a query is correct or reliable.¹⁰⁸ Such persons may also not be able to identify obvious gaps in ChatGPT's analysis in the way a legal practitioner would. As a result, the public's understanding of the law may be distorted and lead to dissatisfaction with legislation. Where SRLs end up relying on inaccurate explanations of the law, this may be more harmful than helpful to their prospects of accessing justice. This apprehension is confirmed by a recent study by Stanford University researchers which concluded that the hallucination risks of using generic generative AI models are highest for SRLs.¹⁰⁹ Hallucinations may reduce significantly with better models, but there is no guarantee that these models will be accessible to SRLs due to cost implications. This is nevertheless based on the premise that SRLs are indigent individuals unable to access technology hiding behind paywalls. On the flip side, LLMs ability to generate information based on key words may

¹⁰⁴ Margaret D Hagan "Towards Human-Centered Standards for Legal Help AI", *Philosophical Transactions of the Royal Society A: Mathematical, Physical and Engineering Sciences* (last revised 1 November 2023), online: <Towards Human-Centered Standards for Legal Help AI by Margaret Hagan :: SSRN>. Research in other fields suggests that an increase in AI quality reduces the incentive for human attention, allowing AI to substitute rather than augment their performance (See Fabrizio Dell'Acqua, "Falling Asleep at the Wheel: Human/AI Collaboration in a Field Experiment on HR Recruiters" (last visited 14 June 2024), online: <Falling+Asleep+at+the+Wheel+-+Fabrizio+DellAcqua.pdf (squarespace.com)>; Fabrizio Dell'Acqua et al, "Navigating the Jagged Technological Frontier: Field Experimental Evidence of the Effects of AI on Knowledge Worker Productivity and Quality" (2023) Harvard Business School Technology & Operations Mgt Unit Working Paper No 24-013, online: <Navigating the Jagged Technological Frontier: Field Experimental Evidence of the Effects of AI on Knowledge Worker Productivity and Quality by Fabrizio Dell'Acqua, Edward McFowland, Ethan R. Mollick, Hila Lifshitz-Assaf, Katherine Kellogg, Saran Rajendran, Lisa Krayer, François Candelon, Karim R. Lakhani :: SSRN>.

¹⁰⁵ Ryan & Hardie, *supra* note 97.

¹⁰⁶ Lance Eliot, "ChatGPT and other AI Programs Aid and Muddle Access to Justice as Non-Lawyers Seek their Advice" (7 March 2023) online: JURIST <ChatGPT and Other AI Programs Aid and Muddle Access to Justice as Non-Lawyers Seek Their Advice - JURIST - Commentary - Legal News & Commentary>.

¹⁰⁷ *Ibid*

¹⁰⁸ Fritsch, *supra* note 64

¹⁰⁹ Matthew Dahl et al, "Large Legal Fictions: Profiling Legal Hallucinations in Large Language Models", *J Legal Analysis* (forthcoming) online: (25 April 2024) <2401.01301.pdf (arxiv.org)>.

also help SRLs to obtain acceptable first drafts of documents with very little information provided by SRLs, aiding the self-help ethos proposed by certain scholars for SRLs.¹¹⁰

C. Responses to these Challenges

As far as addressing these limitations are concerned, a number of proposals have been suggested. For example, one proposed solution is not necessarily deploying generative AI like ChatGPT directly, but by using their underlying technology in a customized LLM.¹¹¹ A closely related proposal is the development generative AI in a manner that recognizes the general demographic of SRLs, using generative AI chatbots in self-help contexts such as completion of court forms and courts exploring LLM interfaces that direct more users to verified legal aid and self-help resources.¹¹² Drew Simshaw in the United States context, suggests a calibration of AI with careful consideration of the appropriate level of reliance on the technology depending on the consumers, legal issues and underlying processes involved with each case.¹¹³ In responding to the “hallucination challenge”, some judges in the United States¹¹⁴ have issued directives requiring both lawyers and SRLs to disclose the use of artificial intelligence in preparation of legal documents. A few jurisdictions in Canada have also issued directives to this effect.¹¹⁵

¹¹⁰ See e.g. Amy Salyzyn et al, “Literacy Requirements of Court Documents: An Under-Explored Barrier to Access to Justice” (2016) 33:2 Windsor YB Access Just 263. More multilingual open-access LLMs are also being developed to tackle language barriers. In February 2024, Cohere for AI, a non-profit research laboratory launched its multilingual LLM, Aya, which covers 114 different languages, “Introducing Aya” (13 February 2024) online: <Aya | Cohere For AI>.

¹¹¹ Society for Computers and Law, “AI: opening the door to justice” (16 August 2023), online: <SCL: AI: opening the door to justice>.

¹¹² See Colleen V Chien et al, “How Generative AI can Help Address the Access to Justice Gap Through the Courts”, Loy LA L Rev (forthcoming), online: <How Generative AI Can Help Address the Access to Justice Gap Through the Courts by Colleen V. Chien, Miriam Kim, Akhil Raj, Rohit Rathish :: SSRN>.

¹¹³ Drew Simshaw, “Access to A.I. Justice: Avoiding an Inequitable Two-Tiered System of Legal Services” (2022) 24:1 Yale JL & Tech 150 at 181.

¹¹⁴ See “Standing Order for Civil Cases before Magistrate Judge Fuentes” (31 May 2023), online: US Courts (Illinois) <[https://www.ilnd.uscourts.gov/_assets/_documents/_forms/_judges/Fuentes/Standing%20Order%20For%20Civil%20Cases%20Before%20Judge%20Fuentes%20rev%27d%205-31-23%20\(002\).pdf](https://www.ilnd.uscourts.gov/_assets/_documents/_forms/_judges/Fuentes/Standing%20Order%20For%20Civil%20Cases%20Before%20Judge%20Fuentes%20rev%27d%205-31-23%20(002).pdf)>; “Order on Artificial Intelligence”, United States Court of International Trade (Vaden, J) (8 June 2023), online: <<https://www.cit.uscourts.gov/sites/cit/files/Order%20on%20Artificial%20Intelligence.pdf>>; General Order, United States Bankruptcy Court, Northern District of Texas (21 July 2023), online: <<https://www.txnb.uscourts.gov/sites/txnb/files/news/General%20Order%202023-03%20Pleadings%20Using%20Generative%20Artificial%20Intelligence-signed.pdf>>.

¹¹⁵ See US Federal Court, “Notice to the Parties and the Profession: The Use of Artificial Intelligence in Court Proceedings” (20 December 2023), online: <[2023-12-20-notice-use-of-ai-in-court-proceedings.pdf](https://www.fct-cf.gc.ca/2023-12-20-notice-use-of-ai-in-court-proceedings.pdf) (fct-cf.gc.ca)>; Manitoba, “Practice Direction, Re: Use of Artificial Intelligence in Court Submissions” (23 June 2023), online: <https://www.manitobacourts.mb.ca/site/assets/files/2045/practice_direction_-_use_of_artificial_intelligence_in_court_submissions.pdf>; Yukon Supreme Court, “Practice Direction, Use of Artificial Intelligence Tools” (26 June 2023), online: <<https://www.yukoncourts.ca/sites/default/files/2023-06/GENERAL-29%20Use%20of%20AI.pdf>>; Alberta, Court of King’s Bench, “Notice to the Profession & Public- Ensuring the Integrity of court submissions when using large language models” (6 October 2023), online: <<https://albertacourts.ca/kb/resources/announcements/notice-to-the-profession-public---use-of-ai-in-citations-submissions>>; Supreme Court of Nova Scotia “Ensuring the Integrity of Court Submissions when using generative

These propositions, particularly as it relates to customizing LLMs, are indeed a step in the right direction as far as tailoring LLMs to the needs of SRLs are concerned. Customizing LLMs to meet SRL needs is however a major challenge, considering their diverse characteristics and demographic. It is also a task that may not be readily undertaken by existing for-profit legal technology developers, whose client base consists majorly of law firms and legal service providers. Nevertheless, adopting these proposals in developing LLMs can at least serve as a means of encouraging SRLs on low incomes who have the requisite language and technical skills to use digital tools.¹¹⁶ Having said this, there is a much bigger issue that affects these propositions: the correlation between the utility of LLMs and the skill of the user. The concluding aspect of this article will discuss this challenge in greater detail.

V. CONCLUDING THOUGHTS

In truth, it is hard to determine the specific impact of generative AI for SRLs. As evidenced in the now infamous case of the New York lawyers sanctioned for citing “hallucinated” false legal cases¹¹⁷ in court documents and the more recent Canadian example,¹¹⁸ even lawyers themselves require a certain degree of competence to properly use Generative AI.¹¹⁹ SRLs have also been cited for false citations in a number of jurisdictions. In May 2023, a Manchester Court heard how an SRL presented false citations to the court

Artificial Intelligence, (18 October 2023), online:

<https://courts.ns.ca/sites/default/files/notices/Oct%202023/NSSC_Court_Submissions_AI_Oct_18_2023.pdf>; Superior Court of Quebec, “Notice to Profession and Public: Integrity of Court Submissions When Using Large Language Models, (24 October 2023), <Avis_a_la_Communit%C3%A9_juridique-Utilisation_intelligence_artificielle_EN.pdf (coursuperieureduquebec.ca)>.

- ¹¹⁶ Identifying and encouraging these category of people with access to justice needs has been identified by Roger Smith as one of the “small-scale” advances in using technology to increase access to justice (See Roger Smith, “The Future of Law: Technology, Innovation and Access to Justice in Legal Services Around the World” in Peter De Souza & Maximillian Spohr, eds, *Innovation and Access to Justice* (Edinburgh: Edinburgh University Press, 2021) 82.
- ¹¹⁷ For a copy of the ruling imposing sanctions, see *Roberta Mata v Avianca Inc* 22-CV-1461 (NY Dist C 2023), online: <<https://www.documentcloud.org/documents/23856993-sanctions-mata-v-avianca?responsive=1&title=1>>. In July 2023, Another lawyer in Colorado Springs was also found to have used made-up cases in a motion after consulting ChatGPT, see Quinn Ritzdorf, “Colorado Springs attorney says ChatGPT created fake cases he cited in court documents” 13 June 2023) online: KRDO, <<https://krdo.com/news/2023/06/13/colorado-springs-attorney-says-chatgpt-created-fake-cases-he-cited-in-court-documents/>>. In October 2023, another US lawyer was accused by his former client of relying on an “experimental” AI program to write his closing argument for his criminal trial, resulting in a negative outcome (See *United States of America v Prakazrel Michel* 19-148-1 (DC Dist C 2023), online: <<https://www.documentcloud.org/documents/24036102-michelnewtrialmotion101623>>. Other cases in the US include *Park v Kim* (2024) online: [justitia.com <\(22-2057-2024-01-30.pdf\)>](https://www.justitia.com/cases/22-2057-2024-01-30.pdf).
- ¹¹⁸ See Simon Little, “AI ‘hallucinated’ fake legal cases allegedly filed to B.C court in Canadian first”, *Global News* (last visited 12 June 2024), online: <[AI ‘hallucinated’ fake legal cases allegedly filed to B.C. court in Canadian first \(msn.com\)](https://www.msn.com)>.
- ¹¹⁹ In January 2024, CaseText, a part of legal service provider Thomson Reuters, created a two-part blog post to help lawyers develop their AI literacy (See CaseText, “What makes large language models tick” (19 January 2024), online: <[What makes large language models tick? – Casetext](https://www.casetext.com/insights/articles/what-makes-large-language-models-tick)>; See also CaseText, “Techniques for writing effective legal AI prompts (26 January 2024), online: <[Techniques for writing effective legal AI prompts – Casetext](https://www.casetext.com/insights/articles/techniques-for-writing-effective-legal-ai-prompts)>.

following an inquiry from ChatGPT.¹²⁰ In February 2024, a Missouri Appeals Court fined an SRL \$10,000 in sanctions for using AI to generate nearly two dozen fake citations in a legal brief.¹²¹ The tech-savvy SRL who is unable to access cost-prohibitive AI may benefit a great deal from proper usage of LLM tools in preparation for legal proceedings. Provided SRLs are also willing to undertake the task of verifying LLM information through other existing legal and generic databases, LLMs could very well serve as a good foundation for them building a solid legal case. Doing so nevertheless requires a level of expertise which SRLs may or may not have. However, as noted by certain scholars, understanding how well LLMs work is difficult without naturalistic evaluation of everyday users, research on which is currently limited with respect to law.¹²² The prompts generated by those with legal or literacy training, much of which forms the subject of current research, may not always be an accurate representation of how SRLs will use LLMs. On the other hand, the conversational dimensions of information dissemination may well work in favour of SRLs especially since the more generic LLMs such as ChatGPT or Gemini may better respond to simpler, generically worded queries than complex, specialist queries.¹²³

Determining the impact of generative AI on SRLs will also depend on an understanding of the areas of law typically involving SRLs. Based on 2019/2020 data, it appears that the greatest increase in SRLs is in family law, where there has been an upward trend since 2014.¹²⁴ The majority of cases in these areas proceed through the courts uncontested in that fiscal year.¹²⁵ In general, a relatively low percentage of family law disputes proceed to trial, with the vast majority settled either through alternative dispute resolution or at the infant state of judicial proceedings. Family law proceedings involving SRLs are also generally perceived as not being substantively complex and there is a notion that SRLs are able to understand proceedings easily upon explanation.¹²⁶ It is possible that engagement of LLMs by SRLs in this area further facilitates the dispute resolution proceedings by guiding settlement options for petitioner SRLs. However, for areas of law with greater demands on legal reason or procedural or substantive complexity/nuance, LLM limitations are likely to be more glaring and pronounced, making reliance on

¹²⁰ John Hyde, “LiP present false citations to court after ChatGPT”, *Law Society Gazette* (28 May 2023), online: <<https://www.lawgazette.co.uk/news/lip-presents-false-citations-to-court-after-asking-chatgpt/5116143.article>>. For a copy of the ruling, see *Harber v Commissioners for His Majesty’s Revenue and Customs*, [2023] UKFTT 1007 (TC), online: <*Harber v Commissioners for His Majesty’s Revenue and Customs* (INCOME TAX - penalties for failure to notify liability to CGT - appellant relied on case law which could not be found on any legal website - whether cases generated by artificial intelligence such as ChatGPT) [2023] UKFTT 1007 (TC) (04 December 2023) (bailii.org)> at 20-25 for the discussion on reference to false citations.

¹²¹ For a copy of the ruling, see *Molly Kruse v Jonathan R Karlen et al* (13 February 2024), online: <[file.jsp \(mo.gov\)](#)>.

¹²² Sayash Kapoor, Peter Henderson & Arvind Narayanan, “Promises and pitfalls of artificial intelligence for legal applications” (24 January 2024), online: Center for Information Technology Policy, Princeton University <[Promises and pitfalls of artificial intelligence for legal applications \(princeton.edu\)](#)>.

¹²³ This advantage is also observed by Damien Charlotin, who also believes this conversational dimension of LLMs can at the very least help SRLs get the first step in any legal journey (See Damien Charlotin, “Large Language Models and the Future of Law” (11 September 2023), online: SSRN <[ssrn-4548258.pdf](#)>).

¹²⁴ Statistics Canada, Lyndsay Ciavaglia Burns, *Profile of family law cases in Canada, 2019/2020*, by Lyndsay Ciavaglia Burns (28 June 2021), online: <[Profile of family law cases in Canada, 2019/2020 \(statcan.gc.ca\)](#)>.

¹²⁵ *Ibid.*

¹²⁶ Cassandra Richards, “Creating a System for all Parents: Rethinking Procedural and Evidentiary Rules in Proceedings with Self-Represented Litigants” (2022) 45:1 Dal LJ 8.

them possibly more harmful than helpful.¹²⁷ This is particularly if SRLs are relying on more generic LLMs such as ChatGPT that are not as trained in legal data as other bespoke software.¹²⁸ Although the risk may decrease as more legal-specific data is used to train LLMs, the ability of SRLs to obtain accurate information in more nuanced areas of law will still depend on communicating prompts in a manner understandable by the LLM, which may be problematic.

Ultimately, the most crucial requirement for SRLs would be, as with lawyers, developing their AI literacy to effectively maximize the usage of LLMs. LLMs are optimized to synthesize content impressively, making them useful for both answering questions and drafting content.¹²⁹ However, they are not search engines and are not always knowledgeable about the topics being discussed.¹³⁰ Furthermore, SRLs, at least for the time being, will also be relying on generic generative AI and not on specialized commercial legal research tools. As a result, making effective use of such tools should be in combination with existing legal resources. Aside from free legal databases such as CanLII, many other legal aid organizations provide free resources on basic rights to the public through their websites. An SRL with sufficient tech-savviness to venture into LLM usage should also be sufficiently technologically competent in researching information on their rights through other established legal databases. Generative AI's interactive conversational abilities, combined with existing access to legal information, makes it such that people have a running chance of learning about legal aspects and becoming more aware of their legal rights.¹³¹ This may not however be applicable to the more generic models, which according to researchers, can give advice too generic to enable SRLs identify their legal rights, its source and how to enforce it.¹³² SRLs with sufficient prompt-engineering skills (and possibly financial means) may even take advantage of more bespoke software to predict case outcomes, in which case they are able to not only develop decent cases, but possibly winning cases. As LLMs are also designed to respond to ordinary language and other ubiquitous inputs, they can, with a little practice in prompt creation, still be readily used by nonspecialists who lack technical skills.¹³³ However, this is all based on an assumption that the majority of SRLs have the basic language or digital literacy needed to ground any form of generative AI usage. SRLs with extremely low literacy may not even have the ability to read and write in any language, let alone engage conversationally with GPT-powered chatbots. Some SRLs may not have ready access to computers or smartphones and even those who do may not be able to afford internet access. For such categories of SRLs, it is highly unlikely that they can utilize the assistive potential of LLMs in any form.

¹²⁷ Marialuisa Taddia, "AI and Chatbots are No Cure-All for Access to Justice" (17 April 2023) online: Law 360, <AI And Chatbots Are No Cure-All for Access To Justice - Law360 UK>. There is also research showing less success for generative AI in more intricate problem solving tasks (See Dell'Acqua et al, *supra* note 104).

¹²⁸ Drew Simshaw contemplates the nature of legal issues and underlying processes involved in legal cases in arguing for an appropriate "calibration" of legal technology to access to justice needs (See Simshaw, *supra* note 113. See also Drew Simshaw, "Toward National Regulation of Legal Technology: A Path Forward for Access to Justice" (2023) 92:1 *Fordham L Rev* 1 at 15-20.

¹²⁹ Rawia Ashraf, "ChatGPT, Generative AI, and LLMs for Litigators" *Practical Law Journal* (May 2023), online: ChatGPT <Generative AI, and LLMs for Litigators | Practical Law The Journal | Reuters>.

¹³⁰ *Ibid.*

¹³¹ See Eliot, *supra* note 106.

¹³² Ryan & Hardie, *supra* note 97 at 190

¹³³ James Manyika & Michael Spence, "The Coming AI Economic Revolution: Can Artificial Intelligence Reverse the Productivity Slowdown?" (2023) 102:6 *Foreign Affairs* 70 at 77-78.

The impact of increased use of LLMs by SRLs on the courts remains uncertain. On the one hand, a generative AI literate SRL may discover strategies of resolving his legal issue within the shortest possible time, leading to increased efficiency in the administration of justice. Such individuals can easily use LLMs to determine whether they satisfy the elements of various claims and easily generate customized language fit for their specific circumstances.¹³⁴ On the other hand, increased awareness of legal rights and assistance in legal drafting provided by LLMs may also lead to more contested cases and frivolous applications, increasing the administrative burden of the courts and prolonging judicial proceedings.¹³⁵

¹³⁴ Maura Grossman et al, "The GPT Judge: Justice in a Generative AI World (2023) 23:1, Duke L & Tech Rev 21 online: SSRN <SSRN-id4460184.pdf>.

¹³⁵ Netolitzky alludes to this point in his research on SRLs (See Netolitzky, "Walking Wounded", *supra* note 6. This may also lead to a resurgence in the phenomenon of Organized Pseudolegal Commercial Argument (OPCA) Litigants, a dimension of vexatious litigants discussed extensively by Associate Chief Justice J.D Rooke (as he then was) in *Meads v Meads* (2012) ABQB 571 (For a more general discussion on OPCA litigants, see Donald J Netolitzky, "Organized Pseudolegal Commercial Arguments in Canadian Inter-Partner Family Law Court Disputes " (2017) 54:4 Alta L Rev 955.