FROM PROMISE TO PERIL: THE USES AND REGULATION OF AI BY THE JUDICIARY

The Honourable Simon Ruel, Court of Appeal of Quebec

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I. INTRODUCTION

Once confined to science fiction, generative artificial intelligence (AI) is now a reality and is being used increasingly in justice systems around the world. Judges are already encountering AI in litigants' arguments, pleadings and evidence, and they are increasingly using publicly available tools themselves.

This presentation will focus specifically on the potential use of AI systems by judges to support decision-making.

The judiciary faces a dual challenge with respect to the use of AI. On the one hand, AI systems can strengthen justice by making it faster, more accessible and more consistent. However, it can also threaten justice by introducing bias, eroding confidentiality or undermining judicial independence and impartiality.

The central question is not whether AI will enter courtrooms. It already has, at least to some extent, in Quebec and Canada. The key issue is how AI will be integrated, regulated and controlled so that it enhances rather than compromises the legitimacy of judicial decision-making.

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II. OPPORTUNITIES FOR JUDICIAL DECISION-MAKING

AI has the potential to support judges in five key areas. These opportunities could free up more time for judges to focus on the unique aspects of their role, such as weighing arguments, exercising judgment and articulating reasons.

1. Legal research and analysis

AI systems could rapidly analyse vast bodies of statutes, precedents and doctrine, providing that they have access to the relevant data on which to train their algorithms.

Eventually, in common law legal systems such as in Canada, which includes public, administrative and criminal law in Quebec, AI systems could have the potential to identify patterns across thousands of judgments. This may improve consistency and predictability.

In some areas, such as sentencing, law clerks must repeat extensive research to establish ranges of sentences that have been imposed in other similar cases. This is done to ensure that the principle of parity is respected in the sentencing process. This type of repetitive research is time consuming and could be supported by AI research systems.

That said, however, my understanding is that publicly accessible generalist systems such as ChatGPT, Copilot, Gemini and Claude do not have full access to, nor have they been trained on, Canadian legislation, regulations and jurisprudential databases, including those of the Supreme Court of Canada. As it stands, this considerably limits opportunities to use AI for legal research.

Commercially available legal AI systems exist, but have significant limitations, such as lack of access to civil law jurisprudence in Quebec, or the inability to carry out cross-language research. In fact, most AI legal research tools are primarily trained on English-language datasets, leading to blind spots in civil law and bilingual jurisdictions such as Quebec.

2. Support functions

AI systems can prepare chronologies, summarize documentary evidence and expert reports, and organize case files. In class actions, for instance, counsel and judges may need to review millions of pages of documents. AI can provide significant assistance with document management and comprehension in complex, high-volume cases.

In international justice, for instance, if a case were to proceed to trial at the International Criminal Court ("ICC") concerning the Russia/Ukraine or the Gaza matters, the evidence could comprise thousands of documents in various languages, videos, photographs, digital and social media evidence, and satellite imagery and intercepts. Such a case could quickly become unmanageable, and the use of AI systems might become not only necessary, but critical.

In fact, in 2023, the ICC launched an evidence submission platform called OTPLink, which enables the Court to process the receipt of massive loads of digital information by key stakeholders such as communities affected by conflicts, civil society, or national authorities, about current or potential cases within the jurisdiction of the Court.

Nationally, in high-volume cases brought before courts and administrative tribunals — such as those relating to immigration, tenancy disputes and social security — the management of thousands of cases and documents creates severe backlogs, which raises significant issues regarding the administration of, and access to, speedy and timely administrative justice. AI systems can provide critical support functions in busy jurisdictions.

3. Information processing tools

Currently, court hearings in Quebec are not transcribed automatically, which creates significant issues, delays, and massive costs for appeals. In most cases, the transcripts of the hearings in first instance must be produced for appeals. Parties must request transcripts from court registries, and these transcripts are prepared by professional stenographers. The current system is both costly and outdated, and it causes significant delays.

AI systems have the potential to automate tasks such as transcriptions and anonymization, creating major efficiencies and speeding up court

processes and appeals, provided that a human remains in the loop for verification and vetting.

4. Linguistic and stylistic support

In bilingual jurisdictions such as Canada and Quebec, AI-assisted document revision systems can improve clarity and precision in both official languages, promoting fairness and accessibility.

The purpose of AI in this context is not to replace judicial assistants, but to address the fact that courts across the country are facing significant support staff shortages that are creating severe delays and backlogs. Where these delays are considered unreasonable, they could result in criminal cases being dismissed, thus eroding public confidence in the justice system.

5. Decision support

In specialized tribunals managing routine cases such as tenancy disputes, small claims, and social security matters, AI systems could potentially provide templates or draft judgments. While this may be controversial, one could envision the use of AI systems to support judicial decision-making in specialized jurisdictions or tribunals that apply a defined set of rules to similar cases.

Of course, core reasoning and adjudication must remain the responsibility of judges and administrative decision-makers.

III. GOVERNANCE AND ETHICAL CONSIDERATIONS

The use of AI systems to support judicial or administrative decision-making comes with inseparable governance and ethical challenges. Around the world, public institutions and courts have begun to articulate guiding principles, including the following:

- *Global Toolkit on AI and the Rule of Law for the Judiciary*, UNESCO, 2025.
- *Ethical Charter on the use of artificial intelligence (AI) in judicial systems and their environment*, European Commission for the Efficiency of Justice (CEPEJ), 2018.

- *Principles and Practices for Using AI Responsibly and Effectively in Courts – A Guide for Court Administrators, Judges, and Legal Professionals*, National Centre for State Courts, 2025.

- *Guidelines for the Use of Artificial Intelligence in Canadian Courts*, Canadian Judicial Council, 2023.

The key governance and ethical considerations concerning the anticipated increased use of AI systems in support of judicial decision-making may be summarized as follows:

1. Preservation of the fundamental values of justice

While the integration of AI offers the potential for greater efficiency, it also poses a risk to the justice system's fundamental principles. Judging is not a purely technical exercise. It is an intrinsically human process rooted in deliberation, empathy, and recognizing the dignity of all parties involved. No matter how sophisticated they are, machines and algorithms cannot replicate the moral reasoning and sense of justice that judges bring to their decisions.

Even when AI systems demonstrate speed, consistency, or predictive accuracy, these qualities do not substitute judgment. Delegating the essence of judging to a machine would erode the human dimension of justice and reduce judicial decisions to algorithmic outputs detached from context, nuance, values, and empathy.

There can be no compromise. In all cases, particularly when used in support of judicial decision-making, AI systems must serve the fundamental values of justice, which include independence and impartiality of the judiciary, fairness, equality, preservation of human rights, and access to justice. These values are constitutionally protected in Canada.

2. Humans in the loop

These fundamental values of justice converge on one principle: humans must always be involved in supporting judicial decision-making, particularly for the moderate or high-risk use of AI systems. While AI can assist with research, document analysis and procedural streamlining, the final judgement on the rights of the parties involved

in a court case must always be made by humans who are accountable for their decisions.

The *Ethical Principles for Judges*, published by the Canadian Judicial Council ("CJC") and binding on federally appointed judges, state that "judges should be vigilant to avoid inappropriately acquiring or receiving out-of-court information related to the parties, witnesses, or issues under consideration in matters before them. Fairness issues may need to be considered by the judge should this happen." This should also apply to AI systems.

In Canada, the adversarial process requires judges to impartially adjudicate on the basis of evidence presented by the parties, not material supplied by opaque algorithms.

In fact, judicial legitimacy depends on justice being seen as a human act of reasoning. Equity, compassion, and discretion, which are integral considerations in judicial decision-making cannot be delegated. These are intrinsic human values.

Recently, judges in Colombia, Mexico, and Peru admitted to using ChatGPT in legal determinations, sparking debate. Canadian courts must anticipate and avoid similar controversies.

3. Confidentiality, security, and privacy

Judicial data – including testimonies in some cases, sealed records, and confidential exhibits – is sensitive. In Quebec, family court proceedings are held *in camera*. Youth justice records are sealed. Statutory confidentiality applies to certain categories of criminal cases, such as those involving sexual crimes. In other cases, to protect important private or commercial interests, courts may order that evidence be given subject to confidentiality measures.

The confidentiality of court processes must not be compromised by AI systems in any way. In order to fully implement AI systems in support of judicial decision-making, secure "sandboxes" would need to be provided so that sensitive data cannot enrich algorithmic models, ensuring that the confidentiality of information can be preserved.

4. Sovereignty and infrastructure

Who owns the AI system infrastructure? Who controls the algorithm? Where is the data geographically located? These questions all point to the fact that dependence on foreign providers may jeopardize judicial independence. Digital sovereignty is essential for the judiciary. In its *Blueprint for the Security of Court of Information* (2024), the CJC states that:

> Classified Court Information should at all times reside in Canada. Judicial Users must be notified and give prior consent if any Judicial Data is proposed to be stored, processed or transmitted outside Canadian jurisdictions or by hosts in Canada that are subject to intrusive foreign law.

This should be equally applicable to AI systems.

5. Quality, transparency, and accountability

The outputs of AI systems must be accurate, explainable, and verifiable. The opacity of “black box” systems is incompatible with judicial reasoning. There are real dangers: in many reported cases around the world, AI systems have “hallucinated” and fabricated AI-generated case law and results. These results have the potential to severely undermine the credibility of counsel and, by extension, the credibility of the justice system as a whole.

The justice system cannot compromise on quality and accuracy. Judges make decisions that affect the lives, liberties, livelihoods, and personal and commercial interests of individuals and corporations. Judges should therefore be able to validate, trace, and understand the reasoning and examine the sources supporting an AI system’s output.

Furthermore, AI-based legal research in support of judicial functions can only be accepted if AI systems have access to complete and accurate data – in both of Canada’s official languages – that is not compromised by inaccurate information.

6. Continuous education and support

According to the Canadian *Ethical Principles for Judges*, technological literacy is now a requirement for judicial ethics. The same should apply to AI systems used in support of judicial decision-making.

Judges must be aware of the capabilities and limitations of AI systems. For instance, the quality of an AI system's response depends on the quality of the prompt provided. Judicial users should have a strong grasp of this concept.

Additionally, it is important to note that AI platforms, particularly public generalist ones, may not have been trained on judicial databases, but rather on the internet in general, a fact that may not be understood.

IV. CANADA AND QUEBEC – CHALLENGES AND PROSPECTS

The debate on the use of AI systems by judges is accelerating in Canada and Quebec. As previously discussed, there are many anticipated opportunities and benefits. Using AI systems in the justice system could also be an important way to improve access to justice, a fundamental consideration.

Self-represented litigants could use AI systems to conduct legal research, draft proceedings, and navigate the intricacies of the justice system. This would narrow the gap between legal expertise and public need. AI systems could also improve access to justice by making the judicial process more efficient and timelier, thereby reducing backlogs.

Courts and individual judges in Quebec are experimenting with AI systems. Currently, judges face a multitude of unvalidated tools. As it stands, due to the segmentation of functionalities between the various AI platforms, it seems that no commercially available AI model can serve the needs of the justice system. Choosing a platform or platforms would therefore be a significant issue.

Regardless, before introducing any AI system to support judicial decision-making, courts will need to perform a comprehensive and impartial assessment of the potential impacts on judicial independence, impartiality, privacy, and security, in order to preserve the fundamental values of justice.

Unfortunately, there will likely be a substantial delay before standardized, secure AI platforms are provided to support judicial decision-making. Indeed, there are major obstacles to the introduction of such platforms.

For example, the digitization of court documents in Quebec is incomplete. This is a fundamental prerequisite for adopting AI systems to support the justice system. Further, as indicated, AI platforms rely on data, yet the generalist public platforms do not have access to large Canadian judicial databases containing judgments, academic papers, textbooks, and legislation.

On the other hand, by delaying the adoption of AI systems to support judicial and decision-making processes, courts risk falling behind the private sector and public expectations. Institutional inertia also has consequences. That said, however, moving too quickly with AI – without implementing robust safeguards – risks eroding public confidence in the judiciary.

In Quebec, one key problem is that courts lack full control over their technological environment. The provincial department of justice is responsible for providing information technology platforms and systems with the advice and support of the department of cybersecurity, but the latter simultaneously serves a multitude of stakeholders with distinct interests.

In Canada, courts are constitutionally independent from the other branches of government, including for the administration of judicial affairs. This creates tensions which have the potential to compromise judicial independence.

Some Canadian courts have requested and obtained their full administrative independence, including over technology. For other courts, such as those in Quebec, their lack of control over technology will inevitably delay and hamper the deployment of AI systems to support the judiciary.

In many jurisdictions, successful technological reforms in the justice system were made possible because courts had both the flexibility and the resources to design and implement solutions tailored to their needs. They retained control and remained in the driver’s seat. Unfortunately, this has not been the case in the province of Quebec.

V. COMPARATIVE LESSONS

A number of international jurisdictions are moving quickly to implement AI systems in support of justice, including the following:

1. China

A High Court in China has developed a smart court management AI system – dubbed Intelligent Trial 1.0 – which automatically scans and digitizes filings; classifies documents into electronic files; identifies relevant laws, cases, and legal documents to be considered; generates all necessary court procedural documents such as notices and seals; and distributes cases to judges so that they can be dealt with and adjudicated.

2. Singapore

The Intelligent Court Transcription System ("iCTS") has been implemented in Singapore courts. The iCTS has the potential to increase court efficiency by transcribing court hearings in real-time, removing the need to hire a human transcriber and allowing judges and parties to immediately review oral testimonies given in court. It does this by using neural networks trained with language models and domain-specific terms (such as legal terminology).

3. India

The Supreme Court of India has implemented an AI system – termed Supreme Court Portal for Assistance in Courts Efficiency ("SUPACE") – that will help by cataloguing a large number of earlier judicial decisions for better processing of case materials or conducting dynamic research into precedents. SUPACE will not be used in decision-making. The role of AI will be confined to data collection and analysis.

4. Brazil

Brazil's Supreme Federal Court uses the VICTOR AI system, which was developed in collaboration with the University of Brasilia. The AI technology analyzes the enormous volume of appeals and automates the examination process by identifying cases with general repercussions, a requirement for the processing of an appeal.

5. United States State Courts

The National Center for State Courts created an AI Sandbox, which offers a secure environment for state judges in the United States and court professionals to familiarize themselves with AI tools.

These examples demonstrate that AI can be integrated responsibly in support of justice and judicial decision-making, but only within robust ethical and institutional frameworks.

VI. CONCLUSION

AI presents the Canadian and Quebec judiciary with a paradox. Used wisely, it can strengthen access to justice, reduce delays, and allow judges to focus on their essential role – that of judging. Used carelessly, it risks undermining the fundamental values of justice as well as public confidence.

The judiciary should embrace AI innovations deliberately, yet cautiously. The public rightly expects courts to be efficient and modern. Today, however, critical shortages of court personnel, budgetary constraints, recurrent delays, and rising litigation costs stand as major obstacles to access to justice. Adequately designed and implemented, AI systems have the potential to help mitigate all of these challenges.

Judicial independence is being tested worldwide these days. At every moment and at every step in the deployment of technology, the fundamental values of justice must be safeguarded, because without judicial independence and impartiality, there is simply no justice.

Justice must remain a human act of reasoning. But with appropriate vetting and safeguards, AI systems have the immense potential to advance the aims and accessibility of justice.