



EAB Tribunal Cluster

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Tribunal Policy on Use of Generative Artificial Intelligence

Overview

This document sets out how and when Artificial Intelligence (AI) may be used in connection with appeals before the Environmental Appeal Board, the Forest Appeals Commission, and the Energy Resource Appeal Tribunal (the “EAB Tribunal Cluster”), as well as to define limitations and conditions on the use of AI, where its use is permitted. AI technology is fast-evolving and as such this policy may be updated from time to time.

This policy has the force of a rule enacted by each body within the EAB Tribunal Cluster, pursuant to section 11 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45.

AI has become more complicated and capable over time. Familiar technological features like spellcheck features in word processing software were originally features of relatively simple, rules-based AI called traditional AI. Over time, AI capacity increased to allow predictive functions based on observed or inputted data (predictive AI) or to allow the learning of language including via dictation software (conversational AI). Now, generative AI allows the creation of content, such as images or text, in response to submitted prompts by machine-based learning from both user-inputted and external sources.

There are potential risks associated with using generative AI in the legal field that have been identified by courts and advisory bodies, such as:

- generative AI may “hallucinate” case law and generate cases that do not exist,¹ inaccurately summarize cases, fail to provide proper citations, or provide inaccurate citations;²
- human decision-making could be replaced by AI decision-making, leading to an erosion of judicial independence and agency³ and public confidence in the legal system;
- confidential or sensitive information entered into AI tools may be accessible by other users; and

¹ *Ko v. Li*, 2025 ONSC 2965 (CanLII).

² *R. v. Chand*, 2025 ONCJ 282 (CanLII).

³ Canadian Judicial Council, *Guidelines for the Use of Artificial Intelligence in Canadian Courts*, <https://cjc-ccm.ca/sites/default/files/documents/2024/AI%20Guidelines%20-%20FINAL%20-%202024-09%20-%20EN.pdf>

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- AI can be biased where it is trained on data which itself is biased.

The distinctions between types of AI have become harder to make. Widely used products like Microsoft Office and the Google search engine have integrated generative AI programs. These generative AI programs may carry out tasks formerly done by traditional AI programs (for example, spellcheck), or may enhance the performance of those tasks (for example, by suggesting text while a user types in Microsoft Word).

Given that AI has become integrated with modern word processing, search engines, and other professional tools, it is difficult or impossible to avoid the input of AI-generated suggestions or input. This policy is concerned with “Substantive AI-Generated Content,” which is AI-generated content which:

- quotes, summarizes, references, purports to quote, purports to summarize, or purports to reference any legal authority, including without limitation, legislation, regulations, codes, bylaws, legal or quasi-legal decisions, scholarly articles, books, and other similar materials used for their persuasive value; or
- was created in response to information generated via a prompt from a user, for the purpose of creating AI-generated content, whether that content is intended for use in formulating, creating, clarifying, or otherwise editing material to be submitted to the EAB Tribunal Cluster.

For clarity, Substantive AI-Generated Content does not include the use of software to check spelling or grammar, or the consideration or use of AI-generated word/phrase suggestions that are integrated with word processing software, search engines, or other professional software.

Party Use of AI

The EAB Tribunal Cluster does not dictate the tools used in creating submissions as part of appeal processes, including AI. Parties appearing before the EAB Tribunal Cluster, or their representatives, may rely on Substantive AI-Generated Content in drafting submissions.

The following considerations apply where Substantive AI-Generated Content is used by parties or their representatives in generating submissions:

- **Accountability:** parties and representatives will be held accountable for the accuracy of submissions made to the EAB Tribunal Cluster. Any “hallucinated” or inaccurate case references, summaries, or quotations will not be excused because they were AI-generated. Rather, the party or representative will be deemed to have invented or misrepresented the relevant legal authorities. This may be grounds for a costs award in appropriate circumstances, other repercussions as described in

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the EAB Tribunal Cluster's *Code of Conduct*, or may obligate members of the EAB Tribunal Cluster to report these circumstances to relevant regulatory bodies, such as the Law Society of British Columbia.

- **Transparency:** parties and representatives relying on Substantive AI-Generated Content must disclose this usage to the EAB Tribunal Cluster and to all other parties, participants, interveners, and representatives involved in the relevant appeal(s). This disclosure must be included with the submissions at issue and must indicate the specific portion of submissions for which AI-Generated Content was used and the degree to which it was used (for example, when AI Generated Content is relied upon as factual information or where it provides some or all of the arguments included in submissions).

The EAB Tribunal Cluster does not accept that AI may independently produce evidence. As such, AI cannot be used to generate summaries or explanations related to facts unless those summaries or explanations are adopted by a witness providing evidence to the EAB Tribunal Cluster. In such circumstances, the witness must disclose the fact that they used AI to generate their evidence, as well as the scope of use of AI, the methodology used (including verbatim inputs provided to the AI and the number of iterations and responses received at each iteration), and any limitations or precautions taken to increase the accuracy or reliability of the information generated by the AI.

Member Use of AI

Members are permitted to use resources available to them in writing decisions, including generative AI. Members may, but are encouraged not to, rely on Substantive AI-Generated Content in their decision-making.

The following considerations apply where Substantive AI-Generated Content is used by members:

- **Accountability:** Members are accountable for the work they produce, independent of the tools or processes used in doing so. If “hallucinated” or inaccurate case summaries are included in a draft decision, those instances will be treated as if the member invented or misrepresented the relevant legal authorities.
- **Authority:** Members may not delegate any decision-making to AI. Decisions related to the admission and weighing of evidence, the analysis of submissions and law, and the application of law to the facts of the case must all be done by the member(s) assigned to decide the appeal.
- **Diligence:** Members are expected to verify all legal citations provided in submissions or included in drafting. Members must not rely on cases summarised

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by parties without verifying the relevant quotations or authorities from a reliable source, such as CanLII.

- **Fairness:** Members who review the evidence must be the ones to decide the case. Any delegation of decision-making to AI is, in addition to an unauthorized delegation, a contravention of the rules of procedural fairness and will be treated as such.
- **Privacy and Security:** Members must follow current direction for BC Public Service Employees on electronic information, including *BC Government's Policy on the use of generative AI*⁴ and the BC Government's *Appropriate Use Policy*.⁵ All evidence and submissions submitted as part of an appeal are considered "Confidential Information," insofar as the *Appropriate Use Policy* is concerned.
- **Transparency:** Members relying on Substantive AI-Generated Content as part of decision-making must disclose this fact in their decision and explain the scope of AI use and the limitations and precautions they used in doing so. This is to maintain public confidence and to ensure parties can effectively gauge post-decision rights for further appeal or review of decisions.

Additional Considerations

Members who are lawyers may also have professional obligations and should refer to the Law Society of BC guidance, such as the *Guidance on Professional Responsibility and Generative AI*.⁶

⁴ <https://digital.gov.bc.ca/policies-standards/ai/policy/>

⁵ https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/services-policies-for-government/policies-procedures/appropriate-use-policy/appropriate_use_policy.pdf.

⁶ <https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/Professional-responsibility-and-AI.pdf>.