

THE CHANGING LEGAL LANDSCAPE: WHAT HAPPENS WHEN AI IS USED TO DRAFT A JUDGMENT?



On 31 July 2026, the High Court, Gauteng Division handed down an important judgment that ALL legal practitioners should be aware of. The matter of *FJL v TGO* dealt with an urgent appeal concerning the schooling arrangements of the parties' two children. The Court not only had to address the schooling arrangements and the issue of urgency but also had to address the discrepancies in the judgment handed down by the Acting Judge in the court *a quo*.

The appellant's legal team in the matter pointed out that there were 11 discrepancies in the judgment being appealed, and this was confirmed by the senior librarian of the Johannesburg Society of Advocates. The discrepancies appeared to be the product of AI 'hallucinations' as there were fabricated and misattributed case citations in the judgment. The court had to deal with the impact of unverified AI generated legal authority on the constitutional right set out in section 34 of the Constitution. Opperman J's judgment considered the approaches of different jurisdictions such as the United Kingdom, Canada, Australia, and the United States in

similar matters and found that the underlying principle on the use of generative AI is the same. AI may assist with summarisation, research, editing, and drafting however the human drafter still has a duty to verify the output and remains accountable for it. The Legal Practice Act and the Legal Practice Council's Code of Conduct and Rules are all silent on the use of AI. As it stands, there is no binding authority or general guidelines on how legal practitioners and members of the judiciary should use generative AI for research, drafting and even reasoning. In order to address this gap, the LSSA's AI Committee has over the past year been working on the AI guidelines and these will be finalised and published in the upcoming months. In the interim, the profession must be guided by the already established principles, such as a legal practitioner's duty to not mislead the court, whether intentionally or negligently. This principle was emphasised by the High Courts in the KwaZulu – Natal Division and the Gauteng Division in the judgments of *Mavundla v MEC: Department of Co-Operative Government and Traditional Affairs KwaZulu-*

Natal and Others and Northbound Processing (Pty) Ltd v South African Diamond and Precious Metals Regulator and Others. The Court in both matters emphasised that a legal practitioner's duty to not mislead the court encompasses the duty to present an honest account of the law, which inevitably includes not presenting fictitious or non-existent cases or misattributing cases. This principle underpins the ethical obligations to which legal practitioners are subject as envisaged by the Legal Practice Council's Code of Conduct and Rules.

The Labour Court, Durban in *Molawa and Others v Matjhabeng Local Municipality and Another* was faced with a similar matter where a chairperson's ruling in disciplinary proceedings relied on fictitious case authorities. In this matter, the court had to stay the disciplinary proceedings as there was potential for grave injustice to occur if the proceedings were allowed to continue.

The court advised that the right set out in section 34 of the Constitution cannot be said to be met when the law applied is non-existent or jumbled together quotes from cases. Opperman J emphasised that an essential quality of the law is in its verifiability, which means others must be able to find it and check it.

The judgment also answers a second question, which is what happens to a decision reached with the assistance of fabricated authority? The court considered the recent decision of the Supreme Court of India in *Pooja Ramesh Singh v Jammu and Kashmir Bank Ltd*, which adopted a zero-tolerance approach and set aside a tribunal decision where hallucinated

material had entered the reasoning process, holding that such a decision 'is no decision in the eyes of the law.' Opperman J did not follow this approach by declaring the court a quo's order a nullity however she considered the merits of the appeal and dismissed the appeal and referred the conduct of the Acting Judge to the chairperson of the Legal Practice Council for investigation.

What does this mean for legal practitioners?

Pending the finalisation and/or publication of formal guidelines, legal practitioners are encouraged to do the following to guard against the pitfalls of using generative AI, specifically:

1. Verify: every citation, quotation, and case reference in a pleading, opinion, or heads of argument must be checked against the primary source before it is filed or relied upon;
2. The duty to report is not optional. Article 16(1) of the Code of Judicial Conduct requires a judge who becomes aware of clear evidence of professional misconduct to inform the Legal Practice Council when a legal practitioner falls short of their duty to not mislead the court.
3. Confidentiality obligations under POPIA remain. Client and case information should not be entered into public AI tools without appropriate safeguards or anonymisation. The LSSA urges legal practitioners to verify everything and remember that AI is a tool that may assist with research and drafting but it may never decide or reason. That duty cannot and should not be delegated to an AI tool.

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