

AI for Lawyers

Judge says AI could have been used to reduce legal fees

By Tara Vasdani



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(December 12, 2018, 10:34 AM EST) -- Recently, the Ontario Superior Court of Justice in the case of *Cass v. 1410088 Ontario Inc.* 2018 ONSC 6959 commented on the use of artificial intelligence in reducing a successful defendant's motion preparation costs, notably, the amount of paid resources used to engage in "legal research" prior to the motion.

The defendant in the matter was successful on summary judgment, and later made submissions requesting that the court award partial indemnity costs of \$17,112 for its services rendered prior to a Rule 49 offer, and substantial indemnity costs post-that offer of \$23,989. Disbursements at the time totalled \$24,300. A portion of the disbursements included a \$900 client bill for legal research completed prior to the motion.

The courts' longing for the implementation and exercise of legal research tools such as artificial intelligence (AI) in reducing client costs and creating a more efficient legal process, is not new. Since the advent of computer technology, lawyers have rightfully capitalized on its ability to assist in organization, quick retrieval of case law and case summaries via webpages, and more recently, the use of tools like e-discovery to reduce client costs and the average lawyer's workload in the preparation of affidavits of documents and examinations for discovery.

In *Cass*, Justice A.C.R. Whitten assessed the defendant's employ of third-party research programs in comparison to free services, and held:

"\$900.00 for legal research is problematic. One assumes that counsel graduated with the basic legal knowledge we all possess. ... Counsel no doubt was familiar with the focus on the degree or control and access exercised by the landlord on the subject area. So given all the base experience and knowledge, the need for 'research' by some anonymous identity is questionable.

"... the principal case law was from the Supreme Court of Canada, and defence counsel, as competent counsel as he was, would no doubt have read the decisions authorized by Justice Iacobucci, to argue so compellingly that the plaintiff was not such a beneficiary.

"All in all, whatever this 'research' was would be well within the preparation for the motion. There was no need for outsider or third party research."

The most interesting portion of Justice Whitten's analysis, being: "... If artificial intelligence sources were employed, no doubt counsel's preparation time would have been significantly reduced."

Previously, I considered the use of Google's Duplex AI system, which operates by making phone calls and setting up reminders using a human-like program and can be used to create a legal process that is more efficient, more knowledgeable, and most of all up to date with the social realities of today. The system impressively called a restaurant and hair salon to set up appointments and took steps to pretend to be human by inserting "umms" and "ahs" into the conversation. The person on the other end appeared to be entirely unaware that they were speaking to a program.

Google's system not only dealt with a difficult individual on the other side, but also took steps to

determine the restaurant's wait times for the time that its owner wanted to get there, with his four friends. Combining Justice Whitten's reasoning in *Cass* and the potential of a system such as Google Duplex in the legal industry, what could some of these tools accomplish?

Well, implementing an AI system such as Google Duplex would allow the courts and counsel to resolve cases more efficiently, deal with matters and counsel communication more quickly and sift through file documents more readily. While law students and juniors are wonderful for their knowledge of legislative developments, and in finding current case law, an AI system such as Google Duplex would not only search the most recent case law available, but the *Hansard*, legislative updates, news articles and anything and everything it could find online.

Lawyers will forever be distinguished for their wonderful skillset in the art of persuasion — but what causes them to obtain those “aha!” moments, is often what they read the night before.

If AI could provide us with all of the current law — in one space — juniors and articling students would be able to focus more on what matters most: honing skills early-on in client development, the art of argument and of persuasion, and drafting actual pleadings and facts.

Back when I felt the need to serve by Instagram, I found a huge lacuna in the legal system. I commented on the fact that pleadings were now being filed online — and truly believe that soon, motion materials will be done in the same way. If AI can conquer the task of legal research, filing and electronic system management, lawyers can focus more on what makes them so unbelievably unique: moving matters forward and achieving resolution creatively and quickly.

All in all, my conclusion is this: just like Instagram, the future is here. Justice Whitten's reasoning which follows very closely to that of Justice Perell's decision in *Drummond v. Cadillac Fairview Corp. Ltd.* 2018 ONSC 5350, is both welcoming and telling. Although the legal industry continues to demonstrate a great resistance to the technological shift in client service and clients' expectations, it is only a matter of time before modern judiciaries will begin to expect the employ of tech tools by counsel and students. Should lawyers choose not to follow suit, they could end up with a very disappointing, and potentially assessment-worthy, client costs award.

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