



# Claim Case Study: Artificial Intelligence Case Comparison

**A**rtificial Intelligence (AI) is evolving and becoming ubiquitous in our work and personal lives. Currently, only a few cases have made their way through the courts. The two cases discussed below demonstrate that AI can be a useful tool for business applications, however, at this point, it is prudent to treat AI as an assistant whose work needs review and not an equal whose work can be relied upon unchecked.

## ***Haghshenas v. Minister of Citizenship and Immigration, 2023 FC 464***

This Federal Court case involves the use of AI to make decisions concerning immigration.<sup>1</sup> The Applicant in this case is an individual from Iran who applied for a work visa targeted towards entrepreneurs and self-employed candidates seeking to operate a business in Canada. The Immigration Officer at the Embassy of Canada in Ankara, Turkey was not satisfied the Applicant would leave Canada at the end of his stay due to the purpose of his visit. His application was denied and the Applicant applied for judicial review. The reasons given for the decision, found in the Officer's notes, were as follows:

Applicant proposes to start an elevator installation and servicing business.

- The business plan indicates the hiring of one elevator mechanic and one elevator engineer. Salary estimates for the engineer are below provincial average.

- The business plan projects considerable profits of over \$540,000 in the first year without having provided any evidence of potential clients or contracts.
- The projected revenues are based on the average obtainable market share therefore, the revenue projections are speculative.
- The business plan includes rental estimate for commercial office space but does not include estimates for suitable industrial/warehouse space that would be required for equipment and components to support such an installation company.
- Applicant indicates that the company will register as a licensed contractor for elevator and escalator installation as required by legislation; however, no evidence has been provided that this process has been completed and therefore it is unclear as to whether or not the business entity would be found to meet these requirements.

Based on these reasons, the Officer was not satisfied that the Applicant had presented a business plan that would represent a significant benefit to Canada. Weighing the factors in the application, the Officer was not satisfied that the Applicant would depart Canada at the end of the period authorized for their stay. Accordingly, the Officer denied this application.

The Applicant's grounds for seeking the judicial review included the fact that the Officer's decision was made with the assistance of AI in the form of "Chinook" software and

<sup>1</sup> Lawyer Used ChatGPT In Court—And Cited Fake Cases. A Judge Is Considering Sanctions (forbes.com)

the Applicant's position was that there are questions about "Chinook's" reliability and efficacy and, therefore, a decision made using the software could not be deemed reasonable until it was determined how machine learning has replaced human input and how it affects application outcomes.

The Judge decided that the use of AI was irrelevant because the Officer ultimately made the decision and the application for judicial review was dismissed.

## Lawyer Used ChatGPT In Court – And Cited Fake Cases

This article from June 2023 describes a case where an American lawyer had a client who was injured on an Avianca Airlines flight. When conducting research, the Plaintiff's lawyer engaged ChatGPT which provided citations for several precedents, such as, "*Varghese v. China Southern Airlines*" and "*Shaboon v. Egypt Air*". When the Federal Judge attempted to look these cases up, it was discovered that they didn't exist. The AI platform had created these cases and had not indicated that they were fictitious.

The Judge issued a \$5,000 fine to the lawyer and dismissed his action because he found that the lawyer "abandoned their responsibilities when they submitted non-existent judicial opinions with fake quotes and citations created by the artificial intelligence tool ChatGPT, then continued to stand by the fake opinions after judicial orders called their existence into question, advocated for the fake cases and legal arguments," even "after being informed by their adversary's submission that their citations were non-existent and could not be found."<sup>2</sup>

If employers are going to permit staff to use AI to assist them in completing their duties, they should be trained to keep accurate notes to explain the extent to which the AI was used as well as any other factors considered when making decisions.

It is recommended that if AI programs are used for work purposes, the information provided be verified through another source.

<sup>2</sup> <https://arstechnica.com/tech-policy/2023/06/lawyers-have-real-bad-day-in-court-after-citing-fake-cases-made-up-by-chatgpt/>

## Liability

The liability for damage or injury caused by an AI system can vary depending on the specific circumstances, legal jurisdictions, and the applicable laws.

1. **Manufacturer/Developer:** In some cases, the liability can fall on the entity that manufactured or developed the AI system. If the damage or injury results from a defect in the system itself, the manufacturer or developer may be held liable.
2. **User/Operator:** The liability may also lie with the user or operator of the AI system. If they fail to use the AI system appropriately, follow guidelines, or take necessary precautions, they may be held responsible for any resulting harm.
3. **Intermediaries:** In certain situations, intermediaries, such as distributors or service providers, may bear some liability if they played a role in selling, distributing, or maintaining the AI system, especially if they were aware of any potential risks or flaws.
4. **Regulatory Bodies/Organizations:** Depending on the jurisdiction, regulatory bodies or organizations may have certain liability obligations. They may be responsible for ensuring that AI systems meet safety standards or for overseeing the development and deployment of AI technologies.

Liability laws related to AI are still evolving, and specific cases may have different outcomes based on various factors. Consulting with a legal professional well-versed in AI and technology law would be necessary to determine liability in a specific situation.

The Ontario Provincial Government has published these guidelines: Artificial Intelligence (AI) Transparency Guidelines and Principles | [ontario.ca](https://www.ontario.ca).