

The Influence of ChatGPT-generated Data on the Administration of Justice in South Africa

Isiphile Petse* and Usenathi Phindelo**

Abstract

ChatGPT, as a medium for South African legal practitioners to conduct legal research, is a threat to the courts and the administration of justice. ChatGPT has become a manipulative tool that deceives legal professionals. For instance, the chatbot has generated false or misleading legal documents. The information generated by ChatGPT not only misleads the court but also misleads legal practitioners who use the information without verification. Failing to verify the information generated by ChatGPT means that legal practitioners could be found guilty of committing the common-law crime of perjury, especially when a legal practitioner presents incorrect information during court proceedings. This article examines the cases of Mavundla v MEC: Department of Cooperative Governance and Traditional Affairs and Others; Michelle Parker v Amanda Forsyth NO and Others and Roberto Mata v Avianca to illustrate the impact of ChatGPT-generated information on the courts and the administration of justice. The article also refers to various methods and guidelines that South African legal practitioners can use to verify the accuracy of information produced by ChatGPT. Furthermore, the article examines existing codes of conduct and suggests sanctions that can be used when incorrect or biased information is presented in court. In conclusion, the article suggests that the EU AI Act is a framework South Africa can consider when developing its legal guidelines for artificial intelligence.

Keywords

Chat Generative Pre-trained Transformer (ChatGPT), administration of justice, South African courts, legal practitioners, perjury, code of conduct, Legal Practice Council

1. Introduction

Chat Generative Pre-trained Transformer (ChatGPT)¹ is a language model that was

1 Wilson, M 'ChatGPT Explained: Everything You Need to Know About the AI Chatbot' (2023) <<https://www.techradar.com/news/chatgpt-explained>> accessed 31 August 2023; *Michelle Parker v Amanda Forsyth NO and Others* case no 1585/20 (29 June 2023) para 86. The court defined a chatbot as a computer program designed to simulate conversation with human users over the Internet.

* LLB, LLM (University of the Western Cape), Lecturer (Walter Sisulu University, School of Law) <<https://orcid.org/0000-0002-4079-5544>> e-mail: ipetse@wsu.ac.za

** LLB student (Walter Sisulu University, School of Law) <<https://orcid.org/0009-0003-8940-3542>> e-mail: 221135952@mywsu.ac.za



released in November 2022 by OpenAI.² ChatGPT uses advanced artificial intelligence (AI) techniques to generate coherent, natural-sounding, human-like language responses to prompts or inputs.³ ChatGPT can fulfil a wide range of requests made via text, including generating a gratitude letter.⁴ and assisting with legal research.⁵ Despite its ability to answer questions and help with legal research, the chatbot has changed how society obtains legal information.⁶ This has heightened exposure to legal claims arising from AI-related violations of fundamental human rights.⁷ South African lawyers' use of ChatGPT to conduct legal research has become an increasing problem. In a regional court case, *Michelle Parker v Amanda Forsyth NO and Others*,⁸ the plaintiff's attorney explained that his partner had sourced cases using ChatGPT.⁹ South African lawyers and judges in other jurisdictions, such as the United States of America,¹⁰ Colombia¹¹ and the Netherlands,¹² have also used ChatGPT.

ChatGPT has proven to be a significant problem and a threat to the integrity of the courts and the quality of the legal information accessed and used. For example, a judge in a subdistrict court in Gelderland, Netherlands, based a verdict on information generated by ChatGPT. This reliance on chatbot-generated content astonished experts,

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- 2 Perlman, A 'The Implication of ChatGPT for Legal Services and Society' <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4294197> accessed 1 September 2023; Schulman, J, Zoph, B & Kim, C et al 'Introducing ChatGPT' (2022) <<https://openai.com/blog/chatgpt>> accessed 1 September 2023.
 - 3 Kalla, D & Smith, N 'Study and Analysis of ChatGPT and its Impact on Different Fields of Study' (2023) 8 *International Journal of Innovative Science and Research Technology* 828; Lo Chung, K 'What is the Impact of ChatGPT on Education? A Rapid Review of the Literature' (2023) 13 *Education Science* 1.
 - 4 Lund, BD 'A Brief Review of ChatGPT: Its Value and the Underlying GPT Technology' (2023) <<https://www.researchgate.net/publication/36680957>> accessed 1 September 2023; *Michelle Parker* (note 1) para 86. ChatGPT can also compose various forms of written content, including articles, social media posts, essays, code and email.
 - 5 *Michelle Parker* (note 1) para 87 (in this case, the plaintiff's attorneys used ChatGPT to conduct legal research); Perlman (note 2) 2.
 - 6 Perlman (note 2) 1–2. The author also confirms that 'AI tools like ChatGPT hold the promise of altering how we generate a much wider range of legal documents and information.'
 - 7 Ka Mtuze, S & Morige, M 'Towards Drafting Artificial Intelligence (AI) Legislation in South Africa' (2024) *Obiter* 163.
 - 8 Note 1.
 - 9 Para 86.
 - 10 *Roberto Mata v Avianca Inc* case 22-cv-1461 (PKC) (the plaintiff's counsel submitted six cases that were generated by ChatGPT); Maruf, R 'Lawyer Apologizes for Fake Court Citations from ChatGPT' (2023) <<https://edition.cnn.com/2023/05/27/business/chat-gpt-avianca-mata-lawyers/index.html>> accessed 3 September 2023.
 - 11 Luke, T 'Colombian Judge Says He Used ChatGPT in Ruling' (2023) <<https://www.theguardian.com/technology/2023/feb/03/colombia-judge-chatgpt-ruling>> accessed 3 September 2023 (Judge Manuel, a judge in Colombia, used ChatGPT to make a ruling); Janus, R 'A Judge Just Used ChatGPT to Make a Court Decision' (2023) <<https://www.vice.com/en/article/k7bdmv/judge-used-chatgpt-to-make-court-decision>> accessed 3 September 2023.
 - 12 Quekel, S 'Disbelief at Dutch Judge Using ChatGPT in Verdict: "This is really unacceptable"' (2024) <<https://www.ad.nl/binnenland/ongeloof-om-nederlandse-rechter-die-chatgpt-gebruikt-in-vonnis-dit-kan-echt-niet~ae3288e10/?referrer=https%3A%2F%2Fwww.dutchnews.nl%2F>> accessed 31 April 2025.

who voiced significant concerns regarding the potential for inaccuracies. They emphasised that employing such technology in the judiciary raises serious ethical and practical challenges.¹³ The use of ChatGPT by lawyers and judges has shown that the chatbot can be discriminatory¹⁴ and misleading.¹⁵ This article analyses the legal impact of ChatGPT-generated information on the courts and the administration of justice. The analysis identifies and discusses existing codes of conduct prohibiting South African legal practitioners from presenting incorrect and biased information in court.

Secondly, the article explores existing sanctions that could be imposed by the courts, especially when legal practitioners provide biased and incorrect information. Lastly, to protect the independence, impartiality, dignity, and accessibility of the courts, the organs of state bear a paramount duty to ensure that legislative measures are executed accordingly.¹⁶ This article calls for ChatGPT to be human-centric and to maximise the benefits of AI solutions while minimising lawyers' risk and exposure to legal claims arising from AI-related violations of fundamental human rights.¹⁷

The article suggests that the EU's AI Act is a framework that South Africa can consider in developing its legal guidelines for AI. It recommends different methods that South African legal practitioners can use to verify the accuracy of the information generated by ChatGPT.

2. The impact of ChatGPT on the courts and the administration of justice

ChatGPT has generated false or misleading legal information that has been used in the courts.¹⁸ In *Michelle Parker*,¹⁹ the court heard that an attorney used information generated by ChatGPT²⁰ without verifying the accuracy of the information generated by the chatbot.²¹ The court inquired whether the information that was generated by the chatbot was, in fact, accurate. The court asked the defendant and the plaintiff to make a concerted effort to locate the suggested information²² or authority.²³ The plaintiff's counsel conceded

13 Ibid.

14 Janus, R 'Facebook's AI Chatbot: "Since Deleting Facebook My Life has been Much Better"' (2022) <<https://www.vice.com/en/article/qjkkgm/facebooks-ai-chatbot-since-deleting-facebook-my-life-has-been-much-better>> accessed 3 September 2023: 'In 2016, Microsoft unleashed an AI chatbot called Tay, which was shut down after it turned into a racist, holocaust-denying conspiracy theorist after less than a day of interacting with users on Twitter.'

15 Janus, R 'Stack Overflow Bans ChatGPT for Constantly Giving Wrong Answers' (2022) <<https://www.vice.com/en/article/wxnaem/stack-overflow-bans-chatgpt-for-constantly-giving-wrong-answers>> accessed 3 September 2023; *Roberto Mata v Avianca* (note 10) para 4 (the court stated that 'five decisions submitted by plaintiff's counsel contain similar deficiencies and appeared to be fake as well'); *Michelle Parker* (note 1) para 87.

16 Constitution of the Republic of South Africa, 1996, s 165(4).

17 Ka Mtuzze & Morige (note 7) 163.

18 Perlman (note 2) 18.

19 Note 1. The case was heard on 22 May 2023.

20 Para 86: 'the plaintiff's counsel explained that his attorney had sourced the cases through the medium of ChatGPT'.

21 Para 87. The court noted that the plaintiff's attorneys used the AI medium to conduct legal research and accepted the results without satisfying themselves about the accuracy of the information generated.

22 Para 79.

23 Para 80. The information or authority referred to was case law.

that the information could not be sourced,²⁴ which resulted in the defendant's attorneys being unable to access the information generated by the chatbot.²⁵ The court found that the citations, facts, and decisions generated by the chatbot were fictitious.²⁶ The information generated by the chatbot can not only mislead the court,²⁷ it can also mislead any reckless legal practitioner who uses and presents the generated information without verification.

In the United States, a similar incident occurred in *Roberto Mata v Avianca Inc*,²⁸ where an attorney submitted six cases generated by the chatbot.²⁹ The court confirmed that the citations and decisions in the submitted cases did not exist.³⁰ The *Roberto Mata* case showed that the use of information generated by ChatGPT impacts the courts, and any legal practitioner who uses the chatbot must be aware that the information it generates could be false.³¹

In South Africa, the East London Circuit Local Division held in *Mzayiya v Road Accident Fund*³² that legal practitioners must ensure that court documents such as pleadings, affidavits, and heads of arguments are authentic. If they mislead the court by using ChatGPT, they risk committing the common-law crime of perjury.³³ It is important to note that when legal practitioners rely on information generated by ChatGPT, they must remember their paramount duty to the courts and the administration of justice.³⁴ In *General Council of the Bar of South Africa v Geach and Others*³⁵ it was correctly emphasised legal practitioners' duty towards the courts:

[Legal practitioners] are the beneficiaries of a rich heritage and the mantle of responsibility that they bear as the protectors of our hard-won freedoms is without parallel. As officers of our courts lawyers play a vital role in upholding the Constitution and ensuring that our system of justice is both efficient and effective. It, therefore, stands to reason that absolute personal integrity and scrupulous honesty are demanded of each of them ...³⁶

Legal practitioners not only have a positive duty to be honest in the information they present, but they must also uphold the Constitution, 1996 and ensure that justice is

24 Ibid.

25 Para 85.

26 Para 87.

27 Para 88. The defendants' counsel submitted that the attempt to provide fictitious information misleads the court and such an act must be met with an appropriate punitive cost order.

28 Note 10.

29 Paras 25, 27, 29; Maruf (note 10).

30 Para 2. The court stated that one of the six cases, *Varghese*, contained a decision with internal citations and non-existent quotes.

31 Maruf (note 10). The attorney admitted that he was unaware that ChatGPT's information could be false.

32 *Mzayiya v Road Accident Fund* [2021] 1 All SA 517 (ECL).

33 Ibid.

34 Ibid. Chapter 8 of the Constitution provides for the protection of the courts and the administration of justice.

35 2013 (2) SA 52 (SCA).

36 Para 87.

correctly administered even outside the courts.³⁷ Section 165(4) of the Constitution states that '[o]rgans of state, through legislative and other measures, must ensure that independence, impartiality, dignity, accessibility and effectiveness of the courts are protected'.³⁸ In *Mzayiya*, the court explained the extent to which legal practitioners have a legal duty towards the court as follows:

- (i) They are encouraged to refuse client mandates that would jeopardise the administration of justice.³⁹
- (ii) They have a legal duty not to use evidence and legal points that mislead the court.⁴⁰
- (iii) They are required to conduct themselves with honesty and integrity.⁴¹

Legal practitioners must not commit an act of perjury or sabotage the administration of justice⁴² by using the chatbot. In South Africa, information obtained or presented in a manner that violates any right contained in the Bill of Rights of the Constitution must be excluded or considered inadmissible if the admission of such information would render the trial unfair or detrimental to the administration of justice.⁴³ This means that when a legal practitioner presents or relies on incorrect information generated by ChatGPT without proper verification, they increase the risk of violating the public trust⁴⁴ and the rights protected by the Bill of Rights, such as a client's right to a fair trial. Even though such information can be excluded and deemed inadmissible by the courts, no procedural guidelines or court precedents exist to emphasise that ChatGPT's false information can render a trial unfair or undermine the administration of justice, as illustrated in this article.

Moreover, in many cases, excluding information obtained or presented in ways that violate Bill of Rights protections is not absolute. Consequently, there is a significant likelihood that courts may accept evidence or data generated by ChatGPT that is either unconstitutional or illegally obtained. This may happen when the court cannot determine whether the legal practitioner has verified the information.

37 Section 2 of the Constitution not only invalidates law and/or conduct that is inconsistent with it but requires that any obligation imposed by it must be fulfilled.

38 Section 165(4) of the Constitution.

39 *Mzayiya* (note 32) para 93. See Van Eck, M 'Duties of Practitioners to Court?' (2022) available at <<https://www.derebus.org.za/duties-of-practitioners-to-court/>> accessed 9 September 2023.

40 *Mzayiya* (note 32) para 83. In addition, the court stated that legal practitioners should not be 'permitted to knowingly offer or rely on false evidence or to misstate evidence.' See Van Eck (note 39).

41 *Mzayiya* (note 32) para 82; Van Eck (note 39).

42 *Mzayiya* (note 32) para 83. Kroon AJ confirmed that '[t]o suppress evidence or worse still to suborn perjury, is to sabotage the administration of justice and it strikes at the heart of the legal practitioner's duty to court'.

43 Section 35(5) of the Constitution.

44 *Mavundla v MEC: Department of Cooperative Governance and Traditional Affairs and Others* [2025] ZAKZPHC 2 para 24.

Currently, South African courts and the Legal Practice Council have the discretion to verify and investigate the accuracy of information generated by ChatGPT and presented by legal practitioners. In a recent South African case, *Mavundla v MEC: Department of Cooperative Governance and Traditional Affairs and Others*,⁴⁵ the High Court emphasised the need to scrutinise and investigate artificially generated fictional citations presented by a legal practitioner in court. In investigating the accuracy of the information, Judge Bezuidenhout appointed two legal researchers to verify the presented information, and they discovered that the citations were from ChatGPT.⁴⁶ In many cases, courts usually regard information presented by legal practitioners as authoritative, meaning that the courts usually trust that the information provided during court proceedings has been verified before being presented.⁴⁷

Thus, the court in the *Mavundla* case viewed the inclusion of false citations by legal practitioners as a serious threat to fundamental trust in the legal system.⁴⁸ As a result, due to the implications of ChatGPT for the legal profession, the court referred the matter to the Legal Practice Council for further investigation,⁴⁹ without providing a precedence or court judgment that can assist or influence the decisions made by courts in the future.

The *Mavundla* case illustrates that while precedent holds significant weight in common-law systems, the fabricated information generated by ChatGPT undermines the principles of legal reasoning and academic integrity, especially if the data is unverified and uncorrected by the courts. Therefore, as part of the investigation, courts should also examine the conditions under which the information was acquired and potentially establish common-law rules that govern the use of ChatGPT by legal practitioners without infringing on rights, in accordance with section 36 of the Constitution.

Section 36(1) of the Constitution states that ‘the rights contained in the Bill of Rights may be limited only in terms of the law of general application and to the extent that such limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom.’⁵⁰ In *S v Naidoo*,⁵¹ the court held that the law of general application can be a statutory or a common-law rule⁵² that permits illegal or unconstitutional information to be admitted.⁵³ This is regarded as a constitutionally permissible limitation of the rights enshrined in the Bill of Rights.⁵⁴ However, in the absence of statutory and common-law rules that regulate the use of ChatGPT-generated data in South African courts, legal practitioners will continue to waste valuable judicial time and resources.⁵⁵

45 Note 44.

46 Para 50.

47 Para 20.

48 Para 24.

49 Ibid.

50 Section 36(1) of the Constitution, 1996.

51 1998 (1) SACR 479 (N).

52 *S v Naidoo* 1998 (1) SACR 479 (N) 500.

53 Schwikkard, P & Van der Merwe, *S Principles of Evidence* 4 ed (Juta & Co, 2015) 240.

54 Ibid.

55 *Mavundla* (note 44) para 16.

3. Ethics of Legal Practitioners' Use of ChatGPT

In South Africa, the professional conduct of legal practitioners must be regulated, and accountability must be ensured.⁵⁶ The South African Legal Practice Council (the Council) must uphold and advance the rule of law, the administration of justice and the Constitution.⁵⁷ The Council has developed a Code of Conduct that can be reviewed and amended and applies to all legal practitioners in South Africa,⁵⁸ particularly when addressing the use of ChatGPT-generated data by legal practitioners in court.

In the *Mzayiya* case, regarding the Council's Code of Conduct (the Code), the court emphasised that legal practitioners should maintain the highest standards of honesty and integrity by upholding the principles and values enshrined in the Constitution.⁵⁹ This means that legal practitioners must constantly be subjected to their legal duty to the court,⁶⁰ the interests of justice,⁶¹ and the observance of the law.⁶² Legal practitioners must bear in mind article 57.1 of the Code before they use misleading information generated by ChatGPT in courts. Article 57.1 of the Code states:

A legal practitioner shall take all reasonable steps to avoid, directly or indirectly, misleading a court or a tribunal on any matter of fact or question of law. In particular, a legal practitioner shall not mislead a court or a tribunal in respect of what is in papers before the court or tribunal, including any transcript of evidence.⁶³

Even though the *Mzayiya* case did not refer to the Code, it correctly discussed principles similar to those in the Code. Legal practitioners in South Africa are governed by the Constitution, court judgments, the Legal Practice Act, and the Code; apart from the mentioned sources, legal practitioners are accountable for recklessly presenting misleading information generated by ChatGPT during court proceedings.⁶⁴ Recklessness affects the courts and the administration of justice; therefore, this conduct infringes on the rights conferred by the Constitution.⁶⁵

Even though the Legal Practice Act and the Code do not make provision for an incident where the legal practitioner provides misleading ChatGPT information in court, the *Mzayiya* case confirmed that a counsel who is dishonest is guilty of misleading the court and is thus party to perjury.⁶⁶ For example, in the *Michelle Parker* case, the defendant's counsel alleged that the plaintiff's counsel attempted to mislead the court; the court

56 Legal Practice Act 28 of 2014, long title – summary of the scope and purpose of the legislation.

57 Section 5 of the Legal Practice Act.

58 Section 36(1) of the Legal Practice Act.

59 Articles 3.1 and 3.2 of the Legal Council's Code of Conduct 2019.

60 Articles 3.3 and 3.3.1 of the Code.

61 Article 3.3.2 of the Code.

62 Article 3.3.3 of the Code.

63 Article 57.1 of the Code.

64 Wilson (note 1) refers to *Michelle Parker* (note 1).

65 Section 2 of the Constitution, 1996 not only invalidates law and/or conduct inconsistent with it but requires that any obligation imposed by it must be fulfilled.

66 *Mzayiya* (note 32).

highlighted that such an act must be met with a punitive costs order, and the attorney's conduct must be reported to the Legal Practice Council.⁶⁷

While the court has mentioned the possibility of a lenient sanction, it is essential to recognise that cases involving AI must be addressed on a case-by-case basis. This need stems from the complex nature of AI and its unique influence on the administration of justice. For example, although legal practitioners relied on incorrect information generated by ChatGPT in the *Michelle Parker* case, that information was not presented in court. In contrast, the *Mavundla* case involved a candidate attorney using the chatbot, with the principal presenting that information in court. Each case presents a distinct issue, indicating that different sanctions may be appropriate. The question remains: can the use of misleading information generated by ChatGPT be considered perjury?

4. Sanctions for the use of misleading information generated by ChatGPT

In the *Michelle Parker* case, the court warned that sometimes legal practitioners can become careless and overly zealous. This can lead them to place excessive trust in the integrity of legal research generated by AI, often recklessly.⁶⁸ This leaves the court with no option but to question the intent of the legal practitioner presenting the misleading information.⁶⁹ Legal practitioners must be held liable even if they did not intend to mislead the court. This was elaborated upon in the *Michelle Parker* case, where the court stated:

Although the plaintiff's attorneys did not intend to mislead anyone, the inevitable result of his debacles was that the defendant's attorneys were indeed misled into thinking that these authorities were real. As a result, they would have invested a significant amount of time and effort in their futile attempts at tracking down these cases ...⁷⁰

In the *Michelle Parker* case, the court did not decide whether a legal practitioner who shares incorrect and/or misleading information should be found guilty of perjury. Still, the court confirmed that the embarrassment associated with a legal practitioner relying on non-existent information generated by the chatbot does call for punishment.⁷¹ The acts of dishonesty and misleading the court may be seen as perjury.⁷² Snyman states that '[p]erjury consists in the unlawful and intentional making of a false statement in the course of a judicial proceeding by a person who has taken the oath or made an affirmation before, or who has been admonished by, somebody competent to administer or accept the oath, affirmation or admonition.'⁷³

Snyman's definition of perjury does not extend to false statements, affidavits, declarations or case law authority, especially when a legal practitioner shares a list of information generated by ChatGPT with the other party.⁷⁴ Section 9 of the Justice of the

⁶⁷ *Michelle Parker* (note 1) para 89.

⁶⁸ *Ibid.*

⁶⁹ Para 91.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Mzayiya* (note 32).

⁷³ Snyman, *Criminal Law* 6 ed (LexisNexis, 2014) 332.

⁷⁴ The court in *Michelle Parker* (note 1) para 81 stated that the plaintiff's attorneys forwarded a list of cases to the defendant's attorney as constituting the authorities.

Peace and Commissioners of Oaths Act (JPCOA)⁷⁵ extends the scope of false statements to affidavits and declarations.

Section 9 of the JPCOA states that ‘[a]ny person who, in an affidavit, affirmation or solemn or attested declaration made before a person competent to administer an oath or affirmation or take the declaration in question, has made a false statement knowing it to be false, shall be guilty of an offence and liable upon conviction to the penalties prescribed by law for the offence of perjury.’⁷⁶ Section 9 of JPCOA is broader than Snyman’s definition as it includes affidavits, affirmations and declarations but does not state whether these affidavits, affirmations, declarations and false statements should be made during judicial proceedings or outside of court.⁷⁷ In providing clarity, a statement constituting perjury can be verbal or an affidavit.⁷⁸ Snyman confirms that the statement (an affidavit or verbal statement) does not have to be material to the issue to be decided in the court proceedings; however, there must be an inference from the evidence presented during the judicial proceedings.⁷⁹

In the *Michelle Parker* case, the court confirmed that the plaintiff’s legal team did not submit the information (list of cases) generated by ChatGPT to the court as binding authorities.⁸⁰ The list of non-existent cases was only sent to the other party’s legal practitioner as the authority that the plaintiff’s legal team would rely on during the court proceedings.⁸¹ The court confirmed that if the court had been satisfied that the plaintiff’s legal team had attempted to mislead the court, the outcome would have been far more severe.⁸² Perhaps such an act would have constituted perjury.

Unlike the *Michelle Parker* case, in the *Roberto Mata*⁸³ case in the USA, the plaintiff’s legal representatives submitted a legal brief that included six non-existent judicial opinions and citations before receiving an order from the court.⁸⁴ The court affirmed that the court was presented with an unprecedented circumstance.⁸⁵ A legal practitioner unlawfully and intentionally used false information generated by ChatGPT during the

75 16 of 1963.

76 Section 213(6) of the Criminal Procedure Act 51 of 1977 states: ‘Any person who makes a statement which is admitted as evidence under this section and who in such statement wilfully and falsely states anything which, if sworn, would have amounted to the offence of perjury, shall be deemed to have committed the offence of perjury and shall, upon conviction, be liable to the punishment prescribed for the offence of perjury.’

77 *Raith Gourmet Trading (Pty) Ltd v Halligan; In re: FOCSWU obo Davids and Others v De Kock and Others* [2014] ZALCJHB 259 para 25. A false statement made in the course of judicial proceedings has been held to include an affidavit ‘which the law permits to be used in judicial proceedings as evidence, for example, in motion proceedings or in actions where the Court or the law permits evidence to be given by means of affidavits’. See Snyman (note 77) 333.

78 Snyman (note 77) 332.

79 *Ibid* 332; *R v Matakane* 1948 (3) SA 384 (A) paras 391–393; *R v Wallace* 1959 (3) SA 828 (R) paras 829–830.

80 *Michelle Parker* (note 1) para 89.

81 *Ibid*.

82 *Ibid*.

83 *Roberto Mata* (note 10).

84 Paras 24, 25, 27 and 29.

85 Para 21; Maruf (note 10). Judge Kevin Castel of the Southern District of New York wrote: ‘The court is presented with an unprecedented circumstance.’

judicial proceedings. The court found that the lawyers acted in bad faith and made false and misleading statements to the court, while they could have avoided such conduct.⁸⁶ The judge ordered the legal practitioners to pay a fine of \$5,000.⁸⁷

In the *Michelle Parker* case, the court also granted a costs order, which the defendant sought as an appropriate sanction.⁸⁸ Even though the dispute was not about legal practitioners misleading the court, this case is relevant. In South Africa, the only appropriate sanction for the use of incorrect, non-existent and misleading information generated by ChatGPT in court is a sanction dealing with perjury⁸⁹ or possible referral to the Legal Practice Council for misconduct,⁹⁰ which are too lenient. In both criminal and civil proceedings,⁹¹ a person who knowingly makes a false statement in an affidavit is guilty of an offence, with penalties that are the same as those for perjury.⁹² Section 28 of the Criminal Procedure Act (CPA), partly governs the substantive consequences of the unlawful act of giving false information.⁹³ Section 28(2) of the CPA states that

Where any person falsely gives information on oath under section 21 (1) or 25 (1) and a search warrant or, as the case may be, a warrant is issued and executed on such information, and such person is in consequence of such false information convicted of perjury, the court convicting such person may, upon the application of any person who has suffered damage in consequence of the unlawful entry, search or seizure, as the case may be, or upon the application of the prosecutor acting on the instructions of that person, award compensation in respect of such damage, whereupon the provisions of section 300 shall *mutatis mutandis* apply with reference to such award...⁹⁴

This means that evidence led during court proceedings assists the court in determining the amount to be awarded. Perjury is sanctioned on a case-by-case basis, depending on the matter in dispute, and is evidence-led.⁹⁵ Legal practitioners should never present

86 Merken, S ‘New York lawyers sanctioned for using fake ChatGPT cases in legal brief’ (2023) <<https://www.reuters.com/legal/new-york-lawyers-sanctioned-using-fake-chatgpt-cases-legal-brief-2023-06-22/>> accessed 12 September 2023.

87 *Ibid.* \$5,000 equals R94 762.60.

88 *Michelle Parker* (note 1) para 91. The court stated that the embarrassment associated with an incident of a legal practitioner relying on non-existent cases was sufficient punishment for the plaintiff’s attorney.

89 *Mzayiya* (note 32); *Michelle Parker* (note 1); s 9 of the JPCOA; s 319(3) of the CPA.

90 *Mzayiya* (note 32) para 94; *Michelle Parker* (note 1): ‘If a legal practitioner makes himself guilty of misconduct, then an obligation rests on the professional organisation which has jurisdiction over the practitioner, the Legal Practice Council, to bring the errant practitioner to book, it is the watchdog of the profession.’

91 *Talacar Holdings (Pty) Ltd v City of Johannesburg Metropolitan Municipality and Others* [2023] ZAGPJHC 250 para 16.

92 Pete, S, Hulme, D & Du Plessis, M et al *Civil Procedure: A Practical Guide* (Juta & Co, 2016) 194.

93 Swanepoel, JP, Joubert, JJ & Terblanche, SS *Criminal Procedure Handbook* 12 ed (Juta & Co, 2020) 188.

94 Section 28(2) of the CPA.

95 *S v Ncamane* [2019] ZAFSHC 220. The accused was convicted of a contravention of s 9 of the JPCOA. The court sentenced the accused to six months’ imprisonment which was wholly suspended for five years on condition that he was not convicted of perjury again.

AI-generated information, such as that produced by ChatGPT, under oath without proper verification, as doing so could amount to perjury and undermine the integrity of the legal profession in South Africa. In *Rondel v Worsley*,⁹⁶ Lord Denning emphasised that legal practitioners must be loyal to a higher cause: truth and justice.⁹⁷ This means that a legal practitioner must not consciously misstate the facts or knowingly conceal the truth.⁹⁸ The only way a legal practitioner can be loyal to his or her legal duty to the courts is to verify the information before presenting it.

5. Limited methods to verify information generated by ChatGPT

ChatGPT can be regarded as a helpful tool,⁹⁹ but the answers provided by the chatbot are not always reliable.¹⁰⁰ In the age of instant gratification from technology, legal practitioners should not forget good old-fashioned independent reading.¹⁰¹ Independent reading must be infused with the efficiency of modern technology.¹⁰² That will enable legal practitioners to verify the accuracy of the information generated by the chatbot.

In the *Parker* case, the court confirmed that legal practitioners must come to court with a legally independent mind that does not merely repeat the unverified research of a chatbot.¹⁰³ Legal practitioners must also use ChatGPT as a starting point rather than the final product; legal practitioners must ensure that they clearly define tasks and validate information against credible sources involving human expertise and interpersonal interaction,¹⁰⁴ such as the Bing search engine, which improves ChatGPT.¹⁰⁵ Apart from using Bing to improve the quality and accuracy of information generated by ChatGPT,¹⁰⁶ technical measures should also be considered. Whenever data collection and processing

96 [1966] 3 All ER 657 (Eng CA).

97 At 665; *Mzayiya* (note 32) para 89.

98 *Ibid.*

99 Frackiewicz, M 'The Advantages and Limitation of Using ChatGPT for Legal Research and Analysis' (2023) <<https://ts2.space/en/the-advantages-and-limitations-of-using-chatgpt-for-legal-research-and-analysis/>> accessed 17 September 2023: 'ChatGPT can be used to automate the summarisation of legal documents, allowing researchers and analysts to quickly grasp the key points of a document without spending hours reading through it.'

100 *Ibid*; Manie, A 'My Learned Bot – ChatGPT can be a Powerful Tool for Lawyers, but Caution is the Name of the Game' (2023) <<https://www.dailymaverick.co.za/opinionista/2023-02-12-my-learned-bot-chatgpt-can-be-a-powerful-tool-for-lawyers-but-caution-is-the-name-of-the-game/>> accessed 17 September 2023: 'ChatGPT's responses can be incomplete, inaccurate and dangerously misleading at times.'

101 *Michelle Parker* (note 1) para 90.

102 *Ibid.*

103 *Ibid.*

104 Manie (note 107). The author sets out strategies to enhance the effectiveness and address the limitations of ChatGPT in the legal industry.

105 Perlman (note 2).

106 *Ibid*; Ortiz, S 'What is ChatGPT and Why Does It Matter? Here's What You Need to Know' (2023) <<https://www.zdnet.com/article/what-is-chatgpt-and-why-does-it-matter-heres-everything-you-need-to-know/>> accessed 17 September 2023. Due to ChatGPT's data being limited up to 2021, the chatbot was unaware of events or news that had occurred since then. This problem was addressed through ChatGPT's integration into Bing as its default search engine. Bing is a plugin that gives ChatGPT the ability to index and provide citations.

are deemed illegal, such data should not be used and must be excluded, particularly if it produces discriminatory results.¹⁰⁷ This indicates that legal practitioners require not only a solid understanding of the law but also interdisciplinary skills to adapt to technological advancements. They should be mindful of when to employ tools like ChatGPT, acknowledging that it may occasionally contain outdated or fabricated information.¹⁰⁸

The data produced by ChatGPT represents a serious threat to the integrity of our courts and the administration of justice, as well as to the work of legal researchers and practitioners. To protect the legal profession from these dangers, the courts must take decisive action by imposing significant sanctions on legal practitioners who irresponsibly mislead them. However, without laws, legal professionals, including the South African courts, will be unable to maintain the integrity of the legal system and uphold justice for all. ChatGPT's harmful and misleading information will remain unregulated, and legal practitioners who use ChatGPT will not know how to safeguard their rights and obligations.

6. Steps for developing a regulatory framework for ChatGPT in the legal profession

In formulating a regulatory framework for ChatGPT, we should consider the key regulatory issues in the European Union (EU), the first jurisdiction to enact AI legislation.¹⁰⁹ The EU's AI framework can provide valuable insights for developing an AI legal framework in South Africa.¹¹⁰ European authorities have implemented a comprehensive approach to safeguarding ChatGPT users and upholding their rights. This strategy not only protects users, including legal professionals but also ensures that the chatbot's developers and providers are held accountable.

The EU AI Act¹¹¹ does not explicitly define ChatGPT; however, it generally defines AI systems as machine-based systems designed to operate with varying levels of autonomy.¹¹² The Act also offers a neutral definition of a general-purpose AI system, which refers to an AI system based on a general-purpose AI model capable of serving various purposes, for both direct application and integration into other AI systems.¹¹³

According to the definitions, ChatGPT is a versatile general-purpose AI system. Its ability to generate text tailored to user prompts in diverse contexts showcases its flexibility and power. Moreover, its functionality allows for seamless integration with other AI systems, making it an invaluable tool for various applications.¹¹⁴

107 Terzidou, K 'Generative AI for the Profession: Facing the Implications of the Use of ChatGPT Through an Intradisciplinary Approach' (2023) <<https://www.medialaws.eu/generative-ai-for-the-legal-profession-facing-the-implications-of-the-use-of-chatgpt-through-an-intradisciplinary-approach/>> accessed 23 January 2025.

108 Ibid.

109 Hickman, T, Lorenz, S & Teetzmann, C 'Long Awaited EU AI Act Becomes Law after Publication in the EU's Official Journal' (2024) <<https://www.whitecase.com/insight-alert/long-awaited-eu-ai-act-becomes-law-after-publication-eus-official-journal>> accessed 24 January 2025.

110 Ka Mtuzze & Morige (note 7) 168.

111 European Union Artificial Intelligence Act 2024/1689.

112 Article 3(1) of the EU AI Act.

113 Article 3(66) of the EU AI Act.

114 Terzidou (note 111).

The definitions are essential as South Africa starts to establish a legal framework for AI. Incorporating ChatGPT into forthcoming South African legislation will assist legal practitioners in evaluating the associated risks and enable them to determine whether the chatbot has an unacceptable, highly limited or minimal risk,¹¹⁵ as outlined in article 6 of the EU AI Act. Article 6 of the EU AI Act effectively outlines the classification rules for AI systems deemed to be high-risk, making clear reference to Annex III of the EU AI Act.¹¹⁶ This structured approach enhances transparency and accountability in deploying advanced AI technologies. These classifications do not explicitly label ChatGPT as a high-risk AI system. However, since the chatbot is employed by judicial authorities to research and interpret facts and legal matters, the Act recognises that these intended uses can affect the administration of justice.¹¹⁷ When a chatbot produces frivolous information, a considerable risk is involved.

We recommend that South Africa should prioritise several essential components in developing its AI legal framework: transparency, human oversight, mandatory risk management and enhanced content moderation.¹¹⁸ Furthermore, as outlined in article 16 of the EU AI Act, chatbot providers should be held liable and accountable for the information their systems generate.¹¹⁹

7. Conclusion

Legal practitioners' increasing reliance on ChatGPT in South Africa presents a serious challenge that cannot be ignored. Without appropriate legislation, regulations or official policies governing the ethical use of this technology, the legal profession is at risk.¹²⁰ Developing frameworks to protect the integrity of legal practice is crucial. To achieve this, we urgently need more legal literature to inform and guide the creation of robust policies and ethical standards. Acting now is essential for the future of the country's legal profession.

Strict measures and sanctions are needed to hold legal practitioners accountable¹²¹ for any negligent and misleading actions. A coordinated approach is essential to ensure the effective use of chatbots while safeguarding the administration of justice and human rights. The *Michelle Parker* and *Mavundla* cases emphasise that legal practitioners must remember their obligations to the courts and the administration of justice during legal research. South Africa should use the EU AI Act as a model to create a robust AI framework. This framework will ensure accountability for legal practitioners and those who provide and develop chatbots. Embracing this approach will foster responsibility and trust in our society regarding AI technology.

115 Ibid.

116 Article 6(2).

117 Annexure 8(b) of the EU AI Act.

118 Article 2 of the EU AI Act.

119 Article 16 of the EU AI Act.

120 Ka Mtuze & Morige (note 7) 167.

121 Brand, D 'Responsible Artificial Intelligence in Government: Development of a Legal Framework for South Africa' (2022) 14 *eJournal of eDemocracy* 146; Gless, S 'AI in the Courtroom: A Comparative Analysis of Machine Evidence in Criminal Trials' (2020) 51 *Georgetown Journal of International Law* 251. Gless believes that the authenticity and legitimacy of AI should be human-centred.

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