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Minja Pesic
Service Manager
Immigration and Protection Tribunal

By email: Minja.Pesic@justice.govt.nz

Feedback on Immigration and Protection Tribunal Practice Note on the use of artificial intelligence before the Tribunal

1. The New Zealand Law Society Te Kāhui Ture o Aotearoa is grateful for the opportunity to provide feedback on the Immigration and Protection Tribunal's *Practice Note 6: The Use of Artificial Intelligence Before the Tribunal* (**draft Practice Note**).

2. We have sought feedback on this draft Practice Note from the Law Society's Immigration & Refugee Law Committee.[1]

3. The Committee's feedback is set out below:

    a. **Paragraph [4.3]:** we recommend replacing "lawyer" with "lawyer, representative or party", as the obligations outlined in this paragraph could also apply to non-lawyer representatives and parties.

    b. **Paragraph [5.2]:** we note the *Guidelines for use of generative artificial intelligence in Courts and Tribunals by lawyers* (**Courts and Tribunals Guidelines**) refer to lawyers' duties and obligations under the Lawyers and Conveyancers Act 2006 and the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (**RCCC**).[2] These include:

        (i) the duty to uphold the rule of law;

        (ii) the duty to facilitate the administration of justice;

        (iii) the overriding duty of a lawyer as an officer of the court; and

        (iv) the duty of honesty to the court and to not mislead or deceive the court.

        It could be helpful to refer to these duties and obligations in the Tribunal's Practice Note to ensure consistency with the Courts and Tribunals Guidelines and to ensure lawyers' duties and obligations are more clearly identified in the Practice Note.

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1 More information about this Committee is available on our website: www.lawsociety.org.nz/professional-practice/law-reform-and-advocacy/law-reform-committees/immigration-and-refugee-law-committee/.

2 *Guidelines for use of generative artificial intelligence in Courts and Tribunals: Lawyers* (7 December 2023) at page 1.

c. **Paragraphs [5.4] and [5.5]:** it could be helpful to combine these two paragraphs into a single paragraph, as paragraph [5.5] does not, on its own, set out any expectations of lawyers, representatives or parties.

d. **Paragraph [5.6]:** it may not always be possible for lawyers and representatives to "ensure" that material submitted to the Tribunal is accurate, relevant, complete and supported by evidence. We therefore suggest replacing this expectation with a requirement for lawyers and representatives to 'take all reasonable measures to ensure the veracity of the material being submitted' (or similar).

e. **Paragraph [6.4]:** the reference to "result" in the third line should be to "results".

f. **Paragraph [6A.2]:** the first sentence of this paragraph imposes a blanket rule prohibiting the use of AI. As currently drafted, this could prevent the use of AI even in circumstances where its use does not result in the creation of facts, or the embellishment or modification of a witness's evidence. This could include circumstances where, for example, AI is used to transcribe speech to text, format documents, and create chronologies. We therefore query whether a strict blanket rule is necessary here, and whether this expectation could be reframed to:

   (i) focus only the matters covered in the second sentence of paragraph [6A.2], and

   (ii) otherwise require lawyers and representatives to exercise their discretion to use AI in a responsible manner that is consistent with their professional obligations.

g. **Paragraph [6A.3]:** this paragraph largely replicates the expectation in paragraph [6A.2], and could be deleted.

h. **Paragraph [7.3]:** this paragraph states that a person "must be able to explain the material submitted". There may be instances where evidence that is submitted cannot easily be explained by the person (for example, it may not always be apparent to the person why Police have lodged a First Information Report against them). We presume this requirement relates specifically to extensive or repetitive information provided to the Tribunal (as noted in the preceding sentence), rather than information provided to the Tribunal more generally. If that is the case, it could be helpful to more clearly link the requirement to explain material to the preceding sentence of this paragraph.

i. **Paragraph [7.4]:** we recommend reframing this paragraph as follows, to ensure the Tribunal continues to have the ability to give more weight to materials identified in this paragraph in circumstances where the Tribunal deems that to be appropriate:

> "The Tribunal may decide how much weight to give to material which is irrelevant, unreliable, inaccurate, repetitive, misleading or supported by evidence."

j. **Paragraph [9.4]:** the Law Society's *Generative AI guidance for lawyers*[3] notes that improper, negligent or incompetent use of Gen AI could lead to a serious breach of

[3] A cope of this Guidance is available here: www.lawsociety.org.nz/professional-practice/rules-and-maintaining-professional-standards/generative-ai-guidance-for-lawyers/.

the RCCC including rules 3, 10.9 and 13.1. This Guidance also states that a lawyer practising on own account who allows the use of Gen AI in a way that is not adequately monitored or checked, or who allows a situation to arise where staff are using Gen AI in an unauthorised manner, also risks breaching rules 11 and 11.1. We invite the Tribunal to consider whether the language of paragraph [9.4] could be more closely aligned with the Law Society's Guidance to ensure that the consequences of improper, negligent or incompetent use of AI by lawyers are clearly set out in the Tribunal's Practice Note.

Next steps

4. We hope this feedback is helpful. Please do not hesitate to get in touch with me via the Law Society's Acting Manager Law Reform and Advocacy, Nilu Ariyaratne (Nilu.Ariyaratne@lawsociety.org.nz), if it would be helpful to discuss our feedback before this Practice Note is finalised.

Nāku noa, nā



Simon Graham
Convenor, Law Society Immigration & Refugee Law Committee