

Federal Court



Cour fédérale

Date: 20250624

Docket: IMM-23001-24

Citation: 2025 FC 1138

Ottawa, Ontario, June 24, 2025

PRESENT: Associate Judge Catharine Moore

BETWEEN:

**Wael Mostafa Aly Hussein
Rehab Mohammed Abdelrahim Abdelazez
Lina Wael Mostafa Aly Hussein**

Applicants

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP

Respondent

ORDER AND REASONS

[1] In my Order of April 28, 2025, I indicated that consideration was being given to whether it would be appropriate to direct Applicant's counsel to pay any costs awarded on the motion personally and provided the Applicant ten days to serve and file any written submissions on this issue. That decision sets out the facts, which are, essentially, that several cases were relied upon by Applicant's counsel which did not exist and, further, that four directions of the Court were required before Applicant's counsel admitted that generative AI had been used and had resulted

in the error. For the reasons that follow, I find that a modest amount of costs payable by Applicant's counsel personally is warranted.

[2] By letter dated May 7, 2025, the Applicant's counsel provided a letter addressing the issue. No response was received from the Respondent.

[3] Applicant's counsel acknowledges without reservation that generative AI technology was used during the preparation of legal submissions filed with the Court in this matter. He goes on to say that he relied in good faith on Visto.ai for the references and did not independently verify them. He takes full responsibility and asserts that he did not intend to mislead the Court.

[4] He also says that the Applicant delayed in providing instructions to proceed with the judicial review and that, once the instructions were received, he had to act quickly to preserve the Applicant's rights. In addition, he did not charge the Applicant for the work on this judicial review.

[5] Finally, he apologizes and advises that he is prepared to accept whatever sanction the Court deems appropriate.

[6] Respondent has remained silent. While the use of generative AI is not the responsibility of the responding party, it was not appropriate for the Respondent to not make any response to the Court's four directions and Order. Indeed, assuming that the Respondent noticed the

hallucinated cases on receipt of the written argument, it should have brought this to the attention of the Court.

[7] There is no doubt that the imposition of a costs award against counsel personally is unusual and there are few cases approaching the high threshold described in *Young v. Young* [1993] 4 S.C.R. 3 and *Quebec v. Lacombe* 2010 SCC 38. In this Court, *Kuehne + Nagel Inc. v. Harman Inc.* 2021 FC 26, sets out a two-part test to determine the lawyer's liability for costs. The first step is to determine whether the lawyer's conduct has caused costs to be incurred unnecessarily. I find that it has for the reasons set out in my previous judgment. The second step is to consider, as a matter of discretion and applying the extreme caution principle, whether, in the circumstances, the imposition of costs is warranted.

[8] There are now a number of decisions from Canadian courts wrestling with the issue of AI hallucinations in the context of civil cases.

[9] Justice Matsuhara decided *Zhang v. Chen* 2024 BCSC 285, in February of 2024. In that case, the successful party sought costs against opposing counsel on the basis that the counsel had relied upon hallucinated cases. Justice Matsuhara declined to make an award; however, he noted that:

[29] Citing fake cases in court filings and other materials handed up to the court is an abuse of process and is tantamount to making a false statement to the court. Unchecked, it can lead to a miscarriage of justice.

[10] *Zhang, supra*, is slightly different from the case under consideration, as although the hallucinated cases appeared in the Notice of Application, they were never relied upon, and further, because the costs order was sought by opposing counsel.

[11] More recently, Justice F.L. Myers of the Ontario Superior Court decided *Ko v. Li* 2025 ONSC 2965. In addition to AI hallucinations, the facts of that case are somewhat similar in that counsel took full responsibility, offered an apology and received no remuneration from the litigation. Justice Myers had ordered the counsel to show cause why she should not be held in contempt but ultimately declined to make a finding of contempt based largely on the expression of regret and accountability.

[12] I find that the decision in *Ko, supra*, is somewhat distinguishable on the basis that Ontario does not require disclosure of the use of generative AI in the manner of this Court's direction; rather, a provision was recently added to the Ontario *Rules of Civil Procedure*, R. 4.06.1(2.1), which requires a lawyer to certify that every authority in the factum is authentic.

(2.1) A factum shall include a statement signed by the party's lawyer, or on the lawyer's behalf by someone the lawyer has specifically authorized, certifying that the person signing the statement is satisfied as to the authenticity of every authority cited in the factum.

(2.1) Tout mémoire comprend une déclaration qui est signée par l'avocat de la partie, ou par une personne que celui-ci a expressément autorisée à agir en son nom, et qui certifie que la personne qui a signé la déclaration est convaincue de l'authenticité de chacun des éléments de doctrine et de jurisprudence cités dans le mémoire.

[13] This approach is quite different than the practice direction of this Court requiring disclosure of the use of generative AI (Notice to the Parties and the Profession on the Use of Artificial Intelligence in Court Proceedings dated May 7, 2024).

[14] Furthermore, Justice Myers did, in fact, impose some sanctions on counsel; specifically, a requirement to take continuing Professional Development courses and that she not bill Ms. Ko for the motion on which the offending factum was filed. Additionally, Justice Myers made the following comments with which I agree:

[14] Irrespective of issues concerning artificial intelligence, counsel who misrepresent the law, submit fake case precedents, or who utterly misrepresent the holdings of cases cited as precedents, violate their duties to the court.

[16] A court decision that is based on fake laws would be an outrageous miscarriage of justice to the parties and would reflect very poorly on the court and the civil justice system.

[17] In determining and pronouncing the law applicable to its decisions, the court receives submissions from counsel concerning the applicable law. As discussed below, the court relies on counsel to state the law accurately and fairly. Misrepresentation of the law by a lawyer poses real risks of causing a miscarriage of justice that undermines the dignity of the court and the fairness of the civil justice system.

[15] I accept the submissions of Applicant's counsel and find that much of what he says mitigates the situation; however, the real issue is not the *use* of generative artificial intelligence but the *failure* to declare that use. The practice direction of this Court, which is not referenced at all by Applicant's counsel, is that any use of generative AI must be disclosed in the first paragraph of the document. This is so that the opposing counsel and the Court are on notice and can do the necessary due diligence. As the practice direction says, "The Court confirms that the inclusion of a Declaration, in and of itself, will not attract an adverse inference by the Court."

The Court acknowledges the significant benefits of artificial intelligence, particularly in busy practices where cost efficiencies are being sought and is not trying to restrict its use. The concern is that there be some protection against the documented potential deleterious effects of its use.

[16] Taking into consideration all of the circumstances, including the expression of regret and accountability as well as the failure to even reference the practice direction and the fact that the hallucinated cases were relied upon, I find that a modest award of costs against counsel is warranted.

[17] In *Mohammadhosseini v. MCI* 2024 FC 1104, Mr. Justice Grant made what he described as a small award of costs against counsel personally in the amount of \$350. Given that Applicant's counsel was not remunerated for his services in the file, which included the motion on which the offending factum was filed and a motion for a stay of removal and, in addition, that I am also of the view that the Respondent's lack of action exacerbated matters and it should not benefit as a result, I am ordering a modest amount of \$100 to be payable by Applicant's counsel personally.

THIS COURT ORDERS that:

1. The Applicant's counsel shall pay costs personally in the amount of \$100.00 to the Respondent.

"Catharine Moore"

Associate Judge