FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA (DIVISION 2)

Dayal [2024] FedCFamC2F 1166

File number(s):	MLC 10532 of 2024
Judgment of:	**JUDGE A. HUMPHREYS**
Date of judgment:	27 August 2024
Catchwords:	**FAMILY LAW** – LEGAL PRACTITIONERS – duties of solicitors – solicitor appearing as agent tendered a list and summary of authorities which are acknowledged by the solicitor not to exist – list and summary generated using software relying on artificial intelligence (AI) – accuracy of the document produced was not verified by the solicitor – unconditional apology offered by the solicitor for what is acknowledged to be a breach of the professional standards expected of a solicitor in this court – referral made to the Office of the Victorian Legal Services Board and Commissioner, being the statutory body and officer responsible for the maintenance of professional standards of solicitors in Victoria – decision for referral not intended to be punitive – responsible use of AI tools in litigation an issue of public interest.
Legislation:	*Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* (NSW) *Legal Profession Uniform Law Application Act 2014* (Vic) s 30 *Legal Profession Uniform Law*
Cases cited:	*Handa & Mallick* [2024] FedCFamC2F 957 *Mata v. Avianca, Inc*, 678 F.Supp.3d 443 (S.D.N.Y. 2023)
Division:	Division 2 Family Law
Number of paragraphs:	22
Date of last submission/s:	19 August 2024
Date of hearing:	On the papers
Place:	Melbourne
Solicitor:	Mr Dayal of C Law Firm

ORDERS

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA (DIVISION 2)

Re MR DAYAL
(A solicitor)

ORDER MADE BY: **JUDGE A. HUMPHREYS**

DATE OF ORDER: **27 AUGUST 2024**

THE COURT DIRECTS:

1. The Principal Registrar of the court or his delegate refer this matter to the Office of the Victorian Legal Services Board and Commissioner for consideration of the conduct of Mr Dayal, solicitor, providing copies of the following:

    (a)   These directions and the reasons for the directions;

    (b)   The written submissions of Mr Dayal dated 19 August 2023 (Exhibit B);

    (c)   The settled *ex tempore* reasons delivered on 19 July 2024 in the matter of *Handa & Mallick* (MLC6910/2023); and

    (d)   The list of authorities and case summaries tendered by Mr Dayal at the hearing on 19 July 2024 (Exhibit A).

2. The name of Mr Dayal and his firm, C Law Firm, be anonymised in the published reasons for these directions.

Note: The form of the order is subject to the entry in the Court's records.

Note: This copy of the Court's Reasons for judgment may be subject to review to remedy minor typographical or grammatical errors (r 10.14(b) *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth)), or to record a variation to the order pursuant to r 10.13 *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (Cth).

Part XIVB of the *Family Law Act 1975* (Cth) makes it an offence, except in very limited circumstances, to publish an account of proceedings that identify persons, associated persons, or witnesses involved in family law proceedings.

IT IS NOTED that publication of this judgment by this Court under a pseudonym has been approved pursuant to subsection 114Q(2) of the *Family Law Act 1975* (Cth).

<center>**REASONS FOR JUDGMENT**</center>

JUDGE A. HUMPHREYS

1   This matter relates to my decision to refer the conduct of a solicitor to the Office of the Victorian Legal Services Board and Commissioner. The solicitor in question tendered to the court a list and summary of legal authorities that do not exist. The solicitor has informed the court the list and summary were prepared using an artificial intelligence ("AI") tool incorporated in the legal practice management software he subscribes to. The solicitor acknowledges he did not verify the accuracy of the information generated by the research tool before submitting it to the court.

2   The solicitor concerned is Mr Dayal, a Victorian solicitor and principal of the firm C Law Firm. I will refer to him as "the solicitor" and his name and the name of his firm will be anonymised when my reasons are published, noting the purpose of my decision is not punitive.

3   For the background to the matter, I refer to my earlier *ex tempore* reasons delivered on 19 July 2024 in the enforcement proceeding in which the solicitor appeared as agent for another firm of solicitors.[1] Those reasons explain the circumstances in which the list and summary of authorities was tendered by the solicitor, how the content of the list and summary of authorities was identified to be inaccurate and the solicitor's acknowledgement that the list and summary of authorities was prepared with the assistance of AI.

4   On 19 July 2024, I made orders in relation to the conduct of the solicitor in tendering the inaccurate list and summary of authorities as follows:

> 4.   A copy of these orders, the transcript of proceedings on 19 July 2024 and settled oral reasons as soon as available, be provided […] ("the solicitor"), who today appeared as agent for […] being the solicitors for the husband and that transcript also be made available to the parties' lawyers.

> 5.   By no later than **4.00 pm** on **19 August 2024**, the solicitor is to provide to the court by way of email […], submissions of not more than five pages, identifying any reasons as to why he ought not be referred to the Office of the Victorian Legal Services Board and Commissioner in relation to the list of authorities tendered by him at today's hearing.

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[1] *Handa & Mallick* [2024] FedCFamC2F 957.

Submissions

5   On 19 August 2024, the solicitor provided written submissions to my chambers in accordance with those orders.[2]

6   In his written submissions the solicitor acknowledged:

(a)   Handing up to the court on 19 July 2024 a document that purported to contain summaries of relevant authorities and included what looked like medium neutral citations identifying those decisions;

(b)   Using legal software, and in particular an AI driven research tool module, to generate the list of authorities and summaries;

(c)   Neither he nor another legal practitioner had reviewed the output generated by the research tool to ensure the accuracy of the list of authorities and case summaries; and

(d)   The authorities identified in the list and summary tendered to the court do not exist.

7   The solicitor has offered an unconditional apology to the court for tendering the inaccurate list and summary of authorities. He has provided an assurance that he will "take the lessons learned to heart and will not commit any such further breach of professional standards in the future." He asks that I not make a referral to the Victorian Legal Services Board.

8   The submissions made by the solicitor include that he did not intentionally mislead the court. In support of that submission, the solicitor provided information as to the circumstances which lead to him relying on the AI tool within the practice management software he uses and how he generated the list of authorities and case summaries. He explained that he did not fully understand how the research tool worked. He acknowledged the need to verify AI assisted research, or indeed any source of legal research relied upon, for accuracy and integrity.

9   The solicitor outlined the steps he has taken to address and mitigate the impact of his conduct, including voluntarily making a payment to the solicitors for the other party in the enforcement proceeding, in settlement of costs thrown away for the hearing on 19 July 2024. He says he has informed the Legal Practitioners Liability Committee ("LPLC") of what occurred and that the LPLC is providing him with ongoing professional support. The solicitor

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[2] A new court file has been created in respect of this particular matter. The written submissions of the solicitor have been placed on the court file and marked Exhibit B.

has also provided submissions in relation to his personal and professional circumstances and the stress and cost caused to him as a result of his conduct on 19 July 2024. He offered to provide an affidavit to verify the information provided in his submissions.

Use of AI in litigation

10   The use of technology is an integral part of efficient modern legal practice. At the frontier of technological advances in legal practice and the conduct of litigation is the use of AI. Whilst the use of AI tools offer opportunities for legal practitioners, it also comes with significant risks.

11   Relevantly to this case, the USA District Court case of *Mata v Avianca Inc*[3] drew worldwide attention to the risk of relying on generative AI for research purposes in litigation without independent verification. In that case, attorneys of a firm who relied on generative AI to prepare legal submissions which were filed referring to non-existent cases, and initially stood by the submissions when called into question by the court, were found to have abandoned their professional responsibilities and sanctioned. The USA District Court outlined the potential harms flowing from the filing of bogus submissions in its judgment as follows:[4]

> Many harms flow from the submission of fake opinions. The opposing party wastes time and money in exposing the deception. The Court's time is taken from other important endeavors. The client may be deprived of arguments based on authentic judicial precedents. There is potential harm to the reputation of judges and courts whose names are falsely invoked as authors of the bogus opinions and to the reputation of a party attributed with fictional conduct. It promotes cynicism about the legal profession and the American judicial system. And a future litigant may be tempted to defy a judicial ruling by disingenuously claiming doubt about its authenticity.

12   The potential harms identified by the USA District Court apply to the reliance on non-existent authorities in this court.

13   Whilst this court has not yet done so, a number of courts in Australia and overseas have formulated guidelines for the responsible use of generative AI by litigants and lawyers, to assist those conducting litigation before them.

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[3] *Mata v. Avianca, Inc,* 678 F.Supp.3d 443 (S.D.N.Y. 2023) ("*Mata v Avianca, Inc*").
[4] *Mata v Avanica, Inc,* 448.

14   Guidelines issued by each of the Supreme Cout of Victoria and County Court of Victoria for example,[5] emphasise:

   (a)   Parties and practitioners who are using AI tools in the course of litigation should ensure they have an understanding of the manner in which those tools work, as well as their limitations;[6]

   (b)   The use of AI programs must not indirectly mislead another participant in the litigation process (including the court) as to the nature of any work undertaken or the content produced by that program. Ordinarily parties and their practitioners should disclose to each other the assistance provided by AI programs to the legal task undertaken;[7] and

   (c)   The use of AI to assist in the completion of legal tasks must be subject to the obligations of legal practitioners in the conduct of litigation, including the obligation of candour to the court.[8]

15   Importantly in the context of this matter, the guidelines issued by the Supreme Court and County Court of Victoria explain that generative AI and large language models[9] create output that is not the product of reasoning and nor are they a legal research tool. Generative AI does not relieve the responsible legal practitioner of the need to exercise judgment and professional skill in reviewing the final product to be provided to the court.[10]

Duties of legal practitioners

16   Whilst not issued by this court or applying directly to practitioners conducting litigation in this court, I mention these particular guidelines because they reflect the responsible use of AI by practitioners in litigation by reference to the duties of legal practitioners generally, including the duty not to mislead the court or another participant in the litigation process and the duty of candour to the court. In that sense, the guidance provided by these particular guidelines is applicable to practitioners conducting litigation in this court.

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[5] Supreme Court of Victoria, *Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation*, May 2024 ("Supreme Court of Victoria guidelines"); County Court of Victoria, *Guidelines for Litigants: Responsible Use of Artificial Intelligence in Litigation*, 1 July 2024 ("County Court of Victoria guidelines").
[6] Principle 1 of both guidelines.
[7] Principle 3 of both guidelines.
[8] Principle 4 of both guidelines.
[9] These terms are explained in a glossary in each of the Supreme Court of Victoria guidelines and the County Court of Victoria guidelines.
[10] Item 8 of both guidelines.

17   Relevantly to the conduct of the solicitor before me, the duties of Victorian solicitors include:

(a)   The paramount duty to the court and to the administration of justice,[11] which includes a specific duty not to deceive or knowingly or recklessly mislead the court;[12]

(b)   Other fundamental ethical duties, including to deliver legal services competently and diligently;[13] and

(c)   To not engage in conduct which is likely to diminish public confidence in the administration of justice or bring the legal profession into disrepute.[14]

18   The solicitor has acknowledged a breach of the professional standards expected of a solicitor in this court, by his conduct in tendering a list and summary of authorities that do not exist, generated without disclosing the source of the information presented to the court and without verifying its accuracy.

Referral to regulatory body

19   The question for me is whether I should make a referral to the Victorian Legal Services Board and Commissioner, being the independent statutory authority and officer in Victoria whose role and functions include ensuring the effective regulation of the legal profession and the maintenance of high ethical and professional standards.[15]

20   I accept the apology offered by the solicitor as genuine and acknowledge the steps he has undertaken to mitigate the impact of his conduct on the other party to the litigation, which was confirmed by that party's counsel at a subsequent hearing. I acknowledge the solicitor's submission as to the stress he has experienced as a result of the consequences flowing from his conduct and find it unlikely the conduct the subject of this decision will be repeated.

21   However, I consider the Office of the Victorian Legal Services Board and Commissioner are the appropriate body and official to determine if there should be any further investigation or action taken in respect of the solicitor's conduct in this instance. I also consider it is in the public interest for the Victorian Legal Services Board and Commissioner to be aware of the

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[11] r 3 of the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* (NSW) ("Solicitors' Conduct Rules").
[12] r 19.1 of the Solicitors' Conduct Rules.
[13] r 4.1 of the Solicitors' Conduct Rules.
[14] r 4 of the Solicitors' Conduct Rules.
[15] s 30 of the *Legal Profession Uniform Law Application Act 2014* (Vic) ("the Application Act"); and *Legal Profession Uniform Law* (at schedule 1 of the Application Act).

professional conduct issues arising in this matter, given the increasing use of AI tools by legal practitioners in litigation more generally.

22 Accordingly, I will make directions providing for copies of the following documents to be provided by the Principal Registrar of this court (or his delegate) to the Office of the Legal Services Board and Commissioner to assist the Board and/or Commissioner in determining if any further steps will be taken by them:

(a) These reasons;

(b) The written submissions provided by the solicitor dated 19 August 2024;[16]

(c) My settled *ex tempore* reasons delivered on 19 July 2024; and

(d) The list of authorities and case summaries tendered by the solicitor at the hearing on 19 July 2024.[17]

I certify that the preceding twenty-two (22) numbered paragraphs are a true copy of the Reasons for Judgment of Judge A. Humphreys.

Associate:

Dated: 27 August 2024

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[16] Exhibit B.
[17] Marked as Exhibit A in the enforcement proceeding and which I will also place on this court file marked as Exhibit A.