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CERTIFYING LEGAL AI ASSISTANTS
FOR UNREPRESENTED LITIGANTS:
A GLOBAL SURVEY OF ACCESS TO CIVIL JUSTICE,
UNAUTHORIZED PRACTICE OF LAW, AND AI

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The global integration of artificial intelligence (AI) into legal services has created a critical need for clarity regarding unauthorized practice of law (UPL) rules. Traditionally, UPL rules prohibited unlicensed individuals from engaging in activities legally reserved for qualified attorneys, including, in some jurisdictions, offering legal advice, interpreting laws, representing clients in court, or drafting

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Dr. L. Karl Branting passed away unexpectedly on July 18, 2024. Karl had a deep and profound commitment to human rights, access to justice, and AI for good. This article is dedicated to Karl, his family, and everyone ceaselessly dedicated to the pursuit of equitable access to justice for all.

All opinions and views expressed are our own. We presented an abstract of this article at the University of Geneva Digital Law Center's Research Colloquium in June 2024 and thank Professor Irene Calboli and Professor Sergio Branco for their helpful feedback. Additionally, we are grateful to the following reviewers for their valuable input and observations on various drafts of this article: Sam Harden, Lotta Lampela, Marc Lauritsen, Izak Rosenfeld, and Brian Rhindress. We would also like to thank the *Columbia Science and Technology Law Review* staff for their editorial assistance. Any remaining errors are our own.

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legal documents. Now that some AI systems can perform functions that practice of law regulating authorities have traditionally reserved for licensed attorneys, a framework is needed to certify the use of legal AI assistants by unrepresented litigants.

Ensuring the accuracy of information provided by legal AI assistants for unrepresented litigants benefits the entire legal community, including attorneys, by promoting stricter standards and higher acceptance thresholds. We examine the perspectives of several primary stakeholders in certifying legal AI assistants, including unrepresented litigants, practice of law regulating authorities, judiciaries, the legislature, the legal aid community, and the legal tech community.

We conduct a detailed survey of access to justice, AI, and UPL in various international jurisdictions, including Argentina, Australia, Brazil, Canada, China, the European Union, Germany, India, New Zealand, Nigeria, Singapore, the United Kingdom, and the United States. In each of these jurisdictions, we explore how UPL is currently managed in the context of legal AI use by unrepresented litigants. We also include a 50-state and 6-territory survey for the United States on what each Bar Association and Judiciary is doing to regulate legal AI use by unrepresented litigants.

In light of this survey, we propose that practice of law regulating authorities add certified legal AI assistants to their lists of UPL exemptions so that such assistants can provide specific and useful legal information, guidance, and advice to unrepresented litigants. We propose a capability-based framework for certifying legal AI assistants for unrepresented litigants. This is intended as a harmonized global proposal, designed for local implementation by each jurisdiction's practice of law regulating authority, with the flexibility to address individual jurisdictional nuances.

Unrepresented litigants are already using AI chatbots for help in legal proceedings, sometimes to their detriment. Our proposal aims to allow unrepresented litigants to use legal AI assistants that have been verified for accuracy. This framework addresses the key justification for UPL restrictions—the risk of incorrect legal guidance—by basing the certification of individual capabilities on their accuracy when tested on public benchmark datasets. Legal AI assistants are added to lists of UPL exemptions under this approach if their accuracy meets or exceeds a certification threshold when tested on these public benchmark datasets. The jurisdiction's practice of law regulating authority would set the certification threshold or, as we suggest, a third-party certifying authority delegated to perform this task. While many public benchmark datasets are required under this framework, the legal AI community is rapidly developing such datasets.

To enable AI to enhance access to justice for unrepresented litigants globally, practice of law regulating authorities in each jurisdiction must choose to exempt certified legal AI systems for unrepresented litigants from unauthorized practice of law regulations.

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I. BACKGROUND

Unrepresented litigants are already using AI chatbots for help in legal proceedings, sometimes to their detriment. A key justification for unauthorized practice of law restrictions is the risk that people will receive inaccurate legal advice. Unrepresented litigants are most vulnerable when they receive faulty legal

advice, because of their unrepresented status and the lack of professional legal advice on the specific legal issue they face. However, the one-to-one approach of addressing the access to justice gap by trying to provide every unrepresented litigant with a legal professional has not worked, is not working, and will not work. The number of unrepresented litigants is simply too large and the scale of the need for legal help is simply too vast.¹ This raises the question: Is the legal advice unrepresented litigants receive from a chatbot better than nothing, which is what they would get otherwise? What about the instances where a chatbot provides incorrect legal guidance or advice and leaves the person worse off? This global problem is in urgent need of a workable solution.

The rapid integration of AI into legal services, particularly in aiding unrepresented litigants, has exposed significant gaps in the existing UPL restrictions. Traditionally, UPL rules have restricted the practice of law to licensed attorneys, prohibiting unlicensed individuals from engaging in legal activities such as providing advice, interpreting laws, or drafting documents. However, the emergence of AI systems capable of performing tasks traditionally reserved for licensed lawyers poses a challenge to conventional UPL restrictions.

Currently, no standardized framework exists to certify legal AI assistants for unrepresented litigants. This lack of framework results in the absence of clear guidelines on their permissible use and poses risks of inaccurate legal advice and misinformation. Despite this, unrepresented litigants are increasingly using legal AI assistants in legal proceedings, often without a guarantee of accuracy. This regulatory ambiguity not only impedes the responsible deployment of AI in legal contexts but also inhibits access to justice for individuals who cannot afford legal representation.

A framework is urgently needed to certify the use of legal AI assistants, ensuring that they provide accurate legal advice and information to unrepresented litigants. Such a framework would benefit the entire legal ecosystem by establishing clear certification standards and higher accuracy thresholds as well as promoting access to justice while protecting the integrity of legal services. Our study explores the perspectives of key stakeholders, including unrepresented litigants, practice of law regulating authorities, judiciaries, the legislature, the legal aid community, and the legal tech community.

This section provides an overview of the terminology we use in the article for consistency despite jurisdictional nuances and variations. It highlights the global diversity in defining the practice of law and its related concepts. It also introduces the global access to justice crisis, how preventing unrepresented litigants from using legal AI assistants widens the justice gap, and the role of Bar Associations and Law Societies in regulating the practice of law. Finally, this

¹ WORLD JUSTICE PROJECT, MEASURING THE JUSTICE GAP 13 (2019).

section underscores the necessity for international cooperation to effectively govern AI in legal services, especially for use by unrepresented litigants.

A. Terminology

This article covers numerous jurisdictions, each with its own unique legal framework and terminology. Due to these variations, we have carefully selected terminology that broadly captures equivalent concepts across different legal systems. We aim to provide a coherent and accessible multijurisdictional discussion while understanding that nuances exist in each jurisdiction's unique legal system.

1. Practice of Law

The “practice of law” is defined globally in varied ways, reflecting the diverse legal traditions and regulatory frameworks of different jurisdictions. In many jurisdictions, the practice of law encompasses activities such as providing legal advice, representing clients in legal matters, and drafting legal documents. However, the specific requirements and scope of legal practice can differ significantly. For example, in the United States, providing legal advice is considered the practice of law,² but in the United Kingdom, it is not.³

How the practice of law is defined is a contentious issue. For example, in 2003, the American Bar Association (ABA) Task Force on the Model Definition of the Practice of Law concluded that it could not define the practice of law and that each state should develop its own definition.⁴

The states have also still struggled to define the practice of law. For example, on April 6, 2024, New York State Bar Association's (NYSBA) Task Force on AI released a report and recommendations to the NYSBA's House of Delegates and offered a befuddling note on the practice of law:

[W]ithout a uniform definition and precise meaning of the practice of law, we fall upon the adage: “You know it when you see it.”⁵

2. Unauthorized Practice of Law

What is regarded as the practice of law determines how the unauthorized practice of law is defined. Some jurisdictions call this “illegal practice of a

² See, e.g., *Definition of The Practice of Law*, ABA TASK FORCE ON THE MODEL DEFINITION OF THE PRACTICE OF L. (Sept. 18, 2002), https://www.americanbar.org/groups/professional_responsibility/task_force_model_definition_practice_law/model_definition_definition/ [https://perma.cc/S4BK-FXS8].

³ Legal Services Act 2007, c. 29, § 12 (UK).

⁴ REPORT BY ABA TASK FORCE ON THE MODEL DEFINITION OF THE PRACTICE OF LAW 13 (2003), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/model-def_migrated/taskforce_rpt_803.pdf [https://perma.cc/3SXR-6NWV].

⁵ NYSBA TASK FORCE ON ARTIFICIAL INTELLIGENCE, REPORT AND RECOMMENDATIONS TO NYSBA HOUSE OF DELEGATES 31 (2024).

profession” (Brazil),⁶ “unqualified legal practice” (Australia),⁷ “illegal practice of law” (China),⁸ “unqualified legal services” (Germany),⁹ or something else. For consistency, we use the “unauthorized practice of law” or “UPL” to refer to this same concept.

Just as the definition of “practice of law” is elusive, so too is the definition of “unauthorized practice of law.” In the U.S., Section 4 comment (c) of the Third Restatement of Law Governing Lawyers states:

The definitions and tests employed by courts to delineate unauthorized practice by nonlawyers have been vague or conclusory, while jurisdictions have differed significantly in describing what constitutes unauthorized practice in particular areas. Certain activities, such as the representation of another person in litigation, are generally proscribed. Even in that area, many jurisdictions recognize exceptions for such matters as small-claims and landlord-tenant tribunals and certain proceedings in administrative agencies. Moreover, many jurisdictions have authorized law students and others not admitted in the state to represent indigent persons or others as part of clinical legal-education programs.¹⁰

3. Practice of Law Regulating Authorities

Commonly, Bar Associations and Law Societies play a critical role in establishing ethical guidelines and regulatory standards for the practice of law within their jurisdictions, ensuring the integrity of the legal profession. Of note, this power is often authorized by statute from the legislature¹¹ or formed outside of the

⁶ Estatuto da Advocacia e da Ordem dos Advogados do Brasil [E.O.A.B.], Lei No. 8,906, de 4 de julho de 1994, art. 3, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 5.7.1994 (Braz.). *See also, e.g., Regulation of the Legal Profession in Brazil: Overview*, MONTGOMERY & ASSOCIADOS, <https://montgomery.adv.br/en/regulation-of-the-legal-profession-in-brazil-overview-2/> [https://perma.cc/5HSP-GEA2] (Braz.).

⁷ *Legal Profession Uniform Law 2014* (NSW) pt 2.1 (Austl.).

⁸ Zhōnghuá Rénmín Gònghéguó Lǚshī Fǎ (中华人民共和国律师法) [Law of the People’s Republic of China on Lawyers] (promulgated by the Standing Nat’l People’s Cong., Sept. 1, 2017, effective Jan. 1, 2018), art. 46 (China).

⁹ Rechtsdienstleistungsgesetz [Legal Services Act], Dec. 12, 2007, BGBl I at 2840, last amended by Gesetz [G], Mar. 10, 2023, BGBl I at No. 64, art. 20 (Ger.), https://www.gesetze-im-internet.de/englisch_rdg/englisch_rdg.html.

¹⁰ RESTATEMENT (THIRD) OF LAW GOVERNING LAWYERS § 4 cmt. (c) (Am. Law Inst. 2000).

¹¹ For example, the State Bar of California was created by the California Legislature in 1927 as an arm of the Supreme Court. *Our Mission: What We Do*, ST. B. OF CAL., <https://www.calbar.ca.gov/About-Us/Our-Mission> [https://perma.cc/E2GP-AJG5] (last visited Nov. 12, 2024).

state or provincial system entirely and later incorporated by statute.¹² Sometimes, the highest court retains this authority, or another type of committee takes on the task. Whichever is the case for the jurisdiction, we call the entity exercising this power the “practice of law regulating authority.” It is possible for a jurisdiction to have multiple practices of law regulating authorities.

4. Unrepresented Litigants

Unrepresented litigants are individuals who, by circumstance or choice, represent themselves in legal proceedings without the assistance of a lawyer. This decision may be due to various factors, including the inability to afford legal representation, lack of access to legal services, or the desire to handle their cases independently. Unrepresented litigants navigate the complexities of the legal system, which is built for lawyers and legal professionals, on their own, undertaking tasks such as filing documents, preparing legal arguments, and presenting their cases in courts. An unrepresented litigant is also known as a “self-represented litigant” (U.S., Canada, Australia),¹³ “litigant in person” (India, Singapore, U.K.),¹⁴ “pro se” (U.S.),¹⁵ an “unrepresented litigant” (Australia),¹⁶ or something else. We use “unrepresented litigants” to capture each of these concepts.

5. Legal AI Assistants

We use the term “legal AI assistant” to refer to a computer system that provides legal guidance to users who are neither attorneys themselves nor

¹² For example, the New York State Bar Association was founded in 1876 with its own constitution and later incorporated via legislative act as the official bar association of New York. *Our History*, N.Y. ST. B. ASS’N., <https://nysba.org/about/> [<https://perma.cc/TH8W-BQ54>] (last visited Nov. 12, 2024).

¹³ See *Access to Justice: Self-represented Litigants*, ABA, https://www.americanbar.org/groups/legal_aid_indigent_defense/resource_center_for_access_to_justice/resources---information-on-key-atj-issues/litigant_resources/ [<https://perma.cc/2ZXG-BJQD>] (last visited Nov. 12, 2024); *Self-Represented Litigants in Family Law*, GOV’T OF CAN. (June 1016), <https://www.justice.gc.ca/eng/rp-pr/fl-lf/divorce/jf-pf/srl-pnr.html?wbdisable=true> [<https://perma.cc/UW7G-FNVM>]; *Chapter 10 - Self-represented litigants*, PARLIAMENT OF AUSTL., https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2002-04/legalaidjustice/report/ch10 [<https://perma.cc/G85S-LET7>] (last visited Nov. 12, 2024).

¹⁴ See *Standard Operating Procedure for Ld. Advocate/Litigant-in-person for attending urgent hearing of a matter through video conferencing*, SUP. CT. OF INDIA, https://main.sci.gov.in/pdf/LU/23032020_153530.pdf [<https://perma.cc/7RWT-ZVGQ?type=image>] (last visited Nov. 12, 2024); *Represent yourself in court: rights and responsibilities*, SINGAPORE CTS., <https://www.judiciary.gov.sg/attending-court/represent-yourself-court-rights-responsibilities> [<https://perma.cc/2FAM-346H>] (last visited Nov. 12, 2024); *Represent yourself in court*, GOV.UK, <https://www.gov.uk/represent-yourself-in-court> [<https://perma.cc/RZ6H-4YMY>] (last visited Nov. 12, 2024).

¹⁵ See *Access to Justice: Self-represented Litigants*, *supra* note 13.

¹⁶ See *Representing myself*, FED. CIR. & FAM. CT. OF AUSTL., <https://www.fcfcga.gov.au/attending-court/representing-myself> [<https://perma.cc/Q7Y9-TY67>] (last visited Nov. 12, 2024).

represented by an attorney, predominantly unrepresented litigants. By “legal guidance,” we mean information, advice, or decision support on legal issues. Our definition captures a variety of tools, both large and small, whether designed for legal purposes or not, from large language models (“LLMs”), such as ChatGPT or Claude, to small legal aid tools incorporating AI.

We exclude from our definition of legal AI assistant any system that takes actions that may alter a person’s legal status *autonomously*, i.e., without requiring an action by that person. Examples of such autonomous legal systems include systems for automated calculation of welfare eligibility,¹⁷ resume screening systems,¹⁸ and automated home loan approval algorithms.¹⁹

B. Global Access to Justice Crisis, UPL, and AI Survey

The global access to civil justice crisis is a pervasive and multifaceted problem that affects millions of people worldwide, particularly those from marginalized and low-income communities. According to the World Justice Project’s 2019 “Global Insights on Access to Justice” Report, approximately 1.4 billion people have unmet civil or administrative justice needs, even in countries with functioning institutions and fundamental legal protections.²⁰ The Report notes that this estimate is likely conservative and explains: “Obstacles to addressing legal needs may include poor legal capability and knowledge, insufficient help or assistance, or resolution processes that are slow, expensive, or biased.”²¹ In many regions, the civil justice system is inaccessible to the most vulnerable, leading to a lack of legal remedies for violations of rights, perpetuating cycles of poverty and social inequality.²² Addressing this crisis requires innovative solutions, such as leveraging legal AI assistants to provide accessible legal resources and support for unrepresented litigants.

We conduct a detailed survey of access to civil justice in various international jurisdictions, including Argentina, Australia, Brazil, Canada, China, the European Union, Germany, India, New Zealand, Nigeria, Singapore, the United Kingdom, and the United States. In each of these jurisdictions, we explore how UPL is currently managed in the context of AI for unrepresented litigants. We also

¹⁷ VIRGINIA EUBANKS, AUTOMATING INEQUALITY: HOW HIGH-TECH TOOLS PROFILE, POLICE, AND PUNISH THE POOR (2018).

¹⁸ Sean M. Noble, Lori L. Foster, & S. Bartholomew Craig, *The procedural and interpersonal justice of automated application and resume screening*, 29 INT’L J. SELECTION & ASSESSMENT 139-153 (2021).

¹⁹ John Villasenor & Virginia Foggo, *Algorithms, Housing Discrimination, and the New Disparate Impact Rule*, 22 COLUM. SCI. & TECH. L. REV. 1 (2020).

²⁰ G7 Bars’ Statement on Artificial Intelligence (AI), ABA (Mar. 21, 2024), <https://www.americanbar.org/content/dam/aba/administrative/center-for-innovation/ai-task-force/g7-bars-statement-on-gen-ai-signed03212024.pdf> [https://perma.cc/T55P-5YTM].

²¹ *Id.*

²² *Id.*

include a 50-state and 6-territory survey for the United States on what each Bar Association and Judiciary is doing to regulate AI use by unrepresented litigants.

This survey finds that policies on legal AI tools internationally, especially their use by unrepresented litigants, are currently inchoate and that jurisdictions have taken various approaches. Some jurisdictions have chosen to do nothing and wait; these jurisdictions are not highlighted herein. Some jurisdictions have provided general guidance from law societies, bar associations, or the courts. Some jurisdictions' courts have banned any generative AI use in court submissions, while others require all litigants, including unrepresented litigants, to disclose whether they used AI and how they used it in their submissions. Other jurisdictions offer legal regulatory "sandboxes," which are controlled environments where legal technology service providers can operate under relaxed regulations. Some of these sandboxes exempt legal service providers from UPL restrictions if they provide innovative legal service solutions to improve access to justice.

C. Capability-Based Framework to Certify Legal AI Assistants for Unrepresented Litigants

We propose a capability-based framework for certifying legal AI assistants that provide legal advice to unrepresented litigants. This is intended as a harmonized global proposal, designed for local implementation by each jurisdiction's practice of law regulating authority, with the flexibility to address individual jurisdictional nuances. This framework addresses the key justification for UPL restrictions—the risk of incorrect legal guidance—by basing the certification of individual capabilities on their accuracy when tested on public benchmark datasets.

To enable AI to enhance access to justice for unrepresented litigants globally, practice of law regulating authorities in each jurisdiction must choose to exempt certified legal artificial intelligence systems for unrepresented litigants from UPL restrictions. Legal AI assistants are added to lists of UPL exemptions under this approach if their accuracy meets or exceeds a certification threshold when tested on these public benchmark datasets. The practice of law regulating authority would set the certification threshold or, as we suggest, a third-party certifying authority delegated to perform this task. While many public benchmark datasets are required under this framework, the legal AI community is rapidly developing such datasets.

The need for a framework for certifying legal AI assistants that provide legal advice to unrepresented litigants is highlighted by the institutional recognition and calls for global collaboration on legal AI issues by practice of law regulating authorities, specifically as it pertains to access to justice applications.

1. Calls for Global Collaboration of Practice of Law Regulating Authorities

On March 21, 2024, the leaders of all G7 bar associations, including the American Bar Association, Bundesrechtsanwaltskammer, Canadian Bar Association, Conseil National des Barreaux, Consiglio Nazionale Forense, Council

of Bars and Law Societies of Europe, Deutscher Anwaltverein, Japan Federation of Bar Associations, and Law Society of England and Wales, signed a statement of intent to cooperate in the use of AI in the legal profession.²³ The G7 bar association representatives specifically stated their intent to cooperate with each other regarding professional codes of conduct and underscored their commitment to access to justice.

On April 6, 2024, New York State Bar Association's (NYSBA) Task Force on AI released a report and recommendations to the NYSBA's House of Delegates.²⁴ In its recommendations section, it expressed concern about the jurisdictional issues regarding AI tools and the desire for multijurisdictional coordination and regulation:

Global Cooperation: Another consideration in the regulatory approach involves jurisdictional reach. Can AI be effectively governed at the local, state or federal level, or does its governance necessarily require some degree of international or even global cooperation? We believe in local, state and federal regulation where appropriate, but also propose that local, state and federal regulation is likely to prove inadequate without international and sometimes global cooperation, because AI is a cross-border phenomenon rather than a local one. The following four elements of AI may elude regulations if they are confined to a specific geographic area:

- i. Data, which is the input for AI, can move across borders (although data location is likely to enhance a jurisdiction's power to regulate AI);
- ii. Algorithms programmable anywhere in the world;
- iii. Algorithms exportable for use anywhere else in the world; and
- iv. Outputs from algorithms transmitted to and applied in different jurisdictions.²⁵

In October 2023, the U.K. Solicitors Regulation Authority responded to the House of Lords Communications and Digital Committee's request to respond to questions to inform their inquiry into large language models.²⁶ It noted: "We would also welcome the government taking a lead in promoting interoperability and

²³ *Id.*

²⁴ NYSBA TASK FORCE ON ARTIFICIAL INTELLIGENCE, *supra* note 5.

²⁵ *Id.* at 56.

²⁶ SOLICITORS REGULATION AUTHORITY, HOUSE OF LORDS COMMUNICATIONS AND DIGITAL COMMITTEE: SRA RESPONSE TO QUESTIONS ON LARGE LANGUAGE MODELS (Oct. 2023), <https://committees.parliament.uk/publications/42156/documents/209533/default/> [<https://perma.cc/7WHH-C7B3>].

coordinating developments across jurisdictions, recognising that AI developments span international jurisdictions.”²⁷

II. STAKEHOLDER PERSPECTIVES

We propose that practice of law regulating authorities allow unrepresented litigants to use legal AI assistants that have been verified for accuracy. There are several primary stakeholders in the certification of legal AI assistants for unrepresented litigants, including unrepresented litigants, practice of law regulating authorities, judiciaries, legislatures, the legal aid community, and the legal tech community. While there are other secondary stakeholders, including law firms and law schools, we focus here on the primary stakeholders. Additionally, some primary stakeholders’ perspectives may be similar or overlap substantially, but we distinguish the groups because their stakes in the certification differ.

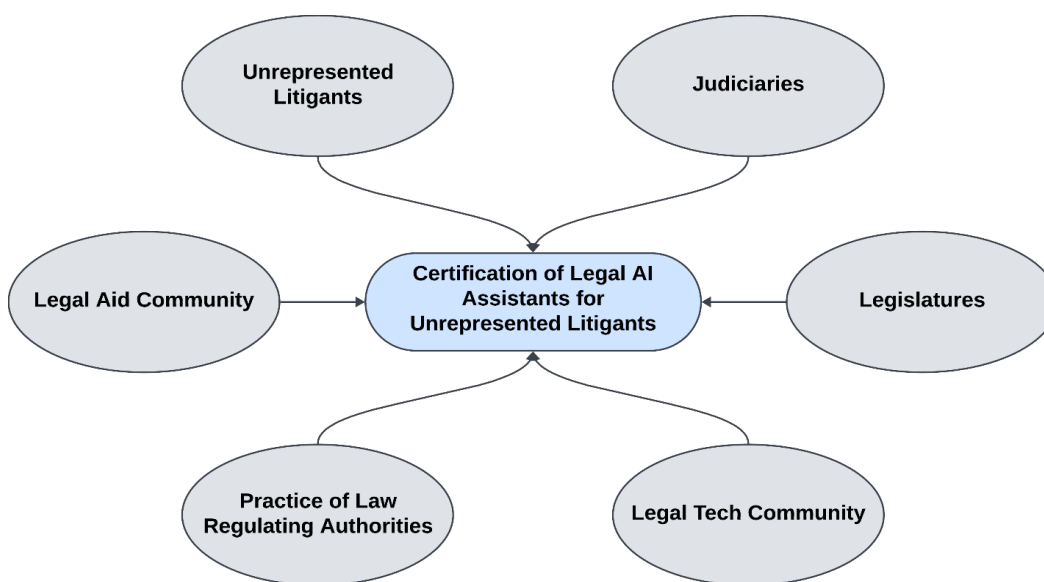


Figure 1. Primary stakeholders in certification of legal AI assistants for unrepresented litigants.

A. Shared Stakeholder Interests

One interest that touches every primary stakeholder is the accuracy of the information provided by legal AI assistants. Designing and regulating legal AI assistants for unrepresented litigants inherently supports the broader legal community, including attorneys, because the standards will be strict and the threshold for acceptance will be much higher than for attorneys or other legal professionals. This is not only because of the substantial public interest in ensuring

²⁷ *Id.* at 11, ¶ 31.

that unrepresented litigants receive correct and actionable legal advice, but also because of the different stakeholder perspectives on preventing judicial slowdown or inundating courts with fictitious cases or misleading information.²⁸ As these systems are scrutinized to meet high accuracy thresholds for unrepresented litigants, attorneys or other legal professionals who use or interact with similar AI tools will benefit from the enhanced quality and dependability of the information. Thus, setting rigorous accuracy threshold standards protects unrepresented litigants and elevates the quality of legal tools available to the legal profession, reinforcing the integrity of legal practice, and fostering trust in legal AI technologies across the board.

A fundamental interest in the accuracy of information provided by legal AI assistants is the redressability for unrepresented litigants who receive faulty advice from these systems. Typically, when attorneys fail to provide a client with the requisite standard of care, that client can seek redress in a malpractice tort.²⁹ For legal AI assistants exempted from UPL, the malpractice tort would not apply (at least in jurisdictions familiar to the authors).

Legislatures must decide whether certified legal AI assistants should be further exempted from consumer protection regulations. Joseph Avery et al. argue that standard common law and statutory private rights of action will still exist for consumers, explaining:

Nonlawyer providers of legal services will not escape liability simply because the fiduciary attorney-client relationship required under the legal malpractice tort is absent. Injured consumers will have a private right of action such that the negligence claim will look to the definition of the service provided and determine whether that service fell below the standard of care. It might take some time for the common law to establish the standard of care owed by nonlawyer legal service providers, particularly in instances in which partial services are provided (e.g., a nonlawyer provides legal research and gives legal advice but neither drafts nor files the final legal document), but legal malpractice jurisprudence will provide guidance.³⁰

²⁸ See, e.g., Eugene Volokh, *Six Federal Cases of Self-Represented Litigants Citing Fake Cases in Briefs, Likely Because They Used AI Programs*, REASON: THE VOLOKH CONSPIRACY (Nov. 11, 2023), <https://reason.com/volokh/2023/11/13/self-represented-litigants-use-ai-to-write-briefs-produce-hallucinated-citations/> [https://perma.cc/Q35C-HFQZ]; Neil Rose, *Litigant unwittingly put fake cases generated by AI before tribunal*, LEGAL FUTURES (Dec. 7, 2023), <https://www.legalfutures.co.uk/latest-news/litigant-unwittingly-put-fake-cases-generated-by-ai-before-tribunal> [https://perma.cc/D3GP-GW96].

²⁹ Requirements vary by state but generally require a violation of the rules of professional conduct. See generally ABA Rules of Professional Conduct.

³⁰ Joseph J. Avery et al., *ChatGPT, Esq.: Recasting Unauthorized Practice of Law in the Era of Generative AI*, 26 YALE J. L. & TECH. 64, 123 (2023).

Avery et al. also address negligence waivers:

[N]onlawyer legal-service providers would be held to the same public-policy restrictions as lawyers with respect to waivers. If a lawyer could not enforce a negligence waiver, a mandatory arbitration clause, or like ilk, then a nonlawyer could not enforce them either.³¹

However, Ashley Chase and Sam Harden have proposed a scheme for regulating consumer-facing generative AI products to fill the justice gap where companies or developers are shielded from liability if they follow certain regulations, such as disclosures, disclaimers, a data deletion policy, and expert review.³² Chase and Harden propose that if a legal AI provider meets such regulations, it will be entitled to a liability presumption that its product meets the standard of care and will receive a statement by the state or local bar association that it cannot be found to “practice law” by giving legal advice.³³

We agree with Brooke Brimo that “most pro se litigants who use legal AI may not have the means to initiate another lawsuit against the publisher if things go wrong.”³⁴ For this reason, we think it is better to incentivize legal AI providers to comply with regulations via a liability presumption (which is just a presumption in fact and not a waiver of liability) than disincentivizing the development of legal AI tools at all, which poses the risk of increasing the gap in access to justice.

B. Unrepresented Litigants

Unrepresented litigants stand as a pivotal stakeholder group in the certification of legal AI assistants. They often lack formal legal training and face substantial obstacles in understanding complex legal jargon, navigating procedural intricacies, and effectively presenting their cases in court. AI tools designed explicitly for unrepresented litigants can bridge these gaps by offering straightforward, step-by-step guidance on legal processes, translating legal terms into everyday language, and suggesting documents and filings relevant to their cases, among other things. By focusing on the unique needs of unrepresented litigants, legal AI assistants can be powerful partners in the pursuit of equitable and efficient legal services.

³¹ *Id.* at 124.

³² Ashley Krenelka Chase & Sam Harden, *Through the AI-Looking Glass and What Consumers Find There*, J. TECH. L. & POL’Y (forthcoming 2024) (manuscript at 27-32), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4722695 [<https://perma.cc/4Z9Y-CGZG>].

³³ *Id.* (manuscript at 28).

³⁴ Brooke K. Brimo, *How Should Legal Ethics Rules Apply When Artificial Intelligence Assists Pro Se Litigants?*, 35 GEO. J. LEGAL ETHICS 549, 573 (2022).

C. Practice of Law Regulating Authorities

Practice of law regulating authorities safeguards the interests of unrepresented litigants and the public by ensuring that legal services are accessible and provided ethically and competently. The Law Society of Ontario says, “[w]ithout the supervision of a regulatory body, there is a risk that legal services will be delivered unethically, ineffectively or incorrectly, which may discourage individuals from seeking legal assistance at all.”³⁵ Brooke Brimo explains, “[t]he ABA takes the position that ‘some legal help is better than none’ in allowing limited-scope representation, so the legal profession might also find that some help is better than none when it comes to software aimed at assisting pro se litigants.”³⁶ Recognizing the potential of legal AI assistants to significantly enhance access to justice, practice of law regulating authorities can amend their UPL regulations to add an exemption for certified legal AI assistants. This would be similar to approaches by legal regulatory “sandboxes” in British Columbia,³⁷ Manitoba,³⁸ Ontario,³⁹ Saskatchewan,⁴⁰ England and Wales,⁴¹ and Utah.⁴² Notably, while Alberta also has a sandbox, it does not offer a UPL exemption.⁴³

However, another concern of practice of law regulating authorities is whether they are appropriately situated to regulate these complex technologies effectively. For example, lawyers in Toronto responded to questions from the International Bar Association on the state of AI in Canada, explaining that “as a self-regulator, the [Law Society of Ontario] is faced with the challenge of whether it is appropriately situated and has the resources necessary to effectively regulate

³⁵ *Access to Innovation – FAQs: #7*, L. SOC’Y OF ONT., <https://lso.ca/about-lso/access-to-innovation/faqs#7-why-should-licensees-be-supportive-of-this-program--5> [<https://perma.cc/693C-KXSS?type=image>] (last visited Nov. 5, 2024).

³⁶ Brimo, *supra* note 34, at 574.

³⁷ *Innovation Sandbox*, L. SOC’Y OF B.C., <https://www.lawsociety.bc.ca/about-us/priorities/innovation-sandbox/> [<https://perma.cc/9H2R-D65B>] (last visited Nov. 5, 2024).

³⁸ *Regulatory Sandbox Pilot Program*, L. SOC’Y OF MAN., <https://lawsociety.mb.ca/about/lsm-initiatives/access-to-justice/regulatory-sandbox-pilot-program/> [<https://perma.cc/Q8KN-AVR6>] (last visited Nov. 5, 2024).

³⁹ *Access to Innovation*, L. SOC’Y OF ONT., <https://lso.ca/about-lso/access-to-innovation> [<https://perma.cc/73ZM-TYZR?type=image>] (last visited Dec. 28, 2024).

⁴⁰ *Future of Legal Services Initiative*, L. SOC’Y OF SASK., <https://www.lawsociety.sk.ca/initiatives/access-to-justice/future-of-legal-services/> [<https://perma.cc/8S9C-JKZH>] (last visited May 25, 2024).

⁴¹ *SRA Innovate*, SOLICS. REGUL. AUTH. (Dec. 2022), <https://www.sra.org.uk/solicitors/resources/sra-innovate/> [<https://perma.cc/2V72-7D5B>].

⁴² *Frequently Asked Questions*, UTAH OFF. OF LEGAL SERVICES INNOVATION, <https://utahinnovationoffice.org/faq/> [<https://perma.cc/F6ZR-9GPK>] (last visited May 25, 2024).

⁴³ *About the Innovation Sandbox*, L. SOC’Y OF ALTA., <https://www.lawsociety.ab.ca/about-us/key-initiatives/innovationsandbox/about/#FAQ> [<https://perma.cc/G6XF-BFZ8>] (last visited May 26, 2024).

persons and entities operating legal tech tools.”⁴⁴ Practice of law regulating authorities seek to balance serving the public without having to delve into nuanced technical details or to act as both legal and technology experts for certifying legal AI assistants.

Because practice of law regulating authorities are invested in the transparency and accountability of legal AI assistants for unrepresented litigants, clear mechanisms for resolving disputes and errors must be established. This is crucial for unrepresented litigants, who may lack the expertise to identify and challenge inaccuracies on their own. By implementing clear procedures for contesting AI-generated guidance, the authorities ensure that unrepresented litigants have a direct avenue to seek redress. Examples of such complaint systems are established in Utah, where users can complete a complaint form on the sandbox’s website,⁴⁵ and in Ontario, where the approach is that each licensed provider must have its own individual mechanism for resolving disputes, subject to oversight by the sandbox.⁴⁶

D. Judiciaries

Judiciaries globally have a strong interest in the effectiveness of legal AI assistants for unrepresented litigants, as some unrepresented litigants will rely on these tools for drafting court submissions and for guidance on their cases. Judiciaries have multifaceted interests in the governance and certification of legal AI assistants for unrepresented litigants, including maintaining effective court procedures and improving efficiency in case management, as well as the accuracy, reliability, and fairness of these systems to ensure they provide equitable assistance to unrepresented litigants without imposing undue burden on the judiciary or other parties. Certified legal AI assistants could improve the efficiency of the legal process by helping unrepresented litigants prepare and present their cases effectively.

E. Legislatures

Legislatures play a crucial role by enacting laws that govern the use and certification of legal AI assistants. They can establish legal frameworks that

⁴⁴ INTERNATIONAL BAR ASSOCIATION, ALTERNATIVE AND NEW LAW BUSINESS STRUCTURES COMMITTEE, GUIDELINES AND REGULATIONS TO PROVIDE INSIGHTS ON PUBLIC POLICIES TO ENSURE ARTIFICIAL INTELLIGENCE’S BENEFICIAL USE AS A PROFESSIONAL TOOL 53 (2024) [hereinafter IBA AI REPORT].

⁴⁵ *Sandbox Consumer Complaint Form*, UTAH OFF. OF LEGAL SERVICES INNOVATION, <https://utahinnovationoffice.org/sandbox-customer-complaint/> [https://perma.cc/VR4F-LRDW] (last visited Nov. 5, 2024).

⁴⁶ *Access to Innovation – FAQs: #3*, L. SOC’Y OF ONT., <https://lso.ca/about-lso/access-to-innovation/faqs#3-what-can-i-do-if-i-have-a-complaint-about-services-i-have-received-from-an-access-to-innovation--5> [https://perma.cc/E7V2-SCM5?type=image] (last visited Dec. 28, 2024).

mandate transparency, accountability, and fairness in AI applications, ensuring these systems adhere to the principles of justice accessible to all, including unrepresented litigants. By setting regulatory standards, legislatures ensure that the deployment of legal AI aligns with public policy goals and civil rights protections. Leading examples include the EU AI Act,⁴⁷ the Utah AI Policy Act,⁴⁸ and the Colorado AI Act.⁴⁹

F. Legal Aid Community

It is a common perspective in the legal aid community that advice from legal AI assistants, even if not perfect, is far better than no advice at all. The global access to justice chasm underscores this perspective. In 2019, the World Justice Project highlighted that around 1.4 billion people had unmet civil or administrative justice needs, even in countries with “functioning” legal systems.⁵⁰ The report suggested that this number is likely an underestimate, due to barriers such as limited legal knowledge, inadequate assistance, and slow, costly, or biased resolution processes.⁵¹ From the perspective of the legal aid community, legal AI assistants are seen as crucial tools for overcoming obstacles to justice and enhancing access for unrepresented litigants.⁵² Legal AI tools can offer essential guidance, simplifying complex legal processes that would otherwise be daunting and inaccessible. Preventing unrepresented litigants from using AI systems widens the justice gap, as many individuals lack the resources to secure traditional legal assistance, and the number of people in need of assistance is far greater than the number able to provide it.

G. Legal Tech Community

The legal tech community, which includes lawyers, technologists, developers, members of the legal aid community, and other stakeholders, shares a common goal: ensuring that legal AI assistants are reliable, accurate, and ethically compliant. The legal tech community prioritizes usability, data privacy, and security, ensuring that legal AI tools are easy to use and can handle sensitive information responsibly. Other goals include continuously improving legal AI assistants through regular updates and user feedback. The community also emphasizes cost-effectiveness, especially for nonprofits and organizations supporting unrepresented litigants. Furthermore, the legal tech community

⁴⁷ Regulation 2024/1689, 2024 O.J. (L 144) 1, 28, 84 (EU) [hereinafter EU AI Act].

⁴⁸ Utah AI Policy Act, UTAH CODE ANN. §§ 13-72-101 to -305 (West 2024).

⁴⁹ Colorado AI Act, COLO. REV. STAT. §§ 6-1-1701 to -1711 (2024).

⁵⁰ WORLD JUSTICE PROJECT, *supra* note 1, at 13.

⁵¹ *Id.* at 13-14.

⁵² See, e.g., Talk Justice, *Putting AI to the Test for Legal Services*, LEGAL SERVICES CORP., (May 14, 2024), <https://legaltalknetwork.com/podcasts/talk-justice/2024/05/putting-ai-to-the-test-for-legal-services/> [https://perma.cc/2SMA-RWAH].

advocates for collaboration and transparency in AI development and deployment. It provides education and training for users and legal professionals to use and integrate AI tools into legal practices effectively.

1. Calls To Certify Legal AI Assistants

Members of the legal tech community advocate for standards for regulating legal AI assistants to ensure they effectively support unrepresented litigants.⁵³ In June 2024, Ed Walters argued that “state legislatures should re-evaluate laws that govern the practice of law by software providers that are not licensed to practice, with the explicit goal of expanding legal assistance to more people.”⁵⁴ Additionally, in 2019, Ed Walters explained that lawyers and law firms recognize that they cannot independently verify that their software conforms to ethical standards and noted the need for an industry group or certification process to provide a reasonable safe harbor.⁵⁵ Currently, no such certification group exists.

Additionally, Chase and Harden’s proposed scheme for regulating consumer-facing generative AI products to fill the justice gap, discussed above, suggests that legal AI providers self-regulate. They explain that “[g]iven how little the legal field seems to understand technology, generally, and generative artificial intelligence, specifically, it may be a good thing to not have a formal body regulating these tools. On the other hand, Courts are no more equipped to do that.”⁵⁶ They explain that “it will be essential that the providers following these regulations can be certified in some way to demonstrate to consumers that their tool meets the framework. Certification is tricky, however, and requiring a regulatory body to also be a certification body presents additional challenges. A potential solution exists with self-certification.”⁵⁷

Finally, Colleen Chien and Miriam Kim advocate for voluntary certification or “seal of approval” programs for legal aid bots.⁵⁸ Chien and Kim explain:

Particularly in light of the known challenges of generative AI technology including bias, accuracy, privacy, and confidentiality, a certification or “seal of approval” program could evaluate legal bots across dimensions including reliability in providing accurate and up to date legal information, ability to spot ethical issues, transparency

⁵³ See, e.g., Talk Justice, *Results from the First Field Study of AI for Legal Aid*, LEGAL SERVICES CORP. (June 11, 2024), <https://legaltalknetwork.com/podcasts/talk-justice/2024/06/results-from-the-first-field-study-of-ai-for-legal-aid/> [<https://perma.cc/QZ35-JM7N>].

⁵⁴ Ed Walters, *Re-Regulating UPL in an Age of AI*, 8 GEO. L. TECH. REV. 316, 319 (2024).

⁵⁵ Ed Walters, *The Model Rules of Autonomous Conduct: Ethical Responsibilities of Lawyers and Artificial Intelligence*, 35 GA. STATE U. L. REV. 1073, 1087 (2019).

⁵⁶ Chase & Harden, *supra* note 32 (manuscript at 34 n. 6.).

⁵⁷ *Id.* at 32.

⁵⁸ Colleen Chien & Miriam Kim, *Generative AI and Legal Aid: Results from a Field Study and 100 Use Cases to Bridge the Access to Justice Gap*, LOYOLA OF LOS ANGELES L. REV. (forthcoming 2024) (manuscript at 51), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4733061.

around limitations and disclaimers, and adherence to privacy policies and data regulations. Lawyers and technologists could collaborate on appropriate certification standards and procedures tailored for verifying legal bots across domains and dimensions.⁵⁹

III. GLOBAL ACCESS TO CIVIL JUSTICE, UPL, AND AI SURVEY

To determine if any jurisdictions already have a workable solution to the problem of unrepresented litigants using legal AI assistants and receiving inaccurate advice, we conducted a comprehensive survey of access to civil justice across various international jurisdictions, including Argentina, Australia, Brazil, Canada, China, the European Union, Germany, India, New Zealand, Nigeria, Singapore, the United Kingdom, and the United States. We examined how each manages UPL in the context of legal AI use by unrepresented litigants. For the United States, this includes a 50-state and 6-territory survey on the regulatory actions of Bar Associations and Judiciaries regarding AI use by unrepresented litigants. We chose to survey these jurisdictions in depth, after a preliminary survey of more jurisdictions reflected that our selected jurisdictions would provide tangible insights at the intersection of our focus topics. Jurisdictions that are not highlighted may also be working on these issues.

A. Argentina

According to the World Justice Project, as of 2023, Argentina ranked 112 out of 142 countries on “Civil Justice Is Not Subject To Unreasonable Delay.”⁶⁰ In 2019, Argentina’s Ministry of Justice and Human Rights of the Nation conducted an “Access to Justice and Conditions of Social Inequality” survey of 5,722 people face to face and found “69.8% of those who had a problem that was difficult to solve and that could lead to legal problems sought help or went to an institution to try to solve the problem. But there is also a significant 22.3% who did nothing. Only 7.8% tried to solve it on their own.”⁶¹ Incredibly, “after these different processes of seeking help or advice, or going to different types of institutions and receiving different types of help, 61.8% declared themselves dissatisfied or very dissatisfied with the results. If everyone is taken into account, whether or not they have sought help, dissatisfaction grows to 67.7%.”⁶²

⁵⁹ *Id.*

⁶⁰ *Rule of Law Index 2023: Argentina, Civil Justice*, WORLD JUST. PROJECT, <https://worldjusticeproject.org/rule-of-law-index/country/2023/Argentina/Civil%20Justice> [https://perma.cc/SW24-HWP3] (last visited Nov. 12, 2024).

⁶¹ MINISTERIO DE JUSTICIA Y DERECHOS HUMANOS DE LA NACIÓN [MINISTRY OF JUSTICE AND HUMAN RIGHTS OF THE NATION], ACCESO A LA JUSTICIA Y CONDICIONES DE DESIGUALDAD SOCIAL [ACCESS TO JUSTICE AND CONDITIONS OF SOCIAL INEQUALITY] 9 (2019) (machine translation by Google on file with authors).

⁶² *Id.* at 13.

Argentina consists of several provinces, each with its own jurisdiction and specific professional ethics regulations for attorneys registered locally.⁶³ On April 9, 2024, Argentina's Justice Ministry issued Order No. 111/202464, which established the Comprehensive National AI in Justice Program. The program aims to enhance administrative and court proceedings through the effective use of AI tools, to ultimately optimize the work of all participants in these processes.⁶⁴

This is promising, since a report by the Center for Technology and Society Studies (CETyS) of the University of San Andrés titled the "Readiness of the judicial sector for Artificial Intelligence in Latin America," published in September 2021, found there was no "leading agency at the national level with the necessary institutional, material and technical resources, as well as an appropriate sense of urgency, to drive the implementation of AI in the justice system" and the Supreme Court of Justice of the Argentine Nation was not working on "instruments associated with the use of AI, nor does it have the capacity to do so."⁶⁵

The same report explains that "the lack of defined public policies in the judicial sphere in the short term hinders the possibility of agents of the system to train in complex issues and provide adequate responses to problems or demands in the field of justice that require or enable the use of AI."⁶⁶ At that time, Valeria Quiroga, Director of the Statistics Area of the Buenos Aires Judiciary, said "developments occur because some people are interested and form alliances with those who have the capabilities."⁶⁷ Héctor Chayer, Academic Coordinator of the Justice 2020 Program of the National Ministry of Justice, argues, "[b]efore talking about AI, you must have a more or less reasonable electronic file system."⁶⁸ Time will tell what kind of impact the Comprehensive National AI in Justice Program will have and whether it can meet the needs and expectations of those in the legal services space in Brazil.

University of Buenos Aires Innovation and Artificial Intelligence Laboratory (UBA IALAB) is a leading regional institution for developing AI projects in the public sector in South America, with at least three collaborations in

⁶³ Mercedes Balado Bevilacqua, *Attorneys are like Priests: Secrecy is the Key of their Profession*, NYSBA, <https://nysba.org/NYSBA/Sections/International/Seasonal%20Meetings/Vienna%202014/Coursebook/Plenary%201/Balada%20Argentine%20Paper1.pdf> [https://perma.cc/R3A4-XHA5] (last visited Nov. 12, 2024).

⁶⁴ Ministerio De Justicia, Resolución 111/2024, BOLETÍN OFICIAL DE LA REPÚBLICA ARGENTINA (Apr. 11, 2024) <https://www.boletinoficial.gob.ar/detalleAviso/primera/305645/20240411> [https://perma.cc/L9UN-XBRT].

⁶⁵ Gonzalo Bustos Frati & Bruno Gorgone, *Assessment Of The Readiness Of The Judicial System For The Adoption Of Artificial Intelligence – Case Argentina*, CENTER FOR TECHNOLOGY AND SOCIETY STUDIES (CETyS) OF THE UNIVERSITY OF SAN ANDRÉS 34, 39 (Sept. 2021), <https://cetys.lat/wp-content/uploads/2021/09/argentina-EN.pdf> [https://perma.cc/3HD2-XTWJ] [hereinafter *Argentina Readiness Assessment*].

⁶⁶ *Id.* at 71.

⁶⁷ *Id.*

⁶⁸ *Id.* at 72.

Argentina, Columbia, and Peru.⁶⁹ The UBA IALAB, while not a governing entity, has released “Guidelines for the use of ChatGPT and text generative AI in Justice” because, as it explains:

Based on the work we do at UBA IALAB on the impact of ChatGPT in different areas, including the legal field, we believe that it is a critical moment to carry out a ‘controlled and strictly supervised experimentation’, ushered by guidelines that are updated and modified over time with constant feedback from different stakeholders.⁷⁰

These guidelines were based on Massachusetts Institute of Technology’s Task Force on Responsible Use of Generative AI for Law.⁷¹

1. Prometea

Prometea is an AI-enabled tool used by the Office of the Public Prosecutor (MPF) in Buenos Aires for various cases.⁷² According to Juan Gustavo Corvalán, Deputy Prosecutor of the MPF and Academic Director of the UBA IALAB, Prometea is:

[P]roducing 1000 rulings about housing rights required 174 work days. With Prometea they are done in 45 days. The same occurs with cases related to labor rights. Without Prometea it took 83 days to produce 1000 rulings. With Prometea, it’s done in 5 days. Prometea also helps control that filings comply with all formal requirements. It cuts time from 160 to 38 work days per 1000 filings.⁷³

The development of Prometea began jointly with the UBA IALAB in 2017.⁷⁴ The CETyS Report on the “Readiness of the Judicial Sector for Artificial Intelligence in Latin America” explains that “Prometea consists of two predictive modules mounted on expert systems; one is focused on housing issues and the other on issues associated with the right to work and procedural aspects.”⁷⁵ However, the Report is also quite critical of Prometea and states, “the institutional innovations based on

⁶⁹ *Id.* at 52.

⁷⁰ Juan Gustavo Corvalán et al., *Guidelines for the use of ChatGPT and text generative AI in Justice*, IALAB 6 (Aug. 2023), <https://ialab.com.ar/webia/wp-content/uploads/2024/02/Guia-uso-IAG-.pdf>.

⁷¹ Dazza Greenwood, *Task Force on Responsible Use of Generative AI for Law*, MIT COMPUTATIONAL L. REP. (Feb. 9, 2024), <https://law.mit.edu/pub/generative-ai-responsible-use-for-law/release/9> [<https://perma.cc/SK4R-5QTQ>].

⁷² *Argentina Readiness Assessment*, *supra* note 65.

⁷³ Federico Ast, *Prometea, Artificial Intelligence in the Judicial System of Argentina*, MEDIUM (June 6, 2020), <https://medium.com/astec/prometea-artificial-intelligence-in-the-judicial-system-of-argentina-4dfbde079c40> [<https://perma.cc/D2WG-5XF5>].

⁷⁴ *Argentina Readiness Assessment*, *supra* note 65.

⁷⁵ *Id.* at 52.

AI in the judicial sphere around the ‘Prometea experience’ are inscribed in an agenda associated with the idea of augmented justice rather than open justice.”⁷⁶ The criticism here is that it is argued to favor efficiency over transparency in legal proceedings.

B. Australia

According to the World Justice Project, in 2023, Australia ranked 14th out of 142 countries in the “Civil Justice” category.⁷⁷ In 2021, the Public Understanding of Law Survey (PULS) conducted predominantly face-to-face interviews with 6,008 respondents across Victoria and found that, where legal needs existed, 78% went unmet.⁷⁸ PULS also found that “more than half of those obtaining legal advice also used a ‘non-legal’ service. Numerically, more respondents had legal needs met by ‘non-legal’ than legal services.”⁷⁹ However, among those who did not seek advice, 30% cited concerning reasons, such as not knowing where to find help or feeling that seeking help would be futile.⁸⁰

The practice of law in Australia is primarily governed by the Australian Solicitors Conduct Rules (ASCR). The ASCR establish unified professional conduct rules for solicitors in Australia and result from a collaboration between state and territory law societies and professional bodies of the Law Council and the Legal Profession Uniform Law Act (LPUL). The LPUL creates a common legal services market across New South Wales, Victoria, and Western Australia.⁸¹

LPUL Chapter 2.1 addresses UPL in Australia (which is referred to as “unqualified legal practice” in Australia).⁸² While discussing the ethics of AI in legal practice, Professor Michael Legg from the School of Private & Commercial Law at University of New South Wales Law & Justice noted, “the legislation that

⁷⁶ *Id.*

⁷⁷ *Rule of Law Index 2023: Australia, Civil Justice*, WORLD JUST. PROJECT, <https://worldjusticeproject.org/rule-of-law-index/country/2023/Australia/Civil%20Justice> [https://perma.cc/HWX4-MD8S] (last visited Oct. 21, 2024).

⁷⁸ *Everyday Problems and Legal Need*, PUB. UNDERSTANDING OF L. SURVEY 10-12 (Aug. 30, 2023), <https://puls.victorialawfoundation.org.au/publications/everyday-problems-and-legal-need> [https://perma.cc/DGS8-43G4].

⁷⁹ *Id.* at 10.

⁸⁰ *Id.*

⁸¹ *Australian Solicitors’ Conduct Rules*, L. COUNCIL OF AUSTL., <https://lawcouncil.au/policy-agenda/regulation-of-the-profession-and-ethics/australian-solicitors-conduct-rules> [https://perma.cc/58UL-7W3B] (last visited Oct 21, 2024).

⁸² *Legal Profession Uniform Law 2014* (NSW) pt 2.1 (Austl.).

deals with the practice of law could be amended to allow AI and machine-provided services to practice law.”⁸³

In May 2024, lawyers in Sydney responded to questions from the International Bar Association on the state of AI in Australia, explaining that “[t]here is currently no legal profession-specific regulation planned for AI. The focus remains on developing a more generally applicable framework and standards for AI systems in Australia.”⁸⁴

In July 2023, the New South Wales Bar Association released “Issues Arising from the Use of AI Language Models (including ChatGPT) in Legal Practice” to guide barristers.⁸⁵

C. Brazil

In 2023, according to the World Justice Project, for “Civil Justice Is Not Subject To Unreasonable Delay,” Brazil ranked 126th out of 142 countries.⁸⁶ In a 2017 survey of 1,049 people in Brazil’s three largest cities, the World Justice Project found that of the 69% who experienced a civil legal problem in the past two years, 50% knew where to get advice and information, but only 13% were able to access help, and only 55% fully resolved their problem.⁸⁷ On average, it took respondents about six months to resolve the problem.⁸⁸ Twelve percent said it was difficult or nearly impossible financially to resolve their legal problem, and 28% experienced hardship because of their problem, whether it was health, economic, interpersonal, or substance abuse-related.⁸⁹

The Brazilian Bar Association (OAB) is responsible for regulating the legal profession.⁹⁰ In Brazil, people who are not licensed lawyers can only represent themselves in the following limited circumstances:

⁸³ Ben Knight, *Judgement Day: Will the rise of the robots be the end of the lawyers?*, UNSW SYDNEY (Aug. 18, 2023), <https://www.unsw.edu.au/newsroom/news/2023/08/judgement-day--will-the-rise-of-the-robots-be-the-end-of-the-law> [https://perma.cc/D9BG-C5WN].

⁸⁴ IBA AI REPORT, *supra* note 44, at 36.

⁸⁵ *Issues Arising from the Use of AI Language Models (including ChatGPT) in Legal Practice*, NEW SOUTH WALES BAR ASS’N. (July 12, 2023), <https://inbrief.nswbar.asn.au/posts/9e292ee2fc90581f795ff1df0105692d/attachment/NSW%20Bar%20Association%20GPT%20AI%20Language%20Models%20Guidelines.pdf> [https://perma.cc/4ZS9-Z4GD].

⁸⁶ *Rule of Law Index 2023: Brazil, Civil Justice*, WORLD JUST. PROJECT, <https://worldjusticeproject.org/rule-of-law-index/country/2023/Brazil/Civil%20Justice> [https://perma.cc/EPQ6-VXMK] (last visited Oct. 21, 2024).

⁸⁷ WORLD JUST. PROJECT, GLOBAL INSIGHTS ON ACCESS TO JUSTICE 27 (2019), <https://worldjusticeproject.org/sites/default/files/documents/WJP-A2J-2019.pdf> [https://perma.cc/N5V9-4BZ9].

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ E.O.A.B., Lei No. 8,906, de 4 de julho de 1994, art. 3, D.O.U. de 5.7.1994 (Braz.).

1. When filing habeas corpus in any court.
2. In small claims court cases where the claim does not exceed 20 times the minimum wage (this exception does not apply in appeals cases).
3. In labor lawsuits initiated by employees (this exception does not apply in appeals cases).⁹¹

Brazil provides free legal aid and public defenders, and legal charities, law school clinics, and pro bono units are available to assist those in need.⁹² Providing legal services in Brazil while not a licensed lawyer is a criminal offense of illegal practice of a profession, punishable by a prison term of between 15 days and three months and a fine.⁹³

In 2018, the OAB created the Artificial Intelligence Coordination to regulate AI in the legal profession, responding to concerns over AI tools offering legal assistance without lawyers.⁹⁴ This was in response to the launch of a so-called “robot” that provided workers assistance as a labor rights consultancy tool.⁹⁵ The OAB issued a statement repudiating the tool and proclaimed that legal consultancy, advisory services, and legal direction are reserved exclusively for licensed lawyers.⁹⁶

In May 2024, lawyers in São Paulo responded to questions from the International Bar Association on the state of AI in Brazil, and they explained:

To contribute to the modernisation of law in Brazil, the Federal Council of the OAB currently offers OABJuris, an AI application made available free of charge to registered professionals. The tool helps attorneys across the country to find the most appropriate case law, to have stable information about recent decisions of the courts and to make safer decisions about whether to appeal or not.⁹⁷

⁹¹ *Id.* art. 1.

⁹² Neil Montgomery, *Regulation of the Legal Profession in Brazil: Overview*, THOMSON REUTERS PRACTICAL L. (Nov. 1, 2022), <https://uk.practicallaw.thomsonreuters.com/8-637-9911>.

⁹³ *Id.*

⁹⁴ *OAB cria grupo para regulamentar inteligência artificial* [OAB creates group to regulate artificial intelligence], MIGALHAS (July 3, 2018), <https://www.migalhas.com.br/quentes/282968/oab-cria-grupo-para-regulamentar-inteligencia-artificial> [<https://perma.cc/HSU4-DSY5>].

⁹⁵ *IAB e OAB/RJ denunciam substituição de advogados por robôs na internet* [IAB and OAB/RJ denounce the replacement of lawyers by robots on the internet], MIGALHAS (July 3, 2018), <https://www.migalhas.com.br/quentes/282667/iab-e-oab-rj-denunciam-substituicao-de-advogados-por-robos-na-internet> [<https://perma.cc/ZFH5-K92H>].

⁹⁶ *Id.*

⁹⁷ IBA AI REPORT, *supra* note 44, at 44.

Additionally, Brazil introduced its Consumidor program, an ODR initiative designed to address unrepresented litigants' consumer disputes.⁹⁸ Funded by the government of Brazil, the program has engaged 548 companies since starting in 2021, and successfully resolved nearly two million complaints.⁹⁹ It has an 81% resolution rate, with consumer satisfaction averaging 3.3 out of 5.¹⁰⁰ Notably, the OAB likely does not find an issue with using AI in this space, because small claims are one of the areas people are not required to get an attorney for in Brazil already.

D. Canada

According to the Law Society of Ontario, “over any three-year period, nearly half of all Canadian adults will experience at least one legal problem that they consider serious and difficult to resolve. However, Canadians do not seek professional assistance for more than 80% of their legal issues.”¹⁰¹

The Federal Court of Canada requires all litigants, including unrepresented litigants, to inform the court and other parties if they use AI to prepare a document filed with the Court in the first paragraph of the document's text.¹⁰² The Court explains:

The Court recognizes that counsel have duties as Officers of the Court. However, these duties do not extend to individuals representing themselves. It would be unfair to place elevated AI-related responsibilities only on these self-represented individuals, and allow counsel to rely on their duties. Therefore, the Court provides this Notice to ensure fair treatment of all represented and self-represented parties and interveners.¹⁰³

⁹⁸ KANAN DHURU ET AL., THE HAGUE INSTITUTE FOR INNOVATION OF LAW (HiIL), USE OF DIGITAL TECHNOLOGIES IN JUDICIAL REFORM AND ACCESS TO JUSTICE COOPERATION 63 (2021), <https://www.hiil.org/wp-content/uploads/2021/11/HiIL-Use-of-digital-technologies-in-judicial-reform-and-access-to-justice-cooperation.pdf> [<https://perma.cc/7UM4-STWY>].

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Access to Innovation – About A2I*, L. SOC'Y OF ONT., <https://lso.ca/about-lso/access-to-innovation/about-a2i> [<https://perma.cc/DGB3-RZPA?type=image>] (last visited Nov. 4, 2024).

¹⁰² *Notice to the Parties and the Profession: The Use of Artificial Intelligence in Court Proceedings*, FED. CT. OF CAN. (Dec. 20, 2023), <https://www.fct-cf.gc.ca/Content/assets/pdf/base/2023-12-20-notice-use-of-ai-in-court-proceedings.pdf> [<https://perma.cc/M8YA-LKVT>].

¹⁰³ *Notice to the Parties and the Profession: The Use of Artificial Intelligence in Court Proceedings*, FED. CT. OF CAN. (May 7, 2024), <https://www.fct-cf.gc.ca/Content/assets/pdf/base/FC-Updated-AI-Notice-EN.pdf> [<https://perma.cc/BH9J-735E>].

Some regional courts have similar policies. The Court of King's Bench of Manitoba also requires all litigants to disclose any use of AI and explain how it was used in submissions.¹⁰⁴ The Supreme Court of Yukon has a similar policy as well.¹⁰⁵

The Federation of the Law Societies of Canada is a national association of the fourteen law societies in Canada, and each law society is responsible for regulating the practice of law in its respective province.¹⁰⁶ We highlight several provinces below that employ sandbox approaches to allow legal service providers UPL exemptions when creating innovative technical solutions to improve access to justice. Additionally, some provinces provide generative AI information handbooks and guidance for legal professionals.

1. Alberta

The Law Society of Alberta has an "Innovation Sandbox" to encourage the creative development of legal services in Alberta.¹⁰⁷ However, there is no UPL exemption for Alberta's sandbox, explaining on its website: "While the Innovation Sandbox is open to both lawyers and non-lawyers, the Sandbox will not permit any business model that seeks to deliver legal advice from non-lawyers. Under no circumstances will a Sandbox application that proposes a business model that seeks to deliver legal advice from non-lawyers be approved."¹⁰⁸

Unlike the requirements in the Federal Court of Canada and other provincial courts for litigants to disclose AI use, the courts in Alberta have issued a notice urging (but not mandating) that all litigants verify AI-generated legal references with authoritative sources and maintain human oversight to ensure the integrity of court submissions.¹⁰⁹ The Law Society of Alberta has also introduced "The Generative AI Playbook" to guide lawyers in the ethical and responsible use of

¹⁰⁴ *Practice Direction Re: Use of Artificial Intelligence in Court Submissions*, CT. OF KING'S BENCH OF MAN. (June 23, 2023), https://www.manitobacourts.mb.ca/site/assets/files/2045/practice_direction_-_use_of_artificial_intelligence_in_court_submissions.pdf [<https://perma.cc/9MYX-A4P3>].

¹⁰⁵ *Practice Direction General-29 Use Of Artificial Intelligence Tools*, SUP. CT. OF YUKON (June 26, 2023), <https://www.yukoncourts.ca/sites/default/files/2023-06/GENERAL-29%20Use%20of%20AI.pdf> [<https://perma.cc/GDK4-C47Y>].

¹⁰⁶ *About Us*, FED'N OF L. SOC'YS OF CAN., <https://flsc.ca/about-us/> [<https://perma.cc/8CM7-DVA9>] (last visited Oct. 20, 2024).

¹⁰⁷ *Innovation Sandbox*, L. SOC'Y OF ALTA., <https://www.lawsociety.ab.ca/about-us/key-initiatives/innovationsandbox/> [<https://perma.cc/9GUU-7NK3>] (last visited Oct. 20, 2024).

¹⁰⁸ *About the Innovation Sandbox*, L. SOC'Y OF ALTA., *supra* note 43.

¹⁰⁹ *Notice to The Profession & Public - Ensuring The Integrity Of Court Submissions When Using Large Language Models*, CT. OF KING'S BENCH OF ALTA. (Oct. 6, 2023), <https://albertacourts.ca/kb/resources/announcements/notice-to-the-profession-public---use-of-ai-in-citations-submissions> [<https://perma.cc/548R-Y3JL>].

Generative AI in legal practice.¹¹⁰ The Playbook explains that the courts in Alberta and the Federal Court of Canada notices about Generative AI use for court-filed documents “apply to all litigants, including those without legal representation.”¹¹¹

2. British Columbia

The Law Society of British Columbia actively encourages innovation in legal services through its “Innovation Sandbox.”¹¹² The Law Society explains that “the innovation sandbox will enable individuals, businesses or organizations that are currently not authorized to practise law to provide services that address the unmet need for legal advice and assistance within a structured environment that maximizes the benefits of the services while minimizing the risks associated with providing those services.”¹¹³ Additionally, the Law Society published “Guidance on Professional Responsibility and Generative AI” as a resource for lawyers.¹¹⁴

3. Manitoba

The Law Society of Manitoba created a “Regulatory Sandbox Pilot Program” with the goal “to improve access to justice by improving access to legal advice and assistance.”¹¹⁵ The sandbox provides an exception to Manitoba’s UPL rules, because it “will enable individuals, businesses or organizations that are currently not authorized to practise law to provide specific services that address an unmet need for legal advice and assistance within a structured environment.”¹¹⁶

4. Ontario

The Law Society of Ontario (LSO) has initiated a regulatory sandbox called “Access to Innovation” to pilot legal technology services.¹¹⁷ This initiative aims to facilitate access to justice while protecting the public from unregulated legal tools.¹¹⁸ However, lawyers in Toronto responded to questions from the

¹¹⁰ Len Polsky & Michael Ward, *The Generative AI Playbook*, L. SOC’Y OF ALTA. (Jan. 2024), <https://www.lawsociety.ab.ca/resource-centre/key-resources/professional-conduct/the-generative-ai-playbook/> [https://perma.cc/7JL3-JUZY].

¹¹¹ *Id.*

¹¹² *Innovation Sandbox*, L. SOC’Y OF B.C., *supra* note 37.

¹¹³ *About the Innovation Sandbox*, L. SOC’Y OF B.C., <https://www.lawsociety.bc.ca/about-us/priorities/innovation-sandbox/about-the-innovation-sandbox/> [https://perma.cc/CU6A-2BC8] (last visited Oct. 20, 2024).

¹¹⁴ *Practice Resource: Guidance on Professional Responsibility and Generative AI*, L. SOC’Y OF B.C. (Oct. 2023), <https://www.lawsociety.bc.ca/Website/media/Shared/docs/practice/resources/Professional-responsibility-and-AI.pdf> [https://perma.cc/UR2P-K6FV].

¹¹⁵ *Regulatory Sandbox Pilot Program*, L. SOC’Y OF MAN., *supra* note 38.

¹¹⁶ *Id.*

¹¹⁷ *Access to Innovation*, L. SOC’Y OF ONT., *supra* note 39.

¹¹⁸ *Access to Innovation – About A2I*, L. SOC’Y OF ONT., *supra* note 101.

International Bar Association on the state of AI in Canada, explaining that “as a self-regulator, the LSO is faced with the challenge of whether it is appropriately situated and has the resources necessary to effectively regulate persons and entities operating legal tech tools.”¹¹⁹

5. Saskatchewan

The Law Society of Saskatchewan is working to expand access to regulated legal services through its “Future of Legal Services Initiative.”¹²⁰ Regarding exemptions to UPL for legal service providers under this program, the Law Society of Saskatchewan explains:

Some existing alternative (non-lawyer) legal service providers, though they may not fall within the list of current exemptions, do not pose a significant risk to the public. *Historically, the Law Society has not pursued criminal prosecutions or sought injunctions against these types of low risk providers even if their activities meet the technical definition of unauthorized practice.* As a result, the Law Society formalizes its stance not to prosecute or enforce against these existing providers on a temporary basis while new rules, processes, and categories of licenses are explored as part of the Future of Legal Services Initiative.¹²¹

The Law Society of Saskatchewan uses the “Risk-Based Framework for Assessment of Pilot Applications” to analyze the risk to the public.¹²²

E. China

In 2023, China ranked 138th out of 142 countries in the category of “Civil Justice is Free of Improper Government Influence.”¹²³ While, as of 2019, there was roughly one lawyer for every 300 citizens in the U.S., there was only one lawyer for every 4,500 citizens in China.¹²⁴ As a result, China is leveraging technology to fill this access gap.

¹¹⁹ IBA AI REPORT, *supra* note 44, at 53.

¹²⁰ *Future of Legal Services Initiative*, L. SOC’Y OF SASK., *supra* note 40.

¹²¹ *Definition of the Practice of Law*, L. SOC’Y OF SASK., <https://www.lawsociety.sk.ca/regulation/definition-of-the-practice-of-law/> [https://perma.cc/LJ22-LV4B] (last visited Oct. 20, 2024) (emphasis added).

¹²² L. SOC’Y OF SASK., FUTURE OF LEGAL SERVICES INITIATIVE UPDATE REPORT 5, 26 (Mar. 1, 2024), <https://www.lawsociety.sk.ca/wp-content/uploads/Report-Update-Future-of-Legal-Services-Initiative-2024-04-16.pdf> [https://perma.cc/LJ22-LV4B].

¹²³ *Rule of Law Index 2023: China, Civil Justice*, WORLD JUST. PROJECT, <https://worldjusticeproject.org/rule-of-law-index/country/2023/China/Civil%20Justice>. [https://perma.cc/5T8Y-JSW3] (last visited Oct. 20, 2024).

¹²⁴ Tianyu Yuan & Michael Wang, *Where Is China Heading With Legal Tech?*, ARTIFICIAL LAWYER (Oct. 21, 2018), <https://www.artificiallawyer.com/2019/10/21/where-is-china-heading-with-legal-tech/> [https://perma.cc/3G8H-SVCK].

However, while China may be a leader in the law and AI space, it is not in the fundamental human rights and justice space. Thus, while we will discuss how China is leading in incorporating technology and AI into its entire judiciary, its implementation of judicial autonomous decision-making should be reviewed with great caution. China is the dystopian version of AI judicial decision-making that democratic leaders in the law, AI, *and* access to justice space are trying to avoid imitating—an authoritarian regime employing AI for autonomous decision-making over people’s fundamental rights.

Lawyers in China are regulated by the Ministry of Justice (MOJ) and the government-led national All China Lawyers Association (ACLA) at the state level, and the Bureau of Justice (BOJ) and Lawyers Association branches of the ACLA at the provincial, municipal, and county levels.¹²⁵ The 1997 Lawyers Law of the People’s Republic of China (Lawyers Law) gives the BOJ at the provincial, municipal, and county levels the authority to discipline lawyers.¹²⁶ The ACLA has its own Lawyers Practice Code of Conduct, effectuating the Lawyers Law, which provides it with lawyer ethics and discipline authority.¹²⁷

Access to legal information is a pressing concern in China. In January 2024, China’s Supreme People’s Court, the highest court in the nation, committed to “deepen judicial disclosure” following criticism of its new public database of 2,000 cases, which scholars believe may eventually replace an existing accessible database of 143 million court documents.¹²⁸

1. Smart Courts

In 2017, the Supreme People’s Court called for the creation of “smart courts” to employ innovative technologies to promote the modernization of the judiciary.¹²⁹ In 2022, the Supreme People’s Court ordered the people’s courts to incorporate AI by 2030 “to provide whole-process high-level intelligent support for serving the people and justice, with the norms and principles being widely

¹²⁵ Judith A. Mcmorrow, Sida Liu, & Benjamin Van Rooij, *Lawyer Discipline in an Authoritarian Regime: Empirical Insights from Zhejiang Province, China*, 30 GEO. J. LEGAL ETHICS 267, 273 (2017).

¹²⁶ *Id.* at 274.

¹²⁷ *Id.*

¹²⁸ Laurie Chen, *China vows judicial disclosure after outcry over plan to curb access to rulings*, REUTERS (Jan. 22, 2024), <https://www.reuters.com/world/china/china-vows-judicial-disclosure-after-outcry-over-plan-curb-access-rulings-2024-01-22/> [<https://perma.cc/9GEK-K9QC>].

¹²⁹ Zuigao Renmin Fayuan Guanyu Jiakuai Jianshe Zhihui Fayuan de Yijian, Fafa [2017] 12 Hao (最高人民法院关于加快建设智慧法院的意见, 法发[2017] 12 号) [Supreme People’s Court Opinion on Accelerating the Construction of Smart Courts, Judicial Opinion No. 12 (2017)] (promulgated by the Sup. People’s Ct., Apr. 12, 2017) SUP. PEOPLE’S CT. GAZ., Apr. 12, 2017, <http://gongbao.court.gov.cn/Details/5dec527431cdc22b72163b49fc0284.html> [<https://perma.cc/3A3A-DVS4>].

acknowledged, the administrative workload of judges being significantly reduced.”¹³⁰

Courts now offer online service platforms. In Shanghai, for example, users can file a lawsuit on the Shanghai Higher People’s Court website by selecting their district court, entering party information and appeal details, uploading identification and evidence, and submitting for review.¹³¹ Applicants receive a response and can track the review process online.¹³²

2. Actual Legal Robots

As succinctly expressed by Sean West in *Above the Law*: “Seriously, you can walk into a court in China, and a robot will tell you if you are likely to win your case and how much it might cost you.”¹³³ For example, Beijing Intermediate People’s Court has a legal advisory robot, Xiao Fa, which is 1.46 meters tall and offers free legal advice and guidance in a child-like voice.¹³⁴ The robot moves its head and waves its hands, displays instructions on screen, and directs people to the appropriate service window.¹³⁵ Xiao Fa can answer over 40,000 litigation-related questions, can resolve 30,000 legal issues, and holds information about more than 7,000 laws and 5 million cases.¹³⁶ As of 2017, China already had over 100 robots like Xiao Fa in courts across the country.¹³⁷ Also, some court machines provide people with predictions on their likelihoods of success in civil suits, cautioning about various risks, including financial and emotional costs, guiding individuals toward settlement while aiming to adhere to legal regulations.¹³⁸

¹³⁰ *The Supreme People’s Court The Opinions on Regulating and Strengthening the Applications of Artificial Intelligence in the Judicial Fields*, CHINA JUST. OBSERVER (Dec. 8, 2022), <https://www.chinajusticeobserver.com/law/x/the-supreme-people-s-court-the-opinions-on-regulating-and-strengthening-the-applications-of-artificial-intelligence-in-the-judicial-field-20221208> [<https://perma.cc/QB8F-3FLM>].

¹³¹ *Chinese courts go digital*, CHINA DAILY (Aug. 6, 2015, 5:29 PM), https://www.chinadaily.com.cn/china/2015-08/06/content_21520833.htm [<https://perma.cc/XCL9-KYMF>].

¹³² *Id.*

¹³³ Sean West, *OMG, China Has ACTUAL Legal Robots And All The Legal Tech Patents*, ABOVE THE L. (Nov. 13, 2023, 1:48 PM), <https://abovethelaw.com/2023/11/omg-china-has-actual-legal-robots-and-all-the-legal-tech-patents/> [<https://perma.cc/UNJ7-62H6>].

¹³⁴ *Robot gives guidance in Beijing court*, CHINA DAILY (Oct. 13, 2017, 7:03 AM), https://www.chinadaily.com.cn/china/2017-10/13/content_33188642.htm [<https://perma.cc/7V53-HRC7>].

¹³⁵ *Id.*

¹³⁶ Cao Yin, *Courts embrace AI to improve efficiency*, CHINA DAILY (Nov. 16, 2017, 7:55 AM), http://www.chinadaily.com.cn/china/2017-11/16/content_34595221.htm [<https://perma.cc/6ANC-BKBD>].

¹³⁷ *Id.*

¹³⁸ Zhiyu Li, Benjamin Chen & Shitong Qiao, *How Technology is Changing Justice in China*, JUDICATURE INT’L, June 2022, at 1, 2.

3. WeChat

The company that designed the Xiao Fa robot also provides the same legal information that Xiao Fa provides via WeChat.¹³⁹ The WeChat platform is more popular than the robots, because it is available anytime and is linked to more than 350 judicial authorities.¹⁴⁰ Another mobile court option via WeChat enables users to complete case filings, attend hearings, and exchange evidence remotely.¹⁴¹ As of 2019, this option was available in 12 provinces and regions.¹⁴² Additionally, Chinese courts are also using WeChat for service of process.¹⁴³

F. European Union

Lawyers in the European Union (EU) benefit from the “EU regime on free movement of lawyers,” which, among other things, allows a lawyer from one EU Member State to practice in another Member State under their home State license.¹⁴⁴ The lawyer is always subject to the professional code of conduct (including any UPL provisions) of both the home and host States unless there is a conflict (referred to as “double deontology”), in which case the host State’s rules apply.¹⁴⁵ According to a 2014 report by the International Bar Association, non-lawyers are allowed to provide legal advice in at least fourteen EU countries, with only some countries limiting transactional advice to legal professionals.¹⁴⁶

The EU is a global leader in regulating AI. Relevantly, the EU AI Act calls for some AI systems designed for judicial administration to be classified as “high risk,” with some exceptions:

¹³⁹ See Yin, *supra* note 136.

¹⁴⁰ *Id.*

¹⁴¹ Agence France-Presse, *Chinese Digital Courts: A Brave New World*, COURTHOUSE NEWS SERVICE (Dec. 6, 2019), <https://www.courthousenews.com/chinese-digital-courts-a-brave-new-world/> [https://perma.cc/9T2U-3YBR].

¹⁴² *Id.*

¹⁴³ See, e.g., *A New Initiative Of The Chinese Court: WeChat Delivery!*, ANDERSON & ANDERSON LLP (Oct. 25, 2022), <https://www.anallp.com/index.php/index/article/aid/391.html> [https://perma.cc/DRF7-TDR8] (discussing Chinese court using WeChat to deliver the service of summons).

¹⁴⁴ COUNCIL OF BARS AND L. SOCIETIES OF EUR. [CCBE], GUIDELINES FOR BARS & LAW SOCIETIES ON FREE MOVEMENT OF LAWYERS WITHIN THE EUROPEAN UNION 3 (2021), https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/EU_LAWYERS/EUL_Guides_recommendations/EN_EUL_20210521_FML-guide.pdf [https://perma.cc/SHN6-2HFL].

¹⁴⁵ *Id.* at 9.

¹⁴⁶ INTERNATIONAL BAR ASSOCIATION, IBA GLOBAL REGULATION AND TRADE IN LEGAL SERVICES REPORT (2014), <https://www.ibanet.org/MediaHandler?id=1D3D3E81-472A-40E5-9D9D-68EB5F71A702> [https://perma.cc/ZW7C-2GRP]; Ivan Mitchell Merrow & Madeleine Dusseault, *Non-Lawyer Legal Services: An International Round-Up*, ASSOCIATION DU BARREAU DE L'ONTARIO [Ontario Bar Association] (June 16, 2017), https://www.oba.org/JUST/Archives_List/2017/June-2017/Non-lawyer-global-fr-3 [https://perma.cc/Z4AK-JQS7].

Certain AI systems intended for the administration of justice and democratic processes should be classified as high-risk, considering their potentially significant impact on democracy, rule of law, individual freedoms as well as the right to an effective remedy and to a fair trial. In particular, to address the risks of potential biases, errors and opacity, it is appropriate to qualify as high-risk AI systems intended to be used by a judicial authority or on its behalf to assist judicial authorities in researching and interpreting facts and the law and in applying the law to a concrete set of facts. AI systems intended to be used by alternative dispute resolution bodies for those purposes should also be considered high-risk when the outcomes of the alternative dispute resolution proceedings produce legal effects for the parties. The use of artificial intelligence tools can support the decision-making power of judges or judicial independence, but should not replace it, as the final decisionmaking must remain a human-driven activity and decision. *Such qualification should not extend, however, to AI systems intended for purely ancillary administrative activities that do not affect the actual administration of justice in individual cases, such as anonymisation or pseudonymisation of judicial decisions, documents or data, communication between personnel, administrative tasks.*¹⁴⁷

Notably, the “high risk” classification under the EU AI Act seems limited to systems autonomously making decisions affecting individuals’ rights. AI legal information or guidance systems do not seem “high-risk” in this sense. The AI systems described in most of the literature on AI in ODR promote settlement and do not decide anything autonomously.¹⁴⁸ However, ODR/ADR systems would be high-risk, if they contained a decision component.

The European e-Justice Portal provides legal information for all EU Member States and EU courts by category and topic.¹⁴⁹ It also offers a “wizard” that guides users to available EU procedures and online forms.¹⁵⁰ The EU also offers an Online Dispute Resolution tool for EU consumers and traders to file complaints, offering access to certified dispute resolution bodies across EU Member States.¹⁵¹

¹⁴⁷ EU AI Act, *supra* note 47, at Recital 61 (emphasis added).

¹⁴⁸ See, e.g., Amy J. Schmitz & John Zeleznikow, *Intelligent Legal Tech to Empower Self-Represented Litigants*, 23 COLUM. SCI. & TECH. L. REV. 1 (2022) (discussing the use of ODR in online claim diagnosis, negotiation, and mediation); Karl Branting et al., *A computational model of facilitation in online dispute resolution*, 31 ARTIFICIAL INTELLIGENCE & L. 465 (2023) (discussing the use of ODR as facilitators).

¹⁴⁹ *European e-Justice Portal*, EUR. UNION, <https://e-justice.europa.eu/home?action=home&plang=en> [https://perma.cc/EZ8R-4GVD].

¹⁵⁰ *Id.*

¹⁵¹ *Online Dispute Resolution*, EUR. COMM’N, <https://ec.europa.eu/consumers/odr/main/?event=main.home2.show&lng=EN> [https://perma.cc/3ETP-RF6J].

G. Germany

While Germany is a Member State of the European Union, we also analyze it as a separate jurisdiction. In 2023, according to the World Justice Project, Germany ranked fourth out of 142 countries in the “Civil Justice” category.¹⁵² However, a 2018 World Justice Project survey of about 1,000 people in Germany found that of the 68% of people who experienced a civil legal problem in the past two years, only 33% were able to access help, and only 43% said their problems were fully resolved.¹⁵³ On average, it took people about eleven months to solve their problems, and 43% experienced hardship because of their problems, whether they were related to health, economics, interpersonal, or substance abuse.¹⁵⁴

In Germany, the Legal Services Act governs out-of-court legal services (including legal advice), which only lawyers may provide.¹⁵⁵ The Federal German Bar Association sets the Rules of Professional Practice.¹⁵⁶

In May 2024, Martin Schirmbacher in Berlin responded to questions from the IBA on the state of AI in Germany, stating that “In principle, the German law for legal services (Rechtsdienstleistungsgesetz or RDG) does not allow the fully automated provision of legal services; however, to provide legal services, using AI is possible For a legally secure use, it is always important that the legal service is still provided by the lawyer him/herself and that the AI only acts as an ‘assistant’ to the lawyer and not as the lawyer him/herself.”¹⁵⁷

On September 9, 2021, the German Federal Court of Justice ruled that Wolters Kluwer’s Smartlaw, which provides document automation services, does not violate the RDG.¹⁵⁸ This decision overturned a 2019 decision by the Cologne

¹⁵² *Rule of Law Index 2023: Germany, Civil Justice*, WORLD JUST. PROJECT, <https://worldjusticeproject.org/rule-of-law-index/country/2023/Germany/Civil%20Justice> [https://perma.cc/ZU5L-9L8F] (last visited Oct. 23, 2024).

¹⁵³ WORLD JUST. PROJECT, *supra* note 87, at 43 (summarizing the survey results for Germany).

¹⁵⁴ *Id.*

¹⁵⁵ *Frequently Asked Questions*, RECHTSDIENSTLEISTUNGSREGISTER [LEGAL SERVICES REGISTER], <https://www.rechtsdienstleistungsregister.de/index.php?lang=en&button=fragen> [https://perma.cc/JN9B-GES3] (last visited Oct. 23, 2024).

¹⁵⁶ Dr. Jochen Lehmann, *Regulation of the Legal Profession in Germany: Overview*, THOMSON REUTERS PRACTICAL L. (Oct. 1, 2022), <https://uk.practicallaw.thomsonreuters.com/2-638-8145> [https://perma.cc/RH9N-4JM6].

¹⁵⁷ IBA AI REPORT, *supra* note 44, at 83.

¹⁵⁸ *Wolters Kluwer Wins Landmark German DIY Doc Generation Case*, ARTIFICIAL LAWYER (Sept. 10, 2021), <https://www.artificiallawyer.com/2021/09/10/wolters-kluwer-wins-landmark-german-diy-doc-generation-case/> [https://perma.cc/G8Q7-5FJR].

District Court.¹⁵⁹ The court cited “the lack of an individual legal assessment as the main reason for its decision.”¹⁶⁰

On November 27, 2019, the German Federal Court of Justice ruled that Lexfox, which operates the website “wenigermiete.de” that provides tenants a free service to check if their rent exceeds rent control limits, did not violate the RDG.¹⁶¹ Schirmbacher discussed the case about “wenigermiete.de” explaining: “The judgment opens up many new possibilities for the use of AI for legal services. In particular, it allows enforcement in cases where consumers want to assert a right but are not prepared to bear the costs and risks.”¹⁶²

H. India

According to the World Justice Project, India ranks 111th out of 142 countries in the “Civil Justice” category and 136th out of 142 in the subcategory “Civil Justice Is Not Subject To Unreasonable Delay.”¹⁶³ The *Advocates Act of 1961* established the unified Bar Council of India, which sets standards of professional conduct, and the regional State Bar Councils.¹⁶⁴ Disciplinary actions are initiated by the Disciplinary Committee of the State Bar Councils, with the Bar Council of India serving as the appellate authority.¹⁶⁵

In May 2024, a lawyer in Bengaluru responded to questions from the International Bar Association on the state of AI in India, explaining: “use of AI in the legal sector is in a fairly nascent stage” and that “[t]he Government of India is working towards evolving an AI-friendly regime.”¹⁶⁶

The e-Courts Integrated Mission Mode Project under the National e-Governance Plan is computerizing court processes and creating a networked infrastructure.¹⁶⁷ The e-Courts Project is intended “to enable litigants, lawyers, and

¹⁵⁹ Michael Thaidigsmann, *German court rules legal bot is against the law*, IN-HOUSE LEGAL (Oct. 24, 2019), <https://inhouse-legal.eu/legal-technology/german-court-rules-legal-bot-is-against-the-law/> [<https://perma.cc/DL3U-FKDH>].

¹⁶⁰ *Wolters Kluwer Wins Landmark German DIY Doc Generation Case*, *supra* note 158.

¹⁶¹ Bundesgerichtshof [BGH] [Federal Court of Justice] Nov. 27, 2019, 224 Entscheidungen des Bundesgerichtshofes in Zivilsachen [BGHZ] 89 (Ger.).

¹⁶² IBA AI REPORT, *supra* note 44, at 83.

¹⁶³ *Rule of Law Index 2023: India, Civil Justice*, WORLD JUST. PROJECT, <https://worldjusticeproject.org/rule-of-law-index/country/2023/India/Civil%20Justice> [<https://perma.cc/8HMN-FX39>].

¹⁶⁴ Amal Kumar Ganguli, *Overview of the Legal Profession in India*, INT’L ASS’N. OF LAWYERS, <https://www.uanet.org/en/actions/overview-legal-profession-india> [<https://perma.cc/4NYR-7QQE>].

¹⁶⁵ *Id.*

¹⁶⁶ IBA AI REPORT, *supra* note 44, at 102.

¹⁶⁷ Sweety Kumari & Priya Shukla, *Access to justice through use of legal technology*, 12 J. RSCH. HUMANITIES & SOC. SCI. 242, 245 (2024).

other stakeholder [sic] to access court-related information and services online.”¹⁶⁸ The National Judicial Data Grid provides real-time information on pending and completed cases from various courts across India.¹⁶⁹

The Indian judiciary has embraced technology and is already using AI.¹⁷⁰ The Supreme Court has introduced SUPACE (Supreme Court Portal for Assistance in Court’s Efficiency), an AI-powered portal designed to aid judges in case management and decision-making.¹⁷¹ It reportedly reads case files, extracts relevant information, drafts case documents, manages work distribution, and provides information within seconds, even from thousands of pages of documents.¹⁷² The Supreme Court also uses SUVAS (Supreme Court Vidhik Anuvaad Software), an AI-driven translation tool capable of translating English-language documents, orders, and judgments into nine vernacular languages—Assamese, Hindi, Bengali, Marathi, Odiya, Kannada, Telugu, Tamil, and Urdu—and will be expanded to include other regional languages.¹⁷³

Notably, in March 2023, a judge from the Punjab and Haryana High Court, Anoop Chitkara, used ChatGPT to assist decision-making in open court during a bail hearing for an assault and murder case.¹⁷⁴

In April 2024, the Supreme Court of India hosted a two-day conference on Technology and Dialogue with the Supreme Court of Singapore, specifically focused on AI in the judiciary, with a sub-focus on access to justice.¹⁷⁵

I. New Zealand

According to the World Justice Project, in 2023, New Zealand ranked eleventh out of 142 countries in the “Civil Justice” category.¹⁷⁶ A 2017 World Justice Project survey of about 1,000 people in New Zealand found that of the 63% of people who experienced a civil legal problem in the past two years, 72% knew

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 246.

¹⁷² *Id.*

¹⁷³ *Id.* at 245.

¹⁷⁴ Adam Smith, Anastasia Moloney, & Avi Asher-Schapiro, *Are AI chatbots in courts putting justice at risk?*, THE JAPAN TIMES (May 5, 2023), <https://www.japantimes.co.jp/news/2023/05/05/world/ai-chatbots-courtroom-use/> [https://perma.cc/2374-7XTB].

¹⁷⁵ *Supreme Court of India to Host Two Day Conference on Technology and Judicial Dialogue with Singapore on April 13-14, 2024*, SUP. CT. OF INDIA, (Apr. 15, 2024), <https://www.sci.gov.in/supreme-court-of-india-to-host-two-day-conference-on-technology-and-judicial-dialogue-with-singapore-on-april-13-14-2024/>. [https://perma.cc/VN3D-3SYB].

¹⁷⁶ *Rule of Law Index 2023: New Zealand, Civil Justice*, WORLD JUST. PROJECT, <https://worldjusticeproject.org/rule-of-law-index/country/2023/New%20Zealand/Civil%20Justice> [https://perma.cc/X9H6-D3JK].

where to get advice and information. Still, only 32% could access help, and only 44% said their problems were fully resolved.¹⁷⁷ On average, it took people about eight months to solve their problems, and 46% experienced hardship because of their problem, whether it was health, economic, interpersonal, or substance abuse related.¹⁷⁸

The practice of law in New Zealand, including the provision of legal services and lawyer conduct, is governed by the *Lawyers and Conveyancers Act 2006*, along with accompanying rules and regulations.¹⁷⁹ Chapter 2.11 of the *Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008* prohibits UPL.¹⁸⁰ The New Zealand Law Society is the national regulator of the legal profession and provides “Generative AI guidance for lawyers.”¹⁸¹

New Zealand sets the standard for comprehensive coverage with its Generative AI guidance, which is applicable across all New Zealand courts and tribunals. The final guidelines, issued on December 7, 2023, are innovatively tailored to three different audiences: (1) judges, judicial officers, tribunal members, and judicial support staff¹⁸²; (2) lawyers¹⁸³; and (3) non-lawyers (i.e., unrepresented litigants and persons giving expert evidence).¹⁸⁴ The unrepresented litigant guidance does not address UPL issues and does not require Generative AI disclosure, unless the court or tribunal asks.¹⁸⁵

J. Nigeria

According to the World Justice Project, in 2023, Nigeria ranked 100th out of 142 countries in the “Civil Justice” category.¹⁸⁶ In the sub-category “Civil Justice

¹⁷⁷ WORLD JUST. PROJECT, *supra* note 87, at 77 (summarizing the survey results for New Zealand).

¹⁷⁸ *Id.*

¹⁷⁹ Lawyers and Conveyancers Act 2006 (N.Z.).

¹⁸⁰ Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, r 2.11 (N.Z.).

¹⁸¹ *What is the Law Society?*, NEW ZEALAND L. SOC’Y (July 31, 2023), <https://www.lawsociety.org.nz/about-us/what-is-the-law-society/> [https://perma.cc/3P6N-W8CJ]; *see also* *Generative AI guidance for lawyers*, NEW ZEALAND L. SOC’Y (Mar. 14, 2024), <https://www.lawsociety.org.nz/professional-practice/rules-and-maintaining-professional-standards/generative-ai-guidance-for-lawyers/> [https://perma.cc/3ZTJ-QW9T].

¹⁸² *Guidelines for Use of Generative Artificial Intelligence in Courts and Tribunals: Judges, Judicial Officers, Tribunal Members and Judicial Support Staff*, CTS. OF NEW ZEALAND (Dec. 7, 2023), <https://www.courtsofnz.govt.nz/assets/6-Going-to-Court/practice-directions/practice-guidelines/all-benches/20231207-GenAI-Guidelines-Judicial.pdf> [https://perma.cc/S3T8-WT9Q].

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 4.

¹⁸⁶ *Rule of Law Index 2023: Nigeria, Civil Justice*, WORLD JUST. PROJECT, <https://worldjusticeproject.org/rule-of-law-index/country/2023/Nigeria/Civil%20Justice> [https://perma.cc/27EV-T3UE] (last visited Oct. 19, 2024).

Is Not Subject To Unreasonable Delay,” it ranked 131st out of 142.¹⁸⁷ In 2022, the Hague Institute for Innovation of Law (HiIL) surveyed 6,573 randomly selected adults across Nigeria and found that around 81% of Nigerians faced at least one legal issue in the past year, with many experiencing multiple legal issues.¹⁸⁸ Of these, 55% were resolved partially or completely, and 82% of such resolutions were deemed fair or very fair.¹⁸⁹ Common legal issues included neighbor disputes, domestic violence, land disputes, crime, and housing problems.¹⁹⁰

The *Legal Practitioners Act* governs the legal profession in Nigeria, and the General Council of the Bar makes the Rules of Professional Conduct separately.¹⁹¹ The legal profession is regulated nationally, including by the Legal Practitioners Disciplinary Committee, the Nigerian Bar Association Constitution, the General Council of the Bar, and the Legal Practitioners Remuneration Committee.¹⁹²

Citizens’ Gavel, a non-governmental organization automating in the access to justice sector in Nigeria, has introduced Podus AI, a platform aimed at helping indigent Nigerians access justice and receive legal research assistance.¹⁹³ People who need help can make their cases online or via WhatsApp and be assigned to a lawyer.¹⁹⁴ Podus AI assists people by providing legal knowledge, advice, and help with drafting letters.¹⁹⁵ The Operations Lead of Citizens’ Gavel, Oluwafemi Ajibade, says: “Every facet of the professional atmosphere in Nigeria is being short-staffed, and we don’t have enough lawyers or doctors to cater for every need of the people. So, for lawyers or for legal problems generally, AI will help lawyers reduce their workload.”¹⁹⁶

¹⁸⁷ *Id.*

¹⁸⁸ PATRICK KIMARARUNGA ET AL, THE HAGUE INSTITUTE FOR INNOVATION OF LAW (HIIL), JUSTICE NEEDS AND SATISFACTION IN NIGERIA 5 (2023), <https://www.hiil.org/research/justice-needs-and-satisfaction-in-nigeria/> [<https://perma.cc/DU7L-ZZ4H>].

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ Ngozi Efobi & Raymond Ofagbor, *Regulation of the Legal Profession in Nigeria: Overview*, THOMSON REUTERS PRACTICAL L. (Jan. 1, 2023), <https://uk.practicallaw.thomsonreuters.com/w-016-5822>.

¹⁹² *Id.*

¹⁹³ *Group Launches Podus AI to Help Nigerians Get Access to Justice*, THIS DAY LIVE (Mar. 6, 2024), <https://www.thisdaylive.com/index.php/2024/03/06/group-launches-podus-ai-to-help-nigerians-get-access-to-justice/> [<https://perma.cc/A64D-6FJS>].

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

K. Singapore

According to the World Justice Project, Singapore ranks ninth out of 142 countries in the “Civil Justice” category.¹⁹⁷ A 2019 World Justice Project survey of about 1,000 people in Singapore found that of the 50% of people who experienced a civil legal problem in the past two years, 67% knew where to get advice and information, and only 40% said their problems were fully resolved.¹⁹⁸ On average, it took people about nine months to solve their problems, and 45% experienced hardship because of their problems, whether they were health, economic, interpersonal, or substance abuse related.¹⁹⁹

The Legal Profession Act 1966 (LPA) is the primary governing legislation for the practice of law in Singapore.²⁰⁰ UPL is prohibited by LPA Section 33.²⁰¹ While the LPA does not precisely define the “practice of law,” it generally restricts such practice to advocates and solicitors with a practicing certificate in Singapore or those registered under the Legal Services Regulatory Authority, such as foreign-qualified lawyers.²⁰² However, Section 34 provides a list of UPL exemptions.²⁰³ Nisha Francine Rajoo discusses alternative legal service providers (ALSPs), ranging from small legal tech start-ups to major accounting firms providing legal solutions, and explains:

Currently, there is no express statutory exemption from the operation of Section 33 LPA for such ALSPs. At the same time, the issue of whether such ALSPs are generally prohibited by Section 33 LPA has not been litigated in the Singapore courts to date. The applicability of Section 33 LPA to such ALSPs is therefore yet to be tested in Singapore.²⁰⁴

One example of a proposal to stay in line with Section 33 without needing an exemption could potentially include the following by Elizaveta Shesterneva:

¹⁹⁷ *Rule of Law Index 2023: Singapore, Civil Justice*, WORLD JUST. PROJECT, <https://worldjusticeproject.org/rule-of-law-index/country/2023/Singapore/Civil%20Justice> [<https://perma.cc/H9XE-NS9K>] (last visited Nov. 12, 2024).

¹⁹⁸ WORLD JUST. PROJECT, *supra* note 87, at 94 (summarizing the survey results for Singapore).

¹⁹⁹ *Id.*

²⁰⁰ Sarjit Singh Gill, Shirin Swah, & Sarah Chew, *Regulation of the Legal Profession in Singapore: Overview*, THOMSON REUTERS PRACTICAL L. (Oct. 1, 2022), <https://uk.practicallaw.thomsonreuters.com/w-009-1078>.

²⁰¹ Legal Profession Act 1966, s 33 (Sing.).

²⁰² Nisha Francine Rajoo, *Alternative Legal Service Providers and The Unauthorised Practice Of Law: Comparative Perspectives*, THE L. SOC’Y OF SINGAPORE, <https://www.lawsociety.org.sg/publication/alternative-legal-service-providers-and-the-unauthorised-practice-of-law-comparative-perspectives/> [<https://perma.cc/2V2P-ZSXA>] (last visited Nov. 12, 2024).

²⁰³ Legal Profession Act 1966, s 34 (Sing.).

²⁰⁴ Rajoo, *supra* note 202.

A possible two-step approach would be to introduce a chatbot platform where a user could converse with a chatbot that would cite necessary laws and regulations and provide customised assistance to the user's particular situation. This is the first step. The second step would commence when the user introduces specific details and circumstances to the conversation that would be too difficult for the chatbot to comprehend. The chatbot would then advise the user to contact a lawyer. A legal professional or a law firm will then be chosen by the user using the same chatbot. The human legal service providers would be connected to the chatbot platform approximately the same way drivers are connected to Uber.²⁰⁵

However, this proposal does not resolve the issue of the lack of human legal service providers to fill the justice gap.

The Singapore Judiciary is dedicated to using technology to enhance access to justice with both the "Courts of the Future" (COTF) Taskforce and the Office of Transformation and Innovation.²⁰⁶ In April 2024, Supreme Court of Singapore Chief Justice Sundaresh Menon gave a keynote speech at a two-day conference on Technology and Dialogue with the Supreme Court of India, which was specifically focused on AI in the judiciary. He said:

AI tools can assist *would-be litigants* in their efforts to vindicate their legal rights, in cases where they might otherwise be deterred or prevented from seeking recourse through the courts due to asymmetries in information and resources, and the cost of seeking legal representation. AI tools can mitigate this problem by helping self-represented persons navigate court systems and processes that were traditionally designed with lawyers and judges in mind.²⁰⁷

²⁰⁵ Elizaveta Shesterneva, *The Use Of Chatbots As A Way To Create A Two-Step Approach To Providing Legal Services: Case Study*, THE L. SOC'Y OF SINGAPORE, <https://www.lawsociety.org.sg/publication/the-use-of-chatbots-as-a-way-to-create-a-two-step-approach-to-providing-legal-services/> [https://perma.cc/RVL9-LERP] (last visited Nov. 12, 2024).

²⁰⁶ Tan K. B. Eugene, *Singapore: National report for the Global Access to Justice Project*, SINGAPORE MGMT. UNIV. 114 (Sept. 2021), https://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=5680&context=sol_research [https://perma.cc/8ZR4-6UL8].

²⁰⁷ Sundaresh Menon, *Chief Justice Sundaresh Menon: Keynote Speech at the Inaugural Singapore-India Conference on Technology*, SINGAPORE CTS. ¶ 29 (Apr. 15, 2024), <https://www.judiciary.gov.sg/news-and-resources/news/news-details/chief-justice-sundaresh-menon-keynote-speech-at-the-inaugural-singapore-india-conference-on-technology> [https://perma.cc/XRJ8-7JY4].

Notably, in August 2023, the Singapore courts signed an agreement with Harvey AI to bring generative AI to its courts, starting with its small claims tribunal.²⁰⁸ Justice Aedit Abdullah explained that the small claims tribunal was a good testing ground because it does not have lawyers.

Unrepresented litigants can use ODR for online negotiations and mediation, a practice pioneered in the Small Claims Tribunals and planned to be extended to other courts.²⁰⁹ The state courts have launched an ODR platform for motor accident claims, featuring an outcome predictor and a negotiating platform. Future updates will enable online asynchronous hearings for pre-trial conferences.²¹⁰ Additionally, an online outcome simulator developed with the Singapore Academy of Law helps assess responsibility and damages in motor accident cases.²¹¹ The eLitigation platform also facilitates online Case Dispute Resolution (CDR) hearings, eliminating the need for in-person attendance.²¹²

L. United Kingdom

According to the World Justice Project, the U.K. ranks 45th out of 46 countries by income and thirtieth out of 31 countries by region in the category “People Can Access and Afford Civil Justice.”²¹³ Reforms resulting from the *2012 Legal Aid Sentencing and Punishment of Offenders Act* (LASPO) led to a significant increase in the number of unrepresented litigants.²¹⁴ In 2022, a survey conducted by the Law Society of England and Wales found that 64% of nearly two thousand lawyers surveyed reported that access to justice for both civil and criminal issues had declined over the past decade.²¹⁵ A 2019 online survey by the Law Society on the legal aid needs of nearly 30,000 people found that of the 6 in 10

²⁰⁸ Lydia Lam, *Generative AI being tested for use in Singapore Courts, starting with small claims tribunal*, CHANNEL NEWS ASIA (Sept. 27, 2023), <https://www.channelnewsasia.com/singapore/artificial-intelligence-court-small-claims-singapore-chatgpt-3801756> [https://perma.cc/8E2C-7Y9H].

²⁰⁹ Eugene, *supra* note 206, at 193.

²¹⁰ *Id.* at 116-117.

²¹¹ *Id.* at 117.

²¹² *Id.*

²¹³ *Rule of Law Index 2023: United Kingdom, Civil Justice*, WORLD JUST. PROJECT, <https://worldjusticeproject.org/rule-of-law-index/country/2023/United%20Kingdom/Civil%20Justice> [https://perma.cc/4XCE-USZ7] (last visited Nov. 5, 2024).

²¹⁴ Gabrielle Garton Grimwood, *Litigants in person: the rise of the self-represented litigant in civil and family cases*, HOUSE OF COMMONS LIBR. (Jan. 14, 2016), <https://researchbriefings.files.parliament.uk/documents/SN07113/SN07113.pdf> [https://perma.cc/N5QL-QJBS].

²¹⁵ *Nearly two thirds of lawyers believe access to justice has worsened over the last decade*, THE L. SOC’Y (Apr. 6, 2023), <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/nearly-two-thirds-of-lawyers-believe-access-to-justice-has-worsened-over-the-last-decade> [https://perma.cc/L3V6-6UGN].

adults (64%) who experienced a legal issue in the last four years, 45% either received non-professional help or no help at all.²¹⁶

The legal profession in the U.K. is divided into two main categories: solicitors and barristers.²¹⁷ Under the *Legal Services Act 2007*, the legal profession, including solicitors and barristers, is regulated by independent bodies within their respective professional organizations, all overseen by the Legal Services Board.²¹⁸

Historically, solicitors managed ongoing client relationships and out-of-court legal services, whereas barristers specialized in providing expert legal advice and advocacy in courts, arbitrations, and mediation.²¹⁹ The Law Society of England and Wales represents solicitors, while the Bar Council of England and Wales represents barristers.²²⁰ The Solicitors Regulation Authority oversees solicitors and law firms, while the Bar Standards Board regulates barristers, with additional oversight from the Bar Council and the Council of the Four Inns of Court concerning qualifications and discipline.²²¹ The Legal Ombudsman handles complaints against all authorized legal professionals.²²²

Section 12 of the *Legal Services Act 2007* defines “reserved legal activities” exclusively for qualified solicitors, barristers, or other recognized professionals.²²³ These include the right to appear before and address a court, conduct litigation, draft certain documents, notary activities, and administer oaths.²²⁴ Most notably, legal advice is not reserved exclusively for legal professionals in the UK.

On December 12, 2023, a panel of senior judges led by Lady Chief Justice Baroness Carr released guidelines for the judiciary on the responsible use of AI in courts and tribunals.²²⁵ The guidelines caution the judiciary that litigants may use AI tools in their submissions, including:

²¹⁶ *Legal needs of individuals in England and Wales report*, THE L. SOC’Y (Jan. 27, 2020), <https://www.lawsociety.org.uk/topics/research/legal-needs-of-individuals-in-england-and-wales-report> [<https://perma.cc/W2MY-QGS8>].

²¹⁷ *Doing legal business in England and Wales*, THE L. SOC’Y (Oct. 25, 2023), <https://www.lawsociety.org.uk/topics/international/doing-legal-business-in-england-and-wales> [<https://perma.cc/CJ3G-DEQ4>].

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Legal Services Act 2007*, c. 29, § 12 (UK); *Reserved legal activities*, LEGAL SERVICES BOARD, <https://legalservicesboard.org.uk/enquiries/frequently-asked-questions/reserved-legal-activities> [<https://perma.cc/5339-GQV9>] (last visited Nov. 5, 2024).

²²⁴ *Id.*

²²⁵ *Artificial Intelligence (AI) Guidance for Judicial Office Holders*, CTS. & TRIBUNALS JUDICIARY (Dec. 12, 2023), <https://www.judiciary.uk/wp-content/uploads/2023/12/AI-Judicial-Guidance.pdf> [<https://perma.cc/4FGU-KTKU>].

AI chatbots are now being used by unrepresented litigants. They may be the only source of advice or assistance some litigants receive. Litigants rarely have the skills independently to verify legal information provided by AI chatbots and may not be aware that they are prone to error. If it appears an AI chatbot may have been used to prepare submissions or other documents, it is appropriate to inquire about this, and ask what checks for accuracy have been undertaken (if any).²²⁶

As in the U.S., unrepresented litigants have submitted fictitious cases to tribunals in the U.K., relying on the substance to their detriment.²²⁷

The Solicitors Regulation Authority has an innovation sandbox called “SRA Innovate” with a broad goal “to help meet the evolving needs of the public, businesses, law firms and the economy.”²²⁸ They have a waiver process for their Standards and Regulations for qualifying applicants.²²⁹ Remarkably, in June 2023, the Solicitors Regulation Authority found that there was a small number of providers of legal advice (around 3,800) capturing the unregulated legal services market, but that “the satisfaction with the quality of advice provided was broadly similar across both regulated and unregulated providers.”²³⁰

M. United States

In 2023, the World Justice Project ranked the wealthiest forty-six countries on whether “People Can Access And Afford Civil Justice;” the United States ranked forty-sixth—last place.²³¹ A 2022 Report by the Legal Services Corporation found that 92% of low-income Americans did not receive adequate or any legal assistance for their civil legal problems.²³² On December 31, 2023, Supreme Court Chief Justice Roberts published the 2023 Year-End Report on the Federal Judiciary and explained how AI can help:

²²⁶ *Id.* at 5.

²²⁷ Rose, *supra* note 28.

²²⁸ SRA Innovate, SOLICITORS REGUL. AUTH., *supra* note 41.

²²⁹ *Waivers*, SOLICITORS REGUL. AUTH., (Nov. 25, 2019), <https://www.sra.org.uk/solicitors/resources/all-other-topics/waivers/> [<https://perma.cc/X7KE-G4FD>].

²³⁰ FRONTIER ECONOMICS, UNDERSTANDING THE UNRESERVED MARKET: A REPORT FOR THE SOLICITORS REGULATION AUTHORITY 8-9 (June 2023), <https://www.sra.org.uk/globalassets/documents/sra/research/understanding-unreserved-market-june-2023.pdf> [<https://perma.cc/8CLY-N3GJ>].

²³¹ *Rule of Law Index 2023: United States, Civil Justice*, WORLD JUST. PROJECT, <https://worldjusticeproject.org/rule-of-law-index/country/2023/United%20States/Civil%20Justice> [<https://perma.cc/H9WK-UMG3>] (last visited Nov. 5, 2023).

²³² LEGAL SERVICES CORPORATION, THE JUSTICE GAP: THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 7 (April 2022), https://lsc-live.app.box.com/s/xl2v2uraitbbrhuwtjlg_i0emp3myz1.

Proponents of AI tout its potential to increase access to justice, particularly for litigants with limited resources. Our court system has a monopoly on many forms of relief. If you want a discharge in bankruptcy, for example, you must see a federal judge. For those who cannot afford a lawyer, AI can help. It drives new, highly accessible tools that provide answers to basic questions, including where to find templates and court forms, how to fill them out, and where to bring them for presentation to the judge—all without leaving home. These tools have the welcome potential to smooth out any mismatch between available resources and urgent needs in our court system.²³³

Additionally, on October 30, 2023, President Biden issued an Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence.²³⁴ Section 2(d) aims to ensure that AI advances equity and civil rights, and, most relevantly, it requires explicit instructions to landlords, administrators of federal benefits programs, and federal contractors to prevent the use of AI algorithms in ways that could increase discrimination.²³⁵ The White House Office of Science and Technology Policy published the Blueprint for an AI Bill of Rights in October 2022.²³⁶ While the Blueprint for an AI Bill of Rights is non-binding and does not constitute U.S. government policy, it should be considered highly influential.²³⁷ The framework sets forth five principles: (1) Safe and Effective Systems, (2) Algorithmic Discrimination Protections, (3) Data Privacy, (4) Notice and Explanation, and (5) Human Alternatives, Consideration, and Fallback.²³⁸ The framework applies to (1) automated systems that (2) have the potential to meaningfully impact the American public's rights, opportunities, or access to critical resources or services.²³⁹

1. Unrepresented Litigants' Fictitious Case Citations

As of November 11, 2023, there were at least six federal cases of unrepresented litigants citing nonexistent cases presumably due to AI use, some

²³³ UNITED STATES SUPREME COURT, 2023 YEAR-END REPORT ON THE FEDERAL JUDICIARY 5 (2023).

²³⁴ Exec. Order No. 14110, 3 C.F.R. 657 (2024).

²³⁵ *Id.* at 658; *Fact Sheet: President Biden Issues Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence*, THE WHITE HOUSE (Oct. 30, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/30/fact-sheet-president-biden-issues-executive-order-on-safe-secure-and-trustworthy-artificial-intelligence/> [<https://perma.cc/M35C-GSLC>]; *see generally Artificial Intelligence and Civil Rights*, U.S. DEPT. OF JUST. (Apr. 12, 2024), <https://www.justice.gov/crt/ai#guidance>. [<https://perma.cc/QD4E-FNVQ>].

²³⁶ THE WHITE HOUSE, BLUEPRINT FOR AN AI BILL OF RIGHTS: MAKING AUTOMATED SYSTEMS WORK FOR THE AMERICAN PEOPLE (Oct. 2022).

²³⁷ *Id.* at 2.

²³⁸ *Id.* at 5-7.

²³⁹ *Id.* at 8.

being threatened with dismissal and sanctions.²⁴⁰ On April 9, 2024, in the Missouri Court of Appeals, Eastern District, in *Kruse v. Karlen*, the Court sanctioned the pro se appellant \$10,000 for filing a brief containing fictitious case citations generated by AI.²⁴¹ The Court explained:

And we further appreciate the challenges placed on pro se litigants who are unable to afford legal counsel. This Court routinely makes reasonable accommodations for pro se litigants when doing so does not cause the Court to become an advocate for the pro se litigant. But the facts before us present a much more serious and fundamental issue than poor briefing. Appellant's actions in pursuing this appeal have required Respondent to expend more resources than necessary to decipher the record and arguments as well as to identify the fictitious cases Appellant wrongly presented to this Court. Respondent was compelled to file the necessary briefing, arguments, and supplemental legal file and appendix as well as attend oral argument for an appeal that wholly lacked merit.²⁴²

2. Regulation of AI and Lawyers

In the U.S., the American Bar Association is a professional organization of lawyers that, most relevantly, establishes Model Rules of Professional Conduct. State Bar Associations and State Supreme Courts generally work together to regulate attorneys licensed to practice in their jurisdictions. Most States have adopted, to some extent, the ABA's Model Rules of Professional Conduct.

For this article, we surveyed the fifty-six U.S. states and territories on their approaches to regulating AI for lawyers. For this survey, we reviewed the Bar Association Committees of each state and territory to see how they publicly examine lawyers' or unrepresented litigants' use of AI. We also researched each state and territory individually for any statewide AI policies affecting lawyers. Finally, we examined actions by each state and territory's judiciary regarding lawyers' or unrepresented litigants' use of AI. We share the findings of each in turn and note that some states or territories may be working on this issue without publicizing their efforts.

a) State Bar Associations

In May 2024, a lawyer in New Jersey responded to questions from the International Bar Association on the state of AI in the U.S., explaining that “esoteric

²⁴⁰ Volokh, *supra* note 28. For a discussion of Generative AI systems generating fictitious cases, see Shawn Curran, Sam Lansley, & Oliver Bethell, *Hallucination is the last thing you need*, ARXIV (June 20, 2023), <https://arxiv.org/pdf/2306.11520> [<https://perma.cc/9T4K-M8NM>].

²⁴¹ *Kruse v. Karlen*, 692 S.W.3d 43, 52-54 (Mo. Ct. App. E.D., 2024).

²⁴² *Id.* at 54.

issues arise as to whether the use of AI constitutes the practice of law, such that non-lawyers engaging in it are breaking ABA Model Rule 5.5” and that:

Generally speaking, and with limited exception, lawyers, not law firms, are regulated in the US. Bar associations and the regulatory authorities are considering the impact of the definition of legal services and the fact that various entities (sometimes called disruptor companies) are performing what may have been called traditionally ‘legal services’. To date, they are not generally regulated. It is suggested that bar associations need to take a broad-minded approach, as the access to legal services – the so-called justice gap – is driving reform in certain jurisdictions, including the use of legal forms and non-lawyer ownership.²⁴³

Of the fifty-six U.S. State and Territory Bar Associations, seven have an AI-specific committee (Connecticut, Florida, Kentucky, Minnesota, New Hampshire, New York, Texas),²⁴⁴ sixteen have a non-AI-specific committee (Arizona, California, Illinois, Indiana, Iowa, Michigan, Montana, Nebraska, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Virginia, Washington),²⁴⁵ and thirty-three have not designated a committee to

²⁴³ IBA AI REPORT, *supra* note 44, at 171.

²⁴⁴ *Generative AI Committee*, CONN. BAR ASS’N, <https://www.ctbar.org/members/sections-and-committees/committees/generative-ai-committee> [<https://perma.cc/AH5U-7B5G>] (last visited Nov. 12, 2024); *Special Committee on AI Tools & Resources*, THE FLA. BAR <https://www.floridabar.org/about/cmtes/cmtes-me/special-committee-on-ai-tools-resources/> [<https://perma.cc/XSA3-R3KM>] (last visited Nov. 12, 2024); *ETHICS OPINION KBA E0457*, KY. BAR ASS’N (Mar. 15, 2024), [https://cdn.ymaws.com/www.kybar.org/resource/resmgr/ethics_opinions_\(part_2\)_/kbae457artificialintelligenc.pdf](https://cdn.ymaws.com/www.kybar.org/resource/resmgr/ethics_opinions_(part_2)_/kbae457artificialintelligenc.pdf) [<https://perma.cc/DEN7-BHFV>]; *Committees*, MINN. STATE BAR ASS’N, <https://www.mnbar.org/about-msba/leadership/msba-committees> [<https://perma.cc/3DX6-83LW>] (last visited Nov. 12, 2024); *New Hampshire Bar Association Committees*, N.H. BAR ASS’N, <https://www.nhbar.org/nhba-committees/> [<https://perma.cc/W78K-HXM2>] (last visited Nov. 12, 2024); *Task Force on Artificial Intelligence*, N.Y. STATE BAR ASS’N, <https://nysba.org/committees/task-force-on-artificial-intelligence/> [<https://perma.cc/4G4D-JGZ2>] (last visited Nov. 12, 2024); Lowell Brown, *Workgroup to Study: Artificial Intelligence Uses, Pitfalls*, ST. BAR OF TEX. (Sept. 2023) <https://www.texasbar.com/AM/Template.cfm?Section=articles&ContentID=61206&Template=/CM/HTMLDisplay.cfm> [<https://perma.cc/Z7XY-ESQD>].

²⁴⁵ *Technology Working Group*, STATE BAR OF ARIZ., <https://www.azbar.org/for-legal-professionals/communities/advisory-groups/technology-working-group/> [<https://perma.cc/UJ4M-SMXR>] (last visited Nov. 12, 2024); *Committee on Professional Responsibility and Conduct*, THE STATE BAR OF CAL., <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Committees/COPRAC> [<https://perma.cc/H3L2-UHTY>] (last visited Nov. 12, 2024); *ISBA Committees*, ILL. STATE BAR ASS’N, <https://www.isba.org/committees> [<https://perma.cc/FG5Z-VBH2>] (last visited Nov. 12, 2024); *Committees*, IND. STATE BAR ASS’N, <https://www.inbar.org/page/committees> [<https://perma.cc/DN7P-P9WL>]; *ISBA Committees*, IOWA STATE BAR ASS’N, <https://www.iowabar.org/?pg=committees> [<https://perma.cc/5CMU-YD84>] (last visited Nov. 12, 2024); *Judicial Ethics Committee*, STATE BAR OF MICH., https://www.michbar.org/generalinfo/judicial_ethics [<https://perma.cc/5CMU-YD84>].

handle AI and law issues.²⁴⁶ Notably, Minnesota has a specific Bar Association Working Group on AI and the Unauthorized Practice of Law.²⁴⁷

California, Florida, and Michigan regulate AI issues through their State Bars and various committees. On November 16, 2023, California's State Bar Committee on Professional Responsibility and Conduct (COPRAC) set forth its initial recommendations on lawyers' use of AI, but also included further considerations, noting:

COPRAC recommends that the Board take action to:

- Work with the Legislature and the California Supreme Court to determine whether the unauthorized practice of law should be more clearly defined or articulated through statutory or rule changes; and

perma.cc/6KPJ-SMCP] (last visited Nov. 12, 2024); *State Bar of Montana Committees and Sections*, STATE BAR OF MONT., <https://www.montanabar.org/About-Us/Sections-and-Committees> [<https://perma.cc/XZ7U-UJGJ>] (last visited Nov. 12, 2024); *NSBA Online Member Communities, Technology, Privacy, and Security Law*, NEB. STATE BAR ASS'N, <https://community.nebar.com/home/community-home?CommunityKey=65cba049-e42e-474c-84f9-e1179170a19f> [<https://perma.cc/P88D-5X36>] (last visited Nov. 12, 2024); *Proposed Opinions*, N.C. STATE BAR, <https://www.ncbar.gov/for-lawyers/ethics/proposed-opinions/> [<https://perma.cc/CP87-2TCL>] (last visited Nov. 12, 2024); *Committees and Commissions*, PA. BAR ASS'N, <https://www.pabar.org/public/committees/> [<https://perma.cc/97PL-TF3P>] (last visited Nov. 12, 2024); *Comisiones [Commissions]*, ABOGADOS Y ABOGADAS DE PUERTO RICO [P.R. BAR ASS'N], <https://capr.org/comisiones/> [<https://perma.cc/K2KP-3S7M>] (last visited Dec. 29, 2024); *Bar Committees*, R.I. BAR ASS'N, <https://ribar.com/for-attorneys/bar-committees> [<https://perma.cc/2B6D-XAHW>] (last visited Nov. 12, 2024); *Technology Committee*, S.C. BAR, <https://www.scbbar.org/lawyers/sections-committees-divisions/committees/technology-committee/> [<https://perma.cc/F3WC-EK8G>] (last visited Nov. 12, 2024); *Special Committee on the Future Practice of Law*, TENN. B. ASS'N, <https://www.tba.org/?pg=Special-Committee-on-Evolving-Legal-Market> [<https://perma.cc/W6VV-9QXG>] (last visited Nov. 12, 2024); *Sections & Committees, Intellectual Property and Information Technology Law Section*, VA. BAR ASS'N, https://www.vba.org/page/ip_technology_law [<https://perma.cc/U353-ZVRS>] (last visited Nov. 12, 2024); *Legal Technology Task Force*, WASH. STATE BAR ASS'N, (June 11, 2024), <https://www.wsba.org/connect-serve/committees-boards-other-groups/legal-technology-task-force> [<https://perma.cc/2J7L-F2D9>] (last visited Nov. 12, 2024).

²⁴⁶ Alabama, Alaska, American Samoa, Arkansas, Colorado, Delaware, Georgia, Guam, Hawaii, Idaho, Kansas, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Missouri, Nevada, New Jersey, New Mexico, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Oregon, South Dakota, US Virgin Islands, Utah, Vermont, West Virginia, Wisconsin, Wyoming (as of Apr. 12, 2024).

²⁴⁷ *Eran Kahana Appointed to Bar Association Working Group on AI and the Unauthorized Practice of Law*, MALSON LLP (Apr. 13, 2023), <https://www.maslon.com/eran-kahana-appointed-to-bar-association-working-group-on-ai-and-the-unauthorized-practice-of-law-1> [<https://perma.cc/7L7Y-NFQV>].

- Work with the Legislature to determine whether legal generative AI products should be licensed or regulated and, if so, how.²⁴⁸

The Florida Bar released an ethics opinion for lawyers on the use of generative AI,²⁴⁹ and the State Bar of Michigan released an ethics opinion for judicial officers on maintaining technology competence, including AI.²⁵⁰ Recently, on April 6, 2024, the NYSBA Task Force on AI released a report and recommendations to the NYSBA's House of Delegates.²⁵¹

b) State Judiciaries

Of the 56 U.S. State and Territory judiciaries, 7 have an AI-specific committee (Arizona, Connecticut, Georgia, Illinois, New Jersey, New York, Vermont)²⁵², 6 have a non-AI-specific committee (California, Colorado, Delaware, Indiana, Louisiana, Wyoming)²⁵³, and 43 do not have a committee handling AI and

²⁴⁸ *Recommendations from Committee on Professional Responsibility and Conduct on Regulation of Use of Generative AI by Licensees*, STATE BAR OF CAL. 4 (Nov. 16, 2023), <https://aboutblaw.com/bbpZ> [<https://perma.cc/W8ZG-KFJD>].

²⁴⁹ The Florida Bar, Ethics Opinion 24-1 (Jan. 19, 2024).

²⁵⁰ State Bar of Michigan, Ethics Opinion JI-155 (Oct. 27, 2023).

²⁵¹ NYSBA TASK FORCE ON ARTIFICIAL INTELLIGENCE, *supra* note 5.

²⁵² *Establishing the Arizona Steering Committee On Artificial Intelligence And The Courts*, SUP. CT. OF THE STATE OF ARIZ. (Jan. 24, 2024), <https://www.azcourts.gov/Portals/22/admorder/Orders24/2024-33.pdf> [<https://perma.cc/A227-VU3T>]; *Artificial Intelligence Responsible Use Framework*, STATE OF CONN. JUD. BRANCH (Feb. 1, 2024) <https://www.jud.ct.gov/faq/CTJBResponsibleAIPolicyFramework2.1.24.pdf> [<https://perma.cc/Y4SG-UKDC>]; *General Session Friday, April 12, 2024 10 a.m. – 12 p.m.*, JUD. COUNCIL OF GA. (Feb. 1, 2024), <https://jcaoc.georgiacourts.gov/wp-content/uploads/2024/05/JC-Binder-Final-4-04122024.pdf> [<https://perma.cc/ENF3-GFSN>]; *Daniel W. Linna Jr. Joins Illinois Supreme Court AI Task Force*, COOK CNTY. RECORD (Feb. 13, 2024), <https://cookcountyrecord.com/stories/654726814-daniel-w-linna-jr-joins-illinois-supreme-court-ai-task-force> [<https://perma.cc/MV3Z-TUBB>]; *Supreme Court Convenes Committee on Artificial Intelligence and the Courts*, N.J. CTS. (Sept. 22, 2023), <https://www.njcourts.gov/press-releases/2023/09/supreme-court-convenes-committee-artificial-intelligence-and-courts> [<https://perma.cc/8JTR-64EK>]; *Chief Administrative Judge Joseph A. Zayas Names Advisory Panel to Study the Impact of Artificial Intelligence on the New York State Courts*, N.Y. STATE UNIFIED CT. SYSTEM (Apr. 11, 2024), https://www.nycourts.gov/LegacyPDFS/press/pdfs/PR24_16.pdf [<https://perma.cc/VDS5-BR2M>]; *Vermont Judiciary Committee on Artificial Intelligence and the Courts*, VT. JUDICIARY, <https://www.vermontjudiciary.org/about-vermont-judiciary/boards-and-committees/artificial-intelligence> [<https://perma.cc/JJQ9-TZ22>] (last visited Oct. 21, 2024).

²⁵³ *Information Technology Advisory Committee*, JUD. BRANCH OF CAL., <https://www.courts.ca.gov/itac.htm> [<https://perma.cc/4LQC-7F9G>] (last visited Oct. 21, 2024); Michael Karlik, *Colorado Supreme Court committee votes to explore role of AI in practice of law*, COLO. POLITICS (Mar. 8, 2024), https://www.coloradopolitics.com/courts/colorado-supreme-court-committee-votes-to-explore-role-of-ai-in-law/article_608d1244-dcda-11ee-9375-272a46ec8ef5.html

law issues.²⁵⁴ While Minnesota does not have an AI-specific judicial committee handling AI and law issues, discussions and official policies have been established at its meetings for handling AI.²⁵⁵

In 2023, the New Jersey Supreme Court convened a Committee on Artificial Intelligence and the Courts, and on January 24, 2024, released guidelines for lawyers regarding the ethical use of Generative AI.²⁵⁶ This report did not address the issue of UPL when unrepresented litigants use AI.

Notably, having a bar association or judicial committee on AI or a non-AI-specific committee is not dispositive that a state is regulating AI for lawyers. While Utah, Kansas, Maine have no bar association or judicial committee on the topic, they regulate AI for lawyers and legal professionals in other ways.

c) Utah's Sandbox

Utah stands out as a leader in the access to justice and innovation space, as its Supreme Court established a regulatory sandbox for nontraditional legal services to improve access to justice in 2020,²⁵⁷ and under the Utah AI Policy Act, lawyers must alert their clients when they are interacting with Generative AI as a part of

[<https://perma.cc/AU86-L8QY>]; *Delaware Supreme Court Re-launches the Commission on Law and Technology*, DEL. SUP. CT. (October 4, 2023), <https://courts.delaware.gov/Forms/Download.aspx?id=215708> [<https://perma.cc/LU8P-43ZU>]; *Commission on Indiana's Legal Future*, IND. JUD. BRANCH, https://www.in.gov/courts/admin/legal-future/#Technology_Applications.pdf [<https://perma.cc/BX4H-2PQ8>] (last visited Oct. 21, 2024); *Letter from Supreme Court of Louisiana, to Shayna Sonnier, President*, SUP. CT. OF LA. (Jan. 22, 2024), <https://www.lsba.org/documents/News/LSBANews/LASCLetterAI.pdf> [<https://perma.cc/4M5X-YG4T>]; *Teams Meeting December 11, 2023 8:00 am – 12:00 pm Minutes*, WYO. JUD. COUNCIL (Dec. 11, 2023), <https://www.courts.state.wy.us/wp-content/uploads/2024/02/WJC-12.11.2023-Minutes.pdf> [<https://perma.cc/M8S5-WHLU>].

²⁵⁴ Alabama, Alaska, American Samoa, Arkansas, Florida, Guam, Hawaii, Idaho, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, US Virgin Islands, Utah, Virginia, Washington, West Virginia, Wisconsin (as of Apr. 12, 2024).

²⁵⁵ *Judicial Council Minutes May 18, 2023*, MINN. JUD. BRANCH (May 18, 2023), https://www.mncourts.gov/mncourtsgov/media/Judicial_Council_Library/May-2023-Minutes.pdf [<https://perma.cc/Y32J-S5XW>]; *Judicial Council Minutes August 17, 2023*, MINN. JUD. BRANCH, (Aug. 17, 2023), [https://www.mncourts.gov/mncourtsgov/media/Judicial_Council_Library/August-2023-Public-Minutes-\(FINAL\).pdf](https://www.mncourts.gov/mncourtsgov/media/Judicial_Council_Library/August-2023-Public-Minutes-(FINAL).pdf) [<https://perma.cc/7YFN-JKFA>].

²⁵⁶ *Supreme Court Convenes Committee on Artificial Intelligence and the Court*, N.J. CTS., *supra* note 252; *Notice – Legal Practice: Preliminary Guidelines on the Use of Artificial Intelligence by New Jersey Lawyers*, N.J. CTS. (Jan. 25, 2024), <https://www.njcourts.gov/notices/notice-legal-practice-preliminary-guidelines-use-of-artificial-intelligence-new-jersey>. [<https://perma.cc/3ZYL-LYYW>].

²⁵⁷ UTAH SUP. CT., STANDING ORDER NO. 15 (September 21, 2022), <https://legacy.utcourts.gov/rules/urapdocs/15.pdf> [<https://perma.cc/SHH4-CTSG>].

their services.²⁵⁸ Utah’s sandbox allows legal services that would typically violate UPL rules to operate in the State.²⁵⁹ It explicitly allows “firms, companies, or organizations using Alternative Legal Providers (human or software) to practice law.”²⁶⁰

d) Other State’s Policies Affecting Lawyers

Kansas and Maine have executive branch Generative AI policies that affect state employee lawyers, legal professionals, and legal services.²⁶¹ Vermont’s Council on Artificial Intelligence has established Generative AI policies affecting state employee lawyers and legal services.²⁶²

e) Colorado AI Act

The Colorado AI Act (CAIA) represents the first comprehensive, risk-based approach to AI regulation in the U.S.²⁶³ It establishes requirements for high-risk AI use, including developer and deployer obligations, consumer rights to transparency and appeal, and enforcement mechanisms.²⁶⁴ The CAIA defines “high-risk artificial intelligence system” as “any artificial intelligence system that, when deployed, makes, or is a substantial factor in making, a consequential decision.”²⁶⁵ It defines a “consequential decision” as “a decision that has a material legal or

²⁵⁸ Utah AI Policy Act, UTAH CODE ANN. § 13-72-101 (West 2024); Stuart D. Levi et al., *Utah Becomes First State To Enact AI-Centric Consumer Protection Law*, SKADDEN (Apr. 5, 2024), <https://www.skadden.com/insights/publications/2024/04/utah-becomes-first-state> [<https://perma.cc/L85N-UTBE>].

²⁵⁹ *Frequently Asked Questions*, UTAH OFF. OF LEGAL SERVICES INNOVATION, *supra* note 42.

²⁶⁰ *Id.*

²⁶¹ *Generative Artificial Intelligence Policy*, KAN. OFF. OF INFO. TECH. SERVICES (July 31, 2023), <https://governor.kansas.gov/wp-content/uploads/2023/08/P8200.00-Generative-Artificial-Intelligence-Signed.pdf> [<https://perma.cc/68EC-UTKV>]; *State Of Maine Department Of Administrative And Financial Services Maine Information Technology (Maineit) Cybersecurity Directive 2023-03*, STATE OF ME. OFF. OF THE CHIEF INFO. OFFICER (June 21, 2023), <https://www.maine.gov/oit/sites/maine.gov/oit/files/inline-files/FINAL-Cybersecurity-Directive23-03Artificial-Intelligence.pdf> [<https://perma.cc/2BAB-N6ZY>]; *State Of Maine Department Of Administrative And Financial Services Maine Information Technology (Maineit) Cybersecurity Directive 2024-01*, STATE OF ME. OFF. OF THE CHIEF INFO. OFFICER, <https://www.maine.gov/oit/sites/maine.gov/oit/files/inline-files/Cybersecurity%20Directive%2024-01%20Generative%20Artificial%20Intelligence%20final.pdf> [<https://perma.cc/NH8N-C865>].

²⁶² *Guidelines for Use of Content Generating AI*, VT. (Nov. 29, 2023), <https://digitalservices.vermont.gov/sites/digitalservices/files/documents/Guidelines%20for%20use%20of%20Generative%20AI.pdf> [<https://perma.cc/VKT7-6CMK>].

²⁶³ Tatiana Rice, *Colorado AI Act Two-Pager Cheat Sheet*, FUTURE OF PRIVACY FORUM 1 (May 17, 2024), <https://fpf.org/wp-content/uploads/2024/05/FPF-FINAL-CO-SB-205-Two-Pager-.pdf> [<https://perma.cc/7P57-EQ24>].

²⁶⁴ *Id.*

²⁶⁵ Colorado AI Act, COLO. REV. STAT. § 6-1-1701 (9)(a) (2024).

similarly significant effect on the provision or denial to any consumer of, or the cost or terms of.” most relevantly “a legal service.”²⁶⁶ The CAIA will come into effect on February 1, 2026.²⁶⁷

f) U.S. Conclusion

California, Colorado, Florida, Kansas, Maine, Michigan, New Jersey, Utah, and Vermont are all regulating AI for lawyers or legal services or have explicit policies affecting either. The remaining forty-seven states and territories appear not to explicitly regulate AI for lawyers or legal services yet, even though they may have committees or task forces reviewing the issue.²⁶⁸

N. Global Survey Results and Conclusions

This survey demonstrates a striking absence of policy consensus on legal AI internationally, especially its use by unrepresented litigants, and the need for more consistency in the approaches taken by various jurisdictions. Some jurisdictions have chosen to do nothing and wait; these jurisdictions were not highlighted. Some jurisdictions have provided general guidance from law societies, bar associations, or the courts (New Zealand, the United Kingdom, jurisdictions within the United States, Alberta, and British Columbia). Some jurisdictions’ courts have banned any Generative AI use in government use (e.g., Maine), while others require all litigants, including unrepresented litigants, to disclose whether they used AI and how they used it in their submissions to courts (e.g., Canada, jurisdictions within the United States, Manitoba, and Yukon). Other jurisdictions are using legal regulatory sandboxes to exempt legal service providers from UPL restrictions if they provide innovative legal service solutions to improve access to justice (e.g., British Columbia, Manitoba, Ontario, Saskatchewan, England and Wales, and Utah).

Based on this survey, we found the sandbox approach to be the most comprehensive, developed, and promising for legal AI assistants. While current sandboxes are slated to be temporary, our proposal recommends that they become permanent and more prevalent. We propose that practice of law regulating authorities amend their UPL rules to exempt certified legal AI assistants for unrepresented litigants based on the immense need for innovative access to justice solutions. Moreover, this approach would encourage practice of law regulating

²⁶⁶ *Id.* § 6-1-1701 (3)(h).

²⁶⁷ Rice, *supra* note 263.

²⁶⁸ Alabama, Alaska, American Samoa, Arizona, Arkansas, Colorado, Connecticut, Delaware, Georgia, Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, US Virgin Islands, Virginia, Washington, West Virginia, Wisconsin, Wyoming (as of Apr. 12, 2024).

authorities to define the practice of law and UPL in their professional ethics regulations and enumerate a list of exemptions from UPL. Ultimately, this proposal builds upon the sandbox approaches but aims to establish permanent UPL exemptions, as legal AI assistants and other tools are here to stay.

IV. A CAPABILITY-BASED FRAMEWORK FOR LEGAL AI ASSISTANTS

The starting point for a capability-based framework is the observation that the purpose of UPL restrictions is to reduce the risks (potential costs) of incorrect guidance from unqualified sources. Individuals with no legal training are typically prohibited from providing legal services, because they are unlikely to be able to provide accurate and trustworthy guidance. Even if some unlicensed individuals (jail-house lawyers, for example) can sometimes provide useful legal advice, the absence of credentials makes it difficult to verify the accuracy of their advice. However, restricting access to demonstrably trustworthy sources does not reduce the risk of incorrect information or advice.

A similar analysis applies to legal AI assistants. Prohibitions on such systems are justified, if the risk of harm from inaccurate guidance outweighs the potential benefits from reliable advice. However, the vast unmet need for legal services worldwide²⁶⁹ demonstrates that withholding access to accurate legal guidance systems from those who cannot afford an attorney risks significant harm. Determining the balance between the potential harm and benefits of a legal AI assistant requires assessing the accuracy of the system. We propose a framework based on measuring the accuracy of individual legal AI capabilities.

A. Legal AI Capabilities

Legal problem-solving comprises a number of *legal tasks*, which are activities needed to achieve a goal through legal processes. A partial list of legal tasks needed to assist litigants is set forth in Table 1, below.

²⁶⁹ WORLD JUSTICE PROJECT, *supra* note 1.

Providing general legal information, e.g., the steps needed to trigger a legal process.
Eliciting a litigant's objectives and the facts giving rise to those objectives.
Identifying a legal remedy that could achieve an objective, if successful.
Assessing whether the facts as asserted support a prima facie case for a legal remedy.
Predicting the likely outcome of a case under a given set of facts.
Drafting a petition or other pleading.

Table 1. Tasks needed to assist litigants.

Each of these tasks requires separate skills from a human attorney. Similarly, each of these tasks imposes separate information-processing requirements on any automated system. For example, estimating the likely outcome of a case is an example of a *prediction* task, the general category of tasks in which a set of input values is used to predict a new value.²⁷⁰ Eliciting the facts and goals of a litigant, by contrast, is a kind of *goal-directed dialogue*,²⁷¹ which is a much more complex task studied by the computational linguistics community.

A *legal AI capability* is a computer system implemented or adapted to perform a given legal task. For example, BERT²⁷² is a neural net model that can be trained to predict legal decisions of a particular kind, e.g., decisions by the European Court of Human Rights (ECHR).²⁷³ A BERT model trained in this way is a *capability* to perform the task of ECHR decision prediction. Similarly, Docassemble²⁷⁴ is a system that can be programmed to draft pleadings of particular kinds, such as a tenant's answer to defend against eviction. A Docassemble system programmed in this way is a *capability* to perform the task of answer drafting.

A legal AI capability is invoked by a user, such as an unrepresented litigant, in the form of a *query*, which is a question or problem posed to a legal AI assistant. The output of a legal AI capability when queried is termed the *response* to the

²⁷⁰ See, e.g., Masha Medvedeva, Michel Vols & Martijn Wieling, *Using machine learning to predict decisions of the European Court of Human Rights*, 28 ARTIFICIAL INTELLIGENCE & L. 237, 238 (2020).

²⁷¹ See, e.g., Charlie Snell et al., *Context-Aware Language Modeling for Goal-Oriented Dialogue Systems*, in PROCEEDINGS OF THE 60TH ANNUAL MEETING OF THE ASSOCIATION FOR COMPUTATIONAL LINGUISTIC 2351-2366 (2022).

²⁷² Jacob Devlin et al., *BERT: Pre-training of Deep Bidirectional Transformers for Language Understanding*, in PROCEEDINGS OF THE 57TH ANNUAL MEETING OF THE ASSOCIATION FOR COMPUTATIONAL LINGUISTIC 4171-4186 (2019).

²⁷³ See Medvedeva et al., *supra* note 270, at 238.

²⁷⁴ Jonathan Pyle, DOCASSEMBLE, <https://docassemble.org/> [<https://perma.cc/M4LM-YJWG>] (last visited Dec. 29, 2024).

query. The datasets used to train machine-learning algorithms typically consist of query-response pairs that exemplify the desired behavior.

A capability can be evaluated by the quality of its performance on a task. If the task is prediction, performance is typically measured in terms of f-measure, which places equal weight on recall and precision²⁷⁵ or Matthews Correlation Coefficient (MCC), which is more informative if some outcomes are much more probable than others.²⁷⁶ If the task involves text generation, such as document drafting, AI researchers typically measure performance in terms of Bleu,²⁷⁷ which measures how closely the generated text resembles the reference, or “ground truth” text, or Perplexity, which can be used to measure coherence.²⁷⁸ If the task is to elicit the user’s objectives, performance can be measured by Task Success Rate (TSR), the proportion of dialogue tasks that are successfully completed by the system. For simplicity of exposition in this article, we will refer to f-measure, MCC, Bleu, Perplexity, TSR, and other measures of performance information as *accuracy*.²⁷⁹

AI Task	Legal Example	Typical Accuracy Measures
Prediction	Likelihood of success at trial	f-measure, MCC
Text generation	Document drafting	Bleu, Perplexity
Goal-directed dialogue	Case elicitation from user	Task Success Rate

Table 2. Typical accuracy measures for legal AI tasks.

Multiple capabilities are possible for a single legal task. For example, a different machine learning algorithm, such as a Random Forest,²⁸⁰ could be trained to predict ECHR cases. The resulting model would probably have different accuracy from the BERT model, and both models could be compared against each other or evaluated against a standard benchmark using f-measure, MCC, or another

²⁷⁵ See C. J. VAN RIJSBERGEN, INFORMATION RETRIEVAL 6, 112 (2nd ed. 1979).

²⁷⁶ See Sabri Boughorbel, Fethi Jarray & Mohammed El-Anbari, *Optimal classifier for imbalanced data using Matthews Correlation Coefficient metric*, PLOS ONE, June 2, 2017, at 4-5.

²⁷⁷ Kishore Papineni et al., *BLEU: a Method for Automatic Evaluation of Machine Translation*, in PROCEEDINGS OF THE 40TH ANNUAL MEETING OF THE ASSOCIATION FOR COMPUTATIONAL LINGUISTICS 311, 311-18 (2002).

²⁷⁸ See Sergey Vychezhzhanin et al., *Controllable Story Generation Based on Perplexity Minimization*, in ANALYSIS OF IMAGES, SOCIAL NETWORKS AND TEXTS 154-69 (2023). We note that systems having a user interface, such as document assembly systems, can also be analyzed in terms of usability factors, such as mean time to completion or task completion rate. These are important factors in the decision to deploy one system rather than another but do not necessarily reflect system accuracy.

²⁷⁹ We note that we are not using “accuracy” in the formal, statistical sense of “the proportion of correct answers” but rather as an umbrella term for correctness and performance quality.

²⁸⁰ Leo Breiman, *Random forests*, 45 MACHINE LEARNING 5, 5-32 (2001).

metric for prediction accuracy. Similarly, different document assembly software, such as HotDocs,²⁸¹ could be used to draft a tenant's answer and defense to eviction. The accuracy of these two capabilities—one implemented with Docassemble and the other with HotDocs—could be evaluated based on perplexity or on Bleu scores when compared to a ground truth text.

AI assurance is the process of ensuring that intelligent systems are valid, accurate, complete, comprehensible, and free from bias.²⁸² There is broad literature on AI assurance,²⁸³ which we do not attempt to replicate or summarize here. Instead, our focus is on the aspect of assurance most closely tied to the justification for UPL restrictions or exemptions—the accuracy of the legal system's guidance. We do not address assurance standards not specific to legal AI assistants.

B. Standards for Certifying Legal Capabilities

Legal problem solving consists of multiple individual legal tasks, and multiple capabilities can be implemented for each legal task. Therefore, assurance of a legal AI assistant requires evaluation of each of the individual capabilities that constitute the legal AI assistant as a whole.

The evaluation standards for each individual legal capability can be conceptualized as consisting of two components. The first component consists of an *evaluation criterion* for the capability, such as f-measure, Bleu, or TCR. The second component consists of a corresponding *acceptability threshold*, e.g., the minimum acceptable accuracy under the particular evaluation criterion. For example, for a predictive system for a given area of law—say, the probability that a petition for an injunction based on breach of an implied warranty of habitability will be granted—one evaluation criteria would be accuracy (e.g., f-measure) and a minimum accuracy threshold (e.g., f-measure > 0.95). Similarly, the evaluation criterion for a document drafting system might be a Bleu index and the minimum threshold 85 (meaning an 85 percent match), and the evaluation for a dialogue system might be TCR and a minimum threshold of 90% (meaning 90% of tasks were completed). Certification of a legal AI assistant that constitutes multiple capabilities depends on the evaluation of each of the AI system's individual capabilities.

²⁸¹ Stephen J. Harhai, *Document Assembly with HotDocs*, 17 FAMILY ADVOCATE 10, 10 (1995).

²⁸² For a slightly broader formulation, see Feras A. Batarseh, Laura Freeman & Chih-Hao Huang, *A survey on artificial intelligence assurance*, 8 J. BIG DATA 60, 61 (2021).

²⁸³ *Id.*; See also Laura Freeman, Abdul Rahman & Feras A. Batarseh, *Enabling Artificial Intelligence Adoption through Assurance*, 10 SOC. SCIS. 322 (2021); OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, No. M-24-10, MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES, ADVANCING GOVERNANCE, INNOVATION, AND RISK MANAGEMENT FOR AGENCY USE OF ARTIFICIAL INTELLIGENCE (Mar. 28, 2024).

C. Benchmarks for Legal Capability Evaluation

The evaluation criteria for a particular legal capability depends on the task that it is intended to accomplish. In contrast to the almost unlimited diversity of possible legal capabilities, the number of distinct legal tasks is relatively circumscribed. Moreover, the legal AI community has developed benchmarks for evaluating the performance of AI systems on a very wide range of legal tasks. These benchmarks are based on datasets constructed and made publicly available by legal AI researchers, allowing alternative algorithms and systems (i.e., capabilities) to be evaluated and compared. This section describes how benchmarks based on publicly available datasets can be used to evaluate legal capabilities.

The number of legal AI datasets is rapidly growing. Most of these datasets have been developed for training and evaluating capabilities to support attorneys' activities.²⁸⁴ However, this article focuses on the subset of tasks relevant to unrepresented litigants. We identified a core set of legal tasks above that are important for unrepresented litigants and will now show how the evaluation procedures developed by the legal AI research community can establish clear standards for accuracy in AI capabilities for these tasks.

AI for legal problem solving has been an active research area for over 30 years.²⁸⁵ During the last decade, this research has shifted increasingly toward developing text analysis techniques for legal problem solving.²⁸⁶ This text-oriented research is reflected in a variety of benchmark datasets. For example, Maastricht University hosts 36 datasets for legal judgment prediction, legal text classification, legal question answering, and legal text summarization.²⁸⁷ Similarly, "Datasets for Machine Learning in Law" contains data collections assembled for various individual tasks, including judgment prediction, document annotation, summarization, question answering, and document classification.²⁸⁸

The advent of LLMs has dramatically accelerated the development of benchmark legal datasets. This is due both to LLMs' astonishing capabilities for

²⁸⁴ See, e.g., Neel Guha et al., *LegalBench: A collaboratively built benchmark for measuring legal reasoning in large language models*, ARXIV 1, 9 (Aug. 20, 2023), <https://arxiv.org/pdf/2308.11462> [<https://perma.cc/FG99-KLBR>] (discussing the capabilities of LegalBench and its empirical evaluation of 20 open-source and commercial LLMs).

²⁸⁵ Guido Governatori et al., *Thirty years of Artificial Intelligence and Law: the first decade*, 30 ARTIFICIAL INTELLIGENCE & L. 481, 481-82 (2022).

²⁸⁶ Serena Villata et al., *Thirty years of artificial intelligence and law: the third decade*, 30 ARTIFICIAL INTELLIGENCE & L. 561, 570 (2022).

²⁸⁷ Maastricht Law & Tech Lab, *Legal Natural Language Processing*, GITHUB, <https://github.com/maastrichtlawtech/awesome-legal-nlp> [<https://perma.cc/9MFC-RX66>] (last visited Oct. 23, 2024). Note that several of these datasets also appear in the LegalBench and LawBench collections.

²⁸⁸ Neel Guha, *Legal ML Datasets*, GITHUB, <https://github.com/neelguha/legal-ml-datasets> [<https://perma.cc/GQ8G-AE6H>] (last visited Oct 24, 2024).

interpreting legal texts and their dangerous propensity for hallucinations.²⁸⁹ An example of an LLM-era evaluation resource is LegalBench, a collaboratively constructed collection of datasets organized according to the “Issue, Rule, Application, and Conclusion” (IRAC) academic model.²⁹⁰ LegalBench comprises datasets for evaluation on 162 tasks spanning the four IRAC categories.²⁹¹ The stated purpose of LegalBench is an open-source, interdisciplinary benchmark for English, which evaluates the legal reasoning of LLMs, such as Claude, ChatGPT, and Gemini.²⁹² The majority of the tasks are for attorneys, such as determining whether the requirements for diversity jurisdiction are met under a given set of facts and determining whether a sentence in a judicial opinion overrules a previous case. However, a few are relevant to unrepresented litigants, such as understanding the rights and obligations imposed by popular websites’ terms of service clauses.²⁹³

Much like LegalBench, LawBench is a collaboratively constructed collection of datasets intended for benchmarking LLMs, primarily under Chinese law.²⁹⁴ LawBench is organized in a three-category top-down framework for legal tasks: “legal knowledge memorization,” “legal knowledge understanding,” and “legal knowledge applying.”²⁹⁵ As with LegalBench, most LawBench datasets are for tasks attorneys perform, such as document proofreading and argument mining.²⁹⁶ However, several tasks in the LawBench dataset collection are quite relevant to unrepresented litigants, including “Consultation,” which provides an answer in response to a user’s request for help.²⁹⁷ Others include “Issue Topic Identification,” which consists of assigning a user’s query to one of a set of predefined topics, and “Marital Disputes Identification,” which consists of identifying the type of domestic dispute described by a given sentence.²⁹⁸

The Maastricht, LegalBench, LawBench, and “Machine Learning in Law” datasets and numerous other collections illustrate the rapid development of shared, public benchmark datasets across the global legal AI community. Legal technology conferences and journals increasingly require researchers to make the datasets used in evaluating their systems publicly available as a condition of publication. This

²⁸⁹ Matthew Dahl et al., *Large Legal Fictions: Profiling Legal Hallucinations in Large Language Models*, ARXIV 1, 2 (June 21, 2024), <https://arxiv.org/pdf/2401.01301> [<https://perma.cc/3PAJ-ZTGE>].

²⁹⁰ Guha et al., *supra* note 284, at 6.

²⁹¹ *Id.*

²⁹² *Id.* at 4. See Darioush Kevian et al., *Capabilities of Large Language Models in Control Engineering: A Benchmark Study on GPT-4, Claude 3 Opus, and Gemini 1.0 Ultra*, ARXIV 1 (Apr. 4, 2024), <https://arxiv.org/pdf/2404.03647> [<https://perma.cc/7JVA-AXF2>].

²⁹³ Guha et al., *supra* note 284, at 60-61.

²⁹⁴ Zhiwei Fei et al., *Lawbench: Benchmarking Legal Knowledge Of Large Language Models*, ARXIV 2 (Sept. 28, 2023), <https://arxiv.org/pdf/2309.16289> [<https://perma.cc/TKB4-QPKN>].

²⁹⁵ *Id.* at 3.

²⁹⁶ *Id.* at 2.

²⁹⁷ *Id.* at 9.

²⁹⁸ *Id.* at 6.

facilitates the reproducibility of research results and the comparison of alternative algorithms, driving progress in the field.²⁹⁹

Legal AI researchers have developed a rapidly growing collection of public datasets for evaluating capabilities for individual legal tasks. While most of these tasks benefit attorneys, some are relevant to unrepresented litigants. If there was community-wide awareness of the need for more datasets tailored specifically to unrepresented litigants' needs, developing such datasets would be a much higher priority for the research community. However, even with existing datasets, evaluating the accuracy of many legal capabilities for unrepresented litigants is possible.

D. Capabilities for Unrepresented Litigants

While there has been extensive analysis of tasks to benefit attorneys, including dozens of datasets for evaluating capabilities to accomplish those tasks, there has been little systematic analysis of the tasks needed by unrepresented litigants. However, the tasks set forth in Table 1 form the core of unrepresented litigants' needs. Those tasks are duplicated in Table 3, paired with one or more datasets developed for research on the corresponding task.

²⁹⁹ See Odd Erik Gundersen et al., *On reproducible AI: Towards Reproducible Research, Open Science, And Digital Scholarship in AI Publications*, 39 AI MAGAZINE 56, 57 (2018).

Unrepresented Litigant Task	Benchmark Dataset
Providing general legal information	JEC-QA: a legal-domain question answering dataset ³⁰⁰
Eliciting a litigant’s objectives and the facts giving rise to those objectives	The LawBench Consultation dataset ³⁰¹
Identifying a legal remedy that could achieve a goal, if successful	The LegalBench Learned Hands dataset ³⁰²
Assessing whether the facts as asserted support a prima facie case for a legal remedy	SARA (StAtutory Reasoning Assessment dataset) ³⁰³
Predicting the likely outcome of a case under a given set of facts	Over 30 datasets ³⁰⁴
Drafting a petition or other pleading	BUILDNYAI ³⁰⁵

Table 3. Unrepresented litigant tasks matched with corresponding evaluation datasets.

Many of these datasets are specific to particular jurisdictions or areas of law. However, they demonstrate that benchmark datasets are possible for every

³⁰⁰ Haoxi Zhong et al., *JEC-QA: A Legal-Domain Question Answering Dataset*, 34 PROCEEDINGS OF THE AAAI CONFERENCE ON ARTIFICIAL INTELLIGENCE 9701 (2020). For a discussion of evaluation criteria for legal AI assistants, see Margaret Hagan, *Good AI Legal Help, Bad AI Legal Help: Establishing quality standards for responses to people’s legal problem stories*, SSRN (Oct. 10, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4640596 [<https://perma.cc/79NX-NQ8Q>].

³⁰¹ Fei et al., *supra* note 294, at 9. Interactions between a client and an attorney skilled in interviewing are very complex. See, e.g., Ann Shalleck, *How Clients and Lawyers Construct Facts: Stories They Tell Each Other and the Stories that Guide Investigations into the World*, in 14 DIGNIFYING AND UNDIGNIFIED NARRATIVES IN AND OF (THE) LAW: PROCEEDING OF THE IVR WORLD CONGRESS 2019 at 119 (Flora Di Donato et al. eds., 2021); Karl Branting & Sarah McLeod, *Narrative-Driven Case Elicitation*, in PROCEEDINGS OF THE ICAIL 2023 WORKSHOP ON ARTIFICIAL INTELLIGENCE FOR ACCESS TO JUSTICE (Karl Branting ed, 2023).

³⁰² See Guha et al., *supra* note 284, at 77-78.

³⁰³ Nils Holzenberger, Andrew Blair-Stanek, & Benjamin Van Durme, *A Dataset for Statutory Reasoning in Tax Law Entailment and Question Answering*, ARXIV 1 (Aug. 21, 2020), <https://arxiv.org/pdf/2005.05257> [<https://perma.cc/TA6H-6KL8>].

³⁰⁴ Junyun Cui, Xiaoyu Shen, & Shaochun Wen, *A Survey on Legal Judgment Prediction: Datasets, Metrics, Models and Challenges*, 11 IEEE ACCESS, Sept. 19, 2023, at 1, 1.

³⁰⁵ Prathamesh Kalamkar et al., *Corpus for Automatic Structuring of Legal Documents*, ARXIV 1 (Sept. 19, 2022), <https://arxiv.org/pdf/2201.13125> [<https://perma.cc/6DD4-U9JR>].

unrepresented litigant-supporting task and that, with the right incentives, the research community could develop many more datasets.

E. Policy Decisions in a Capability-Based Framework

As discussed above, whether a particular capability for a legal task is sufficiently accurate that it should be exempt from UPL depends on two factors: (1) an evaluation criterion that measures the performance on the legal task; and (2) an acceptability threshold under that criterion. Evaluation criteria have been and are continuing to be developed by the legal AI community in the form of data sets for specific tasks. However, selecting the evaluation criterion and setting the acceptability threshold are policy decisions that require balancing potential costs and benefits, much like any other policy decision. We first describe how certifying authorities can select an appropriate accuracy threshold by calculating the costs and benefits associated with that threshold. We consider three alternative assessment levels for analyzing the potential benefits and risks, which we refer to as Strict, Moderate, and Loose. Since each accuracy threshold is specific to an individual legal task, a preliminary practical step is identifying the particular task performed by a capability. Finally, we discuss how practice of law regulating authorities can exercise their authority in setting, or delegating the decision for setting, the acceptability threshold under one of the assessment levels.

1. Cost-Benefit Analysis

When considering whether to permit or prohibit a product or service, certifying authorities must always balance potential harms and benefits, including impacts on public health, safety, and the economy. Regarding policies governing legal AI assistants for unrepresented litigants, the harms and benefits involve access to justice.

Unrepresented litigants are at a significant disadvantage in legal proceedings compared to parties represented by an attorney: “Without representation, people lose custody of their children. They are evicted from their homes. Their assets or wages are seized. They are deported. Their lives are disrupted with significant financial and emotional impact.”³⁰⁶ Accurate guidance from legal AI assistants could reduce these significant costs. Thus, the potential benefits of providing legal AI assistants to individuals who would otherwise be

³⁰⁶ Ralph Baxter, *Dereliction of Duty: State-Bar Inaction in Response to America’s Access-to-Justice Crisis*, 132 YALE L. J. 228, 231 (2022). See also Martin Frankel et al., *Impact of Legal Counsel in Outcomes for Poor Tenants in New York City’s Housing Court: Results of a Randomized Experiment*, 35 L. & SOC’Y REV. 419, 419-434 (2001) (showing that provision of legal counsel produces large differences in outcomes for low-income tenants in housing court, independent of the merits of the case); OPEN GOV’T PARTNERSHIP [OGP], JUSTICE POLICY SERIES, PART 1: ACCESS TO JUSTICE 24 (2019) (discussing individual’s ability to access legal help in OGP countries).

unrepresented—primarily low- and middle-income individuals worldwide—could be significant.

The potential benefits of using legal AI assistants for unrepresented litigants must be balanced against the potential harms to unrepresented litigants from incorrect guidance. These harms could include adverse legal outcomes because of the failure to raise valid legal arguments, procedural missteps, or financial harm resulting from the loss of a meritorious claim.

The certifying authority should set a capability accuracy threshold high enough to ensure that the benefits of exempting a legal AI assistant at that level of accuracy would outweigh the potential costs. For a simplified example of how a cost-benefit analysis might be conducted, consider the following variables:

U – the number of unrepresented litigants who would use a legal AI assistant if it were available

A – the mean value of receiving correct legal advice

B – the mean cost of receiving incorrect legal advice

α – the mean accuracy of the advice from the AI assistant

As shown in Table 4, the benefit of exempting a legal AI assistant would be $U \cdot A \cdot \alpha$, meaning the number of users times the mean value of correct advice times the mean accuracy. The cost would be $U \cdot B \cdot (1 - \alpha)$, meaning the number of users times the mean cost of incorrect advice times the probability of a wrong answer. The benefits outweigh the costs if $U \cdot A \cdot \alpha > U \cdot B \cdot (1 - \alpha)$, which is equivalent to $A \cdot \alpha > B \cdot (1 - \alpha)$.

	Benefits	Costs/Harms
Formula	$U \cdot A \cdot \alpha$	$U \cdot B \cdot (1 - \alpha)$
Meaning	Legal benefits to the proportion, α , of users, U , whose advice is correct.	Legal harm to the $(1 - \alpha)$ proportion of users whose advice is incorrect.

Table 4. Cost-benefit matrix for legal AI capability with accuracy threshold α .

We understand there are some potential harms not captured by this formulation. For example, this formulation omits the loss of fees to attorneys from individuals who could afford legal representation but choose not to, as this loss is offset by the corresponding savings for those individuals, leaving the cost-benefit analysis unaffected. However, we focus here on the narrow question of establishing certification standards for legal AI assistants for unrepresented litigants who could not otherwise afford an attorney. Ensuring the accuracy of information provided by legal AI assistants for unrepresented litigants benefits the entire legal community, including attorneys, by necessitating stricter standards and higher acceptance thresholds for legal AI assistants generally.

Estimating A and B , the potential benefits and costs of a policy decision, is a routine activity of regulatory agencies.³⁰⁷ In economics, market price is a customary estimation of the value of goods or services.³⁰⁸ Under this approach, the value of correct legal advice, A , could be estimated as the market rate for attorney's fees. The mean cost of receiving incorrect legal advice, B , may be more complex to estimate, but for this discussion, we assume B might be greater than A , meaning that the costs of bad advice could be greater than the benefit of good advice.

Any choice of a minimum level for α (the accuracy of a capability) based on a cost-benefit analysis entails an implicit or explicit estimation of the relative magnitude of A and B . For example, if A and B are equal, then any $\alpha > 0.5$ will lead to a net benefit because the advice is, on average, more likely to help than hurt. If $B = 2 * A$, that is, harm from incorrect answers is twice as great as the benefit of correct answers, then α must be greater than 0.67, i.e., since $0.67 * A = 0.33 * B$ under this scenario, $\alpha * A - (1 - \alpha) * B > 0$, meaning that benefits outweigh costs only if $\alpha > 0.67$.

2. Assessment Levels for Accuracy Thresholds

Certification decisions for legal capabilities can vary depending on the stringency of the cost-benefit analysis that justifies them.

Assessment level	Requirements
Strict	Empirical calculation of A and B , the mean benefits and costs of correct and incorrect legal advice, respectively
Moderate	Estimates of A and B , considering best-case and worst-case scenarios
Loose	Provider voluntarily discloses accuracy (α) for the capability provided

Table 5. Three assessment levels for certification of a capability.

Table 5 shows three possible assessment levels for certifying authorities to determine the minimum accuracy threshold required to justify exempting a legal AI capability. The strictest assessment level would require an empirical cost-benefit analysis showing that the potential benefits outweigh the potential harm under the proposed threshold. A moderate assessment level would require setting an accuracy threshold based on an estimate of the potential benefit and harm, without

³⁰⁷ Cass R. Sunstein, *The Real World of Cost-Benefit Analysis: Thirty-Six Questions (And Almost as Many Answers)*, 114 COLUM. L. REV. 167, 170-173 (2014).

³⁰⁸ See Robert W. Hahn & John A. Hird, *The Costs and Benefits of Regulation: Review and Synthesis*, 8 YALE J. ON REGUL. 233, 241-43 (1991).

performing an empirical cost-benefit analysis. Finally, a loose assessment level would require each capability to be identified, and the capability's accuracy to be disclosed to users, but would not require any explicit cost-benefit analysis. Regardless of the assessment level, an accuracy threshold must be selected.

In summary, an accuracy threshold for a legal AI capability can be justified through a cost-benefit analysis comparing the benefits of accurate advice from the capability, A , with the costs of inaccurate advice, B . A strict assessment of these benefits and costs would require an empirical calculation of A and B , whereas a moderate approach would be based on estimates of A and B . A loose assessment level that depends on voluntary disclosure by the capability provider would not provide the net cost-benefit calculation needed to justify any particular accuracy threshold but would be more beneficial for unrepresented litigants than no accuracy disclosure. Compliance at the loose level could also be beneficial by demonstrating to practice of law regulating authorities the practicality of higher levels of capability-based certification by showing legal AI assistant providers' ability to perform and report accuracy evaluations.

By analogy, in most jurisdictions, people must sit for examinations with minimum passing scores to become licensed attorneys. The accuracy threshold we propose can be considered similar to this minimum passing score. Just as jurisdictions do not require people to get 100% accuracy on their examinations to become attorneys, law practice regulating authorities should not require 100% accuracy (i.e., $\alpha = 1.0$) of legal AI assistants for unrepresented litigants.

3. Task Identification

A final requirement for a capability-based certification framework is that each query must be analyzed to determine the task necessary to respond to that query. This analysis is a problem fundamental to computational linguistics: *text classification*.³⁰⁹ In text classification, a sequence of text is assigned to one of a set of predefined categories. In this case, the categories correspond to each of the legal tasks for which evaluation benchmarks are used to certify corresponding capabilities, along with a default category for non-legal content.

A certified system must determine what legal AI capabilities, if any, are required to respond to the user's query and utilize only those that have been certified. If the legal AI capability required to respond to the query is not certified, the system should provide a message that it is not certified to answer a question of that type.

³⁰⁹ See Kamran Kowsari et al., *Text Classification Algorithms: A Survey*, 10 INFORMATION 150, 150 (2019).

4. The Certification Process

The capability-based framework described above must proceed through a series of steps performed by the certifying authority and the legal AI assistant provider. The initial steps that the certifying authority must perform are as follows:

1. Identify the set of legal tasks for unrepresented litigants to be regulated.
2. For each task, identify a benchmark dataset.
3. Select the evaluation criterion and set the acceptability threshold for each task's benchmark.
4. Approve a query classifier that identifies the task, if any, required to respond to each query.

Each legal AI provider must perform a separate but parallel set of steps:

1. Apply for certification of capabilities that perform legal tasks for unrepresented litigants.
2. Implement or adopt an existing query classifier to identify unrepresented litigant tasks.
3. Demonstrate that all capabilities to be offered satisfy evaluation criteria, e.g., have accuracy above the minimum threshold.
4. Respond with legal assistance only to queries that either (1) require no legal capability or (2) require a legal capability that satisfies the certification criteria.

Finally, both the certifying authority and the legal AI provider must perform maintenance activities:

1. As new legal tasks are identified and formalized, and new benchmark datasets are created:
 - a. The certifying authority must update the set of regulated tasks for unrepresented litigants.
 - b. The certifying authority must select the evaluation criterion and the acceptability threshold set for each task's benchmark.
 - c. Each compliant legal AI provider must update the query classifier to identify the new tasks correctly.

2. The certifying authority must actively monitor the performance of legal AI providers. These providers must compare the queries received for each task to those in the benchmark dataset to detect inconsistencies or concept drift.³¹⁰ If the queries observed by a legal AI provider for a given task significantly deviate from the existing benchmark training set, the provider should notify the certifying authority, which should then investigate whether the benchmark dataset needs updating. Alternatively, the legal AI provider can voluntarily update the benchmark training set to be consistent with the observed queries.
3. Respond promptly to unrepresented litigant complaints and feedback.

F. Capability-based Framework vs. Alternative Standards

The relative merits of the capability-based approach to certification of legal AI assistants for unrepresented litigants depend on the strengths and weaknesses of the alternatives. The discussion above has shown that jurisdictions still need to devise workable standards for regulating legal AI assistants for unrepresented litigants. There has been little success in basing workable standards on the distinction between impermissible “advice” or “decision-making,” and permissible forms of assistance that neither engage in decision-making, nor provide “advice.” Arguably, even the ranking of search results by a retrieval engine requires a form of decision-making (ranking one result above another) and advice (e.g., relying on the highest ranked case). Apart from the impracticality of drawing a bright line based on these vague and context-dependent terms, such line drawing ignores the motivation behind UPL restrictions, i.e., protection of consumers of legal services from receiving incorrect guidance. The capability-based approach focuses on standards that reduce the risks of incorrect guidance from AI systems while minimizing unnecessary restrictions on the accurate guidance such systems can provide to individuals without other source of legal assistance.

Several *risk-based* approaches to regulating AI have or will soon be adopted, including the EU AI Act,³¹¹ the Colorado AI Act,³¹² and the Saskatchewan Legal Regulatory Sandbox “Risk-Based Framework.”³¹³ The focus of these

³¹⁰ For a detailed analysis of the concept, see João Gama et al., *A survey on concept drift adaptation*, 46 ACM COMPUTING SURVEYS 44:1 (2014) (We leave the issue of best practices and standards for handling concept drift to future work).

³¹¹ See EU AI Act, *supra* note 47, at Recitals 26-27 & Annex III 8(a).

³¹² See Colorado AI Act, COLO. REV. STAT. § 6-1-1701 (9)(a) (2024).

³¹³ See L. SOC’Y OF SASK., *supra* note 122, at 26.

approaches is generally on algorithmic processes considered “high risk,” such as those that perform actions with significant legal, financial, employment, or educational consequences (the Colorado AI Act), or those used in determining access to essential services and benefits, law enforcement, education, employment, or administration of justice and democracy (the EU AI Act).

The risk-based approaches appear to cover the entire gamut of AI assurance issues mentioned at the start of this section. Courts have not yet been able to interpret whether legal AI assistants for unrepresented litigants fall within the scope of “high-risk systems.” Still, it seems possible that at least some systems for unrepresented litigants would fall into the high-risk category under some of these acts. Regardless of whether legal AI assistants for unrepresented litigants fall under regulations for high-risk systems, the capability-based approach focuses on the much narrower question of whether the *accuracy* of a particular capability is sufficiently high that its benefits to unrepresented litigants are likely to outweigh the risks. This is a separate and narrower issue than the *overall* assurance standards, which are the main focus of risk-based regulations.

In summary, the capability-based approach is preferable to bright-line tests based on whether a legal AI assistant is providing “advice” or is engaged in “decision-making,” because it bases exemptions from UPL on calculating the actual trade-offs between correct and incorrect information based on public benchmarks. The risk-based approaches address the broader assurance issues of AI systems used in consequential applications, which is important for, but orthogonal to, the cost-benefit analysis of an individual capability.

G. Issues with the Capability-Based Approach

The capability-based framework estimates capabilities’ benefits and risks based on their accuracy on public benchmark datasets. This approach leverages the work of the legal AI research community in certifying legal AI assistants for unrepresented litigants. However, using public benchmark datasets raises two issues: the proliferation of benchmark datasets and data contamination.

1. Proliferation of Benchmark Datasets

In the last decade of research, the legal AI research community has formalized many important legal tasks and developed replicable, empirical procedures for evaluating algorithmic approaches to performing those tasks based on open-access benchmark datasets. The emphasis of this work has been on tasks performed by professional attorneys in their practices. However, tasks needed to assist unrepresented litigants constitute a subset of those the research community has explored. Thus, the technical requirements for evaluating AI systems for unrepresented litigants have been emerging organically from the research community.

Nevertheless, the requirement for a separate dataset for each legal task presents a challenge. While there are currently many benchmark datasets for legal

tasks, the capability-based framework may require separate datasets for many tasks in different jurisdictions and domains. Initially, benchmarks would be available for only a subset of jurisdictions; their reliability in other jurisdictions would be uncertain. For example, a benchmark dataset for the task of predicting the likelihood of success of a domestic protection order in one state might be unreliable in a different state. Moreover, benchmark datasets are informative only to the extent that the cases in those datasets are representative of the actual current cases in the jurisdiction. This could be established only by sampling the actual queries received by a legal AI assistant provider. However, the AI technology community may accelerate the development of benchmarks for unrepresented litigants if practice of law regulating authorities consistently hold that certified legal AI assistants for unrepresented litigants would be exempt from UPL rules.

2. Data Contamination

A second issue arises from the use of public benchmark datasets for the evaluation of capabilities. The replicability and generality of accuracy evaluations depend on the existence of open-access benchmark datasets. However, legal AI assistants are increasingly built around LLMs, which are typically trained on all available public data.³¹⁴ When an LLM is tested on a dataset that was part of its training set, a situation known as *data contamination*, the performance can appear to be artificially high.³¹⁵ Contamination of LLM-based legal AI capabilities with benchmark datasets could inflate their apparent accuracy on benchmark datasets, leading to an underestimation of their actual risks under a given accuracy threshold.

However, reducing data contamination is an area of active research. Much of this work is taking place in the context of *the right to be forgotten* under the E.U.'s General Data Protection Regulation (GDPR) and consists of the development of techniques for *machine unlearning*.³¹⁶ Machine unlearning techniques are still under development. The issues of data contamination and the right to be forgotten, however, are so critical to the legitimacy of LLMs that the legal tech industry will have no choice, in our view, but to devise effective solutions for this problem. Accordingly, we view data contamination as a potential long-term risk to the capability-based framework that bears monitoring, but for which technical solutions are likely to be forthcoming soon.

³¹⁴ Shuo Yang et al., *Rethinking Benchmark and Contamination for Language Models with Rephrased Samples*, ARXIV 1 (Nov. 11, 2023), <https://arxiv.org/pdf/2311.04850> [<https://perma.cc/GS6Z-ESCA>].

³¹⁵ *Id.* at 2; see also Hugo Touvron et al., *Llama 2: Open Foundation and Fine-Tuned Chat Models*, ARXIV 75-77 (July 19, 2023), <https://arxiv.org/pdf/2307.09288> [<https://perma.cc/JEZ8-NCST>].

³¹⁶ Thanh Tam Nguyen, *A Survey of Machine Unlearning*, ARXIV, at Section 1.1 (Sept. 17, 2024), <https://arxiv.org/pdf/2209.02299> [<https://perma.cc/HBE8-LKVP>].

V. STEPS FOR IMPLEMENTING CERTIFIED LEGAL AI ASSISTANTS FOR UNREPRESENTED LITIGANTS

Implementing a certification framework for legal AI assistants is crucial to ensuring that these tools effectively support unrepresented litigants. These steps outline the approach to implementing certified legal AI assistants. This will require practice of law regulating authorities to amend their UPL rules by adding an exemption for legal AI assistants and implementing certification by an external third party. By updating regulatory frameworks and leveraging the expertise of a diverse certification body, this strategy aims to enhance unrepresented litigants' access to justice. The following sections briefly detail the UPL amendments, certification process, implementation, monitoring, and public awareness initiatives necessary to implement certified legal AI assistants for unrepresented litigants.

These implementation steps depend on the existence of benchmark datasets for the capabilities to be certified. Many such datasets exist, as described above, but the research community generally focuses on tasks for attorneys rather than unrepresented litigants. To increase the number of benchmark datasets for unrepresented litigant tasks, stakeholders interested in promoting legal AI must publicize the importance of identifying, analyzing, and developing benchmark datasets specifically for unrepresented litigant tasks. Commitment to AI for social good is widespread in the AI research community;³¹⁷ this commitment could turn into action if the importance of benchmark datasets for unrepresented litigant tasks was broadly understood. Institutions that develop applications for unrepresented litigants, such as courts and legal aid organizations, should be encouraged to share anonymized datasets that reflect the actual cases that they handle. Legal AI researchers should be encouraged to partner with legal aid organizations to develop curated datasets to evaluate organizations' capabilities accurately.

³¹⁷ See, e.g., Nenad Tomašev et al., *AI for Social Good: Unlocking the Opportunity for Positive Impact*, NATURE COMM'NS, May 18, 2020, at 1; Haydn Belfield, *Activism by the AI Community: Analysing Recent Achievements and Future Prospects*, in PROCEEDINGS OF THE 3RD AAAI/ACM CONFERENCE ON AI, ETHICS, AND SOC'Y 15-21 (Annette Markham et al. eds., 2020); see also, AI FOR GOOD, <https://ai4good.org/about-us/> [<https://perma.cc/4MU6-ZR64>] (last visited Oct. 19, 2024).

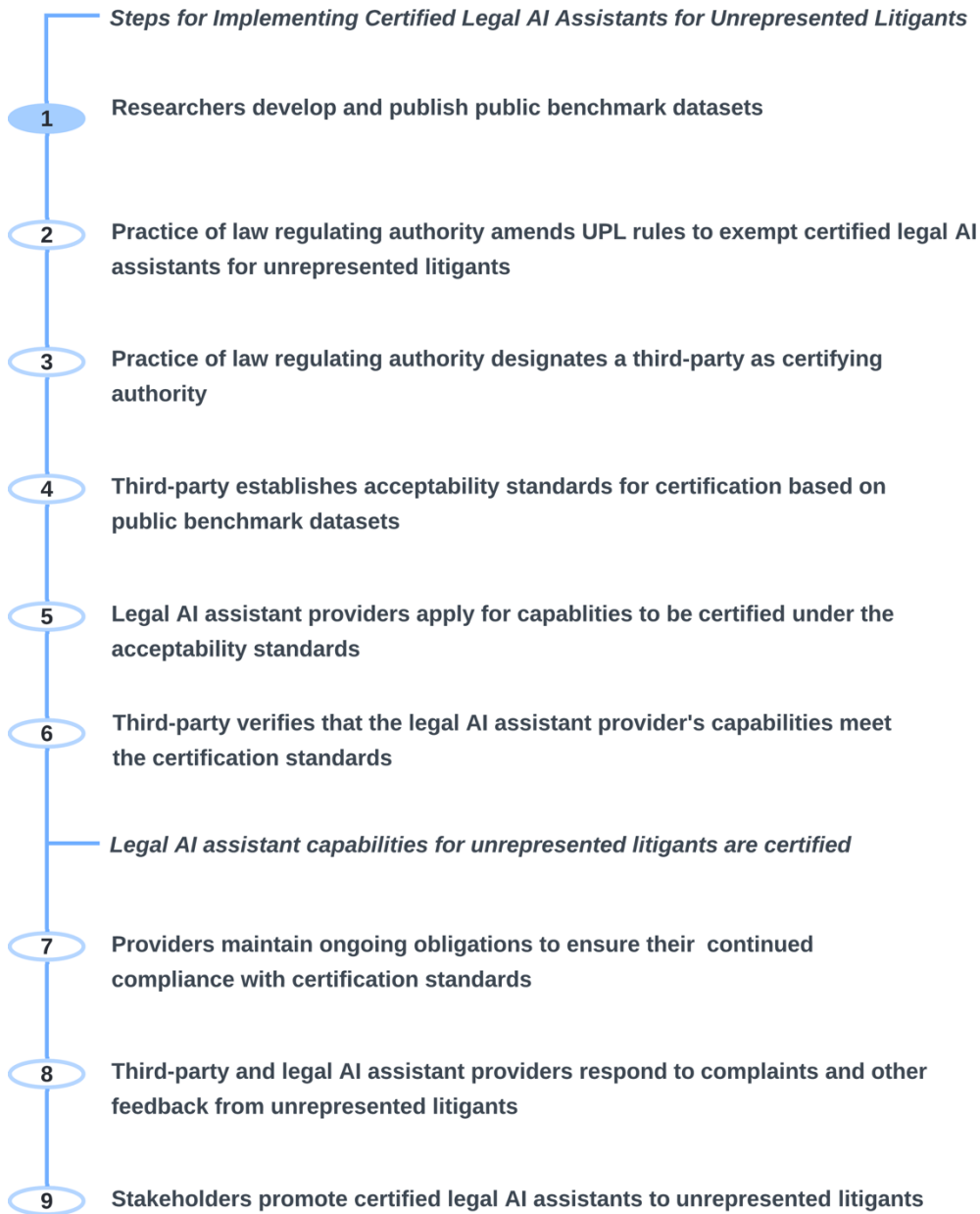


Figure 2. Steps for Implementing Certified Legal AI Assistants for Unrepresented Litigants

A. Exempting Certified Legal AI Assistants From UPL

Recognizing the potential of AI to enhance access to justice, practice of law regulatory authorities would amend their UPL rules. The amendments should include an exception for AI systems that have received certification from a designated third-party organization. This exception would allow certified AI systems to operate and provide legal assistance to unrepresented litigants without violating UPL regulations. This approach is similar to those used by legal

regulatory sandboxes in British Columbia,³¹⁸ Manitoba,³¹⁹ Ontario,³²⁰ Saskatchewan,³²¹ England and Wales,³²² and Utah.³²³ Notably, while Alberta also has a sandbox, it does not offer a UPL exemption.³²⁴ An example of such an exemption could look like:

Exemptions from the Prohibition Against the Unauthorized Practice of Law:

- a) the following are exempt from the prohibition against the unauthorized practice of law:
 - i. ...;
 - ii. ...;
 - iii. ...; and
 - iv. certified legal AI assistants for unrepresented litigants.³²⁵

B. Certification by an External Third-Party

To address the complexities of regulating legal AI assistants for unrepresented litigants, a multi-stakeholder approach should be implemented under which legal AI assistants would be certified by an external third party. This third party could take many forms but should, at a minimum, include technology-competent individuals tasked with evaluating and certifying AI systems based on the capability-based framework discussed above. These organizations should include responsible experts from the legal tech community, academic institutions, and ethical oversight bodies.

Legal AI assistant developers would apply for certification by submitting documentation for each capability, demonstrating that the capability satisfies the acceptability threshold on a benchmark dataset previously designated by the certification body. If no benchmark has been designated, the certifying authority would select one, possibly in cooperation with the developer. As a starting point, developers could propose the dataset used to develop the capability. Capabilities of

³¹⁸ *Innovation Sandbox*, L. SOC'Y OF B.C., *supra* note 37.

³¹⁹ *Regulatory Sandbox Pilot Program*, L. SOC'Y OF MAN., *supra* note 38.

³²⁰ *Access to Innovation*, L. SOC'Y OF ONT., *supra* note 39.

³²¹ *Future of Legal Services Initiative*, L. SOC'Y OF SASK., *supra* note 40.

³²² *SRA Innovate*, SOLICS. REGUL. AUTH., *supra* note 41.

³²³ *Frequently Asked Questions*, UTAH OFF. OF LEGAL SERVICES INNOVATION, *supra* note 42.

³²⁴ *About the Innovation Sandbox*, L. SOC'Y OF ALTA., *supra* note 43.

³²⁵ Language for this example was inspired by the UPL exemptions in Saskatchewan. *See Part 10 Alternative Legal Service Providers 1002(1)*, L. SOC'Y OF SASK., at 54 (Jan. 1, 2020), <https://www.lawsociety.sk.ca/wp-content/uploads/2021/07/RulesJuly2021WEBSITE.pdf-00228230xB6EE0.pdf#page=68>. [<https://perma.cc/96X2-5MZB>].

legal AI assistants that meet the established standards would be certified and exempted from UPL rules.

C. Implementation and Monitoring

Certified legal AI assistants would then be rolled out to the public. In partnership with the practice of law regulatory authority, the certifying authority would actively monitor the performance and impact of these legal AI assistants to ensure they are effectively assisting unrepresented litigants. Continuous feedback mechanisms would be established to gather input from users and stakeholders. Allowing the certifying authority to ensure ongoing compliance with established standards and address any emerging issues promptly. This proactive monitoring and feedback process would help to maintain the reliability, accuracy, and ethical integrity of the legal AI assistants, ensuring they consistently meet the needs of unrepresented litigants.

Feedback systems could include complaint systems, such as those that are established in Utah, where users can complete a complaint form on the sandbox's website,³²⁶ and in Ontario, where the approach is that each licensed provider must have their own individual mechanism for resolving disputes, subject to oversight by the sandbox.³²⁷

D. Public Awareness and Education

Stakeholders should launch educational campaigns to inform unrepresented litigants and the general public about the availability and benefits of certified legal AI assistants. These campaigns should emphasize how certified legal AI assistants can assist unrepresented litigants in navigating complex legal processes. Additionally, stakeholders should provide training programs for legal aid professionals on how to integrate legal AI assistants into their services effectively. By raising awareness and providing education, the initiatives would aim to ensure that unrepresented litigants are well-informed about their options and can confidently use certified legal AI assistants.

E. Continued Public and Private Investment

The public should invest in certifying legal AI assistants for unrepresented litigants because this initiative promises numerous untapped societal advantages. Supporting certified legal AI assistants can create a positive ripple effect that enhances the overall efficiency and fairness of the judicial system. By investing in the certification of legal AI assistants, access to justice could be improved, strain

³²⁶ *Sandbox Consumer Complaint Form*, UTAH OFF. OF LEGAL SERVICES INNOVATION, *supra* note 45.

³²⁷ *Access to Innovation – FAQs: #5*, L. SOC'Y OF ONT., <https://lso.ca/about-lso/access-to-innovation/faqs#5-what-happens-if-a-user-has-a-complaint-about-the-services-they-have-received-from-an-access-t-5> [<https://perma.cc/Z3QH-M4KC?type=image>] (last visited Dec. 29, 2024).

on court resources could be reduced, and everyone, regardless of their financial situation, could navigate the legal system more effectively. This investment leads to a more equitable and smoothly functioning legal system, benefiting society altogether.

The private sector should also consider investing in certifying legal AI. Businesses and legal tech companies have a unique opportunity to innovate and lead in this space. By developing or certifying legal AI assistants, private entities can establish themselves as in the legal technology industry. Additionally, reducing the strain on the judicial system could save money for businesses that frequently engage with the legal system.

VI. CONCLUSION

We have proposed a capability-based framework for certifying legal AI assistants, focusing on the accuracy of their guidance, which addresses the primary concern of UPL regulations—the risk of incorrect legal advice. By establishing certification thresholds based on public benchmark datasets, legal AI assistants can be exempted from UPL restrictions, thus ensuring they provide reliable support to unrepresented litigants.

This is intended as a harmonized global proposal, designed for local implementation by each jurisdiction's practice of law regulating authority, with the flexibility to address individual jurisdictional nuances. Adopting this framework will enhance global access to justice, benefiting unrepresented litigants, regulatory authorities, and the entire legal community by maintaining high standards of legal guidance and promoting innovative AI solutions.

Integrating AI into legal services demands a clear and structured approach to unauthorized practice of law regulations. Our comprehensive survey of various international jurisdictions reveals that policies on legal AI, especially for unrepresented litigants, are still evolving. Some jurisdictions offer general guidance, others impose bans or disclosure requirements, and a few employ legal regulatory sandboxes to promote innovative solutions for access to justice.

While current sandboxes are slated to be temporary, our proposal recommends their continued proliferation and permanence. We propose that practice of law regulating authorities amend their UPL rules to exempt certified legal AI assistants for unrepresented litigants based on the immense need for innovative access to justice solutions. Ultimately, this proposal builds upon the sandbox approaches but aims to establish permanent UPL exemptions, as legal AI assistants and other tools are here to stay.

VII. IN MEMORIAM

Dr. L. Karl Branting
Chief Scientist of Machine Learning for Computational Law
The MITRE Corporation
November 16, 1952 – July 18, 2024

Dr. L. Karl Branting unexpectedly passed away on July 18, 2024, at the age of 71. His loss is deeply felt, both personally by those who knew him and by the broader legal, AI, and access-to-justice communities. Just days before his passing, Dr. Branting was overjoyed to learn that the Columbia Science and Technology Law Review had offered to publish this article.

Dr. Branting was the Chief Scientist of Machine Learning for Computational Law at the MITRE Corporation (2007-2024). Dr. Branting received a Ph.D. in Computer Science from the University of Texas at Austin (1991), a J.D. from Georgetown University (1980), and a B.A. magna cum laude in Philosophy from the University of Colorado (1975). Dr. Branting was the President of the International Association for Artificial Intelligence and Law (2004-2005) and a United States Supreme Court Fellow (2001-2002). He published more than 100 peer-reviewed research articles and books on Artificial Intelligence and, in 2023, chaired an International Workshop on AI for Access to Justice.

In addition to his seemingly countless professional accolades and achievements, Dr. Branting was an extraordinary human being—one of those rare individuals whose brilliance was matched by his kindness. Dr. Branting was known for his curiosity, intelligence, humility, and gregarious nature, which made him an incredible colleague and a beloved collaborator. These personal qualities significantly contributed to his ability to build strong, interdisciplinary teams that worked synergistically toward common goals.

As an academic, Dr. Branting mentored numerous students and researchers, instilling in them a rigorous approach to AI and law. His teaching and research have inspired new generations of scholars to explore and expand upon his work, ensuring ongoing innovation and refinement of AI applications in the access-to-justice space.

Dr. Branting's extensive career in AI and law significantly advanced applications for access to justice. His research in case-based reasoning, decision-support systems, and narrative-driven case elicitation have provided profound insights into how AI can effectively assist unrepresented litigants. Starting in the early 1980s, he pioneered applications for legal AI in the access-to-justice space. His contributions consistently pushed the boundaries of what is achievable at the intersection of AI and law, highlighting new possibilities for technology in the legal domain.

One of his notable early innovations was the Protection Order Advisor, which he developed for the Idaho Supreme Court in 2000. The POA was an AI-driven tool designed to assist individuals seeking protection orders. This advisory

system assessed whether the user could make a prima facie case that the substantive requirements for a protection order were met, thereby extracting the facts pertinent to the applicable legal rules from the user.

More recently, in *Judges Are from Mars, Pro Se Litigants Are from Venus: Predicting Decisions from Lay Text*, Dr. Branting and others explored whether case outcome prediction is feasible when using layperson descriptions of facts. The results established an important challenge in legal AI and access to justice, namely bridging the gap between layperson language and legal language.

In *Scalable and Explainable Legal Prediction*, Dr. Branting and others provided a new method of efficiently annotating large corpora of legal documents and performing explainable legal prediction, introducing innovative solutions to two of the biggest challenges in AI and law.

In *A Computational Model of Facilitation in Online Dispute Resolution*, Dr. Branting and others performed interviews with real-world facilitators in Utah and built machine learning models directly corresponding to their needs. This is an important contribution to the field of using AI in ODR, which is one of the most promising use-cases of AI.

At the time of his passing, Dr. Branting was still working on his book “Equalizing Justice: Harnessing AI for Litigants Without Lawyers” to be published by Cambridge University Press. Dr. Branting’s book will be completed by a group of contributors and advisors to honor his legacy and continue his mission to improve access to justice using artificial intelligence.

Dr. Branting’s dedication to human rights and access to justice is reflected in each of his projects, showing a profound understanding of AI’s potential to democratize access to legal resources. His recent and unexpected passing marks a significant loss to the field and cause, but his groundbreaking work will continue to inspire advancements in AI for access to justice for many years to come.