

Managing Artificial Minds: **Navigating the Legal and Practical Risks of AI**

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What are we talking about?

1. **Current State of Affairs:** Regulation & Integration of Post-Human Resources
2. **Legal Risks:** Privacy, Information Security & Employee Monitoring
3. **Practical Risks:** Bias, Reliability & Opacity
4. **Labour Impact:** Technological Change & Layoffs
5. **Risk Mitigation:** Developing an AI Policy



Integration of “Post-Human Resources”

Not an “if” or a “when”, but a “how”

AI Tools in Organizational Process vs. HR Decision Making

- Recruitment and offboarding - May 2025 says 52% of Employers vs April EE poll
- Performance management and engagement
- Disability management
- *JuiceBox / ClickUp / Workable / Zoho Recruit*



Major Integration Impediments

Considerations for AI use

Regulatory Compliance

Privacy and Information Security

Reliability and Bias



Regulatory Compliance

Regulation moves slowly – technology moves quickly

Context from other Jurisdictions

- EU → *Artificial Intelligence Act*
- USA → Moving away from regulation (“Removing Barriers” EO)
- Australia → Voluntary Ethics Principles, Safety Standards, etc.

Where are we at in Canada?

- Proposed Bill C-27 – included *Artificial Intelligence and Data Act*, overhaul to federal privacy legislation – died on the order paper
- Privacy legislation – PIPEDA, PIPA, FIPPA, Privacy Act
- Piecemeal legislation – Ontario’s *Employment Standards Act*, 2000 amendments
- *Human Rights Code*
- *Workers’ Compensation Act*



Legal Risks

Operating in the grey area of privacy legislation

General framework of privacy legislation:

Private organizations (PIPA) and public bodies (FIPPA) share common responsibilities under privacy legislation:

- Ensure that personal information is collected, used and disclosed only as authorized
- Control authorization and access to information within the organization
- Take reasonable steps to:
 - Ensure the accuracy and accessibility of personal information in the organization's control
 - Ensure the security of personal information in the organization's control

In addition, some organizations have statutory reporting requirements in the event of a “privacy breach” (unauthorized access or disclosure of personal information).



Privacy and Information Security

Commentary and warnings from the Privacy Commissioners

Canada's Information & Privacy Commissioners sound the alarm

- Statement on Generative AI (June 2023)
- Principles for Responsible, Trustworthy and Privacy-Protective Generative AI Technologies (December 2023)
- Joint Canada, BC, QC and Alberta investigation of OpenAI and ChatGPT – still outstanding

Key risks identified:

1. Lacking legal authority for processing personal information in the data sets used to train AI
2. “Inverting” AI models to extract personal information used as training data
3. Lack of transparency and mechanisms for ensuring personal information is accurate and accessible
4. AI models fundamentally incompatible with requirements to notify individuals about what personal information is collected and the purposes for which it may be used

Example: Ontario IPC in *Privacy Complaint PI21-00001* → McMaster University's use of AI when proctoring electronic exams to fail to comply with privacy legislation



Privacy and Information Security

More information can mean more problems

Integration of AI tools into people management can dramatically increase information collection:

- Automated collection (AI transcripts, meeting minutes, time management, etc.)
- Monitoring, particularly with a remote or distributed workforce

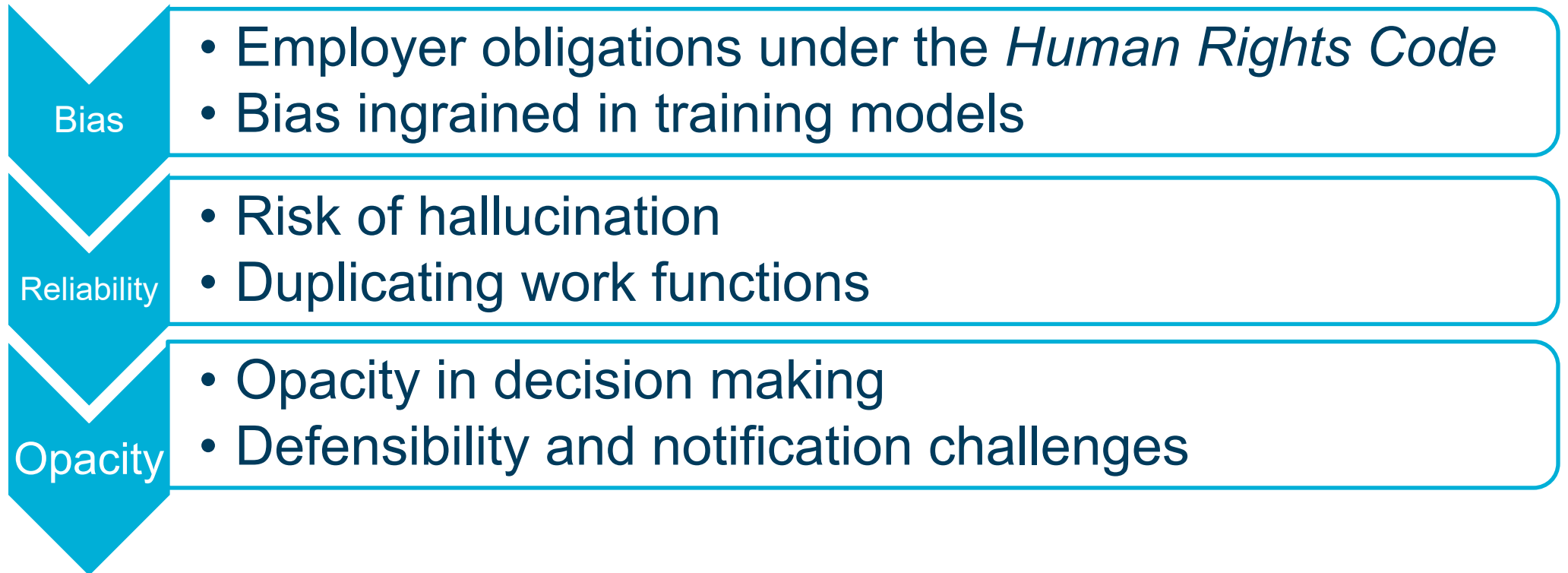
More information can lead to efficiency, but it can also enhance risks - Why?

1. Personal information engages privacy legislation
2. Accessibility and information management requirements
3. Organization can be on the hook for misuse of information, internally or externally:
 - *Tucci v. Peoples Trust Company*, 2020 BCCA 246
 - *G.D. v. South Coast B.C. Transportation Authority*, 2024 BCCA 252
 - *Campbell v. Capital One Financial Corporation*, 2024 BCCA 253
 - *Insurance Corporation of British Columbia v. Ari*, 2023 BCCA 331



Practical Risks

Managing consistency with employer obligations





Bias and Opacity in Decision Making

How is the sausage being made?

Issue 1:

- Obligations under Human Rights legislation
- Bias in training models can translate to decisions:
 - Amazon abandoned its AI hiring tool in 2018
 - ChatGPT has demonstrated racial and disability bias when sorting resumes

Issue 2:

- Backing up your decision – complaints, claims and arbitrations
- The more decision control is vested in AI, the harder it is to prove the basis on which the decision was made



Reliability & ‘Hallucinations’

“For every complex problem there is an answer that is clear, simple, and wrong.” – H.L. Mencken

- Generative AI offers tremendous efficiency gains, but has a persistent risk of “hallucination” and unreliable output
- Even legal-specific AI tools hallucinate between 17% and 33% of the time¹
- Risks emphasized by AI companies:
 - Increased Sophistication = Better Hallucination
 - “Agentic Misalignment”
- On Regulators’ Radar:
 - [2023 Canada federal Government guidelines](#) vs [US using AI re Kennedy files](#)
 - LSO White Paper on AI
 - BC Law Society Guidelines
 - Federal Court Guidelines
- Organizations and Individuals are on the hook for hallucinated content
 - *Zhang v. Chen*, 2024 BCSC 285; *Ko v. Li*, 2025 ONSC 2766; *R. v. Chand*, 2025 ONCJ 282
 - *Moffatt v. Air Canada*, 2024 BCCRT 149
 - [Deloitte repays Australian Government](#) \$440,000 for its IT Compliance Report
 - *Reddy v Saroya*, 2025 ABCA 322 – liability for contractor’s use of AI

¹ V. Magesh et al., [“Hallucination-Free? Assessing the Reliability of Leading AI Legal Research Tools.”](#) (2025) 22 *J Empir Leg Stud*.

U.S. Government Policy Proposals...

- 73-page report on chronic illnesses
- Presented as “milestone,” “evidence-based foundation”
- Referenced seven non-existent studies
- Other research “systematically misrepresented”

World
Europe
US
Americas
Asia
Australia
Middle East
Africa
Inequality
Global development

Trump administration

RFK Jr's 'Maha' report found to contain citations to nonexistent studies

Failures uncovered as US health secretary touted 'gold-standard' science in health report ordered by Trump team



 Robert F Kennedy Jr testifies before a Senate hearing on 20 May. Photograph: Manuel Balce Ceneta/AP

Robert F Kennedy Jr's flagship **health commission report** contains citations to studies that do not exist, according to an **investigation** by the US publication Notus.

<https://www.theguardian.com/us-news/2025/may/29/rfk-jr-maha-health-report-studies>

Technological Change and Layoffs

- At common law, a temporary layoff is still a termination
 - No automatic or implied right to temporary layoff in BC
 - Need temporary layoff provision in employment agreement
- Employment Standards Act
 - layoffs lasting more than 13 weeks (within a period of 20 consecutive weeks) are not temporary layoffs; they're terminations
 - Also consider group termination
- Collective Agreement – Technological Change and Layoffs. S.54 notice

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MONDAY
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2.8K
READS

Strategic HR

60% of HR consult ChatGPT for layoff decisions: Report

A survey reveals that managers now use AI tools like ChatGPT to make critical HR decisions—including layoffs, promotions, and raises—raising major concerns around ethics, mental health, and accountability in the workplace.

<https://www.peoplesmatters.in/news/strategic-hr/60-of-hr-consult-chatgpt-for-layoff-decisions-report-46250>



Develop an AI Policy (and a Privacy Policy)

Practical Steps and Risk Mitigation

Evaluate

- What tools are currently being used?
- What are staff permitted to use?
- What are the risk profiles (personal information, decision making)

Control

- Establish clear policies
- Identify significant areas of risk
- Ensure supervisory awareness

Identify Key Competencies

- Targeted training for roles with integrated AI
- Hire or train for prompt engineering or AI management



Questions?

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