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An Analysis of the Use of ChatGPT as an Unreliable Source for Legal Research by Legal Practitioners in South Africa*

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Abstract

Legal practitioners who have been enrolled to practise either as attorneys, advocates or candidate legal practitioners are bound to conduct themselves in a manner consistent with the legal practitioner’s code of conduct. The code of conduct mandates legal practitioners to uphold their duty to the court and not to mislead the court with non-existent authorities when acting for their clients. The article further discusses the historical development of Chat Generative Pre-Trained Transformer (GPT) through Open Artificial Intelligence. The article asserts that there is growing reliance on ChatGPT as a primary method of research by legal practitioners to draft legal documents and advance legal arguments in court. To this end, the article discusses the case of Mata v Avianca Inc in the United States of America, where a legal practitioner used unverified legal authorities from ChatGPT. The article shows that this case should have served as a caution for South African legal practitioners not to use unverified legal authorities during legal arguments. However, it was not to be as the South African case of Parker v Forsyth, the legal practitioners, in their heads of arguments, submitted that legal

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authorities in the form of case law exist and that these support the argument that a body corporate can be sued for defamation. The court found that the list of cases referred to by the defendant's attorney was generated through ChatGPT and therefore is non-existent. It is argued that South African legal practitioners who use unverified legal authorities must pay (cost de bonis propriis) as a measure to ensure that the legal profession is not brought into disrepute. A legal practitioner guilty of such conduct should be subjected to a disciplinary hearing.

Keywords: ChatGPT; artificial intelligence; legal practitioners; Code of Conduct

1 INTRODUCTION

This article examines the Legal Practitioners Code of Conduct¹ (Code of Conduct) which sets out the duties of and behavioural guidelines for legal practitioners within the scope of their professional duties. The article further discusses the historical development of Chat Generative Pre-Trained Transformer (GPT) and how legal practitioners have used this artificial intelligence (AI) tool as a source for their legal research. The article highlights the dangers of using legal authorities generated through Chat GPT without ensuring their veracity, since this is in direct contravention of the Code of Conduct. To this end, case law is discussed, which should serve as a caution for South African legal practitioners not to rely solely on ChatGPT but to conduct independent legal research. Deterrence measures that can be implemented by the courts and the Legal Practice Council against legal practitioners who do not heed this caution are recommended.

The Legal Practise Act² (LPA) developed a Code of Conduct that applies to all legal practitioners, candidate legal practitioners and juristic entities.³ The Code of Conduct sets out the standard of conduct which legal practitioners and candidate legal practitioners must adhere to.⁴ The Code of Conduct ensures that legal practitioners do not bring the legal profession into disrepute,⁵ by ensuring that they maintain the highest standard of honesty and integrity.⁶ Legal practitioners are required to observe the law,⁷ remain abreast with the development of the law, regulations, legal theory, common law and legal practice in the fields in which they practise.⁸ Advocates must conform to section 34(2) of the LPA read with Part IV of the Code of Conduct in carrying out their duties,⁹ over and above the duty of prioritising the concerns of their clients, in the interest of justice.¹⁰

In the recent case of *Mzayiya v Road Accident Fund (Mzayiya)*,¹¹ the court did not specifically refer to the Code of Conduct but reiterated that legal practitioners should act within its confines. In *Mzayiya*, the plaintiff suffered damages as a result of a motor vehicle collision that had occurred on 20 March 2019.¹² On 20 May 2020, summons were issued against the defendant.¹³

1 Code of Conduct for all Legal Practitioners, Candidate Legal Practitioners and Juristic Entities GN 168 *Government Gazette* 42337 (29 March 2019) (Code of Conduct).

2 28 of 2014.

3 LPA s 36(1) read with Part II, para 2 of the Code of Conduct.

4 LPA s 36(2).

5 Code of Conduct Part II, para 3.15.

6 *Ibid* Part II, para 3.1.

7 *Ibid* para 3.3.3.

8 *Ibid* para 3.13.

9 LPA s 34(2)(a)(i) read with Part IV of the Code of Conduct.

10 Code of Conduct Part II paras 3.3.1 and 3.3.2.

11 *Mzayiya v Road Accident Fund* 2021 1 All SA 517 (ECL).

12 *Mzayiya* para 39.

13 *Ibid* para 46.

The defendant failed to defend the claim on 5 August 2020 and consequently, the plaintiff launched an application for a default judgment.¹⁴ The matter was set down for hearing and the default judgment application was heard on 18 August 2020.¹⁵ The fundamental issue that the court had to deal with in the application for default judgment was in relation to the date of the motor vehicle accident. The summons, particulars of the claim and section 19(f) of the affidavit, together with the affidavit in support of default judgment indicated that the accident occurred on 20 March 2019.¹⁶ The documents attached to the application for default judgment including medico-legal reports, draft order, affidavits submitted to the South African Police Service and an explanatory affidavit by the legal practitioner representing the plaintiff, indicated that the accident had occurred on 15 February 2007.¹⁷

The court also noted with concern, the misrepresentation which appeared from the default judgment application that Ms Nikelo (the mother of the plaintiff) deposed an affidavit on 3 December 2019.¹⁸ The affidavit recorded that the accident had occurred on 15 February 2007.¹⁹ The court further pointed out that Ms Nikelo was the signatory to the section 19(f) affidavit, and the affidavit in support of the application for default judgment.²⁰ She could not explain why the date differed to that of the date on which the accident had occurred.²¹ The section 19(f) affidavit and the affidavit in support of default judgment were signed in less than a month apart.²² Considering that Ms Nikelo signed the section 19(f) affidavit, the court questioned as to whether the applicant knew about or was involved in the collision.²³ The court held that the defendant was not supplied with the correct information regarding the claim and was thus not in a position to have raised a special plea of prescription.²⁴ This article focuses on the ethical standards required by the court from legal practitioner made. It is submitted that while the court did not refer specifically to the Legal Practitioner's Code of Conduct, the remarks made by the court in relation to ethical standards are in line with the principles set out in the Code.

The court held that it is the legal practitioner's duty not to mislead the court on evidentiary and legal points.²⁵ A legal practitioner who knowingly offers or relies on false evidence or misleading evidence behaves unethically.²⁶ It is submitted that this duty ensures that legal practitioners do diligent independent legal research when presenting evidence that seeks to advance their client's case and where AI is used, legal practitioners must ensure that the information authority generated is authenticated. The court further emphasised on this point by referring to the English case of *Rondel v Worsely*, where it was held that a legal practitioner must uphold his duty to the court by ensuring that he produced all relevant authorities, even those that were against him.²⁷ The court held that a practitioner who fails to uphold this ethical principle must be subjected to disciplinary measures.²⁸ The court struck the *Mzayiya* matter from the roll, refusing to grant

14 *Ibid*

15 *Ibid* para 56.

16 *Ibid* para 51.

17 *Ibid* para 55.1.

18 *Ibid* para 55.3.

19 *Ibid*.

20 *Ibid*.

21 *Ibid*.

22 *Ibid*.

23 *Ibid* para 14.

24 *Ibid* para 10.

25 *Ibid* para 83.

26 *Ibid*.

27 *Ibid* para 88 referring to *Rondel v Worsely* 1969 1 AC 191.

28 *Ibid*.

default judgment on a non-existent accident and directed that the matter be investigated for fraud.²⁹

2 CHATGPT THROUGH OPEN ARTIFICIAL INTELLIGENCE

Legal practitioners form part of the global community and are influenced in their scope of work by technological developments. One of these technological advancements is Chat GPT developed through Open Artificial Intelligence (OpenAI).³⁰ It is therefore crucial to understand the meaning of AI. A research programme in the United States of America held at the Dartmouth College, New Hampshire in 1956, initiated a systematic laboratory research into AI.³¹ Since this research began, a number of definitions have come to the fore.³² The common definition of AI is that it is a technology that enables machines to imitate various complex human skills, including but not limited to problem solving, pattern recognition, the creation of algorithms and models that enable robots to carry out operations that traditionally call for human cognitive abilities.³³ Over the years, AI has developed from laboratory-based technology to spreading its influence in various communities. This is evident in the increased number of global businesses utilising AI, such as Google and Microsoft, making it more accessible and affordable to the public.³⁴ In 2015, Elon Musk and Sam Altman launched OpenAI with a strategy directed towards promoting cooperation and exchange of information, while preventing the concentration of AI technology in the hands of a small number of strong organisations.³⁵ ChatGPT was then developed through OpenAI. Kalla and others define ChatGPT as a language model that uses advanced AI techniques to generate natural language responses to a given prompt or input.³⁶ One of the ways to use ChatGPT is to feed a question into the system. The question will be processed, using a knowledge of language patterns and relationships to generate a response.³⁷ The user will receive the generated response and has an option to continue the conversation or ask another question.³⁸

3 CASE LAW ON CHAT GPT THROUGH OPEN ARTIFICIAL INTELLIGENCE AS AN UNRELIABLE SOURCE FOR LEGAL RESEARCH

ChatGPT is trained in large datasets of text data and inaccuracies within that data can be reflected in its responses.³⁹ This essentially places a duty on legal practitioners to ensure that they monitor and verify the information generated through ChatGPT to aid their client's case in court. To this extent, the Code of Conduct mandates legal practitioners not to mislead the court by providing or referring to misleading information or evidence. This has been illustrated by the American case of *Mata v Avianca Inc (Mata)*.⁴⁰ In this case, the plaintiff (Roberto Mata) filed a

29 *Ibid* para 117.

30 Sheikh *et al. Mission AI: The New System Technology* (2023) 15–41.

31 *Ibid.*

32 *Ibid.*

33 Mhlanga “The Value of Open AI and Chat GPT for the Current Learning Environments and the Potential Future Uses” <https://ssrn.com/abstract=4439267> (accessed 02-11-2023).

34 Sheikh *et al.* 15–41.

35 Mhlanga <https://ssrn.com/abstract=4439267> (accessed 02-11-2023).

36 Kalla *et al.* “Study and Analysis of Chat GPT and its Impact on Different Fields of Study” 2023 (8) *International Journal of Innovative Science and Research Technology* 827–833.

37 *Ibid.*

38 *Ibid.*

39 *Ibid.*

40 *Mata v Avianca, In*, No. 1:2022cv01461 - Document 54 (S.D.N.Y. 2023).

legitimate complaint in the Supreme Court of the State of New York.⁴¹ The plaintiff alleged that he had been injured as a result of a metal-serving cart that struck his knee at the time he was flying from El Salvador to John F Kennedy Airport.⁴² The defendant (Avianca) contended that the Supreme Court of the state of New York lacked jurisdiction and consequently, the matter was referred to the federal court on 22 February 2022.⁴³ The defendant filed a motion to dismiss the plaintiff's case stating that the matter was time-barred under the Montreal Convention.⁴⁴

The plaintiff opposed the motion through an affirmation in opposition. In response to opposing the matter, Avianca in his reply memorandum indicated that the plaintiff, in their opposition to the motion, cited a number of cases that could not be located.⁴⁵ A few of the cases that the defendant could locate did not relate to issues in which they were cited for.⁴⁶ The defendant stressed that the cases cited in the plaintiff's Affirmation in Opposition were non-existent.⁴⁷ Faced with such a predicament, the court conducted its own research to locate the cases alleged to be non-existent by the defendant. The court in its own research could not locate several cases cited by the plaintiff.⁴⁸ The court later made a finding that one of the plaintiff's attorneys used ChatGPT, which fabricated the cases cited in their affirmation in opposition.⁴⁹

The plaintiff's attorney admitted to using ChatGPT by stating that he had queried ChatGPT for broad legal guidance.⁵⁰ He subsequently narrowed the question to cases that support the argument that the federal bankruptcy stay tolled the limitations period for a claim under the Montreal Convention.⁵¹ However, this was done to supplement his own research.⁵² The court found that the statement made by the plaintiff's legal representative in his affidavit that ChatGPT "supplemented" his own research was a misleading attempt to mitigate his actions and created a false impression that he had done meaningful research on the issue.⁵³ The court further held that the plaintiff's legal representative relied exclusively only on an AI chatbot as a source of his substantive arguments that he had relied upon in court.⁵⁴ The court emphasised that in researching and drafting court submissions, competent lawyers appropriately obtain assistance from junior lawyers, law students, contract lawyers, legal encyclopaedias and databases such as Westlaw and LexisNexis.⁵⁵ Technological advances were common place to obtain such assistance and that there was nothing inherently improper about using a reliable AI tool for assistance.⁵⁶ But existing rules impose a gatekeeping role on attorneys to ensure the accuracy

41 *Mata* para 1.

42 *Ibid.*

43 *Ibid* para 1.

44 *Ibid* para 3.

45 *Ibid* para 7.

46 *Ibid.*

47 *Ibid.*

48 *Ibid* para 9.

49 *Ibid* para 11.

50 *Ibid* para 38.

51 *Ibid.*

52 *Ibid* para 41.

53 *Ibid.*

54 *Ibid* para 41.

55 *Ibid* para 1.

56 *Ibid.*

of their filings.⁵⁷

The court highlighted the dangers that emanated from using fake legal authorities. The opposing party wasted time and money in exposing the deception.⁵⁸ The court's time could have been utilised for other important endeavours⁵⁹ and the client could have been deprived of arguments based on authentic judicial precedents.⁶⁰ There is potential harm to the reputation of judges and courts whose names were falsely invoked as authors of the bogus opinions and the reputation of a party accused of fictional conduct.⁶¹ To curb such acts, the court issued a penalty of \$5 000, which was jointly and severally imposed on the plaintiff's attorneys and had to be paid to the registrar of the court within fourteen days of the order.⁶²

The *Mata* case should serve as a warning for South African legal practitioners not to use authority obtained from ChatGPT without due diligence to check the accuracy and authenticity of the generated authority relied on. This seems not to be the case because the court was faced with a similar matter in *Parker v Forsyth*.⁶³ In this case, the plaintiff and the defendants were all trustees of the body corporate of the Dorset Sectional Titles Scheme in Parkwood, Johannesburg.⁶⁴ The first defendant was sued in her representative capacity, or alternatively in her personal capacity, for defamation and *iniuria*.⁶⁵ The other five defendants were also sued in their representative capacities for the act of defamation and *iniuria*, allegedly committed by the first defendant.⁶⁶ The plaintiff sought to hold the body corporate liable for defamation and *iniuria* committed by the defendants.⁶⁷ The court indicated that there was no need to cite all the defendants as it created confusion whether they were being sued in their personal or representative capacity.⁶⁸ What would have sufficed, was for the plaintiff to cite the body corporate as the only defendant for purposes of litigation.⁶⁹ To determine whether the relief sought by the plaintiff was acceptable, the interpretation of section 2(7) of the Sectional Titles Schemes Management Act 8 of 2011

57 *Ibid.*

58 *Ibid.*

59 *Ibid.*

60 *Ibid* para 2.

61 *Ibid.*

62 *Ibid* para 34.

63 *Parker v Forsyth NO* (unreported case no (1585/20) [2023] ZAGPRD 1 (29 June 2023) "*Parker*) <https://lawlibrary.org.za/akn/za-gp/judgment/zagprd/2023/1/eng@2023-06-29> (accessed 02-11-2023).

64 *Parker* para 4.

65 *Ibid.*

66 *Ibid.*

67 *Ibid.* para 5.

68 *Ibid.*

69 *Ibid.*

had to be undertaken by the court ('STSMA').⁷⁰ Section 2(7) reads as follows:

The Body Corporate has perpetual succession and is capable of suing and being sued in its corporate name in respect of:

- (a) Any contract entered into by the body corporate;
- (b) Any damage to the common property;
- (c) Any matter in connection with the land or building for which the body corporate is liable or for which the owners are jointly liable;
- (d) Any matter arising out of the exercise of any of its powers or the performance or non-performance of any of its duties under this act or any rule; and
- (e) Any claim against the developer in respect of the scheme if so determined by special resolution.⁷¹

The defendants argued that a claim for defamation cannot be brought in terms of the enabling provision, particularly section 2(7)(d) of the STSMA, which limits the scope of a body corporate to sue and be sued regarding the performance of its functions and duties.⁷² The body corporate of a sectional title scheme manages and maintains its common property and finances and as such, the claims instituted by and against the body corporate were limited to those listed in section 2(7) of the STSMA.⁷³ The plaintiff argued that the body corporate should be held liable because the matter fell within the ambit of the section 2(7)(d) of the STSMA.⁷⁴ The alleged defamatory statement by the first defendant was made during a discussion held by the trustees relating to the value of fringe benefits of employees of the Dorset Body Corporate.⁷⁵ Section 2(7)(d) of the STSMA provides that a body corporate is capable of suing and being sued in respect of any matter arising out of the exercise of any of its powers, or the performance or non-performance, of any of its duties under the STSMA or any rule.⁷⁶ The plaintiff specifically relied on the legislature's use of the words "*any matter*" and contended that the words must be given their ordinary meaning.⁷⁷ This meant that these words had to be interpreted to include as many causes of action that could be classified under the section, rather than restricting them.⁷⁸ The court understood the plaintiffs to suggest that there was authority in the form of case law, in terms of which this question could be answered. Paragraph 30 of the plaintiff's heads of argument stipulated that the courts view body corporates as legal persons in terms of the South African law of entities and they may sue and be sued without limitation.⁷⁹ There were several authorities relating to matters where a body corporate was allowed to sue natural and legal persons for defamation of the body corporate.⁸⁰ At the time of the hearing, the plaintiff's counsel indicated that he could not access the case law.⁸¹ The defendants' attorney was not aware of any

70 *Ibid* para 33.

71 *Ibid*.

72 *Ibid* para 36.

73 *Ibid*.

74 *Ibid* para 40.

75 *Ibid* para 41.

76 *Ibid* para 42.

77 *Ibid*.

78 *Ibid*.

79 *Ibid* para 78.

80 *Ibid*.

81 *Ibid*.

such authority.⁸²

The court required both parties to check the sources suggested by the plaintiff's legal representatives.⁸³ The matter was then postponed to 22 May 2023 for the result of the research.⁸⁴ On the aforementioned date of 22 May 2023, it was duly acknowledged by the legal representative of the plaintiff that the relevant legal authorities, upon which the argument was based, could not be substantiated.⁸⁵ In the ordinary course of events, it was plausible that such an act could have been pardoned, were it not for the subsequent circumstances. Between 28 March 2023 and 22 May 2023, the legal representatives of the involved parties engaged in extensive and substantive discourse pertaining to the authorities of the case, which the plaintiff's legal counsel claimed to have existed.⁸⁶ This was substantiated by a compilation of documents comprising the pertinent email correspondences, which were tendered before the court in furtherance of the request for an award of punitive costs.⁸⁷ In light of the circumstances, it was comprehensible that the legal representatives of the defendants were eager to obtain access to the pertinent jurisprudence upon which the plaintiff relied.⁸⁸

During this period, the plaintiff's legal representatives passed on to the defendant's legal representatives a compilation of cases, accompanied by a corresponding summary, with the intention of presenting them as the pertinent authorities in question.⁸⁹ With regard to the entitlement of a body corporate to sue for defamation, the following cases were generated through ChatGPT and provided by the plaintiff's attorney. The first was the case of *The Body Corporate of the Brampton Court v Weenen*, in which the body corporate sued a unit owner for defamatory comments made in an email to other owners in the scheme.⁹⁰ The second case was *The Body Corporate of Bela Vista v C & C Group Properties CC*, in which the body corporate sued a Close Corporation for defamation after it had sent a defamatory letter to the body corporate.⁹¹ With regard to the body corporate being sued for defamation, the case of *Dolphin Whisper Trading 21 (Pty) Ltd v The Body Corporate of La Mer* was provided where a company succeeded with a claim for defamation after the body corporate made defamatory statements about the company's business operations.⁹²

Generally, where a body corporate sued or was sued for defamation the following cases were generated by ChatGPT and were provided by the plaintiff's attorney to support their client's case, namely: (a) *Body Corporate of Pinewood Park v Behrens*; (b) *Body Corporate of Empire Gardens v Sithole2*; (c) *Body Corporate of the Island Club v Cosy Creations CC*; and (d) *Body Corporate of Fisherman's Cove v Van Rooyen*.⁹³ The legal representatives of the defendants

82 *Ibid.*

83 *Ibid* para 79.

84 *Ibid.*

85 *Ibid* para 80.

86 *Ibid.*

87 *Ibid.*

88 *Ibid.*

89 *Ibid* para 81.

90 *Ibid* para 82.1. See *The Body Corporate of the Brampton Court v Weenen* [2012] ZAGP JHC 133, Non-existent case provided by the plaintiff's attorney.

91 *Ibid* para 82.2. See *The Body Corporate of Bela Vista v C & C Group Properties CC* [2009] ZAGPPHC 54, Non-existent case provided by the plaintiff's attorney.

92 *Ibid* para 83.1 See *Dolphin Whisper Trading 21 (Pty) Ltd v The Body Corporate of La Mer*; Non-existent case provided by the plaintiff's attorney.

93 *Ibid* para 84. See *Body Corporate of Pinewood Park v Behrens* [2013] ZASCA 89, *Body Corporate of Empire Gardens v Sithole and Others* 2017 ZAGPJHC 23, *Body Corporate of the Island Club v Cosy Creations CC* [2016] ZAWCHC 182, *Body Corporate of Fisherman's Cove v Van Rooyen* [2013] ZAGPHC 43, Non-existent cases provided by the plaintiff's attorney.

encountered insurmountable obstacles in their quest to obtain access to any of the above-mentioned cases provided by the plaintiffs' attorneys.⁹⁴ The attorneys representing the plaintiff were regrettably unable to provide them with copies of the cases.⁹⁵

During the hearing held on 22 May 2023, the legal representative acting on behalf of the plaintiff elucidated that their legal counsel had procured the relevant legal precedents by means of utilising the ChatGPT platform.⁹⁶ The attorneys representing the plaintiff accepted the legal authority generated through ChatGPT for the purpose of engaging in legal research and subsequently, embraced the outcomes it produced without duly ensuring its veracity.⁹⁷ Upon further examination, it came to light that the cases provided by the plaintiff's attorneys were non-existent.⁹⁸ The names, citations and decisions of the provided cases were all fictitious. The counsel representing the plaintiff was compelled to acknowledge and accept this fact.⁹⁹

The counsel representing the defendants contended that such an endeavour to deceive the court necessitates the imposition of a suitable punitive costs order.¹⁰⁰ Nevertheless, it was imperative to note that the legal representatives of the plaintiffs did not proffer these cases to the court in the capacity of binding authorities, rather they tendered them to the defendants' counsel.¹⁰¹ The court emphasised that attorneys, in their capacity as legal practitioners, are expected to exercise due diligence in identifying and consulting relevant legal precedents before implementing any course of action.¹⁰² It is incumbent upon them to thoroughly assess and comprehend the cases upon which they intend to rely to avoid any potential errors or missteps in their proposed actions.¹⁰³ The court further opined that an excessive reliance was bestowed upon the credibility of the legal research produced by AI, while concurrently neglecting the duty to diligently corroborate the said research.¹⁰⁴ Upon careful examination, it was evident that the court possessed a substantial degree of confidence in affirming that both the attorney representing the plaintiff and her legal counsel did not make any deliberate attempts to deceive or mislead the court.¹⁰⁵ It is submitted that the court should have granted cost *de bonis propriis* against the plaintiff's attorney and legal counsel. This is because there was deliberate misleading of the court on non-existent authorities supporting their client's case. This was quite evident when the court pointed out that paragraph 30 of the plaintiff's heads of argument stated that the courts view body corporates as legal persons in terms of the South African Law of entities in that they may sue and be sued without limitation.

The court further held that the present case served as a warning, particularly directed towards the legal practitioners implicated in this case, that in the area of legal research the expediency afforded by modern technology must still be complemented by a measure of traditional and self-reliant perusal.¹⁰⁶ The judiciary anticipated legal practitioners to approach novel legal issues with a legally autonomous and inquisitive mindset, rather than merely regurgitating

94 *Ibid* para 85.

95 *Ibid*.

96 *Ibid* para 86.

97 *Ibid* para 87.

98 *Ibid*.

99 *Ibid*.

100 *Ibid* para 88.

101 *Ibid* para 89.

102 *Ibid*.

103 *Ibid*.

104 *Ibid* para 90.

105 *Ibid* para 91.

106 *Ibid* para 90.

unverified research obtained from a chatbot.¹⁰⁷ While it was acknowledged that the plaintiff's legal representatives did not possess the intention to deliberately deceive any party, it was an undeniable consequence of this unfortunate situation that the legal practitioners representing the defendants were, in fact, led astray into believing the authenticity of the said authorities.¹⁰⁸ Consequently, the individuals in question would have expended a substantial amount of time and exertion in their fruitless endeavours to locate and trace these authorities.¹⁰⁹ The hearing of 22 May 2023 was intended for the specific purpose of receiving the relevant case law authority that turned out to be non-existent. The court held that the defendants' request for a costs order in this matter was not deemed to be unreasonable,¹¹⁰ however the court deemed the action of the plaintiff's attorney not to be punitive in nature.¹¹¹ The embarrassment associated with this incident was probably sufficient punishment for the plaintiff's attorneys.¹¹² It is argued that the court should have awarded a cost order against the plaintiff's attorneys as this would serve as a deterrent and send a strong message to South African legal practitioners to verify the authenticity of any authority generated through Chat GPT.

4 CONCLUSION

This article cautions South African legal practitioners from using unverified legal authorities as this is in direct contravention of the Code of Conduct. The rationale is not to discourage legal practitioners from using ChatGPT and other forms of AI tools that may assist them in their scope of work. To this end ChatGPT has the potential to assist legal practitioners with their research by summarising large amounts of text data, generate legal documents such as contracts, particulars of claim, etcetera, and providing legal analysis by providing suggestions and insight based on its comprehension of legal principles and precedents.¹¹³ However, there are some the challenges when using ChatGPT. One is that it may not have the same level of understanding and judgement as a human, and thus unable to provide the in-depth analysis of legal principles and precedents.¹¹⁴ The deceptional use of ChatGPT is demonstrated in both the *Mata* and *Parker* cases in which false legal cases and possibly false legal documents were utilised. This also highlights the fact that a legal practitioner may not deny liability on the basis that legal authority and arguments presented to court were generated through AI. The duty to ensure that legal authority generated through AI is verified and accurate remains the responsibility of the legal practitioner. It is submitted that legal practitioners who turn a blind eye to this caution and fail to abide by the legal practitioner's code of conduct, should incur costs *de bonis propriis*. Where legal practitioners repeatedly mislead the court with false legal authority, the Legal Practise Council should take disciplinary action against them to protect the image of the profession as highlighted in the *Mzayiya* case.

107 *Ibid.*

108 *Ibid* para 91.

109 *Ibid.*

110 *Ibid.*

111 *Ibid.*

112 *Ibid.*

113 Perlman "The Implications of ChatGPT for Legal Services and Society" <https://ssrn.com/abstract=4294197> (accessed 02-11-2023).

114 *Ibid.*