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THE IMPACT OF AI ON ESTATE PLANNING

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In Part 3 of RBS's AI & The Law: Legal Insights for the Digital Age series, we explore the impact of AI on estate planning.

Overview

There is no doubt that AI has the potential to make many aspects of our lives easier, and the increasing prevalence of AI technology in today's world is difficult to ignore. This article will outline AI's impact in the estate planning context, with a particular focus on the preparation of wills, and the potential benefits and risks of using AI for estate planning purposes.

Estate planning encompasses a broad area of law that not only involves the preparation of wills to dispose of one's assets upon their death, but also planning for one's potential incapacity through the appointment of representatives for legal, financial, personal, and medical decisions, planning for the intergenerational transfer of wealth, tax planning, and business succession planning, among others.

Benefits of Using AI Technology in Estate Planning

One of the benefits of using AI in estate planning is the ability to streamline the preparation of entire legal documents such as wills and enduring powers of attorney. Lawyers can utilize AI for traditionally time-consuming administrative tasks, such as file organization and data compilation required to draft documents, improving cost-efficiency for clients. AI may be able to generate such documents in mere seconds. It can be expensive to meet with a lawyer for comprehensive estate planning. Incorporating AI into a legal practice could result in better access to timely legal services for clients at a fraction of the cost.

AI can also be used by the general public to educate themselves about general estate planning and legal principles, to better understand and interpret existing legal documents they may have, and even to generate their own estate planning documents for themselves. AI has the potential to increase efficiencies in a legal practice, increase access to legal services and to be a powerful tool for increasing knowledge.





Risks of Using AI Technology in Estate Planning

Although there are many potential benefits to using AI in estate planning, in its current state, AI cannot completely displace the role of a legal professional. Extreme caution should always be used by both individuals and legal professionals when using AI. Below are some of the most notable considerations:

1. **Confidentiality:** If a third-party AI service provider, such as ChatGPT, is used, any data that is submitted to the system is stored and subject to unintended disclosure. For instance, in the event of a data breach, confidential information could be disclosed to third parties. One should consider the extent of sensitive information they are providing when using AI. Certain precautions could be taken to reduce the amount of identifying information, such as replacing names, addresses, etc., but this may not completely eliminate the risk of confidentiality breaches and loss of privacy.
2. **Accuracy and Reliability:** AI's ability to generate documents is largely limited to the prompts that are used. Therefore, the instructions given to the AI system must be sufficiently detailed and provide enough context in order to generate useful documents. A slight change in instructions may produce distinctly different documents, or AI may not recognize the nuances in circumstances that require customization. In addition, AI technology is programmed to always provide an answer to a prompt, without regard to whether the result is reliable and accurate. This makes AI susceptible to false outputs known as "hallucinations". It is imperative users consult legal professionals to ensure the accuracy and reliability of documents generated using AI.
3. **Unique Circumstances and Local Law:** A will that is prepared using AI may not take into consideration an individual's unique circumstances or the specific laws of the jurisdiction(s) that will govern their estate.

For instance, the *Wills, Estates and Succession Act* (British Columbia) ("**WESA**") governs the law of inheritance in British Columbia, Canada. WESA is unique in Canada, as it provides that a deceased person's spouse and children may apply to the court to vary the deceased person's will if it does not make adequate provision for their proper maintenance and support. If such an action is commenced, the court can vary a will to redistribute assets among a will-maker's spouse, children and other beneficiaries. If the AI system does not consider the application of WESA, it may result in generating a will that is more vulnerable to a legal challenge resulting in the will-maker's wishes not being honored, significant legal fees, delay of the administration of the will-maker's estate, and irreparable damage to familial relationships.

In addition, a will can also be challenged on the basis that the will-maker did not have the requisite testamentary capacity to execute the will. The assessment of capacity is a legal determination in which a lawyer plays a key role. It is unlikely that an AI system could carry out a reliable capacity assessment, even





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if it is provided with a detailed prompt regarding the will-maker's circumstances.

There are countless other factors that can affect an estate plan, including tax implications and probate fees; unique family circumstances such as blended families and beneficiaries with disabilities or substance abuse issues; owning assets in multiple jurisdictions; and owning assets in complicated structures such as corporations and trusts. Although a will is a key component of an estate plan, it is often used in conjunction with other planning tools such as joint ownership, beneficiary designations and trusts. If all of the factors are not sufficiently considered and accounted for by AI, it is very possible that one could end up in a worse situation with a poorly drafted will and inadequate estate plan, than they would have been in had they passed away with no estate plan at all.

Conclusion

There are certainly opportunities to use AI to streamline efficiencies in collecting data and drafting estate planning documents. There are even situations where AI could produce quick and cheap wills that are valid and accurately reflect the will-makers wishes. However, there are still many risks if relying on AI in a more substantive estate planning context. A will that works in one province or set of circumstances, may not work in another. One should consult with a lawyer if they are concerned as to whether the use of AI is appropriate in their unique circumstances.



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