

# The Paradox of AI in Expert Evidence: Extraordinary Capability, Extraordinary Responsibility

**A commentary on the current uses, predicted trajectory, and the risks and limitations of unqualified and unconstrained AI use in expert evidence in dispute resolution.**

*AI is the most useful business tool that I have seen in over 30 years. It is also, without qualification, one of the most dangerous. That paradox is the subject of this commentary.*

## The Paradox of AI in Expert Evidence: Extraordinary Capability, Extraordinary Responsibility

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Artificial Intelligence (AI) is the most useful business tool that I have seen in over 30 years. Conversely, it is also one of the most dangerous tools. Recent industry discussions surrounding such a critical paradox have motivated me to research and subsequently write this commentary on AI use in dispute resolution.

The principal risk facing expert evidence is not that AI will replace experts. It is that AI will allow individuals lacking genuine expertise to produce outputs that superficially resemble expert analysis.

I believe AI disclosure should become mandatory in expert evidence. Many practitioners will disagree. Some will argue disclosure is unnecessary. Others will argue it is already implied by existing duties. I disagree. The profession is moving too slowly.

I write through the lens of a project advisory and expert services practitioner in international complex infrastructure and renewable energy in the Asia-Pacific region, having witnessed an increasing volume of AI-related outputs which I consider paradoxical. Extraordinary capability yet extraordinary responsibility. Is AI use in expert evidence a productivity multiplier, a credibility risk, and a possible risk to the judicial system?

This commentary addresses the current uses, predicted trajectory, risks, and limitations of unqualified and unconstrained AI use within infrastructure and renewable energy disputes, specifically expert evidence within the arbitration domain.

*As Dame Victoria Sharp, President of the King's Bench Division, observed in *Ayinde v The London Borough of Haringey* [2025]: "Artificial intelligence is a tool that carries with it risks as well as opportunities. Its use must take place therefore with an appropriate degree of oversight, and within a regulatory framework that ensures compliance with well-established professional and ethical standards if public confidence in the administration of justice is to be maintained."<sup>1</sup>*

### What is AI?

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To better understand AI in dispute resolution, one must first determine the most applicable definition of AI and then apply it aptly to the dynamics of dispute resolution, specifically international arbitration and expert services.

For the purposes of this commentary, AI is defined as computational systems that generate, analyse, classify, predict, or recommend outputs based on data, algorithms, and statistical models, including machine learning systems and large language models. AI may assist human decision-making and professional analysis, but it does not possess independent judgment, professional responsibility, or legal accountability.

The information technology company IBM defines AI as "technology that enables computers and machines to simulate human learning, comprehension, problem solving, decision making, creativity and autonomy."<sup>2</sup>

The intergovernmental policy forum, OECD, defines an AI system as "a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment."<sup>3</sup>

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<sup>1</sup> *Ayinde v The London Borough of Haringey* [2025] EWHC 1383 (Admin).

<sup>2</sup> IBM (2026). *What is Artificial Intelligence (AI)?* IBM. <https://www.ibm.com/think/topics/artificial-intelligence>.

<sup>3</sup> OECD (2024). *'Explanatory memorandum on the updated OECD definition of an AI system'*, OECD Artificial Intelligence Papers, No. 8, OECD Publishing, Paris.

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The Academy of Experts defines AI as referring to “the development of computer systems capable of performing tasks that typically require human intelligence. AI technologies typically act with some degree of autonomy, rather than being constrained by explicitly programmed rules... AI is not sentient, and its capabilities are based on (and limited by) the tasks and data sets available to it from which to learn.”<sup>4</sup>

Research suggests that it is challenging to find a precise definition for AI to apply to the workings of dispute resolution. However, what is clear is that AI as it relates to dispute resolution must not be used as a substitute for expert judgment that is independent, fact-driven, traceable, and grounded in relevant experience and qualification.

Despite being considered as a ‘black box’ that lacks explainability and appears to have the inherent problems of opacity, strangeness, unpredictability and justification<sup>5</sup>, AI has tremendous benefits if used correctly, responsibly, and with adequate disclosure.

*As Sheikh et al. (2023) observe: “It is not surprising that AI is so difficult to define clearly. It is, after all, an imitation or simulation of something we do not yet fully understand ourselves: human intelligence.”<sup>6</sup>*

And perhaps there is a clue in the name. AI is artificial intelligence.

## **The Historical & Current Purpose of Expert Evidence**

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The increasing reliance on expert evidence invites a question that is rarely asked. What was expert evidence originally intended to achieve and is such still relevant today?

The modern starting point is often traced to *Folkes v Chadd* (1782)<sup>7</sup>, where Lord Mansfield admitted the opinion of the engineer John Smeaton regarding the causes of silting at Wells Harbour. The principle was straightforward. Where a dispute involved matters beyond the ordinary knowledge of the decision-maker, specialised expertise could assist the court in reaching a more informed conclusion.<sup>8</sup>

Although contemporary arbitration has evolved considerably since *Folkes v Chadd*, the underlying rationale remains unchanged. Expert evidence exists because there are questions that legal analysis alone cannot answer. A tribunal may determine what a contract requires, however, an expert may assist it in understanding how a transmission network operates, how a turbine commissioning programme is sequenced, whether an EPC failure was technically foreseeable, or whether a battery energy storage system performed in accordance with accepted engineering standards.

The expert’s role is therefore both evidential and educational. The expert does not decide the dispute. Rather, the expert assists the tribunal to understand specialised matters so that it can make better-informed decisions.<sup>9</sup> The value of expert evidence has never been access to information alone. It has always been the application of independent judgment, experience, and specialised knowledge to information that the tribunal cannot reasonably be expected to evaluate unaided.

This is particularly important in the age of artificial intelligence.

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[https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/03/explanatory-memorandum-on-the-updated-oecd-definition-of-an-ai-system\\_3c815e51/623da898-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/03/explanatory-memorandum-on-the-updated-oecd-definition-of-an-ai-system_3c815e51/623da898-en.pdf)

<sup>4</sup> The Academy of Experts (2026). *Guidance for expert witnesses on the use of artificial intelligence (AI)*, p. 3. <https://taecdnet.b-cdn.net/wordpress/wp-content/uploads/2026/02/fs-26-01-AI.pdf>

<sup>5</sup> Brożek, B., Furman, M., Jakubiec, M., & Kucharzyk, B. (2023). *The black box problem revisited: Real and imaginary challenges for automated legal decision making*. *Artificial Intelligence and Law*, 31(1), pp. 427–440.

<sup>6</sup> Sheikh, H., Prins, C., and Schrijvers, E. (2023). ‘Artificial Intelligence: Definition and Background’, in *Mission AI: The New System Technology*, Springer, p. 16.

<sup>7</sup> *Folkes v Chadd* (1782) 3 Doug KB 157.

<sup>8</sup> Freckelton, I., & Selby, H. (2019). *Expert Evidence* (7th ed.). Thomson Reuters; Phipson on Evidence (20th ed., 2022), ch. 33.

<sup>9</sup> Freckelton & Selby. (2019).

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## Current Applications of AI in Disputes

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Available evidence indicates that AI use in disputes is real and appears to be accelerating. Survey data, institutional guidance, and commercial platform deployments collectively point to five operational categories where AI is currently performing well.

The common thread is consistent: AI delivers most reliably on structured, bounded tasks where the inputs are defined, and an experienced practitioner can verify the output.

### Document review at scale

A dispute involving a major EPC project can generate tens of thousands of documents, contemporaneous records, RFIs, design submittals, correspondence chains, variation orders, programme updates, minutes, and much more. AI-assisted review tools are now capable of rapidly processing large volumes of documents, identifying patterns, flagging contradictions, and surfacing records that manual review may miss or deprioritise. AI's depth and speed of pattern recognition represent a step change in capability and productivity, not an incremental improvement.

### Contract and clause analysis

AI performs well on structured legal text, whether that be with FIDIC conditions, notice obligation chains, risk allocation mapping across a multi-contract EPC structure, or identification of drafting errors. These are tasks where AI tools now rapidly provide reliable and useful output with appropriate prompting. It can also be well argued that AI cannot and may never be able to replace the grounded interpretations, opinions, conclusions, testimony, traceability, and critical independence of truly experienced and qualified experts.

### Chronology and timeline construction

The foundation of most delay claims is a coherent chronology of events. AI can extract dates, sequence events, and identify timeline gaps from a suite of documents faster than a team can produce. While such AI outputs still require critical expert review, the time saving is substantial.

### Transcript and hearing analysis

AI summarisation of dispute transcripts, identification of witness inconsistencies across sessions, and tracking of specific factual issues through a hearing record are now operationally deployed in major commercial disputes proceedings<sup>10</sup>. The CIARB Guideline on the Use of AI in Arbitration (updated September 2025) identifies hearing transcription and inconsistency detection as recognised AI benefits, noting that AI tools can generate hearing transcripts at a fraction of the cost of human stenographers.<sup>11</sup>

Platforms such as Opus 2, which supported approximately 75% of The Lawyer Top 20 Cases in 2024, now provide AI-assisted transcript summarisation and natural-language query functions that are increasingly being deployed in complex litigation and arbitration proceedings to assist counsel and dispute teams in managing growing volumes of evidence and hearing data.<sup>12</sup>

### Research assistance

AI deployment for rapid synthesis of arbitral awards, jurisdiction specific case law, and regulatory frameworks is useful and saves substantial time, but is not a substitute for legal judgment. AI research assistance is a genuine multiplier on the speed at which experienced practitioners can cover ground.

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<sup>10</sup> Friedman, E., Zibibbo, N., Bhat, R., Prevatt, S., and André, O. (2025). *AI in international arbitration: A fast-evolving landscape*. Freshfields Bruckhaus Deringer. <https://www.freshfields.com/globalassets/our-thinking/campaigns/international-arbitration-in-2025/international-arbitration-in-2025.pdf>.

<sup>11</sup> Chartered Institute of Arbitrators, *Guideline on the Use of AI in Arbitration (updated September 2025)*. [https://www.ciarb.org/media/bpndtcgu/guideline-on-the-use-of-ai-in-arbitration\\_updated-sept-2025.pdf](https://www.ciarb.org/media/bpndtcgu/guideline-on-the-use-of-ai-in-arbitration_updated-sept-2025.pdf).

<sup>12</sup> Opus 2. (2025, January 14). *Opus 2 momentum: Reflecting on a transformative year in legal technology*. <https://www.opus2.com/en-us/news/opus-2-momentum-2024>.

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*It is important to note that properly governed AI has the potential to improve access to justice by reducing document review costs, accelerating tribunal access to relevant evidence, improving procedural efficiency, and reducing barriers to participation in complex disputes. The argument in this commentary is not against AI use — it is for its responsible, experienced, and disclosed use.*

## Where AI Is Heading in the Near Future

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Current trends and institutional deployments suggest that AI will become progressively embedded at every stage of a dispute lifecycle, from early contractual risk identification through to post-award enforcement analysis.

The direction of travel is clear, though the pace and extent of adoption will vary across jurisdictions and practice areas.

A 2025 international arbitration survey by White & Case, the School of International Arbitration, and Queen Mary University of London consisted of 2,402 questionnaire responses and 117 interviews conducted across a diverse range of participants.<sup>13</sup> The survey concluded that in the next five years AI use in arbitration is expected to increase significantly, driven by the potential for greater efficiencies. The survey states that the “principal current uses of AI include factual and legal research, data analytics and document review. AI assistance in drafting and in evaluating legal arguments is also expected to increase, but significant concerns persist about accuracy, ethical issues and AI’s ability to handle complex legal reasoning.”<sup>14</sup>

The survey also found that the principal drivers for the increased use of AI in international arbitration are saving party and counsel time (54%), cost reduction (44%), and reduction of human error (39%).

The principal obstacles were cited as concerns about errors and bias (51%), confidentiality risks (47%), lack of experience (44%), and regulatory gaps (38%).<sup>15</sup>

### Predictive dispute modelling

The Chartered Institute of Arbitrators states that “AI has the potential to go beyond research and data analysis to provide predictions of potential case outcomes and insights on the likely response to certain procedural strategies or arguments.”<sup>16</sup> Such AI predictive functions may also present opportunities for disputing parties to make better-informed assessments of the costs, risks, and “probabilistic legal predictions” of proceeding to arbitration.<sup>17</sup>

AI-enabled arbitration analytics are increasingly being developed to support data-informed pattern analysis across recurring claim types, arbitrator profiles, procedural behaviours, and forum trends. This is evident in emerging commercial platforms such as Jus Mundi (whose Jus AI 2 research-based platform launched in September 2025) and Dispute Resolution Data, which announced in October 2025 an enhanced AAA-ICDR data partnership and a relaunched platform with advanced AI capabilities.

However, because many arbitral awards remain confidential or unpublished, and because complex disputes are highly fact-specific, current AI tools are better described as decision-support and risk-calibration instruments rather than statistically reliable outcome-prediction engines for specific tribunals or jurisdictions.

### AI-assisted expert report drafting

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<sup>13</sup> White & Case, School of International Arbitration, and Queen Mary University of London (2025). *2025 International Arbitration Survey*. <https://www.whitecase.com/sites/default/files/2025-10/white-case-qmul-international-arbitration-survey-report-2025.pdf>.

<sup>14</sup> White & Case (2025).

<sup>15</sup> White & Case (2025).

<sup>16</sup> Chartered Institute of Arbitrators (2025). p.4. [https://www.ciarb.org/media/bpndtcgu/guideline-on-the-use-of-ai-in-arbitration\\_updated-sept-2025.pdf](https://www.ciarb.org/media/bpndtcgu/guideline-on-the-use-of-ai-in-arbitration_updated-sept-2025.pdf).

<sup>17</sup> Jones, D. (2026). ‘Beyond the Horizon: Charting the Next Forty Years of Alternative Dispute Resolution’, paper delivered at the ADC 40th Anniversary ADR Conference, 27 March 2026, p. 5.

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There is evidence that AI-assisted expert report drafting is emerging across parts of the profession, often informally and ahead of settled professional standards. The risk is greatest where practitioners use AI as a drafting or reasoning substitute without the experience, supervision, or technical controls needed to identify hallucinations, omissions, confidentiality breaches, or analytical errors. And without adequate disclosure.

The professional response accelerated in late 2025 and 2026. On 30 January 2026, the Academy of Experts, whose President is Lord Neuberger of Abbotsbury, former President of the UK Supreme Court published guidance addressing the responsible use of AI by expert witnesses. Key risks identified include AI use in analysis to inform opinion, generating narrative content, and scenario modelling.<sup>18</sup>

AI may assist, but the expert remains personally responsible for the reasoning, conclusions, and report adopted as their own. Mr Justice Waksman's remarks at the Bond Solon Expert Witness Conference in November 2025, in which he described a solicitor providing a pre-drafted AI report to an expert as "a gross breach of duty" reinforce that position<sup>19</sup>. That 14% of expert witnesses surveyed indicated they were willing to accept instructions on the same basis compounds the concern.<sup>20</sup>

The confidentiality risk is equally serious. In *UK v Secretary of State for the Home Department*<sup>21</sup>, the Upper Tribunal warned that uploading confidential material into publicly accessible generative AI systems does waive client confidentiality and legal professional privilege, stating "uploading confidential documents into an open-source AI tool, such as ChatGPT, is to place this information on the internet in the public domain, and thus to breach client confidentiality and waive legal privilege, and any such conduct might itself warrant referral to the regulatory body." This ruling is directed at publicly accessible tools with data retention; it does not apply in the same way to properly configured enterprise AI deployments with appropriate data governance.<sup>22</sup>

The IBA Rules on the Taking of Evidence in International Arbitration (2020) remain silent on AI. Current trends suggest that AI-assisted expert drafting may become routine within the near future. The frameworks that should govern it are still being written. The expert's opinion and independence cannot be delegated to an AI system. Nor, ultimately, can the administration of justice.

## **Real-time programme analysis**

Integration of AI with live project control systems such as scheduling, cost tracking, earned value management, and much more, will enable near real-time identification of delay causation and quantum impact. The dispute record will increasingly be generated as the project runs, not reconstructed after the fact. This fundamentally changes the evidentiary landscape and shifts the burden of contemporaneous record keeping from a discipline to a technological output.

## **Automated quantum assessment for defined claim types**

Variations, prolongation costs, and disruption claims follow well-established methodologies. AI can and is likely to automate significant (preliminary) portions of the quantum analysis workflow for standardised claims, particularly those involving large document sets, repetitive calculations, delay-linked cost analysis, variation quantification and structured damages models.

However, expert judgment remains essential for causation, entitlement, assumptions, valuation methodology and the formulation of expert opinion. The automation risk is therefore concentrated up to the middle of the complexity distribution where standardisation exists, not the extremes.

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<sup>18</sup> The Academy of Experts (2026), p. 15.

<sup>19</sup> Law Gazette (7 November 2025). *AI-generated expert report 'a gross breach of duty'*. Law Gazette. <https://www.lawgazette.co.uk/news/ai-generated-expert-report-a-gross-breach-of-duty/5125051.article>.

<sup>20</sup> This figure was reported in connection with Mr Justice Waksman's remarks at the Bond Solon Expert Witness Conference, November 2025; Law Gazette (2025).

<sup>21</sup> *UK v Secretary of State for the Home Department (AI hallucinations; supervision; Hamid)* [2026] UKUT 81 (IAC) at [60].

<sup>22</sup> *UK v Secretary of State for the Home Department* [2026].

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## Risks and Limitations of AI Use

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Here directness is required. The professional risk is real and the limitations are serious.

### **AI does not understand context the way a practitioner does**

AI processes text and is exceptional at identifying patterns. It does not understand what it means to manage a construction site under duress, be accountable for an outcome, sit in a boardroom opining on a critical matter, uphold independence, recover a stressed project, nor serve a duty to the court or tribunal. It does not know from direct operational experience what caused the breach, why and how governance failed, and that the contract's risk allocation was never going to survive the brutal realities of a project.

Such judgment comes from many years of direct delivery experience and professional accountability. It cannot be replicated by a language model. The fundamental limitation is not computational power, it is the absence of embodied operational experience and human interfacing.

*As Professor Doug Jones AO observed at the ADC 40th Anniversary Conference (March 2026): “rather than replacing familiarity by a human with complex factual evidence, AI is well placed to recategorise and guide readers through otherwise impenetrably dense fact patterns.” The analogy is apt, a table of contents does not understand the document. AI organises. Practitioners understand.<sup>23</sup>*

The author considers that parts of the Asia-Pacific region may be more exposed to the risks of poorly governed AI use in dispute resolution than some more mature arbitration markets. This is not a function of technology itself, but of context. Rapid growth in infrastructure and energy investment, increasing technical complexity, a limited supply of sector-specialist experts and arbitrators in certain jurisdictions, and differing levels of AI governance and professional regulation may collectively create conditions in which AI-generated outputs are relied upon without sufficient scrutiny. If that assessment is correct, the challenge for the profession is not whether AI should be used, but how to ensure that technological capability does not outpace professional competence and oversight.

The longer-term question of whether AI reasoning may eventually converge with or exceed expert judgment in defined technical domains is a separate and evolving inquiry, one that the profession will need to confront on its own terms as the technology matures.

Given the current and more so the projected use of AI in expert services is it a case whereby highly relevant, verified, credible, and direct firsthand experience is the deciding factor behind what an expert truly is ?

### **Hallucination in legal and technical contexts is a professional liability event**

Language models will confidently cite arbitral awards that do not exist, misstate FIDIC provisions, mischaracterise delay methodologies, and generate plausible sounding quantum calculations that do not survive scrutiny. Professor Doug Jones AO has observed that hallucinations will never be fully eradicated. Waiting for a hallucination-free AI, he writes, “may be like waiting for Godot”, because the capacity to generate bogus outputs is inherent in the statistical architecture of LLMs.<sup>24</sup>

There have been recent cases in which fictitious case law was cited in arbitration proceedings,<sup>25</sup> AI-generated submissions were filed with a court,<sup>26</sup> and an expert on artificial intelligence itself submitted a declaration containing citations to two non-existent academic articles and an incorrect attribution of

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<sup>23</sup> Jones, D. (2026), pp. 7–8.

<sup>24</sup> Jones, D. (2026). p 7.

<sup>25</sup> *LaPaglia v Valve Corporation*, 3:25-cv-00833 (SD Cal, 9 December 2025).

<sup>26</sup> *Re Walker [2025] VSC 714* (Moore J, Supreme Court of Victoria, Australia). The case involved AI-generated submissions with hallucinated case citations filed in probate proceedings, the Court declined to refer the solicitor to the Victorian Legal Services Commissioner, instead dealing with the conduct directly under its inherent supervisory jurisdiction and imposing a reprimand.

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a third, all produced by GPT-4o used without verification. The court struck the declaration and found the errors “shattered” the expert’s credibility.<sup>27</sup>

Current trends suggest that there will likely be more such cases. The trajectory is likely to continue unless stronger disclosure, verification and governance frameworks emerge.

The CIArb Guideline on the Use of AI in Arbitration (2025) states that “the inherent black box quality of AI may impede human oversight over the accuracy of decisions or predictions produced by the AI tool.”

The mechanism of failure is not the AI producing nonsense. It is the AI producing credible sounding nonsense that an inexperienced reviewer cannot distinguish from substance.

*The specific danger is the emergence of AI-assisted advisory and expert opinion from people who lack the foundational experience to interrogate what the AI is producing. Worse still: a practitioner representing as an ‘expert’ by using AI to present plausible opinions without the essential experience upon which a credible opinion must be grounded.*

### **In expert services practice, the risk is acute**

An expert report produced with AI assistance by someone without genuine independent technical expertise is not an expert report. It is a competently formatted document that will collapse under cross-examination. Tribunals and experienced arbitration counsel are far from naive. The gap between surface credibility and substantive credibility becomes visible quickly in a contested hearing under directed cross-examination on methodology. The absence of genuine expertise is exposed regardless of how polished the written output appears.

The positive counterexample is informative. In *Ferlito v Harbor Freight Tools USA Inc* (ED NY, 2025), the court refused to exclude an expert who had used AI to verify his findings, crucially, because he had relied on his decades of experience to write the report first, then used AI only to confirm what he had already independently concluded. The sequence matters: experience first, AI second, verification always.<sup>28</sup>

Reiterating the point – are we at an intersection whereby highly relevant, verified, credible, and direct firsthand experience is the deciding factor behind what an expert truly is ?

### **AI tends toward the median**

AI optimises for the probable rather than the original. AI synthesises existing positions, established methodologies, and conventional analysis. The disputes that matter, the ones that go to hearing, are rarely conventional. They turn on specific facts, specific contract language, specific project histories, and the application of expert judgment to genuinely contested technical issues. An AI-assisted analysis that cannot depart from the conventional position when the facts require it is not expert analysis. It is sophisticated averaging. In highly contested proceedings, sophisticated averaging loses.

### **The independence obligation cannot be delegated to a tool**

Under the IBA Guidelines, the SIAC 2025 Rules, and most institutional frameworks, the independence and duty obligations are personal to the expert.

As Cresswell J observed in *The Ikarian Reefer*<sup>29</sup>, an expert witness owes an independent duty to the court or tribunal and must provide objective, unbiased opinion within the scope of their expertise. That duty cannot be delegated to a language model, algorithm, or other technological tool, regardless of its sophistication.

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<sup>27</sup> *Kohls v Ellison*, No 24-CV-3754, 2025 WL 66514 (D Minn, 10 January 2025).

<sup>28</sup> *Ferlito v Harbor Freight Tools USA Inc*, No CV 20-5615, 2025 WL 1181699 (EDNY, 23 April 2025) (Brown J). The expert used a large language model only to confirm conclusions already reached based on decades of experience.

<sup>29</sup> *National Justice Compania Naviera SA v Prudential Assurance Co Ltd* (The Ikarian Reefer) [1993] 2 Lloyd’s Rep 68 (QBD).

The expert signs the report. The expert takes the stand. The expert is examined on every conclusion. If those conclusions were generated primarily by AI and the expert lacks the technical foundation to own them independently, and to defend them under sustained cross-examination without reference back to the tool, the engagement is professionally compromised from the outset. To the Author's knowledge, no current disclosure framework resolves this.

## The Coming Credibility Divide

There is a structural dimension that the profession has been slow to confront. AI is lowering the barrier to producing documents that resemble expert evidence at precisely the moment that global demand for genuine sector-specialist experts is outstripping supply. In infrastructure and energy arbitration in particular, where disputes are technically dense, projects are complex, and the pool of practitioners with real delivery experience is finite, the temptation to close the gap between demand and genuine expertise with AI-generated output is acute. Scarcity does not create the risk on its own, but it sharpens the incentive to substitute tools for experience.

The likely consequence is the emergence of two categories of practitioner offering what is presented as expert evidence. The first uses AI to enhance genuine expertise, to process more material, test more hypotheses, and work faster, while retaining the judgment to recognise when the tool is wrong. The second uses AI to simulate expertise it does not possess, producing reports that are fluent, well-structured and superficially authoritative.

On paper, the two may be difficult to tell apart. The difference becomes visible under cross-examination, where the first expert can defend every conclusion from independent knowledge and the second cannot move beyond what the tool produced. That is the credibility divide, and it will increasingly define the value of expert evidence. For instructing parties, the discriminating question is not whether an expert used AI, but whether the expertise existed independently of it.

## The Risks and Benefits of AI Use in Expert Services

The following table ranks the five principal risk and benefit dimensions by significance to expert witness practice in international arbitration, as assessed by the author.

| #                                                                                     | Area                                           | Benefit                                                                                                                                                                                                                        | Risk                                                                                                                                                                                                                                                        |
|---------------------------------------------------------------------------------------|------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Ranked by significance to expert witness practice in international arbitration</i> |                                                |                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                             |
| <b>1</b>                                                                              | <b>Document analysis &amp; review</b>          | Can process tens of thousands of project records at a scale and speed impossible manually.<br><br>Surfaces contradictions and gaps that would otherwise may be missed, strengthening the evidentiary foundation of the report. | AI may misclassify, omit, or misweight documents without flagging the error.<br><br>An expert who cannot independently interrogate the details and facts has no means of detecting the error before it reaches the report, or the witness stand.            |
| <b>2</b>                                                                              | <b>Independence &amp; duty to the tribunal</b> | AI can accelerate the analytical groundwork, freeing the expert to focus time on opinion formation.                                                                                                                            | Where AI generates conclusions that the expert adopts without genuine independent evaluation, the independence obligation under the IBA Guidelines and institutional rules is compromised.<br><br>Non-disclosure of AI use may constitute a breach of duty. |

|   |                                           |                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                |
|---|-------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3 | <b>Accuracy &amp; hallucination</b>       | AI research tools drawing on curated legal databases such as Jus AI 2, Westlaw, and Relativity significantly reduce the time required to identify relevant awards, precedents, and methodological standards, with citation trails that support verification.              | General-purpose AI models hallucinate with confidence. The 2025 QMUL/White & Case survey identifies AI error risk as the primary concern of 51% of arbitration practitioners.<br><br>An inexperienced expert cannot identify what they do not know to check.                                                                                   |
| 4 | <b>Methodology &amp; quantum analysis</b> | AI can automate structured elements of delay and quantum analysis using established methodologies such as SCL D&D2 and AACE 29R-03.<br><br>Reduces manual computation error and speeds up iterative modelling.                                                            | AI defaults to the methodological median. Disputes that turn on contested causation, concurrent delay, or non-standard contract structures require expert judgment to depart from convention.<br><br>Analysis that cannot make that departure produces competent-looking but substantively wrong conclusions.                                  |
| 5 | <b>Cross-examination exposure</b>         | AI can stress-test draft conclusions prior to filing by identifying internal inconsistencies, logical gaps, and areas of analytical weakness before opposing counsel does.<br><br>When used by an experienced expert, it functions as a rigorous pre-hearing review tool. | An expert who cannot articulate and defend every conclusion without reference to the AI tool that generated it will not survive directed cross-examination.<br><br>Tribunals and experienced arbitration counsel identify the credibility gap quickly.<br><br>The consequence of a report that collapses under examination is not recoverable. |

## The Correct Use of AI

AI is a capability, efficiency, and productivity multiplier for experienced practitioners. Yet it is also a predictive machine that is prone, and will continue to be prone, to hallucinations.<sup>30</sup>

AI is not a substitute for experience itself, grounded decision-making, the upholding of justice, independence, or human interfacing.

Used correctly, AI allows an experienced practitioner to process more documents, analyse more contracts, identify more issues, and produce more rigorous analysis than was previously possible in the time available. The AI accelerates the work. The practitioner owns the judgment, and critically, is capable of identifying where the AI has produced an error, a gap, or a misleading synthesis.

Used incorrectly, AI creates a convincing veneer of expertise over a foundation that will not hold. There must be universal robust frameworks firmly in place to define, manage and ensure that the use of AI in disputes is deployed in the interests and the integrity of the judicial system.

<sup>30</sup> Jones, D. (2026), p. 7. See also *LaPaglia v Valve Corporation*, 3:25-cv-00833 (SD Cal, 9 December 2025).

AI disclosure should be mandatory in expert services. There is an urgent requirement for the further development of rules, regulations, and legislation to ensure AI use is correctly applied and appropriately contained to maximise benefits and minimise risks. Existing guidelines, the expert’s duties to the tribunal or court, and the expert’s responsibility for their report<sup>31</sup> are all essential elements, however, a mandatory disclosure framework is imperative.

Why mandatory rather than discretionary? Because discretion has already proven insufficient. A mandatory standard promotes transparency, allowing a tribunal and an opposing party to see where and how AI has been used, it protects the expert’s personal and non-delegable independence duty by compelling a conscious account of any reliance, it allows the tribunal to weigh an opinion on an informed basis rather than discovering the role of AI for the first time under cross-examination, and it drives consistency across experts, institutions and jurisdictions, which discretionary practice cannot deliver.

The obvious objection is that almost all modern software now embeds AI. Word processing, search, grammar and citation tools among them, so that a disclosure obligation risks becoming either trivial or unworkable. The answer is that disclosure should attach to function, not to the mere presence of AI in a tool. Mechanical assistance that does not touch the substance of the opinion, such as formatting, spell-checking and basic search, falls outside the obligation. What must be disclosed is the use of AI in analysis, reasoning, the generation of substantive or narrative content, scenario modelling, or the drafting of opinion. The line is drawn there because that is where AI begins to bear on the independence and reliability of the expert’s conclusions.

The consequences of undisclosed or poorly governed AI use are not confined to experts. They ultimately affect clients, tribunals and arbitral institutions through increased challenge risk, reduced confidence in expert evidence and greater uncertainty regarding the reliability of opinions presented in proceedings.

## Proposed AI Disclosure Framework for Expert Witnesses

The call for mandatory AI disclosure in expert services requires operational content to be actionable.

The following framework, in conjunction with existing guidelines should be a starting point for professional bodies, institutional rules, and court practice directions addressing AI use by party-appointed experts. Disclosure should be appended to the expert’s declaration and should identify, at minimum, the matters set out in the illustrative non-exhaustive table on the following page.

| AI use in expert work               | Disclosure required | Recommended disclosure content                                |
|-------------------------------------|---------------------|---------------------------------------------------------------|
| Legal or technical research         | Yes                 | Tool identified. Scope and purpose described.                 |
| Document review and analysis        | Yes                 | Tool identified. Documents described. Sampling method stated. |
| Chronology or timeline construction | Yes                 | Tool identified. Verification method stated.                  |
| Drafting of narrative content       | Yes                 | Tool identified. Extent of use and independent review stated. |
| Analytical modelling or quantum     | Yes                 | Methodology independently verified and stated.                |
| Translation or transcription        | Yes — brief         | Tool identified.                                              |
| Grammar and spell checking          | No                  | —                                                             |
| Pure formatting                     | No                  | —                                                             |
| Public or enterprise deployment     | Yes                 | Tool identified. Scope and purpose described.                 |
| Confidential data uploaded          | Yes                 | Tool identified. Scope and purpose described.                 |
| Outputs independently verified      | Yes                 | Tool identified. Scope and details described.                 |
| AI contributed to conclusions       | Yes                 | Tool identified. Scope and details described.                 |

<sup>31</sup> The Academy of Experts (2026).

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AI is truly an extraordinary tool. The judgment required to use it responsibly remains entirely human and entirely dependent on the depth of operational industry experience behind it. That experience is not acquired by using AI more. It is acquired by doing the work, carrying the accountability, and having the demonstrable experience and qualifications to legitimately be classified as an expert.

*The question I would put to any practitioner incorporating AI into their expert witness work is straightforward:*

*If the AI produced the wrong answer, would you know? If the honest answer is 'probably not' or 'no', the AI should not be in the workflow.*

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## ABOUT THE AUTHOR

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## DISCLOSURE AND INDEPENDENCE NOTE

*This commentary is published as an independent market analysis and reflects the author's professional assessment of publicly available and cited sources as at the date of publication. It is not written on behalf of, or with reference to, any specific client instruction, and it does not constitute advice on any particular transaction, contract, or dispute. Given the author's practice as an independent expert and advisory practitioner in APAC infrastructure and energy disputes, this commentary is deliberately confined to observation and analysis of documented market, technical, and regulatory conditions, and avoids advocacy positions on contested legal or contractual questions that could compromise the author's independence in future instructions. Readers with a specific transaction or dispute in contemplation should seek advice calibrated to their own facts.*

*Disclosure: This article has used AI tools to assist in web searches, cross-check references and citations, and assist in formatting. All AI outputs have been independently verified, and errors identified in that process have been corrected.*

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