

# THE COMMON LAWYER

## AI and the Auto Industry: Why the Wait-and-See Approach May Be Best for Your Dealership



By Justin Jakubiak & Laheen Dhanidina

TURN ON THE NEWS, SCROLL YOUR SOCIAL MEDIA FEEDS, speak to almost anyone and it seems that the topic of artificial intelligence is everywhere and on everyone's mind. Is it good? Is it the solution to everything? Or is it evil and will it result in the mass elimination of all sorts of employment across a variety of industries (including law, accounting, advertising, design and more).

Without question, no one, and no industry, can afford to ignore the pros and cons of AI today and into the future. In our own office, we have recently drafted and put into effect an internal policy that is very conservative and essentially prohibits the use of many of

the current AI products and programs for legal research and drafting. As will be explained below, the currently available AI products are still very much in the early development stages and are not reliable enough for us to be confident that they will provide the results and quality that our clients expect and require.

While AI and its various forms are very exciting and should likely begin to be implemented in some form in most Canadian businesses, there are reasons to be cautious about its implementation.

Given how highly regulated the automotive industry is in Ontario, and how nuanced so many of your day-to-day obligations are as a dealer, we strongly encourage all dealerships and their management to proceed carefully, and not before the implementation of carefully considered policies and guardrails.

### AI and Advertising

Advertising is just one example of a dealership's business that is highly regulated. Get it right and you will drive consumers to your store and increase sales. Get it wrong, and OMVIC may be at your door and the dealership, as well as its owners/dealer principals, may be charged for failing to advertise in accordance with the law.

Dealerships must ensure that their advertisements include certain

language (and do not include other language), are detailed enough, are not misleading and contain various required disclosures. I note that we regularly assist large dealerships and dealer groups who have many stores and much experience, and despite this still struggle with ensuring all advertising is fully compliant.

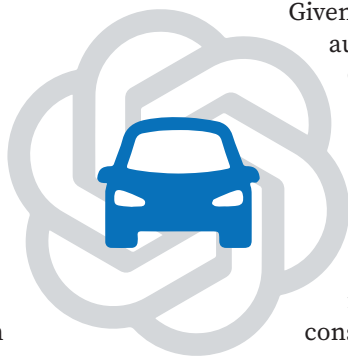
On its face, AI, especially programs like ChatGPT, seem like the obvious answer to ensuring the creation of effective and compliant advertisements. Not so fast....

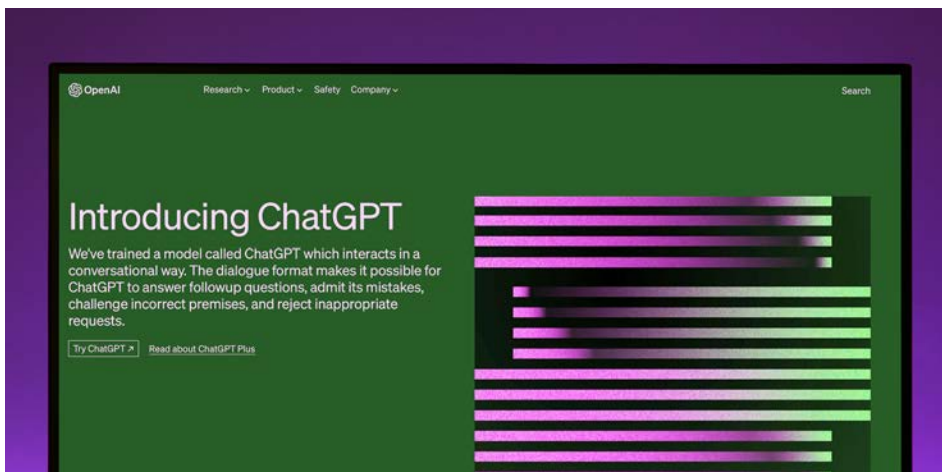
ChatGPT is a program that provides detailed responses to questions asked of it – but, among other things, requires you to ask it the right questions.

Notwithstanding some well reported issues and mistakes as a result of ChatGPT, it is one of the fastest growing programs and is being implemented in all sorts of industries.

You can ask ChatGPT to conduct a search and determine what a dealership's regulatory obligations are with respect to advertising and to create a compliant advertisement. While this appears to be a quick way to help your dealership become more efficient and, in turn, more successful, there is undoubtedly an issue with the technology (as it currently is) and using it in this way.

The main concern is whether the information that the technology is





using to develop the advertisement is comprehensive and accurate.

ChatGPT, for example, may not capture all regulatory obligations with respect to advertising. While it does scan various sources of information to provide an up-to-date picture on the current obligations, it may not catch all key words or legislation that is not directly related, but is still relevant, to dealership advertising.

Along the same line, if ChatGPT has not confined its search parameters to the relevant jurisdiction, that answer (and subsequent advertisement) may inadvertently be based on regulations from British Columbia, and not Ontario. As the rules and regulations pertaining to automotive sales vary from province to province, the advertisement may not be compliant with your obligations as a result.

Inaccuracies and information which is simply false are another cause of concern. ChatGPT's ability to provide accurate information has been under scrutiny further to a New York lawyer who relied on the program to research case law and draft his brief for a personal injury case. It is unclear why, but ChatGPT included six non-existent cases in the brief! Yes, it simply made up some law.

The above is just one example of the pitfalls of relying on AI to provide you with comprehensive and accurate information. If ChatGPT can actively

create and include non-existent cases, it can create and include non-existent regulations.

In the circumstance that AI gets everything right – the information relied on is comprehensive, relevant, accurate, and from the correct jurisdiction – there is still one more concern. That is, whether ChatGPT is correctly describing the regulation and your obligations. A clear issue with the technology is that it may misrepresent the regulation, for example, by changing a "must" to a "can."

While this may seem like a minor change, it can drastically impact whether your advertisement is compliant.

As a result, it is clear that today there remain serious risks to using ChatGPT, and other AI, in your day-to-day operations without adequate oversight and policies being first put into place.

OMVIC prosecutions, legal fees, and general costs for removing the advertisements are just some of the consequences that a dealership may experience. OMVIC has been clear that dealers and their principals, are responsible for all of a dealer's legal obligations at law – a defence of "ChatGPT made me do it" is unlikely to be accepted as an excuse, or to win the day in court.

### **Drafting Legal Documents and Policies with AI**

Just like advertisements, AI can present problems when drafting important legal documents, including contracts and policies.

Language use is important for being able to convey the correct meaning and to ensure that parties are properly bound by the terms of the contract. ChatGPT, as discussed above, may be seen as a great tool in drafting contracts as it can eliminate the need to do it yourself, or have a lawyer draft one on your behalf. It has the potential to save time, money, and resources that can be deployed elsewhere.

If the language of the contract is unclear or imprecise, it could lead to the contract not being legally binding or enforceable. Imprecise or unclear language can lead to loopholes in clauses that may be exploited, or clauses being held by a Court as too unclear to have meant what the drafter intended. For dealerships, this could impact clauses regarding representations of the quality of the vehicle, warranties, financing terms, and other essential terms.

The fact is that today, AI programs may not be able to foresee loopholes or may create loopholes inadvertently.

If the language proposed by AI is excessive or overly restrictive, the relevant term may also be unenforceable. Courts do not look favourably on larger, more powerful organizations unreasonably restricting employees and their rights post employment, or of contract provisions which may appear to be taking advantage of consumers and the unequal bargaining position that they are typically in when purchasing a vehicle. What may be a clause drafted to protect the business, may be seen by the Courts as an overly restrictive clause that creates a problematic power imbalance. The use of language in this way is, again, not something that AI, at this stage, can foresee and understand when drafting contracts and policies.

This is not just important for larger dealerships, but also smaller ones as well as it may impact the following agreements and policies:

- In-house financing, leasing and warranty agreements;
- Employee agreements;
- Sales agreements; and
- Policies which a dealership may be required to have at law.

### Using Machine Learning to Predict Buyer Behaviour

Another AI derivative, machine learning, which can be used to predict buyer behaviour, must also be used with caution and oversight.

Machine learning programs review data sets and draw inferences from that data to come to conclusions. This form of AI is particularly useful in being able to predict future behaviours based on previous trends. For example, by providing the program with data sets on the time of year and car colour most often leased, the program may be able to draw a conclusion about what car colour is most likely to be leased in the upcoming summer which may assist with inventory purchasing.

As time goes on, we expect that machine learning will assist dealerships with their strategy and can provide clarity on some of the following:

- Best-selling or most often leased vehicles;
- What protections or warranties are most often purchased;
- Whether certain protections or warranties are most often bought with other products;
- Whether certain protections or warranties are most often bought with specific vehicles;
- What is the most popular colour, make, and model; and
- Whether certain protections, warranties, colours, makes, and models of vehicles are more common during certain seasons.

Machine learning, like other AI programs, is not impervious to mistakes as the program may make improper associations between two pieces of data. The program may incorrectly conclude that more blue cars were sold during the summer season. Rather than the colour, it could be that the make of the vehicle was the reason for the increased number of cars sold, or that the dealership had more blue SUV's available. This is just one example of improper associations that may provide misinformation to the dealership.

There is also the risk that the program has not considered an important factor or has drawn an incorrect inference where multiple characteristics are linked. Consider certain external factors such as whether the consumer is concerned about climate change, recessionary and other economic factors, or availability of public transit. These factors can influence the decisions of the consumer but may not be included in machine learning programs because they may not have access to this information.

Machine learning programs, like other AI, have the potential to help businesses become more successful. But there are risks in relying on the conclusions drawn from these programs to the exclusion of your industry experience learned from years of experience.

### Conclusion

We're definitely not saying ChatGPT, or any AI for that matter, is entirely

unhelpful or untrustworthy. But rather, the concern is that the technology is still developing. Solely relying on AI to ensure compliance with regulatory standards, draft legally binding documents (or other policies), or to predict buyer behaviour can lead to significant errors, regulatory infractions and a headache. It's best to approach AI with caution. Adopting a wait-and-see mindset to AI may be better for your business in the long run.

We hope that this article has provided you with some important information so that you can make an informed decision about how, if at all, you'd like to incorporate AI in your business. Moving forward, the question will no longer be whether we should use AI, but when and how we can use it to our advantage. Whatever you do, and as with every new frontier in business - take your time, create policies, invest in employee training, listen to guidance from the UCDA - and - call your lawyer!

*Justin is a Partner with Fogler, Rubinoff LLP and is recognized by the Law Society of Ontario as a Specialist in Civil Litigation. This article was written with Laheen Dhanidina, a summer student with Fogler, Rubinoff LLP.*

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