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Use of fake cases by U.K. lawyer qualifies as professional misconduct

By **Stephen A. Thiele**

Law360 Canada (May 15, 2025, 1:57 PM EDT) -- The citation of fake cases in documents used in court proceedings continues to be a growing phenomenon. In *Ko v. Li*, 2025 ONSC 2766, an Ontario lawyer has been ordered to show cause why she should not be cited in contempt of court for relying on non-existent authorities in her submissions on a motion.

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Although a ruling on the issue of contempt has not yet been made in the *Ko* case, a court in the United Kingdom has determined that a lawyer's reliance on five fake cases to support a client's court proceeding qualified quite clearly as professional misconduct and resulted in the lawyer and a law centre that hired her to pay for wasted costs.

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In *R (on the application of Frederick Ayinde) v. Haringey London Borough Council*, [2025] EWHC 1040 (Admin), an individual made a homeless application to the defendant Borough for housing after being forced to leave the place where he had been living for five years. The individual attached medical evidence to the application showing that he suffered from chronic kidney disease and hypertension. The Borough denied the application on the grounds that the individual did not have priority-needed housing.

This decision was upheld on a review by the Borough, and the individual appealed this ruling to the County Court. The County Court quashed this ruling, and the individual then again requested interim accommodation from the Borough. The individual contended that under s. 188(3) of the U.K.'s *Housing Act, 1996*, he was entitled to accommodation pending a judicial review.

The Borough failed to respond to the request, prompting the individual to proceed with a judicial review.

The individual's lawyer filed a written statement of facts and grounds to support the judicial review and then made an application for urgent accommodation. The County Court granted permission for the judicial review to proceed and granted an interim housing order. Directions were also given to the

Borough in connection with responding to the judicial review.

Although the Borough failed to comply with the directions, which ultimately proved fatal to its ability to defend the judicial review application, it noted that the statement of facts and grounds filed in support of the individual's proceeding contained case citations that were wrong and misleading legal statements. Lawyers for the Borough contacted the individual's lawyer and sought five cases that they could not find in the written submission. One of the cases that could not be found was an apparent Court of Appeal decision.

The individual's lawyer apologized for the wrong citations, but did not provide any of the five cases. Furthermore, the individual's lawyer explained, among other things, that any of the citation errors could be corrected before a hearing, that no explanation in connection with the citation errors was required and that the citation errors were cosmetic.

While the judicial review application was granted, the Borough sought to recover wasted costs caused by the citations that could not be found, and the propositions of law that they apparently supported.

For example, in the written statement of facts and grounds, the individual's lawyer stated that a certain case had "emphasised that failing to provide interim accommodation during the review process undermines the protective purposes of homeless legislation. The court found that such failure not only constitutes a breach of statutory duty but also creates unnecessary hardship for vulnerable individuals. The respondent's similar failure in the present case demonstrates a procedural impropriety warranting judicial review."

This case did not exist.

The written submission contained other statements about what certain cases had determined, but those cases were also non-existent.

When questioned by the judge about these statements and the cases cited, the individual's lawyer explained that she kept a box of copies of cases and kept a paper and digital list of cases with their ratios in it. She then dragged and dropped those cases into the written submission.

Furthermore, the individual's lawyer downplayed any errors with respect to the cases submitting that they represented "minor citation errors" before conceding, when challenged by the judge, that they were "serious." But even after making the concession, the individual's lawyer returned to her position that errors were "minor citation errors."

The court rejected the lawyer's explanation for how the fake cases arose and concluded that the use of fake cases was extremely troubling.

Under the applicable law, the court was entitled to make a wasted costs order against a lawyer if:

- The legal representative acted improperly, unreasonably or negligently;
- The legal representative's conduct caused a party to incur unnecessary costs or has meant that costs incurred by a party prior to the improper, unreasonable or negligent act or omission have been wasted;
- It is just in all the circumstances to order a legal representative to compensate that party for the whole or part of those costs.

In the circumstances, the court found that the individual's lawyer had acted improperly, unreasonably and negligently. She breached her duty to act fairly and to not mislead the court by using fake cases in a pleading or saying that the use of the fake cases represented simply "minor citation errors" or "cosmetic errors."

The court stated that providing a description of five fake cases qualified as professional misconduct.

Although the court was not able to determine if the claimant's lawyer had used artificial intelligence (AI) that resulted in the generation of the fake cases, the court held that the claimant's lawyer had

intentionally relied upon the fake cases, not caring whether the cases existed or not. The court noted that it clearly would have been negligent if the lawyer used AI and did not check it or put fake text into the written submission.

The court also found that the individual's lawyer caused the Borough to suffer a loss. Lawyers for the Borough had acted properly in attempting to find the non-existent cases and raising those cases with the individual's lawyer. Exposing the behaviour of the individual's lawyer was appropriate because it undermined the integrity of the legal profession.

Lastly, the court held that a wasted costs order was justified for the "appalling professional misbehaviour of the [individual's] solicitors and barristers in relation to the fake citations and the way, when those were raised, that they tried to finesse them into being 'minor citation errors.'"

In the result, the court awarded wasted costs against the individual's lawyer and the law centre in the total amount of £4,000, divided equally between them. In addition, the court significantly reduced the costs awarded to the individual on his successful judicial review application because of the use of the fake cases.

The key takeaway from this case is that a lawyer must ensure that fake cases are not put before the court. All cases relied upon must be checked and verified using reputable legal research tools and sources. Lawyers who mislead a court with fake cases breach their duty to the justice system and expose themselves to potentially significant personal cost awards and disciplinary action.

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