

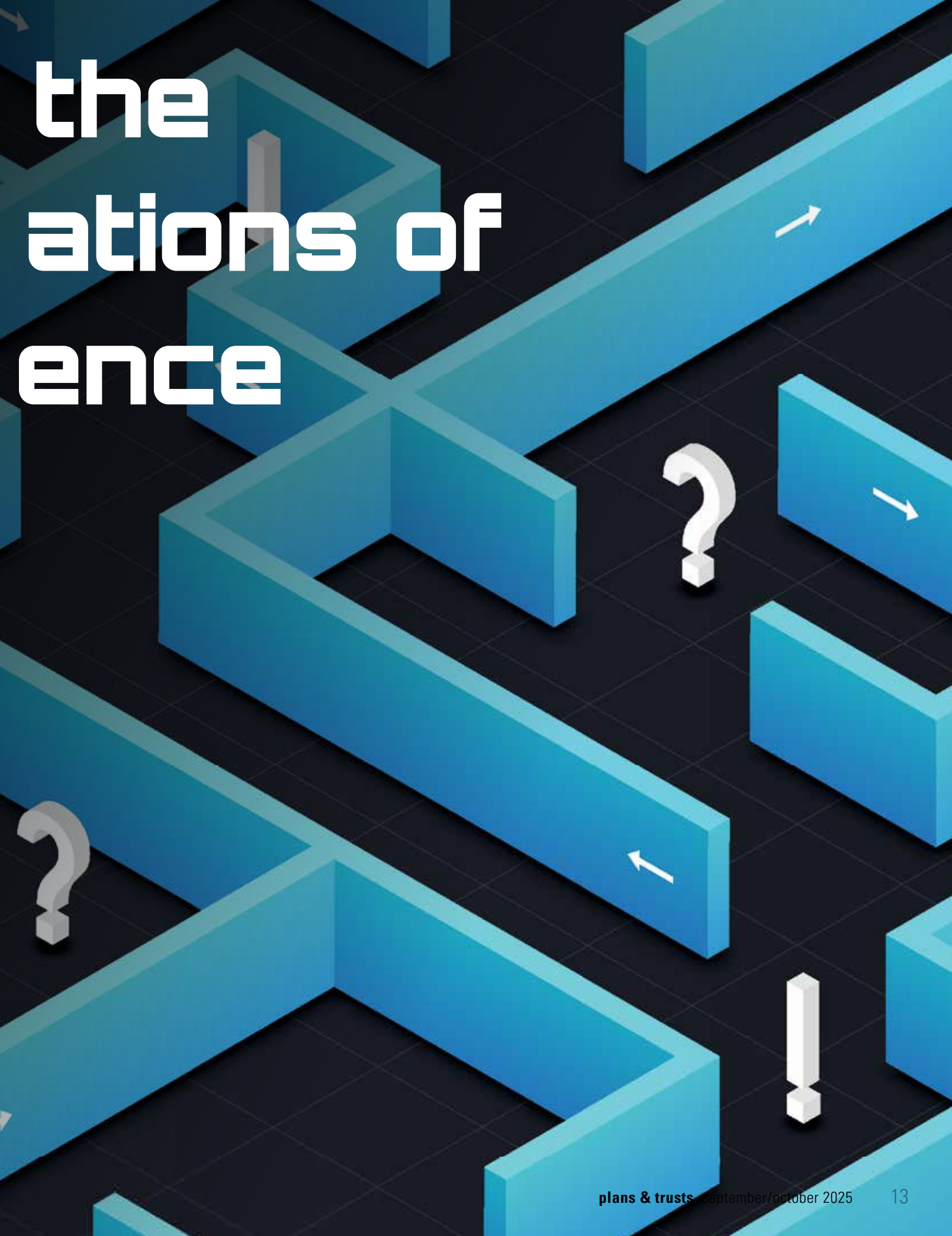
Understanding Legal Consider Artificial Intellig

by | **Ken Leung**

As the integration of artificial intelligence becomes increasingly widespread, its potential to transform workplaces is growing, along with the risks. The author examines key legal considerations for employers and benefits professionals navigating this evolving technology.

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Over the past several years, there has been a widespread adoption and use of artificial intelligence (AI) in both our daily and professional lives. In particular, the growing popularity of AI tools, such as ChatGPT, for drafting emails, generating artwork or even assisting with coding is transforming industries and accelerating economic growth. AI has the potential to add \$187 billion annually to the Canadian economy by 2030.¹ However, Canadian businesses are reportedly lagging in the adoption of AI compared to other countries.² At the same time, for employers and plan administrators, increasing legal and ethical considerations call for a cautious approach to the widespread adoption of AI, not just adapting to the technology but doing so responsibly.

Unlocking the Promise of AI

According to PTO Exchange, some common uses of AI being explored among pensions and benefit plans include automated claims processing, predictive analytics for health trends or funding projections, and the streamlining of administration and communications. However, these applications also bring potential risks that must be carefully managed. The Canadian Parliament had anticipated concerns regarding the potential risks of AI use and introduced the Artificial Intelligence and Data Act (AIDA) as part of Bill C-27 in June 2022.³ The AIDA was intended to regulate the design and development of AI systems at the federal level. It defines an *artificial intelligence system* as “a technological system that, autonomously or partly autonomously, processes data related

to human activities through the use of a genetic algorithm, a neural network, machine learning or another technique in order to generate content or make decisions, recommendations or predictions.”⁴ The AIDA focuses particularly on the harm to individuals associated with “high-impact” AI systems, which includes physical and psychological harm or damage to an individual’s property. However, the prorogation of Parliament earlier this year effectively ended Bill C-27 and the AIDA. Despite this, the Canadian government is pressing forward with the adoption of AI to drive economic growth and innovation, which could help to improve the relatively weak productivity of workers in the country.^{5,6}

Notwithstanding the absence of federal legislation in Canada that governs the use of AI, existing laws in the areas of privacy, intellectual property and employment would generally apply to AI use. The Personal Information Protection and Electronic Documents Act (PIPEDA) is the federal legislation that regulates how private sector organizations engaged in commercial activities collect, use and disclose personal information.⁷ PIPEDA applies across Canada except in provinces that have established substantially similar legislation (i.e., British Columbia, Alberta and Québec).⁸ Although AI is not explicitly referenced in PIPEDA or other similar legislation, the same obligations apply: Businesses must obtain meaningful consent and implement appropriate security safeguards when collecting or using personal information, regardless of whether they use AI tools. Any breach of these requirements could lead to regulatory action or lawsuits. For example, a business that is

Takeaways

- AI can support pension and benefit plan administration in several ways—e.g., streamlining the member onboarding experience through the collection of data; membership engagement and communication via chatbots and dashboards; identification of fraudulent activity (including identity theft and impersonation); improving trustee productivity through AI tools that can take minutes of meetings and perform automated reporting to respond to specific queries.¹⁵
- The Canadian government aims to boost innovation and economic growth through AI adoption, which could help address the country’s relatively low worker productivity.
- Pension plan administrators, as fiduciaries, are required to act in the best interests of members and exercise prudence when using AI in plan administration, governance or investment. They would be well-served to engage AI experts when designing or implementing AI tools for any use cases they are considering, in order to ensure compliance with pension legislation.
- Employers should be mindful of potential liability when using AI in the workplace, particularly in recruitment or promotion, as it could lead to discrimination claims based on prohibited legal grounds.
- Plan administrators should consult recently updated CAPSA Guideline No. 10, which does not focus on AI but provides a practical risk management framework to identify, evaluate, manage and monitor risk associated with plans. It highlights the importance of managing third-party risk, including data breaches and failure to meet contractual obligations. It stresses the need for due diligence when engaging service providers to protect the plan from reputational and financial harm.

using personal information to train its AI tools without the informed consent of individuals runs the risk of legal liability as well as reputational damage.

Employers should also be wary of their potential liability when using AI tools in the workplace. If an employer uses AI tools to facilitate the recruitment or promotion of employees, it could expose itself to legal claims on the basis of discriminating against individuals on prohibited legal grounds. In Ontario, beginning on January 1, 2026, employers must include a statement in job postings if AI is used to screen, assess or select candidates.⁹ Although this measure by the Ontario government aligns with the potential risk of AI tools discriminating in the employment context, it is unclear at this time what that statement would look like and how the inclusion of this disclosure statement could serve to protect job applicants.

AI in Practice

Despite the aforementioned risks, the adoption of AI could lead to many benefits, including those relating to pension plans. The CFA Institute's recent report on AI technologies in the pension value chain illustrated various use cases for implementing AI:¹⁰

- Onboarding members (including the collection of personal information)
- Integrating chatbots as part of member communications and improving the accessibility and clarity of pension reporting and disclosure
- Optimizing investment strategies and portfolio construction
- Navigating decumulation strategies.

Accordingly, pension plan administrators who are required to act in the best interests of plan members and beneficiaries, and act as fiduciaries, must likewise act prudently when designing or implementing AI tools in the administration, governance and investment of pension plans. As a starting point, pension legislation across Canada broadly mandates that pension administrators must “exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.”¹¹ In the context of designing or implementing AI in the course of administering or investing a pension plan, plan administrators must also use “all relevant knowledge and skill that the administrator possesses or, by reason of the administrator’s

Is Your AI Usage Problematic? An Ethical and Legal Usage Checklist

- Why is our organization using an AI tool?
- What outcomes do we want AI to achieve or improve?
- What policies, guidelines or laws must our organization follow?
- Does this AI model create or reinforce a hidden bias?
- Who is responsible for monitoring and reviewing this AI system?

profession, business or calling, ought to possess.”¹² Practically speaking, this suggests that pension plan administrators will be well-served to engage AI experts when designing or implementing AI tools for any use cases they contemplate in order to ensure compliance with pension legislation.

Updated CAPSA Guidelines

In addition to pension legislation, the Canadian Association of Pension Supervisory Authorities (CAPSA) also published specific guidelines that plan administrators should consult when incorporating AI as part of their plan administration. This includes the recently published CAPSA Guideline No. 10: Guideline for Risk Management for Plan Administrators, which provides that an effective risk management framework to identify, evaluate, manage and monitor risks applicable to pension plans is important to support plan administrators to fulfill their fiduciary duties.¹³ Again, while the report does not focus on AI tools, it would be prudent for plan administrators to consider and apply the principles set forth in CAPSA Guideline No. 10. For example, the report identifies *third-party risk* as a risk to the plan when its third-party service provider fails to protect data or systems or fails to carry out its contractual obligations.¹⁴ Given the reputational or financial risks that third parties can introduce to pension plans, plan administrators should exercise due diligence when procuring such goods or services in the first instance. In the context of an AI service provider, some examples of background diligence would include assessing the provider’s management team, expertise, clientele, operating history and financial position. Clearly, it would not be ideal if an AI service provider lacked the necessary sources (financial or otherwise) to continue delivering the services procured.

Even worse, it is unclear how an insolvent provider can properly fulfill its posttermination obligations as they relate to the return, destruction or transition of client data (including personal and confidential information), all of which typically require active cooperation between the parties. Plan administrators must also carefully review and negotiate the terms of the service provider's data protection policies to ensure that they are appropriate and align with the plan's own data protection terms, including where such information is stored. At a minimum, the service provider's security safeguards and retention policies should align with the plan's own requirements. Any mismatch could harm the plan's legal compliance and expose it to liability.

Similarly, plan administrators should thoughtfully consider the duration of such third-party contracts and corresponding termination provisions. In particular, if a service provider fails to deliver the AI tools and related services in accordance with the plan's expectations, recourse should be available to terminate the relationship sooner rather than later. Other commercial considerations relate to the pricing of these services: Is the provider permitted to increase fees on an annual basis, and are there caps on these fees? Does the provider have insurance to cover the performance of its duties under contract? What indemnification obligations are afforded to the plan for breaches of the provider's obligations?

While these measures are designed to help protect and mitigate risks to the plan, it is ultimately the plan administrator's responsibility to oversee and manage the plan.

Balancing Innovation With Responsibility

As a preliminary step, plan administrators should proactively assess the potential benefits of AI tools on the plan administration and investment functions. This includes staying informed about the development of AI. At the same time, administrators need to review their existing governance frameworks to address AI-specific risks and legal considerations, such as privacy concerns, vendor management, and compliance with legal and regulatory requirements. There is

BIO

Ken Leung is a partner in Koskie Minsky's pension and employee benefits group, with a focus on pension fund investments and governance. Leung has experience in a broad range of corporate and commercial matters in the financial services industry.



also a need to educate staff and vendors on the permitted use, design and implementation of AI, as human oversight and accountability are critical to the development of a sustainable and compliant AI strategy. ☞

Endnotes

1. "Future-Proofing Ontario: Seizing AI's Economic Potential." Ontario Chamber of Commerce. 2025.
2. Rannella Billy-Ochieng. "Artificial Intelligence Technologies Can Help Address Canada's Productivity Slump." TD Economics. May 28, 2024.
3. Prime Minister of Canada. "Securing Canada's AI advantage." April 2024.
4. Bill C-27. An Act to enact the Consumer Privacy Protection Act, the Personal Information and Data Protection Tribunal Act and the Artificial Intelligence and Data Act and to make consequential and related amendments to other Acts, First Session, Forty-fourth Parliament of Canada, 2022.
5. Government of Canada. "Government of Canada Celebrates AI and Tech Innovation in Toronto." June 2025.
6. Rannella Billy-Ochieng. "Artificial Intelligence Technologies Can Help Address Canada's Productivity Slump." TD Economics. May 28, 2024.
7. Personal Information Protection and Electronic Documents Act (S.C. 2000, c. 5).
8. Office of the Privacy Commissioner of Canada. "Provincial laws that may apply instead of PIPEDA." 2020.
9. Employment Standards Act, 2000, S.O. 2000, c. 41. June 18, 2025.
10. Hayman, G. Pensions in the age of artificial intelligence. CFA Institute Research & Policy Center, December 17, 2024.
11. Pension Benefits Act, R.S.O. 1990, c. P.8. December 31, 2024.
12. Ibid.
13. Canadian Association of Pension Supervisory Authorities. *Guideline No. 10 – Guideline for Risk Management for Plan Administrators*. Retrieved from CAPSA, September 9, 2024.
14. Ibid.
15. Ibid.