

CHATGPT & INTERNATIONAL ARBITRATION: WHAT NEXT FOR PRACTITIONERS?



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The rapid rise of ChatGPT has taken the legal profession by storm and sparked conversations about how practitioners could be impacted by its increased use. The language processing tool has impressed users with its ability to generate clear — and at first glance seemingly sophisticated — responses to complex questions in a matter of seconds. But while it's tempting to conclude the days of the arbitration practitioner are numbered, given that success in the profession is often predicated on the ability to write persuasively, such an assumption would be too simplistic. While ChatGPT and generative artificial intelligence tools like it are undoubtedly helpful, they do not come without their own set of problems, which we will explore further in this article. Simply put, any material disruption to the arbitration profession is unlikely — at least for the time being.



What is ChatGPT?

At its core, ChatGPT is a free-to-use chatbot that is capable of answering questions and generating text such as articles, or long-form essays. It was created by OpenAI, an American research firm, and officially launched for public use last November. The program is trained on data from the internet up to 2021. It contains more than 300 billion words and its answers are fine-tuned with human supervision — allowing it to create responses which appear human-like, when asked questions. Following ChatGPT's popularity, it is expected that similar, if not more, capable “chatbots” will proliferate in the coming years. Indeed, at the timing of writing, Google has since announced the launch of its own conversation programme called Bard. Bard is still only available to

limited beta testers, but is expected to be rolled out more widely in the coming months — underscoring the appetite for such language-processing tools.



Dataset limitations

Still, just because something is popular doesn't mean it's problem-free. Arguably, one of the biggest limitations of ChatGPT at present, is the dataset on which it has been trained on. ChatGPT is based on data up to 2021 and is not connected to the internet. As a result, should you ask the programme about recent developments, there's a strong chance it wouldn't provide an accurate response. This presents particular problems for arbitration as, like other areas of law, a lot can turn on whether information is up to date. ChatGPT's limited dataset is also problematic for conducting legal research given that

its findings will not reflect the latest jurisprudence and/or commentary on international arbitration.

This obstacle could fall away if specialised legal chatbots emerge, which have access to the latest legal developments, or if OpenAI updates ChatGPT's dataset. If that occurs, then legal research, long the adversary of junior practitioners, could become more efficient and lead to potential cost savings for clients. However, for the moment, ChatGPT offers, at most, a helpful starting point for arbitration related queries.



Err on side of caution

Even then, we would suggest practitioners remain cautious before relying on ChatGPT.

The answers provided by chatbots reflect the statistical patterns in the data that it has been trained on. If part of the data set is wrong or biased, or if a certain viewpoint is overrepresented then this will cause the programme to generate inaccurate responses.

This flaw means international arbitration practitioners need to be particularly careful when using ChatGPT. Many concepts in arbitration are subject to debate and can differ from jurisdiction to jurisdiction. Further, the nature of an arbitration practitioner's task is often to distinguish one case from another – such a task may not be assisted by data that is based on overrepresented viewpoints. Accordingly, practitioners will need to carefully verify responses from ChatGPT for bias and to check if they are correct. The requirement for ChatGPT's responses to be scrutinised could limit costs savings for clients — assuming they are comfortable with their lawyers using the platform (noting possible concerns about confidentiality).



Limited capabilities

The link between the capabilities of a chatbot and its dataset gives rise to another limitation: it won't be familiar with specific cases.

For instance, ChatGPT won't know the identity of the parties, the history of their dispute or the key pieces of evidence.

Consequently, if asked to perform a routine drafting task in an arbitration such as the inter-partes correspondence, pleadings, or an award, it would struggle to generate any useful, accurate content. It is possible for a user to tell ChatGPT to consider certain pieces of information when providing responses. However, the programme is not yet capable of being provided with the significant amounts of information generated by an ongoing arbitration. Given this constraint, ChatGPT's ability to assist with complex drafting tasks in an arbitration will be limited.



Confidentiality

Confidentiality concerns may also limit the use of chatbot programmes. ChatGPT stores the data it receives from users and it is unclear from ChatGPT's terms of use how they store or guarantee the security of this data. Moreover, its terms limit OpenAI's liability for loss of data to just US\$100, giving parties very limited recourse should any sensitive data be lost. This will likely make parties cautious about their lawyers using the programme in an arbitration, noting that confidentiality is one of the key reasons parties choose arbitration over the courts.



Indeed, the risks posed to the confidentiality of a dispute by using ChatGPT could lead to a party applying for, or parties agreeing that, its use be prohibited in an ongoing arbitration.

This development would raise novel questions for practitioners and arbitral tribunals. For example, how such a prohibition should be enforced by an arbitral tribunal (or institution) and the consequences if a party or arbitral tribunal is found to have used a chatbot.



Limited immediate-term impact

ChatGPT is the first chatbot to gain widespread prominence. It will certainly not be the last. Future programmes are likely to address some of the limitations we have identified such as ChatGPT's pre-2021 data set and the risk of possible bias or inaccurate responses. As chatbot capabilities increase, it is likely the debate around arbitration practitioners using such programmes and the risks to the confidentiality of arbitration proceedings will become more pronounced. The potential for improved chatbots to assist practitioners with more routine tasks and for clients to significantly reduce the cost of arbitrating is clear. But will those benefits outweigh the importance of confidentiality for arbitration users? Further still, will developers be able to create a chatbot with sufficient privacy safeguards to enable regular use by practitioners? We shall watch this space with interest.

For the moment though, ChatGPT's impact on international arbitration is likely to be limited. The programme represents an important technological development but is not without fault. Given the flaws identified, practitioners should, in our view, be cautious when using the programme, making sure to not use client or sensitive data in questions to ChatGPT and checking that responses are correct.

