THE CURRENT STATE OF AI REGULATION IN CANADA

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In Part 2 of RBS's AI & The Law: Legal Insights for the Digital Age series, we explore the current state of AI regulation in Canada. This article takes an in-depth look at the Artificial Intelligence and Data Act (AIDA), covering AIDA's legislative progress, the AI systems AIDA will govern, AIDA's implementation timeline, and the interim measures the Canadian Government has put in place until AIDA is enacted.

Overview

There is currently no regulatory framework in Canada specific to AI. However, Canada is taking steps toward regulating AI at the federal level, in particular through the proposed *Artificial Intelligence and Data Act* ("**AIDA**"), which is presently under legislative review.

AIDA's purpose is to ensure the safe and responsible development and deployment of AI technologies, balancing innovation with ethical and safety standards. *AIDA* will apply to private sector entities designing, developing, or deploying AI systems in trade and commerce.

Legislative Progress

AIDA was tabled in June 2022 as part of Bill C-27, the *Digital Charter Implementation Act,* 2022 ("**Bill C-27**"). Bill C-27 successfully passed a second reading in April 2023 and was subsequently referred to the House Standing Committee on Industry, Science and Technology Committee (the "**Committee**") for consideration. On November 28, 2023 the Minister of Innovation, Science, and Industry François-Philippe Champagne presented the Committee with the Government's proposed amendments (the "**Proposed Amendments**") to *AIDA*. The Proposed Amendments aim to:[1]

1. Introduce new definitions of "artificial intelligence system" (AI systems), "machine learning model" and "general-purpose system".
2. Set out seven initial classes of high-impact AI systems parameters for the Government to deem further classes of systems as high-impact systems.
3. Establish distinct obligations on different actors across the AI value chain and clarify that *AIDA*'s

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obligation only applies once systems (or machine learning models) are placed on the market or put into use.

4. Require the establishment of accountability frameworks for those involved in the development and deployment of general-purpose or high-risk AI systems.
5. Provide for new powers for the new Artificial Intelligence and Data Commissioner.
6. Align *AIDA* with the European Union AI Act and the Organization for Economic Co-operation and Development (OECD) Definitions.

What AI systems will *AIDA* apply to?

In its current form, *AIDA* will apply only to "high-impact" AI systems. The original version of *AIDA* in Bill C-27 left the definition of "high-impact" entirely to regulations, which led to many stakeholders asking the Government for more clarity as to how it would define such systems.

The Proposed Amendments set out a list of seven classes of "high-impact" AI systems to provide further clarification, as follows:[2]

1. **Employment related matters:** systems used in employment matters, such as recruitment, hiring, remuneration, promotion, training, transfer or termination, etc.
2. **Provision of services:** systems used to determine service access, specifically:
   a. whether to provide services to an individual, or the type or cost of services to be provided to an individual; or
   b. how to prioritize services to be provided to individuals.
3. **Biometric information processing:** systems used to process biometric information in matters relating to:
   a. the identification of an individual, except where such information is processed with the individual's consent to authenticate their identity; or
   b. the assessment of an individual's behavior or state of mind.
4. **Content moderation and prioritization:** systems used in content moderation and prioritization, in particular:
   a. moderating content on online communication platforms, including search engines or social media services; or
   b. prioritizing the presentation of such content.
5. **Healthcare and emergency services:** systems used in healthcare or emergency services matters, with certain exceptions for regulated medical devices.
6. **Court or administrative body decision-making:** systems used by a court or administrative body

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in making determinations relating to an individual who is a party to proceedings.

7. **Law enforcement:** systems used to assist a peace officer in the exercise and performance of their law enforcement powers, duties, and functions as defined in the *Criminal Code*.

Implementation Timeline

The Committee is now considering the Proposed Amendments. Following consideration and potential adoption of these Proposed Amendments, Bill C-27 will then move to the report stage, a third reading in the House of Commons, and eventually Royal Assent, assuming it successfully passes each stage. After Royal Assent, the government has the following plan for implementing the initial set of *AIDA* regulations:[3]

- Consultation on regulations (6 months)
- Development of draft regulations (12 months)
- Consultation on draft regulations (3 months)
- Coming into force of initial set of regulations (3 months)

In other words, after *AIDA* receives Royal Assent, it could take a further two years before *AIDA* comes into force.

Interim Measures: Canada's Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative AI Systems

Since tabling Bill C-27, the Government of Canada has recognized an urgent need and broad support for the regulation of generative AI systems until Bill C-27 becomes law. In response to this need, the Canadian Government announced Canada's Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative AI Systems (the **"Code"**) in September 2023.[4] The Code sets voluntary commitments that companies can sign to demonstrate responsible development and management of generative AI systems.

The code outlines measures that are aligned with six core principles:[5]

- **Accountability:** Organizations will implement a clear risk management framework proportionate to the scale and impact of their activities.
- **Safety:** Organizations will perform impact assessments and take steps to mitigate risks to safety, including addressing malicious or inappropriate uses.
- **Fairness and equity:** Organizations will assess and test systems for biases throughout the lifecycle.
- **Transparency:** Organizations will publish information on systems and ensure that AI systems and AI-generated content can be identified.

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- **Human oversight and monitoring:** Organizations will ensure that systems are monitored and that incidents are reported and the reports are acted on.
- **Validity and robustness**: Organizations will conduct testing to ensure that systems operate effectively and are appropriately secured against attacks.

Each of these core principles has requirements that organizations can commit to by signing the Code. The Code serves as a bridge until Bill C-27 comes into force. However, as it is voluntary the Code has no binding power, and when the authors of this article last checked, only 40 companies had signed on to it.

Conclusion

The Government of Canada recognizes the need to establish a legal framework governing AI systems, promoting innovation and benefiting society in a fair, transparent, and safe manner. To address this need, the Government of Canada has introduced *AIDA* with the aim of regulating AI at the federal level. However, *AIDA* is still years off from coming into force, assuming it first passes its legislative review and becomes law. In the absence of federal legislation regulating AI, organizations may opt into the voluntary Code to signify their commitment to responsible development and management of generative AI systems.

If you have any further questions about the current regulations around AI in Canada, feel free to reach out to the authors of this article or any lawyers in our Technology and Innovation Group.

[1] Letter from François-Philippe Champagne to Joël Lightbound (3 October 2023), online: <https://www.ourcommons.ca/content/Committee/441/INDU/WebDoc/WD12751351/12751351/MinisterOfInnovationScienceAndIndustry-2023-11-28-Combined-e.pdf> [Proposed Amendments] at p. 9-10
[2] *Proposed Amendments* at p. 5-8
[3] Government of Canada, "The Artificial Intelligence and Data Act (AIDA) – Companion document" (March 2023) <https://ised-isde.canada.ca/site/innovation-better-canada/en/artificial-intelligence-and-data-act-aida-companion-document>
[4], [5] Government of Canada, "Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative AI Systems" (September 2023) <https://ised-isde.canada.ca/site/ised/en/voluntary-code-conduct-responsible-development-and-management-advanced-generative-ai-systems>

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