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Recommendations on Canada's first legislation addressing artificial intelligence.

Submitted to: Standing Committee on Industry and Technology (INDU) Study on Bill C-27 *Digital Charter Implementation Act*, 2022

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Preamble

Bill C-27, the *Digital Charter Implementation Act* introduced on June 16, 2022, proposes to set rules for the responsible development and implementation of artificial intelligence (AI) in Canada. It introduces the *Artificial Intelligence and Data Act* (AIDA), marking the country's first legislation addressing AI. Noteworthy components of AIDA include mandates requiring companies in the AI sector to assess the inherent risks associated with their tools right from their inception. Furthermore, the legislation envisions the establishment of an AI commissioner responsible for overseeing the implementation and enforcement of these new provisions.

Since its introduction, numerous experts have expressed reservations about the proposed legislation's scope and content. On September 25, 2023, a coalition comprised of 45 civil society organizations, experts, and academics collaborated on a letter addressed to Minister François-Philippe Champagne. This collective outlined concerns that AIDA might not adequately protect the rights and freedoms of Canadian citizens in this rapidly evolving AI landscape. A key request of this letter is the removal of AIDA from Bill C-27, emphasizing the need for the House of Commons Standing Committee on Industry and Technology (INDU) to dedicate enough time to discussing and scrutinizing its provisions.

In September 2023, Minister Champagne proposed amendments to the bill to address numerous criticisms that had been directed at AIDA. The latest version of the law introduces a revised definition for AI and general-purpose systems. It also outlines distinct obligations based on the AI chain's value and confers new authority to the AI commissioner. A significant modification involves including a definition for high-impact systems, mirroring the classification system in the European Union, which delineates seven classes of high-impact systems.

However, new concerns have arisen with the introduction of these amendments, and some pre-existing issues continue to persist. While recognizing the government's dedication to AI regulation, the Canadian Association of Professional Employees (CAPE) has identified specific legislative and regulatory aspects that raise concerns and could benefit from improvement. CAPE concerns echo and reinforce those already raised by other federal public sector unions, such as the Professional Institute of the Public Service of Canada, and national labour organizations, such as the Canadian Labour Congress. Additionally, CAPE addresses some of the recently published amendments.

It is against this backdrop that CAPE is submitting the following recommendations for INDU's consideration which, it believes if implemented, will address many of the concerns and greatly strengthen the legislation.

Key recommendations

1. **Treat AIDA as a standalone entity, separate from omnibus Bill C-27.**
2. **Offer stakeholders who have previously testified before INDU, prior to the submission of additional amendments to AIDA, an opportunity to appear for a second time.**
3. **Increase and expand consultations with labour organizations and unions, such as the Canadian Labour Congress and CAPE, to obtain a more comprehensive understanding of the issues and opportunities.**
4. **CAPE, along with other labour organizations and unions, also support an independent AI and Data Commissioner, including an independent selection process.**
5. **Integrate workers' rights into the categories defining high-impact systems.**
6. **Broadening the scope of AIDA to encompass all federal departments, Crown agencies, and institutions is crucial.**

What's at stake and key recommendations.

> ➢ **Recommendation 1: Treat AIDA as a standalone entity, separate from omnibus Bill C-27.**

Issue: Refocusing discussions on AIDA

Incorporating AIDA into an omnibus bill addressing critical topics such as privacy protection and the security of personal information compromises in-depth discussions on the regulation of AI. This integration into a broader legislative framework, such as Bill C-27, may lead to a dispersion of the necessary attention required to adequately assess AIDA's specific implications. Witnesses have limited speaking time and, therefore, must choose the segment of Bill C-27 on which their interventions will focus. The inherent complexity of AI regulation demands a thorough analysis to prevent gaps that could result in severe consequences for privacy and individual rights. We are skeptical about the current forum's suitability for conducting this in-depth analysis.

> ➢ **Recommendation 2: Offer stakeholders who have previously testified before INDU, prior to the submission of additional amendments to AIDA, an opportunity to appear for a second time.**

Issue: Recent amendments to AIDA

The recent amendments to AIDA have introduced significant changes to the bill, necessitating additional consultation with stakeholders. On September 26, Minister Champagne verbally outlined the proposed amendments, detailed in two follow-up letters. However, it took until after nine committee meetings for the amendments initially announced by the minister to be formally submitted. This submission comprises an extensive package of information that significantly changes the bill.

Several experts have been summoned to testify before the committee; however, they have been unable to provide input on the initially intended version of the bill. This undermines the significance of their participation in the committee, as they will miss the chance to assess and comment on the most recent version of AIDA. Therefore, it is crucial to extend the consultation

process, allowing stakeholders who have previously provided comments on AIDA the opportunity to thoroughly examine the additional information submitted and provide their feedback.

> **Recommendation 3: Increase and expand consultations with labor organizations and unions, such as the Canadian Labour Congress and CAPE, to obtain a more comprehensive understanding of the issues and opportunities.**

Issue: Need for expanded engagement and transparency in AIDA development

One of the primary concerns raised by CAPE, and shared by other public sector unions, is the need for more direct engagement with the broader public during the development of AIDA. The exclusive entrustment of AIDA's development to Industry, Science and Economic Development Canada (ISED), whose primary mission revolves around promoting the economic growth of the AI industry, raises concerns about whether the interests of Canadian workers have been adequately considered in the process, leading critics to view it as a potential conflict of interest.

During a committee meeting, the minister highlighted having more than "300 meetings with academics, businesses and members of civil society regarding this bill." However, upon the committee's request for the list, it was revealed that only 28 consultations involved academics, with the majority focused on industry actors. While the transparency in revealing consultation details is appreciated, it underscores the need for more extensive engagement with social actors and those directly affected by AI development in the later stages. To ensure transparency, CAPE recommends that the government continue seeking input from unions and other labour organizations, especially considering the potential labour market and civil society disruptions, by maintaining an open dialogue that defends the interests of the public.

> **Recommendation 4: CAPE, along with other labour organizations and unions, supports an independent AI and Data Commissioner, including an independent selection process.**

Issue: Centralization of power within ISED

Another significant concern pertains to the centralization of power within ISED in applying AIDA. Various experts have criticized the lack of autonomy between the AI and Data Commissioner and ISED throughout the committee meetings. While the most recent amendments aim to redefine the commissioner's role, granting them more authority and introducing some separation from the Minister of Innovation, Science, and Industry of Canada, these changes need to be revised to ensure sufficient independence.

In a blog post published December 8, Dr. Scassa, Canada Research Chair in Information Law and Policy, illustrates how the "commissioner 2.0" is not a truly independent position. Despite the modifications, the commissioner continues to be appointed directly by the minister, serving without a specified term and lacking job security. Moreover, AIDA specifies that in the commissioner's absence, the minister will assume their powers and duties. These aspects of AIDA underscore the need for more substantial measures to ensure the commissioner's independence from ministerial influence.

> **Recommendation 5: Integrate workers' rights into the categories defining high impact systems.**

Issue: Insufficient protection of workers' rights

An additional concern arises from AIDA's omission of workers' rights. This deficiency, underscored by professors Brandusescu and Seiber in their committee submission, merits careful consideration. As outlined in their document, ISED's amendment fails to address the crucial aspect of workers' rights. While introducing categories in the AIDA amendments addressing high-risk scenarios involving artificial intelligence systems in employment-related decisions (class 1 of high-impact systems) is a positive step, there remains a significant oversight concerning the potential harm to workers who use or are subject to these new technologies.

The document by Brandusescu and Seiber also lays out how leveraging AI to boost productivity can lead to the dehumanizing exploitation of workers. Within this document, the researchers offer numerous examples illustrating instances where the application of artificial intelligence in productivity management has harmed workers. It is crucial not to underestimate AI's potential to fundamentally reshape the essence of work, possibly eroding its sense of purpose. The profound impact of artificial intelligence on work is an aspect that experts are still grappling to fully anticipate. AIDA should proactively initiate the development of legislation aimed at safeguarding the rights and well-being of workers in the face of these transformations.

> **Issues 6: Broadening the scope of AIDA to encompass all federal departments, Crown agencies, and institutions is crucial.**

Issue: Government exclusion from AIDA

Finally, despite the criticisms expressed in this regard, AIDA continues to exclude the government from its legislative scope. The letter accompanying the amendment, drafted by the minister, attempts to justify this choice. It mentions, among other things, that the Government of Canada remains subject to the Directive on Automatic Decisions. However, we are not convinced that the Directive on Automatic Decisions currently provides adequate protection to Canadian citizens.

Firstly, the directive is limited to the issue of automatic decisions, whereas it is known that AI-based systems have much broader applications. Additionally, the required transparency has yet to be achieved despite the existence of the directive. Although it mandates departments using automated decision systems to publish an algorithmic impact assessment, very few have done so thus far. Despite the Treasury Board Secretariat's announcement of more than 300 AI-based projects at various stages of development during the third review of the Directive in 2022, only 14 algorithmic impact assessments are currently accessible to the public.

The minister also contends that private sector organizations will be involved in developing systems for public service, and AIDA would apply to those systems. However, concerns arise when the government administers a system designed by the private sector or when government employees internally develop systems. The proposed amendment aims to establish responsibilities across the "AI value chain," outlining distinct obligations at each step of the AI system's life cycle (development vs. application). It is unclear what the responsibility of a developer whose system is being used by a government organization would be. If these systems fall outside the purview of the Directive on Automatic Decisions, their usage may lack adequate supervision.

About the Canadian Association of Professional Employees (CAPE)

With more than 25,000 members, the Canadian Association of Professional Employees is one of the largest federal public sector union in Canada, dedicated to advocating on behalf of federal employees in the Economics and Social Science Services (EC) and Translation (TR) groups, as well as employees of the Library of Parliament (LoP), the Office of the Parliamentary Budget Officer (OPBO) and civilian members of the RCMP (ESS and TRL).

For more information: www.acep-cape.ca