

The Artificial Intelligence and Data Act (AIDA)

Submitted to the Study of Bill C-27

**House of Commons' Standing Committee
on Industry and Technology (INDU)**

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Introduction

The Canadian Labour Congress (CLC) is Canada's largest central labour body, uniting over 50 national and international unions, 12 provincial and territorial federations of labour, and more than 100 local labour councils. On behalf of over 3 million workers employed in every region and sector in the country, the CLC welcomes the opportunity to provide commentary and recommendations on Part III of Bill C-27 enacting the *Artificial Intelligence and Data Act*.

Canadians from all walks of life are increasingly aware of the current and potential effects of AI, including the risks to health and safety, human and civil rights, and political equality. As well, in a wide range of industries and occupations across Canada, artificial intelligence is increasingly transforming work and the workplace. AI is already having far-reaching effects on employment and job security, job design, work organization and the task composition of work, and workplace monitoring, data extraction and management. Working people confront artificial intelligence not just as consumers and service-users, but in the design of their jobs, the organization of their work, and in staffing, management, and human resource processes. The regulation of AI is of direct material interest to working people, as workers, consumers, and citizens.

In 2022, the Canadian Labour Congress formed a Task Force on Automation and Artificial Intelligence to study the impacts on employment, work reorganization and job design, inequality, and the human and labour rights of working people. Affiliate unions have told the CLC that artificial intelligence is rapidly reshaping work in unionized workplaces, across sectors, industries, and occupations. In air transportation and aerospace manufacturing, workers [report](#) confronting AI applications in their workplaces. Education and creative industry workers also face challenges with generative AI and the potential loss of control of and compensation for their work. The observations and recommendations specific to Bill C-27 below are informed by the deliberations and findings of the Task Force.

The Artificial Intelligence and Data Act

Bill C-27 enacts the *Artificial Intelligence and Data Act* (AIDA), to date Canada's most significant attempt to regulate the development and adoption of AI. AIDA seeks to mitigate risks of harm and 'biased output' related to 'high-impact' artificial intelligence systems. It allows for regulations prohibiting the development and use of an AI system that causes serious harm to individuals, and prohibits the use of illegally obtained personal information for designing, developing and using AI. AIDA would create an Artificial Intelligence and Data Commissioner within the department responsible for the Act. It also authorizes the Minister to order the production of records related to AI systems, and to establish an advisory committee and produce reports on compliance with the Act.

The CLC believes that like any new technologies, whether artificial intelligence improves or worsens work, job quality and economic insecurity depends on the balance of interests in shaping the development and application of AI. Developed with proper transparency, accountability and intentions, AI has the potential to form part of a series of measures to improve working lives. Deployed for the purpose of shedding workers, reducing costs, and exploiting opportunities for profit at the cost of privacy and human rights, AI will lead to greater inequality, insecurity and potentially discrimination and dystopic outcomes. In other words, the potential of AI to improve social, economic, and political life depends greatly on regulation.

The CLC welcomes federal government efforts to regulate the development and adoption of artificial intelligence in Canada, in particular the attention to the risks and potential harms to labour and human rights. In the past, the Government of Canada's overriding concerns seems to have been industry competitiveness and a desire to facilitate AI research and development and commercialization in Canada. We believe this has been a lopsided approach to the issue, and we welcome the attention to protecting society from the potential harms of artificial intelligence.

First Principles

The CLC believes that transparency and public consultation are essential and indispensable elements of an effective and adequate regulatory framework for the development and application of AI. AIDA was introduced without public consultation with unions and civil society organizations, and there are glaring problems with the proposed Act. Instead of a stand-alone Bill, AIDA is bundled into a larger Bill reforming commercial sector privacy laws.

From a human rights perspective, unregulated AI development and adoption raises risks and concerns in a host of different areas, from discrimination and the potential infringement of privacy and basic civil liberties, to AI's potential to deepen existing inequities experienced by vulnerable groups and undermine efforts to improve inclusion. AIDA requires no human rights or privacy impact assessment in the development and application of AI systems.

Despite the widespread risks and potential for harm, AIDA regulates only so-called "high-impact" AI systems, but leaves the definition of such a system to regulation. Indeed, it leaves most of the details regarding AI governance and compliance enforcement to future regulations, with the industry-mandated Department of Innovation, Science and Economic Development (ISED) given responsibility for drafting the regulations. To this point, ISED and the Government of Canada have been chiefly concerned to promote AI innovation and commercialization in Canada, not regulate its development and adoption in the public interest. The proposed Commissioner responsible for administering the Act would not be independent, but rather housed within ISED.

Recommendations Regarding AIDA

- *AIDA should be expressly expanded to apply to all federal departments and agencies and crown corporations including national security institutions.*

The application of AIDA is far too narrow. AIDA explicitly does not apply to a product, service or activity under the direction or control of National Defence, Canadian Security Intelligence Service, Communications Security Establishment, and other federal and provincial departments and agencies as prescribed by regulation. Several of these institutions are a source of greatest concern and risk for the development of AI applications that violate privacy and human rights.

The government should not exempt itself, especially the security services. The Government of Canada is a leading [adopter](#) and promoter of AI; to encourage development and adoption of AI systems, Treasury Board has a [Directive on Automated Decision-Making](#) which delineates the circumstances under which decisions can be relegated to AI without direct human involvement. As one [commentator](#) points out, government is responsible for many of the 'highest-impact' AI systems, from decision-making regarding [immigration](#) and [benefits claims](#) to [policing](#) and [military operations](#). By exempting itself from AIDA, the government is missing a golden opportunity to impose high ethical standards that positively shape the direction of AI development and use.

In addition to government support for innovation in this area, public procurement supports and facilitates the research, development and commercialization of AI technologies. Many AI applications developed for National Defence, for instance, will eventually find their way into commercial application. For this reason, the government must be part of the legal and regulatory framework for AI development in Canada. All government departments, agencies and Crown corporations should be included in the Act.

- *The purpose clause of the Act should be strengthened.*

Currently, AIDA is intended in part “to prohibit certain conduct in relation to artificial intelligence systems that may result in serious harm to individuals or harm to their interests.” This should be revised to “prohibit conduct that may result in harm to individuals and groups,” and not just serious harm. Currently, AIDA’s focus is on individual harms but not societal risk (e.g. to the environment or Canadian democracy). Considered as a whole, the AI and Data Act is notably inferior to the European Union’s [Artificial Intelligence Act](#), which recognizes the potential for broader society harms.

- *The Artificial Intelligence and Data Commissioner should be redesigned and made truly independent.*

Currently, AIDA provides for the ISED Minister to designate a senior department official to act as the Artificial Intelligence and Data Commissioner. This should be an independent position; siting the Commissioner within the department responsible for supporting industry is inappropriate for an office providing supervision and regulatory oversight, and presents the potential for confused, divergent and conflicting objectives.

- *AIDA should institutionalize public disclosure, consultation, and accountability through a representative AI Advisory Council*

While AIDA authorizes the Minister to establish an advisory committee, we strongly believe the government must go much further than the current [Advisory Council on Artificial Intelligence](#) established in 2019. This body is dominated by industry and academic voices, with no participation from civil society, human rights advocacy organizations, unions, and the public. The CLC strongly supports the creation of a permanent representative advisory council to advise on research needs, regulatory matters, and administration and enforcement of AIDA.

Summary of Recommendations

1. AIDA should be expressly expanded to apply to all federal departments and agencies and Crown corporations, including national security institutions.
2. AIDA should be reconceived from a human, labour, and privacy rights-based perspective, placing transparency, accountability and consultation at the core of the approach to regulating AI.
3. AIDA should regulate the risk of real harms and discrimination from AI systems that fall outside the classification of 'high-impact'.
4. The purpose clause should be revised to prohibit conduct that may result in harm to individuals and groups, not just serious harm, and reference societal harms in addition to individual ones.
5. AIDA should create a permanent, representative advisory council to make recommendations on research needs, regulatory matters, and administration and enforcement of AIDA.

Concluding Remarks

The CLC believes that there should be much more transparency, information-sharing, and engagement institutionalized in Canadian workplaces and society more broadly.

To date, the Government of Canada has appeared to prioritize the commercial development and competitiveness of the AI industry in Canada. For this reason, the government has preferred a 'light-touch' approach to regulation, opting for [voluntary industry ethical codes of conduct](#) over regulatory guidelines.

In our view, this approach is deeply inadequate, in several ways. First, it confuses and invites conflicts between the distinct government roles of regulator and industry champion. Second, there is little reason to believe that private actors, locked in a competitive race to deepen the development and application of AI technologies with potentially far-reaching consequences for human rights and civil liberties, can be relied on to voluntarily safeguard the public interest. Third, the development and implementation of AI technologies in Canadian workplaces and organizations continue to take place in a public accountability and engagement vacuum. Canada's unions urge the federal government to study and learn from the regulatory approach adopted by the [European Union](#) and other governments in order to strengthen transparency and disclosure, institutionalized public engagement and oversight, legislative scrutiny, and risk mitigation as necessary ingredients for a democratic, rights-enhancing development of artificial intelligence.

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