

AIDA Priority Recommendations Package

March 1, 2024

Organizations:

- OpenMedia
- International Civil Liberties Monitoring Group
- Privacy & Access Council of Canada

Individuals:

- Jim Balsillie, Founder, Centre for Digital Rights
- Andrew Clement, Professor emeritus, University of Toronto
- Christelle Tessono, Technology Policy Researcher, University of Toronto
- Fenwick McKelvey, Associate Professor, Concordia University (reluctantly given the deep issues with consultation raised by the Assembly for First Nations and the overall flawed committee process)
- Brenda McPhail, Executive Education Director, McMaster Public Policy in Digital Society Program.
- Maroussia Lévesque, AI governance doctoral researcher, Harvard Law School

Introduction

The Artificial Intelligence and Data Act's flaws — in terms of both [process](#) and [substance](#) — have been well documented. We, the organizations and individuals named above, believe that the Act (commonly known as AIDA) is a fundamentally broken piece of legislation that risks undermining the fundamental human rights of people across Canada for the sake of narrow industry interests.

Time and again, we and many others have called for AIDA to be split off from the rest of Bill C-27, and sent back for the public consultation and extensive redrafting that it so desperately needs, and that people across Canada so richly deserve.

That remains our well-founded position.

We strongly urge MPs on the Industry Committee to recognize that we would not be in this mess had it not been for the government's ill-advised rush to be among the first states to legislate for AI, and its failure to conduct any meaningful consultation with anyone outside the AI industry prior to introducing AIDA. As many of the Committee's witnesses have stated: there are no trophies for coming first. People across Canada need you to get this right.

The most troubling aspect of the government's failure to consult was the absence of any meaningful consultation with First Nations, or other Indigenous peoples, on any aspect of Bill C-27. The Assembly of First Nations (AFN) stated in its [submission](#) that "the process is flawed because there was no Nation-to-Nation consultation between Canada and First Nations."

Highlighting that First Nations' right to data sovereignty is "essential to the realization of other rights including rights to self-determination and self-government," the AFN concluded that both AIDA, and ISED's voluntary Code of Conduct, "do little to assure First Nations that their individual and collective rights will be respected by commercial interests or governments."

As [noted](#) by the Centre for Digital Rights (CDR), the government's failure to consult with Indigenous Peoples flies in the face of its obligation to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), as well as the First Nations OCAP Principles of Ownership, Control, Access, and Possession in relation to data.

This is all the more concerning given that [Measure #30](#) of the federal government's *UN Declaration Act 2023-28 Action Plan* — published as recently as last June — specifically commits various government departments to:

“Continue to support Indigenous Data Sovereignty and Indigenous-led data strategies through legislative, regulatory and policy options to help ensure that First Nations, Inuit, and Métis have the sufficient, sustainable data capacity they need to control, manage, protect, and use their data to deliver effective services to their peoples, tell their own stories, participate in federal decision-making processes on matters that impact them, and realize their respective visions for self-determination...”

Despite this clear commitment, neither Bill C-27 itself, nor any of the [amendment packages](#) published last fall by Industry Minister François-Philippe Champagne, make any attempt to engage with, or even to reference, Indigenous Peoples' right to data sovereignty. CDR rightly characterizes this failure as “unacceptable and inexcusable.” And it's sadly emblematic of a broader failure to meaningfully consult Indigenous Peoples on legislation that impacts their data sovereignty rights and interests.

There is still time for the Industry Committee to do the right thing by removing AIDA from Bill C-27 and then conducting a thorough public consultation — prioritizing Indigenous perspectives — before introducing a much-improved redrafted bill.

However, we are gravely concerned that, under pressure from both the government and powerful AI industry interests, the Committee may decide to press ahead with this deeply-flawed piece of legislation, rather than send it back for the broad public consultation and extensive redrafting it requires.

Therefore, we present these amendments and recommendations not in the belief that AIDA can be 'fixed,' but with a view to patching its most glaring shortcomings if the Committee insists on pressing forward with the bill.

In this spirit, we set out below high-priority recommendations in three key areas:

- [Section 1 – Ongoing review, consultation, and legislative updates](#)
- [Section 2 - Uphold Human Rights](#)
- [Section 3 - Independent Oversight & Enforcement](#)

All three sections are important, but the first section is absolutely critical. Put simply, if AIDA were an aircraft, it would be thoroughly unfit to fly. But if the Committee insists on taking to the air regardless, they should at least patch up the holes in the wings, add some landing wheels and, most important of all, furnish AIDA with a toolkit so it can be patched up mid-air.

It is therefore vital that AIDA contain a mechanism for in-depth, ongoing, meaningful consultation feeding into regular legislative review and update, led by a parliamentary committee tasked with permanent review of the bill.

Outstanding Issues:

Furthermore, our critique is by no means limited to the areas we cover in the rest of this document. Even if all of the below proposals were implemented, AIDA would remain in need of improvement.

Among the most important outstanding issues are:

- The need to conduct good faith and comprehensive consultation and cooperation with Indigenous Peoples to fix the many elements of Bill C-27 which infringe Indigenous rights. The government must ensure adequate timelines, processes, funding, and capacity supports to ensure that Indigenous Peoples are duly consulted, in line with its obligation to take "effective measures" and "necessary steps" to meet the objectives of UNDRIP and the *UN Declaration Act*. This consultation must encompass the AFN's [specific concerns](#) about AIDA, including around data sovereignty, AI's potential to exacerbate racial and ethnic profiling, the lack of an independent AI and Data Commissioner, and what AFN describes as the "chilling" exemption of National Defence, the Canadian Security and Intelligence Service, and the Communications Security Establishment.
- The need for an outright prohibition of “unacceptable risk” uses of AI — e.g. biometric identification / facial recognition in public places (as per the EU’s *AI Act*.) This could form an additional part of the Commissioner’s s. 14 (1) powers, as set out in the Minister’s proposed amendments, which are currently limited to determining whether or not a system is “high-impact.”
- The inappropriateness of defining “high-impact” based on intended uses alone, with no legislative specification of the criteria for inclusion, nor guiding principles in terms of

defining high-impact systems and levels of risk, nor allowing for the designation of unacceptable risk applications as in other jurisdictions.

- The need to tackle the multi-jurisdictional challenge of the risks of misinformation, disinformation, malinformation, and their amplification, arising from the use of AI systems – and more broadly other harmful effects that may fall outside the definitions of “harm” and “biased output” which the current framework is built around.
- The need to address the potential use of AI in weapon systems, or by military contractors. We suggest scoping-in to AIDA the use of AI technologies by DND, CSIS, CSE, and defining such use as “high-impact” – or, where appropriate, “unacceptable” – as is already the case for peace officers under the Minister’s proposed amendments.
- The need to ensure that the Office of the Privacy Commissioner, and the Office of the AI & Data Commissioner (which we propose be established as an independent officer of Parliament), are empowered to work closely together, with clear lines of responsibility, and well-defined areas for collaboration. Furthermore, we are open to dropping “Data” from the AI Commissioner’s title if that would lend clarity to how they would work together with the Privacy Commissioner.
- Finally, given that AIDA applies to the private sector, there is also a need to address the use of AI technologies by the public sector, for example by updating the *Privacy Act*.

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Section 1 – Ongoing review, consultation, and legislative updates

Introduction:

In light of the government's failure to conduct a meaningful public consultation prior to introducing AIDA, and the many profound flaws with the current legislation, it is imperative that, if adopted, AIDA incorporate a process for rigorous ongoing review and update, informed by genuine public consultation, independent background research, and parliamentary committee study.

Given the rapid pace of change in the AI field, AIDA needs to be both adaptable and future-proofed in order to keep up with the societal, technological, and human rights implications of AI technologies. It is equally essential that this process involves deep public consultation, facilitated dialogue, awareness-raising, and independent background research so that parliamentarians, independent experts, and the public can understand and engage with the future challenges of AI.

To ensure that Canada's regulatory framework can meet future needs, this process must apply to both the legislation itself, and to regulations flowing from it.

We set out below several amendments designed to contribute toward achieving this goal. Note that references in these amendments to the role of the AI & Data Commissioner (AIDC) should be viewed in conjunction with the proposals set out in Section 3 of this document to ensure the AIDC becomes an independent officer of Parliament, and not a mere agent of the Industry Minister.

Intent:

Our intent with these amendments is:

- **1.1** - To ensure the AI & Data Commissioner convenes broad, arms-length public consultation, and facilitates dialogue on the democratic, systemic, and human rights implications of AI. A useful model for this is [AlgoWatch](#), a project co-funded by the European Union, which focuses on educating the public about the challenges of algorithms and AI in the field of information and digital citizenship.
- **1.2** - To significantly expand the reporting and review duties of the AI & Data Commissioner, including by ensuring the Commissioner submits an annual report to Parliament on the activities of its office and has the power to submit special reports when urgent or important. All such reports are to be referred to the Parliamentary committee responsible for permanent review of AIDA.
- **1.3** - To permanently task a designated Parliamentary Committee with ensuring that AIDA is reviewed, and wherever necessary revised and updated, with such reviews to

include public hearings and to be conducted once every three years, starting one year after AIDA comes into force. The Minister of Industry should be obliged to respond within 90 days to these committee reviews with a plan – including legislative and regulatory changes – designed to remedy deficiencies identified by the Committee.

- **1.4** - To remove the Ministerial advisory committee envisaged in s. 35, because this is an opaque mechanism that would no longer be required given that an independent AI Commissioner would be responsible for oversight and enforcement of AIDA, rather than the Minister. Removing this from the Bill also has the advantage of permitting the AI Commissioner to establish such a committee if desirable, while not forcing them to do so.

Amendments 1.1 - Duty to ensure ongoing public consultation:

AIDA Original Text:	AIDA Proposed Text:
<p>General powers of Minister 32 The Minister may</p> <p>(a) promote public awareness of this Act and provide education with respect to it;</p> <p>(b) make recommendations and cause to be prepared reports on the establishment of measures to facilitate compliance with this Part; and</p> <p>(c) establish guidelines with respect to compliance with this Part.</p>	<p>General powers of the Minister Artificial Intelligence and Data Commissioner</p> <p>32 The Minister Commissioner may shall</p> <p>(a) promote public awareness of this Act and provide education with respect to it;</p> <p>(b) convene public hearings to facilitate dialogue about the widespread democratic, systemic, and human rights implications of AI technological developments;</p> <p>(c) make recommendations and cause to be prepared and published reports on the establishment of measures to facilitate compliance with this Part; and</p> <p>(d) establish guidelines with respect to compliance with this Part.</p>

Amendments 1.2 - Report and Review Obligations of AI & Data Commissioner:

AIDA Text as amended by the Minister:	AIDA Proposed Text:
<p>Annual report 35.1 Before July 1 of each calendar year, the Commissioner must prepare a report on the administration and enforcement of this Part during the previous calendar year and must cause the report to be published on a publicly available</p>	<p>Annual report 35.1 (1) Before July 1 of each calendar year, tThe Commissioner must prepare a report on the administration and enforcement of this Part during the previous calendar year and must cause the report to be published on a publicly available</p>

<p>website.</p>	<p><u>website. shall, within three months after the termination of each financial year, submit an annual report to Parliament on the administration and enforcement of this Part during that financial year, including a summary of advice provided by the advisory committee established under section 35 (1).</u></p> <p><u>(2) The Commissioner may, at any time, make a special report to Parliament referring to and commenting on any matter within the scope of the powers, duties and functions of the Commissioner where, in the opinion of the Commissioner, the matter is of such urgency or importance that a report thereon should not be deferred until the time provided for transmission of the next annual report of the Commissioner under section 35.1(1).</u></p> <p><u>(3) Every report to Parliament made by the Commissioner under subsection (1), (2), (4) or (5) shall be made by being transmitted to the Speaker of the Senate and to the Speaker of the House of Commons for tabling in those Houses.</u></p> <p><u>(4) Every report referred to in subsection (1) shall, after it is transmitted for tabling pursuant to that subsection, be referred to the committee designated or established by Parliament for the purpose of subsection 38.1 [referring to proposed new s. 38.1 below]</u></p>
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Amendments 1.3 - Permanent review of Act by Parliamentary Committee:

<p>PROPOSED TEXT - AIDA:</p> <p>Permanent review of Act by Parliamentary committee 38 The administration and operation of this Act shall be reviewed on a permanent basis by any committee of the House of Commons, of the Senate or of both Houses of Parliament that may be designated or established by Parliament for that purpose.</p> <p>Review and report by Parliamentary committee 38.1 (1) A committee referred to in section 38 shall undertake a review of this Act within one year after the day on which this section comes into force and every three years after the review is undertaken, and shall submit a report on each review to the Senate, the House of Commons or both Houses of Parliament, as the case may be, including a statement of any changes the committee would recommend, within 180 days of that first anniversary and every three years thereafter.</p>
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(2) The Minister must cause a report responding to the committee's review to be laid before each House of Parliament within 90 days after the receipt of the committee's report.

(3) If the Committee report identifies any deficiencies in the application of this Act the Minister's report must include a plan to remedy those deficiencies — including any proposed Legislative amendments or regulatory changes — and a timeline for its implementation.

**Renumber ensuing sections of the Act*

Amendments 1.4 - Remove requirement for Ministerial Advisory Committee:

AIDA Original Text:	AIDA Proposed Text:
<p>Advisory committee 35 (1) The Minister may establish a committee to provide the Minister with advice on any matters related to this Part.</p> <p>Advice available to public (2) The Minister may cause the advice that the committee provides to the Minister to be published on a publicly available website.</p>	<p>Advisory committee 35 (1) The Minister may establish a committee to provide the Minister with advice on any matters related to this Part.</p> <p>Advice available to public (2) The Minister may cause the advice that the committee provides to the Minister to be published on a publicly available website.</p>

Section 2 – Uphold Human Rights

Introduction:

From a human rights perspective, AIDA is hugely problematic in its current form. It fails to recognize that fundamental human rights must take precedence over narrow, commercial interests. It fails to recognize AI's potential to cause harm to identifiable groups, not just to individuals. And it fails to recognize that the human rights risks arising from AI development are inequitably distributed, with negative impacts falling disproportionately on individuals and groups that are already marginalized.

Exacerbating the multiple problems with AIDA itself are several 'trickle-down' effects from the *Consumer Privacy Protection Act (CPPA)* in Part 1 of Bill C-27. Even taking into account the Minister's proposed amendments, Bill C-27's preamble and the purpose clauses of both AIDA and the CPPA remain far too weak, and reflect a dangerous mindset that commercial interests can somehow be 'balanced' against our fundamental human rights.

Additionally, key definitions in both AIDA and the CPPA require significant strengthening if they are to better protect human rights. And there should be no question of law enforcement and security agencies receiving a blanket opt-out for their use of AI technologies — use that should instead be defined as high-impact.

Our amendments below aim to systematically address each of these shortcomings.

Intent:

Our intent with these amendments is:

- **2.1** - To explicitly recognize the precedence of fundamental human rights, including privacy, over narrow commercial interests in terms of AIDA's purpose and implementation;
- **2.2** - To strengthen human rights protections for individuals and identifiable groups, prioritizing the core definitions of "harm" and "biased output";
- **2.3** - To mandate upfront and ongoing human rights impact assessments, including of privacy and equity risks, for all AI systems, of a depth and detail appropriate to the level of risk ;
- **2.4** - To remove the exemption for private sector technology under the direction and control of law enforcement and security agencies, and to proactively define such use as "high-impact", as is the case for peace officers;

- **2.5** - To strengthen the definition of key concepts in the *Consumer Privacy Protection Act (CPPA)*, which have a ‘trickle-down’ impact on AIDA.

Amendments 2.1 - Recognize that fundamental human rights take precedence over other interests:

Bill C-27 Text as Amended by the Minister:	Bill C-27 Proposed Text:
<p>Preamble</p> <p>Whereas the right to privacy of individuals is a fundamental right in Canada;</p> <p>Whereas the protection of the privacy interests of individuals with respect to their personal information is essential to individual autonomy and dignity and to the full enjoyment of fundamental rights and freedoms in Canada;</p> <p>Whereas Parliament recognizes the importance of the privacy and data protection principles contained in various international instruments;</p>	<p>Preamble</p> <p>Whereas the right to privacy of individuals is a fundamental right in Canada;</p> <p>Whereas the protection of the fundamental right to privacy interests of individuals with respect to their personal information is essential to individual autonomy and dignity and to the full enjoyment of fundamental rights and freedoms in Canada;</p> <p>Whereas Parliament recognizes the importance of the privacy and data protection human rights principles contained in various international instruments including international human rights instruments that recognize the fundamental human rights to privacy and data protection, freedom from discrimination, freedom of expression, life and safety, and democracy.</p>

CPPA Original Text:	CPPA Proposed Text:
<p>Purpose</p> <p>5 The purpose of this Act is to establish — in an era in which data is constantly flowing across borders and geographical boundaries and significant economic activity relies on the analysis, circulation and exchange of personal information — rules to govern the protection of personal information in a manner that recognizes the right of privacy of individuals with respect to their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.</p>	<p>Purpose</p> <p>5 The purpose of this Act is to establish — in an era in which data is constantly flowing across borders and geographical boundaries and significant economic activity relies on the analysis, circulation and exchange of personal information — rules to govern the protection of personal information in a manner that recognizes the fundamental human right of privacy of individuals with respect to their personal information and takes precedence over the need of organizations to collect, use or disclose personal information for commercial purposes. that a reasonable person would consider appropriate in the circumstances.</p>

AIDA Original Text:	AIDA Proposed Text:

<p>Purposes 4 The purposes of this Act are</p> <p>(a) to regulate international and interprovincial trade and commerce in artificial intelligence systems by establishing common requirements, applicable across Canada, for the design, development and use of those systems; and</p> <p>(b) to prohibit certain conduct in relation to artificial intelligence systems that may result in serious harm to individuals or harm to their interests.</p>	<p>Purposes 4 The purposes of this Act are</p> <p>(a) to regulate international and interprovincial trade and commerce in artificial intelligence systems by establishing common requirements, applicable across Canada, for the design, development and use of those systems; and</p> <p>(b) to prohibit certain conduct in relation to artificial intelligence systems that may result in serious harm to individuals and identifiable groups, or harm to their interests; and</p> <p>(c) to prohibit certain conduct in relation to artificial intelligence systems that may result in infringing the fundamental human rights of individuals, including the rights to privacy, freedom from discrimination, life and safety, to move freely, and freedom of expression.</p>
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Amendments 2.2 - Strengthen human rights protections for individuals and identifiable groups:

AIDA Original Text:	AIDA Proposed Text:
<p>Definitions</p> <p>biased output means content that is generated, or a decision, recommendation or prediction that is made, by an artificial intelligence system and that adversely differentiates, directly or indirectly and without justification, in relation to an individual on one or more of the prohibited grounds of discrimination set out in section 3 of the Canadian Human Rights Act, or on a combination of such prohibited grounds. It does not include content, or a decision, recommendation or prediction, the purpose and effect of which are to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be based on or related to the prohibited grounds. (<i>résultat biaisé</i>)</p>	<p>Definitions</p> <p>biased output means content that is generated, or a decision, recommendation, classification, categorization or prediction that is made, by an artificial intelligence system and that adversely differentiates, directly or indirectly and without justification, in relation to an individual on one or more of the prohibited grounds of discrimination set out in section 3 of the Canadian Human Rights Act, or on a combination of such prohibited grounds, or on the basis of other grounds that result in greater inequality and marginalization for the affected party. It does not include content, or a decision, recommendation or prediction, the purpose and effect of which are to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be based on or related to the prohibited grounds. (<i>résultat biaisé</i>)</p>
<p>harm means</p>	<p>harm means</p>

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<p>(a) physical or psychological harm to an individual;</p> <p>(b) damage to an individual’s property; or</p> <p>(c) economic loss to an individual. (<i>préjudice</i>)</p>	<p>(a) physical or psychological harm to an individual or identifiable group;</p> <p>(b) damage to an individual’s property, collectively owned property, land or buildings held on behalf of a group or collective, or public property or public spaces; or</p> <p>(c) economic loss to an individual or identifiable group. (<i>préjudice</i>); or</p> <p>(d) material or immaterial harm to the fundamental human rights, including the rights to privacy, dignity, or autonomy, of an individual or identifiable group; or</p> <p>(e) material or immaterial harm to the fundamental human rights of an individual or identifiable group; or</p> <p>(f) biased output.</p>
<p>36 The Governor in Council may make regulations for the purposes of this Part, including regulations</p> <p>(a) respecting what constitutes or does not constitute justification for the purpose of the definition biased output in subsection 5(1);</p> <p>(b) for the purposes of sections 7, 8, 8.2 to 10.1, 11 and 12, subject to section 37;</p>	<p>36 The Governor in Council may make regulations for the purposes of this Part, including regulations</p> <p>(a) respecting what constitutes or does not constitute justification for the purpose of the definition biased output in subsection 5(1);</p> <p>(b) for the purposes of sections 7, 8, 9, 10, 11, 12 and 18; subject to section 37;</p>

AIDA Original Text:	AIDA Proposed Text:
<p>Purposes</p> <p>4 The purposes of this Act are</p> <p>(a) to regulate international and interprovincial trade and commerce in artificial intelligence systems by establishing common requirements, applicable across Canada, for the design, development and use of those systems; and</p> <p>(b) to prohibit certain conduct in relation to artificial intelligence systems that may result in serious harm to individuals or harm to their interests.</p>	<p>Purposes</p> <p>4 The purposes of this Act are</p> <p>(a) to regulate international and interprovincial trade and commerce in artificial intelligence systems by establishing common requirements, applicable across Canada, for the design, development and use of those systems; and</p> <p>(b) to prohibit certain conduct in relation to artificial intelligence systems that may result in serious harm to individuals and identifiable groups or harm to their interests; and</p> <p>(c) to prohibit certain conduct in relation to artificial intelligence systems that may result in infringing fundamental human rights; and</p>

	(d) to address societal risks arising out of artificial intelligence systems, including risks to the environment and democracy.
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Amendments 2.3: Mandate upfront and ongoing human rights impact assessments, including of privacy and equity risks, for all AI systems:

AIDA Text as amended by the Minister:	AIDA Proposed Text:
<p>General-purpose system – first time 7 (1) Before a general-purpose system is made available in the course of international or interprovincial trade and commerce for the first time, the person who makes it available for that first time must ensure that</p> <p>(a) measures respecting the data used in developing the system have been established in accordance with the regulations;</p> <p>(b) an assessment of the adverse impacts that could result from any use of the system that is reasonably foreseeable has been carried out in accordance with the regulations;</p> <p>(c) measures to assess and mitigate any risks of harm or biased output that could result from any use referred to in paragraph (b) have been established in accordance with the regulations;</p> <p>(d) tests of the effectiveness of the mitigation measures established under paragraph (c) have been carried out;</p> <p>(e) the features prescribed by regulation that permit human oversight of its operations have been included in the system;</p> <p>(f) a plain-language description has been prepared of</p> <p>(i) the system’s capabilities and limitations,</p> <p>(ii) the risks of harm or biased output referred to in paragraph (c), and</p> <p>(iii) any other information prescribed by regulation;</p>	<p>General-purpose system – first time 7 (1) Before a general-purpose system is made available in the course of international or interprovincial trade and commerce for the first time, the person who makes it available for that first time must ensure that</p> <p>(a) measures respecting the data used in developing the system, including the provenance of this data, have been established in accordance with the regulations and other relevant laws, notably for data and intellectual property protections;</p> <p>(b) an assessment of the adverse impacts, including any risks of harm or biased output, that could result from any use of the system that is reasonably foreseeable has been carried out in accordance with the regulations;</p> <p>(c) measures to assess and mitigate any risks of harm or biased output that could result from any use referred to in paragraph (b) have been established in accordance with the regulations;</p> <p>(d) tests of the effectiveness of the mitigation measures established under paragraph (c) have been carried out;</p> <p>(e) the features prescribed by regulation that permit human oversight of its operations have been included in the system;</p> <p>(f) a plain-language description has been prepared of</p> <p>(i) the system’s capabilities and limitations,</p> <p>(ii) the assessment of adverse impacts referred to in paragraph (b).</p>

	<p>(iii) the risks of harm or biased output referred to in paragraph (c), and</p> <p>(iv) any other information prescribed by regulation;</p>
<p>Developing machine learning model 9 (1) Before a machine learning model is made available, for incorporation into a high-impact system, in the course of international or interprovincial trade and commerce for the first time, the person who makes it available for that first time must ensure that</p> <p>(a) measures respecting the data used in developing the model have been established in accordance with the regulations;</p> <p>(b) measures to identify, assess and mitigate the risks of biased output that could result from the use of the model by a high-impact system in which the model is intended to be incorporated have been established in accordance with the regulations;</p>	<p>Developing machine learning model 9 (1) Before a machine learning model is made available, for incorporation into a high-impact an AI system, in the course of international or interprovincial trade and commerce for the first time, the person who makes it available for that first time must ensure that</p> <p>(a) measures respecting the data used in developing the model, including the provenance of this data, have been established in accordance with the regulations;</p> <p>(b) proportionate measures to identify, assess and mitigate the risks of harm or biased output that could result from the use of the model by a high-impact an AI system in which the model is intended to be incorporated have been established in accordance with the regulations;</p>
<p>Making high-impact system available 10 (1) Before a high-impact system is made available in the course of international or interprovincial trade and commerce for the first time, the person who makes it available for that first time must ensure that</p> <p>(a) an assessment of the adverse impacts that could result from the intended use or from any other use of the system that is reasonably foreseeable has been carried out in accordance with the regulations;</p> <p>(b) measures to assess and mitigate any risks of harm or biased output that could result from any use referred to in paragraph (a) have been established in accordance with the regulations;</p>	<p>Making high-impact system available 10 (1) Before a high-impact system is made available in the course of international or interprovincial trade and commerce for the first time, the person who makes it available for that first time must ensure that</p> <p>(a) an assessment of the adverse impacts, including any risks of harm or biased output, that could result from the intended use or from any other use of the system that is reasonably foreseeable has been carried out in accordance with the regulations;</p> <p>(b) measures to assess and mitigate any risks of harm or biased output that could result from any use referred to in paragraph (a) have been established in accordance with the regulations;</p>
<p>Elements 12 (5) The accountability framework must, in accordance with the regulations, include</p> <p>(a) a description of the roles and responsibilities and reporting structure for all personnel who contribute to making the artificial intelligence system available or who contribute to the management of its operations;</p>	<p>Elements 12 (5) The accountability framework must, in accordance with the regulations, include</p> <p>(a) a description of the roles and responsibilities and reporting structure for all personnel who contribute to making the artificial intelligence system available or who contribute to the management of its operations;</p>

<p>(b) policies and procedures respecting the management of risks relating to the system;</p>	<p>(b) policies and procedures respecting the management of risks relating to the system, including any risks of harm or biased output;</p>
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Amendments 2.4: Remove the exemption for private sector technology under the direction and control of law enforcement and security agencies:

AIDA Original Text:	AIDA Proposed Text:
<p>Non-application 3 (1) This Act does not apply with respect to a government institution as defined in section 3 of the <i>Privacy Act</i>.</p> <p>Product, service or activity (2) This Act does not apply with respect to a product, service or activity that is under the direction or control of (a) the Minister of National Defence; (b) the Director of the Canadian Security Intelligence Service; (c) the Chief of the Communications Security Establishment; or (d) any other person who is responsible for a federal or provincial department or agency and who is prescribed by regulation.</p>	<p>Non-application 3 (1) This Act does not apply with respect to a government institution as defined in section 3 of the <i>Privacy Act</i>.</p> <p>Product, service or activity (2) This Act does not apply with respect to a product, service or activity that is under the direction or control of Notwithstanding (1), for greater clarity, this Act applies to commercially-acquired products, services or activities that are under the control or direction of (a) the Minister of National Defence; (b) the Director of the Canadian Security Intelligence Service; (c) the Chief of the Communications Security Establishment; or (d) any other person who is responsible for a federal or provincial department or agency and who is prescribed by regulation.</p>
<p>SCHEDULE 2 (Section 39) (Subsection 5(1), paragraph 10.2(2)(a) and section 36.1)</p> <p>High-Impact Systems – Uses</p> <p>7: The use of an artificial intelligence system to assist a peace officer, as defined in section 2 of the Criminal Code, in the exercise and performance of their law enforcement powers, duties and functions.</p>	<p>SCHEDULE 2 (Section 39) (Subsection 5(1), paragraph 10.2(2)(a) and section 36.1)</p> <p>High-Impact Systems – Uses</p> <p>7: The use of an artificial intelligence system to assist a peace officer, as defined in section 2 of the Criminal Code, in the exercise and performance of their law enforcement powers, duties and functions.</p> <p>8: The use of an artificial intelligence system to assist the following in the exercise and performance of their duties and functions:</p> <p>(a) The Chief or an employee of the Communications Security Establishment;</p>

	<p>(b) <u>the Director or an employee of the Canadian Security Intelligence Service;</u></p> <p>(c) <u>the Chief of the Defence Staff, or an officer or non-commissioned member of the Canadian Armed Forces.</u></p>
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Amendments 2.5: Strengthen the definition of key concepts in the *Consumer Privacy Protection Act (CPPA)*, which have a ‘trickle-down’ impact on AIDA:

CPPA Original Text:	CPPA Proposed Text:
<p>Definitions 2 (1) The following definitions apply in this Act.</p> <p><i>personal information</i> means information about an identifiable individual. (<i>renseignement personnel</i>)</p>	<p>Definitions 2 (1) The following definitions apply in this Act.</p> <p><i>personal information</i> means information about an identifiable individual, <u>including, but not limited to, names, ID numbers, online identifiers, or factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity” of a person.</u> (<i>renseignement personnel</i>)</p> <p><i>sensitive personal information</i> <u>means personal information that includes health data, financial data, genetic data, biometric data, location data, or data on ethnic and racial origins, political opinions, religious beliefs, or sexual orientation, as well as personal information which, in the context of its use or communication, entails a high level of reasonable expectation of privacy.</u> (<i>renseignement personnel sensible</i>)</p>

Section 3 — Independent Oversight and Enforcement

Introduction:

The failure to create an independent oversight body is perhaps the most glaring shortcoming of AIDA's proposed regulatory framework.

Given the rapid pace of AI development, and the dangers presented by such development, it is absolutely essential that Canada has an independent, well-resourced AI & Data Commissioner, equipped with full investigatory and enforcement powers, to protect our basic human rights.

The proposed model of a Commissioner sitting within ISED and reporting to the ISED Minister — whose mandate it is to grow the AI industry — presents an obvious risk of conflict of interest.

Such lack of independence will not only seriously undermine the Commissioner's effectiveness, it will also result in near-zero public confidence in their actions — confidence which is essential for the success of any AI regulatory framework.

Although the Minister's proposed amendments do strengthen some aspects of the Commissioner's powers, they fail completely to tackle this fundamental problem.

Below, we set out what we believe is the minimum viable model for an independent, arms-length AI & Data Commissioner, equipped with full powers to oversee, review, and enforce AI regulations, including the power to receive and act on complaints received from the public.

The Commissioner's office must be fully resourced to ensure they have the operational and technical expertise required to fulfil their duties under the Act. This resourcing must also scale with the growth of the AI industry over the years ahead, as this growth will place further demands on the Commissioner's office. The Commissioner must also have the authority to share information or conduct joint investigations with other regulators where necessary.

Furthermore, we anticipate that the Commissioner's toolkit of powers will require continual strengthening to keep pace with AI development — a key task for the Parliamentary oversight mechanisms proposed in Section 1 above.

Intent:

Our intention with these amendments is to:

- **3.1** — Establish the AI & Data Commissioner as an independent officer of Parliament, appointed by the Governor-in-Council after cross-party consultation, with full investigatory and enforcement powers and the resourcing required to ensure sufficient operational and technical expertise. This essential check-and-balance would mean the AI & Data Commissioner would become an arms-length, independent body.

- *N.B. The legislative wording we propose in ss. 33-43 below is modeled closely on ss. 53-68 of the Privacy Act which establishes the Office of the Privacy Commissioner.*
- **3.2** — Ensure that the oversight, review, and enforcement of AIDA is placed under the purview of the independent AI & Data Commissioner, not the Industry Minister. Although the Minister’s amendments package granted some additional powers to the Commissioner, much improvement is still required in this area.
- **3.3** — Provide a mechanism for the independent Commissioner to receive complaints.

Amendments 3.1: Establish the AI & Data Commissioner as an independent officer of Parliament

AIDA Text as amended by the Minister:	AIDA Proposed Text:
<p>Artificial Intelligence and Data Commissioner 33 (1) The Minister may designate a senior official of the department over which the Minister presides to be called the Artificial Intelligence and Data Commissioner, whose role is to assist the Minister in the administration and enforcement of this Part.</p> <p>Delegation (2) The Minister may delegate to the Commissioner any power, duty or function conferred on the Minister under this Part, except the power to make regulations under section 37. Administration and enforcement</p> <p>Administration and enforcement (3) The Commissioner must administer and enforce this Part in a manner that takes into account the variety of persons who are subject to any of the requirements set out in sections 6 to 12, including the nature and size of their businesses.</p> <p>Absence, incapacity or no designation (4) If the Commissioner is absent or incapacitated or if no Commissioner is designated, the Minister is to exercise the powers and perform the duties and functions of the Commissioner.</p>	<p>Artificial Intelligence and Data Commissioner</p> <p>Appointment 33 (1) The Minister may designate a senior official of the department over which the Minister presides to be called the Artificial Intelligence and Data Commissioner, whose role is to assist the Minister in the administration and enforcement of this Part. <u>The Governor in Council shall, by commission under the Great Seal, appoint an Artificial Intelligence and Data Commissioner after consultation with the Leader of the Government in the Senate or Government Representative in the Senate, the Leader of the Opposition in the Senate, the Leader or Facilitator of every other recognized party or parliamentary group in the Senate and the leader of every recognized party in the House of Commons and approval of the appointment by resolution of the Senate and House of Commons.</u></p> <p>Delegation (2) The Minister may delegate to the Commissioner any power, duty or function conferred on the Minister under this Part, except the power to make regulations under section 37. <i>[this section will get renumbered if these amendments pass — it’s a reference to s. 37 “Regulations — Minister” in the current version of the Bill]</i></p> <p>Administration and enforcement (3) The Commissioner must administer and enforce this Part in a manner that</p>

takes into account the variety of persons who are subject to any of the requirements set out in sections 6 to 12, including the nature and size of their businesses.

Tenure

(4) Subject to this section, the Commissioner holds office during good behaviour for a term of seven years, but may be removed for cause by the Governor in Council at any time on address of the Senate and House of Commons.

Further terms

(5) The Commissioner, on the expiration of a first or any subsequent term of office, is eligible to be re-appointed for a further term not exceeding seven years.

Absence, incapacity or no designation

(4) If the Commissioner is absent or incapacitated or if no Commissioner is designated, the Minister is to exercise the powers and perform the duties and functions of the Commissioner.

Interim appointment

(6) In the event of the absence or incapacity of the Commissioner, or if that office is vacant, the Governor in Council may appoint any qualified person to hold that office in the interim for a term not exceeding six months, and that person shall, while holding office, be paid the salary or other remuneration and expenses that may be fixed by the Governor in Council.

Rank, powers and duties generally

34 (1) The Commissioner shall rank as and have all the powers of a deputy head of a department, shall engage exclusively in the duties of the office of Commissioner under this Act or any other Act of Parliament and shall not hold any other office under His Majesty for reward or engage in any other employment for reward.

Salary and expenses

(2) The Commissioner shall be paid a salary equal to the salary of a judge of the Federal Court, other than the Chief Justice, and is entitled to be paid reasonable travel and living expenses incurred in the performance of duties under this Act or any other Act of Parliament.

Pension benefits

(3) The provisions of the *Public Service Superannuation Act*, other than those relating to tenure of office, apply to the Commissioner, except

that a person appointed as Commissioner from outside the public service, as defined in the *Public Service Superannuation Act*, may, by notice in writing given to the President of the Treasury Board not more than sixty days after the date of appointment, elect to participate in the pension plan provided in the *Diplomatic Service (Special) Superannuation Act*, in which case the provisions of that Act, other than those relating to tenure of office, apply to the Commissioner from the date of appointment and the provisions of the *Public Service Superannuation Act* do not apply.

Other benefits

(4) The Commissioner is deemed to be employed in the public service of Canada for the purposes of the *Government Employees Compensation Act* and any regulations made under section 9 of the *Aeronautics Act*.

Staff

Staff of the Artificial Intelligence and Data Commissioner

35 (1) Such officers and employees as are necessary to enable the Commissioner to perform the duties and functions of the Commissioner under this Act or any other Act of Parliament shall be appointed in accordance with the *Public Service Employment Act*.

Technical assistance

(2) The Commissioner may engage on a temporary basis the services of persons having technical or specialized knowledge of any matter relating to the work of the Commissioner to advise and assist the Commissioner in the performance of the duties and functions of the Commissioner under this Act or any other Act of Parliament and, with the approval of the Treasury Board, may fix and pay the remuneration and expenses of such persons.

General

Principal office

36 The principal office of the Commissioner shall be in the National Capital Region described in the schedule to the *National Capital Act*.

Security requirements

37 The Commissioner and every person acting on behalf or under the direction of the Commissioner who receives or obtains information relating to

any investigation under this Act or any other Act of Parliament shall, with respect to access to and the use of that information, satisfy any security requirements applicable to, and take any oath of secrecy required to be taken by, persons who normally have access to and use of that information.

Confidentiality

38 Subject to this Act, the Commissioner and every person acting on behalf or under the direction of the Commissioner shall not disclose any information that comes to their knowledge in the performance of their duties and functions under this Act.

Disclosure authorized

39 (1) The Commissioner may disclose or may authorize any person acting on behalf or under the direction of the Commissioner to disclose information

(a) that, in the opinion of the Commissioner, is necessary to

(i) carry out an investigation under this Act, or

(ii) establish the grounds for findings and recommendations contained in any report under this Act; or

(b) in the course of a prosecution for an offence under this Act, a prosecution for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made under this Act or a review before the Court under this Act or Part 1 of the *Access to Information Act* or an appeal from a review of that Court.

Information not to be disclosed

40 In carrying out an investigation under this Act, and in any report made to Parliament under section [35.1(1)], the Commissioner and every person acting on behalf or under the direction of the Commissioner shall take every reasonable precaution to avoid the disclosure of, and shall not disclose.

[the reference to 35.1(1) will get renumbered if these amendments passed: it refers to the annual report to Parliament by the Commissioner]

(a) any information that the head of a government institution would be authorized to refuse to disclose if it were requested under subsection 12(1)

or contained in a record requested under the Access to Information Act; or

(b) any information as to whether personal information exists where the head of a government institution, in refusing to disclose the personal information under this Act, does not indicate whether it exists.

No summons

41 The Commissioner or any person acting on behalf or under the direction of the Commissioner is not a competent or compellable witness, in respect of any matter coming to the knowledge of the Commissioner or that person as a result of performing any duties or functions under this Act, in any proceeding other than a prosecution for an offence under this Act, a prosecution for an offence under section 131 of the Criminal Code (perjury) in respect of a statement made under this Act, a review before the Court under this Act or an appeal from a review of that Court.

Protection of Artificial Intelligence and Data Commissioner

42 (1) No criminal or civil proceedings lie against the Commissioner, or against any person acting on behalf or under the direction of the Commissioner, for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise or performance of any power, duty or function of the Commissioner under this Act.

Libel or slander

(2) For the purposes of any law relating to libel or slander,

(a) anything said, any information supplied or any document or thing produced in good faith in the course of an investigation carried out by or on behalf of the Commissioner under this Act is privileged; and

(b) any report made in good faith by the Commissioner under this Act and any fair and accurate account of the report made in good faith in a newspaper or any other periodical publication or in a broadcast is privileged.

Offences

Obstruction

43 (1) No person shall obstruct the Commissioner or any person acting on behalf or under the

	<p><u>direction of the Commissioner in the performance of the Commissioner’s duties and functions under this Act.</u></p> <p>Offence and punishment <u>(2) Every person who contravenes this section is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars.</u></p> <p>*** <i>Subsequent Sections to be Renumbered</i></p>
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Amendments 3.2: Place the oversight, review, and enforcement of AIDA under the purview of the independent Commissioner, not the Industry Minister:

AIDA Text as amended by the Minister:	AIDA Proposed Text:
<p>Cessation 17 (1) The Minister may, by order, require that any person who makes a high-impact system or general-purpose system available, or who manages the operations of such a system, cease making it available or cease its operations if the Minister has reasonable grounds to believe that the use of the system gives rise to a risk of imminent and serious harm.</p>	<p>Cessation 17 (1) The Minister <u>or Commissioner</u> may, by order, require that any person who makes a high-impact system or general-purpose system available, or who manages the operations of such a system, cease making it available or cease its operations if the Minister <u>or Commissioner</u> has reasonable grounds to believe that the use of the system gives rise to a risk of imminent and serious harm.</p>

AIDA Original Text:	AIDA Proposed Text:
<p>Publication 18 (1) The Minister may, by order, require that a person referred to in any of sections 6 to 12, 15 and 16 publish, on a publicly available website, any information related to any of those sections. However, the Minister is not permitted to require that the person disclose confidential business information.</p>	<p>Publication 18 (1) The Minister <u>Commissioner</u> may, by order, require that a person referred to in any of sections 6 to 12, 15 and 16 publish, on a publicly available website, any information related to any of those sections. However, the Minister <u>Commissioner</u> is not permitted to require that the person disclose confidential business information.</p>
<p>Publication of information – contravention 27 (1) If the Minister considers that it is in the public interest to do so, the Minister may, for the purpose of encouraging compliance with this Part, publish information about any contravention of this Part on a publicly available website.</p>	<p>Publication of information – contravention 27 (1) If the Minister <u>Commissioner</u> considers that it is in the public interest to do so, the Minister <u>Commissioner</u> may, for the purpose of encouraging compliance with this Part, publish information about any contravention of this Part</p>

<p>Restriction (2) However, the Minister is not permitted to publish confidential business information under subsection (1).</p>	<p>on a publicly available website.</p> <p>Restriction (2) However, the Minister Commissioner is not permitted to publish confidential business information under subsection (1).</p>
<p>Publication of information – harm 28 (1) Without the consent of the person to whom the information relates and without notifying that person, the Minister may publish, on a publicly available website, information that relates to an artificial intelligence system and that is obtained under this Part if the Minister has reasonable grounds to believe that</p> <p>(a) the use of the system gives rise to a serious risk of imminent harm; and (b) the publication of the information is essential to prevent the harm.</p> <p>Restriction (2) However, the Minister is not permitted to publish personal information or confidential business information under subsection (1).</p>	<p>Publication of information – harm 28 (1) Without the consent of the person to whom the information relates and without notifying that person, the Minister Commissioner may publish, on a publicly available website, information that relates to an artificial intelligence system and that is obtained under this Part if the Minister Commissioner has reasonable grounds to believe that</p> <p>(a) the use of the system gives rise to a serious risk of imminent harm; and (b) the publication of the information is essential to prevent the harm.</p> <p>Restriction (2) However, the Minister Commissioner is not permitted to publish personal information or confidential business information under subsection (1).</p>
<p>Administrative monetary penalties 29 (1) A person who is found under the regulations to have committed a violation is liable to the administrative monetary penalty established by the regulations.</p> <p>Regulations (4) The Governor in Council may make regulations respecting an administrative monetary penalties scheme, including regulations...</p> <p>(g) respecting the persons or classes of persons who may exercise any power, or perform any duty or function, in relation to the scheme, including the designation of such persons or classes of persons by the Minister.</p>	<p>Administrative monetary penalties 29 (1) If the Commissioner finds that a person has committed a violation under the regulations, that person A person who is found under the regulations to have committed a violation is liable to the administrative monetary penalty established by the regulations.</p> <p>Regulations (4) The Governor in Council may make regulations respecting an administrative monetary penalties scheme, including regulations...</p> <p>(g) respecting the persons or classes of persons who may exercise any power, or perform any duty or function, in relation to the scheme, including the designation of such persons or classes of persons by the Minister Commissioner.</p>

Amendments 3.3: Provide a mechanism for the independent Commissioner to receive complaints:

AIDA Text as amended by the Minister:	AIDA Proposed Text:
<p>Audit 15 (1) If the Commissioner has reasonable grounds to believe that a person has contravened or is likely to contravene any of sections 6 to 12, a provision of the regulations or an order made under section 13, 14, 16, or 18, the Commissioner may</p> <p>(a) conduct an audit with respect to the possible contravention; (b) require, by order, that the person conduct the audit; or (c) require, by order, that the person engage the services of an independent auditor to conduct the audit.</p>	<p>Audit 15 (1) (a) If the Commissioner has reasonable grounds to believe that a person has contravened or is likely to contravene any of sections 6 to 12, a provision of the regulations or an order made under section 13, 14, 16, or 18, the Commissioner may</p> <p>(i) conduct an audit with respect to the possible contravention; (ii) require, by order, that the person conduct the audit; or (iii) require, by order, that the person engage the services of an independent auditor to conduct the audit.</p> <p><u>Audit pursuant to written complaint</u></p> <p>(b) An individual may file with the Commissioner a written complaint against a person for contravening this Part. The Commissioner may use all or part of such a written complaint as a basis for determining whether reasonable grounds exist for the purposes of section 15 (1)(a).</p> <p><i>*Renumber ensuing sections of the Act</i></p>