



Mr. Joël Lightbound, M.P.
Chair
Standing Committee on Industry and Technology
House of Commons
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Dear Colleague:

I am writing to you following my appearance at the Standing Committee on Industry and Technology on September 26, 2023, for your study of Bill C-27, the *Digital Charter Implementation Act, 2022*.

I want to acknowledge my deep appreciation for the parliamentary process, and for the work of your Committee specifically. I have great respect for the work you have and will do in consideration of legislation and issues related to innovation, industry, and the economy, and I recognize the role that you will play in studying and making recommendations on this important piece of legislation.

As I noted during my appearance, the Government of Canada has heard from numerous stakeholders since tabling Bill C-27 in June 2022. Given the length of time that has passed and the many technological developments, it was fruitful for my officials and me to continue to engage and hear more about how the Bill could work and be improved. In response to the feedback received, I wanted the Committee to hear, in advance of its study, about some of the directions that we have heard and concurred with that could improve the Bill. My purpose in highlighting these areas for amendments in my remarks was to illustrate a commitment to constructively working with Committee members to advance the work on this bill. I also want to signal a strong openness from the Government to propose key amendments as well as consider further amendments from stakeholders and parliamentarians to achieve important improvements and clarifications to the Bill.

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You will find in the attached annex considerable detail related to the amendments we would propose for consideration by the Committee as you advance your study of the Bill.

Specifically, with respect to the *Consumer Privacy Protection Act* (CPPA), we are ready to work with Committee members to develop amendments in a number of key areas.

First, we heard directly from the Privacy Commissioner and from a number of others that the Bill needs a stronger foundational commitment to the privacy of Canadians. It is with this in mind that the Government would support a recommendation by the Committee to explicitly recognize a fundamental right to privacy for Canadians. While there is already language in the preamble of the Bill, we believe this could specifically be included in the purpose statement of the Bill itself, as echoed by many members of this Committee and others.

Second, the Bill already places a priority on the protection of children's privacy; however, stakeholders indicated a desire to see further reinforcement to ensure that our children have even stronger protections. To that end, the Government members would propose amendments that further outline how these protections are reinforced, including in the preamble to the Bill and in Section 12.

Third, a number of stakeholders and parliamentarians expressed that the Tribunal may fetter some of the capacities of the Office of the Privacy Commissioner of Canada to act on its own accord in correcting privacy behaviours of private sector actors. To this end, we would be supportive of providing the Commissioner more flexibility to reach "compliance agreements" under the Act to ensure that the Tribunal is engaged to consider only those cases that require the specialized adjudication it is designed to provide.

These areas for amendment are aligned with the recommendations presented by the Privacy Commissioner of Canada, who appeared before the Industry Committee on September 28, as well as proposals and feedback presented by Opposition members during the Second Reading debate. We also heard from stakeholders that they are concerned about the burden on small and medium-sized enterprises (SMEs), safeguards for exceptions, greater co-operation between regulators, and alignment with international and domestic legislation. We look forward to hearing from witnesses and Committee members on these issues and remain open to working collaboratively to address them.

With respect to the *Artificial Intelligence and Data Act*, we are ready to work with committee members to develop amendments in the following areas to bring greater clarity to the Act while preserving its flexibility to respond to the rapidly evolving environment. Specifically, this would include:

- defining classes of systems that would be considered high impact;
- specifying distinct obligations for generative general-purpose AI systems, like ChatGPT;
- clearly differentiating roles and obligations for actors in the AI value chain;
- strengthening and clarifying the role of the proposed AI and Data Commissioner; and
- aligning with the *EU AI Act* as well as other advanced economies.

Again, much greater detail of possible approaches and language is provided in the annex for consideration by the Committee. These areas are aligned with feedback that we have heard from stakeholders and Opposition members during Second Reading. We have also heard from stakeholders regarding the need to reflect impacts on human rights in the Bill and concerns about potential duplication between regulators and the regulatory burden on SMEs. We remain open to collaborating on these issues as well.

As noted, the enclosed annex provides further details of these amendments, and I trust that this provides the needed transparency regarding the direction the Government would be keen to pursue through the Committee's study of the Bill. I have taken note of the motion passed by the Committee on September 28. My officials are currently working with the Department of Justice to draft these amendments, and members of the Government will table them through the appropriate processes when they are finalized. These and potentially other amendments will continue to be informed by what we hear during the Committee study and in response to the Committee members' own proposed amendments.

On a separate matter, I note that I was asked during my appearance about the application of the "substantially similar provision" under CPPA, for example, in the case of Quebec. I would like to reaffirm that the alignment and coordination of privacy regimes are key to effective enforcement nationwide and to maintaining trust and confidence in data flows across Canada. Currently, the Personal Information Protection and Electronic Documents Act (PIPEDA) sets national standards for privacy practices in the private sector, and the CPPA will continue this practice. A few provinces have privacy laws deemed substantially similar to PIPEDA. This means that, in many circumstances, the provincial law applies instead of the federal law. The CPPA, like PIPEDA, contains a clause that will allow the Governor in Council to make regulations to establish criteria to be applied in a determination of substantially similar status (clause 122(3)). The intent is that provinces that provide equal or greater privacy protection to the CPPA and provide for independent oversight and redress will continue to be deemed substantially similar. In the specific case of Quebec, it is anticipated that the designation of their provincial privacy regime as "substantially similar" would continue under the CPPA.

I would like to reaffirm my government's commitment to ensuring that our legislative frameworks for privacy and AI are suited for the digital age, and to acknowledge the important role of your Committee in advancing this work. Thank you in advance for considering the attached proposals in your deliberations and study of the Bill. We look forward to hearing from witnesses and to supporting the Committee in this important work.

Please accept my best wishes.

Sincerely,

A handwritten signature in black ink, appearing to read 'F. Champagne', with a stylized flourish at the end.

The Honourable François-Philippe Champagne, P.C., M.P.

Attachment

ANNEX

Bill C-27, Part 1 : *Consumer Privacy Protection Act*

| Proposal | Details |
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| Explicitly recognize a fundamental right to privacy for Canadians | To address concerns that the legislation does not explicitly recognize a fundamental right to privacy, the Government would propose amending the preamble to the Bill as well as the purpose clause (Section 5) to qualify the right to privacy as a <i>fundamental</i> right. This will ensure that the privacy rights of Canadians are given due importance in the interpretation of the Act. |
| Recognize and reinforce the protection afforded to children | <p>To highlight the importance of the protection of children’s personal information in a commercial context, and to ensure that interpretation of Part I and Part II give due consideration to the special interests of children, the Government would propose amending the preamble of the Bill to include a specific reference to the special interests of children with respect to their personal information.</p> <p>Furthermore, the Government would propose further protecting children by amending Section 12, so that organizations consider the special interests of minors, when determining whether personal information is being collected, used or disclosed for an appropriate purpose.</p> <p>Note: The CPPA already contains strong protections for the collection, use and disclosure of children’s personal information. Notably, the Bill deems all personal information belonging to a minor as “sensitive.” This means that:</p> <ul style="list-style-type: none"> • organizations will generally need to use express consent when collecting, using, or disclosing the information; • organizations will need to consider carefully whether their reason for collecting, • stronger security safeguards must be employed to protect the information; and • retention periods for this information should generally be shorter than for information of adults. <p>In addition, recognizing that children are uniquely vulnerable, the Bill currently allows children or their guardians to exercise even stronger protective measures over their personal information than would otherwise be possible for adults. For example, the Bill makes</p> |

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| | it easier to manage the minors' personal information, by providing a right to deletion that supersedes an organizations' standing retention policy. This would help reduce the risk that children's mistakes in the online environment will follow them in life. |
| Provide the Commissioner more flexibility to reach "compliance agreements" | To address concerns that the Privacy Commissioner cannot levy a financial penalty on non-compliant organizations, the Government would propose an amendment to the CPPA to permit that the terms of a compliance agreement may also contain financial consideration. The OPC and non-compliant organizations could thereby sign such agreements without the need to go to the Tribunal or Court. Such agreements are final and cannot be appealed. The Government is also carefully examining other proposals made by the Privacy Commissioner to grant more flexibility to the Commissioner with respect to enforcement and look forward to committee's deliberations in this regard. |

Bill C-27, Part 3 : Artificial Intelligence and Data Act

| Proposal | Details |
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| High impact systems | <p>The Government heard consistent feedback that the bill should include key classes of "high impact AI systems" that the bill would apply to at the outset, for example, those that deal with health and safety. Therefore, the Government would propose amendments that clarify the meaning of high-impact systems as those of which at least one intended use may reasonably be concluded to fall within a list of classes to be set out in a schedule to the Act. To assist the Committee's work, the proposed initial list of classes would be the following:</p> <ol style="list-style-type: none"> 1. The use of an artificial intelligence system in matters relating to determinations in respect of employment, including recruitment, referral, hiring, remuneration, promotion, training, apprenticeship, transfer or termination. 2. The use of an artificial intelligence system in matters relating to (a) the determination of whether to provide services to an individual; (b) the determination of the type or cost of services to be provided to an individual; or (c) the prioritization of the services to be provided to individuals. 3. The use of an artificial intelligence system to process biometric information in matters relating to (a) the identification of an individual, other than if the |

biometric information is processed with the individual's consent to authenticate their identity; or (b) an individual's behaviour or state of mind.

4. The use of an artificial intelligence system in matters relating to (a) the moderation of content that is found on an online communications platform, including a search engine and a social media service; or (b) the prioritization of the presentation of such content.
5. The use of an artificial intelligence system in matters relating to health care or to emergency services, excluding a use referred to in any of paragraphs (a) to (e) of the definition of "device" in section 2 of the Food and Drugs Act that is in relation to humans.
6. The use of an artificial intelligence system by a court or administrative body in making a determination in respect of an individual who is a party to proceedings before the court or administrative body.
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.

Furthermore, the Government recognizes that this list could change and would support an amendment related to the above where the schedule could be modified by the Governor in Council as the technology evolves and systems of interest and their impacts change.

If these amendments listing high-impact systems are adopted, the current Section 7, which indicates that a person responsible for an artificial intelligence system must assess whether it is a high-impact system in accordance with regulations, would no longer apply and would be proposed for removal.

Aligning AIDA with the EU AI Act and the OECD by making targeted amendments to key definitions.

In order to demonstrate alignment with evolving international frameworks, the Government would propose amendments to broaden the scope of AI systems covered in the AIDA and align with evolving international discussions. The Government would be supportive of an amendment that aligns with the OECD definition of AI: a technological system that, using a model, makes inferences in order to generate output, including predictions, recommendations or decisions. This will help to ensure that Canada's framework is interoperable and consistent with international best practices.

In addition, the Government would propose amendments in which sections 8 and 9 of AIDA would be replaced with new sections laying out the responsibilities of:

- Persons developing a machine learning model intended for high-impact use would need to ensure that appropriate measures are taken before it goes on the market (either by itself or as part of a high-impact system);
- Persons placing on the market or putting into service a high- impact system would be responsible for ensuring that necessary measures with regard to development were taken prior to the system entering the market.
- Persons managing the operations of a high-impact system would be responsible for ongoing obligations once the system is in use.
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Any person who substantially modifies a high-impact or general- purpose system would be responsible for ensuring that pre-deployment requirements are met.

All persons conducting regulated activities would need to prepare an accountability framework consisting of:

- the roles and responsibilities and reporting structure for all personnel who support making the system available for use or who support the management of its operations;
- policies and procedures respecting the management of risks relating to the system;
- policies and procedures on how the personnel are to advise the person referred of serious incidents related to the system;

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| | <ul style="list-style-type: none"> • policies and procedures respecting the data used by the system; • the training that the personnel must receive in relation to the system and the training materials they are to be provided with; and • anything else that is prescribed by regulation. <p>The framework would have to be provided to the Commissioner upon request, who would be able to provide guidance or make recommendations regarding corrective action.</p> |
| <p>Creating clearer obligations across the AI value chain</p> | <p>The Government would propose amendments that would clarify the obligations of different actors in the value chain along the lines of the AIDA Companion Document.</p> <p>Developers of machine learning models intended for high-impact use would, before placing on the market or putting into service such a model and in accordance with any regulations:</p> <ul style="list-style-type: none"> • Establish data governance measures; • Establish measures to assess and mitigate risks of biased output; <p>Developers would, before placing on the market or putting into service a high-impact AI system and in accordance with any regulations:</p> <ul style="list-style-type: none"> • Perform an impact assessment; • Establish measures to assess and mitigate risks of harm or biased output; • Ensure that the system incorporates features enabling appropriate human oversight; • Ensure the reliability and robustness of the system; • Conduct testing; • Prepare a manual for the person managing the operations; • Comply with any other regulations made by the Governor in Council. |

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| | <p>Persons making available a high-impact system would:</p> <ul style="list-style-type: none"> • Make the manual available to any person who is to manage the operations of the system; and • Comply with any other regulations made by the Governor in Council. <p>Persons managing the operations of a high-impact system would, in accordance with any regulations:</p> <ul style="list-style-type: none"> • Establish measures to assess and mitigate risks of biased output; • Conduct testing of the effectiveness of mitigation measures; • Ensure appropriate human oversight; • Publish a description of the system, including with regard to risks and mitigations; • Report serious incidents to the developer and the Commissioner • Comply with any other regulations made by the Governor in Council. • |
| <p>Distinct obligations for general purpose AI systems</p> | <p>The Government would look to propose amendments to create distinct requirements for AI systems like ChatGPT that are designed to be used for many different tasks in many different contexts. While they could be regulated as high-impact systems, we have heard from stakeholders that these systems are distinct enough that they deserve recognition in the law.</p> <p>Therefore, the Government would propose to set out clearer responsibilities. Developers of general-purpose systems would, before placing on the market or putting into service and in accordance with any regulations:</p> <ul style="list-style-type: none"> • Perform an impact assessment; • Establish measures to assess and mitigate risks of biased output; • Conduct testing of the effectiveness of mitigation |

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| | <p>measures;</p> <ul style="list-style-type: none"> • Prepare a plain-language description of the capabilities and limitations of the system, as well as the risks and mitigation measures taken; • Comply with any other regulations made by the Governor in Council. <p>Persons making available general-purpose systems would:</p> <ul style="list-style-type: none"> • Provide the plain language description to users of the system; and • If the system is available to the public, publish the description. <p>Managers of the operations of general-purpose systems would, in accordance with any regulations:</p> <ul style="list-style-type: none"> • monitor for any use of the system that could result in a risk of harm or biased output; • take measures necessary to mitigate the risks; • report serious incidents to the developer and the Commissioner; and • Comply with any other regulations made by the Governor in Council. <p>In addition, The Government would look to propose amendments that would ensure that AI-generated content can be identified by Canadians:</p> <ul style="list-style-type: none"> • If there is a reasonably foreseeable risk that an individual communicating with a system could believe that it is human, the person managing the operations of that system must inform the individual that it is not; and • Persons developing general-purpose systems that produce text or audio-visual content must make best efforts to ensure that it can be readily identified. |
| <p>Strengthening and clarifying the role of the AI and Data Commissioner</p> | <p>The Government would support amendments to clarify more specifically the functions and roles of the AI and Data Commissioner. These would be intended to provide clarity</p> |

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| | regarding the role of the AIDC, build confidence in their ability to carry out their mandate independently, and enable them to play a strong coordinating role across the AI regulatory system to ensure coherence and avoid duplication. |
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