

DENTONS

Canada's Privacy and AI Regulatory Landscape – How to Navigate Uncharted Territory



Chantal Bernier
Senior Counsel, Ottawa
1+613 783 9684
Chantal.bernier@entons.com



Kelly Osaka
Partner, Calgary
1+403 268 3017
Kelly.osaka@entons.com



Melika Mostowfi
Associate, Calgary
1+403 268 7011
Melika.mostowfi@entons.com

Grow | Protect | Operate | Finance

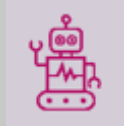
AI Regulation (or lack thereof) in Canada

- **AIDA:** would have regulated the design, development, and use of AI systems, with a focus on mitigating the risks of harm and bias in the use of “high impact” AI systems.
- **AIDA Companion Document:** provided insight into policy priorities and outlined a consultation process to allow for stakeholder input in developing regulations under AIDA.
- **Québec Act:** imposes transparency and data subject rights obligations where organizations make decisions about individuals exclusively through “automated processing”.

New Government! What Happens Now?



**A new AI Bill would
be introduced**



**The Regulation of AI
will still be in limbo**



**Despite the
uncertainty, there
are non-binding
guidelines**

Impact of Election – Factors at Play

- **Responsible Individuals:** Deputy Minister did not develop Bill C-27 – a different Minister will likely be assigned for Innovation, Science and Economic Development Canada
- **Formatting of Legislation:** Address the criticism of coupling of AIDA and PIPEDA
- **Legislation Content:** Call for specificity around AIDA
- **International Influence:** International trends on AI regulation and proposed investments

Dentons AI Trends Survey

Survey Report from 450 business leaders and general counsel

- 63% of business leaders do not have a formalized AI roadmap for high-impact AI integration.
- 69% of business leaders are delaying important AI investment decisions due to an expected increase in regulation.
- 73% of business leaders believe that inconsistent and fragmented AI regulation will have a major impact on their organization and its growth strategy.

Dentons AI Trends Report

Low Regulation

- US: Reduce regulation, minimize international cooperation
- UK: UK National AI Strategy, avoiding AI-specific legislation in favour of guidance and codes of practice from sectoral regulators

Soft Law

- Latin America: Regulation in Peru, legislation tabled in Chile, Colombia, Brazil, Mexico, Panama, Peru and Costa Rica
- Africa: AI Strategy in Mauritius, Kenya, Nigeria and South Africa
- Canada: Legislation effort in proposed Artificial Intelligence and Data Act (AIDA) guidance with Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative AI Systems.
- Asia-Pacific: Voluntary AI Safety Standard in Australia, Model AI Governance Framework in Singapore, Interim Measures for the Management of Generative AI Services in China

Comprehensive AI-specific legal framework:

- EU: AI Act regulating use of AI through risk-based governance framework

Considerations for an AI Strategy

1. Assess the AI system in organizations' context

- Organization's role: Developer? Service provider? Customer of AI?
- Purpose: Aligned with the organization's core business? Appropriate for a "*reasonable person*"?
- Interested parties: Business customers? Individuals? Other stakeholders?

Considerations for an AI Strategy

2. Assess risk: NIST's Artificial intelligence Risk Management Framework: Generative Artificial Intelligence Profile

- Valid and Reliable?
- Safe?
- Secure and Resilient?
- Accountable and Transparent?
- Explainable and Interpretable?
- Privacy-Enhanced?
- Fair—with Harmful Bias Managed?

Considerations for an AI Strategy

3. Establish outcomes: ISED Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative AI Systems

- Accountability
- Safety
- Fairness and Equity
- Transparency
- Human Oversight and Monitoring
- Validity and Robustness

Considerations for an AI Strategy

4. Identify legal risk

- What laws are engaged?
- How does sectoral regulation apply?
- How do rules of professional conduct apply?

Considerations for an AI Strategy

5. Mitigate legal risk

- Document legal assessment
- Conduct a privacy impact assessment and/or algorithmic impact assessment
- Ensure explainability
- Verify consent requirements
- Be transparent
- Monitor performance
- Document monitoring
- Apply on-going improvement

Questions?