1. Canadian Regulation of AI

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Canada regards itself as a global leader in AI anchored by several prominent national hubs. For example, Montreal has the highest concentration of researchers and students of deep learning worldwide, and Toronto features the highest concentration of AI start-ups with the accelerator and founder program Next AI and seed-stage program the Creative Destruction Lab.[1] It has also established three national AI institutes: Alberta Machine Intelligence Institute (Amii),[2] Montreal Institute for Learning Algorithms (Mila),[3] and the Vector Institute in Toronto.[4]

The government has also sought to position itself as a leader in the regulation of AI. Canada touts itself as the first country to implement a national AI strategy. In 2017, it appointed the Canada Institute for Advanced Research (CIFAR) to develop and lead a $125 million Pan-Canadian Artificial Intelligence Strategy.[5] The Canadian government's regulatory approach has built on CIFAR's work, with an emphasis on the need to ensure the effective and ethical use of AI. To that end, it has identified five principles:

1. **understand and measure** the impact of using AI by developing and sharing tools and approaches

2. **be transparent** about how and when [they] are using AI, starting with a clear user need and public benefit

3. **provide meaningful explanations** about AI decision-making, while also offering opportunities to review results and challenge these decisions

4. **be as open as [they] can** by sharing source code, training data, and other relevant information, all while protecting personal information, system integration, and national security and defence [and]

5. **provide sufficient training** so that government employees developing and using AI solutions have the responsible design, function, and implementation skills needed to make AI-based public services better[6]

Government policy in the AI field is supported by an Advisory Council on Artificial Intelligence, which includes several CIFAR leaders. It is tasked with providing recommendations for "building Canada's strengths and global leadership in AI, identifying opportunities to create economic growth that benefits all Canadians, and ensuring that AI advancements reflect Canadian values".[7]

Despite the promotion of AI leadership, the reality is that the Canadian government has done little to implement strict AI regulations, relying instead on softer policies or principles. Moreover, Canada still lags behind other national strategies in terms of AI ethics or what it terms "responsible AI". The failure to address these issues has garnered some attention. For example, the Brookfield Institute for Innovation + Entrepreneurship and CIFAR noted in 2019 that Canada needs regulation addressing AI directly, including the future of work with AI, AI anti-trust

mechanisms, consumer protection specific to AI, data governance, AI public education and consultation, and responsible innovation.[8] Similarly, Deloitte's AI practice, called Omnia AI, released a report in 2019, which stated:

> Our policy frameworks were drafted with good intentions, but many date back decades — to a time before digitization was widespread — which has led to legal grey zones and operating risk today. Only by modernizing our legal and regulatory frameworks will we give our businesses the clarity to grow while still ensuring that citizens know their rights are protected.[9]

Without AI specific legislation, Canada relies heavily on laws of general application including Canada's *Canadian Charter of Rights and Freedoms*,[10] the *Personal Information Protection and Electronic Documents Act*,[11] and the existing marketplace framework. Critics argue that the approach is inadequate to regulate AI when contrasted both with other countries and given the challenges associated with AI governance.[12]

Perhaps the most notable federal government AI policy initiative to date is the *Directive on Automated Decision-Making*, which took effect on April 1, 2019.[13] Although only applicable to the use of AI by the federal government, the Directive verifies that automated decision systems developed or purchased by the Government of Canada comply with core administrative law principles such as transparency, accountability, legality and procedural fairness.[14] The Directive notably requires an Algorithmic Impact Assessment[15] prior to the production of any automated decision system. The various requirements can be enforced with any measure allowed by the *Financial Administration Act* that the Treasury Board determines is appropriate and acceptable in the circumstances.[16]

While Canada's domestic AI legal and regulatory frameworks have yet to fully take shape, Canada has been active on the international front in helping to shape global AI policy and norms. This includes active participation in various fora such as the OECD, the G7, and the World Economic Forum.[17] Further, the mandate of the Global Partnership on Artificial Intelligence, formerly known as the International Panel on Artificial Intelligence — central to the Canada-France Statement on Artificial Intelligence — was first announced by Canada's Prime Minister and Minister of Innovation, Science and Economic Development Canada and France's Secretary of State for the Digital Sector at the G7 Multi-Stakeholder Conference on Artificial Intelligence in December 2018.[18] Its declaration and organizational structure were made public at the end of an informal meeting of G7 Digital Ministers in May 2019.[19]

Footnote(s)

1   See Invest in Canada, *Canada A Leader in Artificial Intelligence (AI)* (2017) at 1-2, online: *Government of Canada* https://www.international.gc.ca/investors-investisseurs/assets/pdfs/download/Niche_Sector-AI.pdf.

2   See Amii, "About Amii" (last accessed September 12, 2020), online: *Amii* https://www.amii.ca/about/.

3   See Mila, "Mila Presentation" (last accessed May 29, 2020), online: *Mila* https://mila.quebec/en/mila/.

4   See Vector Institute, "About" (last accessed May 29, 2020), online: *Vector Institute* https://vectorinstitute.ai/#about.

5   See Canadian Institute for Advanced Research, "CIFAR Pan-Canadian Artificial Intelligence Strategy" (last accessed May 28, 2020), online: *Canadian Institute for Advanced Research* https://www.cifar.ca/ai/pan-canadian-artificial-intelligence-strategy.

6   See Government of Canada, "Responsible Use of Artificial Intelligence (AI)" (last modified September 9, 2019), online: *Government of Canada* https://www.canada.ca/en/government/system/digital-government/modern-emerging-technologies/responsible-use-ai.html.

7   See Innovation, Science and Economic Development Canada, "Advisory Council on Artificial Intelligence" (last modified May 14, 2019), online: *Government of Canada* http://www.ic.gc.ca/eic/site/132.nsf/eng/home.

8   See Sarah Villeneuve, Gaga Boskovic & Brent Barron, *Rebooting Regulation: Exploring the Future of AI Policy in Canada* (May 28, 2019) at 3, online: *Brookfield Institute for Innovation and Entrepreneurship* https://brookfieldinstitute.ca/wp-content/uploads/AIFutures_PolicyLabs_Final_EN.pdf.

9   Deloitte Canada, *Canada's AI Imperative: Public Policy's Critical Moment* (2019) at 4, online: *Deloitte Canada* https://www2.deloitte.com/content/dam/Deloitte/ca/Documents/deloitte-analytics/ca-public-policys-critical-moment-aoda-en.pdf.

10   Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

11 S.C. 2000, c. 5.

12 See Jesse Hirsh, "The Policy Deficit Behind Canadian Artificial Intelligence: The Longer Canada Defers Effective AI Governance, the Harder it Will be to Catch Up" (February 13, 2018), online: *C.I.G.I.* https://www.cigionline.org/articles/policy-deficit-behind-canadian-artificial-intelligence.

13 See Treasury Board of Canada Secretariat, *Directive on Automated Decision-Making* (Ottawa: Treasury Board of Canada Secretariat February 5, 2019) at ss. 1.1-1.3, online: *Government of Canada* https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=32592.

14 See Treasury Board of Canada Secretariat, *Directive on Automated Decision-Making* (Ottawa: Treasury Board of Canada Secretariat February 5, 2019) at ss. 1.1-1.3, online: *Government of Canada* https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=32592.

15 See Government of Canada, "Algorithmic Impact Assessment" (2020), online: *Government of Canada* https://www.canada.ca/en/government/system/digital-government/digital-government-innovations/responsible-use-ai/algorithmic-impact-assessment.html.

16 *Financial Administration Act*, R.S.C. 1985, c. F-11, s. 7; Government of Canada, *Framework for the Management of Compliance* (Ottawa: Treasury Board of Canada Secretariat, 2009).

17 See O.E.C.D. AI Policy Observatory, "Government of Canada Advisory Council on Artificial Intelligence" (last modified November 15, 2019), online: *OECD AI Policy Observatory* https://oecd.ai/dashboards/policy-initiatives/2019-data-policyInitiatives-24562.

18 See O.E.C.D. AI Policy Observatory, "Global Partnership on Artificial Intelligence" (last updated February 18, 2020), online: *OECD AI Policy Observatory* https://oecd.ai/dashboards/policy-initiatives/2019-data-policyInitiatives-24565.

19 See O.E.C.D. AI Policy Observatory, "Global Partnership on Artificial Intelligence" (last updated February 18, 2020), online: *OECD AI Policy Observatory* https://oecd.ai/dashboards/policy-initiatives/2019-data-policyInitiatives-24565.

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