Sept. 25, 2023

To: The Honourable François-Philippe Champagne, P.C., M.P., Minister of Innovation, Science and Industry

CC:
Joël Lightbound, Chair of the Standing Committee on Industry and Technology
Rick Perkins, Vice-Chair of the Standing Committee on Industry and Technology
Sébastien Lemire, Vice-Chair of the Standing Committee on Industry and Technology
Members of the Standing Committee on Industry and Technology

RE: Joint letter of concern regarding the *Artificial Intelligence and Data Act* (AIDA)

Dear Minister,

We, the undersigned organizations and experts, are writing to express our serious concerns regarding the *Artificial Intelligence and Data Act* (AIDA), set out in Part 3 of Bill C-27: *An Act to enact the Consumer Privacy Protection Act, the Personal Information and Data Protection Tribunal Act and the Artificial Intelligence and Data Act and to make consequential and related amendments to other Acts.* Some of these concerns will be familiar, as they were raised in a letter in March 2023 from many of the same signatories.[1]

AIDA as it stands is an inadequate piece of legislation. ISED should not be the primary or sole drafter of a bill with broad human rights, labour, and cultural impacts. The lack of any public consultation process has resulted in proposed legislation that fails to protect the rights and freedoms of people across Canada from the risks that come with burgeoning developments in AI.

We believe that AIDA must be removed from Bill C-27. We understand that there is significant resistance to this proposal, but it is necessary as the bill is not adequate for committee consideration. Regulatory efforts to address artificial intelligence could still be completed on the same timeline that ISED is currently working towards, to come into effect in 2025. Working towards significantly improving AIDA is not starting from scratch, and accomplishing the goal of having regulation in effect in 2025 is achievable. Removing AIDA from Bill C-27 is also necessary to give the House of Commons Standing Committee on Industry and Technology (INDU) appropriate time to focus on the remainder of the bill, which raises significant concerns for privacy rights in Canada.

International peers in several jurisdictions, including the European Union,[2] have done much more significant and cross-sectoral groundwork to arrive at their proposed and early approaches to AI regulation. ISED is correct in stating that we need to think about future uses of AI through the lens of Canadian norms

[1] See ICLMG, "Vote Against Aida" (2023), available at: https://iclmg.ca/vote-against-aida/
[2] See EU AI Act (2021), available at: https://artificialintelligenceact.eu/the-act/

and values, but without adequate public engagement on this topic (which to date has not occurred), AIDA cannot be said to represent an approach desired by, or likely to be trusted by, the Canadian public.

Indeed, despite the Bill's Preamble, which recognizes that Canada needs a regulatory framework that ensures that "artificial intelligence systems and other emerging technologies uphold Canadian norms and values" and are consistent with "international human rights law" and "the right to privacy,"[3] AIDA clearly puts economic interests first.

In the absence of an appropriate reset, we have a number of concerns that need immediate and significant attention:

1. Human rights: Despite the Preamble, neither the CPPA's nor AIDA's text recognizes privacy as a fundamental human right.[4] AIDA also fails to integrate an assessment of human rights impacts or to effectively set limits based on human rights implications.[5]
2. Definitional gaps: Large gaps in definitions like "high-impact system" leave major aspects of AIDA illegible and void of substance. The current approach, leaving the majority of the detail to future regulation, is not facilitating agility but rather diminishing democratic accountability. We understand that amendments based on the AIDA companion document, including that definition, may be pending. There is a corresponding problem, however, in that the current focus on high-impact systems is predicated on a misunderstanding of the potential cumulative and consequential impact of "lower impact" systems that would likely miss that threshold and escape regulation.
3. Independence: It is inappropriate for the regulation of AI to fall completely under the auspices of ISED, whose mandate is to support the economic development of the AI industry. As the OECD's 2014 Best Practice Principles for Regulatory Policy stress, "The assignment to a regulator of both industry development and regulatory functions, ... can reduce the regulator's effectiveness in one or both functions and can also fail to engender public confidence."[6] Placing an Artificial Intelligence and Data Commissioner under ISED further undermines the independence and effectiveness of oversight.
4. Consultation: The lack of structured, deliberative, and wide-ranging consultations before and since tabling AIDA is anti-democratic, and it has deprived people in Canada of the rights-protecting, stress-tested AI legislation they need. ISED's more active consultation on a generative AI Code of Practice—a document that is akin to a statement of principles, yet fails to mention privacy or questionable data practices as a factor in the fairness and equity assessment—is effectively a distraction from getting AIDA right.
5. The use of AI in public and private sectors: The government should have envisioned AI rules for both the private and public sector at once, instead of taking a patchwork approach. The absolute exemption of technology under the control of national security agencies, including National

[3] Preamble, https://www.parl.ca/DocumentViewer/en/44-1/bill/C-27/first-reading

[4] For arguments to this effect, see submissions by the Canadian Civil Liberties Association and the Centre for Digital Rights to the INDU Committee in preparation of their study of Bill C-27.

[5] This is in contrast to the pending Council of Europe framework convention on artificial intelligence, human rights, democracy and the rule of law, to which Canada is an observer state, see https://rm.coe.int/cai-2023-18-consolidated-working-draft-framework-convention/1680abde66.

[6] See OECD, The governance of regulators (2014) available: https://read.oecd-ilibrary.org/governance/the-governance-of-regulators/chapter-1-role-clarity_9789264209015-6-en#page2. p. 33.

Defence, CSIS and the CSE, dangerously allows for some of the most "high risk" uses of AI to go without any independent or public scrutiny or oversight.

It is clear that AIDA is not the AI bill people across Canada deserve. We need a reset, and if that is not to be, the bill requires substantial remediation that must incorporate the concerns we raise here. We would also refer you to the list of briefs appended to this letter, whose authors include some of the signatories to this statement.

We conclude by noting that while we write today specifically to raise our concerns with AIDA, many of the groups and individuals who have signed this letter have made submissions expressing concerns with Bill C-27 in its entirety. Do not take our exclusion of the other parts of the bill—the *Consumer Privacy Protection Act* and the *Personal Information and Data Protection Tribunal Act*—from this letter as acceptance of them. These Acts also require scrutiny to address the imbalance that prioritizes corporate interests over individuals' privacy rights and due process.

We look forward to your response and to an open dialogue with your office about our concerns shortly.

Signed:

Organizations

1. BC Civil Liberties Association
2. Canadian Civil Liberties Association
3. Digital Public
4. International Civil Liberties Monitoring Group
5. OpenMedia
6. Tech Reset Canada
7. Rideau Institute on International Affairs
8. Open North
9. Just Peace Advocates
10. Digital Justice Lab
11. Public Interest Advocacy Centre
12. Centre for Digital Rights
13. Women's Legal Education and Action Fund (LEAF)
14. Ligue des droits et libertés
15. Freedom of Information and Privacy Association
16. The Centre for Free Expression
17. Amnistie internationale Canada francophone
18. Amnesty International Canadian Section (English speaking)
19. Inter Pares

Individuals

1. Bianca Wylie, writer and public interest technology advocate

2. Brenda McPhail, Ph.D., Acting Executive Director, Public Policy in Digital Society Program, McMaster University
3. Andrew Clement, University of Toronto
4. Blair Attard-Frost, AI Policy Researcher, Lecturer, & Advisor
5. Teresa Scassa, University of Ottawa
6. Christelle Tessono, Technology Policy Researcher
7. Ori Freiman, Post-Doctoral Fellow at McMaster University's Digital Society Lab
8. Natasha Tusikov, York University
9. Jonathan Roberge, INRS
10. Evan Light, York University
11. Michael Geist, University of Ottawa
12. Dr. Blayne Haggart, Associate Professor of Political Science, Brock University
13. Fenwick McKelvey, Concordia University
14. Leslie Regan Shade, University of Toronto
15. Professor Colin Bennett, University of Victoria
16. Luke Stark, Western University
17. Dr. Kristen Thomasen, UBC
18. Joanna Redden, Western University
19. Maroussia Lévesque, SJD candidate, Harvard Law School
20. Renée E. Sieber, McGill University
21. James L. Turk, Toronto Metropolitan University
22. Jane Bailey, Professor, University of Ottawa Faculty of Law
23. Karine Gentelet, Professeure, Université du Québec en Outaouais
24. Dr. sava saheli singh, York University
25. Azeezah Kanji, legal academic and writer
26. Yavar Hameed, human rights lawyer