

Comments on the third review of Canada’s Directive on Automated Decision-Making

The following response is on [Canada’s Directive on Automated Decision-Making \(DADM\)](#)’s review of key issues, policy recommendations, and provisional amendments. We (Ana Brandusescu and Renée Sieber) were invited to submit a response as part of the Treasury Board of Canada Secretariat (TBS)’s first phase of stakeholder engagements on the 3rd review of the DADM (we received the invitation on April 27; the submission deadline is June 30, 2022). This consultation is part of a broader set of targeted engagements that the TBS Data & AI Policy team is currently undertaking with stakeholders from academia, civil society, other government institutions, and international organizations. If you are interested in commenting, please consult the [Report on the 3rd Review of the Treasury Board Directive on Automated Decision-Making](#) and the [Summary of Key Issues and Proposed Amendments](#). Comments can be sent to ai-ia@tbs-sct.gc.ca.

Scope: We strongly agree with expanding the scope of the Directive on Automated Decision-Making (DADM) to cover internal services.

In line with expanding the scope, DADM also should require a publicly accessible list of scheduled departments and agencies published and regularly updated that clearly indicates those that (1) fall under the scope of the DADM, (2) do not fall under the scope of the DADM¹, and (3) have entered into a Specific Agreement with TBS as per Section 9.2 of the DADM, as well as the terms of each of those Specific Agreements.

Periodic review: “Change to “every 2 years”, and “as determined by the CIO of Canada” should there be a pressing need for an off-cycle review.””

Disagree - As part of ADM, we are particularly concerned with AI and even more specifically, deep learning. Given the rapid change in deep learning developments (from design to deployment and use) the review period should at least be annually. This requires, of course, sufficient staff to review the documents. We recommend that TBS hires more people to oversee DADM.

The changes also should include proactive disclosure of periodic reviews, completed and draft documents. The reviews should be made available to the public on a Government of Canada website, for example, Canada’s “Responsible use of artificial intelligence (AI)”:
<https://www.canada.ca/en/government/system/digital-government/digital-government-innovation>

¹ For example, the Canada Revenue Agency (CRA) has special exemptions in government - there needs to be an alternative policy regarding AI that can cover the Agency since they cannot be covered by the DADM; recommend that this policy is created outside of the CRA.

[s/responsible-use-ai.html](#). The draft reviews should not require ATIP. The reviews should not be published on informal sites like SSRN or Google Drive.

Clients impacted: “Replace references to “Canadians” with the term “clients”.”

Disagree - we recommend replacing “Canadians” with “people” (or “residents of Canada”). It is all too easy to formulate responsible AI in the language of business. However, Canada is not a business. Governments have many needed inefficiencies built in (e.g., serving the North). Canada has to be transparent, which businesses do not. Beyond merely delivering efficient services, Canada has to uphold democratic principles and inculcate those principles in its publics. These have little to do with envisioning Canadians as clients.

Data Governance: We agree with adding a requirement to govern the data used and generated by automated decision systems. It is important to recognize that AI governance is not data governance.²

Model bias: “Expand existing requirement to test data for bias to also require testing systems’ underlying models for bias.”

We largely agree with testing the underlying assumptions inherent in the models themselves. We are worried about a focus on debiasing, particularly computational testing. More recent arguments ask us move beyond arguments around bias/debiasing to harm since debiasing alone does not guarantee fairness, equality and non-discrimination.³

DADM needs to cover the use of AI like facial recognition (e.g., Clearview AI) - even if the technology itself didn’t make any decisions.⁴

Explanation: “Expand the existing requirement to include a description of the role of the system in decision-making, the data and the processing applied to it, and the output of the system and related information for interpreting it.”

We agree and would add a call for explanation by design, which would guarantee that explainability is built into the system at the design stage and can be activated as models are developed and deployed (e.g., as classification systems are retrained).

² Mäntymäki, M., Minkinen, M., Birkstedt, T., & Viljanen, M. (2022). Defining organizational AI governance. *AI and Ethics*, 1-7. <https://link.springer.com/article/10.1007/s43681-022-00143-x>.

³ Balayn, A. and Gürses, S. (2021). Beyond Debiasing: Regulating AI and its inequalities. Report of European Digital Rights Association, Brussels. https://edri.org/wp-content/uploads/2021/09/EDRi_Beyond-Debiasing-Report_Online.pdf

⁴ Reeveley, D. (2021, October 26). Federal rules on AI too narrow and risk ‘damaging public trust’: Internal review. The Logic. <https://thelogic.co/news/federal-rules-on-ai-too-narrow-and-risk-damaging-public-trust-internal-review/>

Reasons for Automation: “Add questions to the AIA [algorithmic impact assessment] concerning the user need that the system is addressing, the effectiveness of the system in meeting that need, and the alternatives considered.”

We strongly support the addition of questions asking about manual processes as alternatives to automated processes.

Peer Review: We agree with the expansion of the “existing requirement to include publishing a summary of peer review findings and clarify the timing as “before the system’s production”.”

We also recommend including a requirement for TBS to publish a publicly accessible AI registry -- an inventory of AI systems and technologies including free software trials -- used by the federal government. It should be hosted or available on the government’s responsible use of AI landing page.⁵ The registry should include AI systems built for government departments and agencies by the companies listed in Canada’s AI Source List⁶ and algorithmic impact assessments (AIAs) associated with each AI system, any relevant procurement documentation (Request For Proposals, proposals, vendor communications, etc.), decision documentation as required by DADM Section 6.2.8, regular quality assurance reporting required by Section 6.3, and more general effectiveness/efficiency reporting required by Section 6.5.

The publicly accessible AI registry is especially important to include AI systems used by law enforcement and for national security purposes (e.g., to monitor facial recognition technology used by government), as well as for departments and agencies contemplating face ID for social assistance; this registry will be useful for researchers, academics, and investigative journalists to inform the public. Public registries can facilitate independent reviews from academia, civil society, and journalists, and support open government by providing proactive disclosure of information -- specifically access to relevant data on the use of AI systems by public authorities.

Contingency Planning: “Harmonize the wording of the contingency requirements to that of the Policy on Government Security.”

We agree. Regarding Government Security, we recommend adding a clear definition of National Security System to Appendix A of the DADM ("Definitions"). For example, DADM Section 5.4

⁵ Responsible use of Artificial Intelligence (AI):
<https://www.canada.ca/en/government/system/digital-government/digital-government-innovations/responsible-use-ai.html>

⁶ List of interested Artificial Intelligence (AI) suppliers:
<https://www.canada.ca/en/government/system/digital-government/digital-government-innovations/responsible-use-ai/list-interested-artificial-intelligence-ai-suppliers.html>

references the Policy on Service and Digital, however it does not provide a clear definition of National Security Systems, with examples and involved agencies.

Timing of AIA release: We strongly agree with mandating the release of AIAs prior to the production of a system. We also encourage the release and publication of AIAs on the Open Government Portal for *all* AI systems departments and agencies. Currently there are only five published AIAs for the entirety of government.

TBS should coordinate with regulators so as to ensure accountability and enforceability of DADM. TBS should coordinate with directives and other ADM-related policies developed in exempted agencies (e.g., CRA, Office of the Commissioner of Lobbying of Canada, RCMP).

DADM should include a review of the companies that have voluntarily committed to the AIA on Canada's AI Source List. The DADM should include a requirement to remove companies from the AI Source List that are involved in human rights abuses (e.g., Palantir Technologies Inc.). When AI systems or the firms that develop them infringe on fundamental rights and democratic principles, they should be banned.⁷ If the systems are unlawful (e.g., violated legal terms of service in the data collection) then they should be banned.

The AIA process should more meaningfully engage with civil society.⁸ The only external non-governmental actors consulted in Canada's four published AIAs were companies. DADM also should include more specific, ongoing monitoring and reporting requirements so the public knows if the use or impact of an AI system has changed since the initial AIA.

⁷ Algorithm Watch (2022). Open letter calling for a global ban on biometric recognition technologies that enable mass and discriminatory surveillance. <https://algorithmwatch.org/en/open-letter-ban-biometric-surveillance/>

⁸ Brandusescu, A. & Reia, J. (eds). (2022). Artificial intelligence in the city: Building civic engagement and public trust. *Centre for Interdisciplinary Research on Montreal, McGill University*; Brandusescu, A. & Reia, J. (eds). (2022). L'intelligence artificielle dans la ville : Renforcer l'engagement civique et la confiance du public. *Centre de recherches interdisciplinaires en études montréalaises*, Université McGill.