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Artificial intelligence soon to be regulated in Canada?

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For the time being, there are no specific laws governing the use of artificial intelligence in Canada. Certainly, the laws on the use of personal information and those that prohibit discrimination still apply, no matter if the technologies involved are so-called artificial intelligence technologies or conventional ones. However, the application of such laws to artificial intelligence raises a number of questions, especially when dealing with “artificial neural networks,” because the opacity of the algorithms behind these makes it difficult for those affected to understand the decision-making mechanisms at work. Such artificial neural networks are different in that they provide only limited explanations as to their internal operation.

On November 12, 2020, the Office of the Privacy Commissioner of Canada (OPC) published its recommendations for a regulatory framework for artificial intelligence.[1] Pointing out that the use of artificial intelligence requiring personal information can have serious privacy implications, the OPC has made several recommendations, which involve the creation of the following, in particular:

> A requirement for those who develop such systems to ensure that privacy is protected in the design of artificial intelligence systems;
> A right for individuals to obtain an explanation, in understandable terms, to help them understand decisions made about them by an artificial intelligence system, which would also involve the assurance that such explanations are based on accurate information and are not discriminatory or biased;
> A right to contest decisions resulting from automated decision making;
> A right for the regulator to require evidence of the above.

It should be noted that these recommendations include the possibility of imposing financial penalties on companies that would fail to abide by this regulatory framework.

Moreover, contrary to the approach adopted in the *General Data Protection Regulation* and the Government of Quebec’s Bill 64, the rights to explanation and contestation would not be limited

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solely to automated decisions, but would also cover cases where an artificial intelligence system assists a human decision-maker.

It is likely that these proposals will eventually provide a framework for the operation of intelligence systems already under development. It would thus be prudent for designers to take these recommendations into account and incorporate them into their artificial intelligence system development parameters as of now.

Should these recommendations be adopted, it will also become necessary to consider how to explain the mechanisms behind the systems making or suggesting decisions based on artificial intelligence. As mentioned in these recommendations, “while trade secrets may require organizations to be careful with the explanations they provide, some form of meaningful explanation should always be possible without compromising intellectual property.”[2]

For this reason, it may be crucial to involve lawyers specializing in these matters from the start when designing solutions that use artificial intelligence and personal information.

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1. https://www.priv.gc.ca/en/about-the-opc/what-we-do/consultations/completed-consultations/consultation-ai/reg-fw_202011/
2. *Ibid.*

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