

# **POLICY FORUM**

## **Solutions for Canadian Digital Policy and Legislation**

### **03 Keynote & Fireside Chat: The State of Digital Policy in Canada**

**The Canadian Internet Society Policy Forum: Solutions for Canadian Digital Policy and Legislation**

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#### **03 Keynote - The State of Digital Policy in Canada**

**Mark Schaan, Privy Council Office of Canada:** Bonsoir à tous, and good afternoon, everyone. It's great to be here and thanks so much for the provocative and interesting introductions to today's assembly. My name is Mark Schaan, I'm the Deputy Secretary to the Cabinet for Artificial Intelligence at the Privy Council Office and it's my pleasure to join you here today.

And we just want to start by acknowledging that we're here in the National Capital Region on the unceded traditional territories of the Algonquin Anishinaabeg peoples, who have presided over this place for time immemorial. An important reminder, I think, in part because as we talk about the future sometimes it's a good reminder of both the relationship back to often marginalized traditional peoples, but also the import of thinking with a multi generational approach to topics like the digital society.

And I think we've got a bit of a challenging conversation to think about how to frame digital policy for the way forward which can be as expansive probably as we'd like it. My current role I find expansive enough and it only tries to capture artificial intelligence and as opposed to all of the digital kind of tools and toolkits that we find ourselves within.

The secretariat at the BCO has essentially been established to try and seize Canada's opportunity and so we're keen to understand some of the thinking that will come out of this effort from the Internet Society about what forward looking digital policy can look

like. Maybe a couple of points that I would just make before I get to have a good conversation, and end.

I'd offer a few thoughts, and one is, I think, this multi tent, this multi tentacled kind of feature of digital policy is that it is, in fact, kind of everything. And so, I think, when thinking about how to draft and craft digital policy one has to identify that you are ultimately going to have to be prioritizing and working across multiple policy objectives.

And those policy objectives in and of themselves are not necessarily wrong or bad and in fact actually when they are cross purposes is often an important element for governments to think reflectively and thoughtfully about how to entertain them. And I think about that in the context of my public service career where I think it's useful to identify a note and even just a name when public policy interests are multiple in nature as opposed to pretending or trying to gloss over digital policy contradictions or tensions that are inherent to the work that we do.

It's very natural, for instance, in my old job at Industry Canada, when I was still in Industry Canada, that as Director of Life Sciences, my goal was to grow life sciences and bioeconomy. And that was sometimes in tension or at odds with my colleagues at Health Canada, whose job was to create a safe and effective drug supply for the people of Canada.

Those two public policy objectives aren't inherently wrong, and they're both valid, but figuring out how to actually work through some of those tensions, I think, are some of what is often the most important piece. And I think that's exactly where we find ourselves at the digital policy table, which is to say that there are multiple streams and multiple kind of active efforts at play and multiple interests that need to be satisfied and understood.

Whether that's the distinction between content providers and content creators, whether that's the distinction between the necessities for safety and security, and the desire for open and for transparency. And I think those are often elements where we really need to sort things through.

When I think about the effort that got us the digital charter, which was a previous attempt at trying to outline what a vision for an Internet and data fueled economy and society could look like, one can see that it transcends multiple players and actors. It has everything from access to the tools and skills to be able to engage with connectivity and with an Internet and data driven society and economy, all the way through to fair and free elections and devoid of interference from foreign actors.

And I think that's just a portion of the kind of continuum that exists across the digital economy that needs to get wrestled with. And then I think we have to structurally and methodically think about the tool sets and the kind of foundations that help us underpin what good digital policy looks like.

And so, we have an approach in Canada that I think we have to recognize as the kind of founding context within which we find ourselves. We're blessed, or potentially cursed, depending on how you think about it, with a set of marketplace frameworks that are of general application and kind of cross the entirety of the economy.

They include things like competition, like copyright, like intellectual property, and ends like privacy. And those marketplace frameworks have a capacity to be updated for a digital economy and for an increasingly connected and data-driven and AI-driven and algorithmically informed and augmented economy and society.

But then there are sector specific or activity based regulations that live on top of those, whether that's the management and regulation of cars or the management and regulation of health. And those have an important role to play in terms of the degree to which they are doing the work of keeping us both benefiting from but also safe in a world of connectivity and increased preference of data, proliferation of data.

Then there are certifications, standards, codes, and protocols data trusts, a whole series of voluntary efforts that can essentially live on top of or in place of activity based or sector specific regulations. Then there are trade rules and norms that often live even on top of that. And I think we have to recognize that continuum of tools is the shape with which we can inform a modern approach to data and digital policy.

Not recognizing the interplay between them or suggesting that we can somehow do away with those, I think is problematic at outset. And I think we have to recognize the degree to which those various elements can and should be enacted upon and grown. And so I think that is the task ahead of us.

And I think AI is a principle kind of driver. It's one of the reasons why the secretariat was created and I think is hopefully informative as to the ways in which we can think about the cross-cutting. And by very, it's very nature friction-filled intense, full approach to digital policy in a modern era.

With that, I'll take some questions.

**Hannah Daley - The Wire Report:** All right. So like we said, my name is Hannah Daley and I'm with The Wire Report. So you mentioned a lot of words and a lot of ways that things overlapped. I liked the use of multi-tentacled so thinking of that and this ever changing digital space that we're in Looking at policy and looking at what has to change, do you think Canada's more proactive or reactive right now?

**Mark Schaan, Privy Council Office of Canada:** That's a good question. I think there are ways in which our digital policies are ideally forward thinking, and I think there are definitely some elements of our digital policy that have been a culture of our zeitgeist. And so, And I think this is some of the challenge of doing effective policymaking in a

digital era is that where there is a void that's created within the polity, when you've got citizen issues that are surfacing, I think they, they latch onto and seek the easiest path to remedy.

And sometimes that's a challenging space because either things are in midstream or there isn't necessary, necessarily a legislative or regulatory kind of fix. And so, interestingly, I think I would use the origin story for the Artificial Intelligence and Data Act as one of the kind of realities of how these sorts of issues come to surface, which was.

Everyone probably will remember that we had our first attempt at privacy modernization in the earlier mandates of this government and that focused solely on modernizing the Personal Information and Protection of Electronic Documents Act. But when the new minister arrived and began very quickly pushing on issues that were very top of mind for citizens and the society around things like algorithmic harms, and increasing amounts of potential for AI to be potentially pushing on citizens in ways that were unhelpful, and, but not necessarily tied to personal information, it necessitated some sort of response that sort of said, well, If not PIPEDA, then what?

And that very much gave rise to the possibility of a need for the government to have some mechanism to be able to regulate high impact AI systems. And that was the relationship both to the bill and then ultimately To the effort. And so I think you can see those types of issues in a number of spaces where, and sometimes the moment creeps up on you faster than what our either toolkit or our current approaches allow for, and it will seek an exhaust valve.

That is wherever the steam can get to quickest in some ways. And so I think we probably suffer from both an attempt to be as proactive as possible, sometimes allowing perfect to be the enemy of the good. And then sometimes just falling to the notion of needing to be reactive to what are our critical issues in the poly.

**Hannah Daley - The Wire Report:** And looking at Canada's digital policy, as far as priorities go you mentioned AI as a principal driver. So where does AI, in your opinion, fit in shaping those priorities?

**Mark Schaan, Privy Council Office of Canada:** So AI is an interesting telltale or kind of case example in some ways of some of the both challenges and opportunities of digital policymaking in Canada.

It's a technology for which Canada has played an outsized role in its development. So, 41 years ago, the Canadian Institutes for Advanced Research started their neural network and machine learning program which at the time saw zero pathway towards, Kind of enlightenment and the notion of the degree to which this would actually be a technology that Canada would actually drive.

And so I think that's telling in a lot of ways. One is that good policy and good effective outcomes in the digital space are not always assured, nor is there a linear relationship between now and where you need to get to. On the other hand, notwithstanding the fact that we boast the Nobel prize winner for, who helped shape this technology, a computer scientist who won a physics award, we have the lowest levels of trust in artificial intelligence amongst our G7 peers shockingly low degrees of willingness on the part of average Canadians to engage with the technology and feel safe in its usage.

And so I think AI is a telltale of the kinds of both costs and opportunities for Canada in specific. On the one hand, we need to get to trust. On the other hand, we absolutely also need to seize our opportunity to be able to be the drivers of the application and adoption of a technology that I think we can credibly say we played an important role in developing.

And so, I think AI fits into a broader digital suite that needs to find that important balance where it absolutely promotes innovation, absolutely uses technology for the good of the social problems and the economic problems that we find ourselves within, including a monstrous productivity gap but also at the same time brings people along, because it's not assured that you necessarily will find yourself with a willing public desirous to be able to engage or adopt.

**Hannah Daley - The Wire Report:** And circling back to the policy aspect of that once again what kind of steps could Canadian policymakers take to foster a more proactive or even adaptable digital policy framework, or are there steps at this point?

**Mark Schaan, Privy Council Office of Canada:** Yeah, so I think we're thinking about this in a few ways. So one is, You can easily find yourself in a never ending spin cycle where you have no good use cases which fuels a lack of trust or a lack of kind of insight into the possibilities and the opportunities of the technology.

Which fuels risk aversion and an unwillingness, therefore, to adopt. And you can literally continue in this zone where no one wants to adopt good use cases because there's risk aversion and fear that you'll be negated by the public opinion around it. And so I think we need better use cases, and I think we need to bring people along in ways that actually sort of make sense.

And so we're thinking about this methodically within the context of AI adoption, both in the public service and in the broader economy, by trying to find those opportunities where we actually think that implementation at scale is both Not necessarily obvious, but certainly can create obvious benefits in the short term, and that actually can drive the productivity and efficiency gains that we think are actually what will ultimately sell business process owners around meaningful adoption.

And we have to do the exact same thing with the private sector in terms of ensuring that there is both Canadian capabilities at the ready and a prob and a willingness to be

able to allow for that risk aversion to be overcome. And so I think we have to think about that both at the level of kind of back office, but also at the level of signature capabilities, where I think Canada is well placed to be able to fuel some of that, particularly in our current geopolitical context.

**Hannah Daley - The Wire Report:** And in trying to engage more with a perhaps untrusting public as well as with industry, is there a way to make that process more Understandable and transparent for people to try and get them on board.

**Mark Schaan, Privy Council Office of Canada:** Yes and no. So, people make lots of analogies between the digital world and the analog world and how we got to good outcomes in the analog world.

And there's been some fascinating research and writing done on particularly international governance and the digital reality, and thinking through how can we look at previous models that got to reasonable, or at least consistent, international governance and think about what that means for the current state of things.

And so people point to things like the financial action task force at the OECD, or they point to things like a CAHO in aviation and think about mechanisms by which we can think about some of those. I think the civil aviation analogy is an interesting one cause I'm not sure that getting to doubting Thomases by putting fingers in holes is necessarily the easiest mechanism, and that's certainly not what happened in civil aviation. None of us, last time I checked did a double take on the plane that we got onto to make sure that, the screws were in the right spots, and that we actually thought that we were going to be able to fly safely.

we took for granted that the right standards and other efforts were in place and we saw enough planes fly and land safely that we all decided that it was worth it to get on it. And so I think we, we have to find a kind of similar kind of middle ground that allows us in the digital space to both have seen enough planes take off and land effectively and enough effective standards and certifications that live behind the scenes to be able to get on the plane and ride it effectively and create a market around it.

And I think that is the journey we're on currently with AI and with the digital economy more generally.

**Hannah Daley - The Wire Report:** I will say, every time I get on a plane, I am thinking about whether or not There's certain ones you can see it poking out of the wing and it's a little concerning. That aside, I think nobody here would be shocked to consider that sometimes policy moves quite slow.

The digital space moves very fast. Is there a way to effectively address that gap in pacing as things keep changing.

**Mark Schaan, Privy Council Office of Canada:** So I'm going to be unhelpful and point to the things that stand in the way, or the things that are hard, rather than suggesting the ways in which you can overcome them necessarily.

But I think they're real, and as I say, pointing out tensions is at least a starting point to thinking about how to get to a better spot. So one of the tensions is within our Westminster system. So, we know that in the kind of hierarchy of flexibility, the most The least flexible is legislation, the most flexible is some sort of self adopted protocol or code that people can nimbly move around with, and the reality is that our duly elected politicians are not particularly flexible.

I'm keen on the notion of relegating the vast majority of effective governance of the digital society to self-governed codes or nimble agile governance mechanisms that can be self-policed because it turns out that they're not particularly trusting of the actors on the other side That makes it challenging to do what we know is potentially more flexible approaches to good governance, which is to say, let's actually only legislate it at the level of principle and at outcome, and then allow for regulations, guidance, and certifications and standards to follow in behind.

I've now done, I don't know, a few dozen legislative amendments and changes over the course of my career, and I've had to In at least one instance, produce arguably fake regulations in the sense that the law provided regulation making power but I needed to show my future work in order to get my legislation through and so I think that is a natural tension that I think is one of the things that stands in the way of being fast.

The other is Principles based legislative approaches turns out run into challenges when you actually want meaningful enforcement. and that is certainly one of the challenges that we've run into in the modernization of PIPEDA was people love principles based approaches to legislation until you tell them that there's actually going to be meaningful.

Monetary penalties associated with noncompliance. And then quite rightly, industry turns to you and says, but you're going to have to tell me in extraordinary granularity, exactly what you want me to do so that I can avoid these penalties and fines. To which you said, I thought you liked principles based legislation.

And you said, well, yes, but you also have to tell me exactly what I'm supposed to do so that I can defray my risks. So that's attention.

And then third is, I think this notion that government, in and of itself, has a fundamental additional fiduciary obligation to its citizens, that is often different in the risk calculus than some of what is available or practiced in the private sector, which is to say, when you're going to adopt new technologies, for instance, as a good use case, doing that in citizen-facing services, when you're talking about the old age security system or the guaranteed income supplement is, notwithstanding the fact that it's meaningful to do it

at a telecommunications company or an insurance provider, is still different than when you're actually the government, and the willingness of citizens to be able to see government as early adopters is considerably lower, notwithstanding the fact they will still complain, and say, I can, book my tire replacement online and have them come to my house and I can do it in six seconds, why can't I do that for my passport?

And then you say, well, would you be willing for us to, run a risk of adopting a brand new technological system that actually is going to require that and share your personal information with a whole bunch of third party providers to be able to enable that type of service, and then it turns out citizens get a little wary.

So, I think I've not been helpful in answering your question about can we be quick? I'd say those are the fundamental tensions that hurt, that, that hamper our ability to be quick. But I think there are pathways through that, particularly with more deliberative processes that actually ideally get those politicians on side for what is going to live in the subsequent efforts, helping the industry on what good compliance looks like, and then helping the citizens on understanding the value proposition of transformation, including what that's going the status quo of tech debt actually legitimately means, in terms of how many of their old age security checks are actually being held together with bubblegum and scotch tape.

**Hannah Daley - The Wire Report:** And I guess, on that note, do you think we're actually on the path to maybe doing that?

**Mark Schaan, Privy Council Office of Canada:** I feel optimistic. I'm supposed to. I'm the Secretary to the Cabinet for Artificial Intelligence. My job was not created out of a sense of ambivalence about the possibilities of the technological opportunity before us. I tell that to people all the time when I describe their secretariat. We weren't created to be neutral about AI.

We weren't created so that we could come back and, in two years, tell the government what they should think about AI and whether or not it was good or bad. We were created on the premise that there is fundamental good that can come out of this technology in its deployment, in our economy, in our society and in international arenas.

And we are trying to chart a path that actually sees us meaningfully address that leadership across all of those dimensions, and so, yeah, I'm arguably paid to be optimistic.

**Hannah Daley - The Wire Report:** And is there anything in this new role that's been particularly surprising, or anything that you've had to deal with like that?



**Mark Schaen, Privy Council Office of Canada:** Yes, and I would say the thing that surprises me or surprised me is also a confirmation of why I think we exist, which is I sort of knew going in that the rationale for the Secretariat was that there is just a ridiculous amount of activity related to artificial intelligence happening across the economy and within the federal family, and that the real risk of that is that it would not amount to greater than the sum of its parts.

And so I have been buoyed by the places I am seeing, and the instances of AI that I am seeing, in all sorts of parts of both our society, our economy, and government. But, I also recognize that it is justifiable then that we really need to make sure that we are strategically cohering that effort to maximize our impact, because there is a great chance that we will actually lose out on this opportunity to lead, because of the fact that our efforts are uncoordinated or siloized.