

Digital Policy Hub – Working Paper

Braiding Digital Sovereignty: Strengthening Canada's Digital Charter

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The Digital Policy Hub working papers are the product of research related to the Hub's identified themes prepared by participants during their fellowship.

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Bottom Line Up Front

Canada faces an increased urgency to pass digital sovereignty legislation in advance of renewed international trade negotiations with the United States and the European Union, and to address legislative shortcomings identified in its proposed Digital Charter Implementation Act (DCIA). The Haudenosaunee Confederacy's constitutional principles of Karihwi:iyó (Righteousness), Ka'satsténshsera (Power) and Skén:nen (Peace) can help strengthen Canadian digital sovereignty by informing how to bridge policy gaps in the Digital Charter. These principles offer inspiration for how Canada's digital sovereignty future can be anchored in justice, fairness, consent and harm prevention. By braiding Indigenous, Canadian and international law, Canada can strengthen its approaches to national security, digital sovereignty and the ethical governance of artificial intelligence (AI), thereby enhancing public trust, balancing power and safeguarding future generations from digital harms. This includes adopting policy objectives into the Digital Charter and co-developing Indigenous data sovereignty legislation.

Key Points

- The failure to pass the DCIA before the 2025 federal election provides an opportunity to amend the legislation, entrench policy objectives that address civil society's concerns, and ensure consistency with and implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) Act.
- The Canada-United States-Mexico Agreement's (CUSMA's) digital trade chapter prohibits Canada from holding foreign technology companies liable for online harms and minimizes data-localization policies, while exemption article 32.5 exists for Indigenous peoples' rights.
- Canada has endorsed the Indigenous Peoples Economic and Trade Cooperation Arrangement (IPETCA) and is obligated to uphold the rights affirmed in UNDRIP.
- The Kayanerenkó:wa (Great Law of Peace) provides a comparative legal framework that could guide Canada's path forward in developing a digital sovereignty framework.
- Anchoring the Digital Charter in an approach that prioritizes individual and collective protections, public interest and consent, and is aimed at national unity, would assist Canada in learning from the constitutional principles that have guided the Haudenosaunee Confederacy.

Recommendations

- **Entrench fairness and justice as the two primary policy objectives for the DCIA.**
- **Separate AIDA from the DCIA and launch a stand-alone national public engagement on AIDA.**
- **Amend AIDA so that it applies to government and industry.**
- **Adopt individual and collective safeguards, and the protection of children and future generations, as the two primary policy objectives in the CPPA.**
- **Co-develop Indigenous data sovereignty legislation with Indigenous partners as part of the Digital Charter to affirm Canada's obligations to Indigenous peoples under domestic and international law.**

Introduction

Canada has reached a crossroads amid evolving international trade negotiations. In charting a path forward for digital sovereignty, Canada faces the question of which governance principles should anchor its digital sovereignty framework. This working paper will explore how braiding Haudenosaunee law, Canadian law and international law strengthens Canadian digital sovereignty, specifically the DCIA.¹ In 2024, the Supreme Court of Canada in the *C-92 Reference* case² recognized at paragraph 7 that “the metaphor of ‘braiding’ together these three types of norms has been helpfully proposed to explain how the [UN] Declaration should be implemented in Canada, so as to ‘work out how state law and Indigenous law could be interwoven, with guidance from international law, to form a single, strong rope’” (Christie 2017; Fitzgerald and Schwartz 2017).

This working paper has five goals:

- provide a backgrounder on Canadian digital sovereignty;
- outline the gaps in Canada’s Digital Charter;
- present an overview of the constitutional principles of Haudenosaunee law;
- provide a transsystemic legal analysis; and
- recommend ways to strengthen DCIA protections.

The objective is to argue that Haudenosaunee constitutional principles, as just one example of Indigenous laws, should be considered when developing digital trade rules due to Canada’s obligations to consider Indigenous legal orders under UNDRIP³ as affirmed in the Supreme Court of Canada’s *C-92 Reference* decision and under IPETCA.⁴

The analysis will summarily engage with written accounts of Haudenosaunee constitutional principles of Skén:nen (Peace), Karihwí:iyo (Righteousness) and Ka’satsténshsera (Power), looking at how they could help strengthen the DCIA. With growing concerns over algorithmic bias, unethical AI development and foreign interference in national digital infrastructure, the recommendations will outline how these three constitutional principles could inform legislative reforms to strengthen digital sovereignty, national security and ethical AI governance.

1 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*, 1st Sess, 44th Parl, 2022 [DCIA].

2 *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5.

3 *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 295, UNGAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/296, 46 ILM 1013 (2007) SC 2021, art 14.

4 *Indigenous Peoples Economic and Trade Cooperation Arrangement*, 10 December 2021 (endorsed 23 June 2022), online: <www.international.gc.ca/trade-commerce/indigenous_peoples-peuples_autochtones/ipetca-text-acecpa-texte.aspx?lang=eng> [IPETCA].

Methodology

This working paper utilizes a comparative qualitative methodology and legal narrative analysis. Legal narrative analysis engages with published and translated stories from an Indigenous society (Asch 2021). Through legal narrative analysis, the paper analyzes the governing principles set out in written accounts of Kayanerenkó:wa, the constitution of the Haudenosaunee Confederacy. The working paper engages exclusively with written works that describe Haudenosaunee law as they might be conceptually understood in translation from Kanyen'kéha into English, recognizing that English translations may not fully reflect the original understanding of these principles. A review of the DCIA, which died on the Order Paper in April 2025, was conducted alongside an analysis of what was missing from the proposed legislation, according to critics. A comparative contextual analysis was performed using a qualitative constructivist approach (Wilson 2008) in which consideration of specific Haudenosaunee legal principles toward the DCIA offers policy solutions. The underlying objective is for policy makers to understand the principles of the Great Law of Peace to help fill in gaps within Canada's legislation.

Background: Digital Sovereignty

The Privy Council Office defined national security in 2017 as “relat[ing] to threats that have the potential to undermine the security of the state or society and that require a national response” (National Security and Intelligence Committee of Parliamentarians 2019, 17). The Dais recently described digital sovereignty as “having the power to decide how digital technologies and data are used and governed within national borders, free from external influence or control” (Coté, n.d.). Looking at the two definitions jointly, this working paper assumes that the foreign development of AI systems, algorithms and data transfers is intrinsically linked to threats against Canada at the national level, including its economy, democratic institutions and individual citizens.

The DCIA

The DCIA⁵ was introduced in 2022 as an attempt by the federal government to address concerns around private and individual privacy protections, and AI and data regulation. It also sought to address the adequacy status of Canada's regulatory regimes as considered by the EU General Data Protection Regulation,⁶ which ultimately enables data to be transferred between the European Union and Canada without further regulatory requirements and controls (Charland, Savoie and van den Berg 2022). The proposed DCIA comprised three sub-legislative pieces: the Consumer Privacy Protection Act (CPPA),⁷ AIDA (Innovation, Science and Economic Development Canada 2025) and the Personal Information and Data Protection Tribunal Act. Various parliamentary

5 DCIA, *supra* note 1.

6 EC, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/ED (General Data Protection Regulation), OJ, L 119.

7 Bill C-11, *An Act to enact the Consumer Privacy Protection Act and the Personal Information and Data Protection Tribunal Act and to make consequential and related amendments to other Acts*, 2nd Sess, 43rd Parl, 2020 (first reading 17 November 2020) [CPPA].

stakeholders, such as Canada’s privacy commissioners and the Standing Committee on Industry and Technology, have all provided input into the textual evolution of the DCIA⁸ (Office of the Privacy Commissioner of Canada 2023; Standing Committee on Industry and Technology 2024). In April 2024, the DCIA died on the Order Paper due to the federal election.

Emerging Challenges for Digital Sovereignty

Canada has recently faced at least two international challenges with its allies regarding digital sovereignty that have provided a necessary impetus to pass some form of legislation. The first challenge has been the restrictive provisions set out in the digital trade chapter of CUSMA,⁹ especially articles 19.17.2 and 19.17.3. This chapter seeks to prevent Canada from holding American technology companies liable for online harms and to minimize data-localization policies that could compel foreign companies to store Canadian data on Canadian servers (Hruška 2025). This restrictive chapter of CUSMA has inherently eroded Canada’s ability to exercise data sovereignty when challenged by American technology companies. However, article 32.5 (Indigenous peoples’ rights) serves as an exception that allows Canada to affirm Indigenous data sovereignty through domestic law and could serve as a pathway to circumvent the digital trade chapter.

Canada is also in ongoing negotiations toward a Digital Trade Agreement (DTA) with the European Union,¹⁰ with an emphasis on “cross-border data movement” provisions (Appleton 2025). The DTA could further erode Canada’s ability to protect Canadian and Indigenous data and how it is used by European technology firms (ibid.). Provisions under consideration in negotiations include AI and misinformation governance, which may see Canada give way to the interests of European corporations in the absence of a digital sovereignty regime.

As part of Canada’s obligations under article 31 of UNDRIP, respecting Indigenous data sovereignty must be central to any discussion of Canadian data sovereignty at home and abroad. Aotearoa New Zealand faces similar trade challenges, advocating for digital inclusion and Indigenous rights exceptions at the World Trade Organization,¹¹ and Māori rights to be upheld and protected in the Indo-Pacific Economic Framework for Prosperity (Ngā Toki Whakarururanga 2023; World Economic Forum 2025).

Canada’s endorsement of IPETCA asserts, at article 4(a)(x), that as a participating economy, it will “recognise traditional knowledge and Indigenous worldviews in relation to digital issues.”¹² IPETCA reaffirms various international instruments, such as UNDRIP, and article 6 of IPETCA serves as a non-derogation clause. Canada has acknowledged that its laws and policies relating to global trade and investment must advance the

8 House of Commons, Standing Committee on Industry and Technology, *Evidence*, 44-1, No 90 (19 October 2023) (Philippe Dufresne).

9 *Protocol replacing the North American Free Trade Agreement with the agreement between Canada, the United States of America, and the United Mexican States*, 30 November 2018, Can TS 2020 No 5 (entered into force 1 July 2020) [CUSMA].

10 See <https://international.canada.ca/en/global-affairs/consultations/trade/2025-06-23-digital-trade>.

11 WTO, *Joint Statement Initiative on E-commerce*, Discussion Paper on Digital Inclusion – Language for Consideration by JSI Participants, Communication from New Zealand (25 November 2022), WTO Doc INF/ECOM/70, online: <www.mfat.govt.nz/assets/Trade-agreements/WTO-e-commerce-negotiations/Joint-Statement-Initiative-on-E-commerce-discussion-paper-on-Digital-Inclusion.pdf>.

12 IPETCA, *supra* note 4, art 4(a)(x).

rights and interests of Indigenous peoples, and that it is inappropriate to weaken protections for Indigenous peoples at home to encourage international trade and investment. Canada must explicitly take action to respect Indigenous data sovereignty in trade discussions.

Policy Gaps in the DCIA

The most recent public critique arose from an open letter from Canadians for Digital Sovereignty (2025) to Prime Minister Mark Carney that addressed the shortcomings of AIDA and the CPPA. The letter sets out 14 priority action items around digital sovereignty that the collective believes the federal government needs to urgently address in the face of challenges by US President Donald Trump's administration. The issues and related priority action items tied to AIDA include:

- Canadians not being engaged in an open, inclusive discussion on their collective future of digital sovereignty;
- it was hastily rushed through as part of the DCIA;
- it does not apply to the private and public sectors; and
- it disregards the public interest (*ibid.*).

The letter also addresses issues with the CPPA, such as the legislation does not recognize privacy as a fundamental human right and does not adequately protect minors (Appleton 2025; Beaumier 2025; Canadians for Digital Sovereignty 2025; Fung 2025; Rasky 2024). The CPPA merely asserts in its preamble that “Parliament recognizes that artificial intelligence systems and other emerging technologies should uphold Canadian norms and values in line with the principles of international human rights law.”¹³ Furthermore, sections 18(1)–(3) of the CPPA allow companies to collect and use personal information without an individual's consent if an organization or business has a “legitimate interest that outweighs any potential adverse effect on the individual.”¹⁴ The proposed text thus creates a pathway for individual rights and interests to be deemed less important than industry's business interests.

One of the letter's signatories, Barry Appleton, has flagged elsewhere concerns around the absence of a comprehensive digital sovereignty legislative regime in Canada. Appleton (2025) raised concerns that the DCIA has failed to respond to the US government's Clarifying Lawful Overseas Use of Data Act and to restrictive provisions in CUSMA, especially regarding public calls for cloud-agnostic services and provisions to block the transfer of cross-border information. Appleton (*ibid.*) called for legislation to assert Canadian authority over algorithmic systems — including infrastructure, data, technology, transparency and auditing of AI systems — securing critical digital systems domestically. While Appleton suggested additional legislation, the federal government has an opportunity to integrate these provisions into the DCIA, even if pursued incrementally: passing the DCIA with macro-level policy objectives and declarations, with follow-on legislation concurrently developed to address micro-level policy gaps.

¹³ CPPA, *supra* note 7, Preamble.

¹⁴ *Ibid.*, s 18(1)–(3).

Principles of Haudenosaunee Law

In the 2023 Quebec Superior Court decision of *White and Montour*,¹⁵ Justice Sophie Bourque, in her reasons for judgment, provided a comprehensive written analysis of what was presented to the court regarding Haudenosaunee law and Kayanerenkó:wa (Great Law of Peace) in a way that Canadians at large, and the broader judiciary, can contemporarily understand. The positions set out in this working paper rely exclusively on written accounts of Kayanerenkó:wa as presented in jurisprudence and scholarly works, and do not reflect or account for alternative perspectives held by those in Haudenosaunee communities. This working paper acknowledges that the principles of peace, power and righteousness are nuanced and complex, and that its purpose is not to examine those complexities in full. Instead, it offers a summary of those three principles based on publicly available resources.

Kayanerenkó:wa appears to emphasize unity, consensus and relational responsibility (Porter 2008). These principles are critical for understanding how the DCIA addresses unknown and uncertain shifts in the digital environment, and how it will govern responsibility and obligations among individuals, corporations and government. For this working paper, the analysis of these three principles brought by the Peacemaker will focus on the societal meanings of written translations and interpretations rather than individual ones. When the Peacemaker brought the ideas of Skén:nen, Karihwí:iyo and Ka'satsténshsera to the Mohawk, Oneida, Onondaga, Cayuga and Seneca communities, he was pitching the belief that principles would “lead to the organized enactment of the vision” (Williams 2018, 216). The underlying premise of this working paper is that entrenching core guiding principles into federal law to resolve digital policy challenges may help Canada realize its vision for true digital sovereignty and public safety. To better understand these three constitutional principles and how they might inform Canadian digital sovereignty legislation, we must examine them individually as broader concepts and their interrelation (Williams 2018).

Karihwí:iyo has been loosely translated as the principle of the good way, or righteousness¹⁶ (ibid.). The Peacemaker explained to communities that this principle means: “People respect each other as though they are one person; also everybody is related among the various nations, so that now they will stop, the sins and activities of evil people; now everyone will repent, the old people and the young people; now everyone will respect one another among all of the nations” (ibid., 217). The concept has been interpreted as entailing two meanings. The first is ethical teachings and values (Williams 2018); the second is the notion of what is right — what we commonly label in English as the idea of justice. This second meaning is achieved through the establishment of ethical doctrine in institutional forms (ibid.). Ka'satsténshsera has been loosely translated as the principle of power¹⁷ (Hill 2017). The Peacemaker explained to communities that this principle means: “All of the nations will unite all their affairs, and the group of several nations will become just a single one, and their power is that

¹⁵ *R c Montour*, 2023 QCCS 4154 [*Montour*].

¹⁶ *Ibid* at paras 383, 407.

¹⁷ *Ibid* at paras 223, 225.

they shall join hands. This, moreover shall be the basis upon which they will survive as a group. Forming a single family, similar to being one person having one head and one life, surrounded by the 'Good Message' (Righteousness). This is how peace will now come about among all of the Nations, and power will arise for families to continue from here on in" (Williams 2018, 218). Skén:nen has been loosely translated as the principle of peace or harmony¹⁸ (Hill 2017). The Peacemaker explained to communities that the "Great Spirit never planned for humans to hurt one another," and that the principle means violent conflict would end: "The different nations' villages are as neighbours and as to the localized families and their children, what will happen is that they will all be very close relatives...that everyone will be united" (Gibson 1992, 13; Williams 2018, 218). It has been interpreted when applied to a society (in contrast to an individual) as meaning "peace, tranquility, or rest (with its opposite being war, strife, or contention)" (Williams 2018, 218). The underlying teaching of this principle is the responsibility of all members of society to "do no harm" (ibid., 219).

Analysis

A recently emerging field of legal scholarship across Canada explores how we can braid Indigenous, Canadian and international laws to strengthen our laws (Borrows 2017). John Borrows (2002) laid the framework for the transsystemic legal approach, which engages with Indigenous laws through the retelling of stories as cases and the use of the common law "case method" to identify legal principles within those stories. The approach this working paper takes to Haudenosaunee principles draws inspiration from the US Constitution. In 1988, the US Senate formally recognized that the Constitution was "influenced [in part] by the...Iroquois Confederacy."¹⁹ The Great Law of Peace has served as a constitutional inspiration for other nations as well (Fenton 1998). Digital threats toward Canadians and Indigenous peoples require the establishment of a common defence through a broader digital sovereignty framework grounded in principles that can withstand the ebbs and flows of technological evolutions and foreign political currents.

Karihwi:iyo (Righteousness)

The Haudenosaunee principle of "righteousness" could be transsystemically integrated into the DCIA through the adoption of policy objectives that focus on institutional ethics that guide decision making, such as "justice" and "fairness," which apply to all sub-aspects of the legislation, regulations and a future AI and digital ethics framework. The emphasis of such an amendment would be on the coherence of these objectives throughout all the multi-level governance aspects associated with the DCIA. By adopting justice and fairness as the overarching policy objectives of the DCIA, the federal government would move toward ensuring the welfare of all Canadians by prioritizing the public interest and equity over corporate and foreign interests. In line with the adoption of these two policy objectives, the federal government could advance privacy as a fundamental human right within the CPPA aspect of the legislation. This move would recognize that these policy objectives require individual Canadians to have privacy rights against corporations and foreign

¹⁸ *Ibid* at paras 205, 223–24.

¹⁹ US, H Con Res 331, *Iroquois Confederacy and Indian Nations — Recognizing Contributions to the United States*, 100th Cong, 1988, 102 Stat 4932.

actors, as the Charter of Rights and Freedoms only protects them from certain aspects of domestic state action. The adoption of these two policy objectives could prompt the introduction of blocking provisions for cross-border data flows as part of a “fair” and “just” digital regulation framework grounded in the public interest of individual Canadians rather than corporate and foreign interests. Adopting such institutional ethics also requires Canada to vehemently defend and affirm the inherent rights of all Indigenous peoples, toward whom the Crown owes a fiduciary duty. This responsibility includes asserting, in domestic law and international agreements, that Indigenous data sovereignty is paramount over other interests. Such legislative and policy action would be consistent with the principles of justice and fairness.

Ka’satsténshsera (Power)

The Haudenosaunee principle of “power” could be transsystemically adopted into the DCIA through a broader shift in the structural and development approach to how institutional authority is derived, from an exercise in political control within the House of Commons to one ultimately grounded in unity and consent given by Canadians. This is especially relevant for the development of AIDA and determining the future of AI regulation and ethics in Canada due to the fundamental impact that AI will have on the Canadian economy and on the lives of individual Canadians. For Canadians to move forward without further division in an economy that will be fundamentally shaped by AI’s evolution, and increased distrust in whether what they see online and in the news is real or AI, the federal government needs to ensure that there is broader consensus on the path forward — walked ethically by all involved. The consideration of this Ka’satsténshsera principle could be realized procedurally by ensuring that all Canadians are meaningfully engaged in consensual conversations and, in some democratic form, consent to the legislative actions taken around their shared digital future. This could include citizens’ assemblies, referenda or broader public engagement on the legislation through the development of a public participation plan akin to those called for in the Impact Assessment Act (Impact Assessment Agency 2025).

Furthermore, the federal government could move toward emphasizing consent and unity by removing AIDA from the broader DCIA package to launch focused public engagement dedicated to the future of AI ethics and governance, and, in those consultations, work to enshrine legislative principles and sections that prioritize public interest over industry and government. This shift also requires Canada to partner with Indigenous peoples to co-develop Indigenous data sovereignty legislation that is guided and informed by Indigenous world views and laws as obligated in UNDRIP and IPETCA. This includes driving conversations grounded in “free, prior and informed consent” rather than asserting Canada’s dominant viewpoints, to bring forward a strong piece of legislation built on the principles of consent and unity with Indigenous partners that will ultimately protect individual and collective intellectual property (IP) rights.

Skén:nen (Peace)

The Haudenosaunee principle of “peace” could be transsystemically adopted into the DCIA through a fundamental shift in policy approach that focuses on harm prevention, harm reduction and disarming unbalanced power wielded by corporate interests. In practice, this aim could be realized through explicit recognition in the DCIA that, among stakeholders and affected parties, there is a need to maintain reciprocal and equal relationships among and between civil society, government and industry. In short, enshrining individual and collective protections for all Canadians,

including heavy-handed consequences for harms incurred by corporations and foreign actors against our children and future generations through their actions, algorithms and overall ethic toward the Canadian digital economy. The integration of this principle of Skén:nen, in some form, could thus serve as a deterrent to harmful actions in the digital sphere, whether through privacy infringements, the spread of disinformation aimed at fuelling socio-political and economic divides, or online harms targeting the most vulnerable, including children. This shift also requires Canada to exercise the article 32.5 exemption in CUSMA for Indigenous peoples' rights to affirm Indigenous data sovereignty and to protect cultural knowledge IP from AI, big tech companies and foreign governmental organizations. This would ensure that harm prevention and harm reduction efforts protect Indigenous communities who may continue to be overlooked by Canada's digital sovereignty efforts.

Recommendations

- **Recommendation 1: Entrench fairness and justice as the two primary policy objectives for the DCIA**, learning from “righteousness” to promote the adoption of institutional ethics in decision making.
- **Recommendation 2: Separate AIDA from the DCIA and launch a stand-alone national public engagement on AIDA**, learning from “power” to promote a unity- and consent-driven approach that meaningfully engages all Canadians in a conversation around their shared digital future.
- **Recommendation 3: Amend AIDA so that it applies to government and industry**, learning from “peace” to promote equal and reciprocal accountability for all stakeholders.
- **Recommendation 4: Adopt individual and collective protections, and the protection of children and future generations, as the two primary policy objectives in the CPPA**, learning from “righteousness” to recognize that individual privacy should be equally protected against corporate interests.
- **Recommendation 5: Co-develop Indigenous data sovereignty legislation with Indigenous partners as part of the Digital Charter to affirm Canada's obligations to Indigenous peoples under domestic and international law**, learning from “righteousness” by upholding Canada's fiduciary duties and ensuring consistency with IPETCA and UNDRIP, “power” by adopting an Indigenous-led braiding approach recommended by the Supreme Court of Canada and “peace” by ensuring that Indigenous data is protected from exploitation.

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