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Effective digital governance requires close collaboration

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Strong collaboration between the federal and provincial governments will be essential to establishing a robust national digital governance system in Canada. The risk of provinces initiating their own systems is a multiplicity of laws and statutes, similar to what exists with privacy laws. Digital governance and artificial intelligence (AI) policy was a focus of discussion during an Osler AccessPrivacy call hosted by Adam Kardash, partner, Privacy and Data Management, with special guest Teresa Scassa, Canada Research Chair in Information Law and Policy, and Professor at the University of Ottawa Faculty of Law.

The possible role for a national data commissioner was considered as part of the call. This concept was introduced in mandate letters posted by the federal government and in the 2021 federal budget. It was anticipated the commissioner would advise government and business on approaches to data driven issues to help protect personal data, and to encourage innovation in the digital marketplace. It was unclear, however, what role the commissioner would play in data governance or enforcement.

Potential data sharing between the public and private sectors—and its privacy implications—was also discussed. The value of information sharing for public health purposes, for example, was apparent during the pandemic. Data sharing can also be helpful in detecting and preventing fraud and cybersecurity.

In terms of AI, future court rulings on intelligent agents and the foreseeability of harm will be of great interest. It remains to be seen what principles will be applied in cases involving automated decision making. Also it is debatable whether AI-generated works or AI-generated inventions should be eligible for intellectual property protection.

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