

# A Human Rights Analysis of Automated Decision Making in Canada's Immigration and Refugee System

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## **INTERNATIONAL HUMAN RIGHTS PROGRAM, UNIVERSITY OF TORONTO**

**The IHRP advocates for the most disenfranchised, both in Canada and abroad. The Program has established an impressive track record for advocating for the rights of migrants, refugees, women, children, sexual minorities, Indigenous Peoples, ethnic minorities, immigration and criminal detainees, journalists, human rights activists, and individuals with mental health issues.**

**PETRA MOLNAR**

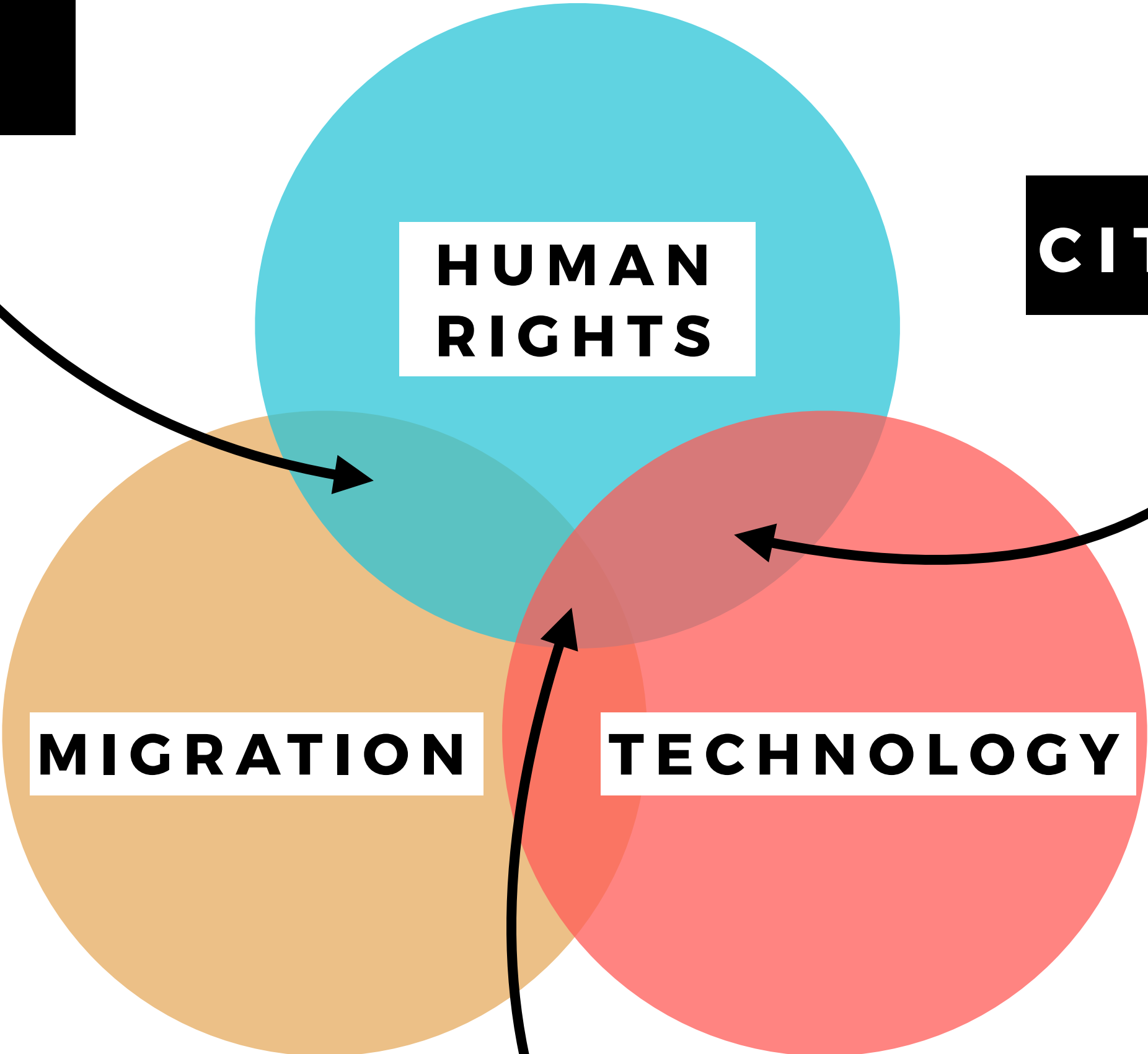
## **THE CITIZEN LAB, MUNK SCHOOL OF GLOBAL AFFAIRS & PUBLIC POLICY**

**The Citizen Lab is an interdisciplinary laboratory based at the Munk School of Global Affairs and Public Policy at the University of Toronto focusing on research, development, and high-level strategic policy and legal engagement at the intersection of information technologies, human rights, and global security.**

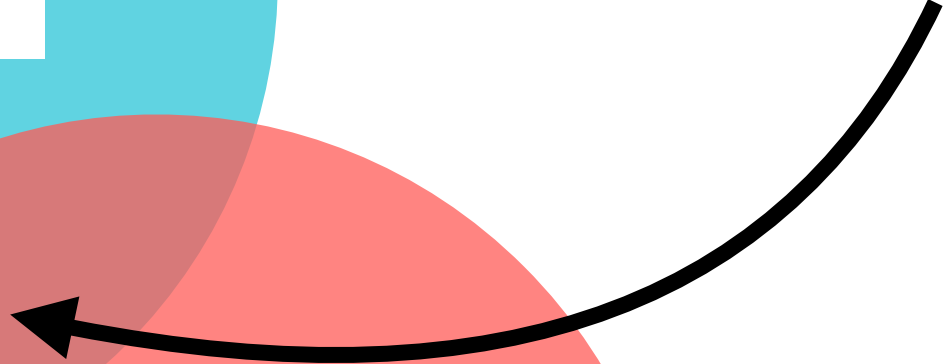
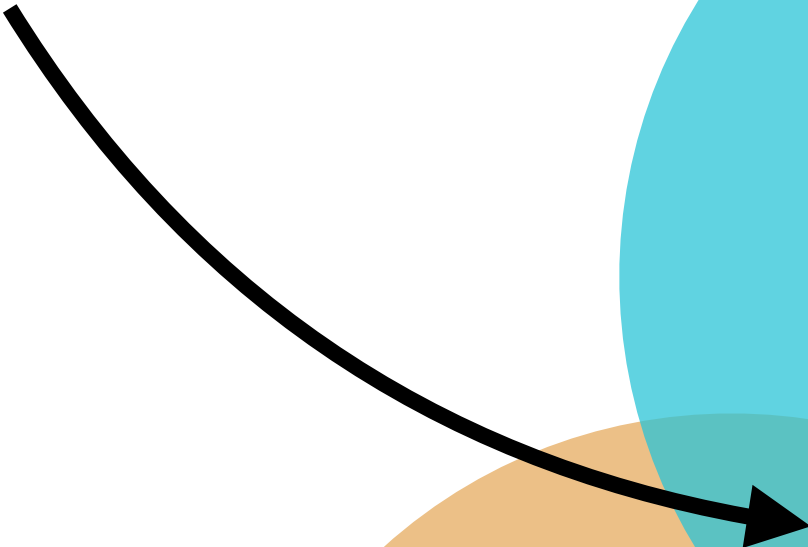
**LEX GILL**

**IHRP**

**CITIZEN LAB**



**THIS REPORT**



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AND IN DEVELOPMENT**

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**6**

**“A.I. HYPE” AND  
TECHNOSOLUTIONISM  
CAN’T FIX A GLOBAL  
HUMANITARIAN CRISIS**

# HUMAN RIGHTS IMPACTS



**ASSOCIATION,  
RELIGION,  
EXPRESSION**



**FREEDOM OF  
MOVEMENT**



**LIFE, LIBERTY,  
AND SECURITY  
OF THE PERSON**

# HUMAN RIGHTS IMPACTS



**EQUALITY AND  
FREEDOM FROM  
DISCRIMINATION**

- ① **Direct versus indirect discrimination**
- ② **Risk of creating feedback loops and exacerbating existing patterns of bias in a highly discretionary system**
- ③ **AI and machine learning already have a problematic track record – especially with race and gender**

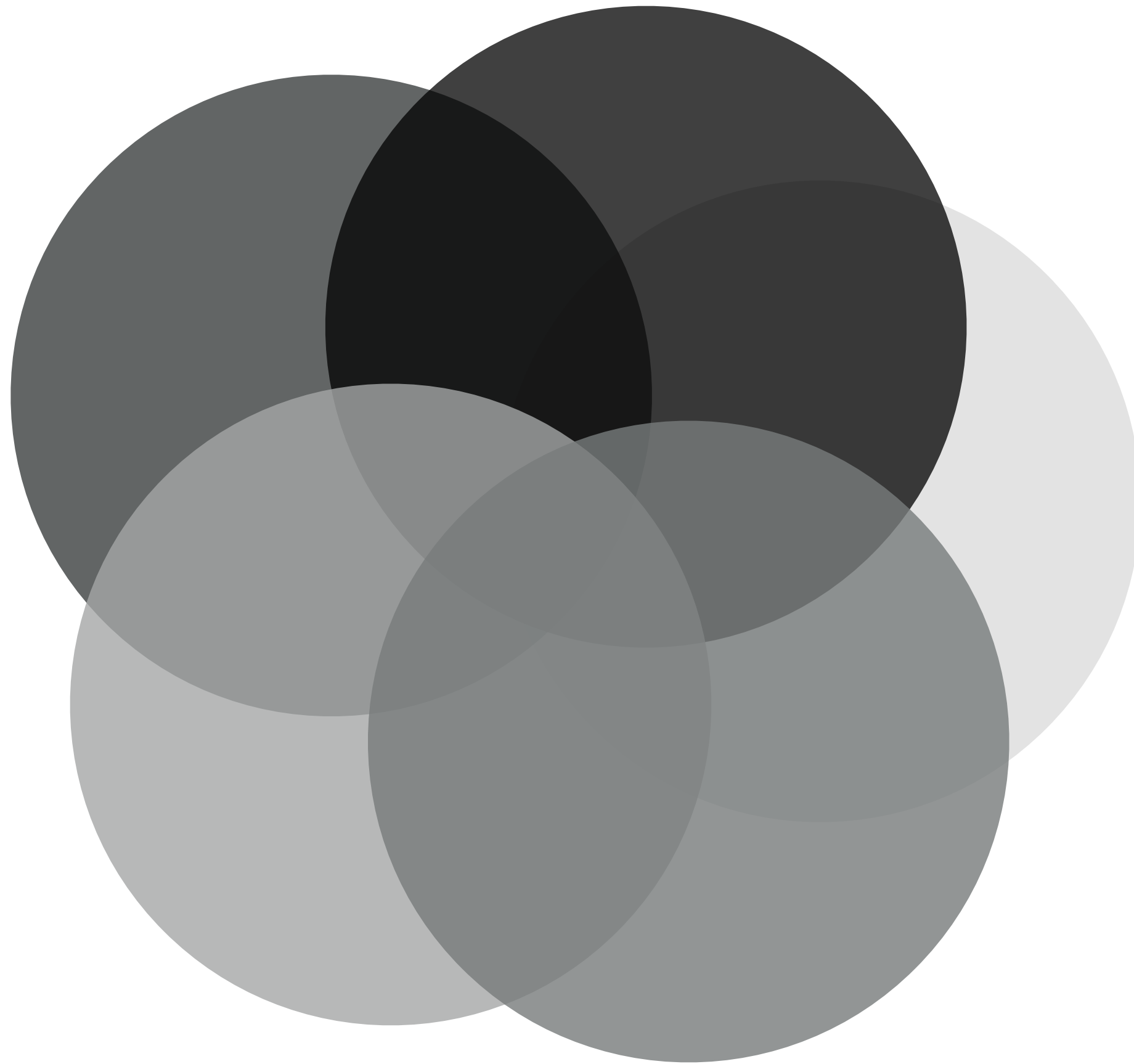
# HUMAN RIGHTS IMPACTS



**PRIVACY RIGHTS  
AND DATA  
PROTECTION**

- ① **Privacy rights in both “inputs” and “outputs”**
- ② **Accuracy obligation may be case and applicant specific (see Ewert)**
- ③ **Tensions between need to minimize and maximize data in order to prevent harms**

**(in practice, they all intersect)**



# ADMINISTRATIVE LAW ISSUES

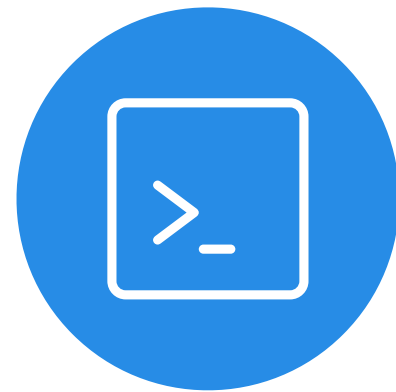
**PROCEDURAL  
FAIRNESS**



**STANDARD  
OF REVIEW**

# OTHER SYSTEMIC CHALLENGES

## LACK OF TECHNICAL CAPACITY



A lack of technical capacity within government can lead to a **potentially inappropriate reliance** on the private sector.

Adopting emerging and complex tools at the bleeding edge of scientific development without in-house talent capable of understanding, evaluating, and managing these technologies is not responsible from an engineering perspective (as well as a legal and ethical one).

## PRIVATE SECTOR ACCOUNTABILITY



Private sector businesses have an **independent responsibility** to ensure that the technologies they develop do not violate international human rights. They also have **clear legal obligations** to comply with Canadian law, including privacy and human rights legislation, in the development of their products and services.



## **ACCESS TO JUSTICE**

Automated systems may streamline services, increase accessibility, and shorten delay. However, they may also **exacerbate existing barriers** to access and **create new ones**.



## **PUBLIC CONFIDENCE**

Automated systems may strengthen the transparency, regularity, and explainability of administrative decision-making in some cases. Yet if the public believes that these technologies are **coloured by bias or operate arbitrarily**, the impact on public confidence in the administration of justice will be difficult to repair.



## **GLOBAL IMPACTS**

Canada has a unique opportunity to develop international standards that regulate these technologies in accordance with **domestic and international human rights obligations**. It is essential to set a clear example for countries with more problematic human rights records and weaker rule of law.



**1**

**Automated decision systems adopted by government must respect international human rights law and the Charter**

**2**

**Immigration and refugee law is a particularly high-risk laboratory for experiments with these technologies**

**3**

**Transparency regarding current practices, independent oversight, and new, binding standards are urgently needed**



**QUESTIONS?**