

The use of AI in Immigration, Refugee, and Border Control enforcements in Canada

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Introduction: the mysterious use of AI

In recent years, lawyers and human rights advocates have become aware that **the federal government has been using Artificial Intelligence** and other advanced analytics tools in immigration, refugee, and border control matters. The *Orcan v Canada (Citizenship and Immigration)*, 2022 FC 175, and *Barre v Canada (Citizenship and Immigration)*, 2022 FC 1078, cases brought a **shocking revelation to the legal field** that our federal government has started **using AI in processing immigration/refugee application (Orcan)** and they have also **implemented AI facial recognition technology** for enforcement of those laws and for border control (*Barre*).

The federal government has been **silent** about these technologies, **did not inform the public** or immigration/refugee applicants about their use, and **did not even disclose** where they obtained their AI technology or how they were training their models. This **lack of transparency by the government** has made lawyers and human rights advocates worry about **the deteriorating effects of AI technology on the rights of immigrants and refugees**, who are already **one of the most vulnerable marginalized groups in Canada**, facing many challenges.

Not only do cases like *Orcan* and *Barre* raise **administrative law** issues, but they also engage **human rights laws** and regulations.

Objectives: Legal Reform & Accountability

The current Canadian administrative and human rights laws **inadequately** govern the use of AI in immigration, refugee, and border control processing and enforcement.

While the **general narrative around AI** portrays this technology as an efficient enhancement in administrative and bureaucratic domains, its deployment, training models, and the lack of transparency and disclosure by government actors raise **serious concerns**.

A **legal reform** that is **grounded in transparency, accountability, and equality principles** is necessary to **ensure a responsible use of AI** that is compliant with the pillars of **human rights in mind** and according to **the rule of Law** in Canada.

Until the Courts and legislative branches in Canada meaningfully engage with the issue of responsible use of AI, it is the task and moral duty of legal researchers, among others, to research and publish their findings on this issue.

Research Questions

Artificial Intelligence and its increasing widespread use by the federal government pose serious questions for legal scholars:

1- To what extent could the use of emerging advanced technologies hinder or improve human rights?

2- On the specific issues of using AI for immigration, refugee, and border control processing and enforcement, what are the government's administrative law and human rights obligations, especially since immigrants and refugees are among one of the most vulnerable and marginalized groups in Canadian society?

What others say: the need for reform

Early research in **developing AI** facial recognition tools **ignored race and racism** leading to biased datasets **causing poor accuracy in AI use for darker skin tones and higher false positives** among Black and minority groups. **Technology discrimination in Canada** for border control and immigration enforcement exhibits high error rates raising concerns about **systemic bias, lack of transparency, and diminished procedural fairness** (*The New Jim Crow*).

Canada needs to **incorporate explicit human rights provisions in its AI** regulatory framework, and implement an **impact assessment** measure for the effects of **AI use on fundamental rights of people** and provide **tangible means of mitigating the risks** associated with it (*AI Compliance*).

Despite well-intentioned use of AI in asylum and migration policies and practices, the reality of AI implementation establishes a **pattern of jeopardizing or sacrificing human rights, privacy and security rights of the migrants/refugees**, raising **concerns about vulnerability** of the affected individuals and **transparency of the government actors** (*An eye for an I*).

Rotenberg: governments should align AI governance with a mission to **safeguard human rights, democracy, and the rule of law**, something that Europe's **AI Treaty** strives to achieve (Canada is a signatory state, USA is an observer state; *AI Framework*).

Materials and Methods

- 1- Record Court/tribunal decisions on AI use in immigration, refugees, and border control to **identify AI use patterns**.
- 2- Access to Information request about AI use.
- 3- Legal analysis to **identify risks and legal violations**.

Hypothesis and next steps

Court precedents such as *Orcan* and *Barre*, and the cases that followed, and through the investigations the advocates have conducted on this matter, there seems to be a **racialized pattern of error/bias in the use of AI** for immigration, refugee, and border control cases.

The **limited accountability** and **lack of transparency** on the part of the government **reveal significant human rights deficits** and infringements.

I hypothesize that through observing and investigating further Court/tribunal decisions and human rights reports, and through conducting a human rights/administrative law legal analysis, the pattern of AI use could establish that the current Canadian administrative and human rights laws **inadequately govern the use of AI** in immigration, refugee, and border control processing and enforcement, which is **infringing on the rights of those individuals caught in such uses**. Simply put, the precedents and **patterns** they establish are **too concerning to ignore**.

A **legal reform solution** could be following the mandates of Europe's **AI Treaty**, which Canada is a signatory to, to establish an **independent oversight mechanism**, to follow the model convention and treaty languages of the AI Treaty and implement them according to the internal needs of Canada, prepare a mandate for **accountability** and **transparency for adverse uses and effects of AI** in Canada. The EU framework is rooted in safeguarding human rights, democracy, and the rule of law.

References

Jurisprudence

Barre v Canada (Citizenship and Immigration), 2022 FC 1078.

Orcan v Canada (Citizenship and Immigration), 2022 FC 175.

Journal Articles

Gideon Christian, The New Jim Crow - Unmasking Racial Bias in AI Facial Recognition Technology within the Canadian Immigration System, 2024 69-4 *McGill Law Journal* 441, 2024 CanLIIDocs 3258 [*The New Jim Crow*].

Macfarlane, Alex, "Strategic Compliance: Revising Canada's Artificial Intelligence and Data Act to Meet EU Human Rights and Data Protection Benchmarks" (2025) 83 *University of Toronto Faculty of Law Review* [*AI Compliance*].

Nalbandian, Lucia, "An eye for an 'I': a critical assessment of artificial intelligence tools in migration and asylum management" (2022) 10:1 *CMS* 32 [*An eye for an I*].

Rotenberg, Marc, "Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law (Council Eur.)" (2025) 64:3 *International Legal Materials* 859-902 [*AI Framework*].

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