



Information and Privacy
Commissioner of Ontario
Commissaire à l'information et à la
protection de la vie privée de l'Ontario

VIA ELECTRONIC MAIL

January 19, 2023

Hon. Kaleed Rasheed
Minister of Public and Business Service Delivery
Minister's Office
College Park, 5th Floor
777 Bay St.
Toronto, ON M7A 2J3

Hon. Monte McNaughton
Minister of Labour, Immigration, Training and Skills Development
Minister's Office
400 University Ave., 14th Floor
Toronto, ON M7A 1T7

Dear Minister Rasheed and Minister McNaughton:

RE: MP Coteau's Report on Employee Monitoring

This being my first correspondence to you in 2023, let me seize the opportunity to wish you both a happy, peaceful and productive new year.

I am writing to inform you of a report recently issued by Member of Parliament Michael Coteau on employee monitoring in Canada, entitled [*The Rise of Bossware: Protecting the Privacy of Canadians Who Work from Home*](#). The report advocates for a pan-Canadian framework regarding employer surveillance, and signals a forthcoming federal Private Member's Bill. The release of this report by a federal MP calling for a harmonized federal, provincial and territorial framework is a stark reminder that protecting employee privacy is primarily a matter of provincial responsibility. The serious gap in statutory privacy protection that continues to persist for the vast majority of Ontario workers requires urgent attention if Ontario is to become a leading digital jurisdiction in which to live and work.

Employee monitoring has grown dramatically since the pandemic. As the report notes, as many as 60% of Canadians started working from home in 2020, and 40% of positions may remain at home indefinitely. In July 2021, 46% of Ontarians surveyed by the province reported working some — if not all — of their hours from home. This shift has accelerated the use of monitoring technologies that track employees' activity during their workday. This tracking can include computer monitoring, such as keystrokes, cursor movements and screen captures, or visual biometric information, like recording voice, eye and facial muscle movements via webcam. Advanced forms of tracking can also include behavioural and sentiment analysis. Monitoring can lead to significant, measurable impacts on one's career — like job compensation, promotion, or



2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel/Tél : (416) 326-3333
1 (800) 387-0073
TTY/ATS : (416) 325-7539
Web : www.ipc.on.ca

termination — but also subtler impacts that are more difficult to measure, such as the stress and mental health effects of having the employer digitally present in an employee's home.

There is ongoing debate about how employers should evaluate productivity in a remote work environment, and whether privacy-invasive monitoring is an appropriate way to account for employees' time. As these practices become more prolific, policy makers must anticipate and address future consequences of these evolving technologies before they go too far.

For example, surveillance can invade an employee's home and capture intimate details of family life that are not relevant to an employee's professional capacity. It may also penalize employees for periods of presumed inactivity, and discount important but unseen or unmeasured aspects of their work. Monitoring data, when linked and analyzed with artificial intelligence, could also produce harmful psychometric inferences (e.g., about mental health or cognitive competence) that are used to profile employees or measure their performance without any guarantee of accuracy and without the employee's ability to contest. Absent effective regulation, this could create significant power imbalances between employees and employers, especially for vulnerable populations and marginalized communities.

Mr. Coteau's report raises issues that are worthy of your consideration from an Ontario perspective.

- **Improving legislative coverage:** The report discusses the general weakness and inconsistency of statutory protections across Canada. Ontario has significant work to do in this area. Given constitutional division of powers, federal legislation cannot address the longstanding provincial gap for employee personal information in Ontario. This gap must be addressed in provincial privacy legislation. At a minimum, Ontario should take steps to introduce the basic level of privacy protections already found federally and in the laws of Quebec, Alberta, and British Columbia.
- **Framework agreements and consistent standards:** The report also discusses the need for a pan-Canadian framework agreement recognizing that each level of government has a role to play according to its respective area of jurisdiction. The report notes feedback from employers that they want harmonized rules across Canada, and alignment with international standards. Such potential for harmonization already exists in Canada through substantially similar legislation that Ontario could use as a baseline, informed by the increasing convergence of recent law reform initiatives aimed at meeting recognized international standards.

I applaud the government for taking an important first step by amending the *Employment Standards Act* to require employers to adopt and communicate policies for electronic monitoring of their employees. That said, and as I noted to the Standing Committee on Social Policy, there remain serious gaps and weaknesses in these amendments. For example, they do not provide employees with a right to challenge or complain about the content of the policies, or an employer's non-compliance with them. They do not in any way restrict an employer's ability to use the information collected from employee monitoring for any purpose, or offer workers any protection from unreasonable or invasive electronic monitoring practices.

These issues are complex, and require a more nuanced understanding of the technologies currently being used, how employers are using them, and how different legislative frameworks can work together to guide their responsible use. I urge your Ministries to work together in addressing these issues, and my office stands ready to consult and assist throughout the process of policy and legislative design.

The rise of employee surveillance presents significant risks, but also opportunities. It requires commitment and timely action from our governments. I am hopeful that Ontario will take the necessary legislative steps to protect Ontario's employees in a future of work that they can trust and thrive in. Only with the full contribution, engagement and ingenuity of a modern workforce, can the province truly achieve its ambitious goal of becoming a global digital leader.

Given the significant public interest on this issue, and in the spirit of transparency, I intend to post this letter on the Information and Privacy Commissioner's website.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kosseim', with a horizontal line underneath the name.

Patricia Kosseim
Commissioner

c.c. Michelle E. DiEmanuele, Secretary of Cabinet
Renu Kulendran, Deputy Minister of Public and Business Service Delivery
Greg Meredith, Deputy Minister of Labour, Immigration, Training and Skills Development
John Roberts, Chief Privacy Officer and Archivist of Ontario