

# **AI Surveillance and Privacy in Canada: The Need for Government Intervention**

November 3, 2024

Word Count: 1480

## I. Introduction

“Technology is a useful servant but a dangerous master.”<sup>1</sup>

— *Christian Lous Lange.*

Artificial Intelligence (AI) is reshaping industries across the globe, offering significant advancements in healthcare, finance, entertainment, and beyond. However, as AI applications become more widespread, they present profound challenges to rights and freedoms, particularly in the realm of privacy.<sup>2</sup> In Canada, AI-powered surveillance technologies such as facial recognition and behavioral analytics bring critical privacy concerns, raising questions about how much control Canadians have over their personal information in public and private spaces.<sup>3</sup> The possibility of constant monitoring and data collection poses a substantial risk to autonomy, freedom of expression, and the right to privacy. This is concerning for Canadian citizens since privacy is a basic human right enshrined in the Canadian Charter of Rights and Freedoms that we celebrate every year on

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<sup>1</sup> The Nobel Peace Prize. Christian Lange – Nobel Lecture. “The Nobel Peace Prize 1921.” NobelPrize.Org. (2024). <https://www.nobelprize.org/prizes/peace/1921/lange/lecture/>.

<sup>2</sup> Rayhan, Rajan, and Shahana Rayhan. "AI and human rights: balancing innovation and privacy in the digital age." DOI: 10.13140/RG. 2.2 35394 (2023).

<sup>3</sup> Yuan Stevens and Ana Brandusescu. “Weak Privacy, Weak Procurement: The State of Facial Recognition in Canada.” *Centre for Media, Technology and Democracy*. Centre for Media, Technology and Democracy. (2021). <https://www.mediatechdemocracy.com/all-work/weak-privacy-weak-procurement-the-state-of-facial-recognition-in-canada>.

April 17<sup>th</sup>.<sup>4</sup> Surveillance AI, capable of tracking and interpreting human beings in the overt as well as covert environment aims to recast privacy as a privilege to be granted or withdrawn based on technological monitoring.

In June 2022, the Government of Canada tabled the AI and Data Act (AIDA) as part of Bill C-27, the Digital Charter Implementation Act, 2022.<sup>5</sup> Nonetheless, although AIDA is a significant advancement toward AI regulation through the implementation of risk-based approaches, a more proportional regulation is required in the provision of privacy protection as a function of the risk posed by AI surveillance. This essay focuses on the privacy risks posed by AI surveillance in Canada and examines the role of government intervention in protecting this fundamental right. It argues that Government intervention, is not only necessary but essential to establishing a balanced approach to AI that respects citizens' rights.

## II. AI Surveillance and Privacy Risks in Canada

AI surveillance technologies like facial recognition and predictive policing are being implemented more frequently by the government and private organizations.<sup>6</sup> These technologies allow organizations to monitor people's activities, evaluate their actions, and even anticipate their actions, basically without their knowledge or consent. This kind of

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<sup>4</sup> Government of Canada, Department of Justice. "The Canadian Charter of Rights and Freedoms." *Government of Canada, Department of Justice, Electronic Communications*. (2024). <https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccd/>.

<sup>5</sup> Government of Canada. The Artificial Intelligence and Data Act (AIDA) – Companion document. *Innovation, Science and Economic Development Canada Main Site* (2023). <https://ised-isde.canada.ca/site/innovation-better-canada/en/artificial-intelligence-and-data-act-aida-companion-document>.

<sup>6</sup> Urquhart, Lachlan, and Diana Miranda. "Policing faces: the present and future of intelligent facial surveillance." *Information & communications technology law* 31, no. 2 (2022): 194-219.

surveillance is highly dangerous because private life is a basic human right and a cornerstone of liberty, democracy, and free speech. Based on Westin's theory of privacy, privacy is the right to determine and manage the extent to which information about one is shared with others to respect individual space or territory.<sup>7</sup> Of the rights affected by ubiquitous AI surveillance in a society, this right is impacted most gravely. This situation contradicts the main concept of Westin and his principles where anonymity and privacy control over the information becomes one of the essential features of democratic states.

The first issue that arises with the issue of AI surveillance is the potential to gather massive quantities of personal information from people in all kinds of settings.<sup>8</sup> For example, facial recognition can tell a person's identity from facial characteristics, track their movements from one place to another, and even create behavior patterns and share such info with third parties. Privacy Commissioner of Canada's study shows that with no precautions this technology can result in surveillance of society, endangering Canadians' feeling of privacy and liberty in public places.<sup>9</sup> One impact of this is that AI surveillance interjects the privacy presumption in people's safe spaces, and leads to people changing how they behave because they are being watched all the time.

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<sup>7</sup> Austin, Lisa M. "Re-reading westin." *Theoretical Inquiries in Law* 20, no. 1 (2019): 53-81.

<sup>8</sup> Dwivedi, Yogesh K., Laurie Hughes, Elvira Ismagilova, Gert Aarts, Crispin Coombs, Tom Crick, Yanqing Duan et al. "Artificial Intelligence (AI): Multidisciplinary perspectives on emerging challenges, opportunities, and agenda for research, practice and policy." *International journal of information management* 57 (2021): 101994.

<sup>9</sup> Office of the Privacy Commissioner of Canada. "Protecting Privacy in a Digital Age." *Office of the Privacy Commissioner of Canada*. (2023). [https://www.priv.gc.ca/en/opc-news/speeches/2023/sp-d\\_20231127/](https://www.priv.gc.ca/en/opc-news/speeches/2023/sp-d_20231127/).

Furthermore, the collection of large amounts of data using AI can be abused or leaked resulting in privacy breaches.<sup>10</sup> This is because if assigned data protection measures are not strict enough then the information gathered through AI surveillance tools is likely to be sold or otherwise be leaked to third parties not authorized to access it. This risk is especially so because Canada has not implemented suitable measures to regulate AI-based data collection.<sup>11</sup> Hence, although AI surveillance may have advantages in terms of security, it contains significant privacy threats that, if left unregulated, can threaten the democratic fabric of Canadian society. Consequently, there is concern for autonomy and freedom of speech where there is a need for responsible use of such technologies.<sup>2</sup>

### **III. The Role and Necessity of Government Intervention**

Due to the nature of privacy being compromised in this sort of AI surveillance, regulation becomes important for the government to set the standards that can help to protect Canadians' rights while at the same time enabling AI to be applied responsibly.<sup>11</sup> This means that, in the absence of regulation, private companies and government agencies could freely use AI surveillance and privacy could be violated massively. Therefore, it is the government's responsibility to impel AI surveillance to respect privacy principles that respect the liberty and democratically enshrined rights of individuals. AIDA makes a big step in this direction with the help of a risk-based approach, especially for high-risk AI systems that can threaten privacy, security, and equality.<sup>5</sup>

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<sup>10</sup> Manheim, Karl, and Lyric Kaplan. "Artificial intelligence: Risks to privacy and democracy." *Yale JL & Tech.* 21 (2019): 106.

<sup>11</sup> Attard-Frost, Blair, Ana Brandusescu, and Kelly Lyons. "The governance of artificial intelligence in Canada: Findings and opportunities from a review of 84 AI governance initiatives." *Government Information Quarterly* 41, no. 2 (2024): 101929.

The resilience of Westin's theory to privacy erosion hinges on its requirement of transparency, informed consent, and control over data use.<sup>7</sup> These principles are the same as AIDA's requirements for transparency and accountability which force AI developers to disclose how they use the data and mitigate the risks, however, AIDA's provisions do not cover all aspects sufficiently.<sup>5</sup> For example, the lack of a consent requirement means that Canadians are basically at the mercy of any data broker that has access to their information, without the option to exercise informed choice.<sup>12</sup> The reason for government intervention is therefore to set up consent and control protocols.

Additionally, the government can mandate data minimization standards, that is, the collection of data should be limited to that needed for the purpose in question. By data minimization, organizations cannot collect an excessive amount of information, and the risks of misuse or breaches will be minimized. Finally, an independent oversight body dedicated to AI privacy issues should be created to ensure consistent enforcement of AIDA's provisions and to provide real-time responses to emerging privacy risks. Without independent oversight, companies may not have the right incentive to prioritize privacy. This body will monitor to see that privacy laws are adhered to, investigate complaints, and make sure AI surveillance applications do not violate democratic values.

#### **IV. Conclusion**

Ultimately, AI surveillance technology poses relatively high risks for privacy, which undermines the Canadians' choice over their personal information as well as their mobility in public spaces. Therefore, just as it is crucial to regulate the collection of personal data by

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<sup>12</sup> Gruske, Carolyn. "Critics Say Artificial Intelligence and Data Act Needs to Focus More on Rights, Not Just Business." Canadian Lawyer. Canadian Lawyer. (2023). <https://www.canadianlawyermag.com/practice-areas/privacy-and-data/critics-say-artificial-intelligence-and-data-act-needs-to-focus-more-on-rights-not-just-business/380552>.

commercial actors, government regulation is needed to minimize these risks because only the state can guarantee that AI surveillance does not violate its citizens' privacy and democracy. Recourse to consent, data minimization, bias reports, inspections from a civilian commission, and openness are the courses of action that the government can use to set conditions that yield the worth of AI without jeopardizing privacy. All these measures are needed to protect the rights of Canadians in today's postmodern world where a lot of monitoring is done through AI to ensure that the AI surveillance is doing good to the people and not just having a way of tweaking the citizens. Thus, as AI develops, the commitment of governments to privacy regulation will remain the factor for trust and to protection of Individuals' freedom.

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