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Tracking apps, hidden recordings and a child's phone: Surveillance in Ontario parenting cases

By **Lorne J. Fine**



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Law360 Canada (November 19, 2026, 2:27 PM EST) -- In Canada, the digital lives of children are on the national agenda. On Oct. 20, the federal Privacy Commissioner released Canada's first *Children's Privacy Code.* Although this is not binding law, it sets out clear guidance under the *Personal Information Protection and Electronic Documents Act* (PIPEDA), for organizations whose online services are directed at, or likely to be accessed by, children.

But that's not all. The following day, the House of Commons began second reading debate on Bill C-34, the *Safe Social Media Act*, which would require operators of designated social media services to implement age-verification or age-estimation measures. These are designed to prevent children under 16 from holding accounts, subject to specified exemptions. Bill C-34 has since been referred to committee.

Both initiatives are directed primarily at organizations that operate digital services. In the family law realm, however, threats to a child's privacy often sit closer to home, especially in a high-conflict separation or divorce.



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This is because a child's phone or other technology can become one parent's incidental — or else strategic — window into the other household. This might look like a tracking app left running or slipped into a schoolbag, a shared cloud account, a "Find my" function left running on an iPad, an AirTag affixed to a shoe, a camera trained on the front door at every exchange, or a surreptitious recording made during parenting time.

The Ontario courts have seen it all — and in family law matters have tended to view the surveillance as a mark *against* the parent who did it. The criminal law has also stepped in decisively: effective July 18, 2026, the *Criminal Code* was augmented to add location monitoring as a form of criminal harassment.

In the hands of warring parents, ordinary technology can become a tool of conflict, and a source of real risk for the family lawyers who advise them. This article canvasses some of the developments.

When surveillance backfires

A review of some recent family law cases reveals a prominent theme: in the context of separation and divorce, courts have low tolerance for parents who try to gain advantage by turning the child into an unwitting informant, through the use of otherwise harmless monitoring devices like the child's phone or backpack tracker.

This was made clear in *C.C. v. S.P.R.*, 2022 BCSC 1057, where the court stressed that surreptitious recording for family law matters "should be discouraged," adding that the secret recording of a spouse, former spouse or child for the purpose of gaining such an advantage "erodes, if not destroys, trust between those individuals" and "sows the seeds of mistrust in the children of the marriage."

Part of that distrust arises because one parent might propose or install child tracking for what seems like genuine safety-related reasons, but then will use the access to surveil, or even stalk, the other.

In *Kolodziej v. Kolodziej*, 2020 ONSC 3944, the mother admitted that she had surreptitiously put a tracking device in the children's backpack, and that she recorded every access exchange on her home surveillance camera. She said she had acted out of concern for the children, and that the father found the device the day she planted it. The court received her explanation "with a huge grain of salt" but declared that this kind of tracker use was "troubling to the extreme." The mother had used the children "to unknowingly surveil their father," and was stalking him and possibly invading his privacy tortiously. The court ordered the mother not to record exchanges, not to use any device to track the father, and keep a set distance from him during his parenting time.

In *E.M.B. v. M.F.B*., 2024 ONSC 162, the monitoring was done through a 7-year-old child's own iPad — and both parents treated it as the flashpoint of their conflict. The father complained that his FaceTime calls were not private; the mother admitted tracking the child's whereabouts through the iPad's "Find my" function. The latter was "particularly troubling," the court said, because she had previously used private investigators to surveil the father. The court restructured the child's contact with each parent (although it stopped short of reversing primary care away from the mother).

A parent's introduction of surreptitiously obtained recordings as evidence can also backfire in the litigation itself: in *Droit de la famille — 26468*, 2026 QCCS 1485, a father took his son from school at lunch, recorded their conversation and filmed it. When played at the court hearing, it showed the father pressing the boy and criticizing the mother. The child's "discomfort is evident," as the court noted, and the whole recording "reveal[ed] a lack of judgment" on the father's part.

Tracking vs. just 'communicating'

Even if the parents have agreed to safety-related tracking, it can quickly breed conflict. This is because separated or divorcing parents who must manage a child's day-to-day activities together often disagree on the *extent* of the monitoring, and what purpose it serves. Often the court has to be called in to resolve their disagreement.

For example, in *Dostie v. Poapst*, 2020 ONSC 139, the separated parents had a long history of conflict around many issues, one of which was phone use generally. The father claimed the mother refused to pick up the phone when he called the child, and would not facilitate phone or Skype access. As part of his resulting motion for contempt, the father objected outright to the mother's location tracking on the child's phone during access visits, which he considered an infringement of the child's access with him. The mother's evidence was that she had simply bought the device to promote communication: it would give the boy some privacy and more autonomy in contacting both of his parents, especially in light of their ongoing conflict on the topic. She also noted the father would simply confiscate the phone during visits with him. In dismissing the father's contempt motion, the court accepted the mother's explanation, and rejected the father's concerns in this regard.

The child's own privacy

A related issue is how this kind of monitoring might infringe on a child's own privacy. Although the

federal *Children's Privacy Code* does not bind parents, the underlying principles are still useful in the family law context. It treats children as rights-holders with an independent interest in their own information. In connection with being tracked and monitored, it calibrates each child's rights in line with their individual evolving maturity and capacity, and expects that they will be told in plain language when a parent monitors their activity.

As some of the canvassed cases above have shown, the Ontario courts are also on board with this approach. Returning to the *E.M.B.* case as just one example, the court rebuilt the child's contact around the child's own needs, giving the child free rein to use her iPad to reach the other parent at set times, and declaring it up to the child to decide. The court also directed that calls were to take place "in a private setting without the presence of adult observers."

When tracking becomes a crime: The Protecting Victims Act

Until this past summer, the consequences of tracking a child's phone or planting a device in a backpack played out mainly within the parenting case itself: adverse credibility findings, conduct orders and restructured parenting time. Now, however, the family courts are not the only forum in which a parent's surveillance may be judged.

Parliament has raised the stakes by expressly bringing that kind of monitoring within the *Criminal Code* offence of "criminal harassment" as defined in s. 264. The *Protecting Victims Act*, S.C. 2026, c. 19 (Bill C-16), received royal assent on June 18, 2026; the amendments took effect a month later, on July 18, 2026.

In a separation context, the question under the code's s. 264 is whether the conduct of one parent could reasonably be expected to cause the other parent or child to believe that their safety (including their psychological safety), or the safety of anyone known to them, is threatened. The Crown no longer has to prove that the person was actually afraid; however, the Crown must still prove an *intent* to harass, or knowledge or recklessness as to whether the conduct harasses.

Importantly, the prohibited conduct may be carried out "in person, by a means of telecommunication or by any other means," and it expressly includes "monitoring the location, movements, actions or social interactions of the other person or of anyone known to them," which plainly includes the child in a divorce context.

In the plainest terms, this means that putting a tracker in a child's backpack can amount to a crime, assuming intent and other elements are proven. For family lawyers advising clients who are thinking about installing one, this is a profound shift and a significant professional responsibility.

Notably, a companion code offence, s. 264.01 (coercion or control of intimate partner), will also come into force on June 18, 2028, or earlier by order-in-council. It targets a pattern of coercive or controlling conduct toward an intimate partner, and expressly lists monitoring the partner's location, movements, actions or social interactions as one form of that conduct.

These fortified criminal offences augment the existing protections under family law. The *Children's Law Reform Act* already defines "family violence" to include conduct that "constitutes a pattern of coercive and controlling behaviour," while the *Divorce Act* adds an enumerated list that includes "harassment, including stalking." Surveillance can quickly amount to stalking, and courts must, when assessing the impact of family violence, consider whether there is a pattern of coercive and controlling behaviour (e.g. under s. 16(4)(b) of the *Divorce Act*).

The result is that the same tracker or hidden camera can now support a family violence finding in the parenting case, as well as a criminal harassment charge in the criminal court.

The takeaway

For family lawyers with clients who are tempted to use surreptitious tracking and other surveillance against their partners, there are many clear risks that must be explained. Not only are those clients likely to damage their own case, but pervasive conduct may expose them to family violence allegations, a privacy tort claim and even criminal charges under ss. 264 and 264.01 of the code.

The practical advice is simple: disable shared-location and "Find my" features at separation, put any genuinely safety-driven monitoring in writing by agreement or court order, and make sure the child knows all about it.

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