

CACE Webinar  
**PRIVACY**  
**LOOKING OVER THE HORIZON**



October 7, 2021

## **David Fraser (moderator)**

– McInnes Cooper

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## **Patricia Kosseim**

– Information and Privacy Commissioner of Ontario

## **Jill Clayton**

– Information and Privacy Commissioner of Alberta

# Quebec's Bill 64: What employers should know

## Éloïse Gratton



# Bill 64: What employers should know

- New enforcement tools:



- New powers granted to the CAI to impose administrative monetary penalties: up to C\$10,000,000 or 2 % of worldwide turnover
- Penal proceedings: fines up to C\$25,000,000, or 4% of worldwide turnover
- New private right of action for individuals



- New breach reporting requirements

- New accountability rules




- New requirements for cross border transfers





# Bill 64: What employers should know

- **Transparency and consent:**
  -  **Reinforced requirements:** Reinforced consent, **no employee consent exception**, profiling
  - **Some less stringent rules:** Business analytics, research, de-identified information, business transactions, business contacts
- **New individual rights:**
  - Right to data portability
  - Right to object to automatic processing



# Privacy in Ontario: Recent Developments

Patricia Kosseim

Information and Privacy Commissioner  
of Ontario

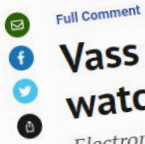


Information and Privacy  
Commissioner of Ontario

Commissaire à l'information et à la  
protection de la vie privée de l'Ontario

The Canadian  
Association of  
Counsel to  
Employers

October 7, 2021



# Vass Bednar: Your boss is watching you while you work

Electronic surveillance in the work is becoming more sophisticated at work remotely

Vass Bednar, National Post  
Aug 18, 2020 • August 18, 2020 • 4 minute read



# Companies are implementing vaccine mandates. Can employees reject them?

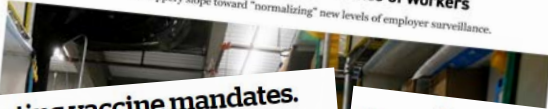
No 'one size fits all' vaccine mandate, employment lawyer says  
Mark Gollom - CBC News - Posted: Aug 23, 2021 4:00 AM ET | Last Updated: August 23



...te businesses have announced plans to implement mandatory  
Canadian Press)

# Coronavirus opens door to company surveillance of workers

Privacy advocates warn of a slippery slope toward "normalizing" new levels of employer surveillance.



# How My Boss Monitors Me While I Work From Home

... we shelter in place in the pandemic, more employers are using  
... our work — and us.

Practice areas · Labour and employment

# Can employers require new hires to show proof of vaccination?

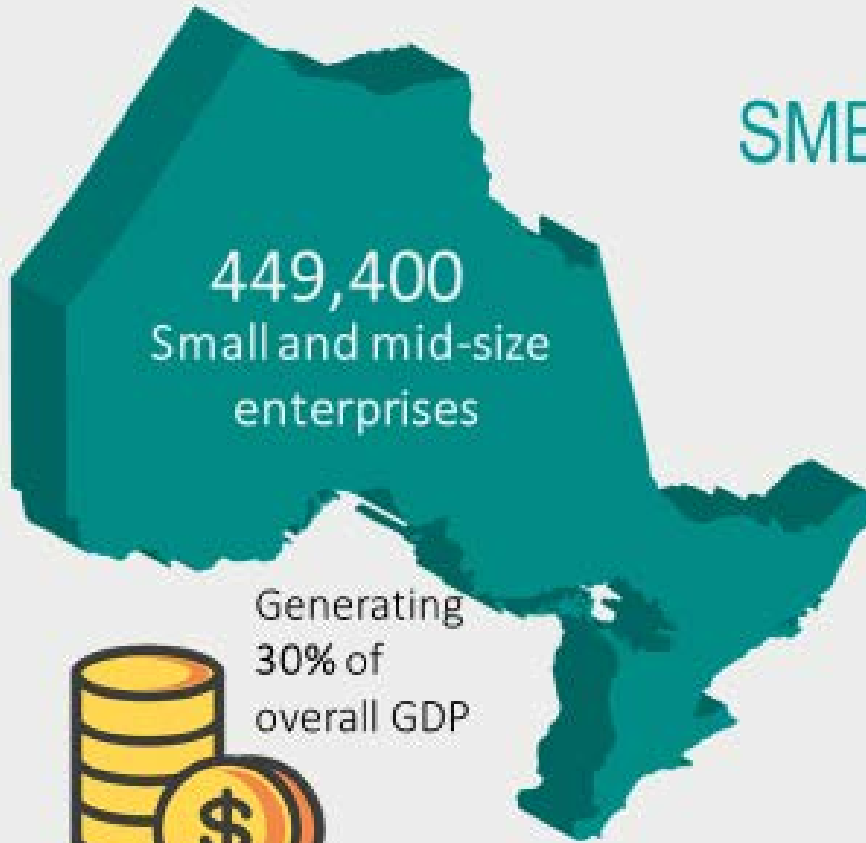
By Elizabeth Raymer  
17 May 2021 / Share



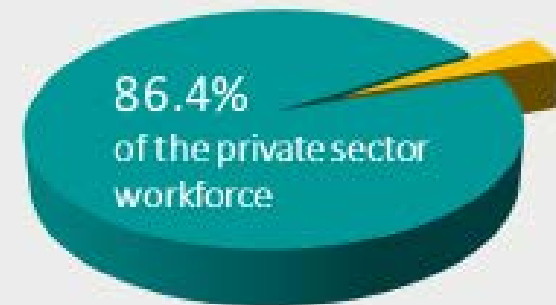
# Managers turn to surveillance software, always-on webcams to ensure employees are (really) working from home

Always-on webcams, virtual "water coolers," constant monitoring: Is the tech industry's new dream for remote work actually a nightmare?

# SME employees in Ontario



4.2 million  
employees





# Employee privacy and COVID-19 testing

- Employee COVID-19 testing policies were challenged in two recent Ontario labour arbitration cases
- Two different types of workplaces:
  - retirement home
  - construction company



Office of the  
Privacy Commissioner  
of Canada

Commissariat  
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la vie privée du Canada

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## Privacy and COVID-19 Vaccine Passports

### Joint Statement by Federal, Provincial and Territorial Privacy Commissioners

May 19, 2021

#### Background

Vaccine passports <sup>1</sup>(*PH1*) are being considered by some governments and businesses as a means of allowing a return to something more closely resembling normal life. Canada's Privacy Commissioners have decided to make a statement at this time in an effort to ensure that privacy is considered at the earliest opportunity as part of any discussions about vaccine passport development.

A vaccine passport can take a number of different forms, such as a digital certificate presented on a smart phone app or a paper certificate, but it essentially functions to provide an individual with a verified means of proving they are vaccinated in order to travel or to gain access to services or locations. Proponents justify this measure based on the idea that vaccinated individuals have a significantly decreased risk of becoming infected and a decreased risk of infecting others <sup>2</sup>(*PH2*). If supported by evidence of their effectiveness, vaccine passports could bring about broad and impactful benefits, including allowing increased personal liberties, fewer restrictions on social gatherings, and accelerated economic recovery resulting from greater participation in society.

At its essence, a vaccine passport presumes that individuals will be required or requested to disclose personal health information – their vaccine/immunity status – in exchange for goods, services and/or access to certain premises or locations. While this may offer substantial public benefit, it is an encroachment on civil liberties that should be taken only after careful consideration. This statement focuses on the privacy considerations.

Vaccine passports must be developed and implemented in compliance with applicable privacy laws. They should also incorporate privacy best practices in order to achieve the highest level of privacy protection commensurate with the sensitivity of the personal health information that will be collected, used or disclosed.

Above all, and in light of the significant privacy risks involved, the necessity, effectiveness and proportionality of vaccine passports must be established for each specific context in which they will be used.

- **Necessity:** vaccine passports must be necessary to achieve each intended public health purpose. Their necessity must be evidence-based and there must be no other less privacy-intrusive measures available and equally effective in achieving the specified purposes.
- **Effectiveness:** vaccine passports must be likely to be effective at achieving each of their defined purposes at the outset and must continue to be effective throughout their lifecycle.

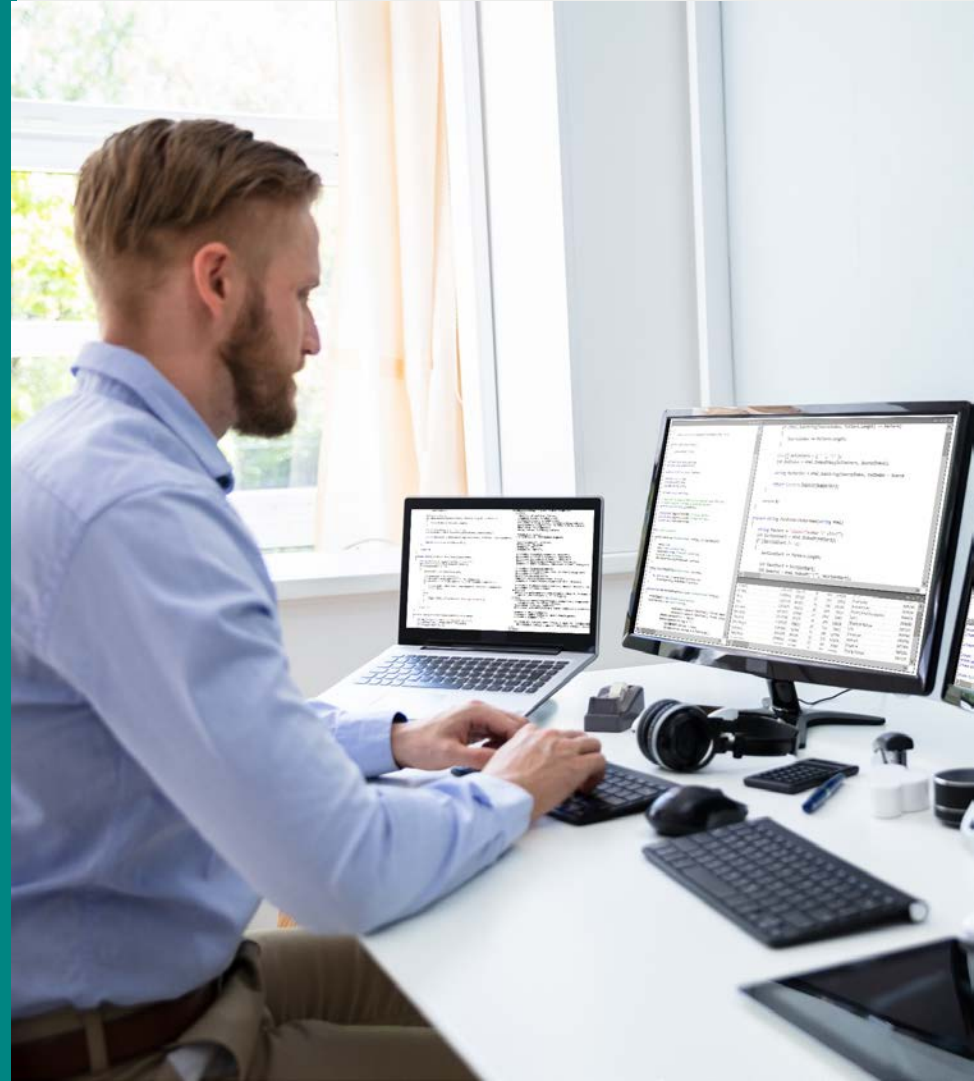
When contemplating the introduction of vaccine passports, the commissioners recommend that governments and businesses adhere to the following privacy principles:

- legal authority
- consent and trust
- limiting collection, use, disclosure and retention / purpose limitation
- transparency
- accountability
- safeguards
- independent oversight
- time and scope limitations

<https://priv.gc.ca/en/opc-news/speeches/2021>

# Ontario's white paper proposal: employee personal information

- An organization may collect, use or disclose personal information about an employee if the information is collected, used or disclosed solely for the purposes of:
  - a) establishing, managing or terminating an employment or volunteer-work relationship between the organization and the individual; or
  - b) managing a post-employment or post-volunteer-work relationship between the organization and the individual.





“As currently proposed, however, we are concerned that the new provisions are overly broad and would allow an employer to collect, use, and disclose any information about an employee as is reasonable for managing the employment relationship.

Both *PIPEDA* and C-11 critically require that the collection, use, and disclosure be necessary for establishing, managing or terminating the employment relationship and that employees be provided with notice of the purported information practices. We strongly urge the government to introduce similar requirements of necessity and notice in an eventual Ontario law.”

## The IPC's response

# Developments in Alberta

## Jill Clayton

Information and Privacy Commissioner of Alberta



Office of the Information and  
Privacy Commissioner of Alberta

**Thank you for attending!**  
**(And consider joining the CACE Privacy Committee!)**

**Questions?**

