



Michelle Kelly

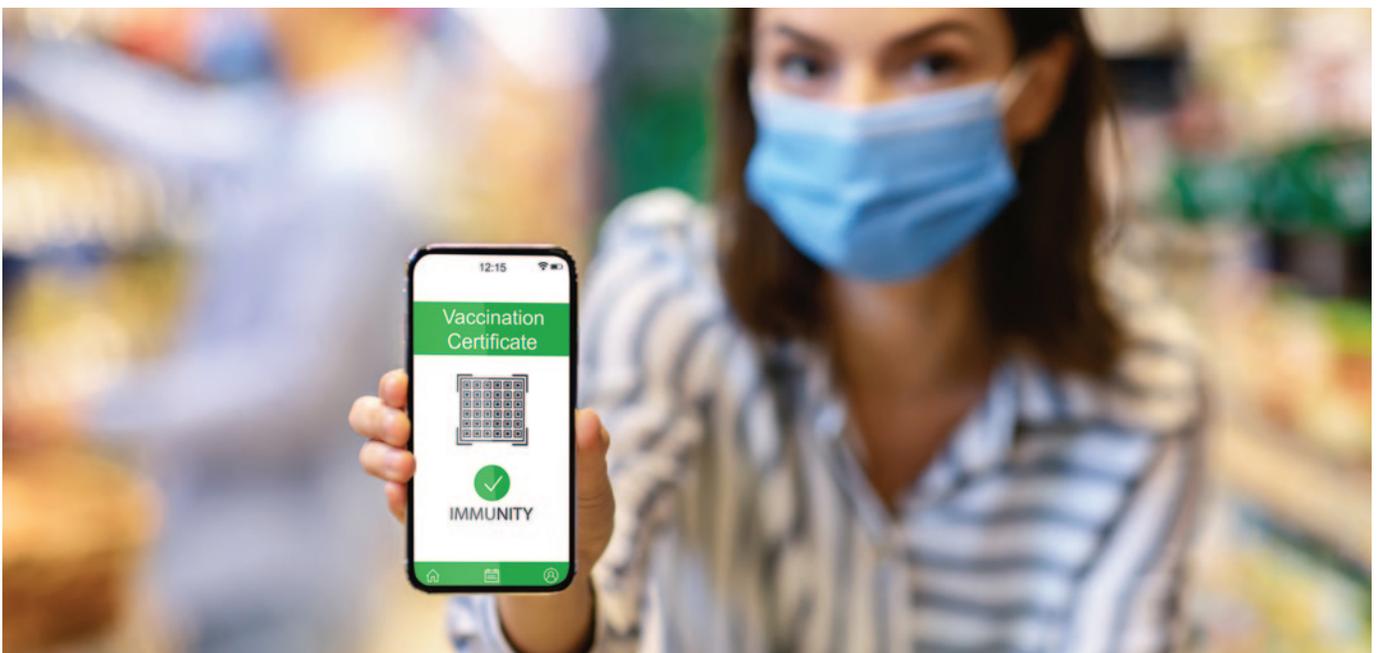
Robson Carpenter LLP

New Ontario Proof of Vaccine Requirements: What is Your Responsibility?

On September 1, 2021, the Ontario government announced its plan to implement a “vaccine passport” that would require individuals to provide proof of vaccination to enter certain spaces. There was much speculation about whether the requirements would apply to condominiums with at least one article circulating that claimed a government official confirmed to the author the regulations would not apply to condominiums. The wait is over as the Ontario government released the regulations regarding proof of vaccination on September 14, 2021. While some issues now have clarity, some remain unclear.

What seems clear:

1. Proof is required. Proof of being fully vaccinated and personal identification (i.e. driver’s license) will be required to access certain spaces, including indoor areas of meeting and event spaces, and indoor sports and fitness facilities.
2. Definition of “Vaccinated”. Fully vaccinated currently means a full series of vaccines authorized for use by Health Canada (or a combination), three doses of a non-authorized vaccine, or one or two doses of a non-authorized vaccine followed by a mRNA vaccine.
3. Exemptions. There are numerous exceptions or exemptions to the proof of vaccination requirement. For example, children under the age of 12 or under the age of 18 if entering an indoor sports or fitness facility. There are other exemptions, including if the person is only entering to use the washroom, to access an outdoor area that can only be accessed through



an indoor route, and make purchases. Medical exemptions require a written document from a physician or registered nurse documenting the reason for not being fully vaccinated and the applicable time period.

4. Retention of Information. The regulation prohibits a business or organization from retaining any information provided regarding proof of vaccination or exemptions. This seems to suggest that the business or organization will need to implement a system that checks each time a person attempts to enter their premises.

What is not clear:

1. Application to Condos. This is the million-dollar question. Unlike with other regulations made under the Reopening Ontario (A Flexible Response to Covid-19) Act, 2020, there is no clear indication as to whether the proof of vaccination requirement applies to

condominiums. For some condominiums without amenities like gyms or meeting spaces, it clearly does not apply. However, for condominiums with amenity spaces, it simply is not clear and those condominiums may wish to seek a legal opinion from their lawyer.

2. Other Exemptions. There is no mention of the other types of exemptions typically permitted by law for vaccine requirements (i.e. religious or conscientious objections). Based on press releases by the Ontario government, this appears to be intentional. The unclear part is whether the Human Rights Code would require these additional exemptions to be provided or other accommodations in certain cases.

Notwithstanding the above, many lawyers believe condominiums could adopt vaccine requirements even if not required by the regulations as part of the

condominium's duty to manage the common elements and ensure dangerous conditions do not exist on the property for owners, employees, and others using the property. It is a high conflict issue right now. To avoid politicizing the issue, boards looking to adopt vaccine requirements should perform a risk assessment to determine if it would be appropriate for their condominium. There simply is not a one-size-fits-all approach for all condominiums in Ontario given their unique features and residents.

There is still much that could change as the proof of vaccination requirements are implemented and other public health measures are taken or relaxed during the pandemic. Stay tuned for more on this topic in the Winter edition!

Michelle Kelly is a Lawyer with Robson Carpenter LLP 



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