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## Op Ed: Ombuds Day, vaccine credentials and fairness



*Note: This op-ed was written by Yukon Ombudsman Diane McLeod-McKay and submitted to Yukon newspapers for use this week. It is to be published in the Yukon News and Whitehorse Star newspapers on Friday, October 15, 2021 and in l'aurore boreale newspaper on Thursday, October 14, 2021.*

International Ombuds Day is celebrated around the world and this year falls on October 14. With an ongoing goal of improving public awareness about Ombuds, this year's theme is "Exploring options to resolve conflict, together".

In the Yukon, the Ombudsman is an independent officer of the Yukon Legislative Assembly. This means that they are independent from government. The Ombudsman is responsible for investigating complaints by individuals or groups about unfairness in the delivery of government and other publicly funded services. If a person or group believes that they were treated unfairly when using these services, the Ombudsman works to resolve any unfairness and has broad powers of investigation, including the power to compel disclosure of documents and witness testimony. The Ombudsman also works proactively with these bodies, called 'authorities' under the *Ombudsman Act*, to assist them in delivering services more fairly.

The declaration of the worldwide COVID-19 pandemic in early 2020 led to changes in how public services were delivered and to many restrictions on our lives. As a measure to combat the pandemic, vaccinations were made available to eligible Canadians in early 2021. Many have opted to be vaccinated while some have not for personal or other reasons. Some parts of Canada are still struggling to increase vaccination rates, and outbreaks of COVID-19 continue to occur at a higher rate than in the Yukon.

To address low vaccine rates and decrease the risk of transmission to non-vaccinated individuals, many governments across Canada have begun to implement vaccine credential systems that permit access to non-essential services to only those who are fully vaccinated. Most of these services are in the private sector.

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As I write this op-ed, I am unaware of any publicly delivered services imposing similar restrictions. However, if cases continue to rise, it is possible that there may be restrictions on access to buildings operated by government or other publicly funded organizations. An example may be recreational facilities that are publicly funded. Although the Yukon government has now issued vaccine credentials for Yukoners, to date it has not mandated the use of vaccine credentials in any services in the Yukon, public or private. This is likely because the Yukon has a high rate of vaccinated citizens.

In anticipation of the implementation of vaccine credential systems, I and my Ombuds colleagues across Canada collaborated on the development of guidance for governments and other public service providers to ensure that fairness is top of mind when deciding whether to restrict access to services to fully vaccinated people through a vaccine credential system and, if so, how to manage these restrictions. We issued our guidance this past May.

The guidance sets out ten fairness principles intended to guide decision-making on implementation and use of vaccine credentials.

1. There must be clear direction from government on the application and use of vaccine credentials by authorities, either through law or policy.
2. The law or policy must be evidence-informed and subject to regular review.
3. Any restrictions for accessing public services must not be contrary to law, including privacy and human rights laws.
4. Access to vaccine credentials must be equitable and accessible to everyone.
5. The requirement to disclose vaccine status must be proportionate to the type of service being provided, the associated risk to individuals, and the risks posed to public health.
6. Accommodation must be made to provide access to services for individuals who are unable to receive the vaccine.
7. Clear guidance should be provided to front-line staff of authorities to assist them in communicating decisions about limiting access to services based on vaccine status.
8. Decisions made about imposing restrictions must be done in a transparent, procedurally-fair manner and be clearly communicated. This includes making the policy about the requirement easily accessible and providing information to those affected about how to make a complaint.
9. Individuals who are denied access because they are not fully vaccinated should be informed about their right to appeal the decision and how to do so.
10. Authorities who are considering developing or requiring a vaccine credential for access to services should involve the relevant independent oversight bodies, such as an Ombudsman, Privacy Commissioner or the Human Rights Commission, in the development of the vaccine credential, to ensure the use of the credential is lawful and fair.

A complete copy of the joint guidance document can be found at [https://ombudsman.novascotia.ca/sites/default/files/documents/CCPO-Fairness-Principles\\_Vaccine-Passport-EN.pdf](https://ombudsman.novascotia.ca/sites/default/files/documents/CCPO-Fairness-Principles_Vaccine-Passport-EN.pdf).

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Our *Fairness by Design* self-assessment guide can also help authorities determine whether the development, implementation and use of a vaccine credential will be fair. It can be found on our website at <https://www.yukonombudsman.ca/yukon-ombudsman/for-authorities/resources>.

I encourage authorities to review these resources prior to making decisions about whether to use vaccine credentials to limit access to public services only to those who are fully vaccinated or before deciding to use some other screening measure that has the same effect.

I also encourage Yukoners to contact our office if they have any questions or concerns about the use of vaccine credentials to access government or other public services. As well, it is important to know that the majority of provinces and territories in Canada have an Ombudsman who can address any concerns they may have regarding the use of vaccine credentials for accessing publicly funded services outside the Yukon.

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Yukon Ombudsman

