

COVID-19 BULLETIN – MAY 12, 2020

By Keri Bennett and Sarah Dickson

Navigating COVID-19 in the Workplace - Privacy Update

During this pandemic, we have seen the increased use of smart phone apps as a public health tool, often for the purposes of contact tracing or notifying individuals of the fact they have been in close proximity with someone who is confirmed or assessed as likely to be a carrier of COVID-19. On May 7, 2020, the Federal, Provincial and Territorial Privacy Commissioners [issued a joint statement](#) setting out guiding principles for governments that intend to use contact-tracing applications.

The joint statement is directed at government. However, it provides helpful guidance to employers considering the use of tracing measures when implementing back-to-work plans.

There is one important caveat. The Commissioners ask government to make the use of apps voluntary and to seek consent. Employers in B.C. do not require consent to collect, use and disclose personal information about employees where such personal information is managed in accordance with applicable provincial and federal privacy legislation.

The Commissioners ask governments to respect the following principles:

- **Consent and trust:** use of apps must be voluntary;
- **Legal authority:** there must be a clear legal basis, and separate consent provided for all specific public health purposes intended;
- **Necessity and proportionality:** measures must be science-based, necessary for a specific purpose, tailored to that purpose and likely to be effective. The least intrusive option must be used;
- **Purpose limitation:** the information can be used only for its intended public health purpose;
- **De-identification:** aggregate or anonymous data should be used when possible;
- **Time-limitation:** any personal information collected should be destroyed when the crisis ends, and the application decommissioned;
- **Transparency:** the creator/owner of the app should be clear about the basis and terms applicable to the exceptional measures, and provide clear information about how the information will be collected, used, distributed and stored;
- **Accountability:** ongoing monitoring and evaluation plans concerning the effectiveness of these initiatives should be created and reports should be publicly available. Oversight by an independent third party is recommended; and



- **Safeguards:** legal and technical security safeguards must be put in place to ensure no non-authorized access of data occurs, and it is only used for its intended public health purpose.

The complete guidelines can be found here: https://priv.gc.ca/en/opc-news/speeches/2020/s-d_20200507/

Videoconferencing and Privacy Issues

Many employees and employers are likely concerned with how to protect their privacy in our “new normal” world of regular video conferencing. For some tips, check out the Office of the Privacy Commissioner of Canada’s blog post: [Videoconferencing – Maintain your physical distance, but keep your personal information close](#)

For further information relating to the COVID-19 pandemic and how it may impact your workplace, please look to our previous bulletins, which can be found on [Roper Greyell's COVID-19 resource page](#).

This memorandum is current to the afternoon of **May 12, 2020**, but the pandemic and the responses of federal and provincial governments continue to evolve, and this may impact the accuracy of the information in this bulletin. If in doubt about whether anything in this document is still current, please do not hesitate to [contact us](#).

[Keri Bennett](#) and [Sarah Dickson](#) are labour and employment lawyers at Roper Greyell LLP and practise in all areas of labour, employment and human rights law. To obtain contact information of any other lawyer at our firm, please visit <https://ropergreyell.com/our-people/>

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