

# The Quarantine Act and other laws governing ports of entry during the COVID-19 pandemic

**An immigration specialist discusses the legal tools at the government's disposal**



*Sergio Karas is an immigration lawyer*

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While new cases of coronavirus emerge in Europe, the Middle East, Asia and North America, immigration lawyer Sergio Karas told *Canadian Lawyer* how Canada prevents diseases from spreading through ports of entry.

In comparison to Japan, Hong Kong, Philippines, Australia and Macau – some of which have placed temporary bans on travellers recently in China – Canada's measures to prevent travellers from spreading coronavirus are currently mild, says Karas, who is certified by the Law Society of Ontario as a specialist in Canadian citizenship and immigration law and is former chair of the Ontario Bar Association Citizenship and Immigration Section.

In Australia, the government announced it is denying entry to anyone who has travelled to mainland China, except for Australian citizens, permanent residents, New Zealand citizens residing in Australia, diplomats and immediate family members of Australian citizens. Once arrived, citizens and other exceptions will be required to "self-isolate for 14 days."

In Canada, "there is voluntary reporting and there is no ironclad restriction on travel," says Karas. But he adds that Canadian law does provide for a stricter approach.

The system by which authorities are regulating spread of coronavirus through Canadian ports of entry are based on the Immigration and Refugee Protection Act, the Quarantine Act and the Aeronautics Act, he says.

Canada's Immigration and Refugee Protection Act can prevent a non-citizen from coming into the country if they are a danger to public health. Under s. 38 of the Act, the government can make inadmissible anyone with a contagious disease or a non-contagious illness which would impose costs on the healthcare system, Karas says.

The Quarantine Act applies to everyone – Canadian and foreign national – and puts a duty on all travellers and transportation companies – either coming or going – to disclose if they have a communicable disease or if they suspect someone else they're travelling with does. Screening officers, who are authorized by the Minister of Health, have the power to isolate anyone likely to have a communicable disease until they're assessed by a quarantine officer and those who refuse can be arrested without a warrant. The quarantine officer can prescribe a medical examination and at this stage, if the traveller refuses treatment or "any other measure" to prevent the disease's spread, the officer can arrest and detain the traveller, with the detention reviewed every seven days, says Karas.

But the limited utility of the system of screening and quarantine officers and self-reporting is that it relies on the honour system, he says.

"Let's suppose somebody comes in to the port of entry and they have symptoms. Under the Quarantine Act, they're legally mandated to report those symptoms. Now, from the practical point of view. I don't think anybody does that," he says.

"What has happened recently with the coronavirus outbreak is that, in the cases that we have seen, people have come through the airport and then sought medical attention afterwards," he says.

But the Quarantine Act also allows the federal cabinet to make an order banning travel or imposing conditions on travel to people who've been in a foreign country with a communicable disease outbreak.

"It is conceivable that this could be used to prevent the entry of travellers who have been in China or any area affected by the coronavirus," says Sergio Karas

A travel ban raises the question of how disallowing entry or exit of a Canadian citizen clashes with s. 7 of the Charter – life, liberty and security, he says.

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“This is the area in which we potentially may be entering in the future,” he says.

Karas adds there is little to no caselaw on the Quarantine Act and, to his knowledge, no one has ever challenged the act in court.

The spread of diseases such as coronavirus can also be curbed through the Aeronautics Act, Tokyo Convention and Chicago Convention, which regulate air travel. The law puts a duty on airplane pilots to tell screening and quarantine officers about anyone suspected of having a communicable disease and pilots have “broad discretion” to refuse boarding to passengers, Karas says.

The Aeronautics Act also puts an obligation on airlines to report any illness on board their aircraft to a quarantine officer.

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