

COVID-19 Pandemic: Impacts on the Transportation Industry in Canada from an Immigration Perspective



Daniel Lee*

On March 11, 2020, the World Health Organization assessed COVID-19 as a pandemic. The Government of Canada has unveiled aggressive new measures to contain the coronavirus and this has direct impact on the transportation industry in Canada. This article will provide a summary of the major impact on the transportation industry from an immigration perspective based on the Orders in Council issued by the Governor General and the guidelines from the Government of Canada between the period March 20, 2020 and April 6, 2020.

What is Canada's Travel Ban?

On March 20, 2020, the Governor General issued two Orders in Council, pursuant to section 58 of the *Quarantine Act*. The effect of the two Orders in Council is the creation of a temporary travel ban on foreign nationals travelling to Canada from overseas and from the United States, unless the foreign nationals meet one of the exemptions to the travel ban. The travel ban applies to travel by land, air and water, and stops foreign nationals from travelling to Canada for non-essential travel. There are specific exceptions to the travel restrictions that apply to employees in the transportation industry, which will be discussed below.

The first Order in Council is referred to as the Minimizing the Risk of Exposure to COVID-19 in Canada Order (Prohibition of Entry into Canada from any country other than the United States) ("International Order"). The International Order will be valid from March 22, 2020 to June 30, 2020, and it applies to all travel from any country other than the United States.

The International Order prescribes individuals that are prohibited from entering Canada by air and water. Currently, Canadian citizens, permanent residents and their immediate family members (i.e. spouses, common law partners, dependent children, parents and guardians) can return to Canada by air travel. There are some exceptions to the International Order, such as for airline crews as defined in section 101.01(1) of the *Canadian Aviation Regulations*, diplomats and travelers arriving in Canada in transit to a third country (not an exhaustive list). Further, as at March 20, 2020, the Canadian government provided that the exemptions to the air travel restrictions also apply to the following individuals:

- seasonal agricultural workers, fish/seafood workers, caregivers and all other temporary foreign workers in possession of a valid Canadian Work Permit;
- international students who hold a valid study permit, or have been approved for a study permit, at the time the travel restrictions took effect on March 18, 2020; and
- permanent resident applicants who had been approved for permanent residence before the travel restrictions were announced on March 18,

2020, but who had not yet travelled to Canada.

The second Order in Council is referred to as the Minimizing the Risk of Exposure to COVID-19 in Canada Order (Prohibition of Entry into Canada from the United States ("US Order"). The US Order applies to all travel from the United States, including land, air and water. The US Order is effective on March 21, 2020 and is valid until June 21, 2020 (at the time of writing this article, the US Order has not been amended). In order for a foreign national to enter Canada from the United States, the foreign national needs to meet two requirements:

1. The foreign national has only been in the United States or Canada during the preceding 14 day period; and
2. The foreign national is not entering Canada for an optional or discretionary purpose, such as tourism or recreation.

Please note citizens of the United States are currently exempt from the requirement to have only been in the United States or Canada during the preceding 14 day period. However, permanent residents of the United States are not exempt from the above requirement.

The distinction between essential travel and non-essential travel will be examined subsequently.

What is Essential Travel?

The distinction between essential travel and non-essential travel is important in assessing whether or not a foreign national could enter Canada during the COVID-19 pandemic. In general, non-essential travel includes travel for tourism or recreational purposes. Essential travel is not explicitly defined by the Government of Canada. However, on March 23, 2020,

* Lawyer, Alexander Holburn Beaudin + Lang LLP, Vancouver

the Government of Canada has provided a guideline and essential travel include the following activities (not an exhaustive list):

- work and study;
- economic services and supply chains (truck drivers, crew on any plane, train or marine vessel);
- critical infrastructure support;
- health (immediate medical care);
- safety and security;
- shopping for essential goods (medication); and
- other activities at the discretion of the border services officer.

Accordingly, when a foreign worker is essential to the movement of goods or people, such as flight crew, truck driver, railroader, and mariner, the foreign worker is permitted to enter Canada, as long as the foreign worker does not exhibit any COVID-19 symptoms.

What is the New Mandatory Self-Isolation Requirement?

On March 24, 2020, the Governor General issued the Order in Council for Minimizing the Risks of Exposure to COVID-19 in Canada Order (Mandatory Isolation) ("Mandatory Isolation Order") to clarify its position on self-isolation for all persons entering Canada by air, sea or land. The Mandatory Isolation Order is valid from March 25, 2020 to June 30, 2020. According to the Mandatory Isolation Order, all persons entering Canada must self-isolate for 14 days and monitor for signs and symptoms of COVID-19, with the exception of those deemed as providing an essential service by the Chief Public Health Officer. Essential transportation workers, such as truck drivers, rail or air crew, are deemed as providing an essential service while in Canada. Therefore, they are exempted from the mandatory self-isolation requirement

after returning to Canada from a work-related travel. This means if the essential transportation worker is returning to Canada from a vacation and not from a work-related travel, then the essential transportation worker is required to self-isolate for 14 days and monitor for COVID-19 signs and symptoms.

The *Quarantine Act* imposes heavy monetary penalties for breaching the mandatory self-isolation requirement. Pursuant to section 71 of the *Quarantine Act*, the penalties include a fine of up to CAD\$750,000 or to imprisonment for up to six months, or to both. Moreover, a person who causes a risk of imminent death or serious bodily harm to another person while willfully or recklessly contravening the *Quarantine Act* or the regulations could be liable for a fine of up to CAD\$1,000,000 or to imprisonment of up to three years, or to both.

Breaches of some of the offences under the *Quarantine Act* are deemed indictable offences. Given this, employers need to be aware that there are additional consequences on temporary foreign workers because breaches of some of offences in the *Quarantine Act* may make the temporary foreign worker inadmissible to Canada on criminal grounds. Hence, employers of temporary foreign workers should ensure their temporary foreign workers comply with the mandatory self-isolation requirement, if applicable. If not, then the temporary foreign worker could be deported from Canada if they are convicted of an indictable offence under the *Quarantine Act*. The legal implications for the above are the temporary foreign worker could be inadmissible to Canada on criminal grounds; and as such, the temporary foreign worker may not be eligible to apply for a Work Permit, unless the temporary foreign worker is issued a temporary resident permit, or issued a record suspension from the Parole Board of Canada for a criminal conviction committed in Canada.

Further, for permanent residents who are sentenced for a term of imprisonment of more than six months for breaching the *Quarantine Act*, they could be deported from Canada on serious criminal grounds, pursuant to section 36(1)(a) of the *Immigration and Refugee Protection Act*. Accordingly, employers need to be aware of the above potential consequence on permanent residents for breaching the *Quarantine Act*.

Conclusion:

The Government of Canada has unveiled aggressive new measures to contain the coronavirus, including a temporary travel ban on foreign nationals from travelling to Canada from overseas and from the United States, unless the foreign nationals meet one of the exemptions to the travel ban. Based on the above mentioned Orders in Council, essential transportation workers, such as truck drivers, rail or air crew, are deemed as providing an essential service while in Canada. Accordingly, essential transportation workers are exempted from the travel ban and the mandatory self-isolation requirement, if they are returning to Canada from a work-related travel. However, a worker (including temporary foreign worker) who is classified as an essential transportation worker may be required to comply with the mandatory self-isolation requirement when they are not returning to Canada from a work-related travel. Citizens of Canada, permanent residents, and all temporary residents, including temporary foreign workers, are all required to comply with the *Quarantine Act*. Non-compliance with the *Quarantine Act* may lead to future immigration inadmissibility issues to the temporary foreign workers and ultimately impact their eligibility to apply for a new work permit or permanent residency, or potential deportations for permanent residents when they are sentenced for a term of imprisonment of more than six months for breaching the *Quarantine Act*. 