

# An analysis of Canadian travel restrictions due to the COVID-19 outbreak

March 18, 2020

## Introduction

On March 16, 2020, Prime Minister Trudeau announced that Canada would be barring the entry of all travellers, other than Canadian citizens and Canadian permanent residents, in response to the 2019 Novel Coronavirus (COVID-19) outbreak. However, very few details were available at that time. For example, until formal guidance was published, it was not known that this measure would apply only to air travel. The air travel ban became effective on March 18, 2020, at 12:00 p.m. (noon) Eastern Daylight Time.

On March 18, 2020, Prime Minister Trudeau also announced that Canada and the United States had agreed to temporarily close the Canada-US border to non-essential travel. President Trump also announced this temporary closure in a tweet on March 18, 2020. Prime Minister Trudeau confirmed that travel for the purposes of recreation and tourism will be prohibited. Both Prime Minister Trudeau and President Trump have also stated that trade will not be affected. However, very little details have been provided. The land travel ban is not in place yet, but will become effective at 11:59 p.m. on March 20, 2020.

A summary of the above travel restrictions is provided below.

## The air travel ban

On March 17, 2020, Transport Canada issued a formal notice (the Transport Canada Notice), which has provided some clarification regarding the air travel ban. On March 18, 2020, the Governor General issued an Order-in-Council pursuant to the *Quarantine Act* (the Order-in-Council), which has provided further clarification regarding the air travel ban. A summary of this guidance appears below.

### Banning the entry of foreign nationals by air from all countries except the United States

According to the Transport Canada Notice and the Order-in-Council, the air travel ban is effective as of March 18, 2020, at 12:00 p.m. (noon) Eastern Daylight Time. Both the Order-in-Council and the Transport Canada Notice confirm that this travel ban applies to air travel only. Although the Transport Canada Notice does not mention an expiration date, the Order-in-Council states that the air travel ban will end at noon Eastern Daylight Time on June 30, 2020.

The Transport Canada Notice confirms that the air travel ban does not apply to air crews, travellers transiting to a third country, Canadian permanent residents, diplomats, or immediate family members of Canadian citizens. The Order-in-Council provides additional clarification regarding who is exempt from the air travel ban. It states that the following

foreign nationals (i.e., a person other than a Canadian citizen or Canadian permanent resident) are exempt:

- A person who has been only in the United States or Canada during the period of 14 days before the day on which they arrived in Canada;
- An immediate family member of a Canadian citizen or a Canadian permanent resident;
- A person registered as an Indian under the *Indian Act*;
- A person who is authorized, in writing, by a consular officer of the Government of Canada to enter Canada for the purpose of reuniting immediate family members;
- A crew member;
- An accredited diplomat, consular officer, representative or official of a country other than Canada, of the United Nations or any of its agencies, or of any international organization of which Canada is a member;
- A person who enters Canada at the invitation of the Minister of Health for the purpose of assisting in the COVID-19 coronavirus disease response;
- A person who arrives by means of an aircraft operated by the Canadian Forces or the Department of National Defence;
- A member of the Canadian Forces or a visiting force, and the immediate family members of that member;
- A protected person (i.e., a person who has received refugee status in Canada);
- A French citizen who resides in Saint-Pierre-et-Miquelon and has been only in Saint-Pierre-et-Miquelon, the United States or Canada during the period of 14 days before the day on which they arrived in Canada;
- A person or a class of persons who, in the opinion of Canada's Chief Public Health Officer: (1) does not pose a risk of significant harm to public health, or (2) will provide an essential service (this term has not been defined) while in Canada; and
- A person whose presence in Canada, in the opinion of the Minister of Foreign Affairs, the Minister of Citizenship and Immigration, or the Minister of Public Safety and Emergency Preparedness, is in the national interest.

For the purpose of the above exemptions, the term "immediate family member" means:

- The spouse or common-law partner of a Canadian citizen / permanent resident;
- A dependent child of a Canadian citizen / permanent resident, or of their spouse or common-law partner; or
- A dependent child of a dependent child referred to above.

Neither the Transport Canada Notice nor the Order-in-Council specifically refer to an exemption for United States citizens, even though the Prime Minister made clear during his press conference that United States citizens would be exempt from the travel ban, at least for now. As the air travel ban currently reads, it instead exempts all foreign nationals (including United States citizens) who are traveling from the United States, under certain conditions.

The Transport Canada Notice states that, pursuant to the *Aeronautics Act*, the Minister of Transport will require air carriers on flights to Canada to deny boarding to any passenger who is not a Canadian citizen or Canadian permanent resident, *and has resided in any country other than the US in the last 14 days*. It also states that, for practical purposes, the denial of boarding would apply to:

- All foreign nationals on flights to Canada *other than trans-border flights*, and
- Any foreign national *on a trans-border flight who has resided outside the US and Canada in the last 14 days*.

Finally, it also states that travellers cannot board a plane to Canada if they have been outside of Canada or the United States in the last 14 days, unless they are Canadian citizens, Canadian permanent residents, *or in transit to a third country*.

Based on the Transport Canada Notice and the Order-in-Council, it appears as though the following rules apply:

- The air travel ban applies to all foreign nationals (unless otherwise exempted) who are travelling to Canada on an international flight.
- The air travel ban applies to all foreign nationals (unless otherwise exempted) who are travelling to Canada on a trans-border flight (i.e., between the United States and Canada) *if they have been outside the United States and Canada within the last 14 days*. In other words, a foreign national travelling to Canada on a trans-border flight who has been residing in the United States and/or Canada during the last 14 days would not be subject to the travel ban (unless they show symptoms of COVID-19).
- The air travel ban does not apply to foreign nationals who are merely transiting Canada on their way to some other country.
- The air travel ban does not apply at the Canada-US border. However, in the absence of clear guidance, some CBSA officers may have been applying the air travel ban at the land ports of entry as well.

## Preventing symptomatic passengers from boarding a plane to Canada

According to the Transport Canada Notice, the Minister of Transport also requires air operators to prevent any traveller who is showing symptoms of COVID-19 (regardless of their citizenship status) to be denied boarding any international flight to Canada (including a trans-border flight). In other words, even a Canadian citizen attempting to return to Canada from any foreign destination (including the United States), and who is showing symptoms consistent with COVID-19, will not be permitted to board their flight.

Air operators are required to do a basic health assessment of all air travellers before they board the flight, based on guidance from the Public Health Agency of Canada. This would include the operator asking simple health questions, looking for visible signs of illness prior to boarding, and possibly referring the traveller for a further medical assessment.

If the traveller presents COVID-19 symptoms, the air carrier is required to deny boarding to the traveller for a period of 14 days (the traveller will then need to demonstrate that he or she is no longer symptomatic), or until a medical certificate (confirming that the patient does not carry the virus) is presented.

Airlines have been asked to begin implementing this measure immediately and must have it in place by no later than 12:01 a.m. Eastern Daylight Time on March 19, 2020. However, this measure does not apply to flights carrying only cargo (i.e., no passengers or non-crew).

## Consolidation of international inbound flights to four major hubs

According to the Transport Canada Notice, all international inbound flights to Canada will be redirected to one of four major Canadian airports, which have implemented additional health screening procedures. The four designated airports are:

- Vancouver International Airport;
- Calgary International Airport;
- Toronto Pearson International Airport; and
- Montréal Pierre Elliott Trudeau International Airport.

This measure is effective as of 12:01 a.m. Eastern Daylight Time on March 18, 2020. However, direct flights from the United States, from sun destinations, such as Mexico and the Caribbean, and from St. Pierre-et-Miquelon are exempt from this measure. They will continue to operate on their regular routes and will land at their original Canadian destinations.

## The land travel ban

As mentioned above, very few details are available regarding the land travel ban, which will prohibit non-essential travel at land ports of entry (and likely sea ports as well) along the Canada-US border. Although the decision to prohibit non-essential travel could possibly apply to air travel also, this seems unlikely. It appears more likely that this restriction will only apply along the Canada-US border and will not modify the existing air travel ban.

Prime Minister Trudeau confirmed that Canadian citizens and Canadian permanent residents will be able to return to Canada. However, they might still be prevented from entering if they are symptomatic.

Both the United States and Canada have stated that trade and key supplies will continue to flow across the border, and people who need to cross for essential work will still be able to do so. However, no guidelines are available regarding what will be considered “essential.”

Prime Minister Trudeau has announced that the land travel ban will take effect at midnight on March 20, 2020. This is consistent with an unpublished notice from US Customs and Border Protection, which states that the land travel ban will become effective at 11:59 p.m. Eastern Daylight Time on March 20, 2020, and will remain in effect until 11:59 p.m. Eastern Daylight Time on April 20, 2020.

As mentioned above, the land travel ban is not yet effective. However, in the absence of formal guidance, some CBSA officers may already be restricting travel across the Canada-US border.

## Conclusion

The air travel ban prevents foreign nationals (unless otherwise exempted) from boarding an international flight to Canada. Although Canadian citizens, Canadian permanent residents, and other exempt individuals may still travel to Canada on international flights, these flights will be redirected to one of the four designated airports.

The air travel ban does not appear to restrict trans-border air travel from the United States. However, any foreign national (unless otherwise exempt) who has been outside the United States or Canada in the last 14 days, will be denied boarding.

In addition, any traveller who exhibits symptoms of COVID-19 will be denied boarding. This applies to all travellers (including Canadian citizens, Canadian permanent residents and other exempt individuals). It also applies to both international and trans-border flights.

The land travel ban is not yet in effect, but will become effective at 11:59 p.m. Eastern Daylight Time on March 20,

2020. Unfortunately, very few details are available regarding the land travel ban. It appears as though it will not apply to Canadian citizens and Canadian permanent residents returning to Canada. However, they might still be denied entry if they are symptomatic. Although essential travel will apparently be permitted, the term “essential” has not been defined.

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