Coronavirus and criminal law: What you need to know

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We are unquestionably facing uncertain times. Outside of Canada, sweeping government-ordered lockdowns, shut downs, travel restrictions and bans on gatherings and human-to-human contact have quickly become part of the global response to the novel coronavirus outbreak. This is happening even in modern liberal democracies, with guaranteed rights and freedoms similar to ours.

Some countries, including South Korea, have gone further and sought to criminally prosecute individuals deemed responsible for spreading the virus. While large-scale restrictions on human movement and interaction in Canada were perhaps unthinkable just weeks ago, as was the criminalization of spreading disease, a question being asked with increasing frequency is: could it happen here?

Can the sorts of restrictions we've seen in Italy be instituted here?

In a word, yes.

Many Canadians repatriated from stricken areas and cruise ships have been placed under quarantine at government facilities. The federal government has the power to impose these sorts of quarantines under the *Quarantine Act*, which empowers them to take steps to prevent the spread of communicable diseases by individuals entering Canada from abroad.

Once there is local spread, the onus shifts to provincial governments to stop it. In Ontario, for example, existing public health and emergency management legislation could be used as a basis to impose the kind of large-scale restrictions we have seen in Italy. Under emergency management legislation, in particular, travel and movement could be restricted or prohibited, and businesses, offices, schools and other places can be ordered closed.

What if I disobey?

Businesses or individuals that do not comply with an order or directive made pursuant to the existing federal or provincial legislation could potentially be subject to prosecution.

Although the penalties vary from statute to statute, individuals could be subject to fines or imprisonment and corporations could be subject to significant fines.

Can I "fudge" my answer about where I have travelled to in order to avoid a potential quarantine after my holiday?

That's a bad idea. If a quarantine is in place, it's an offence under the *Quarantine Act* to make a false or misleading statement to a CBSA officer or other official involved in screening travellers re-entering the country. Lying can land you in prison for up to three years and result in a fine of up to $500,000.

I think I may have novel coronavirus. Can I be criminally liable if I infect others?

Criminal liability in Canada is exceedingly unlikely when individuals and businesses act reasonably and responsibly and comply with orders and directives from public health and other government officials. Except in very specific circumstances, which would not apply to the spread of novel coronavirus, Canada does not criminalize the unintentional spread of communicable diseases.

What about my rights under the Charter of Rights and Freedoms?

The *Charter* applies to all state action, even during public health emergencies. While the legislation referred to above was duly enacted and has not to date been struck down as unconstitutional, the government's exercise of any of the powers referred to above in any specific case remains subject to the *Charter*. To the extent exercising these powers infringe constitutionally protected rights to mobility, liberty, or freedom from arbitrary detention, those actions could be challenged as unconstitutional.

For legal advice on issues arising from COVID-19, please contact the author or related contacts below who are ready to assist businesses navigate these uncertain times.

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