

Can I Be Sued If I Infect Someone with Covid-19?

Authors: Alyssa Mariani Jamie Kagan

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As the COVID-19 pandemic stretches on, and the restrictions surrounding self-isolation, quarantine, and physical distancing remain in place, many Manitobans are frustrated by the inability to leave their homes, visit with friends, family, and loved ones, and go about their lives as freely as before. The temptation to get back to “normal” in spite of the restrictions is real. So what happens if people stop complying with the restrictions?

Are you liable?

In Canada, a person can be held liable for their negligent conduct where it causes injury, loss, or damage to another that was reasonably foreseeable. The Canadian law in negligence has its roots in a 1932 decision from the House of Lords known as *Donoghue v Stevenson* where Lord Atkin established what has come to be known as the “neighbour principle.” In his decision, Lord Atkin noted that “the rule that you are to love your neighbour becomes in law you must not injure your neighbour.” Essentially, this means that a person is required to take reasonable care to avoid acts or omissions that they can reasonably foresee would likely injure their neighbour (meaning anyone who might reasonably be adversely affected if reasonable care is not taken when acting). This case is the origin of negligence law in Canada and states an obvious principle that is being lost as the pandemic drags on. We owe a responsibility to each other for each other’s safety.

Negligence has been applied in many cases involving the infliction of physical harm upon another person. In Ontario, in the decision of *Bell-Ginsburg v Ginsburg*^[1], the Court considered a claim brought by an estranged wife against her husband for negligence in respect of his extramarital activities, which she claimed he deliberately concealed from her and which put her at risk of contracting HIV. The Court agreed with the wife that it was foreseeable to the husband that his undisclosed hazardous sexhttp://inmotion.dfmdemos.com/tdsrecovery/covid-19/can-i-be-sued-if-i-infect-someone-wit h-covid-19/#_ftn1ual activity would cause damage to his wife.

In addition to the *Bell-Ginsburg* case, the Canadian courts have frequently dealt with the issue of negligence as it relates to the transmission of HIV/AIDS. These cases indicate that a person who suffers from a known disease has a duty to disclose that fact before engaging in

sexual activity with another person in circumstances where there is a realistic possibility of transmission.

Based on the foregoing, it is clear that an individual who is either knowingly suffering from COVID-19, or exhibiting the symptoms thereof, may be liable in negligence if they breach quarantine and self-isolation restrictions, placing themselves in close proximity to another person without disclosing their illness or symptoms, and transmits the virus to another person. This is so given the common knowledge that COVID-19 is highly contagious and transfers readily from person to person. It is also clear that everyone knows or ought to know that you must isolate if you have symptoms. The media coverage of the pandemic will leave no doubt that the population as a whole knows what it needs to do to stay safe. The failure to follow the clear protocols, such as wearing a mask, will attract liability and claims.

What happens if you are sued for negligence in these circumstances?

Fortunately, most individuals have insurance coverage for their own negligence under their home insurance or renter's insurance policies.

There are common exclusions in these types of policies relating to claims for injury caused by intentional acts. Individuals have frequently turned to the courts for a determination of whether such an exclusion clause applies to exclude coverage for their negligence.

The leading case on this issue is the Supreme Court of Canada's ruling in *Non-Marine Underwriters, Lloyd's London v Scalera* [*Scalera*].^[2] In that case, the insurer argued that the exclusion clause applied wherever there was an intentional act, regardless of whether there was an intent to injure as a result of that act. The Court disagreed, finding that such an interpretation would result in an absurd situation where almost any act of negligence could be excluded under such a clause. Instead, the Court held that these types of exclusion clauses must be read to require that the injuries be intentionally caused, meaning that they are the product of an intentional tort and not of negligence.

The *Scalera* decision has been upheld by the Manitoba Court of Appeal. In particular, in its 2004 decision in *F(RD)(Litigation Guardian of) v Co-operators General Insurance Co*^[3], the Court found that the exclusion clause was not applicable in a case where the insured had intentionally started a fire on school grounds because the damage to the school buildings might have been an unforeseen consequence of the act of starting the fire.

Therefore, the question that must be answered in determining whether a person may be entitled to insurance coverage for their negligent conduct in breaching quarantine is whether the breach was intentional, in that the person either desired its consequences or the consequences were substantially certain to result from the negligent conduct.

In the context of the current pandemic, in which it is common knowledge that elderly persons and individuals with compromised immune systems are most vulnerable to the most serious symptoms of COVID-19, there is a possibility that a person who intentionally breaches quarantine by coming into close physical proximity with one of these individuals, thereby transmitting the virus, may find that they do not have coverage under their insurance policy for their negligence.

Damages

If you are found liable for spreading COVID-19, your liability would be very large. A defendant is responsible for all medical costs and income loss. Plus, an additional award will be payable for the harm to the person's life and for any long-term health effects.

Conclusion

As the potential consequences of transmitting COVID-19 by being in breach of quarantine requirements are reasonably foreseeable, it is possible you may be sued by a person infected by the virus with whom you have come into close physical contact while in breach of quarantine.

If you are sued for negligence as a result of breaching quarantine, you may be entitled to coverage from your home or renter's insurance policy unless your insurer can establish that you intended to cause harm to another person by virtue of your conduct. Alternatively, if your conduct in breaching quarantine is considered to be a contravention of a law in force in Manitoba, additional exclusions under your insurance policy may apply.

[1] 1993 CarswellOnt 346 (Ont Ct J (Gen Div)).

[2] 2000 SCC 24.

[3] 2004 MBCA 156.

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