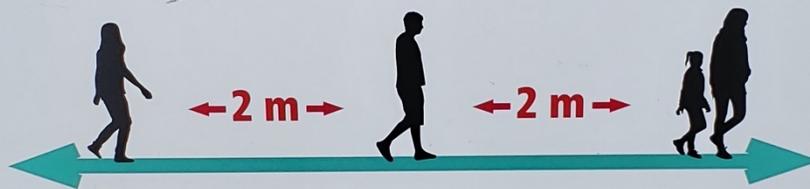


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CANADIAN TECHNICAL TAPE LTEE

Stay Off the Grass: COVID-19 and Law Enforcement in Canada

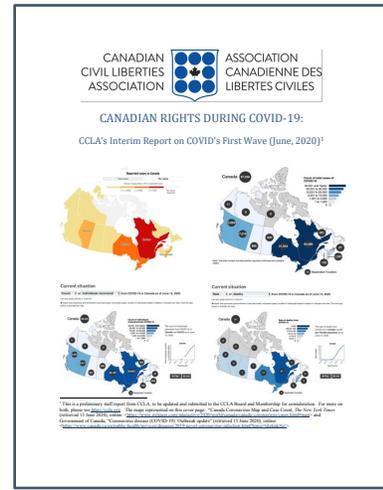
June 2020
Canadian Civil Liberties Association
Policing the Pandemic Mapping Project

About the Canadian Civil Liberties Association

The Canadian Civil Liberties Association (CCLA) was constituted in 1964 to promote respect for and observance of fundamental human rights and civil liberties, and to defend and foster the recognition of those rights and liberties. We are national, non-profit, and independent. Since our founding, CCLA has been at the forefront of protecting fundamental freedoms and democratic life in Canada. A wide variety of people, occupations and interests are represented in our membership. The Canadian Civil Liberties Education Trust, the CCLA's education arm, has been engaged in public education since its inception in 1968.

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For more on CCLA's reporting on Canada during COVID-19, please see <https://ccla.org/coronavirus/> and CCLA's first COVID-19 report, *Canadian Rights During COVID: CCLA's Interim Report on COVID's First Wave* (June, 2020), available at <https://ccla.org/cclanewsites/wp-content/uploads/2020/06/June-2020-COVID-report-working-document.pdf>



About Policing the Pandemic Mapping Project

The Policing the Pandemic Mapping Project was launched on 4 April, 2020 to track and visualize the massive and extraordinary expansions to police power enacted across Canada in response to the COVID-19 Pandemic. The project aims to bring to light COVID-19 related patterns of police intervention to help understand who is being targeted, what justifications are being used by police, and how marginalized people in particular are being impacted. The project is a continually updated living repository and currently consists of two interactive maps and a searchable database of COVID-related enforcement events across Canada. More information can be found here: <https://www.policingthepandemic.ca/>.

Acknowledgments

CCLA and Policing the Pandemic Mapping Project would like to thank all those who took the time to write to CCLA regarding their experiences with COVID-related ticketing. We also greatly appreciate the conversations we had with grassroots, advocacy and legal organizations in Nova Scotia, Ontario, and Quebec that spoke with CCLA about local ticketing practices.

This report was authored by Abby Deshman, CCLA Criminal Justice Program Director, and the Policing the Pandemic Mapping Project co-founders Alexander McClelland, University of Ottawa, and Alex Luscombe, University of Toronto. Thanks to all the CCLA staff for their comments and feedback, and in particular CCLA staff lawyer J.Y. Hoh and summer law student Noah Benson for their hard work on this report over the past weeks.

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Executive Summary

Over a ten-day span in March 2020 every Canadian province and territory declared some kind of state of emergency in response to the COVID-19 pandemic. Unprecedented restrictions on individuals' freedoms quickly followed. Many public spaces across the country were shuttered. Indoor and outdoor gatherings were restricted. Public health recommendations to maintain physical distancing became legally-enforceable laws pursuant to legislation and emergency orders.

Many of the laws were overly broad, vague and confusing. Penalties for violating emergency orders were significant - \$880 in Ontario, for example, and \$1500 in Quebec.

The broader analysis of the civil liberties impact of the COVID-19 pandemic and Canadian governments' responses to date was examined in a report released by the Canadian Civil Liberties Association earlier this month, "Canadian Rights during COVID-19: CCLA's Interim Report on COVID's First Wave."¹

This report focuses in more detail on one aspect of Canada's pandemic response: the use of coercive fines and law enforcement to respond to a public health crisis.

Lessons from previous public health emergencies have shown that compliance with public health strategies is most effectively secured through good will and education – not policing, fines and arrests.² For some provinces in Canada, the focus was on education, not enforcement, and many provinces very effectively 'flattened the curve' of the pandemic by relying on public health recommendations and education. Other provinces, however, turned to punitive enforcement to secure compliance.

Based on publicly-available sources we estimate that between April 1 and June 15, 2020 there were over 10,000 tickets issued or charges laid related to COVID-19. Across the country this has resulted in over \$13 million dollars in COVID-related fines to date.

The vast majority of COVID-related fines – a full 98% of the national total – have been issued in just three provinces: Quebec (6600 COVID-related charges, 77% of the total dollar amount of fines), Ontario (2853 charges, 18%) and Nova Scotia (555 charges, 3%).

In early April the Canadian Civil Liberties Association launched an online COVID tickets tracker where Canadians could record their experiences with COVID-related stops, searches and charges. Over the ensuing ten weeks over one hundred people have gotten in touch with CCLA to share their stories of

¹ Canadian Civil Liberties Association, "Canadian Rights During COVID: CCLA's Interim Report on COVID's First Wave" (June 2020), online: <<https://ccla.org/cclanewsites/wp-content/uploads/2020/06/June-2020-COVID-report-working-document.pdf>>.

² UNAIDS (Joint United Nations Programme on HIV/AIDS), "Rights in the time of COVID-19: Lessons from HIV for an effective, community-led response" (March 2020), online: <https://www.unaids.org/sites/default/files/media_asset/human-rights-and-covid-19_en.pdf>; George J. Annas, Wendy K. Mariner, and Wendy E. Parmet, "Pandemic Preparedness: The Need for a Public Health – Not a Law Enforcement/National Security – Approach" American Civil Liberties Union (January 2008), online: <<https://www.aclu.org/report/pandemic-preparedness-need-public-health-not-law-enforcementnational-security-approach>>; Brandon D.L. Marshall and Abdullah Shihpar, "We Can't Police Our Way Out of a Pandemic" *New York Times* (27 April 2020), online: <<https://www.nytimes.com/2020/04/27/opinion/coronavirus-police.html>>.

being stopped, questioned or ticketed. While this represents a small proportion of the total number of tickets issued across the country, there is a notable consistency across the individual accounts.

Many of the experiences Canadians shared demonstrate how over-zealous, technical enforcement of confusing, broad and vague laws frequently led to fines that were completely disconnected with the goal of protecting public health. Many people were given hefty fines for minor technical violations of emergency orders: standing three feet inside an unmarked and unfenced soccer field, having a child run ahead and jump up on a park bench for a few seconds, or walking alone on a path that the municipality had specifically flagged as open – only to receive a ticket when a police officer disagreed on the legal interpretation.

Many others who contacted CCLA seemed to have been ticketed for actions that were not contrary to any emergency orders at all. Multiple individuals recounted tickets being issued for walking or running, alone, through open parks. Several others said that they were charged \$880 for a violation of an Emergency Order for having their dog off-leash. Yet another reported that an uncle had been ticketed for sharing a ride home from work with his essential services co-worker.

It has only taken a few months for the inequality in contemporary Canadian society to be reflected in unequal COVID-19 infection rates in our communities. Inequality in our society also plays out in the unequal application and impact of laws. Data from other jurisdictions around the world has made it clear that long-standing discriminatory patterns of policing are being reproduced in the context of COVID-19 enforcement. Unfortunately, we may never have quantitative data regarding discriminatory patterns of COVID-19 enforcement in Canada. Many police forces across Canada do not collect demographic data, such as race, gender, or socioeconomic status, of their enforcement patterns.

Despite large data gaps, however, there are numerous indications that the arbitrary rules, increased enforcement powers, and significant fines are having a disproportionate impact on specific communities, including Black, Indigenous, and other racialized groups, those with precarious housing, recent immigrants, youth, members of the LGBTQ2S community, and certain religious minorities.

Numerous individuals who got in touch with CCLA and self-identified as racialized felt that they had been targeted by law enforcement because of their race, and multiple investigations in various jurisdictions have been launched after allegations of discriminatory actions on the part of bylaw officers. The pandemic has also been used as a justification to increase the ability of a variety of law enforcement officials to stop individuals and demand that they provide identification, a practice also known as “carding” which has been used disproportionately against people who are Black, Indigenous, who have mental health disabilities, who are experiencing homelessness, and who are otherwise racialized and marginalized.

The focus on individuals’ behaviour in public spaces also disproportionately impacts those who rely on parks and other public spaces, including those who are precariously housed, living in shelters or on the streets. Community organizations in Quebec in particular reported to CCLA that their street-involved clients have received many tickets for alleged physical distancing infractions. Increased police targeting of this community has also reinforced the pre-existing distrust between marginalized individuals and the police, directly undermining an effective public health response, which requires trust, open communication, and the ongoing provision of services and supports.

The requirement in several jurisdictions that individuals stay physically separated from those who are not in their household also raises significant concerns about an increase in discriminatory policing on the basis of age, family status, religion and sexual orientation. Individuals in same-sex relationships reported that they felt targeted by law enforcement, as they were stopped, questioned about their relationship, and required to provide identification, while heterosexual couples in the same spaces were allowed to walk by without suspicion. Young people, who often live with roommates, also reported increased targeting from law enforcement. And in Quebec, several individuals who self-identified as members of the Jewish community told CCLA that they felt they had been specifically targeted because of their religion.

Numerous individuals who contacted the CCLA also commented on the impact of high monetary fines. Students, elderly persons on fixed incomes, single parents and those who were unemployed or about to lose their jobs all commented to us that the amount of the fine was crushing. For many, the amount of money they were fined represented their entire rent or grocery budget for the month.

Finally, the unclear and complex nature of the underlying orders has been particularly hard for those who do not speak English as their first language, including refugees and recent immigrants.

At this point in time it appears that most of the country has made it past the peak of the first wave of this pandemic. It also seems that we have made it through the peak of the punitive law enforcement approach. After weeks where thousands of fines were handed out, the restrictions are starting to loosen and some jurisdictions that initially responded with fines are returning to education approaches. But we are being told to expect a second wave of infection. It is highly likely that, in some portions of the country, public health officials will recommend a return to tighter restrictions on daily activities. This should not also mean a return to law enforcement stops, searches, and charges.

The only way through this is with a robust, democratic, constitutionally-compliant public health approach. Government leaders must resist the temptation – and the calls from scared constituents – to back up every public health recommendation with the force of law and give a *carte blanche* to law enforcement.

Trying to police our way out of this pandemic is unimaginative, sometimes unconstitutional, and ineffective.

When rules don't make sense, people stop listening to those in authority.

When laws are unworkable or indecipherable, people ignore them.

When enforcement is unfair, arbitrary, and discriminatory people become less compliant and more defiant. They focus less on trying to obey the rules, and think more about trying not to get caught.

And when a public health approach is rejected in favour of a law enforcement approach, the individuals that feel the brunt of the punitive measures are those who are at most risk in the first place.

Instead, governments must take the time to explain the risks, the science, the evidence-based measures that each and every person needs to take. They must demonstrate a real, long-term commitment to education. And work with communities to ensure the supports are there to allow the public health

recommendations to become a reality. Canadians – and particularly those communities most impacted by the pandemic - need public health supports, not punitive law enforcement and fines.

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Introduction

In January 2020 the novel corona virus, or COVID-19 as it is now called, started to circulate the globe. On March 11, 2020 the World Health Organization declared that the spread of COVID-19 constituted a pandemic.

By the time the global pandemic was declared Canada was already in the grips of a public health crisis. On March 13, 2020, the Province of Quebec declared a provincial public health emergency. Within 10 days every other province and territory had followed suit – either through public health laws or emergency laws or both. Dozens of municipal governments also declared local states of emergency, passing new bylaws that layered on top of the provincial and territorial emergency orders.

The broader analysis of the civil liberties impact of the COVID-19 pandemic and Canadian governments' responses to date was examined in a report released by the Canadian Civil Liberties Association earlier this month, *Canadian Rights during COVID-19: CCLA's Interim Report on COVID's First Wave*.³

This report focuses in more detail on one aspect of Canada's pandemic response: the use of coercive fines and law enforcement to respond to a public health crisis.

Over the course of those first few weeks in March, Canadians' basic liberties were curtailed to an unprecedented degree. Many public spaces across the country were shuttered. Indoor and outdoor gatherings were restricted. Emergency orders were passed to turn public health recommendations to maintain physical distancing into legally-enforceable orders.

Millions of people across Canada found themselves grappling with a radically new legal order, one that had taken shape in a matter of days and was constantly evolving. The emergency measures were often confusing. The unprecedented restrictions on individuals' freedoms changed on a daily basis. Communication from government leaders was not always clear. The line between a public health recommendation, and an emergency order that carried the force of law, was blurry. Many emergency orders were vague and overly broad, so much so that several were in our view clearly unconstitutional. And the orders themselves were not always posted when announcements were made, leaving the public to guess the law based on quotes, media releases, and rumours of people who had been fined. Penalties for violating emergency orders were significant - with individual fines frequently amounting to \$880 in Ontario, or \$1500 in Quebec.

Lessons from previous public health emergencies have shown that compliance with public health strategies is most effectively secured through good will and education – not policing, fines and arrests.⁴

³ Canadian Civil Liberties Association, *Canadian Rights During COVID: CCLA's Interim Report on COVID's First Wave* (June 2020), online: <<https://ccla.org/cclanewsites/wp-content/uploads/2020/06/June-2020-COVID-report-working-document.pdf>>.

⁴ UNAIDS (Joint United Nations Programme on HIV/AIDS), "Rights in the time of COVID-19: Lessons from HIV for an effective, community-led response" (March 2020), online: <https://www.unaids.org/sites/default/files/media_asset/human-rights-and-covid-19_en.pdf>; George J. Annas, Wendy K. Mariner, and Wendy E. Parmet, "Pandemic Preparedness: The Need for a Public Health – Not a Law Enforcement/National Security – Approach" American Civil Liberties Union (January 2008), online: <<https://www.aclu.org/report/pandemic-preparedness-need-public-health-not-law-enforcementnational-security>>.

And at first the focus in Canada was on education, not enforcement. Political leaders, health professionals and police forces across the country emphasized the importance and primacy of education.

Soon, however, commitment to that approach began to waver in some jurisdictions. In mid-March the first few reports of individuals being stopped, questioned, carded and fined emerged.⁵ Within weeks the reports ballooned to hundreds, and then thousands. In Toronto and Ottawa, for example, the focus quickly turned from education to enforcement. Barely two weeks into the emergency, both politicians and law enforcement agencies began to issue warnings of strict enforcement measures. On March 30, Toronto Mayor John Tory warned that “time is up” for those continuing to gather at parks and stated that fines ranging from \$750 to \$5000 would be issued “with regularity” until people “get the message.”⁶ Similarly, on April 4 the City of Ottawa’s By-law and Regulatory Services official twitter account tweeted that “The warning phase is over. We are moving from education to enforcement to protect the lives of our residents.”⁷

Quebec also turned to punitive enforcement after a few weeks. At first, Montreal police and politicians put an emphasis on education.⁸ But by April 2, the Mayor and Montreal’s municipal police service (“SPVM”) issued statements indicating that moving forward there would be a zero-tolerance approach and increased police patrols of popular parks.⁹ Despite only starting to hand out tickets on April 4th, by

[approach](#)>; Brandon D.L. Marshall and Abdullah Shihpar, “We Can’t Police Our Way Out of a Pandemic” *New York Times* (27 April 2020), online: <<https://www.nytimes.com/2020/04/27/opinion/coronavirus-police.html>>.

⁵ Alexander McClelland & Alex Luscombe, “Policing the Pandemic Enforcement Report April 04 2020 - April 13 2020” (13 April 2020), pg 2, online: <https://static1.squarespace.com/static/5e8396f40824381145ff603a/t/5e950fdee0ad340d4498f935/1586827230486/Police_the_Pandemic_Report_13April2020.pdf>.

⁶ “Time is up’: John Tory warns of fines up to \$5K for people who gather at Toronto parks, playgrounds”, *City News* (30 March 2020), online: <<https://toronto.citynews.ca/2020/03/30/time-is-up-tory-warns-of-fines-up-to-5k-for-people-who-gather-at-city-parks-playgrounds/>>.

⁷ Ottawa By-Law, “The warning phase is over. We are moving from education to enforcement to protect the lives of our residents. Those who are not following provincial orders and those gathering in closed parks will be fined. #COVID19 #OttCity #OttNews” (4 April 2020 at 7:57), online: *Twitter* <<https://twitter.com/ottawabylaw/status/1246406653047521281>>.

⁸ See Valérie Plante, “# COVID19 : if collaboration is not possible, reports will be issued to people who do not respect the measures. If you see a situation that violates public health regulations, you can report it to @SPVMat 911. (3/3) #polmtl” (29 March 2020 at 18:46), online: *Twitter* <https://twitter.com/Val_Plante/status/1244395619516583937>; Montreal Police Department (SPVM), News Release, “COVID-19: how the SPVM ensures compliance with social distancing measures and businesses deemed non-essential” (31 March 2020), online: *SPVM Press Releases* <<https://spvm.qc.ca/fr/Communiqués/Details/14730>> .

⁹ See Valérie Plante, “The @SPVM ensures an increased presence and tickets will be given to offenders who do not respect the 2m distance in Montreal parks. Last chance to respect public health rules before we close certain parks. When we take our individual responsibilities, we act for the common good” (1 April 2020 at 15:28), online: *Twitter* <https://twitter.com/Val_Plante/status/1245432923421134849>; Montreal Police Department (SPVM), News Release, “COVID-19: Stepping up measures to ensure compliance with the assembly ban” (2 April 2020), online: *SPVM Press Releases* <<https://spvm.qc.ca/fr/Communiqués/Details/14732>>; Valérie Plante, “# COVID19 : The @SPVM has stepped up patrols in the following parks: Mont-Royal, Jeanne-Mance, Laurier, La Fontaine, Maisonneuve and Canal de Lachine, as well as in local parks. We are asking for the cooperation of Montrealers, so

April 27th the SPVM and the Quebec provincial police had issued over 3,350 tickets and infringement reports (referrals of fines to prosecutors, awaiting judge's approval).¹⁰

In Nova Scotia the Minister of Justice went so far as to issue a Ministerial Directive to the police directing all municipal police forces and the Royal Canadian Mounted Police to “escalate their efforts from public education to enforcement, in accordance with officer discretion.”¹¹

According to our compilation of publicly-available sources, over \$13 million dollars in fines have been issued since the beginning of the states of emergency across Canada. The vast majority of these fines have been in Quebec (77%), followed by Ontario (18%) and Nova Scotia (3%).

Not all jurisdictions relied on enforcement and penalties. In British Columbia, for example, physical distancing was, for the most part, a public health recommendation rather than a legal requirement. Police and bylaw officers were not permitted to enforce public health orders – and the government put out clear guidance to law enforcement emphasizing their limited role and the clear need to focus on education and public health support.¹² Enforcement was also restrained in Manitoba. Between April 8th and May 4th, the Manitoba RCMP issued only four tickets.¹³ In Winnipeg, the first ticket for violating city bylaws was issued on May 1st¹⁴, and by May 19th only four tickets had been issued.¹⁵

In the jurisdictions that relied on punitive fines to secure compliance, however, accounts quickly emerged of heavy-handed law enforcement and antagonistic interactions with police and bylaw officers.

that our parks can remain open. #polmtl” (2 April 2020 at 15:20), online: *Twitter* <https://twitter.com/Val_Plante/status/1245793315213230080>.

¹⁰ Katelyn Thomas, “Montreal police hand out 400 more COVID-19-related tickets, say measures are working”, *CTV News* (27 April 2020), online: <<https://montreal.ctvnews.ca/montreal-police-hand-out-400-more-covid-19-related-tickets-say-measures-are-working-1.4913154>>; Andy Riga, “Coronavirus: It has been a long, rough eight weeks in Quebec”, *Montreal Gazette* (9 May 2020), online: <<https://montrealgazette.com/news/local-news/coronavirus-it-has-been-a-long-rough-eight-weeks-in-quebec/>>.

¹¹ *Minister's Directive under Nova Scotia Police Act* (30 March 2020), online: <<https://novascotia.ca/coronavirus/docs/Minister-Furey-Directive-March-30-2020.pdf>>.

¹² “Compliance and Enforcement Guidance about Public Health Orders with respect to Physical Distancing” (last modified 31 March 2020), online (pdf): *The official website of the Government of British Columbia* <https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/compliance_and_enforcement_guidance_march_31_2020.pdf>.

¹³ Royal Canadian Mounted Police, News Release, “Manitoba RCMP release statistics on COVID-19 enforcement” (15 April 2020), online: <<https://www.rcmp-grc.gc.ca/en/news/2020/manitoba-rcmp-release-statistics-covid-19-enforcement>>; Royal Canadian Mounted Police, News Release, “Manitoba RCMP release statistics on COVID-19 enforcement” (22 April 2020), online: <<https://www.rcmp-grc.gc.ca/en/news/2020/manitoba-rcmp-release-statistics-covid-19-enforcement-0>>; Royal Canadian Mounted Police, News Release, “Manitoba RCMP release statistics on COVID-19 enforcement” (28 April 2020), online: <<https://www.rcmp-grc.gc.ca/en/news/2020/manitoba-rcmp-release-statistics-covid-19-enforcement-1>>; Royal Canadian Mounted Police, News Release, “Manitoba RCMP release statistics on COVID-19 enforcement” (6 May 2020), online: <<https://www.rcmp-grc.gc.ca/en/news/2020/manitoba-rcmp-release-statistics-covid-19-enforcement-2>>.

¹⁴ Kayla Rosen, “City hands out first ticket for breaking public health orders”, *CTV News* (1 May 2020), online: <<https://winnipeg.ctvnews.ca/city-hands-out-first-ticket-for-breaking-public-health-orders-1.4920700>>.

¹⁵ City of Winnipeg, “COVID-19 By-law Enforcement Over Time” (last modified 22 June 2020), online: *City of Winnipeg Open Data Portal* <<https://data.winnipeg.ca/Neighbourhood-Liveability-Property-Standards-Licen/COVID-19-By-law-Enforcement-Over-Time/c7vf-ya84>>.

In early April CCLA launched its COVID-19 Tickets Tracker Form. Since that time we have recorded the experiences of over 100 people from across the country. This report shares their stories, and provides some powerful early warning signs regarding the dangers of moving from a public health response to one focused on public order.

Methodology

This numerical data on enforcement presented in this report was collected via the Policing the Pandemic Mapping Project using two primary approaches:

- News articles and press releases collected using Google Alerts, a web crawling and notification service, set to a range of COVID-19/enforcement related keywords; and
- Manual web searches of governments' and police services' websites and social media accounts.

These sources are unlikely to capture every incident or enforcement action taken by police and bylaw officers in Canada. What the data provides are therefore conservative estimates.

Reports of enforcement from governments, including municipalities and police, were considered to be the most reliable sources of information. Media reports were also used, and when possible, researchers worked to verify them with other sources. Most media reports relied on enforcement numbers already released by police forces or government officials. Verifying a media report can include searching for the origin of reports of enforcement as reported by enforcement agencies or governments. For example, many enforcement numbers are released by city officials or enforcement agencies via press releases or conferences, or on social media accounts, or websites. The process of verification also occurred over time as reports were updated and reproduced in various media outlets. In some cases, verification was not possible as there was only one available media report on an enforcement incident.

Enforcement incidents were counted from the moment they were reported, even if the matter had not reached court, was dropped, stayed, or withdrawn.

The majority of the individual narratives reproduced in this report were sent to the CCLA through the organization's online COVID ticket tracker form, which was launched in early April 2020. Over 100 people shared their stories. For every person who shared their story, there are many others who likely didn't see the call for information or chose not to share their experiences. While this is a small proportion of the total number of tickets issued, the trends highlighted in this report are consistent with both media articles regarding enforcement actions and the accounts shared directly with CCLA. The direct quotes in the report are being shared with the authors' consent.

CCLA staff also reached out to select organizations in Nova Scotia, Quebec and Ontario to get more information on local experiences of enforcement during the pandemic.

Lessons on Enforcement from Previous Pandemics

Leading Canadian and international public health experts have warned against deploying hastily drafted, punitive measures in response to the COVID-19 pandemic.¹⁶ Lessons from previous public health emergencies have shown how restrictive, punitive measures and overly-broad enforcement undermine public health objectives while violating human rights, leading to unequal and unjust forms of enforcement and abuse.¹⁷ As recently explained by the Joint United Nations Programme on HIV/AIDS:

Compulsory restrictive and punitive measures do nothing to remove obstacles for the most vulnerable, or empower communities—instead, they exacerbate barriers for the people most in need and potentially increase the vulnerabilities of people and communities. They can break down the trust between the government and the community and remove the feeling of ownership and power that people and communities need in order to look after themselves and each other. In effect, we lose those crucial elements that are so necessary: kindness, solidarity and an ethic of care.¹⁸

Canada, however, has a long history of turning to law enforcement to handle public health issues. This history offers some stark lessons on the dangers – and the inefficacy - of using a public order approach to confront a public health emergency.

At the turn of the 20th century, the relatively new settler colony, still known as the Dominion of Canada, was contending with multiple public health issues. The country lost approximately 50,000 people during the influenza epidemic and another 50,000 to tuberculosis.¹⁹ At the same time, combined epidemics of the sexually transmitted infections syphilis, herpes, and gonorrhoea began to take hold. By 1916, initial testing in the military overseas revealed 66,083 cases of the three sexually transmitted infections.²⁰ Subsequent studies found that the high prevalence of infection was consistent with the general

¹⁶ World Health Organization, “Addressing human rights as key to the COVID-19 response” (April 2020), online: <<https://www.who.int/publications/i/item/addressing-human-rights-as-key-to-the-covid-19-response>>; UNAIDS (Joint United Nations Programme on HIV/AIDS), “Rights in the time of COVID-19: Lessons from HIV for an effective, community-led response” (March 2020), online: <https://www.unaids.org/sites/default/files/media_asset/human-rights-and-covid-19_en.pdf>; Canadian HIV/AIDS Legal Network, “Flatten Inequality: Human rights in the age of COVID-19” (April 2020), online: <<http://www.aidslaw.ca/site/flatten-inequality-human-rights-in-the-age-of-covid-19/?lang=en>>; Brandon D.L. Marshall and Abdullah Shihpar, “We Can’t Police Our Way Out of a Pandemic” *New York Times* (27 April 2020), online: <<https://www.nytimes.com/2020/04/27/opinion/coronavirus-police.html>>.

¹⁷ J.M. Mann, L. Gostin, S. Gruskin, T. Brennan, Z. Lazzarini, & H.V. Fineberg, “Health and human rights” (1994) 1:1 *Health and human rights* 6; George J. Annas, Wendy K. Mariner, and Wendy E. Parmet, “Pandemic Preparedness: The Need for a Public Health – Not a Law Enforcement/National Security – Approach” *American Civil Liberties Union* (January 2008), online: <<https://www.aclu.org/report/pandemic-preparedness-need-public-health-not-law-enforcementnational-security-approach>>; Brandon D.L. Marshall and Abdullah Shihpar, “We Can’t Police Our Way Out of a Pandemic” *New York Times* (27 April 2020), online: <<https://www.nytimes.com/2020/04/27/opinion/coronavirus-police.html>>.

¹⁸ UNAIDS (Joint United Nations Programme on HIV/AIDS), “Rights in the time of COVID-19: Lessons from HIV for an effective, community-led response” (March 2020), online: <https://www.unaids.org/sites/default/files/media_asset/human-rights-and-covid-19_en.pdf>.

¹⁹ Jay Cassel, *The secret plague: Venereal disease in Canada, 1838–1939*, (Toronto: University of Toronto Press, 1987).

²⁰ *Ibid.*

population at home. In 1917, the Toronto General Hospital documented that a full 13% of its patients were infected with syphilis alone.²¹

There were limited treatments available for these infections, and the country had little to no infrastructure to respond effectively. The diseases were highly stigmatized and ascribed with moral wrongdoing.²² Officials responded using force and coercion. In 1917, under the *War Measures Act*, the government included a new provision targeting only women known as Regulation 40D. The emergency law allowed for the forced testing and confinement of any women caught having sex with a member of the military. While sexually transmitted diseases did not discriminate, this new emergency law did, targeting poor and working-class single women working as sex workers and single “promiscuous” women - particularly Indigenous women, non-white immigrants, and those surviving on transactional sex. The law reinforced assumptions that women were the vectors of disease and solely responsible for transmission of sexual infections.²³

After the war, similar laws were enacted across the country. Alberta’s 1919 *Venereal Disease Prevention Act*, for example, allowed for the forcible testing of people suspected of having the infections, and confinement in jail for any person who tested positive.²⁴ While this law did not specify a focus only on women, it was often targeted at poor working-class women of colour and sex workers. Just two years after the law was enacted, the number of women in the local jail doubled.²⁵ Increasing the prison population for women did not combat the epidemic: the diseases still flourished across all aspects of society, and did not abate until the advent of penicillin in 1928.

There are also contemporary examples of using the criminal law to respond to public health issues. In the late 1980s Canada began mobilizing the criminal law to single out individuals with one particular health condition – HIV. Since 1989, over 200 people have faced criminal sanction.²⁶ The legal decisions finding individuals guilty, most often of aggravated sexual assault for engaging in consensual sex, have been criticized as out of touch with the scientific evidence about how HIV is actually transmitted, the risk of infecting sexual partners when basic precautions are taken, and the feminist critique that we need coherent sexual assault laws. This law has also been applied disproportionately to racialized Black

²¹ *Ibid.*

²² Janice Dickin McGinnis, “From salvarsan to penicillin: Medical science and VD control in Canada” in Wendy Mitchinson & Janice Dickin McGinnis, eds, *Essays in the history of Canadian medicine*, (Toronto: McClelland and Stewart, 1988) at 126-47.

²³ Cassel, *supra* note 19; Alex McClelland, *Living in a Negative Relation to the Law: Legal Violence and the Lives of People Criminally Charged Due to HIV in Canada* (Doctor of Philosophy (Humanities), Concordia University, 2020) [unpublished].

²⁴ Alberta, Provincial Board of Health, *REGULATIONS MADE AND ISSUED BY THE PROVINCIAL BOARD OF HEALTH UNDER POWER CONFERRED ON THE SAID BOARD BY THE VENEREAL DISEASES PREVENTION ACT, BEING CHAPTER 50 OF THE ALBERTA STATUTES 1918 AND AMENDMENTS THERETO* (8 December 1919), s. 3; Tracy Kulba, “Citizen crusaders: Social hygiene and the production of the female citizen in post-world war one Canada” (2008) 42:3 *West Coast Line* 59 14.

²⁵ Mélanie Méthot, “The Fort Saskatchewan Prison Ledger 1914-1919: Portraits of Vagrants” (2016) 39:1 *Prairie Forum* 27.

²⁶ Canadian HIV/AIDS Legal Network, “THE CRIMINALIZATION OF HIV NON-DISCLOSURE IN CANADA: CURRENT STATUS AND THE NEED FOR CHANGE” (18 June 2019), online: *Canadian HIV/AIDS Legal Network* <<http://www.aidslaw.ca/site/the-criminalization-of-hiv-non-disclosure-in-canada-report/?lang=en>>.

men, who have borne the brunt of the harsh punishments and sensationalized racist media coverage.²⁷ Studies have shown that, unlike effective HIV prevention approaches that emphasize community behavioural changes, policing discourages testing and drives people away from seeking healthcare.²⁸

It has only taken a few months for the inequality in contemporary Canadian society to be reflected in unequal COVID-19 infection rates in our communities. The elderly in long term care homes. Prisoners in overcrowded jails. Those with precarious housing, who are forced to rely on the shelter system or share temporary spaces. Migrant farm workers. The personal support workers, who are disproportionately drawn from immigrant and racialized communities. Those who live in crowded apartments with roommates or extended families. All of these communities, many of which are disproportionately composed of Black, Indigenous, and other racialized minorities, as well as individuals living with mental illness or experiencing addictions,²⁹ are at heightened risk of contracting COVID-19 due to their social determinants of health.³⁰

Inequality in our society also plays out in the unequal application and impact of laws. As detailed further below, the experiences to date suggest that specific communities – including Black, Indigenous and other racialized communities, those with precarious housing, recent immigrants, the LGBTQ2S, and young persons – are disproportionately impacted by COVID-19 law enforcement. Canadians – and particularly those communities most impacted by the pandemic - need public health supports, not punitive law enforcement and fines.

²⁷ Eric Mykhalovskiy et al, “‘Callous, Cold and Deliberately Duplicitous’: Racialization, Immigration and the Representation of HIV Criminalization in Canadian Mainstream Newspapers” (23 November 2016), online (pdf): *Semantic Scholar* <https://pdfs.semanticscholar.org/c30f/2038062333f00cc89d92752c82b0322c3c22.pdf?_ga=2.145751927.2132929343.1592584359-1487547020.1592584359>.

²⁸ Barry D. Adam et al, “Impacts of Criminalization on the Everyday Lives of People Living with HIV in Canada” (2014) 11:1 *Sexuality Research & Soc Policy* 39; Barry D. Adam et al, “HIV disclosure as practice and public policy” (2015) 25:4 *Critical Public Health* 386; Catherine Dodds et al, “Keeping confidence: HIV and the criminal law from HIV service providers’ perspectives” (2015) 25:4 *Critical Public Health* 410; Patrick O’Byrne, “Criminal law and public health practice: Are the Canadian HIV disclosure laws an effective HIV prevention strategy?” (2012) 9:1 *Sexuality Research & Soc Policy* 70.

²⁹ Akwatu Khenti, “The Canadian war on drugs: Structural violence and unequal treatment of Black Canadians” (2014) 25:2 *Intl J of Drug Policy* 190, online: <<https://www.sciencedirect.com/science/article/abs/pii/S0955395913002302?via%3Dihub#!>>; Alwasi Owusu-Bempah & Scot Wortley, “Race, Crime, and Criminal Justice in Canada” in Sandra Bucerius & Michael Tonry, eds, *The Oxford Handbook of Ethnicity, Crime, and Immigration*, (New York: Oxford University Press, 2014) 281.

³⁰ Benjamin Shingler & Verity Stevenson, “COVID-19’s devastating toll on families in Montreal’s poorest neighbourhoods”, *CBC News* (15 May 2020), online: <<https://www.cbc.ca/news/canada/montreal/montreal-low-income-inequality-covid-19-1.5570296>>; Tracey Lindeman, “Why are so many people getting sick and dying in Montreal from Covid-19?”, *The Guardian* (13 May 2020), online: <<https://www.theguardian.com/world/2020/may/13/coronavirus-montreal-canada-hit-hard>>.

A Patchwork of Local Emergency Orders

Declaring a state of emergency gives a federal, provincial, or municipal government (or individual ministers) the power to issue sweeping orders to control many aspects of public and private life. By the end of March all the provinces and territories had declared some form of a state of emergency, and in short order governments released a flurry of emergency regulations, orders and health directives. The majority of the emergency orders impacting the day-to-day lives of Canadians are determined at the provincial and territorial level, with many municipalities also layering on their own emergency bylaws.

Although all jurisdictions in Canada passed emergency laws, enforcement of those laws has varied significantly, and the vast majority of COVID-related tickets have been handed out in three provinces: Quebec, Ontario and Nova Scotia.³¹ For the purposes of this report, a brief summary of the laws that had the most impact on individuals' day-to-day activities in these three provinces is provided below.

Quebec Emergency Orders

Quebec, the Canadian province worst hit by COVID-19, declared a public health emergency on March 13, 2020.³² By March 21st, the provincial government had banned all indoor and outdoor gatherings with a number of narrow exceptions:

- The gathering is required by a work environment that is not the subject of a suspension by decree;
- The gathering is to obtain a good or a service from an establishment or a person whose activities are not suspended by decree;
- The gathering is in a transportation vehicle;
- For an outside gathering, if, a) the people assembling live in the same residence, b) if one person is receiving a service from another, or c) if a minimum distance of 2 meters is observed;
- The gathering is inside a private residence for its occupants and others who provide a required service or support.³³

On May 22nd, the restrictions on outdoor gatherings were relaxed to allow gatherings of a maximum of 10 people from not more than three households, so long as people from different households stayed

³¹ For more details see the "Enforcement by the Numbers" section of this report.

³² *Order in Council declaring a public health emergency throughout Quebec territory* (13 March 2020), online: <<http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=1&file=104301.pdf>>.

³³ *CONCERNING renewal of the public health emergency under section 119 of Public Health Act and certain measures to protect the health of the population* (20 March 2020), online: <<https://cdn-contenu.quebec.ca/cdn-contenu/adm/min/sante-services-sociaux/publications-adm/lois-reglements/decret-222-2020.pdf>>.

two metres apart.³⁴ Restrictions on indoor gatherings remained in force until mid-June, when the government slowly started easing them in some locations.³⁵

Initially police that witnessed alleged violations of the emergency orders were restricted to issuing a general offence report, which would be sent to investigators and then the director of criminal and penal prosecutions (DPCP) for a decision on whether or not to issue a fine. On March 29th, city officials held a news conference and announced that the DPCP had authorized Montreal and Quebec provincial police to immediately issue tickets, with expected fines of \$1000, to those who violated physical distancing regulations.³⁶ Montreal police also increased patrols in the neighbourhoods most affected by the virus, and Montreal's top public health official stated that if individuals "do not comply with these orders after warnings from police, officers have been told to hand out fines."³⁷

Ontario Emergency Orders

On March 17, 2020, Ontario also declared a state of emergency under the province's *Emergency Management and Civil Protection Act* ("EMCPA").³⁸ Shortly thereafter, Ontario began publicizing emergency orders, including the closure of certain establishments and non-essential businesses.³⁹ On March 18th, Ontario prohibited all organized public events of over 50 people⁴⁰ and ten days later the restrictions were tightened to prohibit organized events of more than 5 people, as well as social or religious gatherings of more than 5 people regardless of where they took place.⁴¹ There were exceptions written in for gatherings of members of a single household and for funeral services with 10 or fewer

³⁴ *Ordering of measures to protect the health of the population amid the COVID-19 pandemic situation* (22 May 2020), online: <<https://cdn-contenu.quebec.ca/cdn-contenu/adm/min/sante-services-sociaux/publications-adm/lois-reglements/decret-543-2020-anglais.pdf?1590166601>>; Benjamin Shingler, "Quebecers allowed to gather outside in groups of 10 from 3 households, respecting 2-metre rule", *CBC News*, (20 May 2020), online: <<https://www.cbc.ca/news/canada/montreal/quebec-gatherings-parks-1.5577111>>.

³⁵ "Gatherings during the COVID-19 pandemic" (last modified 9 June 2020), online: *Official website of the Gouvernement du Québec* <<https://www.quebec.ca/en/health/health-issues/a-z/2019-coronavirus/gatherings-events-covid19/>>.

³⁶ "COVID-19: Montreal, Quebec police can now directly fine physical distancing violators", *CTV News* (4 April 2020), online: <<https://montreal.ctvnews.ca/covid-19-montreal-quebec-police-can-now-directly-fine-physical-distancing-violators-1.4882791?cache=%3Fclipid%3D373266>>.

³⁷ Franca G. Mignacca, "More fines, more patrols as Montreal police ramp up enforcement of public health orders", *CBC News* (29 March 2020), online: <<https://www.cbc.ca/news/canada/montreal/montreal-mayor-police-covid-19-emergency-1.5514281>>.

³⁸ *Order in Council 518/2020 Declaration of Emergency under the Emergency Management and Civil Protection Act* (17 March 2020), online: <<https://www.ontario.ca/orders-in-council/oc-5182020>>.

³⁹ *O. Reg. 51/20: EMERGENCY ORDER UNDER SUBSECTION 7.0.2 (4) OF THE ACT* (18 March 2020), online: <<https://www.ontario.ca/laws/regulation/200051/v1>>; *O. Reg. 82/20: ORDER UNDER SUBSECTION 7.0.2 (4) - CLOSURE OF PLACES OF NON-ESSENTIAL BUSINESSES* (24 March 2020), online: <<https://www.ontario.ca/laws/regulation/200082/v1>>.

⁴⁰ *O Reg 52/20: ORDER UNDER SUBSECTION 7.0.2 (4) OF THE ACT - ORGANIZED PUBLIC EVENTS, CERTAIN GATHERINGS* (18 March 2020), online: <<https://www.ontario.ca/laws/regulation/200052/v1>>.

⁴¹ *O Reg 52/20: ORDER UNDER SUBSECTION 7.0.2 (4) OF THE ACT - ORGANIZED PUBLIC EVENTS, CERTAIN GATHERINGS* (28 March 2020), online: <<https://www.ontario.ca/laws/regulation/200052/v2>>.

attendees.⁴² Although some restrictions started to be loosened in mid-May, an exception exempting larger gatherings in businesses not required to close was not added until May 29th.⁴³

Ontario also put in place specific restrictions on access to and use of public parks. On March 30th the province closed all “outdoor recreational amenities” that were intended for use by more than one family, whether or not they were publicly or privately owned.⁴⁴ Outdoor recreational amenities were specifically defined to include:

- outdoor playgrounds, play structures and equipment,
- outdoor sports facilities and multi-use fields,
- off-leash dog areas,
- portions of parks and recreational areas containing outdoor fitness equipment,
- community gardens, and
- outdoor picnic sites, benches and shelters in parks and recreational areas.

The regulation prohibited “entry or use” of closed-down outdoor recreational amenities, but specified that individuals were permitted to walk through or use portions of parks and recreational areas that were not closed.⁴⁵ In late April these restrictions were eased to allow for use of community gardens under certain conditions.⁴⁶ On May 19th park restrictions were further relaxed to allow the use of many outdoor sports amenities, off-leash dog areas, picnic sites, and benches or shelters in parks or recreational areas.⁴⁷ Social distancing of two metres is required during use of such areas and amenities, with an exception for single households.

⁴² *Ibid.*

⁴³ On May 16th, the order was amended to establish conditions for religious services attended by persons in motor vehicles. On May 29th an exception was added to 52/20 exempting businesses not required to close under order 82/20 from the prohibition. *O. Reg. 52/20: ORDER UNDER SUBSECTION 7.0.2 (4) OF THE ACT - ORGANIZED PUBLIC EVENTS, CERTAIN GATHERINGS* (16 May 2020), online: <<https://www.ontario.ca/laws/regulation/200052/v3>>; *O. Reg. 52/20: ORDER UNDER SUBSECTION 7.0.2 (4) OF THE ACT - ORGANIZED PUBLIC EVENTS, CERTAIN GATHERINGS* (29 May 2020), online: <<https://www.ontario.ca/laws/regulation/200052/v4>>.

⁴⁴ *O. Reg. 104/20: EMERGENCY ORDER UNDER SUBSECTION 7.0.2 (4) OF THE ACT - CLOSURE OF OUTDOOR RECREATIONAL AMENITIES* (30 March 2020), online: <<https://www.ontario.ca/laws/regulation/200104/v1>>.

⁴⁵ The regulation specified that “nothing in this Order precludes individuals from walking through or using portions of park and recreational areas that are not otherwise closed and that do not contain an outdoor recreational amenity described in subsection (2).” *O. Reg. 104/20: EMERGENCY ORDER UNDER SUBSECTION 7.0.2 (4) OF THE ACT - CLOSURE OF OUTDOOR RECREATIONAL AMENITIES* (30 March 2020), s. 1(4), online: <<https://www.ontario.ca/laws/regulation/200104/v1>>.

⁴⁶ *O. Reg. 104/20: EMERGENCY ORDER UNDER SUBSECTION 7.0.2 (4) OF THE ACT - CLOSURE OF OUTDOOR RECREATIONAL AMENITIES* (24 April 2020), online: <<https://www.ontario.ca/laws/regulation/200104/v2>>.

⁴⁷ The May 19th revision limited the 104/20’s application to outdoor playgrounds, play structures and equipment, outdoor pools, whirlpools and spas, splash pads, spray pads, wading pools and water slides, communal facilities intended to be used by persons using outdoor sports amenities (with an exception for essential businesses), and all portions of park and recreational areas containing outdoor fitness equipment. 104/20 allows for walking through and use of areas not otherwise closed and not containing a facility - other than facilities intended to be used by persons using outdoor sports amenities – to which the order applies. Under the current order, individuals can use many outdoor sports amenities, off-leash dog areas, picnic sites, and benches or shelters in parks or recreational areas. Social distancing of 2 metres is required during use of such areas and amenities, with an exception for single households. *O. Reg. 104/20: EMERGENCY ORDER UNDER SUBSECTION 7.0.2 (4) OF THE ACT - CLOSURE OF OUTDOOR RECREATIONAL AMENITIES* (19 May 2020), online: <<https://www.ontario.ca/laws/regulation/200104/v3>>.

Local bylaws placed further restrictions on individual freedoms. Toronto, for example, declared a public health emergency on March 23, 2020,⁴⁸ requiring all individuals in parks or public squares to maintain two metres separation from anyone not from the same household.⁴⁹ In Marathon, Ontario a local bylaw was passed that required every person to remain two metres from anyone who was not from the same household while on public property, with no exceptions whatsoever.⁵⁰

Police powers were also expanded. Under an Ontario emergency regulation which came into effect on March 31st, a wide range of law enforcement officials were empowered to require individuals to provide their name, date of birth, and address so long as there were reasonable and probable grounds to believe that they failed to comply with an emergency order.⁵¹ Upon receiving such a request, individuals were required to “promptly comply”.⁵²

Anyone ticketed received a fine of at least \$750, with additional fees such as a victim fine surcharge added on.⁵³ The EMCPA also established a separate fine of \$1000 for obstruction of persons exercising powers or performing duties in accordance with an emergency order.⁵⁴

Nova Scotia Emergency Orders

Nova Scotia declared a state of emergency on March 22 and immediately put into place an order closing all provincial and municipal parks and beaches.⁵⁵ The order specified that a violation could result in fines between \$500 and \$10,000. The complete closure of parks remained in force until May 1, when the

⁴⁸ Miriam Katawazi, “Toronto declares state of emergency amid COVID-19 pandemic” *CTV News* (23 March 2020), online: <<https://toronto.ctvnews.ca/toronto-declares-state-of-emergency-amid-covid-19-pandemic-1.4864679>>.

⁴⁹ City of Toronto, By-law No 322-2020, *To amend Municipal Code Chapters 608 and 636 to impose emergency physical distancing regulations with respect to Parks, and Public Squares* (2 April 2020), online: <<https://www.toronto.ca/legdocs/bylaws/2020/law0322.pdf>>.

⁵⁰ Marathon, by-law No 1979, *A by-law to promote and regulate physical distancing during the COVID-19 Emergency within the Town of Marathon* (6 April 2020), at 6.

⁵¹ *O. Reg. 114/20: ORDER UNDER SUBSECTION 7.0.2 (4) OF THE ACT - ENFORCEMENT OF ORDERS* (31 March 2020), online: <<https://www.ontario.ca/laws/regulation/200114>>.

⁵² *O. Reg. 114/20: ORDER UNDER SUBSECTION 7.0.2 (4) OF THE ACT - ENFORCEMENT OF ORDERS* (31 March 2020), s. 1(2), online: <<https://www.ontario.ca/laws/regulation/200114>>.

⁵³ *Schedule 4.0.1, Emergency Management and Civil Protection Act* (2020), online: <<https://www.ontariocourts.ca/ocj/how-do-i/set-fines/changes-to-the-consolidated-set-fine-schedules/schedule-4-0-1-2020-03-18/>>.

⁵⁴ *Schedule 4.0.1, Emergency Management and Civil Protection Act* (2020), online: <<https://www.ontariocourts.ca/ocj/how-do-i/set-fines/changes-to-the-consolidated-set-fine-schedules/schedule-4-0-1-2020-03-18/>>.

⁵⁵ *Direction of the Minister under a Declared State of Emergency* (Nova Scotia: 22 March 2020), online: <<https://novascotia.ca/coronavirus/docs/Direction-of-Minister-under-a-Declared-State-of-Emergency.pdf>>.

prohibition was softened and parks, with the exception of children’s playgrounds and beaches, were reopened.⁵⁶ Beaches and trails within beaches were reopened on May 16th.⁵⁷

Through all the stages of closure and re-opening, a directive from the Medical Officer of Health required all persons present and residing in Nova Scotia to “maintain social distancing of two metres or six feet and keep social gatherings to 5 persons or less.”⁵⁸ Concerningly, there was no legal exemption for individuals who lived in the same household to be in closer physical contact, with the absurd result that every time a Nova Scotian came within 2 metres of each other, they were breaking the law. In early April the government was asked to comment on the breadth of their physical distancing order. The responses were confusing and contradictory. CBC News reported that the RCMP responded that their officers would “make an exception as long as people can prove they live together by showing the same address on a driver’s licence or a piece of mail.”⁵⁹ The province provided media with a statement that said the social distancing requirements apply to situations where people from different households may gather, but also added that the province is encouraging people, even those who live together, to practice physical distancing, if possible.⁶⁰ And a government spokesperson added that “while police have been given the authority to interpret and apply the Public Health Order, we know they are also being reasonable and understanding, based upon the unique circumstances of each situation.”⁶¹

Even when the law was amended on May 15 to allow a family household to engage in “close social connection with another immediate family household”, there continued to be no legal exemption for members of the same household to be in close physical contact.⁶² The first time such an exemption was mentioned in a legal order was around the beginning of June.⁶³

Nova Scotia also used legal orders to direct law enforcement practices. On March 30th the Minister of Justice issued a Ministerial Directive to the police, directing all municipal police forces and the Royal Canadian Mounted Police to “escalate their efforts from public education to enforcement, in accordance with officer discretion.”⁶⁴ Senior police leadership “in all municipal police forces and the RCMP” was

⁵⁶ *Direction of the Minister To Partially Lift Earlier Direction* (Nova Scotia: 1 May 2020), online: <<https://novascotia.ca/coronavirus/docs/Direction-of-Minister-under-a-Declared-State-of-Emergency-1-May-2020.pdf>>.

⁵⁷ *Direction of the Minister To Partially Lift Earlier Direction* (Nova Scotia: 15 May 2020), online: <<https://novascotia.ca/coronavirus/docs/EMA-15-May-2020.pdf>>.

⁵⁸ *ORDER BY THE MEDICAL OFFICER OF HEALTH UNDER SECTION 32 of the HEALTH PROTECTION ACT 2004, c. 4, s. 1.* (24 March 2020), s. 6, online: <<https://nsfa-fane.ca/wp-content/uploads/2020/03/COVID-19-Global-Order-2020-03-24-2.pdf>>.

⁵⁹ Emma Smith & Elizabeth McMillan, “Legal experts say COVID-19 orders under N.S. state of emergency lack detail”, *CBC News* (14 April 2020), online: <<https://www.cbc.ca/news/canada/nova-scotia/halifax-regional-police-enforcement-covid-19-public-health-orders-david-fraser-1.5531023>>.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *ORDER BY THE MEDICAL OFFICER OF HEALTH UNDER SECTION 32 of the HEALTH PROTECTION ACT 2004, c. 4, s. 1.* (15 May 2020), s. 28(a.), online: <https://novascotia.ca/just/regulations/rg1/2020/RG1-2020-05-20.pdf?fbclid=IwAR0l19fiyj0c4lInicejgPW-KnHtYktGnuAP8CWwPj_8sOOfEKzcSm7KobOw>.

⁶³ *ORDER BY THE MEDICAL OFFICER OF HEALTH UNDER SECTION 32 of the HEALTH PROTECTION ACT 2004, c. 4, s. 1.* (3 June 2020), online: <<https://novascotia.ca/just/regulations/rg1/2020/RG1-2020-06-03.pdf>>.

⁶⁴ *MINISTER’S DIRECTIVE* (30 March 2020), s. 1, online: <<https://novascotia.ca/coronavirus/docs/Minister-Furey-Directive-March-30-2020.pdf>>.

also specifically ordered to “ensure that police officers adhere to this Directive.” The Directive, which as of June 19 remained in force, requires police to focus on enforcing prohibitions related to parks and beaches, social distancing, gatherings, quarantining and isolation.

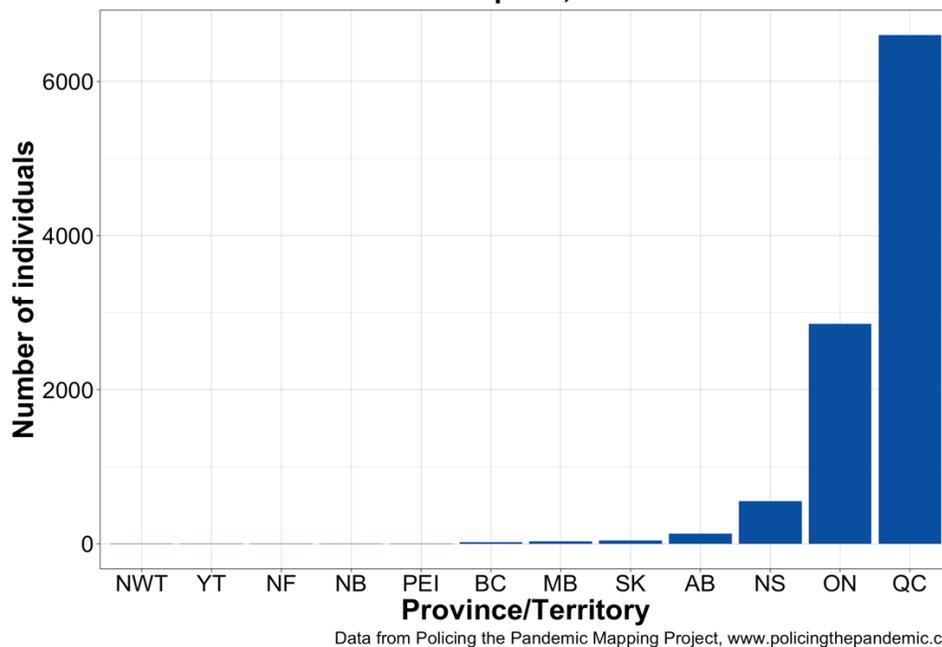
Enforcement by the numbers

There is no official government source providing a country-wide picture of enforcement actions related to the pandemic. Based on publicly-available sources, however, we estimate that between April 1 and June 15, 2020 there were over 10,000 tickets issued or charges laid related to COVID-19.⁶⁵

Across the country this has resulted in over \$13,000,000 in COVID-related fines.

Quebec leads the country in the scope and scale of COVID-19 related enforcement with a combined total of 6600 people who have been fined or charged with an offence. This is followed by Ontario (2853), Nova Scotia (555), Alberta (129), Saskatchewan (44), Manitoba (30), and British Columbia (22). The rest of the provinces have less than five total individuals facing fines or charges related to COVID-19 (see Figure 1).

Figure 1: Total number of COVID-related police/bylaw enforcement actions since April 1, 2020



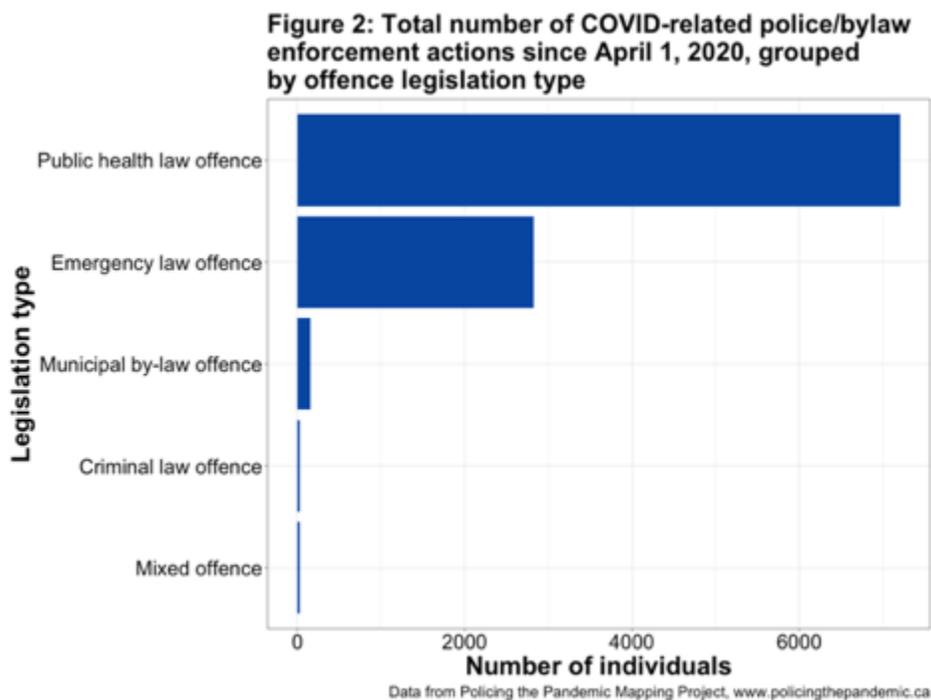
The amount of the fines for physical distancing and minimal gathering violations varies across the country. In Quebec the fines are most often \$1546.00, and are enabled under the province's Public Health Act. In Ontario, fines enforced under the Emergency Management and Civil Protection Act are \$750.00, with a mandatory victim surcharge, bringing the cost of each ticket to \$880.00. In Nova Scotia, tickets are most often \$697.50. In Saskatchewan, tickets are the highest in the country, at a minimum of \$2000.00 each. In all instances, the size of the fine goes up after the first alleged violation, and can

⁶⁵ All numbers that we present here are conservative estimates based on collected data from publicly accessible media articles, and government and police websites and press release communications. Please see the Methodology section of this report for more details.

potentially result in jail time. Although we have not seen evidence of anyone going to jail for receiving multiple tickets in Canada, there have been media reports of people being fined multiple times.⁶⁶

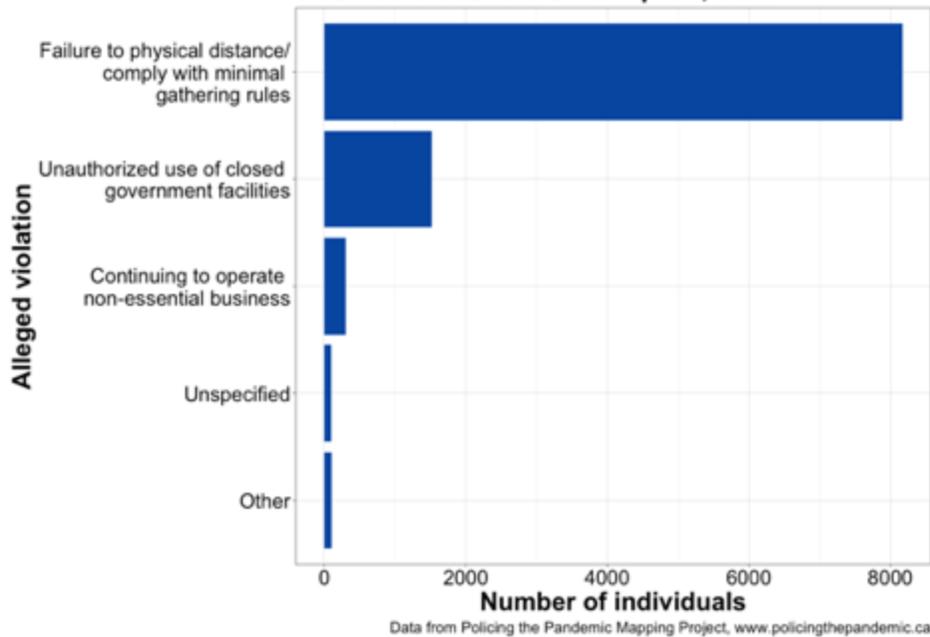
Based on known figures, Quebec leads the country with \$10,085,598.00 in total fines issues, followed by Ontario (\$2,424,710.00), Nova Scotia (\$424,429.00), Alberta (\$114,600.00), and Saskatchewan (\$100,000.00). The rest of the provinces and territories have issued less than \$25,000.00 in fines, with some jurisdictions in the low hundreds.

Most of the offences relate to provincial emergency legislation (approximately 2827 alleged violations) and various public health laws (7206 alleged violations), with the majority of the citations targeting physical distancing and gathering requirements (see Figures 2 and 3). There have also been 32 alleged *Criminal Code* violations.



⁶⁶See e.g. Department of the Eeyou Eenou Police Force, Press Release, “Successful Drug Seizure” (3 April 2020), online: [Facebook](https://www.facebook.com/EeyouEenouPoliceForce/photos/a.351055118297059/2825445524191327/?type=3&theater) <<https://www.facebook.com/EeyouEenouPoliceForce/photos/a.351055118297059/2825445524191327/?type=3&theater>>; Daniel Renaud, “Pluie de constats dans un repaire de la mafia”, *La Presse* (5 May 2020), online: <<https://www.lapresse.ca/covid-19/2020-05-05/pluie-de-constats-dans-un-repaire-de-la-mafia?fbclid=IwAR0ncwfGsoSdlrrd0Kz0jB6PrKIS2rznb4GU-uW8-twssnAYZdN3t5EeTuA>>.

Figure 3: Total number of COVID-related noncriminal enforcement actions since April 1, 2020



At the end of May, the RCMP, who have been tasked with enforcing the federal *Quarantine Act*, announced that they had conducted home visits on 2,200 people who were under mandatory self-isolation. Canada Border Services Agency and the Public Health Agency of Canada shares a list of names of recent travelers to local RCMP, who then conduct the home visits. To date, 4 tickets of \$1000 for violating self-isolation under the *Quarantine Act* have been issued: 3 in undisclosed locations, and 1 in Richmond, British Columbia.

Shifting practices of enforcement

Quebec, Ontario, and Nova Scotia initially saw the highest levels of enforcement across the country. Some areas within those jurisdictions, however, have recently begun to scale back enforcement in favour of education. For example, in Ottawa, the city recently announced a shift from enforcement to education. Instead of issuing tickets, Ottawa bylaw officers are now issuing warnings. It was reported that 40 verbal warnings were issued during last week of May to beachgoers in the city.⁶⁷

In other provinces, however, authorities have announced that enforcement is only just beginning. The Manitoba government has indicated that the province is increasing the number of public-health enforcement personnel.⁶⁸ In other areas new enforcement tensions have emerged as public spaces have started to re-open. In Toronto and St. Catharines, Ontario, for example, large public gatherings that took

⁶⁷ Josh Pringle, “Bylaw officers issue 40 warnings in parks during heat wave”, *CTV News* (28 May 2020), online: <<https://ottawa.ctvnews.ca/bylaw-officers-issue-40-warnings-in-parks-during-heat-wave-1.4959113>>.

⁶⁸ Carol Sanders & Ben Waldman, “Province increasing number of public-health enforcement personnel”, *Winnipeg Free Press* (14 May 2020), online: <<https://www.winnipegfreepress.com/special/coronavirus/province-increasing-number-of-public-health-enforcement-personnel-570473022.html#long-story>>.

place in parks and beaches prompted the municipal governments to indicate that enforcement responses would be escalated.⁶⁹

As provinces open up, new forms of enforcement are also emerging. The suburb of Montreal, Cote St Luc, became the first municipality in Canada to legally mandate the wearing of masks for anyone entering city-owned buildings or local businesses. The city council passed the bylaw on June 1st, enabling fines between \$100 and \$500 for businesses and individuals who violate the bylaw.

Ottawa and Brampton have made the wearing of masks mandatory on the cities' public transportation systems. Toronto officials similarly announced that masks on public transit will become a requirement in July, and have stated that they do not intend to enforce the fines.⁷⁰ Ottawa's transit manager stated that there would not be "mask police", but did say that while the measure would be communicated first with education taking priority over enforcement, fines for non-compliance did remain a possibility.⁷¹

Finally, in many jurisdictions regular city bylaw enforcement was suspended due to emergency measures. As reopening efforts move forward, routine bylaw enforcement is restarting and there are jurisdictions where bylaw officers will have the power to enforce both everyday bylaws as well as COVID-19 measures. In Windsor, for example, municipal bylaw enforcement officers resumed regular service at the beginning of June and will therefore be enforcing COVID-19 measures along with other city bylaws simultaneously.⁷²

“Snitch lines” for non-compliance

Based on available reports from media and government, there are over 30 COVID-19 related non-compliance lines across the country, primarily to report issues related to not following emergency public health protocols. The vast majority of these are in Southern Ontario (20). The remaining 10 snitch lines are spread across BC, Alberta, Saskatchewan, Quebec, New Brunswick, and Newfoundland. In some jurisdictions, 311 has been promoted as the way to report non-compliance, while in others there have been dedicated phonelines and web portals set up. Media reports and government press releases on

⁶⁹ Bonnie Heslop, “MAYOR OF ST. CATHARINES 'DISAPPOINTED' FOLLOWING PARTY AT SUNSET BEACH”, *iHeartRadio* (27 May 2020), online: <<https://www.iheartradio.ca/610ctb/news/mayor-of-st-catharines-disappointed-following-party-at-sunset-beach-1.12520658>>; Carol Sanders & Ben Waldman, “Province increasing number of public-health enforcement personnel”, *Winnipeg Free Press* (14 May 2020), online: <<https://www.winnipegfreepress.com/special/coronavirus/province-increasing-number-of-public-health-enforcement-personnel-570473022.html#long-story>>; Karena Walter, “Hundreds party on St. Catharines beach during pandemic”, *The St. Catharines Standard* (27 May 2020), online: <<https://www.stcatharinesstandard.ca/news-story/9998484-hundreds-party-on-st-catharines-beach-during-pandemic/>>.

⁷⁰ “Masks to be made mandatory on the TTC July 2”, *CTV News* (11 June 2020), online: <<https://toronto.citynews.ca/2020/06/11/ontario-transit-masks-coronavirus/>>.

⁷¹ Ted Raymond, “‘No mask police’: Transit commission approves mandatory masks on OC Transpo”, *CTV News* (1 June 2020), online: <<https://ottawa.ctvnews.ca/no-mask-police-transit-commission-approves-mandatory-masks-on-oc-transpo-1.4963525>>.

⁷² Dave Battagello, “Bylaw enforcement to ramp back up, still include COVID-19 violations”, *Windsor Star* (27 May 2020), online: <<https://windsorstar.com/news/local-news/bylaw-enforcement-to-ramp-up-include-covid-19-violations>>.

these lines have indicated that thousands of calls have been received across the country. In some instances, it has been noted that the non-compliance lines were set up as a diversion from 911.⁷³ Not all of these snitch lines are concerned with issues of physical distancing. In March, the Government of Ontario launched a snitch line to report COVID-related price gouging across the province.⁷⁴ The Canada Revenue Agency recently announced it has expanded its federal tax cheat reporting portal to include claims of Canada Emergency Response Benefit (CERB) fraud. This federal snitch line adds another way that communities have been called on by governments to report on each other in the context of COVID-19.

⁷³ See e.g. Sûreté du Québec, “Les appels sur la COVID-19 à la Sûreté du Québec” (8 April 2020), online (video): *YouTube* <<https://www.youtube.com/watch?v=PV59oaAKJT4>>.

⁷⁴ Rob Ferguson, “Province reduces size of public gatherings to five, clamps down on price gougers”, *The Star* (28 March 2020), online: <<https://www.thestar.com/news/canada/2020/03/28/i-have-zero-tolerance-doug-ford-takes-aim-at-covid-19-price-gougers.html>>.

Individuals' experiences of enforcement

Over the past two months over one hundred people have gotten in touch with CCLA to share their stories of being stopped, questioned or ticketed. While this represents a small proportion of the total number of tickets issued across the country, there is a notable consistency across the individual accounts. The overwhelming impression upon reading these experiences is that these were individuals who were doing their best to comply with public health advice. None were, as far as we can tell, seriously endangering themselves, others, or the health of the general public through their actions. Many were fined hundreds of dollars for minor technical violations of broad and vague legal orders. Many others seem to have been ticketed for actions that were entirely legal. Across all three jurisdictions the arbitrary rules, increased enforcement powers, and significant fines had disproportionate impacts on specific communities.

A number of the experiences that individuals shared with the CCLA are reproduced below under three headings: misapplication of the law, enforcement that prejudiced public health rather than protected it, and disproportionate impacts.

Misapplication of the law

Many of the individuals who got in touch with CCLA reported being ticketed by police and bylaw enforcement for what appears to have been perfectly legal behaviour. Several individuals in Ontario, for example, shared stories of activities that were never illegal - sharing a car with an essential services coworker, for example, or stopping to talk with one other person on a Toronto sidewalk.

Enforcement actions at parks have also presented significant problems. In Ottawa, for example, the city issued the advice that parks were open for walking through, but that individuals could not stop or linger in the parks. Ottawa Parks tweeted that any individual or group “play”, even if it was not on a sports field or playground equipment, was prohibited.⁷⁵ Numerous individuals who contacted the CCLA were ticketed for when bylaw officers judged they had not been passing through the park quickly enough and had therefore crossed the line into ‘lingering’. There was no apparent legal source for these tickets. Provincial orders did not extend this far, and no emergency bylaws impacting parks were passed. In fact, the Ontario provincial emergency order governing park closures stated that green areas which were not specifically closed by the provincial order remained open for unrestricted public use.⁷⁶ It was only after numerous calls and emails to the City of Ottawa that CCLA was provided with a legal explanation of the source of these closures: powers granted under pre-existing bylaws that delegate authority to the city’s General Manager of Recreation, Cultural and Facility Services to close off portions of the parks. It is unclear how the city can legally justify fining these individuals \$880 for violating emergency legislation when they were not contravening provincial or municipal emergency orders.

⁷⁵ City of Ottawa, “The warm spring weather may inspire you to hit the outdoors, but please remember that all #OttCity parks and park equipment remain closed. Practice #PhysicalDistancing and maintain a minimum 2-metre distance from others. For more info: <https://bit.ly/3bKKYaD>” (2 April 2020 at 16:30), online: *Twitter* <<https://twitter.com/ottawacity/status/1245810807910412288>>.

⁷⁶ *O Reg 104/20: Emergency Order under Subsection 7.0.2 (4) of the Emergency Management and Civil Protection Act – Closure of Outdoor Recreational Facilities* (30 March 2020), s. 1(4), online: <<https://www.ontario.ca/laws/regulation/200104/v1>>.

Similarly, in Toronto multiple individuals recounted tickets being issued for walking or running through open parks. Several others said that they were charged \$880 for a violation of an Emergency Order for letting their dog run off-leash; they weren't in a designated off-leash dog area at the time (these areas had been closed by provincial order), but were fined under the emergency legislation regardless.

In these and many other instances there does not appear to have been a legal basis for enforcement officers' actions to fine individuals under emergency legislation.

Detained, questioned, identified and fined for legal activity

OH, Toronto, Ontario

I am 17 years old. On April 9, 2020 I was ticketed for "being closer than 2 metres to any other person who is not a member of the same household". I was out taking a walk on Danforth Avenue close to Pape when I saw a friend from my high school. I stopped to say hello when an officer approached. The officer didn't ask us to move along, he just gave both me and my friend tickets.

Jacky, Ottawa, Ontario

I was issued a ticket for \$880 yesterday while in a public park. I was, for the most part, on the paths and walking through the park. As I was doing so I walked up a large hill that's in the center of the park (for some cardio) and then went back down the other side. I was going up once more and getting ready to head home when I was approached by a bylaw officer. I said I was happy to leave and apologized. He said no, he would be issuing me a ticket then asked me to produce my ID. I didn't have any on me as I was out for exercise, so he said he would be calling the police. I had to call my partner to take a photo of my ID and give it to the officer. I told him I was on my way through and he said I was using the park facilities. I have made a phone call to city officials already and will continue to do so as I don't believe I was in violation of the emergency rules.

RD, Aurora, ON

I was walking my dog and baby on a park path. I saw three older people coming my way and they weren't very physically fit so I pulled off to the side at a safe distance away from them and waited for them to pass. I had my back to them so I wouldn't breathe in their direction. I was checking my phone in the meantime. When they were past me, I unparked my stroller and began walking again when a bylaw officer in a car marked "bylaw animal control" cut me off (sped in front of my stroller and my dog) in the middle of a small and busy park. He wasn't wearing any PPE and was definitely not six feet away from me. He began to tell me I was standing in one spot for too long and said he had been watching me for a while. When he asked if I knew that the park was closed, said there was a zero-tolerance policy, and told me I was getting an \$880 ticket. However, I wasn't using the park greenspace or amenities. The town of Aurora website says that we can use the walkways in parks as long as we adhere to social distancing, which is what I was doing.

CS, Toronto, Ontario

I was running alone in High Park in Toronto. I went down a road wide enough for about 1.5 cars, surrounded by forest. About 100 metres down this road, there was a blockade. I thought this was so cars couldn't go down the road. I went around the blockade and turned a corner where I was approached about eight bylaw officers. I still did not think I did anything wrong because I was alone.

One bylaw officer told me I was in the off-leash dog park, which is closed. I wasn't super familiar with the park so I didn't question it, even though a road surrounded by trees is clearly not a dog park. I know exactly where I was ticketed because my running app shows where I was stopped for 10 minutes. It's nowhere near the High Park dog park, so this was inaccurate on his part.

I did everything I could to practice social distancing and run alone, and it still wasn't enough. It was not obvious the area was off limits for runners or that I'd be subject to a huge fine (\$880). The rest of the park was BUSY with couples and families, many of whom had children running around anywhere they wanted. So why ticket people running down a quiet road away from the commotion?

Rasmus Larsen, Toronto, Ontario

I was running in High Park Toronto on April 20, 2020 around 3:45pm. The park was open for public use (except amenities, e.g., playgrounds) according to an official sign placed by the north-east entrance (corner of Keele/Bloor) and the High Park website. Once inside the park, I was stopped by a group of approximately 15-20 police officers on a paved road (Spring Rd.), which according to them was considered an "amenity". There were multiple open entries to the park area, though some entrances were sporadically covered (though not blocked) by yellow tape that read "caution" (the kind of tape you can buy in hardware stores). There were no signs clearly indicating the area was off limits (the type of signs seen in other Toronto parks). I explained to the officers that there was no way of knowing that the area was off limits; I also respectfully pointed out the obvious that it was very counter-intuitive that the word "amenity" would cover the roads of an officially open park. However, even though they seemed to agree with the absurdity of the situation, they reported that they had been given their orders.

Everyone in the immediate vicinity was fined, though several people simply turned around and were not fined (nor did the officers attempt to stop people leaving the area). Also, there is a narrow path literally parallel, and next to the paved road only separated by a thin "chicken fence" where numerous people were passing without getting fined. Some of them even congregated asking the police (while leaning onto the fence) what they were doing, visibly confused by the situation.

If the purpose of ticketing was to enforce social distancing in an open park, I wonder why the police would choose to arbitrarily block a wide paved road that was ideal for social distancing, while keeping narrow paths open? It was indeed some sight to see a small group of officers take up an entire road, while dozens of civilians had to cluster on narrow and muddy paths.

Arbitrary enforcement prejudicing public health rather than protecting it

Over-zealous, technical enforcement of confusing, broad and vague laws frequently led to fines that were completely disconnected with the goal of protecting public health.

Almost all the individuals who got in touch with CCLA were alone or with members of their own household when they were ticketed. The few who were with individuals from other households said they were careful to practice appropriate physical distancing.

Numerous Quebeckers, who were prohibited from partaking in most kinds of outdoor gatherings with very limited exceptions for over two months, sent us accounts of how they were fined over a thousand dollars while doing their absolute best to maintain appropriate distances from others. They described having to walk closer to a friend for a few seconds to navigate a busy narrow street corner, or being ticketed when a police officer judged that the stranger walking behind them on a park path came too close.

Many Ontarians described tickets being issued for being in an empty field, parking lot, or other location where virus transmission was a near impossibility. Several tickets were levied on elderly persons who had stopped on a bench to catch their breath in an otherwise deserted park. In other cases, bylaw enforcement punished actions that people took in order to protect public health, such as stepping off a path onto the grass to allow more space between path users. It is difficult to see how this type of technical enforcement meaningfully protects public health. The likelier outcome is damaged public trust in government action and reduced compliance with public health measures.

Many individuals also reported feeling uncomfortable when law enforcement officials, who were not wearing masks or gloves, came close to them in order to speak to them or issue a ticket. In most – but not all – jurisdictions law enforcement officers were exempted from physical distancing requirements. In many of these cases, however, the risk of virus transmission was counterproductively increased by the enforcement decision because the bylaw officer had to come close to issue a ticket.

There were also numerous reports of tickets being issued in areas with no signage to indicate that a particular park fixture or area was off-limits. If enforcement efforts were truly adopting an education-first approach, law enforcement would not be ticketing people present in un-signed areas. The situation is further muddied by the fact that some areas had been properly signposted or cordoned off with warning tape, which creates the reasonable inference that unmarked areas are not off-limits.

In Halifax, the legal restrictions surrounding parks were so confusing that it was all but impossible to comply. As summarized above, on March 22 the Nova Scotia government declared a state of emergency and closed all provincial and municipal parks and beaches. Government officials specified in statements to the media that trails that were not within provincial parks would remain open for exercise.⁷⁷ In Halifax, however, local bylaws specifically stated that all trails were defined as parks.⁷⁸ As explained by

⁷⁷ Nova Scotia Premier's Office, News Release, "State of Emergency Declared in Response to COVID-19, Seven New Cases" (22 March 2020), online: <<https://novascotia.ca/news/release/?id=20200322001>>.

⁷⁸ Halifax Regional Municipality, by-law No P-600, *Municipal Parks By-law* (25 May 1999), s. 2(c), online: <<https://www.halifax.ca/sites/default/files/documents/city-hall/legislation-by-laws/By-law%20P-600.pdf>>.

one Halifax City Councillor, “very few people know what’s a provincial trail, what’s a municipal trail, for example, and there’s even some confusion amongst some folks at the city.”⁷⁹ Numerous Haligonians who contacted CCLA reported that police stopped and fined them for simply stepping on the grass beside a sidewalk or walking through a trail that the municipality had indicated was open to the public.⁸⁰

This state of confusion is unacceptable. If the government wishes to make rules that are backed up by punitive fines, it must ensure that those rules are clearly communicated to the public. If there is confusion, education – not police stops and charges – must be the answer.

Confusion in Halifax

Tristan Cleveland, Halifax, Nova Scotia

My little brother, Timothy Cleveland, was fined yesterday, April 9, for \$697.50 because he was walking on a multi-use path through a public space on the way to work, in Halifax, Nova Scotia. He works as a cook at a restaurant offering take-out. These multi-use paths are in the Halifax Commons, and a central active transportation corridor for the city, connecting neighbourhoods, major main streets, the hospitals, and the downtown.

The multi-use paths were lined with little flags. The municipality explained, in a tweet, that the flags designated areas where people were allowed to walk. But police had also put up a yellow barrier blocking entrance to the park. Municipal police are being told by the province to enforce the order in parks. The municipality is trying to convince the province to adjust the rules. So you had two parts of government sending a contradictory message.

He ended up paying the fine because that was easier to him than the stress of fighting it. I feel like that's part of what's unfair here. Those little flags stayed up for weeks and were widely used by people for walking through the park. So he really did pay a \$700 fine for nothing more than walking to work.

⁷⁹ Graeme Benjamin & Alexa Maclean, “Coronavirus: Halifax councillor calling for HRM trails to remain open”, *Global News* (23 March 2020), online: <<https://globalnews.ca/news/6717812/coronavirus-hrm-trail-closure/>>.

⁸⁰ Jesse Thomas, “Coronavirus: Pedestrian confused after being ticketed for walking through Halifax Common”, *Global News* (13 April 2020), online: <<https://globalnews.ca/news/6813276/pedestrian-ticketed-walking-halifax-common/>>.

Enforcement that prejudices rather than protects public health

Joanne Austin, Marathon, ON

I went to the store not expecting to see anyone I knew. When I got there I ran into my mother who has mobility issues, is a type 2 diabetic and has schizophrenia. She stated she had no money for food. I went to the bank, pulled some money out of my account and went back to give it to her. Once I handed the money to her I took a few steps back. I had been talking with her for a couple minutes when a bylaw officer came and gave me a fine for \$875. The bylaw officer stated he had given plenty of warnings to people about the 6ft social distancing bylaw (personally I was never given a prior warning) and that he had to start giving out fines as no one was listening to the rules. At one point I had to give him my ID. When I gave him my driver's licence I had to place it on the mirror of bylaw officer's vehicle and step back 6ft; the same thing when he gave my ID back to me. When he handed me the ticket he got out of his vehicle and walked up to me, at an arm's length away (roughly 2ft away), and handed me my ticket. At the time I was not receiving updates on new laws and such being passed in the community as I don't have cable TV, did not listen to the radio and/ or access the town's Facebook page.

Kadu C., Toronto, Ontario

My girlfriend and I were walking around Victoria Park when she received a called from her mom telling that her dad was in the hospital. We had been stopped for about five minutes to answer the call when a police officer stopped his car, walked up to us, and fined us. We tried to explain to him the situation, but nothing changed. I asked whether they had any signage around the park at the time and the cop confirmed that there were signs. I recorded the whole surroundings of the park showing no signs restricting the use of the park.

RM, Toronto, Ontario

I was alone in Greenwood park, walking my dog. There were maybe two other people in the 13-acre park, both quite far from me. I stopped for a few minutes to throw a ball for my dog and happened to be standing in the corner of the "soccer field". This particular field does not have any painted lines to indicate a soccer field, except for the remnants of metal goal posts, no nets. A bylaw officer approached me and indicated I was using a closed park amenity. I asked if this was a warning or a ticket, he said he had to look up my info to see if I'd been spoken to before, so I complied and was cooperative as I had not been spoken to before. I was expecting a warning. I received a ticket for "not complying with an Order during a declared emergency" for \$750 - \$880 payable.

AW, Toronto, ON

I was playing catch with my 15-year-old son on the baseball diamond at Cedarvale park. We were just playing catch. But the worst part was they gave an \$880 ticket to a 15- or 16-year-old boy who was doing soccer drills by himself. He just picked the wrong patch of grass to practice. Just exercising. In the grass.

Disproportionate impacts

Several people who wrote to CCLA stated they felt targeted and singled out on the basis of their race, sexual orientation, religion, age or family status. Although a wide range of individuals have been ticketed, certain communities have been particularly disadvantaged by COVID-related enforcement activities.

In certain regions of the world, notably, London, England and New York City, it has become clear that long-standing discriminatory patterns of policing have been reproduced in the context of COVID-19 enforcement. The London Metropolitan Police released data indicating that Black and Asian people were more likely to be targeted and fined under COVID-19 emergency laws than white people.⁸¹ A month earlier, the New York City Police Department released racially disaggregated data on COVID-19 related enforcement, revealing that 81 per cent of the NYPD's summonses related to physical distancing have gone to Black and Latinx people.⁸² It was further revealed that 35 of 40 of the people arrested by the NYPD between March 17 and May 4 for alleged physical distancing failures were Black.⁸³

Unfortunately, we may never have quantitative data regarding discriminatory patterns of COVID-19 enforcement in Canada. Despite the many calls for increased transparency in policing, many police forces across Canada do not collect demographic data, such as race, gender, or socioeconomic status, of their enforcement patterns. The RCMP does not collect data on race, nor do many other police agencies. Only last year did the Toronto Police Service announce a policy framework to guide the collection of race-based data, although it has still not released anything.⁸⁴ Toronto Police Services and Toronto City bylaw, both of the institutions tasked with policing the pandemic, announced that they are not collecting data on race while enforcing COVID-19 measures.⁸⁵ While greater access to race-based data will not end systemic racism and discrimination, it is particularly concerning that police services continue to resist collecting this data while simultaneously denying the existence of systemic racism in policing.

Despite large gaps in data, however, there have been numerous reports of Black, Indigenous, and other racialized and marginalized people being targeted by COVID-19 related enforcement measures. Numerous individuals who got in touch with CCLA and self-identified as racialized felt that they had been targeted by law enforcement because of their race. One organization that provides services to the Indigenous community in Montreal reported that a large number of their clients, many of whom were street-involved, had received COVID-related tickets and reported a significant increase in police

⁸¹ Vikram Dodd, "Met police twice as likely to fine black people over lockdown breaches – research", *The Guardian* (3 June 2020), online: <<https://www.theguardian.com/uk-news/2020/jun/03/met-police-twice-as-likely-to-fine-black-people-over-lockdown-breaches-research>>.

⁸² Pilar Melendez, "NYPD: 81% of Coronavirus-Related Summonses Have Been Issued to Black, Hispanic Residents", *The Daily Beast* (8 May 2020), online: <<https://www.thedailybeast.com/nypd-reveals-81-of-coronavirus-related-summonses-have-been-given-to-black-hispanic-residents>>.

⁸³ Ashley Southall, "Scrutiny of Social-Distance Policing as 35 of 40 Arrested Are Black", *The New York Times* (7 May 2020), online: <<https://www.nytimes.com/2020/05/07/nyregion/nypd-social-distancing-race-coronavirus.html>>.

⁸⁴ "Race-Based Data", online: *Toronto Police Service* <<https://www.torontopolice.on.ca/race-based-data/>>.

⁸⁵ Victoria Gibson, "Toronto police, city bylaw, not collecting data on race when enforcing COVID rules", *iPolitics* (1 June 2020), online: <<https://ipolitics.ca/2020/06/01/toronto-police-city-bylaw-not-collecting-data-on-race-when-enforcing-covid-rules/>>.

harassment. In Ottawa an internal review has been launched into the case of a Black man who was punched by a bylaw officer. And in Toronto two Black women reported that a bylaw officer stopped them, but not other white users of the park, and said they were “trespassing” and that if they were at his home he could “shoot” them.⁸⁶ The City of Toronto has initiated an investigation into the incident. Finally, in mid-May, in Saskatchewan, the RCMP interrupted a sun dance ceremony of the Beardy’s and Okemasis Cree First Nation despite the fact that the organizers said they limited the number of people at the event and practiced physical distancing. Clay Sutherland, the lead organizer of the ceremony, told media that the police actions “took us back to 150 years ago when all of our people had to go underground. They had to hide. They had to hide who they were.”⁸⁷ The RCMP left without laying charges.

The focus on individuals’ behaviour in public spaces also disproportionately impacts those who rely on parks and other public spaces. Those who are precariously housed, living in shelters or on the streets, are directly experiencing the impacts of park closures and restrictions on outdoor gatherings. There have been media reports of people experiencing homelessness having been ticketed in Montreal, Hamilton and Toronto⁸⁸.

Community organizations in Montreal in particular reported to CCLA that their street-involved clients have received many tickets for alleged physical distancing infractions. Support workers reported that, as community supports and services were closed due to the pandemic, many individuals were pushed out into the street. The decrease in services and increase in visibility has resulted not only in thousands of dollars of COVID-related fines, but also a reported increase in criminal charges due to the increased policing of these communities. Increased police targeting of this community has also reinforced the pre-existing distrust between marginalized individuals and the police, directly undermining an effective public health response, which requires trust, open communication, and the ongoing provision of services and supports.

Support workers for these communities have also been targeted. One individual who reached out to CCLA was a community support worker in Montreal who worked with Indigenous street communities and people experiencing homelessness. She was ticketed while providing COVID-19 education and support to a person from the Indigenous street community.

The pandemic has also been used as a justification to increase the ability of a variety of law enforcement officials to stop individuals and demand that they provide identification, a practice also known as

⁸⁶ Devika Desai, “City of Toronto investigating after two Black women allege bylaw official racially profiled them”, *The National Post* (18 June 2020), online: <<https://nationalpost.com/news/world/city-of-toronto-investigates-after-two-black-women-allege-they-were-racially-profiled-by-bylaw-official/wcm/5eb0dde9-3947-4adb-a7ee-2d622d8478dc/>>.

⁸⁷ David Shield & Creeden Martell, “RCMP ‘had no understanding’ of sun dance ceremony that was interrupted, dancer says”, *CBC News* (12 May 2020), online: <<https://www.cbc.ca/news/canada/saskatoon/beardys-okemasis-sun-dance-1.5566551>>.

⁸⁸ Jane Gerster & Andrew Russell, “Crowded shelter or \$880 fine? Homeless face ‘impossible’ coronavirus choice”, *Global News* (30 April 2020), online: <<https://globalnews.ca/news/6871927/coronavirus-fines-homeless/>>; Matthew Van Dongen, “‘I can’t pay it anyway’: Why are Hamilton police ticketing the homeless during the COVID-19 pandemic?”, *The Star* (21 April 2020), online: <<https://www.thestar.com/news/gta/2020/04/21/i-cant-pay-it-anyway-why-are-hamilton-police-ticketing-the-homeless-during-the-covid-19-pandemic.html>>.

“carding” which has been used disproportionately against people who are Black, Indigenous, who have mental health disabilities, who are experiencing homelessness, and who are otherwise racialized and marginalized. Enforcement officers in Ontario, for example, have been empowered to ask for the identification of any person whom they had “reasonable and probable grounds” to believe had violated an emergency order.⁸⁹ Because the emergency orders are quite broad and vague, officers have considerable discretion to detain and collect identification from people who are simply present in public space. In early April CCLA wrote to the Ontario government outlining its concerns and requesting that a number of safeguards be put into place; no reply was received.⁹⁰

Some cities are using the information gleaned from their snitch lines and existing police patrols to engage in hotspot policing, whereby police patrols are redirected to target particular neighbourhoods with high numbers of complaints.⁹¹ Given the likely unevenness of existing policing and which communities are the target of reports for alleged infractions, this approach risks allocating more police to areas of the city that are already over policed and intensifying surveillance on those communities that are already being heavily surveilled, both by law enforcement and by other residents.

The requirement in several jurisdictions that individuals stay physically separated from those who are not in their household also raises significant concerns about an increase in discriminatory policing on the basis of age, family status, religion and sexual orientation. CCLA received reports of police officers asking couples in parks for their identification to determine whether they are part of the same household and therefore exempt from social distancing rules.⁹² Individuals in same-sex relationships stated that they felt targeted by law enforcement, as they were stopped, questioned about their relationship, and required to provide identification, while heterosexual couples in the same spaces were allowed to walk by without suspicion. Young people, who often live with roommates, told us they have also experienced increased targeting from law enforcement. And in Quebec, several individuals who self-identified as members of the Jewish community told CCLA that they felt they had been specifically targeted because of their religion.

Numerous individuals who contacted the CCLA also commented on the impact of high monetary fines. Students, elderly persons on fixed incomes, single parents and those who were unemployed or about to lose their jobs all commented to us that the amount of the fine was crushing. For many, the amount of money they were fined represented their entire rent or grocery budget for the month.

Finally, the unclear and complex nature of the underlying orders has been particularly hard for those who do not speak English as their first language, including refugees and recent immigrants. In Nova

O. Reg. 114/20: ORDER UNDER SUBSECTION 7.0.2 (4) OF THE ACT - ENFORCEMENT OF ORDERS (31 March 2020), s. 1(1), online: <<https://www.ontario.ca/laws/regulation/200114>>.

⁹⁰ Letter from CCLA to Attorney General of Ontario Doug Downey & Solicitor General of Ontario Sylvia Jones (3 April 2020), online: <<https://ccla.org/coronavirus-update-letter-carding/>>.

⁹¹ Anna Junker, “COVID-19: Edmonton physical distancing complaints spike, ‘hotspots’ emerge with warming weather”, *Edmonton Journal* (2 May 2020), online: <<https://edmontonjournal.com/news/local-news/covid-19-edmonton-physical-distancing-complaints-spike-hotspots-emerge-with-warming-weather>>.

⁹² Letter from CCLA to Attorney General of Ontario Doug Downey & Solicitor General of Ontario Sylvia Jones (3 April 2020), online: <<https://ccla.org/coronavirus-update-letter-carding/>>.

Scotia, for example, media reported that a newcomer family was ticketed for being in a park alone.⁹³ In Ottawa, reports of bylaw officers targeting multiple Syrian refugees incited a public outcry.⁹⁴

Disproportionate impacts and discriminatory experiences of enforcement

A street worker with Indigenous Support Worker Project, Montreal, Quebec

I am a community support worker, or travailleurs des rues, in Montreal. I work with Indigenous street communities and homeless people. On Friday April 10, during my work shift, I was stopped, issued a \$1500 public health violation fine and arrested and charged with obstruction of a police officer.

The police approached me while I was interacting with a person from the Indigenous street community giving COVID-19 education and support. They continued to proceed with the fine and criminal charge despite me identifying myself as a street worker. They refused to allow me to speak with the Indigenous police liaison, handcuffed me, searched me, and detained me in the police car. They threatened to take me to the jail. Eventually the Indigenous police liaison was able to speak to them on their direct line and then they released me into the street with the fine and the criminal charge intact.

NY, Montreal, Quebec

I was 1.5 metres sitting away from my partner in a park (just us two). We were accosted three times by different cadets and police. The first two times they simply asked if we live together, we said yes, they went away. The third time two officers, after they asked that question, asked for our IDs as they approached us. My partner has had bad experiences with police in the past had a trauma response (partly due to the fact that we were trapped/cornered in the stands at a baseball diamond - and the police were cutting off the one entrance/exit to the seating). I think we were singled out because we were young adults who didn't fit into the normative family ideal put forward by western society (heterosexual, monogamous, child-bearing, etc.).

An 80-year-old woman, Toronto, Ontario

I was ticketed by six bylaw officers (they weren't practicing social distancing). I was all alone in a quiet area of High Park foraging for greens like garlic mustard, stinging nettles. I was asked for ID (I didn't have) and my pleading that I need these greens to stay healthy as an 80-year-old on a fixed income went on deaf ears. I was given the ticket. I tried to tell these young men that visiting a supermarket is much more dangerous than picking all by myself a few greens that Toronto Parks considers to be invasive plants. These greens will go down in history as possibly the most expensive in the world!

⁹³ Emma Smith, "Legal Aid wants to help Nova Scotians facing steep COVID-19 fines", *CBC News* (13 May 2020), online: <<https://www.cbc.ca/news/canada/nova-scotia/covid-19-summary-offence-tickets-legal-aid-lawyer-help-nova-scotia-1.5567487>>.

⁹⁴ Hillary Johnstone, "Refugee advocates beseech bylaw to 'warn and inform' after man handed \$880 fine", *CBC News* (9 April 2020), online: <<https://www.cbc.ca/news/canada/ottawa/syrian-man-ottawa-park-bylaw-1.5526286>>; Idil Mussa, "No picnic: Man fined \$880 says he was just taking a rest", *CBC News* (29 April 2020), online: <<https://www.cbc.ca/news/canada/ottawa/newcomer-hit-with-880-fine-for-picnicking-says-he-was-simply-taking-a-rest-1.5547849>>.

Ronalee Carey, Ottawa, ON

I am a member of a refugee sponsorship group. One of our refugees was ticketed over the weekend for letting his little brothers and sister play on a play structure. He was aware of the physical distancing restrictions, but not about public park closures. There apparently was a sign on the play structure, but when he arrived it was on the ground (someone must have taken it off the play structure before he arrived). He told me he thought it was just garbage, and didn't look at it closely. Even if he had, I'm not sure he would have understood it as his English is still at the intermediate level.

Anne, Toronto, Ontario

I was ticketed because my child jumped on a picnic table and then jumped off. He did not cross the caution tape. An officer was sitting in his vehicle and said he saw my son jump off the picnic table with his binoculars. This took place in a matter of seconds. Nevertheless, immediately afterwards, an officer honked his horn and pulled up to us and demanded my identification stating he will have to issue a ticket. The officer was determined to ticket us without giving us a chance to speak. I believe he was waiting in his vehicle and eager to issue a ticket at first sight of anything he deemed as a violation.

I apologized to the officer and attempted to tell him that I am currently laid off and on CERB and that I am a single mom supporting 3 children and not able to afford the \$880 fine. He did not acknowledge or respond to my statement and was quite aggressive and agitated. After he handed me the ticket he simply told us to go home and did not explain how to proceed with payment or our options for contesting the ticket.

My son (who the ticket was meant for) has special needs and had the Bylaw Officer spoken to my son, he may have recognized that perhaps issuing a ticket for jumping off a picnic bench was excessive and in poor judgement.

J. Landry, Montreal, Quebec

I've been at Montreal parks with my roommate several times and have been stopped and questioned about eight times in the last two weeks. The police always come by, three of them, and ask my name, address, identification, the reason I'm in the park, why I don't stay near my house.... I try to say that I don't have to provide this information because we are not doing anything against the law.... they should just believe what we say when we tell them we are roommates and leave. But they say that if we don't provide the information they will arrest us.

A local High Park resident, Toronto, Ontario

My partner and I were walking in High Park. We had stopped to look at some flowers when three men wearing yellow vests approached us. One of them abrasively asked, "do you live together?" Being a Canadian citizen, I was genuinely confused and taken aback by the nature of the question. My response was to attempt to ask clarification as to why this question was being asked of two people walking in public. Before I could finish my question, the man became even more aggressive and began demanding my ID and proof that we lived in the same residence. Still unsure as to what authority the

officer actually represented, I asked who he was. This question seemed to agitate him even further as he identified himself as a City of Toronto By-Law Officer. He told us that people not living in the same household must be 6 feet apart at all times. When I told the officer that I was unaware of such a law, he said that “it’s all over the news.”

My response to the bylaw officer’s demands for proof that my partner and I live in the same household was that I do not carry my wallet as I am simply out for a walk. Trying to de-escalate the situation, my partner asked the bylaw officer whether, if we continued to walk and leave that park and keep our distance, that would be ok? The bylaw officer said yes.

We both proceeded to walk away from the bylaw officer who began barking orders not to walk away. At this point, I told my partner that she should walk in another direction and that we would meet at home.

The bylaw officer and his team proceeded to follow me for the next 25 minutes. When I asked why he was following me, he said that he was not following me. He continued to follow me from a distance and matched my every turn as I continued to meander my way through the park. I was afraid of what the bylaw officer’s intentions were.

I began to turn east and walk towards the ravine where there was a depression – this is the route that I usually take during my walk - when two TPS cruisers pulled up to within approximately 10 feet of me. At this point, I was approximately 30 meters east of High Park avenue where the ravine begins to dip just out of site of passers by.

Fearing for my life – I am a 6:3 Black man with short dread locks – I instructed the TPS officers that for my own safety, I needed to have the conversation with them closer to where more passersby could observe.

The TPS officers insisted that I stayed where I was but for my own safety, I insisted on moving closer to where there were passers by.

When I reached a space which I felt was safer, I sat on the ground with my legs crossed where my hands could be seen. The officer then instructed me to give my name and I asked him “why?” He said that I was not supposed to be walking in High Park with someone else. Both the TPS officer and the bylaw officer were as unsure of the details of the City of Toronto emergency By-Law that I was breaching. Both of them needed to look up the exact name and details of the law on their phones.

The TPS officer - as the bylaw officer continually whispered in his ear - on numerous occasions threatened me with “violent arrest” and “jail on criminal charges.”

I continually asserted my rights as a citizen and that they had no right to take me to jail because I was walking through the park with my partner. In addition, I informed the officer that I was aware of the practice of “Carding” and that if I provided my name, I would now be criminalized and fair game by the TPS, which is precisely the reason for why carding was stopped in 2017.

The officer, on numerous occasions made threatening gestures toward me and the onus was on me to sit on the grass with my legs crossed, so that it could be clearly seen that I was not a threat.

By this point, my communication with the TPS officer and the bylaw officer was loud and assertive as a result of my frustration for being stopped, harassed, stalked, and threatened with jail for walking in the park with my partner; a by-law that the officer needed to look up on his phone for the details, in addition to the fact that this by-law, which both myself, my partner, and the bylaw and TPS officer were not abreast of.

The TPS officer said that I must either provide my name or go to jail. I told the TPS officer my name.

The TPS officer could not find my name in his computer. He again asked me for my drivers licence. I responded that I do not carry my drivers license for a walk in the park. I then offered to spell my name and he keyed my name into his computer. Once the officer had confirmed that he had my name in his computer, I then stood up to continue to walk out of High Park.

At that point, the TPS officer threatened to arrest me if I did not provide my date of birth. I became increasingly frustrated at their seeming ability to make up the rules as they went along. I told the TPS officer my date of birth and I walked away.

I went back to High Park approximately 30 minutes later, this time, I observed the same bylaw officer sitting in his City of Toronto By-Law cruiser. He was playing on his cell phone while numerous groups of – White – people, ranging from groups of 2 to 4 and all within a foot of each other, strolled in and out of High Park without the officer even flinching.

Confusion around challenging the tickets

The dubious circumstances under which many tickets were issued have been compounded by further confusion regarding how to challenge the tickets in court.

The Ontario government, for example, has provided conflicting information about the deadlines for challenging tickets. During the height of the ticketing blitzes in Toronto and Ottawa, information about how to contest a ticket was inconsistent depending on whether you looked at the physical ticket or the municipality's website. In some instances, the direction was that tickets could be contested by attending at a courthouse or municipal building in person within 15 days of receipt of the ticket, but the pandemic had shuttered these offices. Ottawa's municipal website at one point indicated that the option of contesting the ticket was simply "not available" because the courts were closed. At the outset of the emergency Ontario had also passed a regulation to freeze procedural deadlines – including the 15-day limit for contesting a ticket.⁹⁵ This information, however, was not provided to those receiving fines.

It was only after letters from CCLA and several false starts that numerous municipal websites started to be updated to provide accurate timelines and online options to request a trial.⁹⁶

⁹⁵ *O. Reg. 73/20: Order under Subsection 7.1 (2) of the Act – Limitation Periods* (20 March 2020), online: <<https://www.ontario.ca/laws/regulation/200073>>.

⁹⁶ See e.g. Letter from CCLA to Ottawa Mayor Jim Watson and Ottawa Chief of Police Peter Sloly (6 April 2020), online: <<https://ccla.org/coronavirus-update-letter-to-ottawa/>>; Letter from CCLA to Attorney General of Ontario Doug Downey, Solicitor General of Ontario Sylvia Jones & Minister of Municipal Affairs and Housing Steve Clark (24 April 2020), online: <<https://ccla.org/coronavirus-update-ccla-poa-due-process/>>.

The disarray of the ticketing regime has infringed individuals' constitutional due process rights. Some persons, misinformed by the government as to their due process rights, may have already paid their fines online for fear of the consequences of delay.

Enforcement officers should clearly tell each ticketed person that no action need be taken until the emergency orders expire, and that information should be included on the physical ticket and the websites of municipal and provincial governments.

Your options: plead guilty, or plead guilty

A family in Ottawa, Ontario

Our family had a stressful incident with an Ottawa bylaw officer on Saturday April 18, during a family bicycle ride. We were on a designated bike path in Strathcona park with our 10- and 8-year-old children, and our children requested to stop as they were thirsty. We stopped just off the bike path so as not to impede bike/pedestrian traffic and maintain appropriate social and physical distancing from other riders. As we were ready to return to the bike path, the girls ran off towards a stone edifice that was not taped off. While the area was quiet, several other pedestrians had been recently lingering around this stone edifice to look at it, walk around and through it, and take pictures. As we called to our children to return to us, an Ottawa bylaw officer approached them asking for their parents' whereabouts. The girls immediately returned to us, and got on their bikes. The children completely avoided any taped off or marked areas in the playground. We advised the officer that there was no intent to loiter and we were returning home on the bike path. The officer requested my ID, and handled it without any gloves or sanitary procedures. He issued me an \$880 ticket, citing the Emergency Management and Civil Protection Act.

He stated we had 3 options, and advised us we could call the City of Ottawa as needed. He then acknowledged that the City of Ottawa offices are closed at this time.

We noted that on the City of Ottawa website, the POA webpage is not updated to allow the 3 options listed on the back of the ticket.

When I called the City of Ottawa on Apr. 20th at 10:29 am, I was informed that option 2 and 3 – which would allow us to contest the ticket - were currently deferred as all offices are closed, with no possibility of complying with the 15 day deadline to appeal. The worker further stated "maybe you should have complied in the first place" and expressed that this was a "joke". She then advised that someone would call me from the provincial office in 48 hours. I never received a phone call.

Sophie Galvan, Ottawa, Ontario

I sat down briefly (45 seconds at most) to tie my shoe as I finished a call. I can't kneel on my left knee due to a documented injury sustained in December. Nerve damage over the knee cap remains, while the lateral subluxation of the knee cap has healed well. I stood and continued walking away, looking down at my phone to end the call. I was immediately approached by a bylaw officer who did not say

anything but "show me your identification". I was surprised and asked him to repeat. He said show me your identification. I got my senses back and asked why. He said because I was sitting on the bench. I told him I had been there for no more than a minute. He again told me to give him ID. I did and he took off for 10 minutes and wrote up a ticket. When he came back, I told him that I had only been there for less than a minute and explained why and what I was doing. I asked him if he had sat to observe me. He said he had just driven up and saw me sitting there and standing up to walk away. I reminded him that it was -7 degrees and I had only stopped for a few seconds to then get back up and continue my walk. I was not loitering.

I asked him how I could appeal this ticket. He specifically gave me two options: plea of guilt - with voluntary payment, or plea of guilt - and submit for a reduction in penalty. He did not verbally tell me about the option of not guilty.

Conclusion

Trying to police our way out of this pandemic is unimaginative, sometimes unconstitutional, and ineffective.

When rules don't make sense, people stop listening to those in authority.

When laws are unworkable or indecipherable, people ignore them.

When enforcement is unfair, arbitrary, and discriminatory people become less compliant and more defiant. They focus less on trying to obey the rules, and think more about trying not to get caught.

Many of our constitutional rights aim to protect us against unfair, arbitrary, vague, overly broad, or disproportionate government measures. To ensure that our *Charter* rights and freedoms – including our liberty, freedom of movement, freedom of association, and freedom of peaceful assembly – are only restricted to the extent that is reasonable and demonstrably necessary. Laws that are too vague do not give enough guidance to individuals as to what is permissible and what is illegal. Laws that prohibit an overly broad swath of activity are arbitrary and unfair. Vague and overbroad laws put an unacceptable amount of power in the hands of law enforcement leading to arbitrary, unfair, and discriminatory patterns of enforcement.

And when a public health approach is rejected in favour of a law enforcement approach, the individuals that feel the brunt of the punitive measures are those who are at most risk in the first place. Those who live on the streets, those who are already struggling to make ends meet, those who are racialized or otherwise marginalized. Sending in police instead of health care professionals further isolates individuals, pushing them farther from the supports and services they need in order to stay healthy and safe.

At this point in time it appears that most of the country has made it past the peak of the first wave of this pandemic. It also seems that we have made it through the peak of the punitive law enforcement approach. After weeks where thousands of fines were handed out, the restrictions are starting to loosen. In some areas of the country where COVID-19 spread remains a serious concern, however, the public order approach seems to have been softened, in favour of a return to education. This is a welcome development.

But we are being told to expect a second wave of infection. It is highly likely that, in some portions of the country, public health officials will recommend a return to tighter restrictions on daily activities. This should not also mean a return to police stops, searches, and crushing fines.

The only way through this is with a robust, democratic, constitutionally-compliant public health approach. Resist the temptation – and the calls from scared constituents – to back up every public health recommendation with the force of law and give a *carte blanche* to law enforcement. Explain the risks, the science, the evidence-based measures that each and every person needs to take. And work with communities to ensure the supports are there to allow the recommendations to become a reality.

Elected leaders frustrated with public behaviour will need to be more self-critical than finger-wagging. Our leaders need to lead better, by better example, through better advocacy and social supports, not by

wielding powers to punish heretofore benign behaviour. Evidence-based decision making. Public education of causes, effects. Social supports. More education. More supports. More carrots than sticks. Maybe some economic supports will have strings attached, incentivizing evidence-based pro-public health conduct. And so on. It is exhausting. At times frustrating. But welcome to our new reality.

The new rules we are living under need to be strictly necessary, proportionate and rational. They need to be clearly drafted and consistently explained to the population. Then re-explained. Leaders need to be clear, firm, patient and understanding – even in the face of an evolving pandemic. Restrictions on liberty need to be constitutionally-compliant, grounded in law and human rights. And any punitive enforcement measures need to be exercised with restraint, reserved as an absolute last resort.

Public trust wanes when we feel that laws are irrational, that police and politicians are more concerned about quotas than safety. And public health suffers when the very communities that need the most support are the ones experiencing the most repression.