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COVID-19 and Law Enforcement in Canada: The Second Wave

May 2021

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.

About the Canadian Civil Liberties Education Trust

The Canadian Civil Liberties Education Trust (CCLET) is a charitable research and educational organization created by CCLA in 1968. Each year CCLET reaches 11,000+ elementary to graduate level students, from a wide range of public, separate, and private educational institutions. Through our Civil Liberties in the Classroom and our Teaching Civil Liberties programs, which are funded by both a Law Foundation of Ontario (LFO) grant and private donations, we provide workshops, seminars, and in-class sessions for schools, school boards, faculties of education, and community groups and non-profit agencies, educating people in Canada about their rights and freedoms. For more on CCLET, please see <https://ccla.org/education/>.

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For more on CCLA's reporting on Canada during COVID-19, please see <https://ccla.org/coronavirus/>. CCLA's first report on COVID-19 and law enforcement, *Stay off the Grass: COVID-19 and Law Enforcement in Canada*, is available at <https://ccla.org/fines-report/>.

About the Policing the Pandemic Mapping Project

The Policing the Pandemic Mapping Project was launched on April 4, 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/>.

Cover photograph: Annabis Photography, www.annabisphotography.ca

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Executive Summary

This report examines the policing of COVID-19 orders in Canada between September 2020 and March 2021. Over the fall and winter Canada experienced new waves of COVID-19 infections. As the pandemic has grown and changed, so too have COVID-19 emergency orders and the associated practices of enforcement. Canadian emergency management is decentralized along constitutional lines. Most enforcement was by province, territory, and municipality, which of course varied because no two provinces or cities are alike, and certainly they all governed themselves differently. The federal government also managed its own constitutional responsibilities, such as international borders, airports, and citizenship re-entry. A patchwork of legal regulations resulted, and a patchwork of enforcement approaches too. As with the first wave, regionalist generalizations about enforcement are possible at this stage, but what remains unknown is how charges will be prosecuted and managed by various jurisdictions.

In June 2020, the Canadian Civil Liberties Association and the Policing the Pandemic Mapping project released a report on Canada's use of coercive fines and law enforcement to respond to the COVID-19 public health crisis. Our research, which included feedback from individuals who had received COVID-related fines and national tracking of COVID tickets, showed that Canadians' experiences of COVID law enforcement varied dramatically. During the first wave of COVID-19 some jurisdictions chose to focus their efforts on clear, evidence-based recommendations and messaging. They were effective in flattening the first curve. Others doubled down on a punitive approach with high fines, sending by-law and police officers into parks and homes to ticket those who stepped out of line. These jurisdictions – notably Ontario, Quebec, and Nova Scotia – also got through the first wave. But many in those communities experienced the additional harms flowing from arbitrary, unnecessary, and discriminatory enforcement actions. There were concerning indications these harms were disproportionately experienced by certain communities, including Black people and members of other racialized communities, Indigenous persons, recent immigrants, same sex couples, elderly people, and persons experiencing homelessness.

Research on Policing Pandemics

A pandemic is a public health, not a public order, crisis. Punishing people with charges and fines misses the target – the virus itself – often in ways that exacerbate pre-pandemic inequality. What was true about policing pre-pandemic was often amplified during COVID19.

Insights from the fields of criminology and public health suggest that we should not be relying on punitive enforcement to manage a public health crisis, and throughout the COVID-19 pandemic Canadian doctors and public health experts have repeatedly expressed concerns about the impacts of enforcement-led, punitive approaches to policing communities for COVID-19 compliance.

There is little evidence to suggest that fines are an effective public health response. To the contrary, a disproportionate focus on punitive measures can undermine effective public health strategies, including many of the public health interventions like testing and contact tracing that have proven to be effective in the COVID-19 context.

An over-reliance on punitive enforcement also tends to disproportionately harm already marginalized communities. Decades of research has shown that certain groups, including Black people and members of other racialized groups, Indigenous persons, those living in poverty, with addictions, or with mental illness, are disproportionately stopped, harassed, criminalized, harmed, and killed by police. Studies from other national jurisdictions that collect and release race-based data on police responses to COVID-19 have largely affirmed that pre-existing discriminatory policing patterns are also reflected in COVID-19

enforcement. Although anecdotal, in our June 2020 report we highlighted numerous concerning incidents of COVID-related stops and ticketing related by racialized individuals, recent immigrants, same sex couples, elderly people, and persons experiencing homelessness.

Charting Canadian governments' response to COVID-19: emergency orders and enforcement trends

In many respects the second wave of legal restrictions targeting individuals' rights and freedoms were harsher than the emergency orders promulgated during the first wave of the pandemic. Lockdowns lasted longer in many parts of the country. In several jurisdictions limitations on movement and gathering became more stringent – Ontario, for example, introduced a “stay at home” order, and Quebec put in place a highly concerning province-wide curfew. Interprovincial and international borders hardened, and new travel restrictions were put in place. Laws requiring masks in particular situations also became common-place during the second wave of the pandemic.

In other respects, however, the second wave emergency orders were more targeted and nuanced. Provinces increasingly employed regional approaches to closures and restrictions that attempted to respond to the localized public health risks, creating a patchwork of restrictions within each province. Many of the broadest restrictions on accessing outdoor public space and amenities that we criticized during the first wave of COVID-19 – banning individuals from public parks and other types of outdoor spaces – were not reenacted in the second wave of COVID-19. At the outset of the pandemic numerous emergency orders had also banned all gatherings, with no exceptions for support services or even at times members of the same household. Second wave gathering restrictions have been more targeted and nuanced, tending to try to focus on prohibiting or minimizing ‘social’ gatherings, and provide a long list of exceptions to allow legal scope for a broad range of ‘more essential’ gathering activity. The increasing complexity of the most restrictive orders left legal scope for activities that were essential for individuals’ physical and mental health. They also, however, created very confusing laws that were often vague and difficult to understand. The enforcement of these orders relied extensively on law enforcement discretion, creating opportunities for selective and unequal enforcement.

Throughout the second wave, governments across the country have continued to focus on high fines and punitive enforcement as a way to stem rising COVID-19 infections. There were a few instances where public health and law enforcement leadership publicly questioned the utility of responding to COVID-19 outbreaks by increasing police enforcement. In almost all parts of the country, however, politicians called for increased enforcement during the second wave. The political focus on punitive enforcement was perhaps most notable in Manitoba, where the province hired a private security force to increase COVID-19 ticketing and the Premier stated that his only regret during the second wave of COVID-19 was that he did not issue more tickets. A number of jurisdictions also enabled increased enforcement actions during the second wave by introducing laws that increased fine amounts, expanded police powers, and/or extended those enforcement powers to a broader set of law enforcement actors.

While there is no official government source providing a country-wide picture of the number and nature of enforcement actions related to the pandemic, we have continued to track the phenomenon. We were able to obtain comprehensive data documenting the number of tickets issued for alleged violations of COVID-19 related laws in five jurisdictions: British Columbia, Manitoba, Ontario, Quebec, and Nova Scotia.

Ontario, British Columbia, and Nova Scotia all had relatively similar rates of ticket issuance over the course of the second wave, handing out between 0.21 and 0.28 tickets per 1,000 people between October 2020 and February 2021. Quebec and Manitoba were the most punitive of the five jurisdictions where

detailed enforcement statistics were available, with ticketing rates of 0.51 and 0.69 tickets handed out per 1,000 residents respectively.

During the pandemic's first wave, British Columbia was seen as a jurisdiction that, from a civil liberties perspective, took a model approach to enforcement. The province managed to effectively flatten its first COVID-19 curve without imposing some of the harsher lockdown measures seen in other provinces, and maintained a clear focus on education and persuasion rather than enforcement. Since that time, however, enforcement activity has increased significantly in the province. In June 2020 we estimated that, based on publicly available reports at the time, BC had issued approximately 22 COVID-related fines and charges during the first few months of the pandemic. Between August and March 2021, the province reported handing out 1,584 fines. The total cost of fines given out in British Columbia since late August 2020 has surpassed \$1,000,000.

Ontario was one of the jurisdictions that handed out the most tickets during the first wave of the pandemic. In our June report we criticized both the nature of the enforcement actions, which at times targeted behaviour that was not illegal or did not represent a risk to public health, as well as the general prioritization of punishment over education and community supports. The total number of fines issued in Ontario during the second wave surpassed the number given in the first few months of the pandemic. Between March 2020 and August 2020, the province reported issuing a total of 2,562 fines. From September 2020 to March 2021, the province reported a total of 3,942 fines, reaching peak enforcement at 1,368 fines in a single month in January 2021. The number of tickets issued by by-law and police officers in Toronto and Ottawa specifically, however, generally decreased during the second wave of the pandemic. The focus of the law enforcement officers in those cities has also shifted, moving away from ticketing individuals for their use parks and public spaces and increasing the focus on business-related infractions. Although exact figures are not available, we estimate that since the beginning of the pandemic Ontario has issued at minimum \$5.7 million in COVID-19 related fines.

In our June 2020 report we found that Nova Scotia was the highest per capita ticket issuer. Nova Scotia law enforcement continue to give out fines for COVID-related behaviours, but at a much lower magnitude in wave 2 than in wave 1. Of the total 912 fines given across Nova Scotia between March 2020 and February 2021, 76% (690) were given out during wave 1 (March 2020 – August 2020). In fact, most of these fines (439, 48%) were given out in a single month, during the province's April 2020 "ticketing blitz". Just under than a quarter of the fines issued during the pandemic (24%, 222 tickets) were given out between September 2020 – February 2021. In total, Nova Scotia has levied over \$880,000 in COVID-related fines: \$667,977.50 in fines between March 2020 and August 2020, and \$218,517.50 in fines between September 2020 and February 2021.

In Manitoba, law enforcement officials gave very few fines during the first wave of the pandemic but have since adopted a punitive approach to managing the transmission of COVID-19. In June 2020 we estimated that, based on publicly available reports at the time, Manitoba had issued about 30 COVID-related fines and charges between April 1 and June 15, 2020. Beginning November 2020, Manitoba law enforcement officers began giving out upwards of 100 fines per week resulting in a per capita ticketing rate that was approximately three times higher than most of the other provinces studied. Between September 2020 and February 2021, Manitoba issued a total of 904 tickets. Most of the fines issued in Manitoba have gone to individuals, at a cost of \$298-\$1,296. At least 57 fines have been given to businesses since November 2020, at a cost of \$5,000. Manitoba did not begin releasing information about the nature and cost of fines until the week of November 23-29 2020. Based on the available information, however, Manitoba issued well over \$1,000,000 in fines during wave 2 of the pandemic.

Québec was identified as one of the most punitive provinces in the first wave of COVID-19. Like many other jurisdictions, the province appears to have become more punitive in its approach to the second wave

of infections. Between April 2020 and August 2020, the province reported giving out 3,756 fines, valued at \$5,507,255. Between September 2020 and March 2021, the province reported giving out 7,445 fines, totaling \$12,283,745 in fines. Ticketing in the province increased exponentially between October 2020 and March 2021, reaching a high of 3,309 fines in March 2021. Added together, this totals \$16,791,009 in fines issued between April 2020 and March 2021. Data from April 2021 shows that this figure has now reached \$24,393,156. In April 2021, Quebec law enforcement officers gave a total of 5,060 fines. This is even greater than the number of fines given in March 2021, meaning that the rate of monthly enforcement is still continuing to increase across the province.

The situation in Quebec is particularly concerning. Quebec has some of the most repressive COVID-19 orders, including a province-wide curfew that has been in effect for months. Particular concerns have been raised about the impact of Quebec's measures on those experiencing homelessness and other marginalized communities. Quebec also continued its singular focus on punitive enforcement even as rates of COVID-19 infections dropped through February and March. At the end of February, for example, Quebec Premier Legault announced that indoor pools, rinks, and movie theatres would be allowed to open. The curfew, however, remained in effect through March, and that month Quebec law enforcement handed out what was then a record number of fines – 3,309 tickets.

Comparing ticketing rates across the five provinces, Quebec and Manitoba have by far the highest per capita ticketing rates of the jurisdictions studied. It is notable, however, that Manitoba's rate of active COVID-19 cases during the second wave was much higher than Quebec's, where the infection rates were more comparable to Ontario and British Columbia. Ticketing in Quebec has also remained consistently high over many months, and during the time period in question reached its peak in March 2021, despite the fact that, at that time, the province's COVID-19 numbers had been declining for months.

Although Nova Scotia had relatively few cases of COVID-19 during between September and March, its use of punitive tickets on a per capita basis during the study period was comparable to that in Ontario and British Columbia, where COVID-19 infection rates were many times higher. The fact that Nova Scotia so significantly reduced its ticketing activities during the second wave, and nevertheless maintained a per capita ticketing rate that was on par with jurisdictions facing a much more serious public health crisis, underscores the scale of the ticketing blitz that the province undertook in the first month of the pandemic.

Conclusion: confronting the third wave of COVID-19

Our understanding of COVID-19 transmission has evolved significantly over the past year. There is now a broad consensus that most outdoor activities are relatively low-risk, and that transmission is much more likely in indoor settings. It is also increasingly apparent that, although outdoor gatherings in parks and high-profile instances of intentional rule-breakers may capture the headlines, most people are complying with public health recommendations, and much of the current spread of COVID-19 is happening amongst those that provide essential services. It is also clear that rates of infection map onto existing patterns of social inequality, with racialized and lower income communities experiencing much higher rates of COVID-19 infections and deaths.

Experts have underscored the need to assist essential workers through measure like paid sick leave, prioritized vaccination strategies, and the provision of supports to ensure that the spaces where people work, travel and live are as safe as possible. Medical professionals have also spoken out about the negative impacts that punitive enforcement-led approaches will have on the very communities currently suffering the brunt of COVID-19 illness and death.

Despite these clear trends and consistent recommendations to focus on community supports, some governments facing the third wave of COVID-19 are again turning to broad restrictions on access to

outdoor public space and punitive enforcement measures. Several provinces have recently increased the amount of their fines. In late April, for example, Nova Scotia doubled its fine for those who break COVID-19 gathering limits; that fine is now set at \$2,000 per ticket. In many jurisdictions more fines are being handed out now than at any other point in the pandemic: Quebec, for example, has issued a record-breaking number of COVID-related tickets in the past month, reporting 5,060 fines in April 2021 alone, bringing the total dollar figure since March 2020 to \$24,393,156. Police powers have also continued to expand. In Ontario, the provincial government passed a regulation on April 16, 2021 giving police broad powers to detain and question individuals to determine their compliance with a broad stay-at-home order. The government also passed numerous other limits on access to parks and outdoor amenities – all of which ran counter to the advice that had been provided by the government’s scientific advisory table. The measures were partially reversed after significant public outcry, an impending constitutional challenge from the CCLA, and public statements from many police services that they would not be using the new powers. Nevertheless, concerning restrictions on access to outdoor space remain and the police have retained expanded powers to detain and question individuals suspected of violating gathering limits.

As Canadian governments move to tackle a third and by all accounts more difficult wave of the COVID-19 pandemic, we urge them to remain focused on proven public health policy interventions such as community supports, paid sick leave, and education rather than punitive enforcement measures. We cannot police our way out of this pandemic.

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Introduction

In June 2020, the Canadian Civil Liberties Association and the Policing the Pandemic Mapping Project released a report on Canada’s use of coercive fines and law enforcement to respond to the COVID-19 public health crisis. Our research, which included feedback from individuals who had received COVID-related fines and national tracking of COVID tickets, showed that Canadians’ experiences of COVID law enforcement varied dramatically. During the first wave of COVID-19 some jurisdictions chose to focus their efforts on clear, evidence-based recommendations and messaging. They were effective in flattening the first curve. Others doubled down on a punitive approach with high fines, sending by-law and police officers into parks and homes to ticket those who stepped out of line. These jurisdictions – notably Ontario, Quebec, and Nova Scotia – also got through the first wave. But many in those communities experienced the additional harms flowing from arbitrary, unnecessary, and discriminatory enforcement actions.

Since that time our understanding of COVID-19 transmission has evolved significantly. There is a broad consensus that most outdoor activities are relatively low-risk, and that transmission is much more likely in indoor settings. It is also increasingly clear that, although outdoor gatherings at parks and high-profile instances of intentional rule-breakers may capture the headlines, most people are complying with public health recommendations, and much of the current spread of COVID-19 is happening amongst those that provide essential services. Infectious disease experts looking at the spread of COVID-19 in the Greater Toronto Area, for example, have found that the third wave is being driven by transmission in essential workplaces.¹ Reported compliance with self-isolation requirements is generally high, and law enforcement spot checks for compliance with post-travel quarantine laws and masking orders have consistently shown very high levels of compliance.² Experts have underscored the need to assist essential workers through measure like paid sick leave, prioritized vaccination strategies, and the provision of supports to ensure that the spaces where people work, travel and live are as safe as possible.³

It is also clear that rates of infection map onto existing patterns of social inequality. Government policymakers have had ample evidence of these disparities in rates of transmission since the beginning of the pandemic. A Public Health Ontario report from May 2020 reported data showing very clearly that the “most ethno-culturally diverse neighbourhoods in Ontario, primarily those concentrated in large urban areas, are experiencing disproportionately higher rates of COVID-19 and related deaths compared to

¹ Tom Blackwell, “Vaccinate essential workers on the job because they’re hardest hit by COVID’s third wave: experts” *National Post* (5 April 2021); Lauren Pelley, “COVID-19 variants spreading faster in GTA areas with more low income residents, essential workers: study” *CBC News* (27 March 2021); Zain Chagla et al, “Characterizing the disproportionate burden of SARS-CoV-2 variants of concern among essential workers in the Greater Toronto Area, Canada” (2021), *medRxiv*, online: <https://www.medrxiv.org/content/10.1101/2021.03.22.21254127v1>.

² City of Edmonton COVID-19 Dashboard: Face Coverings Compliance (accessed April 28, 2021), online: <https://public.tableau.com/profile/city.of.edmonton#!/vizhome/CityofEdmontonCOVID-19Dashboard/Summary>. Catherine Tunney, “With just 141 tickets issued, PHAC says most travellers are following quarantine laws” *CBC News* (3 February 2021), online: <https://www.cbc.ca/news/politics/quarantine-act-enforcement-1.5897682>. Statistics Canada, “COVID-19 in Canada: A One-year Update on Social and Economic Impacts”, (Ottawa: Statistics Canada, 2021), online: <https://www150.statcan.gc.ca/n1/en/pub/11-631-x/11-631-x2021001-eng.pdf?st=jacl4wQL>.

³ Zain Chagla, Sumon Chakrabarti and Kwadwo Kyeremanteng, “To keep COVID-19 variants out of Canada, stop ignoring essential workers”, *Globe and Mail* (3 February 2021), online: <https://www.theglobeandmail.com/opinion/article-by-ignoring-essential-workers-were-missing-the-mark-on-our-efforts-to/>; Amina Zafar, “Support for essential workers could bring COVID-19 under control faster in Canada, doctors say”, *CBC News* (10 February 2021), online: <https://www.cbc.ca/news/health/covid-19-essential-workers-support-punishment-1.5909162>.

neighbourhoods that are less diverse”.⁴ Statistics Canada has reported that Canada’s most racially diverse neighbourhoods have mortality rates that are more than twice as high as areas that are predominantly white.⁵ These are the same communities which are disproportionately subjected to police surveillance, detentions, searches, charges, and use of force; medical professionals have spoken out about the negative impacts that punitive enforcement-led approaches will have on the very communities currently suffering the brunt of COVID-19 illness and death.⁶

Despite these clear trends and consistent recommendations to focus on community supports, some governments facing the third wave of COVID-19 are again turning to broad restrictions on access to outdoor public space and punitive enforcement measures. In late April, Nova Scotia doubled its fine for those who break COVID-19 gathering limits; that fine is now set at \$2,000 per ticket. In Ontario, the provincial government passed a regulation on April 16, 2021 giving police broad powers to detain and question individuals to determine their compliance with a broad stay-at-home order. The government also passed numerous other limits on access to parks and outdoor amenities – all of which ran counter to the advice that had been provided by the government’s scientific advisory table. The measures were partially reversed after significant public outcry, an impending constitutional challenge from the CCLA, and public statements from many police services that they would not be using the new powers. Nevertheless, concerning restrictions on access to outdoor space remain and the police have retained expanded powers to detain and question individuals suspected of violating gathering limits.

It is against the backdrop of these and other ongoing discussions and concerns about fines and enforcement that we release this follow-up report, examining Canada’s approach to COVID-19 ticketing and law enforcement during the pandemic’s second wave – from approximately September 2020 to March 2021.

In general, the enforcement trends mirrored patterns of COVID-19 infections: declining through the summer, and increasing again through the fall and winter. This pattern, however, is not simply due to a decline in COVID-19 infections and the lifting of the most stringent legal restrictions. Nor is it indicative of a causal relationship: there is no evidence that infections declined because enforcement increased. There continue to be significant disparities in the reliance on ticketing across the country. The role of police and other law enforcement officials in a public health crisis is at heart a policy decision, and some jurisdictions have chosen to rely on extremely coercive and punitive responses during this public health crisis. Even at the height of the first wave, some jurisdictions that had initially turned quickly to punitive tickets in order to secure compliance were starting to back off and rely more on education than enforcement.

As documented below, the extent to which Canadian governments have relied on police and law enforcement during the second wave of COVID-19 cases has varied significantly as well. We were able to obtain comprehensive data documenting the number of tickets issued for alleged violations of COVID-19 related laws in five jurisdictions: British Columbia, Manitoba, Ontario, Quebec, and Nova Scotia.

Four out of five of the jurisdictions significantly increased their ticketing activity as compared to the outset of the pandemic. There is no evidence, however, that fines have any effect on rates of COVID-19

⁴ Ontario Agency for Health Protection and Promotion (Public Health Ontario), *Enhanced Epidemiological Summary: COVID-19 in Ontario – A Focus on Diversity*, 14 May 2020 (Toronto: Queen’s Printer for Ontario, 2020), online: <https://www.publichealthontario.ca/-/media/documents/ncov/epi/2020/06/covid-19-epi-diversity.pdf?la=en>

⁵ Statistics Canada, *supra* note 2.

⁶ Chagla, *supra* note 3; Zafar, *supra* note 3.

transmission, underscoring the extent to which punitive enforcement measures – and the harms that flow from them – are a government policy choice rather than a necessary, evidence-based public health measure.

Methodology

Data on enforcement presented in this report was collected via the CCLA and the Policing the Pandemic Mapping Project using a number of 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;
- Manual web searches of governments' and police services' COVID-19 web portals;
- Requesting data directly from various government agencies or from media outlets; and
- Individuals' reports of COVID-19-related enforcement interactions, including those collected via CCLA's online COVID-19 ticket tracker.

These sources are unlikely to capture every incident or enforcement action taken by police, by-law officers, or private security agents in Canada. Whereas our June 2020 report relied primarily on media reporting, all figures, rates, and aggregate level statistics on enforcement in this report were calculated using strictly official government sources the CCLA and the Policing the Pandemic Mapping Project obtained directly.

Inconsistencies in how different governments collect and release this information limit our ability to draw regional level comparisons. While we have tried to provide an analysis of monthly trends, in some cases (e.g., Manitoba, British Columbia) this was not possible. The length of time covered by the data we obtained from various governments also varied. It was our goal to provide an analysis of COVID enforcement data for a full year period (March 2020 to March 2021) for every jurisdiction we analyzed, further dividing these into wave 1 (March 2020 to August 2020) and wave 2 (September 2020 to March 2021) periods. Again, however, this was not always possible. In some cases (e.g., Nova Scotia), we have obtained data only up to January or February 2021. In other cases (e.g., Quebec), we have obtained data for the full year period, but with the inability to disaggregate data by month for certain periods.

In some jurisdictions, governments have been providing daily or weekly updates on levels of enforcement via press releases or open data dashboards. These sources are limited to only a handful of places. The City of Toronto, for instance, regularly reports limited data on enforcement in its daily COVID-19 briefings, along with numbers of new infections, and information on new protocols and other response efforts.⁷ The government of Québec also reports updates of COVID-19 related-charges online. While these official sources are generally easy to access and may contain more accurate information on certain aspects of enforcement (e.g., the number of people ticketed) than news media articles, they come with trade-offs. The City of Toronto page on COVID-related enforcement, for example, contains no information about *why* people may have been fined (e.g., hosting a large gathering, walking through a closed park), and contains no information about the demographic characteristics of those who were in contact with police or by-law officers. We are also unable to determine the degree to which fines may have gone to the same person. In the data we obtained, each fine is counted as a separate event, regardless of whether it was the person's first fine or not. Finally, as noted, there is little consistency in how data are collected or (dis)aggregated by different governments.

Newspaper articles, which we relied on more heavily in our previous report, tend to report more surrounding contextual information. In this report, we have relied on media reports only to further contextualize official government statistics with available situational and demographic information about enforcement.

⁷ “[COVID-19: Orders and By-laws](https://www.toronto.ca/home/covid-19/covid-19-what-you-should-do/covid-19-orders-directives-by-laws/)” (last updated 11 March 2021), online: *City of Toronto* <https://www.toronto.ca/home/covid-19/covid-19-what-you-should-do/covid-19-orders-directives-by-laws/>.

The Research on Policing Pandemics

Throughout the COVID-19 pandemic doctors and public health experts have repeatedly expressed concerns about the impacts of enforcement-led, punitive approaches to policing communities for COVID-19 compliance.⁸ Health experts have also consistently called for governments to encourage individuals to get outside to maintain their physical and mental well-being, and focus government efforts on supporting communities and essential workers – who are currently bearing the brunt of COVID-19 infections.⁹

Since the first wave of the pandemic several researchers have tried to identify which government policy measures have had the greatest impact on rates of COVID-19 transmission. The particular role that policing and enforcement plays in ensuring compliance with COVID-19 public health orders remains largely unknown at this stage in the pandemic.¹⁰ Our June report on COVID-19 enforcement during the first wave of the pandemic concluded that high levels of punitive enforcement were not necessary to control the spread of COVID-19, and documented significant concerns about the impact that punitive enforcement would have on over-policed communities and broader public health measures. We draw on insights from the fields of criminology and public health to expand on each of these themes below.

a. There is little evidence to suggest fines are an effective public health response

The social science evidence around the impacts of fines provides ample grounds for questioning the assertion that fines, big or small, are necessary to secure broad compliance with public health recommendations.

The logic driving the turn to punitive fines is simple. We often assume that if you punish people with a fine for their poor behaviour, they will be likely to change their actions to avoid being fined again – in criminology this is referred to as specific deterrence. It is also assumed that issuing fines will impact the broader population - people who hear that fines are a possibility or learn of someone else receiving a fine will, in theory, be warned off from breaking the law. This broader impact is termed general deterrence.

Although specific and general deterrence are notoriously difficult to measure scientifically, a small body of research on the potential deterrent effect of monetary penalties does exist. Taken together, these studies provide very little support for the theory that fines can act as deterrent for ‘bad’ or antisocial behaviours. Moreover, it is important to underscore that no academic study has ever sought to measure the deterrent

⁸ Chagla, *supra* note 3; Zafar, *supra* note 3.

⁹ Muriel Draaisma, “Science experts didn’t recommend Ontario ban outdoor amenities, COVID-19 panel member says”, *CBC News* (19 April 2021), online: <https://www.cbc.ca/news/canada/toronto/ontario-outdoor-recreational-amenities-ban-covid-19-science-advisory-table-did-not-recommend-1.5993818>; Sheena Goodyear, “This doctor almost quit Ontario’s COVID-19 scientific advisory table over Ford’s response”, *CBC Radio* (19 April 2021), online: <https://www.cbc.ca/radio/asithappens/as-it-happens-monday-edition-1.5993254/this-doctor-almost-quit-ontario-s-covid-19-scientific-advisory-table-over-ford-s-response-1.5993370>.

¹⁰ One study, which examined a wide range of Canadian governments’ policy responses, indicated that provinces with less strict COVID-19 restrictions over the summer saw a sharp increase in COVID-19 cases during the second wave. The research, however, did not take into account the role of policing and fine-based enforcement, and included a wide range of policy responses including financial support programs, business and school closures, and public health recommendations. Thomas Hale et al, “Variation in the Canadian Provincial and Territorial responses to COVID-19” (2021) Blavatnik School of Government Working Paper No 2020/039, online: <https://www.bsg.ox.ac.uk/research/publications/variation-canadian-provincial-and-territorial-responses-covid-19>; James Keller, “Provinces with least-strict COVID-19 restrictions this summer saw sharp case spikes in second wave, data show” *Globe and Mail* (5 March 2021), online: <https://www.theglobeandmail.com/canada/alberta/article-university-of-oxford-data-show-provinces-with-lax-covid-19/>.

efficacy of fines on public health related behaviours like physical distancing or wearing masks. Elsewhere, we have summarized the academic evidence on the efficacy of fines as follows:

Despite being the most commonly applied sanction across criminal, civil, and regulatory bodies of law in most Western countries (O'Malley 2010), strong, conclusive evidence in support of the deterrent effectiveness of fines is lacking (Beckett and Harris 2011; Wagenaar et al. 2007; Weatherburn and Moffatt 2011). Previous research in criminology has examined whether fines have a deterrent effect on the person receiving the fine, often in the context of drinking and driving, an area in which fines make up over 85% of penalties received in Canada (Statistics Canada 2007). While some studies have found that fines may have a deterrent effect in very specific circumstances (Yu 1994), others have found no deterrent effect on future behaviour whatsoever (Beckett and Harris 2011). Neither is it necessarily true that larger fines have a greater specific or general deterrent effect on future behaviour. Using a large sample of drinking and driving offenders in New South Wales, Australia, Weatherburn and Moffatt (2011) found that those given steep fines were no less likely to commit a future drinking and driving offence than those who received smaller fines. In the context of tax evasion in Canada, Varma and Doob (1998) similarly found that the size of the fine led to no greater deterrent effect. When one also considers the high rate of omitted variable bias in existing studies on deterrence (Weatherburn and Moffatt 2011), the existing evidence base for research into the deterrent effectiveness of fining becomes even shakier.¹¹

Particularly relevant for the COVID-19 context is the principle that a punitive measure such as a fine can only effectively shape behaviour when individuals know about and understand the law being enforced. It does little good to say you can be fined for breaking the law if the rules in question are so new, complex or vague that no one understands them. This has been a significant issue for COVID-19 orders which are often lengthy, broad, vague, and change frequently. Many individuals who got in touch with the CCLA to share their experiences receiving COVID-19 tickets in the first wave of the pandemic did not know their actions were prohibited. Moreover, even if people do understand the law and know fines are a possibility, individuals can only modify their behaviour if they have the means to do so. Fining a person for being on the street after curfew is futile if the person being punished has no safe indoor space to sleep.

b. Punitive law enforcement approaches are likely to disproportionately and negatively impact marginalized populations

Decades of research has shown that certain groups, including Black people and members of other racialized communities, Indigenous persons, those living in poverty, with addictions, or with mental illness, are disproportionately stopped, harassed, criminalized, harmed, and killed by police. There is no reason to assume that these systemic patterns of unequal enforcement would be different in a law enforcement-led response to COVID-19.

Studies from other national jurisdictions that collect and release race-based data on police responses to COVID-19 have largely affirmed that pre-existing discriminatory policing patterns are also reflected in COVID-19 enforcement. The London Metropolitan Police, for example, released data indicating that

¹¹ Alex Luscombe and Alexander McClelland, “[An extreme last resort’: Monetary Penalties and the Policing of COVID-19 in Canada](https://www.mediatechdemocracy.com/work/extreme-last-resort-monetary-penalties-and-the-policing-of-covid19-in-canada)”, Centre for Media, Technology and Democracy (November 2020), online: <<https://www.mediatechdemocracy.com/work/extreme-last-resort-monetary-penalties-and-the-policing-of-covid19-in-canada>>.

Black and Asian people were more likely to be targeted and fined COVID-19 emergency laws than white people.¹² The New York City Police Department similarly released racially disaggregated data on COVID-related enforcement, and a New York Times analysis revealed that 81 percent of the NYPD's summonses related to physical distancing had gone to Black and Latinx people.¹³ An additional New York Times analysis revealed that 35 of 40 people arrested by the NYPD for alleged physical distancing failures were Black.¹⁴ A report that gathered public information about COVID-19 enforcement across the United States found that Black, Indigenous, and people of colour were 2.5 times more likely to be policed for alleged COVID-19 violations than white people.¹⁵ The same study found that Black people in particular were 4.5 times more likely to face COVID-19 enforcement actions than white people.

We are unable to calculate the same figures in Canada because Canadian law enforcement generally does not release, and in some case does not even collect, detailed social-demographic information related to enforcement, COVID-19 included. Early in the pandemic, for example, both the Toronto Police Service and Toronto City by-law declared that they would not be collecting any race-based statistics on COVID-19 related enforcement.¹⁶ Without detailed demographic data, we may never be able to fully determine the extent to which enforcement responses to COVID-19 reflected the same unequal patterns documented in other contexts. We strongly suspect, however, based on previous research and findings in other countries, that similar trends are a reality in Canada as well. Although anecdotal, in our June 2020 report we highlighted numerous concerning incidents of COVID-related stops and ticketing related by racialized individuals, recent immigrants, same sex couples, elderly people, and persons experiencing homelessness.

The concerns we related early on in the pandemic regarding the disproportionate impacts of punitive enforcement persist. In Quebec, grassroots organizations report that individuals experiencing homelessness have again received tickets for being in public space after the province-wide curfew and have been harassed by police enforcing COVID orders when attempting to access safe injection sites. During Ontario's second wave of COVID-19 the police stated that they would be enforcing COVID-19 restrictions in the course of their regular duties, and did not have the power to randomly stop individuals or pull over cars to inquire about compliance with COVID-19 orders.¹⁷ Since regular policing duties bring them into disproportionate contact with the communities that are traditionally over-policed, it stands to reason that COVID-19 tickets have a high chance of being disproportionately levied against these same populations.

¹² Will Taylor, "[Black people more likely to be fined under coronavirus laws than whites in London, new figures show](https://ca.sports.yahoo.com/news/black-asian-minorities-coronavirus-regulations-arrested-fined-london-085018157.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xiLmNvbS8&guce_referrer_sig=AQAAAAYycDgaspK4tpwKKx9hns7jlQcx7sccK-bvrgKM_jRfrW3fSGZ-pukktmbmqBd8b03xDOLiEUaboxQYSm6lWW48KNrUYWp7ieo1R3AHgJE08w0QCZS0d1O_njX_4_eOknjdO5-5rUNz9kfxDdBbbqQA7Rypdf2hZp-SaMZWAY)" *Yahoo News UK* (3 June 2020), online: https://ca.sports.yahoo.com/news/black-asian-minorities-coronavirus-regulations-arrested-fined-london-085018157.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xiLmNvbS8&guce_referrer_sig=AQAAAAYycDgaspK4tpwKKx9hns7jlQcx7sccK-bvrgKM_jRfrW3fSGZ-pukktmbmqBd8b03xDOLiEUaboxQYSm6lWW48KNrUYWp7ieo1R3AHgJE08w0QCZS0d1O_njX_4_eOknjdO5-5rUNz9kfxDdBbbqQA7Rypdf2hZp-SaMZWAY.

¹³ Adrian Carrasquillo, "[81 Percent of NYPD's Social Distancing Summonses Were Issued to Blacks and Latinos: 'It's the New Stop and Frisk'](https://www.newsweek.com/81-percent-nypds-social-distancing-summonses-were-issued-blacks-latinos-its-new-stop-frisk-1502841)" *Newsweek* (8 May 2020), online: <https://www.newsweek.com/81-percent-nypds-social-distancing-summonses-were-issued-blacks-latinos-its-new-stop-frisk-1502841>.

¹⁴ Ashley Southall, "[Scrutiny of Social-Distance Policing as 35 of 40 Arrested Are Black](https://www.nytimes.com/2020/05/07/nyregion/nypd-social-distancing-race-coronavirus.html)" *New York Times* (7 May 2020), online: <https://www.nytimes.com/2020/05/07/nyregion/nypd-social-distancing-race-coronavirus.html>.

¹⁵ Pascal Emmer et al, "[Unmasked: Impacts of Pandemic Policing](https://communityresourcehub.org/wp-content/uploads/2020/12/Unmasked.pdf)" Community Resource Hub for Safety and Accountability, (October 2020), online: <https://communityresourcehub.org/wp-content/uploads/2020/12/Unmasked.pdf>.

¹⁶ Victoria Gibson, "Toronto police, city by-law, not collecting data on race when enforcing COVID rules", *iPolitics* (1 June 2020), online: <https://ipolitics.ca/2020/06/01/toronto-police-city-by-law-not-collecting-data-on-race-when-enforcing-covid-rules/>.

¹⁷ Liam Casey, "[Stay-at-home order doesn't give police power to enter homes, pull over drivers, stop pedestrians](https://www.cbc.ca/news/canada/toronto/covid-ont-question-and-answer-1.5873732)", *CBC News* (14 January 2021), online: <https://www.cbc.ca/news/canada/toronto/covid-ont-question-and-answer-1.5873732>.

c. Effective public health strategies can be undermined by punitive measures

Many of the public health strategies that are being prioritized right now – in particular strict self-isolation guidelines, robust testing, and contact tracing programs – can be undermined by an over-emphasis on punitive enforcement.

On the testing front, people who believe they will be unable to shoulder the burden of the isolation orders that accompany a positive COVID-19 test may be reticent to get tested. Numerous individuals who are incarcerated in Canada’s jails and prisons, for example, have reported that they fear getting tested because they know that those who test positive for COVID-19 are placed in solitary confinement. Essential workers who do not have paid sick leave and parents with children in childcare or school will frequently face income and job insecurity if they or a family member tests positive. Globally, experts have outlined that taking a punitive, as opposed to supportive human rights-based approach towards individuals who may face significant hardship complying with isolation orders will cause greater hardship and marginalization, and could create an environment where - due to economic pressures or fear of facing charges - individuals hide symptoms or avoid testing.¹⁸

Punitive approaches to enforcing self-isolation recommendations can also push people away from the supports and services they need in order to follow public health guidelines. Fully complying with the standard public health self-isolation recommendations is extremely difficult. Many people simply do not have the means to fully and completely isolate themselves from everyone else – including those in their own household – for an extended period of time. Family caregivers, people with disabilities, single parents, those with limited social support networks, people living in shared accommodations, and families with limited or unstable sources of income may face particular challenges complying with strict public health recommendations. If people fear that they will be punished for failing to abide by strict public health rules, they will be less likely to disclose their difficulties and seek the supports they need.

Finally, a punitive approach to compliance with public health orders can also undermine contact tracing efforts. Individuals who fear that they will be punished for having violated restrictions on gatherings or mask requirements may be reluctant to disclose their recent activities and contacts to public health officials.

¹⁸ Martin Wall et al, “[Health workers may have hidden Covid-19 symptoms to avoid losing pay – union](https://www.irishtimes.com/news/health/health-workers-may-have-hidden-covid-19-symptoms-to-avoid-losing-pay-union-1.4309256)”, *Irish Times* (21 July 2020), online: <<https://www.irishtimes.com/news/health/health-workers-may-have-hidden-covid-19-symptoms-to-avoid-losing-pay-union-1.4309256>>; “Rights in the time of COVID-19: Lessons from HIV for an effective, community-led response” (2020) UN AIDS at 13, online: https://www.unaids.org/sites/default/files/media_asset/human-rights-and-covid-19_en.pdf; “HIV Justice Worldwide Steering Committee Statement on COVID-19 Criminalisation”, *HIV Justice Network* (25 March 2020), online: <https://www.hivjustice.net/news/hiv-justice-worldwide-steering-committee-statement-on-covid-19-criminalisation/>; Eric Mykhalovskiy et al, “Human rights, public health and COVID-19 in Canada” (2020) 111 *Canadian Journal of Public Health* 975 at 978, online: <https://link.springer.com/content/pdf/10.17269/s41997-020-00408-0.pdf>.

Charting Canadian governments’ responses to COVID-19’s second wave

The emergence of a second wave of COVID-19 in the fall of 2020 – defined here as the period September 2020 to March 2021 – gave rise to a new round of restrictive emergency orders across the country, with responses varying significantly across the provinces and territories.¹⁹ While there is no official government source providing a country-wide picture of enforcement actions related to the pandemic, we have continued to track the phenomenon.

In many respects the second wave of legal restrictions targeting individuals’ rights and freedoms were harsher than the emergency orders promulgated during the first wave of the pandemic. Lockdowns lasted longer in many parts of the country. In several jurisdictions limitations on movement and gathering became more stringent – Ontario, for example, introduced a “stay at home” order, and Quebec put in place a highly concerning province-wide curfew. Interprovincial and international borders hardened, and new travel restrictions were put in place. Laws requiring masks in particular situations have also become common-place. Several court challenges to the constitutional validity of various laws were launched,²⁰ and at least two judicial decisions have suspended portions of provincial orders.²¹

In other respects, however, the more recent emergency orders have been more targeted and nuanced. Provinces increasingly employed regional approaches to closures and restrictions that attempted to respond to the localized public health risks, creating a patchwork of restrictions within each province. Many of the broadest restrictions on accessing outdoor public space and amenities that we criticized during the first wave of COVID-19 – banning individuals from public parks and other types of outdoor spaces – have not been reenacted. Numerous first wave emergency orders had also banned all gatherings, with no exceptions for support services or even at times members of the same household. Second wave gathering restrictions have been more targeted and nuanced, tending to try to focus on prohibiting or minimizing ‘social’ gatherings, and provide a long list of exceptions to allow legal scope for a broad range of ‘more essential’ gathering activity. The increasing complexity of the most restrictive orders left legal scope for activities that were essential for individuals’ physical and mental health. They also, however, created very confusing laws that were often vague and difficult to understand. The enforcement of these orders relied extensively on law enforcement discretion, creating opportunities for selective and unequal enforcement.

¹⁹ Hale et al, *supra* note 10.

²⁰ Ongoing court challenges include a challenge to Alberta’s public health measures (*Ingram et al. v. Her Majesty the Queen in Right of Alberta et al.*, Alberta Queen’s Bench Court File 2001-14300; Originating Application accessible at: <https://www.jccf.ca/wp-content/uploads/2020/12/2020-12-07-Originating-Application-Redacted.pdf>); a challenge to aspects of Manitoba’s public health legislation and emergency orders (*Gateway Bible Baptist Church et al. v. Her Majesty the Queen in Right of Manitoba et al.*, Manitoba Queen’s Bench File No.: CI 20-01-29284; Amended Notice of Application accessible at: <https://www.jccf.ca/wp-content/uploads/2021/01/Amended-NOA-FINAL.pdf>); a challenge to Yukon’s emergency legislation and orders (*Mercer et al. v. Yukon*, Supreme Court of Yukon File No. 20-A0032); a judicial review application related to Yukon’s declaration of a state of emergency (*Mercer et al. v. Yukon*, Supreme Court of Yukon File No. 20-AP002); and a challenge to emergency measures in Ontario (*Vaccine Choice Canada et al. v. Trudeau et al.*, Ontario Superior Court File No. CV-20-00643451-0000, redacted Statement of Claim available online at: <https://vaccinechoiccanada.com/wp-content/uploads/vcc-statement-of-claim-2020-redacted.pdf>).

²¹ In Quebec, the Superior Court suspended the application of a province-wide curfew to the homeless population. See *Clinique juridique itinérante c. Procureur général du Québec*, 2021 QCCS 182. In British Columbia, restrictions on protest activities and in-person religious services were challenged. The Court upheld the restrictions on religious worship but struck down those on outdoor protests. See *Beaudoin v. British Columbia*, 2021 BCSC 512.

Throughout the second wave, governments across the country continued to focus on high fines and punitive enforcement as a way to stem rising COVID-19 infections. There were a few instances where public health and law enforcement leadership publicly questioned the utility of responding to COVID-19 outbreaks by increasing police enforcement. In almost all parts of the country, however, politicians called for increased enforcement during the second wave. The political focus on punitive enforcement was perhaps most notable in Manitoba, where the province hired a private security force to increase COVID-19 ticketing and the Premier stated that his only regret during the second wave of COVID-19 was that he did not issue more tickets. A number of jurisdictions also enabled increased enforcement actions during the second wave by introducing laws that increased fine amounts, expanded police powers, and/or extended those enforcement powers to a broader set of law enforcement actors.

There has also been increasing attention paid – both in emergency orders and in enforcement efforts – to businesses. Earlier in the pandemic, business-oriented fines were predominantly issued for operating a non-essential business. As provinces and territories re-opened after the end of the first wave, businesses have been fined for failing to adhere to public health orders such as ensuring tables allow for physical distancing between patrons and hosting events that exceed maximum gathering limits. There have been concerns that certain businesses deemed *undesirable* which can be hyper-regulated by municipalities appear to be more likely to be fined or face other sanctions. These businesses include tattoo parlours, beauty parlours, massage parlours, and hookah lounges.

Non-compliance “snitch lines” have played a factor in the enforcement of business-related COVID-19 violations.²² In Toronto, for example, residents have been encouraged to report non-compliance via the city’s online portal, which contains three categories of report: unauthorized business remains open and business suspected of price-gouging, with examples of what to report are also offered, which for unauthorized business remains open, are extremely specific: food buffets, barrierless karaoke rooms, oxygen bars, saunas, steam rooms, and bathhouses.

We were able to obtain comprehensive data documenting the number of tickets issued for alleged violations of COVID-19 related laws in five jurisdictions: British Columbia, Manitoba, Ontario, Quebec, and Nova Scotia. Ontario, British Columbia, and Nova Scotia all had relatively similar rates of ticket issuance over the course of the second wave, handing out between 0.21 and 0.28 tickets per 1,000 people between September and March (see Table 1). Quebec and Manitoba were the most punitive of the five jurisdictions where detailed enforcement statistics were available, with ticketing rates of 0.51 and 0.69 tickets handed out per 1,000 residents respectively.

The situation in Quebec is particularly concerning. Quebec has some of the most repressive COVID-19 orders, including a province-wide curfew that has been in effect for months. Particular concerns have been raised about the impact of Quebec’s measures on those experiencing homelessness and other marginalized communities. Quebec also continued its singular focus on punitive enforcement even as rates of COVID-19 infections dropped through February and March. At the end of February, for example, Quebec Premier Legault announced that indoor pools, rinks, and movie theatres would be allowed to open. The curfew, however, remained in effect through March, and that month Quebec law enforcement handed out a record number of fines – 3,309 tickets.

Comparing ticketing rates across the five provinces, Quebec and Manitoba have by far the highest per capita ticketing rates of the jurisdictions studied (see Table 1). It is notable, however, that Manitoba’s

²² Alexander McClelland and Alex Luscombe, “Policing the Pandemic: Counter-mapping Policing Responses to COVID-19 across Canada” (2021) 10 Annual Review of Interdisciplinary Justice Research 195, online: https://c0c42d9a-a170-4571-949c-ea8bd55b102f.filesusr.com/ugd/3ac972_684671c0a416499aa24fa070e5a20263.pdf.

rate of active COVID-19 cases during the second wave was much higher than Quebec's, where the infection rates were more comparable to Ontario and British Columbia (see Figure 1). Ticketing in Quebec has also remained consistently high over many months, and during the time period in question reached its peak in March 2021, despite the fact that, at that time, the province's COVID-19 numbers had been declining for months.

Although Nova Scotia had relatively few cases of COVID-19 during between September and March, its use of punitive tickets on a per capita basis during the study period was comparable to that in Ontario and British Columbia, where COVID-19 infection rates were many times higher. The fact that Nova Scotia so significantly reduced its ticketing activities during the second wave, and nevertheless maintained a per capita ticketing rate that was on par with jurisdictions facing a much more serious public health crisis, underscores the scale of the ticketing blitz that the province undertook in the first month of the pandemic.

The remainder of report provides more detailed summaries of the enforcement approaches taken by various jurisdictions, including the most up-to-date data on levels of enforcement wherever possible. Information on the legally-binding emergency orders restricting gatherings and access to public space is also provided for context.

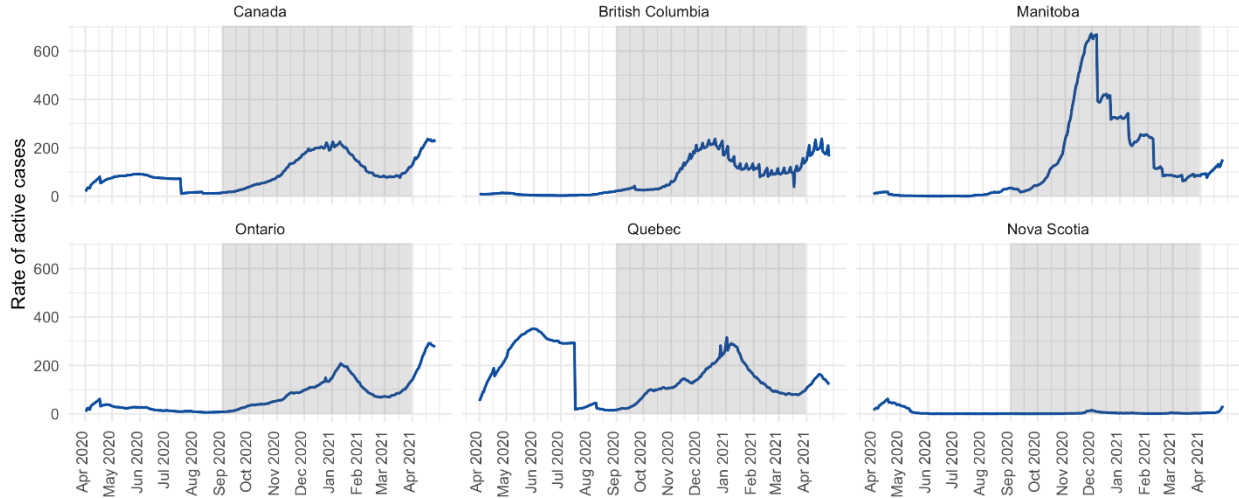
Table 1: Wave 2 October 2020 – February 2021 provincial enforcement rates per 1,000

Province	Population	Total Fines	Rate per 1,000
British Columbia	4,648,055	~1,300	~0.28
Manitoba	1,278,365	893	0.69
Ontario	13,448,494	3,020	0.22
Québec	8,164,361	4,136	0.51
Nova Scotia	923,598	195	0.21

Notes: population data obtained from 2016 census. Total fines represent pooled enforcement data for October 2020 through to the end of February 2021. The total fines and rate per 1,000 for British Columbia has been estimated using available data. Due to inconsistencies in how governments have (dis)aggregated their data prior to release, we were unable to include September 2020 or March 2021 data in these calculations. All data obtained from official government sources. No official government data were available for Alberta, Saskatchewan, New Brunswick, Prince Edward Island, Newfoundland and Labrador, or the territories.

Rate of active COVID-19 cases

April 01 2020 - April 26 2021. Shading indicates wave 2 period, as defined in report.



Data source: Government of Canada

Figure 1: Rate per 100,000 population of active COVID-19 cases for British Columbia, Manitoba, Ontario, Quebec, Nova Scotia, and all of Canada. Data covers April 01, 2020 – April 26, 2021. Shading indicates wave 2 period (September 01, 2020 – March 31, 2021), as defined throughout report.

a. British Columbia

Emergency Orders

During the pandemic’s first wave, British Columbia was seen as a jurisdiction that, from a civil liberties perspective, took a model approach to enforcement.²³ The province managed to effectively flatten its curve without imposing some of the harsher lockdown measures seen in other provinces, and maintained a clear focus on education and persuasion rather than enforcement.

As with most other provinces, BC also experienced a concerning increase in COVID-19 infections in the fall, with a rise in new reported cases that started increasing steadily in mid-October and peaked in late November.²⁴ In response to the rising case counts, in late October Dr. Henry issued an order that severely limited gatherings in most indoor spaces, including private residences. The gathering of more than six guests in addition to the occupants of a private residence was prohibited. This order was followed a few days later by one that targeted the Vancouver Coastal Health and Fraser Health Regions, prohibiting people from engaging in social gatherings in a private residence with anyone other than their “core bubble” (typically defined as a household, with some exceptions for those living alone).²⁵ There were a large number of exceptions for in-person home services. British Columbia elected not to extend the same

²³ Canadian Civil Liberties Association and Policing the Pandemic Mapping Project, “[Stay off the Grass: COVID-19 and Law Enforcement in Canada](https://ccla.org/cclanewsites/wp-content/uploads/2020/06/2020-06-24-Stay-Off-the-Grass-COVID19-and-Law-Enforcement-in-Canada1.pdf)” (June 2020), online: <<https://ccla.org/cclanewsites/wp-content/uploads/2020/06/2020-06-24-Stay-Off-the-Grass-COVID19-and-Law-Enforcement-in-Canada1.pdf>>.

²⁴ “[British Columbia COVID-19 Dashboard](https://experience.arcgis.com/experience/a6f23959a8b14bfa989e3cda29297ded)” (accessed 24 January 2021), online: *Government of British Columbia* <https://experience.arcgis.com/experience/a6f23959a8b14bfa989e3cda29297ded>.

²⁵ Order of the Provincial Health Officer, *COVID-19 Prevention Regional Measures* (13 November 2020), online: <<https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/covid-19-pho-order-vch-fh.pdf>>.

level of restrictions to outdoor gatherings. British Columbia's order also did not close public parks, and the province did not have any orders requiring mask use until late November.²⁶

Through December and January, the province's gathering and other public health restrictions were clarified and streamlined.²⁷ During the height of the second wave restrictions, British Columbians were prohibited from hosting events or attending at private residences where there is a person who is not an occupant was present.²⁸ Numerous exceptions were provided for purposes such as work, personal care, education, music lessons, emergency services, housekeeping, maintenance, repairs, or any other purpose that is "not social in nature".²⁹ Individuals who lived alone were permitted to have up to two other non-occupants over as guests, or go over to their residences for social visits, if the people involved regularly interacted with each other.³⁰ A wide variety of organized activities, including support meetings, outdoor exercise and sports, and low-intensity indoor athletics were permitted so long as they adhered to specific health guidelines.³¹

Enforcement actions

British Columbia's public health leadership has continued to push back against calls for broad enforcement using police and by-law officers. As Dr. Henry explained at a November news conference, the province did not plan to accompany the increased restrictions with increased enforcement:

We don't necessarily need to enforce it. These are the rules and we know that people understand the rationale and, for the most part, they follow them. . . . we do have the ability to enforce rules through PHO and by-law officers and police, but I don't believe this is necessary.³²

Despite this very welcome messaging, enforcement powers in the province have increased since the early months of the pandemic. In August and September the provincial government gave police and other provincial enforcement officers the ability to issue tickets for contravention of the Public Health Officer's orders – enforcement powers that were reserved for public health officials during British Columbia's first COVID wave.³³ The province also announced that, as of December 16, 2020, enforcement measures of COVID-19 public health orders were being strengthened by enhancing workplace inspections, sending unpaid and overdue COVID-19 violation tickets directly to collections and enhancing police and law-enforcement resources.³⁴

²⁶ "Province extends emergency, introduces mask enforcement measures" (24 November 2020), online: *Government of British Columbia* <<https://news.gov.bc.ca/releases/2020EMBC0061-001960>>.

²⁷ Order of the Provincial Health Officer, *Gatherings and Events* (8 January 2021), online: <<https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/covid-19-pho-order-gatherings-events.pdf>>.

²⁸ *Ibid* at A.1.

²⁹ *Ibid* at A.2.

³⁰ *Ibid* at A.5, A.6.

³¹ *Ibid*.

³² Michelle Ghossoub, "B.C. announces new COVID-19 restrictions for Metro Vancouver health regions for 2 weeks as cases surge", *CBC News* (7 November 2020), online: <<https://www.cbc.ca/news/canada/british-columbia/b-c-announces-new-covid-19-restrictions-for-metro-vancouver-health-regions-for-2-weeks-as-cases-surge-1.5793969>>.

³³ "Province updates measures to enforce COVID-19 public safety" (20 September 2020) online: *Government of British Columbia* <<https://news.gov.bc.ca/releases/2020PSSG0053-001836>>.

³⁴ "Violation tickets for unsafe COVID-19 behaviour" (13 January 2021), online: *Government of British Columbia* <<https://www2.gov.bc.ca/gov/content/safety/emergency-preparedness-response-recovery/covid-19-provincial-support/violation-tickets>>.

The number of tickets issued in the province has also increased significantly. In June 2020 we estimated that, based on publicly available reports at the time, BC had issued approximately 22 COVID-related fines and charges during the first few months of the pandemic. Enforcement through fines ramped up in late December and January, with law enforcement officials handing out more tickets between December 19 – February 2 than they handed out in the four prior months combined.³⁵ Between August 21 and December 14, 2020, the province handed out a total of 362 tickets to individuals and businesses. Between mid-December and the end of March 2021 more than 1300 tickets were handed out – mostly targeting individuals accused of violating public health orders (see Table 2).

Excluding *Quarantine Act* fines, British Columbia law enforcement officials have given out \$961,400 worth of fines between August 21, 2020 and March 26, 2021. Including the 113 *Quarantine Act* fines in this figure would easily push it over \$1 million. The cost of *Quarantine Act* fines, however, which can vary widely, has not yet been released, and therefore is not included in this calculation.

Table 2: COVID-19 related fines in British Columbia between August 21, 2020 and March 26, 2021

Time Period	Gathering/event order violations (owners) - \$2,300/fine	Food and Liquor Serving Promises violations - \$2,300	Tickets issued to individuals - \$230	Quarantine Act fines	Total Fines	Total Fine Amount (excluding Quarantine Act fines)
Mar 12 –26, 2021	21	9	69	15	114	\$84,870
Feb 27-Mar 12, 2021	22	1	112	12	147	\$78,660
Feb 13-26, 2021	29	7	242	7	285	\$138,460
Jan 16-Feb 12, 2021	51	5	309	9	374	\$199,870
Dec 15-Jan 15, 2021	74	5	324	13	416	\$256,220
Aug 21-Dec 14, 2020	45	21	224	72	362	\$203,320
Total	221	39	1,211	113	1,584	\$961,400

Notes: Time periods as released by the Government of British Columbia. Note that some time periods are two weeks in length, while others are a full month. Quarantine Act fines excluding from total cost calculation (last column) as fine values not reported at the time of writing.

During the second wave of COVID-19 British Columbia also increased its fines for certain types of COVID-19 infractions. BC Public Safety Minister Mike Farnworth had initially resisted calls from other politicians for harsher penalties, stating in early February that he believed that the rules in place were working.³⁶ On March 25, 2021, however, the government increased fines for attending or promoting a gathering in violation of COVID-19 public health orders, more than doubling the amount from \$230 to \$575. As Minister Farnworth explained, “[o]ver the past several months, it’s become clear that for some, the risk of a \$230 violation ticket isn’t enough to deter attendance at events that violate the provincial health officer order.”

³⁵ 387 tickets were issued between 21 August 2020 and 18 December 2020. A total of 806 tickets had been issued by 2 February 2021, suggesting 419 tickets were handed out between 19 December 2020 and 2 February 2021. See, e.g. “Some B.C. politicians calling for stricter enforcement of COVID-19 health measures”, *CBC News* (1 February 2021), online: <<https://www.cbc.ca/news/canada/british-columbia/covid19-stricter-measures-1.5896339>>; Alyse Kotyk, “COVID-19 fines: Dozens of tickets handed out in B.C. in the last 2 weeks of 2020”, *CTV News* (6 January 2021), online: <<https://bc.ctvnews.ca/covid-19-fines-dozens-of-tickets-handed-out-in-b-c-in-the-last-2-weeks-of-2020-1.5255547>>; Alyse Kotyk, “‘It’s unbelievable’: Dozens of COVID-19 tickets were handed out in B.C. in the last 2 weeks”, *CTV News* (3 February 2021), online: <<https://bc.ctvnews.ca/it-s-unbelievable-dozens-of-covid-19-tickets-were-handed-out-in-b-c-in-the-last-2-weeks-1.5293989>>.

³⁶ “Some B.C. politicians”, *supra* note 36; Kotyk, “It’s unbelievable”, *supra* note 36.

The province has received some criticism for overzealous enforcement of the public health measures. For example, in January 2021 the RCMP prevented a drive-in rally in Surrey, despite efforts by organizers to have volunteers who would ensure people would stay in their cars and follow public health orders.³⁷ Although the event was shut down before it began, a volunteer was given a \$2,300 ticket for promoting a large gathering,³⁸ suggesting that tickets are not only being issued solely to people who “refuse to put the safety of people and communities above their own selfish needs” as has been suggested by B.C.’s Minister of Public Safety.³⁹

b. Alberta

Emergency Orders

Alberta generally took a more cautious approach to strict mandatory public health measures in response to the second wave of COVID-19. The province ended its state of emergency in June 2020,⁴⁰ when the worst of the first wave was over. However, under the province’s *Public Health Act* a Cabinet declaration of emergency is not necessary to grant the Chief Medical Officer broad legal powers.⁴¹ As the virus has resurged in the province during the Fall of 2020 the Chief Medical Officer responded with formal orders in select circumstances and less formal guidance/advice in others.

In early November an Order was issued that limited all private social gatherings to 15 people for certain geographic areas of the province.⁴² In mid-November further targeted health measures were introduced for certain regions, including a ban on indoor fitness classes, group performing, singing and dancing, and limiting wedding and funeral services to 50 people.⁴³ In addition to these mandatory measures, the province laid out detailed voluntary measures that were recommended for those living in the hardest hit regions, although it was not always clear from the government’s messaging which measures were mandatory and which are voluntary.⁴⁴

³⁷ Emad Agahi, “[What the RCMP did was not right’: Attendees of cancelled rally criticize police for shutdown](https://bc.ctvnews.ca/what-the-rcmp-did-was-not-right-attendees-of-cancelled-rally-criticize-police-for-shutdown-1.5270759)”, *CTV News* (17 January 2021), online: <<https://bc.ctvnews.ca/what-the-rcmp-did-was-not-right-attendees-of-cancelled-rally-criticize-police-for-shutdown-1.5270759>>.

³⁸ *Ibid.*

³⁹ Kotyk, “It’s unbelievable”, *supra* note 35.

⁴⁰ Stephanie Babych, “[State of public health emergency expiring in Alberta as province reports additional COVID-19 death](https://calgaryherald.com/news/local-news/live-at-330-p-m-province-provides-an-update-on-covid-19-response-2)”, *Calgary Herald* (16 June 2020), online: <<https://calgaryherald.com/news/local-news/live-at-330-p-m-province-provides-an-update-on-covid-19-response-2>>.

⁴¹ *Public Health Act, RSA 2000, c P-37*.

⁴² In particular, any region where the active case rate was 50+ per 100,000 population or where the active cases in the region is 10 or greater: [CMOH Order 36-2020](https://open.alberta.ca/publications/cmoh-order-36-2020-which-rescinds-cmoh-order-35-2020-2020-covid-19-response-2) (6 November 2020), online: <<https://open.alberta.ca/publications/cmoh-order-36-2020-which-rescinds-cmoh-order-35-2020-2020-covid-19-response-2>>.

⁴³ Calgary area, Edmonton area, Fort McMurray, Grand Prairie, Lethbridge and Red Deer were the subject of targeted health measures in [CMOH Order 37-2020](https://open.alberta.ca/publications/cmoh-order-37-2020-2020-covid-19-response-2) (12 November 2020), online: <<https://open.alberta.ca/publications/cmoh-order-37-2020-2020-covid-19-response-2>>.

⁴⁴ Some of the voluntary measures that were urged in October and November included a prohibition on gatherings inside homes or outside of individuals’ local community (i.e. in a different region of the province). In other words, people could gather in groups of up to 15 in structured and regulated environments like restaurants but were also being asked not to travel to areas without restrictions. The targeted voluntary measures also recommend that people limit themselves to membership in 3 “cohorts” which might mean a person’s core household, school, and one other sport or social cohort. Mask use was encouraged in all indoor workplaces and offices are to reduce employees in the workplace at one time. Faith-based gatherings were limited to 1/3 capacity, although this also appeared to be a voluntary measure.

On November 24, 2020, the government re-instated the declaration of the province’s state of a public health emergency and introduced more stringent province-wide restrictions. The new measures banned most indoor social gatherings by prohibiting all visits in private residences, with exceptions for situations such as emergency response, visiting children, and social or protective services. Individuals who lived alone were allowed to have two guests who they regularly interacted with. Indoor private social gatherings outside of private residences were significantly restricted,⁴⁵ and outdoor social gatherings were limited to ten people.⁴⁶ A mandatory mask requirement, subject to exceptions including children under two and mental or physical limitations, was introduced for indoor workplaces in Edmonton, Calgary and surrounding areas.⁴⁷

On December 8 the restrictions were tightened again to extend the mask requirement province-wide and prohibit all indoor and outdoor private social gatherings, with the exception of 10-person funeral services or wedding ceremonies.⁴⁸ Outdoor physical activity was permitted but was limited to 10 or fewer people and outdoor activities where physical distancing could not be maintained were prohibited. A mandatory work from home measure for all those who were not required to be physically present at work came into effect on December 13, 2020.⁴⁹

Restrictions on outdoor private social gatherings were relaxed slightly on January 18, 2020,⁵⁰ and further eased at the beginning of March to allow for some businesses and indoor public services, like libraries and gyms, to reopen.

Enforcement actions

Alberta also appeared to take a cautious approach to enforcement, at least at the outset of the second COVID-19 wave. Unlike many other jurisdictions, by-law officers in Alberta do not have stand-alone enforcement powers under the *Public Health Act*. The Calgary Police Service reported handing out a total of 35 tickets between April 1 and November 13, none to businesses, and in Edmonton, Chief of Police Dale McFee continued to emphasize education and awareness over writing tickets or issuing fines: “We get a lot of fines handed out in the criminal justice system. I’m not sure they’ve deterred much activity in a lot of areas.”⁵¹

As case counts rose, however, the pressure to increase enforcement measures mounted. Calgary’s Mayor expressed some concerns about the initial approach to enforcement and stated that he would seek

⁴⁵ [CMOH Order 38-2020](https://open.alberta.ca/publications/cmoh-order-38-2020) (24 November 2020), online: <<https://open.alberta.ca/publications/cmoh-order-38-2020>>, Part 2.

⁴⁶ “[Strong restrictions to slow the spread of COVID-19](https://www.alberta.ca/release.cfm?xID=75761DF0A1D11-C8DA-D2A7-1B1E30D593FE280C)” (24 November 2020), online: *Government of Alberta* <<https://www.alberta.ca/release.cfm?xID=75761DF0A1D11-C8DA-D2A7-1B1E30D593FE280C>>; [CMOH Order 38-2020](#), *ibid*.

⁴⁷ [CMOH Order 38-2020](#) *supra* note 46 at Part 4.

⁴⁸ [CMOH Order 41-2020](https://open.alberta.ca/dataset/f27976e7-9cf6-4d14-a9b3-b410fbc91baf/resource/465cb25b-da04-4d53-8834-c2ea7c2b151e/download/health-cmoh-record-of-decision-cmoh-order-41-2020.pdf) (8 December 2020), online: <<https://open.alberta.ca/dataset/f27976e7-9cf6-4d14-a9b3-b410fbc91baf/resource/465cb25b-da04-4d53-8834-c2ea7c2b151e/download/health-cmoh-record-of-decision-cmoh-order-41-2020.pdf>>.

⁴⁹ [CMOH Order 42-2020](https://open.alberta.ca/dataset/4cccb47f-c26a-40bf-b95e-caaf04892164/resource/3a7a124f-1d12-485b-b7b1-09bddf61f29e/download/health-cmoh-record-of-decision-cmoh-order-42-2020.pdf) (11 December 2020), online: <<https://open.alberta.ca/dataset/4cccb47f-c26a-40bf-b95e-caaf04892164/resource/3a7a124f-1d12-485b-b7b1-09bddf61f29e/download/health-cmoh-record-of-decision-cmoh-order-42-2020.pdf>> at Part 9.

⁵⁰ [CMOH Order 01-2021](https://open.alberta.ca/dataset/fcb2b719-af1f-426c-bf76-6390f7ac0459/resource/bbd990d1-cae3-463f-a8fd-d3cb248ee192/download/health-cmoh-record-of-decision-cmoh-order-01-2021.pdf) (18 January 2021), online: <<https://open.alberta.ca/dataset/fcb2b719-af1f-426c-bf76-6390f7ac0459/resource/bbd990d1-cae3-463f-a8fd-d3cb248ee192/download/health-cmoh-record-of-decision-cmoh-order-01-2021.pdf>>.

⁵¹ Janice Johnston, “[Edmonton police have not issued a pandemic-related ticket since June](https://www.cbc.ca/news/canada/edmonton/policing-the-pandemic-alberta-law-enforcement-opts-for-educational-approach-over-tickets-fines-1.5791688)” *CBC News* (6 November 2020), online: <<https://www.cbc.ca/news/canada/edmonton/policing-the-pandemic-alberta-law-enforcement-opts-for-educational-approach-over-tickets-fines-1.5791688>>.

approval from the provincial government to give by-law and police officers the authority to issue tickets for violations of the new measures.⁵² Alberta's chief medical officer of health also wrote to Alberta police requesting assistance with enforcement efforts.⁵³ On November 27 the provincial government announced that certain Alberta peace officers and community peace officers had been granted temporary authority to enforce public health orders, increasing the number of officers able to levy fines by about 700.⁵⁴ Over the next month media commentators continued to question why more COVID tickets were not being handed out, particularly for participants in anti-mask rallies.⁵⁵

Unfortunately, Alberta does not publish province-wide statistics on COVID-19 enforcement efforts. In Edmonton, however, it is clear that there has been a significant increase in enforcement, with the majority of the tickets being handed out for alleged violations of the city's mask by-law (see Figure 2). Although ticketing in Edmonton appears to have begun in August 2020, as the province entered its second wave of cases, enforcement data prior to December 2020 were unreliable and therefore excluded from the discussion here. The total number of fines under the city's mask by-law was 86 in December 2020, 147 in January 2021, and 43 in February 2021. In the same three-month period there were 5, 12, and 7 fines in Edmonton, respectively, under the provincial Public Health Act.

⁵² Heide Pearson, "COVID-19: City of Calgary to seek approval to enforce newly-announced health restrictions" *Global News* (13 November 2020) online: <https://globalnews.ca/news/7460780/calgary-covid-19-update-friday-nov-13-2020/>.

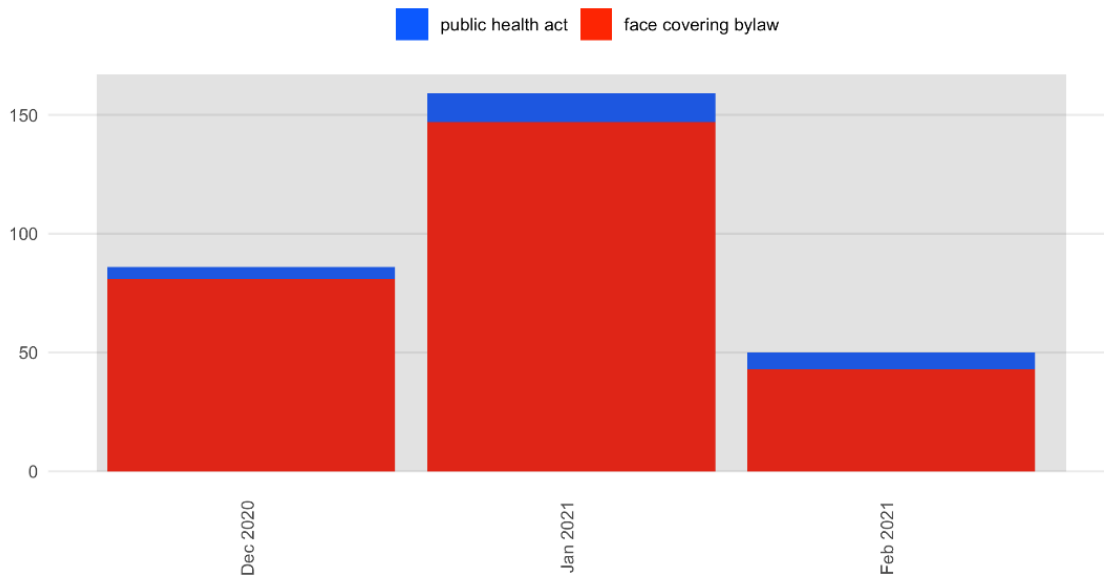
⁵³ Josee St-Onge, "Alberta's top doctor asks police for support enforcing COVID-19 restrictions", *CBC News* (18 November 2020), online: <<https://www.cbc.ca/news/canada/edmonton/hinshaw-letter-police-enforcement-covid-19-restrictions-1.5805880>>.

⁵⁴ *M.O. 64/2020* (27 November 2020), online: <<https://open.alberta.ca/dataset/bce3204d-40bd-421c-937c-5420779eda15/resource/fc9e6143-9042-4433-8ac8-0c1122004a55/download/jsg-peace-officer-bulletin-26-2020-authority-to-enforce-public-health-act-and-cmoh-orders.pdf>>; "Update 147: COVID-19 pandemic in Alberta" (27 November 2020), online: Government of Alberta <<https://www.alberta.ca/release.cfm?xID=7579378EB135E-E6C1-8702-086FA782A1D024EA>>.

⁵⁵ Mark Villani, "Frustration, finger pointing over lack of ticketing at Alberta anti-mask rallies", *CTV News* (30 November 2020), online: <https://calgary.ctvnews.ca/frustration-finger-pointing-over-lack-of-ticketing-at-alberta-anti-mask-rallies-1.5209944>; Brad Quarin, "Warnings, not tickets, being issued for COVID breaches", *Toronto Star* (16 December 2020), online: <https://www.thestar.com/news/canada/2020/12/16/warnings-not-tickets-being-issued-for-covid-breaches.html>; Janice Johnston, "Public health orders, tickets issued to Albertans defying COVID-19 restrictions", *CBC News* (30 December 2020), online: <https://www.cbc.ca/news/canada/edmonton/alberta-covid-19-coronavirus-enforcement-1.5858030>.

COVID-19 Related Fines in Edmonton, Alberta

December, 2020 - February, 2021. Y-axis indicates number of fines. Shading indicates wave 2.



Data source: City of Edmonton

Figure 2: COVID-19 related fines in Edmonton, Alberta between December, 2020 – February, 2021. August, 2020 – November, 2020 not shown here as no reliable data were available at the time of writing.

c. Saskatchewan

Between September 2020 and March 2021, Saskatchewan faced two peaks in active COVID-19 cases, one in the fall and a second early in the New Year. In response to the rising infection rates the province started imposing stricter gathering limits in October.⁵⁶ Restrictions continued to increase through the fall, and in mid-December the province entered a “lockdown” period.⁵⁷ During the December “lockdown” private indoor gatherings were limited to immediate household members; outdoor gatherings of up to 10 people were permitted so long as physical distancing between households could be maintained.⁵⁸

Unfortunately, there is no reliable data documenting enforcement actions in Saskatchewan during the second wave of COVID-19. Saskatchewan’s Premier, Scott Moe, called for the escalation of enforcement measures in mid-January 2021 in response to indications that residents were not following public health guidelines. He also requested that public health look into closing businesses that were not following

⁵⁶ Government of Saskatchewan “COVID-19 Update: 40 New Cases, Nine in Hospital, 12 Recoveries” (16 October 2020), online: <https://www.saskatchewan.ca/government/news-and-media/2020/october/16/covid19-update-40-new-cases-nine-in-hospital-12-recoveries>.

⁵⁷ Government of Saskatchewan, “COVID-19 Update: New Measures to Further Reduce Transmission Risk” (14 December 2020), online: <https://www.saskatchewan.ca/government/news-and-media/2020/december/14/covid-19-update-new-measures-to-further-reduce-transmission-risk>.

⁵⁸ *Ibid.*

guidelines.⁵⁹ A Regina Police Services Inspector reinforced this statement in March 2021, saying the emphasis had been on education during 2020 and there was significant leniency, but it was now time to increase enforcement.⁶⁰

d. Manitoba

Emergency Orders

The second COVID-19 wave in Manitoba was significantly more serious than the initial spring outbreak. In November 2020 Manitoba had the highest rate of active COVID-19 cases in the country,⁶¹ and on November 12 the entire province was moved into the red – or critical – level of the provincial pandemic response system. The public health orders passed at that time⁶² placed a general prohibition on gatherings of more than five people who did not live in the same residence. Exceptions included health care or social services facilities, or gatherings at businesses or facilities that were permitted to stay open under the Order. The order also specified that people who reside at a particular private residence should not be included when calculating the maximum gathering size at that residence. The order closed all outdoor recreational facilities (e.g., soccer fields, playgrounds, and hockey rinks) and required people taking part in outdoor recreational activities such as running to stay at least two meters apart. Masks were required in indoor spaces, with various exceptions including for young children and those with relevant medical conditions. Finally, despite early statements suggesting that the order would ban Manitobans from socializing with people outside their own household,⁶³ the gathering limit initially remained set at a maximum of five people.⁶⁴ Dr. Brent Roussin, Manitoba’s chief provincial public health officer, explained the decision not to put that prohibition into a legally-binding order was based on concerns about the ability to enforce such a broad prohibition.⁶⁵

Those concerns are well-founded. Provinces that have tried to put in place such strict gathering limits have had to accompany them with dozens of confusing exceptions, risking arbitrary and discriminatory enforcement. Unfortunately, however, such communication mistakes have significant consequences. The perception that the law was more permissive than originally intended undermined the strong and clear public health recommendation to limit contacts to your household. After significant public outcry, a more restrictive order with a general prohibition on non-occupants entering private residences – with a list of broad exceptions to the prohibition – was issued on November 19, 2020.⁶⁶ As case counts continued to decline, restrictions were relaxed and on January 22, Manitobans in southern and central areas of the province were also allowed to select two other people who would be permitted to come into their

⁵⁹ Thomas Piller, “Saskatchewan Premier Moe encourages escalation of coronavirus measure enforcement”, *Global News* (20 January 2021), online: <https://globalnews.ca/news/7586956/enough-is-enough-saskatchewan-premier-says-its-time-to-start-enforcing-covid-19-rules/>.

⁶⁰ Alec Salloum, “Police say tickets have been an effective tool in health order enforcement”, *Regina Leader-Post* (12 March 2021), online: <https://leaderpost.com/news/local-news/police-say-tickets-have-been-an-effective-tool-in-health-order-enforcement>.

⁶¹ “COVID-19 Situational Awareness Dashboard” (accessed 24 January 2021), online: *Government of Canada* <<https://health-infobase.canada.ca/covid-19/dashboard/>>.

⁶² Orders under *The Public Health Act* (11 November 2020), online: <https://www.gov.mb.ca/asset_library/en/proactive/2020_2021/orders-soe-11122020.pdf>.

⁶³ Bartley Kives, “Manitoba’s code red restrictions don’t include top doc’s vow to limit social gatherings to 1 household”, *CBC News* (11 November 2020), online: <<https://www.cbc.ca/news/canada/manitoba/manitoba-red-restriction-social-gathering-1.5798841>>.

⁶⁴ Orders under *The Public Health Act*, *supra* note 62.

⁶⁵ Kives, *supra* note 63.

⁶⁶ Orders under *The Public Health Act*, *supra* note 62.

homes.⁶⁷ By the end of March 2021, outdoor public gatherings were limited to 25 people and indoor public gatherings were limited to 5 people.⁶⁸

Enforcement actions

Manitoba has also adopted a singular focus on punitive fines and enforcement. In late October the province extended enforcement powers to by-law officers⁶⁹ and significantly increased the amount of money individuals were fined for public health violations;⁷⁰ the fines are now set at \$1,296 for individuals, and \$5,000 for corporations. In early November the province announced that it would be spending \$2.5 million to “support additional enforcement” for COVID-19 and extended enforcement powers to an additional 275 personnel.⁷¹ And on November 17 the Premier announced that he had signed a contract with a private security firm, which would be mandated to patrol and issue fines for public health infractions.⁷² The province also announced that the government would reimburse municipalities for the equivalent value of any tickets written by municipal by-law enforcement staff, creating a significant financial incentive for municipalities to issue high numbers of tickets.⁷³

Even though the COVID-19 infections decreased toward the end of December, the rhetoric surrounding the need to ensure public health compliance through punishment has continued. Premier Brian Pallister stated in December 2020: “The fact is, if you take \$1000 out of somebody’s pocket, then that better be a deterrent. And if it isn’t, \$5000 will be.”⁷⁴ In January 2021 he stated that he wished he had taken even more steps to enforce public health measures last year, and that “we were trying too hard to educate, perhaps, and not enough maybe to make it clear that there are serious consequences if you don’t want to abide by the rules.”⁷⁵ He then suggested the province needed to further step up enforcement of existing orders in preparation for new restrictions that came into effect January 29, 2021 requiring anyone entering Manitoba to quarantine for 14 days.⁷⁶

The Government of Manitoba has been releasing weekly data on COVID enforcement dating back to the third week of May 2020. The province gave very few fines in wave 1: in June 2020 we estimated that, based on publicly available reports at the time, Manitoba had issued about 30 COVID-related fines and

⁶⁷ *Orders under The Public Health Act* (21 January 2021), online: <https://manitoba.ca/asset_library/en/proactive/2020_2021/orders-soe-01212021.pdf>.

⁶⁸ *Orders under the Public Health Act* (25 March 2021), online: https://manitoba.ca/asset_library/en/proactive/2020_2021/orders-soe-03252021.pdf.

⁶⁹ “Province Taking Action to Reinforce Public Health Orders” (21 October 2020), online: *Government of Manitoba News Release* <<https://news.gov.mb.ca/news/index.html?item=49446&posted=2020-10-21>>.

⁷⁰ “Manitoba Authorizes Municipal By-law Officers to Issue Tickets for Breaches of Public Health Emergency Orders” (23 October 2020), online: *Government of Manitoba News Release* <<https://news.gov.mb.ca/news/index.html?item=49454&posted=2020-10-23>>.

⁷¹ “Province Protecting Manitobans by Increasing Enforcement of COVID-19 Public Health Orders” (5 November 2020), online: <<https://news.gov.mb.ca/news/index.html?item=49576&posted=2020-11-05>>.

⁷² Sarah Petz, “Manitoba hires private security firm to crack down on COVID-19 rule breakers starting this weekend”, *CBC News* (17 November 2020), online: <<https://www.cbc.ca/news/canada/manitoba/covid19-enforcement-update-manitoba-pallister-1.5804774>>.

⁷³ “Province Protecting Manitobans”, *supra* note 71.

⁷⁴ Sarah Petz, “Over \$180K in fines issued in Manitoba for not following COVID-19 public health orders last week”, *CBC News* (1 December 2020), online: <https://www.cbc.ca/news/canada/manitoba/pallister-covid-19-enforcement-1.5823368>.

⁷⁵ Rachel Bergen, “14-day quarantine will be mandatory for all entering Manitoba”, *CBC News* (26 January 2021), online: <https://www.cbc.ca/news/canada/manitoba/covid-19-manitoba-brian-pallister-1.5888250>.

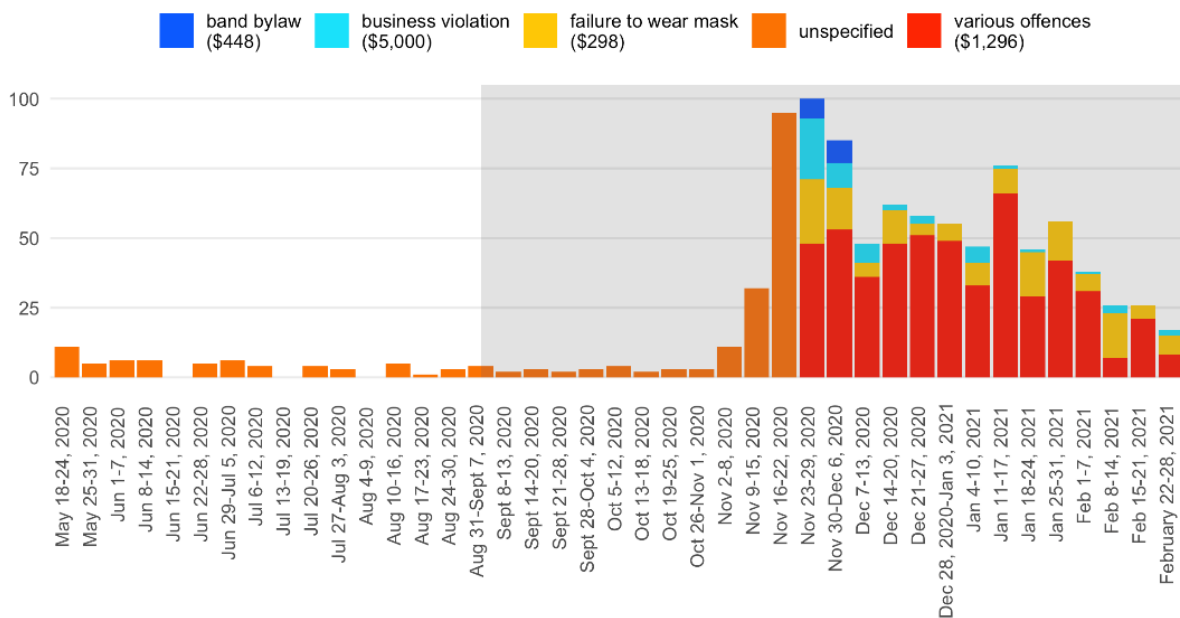
⁷⁶ Michelle Gerwing and Danton Unger, “Manitoba premier amends interprovincial travel rules amid COVID-19 variant surge”, *CTV News* (26 January 2021), online: <https://winnipeg.ctvnews.ca/manitoba-premier-amends-interprovincial-travel-rules-amid-covid-19-variant-surge-1.5282677>.

charges between April 1 and June 15, 2020. In November 2020, however, the province took a hard turn toward punitive, fine based enforcement, and between September 2020 and February 2021 (March 2021 data not available), Manitoba issued 904 tickets (see Figure 3). The greatest number of fines in a single week were given out between November 23-29, 2020, totalling 100 fines.

Manitoba did not begin releasing information about the nature and cost of fines until the week of November 23-29 2020. Based on the available information, however, the total cost of all fines given between November 23, 2020 and February 28, 2021 puts the total dollar figure at \$1,011,740, a number which would be notably higher if charges from prior months/weeks were included. The majority of the fines in Manitoba to date have cost \$1,296, labelled "various offences" in the data released by the Government of Manitoba. Between the week of November 23-29, 2020 and February 22-28, 2021, the period when the government began releasing breakdowns by the cost of fines, a total of \$1,011,740 fines were given out. Broken down by violation, that's \$6,720 in band by-law tickets, \$43,508 in failure to wear mask fines, \$285,000 in business violations, and \$676,512 in "various offences". Unfortunately, detailed information about the cost and nature of the fine before the week of November 23-29, 2020 have not been released by the Government of Manitoba.

COVID-19 Related Fines in Manitoba

May, 2020 - February, 2021. Y-axis indicates number of fines. Shading indicates wave 2.



Data source: Government of Manitoba

Figure 3: COVID -19 related fines in Manitoba, May 2020 to February 2021. Note: data could not be aggregated by month due to several weeks spanning two months (e.g., December 28, 2020 - January 3, 2021). The Government of Manitoba did not release data on the type of fine (e.g., business violation vs failure to wear mask) until the week of November 23-29, 2020. All prior fines have been labelled “unspecified”.

e. Ontario

Emergency Orders

After the first wave of COVID-19, Ontario ended its official state of emergency and brought the *Reopening Ontario Act* (“ROA”) into force. Although the state of emergency lapsed in July, most of the emergency orders brought in to respond to the pandemic remained in force through the provisions of the ROA.

As Ontario’s COVID-19 case counts began to rise through the fall, the regulations under the ROA were repeatedly amended to create more restrictive limits on public and private activities. Then, in late November, Toronto and Peel Region were moved into the ‘grey’ category – the most restrictive category under the ROA.⁷⁷ The rest of the province followed a month later.

In the grey zone all indoor social gatherings and indoor public events were prohibited, and outdoor social gatherings were limited to 5 people.⁷⁸ Limited exceptions were provided for individuals who lived alone, attendance at permitted businesses and gatherings in motor vehicles for religious services.⁷⁹ Individuals were required to work from home except where on-site attendance was necessary,⁸⁰ and for those workplaces that remained open numerous health measures were required. Unlike in the first wave of COVID-19 restrictions, however, outdoor recreational amenities such as dog parks, sports fields, benches and playgrounds generally remained open,⁸¹ and numerous public health and elected leaders actively encouraged people to get outside for their physical and mental health. Several municipalities, however, put in place local by-laws or were subject to local public health orders limiting and closing specific park amenities or generally requiring physical distancing in park space.⁸²

On January 13, 2021, the province introduced further restrictions by again declaring a formal state of emergency and enacting a province-wide “stay at home” order. The order, which remained in force for seven weeks, required individuals to “remain in their place of residence at all times unless it is necessary to leave” for “essentials” such as work, education, childcare, obtaining goods and services, assisting others, exercise, and doing anything necessary to respond to or avoid an imminent risk to an individual’s health and safety. The order specified that it did not apply to people who are experiencing homelessness⁸³

⁷⁷ [“Toronto, Peel move into COVID-19 lockdown Monday as Ontario tries to stop ‘worst-case scenario’”, CBC News](https://www.cbc.ca/news/canada/toronto/covid-19-coronavirus-ontario-november-20-toronto-peel-1.5809575) (20 November 2020), online: <https://www.cbc.ca/news/canada/toronto/covid-19-coronavirus-ontario-november-20-toronto-peel-1.5809575>.

⁷⁸ *Rules for Areas in Stage 1*, O Reg 82/20, Schedule 4, s.1.

⁷⁹ *Ibid* at Schedule 4, ss.2 - 4.

⁸⁰ *Ibid* at Schedule 1, s. 2.1.

⁸¹ *Ibid* at Schedule 3, s. 4.

⁸² City of Toronto By-Law 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); City of Toronto By-Law 323-2020, *To amend Municipal Code Chapter 636, Public Square to include Nathan Phillips Square within the emergency physical distancing regulations*, (3 April 2020); Nadine Yousif, [“Is Vaughn skating on thin ice? Why decision to close outdoor rinks, toboggan hill amid COVID concerns is a slippery slope”, The Star](https://www.thestar.com/news/gta/2021/01/20/is-vaughan-skating-on-thin-ice-why-decision-to-close-outdoor-rinks-toboggan-hill-amid-covid-concerns-is-a-slippery-slope.html) (20 January 2021), online: <https://www.thestar.com/news/gta/2021/01/20/is-vaughan-skating-on-thin-ice-why-decision-to-close-outdoor-rinks-toboggan-hill-amid-covid-concerns-is-a-slippery-slope.html>; Josh Pringle, [“Ottawa bans sledding at Mooney’s Bay Hill after large crowds gather at popular winter attraction”, CTV News](https://ottawa.ctvnews.ca/ottawa-bans-sledding-at-mooney-s-bay-hill-after-large-crowds-gather-at-popular-winter-attraction-1.5278626) (22 January 2021), online: <https://ottawa.ctvnews.ca/ottawa-bans-sledding-at-mooney-s-bay-hill-after-large-crowds-gather-at-popular-winter-attraction-1.5278626>.

⁸³ *Stay-at-Home Order*, O Reg 11/21, Schedule 1, s. 1(3).

and had other explicit provisions regarding leaving unsafe living conditions and protecting oneself or others from domestic violence.⁸⁴

The “stay at home” order was rescinded in mid-February, and varying levels of regional restrictions remained until April 3, when the government moved the entire province to a modified version of the ‘grey’ category. Only four days later – on April 7 – another province-wide stay at home order was issued.

Enforcement actions

Ontario has continued to place a heavy reliance on punitive ticketing to enforce compliance with public health orders. The province was one of only three jurisdictions that relied heavily on ticketing during the first wave of COVID-19, and in the first few months of the pandemic many Ontarians contacted CCLA to share their experiences with unfair, arbitrary enforcement actions.

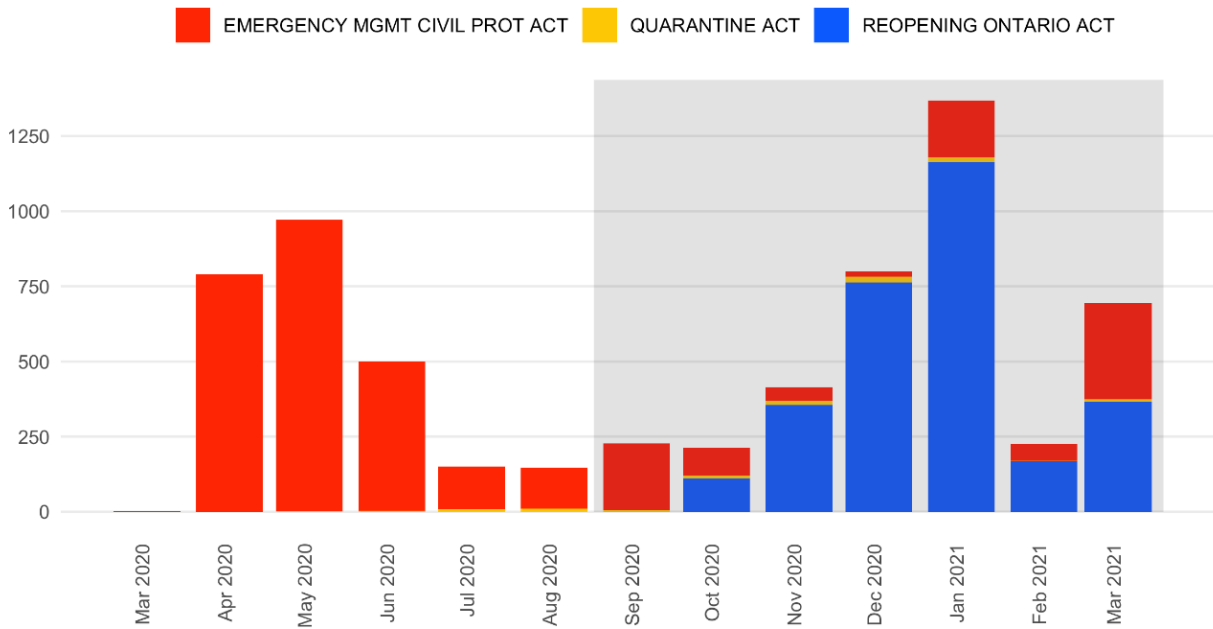
The total number of fines Ontario issued in wave 2 has surpassed the number given in wave 1. Ticketing during Ontario’s second wave has steadily increased since October, reaching a monthly record of 1,368 fines issued in January 2021 (1,163 fines under the *Reopening Ontario Act*, 188 fines under the *Emergency Management Civil Protection Act*, and 17 fines under the federal *Quarantine Act*). Between September 2020 and March 2021, the province reported 3,942 fines, compared to 2,562 between March 2020 and March 2021, for a total 6,504 fines since the start of the pandemic (see Figure 4).

Although exact figures are not available (Ontario currently only reports the total amount of *paid* fines), we estimate that since the beginning of the pandemic Ontario has issued over \$5.7 million in COVID-19 related fines. This number was calculated by multiplying the total number of tickets issued by 880 – the minimum amount an individual would be fined in Ontario (\$750 + the victim surcharge). As there are a number of circumstances under which the fine associated with a charge could be much larger, this should be read as a conservative estimate.

⁸⁴ *Ibid* at Schedule 1, s. 1(1) 15.

COVID-19 Related Fines in Ontario

March, 2020 - March, 2021. Y-axis indicates number of fines. Shading indicates wave 2.



Data source: Ministry of Attorney General

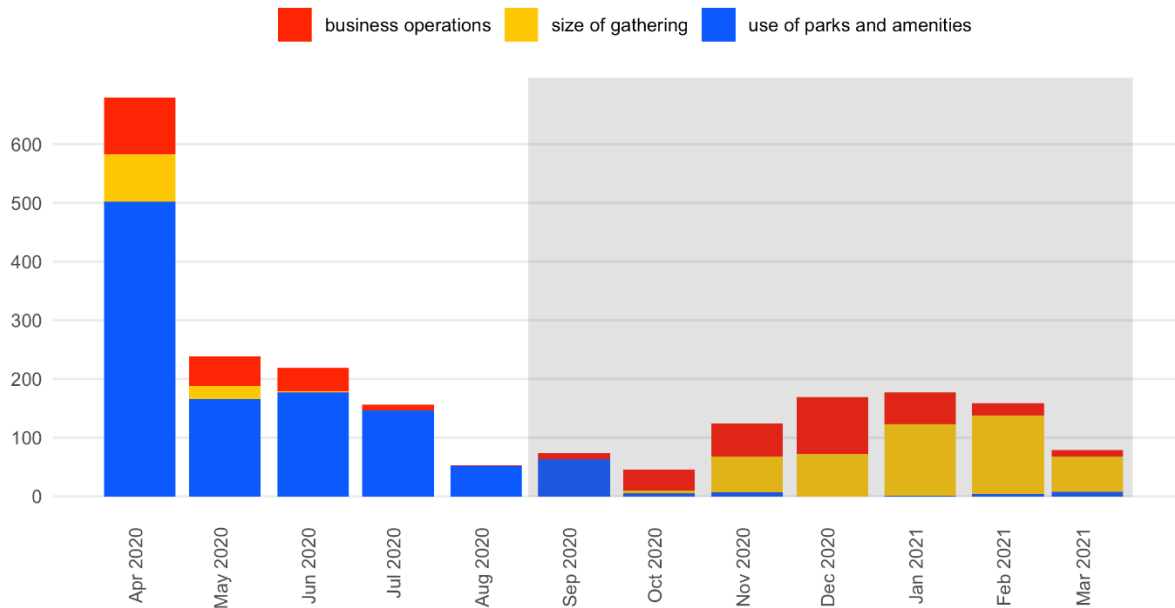
Figure 4: COVID-19 related fines in Ontario between March 2020 to March 2021. Includes all fines given by by-law, public health, police officers, and other provincial enforcement officials.

Although the number of fines has increased since the first wave, more detailed data from the City of Toronto suggests that the nature of the enforcement action has also shifted.

In Toronto, for example, a far greater proportion of the fines given out by by-law and police officers during wave 1 pertained to use of public parks and amenities, whereas nearly all of the fines during wave 2 have been given in relation to business operations and size of gatherings (see Figure 5). The largest number of fines given out by Toronto law enforcement officials in a single month remains April 2020, when the city launched its “ticketing blitz”. In that month, the city gave out a total of 679 fines (14.1% business, 11.9% size of gathering, 73.9% use of parks and amenities). These 679 fines account for 31% of the 2,174 total COVID-related fines given out by Toronto by-law officers, police officers and public health officials between April 2020 and March 2021.

COVID-19 Related Fines in Toronto, Ontario

April, 2020 - March, 2021. Y-axis indicates number of fines. Shading indicates wave 2.



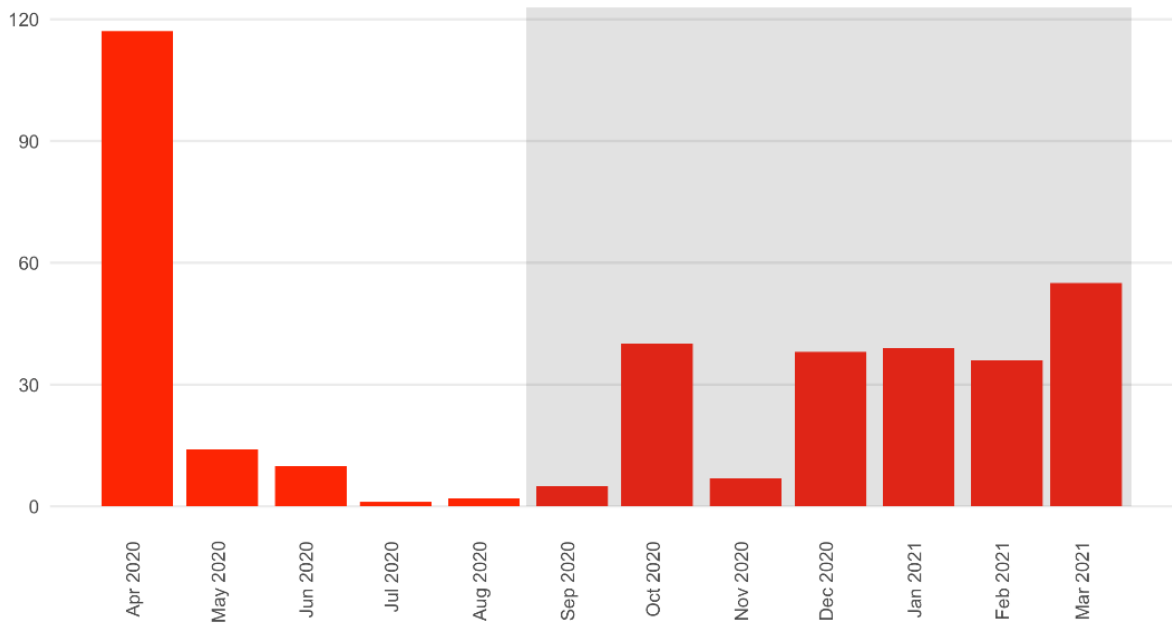
Data source: City of Toronto

Figure 5: COVID-19 related fines in Toronto, Ontario between April 2020 to March 2021. Includes all charges by City of Toronto Municipal Licensing & Standards, Toronto Public Health and Toronto Police Service.

Ottawa by-law officers, like Toronto, gave out the largest number of fines during its ticketing blitz in the month of April 2020. In that month, the city gave out a total of 117 fines. These 117 fines account for 32% of the total 364 fines given out in Ottawa between the beginning of April 2020 and the end March 2021. Unfortunately, the City of Ottawa has not provided any information as to why these fines are being given out (e.g., business operations vs. use of public parks). With the exception of September and November, the number of fines given out in Ottawa during wave 2 has remained relatively stable, showing a slight increase in March. In March, the City of Ottawa reported giving out a total of 55 fines, up from 36 fines in February.

COVID-19 Related Fines in Ottawa, Ontario

April, 2020 - March, 2021. Y-axis indicates number of fines. Shading indicates wave 2.



Data source: City of Ottawa

Figure 6: COVID-19 related fines issued by by-law officers in Ottawa, Ontario between April 2020 to March 2021

The data from Toronto and Ottawa also show that enforcement in Ontario’s two largest cities have decreased relative to the first wave, while overall provincial enforcement has increased and surpassed first wave levels. This, combined with regional breakdowns of province-wide data, suggests that enforcement has shifted geographically, with fewer tickets being issued in Toronto and Ottawa, and more fines being issued in other parts of the province. It also possible, however, that more enforcement actions Ottawa have been shifted to police; these tickets would not be captured in the Ottawa data. Recent comments from Ottawa Police, however, suggest that Ottawa’s police service has not been taking an increased role in enforcing COVID-19 restrictions.⁸⁵ Speaking in January 2021, Ottawa’s deputy police chief emphasized the nuanced role of police in the ongoing pandemic:

This is a public health crisis and you’re not going to enforce your way out of it. We need to have people understand the ramifications of what they’re doing. Enforcement is a tool, but we actually have to get the hearts and minds of our community understanding that it’s absolutely important that we abide by [the rules].⁸⁶

The increase in tickets under the *Emergency Management and Civil Protection Act* in January 2021 presumably relate to alleged violations of the province’s stay-at-home order. The January stay-at-home order initially caused significant concerns that police would be proactively stopping and questioning individuals to monitor compliance. Unlike Quebec, however, the Ontario government clarified that the

⁸⁵ Kate Porter, “Stay-at-home order in effect, but questions about enforcement linger”, *CBC News* (14 January 2021), online: <https://www.cbc.ca/news/canada/ottawa/stay-at-home-order-ottawa-enforcement-1.5872528>.

⁸⁶ Ted Raymond, “Ottawa Bylaw handed out five fines, five warnings since started of stay-at-home order”, *CTV News* (18 January 2021), online: <https://ottawa.ctvnews.ca/ottawa-bylaw-handed-out-five-fines-five-warnings-since-start-of-stay-at-home-order-1.5271782>.

police would not be able to stop people to ask where they are going or enter homes to check for compliance.⁸⁷

The fact that police powers were not initially expanded does not mean that policing of the stay-at-home did not have disproportionate impacts on traditionally over-policed communities. Police officers were expected to enforce the stay-at-home order in the course of their normal policing duties. Police spend a disproportionate amount of time in racialized, lower-income communities, and have high levels of interaction with racialized persons, individuals with addictions and mental health issues, and other marginalized communities. These groups are likely to face disproportionate levels of monitoring for compliance, and punishment for alleged violations of, the stay-at-home order.

Although this report focuses on the second wave of COVID-19, it is worth noting that Ontario's most recent stay-at-home order, which is currently in force to respond to the province's third wave of COVID-19, has been accompanied by a concerning increase in police powers.

f. Quebec

Emergency Orders

The Quebec government was the first to enact broad emergency measures in response to the resurgence of COVID-19. Early in the fall the province established four basic levels of COVID restrictions: Level 1 – vigilance (green); Level 2 – early warning (yellow); Level 3 – alert (orange); and Level 4 – maximum alert (red).

The laws governing what can and cannot happen at the different levels are detailed and complex.⁸⁸ Throughout the second wave of COVID-19, level 4 restrictions, which applied across much of the province during the peak of the second wave, banned private indoor or outdoor gatherings subject to a list of complex exceptions. The law permitted people to gather in a private residence to receive a “service or support” required for health, safety, personal care or esthetics, respite, domestic help, help for activities of daily living, pedagogy or education. Individuals who live alone were also permitted to have a single visitor within their residence. The emergency order also required that Quebecers stay two metres apart from people outside their household when outside of their home – although again there was an exception for the provision of a service or support. Schools also received specific exemptions and regulations, as did protests, funerals, and places of worship.

On January 6, 2021, facing a continuing rise in COVID-19 rates, Quebec announced further public health measures. Existing public health restrictions were amended and, most significantly, a new curfew was imposed, requiring residents to stay in their homes between 8:00 p.m. and 5:00 am. The curfew took effect at 12:01 a.m. on January 9.

⁸⁷ Liam Casey, “[Stay-at-home order doesn't give police power to enter homes, pull over drivers, stop pedestrians](https://www.cbc.ca/news/canada/toronto/covid-ont-question-and-answer-1.5873732)”, *CBC News* (14 January 2021), online: <<https://www.cbc.ca/news/canada/toronto/covid-ont-question-and-answer-1.5873732>>.

⁸⁸ “[Measures adopted by Orders in Council and Ministerial Orders in the context of the COVID-19 pandemic](https://www.quebec.ca/en/health/health-issues/a-z/2019-coronavirus/measures-orders-in-council-ministerial-orders/)” (last updated 22 January 2021), online: *Government of Quebec* <<https://www.quebec.ca/en/health/health-issues/a-z/2019-coronavirus/measures-orders-in-council-ministerial-orders/>>.

The Order-in-Council⁸⁹ establishing the curfew lays out a number of exceptions – reasons that are considered adequate to excuse being out past 8 pm. These included certain employment activities (related to services not suspended under other Orders-in-Council), attending adult education institutions, obtaining health care, tending to the needs of a vulnerable person, donating blood, and walking one’s dog (within a 1 km radius from one’s residence). If the harshness of a curfew was lessened somewhat by these exceptions, the province’s messaging on enforcement was clear: police would be actively enforcing the curfew and residents out between 8 and 5 should be prepared to show proof of their need to be outside of the home.

Although the curfew was intended to be a four-week “shock treatment” to deal with increasing hospital numbers, it has remained in place for over three months and the government has not announced an intention to rescind it any time soon. When case numbers and the situation in hospitals improved in the province, other public health restrictions were loosened (for example, movie theatres re-opened to limited capacity), but the curfew remained in place. The government subsequently changed the time of the curfew (beginning it at 9:30 p.m. rather than 8:00 p.m.), but reverted back to more strict limits when case numbers and hospitalizations rose again.

The curfew has prompted large protests and has been opposed by numerous groups, including the Canadian Civil Liberties Association and La Ligue des Droits et Libertés (“La Ligue”). La Ligue has questioned the effectiveness of a curfew based on the experiences of France and some U.S. states, and pushed for collective solutions like improving the ventilation of indoor areas and improving the capacity for tracing cases rather than restricting individual freedoms through a curfew.⁹⁰ The CCLA has argued that the curfew, if ever justified, should not have continued beyond its initial planned four-week period and that loosening restrictions in other areas while maintaining the curfew is an unreasonable restriction on liberties and vests law enforcement with too much power and discretion to stop and question Quebecers.

The enactment of broad, complicated, and strict laws invites arbitrary and unfair enforcement. These consequences were evident in Quebec during the first wave of COVID-19. Throughout April, May and June many Quebecers got in touch with CCLA to report instances of unfair, arbitrary ticketing. One person described being ticketed when the stranger walking behind them in the park stepped too close. One woman who works at a Montreal social service organization was ticketed for stopping to offer support services to a street-involved Indigenous client. Quebec civil society organizations also reported that ticketing and increased harassment of street-involved populations was commonplace and prejudiced essential public health and social service supports.⁹¹

The second wave of COVID-19 enforcement has given rise to similar concerns, and in particular about ongoing disproportionate impacts for marginalized communities, including Indigenous persons, Black people and members of other racialized communities, those experiencing homelessness, mental health challenges, and addictions.

⁸⁹ [Order in Council No 2-2021](https://cdn-contenu.quebec.ca/cdn-contenu/adm/min/sante-services-sociaux/publications-adm/lois-reglements/decret-2-2021-anglais.pdf?1610143878), ordering of measures to protect the health of the population amid the COVID-19 pandemic situation (8 January 2021), online: <<https://cdn-contenu.quebec.ca/cdn-contenu/adm/min/sante-services-sociaux/publications-adm/lois-reglements/decret-2-2021-anglais.pdf?1610143878>>.

⁹⁰ “[COVID-19: La Ligue des droits et libertés s’oppose au couvre-feu](https://www.journaldemontreal.com/2021/01/06/covid-19--la-ligue-des-droits-et-libertes-soppose-au-couvre-feu)”, *Le Journal de Montréal* (6 January 2021), online: <https://www.journaldemontreal.com/2021/01/06/covid-19--la-ligue-des-droits-et-libertes-soppose-au-couvre-feu>.

⁹¹ [Table des Organismes Communautaires Montréalais de Lutte Contre Le Sida](http://toms-mtl.org/wp-content/uploads/2020/09/Amnesty-request-Letter.pdf), *Amnesty Request Letter* (23 September 2020), online: <<http://toms-mtl.org/wp-content/uploads/2020/09/Amnesty-request-Letter.pdf>>.

The curfew has had particularly concerning impacts on homeless populations and those who rely on safe injection sites. When the curfew was first enacted, reports surfaced that people experiencing homelessness were being fined for being on the street at night.⁹² When specifically asked about the curfew's application to individuals experiencing homelessness, Premier Legault clarified that there would be no exemption, arguing that there was adequate shelter space in Montreal.⁹³ Community advocates and support workers responded that the Mayor's assertions were simply wrong – there are not enough spaces in the shelter system and, in any event, there are many reasons why some people may refuse to go to a shelter (or be refused a space by the shelter).⁹⁴ After an Indigenous man died on the streets, after taking refuge in a portable toilet steps away from a shelter that was closed overnight, calls on the province to exempt the homeless from the curfew intensified, but the Premier argued that an exemption could open the door to people pretending to be homeless in order to skirt the rules.⁹⁵

In January, the Clinique Juridique Itinerante/Mobile Legal Clinic launched a court challenge to the curfew's application to people experiencing homelessness and also sought an urgent interim stay of the curfew as applied to that population. On January 26, 2021, the Quebec Superior Court ruled that, although the curfew had been adopted in the public interest, its application endangered the life, safety and health of those experiencing homelessness. Given these concerns, the judge ruled in favour of suspending the curfew order until the matter could be argued on its merits in court. Following the ruling, Lionel Carmant, the Minister of Health and Social Services, indicated that the government would not challenge the temporary court order and would instead amend its curfew order to ensure that it would not apply to those experiencing homelessness.⁹⁶

The curfew and the increase in policing after 8 pm is also a barrier to harm reduction services like safe injection sites, with some organizations noting a drop in attendance.⁹⁷ Travel certificates are available to those who make it to safe consumption sites, but the increased police presence as a result of the curfew has made travelling with a banned substance even riskier, and there have been reports of individuals having trouble with the police despite having a travel certificate.⁹⁸ On May 4, 2021, a Montreal harm reduction group launched a new legal challenge to the curfew, arguing that it violates the constitutional rights of safe injection site users by preventing individuals from accessing health care.

⁹² Dan Spector, "[Advocates say at least six Montreal homeless people ticketed for curfew offenses in first week](https://globalnews.ca/news/7581356/advocates-say-at-least-six-montreal-homeless-people-ticketed-for-curfew-offenses-in-first-week/)", *Global News* (16 January 2021), online: <<https://globalnews.ca/news/7581356/advocates-say-at-least-six-montreal-homeless-people-ticketed-for-curfew-offenses-in-first-week/>>.

⁹³ Iman Kassam, "[Homeless under curfew: Montreal added shelter space this year, but the situation's complicated](https://montreal.ctvnews.ca/homeless-under-curfew-montreal-added-shelter-space-this-year-but-the-situation-s-complicated-1.5258323)", *CTV News* (7 January 2021), online: <https://montreal.ctvnews.ca/homeless-under-curfew-montreal-added-shelter-space-this-year-but-the-situation-s-complicated-1.5258323>.

⁹⁴ *Ibid.*

⁹⁵ Jonathan Montpetit, "[Feds push Legault to ease curfew rules, says homeless man's death in Montreal was avoidable](https://www.cbc.ca/news/canada/montreal/quebec-curfew-rules-homeless-marc-miller-1.5881022)", *CBC News* (20 January 2021), online: <https://www.cbc.ca/news/canada/montreal/quebec-curfew-rules-homeless-marc-miller-1.5881022>.

⁹⁶ Kalina Laframboise, "[Quebec will exempt homeless from COVID-19 curfew after court finds rule endangered safety](https://globalnews.ca/news/7602260/quebec-homeless-population-curfew-exemption-reaction/)", *Global News* (27 January 2021), online: <https://globalnews.ca/news/7602260/quebec-homeless-population-curfew-exemption-reaction/>.

⁹⁷ "Couvre-feu et surdoses: Une baisse marquée de la fréquentation des sites de consommation supervisée inquiète les organismes en réduction des méfaits", *L'Anonyme* (28 January 2021), online: [https://www.newswire.ca/fr/news-releases/couvre-feu-et-surdoses-une-baisse-marquee-de-la-frequentation-des-sites-de-consommation-supervisee-inquiete-les-organismes-en-reduction-des-mefaits-889888572.html?fbclid=IwAR2y_SARfYYjvQIKwH80iRptA0XmqbB12xmNZLRgmsxm9HMPaNIjss0hqRw](https://www.newswire.ca/fr/news-releases/couvre-feu-et-surdoses-une-baisse-marquee-de-la-frequentation-des-sites-de-consommation-supervisee-inquiete-les-organismes-en-reduction-des-mefaits-889888572.html?fbclid=IwAR2y_SARfYYjvQIKwH80iRptA0XmqbB12xmNZLRgmsxm9HMPaNIjss0hqRw;);

Simona Rosenfield and Kira London-Nadeau, "Quebec's Curfew a Public Health Threat for People Who Use Drugs" *Filter* (22 February 2021), online: <https://filtermag.org/quebec-curfew-safe-consumption/amp/?fbclid=IwAR2PvutzQT33NQNHSG6SJNorw7cDFPGKjoK2XwisG44i3VjapB2XGo3r5Xc>.

⁹⁸ "Couvre-feu et surdoses", *supra* note 96.

Enforcement actions

In our June report we indicated that Quebec led the country in both scope and scale of COVID-19 enforcement measures. While other jurisdictions were able to successfully respond to the first wave of COVID-19 without relying on punitive enforcement measures, Quebec law enforcement handed out thousands of tickets, amounting to millions of dollars in fines, over the course of a few weeks. According to government data, between April 2020 and August 2020 (wave 1), the province issued 3,756 COVID-19-related fines, valued at \$5,507,255.

Quebec has continued its punitive, police-led approach to the second wave of COVID-19. Based on the available data the province continues to lead the country, both in number of fines and (very likely) the total cost levied by the tickets.

Between September 2020 and March 2021 (wave 2), the province reported giving out 7,445 fines, totaling \$12,283,745 in fines. Ticketing over this time period has increased exponentially: the province reported giving out 26 fines in October, 94 fines in November, 141 fines in December, 1,010 fines in January, 2,865 fines in February 2021, and 3,309 fines in March 2021. The significant increase in ticketing aligns with the imposition of Quebec's curfew. In the first weekend that the curfew was in force, police were reported to have handed out 740 tickets⁹⁹ – close to 200 of these in Montreal alone.¹⁰⁰ In the week following, more than 1,400 more tickets were handed out in the province.¹⁰¹ Not all the tickets were related to curfew violations, however; some tickets went to those engaged in protesting the curfew itself,¹⁰² and some for gathering socially contrary to the rules.¹⁰³

Justice Quebec has also released data on the total monthly cost of these fines, which is significant. In dollar amounts, Quebec law enforcement officers gave out \$23,748 in fines in October 2020, \$132,343 in fines in November 2020, \$220,565 in fines in December 2020, \$1,523,236 in fines in January 2021, \$5,348,558 in fines in February 2021, and \$5,035,304 in fines March 2021. In total, this adds up to \$12,283,754 worth of fines given out in Quebec between October 2020 and March 2021, an even greater amount than the total cost of fines between April 2020 and September 2020, which totals \$5,507,255. Added together, Quebec law enforcement officers gave out a total of \$16,791,009 in fines between April 2020 and March 2021.

In April 2021, Quebec law enforcement officers gave a total of 5,060 fines. This is even greater than the number of fines given in March 2021, meaning that the rate of monthly enforcement is still continuing to increase across the province. The total dollar amount of tickets issued by Quebec during the pandemic has now reached over \$24,393,156.

⁹⁹ Don Spector, “[Coronavirus: Quebec police issue 740 tickets across province on first weekend of curfew](https://globalnews.ca/news/7569468/coronavirus-quebec-police-tickets-first-weekend-curfew/)”, *Global News* (11 January 2021), online: <<https://globalnews.ca/news/7569468/coronavirus-quebec-police-tickets-first-weekend-curfew/>>.

¹⁰⁰ Luca Caruso-Moro, “[Montreal police hand out nearly 200 tickets for illegal outings in the first weekend under curfew](https://montreal.ctvnews.ca/montreal-police-hand-out-nearly-200-tickets-for-illegal-outings-in-the-first-weekend-under-curfew-1.5262009)”, *CTV News* (11 January 2021), online: <<https://montreal.ctvnews.ca/montreal-police-hand-out-nearly-200-tickets-for-illegal-outings-in-the-first-weekend-under-curfew-1.5262009>>.

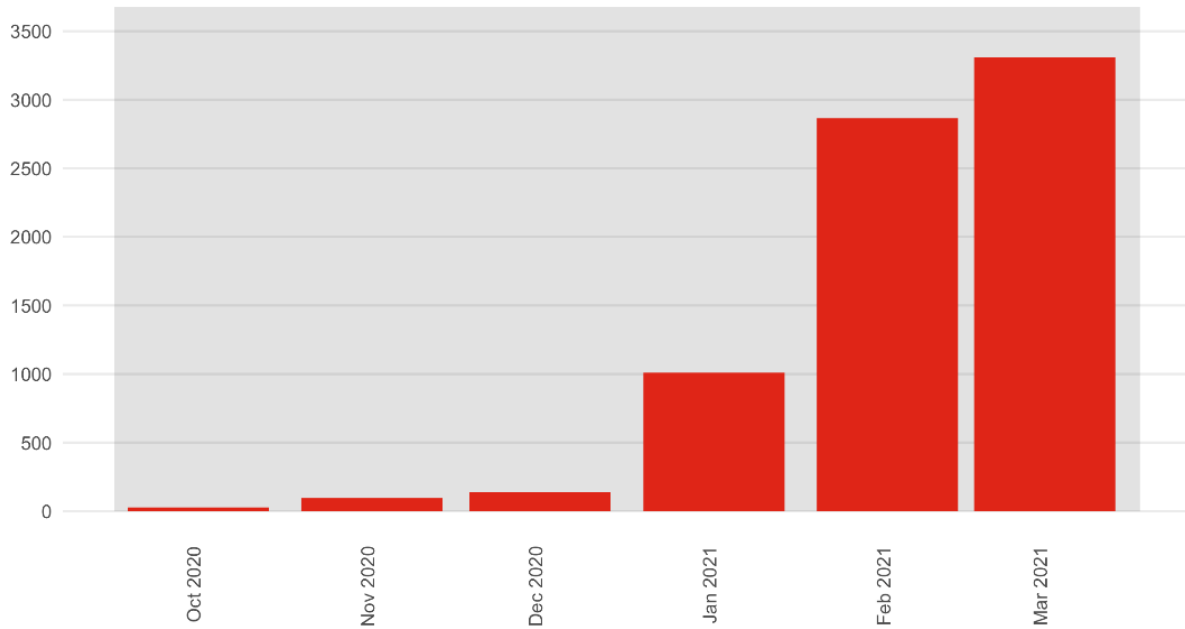
¹⁰¹ The Canadian Press Staff, “[Quebec police forces hand out nearly 1,500 tickets for curfew violations in a week](https://montreal.ctvnews.ca/quebec-police-forces-hand-out-nearly-1-500-tickets-for-curfew-violations-in-a-week-1.5271787)”, *CTV News* (18 January 2021), online: <<https://montreal.ctvnews.ca/quebec-police-forces-hand-out-nearly-1-500-tickets-for-curfew-violations-in-a-week-1.5271787>>.

¹⁰² Jacob Serebrin and Michel Saba, “[Dozens of people protesting Quebec curfew fined for violating it on first night](https://www.theglobeandmail.com/canada/article-dozens-of-people-protesting-quebec-curfew-fined-for-violating-it-on-2/)”, *Globe and Mail* (10 January 2021), online: <<https://www.theglobeandmail.com/canada/article-dozens-of-people-protesting-quebec-curfew-fined-for-violating-it-on-2/>>.

¹⁰³ See e.g. Gabrielle Fahmy, “[Over \\$55,000 in fines handed out at illegal gathering in Laurentians](https://montreal.ctvnews.ca/over-55-000-in-fines-handed-out-at-illegal-gathering-in-laurentians-1.5281373)”, *CTV News* (25 January 2021), online: <<https://montreal.ctvnews.ca/over-55-000-in-fines-handed-out-at-illegal-gathering-in-laurentians-1.5281373>>.

COVID-19 Related Fines in Québec

October, 2020 - March, 2021. Y-axis indicates number of fines. Shading indicates wave 2.



Data source: Justice Québec

Figure 7: COVID-19 related fines issued by law enforcement officials in Québec between October 2020 to March 2021. Note: data prior to October 2020 not included in figure, as monthly breakdowns not available (only a pooled total was available, noted in the text).

The consistent focus on punitive enforcement has also been reflected in legal changes to enhance police powers and the statements of political leaders.

In the fall, for example, the government expanded police powers to quickly issue tickets and provided a telewarrant system to enable them to get warrants quickly from their squad cars.¹⁰⁴ Montreal’s mayor announced that police presence in parks would be increased to prevent people from gathering,¹⁰⁵ and multiple Quebec police services sent police to tour high school grounds to ensure students are following the law.¹⁰⁶ With cases surging in December, Premier Legault “ordered” police to issue more fines to citizens who do not comply with the COVID-19 rules, saying they are no longer at the stage of warning

¹⁰⁴ Sidhartha Banerjee, “[Quebec police given ‘telewarrant’ system to enforce new lockdown orders](https://www.theglobeandmail.com/canada/article-quebec-police-given-telewarrant-system-to-enforce-new-lockdown/)”, *Globe and Mail* (30 September 2020), online: <<https://www.theglobeandmail.com/canada/article-quebec-police-given-telewarrant-system-to-enforce-new-lockdown/>>.

¹⁰⁵ Franca G Mignacca, “[As city enters red zone, Montreal calls on youth to respect regulations](https://www.cbc.ca/news/canada/montreal/montreal-covid-red-drouin-plante-1.5742953)”, *CBC News* (29 September 2020), online: <<https://www.cbc.ca/news/canada/montreal/montreal-covid-red-drouin-plante-1.5742953>>.

¹⁰⁶ “[Quebec government instructs police to increase presence around high schools](https://www.cbc.ca/news/canada/montreal/longueuil-quebec-city-police-schools-1.5754896)”, *CBS News* (8 October 2020), online: <<https://www.cbc.ca/news/canada/montreal/longueuil-quebec-city-police-schools-1.5754896>>.

people.¹⁰⁷ Provincial and Montreal police seemed to answer this call, doubling the number of tickets issued from December 14 – 20 than were issued in the previous week.¹⁰⁸

After the curfew was implemented in January, Quebec’s public safety minister said that police would have the power to stop people who were walking or driving after the curfew to ask why they were outside, and that it would be “the responsibility of that person to show the police officer that they have a good reason to be out of their home.”¹⁰⁹ Quebec’s curfew has remained in force since January, and was maintained through February and early March as Quebec’s COVID-19 numbers have declined significantly. The province’s focus on punitive enforcement has also continued. During a press conference on February 17, 2021, for example, Geneviève Guilbault, Deputy Premier and Minister of Public Safety of Quebec, stated a police operation would be in effect over spring break with officers patrolling areas where gatherings may occur, including parks, resorts, and ice rinks as well as malls and other businesses to ensure COVID rules are being followed.¹¹⁰

¹⁰⁷ Philip Authier, “[Quebec police ordered to issue more fines to citizens flouting COVID-19 rules](https://montrealgazette.com/news/quebec/quebec-replaces-vaccination-campaigns-chief-but-says-rollout-wont-be-delayed)”, *Montreal Gazette* (9 December 2020), online: <<https://montrealgazette.com/news/quebec/quebec-replaces-vaccination-campaigns-chief-but-says-rollout-wont-be-delayed>>.

¹⁰⁸ Daniel J Rowe, “[Number of tickets for not respecting health measures doubles as lockdown approaches](https://montreal.ctvnews.ca/number-of-tickets-for-not-respecting-health-measures-doubles-as-lockdown-approaches-1.5242845)”, *CTV News* (23 December 2020), online: <<https://montreal.ctvnews.ca/number-of-tickets-for-not-respecting-health-measures-doubles-as-lockdown-approaches-1.5242845>>.

¹⁰⁹ Marilla Steuter-Martin, “[Quebec lays out how COVID-19 curfew will be enforced](https://www.cbc.ca/news/canada/montreal/quebec-covid-curfew-geneviève-guilbault-explains-enforcement-1.5864988)”, *CBC News* (7 January 2021), online: <<https://www.cbc.ca/news/canada/montreal/quebec-covid-curfew-geneviève-guilbault-explains-enforcement-1.5864988>>.

¹¹⁰ Montreal Gazette, “[‘Stay in your bubble’: Police operation to enforce Quebec’s COVID rules over March break](https://www.youtube.com/watch?v=cP5WrFS-hKM)” (17 February 2021), online: YouTube <https://www.youtube.com/watch?v=cP5WrFS-hKM>.

Experiences from Quebec

Multiple people from Quebec who got in touch with CCLA after receiving a ticket commented that police officers threatened them with arrest if they did not provide their information, including identification. Multiple people also reported that police officers told them they would not have received a ticket had they not ‘argued’ with the officer. We have reproduced below two of the testimonials we received.

Mike, Quebec City, December 2020

I was walking with my partner, Alex, in downtown Quebec City when she began to have a shooting pain in her feet. She suffers from Acrocyanosis, a condition involving poor circulation, pain, and numbness. She needed to soak her feet in hot water to help with circulation so we went to the closest place we could think of – the apartment of an extended family member. I had to help her up the stairs, she was in a lot of pain. When we got inside we put her feet in hot water, and Alex’s relatives made tea for us.

While we were there the Quebec City Police stormed in, 12 officers in all.

They entered without consent, no search warrant, and no "Telewarrant" issued by a Judge or Court. We asked them who let them in, how did they get in, and if they had a warrant. The officers admitted they didn’t have a warrant but said the Ministry of Health had given them the authority to enter homes. They demanded to see our IDs and laughed at Alex when she said she had a medical condition. They told us we would go to jail if we didn’t do what they said. We were all scared, and Alex was crying. At one point she had trouble breathing and fell to the floor.

The police searched the entire apartment - roaming through personal belongings, wardrobes and closets. They said they believed we were hiding more people. They even demanded to have access to Alex’s Facebook account.

In the police report, they said that we were being hostile and non-compliant. That’s simply not true. They also said they had our consent to enter the apartment. That is also not true.

I understand that due to COVID, laws and bylaws, especially in Quebec, have become extremely strict. However this seems to violate our basic constitutional rights as Canadians. Quebec or elsewhere.

We were all given fines of \$1550.00.

A community worker in Montreal, March 2021

As a community worker with the homeless in Montreal, I have seen firsthand how the prohibition to gather in the public space and the curfew have affected them disproportionately. While the police may use their discretion not to issue tickets for the homeless that fit their stereotypical vision, those who live at the margin live in fear and anguish. I have heard from at least four people that they recently received a curfew ticket. It puts their safety at risk rather than protecting it.

g. Atlantic Canada

The east coast provinces had relatively low per capita COVID-19 infection rates throughout the second wave, and generally imposed fewer legal restrictions on residents as compared to the central and western provinces. The highest rates of active infection in the region occurred in Newfoundland and Labrador in mid-February, which prompted the province to move to “Alert Level 5”, the highest level of provincial restrictions. New Brunswick experienced several smaller waves of COVID-19 cases throughout the fall and winter and relied primarily on regional restrictions. A few areas of the province were subject to the most stringent “Red” and “Lockdown” levels for several weeks. Nova Scotia and Prince Edward Island had the lowest second wave peaks in the country.

Unfortunately, reliable data on enforcement is not available for most of the Atlantic provinces. The remainder of this section focuses on the situation in Nova Scotia, which had the highest per capita rate of ticketing in the country during the first wave of COVID-19.

Nova Scotia Emergency Orders

Nova Scotia has continued to operate under a provincial state of emergency since March 2020. The province started to experience an increase in COVID-19 infections in late October and experienced a peak in second wave active cases on November 30, 2020 (142 active cases province-wide).¹¹¹ Through December and January the number of active detected COVID-19 cases in the province significantly declined.¹¹²

In our June 2020 report we expressed significant concern regarding several of Nova Scotia’s broad and confusing emergency measures; the most problematic of these provisions – including the orders closing public trails and requiring all individuals to maintain physical distancing at all times – have not been reenacted. At the height of the province’s second wave, indoor and outdoor gatherings in Halifax, Bedford and Dartmouth were restricted to 5 people with the additional requirement that physical distancing be maintained within the group.¹¹³ By the end of March, most indoor and outdoor gatherings were limited to a maximum of 10 people. Unless individuals were with members of their own household, regardless of how many members, or are part of a 10-person social group, they were required to “maintain physical distancing of two metres”.¹¹⁴

Nova Scotia enforcement actions

In our June report we found that Nova Scotia had the highest per capita ticketing rate in the country. The issuance of fines has slowed significantly in the second wave of COVID-19.

Data from the province confirms that Nova Scotia was one of the first provinces to give out COVID-19 related fines, reporting 8 fines in March 2020. The new data also confirms that the majority of the fines handed out in the province were levied during the first few weeks of the pandemic. In April, Nova Scotia law enforcement agents gave out 439 fines, accounting for 48% of total fines reported from the beginning of March 2020 to the end of February 2021. The total number of fines given out per month has decreased considerably since April 2020. Although the province saw a slight increase in the number of reported

¹¹¹ “[Nova Scotia COVID-19 Dashboard](https://experience.arcgis.com/experience/204d6ed723244dfbb763ca3f913c5cad)” (accessed 24 January 2021), online: *Government of Nova Scotia* <<https://experience.arcgis.com/experience/204d6ed723244dfbb763ca3f913c5cad>>.

¹¹² *Ibid.*

¹¹³ [Restated Order of the Chief Medical Officer of Health](#) Under Section 32 of the Health Protection Act 2004, c 4, s 1, (2020) NS Gaz 1, 2142.

¹¹⁴ *Ibid* at s 5.3.

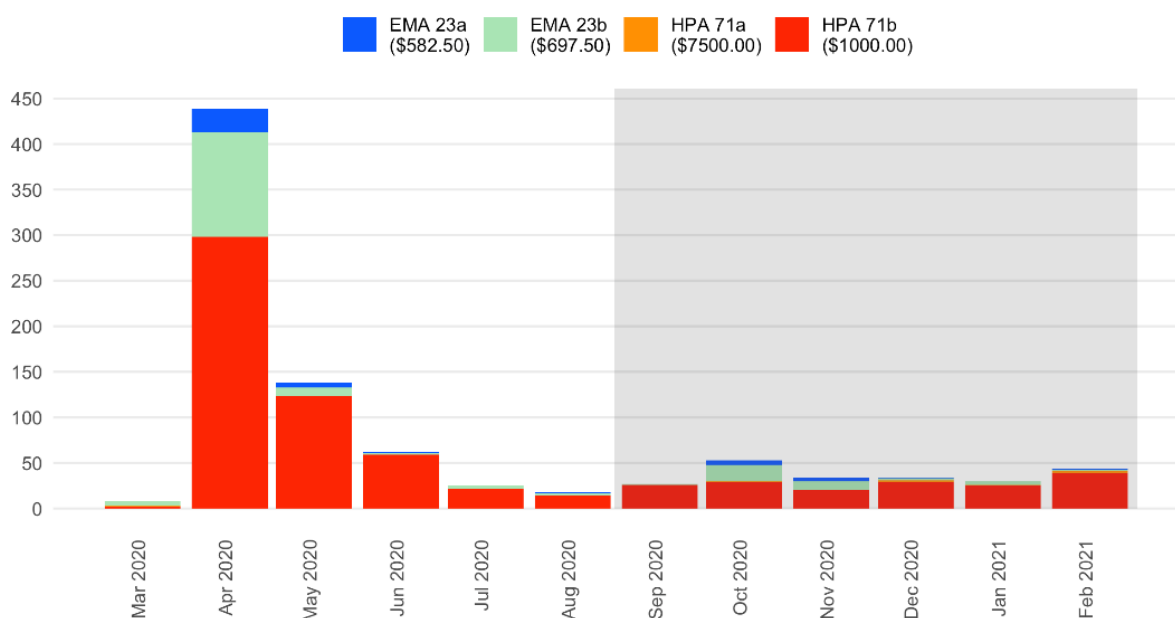
finer in October 2020 (53 fines), the overall magnitude of fines remains very low in wave 2 compared to wave 1 (see Figure 8).

The vast majority of fines given out in Nova Scotia have been under HPA 71b, which cost \$1,000. Section 719b) of the *Health Protection Act* makes it an offence for an individual to fail comply with any provision of the *Health Protection Act* or any regulation made under Part 1 of the *Act*. This includes self-isolation and quarantine requirements, physical distancing, gathering limits, and mask requirements. There have also been 7 business-related fines under s. 71(a), which cost \$7,500, between March 2020 and February 2021. Violations under this provision would likely relate to capacity limits; physical distancing measures within workplaces; ensuring patrons are following gathering limits, mask requirements and physical distancing; closing hours; and implementing cleaning and equipment requirements.

In total, this adds up to \$886,495.00, or \$667,977.50 in fines between March 2020 and August 2020 (wave 1) and \$218,517.50 in fines between September 2020 and February 2021 (wave 2).

COVID-19 Related Fines in Nova Scotia

March, 2020 - February, 2021. Y-axis indicates number of fines. Shading indicates wave 2.



Data source: Government of Nova Scotia

Figure 8: COVID-19 related fines issued by law enforcement officials in Nova Scotia between March 2020 to February 2021. Enforcement data for March 2021 not available at the time of writing.

It is unclear whether the decrease in fines is as a result of a change in enforcement practices, or differences in the levels of COVID-19 related restrictions. As noted above, many of the most confusing and restrictive laws that we highlighted in our June report – including for example the closure of public trails and a requirement to maintain physical distancing in any space outside the home at all times – have not been re-enacted. The province, like many of the other maritime jurisdictions, has also experienced lower levels of COVID-19 infections than other areas of the country.

There are, however, anecdotal indications of a continued faith in the efficacy of punitive fines. One media report quotes a Crown prosecutor who expressed the belief that ticketing helped to keep the province’s

COVID-19 case count low and suggested that people facing higher fines (up to \$10,000 for individuals) have little or no remorse for their actions.¹¹⁵ Another report indicated that, although province has “directed” the police to increase enforcement so that every person at an illegal gathering can be charged, this approach is not always taken.¹¹⁶

h. The Territories

The Yukon and the Northwest Territories experienced relatively small spikes in the rates of active COVID-19 cases at several points between September 2020 and March 2021. A large outbreak in the remote community of Arviat, Nunavut, drove active case rates higher in that jurisdiction.

Like Atlantic Canada, the territories have primarily focused on controlling COVID-19 through intra- and inter-jurisdictional travel restrictions, and quarantine requirements for those entering from other territories or provinces. In Nunavut, where the most serious second wave outbreak took place, territory-wide orders throughout the fall and winter set relatively relaxed maximum limits on indoor and outdoor gatherings, and parks and other outdoor public spaces have remained open.¹¹⁷ Local orders applicable to communities with more severe outbreaks, however, implemented much stricter stay-at-home requirements including curfews.¹¹⁸

Unfortunately, there is no comprehensive reporting of enforcement efforts in the territories. Based on publicly-available information, however, there has been a slight increase in the use of punitive enforcement measures. The Northwest Territories, for example, had no reports of COVID-related ticketing during the first wave of COVID-19. Between September and February, however, the Territory saw upwards of 13 reports, primarily for alleged violations of failing to self-isolate, or provide an adequate self-isolation plan to authorities. In Nunavut, we have documented fines for businesses of \$2,870. In Arviat, Nunavut, which was the site of a significant COVID-19 outbreak with two concerning waves of infections, four additional by-law officers were hired for enforcement and the February emergency order reportedly stated that officers were to patrol the community 24 hours a day.¹¹⁹

¹¹⁵ Jack Julian, “[This many people have been charged with violating Nova Scotia’s COVID-19 protocols](https://www.cbc.ca/news/canada/nova-scotia/nova-scotia-covid-19-offences-1.5848639)”, *CBC News* (21 December 2020), online: <<https://www.cbc.ca/news/canada/nova-scotia/nova-scotia-covid-19-offences-1.5848639>>.

¹¹⁶ “[N.S. woman charged for breaking COVID-19 rules on New Year’s Eve](https://www.cbc.ca/news/canada/nova-scotia/nova-scotia-woman-charged-breaking-covid-19-rules-on-new-year-s-eve-1.5859247)”, *CBC News* (1 January 2021), online: <<https://www.cbc.ca/news/canada/nova-scotia/nova-scotia-woman-charged-breaking-covid-19-rules-on-new-year-s-eve-1.5859247>>.

¹¹⁷ Order Respecting Social Distancing and Gatherings (#14) under the Public Health Act, S Nu 2016, c 13, (1 March 2021) online: https://www.gov.nu.ca/sites/default/files/order_re_social_distancing_and_gatherings_14_1.pdf; Order Respecting Social Distancing and Gatherings (#13) under the Public Health Act, S Nu 2016, c 13, (11 January 2021), online: https://www.gov.nu.ca/sites/default/files/order_social_distancing_and_gatherings_13_210111.pdf; Order Respecting Social Distancing and Gatherings (#12) under the Public Health Act, S Nu 2016, c 13, (7 December 2020), online: https://www.gov.nu.ca/sites/default/files/order_social_distancing_and_gatherings_12_stage_2_nunavut_201204.pdf; Order Respecting Social Distancing and Gatherings (#11) under the Public Health Act, S Nu 2016, c 13, (2 December 2020), online: https://www.gov.nu.ca/sites/default/files/order_social_distancing_and_gatherings_12_stage_2_nunavut_201204.pdf; Order Respecting Social Distancing and Gatherings (#14) under the Public Health Act, S Nu 2016, c 13, https://www.gov.nu.ca/sites/default/files/social_distancing_and_gatherings_order_-_nunavut.pdf.

¹¹⁸ Emma Tranter, “Nunavut community of Arviat declares state of emergency over rising COVID-19 case numbers”, *Globe and Mail* (24 February 2021), online: <https://www.theglobeandmail.com/canada/article-nunavut-community-of-arviat-declares-state-of-emergency-over-rising/>.

¹¹⁹ *Ibid.*

i. Federal enforcement: policing of borders and use of the Quarantine Act

During the second wave of COVID-19 the federal government dramatically increased its reliance on the use of the federal *Quarantine Act*, for both Canadian residents arriving from out-of-country and visitors from abroad. Early on in the pandemic it was announced that the RCMP would be acting as a coordinating agency to enforce emergency orders under the act which prohibit intended visitors from abroad from entering Canada for non-essential reasons, and which require that people arriving in Canada from out-of-country self-isolate for 14 days.¹²⁰ Violators can be fined \$1000 in addition to a victim surcharge.

The Public Health Agency of Canada has announced that, as of February 2021, more than 2 million people had been required to self-isolate under the *Quarantine Act*.¹²¹ The first known charge enacted from the *Quarantine Act* was reported in May, with one international traveler in Richmond, BC facing an alleged violation. As of February 2021, the RCMP, along with other police agencies, including the Toronto Police Services and the SPVM have issued upwards of 141 violations.¹²² While most fines up to that point were for failing to self-isolate upon entering Canada from out-of-country, two fines were issued to the operators of US vessels for entering Canadian waters, including one individual who was whale-watching in BC waters.¹²³ In addition to fines, more than 30,000 people had been turned away at the Canada-US border due to COVID-19 restrictions.

In February 2021, new restrictions came into place to address the emergence of new COVID-19 variants that are spreading globally through international travel.¹²⁴ Travellers arriving from outside of Canada were required to quarantine at their own expense at a designated hotel for up to 3 days while they await a COVID-19 test result. Some people have opted to leave the hotel and risk being fined, explaining that they felt it was safer for them to self-isolate in their own residences rather than stay in a hotel alongside other travellers and hotel employees.¹²⁵ Several constitutional challenges to the hotel quarantine requirements have been launched.

¹²⁰ Canada, Royal Canadian Mounted Police, “[RCMP role in enforcing the Federal Quarantine Act](https://www.rcmp-grc.gc.ca/en/news/2020/rcmp-role-enforcing-the-federal-quarantine-act)”, (Ottawa: RCMP, 10 April 2020), online: <https://www.rcmp-grc.gc.ca/en/news/2020/rcmp-role-enforcing-the-federal-quarantine-act>.

¹²¹ Tunney, *supra* note 2.

¹²² *Ibid.*

¹²³ “[2 U.S. boaters in B.C. waters fined under Quarantine Act](https://www.cbc.ca/news/canada/british-columbia/rcmp-quarantine-act-fines-1.5658193)” *CBC News* (21 July 2020), online: [cbc.ca/news/canada/british-columbia/rcmp-quarantine-act-fines-1.5658193](https://www.cbc.ca/news/canada/british-columbia/rcmp-quarantine-act-fines-1.5658193).

¹²⁴ Canada, “[COVID-19 mandatory hotel stopover: About](https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/latest-travel-health-advice/mandatory-hotel-stay-air-travellers.html)” (last updated 16 March 2021), online: <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/latest-travel-health-advice/mandatory-hotel-stay-air-travellers.html>.

¹²⁵ Sophia Harris, “More than 200 travellers fined for refusing to quarantine in hotels after landing in Canada”, *CBC News* (16 April 2021), online: <https://www.cbc.ca/news/business/quarantine-hotel-covid-19-travel-canada-fine-1.5988378>.

Conclusion

As the pandemic has grown and changed, so too have governments' practices of enforcement.

During the second wave of COVID-19, many jurisdictions where there had previously been limited forms of COVID-19 enforcement, issued an increasing number of punitive fines. In many parts of the country political leaders have continued to focus on punitive enforcement even as the social inequities driving the spread of this pandemic, and the specific challenges racialized and lower income communities are facing in accessing health services, became ever clearer. The turn to law enforcement tends to disproportionately harm those communities – including Black people and members of other racialized communities, Indigenous persons, those experiencing homelessness, mental health challenges, and addiction - that are already subject to disproportionate and harmful policing practices. It is also of questionable efficacy from a public health perspective; trying to punish people into complying with broad, confusing and vague laws is unlikely to meaningfully impact behaviour, and tends to push marginalized populations further from the services and supports they need.

We are now over a year into this pandemic. Much of the country is now in the grips of an even more challenging third wave of COVID-19 infections driven by more transmissible and more virulent variants.

Although outdoor gatherings at parks and high-profile instances of intentional rule-breakers may capture the headlines, most people are complying with public health recommendations. In the hardest-hit areas of the country, it is increasingly clear that much of the spread of COVID-19 is happening amongst those that provide essential services and their households. It is also increasingly clear that rates of infection map onto existing patterns of social inequality, with racialized and lower income communities experiencing much higher rates of COVID-19 infections and deaths.

Many public health and medical experts have underscored the need to take an equity-based, harm reduction approach to confronting COVID-19 – a strategy that is directly undermined by zero-tolerance, punitive approaches. Medical professionals have also spoken out about the negative impacts that punitive enforcement-led approaches will have on the very communities currently suffering the brunt of COVID-19 illness and death.

Our leaders need to support communities in finding safer ways to navigate their daily lives while also reducing the risk of COVID-19 transmission. This means focusing on supports, not punishment: facilitating safe access to outdoor spaces; supporting essential workers; providing supports to make work, travel, and living spaces safe; and building trust with communities to ensure a successful vaccination roll-out.

Despite clear and consistent recommendations to focus on health equity and community supports, however, some governments facing the third wave of COVID-19 are again turning to broad restrictions on access to outdoor public space and punitive enforcement measures.

Several provinces have recently increased the amount of their fines. In late April, for example, Nova Scotia doubled its fine for those who break COVID-19 gathering limits; the fine is now set at \$2,000 per ticket. New police powers have also been introduced. In Ontario, the provincial government passed a regulation on April 16, 2021 giving police broad powers to detain and question individuals to determine their compliance with a broad stay-at-home order. Ontario also passed broad limits on access to parks and outdoor. The measures, which had not been recommended by the government's scientific advisory table, were partially reversed after significant public outcry, an impending constitutional challenge from the CCLA, and public statements from many police services that they would not be using the new powers.

Nevertheless, concerning restrictions on access to outdoor space remain and the police have retained expanded powers to detain and question individuals suspected of violating gathering limits.

Early indications are that jurisdictions may be on track to hand out more fines in the coming months than they have at any other point during the pandemic. Through April 2021, Quebec continued to ticket individuals in record-breaking numbers, reporting 5,060 fines in this month alone, bringing the total dollar figure since March 2020 to \$24,393,156. In Toronto, as well, there appears to be a renewed focus on enforcement. On April 21, 2021, the Toronto Police Service announced that dedicated COVID-19 enforcement teams would be established at each division; the number of tickets issued by Toronto police and by-law officers for alleged violations of COVID-19 restrictions on activities in parks has increased significantly.¹²⁶

As Canadian governments move to tackle a third, and by all accounts more difficult, wave of this pandemic, all those involved in the pandemic response must remain focused on proven public health tools such as community supports and education rather than unproven punitive enforcement measures that risk exacerbating the crisis rather than resolving it. We cannot police our way out of this pandemic.

¹²⁶ City of Toronto COVID-19 Enforcement Data, “EMCPA and Reopening Ontario (A Flexible Response to COVID-19) Act: Large Gatherings in Parks” (updated 21 April 2021), online: <https://www.toronto.ca/wp-content/uploads/2020/10/95c3-covid-19-enforcement-data.pdf>.