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Toronto

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OMBUDSMAN TORONTO REPORT

ENQUIRY INTO THE CITY OF TORONTO'S COMMUNICATION AND ENFORCEMENT OF COVID- 19 RULES IN CITY PARKS IN SPRING 2020

June 30, 2021



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OMBUDSMAN'S ACKNOWLEDGMENT OF CITY STAFF

The early days of the pandemic, in spring 2020, were a truly unprecedented and frightening time. The City of Toronto's elected officials and staff were suddenly faced with the monumental and complex task of keeping people in Toronto safe from a new and unpredictable danger: the COVID-19 virus.

As I said about the Toronto Public Service when I issued my 2019 Annual Report in July 2020, "We have all benefitted from their heroic response. We have seen them work tirelessly to provide critical and essential services to people in Toronto, particularly our most vulnerable. Like so many others, I am sincerely grateful for their efforts."

While it is my role as Ombudsman to point out unfairness in how the City delivers services when I see it, it is also important that I repeat this message once again. My team and I deeply appreciate all that our local government has done during this pandemic, in the face of extreme challenges, to try to keep people in Toronto safe.

Susan E. Opler
Ombudsman



EXECUTIVE SUMMARY

Spring 2020: People Turned to Their Local Government at a Time of Fear and Uncertainty

2020 was an extremely unpredictable and challenging year in Toronto, as it was around the globe. When the COVID-19 pandemic hit in the spring of 2020, almost every aspect of civilian and community life in our city suddenly came to a standstill, with no sense of when the disruption might end.

As people in Toronto scrambled to find footholds in new and ever-changing terrain, many turned to their local government for guidance. They wanted clarity on what was happening and sought public health advice and guidelines on how to stay safe. They wanted to know what new rules they had to follow, and they needed information on what changes they should expect to City services.

At a time of such fear and uncertainty for all, clear, accessible, and timely answers to these questions were vital. People in Toronto needed to be able to rely on and trust in their local government, and good service to the public was more important than ever.

Quickly Changing Circumstances, a State of Emergency, and New Rules for City Parks

Our local government, too, was responding to the rapidly changing situation, which included evolving information from public health leaders around the world and frequently changing rules from the Province of Ontario. The City's leaders had to make, implement, and communicate decisions quickly, changing course often. They did all of this with the goal and intention of keeping people in Toronto safe.

On March 17, 2020, the Province of Ontario declared a provincial emergency under the *Emergency Management and Civil Protection Act* and began to make orders creating rules designed to prevent the spread of COVID-19.

On March 23, 2020, Toronto's Mayor declared a State of Emergency in the City.

Two days later, on March 25, 2020, the City announced that effective immediately, it was closing all City-owned playgrounds and many park amenities, including sports fields, picnic areas, and off-leash dog parks. The City said it would be putting up signs across park amenities, locking fencing or gates, and signing and taping off unfenced playground structures.



On March 30, 2020, the Province ordered the closure of all outdoor recreational amenities across Ontario.

Soon after, on April 2 and 3, 2020, the Mayor issued Emergency Orders imposing physical distancing in City parks and public squares.

The City informed the public that a COVID-19 Enforcement Team—200 by-law enforcement officers from the City’s Municipal Licensing and Standards division (MLS), 10 Toronto Public Health by-law officers, and the resources of the Toronto Police Service—would be monitoring City parks and that violation of these new rules would result in a fine.

People got tickets for violating COVID-19 rules in City parks for either \$750 or \$1,000, depending on which rule applied, plus \$130 in charges and fees.

The Beginning of Park-Related Complaints

People in Toronto cherish our parks and green spaces. They are an important and well-used resource, which has been especially so during the COVID-19 pandemic.

It wasn't long after the Province ordered outdoor recreational amenities closed and the Mayor issued his Emergency Orders that we began to hear from people who had received tickets from by-law enforcement officers in City parks. These people told us that at the time they were given tickets, they were unclear about what they could and could not do in City parks. They also said they did not know how they could dispute a ticket by requesting a trial, since the City’s Court Services division closed its offices and public counters because of the pandemic.

What We Heard

We heard directly from 10 people who got tickets from by-law enforcement officers in April for violating the park rules. Some of them were retired, recently laid-off, or single parents. They believed the fine of \$880 was high, undeserved, and/or disproportionate to the offence they were accused of. Some had sought legal advice.

All the complainants we spoke with knew there were new restrictions of some kind on the use of City parks because of COVID-19. Some were aware from the media that certain amenities in parks were closed, but they did not know the extent of the closures.

Many of the complainants were unclear whether benches and picnic tables were included on the list of closed park amenities. Some complainants said that areas of a park they thought they could use were not clearly marked, and that the signs the City



had posted didn't explain what amenities they were not allowed to use. Some complained that yellow caution tape attached to closed park amenities had blown away.

A common theme with all complainants was that they felt they had been penalized not for flouting the COVID-19 rules on the use of City parks, but for simply being unaware of them, or not fully understanding them. All the complainants who spoke with us said that they feared returning to parks after they had gotten tickets, out of concern that they would be ticketed again for other rules they did not know about.

We Launched an Enquiry

After discussions with City staff, the Ombudsman had questions about how the City communicated and enforced park restrictions, and how it communicated dispute options for people who got a ticket.

She therefore sent a letter on May 26, 2020, confirming to the City and three of its divisions—Strategic Communications, MLS, and Court Services—that she and her team were conducting an Enquiry into the following issues:

- Whether the City had provided adequate information to the public regarding what constituted a violation of COVID-19 related rules concerning the use of parks
- Whether the City had provided adequate guidance, direction, and/or training to MLS by-law enforcement officers to enforce COVID-19 related rules concerning the public's use of parks
- Whether the City had provided adequate information to the public about how someone could challenge a ticket issued for a violation of COVID-19 related rules with respect to parks.

Our Enquiry focused on the time period from April 2 to May 15, 2020.

What We Did

During our Enquiry, we spoke with several members of the public who had received a ticket they believed was unfair. We also interviewed City staff from MLS, Strategic Communications, Court Services, Legal Services, and Social Development, Finance and Administration (SDFA).

Further, we completed an extensive document review, which included MLS training materials, City news releases, and the reports of two investigations into allegations of



racial profiling and discrimination by MLS by-law enforcement officers enforcing COVID-19 rules in City parks.

City staff and leaders cooperated fully with our Enquiry. This is noteworthy, given the added pressure they were under because of the pandemic.

What We Found

After reviewing all the evidence, the Ombudsman found that how the City communicated the rules for using City parks, how by-law enforcement officers were trained to enforce those rules, and how the City communicated ticket dispute options were unfair to the public.

Some of what we found:

Communication

- While the City's parks were never closed—only amenities within them—people were confused about what they could and could not do in City parks, and what would put them at risk of getting a ticket.
- The City communicated frequently about the COVID-19 rules for parks between April 2 and May 15, 2020. However, we found that overall, its communication was fragmented, confusing, and in some cases, inconsistent. The City told us that this was in part because it had trouble keeping up with the Province's frequent communications about new orders to help stop the spread of COVID-19.
- Park benches were a particular source of confusion. They were on the Province's list of closed amenities, but never on the City's. The City knew people were confused about them, yet its messaging about park benches was inconsistent and unclear.
- Public health advice and legal rules were often mixed together in the same City communications, causing the public added confusion and fear of prosecution. Public health advice is important, but it is not the same as legal rules that put people in jeopardy of prosecution. Fairness demands that this difference be made clear in public communications.

Enforcement

- MLS leadership faced considerable challenges delivering training to by-law enforcement officers on how to enforce COVID-19 rules in City parks. Staff told us these included quickly changing rules, training staff in parking lots before and after shifts and providing training direction through frequent



emails, which staff had to review on mobile devices with internet connection limitations.

- In April 2020, MLS introduced the term "zero tolerance" in relation to by-law enforcement officers' duties to enforce COVID-19 rules in City parks. There was confusion among by-law enforcement officers about what "zero tolerance" meant.
- Some by-law enforcement officers told us they understood that the zero tolerance direction limited their ability to exercise discretion and judgment. We noted that the number of tickets officers issued to people in City parks significantly increased immediately following the zero tolerance directive.
- Further, some by-law enforcement officers did not feel comfortable raising operational concerns with MLS management—including about the zero tolerance strategy—for fear of reprisal.
- We also found that by-law enforcement officers have not received adequate training on how to exercise judgment and discretion in a fair and equitable way, raising a concern that MLS's enforcement activities may be disproportionately impacting vulnerable populations.
- This concern was amplified by the results of two independent investigations, which found that two different by-law enforcement officers enforcing COVID-19 rules in City parks had discriminated against Black people.

Ticket Disputes

- The tickets that people got for violating COVID-19 rules in City parks had a message printed on the back that told people they had 15 days to either plead guilty and pay the ticket, request an early resolution meeting with a City prosecutor, or attend a Court office to request a trial. It also told them an additional costs could be applied if they didn't meet the deadline.
- Because of the pandemic, however, the Province had suspended the time limit for disputing a ticket, so the 15-day period did not apply. Despite this suspension, by-law enforcement officers issuing tickets were not giving people clear written information about how they could dispute their ticket during the pandemic or the fact that the 15-day timeline on the back of the ticket was suspended.
- In addition, it was hard for people to get information or service from Court Services, whose website said that all Provincial Offences courtrooms, public counters, email and call centre services were closed, and that staff would not be responding to emails or answering telephone calls.



- As a result, people who got tickets found it difficult (if not impossible) to get information on how to dispute them or pay their fines. This was unfair, even more so considering the high price of the tickets and the economic constraints of the pandemic.
- We also noted that some commentators have questioned whether fines are an effective mechanism for deterring behavior and controlling the spread of COVID-19, and that there is evidence which suggests that enforcement fines during the COVID-19 pandemic will likely be felt disproportionately by poor, marginalized, and unhoused people.

Recommendations We Made During the Enquiry

While conducting the Enquiry, the Ombudsman noted several instances of unfairness that required immediate action. She contacted the City directly with recommendations on how to improve service to the public. In response, the City took a number of positive steps to improve how it communicated and enforced COVID-19 rules in City parks, as well as how it communicated options for disputing tickets.

- The City updated its website to include significantly more and clearer information about the rules for park use, including what people could do in parks and what remained open.
- The City also publicly shared clear information about what was and was not allowed regarding the use of park benches.
- Court Services updated its website to inform the public in clear language that the time limits for disputing a ticket were suspended, how to exercise the options on the back of the ticket, that there would be no in-person services before September 2020, and that the public could now participate in early resolution meetings by telephone.
- Strategic Communications, with help from Legal Services, prepared a ‘buck slip’ for by-law enforcement officers to hand to people when giving them a ticket. The buck slip contained accurate information on how people could dispute a ticket and told them that the 15-day time limit to request a trial was extended while the Provincial Emergency Orders remained in effect.

Further Recommendations

At the conclusion of the Enquiry and based on its findings, the Ombudsman made 14 further recommendations, which the City should implement as soon as possible. These include that the City should:



- Create an organization-wide policy to ensure its communication to the public about changes to City services and facilities is timely, accurate, coordinated, and accessible
- Develop processes to address public complaints about City communications in a timely and effective way
- Immediately make public anonymized summaries of the two investigations into allegations of racial profiling and discrimination by by-law enforcement officers, as well as the steps the City has taken, and will be taking, to implement the systemic recommendations outlined in the reports.

The Ombudsman's recommendations also include that MLS should:

- Immediately send clear and direct communication to all staff that “zero tolerance” is an unacceptable, unclear, and unfair approach to enforcement
- Create a policy and training materials for by-law enforcement officers on how to exercise judgment and discretion in a fair and equitable way
- Develop a plan to hear directly from community organizations, particularly organizations serving vulnerable and marginalized people, and ensure that feedback from Toronto’s communities informs the training and operations of MLS’s enforcement activities
- Develop an anti-racism strategy to eliminate racial profiling from by-law enforcement officers
- Explore adopting a race-based data collection strategy to help identify inequalities in MLS’s enforcement activities.

The Current Status of Tickets

The tickets the City issued for violation of COVID-19 rules in City parks between April 2 and May 15, 2020 are now in the Court system, which is outside the Ombudsman’s legal jurisdiction.

Also, prosecutorial discretion is an important principle in our legal system, and it would be inappropriate for the Ombudsman to make any recommendation on how City prosecutors, who are staff within the City’s Legal Services, should exercise that discretion. She will, however, be sending this report to the City Solicitor for review by her and her colleagues.



People with questions about their tickets can contact Court services (416-338-7320 or poacourt@toronto.ca) to get information about the status of their case and available court processes, which may include applying to re-open a conviction and/or appeal.

Court Services cannot provide legal advice or representation. Appendix D of the report is a list of additional resources that may be helpful for people who received tickets.

The City's Response and Follow Up

In response to our report, the City administration says it “is dedicated to continuous improvement and accepts and acknowledges that staff faced significant challenges communicating and enforcing the numerous and changing COVID regulations and public health guidelines in 2020.”

The City further says it supports and accepts the recommendations in this report and undertakes to implement all of them. Ombudsman Toronto will follow up to ensure it does so.



INTRODUCTION

1. Early spring 2020, when the first wave of COVID-19 hit Toronto, was a time of fear and uncertainty for people in Toronto.
2. Public health officials from all three levels of government (federal, provincial and municipal) shared public health advice, which changed frequently as circumstances and understanding of the virus evolved. That advice was aimed at stopping the spread of the virus, saving lives and preventing our healthcare system from becoming overwhelmed.
3. Provincial and City officials also passed legislation and by-laws with the same goals, creating certain offences which exposed people and businesses to a risk of being ticketed and having to pay a fine for non-compliance.
4. We heard a lot of public confusion about the rules, and sometimes advice and rules were mixed together in communications. We also heard public concern about unfair enforcement.
5. What we heard led the Ombudsman to tell the City administration that we would be conducting an Enquiry to examine whether certain aspects of the City's communications and enforcement of the rules were fair.
6. We found that despite the commendable, good faith efforts of the Toronto Public Service under extremely difficult circumstances, there was unfairness in how the City communicated the rules, how it enforced the rules, and how it communicated options for people to dispute tickets.
7. Fairness in the delivery of public services focuses on the impact on the people being served, not on the efforts or good intentions of the service providers. The impact of what we found was unfair to people in Toronto, especially people by-law enforcement officers ticketed for breaking COVID-19 rules in City parks.
8. This report outlines our Enquiry and explains our findings. It includes sections on:
 - Some background, including declarations of an Emergency by the Province and the City, and steps that each took to limit the spread of COVID-19
 - Complaints we heard from the public
 - Each of the following questions, which our Enquiry examined for the time period of April 2 to May 15, 2020:



- Whether the City provided adequate information to the public regarding what constituted a violation of COVID-19 related rules concerning the use of City parks
 - Whether the City provided adequate guidance, direction and/or training to MLS by-law enforcement officers to enforce COVID-19 related rules concerning the public's use of City parks
 - Whether the City provided adequate information to the public about how someone could challenge a ticket issued for a violation of COVID-19 related rules in City parks.
9. This report also presents recommendations to address the unfairness we found and to improve services in the future.

BACKGROUND

WHO Declares COVID-19 a Pandemic and Ontario Declares an Emergency

10. On March 11, 2020, the World Health Organization declared COVID-19¹ a pandemic.² The novel virus (meaning it had not previously been identified in humans) that causes COVID-19 had spread worldwide and presented an immediate risk of further global spread.
11. On March 12, 2020, as school children and their families were getting ready for the Ontario March break, the Minister of Education ordered all publicly funded schools to close for two weeks following March break.³
12. Then, just five days later, on March 17, 2020, the Government of Ontario took what was at the time an extraordinary step: it declared a provincial emergency⁴

¹ COVID-19 is a respiratory infectious disease caused by the coronavirus, SARS-CoV-2.

² World Health Organization Director-General's opening remarks at the media briefing on COVID-19, March 11, 2020, <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

³ Order in Council 517/2020 (Ontario), March 12, 2020, <https://www.ontario.ca/orders-in-council/oc-5172020>

⁴ O. Reg. 50/20: Declaration of Emergency under the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, <https://www.ontario.ca/laws/regulation/200050>



under section 7.0.1 (1) of the *Emergency Management and Civil Protection Act* (the EMCPA).⁵ “We are facing an unprecedented time in our history,” the Premier of Ontario said. “The health and wellbeing of every Ontarian must be our number one priority.”⁶

13. Having declared an emergency, the provincial government made orders under s.7.0.2 and 7.1 of the EMCPA.⁷ On the same day it declared the emergency, it issued an order requiring the closure of facilities providing indoor recreational programs, public libraries, private schools, licensed child care centers, bars and restaurants (except for takeout food and delivery), theatres and concert venues.⁸ Another order that day prohibited organized public events of over 50 people.⁹
14. The provincial government later ordered the closure of non-essential businesses as of 11:59 p.m. on March 24, 2020.¹⁰ On March 28, 2020, it issued an order prohibiting people from attending events of more than five people, whether organized public events, social gatherings or gatherings for the purposes of conducting religious services, rites or ceremonies, with limited exceptions.¹¹
15. On March 30, 2020, it ordered the closure of all outdoor recreational amenities intended for use by more than one family, everywhere in Ontario.¹²

⁵ *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, <https://www.ontario.ca/laws/statute/90e09>

⁶ Office of the Premier, News Release: Ontario Enacts Declaration of Emergency to Protect the Public, March 17, 2020, <https://news.ontario.ca/en/release/56356/ontario-enacts-declaration-of-emergency-to-protect-the-public>

⁷ Ministry of the Solicitor General, Report on Ontario’s Provincial Emergency from March 17, 2020 to July 24, 2020, updated February 22, 2021, <https://www.ontario.ca/document/report-ontarios-provincial-emergency-march-17-2020-july-24-2020>

⁸ O. Reg. 51/20: Emergency Order Under Subsection 7.0.2(4) of the *Emergency Management and Civil Protection Act*, March 18, 2020 – March 22, 2020, <https://www.ontario.ca/laws/regulation/200051/v1>

⁹ O. Reg. 52/20: Emergency Order Under Subsection 7.0.2(4) of the *Emergency Management and Civil Protection Act*, March 18, 2020 – March 27, 2020, <https://www.ontario.ca/laws/regulation/200052/v1>

¹⁰ O. Reg. 82/20: Order Under Subsection 7.0.2 (4) of the *Emergency Management and Civil Protection Act* – Closure of Places of Non-Essential Businesses, March 24, 2020 – April 2, 2020, <https://www.ontario.ca/laws/regulation/200082/v1>

¹¹ O. Reg. 52/20: Order Under Subsection 7.0.2 (4) of the *Emergency Management and Civil Protection Act* – Organized Public Events, Certain Gatherings, March 18, 2020 – March 27, 2020, <https://www.ontario.ca/laws/regulation/200052/v2>

¹² Office of the Premier, News Release: Ontario Extends Emergency Declaration to Stop the Spread of COVID-19 - All Outdoor Recreational Amenities across Province Now Closed, March 30, 2020, <https://news.ontario.ca/en/release/56523/ontario-extends-emergency-declaration-to-stop-the-spread-of-covid-19>



The City of Toronto Declares an Emergency and Closes Park Amenities

16. In response to local circumstances, the City of Toronto also took steps to provide public health advice and make rules to slow the spread of COVID-19.
17. On March 13, 2020, Toronto's Medical Officer of Health recommended, effective March 14, the closure of all licensed childcare centres, the cancellation of March break camps, and enhanced measures for travelers.¹³ The following day, the City of Toronto announced that the day before, it had cancelled most programming and closed a number of facilities, based on the recommendations of the Medical Officer of Health.¹⁴
18. On March 16, 2020, Toronto's Medical Officer of Health recommended that bars and restaurants stop in-person services and move exclusively to take-out and delivery service, and for all nightclubs, movie theatres and concert venues to close as soon as possible. She also asked everyone in the city to make every possible effort to practice social distancing.¹⁵ "My message to you today is simple," the Medical Officer of Health said the following day. "Stay at home, stay safe and take care of each other."¹⁶
19. On March 23, 2020, the Mayor of Toronto declared a State of Emergency in the City.¹⁷
20. According to a City news release, the Mayor's declaration of a state of emergency was meant to strengthen the recommendations made by the Medical Officer of Health to stop all non-essential work and activities to help stop the spread of COVID-19. It also empowered the Mayor to issue orders to

O. Reg. 104/20: Emergency Order Under Subsection 7.0.2 (4) of the *Emergency Management and Civil Protection Act* – Closure of Outdoor Recreational Amenities, March 30, 2020 – April 23, 2020, <https://www.ontario.ca/laws/regulation/200104/v1>

¹³ Toronto Medical Officer of Health, Update on COVID-19, March 13, 2020, https://www.toronto.ca/wp-content/uploads/2020/03/8d79-MOH-Statement_FINAL_13March2020.pdf?fbclid=IwAR3X_Ni-OmkYVQiJ_Bhb2xdZ-1HQ31QkZdUbvLoj5c3sPQK-melTpG3-ZzM

¹⁴ City of Toronto, News Release: City of Toronto website updated with latest COVID-19-related information, March 14, 2020, <https://www.toronto.ca/news/city-of-toronto-website-updated-with-latest-covid-19-related-information>

¹⁵ Toronto Medical Officer of Health, Update on COVID-19, March 16, 2020, https://www.toronto.ca/wp-content/uploads/2020/03/95bc-MOH-Statement_16March2020.pdf

¹⁶ Toronto Medical Officer of Health, Update on COVID-19, March 17, 2020, https://www.toronto.ca/wp-content/uploads/2020/03/96a7-MOH-Statement_17March2020.pdf

¹⁷ City of Toronto Declaration of Emergency, March 23, 2020, <https://www.toronto.ca/wp-content/uploads/2020/03/95d7-covid-19-order-mayor-chapter-59-2020-03-23.pdf>



implement the City's Emergency Plan in order to respond to the extraordinary situation that was unfolding and, ultimately, to protect the health, safety, and welfare of people in Toronto.¹⁸

21. On March 25, 2020, in its continuing efforts to stop the spread of COVID-19, the City announced that it was closing “all City-owned playgrounds, sports fields, basketball and tennis courts, off-leash dog parks, skateboard and BMX parks, picnic areas, outdoor exercise equipment and other park amenities, as well as parking lots attached to its parks system” effective immediately. The City further announced that in closing park amenities, it would be putting up signs across park amenities, locking fencing or gates, and signing and taping off unfenced playground structures.¹⁹

The Mayor's Emergency Orders: Keep Two Metres Apart in Parks and Public Squares

22. On April 2 and 3, 2020, the Mayor issued Emergency Orders imposing physical distancing in City parks and public squares.²⁰ According to a City news release, this meant that any two people who did not live together and who did not keep two metres of distance between them in parks and public squares would be subject to prosecution and would be liable for a fine of up to \$5,000 upon

¹⁸ City of Toronto, News Release: City of Toronto response to COVID-19 strengthened by emergency declaration, March 24, 2020, <https://www.toronto.ca/news/city-of-toronto-response-to-covid-19-strengthened-by-emergency-declaration>

Section 4(1) of the *Emergency Management and Civil Protection Act* states: “The head of council of a municipality may declare that an emergency exists in the municipality or in any part thereof and may take such action and make such orders as he or she considers necessary and are not contrary to law to implement the emergency plan of the municipality and to protect property and the health, safety and welfare of the inhabitants of the emergency area.” §59-5.1.A of Chapter 59, Emergency Management, of the Toronto Municipal Code states: “The Mayor may declare that an emergency exists in the City of Toronto or in any part of it and may take such action and make such orders as he or she considers necessary and not contrary to law to implement the Plan and to protect property and the health, safety and welfare of inhabitants of the emergency area.”

¹⁹ City of Toronto, News Release: City of Toronto closing playgrounds and other parks amenities to stop the spread of COVID-19, March 25, 2020, <https://www.toronto.ca/news/city-of-toronto-closing-playgrounds-and-other-parks-amenities-to-stop-the-spread-of-covid-19>

²⁰ Emergency Order No. 1 - To impose regulations requiring physical distancing within Parks and Public Squares. Mayor's Order under Toronto Municipal Code Chapter 59, April 2, 2020, <http://app.toronto.ca/nm/api/individual/notice/1625.do>

Emergency Order No. 2 - To impose regulations requiring physical distancing within Nathan Phillip Square in the same manner as other Public Squares, Mayor's Order under Toronto Municipal Code Chapter 59, April 3, 2020, <http://app.toronto.ca/nm/api/individual/notice/1626.do>



conviction, and that the City had asked the Chief Justice of the Province of Ontario to issue a set fine for this offence.²¹

23. At the same time, the City also announced that a COVID-19 Enforcement Team, consisting of 200 by-law enforcement officers from the City's Municipal Licensing and Standards division (MLS), 10 Toronto Public Health by-law officers, and the resources of the Toronto Police Service, would be enforcing the "new physical distancing by-law and provincial orders banning organized social gatherings of more than five people, bans on using closed playgrounds and other park amenities, and the closure orders on non-essential businesses that remain open."²²
24. On April 3, 2020, a City news release said that people failing to keep at least two metres apart from others in parks and public squares could receive a \$1,000 ticket, the amount having been approved as a set fine by the Chief Justice of the Province of Ontario, and that "officers could issue higher tickets that would be subject to the courts, where the fines could go up to \$5,000 upon conviction." It also said that the COVID-19 Enforcement Team would be across the City on the weekend "educating the public and enforcing compliance" of the City's new by-law "and the other measures enacted by the municipal and provincial governments." The news release stated:

Officers will be educating the public about the seriousness of COVID-19, why these extraordinary measures are in place, and if, in the end, they don't see compliance, then fines can and will be issued, some of which carry very significant penalties – up to \$100,000 and one year in jail.²³

²¹ City of Toronto, News Release: Mayor Tory signs emergency order encouraging physical distancing in parks and public squares, April 2, 2020, <https://www.toronto.ca/news/mayor-tory-signs-emergency-order-encouraging-physical-distancing-in-parks-and-public-squares>

²² See Footnote 21.

²³ City of Toronto, News Release: Fine for failing to keep your distance in parks set at \$1,000, April 3, 2020, <https://www.toronto.ca/news/fine-for-failing-to-keep-your-distance-in-parks-set-at-1-000>



OMBUDSMAN TORONTO'S ENQUIRY

25. Soon after the Mayor issued his Emergency Orders, Ombudsman Toronto started to receive complaints from people who had been ticketed by by-law enforcement officers in City parks.
26. These people told us that at the time they got a ticket, they were unclear about what they could and could not do in City parks. They also said they did not know how they could dispute a ticket, because the City's Court Services division was closed due to the pandemic.
27. After some initial discussions with City staff, the Ombudsman had some questions about the City's public communication about the restrictions on use of parks, enforcement issues, and about the City's communication of dispute options for people who got a ticket.
28. As a result, the Ombudsman sent a letter on May 26, 2020 confirming to the City and three of its divisions—Strategic Communications, MLS and Court Services—that she and her team were conducting an Enquiry into the following issues:
 - Whether the City had provided adequate information to the public regarding what constituted a violation of COVID-19 related rules concerning the use of parks
 - Whether the City had provided adequate guidance, direction and/or training to MLS by-law enforcement officers to enforce COVID-19 related rules concerning the public's use of parks
 - Whether the City had provided adequate information to the public about how someone could challenge a ticket issued for a violation of COVID-19 related rules with respect to parks.
29. In her letter, the Ombudsman acknowledged “the incredible efforts” City leaders and their staff had made “to continue serving the public in the very challenging and quickly-changing circumstances the pandemic [had] presented.” She also thanked them for the open and constructive approach they had taken so far to her team's questions, requests for documents and recommendations for improved service to the public.
30. City staff at all levels of the organization continued to extend full co-operation throughout our Enquiry. We sincerely appreciate this, especially knowing the extreme pressure they were under.



31. During our Enquiry:

- We spoke with members of the public who had received a ticket and who felt that they had been wrongly ticketed. We also spoke with the Canadian Civil Liberties Association to learn about concerns they were hearing from members of the public.
- We interviewed staff from MLS: by-law enforcement officers, supervisors, managers, and senior staff, including the Directors of Investigative Services and By-law Enforcement and the Executive Director.
- We reviewed documents from MLS, including over 20 training documents totaling over 300 pages created for enforcement of the Emergency Order and by-laws during the pandemic. We also reviewed data MLS collected on interactions between by-law enforcement officers and members of the public relating to the enforcement of the COVID-19 rules from April 2 to May 15, 2020.
- We reviewed the reports of two investigations (one by an investigator outside the City and one by the City's Human Rights Office) into incidents between MLS by-law enforcement officers and members of the public. Both investigations found that officers had engaged in discrimination.
- We reviewed relevant legislation and by-laws, including the Province's Emergency Orders and the City's by-laws.
- We reviewed the City's news releases and information the City posted on its *COVID-19: Affected City Services and Facilities* webpage, as well as related media and social media reports.
- We interviewed staff from the City's Social Development, Finance and Administration division (SDFA), including the City's Confronting Anti-Black Racism unit (CABR).
- We spoke with and got information from the Strategic Communications division about the City's public communications related to the use of parks.
- We spoke with the City's Court Services division and Legal Services division to discuss issues related to communication and logistics for disputing tickets issued to members of the public during the COVID-19 pandemic.



32. Our Enquiry focused on the time period from April 2 to May 15, 2020.
33. As noted above, we received excellent cooperation from the City, its divisions, management and staff. We also appreciated the valuable input of the members of the public we spoke to and the Canadian Civil Liberties Association.

COMPLAINTS FROM THE PUBLIC: WHAT WE HEARD

34. The City's parks were never closed, only amenities within them, as announced by the City in its March 25, 2020 decision to close its parks amenities,²⁴ and then ordered by the Province on March 30, 2020.²⁵ Also, the Province's Emergency Order on social gatherings and the City's physical distancing by-laws applied in parks.
35. Our Enquiry found that people were uncertain about what they could and could not do in City parks.
36. The Canadian Civil Liberties Association publicly reported several stories that people shared with it where the COVID-19 rules were allegedly misapplied, arbitrary enforced, or enforced in a way that was discriminatory and caused disproportionate impacts.²⁶
37. Ombudsman Toronto heard the stories of 10 people who got tickets from by-law enforcement officers in April for violating the park rules. Some of those ticketed were retirees, recently laid-off, or single parents, and they felt the fine of \$880

²⁴ City of Toronto, News Release: City of Toronto closing playgrounds and other parks amenities to stop the spread of COVID-19, March 25, 2020, <https://www.toronto.ca/news/city-of-toronto-closing-playgrounds-and-other-parks-amenities-to-stop-the-spread-of-covid-19>. This news release states that "municipal bylaws give the General Manager of Parks Forestry and Recreation the authority to close parks amenities."

²⁵ O. Reg. 104/20: Emergency Order Under Subsection 7.0.2 (4) of the *Emergency Management and Civil Protection Act* – Closure of Outdoor Recreational Amenities, March 30, 2020 – April 23, 2020, <https://www.ontario.ca/laws/regulation/200104/v1>

²⁶ Canadian Civil Liberties Association, Stay Off the Grass: COVID-19 and Law Enforcement in Canada, Policing the Pandemic Mapping Project, June 2020, <https://ccla.org/cclanewsites/wp-content/uploads/2020/06/2020-06-24-Stay-Off-the-Grass-COVID19-and-Law-Enforcement-in-Canada1.pdf>



was high, undeserved, and/or disproportionate to the offence they were accused of. Some had sought legal advice.²⁷

38. All the complainants we spoke with knew there were new restrictions of some kind on the use of City parks because of COVID-19. Some were aware from the media that certain amenities in parks were closed, but they did not know the extent of the closures.
39. Many of the complainants were unclear whether benches and picnic tables were included on the list of closed park amenities. Some complainants said that areas of a park they thought they could use were not clearly marked, and that signs posted by the City didn't explain what amenities they were not allowed to use. Some complained that yellow caution tape attached to closed park amenities had blown away.
40. A common theme with all complainants was that they felt they had been penalized not for flouting the COVID-19 rules on the use of City parks, but for simply being unaware of them, or not fully understanding them. All the complainants who spoke with us said that they feared returning to parks after they had gotten tickets, out of concern that they would be ticketed again for other rules they did not know about.
41. Below are a few case examples of what we heard.

Trinity Bellwoods Park

42. On April 15, 2020, Ms. X and Ms. Y sat down at a picnic table in Trinity Bellwoods Park to drink the takeout coffee they had just bought, when two by-law enforcement officers approached them. According to the pair, the officers told them that they could not sit at the picnic table because park amenities were closed. The officers told them they should have known about the park rules and

²⁷ We did not review the individual circumstances of the complaints, instead referring the complainants to MLS. MLS then asked Legal Services to review the complainants' tickets. When we followed up with MLS to learn the outcome of the review, MLS told us that the City had withdrawn two of the ten tickets; the remainder will be proceeding to court. MLS told us that the remaining eight complainants would have an opportunity to meet with a legal representative for the City (a City prosecutor) to discuss their matters before proceeding to trial.



asked them whether they followed the news. The officers gave separate tickets to Ms. X and Ms. Y for using a closed park amenity.

43. Ms. X and Ms. Y told us there was a sign at the entrance to the park that amenities were closed, but the sign did not specify which amenities were included. They saw certain amenities such as tennis courts taped off, but not the picnic table. They said that was why they thought they could sit there.

Thompson Memorial Park

44. On April 16, 2020, Mr. and Mrs. Z were walking through Thompson Memorial Park when Mrs. Z accidentally fell. Mrs. Z told us that she was very emotional that day because she had just lost her job due to the pandemic. The couple sat down on a bench next to the playground area so that Ms. Z could calm down.
45. Shortly after they sat down, two by-law enforcement officers approached. Mr. and Mrs. Z told us that the officers did not ask any questions, but simply wrote and handed them each a ticket, saying that the playground was closed, without any further explanation. Mr. Z asked if the officers could issue warnings instead. He said the officers told him that he should have known that park amenities were closed because it was in the media. Mr. Z told us there was yellow tape on the ground near the bench, so it was confusing as to whether they could sit there.

Sherwood Park

46. On April 25, 2020, Ms. W went to Sherwood Park with her two children, ages 12 and 15. Her daughter needed to use the public washroom, but it was locked, so she had to go behind the building. Ms. W and her son, who has special needs, waited for her daughter near the walking path, where there was a picnic table. Ms. W's son suddenly jumped on and then off the picnic table. Yellow caution tape was loosely wrapped around the table.
47. A by-law enforcement officer drove a City vehicle up to Ms. W and her son and started honking. According to Ms. W, the officer parked the vehicle and walked towards her and her son, appearing very agitated. She said that the officer asked Ms. W what she and her son were doing there. Ms. W said that when she tried to explain what she was doing, he kept cutting her off and she was not able to explain that her son has special needs.



48. The by-law enforcement officer demanded that Ms. W provide identification. Ms. W said her daughter had returned by then and both of her children started crying because they were afraid. Ms. W, who is racialized, said the by-law enforcement officer said, “You people need to learn,” and she wondered whether he was referring to her race and/or her gender. The by-law enforcement officer gave her a ticket for using a closed park amenity.²⁸

COMMUNICATION OF THE RULES FOR PARKS

49. The City’s Strategic Communications leadership told us it was challenging for their staff to keep up with the quickly evolving public health advice, as well as with the Province’s frequent communications about new orders to help stop the spread of COVID-19.
50. Typically, they said, the Province would announce new orders first with a media conference, then with a written news release, and then finally it would release the actual legal regulation imposing the legal order.
51. Often, the City’s communications would need to be adjusted at each step of this process. Strategic Communications told us that this meant that sometimes they had to update the City’s communication channels not only daily, but hourly.
52. Strategic Communications told us that between March 11, 2020 (the day the World Health Organization declared COVID-19 a pandemic) and May 15, 2020, the City issued:
- 143 news releases
 - 47 livestreamed press briefings
 - 4,888 website updates/edits
 - 1,316 tweets
 - 677 Facebook posts.

²⁸ The City told us that it has withdrawn the ticket in this case.



53. Overall, the evidence shows that the City used frequent news releases, press briefings, its website, social media and posted signs to communicate the COVID-19 rules and restrictions regarding the use of City parks during this time period. As noted above, the City frequently updated or changed its messaging to try and keep up with changing rules and public health advice.

Messaging About Closed Playgrounds and Park Amenities

54. On March 25, 2020, the City issued a news release under the heading, “City of Toronto closing playgrounds and other parks amenities to stop the spread of COVID-19.”²⁹
55. The news release said that all City-owned playgrounds, sports fields, basketball and tennis courts, off-leash dog parks, skateboard and BMX parks, picnic areas, outdoor exercise equipment and “other park amenities”, as well as parking lots attached to parks, would be closed effective immediately. The news release also gave the following information:

While the public has been advised that fresh air and exercise is good if you are not ill, and if so, you should stay home, it has been observed that individuals are using parks and their amenities to congregate. The public has also shared its concerns about how parks amenities are supporting that congregation. The City is urging all residents, who are not performing essential or critical services, to stay home.

Beginning tomorrow, signage will be erected across Toronto’s parks amenities to advise of closures, including playgrounds. Where fencing or gates exists, they will be locked. Unfenced playground structures will be signed and taped off. Parks green spaces will remain accessible, but all amenities within City parks will be closed.

Toronto’s Medical Officer of Health...has been clear: physical distancing of at least two metres is critical in helping stop the spread of COVID-19. Every Torontonian has a part to play in helping bring an end to this pandemic. The action today is one more important step in that effort.

...

Municipal by-laws give the General Manager of Parks Forestry and Recreation the authority to close parks amenities. Violations of municipal by-laws related to accessing a

²⁹ City of Toronto, News Release: City of Toronto closing playgrounds and other parks amenities to stop the spread of COVID-19, March 25, 2020, <https://www.toronto.ca/news/city-of-toronto-closing-playgrounds-and-other-parks-amenities-to-stop-the-spread-of-covid-19>

closed, City-owned parks amenity vary depending on the offence but can result in fines of up to \$5,000. Residents with concerns can call 311.

56. The news release asked residents to check the City's website at www.toronto.ca/covid-19/ for "answers to common questions" before contacting 311 or the Toronto Public Health COVID-19 Hotline.
57. At the beginning of the pandemic, the City created a dedicated section of its website for people to get information about City services affected as a result of the pandemic, *COVID-19: Affected City Services & Facilities*.
58. On March 25, 2020, under "Parks", the website said, "All City-owned playgrounds, sports fields, basketball and tennis courts, off-leash dog parks, skateboards and BMX parks, picnic areas, outdoor exercise equipment and other parks amenities, as well as parking lots attached to its parks system are closed."³⁰
59. On March 28, 2020, the City posted a message to its social media accounts explaining that the City had closed all playgrounds and park amenities and telling people to stay home.



³⁰ [COVID-19: Affected City Services & Facilities – City of Toronto \(archive.org\)](https://www.toronto.ca/covid-19/)



60. On March 29, 2020, some City Councillors posted this message to their social media accounts: “Parks are open for walking, cycling & running only. Using amenities or congregating in groups is not permitted.” However, we could not find this messaging on the City’s social media accounts for the same date. Also, this statement, about parks being open for walking, cycling and running, did not appear on the website. Instead, under “Park Amenities”, it said:

Park and ravine green spaces remain accessible, but all amenities within City parks are closed. If you are visiting a park space, please practice physical distancing. Dogs can be taken into park spaces on a leash.

Closed City park amenities include:

- Playgrounds
- Sports fields
- Basketball and tennis courts
- Off-leash dog parks
- Skateboard and BMX parks
- Picnic areas
- Outdoor exercise equipment
- Greenhouses, nurseries and conservatories
- Zoos and farms
- Parking lots.³¹

61. On March 31, 2020, the day after the Province ordered the closure of park amenities, the City’s website had updated information about the use of parks. It now included frisbee golf locations, allotment and community gardens and park washrooms/shelters in the list of closed park amenities. The website also said that residents could not use park amenities or congregate in groups while in a park. It gave information on how much someone could be fined for “continuing to congregate or [using] closed amenities...”³²

62. At this time, parks and “ravine green spaces” were not closed and according to the City, “remain[ed] accessible.”

³¹ [COVID-19: Affected City Services & Facilities – City of Toronto \(archive.org\)](https://www.toronto.ca/covid-19-affected-city-services-facilities/)

³² [COVID-19: Affected City Services & Facilities – City of Toronto \(archive.org\)](https://www.toronto.ca/covid-19-affected-city-services-facilities/)



Messaging About Physical Distancing Rules in Parks and Public Squares

63. On April 2, 2020, the City issued a news release titled, “Mayor Tory Signs Emergency Order Encouraging Physical Distancing in Parks and Public Squares”:

Today, [the Mayor] signed an emergency order regulating physical distancing in City of Toronto parks and public squares.

Any two people who don’t live together, who fail to keep two metres of distance between them in a park or public square, will be subject to prosecution and will be liable for a fine of up to \$5,000 upon conviction. The City has asked the Chief Justice of the Province of Ontario to issue a set fine for this offence.

The Mayor took this emergency action – which is in effect for at least the next 30 days – to further drive home the message that people have to keep their distance from each other to avoid spreading COVID-19 in our city and to save lives.

[The Mayor] and the City’s Medical Officer of Health...are asking Toronto residents to take the message of staying home, except when absolutely necessary, with the seriousness that the situation requires.

To save lives, protect our healthcare system, and get the economy and City back to normal as quickly as possible, the public must follow the advice – and orders communicated publicly on several occasions – to stay home as much as possible.

This weekend, the public can expect to see increased enforcement of orders and laws designed to stop the spread of COVID-19.

A COVID-19 Enforcement Team of 200 Municipal Bylaw Enforcement Officers, 10 Toronto Public Health Bylaw Officers, plus the resources of the Toronto Police Service will enforce the new physical distancing bylaw, provincial orders banning organized social gatherings of more than five people, bans on using closed playgrounds and other parks amenities, and the closure orders on non-essential businesses that remain open.

The enforcement team will be responding to complaints and proactively patrolling parks and other public spaces, all in an effort to ensure public understanding of the need to limit social interactions.

Fines for violating a provincial order under the Emergency Measures Act can range from \$750 to \$100,000, including up to one year in jail, for social gatherings exceeding five persons, using parks amenities which have been closed, opening non-essential businesses, and failing to identify oneself to a police officer or a provincial offences officer (bylaw officer) investigating a matter under the Emergency Measures and Civil Protection Act.

The advice from Toronto’s public health officials has been clear and consistent: To stop the community spread of this deadly virus, we must reduce all contact with others as much as possible.



Failure to adhere to these guidelines and orders will result in more people dying from COVID-19. It will result in our healthcare system being overwhelmed and unable to treat all who need critical care. And it will result in our inability to recover more quickly – as a society and economically.³³

64. On April 3, 2020, another City news release said that people failing to keep at least two metres apart from others in parks and public squares could receive a \$1,000 ticket. It also said that the COVID-19 Enforcement Team would be across the City on the weekend “educating the public and enforcing compliance” of the City’s new by-law “and the other measures enacted by the municipal and provincial governments.” The news release said:

Officers will be educating the public about the seriousness of COVID-19, why these extraordinary measures are in place, and if, in the end, they don’t see compliance, then fines can and will be issued, some of which carry very significant penalties – up to \$100,000 and one year in jail.³⁴

Messaging About COVID-19 Enforcement Blitz and Tickets for Using Park Benches

65. In an April 4, 2020 news release, the City said that 311 was continuing to receive complaints about people gathering and not practicing physical distancing, “particularly in parks and green spaces.” The news release said that during the upcoming weekend, MLS by-law enforcement officers and Parks, Forestry and Recreation staff, working with Toronto Police, would be in parks across the City “providing public education and enforcing physical distancing.” The news release said that this “enforcement blitz” would be targeting busy parks and the “top 10 emerging problem areas.”³⁵
66. On April 7, 2020, the City’s website listed the same closed park amenities as on March 31, 2020.³⁶ The website also now included a link for the public to access information on the City’s website about “the emergency orders, directives and by-laws that regulate physical distancing in City parks and public squares.”

³³ City of Toronto, News Release: Mayor Tory signs emergency order encouraging physical distancing in parks and public squares, April 2, 2020, <https://www.toronto.ca/news/mayor-tory-signs-emergency-order-encouraging-physical-distancing-in-parks-and-public-squares>

³⁴ City of Toronto, News Release: Fine for failing to keep your distance in parks set at \$1,000, April 3, 2020, <https://www.toronto.ca/news/fine-for-failing-to-keep-your-distance-in-parks-set-at-1-000/>

³⁵ City of Toronto, News Release: City of Toronto enforcement blitz ramps up across Toronto, April 4, 2020, <https://www.toronto.ca/news/city-of-toronto-enforcement-blitz-ramps-up-across-toronto>

³⁶ [COVID-19: Affected City Services & Facilities – City of Toronto \(archive.org\)](https://www.toronto.ca/covid-19-affected-city-services-facilities)

67. On April 9, 2020, the City’s news release urged residents to stay and home and keep their distance from others during the upcoming Easter holiday weekend. It also said that the COVID-19 Enforcement Team would be continuing enforcement over the weekend, noting that “officers continue to observe people participating in prohibited activities in City parks, including gathering in groups larger than five, not practicing physical distancing, using closed parks amenities and allowing dogs to run off leash in public areas.”³⁷
68. The release reported that the previous day, the City had received 356 complaints “involving people using amenities or not practicing physical distancing in parks” and that by-law enforcement officers spoke to 989 people “regarding the closure of park amenities and distancing.”³⁸
69. By April 9, 2020, the City had received a huge number of public inquiries about the COVID-19 restrictions on the use of outdoor recreational amenities, especially concerning the use of benches. It knew that people were confused about the rules.
70. We found that at that time, the City had some public messaging telling people not to “gather” on park benches. However, the City’s website did not list “benches” as a closed park amenity,³⁹ although they were included as a closed outdoor amenity in the provincial Order.⁴⁰



³⁷ City of Toronto, News Release: City of Toronto urges residents to stay home and keep their distance from others over the holiday weekend, April 9, 2020, <https://www.toronto.ca/news/city-of-toronto-urges-residents-to-stay-home-and-keep-their-distance-from-others-over-the-holiday-weekend>

³⁸ See Footnote 37.

³⁹ [COVID-19: Affected City Services & Facilities – City of Toronto \(archive.org\)](https://www.toronto.ca/covid-19-affected-city-services-facilities)

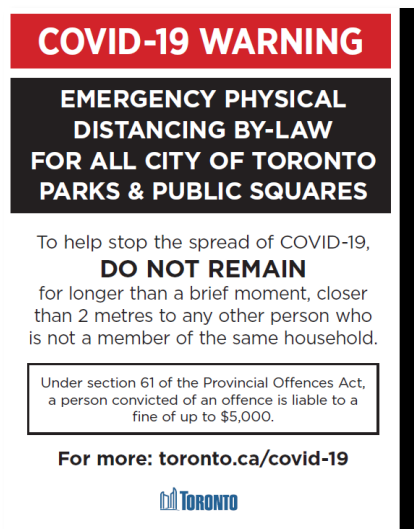
⁴⁰ See Footnote 25.

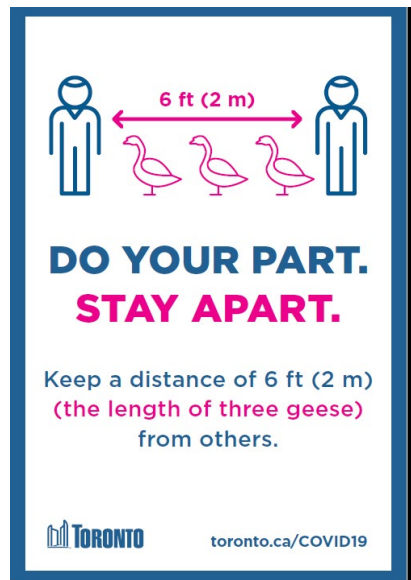
Messaging About Easter Weekend 2020

71. On April 10, 2020, the City's messaging on social media said that there would be a focus on education and enforcement that weekend.



72. As early as March 28, 2020, the City began posting signs at parks, entrances to playgrounds, and green spaces. The messaging on some of the signs was focused on educating the public about the physical distancing by-law, and its requirement to keep at least two metres apart from any person who was not from the same household. Other signs referred to the closure of park amenities.





73. On April 11, 2020, a City news release announced that the COVID-19 Enforcement Team would begin “stricter enforcement” as part of an ongoing “blitz” in parks and public squares: “No longer focused on education, enforcement officers will now move almost exclusively to issuing tickets to people congregating in groups and using closed amenities in City parks.”⁴¹ The City posted messaging about the planned enforcement for the upcoming weekend to its social media sites on April 12, 2020.



⁴¹ City of Toronto, News Release: City of Toronto begins stricter enforcement to help stop the spread of COVID-19, April 11, 2020, <https://www.toronto.ca/news/city-of-toronto-begins-stricter-enforcement-to-help-stop-the-spread-of-covid-19/>



74. On April 13, 2020, another City news release said that the COVID-19 Enforcement Team was “focused on stricter enforcement in City parks and squares” and that the team had “moved from issuing warnings to almost exclusively issuing tickets in order to convey the seriousness of the City’s measures and increase compliance.” It also said:

While officers reported lighter use of some busy parks this weekend, tickets were issued for using park amenities such as lingering on Muskoka chairs and benches. Individuals who need to physically rest while out on a walk are permitted to use benches to recover, however lingering and use of benches beyond necessary resting purposes is prohibited.⁴²

75. As of April 16, 2020, however, the list of closed park amenities on the City’s website did not include benches (or Muskoka chairs).⁴³ In fact, based on our review of the City’s website, it does not appear that benches were ever listed as a closed park amenity.
76. On April 18, 2020, a City news release said that the City’s COVID-19 Enforcement Team was continuing to see “troubling behavior as weather improves and people become frustrated with restrictions” and that enforcement would continue over the weekend “ensuring people across the City are following public health direction and provincial orders.”⁴⁴

‘What Can You Do in a Park?’: The Parks Fact Sheet

77. During our Enquiry, we came across a Parks Fact Sheet dated April 21, 2020. It was called *What Can You Do in a Park?* We found it posted on a City Councillor’s website.
78. When we asked staff from Strategic Communications about the Parks Fact Sheet, they told us they had created it as “one in a series of communications pieces” to provide information about parks enforcement, based on information

⁴² City of Toronto, News Release: City of Toronto continues to encourage residents and businesses to practise physical distancing and help stop the spread of COVID-19, April 13, 2020, <https://www.toronto.ca/news/city-of-toronto-continues-to-encourage-residents-and-businesses-to-practise-physical-distancing-and-help-stop-the-spread-of-covid-19>

⁴³ [COVID-19: Changes to City Services – City of Toronto \(archive.org\)](https://www.toronto.ca/news/city-of-toronto-covid-19-enforcement-team-continues-important-work-across-the-city/)

⁴⁴ City of Toronto, News Release: City of Toronto COVID-19 Enforcement Team continues important work across the city, April 18, 2020, <https://www.toronto.ca/news/city-of-toronto-covid-19-enforcement-team-continues-important-work-across-the-city/>



from the City's COVID-19 Enforcement Working Group, including MLS, Legal Services, and Parks, Forestry and Recreation.

79. Strategic Communications told us that while the Parks Fact Sheet was not posted to the City's website, "the majority" of the content in the fact sheet was there. The Parks Fact Sheet was not meant to be made public, they said, but rather was only intended as an internal document for City staff to respond to public and media inquiries, and for Councillors to respond to the public.
80. To address public confusion and presumably because they were getting so many questions about park use, some City Councillors posted the Parks Fact Sheet, or information from it, to their websites or social media sites.
81. We reviewed the information in the April 21, 2020 Parks Fact Sheet and information posted to the City's website on that date. By contrast to the City's website, the Parks Fact Sheet had some clear and easy to understand messaging on what was, and what was not, allowed in a City park.
82. For example, under the heading, **What can you do in a park?**, the Parks Fact Sheet said, "At this time, the park is not meant to be a destination like it used to be. People can walk/run there, get some exercise and then keep moving."
83. There was also a heading titled, **What about benches?**

A park bench is a place for temporary respite, not a place to linger.

The City will no longer be issuing tickets to people using park benches. However, benches are not destinations where people should begin to congregate. Benches are not sanitized. People may unknowingly spread the virus by sneezing or touching the bench when the next person comes along, sits down and touches the bench.



Parks Fact Sheet

April 21, 2020

What can you do in a park?

At this time, the park is not meant to be a destination like it used to be. People can walk/run there, get some exercise and then keep moving.

Amenities in parks are closed

Park and ravine green spaces remain accessible, but all amenities within City parks are closed. If you are visiting a park space, please practice physical distancing.

While in a park, residents must not use park amenities or congregate in groups. Dogs can be taken into park spaces on a leash. Please do not put yourself or loved ones or neighbours at risk of exposure.

The City can close a park or any part of it, in the interests of public safety. Closed City park amenities include:

- Playgrounds
- Sports fields
- Basketball and tennis courts
- Off-leash dog parks
- Skateboard and BMX parks
- Picnic areas
- Outdoor exercise equipment
- Greenhouses, nurseries and conservatories
- Zoos and farms
- Parking lots
- Frisbee golf locations
- Allotment and community gardens
- Park washrooms/shelters

What about benches?

A park bench is a place for temporary respite, not a place to linger.

The City will no longer be issuing tickets to people using park benches. However, benches are not destinations where people should begin to congregate. Benches are not sanitized. People may unknowingly spread the virus by sneezing or touching the bench when the next person comes along, sits down and touches the bench.

84. As of April 21, 2020, the day the *What Can You Do in a Park?* fact sheet was circulated internally to City staff and Councillors, the City's website said nothing about what the public could do in a park. Further, it did not inform people that the City would no longer be issuing tickets to people using park benches.
85. The City's April 21, 2020 news release, too, did not include information from the fact sheet about what people could do in a park, or the fact that the City would no longer be ticketing people using park benches.⁴⁵

⁴⁵ City of Toronto, News Release: City of Toronto encourages residents to keep staying home and practising physical distancing, April 21, 2020, <https://www.toronto.ca/news/city-of-toronto-encourages-residents-to-keep-staying-home-and-practising-physical-distancing>



86. Unlike the City's website at that time, however, an April 26, 2020 *Toronto Star* article gave readers information about what they could and could not do in parks, quoting a City spokesperson.⁴⁶
87. The article said that people could walk through parks, so long as they walked only with people they lived with and did not come within six feet of anyone else. The article said that walking, running or cycling through parks was allowed, so long as people kept moving through the park, trails and boardwalks. While "stopping momentarily" was permitted, the City said that a park should not be a destination for stopping. The article also said that picnics were also not permitted. "At this time, parks and green spaces are not meant to be a destination like they used to be," the article quoted a City spokesperson as saying.
88. The article ended with the following statement: "If members of the same household want to get out and throw a ball or a frisbee around, that is permitted. However, residents are encouraged not to use parks, as much as possible."

The Ombudsman Seeks Clarification and the City Updates its Website

89. On April 27, 2020, Ombudsman Toronto staff specifically asked MLS for clarification about enforcement on the use of park benches, an area in which we had heard much public confusion. We said that we had come across the Parks Fact Sheet and that we were concerned that the City had not shared with the public much of the information in it, including the fact that the City would no longer be issuing tickets for sitting on a park bench.
90. The next day, April 28, 2020, the City updated its website to include significantly more information about parks, in line with the information that was included in a Strategic Communications April 27, 2020 update to the Parks Fact Sheet.⁴⁷

⁴⁶ Francine Kopun and David Rider, *Toronto Star*, "Torontonians can't wait for the city's green spaces to reopen. Not so fast, says Mayor John Tory," April 26, 2020, https://www.thestar.com/news/city_hall/2020/04/26/torontonians-cant-wait-for-the-citys-green-spaces-to-reopen-not-so-fast-says-mayor-john-tory.html

⁴⁷ [COVID-19: Changes to City Services – City of Toronto \(archive.org\)](https://www.toronto.ca/city-government/department-strategic-communications/covid-19-changes-to-city-services/) The City told us that this information was posted to the webpage on April 27, however the earliest that we could confirm that it was posted was on April 28.



91. For the first time since the City had started to give information to the public about using City parks during COVID-19 over one month earlier, there was now a section called, **What can you do in a park?**

At this time, the park is not meant to be a destination like it used to be. People can walk/run, get some exercise and then keep moving. While visiting a park, people must practise physical distancing. Under the City's physical distancing by-law, any two people who don't live together, who fail to keep two metres of distance between them in a park or public square, can receive a \$1,000 ticket.

92. Also, for the first time, the City's website had a section, **What remains "open" in a park?**

People can walk/run/bike in the following areas:

- Park and ravine green spaces
- Beaches
- Trails
- Boardwalks
- Dogs can be walked on-leash

People can also:

- Fish (with a licence)
- Boat, kayak, canoe

93. The information the City included in the **What remains "open" in a park?** section had not changed since the beginning of the restrictions on the use of park amenities. But the City did not share it with the public on its website until April 28, 2020.

94. Also, for the first time, the City's website had a new section titled, **What about park benches?**

The focus of enforcement has now shifted away from issuing charges to individuals solely for the use of park benches as a place for temporary respite. The focus in relation to the use of park benches will be on individuals who are not in compliance with the prohibitions on social and public gatherings, and who do not practise physical distancing while using park benches.

Benches are not destinations where people should begin to congregate. Benches are not sanitized. People may unknowingly spread the virus by sneezing or touching the bench when the next person comes along, sits down and touches the bench.



95. The information about park benches was the same information in the Park Fact Sheet that Strategic Communications staff had sent to City staff and Councillors on April 21, 2020—a full week earlier.

More Changes in the City's Messaging

96. On April 30, 2020, Strategic Communications updated the Parks Fact Sheet again. It now said: “As the nice weather approaches, we want to leave parks open for residents. We know how important parks are for respite, serenity as well as an escape to nature and green space in our city. At this time, a park is not meant to be a destination.”
97. This information was included in the City's May 1, 2020 news release.⁴⁸
98. The news release said that although the park was not meant to be a destination, and all park amenities remained closed, residents “may walk, run or bike through park and ravine green spaces, beaches, trails and boardwalks,” dogs could continue to be walked on-leash, and fishing (with a licence), boating, kayaking and canoeing were also permitted. This was the first City news release with information on what people could do in a park.
99. The news release did not, however, include any information about the City's approach to park benches, although the website now included this information.
100. On May 2, 2020, the City's website included the information it had added to the fact sheet on April 30, 2020:

Based on recommendations from Toronto's Medical Officer of Health to stop the spread of COVID-19 and save lives, the City has made changes to how City parks can be used.

As nice weather approaches, we want to leave parks open for residents. We know how important parks are for respite, serenity as well as an escape to nature and green space in our city.

At this time, a park is not meant to be a destination:

- You are encouraged to get some fresh air and exercise, and to keep moving;
- We are asking you not to bring a picnic to the park as it can lead to people congregating together;

⁴⁸ City of Toronto, News Release: City of Toronto update on COVID-19, May 1, 2020, <https://www.toronto.ca/news/city-of-toronto-update-on-covid-19-2>



- While visiting a park, you must practise physical distancing. Under the City's physical distancing by-law, any two people who don't live together, who fail to keep two metres of distance between them in a park or public square, can receive a \$1,000 ticket.
- Under the Province's Emergency Order, a social gathering or organized public event of more than five people is prohibited, unless everyone gathered together live in the same household. This applies in parks.⁴⁹

101. There was also now a section on the website called, the **Use of picnic tables**:

You cannot use a picnic table at this time. Picnic tables are considered amenities under the provincial order. Much like benches, picnic tables are not sanitized and can also promote congregating.⁵⁰

102. Based on our review of the information on the City's website, it never previously listed picnic tables as a closed park amenity.
103. A review of City news releases after May 2, 2020 shows that, generally, the messaging about the use of parks concerned the ongoing work of the COVID-19 Enforcement Team and complaints the City continued to receive about people using outdoor amenities or not practicing physical distancing in City parks or squares. A May 13, 2020 City news release reminded the public that "parks amenities, including parking lots, remain closed at this time."⁵¹

The Ombudsman Urges the City Manager to Clarify the Public Messaging

104. On May 12, 2020, with a holiday long weekend approaching, the Ombudsman wrote to the City Manager to express concern that the public "was thoroughly confused and needs clearer information, as a matter of fairness" about park use.
105. Acknowledging the massive efforts of City leadership and staff to modify services to the public in very challenging and quickly-changing circumstances, the Ombudsman said:

"...the public wants (and is entitled to) clear information on the following questions:

1. What are people allowed to do in City parks?

⁴⁹ [COVID-19: Changes to City Services – City of Toronto \(archive.org\)](https://www.toronto.ca/news/city-of-toronto-update-on-covid-19-11)

⁵⁰ See Footnote 49.

⁵¹ City of Toronto, News Release: City of Toronto update on COVID-19, May 13, 2020, <https://www.toronto.ca/news/city-of-toronto-update-on-covid-19-11>



2. What is the **public health advice** about using parks?
3. What are the **prohibited activities** in parks, which could lead to someone getting a ticket?

The need for clear information on these basic questions is urgently needed, especially with the May long weekend and the start of summer approaching.”

106. Noting that she had already discussed these issues with the leadership of both MLS and Strategic Communications (both of whom had been responsive and helpful), she said she believed it required the City Manager’s intervention for two reasons: “First, it is a matter of significant public interest and concern, and public confusion persists. Second, it requires a coordinated response involving input from several different City divisions and departments...”
107. The Ombudsman pointed out that the City’s website stated, “As the nice weather approaches, we want to leave parks open for residents. We know how important parks are for respite, serenity as well as an escape to nature and green space in our city.”
108. Despite that language, however, the website said that parks are not meant to be a destination, and that people could walk, bike or jog through parks, but must keep moving. Many signs in the parks said, “**DO NOT REMAIN,**” with some fine print about physical distancing rules.
109. The Ombudsman asked why the City was saying that the greenspace in a park could not be a “destination”:

“So long as someone is alone or with members of their immediate household, practicing physical distancing and not using any park amenities, are they not following both the rules and public health advice? Can someone not relax and read a book while sitting on the grass, or enjoy a picnic, alone or with members of their household, so long as they are six feet away from all others?

I appreciate that as scientific study and understanding of the virus progresses, public health advice may change; so may rules prohibiting some behaviours. But the public has a need and a right to know at any given time what the advice is, and what is prohibited.

I am also concerned that this is an issue of equity. Many residents of Toronto do not have private access to greenspace. Parks are even more critical for them.

I ask you to take immediate steps to ensure that the City provides clearer, more accessible information to the public on all of these issues, and then keeps it up to date.”
110. The Ombudsman’s May 12, 2020 letter is attached as Appendix A.
111. The City Manager promptly responded by letter on May 14, 2020.



112. In his response, the City Manager said that the City's top priority in responding to the pandemic had been to save lives by doing all that it could to stop the spread of the virus in the community. "Every action taken by the City in response to COVID-19 had been informed by this goal, as well as the goal of preventing our healthcare systems in Toronto from becoming overwhelmed."
113. Reviewing the history of the City's messaging about public health advice and COVID-19 rules for parks and public squares, he said that the public health message had shifted in the previous week. While the City's public health message was now that people should still avoid non-essential trips in the community to prevent further spread of COVID-19, it now encouraged people to go out for their physical and mental health.
114. "When going out, we are still recommending maintaining a physical distance of two metres (six feet) from others and going out only with members of their household. There remains, however, community spread of COVID-19 and we need to ensure that our messaging does not inadvertently result in further transmission of the virus by overtly encouraging parks use," he said.
115. His letter continued, "At the same time, we recognize that people wish to use their parks. I concur that it is important for the public, then, to have absolute clarity around what is permitted in city parks, as well as what is not permitted..."
116. To that end, he said, staff would be revising the City's website and social media messaging before the upcoming long weekend to ensure greater clarity.
117. The City Manager's May 14, 2020 letter is attached as Appendix B.
118. On May 15, 2020, the City's news release said that "at this time" parks were open for certain activities. The release stated, "The Medical Officer of Health continues to encourage healthy residents to get fresh air and exercise. City parks are important for respite, serenity, and as an escape to nature and green space. While park amenities remain closed, many activities are permitted."⁵² The news release then listed the activities that were allowed in City parks.

⁵² City of Toronto, News Release: City of Toronto update on COVID-19, May 15, 2020, <https://www.toronto.ca/news/city-of-toronto-update-on-covid-19-13>



119. On the same date, the City's website gave the following information:

As the nice weather approaches, parks remain open for residents however, the amenities remain closed including picnic tables, washrooms and playgrounds (more information below).

What is allowed in City parks?

You are encouraged to get fresh air and exercise.

Provincial orders and the City by-law on physical distancing remain in effect, requiring people who are not from the same household to maintain a physical distance of two metres in a park or public square.

Gatherings of more than five people who are not members of a single household are not permitted by provincial order.

At this time, City parks are open for the following activities:

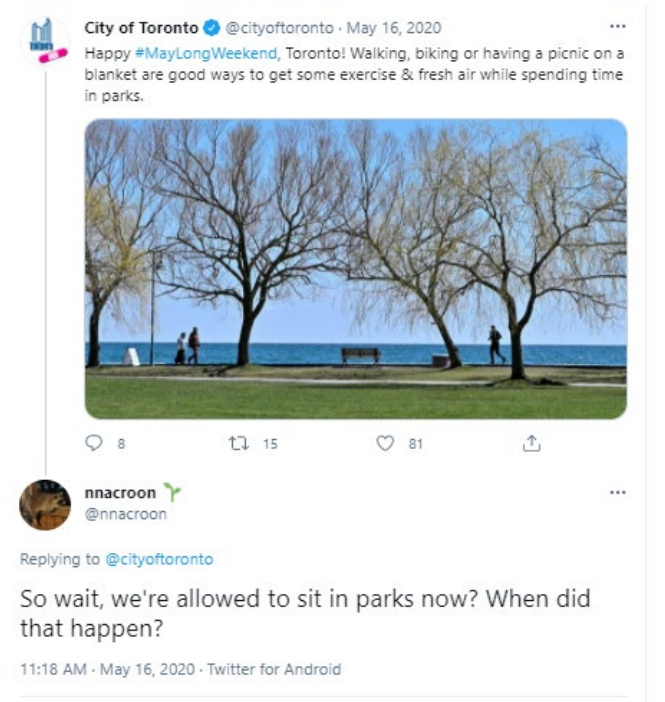
- People can walk/run/bike in parks and ravine green spaces; beaches; trails; boardwalks
- Parks green space is available for public use for those wishing to rest or read a book
- You are allowed to bring a picnic to the park or sit on a blanket and enjoy the park setting as long as everyone present is a member of a single household, and that they remain more than two metres away from others not from their household who may also be the park
- Dogs can be walked on-leash
- Fishing with a licence
- People can also boat, kayak, canoe

Important reminders:

- While visiting a park, you must practise physical distancing. Under the City's physical distancing by-law, any two people who don't live together, who fail to keep two metres of distance between them in a park or public square, can receive a \$1,000 ticket.
- Under the Province's Emergency Order, a social gathering or organized public event of more than five people is prohibited, unless everyone gathered together live in the same household. This applies in parks.⁵³

⁵³ [COVID-19: Changes to City Services – City of Toronto \(archive.org\)](#)

120. On May 16, 2020, the City posted a message to social media encouraging residents to have a picnic in a City park, among other things.
121. Some users noted their confusion and surprise in response to this apparent contradiction to the City's previous messaging that parks were not meant to be a destination.



Analysis and Findings

122. When the COVID-19 pandemic struck, almost every aspect of civilian and community life in Toronto came to a standstill. Businesses closed. People lost their jobs, and those who could switch to working from home did so. Schools and educational institutions either closed or moved teaching online. COVID-19 was a shock to our everyday way of life.
123. As infection rates and deaths from COVID-19 quickly and dramatically increased, City staff were tasked with keeping residents informed and safe.
124. We acknowledge the significant challenge that keeping the public informed about the quickly and constantly changing situation presented—including public health measures and advice, impacts on City services and facilities, emergency safety measures and orders being implemented by different levels of government.



125. People in Toronto struggled to keep up with the available information about the virus, public health advice, and about what they could—and could not—do in City parks, among other rules and restrictions.
126. One clear source of public confusion was the rapid implementation of emergency measures at different times by different levels of government, all done to keep people safe.
127. However, despite these challenges (or perhaps because of them), we found that the City’s communication to the public about the rules for parks between April 2 and May 15, 2020 was fragmented, confusing and in some cases, inconsistent. People did not know what they should or should not do (or what they could and could not do) in City parks, or what would put them at risk of getting a ticket. And depending where they looked, the City gave them different information.
128. Fair communication of information to the public requires clear, easy-to-understand, accessible, and coordinated messages. We found that in some cases, the City did not deliver this.
129. A key source of confusion was that in many City communications, public health advice and legal rules were mixed up together.
130. The City’s April 2, 2020 news release, for example, gave people mixed messages about what was advice and what were rules.⁵⁴ The title of the news release, “[The Mayor] Signs Emergency Order *Encouraging* Physical Distancing in Parks and Public Squares” (emphasis added), implied advice, while the text said, “Any two people who don’t live together, who fail to keep two metres of distance between them in a park or public square, will be subject to prosecution and will be liable for a fine of up to \$5,000 upon conviction,” setting out a legally enforceable rule.
131. Our governments want us to follow public health advice, for good reason. But that advice is not the same as legal rules that put people in jeopardy of prosecution. Fairness demands that this difference be made clear in public communications.
132. City parks, ravines and green spaces were never closed to the public. Although the City’s public health advice was for people to stay home and avoid non-essential trips into the community, people could still use parks in certain ways, including for walking, running, cycling and sitting on the grass—so long as they

⁵⁴ See Footnote 21.



did so while maintaining a physical distance of two metres from people not from their own household. But because of confusing and inconsistent messaging, some people were afraid to use our public parks at all, for fear of being ticketed. This was unfair.

133. We also found that the City did not adequately inform the public that using park benches was against the rules—specifically, the Province’s March 30, 2020 Emergency Order closing outdoor recreational amenities⁵⁵—and could result in a ticket. The City’s website never specifically listed benches as a closed outdoor amenity.
134. More troublingly, our Enquiry found that as early as April 9, 2020, the City was aware that people were confused about whether, and how, they could use benches. Yet, as we noted, a City’s news release on April 13, 2020 reported that “tickets were issued for using park amenities, such as lingering on ... benches.”
135. Eventually, the City changed its enforcement focus on benches, away from focusing on people simply using them to instead ensuring that they were not places where people were congregating without observing the requirement to remain two metres away from people not in the same household.
136. Even at the time the City decided to shift its enforcement focus for benches, however, it did not include information about acceptable use of park benches in any City news releases or on its social media sites. This information was only in its internal Parks Fact Sheet, not intended for broad public circulation.
137. It was not until April 28, 2020, one week after internal City documents confirmed the shift in enforcement for sitting on benches, and after the Ombudsman sought clarification on this issue, that the City posted this information on its website.
138. As noted earlier, the beginning of the pandemic was a frightening and confusing time for all. We acknowledge that the City rightly wanted to be careful in its messaging, to not encourage activities that could cause virus spread, at a time when there was a heightened risk of community transmission of COVID-19.

⁵⁵ O. Reg. 104/20: Emergency Order Under Subsection 7.0.2 (4) of the *Emergency Management and Civil Protection Act* – Closure of Outdoor Recreational Amenities, March 30, 2020 – April 23, 2020, <https://www.ontario.ca/laws/regulation/200104/v1> and April 24, 2020 – May 18, 2020, <https://www.ontario.ca/laws/regulation/200104/v2>. S. 1(1)6 of both versions of this Emergency Order list “All outdoor picnic sites, benches and shelters in park and recreational areas.”



139. But, as a matter of fairness, it was important for the City to ensure that besides communicating public health advice, it gave people clear, easy-to-understand and transparent information about what was—and what was not—legally permitted in City parks.
140. Internally, the City had messaging that clearly reflected what the public could and could not do in a park. However, its public messaging did not reflect the same clarity.
141. We found that, until we intervened, the City did not give the public clear, coordinated and easy-to-understand information on what people could and could not legally do in parks, despite staff's good faith intentions and efforts. This was unfair to all, specifically to people who got tickets in City parks.
142. Recognizing that the COVID-19 pandemic presented unprecedented challenges to the City's delivery of programs and services, which continue as of the date of this report, we make the following recommendations regarding City communications to the public:

Recommendation 1

The City should create an organization-wide communications policy to ensure that it gives the public timely and accurate information about changes to people's access to City services and facilities (including City parks) in a coordinated, consistent, and accessible way.

This communications policy should:

- Apply to all City divisions and departments
- Apply to all the City's communication platforms, including, but not limited to its website, 311 Toronto, social media sites, news releases, signage, and communication pieces for City Councillors
- Consider all of Toronto's diverse communities
- Emphasize the importance of giving the public information that clearly distinguishes between advice (including public health advice) and legally prohibited activities
- Include a requirement for clear, simple language
- Use data and research to measure the effectiveness of City communications.



Recommendation 2

To complement this communications policy, the City should develop processes to address the following:

- Ensuring that the City addresses public complaints about City communications, including communications related to enforcement, in a timely and effective way
- How the City can partner with local agencies serving Toronto's communities to communicate information about changes to the public's access to City services and facilities to the populations they serve in an effective and accessible way.

ENFORCEMENT

The COVID-19 Coordinated Enforcement Team

143. On April 3, 2020, the Executive Director of MLS created the COVID-19 Coordinated Enforcement Team. He told us his goal in doing so was to ensure that the City had a consistent and coordinated enforcement approach for the many orders the Province was issuing.
144. The Coordinated Enforcement Team originally included staff from seven City divisions (Legal Services, MLS, Parks, Forestry and Recreation, Strategic Communications, Toronto Building, Toronto Public Health, and Transportation Services) and from the Toronto Police Service. On April 27, 2020, the team expanded to include Shelter, Support and Housing Administration and Social Development, Finance and Administration.
145. The MLS Executive Director said the team met seven days a week from April 3, 2020 until the end of August 2020. It continues to meet three times per week "in order to provide a forum for each division to provide updates, identify issues and challenges, discuss strategies, problem solve, develop appropriate plans and the associated implementation of those plans." In addition, each Monday,



the team evaluates enforcement activities from the previous week and decides whether modifications are necessary.⁵⁶

COVID-19 Training for By-law Enforcement Officers: ‘Fast and Furious’

146. Following the Mayor’s Emergency Orders, MLS assigned by-law enforcement officers from different departments within the division to enforce the new rules in parks. To help officers perform these duties, MLS released a stream of training materials, accessible online.
147. According to the Executive Director, training for MLS by-law enforcement officers is traditionally done in a classroom setting, to help ensure staff comprehension of the training material. However, because of the physical distancing restrictions imposed by the pandemic, MLS had to resort to new methods, such as training staff in parking lots and having staff access training material on their mobile devices.
148. Also, City staff were subject to some remote internet connection limitations in the early weeks of the pandemic, as the City expanded its IT services.
149. He believes the division did an admirable job of training by-law enforcement officers given the challenging circumstances facing MLS at the time.
150. Representatives of MLS told us they made a “herculean” effort to assemble training materials quickly—both at the beginning and as enforcement in parks continued—to respond to updates to the rules and how those rules should be enforced. According to the manager who largely oversaw this training, the training came at officers “fast and furious.”
151. One supervisor told us it was a challenge to deal with the volume of new information each day. Another said that despite the online courses being helpful for officers in terms of understanding the law, communications, and guidance for enforcing specific by-laws, supervisors found themselves training officers by going over the Emergency Orders at length, in person, almost every weekend.
152. We heard from officers that they appreciated training material that gave them clear breakdowns and explanations of the new rules, or material with “short-form” wording of instructions, for example on how to issue a ticket. In general,

⁵⁶ The Coordinated Enforcement Team now includes 12 divisions plus the Toronto Police Service.



officers said they appreciated getting instructions from MLS leadership that clearly told them the “basics” of what they were supposed to do on that day.

153. Overall, most of the by-law enforcement officers we interviewed said they found the training materials helpful.

Early By-Law Enforcement Officer Training

154. Most by-law enforcement officers are only trained to issue tickets for by-law violations. In the weeks following the Mayor’s announcement of the Emergency Orders, the online training resources for by-law enforcement officers focused on how and when to issue tickets under the *Provincial Offences Act*, as many officers had never performed this function before.
155. One of the first training documents MLS issued to officers was the *Public Spaces COVID-19 Protocol* (the “Protocol”), on March 31, 2020.⁵⁷
156. The Protocol outlined the general procedures for by-law enforcement officers working in public spaces in City of Toronto parks, or other areas, as prescribed by MLS management.
157. It began by explaining that the City had closed playgrounds, sports fields and “amenities within parks” due to the COVID-19 pandemic, to encourage physical distancing and reduce the risk of spreading the virus. It said that “until further notice” these areas were restricted and the public “[could] not enter for the safety of all residents and visitors.”
158. The Protocol noted that it was “incumbent” on by-law enforcement officers to ensure that they enforced by-laws and the Province’s Emergency Orders “with tact and diplomacy.”
159. It also reminded by-law enforcement officers to follow standards set under Chapter 192 of the *Toronto Municipal Code* (commonly known as the *Toronto Public Service By-Law*) in the exercise of their duties, by modelling the “core values” of the public service, including “to serve the public well, to act with integrity, to use City property, services and resources responsibly, and to apply judgment and discretion.”⁵⁸

⁵⁷ This protocol was revised twice after it was first released, with the last revision being April 12, 2020.

⁵⁸ Taken from Toronto Municipal Code § 192-3, “Values” where the “core values” of the Toronto Public Service are listed.



160. The Protocol explained that, further to Province's Emergency Order made under the *Emergency Management and Civil Protection Act*, all outdoor recreational amenities were closed. This included:
- “All communal or shared, public or private, outdoor recreational amenities everywhere in Ontario, including but not limited to playgrounds, sports fields, basketball and tennis courts, off-leash dog parks, skateboards and BMX parks, picnic areas, outdoor community gardens, park shelters, outdoor exercise equipment, condo parks and gardens, and any other outdoor recreational amenities outlined in Order 7.0.2.”
161. The Protocol also explained that while outdoor recreational amenities were closed, certain areas were still available for public use:
- “Green spaces in parks, trails, ravines and conservation areas that aren't otherwise closed would remain open for walkthrough access, but individuals must maintain the safe physical distance of at least two metres apart from others.”
162. Regarding the public's permitted use of green spaces, the Protocol added:
- “For greater clarity, individuals who are not in violation of the Social Gathering⁵⁹ provisions of the *Emergency Management and Civil Protection Act* can walk through the green space or trails in parks which have not been otherwise closed by Emergency Order or by the City.”
163. The Protocol told by-law enforcement officers that, when conducting a complaint investigation as part of their enforcement, “common sense and good judgment must always be used when carrying out any action. It is vital that discretion is employed whenever appropriate to achieve compliance in a measured manner.”
164. MLS leadership told us that, because of the “unprecedented” circumstances the pandemic presented, creating training documents for by-law enforcement officers was like trying to hit a moving target. They had to adapt to numerous changes in direction in order to support and educate by-law enforcement officers. This resulted in MLS creating many different training bulletins and procedures on enforcement activities related to parks, public squares and non-essential businesses. Besides the Protocol discussed above, these included:
- Non-Essential Business Protocol (April 2, 2020)

⁵⁹ This refers to provisions under the Provincial government's Emergency Order restricting the size of organized public events and certain gatherings, O. Reg. 52/20: Order Under Subsection 7.0.2 (4) of the *Emergency Management and Civil Protection Act* – Organized Public Events, Certain Gatherings, March 28, 2020 – May 15, 2020, <https://www.ontario.ca/laws/regulation/200052/v2>



- Certificates of Offence (April 4, 2020)
 - Public Spaces COVID-19 Procedure (first issued April 3, then reissued April 17, 2020).⁶⁰
165. On April 28, 2020, MLS issued a *COVID-19 Compliance Guide* to by-law enforcement officers. This 52-page document was intended to be a comprehensive guide for by-law enforcement officers covering all topics related to enforcement during the COVID-19 pandemic, and was updated on an ongoing basis, as required. Topics included, details on the Province's Emergency Orders and City by-laws, instructions on how to use the City's new mobile parks by-law enforcement application for responding to complaints, safety considerations, PPE, and end of shift reporting.
166. The *Compliance Guide* instructed by-law enforcement officers that "providing education and awareness is the foremost method of gaining compliance." MLS leaders told us that they reinforced an "education first" strategy, mainly through informal means, such as staff tailgate sessions and emails.

Tailgates, Emails and Other 'Informal' Training to Enforcement Staff

167. By-law enforcement officers generally meet before and after their shifts in what are called "tailgate sessions." These are sessions led by shift supervisors and/or managers to give officers relevant information regarding their duties.
168. During the early months of the pandemic, tailgates typically occurred in parking lots to maintain physical distancing. During these sessions, supervisors gave officers their work assignments and updated them on any new changes or developments relevant to the enforcement of the COVID-19 related orders.
169. In addition to tailgate sessions, MLS used email communication as a primary means of communicating with by-law enforcement officers. Typically, the emails contained a mixture of guidance and directions to officers, either in the body of the email itself or as an attachment, such as a training bulletin or a "tip-sheet."
170. Based on the evidence we reviewed, almost all these emails came from the Executive Director, the Director of By-Law Enforcement, or the Director of

⁶⁰ This Procedure was a PowerPoint presentation and appears to be meant as a companion training document to the Public Spaces COVID-19 Protocol issued on March 31, 2020.



Investigative Services. They either sent the emails directly to front line officers, or more often, sent them to managers and supervisors for them to forward on to officers.

171. Many officers told us that messaging from MLS leadership about enforcement was at times “confusing”, especially messaging received during tailgate sessions and email messages.
172. One officer explained that coordination between officers on one hand and managers/supervisors on the other was difficult, especially at the beginning of the pandemic. This was because officers were arriving from different sections of MLS to assist with enforcement in City parks, but sometimes, depending on the officer’s supervisor, the instructions they had received might be different.
173. This meant that one supervisor in the morning shift would relay information to the team, and in the afternoon, a different shift supervisor would give different information, sometimes assigning an officer to a different park, with a different partner, not knowing that they had received different instructions that morning.
174. One officer recalled being asked by colleagues what rules were still being enforced, because it was not always clear to them what rules they were expected to enforce. “One day they tell us to enforce, then the next day they say don’t enforce anymore,” one officer told us. “Some days we’d have to figure it out on our own.”

Park Benches

175. As discussed above, we heard that the City’s public communications caused considerable public confusion about whether and how people could use park benches.
176. The City also gave enforcement officers confusing information about benches.
177. The Province’s March 30, 2020 Emergency Order listed “benches” as a closed outdoor recreational amenity.⁶¹ However, the MLS Protocol, issued to by-law enforcement officers on March 31, 2020, did not list benches as closed outdoor amenities under the Province’s March 30, 2020 Emergency Order.

⁶¹ Section 1.(1)6 of O. Reg. 104/20: Emergency Order Under Subsection 7.0.2 (4) of the *Emergency Management and Civil Protection Act* – Closure of Outdoor Recreational Amenities, March 30, 2020 – April 23, 2020, <https://www.ontario.ca/laws/regulation/200104/v1>



178. As noted earlier, the City knew as early as April 9, 2020 that the public was confused about the use of park benches.
179. On April 13, 2020, the City issued a news release stating that over the Easter long weekend, people had gotten tickets “for using park amenities such as lingering on Muskoka chairs and benches.” The news release said that “individuals who need to physically rest while out on a walk are permitted to use benches to recover, however lingering and use of benches beyond necessary resting purposes is prohibited.”⁶²
180. The public confusion surrounding legal restrictions on the use of parks was highlighted in an April 15, 2020 article by *Globe and Mail* columnist Oliver Moore. He wrote that, until the City’s April 13, 2020 news release stating that tickets were issued for “lingering on [park] chairs and benches,” the specifics on what the rules for park closures meant with regards to sitting in Toronto parks had been unclear.⁶³
181. Mr. Moore said that a City spokesperson explained that the tickets were issued not because people were sitting on benches for too long—the offence was using a bench at all. According to Mr. Moore, the spokesperson added that “officers in Toronto are being told to use their judgment, to allow people brief respite but not longer stops that the city worries could turn benches into gathering places.”
182. Mr. Moore noted that the “line differentiating resting from lingering is not spelled out in law.”
183. He also said that advocates for people experiencing homelessness were particularly concerned that this population would be targeted for using park benches, with fewer places to go to since libraries and community centres were closed.

⁶² City of Toronto, News Release: City of Toronto continues to encourage residents and businesses to practise physical distancing and help stop the spread of COVID-19, April 13, 2020, <https://www.toronto.ca/news/city-of-toronto-continues-to-encourage-residents-and-businesses-to-practise-physical-distancing-and-help-stop-the-spread-of-covid-19>

⁶³ Oliver Moore, The Globe and Mail, “Critics say charging people for ‘lingering’ on Toronto’s park benches is arbitrary and misguided,” [April 15, 2020, https://www.theglobeandmail.com/canada/toronto/article-critics-say-charging-people-for-lingering-on-torontos-park-benches](https://www.theglobeandmail.com/canada/toronto/article-critics-say-charging-people-for-lingering-on-torontos-park-benches)



184. On April 15, 2020, MLS leadership sent a training bulletin to MLS management staff, to be circulated to all by-law enforcement officers. It said the following about benches:

The City has received an enormous amount of public inquiries regarding the Province's Emergency Order prohibiting the use of certain outdoor recreational amenities. In particular, the use of benches has been an area where the public has sought clarification.

The City recognizes that there will be many circumstances where members of our community may need to momentarily use the park benches for a rest and catch their breath while walking through the park space. Discretion should be used when you encounter a person resting on a park bench. Educating the person that the Emergency Order closed the use of all outdoor recreational amenities and requesting the person's compliance to continue their walk is the proper use of discretion. Outside exceptional circumstances there should be few reasons to issue a charge in this situation. Compliance remains the key in terms of simply sitting on a park bench.

The City's response regarding park benches is different in the context of the Province's Emergency Order on Social Gatherings and the City's Physical Distancing By-law. Both of these regulations are applicable to park benches. If you encounter members of the public who are using the park benches in violation of either of these regulations and creating a risk for the spread of COVID-19, education remains the key objective. If discretion is used and education does not stop the non-compliance with the Social Gathering or Physical Distancing regulations, then you may consider resorting to enforcement action.

If you are unsure of any of these concepts, please speak with your supervisor or manager.

185. Also on April 15, 2020, an MLS Director sent an email to district managers, asking them to "reinforce" that by-law enforcement officers "are not to issue charges to individuals resting on benches but rather to focus on the social distancing/gatherings aspect if there is more than one person using the bench and surrounding area."
186. On April 17, 2020, MLS issued the *Public Spaces COVID-19 Procedure*, a PowerPoint training document for by-law enforcement officers.
187. This training document referenced the Province's March 30, 2020 Emergency Order to close all outdoor recreational amenities, including benches. It referred to the "proper use of discretion" and told officers that, "[t]here are often circumstances in which an officer can use methods other than issuing a charge to obtain compliance." The document explained that if they encountered "what seems to be a vulnerable person(s) in a park using the amenities (such as a bench) the officer can educate or offer assistance if required."



188. It continued, “if the individual informs that they need a minute to rest/catch their breath and will be moving,” officers should, “allow reasonable time to vacate the area.” It also noted that officers should “use discretion” when encountering “a person resting on a park bench. Educate the person on the emergency law and that all outdoor recreational amenities are closed. Request compliance – ask them to continue their walk.”
189. Unlike the April 15, 2020 training bulletin, which told officers not to issue tickets to persons resting on benches, and to focus only on compliance with the physical distancing/social gathering restrictions, the April 17, 2020 training document told officers that they should still “request compliance” and “ask them to continue their walk” when encountering someone using a bench to rest.
190. On April 21, 2020, another MLS director sent an email, suggesting that they knew by-law enforcement officers were confused about benches:
- To All Staff: Please ensure staff are aware that benches ARE NOT OUR FOCUS and people can sit on them. Officers should no longer be focusing on these!
191. The next day, MLS leadership sent yet another email with the subject, “Park Bench Enforcement – Change of Focus Effective Today.” The content was almost identical to the training bulleting of April 15, 2020, one week earlier:
- The focus of enforcement has now shifted away from issuing charges to individuals solely for the use of park benches. The focus in relation to the use of park benches should only be in relation to individuals who are not in compliance with the prohibitions on social and public gatherings and the City’s physical distancing by-law for individuals who are using park benches.
- Officers should still be enforcing the EMPCA orders prohibiting social gatherings of more than 5 people as well as the Parks and Public Squares By-Laws related to physical distancing.
- Officers are free to educate people on risks of transmission and the fact that park benches are not sanitized.
192. As noted above, on April 28, 2020, MLS issued its *COVID-19 Compliance Guide*, the 52-page, comprehensive training guide on MLS enforcement protocols for COVID-19. The guide did not include any of the previous directions to staff about allowing people to use benches to rest. The only information about benches in this document was reference to the Province’s March 30, 2020 Emergency Order, which listed benches as a closed outdoor amenity.
193. On May 1, 2020, MLS leadership sent staff yet another document on the topic of park benches. This training bulletin said, “The focus of enforcement has shifted away from issuing charges to individuals solely for the use of park benches as a place for temporary respite.” The bulletin explained that the focus for benches



was “on individuals who are not in compliance with the prohibitions on social and public gatherings, and who are not practicing physical distancing while using park benches.”

The Use of Discretion and ‘Zero Tolerance’

194. MLS issued the *Public Spaces COVID-19 Procedure* (the “Procedure”)—first on April 3, 2020 and re-issued on April 17, 2020—to give by-law enforcement officers an overall outline of the general approach to follow when operating in City parks and public places. Like the Protocol of March 31, 2020, the Procedure reminded officers to model core values of the Toronto Public Service in the course of their enforcement duties, including by applying “judgment and discretion.”
195. Despite telling officers to apply judgment and discretion in their duties, however, the first version of the Procedure gave by-law enforcement officers no guidance or direction on how to apply judgment and discretion fairly when exercising their enforcement authority.
196. The second version of the Procedure said that by-law enforcement officers “must ensure that any enforcement action is executed with tact and diplomacy” and that “[c]ommon sense and good judgment must always be used.” The Procedure also said that it is “vital that discretion is employed, whenever appropriate, to achieve compliance in a measured manner.” It gave officers some specific guidance on using discretion with respect to the use of park benches, as discussed in the previous section of this report.
197. Most by-law enforcement officers we spoke to said that education was the primary enforcement tool they used. They said that educating people on the rules and using judgment and discretion have always been key components of their enforcement approach, even before the pandemic.
198. However, some officers told us they felt pressured at times to issue tickets, based on the directions they got from senior MLS staff. Specifically, officers referred to emails from senior MLS staff directing officers to use a “zero tolerance” enforcement strategy.
199. On April 2, 2020, an MLS director sent an email to all MLS Investigation Services staff. The email gave information on a variety of operational issues. Under the heading, “ENFORCEMENT STRATEGY”, the email said, “Our enforcement strategy is **ZERO TOLERANCE** so you are expected to issue tickets if people do not leave the park.” (Emphasis in original.)



200. On April 5, 2020, another MLS director sent an email to supervisors and managers asking them to “inform staff to lower their tolerance for non-compliant behaviour in parks.” The email continued:

With the amount of education and awareness that City staff have conducted compounded by the awareness created by the constant media and social media coverage there is no excuse. Obviously, we need to use discretion and evaluate each situation, such as someone out for a jog stopping at a bench to tie their shoelace, or something similar, but the ratio of warnings to charges needs to change to get the message heard loud and clear.

201. On April 11, 2020, the same MLS director who sent the April 2, 2020 email said this in another email to supervisors and managers:

You may have heard the Mayor on the news this morning talking about the efforts we have put forth and there are still people not complying.

Effective immediately there will be zero tolerance in the parks. Staff are to be directed to issue tickets for non-compliance.

Attached is a power point for staff who are still not sure how to write a ticket. Please ensure you have tailgates with your staff today, tomorrow and every day until they start to write tickets. Clearly notices⁶⁴ do not work. I am asking for your concerted effort to turn this around. (Emphasis added.)

202. Later that day, the same MLS director sent another email, directly to front line staff. It said, in part:

MLS Officers have been recognized by the Mayor, (the Chief of Police, the Executive Director of MLS) and most importantly members of the public who have only good things to say when they see you out there doing your job for the City of Toronto. Today the Mayor asked us to enforce the emergency orders with zero tolerance. In response, 20 hot spot parks have been identified and MLS together with [Toronto Police Service] will be patrolling these parks to bring home this message. You have been called upon to ensure the public gets the message loud and clear! **So officers must issue tickets where you can and let's drive the message home...** (Emphasis added.)

203. Two days later, an April 13, 2020 City news release said that over the Easter long weekend, the COVID-19 Coordinated Enforcement Team had “moved from issuing warnings to almost exclusively issuing tickets in order to convey the seriousness of the City’s measures and increase compliance.” The news release said that on April 12, 2020, MLS by-law enforcement officers had issued 40

⁶⁴ MLS told us that “notices” refer to instances when a by-law enforcement officer issued a written warning. MLS said that notices were generally issued to non-essential business that were operating in contravention of the emergency orders, but that there were a few instances where notices were issued to people in parks.



tickets for the use of closed park amenities and not practicing social distancing and that 107 tickets had been issued over the holiday long weekend, accounting for 56% of total tickets issued since April 4, 2020.⁶⁵

204. The only MLS training document we found that referred to “zero tolerance” was the Protocol issued March 31, 2020. Specifically, the Protocol said:

[Coordinated enforcement] Initiatives may be designated as educational based, to a ‘zero tolerance’ enforcement approach where [by-law enforcement officers] shall move to exclusively issue charges for all non-compliance matters based on the considerations set out above. Common sense exceptions must still be applied in appropriate circumstances, but set criteria developed by the Division will act as a guiding principal (sic) towards enforcement considerations.⁶⁶

205. During our interviews with by-law enforcement officers, it was apparent that there was no clear understanding of what a “zero tolerance” enforcement strategy meant.
206. One officer told us that “zero tolerance” meant officers were to ticket where someone failed to comply with a request to stop the prohibited activity. Another understood that “zero tolerance” was to be applied only where safety was an issue, and yet another understood “zero tolerance” to mean simply that education was over and to start issuing tickets.
207. Some officers said they felt that directives from senior MLS staff to start issuing more tickets meant that they were to issue tickets immediately upon seeing a violation, without using judgment or discretion.
208. One officer said they felt intimidated by the messaging coming from management and supervisors, some of whom were vocal about giving tickets during daily briefing huddles. According to this officer, “there were people I worked with who were fearful for their employment because of that zero tolerance mentality.” This officer said that they interpreted the email reference to “zero tolerance” to mean that they no longer had the ability to use discretion.

⁶⁵ City of Toronto News Release: [City of Toronto continues to encourage residents and businesses to practise physical distancing and help stop the spread of COVID-19 – City of Toronto](#)

⁶⁶ “Coordinated enforcement initiatives” are described as “deliberate strategies employed to target habitual non-compliance.” The protocol states “As specific circumstances and objectives may vary, so will the level of enforcement, which will be proportionate to the level of objective non-compliance.” It explains that “the appropriate level of enforcement” will be determined by factors such as public safety, risk, outcomes, historic information, complaints, and the greater public interest.



209. One MLS manager we spoke with acknowledged that while they personally believed that officers always had the ability to use their discretion, an officer hearing “zero tolerance” might have believed they could no longer use their discretion. This manager also admitted they felt pressure from senior MLS staff to ensure that officers were issuing tickets. “When someone at a higher level with more authority is telling you to do something, it is pressure.”
210. Some officers told us that they ignored messaging to issue more tickets, choosing instead to continue to apply judgment and discretion to their enforcement duties. Many said they believed that, despite messaging from senior MLS staff about “zero tolerance”, they still had the ability to use discretion in deciding whether to issue a ticket or not, except if there were clear risks to health and safety.
211. The MLS directors who sent the April 2, 2020, April 5, 2020, and April 11, 2020 emails told us they were not aware of any officer confusion arising from the “zero tolerance” wording. However, another senior MLS staff person told us they were concerned when they saw the term “zero tolerance” in the April 11, 2020 email to staff, since they felt that some officers could interpret it to mean that they could no longer use discretion.
212. The MLS Executive Director acknowledged that the term “zero tolerance” could be “troublesome,” depending on how officers interpreted it. He explained that during meetings among MLS senior staff, efforts were made to define “zero tolerance” as “active enforcement” rather than to mean exclusively issuing tickets, and that MLS's response plan at that time was to try a more “enforcement-based” approach to gain compliance.
213. The Executive Director said that there was never an intention to remove discretion from officers. Wherever possible, he tried to convey to senior staff the importance of being clear and consistent in messaging to frontline staff.
214. The Executive Director also told us that the City was getting many complaints from members of the public who believed it should be enforcing the rules more strictly.

Ticketing: By the Numbers

215. According to MLS policy, providing education and awareness are the primary means for by-law enforcement officers to gain public compliance with rules they are enforcing. Officers are to use issuing a ticket as an enforcement measure only “if necessary” to gain compliance. As noted earlier, MLS leaders told us



that the division repeatedly reinforced an education-first enforcement strategy with by-law enforcement officers.

216. MLS data shows that between April 2 and May 15, 2020, MLS issued **280 tickets** related to the enforcement of COVID-19 rules in City parks.⁶⁷ MLS told us that overall, it delivered **15,821 verbal cautions** in the same time period, although that number includes both verbal cautions delivered in parks and elsewhere.
217. These numbers suggest that overall, by-law enforcement officers used the enforcement strategy of education, in the form of verbal cautions, as the primary method to gain compliance, rather than issuing tickets. The numbers on their own, however, do not tell us whether the tickets by-law enforcement officers gave to people in City parks were fair.
218. According to the MLS data we reviewed, on April 11 and 12, 2020, MLS issued **35 and 38 tickets**, respectively. This two-day total of **73 tickets** accounted for approximately 26% of all the tickets MLS issued for violation of COVID-19 rules in City parks between April 2 and May 15, 2020 (a total period of just over six weeks, or 44 days).
219. April 11 and April 12, 2020 were also the only two days between April 2 and May 15, 2020 that MLS issued more than **18 tickets** in a single day for violations of the COVID-19 rules in City parks. This clear spike in tickets is notable in the context of MLS leadership's messaging to staff on April 11, 2020 to take a "zero tolerance" approach to people using parks and to issue tickets to "drive the message home."

Impacts of Enforcement on Vulnerable Populations

The "Fair and Equitable Enforcement" Bulletin

220. On April 15, 2020, an SDFA Acting Director emailed the MLS Executive Director and Director of Investigative Services.

⁶⁷ These numbers may be understated. In reviewing the data provided by MLS, we considered the following offences: failed to comply with an Order made during a declared emergency; obstructed any person performing a duty in accordance with an Order during emergency; obstructed any person exercising a power in accordance with an Order made during a declared emergency; and remaining closer than two meters to any person who is not of the same household. We also only considered the offence locations that were clearly identified as a "park."



221. The Acting Director wrote that SDFA was hearing concerns from community organizations serving vulnerable residents about issues related to enforcement. She asked if MLS “might be able to provide an overview of the approach to enforcement, particularly as it relates to vulnerable residents,” which SDFA could share with its community partners. She also asked if SDFA could share with MLS the feedback it was hearing the community.
222. The next day, there was a meeting among the MLS Executive Director and Director of Investigative Services and senior staff from SDFA, including the Acting Director who sent the April 15, 2020 email and the Manager of CABR.
223. SDFA shared concerns they were hearing from community organizations about by-law enforcement officers stopping vulnerable residents as part of enforcement, and reports of unhoused people using City parks getting tickets.
224. The CABR Manager sent a follow-up email to the MLS Executive Director and Director. First, he asked if MLS could direct its by-law enforcement officers to tell people that when they ask for identification, they are only asking for an individual’s name, not for a piece of physical identification. Second, he asked:
- ...if MLS could provide us with a resource guide or information to help us help the organizations supporting vulnerable populations to understand the parameters/scope of officer discretion to issue a ticket instead of a warning. For instance, what factors inform that discretion? Which factors don’t?
225. The CABR Manager later gave MLS some suggestions for developing training for by-law enforcement officers to work on addressing SDFA’s concerns. This included giving MLS sections of CABR’s training material about avoiding racial discrimination in law enforcement, for MLS to use to “offer more direction to officers.”⁶⁸
226. Regarding the issue of officers’ use of discretion, the CABR Manager suggested to MLS that its training materials for officers should “be more explicit” and discuss the “appropriate use of discretion vs. inappropriate use of discretion.” He explained:
- What the social support/services sector partners and their clients are hoping for is some more concrete examples that can be used as guidelines for compliant, safe and effective delivery of services. Everyone knows and understands that situations are fluid and

⁶⁸ On the issue of by-law enforcement officers asking members of the public for identification, the MLS staff responsible for developing training confirmed to the Manager of CABR that officers “should not be asking for ID unless they are issuing a charge” and that “has always been the case.” However, MLS had now included this information into additional, mandatory, training for all by-law enforcement officers.



dynamic. But having a stronger/clearer sense of what it looks like to be legitimately issued a ticket vs. illegitimately issued a ticket would be really helpful for our City staff teams, and our community agency partners.

227. On May 8, 2020, MLS issued a new training bulletin called, *Fair and Equitable Enforcement*. The bulletin's preamble said, "Fair, equitable, non-discriminatory, and inclusive service is ALWAYS a core objective of Municipal Licensing & Standards," and that the bulletin was intended to, "highlight and underscore some of the core components of MLS's responsibilities and values in the context of its COVID-19 duties."
228. The bulletin said that persons having contact with by-law enforcement officers "should be treated in a fair, impartial, equitable, and objective manner, in accordance with the by-laws, and without consideration of their individual demographics."⁶⁹ It explained that, "administratively fair enforcement decisions are proportional, equitable and consistent," and that these decisions should:
- Consider whether enforcement action is proportionate to the harm caused by the violation
 - Consider whether a person's circumstance would make enforcement unjust
 - Consider whether an enforcement measure is consistent with law, policies and practice
229. The bulletin included some information on racial profiling, copied from the training material the CABR Manager had given to MLS. It explained what racial profiling is, key concerns when conducting enforcement duties, and tips for conducting enforcement fairly and avoiding allegations of racism.

⁶⁹ A direction to undertake enforcement in a way that treats people "without consideration of their individual demographics" without further explanation could be interpreted as suggesting that officers should treat all people equally, not equitably. In order to be fair, enforcement must be equitable, not equal. Equal treatment essentially means treating everyone the same. Equitable treatment takes into consideration someone's individual circumstances, needs and demographics. Any enforcement activity that has as its goal treating people equally, as opposed to equitably, risks failing to take into account individual circumstances, such as whether the person is vulnerable, and could lead to unfair enforcement action. It is better to direct officers that they must enforce "without discrimination" and to educate them on what that requires.



230. The bulletin also discussed topics related to conducting enforcement/investigation activities with vulnerable people. It included suggestions on how to accommodate the needs of vulnerable people, for example by taking more time to explain a notice or allowing for a third person or advocate to speak on behalf of the vulnerable person. It also included information about some City programs that serve vulnerable people, including the Streets to Homes program, and directed officers to contact the Central Intake Line for people experiencing homelessness to get information on available resources and services.
231. While MLS did create training documents that discussed enforcement issues related to racial profiling and vulnerable people, we did not see any MLS training documents, policies or procedures that explicitly addressed the appropriate, fair use of discretion by by-law enforcement officers.

MLS Training: Use of Discretion and Differential Enforcement

232. The CABR Manager told us that before the pandemic, CABR had delivered general anti-Black racism training to new MLS staff and managers, but it was not specific to enforcement activities.
233. More recently, MLS asked CABR to deliver a training program for all staff. The training program aims to achieve the following goals:
- Create increased understanding of the history of Black populations in Toronto and Canada more broadly.
 - Adopt a common definition and recognition of manifestations of anti-Black racism in Canada.
 - Enhance competency in understanding and applying the Anti-Black Racism Analysis Tool.
 - Deepen knowledge of the Toronto Action Plan to Confront Anti-Black Racism and its relation to your division's work.
234. By the end of April 2021, 400 MLS staff, including by-law enforcement officers, supervisors and managers, had completed the CABR training, with approximately 55 MLS staff still to complete the training.
235. During our interview, the CABR Manager spoke about the connection between the use of discretion and “differential enforcement.” He said that, in his opinion, it should be a priority for by-law enforcement officers to be trained “on the discriminatory exercise of discretion.” He explained that this training should not



only focus on the negative, discriminatory enforcement impacts on Black Torontonians of the improper exercise of discretion but should also highlight and explore the negative experiences of “folks who are homeless, living with addictions, mental health challenges.” He explained further:

There is room to prioritize training of all [by-law] enforcement officers, training on discretion related to enforcement for all vulnerable populations. The City should have been proactive in embedding this training and focus into their work, so it becomes part of MLS’s enforcement culture. In my opinion, MLS wasn’t prioritizing the issue of discretion and differential enforcement ... and if we had embedded that culture earlier then we wouldn’t have these issues during [the pandemic]. The [pandemic] accentuated the problems we already had, so we should have been more proactive on that front...of prioritizing training around abuse of discretion, which leads to differential enforcement.

Voices from Toronto’s Communities: Concerns About Enforcement

236. SDFA operates many programs that allow it to keep in touch with community agencies serving vulnerable people across the City. One of these programs is the “community cluster program,” which SDFA created at the beginning of the pandemic and is still operating today. The program has SDFA staff work with community agencies across 10 geographic neighborhoods. Another program, also started at the beginning of the pandemic but since discontinued, was a “response table” that involved a regular conference call between SDFA and community agencies, where the community agencies could share any concerns they were seeing.
237. SDFA told us it was through these programs that the division heard community concerns about enforcement of the COVID-19 rules. This is what caused the Acting Director to email MLS.
238. In addition to speaking with MLS, the SDFA Acting Director and other staff prepared a briefing note for the SDFA Executive Director on concerns the division was hearing from community agencies, including the lack of clarity about enforcement of the Emergency Orders, as well as “how discretion is being used to determine if a warning or a ticket will be issued.”
239. The note made recommendations that SDFA felt could help address some of the community concerns, such as the City creating an infographic to provide clearer communication to the public about enforcement of the Emergency Orders.
240. The note also recommended that the City give clear messaging to the public about “the nature, scope and application of the new powers,” which should touch on, among other things, the fact “that officers have discretion to issue a



warning instead of a ticket” and should “provide a clear indication of what can legitimately inform discretion and what cannot.”⁷⁰

241. SDFA got an opportunity to share the concerns it was hearing during a conference call with senior City leaders on April 27, 2020. The conference call was attended by two Deputy City Managers, the City Solicitor, the Chief Communications Officer and the Chief of the Office of Emergency Management.
242. As a result of the information SDFA shared during that call, the participants agreed that SDFA should work with MLS and Strategic Communications to help create communications for the public to help clarify enforcement powers/procedures under the Emergency Orders and by-laws. City leadership also asked SDFA to work with MLS and with the Toronto Police Service “on an ongoing basis to support providing information to officers about how their services are being received by vulnerable populations.”
243. During our interview, the manager of CABR spoke about the importance of the City having strong relationships with communities and community service organizations “to hear their perspectives [at all times], and not [just] in a crisis situation” like the COVID-19 pandemic.
244. Speaking specifically about MLS, he said he believed that initiatives to connect with Toronto’s communities, like SDFA’s community roundtables, “have not been adequately built into MLS and their structure.” The manager felt that MLS should have a program in place so it could hear directly from agencies serving vulnerable people “to make sure by-law enforcement officers are not removed from community experiences.”

⁷⁰ Other recommendations included asking officers to stop ticketing people experiencing homelessness and instead provide information about physical distancing, asking the City to recognize the decades long problems caused by carding and how this context impacted and could impede education and enforcement of the new provisions, and the City recognizing its commitment to ensuring all people, regardless of status, can access services, and maintaining the AccessTO policy.



Allegations of Racial Profiling and Differential Treatment

Centennial Park Incident

245. On June 17, 2020, the media widely reported an incident from the previous day involving two Black women and an MLS by-law enforcement officer at Centennial Park. The women said they had been victims of racial profiling. Video clips showing part of the interaction between the women and the officer were posted on social media.
246. The same day, the Ombudsman spoke with the Executive Director of MLS and the City Manager about the reports of the incident. They told her that the City would have the incident investigated by an external, third-party investigator. The Ombudsman said that Ombudsman Toronto would review the City's investigation of this incident once it was complete. She asked the City to provide her with information about the investigation, including the terms of reference, who would be conducting the investigation and how, and timelines for completion.
247. In a June 18, 2020 news release, the Ombudsman said that any allegation of anti-Black racism in City enforcement is serious and must be properly and fairly investigated. She explained that her office would be reviewing the City's investigation of the incident to ensure that it was fair, thorough and transparent. That news release is attached as Appendix C.
248. The independent investigator hired by the City issued a final report on October 14, 2020. She found that a City by-law enforcement officer had harassed the complainants on the basis of race when he told them he could shoot them if the fenced stadium grounds were his private property. She also found that he had improperly used differential enforcement with the two Black women by contrast to non-Black young adults who had also been using the closed area, thereby discriminating against the women on the basis of race. The Centennial Park investigator concluded that the officer in question had breached the Ontario *Human Rights Code*⁷¹ and the City of Toronto's Human Rights and Anti-Harassment/Discrimination Policy.⁷²

⁷¹ *Human Rights Code*, R.S.O. 1990, c. H.19, <https://www.ontario.ca/laws/statute/90h19>

⁷² City of Toronto Human Rights and Anti-Harassment/Discrimination Policy, <https://www.toronto.ca/city-government/accountability-operations-customer-service/city-administration/corporate-policies/people-equity-policies/human-rights-and-anti-harassment-discrimination-hrap>



249. The Centennial Park investigator made three systemic recommendations to prevent future harassment and discrimination by by-law enforcement officers:
- Understanding that by-law enforcement officers are agents of the state and exercise power over members of the public, and that they have independent discretion in use of their authority, MLS should work with internal stakeholders to develop hiring criteria that prioritizes skills such as emotional acuity, conflict resolution, and commitment to upholding City's commitment of dignity, respect, diversity and inclusion. This will address personality traits (e.g. rigid thinking, inability to read emotional situations, authoritarian predisposition) that are incompatible with providing dignified, respectful service to the public at large.
 - Provide rigorous training to by-law enforcement officers on appropriate and flexible approaches to confronting members of the public regarding their wrongdoing, supported by specific scripts to be used to caution/educate etc. Consider enhancing regular training and resources to equip by-law enforcement officers with de-escalation techniques and techniques to check themselves from acting on their unconscious bias or engaging in racial profiling and arbitrary use of their discretion.
 - As a result of the independent nature of the by-law enforcement officer function and the importance of discretion, MLS should explore additional oversight opportunities to monitor performance (e.g. audits, 3rd party assessments, actors posing as public in breach of bylaw) and perform annual assessment of by-law enforcement officers.
250. The Ombudsman reviewed the Centennial Park investigation to satisfy herself that it was fair, thorough and transparent. She found it to be fair and thorough, but on the issue of transparency, she noted with concern that the City had not released any public information at all about the investigation's findings and recommendations.

High Park Incident

251. During our Enquiry, we became aware of an earlier incident that had also led to allegations of racial profiling against a different MLS by-law enforcement officer. That incident, on April 8, 2020, had not been the subject of media reports.
252. The complainant, who identified as a Black person, complained to MLS that a by-law enforcement officer had racially profiled him while he was walking with his white partner in High Park. MLS contacted the City's Human Rights Office when it received the complaint, and it was decided that the Human Rights Office would conduct the investigation.
253. The High Park investigation found that in stopping the complainant as he did, the by-law officer had singled the complainant out because of his race, rather than based on reasonable suspicion that he was in violation of COVID-19 rules.



254. The investigation further found that the officer had then racially profiled and discriminated against the complainant on the basis of race by following him for 25 minutes as he was leaving the park, and by escalating the matter to the police.
255. The investigation found that a third allegation concerning the by-law enforcement officer's behaviour as he wrote the complainant's ticket was not substantiated.
256. Overall, the High Park investigation found that the by-law enforcement officer had used his authority in a manner that relied on stereotypes about race and/or colour to single out the complainant for greater enforcement and scrutiny.
257. The High Park investigation also made systemic recommendations:
- According to the Ontario Human Rights Commission Report on Racial Profiling in Ontario, racial profiling can become part of the "normal" way an organization operates. As such, MLS should develop policies, procedures and guidelines around enforcement that would ensure effective accountability, including numerical data (in consultation with the City's Equity Diversity and Human Rights section) on enforcement of racialized people.
- Preventing racial profiling entails taking concrete action and steps. As such, MLS should ensure that by-law enforcement officers are required to take refresher human rights training at least once a year.
258. Notably, the investigation report said that in explaining his decision to follow the complainant, the by-law enforcement officer had said he was acting on the direction to enforce the physical distancing by-laws "based on a zero tolerance" approach, referencing the April 2, 2020 email from MLS leadership.
259. The City did not make the High Park incident investigation, its findings or its recommendations public.
260. The City withdrew the charge.

Analysis and Findings

Training and Use of Discretion

261. We recognize that it was a challenge for MLS to create and maintain officer training material that was current and in stride with the constantly changing legal and public health landscape. In addition, some of the training resources had to be entirely developed from scratch, as previously a lot of MLS training had been outsourced to external providers or done in class with instructors. MLS leaders



acted quickly to provide by-law enforcement officers with ongoing training resources during the pandemic.

262. While much of the training created by MLS was new, key elements of the training were constant for enforcement activities. They included the importance of by-law enforcement officers using education as a primary means of ensuring compliance with by-laws and using judgment and discretion when engaging in enforcement duties. As noted in a May 2020 MLS training document, “Fair, equitable, non-discriminatory, and inclusive service is ALWAYS a core objective of Municipal Licensing & Standards.”
263. However, our Enquiry found that at times, the training and direction MLS gave to by-law enforcement officers compromised this core objective.
264. In early April 2020, MLS introduced by-law enforcement officers to the term “zero tolerance” in relation to their duties to enforce the COVID-19 rules in parks. There was clear evidence that discussion of “zero tolerance” caused confusion among staff at all levels.
265. The materials MLS shared with us contained no clarification of the term, and we heard from many officers and supervisory staff that they were either confused by it, or they understood it differently from other staff. Some believed that “zero tolerance” meant that officers could no longer take an educational approach during enforcement activities or use judgment and discretion.
266. By-law enforcement officers issued significantly more tickets to people in City parks on April 11 and April 12, 2020, when MLS was explicitly directing staff to take a “zero tolerance” approach, than at other times.
267. To compound the potential unfairness resulting from confusion about the term “zero tolerance”, SDFA had flagged to MLS community concerns about improper officer use of discretion, and about unfair and inequitable enforcement.
268. The City took some steps to address these concerns, including some MLS training on fair and equitable enforcement. But by-law enforcement officers were not explicitly trained about the proper (and improper) exercise of discretion and judgment.
269. It is very concerning that some by-law enforcement officers believed the zero tolerance direction limited their ability (which is actually a duty) to exercise discretion and judgment at all times when using their authority. We also noted that some officers did not feel comfortable raising operational concerns with MLS management, including about the direction on zero tolerance, for fear of reprisal.



270. The clear and direct result of this confusion among by-law enforcement staff was unfairness to people using City parks.

271. As a result, we make the following recommendations:

Recommendation 3

MLS should immediately send clear and direct communication to all of its staff that “zero tolerance” is an unacceptable, unclear and unfair approach to enforcement, which should be avoided.

Recommendation 4

MLS, with the help of Legal Services, should conduct a review of all MLS enforcement policies, procedures, guidelines, operational directives, training materials and any other relevant documents to identify and remove any reference to the term “zero tolerance.”

Recommendation 5

MLS should create a process that allows staff to make anonymous reports about operational concerns, questions or confusion.

Recommendation 6

MLS, with the help of Legal Services and SDFA, should create a policy and training materials on the fair and equitable exercise of judgment and discretion by by-law enforcement officers in exercising their authority.

MLS may wish to consult with the TTC, who is developing such a policy for its enforcement staff as a result of our previous reports.⁷³

Recommendation 7

MLS should publish and widely share its policy on the fair and equitable exercise of judgment and discretion by by-law enforcement officers, including with community agencies serving vulnerable populations.

Listening to Toronto’s Communities

272. We find that MLS is missing a critically important opportunity to listen to voices from Toronto’s communities when designing and evaluating its enforcement

⁷³ See [Ombudsman Toronto Report](#) at pages 60 and 61. Also see [Ombudsman Toronto Enquiry Report](#) at page 31.



activities. This should be a priority, especially with vulnerable and marginalized communities. There is evidence suggesting that it is members of these communities who tend to be disproportionately impacted by enforcement activities, particularly the adverse impact of fines.⁷⁴

Recommendation 8

As a priority, MLS, with help as necessary from SDFA, the City's Shelter, Support & Housing Administration division, and other relevant City divisions, should develop a plan to allow MLS to hear directly from community organizations, particularly organizations serving vulnerable and marginalized people, and ensure that feedback from Toronto's communities informs the training and operations of MLS's enforcement activities.

Racial Discrimination

273. While we have found that unclear public messaging and officer training made MLS's enforcement of COVID-19 rules in parks generally unfair, we also know that in at least two individual cases, there was direct, deep and concerning unfairness. Those were the two cases in April and June 2020, where independent investigations found discriminatory enforcement.
274. Our social values and the legal principles of fair enforcement for all people are seriously undermined when law enforcement officials impose heavier surveillance and sanctions on members of racialized groups or other marginalized or vulnerable groups.
275. Systemic racism and discrimination in Toronto, including anti-Black racism, negatively impact how Black, Indigenous and other equity-deserving communities experience life in our city.⁷⁵

⁷⁴ Alexander McClelland, Alex Luscombe and Nicholas Buhite (2020), Policing the Pandemic Mapping Project Criminal Enforcement Report, April 01 2020 - July 15 2020, <https://static1.squarespace.com/static/5e8396f40824381145ff603a/t/5f2452853bd3337789dc0dfe/1596215942723/Police+the+Pandemic+Criminal+Enforcement+Report+%284%29.pdf>

⁷⁵ See the following documents:
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.HL17.9>
<http://www.ohrc.on.ca/en/disparate-impact-second-interim-report-inquiry-racial-profiling-and-racial-discrimination-black>;
<https://torontofoundation.ca/fallout-report-safety/>;
<https://torontofoundation.ca/fallout-report-health-and-wellness/>;
<https://www.socialplanningtoronto.org/exclusion>;



276. It is important to acknowledge that MLS acted quickly to ensure these two very serious incidents were thoroughly investigated. What the investigations found were two separate cases where by-law enforcement officers discriminated against people based on race. These incidents damage the public's trust in MLS to conduct enforcement activities fairly and equitably. It is of fundamental importance that MLS work to build trust with the public.
277. To its credit, MLS took advice from CABR and included material on racial profiling in training for officers. We also understand that MLS has taken steps to implement broader training, recommended by CABR, to all enforcement staff, including officers, supervisors and managers.
278. However, we believe that more work must be done in this area to build public trust and confidence.
279. As a result, we make the following recommendations:

Recommendation 9

To promote transparency and public confidence, the City should immediately make public anonymized summaries of the findings and the systemic recommendations of the investigations into the incidents in April and June 2020 in High Park and Centennial Park respectively.

Recommendation 10

The City should make public the steps it has taken, and will be taking, to implement the systemic recommendations in the High Park and Centennial Park investigations.

Recommendation 11

MLS should develop an anti-racism strategy, with the help of the City's Confronting Anti-Black Racism unit, the City's Indigenous Affairs Office, other relevant City divisions and units and external resources as required.

MLS's anti-racism strategy should have as one of its goals eliminating racial profiling by by-law enforcement officers. The anti-racism strategy should encompass the following areas of MLS operations:



- Staff recruitment and retention
- Policies and procedures
- Training
- Enforcement activities
- Performance improvement and accountability
- Community engagement

MLS may wish to consult with the TTC, which is undertaking a similar project as a result of our work with it.⁷⁶

Recommendation 12

As part of developing an anti-racism strategy, MLS should consult with communities impacted by systemic racism, discrimination and vulnerability.

Recommendation 13

As part of developing an anti-racism strategy, MLS should explore adopting a race-based data collection strategy to help identify inequalities in its enforcement activities.

As with Recommendation 11, MLS may wish to consult with the TTC, which is undertaking a similar project as part of developing its anti-racism strategy and race-based data collection strategy.

TICKET DISPUTE OPTIONS

Court Services, Timelines and Disputing a Ticket

280. The City's Court Services division operates four Provincial Offences Court locations in Toronto, which allow the public to pay provincial offence fines

⁷⁶ See [Ombudsman Toronto Enquiry Report](#) at page 30.



(except parking fines), access provincial offence trials, early dispute resolution and more.⁷⁷

281. Court Services does this work under a Memorandum of Understanding between the City and the Province. Staff explained that Court Services follows the directions of the Ontario Court of Justice and the Ministry of the Attorney General with respect to court operations and public communications, including the signage it posts at its courts.
282. During the pandemic, the City—like other cities across Canada—used fines to enforce its public health restrictions.
283. On March 18, 2020, the Chief Justice of the Ontario Court of Justice ordered set fines of \$750 or \$1,000 for the following offences under the *Emergency Management and Civil Protection Act*:
- Fail to comply with an order made during a declared emergency
 - Obstruct any person exercising a power in accordance with an order made during a declared emergency
 - Obstruct any person performing a duty in accordance with an order made during a declared emergency.⁷⁸

In addition to the set fine, tickets included another \$130 to cover the victim fine surcharge and costs.⁷⁹

284. People who were unfortunate enough to get one of these tickets now had to pay a steep fine in addition to dealing with the challenges of the pandemic.
285. When someone gets a ticket like this, the back of the ticket explains that they must exercise one of three options within 15 days:
- Plead guilty and pay the ticket;

⁷⁷ City of Toronto Court Services, <https://www.toronto.ca/city-government/accountability-operations-customer-service/city-administration/staff-directory-divisions-and-customer-service/court-services/>. The Court Services division also supports the City's adjudicative boards: Administrative Penalty Tribunal, Toronto Licensing Tribunal and Toronto Local Appeal Body.

⁷⁸ Chief Justice, Ontario Court of Justice, March 18, 2020, <https://www.ontariocourts.ca/ocj/how-do-i/set-fines/changes-to-the-consolidated-set-fine-schedules/schedule-4-0-1-2020-03-18/>

⁷⁹ For clarity, these tickets are technically called "Offence Notices," issued under Part I of the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33, <https://www.ontario.ca/laws/statute/90p33>.



- Request an early resolution meeting with a City prosecutor (which does not forego the right to a trial); or
- Attend at a Court office to request a trial.

286. If the person does not exercise one of those options by the 15-day deadline, the ticket explains that they are deemed not to dispute the charge, and a conviction may be entered against them. The ticket warns that "upon conviction, additional costs will be added to the total payable."

287. The back of the ticket looks like this:

Important – If you do not exercise one of the following options within 15 days of receiving this notice, you will be deemed not to dispute the charge and a justice may enter a conviction against you. Upon conviction, additional costs will be added to the total payable. If the fine goes into default, an administrative fee will be added and steps will be taken to enforce your defaulted fine. For example, information may be provided to a consumer reporting agency and for certain offences, including speeding, your driver's licence may be suspended.

1 **OPTION 1 – Plea of Guilty – Voluntary Payment of Total Payable:** I plead guilty and payment of the total payable is enclosed (follow the instructions on the 'payment notice.')

2 **OPTION 2 – Early Resolution – Meet with Prosecutor** (by choosing this option you do not forego the right to a trial):

☐ I request a meeting with a prosecutor to discuss the possible resolution of the charge. I understand that if I fail to attend the scheduled meeting, I will be deemed not to dispute the charge and may be convicted in my absence.

I request a _____ language interpreter.
(Leave blank if inapplicable)

☐ I live more than 75 km from the courthouse listed below and I would like to meet the prosecutor by telephone

You must send this notice to the Ontario Court of Justice, Provincial Offences Office at:

1530 Markham Road, Main Floor
Toronto, ON M1B 3G4

You will be sent a meeting notice to the address on the file. You must notify the court if your address changes.

3 **OPTION 3 – Trial Option – DO NOT MAIL** – I intend to appear in court to plead **not guilty** and to have an English language trial. You or your representative **MUST** attend in person at the court office shown below within the times and days shown to file a notice of intention to appear in court. Bring this notice with you.

Ontario Court of Justice, Provincial Offences Office
1530 Markham Road, Toronto Ontario
Monday to Friday, excluding Holidays, 8:30 a.m. - 4:30 p.m.
Telephone (416) 338-7320 - TTY (416) 338-7394

288. Court services across the province were affected by the pandemic. According to a "Notice to Public" on the Ontario Court of Justice website dated March 23, 2020, "All Provincial Offences Act matters (e.g. traffic tickets and offences under



provincial legislation) scheduled until May 29, 2020 will be rescheduled. Do not attend court.”⁸⁰

289. The “Notice to Public” also set out that several timelines from the *Provincial Offences Act* had been extended.⁸¹ Finally, it said the following:

Please also be advised that the Government of Ontario made an order pursuant to s. 7.1 of the *Emergency Management and Civil Protection Act* (EMPCA), suspending any limitation periods in statutes and regulations for the duration of the State of Emergency. This will impact timelines under the *Provincial Offences Act* and related proceedings.⁸²

290. Over a month later, on April 30, 2020, MLS published a Training Bulletin titled, “Provincial Offences Act Matters.” The bulletin quoted extensively from the “Notice to Public” and reproduced it in its entirety.
291. After setting out how all *Provincial Offences Act* matters scheduled until May 29, 2020, would be rescheduled, the bulletin stated:
- By-law enforcement officers must explain to the person charged with the offence all three options on the back of the Offence Notice. In addition, officers should explain the status of the courts as described above when they are serving the tickets.
292. The bulletin did not give by-law enforcement officers any other direction on what to tell people about how they could dispute their ticket, or the fact that the 15-day timeline on the back of the ticket was suspended.
293. Like many City services, the City’s court operations were reduced due to the pandemic.
294. Court Services staff told us that on March 16, 2020, at the direction of the Ontario Court of Justice, they posted signs at all court locations. One explained that *Provincial Offences Act* matters for a certain period were being adjourned and rescheduled and that certain timelines had been extended. Another referred

⁸⁰ Ontario Court of Justice, Notice to Public Regarding Provincial Offences Act Matters, March 23, 2020, <https://www.ontariocourts.ca/ocj/covid-19/archives/notice-poa-matters-march-23-2020/>

⁸¹ The notice referenced the following order by the Chief Justice of the Ontario Court of Justice which extended these timelines: Order pursuant to section 85 of the *Provincial Offences Act* extending certain time periods under the *Provincial Offences Act* for proceedings in the Ontario Court of Justice, March 15, 2020, <https://web.archive.org/web/20200428234202/https://www.ontariocourts.ca/ocj/files/POAs85OrderMarch15.pdf>

⁸² The version of the Notice to Public currently online cites the following link for the Government of Ontario order: O. Reg. 73/20: Order under subsection 7.1 (2) of the *Emergency Management and Civil Protection Act* - Limitation Periods, <https://web.archive.org/web/20200428051903/https://www.ontario.ca/laws/regulation/200073>



people to Court Services' website and an email address for that court location for more information. The Director of Court Services told us that Court Services staff were monitoring and responding to emails sent to the addresses on the posters and that the division kept the signs current as the situation changed over the following months.

295. As of April 3, 2020, however, the City's website said that all Provincial Offences courtrooms, public counters, email and call centre services were closed, as were the City's *Provincial Offences Act* intake services. Also, it said that Court Services would not be responding to email or answering telephone calls.⁸³
296. The website said that people could still request an early resolution meeting with a prosecutor online through the City's Court Case Look Up system.
297. It also said that all time limits for requesting a trial were extended and asked people to "hold onto your ticket and follow these pages for updates on services provided by Court Services." It said that once the City's public counters reopened, people could attend the court location listed on the back of the ticket to request a trial. The website also said "legislative timelines for tickets that have not expired prior to March 15, 2020 have been extended."
298. By the end of April and going into May 2020, Ombudsman Toronto was hearing complaints that people who had gotten tickets were not able to dispute the tickets or pay the fines. Some complainants we spoke with told us that they had trouble disputing the ticket online and were unaware that the 15-day time limit printed on the back of their tickets did not apply.
299. Complainants told us that officers who had given them these tickets did not explain the dispute options, or the fact that timelines had changed because of the pandemic. Some told us that they believed they had to pay immediately, because it was not clear how they could dispute the ticket.
300. Eight people told us that when they tried to book an early resolution online, they got an error message, leading them to believe their tickets might have been cancelled. Court Services later told us that this could have been because of a delay in MLS filing the tickets with the court.

⁸³ [COVID-19: Affected City Services & Facilities – City of Toronto \(archive.org\)](https://www.toronto.ca/covid-19-affected-city-services-facilities/)

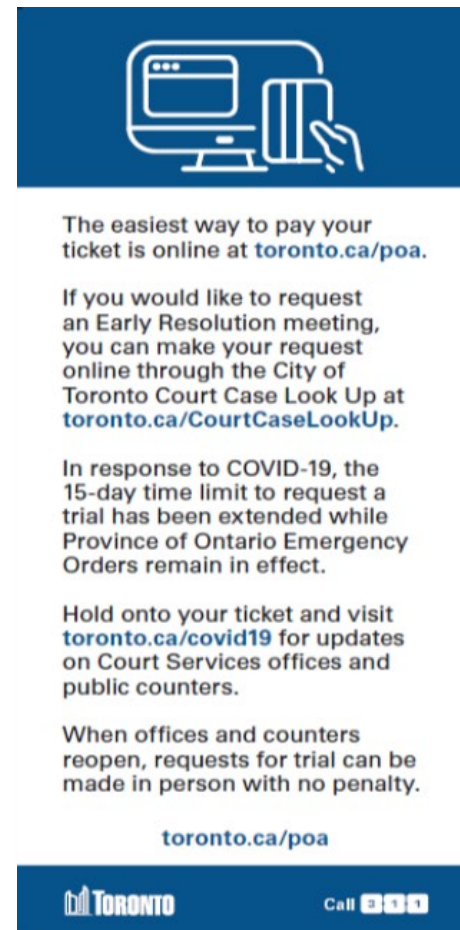


Giving the Public Clear Information on Dispute Options

301. On May 15, 2020, the Ombudsman and members of her staff met with the Director of Court Services and staff from Legal Services to share information about the confusion we were hearing from complainants about dispute options.
302. Acknowledging that these were exceptional times and recognizing that Court Services had to adjust to the changing situation involving the legal framework of both provincial and municipal emergency orders, and also that much of Court Services' public messaging is directed by the Ministry of the Attorney General and the Ontario Court of Justice, the Ombudsman was concerned by what she was hearing. She wanted to understand the City's efforts to give people clear and accurate information about their legal right to dispute a ticket and their ability to use the court process during the pandemic.
303. She pointed out that the information pre-printed on the back of the tickets about how to challenge the ticket now did not apply.⁸⁴ The Province had suspended the time limit for disputing a ticket because of the pandemic, so the 15-day period did not apply. Further, Court Services' offices and public counters were closed, making it impossible for people to dispute their tickets by requesting a trial within the 15-day period printed on the back.
304. Some people were having trouble finding their tickets on the website to pay them or request an early resolution meeting, and no-one was answering the phone at Court Services to answer questions.
305. The Ombudsman said that this was unfair, especially considering the high price of the tickets and the fact that so many people were suffering economically because of the pandemic.
306. The Ombudsman recommended that Court Services move quickly to review and update the information it was giving to the public about how to access court services during (and after) the pandemic, including critically important information on how to challenge a ticket. She told them that as a matter of good public service, the City needed to provide clear and reasonable information to the public on this.

⁸⁴ We acknowledge that the language pre-printed on Provincial Offences tickets is determined by the Province, not the City.

307. The Ombudsman offered the help of her staff, who proposed extensive website revisions to help Court Services make people's rights and options with respect to disputing tickets clearer and easier to understand.
308. Court Services accepted the Ombudsman's recommendation and set about implementing it.⁸⁵
309. In June and in early July 2020, Court Services added clearer and more detailed information to the City's website, including about how to exercise the options on the back of the ticket, that there would be no in-person proceedings before September 2020, and that some members of the public could now participate in early resolution meetings by telephone.
310. The Ombudsman further recommended that MLS by-law enforcement officers give people receiving a ticket something to tell them that the information on the ticket about dispute options did not apply and directing them to where on the City's website they could find accurate and current information about their options to pay or dispute the ticket.
311. Based on the Ombudsman's recommendation, Strategic Communications, with assistance from Legal Services, prepared a 'buck slip' for MLS by-law enforcement officers to hand to people when issuing a ticket.
312. The buck slip (in English and French) included a link to the City's website where people could request an early resolution meeting, told them that the 15-day time limit to request a trial was extended while the Provincial Emergency Orders remained in effect, and directed people to hold on to their tickets and visit the City's COVID-19 webpage for updates on the reopening of Court Services.



⁸⁵ Court Services told us they had to seek approval from the Ministry of Attorney General before formally making some of the changes to the website messaging.



Current Status of Tickets and Options for Next Steps

313. According to MLS data, as of the end of April 2021, of the **280 tickets** issued between April 2 and May 15, 2020 for violation of the COVID-19 rules in City parks:
- 127 have been challenged
 - 14 were not found on ICON⁸⁶
 - 122 remain outstanding
 - 17 have been paid (totaling \$13,250 in fines paid).
314. We understand that some people who got tickets will have questions, given our findings in this report.
315. People who already paid a ticket for a breach of COVID-19 rules in City parks between April 2 and May 15, 2020, or who were convicted without a hearing (or anyone else who got a ticket) can contact Court Services to get information on the status of their case and available court processes, which may include applying to re-open a conviction and/or appeal. Court Services' Provincial Offences Office email address is poacourt@toronto.ca and its phone number is 416-338-7320.
316. Court Services cannot provide legal advice or representation. We have included at Appendix D a list of additional resources that may be helpful for people who received tickets.

⁸⁶ ICON (the Integrated Courts Offences Network) is the Provincial online system for managing information on court cases. The City told us tickets not found on ICON may not have been reported, not filed on time, or the file may have been misplaced. The City told us that charges in this category will not be proceeding.



THE IMPACT OF FINES ON VULNERABLE POPULATIONS

317. Some commentators have questioned fines as an ineffective mechanism to deter behavior and to control the spread of COVID-19. Specifically, they have argued that fining in the context of policing a communicable disease is supported by weak empirical evidence, that fines have been rolled out with minimal education, consultation or oversight, and that monetary fines can be reasonably believed to cause greater harm than good, especially for marginalized populations.⁸⁷
318. There is also evidence suggesting that enforcement fines during the COVID-19 pandemic will likely be felt disproportionately by poor, marginalized and unhoused people. Further, given that COVID-19 has increased income inequalities, harsh fines represent an extraordinary burden on people with low incomes.⁸⁸
319. Human rights law has recognized that certain restrictions on civil liberties and human rights may sometimes be justified, including to contain the spread of disease. However, such restrictions are required to be necessary to achieve a legitimate, pressing objective, the least intrusive and restrictive means of achieving that objective, neither arbitrary nor discriminatory in application and subject to review and appeal. Further, the needs of the most vulnerable need to be considered when putting restrictions into place.⁸⁹

⁸⁷ Alex Luscombe and Alexander McClelland (2020), “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>

⁸⁸ Alexander McClelland, Alex Luscombe and Nicholas Buhite (2020), Policing the Pandemic Mapping Project Criminal Enforcement Report, April 01 2020 - July 15 2020, <https://static1.squarespace.com/static/5e8396f40824381145ff603a/t/5f2452853bd3337789dc0dfe/1596215942723/Police+the+Pandemic+Criminal+Enforcement+Report+%284%29.pdf>

⁸⁹ <https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response> Canadian HIV/AIDS Legal Network. (2020). Flatten inequality: human rights in the age of COVID-19. <http://www.hivlegalnetwork.ca/site/flatten-inequality-human-rights-in-the-age-of-covid-19/?lang=en>



CONCLUSION

320. The City of Toronto and the Province of Ontario had compelling reasons for developing public health advice and rules to slow the spread of COVID-19 in the spring of 2020, including in City parks. They were fully justified in doing so and did so in very challenging and quickly changing circumstances.
321. The decision to use fines as a tool to enforce COVID-19 restrictions was a policy decision that Toronto City Council and the Provincial legislature were authorized to make. Ombudsman Toronto does not oversee policy making by City Council or its committees and does not oversee the provincial government.
322. An Ombudsman does not look to assign blame, but to point out unfairness in the implementation of policies and the delivery of services and programs. Where they find something to be unfair, they make practical, workable recommendations to remedy the unfairness and to improve the delivery of those services and programs.
323. Assessing whether the delivery of services was unfair involves looking not at the effort or good intentions that went into the service delivery, but at the impact on the people being served.
324. We started this Enquiry because we heard about broad public confusion about what people could and could not do in City parks. For the reasons outlined in detail above, we found that the City's communication to the public on this subject was not clear and was at times confusing.
325. Problems with the City's communication of COVID-19 rules as they applied in City parks included mixing up messages of what was public health advice and what were rules that could result in a ticket, as well as inconsistent and different information in different places.
326. With regards to enforcement, we found significant problems in how the City trained and instructed by-law enforcement officers charged with enforcing the rules. The City provided insufficient training and direction on how to properly use discretion and inappropriately relied on a concept of "zero tolerance" as an acceptable enforcement approach.
327. MLS by-law enforcement officers have not received adequate training on how to exercise judgment and discretion in a fair and equitable way, raising a concern that MLS's enforcement activities are disproportionately impacting vulnerable populations. This was vividly illustrated by the two investigations into allegations



of racial profiling and differential enforcement involving by-law enforcement officers and Black Torontonians, both of which found racial discrimination.

328. We also found problems with how the City informed people about how they could exercise their right to challenge a ticket. Information on the tickets themselves about a 15-day deadline no longer applied and it was hard for people to get information or service from Court Services.
329. The cumulative impact of our findings was unfairness, to all people in Toronto who didn't understand the COVID-19 rules as they applied in City parks, and especially to people who got tickets.
330. The City responded quickly and cooperatively when the Ombudsman and her team initially flagged these fairness concerns. They accepted her recommendations and took immediate steps to ensure that, from that time onward, they gave people clearer information about what was and was not allowed in City parks. MLS by-law enforcement officers started giving people who got tickets clear and detailed information on their dispute options and Court Services vastly improved its public information on ticket dispute options and on its services.
331. Based on the extensive evidence we reviewed during this Enquiry and our findings, we are now making further recommendations to improve service to the public.
332. In sum, this Enquiry found unfairness in how the City communicated the rules for using City parks, how by-law enforcement officers were trained to enforce those rules, and how the City communicated dispute options, between April 2 and May 15, 2020.
333. In the Ombudsman's opinion, the combination of public confusion about the rules, inadequate training of by-law enforcement officers on how to equitably enforce those rules and insufficient communication about how people could exercise their right to dispute a ticket created a climate where it was unfair for the City to be giving people tickets for violation of COVID-19 rules in City parks.
334. Getting a ticket for between \$880 and \$1,130 is a very stressful experience for anyone, especially during a pandemic, and especially if that person is vulnerable. So is deciding whether to fight the ticket and if so, figuring out how; even more so if the information you've been given is wrong and you can't get in touch with anyone to ask a question.



335. The tickets the City issued for violation of COVID-19 rules in City parks between April 2 and May 15, 2020, are now in the Court system, which is outside the Ombudsman's legal jurisdiction.
336. Prosecutorial discretion is an important principle in our legal system, and it would be inappropriate for the Ombudsman to make any recommendation on how City prosecutors, who are staff within the City's Legal Services, should exercise that discretion. The Ombudsman will, however, be sending this report to the City Solicitor for review by her and her colleagues.
337. As noted above, people with questions about their tickets can contact Court Services to get information on the status of their case and available court processes. They may also wish to seek independent legal advice.

RECOMMENDATIONS

338. In consideration of the information gathered through this Enquiry and our findings, we make the following recommendations, which the City should implement as soon as possible:

Recommendation 1

The City should create an organization-wide communications policy to ensure that it gives the public timely and accurate information about changes to people's access to City services and facilities (including City parks) in a coordinated, consistent, and accessible way.

This communications policy should:

- Apply to all City divisions and departments
- Apply to all the City's communication platforms, including, but not limited to, its website, 311 Toronto, social media sites, news releases, signage, and communication pieces for City Councillors
- Consider all of Toronto's diverse communities
- Emphasize the importance of giving the public information that clearly distinguishes between advice (including public health advice) and legally prohibited activities
- Include a requirement for clear, simple language



- Use data and research to measure the effectiveness of City communications.

Recommendation 2

To complement this communications policy, the City should develop processes to address the following:

- Ensuring that the City addresses public complaints about City communications, including communications related to enforcement, in a timely and effective way
- How the City can partner with local agencies serving Toronto's communities to communicate information about changes to the public's access to City services and facilities to the populations they serve in an effective and accessible way.

Recommendation 3

MLS should immediately send clear and direct communication to all of its staff that "zero tolerance" is an unacceptable, unclear and unfair approach to enforcement, which should be avoided.

Recommendation 4

MLS, with the help of Legal Services, should conduct a review of all MLS enforcement policies, procedures, guidelines, operational directives, training materials and any other relevant documents to identify and remove any reference to the term "zero tolerance."

Recommendation 5

MLS should create a process that allows staff to make anonymous reports about operational concerns, questions or confusion.

Recommendation 6

MLS, with the help of Legal Services and SDFA, should create a policy and training materials on the fair and equitable exercise of judgment and discretion by by-law enforcement officers in exercising their authority.

MLS may wish to consult with the TTC, who is developing such a policy for its enforcement staff as a result of our previous reports.



Recommendation 7

MLS should publish and widely share its policy on the fair and equitable exercise of judgment and discretion by by-law enforcement officers, including with community agencies serving vulnerable populations.

Recommendation 8

As a priority, MLS, with help as necessary from SDFA, the City's Shelter Support and Housing Administration division, and other relevant City divisions, should develop a plan to allow MLS to hear directly from community organizations, particularly organizations serving vulnerable and marginalized people, and ensure that feedback from Toronto's communities informs the training and operations of MLS's enforcement activities.

Recommendation 9

To promote transparency and public confidence, the City should immediately make public anonymized summaries of the findings and the systemic recommendations of the investigations into the incidents in April and June 2020 in High Park and Centennial Park respectively.

Recommendation 10

The City should make public the steps it has taken, and will be taking, to implement the systemic recommendations in the High Park and Centennial Park investigations.

Recommendation 11

MLS should develop an anti-racism strategy, with the help of the City's Confronting Anti-Black Racism unit, the City's Indigenous Affairs Office, other relevant City divisions and units and external resources as required.

MLS's anti-racism strategy should have as one of its goals eliminating racial profiling by by-law enforcement officers. The anti-racism strategy should encompass the following areas of MLS operations:

- Staff recruitment and retention
- Policies and procedures
- Training
- Enforcement activities
- Performance improvement and accountability



- Community engagement.

MLS may wish to consult with the TTC, which is undertaking a similar project as a result of our work with it.

Recommendation 12

As part of developing an anti-racism strategy, MLS should consult with communities impacted by systemic racism, discrimination and vulnerability.

Recommendation 13

As part of developing an anti-racism strategy, MLS should explore adopting a race-based data collection strategy to help identify inequalities in MLS's enforcement activities.

As with Recommendation 11, MLS may wish to consult with the TTC, which is undertaking a similar project as part of developing its anti-racism strategy and race-based data collection strategy.

Recommendation 14

The City should give Ombudsman Toronto quarterly updates on the status of its implementation of these recommendations.

THE CITY'S RESPONSE TO THE FINDINGS AND RECOMMENDATIONS

339. As a matter of procedural fairness, we shared a draft of this report with the leadership of MLS, Strategic Communications, and Court Services, as well as their legal advisers. We then met with them to give them an opportunity to make representations on our findings and recommendations.
340. In response to our report, the City administration says it "is dedicated to continuous improvement and accepts and acknowledges that staff faced significant challenges communicating and enforcing the numerous and changing COVID regulations and public health guidelines in 2020".
341. The City further says it supports and accepts the recommendations in this report and undertakes to implement all of them.
342. A copy of the City Manager's letter of June 30, 2021 is attached as Appendix E.



OMBUDSMAN TORONTO FOLLOW-UP

343. Ombudsman Toronto will follow up with the City quarterly, until we are satisfied that implementation of our recommendations is complete.

(Original Signed)

Susan E. Opler
Ombudsman



Appendix A: Ombudsman's May 12, 2020 Letter to City Manager



Ombudsman
Toronto

Listening. Investigating. Improving City Services.

Susan E. Opler
Ombudsman

Tel: 416-392-7061

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ombudsmantoronto.ca

May 12, 2020

SENT BY EMAIL

Mr. Chris Murray
City Manager
City of Toronto, City Hall
100 Queen St. W., 4E
Toronto, ON M5H 2N2

Dear Mr. Murray,

Re: Clarifying for the public permitted uses, public health advice and legal prohibitions relating to City park use during COVID-19

As I mentioned to you when we spoke last week, my office is in the preliminary stages of an Enquiry, looking at various issues relating to the City's enforcement of COVID-19 rules about park use.

I wish to acknowledge the herculean efforts that City leadership and staff have made to continue and modify services to the public in the very challenging and quickly-changing circumstances the pandemic has presented. Like so many others in our City, I am very grateful.

I write to you today, however, because I am concerned that despite these efforts, the public is thoroughly confused and needs clearer information, as a matter of fairness.

Specifically, the public wants (and is entitled to) clear information on the following questions:

- 1) What are people allowed to do in City parks?
- 2) What is the **public health advice** about park use?
- 3) What are **prohibited activities** in parks, which could lead to someone getting a ticket?

The need for clear information on these basic questions is urgently needed, especially with the May long weekend and the start of summer approaching.

I have already discussed this issue with both Carleton Grant and Brad Ross, both of whom were responsive and helpful, but I believe that it requires your intervention for two reasons. First, it is a matter of significant public interest and concern, and public confusion persists. Second, it requires a coordinated response involving input from several different City divisions and departments, including:

375 University Avenue, Suite 203
Toronto, Ontario M5G 2J5



- 2-

- The Emergency Operations Centre
- Strategic Communications
- Municipal Licensing and Standards
- Parks, Forestry and Recreation
- Toronto Public Health
- Legal Services
- 311

To help illustrate the need for the City to address in its public communication the three key questions set out above, I believe that some of the City's current messaging risks confusing the public and requires clarification:

The website states, *"As the nice weather approaches, we want to leave parks open for residents. We know how important parks are for respite, serenity as well as an escape to nature and green space in our city."*

Despite the language above, however, the website and park signs say that people must walk, bike or jog through, and keep moving. Signs in the parks say, "DO NOT REMAIN" (with some additional small print about social distancing rules).

Further, it is unclear why the City says that the greenspace in a park cannot be a "destination". So long as someone is alone or with members of their immediate household, practicing physical distancing with all others and not using any park amenities, are they not following both the rules and the public health advice? Can someone not relax and read a book while sitting on the grass, or enjoy a picnic, alone or with members of their household, so long as they are six feet away from all others?

I appreciate that as scientific study and understanding of the virus progresses, public health advice may change; so may rules prohibiting some behaviours. But the public has a need and a right to know at any given time what the advice is, and what is prohibited.

I am also concerned that this is an issue of equity. Many residents of Toronto do not have private access to greenspace. Parks are even more critical for them.

I ask you to take immediate steps to ensure that the City provides clearer, more accessible information to the public on all of these issues, and then keeps it up to date.

Thank you for your attention to this important matter.

Sincerely,

Susan E. Opler
Ombudsman

c.c.: Brad Ross, Chief Communications Officer, City Manager's Office
Carleton Grant, Executive Director ML&S

375 University Avenue, Suite 203
Toronto, Ontario M5G 2J5



Appendix B: City Manager's May 14, 2020 Response to Ombudsman



Chris Murray, MCIP RPP
City Manager

City Hall
100 Queen Street West
East Tower, 4th Floor
Toronto, Ontario M5H 2N2

Tel: 416-392-3551
chris.murray@toronto.ca
www.toronto.ca

May 14, 2020

Susan E. Opler
Ombudsman
City of Toronto

Dear Ms Opler,

Thank you for your letter of May 12, 2020 regarding your request for clarity of permitted parks use during COVID-19. As you rightly note in your correspondence, the City of Toronto has made great strides and continues to keep the public and staff safe, maintain essential services, and take appropriate action necessary during what is an extremely fluid and challenging time.

As you know, COVID-19 is a global pandemic that places lives at risk as a result of exposure. The challenges faced by the City have been exacerbated by the presence of significant community spread of COVID-19 in Toronto.

In responding to COVID-19, our priority has been to save lives by doing all that we can to stop the spread of the virus in our community. Every action taken by the City in response to COVID-19 has been informed by this goal, as well as the goal of preventing our healthcare systems in Toronto from becoming overwhelmed.

The General Manager of Parks, Forestry and Recreation, on the advice of the Medical Officer of Health and under her Municipal Code authority, Chapter 608, closed all parks amenities on March 25, 2020 in order to assist in preventing community spread of COVID-19. Five days later, on March 30, under O. Reg. 104/20, the Province of Ontario, under the Emergency Management and Civil Protection Act, made an order to close outdoor recreational amenities in the Province of Ontario.

At the onset of this pandemic, the public health message has been to stay home, except for essential trips and daily exercise. While the City did not close green spaces in parks, it did close parks amenities like playgrounds, sports fields, fitness equipment, tennis and basketball courts, baseball diamonds, off-leash dog parks, washrooms and more. Each have remained closed for public use to help prevent the spread of COVID-19. The City's website and social media channels each reflected these closures and prohibition of public use, and signage was created and erected throughout our parks system to ensure the public were informed of these closures, as well as why. Bylaw officers and police have been educating the public about appropriate parks use and, where prohibited use was evident, issuing tickets using the discretion afforded enforcement officers.





In the last week, the public health message has shifted. While people should still avoid non-essential trips in the community to prevent further spread of COVID-19, we now encourage people to go out for their physical and mental health. When going out, we are still recommending maintaining a physical distance of two metres (six feet) from others and going out only with members of their household. There remains, however, community spread of COVID-19 and we need to ensure that our messaging does not inadvertently result in further transmission of the virus by overtly encouraging parks use.

At the same time, we recognize that people wish to use their parks. I concur that it is important for the public, then, to have absolute clarity around what is permitted in city parks, as well as what is not yet permitted, especially as the milder weather approaches and, understandably, people choose to go outside. As circumstances and public health advice changes, our information, as well as enforcement protocols, will also need to change.

To that end, staff advise me that the City website and social media messaging is being revised before the start of the upcoming long weekend to ensure greater clarity on the following:

- Parks green space is available for public use for those wishing to rest or read a book, for example
- Provincial orders and the City bylaw on physical distancing remains in effect, requiring people who are not from the same household to maintain a physical distance of two metres in a park or public square
- People are permitted to set out a blanket and enjoy a park setting if they are members of a single household and that they remain more than two metres from others not from their household who may also be enjoying the park
- Gatherings of more than five people who are not members of a single household are not permitted by provincial order
- And a reminder that parks amenities remain closed, including picnic tables, washrooms and drinking fountains.

Bylaw officers will continue to monitor parks to ensure closed parks amenities are not being used. Should they encounter gatherings in parks of more than five people who are not members of a single household, or instances where physical distancing rules are not being observed, they will continue to educate individuals of the requirement to maintain physical distancing. Our objective, always, is to educate first and enforce second.

As announcements from the Province on what is permissible in parks are made, further changes to our public information and enforcement activity will quickly follow, as we did when curbside pick up for retail was announced and, subsequently, commenced on May 11. Be assured that staff remain nimble and are committed to adjusting both messaging and enforcement activities to reflect changing circumstances as they arise.

We want the public to enjoy their wonderful park system, of course, but staff continue to be guided by public health advice based on the concern that remains of continued community transmission of COVID-19. Public messages have been clear on this continued risk, but I



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assure you we will endeavour to be even clearer, as you rightly suggest, on how to safely and appropriately use parks.

Thank you for sharing your perspective with me on this matter. I trust you and yours are keeping well during these extraordinary times. If I can offer further assistance on this matter, please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Chris Murray".

Chris Murray
City Manager

cc: Brad Ross, Chief Communications Officer, City Manager's Office
Carleton Grant, Executive Director, ML&S



Appendix C: Ombudsman Toronto June 18, 2020 News Release

Toronto Ombudsman to Review City's Investigation Of Incident at Centennial Park

18 June 2020

The City of Toronto Ombudsman will review the City's investigation of a widely reported incident involving one of its By-Law Enforcement Officers and members of the public in Centennial Park earlier this week.

Susan Opler says that any allegation of anti-Black racism in City enforcement is serious and must be properly and fairly investigated. The City has committed to a full investigation, and the Ombudsman will await its result.

"Ombudsman Toronto is not investigating the incident at this time," says Opler. "But we will be reviewing the City's investigation to ensure that it is fair, thorough and transparent. It is essential that the City take responsibility for investigating what happened. But the public needs to have assurance that there will be independent oversight of that investigation."

"I understand that the City has decided to have the investigation conducted by an outside party, not by City staff," says Opler. "That is an appropriate decision, given the seriousness of the allegations and the level of public interest and concern. The City should publicly announce who will be conducting the investigation as soon as possible, and I urge anyone with information about the incident to contact the investigator(s) directly."

Yesterday afternoon, the Ombudsman informed the City Manager that she would be reviewing the City's investigation, and asked him for details of the City's plan for it, including:

- The terms of reference of the investigation;
- Who will conduct the investigation;
- How it will be conducted; and
- Timelines for its completion.

Ombudsman Toronto provides independent oversight of City of Toronto services and administration, to ensure that the City treats all people fairly.

An Ombudsman Toronto [backgrounder](https://ombudsmantoronto.ca) is available at ombudsmantoronto.ca.



Appendix D: Possible Sources of Legal Information or Advice Regarding *Provincial Offences Act* Charges

- Fair Change, “a student-run and lawyer-supervised pro bono legal clinic who supports street-involved individuals address their provincial offence tickets.” <https://fairchangeccs.wordpress.com/>
- The ‘C Court Project’ at Old City Hall, which provides free legal advice and representation to homeless accused facing Provincial Offences Act “street” or “nuisance” charges. Those seeking more information may contact staff lawyer and project lead Amy Slotek at SlotekA@lao.on.ca.
- Ontario Court of Justice Guide for Defendants in Provincial Offences Cases. <https://www.ontariocourts.ca/ocj/self-represented-parties/guide-for-defendants-in-provincial-offences-cases/guide/>
- Steps to Justice, a website that “gives reliable and practical information on common legal problems.” <https://stepstojustice.ca/>



Appendix E: City Manager's June 30, 2020 Letter to Ombudsman



Chris Murray, MCIP RPP
City Manager

City Hall
100 Queen Street West
East Tower, 4th Floor
Toronto, Ontario M5H 2N2

Tel: 416-392-3551
chris.murray@toronto.ca
www.toronto.ca

June 30, 2021

Ms. Susan E. Opler
Ombudsman Toronto
375 University Avenue
Toronto, ON M5G 2J5

Dear Ms. Opler:

Thank you providing an opportunity to review your report, "*Enquiry into the City of Toronto's Communication and Enforcement of COVID-19 Rules in City Parks in Spring 2020.*" We appreciate the efforts of you and your team in conducting this review and providing the opportunity to comment.

We support and accept the recommendations made in the report. Work is already underway to implement a number of these recommendations and I assure you that we will undertake to implement all of these recommendations to continue our efforts to improve and ensure fairness in the delivery of our services.

The City is dedicated to continuous improvement and accepts and acknowledges that staff faced significant challenges communicating and enforcing the numerous and changing COVID regulations and public health guidelines in 2020. Acknowledging that and learning from it is a necessary part of the process of improving the manner in which the City serves its residents, even in the extraordinary circumstances of a pandemic. In particular, the incidents at Centennial Park and High Park were unacceptable and troubling. The City of Toronto is therefore reviewing and taking appropriate steps to implement all of the recommendations contained in your report, as well as those in the investigation reports related to those incidents. With respect to matters which are currently before the courts, the City cannot comment further and will wait for a determination of those on their merits.

As you highlight in your report, the COVID-19 pandemic has been an extremely challenging time for residents of the city, of course, but also the Toronto Public Service. Our priority, at the outset of the pandemic, was to stop the spread of the virus in the community and to save lives. Information about the virus and various public health measures to combat it changed rapidly and staff worked diligently, under extreme pressure, to respond to the pandemic, protect the public, and ensure we were in a strong position to support the City's recovery from COVID-19.

As I write, vaccination efforts are well underway in Toronto. The public has responded tremendously, with some 75 per cent of all adults having received their first dose of COVID-19 vaccine, and more than 35 per cent fully vaccinated.





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I want to thank you, once again, for your report, as well as the entire Toronto Public Service for their tireless commitment to the public they serve.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Murray".

Chris Murray
City Manager

