



Toronto City Council

July 14, 2021

Dear Mayor John Tory and Toronto City Councillors,

I am writing on behalf of the Canadian Civil Liberties Association (“CCLA”) regarding the Toronto Ombudsman’s recent report on by-law enforcement of COVID-19 orders in city parks at the outset of the pandemic. As set out below, we are urging you to accept and implement the Ombudsman’s recommendations and to take further action to ensure that the City pursues all possible remedies for those who were unfairly ticketed in Toronto parks in the early months of the COVID-19 pandemic.

The Ombudsman’s report clearly identifies a number of reasons why the issuance of COVID-related tickets to people using public parks was fundamentally unfair. Specifically, the Ombudsman found that:

- The City’s public facing communication regarding the rules applicable to park space was fragmented, confusing, conflated public health advice with legally binding orders, and, in some cases, was inconsistent with the law or prior messaging.
- Breakdowns in internal communication regarding those same rules, as well as inadequate training of by-law enforcement officials, led to significant confusion among by-law officers regarding what activities were prohibited.
- The introduction of an ill-defined “zero tolerance” approach to enforcing the COVID-19 rules was inappropriate and compounded the confusion among enforcement officials.
- The tickets themselves bore instructions and deadlines for payment and/or dispute of the charges, but none of this information was applicable due to province-wide closures of courthouses and services, as well as suspensions of time limitations on tickets; little-to-no information was available elsewhere. As a result, people found it difficult (if not impossible) to figure out how to pay their fines or challenge their tickets.

The Ombudsman’s report also details two separate cases where officers discriminated on the basis of race. In the first incident, two Black women were stopped and ticketed by an officer as they were leaving the field at Centennial Park after an outdoor workout. An independent investigation into the incident found that these women were subjected to differential enforcement as a number of non-Black young adults, who were present at the time, making use of the closed

area in a similar manner, were not approached by the officer.<sup>1</sup> In the second case, the Human Rights Office was called on to investigate an incident where an officer stopped, and subsequently followed for a period twenty-five minutes, a Black person walking through High Park with his white partner. The investigation found that he had been singled out, not for any valid suspicion that he was in violation of the COVID-19 restrictions, but simply due to his race. This individual also provided an account of the incident to CCLA. In his written description of the incident, which we included in our June 2020 report, he further explained that the by-law officer called the police for assistance during the encounter. The individual reported that he feared for his life, and at one point he sat on the ground with his legs crossed and his hands visible so he could prove to law enforcement he was not a threat.<sup>2</sup>

Based on these and other findings, the Toronto Ombudsman concluded that, “between April 2 and May 15, 2020...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.”

These findings, while alarming, should not come as a surprise. In June of 2020, the CCLA co-authored a report outlining many of the concerns that have now been substantiated by the Ombudsman’s investigation. In *Stay Off the Grass: COVID-19 and Law Enforcement in Canada*, we underscored the degree of confusion and uncertainty people felt with regard to the COVID-specific legal restrictions and penalties implemented across the country.<sup>3</sup> The report expressed significant concerns regarding the punitive approach to a public health crisis and recounted first-hand accounts of how over-zealous, technical enforcement of confusing, broad, and vague laws frequently led to fines that were completely disconnected with the aim of protecting public health.

We have also consistently registered concerns about the disproportionate impact a punitive, law enforcement approach is likely to have on vulnerable communities including Indigenous persons, Black individuals and members of other racialized groups, members of the 2SLGBTQIA+ community, recent immigrants, youth, and populations who rely heavily on access to public space (like those who are precariously housed, or street involved). Many of those who reported receiving unfair tickets to the CCLA were students, elderly persons on fixed incomes, single parents and those who were unemployed or about to lose their jobs, and all commented to us that the amount of the fines were crushing.

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<sup>1</sup> Alarming, these women reported to the media that officer had said the following during their interaction: “Did you know that you two are trespassing, and that if this were my home, I’d be licensed to shoot you both?” While the officer in question has since denied these allegations, the finding of racial discrimination by the independent investigator, which was subsequently reviewed and validated by the Ombudsman of Toronto, should compel the City to seriously reflect on the ways its enforcement-oriented approach to public health created unsafe, traumatizing situations for racialized Torontonians.

<sup>2</sup> See Canadian Civil Liberties Association and the Policing the Pandemic Mapping Project, *Stay off the Grass: COVID-19 and Law Enforcement in Canada* (June 2020), available at <https://ccla.org/fines-report/>

<sup>3</sup> The full report is available at <https://ccla.org/fines-report/>.

While we echo the Ombudsman’s concerns and support her conclusions, we note that the report recommendations—which we fully support—are largely forward-looking. They will not directly remedy the unfairness already experienced by those who received fines during the identified period.

In addition to the recommendations in the report, the CCLA urges Council to also explore appropriate remedies for those who received unfair tickets in Toronto’s parks.

**We therefore call on City Council to:**

- **fully accept and implement the Ombudsman’s recommendations;**
- **pass a motion to proactively bring the Ombudsman’s findings to the attention of the Attorney General and assigned prosecutors, with a request that consideration be given as to the impact the general unfairness underlying all impugned tickets should have on the exercise of prosecutorial discretion; and**
- **proactively refund the full cost of any of the impugned tickets that have already been paid.**

Finally, we note that lessons from previous public health emergencies have shown that compliance with public health strategies is most effectively secured through good will and education—not through policing, fines and arrests. Our research, undertaken in partnership with the Policing the Pandemic Mapping Project, has shown that some jurisdictions in Canada very effectively confronted COVID-19 without relying extensively on fines. Unfortunately, during the first wave of COVID-19, Toronto was a city that turned to punitive enforcement in its attempts to ensure compliance.

Use of punitive law enforcement to confront a public health crisis tends to disproportionately impact vulnerable communities, including Black people and members of other racialized communities, Indigenous persons, recent immigrants, same sex couples, elderly people, and persons experiencing homelessness. Focusing on punishment as opposed to supports can also significantly hamper proven public health strategies, pushing behaviour that may present a public health risk out of sight, undermining public health efforts such as contact tracing, prejudicing the public trust necessary for successful vaccination campaigns, and pushing the people and communities that most need supports even farther from public health services.

We are pleased to note that the number of fines issued in Toronto during the second wave of COVID-19 was lower and that enforcement activity focused more on businesses and large gatherings rather than individuals’ behaviour in parks and other outdoor public spaces.<sup>4</sup> This is a welcome trend and, in our view, highlights just how disproportionate and counterproductive the law enforcement response was early on in the pandemic. As we noted in our most recent report on COVID-19 and law enforcement:

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<sup>4</sup> Please see our most recent report, *COVID-19 and Law Enforcement: The Second Wave*, for a fuller discussion of more recent COVID-19 enforcement in Canada: <https://ccla.org/ccla-and-ppmp-release-new-report/>

[In the month of April 2020] a total of 679 fines (14.1% business, 11.9% size of gathering, 73.9% use of parks and amenities). These 679 fines account for 31% of the 2,174 total COVID-related fines given out by Toronto by-law officers, police officers and public health officials between April 2020 and March 2021.<sup>5</sup>

Despite the apparent shift in direction and focus during the second wave of COVID-19, throughout the third wave of COVID-19 we continued to hear calls from various public officials to increase enforcement and punitive fines as a primary pandemic response. CCLA appreciated the concerns expressed by Mayor Tory regarding the Ontario government's attempt to grant law enforcement unconstitutional police powers. Despite the fact that the province backed down from the most concerning aspects of that emergency order, it is important to note that expanded police powers remain in effect. Concerns about discriminatory impacts remain, and during the third wave of COVID-19 the Toronto Police Service created dedicated police enforcement teams, active at all detachments, to specifically police public health orders.

**As we continue to grapple with the impacts of the pandemic, we urge City Council to remain focused on equity-driven, proven public health policy interventions such as community supports and education rather than punitive enforcement measures.**

Thank you for your time and attention to this matter.

Sincerely,



Abby Deshman  
Director, Criminal Justice Program  
Canadian Civil Liberties Association

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<sup>5</sup> *Ibid.*