

“An extreme last resort”: Monetary Penalties and the Policing of COVID-19 in Canada

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Contents

- 3. About the Authors
- 4. About the Series
- 5. Introduction
- 8. COVID-19 and the Punishment of Non-Compliance
- 13. Against the Use of Fines
 - 13. — 1. Weak Evidence Base
 - 14. — 2. Risks of Disproportionate Harm
 - 16. — 3. Lack of Education, Consultation, and Oversight
 - 18. — 4. Conflicting Policy Goals
- 21. Conclusion
- 22. Endnotes
- 25. References



About the Authors

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Together, in April 2020, they launched the [Policing the Pandemic Mapping Project](#), a Canadian data justice initiative that tracks and publishes data and critical commentary on the enforcement practices of police in response to COVID-19. Since its launch, the project has garnered extensive national and international attention, engagement, and support. The project has been featured widely in the media, including outlets like the BBC news, the CBC, the Globe and Mail, and the Toronto Star.

About the Series

In this essay series, *Watching the Watchers: The New Frontier of Privacy and Surveillance under COVID-19*, McGill's [Centre for Media, Technology and Democracy](#) explores the policy, legal and ethical issues of (new) surveillance tactics in times of crisis.

In the wake of the 2020 global pandemic, governments and corporations around the world are adopting unprecedented data-gathering practices to both stop the spread of COVID-19 and transition to safer and more economically stable futures. This essay series examines how public and private actors are using pandemic response technologies to capitalize on this extraordinary moment of upheaval. It convenes a diverse group of experts to examine the policy, legal, and ethical challenges posed by the use of tactics that surveil and control populations around the world. With a focus on wide-ranging topics such as cybersecurity, racial justice, and worker surveillance, among others, this series offers a roadmap as policymakers confront the privacy and human rights impacts of crises like the novel coronavirus in the years to come.



Introduction

In the fall of 2019, the world saw the emergence and global spread of a new coronavirus (SARS-CoV-2) capable of causing acute respiratory syndrome (COVID-19) in humans. Emerging first in Wuhan, China, the virus has since spread to hundreds of countries, including Canada. Since the new coronavirus became known, scientists worldwide have been tirelessly to develop biomedical solutions to cure or at least lessen the virus' impact on people's health. Alongside these biomedical interventions, governments around the world have also sought to control the spread of the virus through various social, political, and economic means. In Canada, much like the United States (Gostin and Wiley 2020), such measures have included closure of schools, businesses, and various government facilities (e.g., parks), public health orders requiring people to stand a minimum distance from one another in public space, bans on large public and private gatherings of people, community curfews, intra and international travel restrictions, and mandatory self-isolation orders for recent travellers within and outside Canada.

In this article, we critically reflect on one specific non-biomedical prevention measure which has been implemented across the country in an effort to control the spread of COVID-19: monetary fines. While some non-biomedical prevention measures, such as physical distancing rules, have proven to be effective at slowing the virus' spread (Courtemanche et al. 2020), the exact contribution of monetary fines, as a pandemic response mechanism, has been much less clear. In fact, we argue that there are many strong reasons for why the use of monetary fines, as a COVID-19 prevention measure, should not be implemented at all.

Drawing on data collected for a larger, ongoing research project, the *Policing the Pandemic Mapping Project*³, aimed at tracking trends in the enforcement of COVID-related laws across Canada, in this article we develop four arguments for why we should be both skeptical and critical of the use of fines to control the spread of COVID-19: (1) fining, particularly in the context of the policing

POLICING THE PANDEMIC

MAPPING PROJECT



Image Credit: policingthepandemic.ca

of communicable disease, is supported by a weak empirical evidence base; (2) monetary fines can be reasonably believed to cause greater harm than good, especially for marginalized populations; (3)

monetary fines have been rolled out with minimal education, consultation, or oversight; and (4) the punitive tactic of fining is in direct contradiction with two other major policy goals being pursued by Canadian government officials, namely, financial relief and the fostering of a collective response to the pandemic. Although our discussion is restricted to Canada, we believe that the questions and policy concerns we raise will be broadly applicable, particularly to other national contexts where police responses to COVID-19 have been similar (e.g., United States, United Kingdom, Spain, France).

As a caveat, we wish to highlight that it is monetary fining as *a particular form of legal enforcement* that we are principally concerned with in this article. It does not follow that just because we reject the use of fines as a mechanism that we reject the substance of all emergency legal orders currently in effect (e.g., wear a mask when inside of a business). The imposition of monetary fines is but one among many possible mechanisms for managing legal compliance.⁴

We develop our argument in two parts. First, we provide a brief overview of how monetary penalties have been used across Canada since late March, when states of emergencies were declared in every province and territory. The second section of the article develops our four arguments against the use of COVID-related fines by federal, provincial, and municipal governments across Canada. While we are sympathetic to the unique pressure and demands placed on government policymakers during the current public health crisis, there is still a general obligation to pursue policies that are supported in evidence,

minimize or at least do not add to current harms, are clearly and transparently communicated, include sufficient oversight to ensure accountability, and are consistent with other policies and practices being advocated by those in power.

Monetary fines, we argue, fail to meet all four of these basic requirements of good governance and policy, and a growing body of literature is outlining how a punitive response to the pandemic in Canada will do more harm than good (French et al. 2020; Jones 2020; Mykhalovskiy et al. 2020; Skolnik 2020; Wray, Fleming, and Gilliland 2020).



COVID-19 and the Punishment of Non-Compliance

Since COVID-19 first began to take hold in Canada, there has been an extraordinary scaling-up in police powers and presence across the country. In many jurisdictions, bylaw officers too have been deputized to enforce many of the new provincial public health and emergency orders in effect.⁵ To enforce public health orders, police and bylaw officers throughout the country have been engaging in a wide range of practices, including patrolling parks and other public spaces, managing inter- and intra-provincial travel restrictions through bordering, maintaining checkpoints and conducting ID checks, ensuring that closed government facilities are not trespassed on, monitoring those in the community ordered to self-quarantine, conducting regular street patrols in so-called COVID-19 hotspots, enforcing community curfews, educating the public about the existence of certain legal restrictions and explaining their official rationale, and – the particular aspect of COVID-19 policing we wish to take up in this article – giving out monetary penalties for perceived instances of public health order non-compliance.

All governments across Canada have now rolled out monetary fines as a central mechanism of social control, although we have found the rate at which fines are actually being used by police and bylaw officers varies widely from jurisdiction to jurisdiction. In some jurisdictions, fines exist as a possibility but have yet to be applied. Some jurisdictions began fining early on in the pandemic (e.g., Montreal), while others have only begun to give out fines more recently with their ascendance

into a "second wave" (e.g., Vancouver). The logic behind the hastily adopted approach to these COVID-19 monetary fines is that they will have a deterrent effect on people's behaviour, effecting a greater degree of legal compliance in both the person receiving the fine (specific deterrence) and in the population at large (general deterrence). As Ontario Premier Doug Ford remarked in September, fines are meant to "send a message for the reckless, careless people that want to hold [large social gatherings], and put their neighbours and the community in jeopardy".⁶

The legal authority of police and bylaw officers to issue these COVID-19 fines have come as a result of emergency orders. To date, most of these emergency orders have been issued at the provincial/territorial level in Canada, although at the federal level, the Quarantine Act has also been deployed, and a



All governments across Canada have now rolled out monetary fines as a central mechanism of social control

handful of municipalities have enacted their own emergency public health bylaws as well. Below is a rough (and incomplete) timeline of the COVID-19 fines one can currently face in numerous regions of the country:

- On March 18, 2020, the Government of Ontario announced fines under the provinces Emergency Management and Civil Protection Act of between \$750-1,000, plus a \$130 victim surcharge.⁷
- On March 19, 2020, the Government of Newfoundland and Labrador announced that anyone found in breach of the public health orders could be fined between \$500-2,500, jail time up to 6 months, or both. Businesses were instructed they could face fines of up to \$5,000-50,000.⁸
- On March 23, 2020, the City of Vancouver passed a motion granting city bylaw and police officers to fine businesses up to \$50,000 and individuals up to \$1,000 for failure to comply with physical distancing rules. In BC, under the Public Health Act, the provincial health officer released guidelines to bylaw and police officers on April 1, instructing them to give people warnings, educate people, and if necessary, issue fines for non-compliance.⁹

- On March 22, 2020, the Government of Saskatchewan announced it would be fining anyone \$2,000 for failure to self-isolate for 14 days after international travel.¹⁰
- On March 22, 2020, the Government of Nova Scotia announced it would be fining individuals up to \$1,000 and businesses up to \$7,500 for any breaches of the provinces Health Protection Act.
- On March 23, 2020, the Attorney General and Ministry of Justice of PEI announced that individuals which do not comply with the province's public health orders could be fined in a three part tiered approach: \$1,000 for the first fine, \$2,000 for the second fine, and \$10,000 thereafter each additional fine.
- On March 25, 2020, the Government of Alberta announced it would be empowering police officers in the province to fine people \$1,000 for contraventions of public health orders.¹¹ The next day it the Lieutenant Governor in Council issue an order extending these powers to community as well as police officers.¹²
- On March 31, another Emergency Order was enacted requiring people to identify themselves to police under the EMCPA, with failure to identify oneself at all or correctly potentially resulting in a \$750-1,000 fine.¹³
- On March 19, 2020, the Government of New Brunswick announced that people could face fines for failure to follow the public health orders in place. Fines of between \$292.50-10,200.¹⁴
- On April 2, 2020, the Premier of Quebec formally requested that provincial and municipal police officers begin enforcing emergency orders, giving out fines for individuals and businesses of between \$1,000-6,000.¹⁵ On the same day, the Government of Yukon launched the Civil Emergency Measures Health Protection Order, allowing fines of \$500 and jail time to be given for those who breach the provinces Civil Emergency Measures Act.¹⁶
- On April 9, 2020, the Government of Manitoba and City of Winnipeg announced it would be upping enforcement of the province's Public Health Act, with pre-set fine amounts for breaching the emergency orders set at \$486 for individuals and \$2,542 for business.¹⁷



- On April 14, 2020, the Federal government passed amendments to the Contraventions Act, allowing police to give fines or criminal charges for breaches of Canada's Quarantine Act. These fines range between \$275-1,000.¹⁸

Clearly, these fines are not inexpensive. Often, these fines come with associated fees, making them even more costly. In Ontario, the minimum \$750 fine actually costs \$880 once the province's victim surcharge is factored in. In Quebec, the minimum fine one faces for violating COVID-19 emergency orders is \$1,000 *plus* fees for a total of \$1,546. When one takes into consideration the great deal of financial distress millions of Canadians are currently facing, the disruptive potential of these fines is even greater. Indeed, a fine of \$1,546 is more than the average Montreal resident pays in rent in a month.¹⁹

Demographic and contextual information about the people receiving fines for COVID-related behaviors has been sparse and difficult to access. Still, some information is available. Of particular concern has been the numerous reports from racialized²⁰ and immigrant people²¹ that they were targeted by law

enforcement officers. Examples include reports of Black men being targeted and harassed,²² and in at least one case assaulted²³ by authorities deputized with upholding the new pandemic order in an Ottawa park.



Police and bylaw officers in the City of Toronto, for example, declared they would not be collecting information about race in any of the cases involving COVID-related fines

Equally troubling are the mounting reports of homeless people being targeted with COVID-related fines. In Ontario and Quebec especially, there have been numerous reports of multiple homeless people receiving large fines for alleged violations of physical distancing rules.^{24,25} Beyond these incidents, we know very little about the demographic characteristics of people that have been fined so far. In some cases, we have learned that police and bylaw officers are opting not to collect certain demographic information at all. Police and bylaw officers in the City of Toronto, for example, declared they would not be collecting information about race in any of the cases involving COVID-related fines,²⁶ a perhaps predictable decision



given the city’s longstanding history of avoiding the collection and disclosure of race-based data in all areas of criminal justice (Owusu-Bempah and Millar 2010).

Our report with the Canadian Civil Liberties Association (CCLA) (Deshman, McClelland, and Luscombe 2020) involved soliciting numerous, detailed descriptions from Canadians about the circumstances that led to them being fined. This led to some further insight, but the knowledge base, particularly knowledge of aggregate level trends, is still hugely limited. If nothing else, the information we gleaned from Canadians in our work with the CCLA served to corroborate to some degree what we noted above, namely, that various marginalized communities, including Black, Indigenous, and other racialized groups, those with precarious housing, recent immigrants, youth, members of the LGBTQ2S community, and certain religious minorities, have felt disproportionately targeted and impacted by the fine-based enforcement of COVID-related rules. Our work with the CCLA also revealed some of the situational factors that led to bylaw and police officers giving out fines. As we wrote in this report:

Many people were given hefty fines for minor technical violations of emergency orders: standing three feet inside an unmarked and unfenced soccer field, having a child run ahead and jump up on a park bench for a few seconds, or walking alone on a path that the municipality had specifically flagged as open – only to receive a ticket when a police officer disagreed on the legal interpretation [...] Multiple individuals recounted tickets being issued for walking or running, alone, through open parks. Several others said that they were charged \$880 for a violation of an Emergency Order for having their dog off-leash. Yet another reported that an uncle had been ticketed for sharing a ride home from work with his essential services co-worker. (Deshman et al. 2020)

Although limited, it is worth noting that the evidence we obtained in our work with the CCLA did not reveal any of the kinds of “egregious” circumstances one might have imagined were pressing police and bylaw officers to apply these so-called “last resort” fines. Most appeared to be quite benign and, in our view, forgivable, mistakes made by people doing their best to adapt to an emergent crisis and legal order.

Against the Use of Fines

1. Weak Evidence Base

For all the emphasis on “following the science” that we have heard repeated by Canadian government officials since the beginning of the COVID-19 pandemic, the heavy reliance on fines and fees in many jurisdictions across Canada comes as somewhat of a surprise. As the City of Toronto declares on its website of COVID-related policy measures, where it explains ticketing as well as other policy interventions, the “response to the current COVID-19 pandemic around the world has been dynamic and based on the best advice from public health experts”.²⁷ In reality, fines and fees are one of the most understudied areas of criminology, and there is little conclusive evidence to suggest that such an approach will have the kind of deterrent effect on people’s behaviour that many policymakers seem to believe it will.

Despite being the most commonly applied sanction across criminal, civil, and regulatory bodies of law in most Western countries (O’Malley 2010), strong, conclusive evidence in support of the deterrent effectiveness of fines is lacking (Beckett and Harris 2011; Wagenaar et al. 2007; Weatherburn and Moffatt 2011). Previous research in criminology has examined whether fines have a deterrent effect on the person receiving the fine, often in the context of drinking and driving, an area in which fines make up over 85% of penalties received in Canada (Statistics Canada 2007). While some studies have found that fines may have a deterrent effect in very specific circumstances (Yu 1994), others have found no deterrent effect on future behaviour whatsoever (Beckett and Harris 2011). Neither is it necessarily true that larger fines have a greater specific or general deterrent effect on future behaviour. Using a large sample of drinking and driving

offenders in New South Wales, Australia, Weatherburn and Moffatt (2011) found that those given steep fines were no less likely to commit a future drinking and driving offence than those who received smaller fines. In the context of tax evasion in Canada, Varma and Doob (1998) similarly found that the size of the fine led to no greater deterrent effect. When one also considers the high rate of omitted variable bias in existing studies on deterrence (Weatherburn and Moffatt 2011), the existing evidence base for research into the deterrent effectiveness of fining becomes even shakier.

With respect to COVID-19 in particular, it is also important to keep in mind that even if there were strong evidence in support of the deterrent efficacy of fining, the evidence is not going to have been born from the same issue of crisis and disease we are dealing with today. To our knowledge, there has never been a scientific study of whether or not fines are an effective means of controlling behaviours meant to stem the spread of a communicable disease like COVID-19. This is unprecedented and unevaluated territory for scholars of fines and deterrence, a field which is already hugely understudied.

Lastly, any potential deterrent effect of fining will further hinge upon the celerity and certainty of fining (Robinson and Darley 2004), as well as the extent to which potential offenders are even aware of the possible consequences (Beckett and Harris 2011:519). While COVID-related fines in Canada have certainly been swift for those on receiving end, there is little evidence to suggest they have been applied with a high degree of certainty, and as many people who have received fines have reported, they did not even know fines were a possibility (Deshman et al. 2020).

2. Risks of Disproportionate Harm

Since government responses to the COVID-19 pandemic began in Canada, one of our major concerns as scholars of policing has been with the ways in which the new powers and boosted presence possessed by police and bylaw officers may put marginalized and racialized Canadians at greater risk of harm. Based on decades of research, it is well established that poor, Black, and Indigenous people in Canada already face a disproportionate risk of being harassed, fined, criminalized, and killed by police. Poor, homeless, and working-class Canadians have a long history of being overpoliced, often for petty crimes, that continues today (Gordon 2004; Sylvestre 2007). In Canada, our policing institution is historically rooted in



the project of settler-colonization, and this project violently persists today in the form of disproportionate surveillance, regulation, and incapacitation of Indigenous people (Monaghan 2013; Proulx 2014). Black Canadians have long been subject to disproportionate harm from law enforcement in Canada, beginning with the numerous drug wars of the early 20th century (Khenti 2014;

Owusu-Bempah and Luscombe Forthcoming). Recently, it was determined that Black people in Halifax are six times more likely than White people to be street checked by police (Wortley 2019). In part a result of these unfair and uneven policing practices, Black and Indigenous people in Canada are also massively overrepresented in the prison system compared to White people (Khenti 2014; Owusu-Bempah and Wortley 2014).

In this context of unequal enforcement, granting police and bylaw officers with new, broad discretionary power to fine and potentially jail people perceived to be breaking public health orders is only likely to exacerbate the current

crisis. Race and class play a significant role in influencing law enforcement officer's decision-making (Kochel, Wilson, and Mastrofski 2011; Sylvestre 2010) and we would be naïve to think that the same classist and racist patterns of enforcement we see in other legal contexts would not



we would be naïve to think that the same classist and racist patterns of enforcement we see in other legal contexts would not apply in the context of COVID-19

apply in the context of COVID-19. In fact, there is no sound reason at all to expect the application of laws regulating COVID-related behaviour will not mirror the widespread patterns of unequal justice we see in other policing contexts. This is how policing in our country operates; the causes of these inequalities are systemic, not stochastic, and patterns of unequal enforcement are sadly robust across a wide range of crime types and circumstances.

These concerns about poor and racialized people being disproportionately targeted by police and bylaw officers are further compounded by the fact COVID-19 itself is not spreading across the population equally. There is a growing body of evidence to suggest that poor and racialized communities in Canada,²⁸ much like the United States,²⁹ are being disproportionately impacted by COVID-19. For example, in Montréal, the city with the most COVID-related fines across Canada, the areas reporting the highest numbers of COVID-19 are predominately Black and low-income neighbourhoods.³⁰ In Toronto, another city in which a high number of COVID-related fines have been issued, Black people comprise only 9% of the overall population, yet make up over 21% of reported COVID-19 cases. More generally, people of colour make up over 80% of all known COVID-19 cases in Toronto to date.³¹ The uneven spread of COVID-19 along lines of race and socio-economic status in Canada puts these already historically overpoliced communities at further risk of policing, exacerbating the current crisis.

Finally, it goes without saying that the impact of fines are especially acute for those people who are already struggling to hold steady employment, secure a living wage, pay rent, maintain credit, pay for childcare, and buy groceries, issues that we knew disproportionately affected racialized communities in Canada well before the COVID-19 pandemic began (Attewell, Kasinitz, and Dunn 2010; Khenti 2014).

3. A Lack of Education, Consultation, and Oversight

The use of monetary penalties by Canadian governments in response to COVID-19 raises myriad questions which, more than seven months into the crisis, have still not been sufficiently addressed by our political leaders. Why did the government turn to the use of fines in the first place? Where did the idea of COVID non-compliance fines come from? What evidence, if any, did the government have in support of fines and fees in particular to encourage the COVID-related behaviours it was enforcing? How were the amounts for respective fines determined? Why, in some jurisdictions, have the fines been so large, especially when compared to other types of offences where ticketing is used? Under what aggravating circumstances could one be expected to receive a fine rather than a warning? Assuming one receives a fine, how are they then to appeal the ticket, given that, for much of pandemic, courts have been closed and/or operating in a limited capacity?

It is a truism of criminal justice policy that, to have any shot at being effective,

rules must be clearly explained and justified, and the procedures for enforcing them must be perceived as fair and just by those subject to them (Tyler 2003). In the absence of a high degree of legitimacy and procedural justice, people are prone to simply ignore or blatantly defy the rules in question, seeking creative ways to avoid detection rather than ways to comply. It is difficult to see how the current approach to policing COVID-19 in Canada has sufficiently met these criteria.

In most jurisdictions, announcements have been made that fines would only be rolled out *as a last resort*, if and when efforts to educate the population about the importance of physical distancing and other public health orders failed. Claims

have been made about how fines are only to be used as if completely necessary, as part of a broader "measured approach" to enforcement.³²

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As one spokesperson for the Service de Police de la Ville de Montréal explained less than two weeks before they began ticketing thousands of people across the city: "We're being given that tool [to issue fines]. However, it's the type of tool that we never wish to use, that we don't intend to use... The instructions that have been given to our police officers is this is a tool to be used as an extreme last resort".³³

Despite this rhetoric, we have found it difficult to find evidence of serious, sustained efforts to educate people in most jurisdictions, and government officials have been anything but transparent about the measures they may or may not have taken in the lead up to widespread issuance of fines. And even if efforts to educate were seriously pursued by police and bylaw officers throughout the country, on its face, two weeks hardly seems like long enough. As we reflected in our report with the CCLA:

Millions of people across Canada found themselves grappling with a radically new legal order, one that had taken shape in a matter of days and was constantly evolving. The emergency measures were often confusing. The unprecedented restrictions on individuals' freedoms changed on a daily

basis. Communication from government leaders was not always clear. The line between a public health recommendation, and an emergency order that carried the force of law, was blurry. Many emergency orders were vague and overly broad, so much so that several were in our view clearly unconstitutional. And the orders themselves were not always posted when announcements were made, leaving the public to guess the law based on quotes, media releases, and rumours of people who had been fined. (Deshman et al. 2020)

Without serious, sustained efforts to educate and encourage legal compliance through less punitive means, governments across Canada have by and large failed to take their own proposed approach to enforcement seriously. It is unfair to expect people to simply adapt to a highly dynamic, everchanging legal order in two weeks’ notice, particularly when minimal efforts appear to have been made to prepare them for it.

4. Conflicting Policy Goals

Finally, we take issue with the current use of fines because they are in direct contradiction with two other government policies: financial relief and a collective response of “togetherness”. Since the beginning of the pandemic, we have seen a significant return of a social welfare supports and “big government”,³⁴ with billions of dollars in relief funds being disbursed at unprecedented speeds in support of struggling Canadians and their businesses. On March 25, 2020, the Government of Canada began its *COVID-19 Economic Response Plan*,³⁵ which has involved giving out hundreds of billions of dollars of support payments to Canadians who are currently in need of help, unable to make mortgage payments, pay rent, buy groceries and, in the case of business owners, pay their employees. As part of this plan, millions of dollars of support were earmarked for various “Vulnerable Groups”, which has involved allocating relief funds specifically to poor and Indigenous communities, homeless populations, and persons with disabilities.³⁶ We have also seen similar financial relief measures implemented by the provinces and territories. On March 25, 2020, the Government of Ontario released its Action Plan, *Responding to COVID-19*, committing \$17 billion in financial resources to help people and businesses in need. In support of renters facing an income loss, the Government of BC announced the new *Temporary Rental Supplement* program, supplementing eligible households with \$300-500 a month to help make rent.³⁷ On April 2, 2020, the Government of Nova Scotia announced it would be dedicating



\$20 million in a *Worker Emergency Bridge Fund* to support those facing layoffs but ineligible for Employment Insurance.³⁸ On April 30, 2020, the Government of Saskatchewan announced it would be supplementing the wages of low income earners with a \$400 a month payment for up to 16 weeks.³⁹ As we enter the much anticipated "second wave" of the pandemic, the need for additional financial relief programs such as these is only going to become greater.

Alongside these financial relief programs, police and bylaw officers are being deputized with the power to extract large sums of money from people in the name of pandemic control and disease prevention, and many politicians are encouraging them to do so. This strikes us as a deeply contradictory, if not entirely nonsensical, combination of policies. If people cannot afford to pay rent, a hardship the government's relief measures certainly recognizes, why should people be expected to be able to pay a \$500, \$900, or \$1,500 fine?⁴⁰ One can easily imagine a situation in which someone receives financial relief only to then be unable to make rent or purchase groceries because the financial support they obtained must now be used to pay off the additional legal debt generated as a result of some COVID-related infraction.

Second, we wish to highlight the many layers of contradiction inherent in the government's emphasis on "togetherness" and "empathy" on the one hand, and individual



These sustained and strategic communications efforts by government officials to elicit a high degree of cooperation, empathy, and altruistic support among Canadians are fundamentally at odds with the emphasis on individualized punishment through fines

monetary-based punitiveness on the other. Canadian federal officials including Prime Minister Justin Trudeau and Deputy Prime Minister Chrystia Freeland have been very consciously invoking the discourse of "togetherness" in interviews and political speeches since mid-March. As Trudeau asserted to Canadians on March 18, "We are all in this together and we are there for you".⁴¹ By the end of March, Trudeau had used this language of "togetherness" at least 50 times in over 20 news conferences,⁴² a number which has dramatically increased since. And this is not only rhetoric coming from federal politicians. We have seen this language

from provincial leaders, from municipal politicians, and from police officials too. The Premier of Saskatchewan, Scott Moe, ensured residents of the province early on that they would "get through this together", encouraging everyone to "look after one another".⁴³ At the beginning of September, Ontario Premier Doug Ford said: "come on guys, we have gone through everything together as a team and you can't let your guard down now".⁴⁴ We have also seen this language from our provincial health ministers. In response to reports of increasing harassment of people with out-of-province license plates in BC, Dr. Bonnie Henry called on BC's residents to show compassion, saying "We do not know everybody's story", and reminding residents that "We are all in this together".⁴⁵ And finally, we have even seen this language from the police.⁴⁶

These sustained and strategic communications efforts by government officials to elicit a high degree of cooperation, empathy, and altruistic support among Canadians are fundamentally at odds with the emphasis on individualized punishment through fines. If we are truly all in this together, then we are also some degree responsible for one another, and this extends to our actions. The punitive approach of fining defies this conception of "collective responsibility" (Harcourt 2004), pinning responsibility onto a single person as if they were somehow acting alone, within a social vacuum. Fining is ultimately punitive, and as such operates on the simplistic assumption that, as rational actors, a person has knowingly and intentionally broken the law all the while possessing the ability to choose otherwise. This is not empathetic, and in fact could not be farther from it. If the government is sincere in its efforts to guide us out of it this crisis through togetherness and empathy, then the use of monetary fines should be carefully reconsidered.



Conclusion



As the COVID-19 pandemic continues to develop, so too will Canada's approaches to pandemic-related enforcement. After April 2020, the rate at which fines were being given out in many jurisdictions appeared to slow down. But with numerous provinces now entering the height of their "second wave", we are beginning to see monetary penalties return in full force. In some regions of Canada, the size of the fines has even increased. At the time of writing, Ontario Premier Doug Ford promised to introduce the highest fines in the country for those caught violating size restrictions on social gatherings.⁴⁷ The province of British Columbia, having resisted a punitive approach to managing the spread of COVID-19 throughout most of the pandemic, has desperately turned to the use of fines as their numbers of residents testing positive for COVID-19 reach their highest yet. None of this is likely to help. If the government truly wants to "follow the science" in its current approach to this crisis, then now is the time to reverse course. Fines, as simple and conceptually appealing as they might be, are much more likely to exacerbate the current crisis than they are to resolve it. The evidence suggests as much.

Endnotes

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- 2 Assistant Professor, Institute of Criminology and Criminal Justice, Carleton University. Email: AlexanderMcClelland@carleton.ca.
- 3 The Policing the Pandemic Mapping Project was launched on April 4, 2020 to track and publicize the massive and extraordinary expansions of police power and the unequal patterns of enforcement that could arise as a result (Luscombe and McClelland 2020). As of March 31, 2020, the project has documented over 10,000 individuals that have been ticketed or charged on separate occasions for alleged COVID-19 related violations across Canada. The goal of the project has been to bring to light patterns of police intervention in order to understand who is being targeted, what justifications were being used by police, and how marginalized people are being impacted during the current crisis. More broadly, our goal has been to inform a larger conversation about the role of policing in society, particularly as it regards the policing of crisis and communicable disease. Through the acts of identifying, reporting, and visualizing events related to the policing of COVID-19, the project offers a living repository of publicly accessible data that can be used by activists, academics, journalists, and community members to analyze, discuss, and challenge the policing of COVID-19. The project is available at: www.policingthepandemic.ca.
- 4 Moreover, there is an argument to be made that even without the kind of punitive enforcement one enacts with fining, the mere existence of a given law is still likely to have a non-negligible effect on people's behaviour.
- 5 Throughout this article, we focus on the enforcement of municipal, provincial, and federal public health laws rather than the criminal law. Although some people have been arrested and criminally charged for things like fraud (e.g., claiming to be COVID positive to get out of work), mischief (e.g., licking produce in a store), and coughing on store staff and police officers during an arrest, this has not been the predominant approach (McClelland, Luscombe, and Buhite 2020). Indeed, by our counts, criminal actions make up less 1% of total enforcement actions taken by police and bylaw officers so far.
- 6 <https://www.theglobeandmail.com/canada/article-ontario-cracks-down-on-social-gatherings-in-toronto-peel-and-ottawa/>.
- 7 <https://www.ontariocourts.ca/ocj/how-do-i/set-fines/changes-to-the-consolidated-set-fine-schedules/schedule-4-0-1-2020-03-18/>.
- 8 <https://www.gov.nl.ca/covid-19/alert-system/public-health-orders/>.
- 9 <https://news.gov.bc.ca/releases/2020EMBC0018-000617>.
- 10 <https://www.saskatchewan.ca/government/health-care-administration-and-provider-resources/treatment-procedures-and-guidelines/emerging-public-health-issues/2019-novel-coronavirus/self-isolation>.
- 11 https://open.alberta.ca/dataset?q=&sort=metadata_created+desc&pubty pe=Orders+and+Directives&tags=COVID-19.
- 12 https://www.qp.alberta.ca/documents/Orders/Orders_in_Council/2020/2020_100.html.
- 13 <https://news.ontario.ca/mcscs/en/2020/03/public-required-to-identify-themselves-if-charged-with-breaching-an-emergency-order-during-the-covid.html>.



- 14 https://www2.gnb.ca/content/gnb/en/news/news_release.2020.04.0173.html.
- 15 https://www.quebec.ca/nouvelles/rechercher/?L=0&id=6557&sr=0&tx_solr%5Bq%5D=&tx_solr%5Bfilter%5D%5B%5D=news_type%3ACommuniqu%C3%A9&tx_solr%5Bfilter%5D%5B%5D=news_type%3AInvitation%20aux%20m%C3%A9dias&tx_solr%5Bfilter%5D%5B%5D=&tx_solr%5Bsort%5D=newest%20desc
- 16 http://www.gov.yk.ca/legislation/regs/mo2020_050.pdf.
- 17 <https://news.gov.mb.ca/news/index.html?item=47464&posted=2020-04-09>.
- 18 <https://www.canada.ca/en/departement-justice/news/2020/04/government-of-canada-further-facilitates-enforcement-of-the-federal-quarantine-act.html>.
- 19 <https://montrealgazette.com/news/local-news/935-for-a-studio-apartment-a-study-say-thats-the-average-in-montreal>.
- 20 <https://www.cbc.ca/news/canada/ottawa/syrian-man-ottawa-park-bylaw-1.5526286>.
- 21 <https://www.cbc.ca/news/canada/ottawa/newcomer-hit-with-880-fine-for-picnicking-says-he-was-simply-taking-a-rest-1.5547849>.
- 22 <https://ccla.org/cclanewsites/wp-content/uploads/2020/06/2020-06-24-Stay-Off-the-Grass-COVID19-and-Law-Enforcement-in-Canada1.pdf>.
- 23 <https://ottawacitizen.com/news/ottawa-father-alleges-bylaw-officer-punched-him-in-the-face-city-denies-any-improper-conduct-during-ticketing-altercation/>.
- 24 <https://globalnews.ca/news/6871927/coronavirus-fines-homeless/>.
- 25 <https://www.cbc.ca/news/canada/montreal/calls-for-moratorium-homeless-montrealers-getting-1500-fines-1.5581520>.
- 26 <https://ipolitics.ca/2020/06/01/toronto-police-city-bylaw-not-collecting-data-on-race>
- 29 <https://www.nytimes.com/2020/04/29/magazine/racial-disparities-covid-19.html>.
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- 31 <https://www.cbc.ca/news/canada/toronto/toronto-covid-19-data-1.5669091>.
- 32 <https://vicpd.ca/2020/08/22/party-host-served-2300-fine-for-crma-violation/>.
- 33 <https://www.cbc.ca/news/investigates/police-covid-enforcement-fines-arrests-1.5508144>.
- 34 <https://www.thestar.com/politics/political-opinion/2020/04/28/covid-19-has-proved-the-value-of-big-government-will-justin-trudeau-step-up-and-lead-the-economy.html>.
- 35 <https://www.canada.ca/en/departement-finance/economic-response-plan.html>.
- 36 <https://www.canada.ca/en/departement-finance/economic-response-plan/fiscal-summary.html>.
- 37 <https://www2.gov.bc.ca/gov/content/safety/emergency-preparedness-response-recovery/covid-19-provincial-support/financial-benefits#BCEBW>.
- 38 <https://novascotia.ca/news/release/?id=20200402005>.
- 39 <https://www.saskatchewan.ca/government/news-and-media/2020/april/30/temporary-wage-supplement>.
- 40 For the same reasons, the threat of jail time for receiving multiple tickets or failing to pay a ticket can be viewed as a policy contradiction. Since the beginning of the COVID-19 pandemic, Canadian political officials have been seeking to release people from the country's jails, prisons, and remand facilities, recognizing the public health risks that incarceration creates, for both people incarcerated and the wider community. Placing more people in jail due to alleged violations of COVID public health orders would obviously not be sound, let alone consistent with the current policy emphasis of release.



41 <https://www.cbc.ca/news/politics/trudeau-pandemic-covid-coronavirus-media-1.5516383>.

42 Ibid.

43 <https://www.thestar.com/opinion/editorials/2020/03/20/coronavirus-is-teaching-us-a-fundamental-lesson-were-all-in-this-together.html>.

44 <https://toronto.ctvnews.ca/ontario-forced-to-pause-reopening-plan-for-four-weeks-as-covid-19-cases-spike-1.5095876>.

45 <https://globalnews.ca/news/7253826/coronavirus-covid-19-bc/>.

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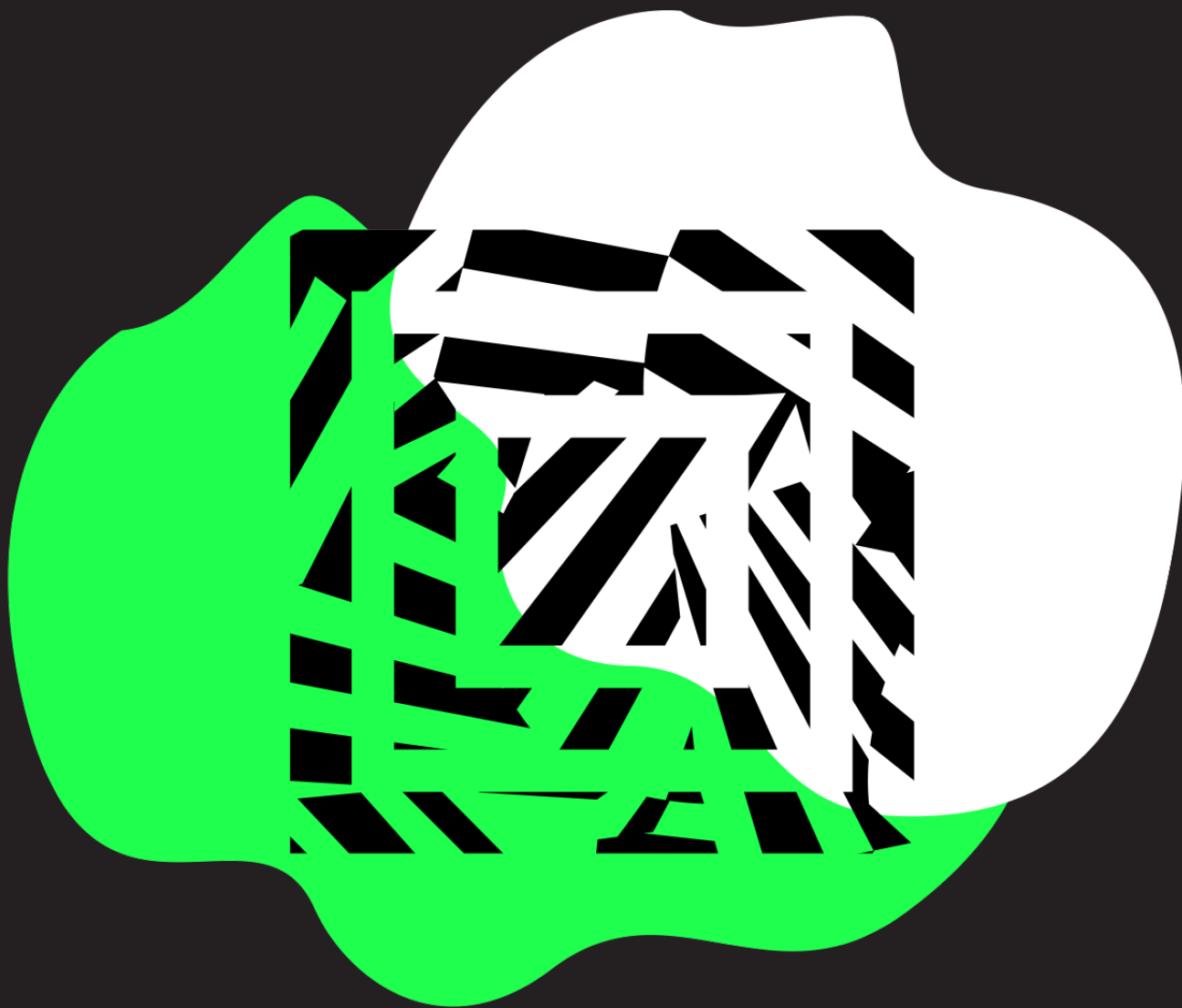
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