

Tickets during COVID-19 in Montréal

*** This document provides general legal information, not legal advice. ***

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In Montreal, marginalized people occupying public space are frequently profiled and surveilled. Ticketing has been used for a long time as a tool for control, discrimination and repression. **The emergency measures put into place by the government in response to COVID-19** (e.g. rules related to “gatherings”) **have given law enforcement additional powers to continue to target and profile communities.**

Numerous rights violations can result from the various emergency measures (e.g. police abuse, reporting to police, forced isolation, etc.). **This document focuses only on ticketing, despite the many other rights issues raised by the emergency measures related to the COVID-19 pandemic. The objectives of this document are to:**

- Provide basic legal information on regulatory offences (“penal offence”) and tickets issued in the context of COVID-19 under the *Public Health Act*, particularly tickets related to “gatherings”
- Explain some differences between these tickets and those given to marginalized people in public space using other by-laws and regulations
- Explain what a person can do if they receive a ticket and what each option involves
- Support marginalized people in defending their rights when faced with these tickets.

Marginalized and criminalized people need to consider many factors when attempting to defend their rights and manage harmful consequences that may result from interacting with police. This is a complex exercise that this document does not address. For information on interacting with law enforcement, see the following resources:

- [Arrest and detention](#) and [Police powers: in-call and outcall](#), by Stella, l’amie de Maimie
- [Guess What! We’ve Got Rights!?](#), by the COBP (Collective Opposed to Police Brutality)
- [Surprise, we still have rights! \(COVID-19 context\)](#), by a collective of lawyers

Contact the Clinique Droits Devant

The Clinique Droits Devant is a community organization that offers information, support, and accompaniment regarding tickets and criminal charges that are related to homelessness. We are community workers (not lawyers!), but we can help you:

- Understand your options if you receive a ticket
- Ask for a copy of your ticket and/or access the evidence related to your ticket
- Help you prepare to challenge a ticket (if you'd like to be accompanied, let us know!)
- Arrange a payment plan or a compensatory work agreement
- Write a police ethics complaint

Due to COVID-19 our walk-in hours are suspended, but you can still contact us:

- By e-mail: intervention@cliniquedroitsdevant.org
- By telephone : (514) 603-0265 : leave us a voicemail or send us a text and we'll get back to you as soon as we can.

1. What is a ticket? What is a regulatory or penal offence?

- The word "ticket" is an informal term often used to refer to a "statement of offence" (a "*constat d'infraction*" or "*contravention*" in french).
- **A ticket initiates a prosecution for a "penal offence", also referred to as a "regulatory offence"** (an "*infraction pénale*" in french).
- **A regulatory/penal offence** (e.g. being in a park after closing hours) is different from a criminal offence (e.g. theft).
- Being found guilty of a regulatory offence **does not result in a criminal record**.
- However, being found guilty of a regulatory offence results in a fine and, in certain cases, an unpaid fine can result in a warrant for imprisonment (after many months).

Regulatory offences can be created by different types of laws, including:

- **A municipal by-law** (e.g. City of Montreal by-law, borough by-law, Société de Transport de Montréal (STM) by-law). These tickets are processed by **Montreal's Municipal Court**.
- **A provincial law** (e.g. *Public Health Act*, *Highway Safety Code*). These tickets are sometimes processed by the Montreal's Municipal Court, but more often by a **Provincial Court, namely the Court of Québec, criminal and penal division, located at Montreal's Palais de Justice**.
- **A federal law** (e.g. *Railway Safety Act*)

2. Regulatory/penal offences under the *Public Health Act*

Tickets for regulatory offences commonly issued to people occupying public space

- Before the the current COVID-19 health crisis, most tickets in Montreal related to occupying and using public space were issued **using either municipal by-laws, the *Highway Safety Code* or STM by-laws.**
- These tickets issued for regulatory offences are processed by Montreal's Municipal Court which no longer issues warrants for imprisonment for non-payment of fines, thanks to the previous work and activism of community organizations and activists.

Tickets for regulatory offences issued under the emergency measures related to COVID-19

In response to the COVID-19 pandemic, the government of **Quebec declared a state of public health emergency** throughout Quebec. The public health emergency was declared **under the [Public Health Act](#) (a provincial law) and grants exceptional powers to the government.**

- The public health emergency came into effect in Quebec on March 13, 2020.
- Also, the City of Montreal declared a local state of emergency under the [Civil Protection Act](#) on March 27, 2020.
- Each state of emergency remains in effect until it is lifted by the related government authority (provincial and municipal).
- **These exceptional emergency powers allowed the provincial government to create new prohibitions and regulatory offences, such as the ban on “gatherings”** (see notably decrees [222-2020 of March 20, 2020](#) and [543-2020 of May, 22, 2020](#)).

Since March 20, 2020, and until these rules are lifted or modified by the government, gatherings (2 people or more) are prohibited. There are exceptions to this ban:

OUTDOORS in a PUBLIC place (e.g. in a park) people can gather IF:

- they maintain a minimum distance of two meters between them, OR
- they reside at the same address, OR
- they are receiving or offering a service or support.

OUTDOORS in a PRIVATE place (e.g. in a private yard) people can gather IF:

- they reside at that same address, OR
- they are receiving or offering a service or support, OR
- a maximum of 10 people are gathered, and a minimum distance of two meters is maintained between them as much as possible.

INDOORS (e.g. in an apartment, private residence), people can gather IF:

- they reside at that same address, OR
- they are receiving or offering a service or support, and a minimum distance of two meters is maintained between them as much as possible.

NOTE:

- There are also other exceptions to the ban on “gatherings”, e.g. using transportation.
- **Certain exceptions have been explained clearly by governments and other institutions.** E.g. street/outreach work carried out by certain organizations has been officially recognized as an essential service.
- **However, how some other exceptions will be interpreted remains very unclear.** E.g. the exception for persons gathering closer than two meters outdoors in order to receive or provide a service or support remains open to interpretation by the authorities.
- **Also, the government can modify these bans/exceptions over time and throughout stages of the pandemic. Consult the *Clinique Droit Devant* website for the detailed document with updates.**

****The application and legal interpretation of these new offences is unclear and evolving.** As with any regulatory/penal or criminal offence, various defenses may be possible for some people depending on the situation. **We cannot predict what legal and political authorities will do and what might happen with these tickets in the future.** E.g. Will they prosecute each ticket? Will *some* be withdrawn? Will *all* tickets for “gathering” be withdrawn, as many groups are demanding (“amnesty”)? **The outcome of these tickets remains uncertain.****

If the police claim that you violated these rules, they can give you a ticket under the *Public Health Act*.

- Being found guilty of a regulatory offence **under the *Public Health Act* does not result in a criminal record.** Nevertheless, **it would result in a fine of at least \$1,000, and potentially fees of at least \$500.**
- Also, these tickets will be processed by provincial courts (not the Montreal Municipal Court). As a result, the **Montreal Municipal Court’s practice of not resorting to warrants for imprisonment for unpaid fines does not apply.** In other words, an unpaid provincial ticket (e.g. related to a “gathering”) could lead to a warrant for imprisonment

Interactions with the police and the risk of criminal charges

- So far, no new criminal offences have been created in response to the COVID-19 pandemic (although the pre-existing [Quarantine Act](#), which is rarely invoked, could apply during the pandemic). Yet marginalized and criminalized people continue to be at risk of the impacts of criminalization.
- Increased police presence and additional powers granted during the public health emergency increase the risk of being stopped and questioned by police. New public reporting measures also increase this risk. E.g., being stopped for a regulatory offence often leads to a person’s name being searched in the police system which may result in a charge for breach of a bail or parole condition (for a person subject to a court order), or it may lead to a search which may result in a criminal charge for drug possession. An interaction may also escalate and result in a criminal charge for obstructing a police officer.
- The consequences of being found guilty of a criminal offence are more serious than those of a regulatory offence (e.g. criminal record, court ordered conditions, possible imprisonment).

3. Receiving a ticket: what can you do?

When you receive a ticket under the *Public Health Act*, you have three options:

1. Do nothing
2. Plead guilty
3. Plead not guilty and contest the ticket

1. Do nothing

If you don't do anything about your ticket, a "not-guilty" plea will be registered, but you will not be informed of the date, time, or place of the court hearing. **The ticket will be judged in your absence and you will most likely be found guilty by default.**

Additional fees will be added to the fine at each stage of the debt collection process. These are additional fees, not interest. The stages that follow the judgment have consequences. It takes many months for a ticket to proceed from the first stage to the last. We provide the names of the stages below in French as only the French terms are used in Quebec.

- The "Bref de saisie" stage: A bailiff may come to your door to try to seize your belongings. However they cannot seize your essential goods or other people's belongings.
- The "Mandat d'amener" stage: If you are stopped by the police and a "mandat d'amener" has been issued in your name, a police officer can make you sign a document ("recognizance entered into before a peace officer"). The document swears that you will go to the debt collector's bureau (*percepteur des amendes*). The police will give you a signed copy of the document, which will indicate the address. Simply put, you agree to go see them. It is also possible that the police officer brings you directly to the collector.
- Final step: « Mandat d'emprisonnement »: In Montreal, there is a moratorium on imprisonment for non-payment of fines related to tickets that are processed by Montreal's Municipal Court. However, for tickets processed Provincial Courts (which include tickets related to "gatherings"), a warrant of imprisonment can be issued for non-payment. Imprisonment for non-payment of fines does not result in a criminal record.

2. Plead guilty:

Fill out the “Reply Form” (or “*Formule de réponse*”) on the back of the ticket:

- Tick the box marked “guilty” (or “coupable”)
- Sign your name and write the date
- Send the “Reply Form” part of the ticket by mail to the address indicated on the ticket: Bureau des infractions et amendes, 1200 route de l’Église, 6e étage, Québec (QC) G1V 4X1

Once you have plead guilty:

- You can pay the total amount indicated on the ticket (including the fees) in one go, OR
- You can ask to make a payment plan, or to do “compensatory work” at an organisation to pay off your ticket. To do this, you will need to call the *Bureau des infractions et amendes* (BIA), at 1-877-AMENDES. Note: those two options are also available for people who plead not guilty, but are later found guilty by a judge.

3. Plead not guilty and contest the ticket

- ❖ Pleading not guilty is a way of defending your rights. It allows you to tell your side of the story, or it can just be a way to buy more time to think about what you want to do.
- ❖ The debt collection process will immediately stop, and no additional fees will be added before you have had the opportunity to present your case to a judge.

What are the deadlines?

It says on the ticket that you have 30 days from when you receive the ticket to either pay OR plead not guilty and contest the ticket. However, **the provincial government has declared that the deadlines for submitting a plea or making a payment are suspended for the duration of the public health emergency.** This means that you will **have 30 days as of when the public health emergency measures end, or as of when the deadlines are no longer suspended, to contest a ticket related to a “gathering” (“rassemblement”).** In theory, you need to respect the 30-day deadline. However, sometimes its still possible to contest a ticket even after the time limit by contacting the *Bureau des infractions et amendes* (BIA) to check what stage the file is at. The Clinique Droits Devant can help you with this.

To contest, fill out the “Reply Form” (or “*Formule de réponse*”) on the back of the ticket:

- **In the box titled “PLEA” (or “*PLAIDOYER*”):**
 - Tick the box marked “Not guilty” (or “*Non coupable*”)
 - Sign your name and write the date
 - You can also request a copy of the evidence by writing “I request disclosure of the evidence. Please send it to me by mail, at the address linked to this file” on the lines below the box. (See p. 7 for more information on the disclosure of evidence)
- **Send the “Reply Form” part of the ticket by mail to the address indicated on the ticket:** Bureau des infractions et amendes, 1200 route de l’Église, 6e étage, Québec (QC) G1V 4X1

If you no longer have a copy of your ticket, but you want to contest it:

- You can still contest your ticket if you're within the time limit.
- To do so, contact the *Bureau des infractions et amendes* (BIA) at 1 877-263-6337 (1 877-AMENDES). By giving your full name and date of birth, you can ask for the number of the file related to your ticket, and ask what stage the file is at.
- Don't hesitate to contact the Clinique Droits Devant if you'd like us to help you with obtaining this information or contesting your ticket.

IMPORTANT :

- **Make sure that the address written on the ticket is up to date:** The letter informing you of your court date (« avis d'instruction de la poursuite/notice of trial ») will be sent to this address, unless you indicate a new address on the "Reply Form". If you're currently unhoused, you could use the address of a friend or a community organization.
- Because there is a long delay before appearing before a judge, **it may be helpful to write down** (or find another way to document) a detailed account of **your experience and side of the story as soon as possible** to help you to clearly remember what happened. **These notes will be useful when it comes to preparing your defense.** Contact a community worker at the Clinique Droits Devant if you'd like help with this.
- **Wait for the letter informing you of your court date, time and location** (« l'avis d'instruction de la poursuite/ notice of trial »). It can take many months to receive this letter by mail.
- If you don't receive a copy of the evidence with the letter informing you of your court date, **you have the right to request a copy of the evidence** (e.g. the report written by the police officer who gave you the ticket) **before your court date to help you prepare** your version of what happened and your defense.

WHY CONTEST :

- Contesting a ticket is refusing to be found guilty of an offence without the opportunity to express your side of the story. It is a **way to defend your rights** and to be heard by the court. It can be affirming to have a voice and to assert that you have rights that were violated.
- **While awaiting your court date, you can use the time to prepare yourself and think about whether you want to proceed with contesting.**
- Contesting a ticket (a regulatory/penal procedure) does not prevent you from participating – at a later date – in a class action raising *Charter* claims, for example (a civil procedure). Nor does it prevent you from filing a police ethics complaint. Whereas, even if you participate in a class action or you file a police ethics complaint related to the same event, you still need to plead not guilty if you want to contest your ticket. **These are different procedures** – they take place in different courts and they lead to very different possible outcomes.

THE HEARING :

- **When you contest your ticket, you can expect to be found not guilty (“acquitted”) OR guilty by the court.**
- The Crown prosecutor will present their “arguments’ and evidence, which is usually the report that the police officer wrote after issuing your ticket. Next, you will have the opportunity to present your defense. The judge and/or the prosecutor may ask you questions about the event.
- **If you are found not guilty (“acquitted”) by the court:** Congratulations! You have won, and the process is over. You will not have to pay the fine, or any fees.
- **If you are found guilty by the court:** You will have to pay the fine. At this point, generally the amount owed will also include various fees. However, it is possible to negotiate with the Crown prosecutor before the hearing to ask that payment of the fees not be ordered by the judge. It is also possible to ask the judge to not include the fees (which would leave you with the minimum fine – normally \$1000). It's also possible to request a payment plan, or compensatory work hours, by contacting the BIA (*Bureau des infractions et amendes*). If you don't pay the fine, the file will progress through the various stages and additional fees will be added and, after many months, a warrant for imprisonment for non-payment can be issued.
- **Even if you are found guilty at your court date, the judge cannot order that you be imprisoned then and there – there is no risk of imprisonment on your court date.**
- **Don't hesitate to contact the Clinique Droits Devant for support in this process.**