

TICKETS IN THE TIME OF COVID-19 in Montreal

UP TO DATE AS OF MAY 25, 2020

CLINIQUE DROITS DEVANT

L'accompagnement social en milieu judiciaire

THE EMERGENCY MEASURES TAKEN BY THE GOVERNMENT IN RESPONSE TO COVID-19 (such as the rules prohibiting “gatherings”) have given law enforcement new powers, allowing for even greater targeting and profiling of marginalized people in public spaces.

This document addresses tickets which are being given to people as a result of the emergency measures adopted in response to COVID-19. Many different factors must be considered to protect your rights and minimize the risks that result from interactions with the police. This document does not provide such information.

The Clinique Droits Devant is a community organization which offers information, support, and accompaniment regarding tickets and criminal charges that are related to homelessness.

This is a summary of a more detailed document, which is available at: www.cliniquedroitsdevant.org. This summary was produced by Tara Santini, Véronique Fortin and the Clinique Droits Devant

This document contains legal information, and not legal advice.

What is a ticket?

- A “ticket” or “statement of offence” (also known as a “constat d’infraction” or “contravention”, in Quebec) relates to a regulatory or “penal” offence (also known as an “infraction pénale” in Quebec).
- A regulatory offence (ex. being found in a park that is closed) is different from a criminal offence (such as theft). Being found guilty of a regulatory/penal offence does not result in a criminal record. However, it does lead to a fine, and in some 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:

- **MUNICIPAL BY-LAWS** – these tickets are handled by the Municipal Court in Montreal;
- **PROVINCIAL LAWS** – these tickets are sometimes handled by the Municipal Court in Montreal, but in general, they are processed by the Montreal *Palais de Justice* (provincial courthouse).

TICKETS COMMONLY GIVEN TO PERSONS IN PUBLIC SPACES:

- Before COVID-19, most tickets given to people in Montreal in relation to their use of public spaces were related to municipal by-laws, the *Highway Safety Code*, and the regulations of the STM.
- These tickets are handled by the Montreal Municipal Court, which no longer issues warrants for imprisonment for unpaid fines.

Tickets related to COVID-19 restrictions:

- In response to the COVID-19 pandemic, the government of Quebec declared a state of public health emergency on March 13, 2020. The provincial government used the *Public Health Act* to do this. This allows for special emergency powers. Using those powers, the government introduced various new restrictions, notably around physical distancing and “gatherings” (“rassemblements”, in French).
- The state of public health emergency will remain in effect until the government stops renewing it.

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

There are several exceptions to the ban on “gatherings”, and since June 22, 2020, people can gather in the following cases:

- **In a PUBLIC place — OUTDOORS** (e.g. in a park) 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.
- **In a PRIVATE place — INDOORS** (e.g. in an apartment, private residence) **or OUTDOORS** (e.g. in a private yard) IF:
 - they are receiving or offering a service or support, OR
 - they reside at that same address, OR
 - a maximum of 10 people are gathered.

NOTE:

- There are also other exceptions, e.g. using transportation.
- **Certain exceptions have been explained clearly** (e.g. assurances have been given to outreach workers from some community organizations). **However, how other exceptions will be interpreted remains very unclear** (e.g. for the exception for persons gathering closer than two meters outdoors in order to receive or provide a service or support).
- **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.

If the police believe that you are violating these rules, they can give you a ticket under the Public Health Act.

- People who are found guilty of such an offence will be ordered to **pay a fine of at least \$1000, and possibly also considerable fees.** These tickets will be handled 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.** This means that there is a chance that you could be imprisoned if you do not pay the fine.

**THE APPLICATION AND LEGAL INTERPRETATION OF THESE NEW OFFENCES IS UNCLEAR AND EVOLVING, and so we cannot predict what might happen with these tickets in the future.

INTERACTIONS WITH THE POLICE AND THE RISK OF CRIMINAL CHARGES

So far, no new criminal offences have been created in response to COVID-19. That said, police presence and powers have been increased and public reporting has been encouraged during the state of emergency. All of this increases the risk of people being stopped and questioned by police officers. An interaction with the police may result in criminal charges (e.g. for obstructing a police officer, or possession of drugs). 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, etc.)

What can you do if you've received a ticket related to the Public Health Act? You have 3 options:

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 your will most likely be found guilty.** Fees will be added to the fine, and after that, more fees will be added at each step of the debt collection process. It generally takes several months for the file to pass from one step to the next.

Warning: the final step for unpaid tickets that are handled by provincial courts is imprisonment.

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 the ticket, and write the date.
- Send the "Reply Form" part of the ticket by mail to the address indicated on the ticket.

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.

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, and can even 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 fees will be added on before you have had the opportunity to present your case to a judge.

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 the ticket, 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.
- Send the "Reply Form" part of the ticket by mail to the address indicated on the ticket.

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. 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").** Sometimes it's still possible to contest a ticket even after the time limit by contacting the BIA to check what stage the file is at. The Clinique Droits Devant can help you with this.

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 BIA at 1 877-263-6337 (1 877-AMENDES)** and 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.

CONTEST TICKET

- When you contest, you can expect to be found not guilty or guilty by the court:
 - **If you are found not guilty:** 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:** You will have to pay the fine. Generally, the amount owed will also include various fees. However, it is possible to negotiate with the prosecution lawyer before the hearing, or 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. If you don't pay the fine, the file will progress through various steps 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.
- Make sure that the address written on the ticket is up to date – the letter informing you of your court date 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.
- It's helpful to write down 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 to come in the mail. This can take a number of months.
- For the duration of the public health emergency, there won't be any hearings at the *Palais de Justice* for contested tickets.
- 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** before your court date to help you prepare your version of what happened and your defense.
- Contesting a ticket will not in any way prevent you from also making a police ethics complaint, participating in a civil lawsuit, or defending your rights in another way.

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Contact a community worker at the **Clinique Droits Devant**

The Clinique Droits Devant is a community organization which offers information, support, and accompaniment regarding tickets and criminal charges that are related to homelessness. On account of COVID 19, we have had to temporarily cancel our drop-in hours. It is still possible to reach us:

- By email, at intervention@cliniquedroitsdevant.org
- By phone, at 514 603-0265, by either leaving a voicemail message or sending us a text message. We'll get back to you as soon as possible.