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# Regulations Amending the Contraventions Regulations (Schedule XVI): SOR/2021-13

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## CONTRAVENTIONS ACT

P.C. 2021-78 February 14, 2021

His Excellency the Administrator of the Government of Canada in Council, on the recommendation of the Minister of Justice, pursuant to section 8 <sup>a</sup> of the *Contraventions Act* <sup>b</sup>, makes the annexed *Regulations Amending the Contraventions Regulations (Schedule XVI)*.

## Regulations Amending the Contraventions Regulations (Schedule XVI)

### Amendments

1 The portion of items 1 to 6 of Schedule XVI to the *Contraventions Regulations* <sup>1</sup> in column III is replaced by the following:

Item	Column III Fine (\$)
1	825
2	825
3	825

4	1500
5	825
6	3000

**2 Schedule XVI to the Regulations is amended by adding the following after item 6:**

Item	Column I Provision of <i>Quarantine Act</i>	Column II Short-Form Description	Column III Fine (\$)
6.1	34(2)	(a) Failure to inform a quarantine officer before arrival that any person, cargo or thing on board a conveyance could cause the spreading of a communicable disease	5000
		(b) Failure to inform a quarantine officer before arrival that a person on board a conveyance has died	5000
		(c) Failure to inform a quarantine officer before arrival that any prescribed circumstances exist	5000

**3 The portion of items 7 to 10 of Schedule XVI to the Regulations in column III is replaced by the following:**

Item	Column III Fine (\$)
7	3000
8	825
9	3000
10 (a)	1500
10 (b)	825

## Coming into Force

**4 These Regulations come into force on the day on which they are registered.**

# REGULATORY IMPACT ANALYSIS STATEMENT

*(This statement is not part of the Regulations.)*

## Issues

In response to the COVID-19 coronavirus pandemic, the Government of Canada has made numerous emergency orders under the *Quarantine Act* designed to slow and prevent the spread of COVID-19, by restricting entry into Canada or subjecting persons entering Canada to certain conditions, notably requiring any person returning from travelling abroad to self-isolate for 14 days. It is vitally important that those measures be strictly followed. In April 2020, certain *Quarantine Act* offences were designated as contraventions in order to provide enforcement authorities with an additional enforcement tool to improve compliance with the *Quarantine Act* and the emergency orders made under that Act. The offences designated as contraventions pertain to obligations imposed on individual travellers with respect to international travel requirements and mandatory isolation upon arriving in Canada. The ticketing scheme established by the *Contraventions Act*, known as the Contraventions Regime, provides another option for enforcing certain federal offences of a regulatory nature as the offender can choose to plead guilty and pay a fine without having to appear in court.

The April 2020 amendments to the *Contraventions Regulations* were among the very first governmental efforts to prevent risks to the health of Canadians in the context of the first months of the COVID-19 pandemic. The fine amounts for these contraventions, ranging between \$275 and \$1,000, had been cautiously determined in light of existing contraventions fine amounts, and were perceived by the Public Health Agency of Canada (PHAC) at the time as sufficiently high to impact the behaviour of Canadians who were going to travel. It was also anticipated that the fine levels set for *Quarantine Act* contraventions could, to some extent, influence the provincial, territorial (P/T), and municipal fines that were going to be subsequently put in place.

However, there is growing concern that Canadians continue to engage in non-essential travel. In the context of emerging new and more contagious variants of COVID-19, travellers who contravene the *Quarantine Act* upon return to Canada pose a serious and heightened threat to public health. Having observed the situation, PHAC has determined that the fine amounts set in April 2020 are not perceived by Canadians as being sufficiently high to deter them from engaging in non-essential travel and to urge them to comply with *Quarantine Act's* obligations. In addition, PHAC has observed the existence of higher fine amounts in provinces for contravening public health orders under provincial public health legislation. Thus, as cases continue to rise, a number of provinces have increased their maximum fine amounts from those originally set earlier in the pandemic.

Increased fine amounts are required for existing contraventions listed under Schedule XVI to the *Contraventions Regulations* in order to re-emphasize to Canadians the seriousness and severity of contravening these offences while striking an appropriate deterrence approach. The increased fine amounts also enable PHAC to reinforce its leadership role, in the context of an unprecedented

pandemic which continues to persist, to reiterate the importance of the measures in place, the need being pressing to set a firmer tone and to send a concise, unequivocal and stronger message to Canadians.

Further, amendments to the *Contraventions Regulations* are also warranted due to reported incidents involving marine conveyances where a number of vessel operators did not report real or suspected illness onboard their vessels prior to arriving in Canada as required by subsection 34(2) of the *Quarantine Act*. Actively or passively concealing a case of illness onboard a conveyance such as a cargo vessel is of sufficient risk from a public health perspective to other stakeholders such as employees of pilotage authorities, dockworkers and other individuals who may come into proximity with an infected individual. Enforcement measures, such as ticketing, were not available at the time of the incidents. PHAC needs to provide its enforcement officers with a proper and efficient enforcement tool, should such incidents occur again. The fine would need to be set at a level which provides a sufficient disincentive against concealing the presence of illness on board and reflects the degree of seriousness, while at the same is sufficiently high to impact commercial operators.

In order to allow for the enforcement of subsection 34(2) of the *Quarantine Act* through the ticketing procedure established under the *Contraventions Act*, this offence must be designated as a contravention and included in the *Contraventions Regulations*.

## Background

The COVID-19 coronavirus disease outbreak is a global issue and has been declared a pandemic by the World Health Organization. It has been demonstrated that the virus can cause severe, life-threatening respiratory disease. Human-to-human transmission remains the predominant route of transmission of the current outbreak of this disease.

The purpose of the *Quarantine Act* is to prevent the introduction and spread of communicable diseases such as COVID-19. It is applicable to persons and conveyances arriving in or in the process of departing from Canada. It provides measures for the screening, health assessment and medical examination of travellers to determine if they have a communicable disease and control measures to prevent the introduction and spread of communicable disease.

The *Quarantine Act* authorizes the Governor in Council to make emergency orders prohibiting any class of persons who have been in a foreign country from entering Canada, or subjecting their entry into Canada to any conditions. In the context of the Government of Canada's response to COVID-19, numerous emergency orders have been made since early February 2020. As an additional measure, a ticketing scheme for contravening the *Quarantine Act* was put in place in April 2020 under the *Contraventions Act*.

Enacted in 1992, the *Contraventions Act* provides a procedure for the prosecution of federal regulatory offences designated as contraventions. This procedure reflects the distinction between criminal offences and regulatory offences and offers an alternative to the summary conviction procedure set out in the *Criminal Code*. It allows enforcement authorities to commence the prosecution of a contravention by means of a ticket with the option of voluntary payment of the

prescribed fine, therefore avoiding the longer and more costly procedure set out in the *Criminal Code*. This spares the offender from the legal ramifications of a *Criminal Code* conviction while ensuring that court and criminal justice resources can be focussed on the prosecution of more serious offences. This ticketing procedure is a more reasonable and effective approach for minor offences, and provides for fines that are more proportionate to the seriousness of these offences.

Made under section 8 of the *Contraventions Act*, the *Contraventions Regulations* identify the federal offences designated as contraventions, provide the short-form description of these offences and prescribe the amount of the fine for each of these contraventions. The Contraventions Regime provides another option for enforcing certain federal offences of a regulatory nature as the offender can choose to plead guilty and pay a fine without having to appear in court. Making use of this regime saves valuable time for the courts and for the enforcement agency, which can be dedicated to the prosecution of the most serious instances of these offences.

In April 2020, 10 offences of the *Quarantine Act* were designated as contraventions under Schedule XVI to the *Contraventions Regulations* with associated fine amounts. These fine amounts have revealed to be insufficiently high to impact the behaviour of Canadians when they engage in non-essential travel. Also, some offences of the *Quarantine Act* have not yet been designated as contraventions. For example, if enforcement authorities believe that a warning or other non-legal response is insufficient for contravening subsection 34(2) of the *Quarantine Act*, they must prosecute using the procedure set out in the *Criminal Code*. Reported incidents involving marine conveyances indicated that a number of vessel operators did not declare real or suspected illness onboard their vessels prior to arriving in Canada as required by subsection 34(2) of the *Quarantine Act*. Actively or passively concealing a case of illness onboard a conveyance such as a cargo vessel is of sufficient risk from a public health perspective to other stakeholders such as employees of pilotage authorities, dockworkers and other individuals who may come into proximity with an infected individual.

These amendments to the *Contraventions Regulations* directly support the Government of Canada's response to COVID-19 and are therefore made on an expedited basis to support continued efforts to prevent or reduce risks to the health of Canadians.

## Objective

The objective of these amendments is to pursue additional efforts to prevent the spread of COVID-19 among Canadians by including meaningful and more persuasive fines in order to improve compliance with the *Quarantine Act* and the emergency orders made under that Act. The purpose is to ensure better deterrence of non-compliance and to send a clearer and stronger message on the severity associated to non-compliance.

Furthermore, the amendments are made in order to expand the list of offences, which could be prosecuted by means of a contraventions ticket by designating as a contravention the offence at section 34(2) of the *Quarantine Act*. This would ensure meaningful fines are also applicable to

operators of commercial conveyances in cases of non-compliance with their obligations under the *Quarantine Act*, in order to ensure that non-compliance with the *Quarantine Act* does not become a cost of doing business.

The increase of the fine amounts for existing contraventions and the designation of offences under the *Quarantine Act* as contraventions are intended to provide enforcement authorities with a useful and additional enforcement tools to improve compliance with the *Quarantine Act*. The intended benefits of using the Contraventions Regime are a more efficient and standardized enforcement regime.

## Description

The amendments to the *Contraventions Regulations* do not create new offences nor do they impose new restrictions or burdens on individuals or businesses.

The amendments increase fine amounts for contraventions of the *Quarantine Act* currently listed under Schedule XVI to the *Contraventions Regulations*. In addition, these amendments designate the offence at subsection 34(2) of the *Quarantine Act* as a contravention.

The amendments increase the fine amounts to three times the previous amount, with the exception of the fine amounts for section 26 and subsection 65(2) which are set at \$3,000, for the contraventions already listed under Schedule XVI to the *Contraventions Regulations* pertaining to obligations imposed on travellers and other persons to prevent the introduction and spread of communicable disease, including the obligation of a traveller

- to present oneself to a screening officer at the nearest entry point (section 12): \$825;
- to answer relevant questions asked by a screening officer or quarantine officer or to provide any required information or record (subsection 15(1)): \$825;
- to disclose to a screening officer or quarantine officer that they may have a communicable disease or have recently been in close proximity to a person that has a communicable disease (subsection 15(2)): \$825;
- to comply with reasonable measures ordered by a screening officer or quarantine officer (subsection 15(3)): \$1,500;
- to comply with an order from a quarantine officer to report to a public health authority (subsection 25(1)): \$825;
- to comply with an order regarding a treatment or any other measure for preventing the spread of the communicable disease (section 26): \$3,000; and
- to comply with an emergency order prohibiting or subjecting to any condition the entry of the traveller into Canada (section 58): \$3,000.

The amendments also increase fine amounts related to offences designated as contraventions that prohibit any person from

- entering or leaving a quarantine facility without the authorization of a quarantine officer (subsections 65(1): \$825 and (2): \$3,000; and
- hindering or willfully obstructing a quarantine officer, a screening officer or an environmental health officer or making a false or misleading statement to the officer (paragraphs 66(a): \$1,500 and (b): \$825).

In addition, a new item 6.1 is added with the following short-form descriptions to reflect the designation of subsection 34(2):

- (a) Failure to inform a quarantine officer before arrival that any person, cargo or thing on board a conveyance could cause the spreading of a communicable disease
- (b) Failure to inform a quarantine officer before arrival that a person on board a conveyance has died
- (c) Failure to inform a quarantine officer before arrival that any prescribed circumstances exist

The fine amounts for these short-form descriptions are \$5,000.

## Regulatory development

### ***Consultation***

These amendments to the *Contraventions Regulations* continue to support the Government of Canada's efforts to prevent risks to the health of Canadians in the context of the challenging second wave of the COVID-19 pandemic. Increasing existing *Quarantine Act* contraventions fine amounts and introducing one additional offence only, these amendments have been made on an expedited basis, and therefore, no formal public consultations were undertaken.

However, PHAC has reached out to Transport Canada's stakeholder's maritime community in fall 2020 and in January 2021 with respect to designating subsection 34(2) of the *Quarantine Act* as a contravention and associated \$5,000 fine amount, to advise its members of the availability of the ticketing enforcement tool with associated fine amounts. Stakeholders included representation from labour unions, maritime and shipping industry groups and associations, as well as Fisheries and Oceans Canada. Stakeholders were receptive to the advantages of a ticketing regime over the onerous penalties and process under the summary conviction process.

The amendments to the *Contraventions Regulations* do not create new offences nor do they impose new restrictions or burdens on individuals or businesses. They increase existing fine amounts and designate as contraventions an existing offence contained in the *Quarantine Act*, therefore allowing the prosecution of this offence through the Contraventions Regime.

### ***Modern treaty obligations and Indigenous engagement and consultation***

An initial assessment of modern treaties was undertaken. The assessment did not identify any modern treaty implications or obligations.

## ***Instrument choice***

In order to improve the impact of existing contraventions fine amounts and to have an additional offence enforced through the Contraventions Regime allowing enforcement officers to issue contraventions tickets, fine amounts require to be increased and the additional offence must first be designated as a contravention and included in the *Contraventions Regulations*. Therefore, no non-regulatory options were considered.

## **Regulatory analysis**

### ***Benefits and costs***

The increase of existing contraventions fine amounts and the designation of an additional offence as a contravention provide enforcement officers with additional enforcement tools to better enforce the provisions of the *Quarantine Act*. In fact, previous fine amounts for the existing contraventions had not impacted significantly the behaviours of travellers, and enforcement officers attempting to enforce subsection 34(2) of the *Quarantine Act* were only able to issue a warning or proceed under the *Criminal Code* procedure. The Contraventions Regime allows enforcement officers to use a more graduated approach to enforcement that reflects the severity of each infraction.

Increasing existing contraventions fine amounts enables PHAC to send a clear message about the severity of non-compliance which undermines governmental efforts to prevent and ultimately eradicate the spread of COVID-19. More importantly, from a benefits and costs perspective, new fine amounts contribute to efforts to avoid overwhelming governmental quarantine facilities, front-line hospitals and long-term care homes. In addition, the offence newly designated as a contravention, namely subsection 34(2), is meant to fill in a gap in the Contraventions Regime to hold operators of commercial conveyance responsible for actions that jeopardize efforts to prevent the spread of COVID-19. As a consequence, both sets of amendments promote compliance with improved measures implemented to curtail the spread of COVID-19.

While there are no data from which one can draw a comparison, there is consensus among all key players (federal institutions, enforcement authorities, the courts and the public) that prosecutions by way of ticketing results in savings to the entire justice system as it provides the offenders, law enforcement, and courts with a quick and convenient process for handling offences. Ticketing, to a large extent, is intended to reduce pressure on the courts, resulting in savings for the government in terms of prosecution costs, and enabling the courts to focus on matters that require judicial consideration. Ticketing also frees up a great amount of enforcement officers' time. Less time in the office preparing for court means more time that is dedicated to undertake monitoring, control and surveillance efforts. Furthermore, offenders will be subject to a process that can be more appropriate and proportionate to the nature of the offence. The offender can pay the fine and avoid the burden of having to appear in court or, should they choose to plead not guilty, the ticket can be contested in court.



Costs incurred by the provinces in the administration of federal contraventions are covered by the revenues generated by the payment of fines, making the Contraventions Regime cost neutral. The surplus fine revenues are shared equally between the federal and provincial governments. The agreements signed with the provinces include clauses to that effect.

When additional offences are designated as contraventions, participating provinces may incur administrative costs in order to update their systems as needed. However, these costs remain marginal as this task is an ongoing activity integral to the administration of the Contraventions Regime, the *Contraventions Regulations* being amended on a regular basis. Moreover, any such costs are meant to be offset by fine revenues collected.

Generally, issuing contraventions tickets is more costly than relying on warnings or simply not enforcing the offences. However, those are not meaningful alternatives to the Contraventions Regime. The *Contraventions Act* provides enforcement officers with a quick and convenient process to lay charges by means of tickets. As a court appearance is not required where the accused voluntarily pays the set fine, the result is savings in terms of prosecutions costs and time spent by enforcement officers preparing for court. Though the actual payment of fines is not considered a cost since individuals whose activities are contrary to prevailing laws and regulations do not have standing (i.e. whether the costs should count) in this context.

Training on the Contraventions Regime is provided by the Department of Justice in collaboration with client departments, provincial court services counterparts and the Public Prosecution Services of Canada at the request of client departments on a need basis. The costs associated with this training is integral to ongoing activities and are generally not dependent on any one specific amendment to the *Contraventions Regulations*.

### ***Small business lens***

Analysis under the small business lens concluded that the proposal will not impact Canadian small businesses.

### ***One-for-one rule***

The one-for-one rule does not apply to this initiative, as there is no incremental change in administrative burden on businesses.

### ***Regulatory cooperation and alignment***

These amendments are not related to a work plan or commitment under a formal regulatory cooperation forum.

### ***Strategic environmental assessment***

In accordance with the *Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals*, a preliminary scan concluded that a strategic environmental assessment is not required.

## ***Gender-based analysis plus (GBA+)***

No differential impacts are expected on the basis of gender or other identity factors as these amendments do not create new requirements or burdens on individuals; they increase existing contraventions fine amounts and merely designate an existing offence as a contravention.

It is important to note that the purpose of the *Contraventions Act* is to ensure that the enforcement of offences designated as contraventions is to be less onerous on the offender and more proportionate and appropriate to the seriousness of the offence when compared to the procedure set out in the *Criminal Code*.

It is also important to note that COVID-19 has been demonstrated to more severely affect a vulnerable subpopulation of persons, specifically older adults with co-morbidities as well as those who are immunocompromised. The Government of Canada is supporting efforts to address this serious risk to these vulnerable populations by enabling a ticketing regime to enforce requirements under the *Quarantine Act*.

## ***Rationale***

In general, the amendments to the *Contraventions Regulations* enable reasonable enforcement of regulations and statutes while ensuring consistency of enforcement with similar types of offences.

The amendments to the *Contraventions Regulations* involving the fine amounts for the *Quarantine Act* offences and the addition of the designation of subsection 34(2) are meant to ensure a higher level of compliance as the government is coping with a persistent and challenging second wave of COVID-19.

With respect to the increase of fine amounts, PHAC not only relied on current fine levels of similar provincial public health orders, but has also determined these fine amounts based on the range permitted by the Contraventions Regime where the maximum fine amount that can be contemplated for a contravention is \$5,000 (corresponding to the maximum fine under the *Criminal Code's* summary conviction procedure).

The amendments increasing the existing fine amounts, which are solely meant to be imposed on individuals, namely travellers, are all set at three times the previous amount, with the exception of the fine amounts for section 26 and subsection 65(2), which are set at \$3,000, corresponding to four times the previous amount. The new fine amounts were determined in light of the reassessment performed by PHAC of each offence's degree of seriousness. Both section 26 (failure to comply with an order regarding a treatment or a measure) and subsection 65(2) [leave a quarantine facility without authorization] were identified to be more serious and therefore higher fine amounts were merited.

Furthermore, the proposed fine amount for subsection 34(2) of the *Quarantine Act* dealing with conveyances operators, which in most cases, if not all, are commercial, is at the highest level possible under the Contraventions Regime in order to avoid fines becoming a cost of business.

The fine amounts reflect the distinction between the actions of individuals (e.g. travellers, crewmembers) and actions by operators of commercial conveyances. In a commercial context, fines must offset the commercial gain a corporation might otherwise garner from evading public health measures. In the context of marine conveyances, a significant consequence of the targeted behaviour includes increased risk to key elements of Canada's marine transportation sector (e.g. pilots, port workers) from unmitigated exposure to a communicable disease.

## Implementation and compliance and enforcement

### *Implementation*

These Regulations come into force on the day on which they are registered.

Implementation following the designation of subsection 34(2) of the *Quarantine Act* as contravention may involve messaging from federal departments involved in enforcing travel restriction measures to vessels arriving in Canada and which are advised of their legislated requirements to notify Canadian officials when there are reasonable grounds to suspect that a person could cause the spread of COVID-19.

### *Compliance and enforcement*

The amendments to the *Contraventions Regulations* provide enforcement officers with an appropriate enforcement measure, allowing them to fulfill their mandate effectively and promote legislative and regulatory compliance.

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## Footnotes

a S.C. 1996, c. 7, s. 4

b S.C. 1992, c. 47

1      SOR/96-313

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