



# VANCOUVER POLICE DEPARTMENT

## REPORT TO THE VANCOUVER POLICE BOARD

REPORT DATE: March 19, 2019  
COMMITTEE MEETING DATE: April 18, 2019  
BOARD REPORT # 1904C01

*Regular*

TO: Vancouver Police Board Service and Policy Complaints Review Committee  
FROM: Inspector Dawn Richards, Special Investigation Section  
SUBJECT: Service or Policy Complaint 2018-138 Sexual Assault Investigation

---

### RECOMMENDATION:

**That the Vancouver Police Board Service and Policy Complaints Review Committee ('Committee') dismiss the complaint with reasons.**

### SUMMARY:

The complainant originally registered a complaint with the Office of the Police Complaint Commissioner (OPCC 2018-14822), in June 2018, regarding the conduct of the two investigators assigned to her sexual assault investigation. The OPCC reviewed the complaint and on July 19, 2018, dismissed it after finding that there was no misconduct by the officers.

On December 4, 2018, the OPCC forwarded a Service or Policy Complaint to the Vancouver Police Board (OPCC 2018-15592), drawing from the complainant's concerns related to the way the Vancouver Police Department (VPD) conducts sexual assault investigations.

The complainant has specific concerns with regard to various interactions with victims. This report provides information about the legal requirements police must follow when conducting an investigation, obtaining statements, determining whether charges should be recommended to Crown Counsel, and disclosure requirements. The concerns brought forward in this complaint are either currently addressed by best practices or are not legally feasible. As such, this report recommends that the complaint be dismissed with reasons.

### POLICY:

Regulations and Procedures Manual 1.7.16 *Sexual Offences*  
Regulations and Procedures Manual 1.6.37(ii) *Witness Statements*

### DISCUSSION:

This service or policy complaint stems from sexual assault investigation undertaken by the VPD's Sex Crimes Unit on December 29, 2016. The complainant's specific concerns are:

1. All interaction between victims and investigators should be recorded, including phone calls and video and audio recordings of interactions outside of the recorded interview room.
2. Investigators' reports should be reviewed with victims before being concluded to ensure that the report is accurate and complete.
3. Investigators should not be allowed to interview a victim without a victim support person or legal representation present.

**Concern #1 - All interaction between victims and investigators should be recorded, including phone calls and video and audio recordings of interactions outside of the recorded interview room.**

All evidence gathered by police during the course of an investigation forms part of the investigative record. This includes, in part, police notes, victim and witness statements, and recordings of statements. If a charge is recommended to Crown Counsel, all of the evidence gathered by the police must be provided to Crown Counsel in a disclosure package.

In *R v Stinchcombe*, [1991] 3 S.C.R. 326, the Supreme Court of Canada found that "*the Crown has a legal duty to disclose all relevant information to the defence. The fruits of the investigation which are in its possession are not the property of the Crown for use in securing a conviction but the property of the public to be used to ensure that justice is done.*" Therefore, all recordings, notes, and statements obtained by police during the course of the investigation must be provided to the Crown for assessment and a decision on what must be disclosed to the accused.

Some information should not be disclosed to the accused and must be vetted from the evidence gathered. Information that is irrelevant to the case, such as the addresses, phone numbers and other personal details of the victims and witnesses, must be vetted from police notes, statements and all recordings prior to disclosure. In prolonged or larger scale investigations, a considerable portion of communication between victims and investigators is of no investigative value. For example, setting up appointments, providing file updates, and checking in with the victim to ensure proper victim management.

Recording every interaction between the police and a victim prevents candid conversation and makes for impersonal interactions during a stressful time for the victim, adding to their trauma. To encourage cooperation and increase public trust, police ensure victims are advised when a statement or conversation is being recorded. It should be noted that not all phone calls and interactions with accused persons are recorded, to which there is a much higher level of scrutiny in assessing the police's actions and conduct.

It is impractical for police to record all interactions with victims. Storage of electronic recordings, transcription, and vetting of protected and irrelevant information in every interaction with a victim would be an inefficient use of resources that could be deployed to investigate crime. The disclosure packages to Crown Counsel would be larger than currently provided and result in delay of submitting reports to Crown Counsel. Further delay would likely occur during Crown Counsel's charge approval assessment.

**Concern #2 - Investigators' reports should be reviewed with victims before being concluded to ensure that the report is accurate and complete.**

Investigators assess all evidence gathered during an investigation to determine whether a criminal offence occurred. Then investigators make an assessment of the information obtained and determine if there is sufficient evidence to support the recommendation of a charge to Crown

Counsel. An investigation must include an attempt to obtain a statement from victims and witnesses. The investigators must then review the statement and assess how it fits with all of the other evidence gathered, what new information has been generated, and what further investigation is required. When all investigative leads have been exhausted, the investigator must come to an investigative conclusion.

Sometimes what a victim or witness reports cannot be corroborated or a victim's or witness' recollection of what occurred is not supported by the available evidence and the investigation is concluded without charges being recommended. This does not mean that the police do not believe the victim or witness, rather it means that there is insufficient evidence to corroborate their statement or recommend charges to Crown Counsel.

In this particular incident, the investigator reviewed the complainant's written statement and photos provided by the complainant. The investigator conducted a recorded interview with the complainant and obtained evidence of text message conversations between the complainant and the suspect. The investigator obtained the complainant's medical records and reviewed them. Recorded interviews were obtained from four disclosure witnesses. The investigator obtained a written statement from the suspect and conducted a recorded interview with the suspect. Based on the totality of the investigation, the investigator did not believe that there was sufficient evidence to recommend criminal charges to Crown Counsel.

For the integrity of the investigation and the preservation of evidence, it would be improper to share all information gathered with anyone who may be required to testify in the matter. If a victim feels that a report is inaccurate or has concerns about the investigative conclusions, the victim may request to discuss their report and their statement with the investigator or the investigator's supervisor. A victim may provide permission for the VPD to discuss the investigation or report with a victim advocate, on the victim's behalf.

**Concern #3 - Investigators should not be allowed to interview a victim without a victim support person or legal representation present.**

The VPD recognizes a victim's right to choose whether to report a crime or make a statement to the police. When a victim chooses to report a crime and make a statement, it is best practice for the police to obtain a video and audio recorded statement at the police station. A victim may choose not to provide a statement to police and report the incident anonymously through a third party. The VPD currently accepts third party reports of sexual offences through victim advocacy groups.

The VPD recognizes the impact of trauma on a victim and prioritizes the training and application of trauma informed investigations. Victim support persons have an important role in supporting a victim through the reporting of an assault and police investigation. It is common for victim support workers to be present during victim interviews. In fact, knowing the positive impact this can have, a proposal to integrate a victim support worker into the Sex Crimes Unit is currently being reviewed through Provincial funding processes.

Victims of sexual assault who attend Vancouver General Hospital for medical examination by the Vancouver Coastal Health Sexual Assault Services routinely meet with representatives of Women Against Violence Against Women (WAVAW), prior to leaving the hospital. In many cases, a WAVAW support person will accompany the victim to the police station for the interview. Special Investigation Section investigators have frequent contact with victim advocacy and support workers from organizations such as Rape Relief, WAVAW, and Ending Violence Association of BC and work collaboratively with these organizations to address victims' concerns.

In this particular incident, a Family Services of Greater Vancouver victim support counsellor, imbedded within the Section, provided support to the complainant prior to the initial interview and after the interview. The counsellor continued to provide support to the complainant long after the investigation was concluded. This counselling was organized and facilitated by the VPD.

It is very rare for a victim to request to have legal representation present during a police interview. There is no legal requirement for any person, including a suspect, to have legal representation present during a police interview; nonetheless, the VPD would always consider a victim's request to have legal representation present during a police interview.

**CONCLUSION:**

This is a Service or Policy Complaint stemming from a November 2016 incident. This report provided information about legal requirements and best practices that guide police when gathering evidence, obtaining statements, and assessing and recommending charge approval.

The concerns outlined in this complaint appear to be based on victim trauma. As mentioned above, the VPD prioritizes the training and application of trauma informed, evidence led investigations. In the past few years Sex Crime Unit investigators have been vigorously educated on methods to recognize and alleviate trauma during interviews to determine best evidence. The concerns brought forward in this complaint are not legally feasible, but more importantly, are not consistent with trauma informed training practices. As such, the VPD recommends that the Committee dismiss the complaint with reasons.

Author: S/Sgt. Shaun Deans Telephone: 604-717-3251 Date March 19, 2019

Submitting Executive Member:

Deputy Laurence Rankin Date: April 2, 2019