



VANCOUVER POLICE DEPARTMENT

REPORT TO THE VANCOUVER POLICE BOARD

REPORT DATE: August 11, 2020
COMMITTEE MEETING DATE: September 17, 2020
BOARD REPORT # 2006R01 (orig.)/2009R01
Regular

TO: Vancouver Police Board Service and Policy Complaint Review Committee
FROM: Superintendent Michelle Davey
SUBJECT: Response to a recommendation for follow up by the OPCC to Service or Policy Complaint #2019-015: Hate Speech

RECOMMENDATION:

THAT the Vancouver Police Board approves this report as its response to the Office of the Police Complaint Commissioner with respect to the recommendations made by the OPCC as a follow up to Service or Policy Complaint #2019-16777/2019-015.

SUMMARY:

The British Columbia Community Alliance (BCCA) sent a letter of complaint, dated August 27th, 2019, to several recipients, including the Vancouver Police Department (VPD), the Vancouver Police Board (VPB), the Office of the Police Complaint Commissioner (OPCC), the Vancouver School Board (VSB), and the City of Vancouver. The complaint described concerns regarding the “handling of a racist hate crime, by a Lord Byng Secondary School student, targeting black students and community members in November 2018.” The concerns alleged that authorities failed to respond appropriately to both the allegation and to protect the community from future harm and incidents of racism. This complaint was investigated and on February 20th, 2020 the VPB’s Service and Policy Complaint Review Committee concluded its review and sent notice with reasons to the OPCC and the BCCA. On May 6th, 2020, the VPB received a letter from the OPCC requesting further clarification on the use of extrajudicial measures in this incident, specifically whether the extrajudicial measures or sanctions involved use of a program.

In summary, the incident in question involved the dissemination of a video made by a student at Lord Byng Secondary School, in which he expressed racist comments against the black community, as well as a desire to harm members of the black community. The threats were not directed towards any named member(s) of the black community. The School Liaison Officer (SLO) conducted a criminal investigation alongside a concurrent VSB internal investigation. At the conclusion of the investigation, police determined that criminal charges would not be forwarded to Crown Counsel for consideration. Corrective measures were instead imposed by both police and the VSB, giving consideration to the *Youth Criminal Justice Act’s* (YCJA) guiding principles on the use of extrajudicial measures. The School Board’s response was also governed by a range of statutory provisions, including section 76 of the *School Act*, which requires that the discipline of a student be similar to that which would be imposed by a kind, firm and judicious parent, and section 79 of that Act, which requires the Board to protect the privacy of student records, and of

students and their families, and the *Freedom of Information and Protection of Privacy Act*.

The OPCC specifically asked in their follow up correspondence what “VPD policies or programs under the YCJA were engaged.” As corrective measures were used and not sanctions, under the YCJA there is no need to refer the youth to a specific program. In the original report, an exhaustive list of corrective measures was not reported, giving consideration to the privacy interests of the youth in this matter. There were a series of police-imposed corrective measures, such as weekly meetings with the SLO, a plan for reparations with the affected community, an apology and counselling. Other corrective measures were imposed by the VSB, such as an immediate suspension for five days, a transfer to another school among others. It is important to note that the youth was held accountable for his actions, and it is understandable that the community affected by his actions should be afforded assurances that this has taken place. However, this matter involves balancing the privacy rights of a youth with the public’s right to access to information. After significant consultation with VSB lawyers and staff, and with the permission of the youth’s parents, the corrective measures noted in this report are disclosed to try to give the community sufficient information as to how the youth was held accountable. The list is not exhaustive, as again, the youth is afforded privacy rights with respect to specific measures, which would not be visible to the general community. The VPD and VSB must tailor their response to the individual student. By their very nature, disclosing some of these measures would violate core privacy rights of the student.

The VPD took this matter seriously, investigated it thoroughly, and in compliance with the YCJA, achieved a resolution that fostered “responsibility and ensured accountability through meaningful consequences and effective rehabilitation and integration.”¹ The question posed by the OPCC has been addressed and the VPD recommends that the VPB accept this follow-up report and conclude its review based on the information outlined in this report.

DISCUSSION:

In November of 2018, a student at Lord Byng Secondary School produced a video that was racist in tone, using hateful language and contained a general threat against members of the black community. He sent the video to a friend of his, who subsequently shared the video via the social media platform Snapchat. Students who received this video subsequently showed it to their parents, who then brought it to the attention of school officials. The school administration notified the VPD School Liaison Officer (SLO) immediately. The student was identified and a criminal investigation, concurrent with a VSB internal investigation, was initiated.

The SLO determined that in this case, it was not appropriate to forward charges to Crown Counsel. Instead, corrective measures were imposed as per the principles of the use of extrajudicial measures in the YCJA. The student was transferred to another school and the matter was concluded. A complaint was filed with the OPCC, and shared with other entities including the city of Vancouver, VPD, and the VSB. A service or policy complaint investigation was directed to the VPB by the OPCC. The matter was investigated and a report was presented to the VPB on February 20th, 2020. The VPB concluded the investigation and sent notice of this conclusion, with reasons, to the OPCC. On May 6th, 2020, the OPCC sent a notice to the VPB requesting additional information about the investigation.

The OPCC noted in this letter specifically the importance of the use of police discretion relative to criminal conduct of youths, and accepts it is contemplated by the principles espoused by the YCJA. Thus, the SLO’s use of discretion in this matter is not at issue. The OPCC sought clarification on whether “a program established under the YCJA or a specific program of the VPD” was used as part of the extrajudicial sanctions imposed. For clarification, corrective measures

¹ <https://laws-lois.justice.gc.ca/eng/acts/y-1.5/page-1.html>

were employed, and not sanctions, as per the definition under the YCJA, thus the OPCC's question becomes inconsequential as it applies to the conditions under which sanctions are imposed and not corrective measures. The SLO assessed the totality of the circumstances, in this specific case, and determined a course of action that would espouse the principles of the YCJA. Of note, the youth had no prior incidents with school administration or police and was an otherwise exemplary student. The SLO confronted the youth about the video and the youth immediately claimed responsibility for his actions, offered to make amends through a letter of apology and meet with affected students. Numerous attempts made by the VSB to facilitate this apology and initiate a restorative justice-based interaction with the affected members of the community were declined. The youth was suspended for five days, but required to stay home an additional 20 days while the VSB established re-entry arrangements. He was transferred to a different school and directed to meet with the SLO weekly. He attended weekly counselling for many months. Part of his corrective measures included creating a self-education plan that was reviewed and approved by the SLO. There were other actions taken by the student that satisfied the SLO that appropriate corrective measures were imposed in this case, but cannot be disclosed to protect the privacy of the youth, in accordance with the provisions of the *School Act* and *Freedom of Information and Protection of Privacy Act*.

It was the opinion of the SLO that the youth understood and took responsibility for the gravity of his actions. In the absence of formal programs, the youth learned about how his actions affected others through counselling and self-directed cultural education, which involved travelling to the United States and living with a person of colour for two weeks. Some of the measures noted above would have been imposed on him had he had not offered to undertake the initiatives himself. The students at Byng were protected in that the youth was transferred to a different school and closely monitored by school staff, the SLO and his parents. The VSB imposed additional corrective measures, which are outside the purview of the VPD to share.

CONCLUSION:

It is not disputed that the student in this matter produced a video that contained racist, hateful and threatening language targeting the black community. This video was shared via social media and was brought to the attention of school officials and ultimately the police. A criminal investigation occurred, and it was determined, as per the YCJA, that extrajudicial measures were appropriate to hold the student accountable in this case, thus charges were not recommended to Crown Counsel. The student had corrective measures employed by both the VPD and the VSB, and was transferred to another school. A complaint was filed with the OPCC by the BCCA, who took issue with charges not being recommended to Crown Counsel. The criminal investigation was reviewed by a senior, experienced investigator in the VPD and it was determined that the appropriate outcome was reached in this case.

Further information was requested by the OPCC to clarify whether the youth participated in any program that may assist in his education and hold him accountable for his actions. This would apply if sanctions were imposed but instead, corrective measures were used to hold the youth accountable. It is the VPD's opinion that this matter has been thoroughly investigated and appropriate corrective measures imposed. As such, the VPD recommends that the VPB accept this response for additional information and conclude its review of the complaint based on the information outlined in this report.

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Submitting Executive Member:

Deputy Chief Laurence Rankin

Date: August 12, 2020