



VANCOUVER POLICE DEPARTMENT

REPORT TO THE VANCOUVER POLICE BOARD

REPORT DATE: December 18, 2020
BOARD MEETING DATE: January 21, 2021
BOARD REPORT # 2101C01

Regular

TO: **Vancouver Police Board Service and Policy Complaint Review Committee**

FROM: James Flewelling, Inspector, Professional Standards Section

SUBJECT: Service or Policy Complaints #2020-18 and #2020-19 re: 'Street Preachers'

RECOMMENDATION:

THAT the Vancouver Police Board Service and Policy Complaint Review Committee (Committee) concludes its review of the complaint based on information outlined in this report.

SUMMARY:

On October 1st, 2020, the Vancouver Police Board (VPB) received Service or Policy Complaints regarding the Vancouver Police Department's (VPD) response to complaints of so-called 'street preachers' who are alleged to have broadcast hate speech of a homophobic/transphobic nature over the summer months of 2020. For the purposes of this report 'street preachers' refers to persons verbally expressing views of a religious nature in a public venue, often from an amplified device. The complaints alleged general lack of enforcement by the VPD, ill-prepared handling of a large 'street preacher' incident on August 31st, 2020, and a lack of understanding of the relevant hate laws.

During the timeframe outlined by the complainants, the VPD received 13 Calls for Service (CFS) directly attributed to complaints regarding street preachers, 10 of which the VPD investigated.¹ These calls included an assault that occurred on Aug 22nd. Of those CFS, VPD members curtailed street preacher activities on seven occasions. Following the August 22nd assault, consultations occurred that involved investigators from VPD's Hate Crimes Unit, Major Crimes Section, as well as the VPD Operations Legal Advisor. These experts concluded that none of the alleged actions by the street preachers constituted a violation of Criminal Code laws concerning hate speech or promoting hate. All reports regarding street preachers continue to be reviewed by the VPD's Hate Crimes investigators. The group also concluded that consideration of any enforcement using by-laws or other lesser offences should be balanced against the VPD's obligation to protect Section 2(b) of the *Canadian Charter of Rights and Freedoms (Charter)*. A guidance document on the above was distributed to all front-line VPD personnel who continue to address incidents of street preacher activity. As such, the VPD recommends that the VPB conclude its review of the complaint based on the information outlined in this report.

¹ Total calls for service determined by a combination of PRIME records cross-checked with call types in the relevant geographic areas between June 1st and October 1st and compared with information from the complainant's statement.

REFERENCES:

VPD Regulations and Procedures Manual (RPM) 1.6.51 Bias, Prejudice and Hate Incidents - General Policy and Procedure
VPD RPM 1.6.27 Noise Control By-law - General Policy and Procedure
VPD RPM 1.7.5 Crowd Control
VPD Public Demonstration Guidelines
<https://vancouver.ca/police/assets/pdf/reports-policies/public-demonstration-guidelines.pdf>
Canadian Charter of Rights and Freedoms – Section 2(b), Freedom of expression

BACKGROUND:

On October 1st, 2020, the VPB received two Service or Policy Complaints regarding the VPD's response to street preachers, alleged to have broadcast homophobic hate speech between June 1st and October 1st 2020. As both complainants were expressing very similar concerns it was ordered that both be combined and investigated together (OPCC File No. 2020-18615). It is acknowledged that much of the material expressed by the street preachers has proven particularly offensive to the 2SLGBTQ+ community. Collectively, the complainants allege inaction by VPD officers in response to complaints involving street preachers and lack of understanding by VPD members of relevant criminal code offences related to hate crimes and the CoV's Noise By-Laws. The allegations include:

1. *“General inaction (by the VPD) this past summer to street preachers in the West End.”*
2. *“Lack of understanding by those in power in the VPD and City of Vancouver about the definition of hate speech and the need to shut down these preachers using police enforcement through bylaw tickets or criminal charges.”*
3. *“Police response (to the Sunset Beach demonstration Aug 31, 2020) was ill-planned and ill-executed.”*
4. *“VPD response was so ineffective that it emboldened Mr. Love to continue and even become more extreme.”*
5. *“VPD failures to enforce the Criminal Code, section 175 (1) when Mr. Love insulted members of the public.”*
6. *“VPD failure to keep Mr. Love out of the gay portion of the West End while he has been released pending trial.”*

One of the complainants also filed a (third party) conduct complaint that falls outside the scope of this report. Allegations of misconduct into individual officers are investigated by the VPD's Professional Standards Section and their processes are legislated by the *Police Act* and overseen by the OPCC.

Additionally, one of the complainants cited concerns that are beyond the purview of the VPD to address. These include:

7. *“The need to change the Criminal Code, section 175 (1) to make it illegal to insult someone of a minority status.”*
8. *“Need to change noise by-laws and responsibility for their enforcement.”*

One of the incidents involved the confrontation between Mr. Dorre Love and a citizen who was injured during the altercation (August 22nd aggravated assault G.O. 20-149239). This matter is currently before the BC Provincial Court and cannot be commented on in this report beyond confirming that Mr. Dorre Love was subsequently charged with one count of aggravated assault contrary to Section 268(1) of the Criminal Code.

DISCUSSION:

This portion of the report will respond to the complainant's allegations (as listed above):

1. *“General inaction (by the VPD) this past summer to street preachers in the West End.”*

The VPD acknowledges that both complainants were unsatisfied with the level of service and or remedies provided by the VPD to address the street preachers. An extensive review of calls for service relating to street preachers was conducted. Between June 1st and October 1st 2020, there were 13 calls for service involving street preaching. These include the August 22nd assault as well as events on August 31st involving David Lynn that culminated in the Sunset Beach incident (described further in the report under complaint number 3). These incidents have been cross-referenced with incidents recounted in the complainant's statements. Several calls for service also appear to correspond to events depicted in on-line videos referenced in the complainant's statements. Of the 13 calls for service VPD members responded to or investigated 10. Three of the calls for service had no information attached to the computer aided dispatched (CAD). It is not clear why, but this can sometimes happen if the call is dispatched in error or if responding units were diverted to higher priority calls without that change being recorded in the call.

Of the 10 calls for service (CFS) that VPD members were able to investigate:

- Seven resulted in intervention by VPD to either curtail or stop behavior by the street preachers that was unlawful or that had the potential to breach the peace, and where clear lawful authority existed
- Two of those seven calls resulted in arrests of street preachers (specifically Mr. Dorre Love who was arrested for Breach of the Peace on July 12th, 2020, and on August 22nd, 2020 when Mr. Love was arrested and charged with aggravated assault)
- Two of the 10 CFS were determined to be unfounded or action not lawfully warranted
- One of the 10 CFS refers to the collective events involving Mr. David Lynn on August 31st

2. *“Lack of understanding by those in power in the VPD and City of Vancouver about the definition of hate speech and the need to shut down these preachers using police enforcement through bylaw tickets or criminal charges.”*

This aspect of the complaint will be addressed in two parts: first, the issue of a perceived lack of understanding of hate speech, and; second, the assertion that VPD officers should have enforced the COV Noise By-Law in order to stop the street preachers.

Material attributed to the street preachers has caused offence and emotional stress to many citizens and specifically to the 2SLGBTQ+ community. A review of all General Occurrence (G.O.) reports relating to street preachers shows that in each case where an allegation of hate speech was indicated, the file was flagged for review by VPD Hate Crimes investigators in accordance with VPD RPM section 1.6.51 *Bias, Prejudice and Hate Incidents*. VPD Hate Crimes investigators work within the Diversity, Inclusion & Indigenous Relations Section (DIIRS) and specialize in Canada's hate laws, including hate speech outlined in Sections 319 (1) of the *Criminal Code (CC)*, *Public Incitement of Hatred* and Section 319(2) *CC, Wilfully Promoting Hate*. Following the August 22nd assault, a VPD meeting was convened to review incidents and practices related to street preachers. This meeting included DIIRS-Hate Crimes investigators, Major Crimes Section investigators, District One management, Public Affairs, Public Order Unit, and the VPD Operations Legal Advisor. There was no evidence of any material in the street preacher incidents to date (including the August 22nd assault) that qualified as a violation of *Section 319 (1) CC (hate*

speech) or Section 319(2) CC (promoting hate). The attendees of that meeting agreed that continued vigilance for such offences would be prudent and that providing additional guidance to frontline personnel was recommended. On August 29th a five-page guidance document was drafted and distributed to all front-line VPD personnel. The document provided background information on street preacher incidents, guidelines for enforcement, and relevant criminal code offences including those specific to hate crimes.

It has been suggested by both complainants that the VPD should have used the CoV Noise Control by-law to ticket and “shut down” the preachers. There are a number of issues to consider with regard to enforcement using CoV Noise by-laws. First, is that the noise control by-law (6555) does not allow a power of arrest. Any enforcement action following advice to the subject of complaint would start with issuing a Notice of By-Law Violation (NBV). Police would need to establish additional significant public interest concerns as well as reasonable and probable grounds before exercising powers of arrest under any relevant criminal code sections.

In August 2020, District One management and the CoV By-law Prosecutor's Office discussed the use of CoV By-laws to reduce amplified noise in public spaces. This meeting was in relation to a rash of illegal busking complaints during the same time period as the street preachers. The CoV By-law Prosecutor's Office acknowledged that the existing by-laws required updating in order to provide more enforcement options in response to an array of different noise complaints. With this in mind, both the VPD Operations Legal Advisor and the VPD Public Order Unit cautioned VPD personnel against attempting to enforce By-laws in situations involving demonstrations, freedom of speech, and or freedom of religious expression.

The VPD monitors or resources more than 200 planned protests and several hundred more demonstrations and disturbances involving similar acts of public expression each year. In most of these events, persons exercising their right to freedom of expression, including freedom of speech (as protected under *Section 2(b) of the Charter*) often end up in violation of ‘minor laws’ including by-laws and Provincial Acts. VPD members are often in the position of having to balance consideration of the protection of individuals and groups exercising their rights under the *Charter* against the impact that expression may have on other members of the public, including instances of excessive noise. In the enforcement of law it is expected that police will be fair and consistent. Where VPD officers have received complaints of demonstrations interfering with the public's enjoyment of public spaces, officers have consistently resolved the complaints without infringing on core democratic and constitutionally protected Canadian values such as those protected by *Section 2(b) of the Charter*. Moreover, the British Columbia Criminal Justice Branch *Crown Counsel Policy Manual* states:

*“Acts of civil disobedience, including conduct involving public demonstrations, may come into conflict with the law and obstruct or interfere with the rights of others. The use of criminal sanctions in these situations may not always be in the public interest.”*²

The practice employed by the VPD in such instances has been to seek voluntary compliance before resorting to enforcement. In four of the incidents involving complaints about street preachers, and where members dealt directly with Mr. Love and his associates and asked them to turn down the volume of amplified equipment, Mr. Love and his group were found to be compliant with such direction.

² <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/civ-1.pdf>

3. *“Police response (to the Sunset Beach demonstration Aug 31, 2020) was ill-planned and ill-executed.”*

On August 31st street preacher Mr. David Lynn arrived in Vancouver as part of a series of appearances planned for Vancouver and other Canadian cities. On this date, Mr. Lynn appeared in a number of Vancouver locations, starting with the intersection of Commercial and Broadway Ave where he immediately drew numerous counter-demonstrators. VPD personnel, already assigned to another demonstration, were redeployed to keep the peace at this location. Mr. Lynn moved two more times finally arriving at Sunset Beach for a series of planned baptisms in English Bay. It is important to note that upon arriving at Sunset Beach, Mr. Lynn was observed to be engaging in baptism ceremonies and reportedly did not engage the public in sermon or broadcasts. A large crowd of counter demonstrators, numbering approximately 300, assembled and encircled Mr. Lynn’s group. A sizeable contingent of VPD officers was assembled to manage expected crowds.

VPD personnel formed a perimeter around Mr. Lynn and his group in an effort to keep the groups separate and allow the religious ceremony to proceed as is required under Section 2(b) of the Charter. It must be remembered that the VPD has a responsibility to protect all involved in such situations, regardless of their personal views or feelings.

4. *“VPD response was so ineffective that it emboldened Mr. Love to continue and even become more extreme.”*

It is unclear if this allegation is referring to Mr. Love’s actions prior to or after the August 22nd assault. It is also unclear as to which alleged actions by Mr. Love were “*extreme*”. According to VPD records there were six street preaching complaints involving Mr. Love prior to the August 22nd assault. There is only one VPD General Occurrence report involving Mr. Love after Aug 22nd (and falling within the complaint timeframe). In five of the six instances prior to the Aug 22nd assault, VPD officers intervened in street preaching incidents which included an arrest (and subsequent release) of Mr. Love for Breach of the Peace. The August 22nd assault incident is before the courts and cannot be discussed in this report. The incident following August 22nd was a report which is discussed later in this report.

5. *“VPD failures to enforce the Criminal Code, section 175 (1) when Mr. Love insulted members of the public.”*

VPD officers did not arrest Mr. Love for Sec 175 (1) *Cause Disturbance in a Public Place*. The complainant refers to several incidents including events depicted in a YouTube post, dated July 14th, entitled *Street Preacher arrested at the Beach*. This is believed to be depicting events that occurred on July 12th at or near the intersection of Denman and Davie St. On this occasion Mr. Love was arrested for Breach of the Peace, removed from the area, and released. Section 31(1) of the Criminal Code (Breach of the Peace) empowers police to arrest an individual or individuals in order to stop a breach of the peace, and release at a later time without charge when the breach of the peace has abated.

All police officers in Canada (including VPD officers) are, at common law, afforded a latitude of discretion when enforcing the law. This entails a duty to enforce the law, but the authority not to charge in any particular case. This is particularly important in the context of dealing with demonstrations and similar incidents. The overarching police duty, is to protect the public and to keep the peace. It has been the practice of VPD officers who are dealing with such matters to

give primary consideration to Section 2(b) of the *Charter* rather than the pursuit of criminal code charges where no injury or damage to property has taken place or is not imminent. It should be noted that efforts by members of the Toronto Police Service to respond to street preacher David Lynn in 2019 by way of by-law enforcement and arrest for causing a disturbance (Sec. 175(1) CC) resulted in a stay of criminal charges and reported criticism of the enforcement action taken by police. Nor did such action prevent Mr. Lynn and his followers from engaging in further street preaching.

6. *“VPD failure to keep Mr. Love out of the gay portion of the West End while he has been released pending trial.”*

The complainant is referring to the area restriction that was imposed as a condition of Mr. Love’s release following the August 22nd assault. On September 9th, 2020, a complaint was received by the VPD alleging that Mr. Love had violated his area restriction. The complaint was based solely on YouTube footage depicting Mr. Love preaching in the West End in what would be within his area restriction. An investigation determined that the YouTube footage depicted events which actually occurred on July 12th (prior to the imposition of the area restriction). The VPD received no additional complaints alleging that Mr. Love had violated his release conditions.

CONCLUSION:

It is acknowledged that the complainants were not satisfied with the manner in which the VPD dealt with the ‘street preachers’ and in particular Mr. Dorre Love and Mr. David Lynn. The common themes are lack of action, lack of enforcement, and lack of understanding of relevant criminal offences and city by-laws. However, in all confirmed incidents VPD attended, investigated, kept the peace, and took necessary enforcement action to maintain the peace and protect the public.

In relation to the alleged “lack of understanding” regarding the definition of hate speech, all of the files involving Mr. Love and street preachers were reviewed by VPD Hate Crimes investigators who concluded (based on the available evidence) that neither the street preacher’s words or actions met the threshold required by law to charge Mr. Love, Mr. Lynn, or their associates with inciting hate. These conclusions were further supported by the VPD Operations Legal Advisor. As VPD officers and legal experts are well aware, Canadian laws are seldom about absolutes but rather more about just and appropriate application in the totality of the circumstances. There are no laws in Canada that police can (or should) exercise to prevent a person from expressing their constitutionally protected opinions or views. This protection includes religious and any other opinions even where such views are widely unpopular, distasteful, or even offensive in nature, as long as they do not incite hate or violent behaviour.

Canadian law protects a party’s lawful freedom of expression even where that expression incites others to wrongfully breach the peace because they find the content objectionable. To date none of these street preachers have been successfully charged and convicted under Canada’s hate laws. Attempted enforcement of municipal by-laws, and other laws relating to maintenance of peace and order by police in other jurisdictions has failed to stop or deter street preaching. The VPD was cognizant of this fact when dealing with Mr. Love, Mr. Lynn and the other street preachers. It was reasonable for the VPD to conclude that the suggested remedies would not only have been ineffective at curbing street preaching but would likely have placed VPD officers in direct conflict with larger considerations of constitutionally protected *Charter* rights.

The VPD recognizes the frustration felt by the complainants and acknowledges the historic and on-going discrimination many in the 2SLGBTQ+ community have experienced and continue to experience. The VPD does not support words or actions of a discriminatory or divisive nature and strives to support inclusiveness in its daily practices. Having said this, the VPD, like all police in Canada, is expected to enforce the law in a fair, consistent, and impartial fashion and with particular observance of the *Charter*. As such, the VPD recommends that the Committee conclude its review of the complaint based on the information outlined in the report.

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Submitting Executive Member:

DCC Howard Chow Date: January 5, 2021