



VANCOUVER POLICE DEPARTMENT

REPORT TO THE VANCOUVER POLICE BOARD

REPORT DATE: February 8, 2021

COMMITTEE MEETING DATE: February 18, 2021

BOARD REPORT # 2102C02

Regular

TO: Vancouver Police Board Service and Policy Complaint Review Committee

FROM: Inspector Alison Laurin #2437 – Operations Division / Court and Detention Services Section

SUBJECT: Service or Policy Complaint #2020-023 Police enforcement action against marijuana distribution from a van on East Hastings Street

RECOMMENDATION

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

SUMMARY:

On November 16, 2020, the Office of the Police Complaint Commissioner (OPCC) received a complaint from a third party outlining concerns related to the Vancouver Police Department's priorities. The complainant advised that he viewed a video which showed the recreational vehicle of the advocate and owner/operator of the Cannabis Substitution Project (who is herein referred to as the Primary Operator) being 'raided' by the Vancouver Police Department (VPD). The complainant questioned VPD's priorities in conducting this 'raid' when there are more pressing issues happening in the Vancouver area.

The police response refers to an incident that occurred on November 14, 2020. Members of the Vancouver Police Department (VPD) seized bulk cannabis being sold from an RV parked on East Cordova Street near Main Street. The distribution of illicit cannabis without a license is contrary to section 9(1) and section 10 of the federal *Cannabis Act*. The RV was advertising cannabis sales as part of a self-described compassionate cannabis substitution program run by the Serious Hope Society (herein referred to as "the Program"). In addition to contravening the *Cannabis Act*, there is no mechanism for the City of Vancouver (CoV) to licence a vehicle to legally operate as a cannabis retail outlet.

One of the duties of police defined under common law is to enforce the law. In addition, Section 34 (2) of the *BC Police Act*, describes the duties of a municipal police department and includes

the duty to enforce, in the municipality, municipal bylaws, the criminal law, and the laws of British Columbia.

The Primary Operator, was aware, based on a recent BC Supreme Court case decision against the Program dated October 23, 2020 of the multiple federal, provincial, and municipal laws and regulations that the Program's operation contravened while operating out of a leased premise at 157 East Cordova Street during the summer of 2020. He had also been warned, by the City of Vancouver (CoV) of the licensing and permits required to continue to operate legally at 157 East Cordova Street. In choosing to continue the illegal distribution of cannabis from an RV parked adjacent to that premise, the Program was not only violating those statutes but also additional CoV Street and Bylaw regulations.

The police intervention was conducted as part of routine policing operations in the Downtown Eastside (DTES) based on the multiple laws being contravened. The VPD will continue to enforce the *Cannabis Act*, the *Cannabis Control and Licensing Act*, and related municipal bylaws and licensing regulations. As this report indicates, this is consistent with the approach of the CoV licensing department and the BC Supreme Court's view on the operations of this Program.

The VPD recommends that the Committee conclude its review based on the information outlined in this report.

BACKGROUND:

On November 14, 2020, the complainant submitted an online complaint to the Office of the Police Complaint Commissioner. He had viewed a video on Facebook in the Group "the Cannabis Substitution Project" which showed the advocate and owner/operator of the Cannabis Substitution Project, the Primary Operator's van, being "raided" by the VPD. He wrote that the Primary Operator has been advocating to get people off of opioids for the last four years. Given the current opioid crisis, he did not feel that now was the time for police to be conducting enforcement against the Project and questioned why this was a priority for the VPD.

On November 13, 2020, an officer noted that a Chevy Camper van (the RV) was parked near East Cordova Street and Main Street with two pop-up 10 x 10 canopies blocking the entire sidewalk space and customers attending a vending window open to the sidewalk. He observed signs on the van advertising cannabis compassion. On November 14, 2020 at 2:40 p.m., he observed the van again in the same location with one pop-up canopy and the same signage. He observed bulk cannabis and a mobile dispensing unit with scales, baggies, and containers in plain view and confirmed that the two men inside were selling cannabis, hash, oils and cannabis edibles from the vending window. The two men provided the name of the Primary Operator and phoned him to attend.

Upon arrival, the Primary Operator claimed to have support of many people including City Council and presented three picture-framed letters that he had written to police. The officers determined that no business or vending permits were in place. The officers seized the obvious bulk cannabis product and left the edibles of unknown content, cash, and related materials. The officers used their discretion and chose not to forward criminal charges or serve bylaw tickets. They advised the Primary Operator of the consequences of continuing the illegal activity and had him move the RV or face impoundment. The Primary Operator agreed to remove the RV and the canopies to avoid impound.

For context, the officers are both assigned to the VPD's Street Vending team. The events described above were not part of a pre-planned or coordinated "raid" but rather part of the daily activities of police in the DTES enforcing criminal and civil laws. It is also noteworthy that there are three legal licensed locations selling cannabis within less than 2 kilometres, with the closest being 700 meters from 157 East Cordova Street at 231 Abbott Street.

Cannabis Substitution Project: The Healing Wave and the Serious Hope Society

The Primary Operator's Cannabis Substitution Project has been active in the Vancouver area for several years in different forms. The following summary is based on the Reasons for Judgement of BC Supreme Court Justice Andrew Majawa from his ruling on October 23, 2020 [BC Supreme Court file VLC-S-S-209368]. From June 2020 to August 2020, the Program operated out of a leased building at 157 East Cordova Street. The Primary Operator is the operator, with others, of a project called The Healing Wave. The Healing Wave provides space to a registered non-profit society called the Serious Hope Society that runs the Program. The Primary Operator deposed that the Program provides high-potency cannabis at reduced cost to individuals with substance use issues that are unable to access legal sources of medical cannabis. The challenges faced in accessing a legal source are apparently partly to do with the clientele's homeless status or lack of means of computers, phones, or other digital communication. Prior to June 2020, the Program operated out of the Vancouver Area Network for Drug Users for three and half years.



Figure 1. Cannabis Substitution Program Recreational Vehicle parked in contravention of the 3-hour parking limit with canopy on public sidewalk on November 14, 2020 conducting illegal distribution of illicit cannabis [Source: G.O. 2020-200766].



Figure 2. Cash till inside the Cannabis Substitution Project showing evidence of illicit cannabis distribution on November 14, 2020 [Source: G.O. 2020-200766].

Applicable Laws and BC Supreme Court Ruling dated October 23, 2020 against the Program

In his ruling, Justice Majawa ordered the Program to vacate the facility at 157 East Cordova Street noting that in order to legally operate the Program from the premise, they must:

- Apply to the CoV for a municipal development permit;
- Apply to the CoV for a variance to current zoning restrictions to make an exception to the zoning on the grounds of hardship;
- Obtain a licence from Health Canada [federal] to sell cannabis for medical purposes pursuant to the *Cannabis Act*, S.C. 2018, c. 16;
- Obtain exemptions from Health Canada in order to provide medical cannabis from a storefront;
- Obtain exemptions from Health Canada in order to provide cannabis with a level of THC that is currently in excess of those permitted by federal regulations;
- The cannabis suppliers to the Program, who are not currently authorized to produce cannabis under federal legislation, would also need to transition into the legal market.

Justice Majawa declined to provide the requested lease extension of 6 months for the Program because the Healing Wave had not, in the Court's opinion, advised the building owner at 157 East Cordova of their intent to knowingly run an illegal cannabis storefront. This placed the owner at risk of fines from City Licencing. Per Justice Majawa's ruling, the CoV in a letter to the Healing Wave's counsel dated September 18, 2020, stated that they are taking strict enforcement action against all cannabis storefronts operating without a valid permit.

In summary, based on Justice Majawa's ruling, the Primary Operator is aware that the Program's operations, even when contained in a storefront, are not compliant with federal or municipal laws and regulations. For police, the most relevant being s. 9(1) of the *Cannabis Act* which states "*Unless authorized under this Act, it is prohibited for an individual who is 18 years of age or older to distribute cannabis of one of more classes of cannabis the total amount of which is equivalent, as determined in accordance with Schedule 3 to more than 30 g of dried cannabis or...to distribute cannabis that they know is illicit cannabis*". It is also prohibited to possess cannabis for the purpose of distributing it. Additionally, all cannabis retail stores selling non-medical cannabis require a Provincial license to operate in Vancouver which is regulated and enforced by the BC Liquor and Cannabis Regulation Branch under the provincial *Cannabis Control and Licensing Act (CCLA)*. Section 101 of the *CCLA* provides peace officers with seizure powers for cannabis found in plain view if the officer has reasonable grounds to believe it is possessed in contravention of the Act and section 81 specifically prohibits an adult from operating a vehicle, whether or not the vehicle is in motion, if there is cannabis in the vehicle. The CoV distinguishes between retail dealer business licenses and those provided to Compassion clubs that "don't sell cannabis" but advocate its use for medical purposes. Based on the evidence observed by VPD members, the Program was selling cannabis.

Mobile RV Operations of the Program: Relevant Bylaws

Continuing to operate the Program from a mobile RV situated directly outside of 157 East Cordova Street, contravened all of the laws noted by the Court above, and, based on the manner of operation, also contravened the CoV Street and Traffic By-law No. 2849 in several respects. Under section 66 of this bylaw, it is not permissible to place property on sidewalks, including the canopies utilized by the Program, or to sell merchandise, including food items (edibles) without an appropriate street vending authorization. Under section 20.1, large vehicles, such as RVs and campers, are not permitted to be parked on any street between the hours of 10:00 pm and 6:00 am, and may not be parked longer than three hours between the hours of 6:00 am and 10:00 pm.

On November 17, 2020, a wide range of relevant CoV departments provided a coordinated response to an inquiry from City Councillor Jean Swanson asking if there were options for the CoV to allow the Program to sell marijuana from a mobile shop. The CoV response stated:

- Medical and non-medical cannabis sales are regulated by the federal and provincial governments, respectively;
- To operate a non-medical cannabis store in Vancouver, the operator is required to hold a valid municipal development permit, a provincial licence and a municipal business licence. There is no mechanism for the CoV to licence a vehicle to legally operate as a cannabis retail outlet;
- Staff have been in contact with the operators of the Healing Wave/Cannabis Substitution project and they are aware of the provincial and municipal requirements to apply to operate a legal non-medical cannabis retail store.

CONCLUSION

The VPD will continue to enforce the existing laws pending the relevant decisions of Health Canada and the CoV with respect to appropriate licensing for this Program.

No shortcoming was identified in the level of VPD service or its policies. As such, the VPD is recommending that the Committee conclude its review based on the information outlined in this report.

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Submitting Executive Member:

DCC Howard Chow Date: February 8, 2021

(Signature)