



VANCOUVER POLICE DEPARTMENT

REPORT TO THE VANCOUVER POLICE BOARD

REPORT DATE: 2021-09-01
COMMITTEE MEETING DATE: 2021-09-23
BOARD REPORT # 21 09 C 02

Regular

TO: **Vancouver Police Board Service and Policy Complaint Review Committee**
FROM: Chris Burnham, Sergeant, District 1, Operations Division
SUBJECT: Service or Policy Complaint #2021-009 re: Trespass Prevention Program

RECOMMENDATION:

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

SUMMARY:

This Service or Policy Complaint involves the Trespass Prevention Program (TPP) that is currently in its pilot testing phase in District One and Chinatown in District Two. The program was developed in response to public safety concerns on private property raised by the community. Similar programs from other cities were analysed in its development. The program was designed to serve the needs of all members of the public and align with the strategic plan of the Vancouver Police Department (VPD).

The seven complainants raised the following concerns:

- Discrimination based on social condition and criminalization of poverty;
- The use of police and penal processes for minor and non-harmful intrusions of trespass;
- Police officers acting as authorized persons under the *Trespass Act* is a conflict of interest;
- The lack of policy and procedure related to the TPP; and
- The TPP will lead to an increase in arbitrary and discriminatory street checks.

In the program's first year it has successfully resolved or helped manage issues with violent trespassers and afforded an opportunity to connect trespassers with community services and resources - without having to issue tickets or make arrests. The program complies with the VPD's *Trespass Act* policy and the provincial police stops standards.

As such, it is recommended that the Committee conclude its review of the complaint based on the information outlined in this report.

BACKGROUND:

The TPP was developed as a public-safety initiative to address the increased level of violence and safety concerns regarding trespassers raised by businesses and residents in the downtown business district and West End community.

Businesses and residents complained of violent reactions when dealing with people setting up shelters, using illegal drugs, urinating, defecating, or sitting with their belongings in a manner that interfered with the use and enjoyment of private property. These incidents led many workers and residents to fear for their safety and reluctant to engage or confront the trespassers resulting in calls to non-emergency, 9-1-1, and 3-1-1.

The District One Neighbourhood Police Team (NPT) received daily complaints of the unreported problems that businesses and residents had in dealing with trespassers. They expressed their fear and anxiety in dealing with trespassers and the negative impact that trespassers' behaviours were having on their daily lives and/or businesses.

These interactions usually occurred when businesses attempted to access their workplace, open their business, set up patio areas, operate their business, and access rear refuge and storage areas. Residents experienced these interactions when they were coming and going from their homes; this was especially concerning when their children were exposed to these behaviours.

When confronted, the responses from trespassers ranged from ignoring or refusing to respond, to verbal assaults, spitting, physical assaults, and assaults with weapons. During the TPP's pilot phase, there were 24 incidents that escalated to assaults causing bodily harm or with weapons (knives, pepper spray, tools, needles, physical force, or other objects) on staff members when asking trespassers to leave their property. This number does not include those incidents that escalated into minor assaults, mischiefs, or other criminal offences.

The level of violence to which some trespassers escalate was on full display recently at a convenience store incident. Two trespassers set up with their belongings in front of the business and interfered with customers accessing the entryway. VPD members were in the area tending to another matter and when they approached the trespassers, one of them pulled a machete. Fortunately, police de-escalated the incident, and no one was harmed.

Prior to TPP, the police had limited authority to take proactive steps to address the behaviours of trespassers that were impacting businesses and residents. Police could not address longstanding issues that had previously been brought to their attention without a current request from the occupier¹.

¹ Defined in the *Trespass Act* as a person lawfully entitled to possess the premises or who is responsible for and controls the activities over persons allowed to enter the premises.

TPP was developed to improve the health and safety of all members of the public in Vancouver communities, including business owners, staff, residents, and people who live with housing, addiction and/or mental health issues. The main goals were to enhance public safety and increase engagement with the community.

Trespass programs in Edmonton, Victoria, Ottawa, and Regina and the VPD's Restaurant and Bar Watch programs were researched in the development of the TPP. The VPD's operational legal advisor reviewed the program prior to the start of the pilot.

How Does the TPP Work?

The occupier of private property gives the VPD the authority to act as an authorized person² on their behalf. The VPD does not solicit enrolment in the program. When businesses or residences raise concerns regarding ongoing issues that flow from the activities of some trespasser, the TPP is offered as a tool that a property owner can use to assist in making their premises safer for residents, staff, or anyone using their property. A VPD TPP coordinator would meet with the occupier to discuss the program's scope, benefits, and limitations.

The TPP is intended to deal with trespassers' behaviours such as setting up shelters, using illegal drugs, urinating, defecating, or sitting with their belongings in a manner that interferes with the use and enjoyment of the private property. The TPP is not used as a tool to remove someone seen as an undesirable member of society by a property occupier. For example, someone sitting outside of a business, not interfering with the business and not involved in any illegal or disruptive behaviour, would not be subject to removal by police.

The occupier signs an agreement letter that makes all police officers of the VPD authorized persons for the purpose of enforcing the B.C. *Trespass Act*. Copies of these letters are kept on file and reviewed on an annual basis to confirm the property's participation in the program. The VPD provides 'no trespassing' stickers that can be affixed to the exterior of the private property.

When a police officer observes a trespasser on private property with a TTP sticker, they can take the following proactive steps to deal with any potential issues or public safety concerns that may arise:

- Confirm the property is still registered in the program;
- Confirm the behaviour of the trespasser is within the scope of the TPP;
- Identify themselves to the trespasser and explain that they are authorized to act on behalf of the occupier;
- Educate the trespasser on the TPP and point out the no trespass sticker;
- Explain why their behaviour makes the occupier feel unsafe;
- Offer to connect the trespasser with resources or services that may assist them with housing, addiction, and/or mental health; and
- Request the trespasser leave the property.

² Defined in the *Trespass Act* as someone authorized by an occupier of a premises to exercise a power or perform a duty of the occupier under this Act. A police officer can be an authorized person.

Enforcement actions are only taken as a last resort and may include issuing a ticket, issuing an appearance notice, or arresting them under the *Trespass Act*. The trespasser's name and date of birth are only obtained in the event enforcement action is taken.

The NPT has taken the lead in using the TPP and educating other police officers on its usage. Up until August 31, 2021 – about eleven months into the pilot program – there have been thirty-two police initiated incidents, zero tickets issued, zero arrests made, and four General Occurrence (GO) reports written in relation to the TPP.

POLICY:

The VPD does not have specific policy in relation to the TPP, but RPM section 1.4.8 *Arrest of Persons on Private Property* and the Province of British Columbia *Trespass Act* sections 2 (Trespass prohibited) and 7 (Arrest without warrant) are applicable. Training and reference material was developed and provided to District One operational members.

DISCUSSION:

Since its roll out the TPP has successfully assisted numerous business owners in the Granville Entertainment District and Jim Deva Plaza to reduce or eliminate the safety concerns that gave rise to the TPP's development. The interactions with trespassers have led to connections with housing resources, supervised injections sites, mental health resources, and other community social services. Many trespassers expressed that they did not realize the impact of their actions on businesses or residents.

The VPD has received approximately 100 requests from individuals, businesses, and business improvement associations outside the pilot areas for the expansion of the TPP into their areas because they are struggling to deal with the impact of trespassers' behaviour on their safety and ability to conduct business.

The complaints from members of the public that led to the creation of the TPP were more significant in nature than merely having an undesirable person on private property. These complaints had the potential to be criminal in nature. The TPP does not use police and penal processes to deal with minor or non-harmful intrusions on private property (as described by the complainant); instead, it uses the *Trespass Act* as a tool to prevent more serious criminal offences from occurring namely assaults, mischiefs, and weapons offences.

Given the approach of the TPP, the relevant training, and data produced, there was no evidence that the TPP criminalized the homeless. In fact, the TPP helped facilitate the opposite; it provided the police the opportunity to engage and assist people with housing or other issues, and therefore reduced their risk of harm. In most incidents, the trespassers responded with less violence or threats of violence when confronted by the police. This reduced the risk of a negative interaction between the property occupier and the trespasser reducing the potential for a negative outcome.

The issue of whether officers are in a conflict of interest by acting as an authorized persons has been answered in Canadian case law (*R v Pitot-Flores*), which concluded that a police officer, “fulfilling his role as an agent of the property owner did not constitute an improper expansion of his role”, and as, “a perfectly valid undertaking on the part of police.”³ Another decision (*R v Fraser*) referred to the conduct of the police officer who acted as “delegatee” of the owner or lawful occupier as “reasonable and appropriate.”⁴

The TPP complies with existing policy and procedure regarding the *Trespass Act*. In the case of the TPP, it relies on the letter of agreement as the statement requesting assistance. The only deviation from the procedure is regarding documentation; whereas the TPP does not require documentation in the form of a GO for every encounter, the *Trespass Act* procedure stated that members attending an incident involving a report of a trespasser shall document the incident in a GO report. The TPP diverted from this requirement because doing so could result in the over-representation of marginalized persons in the PRIME system.

During the TPP’s pilot phase, it has become standard practice to not identify a trespasser unless enforcement action is taken (for the purpose of issuing a ticket, releasing on an appearance notice, or arrest) or for providing their name to a service provider (e.g., housing outreach) for follow-up. The training material is being updated to clarify this practice. Computer Automated Dispatch (CAD) calls are created with remarks referencing the TPP every time a police officer acts in relation to the TPP, but no names are added to the CAD system.

CONCLUSION:

It is acknowledged that the complainants were not satisfied with the VPD’s Trespass Prevention Program, however, the police are bound by a duty to prevent crime and work with the community to improve public safety. The intent of the TPP is not to criminalize marginalized members of the community; rather, it seeks to make all members of society feel safer and find common ground so everyone can coexist in the community. While responding to the needs of the occupier of private property, the program does not ignore the social condition of the trespasser.

As such, it is recommended that the Committee conclude its review of the complaint based on the information outlined in the report.

Author: Sergeant Chris Burnham Telephone: 604-717-2645 Date: 2021-09-01

Submitting Executive Member:

Deputy Chief Howard Chow Date: _____

³ *R v Pitot-Flores* (<http://canlii.ca/t/fm70n>, at para 20)

⁴ *R v Fraser* (<http://canlii.ca/t/5f9l>, at para 32))