



VANCOUVER POLICE DEPARTMENT

REPORT TO THE VANCOUVER POLICE BOARD

REPORT DATE: September 28, 2021
COMMITTEE MEETING DATE: October 21, 2021
BOARD REPORT # 2110C04

Regular

TO: Vancouver Police Board Service and Policy Complaint Review Committee
FROM: Drazen Manojlovic, Director, Planning, Research and Audit Section
SUBJECT: Service or Policy Complaint #2021-012 re: Drug Distribution Protest

RECOMMENDATION:

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

SUMMARY:

On July 14, 2021, a City of Vancouver (CoV) Councillor allegedly distributed, what was held-out-to-be, controlled drugs in Vancouver's Downtown Eastside (DTES) during a protest organized by the Vancouver Area Network of Drug Users (VANDU) and the Drug Users Liberation Front (DULF). The drugs were not distributed for profit but were instead intended as harm reduction and safe supply measures. The protest received considerable national media coverage. A member of the public complained to the Office of the Police Complaint Commissioner (OPCC) regarding the Vancouver Police Department's (VPD) response, which resulted in this service or policy complaint.

VPD officers were on scene during the protest and responded according to the VPD's *Public Demonstration Guidelines*, which outlines the police's critical function to maintain public peace. Officers exercised police discretion to maintain order during the protest and did not take any enforcement action (such as arrest). The VPD recognizes the right to protest as supported in the *Canadian Charter of Rights and Freedoms* (the *Charter*). The VPD also recognizes that the right to protest may, at times, collide with the rights of others, thus police discretion to enforce the law is necessary.

The VPD has consistently acknowledged that drug addiction is primarily a health issue, not a criminal justice issue. Accordingly, the VPD has been supportive of a Four Pillars approach to drug addiction issues, which focuses on Prevention, Harm Reduction, Treatment, and Enforcement. While the VPD does not condone drug trafficking and, in fact, does arrest for drug trafficking, it is recognized that the actions of the other protesters were not motivated by profit and were not the actions of organized crime groups, but rather, were grounded in harm reduction and raising awareness to the need for urgent action to the overdose crisis.

Although the VPD did not take any additional enforcement actions in relation to this particular protest, such as making any arrests, that does not preclude any future police actions from being taken in future similar incidents. Given the totality of the circumstances as they relate to this event, including the need to maintain public peace during the protest, officers used their discretion and chose not to take enforcement action. It is recommended that the Committee conclude its review of the complaint based on the information outlined in the report.

BACKGROUND:

On July 14, 2021, a CoV Councillor, along with other individuals, allegedly distributed what was held-out-to-be controlled drugs in the DTES during a protest organized by VANDU and DULF. The controlled drugs were not distributed for profit but were intended as a harm reduction measure. During that time, the CoV Councillor tweeted¹:

“I got to hand out safe drugs today with VANDU and DULF. 6 deaths a day from poison drugs is way too many. 1 is too many. Safe supply now!!”

According to the CoV Councillor’s biography on the City of Vancouver website², she supports:

“Harm reduction, not criminalization....stopping the opioid crisis by providing clean, safe, and free drugs, and culturally appropriate treatment on demand”

During the protest, VPD officers were on scene and responded in a manner consistent with the VPD’s *Public Demonstration Guidelines*³. The primary objective of these guidelines is to outline the critical police function of maintaining public peace. The VPD recognizes the right to protest as guaranteed in the *Charter*. The Charter is one part of the Canadian Constitution – the Constitution is the supreme law of Canada; all other laws, such as (in this specific incident) violations of the *Controlled Drugs and Substances Act* (CDSA) must be consistent with the rules set out in it⁴. Accordingly, the Public Demonstration Guidelines state:

“The VPD recognizes the right to lawful protest, and that at times the rights of demonstrators will collide with the rights of others, thus discretion to enforce the law is necessary and desirable.”

Taking enforcement actions during a protest may incite the crowd and cause greater risk to public safety. As such, police actions are carefully considered on a case-by-case basis and established on the totality of the circumstances. The event concluded without incident.

A member of public, aware of this event, made a service or policy complaint to the OPCC, and the complaint states (in part):

“the police knew about what was going on but didn’t feel the need to arrest her” and “since when have our laws been discretionary?”

¹ <https://www.citynews1130.com/2021/07/14/vancouver-councillor-advocacy-groups-distribute-drugs-to-highlight-toxic-drug-supply-concerns/>

² [https://vancouver.ca/your-government/\[REDACTED\].aspx](https://vancouver.ca/your-government/[REDACTED].aspx)

³ <https://vpd.ca/contact-us/special-event/>

⁴ <https://www.canada.ca/en/canadian-heritage/services/how-rights-protected/guide-canadian-charter-rights-freedoms.html>

DISCUSSION:

The VPD has consistently acknowledged that addiction is primarily a health issue, not a criminal justice issue. Accordingly, the VPD has been supportive of a Four Pillars approach which focusses on Prevention, Harm Reduction, Treatment, and Enforcement. Further, the VPD has been a leader in advocating for the advancement of all the pillars. In May 2017, the VPD released a report titled *The Opioid Crisis: The Need for Treatment on Demand* that publically called for expanded opioid assisted therapy programs and investment in addiction treatment to reduce the harm caused by the opioid crisis.

Moreover, the VPD has been a leader amongst North American police agencies through its recognition that the opioid crisis is predominantly due to a toxic supply of street drugs. Accordingly, the VPD is proud to be the first Canadian police agency to support and advocate for safe supply. In doing so, the VPD recognizes that a medically-led, evidence-based approach is required. The VPD's November 2019 report *A Journey to Hope* provides an overview of the numerous efforts being made by the VPD in response to the opioid crisis.

The VPD has also consistently focused on ensuring that police are not a barrier for individuals in need of emergency health care. In 2006, the VPD was the first police agency in Canada to cease responding to reports of overdoses in the first instance. As a result, for the last 15 years, the VPD only attends overdose calls when requested to do so, which has typically involved prevailing safety risks to paramedics and/or firefighters.

As the local agency responsible for the enforcement pillar of the Four Pillars approach, the VPD has focused its enforcement efforts on those that do the most harm – persons involved in importing, manufacturing, and trafficking of illicit drugs. In 2006, the VPD changed its drug enforcement strategy to reflect this focus. The VPD does not generally arrest or charge for simple possession unless a substantive offence has also occurred or other circumstances warrant it.

The VPD also has a long history of supporting harm reduction services including Insite (since its opening in 2003) and other Overdose Prevention Sites (OPS) that have opened in the community. In supporting these low-barrier harm reduction health sites, the VPD is mindful of the need to ensure that these locations are accessible to individuals who most require their services. On a daily basis, VPD officers direct drug users to local harm reduction sites in order to minimize the likelihood of overdose and thereby maximizing health outcomes.

On July 9, 2020, the VPD Chief Constable, in his role at the time as President of the Canadian Association of Chiefs of Police, at a national press conference called for the decriminalization of possession of small amounts of illicit drugs for personal use.

Overall, the VPD recognizes the DTES community as unique. There is a disproportionate population impacted by substance abuse whom have been severely impacted by the ongoing overdose crisis. While the VPD does not condone drug trafficking, it is recognized that the actions of the protesters were not motivated by profit and were not the actions of organized crime groups, but rather, were grounded in harm reduction and raising awareness to the need for urgent action to the overdose crisis.

In assessing the totality of the circumstances of the July 14th protest, including balancing the safety of all involved with the demonstrators' right to lawful protest, the VPD did not action an arrest pursuant to the CDSA in this instance. This decision was made, in part, with consideration to the Public Prosecution Service of Canada's (PPSC) charge approval standard. The PPSC

(and hence the VPD) is required to assess the nature of the evidence at hand in addition to other factors such as the nature of the alleged offence, the consequences or harm caused by the offence, and the public confidence in the administration of justice. In this instance, the VPD did not believe that the public interest was met and the discretion used was proportionate to the circumstances of the protest. Of note, police discretion has long been recognized by the courts, including the Supreme Court of Canada that states:

“Discretion is an essential feature of the criminal justice system. A system that attempted to eliminate discretion would be unworkably complex and rigid”⁵

Furthermore, 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.”⁶

That does not preclude the VPD from continuing to assess the facts of each and every case where offences against the CDSA or other statutes occur during protest situations. Such assessment in the future could lead to a viable prosecution where the public interest is met. For example, should a substance, tested by Health Canada to show lethal levels of fentanyl be distributed, the VPD would take action and effect an arrest because the sample would pose a significant risk to the safety of members of the public. In such a circumstance, an arrest does not need to be contemporaneous with an offence and may occur later when all the evidence is known and the arrest can be carried out safely.

CONCLUSION:

The VPD acknowledges the complainant’s concerns with the situation. In every protest, the VPD’s role is to ensure the safety and well-being of all people while balancing the *Charter* rights of individuals to protest. Although there were no arrests made in this particular situation, the VPD does engage in enforcement actions when necessary while considering the totality of the circumstances and on a case-by-case basis. It is therefore recommended that the Committee conclude its review of the complaint based on the information outlined in the report.

Author: Sergeant Alvin Shum

Date: September 28, 2021

Submitting Executive Member:

Deputy Chief Constable Fiona Wilson

Date: October 8, 2021

⁵ [2007 SCC 5 \(CanLII\) | R. v. Beaudry | CanLII](#)

⁶ <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/civ-1.pdf>