



Vancouver Police Board
2120 Cambie Street
Vancouver, BC
V56 4N6

Via Email

June 15, 2021

Dear Police Board Members,

RE: Service & Policy Complaint Regarding the VPD Trespass Prevention Program

On January 28, 2021, a group of seven Indigenous, women's, Downtown Eastside and legal organizations voiced their opposition to the Trespass Prevention Program.¹

Despite the concerns raised, the Trespass Prevention program has not been cancelled. We understand that businesses and stratas are still able to qualify for the program, which authorizes all police officers of the Vancouver Police Department (VPD) to act as authorized representatives and take enforcement action based on VPD officers' reasonable belief that the person is acting in contravention to the BC *Trespass Act*.²

Further to the statement issued in January 2021, we are now filing a Service and Policy Complaint in accordance with s. 168 of British Columbia's *Police Act*.

¹ https://www.pivotlegal.org/end_trespass_prevention_program

² Vancouver Police Department, "Trespass Prevention Program" intake form (Appendix A)

In light of the reviews initiated by the Director of Police Services into how the VPD board handled a previous service and policy complaint,³ we expect the board to consider the relevant and available findings of the review(s) in its response to this complaint.

Complaint

Specifically, we are writing to complain about the inappropriate creation of the Trespass Prevention Program (TPP), as reported by the VPD in a report dated October 19, 2020.⁴ Based on VPD Report 2010C02, the VPD describes a TPP as an initiative that was recently launched, "which gives police written consent from the property owner to move along unwanted parties from private property."⁵

We submit that the lack of transparency about how the TPP has been initiated and managed highlights fundamental problems related to the general direction and management of the VPD as well as the inadequacy and inappropriateness of VPD internal procedures and policies.

We will highlight the nature and gravity of these problems in the following sections, which are categorized as follows:

1. Social Condition and Criminalizing Poverty
2. Democratic Deficit
3. Conflict of Interest with Police Enforcing the Trespass Act
4. Lack of Procedure/Regulation Undermines Rule of Law
5. Potential for Mass Privacy Violations and Increased "Street Checks"

1. Social Condition & Criminalizing Poverty

We submit that the TPP undermines both the VPD's goal to "foster relationships, understanding, and trust with our diverse community"⁶ as well as efforts to standardize

³ Vancouver Sun, "Former deputy AG to investigate handling of Vancouver Police street checks review" (2020, December 26), Online: "<https://vancouversun.com/news/local-news/former-deputy-ag-to-investigate-handling-of-vancouver-police-street-checks-review>

⁴ Vancouver Police Department, "Report to The Vancouver Police Board, Board Report #2010C02 (2020, October 19), online: VPD <https://vancouver.ca/police/policeboard/agenda/2020/1029/SP-5-2-2010C02-2020-015.pdf>

⁵ Vancouver Police Department, "Report to The Vancouver Police Board, Board Report #2010C02" (2020, October 19), online: VPD <https://vancouver.ca/police/policeboard/agenda/2020/1029/SP-5-2-2010C02-2020-015.pdf> at page 5

⁶ Vancouver Police Department, "2017 - 2021 Strategic Plan", <https://vpd.ca/police/assets/pdf/vpd-strategic-plan-2017-2021.pdf> at page 5

unbiased policing across British Columbia.⁷ Furthermore, broadening police authorities to enforce civil laws on behalf of the business community will undoubtedly result in discrimination based on social condition and further criminalize poverty in our city.

We are confident that the TPP's harmful impacts are disproportionately borne by people who are already over-policed and under-protected by public institutions. Issues of "street disorder" or "public nuisance" are demonstrably linked to systemic inequities including poverty, colonialism, racism and structural stigma. Programs such as the trespass prevention program further undermine efforts to promote unbiased policing and to limit unjustifiable police stops.

Last year, the VPD launched a program known as the "Neighbourhood Response Team." This program was subject to a joint complaint by Pivot Legal Society, Vancouver Area Network of Drug Users and the Western Aboriginal Harm Reduction Society.⁸ At that time, complainants noted that "the VPD has unilaterally established a Neighbourhood Response Team, ignoring the municipal priorities outlined by Vancouver City Council, as well as numerous stakeholders in the City [...] Furthermore, the complaint noted that "issues of 'street disorder' or 'public nuisance' are demonstrably linked to systemic inequities including poverty, colonialism, racism and structural stigma."⁹

The establishment and operation of the TPP continues to exacerbate the criminalization of poverty, and the recurrent displacement of people who rely on public space.

2. Democratic Deficit

We submit that the creation and existence of the TPP in Vancouver reveals an alarming disregard for democracy and civilian oversight. The BCCLA has been raising concerns about BC's *Trespass Act* since 1981, including the use of policing and penal processes for the minor and non-harmful intrusion of trespass, which is a civil (not Criminal Code) offense.¹⁰ The Act authorizes the extreme powers of questioning and arrest without a warrant, while removing the presumption of innocence for the person accused of trespass.

Our democracy is predicated upon many principles of governance, including the foundational concept that the people elect representatives who then transparently develop and enact

⁷ Provincial policing standards to promote unbiased policing have been under development since at least 2018 and include standards to constrain street checks by police. Unbiased policing standards are expected to be numbered 6.1 and have yet to be approved by the Ministry of Solicitor General. For further information see Provincial Policing Standards, number 6 available at <https://www2.gov.bc.ca/gov/content/justice/criminal-justice/policing-in-bc/policing-standards>

⁸ Pivot Legal Society, "Joint Complaint opposing New VPD Neighbourhood Response Team", available at https://www.pivotlegal.org/joint_complaint_on_neighbourhood_response_team

⁹ Pivot Legal Society, "Joint Complaint opposing New VPD Neighbourhood Response Team", available at https://www.pivotlegal.org/joint_complaint_on_neighbourhood_response_team

¹⁰ British Columbia Civil Liberties Association, "Trespass Act Amendments, October 22, 1981", available at https://bccla.org/our_work/trespass-act-amendments/

laws through the legislative process. In this case, the BC legislature repealed and replaced the *Trespass Act* in its entirety in 2018. The proposed law - including its underlying policy - was publicly debated and passed by the Members of the Legislative Assembly just three years ago.

It is important to emphasize that the legislators clearly limited the role of peace officers in how they can enforce the *Trespass Act*: the statute **does not** contemplate that peace officers such as police are the “authorized persons” appointed by business operators to take on the powers or to perform the duties of the business operators. In other words, the *Trespass Prevention Program* is attempting to rely on agreements between business owners and the VPD to avoid the legal limitations inherent in the *Trespass Act*. In the next section we will explain how this arrangement results in a fundamental conflict of interest for police.

Aside from undermining the law promulgated by elected provincial officials, we submit that the VPD’s implementation of the TPP also disregards other democratic mechanisms specifically tailored to inform how police operate in BC and in Vancouver. The VPD board provides civilian oversight for the VPD, including how the department prioritizes law enforcement objectives and dedicates its resources for the community. Other public decision makers - such as Vancouver City Council and the Minister of Public Safety - share a similar responsibility to ensure that policing is democratic in BC communities.

As far as we can tell, however, the civilian police board of the VPD has never identified the need for a program like the TPP, nor is this program identified in any strategic plan of the VPD or its board. Furthermore, we are unaware of any priorities, goals and objectives of either Vancouver City Council or Minister Farnworth that call for law enforcement bodies to launch such programs to target people who may be trespassing on private property.

From the perspective of democratic oversight and civilian accountability, it is disturbing that the VPD has been able to set up the TPP without providing any evidence to the public or to the various oversight bodies indicating why the current VPD policy is ineffective and such a marked departure is necessitated. The lack of an open and meaningful consultation with the public and those who are most likely to be harmed by this new program also undermines healthy and democratic communities.

3. Conflict of Interest: Police Enforcing the *Trespass Act*

The TPP has the VPD entering into a series of agreements with private property business owners and operators in Vancouver to enforce the *Trespass Act*. The agreement, a template of which can be found in Appendix A, authorizes any VPD police officer to act as an authorized representative on behalf of a business, and to take enforcement action against any person who the VPD officer believes is in contravention of the *Trespass Act*. The agreements do not expire and allow VPD police officers to enforce the *Trespass Act* 24 hours per day.

We submit that these new authorities for police officers - provided through contract - put them into a conflict of interest. This view is supported by the Office of the Police Complaints Commissioner (“OPCC”), who has repeatedly noted conflict of interest issues arising when

Vancouver police officers act as agents for the private sector. Existing programs, such as the VPD's Restaurant Watch/Bar Watch, also derive authority from the *Trespass Act*.

In response to a 2015 complaint about the Restaurant Watch/Bar Watch program, then-Commissioner Stan Lowe emphasized "this relationship places them [police officers] in a conflict of interest whereby they are simultaneously acting as private citizens and peace officers."¹¹ The Commissioner's review of that complaint, as well as similar complaints, "revealed that this conflict can become particularly problematic in circumstances where officers conduct arrests pursuant to section 129 of the *Criminal Code* for obstructing a peace officer, although they are acting pursuant to the authority of an occupier - a private authority."¹²

Additionally, the Commissioner has raised police accountability concerns, including the practice of demanding identification akin to street checks, and the use of police databases to record and collect identifying information.

4. Lack of VPD Regulation/Procedure Undermines Rule of Law

The rule of law is a fundamental principle of governance. This principle requires that people in positions of authority - such as police - must exercise their power within a constraining framework of well-established public norms rather than in an arbitrary or purely discretionary manner. Such norms can only be well-established and public if members of society have access to and knowledge of the law.

In other words, the rule of law requires our rules to be well known so that people can study it, internalize it, and figure out what it requires of them, and direct themselves accordingly. On the other hand, it requires those in positions of authority to understand precisely how the law restricts how they can exercise their powers against others.

We are therefore alarmed that the TPP has been operating for months despite the fact that the VPD *Regulations & Procedures Manual* has not been updated to reflect the program.

As of the filing date of this complaint, the *Regulations & Procedures Manual* only contemplates that the VPD will enforce the *Trespass Act* on a case-by-case basis. The *Regulations* explicitly state that "Members shall not assist in preventing entry to or removing a trespasser from a premises until they are asked to do so by the occupier of the premises or their authorized designate," and outline an 8-step *Trespass Act PROCEDURE*.¹³ It is

¹¹ Office of the Police Complaint Commissioner, "Re: Service of Policy Complaint - Vancouver Police Department (VPD)" (23 October, 2015) https://vancouver.ca/police/policeboard/agenda/2016/0414/Service-and-Policy_item-3-1.pdf

¹² Office of the Police Complaint Commissioner, Annual Report, 2015/2016 https://www.opcc.bc.ca/wp-content/uploads/2017/04/2015-2016_OPCC_Annual_Report.pdf at page 62

¹³ Vancouver Police Department, Regulations & Procedures Manual (31, December 2020) <https://vancouver.ca/police/assets/pdf/manuals/vpd-manual-regulations-procedures.pdf> at page 60

completely unknown at this juncture whether and how VPD officer discretion is constrained when enforcing the TPP.

The TPP is a marked departure from the existing regulations and procedures. It is unacceptable for the VPD to alter its enforcement of the *Trespass Act* without first carefully updating relevant policy and making it publicly available.

5. Possible Mass Privacy Violations and Increased "Street Checks"

We submit that members of the VPD do not have the legal authority to collect personal information of alleged trespassers when acting on behalf of owners or operators of private properties pursuant to the *Trespass Act*. This lack of a legal foundation not only offends the rule of law but is also fundamentally connected to concerns that the TPP will exacerbate the practice of arbitrary and discriminatory street checks in Vancouver, including the dangerous prospect of VPD records expanding to include personal information about people targeted under the program.

This fundamental lack of authority has been flagged by the Office of the Police Complaint Commissioner when assessing complaints made by people about Barwatch/Restaurant Watch programs (VPD programs which also rely on agreements with businesses). For example, the Commissioner expressed these concerns in 2016 about the information that the VPD was collecting under the purported authority of the *Trespass Act*:¹⁴

I am concerned with a practice of demanding government issued identification absent a legislated or common law authority to do so, as such a practice may be considered akin to a street check or "carding", an issue that has been raised with other police boards in Canada, most notably Ontario.

Even if the VPD are not asking for government issued identification under the TPP, we still have deep concerns about whether personal information collected by the VPD under the purported authority of the *Trespass Act* have been stored and possibly even used in VPD records.

Recommendations

Public Accounting of the TPP

We request that the VPD provide an accounting to the public about the data associated with the TPP. We demand that the VPD publicly disclose the following information:

¹⁴ Vancouver Police Board, "Re: Service of Policy Complaint – Vancouver Police Department", (VPD) https://vancouverpoliceboard.ca/police/policeboard/agenda/2016/0414/Service-and-Policy_item-3-1.pdf

- Does the VPD collect personal information when operating under the Trespass Prevention Program?
 - When is the information collected and for what purpose?
 - How long is it stored for?
 - Under what legal authority is the personal information collected?
- What enforcement actions have the VPD taken against people since the program started?
 - How many arrests have been made?
 - How many violation tickets requiring the payment of a \$115 penalty have been issued in relation to the following Trespass offences pursuant to the Trespass Prevention Program?
 - Trespass on enclosed land or premises, or engage in prohibited activity (section 2(1))
 - Fail to leave premises or stop prohibited activity, or re-enter premises or resume prohibited activity (section 2(3)(c) or (d))
 - Remove, alter or deface a sign (section 5 (2))
 - Fail to give name or address (section 6(2))
 - Remain on premises after failure to give name or address (section 6(3))
- How many people have been charged with the criminal code offence of obstructing a police officer as a result of the VPD enforcing the *Trespass Act* on behalf of private property owners who have entered into the Trespass Prevention Program?

Investigation of the TPP

Given these concerns that the VPD are unlawfully collecting and storing personal information collected under the TPP, we request that the investigation into this complaint confirm whether there is a valid legal authority for whatever practices the VPD are using to collect, use, and retain personal information of alleged trespassers under the TPP. The investigation needs to consider the precise nature of the personal information that is collected under the program and confirm whether or not the VPD practices are supported by law.

Should the investigation uncover that the VPD has unlawfully collected any personal information under the TPP, we expect the VPD and its board to expunge any such information from VPD records as soon as practicable, and to notify affected persons about the privacy violation as required by law.

Conclusion

Rather than contribute to the criminalization of people who rely on public space and people who use (il)licit substances, we call on the Vancouver Police Department to immediately terminate the Trespass Prevention Program and cease policing activities that enable the displacement of people who rely on public space.

Sincerely,

Meghan McDermott, Staff Counsel (Policy)
BC Civil Liberties Association

BeeLee Lee, Vice-President
Coalition of Peers Dismantling the Drug War

Alice Kendall, Executive Director
Downtown Eastside Women's Centre

Karen Ward, Drug Policy Consultant

Meenakshi Manno, Criminalization & Policing Campaigner
Pivot Legal Society

Grand Chief Stewart Philip, President
Union of BC Indian Chiefs

Samona Marsh, President
Vancouver Area Network of Drug Users

Mebrat Beyene, Executive Director
WISH Drop-In Centre Society

cc: Clayton Pecknold, Police Complaint Commissioner
Office of the Police Complaint Commissioner

Kasari Govender, Human Rights Commissioner
Office of the Human Rights Commissioner

Wayne Rideout, Assistant Deputy Minister & Director of Police Services
Ministry of Public Safety & Solicitor General

APPENDIX A



VANCOUVER POLICE DEPARTMENT Trespass Prevention Program

*Please complete all fields

Business/Company Name and Address

Date: _____

*Postal Code: _____

*Contact Person & Phone #: _____

*Email: _____

To the Chief Constable:

I, _____ as the owner/occupier of the property

(Owner/Occupier name)

("The Property" at) and doing business as:

(Include address or addresses with name of business, *including postal code)

In Vancouver, British Columbia, do hereby authorize all police officers of the Vancouver Police Department ("VPD") to act as an authorized representative on behalf of my business pursuant to the B.C. *Trespass Act*. As an authorized representative, any VPD police officer can take enforcement action against any person who, on the VPD police officer's reasonable belief, is in contravention of the B.C. *Trespass Act*, and to affect that purpose, are further authorized to enter onto any portion of the property.

In order to assist the VPD with identifying the location as one which has designated authorization to the VPD, the VPD will provide a decal that I will display in a place open to public view.

The authorization to enforce the B.C. *Trespass Act* is in effect 24 hours/day. This authorization is intended to remain in effect until revoked in writing, at which time the decal should be removed and returned to the VPD. If the existing owner/representative of the business/property listed upon this document is leaving the business/property as the owner/representative, they must notify the VPD as such, thus terminating this agreement.

With respect,

(Owner/Occupier)

(VPD Representative)

(Date)

(Date)