



VANCOUVER POLICE DEPARTMENT

REPORT TO THE VANCOUVER POLICE BOARD

REPORT DATE: July 31, 2020
COMMITTEE MEETING DATE: September 17, 2020
BOARD REPORT # 2004C01/2009R02
Regular

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

FROM: Superintendent Michelle Davey

SUBJECT: Response to a recommendation for follow up by the OPCC to Service or Policy Complaint #2020-17366: Investigations conducted by school liaison officers in schools

RECOMMENDATION:

THAT the Vancouver Police Board Service and Policy Complaint Review Committee concludes its review of the recommendation for follow up by the Office of the Police Complain Commissioner to the service or policy complaint based on the information outlined in the report.

SUMMARY:

In November 2018, a student posted a video online, which contained hate speech and threatening comments directed towards Black students at Lord Byng Secondary School. This incident was investigated by the Vancouver Police Department (VPD) School Liaison Officer (SLO) assigned to Lord Byng. The Vancouver School Board (VSB) also conducted a parallel internal investigation.

In the original complaint, the complainant in this matter believed that, as a matter of policy, the SLO should not have been directly involved as the investigating officer, nor should he have been making decisions with respect to whether to recommend charges to Crown Counsel as it may undermine the trust between the SLO and students at the school. He filed a complaint with the Office of the Police Complaint Commissioner (OPCC), who in turn issued a notice of a Service or Police Complaint to the Vancouver Police Board (VPB).

This complaint was investigated and it was determined that it is appropriate for the SLO to conduct criminal investigations involving students in the school where the SLO is assigned. The review also identified that there existed the ability for the file to be reassigned to a different officer other than the SLO should an issue of trust or conflict be determined. This decision is made by the SLO in consultation with the SLO's supervisor. The results of the review were presented to the VPB's Service and Policy Complaint Review Committee on April 16th, 2020 and the matter was concluded and notice sent, with reasons, to the OPCC, and to the complainant Mr. Green.

On July 7th, 2020, the VPB received a letter from the OPCC with a request for further review on whether policy existed that accounts for how investigations in schools are assigned, whether the broader school community was considered, and in particular whether the experiences of racialized students were considered, where applicable. A review of existing policies was conducted and it was determined that the concerns noted by the OPCC are addressed by Policy 1.6.51 *Bias, Prejudice and Hate Incidents* in the VPD Regulations and Procedure Manual. Specifically, the policy requires the police to “address the concerns of the victim and affected communities”.

In a separate but related complaint (OPCC File No. 2019-16777), the OPCC has already noted that the issue of police discretion was not being questioned in this case. Yet that is the very question noted in this letter, regarding who determines if the SLO should be responsible for investigating a particular matter. This investigation has determined that the SLO is the best person to first assess the veracity of the complaint and work with school officials to determine the best course of action, which is often not using the criminal justice system, to address problematic and sometimes criminal behaviour in youth. In fact, the police are mandated by the *Youth Criminal Justice Act* (YCJA) to consider extrajudicial measures as an alternative to using the criminal justice system for youth.

This investigation confirmed that the SLO was the most appropriate police officer to conduct this criminal investigation. He had the most knowledge about school policies, procedures, resources, and staff. SLOs do have the ability to exercise discretion in terms of their role in the investigation. It is common practice for all SLOs to exercise discretion on a case-by-case basis, and to continually assess whether the enforcement of laws within the school environment would jeopardize the trust they have gained with students. If an SLO believes that remaining as the lead investigator could jeopardize the student/SLO trust, then they have several alternatives. After consultation with a supervisor, another police officer can be identified to take the role of lead investigator from the SLO, once it has been determined that continuing with the investigation could undermine the SLO/student trust relationship. This is determined on a case-by-case basis because each investigation is unique. There is no need to attempt to codify this fundamental concept in policy because the same principles apply to all investigations initiated by the police.

The issues identified by the OPCC have been addressed in this report and it is recommended that the Board conclude its review.

DISCUSSION:

In November of 2018, a student at Lord Byng Secondary School created a video that was shared via social media with other students. The video depicted the student’s face such that he was easily recognizable, and clear audio of the student expressing racist comments and a desire to harm members of the Black community. The threats were not directed towards any named member(s) of the Black community.

The video was brought to the attention of the school administration by a parent shortly after it was shared. The school administration shared it immediately with the SLO assigned to Lord Byng Secondary. The SLO initiated a criminal investigation, and the VSB started their own internal investigation in parallel.

At the conclusion of the investigation, it was determined by the SLO that charges would not be recommended to Crown Counsel. Corrective measures were instead imposed by both police and the VSB, giving consideration to the YCJA’s guiding principles on the use of extra-judicial measures. Corrective measures employed by the police included the youth writing a letter of

apology, counselling, weekly meetings with the SLO, and a self-imposed education plan. There were additional measures imposed by the VSB and the student was transferred to a different high school.

This matter was reviewed and concluded by the VPB Service and Policy Complaint Review Committee on April 16, 2020. The OPCC sent a follow up response to the VPB asking for further review, specifically of the “adequacy of the practice of SLO’s, the SLO’s supervisor, or school administration being the party who determines whether the SLO should be responsible for an investigation into a particular matter.” The OPCC stated that it is his view that “any process regarding SLO involvement should also consider students, the parents of students, or wider community concerns that could acutely impact the broader community experience with police in schools.” Finally, the OPCC stated that “any process should take into consideration the particular experiences and concerns cited by racialized students and the racialized community. Further, it is not clear as to whether the process in place as referred to by the Board is formalized and therefore specified in departmental policy.” The OPCC then recommends that a “board-approved written policy be considered” if no written parameters for such a process exists in the VPD.

A review of existing policies was conducted and it was determined that the concerns noted by the OPCC are addressed by Policy 1.6.51 in the VPD Regulations and Procedure Manual, which speaks to the investigation of bias, prejudice, and hate incidents. Specifically, the policy requires the police to “address the concerns of the victim and affected communities”. Thus, this takes into consideration the concerns noted by the OPCC about the consideration of “students, parents of students or wider community concerns that could impact the broader community experience with police in schools.” In addition, this addresses the concerns that may be experienced by racialized students and the racialized community. All of these factors were considered in this case, and appropriate corrective measures were applied to the specific circumstances of this particular case. Each investigation is different and must be considered on its own merits.

In a separate but related complaint (OPCC File No. 2019-16777), the OPCC has already noted that the issue of police discretion was not being questioned in this case. Yet that is the very question noted in this letter, regarding who determines if the SLO should be responsible for investigating a particular matter. In Vancouver schools, generally speaking, the SLO is the first VPD officer called by school administration to conduct an investigation related to an incident in the school. If the SLO is not available, a call to 911 or the non-emergency line is made by school officials, and a patrol unit will attend. This is a similar practice for all investigations in the VPD, including homicides, sexual assaults, break-ins, hate crimes, etc. In the first instance a first responder attends to take the initial report and in many cases, the investigation is completed by this officer. In some circumstances, the investigation will be assumed by a specialized unit, for example such as the Homicide Unit. For incidents in schools, the SLO is the best person to first assess the veracity of the complaint and work with school officials to determine the best course of action, which is often not using the criminal justice system to address problematic and sometimes criminal behaviour in youth. In fact, the police are mandated by the YCJA to consider extrajudicial measures as an alternative to using the criminal justice system for youth. This consideration was applied in this case, through the use of discretion, which the OPCC does not take issue with.

As such, the practices of the SLO assuming conduct of investigations in schools is appropriate because they are the best-placed, best-informed person to determine the right course of action. The SLO will often consult with the school administration with whom they have a working relationship, to best determine the outcome that serves the youth in question, the affected students and their parents, and the broader school community. They are the best person to take the temperature of the school environment to best determine the right course of action.

Additionally, the SLO will often consult with their direct supervisor and management. It is common practice for all SLOs to exercise discretion on a case-by-case basis, and to continually assess whether the enforcement of the criminal code within the school environment is appropriate and/or would jeopardize the trust they have gained with students. The alternative is to have a patrol officer respond who knows nothing about the school, the student, has no relationship with the staff or students and does not understand the needs of the broader school community.

If an SLO believes that remaining as the lead investigator could jeopardize the student/SLO trust, then they have alternatives. For example, another police officer can be identified to take the role of lead investigator from the SLO, once it has been determined that continuing with the investigation could undermine the SLO/ student trust relationship. It is left to the discretion of the SLO, in consultation with his or her supervisor, whether the file may be re-assigned if SLO/student trust issues are in play. There are regular meetings between the SLO and their supervisor to discuss their files, and the supervisor at any time could refer an investigation to a different officer. SLOs are expected to remain vigilant about this delicate trust relationship with students, and use their best judgement, as well as the input from their supervisor, to preserve its integrity.

CONCLUSION:

This investigation has addressed the concerns raised by the complainant and the OPCC with regards to whether there is a need for additional policy to govern investigations conducted in Vancouver schools. VPD policy already dictates that the concerns of the victim and if applicable, the affected community is taken into consideration when conducting an investigation and determining the best course of action. That policy was applied in this particular case, by the SLO who was the lead investigator. As SLOs have intimate knowledge of school policies, staff, specific school functions and students, they are best suited to remain the lead investigators on youth-related investigations in a Vancouver school. It is common practice for all VPD SLOs is to exercise discretion on a case-by-case basis, and to continually assess whether the enforcement of laws within the school environment would jeopardize the trust they have gained with students.

In conclusion, it is recommended that the Committee concludes its review of the complaint based on the information outlined in the report.

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Submitting Executive Member:

DCC Laurence Rankin Date: August 12, 2020