



6 March 2013

VIA - Fax

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

Reply to: Douglas King
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E-mail: doug@pivotlegal.org

Re: By-Law Ticketing in Vancouver's Downtown Eastside

Dear Mayor Robertson and Vancouver Police Board,

I am writing on behalf of Pivot Legal Society and the Vancouver Area Network of Drug Users (VANDU) to file a Service and Policy Complaint in accordance with s. 168 of British Columbia's *Police Act*. Specifically we are writing to complain about the inadequacy or inappropriateness of the Vancouver Police Department's standing orders or policies regarding By-Law enforcement in Vancouver's Downtown Eastside.

In the lead-up to the 2010 Olympic Winter Games, the Vancouver Police Department elected to ramp up enforcement of the City of Vancouver's By-Laws in what has commonly been referred to in the Downtown Eastside as "the ticketing blitz of 2008." Residents of the Downtown Eastside reported receiving tickets for many provincial and municipal law infractions, and were often given multiple tickets at one time. According to a year-end performance report, and a report to the police board by Supt. Warren Lemcke, the police handed out 1,331 city By-Law tickets and 970 tickets for violations of the *Safe Streets and the Trespass Act* in 2008. 1,264 of those tickets were issued during the month of December 2008. This represented a significant increase from the 247 city By-Law tickets and 297 *Safe Streets and the Trespass Act* violation tickets that were issued in 2007.

The 2009 Strategic Plan for the Vancouver Police Department even went so far as stating that it would require BET members to make four random "street checks" per block in the Downtown Eastside. A "street check" involves an officer demanding identification from individuals and then running their names in the police database to see if the person had any outstanding warrants. This provision was later removed after outcry from the legal and political communities about the fact that random street checks are a clear and unjustifiable violation of the *Canadian Charter of Rights and Freedoms*.

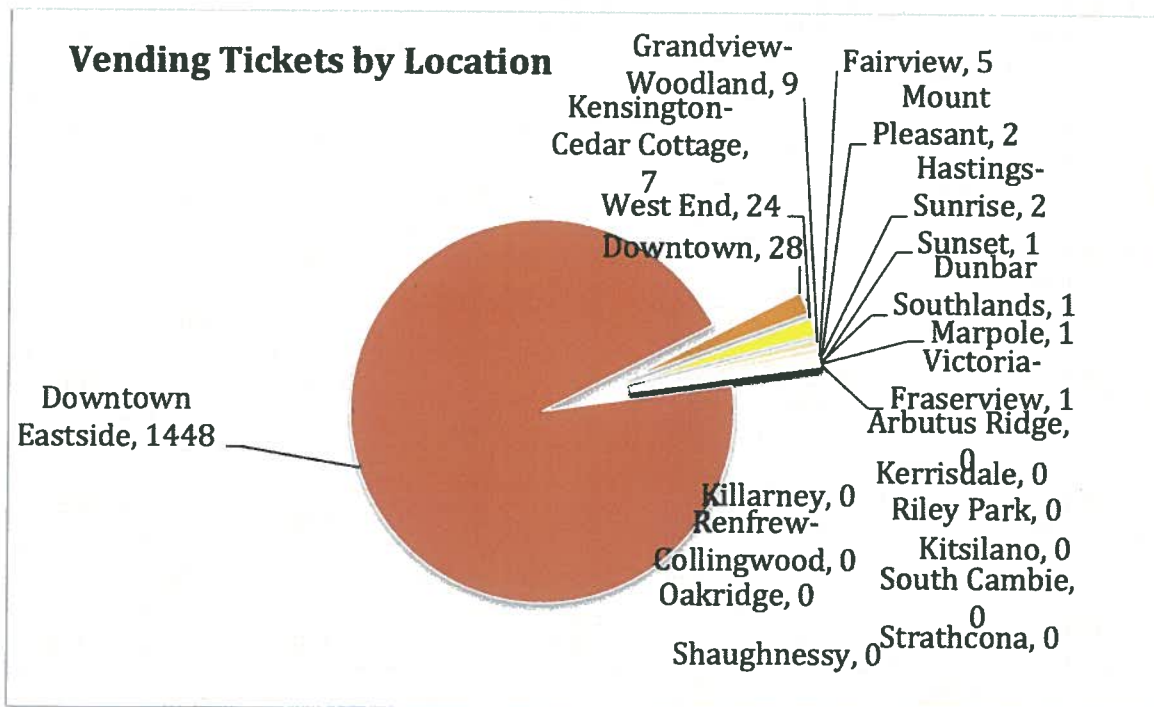
In the Spring of 2009 Mayor Robertson and Vancouver City Council made a strong statement to the public that the Vancouver Police Board had been notified that disproportionate policing of By-Law offences which focused on one geographic neighbourhood, such as the Downtown

Eastside, was an unacceptable practice. Councillor Geoff Meggs stated the following in an interview with Megaphone Magazine on March 22, 2009:

“The mayor’s made it clear to the police board that these ticketing procedures cannot be used in one neighbourhood for a particular purpose,” says Vision councillor Geoff Meggs. “If they’re valid tools, they’ve got to be used everywhere and they should be used without discrimination; so that you’re just as likely to be ticketed in Kerrisdale as the Downtown Eastside.”

Based on the above statement and assurances from both the Vancouver Police Department and City Council that widespread ticketing of the Downtown Eastside was not a police priority and would be returned to normal levels, our offices did not pursue legal action. In the years that have elapsed since that time we have concluded that ticketing in the neighbourhood has not declined but remains at inordinately high levels.

Our offices have made numerous requests for statistics from the Vancouver Police Department on the level of ticketing in the DTES compared to other neighbourhoods. Most of our requests were rebuffed, or the VPD demanded exorbitant fees in order to obtain their release. However, we were provided the statistics surrounding enforcement of the Street Vending Bylaw and Street and Traffic Bylaw (s.66) from the VPD and the results were shocking. They indicate that 95% of all tickets for obstruction of a sidewalk have been issued in the DTES. Originally created to regulate the presentation of items by grocery stores on city sidewalks, the intention of s. 66 is to regulate display of retail merchandise on city streets, which we know takes place in any commercial area of the City or in any neighbourhood where garage or sidewalk sales take place, and that some Vancouver businesses display merchandise beyond their property line on a daily basis. Despite this, the statistics show that the By-Law has been used almost exclusively to target individuals in the Downtown Eastside.



While the statistics on street vending speak for themselves, the VPD should not take this as a complaint regarding the discriminatory ticketing by VPD for s. 66 violations alone. Members of the community have been outspoken and adamant that ticketing of s. 12 of the Street and Traffic Bylaw (jaywalking), s. 70A (panhandling), the Health By-Law provisions (smoking, expectorating, urination), and numerous other By-Laws have been occurring with great frequency and arbitrariness. There is widespread belief that the VPD's adoption of 'proactive policing' policies have been used as a way to circumvent the unlawfulness of random street checks, and are instead using the enforcement of By-Law offences to obtain identification from individuals in the DTES.

Our office has now received two separate reports from individuals that they were recently given By-Law tickets for minor offences and the details are concerning. One individual reported receiving over fifty tickets under section 70A of the Street and Traffic Bylaw for panhandling despite the fact that he is located on private property. When he protested receiving the first ticket and allowed it to drop on the ground, the police officer issued a subsequent ticket for littering. The same type of situation was reported by an individual who received a ticket for jaywalking, and then received a second ticket for littering after accidentally dropping a tissue on the ground in front of the officer.

These incidents are particularly disturbing given the recent findings and recommendations from Commissioner Wally Oppal, head of the Missing Women Commission of Inquiry. Commissioner Oppal made strong and significant findings on the adversarial relationship between the VPD and residents of the DTES. In one of his recommendations, Commissioner Oppal directed the Vancouver Police Department to limit the number of tickets given out for minor offences, given the barriers they create in seeking police protection. Recommendation 5.9 is worded as follows:

"I recommend that the City of Vancouver and the Vancouver Police Department take proactive measures to reduce the number of court warrants issued for minor offences by:

- Reducing the number of tickets issued and charges laid for minor offences;
- Developing guidelines to facilitate greater and more consistent use of police discretion not to lay charges; and
- Increasing the ways in which failures to appear can be quashed early in the judicial process."

In response to all of the Commissioner's recommendations the VPD made the following commitment to the Vancouver Police Board on January 14, 2013:

The VPD is committed to moving quickly to implement the Commissioner's recommendations as they apply to the VPD and to working with the Provincial Government's report champion, former Lieutenant Governor Steven Point, and other stakeholders in ensuring that all police-relevant recommendations are addressed in a comprehensive and timely fashion.

Further on in that report the following it is stated with regard to Recommendation 5.9 in the response section:

This recommendation was based on anecdotal information at a policy forum but research is needed to provide a baseline of data to work with before further action can be considered.

We believe the enforcement of the Street Vending By-Law and s. 66 of the Street and Traffic Bylaw are just two examples of disproportionate and discriminatory policing in the Downtown Eastside, and that the statistics on other By-Law offences will reveal the extent to which city By-Laws have been abused by some officers of the VPD. Given the VPD's adoption of 'proactive policing' policies and the importance of By-Law enforcement in that scheme, our organizations are concerned that the Commissioner's recommendation will be neglected or ignored. We are filing this complaint and requesting the following:

1. That the Vancouver Police Department release the data collected in response to this recommendation to the public, including a comprehensive report on By-Law tickets in the Downtown Eastside by location and type.
2. That the Vancouver Police Department make these statistics readily available to the public.
3. That the Vancouver Police Board use the data collected to re-write or modify existing VPD policy to ensure equality in By-Law enforcement throughout the City, and to actualize the Commissioner's recommendation on ticketing in the Downtown Eastside.

Yours truly,

PIVOT LEGAL SOCIETY

per:

Douglas King
Barrister & Solicitor

cc: via fax - Office of the Police Complaint Commissioner (250) 356-6503