



VANCOUVER POLICE DEPARTMENT PLANNING & RESEARCH SECTION

January 18, 2006

To: Daryl Wiebe, Inspector 1162
i/c Planning & Research Section

From: Matthew Harty, Constable 1959
Planning & Research Section

Subject: Notice to Seek Greater Punishment under the Motor Vehicle Act or
Criminal Code

PR 2005-092

Assignment

Review the current Vancouver Police Department (VPD) Regulations & Procedures Manual (RPM) Section 13.06: *Notice to Seek Greater Punishment* and determine if the section requires amendments for cases involving provincial prohibited drivers.

Background

On 22(3)(b) 22(3)(b) and was informed by Crown Counsel that drivers can be served with a Notice to Seek Greater Punishment when they are arrested for prohibited driving and have a prior conviction for driving while prohibited. Constable Harty determined that no form was available to members for these offences and that RPM Section 13.06 was silent about this issue.

Resources

Jim Fiddler, Constable 1457, Traffic Services

22(1)22(1) Manager, Court Services Headquarters

22(1)22(1) Crown Counsel, Provincial Court

22(1)22(1) Legal Advisor, Planning & Research Section

22(1)22(1) Deputy Regional Crown Counsel, Provincial Crown Counsel

22(1)22(1), Vancouver Regional Crown Counsel, Provincial Crown Counsel

Documents Sourced

BC Motor Vehicle Act

Research and Analysis

Constable Harty checked the VPD RPM and the Provincial forms section on the VPD Intranet and determined that no *Notice to Seek Greater Punishment* under the *Motor Vehicle Act* existed. Constable Harty reviewed RPM Section 13.06: *Notice to Seek Greater Punishment* and it was silent about serving a *Notice to Seek Greater Punishment* upon drivers who have been arrested for prohibited driving and have a prior prohibited driving conviction.

Constable Harty contacted Constable Jim Fiddler, Traffic Services, who stated that there were no "in-house" forms used by the Traffic Section and that he was unaware that such a notice could be served to anyone other than an impaired driver.

Constable Harty phoned [22(1) 22(1)] Manager, Court Services Headquarters in Victoria and asked if members could serve drivers arrested for prohibited driving with a notice, and if so, was there a provincial form available. [22(1) 22(1)] confirmed that as of 1996, police officers can serve drivers with a *Notice to Seek Greater Punishment* who have been arrested for prohibited driving and who have a prior conviction for driving while prohibited. She stated that there is no provincial form in existence except the *Notice to Seek Greater Punishment (PCR099)* for impaired drivers. This form is currently used by the VPD and she suggested that the VPD create its own internal form.

Constable Harty combined an internal *Notice to Seek Greater Punishment* for prohibited drivers form used by Provincial Crown Counsel with the existing *Notice to Seek Greater Punishment* for impaired drivers (PCR099) form to create a new VPD form 1354(05) *Notice to Seek Greater Punishment for Prohibited Drivers*.

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[22(1) 22(1)] Vancouver Regional Crown Counsel and [22(1) 22(1)] Deputy Regional Crown Counsel, both reviewed the proposed form [13(1) 13(1)]

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This *Notice to Seek Greater Punishment for Prohibited Drivers (VPD 1354)* would only be applicable if the driver had prior prohibited driving convictions in the Province of British Columbia. If the driver had several previous convictions in another province or territory, they would not be applicable in British Columbia.

If the driver was arrested for impaired driving and had previous impaired driving convictions under the Criminal Code, then the officer would serve the driver with the existing provincial *Notice to Seek Greater Punishment By Reason of Previous Convictions Section 727(1) (PCR 099)*. In most instances where drivers are found guilty of impaired driving, they receive concurrent Criminal and Provincial driving prohibitions. In situations where drivers are arrested for prohibited driving (both criminal and provincial) officers would serve the driver with both the Federal¹ (PCR 099) and Provincial (VPD 1354) *Notice to Seek Greater Punishment* forms.

Conclusion

The creation of a *Notice to Seek Greater Punishment for Prohibited Drivers* form and amendments for RPM Section 13.06 will assist members with prohibited driving investigations.

¹ Although this form is created by the Province, it has been labeled a Federal form because it deals with Acts of Parliament.

Recommendations

I recommend,

1. THAT, Regulations & Procedures Manual Section 13.06: *Notice to Seek Greater Punishment* be approved and implemented;
2. THAT, Form VPD1354(05): *Notice to Seek Greater Punishment for Prohibited Drivers* be approved and implemented;
3. THAT, Traffic Services develops and delivers a brief training bulletin for all operational members; and
4. THAT, this file be concluded.



Matthew Harty, Constable 1959
Planning & Research Section

Existing Procedure

Section 13.06 – Notice to Seek Greater Punishment

1. Notice of Greater Punishment will be served upon all accused that have prior impaired driving convictions. The arresting member shall:
 - a. conduct both a PARIS and Level II CNI query
 - b. If any previous impaired driving convictions are indicated, complete and serve a Notice of Greater Punishment on the accused. When the accused is in custody, a photocopy of the Notice will be placed in the accused's effects after service
 - c. Note in the Report to Crown Counsel the details of service and attach the following to the report:
 - the original Notice to Seek Greater Punishment; and
 - a legible photocopy of the PARIS printout if applicable.
2. On occasions where one or both of the PARIS and CNI systems are unavailable, the arresting member shall:
 - a. Ask the accused if they have a prior impaired driving conviction
 - b. If the accused admits a prior conviction, proceed with service in the normal manner
 - c. If the accused states that there is no prior conviction, serve the Notice in the normal manner and explain to the accused that the Notice will only apply if there actually is a prior conviction
 - d. Note in the Report to Crown Counsel the following:
 - which of the PARIS and CNI systems were unavailable
 - whether the accused admitted a prior conviction.
3. If the accused is too intoxicated to understand the intent of the Notice, delay service until the accused is sufficiently sober.
4. Every effort should be made by the arresting member to serve the Notice prior to completing his/her tour of duty. Where this is not possible, the Police Jail Supervisor shall serve the Notice on the accused prior to release.
5. The Police Jail Supervisor shall comply with the same procedures for service as the arresting member would have followed.

Proposed Procedure

FOI Recommendation: Public Release

Section 13.06 – Notice to Seek Greater Punishment

Policy

In circumstances where a driver has been arrested for impaired driving and/or prohibited driving and has a prior conviction for impaired driving or prohibited driving, the driver shall be served with a Notice to Seek Greater Punishment in order to provide the driver notice that Crown Counsel will be seeking a greater punishment if the driver is found guilty of the offence.

Procedure

1. Notice of Greater Punishment will be served upon all accused that have prior impaired driving or prohibited driving convictions. The arresting member shall:
 - a. conduct both a PARIS and Level II CNI query;
 - b. If any previous impaired driving convictions or prohibited driving convictions are indicated, complete and serve a Notice of Greater Punishment on the accused;
 - c. If the person has prior convictions for impaired driving under the Criminal Code, serve a Notice to Seek Greater Punishment by Reason of Previous Convictions (PCR099<LINK>);
 - d. If the person has prior prohibited driving convictions listed on their BC driving record serve a Notice to Seek Greater Punishment by Reason of Previous Convictions (VPD1354<LINK>);
 - e. If the person has previous impaired convictions under the Criminal Code and prohibited driving convictions under the BC Motor Vehicle Act, the officer shall serve the person with both Notices indicated in paragraphs c and d;
 - f. When the accused is in custody, a photocopy of the Notice will be placed in the accused's effects after service; and
 - g. Note in the Report to Crown Counsel (General Occurrence Report) the details of service and attach the following to the report:
 - the original Notice to Seek Greater Punishment; and
 - an electronic copy of the BC PARIS Driving Abstract in a CPIC (CP) page if applicable.

2. On occasions where one or both of the PARIS and CNI systems are unavailable, the arresting member shall:
 - a. Ask the accused if they have a prior impaired driving or prohibited driving conviction;
 - b. If the accused admits a prior conviction, proceed with service in the normal manner;
 - c. If the accused states that there is no prior conviction, serve the Notice in the normal manner and explain to the accused that the Notice will only apply if there actually is a prior conviction; and
 - d. Note in the Report to Crown Counsel the following:
 - i. which of the PARIS and CNI systems were unavailable
 - ii. whether the accused admitted a prior conviction.
3. If the accused is too intoxicated to understand the intent of the Notice, delay service until the accused is sufficiently sober.
4. Every effort should be made by the arresting member to serve the Notice prior to completing his/her tour of duty. Where this is not possible, the Police Jail Supervisor shall serve the Notice on the accused prior to release.
5. The Police Jail Supervisor shall comply with the same procedures for service as the arresting member would have followed.