



VANCOUVER POLICE DEPARTMENT

REPORT TO THE VANCOUVER POLICE BOARD

REPORT DATE: August 31, 2018
BOARD MEETING DATE: September 26, 2018
BOARD REPORT # 1809P02
Regular

TO: **Vancouver Police Board**

FROM: Drazen Manojlovic, Director, Planning, Research, and Audit Section

SUBJECT: Revisions to Regulations and Procedure Manual Section 4.1.7 *Intoxicants*

RECOMMENDATION:

THAT the Vancouver Police Board (VPB) approve the proposed revisions to Regulations and Procedure Manual (RPM) Section 4.1.7 *Intoxicants*.

SUMMARY:

The pending legalization of cannabis has led the Vancouver Police Department (VPD) to re-examine policies surrounding the use of substances that have physiological or psychological effects on individuals, specifically with regard to how it impacts employees of the VPD while at work. As such, the VPD has revised policy which governs the standards that members will be held to with regards to the use and possession of alcohol, controlled drugs, and medication. This policy was developed in partnership with the Canadian Association of Chiefs of Police, the British Columbia Association of Municipal Chiefs of Police, the Vancouver Police Union (VPU), the City of Vancouver, and the law firm Roper Greyell LLP. In effect, these revisions will prohibit the consumption of alcohol and drugs, including medication which has physiological or psychological impairing effects, during and prior to the start of their shift. Similar to how alcohol is currently handled, supervisors and managers will continue to ensure that employee and public safety will not be put at risk.

There will be a training component that will be delivered to all employees to educate employees and dispel misinformation surrounding the impairing effects of cannabis. As such, the VPD will endeavour to ensure its employees are aware of the negative health effects and long-term issues surrounding the use of this substance, as well as how it may impact their performance and safety at work if it is used long-term. The training will also contain components on employee health and wellness as it relates to substance abuse and available tools for members who either may have substance use issues or have another underlying issue that results in self-medication. Moreover, supervisors and managers will also be given training on the new revised policy, how to identify signs of substance abuse, and specifically impairment from cannabis. This training will be developed in consultation with the VPU, Teamsters, and the Vancouver Police Officer's Association (VPOA).

BACKGROUND:

The *Cannabis Act (Bill C 45)* will come into effect on October 17, 2018 and it will legalize the use of recreational cannabis. Specifics regarding point of sale, cultivation, public consumption, and the legal age of possession are governed under the *Provincial Cannabis Control and Licensing Act (CCLA)*. Given that this impairing substance will become legal, the VPD is proposing a revision to the RPM that reasserts the expectations that all employees, volunteers, and contractors will come to work *fit for duty* and will remain *fit for duty* for the duration of their shift.

Attached as an appendix are the proposed revisions to policy. It should be noted that the revisions will replace in its entirety the existing RPM section 4.1.7 *Intoxicants*, which will be renamed *Impairment at the Workplace*.

DISCUSSION:

The proposed revisions will cover many types of activities that relate to the use and possession of intoxicants and impairing substances in the workplace. In addition to consumption, the revisions govern the possession of these substances as well as substance testing, references to existing Human Resources substance use policies, and the use of medications.

To determine how these revisions will speak to use during non-duty hours, two approaches exist. One approach requires a specific period of abstinence prior to work (e.g., no consumption of a specific drug in the 24 hours prior to the start of a shift) with the goal of ensuring that members are fit for duty and ready to work when their shift begins. The second approach being considered by law enforcement agencies is a requirement that employees show up to work fit for duty and places no period of abstinence. The position of the VPD is that members are required to show up to work fit for duty as this is deemed to be the most defensible and adaptable in the event other controlled drugs become legalized.

Cannabis Impairment

Some agencies are looking at imposing a period of abstinence prior to work for consuming cannabis in addition to a fit for duty policy. In these policies, the typical period of abstinence from cannabis is a 24-hour period prior to the start of a shift for employees in a “safety-sensitive” position. Simply put, a safety-sensitive position is one in which an employee’s actions have a direct impact on the physical safety of themselves or others. For those who are not in a safety-sensitive position (for example administrative assistants) this period is typically 8 hours.

The VPD does not recommend this method of regulating the usage of cannabis for a number of reasons, but mainly it is due to the lack of a clear time frame as to when cannabis would clear someone’s system and no longer render them impaired. The length of impairment for an individual can vary and there is no medical consensus on how long impairment lasts. Specifying a time-frame can create an implicit approval that this period of abstinence is all that’s required to ensure fitness for duty. In some cases employees will be fit for duty prior to any arbitrary time-frame while in other cases employees will be impaired significantly beyond this time-frame. This can lead to unnecessary labour conflict where employees are fit for duty but have consumed cannabis within this time-frame, or where employees are not fit for duty but mistakenly believe they are as they consumed outside of this time-frame. Additionally, if a time-frame for the consumption of cannabis is included in a policy on impairment, it would only be logical that time-frames for the consumption of other impairing substances are also included.

When researching other policies that included a time restriction, all of these policies included a fit for duty component in addition to a time restriction, which ultimately means the expectation continues to be that all members are fit for duty while at work. It is felt that the inclusion of an arbitrary period of abstinence will not increase safety and may provide a false sense of security to employees. Ultimately, the safety of the public and of VPD employees is best served through a policy which explicitly states employees must be fit for duty, regardless of the cause of impairment, along with the information and tools necessary to determine when they are fit for duty.

Use of Alcohol and Controlled Drugs at the Workplace

The proposed revisions will, in most circumstances, prohibit the use of alcohol and controlled drugs at the workplace. Exceptions will be made for employees who are required to consume these substances as part of their work function, such as undercover and surveillance officers.

The rationale for prohibiting the consumption of these substances during work hours is rather self-evident as the goal is to ensure that all employees are aware of the expectation that they are to remain fit for duty and productive during work hours. As such, the policy will explicitly prohibit consuming these substances while on break or prior to the start of their shift. In practical terms, it is exceptionally rare that an employee is impaired at the workplace, with the most recent case of a member being impaired (by alcohol) at the workplace occurring in 2010.

Use of Medications

The revisions also cover the use of medication and the requirement to bring it to the attention of their supervisors if the employee feels that the drug could render them unfit for operational deployment but still allows them to perform alternate duties. This policy will not prevent employees from taking their medication but it does require the member to notify their supervisor so that appropriate adjustments to their work tasks are made to ensure their safety and the safety of others is not compromised.

Testing of Employees

Generally speaking, testing for impairment or drug use will only occur if there is good reason to suspect an employee is impaired, as it is recognized that the drug and alcohol testing is inherently invasive. As per current practice at the VPD, employees will not be subject to random testing unless it is part of a substance use treatment program. In these cases, random testing will continue to be handled on a case by case basis though prior discussion with the member and their union in advance of any return to work.

Training on the Impacts of Cannabis

The impacts of cannabis on an individual depend on a number of factors ranging from how the product has been consumed to the type of strain that was consumed. Other factors can include how frequently cannabis is consumed, the quantity, and one's own tolerance to the drug. These factors make cannabis a very different drug than alcohol and for these reasons there is a considerable amount of information that employees should be made aware of.

Part of the VPD's strategy to handle the impending legalization of cannabis is training all employees, including supervisors and managers. This training will be developed by the VPD's training section with consultation from the VPU, the Teamsters, and the Vancouver Police Officer's Association (VPOA). Training will be provided to all VPD staff around the impacts of this drug, including the known risks and effects on the body, so that they can make informed decisions surrounding the recreational use of this substance. This is a continuation of the VPD's strategic goal of *promoting a healthy work environment*.

Legal Compliance

The VPD has sought the legal opinion of Gavin Marshall of the law firm Roper Greyell and has received confirmation that the proposed policy revisions are in compliance with applicable labour law and arbitrator decisions, the *BC Human Rights Code*, the *Freedom of Information and Protection of Privacy Act*, and the *Workers Compensation Act*.

CONCLUSION:

The VPD’s revised policy regarding impairment in the workplace will provide clear expectations that all employees show up to work fit for duty and remain fit for duty during their shift. This will help to ensure the safety of all employees and the public. Moreover, this policy also recognizes that some medications may render employees unfit for their current assignment and in these cases the VPD will continue to accommodate members and provide them with alternate work assignments when possible.

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Submitting Executive Member:

_____ Date: September 11, 2018

4.1 Professional Standards

4.1.7 Impairment at the Workplace

POLICY

It is expected that employees will show up to work fit for duty and will remain so for the entirety of their shift. The Vancouver Police Department (VPD), and those who perform services on its behalf, have a shared responsibility to maintain a safe and healthy work environment. The use of alcohol, controlled drugs and medications can have a serious adverse effect on the health, safety, and effectiveness of VPD employees, their work environment, and the public. This policy:

- a. Sets expectations regarding the use of alcohol, medication or controlled drugs that may render an employee unfit for work, impair performance or cause risk of harm to health and safety; and
- b. Ensures employees are aware of the VPD's commitment to a safe workplace, understand their role in achieving a safe workplace, and understand the potential consequences which may result from breaches of this policy.

Considering the foregoing, the VPD is committed to:

- a. Promoting a safe, healthy, and effective working environment for all of its employees, contractors, volunteers, and members of the public who interact with the VPD.
- b. Providing encouragement and opportunities for individuals affected by substance use or addiction illnesses to seek early assistance and pursue recovery.
- c. Effectively managing substance use issues which:
 - i. Impact the workplace, or
 - ii. Affect an individual's ability to safely, reliably and efficiently perform their duties.
- d. Working with all parties to accommodate individuals affected by a substance use or addiction illness and managing the associated risks, particularly in safety sensitive positions.

This policy applies to all VPD employees as well as volunteers and contractors performing work on behalf of the VPD.

DEFINITIONS

Alcohol: includes wine, beer, distilled spirits and any liquid containing ethyl alcohol, whether or not intended as a beverage. It is not intended to include other products containing alcohol which are not intended for consumption, provided these products are being used as intended.

Controlled Drug: includes any drug or substance defined in the *Controlled Drugs and Substances Act* and the *Cannabis Act*.

Medication: means a drug that is intended by the manufacturer or a physician for the treatment of a physical or mental condition, whether or not the drug is prescribed or authorized (such as in the case of medicinal cannabis) by a physician.

PROCEDURE

POSSESSION

1. The possession of alcohol and controlled drugs while working or on a break is allowed provided that:
 - a. It is being temporarily stored for the purposes of transportation away from the workplace and that the alcohol or controlled drug is contained in its original, sealed, and unopened packaging (e.g. locked in an employee's personal vehicle),
OR
 - b. The possession of the alcohol or controlled drug is part of an employee's job function (e.g. handling seized drugs or alcohol).

CONSUMPTION

2. Prior to commencing work, employees, contractors, and volunteers shall abstain from using alcohol, medication, or controlled drugs in a manner that could render them unfit to perform their duties safely and efficiently.
3. Employees, contractors, and volunteers shall abstain from using alcohol and controlled drugs while working or on break.
 - a. Police members who perform covert duties may be given prior approval by their supervisor to consume alcohol or controlled drugs when operationally necessary. In such circumstances, the supervisor shall weigh the concerns regarding the consumption of alcohol or controlled drugs against the specific needs of the police operation.
 - b. Members who have the prior authorization from the Chief Constable are authorized to consume alcohol for official business or protocol functions.
4. Employees, contractors, and volunteers are to act responsibly with regard to the use of medication, whether over-the-counter or prescribed by a physician, to prevent adverse effects on work performance. Employees, contractors, and volunteers are responsible to consult a physician or pharmacist when the potential effects of a medication or combination of medications on work performance are unknown to the individual. Any potential mental or physical impairment or other adverse effect associated with the use of a medication which affects work performance must be brought to the attention of their supervisor so that accommodations to the employee's work can be considered.

PERFORMANCE

5. Employees, contractors, and volunteers are to report fit for duty whenever attending work, and remain fit for duty while on VPD business and premises.
6. When being called in to work, employees, contractors, and volunteers are to notify their supervisor if they are not fit for duty.
7. Employees, contractors, and volunteers are to notify their supervisor if they observe another employee, volunteer or contractor whose ability to work appears to be affected by alcohol, a controlled drug, or other substance.

8. When a supervisor becomes aware that one of their employees, contractors, or volunteers is not fit for duty, after making reasonable enquiries to confirm fitness, they must take appropriate steps to ensure the safety of the employee and others. Once any safety considerations are addressed, they are to immediately notify their manager and the HR manager.

SUBSTANCE USE AND ADDICTION

9. The VPD recognizes its duty to accommodate employees with disabilities, including substance use and addiction illnesses.

CONFIDENTIALITY

10. Medical information is the property of the employee; however, in some cases failure to provide this information may impact an employee's Return to Work, Stay at Work, entitlement to benefits, or the accommodation process. The employer recognizes that denial and lack of self-awareness may be a symptom of substance abuse disability.
11. Unless the employee otherwise provides consent, the VPD will:
 - a. Maintain the confidentiality of information obtained under this policy. The VPD will use obtained information only for the purposes of administering this policy, where limited disclosure is necessary for related health and safety concerns (e.g. where there is deemed to be a potential for risk to self, others or the VPD), or as required by law.
 - b. Only disclose to the employee's supervisor and manager information related to the employee's fitness for work and any applicable restrictions; and further, such disclosure will only be undertaken where necessary for a legitimate work purpose.

TESTING

12. Random or blanket drug or alcohol testing of current or prospective employees is not permitted, except as part of an individual testing protocol recommended by an employee's treating physician as part of a treatment program. Prior to any such testing protocol being implemented, the employee will have an opportunity to consult with their union and the protocol must be agreed to by the employee.
13. If there are reasonable grounds to suspect that an employee, contractor, or volunteer is impaired at work by drugs or alcohol, and the employee, contractor, or volunteer has denied impairment:
 - a. A supervisor or manager will enquire if there is any underlying medical condition or disability and advise the employee to seek medical attention and advice from the union.
 - b. A supervisor or manager may conduct drug and alcohol testing. Prior to the test being conducted, if it involves a VPD employee, the employee will be provided with an opportunity to consult with their union. Where such testing confirms impairment at the workplace, the employee will be given an opportunity to seek medical attention.
 - c. The employee will not return to the workplace until it is confirmed there is no impairment.

14. Accommodation and treatment will be the preferred course of action of the Employer for employees. Discipline could result where there has been failure to disclose a disability resulting in impairment at work so as to endanger the employee or anyone else.