

CREATION OF THE SOUTH COAST BRITISH COLUMBIA TRANSPORTATION AUTHORITY POLICE SERVICE

A. Historical Background to Creation of a Designated Policing Unit for TransLink

1986 – Transit Security and Special Provincial Constables (SPCs) were created with introduction of SkyTrain:

- a. Purpose was to enhance existing police resources to maintain public peace and provide safety of customers and employees.
- b. Uniform initial response unit enforcing Canadian Criminal Code (CCC) and all BC provincial statutes.
- c. SPCs were empowered to make arrests, submit crown counsel reports and issue violation tickets for a variety of provincial offences, including liquor, littering and fare evasion.

1986-1996 – Expanded role:

- a. Initially, SPCs' responded to criminal offences, eliminated unwanted behavior, enforced the *Transit Conduct and Safety Regulation*, including the payment of fares.
- b. The SPC role was then expanded to include drug offences and execution of outstanding warrants issued by the courts and supported by local jurisdictional police.
- c. To enhance criminal investigations and further supported by local police, the Transit Security Department obtained access to Canadian Police Information Center (CPIC) via 3rd party access (New Westminster Police Services).
- d. In 1996, TransLink Security made application to the Attorney General Ministry - Police Services Division (AG Ministry) for direct access to CPIC.

1996-2003 – Role Restrictions:

- a. The Ministry reviewed the CPIC application and concluded that SPCs' were exceeding their law enforcement authority.
- b. The AG Ministry stated there was never an intention for SPCs' to enforce Canadian drug laws and the SPC program did not have the authority to execute outstanding warrants that were not transit related.
- c. SPCs' were told people, in possession of drugs or subject of an outstanding warrant were to be released if they have a valid fare.
- d. In December 2002, a challenge by defence counsel over the authority of an SPC during the arrest of a knife-wielding individual who was threatening people "near" a SkyTrain station and subsequently committed a robbery was made in court.
- e. The AGs Ministry again reached the conclusion that SPCs' could not exercise their authority in situations that originated "off" transit property.
- f. Interpretation meant that SPCs' could not apprehend someone who shoplifts from a store next to a SkyTrain station and attempts to escape using the train, nor take action should they witness an assault or robbery on a city street even if it involves an intended passenger or someone who just left the system.

Measures to Resolve Authority Issues:

- a. TransLink senior executives met with the AG Ministry and agreed that a review was needed to ensure SPCs' had the applicable authority to "do the job".

- b. AGs Ministry carried out an in-depth TransLink Security Department review/audit.
- c. Review presented a number of different models, most of which involved active police participation.
- d. Review also proposed that TransLink pay for police services provided to SkyTrain.
- e. TransLink hired an external consultant for a thorough review of the AGs audit report.
- f. TransLink Board of Directors advised the AG Ministry that the preferred option (after reviewing both reports) was to form a “task force” comprised of seconded jurisdictional police officers that would be deployed as needed to focus on specific issues.
- g. TransLink requested from the AGs Ministry that the “task force” include staff from Police Services Division, TransLink and applicable jurisdictional police forces.
- h. A steering committee was established, however, police representatives got “bogged down” on the notion of establishing a “TransLink Designated Police Unit” under the *BC Police Act*.
- i. Police felt that establishing a “*corporate, private or for profit police agency*” would set a bad precedent for policing in the province.
- j. Additional comments of “Americanization” style policing would evolve within the province.
- k. After the demise of the proposed vehicle levy tax, TransLink resisted the notion that it would directly fund the participation of the jurisdictional police.
- l. Change in the government in May 2001 placed in the whole review process and its decision on the various options into a lengthy period of suspension.

2003 - Corrective Steps:

- a. In February 2003, at a British Columbia Association of Chiefs of Police (BCACP) meeting, the issue of the TransLink DPU was re-introduced by Police Services Division.
- b. The proposal centered on section 4.1 of the *Police Act* to designate current TransLink SPCs’ as “designated police officers” with appropriate uniform, insignia and authority.
- c. The additional authority would eliminate a significant problem of being constantly challenged, putting passengers and staff at risk, increase enforcement authority and implement more public accountability when complaints surface against Transit constables.
- d. Police Services Division supported the DPU approach, which would allow for a more “seamless” form of policing on all transit properties while working in conjunction with local police agencies.
- e. The Director of Police Services received concurrence from the BCACP to proceed with the 4.1 application.
- f. In December 2003, the TransLink Board of Directors directed that a formal application be submitted to the Ministry of Public Safety and Solicitor General to designate TransLink Transit Security as a DPU.

B. Legislative Framework for the Greater Vancouver Transportation Authority Police Service (GVTAPS)

Creating DPU

Under section 4.1(1) of the *Police Act*:

“Designated Policing” means policing and law enforcement provided in place of or supplemental to the policing and law enforcement otherwise provided by the provincial police force or a municipal police department.

“Entity” means any of the following:

- a. municipality;
- b. a regional district;
- c. a government corporation;
- d. any other prescribed entity.

The process for establishing a DPU is set out in sections 4.1(3) to (9) of the *Police Act*.

On December 2003, TransLink made application under section 4.1(2) of the *Police Act* (to the Minister responsible for the Act’s administration) for the designation of a designated policing unit (DPU) to provide designated policing (**Appendix I**).

As required by section 4.1(3), the application was required to include:

1. a description of all policing and law enforcement services to be provided by the designated policing unit **on behalf of the entity**;
2. a description of the geographical area within which the services are to be provided;
3. a description of the qualifications required of the designated constables;
4. a description of the governance of the designated policing unit, including:
 - a. identification or proposes establishment of the board;
 - b. proposed membership of the board;
5. an explanation as to how the designated policing is to be coordinated with the policing and law enforcement otherwise provided by the provincial/municipal police in the geographical area;
6. a written statement endorsing the application, from each of the following persons:
 - (i) the chief constable of each municipal police department in the geographic area within which the designated policing is to be provided; and (ii) the commissioner, if the designated policing is to be provided in a geographical area within which the provincial police force regularly provides policing and law enforcement (*Note: for the TransLink application, the Minister waived this requirement under section 4.1(4) of the Police Act*);
7. any other information that the Minister may require.

The Minister in establishing the DPU must do so in accordance with the application, therefore the terms of the application form a part of the legal framework for the DPU. The letter of the Minister dated May 21, 2004 (**Appendix 3**) confirmed the terms of the TransLink application, subject to the following terms:

1. named the designated policing unit “Greater Vancouver Transportation Authority (GVTA) Police”;

2. set the mandate of the designated policing unit as follows:
 1. “to preserve and maintain the public peace, prevent crime and offences against the law, aid in the administration of justice and enforce the laws in force in British Columbia, and is:
 - a. primarily directed towards any criminal activity or breach of public peace that could affect the safety or security of transit passengers, transit employees, or transit property, and
 - b. includes conducting investigation and enforcement operations with respect to any unlawful activity on or around transit vehicles and other transit property.”
 2. established geographic jurisdiction; and
 3. identified the board as being subject to change at the discretion of the Minister but will have at least one member from TransLink.

There is a Prescribed Entity Regulation, and by way of **ORDER>>>>>>**, it provides: “The Greater Vancouver Transportation Authority is a prescribed entity for the purposes of “entity” in the Police Act.”

As required by section 4.1(6) of the *Police Act*, the TransLink application was approved by cabinet (Lieutenant Governor in Council) by Order in Council No. 570 dated June 10, 2004 (**Appendix 2**), on the terms required by the Minister dated May 21, 2004.

As authorized by section 4.1(7) of the *Police Act*, by Ministerial Order No. M373 dated October 20, 2004 (**Appendix 4**), the Minister then established **on behalf of TransLink** and in accordance with the terms of the application³

1. Greater Vancouver Transportation Authority Police Service; and
2. Greater Vancouver Transportation Authority Police Board.

Through **Order xxxx**, the Minister then prescribed the GVTAPS so that it was a “police force” in British Columbia under section 1.1 of the *Police Act*. This makes GVTAPS police officers a “provincial constable” under the *Police Act*.

Establishing GVTAPS Regulation and Operations Regulation

As authorized by section 4.2(2) of the *Police Act*, the Minister also made the **Greater Vancouver Transportation Authority Police Service Regulation** (Appendix XX), Ministerial Order No. XX October 20, 2004, that sets out the geographic area in which the GVTAPS must operate, which is the “transportation service region” defined in the *Greater Vancouver Transportation Authority Act*. The Order also prescribes powers, duties and functions of the Board as those set out in s. 4.2(2)(c) of the *Police Act*.

On November 1, 2004, Cabinet passed **Order XXXXX** establishing the **Greater Vancouver Transportation Authority Police Service Operations Regulation (Appendix XX)** which makes certain regulations under the Police Act apply to the GVTAPS: *Police Disposal of Property Regulation*; *Emergency Program Management Regulation*; *Police Uniform Regulation*; and Part 9 of the *Police Act* dealing with the complaint process and *Code of Professional Conduct Regulation*.

Other Regulations

On xxxx, GVTAPS was added to for the federal *Controlled Drugs and Substances Act*.

There are also other regulations under the *Police Act* which already apply to all designated policing units and those are the *Use of Force Regulation*, the *Police Oath/Solemn Affirmation Regulation*, and under the *Motor Vehicle Act*, the *Emergency Vehicle Driving Regulation*.

Authority of GVTAPS

GVTAPS is a Designated Policing Unit in British Columbia established pursuant to s. 4.1 of the *Police Act*. GVTAPS and its police officers are also granted specific authorities under the *Greater Vancouver Transportation Authority Act* and related regulations.

The functions, powers, duties and authority of the GVTAPS are contained in the following:

1. TransLink application for a designated policing unit (**Appendix I**), subject to the terms established by the Minister and subsequent regulations;
2. Terms established by the Minister in a letter dated May 21, 2004 (**Appendix II**);
3. *Police Act*;
4. Regulations to the *Police Act*, including:
 - a. *Greater Vancouver Transportation Authority Police Service Regulation*, (**Appendix IV**)
 - b. *Greater Vancouver Transportation Authority Police Service Operations Regulation* (**Appendix V**)

As set forth in the Minister's letter of May 21, 2004:

"2. The policing and law enforcement mandate of the GVTA Police is to preserve and maintain the public peace, prevent crime and offences against the law, aid in the administration of justice and enforce the laws in force in British Columbia, and is:

(a) primarily directed towards criminal activity or breach of public peace that could affect the safety or security of transit passengers, transit employees or transit property; and
(b) includes conducting investigation and enforcement operations with respect to any unlawful activity on or around transit vehicles and other transit property.

3. The geographic jurisdiction of the GVTA Police is restricted to:
 - a. Any property that is used to provide transit services that is owned or controlled by the GVTA or any of its subsidiaries.
 - b. Any vehicle operated by or on behalf of the GVTA or any of its subsidiaries for the transportation of passengers or goods.
 - c. Any municipality, regional district, or other area included in the transportation service region as defined in the *Greater Vancouver Transportation Authority Act* only if the GVTA are responding to or investigating an incident that is directly related to the mandate of the GVTA as set out in paragraph 2."

Appointment of Designated Constables

Pursuant to section 4.1(11) of the *Police Act*, subject to the approval of the Minister, the Police Board may appoint designated constables to perform designated policing. As set forth in section 13, subject to the restrictions specified in the appointment and to the regulations, a person appointed under section 4.1(11) has the powers, duties and immunities of a provincial constable. Designated Constables have powers and duties of a **provincial** constable, however,

the Minister has authority to place limits on powers and authority of designated constables either in the appointment or by regulation. (See **Appendix XX** for the appointment template.)

Other

This document does NOT discuss the legislative framework for:

- Complaints and discipline process of Transit Police officers, as amended from time to time in the *Police Act* and regulations;
- role of the Police Board under section 4.2 of the *Police Act*;
- role of the legal entity under section s. 4.1, 4.2 and 17.1 of the *Police Act*;
- public body responsibilities under the *BC Freedom of Information and Protection of Privacy Act*.

C. Name Change to South Coast British Columbia Transportation Authority Police Service

As a result of the provincial TransLink Governance Review released in March 2007, on April 26, 2007 the Ministry of Transportation introduced Bill 36 in the Legislature to replace the Greater Vancouver Transportation Authority (GVTA) Act with the South Coast British Columbia Transportation Authority (SCBCTA) Act. On November 27, 2007, the SCBCTA Act came into effect. As a result, s. 2(1) of the GVTA Act was repealed, and the following provisions substituted under the renamed SCBCTA Act:

Authority established

2 (1) The authority is continued under the name "South Coast British Columbia Transportation Authority", consisting of the directors referred to in Part 8.

(1.1) The Greater Vancouver Transportation Authority Police Service is continued under the name "South Coast British Columbia Transportation Authority Police Service" and the Greater Vancouver Transportation Authority Police Board is continued under the name "South Coast British Columbia Transportation Authority Police Board".

(1.2) A reference to the Greater Vancouver Transportation Authority, the Greater Vancouver Transportation Authority Police Service or the Greater Vancouver Transportation Authority Police Board in any record, including, without limitation, in any security agreement, commercial paper, lease, licence, permit or other contract, instrument, document or certificate is deemed to be a reference to the South Coast British Columbia Transportation Authority, the South Coast British Columbia Transportation Authority Police Service or the South Coast British Columbia Transportation Authority Police Board respectively.

(2) The Business Corporations Act does not apply to the authority, but, on request of the authority, the Lieutenant Governor in Council may order that one or more provisions of that Act apply to the authority.

(3) The authority is not an agent of the government.

(4) The authority may carry on business, and, without limiting this, may enter into contracts or other arrangements, adopt bylaws, pass resolutions, issue or execute any

other record or sue or be sued under a name prescribed by regulation of the Lieutenant Governor in Council, and any contract, bylaw, resolution or other arrangement or record entered into, adopted, passed, issued or executed, as the case may be, and any suit brought, by the authority under the prescribed name is as valid and binding as it would be were it entered into, adopted, passed, issued, executed or brought by the authority under its own name.

As a result of this name change from GVTAPS to SCBCTAPS, Police Services Division was required to amend the police service name in legislation it is responsible for:

D. New Legal Entity

In 2012, TransLink received approval from the Labour Relations Board (Appendix XX) to create a bargaining unit specific to Transit Police personnel which would then enable Transit Police personnel to move to a TransLink subsidiary – TransLink Security Management Limited (TSML). TSML is a wholly owned subsidiary of TransLink. Following consultation with the Ministry of Justice and consideration of the DPU provisions within the *Police Act*, TransLink was required to make a new application to move SCBCTAPS to TSML as the legal entity/employer. That application was made August 27, 2012. Similar to the process followed in 2004, a series of legislative orders were completed and other actions taken to facilitate seamless transitioning of the SCBCTAPS to TSML.

1. Order of the Lieutenant Governor in Council No. 006 dated January 16, 2013 approving TSML and TransLink as a prescribed entity for the purpose of s. 1 of the *Police Act*. (Appendix XX)
2. Pursuant to s. 4.1(5) of the *Police Act*, the Minister approved TSML's application to become a DPU, subject to terms as outlined in the Minister's January 17, 2013 letter. (Appendix XX)
3. A letter from TSML Board dated January 27, 2013 confirmed the acceptance subject to the clarification that the geographic jurisdiction was the transportation service region as specific in the SCBCTAPS Regulation. (Appendix XX)
4. Order of the Lieutenant Governor in Council No. 029 dated January 30, 2013 approved, effective March 4, 2013, TSML's application under s. 4.1(2) of the *Police Act*, on the terms required by the Minister on January 17, 2013. (Appendix XX)
5. Order of the Minister of Justice and Attorney General No. 030 dated February 7, 2013 established, in accordance with the approved application and terms, a DPU known as South Coast British Columbia Transportation Authority Police Service and a designated policing board known as the South Coast British Columbia Transportation Authority Police Board. (Appendix XX)
6. Order of the Minister of Justice and Attorney General No. 031 dated February 7, 2013 appointed the new Police Board Chair and members of the Police Board. (Appendix XX)
7. Order of the Minister of Justice and Attorney General No. 032 dated February 7, 2013 designates SCBCTAPS as a police force in British Columbia pursuant to and for the

purpose of all provisions of the Controlled Drugs and Substances Act (Police Enforcement). (Appendix XX)

E. Coordination of Policing and Law Enforcement

The GVTAPS provide policing and law enforcement supplemental to jurisdictional police, not in place of them. The creation of the GVTAPS does not diminish Jurisdictional Police obligations dictated by statute, executive order and contract to provide policing. The Transit Police has established an Memorandum of Understanding of operational and procedural protocols with Jurisdictional Police whose jurisdiction the Transit Police regularly exercises its authority with respect to policing and law enforcement. This MOU reflects a co-ordination of efforts and full support of and co-operation between the Transit Police and JPDs. (Appendix XX)

When a SCBCTAPS Member exercises authority in a jurisdiction whose policing agency has not entered into a Memorandum of Understanding with the Transit Police, the Member will, if possible, notify the policing agency in advance of exercising authority, but in any case must promptly after exercising jurisdiction notify the municipal police department (as required by s. 10(2) of the *Police Act*).

F. Geographic Jurisdiction and

In relation to authority of the SCBCTAPS to investigate non-transit related offences occurring off transit property, Section 10 of the *Police Act* states:

Section 10 (1) Subject to the restrictions specified in the appointment and the regulations, a provincial constable, an auxiliary constable, a designated constable or a special provincial constable has, while carrying out the duties of his or her appointment, jurisdiction throughout British Columbia to exercise and carry out the powers, duties, privileges and responsibilities that a police constable or peace officer is entitled or required to exercise or carry out at law or under an enactment.

This grants a designated constable authority throughout the province unless there are restrictions contained in the specific appointment or regulations.

Further, Section 4.1(13) of the *Police Act* states:

*Subject to the restrictions specified in the appointment and to the regulations, a person appointed under subsection (11) [a designated constable] has the powers, duties and immunities of a **provincial constable**.*

Section 4.2(2) (g) of the *Police Act* specifically identifies the power to make regulations:

"prescribing the restrictions, including geographical restrictions, on the powers, duties and functions of a designated constable of the designated policing unit;"

BC Reg. 454/2004 made under the *Police Act* (Appendix XX) identifies the geographical area under which SCBCTAPS must operate as the transportation service region as defined in the *SCBCTA Act*. Therefore, the authority under section 10(1) and 4.1(13) and the geographic restriction under the regulations establishes authority for SCBCTAPS to operate throughout the region.

Other provisions of the *Police Act* do permit acting outside of jurisdiction -- section 10(2). The authority/jurisdiction of the designated constables can only be restricted or limited by the terms of their appointment or regulations under both sections 10(1) and 4.1(13) of the *Police Act*.

The Ministers' letters of May 21, 2004 and January 17, 2014 are very similar in terms of mandate and jurisdiction, with the exception of the January 17, 2014 Minister's letter adding reference to the SCBCTA Fare Infraction Bylaw introduced in 2012. In both instances, the Minister's letter confirms the mandate of SCBCTAPS to maintain the public peace, prevent crime and offences against the law, aid in the administration of justice and enforce the law in force in British Columbia. The letter identifies that this mandate is primarily (not exclusively) directed towards transit related criminal activity and includes (but does not limit it to) conducting investigations and enforcement operations on or around transit vehicles and transit property. This interpretation is supported by the xxx, 2008 letter from the Director of Police Services (Appendix XX).

Although the Ministers' letters identify the geographic location as being restricted to transit property, transit vehicles and any municipality, etc. in the transportation service region if the police are responding to or investigating an incident directly related to its mandate, the subsequent regulations amends this geographic location description and the *Police Act* requires that any limitations or restrictions be identified in the designated constable's appointment or contained in regulations.

Other than the regulation defining the geographical operational area, SCBCTAPS is not aware of any regulations that restrict the powers, duties and immunities of a designated constable to something different from the powers, duties and immunities of a provincial constable.