

TORONTO TRANSIT COMMISSION REPORT NO.

MEETING DATE: September 25, 2013

SUBJECT: SPECIAL CONSTABLE DESIGNATION FOR
TRANSIT ENFORCEMENT OFFICERS AT THE TTC

ACTION ITEM

RECOMMENDATION

It is recommended that the Commission receive, approve and forward the attached business case to the Toronto Police Services Board (Board) to initiate a new Special Constable agreement between the two agencies.

FUNDING

There are no new or additional financial implications resulting from the implementation of this policy.

BACKGROUND

Since July of 1987 the TTC has employed staff with Provincial Offences Officer status. These officers: provide a visible presence, enforce TTC by-laws, respond to calls for service in order to help preserve the peace, protect the safety of TTC customers and employees and protect TTC assets.

In June 1997, at the request of the TTC and with the approval of the then Provincial Solicitor General, the Toronto Police Services Board (Board) designated certain employees of the TTC responsible for providing safety and security services to the transit system, as Special Constables. These Transit Special Constables were conferred with limited law enforcement powers and authorities in accordance with Section 53 of the *Police Services Act*. This designation was governed by a contractual agreement between the Board and the TTC. Since that time the TTC and the Toronto Police Service (the Service) relied on a partnership to deliver policing and security services to the TTC's employees and patrons.

In 2009, the Service created a Transit Patrol Unit (TPU) to take a more proactive role in policing the subway system. The TPU became operational in May of that year. From the unit's inception, the TPU provided direction and assistance to the TTC Special Constables.

In February 2011, the aforementioned agreement relating to Special Constables between the Board and the TTC was terminated.

Since February 2011, the TTC has undergone many changes with respect to its transit enforcement function in order to address previous concerns raised by the Board and Service. In September 2011, the TTC reorganized the Transit Enforcement Unit (TEU – previously known as Transit Enforcement

and Security Services) to streamline the reporting structure, better align business functions and ensure greater accountability. Prior to September 2011, the department was comprised of three sections: (1) the Transit Enforcement Unit, (2) Investigative Services, and (3) System Security. As part of the departmental reorganization, the TEU only provides a transit enforcement function. The TEU now reports within a separate department from the Investigative Services and System Security sections. The changes were made, in part, to support the TTC in meeting all its new roles and responsibilities as part of the new model for transit policing and security.

A new agreement which provides Special Constable status to a number of TTC employees would be limited to the TEU and would be used as an additional tool with respect to a Transit Enforcement Officer's role in enforcing TTC by-laws.

The TTC is seeking a new agreement with the Board to designate Transit Enforcement Officers as Special Constables with limited powers and authorities under selected federal and provincial statutes to support the enforcement of fares and TTC By-law No.1.

DISCUSSION

Please see the attached business case which clarifies the intention of the program as well as the individual purpose, rationale and application for each authority being requested for the proposed Special Constable framework.

JUSTIFICATION

The proposed limited Special Constable powers and authorities are designed to protect the health and safety of the Transit Enforcement Officer when otherwise benign situations unexpectedly escalate, as well as to deal with situations that are of an immediate public safety nature or in the public's interest when it is neither reasonable nor practical to await the arrival of the police. Support of this program by the Commission is requested so that it may move towards fruition.

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Attachments: 2013 Toronto Transit Commission Business Plan for Special Constable Status

2013 Toronto Transit Commission Business Plan for Special Constable Status

Proposed Special Constable Powers and
Authorities for Transit Enforcement Officers



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Preface

The purpose of this document is to provide the Toronto Police Services Board (the Board) and The Chief of Police with sufficient information and justification to confer limited powers and authorities under selected federal and provincial legislation to employees within the Transit Enforcement Unit (TEU) of the Toronto Transit Commission (TTC). With the approval of the Ministry of Community Safety and Correctional Services, this would be accomplished by appointing them as Special Constables under section 53 of the *Police Services Act*, R.S.O.

Each legislated authority discussed has been divided into three parts: a purpose, a rationale and application and identifies the specific sections being requested. The Purpose serves to provide a brief background of relevance to the safety and security of the transit system. The Rationale provides a basis for requesting the authority outlining the benefits for the Toronto Police Service, the TTC and the transit community. Lastly, the Application describes how a Transit Enforcement Officer (TEO) with Special Constable status will professionally and responsibly apply the authority while executing their duties for the TTC while adhering to TTC policy and procedure, Code of Conduct, and terms of agreement with the Board.

Combined, all three components: Purpose, Rationale and Application, form the framework of justification for each authority requested from the Board.

Background

The Board is responsible for the provision of adequate and effective police services in the City of Toronto pursuant to the provisions of Part III of the *Police Services Act*, R.S.O. 1990 Chap. P-15, (the "PSA").

The TTC is a local passenger transportation commission operating within the Greater Toronto Area. The TTC is a branch of the City of Toronto and operates a transit system pursuant to the provisions of the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Schedule A, as amended (the "COTA").

The TTC has authority to enact by-laws regulating the use of its transit system and has enacted By-Law No. 1 – a by-law regulating the use of the Toronto Transit Commission local passenger transportation system.

The TTC has established a Transit Enforcement Unit (the TEU) in order to: protect the integrity of the transit system, perform security functions with respect to TTC properties and assets and to ensure that the transit system remains a safe and reliable form of transportation.

In 2012 there were over 514 million rides provided by the TTC throughout the City of Toronto. On average, 1.62 million rides per day.

Since July of 1987 the TTC has employed staff with Provincial Offences Officer status. These officers: provide a visible presence, enforce TTC by-laws, respond to calls for service in order to help preserve the peace, protect the safety of TTC customers and employees and protect TTC assets.

In June 1997, at the request of the TTC and with the approval of the then Provincial Solicitor General, the Board designated certain employees of the TTC responsible for providing safety and security services to the transit system, as Special Constables. These Transit Special Constables were conferred with limited law enforcement powers and authorities in accordance with Section 53 of the *Police Services Act*. This designation was governed by a contractual agreement between the Board and the TTC. Since that time the TTC and the Toronto Police Service (the Service) relied on a partnership to deliver policing and security services to the TTC's employees and patrons.

In 2009, the Service created a Transit Patrol Unit (TPU) to take a more proactive role in policing the subway system. The TPU became operational in May of that year. From the unit's inception, the TPU provided direction and assistance to the TTC Special Constables.

In February 2011, the aforementioned agreement relating to Special Constables between the Board and the TTC was terminated.

Since February 2011, the TTC has undergone many changes with respect to its transit enforcement function in order to address previous concerns raised by the Board and Service. In September 2011, the TTC reorganized the TEU (previously known as Transit Enforcement and Security Services) to streamline the reporting structure, better align business functions and ensure greater accountability. Prior to September 2011, the department was comprised of three sections: (1) the Transit Enforcement Unit, (2) Investigative Services, and (3) System Security. As part of the departmental reorganization, the TEU only provides a transit enforcement function. The TEU now reports within a separate department from the Investigative Services and System Security sections. The changes were made, in part, to support the TTC in meeting all its new roles and responsibilities as part of the new model for transit policing and security.

A new Agreement which provides Special Constable status to a number of TTC employees would be limited to the TEU and would be used as an additional tool with respect to a TEO's role in enforcing TTC by-laws.

The TTC is seeking a new agreement with the Board to designate TEOs as Special Constables with limited powers and authorities under selected federal and provincial statutes to support the enforcement of fares and TTC By-law No.1.

Future Vision for TTC Transit Enforcement Officers

Proactive fare and bylaw enforcement are generally not matters of public safety; rather they are matters of a corporate and public interest, both of which would normally be addressed by the transit authority. It is in the best interests of the TTC, the City, and the public to address these issues as efficiently and effectively as possible.

The TTC loses a considerable amount of revenue each year through the use of fraudulent fare media and other types of fare evasion. It is estimated that in 2011, the TTC lost 20.5 million dollars to various forms of fare evasion. It is therefore in the best interests of the TTC, the City and the public to ensure fares are being paid and properly collected. An integral component to combat fare evasion is to ensure an efficient and effective fare inspection and enforcement process is in place as a general and specific deterrent.

Special Constable authority for TTC TEOs is beneficial in supporting the TTC's fare and by-law enforcement objectives.

To ensure that TEOs can effectively and efficiently carry out their security related duties, Special Constable status is recommended.

A proposed new agreement between the TTC and the Board will recognize the need for adequate and effective powers and authorities for TEOs to ensure they have the ability and tools for fare and by-law enforcement, while also ensuring accountability. Further the proposed authorities will allow TEOs to deal effectively and efficiently with any issue that arises as a result of these activities.

Year	Ridership (In Millions)	Fare Evasion (\$ in millions)
2012	514.0	No Data Available
2011	500.0	20.539
2010	477.4	22.067
2009	471.2	11.151
2008	466.7	9.767

Rationale for Special Constable Status

The presence of both Toronto Police Officers and TEOs provides enhanced safety and security for the TTC's employees and customers.

The role of a TEO, with limited Special Constable powers and authorities is in many cases, the appropriate 'mode of response' to deal with issues that result out of their core function which is fare and by-law enforcement.

The proposed limited Special Constable powers and authorities are designed to protect the health and safety of the TEO when otherwise benign situations unexpectedly escalate, as well as to deal with situations that are of an immediate public safety nature or in the public's interest when it is neither reasonable nor practical to await the arrival of the police.

A structured system for reporting Special Constable activity in relation to the powers and authorities granted TEOs by the Board will be put in place to ensure compliance with the terms and conditions of the agreement and to ensure TEOs use their powers and authorities responsibly and lawfully.

A report of all TEO enforcement activity will be submitted to the Service daily for review. The TTC will report annually to the Board in a largely statistical report that amongst other things will identify the training received by TEOs to ensure training is current thereby minimizing risk to both the TTC and the Board. Training standards will be prescribed by Board and Service. In addition, a new Code of Conduct for each TEO has been developed to ensure that the roles and responsibilities of the TEO are understood.

Geographic Jurisdiction

The geographic jurisdiction the TTC has requested from the Board, will be limited to:

- a) any TTC property which includes: all lands, facilities, structures, stations and vehicles owned, leased, occupied or maintained by the TTC,

- b) any place in Toronto provided the TEO is in “fresh pursuit” of a suspect who is fleeing from TTC property as defined in paragraph (a),
- c) the City of Toronto for the purpose of transporting persons detained in custody to a police facility or medical facility or as otherwise directed by an Officer-in-Charge of the Service.

Requested Authorities, Federal Legislation

FEDERAL LEGISLATION

Peace Officer Status

Purpose

A TEO who while performing their normal duties, has, in relation to an offence under any Act or regulation, the powers and obligations of a peace officer under ss. 495 to 497 of the *Criminal Code*.

Rationale

Peace officer authority (under ss. 495 to 497 of the *Criminal Code*) will provide TEOs with powers and authorities beyond those of a citizen to affect arrests where reasonable grounds exist to believe the individual has committed an indictable offence or that the person is named in a criminal warrant. The powers of a peace officer will be limited as a TEO may not use any power conferred by his/her appointment as a Special Constable for enforcement of the *Criminal Code* for the sole purpose of looking for evidence of a criminal offence. If a TEO while performing his/her normal or regular duties encounters a person engaging (or is advised by a third party of such action) in criminal activity, the additional powers of a peace officer will enable the TEO to take appropriate action.

Application

Based on an objective view of the circumstances, immediate action pursuant to the Criminal Code is necessary when it is likely the offender will escape criminal liability if action is not taken and it is neither reasonable nor practical given the circumstances, to await the arrival of a police officer and the arrest or detention is:

- in the interest of the public;
- in the interest of public safety;
- for lawful search and seizure;
- to maintain order on the transit system;
- for officer safety;
- to ensure operational effectiveness;

- to minimize exposure to civil and/or criminal liability due to an unlawful or unreasonable detention.

Where not taking action may result in:

- public safety being compromised;
- officer safety being compromised;
- the immediate opportunity for police to further investigate an offender being lost;
- the undue disruption of transit service, and;
- public order in the transit system being compromised.

The TTC is requesting peace officer authority for TEOs for all sections of the Criminal Code and ancillary Acts as required to support issues that may arise out of fare and by-law enforcement. As noted above, these powers are not to be used for the sole purpose of looking for evidence of *Criminal Code* violations.

Required Authorities, Provincial Legislation

MENTAL HEALTH ACT R.S.O. 1990, CHAPTER M.7

Apprehension Authority Required: Section 16, 17 and 28

Section 16 (Justice of the Peace's Order for Psychiatric Examination)

Purpose

To provide authority to a TEO to take a person named in an order by a justice of the peace into custody forthwith and transport that person to an appropriate place for treatment.

Rationale

TEOs in the performance of their duties encounter persons in distress suffering from mental illness. On occasion, the person has already been named on a Justice of the Peace's Order for Psychiatric Examination. Reasonable cause has already been demonstrated to a Justice of the Peace that the person named in the order:

- a) has threatened or attempted or is threatening or attempting to cause bodily harm to himself or herself;
- b) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her; or
- c) has shown or is showing a lack of competence to care for himself or herself, **and:**

and in addition based upon the information before him or her the justice of the peace has reasonable cause to believe that the person is apparently suffering from mental disorder of a nature or quality that likely will result in:

- d) serious bodily harm to the person;
- e) serious bodily harm to another person; or
- f) serious physical impairment of the person,

Application

If encountering a person apparently in distress and suffering from a mental illness the subsequent investigation reveals a Justice of the Peace has ordered that person be taken to an appropriate facility for treatment the TEO in consultation with the Toronto Police Officer in charge of the division may execute the said order.

The TTC is requesting apprehension authority for TEOs under section 16 of the Mental Health Act to ensure persons requiring immediate intervention under the Act receive the protection and medical treatment required.

Section 17 (Action by Police Officer)

Purpose

To intervene in situations where a person facing mental health challenges that are potentially life threatening or may result in serious injury, receives the assistance and care required to prevent harm to themselves or others.

Rationale

TEOs while on duty will encounter individuals who appear to be suffering from a mental illness and who may present a physical danger to themselves or to others.

Before exercising apprehension authority under section 17 of this Act, TEOs consider the following:

- a) has the person threatened or attempted or is threatening or attempting to cause bodily harm to himself or herself;
- b) has the person behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her; or
- c) has the person shown or is showing a lack of competence to care for himself or herself, **and:**

the TEO is of the opinion that the person is apparently suffering from mental disorder of a nature or quality that likely will result in:

- d) serious bodily harm to the person;
- e) serious bodily harm to another person; or
- f) serious physical impairment of the person,

For the immediate protection of the individual and the collateral protection of the public, TEOs will exercise the authority granted under this Act to ensure a person who appears to be suffering from a mental disorder is transported to a medical facility where a qualified physician will make an assessment.

Application

Based on an objective view of the circumstances, immediate intervention of a person believed to be suffering from a mental disorder is paramount to ensure the safety of that person when it is neither practical nor reasonable to await the arrival of police or a crisis team and intervention and apprehension is:

- in the immediate public interest;
- in the immediate interest of public safety;
- for the immediate safety of the individual;
- for the immediate safety of other members of the public

Where not affecting an apprehension may result in:

- serious bodily harm to the person, or;
- serious bodily harm to another person, or;
- serious physical impairment to the person, and;
- TEO safety being compromised and;
- the exposure to civil and/or criminal liability due to an unlawful detention and;
- the undue disruption of transit service.

The TTC is requesting apprehension authority for TEOs under section 17 of the Mental Health Act to ensure persons requiring immediate intervention under the Act receive the protection and medical treatment required.

Section 28 (Unauthorized absence)

Purpose

To provide a TEO with the authority to return a person who is subject to detention, and has been named in an order, to a psychiatric facility.

Rationale

TEOs in the performance of their duties, responding to calls for service and on general patrol, encounter persons in distress suffering from mental illness. On occasion the person has already been named in an order for return to a psychiatric facility.

If the person has been named in an order and is subject to detention in a psychiatric facility they have recently demonstrated that they are a danger to themselves or others. If the person is not acting in such a manner at the time to justify an apprehension under section 17, allowing that person to continue in the transit system could afford them the opportunity to harm themselves or another person, and would therefore not be in the public interest.

Application

The TTC is requesting authority for TEOs under section 28 of the Mental Health Act to ensure persons requiring psychiatric care who are absent without authorization under the Act to be able to return the person named in an order to a psychiatric facility.

LIQUOR LICENSE ACT R.S.O. 1990, CHAPTER L.19

Arrest and Seizure Authority Required: sections 31(5), 36(1), 47(1) and (1.1) and 48

Purpose

To give TEOs adequate powers and authorities under the Liquor Licence Act to deal with infractions that may pose an immediate risk to public or employee safety (e.g. intoxicated persons) or that may be in the public interest from the standpoint of preserving public order in the transit system, preventing service interruptions, or that may be of a TTC corporate interest from the standpoint of customer safety or civil liability.

Rationale

TEOs are routinely called upon to deal with disorderly conduct and security related incidents on the transit system. Often, they encounter individuals who are intoxicated and/or who have consumed or are consuming alcohol unlawfully and may be acting in a disorderly manner or interfering with the ordinary use and enjoyment of the transit system. The identified sections of the Liquor License Act will authorize TEOs to take the requisite action to prevent continuation of offences and ensure persons who are unable to care for themselves through the consumption of alcohol receive the treatment required at a medical or detoxification facility or are lodged in a place of safety (police facility) until fit to care for themselves.

It is not uncommon for intoxicated persons to ride the transit system, nor is it uncommon for intoxicated persons to be incapable of caring for their own safety and in some instances from becoming aggressive and thereby, posing a threat to other users of the transit system.

Application

Based on an objective view of the circumstances, immediate action pursuant to subsection 31(5) of the Act is necessary when it is neither practical nor reasonable to await the arrival of a police officer and affecting an arrest will:

- significantly reduce the risk of an intoxicated person harming him or herself;

- significantly reduce the risk of an intoxicated person harming another user of the transit system;
- begin the detoxification treatment process at the earliest possible opportunity by facilitating transport under section 36, to a medical or detoxification facility;
- ensure persons exhibiting aggressive behaviour are delivered to a police facility **and**;

where taking immediate action under section 31(5) will:

- serve the public interest for the efficient operation or resumption of transit service and to ensure operational effectiveness;
- in the interest of public safety, maintain order on the transit system;
- ensure the safety of the individual;
- ensure the safety of the TEO through taking physical control of the person;;
- minimize exposure to civil and/or criminal liability due to an unlawful or unreasonable detention
- under section 36, protect the TEO from an action or other proceeding for damages on the grounds that a person brought to a medical facility, is treated without consent.

Since the provision for arrest and detention under section 48 only survives the refusal of or tendering of false identification, release from custody and commencement of a proceeding by way of Provincial Offence Notice or Summons will immediately occur upon the correct identification being given, thereby ensuring the public's interest for any judicial proceeding.

Seizure

When an arrest cannot be made in relation to the Act and there is a need to prevent the continuation of an offence under this Act, or to seize evidence required to establish a prima-facie case with a reasonable prospect for conviction, TEOs require authority under subsection 47(1) and (1.1) to seize without warrant, property that the TEO reasonably believes will afford evidence of an offence under this Act or property that will prevent a continuation of an offence under this Act.

Application

Based on an objective view of the circumstances, property under section 47 would be typically restricted to:

- liquor and the packages in which it is kept that were used in connection with the offence

- identification that was provided as false identification

The TTC is requesting arrest and seizure authority for its TEOS for subsections 31(5), 36(1), 47(1) and (1.1) and 48 of the Liquor Licence Act relevant to enforcement, procedure and seizure of liquor illegally being conveyed on the transit system.

TRESPASS TO PROPERTY ACT R.S.O. 1990, Chapter T.21

Purpose of the Act

The Trespass to Property Act is a statute affording control to owners and occupiers of premises as to who may enter their premises, what activities are permitted on the premises and the right to direct persons to leave the premises, through the enforcement of highly specific and limited offences.

Authority Required: Section 9

Section 9

Arrest without warrant on premises

9. (1) A police officer, or the occupier of premises, or a person authorized by the occupier¹ may arrest without warrant any person he or she believes on reasonable and probable grounds to be on the premises in contravention of section 2.

Delivery to police officer

(2) Where the person who makes an arrest under subsection (1) is not a police officer, he or she shall promptly call for the assistance of a police officer and give the person arrested into the custody of the police officer.

Deemed arrest

(3) A police officer to whom the custody of a person is given under subsection (2) shall be deemed to have arrested the person for the purposes of the provisions of the Provincial Offences Act applying to his or her release or continued detention and bail.

Rationale

TEOs on a regular basis encounter persons who are on TTC property when they have been prohibited from entering, or who are engaged in prohibited activities on the premises, or who refuse to leave premises when directed. The authority granted under the Trespass to Property Act (the Act) authorizes TEOs as persons authorized by the occupier, to arrest and detain persons who are on the property or who are engaging in activities on the property in contravention of the Act.

¹ Includes a TTC TEO

Requiring a police officer to attend TTC property merely to conduct a release is not an efficient use of police resources when TEOs could be granted the authority to release arrested individuals. Release of an individual at the earliest opportunity once the conditions for release are met provides for the least amount of intrusion with the trespasser's liberty.

Application

Based on an objective view of the circumstances, it is neither practical nor reasonable to await the arrival of a police officer to release a person from custody who meets all the conditions for release. TEOs require the requisite authority to expeditiously affect a release subsequent to arrest when all the conditions for release have been met, **and it is:**

- in the interest of the person arrested to prevent unnecessary detention;
- for officer safety with respect to continuing detention, particularly if that detention is unnecessary;
- to minimize exposure to civil and/or criminal liability due to an unlawful or unreasonable detention;
- to investigate a security breach affecting the protection of critical infrastructure (section 10)
- to maintain order on the transit system;
- to ensure operational effectiveness;
- and where extended or unnecessary detention of persons in custody is not practical and may be considered unlawful.

The TTC is requesting authority for its TEOs for sections 9 of the Trespass to Property Act relevant to arrest and release of persons who have been prohibited from entering or who are engaged in prohibited activities on Commission properties, or who refuse to leave TTC property when directed. This authority will support the Service given both them and the TTC are operating with limited resources.

Summary

Limited Special Constable powers and authorities for the TTC's TEOs in their proposed form are intended to contribute to an effective partnership with the Toronto Police Service to provide a safe, secure, and efficient transit service. TEOs are trained and supervised to ensure they exercise their authorities granted by the Board both professionally and responsibly in instances when immediate action is favourable to public safety, the public interest, the interests of the Police Service and the TTC's corporate interests. Training will be performed in accordance with standards as provided by the Service/Board.

The role of the TEO is clear and includes fare and by-law enforcement and response to a TTC emergency and security related incidents. The transit system is a very specialized environment with unique needs and circumstances that are not found in other elements of the community.

The goal with any modern rapid transit system is to provide effective and efficient transit services to the public. The focus for the TEO is community oriented by providing customer awareness and assistance to transit riders using the system, enhancing public awareness of crime prevention strategies and providing a security related function in matters of public safety, public interest and when the corporate business needs of the TTC require such action.

The limited powers and authorities being requested by the TTC from the Board for TEOs are consistent with those afforded to Special Constables employed by other large transit operators for fare and by-law enforcement functions. The dedicated uniform presence the TTC's TEOs provide in partnership with the Toronto Police Service's Transit Patrol Unit, serves to enhance public confidence in the safety and security of the transit system.

The TTC is committed to a full range of accountability to the Board. Powers and authorities conferred upon its TEOs by the Board will be exercised to meet the needs and expectations of the TTC and Toronto's transit community having full regard to the agreement between the TTC and the Board and in compliance with the policies, procedures and core values of the Toronto Police Service.

If you have any questions with regards to this business case please contact:

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