

JURISDICTION OF RAILWAY POLICE CONSTABLES IN CANADA

In the interests of railway safety and security in the future, the wording of the “jurisdiction” of railway police constables must be revisited and revamped to more clearly define their role and authority. There has never been a clear definition of how their jurisdiction pertains to their authorities vested in them by the Criminal Code of Canada. This can be proven based on the myriad of case law decisions challenging jurisdiction and authorities. Railway police constables are designated as “peace officers” as per Section 2(c) of the Criminal Code of Canada while appointed as “police constables” under Section 44(1) of the Railway Safety Act for the purposes of enforcing all the laws of Canada and the provinces in so far as their enforcement relates to properties the railway company owns, possesses or administers or anywhere within 500 meters of that property and the persons upon that property. Railway Constables have no limitations on their authorities to act as “peace officers” and may enforce all of the laws of Canada without restriction on their ability to act whether on or off duty. Their “jurisdiction” is quite simply where to carry out those enforcement actions whereas their authority remains constant in every province that the railway company operates.

This differs from other organizations such as the Military Police and Fisheries and Oceans officers who are specifically limited in section 2 to being deemed “peace officers” only while carrying out duties only under that act, should they act outside those duties, they are deemed to be acting only as civilians. Railway police have no such limitation in the criminal code and have constant “peace officer” status while carrying out any police function and have the protections afforded to “peace officers” at all times. The current Railway Safety Act defines railway police “jurisdiction” wording ***“The police constable has jurisdiction on property under the administration of the railway company and in any place within 500 m of property that the railway company owns, possesses or administers.”*** This can create confusion as it may often be viewed the police constable has no ability to act as a peace officer outside of that 500 meter boundary. This is where the jurisdictional wording interferes with the intent of the criminal code pertaining to peace officer status.

In certain cases security threats to the railway may start beyond the 500 meter jurisdictional boundary, why should a railway constable have no jurisdiction in those cases? Their designations as “peace officers” under Section 2(c) of the Criminal Code of Canada already grant them the ability to carry out law enforcement functions without limitations. Where the issue lies is the “jurisdictional” wording puts limitations on the police Constables and the criminal code does not. This is where the confusion sets in.

In many provinces, railway police constable’s powers are augmented by special provincial appointments giving them powers as provincial offences officers without limitation to act anywhere within that respective province in relation to provincial offences. This again causes confusion as in some cases CN Police will have extended provincial powers whereas CP Police will not have those same extended powers within that same province. This can be for a number of reasons, one being the police service had not gone through the process to get those extended powers separately or they were simply not granted those same powers. This can become an issue if charges are laid and a defense can be argued that the offence occurred 501 meters away from railway property as opposed to 499 meters.

CASE LAW

In *R. v. Koekebakker* [2013] O.J No. 3981 the jurisdiction of a CN Police constable was challenged while their authority to carry out such duties was not. Even though their authority was not challenged, several previous case law decisions were cited including *R. v. Lord*, 2010 BCSC 1046 and *R. V. O'Brien* 1919 W.W.R 469. In the *O'Brien* decision Justice Stewart found that intent of the predecessor legislation, Section 301 of the Railway Act was to create in his words “a sort of dominion police” And that despite the appointed body being a railroad such constables were again in his words “public constables, and were officers of the law and probably in no sense agents of the railway company” Section 301 provided “authority” to protect not merely the railway property and

the railroad officials but the public generally. The court rejected the defense premise “that the language of section 44 of the Railway Safety Act limited the officer’s authority to act. No basis was found to accept the premise that the act somehow severs jurisdiction from enforceability once the officer crosses out of railway property but remains within 500 meters of such property.”

In addition to this, a declaration dated May 15th 2008 was cited in which Justice Jenkins of the Ontario Superior Court of Justice – Municipality of York 50 Eagle Street West Newmarket, Ontario, declared that Canadian National Railway Police Constables appointed under section 44(1) of the Railway Safety Act R.S.C 1985, c.32 as amended and any predecessor legislation are “Provincial Offences Officers” under section 1(1) of the Ontario Provincial Offences Act, R.S.O 1990 c.p.33. It was spoken to that Justice Jenkins would have had the noted section of the Railway Safety Act in front of him at the time of the declaration and made no mention of any limiting language for the abilities of CN Police officers to carry out duties related to any provincial offences in the province.

It is apparent as to the confusion the 500 meter “jurisdiction” limit causes with the courts and with the public in general. In many cases, armed railway police constables in fully marked police vehicles have been called upon to assist members of the public and other police organizations outside of their “jurisdiction” limit of 500 meters from anything the railway company owns possesses or administers. There is an expectation from the public for those constables to act and their “authorities” as police constables as defined by section 2 of the Canadian Criminal Code make them duty bound to do so when called upon. It should be noted security threats such as terrorist activity may also derive outside of this boundary but still be related to the railway. Technically, a railway constable would have no jurisdiction to investigate. For this reason the 500 meter boundary should be removed from the wording and replaced with clearer wording that will in no way jeopardize a constable’s ability to keep the railway and the public in general safe from all threats.

SOUTH COAST BRITISH COLUMBIA TRANSIT POLICE SERVICE

A reference can be made to the South Coast British Columbia Transit Police; based in New Westminster British Columbia these transit constables are responsible for police service related to buses, bus stations, rail stations, rail lines and ferries in the province of British Columbia.

“Transit Police officers are designated provincial police officers, which means they have full police powers throughout the province of British Columbia, 24/7, on and off duty – the same as municipal police officers in British Columbia. Their authority is not restricted to transit property or transit-related incidents. In fact, as fully-qualified police officers, Transit Police officers are required to act when they come across an incident, no matter where it occurs, especially in order to protect life or property”

The British Columbia Transit Authority Act is the legislation allowing for transit constables although they are sworn in under the British Columbia Police Act. They are defined as peace officers and sworn as constables with jurisdiction throughout the province of British Columbia. Their primary duties are within the scope of protection of persons and property under the administration of the transit authority however they are still required to act should they come across an incident needing police assistance. They are then bound to notify the police of local jurisdiction as per the BC Police Act.

In order to simplify and strengthen jurisdiction for federally appointed railway police constables, the same type of clear jurisdictional wording should be implemented in order to better protect to public and security of the railway and allow for easier interpretation of those powers by all.

CURRENT WORDING

Railway Safety Act PART IV.1 Police Constables

Appointment

44 (1) A judge of a superior court may appoint a person as a police constable for the enforcement of Part III of the [Canada Transportation Act](#) and for the enforcement of the laws of Canada or a province in so far as their enforcement relates to the protection of property owned, possessed or administered by a railway company and the protection of persons and property on that property.

Limitation

(2) The appointment may only be made on the application of a railway company that owns, possesses or administers property located within the judge's jurisdiction.

Jurisdiction

(3) The police constable has jurisdiction on property under the administration of the railway company and in any place within 500 m of property that the railway company owns, possesses or administers.

PROPOSED WORDING CHANGES

44 (1) A judge of a superior court may appoint a person as a police constable for the enforcement of Part III of the [Canada Transportation Act](#) and for the enforcement of the laws of Canada or a province in every province and territory the railway company operates in. Their primary duties shall be the enforcement of all the laws of Canada and the provinces as it may relate in any way to the protection of property owned, possessed or administered by a railway company and the protection of persons and property on that property; and in any other place in Canada in the interest of public safety, to protect life and property of the general public and to assist police of local jurisdiction.

Limitation

(2) The appointment may only be made on the application of a railway company that owns, possesses or administers property located within the judge's jurisdiction.

Jurisdiction

(3) The police constable has jurisdiction throughout every province and territory and in any place in Canada where the railway company owns, possesses or administers property. Their primary duties are to enforce all the laws of Canada and the provinces in any place with a focus in any way to the protection of properties that the railway company owns, possesses or administers and the persons upon those properties. The police constable may also carry out enforcement of all the laws of Canada and the provinces in any place in the interest of public safety and in order to protect life and property and to assist the police of local jurisdiction.

A police constable has;

(a) All of the powers, duties and immunities of a peace officer and constable at common law or under any act and the Criminal Code of Canada.

(b) Jurisdiction throughout all of Canada while carrying out those duties and exercising those powers and at any other time when acting to protect the public.

(3.1) If a police constable exercises jurisdiction beyond their primary duties in a municipality or province having police of local jurisdiction, he or she must, if possible, notify the local police in advance, but in any case must after exercising jurisdiction notify the local police of jurisdiction of the municipality or province unless deemed unnecessary by the local police of jurisdiction.

Liability for torts

4) The railway company is liable for a tort that is committed by any of its police constables if the tort is committed in the performance of that person's duties as permitted under this act.

Personal liability

5) In this section, "**police constable**" means;

(a) A person holding an appointment as a constable under this act;

(5.1) No action for damages lies against a police constable or any other person appointed under this act for anything said or done or omitted to be said or done by him or her in the performance or intended performance of his or her duty or in the exercise of his or her power or for any alleged neglect or default in the performance or intended performance of his or her duty or exercise of his or her power.

References

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