

MEMORANDUM OF UNDERSTANDING

BETWEEN:

BC Safety Authority

(dba Technical Safety BC - hereinafter referred to as "BCSA")

AND:

Abbotsford Police Department

as represented by the Chief Constable

and

Central Saanich Police Service

as represented by the Chief Constable

and

Delta Police Department

as represented by the Chief Constable

and

Nelson Police Department

as represented by the Chief Constable

and

New Westminster Police Department

as represented by the Chief Constable

and

Oak Bay Police Department

as represented by the Chief Constable

and

Port Moody Police Department
as represented by the Chief Constable

and

Saanich Police Department
as represented by the Chief Constable

Surrey Police Service

as represented by the Chief Constable

and

Vancouver Police Department
as represented by the Chief Constable

and

Victoria Police Department
as represented by the Chief Constable

and

West Vancouver Police Department
as represented by the Chief Constable

*(Hereinafter referred to as the "Municipal Police
Departments")*

AND:

Metro Vancouver Transit Police
as represented by the Chief Officer

and

Stl'atl'imx Tribal Police
as represented by the Chief Officer
(Hereinafter referred to as the "Designated Policing Units")

AND:

Royal Canadian Mounted Police
as represented by the Commanding Officer of "E" Division
(Hereinafter referred to as the "RCMP")

Respecting Investigations into Incidents Involving Equipment Regulated Under the British Columbia Safety Standards Act¹

¹ Including incidents under the *Safety Standards Act* that may also be subject to a police *Criminal Code* investigation

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PREAMBLE

WHEREAS the BCSA is created by the *Safety Authority Act*, S.B.C. 2003, c. 38 and charged with the administration of the *Safety Standards Act*, S.B.C. 2003, c. 39 and the *Railway Safety Act*, S.B.C. 2004, c. 8 and regulations thereto (collectively the “Act”);

WHEREAS the BCSA is mandated under the Act to investigate incidents and non-compliances involving regulated work or products;

WHEREAS the Act provides BCSA a number of options to promote safety in respect of regulated work and products which include, but are not limited to, conducting inspections, investigations, issuing orders, imposing monetary penalties and referring matters for prosecution under the Act;

WHEREAS the BCSA, the Municipal Police Departments, the Designated Policing Units and the RCMP (each a “Participant” and referred to collectively as the “Participants”) recognize that evidence collected for the purpose of a criminal investigation or prosecution under the Act must be obtained in accordance with the requirements of the *Criminal Code* of Canada, the *Canadian Charter of Rights and Freedoms* and criminal and quasi-criminal rules of evidence (referred to collectively as the “Prosecutorial Evidentiary Rules”);

WHEREAS the Act provides BCSA Officers with authority to enter specific premises, as defined in the *Safety Standards Act*, to conduct an inspection or investigation and to require persons to attend and answer questions, take photographs and recordings, require a place not be disturbed, take samples and conduct tests of materials and things, require the production of records, and exercise other powers necessary or incidental to carrying out BCSA Officers’ functions;

WHEREAS the Act provides that the scene of an incident must not be disturbed unless otherwise directed by a BCSA Officer;

WHEREAS the Police, pursuant to the *Police Act*, R.S.B.C. 1996, c. 367 and the *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10, are mandated to investigate violations of Provincial Statutes including the Act;

WHEREAS the Participants recognize each other as engaged in law enforcement activities, as those activities relate to privacy legislation under the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, the *Access to Information Act*, R.S.C. 1985, c. A-1 and the *Privacy Act*, R.S.C. 1985, c. P-21;

WHEREAS the Participants recognize that if a situation arises where concurrent evidentiary investigations are necessary for Prosecution and regulatory purposes, the Participants take steps necessary to ensure that a Regulatory investigation remains enabled to achieve its objectives in a timely and reasonable manner;

WHEREAS sections 33.2(a) and 33.2(i) of the *Freedom of Information and Protection of Privacy Act*, and sections 8(2)(a) and (8)(2)(f) of the *Privacy Act* permit the disclosure of personal information for the purpose for which it was obtained or compiled or for a use consistent with that purpose, and to a public body or a law enforcement agency in Canada to assist in a specific investigation;

WHEREAS it is in the public interest that the Participants cooperate and share information when conducting concurrent, joint, or sequential investigations into the same incident or non-compliance;

AND WHEREAS the BCSA and the Police wish to enter into an agreement for cooperation on activities that enable the Participants to carry out their responsibilities in a comprehensive and coordinated manner, without compromising the independence of the Participants, and within the provisions of applicable legislative authorities governing privacy and access to information; the following agreement is hereby entered into.

THE PARTICIPANTS AGREE AS FOLLOWS:

1 PURPOSE AND OBJECTIVE

The purpose of this Memorandum of Understanding ("MOU") is to establish a cooperative agreement between the BCSA and the Police to ensure the investigation of any Regulatory Incident or Offence is conducted in a thorough, timely, and effective manner that prioritizes public safety as reflected in the respective legislative mandates of the Participants.

2 DEFINITIONS

In this Memorandum of Understanding each of the following terms shall, unless the context otherwise requires, have the meaning set out beside it:

"BCSA Officer"	Means any Safety Officer or Provincial Safety Manager appointed by the BCSA under the Act.
"Chief Constable"	Means any Chief of Police for a Municipal Police Agency in the Province of British Columbia.
"Chief Officer"	Means the Chief Officer for each Designated Policing Units.
"Commanding Officer"	Means the Commanding Officer of the Royal Canadian Mounted Police, "E" Division.
"Concurrent Investigation Activity"	Activities that are conducted under one Participant's authority that relate to events, evidence, geography during the same or similar time that are also material to the other Participant's activities. Concurrent activities may include incident scene documentation or evidence gathering.
"Criminal"	Means any offence under the <i>Criminal Code</i> or another federal enactment which: (a) involves infliction or risk of serious injury (including death) or significant property damage; or (b) is identified for criminal investigation by the Police whether or not the offence also constitutes an Offence in relation to the Act.
"Incident"	Means an event occurring as a result of regulated work, or the testing, use or operation of a regulated product, that (a) causes death, personal injury or damage to property, or (b) creates a risk of personal injury or damage to property;
"Independent Investigation Activity"	Activities that are conducted under one Participant's authority without an obligation for coordination or consultation with other organizations.

"Joint Investigation Activity"	Activities that are entered into where both Participants combine and organize resources to achieve a single shared output. A joint investigation produces a single investigation report. A joint test report produces a single test result. Joint activities may also include incident scene management.
"MOU"	Means this Memorandum of Understanding respecting investigation of potential Offences under the Act.
"Offence"	Means an actual or suspected failure to comply with the Act which: (a) creates a high risk or causes fatality, serious injury or significant property damage, (b) is repetitive or demonstrates flagrant disregard for public safety.
"Police"	Means the provincial police force (Royal Canadian Mounted Police), municipal police agencies, and designated policing units listed in section 1.1 of the <i>Police Act</i> , R.S.B.C. 1996, c. 367.
"Police Officer"	Means any sworn member of the Police Agency, appointed pursuant to the <i>Police Act</i> and regular members of the RCMP.
"Prosecution"	Means a prosecution under the <i>Criminal Code</i> , provincial statutes, or the Act.
"Prosecutorial Evidentiary Rules"	Means the rules of evidence under the <i>Criminal Code</i> , the <i>Canadian Charter of Rights and Freedoms</i> , and other criminal or quasi-criminal rules of evidence.
"Provincial Police Service Agreement" or "PPSA"	Means the Memorandum of Agreement made between the Government of Canada and the Government of British Columbia, dated April 1, 2012.
"Sequential Investigation Activity"	Activities that are recognized as important to occur in a particular order between Participants.
"Serious Injury"	"serious injury" means an injury that (a) creates substantial risk of death; (b) causes substantial disfigurement; or (c) causes substantial loss or impairment of mobility of the body as a whole, or of the function of any particular bodily member or organ. NOTE: Substantial means significant or considerable, and does not include imaginary or illusory.

3 AGREEMENT AUTHORITY

- 3.1 This MOU is entered into by the President and CEO of the BCSA under the authority of the *Safety Authority Act* in aiding the administration of justice in the Province of British Columbia and in carrying into effect the applicable legislation.
- 3.2 This MOU is entered into by the Chief Constables of their respective Municipal Police Agencies and the Chief Officers of their Designated Policing Units located in British Columbia under the authority of sections 4.2, 26, and 34 of the *Police Act* to aid in the prevention of crime and offences against the law, and the enforcement of municipal bylaws, the criminal law, and the laws of British Columbia.

- 3.3 This MOU is entered into by the Commanding Officer under the authority of section 5 and in relation to section 20 of the *Royal Canadian Mounted Police Act* in aiding the administration of justice in the Province of British Columbia and in carrying into effect the applicable legislation.

4 ROLES IN RESPONDING TO POTENTIAL OFFENCES UNDER THE ACT

- 4.1 The BCSA and the Police each recognize that the other has authority to access premises, as governed by their applicable legislation and common law powers, and investigate non-compliance and potential offences within their respective mandates by way of conducting interviews, seizing evidence and recording information.
- 4.2 The BCSA and the Police recognize the importance of timely notifications of potential Incidents or Offences under the Act. The BCSA will notify Police, as soon as practicable, of potential Offences under the Act when there is reason to believe Prosecution may be required. The Police will take reasonable steps to notify BCSA, as soon as practicable, of incidents where there is reason to believe equipment or work regulated under the Act may be involved.
- 4.3 BCSA Officers and the Police who attend any premises will each protect the scene for the other and will consult and cooperate as much as possible on issues of site security, interviewing of witnesses, seizing and securing evidence, and exchanging information to ensure the integrity of each agency's investigation.
- 4.3.1 While ensuring that incidents are investigated by the appropriate agency the Police and the BCSA shall consider all offences that could reasonably apply in the circumstances within their respective mandates.
- 4.4 If the Police initiate a Criminal investigation of an Offence, the Police will assume control of the scene and may request assistance from the BCSA.
- 4.5 In the absence of a Criminal investigation by the Police, the BCSA will assume control of the scene and may request assistance from the Police.
- 4.6 Where the Police and the BCSA have reason to maintain joint control of an investigation scene and associated evidence, they may consider entering into a formal Unified Command agreement using the Incident Command System model recognized by all Participants in order to facilitate a joint incident action plan and collaboration in other areas of scene management.
- 4.7 Subject to Section 6 of this MOU, where the Police, the BCSA, and other investigative agencies are engaged in a Joint Investigation Activity within their respective legislative mandates, the Participants may share investigative information with one-another through daily inter-agency meetings. In this regard, particular focus may also be applied to sharing information in advance of conducting interviews or seizing evidence.
- 4.8 Where Police Officers are first responders to an incident and/or Offence, they will confirm the person responsible has notified the BCSA and, in the absence of a Criminal investigation, will make all reasonable attempts to secure the scene undisturbed until BCSA Officers assume control or release the scene.

- 4.9 Where BCSA Officers are first to respond to a scene and identify that a criminal offence may have occurred, they will use reasonable efforts to secure the scene undisturbed until the Police have assumed control or released the scene.
- 4.10 The BCSA and the Police each acknowledge that, when attending any site to perform an inspection or investigation, their personnel are subject to the provisions of the provincial *Safety Standards Act* and Regulations, *Workers Compensation Act* and regulations; and for the RCMP, the *Canada Labour Code* and regulations under federal legislation. The BCSA and the Police will collaborate in complying with these statutory requirements. In particular, before accessing any scene, the Participants will assess the safety risks and take appropriate precautions to ensure safe entry and investigations.

5 INVESTIGATIONS

- 5.1 The BCSA and the Police may conduct Joint Investigation Activity or Concurrent Investigation Activity into incidents, non-compliance and potential offences and will coordinate activities on such investigations so as to ensure each agency is able to effectively discharge its legal mandate.
- 5.2 A senior police officer at an incident site shall conduct an assessment as to whether or not a Criminal investigation specific to sections 217.1 and 219 of the *Criminal Code*, among other *Criminal Code* Offences and subject to any court orders or as required by law, is required. This assessment should be conducted prior to turning an accident scene over to any regulatory agency. After turning an accident scene over to any regulatory agency, the senior police officer should follow-up as appropriate with the regulatory agency to ensure that a Criminal investigation remains unnecessary.
- 5.3 Where there is Concurrent Investigation Activity underway, neither the BCSA nor the Police will release physical evidence it has under its control without first advising the other agency and providing an opportunity for that agency to assume control of the evidence.
- 5.4 The BCSA and the Police will mutually consult and coordinate on the interviewing of witnesses to ensure the integrity of their respective investigations, and avoid unnecessary duplication.
- 5.5 The police or the BCSA may request the other's assistance or expertise for the purpose of assisting in the investigation of an incident, and the BCSA or police will provide such assistance where possible.
- 5.6 If the BCSA identifies a potential criminal offence during the course of an investigation involving matters under the Act, the BCSA will notify the Police and suspend its investigation until the two agencies are able to consult and exchange information on the matter.
 - 5.6.1 Where the BCSA has identified a potential criminal offence and intends to turn the matter over to the Police under 5.6 of this MOU, the Police may seek appropriate legal advice, which may include advice from the Criminal Justice Branch, before the exchange of evidence to ensure that any potential investigation by the Police is not compromised by the receipt of evidence not gathered in compliance with all of the Prosecutorial Evidentiary Rules. The BCSA will promptly provide any information required for the Police and their legal advisors to make this assessment.

- 5.7 Where required by the nature of the non-compliance, the BCSA may employ a dual investigation stream, one for administrative compliance and prevention purposes and the other for prosecutorial investigation purposes.
- 5.8 During their respective investigative processes, the Police, the BCSA, and other investigative agencies will continually collaborate to share knowledge and expertise in a manner that informs situational awareness and supports the early identification of incident causality, site-specific safety issues, and any broader public safety concerns.
- 5.9 Where the Police, the BCSA, and other investigative agencies have reason to maintain joint control of an incident scene, they may consider the Incident Command System (ICS) model recognized by the Participants. This would allow all agencies with geographic or functional jurisdiction for the incident to collaboratively manage the investigation, within the boundaries of law, by establishing a common set of objectives and strategies.
- 5.9.1 Where practicable and warranted by the nature of the incident being investigated, the senior investigator, consistent with major case management, shall seek the appropriate advice to ensure recognition of both the criminal and regulatory offences that may arise in workplace death and serious injury cases.
- 5.10 Where the Police, the BCSA, and other investigative agencies are engaged in a Joint Investigation Activity within their respective legislative mandates, the Participants will ensure investigative activities prioritize the identification of causality so as to address any ongoing or unaddressed public safety risks.

6 EXCHANGE AND SECURITY OF INFORMATION

- 6.1 The BCSA and the Police agree to exchange information and records for the purpose of assisting in their respective investigations, subject to provisions of this MOU, the *Freedom of Information and Protection of Privacy Act*, and the *Privacy Act*. This MOU recognizes that all disclosure of information and records is made at the discretion of the originating agency. Without limiting this discretion, the BCSA and police agree that the following categories of information may be withheld:
- a) Information that is subject to a claim of privilege, including but not limited to solicitor-client privilege, confidential informant privilege, privilege regarding an ongoing investigation, and public interest privilege;
 - b) Disclosure that would violate a statute or constitute an offence; and
 - c) Disclosure that could reasonably be expected to apply to the factors described in section 15(1) or 22(3)(b) / 22(1) of the *Freedom of Information and Protection of Privacy Act* (British Columbia) or section 22(1) of the *Privacy Act* (Canada).
- 6.2 Where the BCSA or the Police receive notice that it may become, or is, subject to a Court order, summons, or subpoena requiring the disclosure of exchanged information or records, the BCSA or the Police shall immediately consult with the originating Participant before disclosing the records or information. For greater certainty, the purpose of this provision is to allow the originating participant to determine whether to take any legal steps with respect to the notice and it does not bar the receiving party from complying with its legal obligations.

- 6.3 Except as set-out in Section 6.5, the BCSA and the Police shall not disclose information and records, exchanged pursuant to this MOU, without the permission of the originating Participant, unless the disclosure is for the purpose of, and limited to, complying with the legal standard of disclosure in a judicial or administrative law proceeding, or where required by law.
- 6.4 Despite 6.3 of this MOU, if either the BCSA or the Police, for the purpose of complying with the legal standard of disclosure in a judicial or administrative law proceeding, or with the *Freedom of Information and Protection of Privacy Act* or the *Privacy Act*, is required to disclose information or records obtained from the other, the originating Participant must be notified prior to any such disclosure.
- 6.5 The BCSA and the Police recognize that, in the course of an investigation it may be necessary to disclose exchanged information or records to third parties; however, each agrees that such disclosure shall not occur without the prior permission of the source agency, except as required by law.
- 6.5.1 Despite 6.5 of this MOU, the BCSA and the Police recognize that in order to protect the public from risk of harm, it may be necessary to disclose information that was gathered by one or more of the Participants during an investigation. Unless exigent circumstances exist, the Participant intending to release the information will, prior to the release of the information, consult with any other Participants involved in the investigation.
- 6.6 All information and documentation provided to, collected by, delivered to, or compiled on behalf of the Participants to this MOU in the performance of their duties and responsibilities shall be dealt with subject to and in accordance with the federal and provincial statutes applicable to a participant, particularly the *Privacy Act*, the *Access to Information Act*, and the *Freedom of Information and Protection of Privacy Act*.
- 6.7 The Participants agree that for the purposes of section 13(1) of the *Access to Information Act*, section 19(1)(c) of the *Privacy Act*, and section 16(1)(b) of the *Freedom of Information and Protection of Privacy Act*, all information disclosed and received between the Participants under this MOU is disclosed and received in confidence, unless otherwise indicated.
- 6.8 Where a Participant receives a request under the *Access to Information Act*, the *Privacy Act*, or the *Freedom of Information and Protection of Privacy Act*, or a Court order, summons or subpoena for disclosure of records relating to this MOU, that Participant shall consult all other affected Participants to this MOU before disclosing the records to the applicant.

7 DECISION TO PROSECUTE

- 7.1 Police will notify the BCSA as soon as practicable where a Police investigation concerning an Offence is referred to Crown Counsel for charge approval. Police will notify the BCSA as soon as practicable of Crown Counsel's decision in this regard. The Police will not disclose any details of Police/Crown communications related to the charge approval process.
- 7.2 The BCSA will notify the Police as soon as practicable where a BCSA investigation concerning an Offence is referred to Crown Counsel for prosecution under the Act. The BCSA will notify Police as soon as practicable of Crown Counsel's decision in this regard.

8 COMMUNICATIONS

- 8.1 Where there are concurrent investigations, the BCSA and the Police will consult and coordinate on all communications with the victim, the victim's family, and the media.
- 8.2 The Participants agree to establish a media relations plan to regulate contacts with the media in relation to this MOU. All media releases shall be reviewed by all affected Participants to the MOU before disclosing those media releases to the media and the public.
- 8.3 Where the BCSA, in the course of an investigation, identifies an existing safety risk, the BCSA may immediately publicize sufficient information to alert affected persons of the risk.

9 TRAINING

- 9.1 The BCSA and the Police may enter into joint training initiatives, as practicable and as operational requirements permit, regarding the British Columbia *Safety Standards Act*, and law enforcement investigations (including, where necessary, Major Case Management and Incident Command System training), to ensure all Participants are familiar with issues/challenges that may inhibit a rigorous and comprehensive investigation from occurring.
- 9.2 The BCSA and Police investigators will undertake training as practicable and as operational requirements permit that includes, but is not limited to: investigations of criminality in workplace settings; *Criminal Code* provisions for conducting incident investigations; and procedures and requirements for collecting evidence and writing reports to Crown Counsel.

10 DISPUTE RESOLUTION

- 10.1 Disputes between the BCSA and the Police will be resolved jointly by the BCSA Director, Risk Safety Knowledge (or Director responsible for investigations), and the Chief Constable, Chief Officer, or Commanding Officer or delegate of the Police Agency.
- 10.2 The Police and the BCSA will work cooperatively and will attempt to resolve any disagreements regarding the requirements of Prosecutorial Evidentiary Rules and may contact the Criminal Justice Branch to resolve any areas of disagreement.

11 CLAIMS

- 11.1 If one Participant receives notice of a claim by a third party for damage of any kind, caused by one of the Participants' personnel or agents arising out of, or in connection with, the implementation of this MOU, the receiving Participant will notify the other Participants as soon as is practicable.

- 11.2 In the event of a notice of claim as described in section 11.1 of this MOU, the Participants will consult and attempt to resolve the claim. Where appropriate based on responsibility, the participants will divide financial responsibility between themselves to satisfy the claim. If such liability results from reckless acts or reckless omissions, willful misconduct or gross negligence of a participant, its personnel or agents, the liability for any costs will be the responsibility of that participant alone.
- 11.3 The above provisions of section 11 will survive the termination of this MOU for any reason whatsoever.

12 TERM OF THE AGREEMENT

- 12.1 This MOU will come into effect when signed by all Participants.
- 12.2 This MOU will remain in effect for a period of 5 years from the date of final signature of all Participants, or if replaced by another agreement or terminated in accordance with this MOU.
- 12.3 In compliance with the Ministerial Directive issued by the Solicitor General of Canada (2002) to the Commissioner of the RCMP that addresses agreements entered into by the RCMP, the Participants agree:
- a) To reviews, audits, and evaluations of any aspect of this MOU, provided such reviews, audits, and evaluations do not require access to BCSA information technology systems;
 - b) To amendments by mutual written agreement duly executed by Participants to this MOU; and
 - c) That any of the Participants to this MOU may terminate participation in this MOU upon provision of 30 days written notice to the other Participants of their intention to terminate this MOU.
- 12.4 Nothing in this MOU is in any way intended to replace or amend any obligation that any of the Participants is bound to or required to perform by operation of law.
- 12.5 Nothing in this MOU shall be interpreted to conflict with or derogate from the *Police Act*, Regulations under the *Police Act*, the *Royal Canadian Mounted Police Act*, or *Royal Canadian Mounted Police Regulations, 2014*, but shall be interpreted in all respects to be subject to the *Police Act* and Regulations under the *Police Act*, the *Royal Canadian Mounted Police Act* or *Royal Canadian Mounted Police Regulations, 2014*. Should any provision of this MOU be found in conflict or derogation of the *Police Act*, Regulations under the *Police Act*, the *Royal Canadian Mounted Police Act* or the *Royal Canadian Mounted Police Regulations, 2014*, such provision shall be null and void.
- 12.6 Nothing in this MOU shall be interpreted as in any way derogating from the responsibilities and obligations of the RCMP pursuant to the Provincial Police Service Agreement entered into between Canada and the Government of the Province of British Columbia, effective April 1, 2012.
- 12.7 This MOU reflects the good faith and spirit of cooperation of the Participants but is not legally binding on any of the Participants.

SIGNED ON BEHALF OF THE FOLLOWING:

Catherine Roome

President & LEO

Technical Safety BC



Date

December 13, 2021

Mike Serr

Chief Constable

Abbotsford Police Department



Date

November 10, 2021

Ian Lawson

Chief Constable

Central Saanich Police Service



Date

2021-11-02

Neil Dubord

Chief Constable

Delta Police Department




Date

Nov. 5, 2021

Donovan Fisher

Chief Constable

Nelson Police Department



Date

2021-10-30

Dave Jansen
Chief Constable
New Westminster Police
Department



Date
November 10, 2021

Ray Bernoties
Chief Constable
Oak Bay Police Department



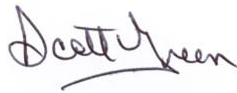
Date
26-11-2021

David Fleugel
Chief Constable
Port Moody Police Department



Date
26 October 2021

Scott Green
Chief Constable
Saanich Police Department



Date
October 26, 2021

Adam Palmer
Chief Constable
Vancouver Police Department



Date
2021-10-26

Del Manak
Chief Constable
Victoria Police Department



Date
October 26, 2021

John Lo

Chief Constable

West Vancouver Police
Department

Date

John Lo

Oct 26, 2021

Dave Jones

Chief Officer

Metro Vancouver Transit Police



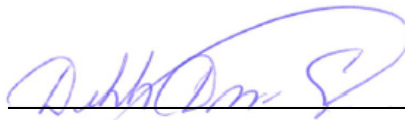
Date

2021-10-28

Deborah Doss-Cody

Chief Officer

Stl'atl'imx Tribal Police Service



Date

2021/2/04/15

Dwayne McDonald

Deputy Commissioner and

Commanding Officer

RCMP "E" Division



Date

2021.11.05

Norm Lipinski

Chief Constable

Surrey Police Service



Date

Oct 26, 2021