September 22nd, 2022

BY EMAIL: law@runyowa.com

305369 Docket No. FD 36500 et al.

ENTERED
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September 23, 2022
Part of
Public Record

Attn: The Honourable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001.

Dear Ms. Brown,

RE: Whistleblower alert regarding the Canadian Pacific Railway's Pending Merger with Kansas City Southern Railway and CP Railway's policing activities in the United States.

Overview.

I[1] am filing this whistleblower complaint on behalf of my clients, whose loved ones died while working for Canadian Pacific Railway ("CP Railway") and Canadian National Railway ("CN Railway") in Canada. My clients are Ms. Pamela Fraser of High River, Alberta, Canada; Ms. Lorelei Desrochers of St. Malo, Manitoba, Canada; Mr. Edward Dockrell of Calgary, Alberta, Canada; and Ms. Heather Dockrell of Calgary, Alberta, Canada.

Specifically, this whistleblower alert provides *prima facie* evidence of how CP Railway's cross border police command structure and law enforcement activities threaten the integrity of the United States' and its peoples' **national security,** the **honest management of its railroads**, **criminal law enforcement, workplace & public safety, privacy rights, civil-constitutional rights, customs & immigration enforcement, and sovereignty**. If the STB approves the merger without accounting for the latent but consequential issues in this whistleblower alert, that will endorse, entrench, and expand the potentially irreversible damage further across the United States and the USMCA region.

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[1] *Please note that I, Tavengwa Runyowa, am a Canadian lawyer and am not a licensed attorney in the United States of America. By submitting this whistleblower complaint, I make no formal or authoritative assertions about the application of American laws. Any such references are to reflect my personal understanding of what the laws are, and to alert the Board and the parties of record to the legal issues that require formal examination.*

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As elaborated in the detailed Appendix attached to this introductory letter, these submissions use the term "complainants" to describe Runyowa Law's clients, who are introduced above. However, the use of this term is purely for convenience and is not meant to express the clients' request for a personal remedy for any "complaint". The complainants propose that upon review of these submissions, the STB:

A) Blocks the merger **unless** CP Railway provides the STB with full and exonerative responses to, and corroborating records regarding, all the outstanding issues identified in this whistleblower alert;

B) Refers the issues in this whistleblower alert to the United States Department of Justice, the Department of Transportation, the Committee for Foreign Investment in the United States, and other relevant authorities for joint or independent investigations into the legal and other potential implications of the issues in these submissions.

The inevitable timing of these submissions.

The complainants submit that the timing of these submissions was not only inevitable, but is relatively prompt given the circumstances. The reasons are as follows:

A) The complainants have made every effort to balance between making a timely filing of these submissions with building a threshold case that would justify the STB taking a serious look at the issues in question. There are still outstanding records and information that the complainants have not yet obtained, mostly from public authorities in Canada and the United States' whose disclosure processes they cannot control. However, the complainants respectfully submit that they have assembled a sufficiently clear "trail of breadcrumbs" to trigger a formal process at the STB about the issues in these submissions. Between June 2022 when the complainants initially filed the confidential version of this whistleblower complaint (that the STB ruled as an impermissible *ex parte* communication), and September 2022, the complainants made some progress in obtaining further supporting information and records to reinforce these submissions.

B) Taking a long-term view, the timing of these submissions is relatively prompt. It appears that the issues in this whistleblower complaint were not on the radar of the STB or any other American authorities whose interests and jurisdictions are impacted. If any of the latent problems discussed in these submissions had publicly manifested in serious incidents after the STB had approved the merger, and without having considered these issues, the damage would likely have been more significant, and potentially irreversible.

C) CP Railway has been aware of the issues in this whistleblower alert since at least **January 2022**. One of the complainants, Ms. Lori Desrochers, put the materials in this package to CP Railways management. However, CP Railway's management refused to disclose or address the issues with the STB and other regulators in the United States and Canada. As such, if the STB finds that the issues in these submissions are relevant to the merger process, CP Railway's willful failure to bring them to the STB's attention deprives CP Railway of any arguments about delay. That failure would also support the case for a thorough review of issues that CP Railway appears intent to preclude from this process.

D) When the Canadian publication, The Globe & Mail's Report on Business Magazine named Mr. Keith Creel its CEO of the Year for 2021, the magazine quoted Mr. Creel as stating of his strategy to defeat CN Railway's competing bid: "I woke up at about two o'clock in the morning. I'd been praying about it and reflecting on it and thinking about it, and the overarching thought that came to my head was just, Your best weapon is the weapon of truth." (Emphasis added). **If Mr. Creel was sincere about the importance of the truth in this merger process and asserts the position that none of the issues in these submissions have any merit, then he has nothing to fear by openly, unequivocally, and comprehensively rebutting every issue with confirmatory records for the STB (not the complainants)**.

In fact, under the STB's rules, Mr. Creel could furnish the Board with CP Raiwlay's responses through a sworn affidavit responding to the questions and demands that the Board puts to CP Railway about the relevant issues. This would be a simple and time efficient approach that requires minimal resources to ensure that this proposed merger does not cause exponentially more problems than it solves. If Mr. Creel is prepared to reassure the STB on the relevant issues, any extension of the duration of these proceedings will be brief. It would also satisfy the STB's due diligence obligation to ensure that these important concerns are resolved before approving such a historic merger.

Finally, given the length of these submissions and the supporting records that accompany them, the detailed Appendix below is prefaced by a **table of contents**. This table of contents should facilitate ease of navigation and if necessary, the non-sequential review of issues of interest. The complainants remain prepared to assist the STB in any manner the Board requests. **I certify that the complainants have served the parties of record with these submissions by email**.

Thank you,

Tavengwa Runyowa

Tavengwa Runyowa

US-STB DETAILED WHISTLEBLOWER ALERT RE: CANADIAN PACIFIC RAILWAY AND PENDING MERGER WITH KANSAS CITY SOUTHERN RAILWAY.

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INTRODUCTION.

This whistleblower alert relates to the United States Surface Transportation Board's ("STB") review of the pending between Canadian Pacific Railway and the Kansas City Southern Railway. The complaint is filed by Runyowa Law Professional Corporation of Regina, Saskatchewan, Canada on behalf of Ms. Pamela Fraser of High River, Alberta, Canada, and her co-complainants, Ms. Lorelei Desrochers, Mr. Edward Dockrell of Calgary Alberta, Canada, Ms. Heather Dockrell of Calgary, Alberta, Canada. The whistleblowers became aware of these issues in this complaint during legal proceedings and other railroad reform efforts they initiated after their loved ones died while working at CP Railway and CN Railway in Canada. Although their personal tragedies were the initial focus of their advocacy efforts, these endeavors gradually unearthed information and records that revealed serious concern that have direct implications in the United States and to the STB's mandate.

This whistleblower alert provides information and *prima facie* evidence of national security and privacy vulnerabilities inherent in CP Railway's cross-border policing structure and operations; CP Railway's abuses of its corporate police force, the CP Police Service; outstanding questions about CP Railway's apparent misrepresentations to American courts regarding its American operations (and by extension, its policing activities); CP Railway's refusal to disclose, in whole or in part, the material information about its cross-border policing activities to the company's shareholders and regulators on both sides of United States-Canada border (including the STB).

As these submissions and supporting records elaborate, all these issues are directly relevant to CP Railway's application to merge with Kansas City Southern. The merger would allow CP Railway to subsume the Kansas City Southern police, expanding the reach of the combined entity's policing operations and jurisdiction further across the United States and USMCA region. The combined police force, including its American police officers, would fall under the operational command of a Chief of Police and corporate civilians at the new Global Headquarters in Calgary, Canada. As currently structured, it is apparent that this expansion would necessarily, and proportionately, extend the pre-existing prejudices of CP Railway's current policing structures, practices, and operations in the United States. If the STB approves the merger without considering these effects, that will **endorse, entrench and extend** the numerous prejudices to American interests including to its **national security, sovereignty, the integrity of the nation's law enforcement infrastructure, railroad governance, as well as Americans' privacy rights, civil rights, civil liberties, and constitutional rights**.

Please note:

1. These submissions use the term "complainants" to describe Runyowa Law's clients who are introduced above. However, any use of this term is purely for convenience and is not meant to express the clients' request for a personal remedy for any "complaint". Runyowa Law's clients are Canadian citizens and residents. Whether the CP Railway-Kansas City Southern merger is successful

or not will not impact them personally. **Further, contrary to CP Railway's assertions, the issues the complainants raise in these submissions do not focus on the deaths of their loved ones at CP Railway and CN Railway**. To the extent that these submissions mention those events, it is only to provide the STB with context for why CP Railway's corporate culture, practices, and the cross-border legal structures it relies on, raise serious and unresolved concerns that directly prejudice American interests and invoke issues within the STB's jurisdiction.

2. We are engaged in an ongoing process of gathering further information and evidence that may be relevant to this filing. Therefore, these submissions are to formally initiate my clients' complaint, but with the STB's leave, we expect to supplement the record as we obtain further details and documentation.

3. Our clients are currently involved in various legal proceedings involving CP Railway and Canadian National Railway ("CN Railway") in Canada. We are prepared to share the details to the extent that the STB may be interested, and that the complainants are not otherwise prohibited from sharing by relevant rules and laws. However, the complainants have included some of the records they have accumulated from the public domain. This includes court filings and other information that we have secured through non-confidential means (such as freedom of information legislation in both Canada **and the United States**).

BEYOND THE PARTIES OF RECORD: OTHER POTENTIALLY NECESSARY PARTIES AND WITNESSES.

The complainants certify that they have served the parties of record with these submissions as required under the Board's rules. Given the nature of the issues in this whistleblower alert, which the Board likely did not anticipate when it established the framework for this merger review process, there are other stakeholders' whose interests and jurisdictions are directly impacted by the issues in this claim. Further, the issues necessarily call for the involvement of other persons who can furnish the Board with important information that will be indispensable for the proper exploration of these issues. These persons contributions, which include the Chief Al Sauvé of the CP Police Service and Chief Stephen Covey of the CN Police Service, can save the Board and parties of record significant time, resources, and expense by providing definitive answers to the pivotal issues regarding their police forces' American operations and command structures.

Collectively, these submissions will refer to these other stakeholder and potential witnesses as "other potentially necessary participants". **The complainants understand that the Board has not approved the participation of these other parties and that alerting them to their potential interests in these proceedings does not amount to the conferral of any formal status by the Board, or obligation to do so**. This non-exhaustive list is intended to alert those stakeholders and the Board about the likely parties

whose interests are at stake and whose participation may be necessary. The potentially necessary participants that the complainant will serve separately are below.

The Office of the Attorney General of the United States.

The Attorney General of the United States represents the United States in legal matters generally and gives advice and opinions to the President and to the heads of the executive departments of the Government when so requested. Given the Attorney General's role in the criminal justice infrastructure, of which railroad policing is a part, the Attorney General's Office has a direct interest in the lawful exercise of police powers, the legal frameworks that govern such powers, the potential national security vulnerabilities in pre-existing legal frameworks, and any associated issues that relate to national security. The issues in this whistleblower complaint touch on how the CP Railway-Kansas City Southern merger touches on all these issues within the Attorney General's jurisdiction.

Attorney General Merrick Garland
United States Attorney General
The Office of the Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

The Department of Transportation Office of the Inspector General (DOT-IG).

The Department of Transportation Office of the Inspector General - Office of Investigations is comprised of criminal and general investigators that are responsible for conducting criminal, civil, and administrative investigations within its purview. This purview includes matter of public safety, an issue that this whistleblower alert covers.

Mr. Scott Harding
Chief, Complaint Center Operations
U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

Scott.V.Harding@oig.dot.gov

National Association of Attorneys General (NAAG).

The National Association of Attorneys General (NAAG) is the nonpartisan national forum for America's state and territory attorneys general. NAAG provides a community for attorneys general and their staff to collaboratively address issues important to their work, as well as training and resources to support attorneys general in protecting the rule of law and the United States Constitution.

The NAAG members have jurisdiction over law enforcement and criminal justice matters in their respective states. They play a central role in the oversight over police forces, including railroad police forces, and in the drafting and enforcement of the laws that govern them.

As railroad police forces are primarily governed by State laws, the NAAG's participation and input on the policing, national security, and criminal justice consequences of allowing CP Railway to acquire the Kansas City Southern police force would be of likely interest to the organization.

Attorney General Tom Miller – President
Attorney General Josh Stein – President Elect
National Association of Attorneys General
1850 M Street NW, 12th floor
Washington, DC 20036

The Office of the United States Secretary of Transportation.

The Secretary of Transport has jurisdiction over American railroads and liaises with Canadian government partners with respect to the cross-border transportation issues at stake in these submissions (policing, customs enforcement etc.). The Secretary prescribes the rules under which railroad police officers exercise federal law enforcement authority pursuant to Title 49 USC 28101.

Mr. John E. Putnam
General Counsel
U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

National Association of Civilian Oversight of Law Enforcement.

The National Association for Civilian Oversight of Law Enforcement (NACOLE) "is a non-profit organization that brings together individuals and agencies working to establish or improve oversight of police officers in the United States." This necessarily includes the railroad police with federal jurisdiction.

Ms. Gianina Irlando - President
National Association for Civilian Oversight of Law Enforcement
P.O. Box 20851
Indianapolis, IN 46220-0851

Email: info@nacole.org

CP Railway Chief of Police, Mr. Al Sauvé.

Although he is a Canada-based employee of CP Railway, by his own assertion, Chief Al Sauvé claims that as a police officer, he is an independent officer of the Canadian Crown". Effectively, he asserts that he is operationally independent from CP Railway as a corporation. Such independence is mandated under Canadian law as the Supreme Court of Canada affirmed in *R. v. Campbell*, [1999] 1 S.C.R. 565 para 28 – 33. We trust that police officers' independence from political interference from the entities that fund and remunerate them is also a live principle in the United States. As such, although CP Railway is participating in this merger process as a party of record, based on Chief Sauvé and his employer's assertions, he is independent from the commercial enterprise.

As a sworn police officer and self-declared officer of the Canadian Crown, Chief Sauvé's sole allegiance must be to the administration of justice in both Canada and the United States (where he exercises operational command over CP Railway's American police officers). As such, Chief Sauvé is exceptionally well-placed to provide the STB and other stakeholders with detailed information about, a) CP Railway's cross-border police command structure, b) the role that CP Railway's civilian management has played in the CP Police's operational police activities in the United States and Canada, c) what direct or indirect access corporate personnel have to police files or information from American police operations, d) his and the Chief Legal Officer's disciplinary powers over CP Railway's American police officers, e) how CP Railway's police complaints policy works in the United States, f) the role that the CP Police Service officers have played in the investigation of deaths, serious injuries, and environmental incidents under the company's watch. These are some of the key issues implicated in this whistleblower alert.

Chief Al Sauvé
Canadian Pacific Railway Police
7550 Ogden Dale Road S.E.
Calgary, AB T2C 4X9, Canada

CN Railway Chief of Police, Mr. Stephen Covey.

Chief Stephen Covey of the Canadian National Police Service is the only other Canada-based Chief of Police for a railroad with operations in the United States. As with Chief Sauvé, Chief Covey is also a corporate employee who serves at the pleasure of his employer, CN Railway, while exercising operational command over company police officer in the United States. Chief Covey's policing authority also arises under Canada's *Railway Safety Act* which has no application in the United States. He can furnish the STB with details on how despite this, the laws of the United States allow him as a non-commissioned police officer in the country to exercise operational command over police officers in the country from abroad. Although CN Railway is a party to these proceedings, Chief Covey is supposed to be a law enforcement officer who is legally required to be independent from his employer on operational matters.

Chief Covey's LinkedIn profile also reflects the systemic concerns about the cross-border police command structure that American laws facilitate, and a similar relationship between CP Railway and its own Chief of Police. In his LinkedIn profile, Chief Covey defines duty as CN Railway's Chief of Police for North America in part as to, "effectively protect and promote CN's people, **business and reputation**." As a sworn law enforcement officer in Canada who exercises command over American law enforcement officers and operations, Chief Covey's sole allegiance must be to the administration of justice. His unabashed and public commitment to protect the "business and reputation" of his corporate employer, CN Railway, raises serious questions about his compliance with the principle of police independence and commitment to the rule of law in Canada and the United States. His dual status as CN Railway's Chief of Police and Chief Security Officer (corporate title) raises further questions about his independence from his employer. This is especially concerning with respect to how under his command, the CN Police Service has handled the criminal investigations of deaths, serious injuries, environmental, and other safety related incidents in which his employer was potentially liable for in the United States.

For the purposes of the STB's merger review, Chief Covey can provide important details about the pattern and implications of the same cross-border policing structures through which CP Railway has operated in the United States. As the Chief of Police of the only other railroad police force that is funded by, and ultimately controlled from outside American soil, Chief Covey's could help the Board understand the full implications of approving a merger that would entrench and extend the inherent problems of this arrangement. This would not only be important for the CP Railway-Kansas City merger but for the precedent an approval decision would set for future combinations and the national interests at stake.

Chief Stephen Covey – CN Police Service
Canadian National Railway Headquarters
935 de La Gauchetière Street West
Montreal, Quebec, Canada H3B 2M9

Email: Stephen.Covey@cn.ca

The Honourable Mr. John R. Baird, P.C.

Although Mr. John Baird is currently a member of CP Railway's Board of Directors, he was also Canada's Minister of Transport and Minister of Foreign Affairs. As such, his past capacities as a cabinet minister in charge of regulating railways and cross-border relationships with the United States, he would have intimate knowledge about CP Railway's cross-border police operations, regulation within Canada, and how the company's civilian leaders exercised ultimate operational command and oversight of the company's police officers in the United States.

The Honourable John Baird, P.C.
Canadian Pacific Railway - Head Office
7550 Ogden Dale Road S.E.
Calgary, AB T2C 4X9
Canada

JURISDICTION OF THE SURFACE TRANSPORTATION BOARD TO ADDRESS THIS WHISTLEBLOWER ALERT REGARDING THE PENDING CP CP-KCS MERGER.

The complainants believe that the Surface Transportation Board has the jurisdiction to consider this whistleblower complaint under Title 49 U.S.C. § 721 and § 10101. The relevant parts of Title 49 U.S.C. read as follows:

SUBTITLE I—DEPARTMENT OF TRANSPORTATION
CHAPTER 7—SURFACE TRANSPORTATION BOARD
SUBCHAPTER II—ADMINISTRATIVE

§ 721. Powers

(a) IN GENERAL.—The Board shall carry out this chapter and subtitle IV. Enumeration of a power of the Board in this chapter or subtitle IV does not exclude another power the Board may have in carrying out this chapter or subtitle IV. The Board may prescribe regulations in carrying out this chapter and subtitle IV.

SUBTITLE IV—INTERSTATE TRANSPORTATION
CHAPTER 101—GENERAL PROVISIONS

§ 10101. Rail transportation policy

In regulating the railroad industry, it is the policy of the United States Government—
….

(3) to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board;
….
(8) to operate transportation facilities and equipment without detriment to the public health and safety;
(9) to encourage honest and efficient management of railroads;
….
(11) to encourage fair wages and safe and suitable working conditions in the railroad industry;

As evinced in the above quoted text, the Surface Transportation Board shall carry out the policies as enumerated in subtitle IV, which includes ensuring rail safety, safe working conditions public health, and the honest management of railroads. Each of these subjects are triggered by the contents of this whistleblower complaint.

FORMAL STEPS THE COMPLAINTANTS PROPOSE THE US-STB TO TAKE WITH RESPECT TO THE CP RAILWAY-KCS MERGER REVIEW.

1. That the STB blocks the proposed merger unless CP Railway provides full and exonerative responses on all issues in this whistleblower complaint.

The complainants request that the STB investigates the issues enumerated above in this complaint. The investigation would likely include asking CP Railway to provide information on its policing operations in the US, whether its police force has ever exercised jurisdiction (partial or total) over deaths and serious injuries in the U.S. and obtaining CP Railway's responses regarding all the other issues in this whistleblower complaint. Unless CP Railway provides the STB with full and exonerative responses to the issues and related evidence in this complaint, the complainants suggest that the STB block the merger. The complainants do not request or expect either the STB or STB to disclose any information to them and understand that the integrity of any investigations and records are paramount.

2. That the STB refers the relevant aspects of this whistleblower alert to other relevant United States authorities for joint or concurrent investigations.

The information and evidence provided in this complaint points to potential offences which overlap with, and extend beyond, the STB's remit. We understand that the STB often coordinates with other agencies including public law enforcement agencies in such cases. Based on the subject matter of this complaint, the U.S. Department of Justice, the U.S Department of Transportation Office of the Inspector General, and the Committee for Foreign Investment in the United States ("CFIUS") appear to be the most natural partners.

THE SYSTEMIC THREATS AND NATIONAL SECURITY VULNERABILITIES THAT THE PENDING CP RAILWAY-KCS MERGER WOULD ENTRENCH AND EXPAND ACROSS THE UNITED STATES.

This section deals with the systemic threats that CP Railway's cross-border police command structure across the United States-Canada border poses to American interests. CP Railway's policing structures and activities has arisen from, and reflects, a latent vulnerability at the intersection of the United States railroad policing, mergers and acquisitions, and national security frameworks. CP Railway's cross-border policing operations are a manifestation of the broader problem. This issue is relevant to the STB's merger review because approving the merger despite these systemic concerns, that would effectively condone, entrench, and expand the systemic prejudice further into the United States. It would also expand the national security vulnerabilities tat hostile actors could exploit to the United States' detriment.

Systemic threat # 1: National security threats and the unguarded "back door": A practical example of the serious vulnerabilities of permitting persons and entities outside the United States to exercise operational command over railroad police officers in the country (as CP Railway currently does and will do to a greater extent after the merger).

CP Railway and CN Railway's cross-border command of police officers and law enforcement operations in the United States, constitute significant national security vulnerabilities across the country. So does the significant informational access that these police powers endow CP Railway's Canada-based Chief of Police and corporate executives who wield ultimate operational control over a law enforcement organization in the United States from Canada. If STB allows CP Railway to use the merger process to integrate the KCS police force into the new Canada-based CP-KCS Police, that will affirm the United States' acceptance of non-American persons with no police powers in the United States, and who answer to persons outside of American soil, exercising full police powers in the country. The externalization of extraordinary powers and informational access that law enforcement authority endows on those who exercise it could have disastrous national security, privacy, and other consequences on the United States.

For example, under the current framework, a foreign power, sovereign wealth fund, hostile non-state entities, or their proxies in credible corporate guises, could gain access to law enforcement databases and operations in the United States by simply buying a railway company in the country. Strategically, these entities could purchase a railroad company that is small enough to evade the heightened regulatory scrutiny that accompanies larger combinations such as the CP-KCS merger, but that are large enough to meet the requirements for hiring police officers in any States where the company operates. Purchasing short-line railroads could provide these bad faith actors an affordable and relatively low-profile platform to obtain extraordinary police powers with relatively little oversight in most States (beyond training requirements), and virtually no harmonized oversight of their activities and conduct across State lines. The bad faith actors can recruit wilful or unwitting co-conspirators in the United States to facilitate the purchase of the railroad and

to staff sensitive positions within the company. Such bad faith actors would likely seek to acquire a railroad company that operates in a State(s) with the least restrictive railroad policing laws and requirements for police commissions. Thereafter, they could leverage federal law, Title 49 USC 28101 to expand their jurisdictional reach, exercise extraordinary police powers and access law enforcement information from across the United States. These malicious actors could also obtain memberships in various law enforcement associations (in which most railway police forces are already members of in both Canada and the United States).

In fact, railway police forces in the United States, including the Kansas City Southern police force (**Attachment 1**), are already members of national police associations[1], which grant them formal and informal access to information about law enforcement and national security operations across the country.

After buying the American railroad and its police force in the United States, bad faith actors could staff the railroad companies with their handpicked police officers, who in many States, need **not** even be American citizens. In fact, of the State laws that we reviewed, only New York State and the State of Wisconsin expressly require that railway police officers be American citizens. For New York, see (Consolidated Laws of New York, Chapter 49, Article 3, Section 88). For Wisconsin, see this link.

As numerous State laws are currently drafted, **any** railroad company with operations in that State can apply for the appointment of company police officers on basic criteria such as age, a clean criminal record, and requisite training. Once appointed, the supervision, deployment, and discipline of the police officers are largely left to the railroad companies. See for example the railroad police laws for, Alabama, California, Michigan, Illinois, New York, Iowa, Texas, Minnesota. Most State laws do not appear to provide a distinct set of rules for police officers who are **not** commissioned in the State, but are operating in the State under federal law (Title 49 USC 28101).

In at least one State, the railroad companies do not even need to go through the process of nominating their prospective police employees for police commissions upon hiring them as railroad police officers. The companies have the option of simply hiring police officers who have **pre-existing police commissions** that the officers obtained independently of their new employer. This is apparently because once conferred, the police commissions or powers attach to the police **officer** and not the employer that facilitated that commission. Thus, once obtained in the first instance, the police officer can transfer that portable commission to subsequent railroad company employers without going through the process of obtaining a new police commission for each employer. For example, from a CP Railway job posting in Iowa, the company's practice shows that company hires police officers with pre-existing police commissions. These police officers automatically become CP Police Service employees upon recruitment, and without CP

[1] For example, the Kansas City Southern Police is a member of the Missouri Police Association and after the CP-KSC merger, the new police force will be called the CP-KCS Police (Attachment 2). Note that Kansas City Southern does not use the word "police" for its security force, but as evident in **Attachment** ___, their "personnel" are police officers. In Missouri, Kansas City Southern police officers have the same criminal law enforcement powers as other police officers. In Canada, both CP Railway and CN Railway's Chiefs of Police are members of the Canadian Association of Chiefs of Police.

Railway having to nominate them for a police commission and the due diligence procedures such processes entail. In fact, it appears that this is CP Railway's approach across the country (**See Attachment 2 and 2.1**).

The ability of railroad companies to obtain police commissions for their employees or to simply acquire them on the open market by hiring "police officers at large" on the open job market, effectively creating a "police-commissions-for-lease" system. If that is not inherently problematic for railroads with no nefarious intent to acquire police powers in this way, it is certainty problematic when in granting police powers, State and federal laws make no distinction between police officers are who answerable to Chiefs of Police and corporate leadership in the United States, and those who answer to persons or entities abroad. The perpetual of police commissions in States like Iowa are especially problematic because they create a market for railroad police officers whose police commissions in one state, makes them the willing or unwitting targets of nefarious actors who can skip the due diligence phase that accompanies a new commission or re-commission.

Tactically, buying a short line or smaller railroad in such a State, and hiring "pre-authorized" police officers on the open market would grant nefarious actors tremendous flexibility is staffing a nationwide network of agents with extraordinary police powers. So would building a pipeline of police officers who gradually obtained police powers in the first instance, and used federal authority to propel their perpetual police powers from the State to exercise perpetual police powers across the country, including in States that do not have the perpetual practice.

Further, across these most State statutes, the railroad police officers have the same law enforcement powers as any other municipal or state police force. In the few cases where the powers are not 100% identical, for example, in Wisconsin, the narrow exceptions the laws carve out for railroad police do not preclude the regular criminal law powers of arrest, search & seizure, access to law enforcement information etc. Additionally, although **some** of the States' railroad police laws include requirements for training or broader compliance audits for all police departments, including for the railroads, (e.g. Minnesota), they do not have provisions for handling public complaints against the railroad company's police officers. Instead, many States simply require that the railroad companies create policies for addressing public complaints and disciplinary issues arising from their police forces.

For example, Section 80.2 of the Iowa railroad police statute does not mandate any minimum standards for what the railroad companies' complaints policy should contain. Nor does it require or provide for any civilian oversight commission or mechanism to deal with public complaints. The railroad police forces also appear to fall outside of the jurisdiction of the Iowa Department of Public Safety's Professional Standards Bureau, which among other duties, deals with complaints against State police officers. The Department's website states that it handles complaints against Department employees which private railroad police officers are not.

The State of Illinois appears to be an exception among the States in that its railroad police law overtly imposes public oversight of abuses of police powers through (610 ILCS 80/2) (from Ch. 114, par. 98) Sec. 2(1)and 2(4). However, even that system first requires that complainants against the railroads first go through the internal system that the companies themselves created under their internal policies before the complainants can access Illinois' public appeal process for railroad police. It is already difficult enough for many regular citizens to muster the courage to file complaints against police officers, especially if the complainants are from demographics that have more troubled relations with the police in general (e.g. new immigrants, and racial, linguistic, and socio-economic minorities). Therefore, forcing complainants to first go through a process that the railroad companies themselves designed and control before an appeal to an independent body is available, sets up significant barriers that limit recourse to justice (via bureaucracy and systemic intimidation, intended or otherwise).

The bottom line is that across the United States, there is an inconsistent framework of railroad police laws that grant railroad powers the ability to internally deal with public complaints against the company police officers. These laws either completely delegate these powers to the railroad companies, or grant the companies the initial authority to address the public complaints, without any consideration of whether the complaint implicates the companies' interests.

The lack of coherent, consistent, and independent civilian oversight in the United States' railroad policing framework is prone to abuse by bad faith actors who answer to unidentified persons abroad, and who likely do not have the security clearances that State and federal governments would require if these persons were exercising such control over police powers in the United States. The system is also prone to abuse by railroad companies **without** nefarious intent against the United States, but who nevertheless deprive citizens of adequate recourse in civilian complaints against the railroad police.

Largely unencumbered by robust, independent, and public civilian oversight mechanisms in most States, CN Railway and CP Railway have created complaints policies that place ultimate decision-making powers over police officer discipline in the hands of the company's Canada-based Chief of Police and Chief Legal Officer (e.g. **Attachment 3 CP Railway's Illinois police complaints policy**). **Not only are these persons based in Canada and have no police commissions in the United States, but they are also employees of the Canadian Pacific Railway Company, the Canadian operating subsidiary of the Canadian Pacific Ltd (holding company)**. The Canadian Pacific **Company** has no railroad operations in the United States, a prerequisite for hiring police forces across many, if not all, States. Therefore, under the complaints policies that CP Railway drafted to oversee its police officers, any civil rights and other complaints against CP Police officers (same for CN Railway), fall under the full and ultimate jurisdiction of corporate employees of a Canadian corporation with no American operations. Thus, instead of access to a public, civilian, and American, complaints commission that is answerable to the American people, anyone filing a complaint against CP Police officers must resort to CP Railway's private system. This includes cases where the police officer(s) who are subject to the complaint was acting in the company's interests (e.g. using

excessive force against a trespasser on company property. See this New York Times article from 2015 as an example. It covers allegations of such abuses by a CN Railway subsidiary in the U.S.)

Given the above, federal law 49 U.S. Code § 28101 constitutes the legal "jet stream" takes the various State laws of differing oversight rigour and creates a "jurisdiction-in-one-State-is-jurisdiction-in-all-states" framework for railroad police forces. The most permissive standard of training and public complaints oversight in one State effectively becomes the national standard.

In summary, the collective implication of State laws empowering railroad company police forces and federal law 49 U.S. Code § 28101 permit Chiefs of Police and/or the corporate civilians to whom they answer, to be non-American persons who are based outside the country, to directly appoint and oversee police officers who can **legally** access sensitive national security information and command policing activity in the United States. As with CP Railway and CN Railway, nothing in State of federal railroad police laws prevents those Chiefs of Police and their corporate civilian leaders (Chief Legal Officers) from facilitating the appointment of police officers and exercising operational command over them from outside the physical jurisdictional reach of American authorities. By simply buying a railroad company in one American State, bad faith actors or America's competitors can enjoy **the extraordinary powers that federal police forces can wield, and that no regular corporation would otherwise have. This potentially includes access to critical national security and law enforcement databases, the monitoring policing radio frequencies, powers to arrest and obtain subpoenas, the power to carry firearms, and powers to enter premises and to interrogate persons**. In other words, the State and federal laws that empower CP Railway and CN Railway's Chiefs of Police and civilian leaders to wield operational command of police officers in the country **from Canada**, present alarming national security, civil rights, privacy vulnerabilities that bad faith actors could exploit to abuse police powers via mergers and acquisitions.

In fact, any bad faith actors seeking to exploit the railroad policing loophole in the United States' need not buy an entire railroad company to inflict serious damage to American interests. The bad faith actors would only need to buy a controlling or sufficiently sizeable stake in the railroad company to influence the human resources, risk management, and policing functions that intersect with the company's policing operations. **It is improbable that State legislators drafted railroad policing laws with the intention of allowing non-American entities outside of American soil to exercise such significant policing powers in the United States, and with no robust, consistent, and ongoing, public oversight within the country**. A contrary position would amount to endorsing a "Trojan horse" vulnerability in the United States' national security infrastructure.

Further, bad faith actors that acquire direct or indirect control of American railroad companies only need to hire or facilitate the appointment of one or two police officers through whom they can obtain the ability to influence or access confidential information about law enforcement activity in the United States.

The railroad police officers themselves need not be wilful co-conspirators with the foreign-controlled entities that buy and operate these railway companies. In the process of conducting their regular work assignments from their Chief of Police or corporate overseers, the rank-and-file police officers can become unwitting participants in the breach of sensitive law enforcement laws and information. After all, it would not seem suspicious for the railroad companies to deploy resources and its own police personnel to concord with their commercial logistics and operational priorities. Such deployments and the operational instructions on what tasks to perform or information to seek out could easily lend a veil of legitimacy to nefarious intentions. This could have seismic consequences on the US' national security. **Attempts at economic espionage and national security threats through commercial acquisitions by hostile actors are a continuing threat for any country. Such attempts require the diligent and proactive identification and remediation of all potential vulnerabilities**. The fact that companies such as CP Railway and CN Railway and their leaders outside of the United States can exercise policing authority in the country not only raises questions about the legal and national security vulnerabilities of the doing so. They also raise the broader question of what precedent will be set for future mergers and acquisitions if American authorities, including STB and the STB, ignore the vulnerabilities inherent in allowing (likely unvetted) private entities to exercise law enforcement powers in the United States from abroad.

If our clients, as regular persons with positive intentions, were able to identify the aforementioned national security and privacy vulnerabilities by simply reviewing State laws on railroad policing and documents they obtained through freedom of information requests, how much damage could hostile players cause with access to more extensive resources, hostile motivations, and fully-fledged police powers in the United States?

To be clear, the complainants are **not** asserting that anyone at CP Railway or CN Railway is deliberately trying to undermine the United States' national security. However, this does not change the fact that in principle, the companies' cross-border command of police officers in the United States is likely inconsistent with American law and national security interests. Further, there is no commercial necessity for CP Railway or CN Railway to operate a police force in the United States, especially given the availability of alternatives that allow both companies to protect their operations and staff without directly exercising police powers that raise serious national security concerns (e.g. through this 2017 FRA Regulation).

Systemic threat # 2: The unlawful extraterritorial application of Canadian law in the United States: CP Railway and CN Railway's Chiefs of Police exercise operational command over police officers and law enforcement activities in the U.S. despite the Chiefs' policing powers arising solely under Canadian law.

The CP Police and CN Police officers in the United States fall under the operational command of their respective Chiefs of Police. Chief Al Sauvé and Chief Stephen Covey are both based at the companies' headquarters in Canada. However, based on available evidence, these Chiefs of Police are not commissioned police officers in any American State. Thus, as far as the United States is concerned, they are civilians with

no **legal** basis for exercising **any** law enforcement authority in, or relating to, the United States. The only formal police commissions that these Chiefs of Police have **anywhere** arise solely out of S. 44 of Canada's *Railway Safety Act*, a non-US statute which has legal no force across the border in the United States.

Nevertheless, both the CP Railway and CN Railway Chiefs of Police and their predecessors in Canada:

a) Have exercised operational command over their company's commissioned police officers in the United States;

b) Have had access to information about ongoing law enforcement operations in the United States (through their subordinate police officers and the network of national police databases that their police officers may have in the United States); and

c) Can make operational decisions about law enforcement activity in the United States from Canadian soil. And under both Title 49 USC 28101 and State laws upon appointment, they do not appear to answer to any American authority on operational matters. Under Section 44.1 of the *Railway Safety Act* in Canada and in other states such as Illinois, the only police oversight requirement is that the companies create and file their own public complaints policies to address public complaints against police officers with Transport Canada and State authorities, respectively. In the case of CP Railway and CN Railway, the policies they drafted for Canada and Illinois appoint the railroad companies' corporate Chief Legal Officers as the ultimate authority in charge of disciplining company police officers, including the Chiefs of Police, and not any public authority in either jurisdiction.

Even if the CP Railway and CN Railway Chiefs of Police have not personally carried out any arrests or conducted investigations in the United States, they still preside over the hierarchy that commands, controls, deploys, finances, and directs the American police officers who do. This overarching control and oversight of American law enforcement activity by "civilians" outside the United States, and whose policing powers arise **solely** under Canadian law, amount to the **extraterritorial application of Canadian law in the United States**.

It is the complainants' understanding that in the United States, there is a presumption against the extraterritorial application of foreign laws in the country unless the United States has consented to such an application. Upon review of statutes regulating railway police officers in numerous States, it appears that no State has expressly recognized the CP Railway's and CN Railway's Chiefs of Police's powers under Canada's *Railway Safety Act*, the only law that grants the Chiefs any police powers, as applicable or transferrable to any United States jurisdiction. The same applies to the corporate civilians in Canada to whom the Chiefs of Police answer. Nor have we found any law, or agreement indicating that any American State has formally conceded or consented to the CP Railway and CN Railway's Chiefs of Police exercising

police authority **as non-commissioned civilians** in their jurisdictions, and with the express authorization to do so from outside the United States. The same applied to CP Railway and CN Railway's corporate civilian leader in Canada. Given the serious jurisdictional implications of these Chiefs of Police exercising law enforcement powers in the United States, the decision to recognize their authority in your country would likely require a conscious and express statement to that effect in applicable statutes, regulations, or other legal authorities.

In all likelihood, State governments never turned their minds to the distinction between CN Railway and CP Railway cross-border police command in the United States, and American railroad companies whose local police forces do not raise the cross-border issues. This is understandable given that most railroad companies operating in the United States are American companies whose Chiefs of Police are based in the country and answer to corporate leaders within its borders. Further, CP Railway and CN Railway have been operating in the United States for many decades, and often through local subsidiaries on the commercial side of their operations. This may have obscured the fact that those subsidiaries may be American and go by the trade name that indicates their corporate parentage "CP Railway" and "CN Railway". However, the policing operations they are associated with are not controlled by the subsidiaries but at the corporate headquarters of the Canadian operating subsidiaries whose leadership are not based in the country.

It appears that American authorities have mistakenly deemed CP Railway and CN Railway's police departments in the United States as synonymous with the companies' commercial subsidiaries that are duly incorporated in the United States. If that were the case, each company would have co-equal Chiefs of Police answering to different corporate leaders in each country. However, both Chief Al Sauvé of the CP Police Service and Chief Stephen Covey of the CN Police Service sit at the apex of the police structures in both countries, and exercised unified command over police officers in both countries.

In various legal proceedings in Canada, the complainants have challenged both CP Railway and CN Railway about their cross-border policing structures and the other issues discussed above. To date, neither company has provided any substantive rebuttal to the allegations, assertions, and implications that the complainants have raised. In late **January of 2022**, we served CP Railway with the records that form the basis of our clients' draft STB complaint. Despite our requests, CP Railway has declined to disclose the nature and implications of its cross-border policing operations to the STB, the Committee for Foreign Investment in the United States (STB), or any other public authority in Canada and the United States. Whether CP Railway can maintain and expand its policing operations in the United States by merging with Kansas City Southern, while continuing to exercise operational command over its police officers from Canada, is likely an issue that would interest both the STB and CFIUS. Therefore, CP Railway's wilful decision to refuse to disclose the policing issues that form the substance of our clients' complaint to American authorities may amount to a **material misstatements through wilful omission**. The STB, STB, the Department of Transportation, the SEC, the Department of Justice, and other State governors and attorneys general, may have an interest in learning about before the STB approves the merger. STB'

intervention and consultation with these other authorities would compel the necessary reviews and investigations with all stakeholders in this issue.

Systemic threat #3: CP Railway and CN Railway's exercise of cross-border control of police powers in the United States raises potential implications or vulnerabilities under the United States *Espionage Act*.

CP Railway and CN Railway's policing operations in the United States give rise to potential implications under the United States *Espionage Act*. Given the context provided in the previous sections, CP Railway's and CN Railway's police officers in the United States are the "agents" of foreign, non-U.S. persons or entities. Given that the Chiefs of Police's policing powers arise solely under the Section 44 of Canada's *Railway Safety Act*, based on the wording of the *Espionage Act* (more below), they could also be classified as the "agents" of the Canadian government or the Canadian Minister of Transport who is responsible for administering Canada's *Railway Safety Act*. In fact, in our clients' litigation arising from the Field, British Columbia derailment of CP Railway Train 301, the current and former CP Railway Chiefs of Police have argued that although they are employees of CP Railway, in their law enforcement functions, they are "officers of the Crown" (Canadian government) (**Attachment 4**).

As agents of the Canadian Crown, legally, the Chiefs of Polices' sworn duty of loyalty necessarily lies **exclusively** with the Canadian state, and not the United States. Therefore, if the CP Railway and CN Railway Chiefs of Police **did** obtain security clearances to authorize their operational command over law enforcement officers and operations in the United States, or to access information from highly sensitive national security databases and related operations in the United States, then they have been doing so as "foreign agents". Without having sworn any official oaths to solemnize their law enforcement powers and allegiance to the United States, including through obtaining police commissions in the country, this likely means that the CP Railway and CN Railway Chiefs of Police attained, and continue to unlawfully wield extraordinary policing powers in the United States. This includes their access to highly sensitive information about American citizens, policing operations, and intelligence/law enforcement operations in the United States.

If the CP Railway and CN Railway Chiefs of Police **do not** have the requisite security clearances that the State and federal laws require of senior law enforcement officers who command police forces with national jurisdiction in the United States, then these Chiefs of Police are likely in breach of American laws that regulate such access to classified or confidential information. Either way, the powers and access that the CP Railway and CN Railway Chiefs of Police exercise in the United States from across an international border, raise concerns about serious violations of the United States' sovereignty, national security, and the privacy interests of American citizens.

NOTE: As previously noted, we have raised the above issues with both CP Railway and CN Railway's boards of directors in the ongoing shareholder related litigation in Canada, most recently at the end of January 2022 (for CP) and March 2022 (for CN). If the companies' Boards of Directors and Chiefs of Police were previously unaware of the serious problems inherent in their cross-border policing structures and operations, they certainly are now. However, in the litigation through which we raised these issues, the companies' Boards of Directors have strenuously fought every effort to remedy these problems or to report these issues to relevant American authorities, including the STB. Therefore, if the cross-border police command that both companies exercise over their respective police forces falls afoul of American laws, then the companies' failure to promptly notify American authorities and immediately remedy any inadvertent violations of American laws are deliberate. That would potentially give rise to offences under State and federal laws such as the ***Espionage Act***. The potentially applicable sections of the *Espionage Act* that apply to the CP Railway and CN Railway's Chiefs of Police (and the corporate leaders to whom they report in Canada) are as follows.

Espionage Act: 18 U.S. Code § 798 - Disclosure of classified information.

> (a) Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise **makes available to an unauthorized person**, or publishes, or uses in any manner prejudicial to the **safety or interest** of the United States **or for the benefit of any foreign government** to the detriment of the United States any classified information—
>
> (1) concerning the nature, preparation, or use of any code, cipher, or cryptographic system of the United States or any foreign government; or
>
> (2) concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or planned for use by the United States or any foreign government for cryptographic or communication intelligence purposes; or
>
> (3) **concerning the communication intelligence activities of the United States or any foreign government; or**
>
> (4) obtained by the processes of communication intelligence from the communications of any foreign government, knowing the same to have been obtained by such processes—
>
> Shall be fined under this title or imprisoned not more than ten years, or both.
>
> (b) As used in subsection (a) of this section—
>
> The term "classified information" means information which, at the time of a violation of this section, is, for reasons of national security, specifically designated by a United States Government Agency for limited or restricted dissemination or distribution;

The terms "code," "cipher," and "cryptographic system" include in their meanings, in addition to their usual meanings, any method of secret writing and any mechanical or electrical device or method used for the purpose of disguising or concealing the contents, significance, or meanings of communications;

The term "foreign government" includes in its meaning any **person or persons acting** or purporting to act for or on behalf of any faction, party, department, agency, bureau, or military force of **or within a foreign country**, or for or on behalf of any government or any person or persons purporting to act as a government within a foreign country, whether or not such government is recognized by the United States;

The term "communication intelligence" means all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients;

The term "unauthorized person" means any person who, or agency which, is not authorized to receive information of the categories set forth in subsection (a) of this section, by the President, or by the head of a department or agency of the United States Government which is expressly designated by the President to engage in communication intelligence activities for the United States.

(c) Nothing in this section shall prohibit the furnishing, upon lawful demand, of information to any regularly constituted committee of the Senate or House of Representatives of the United States of America, or joint committee thereof.

(d)

(1) Any person convicted of a violation of this section shall forfeit to the United States irrespective of any provision of State law—

(A) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation; and

(B) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.

(2) The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1).

(3) Except as provided in paragraph (4), the provisions of subsections (b), (c), and (e) through (p) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853(b), (c), and (e)–(p)), shall apply to—

(A) property subject to forfeiture under this subsection;

(B) any seizure or disposition of such property; and

> (C) any administrative or judicial proceeding in relation to such property, if not inconsistent with this subsection.
>
> (4) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund established under section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) [1] all amounts from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.
>
> (5) As used in this subsection, the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

We will leave the formal interpretation of the law to your Office but as the relevant portions of Act apparently to indicate, a breach of the *Espionage Act* does not require an active desire or motivation to injure the United States' interests. Wilfully accessing or sharing classified information with third parties outside of the United States, and without lawful authorization, appears to amount to a breach of the Act.

Concerns around CP Railway and CN Railway's cross-border police command structure include questions about cross-border data security and privacy. **STB may wish to confirm the locations, functionality, and cross-border access protocols for CP Railway's and CN Railway's police databases, servers, and internal chat group software.** The STB will likely have to convene and process that allows it and other United States' authorities to review this information without jeopardizing national security and sensitive law enforcement information. CP Railway's and CN Railway's Chiefs of Police in Canada are the unified Chiefs for their companies' police officers in **both** the United States and Canada, and that both police forces are singular, cross-border entities with no distinct legal identities in either country. Thus, it is highly probable that to effectively execute their operational command mandates in both countries, the Chiefs of Police have direct or indirect access to their companies' police files, chat groups, servers, and databases in both countries. As such, the Attorney General's Office may also wish to investigate whether the CP Railway and CN Railway police forces have a single, linked, or harmonized informational infrastructure, digital or otherwise, that runs across the United States-Canada border. Of particular interest would be which corporate civilians in Canada have direct or informational access to CP Railway and CN Railway's law enforcement operations and police activities in the United States (e.g. corporate human resources and risk management).

If our understanding is correct, the CP Police and CN Police's cross-border digital infrastructure and operations are sufficiently integrated or connected to facilitate the flow of law enforcement information about American citizens and policing operations to the companies' police and corporate leadership **in Canada**. This transfer of sensitive law enforcement through a "digital tunnel" across the United States-Canada border not only constitutes a likely breach of American national security laws, it also likely amounts

to the violation of federal and **State privacy laws** that protect the American citizens' informational rights. The companies' American police officers who gather, collate, and access that personal information in the United States need to make it available to the superiors they report to in Canada, and who themselves may not have the security clearances or authorizations that apply to persons accessing such information in the United States. This concern not only includes the digital transfer of American law enforcement information or remote access from Canada, but any operational briefings or query responses that CP Railway and CN Railway's American police officers may provide their Chiefs of Police outside of the country (through phone calls, emails, the mail, and any other mediums that transfer sensitive national security and law enforcement information outside of the United States and into Canada).

Systemic threat # 4: Potential division of powers and states' rights implications that CP Railway and CN Railway's policing operations in the United States expose.

This section is not strictly about CP Railway and CN Railway's cross-border exercise of police powers in the United States. However, given the general national security and privacy implications of corporate civilians abroad commanding police officers in the United States, the Attorney General's Office may wish to explore question of whether federal law, "49 U.S. Code § 28101 - Rail police officer", exacerbates this problem. Does the law inadvertently violate States' rights by providing a legal framework in which a police commission in one State effectively amounts to policing authorization in many or all States? To premise this concern, we provide the relevant sections of 49 U.S. Code § 28101 below.

1. (a) In General.—Under regulations prescribed by the Secretary of Transportation, **a rail police officer who is directly employed by or contracted by a rail carrier and certified or commissioned as a police officer under the laws of a State may enforce the laws of any jurisdiction in which the rail carrier owns property, to the extent of the authority of a police officer certified or commissioned under the laws of that jurisdiction, to protect—**

    (1) employees, passengers, or patrons of the rail carrier;
    (2) property, equipment, and facilities owned, leased, operated, or maintained by the rail carrier;
    (3) property moving in interstate or foreign commerce in the possession of the rail carrier; and
    (4) personnel, equipment, and material moving by rail that are **vital to the national defense**.

2. (b) Assignment.—

    A railroad police officer directly employed by or contracted by a railroad carrier and certified or commissioned as a police officer under the laws of a State may be temporarily assigned to assist a second railroad carrier in carrying out law enforcement duties upon the request of the second railroad carrier, at which time the police officer shall be considered to be an employee or agent, as applicable, of the second railroad carrier and shall have authority to enforce the laws of any jurisdiction in which the second railroad carrier owns property to the same extent as provided in subsection (a).

(c) Transfers.—

(1) In general.—

If a railroad police officer directly employed by or contracted by a rail carrier and certified or commissioned as a police officer under the laws of a State transfers primary employment or residence from the certifying or commissioning State to another State or jurisdiction, the railroad police officer, not later than 1 year after the date of transfer, shall apply to be certified or commissioned as a police office [1] under the laws of the State of new primary employment or residence.

(2) Interim period.—

During the period beginning on the date of transfer and ending 1 year after the date of transfer, a railroad police officer directly employed by or contracted by a rail carrier and certified or commissioned as a police officer under the laws of a State may enforce the laws of the new jurisdiction in which the railroad police officer resides, to the same extent as provided in subsection (a).

(d) Training.—

(1) In general.—
A State may recognize as meeting that State's basic police officer certification or commissioning requirements for qualification as a rail police officer under this section any individual who successfully completes a program at a State-recognized police training academy in another State or at a Federal law enforcement training center and who is certified or commissioned as a police officer by that other State.

(2) Rule of construction.—

Nothing in this subsection shall be construed as superseding or affecting any State **training requirements** related to criminal law, criminal procedure, motor vehicle code, any other State law, or State-mandated comparative or annual in-service training academy or Federal law enforcement training center.

First, the overarching federal authority under 49 U.S. Code § 28101 means that railroad police officers who are only commissioned in one State, can still exercise police powers in other States if the police officers' employer has operations in those other States. Therefore, even if one of these police officers comes from a State whose training and other eligibility requirements for becoming a police officer are less stringent than those in where they are not commissioned police officers, under Subsection (a) of 49 U.S. Code § 28101, they can still conduct law enforcement activities in the State.

Second, the power to "protect" under Subsection (a), includes investigations of both potential and crystalized incidents. Such powers necessarily involve the ability to conduct arrests, to consult police and

other law enforcement databases, to carry weapons, and to exercise physical force where necessary. Subsection (a)(4) of 49 U.S. Code § 28101 specifically authorizes these powers with respect to railroad police's ability to protect personnel, equipment, and materials that are vital to **national defence**. Such powers relating to such sensitive subject-matter would naturally entail elevated levels of access to national security information and coordination with many other public authorities. These public authorities unquestioningly cooperate with the railroad police force on the sole basis of their legitimate police powers and authoritative parity with public police officers. If those powers are being deployed in the service of unaccountable shareholders and corporate leaders outside of the United States, the resulting damage to American interests could be incalculable.

Also, Subsection (b) of 49 U.S. Code § 28101, regarding "Assignment", provides yet another basis for out-of-State railroad police officers to enjoy the full suite of law enforcement functions as non-commissioned police officers in the other States.

When applied to the example of a foreign, nefarious actor buying an American railroad as a means of obtaining police powers in the United States through the "backdoor", such an actor could purchase a railroad company in one State, but through 49 U.S. Code § 28101, automatically obtain policing powers and informational access other States. They would only need episodic access to the other States (physical, digital, or through cooperation with local law enforcement agencies in the other States). Such singular or episodic access would not trigger the "Transfer" provisions of 49 U.S. Code § 28101 that would require the out-of-State police officers to obtain formal police commissions in the States in which they are accessing information and exercising police powers.

As the nefarious actors' police officers would not need to go through any full vetting or training process in their non-home States, this effectively amounts to 49 U.S. Code § 28101 imposing the standards of the police officers' home State on other States. This is notwithstanding the "**Rule of Construction**" under Subsection (b) of 49 U.S. Code § 28101, which notionally appears to place ultimate control over training and certification to the State. However, practically speaking, this provision fails to address two key problems.

First, federal law 49 U.S. Code § 28101, Sections (a) and (b), empower railroad police officers without police commissions in one State to exercise police powers in other States, but the "Rule of Construction" is a subsection of the "Training" provision. This would mean that the Rule is limited to the level and type of **training** requirements that a State can impose for the initial and maintenance of police officers' commissions. Beyond, training, the Rule of Construction does not grant States the authority to exempt themselves from Sections (a) and (b), that allow these outside officers to engage in policing activity **as freely as local railroad police officers can**. As such, federal law 49 U.S. Code § 28101 deprives States the power to decide when and how out-of-State railroad police officers can enter the jurisdiction, under what circumstances, when they must defer to local jurisdiction, and what information or databases they can access regarding the local jurisdiction. Effectively, Sections (a) and (b) of federal law 49 U.S. Code § 28101

create national railroad policing jurisdiction that makes railroad police from one State the equivalent of those in other States. Thus, any laws or conditions that a State may try to impose on how out-of-State railroad police forces operate locally, would be moot. This is especially important in the case of bad faith actors who may acquire a controlling interest in one State and then leverage that to exercise policing authority in any State their company does business, or to access national law enforcement databases with integrated information that may extend beyond those States to the United States as a whole. Although some State laws appear to assert jurisdiction over all railroad police officers and expect them to obey the law within their jurisdiction (e.g. Minnesota, Subdivisions 1, 5, and 6), bad faith actors, by definition, do not obey the law. Their ability to acquire a police force in one State and operate seamlessly across other State under federal law, and while reporting to persons outside of American soil is a serious national security vulnerability.

Second, to the extent that the Rule of Construction under Section (d) of 49 U.S. Code § 28101 defers to States on training standards, in practice, States' ability to monitor compliance with any standards for out-of-State railroad police officers is likely impossible. The large number of police officers who are eligible to cross State lines and with no notification or reporting requirements for such entry is significant. The monitoring and verification burden for every jurisdictional "incursion" by a non-commissioned, out-of-State railroad police officer would be unduly complicated. **That is especially so when such "incursions" are the sort of fleeting or singular instances that would not justify a full training program, but through which bad faith actors could obtain the physical or informational access to incur serious breaches of national security in the United States. This includes accessing or mapping sensitive logistical infrastructure, identifying, and assessing pre-existing security measures, wielding their police authority to obtain information from persons with sensitive information, and accessing databases that regular civilians would not have access to)**. No training requirement or mandates for out-of-State railroad police officers to obey the laws would make such "incursions" more apparent to local authorities. Nor would such requirements remedy the national security, commercial, and privacy vulnerabilities that these fleeting but consequential cross-border "incursions" could impose on any given State and the United States as a whole.

For example, the Iowa railroad police law does not appear to provide for any real-time or other monitoring requirements on the activities of non-commissioned police officers in the State. Nor does it expressly limit the access that these police officers have to local law enforcement operations, databases, records, premises, firearms (and any training related requirements), etc. Further, the Iowa statute does not invoke the "Training" provisions under 49 U.S. Code § 28101 that would otherwise allow the State to preclude the jurisdictional "incursions" of out-of-State Police officers. As such, 49 U.S. Code § 28101 empowers any party that acquires a full or consequential stake in railroad **outside** of Iowa could exercise policing powers **in** the State as long as their company had any tracks, operations, or infrastructure in Iowa. The same applies to the State of Illinois which has a more detailed statute that addresses the requirements for obtaining and maintaining police commissions and training standards, and has a statutory Board that actively enforces and updates its conditions for police commissions. Even the Illinois framework does not invoke the "Training" provisions of 49 U.S. Code § 28101. However, the Illinois railroad police law, (610

ILCS 80/5) Section 5, at least requires railroad police officers to report any missing or stolen firearms of explosives to local law enforcement, "including, but not limited to the municipal police, the County Sheriff, and the Department of State Police", many state statutes do not appear to even have such controls or reporting requirements. The Iowa version does not. Related regulations or other mechanisms in States such as Iowa provide more detailed controls over railroad police forces, but if such provisions do exist, that would not alter the fact that the significant variations across railroad policing laws across the nation's States create potential loopholes that resourceful bad faith actors can exploit.

The overarching federal authority of 49 U.S. Code § 28101 was likely intended to facilitate seamless cross-country policing of critical railroad infrastructure. However, as it is currently structured, it also provides a vehicle through which bad faith actors that can legitimately locate their policing leadership outside of the United States under the current scheme, can acquire control of a railroad in one State, and use the federal law to extend their policing powers across the entire United States. Banning companies and persons outside of the United States from exercising operational command over police officers in the United States would be the first step in ensuring that bad faith actors do not exploit policing powers to threaten national security in the country. This necessarily requires blocking all railroad mergers or acquisitions that grant or extend the exercise of any policing authorities to unvetted persons, entities, and institutions outside of American soil.

Although CP Railway and CN Railway may not be bad faith actors with the intention to undermine American interests, that does not negate the national security and privacy vulnerabilities of allowing the companies' Police Chiefs and corporate executives to exercise operational command of American police officers and law enforcement activities by "remote control" from Canada. If STB, the STB, and other American authorities disregard this issue and approve the merger, it would endorse, entrench, and extend the vulnerabilities deeper into the United States. It would also set a precedent for other entities outside of the United States that they can buy their way into the country's national security infrastructure and effectively exercise criminal law powers against American citizens on American soil from abroad.

CP RAILWAY: *PRIMA FACIE* EVIDENCE OF LEGAL AND CONDUCT ISSUES THAT ARE RELEVANT TO THE COMPANY'S PROPOSED MERGER WITH KCS.

The entrenchment of criminal law powers in private railway corporations has produced some unintended consequences, the full impact of which (to our knowledge) has not been comprehensively reviewed in the United States or Canada. However, this complaint is not strictly about the legal framework which empowers CP Railway to operate a cross-border police force. This whistleblower alert provides *prima facie* evidence of how CP Railway has abused its police force and continues to do so without any accountability to public authorities. Unlike the previous section which focused on the systemic issues that CP Railway's policing command structures and law enforcement activities reflected, this current section presents prima facie evidence and arguments of how CP Railway's conduct that raises red flags that the STB should investigate in this merger review proceeding.

<u>Legal Issue #1 specific to CP Railway</u>: *Prima facie* evidence of abuse of police powers – Through its private police force, CP Railway has exercised policing jurisdiction over, and exonerated itself of, criminal liability for workplace deaths at its operations.

Potential criminal liability for workplace deaths: anchoring fatal and injurious incidents in the Canadian criminal law, and likely, its American equivalents.

When a CP Railway worker has died pursuant to the company's operations in Canada, the CP Police Service has exercised criminal jurisdiction over the incidents (exclusive or otherwise). At a minimum, history suggests that beyond immediately attending to ongoing threats to human life and public safety, and despite being employees of CP Railway, the company's police officers have conducted functions that only independent police officers should be responsible for (given the need to first eliminate the prospect of CP Railway's potential criminal liability for the incidents). These policing functions have apparently included interviewing witnesses, who in many cases, are company employees, and whose witness accounts could implicate company conduct or policy. This is problematic because the truthfulness and completeness of witness testimonies are undermined when the police officers questioning such witnesses are also employees and subordinates of the civilian corporate leaders who are directly, or ultimately, responsible for the company's potential misconduct.

In conjunction with the above, other Canadian public police forces have invariably deferred to the CP Police Service, seeing themselves as taking on a supporting rather than primary investigative role. That has been the case for workplace fatalities even though under the <u>Westray amendments to Canada's *Criminal Code*</u>, employers are presumptive parties of interests in such cases. This has been the historic pattern even though the CP Police Service is legally indistinct from CP Railway, while its police officers are corporate employees who report directly to the company's executive management through their Chief of Police. <u>Naturally, this is problematic because suspects in regulatory and potentially criminal incidents should play no investigative role in investigating and exonerating themselves in workplace fatalities and injuries in which their potential liability is in question</u>.

We trust that the United States has similar laws that capture employers' potential criminal liability for workplace deaths, injuries, and public safety incidents.

Canadian legislators cite CP Railway's alleged handling of Field, British Columbia incident in calling for reforms to railroad policing in Canada.

On June 3, 2022, Canada's Parliamentary Standing Committee on Transport, Infrastructure and Communities released its report on "Railway Safety and the Effects of Railway Operations in the Surrounding Communities in which they Operate" (**Attachment 5)**. At page 17 of the report, the multi-partisan Committee made Recommendation 20 to the Government which stated: "That the Government of Canada amend

Section 44 and 44.1 of the *Railway Safety Act* to remove the potential conflict of interest from the jurisdiction of private railway police in investigations involving their companies." This Parliamentary report is based in part on the culmination of evidence showing that the CP Police Service asserted jurisdiction over derailment of CP Railway Train 301 near Field, British Columbia derailment in February of 2019. The Royal Canadian Mounted Police is currently conducting a criminal investigation into CP Railway with respect to that derailment.

Court filings in civil proceedings which the whistleblowers are involved against CP Railway, also confirm that not only did the CP Police Service assert jurisdiction over the incident, but that the most senior officers, including the Chief and Deputy Chief (Canada), mandated that the investigating officers shut down the investigation after only a month, and exonerated the company of any criminal wrongdoing.

It is important to note that how the unified CP Police Service handled the Field derailment is directly relevant to how the same leadership have handled deaths and serious injuries at CP Railway Ltd.'s American subsidiaries. For context, U.S. Government published data shows that CP Railway had **10,504 casualties** between 1990-2021, **366 of which were fatal**. Additionally, the data shows that **7,349** of the casualties were Railway Employees at CP Railway during that time frame with an additional **25 fatalities** among that category of people. If CP Railway's practice of self-investigation and self-exoneration through the CP Police Service has been the norm over the years in the United States, such conduct could give rise to legal violations that also touch on the investigative jurisdiction of the **United States Department of Justice** (Civil Rights Division, Criminal Division, and the Federal Bureau of Investigation), the **Department of Homeland Security**, and the **Department of Transportation**.

From our queries to date, we have found no instance of the CP Police Service ever laying criminal charges or facilitating the prosecution of CP Railway or its leaders for the above deaths and serious injuries in the United States. Rather, our preliminary research show that American police forces defer such cases to the CP Police Service and to the railway owned police services.

To anchor this self-investigation practice in Canada, the available record confirms that that the CP Police Service has asserted jurisdiction over deaths and serious injuries in which CP Railway is implicated in Canada. In their joint Responses to Civil Claim ("RTCC") that respond to Ms. Fraser's and the Dockrells' lawsuits over the Field, British Columbia derailment of CP Railway Train 301, both the former and current CP Police Service Chiefs of Police conceded that CP Police Service **had** investigated the fatal derailment of Train 301 and exonerated all parties, necessarily including CP Railway and its corporate leaders, of any criminal liability (**Attachment 6 pages 4-5 para 19(c)(d)(k)(l)**).

Further, in his own response to the claim, Constable Mark Tataryn also conceded that he participated in that very investigation while employed as a CP Police Service Officer (**Attachment 7, page 2 para 7-8 and 13**). However, in their response to the claim, CP Railway as a corporation, its CEO, Mr. Keith Creel, and the Board of Directors contradicted the Chiefs and Constable Tataryn by asserting that it would

be unlawful and inappropriate under any circumstances for the CP Police Service to investigate the company and their corporate superiors (**Attachment 8 paragraph 20)**.

Further still, as part of a legal process that the Defendant triggered to obtain a determination that the Dockrell and Fraser claims cannot proceed because they are barred under British Columbia's *Workers Compensation Act*, the CP Railway Company tendered an affidavit from Shelly McInnis, CP Railway's Managing Director, Human Resources (**Attachment 9**). At paragraphs 11 – 17 of Ms. McInnis' sworn affidavit, despite being a senior corporate employee, she makes representations on behalf of the purportedly independent CP Police Service. At paragraph 14 of her affidavit, Ms. McInnis states:

> "The CPPS initiated an emergency response as first responders to the Workplace Accident, and assisted local authorities and CP Railway including to: locate and access the scene of the Workplace Accident through challenging weather conditions; maintain peace and order at the scene; locate and provide any assistance to the emergency response crew and other first responders; secure the scene and evidence for other investigative agencies as requested; and, gather and return the effects of the deceased crew members. The CPPS also conducted a limited investigation into the circumstances of the Workplace Accident to determine whether any of the crew were impaired by drugs or alcohol." [Emphasis added.]

The underlined section contradicts Chiefs of Polices' assertion that the CP Police Service found no criminality by any party, which necessarily includes the CP Railway Company that operated Train 301. That indicates that the CP Police Service engaged in a broader, open-minded query that followed the evidence to the conclusion that no person was responsible for criminal activity. An investigation that was limited to whether the three deceased workers were impaired by drugs or alcohol could not have absolved any potential party, including CP Railway Company of criminal conduct. Effectively, the Chiefs of Police **did** investigate, or at least considered CP Railway Company's potential liability before dismissing it. However, Ms. McInnis, speaking for the CP Railway Company, confidently asserts a narrower scope that contradicts the Company's position. The effect of this contradiction is that the if the Chiefs of Police and the CP Police Service officers did conduct the broader investigation that they assert, and exonerated CP Railway, then this was unlawful and inappropriate as CP Railway states at paragraph 20 of its virtually identical responses to the Dockrell and Fraser claims.

Based on how the CP Police Service handled this investigation under its current and former Chiefs, this indicates that the CP Police Service, answering to management, may have investigated and exonerated CP Railway's American incarnations and the corporate civilians to which they answer, in 331 deaths and 8362 reportable injuries that have happened during CP Railway's American operations between 2011 and 2020 (**Attachment 10**). If so, all these people were denied independent criminal investigations or assessment to determine CP Railway's potential criminal lability.

As detailed further in these submissions, the common pattern in such cases is that the CP Police Service attends the scene of a fatality or serious injury. If another police force has also attended, the CP Police Service asserts jurisdiction or the other police forces yield to the CP Police Service as the police of jurisdiction. This is what happened with the Royal Canadian Mounted Police("RCMP"), which initially claimed it did not have primary jurisdiction over the Field, British Columbia derailment and that the CP Police Service did. However, almost two years after the derailment, the RCMP subsequently launched a criminal investigation in December 2020 after media pressure and CP Railway's insistence that the RCMP had the duty to investigate (not the CP Police Service).

Separately, former CP Police Service Constable Tataryn, who the Chiefs deployed to investigate the case, apparently pushed to direct the investigation on CP Railway's possible role in the derailment.[2] However, according to his response to the Fraser and Dockrell clams, the CP Police Service unilaterally shut down the investigation merely 30 days after the derailment without his consent (see **Attachment 7 page 2 para 7-8 and 13**). If this was indeed the case, this was a direct violation of the principle of police independence that the Supreme Court of Canada found to preclude such interference in a police constable's inherent right to investigate and lay charges as they see fit, not based on their superiors' dictates. *R. v. Campbell*, [1999] 1 S.C.R. 565 at paras 29-33 https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1692/index.do.

We trust that in the United States, police officers are also supposed to be operationally independent, including from the very authorities that fund them. Given the CP Police Service Chiefs' admission that they investigated and exonerated all parties in the Field, BC incident of criminal liability (necessarily including CP Railway), and CP Railway's assertion that such an investigation would be inappropriate and unlawful, it is in the public interest for the STB to determine the extent to which CP Railway may have used its CP Police Service to shield itself from independent criminal scrutiny in the United States. A merger approval that significantly expands the police powers of CP Railway's component companies in the United States without considering evidence of the companies' potential abuses of those powers would be contrary to the American public interest public safety, and the proper governance of railroads. It would also reinforce the injustice that numerous American's suffered because CP Railway used its cross-border CP Police Service to exonerate itself of potential criminal liability for their deaths and serious injuries.

Legal Issue #2 specific to CP Railway: For years, CP Railway repeatedly ignored worker Safety Hazard Reports before the Field, BC derailment of 2019 (Canada Transportation Safety Board).

CP Railway has seen significant safety issues which are exacerbated and encouraged by its aggressive precision scheduled railroading model. CP Railway adopted this business model when Mr. Hunter Harrison became CP Railway's CEO in June 2012. These safety issues are most potently illustrated by the Transportation Safety Board's (TSB) investigative report on the Field, British Columbia derailment of Train

[2] "Police officer suspects internal 'coverup' by CP Rail in fatal B.C. Mountain crash: Canadian Pacific Railway police investigated its own company after fatal derailment." https://www.cbc.ca/news/canada/cp-derailment-investigation-coverup-alleged-1.5436018.

301 **(Attachment 11)**. The TSB report found several safety deficiencies which contributed to the accident including insufficient training of employees, inaccurate safety evaluations including the company's train brake test evaluation methodologies, as well as inadequate reviews or responses to safety hazard reports submitted by crew members, among others. Each of these safety deficiencies is a direct result of the precision scheduled railroading business model employed by CP Railway. This model prioritizes keeping trains running on time in the pursuit of profits over ensuring the safety of crew members and the general public.

The concern with this issue is the extent to which CP Railway's approach to training across its American and Canadian networks created latent and ongoing hazards to public safety in both countries, and of which the Field, BC incident was a real-life manifestation. The STB may wish to more thoroughly examine CP Railway's safety practices with respect to the current adequacy of its crew training, staffing complements, fatigue management, and overall safety practices, to determine whether they pose undue dangers to American workers and communities. The subsections below rely on the Canada TSB's investigative report into the Field, BC incident to highlight long standing concerns that have been pervasive about across the company's operations.

CP Railway's years-long practice of ignoring employees' Safety Hazard Reports.

CP Railway failed to address safety hazard reports submitted by its employees concerning the very issues which directly led to the fatal derailment of Train 301. CP Railway employees assigned to the Laggan Subdivision of tracks were aware of the safety risks associated with that stretch of track in frigid winter temperatures. They attempted to rectify these risks by alerting CP Railway of the dangers and safety issues, only for CP Railway to ignore the issue repeatedly. **Page 11 of the TSB report** states:

> Safety hazard reports involving poorly braking unit grain trains descending Field Hill in cold winter temperatures had been submitted by train crews in January and February for a number of years. As individual notifications of this hazard were closed, new, similar reports continued to be recorded through the reporting system. Although CP's procedure for safety hazard reporting was actively followed at the Calgary terminal, the trend analysis it required was not being done. **Consequently, year after year, the reports on the poor braking of unit grain trains on Field Hill were closed, no formal risk assessment was conducted, and insufficient corrective action was taken**. (Emphasis added).

More alarmingly, the TSB investigation found that CP Railway was actively closing safety hazard report files without any indication that the hazard had been addressed. Specific to the Laggan Subdivision, the TSB report states at page 182:

> Train crews consider the poor braking performance of unit grain trains to be a hazard that may present a direct safety risk to employees and pose a threat to safe railway operations. Consequently, when crews were having difficulties controlling their trains on Field Hill, they filed safety hazard reports. The review of the CCFHSC meeting minutes dating back as far as December 2016 show that, for at

least the 3 winters before the occurrence, crews had filed hazard reports on this issue regularly through the proper channels. **Still, year after year, the reports on the poor braking of unit grain trains on Field Hill were closed, no risk assessment was conducted, and insufficient corrective action was taken.** [emphasis added].

Analyzing and appropriately addressing identified safety risks from employees' safety hazard reports takes time and money, causing delays to train schedules and increased expenses for CP Railway. Tragically, Andrew Dockrell, a member of the relief crew who was fatally injured in the Field, British Columbia derailment, had filled out another safety hazard report about ineffective braking on Field Hill the day before the derailment. The yet unfiled report was found among the wreckage of Train 301 in which he died.

Insufficient Training for Crew Members.

After adopting the precision scheduled railroading business model, CP Railway deprioritized sufficient levels of training for crew members and their supervisors as a cost saving measure. This led to the accelerated promotion and assignment of inexperienced personnel to potentially hazardous tasks they were unqualified to handle. The Laggan Subdivision of the tracks, where the CP Railway Train 301 fatal derailment occurred, was a particularly difficult stretch of track. It is a steep mountain grade and, in the winter, when the derailment occurred, it experiences extremely cold temperatures. When the train was brought to an emergency stop at the top of Field Hill, the crew, along with the train-master, were tasked with determining the appropriate next steps. The crew which brought the train to an emergency stop at the top of Field Hill had not received the appropriate training or gained sufficient experience working in these extreme conditions to be capable of determining the most appropriate course of action. **The TSB report on Field, B.C. at page 10 states**:

> At the time of the occurrence, CP's Field Hill certification program did not have a module on the particular challenges of operating a train on mountain grade in extreme cold conditions. This kind of training could make locomotive engineers more aware of the issues associated with air brake system operations in extreme cold and increase their vigilance when they encounter situations similar to those that arose in this occurrence.
>
> …
>
> If the classroom training does not address the unique needs of the territory where the employees will be working, and if the employees do not obtain the relevant on-the-job training on that territory, they will not be adequately prepared to perform their duties safely.

The **TSB stated at page 114 of its report**:

> The training program was significantly modified in 2017–2018; it was accelerated, as there was a greater demand for conductors due to increased traffic levels. The new requirements for a conductor

> to work on Field Hill, up to the time of the occurrence, were reduced to classroom review of the FHOP using job aids and track schematics. The simulation trips on Field Hill were removed. Conductors were no longer required to be Field Hill–certified.

The TSB report found that CP Railway offered insufficient training to its employees and that this was a direct contributing factor to the fatal derailment.

Inaccurate Train Brake Testing Methodologies.

CP Railway employees conducted the required tests of the brakes on Train 301 prior to the derailment. The train braking test which CP Railway required provided an inaccurate assessment of the functionality of the train's braking capacity. Further, CP Railway's de-prioritization of maintenance of rail cars due to the cost, resulted in faulty, inefficient brakes. The STB may wish to investigate CP Railway's use of "bad ordered cars", which we understand the company used well past the condition of safe operation. CP Railway workers in both countries, including the railway unions would be able to provide more information. In any event, CP Railway Train 301's deficient braking capacity was a primary cause of the fatal derailment of the train on Field Hill. The TSB's post-incident testing of the train's braking capacity found that:

> The average efficiency of the air brake system on the occurrence train was about 60% to 62% of nominal expected values. (page 9 of TSB report).

The TSB report further states at page 77:

> As the figure illustrates, there were significant differences in car temperature, and several of the cars had an average well below 100 °F, a clear indication that their brakes were either ineffective or completely inoperative.

The ineffective brakes of Train 301 were not an anomaly; they are the standard at CP Railway. At page 156 of its report, the TSB found:

> "In CP operations, unit grain trains were so often operating close to the limits of their braking capacity during extreme cold temperatures that braking degradation became normalized."

It is apparent that CP Railway's decision to utilize inaccurate train brake testing methodologies and to avoid regular maintenance of its rail cars is a conscious and deliberate decision to prioritize profits over safety.

Conclusion on CP Railway's safety issues that the STB should investigate before approving the merger with the Kansas City Southern Railway.

The issues in this subsection are only three of many extensive contributing factors that the TSB found led to the fatal derailment of Train 301 near Field, British Columbia in 2019. For a more complete account, see **Attachment 11-TSB Report**. **By raising the Field incident, the complainants are not asking the STB to investigate what happened in Field, British Columbia**. Beyond the Canada Transportation Safety Board report cited in these submissions, the Royal Canadian Mounted Police is already engaged in a criminal investigation into the matter. Thus, practically and legally speaking, the STB could not exercise any investigative jurisdiction over that incident. However, the Board is free to review the Canada Transportation Safety Board report to identify potential patterns regarding how CP Railway's precision scheduled railroading practices may reveal a broader workplace safety culture that manifested in the Field, British Columbia fatal derailment. These practices would help the STB determine where and how to review CP Railway's operations within the scope of the STB's duty to promote transparency around the governance of railroads and public safety.

What all the contributing factors have in common is CP Railway's adoption of unsafe measures and practices that maximize profits while making railway operations less safe; a consequence of the **aggressive application of the precision scheduled railroading business model**. If CP Railway successfully merges with Kansas City Southern Railway that would risk extending CP Railway's application of its precision scheduled railroading business model deeper into the United States, expanding the plethora of safety concerns for workers and the public.

Although the Field, British Columbia incident may have made CP Railway more diligent in the immediate term, the STB should take little comfort in that prospect. Given how aggressively CP Railway has applied the PSR model, and how notable its operating ratio has improved, and its stock price having risen over the past decade, the company likely has little margin for implementing the significant, important, but profit-impacting changes that stronger labour and safety practices would impose on the company. Therefore, despite any lessons learned, it is not a foregone conclusion that the company's safety profile has improved significantly, and across all its operations.

At a minimum, the STB may wish to put CP Railway to the task of providing records and answers regarding all the safety issues in the TSB report **for the sole purpose of determining the extent to which it has adopted those practices in the United States**. Approving a merger involving a company whose conduct in one case reflects potentially systemic risks to public and worker safety would inadvertently condone and extend such behaviour across the merged company's expanded network.

<u>Legal Issue # 3 specific to CP Railway</u>: The operational command that CP Railway's Chief of Police and corporate civilian leaders in Canada exercise over CP Police Service officers in the United States violates America's sovereignty, Americans' civil/constitutional rights, raises national security risks, and amounts to the unlawful exercise of police powers by foreign persons.

CP Police Service's Chief of Police, who commands the companies' American police officers, is a Canadian citizen, based in Canada. Based on records secured from freedom of information requests, neither Chief Sauvé nor his predecessor, Chief Ken Marchant, have been sworn police officers with any authority to exercise police power in the States where the CP Police Service operates (**Attachment 12 and 12.1**). However, the CP Police Service's Chief of Police in Canada, currently Chief Al Sauvé, is the unified Chief for the entire CP Police Service, including for the United States. His Deputy Chief in the United States reports to him under a unified command structure, in which Chief Sauvé is the ultimate authority. The CP Police Service has only one website for the entire cross-border police force. For an example of this unity in cross border command, in the state of Illinois, the CP Police Service's disciplinary procedure places the Chief of Police (in Canada) as the ultimate authority in all disciplinary matters relating to his police officers in that state (**Attachment 13)**. As these documents reflect, records generated from investigations of public complaints against CP Police Service officers are sent to Canadian headquarters. This indicates the placement of operational command and discipline of American police officers under the ultimate authority of foreign persons (the Chief and Chief Legal Officer) outside of American soil, but who themselves are not sworn or commissioned police officers in the United States.

This cross-border control of law enforcement powers by corporate civilians who answer to shareholder and not the American public was one of the issues that Ms. Desrochers raised in her 2022 shareholder proposals to CP Railway. Such control is especially troubling given that these same American police officers are the ones who attend and exercise policing jurisdiction workplace fatalities and reportable injuries for which CP Railway may be responsible. Although other public authorities such as the Federal Railroad Administration, coroners, fire departments and others may all attend, none wield the significant criminal law jurisdiction that can impose effective deterrent effect on unsafe, but profitable workplace practices. Their investigations can usually yield nothing more than recommendations for improvement and reports with modest to no accountability impact.

Given the apparent pattern of public police forces deferring to the company's police force in such matters, the potential deterrent of criminal accountability is neutralized, and unsafe practices are incentivized. Therefore, the complainants request that the STB does not accept it on faith that all CP Railway has handled deaths and serious injuries on its watch any differently in the United States as it has in Canada. The structures that have facilitated the lack of transparency in the police investigations of deaths and serious injuries in the United States require examination before a merger approval potentially extends them deeper into the country.

Furthermore, we understand that the unified CP Police Service either shares the same database across the United States-Canada border or has an integrated system that allows the Chief of Police and his corporate

superiors in Canada access to sensitive records of CP Police Service investigations and databases in the United States.

This issue of cross-border command of police powers also raises serious questions about whether non-American police officers (Chief of Police) and their civilian employers in Canada, who cannot themselves conduct law enforcement activities in the United States, can command criminal law powers against American citizens on American soil. This also raises significant questions around likely breaches of the United States of America's total and inalienable sovereignty over its criminal law enforcement, and the civil/constitutional rights of American citizens to be free from being subjected to the cross-border criminal law powers of foreign persons.

The notion of Canadian Chief of Police commanding American officers from Canada and on behalf of a private civilian leadership with no mandatory, independent civilian oversight body in the United States, should also raise important **national security concerns** in the United States. The Canada based police Chiefs, presumably, as the superiors to American police officers, have access through those American officers to American policing databases. This provides the Canada based Chiefs, and the Canadian civilian corporate executives they report to, access to countless Americans' personal and highly confidential information, including individual Americans' interactions with police forces, whether they were ever suspects in criminal investigations, and countless other pieces of highly sensitive information that Canadians would otherwise not have access to.

At a minimum, before approving a merger that could potentially increase the cross-border traffic of private and sensitive law enforcement information across the United States' border with Canada and Mexico, the STB should at least investigate the nature and extent of the current and combined companies' informational structures. This includes electronic infrastructure, such as police databases, telecommunications networks, internal chat platforms, emails, etc., and non-digital infrastructure and protocols such as cross border transfer of physical files, information, and phone calls regarding American citizens and law enforcement activities.

The final concern around CP Railway's cross-border control of the CP Police Service's American officers and access to its databases and operational activities is the legal implications it may have on the Chief of Police and the civilian leaders who he answers to in Canada. The reasoning here mirrors that in the previous Issue regarding the CP Railway Company, how it has no railroad operations in the United States, and the legitimacy of the CP Police Service in the country. Again, the only reasons that America citizens surrender to the authority of the CP Police Service's officers is because they believe that the officers wear the insignia of a duly authorized police force.

Other American police forces and public authorities may also cooperate with, and cede jurisdiction to, the CP Police Service on the assumption that the police force lawfully obtained its powers to operate in the

United States, and that its police officers in the country are exercising their law enforcement duties pursuant to legitimate law enforcement authority. However, because the legitimacy and validity of those police officers' authority and visible insignia which conveys it to the public flows **strictly** through the command of a foreign Chief of Police and civilians with no recognized police authority in the United States (legitimate or otherwise), then the local officers themselves may not be exercising legitimate policing authority.

The implication is that through the American CP Police officers they command and direct, the Chief of Police and the corporate superiors to whom he answers in his Canadian headquarters could be **depriving American citizens of their rights under color of law.** This could be under federal law, such under Section 242 of Title 18[3] and State-level equivalents. If their authority to command American police officers is illegitimate and unlawful, but they knowingly provide operational direction and obtain information about policing operations and sensitive evidence arising from the United States, then may be unlawfully inducing citizens' compliance and cooperation through "color of law". This could also that even though the Chief of Police and his corporate superiors in Canada may not themselves conduct on-the-ground policing operations in the United States, the CP Police Service Chief of Police and the corporate leaders to whom he reports in Canada may also be **effectively impersonating police officers**, as contemplated under a purposive reading of **18 U.S. Code § 912** and equivalent State laws.

To the extent that any knowledge or intent standard may apply to distinguish between inadvertence and a wilful breach of the above laws, the STB should note that CP Railway has been aware of these issues since at least **January, 2022** when one of the complaints, Ms. Lorelei Desrochers, provided CP Railway's Board with information and records raising these concerns. This was earlier in the still ongoing litigation regarding Ms. Lori Desrochers' shareholder proposals which sought CP Railway to make corrective regulatory filings and take measures to ensure the integrity of its cross-border policing operations. Therefore, **if CP Railway's management was unaware of the potential implications of its prevailing police command structures in the United States before January, 2022, it certainly was after that date**. However, instead of making the relevant disclosures to shareholders and regulators in the United States and Canada, taking steps to reconfigure its policing structures to remedy the issues in these submissions, or providing substantive rebuttals to the merits, CP Railway's management has strenuously avoided any such transparency and accountability moves. Before securing a merger that expands its law enforcement operations in the United States, CP Railway must provide the STB and American public with substantive justifications for why its cross-border police command structure is consistent with the United States' sovereignty and national security. CP Railway must also justify how it is consistent with Americans' civil, rights, constitutional rights, and civil liberties, for them to be subjected to detentions, arrests, and criminal charges, and prosecutions facilitated by police officers who wield their powers under the operational command of a Chief of Police and corporate civilians aboard, and who are not sworn police officers in the United States.

[3] "The United States Department of Justice: Deprivation of Rights Under Color of Law. https://www.justice.gov/crt/deprivation-rights-under-color-law

Legal Issue # 4 specific to CP Railway: CP Railway unlawfully obtained and is unlawfully using its police powers in the United States of America, or, in alternative, misled American courts about the nature of its operations to escape potential liability in the Lac Mégantic disaster lawsuit.

Evidence in the public domain suggests that a) the CP Police Service and its police officers are operating pursuant to policing powers that CP Railway unlawfully obtained and that its police officers cannot validly exercise, **or** b) CP Railway misled American courts about the nature of its operations in the United States to evade a civil suit relating to the Lac Mégantic explosion in Quebec, Canada, **or** c) CP Railway's Canadian subsidiary has been exercising unlawful control over CP Police Service officers who are the legal employees of CP Railway's independent and "arms-length" subsidiaries. Depending on the verification of which corporate incarnation of CP Railway is the legal employer of CP Police Service officers in the U.S. (which we are seeking), one of the aforementioned and finite possibilities should apply. All would give rise to a different form of serious unlawfulness.

All the above alternative scenarios implicate potentially unlawful conduct that CP Railway must explain before it expands its American policing presence through its acquisition of the Kansas City Southern police force. To premise the issues in this section, the following subsection details the various legal incarnations of CP Railway across the United States-Canada border. The subsequent subsection then references details from court records in the Lac Mégantic litigation that exposed CP Railway's potentially unlawful conduct upon which this section is based. Thereafter, the implications of the Lac Mégantic litigation on the lawfulness of CP Railway's policing activities in the United States are discussed.

The significance of CP Railway's corporate incarnations in Canada and the United States (holding company vs. subsidiaries).

For the purposes of clarity, in this section, the relationship between CP Railway's various corporate manifestations in Canada and the United States. Canadian Pacific Railway Ltd. ("CP Railway Ltd.") is the main holding company that is listed on the New York Stock Exchange and Toronto Stock Exchange. The Canadian Pacific Railway **Company** ("CP Railway Company") is the Canadian operating subsidiary of CP Railway Ltd., and purportedly, has no operations in the United States. CP Railway Ltd., has other subsidiaries in the United States including operating subsidiaries such as the Soo Line Company, Delaware and Hudson Railway Company Inc., Dakota Minnesota & Eastern Railroad Corporation etc.

According to the CP Railway **Company**, as a Canadian subsidiary, it operates independently and at arm's length from CP Railway Ltd.'s other subsidiaries. Further, CP Railway Company has insisted that the CP Police Service has no independent legal identity, and that it is merely an organizational umbrella for its police officers (**Attachment 8 at paragraph 19 and Attachment 6 at paragraph 8(e)**). This background is an important starting point for the question of which legal incarnation of the CP Police Service that officers in the United States work for. Regardless of the answer to that question, for which we are currently seeking official confirmation, all available options point to an unlawful outcome with respect to the CP Police Service's operations in the United States.

Context: The CP Railway's submissions to American courts about its corporate structures in the United States revealed evidence about the potential unlawfulness of its policing activities in the United States.

One of CP Railway Limited's American subsidiaries is CP Railway's **Soo Line**, which was implicated in the Lac Mégantic explosion of 2013 in Quebec, Canada. However, in related litigation, in which the complainants are not involved, the plaintiffs'/survivors' families named the Canadian Pacific Railway **Company** as a defendant, and not the Soo Line. Canadian Pacific Railway **Company** successfully argued that under federal bankruptcy laws, it could not be named as a plaintiff in the United States because it had no effective operational presence in the country, and despite being a co-subsidiary of the CP Railway Ltd., was independent and operated at arm's length from the Soo Line. Therefore, CP Railway **Company** argued that the Lac Mégantic families had erred by suing it instead of the Soo Line subsidiary which did have such a presence in the U.S. The plaintiffs' misnaming likely resulted from the fact that the Soo Line and the CP Railway Ltd.'s other American subsidiaries apparently operate under the trade name of "CP Railway" in the United States but are legally distinct from the **Company**.

In support of its position that it could not be sued in the United States, CP Railway **Company** made submissions before the United States District Court District Court of Maine that CP Railway Company, "conducts no business in Illinois". (**Attachment 14**).

Further, at page 2 of the same submissions to the Court, the CP Railway Company stated that, "CP does not own tracks in the U.S.; is not incorporated in the U.S.; and does not operate in the U.S.— with the limited exception of bringing some trains a short distance over the border to safely hand off to the U.S. employees of a distinct U.S. company". (Emphasis Added).

Lastly, in the same proceedings before the United States District Court – District of Maine, counsel for the CP Railway **Company** explained that CP Railway Company and the other subsidiaries of CP Railway Limited are distinct corporations and cannot be interchanged. In support of this counsel stated, "…the allegations of a common enterprise is nothing but conclusory allegations. There's absolutely no facts whatsoever that would support that" (**Attachment 15 at page 92 and Attachment 16**) Throughout the Court proceedings related to the Lac Mégantic disaster, CP Railway Company vehemently insisted that no United States Court had jurisdiction over it because it has no operations in the United States. Yet, CP Police Service officers in the United States of America, who are registered as law enforcement officers in Illinois and the other states in which they operate, fall under the overall command of a Chief of Police who is an employee of the CP Railway **Company** in Canada (**Attachment 13, Attachment 12 and 12.1**).

We have found no evidence of the Soo Line or any other American subsidiary directly employing CP Police Service officers in its individual capacity or in conjunction with CP Railway Ltd's other subsidiaries in the United States of America. If these "CP Railway" subsidiaries employed and appointed CP Police Service officers directly, the officers would not legally fall under the overall command of CP Railway **Company**, a Canadian company which purportedly has no operations in the United States of America. CP Railway

Company's position succeeded at both levels of courts in the relevant proceedings in the U.S., in part, if not entirely, on the basis that the plaintiffs named the "Company" which apparently has no operational presence upon which it could be named as a plaintiff under American laws (**Attachment 17 and 18**).

Further, in CP Railway Limited's "Corporate Sustainability Data Supplement 2020" the corporation further affirms the position that the CP Railway Company only operates in Canada:

> This report covers Canadian Pacific Railway Limited ("CPRL") and its subsidiaries' ("CP" or the "Company") activities and performance across our entire network in Canada and the U.S. CPRL is a holding company and is the direct parent company of Canadian Pacific Railway Company ("CPRC"). CPRC is a common carrier that conducts railway operations in Canada. CPRC has network access to the U.S. market directly through four wholly owned subsidiaries: Soo Line Railroad Company ("SOO Line"), a Class 1 railway operating in the U.S. Midwest; Dakota, Minnesota and Eastern Railroad ("DM&E"), which operates in the U.S. Midwest; Delaware and Hudson Railway Company, Inc. ("D&H"), which operates between Eastern Canada and the U.S. Northeast; and effective June 2020, Central Maine & Québec Railway US Inc. ("CMQ US"), which operates in Maine and Vermont.

In the Data Supplement, "Limited" makes the distinction between "Company" (Canadian operating subsidiary) and its American subsidiaries such as Soo Line. Thus, the "Company" only obtains market access through Limited's other legally distinct subsidiaries in the United States of America, then this confirms that the "Company" **does not** have its own independent railroad operations in the country. With this background in mind, the following subsections detail the unlawful outcomes that arise with respect to CP Police Service's operations in the United States based on the CP Railway Company's positions with respect to its operational presence in the United States.

Unlawful Scenario A: CP Railway has no American operations and unlawfully obtained policing powers in the United States that its police officers cannot validly exercise in the country.

Unlawful Scenario A is based on the working premise that the CP Police Service officers in the United States **are employed** by the CP Railway **Company** that is headquartered in Calgary, Canada (where the police department is headquartered, and where its Chief of Police is also based as a "Company" employee). If the CP Railway Company is the legal employer of the CP Police Service's American police officers, and the CP Railway Company truly has no operational presence in the United States (as the Company claimed in the Lac Mégantic litigation), then the Company unlawfully obtained its police powers in the United States. Further, through its officers who answer to the Canadian Chief of Police and corporate leadership in Canada, continue to operate unlawfully in the United States. That is because such a railroad company's operational presence is a legal prerequisite for hiring railroad police officers in the United States. To understand this issue, one must first review the operational presence for railway companies' ability to hire police officers in the United States.

To lawfully hire or appoint police officers in the United States, railway companies must have

operations in the country and State that its police officers are assigned to protect and patrol. There is no freestanding eligibility for any railway company from anywhere in the world to hire railway police officers in the United States of America if that railway company has no operational presence or property to protect in the country.

For example, in the *Illinois Railroad Police Act* (610) ILCS 80, only a "registered rail carrier", as defined in the Section 18c-7201 of the *Illinois Vehicle Code*:

> "…may provide for the appointment and maintenance of a police force to aid and supplement the police forces of any municipality in the protection of its property and the protection of persons and property of its passengers and employees, or in furtherance of the purposes for which the railroad is organized." (Emphasis Added).

The words "its property" necessarily refer to railroad companies with railroad operations in the United States. Otherwise, any railroad company with operations elsewhere in the world but not in the United States, could provide for the appointment of police officers to protect property that was not "its" property. Further, a "registered rail carrier" would need to register and become an actual "carrier" in the United States to comply with the eligibility criteria. This is not possible for a company with no railroad operations and nothing to "carry" in the United States. Additionally, "the purposes for which the railroad is organized" could only refer to a purpose inside of the United States, which is not applicable to the "purposes" of a company with no operations in the United States (like the CP Railway Company that employs the CP Chief of Police and the Chief Legal Officer to whom he answers). Nevertheless, CP Police Service's American officers answer to a Chief of Police and corporate officers who work for the CP Railway **Company**, a railroad company that claimed to have no railroad operations in the United States. And yet, the CP Police Service has, "police officers assigned to over 25 field offices responsible for **railway police operations** in 6 Canadian Provinces **and 14 U.S. States**" (including Illinois and other non-border states).

Further, Article II Sections (1) and (2) of the *Illinois Vehicle Code,* that the *Illinois Police Act* refers to, respectively state that:

(1) General Provisions. Except as provided in subsection (2) of this Section, no person shall operate as a rail carrier, and no person shall begin or continue construction of any track or other facilities, other than the repair or replacement of existing plant, for use in operations as a rail carrier unless such person has registered with the Commission as a rail carrier.

(2) Exceptions. Each rail carrier operating within the State of Illinois on the effective date of this Chapter shall automatically be deemed, as of that date, to have registered as a rail carrier for purposes of this Section. Such constructive registration shall expire on the 180th day after the effective date of this amendatory Act of 1985.

From the cited provisions of the *Illinois Railroad Police Act* and the *Illinois Vehicle Code*, it is apparent that only railway companies with some operational presence in Illinois can deploy railroad police officers in the state. At most, under 49 U.S. Code § 28101, railroad police officers who are not commissioned in Illinois may exercise police powers in the State with respect to their employers' operations in the Illinois, or on "Assignment" to another railroad that has operations in the State. Even then, all these police officers would have to be employed by a railroad company with operations in the United States. Without any railroad operations, including employees or infrastructure to secure in Illinois or the United States, the CP Railway Company that employs the CP Police Service's Chief of Police and his superiors, is ineligible to lawfully appoint or employ police officers in Illinois. **Despite this, there is no dispute that CP Police Service officers do operate in Illinois. If they are employees of the Canada-confined CP Railway Company, then they are unlawfully exercising police powers by conducting law enforcement operations for a railroad company without the operational presence to legally hire police officers in Illinois and the United States**.

The laws of North Dakota similarly provide this "operational presence" requirement as a prerequisite for railroad companies to retain police officers in the state.

North Dakota Century Code Title 49 Public Utilities

> 49-10.1-05. Railroad police. Railroad police officers who are designated by a railroad to be licensed under the laws of this state, while within the scope of employment with the railroad, have the authority of a "law enforcement officer" as defined under section 12.1-01-04 for the purpose of: 1. Arresting an individual committing a felony on railroad property or associated with railroad equipment; 2. Arresting an individual committing a misdemeanor involving railroad property or relating to persons or property being transported by the railroad, or awaiting transportation by the railroad; 3. Issuing a citation to an individual committing an infraction or noncriminal offense on or relating to railroad property, or to individuals or property being transported by the railroad, or awaiting transportation by the railroad; and 4. Removing an individual from a train who has no right to be there, or who is engaging in a conduct prohibited by title 12.1.

Similarly, the laws of Vermont indicate that only railroads with an operational presence in the state are eligible to hire police officers.

Vermont Statutes Title 5 – Aeronautics and Surface Transportation. Chapter 68 – Construction And Operation Of The Road. Subchapter 8: RAILROAD POLICE

> § 3755. Commissions.
>
> Upon petition of a person or corporation owning or operating a railroad, the Commissioner of Public Safety may, subject to the provisions of section 3757 of this subchapter, commission any employees of the railroad as the person or corporation designates to act as police officers in and upon the premises

and equipment owned, managed, or used by a railroad, shall issue commissions to the employees so commissioned, and shall have the authority to rescind such commissions. (Added 1981, No. 104, § 1; amended 2013, No. 141 (Adj. Sess.), § 14, eff. July 1, 2015.)

Given the above, the CP Railway Company's employment of CP Police Service officers without the operational presence in the United States, including Vermont, would amount to the Company's unlawful exercise of police powers in Vermont.

Further still, the laws of Indiana have the same operational presence prerequisite for a railroad company's retention of railroad police officers.

Indiana General Assembly IC 8-3 Chapter 17 IC 8-3-17-1Appointment, qualifications, and terms.

Sec. 1. Upon the application in writing of a company owning, leasing, using, or operating a railroad in Indiana accompanied by the statements of three (3) reputable Indiana citizens testifying to the moral character of the applicant, the Indiana department of transportation shall appoint and commission persons the company designates and the department finds to be suitable and qualified persons, to act as policemen for the company, upon the premises of the company, or elsewhere within Indiana, when engaged in the discharge of their duties as policemen for that company.

The above are a few examples of states in which the CP Railway employs police officers (who according to the company's website, operate in 14 U.S. states). The "**operational presence**" requirement is not only a legal requirement but a logical necessity. For example, a European railway company with no railroad operations in the United States could not apply to a U.S. state government to hire police officers "at large" in the United States (with the police officers being the only employees). The same applies for the CP Railway Company which must have operations that precondition hiring police officers. However, under no incarnation of this arrangement could the CP Railway **Company**, which has no real operational presence in the United States, be legally eligible to provide such policing service to its fellow CP Railway **Ltd**. subsidiaries that do have railroad operations in the United States.

In summary, railway officers' ability to conduct law enforcement operations on behalf of a specific railroad company in the United States, arises from the railway company having railroad operations for the officers to protect in the United States. According to the CP Railway Company, which employs Chief Al Sauvé, CP Railway's Chief Legal Officer, and the company's corporate executives in Canada, the CP Railway Company has no railroad operations in the United States. Therefore, unless CP Railway can provide an adequate explanation, the CP Police Service officers in the United States have been conducting law enforcement activity under the insignia and authority of a foreign entity that has no lawful grounds to command police powers in the United States. Approving the CP Railway-Kansas City Southern merger would condone and extend CP Railway's potentially unlawful exercise of police powers across more American states.

*Possible Scenario B: The CP Railway Company **does** have an operational presence in the United States but misled American Courts to successfully evade the Lac Mégantic litigation.*

Possible Scenario B is based on the working premise that the CP Railway Company **does have** an operational presence in the United States and is the legal employer of the CP Police Service officers across the 14 American states where its police officers operate (including Illinois, Vermont, Indiana and North Dakota). If so, then the CP Railway Company misrepresented itself to the American courts in order to successfully evade the potential liability of being a defendant in the Lac Mégantic litigation in the United States. Making material misrepresentations to a Court in order to evade legal liability is unlawful. If that is what happened, the CP Railway, in any of its legal incarnations, must be held accountable. The companies and their corporate leaders must not be permitted to expand their commercial and policing powers in the United States, the country where it would have misled local courts about its operations in the country to the prejudice of the administration of justice.

Possible Scenario C: The American subsidiaries of the CP Railway Ltd. are the legal employers of the CP Police Service's American police officers but have unlawfully relinquished operational command over these officers to a Canadian corporation.

Under possible Scenario C, the CP Police Service's officers are legally employed by one of CP Railway Ltd.'s American subsidiaries. Even this scenario manifests a different form of unlawfulness that the STB should examine before CP Railway is allowed to merge with Kansas City Southern, and to integrate the latter's police force into the Canada-headquartered CP Police Service.

If the CP Police Service officers in the United States are legally employed by one or more of CP Railway Ltd.'s American subsidiaries, this may resolve the question of whether they are working for a company(s) with an operational presence in the United States. However, this scenario creates a new problem. The CP Police Service is a unified cross-border police service without bifurcated legal identities across the United States Canada border. It has one overall Chief of Police based in Canada who exercises operational command over all CP Police Service officers, including those in the United States. Although there is a highest-ranking police officer or "Deputy Chief" of the CP Police Service in the United States, that individual is subordinate to the CP Police Service's overall Chief who is based in Canada and is an employee of the CP Railway Company (currently Mr. Al Sauvé).

Until June 2019, Chief Sauvé was the "Deputy Chief, Operations – Canada" after which he was promoted to be the overall Chief of the CP Police Service for both Canada and the United States. However, Chief Al Sauvé is an employee of the CP Railway Company and is not a commissioned police officer in the United States (**Attachment 6 at paragraph 8(f)**). He is also not on the roster of commissioned CP Police Service officers in the State of Illinois where he commands American police officers (**Attachment 12 and 12.1**). Further, as evident from the CP Police Service's filings with Illinois police regulators, in disciplinary

matters, the progression/escalation of complaints involving CP Police Service officers in the United States rise all the way to the Chief of Police and Chief Legal Officer at Canadian headquarters, which are in Canada (**Attachment 13).**

Therefore, if the CP Police Service's officers in the United States are legally employed by American subsidiaries of CP Railway Ltd., then the CP Railway Company, through its Chief of Police who is not a police officer or resident in the United States, is unlawfully exercising operational command and control over statutory police officers on sovereign American territory where his employer does not have railroad operations. Given that the CP Police Service Chief and the corporate civilian leaders he answers to are not sworn police in the United States, under "Possible Scenario C", they would all be exercising unlawful control, operational command, or influence over police officers, operations, and criminal law powers in the United States. It would also mean that CP Railway Ltd.'s American subsidiaries, which have operations in the United States, have unlawfully relinquished command of their statutory police officers in the country to a foreign corporation with no operational presence in the U.S., and which argued before American courts that it was "arms-length" from these U.S., subsidiaries.

If the American subsidiaries obtained police powers through their operational presence in the United States but then delegated operational control of those officers to the CP Railway **Company**, a corporation that operates only in Canada, that would not only be unlawful, but it would also raise national security concerns for the United States. Foreign-based corporate civilians and their Chief of Police should not have access to investigative information, databases, and other sensitive law enforcement records that require police commissions and varying levels of security clearances to access in the United States.

Notably, in places such as New York State, non-American citizens cannot be police officers in the state (**Attachment 19 at section 10**), a condition that is often concurrent with residency requirements in some states. Without police commissions in the US, and potentially without American citizenship either, Chief Al Sauvé's command over American police officers and access to sensitive law enforcement information/records relating to the United States is likely unlawful from a national security perspective.

CP Railway's policing activities in the United States may amount to the deprivation of American's rights under color of law and the impersonation of police officers.

The unlawful hiring or unlawful delegation of control over uniformed police officers who elicit compliance based on their apparent law enforcement authority could amount to the offence of "**deprivation of rights under color of law**" by all persons responsible for knowingly authorizing, overseeing, directing, providing official cover for, or directing arrests, using force, or securing compliance with the CP Police Service powers in the United States of America.

If CP Police Service officers in the United States of America, their Chief of Police who commands them from Canada, and corporate leaders to whom he reports, have never had the legitimate authority to exercise operational control of police powers in the United States of America, or if those powers were unlawfully obtained, this could also give rise to potential violations of Title 18 U.S.C.A § 912 (**falsely impersonating a police officer**), U.S.C.A. § 702 (**unauthorized wearing of uniform**) or Title 18 U.S.C.A. § 913 (making arrest or search while impersonating federal officer, agent, or employee), and equivalent state laws where the CP Police Service operates.

NOTE: The complainants and their Canadian legal counsel are not legal experts on American law and could not authoritatively make legal conclusions about the interpretation and application of the aforementioned laws to the CP Railway's policing activities in the United States of America. However, the *prima facie* evidence of the CP Police Service and its Canadian command structures potentially conducting law enforcement operation in the United States of America without validly obtained legal authority raises sufficiently important issues.

Also, if the analysis or premises upon which this section is based are erroneous, CP Railway's Ltd. and its Canadian and American subsidiaries should provide exonerative clarifications regarding the full nature of their cross-border law enforcement operations in the United States before the merger is approved. This includes the important question of which corporate incarnation of CP Railway employs Chief Al Sauvé, the company's American Police Officers, the Chief Legal Counsel who is ultimately responsible for the Chief etc. It would not be in the United States' interests for the STB to allow CP Railway to expand its policing operations deeper into the United States through a merger with Kansas City Southern while the identities of the corporate incarnation and persons wielding these powers remain outstanding.

Legal Issue # 5 specific to CP Railway: Approving the merger considering CP Railway's threats against Canada's Transportation Safety Board members and their public safety investigator to prevent an independent criminal investigation of the Field, B.C. derailment, would undermine the American public interest.

This Issue centers on how after the Field, B.C. derailment of CP Railway Company's Train 301, CP Railway's civilian leadership, through their in-house and outside legal counsel, threatened the Transportation Safety Board and its incident investigator, Mr. Don Crawford. CP Railway made the threats of legal action because of the investigator's public comments that an independent police force needed to investigative evidence of potential criminal negligence in the triple fatality.

The Canadian Transportation Safety Board ("TSB") can investigate transportation incidents but has no criminal jurisdiction or the authority to determine legal liability. However, dating at least as far back as 1998 (**Attachment 20**), the TSB has had internal policies that required the referral of any indicia of criminality that the Board uncovered during its incident investigations to be reported to the Royal Canadian Mounted Police

("RCMP"). Moreover, the RCMP and the TSB separately entered a memorandum of understanding in 2015 which stated, in part (**Attachment 21**):

> "Upon learning of a transportation occurrence to which the CTAISB Act applies, the TSB will notify forthwith the RCMP of any occurrence in which the RCMP may have a direct interest, including occurrences in which there are indications of possible criminal activity, and provide pertinent particulars of that occurrence."

This indicates that despite not having a criminal mandate or the ability to formally find fault, the TSB members understood that their own statute did not prevent them from making referrals to the RCMP or independent police forces to investigate potential criminality. It should be noted that the TSB and RCMP subsequently changed their MOU in the aftermath of the Field derailment in 2020 **(Attachment 22).**

Mr. Don Crawford ("Mr. Crawford") was the Regional Senior Investigator from the TSB who was assigned to investigate the February 4, 2019, derailment of Train 301 near Field, British Columbia. During his investigation, and based on his training, skills, and experience, Mr. Crawford identified indicia of criminality with respect to the derailment of CP Railway Train 301. Pursuant to the TSB's internal policies and memorandum of understanding with the RCMP, Mr. Crawford reported these indicia of criminality to his superiors and requested that the TSB refer the matter to the RCMP. Mr. Crawford's superiors within the TSB refused to refer the derailment of CP Railway Train 301 to outside police forces for a criminal investigation. Mr. Crawford's superiors also barred Mr. Crawford from unilaterally referring the derailment of CP Railway Train 301 to outside police forces.

On January 27, 2020, the Canadian Broadcasting Corporation ("CBC") published an article titled, "Train safety investigator wants RCMP to probe fatal CP mountain crash". In this article, Mr. Crawford went public with his concerns about the need for an independent investigation into the derailment of CP Railway Train 301.

On June 21, 2021, the CBC published another article titled, "CP threatened lawsuit against safety watchdog after investigator spoke out about deadly crash". This later article contained a hyperlink to redacted documents which the CBC obtained from the TSB through the federal *Access to Information Act*, (RSC 1985, c A-1) process (**Attachment 23**). The TSB's heavily redacted disclosures comprised of a series of correspondences between CP Railway's representatives, including its in-house and outside legal counsel, and representatives of the TSB, including its Chairperson, Ms. Kathy Fox and the Board's General Counsel, Ms. Patrizia Huot. The correspondence shows CP Railway's representatives insisting that the TSB take measures against Mr. Crawford in response to his public statements and the TSB representatives acquiescing to that insistence.

Notable excerpts of the correspondences include:

- Mr. Jeff Ellis, CP Railway's Chief Legal Counsel and Corporate Secretary, stating in an email to Ms. Patrizia Huot, "Any word? We need this retracted before it gets circulated widely and harms our company's reputation [redacted] Canadian Pacific [redacted]." Ms. Huot replied, "Working on it".

- Ms. Patrizia Huot sent an email to an undisclosed person with an email address ending in "@cpr.ca" The text of this email reads, "We will have a statement out in less than an hour. I will send you a copy as soon as possible. P".

- Ms. Patrizia Huot sent an email to an undisclosed person with an email address ending in "@cpr.ca". The text of this email reads, "[redacted] Here is a copy of what we just sent CBC in respect to the article. We will also be taking further internal steps to deal with the matter. P"

- An undisclosed CP Railway representative sent an email to Ms. Patrizia Huot containing an attachment. The attachment was a demand letter which reads in part:

  > If the TSB and Mr. Crawford do not immediately retract Mr. Crawford's statement, CP Rail will have no alternative but to commence proceedings against the TSB, [redacted] conclusions recognizing the TSB's own statement in the retraction that "...The investigation is on going... The TSB does not attribute blame or determine civil or criminal liability..." Please confirm that Mr. Crawford will be removed from this investigation and advise what steps will be taken to [redacted] with CP Rail matters. Your and Mr. Crawford's urgent response is required. The harm and damage to CP Rail's reputation increases [redacted]

- The TSB's Chairperson, Ms. Kathy Fox, wrote an email to an undisclosed CP Railway representative. The text of this email reads:

  > I'm very sorry for the furor caused by statements from our (former) lead investigator on the Field investigation file. This is not how we conduct our business. Here is the statement we just issued on our website, which has also been sent to journalists following this investigation. https://www.bst-tsb.gc.ca/eng/medias-media/decl-stat/2020/20200128.html I would be pleased to discuss this further if you wish. I can be reached directly at the number below or on my cell phone at [redacted] Thank you.

- Ms. Fox received a reply email from an undisclosed CP Railway representative. This email reads:

  > Thank you for the email and comments around this unfortunate situation. The irresponsible manner CBC has been reporting and misrepresenting facts, in conjunction with the TSBs lead investigators inappropriate commentary, has been damaging to CP s reputation. Beyond taking

> necessary steps to protect our reputation and the truth I have a strong view their actions were disrespectful/damaging to the families of the employees we tragically lost as well as our collective CP family. We appreciate and agree with your point that the investigators behavior contradicts the manner TSB strives to conduct their business in meeting its mandate. Thank you for the TSBs actions to address and correct the investigators actions.

At the insistence of CP Railway, Ms. Huot and the TSB prepared a statement which distanced the TSB from Mr. Crawford's public statements. Further, Mr. Crawford was removed as the lead investigator of the derailment. In 2020, the RCMP and the Canada TSB amended their MOU to remove the explicit reference to criminal conduct in their referral arrangement. However, the remaining text of the MOU clearly retains that referral obligation. This issue is critical for public safety because the TSB have the technical expertise to understand the mechanics of railway incidents that public police forces do not have. Often, the public police force members that attend the scenes of derailment have no special forensic training unique to the industry and cannot distinguish between a regular accident and potential criminal negligence. This is why the RCMP and the TSB entered into the 2015 MOU. It allows the RCMP to obtain referrals and even qualified assistance in understanding the mechanics of what is before them. Therefore, when Mr. Crawford, the TSB's incident investigator, identified indicia of potential criminality and calls for a referral to independent law enforcement, CP Railway should not have threatened him and the Board with legal action.

Worse, while CP Railway was privately threatening the TSB with legal action, in public, CP Railway's CEO, President and Board member, Mr. Creel, was making public statements about transparency and working with relevant authorities to get to the bottom of what happened in Field, British Columbia. Further, he and CP Railway have expressly stated that not only does the RCMP have the jurisdiction to investigate such incidents, the RCMP is "duty-bound" to investigate. Essentially, CP Railway was delivering private threats to the TSB to prevent referral for a criminal investigation that the corporation claimed the RCMP was obliged to conduct. The RCMP eventually opened that criminal investigation in December 2020.

Further details of the relevant correspondences can be found in the Notice of Civil Claim, filed on behalf of our clients, and attached to this complaint (**Attachment 24**). Please note, the allegations in the claim have not yet been proven in Court and the parties are in the process of exchanging replies and response on the allegations. However, the Notice of Civil Claim provides a thorough recitation of the relevant facts and despite the proof of those facts being pending in court, we have the verification documents of Mr. Creel's public statements that we can provide on demand. In summary, the evidence shows that CP Railway intimidated and coerced an independent federal tribunal into undermining and retaliating against its investigator when that investigator's public statements threatened CP Railway's reputation.

Irrespective of the TSB's acquiescence to CP Railway's threats, CP Railway knew, or should have known, that it was unlawful to threaten an independent government tribunal and its investigator to prevent a legitimate criminal referral regarding the company's potential criminal liability for a triple fatality under its watch.

<u>Legal Issue #6 specific to CP Railway</u>: CP Railway's potential violation of the United States *Foreign Corrupt Practices Act* ("*FCPA*").

This section relates to CP Railway's potential violation of the *Foreign Corrupt Practices Act* through the company's sponsorship of the Canadian Association Chiefs of Police ("CACP") while the CACP's largest member, the RCMP, was purportedly involved in reviewing the Field, B.C. derailment of CP Railway Train 301.

The Field, B.C. derailment gave rise to significant media reporting regarding CP Railway's safety culture and the company's focus on improving its operating ratio. As previously stated, the CP Police Service officer who was assigned to investigate the matter, Constable Tataryn, went public with his allegations that his superiors and the company were engaged in coverup to deflect attention away from the company. The RCMP eventually opened a criminal investigation into the matter. That investigation is ongoing. The relevant media articles that covered this issue can be found at:

- Police officer suspects internal 'coverup' by CP Rail in fatal B.C. mountain crash: https://www.cbc.ca/news/canada/cp-derailment-investigation-coverup-alleged-1.5436018

- RCMP launch probe into Canadian Pacific runaway train crash that killed 3 crew members. https://www.cbc.ca/news/canada/rcmp-cp-rail-crash-derailment-1.5844293

The Field, B.C. derailment of CP Railway Train 301 gives rise to other potentially unlawful conduct because around August 2019, CP Railway sponsored the 2019 Canadian Association of Chiefs of Police ("CACP") Conference (**Attachment 25**). At that time, the RCMP, the CP Police Service, and the plurality of Canada's public police forces in jurisdictions where CP Railway operates, were CACP members. Further, when CP Railway sponsored the CACP annual conference, this was **only six months after the Field**, B.C. disaster[4] while CP Railway was claiming that the RCMP had been involved with the Field, B.C. derailment from the very beginning. The full details of this issue can be found in the civil claim that Ms. Fraser filed in the Supreme Court of British Columbia against CP Railway and other parties arising from this and other conduct (**Attachment 24 paras 113-120**). That claim also addresses the grounds for the other forms of misconduct that this complaint levels against CP Railway and its leadership.

On August 19, 2020, counsel for Ms. Fraser sent a letter via email to the CACP's then President, Chief Bryan Larkin, and the Co-Chairs of the CACP Law Amendments Committee, DC Norm Lipinski and DC Howard Chow (**Attachment 26**). The correspondence, which was attached to an email titled: "CACP and Jurisdiction over Railway Related Matters", sought answers to a range of questions regarding the CACP and railway policing. These questions included the nature and extent of CACP members' policing jurisdiction

[4] There were also other deaths and serious injuries at CP Railway that year so the Field, BC incident was not the only incident in which CP Railway was implicated.

over railway deaths and serious injuries, including as contemplated under the Westray amendments to the Canada's *Criminal Code*. The questions also inquired into whether the CACP members considered the CP Police Service and the CN Police Service as endowed with the primary or exclusive criminal jurisdiction to investigate deaths and serious injuries that happened pursuant to their respective company's operations.

On September 9, 2020, Mr. Peter Cuthbert, the CACP's then Interim Executive Director, replied in an email in which he stated (**Attachment 27**):

> Attention …Tavengwa Runyowa
>
> On behalf of the President of the Canadian Association of Chiefs of Police (CACP), Chief Bryan Larkin and the Co Chairs of the CACP Law Amendments Committee, DC Norm Lipinski and DC Howard Chow, I wish to confirm receipt of your correspondence, dated Aug. 19, 2020 concerning the above subject matter. The Association have consulted with our legal advisers and I am sorry to advise you that the CACP have no intent in getting involved in this private litigation nor will be answering any of the proposed questions.
>
> Sincerely: Peter Cuthbert
>
> Interim Executive Director CACP

Mr. Cuthbert failed to explain why the CACP, the main association of Canada's publicly funded police forces, declined to disclose whether its members have, or could, criminally investigate CP Railway and CN Railway for deaths and serious injuries that happened pursuant to those companies' operations.

Even though both the CP Police Service and CN Police Service are members of the CACP, or, are at least actively involved in the association's lobbying and other activities, Mr. Cuthbert and the CACP declined to explain why these railway company's in-house police forces were members of the CACP and what policing powers these railway police forces could exercise over their corporate owner's injurious conduct.

Mr. Cuthbert and the CACP also failed to explain how answering questions about CACP members' jurisdiction over railway incidents and public safety amounted to a private matter that the CACP did not need to respond to because of ongoing litigation against Canada's railway companies. As the most powerful group of Canadian police forces which receives taxpayer funds, the CACP had the duty to disclose its members' general jurisdiction over railway incidents.

Furthermore, Mr. Cuthbert did not explain why the CACP was refusing to answer general questions about its members' investigative jurisdiction when those members wield extraordinary criminal law powers that can deprive citizens of their life, liberty, security of the person and other constitutional rights. Through Mr. Cuthbert, the CACP demonstrated a deliberate effort to deny Canadians' right to due notice about which

police forces can exercise what powers over them, in what context, and to whom they can report potential criminal wrongdoing in the railway context. CP Railway, through its involvement in the CACP, was the direct beneficiary of the CACP's refusal to answer questions about its jurisdiction over railway incidents.

On March 3, 2021, Runyowa Law followed up with Mr. Cuthbert, raising various concerns about the impropriety of the CP Police Service's and CN Police Service's memberships in the CACP, particularly when other CACP members were responsible for investigating deaths and serious injuries that happened on a periodic basis at CN Railway and CP Railway (**Attachment 28**). Runyowa Law also inquired why the CACP was accepting CP Railway's sponsorship of the CACP's 2019 Annual Conference when CACP members had the jurisdiction to investigate the deaths and serious injuries that were not infrequent at CP Railway. Runyowa Law further challenged the CACP's refusal to formally divulge whether the CP Police Service and the CN Police Service were members of the CACP. Runyowa Law also inquired into why, despite the numerous deaths and serious injuries under both CP Railway's and CN Railway's operations over the years, there were no publicly documented cases of CACP members ever criminally investigating or charging CP Railway and CN Railway. No one at the CACP including Mr. Cuthbert, Chief Larkin, DC Lipinski, and DC Howard ever responded to counsel's March 3, 2021, queries.

In summary, the timing of CP Railway's sponsorship to the CACP, only a few months after the derailment of CP Railway Train 301, potentially amounts to a violation of the *Foreign Corrupt Practices Act*, or equivalent corruption-based laws, as it can be viewed as an unlawful inducement to law enforcement officers whose members are responsible for investigating deaths and serious injuries at the company in general, and the Field, British Columbia investigation, in particular. The STB and American authorities would need to investigate the particulars of CP Railway's sponsorship of the CACP, who authorized it, what the stated reasons for the sponsorship were, who at CP Railway's corporate arm was in touch with which person(s) at the CACP regarding this sponsorship, and whether the CP Railway Board of Directors was aware of the sponsorship and documented all internal interactions relating to it. It would not be in the interests of good governance of railroads to reward CP Railway with a more expanded commercial presence in the United States while this serious question of its relationship with the CACP remains outstanding.

Legal Issue # 7 specific to CP Railway: CP Railway's unlawful use of the Canadian Police Information Centre ("CPIC") database and the company's potential violation of the confidential law enforcement information and privacy of American citizens.

Freedom of information disclosure from the Royal Canadian Mounted Police.

On May 18, 2021, Runyowa Law filed a federal access to information request with the RCMP seeking records documenting the formal working relationship between the RCMP and CP Railway and CN Railway. This was with respect to railway policing with a particular interest in the handling of deaths and serious injuries. The RCMP disclosed a series of memoranda of understanding which it concluded with both the CP Police

Service and CN Police Service. The first 11 pages of the attached document are important for context but the most consequential are pages 10 and 11 of 13 (**Attachment 29 pages 10 and 11 of the PDF numbering**).

In these pages, there are correspondences between an RCMP representative and the then CP Police Service Chief. The RCMP is alerting the CP Police Service that the CP Police Service had been granted the ability to use the Canadian Police Information Centre ("CPIC") database, which the RCMP manages, to screen CP Railway job applicants and that this was not a permissible purpose for using the database. It seems that the RCMP and CP Police Service's own memoranda of understanding, or their respective interpretations, had led CP Railway corporate, which oversees its in-house CP Police Service, to use the database for non-law enforcement purposes between 1999 and, at least until around, 2006.

In the RCMP's 2006 memorandum of understanding ("MOU") with CP Police Service, CP Police Service is categorized as a **Category II** agency. This restricted its access to the CPIC database for particular and limited purposes. As discussed, CP Railway, through the CP Police Service, was accessing the database for prohibited purposes. After, they applied for a Category I class, which would have granted them the ability to rightfully obtain fuller access. They were denied. However, there is a major difference between the 2006 MOU (i.e. before the RCMP knew that CP Railway was unlawfully using the data base) and the 2007 MOU (after the failed attempt to become Category I). The 2007 MOU provides exceptional access which Category II agencies are usually denied, namely, access to the "Intelligence Data Bank". So, even though they were denied being classified as a Category I agency, CP Railway still successfully negotiated for deeper access to the CPIC databases than they would normally be allowed as a Category II agency. Note that this same concession is not provided to CN Railway in their mirror MOU from 2006. If they ever renegotiated a subsequent MOU, it was not provided but it appears that CP Railway may still have far greater access to the CPIC database than a private corporation should.

In follow-up requests to the RMCP, they confirmed that the attached MOUs represent the only records on file (**Attachment 30**) and hence, these versions are likely still operational. We do not know whether CP Railway has continued to access the CPIC database for human resources purposes or is acting in compliance with the applicable authority in Canada. Given the non-policing, human resources purposes for which CP Railway was using the CPIC database, this raises an important and unanswered question. **Have CP Railway's civilian human resources personnel and leaders, who likely have no corresponding security clearances in Canada or the United States, had direct or indirect access to information from the CPIC and American law enforcement databases that contain intelligence and policing information about American citizens and law enforcement activity**? The complainants submit that the STB needs to first answer this question before approving CP Railway's merger with Kansas City Southern, which you condone and authorize the extension of the national security and privacy breaches that this issue may entails.

As a private company, CP Railway should not have been using the CPIC to conduct background checks on its employees. The company should also not have access to the highest category of policing access. It is unclear whether the corporate side still has such access or if the CP Police Service provides information from the database to management for any other purposes. However, there is no dispute that the access the attached document reflects is far greater than what is required for human resources purposes. There are different frameworks through which CP Railway, and other private employers can obtain criminal record checks without accessing the full level of the CPIC.

For example, the RCMP website states:

> "Private companies that perform name-based checks do not have access to police databases. They enter into agreements with municipal police services to conduct name-based criminal record checks of the RCMP's Canadian Police Information Centre (CPIC) system. This normally includes a check of the National Repository of Criminal Records based on the applicant's name and date of birth and may include checks of other national databanks."

If private companies that perform regular criminal record checks cannot access the CIPC database, a private corporation should not be able to do so for human resources purposes. For that purpose, CP Railway was supposed to go through the RCMP and other municipal police forces in Canada and the US to obtain these security checks for all its personnel, including its CP Police Service officers.

Given what these documents indicate, the STB may be concerned about CP Railway's handling of sensitive police security information. The relevant sections of the attached document **Attachment 29** (**pages 10 and 11**) also reflect unaccountability. The STB may wish to ask CP Railway about how it accesses police databases in Canada and the USA.

Potential legal implications in the United States and Canada of CP Railway using the highly confidential CPIC for human resources purposes.

There are several legal issues that arise as a result of CP Railway accessing the CPIC, including:

- It means that CP Railway's civilian personnel may have access to information that it could leverage against its own police officers after they join the company. These are the same police officers who are supposed to be independent from the company and free to hold their company and leaders accountable without fear.
- Systemic and potentially longstanding violations of Canada's federal *Privacy Act* and potentially its United States equivalents. It may still be ongoing given how CP Railway appears to have continued getting privileged access to the CPIC database.
- Criminal record checks that are obtained through standard public channels are usually bare

bones, simply confirming that a person has a record or not. The systems that police use for law enforcement, such as the CIPC, will have more extensive information than the record checks the police release to the public and employers seeking clearance for a worker. This potentially includes information about pardons, offences committed while a minor, immunity agreements, witness protection, information of whether someone was a suspect in a case but never charged, information on confidential informants, or references to persons who were implicated in criminal matters but were not the focus of the police investigation.

Therefore, CP Railway (Human Resources), through the CP Police Service that was conducting the criminal record checks, had access to the backend of the CIPC system, which had this more detailed information about applicants and subsequent employees.

In Canada, police officers are not allowed to access even their own department's databases without bona fide reasons to do so, e.g. investigations that they are actively working on. It is even worse when a corporation accesses the database of a federal police force with information from or about international partners such as the USA. For context, see this media article on a Calgary Police officer who was caught snooping on police records. Presumably many U.S. states and federal law enforcement bodies place similar limitations on their ability to access citizens' information and police records.

- https://www.cbc.ca/news/canada/calgary/calgary-police-officer-charged-privacy-database-breaches-1.6008099

Legal Issue # 8 specific to CP Railway: Merger may extend CP Railway's American subsidiaries' operations through numerous Native American territories, raising constitutional and civil rights issues around a foreign-controlled police force expanding potentially unlawful criminal jurisdiction over Native American peoples and lands.

We understand that as in Canada, CP Railway's American subsidiaries have property, tracks, and other infrastructure that pass through Native American lands in the United States. Based on our understanding, many Native American bands have certain sovereignty, autonomy, self-governance, and self-policing rights on their territory. At the same time, railway police forces are endowed with police powers that are based on the property and infrastructure that lies on certain Native American lands. This raises the issue of the potential violation of Native American's civil, territorial, and constitutional rights when a foreign-based corporation whose Chief of Police commands police officers in the United States (directly or as delegated by American subsidiaries on CP Railway Ltd.) assert criminal jurisdiction on Native lands.

NOTE: The complainants do not claim to speak for Native Americans and are not familiar with the laws that govern this area in the United States. The complainants merely flag this issue because Ms. Pamela Fraser is a member of the Woodland Cree First Nation of the Hudson's Bay area in Ontario, so this is a matter

to which she is sensitive. We are advocating around this issue in Canada and trust that the STB may wish to consider the corresponding legal complications of entrenching and extending CP Railway's potential infringement of Native American rights in the United States by expanding the company's territorial policing powers via the integration of the Kansas City Southern Railway police with the Canada-headquartered CP Police Service.

CP Railway's control over, and apparent abuses of, its corporate CP Police Service likely extend to the company's operations in the United States.

Further, CP Railway's unified police command structure for both Canada and the United States and both countries' largely self-regulatory police complaints' systems raise the question of whether CP Railway similarly handled the safety and policing issues in those cases at it did in Field, BC. If so, it means that the dozens of Americans who have died or have been seriously injured at CP Railway's operations in both Canada and the United States have been denied independent criminal investigations because the CP Police Service has taken over these police investigations by either proactively precluding public police forces, or because of the latter's acquiescence or deference to the CP Police Service. At a minimum, the STB should put CP Railway to the task of disclosing what role its police officers play in workplace and other incidents for which the company may be liable to determine whether a merger that rewards and expands such prejudices would be appropriate.

For context, please review the United States Bureau of Transportation Statistics, "Transportation Fatalities by Mode". The railway section provides aggregate data for each year from 1960 to 2020. The data does not include serious injuries. It also does not break down the figures by the railway companies in question, but this functionality exists.

- https://www.bts.gov/content/transportation-fatalities-mode

These fatality numbers are significant (**please see Attachment 10)**.

The STB should also review this New York Times article from 2015. The article raises concerns about private railway police in the United States.

- www.nytimes.com/2015/05/29/us/complaints-rise-against-nations-railroad-police.html

The article mentions CN Railway's corporate police force and serious civil rights implications of privatizing criminal law enforcement powers. The article does not address the sovereignty, civil rights, and constitutional implications of a foreign domiciled and controlled police department enforcing the criminal law against American citizens.

Even if the CP Police Service did not exercise exclusive investigative jurisdiction over deaths and serious injuries under its watch, any degree of investigative activity by the CP Police Service would have compromised the integrity of any police investigation. This would mean that the deaths and serious injuries of American citizens were never fully investigated by independent police forces, or at all. As long as questions about CP Railway's potential role in frustrating the proper administration of justice for numerous deceased and injured workers and their loved one remains outstanding, it would not be in the public interest for the STB to approve a merger that would reward and extend such legal prejudice to greater swaths of the American homeland.

THE POTENTIAL PAPER TRAIL, LEADS, AND QUESTIONS THAT THE STB AND OTHER INVESTIGATING AUTHORITIES MAY PURSUE TO RESOLVE THE OUTSTANDING QUESTIONS ABOUT CP RAILWAY'S POLICING ACTIVITIES AND CROSS-BORDER COMMAND STRUCTURES IN THE UNITED STATES.

Should the STB or other American authorities elect to commence an investigation into the issues in this whistleblower alert, the following are avenues of investigation which may be productive to pursue. The STB, in conjunction with the other authorities can compel CP Railway to answer relevant questions and provide certain records that can shed further light on the issues in these submissions. Therefore, the STB and the other United States authorities may benefit from pursuing information about, or from, the following.[5]

The CP Police Service's investigative records of deaths, serious injuries, and other incident investigations in the United States.

U.S. Government published data (https://safetydata.fra.dot.gov/OfficeofSafety/Default.aspx) shows that CP Railway had **10,504** casualties between 1990-2021, **366 of which were fatal**. Additionally, the data shows that **7,349 of the casualties** were Railway Employees at CP Railway during that time frame with an additional **25 fatalities** among that category of people. (**Attachment 10**). It is unclear which manifestation of CP Railway accounts for these statistics (subsidiaries or CP Railway Company). Nevertheless, at least some of these incidents may give rise to criminal or other offences that are the United States of America's equivalent of Canada's *Westray* laws.

Notwithstanding limited access to United States data, there is no evidence that any independent law enforcement agency or authority in the United States has ever conducted investigations into deaths and serious injuries at CP Railway through a **criminal, civil rights, or constitutional lens**. The STB should have the

[5] **NOTE**: the complainants are not requesting or expecting that the STB and any other government agency can, or will, disclose these documents to them. The complainants understand the importance of investigative integrity and the fact that public bodies' investigative product may not be fully disclosed e.g. in cases regarding national security.

powers and access to relevant data on all deaths and serious injuries at CP Railway in the United States, the police force(s) that exercised any investigative jurisdiction from a **policing/criminal** perspective, and whether the CP Police Service asserted exclusive, overlapping, or concurrent jurisdiction over these incidents.

The CP Police Service records documenting its investigations into deaths, serious injuries, and other major incidents (e.g. environmental spills) in the United States and Canada over the past 20 years lie at the epicenter of any inquiry. These records should disclose which police officers attended and whether the CP Police Service had exclusive, joint, or any involvement in the ensuing police investigations. The records will also disclose whether the CP Police Service took instructions from, reported to, or allowed the company's civilian leadership to access any evidence on the police file. The CP Police Service's records will also disclose indicia of the company's involvement in the injurious and fatal incidents.

In Canada, the Westray amendments to the *Criminal Code* presume that the employer is the focus in workplace death and serious injury police investigations. We trust that the United States has equivalent laws for employer criminal liability at state and federal levels. Therefore, records showing that CP Railway's corporate leaders inserted themselves into or obtained updates on such incident investigations could amount to obstruction of justice, witness tampering, and other potential offences. This is especially the case if the CP Police Service officers asserted jurisdiction over these incidents and reported to CP Railway's corporate management (or received corporate direction) about the operational aspects of such ongoing investigations, suppressed or failed to expose systemic safety issues in the company, or deliberately excluded CP Railway as a party of interest in the police force's incident investigations.

Any direct evidence of CP Railway "keeping a lid" on negative price sensitive information that could lead to deeper scrutiny of the company's safety and operational practices in Canada and the United States would be in the CP Police Service records. It will be critical for all relevant authorities to play a role in determining whether CP Railway has systemically denied American workers and citizens of their right to independent criminal investigations of deaths and serious injuries in the United States.

Notwithstanding any need to legally compel CP Railway to disclose relevant information to the STB and other authorities, the STB should find that a simple request for the records or questions confirming how the CP Police Service has handled workplace deaths and serious injuries may trigger disclosure. In the alternative, a preliminary step may be to request sworn affidavits from the CP Railway's Board of Directors' members and executive leadership affirming that CP Railway has never exercised any operational control over its police forces, never investigated itself criminally through the CP Police Service, and clarify the independence mechanisms it has between the corporate and policing arms of the company.

At a minimum, asking CP Railway whether the CP Police Service has ever investigated deaths and serious injuries under the company's watch in the United States, exclusively, in parallel, or in conjunction with other investigating authorities, should trigger the right answers, or direct the STB where to focus its efforts. Note that CP Railway may argue that the CP Police Service only plays a supporting role in the police

investigation of workplace deaths and public safety incidents at its railroad operations. CP Railway may argue that other independent police forces are free to conduct their own criminal investigations into incidents at the company. However, as stated earlier in these submissions, these public police forces appear to invariably defer to the CP Police Service's jurisdiction and regard themselves as playing a supporting role. This includes cases where CP Railway's role in the incident is an open question.

Even if public police forces did not defer to the CP Police Service and played an investigative role, CP Railway's police officers play **no** role in such investigations beyond the immediate preservation of life. When CP Police officers, who are company employees that answer to civilian management, collect or handle evidence, liaise with other authorities of jurisdiction, and interview company employees, they are necessarily tainting the integrity of any criminal investigation other police forces may be conducting.

Preventing the CP Railway-Kansas City Southern merger while the full extent of CP Railway's self-policing practice remains an open question is not only imperative, but consistent with the STB's duty to promote public safety and the honest management of railroads

As a sworn law enforcement officer, CP Police Service Chief Al Sauvé is a necessary witness who can furnish the STB with potentially decisive information with respect to the corporate policing issues in these submissions.

Chief Al Sauvé, who purports to be independent from CP Railway, can provide the STB and other American authorities with valuable knowledge and insights about the issues in this whistleblower alert. He has been with the police force for many years and is based in Calgary where CP Railway has its headquarters. As such, he has extensive knowledge about CP Railway's cross-border police operations, the CP Police Service's role in immigration and customs enforcement, its role in the investigation of deaths and serious injuries at the company, the police force's cross-border communications structures, arrest and public complaints records in the United States. Chief Sauvé's powers and obligations as a law enforcement officer in Canada, and effectively in the United States (through his operational control of officers in the United States), place unique obligations on him to cooperate with American authorities on all these issues. Also, **his duties as a police officer, at least in Canada, supersede any duty of loyalty that he may have to CP Railway as a corporate employee.** As an independent "officer of the Crown", he has duties of transparency that CP Railway cannot undermine, restrain, or extinguish.

To the extent that the STB and other authorities may need to obtain such details without publicly divulging confidential or classified information, the complainants trust that the Board has rules and procedures for accepting and triaging such information without breaching confidentiality. However, for **the purposes of transparency, any such censorship should only be to the degree necessary to safeguard sensitive information without allowing CP Railway to invoke a blanket ban on any information that would allow the America public to understand any breaches of their rights and any risks they face from this**

merger. Again, the complainants are not seeking that the STB discloses its findings to them, but use the findings strictly for the merger review process and to refer the matter to other relevant authorities in the United States.

For the purposes of Chief Al Sauvé's potential participation in this merger review process, the STB may wish to explore the following questions which illuminate the nature and degree of CP Railway's cross-border command of American police officers and law enforcement operations that are implicated in this complaint.

1) Does Chief Al Sauvé exercise operational command over CP Police Service officers in the United States, including in operational matters such as workplace death and serious injury investigations that occur under CP Railway's watch?

2) Is Chief Al Sauvé a sworn police officer who can conduct police work in the United States like the officers he oversees in the United States? If not, on what authority does he, as a foreign-based, non-American police officer, command police officers in the United States?

3) Is Chief Sauvé a citizen of the United States? If not, he would be a foreign national commanding a statutory, multi-state police force that enforces the criminal law in the United States against American citizens.

4) What role does the CP Police Service and its officers play in customs and immigration enforcement with respect to trains crossing the United States-Canada border? As a matter of law or practice, do the officers board trains to search for illegal or grey-area goods, firearms, immigrants, etc.? Can they preclude Canadian or American customs and border agents from boarding CP Railway or other trains for these purposes, and do American and Canadian customs and immigration personnel allow them to carry out such functions concurrently or exclusively?

5) If Chief Al Sauvé is **not** a citizen of the United States, does he exercise command over CP Police Service officers in New York State and Wisconsin, which both require that railroad police officers be citizens of the United States? If individual police officers who conduct arrests and other such function in the United States must be American citizens, these States most likely expect that the Chiefs of Police and persons who exercise operational command over all their company officers must also be citizens of the United States.

6) Under Chief Al Sauvé's tenure as Chief of the CP Police Service, and from his knowledge of existing records from before his tenure, has the CP Police Service ever exercised exclusive, concurrent, or overlapping police jurisdiction over any deaths, serious injuries, or other potentially criminal incidents that happened pursuant to CP Railway's operations in the United States or Canada?

7) Is Chief Al Sauvé aware of any instances where CP Railway's civilian leadership or personnel have directed CP Police Service officers on operational matters?

8) Has Chief Al Sauvé, designates, or predecessor ever provided briefings or updates to CP Railway's corporate leadership regarding workplace deaths, serious injuries, and other CP Police Service investigations? If so, did he conduct these meetings as an independent police officer interviewing parties of interest or as a corporate employee reporting to his superiors?

9) Can Chief Sauvé provide the STB records of all death and serious injury incident files at CP Railway in the United States over the past 20 years to show the nature and extend of the CP Police's involvement in the potential criminal investigations of these incidents (provided only to the Board under seal if necessary)?

10) Is Chief Sauvé aware of any potentially unlawful conduct relating to CP Railway's operations that he did not refer to independent police forces, or did not direct the CP Police Service to fully and thoroughly investigate in the United States?

11) To whom does CP Police Service Chief Al Sauvé report to within the CP Railway corporation?

12) Who determines Chief Al Sauvé's salary, bonuses, and benefits? (goes to his purported independence)

13) On what metrics does CP Railway base Chief Sauvé's bonuses?

    This question goes to Chief Sauvé's independence from CP Railway. It would raise significant concerns if the corporate leaders whose policies and actions are implicated in workplace deaths, reportable injuries, and public safety incidents on the company's watch also determined Chief Sauvé's at-risk compensation.

14) Did Chief Sauvé require CP Police Service officers to sign non-disclosure agreements beyond their inherent duties of confidentiality as police officers, to prevent them from making any disclosures that harmed or undermined CP Railway's private interests?

15) Did Chief Al Sauvé or his predecessor, Chief Ken Marchant, ever provide CP Railway's corporate leadership, including Mr. Keith Creel, with updates and operational details about the CP Police Service's operational activities in the United States?

16) Is Chief Al Sauvé prepared to provide a sworn statement or affidavit confirming that all his answers

to the above questions are truthful, and that he is willing to fully cooperate with American regulators without consulting or apprising CP Railway's corporate leadership of his cooperation?

The CP Railway Police Association should also have critical information for American authorities.

The CP Railway Police Associations ("CPRPA"), which is the labour union for CP Police Service officers, may also provide critical information. Our office has received anonymous correspondences from CP Police Service officer(s) who support my clients' advocacy efforts for the creation of independent railway police forces that do not answer to the company. It is apparent that these police officers are unable to investigate safety-related corporate decisions or make allegations against the corporate employers who write their pay cheques.

We understand from several sources that many current and former CP Police Service officers want to speak more freely about the policing and safety issues at CP Railway, but they are afraid to do so. The best way to overcome that fear is to provide them with regulatory cover. If they are compelled to answer questions that the STB and other American authorities require for law enforcement, public protection, and regulatory purposes, CP Railway will have no choice but to allow its police officers to cooperate. Those police officers will also benefit from compelled cooperation because that is less likely to trigger the fear of retaliation that unsolicited disclosures to authorities such as the STB can often trigger. If these CP Police Service officers believe they are protected from retaliation, or that their compelled disclosures will prevent such retaliation, we strongly believe they will provide a tremendous amount of information about CP Railway's policing of fatal and injurious incidents, and the company's other potential abuses of its corporate police force in general.

The CP Railway Board of Directors will have relevant information.

The CP Railway's Board of Directors' minutes and records disclosing any communications between the CP Police Service, corporate executives, and the Board of Directors over the past 11 years or so will also provide relevant information. This is with specific reference to records regarding workplace safety generally, and the CP Police Service's investigations into all workplace deaths and serious injuries in the United States over that period.

CONCLUSION.

In 2021, the Globe & Mail's Report on Business Magazine named CP Railway's President, CEO, and Board member, Mr. Creel, as "CEO of the Year". The basis of the recognition was Mr. Creel's leadership in spearheading the merger between CP Railway and Kansas City Southern Railway. In the article discussing this accolade, the publication quoted Mr. Creel as follows:

> "*It took Creel, a devout Christian and man of deep faith, the night to fully develop his strategy for combatting CN. "I woke up at about two o'clock in the morning. I'd been praying about it and reflecting on it and thinking about it, and the overarching thought that came to my head was just, Your best weapon is the weapon of truth," he says.*
>
> *Which was exactly the message he delivered to shareholders at the following morning's virtual AGM. "I'm going to focus on the truth, because the truth matters," he said. He would go on to repeat the word "truth" another 108 times and the word "fact" more than 40 times over the course of the call.*" (Emphasis Added).

The complainants respectfully request the STB to put Mr. Creel and CP Railway to the task of telling the full truth about CP Railway's cross-border policing activities and responding to the *prima facie* evidence of the serious problems with its cross-border police powers in the United States. If Mr. Creel is sincerely committed to telling the truth, then it should not take an extensive investigation or significant resources for his company to provide fulsome answers to the STB's satisfaction. The Globe & Mail article ends with the following quote from Mr. Creel, which appears to imply that the merger approval is a foregone conclusion:

> '*Does Creel, whose intense conviction guided him this far, feel any uncertainty about what comes next? "There's not a doubt in my mind.*"'

Respectfully, there may be no doubt on Mr. Creel's mind, but as long as CP Railway has not addressed the issues in this complaint that directly impact numerous interests in the United States, there should be significant doubt in the STB members' and Americans' minds about whether the merger should be approved. The hundreds of Americans who died at CP Railway's operations, and the thousands who were injured under the company's watch deserve the truth about what role CP Railway played in the police investigations of their tragedies. They deserve the truth about whether they were denied independent criminal investigations that were not tainted by corporate interference, or subjected to compromised processes from the outset as the complainants' Canadian experience reflects.

American citizens also deserve the truth about whether CP Railway, has been violating their civil-constitutional and privacy rights, their country's sovereign monopoly over its criminal law powers, their customs and immigration enforcement powers at the United States-Canada border, their public safety, and is

posing unacceptable national security risks to their country.

The complainants remain prepared to provide any further assistance that the STB may need.

Thank you,



Tavengwa Runyowa
(Counsel for the whistleblower complainants).

Attachment 1

Missouri and Illinois Rail...

Missouri and Illinois Railroad Police Association

Law Enforcement Agency

3:55 PM

Greetings! Quick question regarding your membership;

Is Kansas City Southern Railway Police Force still a member of your organization?

Thank you in advance,

Sincerely.

4:23 PM

Yes sir. It has been a while since anyone has attended a meeting or event but all Railroad police in either state

Railroad police in either state are welcome to join.

Thank you for clarifying. I was looking on their website but couldn't find any mention of "Kansas City Southern Railway Police" mentioned anywhere; a search on google led me to your association.

Thank you for confirming that to your understanding that they are an existing police force.

Yes they certainly are. At least until the CP buys the KCS. Then it will be the CPKC police.

Attachment 2

CP Police Service



Through targeted enforcement and inspection, the CP Police Service focuses on public safety, reduces the frequency and impact of train delays, and manages and mitigates risk exposure while also protecting personnel, assets, operations, and information.

As a Canadian Constable of the CP Police Service, you are employed by CP and are also appointed and accountable to the Federal Crown. As an American Constable of the CP Police Service, you are employed by CP and are also certified or commissioned by the state(s) in which you work.

Your Constable duties

- Provide public safety through enforcement and education
- Prevent and detect crime
- Enforce the Canadian Criminal Code, The Canadian Railway Safety Act, and Provincial Traffic Safety legislation
- Conduct criminal and accident investigations
- Provide emergency response to incidents and calls for service
- Protect railway assets, operations, and personnel
- Work with other law enforcement agencies during investigations and joint enforcement operations
- Maintain good working knowledge of relevant legislation, policies, and procedures
- Travel on assignment in response to incidents and for training
- Assist victims of crime
- Prepare comprehensive reports and prosecution files and deliver court testimony
- Manage and escort prisoners

Training in Canada

Previous police experience is preferred, but not essential for this position, as new applicants will attend a recognized police college for at least 16 weeks of training. After the basic police training, you'll take four to six weeks of railway police and safety training prior to being sent to your home detachment, where you will attend a field training (FTO) program.

Training in the United States

In the United States, applicants must already hold a law enforcement commission or appointment in the state for which they are applying for appointment. All CP Police Service members in the U.S. must meet and maintain POST certification or equivalent for the state in which they are employed. In addition to completing a field training (FTO) program, new CP Police Service members will be required to take four to six weeks of railway police and safety training in Canada.

Special Agent - Davenport, IA

careers.cpr.ca/job/Davenport-Special-Agent-Davenport,-IA-IA-52801/555015817/

- Req ID: 90404
- Department: Corporate Risk
- Job Type: Full-Time
- Position Type: Non-Union
- Location: Davenport, Iowa
- Country: United States
- % of Travel:
- # of Positions: 1
- Job Available to: Internal & External
- Deadline to apply: 02/13/2022

Canadian Pacific is a transcontinental railway in Canada and the United States with direct links to major ports on the west and east coasts, providing North American customers a competitive rail service with access to key markets in every corner of the globe. CP is growing with its customers, offering a suite of freight transportation services, logistics solutions and supply chain expertise. Visit cpr.ca to see the rail advantages of CP.

PURPOSE OF THE POSITION

The CP Police Service is accepting applications for Police Special Agent based in Davenport IA. The CP Police Service is a railway police department which delivers Police services to the CP network. Duties include emergency response, special events policing, risk reduction operations, investigation of criminal acts, crime prevention and public safety programs.

POSITION ACCOUNTABILITIES

Police Special Agents of the CP Police Service are employed by CP. CP Police Special Agents are responsible for:

- Public Safety through enforcement and education;
- Prevention and detection of crime;
- Facilitate the Enforcement of Federal, State and municipal laws, statutes and by-laws;
- Criminal and Collision investigations;
- Emergency response to incidents and calls for service;
- Protection of Railway assets, operations and personnel.

In addition Police Officer/Special Agents of the Canadian Pacific Police Service must:

- Work with other Law Enforcement Agencies during investigations and in joint enforcement operations;
- Maintain good working knowledge of relevant legislation, policies and procedures;
- Effectively and efficiently plan, manage and prioritize workload and conduct general and directed patrols;
- Be prepared to travel on assignments, in response to incidents and for training;
- Possess strong communication skills;
- Provide assistance to victims of crime;
- Prepare comprehensive reports and prosecution files and deliver court testimony.

POSITION REQUIREMENTS

- Must be a U.S. citizen;
- High school diploma with College or University programs an asset;
- Must be a full-time state certified Police Officer in the state of Iowa or have the ability to transfer police certification in accordance with Iowa standards;
- Knowledge of the U.S. Criminal Justice System;
- This position is considered ‘on-call’ and the successful applicant must be willing to attend incidents after normal working hours;
- Must have a clear criminal record;
- Must acquire a passport upon hiring;
- Must pass extensive background and financial/credit checks;
- Ability to pass medical examination and drug test;
- Meet vision standards of uncorrected vision acuity of at least 20/40, corrected visual acuity of 20/30 with normal color vision;
- Meet minimum hearing requirements;
- Must possess a valid driver’s license for the state in which they are employed;
- Must be qualified in First Aid, CPR and AED;
- Community involvement would be an asset;
- Basic computer skills;
- Must be able to meet CPPS Firearms and Use of Force Standards;
- Must be able to complete and pass a polygraph exam;
- Must be able to complete and pass a psychological exam.

WHAT CP HAS TO OFFER:

- Flexible and competitive benefits package
- Competitive company pension plan

- Employee Share Purchase Plan
- Performance Incentive Program
- Annual Fitness Subsidy

ADDITIONAL INFORMATION:

As an employer with national presence, the possibility does exist that the location of your position may be changed based on organizational requirements.

Medical Requirements:
CP is committed to the safety and health of its employees and the general public. This position is considered a safety sensitive position; all new hires will be required to complete a pre-employment medical evaluation that includes a vision, hearing, drug screening and pre-employment physical along with a psych exam.

Background Investigation:

The successful candidate will need to successfully complete the following clearances:

- Criminal history check
- Education verification
- Last 7 years of employment history
- Last 3 years of driving history
- Social Security number verification

Management Conductor Program:

Becoming a qualified conductor or locomotive engineer is the single best way for a management employee to learn the business at CP. You may be required to obtain a certification or to maintain your current certification/qualification as a conductor or locomotive engineer.

CP is an equal opportunity/affirmative action employer, inclusive of protected veterans and individuals with disabilities.

Attachment 3

Subject	**Public Complaints Procedure (US)**
Effective Date	September 1, 2012
Related Policy/Service Orders #	
Amended Policy	Service Order 09/02
Scope	All US Canadian Pacific Police Service Members
Legislation/Guidelines referenced in policy	IL Railroad Police Act 610 ILCS 80

1. Policy Statement

Canadian Pacific Police Service (CPPS) is committed to conducting public complaint investigations that are thorough, transparent, timely and promote a fair and equitable resolution for all parties involved.

2. Consequence

The policy and procedures contained herein are enforceable pursuant to Section 12.2.1.h of the Service Policy Manual.

3. Authority

The Deputy Chief of Police, Support Services (hereafter referred to as the Deputy Chief) is accountable for ensuring the investigation of all complaints against members of the CPPS, subject to the provisions set out within this policy. In the event that an allegation of criminality or misconduct of a serious nature is made or becomes apparent during an investigation, the Deputy Chief may elect to have the investigation conducted by a 3rd party law enforcement agency (section 4.3.3 applies)

4. Procedures

4.1. Receiving a complaint.

Complaints may be initiated with the Service by:

- Submitting a written complaint, by any means, to Canadian Pacific Police Service, Suite 157 Gulf Canada Square, 401 9th Avenue SW, Calgary, AB T2P 4Z4;
- Telephoning the CPPS Control Centre (PCC) at 1-800-716-9132 and making a verbal complaint;
- In person to any member of the service at any CPPS detachment or office;
- Contacting Professional Standards Department by email or fax at Police_ProfessionalStandards@cppoliceservice.com, 403-319-7024.

Any member receiving a complaint must complete in full Part One of the Public Complaint Form CD0001E and forward it in an email to the Professional Standards Department at CPPS HQ for processing. If the complaint was taken by any PCC member, the on duty Sergeant at the PCC will ensure that all recordings relating to the interaction with the complainant and the incident under examination are retained.

4.2. Processing the complaint

Upon receipt of a complaint the Professional Standards Department will:

- Classify the complaint as a policy/procedure complaint or a member conduct complaint;
- Initiate a complaint file relating to the incident and assign a file number;
- Review the allegation to determine if the complaint maybe suitable for informal resolution, or must be handled using the formal process;
- Notify the Deputy Chief of the receipt of a complaint, and whether or not the complaint is to be handled by way of informal resolution;
- Acknowledge receipt of the complaint in writing to the complainant and provide a copy of the complaint brochure;
- Notify the subject member of the complaint, with a copy being forwarded to their accountable manager (Inspector or above). Included will be a copy of member notification form outlining the allegation(s).
- If the member's alleged conduct is criminal in nature and the notification could compromise the investigation, notification may be withheld;

4.3. Complaint Investigation

4.3.1 Informal Resolution

In some cases it may be possible to deal with the complaint by means of an Informal Resolution. This approach may be beneficial to both the complainant and the member who is the subject of the complaint by encouraging dialogue, exploring alternative perspectives and promoting understanding between all parties. It allows those involved to jointly find a solution to the matter.
Informal resolution may include providing the complainant with an explanation of the facts and circumstances surrounding the members conduct or otherwise attempting to clarify any misunderstandings between all parties involved.

The criteria for complaints suitable for Informal Resolution are:

- Allegations of misconduct of a minor nature;
- Complaints which do not involve misconduct such as a disagreement between the complainant and a member;
- Disputes as to the validity of a legal process; or,
- A misunderstanding of the limits of CPPS's jurisdiction and authority.

Informal Resolution can only proceed if both the complainant and the member involved agree to the process.

Informal resolution process

- When a complaint has been identified as suitable for the informal resolution process the Professional Standards Department will inform the subject member's accountable manager (Inspector or above) and provide all relevant details;
- The Inspector will contact all parties involved to discuss options and outcomes for resolving the complaint. In certain circumstances, the Inspector may designate this responsibility to a front line supervisor (Sergeant or Senior Special Agent);
- The manager or designate will attempt to resolve the situation by providing the complainant with an explanation of the facts and circumstances in order to clarify any misunderstandings between the member involved and the complainant;
- The manager will be responsible to submit a full report to the Professional Standards Department outlining the circumstances of the complaint and a description of how the matter was informally resolved;
- The Deputy Chief will review the outcome and direct any further action deemed appropriate;
- Matters not satisfactorily resolved will proceed to formal complaint investigation.

4.3.2 Formal Complaint Investigation.

- The Deputy Chief is accountable to ensure that all formal investigations are conducted according to this procedure and will appoint an officer, not below the rank of Inspector to conduct the investigation;
- The investigation shall include, but not be limited to, the review of policies and procedures, the review of reports and any video/audio recordings relating to the incident, inspection of the scene or other evidence and interviews of complainant, witnesses, member witnesses and the subject member;
- The Deputy Chief will review the progress of any investigation every 30 days, to ensure that the investigation is comprehensive and is being handled expeditiously;
- The investigation will be completed within 90 days from the receipt of the complaint. If any complaint investigation is not completed within 90 days, the Deputy Chief must notify the Chief of Police and request an extension to the 90 day limit;
- The investigating officer will prepare a final report to the Deputy Chief outlining:

1. The exact nature of the allegation;
2. The details of the member(s) involved;
3. All the established facts relating to the incident(s) that gave rise to the complaint;
4. Copies of all reports, photographs and statements obtained during the course of the complaint;
5. Correct statutory authorities, penal code violations, and policy or procedure infractions;
6. Conclusions;
7. Supporting evidence and any statutory authority to cover the members actions including case law cited.

- The investigating officer will make no recommendations in respect of disciplinary action at any time during the course of the investigation or include such recommendations within the final report;
- The Deputy Chief will review and append a report outlining recommendations which may include disciplinary action and submit to the Chief of Police for a final decision;
- The Chief of Police will provide a final ruling on the disposition of any complaint file and approve the commencement of disciplinary proceedings, if appropriate in accordance with disciplinary policies or the conditions of any relevant collective agreement.

4.3.3 Investigation by 3rd Party Agency

Any allegation that a member of the CPPS has committed a serious criminal offence will be investigated by CPPS only insofar as is necessary to substantiate the allegation. If the allegation is substantiated, or the evidence presented at the time of the initial allegation is so compelling that further investigation by the CPPS is unwarranted then the Deputy Chief may decide that the matter should be investigated by a 3rd Party law enforcement agency.

In such cases, the Professional Standards Department will notify the complainant and the subject member that the matter has been referred to a third party Law Enforcement Agency for further investigation.

4.4 Notifications

The Professional Standards Department will:

- Notify the complainant, in writing, of the outcome of the investigation;
- Notify the subject member, in writing, and inform management of any action to be taken.

4.5. Complaint Administration

The investigating officer will:

- Restrict access to and securely store hard copy and/or electronic case files and documentation when not in active use;
- Forward all hard copy and electronic files to Professional Standards at the completion of the investigation.

Professional Standards will:

- Document and update the complaint file regularly;
- Securely store completed complaint files and electronic documents.

5. Disciplinary Actions

At the conclusion of an investigation it may be necessary to implement either corrective action or a disciplinary action as described below:

5.1 Corrective Action

Corrective action is a non-disciplinary measure intended to correct unsatisfactory performance or conduct. Corrective actions include, but are not limited to; supervisory counseling, verbal reprimand, additional training or additional supervision.

5.2 Disciplinary Action

Disciplinary actions include the commencement of processes and procedures, as defined by the Human Resources department or as contained within any relevant collective agreement, that may result in a formal written reprimand, suspension, demotion or termination.

5.2.1 Disciplinary Interviews

- Any interview of a CPPS member in furtherance of disciplinary proceedings will be held in accordance with CP's established procedures for the conduct of such interviews;
- Interviewing officers will not offer any reward or inducement and shall not threaten or coerce anyone involved in the interview;
- Where the interview is in relation to an alleged criminal offence all steps will be taken to ensure that Miranda rights are read, explained and complied with as required by the criminal justice system.

5.2.2 Representation

- CPPS members who are the subject of a disciplinary interview are permitted to have a personal or union representative with them during the interview;
- CPPS members being interviewed in respect of an alleged criminal act have the right to consult with legal counsel and have legal counsel present during any such interview.

5.3 Right of Appeal

Any US based member of the CPPS who is subjected to disciplinary sanctions as a result of an investigation, will have the right to appeal the decision/disposition to the Illinois State Police in accordance with the Illinois Railroad Police Act.

Any CP employee that alleges abuse of authority or misconduct on the part of the carrier's police officers will also have the right to appeal any decision/disposition to the Illinois State Police in accordance with the Illinois Railroad Police Act.

6. Objective Oversight

Upon conclusion of the investigation the Chief of Police will provide details to Canadian Pacific's General Council for objective oversight.

Sponsor	Manager of Professional Standards Department
Monitoring & Communication	N/A
Final Approval by	Chief of Police

History

Version	Revision By	Date

Attachment 4

No. S211085
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PAMELA FRASER and THE ESTATE OF DYLAN PARADIS

PLAINTIFFS

AND:

CANADIAN PACIFIC RAILWAY LTD.; CP POLICE SERVICE CHIEFS AL SAUVE and KEN MARCHANT; CONSTABLE MARK TATARYN; KEITH CREEL; CANADA PACIFIC RAILWAY LTD. BOARD OF DIRECTORS; THE ATTORNEY GENERAL OF CANADA representing THE MINISTER OF TRANSPORT

DEFENDANTS

RESPONSE TO CIVIL CLAIM

Filed by: CP Police Service Chiefs Al Sauve and Ken Marchant (the "Chiefs")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 - The Chiefs' Response to Facts

1. No facts alleged in Part 1 of the notice of civil claim ("NOCC") are admitted.

2. All facts alleged in Part 1 of the NOCC are denied.

3. The facts alleged in paragraphs 3, 22 and 31 of Part 1 of the NOCC are outside the knowledge of the Chiefs.

4. To the extent that facts are alleged in Part 3 of the NOCC, those facts are denied.

Division 2 - The Chiefs' Version of Facts

5. This action against the Chiefs has no chance of success and is an abuse of this court's process because:

    a) Canadian Pacific Railway Company has an unquestionable commitment to safety as a top priority and as an integral part of its business.

    b) The Chiefs are not, at law, personally liable for any of the torts alleged in the NOCC.

c) The claims against the Chiefs are statute barred by operation of workers compensation legislation.

The defendants "CP Police Service Chiefs Al Sauve and Ken Marchant"

6. The correct name of the corporate defendant named as "Canadian Pacific Railway Ltd." is Canadian Pacific Railway Company ("CP").

7. The Canadian Pacific Police Service ("CPPS") is an arm's length railway law enforcement agency that performs policing functions across six Canadian provinces and in the United States of America.

8. All members of the CPPS in Canada:

a) are appointed by a Superior Court justice pursuant to Part IV.1 of the *Railway Safety Act*, R.S.C. 1985, c. 32 (4th Supp.);

b) are appointed to enforce the laws of Canada and the provinces insofar as that enforcement is related to the protection of CP property and the protection of persons on CP property;

c) have jurisdiction within 500 meters of CP property;

d) are peace officers within the meaning of section 2 of the *Criminal Code of Canada*;

e) are independent officers of the Crown, notwithstanding their employment by CP; and

f) have no jurisdiction in the United States of America.

9. Ken Marchant joined the CPPS in December 2011 as Deputy Chief of Police and was formally appointed Chief of Police on May 15, 2014. He retired from that position on June 17, 2019. His last day on active duty was April 26, 2019.

10. Al Sauve joined the CPPS in February 2012. He was appointed Deputy Chief of Operations in 2015 and Chief of Police in July, 2019.

The Accident

11. On or about February 4, 2019, Mr. Paradis and two other CP employees were tragically killed following the derailment of a westbound grain train between the Upper and Lower Spiral Tunnels east of Field, BC (the "Accident").

12. Although challenged by weather conditions and the remote location of the Accident, members of the CPPS attended at the derailment and secured the scene for other investigative agencies. Investigations began immediately with involvement of:

    a) Transport Canada, which administers the *Railway Safety Act* and regulations thereto;

    b) the TSB, pursuant to the *Canadian Transportation Accident Investigation and Safety Board Act*, S.C. 1989, c. 3, and the *Transportation Safety Board Regulations*, SOR/2014-37;

    c) Department of Employment and Social Development, pursuant to the *Department of Employment and Social Development Act*, S.C. 2005, c. 34;

    d) WorkSafe BC, pursuant to the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 and the *Workers Compensation Act*, R.S.B.C. 2019, c. 1;

    e) the BC Coroners Service, pursuant to the *Coroners Act*, S.B.C. 2007, c. 15; and

    f) the Royal Canadian Mounted Police, pursuant to the *Royal Canadian Mounted Police Act*, R.S.C. 1986, c. R-10.

    Each of these agencies, in addition to having jurisdiction to investigate, also have the skill, expertise, and experience to thoroughly investigate accidents of this kind. At all times, the CPPS has been open and committed to full cooperation with all of these agencies.

13. In close collaboration with the TSB and after completing all necessary safety checks, on February 6, 2019, CP re-opened its mainline through Field, BC. In addition, CP took further steps to enhance safety by supplementing its existing protocols for trains on mountain grades across its network.

14. In or around December 2020, a formal RCMP investigation was opened with respect to the Accident. The Chiefs understand this investigation is ongoing.

15. In specific response to paragraph 50 of Part 1 and paragraph 13 of Part 3 of the NOCC, the Chiefs deny that following the Accident, or generally, any members of the CPPS assumed, asserted, or continued to assume or assert any exclusive jurisdiction to investigate the Accident to the exclusion of any independent police agencies. To the contrary, the RCMP was on site immediately after the Accident and always had jurisdiction to investigate in accordance with its legal authority and discretion, which it has done.

16. The Chiefs deny all allegations in the NOCC regarding any alleged coverup, including by alleged interference with investigations conducted by CPPS members, the RCMP, or any other agency, and by the destruction or concealment of evidence.

17. The Chiefs also specifically deny all allegations in paras. 21-23 and 54 of Part 1 of the NOCC, and elsewhere in the NOCC, in relation to the resignation of the defendant Constable Mark Tataryn.

18. In response to paras. 4-16 and 50-57 of Part 1 of the NOCC and paras. 11-16, 25-28, and 38-46 of Part 3 of the NOCC, the Chiefs deny that they have exclusive jurisdiction within 500 meters of CP property and say that pursuant to the *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10, the RCMP has jurisdiction to investigate crimes anywhere in Canada, including on CP property.

19. In further response to paras. 4-16 and 50-57 of Part 1 of the NOCC and paras. 11-16, 25-28, and 38-46 of Part 3 of the NOCC, the Chiefs:

    a) deny that the CPPS is owned and controlled by CP and is a "wholly-owned subsidiary of CP";

    b) say that the jurisdiction of the members of the CPPS is defined by s. 44 of the *Railway Safety Act*;

    c) admit that they are employees of CP;

    d) admit that they receive direction from CP management on administrative and, occasionally, operational matters;

    e) deny that they receive direction or instructions from CP management on CPPS investigations, and say that CP management has no authority to direct police investigations;

f) admit that they are responsible for protecting CP property and assets but deny that they are responsible for protecting CP's commercial interests;

g) admit that they are public officers when they are acting within the jurisdiction granted by the *Railway Safety Act*.

h) deny any pattern of interference with CPPS investigations by CP or its management;

i) deny any pattern of CPPS asserting exclusive jurisdiction over investigations;

j) say that paragraphs 9 and 13-15 of Part 1 of the NOCC contain irrelevant allegations of fact, and should be struck;

k) say that the CPPS initated an emergency response to the Accident and conducted an investigation into the circumstances of the Accident including:

(i) attending and securing the scene and evidence;

(ii) taking photographs;

(iii) interviewing CP employees who had knowledge of the circumstances preceding the Accident;

(iv) determining whether any of the crew were impaired by drugs or alcohol;

(v) gathering and returning the effects of the deceased crew members; and

(vi) cooperating with all other investigating agencies.

l) say that CPPS found no evidence that a criminal offence was committed by any party, which would support any continuing police investigation, and that none of the other investigating agencies ever advised that a criminal investigation should be undertaken;

m) deny that they or the CPPS foreclosed any investigation into criminal liability;

n) deny that they failed to properly train CPPS members;

o) deny that they failed to conduct a fair, independent, and impartial investigation;

p) deny that they failed to keep victims' families apprised of the investigation, and say that the families had the Chiefs' direct contact information;

q) deny that they failed to ensure that the CPPS remained operationally independent, and that they took instructions from CP management;

r) deny any collusion with CP management in the investigation of the Accident;

s) deny prematurely terminating the investigation of the Accident;

t) deny that they ordered, or failed to prevent, destruction or concealment of evidence;

u) deny that they allowed anyone to "clean up" the scene;

v) deny that they failed to refer investigation of the Accident to an independent third party;

w) deny that they terminated Cst. Tataryn for raising questions about CP's alleged coverup, and specifically deny the allegation in para. 57 of Part 1 of the NOCC; and

x) deny that they engaged in an unlawful conspiracy as alleged or at all.

20. In response to the whole of the NOCC, the Chiefs say that they, and the CPPS, acted at all times in accordance with the standards applicable to railway police in British Columbia.

21. In further response to the whole of the NOCC, the Chiefs deny that they are or were guilty of gross negligence, dishonesty, misfeasance, or malicious or wilful misconduct.

Division 3 - Additional Facts

The plaintiff Estate has received compensation

22. At the time of his death, Mr. Paradis was a CP railway conductor, resident in Calgary, Alberta. He was killed in the Accident arising out of and in the course of his employment with CP. As a result, since the Accident, Mr. Paradis' surviving spouse and dependent children has received compensation through the Alberta Workers' Compensation Board and WorksafeBC.

23. The Chiefs have no knowledge of the appointment of any representative of the Estate of Dylan Paradis.

The plaintiffs' accusations are improper and incapable of honest belief

24. The plaintiffs can have no genuine belief in the allegations that the Chiefs acted with intention to compromise the safety of CP's railway operations or intended to injure Mr. Paradis, his family, or other CP employees as alleged throughout the NOCC.

25. All such allegations made in the NOCC are improper and intended to be inflammatory.

Part 2: RESPONSE TO RELIEF SOUGHT

26. The Chiefs oppose the granting of relief sought in paragraphs 1-2 of Part 2 of the NOCC and seek dismissal of the claim with costs.

Part 3: LEGAL BASIS

Claims against the Chiefs are barred by the common law

27. The Chiefs are not legally responsible for the acts or decisions of any members of the CPPS or any employee or officer of CP. The Chiefs rely upon the common law, including: *McCleave v. Moncton* (1902), 32 SCR 106; *Attorney-General for New South Wales v. Perpetual Trustee Co. Ltd*, [1955] AC 457 (P.C.); and *Rosario v. Gladney*, 1998 CanLII 1787 (BCSC).

Claims against the Chiefs are barred by workers compensation legislation

28. At the time of his death, Mr. Paradis was a worker, CP was an employer within the meaning of the Alberta *Workers' Compensation Act*, R.S.A. 2000, c W-15 ("*Alberta Act*") and the British Columbia *Workers Compensation Act*, R.S.B.C. 1996, c. 492 ("*1996 BC Act*"), which was subsequently repealed and replaced by the *Workers Compensation Act*, R.S.B.C. 2019, c. 1 ("*2019 BC Act*").

29. The injuries suffered by Mr. Paradis which led to his death arose out of and in the course of his employment with CP.

30. The essential character of the plaintiffs' claim is liability for the Accident which led to Mr. Paradis' death in the course of his employment with CP. As a result, all of the plaintiffs' claims against the Chiefs, whether brought on behalf of Mr. Paradis, his Estate or any of his family members, are barred by s. 21 of the *Alberta Act*, s. 10(1) of the *1996 BC Act*, and s. 127 of the *2019 BC Act*. These claims have no chance of success.

31. The Alberta Act and/or the BC Acts further bar action against any "other worker" in respect of a death arising out of and in the course of employment. The Chiefs are "other workers" within the meaning of the legislation. As a result, all of the Plaintiffs' claims, whether bought on behalf of the Estate of Mr Paradis or any family members, are barred as against the Chiefs and have no chance of success.

No negligence, misfeasance, conspiracy or breach of Charter rights

32. In response to the plaintiffs' claims of negligence, misfeasance, and conspiracy, the Chiefs:

a) deny that they owe or owed a duty of care to the plaintiffs respecting any investigation through CPPS;

b) deny that they owe or owed a duty of care to the plaintiff Pamela Fraser or to Mr Paradis or his family;

c) deny that they were negligent or grossly negligent at any time before or after the Accident;

d) deny that they engaged in any deliberate or unlawful conduct in any capacity as a public officer;

e) deny that any of their actions were unlawful as alleged or at all;

f) deny that they conspired with each other or CP as alleged or at all; and

g) deny that they knew or ought to have known that any of their actions would cause any loss, injury, damage, or expense (collectively, "Damages") to the plaintiffs.

h) deny that that any claim of systemic negligence exists against them in law, and deny that any such systemic negligence existed at any time before or after the accident.

33. In response to the claims for breach of the plaintiffs' rights under section 7 of the *Canadian Charter of Rights and Freedoms*, the Chiefs:

a) deny that the Chiefs are subject to the *Charter*;

b) deny that any breach of the plaintiffs' *Charter* rights could have occurred in connection with the Accident or any subsequent investigation;

c) deny that the plaintiff Estate has any *Charter* rights enforceable in these proceedings; and

d) deny that the plaintiff Pamela Fraser has any s. 7 *Charter* rights in connection with the Accident or any subsequent investigation.

34. The Chiefs deny any liabilty to the plaintiffs, whether vicarious or direct, for any Act or omission by the Defendant Cst. Mark Tataryn.

No causation

35. In the alternative, if the Chiefs are found to be liable for any act, omission, or breach, the Chiefs deny that any such act, omission, or breach is the cause, in law or in fact, of the Accident or of any Damages suffered by the plaintiffs whatsoever, including in connection with the Accident or any subsequent investigation.

Damages

36. In the further alternative, if the plaintiffs have suffered any Damages, such Damages are not recoverable in this proceeding. All of the plaintiffs' claims for non-pecuniary Damages resulting from the death of Mr. Paradis are not recoverable, pursuant to the *Family Compensation Act*, R.S.B.C. 1996, c. 126, and s. 150 of the *Wills, Estates and Succession Act*, S.B.C. 2009, c. 13.

37. In the further alternative, the Chiefs deny that any *Charter* damages are recoverable against any non-state corporation or individual; or by or on behalf of the estate of a deceased person.

38. In the further alternative, with respect to any personal claim for damages by the plaintiff Pamela Fraser the Chiefs deny that Pamela Fraser has suffered any psychological damage separate and distinct from the damages resulting from the death of Mr. Paradis. If Pamela Fraser has suffered any such damages, such damages are too remote to be recovered at law.

39. The plaintiffs have failed to particularize the individuals for whose benefit this action has been commenced as required under s. 4 of the *Family Compensation Act*.

Abuse of process

40. The continuation of this action is an abuse of process, as the claims are barred by the Alberta and BC *Workers Compensation Acts* and are not provided for by the *Family Compensation Act* or the *Wills, Estates and Succession Act*.

41. The allegations of conspiracy and misfeasance are incapable of honest belief and are without foundation, abusive and made for an improper purpose, and should be struck.

The Chiefs' address for service: Wilson Butcher
507-815 Hornby Street
Vancouver, BC V6Z 2E6

Fax number address for service (if any): 604-684-8139
E-mail address for service (if any): dbutcher@wilsonbutcher.com

Dated: May 31, 2021

Signature of David G. Butcher, Q.C.
☐ Defendant ☒ Lawyer for Defendants

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

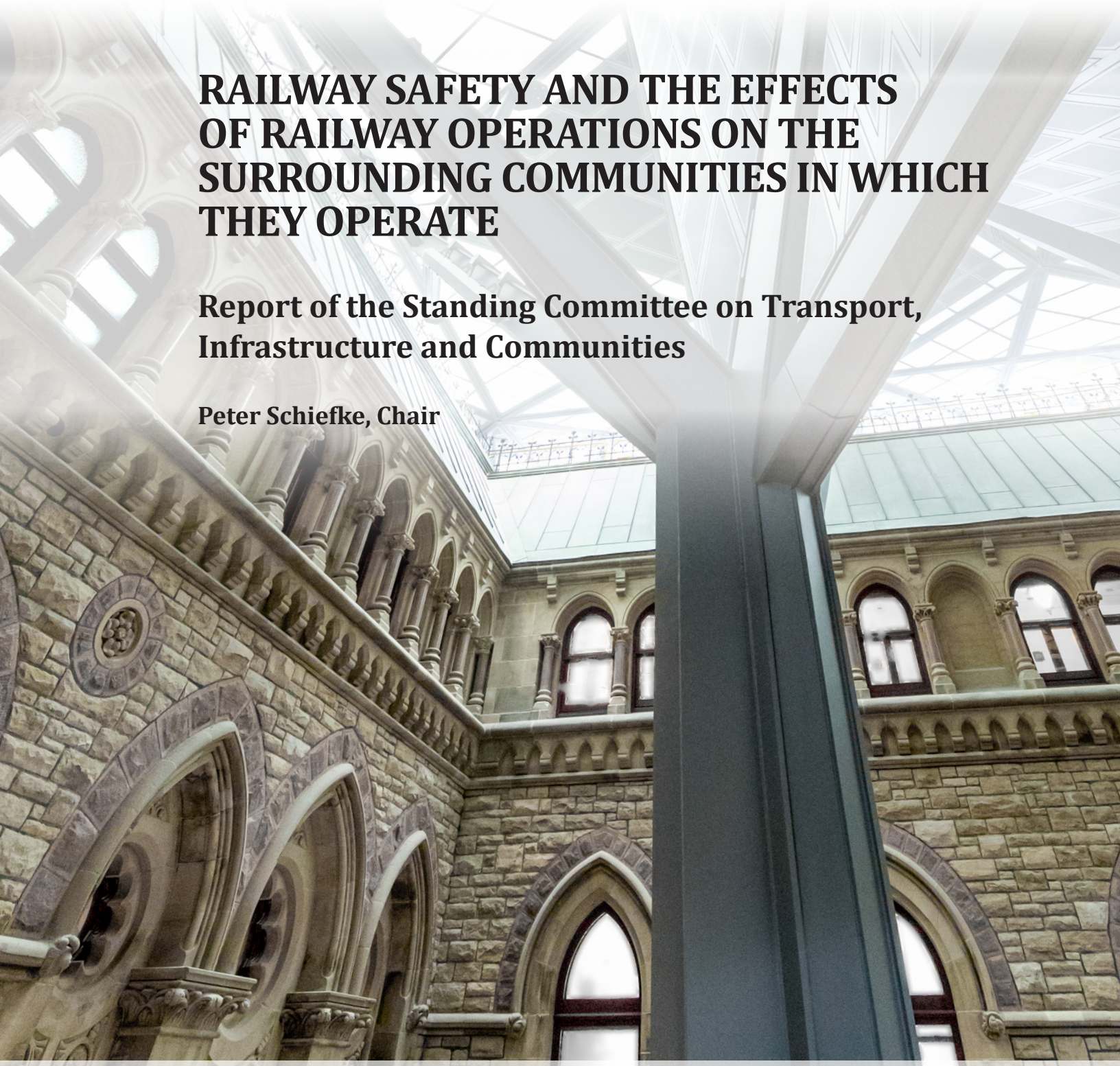
(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Attachment 5

HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA



RAILWAY SAFETY AND THE EFFECTS OF RAILWAY OPERATIONS ON THE SURROUNDING COMMUNITIES IN WHICH THEY OPERATE

Report of the Standing Committee on Transport, Infrastructure and Communities

Peter Schiefke, Chair

JUNE 2022
44th PARLIAMENT, 1st SESSION

Published under the authority of the Speaker of the House of Commons

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Peter Schiefke
Chair

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NOTICE TO READER

Reports from committees presented to the House of Commons

Presenting a report to the House is the way a committee makes public its findings and recommendations on a particular topic. Substantive reports on a subject-matter study usually contain a synopsis of the testimony heard, the recommendations made by the committee, as well as the reasons for those recommendations.

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THE STANDING COMMITTEE ON TRANSPORT, INFRASTRUCTURE AND COMMUNITIES

has the honour to present its

FIFTH REPORT

Pursuant to its mandate under Standing Order 108(2), the committee has studied railway safety and has agreed to report the following:

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A NOTE FROM MEMBERS

The members of the Committee note the passing of Dawn Remington, who provided witness testimony for this study, and express their deepest condolences to her family and loved ones, as well as their gratitude for her meaningful contribution to this study.

SUMMARY

Canada has one of the largest railway networks in the world, and the volume of freight transported by rail is on the rise. Despite some improvements made in the aftermath of the Lac-Mégantic disaster, many Canadians are concerned that this traffic increase will result in more railway transportation accidents.

In March 2021, the Standing Committee on Transport, Infrastructure and Communities (the Committee) undertook to study the Auditor General of Canada's Follow-up Audit on Rail Safety. This report follows an expansion of that study.

The Auditor General of Canada and the Canadian Transportation Accident Investigation and Safety Board both outlined their outstanding recommendations to Transport Canada, particularly regarding regulatory oversight and Safety Management Systems (SMS).

Witnesses also spoke to the Committee about the difficult relationship between municipalities and adjacent properties, as well as Indigenous communities, and the railway companies that run traffic through their communities. Railway crossings represented a significant concern.

The Committee was also told about labour condition issues facing railway workers and heard recommendations to improve fatigue management in the rail industry.

LIST OF RECOMMENDATIONS

As a result of their deliberations committees may make recommendations which they include in their reports for the consideration of the House of Commons or the Government. Recommendations related to this study are listed below.

Fatigue management

Recommendation 1

That Transport Canada, based on the latest science, and in consultation with labour representatives and other stakeholders, strengthen fatigue management rules for railway operators and require railway companies to do better in this area.

Ensuring predictable scheduling for rail workers

Recommendation 2

That Transport Canada, in consultation with labour representatives and other stakeholders, develop legislative and/or regulatory structures to ensure predictable scheduling for rail workers which reflect best practices for fatigue management.

Addressing the impact of deadheading on maximum duty periods

Recommendation 3

That Transport Canada, in consultation with labour representatives, review CN and CP rail's draft fatigue management plans, to address the impact of deadheading on the maximum duty period and require advance work schedule notice to employees.

Establishing standards for away from home rest facilities

Recommendation 4

That Transport Canada, in consultation with labour representatives and other stakeholders, establish adequate standards for away-from-home rest facilities used by rail employees to ensure proper rest between shifts.

Fund – Feasibility studies

Recommendation 5

That the Government of Canada establish a fund to support feasibility studies on developing and relocating rail lines from urban areas.

Fund – Development and relocation projects

Recommendation6

That the Government of Canada consider establishing a fund to support priority projects to develop and relocate rail lines from urban areas.

Recommendations of the Auditor General of Canada

Recommendation 7

That Transport Canada commit to fully and expeditiously implementing the recommendations of the Auditor General of Canada in the Follow-up Audit on the Transportation of Dangerous Goods.

Reviewing SMS effectiveness

Recommendation 8

That Transport Canada undertake a comprehensive review of Safety Management Systems in the rail sector to assess its effectiveness in improving safety standards.

Measuring Transport Canada effectiveness and operator compliance

Recommendation 9

That Transport Canada develop comprehensive indicators, as suggested by the Auditor General of Canada's report to measure the effectiveness of its rail safety oversight activities and compliance rates amongst operators, that these indicators be used to perform annual assessments of rail safety improvements and that the outcome be reported annually.

Following-up after compliance violations

Recommendation 10

That Transport Canada commit to consistent follow-up interventions following rail safety compliance violations to ensure operators have achieved compliance.

Reforming SMS regulations

Recommendation 11

That Transport Canada reform Safety Management System regulations to ensure that rail companies are sufficiently conducting risk assessments and addressing hazards.

Length of trains

Recommendation 12

That Transport Canada review the regulations to limit the length of trains to address safety and crossing-blockage concerns.

Unannounced on-site inspections

Recommendation 13

That Transport Canada significantly increase the number of unannounced on-site inspections to determine the safety of railway tracks, including rail company operations, and that such inspections be conducted by inspectors who are specialised in rail transportation.

Reporting accidents and incidents

Recommendation 14

That Transport Canada require rail operators to report all rail accidents and incidents identified by inspectors and company officials and that this information be made publicly available.

Ensuring adequate resources for Transport Canada

Recommendation 15

That the Government of Canada ensure Transport Canada has adequate resources for monitoring rail safety compliance, including hiring more rail inspectors.

Lac-Mégantic public inquiry

Recommendation 16

That the government launch an independent public inquiry into the Lac-Mégantic tragedy in order to investigate the incident and make recommendations to prevent a similar incident from happening again.

Lac-Mégantic bypass

Recommendation 17

That Transport Canada commit to building the Lac-Mégantic bypass as soon as possible and be transparent about its progress and completion timeline through consultation with Lac-Mégantic residents, landowners, and elected officials.

Lac-Mégantic bypass: maximum speed

Recommendation 18

That Transport Canada consider opting for a lower maximum speed on the Lac-Mégantic bypass than that proposed by Canadian Pacific and that this evidence-based approach be shared with the residents of Lac-Mégantic.

Expanding requirements for information sharing with municipalities and emergency services

Recommendation 19

That Transport Canada develop legislative and/or regulatory structures to require rail companies operating in Canada to provide, in a timely manner, detailed information sharing on the passage of dangerous goods with appropriate municipal officials and emergency services, beyond the current requirements under the Transportation of Dangerous Goods Act.

Removing a potential conflict of interest relating to the jurisdiction of private railway police

Recommendation 20

That the Government of Canada amend Section 44 and 44.1 of the Railway Safety Act to remove the potential conflict of interest from the jurisdiction of private railway police in investigations involving their companies.

Expanding non-compliance enforcement

Recommendation 21

That Transport Canada increase non-compliance enforcement by imposing fines on railway operators that commit safety violations and by using an escalation in the case of continued violations, up to and including revoking licences.

Enshrining whistleblowing protections into legislation

Recommendation 22

That the Government of Canada enshrine adequate whistleblowing protections into legislation to ensure rail company employees can report safety concerns without intimidation or retribution.

Mandating training standards

Recommendation 23

That Transport Canada mandate appropriate standards for emergency response training along rail routes and that this training include emergency responses to derailments and dangerous goods fires.

Granting timely final approval to ERAPs

Recommendation 24

That, as recommended by the Commissioner of the Environment and Sustainable Development in 2020, Transport Canada work to finalize timely approval to emergency response assistance plans for the transportation of dangerous goods.

Improving data collection

Recommendation 25

That, as recommended by the Commissioner of the Environment and Sustainable Development in 2020, Transport Canada improve its data collection to provide more complete information on railway companies and their compliance status.

Undertaking public regional risk assessments

Recommendation 26

That Transport Canada undertake public regional risk assessments to assess the impact of increased rail activity on communities, First Nations and the environment in regions that have seen significant increase in the transportation of dangerous goods.

Mandating maximum response times

Recommendation 27

That Transport Canada mandate maximum response times as part of rail companies' Emergency Response Assistance Plans for the transportation of dangerous goods.

Reducing the burden on municipalities and volunteer fire departments

Recommendation 28

That Transport Canada examine ways to reduce the burden on municipalities and volunteer fire departments for emergency responses to train accidents.

Improving railway companies' relationships with municipalities and Indigenous communities

Recommendation 29

That rail companies work to improve their relationships with municipalities, Indigenous communities, and neighbouring properties affected by railway operations, including residents affected by railway operations, establishing forums for dialogue and community engagement concerning rail activity.

Improving Canada Transportation Agency (CTA) responses to complaints received

Recommendation 30

The Committee recommends that:

- **the Canada Transportation Agency shall respond to complaints (noise, vibration, odour, etc.) with actionable and enforceable recommendations within 4 months of receiving a formal notice of complaint(s) from a local government and/or adjacent properties effected by railway operations;**

- **based on complaints received from neighbouring properties affected by railway operations, as per the above noted, limit hours of railway operations to exclude the resting hours between 23:00 and 06:00. This precedence has been established as per comments made by Witness - Mr. Tom Oommen – CTA;**

> *Mr. Tom Oommen - CTA: Thank you. Perhaps an example would be most enlightening. There was a case, for example, where there was a rail yard that was doing loading and switching operations overnight late at night. The agency heard the complaint. The order of the agency was that no further such operations would be done at nighttime. They were only to be conducted during the day. That is an enforceable order by the agency.*

- **upon completion of a (CTA) mediation process, the CTA provide a full report that includes recommendations within 6 months to all participants; and**

- **the Ministry of Transport evaluate the capacity and delegated authority of the CTA.**

Fully phasing-out DOT-111 tank cars

Recommendation 31

That Transport Canada continue to fully phase out the use of DOT-111 tank cars for the transportation of all forms of dangerous goods and, if possible, look at ways to expedite the process.

Addressing the TSB's recommendations on the 2019 derailment neat Field, B.C.

Recommendation 32

That Transport Canada move urgently to address the recommendations of the Transportation Safety Board in light of their investigation into the 2019 derailment near Field, British Columbia.

Addressing deficiencies at rural crossings

Recommendation 33

That Transport Canada ensure CN and CP Rail address infrastructure deficiencies at rural crossings.

RAILWAY SAFETY AND THE EFFECTS OF RAILWAY OPERATIONS ON THE SURROUNDING COMMUNITIES IN WHICH THEY OPERATE

INTRODUCTION

Canada's railway network is the third largest in the world, with over 40,000 route-kilometers of track[1]and freight transportation by rail playing a significant part in Canada's economy.[2]

Eight years after the Lac-Mégantic disaster,[3] in which 47 people lost their lives, the volume of freight traffic being transported by rail continues to rise. This has led to concerns of a potential increase in the number, if not necessarily the rate, of accidents.[4] Data for 2021 show an increase in both railway accidents (1,038) and rail-related fatalities (60) over 2020, but a decrease over the five-year average.[5] A specific recent example is the tragic derailment near Field, British Columbia, that took the lives of three crew members on 4 February 2019.[6]

It is in this context that, on 25 February 2021, the Auditor General of Canada, Ms. Karen Hogan, tabled in the House of Commons a report entitled *Report 5 – Follow-up Audit on Rail Safety—Transport Canada* (Follow-up Audit).

On 9 March 2021, the House of Commons Standing Committee on Transport, Infrastructure and Communities (the Committee) adopted the following motion:

> That the Committee hold a minimum of one meeting to study the Follow-up Audit on Rail Safety, that the Auditor General of Canada be invited to

1 Transport Canada, Rail Safety in Canada.

2 Auditor General of Canada, *Report 5 – Follow-up Audit on Rail Safety—Transport Canada*, 2021 (AGC, *Follow-up Audit*), paras 5.1-5.2.

3 Transportation Safety Board of Canada, *Rail transportation safety investigation R13D0054*, 6 July 2013.

4 AGC, *Follow-up Audit*, para 5.3.

5 Transportation Safety Board of Canada, *News Release*, 25 February 2022.

6 Transportation Safety Board of Canada, *Rail transportation safety investigation R19C0015*, 31 March 2022.

> appear for the first hour, that the Minister of Transport be invited for the second hour and that this meeting occur no later than 25 March 2021.

The Committee held one meeting on this subject on 13 April 2021, hearing from six witnesses, and subsequently, on 27 April 2021, adopted the following motion to expand and further the study:

> That in light of the numerous rail disasters that have occurred since the Committee last studied rail safety in 2016, and given projected increases in the volumes of dangerous goods transported through some regions of Canada, the committee commit to a follow-up study focusing on Canadian rail safety, including but not limited to the transport of dangerous goods, emergency response capacity and efficacy, and labour conditions for workers in the sector; that the study identify measures that can be taken by the federal government to improve rail safety; that the study consider impacts on the surrounding communities in which they operate; that the committee include the evidence and documentation from its study on the Follow-up Audit on Rail Safety; and that the study conclude in four meetings or fewer.

The Committee held two meetings on this subject, on 15 and 17 June 2021, heard from 17 witnesses, and received three briefs.

Parliament having subsequently been dissolved, the Committee voted to resume its study on Canadian rail safety, including but not limited to the transport of dangerous goods, emergency response capacity and efficacy, and labour conditions for workers in the sector, identifying measures that can be taken by the federal government to improve rail safety; and considering impacts on the surrounding communities in which railways operate. To that end, the following motion was adopted on 31 January 2022:

> That the Committee resume its study on rail safety from the 43rd Parliament; that the evidence and documentation received by the committee during the second session of the 43rd Parliament on the subject be taken into consideration by the committee in the current session; and that the study conclude after a further two meetings of witness testimony.

The Committee held two meetings on this subject, on 10 February 2022 and 3 March 2022, heard from 11 witnesses and received two briefs.

REGULATORY OVERSIGHT

Ms. Hogan's audit identified two fundamental gaps in Transport Canada's oversight activities that, in her view, require immediate action. Both relate to Transport Canada's inability to measure effectiveness: of railway companies' safety management systems (SMS), in the first instance, and of its own oversight activities, in the second. The Canadian Transportation Accident Investigation and Safety Board(TSB)'s Watchlist 2020, as reported by Kathleen Fox, Chair of the TSB, also lists safety management and regulatory surveillance as points of concern.

With regards to the second gap, Dawn Campbell, Principal with the Office of the Auditor General, gave the following example to describe the importance of measuring the effectiveness of Transport Canada's own oversight activities:

> if the compliance rates are improving but the accident rates are not, then that would be an indicator that the department needs to go back and take a look at whether it is focusing on the right areas or what exactly the nature of the concern is there.

Ms. Hogan explained that the problems her office identified are not an issue of data gathering, but rather of using the compliance data obtained from railway companies to inform risk-based planning. Mr. Brazeau told the Committee that the Railway Association of Canada is in constant dialogue with the TSB and Transport Canada to discuss data gathering methodology.

Safety Management Systems

The TSB's Watchlist 2020: Safety Management defines SMS as "an internationally recognized framework that allows companies to identify hazards, manage risk, and make operations safer—ideally before an accident occurs." Ms. Hogan described SMS as "a framework for safety thinking," a position that Ms. Fox supported in saying that SMS "needs to be a mindset," although she added that safety culture, while critical, cannot alone ensure an effective SMS.

For her part, Teresa Eschuk, National Vice-President of the Union of Canadian Transportation Employees, saw SMS as a form of self-regulation. Bruce Campbell, Adjunct Professor at York University's Faculty of Environmental and Urban Change and author of *The Lac-Mégantic Rail Disaster: Public Betrayal Justice Denied*, had a similar view, describing SMS as "a form of blame-shifting, providing cover for the government." This, in his view, is due to a shift away from prescriptive regulations in favour of SMS, with no additional regulatory resources provided and a reduction in the number of

unannounced on-site inspections which he felt resulted in railway companies being provided "much greater leeway to manage their operations."

The Auditor General's Follow-up Audit and the TSB's Watchlist both found that while Transport Canada does require railway companies to have SMS, it does not measure how effective these systems are at improving rail safety in daily operations.[7] The Follow-up Audit includes a list of recommendations made since 2007 by several parties, including the Committee, that Transport Canada measure the effectiveness of SMS[8]. In referring to this list, Ms. Hogan told the Committee: "I'm discouraged that Transport Canada hasn't acted on our recommendations from eight years ago."

Transport Canada representatives explained to the Committee that the department's focus over the past years had been on training and outreach with railway companies with regards to the new SMS regulations and requirements, as well as completing audits of all federally regulated railway company in Canada, which was done in 2020.[9] Michael DeJong, Director General of Rail Safety with the Department of Transport, added that a framework was then created to implement effectiveness audits in accordance with the Auditor General's recommendations, and that these audits were scheduled to begin in September 2021. Ms. Fox confirmed that she was aware of Transport Canada's indications that effectiveness audits were underway.

Ms. Eschuk expressed to the Committee her view that SMS can be useful as an additional layer of safety to be used by inspectors, but that SMS cannot be a replacement for inspections. Random and unannounced inspections, she claimed, can ensure railway companies are complying with policies, whereas "audits only reveal what went wrong." Mike Martin, Policy Advisor for the Union of Canadian Transportation Employees, added that inspectors should be specialists in one mode of transportation to avoid expertise being "watered down." Ms. Hogan also recommended the use of random inspections as part of a larger strategy that includes SMS audits and reactive inspections.

From an industry perspective, Kyle Mulligan, Chief Engineer with the Canadian Pacific Railway (CP), told the Committee that both the Canadian National Railway Company(CN)

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7 Standing Committee on Transport, Infrastructure and Communities (TRAN), *Evidence*, 44th Parliament, 1st Session, Kathleen Fox, Chair, Canadian Transportation Accident Investigation and Safety Board (TSB); Karen Hogan, Auditor General of Canada, Office of the Auditor General (OAG).

8 AGC, *Follow-up Audit*, Exhibit 5.5.

9 TRAN, *Evidence*: Michael DeJong, Director General, Rail Safety, Department of Transport (Department of Transport); Aaron McCrorie, Associate Assistant Deputy Minister, Safety and Security, Department of Transport (Department of Transport).

and CP are employing new technologies to improve their inspection processes, allowing a move towards "dynamic, in-motion, performance based" inspections, rather than "a traditional visual, static inspection in which the train is not moving." Tom Brown, Assistant Vice-President of Safety with CN, also told the committee about new technologies being deployed, such as CN's "autonomous track inspection program" and "automated inspection portals" which, in conjunction with predictive analysis algorithms, can help better schedule train and track maintenance.

Prof. Bruce Campbell expressed serious concern over track infrastructure issues, which Robert Bellefleur, spokesperson for the Coalition des citoyens et organismes engagés pour la sécurité ferroviaire de Lac-Mégantic, attributed to increased rail wear due to "longer, heavier, and faster trains."

Risk Assessments

As Mr. McCrorie told the Committee, railway companies are required to conduct risk assessments of their operations, particularly when transporting dangerous goods. However, Chris J. Apps, Director of the Kitselas Lands and Resources Department for Kitselas First Nation reported dissatisfaction with the consultation process of such assessments. He explained that Kitselas First Nation was informed it would be able to participate in a key route assessment process but was limited to a 500-character submission, to which it received no response. Mr. Apps added that Kitselas First Nation felt the need to undertake its own safety assessment due to increasing rail traffic.[10]

Ms. Hogan indicated that risk assessments should have a standard procedure but be tailored to each region to reflect its "uniqueness" in terms of "different geographies, different temperatures, […] whether there are larger stretches of tracks that run through communities versus in areas that are less populated." Similarly, Dawn Remington, Chair of the Friends of Morice-Bulkley, relayed a request by local governments to the Minister of Transport for "an independent, public risk assessment of hazardous traffic on the northern B.C. rail line."

Railway Police Services

As the Committee heard from Lyndon Isaak, President of the Teamsters Canada Rail Conference, section 44 of the *Railway Safety Act* provides for the establishment of specialised constables to provide police services on, and within 500 meters of, "property owned, possessed or administered by a railway company." Mr. Isaak argued that

10 Kitselas First Nation (brief).

investigations of railway incidents by the company's own police force constitute a concerning conflict of interest and pointed to the recent example of the investigation into the fatal derailment on Field Hill, near Field, British Columbia. He recommended that section 44 be amended to "curb or change the jurisdiction and the power of these corporate police forces."

Marc Brazeau, President and Chief Executive Officer of the Railway Association of Canada, expressed the view that railway police services receive the same training as, and collaborate closely with, other police services, but that they also have an added familiarity with the workings of railways. He also argued that they are able to more quickly deal with trespassing incidents, as they are located on site.

For her part, Ms. Fox stressed the difference between a TSB investigation and a criminal matter pursued by police. She told the Committee that the TSB does not, and in her view should not, play a role in determining civil or criminal liability, as that would make it more difficult for investigators to build trust and cooperation to gather truthful information.

TRANSPORTATION OF DANGEROUS GOODS

Several witnesses[11] cited data showing encouraging decreases in the number of railway accidents in Canada, with Gregory Kolz, Director, Government Relations at the Railway Association of Canada, declaring Canada's rail network to be "the safest in North America and among the safest in the world." Nevertheless, many others[12] expressed concern with the transportation of dangerous goods through their communities. The Committee heard that smaller municipalities, in particular, simply do not have the resources to adequately take charge in the event of a rail disaster, often depending on volunteer fire fighting services.[13]

In particular, some municipal representatives told the Committee of their struggles to obtain advance warning from railway companies of the transit of dangerous goods through their community. They indicated that the process is extremely difficult to

11 TRAN, *Evidence*: Marc Brazeau, President and Chief Executive Officer, Railway Association of Canada (RAC); Fox (TSB), McCrorie (Department of Transport).

12 TRAN, Evidence: Isabelle Bleau, City Councillor, City of Boucherviillle, Comité ferroviaire de Boucherville (Boucherviillle); Michel Bourdeau, Mayor, Municipality of Terrasse-Vaudreuil (Terrasse-Vaudreuil); Dawn Remington, Chair, Friends of Morice-Buckley (Friends of Morice-Buckley); Gerry Thiessen, Chair, Regional District of Buckley-Nechako (Buckley-Nechako); June Wolfrath, Member, Port Robinson Proud.

13 TRAN, Evidence: Bourdeau (Terrasse-Vaudreuil); Remington, (Friends of Morice-Buckley); Thiessen, (Buckley-Nechako).

navigate, with information often coming only after a train had passed, if at all.[14] Mr. Thiessen related his community's suggestion to CN for providing a cargo manifest to all municipalities along a train's route, to ensure that fire services, particularly volunteers, can identify potential concerns ahead of time. He also reported that this suggestion has received "very little response" from CN.

In response to these concerns, Mr. Kolz told the Committee that municipalities are in fact advised of dangerous goods travelling by rail in order to help them train and prepare emergency responses. Mr. Brazeau clarified that first responders have access to this data through the AskRail mobile app. However, due to security concerns over the sensitive nature of this information, he explained that the app is available only to those first responders who have completed training provided by TRANSCAER. This training is offered free of charge and organized by the Railway Association of Canada and the Chemistry Industry Association of Canada. Mr. Brown also indicated that, in addition to offering training to first responders in some areas, CN maintains caches of emergency response equipment in the "unlikely" event of a dangerous goods derailment. He added, however that the company does not have a maximum allowable response time for responding to a major incident involving dangerous goods.

DOT-111s and Lac-Mégantic

Following the Lac-Mégantic tragedy, the TSB identified DOT-111 tank cars as insufficiently crash resistant.[15] Benoit Turcotte, Director General, Transportation of Dangerous Goods with the Department of Transport, told the Committee that a phase-out schedule for the DOT-111s was risk-based, in accordance with the volumes of dangerous goods being transported in those cars. As such, crude oil has not been transported in DOT-111 tank cars since 2016, and they will not be permitted to transport any flammable liquids by 2025.

Isabelle Bleau, City Councillor for the City of Boucherville with the Comité ferroviaire de Boucherville, expressed apprehension, however, that, until the phase-out process is complete in 2025, "those cars could continue to transport refined oil or any other dangerous goods through our cities." She added that "transportation of heavy oil and dangerous goods through our densely populated areas will continue to pose risks."

14 TRAN, *Evidence*: Bleau (Bouchervillle); Bourdeau (Terrasse-Vaudreuil); Benoit Turcotte, Director General, Transportation of Dangerous Goods, Department of Transport (Department of Transport).

15 Transportation Safety Board of Canada, Reassessment of the response to TSB recommendation R14-01.

Mr. McCrorie told the Committee that Transport Canada has addressed most of the recommendations made following the Lac-Mégantic derailment, and that it continues to work on those that remain outstanding. When asked the reason for the delay, he responded that it was simply an issue of prioritizing.

Prof. Bruce Campbell said that he was troubled that an independent public inquiry has never been held with regard to Lac-Mégantic. Mr. Bellefleur echoed that sentiment, saying the absence of an inquiry "has prevented people from coming to terms with the tragedy," describing it as "is a big open wound." Prof. Bruce Campbell added that, in his view, "CP's continued denial of its role in the disaster is inexcusable, though not surprising."

Emergency Response Assistance Plans

As Mr. McCrorie told the Committee, Transport Canada requires railway companies to maintain an emergency response assistance plan (ERAP), that "describes the response capabilities, including the specialized personnel and equipment needed to respond to an accident involving dangerous goods." He described these as being part of Transport Canada's overall strategy of "building layers of protection," with ERAPs putting "the onus on companies to have in place procedures so that they have the capacity to respond when necessary to accidents."

Mr. Turcotte explained that these ERAPs are not public but are reviewed by Transport Canada's transportation of dangerous goods program through a "careful vetting process, confirmation and a sort of audit." However, Chad McPherson, Locomotive Engineer with Teamsters Canada Rail Conference, related to the Committee that the procedures included in emergency response plans "are often simply re-signed from the previous year, with little attention given to mock drills or practices to prepare employees and the public for an emergent situation that may involve evacuation."

COMMUNITY IMPACT

The Committee heard from many witnesses on the interactions between railway companies and the communities they affect, a relationship that Gian-Carlo Carra, City Councillor of the City of Calgary, described as being "based on unhelpful conflict."

Mr. Brazeau spoke of collaboration with municipalities and urban developers, while Mr. Kolz highlighted the importance of a collaborative approach, "exemplified by the proximity initiative, which is a partnership between the (Railway Association of Canada) and the Federation of Canadian Municipalities." Similarly Vince Gagner, General

Manager at Bluewater Association for Safety, Environment and Sustainability, also spoke of a consultation-based model used in Sarnia, Ontario, which was informed through discussions with First Nations communities to address community complaints. He clarified, however, that this "holistic look at risk" is not currently widespread. Mr. Apps described his own community's relationship with railway companies as inconsistently "hot and cold."

Complaints against railway companies, particularly regarding issues like noise and vibration, can be raised with the Canadian Transportation Agency (CTA), which will ensure a dialogue and help facilitate or mediate a solution if necessary.[16] A final step can then be an enforceable order by the CTA.[17] Tom Oommen, Chief Compliance Officer with the CTA, also confirmed to the committee that his agency will keep track of previous complaints and ensure that the railway company is complying with any agreement or order. Continued problems would then be addressed by Transport Canada through "graduated enforcement mechanisms."[18]

Mr. Oommen provided the following example for clarification:

> There was a case, for example, where there was a rail yard that was doing loading and switching operations overnight late at night. The agency heard the complaint. The order of the agency was that no further such operations would be done at nighttime. They were only to be conducted during the day. That is an enforceable order by the agency.

Jonathan LePera, a member of Port Robinson Proud, expressed frustration with his own experience with the CTA's dispute resolution process, as he indicated that no changes had occurred after two mediation sessions, and that no options for additional escalation had been offered.

Mr. Carra, in describing the current system between railway companies and municipalities as "conflict-based," proposed creating "a new framework that understood the essential role that both play in each other's success." Michel Bourdeau, Mayor of the Municipality of Terrasse-Vaudreuil, also agreed that the legislative framework should compel railway companies to cooperate with municipalities, while Mr. Apps stressed the importance of balancing the benefits of industrial development for a community with safety concerns stemming from increased rail traffic.

16 TRAN, *Evidence*: Tom Oommen, Chief Compliance Officer, Canadian Transportation Agency (CTA).

17 TRAN, *Evidence*: Oommen (CTA).

18 TRAN, *Evidence*: DeJong (Department of Transport).

Ms. Bleau told the Committee that her community of Boucherville commissioned its own feasibility study to determine whether a railway line could be diverted to avoid the urban area. She believes the federal government should help pay for such feasibility studies, an idea supported by Mr. Bourdeau.

Rail Crossings

Rail crossings were raised throughout the study as a particularly contentious issue, especially relating to the length of trains. Mr. McPherson gave an example of multiple blocked crossings taking place in Regina, Saskatchewan:

> a train at approximately 9,600 feet, or 2.9 kilometres, is required to stop and line manual switches. While doing this, the train is occupying 11 crossings. This is from Winnipeg Street and Ring Road all the way down to downtown Regina. Many of these crossings are major roadways with high vehicular traffic volumes. There's also a school playground with a pedestrian crossing in the area that is blocked for a significant amount of time while this process happens.

Terry Ugulini, Mayor of the City of Thorold, and Mr. Bourdeau both told the Committee that similar situations occur in their respective communities, causing significant stress. Mr. Bourdeau added that motorists in Terrasse-Vaudreuil have to leave home early to avoid blocked rail crossings, and occasionally speed through smaller streets and roll through stop signs to attempt a detour. Cliff Penn, a member of Port Robinson Proud, also expressed concern about the impact of blocked rail crossings on first responders' response times. In fact, several witnesses spoke to the particular challenges of blocked rail crossings in the small community of Port Robinson, Ontario.[19]

Ms. Fox confirmed that significant improvements were made to grade crossing regulations and standards in 2014 and, as a result, the TSB no longer has outstanding recommendations on this issue. However, she indicated that the length of time that a train can occupy a crossing is currently being investigated.

Some witnesses also referred to Operation Lifesaver, a national not-for-profit funded by Transport Canada and the Railway Association of Canada that works to raise public awareness of rail safety in order to prevent rail crossing and "trespassing" deaths.[20] Mr. Bourdeau, however, was dismissive of the program, which he described as a

19 TRAN, *Evidence*: Jonathan LePera, Member, Port Robinson Proud; Cliff Penn, Member, Port Robinson Proud; and Terry Ugulini, Mayor, City of Thorold.

20 TRAN, *Evidence*: Brazeau (RAC); Gregory Kolz, Director, Government Relations, Railway Association of Canada (RAC); McCrorie (Department of Transport).

once-a-year event in which "(p)eople come here one fine morning and hand out brochures about driver safety."

LABOUR CONDITIONS

The labour condition issue that was most raised during this study related to fatigue management. As Prof. Bruce Campbell reminded the Committee, sleep-related fatigue has been identified as a contributing or risk factor in 31 rail occurrences since 1994, and fatigue management has consistently been on the TSB's Watchlist since 2016. He described it as "a major safety risk that's still not dealt with," because "(s)cience-based fatigue management practices continue to be thwarted by the companies."

Since the publication of the TSB's Watchlist 2020, new duty rules have come into effect in November 2020 to address the issue of fatigue management for railway employees. Ms. Fox told the Committee that it may take some time to fully appreciate the impact of these new rules and that the TSB would continue to look at fatigue as a "possible causal or contributing risk factor" during investigations. Mr. McPherson expressed his view that, while the new rules are a significant improvement, much more needs to be done, particularly regarding the accuracy of train lineups. He explained that scheduling inaccuracies can result in workers being on stand-by, and therefore unable to properly rest, for hours at a time, before beginning a twelve-hour shift.

For his part, Mr. Isaak dismissed the draft fatigue management plans submitted by CN and CP as insufficient, particularly with regards to the impact of "deadheading"[21] on the maximum duty period and advance notice for work schedules. He added that many away-from-home rest facilities used by the railroads are "woefully insufficient for meaningful rest" and recommended the establishment of separate federal standards for these facilities.

Another issue raised during this study was additional protections for whistle-blowers, which Ms. Eschuk recommended be enshrined in legislation and promoted through a new independent office. Prof. Bruce Campbell reminded the Committee of its own recommendation[22] that Transport Canada review whistle-blower protection to determine if SMS is the appropriate framework. He added that, in his view, it is "clearly not an appropriate framework" given that Canada was, in 2021, found to be tied for last

21 "Deadheading" is defined under Section 3.1 of the Duty and Rest Period Rules for Railway Operating Employees as "the authorized transportation of an employee from one location to another at the direction of the railway company, without the employee operating railway equipment and does not include commuting."

22 TRAN, 42nd Parliament, 1st Session, *An Update on Rail Safety*, June 2016.

place in a comparison of the effectiveness of 37 countries' whistle-blowing frameworks.[23]

CONCLUSION

The Committee heard throughout this study of significant improvements made to rail safety in Canada since the Lac-Mégantic tragedy. Nevertheless, it is clear from witness testimony that much work remains to be done, particularly with regards to measuring the effectiveness of SMS and Transport Canada's own oversight activities, as well as the relationship between railway companies and the municipalities, adjacent properties, and Indigenous communities through which they transport dangerous goods.

23 *Are whistleblowing laws working? A global study of whistleblower protection litigation*, a collaborative report by the Government Accountability Project and the International Bar Association, found that "Canada, Lebanon, and Norway's laws are tied for the world's weakest whistleblower protection laws, only matching one out of 20 criteria" (at page 10).

APPENDIX A
LIST OF WITNESSES

The following table lists the witnesses who appeared before the committee at its meetings related to this report. Transcripts of all public meetings related to this report are available on the committee's webpage for this study.

Organizations and Individuals	Date	Meeting
Canadian Transportation Accident Investigation and Safety Board	2022/02/10	4
Kathleen Fox, Chair		
André Lapointe, Chief Operating Officer		
City of Calgary	2022/02/10	4
Gian-Carlo Carra, City Councillor		
Kitselas First Nation	2022/02/10	4
Chris J Apps, Director Kitselas Lands and Resources Department		
Teamsters Canada Rail Conference	2022/02/10	4
Lyndon Isaak, President		
Bluewater Association for Safety, Environment, and Sustainability	2022/03/03	7
Vince Gagner, General Manager		
Municipality of Terrasse-Vaudreuil	2022/03/03	7
Michel Bourdeau, Mayor		
Railway Association of Canada	2022/03/03	7
Marc Brazeau, President and Chief Executive Officer		
Gregory Kolz, Director Government Relations		
Union of Canadian Transportation Employees	2022/03/03	7
Teresa Eschuk, National Vice-President		
Mike Martin, Policy Advisor		

APPENDIX B
LIST OF WITNESSES

The following table lists the witnesses who appeared before the committee at its meetings related to this report. Transcripts of all public meetings related to this report are available on the committee's webpage for this study.

43rd Parliament – 2nd Session

Organizations and Individuals	Date	Meeting
Canadian Transportation Agency	2021/06/15	38
Tom Oommen, Chief Compliance Officer		
Comité ferroviaire de Boucherville	2021/06/15	38
François Beaulne, Chair Subcommittee		
Isabelle Bleau, City Councillor City of Boucherville		
Department of Transport	2021/06/15	38
Michael DeJong, Director General Rail Safety		
Aaron McCrorie, Associate Assistant Deputy Minister Safety and Security		
Benoit Turcotte, Director General Transportation of Dangerous Goods		
Friends of Morice-Bulkley	2021/06/15	38
Dawn Remington, Chair		
Regional District of Bulkley-Nechako	2021/06/15	38
Gerry Thiessen, Chair		
As an individual	2021/06/17	39
Bruce Campbell, Adjunct Professor, Faculty of Environmental and Urban Change, York University Author of The Lac-Mégantic Rail Disaster: Public Betrayal Justice Denied		
City of Thorold	2021/06/17	39
Terry Ugulini, Mayor		

Organizations and Individuals	Date	Meeting
Coalition des citoyens et organismes engagés pour la sécurité ferroviaire de Lac-Mégantic	2021/06/17	39
Robert Bellefleur, Spokesperson		
Comité ferroviaire de Boucherville	2021/06/17	39
François Beaulne, Chair Subcommittee		
Isabelle Bleau, City Councillor City of Boucherville		
Port Robinson Proud	2021/06/17	39
Jonathan LePera, Member		
Cliff Penn, Member		
June Wolfrath, Member		
Teamsters Canada Rail Conference	2021/06/17	39
Chad McPherson, Locomotive Engineer		

APPENDIX C
LIST OF BRIEFS

The following is an alphabetical list of organizations and individuals who submitted briefs to the committee related to this report. For more information, please consult the committee's webpage for this study.

Bluewater Association for Safety, Environment, and Sustainability

Kitselas First Nation

APPENDIX D
LIST OF BRIEFS

The following is an alphabetical list of organizations and individuals who submitted briefs to the committee related to this report. For more information, please consult the committee's webpage for this study.

43rd Parliament – 2nd Session

Campbell, Bruce

Coalition des citoyens et organismes engagés pour la sécurité ferroviaire de Lac-Mégantic

Comité ferroviaire de Boucherville

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the committee requests that the government table a comprehensive response to this Report.

A copy of the relevant Minutes of Proceedings (Meetings Nos. 4, 7, 17 and 18) from the 44th Parliament, 1st Session and (Meetings Nos. 38 and 39) from the 43rd Parliament, 2nd Session is tabled.

Respectfully submitted,

Peter Schiefke
Chair

Attachment 6

No. S211085
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PAMELA FRASER and THE ESTATE OF DYLAN PARADIS

PLAINTIFFS

AND:

CANADIAN PACIFIC RAILWAY LTD.; CP POLICE SERVICE CHIEFS AL SAUVE and KEN MARCHANT; CONSTABLE MARK TATARYN; KEITH CREEL; CANADA PACIFIC RAILWAY LTD. BOARD OF DIRECTORS; THE ATTORNEY GENERAL OF CANADA representing THE MINISTER OF TRANSPORT

DEFENDANTS

RESPONSE TO CIVIL CLAIM

Filed by: CP Police Service Chiefs Al Sauve and Ken Marchant (the "Chiefs")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 - The Chiefs' Response to Facts

1. No facts alleged in Part 1 of the notice of civil claim ("NOCC") are admitted.

2. All facts alleged in Part 1 of the NOCC are denied.

3. The facts alleged in paragraphs 3, 22 and 31 of Part 1 of the NOCC are outside the knowledge of the Chiefs.

4. To the extent that facts are alleged in Part 3 of the NOCC, those facts are denied.

Division 2 - The Chiefs' Version of Facts

5. This action against the Chiefs has no chance of success and is an abuse of this court's process because:

    a) Canadian Pacific Railway Company has an unquestionable commitment to safety as a top priority and as an integral part of its business.

    b) The Chiefs are not, at law, personally liable for any of the torts alleged in the NOCC.

c) The claims against the Chiefs are statute barred by operation of workers compensation legislation.

The defendants "CP Police Service Chiefs Al Sauve and Ken Marchant"

6. The correct name of the corporate defendant named as "Canadian Pacific Railway Ltd." is Canadian Pacific Railway Company ("CP").

7. The Canadian Pacific Police Service ("CPPS") is an arm's length railway law enforcement agency that performs policing functions across six Canadian provinces and in the United States of America.

8. All members of the CPPS in Canada:

a) are appointed by a Superior Court justice pursuant to Part IV.1 of the *Railway Safety Act*, R.S.C. 1985, c. 32 (4th Supp.);

b) are appointed to enforce the laws of Canada and the provinces insofar as that enforcement is related to the protection of CP property and the protection of persons on CP property;

c) have jurisdiction within 500 meters of CP property;

d) are peace officers within the meaning of section 2 of the *Criminal Code of Canada*;

e) are independent officers of the Crown, notwithstanding their employment by CP; and

f) have no jurisdiction in the United States of America.

9. Ken Marchant joined the CPPS in December 2011 as Deputy Chief of Police and was formally appointed Chief of Police on May 15, 2014. He retired from that position on June 17, 2019. His last day on active duty was April 26, 2019.

10. Al Sauve joined the CPPS in February 2012. He was appointed Deputy Chief of Operations in 2015 and Chief of Police in July, 2019.

The Accident

11. On or about February 4, 2019, Mr. Paradis and two other CP employees were tragically killed following the derailment of a westbound grain train between the Upper and Lower Spiral Tunnels east of Field, BC (the "Accident").

12. Although challenged by weather conditions and the remote location of the Accident, members of the CPPS attended at the derailment and secured the scene for other investigative agencies. Investigations began immediately with involvement of:

    a) Transport Canada, which administers the *Railway Safety Act* and regulations thereto;

    b) the TSB, pursuant to the *Canadian Transportation Accident Investigation and Safety Board Act*, S.C. 1989, c. 3, and the *Transportation Safety Board Regulations*, SOR/2014-37;

    c) Department of Employment and Social Development, pursuant to the *Department of Employment and Social Development Act*, S.C. 2005, c. 34;

    d) WorkSafe BC, pursuant to the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 and the *Workers Compensation Act*, R.S.B.C. 2019, c. 1;

    e) the BC Coroners Service, pursuant to the *Coroners Act*, S.B.C. 2007, c. 15; and

    f) the Royal Canadian Mounted Police, pursuant to the *Royal Canadian Mounted Police Act*, R.S.C. 1986, c. R-10.

    Each of these agencies, in addition to having jurisdiction to investigate, also have the skill, expertise, and experience to thoroughly investigate accidents of this kind. At all times, the CPPS has been open and committed to full cooperation with all of these agencies.

13. In close collaboration with the TSB and after completing all necessary safety checks, on February 6, 2019, CP re-opened its mainline through Field, BC. In addition, CP took further steps to enhance safety by supplementing its existing protocols for trains on mountain grades across its network.

14. In or around December 2020, a formal RCMP investigation was opened with respect to the Accident. The Chiefs understand this investigation is ongoing.

15. In specific response to paragraph 50 of Part 1 and paragraph 13 of Part 3 of the NOCC, the Chiefs deny that following the Accident, or generally, any members of the CPPS assumed, asserted, or continued to assume or assert any exclusive jurisdiction to investigate the Accident to the exclusion of any independent police agencies. To the contrary, the RCMP was on site immediately after the Accident and always had jurisdiction to investigate in accordance with its legal authority and discretion, which it has done.

16. The Chiefs deny all allegations in the NOCC regarding any alleged coverup, including by alleged interference with investigations conducted by CPPS members, the RCMP, or any other agency, and by the destruction or concealment of evidence.

17. The Chiefs also specifically deny all allegations in paras. 21-23 and 54 of Part 1 of the NOCC, and elsewhere in the NOCC, in relation to the resignation of the defendant Constable Mark Tataryn.

18. In response to paras. 4-16 and 50-57 of Part 1 of the NOCC and paras. 11-16, 25-28, and 38-46 of Part 3 of the NOCC, the Chiefs deny that they have exclusive jurisdiction within 500 meters of CP property and say that pursuant to the *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10, the RCMP has jurisdiction to investigate crimes anywhere in Canada, including on CP property.

19. In further response to paras. 4-16 and 50-57 of Part 1 of the NOCC and paras. 11-16, 25-28, and 38-46 of Part 3 of the NOCC, the Chiefs:

    a) deny that the CPPS is owned and controlled by CP and is a "wholly-owned subsidiary of CP";

    b) say that the jurisdiction of the members of the CPPS is defined by s. 44 of the *Railway Safety Act*;

    c) admit that they are employees of CP;

    d) admit that they receive direction from CP management on administrative and, occasionally, operational matters;

    e) deny that they receive direction or instructions from CP management on CPPS investigations, and say that CP management has no authority to direct police investigations;

f) admit that they are responsible for protecting CP property and assets but deny that they are responsible for protecting CP's commercial interests;

g) admit that they are public officers when they are acting within the jurisdiction granted by the *Railway Safety Act*.

h) deny any pattern of interference with CPPS investigations by CP or its management;

i) deny any pattern of CPPS asserting exclusive jurisdiction over investigations;

j) say that paragraphs 9 and 13-15 of Part 1 of the NOCC contain irrelevant allegations of fact, and should be struck;

k) say that the CPPS initated an emergency response to the Accident and conducted an investigation into the circumstances of the Accident including:

(i) attending and securing the scene and evidence;

(ii) taking photographs;

(iii) interviewing CP employees who had knowledge of the circumstances preceding the Accident;

(iv) determining whether any of the crew were impaired by drugs or alcohol;

(v) gathering and returning the effects of the deceased crew members; and

(vi) cooperating with all other investigating agencies.

l) say that CPPS found no evidence that a criminal offence was committed by any party, which would support any continuing police investigation, and that none of the other investigating agencies ever advised that a criminal investigation should be undertaken;

m) deny that they or the CPPS foreclosed any investigation into criminal liability;

n) deny that they failed to properly train CPPS members;

o) deny that they failed to conduct a fair, independent, and impartial investigation;

p) deny that they failed to keep victims' families apprised of the investigation, and say that the families had the Chiefs' direct contact information;

q) deny that they failed to ensure that the CPPS remained operationally independent, and that they took instructions from CP management;

r) deny any collusion with CP management in the investigation of the Accident;

s) deny prematurely terminating the investigation of the Accident;

t) deny that they ordered, or failed to prevent, destruction or concealment of evidence;

u) deny that they allowed anyone to "clean up" the scene;

v) deny that they failed to refer investigation of the Accident to an independent third party;

w) deny that they terminated Cst. Tataryn for raising questions about CP's alleged coverup, and specifically deny the allegation in para. 57 of Part 1 of the NOCC; and

x) deny that they engaged in an unlawful conspiracy as alleged or at all.

20. In response to the whole of the NOCC, the Chiefs say that they, and the CPPS, acted at all times in accordance with the standards applicable to railway police in British Columbia.

21. In further response to the whole of the NOCC, the Chiefs deny that they are or were guilty of gross negligence, dishonesty, misfeasance, or malicious or wilful misconduct.

Division 3 - Additional Facts

The plaintiff Estate has received compensation

22. At the time of his death, Mr. Paradis was a CP railway conductor, resident in Calgary, Alberta. He was killed in the Accident arising out of and in the course of his employment with CP. As a result, since the Accident, Mr. Paradis' surviving spouse and dependent children has received compensation through the Alberta Workers' Compensation Board and WorksafeBC.

23. The Chiefs have no knowledge of the appointment of any representative of the Estate of Dylan Paradis.

The plaintiffs' accusations are improper and incapable of honest belief

24. The plaintiffs can have no genuine belief in the allegations that the Chiefs acted with intention to compromise the safety of CP's railway operations or intended to injure Mr. Paradis, his family, or other CP employees as alleged throughout the NOCC.

25. All such allegations made in the NOCC are improper and intended to be inflammatory.

Part 2: RESPONSE TO RELIEF SOUGHT

26. The Chiefs oppose the granting of relief sought in paragraphs 1-2 of Part 2 of the NOCC and seek dismissal of the claim with costs.

Part 3: LEGAL BASIS

Claims against the Chiefs are barred by the common law

27. The Chiefs are not legally responsible for the acts or decisions of any members of the CPPS or any employee or officer of CP. The Chiefs rely upon the common law, including: *McCleave v. Moncton* (1902), 32 SCR 106; *Attorney-General for New South Wales v. Perpetual Trustee Co. Ltd*, [1955] AC 457 (P.C.); and *Rosario v. Gladney*, 1998 CanLII 1787 (BCSC).

Claims against the Chiefs are barred by workers compensation legislation

28. At the time of his death, Mr. Paradis was a worker, CP was an employer within the meaning of the Alberta *Workers' Compensation Act*, R.S.A. 2000, c W-15 ("*Alberta Act*") and the British Columbia *Workers Compensation Act*, R.S.B.C. 1996, c. 492 ("*1996 BC Act*"), which was subsequently repealed and replaced by the *Workers Compensation Act*, R.S.B.C. 2019, c. 1 ("*2019 BC Act*").

29. The injuries suffered by Mr. Paradis which led to his death arose out of and in the course of his employment with CP.

30. The essential character of the plaintiffs' claim is liability for the Accident which led to Mr. Paradis' death in the course of his employment with CP. As a result, all of the plaintiffs' claims against the Chiefs, whether brought on behalf of Mr. Paradis, his Estate or any of his family members, are barred by s. 21 of the *Alberta Act*, s. 10(1) of the *1996 BC Act*, and s. 127 of the *2019 BC Act*. These claims have no chance of success.

31. The Alberta Act and/or the BC Acts further bar action against any "other worker" in respect of a death arising out of and in the course of employment. The Chiefs are "other workers" within the meaning of the legislation. As a result, all of the Plaintiffs' claims, whether bought on behalf of the Estate of Mr Paradis or any family members, are barred as against the Chiefs and have no chance of success.

No negligence, misfeasance, conspiracy or breach of Charter rights

32. In response to the plaintiffs' claims of negligence, misfeasance, and conspiracy, the Chiefs:

a) deny that they owe or owed a duty of care to the plaintiffs respecting any investigation through CPPS;

b) deny that they owe or owed a duty of care to the plaintiff Pamela Fraser or to Mr Paradis or his family;

c) deny that they were negligent or grossly negligent at any time before or after the Accident;

d) deny that they engaged in any deliberate or unlawful conduct in any capacity as a public officer;

e) deny that any of their actions were unlawful as alleged or at all;

f) deny that they conspired with each other or CP as alleged or at all; and

g) deny that they knew or ought to have known that any of their actions would cause any loss, injury, damage, or expense (collectively, "Damages") to the plaintiffs.

h) deny that that any claim of systemic negligence exists against them in law, and deny that any such systemic negligence existed at any time before or after the accident.

33. In response to the claims for breach of the plaintiffs' rights under section 7 of the *Canadian Charter of Rights and Freedoms*, the Chiefs:

a) deny that the Chiefs are subject to the *Charter*;

b) deny that any breach of the plaintiffs' *Charter* rights could have occurred in connection with the Accident or any subsequent investigation;

c) deny that the plaintiff Estate has any *Charter* rights enforceable in these proceedings; and

d) deny that the plaintiff Pamela Fraser has any s. 7 *Charter* rights in connection with the Accident or any subsequent investigation.

34. The Chiefs deny any liabilty to the plaintiffs, whether vicarious or direct, for any Act or omission by the Defendant Cst. Mark Tataryn.

No causation

35. In the alternative, if the Chiefs are found to be liable for any act, omission, or breach, the Chiefs deny that any such act, omission, or breach is the cause, in law or in fact, of the Accident or of any Damages suffered by the plaintiffs whatsoever, including in connection with the Accident or any subsequent investigation.

Damages

36. In the further alternative, if the plaintiffs have suffered any Damages, such Damages are not recoverable in this proceeding. All of the plaintiffs' claims for non-pecuniary Damages resulting from the death of Mr. Paradis are not recoverable, pursuant to the *Family Compensation Act*, R.S.B.C. 1996, c. 126, and s. 150 of the *Wills, Estates and Succession Act*, S.B.C. 2009, c. 13.

37. In the further alternative, the Chiefs deny that any *Charter* damages are recoverable against any non-state corporation or individual; or by or on behalf of the estate of a deceased person.

38. In the further alternative, with respect to any personal claim for damages by the plaintiff Pamela Fraser the Chiefs deny that Pamela Fraser has suffered any psychological damage separate and distinct from the damages resulting from the death of Mr. Paradis. If Pamela Fraser has suffered any such damages, such damages are too remote to be recovered at law.

39. The plaintiffs have failed to particularize the individuals for whose benefit this action has been commenced as required under s. 4 of the *Family Compensation Act*.

Abuse of process

40. The continuation of this action is an abuse of process, as the claims are barred by the Alberta and BC *Workers Compensation Acts* and are not provided for by the *Family Compensation Act* or the *Wills, Estates and Succession Act*.

41. The allegations of conspiracy and misfeasance are incapable of honest belief and are without foundation, abusive and made for an improper purpose, and should be struck.

The Chiefs' address for service: Wilson Butcher
507-815 Hornby Street
Vancouver, BC V6Z 2E6

Fax number address for service (if any): 604-684-8139
E-mail address for service (if any): dbutcher@wilsonbutcher.com

Dated: May 31, 2021

Signature of David G. Butcher, Q.C.
☐ Defendant ☒ Lawyer for Defendants

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Attachment 7

VANCOUVER
AUG 0 3 2021 C
REGISTRY

Action No. S-211085
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

Pamela Fraser and the Estate of Dylan Paradis

Plaintiffs

And:

Canadian Pacific Railway Ltd., CP Police Service Chiefs Al Sauve and Ken Marchant, Constable Mark Tataryn, Keith Creel, Canada Pacific Railway Ltd. Board of Directors, the Attorney General of Canada representing the Minister of Transport

Defendants

RESPONSE TO CIVIL CLAIM

Filed by: The Defendant Mark Tataryn (the "Defendant")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 - Defendant's Response to Facts

1. Unless specifically admitted, the Defendant denies each and every allegation in the Notice of Civil Claim. For greater certainty, the facts alleged in the Notice of Civil Claim, the existence of which are outside the knowledge of the Defendant, as set out in paragraph 4 below, are denied.

2. No facts alleged in Part 1 of the Notice of Civil Claim are admitted.

3. All facts alleged in Part 1 of the Notice of Civil Claim are denied.

4. The facts alleged in paragraphs 31 and 32 of Part 1 of the Notice of Civil Claim are outside the knowledge of the Defendant.

5. To the extent there are facts alleged in Part 3 of the Notice of Civil Claim, those facts are denied.

Division 2 - Defendant's Version of Facts

1. At all material times, the Defendant was a constable appointed pursuant to s. 44(1) of the *Railway Safety Act*, R.S.C. 1985, c. 32 (4th Supp.) ("***RSA***") and was a member of the Canadian Pacific Police Service ("**CPPS**").

2. The Defendant was also, at all material times, a peace officer within the meaning of s. 2 of the *Criminal Code*, R.S.C. 1985, c. C-46.

3. In the early morning hours of February 4, 2019, the Defendant was notified by the Canadian Pacific Police Communications Centre of a train derailment outside Field, British Columbia (the "**Derailment**") and that there was no radio communication from the train's crew members (the "**Crew**"). At the time of this notification, the Defendant was stationed in Golden, British Columbia. The weather conditions at the time were extreme in cold, wind, and snow.

4. Upon receiving notification of the Derailment, the Defendant made all reasonable efforts to locate the scene of the Derailment (the "**Scene**"), attend at the Scene, and locate and provide to the Crew any assistance required.

5. The Defendant was eventually successful in attending at the Scene, which was remote, and in locating the Crew, all of whom were deceased by the time the Defendant arrived at the Scene.

6. The Defendant remained at the Scene until early afternoon on February 4, 2019. Throughout that time, the Defendant worked alongside an RCMP officer who had also been dispatched to the Scene. The Defendant, together with the RCMP officer, made all reasonable efforts to secure the Scene and to take all necessary investigative steps in respect of the Derailment. The Defendant provided his superior officers with regular updates on the nature and status of investigative efforts being made at the Scene.

7. On or about February 8, 2019, the Defendant was assigned by his superior officers to serve as the primary investigator of the Derailment within the CPPS, as part of an investigative team with two other CPPS officers (the "**Investigation**").

8. At all material times, the Defendant discharged his duties as a constable appointed under the *RSA* and as a peace officer under the *Criminal Code* in relation to the Investigation, including, but not limited to:

   (a) attending at the Scene;

   (b) locating and ascertaining the vital status of the Crew;

   (c) taking all reasonable steps to secure the Scene;

   (d) arranging for interviews of the CP employees who had responded to the Crew's emergency radio calls and had attended the Scene;

   (e) compiling a list of additional interview subjects and interviewing several of those individuals;

   (f) appropriately gathering, preserving, handling, transferring, and safeguarding all evidence;

(g) preparing accurate reports of all work completed in respect of the Investigation;

(h) providing regular updates to his superior officers regarding work completed in respect of the Investigation; and

(i) making reasonable efforts to collaborate with various investigative agencies, including the RCMP, the BC Coroners Service, and the Transportation Safety Board ("**TSB**"), in respect of the Investigation.

9. At all material times, the Defendant was in communication with other investigative agencies, including the RCMP, the BC Coroners Service, and the TSB, in respect of the Derailment and any and all investigations in respect thereof.

10. The Defendant at all times cooperated with other investigative agencies that have investigated or are investigating the Derailment, and has submitted to being interviewed by those agencies, including the RCMP and the TSB. The Defendant has also written to the Minister of Transport and the Attorney General regarding events related to the Derailment.

11. The Defendant has never received a request for information or complaint from the Plaintiff Pamela Fraser regarding the Investigation.

12. At all material times, the Defendant followed the instructions of his superior officers with respect to the conduct of the Investigation.

13. On or about March 5, 2019, the Defendant received directions from his superior officers that he was to conclude the Investigation, and the Defendant followed those directions.

14. The Defendant specifically denies the allegations in paragraphs 21-22 and 54-56 of Part 1 of the Notice of Civil Claim and elsewhere in the Notice of Civil Claim in relation to his resignation from the CPPS.

Division 3 - Additional Facts

15. N/A

Part 2: RESPONSE TO RELIEF SOUGHT

1. The Defendant consents to the granting of the relief sought in paragraphs NIL of Part 2 of the Notice of Civil Claim.

2. The Defendant opposes the granting of the relief sought in paragraph ALL of Part 2 of the Notice of Civil Claim.

3. The Defendant takes no position on the granting of the relief sought in paragraph NIL of Part 2 of the Notice of Civil Claim.

4. The Defendant seeks an order dismissing the Plaintiffs' claims, with costs.

Part 3: LEGAL BASIS

1. In response to the entirety of the Notice of Civil Claim, the Defendant says that the Plaintiffs' claims against him have no reasonable prospect of success and should be struck. Permitting the Plaintiffs' claims against the Defendant to go forward would violate the object of our court rules to secure the just, speedy, and inexpensive determination of every proceeding on its merits.

The Defendant owed no duty of care to the Plaintiffs

2. The Defendant did not, at any time, owe a duty of care to the Plaintiffs, as alleged or at all.

3. In the alternative, if the Defendant did owe a duty of care to the Plaintiffs, which is not admitted but specifically denied, the Defendant denies that he breached any such duty, as alleged or at all.

4. At all material times, the Defendant discharged his duties as a CPPS constable reasonably, in good faith, impartially and independently, and in accordance with the standard of care of a reasonable CPPS constable in the circumstances. At all material times, the Defendant exercised the knowledge and skill expected of a CPPS constable.

5. The Plaintiffs have not pleaded that the alleged tortious conduct was the legal cause of any injury, loss, damage, or expense they may have suffered.

The Defendant did not engage in misfeasance of public office

6. The Defendant did not, at any time, engage in misfeasance of public office, as alleged or at all.

7. If the Defendant was a public officer, which is denied, he did not engage in any deliberate and unlawful conduct in his capacity as a public officer.

8. In the alternative, if the Defendant was a public officer and did engage in deliberate and unlawful conduct in his capacity as a public officer, which is not admitted but specifically denied, he was not aware that his conduct was unlawful and was likely to harm the Plaintiffs. At all material times, the Defendant followed the instructions of his superior officers in respect of the Investigation.

9. In the further alternative, if the Defendant was a public officer and did engage in deliberate and unlawful conduct in his capacity as a public officer, which is not admitted but specifically denied, it was not in the Defendant's reasonable contemplation that any of his acts or omissions in respect of the Investigation might harm the Plaintiffs, as the Plaintiffs did not at any time have a legal interest in the Investigation.

10. The Plaintiffs have not pleaded that the alleged conduct was the legal cause of any injury, loss, damage, or expense they may have suffered.

Damages

11. The Plaintiffs have not pleaded that they have suffered any injury, loss, damage, or expense known to law or that is compensable as a result of the alleged acts or omissions of the Defendant, whether in respect of their claim of negligence or misfeasance in public office.

12. Irrespectively, the Defendant denies that the Plaintiffs suffered any injury, loss, damage, or expense known to law or that is compensable, whether in respect of their claim of negligence or misfeasance in public office.

13. In the alternative, if the Plaintiffs did suffer any injury, loss, damage, or expense, which is not admitted but specifically denied, then any such injury, loss, damage or expense is not attributable to the acts, omissions, or breaches of any duty of the Defendant.

14. In the further alternative, if the Plaintiffs did suffer any injury, loss, damage, or expense, which is not admitted but specifically denied, then any such injury, loss, damage, or expense is too remote, unforeseeable, or otherwise not recoverable from the Defendant.

15. The Plaintiffs do not have any basis to plead joint and several liability as against the Defendant. The Defendant pleads and relies on the *Negligence Act*, R.S.B.C. 1996, c. 333.

Defendant's address for service:	Hunter Litigation Chambers 2100 – 1040 West Georgia Street Vancouver, BC V6E 4H1
Fax number address for service (if any):	604-647-4554
E-mail address for service (if any):	wsmart@litigationchambers.com; rrobb@litigationchambers.com; and shumphrey@litigationchambers.com

Dated: August 3, 2021

for Lawyer for the Defendant
William Smart, Q.C.
Hunter Litigation Chambers Law Corporation

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(b) serve the list on all parties of record.

Attachment 8

Bennett Jones LLP
4500 Bankers Hall East, 855 - 2nd Street SW
Calgary, Alberta, Canada T2P 4K7
Tel: 403.298.3100 Fax: 403.265.7219

Munaf Mohamed QC
Direct Line: 403.298.4456
e-mail: mohamedm@bennettjones.com
Our File No.: 41567.172/173

May 5, 2021

Sent Via Email

Runyowa Law
Royal Bank of Canada Building
7th Floor
2010 11 Avenue
Regina, Saskatchewan S4P 0J3

Attention: Tavengwa Runyowa

Dear Mr. Runyowa:

Re: Pamela Fraser and The Estate of Dylan Paradis v. Canadian Pacific Railway Ltd et al.
Eva Dockrell and The Estate of Andrew Dockrell v. Canadian Pacific Railway Ltd. et al.

Please find enclosed for service upon you:

1. Filed Response to Civil Claim on The Estate of Dockrell matter; and

2. Filed Response to Civil Claim on The Estate of Paradis matter.

Please confirm receipt.

Yours,

Munaf Mohamed QC

MM:bd
cc: David Butcher QC, Wilson Butcher
Ciara Mackey, Bennett Jones LLP

Vancouver
04-May-21
REGISTRY

Form 2 (Rule 3-3(1))

No. S211084
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

EVA DOCKRELL and THE ESTATE OF ANDREW DOCKRELL, represented by THE ESTATE ADMINISTRATOR, HEATHER DOCKRELL

PLAINTIFFS

AND:

CANADIAN PACIFIC RAILWAY LTD.; CP POLICE SERVICE CHIEFS AL SAUVE and KEN MARCHANT; CONSTABLE MARK TATARYN; KEITH CREEL; CANADA PACIFIC RAILWAY LTD. BOARD OF DIRECTORS; THE ATTORNEY GENERAL OF CANADA representing THE MINISTER OF TRANSPORT

DEFENDANTS

RESPONSE TO CIVIL CLAIM

Filed by: CANADIAN PACIFIC RAILWAY LTD., KEITH CREEL, and CANADA PACIFIC RAILWAY LTD. BOARD OF DIRECTORS (the "**CP Defendants**")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 - CP Defendants' Response to Facts

1. The CP Defendants do not admit any facts in any Part of the notice of civil claim.

2. The facts alleged in paragraphs 2, 24, and 32 of Part 1 of the notice of civil claim are outside the knowledge of the CP Defendants.

Division 2 - CP Defendants' Version of Facts

1. This action has no chance of success and is an abuse of this Court's process. Canadian Pacific Railway Company ("**CP**") has an unquestionable commitment to safety as a top priority and as an integral part of its business. For the last 15 consecutive years, CP has been independently recognized as the safest Class I railway in North America, measured by train accident frequency.

2. As part of CP's commitment to safety and to its employees, CP funds workers compensation benefits across its Canadian railway network, which through applicable provincial workers compensation legislation, provides automatic, no-fault compensation to every CP worker for injuries arising out of and in the course of their employment with CP.

3. The loss of Mr. Andrew Dockrell ("**Mr. Dockrell**") and his crewmates occurred in an unthinkable railway tragedy that has led to independent, complex investigations and involvement by the Transportation Safety Board, Employment and Social Development Canada, Transport Canada, the B.C. Coroner's office, the RCMP, and other local, provincial, and federal government agencies, some of which remain ongoing. Nevertheless, as Mr. Dockrell's death occurred directly arising out of and in the course of his employment as a locomotive engineer for CP, his Estate received automatic compensation through the Alberta Workers Compensation Board and WorkSafeBC. By operation of Alberta and B.C. legislation and Canadian law, no civil action lies against CP, its executive, directors, or other employees.

4. CP continues to extend its deepest sympathies to the family of Mr. Dockrell and remains committed to cooperating in ongoing investigations of the tragic accident that claimed his life. However, CP categorically denies that it is in law, or in fact, responsible for Mr. Dockrell's death as alleged in the notice of civil claim or at all. Furthermore, the accusations that anyone at CP acted with intention to compromise railway safety or intended to injure Mr. Dockrell, his family, and other CP employees, as alleged throughout the notice of civil claim, are not only false, but without foundation, abusive, and incapable of honest belief by the Plaintiffs.

The CP Defendants

5. The correct name of the Defendant named as "Canadian Pacific Railway Ltd." is Canadian Pacific Railway Company. CP is a non-government corporation incorporated under the *Canada Business Corporations Act*, and is a Class I railway with its head office in Calgary, Alberta. CP carries on business throughout Canada.

6. The Defendant named as "Canada Pacific Railway Ltd. Board of Directors" (the "**CP Board**") is not a legal entity and incapable of being sued.

7. The Defendant, Keith Creel, is the current President and Chief Executive Officer of CP (the "**CP CEO**").

8. The CP Defendants deny that they hold any "public office" or public "capacity" as alleged in the notice of civil claim.

The Accident

9. On or about February 4, 2019, Mr. Dockrell and two other CP employees tragically died following the derailment of a westbound train between the Upper and Lower Spiral Tunnels east of Field, B.C. (the "**Accident**").

10. Although challenged by weather conditions and the remote location of the Accident, investigations began immediately with involvement of the B.C. Coroners' Office, the RCMP, the Transportation Safety Board, Transport Canada, Employment and Social Development Canada, and other agencies in relation to the Accident. In the days following, relevant agencies were also involved as CP crews and contractors worked to remove the damaged rail cars and equipment.

11. At all times, CP has been open and committed to full cooperation with all applicable agencies and authorities in the investigation of the Accident, including the RCMP and Transportation Safety Board.

12. In close collaboration with Transport Canada and after completing all necessary safety checks, on February 6, 2019, CP re-opened its mainline through Field, B.C. In addition, CP took further steps to enhance safety by supplementing its existing protocols for trains on mountain grades in the Laggan Subdivision, which includes the section of tracks where the Accident occurred.

13. In or around December 2020, a formal RCMP investigation was announced with respect to the Accident, which CP understands remains ongoing.

14. In specific response to paragraph 51 of Part 1 and paragraph 13 of Part 3 of the notice of civil claim, the CP Defendants deny that following the Accident, any members of the CP Police Service asserted or continued to assert any exclusive jurisdiction to investigate the Accident to the exclusion of any independent police agencies. To the contrary, the RCMP was on-site immediately

after the Accident and always had jurisdiction to investigate in accordance with its legal authority and discretion, which it has done.

15. With respect to investigation of the Accident, the CP Defendants deny all allegations in the notice of civil claim regarding any alleged "cover up", including by alleged interference with investigations conducted by CP Police Service members, the RCMP, or any other agency, or the destruction or concealment of evidence. The CP Defendants also deny all allegations in the notice of civil claim in relation to the resignation of the Defendant Constable Mark Tataryn.

Safety is CP's Top Business Priority

16. The CP Defendants deny all allegations in the notice of civil claim that CP employed a "profit-at-all-costs" strategy or that any "objectively dangerous decisions" were made to compromise safety standards and prioritize profit over the safety of CP employees. Safety is the utmost priority in CP's business.

17. CP is independently recognized as the safest Class I railway in operation in North America. At all times, both before and after the Accident, CP has taken all reasonable steps and followed all applicable statutory and regulatory requirements to ensure safety in its railway operations.

CP Police Service

18. As a function of CP's history and status as a federal railway, CP employs railway police constables organized as the "CP Police Service", whose operations are headquartered in Calgary, Alberta. CP Police Service members are appointed by a judge of a Canadian superior court pursuant to section 44 of the *Railway Safety Act*, RSC 1985, c 32 (4th Supp) for the enforcement of Part III of the *Canada Transportation Act*, SC 1996, c 10, and the laws of Canada or a province in so far as their enforcement relates to the protection of property owned, possessed or administered by CP and the protection of persons and property on that property. CP Police Service members have jurisdiction in any place within 500 metres of property that CP owns, possesses, or administers.

19. In specific response to paragraphs 5 to 17 of Part 1 of the notice of civil claim, the CP Defendants deny that the CP Police Service is a "wholly-owned subsidiary of CP" or that CP has

any separate or indistinct "law enforcement capacity" or "capacity as a public police force and law enforcement agency". The Plaintiffs' assertions in this respect are wrong in fact and in law and misapprehend the role of CP as an employer of CP Police Service members, who are individually appointed as police constables under the authority of the *Railway Safety Act*.

20. The CP Defendants further deny that CP Police Service members have any jurisdiction, duty, or obligation to investigate criminally their employer, CP, as alleged in the notice of civil claim. In the alternative, if CP Police Service members have any such jurisdiction, duty or obligation, CP Police Service members do not exercise any jurisdiction to investigate their employer criminally as any such investigation would be inappropriate under any circumstances. The jurisdiction of CP Police Service members is limited and does not replace or supersede the jurisdiction of any public agencies, including the RCMP. As a matter of law, the RCMP has jurisdiction throughout Canada, including on property owned by CP. Under the auspices of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10, the RCMP not only have jurisdiction to investigate offences that may occur on CP property but are duty-bound to do so.

Division 3 - Additional Facts

The Plaintiff Estate has received compensation through the Alberta WCB and WorksafeBC

21. At the time of his death, Mr. Dockrell was a CP locomotive engineer, resident in Calgary, Alberta. His death occurred in the Accident, which arose out of and in the course of his employment with CP. As a result, since the Accident, Mr. Dockrell's Estate as represented by Mr. Edward Dockrell, has received compensation through the Alberta Workers Compensation Board (the "**Alberta WCB**") and WorksafeBC.

22. The CP Defendants have no knowledge of the appointment of Heather Dockrell as administrator of the Estate of Andrew Dockrell as provided in the notice of civil claim.

The Plaintiffs' accusations are improper and incapable of honest belief

23. The Plaintiffs can have no genuine belief in accusations that anyone at CP acted with intention to compromise the safety of CP's railway operations or intended to injure Mr. Dockrell,

his family, or other CP employees as alleged throughout the notice of civil claim. All such allegations made in the notice of civil claim are improper and intended to be inflammatory.

Part 2: RESPONSE TO RELIEF SOUGHT

1. The CP Defendants oppose the granting of relief sought in paragraphs 1-2 of Part 2 of the notice of civil claim and seek dismissal of the claim with costs.

Part 3: LEGAL BASIS

"Canada Pacific Railway Ltd. Board of Directors" is not a legal entity

1. The Defendant CP Board, named as the "Canada Pacific Railway Ltd. Board of Directors" in this action, is not a legal entity and cannot be sued. All of the Plaintiffs' claims against the CP Board must be struck.

Claims against the CP Defendants are barred by workers compensation legislation

2. At the time of his death, Mr. Dockrell was a worker and CP was an employer within the meaning of the Alberta *Workers' Compensation Act*, RSA 2000, c W-15 (the "**Alberta Act**") and the British Columbia *Workers Compensation Act*, RSBC 1996, c 492 (the "**Former BC Act**", which was subsequently repealed and replaced by the *Workers Compensation Act*, RSBC 2019, c 1 (the "**New BC Act**") (collectively, the "**BC Acts**"), and the injuries suffered by Mr. Dockrell which led to his death arose out of and in the course of his employment with CP.

3. The essential character of the Plaintiffs' claim is liability for the Accident which led to Mr. Dockrell's death in the course of his employment with CP. As a result, all of the Plaintiffs' claims, whether brought on behalf of Mr. Dockrell or any of his family members as against CP as an employer, are barred under the Alberta Act and the BC Acts, including, amongst others, section 21 of the Alberta Act, section 10(1) of the Former BC Act, and section 127 of the New BC Act. These claims have no chance of success.

4. The Alberta Act and/or BC Acts further bar action against any "other worker" in respect of a death arising out of and in the course of employment. The CP CEO, members of CP's Board of Directors, and all employees of CP are "other workers" within the meaning of the legislation. As

a result, all of the Plaintiffs' claims, whether brought on behalf of the Estate of Mr. Dockrell or any of his family members, as against the CP Defendants are barred and have no chance of success.

No Negligence, Conspiracy, Misfeasance, or Breach of Charter Rights

5. Further and in the alternative, should the Plaintiffs have any remaining right of action against the CP Defendants, which is specifically denied, the CP Defendants further state:

(a) In specific response to the Plaintiffs' claims of negligence, gross negligence and systemic negligence against CP:

(i) CP admits that it owed a duty of care to Mr. Dockrell as his employer to take all reasonable steps and follow all applicable statutory and regulatory requirements to ensure safety in its railway operations, but denies that it has breached that duty in any way.

(ii) CP denies that it, or any employer, owes a duty of care to "guarantee" the safety of its employees.

(iii) CP denies that it owes or owed a duty of care to the Plaintiffs with respect to any investigation through CP or the CP Police Service, as alleged.

(iv) CP denies that it owes or owed any duty of care to the Plaintiff Eva Dockrell, as alleged.

(v) CP denies that it was negligent or grossly negligent as alleged, at any time prior to or following the Accident.

(vi) CP denies that any independent claim for "systemic negligence" exists in law against a non-government entity, as alleged, and in any event, CP denies that it was negligent on any systemic or other basis at any time prior to or following the Accident.

(b) In specific response to the Plaintiffs' claims of negligence and systemic negligence against the CP Board:

(i) CP denies that its Board of Directors or any member thereof owed or owes any duty of care to the Plaintiffs, as alleged.

(ii) CP denies that its Board of Directors or any member thereof was negligent as alleged, at any time prior to or following the Accident.

(iii) CP denies that any independent claim for "systemic negligence" exists in law as against its Board of Directors or any member thereof, as alleged, and in any event, CP denies that its Board of Directors or any member thereof was negligent on any systemic or other basis at any time prior to or following the Accident.

(c) In specific response to the Plaintiffs' claims of conspiracy, the CP Defendants:

(i) Deny that they acted by agreement with each other or with anyone to compromise the safety of CP's operations or investigations of the Accident, as alleged or at all.

(ii) Deny that they acted or failed to act in any manner to purposely injure anyone.

(iii) Deny that they knew or ought to have known that any of their actions would cause damages or loss to the Plaintiffs.

(iv) Deny that any of their actions were unlawful as alleged or at all.

(v) Further state that the Plaintiffs' claims of conspiracy to injure and conspiracy by unlawful means are actually claims of conspiracy to commit negligence, which is not a cause of action known in law.

(d) In specific response to the Plaintiffs' claims of misfeasance in public office against the CP CEO and CP Board, the CP Defendants:

(i) Deny that the CP CEO, CP's Board of Directors or any member thereof is a "public officer" or exercises any public functions.

(ii) Deny that they engaged in any deliberate or unlawful conduct in any capacity as a "public officer".

(iii) Deny that they knew or ought to have known that any of their actions was likely to cause damages or loss to the Plaintiffs.

(iv) Deny that any of their actions were unlawful as alleged or at all.

(e) In specific response to the Plaintiffs' claims for breach of the Plaintiffs' rights under Section 7 of the *Canadian Charter of Rights and Freedoms* against CP and the CP CEO, these Defendants each:

(i) Deny that CP is an entity subject to the *Charter*.

(ii) Deny that the CP CEO is an individual subject to the *Charter*.

(iii) Deny that any breach of the Plaintiffs' Section 7 *Charter* rights could have occurred in connection with the Accident or any subsequent investigation.

(iv) Deny that the Plaintiff Estate has any Section 7 *Charter* rights enforceable in these proceedings.

(v) Deny that the Plaintiff, Eva Dockrell, has any Section 7 *Charter* rights to the life of Mr. Dockrell or in connection with any investigation into the Accident.

(f) In specific response to the Plaintiffs' claim of unjust enrichment against CP, CP categorically denies that it has been enriched in any way connected to the Accident or the death of Mr. Dockrell.

6. The CP Defendants further deny any liability to the Plaintiffs, whether vicarious or direct, in connection with any act or omission by the Defendant Constable Mark Tataryn.

7. Further and in the alternative, if any of the CP Defendants is found to be liable for any actionable or unlawful act, omission, or breach, which is not admitted but specifically denied, the CP Defendants each deny that any such act, omission, or breach is the cause, in law or in fact, of

the Accident or of any losses suffered by the Plaintiffs whatsoever, including in connection with the Accident or any subsequent investigation.

Damages

8. Further and in the alternative, should the Plaintiffs have any remaining right to claim damages against any of the CP Defendants, all of which are specifically denied, the CP Defendants deny that the Plaintiffs have suffered any losses recoverable in this proceeding. In particular:

(a) The Plaintiffs' claims with respect to injuries resulting from the death of Mr. Dockrell, including any injuries allegedly suffered by the Plaintiff Eva Dockrell, which are not admitted but denied, are limited to claims for pecuniary losses available under the *Family Compensation Act*, RSBC 1996, c 126 and the *Wills, Estates and Succession Act*, SBC 2009, c 13, including *inter alia*, sections 2 and 3 of the *Family Compensation Act* and section 150 of the *Wills, Estates and Succession Act*.

(b) Pursuant to the *Family Compensation Act* and *Wills, Estates and Succession Act*, all of the Plaintiffs' claims for general damages, non-pecuniary losses, aggravated damages, and punitive damages against the CP Defendants for any injuries or losses resulting from the death of Mr. Dockrell are barred.

(c) Further and in the alternative, the CP Defendants deny that the Plaintiffs have suffered any pecuniary loss or any other losses recoverable under the *Family Compensation Act* or the *Wills, Estates and Succession Act*.

(d) Further and in the alternative, the CP Defendants deny that any damages under section 24(1) of the *Charter* are recoverable in this action:

(i) Against any non-state corporation or individual; or

(ii) By or on behalf of the estate of a deceased person.

(e) Further and in the alternative, with respect to any personal claim for damages by the Plaintiff Eva Dockrell, which is not admitted but denied, the CP Defendants

deny that Eva Dockrell has suffered any psychological damage or loss unconnected to injuries or losses resulting from the death of Mr. Dockrell. Further and in the alternative, if Eva Dockrell has suffered any such loss or damage, which is denied, such damages are too remote to be recovered at law.

9. Further, with respect to any claim being advanced by the Plaintiffs under the *Family Compensation Act*, the CP Defendants state that the Plaintiffs have failed to particularize in the notice of civil claim the individuals for whose benefit this action has been commenced as required under section 4 of the *Family Compensation Act*.

Abuse of Process

10. The continuation of this action amounts to an abuse of this Court's processes.

11. By operation of Canadian law, including applicable workers compensation legislation, the *Family Compensation Act*, and the *Wills, Estates and Succession Act*, on which the CP Defendants plead and rely, the claims and allegations contained in the notice of civil claim disclose no reasonable claim against the CP Defendants.

12. Furthermore, the Plaintiffs' accusations that the CP Defendants acted with intention to compromise the safety of CP's railway operations and to injure Mr. Dockrell, his family, and other CP employees as alleged throughout the notice of civil claim are incapable of honest belief by the Plaintiffs. All such allegations are without foundation, abusive, and made for an improper purpose, and should be struck.

CP Defendants' address for service:	Bennett Jones LLP Barristers and Solicitors 2500 – 666 Burrard Street Vancouver, B.C. V6C 2X8
Fax number address for service (if any):	(403) 265-3291
E-mail address for service (if any):	mohamedm@bennettjones.com

Dated: 04/05/2021

Signature of Munaf Mohamed QC
☐ Defendant ☒ Lawyer for Defendants

THIS RESPONSE TO CIVIL CLAIM is prepared and delivered by Munaf Mohamed QC of the firm Bennett Jones LLP, Barristers & Solicitors, counsel for the Defendants, whose place of business and address for delivery is 2500 – 666 Burrard Street, Vancouver, British Columbia, V6C 2X8. Telephone: (403) 298-4456. Facsimile: (403) 265-3291.
[mohamedm@bennettjones.com]

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(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Vancouver
04-May-21
REGISTRY

Form 2 (Rule 3-3(1))

No. S211085
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PAMELA FRASER and THE ESTATE OF DYLAN PARADIS

PLAINTIFFS

AND:

CANADIAN PACIFIC RAILWAY LTD.; CP POLICE SERVICE CHIEFS AL SAUVE and KEN MARCHANT; CONSTABLE MARK TATARYN; KEITH CREEL; CANADA PACIFIC RAILWAY LTD. BOARD OF DIRECTORS; THE ATTORNEY GENERAL OF CANADA representing THE MINISTER OF TRANSPORT

DEFENDANTS

RESPONSE TO CIVIL CLAIM

Filed by: CANADIAN PACIFIC RAILWAY LTD., KEITH CREEL, and CANADA PACIFIC RAILWAY LTD. BOARD OF DIRECTORS (the "**CP Defendants**")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 - CP Defendants' Response to Facts

1. The CP Defendants do not admit any facts in any Part of the notice of civil claim.

2. The facts alleged in paragraphs 23 and 31 of Part 1 of the notice of civil claim are outside the knowledge of the CP Defendants.

Division 2 - CP Defendants' Version of Facts

1. This action has no chance of success and is an abuse of this Court's process. Canadian Pacific Railway Company ("**CP**") has an unquestionable commitment to safety as a top priority and as an integral part of its business. For the last 15 consecutive years, CP has been independently recognized as the safest Class I railway in North America, measured by train accident frequency.

2. As part of CP's commitment to safety and to its employees, CP funds workers compensation benefits across its Canadian railway network, which through applicable provincial workers compensation legislation, provides automatic, no-fault compensation to every CP worker for injuries arising out of and in the course of their employment with CP.

3. The loss of Mr. Dylan Paradis ("**Mr. Paradis**") and his crewmates occurred in an unthinkable railway tragedy that has led to independent, complex investigations and involvement by the Transportation Safety Board, Employment and Social Development Canada, Transport Canada, the B.C. Coroner's office, the RCMP, and other local, provincial, and federal government agencies, some of which remain ongoing. Nevertheless, as Mr. Paradis' death occurred directly arising out of and in the course of his employment as a conductor for CP, his surviving spouse and children received automatic compensation through the Alberta Workers Compensation Board and WorkSafeBC. By operation of Alberta and B.C. legislation and Canadian law, no civil action lies against CP, its executive, directors, or other employees.

4. CP continues to extend its deepest sympathies to the family of Mr. Paradis and remains committed to cooperating in ongoing investigations of the tragic accident that claimed his life. However, CP categorically denies that it is in law, or in fact, responsible for Mr. Paradis' death as alleged in the notice of civil claim or at all. Furthermore, the accusations that anyone at CP acted with intention to compromise railway safety or intended to injure Mr. Paradis, his family, and other CP employees, as alleged throughout the notice of civil claim, are not only false, but without foundation, abusive, and incapable of honest belief by the Plaintiffs.

The CP Defendants

5. The correct name of the Defendant named as "Canadian Pacific Railway Ltd." is Canadian Pacific Railway Company. CP is a non-government corporation incorporated under the *Canada Business Corporations Act*, and is a Class I railway with its head office in Calgary, Alberta. CP carries on business throughout Canada.

6. The Defendant named as "Canada Pacific Railway Ltd. Board of Directors" (the "**CP Board**") is not a legal entity and incapable of being sued.

7. The Defendant, Keith Creel, is the current President and Chief Executive Officer of CP (the "**CP CEO**").

8. The CP Defendants deny that they hold any "public office" or public "capacity" as alleged in the notice of civil claim.

The Accident

9. On or about February 4, 2019, Mr. Paradis and two other CP employees tragically died following the derailment of a westbound train between the Upper and Lower Spiral Tunnels east of Field, B.C. (the "**Accident**").

10. Although challenged by weather conditions and the remote location of the Accident, investigations began immediately with involvement of the B.C. Coroners' Office, the RCMP, the Transportation Safety Board, Transport Canada, Employment and Social Development Canada, and other agencies in relation to the Accident. In the days following, relevant agencies were also involved as CP crews and contractors worked to remove the damaged rail cars and equipment.

11. At all times, CP has been open and committed to full cooperation with all applicable agencies and authorities in the investigation of the Accident, including the RCMP and Transportation Safety Board.

12. In close collaboration with Transport Canada and after completing all necessary safety checks, on February 6, 2019, CP re-opened its mainline through Field, B.C. In addition, CP took further steps to enhance safety by supplementing its existing protocols for trains on mountain grades in the Laggan Subdivision, which includes the section of tracks where the Accident occurred.

13. In or around December 2020, a formal RCMP investigation was announced with respect to the Accident, which CP understands remains ongoing.

14. In specific response to paragraph 50 of Part 1 and paragraph 13 of Part 3 of the notice of civil claim, the CP Defendants deny that following the Accident, any members of the CP Police Service asserted or continued to assert any exclusive jurisdiction to investigate the Accident to the exclusion of any independent police agencies. To the contrary, the RCMP was on-site immediately

after the Accident and always had jurisdiction to investigate in accordance with its legal authority and discretion, which it has done.

15. With respect to investigation of the Accident, the CP Defendants deny all allegations in the notice of civil claim regarding any alleged "cover up", including by alleged interference with investigations conducted by CP Police Service members, the RCMP, or any other agency, or the destruction or concealment of evidence. The CP Defendants also deny all allegations in the notice of civil claim in relation to the resignation of the Defendant Constable Mark Tataryn.

Safety is CP's Top Business Priority

16. The CP Defendants deny all allegations in the notice of civil claim that CP employed a "profit-at-all-costs" strategy or that any "objectively dangerous decisions" were made to compromise safety standards and prioritize profit over the safety of CP employees. Safety is the utmost priority in CP's business.

17. CP is independently recognized as the safest Class I railway in operation in North America. At all times, both before and after the Accident, CP has taken all reasonable steps and followed all applicable statutory and regulatory requirements to ensure safety in its railway operations.

CP Police Service

18. As a function of CP's history and status as a federal railway, CP employs railway police constables organized as the "CP Police Service", whose operations are headquartered in Calgary, Alberta. CP Police Service members are appointed by a judge of a Canadian superior court pursuant to section 44 of the *Railway Safety Act*, RSC 1985, c 32 (4th Supp) for the enforcement of Part III of the *Canada Transportation Act*, SC 1996, c 10, and the laws of Canada or a province in so far as their enforcement relates to the protection of property owned, possessed or administered by CP and the protection of persons and property on that property. CP Police Service members have jurisdiction in any place within 500 metres of property that CP owns, possesses, or administers.

19. In specific response to paragraphs 4 to 16 of Part 1 of the notice of civil claim, the CP Defendants deny that the CP Police Service is a "wholly-owned subsidiary of CP" or that CP has

any separate or indistinct "law enforcement capacity" or "capacity as a public police force and law enforcement agency". The Plaintiffs' assertions in this respect are wrong in fact and in law and misapprehend the role of CP as an employer of CP Police Service members, who are individually appointed as police constables under the authority of the *Railway Safety Act*.

20. The CP Defendants further deny that CP Police Service members have any jurisdiction, duty, or obligation to investigate criminally their employer, CP, as alleged in the notice of civil claim. In the alternative, if CP Police Service members have any such jurisdiction, duty or obligation, CP Police Service members do not exercise any jurisdiction to investigate their employer criminally as any such investigation would be inappropriate under any circumstances. The jurisdiction of CP Police Service members is limited and does not replace or supersede the jurisdiction of any public agencies, including the RCMP. As a matter of law, the RCMP has jurisdiction throughout Canada, including on property owned by CP. Under the auspices of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10, the RCMP not only have jurisdiction to investigate offences that may occur on CP property but are duty-bound to do so.

Division 3 - Additional Facts

The Plaintiff Estate has received compensation through the Alberta WCB and WorksafeBC

21. At the time of his death, Mr. Paradis was a CP railway conductor, resident in Calgary, Alberta. His death occurred in the Accident, which arose out of and in the course of his employment with CP. As a result, since the Accident, Mr. Paradis' surviving spouse and dependent children received compensation through the Alberta Workers Compensation Board (the "**Alberta WCB**") and WorksafeBC.

22. The CP Defendants have no knowledge of the appointment of any representative of the Estate of Dylan Paradis.

The Plaintiffs' accusations are improper and incapable of honest belief

23. The Plaintiffs can have no genuine belief in accusations that anyone at CP acted with intention to compromise the safety of CP's railway operations or intended to injure Mr. Paradis,

his family, or other CP employees as alleged throughout the notice of civil claim. All such allegations made in the notice of civil claim are improper and intended to be inflammatory.

Part 2: RESPONSE TO RELIEF SOUGHT

24. The CP Defendants oppose the granting of relief sought in paragraphs 1-2 of Part 2 of the notice of civil claim and seek dismissal of the claim with costs.

Part 3: LEGAL BASIS

"Canada Pacific Railway Ltd. Board of Directors" is not a legal entity

25. The Defendant CP Board, named as the "Canada Pacific Railway Ltd. Board of Directors" in this action, is not a legal entity and cannot be sued. All of the Plaintiffs' claims against the CP Board must be struck.

Claims against the CP Defendants are barred by workers compensation legislation

26. At the time of his death, Mr. Paradis was a worker and CP was an employer within the meaning of the Alberta *Workers' Compensation Act*, RSA 2000, c W-15 (the "**Alberta Act**") and the British Columbia *Workers Compensation Act*, RSBC 1996, c 492 (the "**Former BC Act**", which was subsequently repealed and replaced by the *Workers Compensation Act*, RSBC 2019, c 1 (the "**New BC Act**") (collectively, the "**BC Acts**"), and the injuries suffered by Mr. Paradis which led to his death arose out of and in the course of his employment with CP.

27. The essential character of the Plaintiffs' claim is liability for the Accident which led to Mr. Paradis' death in the course of his employment with CP. As a result, all of the Plaintiffs' claims, whether brought on behalf of Mr. Paradis or any of his family members as against CP as an employer, are barred under the Alberta Act and the BC Acts, including, amongst others, section 21 of the Alberta Act, section 10(1) of the Former BC Act, and section 127 of the New BC Act. These claims have no chance of success.

28. The Alberta Act and/or BC Acts further bar action against any "other worker" in respect of a death arising out of and in the course of employment. The CP CEO, members of CP's Board of Directors, and all employees of CP are "other workers" within the meaning of the legislation. As

a result, all of the Plaintiffs' claims, whether brought on behalf of the Estate of Mr. Paradis or any of his family members, as against the CP Defendants are barred and have no chance of success.

No Negligence, Conspiracy, Misfeasance, or Breach of Charter Rights

29. Further and in the alternative, should the Plaintiffs have any remaining right of action against the CP Defendants, which is specifically denied, the CP Defendants further state:

(a) In specific response to the Plaintiffs' claims of negligence, gross negligence and systemic negligence against CP:

(i) CP admits that it owed a duty of care to Mr. Paradis as his employer to take all reasonable steps and follow all applicable statutory and regulatory requirements to ensure safety in its railway operations, but denies that it has breached that duty in any way.

(ii) CP denies that it, or any employer, owes a duty of care to "guarantee" the safety of its employees.

(iii) CP denies that it owes or owed a duty of care to the Plaintiffs with respect to any investigation through CP or the CP Police Service, as alleged.

(iv) CP denies that it owes or owed any duty of care to the Plaintiff Pamela Fraser, as alleged.

(v) CP denies that it was negligent or grossly negligent as alleged, at any time prior to or following the Accident.

(vi) CP denies that any independent claim for "systemic negligence" exists in law against a non-government entity, as alleged, and in any event, CP denies that it was negligent on any systemic or other basis at any time prior to or following the Accident.

(b) In specific response to the Plaintiffs' claims of negligence and systemic negligence against the CP Board:

(i) CP denies that its Board of Directors or any member thereof owed or owes any duty of care to the Plaintiffs, as alleged.

(ii) CP denies that its Board of Directors or any member thereof was negligent as alleged, at any time prior to or following the Accident.

(iii) CP denies that any independent claim for "systemic negligence" exists in law as against its Board of Directors or any member thereof, as alleged, and in any event, CP denies that its Board of Directors or any member thereof was negligent on any systemic or other basis at any time prior to or following the Accident.

(c) In specific response to the Plaintiffs' claims of conspiracy, the CP Defendants:

(i) Deny that they acted by agreement with each other or with anyone to compromise the safety of CP's operations or investigations of the Accident, as alleged or at all.

(ii) Deny that they acted or failed to act in any manner to purposely injure anyone.

(iii) Deny that they knew or ought to have known that any of their actions would cause damages or loss to the Plaintiffs.

(iv) Deny that any of their actions were unlawful as alleged or at all.

(v) Further state that the Plaintiffs' claims of conspiracy to injure and conspiracy by unlawful means are actually claims of conspiracy to commit negligence, which is not a cause of action known in law.

(d) In specific response to the Plaintiffs' claims of misfeasance in public office against the CP CEO and CP Board, the CP Defendants:

(i) Deny that the CP CEO, CP's Board of Directors or any member thereof is a "public officer" or exercises any public functions.

(ii) Deny that they engaged in any deliberate or unlawful conduct in any capacity as a "public officer".

(iii) Deny that they knew or ought to have known that any of their actions was likely to cause damages or loss to the Plaintiffs.

(iv) Deny that any of their actions were unlawful as alleged or at all.

(e) In specific response to the Plaintiffs' claims for breach of the Plaintiffs' rights under Section 7 of the *Canadian Charter of Rights and Freedoms* against CP and the CP CEO, these Defendants each:

(i) Deny that CP is an entity subject to the *Charter*.

(ii) Deny that the CP CEO is an individual subject to the *Charter*.

(iii) Deny that any breach of the Plaintiffs' Section 7 *Charter* rights could have occurred in connection with the Accident or any subsequent investigation.

(iv) Deny that the Plaintiff Estate has any Section 7 *Charter* rights enforceable in these proceedings.

(v) Deny that the Plaintiff, Pamela Fraser, has any Section 7 *Charter* rights to the life of Mr. Paradis or in connection with any investigation into the Accident.

(f) In specific response to the Plaintiffs' claim of unjust enrichment against CP, CP categorically denies that it has been enriched in any way connected to the Accident or the death of Mr. Paradis.

30. The CP Defendants further deny any liability to the Plaintiffs, whether vicarious or direct, in connection with any act or omission by the Defendant Constable Mark Tataryn.

31. Further and in the alternative, if any of the CP Defendants is found to be liable for any actionable or unlawful act, omission, or breach, which is not admitted but specifically denied, the CP Defendants each deny that any such act, omission, or breach is the cause, in law or in fact, of

the Accident or of any losses suffered by the Plaintiffs whatsoever, including in connection with the Accident or any subsequent investigation.

Damages

32. Further and in the alternative, should the Plaintiffs have any remaining right to claim damages against any of the CP Defendants, all of which are specifically denied, the CP Defendants deny that the Plaintiffs have suffered any losses recoverable in this proceeding. In particular:

(a) The Plaintiffs' claims with respect to injuries resulting from the death of Mr. Paradis, including any injuries allegedly suffered by the Plaintiff Pamela Fraser, which are not admitted but denied, are limited to claims for pecuniary losses available under the *Family Compensation Act*, RSBC 1996, c 126 and the *Wills, Estates and Succession Act*, SBC 2009, c 13, including *inter alia*, sections 2 and 3 of the *Family Compensation Act* and section 150 of the *Wills, Estates and Succession Act*.

(b) Pursuant to the *Family Compensation Act* and *Wills, Estates and Succession Act*, all of the Plaintiffs' claims for general damages, non-pecuniary losses, aggravated damages, and punitive damages against the CP Defendants for any injuries or losses resulting from the death of Mr. Paradis are barred.

(c) Further and in the alternative, the CP Defendants deny that the Plaintiffs have suffered any pecuniary loss or any other losses recoverable under the *Family Compensation Act* or the *Wills, Estates and Succession Act*.

(d) Further and in the alternative, the CP Defendants deny that any damages under section 24(1) of the *Charter* are recoverable in this action:

(i) Against any non-state corporation or individual; or

(ii) By or on behalf of the estate of a deceased person.

(e) Further and in the alternative, with respect to any personal claim for damages by the Plaintiff Pamela Fraser, which is not admitted but denied, the CP Defendants

deny that Pamela Fraser has suffered any psychological damage or loss unconnected to injuries or losses resulting from the death of Mr. Paradis. Further and in the alternative, if Pamela Fraser has suffered any such loss or damage, which is denied, such damages are too remote to be recovered at law.

33. Further, with respect to any claim being advanced by the Plaintiffs under the *Family Compensation Act*, the CP Defendants state that the Plaintiffs have failed to particularize in the notice of civil claim the individuals for whose benefit this action has been commenced as required under section 4 of the *Family Compensation Act*.

Abuse of Process

34. The continuation of this action amounts to an abuse of this Court's processes.

35. By operation of Canadian law, including applicable workers compensation legislation, the *Family Compensation Act*, and the *Wills, Estates and Succession Act*, on which the CP Defendants plead and rely, the claims and allegations contained in the notice of civil claim disclose no reasonable claim against the CP Defendants.

36. Furthermore, the Plaintiffs' accusations that the CP Defendants acted with intention to compromise the safety of CP's railway operations and to injure Mr. Paradis, his family, and other CP employees as alleged throughout the notice of civil claim are incapable of honest belief by the Plaintiffs. All such allegations are without foundation, abusive, and made for an improper purpose, and should be struck.

CP Defendants' address for service:	Bennett Jones LLP Barristers and Solicitors 2500 – 666 Burrard Street Vancouver, B.C. V6C 2X8
Fax number address for service (if any):	(403) 265-3291
E-mail address for service (if any):	mohamedm@bennettjones.com

Dated: 04/05/2021

Signature of Munaf Mohamed QC
☐ Defendant ☒ Lawyer for Defendants

THIS RESPONSE TO CIVIL CLAIM is prepared and delivered by Munaf Mohamed QC of the firm Bennett Jones LLP, Barristers & Solicitors, counsel for the Defendants, whose place of business and address for delivery is 2500 – 666 Burrard Street, Vancouver, British Columbia, V6C 2X8. Telephone: (403) 298-4456. Facsimile: (403) 265-3291.
[mohamedm@bennettjones.com]

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Attachment 9

IN THE WORKERS' COMPENSATION APPEAL TRIBUNAL

IN THE MATTER OF AN APPLICATION FOR CERTIFICATION UNDER SECTION 311 OF THE *WORKERS COMPENSATION ACT*, RSBC 2019, C 1

AND IN THE MATTER OF THE SUPREME COURT OF BRITISH COLUMBIA

No. S211084
Vancouver Registry

BETWEEN:

EVA DOCKRELL and THE ESTATE OF ANDREW DOCKRELL, represented by THE ESTATE ADMINISTRATOR, HEATHER DOCKRELL

PLAINTIFFS

AND:

CANADIAN PACIFIC RAILWAY LTD.; CP POLICE SERVICE CHIEFS AL SAUVE and KEN MARCHANT; CONSTABLE MARK TATARYN; KEITH CREEL; CANADA PACIFIC RAILWAY LTD. BOARD OF DIRECTORS; THE ATTORNEY GENERAL OF CANADA representing THE MINISTER OF TRANSPORT

DEFENDANTS

WCAT TRIBUNAL NUMBER	
APPLICANTS	CANADIAN PACIFIC RAILWAY LTD., CANADIAN PACIFIC RAILWAY COMPANY, AND KEITH CREEL
DOCUMENT	**AFFIDAVIT**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**BENNETT JONES LLP** Barristers and Solicitors 4500 Bankers Hall East 855 – 2nd Street SW Calgary, Alberta T2P 4K7 Attention: Christine Plante Telephone No.: 403.298.3242 Fax No.: 403-265-7219 Client File No.: 41567.000178

WSLEGAL\041567\00172\28931317v4

AFFIDAVIT OF SHELLY MCINNIS

Sworn/Affirmed on December 14, 2021.

I, Shelly McInnis, of Calgary, Alberta, SWEAR/AFFIRM AND SAY THAT:

1. I am employed by Canadian Pacific Railway Company ("**CP Railway**") as the Managing Director, Human Resources. I have personal knowledge of the facts and matters herein disposed to, except where stated to be based upon information and belief in which case I verily believe those facts to be true.

2. I have personal knowledge of the facts and matters herein disposed to, except where stated to be based upon information and belief in which case I verily believe those facts to be true.

3. I understand that this Affidavit is being filed by the Applicants in support of their application to the Workers' Compensation Appeal Tribunal for certifications pursuant to section 311 of the *Workers Compensation Act*, RSBC 2019 c-1 (the "***WCA***") in respect of the civil claim filed by Eva Dockrell and Heather Dockrell, as the purported administrator to the Estate of Andrew Dockrell, in Supreme Court of British Columbia, Vancouver Registry, Action No. S211084 (the "**Dockrell Civil Claim**").

4. Canadian Pacific Railway Ltd. and Keith Creel are named Defendants in the Dockrell Civil Claim. The Plaintiffs in the Dockrell Civil Claim have incorrectly named Canadian Pacific Railway Ltd. as the operating railway and employer to Mr. Dockrell. In fact, the operating railway and employer is Canadian Pacific Railway Company (CP Railway).

5. CP Railway is a non-government corporation incorporated under the *Canada Business Corporations Act*, RSC 1985, c C-44 and is a Class I railway in Canada and the United States, with its head office in Calgary, Alberta. CP Railway carries on business throughout Canada, including in British Columbia. CP Railway is a wholly-owned subsidiary of Canadian Pacific Railway Ltd.

6. In particular and in respect of the Dockrell Civil Claim, the Applicants apply for the following certifications pursuant to section 311 of *WCA*:

   (a) Andrew Dockrell was a worker of CP Railway (and therefore Canadian Pacific Railway Ltd.) at the time the causes of action arose and his death arose out of and in the course of that employment;

   (b) CP Railway (and therefore Canadian Pacific Railway Ltd.) is and was at the time the causes of action arose an employer engaged in an industry within the meaning of the compensation provisions of the *WCA*, and any action or conduct alleged against CP Railway (and therefore Canadian Pacific Railway Ltd.) in the Dockrell Civil Claim arose out of and in the course of employment within the scope of such compensation provisions; and

   (c) Keith Creel was a worker of CP Railway (and therefore Canadian Pacific Railway Ltd.) at the time the causes of action arose and any action or conduct alleged against him in the Dockrell Civil Claim arose out of and in the course of employment within the scope of the compensation provisions of the *WCA*.

A. The Workplace Accident

7. I understand that the Dockrell Civil Claim arises out of the tragic workplace fatality of Andrew Dockrell. Mr. Dockrell died on February 4, 2019 when the westbound train he was operating in the course of his employment with CP Railway derailed between the Upper and Lower Spiral Tunnels east of Field, British Columbia (the "**Workplace Accident**").

B. Andrew Dockrell Employment with CP Railway

8. Mr. Dockrell was employed continuously with CP Railway since March 1, 1985, most recently as a locomotive train engineer.

9. At the time of the Workplace Accident, Mr. Dockrell was part of the crew operating a train from Calgary, Alberta to Vancouver, British Columbia on behalf of CP Railway and in the course of their employment as CP Railway employees. He was actively on shift and on

duty as the locomotive train engineer operating the train that derailed at the time of the Workplace Accident.

10. I believe that Mr. Dockrell was a "worker" as defined by and for purposes of the *WCA* and believe further that his death arose out of and in the course of his employment with CP Railway on or about February 4, 2019.

C. Involvement of Canadian Pacific Police Service in the Workplace Accident

11. As a function of its history and status as a federal railway, CP Railway employs railway police constables organized as the "Canadian Pacific Police Service", whose operations are headquartered in Calgary, Alberta (the "**CPPS**").

12. CPPS members are appointed by a judge of a Canadian superior court pursuant to section 44 of the *Railway Safety Act,* RSC 1985, c 32 (4th Supp) for the enforcement of Part III of the *Canada Transportation Act,* SC 1996, c 10, and the laws of Canada or a province insofar as their enforcement relates to the protection of property owned, possessed or administered by CP Railway and the protection of persons and property on that property, including in British Columbia. CPPS members have jurisdiction in any place within 500 metres of property that CP Railway owns, possesses, or administers.

13. CPPS members are independent officers of the Crown when acting in their appointed capacity, notwithstanding their employment with CP Railway.

14. The CPPS initiated an emergency response as first responders to the Workplace Accident, and assisted local authorities and CP Railway including to: locate and access the scene of the Workplace Accident through challenging weather conditions; maintain peace and order at the scene; locate and provide any assistance to the emergency response crew and other first responders; secure the scene and evidence for other investigative agencies as requested; and, gather and return the effects of the deceased crew members. The CPPS also conducted a limited investigation into the circumstances of the Workplace Accident to determine whether any of the crew were impaired by drugs or alcohol.

15. CPPS did not at any time have or assert exclusive jurisdiction to investigate the Workplace Accident to the exclusion of any independent police agencies or other regulatory entities. The Royal Canadian Mounted Police (the "**RCMP**") was onsite immediately after the Workplace Accident and always had jurisdiction to investigate in accordance with its legal authority and discretion, which it has done. In or around December 2020, a formal RCMP investigation was announced with respect to the Workplace Accident, which CP Railway understands is ongoing.

16. CPPS and CP Railway cooperated fully with the independent investigations undertaken by the British Columbia Coroners Office; the RCMP; the Transportation Safety Board; Transport Canada; the Department of Employment and Social Development; the British Columbia workers' compensation board, operating as WorkSafeBC ("**WorkSafeBC**"); and other local, provincial, and federal government agencies, some of which remain ongoing. These agencies had jurisdiction as well as the skill, expertise and experience to investigate railway accidents.

17. While CPPS emergency response efforts were undertaken in the course of their employment with CP Railway, any formal investigation undertaken by CPPS in their appointed capacity was initiated and undertaken independently of any oversight, control or direction by CP Railway, or any other entity.

D. Keith Creel Employment with CP Railway

18. Mr. Creel commenced employment with CP Railway in the position of President and Chief Operating Officer on or about February 5, 2013, and was promoted to the position of President and Chief Executive Officer on or about January 31, 2017. Mr. Creel also serves on CP Railway's Board of Directors, and has held this position since on or about May 14, 2015.

19. In his capacity as President and Chief Executive Officer, Mr. Creel is, and was at the time of the Workplace Accident, directly and actively involved with and engaged in the daily business operations of CP Railway, which is a railway operating company.

20. Based on his role with and management of CP Railway, I believe that Mr. Creel is a "worker" as defined by and for purposes of the *WCA*.

E. Workers Compensation Coverage and Receipt of Benefits

CP Railway is a Registered Employer with WorkSafeBC

21. CP Railway has been registered as an employer with WorkSafeBC and had continuous coverage since December 30, 1968, including on the date of the Workplace Accident. A true copy of the clearance letter from WorkSafeBC dated October 22, 2021 confirming CP's coverage is attached as **Exhibit "A"** to this Affidavit.

Compensation Coverage and Benefits Received in Respect of Accident

22. The Estate of Andrew Dockrell, as represented by Edward Dockrell, applied for compensation and received benefits from the Alberta workers compensation board ("**WCB Alberta**) and WorkSafeBC in respect of the Workplace Accident.

23. CP Railway has no knowledge of the appointment of Heather Dockrell as administrator of the Estate of Andrew Dockrell.

24. The WorkSafeBC Claim Number for the Estate claims is 29566590. The WCB Alberta Claim Number for the Estate claims is 706 6488.

25. CP Railway submitted an Employer's Report of Injury or Occupational Disease with WorkSafeBC on February 4, 2019 in respect of the Workplace Accident. A true copy of that Employer's Report of Injury or Occupational Disease is attached and marked as **Exhibit "B"** to this Affidavit.

26. The Estate of Mr. Dockrell made compensation claims to WCB Alberta and those claims were accepted by WCB Alberta as the adjudicating board on or about February 5, 2019, as clarified by letter dated February 28, 2019. As set out in the February 28, 2019 letter, WCB Alberta accepted the Estate's claim because the accident causing Mr. Dockrell's death "happened at work and because of work" as contemplated by Section 1(1)(a) of the Alberta's *Workers' Compensation Act,* RSA 2000, c W-15. I also understand that the Estate

of Mr. Dockrell provided WCB Alberta with an executed Right of Election form to proceed with its claim in Alberta, recognizing that it may have claim benefits in British Columbia under the *WCA*, all of which is reflected in the February 5, 2019 and February 28, 2019 letters. A true copy of the WCB Alberta February 5, 2019 decision letter is attached and marked as **Exhibit "C".** A true copy of the WCB Alberta February 28, 2019 decision letter is attached and marked as **Exhibit "D"**.

27. According to the WCB Alberta decision letters, Mr. Dockrell did not have any dependents at the time of his death.

28. I understand that WCB Alberta and WorkSafeBC have joint jurisdiction in respect of the Workplace Accident, in light of various factors including: CP Railway's cross-border train operations; the location of the Workplace Accident in British Columbia; Mr. Dockrell's residence in Alberta; and, the performance of work by Mr. Dockrell for CP Railway in both Alberta and British Columbia.

29. Accordingly, I understand that compensation claims by the Estate and family members in respect of the Workplace Accident are governed by the Interjurisdictional Agreement on Workers' Compensation as between workers' compensation boards (hereinafter, collectively the "**Boards**" and individually, a "**Board**") in all jurisdictions except Quebec and Nunavut (the "**Interjurisdictional Agreement**"). A true copy of the Interjurisdictional Agreement is attached and marked as **Exhibit "E"** to this Affidavit.

30. As stated therein, the Interjurisdictional Agreement is intended to, among other things: promote and ensure the effective, efficient and timely administration and resolution of interjurisdictional issues; facilitate the acceptance of compensable claims; avoid the double payment of assessment for the same work; help workers or dependents where more than one Board may be involved in a claim; create a system to permit a Board to help another Board's claimants; and, provide a system which will try to solve disputes between Boards.

31. To date and to the best of my knowledge, the total of $112,619.02 has been paid out in benefits to Mr. Dockrell's Estate, as represented by Edward Dockrell, including the following specific benefits:

(a) lump sum fatality payment in the amount of $92,959.81;

(b) funeral expenses in the amount of $17,430, which costs were paid directly to McInnis and Holloway Funeral Homes; and

(c) cost for transportation of the body in the amount of $2,229.21, which costs were paid directly to McInnis and Holloway Funeral Homes.

32. These benefits were initially paid by WCB Alberta, and WCB Alberta then sought reimbursement from WorkSafeBC pursuant to the Interjurisdictional Agreement. WorkSafeBC has reimbursed WCB Alberta for benefits up to the entitlement limits under the *WCA*. To date and to the best of my knowledge, WorkSafeBC has paid WCB Alberta $10,995.49. A true copy of WorkSafeBC's Interjurisdictional Claim Reimbursement statement to WCB Alberta is attached and marked as **Exhibit "F"**.

33. I have reviewed the Dockrell Civil Claim. The essential character of the Dockrell Civil Claim is liability for the Workplace Accident which led to Mr. Dockrell's death. However framed, the causes of action advanced in the Dockrell Civil Claim against the Applicants are all derived from this workplace fatality, which arose out of and in the course of Mr. Dockrell's employment with CP Railway.

34. As a result, I verily believe that the Dockrell Civil Claim as against the Applicants is barred by operation of section 127 of the *WCA* and make this Affidavit in support for a certification under the *WCA*, section 311, and for no improper purpose.

SWORN/AFFIRMED BEFORE ME)
at Calgary, Alberta, this)
14 day of December, 2021.)
)
)
A Commissioner for Oaths) SHELLY MCINNIS
in and for Alberta)
)
LAWNA HURL)
Barrister & Solicitor

WSLEGAL\041567\00172\28931317v4

This is Exhibit "A" referred to in the Affidavit of **SHELLY MCINNIS** sworn before me this 14 day of Deember, 2021.

A Commissioner for Oaths in and for
the Province of Alberta
LAWNA HURL
Barrister & Solicitor

WORK SAFE BC
WORKING TO MAKE A DIFFERENCE

Assessment Department
Mailing Address
PO Box 5350
Station Terminal
Vancouver BC V6B 5L5

Location
6951 Westminster Highway
Richmond BC
V7C 1C6
www.worksafebc.com

Clearance Section
Telephone 604 244 6380
Toll Free within Canada
1 888 922 2768
Fax 604 244 6390

Test Tester
6951 Westminster Hwy
RICHMOND, BC V7C 1C6

October 22, 2021

Person/Business : CANADIAN PACIFIC RAILWAY COMPANY
CP RAIL
Account number : 001338

This letter provides clearance information for the purposes of Section 258 of the *Workers Compensation Act.*

We confirm that the above-referenced firm is active, in good standing, and has met WorkSafeBC's criteria for advance clearance. Accordingly, if the addressee on this letter is the prime contractor, the addressee will not be held liable for the amount of any assessment payable for work undertaken by the above-referenced firm to January 01, 2022.

This firm has had continuous coverage with us since December 30, 1968.

Employer Service Centre
Assessment Department

Clearance Reference # : C132701410
CLRAAA

For more information about Section 258 and clearance letters visit WorkSafeBC.com

Please refer to your account number in your correspondence or when contacting the Assessment Department.
To alter this document constitutes fraud.

This is Exhibit "B" referred to in the Affidavit of **SHELLY MCINNIS** sworn before me this 14 day of December, 2021.

A Commissioner for Oaths in and for the Province of Alberta

LAWNA HURL
Barrister & Solicitor

Employer's Report of Injury or Occupational Disease

WorkSafeBC account: **Canadian Pacific Railway Company (#001338)**
Date & time submitted: **2/4/2019 1:09:17 PM**
Source: **Portal**

Report type:	An injury

Operating Location

Operating location number:	048
Operating location description:	CP RAIL FIELD
Operating location address:	

FIELD BC V0A 1G0

Classification Unit

Classification unit number:	810801
Classification unit description:	

Canadian Pacific Railway Company

Employer Contact

Last name:	SALTER
First name:	BRENDA
Phone number:	(604) 944-5877 **Ext:**
Fax number:	

Payroll Contact

Last name:	SALTER
First name:	BRENDA
Phone number:	(604) 944-5877 **Ext:**
Fax number:	

Worker Details

Last name:	Dockrell
Middle initial:	
First name:	Andrew
Gender:	Male
Date of birth:	1964/10/05
Social insurance number:	635229966
Claim number (if known):	

Worker Address

Country:	Canada
Mailing address	E301-3805 MARLBOROUGH DR NE
City:	Calgary
Province:	British Columbia
Postal code:	T2A 5M5

Worker Contact Information

Home phone number:	(403) 923-8499
Work number:	**Ext:**

Worker Employment Details

What's the worker's occupation?	Train Engineer
Did the worker's injury occur while performing volunteer activities?	NO
Did the worker deduct business or equipment expenses from the employment income?	NO
Is the worker a relative of an employer?	NO

Incident Details

Date of incident:	2019/02/04
Time of incident:	01:00 AM

Reported to Employer

Did the worker report the injury/exposure to the employer?	YES
Date reported to employer:	2019/02/04
Time reported to employer:	01:00 AM

Name of the person reported to: CP Police

Incident Location

Did the worker's injury occur on employer's premises or an authorized worksite? YES

Did the incident occur in BC? YES

Describe the location of the incident (example lunch room, parking lot). Include the province and country if not BC.

Field BC, spiral tunnel

Incident Detail

Describe how the incident happened:

unknown

Witness Information

Were there any witnesses? NO

Injury Cause

Did the injuries or exposure result from a specific incident? YES

What was the contributing factor(s) for the injury?

Unsure/Other

If a 3rd party was involved N/A

Describe the injury in detail. What part of the body was injured?(i.e. sprained left ankle, broken right wrist, etc.)

Fatality

Treatment Details

Did the worker receive first aid? NO

Did the worker go to a hospital, medical clinic, or visit a physician or a qualified practitioner? NO

Were the worker's actions at the time of injury for the purpose of your business? YES

Did the incident occur during the worker's normal shift? YES

Was the worker performing regular work duties at the time of the incident? YES

Are you aware of any recent pain or disability in the area of the worker's reported injury? NO

Wage Details

Did the worker miss any time from work beyond the date of injury? YES

Last Day Worked

Last day worked: 2019/02/04

Did the worker continue to work past the day of injury? NO

Employment Details

Is the worker's employment (permanent or temporary)? Permanent

At the time of the injury, was the worker full time or part time? Full Time

Has the worker been employed by the firm for less than 12 months NO

Earnings

Is employer continuing to pay worker full salary? NO

Please explain:

Worker's base salary for this employment at the time of injury: $ 137,295.97 per: Year(s)

Worker's gross earnings for the past 3 month(s) prior to date of injury were $ 137,295.97

Amount of earnings for the past 12 months prior to date of injury: $

Additional Pay

Does worker receive other amounts of compensation in addition to base salary? NO

What other compensation does the worker receive?

Shift Information

Does the worker have a fixed shift?	NO
Does the worker have a rotating shift pattern of less than 6 cycles?	NO
Does the worker work variable shifts (no steady employment pattern)?	NO
Are there days of the week that the worker is never scheduled to work?	NO

Apprenticeship

Is the worker in an apprenticeship program?	NO

Return to Work

Has the worker returned to work?	NO
Do you have any modified or transitional duties available?	NO

Objection Section

Do you have any objections regarding the acceptance of this claim?	NO

This is Exhibit "C" referred to in the Affidavit of **SHELLY MCINNIS** sworn before me this 14 day of December, 2021.

A Commissioner for Oaths in and for the Province of Alberta
LAWNA HURL
Barrister & Solicitor

Working with you *to ensure timely care and comprehensive benefits.*

wcb Workers' Compensation Board – Alberta

ATTN: ESTATE OF ANDREW J DOCKRELL
C/O EDWARD DOCKRELL
44 NEW ST SE
CALARY AB T2G 3Y1

February 05, 2019

Dear Mr. Edward Dockrell:

Worker Name: Estate of Andrew J. Dockrell
Claim Number: 706 6488
Date of Accident: February 04, 2019

This letter is following our telephone conversation today, and will outline the benefits available under the Alberta Workers' Compensation Act. I would like to offer my deepest condolences to you and your family on the loss of your brother, Andrew.

A claim has been set up for the accident involving your late brother, Andrew, and it has been determined you would have the right to elect coverage under the Alberta Workers' Compensation Act as Andrew lived in Alberta. However, as the accident occurred in British Columbia, you may have the right to claim benefits within that jurisdiction. I would encourage you to contact WorkSafe BC toll-free at 1-888-621-7233 in order to determine whether or not the estate may qualify for benefits and what these benefits would be.

I am enclosing a Right of Election form and if you decide to claim with Alberta, you need to complete this form and return it to our office within 30 days of the date of this letter.

The following outlines the benefits under the Alberta Workers' Compensation Act and will allow you to make an informed decision that would be in your best interest.

Funeral Expenses And Other Related Expenses
If you claim with Alberta, I am able to pay up to but not exceeding $16,800.00 towards the burial, cremation, or memorial service. There is also provision to assist with costs incurred in the transportation of the body. In addition, there is a payment of $2,229.21 to assist with any extra costs incurred. For reimbursement purposes please keep any funeral receipts. If you would prefer,

arrangements can also be made for direct billing of the funeral expenses through the funeral home to our office.

Dependency Benefits
I understand that Andrew was not married, not living with anyone for over 3 years in a common-law relationship, had no children under the age of 18 at the time of his death. As there are no dependents, no benefits would be payable.

In the context of the Alberta Workers' Compensation Board an Adult Interdependent Relationship means a person is the adult interdependent partner of another person if:

(a) They have lived in a relationship of interdependence for a continuous period of not less than 3 years immediately preceding his death, or

(b) for a period of some permanence, if there is a child of the relationship by birth or adoption, or

(c) has entered into an adult interdependent partner agreement with the other person (as outlined under the Adult Interdependent Relationship Act).

Lump-sum fatality payment
If you elect with Alberta, a lump-sum fatality payment would be available to Andrew's estate. This one-time payment is intended to help through the financial impact of the loss of Andrew and is equivalent to $92,959.81.

Counseling Services
If you elect with our province, we are also able to offer to the immediate family members counseling services to help deal with things. This offer is only available for a 24-month period following the accident.

Please be aware that a maximum of 10 counseling sessions is available to each immediate family member should they wish to accept this offer of service. Under section 1(1)(q) of the WCB Act, a "member of a family" means a spouse, parent, grandparent, step-parent, child, step-child, brother, sister, half-brother and half-sister of a worker.

Information Required In Order To Set Up Entitlements
If you wish to claim with Alberta, I require the following:

- Completed Right of Election form (enclosed)
- Certified copy of Andrew's Birth Certificate
- If Andrew had a will, please provide a copy of the page that names the executor and a copy of the signature page.

- Copies of the funeral account as well as receipt of payment, or the name of the funeral home if you wish our office to arrange direct billing with them.

Follow-Up Information
If you have any questions regarding this letter or would like to discuss something further you can call me at (780) 498 4684 or toll-free at 1-866-922-9221. I am available in the office Monday to Friday between the hours of 6:00 am and 2:30 pm. You may also reach me by email at diana.stone@wcb.ab.ca.

Sincerely,

D. Stone
Diana Stone, Case Manager

Encl.

cc: CANADIAN PACIFIC RAILWAY COMPANY

This is Exhibit "D" referred to in the Affidavit of **SHELLY MCINNIS** sworn before me this 14 day of December, 2021.

A Commissioner for Oaths in and for the Province of Alberta
LAWNA HURL
Barrister & Solicitor

Working with you *to ensure timely care and comprehensive benefits.*

wcb Workers' Compensation Board – Alberta

ATTN: ESTATE OF ANDREW J DOCKRELL
C/O EDWARD DOCKRELL
44 NEW ST SE
CALGARY AB T2G 3Y1

February 28, 2019

Dear Mr. Edward Dockrell:

Worker Name: Estate of Andrew J. Dockrell
Claim Number: 706 6488
Date of Accident: February 4, 2019

I am deeply sorry for the loss of your brother Andrew and understand this is a difficult time for you and your family. My thoughts are with you and I am here to help you.

Thank you for speaking with me on February 27, 2019, and providing the signed Right of Election form. I know you have a lot of information to process right now, so I am sending this letter to summarize the details from our conversation. If at any time you need help, wish to understand the information in more detail or have questions to help you plan for the future, please give me a call. I know this is a difficult time and you may have many questions. I am here to help.

I would also like to offer some additional support. If you or Andrew's other family members would like to talk to someone about what you are going through, I can offer you counselling. When you have had a chance to think about this, and would like to see a counsellor, please give me a call. I will be happy to talk more about what is available and make arrangements.

As you know, I have accepted Andrew's claim because the accident happened at work and because of work (Section 1(1)(a) of the Workers' Compensation Act).

Fatal one-time payment
One of the benefits available is a one-time fatality payment in the amount of $92,959.81, which is the maximum amount payable (04-08). As Andrew was single with no dependents, the payment has been made payable to his estate. Enclosed is a cheque in this amount.

Funeral costs
I can also help you with payment for many of the funeral costs, including burial, cremation and memorial services, up to $16,800.00. Please send me the bills (and the name of the person who should be reimbursed) and I will take care of the rest.

Preburial costs
In addition, there is a payment of $2,229.21, payable to the estate, to assist with any extra costs incurred. Enclosed is a cheque in this amount for which no receipts are required.

Again, I would like to express my sincere condolences on your loss and want to assure you that I will try to help you in any way I can.

I trust the information provided will help you understand the benefits payable to Andrew's estate through the workers' compensation system. If at any time you have questions about the claim, please give me a call at 780-498-4684. I know this is a difficult time and you are likely to have many questions as you move forward.

Although I strive to make fair decisions, they can always be discussed and reviewed. I encourage you to ask questions and, if after speaking to me you have any reservations, please give my supervisor, Robin Bussiere, a call at 780-498-8667. We are committed to ensuring you understand how each decision is made and how we can help you.

Please note - you have the option of requesting a formal decision review through our dispute resolution and decision review process within 12 months of any decision made. We have information on our website about this process or I can explain the process at any time, if you prefer.

Should you decide to request a formal review of my decision, you may be eligible for interim relief which is financial support given to workers or employers during the review or appeal process. It is provided in exceptional circumstances. You can find more information including the policy criteria at www.WCB.ab.ca>Claims>Review and appeals>For workers or www.WCB.ab.ca>Claims>Review and appeals>For employers.

Sincerely,

D. Stone

Diana Stone, Case Manager

Encl.

cc: CANADIAN PACIFIC RAILWAY COMPANY

This is Exhibit "E" referred to in the Affidavit of **SHELLY MCINNIS** sworn before me this 14 day of December, 2021.

A Commissioner for Oaths in and for the Province of Alberta

LAWNA HURL
Barrister & Solicitor

INTERJURISDICTIONAL AGREEMENT

ON WORKERS' COMPENSATION

Consolidation

ORIGINAL DATED APRIL 2006
AMENDED JULY 9, 2008
AMENDED NOVEMBER 20, 2012 AND EFFECTIVE JANUARY 1, 2014
AMENDED OCTOBER 10, 2013 AND EFFECTIVE JANUARY 1, 2015
AMENDED AND EFFECTIVE NOVEMBER 28, 2017

GUIDE TO THE WORKING DOCUMENT

Intent

1. To avoid the double payment of assessments for the same work.
2. To help workers or dependants where more than one Board may be involved in a claim.
3. To create a system to permit a Board to help another Board's claimants.
4. To provide a system which will try to solve disputes between Boards.

Contents

Part I Introduction
- Section 1 Statement of Principles, Definitions and Application
- Section 2 General Definitions
- Section 3 Application

Part II Adjudication Responsibilities
- Section 4 Election
- Section 5 Cash Benefits
- Section 6 Benefits in Kind
- Section 7 Occupational Diseases
- Section 8 Aggravation or Worsening of a Disability
- Section 9 General Reimbursement Guidelines

Part III Assessment Responsibilities
- Section 10 Application
- Section 11 Assessments – General Principle
- Section 12 Alternative Assessment Procedure for the Interjurisdictional Trucking and Transport Industry - Exception to General Principle

Part IV Administrative Services
- Section 13 Level and Cost of Administrative Services
- Section 14 Provision of Reports and Documents
- Section 15 Appeals

Part V Dispute Resolution.
- Section 16 Dispute Resolution

Part VI Effect of Agreement
- Section 17 Effect of Agreement

Appendices

A. Limits of Participation by Signatory Board.

B. Form of Election.

C. Request for Assessment Transfer By Virtue of the Alternative Assessment Procedure (AAP) for Interjurisdictional Trucking and Transport.

D. Application for the Alternative Assessment Procedure (AAP) for Interjurisdictional Trucking and Transport.

E. Alternative Assessment Procedure-Included Industries.

INTERJURISDICTIONAL AGREEMENT ON WORKERS' COMPENSATION

- *Except as otherwise specifically noted throughout, this Agreement is effective October 1, 1993 for all jurisdictions except Québec and Nunavut.*
- *For Québec, this Agreement is effective on January 1, 1995.*
- *For Nunavut, this Agreement is effective on April 1, 1999.*

PART I - INTRODUCTION

SECTION 1 STATEMENT OF PRINCIPLES

Signatories

1.1 Each Workers' Compensation Board or Commission signatory to this Agreement has entered into this Agreement pursuant to its Statutory Authority.

Intent of Agreement

1.2 The intent of this Agreement is as follows:

a) To promote and ensure the effective, efficient and timely administration and resolution of interjurisdictional issues that are the subject matter of this Agreement;
b) To facilitate the acceptance of all compensable claims so that no injured worker will be denied compensation benefits except in accordance with the applicable Statutory Authority and Board policy; and
c) To ensure that employers are not responsible for the payment of assessments to more than one Board in respect of the earnings or some portion thereof of their employees who are employed in more than one jurisdiction.

Purposes of Agreement

1.3 The purposes of this Agreement are to ensure equity:

a) For workers whose employment is of such a nature as to require performance of their duties in more than one jurisdiction;
b) In the adjudication of claims involving either injury, occupational disease, death, or a combination of these, due to employment in more than one jurisdiction;
c) For employers in relation to assessments of the earnings of their employees, whose employment is of such a nature as to occur in more than one jurisdiction;
d) For workers and employers by providing mutual aid and co-operation in the delivery of benefits and services:
   i) Where a worker has moved to another jurisdiction from the one in which the claim was adjudicated and accepted; and
   ii) In the administration of assessment matters involving more than one jurisdiction.

Mutual Co-operation

1.4.1 Each Board undertakes to ensure that through the provisions of this Agreement and mutual co-operation, no worker disabled as a result of injury or disease causally related to employment in Canada, is denied fair and equitable compensation.

Service level and priority

1.5 Any services under this Agreement shall be given on the same basis and with the same level of service and priority as is provided to beneficiaries or employers in the jurisdiction of the Administering Board.

SECTION 2. GENERAL DEFINITIONS

Definitions

2.1 In this Agreement:

a) "Adjudicating Board" means the Board or Commission to which a claim is made and which decides the question of entitlement to benefits, or the determination of assessment matters.
b) "Adjudication" means the determination of entitlement to benefits under the statutory authority or policy of the jurisdiction where the claim is made and "adjudicate," "adjudicated," and "adjudicating" have corresponding meanings.
c) "Administering Board" means a Board, other than the Adjudicating Board, which provides administrative services and benefits in kind to a beneficiary who has moved out of the jurisdiction of the Adjudicating Board.
d) "Administrative Services" means the services of a participating Board in providing aid and co-operation under this Agreement.
e) "Beneficiary" means a recipient of cash benefits, benefits in kind, administrative or other services provided as the result of an injury or death, including an injury or death caused by occupational disease.
f) "Benefits" means cash benefits, benefits in kind and administrative services.
g) "Benefits in Kind" means financial assistance or services provided pursuant to the Statutory Authority of one of the jurisdictions and may include, but is not restricted to, medical treatment and related services and expenses, vocational rehabilitation services and expenses, the provision or repair of prosthetic appliances.
h) "Board" means those Workers' Compensation Boards or Commissions signatory to this Agreement.
i) "Cash Benefits" means monetary compensation paid for disease, injury or death pursuant to the Statutory Authority or policy of the adjudicating Board.
j) "Jurisdiction" means any of the ten provinces or three territories of Canada.
k) "Occupational Disease" means a disease of gradual onset or incremental progression resulting from exposure during employment to conditions or substances detrimental to health where the disease is due to exposure employment in more than one jurisdiction, and includes, but is not limited to asbestosis, silicosis, pneumoconiosis, cancers caused by exposure to asbestos or radiation, industrial deafness, and vibration induced white finger disease.
l) "Policy" means the guidelines and procedures, or other administrative practices of a Board.
m) "Self-insurer" means those employers who are individually liable for the entire cost of claims whether paid on a capital or current cost basis.
n) "Statutory Authority" means an Act or Acts, including regulations, relating to workers' compensation.

SECTION 3. APPLICATION

Agreement applies

3.1 This Agreement applies to:

a) Any beneficiary entitled to benefits arising out of injury, death, or occupational disease by virtue of the Statutory Authority of the Adjudicating Board, who either temporarily or permanently transfers his or her residence to the jurisdiction of an Administering Board and who requires benefits in kind or administrative services or both;

b) A worker who may be suffering from an occupational disease resulting from employment exposure in more than one jurisdiction;

c) An employer whose workers are covered under the Statutory Authority of more than one jurisdiction.

Agreement does not apply

3.2 This Agreement does not apply to:

a) Employment in, or employers engaged in industries or occupations excluded by or not included under the Statutory Authority or policy in the jurisdiction in which the work is performed or undertaken;

b) Those employers with fewer workers than are required for coverage in the jurisdiction in which work is performed or undertaken;

c) Any employment covered by the *Government Employees Compensation Act*, R.S.C. 1985, c. G-5, as amended;

d) Any employment for which coverage may be obtained only by application in the jurisdiction in which work is performed or undertaken, unless coverage is in force in both the jurisdiction of residence or usual employment and the one in which the work is undertaken or performed;

e) Personal coverage for working employers, directors and executive officers of a corporation, partners in a partnership, proprietors, or independent operators, unless coverage is in force in both the jurisdiction of residence or usual employment and the one in which the work is undertaken or performed;

f) Employers who are classed as self-insurers or as being individually liable for the entire cost of all injuries to their workers under the Statutory Authority or policy of both the jurisdiction of residence or usual employment and the jurisdiction in which work is undertaken or performed.

PART II - ADJUDICATION RESPONSIBILITIES

SECTION 4. ELECTION

Election by Beneficiary

4.1 Where there may be entitlement to benefits in more than one jurisdiction, the beneficiary shall be required by the Adjudicating Board to elect not to claim from other jurisdictions if the claim is accepted, and the Adjudicating Board shall advise the other jurisdictions where the claim could be made, of the election, adjudication and disposition of the claim. The election shall be made on a form similar to Appendix B.

SECTION 5. CASH BENEFITS

Adjudicating Board Determines

5.1 Subject to subsection 5.2, the Adjudicating Board is responsible for determining the nature and extent of cash benefits payable and for making all such payments to a beneficiary who has left its jurisdiction.

Advances on Request

5.2 On the request of the Adjudicating Board, an Administering Board may make special arrangements for advances against such benefits subject to refund.

SECTION 6. BENEFITS IN KIND

Benefits by Administering Board

6.1 Where a beneficiary has left the jurisdiction of an Adjudicating Board and taken up temporary or permanent residence in the jurisdiction of an Administering Board, the Administering Board shall, at the request of the Adjudicating Board, provide or procure and pay for such benefits in kind to the beneficiary as are authorized by the Adjudicating Board.

Refund by Adjudicating Board

6.2 The amount paid according to subsection 6.1 shall be refunded in full by the Adjudicating Board on completion of the services, or on such other terms, as agreed between the two Boards, according to need and circumstance.

SECTION 7. OCCUPATIONAL DISEASES

Definitions

7.1 In this section:

a) "Contributing Board" means a Board
   i) In whose jurisdiction a worker has had occupational exposure which has contributed to the development of the occupational disease, and
   ii) Which has agreed to implement section 7, and
   iii) May include an Adjudicating Board.

b) "Contributing exposure" means occupational exposure in the jurisdiction of a Contributing Board.

c) "Occupational disease claim" means a claim made by a person who is either a worker suffering from an occupational disease, or the dependant of a deceased worker whose death was attributable to an occupational disease.

Election

7.2 Where there may be entitlement to benefits in more than one jurisdiction in respect of an occupational disease claim, the person making the occupational disease claim shall be required by the Adjudicating Board to elect not to claim from other Contributing Boards if the claim is accepted, and the Adjudicating Board shall advise the other jurisdictions where the claim could be made, of the election, adjudication and disposition of the claim. If the claim is denied by the Adjudicating Board , the occupational disease claim may be

made to the Board in another jurisdiction in which the worker has occupational exposure. The election shall be made on a form similar to Appendix B.

No Reimbursement

7.3 A Contributing Board shall adjudicate each occupational disease claim and pay the full costs of the claim without reimbursement from any other Board, if the claim and the full costs of the claim would be allowable based solely on exposure within the jurisdiction of that Board.

Partial Exposure with Contributing Board

7.4 If a claim is registered with a Contributing Board, and it cannot allow the claim pursuant to subsection 7.3, than the Board shall have regard to all contributing exposure and shall:

a) Adjudicate the claim if 30% of the total contributing exposure occurred in the jurisdiction of that Board; or
b) If paragraph (a) does not apply, the Board shall either adjudicate the claim or refer the claim to another Board for adjudication so that the Board which adjudicates claim is
   i) The Board where the claim is registered, if no contributing exposure is 30% or more of the total contributing exposure;
   ii) The Board where the longest contributing exposure occurred, if one or more Boards has at least 30% or more of the total contributing exposure; or
   iii) The Board where the most recent exposure occurred, if the longest contributing exposures over 30% are equal.

Acceptance of Determination by Adjudicating Board

7.5 The Contributing Boards shall accept the allowance of an occupational disease claim by the Adjudicating Board under subsection 7.4.

Contribution Request by Adjudicating Board

7.6 A Contributing Board which has adjudicated and paid the full costs of a claim for occupational disease, while another Contributing Board, where the claim was originally submitted, did not apply the rules provided for under subsection 7.4, can ask for a reimbursement under the rules provided by subsection 7.7.

Sharing of Costs

7.7 Where subsection 7.4 applies, the costs of the occupational disease claim shall be shared by the Contributing Boards as follows:

a) The Adjudicating Board shall apportion among the Contributing Boards the financial responsibility for the occupational disease claim according to the duration of exposure in the jurisdictions of the Contributing Boards in which the worker had occupational exposure;
b) The Adjudicating Board shall invoice each Contributing Board quarterly, not in advance, for its share of the costs of the claim for the past quarter of the year,
c) Each Contributing Board receiving an invoice shall pay the full amount of the invoice within sixty (60) days of receipt, subject only to the maximum amount of benefits payable according to its Statutory Authority.

Exposure in months

7.8 For the purpose of this section, exposure shall be calculated in months of occupational exposure, rounded up.

Costs must exceed $5,000

7.9 Subsection 7.7 applies only to occupational disease claims in which the total costs exceed $5,000.00.

Disablement

7.10 Subject to subsection 7.11, any condition which is treated by a Board as a disablement, but which is defined in this Agreement as an "occupational disease" shall be treated for the purposes of this Agreement as an occupational disease.

Section 7 does not apply

7.11 This section does not apply to claims for occupational chronic stress, occupational chronic pain, or occupational noise-induced hearing loss. Existing arrangements among Boards concerning the compensation of claims for occupational noise-induced hearing loss shall continue.

Effect of No Election

7.12 If an Adjudicating Board allows a claim and pays benefits without an election being made in accordance with subsection 7.2, the Contributing Boards are not responsible for any costs of the claim.

Effective Date

7.13 Section 7 shall commence on January 1, 1998 for all new claims registered after January 1, 1998. *Section 7 is effective for Ontario as of June 25, 2001. Section 7 does not apply to Québec as of February 8, 2005.*

SECTION 8. AGGRAVATION OR WORSENING OF A DISABILITY

Subsequent Employment

8.1 Where a worker who has been, or is, in receipt of benefits from one jurisdiction, and who has taken up employment in another jurisdiction, claims that his or her condition has recurred, worsened, or been aggravated as a result of his or her employment in that jurisdiction, the Board in that jurisdiction shall adjudicate the new claim and award additional benefits to which the worker is entitled and pay the full cost of such benefits and related services as are provided for by its Statutory Authority or policy, and shall advise the other Board upon request.

Not from subsequent employment

8.2 Where the recurrence, worsening or aggravation of the condition did not result from the subsequent employment, the Board in that jurisdiction shall refer all pertinent information to the original adjudicating Board for adjudication and the provisions of this Agreement shall apply in respect of administrative co-operation.

SECTION 9. GENERAL COST REIMBURSEMENT GUIDELINES

Accident Board Responsible

9.1. Where benefits are provided by an Adjudicating Board to a beneficiary, and the injury, or a fatality resulting from the injury, occurred in another jurisdiction where the beneficiary is eligible to claim benefits, the cost of benefits provided by the Adjudicating Board shall be borne by the Board in the jurisdiction in which the injury occurred.

Amount of Reimbursement

9.2. Reimbursements shall either cover the full amount of all payments made by the adjudicating Board on a claim, or the portion of that full amount requested by the adjudicating Board for reimbursement subject only to any policy or statutory limitations. This includes the capitalized costs established on a claim, where both the adjudicating and reimbursing Boards employ a process of capitalizing future costs. Reimbursement in such cases shall be limited to the extent that the reimbursing Board would have itself capitalized the costs had it administered the claim.

Application

9.3 These reimbursement provisions shall not apply to Boards precluded from participation in a system of reimbursement. No reimbursements shall be made to any Board precluded from participation in the reimbursement process.

Effect of limits on participation

9.4 Where the Statutory Authority or policy of a Board permits participation in a reimbursement process but limits the amount or nature of its participation, similar limitations shall be deemed to apply to all other Boards when dealing with that Board.

Reimbursement requests

9.5 Reimbursements shall be requested by the Adjudicating Board and paid by the reimbursing Board either when the claim is closed or, at a minimum of quarterly on a calendar basis. When an action has been commenced, a request for reimbursement shall be deferred pending determination of the net actual cost to the Adjudicating Board.

Capitalization

9.6 Where the capitalization of an award is based on a limited period of years rather than full life expectancy, and is subject to re-capitalization at a later date, the subsequent re-capitalization is subject to reimbursement provisions and the Adjudicating Board shall so advise the other Boards when initially requesting reimbursement.

Claims reopened

9.7 Where a claim is reopened and additional benefits are provided by the Adjudicating Board for recurrent disability, or for rehabilitation or retraining, the additional costs incurred are subject to these reimbursement provisions.

Certain costs not subject to reimbursement

9.8 Additional costs incurred on a claim by an Adjudicating Board as the result of subsequent statutory, or policy amendments, or future cost of living adjustments, are not subject to reimbursement. This restriction does not apply to those situations where the capitalized costs contains provisions for cost of living adjustments.

Costs must exceed $1,000

9.9 The reimbursement guidelines shall not apply in any individual claim in which the total costs paid do not exceed $1,000.

Written notice within two years

9.10 The Adjudicating Board shall notify a reimbursing Board of a potential reimbursement claim within two years of the date the claim is accepted by the Adjudicating Board. No reimbursements are payable on the claim unless the Adjudicating Board has provided written notice within this time frame.

Notice of pre-June 2000 claims

9.11 For potential reimbursement claims arising before June 26, 2000, notice must be given to a reimbursing Board no later than June 25, 2002. No reimbursements are payable on a claim unless the Adjudicating Board has provided written notice within this time frame.

Effective date

9.12 Section 9 shall commence on March 1, 1992.

PART III – ASSESSMENT OBLIGATIONS

SECTION 10. APPLICATION OF PART III

Application

10.1 Subject to subsection 3.2, Part III applies to an employer whose workers are covered under the Statutory Authority of more than one jurisdiction.

SECTION 11. ASSESSMENTS – GENERAL PRINCIPLE

Assessment by Boards

11.1 When this Part applies, as a general principle, each Board agrees to assess those employers who are liable to pay assessments for the work performed by their workers in that Board's jurisdiction only.

Assessment Rates

11.2 Such assessments shall be levied according to the policy of the Adjudicating Board at the assessment rate for the industry in which the employer's operations are classified in each jurisdiction in which the employer is subject to assessment.

Total Earnings not Above Maximum

11.3 Where a worker's total earnings do not exceed the maximum earnings covered by the Board, assessments shall be levied on the full amount of the worker's earnings in that jurisdiction.

Total Earnings Above Maximum

11.4 Where a worker's total earnings exceed the maximum rate of earnings covered by the adjudicating Board, such assessments shall be levied only on that part of the worker's earnings in the jurisdiction which are proportionate to the maximum annual assessable earnings in that jurisdiction for the duration of the period of employment in that jurisdiction, using one of the following formulae:

a) Maximum earnings covered in the jurisdiction divided by 52 and multiplied by the number of weeks of employment in that jurisdiction;
b) Maximum earnings covered in the jurisdiction divided by 365 and multiplied by the number of days the worker is employed in that jurisdiction;
c) Earnings in the jurisdiction divided by total gross earnings, multiplied by the maximum earnings covered in that jurisdiction;
d) Time worked in the jurisdiction divided by total time worked in year, multiplied by maximum earnings covered in that jurisdiction;
e) Any other formula which achieves the same result and is suitable for the particular industry and agreeable to the Adjudicating Board and the Administering Board.

Coverage continues

11.5 When computing earnings for assessment purposes, where a worker, usually resident and employed in one jurisdiction by an employer, is sent by that employer to work in another jurisdiction, the worker shall continue to be covered under the Statutory Authority or policy of the jurisdiction of origin until reaching the jurisdiction of destination, and shall similarly be covered by the jurisdiction of origin on leaving the jurisdiction of destination and the worker's earnings while travelling shall be assessed accordingly. This provision does not apply where the worker's employment is such that coverage exists under the statutory authorities of the jurisdictions through which the worker travels and in which the employer reports the operations and earnings paid to the Boards of such jurisdictions.

SECTION 12 ALTERNATIVE ASSESSMENT PROCEDURE FOR THE INTERJURISDICTIONAL TRUCKING AND TRANSPORT INDUSTRY - EXCEPTION TO GENERAL PRINCIPLE

Definitions

12.1 In this section:

a) "Alternative Assessment Procedure" (the "AAP") means the elective assessment procedure under which an Electing Participant pays all assessments for a calendar year in respect of a Worker engaged in an industry listed in Appendix E, to one Assessing Board (being the jurisdiction in which the Worker lives most of the time);
b) "Assessing Board" means a Participating Board to which an Electing Participant pays assessments under the AAP;

c) "Electing Participant" means:
   (i) an employer who participates in the AAP; and
   (ii) an individual who has optional coverage with an Assessing Board, who is responsible to pay assessment for such coverage, and who participates in the AAP;
d) "Participating Board" means a Board that participates in the AAP;
e) "Registering Board" means a Participating Board, other than the Assessing Board, with which an Electing Participant would, in the absence of the AAP, be required or able to register and pay assessments; and
f) "Worker" means an individual who has workers' compensation coverage from an Assessing Board for work performed anywhere in Canada, and who works in more than one jurisdiction.

Availability of the Alternative Assessment Procedure

12.2 An Assessing Board shall ensure that the AAP is only available to persons eligible to be Electing Participants.

Participating Board

12.3 A Participating Board shall:

a) Require that an Electing Participant:
   (i) Pay assessments to the Assessing Board in accordance with the AAP;
   (ii) Continue to maintain its registration with each Registering Board;
   (iii) Provide any information requested by an Assessing Board or a Registering Board to that Board; and
   (iv) Consent to the disclosure of information concerning itself among the Assessing Board and the Registering Boards, as is necessary for the effective administration of the AAP.
b) Require an Electing Participant's participation in the APP to commence on January 1st of each year and require application for participation in a year to be made by no later than 28 February of that year.
c) As an exception to subsection (b), permit an Electing Participant to commence participation in the AAP later than January 1st of a year in cases where the Electing Participant only became eligible to participate in the AAP after January 1st of that year. In such cases, the application for participation must be made within 60 days of becoming eligible.
d) Require that an Electing Participant withdrawing from the AAP provide written notice to the Assessing Board and each Registering Board of its intention to withdraw prior to the commencement of the applicable calendar year.
e) Upon its acceptance of an application for the AAP and upon becoming an Assessing Board, provide a copy of the application to the Participating Board of each jurisdiction in which the Electing Participant is operating, as indicated on the initial application form or subsequently.
f) Upon notification by an Assessing Board of the acceptance of an application for the AAP, establish a registration for each Electing Participant which would, in the absence of the AAP, be required or able to register and pay assessments in its jurisdiction.

Application for participation in the Alternative Assessment Procedure

12.4 Where an applicant seeks to participate in the AAP, the applicant shall complete and submit an application in the prescribed application form (set out as Appendix D of this Agreement) to a proposed Assessing Board.

12.5 Participation in the AAP comes into effect once the proposed Assessing Board accepts the application. That Board then becomes the Assessing Board for the Worker(s).

Administration of the Alternative Assessment Procedure

12.6 An Assessing Board shall assess an Electing Participant in accordance with the AAP, in accordance with its law and policies, and at the appropriate assessment rate; and shall levy and collect assessments for each Worker, on its own behalf and on behalf of all Registering Boards. Every Participating Board shall take the steps necessary under its enabling legislation to allow the Assessing Board to levy and collect assessments on its behalf.

12.7 A Registering Board shall relieve an Electing Participant from the obligation to pay assessments for a Worker.

12.8 A Registering Board may require an Electing Participant to provide such information, records, and documents as is necessary for the effective administration of the AAP.

12.9 If a Worker is injured and elects to claim compensation from a Registering Board, that Board shall adjudicate and pay the claim in accordance with its enabling legislation. The Registering Board shall invoice the Assessing Board for the costs of the claim either when the claim is closed or, at a minimum, on a quarterly calendar basis.

12.10 Upon receipt of a Registering Board's invoice in accordance with paragraph 12.9, the Assessing Board shall, subject to an applicable limit of participation in Appendix A of this Agreement, pay to the Registering Board the full amount of the invoice (as determined by the Registering Board's law and policy).

12.11 All Participating Boards shall:

a) Provide copies of such reports and documents from their files to one another as is necessary for the effective administration of the AAP.

b) Maintain any and all necessary records relating to the AAP in good-order at all times; and shall review all such records for currency at least once every three years.

No change to coverage

12.12 There shall be no change to the existing workers' compensation coverage of a Worker.

a) The assessment practices set out in section 11 of the Agreement shall continue to apply to an employer who does not participate in the AAP.

b) Nothing in this section shall affect the operation of section 4 (elections) of the Agreement.

c) Assessing and Registering Boards shall keep relevant statistics including claims, cost and assessment statistics relating to the operation of the AAP.

d) Section 9, General Cost Reimbursement Guidelines, shall not apply to an Electing Participant to which this section applies.

PART IV - ADMINISTRATIVE SERVICES

SECTION 13. LEVEL AND COST OF ADMINISTRATIVE SERVICES

No charges to Adjudicating Board

13.1 The Administering Board shall not charge costs or fees to an Adjudicating Board for:

a) Administrative services provided by the staff of the Administering Board on behalf of beneficiaries; or
b) Administrative services provided with respect to assessment matters.

SECTION 14. PROVISION OF REPORTS AND DOCUMENTS

Documents for Claim Administration

14.1 The Adjudicating Board shall provide copies of such reports and documents from its files to the Administering Board as may be necessary for effective administration of a claim. The Administering Board shall provide such medical, rehabilitation or other reports required by the Adjudicating Board to facilitate on-going management of a claim.

Documents for Other Services

14.2.1 Where other services are required of an Administering Board such as the audit of the financial records of an employer to assist another Board in its assessment of that employer, the Board requesting the services shall provide such documentation and records as are available concerning its needs and the policies and practices on which its auditing and assessment procedures are based.

Confidentiality

14.3 Information provided under this section shall be provided in accordance with the confidentiality provisions of the applicable Statutory Authority or policy.

SECTION 15. APPEALS

Requests for Appeal

15.1 Any appeal or request for review or reconsideration shall be dealt with under the appeal process applicable to the Adjudicating Board.

Enquiries to aid Appeals

15.2 The Adjudicating Board may delegate to the Administering Board the conduct of enquiries to aid in such matters.

Complaint to Administering Board

15.3 Where an employer or beneficiary is dissatisfied with services provided by the Administering Board, the resolution of the complaint shall be determined by the Administering Board.

PART V - DISPUTE RESOLUTION

SECTION 16. DISPUTE RESOLUTION

Exclusive Jurisdiction of Adjudicating Board

16.1 Each Adjudicating Board has the exclusive jurisdiction to determine all matters arising under its Statutory Authority and the action or decision of the Adjudicating Board on such matters is final and conclusive. This decision-making authority cannot be delegated to any other Board.

Dispute Resolution

16.2 In the event of a dispute arising between jurisdictions, the Boards in dispute shall undertake negotiations in good faith to reach a decision. Such negotiations shall originally be conducted by the staff involved by correspondence and telephone. Failing an agreement, senior representatives of each Board to the dispute shall address the issues, with the goal of reaching a fair and reasonable conclusion.

Referral to IJA Coordinator

16.3 Should the dispute remain unresolved, each Board shall refer the dispute to the interjurisdictional coordinator appointed by their respective Boards for further review and discussion. If the coordinators fail to resolve the issues to their mutual satisfaction, they may agree to the appointment of one or more coordinators from other Boards to mediate the dispute.

Information for Mediators

16.4 The mediators may request any additional information as is necessary for the understanding and determination of the dispute and may conduct an oral hearing on the dispute at such time and place agreeable to the Boards involved in the dispute. All evidence, whether written or oral, shall be treated with utmost confidentiality.

Recommendations

16.5 The recommendation of the coordinator who acts as mediator is not binding on the parties, however, it is agreed that Boards shall act in utmost good faith and make every bona fide effort to carry out the mediator's recommendations.

Costs Shared

16.6 Any reasonable costs incurred by any coordinator who acts as mediator shall be paid equally by the Boards in dispute.

PART VI - EFFECT OF AGREEMENT

SECTION 17. EFFECT OF AGREEMENT

Statutory Authority Prevails

17.1 To the extent that any of the terms or provisions of this Agreement conflict with, or are not recognized by the Statutory Authority or policy administered by a participating Board, or any other relevant statute, the Statutory Authority or policy or other statute shall prevail.

Acceptance by Administering Board

17.2 Where a Board adjudicates and accepts a claim under the provisions of this Agreement, the Administering Board agrees to accept the disposition of the claim and shall not decline services or assistance except where prohibited by Statutory Authority or policy.

Prior Agreements

17.3 Prior agreements on cost-sharing for certain industrial diseases, the Interjurisdictional Agreement on the Avoidance of Duplicate Assessments and the Interjurisdictional Agreement on Workers' Compensation shall cease to have effect as of the effective date of this Agreement.

Limits on Participation

17.4 Each Board shall provide a statement as to the limitations of its participation, which shall form a part of Appendix A to this Agreement. Each appendix shall be updated as Statutory Authority or policy permits.

Withdrawal by Board

17.5 Any Board may on six (6) months notice to the other participating Boards, withdraw from any and all provisions of the Agreement.

Meetings

17.6 All Boards agree to meet from time to time as may be necessary to discuss the application of the Agreement, to resolve problems and to amend its provisions.

Conformity of Statutory Authorities with Agreement

17.7 All Boards agree to make the necessary representations to their respective legislatures regarding amendments to their Statutory Authority required to bring that authority into conformity with the provisions of this Agreement.

Effective Dates

17.8 Except as otherwise noted, this Agreement shall come into force on the first day of October 1993. This Agreement is effective for Québec on January 1, 1995 and for Nunavut on April 1, 1999.

Section 7 Survives Withdrawal

17.9 Notwithstanding any other provision of this Agreement, the obligations of a Board under section 7, effective on January 1, 1998 in respect of occupational disease claims registered during the period the Board was participating in section 7, shall survive the Board's withdrawal from section 7 or from the Agreement under subsection 17.5.

Appendices

17.10 The appendices form an integral part of this Agreement. Those appendices are:

- Appendix A Limits of Participation by Signatory Board
- Appendix B Form of Election
- Appendix C Request for Assessment Transfer by Virtue of the Alternative Assessment Procedure (AAP) for Interjurisdictional Trucking and Transport
- Appendix D Application for the Alternative Assessment Procedure (AAP) for Interjurisdictional Trucking and Transport
- Appendix E Alternative Assessment Procedure-Included Industries

APPENDIX A

LIMITS OF PARTICIPATION BY SIGNATORY BOARD

EXTENT OF PARTICIPATION BY SIGNATORY BOARDS

JURISDICTION: **Alberta** Workers' Compensation Board/Commission

The above jurisdiction has no limitations on the extent of participation in the Interjurisdictional Agreement on Workers' Compensation since its adoption in October 1993.

Agree

Confirmed by Interjurisdictional Coordinator
Date: August 31, 2005

JURISDICTION: **British Columbia** Workers' Compensation Board/Commission

The above jurisdiction has no limitations on the extent of participation in the Interjurisdictional Agreement on Workers' Compensation since its adoption in October 1993.

Agree

Confirmed by Interjurisdictional Coordinator:
Date: July 7, 2005

JURISDICTION: **Manitoba** Workers' Compensation Board/Commission

The above jurisdiction has no limitations on the extent of participation in the Interjurisdictional Agreement on Workers' Compensation since its adoption in October 1993.

Agree

Confirmed by Interjurisdictional Coordinator
Date: April 13, 2005

JURISDICTION: **New Brunswick** Workers' Compensation Board/Commission

The above jurisdiction has no limitations on the extent of participation in the Interjurisdictional Agreement on Workers' Compensation since its adoption in October 1993.

Disagree, the above noted Board/Commission has the following limitations on the extent of participation in the Interjurisdictional Agreement on Workers' Compensation since its adoption in October 1993:

Section: 7
Limitation: WHSCC NB does not subscribe to section 7 respecting repetitive strain injuries as they are adjudicated in New Brunswick as workplace injuries rather than occupational diseases.
Effective Dates: November 27, 1997

Confirmed by Interjurisdictional Coordinator
Date: August 26, 2005

JURISDICTION: **Newfoundland and Labrador** Workers' Compensation Board/Commission

The above jurisdiction has no limitations on the extent of participation in the Interjurisdictional Agreement on Workers' Compensation since its adoption in October 1993.

Agree

Confirmed by President/CEO
Date: June 24, 2006

JURISDICTION: **Northwest Territories and Nunavut** Workers' Compensation Board/Commission

The above jurisdiction has no limitations on the extent of participation in the Interjurisdictional Agreement on Workers' Compensation since its adoption in October 1993.

Agree

Confirmed by Interjurisdictional Coordinator
Date: April 20, 2005

JURISDICTION: **Nova Scotia** Workers' Compensation Board/Commission

The above jurisdiction has no limitations on the extent of participation in the Interjurisdictional Agreement on Workers' Compensation since its adoption in October 1993.

Disagree, the above noted Board/Commission has the following limitations on the extent of participation in the Interjurisdictional Agreement on Workers' Compensation since its adoption in October 1993:

Section 12: Alternative Assessment Procedure ("AAP") for the Interjurisdictional Trucking Industry - Appendix E. (These provisions are found in section 12 of the Interjurisdictional Agreement on Workers' Compensation - 2005 Consolidation)
Limitation: Limited reimbursement up to the applicable maximum assessable earnings
Effective Dates: January 1, 1995 until January 1, 1999.

Section: Section 7
Limitation: No participation
Effective Dates: October, 1993 until January 1, 1998 when Section 7 Amending Agreement came into effect.

Confirmed by Interjurisdictional Coordinator
Date: July 8, 2005

JURISDICTION: **Ontario** Workers' Compensation Board/Commission

The above jurisdiction has no limitations on the extent of participation in the Interjurisdictional Agreement on Workers' Compensation since its adoption in October 1993.

Disagree, the above noted Board/Commission has the following limitations on the extent of participation in the Interjurisdictional Agreement on Workers' Compensation since its adoption in October 1993:

Section: 12, formerly Appendix E (Alternate Assessment Procedure for Interjurisdictional Trucking Industry)
Limitation: Effective January 1, 1999, any interjurisdictional trucking employers who travel through Ontario and one or more of the Yukon or Prince Edward Island shall be required to pro-rate their assessments, the same as any other interjurisdictional trucking employer which has not applied to be covered by the Alternate Assessment Procedure for the Interjurisdictional Trucking Industry.
For the period January 1, 1997 to December 31, 1998, the previous appendix (below) applies, wherein employers participating in the Alternative Assessment Procedure for the Interjurisdictional Trucking Industry who traveled through Ontario and Nova Scotia were required to prorate their assessments.
Effective Dates: January 1, 1999 – December 31, 2013

Section: 12, formerly Appendix E (Alternate Assessment procedure for Interjurisdictional Trucking Industry.)
Limitation: Effective January 1, 1997, any interjurisdictional trucking employers who travel through Ontario and one or more of the Yukon, Prince Edward Island or Nova Scotia shall be required to pro-rate their assessment, the same as any other interjurisdictional trucking employer which has not applied to be covered by the alternative Assessment Procedure for the Interjurisdictional Trucking Industry.
Effective Dates: January 1, 1997 – December 31, 1998

Section: 7 (Current Occupational Diseases Provision)
Limitation: The Ontario Workplace Safety and Insurance Board will be participating under the Amending Agreement of the Interjurisdictional Agreement that deals with Section 7, Occupational Diseases effective June 25, 2001.
Effective Dates: June 25, 2001

Section: 7 (Current Occupational Diseases Provision)
Limitation: The Ontario WCB will not implement Section 7 of the Interjurisdictional Agreement as amended, effective January 1, 1998.
Effective Dates: January 1, 1998 – June 24, 2001

Section: Section 7 (Previous Occupational Disease Provision)
Limitation: The Workers' Compensation Board of Ontario (the "Board") fully subscribes to the Interjurisdictional Agreement on Workers' Compensation, (the "Agreement"), except for the following limitations on the Board's participation in Section 7 of the Agreement resulting from subsections 134(1), (12), (13), (14) and (16) of the Workers' Compensation Act, R>S>O> 1990, c.w.11:
1. The Board's compliance with paragraph 7.3 of the Agreement is limited to claims where the workers have had sufficient Ontario exposure to be entitled to compensation in Ontario.
2. The Board's compliance with clause 7.5 (a) of the Agreement in a particular case is subject to the Boards in the other exposure jurisdictions participating in a cost apportionment and reimbursement mechanism.
Effective Dates: October 1, 1993 – December 31, 1997

Confirmed by Interjurisdictional Coordinator
Date: June 4, 2013

JURISDICTION: **Prince Edward Island Workers'** Compensation Board/Commission

The above jurisdiction has no limitations on the extent of participation in the Interjurisdictional Agreement on Workers' Compensation since its adoption in October 1993.

Agree

Confirmed by Interjurisdictional Coordinator
Date: August 29, 2005

JURISDICTION: **Quebec** Workers' Compensation Board/Commission

The above jurisdiction has no limitations on the extent of participation in the Interjurisdictional Agreement on Workers' Compensation since its adoption in October 1993.

Disagree, the above noted Board/Commission has the following limitations on the extent of participation in the Interjurisdictional Agreement on Workers' Compensation since its adoption in October 1993:

Section: All the Agreement
Limitation: Non-participation
Effective Dates: Before January 1, 1995

Section: 7
Limitation: Non participation
Effective Dates: February 8, 2005

Confirmed by Interjurisdictional Coordinator
Date: August 25, 2005

JURISDICTION: **Saskatchewan** Workers' Compensation Board/Commission

The above jurisdiction has no limitations on the extent of participation in the Interjurisdictional Agreement on Workers' Compensation since its adoption in October 1993.

Disagree, the above noted Board/Commission has the following limitations on the extent of participation in the Interjurisdictional Agreement on Workers' Compensation since its adoption in October 1993:

Section 12:
Limitation: No involvement in IJT or AAP
Effective Dates October 1993 – December 31, 2008

Confirmed by Interjurisdictional Coordinator
Date: July 9, 2008

JURISDICTION: **Yukon** Workers' Compensation Board/Commission

The above jurisdiction has no limitations on the extent of participation in the Interjurisdictional Agreement on Workers' Compensation since its adoption in October 1993.

Agree

Confirmed by Interjurisdictional Coordinator
Date: June 24, 2013

APPENDIX B

FORM OF ELECTION

THE WORKERS' COMPENSATION ACT OF _____

ELECTION TO CLAIM COMPENSATION
(EXTRA-JURISDICTIONAL)
CLAIM NUMBER _____

I _____ sustained personal injury or occupational disease on the _____ day of _____, 20 _____, in the Province (or Territory, State, etc.) of _____ while in the employ of _____.

OR (in case of a death)

I am a dependant of _____, who died on the _____ day of _____, 20_____, as a result of work-related injury or an occupational disease sustained in the Province (or Territory, State, etc.) of _____.

I must choose whether I will claim compensation under the Workers' Compensation Act of _____ or claim compensation [or damages] under the law of the Province (or Territory, State, etc.) where the injury (or occupational disease or fatality) occurred.

Having considered the matter, I elect to claim compensation for this injury (or occupational disease or fatality) under the Workers' Compensation Act of _____.

Should my claim be accepted, I waive and forego any rights to compensation in any other jurisdiction, and will not apply for or accept any benefits from such other jurisdiction unless authorized to do so by the _____ Compensation Board [or Commission].

[Any unique jurisdictional inserts here]

Dated this _____ day of _____, 20 _____, at _____

Worker's Social Insurance Number _____

Signature Worker or Dependent _____

Witness _____

APPENDIX C

REQUEST FOR ASSESSMENT TRANSFER BY VIRTUE OF THE ALTERNATIVE ASSESSMENT PROCEDURE (AAP) FOR INTERJURISDICTIONAL TRUCKING AND TRANSPORT

A. Identification of the worker			
Surname			Sex M F
First name			
Address			
	City	Province or territory	Postal code
Date of birth		Social insurance number	
Claim number			

B. Identification of the employer			
Name of the employer			
Establishment Address			
	City	Province or territory	Postal code
Contact person			
Phone number		Employer #	

C. Description of time and place of the occurrence		
Place of occurrence	City	Province or territory
Date of accident		

D.	Description of the occurrence and nature of the work-related injury (injury location)

E.	Benefit category		
Gross weekly earnings		_____	
		Amount	**Payment period**
-	short term	_____	_____
-	long term	_____	_____
-	health care	_____	_____
-	rehabilitation	_____	_____
-	survivor benefits	_____	_____
Total		_____	_____

First request ☐ Interim request ☐ Final request ☐

For subsequent assessment transfer requests, please provide claim number in section A and complete section E.

F	Further disbursements expected	Yes ☐	No ☐

Signature of authorized representative		
_____	_____	_____
Name of Representative	Phone Number	Date

APPENDIX D

LOGO HERE	**Application for the Alternative Assessment Procedure (AAP) for Interjurisdictional Trucking and Transport**

Introductory paragraph(s) goes here. Intro paragraphs should include form submission instruction and contact information, in case someone has questions about the form. NOTE: This form will generally only be sent to a firm that is already registered with their home jurisdiction.

Board name account number	Start date of interjurisdictional operations *(yyyy-mm-dd)*
Legal name	Trade name
Contact person	Position title
Phone number *(include area code)*	Fax number *(include area code)*
Mailing Address	

Please check as applicable.	***Workers*** travel in or through...	***Workers*** live in...	The firm has a ***place of business*** in...	**Account number** *(if you are registered in another jurisdiction)*
Alberta	☐	☐	☐	
British Columbia	☐	☐	☐	
Manitoba	☐	☐	☐	
New Brunswick	☐	☐	☐	
Newfoundland and Labrador	☐	☐	☐	
Northwest Territories and Nunavut	☐	☐	☐	
Nova Scotia	☐	☐	☐	
Ontario	☐	☐	☐	
Prince Edward Island	☐	☐	☐	
Québec	☐	☐	☐	
Saskatchewan	☐	☐	☐	
Yukon	☐	☐	☐	

Eligible industries

Please indicate the industry in which your firm is operating (check all that apply).			
Bulk Liquids Trucking	☐	General Freight Trucking	☐
Couriers, Messengers and Delivery	☐	Specialized Freight Trucking	☐
Dry Bulk Materials Trucking	☐	Used Household and Office Goods Moving	☐
Forest Products Trucking	☐	Other (please specify)	

Declaration

- I am the applicant or its authorized agent. By submitting this application, I confirm that the applicant is seeking to elect the Alternative Assessment Procedure (AAP); is agreeing to assume obligations under the *Workers Compensation Act*; and has read or otherwise fully understands the content, requirements, and declaration of this application. Further, I confirm that the information provided is complete and accurate.
- The applicant firm grants authority to the Assessing Board to provide information, including personal information, to Participating Boards which, at the sole discretion of the Assessing Board, is considered necessary for the effective administration of the AAP.

Name of authorized signing authority *(please print)*	Position title
Signature of authorized signing authority	Date *(yyyy-mm-dd)*

Summary of terms and conditions

1. Once this application is accepted by Board name (the Assessing Board), the terms and conditions form part of a legally binding contract.
2. These terms and conditions incorporate by reference the *Interjurisdictional Agreement on Workers' Compensation* (the IJA) and carry the same force and effect as that document.
3. The IJA may be revised from time to time without notice. Once published, those revisions are incorporated into these terms and conditions.
4. If this application is accepted, the firm will pay assessments for each impacted worker to the Assessing Board in accordance with the Alternative Assessment Procedure (AAP). The Assessing Board will notify the appropriate Registering Board(s) of its acceptance of the firm for the AAP.
5. If the firm employs workers living in any jurisdiction other than Board name's province or territory, the firm must contact the workers' compensation authority in that jurisdiction to ascertain whether registration is required and to secure compensation coverage for all eligible workers.
6. A worker's right to claim benefits from the jurisdiction of residence or the jurisdiction of injury is not affected by this procedure.

General information

The AAP forms part of the *Interjurisdictional Agreement on Workers' Compensation* (the IJA), an agreement between all Canadian workers' compensation authorities. Changes to the IJA are made public on the Association of Workers' Compensation Boards of Canada website, www.awcbc.org, where you can also obtain a copy of the IJA.

Each workers' compensation authority in Canada generally requires an out-of-province firm to pay premiums for every worker who travels in or through the province or territory; however, a firm that elects the AAP will pay premiums to the workers' compensation authority in the jurisdiction where a worker lives, provided the worker is eligible for compensation coverage from that jurisdiction for work undertaken anywhere in Canada. Once an application for the AAP has been approved, the Assessing Board will notify Registering Boards of the application, and a registration will generally be established in each applicable jurisdiction.

Payment and reporting options

A firm engaged in an eligible interjurisdictional industry may elect one of the following options:

1. Report earnings and pay premiums to each workers' compensation authority for work performed in that jurisdiction. In trucking and transportation industries, earnings and premiums are based on a percentage of kilometres driven in each province or territory.
2. Elect the AAP, which allows the firm to report interjurisdictional earnings and pay premiums for a worker to the workers' compensation authority in the jurisdiction where the worker lives.

An employer who elects the AAP may only use this method of paying assessment premiums for a worker performing work in an included industry and working in more than one jurisdiction. An employer must continue to pay assessments for all other workers in the province or territory where they work.

Participation in the AAP is for a full calendar year and mid-year changes will not be permitted. To withdraw from the AAP, a firm must provide written notice to the Assessing Board and each Registering Board prior to the commencement of the applicable calendar year. The firm will then be withdrawn from the AAP effective January 1 of the next calendar year.

APPENDIX E

Alternative Assessment Procedure – Included Industries

The AAP is limited to interjurisdictional trucking and transport in the following industries:

Industry	Effective Date
Bulk Liquids Trucking	January 1, 2014
Couriers, Messengers and Delivery	January 1, 2014
Dry Bulk Materials Trucking	January 1, 2014
Forest Products Trucking	January 1, 2014
General Freight Trucking	January 1, 2014
Specialized Freight Trucking	January 1, 2014
Used Household and Office Goods Moving	January 1, 2014
Interurban and Rural Bus Transportation	January 1, 2015
Charter Bus Industry	January 1, 2015
Land Scenic and Sightseeing Transportation	January 1, 2015
Pilot Cars	November 28, 2017

This is Exhibit "F" referred to in the Affidavit of **SHELLY MCINNIS** sworn before me this 14. day of December, 2021.

A Commissioner for Oaths in and for the Province of Alberta

LAWNA HURL
Barrister & Solicitor

Interjurisdictional Claims
Mailing address: PO Box 2195 Stn Terminal, Vancouver BC V6B 5L5
P 604.276.3234 | worksafebc.com

Interjurisdictional Claim Reimbursement

Worker's Compensation Board of Alberta
PO Box 2415
Edmonton
Alberta
T5J 2S5
Canada

Your Invoice Number		Date
Claimant	Andrew Dockrell	
WSBC Claim Number	29566590	
Your Claim Number	706 6488	
Date of Injury	February 04, 2019	

	Invoice Date December 12, 2019	**Payment Date** **June 02, 2020**	Difference
Wage Loss	$19,659.21	**$0.00**	$19,659.21
Health Care Benefits	$0.00	**$0.00**	$0.00
Voc Rehab	$0.00	**$0.00**	$0.00
Pension	$92,959.81	**$0.00**	$92,959.81
Survivor Benefits	$0.00	**$10,995.49**	($10,995.49)
Total	**$112,619.02**	**$10,995.49**	$101,623.53

Shortfalls due to lower BC Survivor Benefit rate.

Regards

Interjurisdictional Claims Team
WorkSafeBC

Attachment 10

4.08 - Casualty Summary Tables

Back to Query Page Print Version

CASUALTIES BY TYPE PERSON AND PRIMARY EVENT FROM FORM FRA F 6180.55A

1990

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	2	688	2	689	.	3	.	.	2	686
Employee not on duty	0	1	.	1	.	.	.	.	.	1
Nontrespasser on rr property	6	39	8	70	.	.	8	70	.	.
Trespassers	9	17	10	18	.	.	4	6	6	12
---- Total	17	745	20	778	.	3	12	76	8	699

1991

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	1	702	1	709	.	5	.	4	1	700
Employee not on duty	0	10	.	10	.	.	.	.	.	10
Nontrespasser on rr property	10	35	10	49	.	.	9	48	1	1
Trespassers	7	17	7	20	.	.	1	9	6	11
---- Total	18	764	18	788	.	5	10	61	8	722

1992

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	0	515	.	519	.	7	.	2	.	510
Employee not on duty	0	5	.	5	.	.	.	.	.	5
Nontrespasser on rr property	6	38	6	50	.	.	6	50	.	.
Trespassers	13	16	18	19	.	.	10	12	8	7
Worker on duty - contractor	0	1	.	1	.	.	.	.	.	1
---- Total	19	575	24	594	.	7	16	64	8	523

1993

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	2	561	2	565	1	5	.	3	1	557
Employee not on duty	0	2	.	2	.	.	.	.	.	2
Nontrespasser on rr property	10	41	13	59	.	.	13	59	.	.
Trespassers	9	19	9	20	.	.	1	4	8	16
---- Total	21	623	24	646	1	5	14	66	9	575

1994

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	0	509	.	515	.	6	.	3	.	506
Employee not on duty	0	1	.	1	.	.	.	.	.	1
Nontrespasser on rr property	4	35	6	45	.	2	6	43	.	.
Trespassers	10	12	12	18	.	.	5	7	7	11
---- Total	14	557	18	579	.	8	11	53	7	518

1995

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	0	497	.	499	.	3	.	3	.	493
Employee not on duty	0	6	.	6	.	.	.	.	.	6
Nontrespasser on rr property	7	25	8	36	.	1	8	35	.	.
Trespassers	6	17	6	20	.	.	2	9	4	11
---- Total	13	545	14	561	.	4	10	47	4	510

1996

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	0	431	.	437	.	9	.	1	.	427
Employee not on duty	0	6	.	6	.	.	.	.	.	6
Nontrespasser on rr property	3	30	5	36	.	.	5	36	.	.
Trespassers	7	10	7	10	.	.	2	2	5	8
Worker on duty - contractor	1	0	1	.	.	.	.	.	1	.
---- Total	11	477	13	489	.	9	7	39	6	441

1997

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	3	294	3	295	.	2	.	2	3	291
Employee not on duty	0	3	.	3	.	.	.	.	.	3
Nontrespasser on rr property	4	30	4	37	.	.	4	35	.	2
Trespassers	8	9	8	9	.	.	2	4	6	5
Contractor - other	0	1	.	1	.	.	.	.	.	1
---- Total	15	337	15	345	.	2	6	41	9	302

1998

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	0	255	.	258	.	1	.	3	.	254
Employee not on duty	0	5	.	5	.	.	.	.	.	5
Nontrespasser on rr property	5	36	6	43	.	.	6	43	.	.
Trespassers	2	13	2	14	.	.	1	4	1	10
---- Total	7	309	8	320	.	1	7	50	1	269

1999

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	2	285	3	290	2	5	.	3	1	282
Employee not on duty	0	1	.	1	.	.	.	.	.	1
Nontrespasser on rr property	5	29	5	32	.	.	5	32	.	.
Trespassers	9	6	9	8	.	.	2	2	7	6
Worker on duty - contractor	0	1	.	1	.	.	.	.	.	1
Contractor - other	0	1	.	1	.	.	.	.	.	1
---- Total	16	323	17	333	2	5	7	37	8	291

2000

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	3	252	3	254	1	4	.	2	2	248
Employee not on duty	0	6	.	6	.	.	.	.	.	6
Nontrespasser on rr property	7	27	8	39	.	.	8	39	.	.
Trespassers	5	5	5	5	.	.	.	1	5	4
Contractor - other	0	1	.	1	.	.	.	.	.	1
---- Total	15	291	16	305	1	4	8	42	7	259

2001

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	1	237	1	241	.	1	.	6	1	234
Employee not on duty	0	2	.	2	.	.	.	.	.	2
Nontrespasser on rr property	4	22	7	28	.	.	7	28	.	.
Trespassers	8	6	8	7	.	.	1	3	7	4
---- Total	13	267	16	278	.	1	8	37	8	240

2002

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	1	193	1	198	.	6	.	2	1	190
Employee not on duty	0	1	.	1	.	.	.	.	.	1
Nontrespasser on rr property	4	20	5	32	.	.	5	31	.	1
Trespassers	4	10	4	13	.	.	2	7	2	6
Worker on duty - contractor	0	2	.	2	.	.	.	.	.	2
Nontrespasser off rr property	1	1	1	1,449	1	1,440	.	.	.	9
---- Total	10	227	11	1,695	1	1,446	7	40	3	209

2003

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	0	164	.	167	.	1	.	2	.	164
Employee not on duty	0	5	.	5	.	.	.	.	.	5
Nontrespasser on rr property	3	12	3	13	.	.	3	13	.	.
Trespassers	11	10	11	16	.	.	4	15	7	1
Worker on duty - contractor	0	4	.	4	.	.	.	.	.	4
---- Total	14	195	14	205	.	1	7	30	7	174

2004

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	0	155	.	160	.	1	.	159
Employee not on duty	0	1	.	1	.	.	.	1
Nontrespasser on rr property	0	11	.	16	.	16	.	.
Trespassers	5	18	5	20	1	12	4	8
Worker on duty - contractor	0	1	.	1	.	.	.	1
Contractor - other	0	0	.	1	.	.	.	1
---- Total	5	186	5	199	1	29	4	170

2005

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	0	124	.	124	.	1	.	1	.	122
Nontrespasser on rr property	6	5	10	7	.	.	10	7	.	.
Trespassers	4	15	4	23	.	.	2	21	2	2
Worker on duty - contractor	0	2	.	2	.	.	.	.	.	2

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
---- Total	10	146	14	156	.	1	12	29	2	126

2006

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	1	104	1	106	.	.	.	.	1	106
Employee not on duty	0	1	.	1	.	.	.	.	.	1
Nontrespasser on rr property	1	7	1	9	.	.	1	9	.	.
Trespassers	4	13	4	16	.	1	1	11	3	4
Worker on duty - contractor	0	1	.	1	.	.	.	.	.	1
Contractor - other	0	1	.	1	.	.	.	.	.	1
Nontrespasser off rr property	0	1	.	1	.	1	.	.	.	.
---- Total	6	128	6	135	.	2	2	20	4	113

2007

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	0	141	.	146	.	3	.	2	.	141
Employee not on duty	0	4	.	4	.	.	.	.	.	4
Nontrespasser on rr property	2	5	2	5	.	.	2	5	.	.
Trespassers	10	19	12	19	.	.	5	13	7	6
Worker on duty - contractor	0	2	.	2	.	.	.	.	.	2
Contractor - other	0	5	.	5	.	.	.	.	.	5
Nontrespasser off rr property	0	1	.	1	.	.	.	1	.	.
---- Total	12	177	14	182	.	3	7	21	7	158

2008

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	0	121	.	123	.	4	.	2	.	117
Nontrespasser on rr property	2	13	2	15	.	.	2	15	.	.
Trespassers	4	4	4	4	.	.	.	3	4	1
---- Total	6	138	6	142	.	4	2	20	4	118

2009

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	1	117	2	120	2	2	.	2	.	116

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Employee not on duty	0	4	.	4	.	.	.	.	.	4
Nontrespasser on rr property	3	13	3	17	.	.	3	15	.	2
Trespassers	4	8	4	8	.	.	1	2	3	6
Worker on duty - contractor	0	3	.	3	.	.	.	.	.	3
Contractor - other	0	1	.	1	.	.	.	.	.	1
---- Total	8	146	9	153	2	2	4	19	3	132

2010

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	0	89	.	91	.	.	.	91
Employee not on duty	0	5	.	5	.	.	.	5
Nontrespasser on rr property	0	9	.	9	.	8	.	1
Trespassers	4	13	4	16	1	7	3	9
Worker on duty - contractor	0	5	.	6	.	.	.	6
---- Total	4	121	4	127	1	15	3	112

2011

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	0	109	.	114	.	5	.	.	.	109
Employee not on duty	0	5	.	5	.	.	.	.	.	5
Nontrespasser on rr property	3	12	4	15	.	.	4	13	.	2
Trespassers	9	12	9	14	.	.	5	4	4	10
Worker on duty - contractor	0	7	.	7	.	.	.	.	.	7
---- Total	12	145	13	155	.	5	9	17	4	133

2012

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	1	99	1	100	.	1	.	1	1	98
Employee not on duty	0	3	.	4	.	.	.	.	.	4
Nontrespasser on rr property	5	7	5	9	.	.	5	9	.	.
Trespassers	8	8	8	9	.	.	3	2	5	7
Worker on duty - contractor	0	2	.	2	.	.	.	.	.	2
---- Total	14	119	14	124	.	1	8	12	6	111

2013

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	1	101	1	101	.	1	.	1	1	99
Employee not on duty	0	1	.	1	.	.	.	.	.	1
Nontrespasser on rr property	2	12	2	15	.	.	2	14	.	1
Trespassers	3	6	3	6	.	.	.	1	3	5
Worker on duty - contractor	0	3	.	3	.	.	.	.	.	3
Contractor - other	0	9	.	9	.	.	.	.	.	9
---- Total	6	132	6	135	.	1	2	16	4	118

2014

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	0	97	.	100	.	2	.	98
Employee not on duty	0	3	.	3	.	.	.	3
Nontrespasser on rr property	5	8	6	13	5	12	1	1
Trespassers	5	9	5	9	4	5	1	4
Worker on duty - contractor	0	2	.	2	.	.	.	2
Contractor - other	0	9	.	9	.	.	.	9
---- Total	10	128	11	136	9	19	2	117

2015

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	0	119	.	123	.	.	.	123
Employee not on duty	0	4	.	4	.	.	.	4
Nontrespasser on rr property	0	7	.	9	.	9	.	.
Trespassers	3	5	3	5	1	1	2	4
Worker on duty - contractor	1	1	1	1	.	.	1	1
Contractor - other	0	8	.	9	.	.	.	9
Nontrespasser off rr property	0	1	.	1	.	1	.	.
---- Total	4	145	4	152	1	11	3	141

2016

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	1	66	1	71	.	6	1	65
Employee not on duty	0	3	.	3	.	.	.	3
Nontrespasser on rr property	1	5	1	7	1	7	.	.
Trespassers	4	6	4	7	3	2	1	5
Worker on duty - contractor	0	2	.	2	.	.	.	2
Contractor - other	0	4	.	4	.	.	.	4
Nontrespasser off rr property	0	0	.	1	.	1	.	.
---- Total	6	86	6	95	4	16	2	79

2017

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	1	59	1	60	.	1	.	1	1	58
Employee not on duty	0	3	.	3	.	.	.	.	.	3
Nontrespasser on rr property	2	9	4	11	.	.	4	11	.	.
Trespassers	1	6	1	6	.	.	.	3	1	3
Worker on duty - contractor	1	0	1	.	.	.	.	.	1	.
Contractor - other	0	2	.	2	.	.	.	.	.	2
---- Total	5	79	7	82	.	1	4	15	3	66

2018

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	2	55	2	57	.	1	.	.	2	56
Employee not on duty	0	6	.	8	.	.	.	.	.	8
Nontrespasser on rr property	3	7	3	7	.	.	3	6	.	1
Trespassers	5	6	5	8	.	.	4	6	1	2
Worker on duty - contractor	0	1	.	1	.	.	.	.	.	1
Contractor - other	0	1	.	1	.	.	.	.	.	1
---- Total	10	76	10	82	.	1	7	12	3	69

2019

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	0	55	.	56	.	.	.	56
Employee not on duty	0	1	.	1	.	.	.	1
Nontrespasser on rr property	1	5	1	5	1	5	.	.
Trespassers	2	5	2	5	.	1	2	4
Worker on duty - contractor	0	2	.	2	.	.	.	2
Contractor - other	0	1	.	1	.	.	.	1
Nontrespasser off rr property	0	1	.	1	.	.	.	1
---- Total	3	70	3	71	1	6	2	65

2020

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	0	24	.	25	.	.	.	25
Employee not on duty	0	2	.	2	.	.	.	2
Nontrespasser on rr property	1	5	1	5	1	5	.	.
Trespassers	2	4	2	4	.	1	2	3
Worker on duty - contractor	0	2	.	2	.	.	.	2
Contractor - other	0	3	.	3	.	.	.	3
---- Total	3	40	3	41	1	6	2	35

2021

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

	Total Incidents		Total Casualties		Train Accs w/o HRC		Highway-Rail (HRC)		Other Events	
	Fatal	Inj	Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Worker on duty - employee	0	32	.	33	.	2	.	3	.	28
Employee not on duty	0	2	.	3	.	.	.	.	.	3
Nontrespasser on rr property	1	4	1	4	.	.	1	4	.	.
Trespassers	3	2	3	3	.	.	.	.	3	3
Worker on duty - contractor	0	2	.	2	.	.	.	.	.	2
Contractor - other	0	3	.	3	.	.	.	.	.	3
---- Total	4	45	4	48	.	2	1	7	3	39

Total incidents are limited to those that result in fatal or nonfatal casualties

TYPE ACCIDENT, TYPE PERSON, AND AGE FROM FORM FRA F 6180.55A

1990

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age							
		Not Reported		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	-	-	-	-	3
	---- Total	-	-	-	-	-	-	-	3
Highway-Rail (HRC)	Trespasser	-	-	-	1	-	-	4	5
	Others	-	8	2	18	1	16	5	28
	---- Total	-	8	2	19	1	16	9	33
Other Events	RR emp on duty	-	-	-	-	-	29	2	657
	RR emp off duty	-	-	-	-	-	-	-	1
	Trespasser	-	1	-	3	3	1	3	7
	---- Total	-	1	-	3	3	30	5	665
---- Total		-	9	2	22	4	46	14	701

1991

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age							
		Not Reported		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	-	-	-	-	5
	---- Total	-	-	-	-	-	-	-	5
Highway-Rail (HRC)	RR emp on duty	-	-	-	-	-	-	-	4
	Trespasser	-	-	-	1	-	1	1	7
	Others	-	-	-	4	5	12	4	32
	---- Total	-	-	-	5	5	13	5	43
Other Events	RR emp on duty	-	-	-	-	-	26	1	674
	RR emp off duty	-	-	-	-	-	-	-	10
	Trespasser	-	1	-	4	-	2	6	4
	Others	-	-	-	-	-	-	1	1
	---- Total	-	1	-	4	-	28	8	689
---- Total		-	1	-	9	5	41	13	737

1992

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age							
		Not Reported		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	-	-	-	-	7
	---- Total	-	-	-	-	-	-	-	7
Highway-Rail (HRC)	RR emp on duty	-	-	-	-	-	-	-	2
	Trespasser	-	-	2	1	2	-	6	11
	Others	-	-	-	2	1	11	5	37
	---- Total	-	-	2	3	3	11	11	50
Other Events	RR emp on duty	-	-	-	-	-	12	-	498
	RR emp off duty	-	-	-	-	-	-	-	5
	Trespasser	1	-	-	3	1	1	6	3
	Non RR emp	-	-	-	-	-	-	-	1
	---- Total	1	-	-	3	1	13	6	507
---- Total		1	-	2	6	4	24	17	564

1993

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age							
		Not Reported		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	-	-	-	1	5
	---- Total	-	-	-	-	-	-	1	5
Highway-Rail (HRC)	RR emp on duty	-	-	-	-	-	-	-	3
	Trespasser	-	-	-	-	1	-	-	4
	Others	-	5	-	3	1	7	12	44
	---- Total	-	5	-	3	2	7	12	51
Other Events	RR emp on duty	-	1	-	-	-	10	1	546
	RR emp off duty	-	-	-	-	-	-	-	2
	Trespasser	1	5	2	2	1	4	4	5
	---- Total	1	6	2	2	1	14	5	553
---- Total		1	11	2	5	3	21	18	609

1994

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age							
		Not Reported		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	-	-	-	-	6
	Others	-	-	-	-	-	1	-	1
	---- Total	-	-	-	-	-	1	-	7
Highway-Rail (HRC)	RR emp on duty	-	-	-	-	-	-	-	3
	Trespasser	-	3	-	-	1	2	4	2
	Others	-	5	1	2	3	5	2	31
	---- Total	-	8	1	2	4	7	6	36
Other Events	RR emp on duty	-	-	-	-	-	7	-	499
	RR emp off duty	-	-	-	-	-	-	-	1
	Trespasser	-	-	1	2	2	4	4	5
	---- Total	-	-	1	2	2	11	4	505
---- Total		-	8	2	4	6	19	10	548

1995

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age							
		Not Reported		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	-	-	-	-	3
	Others	-	-	-	-	-	-	-	1
	---- Total	-	-	-	-	-	-	-	4
Highway-Rail (HRC)	RR emp on duty	-	-	-	-	-	-	-	3
	Trespasser	-	2	-	-	-	1	2	6
	Others	-	-	2	4	2	10	4	21
	---- Total	-	2	2	4	2	11	6	30
Other Events	RR emp on duty	-	-	-	-	-	3	-	490
	RR emp off duty	-	-	-	-	-	-	-	6
	Trespasser	1	-	-	5	2	-	1	6
	---- Total	1	-	-	5	2	3	1	502
---- Total		1	2	2	9	4	14	7	536

1996

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age							
		Not Reported		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	-	-	-	-	9
	---- Total	-	-	-	-	-	-	-	9
Highway-Rail (HRC)	RR emp on duty	-	-	-	-	-	-	-	1
	Trespasser	-	2	-	-	-	-	2	-
	Others	-	-	-	4	-	13	5	19
	---- Total	-	2	-	4	-	13	7	20
Other Events	RR emp on duty	-	-	-	-	-	4	-	423
	RR emp off duty	-	-	-	-	-	1	-	5
	Trespasser	1	1	-	4	2	1	2	2
	Non RR emp	-	-	-	-	-	-	1	-
	---- Total	1	1	-	4	2	6	3	430
---- Total		1	3	-	8	2	19	10	459

1997

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age							
		Not Reported		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	-	-	-	-	2
	---- Total	-	-	-	-	-	-	-	2
Highway-Rail (HRC)	RR emp on duty	-	-	-	-	-	-	-	2
	Trespasser	1	3	-	-	-	-	1	1
	Others	-	1	-	2	-	10	4	22
	---- Total	1	4	-	2	-	10	5	25
Other Events	RR emp on duty	-	-	-	-	-	5	3	286
	RR emp off duty	-	-	-	-	-	-	-	3
	Trespasser	-	-	-	-	1	3	5	2
	Non RR emp	-	-	-	-	-	-	-	1
	Others	-	1	-	-	-	-	-	1
	---- Total	-	1	-	-	1	8	8	293
---- Total		1	5	-	2	1	18	13	320

1998

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age							
		Not Reported		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	-	-	-	-	1
	---- Total	-	-	-	-	-	-	-	1
Highway-Rail (HRC)	RR emp on duty	-	-	-	-	-	-	-	3
	Trespasser	-	-	-	-	-	1	1	3
	Others	-	-	-	2	1	9	5	32
	---- Total	-	-	-	2	1	10	6	38
Other Events	RR emp on duty	-	-	-	-	-	5	-	249
	RR emp off duty	-	-	-	-	-	-	-	5
	Trespasser	-	1	-	1	-	3	1	5
	---- Total	-	1	-	1	-	8	1	259
---- Total		-	1	-	3	1	18	7	298

1999

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age							
		Not Reported		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	-	-	-	2	5
	---- Total	-	-	-	-	-	-	2	5
Highway-Rail (HRC)	RR emp on duty	-	-	-	-	-	-	-	3
	Trespasser	-	-	-	-	-	2	2	-
	Others	-	-	-	1	-	4	5	27
	---- Total	-	-	-	1	-	6	7	30
Other Events	RR emp on duty	-	-	-	-	-	8	1	274
	RR emp off duty	-	-	-	-	-	-	-	1
	Trespasser	-	1	-	2	2	2	5	1
	Non RR emp	-	-	-	-	-	-	-	2
	---- Total	-	1	-	2	2	10	6	278
---- Total		-	1	-	3	2	16	15	313

2000

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age							
		Not Reported		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	-	-	-	1	4
	---- Total	-	-	-	-	-	-	1	4
Highway-Rail (HRC)	RR emp on duty	-	-	-	-	-	-	-	2
	Trespasser	-	1	-	-	-	-	-	-
	Others	-	10	2	3	-	7	6	19
	---- Total	-	11	2	3	-	7	6	21
Other Events	RR emp on duty	-	-	-	-	-	10	2	238
	RR emp off duty	-	-	-	-	-	-	-	6
	Trespasser	1	-	1	1	-	2	3	1
	Non RR emp	-	-	-	-	-	-	-	1
	---- Total	1	-	1	1	-	12	5	246
---- Total		1	11	3	4	-	19	12	271

2001

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age							
		Not Reported		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	-	-	-	-	1
	---- Total	-	-	-	-	-	-	-	1
Highway-Rail (HRC)	RR emp on duty	-	-	-	-	-	1	-	5
	Trespasser	-	-	-	1	-	-	1	2
	Others	-	3	1	2	-	3	6	20
	---- Total	-	3	1	3	-	4	7	27
Other Events	RR emp on duty	-	-	-	-	-	4	1	230
	RR emp off duty	-	-	-	-	-	-	-	2
	Trespasser	-	1	1	1	1	1	5	1
	---- Total	-	1	1	1	1	5	6	233
---- Total		-	4	2	4	1	9	13	261

2002

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age							
		Not Reported		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	-	-	-	-	6
	Others	-	5	-	258	-	132	1	1,045
	---- Total	-	5	-	258	-	132	1	1,051
Highway-Rail (HRC)	RR emp on duty	-	-	-	-	-	-	-	2
	Trespasser	-	-	-	-	-	-	2	7
	Others	-	-	1	3	2	12	2	16
	---- Total	-	-	1	3	2	12	4	25
Other Events	RR emp on duty	-	-	-	-	-	1	1	189
	RR emp off duty	-	-	-	-	-	-	-	1
	Trespasser	-	1	-	-	1	-	1	5
	Non RR emp	-	-	-	-	-	-	-	2
	Others	-	9	-	-	-	-	-	1
	---- Total	-	10	-	-	1	1	2	198
---- Total		-	15	1	261	3	145	7	1,274

2003

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age					
		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	-	-	1
	---- Total	-	-	-	-	-	1
Highway-Rail (HRC)	RR emp on duty	-	-	-	-	-	2
	Trespasser	1	2	-	3	3	10
	Others	-	-	1	4	2	9
	---- Total	1	2	1	7	5	21
Other Events	RR emp on duty	-	-	-	5	-	159
	RR emp off duty	-	-	-	-	-	5
	Trespasser	1	-	1	-	5	1
	Non RR emp	-	-	-	1	-	3
	---- Total	1	-	1	6	5	168
---- Total		2	2	2	13	10	190

2004

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age							
		Not Reported		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Highway-Rail (HRC)	RR emp on duty	-	-	-	-	-	-	-	1
	Trespasser	-	1	-	-	1	2	-	9
	Others	-	2	-	2	-	3	-	9
	---- Total	-	3	-	2	1	5	-	19
Other Events	RR emp on duty	-	-	-	-	-	6	-	153
	RR emp off duty	-	-	-	-	-	-	-	1
	Trespasser	1	-	-	-	-	3	3	5
	Non RR emp	-	1	-	-	-	-	-	1
	---- Total	1	1	-	-	-	9	3	160
---- Total		256 1	4	-	2	1	14	3	179

2005

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age							
		Not Reported		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	-	-	-	-	1
	---- Total	-	-	-	-	-	-	-	1
Highway-Rail (HRC)	RR emp on duty	-	-	-	-	-	-	-	1
	Trespasser	-	1	-	3	-	4	2	13
	Others	-	1	-	-	2	1	8	5
	---- Total	-	2	-	3	2	5	10	19
Other Events	RR emp on duty	-	-	-	-	-	3	-	119
	Trespasser	-	-	-	-	-	-	2	2
	Non RR emp	-	-	-	-	-	-	-	2
	---- Total	-	-	-	-	-	3	2	123
---- Total		-	2	-	3	2	8	12	143

2006

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age					
		Not Reported		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	Trespasser	-	-	-	-	-	1
	Others	-	-	-	-	-	1
	---- Total	-	-	-	-	-	2
Highway-Rail (HRC)	Trespasser	-	1	-	1	1	9
	Others	-	-	-	2	1	7
	---- Total	-	1	-	3	2	16
Other Events	RR emp on duty	-	-	-	3	1	103
	RR emp off duty	-	-	-	-	-	1
	Trespasser	-	-	-	1	3	3
	Non RR emp	-	1	-	-	-	1
	---- Total	-	1	-	4	4	108
---- Total		-	2	-	7	6	126

2007

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age							
		Not Reported		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	-	-	-	-	3
	---- Total	-	-	-	-	-	-	-	3
Highway-Rail (HRC)	RR emp on duty	-	-	-	-	-	-	-	2
	Trespasser	-	1	1	-	2	2	2	10
	Others	-	-	-	-	-	-	2	6
	---- Total	-	1	1	-	2	2	4	18
Other Events	RR emp on duty	-	-	-	-	-	5	-	136
	RR emp off duty	-	-	-	-	-	-	-	4
	Trespasser	-	-	-	1	1	3	6	2
	Non RR emp	-	-	-	-	-	1	-	6
	---- Total	-	-	-	1	1	9	6	148
---- Total		-	1	1	1	3	11	10	169

2008

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age					
		Not Reported		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	1	-	3
	---- Total	-	-	-	1	-	3
Highway-Rail (HRC)	RR emp on duty	-	-	-	-	-	2
	Trespasser	-	-	-	-	-	3
	Others	-	2	2	-	-	13
	---- Total	-	2	2	-	-	18
Other Events	RR emp on duty	-	-	-	1	-	116
	Trespasser	-	-	1	-	3	1
	---- Total	-	-	1	1	3	117
---- Total		-	2	3	2	3	138

2009

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age					
		Not Reported		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	-	2	2
	---- Total	-	-	-	-	2	2
Highway-Rail (HRC)	RR emp on duty	-	-	-	-	-	2
	Trespasser	-	-	-	-	1	2
	Others	-	-	-	3	3	12
	---- Total	-	-	-	3	4	16
Other Events	RR emp on duty	-	-	-	2	-	114
	RR emp off duty	-	-	-	1	-	3
	Trespasser	-	1	1	2	2	3
	Non RR emp	-	-	-	-	-	4
	Others	-	1	-	-	-	1
	---- Total	-	2	1	5	2	125
---- Total		-	2	1	8	8	143

2010

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age							
		Not Reported		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Highway-Rail (HRC)	Trespasser	-	1	-	1	-	1	1	4
	Others	-	-	-	-	-	1	-	7
	---- Total	-	1	-	1	-	2	1	11
Other Events	RR emp on duty	-	-	-	-	-	4	-	87
	RR emp off duty	-	-	-	-	-	-	-	5
	Trespasser	1	-	-	1	1	-	1	8
	Non RR emp	-	-	-	-	-	1	-	5
	Others	-	1	-	-	-	-	-	-
	---- Total	1	1	-	1	1	5	1	105
---- Total		1	2	-	2	1	7	2	116

2011

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age							
		Not Reported		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	-	-	-	-	5
	---- Total	-	-	-	-	-	-	-	5
Highway-Rail (HRC)	Trespasser	1	-	-	-	-	-	4	4
	Others	-	-	-	-	1	4	3	9
	---- Total	1	-	-	-	1	4	7	13
Other Events	RR emp on duty	-	-	-	-	-	1	-	108
	RR emp off duty	-	-	-	-	-	-	-	5
	Trespasser	-	-	-	2	-	2	4	6
	Non RR emp	-	-	-	-	-	1	-	6
	Others	-	-	-	-	-	-	-	2
	---- Total	-	-	-	2	-	4	4	127
---- Total		1	-	-	2	1	8	11	145

2012

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age					
		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	-	-	1
	---- Total	-	-	-	-	-	1
Highway-Rail (HRC)	RR emp on duty	-	-	-	-	-	1
	Trespasser	1	-	1	-	1	2
	Others	-	-	-	-	5	9
	---- Total	1	-	1	-	6	12
Other Events	RR emp on duty	-	-	-	4	1	94
	RR emp off duty	-	-	-	-	-	4
	Trespasser	-	2	1	1	4	4
	Non RR emp	-	-	-	-	-	2
	---- Total	-	2	1	5	5	104
---- Total		1	2	2	5	11	117

2013

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age					
		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	-	-	1
	---- Total	-	-	-	-	-	1
Highway-Rail (HRC)	RR emp on duty	-	-	-	-	-	1
	Trespasser	-	-	-	-	-	1
	Others	-	1	-	4	2	9
	---- Total	-	1	-	4	2	11
Other Events	RR emp on duty	-	-	-	1	1	98
	RR emp off duty	-	-	-	-	-	1
	Trespasser	-	1	1	1	2	3
	Non RR emp	-	-	-	1	-	11
	Others	-	-	-	-	-	1
	---- Total	-	1	1	3	3	114

	Age					
	< 16		16-21		> 21	
	Kld	Inj	Kld	Inj	Kld	Inj
---- Total	-	2	1	7	5	126

2014

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age					
		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj
Highway-Rail (HRC)	RR emp on duty	-	-	-	-	-	2
	Trespasser	-	-	-	-	4	5
	Others	-	-	-	2	5	10
	---- Total	-	-	-	2	9	17
Other Events	RR emp on duty	-	-	-	2	-	96
	RR emp off duty	-	-	-	-	-	3
	Trespasser	-	1	-	1	1	2
	Non RR emp	-	-	-	1	-	10
	Others	-	-	1	-	-	1
	---- Total	-	1	1	4	1	112
---- Total		-	1	1	6	10	129

2015

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age					
		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj
Highway-Rail (HRC)	Trespasser	-	-	-	-	1	1
	Others	-	3	-	2	-	5
	---- Total	-	3	-	2	1	6
Other Events	RR emp on duty	-	-	-	1	-	122
	RR emp off duty	-	-	-	-	-	4
	Trespasser	-	-	-	1	2	3
	Non RR emp	-	-	1	3	-	7
	---- Total	-	-	1	5	2	136
---- Total		-	3	1	7	3	142

2016

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age					
		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj
Highway-Rail (HRC)	RR emp on duty	-	-	-	-	-	6
	Trespasser	-	-	-	-	3	2
	Others	-	-	-	2	1	6
	---- Total	-	-	-	2	4	14
Other Events	RR emp on duty	-	-	-	1	1	64
	RR emp off duty	-	-	-	-	-	3
	Trespasser	-	1	-	2	1	2
	Non RR emp	-	-	-	3	-	3
	---- Total	-	1	-	6	2	72
---- Total		-	1	-	8	6	86

2017

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age					
		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	-	-	1
	---- Total	-	-	-	-	-	1
Highway-Rail (HRC)	RR emp on duty	-	-	-	-	-	1
	Trespasser	-	-	-	-	-	3
	Others	-	1	-	2	4	8
	---- Total	-	1	-	2	4	12
Other Events	RR emp on duty	-	-	-	1	1	57
	RR emp off duty	-	-	-	-	-	3
	Trespasser	-	-	-	-	1	3
	Non RR emp	-	-	-	-	1	2
	---- Total	-	-	-	1	3	65
---- Total		-	1	-	3	7	78

2018

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age					
		< 16		16-21		> 21	
		Kld	Inj	Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	-	-	1
	---- Total	-	-	-	-	-	1
Highway-Rail (HRC)	Trespasser	-	1	1	-	3	5
	Others	-	1	-	-	3	5
	---- Total	-	2	1	-	6	10
Other Events	RR emp on duty	-	-	-	-	2	56
	RR emp off duty	-	-	-	-	-	8
	Trespasser	-	-	-	-	1	2
	Non RR emp	-	-	-	-	-	2
	Others	-	-	-	-	-	1
	---- Total	-	-	-	-	3	69
---- Total		-	2	1	-	9	80

2019

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age			
		16-21		> 21	
		Kld	Inj	Kld	Inj
Highway-Rail (HRC)	Trespasser	-	1	-	-
	Others	-	-	1	5
	---- Total	-	1	1	5
Other Events	RR emp on duty	-	-	-	56
	RR emp off duty	-	-	-	1
	Trespasser	-	1	2	3
	Non RR emp	-	-	-	3
	Others	-	-	-	1
	---- Total	-	1	2	64
---- Total		-	2	3	69

2020

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age			
		16-21		> 21	
		Kld	Inj	Kld	Inj
Highway-Rail (HRC)	Trespasser	-	-	-	1
	Others	-	-	1	5
	---- Total	-	-	1	6
Other Events	RR emp on duty	-	3	-	22
	RR emp off duty	-	-	-	2
	Trespasser	-	-	2	3
	Non RR emp	-	-	-	5
	---- Total	-	3	2	32
---- Total		-	3	3	38

2021

Selectons: Railroad - Canadian Pacific Rwy Co. [CP]
State - ALL County - ALL
Time Frame - Jan 1990 To Oct 2021

		Age			
		16-21		> 21	
		Kld	Inj	Kld	Inj
Train Accidents w/o HRC	RR emp on duty	-	-	-	2
	---- Total	-	-	-	2
Highway-Rail (HRC)	RR emp on duty	-	-	-	3
	Others	-	1	1	3
	---- Total	-	1	1	6
Other Events	RR emp on duty	-	-	-	28
	RR emp off duty	-	-	-	3
	Trespasser	-	-	3	3
	Non RR emp	-	1	-	4
	---- Total	-	1	3	38
---- Total		-	2	4	46

Attachment 11

Transportation Safety Board of Canada

Bureau de la sécurité des transports du Canada

RAIL TRANSPORTATION SAFETY INVESTIGATION REPORT R19C0015

UNCONTROLLED MOVEMENT OF ROLLING STOCK AND MAIN-TRACK TRAIN DERAILMENT

Canadian Pacific Railway Company
Freight train 301-349
Mile 130.6, Laggan Subdivision
Yoho, British Columbia
04 February 2019

Canada

ABOUT THIS INVESTIGATION REPORT

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Le présent rapport est également disponible en français.

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EXECUTIVE SUMMARY

On 04 February 2019, the Canadian Pacific Railway Company (CP) freight train 301-349 being operated by a relief crew derailed on Field Hill near Field, British Columbia, on a 13.5-mile section of track with a steep descending grade (average 2.2%) and several sharp curves. The 3 crew members—a locomotive engineer, a conductor, and a conductor trainee—were fatally injured in the derailment.

The accident

Before the emergency stop

The unit grain train,[1] hauling 112 loaded hopper cars, weighing 15 042 tons, and measuring 6676 feet long, had left Calgary, Alberta, at about 1430[2] the previous day, operated by an inbound crew[3] consisting of a locomotive engineer and a conductor. It travelled west on the Laggan Subdivision, which runs from Calgary to Field. As the train progressed into the mountains, it encountered extreme cold temperatures (below −25 °C).

The train started its descent of Field Hill at approximately 2136. When the entire train was on the steepest part of the grade, it was not able to hold its speed at or below the maximum 15-mph limit. When the speed reached 21 mph, the inbound crew applied the brakes in

1 A unit train is a train carrying a single commodity (in this case, grain) in cars of similar type, length, and weight.

2 All times are Mountain Standard Time, unless otherwise indicated.

3 The report refers to 2 separate train crews. The crew that operated the train from Alyth Yard in Calgary to Partridge is called the inbound crew, and the crew that took over control of the train at Partridge is called the relief crew.

emergency, as required by railway operating procedures. At approximately 2149, the train came to a stop at Partridge, British Columbia (Mile 127.46). From there, about 9 miles of descending 2.2% grade remained ahead of the train.

While stopped in emergency

After the inbound crew brought the train to an emergency stop, they had a job briefing with the trainmaster. It was decided to get the train underway again by releasing the emergency brake application and allowing the train's air brakes to recharge as the train continued its descent (an operation called release and catch). In order to limit the train's acceleration after the brakes were released, the pressure retaining valves[4] had to be set to the high-pressure position on 84 of the rail cars. The conductor completed this task at approximately 2330.

Since the inbound crew was nearing the end of their shift, a relief crew was called in to complete the trip to Field. The relief crew started their shift at 2230 and reached the train—after a series of circumstances had delayed their arrival—at about 0020 on 04 February 2019, some 2.5 hours after the train had been stopped in emergency. Meanwhile, the ambient temperature had dropped to −28 °C, and the train's air brake system had been leaking compressed air, reducing the brakes' capacity to hold the train on the steep grade.

The uncontrolled movement

The relief crew took over care and control of the train and prepared to resume the trip, but waited in the locomotive cab for the track unit carrying the departing inbound crew to be clear of the main track before they began the release and catch.

At 0042, before the relief crew were able to start that process, the train began to creep forward, gradually accelerating uncontrolled down the steep grade. The train was able to proceed over back-to-back reverse curves as its speed reached 53 mph, but it was not able to negotiate the sharp 9.8° curve immediately before the Kicking Horse River bridge. Two locomotives and 99 cars derailed, beginning at Mile 130.6.

Safety deficiencies contributing to the accident

The investigation identified a number of safety deficiencies that contributed to the accident:

- The degradation of air brake systems in extreme cold temperatures
- The limitations of current train brake test methodologies to accurately evaluate air brake performance in these temperatures
- Training that was not specific to the unique operating conditions of the Laggan Subdivision, and the inadequacy of experience of employees supervising mountain-grade[5] operations on this subdivision

[4] A pressure retaining valve is a manually operated valve connected to the brake cylinder exhaust port. It can be used to limit the release of air pressure from the brake cylinder after the automatic brake is released. These valves can help prevent a train from accelerating too quickly downhill while the air brake system is recharging on the descent.

[5] CP defines grades exceeding 1.8% as mountain grades.

- The need for better identification of hazards through reporting, data trend analysis, and risk assessments under CP's safety management system to support risk mitigation measures
- The need for additional physical defences to prevent uncontrolled movement of rolling stock

Air brake system degradation in extreme cold temperatures

The leakage of compressed air from the train's air brake system degraded the performance of the brakes in the extreme cold temperature. As a result, even though the inbound locomotive engineer had increased the amount of braking several times while going down Field Hill towards Partridge, the train's speed continued to increase. When the speed reached 21 mph, the train crew applied the brakes in emergency.

After the train stopped, the air brakes continued to leak over the next 3 hours until they could no longer hold the train.

The investigation used several different methods to determine the effectiveness of the brakes at the time of the occurrence, most notably extensive testing of 13 cars recovered from the accident site; review of wheel temperature data for the cars on the train; brake retarding force calculations; and computerized train dynamics simulations.

The results all indicated that on the descent of Field Hill before the emergency stop the brake effectiveness of the train was in the 60% to 62% range. After the train had been stationary on Field Hill for approximately 3 hours, the brake effort had degraded to less than 40% of the theoretical maximum braking effort.

Several factors contributed to the degradation of the occurrence train's braking performance, especially the leakage of compressed air from the air brake cylinders on the rail cars, which was aggravated by the extreme cold temperatures. If leakage is excessive, or interferes with the normal operation of air brake equipment, the brakes may not apply at all, may produce less than the expected amount of retarding force, or may release after a period of time.

Limitations of current train brake test methodologies

Most air brake issues can be detected when freight cars and locomotives are tested and inspected. The single car test is particularly relevant in this case: it verifies the intended operation of car brakes and ensures, among other things, that the brakes remain applied and do not exceed allowable leakage rates. Cars in service are required to undergo this test at least once every 5 years. The cars on the occurrence train met this requirement.

Because this test is usually conducted in the warmer environment of a maintenance shop, it is very difficult to diagnose issues that reveal themselves only in extreme cold temperatures. Also, it cannot be used to evaluate the operation of the brakes on an entire train.

One of the brake tests that an entire train undergoes is the No. 1 brake test, which is conducted by certified car inspectors when a train is assembled prior to departure. It verifies the brake pipe integrity and continuity, brake rigging condition, air brake application and release, and piston travel on each car in the train. The train cannot depart

unless at least 95% of the train brakes are operative. The occurrence train passed a No. 1 brake test at Alyth Yard before departing Calgary at ambient temperatures of about −26 °C.

By confirming that brakes apply and release, the No. 1 brake test can verify the responsiveness of an air brake system, but it cannot determine its effectiveness. In addition, because this test is done on a stationary train, it does not necessarily expose brake system defects that may materialize only while the train is in motion.

Until train brake test methodologies accurately evaluate air brake effectiveness, trains operating in extreme cold temperatures may continue to have ineffective braking, increasing the risk of loss of control and derailment.

Sufficiency of training

The route through the Rocky Mountains on the Laggan Subdivision traverses some of the most challenging railway operating terrain in North America. Winter temperatures, ice, and snow compound these challenges—and present specific ones as well.

Locomotive engineers

Locomotive engineers have to be certified for the subdivision on which they operate trains. On the Laggan Subdivision, the certification requires about 3 extra months of training on Field Hill operations. This training includes trips to practise and achieve a qualification in descending the mountain grade and safely resuming operation of a train that is stopped on the grade.

At the time of the occurrence, CP's Field Hill certification program did not have a module on the particular challenges of operating a train on mountain grade in extreme cold conditions. This kind of training could make locomotive engineers more aware of the issues associated with air brake system operations in extreme cold and increase their vigilance when they encounter situations similar to those that arose in this occurrence.

Conductors

At the time of the occurrence, CP required conductors to do a classroom review of relevant operating procedures using job aids and track schematics in order to work on Field Hill. New hires also attended a 2-week classroom exercise in a simulated environment, where they operated as conductors applying all rules and operating instructions. However, there were no simulated trips specifically for Field Hill, and conductors were not required to be Field Hill–certified. If the classroom training does not address the unique needs of the territory where the employees will be working, and if the employees do not obtain the relevant on-the-job training on that territory, they will not be adequately prepared to perform their duties safely.

Trainmasters

After the emergency stop on Field Hill, CP operating instructions and procedures required the inbound crew to hold a job briefing with the trainmaster to determine the best course of action and follow the trainmaster's instructions.

Trainmasters overseeing train operations must have the technical expertise, knowledge, and experience to discuss options and provide solutions in complex operational situations, such as emergency brake recovery on a mountain grade.

In this occurrence, the trainmaster had qualified as a locomotive engineer through the management training program, but he had not qualified on the Laggan Subdivision and so had never received the Field Hill training. The trainmaster's effectiveness as a technical leader was likely weakened by the mismatch between his experience and the requirements of supervising mountain-grade operations on the Laggan Subdivision.

Many railway companies in North America employ road foremen. This is also a supervisory role, but it focuses on the technical aspects of train operations (train handling, air brake operation, train dynamics, etc.). Road foremen are experienced locomotive engineers with considerable technical and operational expertise specific to the territory that they oversee. At the time of the occurrence, there was one road foreman at the Calgary terminal (the position had been vacant from 2016 to 2018), but his technical expertise and experience were similar to a trainmaster's.

Need for better hazard identification, data analysis, and risk assessment

A safety management system (SMS) is an internationally recognized framework that allows companies to manage risk effectively and make operations safer. Risk assessments are a cornerstone of a fully functioning and effective SMS and are essential for a company to operate safely.

The *Railway Safety Management System Regulations, 2015* require railway companies to conduct risk assessments, including when a safety concern is identified. To identify safety concerns, railway companies are required to continually analyze their operations, current or emerging trends, and any recurring situations. The analyses use information such as employees' reports of safety hazards and data from safety monitoring technologies.

Safety hazard reports

Safety hazard reports involving poorly braking unit grain trains descending Field Hill in cold winter temperatures had been submitted by train crews in January and February for a number of years. As individual notifications of this hazard were closed, new, similar reports continued to be recorded through the reporting system. Although CP's procedure for safety hazard reporting was actively followed at the Calgary terminal, the trend analysis it required was not being done. Consequently, year after year, the reports on the poor braking of unit grain trains on Field Hill were closed, no formal risk assessment was conducted, and insufficient corrective action was taken.

Data from wheel temperature detectors

CP collects data from the wheel temperature detectors on its network. The work done by CP to use detectors to identify cars with brake system issues was novel in the industry when it began in 2008. These detectors make it possible to identify cars with cold wheels—cold wheels being an indicator of poor braking performance. The data collected in winter allow the railway to monitor the temperature sensitivity and performance of car air brakes when they are most susceptible to leakage.

Wheel temperature detectors are a safety monitoring technology and, as such, data from them must be analyzed to identify safety concerns, trends or emerging trends, or recurring situations. However, at the time of the occurrence, CP did not analyze the data available for grain cars, and an opportunity was missed to identify the hazard and mitigate any risks related to the braking performance of grain trains in extreme cold temperatures.

Risk assessments before operational changes

Risk assessments must be conducted prior to implementing operational changes which have the potential to introduce new hazards or increase the level of severity of existing hazards. In the years preceding the occurrence, CP made incremental changes to the operating procedures for Field Hill, which included the speed threshold at which trains are permitted to descend Field Hill and the requirements for retainers and hand brakes after an emergency brake application. CP did not, however, do any risk analysis to assess how these changes would affect safety.

Need for additional physical defences against uncontrolled movements

This occurrence is one of 589 occurrences reported to the TSB from 2010 to 2019 that were related to unplanned and uncontrolled movements among all railways in Canada. Loss of control, as in this occurrence, was the causal category in 22 (4%) of them. While uncontrolled movements due to loss of control are low-frequency events, 59% of them (13 out of 22) affected the main track.

Uncontrolled movements pose a significant risk to railway employees. When such movements involve the main track, the public—including passengers and people in the vicinity of the railway tracks—can also be exposed to risk. The risks increase significantly when a train carries dangerous goods. Consequently, these are considered low-frequency, high-risk events.

The TSB remains concerned that the current defences are not sufficient to reduce the number of uncontrolled movements and improve safety. Unplanned/uncontrolled movements of railway equipment is on the TSB's Watchlist 2020, which is a list of the key safety issues that need to be addressed to make Canada's transportation system even safer.

New technologies are available

Many technological advancements are available to North American railways to enhance train brake performance, including automatic parking brakes, high-capacity fade-resistant brake shoes, control valves with a brake cylinder maintaining feature, and retention of dynamic brake force on remote locomotives. These technological enhancements are examples of physical defences that are likely to reduce the frequency of unplanned and uncontrolled movements of railway rolling stock. The major freight railways have been receptive to assessing these advancements, but have not fully implemented them. At the time of the occurrence, there were no regulatory requirements for their implementation.

Safety action following the accident

Transportation Safety Board of Canada

Soon after the accident, the TSB communicated critical safety information[6] on

- the prevention of uncontrolled train movements for trains stopped in emergency on grades of less than 1.8% (TSB Rail Safety Advisory Letter 04/19, issued on 11 April 2019);
- air brake system inspection and maintenance on grain hopper cars used in CP unit train operation (TSB Rail Safety Advisory Letter 05/19, issued on 11 April 2019); and
- the effectiveness of the No. 1 brake test (TSB Rail Safety Advisory Letter 04/20, issued on 17 April 2020).

Transport Canada

For its part, Transport Canada introduced numerous initiatives, including a Ministerial Order requiring that trains stopped by an emergency brake application on a grade of 1.8% or greater immediately apply a sufficient number of hand brakes before recharging the air brake system. The Ministerial Order was later repealed when it was superseded by Rule 66 of the *Canadian Rail Operating Rules*.

Transport Canada also approved the use of automated train brake effectiveness technology in lieu of No. 1 brake tests on CP's unit grain trains operating between points in Western Canada and the Port of Vancouver.

Canadian Pacific

For its part, CP

- revised the train handling procedures for the Laggan Subdivision with respect to the use of retainers and hand brakes before recovering from an emergency brake application on mountain grades;
- issued Operating Bulletin OPER-AB-015-19, which introduced both new cold-weather speed restrictions for Field Hill for trains with a weight per operative brake of 100 tons or greater and a requirement that undesired releases of brakes on Field Hill be reported immediately to the rail traffic controller;
- monitored wheel temperatures on all westbound grain trains passing by detectors installed on the Laggan and the Mountain subdivisions, which resulted in more than 5000 grain cars being removed from service for repair;
- developed an advanced training program for locomotive engineers to build their skills and readiness for dealing with adverse conditions in the field. Adverse conditions covered by the training program included response to minor and major changes in air flow and brake pipe fluctuation, response to an undesired release of the air brakes, and procedures for emergency air brake recovery.

6 These safety advisory letters are available at https://www.tsb.gc.ca/eng/securite-safety/rail/index.html

TSB recommendations

To address the systemic safety issues that posed a significant risk in this occurrence, the Board made 3 recommendations, namely

- that the Department of Transport establish enhanced test standards and requirements for time-based maintenance of brake cylinders on freight cars operating on steep descending grades in cold ambient temperatures (TSB Recommendation R22-01);
- that the Department of Transport require Canadian freight railways to develop and implement a schedule for the installation of automatic parking brakes on freight cars, prioritizing the retrofit of cars used in bulk commodity unit trains in mountain grade territory (TSB Recommendation R22-02); and
- that the Department of Transport require Canadian Pacific Railway Company to demonstrate that its safety management system can effectively identify hazards arising from operations using all available information, including employee hazard reports and data trends; assess the associated risks; and implement mitigation measures and validate that they are effective (TSB Recommendation R22-03).

RAIL TRANSPORTATION SAFETY INVESTIGATION REPORT R19C0015

UNCONTROLLED MOVEMENT OF ROLLING STOCK AND MAIN-TRACK TRAIN DERAILMENT

Canadian Pacific Railway Company
Freight train 301-349
Mile 130.6, Laggan Subdivision
Yoho, British Columbia
04 February 2019

The Transportation Safety Board of Canada (TSB) investigated this occurrence for the purpose of advancing transportation safety. It is not the function of the Board to assign fault or determine civil or criminal liability. **This report is not created for use in the context of legal, disciplinary or other proceedings.** See the Terms of use on page 2.

1.0 FACTUAL INFORMATION

1.1 The territory

On 03 February 2019, Canadian Pacific Railway Company (Canadian Pacific or CP) freight train 301-349 was travelling westward on the Laggan Subdivision, which runs from Calgary, Alberta (Mile 0.0) to Field, British Columbia (BC) (Mile 136.6).

The Laggan Subdivision is part of CP's main corridor to the west coast. It is one of several subdivisions through the Rocky and Cascade mountains characterized by steep grades and sharp curves. This route traverses some of the most challenging railway operating terrain in North America and is subject to environmental conditions that include extreme heat and cold, avalanches, rock slides, and slope destabilizations during spring runoff.

The route from Calgary to Stephen, BC (Mile 123.1), consists of a long gradual climb, followed by a steep descent at Field Hill.

The section of the Laggan Subdivision known as Field Hill runs 13.5 miles from Stephen to Field. It is designated as mountain grade[7] and drops from an elevation of 5290 feet at Stephen to 4045 feet at Field. The descending grade varies between 1.7% and 2.2%.

The track through Field Hill goes through several tunnels and crosses the Kicking Horse River at Mile 130.6 between 2 spiral tunnels. The Upper Spiral Tunnel is 3255 feet long and extends from Mile 128.8 to Mile 129.5. The Lower Spiral Tunnel is 2922 feet long and extends from Mile 131.0 to Mile 131.5.

[7] CP defines heavy grades as grades from 1.0% to 1.8%. Grades exceeding 1.8% are defined as mountain grades.

There are several sharp curves ranging from 8° to 10°, including back-to-back reverse curves. At Mile 130.2, the track has an 8.4° left-hand curve followed by a 7.9° right-hand curve; then, approaching the Kicking Horse River bridge, the curvature changes to a 9.8° left-hand curve.

In this occurrence, the train stopped in emergency at Partridge, BC (Mile 127.46). A few hours later, it started to roll on its own, uncontrolled. The head-end portion of the train derailed at Mile 130.6 (figures 1 and 2).

Figure 1. Map showing the occurrence location, with inset map showing the locations of the emergency stop and the subsequent derailment (Source: Railway Association of Canada, *Canadian Railway Atlas*, with TSB annotations)

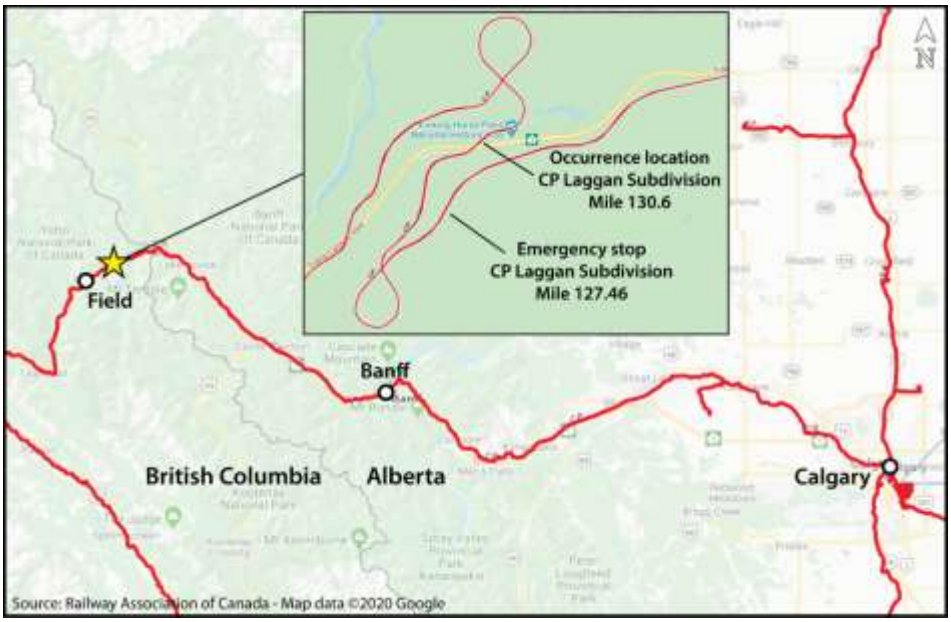
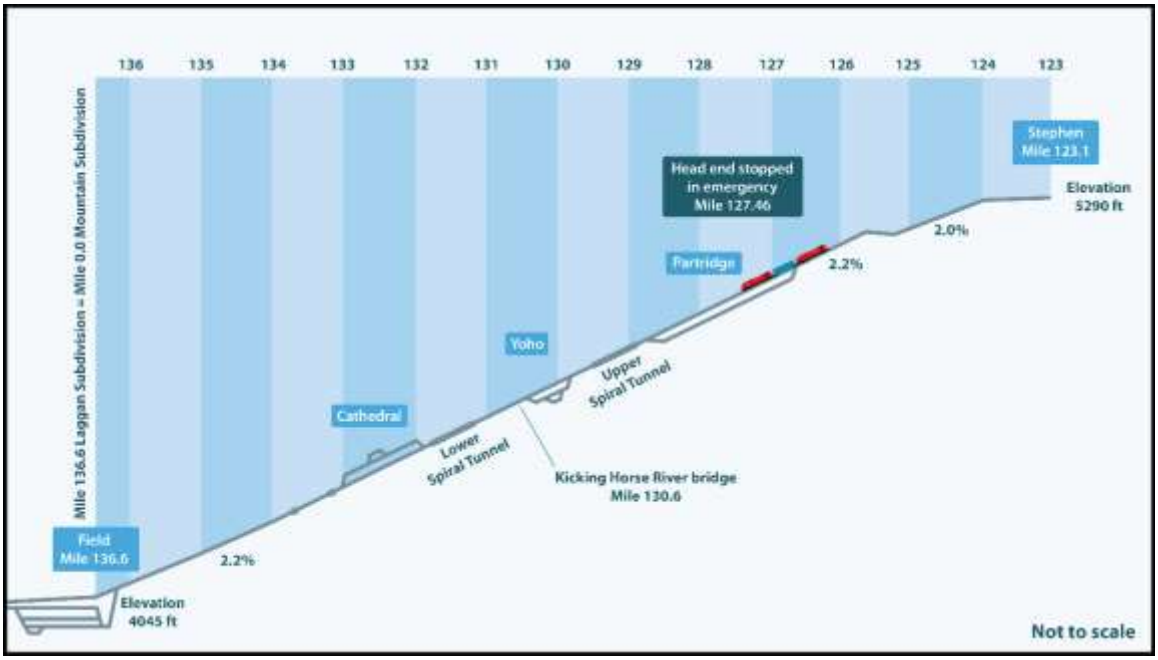


Figure 2. Track gradients on Field Hill and location of the train stopped in emergency (Source: TSB)



1.2 The accident

A summary of relevant events for this occurrence is provided in Table 1. A detailed timeline of the events that took place from the time the train stopped in emergency until it began to roll uncontrolled can be found in Table 2. Both of these tables are in section 1.2.4.

A description of locomotive and freight car brakes is provided in Appendix A. Information on inspection and testing of air brake systems is provided in Appendix B.

1.2.1 Before the emergency stop

On the morning before the occurrence, a CP train crew (the inbound crew)[8] was called at 1030[9] to report at Alyth Yard in Calgary for 1230. The crew was scheduled to operate freight train 301-349 westward on the Laggan Subdivision.

The train was a unit train[10] hauling 112 loaded grain hopper cars. It weighed 15 042 tons and was 6676 feet long. It was powered by 3 distributed power (DP) locomotives—1 positioned at the head end, 1 in a mid-train position, and 1 on the tail end. The mid-train and tail-end locomotives were remote-controlled.[11]

Earlier in the day at around 1210, the train had arrived at Alyth Yard with 1 car cut out (line 101, CP 603181).[12] Prior to departure from Alyth Yard, the train underwent a No. 1 brake test.[13] The test identified defective brakes on 1 more car (line 27, CP 607409), which was also cut out. With the 2 cars cut out, the train was cleared to leave, about 60 minutes later than expected. With the brake systems on 2 of the 112 cars cut out, the train had 98% of its car brakes operative with a weight of 131.1 tons per operative brake.

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8 The report refers to 2 separate train crews. Where there is a risk of confusion, the crew that operated the train from Alyth Yard in Calgary to Partridge is referred to as the inbound crew, and the crew that took over control of the train at Partridge and was on board the train at the time of the derailment is referred to as the relief crew.

9 All times are Mountain Standard Time, unless otherwise indicated.

10 A unit train is a train carrying a single commodity (in this case, grain) in cars of similar type, length, and weight.

11 The remote locomotives, upon receipt of a distributed power (DP) radio message, respond by executing the train handling commands they receive. When the train is operating in DP synchronous mode, as in this occurrence, the signals sent by the lead locomotive ensure synchronous operation between the locomotives distributed throughout the train.

12 A car is cut out by turning the branch pipe cutout cock to the off position and operating the bleed rod to release air pressure from the brake cylinder, rendering the brakes of the car inoperative. See Figure A1 in Appendix A – Locomotive and freight car brakes.

13 A No. 1 brake test, conducted by a certified car inspector, verifies brake pipe integrity and continuity, brake rigging condition, air brake application and release, and piston travel on each car. After completing a No. 1 brake test, a train may depart from a safety inspection location with 95% of the train brakes operative.

The train departed Alyth Yard at approximately 1430. It was operating in extreme cold temperature; when it passed Mile 65.6, a wayside hot box detector[14] alerted the crew that the ambient temperature was −27 °C.

En route, the crew members experienced several delays in their progress westward with reduced speed due to low ambient temperatures, switch malfunctions, and train meets that added to their trip time. The locomotive engineer (LE) noticed increases in air flow whenever he applied the air brakes along the route,[15] but the air brake system performed as expected.

At approximately 2136, the train began proceeding down the steep grade that starts at Mile 125.6. The train could not maintain a speed below the maximum allowable limit of 15 mph; as the speed reached 21 mph, the crew applied the brakes in emergency and the train came to a stop at Partridge at around 2149. From the train's stop location, about 9 miles of descending 2.2% grade still remained ahead of the train before the grade would decrease to between 0.5% and 0.4% for about 9000 feet starting at Field.

1.2.2 While stopped in emergency

At 2215, about 25 minutes after the train was stopped with an emergency brake application, the inbound crew and the trainmaster performed the required job briefing to assess the situation and determine the best course of action for recovering[16] the emergency brake application. It was decided that the conductor would set the retaining valves (retainers)[17] to the high pressure (HP) position on 75% of the cars (84 cars), as required in the Field Hill operating procedures (FHOP), to facilitate a release and catch operation.[18] Because the inbound crew were close to the 10-hour limit of service in their collective agreement, the rail traffic control (RTC) director ordered a relief crew, who would take over control of the train and complete the trip to Field.

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14 A hot box detector is a wayside detector which measures both bearing and wheel temperatures. The detector also provides ambient temperature to the train crew via a radio communication after the entire train has passed by the detector.

15 A rise in air flow when the air brakes are applied is referred to as "applied air flow" and is a leading indicator of brake system malfunction. The locomotive engineer (LE) informed the trainmaster of the observed applied air flow events later during a job briefing after the emergency stop.

16 "Recovering" refers to releasing the emergency brake application and recharging the train's air brakes. This process is initiated by moving the automatic brake valve handle out of the emergency position and placing it in the release position, thus resetting the pneumatic control switch and restoring all locomotive tractive effort and dynamic brake (DB).

17 A retaining valve, commonly called a retainer, is a manually operated valve that is used to limit the release of air pressure from the brake cylinder. For more information, see Appendix A – Locomotive and freight car brakes.

18 "Release and catch" is a term used to describe the operation of recovering an emergency brake application on a descending grade; it involves releasing the emergency brake application and allowing the train's air brakes to recharge as the train continues its descent. The intent is for retained brake cylinder pressure (BCP) and available locomotive DBs to slow the acceleration of the train until the air brake system is sufficiently recharged for re-application of the air brakes.

The members of the relief crew—an LE, a conductor, and a conductor trainee—were not immediately available; they were scheduled to come on duty at 2230. They had originally been ordered at Field to relieve another train and, at that time, the relief LE had opted to take a 2-hour advance call[19] (in accordance with his collective agreement) before coming on duty. Once en route, they travelled to Yoho by road vehicle, then were required to make the remainder of the trip to Partridge in a snow removal track unit.

At Yoho, the relief LE had a face-to-face job briefing with the trainmaster, who informed him of the decision to apply retainers on 84 of the train's cars to assist in the safe recovery from the emergency brake application. Departing Yoho, the relief crew was further delayed as it was necessary to clear snow from a switch that led onto the main track.

While waiting for the relief crew to arrive, the inbound conductor set the required retainers on 84 (75%) of the cars, as decided. The task, which was made more difficult by the mountainous terrain, the extreme cold, and the darkness, took approximately 1 hour. The conductor returned to the locomotive at approximately 2330.

The relief crew arrived at Partridge at 0005 on 04 February 2019, and reached the train at 0020, approximately 2.5 hours after it had stopped in emergency.

1.2.3 The uncontrolled movement

Upon taking control of the train, the members of the relief crew had a job briefing with the inbound crew in the lead locomotive, and no concerns were raised. The relief crew then waited, as the train could not proceed down the hill until a track occupancy permit was cancelled,[20] which required the snow removal track unit transporting the inbound crew to be clear of the Yoho east switch. The LE stated in conversation with the RTC that he would not recover the emergency brake application until it had been confirmed to him that the track ahead was not occupied.

At 0042, while the relief crew was still waiting, the train started to roll on its own and the LE made an emergency radio broadcast. The engineering personnel on the main track overheard the transmissions and responded that they would indicate when they were in the clear at Yoho. The RTC repeated the emergency call a number of times to warn the engineering personnel on the main track to get clear of the track as soon as possible. The LE also asked the RTC to clear trains from the main track at Field, which was done, and to evacuate the Field bunkhouse.

When the train began its uncontrolled movement, the conductor and the conductor trainee left the locomotive cab with the intent to apply hand brakes to stop or slow the train; however, the train continued to accelerate and the LE told both crew members to return to the locomotive cab for their safety. They did not have an opportunity to apply any hand

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19 The collective agreement between the railway and LEs permits advance notification calls to report for duty at the away-from-home terminal to be varied in duration, up to a maximum of 2 hours.

20 Track occupancy permits are issued by the rail traffic controller to a foreman to provide authority to occupy the main track or to perform track work. Such permits are often used to protect track unit movements on the main track and remain in effect until cancelled by the foreman in charge.

brakes. After the train was in motion, it accelerated rapidly and so it was not feasible to recover the emergency brake application.[21]

Once the train entered the sharp curves on the descent, the LE broadcast that he expected the curve resistance to slow the acceleration of the uncontrolled movement and the train to "stall out" in the tunnel. The train was able to proceed over back-to-back reverse curves as its speed gradually accelerated to about 53 mph, well in excess of the maximum authorized speed; however, it was not able to negotiate the sharp 9.8° curve immediately before the Kicking Horse River bridge. The head end of the train derailed at Mile 130.6, at 0051. The 3 crew members were fatally injured.

1.2.4 Sequence of events

The sequence of events was established from a review of available information, including radio communication records, data from the locomotive event recorders (LERs), and interviews (Table 1).

Table 1. Sequence of events in the occurrence

Note: Times where seconds are expressed as 00 are approximate; other times are exact, unless otherwise specified.

Date	Time	Event
2019-02-03	1230:00	The inbound crew is ordered to Alyth Yard for train 301-349.
2019-02-03	1415:00	The train completes a No. 1 brake test and an inspection at Alyth Yard.
2019-02-03	1430:00	The train departs Alyth Yard with 2 cars cut out: CP 603181 (line 101) and CP 607409 (line 27).
2019-02-03	1436:00	The crew members remind the RTC that they need to be off duty by their 10th hour, at 2230, in accordance with their collective agreement.
2019-02-03	1506:00	The LE observes an applied air flow event while bringing the train to a stop at Keith, Alberta, for a meet.
2019-02-03	1510:00	The train receives a roll-by inspection with nothing noted while coming to a stop at Keith to meet 3 trains.
2019-02-03	1519:00	The RTC informs the crew about a problem with the west switch at Keith.
2019-02-03	1639:00	The RTC contacts the crew and asks for a 10 psi brake application and release to address a warm wheel detected on the car in position number 107 (DME 51034).
2019-02-03	1720:00	The LE informs the RTC that the train's speed is now restricted to a maximum of 25 mph through Canmore, Alberta, and Banff, Alberta, after the wayside detector at Mile 65.6 broadcasted a −27 °C cold temperature alert on the standby channel.

[21] Had the LE successfully recovered the emergency brake application during the uncontrolled descent, which is an extraordinary measure that does not follow the railway operating procedures, dynamic braking effort would have been re-enabled on the 2 remote locomotives within several minutes. However, this would have resulted in the temporary loss of the braking capacity provided by the emergency brake application while the air brake system was recharging. The train, therefore, would have accelerated with only the retarding force of the DBs on the 3 locomotives, in combination with whatever residual BCP was being provided by the 84 cars with retainers set.

Date	Time	Event
2019-02-03	1805:00	The LE observes an applied air flow event while bringing the train to a stop at Banff to meet a train.
2019-02-03	1838:00	The RTC informs the crew of impending delays at Eldon, Alberta, to meet other trains, and for weather and switch problems.
2019-02-03	1909:00	The LE observes an applied air flow event while bringing the train to a stop at Eldon to meet 2 trains.
2019-02-03	1910:00	The train receives a roll-by inspection with nothing noted while coming to a stop at Eldon for meets.
2019-02-03	2014:00	The train departs Eldon siding. The RTC relieves the crew of inspecting duties for their train at the end of their tour of duty at Field.
2019-02-03	2125:00	The LE starts to advance the throttle from notch 1 to the notch 2-3 position at a speed of 2 mph to keep the train moving on the approach to Stephen.
2019-02-03	2128:13	The LE makes an initial air brake application at Mile 123.12 while starting down the grade at Stephen.
2019-02-03	2128:37	The LE observes an applied air flow event.
2019-02-03	2136:45	While descending Field Hill, the LE makes the first of several incremental brake pipe pressure reductions as the train speed continues to increase.
2019-02-03	2137:15	The LE observes an applied air flow event after he makes the first incremental brake pipe pressure reduction.
2019-02-03	2148:08	The LE and the conductor apply the train brakes in emergency as the speed reaches 21 mph.
2019-02-03	21:48:25	The LE makes an emergency broadcast on the radio.
2019-02-03	2149:33	The train comes to a stop with the head end located at Mile 127.46.
2019-02-03	2153:00	The RTC asks the crew if the air is coming back, after the brakes were applied in emergency. The crew responds that they need to hold a job briefing with the trainmaster to determine what to do next.
2019-02-03	2215:00	The trainmaster and the crew conduct a job briefing over the radio. During the discussion, the LE mentions the applied air flow events that he observed along the way. A decision is made to set retainers on 75% of the cars (84 cars) per the Field Hill operating procedures.
2019-02-03	2230:00	The trainmaster arrives at Yoho by road vehicle. The RTC director informs the trainmaster that the relief crew will be on their way to Yoho shortly by road vehicle. The track foreman starts preparing a snow removal track unit to transport the relief crew by rail from Yoho to the train. The conductor exits the cab of the locomotive and begins setting the retainers.
2019-02-03	2245:00*	The relief crew arrives at Yoho by road vehicle.
2019-02-03	2315:00	The track foreman, to prepare the way for the snow removal track unit, attempts to line the switch from the storage track onto the main track, but the switch is fouled with frozen snow.
2019-02-03	2330:00	The conductor returns to the locomotive cab after setting 84 retainers.
2019-02-03	2335:00	While waiting in Yoho, the relief LE holds an in-person briefing with the trainmaster. The decision to use retainers on 75% of the cars is discussed, and the relief LE does not object. While the relief LE is with the trainmaster, they also have a briefing via radio with the inbound LE.
2019-02-04	0015:00	The snow removal track unit departs Yoho and travels on the main track to transport the relief crew to the train.
2019-02-04	0031:00	The relief crew reports to the RTC that they are now on board the train.

Date	Time	Event
2019-02-04	0042:02	The train starts to roll on its own with the emergency brake application still engaged.
2019-02-04	0042:36	The conductor and the conductor trainee get off the train to apply hand brakes.
2019-02-04	0042:38*	The LE broadcasts over the radio that the train is in emergency and travelling at 1 mph.
2019-02-04	0042:40*	The LE tells the conductor and the conductor trainee to return to the cab.
2019-02-04	0048:30	The train, now travelling at 22 mph, passes the Partridge west signal, which is displaying a stop indication protecting the block ahead with a track occupancy permit still in effect between Partridge and Yoho.
2019-02-04	0048:30	The inbound crew aboard the snow removal track unit moves clear of the Yoho east switch.
2019-02-04	0048:32	The Yoho east switch is manually lined in the normal position, and the track foreman reports this to the RTC.
2019-02-04	0049:00	The train passes the Yoho east switch.
2019-02-04	0049:10	The LE broadcasts that the train is entering Upper Spiral Tunnel and that its speed is 40 mph.
2019-02-04	0050:05	The LE broadcasts that the speed of the train is 48 mph.
2019-02-04	0050:20	The LE broadcasts that the speed of the train is 51 mph.
2019-02-04	0050:27	The tail end portion of the train separates between positions 85 and 86.
2019-02-04	0050:31	The midsection of the train separates between positions 36 and 37.
2019-02-04	0050:34	The tail-end remote locomotive comes to a stop just inside the west portal of the Upper Spiral Tunnel.
2019-02-04	0050:54*	The head end of the train derails in the Kicking Horse River.
2019-02-04	0051:20	The wayside detector broadcasts an alert after the train passes Mile 130.2 that the power is off and not working, and also provides a car count with fewer cars than are actually on the train.

* Estimated time based on the surviving LER data obtained from the DP mid-train and rear locomotives.

After the train had stopped in emergency on the mountain grade at Mile 127.46, approximately 2.5 hours elapsed before the relief crew was on board and preparing to recover the emergency brake application. Table 2 describes the activities that took place and the delays incurred during the 3 hours that the train remained stationary on Field Hill.

Table 2. Timeline of the events and delays while the train was stationary on Field Hill

Date	Time	Elapsed time	Events
2019-02-03	2150	00:00:00	• The inbound crew applies the train brakes in emergency at Mile 126.98. • The train stops at Mile 127.46. • The inbound crew makes an emergency broadcast on the standby channel and contacts the RTC. • The trainmaster hears the emergency broadcast while in his vehicle at Field.
2019-02-03	2153	00:03:00	• The RTC contacts the inbound crew and requests an update. • The LE indicates that he needs to talk to the trainmaster to have a job briefing before doing anything. • The trainmaster is unable to contact the inbound crew from Field. • The RTC director recognizes the implications related to the time required to apply retainers, recover the emergency brake application, and get the train down to Field. • The train crew originally planned to relieve train 101 is reassigned by the director to relieve train 301 instead.
2019-02-03	2215	00:25:00	• The trainmaster, en route to Yoho, contacts the inbound crew for a job briefing. • The job briefing takes place, during which a decision is made to apply retainers on 75% of the cars (84 cars), as per policy. • The trainmaster assesses that the inbound crew can recover the emergency brake application and bring the train to Field. • The trainmaster tells the crew that he will drive to Yoho to be on hand to assist if necessary.
2019-02-03	2230	00:40:00	• The trainmaster arrives at Yoho by road vehicle. • The track foreman starts preparing a snow removal track unit to transport the relief crew by rail from Yoho to the train. • The RTC director informs the trainmaster that the relief crew will be on their way to Yoho shortly by road vehicle. • The conductor exits the cab of the locomotive and begins setting the retainers.
2019-02-03	2245	00:55:00	• The relief crew arrives at Yoho by road vehicle.
2019-02-03	2253	01:03:00	• The RTC contacts the inbound crew for an update. • The LE indicates that the conductor still has 60 retainers to set.
2019-02-03	2315	01:15:00	• The relief crew is delayed at Yoho while the snow removal track unit is readied and frozen snow is cleaned out of a track switch.
2019-02-03	2327	01:37:00	• The RTC contacts the inbound crew for an update. • The LE indicates that the conductor still has 5 retainers to set. • The LE informs the RTC that the relief crew has not yet arrived at the train.
2019-02-04	0015	02:25:00	• The snow removal track unit departs Yoho and travels by rail to transport the relief crew to the train.
2019-02-04	0020	02:30:00	• The relief crew arrives at the train and conducts a job briefing with the inbound crew.

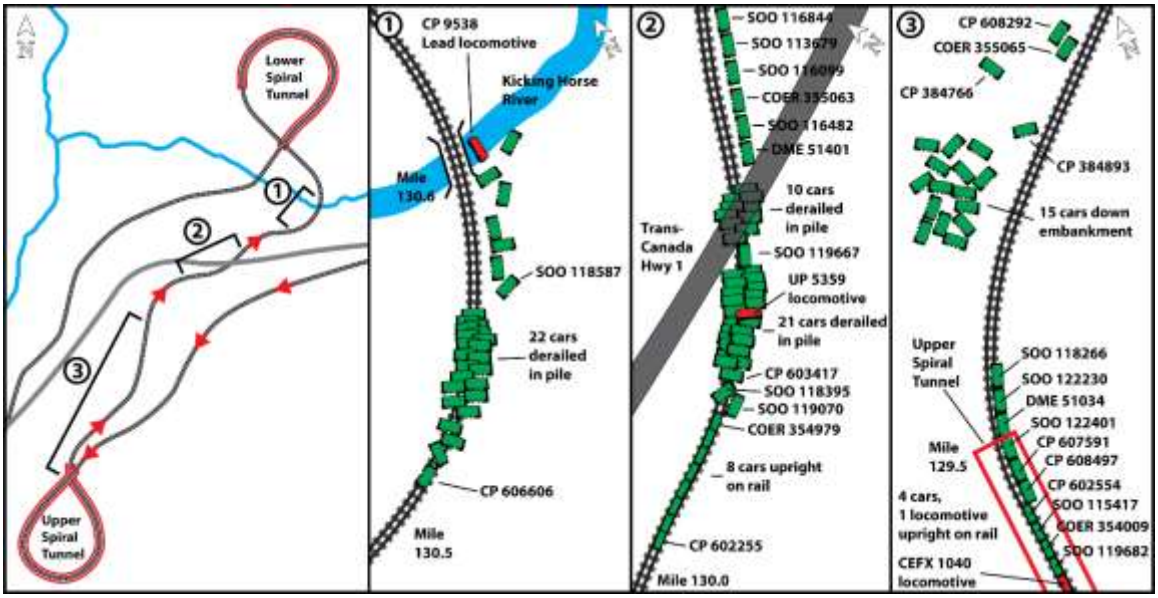
Date	Time	Elapsed time	Events
2019-02-04	0031	02:41:00	• The relief LE contacts the RTC to inform him that they are on board the train. • The relief LE indicates to the RTC that the train is waiting to be contacted by the track foreman for confirmation that the snow removal track unit and all on-board personnel are clear of the main track. • The LE mentions that, after the track foreman provides the "all-clear" confirmation, the emergency brake application will need to be recovered before the train can proceed to Field.
2019-02-04	0042	02:52:00	• The train starts to roll on its own. • The relief crew makes an emergency broadcast on the standby channel. • The RTC contacts the relief crew in response to emergency broadcast. • The relief LE informs the RTC that the train has started to roll on its own even though the emergency brake application has not been recovered.

1.3 Site examination

The derailment site spanned 1.2 miles, from Mile 129.4 to Mile 130.6. It was located about 6.8 track miles northeast of the town of Field.

The train had separated into 3 sections during the derailment (Figure 3).

Figure 3. Site diagram showing an overview of the derailment site and close-up views of the 3 sections of the derailment (Source: TSB)



The front portion of the train, including the lead locomotive (CP 9538) and the first 35 cars, had derailed on the curve immediately before the Kicking Horse River bridge at Mile 130.6 (Figure 4).

Figure 4. Derailed head-end cars looking toward the rear of the train (Source: Canadian Pacific)



The head-end locomotive, CP 9538, was lying on its left side in the riverbed, some 35 feet below the track level. The river was quite shallow, and the surface was frozen and covered with snow. A patch of open water about 20 feet in diameter was visible underneath and adjacent to the locomotive, where the ice had broken when the locomotive fell onto the riverbed. An inspection of the underside of the locomotive showed little indication of ground contact, but the rest of the locomotive had sustained extensive damage.

Several derailed cars were lying on the river embankment, and the remaining cars in this section of the occurrence site had derailed along the right-of-way. The head-end cars had been scattered on the embankment or had come to rest in the treed area some distance away from the track.

Further back in the train, at around Mile 130.2, 40 cars from the middle portion of the train had derailed on their side and in a pile-up. Several of these cars were underneath a multi-lane overpass structure where Highway 1 passes above the track. Some cars were leaning against the bridge piers, which sustained superficial damage (Figure 5).

Figure 5. Cars under the Highway 1 overpass (Source: TSB)



The mid-train remote locomotive, UP 5359, had derailed but stood upright among other cars stacked in a side-by-side pile-up (Figure 6).

Figure 6. Mid-train distributed power remote locomotive, UP 5359 (Source: TSB)



Eight cars on the trailing end of the middle portion did not derail and were not damaged.

In the rear portion, rolling stock was located both inside and outside the Upper Spiral Tunnel. Outside the tunnel, 7 cars were derailed on their side and 15 cars were derailed in a pile-up on the mountainside. Inside the tunnel, 4 cars had stayed on the rails, 1 car had the rear truck derailed, and 2 cars were upright with all trucks derailed. The tail-end remote locomotive, CEFX 1040, remained on the track some 475 feet inside the tunnel (Figure 7).

Figure 7. Tail-end cars derailed outside the Upper Spiral Tunnel (Source: Canadian Pacific)



The track examination did not show any breaks or gaps in the rail, or any indication of lateral shift. The rail was still solidly anchored to the hardwood crossties. The track structure was solidly frozen in the ground. There was no indication that the high rail (outer side of the curve) had canted outward or rolled over.

1.3.1 Inspection of rolling stock

Access to the rolling stock was limited in many areas due to the wreckage, spilled car contents, and confined workspace. In many cases, key components of interest were damaged beyond the point at which meaningful information could be obtained. The inspection focused on the visible portions of the rolling stock, in particular the brake system, the wheelsets, and the position of the various valve handles on the cars. All of these could provide insight into the operation of the train at the time of the occurrence.

The car air brake system appeared to be properly set up. The retainer handles that were visible appeared to be in the HP position. The examination of the hand brakes did not provide any indication that they had been applied. The brake rigging and wheel tread surfaces were all relatively clean and with no evidence of snow or ice buildup.

The head-end locomotive was extensively damaged; a section of the control stand with various control levers was removed for visual inspection off site. This inspection indicated that the controls were operational and had not malfunctioned in any way before the locomotive derailed. The electrical wiring was intact, as were the controller mechanical linkages.

The following components were set aside for further examination and testing:

- the 12 grain cars that had not derailed, plus the grain car that remained upright with 1 truck derailed;
- the tail-end locomotive;
- the brake shoes on all 3 locomotives (Figure 8); and
- the car wheelsets that could be recovered, about 78% of the total wheels (Figure 9).

Figure 8. Twelve of the recovered locomotive brake shoes (Source: TSB)



Figure 9. Recovered car wheelsets (Source: TSB)



1.4 Weather

At the time of the occurrence, the sky was clear with light gusting winds. Although it had recently snowed in the area, the snow was not covering the top of the rail head. The ambient temperature was determined to be about −25 °C when the train stopped in emergency. By the time the train started to roll on its own around 0042, the temperature had decreased to −28 °C.

1.5 Subdivision information

The Laggan Subdivision is part of CP's main corridor to the west coast. The subdivision extends from Calgary (Mile 0.0) to Field (Mile 136.6), and consists primarily of a single main track, with a double-track portion located between Lake Louise, Alberta (Mile 116.2), and Stephen (Mile 123.1). At Field, the track connects with Mile 0.0 of the Mountain Subdivision.

Train movements are governed by the centralized traffic control (CTC) system, as authorized by the *Canadian Rail Operating Rules* (CROR), and dispatched by an RTC located in Calgary. Calgary is also the home terminal for train crews, trainmasters and road foremen operating on the Laggan Subdivision.

Laggan Subdivision freight traffic volumes for 2015–2019 are shown in Table 3.

Table 3. Freight traffic volumes on the Laggan Subdivision from 2015 to 2019 (Source: Canadian Pacific)

Year	Volume (million gross ton-miles per mile)
2015	62.8
2016	65.3
2017	65.9
2018	70.6
2019	70.1

1.6 Track information

In the vicinity of the derailment, the main track consisted of 136-pound continuous welded rail manufactured in 2000. On the open track, the rail was laid on 14-inch double-shouldered tie plates and was fastened to hardwood ties with 3 spikes per tie plate. Inside the spiral tunnels, the rail was secured to steel ties using spring clips. The ballast was clean crushed rock. The shoulders were about 12 inches wide, the cribs were full, and the drainage was good.

The track is normally inspected a minimum of twice per week as required by CP's *Red Book of Track & Structures Requirements*. The last regulatory track inspection, conducted as required by the Transport Canada (TC)–approved *Rules Respecting Track Safety*, was conducted on 31 January 2019. There were no deficiencies noted during the inspection near the derailment location.

From Mile 122.9 to Mile 136.6, the maximum authorized speed on this track is 20 mph. Freight trains having a weight per operative brake of 100 tons or more are restricted to a maximum authorized speed of 15 mph.

1.7 Personnel information

1.7.1 Inbound crew

The inbound crew was composed of an LE and a conductor. Both crew members met established rest and fitness requirements and were qualified for their respective positions.

The LE was hired as a conductor trainee in November 2005. He qualified as a conductor in May 2006. He spent 5 years on yard assignments and then moved to road service. He entered the LE training program in January 2012 and qualified in August 2012. After qualification, he returned to his previous position as a conductor and worked as a relieving LE on various subdivisions when an assignment was available. In 2018, he moved permanently to the LE spare board for the Laggan Subdivision. He had followed the program specifically designed for Field Hill operations and was Field Hill–certified.[22]

The conductor started training as a conductor in April 2018 and qualified at the end of August 2018. After qualifying, she worked on yard assignments in Alyth Yard and in the Carseland Cargill facility and on road switching assignments. The occurrence trip was her 4th trip working as a conductor on the Laggan Subdivision.

1.7.2 Relief crew

The relief crew consisted of an LE, a conductor, and a conductor in training (the conductor trainee). The relief LE qualified in 1996, resigned in 2002, and was rehired as a conductor/LE in 2003. This was his 1268th trip on the Laggan Subdivision. The relief conductor qualified in 2007 and was on his 171st trip on the Laggan Subdivision. The conductor trainee was hired in 2018 and was taking his 13th training trip on the Laggan Subdivision.

The relief crew members had arrived at Field in a westbound train on the morning of 03 February 2019. They went off duty at 1120 and had more than 8 continuous hours off-duty time, in accordance with established rest and fitness requirements. However, from the early morning hours of 03 February 2019 until 2200, a power outage affected heating and electrical power at the CP's bunkhouse in Field, where the relief crew was resting. The power outage also resulted in a loss of communications, meaning that crews had to be notified by supervisors, in person, when called to duty. In addition, the generator in Field ran out of fuel, and the occupants of the bunkhouse resorted to using the propane-fuelled cooking stove as a heat source. The temperature inside the bunkhouse facility had reportedly dropped to as low as 8 °C before power was restored.

[22] More information on Field Hill certification and training is provided in section 1.24.2.4.

1.7.3 Trainmaster

The trainmaster joined CP in 2008 as an RTC where he gained preliminary experience dispatching the Laggan Subdivision during his first year of service. He qualified as a conductor in 2013 and as an LE in 2015 under management training programs,[23] and became a trainmaster in January 2016. At the time of the occurrence, he had taken over 100 trips as an LE, most of them on mountainous territory on the Cranbrook and Windermere subdivisions, and had worked on the Laggan Subdivision as a conductor. The trainmaster was not a Field Hill–certified LE, nor was it a CP requirement for supervisors on that territory.

1.8 Canadian Pacific's grain car fleet

The 112 grain cars on the train were assembled from 3 separate fleets of hopper cars: a fleet owned by the Government of Canada, CP's own fleet, and a fleet of leased cars.

1.8.1 Government of Canada fleet

From 1972 to 1994, the Government of Canada purchased some 13 500 covered hopper cars to carry Western Canadian grain for export (Figure 10). Many of these cars have been removed from service by attrition, but, at the time of the occurrence, more than half of them were still in service and represented approximately one third of the cars in active grain service in Canada. At the end of December 2018, the Government of Canada's grain hopper car fleet consisted of 7749 cars, almost evenly distributed between CP and Canadian National Railway Company (CN). In 2007, the Government of Canada signed an agreement with CN and CP for the operation, maintenance, and refurbishment of the federal fleet of hopper cars.[24]

CP is required by agreement to maintain capacity for the transportation of grain by refurbishing the Government of Canada fleet of hopper cars, upgrading cars to carry higher loads, and replacing some of the retired cars with new higher-capacity hopper cars. Like any other commodity freight car, the grain hopper cars require repairs. TC monitors the number of bad-order cars to ensure that efficient and timely maintenance is done, consistent with the Association of American Railroads (AAR) *Field Manual of the AAR Interchange Rules*.

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23 The primary difference in the management training for LEs was that for management employees, there was no prerequisite regarding the number of years of experience as a conductor. For full-time unionized conductors, a minimum of 2 years was required before training as an LE could start. CP maintains that its fundamental criteria for qualifying employees is their level of competency.

24 Transport Canada, "Canada's new government concludes new agreements with railways operating the federal grain hopper car fleet" (12 October 2007), at https://www.canada.ca/en/news/archive/2007/10/canada-new-government-concludes-new-agreements-railways-operating-federal-grain-hopper-car-fleet.html (last accessed 28 September 2021).

Figure 10. Covered hopper cars owned by the Government of Canada (Source: Transport Canada, TP 14995E, Government of Canada Hopper Car Fleet 2018 Annual Report, p. 3)



The cars in CP's fleet that are owned by the Government of Canada are designated as CP 600000–608591 series. They were mainly built between 1972 and 1985, and are equipped with Wabcopac or Nycopac truck-mounted brakes; they are not equipped with slack adjusters[25] to compensate for wheel and brake shoe wear and to maintain uniform piston travel.

1.8.2 Canadian Pacific hopper cars

Some of the hopper cars on the train were from CP's own fleet: CP 384000 series cars and SOO series cars. The CP 384000 series cars were built in 1981 and were equipped with Wabcopac truck-mounted brakes, but were not equipped with slack adjusters. The SOO series cars were built between 1994 and 2006 and were equipped with newer technology, namely truck-mounted or body-mounted brakes that have automatic slack adjusters.

1.8.3 Leased cars

The leased cars in CP's grain fleet came from various car owners in the United States and were mainly equipped with body-mounted brake rigging systems with automatic slack adjusters.

1.8.4 Fleet composition of the occurrence train

The fleet composition of the occurrence train was as follows:

[25] A slack adjuster is a mechanical component designed to compensate for slack caused by wear that occurs to the brake shoes, wheels, and other brake rigging components. By automatically adjusting slack in the rigging, extension of air brake cylinder piston is maintained at the correct length to ensure uniform and maximum braking efficiency.

- 40 cars: 2 cars in the CP 384000-384999 series and 38 Government of Canada cars in the CP 600000–608591 series;
- 51 cars designated as SOO series, from CP's own fleet; and
- 21 cars from the fleet of leased cars.

The air brake configuration for the cars on the train is provided in Appendix C, with the replacement history of the brake components. The maintenance history indicated that the cars on the occurrence train were maintained according to regulatory standards.

1.8.5 Renewal of Canadian Pacific's grain car fleet

Changes to the *Canada Transportation Act* in May 2018 allowed adjustments to reflect the costs incurred by railway companies to obtain and maintain hopper cars for the movement of grain. In response, CP initiated a review of its existing grain fleet and developed a multi-year plan to replace part of the fleet with new and higher capacity cars. CP started taking delivery of the new grain cars in September 2018. Since then, CP has been receiving new grain cars monthly. The program is expected to be complete by December 2022. As of October 2021, CP has brought into service a total of 5355 new grain cars (4500 purchased and 855 leased).

1.9 Railway operations in winter

Winter conditions in northern climates, such as cold temperatures, ice and snow, present specific challenges for railway operations.

In recognition of these seasonal challenges, most railways operating in the northern United States and Canada establish an annual winter operating plan that presents strategies to remain operationally viable and safe during the winter months. Typical winter operating plans may include proactive actions, for example:

- pre-seasonal servicing of switch heaters and snow fighting equipment,
- servicing of locomotive cooling systems and locomotive "hot start" systems,
- ensuring a supply of suitable replacement rail in anticipation of cold-related rail breaks,
- limiting train length to combat difficulties associated with train air supply on long trains,
- renewing all end-of-car hose gaskets on intermodal and grain cars,
- qualifying trains' air brake systems to half of the allowable regulatory leakage rates,
- speed reductions,
- 30-minute standing air brake leakage test,
- restricting loaded unit train operation during the night when extreme temperatures are forecasted, and
- reinforcing the importance of appropriate clothing and personal protective equipment for employees working outdoors.

1.9.1 Additional challenges in extreme cold temperatures

Beyond the usual challenges faced in winter, extreme cold temperatures (about −25 °C)[26] add another level of complexity to railway operations. For example, rails can become brittle and snap under load, and pull-aparts can occur when the rail anchors cannot overcome the intense compressive forces created when cold rail contracts.

It is well known in the North American railway industry that cold temperatures can result in air leakage from freight car air brake systems.[27] Rubber seals and gaskets become stiff and metal contracts, resulting in leakage of compressed air. In extreme cold temperatures, the effectiveness of air brake systems can further decline. Equally of concern is that symptoms associated with degraded braking efficiency on a train may not be obvious or straightforward for an LE to properly diagnose.

To compensate for air leakage, air brake systems provide brake pipe pressure maintaining[28] to replenish the lost compressed air. However, brake cylinders are only pressure maintained to approximately 8 to 12 psi, regardless of the air brake application in effect.

Brake system leakage in extreme cold temperatures can be particularly problematic in mountain grade territories, where safe train speed control on long descending grades requires higher levels of brake cylinder pressure (BCP) for an extended length of time.

1.9.2 Previous winter restrictions for westbound trains operating on Field Hill

In 2014 and 2015, CP implemented a number of procedural modifications to mitigate some of the challenges of operating trains on Field Hill in extreme cold temperatures.

In 2014, and after an extended period of extreme cold temperatures, CP decided to temporarily limit the speed of grain trains to 10 mph when the temperature reached −20 °C, and to stage grain trains (hold them in a queue) during the night when the temperature dropped below −25 °C. Staging the trains allowed them to descend Field Hill in the warmer daylight hours, which assisted in better braking.

This decision came after several grain trains had difficulties controlling their speed on Field Hill during extreme cold temperatures. Subsequent inspections of 2 of these trains (made up of CP 600000–608591 series cars) in Golden, BC, and in Eldon, Alberta, revealed leaking brake cylinders. Railway certified car inspectors noted that, in Golden, the brake cylinders had leaked off on a number of cars within 15 minutes and that, in Eldon, brake cylinders had leaked off within 20 minutes. These same trains did not have abnormally high leakage

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26 Canadian Pacific, *CP 2018–2019 Winter Contingency Plan* (27 September 2018).

27 A. Aronian, K. Carriere, and E. W. Gaughan, "Train Qualification in Extreme Cold Temperatures," presented at the Air Brake Association Technical Conference, Montreal, Quebec (22 September 2014).

28 For more information on the brake pipe pressure maintaining feature, see Appendix A.

when they received their pre-departure inspections and No. 1 brake tests at Alyth Yard. However, leakage intensified with the colder temperatures encountered in the mountains.[29]

On 12 November 2015, ahead of the winter season, CP issued General Bulletin Order (GBO) M599 for westbound trains on the Laggan Subdivision. The bulletin restricted train speed to a maximum of 10 mph from east siding switch at Partridge to Field when the temperature reading at Mile 111.0 dropped below −25 °C, until braking was seen to be sufficient. The GBO was cancelled on 14 March 2016 concurrent with the end of the winter operating season.

At the time of the occurrence, CP had a system-wide winter contingency plan, however, this plan provided no additional seasonal restrictions specific to mountain grade train operations.

1.10 Field Hill operating procedures

Operating instructions can be found in CP time tables, General Operating Instructions (GOIs), GBOs, Special Instructions (SIs), operating bulletins, and train handling procedures. In this investigation report, the instructions applicable to Field Hill are called the Field Hill operating procedures (FHOP).

The investigation reviewed several years of FHOP dating back to 1985.

In 1990, the time table for the Laggan Subdivision contained SIs for trains left standing on grades:

> **SPECIAL INSTRUCTIONS**
> **(HEAVY HAUL SYSTEMS)**
>
> 1. TRAINS LEFT STANDING ON GRADE
>
> When the unit controlling a train is equipped with pressure maintaining, the train brakes may be left applied to hold the train when standing on a grade until ready to proceed, provided the train is not left unattended. If stop exceeds two hours and it is considered necessary to recharge the brake system before proceeding, sufficient hand brakes must be set to hold the train while recharging. Hand brakes must be set on rear of the train when on an ascending grade and on head end of the train when on a descending grade. Before releasing hand brakes, a sufficient brake pipe reduction must be made to hold the train while hand brakes are being released.[30]

According to these instructions, if a heavy train was stopped on Field Hill in excess of 2 hours and it was considered necessary to recharge the brake system, a sufficient number of hand brakes were to be applied to hold the train stationary while recharging.

The SIs were migrated from the Laggan Subdivision time table into the operating bulletins issued in conjunction with the time table. The first operating bulletin that contained the SIs

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29 There can be a 10 °C to 15 °C difference in temperature between Alyth Yard and Stephen, and a difference of 5 °C to 10 °C between Alyth Yard and Golden. However, in this occurrence, the temperature when the No. 1 air brake test was conducted at Alyth Yard was −26.4 °C; when the train was descending Field Hill, the temperature was −28 °C.

30 Canadian Pacific, Time Table No. 86, Special Instructions, Item 1 (09 December 1990).

was Heavy Haul – Canada Operating Bulletin No 93-A issued on 18 April 1993. The SI last appeared in Operating Bulletin No 93-C issued on 01 November 1993.

In 1997, after an accident on Field Hill that resulted in the derailment of 66 cars during an uncontrolled high-speed descent,[31] CP dedicated operating officers to accompany crews on every train operating westward on Field Hill for a period of 11 days to monitor operating practices and compliance with operating instructions. CP also issued Operating Bulletin 188 on 05 December 1997, which addressed emergency brake recovery procedures on Field Hill.

After an incident on 02 January 1998, in which a freight train handling 112 cars ran uncontrolled between the Upper Spiral Tunnel and Field,[32] CP assigned 7 operating officers and 8 experienced LEs to ride all trains for a 3-month period between Lake Louise and Field. They were tasked with monitoring train crew performance, revising speed restrictions on Field Hill, and devising the proper method of using the train braking systems on the steep grade. CP then issued 2 bulletins: one that addressed train operations in severe weather conditions and snow accumulation above the top of the rail, and another that mandated an emergency brake application if train speed reached 24 mph when descending Field Hill. The bulletins were included in the time table footnotes for the Laggan Subdivision, effective 26 June 1998.[33]

In 1998, after TC issued a notice and order requiring that maps be placed in time tables for subdivisions with grades greater than 1.5% and to provide train crews with train handling guidelines, CP developed new train handling procedures for Field Hill operations. The new guidelines were included in the time table footnotes for the Laggan Subdivision, effective 01 July 1998. They mandated a substantial speed reduction, a fully charged train brake system when descending Field Hill, and the use of retainers and/or hand brakes after an emergency brake application; they also provided specific instructions for when “release and catch” was required on the descent.

Since then, the FHOP have changed several times. Table 4 highlights key changes from 1998 to 2019, with a focus on changes to the instructions related to the number of retainers/hand brakes to apply, and instructions on train speed after the lead locomotive passes the east siding switch at Partridge.

At the time of the occurrence, the 2015 instructions were in effect.

31 TSB Railway Investigation Report R97C0147.

32 TSB Railway Investigation Report R98C0001.

33 Canadian Pacific, Time Table No 83 for the Prairie District (Alberta) (effective 26 June 1998), p. 56.

Table 4. Summary of selected Field Hill operating procedures from 1998 to 2019

Notes

i Percentage/number of cars requiring hand brakes if operating conditions dictate (e.g.: abnormal braking conditions such as weather and poor braking train).

ii The instructions apply to westward trains handling more than 5000 trailing tons, except trains over 5000 tons in which the average weight per car is less than 100 tons.

iii The instructions apply to westward trains in which the trailing tonnage exceeds 6000 tons or the weight per operative brake exceeds 100 tons.

iv The instructions apply to westward freight trains in which the weight per operative brake is 100 tons or greater.

Time table or other railway instruction	Instructions on emergency procedures between Partridge and Field	
	• **Speed at which to put train in emergency** • **Cars requiring retainers set to high pressure position** • **Cars requiring hand brakes** [i]	**Permissible speed after the lead locomotive passes the east siding switch at Partridge**
• 1998-06-26: Time Table #83 [ii] • 2001-02-18: Time Table #40 [ii]	• Put train in emergency when speed attains 24 mph. • Retainers on at least 65% of cars. • Hand brakes on 100% of cars. [i] ○ Note: If there is doubt or uncertainty regarding the continued movement of the train, then contact the RTC and request to speak directly to a road manager.	10 mph; gradually allow speed to increase until it is known that a combination of train air brakes and mid-range dynamic brake are sufficient to control train speed at 15 mph.
• 2004-01-21: Time Table #41 [ii]	• Put train in emergency when speed attains 5 mph above permissible speed. • Retainers on at least 65% of cars. • Hand brakes on 100% of cars. [i] ○ Note: If there is doubt or uncertainty regarding the continued movement of the train, then contact the RTC and request to speak directly to a road manager.	10 mph; gradually allow speed to increase until it is known that a combination of train air brakes and mid-range dynamic brake are sufficient to control train speed at 15 mph.
• 2005-03-16: Field Hill Job Aid [iii]	• Put train in emergency when speed attains 5 mph above permissible speed. • Job briefing: "Before the Emergency PCS [pneumatic control switch] is recovered, the locomotive engineer must initiate a discussion with the conductor as regards the need for hand brakes and/or retainers. They must consider train location, amount of train on grade, proximity of lesser grade, weather, rail or any other condition that may affect train braking. When agreement cannot be reached, the crew must contact a road manager and be governed by his/her instructions. • First and second emergency: Retainers on at least 65% of cars. • First and second emergency: Hand brakes on 100% of cars. [i] ○ Note: If there is doubt or uncertainty regarding the continued movement of the train, then contact the RTC and request to speak directly to a Road Manager.	15 mph
• 2006-11-22: Time Table #42 [iii]	• Put train in emergency when speed attains 5 mph above permissible speed. • Retainers on at least 65% of cars. • Hand brakes on 100% of cars. [i] ○ Note: If there is doubt or uncertainty regarding the continued movement of the train, then contact the RTC and request to speak directly to a road manager.	[not exceeding] 10 mph, gradually allow speed to increase until it is known that a combination of train air brakes and mid-range dynamic brake are sufficient to control train speed at 15 mph.

Time table or other railway instruction	Instructions on emergency procedures between Partridge and Field	
	• **Speed at which to put train in emergency** • **Cars requiring retainers set to high pressure position** • **Cars requiring hand brakes** [i]	**Permissible speed after the lead locomotive passes the east siding switch at Partridge**
• 2008-05-28: Time Table #60 [iii]	• Put train in emergency when speed attains 5 mph above permissible speed. ○ Note: all westward trains experiencing a second emergency beyond mile 123.0 must communicate with a Road Manager and be governed by their instructions. • Retainers on at least 65% of loaded cars. • Hand brakes on 100% of cars. [i] ○ Note: If there is doubt or uncertainty regarding the continued movement of the train, then contact the RTC and request to speak directly to a Road Manager.	[not exceeding] 10 mph, gradually allow speed to increase until it is known that a combination of train air brakes and mid-range dynamic brake are sufficient to control train speed at 15 mph.
• 2012-11-28: Time Table #31 Module 15 [iv] • 2015-02-18: Time Table #31 Module 15.1 [iv] • 2015-10-14: Laggan Subdivision Train Handling Procedure [iv]	• Put train in emergency when speed attains 5 mph above permissible speed. ○ Note: all westward trains experiencing an emergency brake application beyond mile 123.5 must communicate with the on duty Trainmaster via the RTC and be governed by their instructions. • Job briefing: Before the Emergency PCS [pneumatic control switch] is recovered, all crew members (ie: locomotive engineer and conductor and Trainmaster) must perform a job briefing to discuss with each other the use of retainer valves. • First emergency brake application [i] ○ retainers on at least 75% of loaded cars. ○ hand brakes on 75% of cars. • Second emergency brake application ○ retainers on 100% of loaded cars. ○ hand brakes on 40 cars at head-end of train. [i] ○ Note: If there is doubt or uncertainty regarding the continued movement of the train, then contact the RTC and request to speak directly to a Trainmaster.	[not exceeding] 15 mph, make sure it is known that a combination of train air brakes and mid-range dynamic brake are sufficient to control train speed at 15 mph.

1.11 Brake performance before the emergency stop

The results of brake tests performed during the trip, as well as a review of train handling events from the LER data, provide insight on the train's brake performance before the emergency stop.

1.11.1 Locomotive event recorder data

The train was operating in DP synchronous mode during the trip and while descending Field Hill. In this mode, train handling commands used on the lead locomotives are transmitted via a DP radio to each of the remote locomotives. The remote locomotives, upon receipt of the radio message, respond by executing the train handling commands they receive. The signals sent by the lead locomotive ensure synchronous operation between all the remote locomotives distributed throughout the train.

LER data obtained from a train's lead controlling locomotive is normally the primary source of information used for analyzing train handling events; however, data from other locomotives operating in synchronous mode on the same train can similarly be used to support data analysis.

The LER installed on lead locomotive CP 9538 was extensively damaged during the derailment, and the stored data were lost. However, LER data were successfully extracted from the 2 remote locomotives. The review of the LER data did not reveal any issues with the DP radio communications and both LERs showed identical train handling events, confirming that the data are consistent and provide an accurate account of the train events.

A list of train handling events based on the LER data is provided in Appendix D (including DB information).

1.11.2 Applied air flow events

After departing Alyth Yard, the LE observed applied air flow events on several occasions. The first observation occurred about 30 minutes after the train had departed Alyth Yard while the train was being brought to a stop at Keith at 1506 to allow other trains to clear through the area. During this time, the LE noticed an increase in brake pipe air flow immediately after having made an initial brake application.

At later times, other applied air flow events were observed by the LE while bringing the train to a stop for train meets, one at Banff around 1805 and another at Eldon around 1910.

The LE was not concerned with the applied air flow events. The train was otherwise handling as expected and no anomalies were noted, including both times the train was stopped at Eldon. The LE did not report the applied air flow events to the RTC at the time as there was no requirement to do so.

1.11.3 Running brake test

A running brake test involves an application of the automatic brake while the train is proceeding, to verify that the brakes are able to slow the movement.

Railway operating instructions require LEs to perform periodic running brake tests during weather conditions that may cause snow or ice buildup between brake shoes and wheels. In addition, the FHOP require that westbound trains make a running brake test prior to Mile 113.0, to condition the brakes[34] and to verify their operability before reaching the steep descending grade of Field Hill. This requirement ensures that the test is conducted while the train is still traversing various ascending grades with a moderate change in elevation.

[34] Conditioning the air brakes verifies they are operating as intended and ensures that the wheel tread surface and brake shoe interface is clear of ice and snow.

CP's GOIs in effect at the time of the occurrence[35] provide additional information on when and how the running brake test is to be performed:

> **12.0 Running Brake Test**
>
> **12.1** In the event of a complete Dynamic Brake failure enroute or when adverse weather conditions require the conditioning of the brakes, a running brake test must be performed on all trains prior to descending grades 2% or greater and at locations specified in special instructions.
>
> *Examples of adverse weather conditions include but are not limited to the following:*
> *- Snow accumulations above the top of the rail*
> *- Outside ambient temperature is −15° Celsius or colder*
> *- Freezing rain conditions*
>
> A running brake test of passenger train brakes must be made after leaving any location where any standing train air brake test was made.
>
> **12.2 Running Brake Test Procedure**

Step	Description
1	When the speed of the train permits, apply the train brakes with sufficient force to verify the brakes are operating properly.
2	The locomotive brakes should not be allowed to apply at this time.
3	If the brakes do not operate properly, immediately stop the train, determine the correct cause of failure, then repeat the running brake test.

According to the LER data, the automatic air brake had been applied on 2 separate occasions prior to Mile 113.0:

- At about 1902, the train entered the Eldon Siding at Mile 105.7. After progressively reducing the throttle, an initial 7 psi brake pipe reduction was made at around 1907, followed by a further 3 psi brake pipe reduction to 10 psi to stop the train at the west end of the siding at about 1909. The train remained stationary for about 28 minutes, proceeded westward for 84 feet, and then stopped again at 1943. The train then remained stationary on the 0.55% ascending grade for about 35 minutes with an 11 psi automatic brake application in combination with fully applied (i.e., 72 psi of BCP) locomotive independent brakes.
- At around 2019, a reverse movement was made in the eastward direction to back the train out of the siding at Eldon. When the train speed reached 21 mph, the DB was applied,[36] followed by an initial 9 psi brake pipe reduction. When the train was about to clear the Eldon east switch, and with the DB having remained applied, the automatic brakes were fully applied (i.e., 26 psi brake pipe pressure reduction) from a speed of 14 mph. In the next 21 seconds, the brake pipe pressure was reduced from 79 psi to 62 psi and the train came to a stop a few seconds later.

35 Canadian Pacific, *General Operating Instructions* (revised 06 September 2018), Section 3, Item 12.0.

36 More information on DBs is provided in Appendix A.

The LER data indicate that, during the train stops described above, the air brakes responded adequately and did not show any performance issues. Although it had recently snowed in the area, there was no snow accumulation above the top of the rail nor blowing snow during the brake applications that were made to stop the train at Eldon.

The LE felt that the brake applications at Eldon were sufficient to fulfill the requirements of the FHOP and section 3, item 12.0 of the GOI.

From the time the train departed the Eldon siding until it arrived at Stephen over 1 hour later, the automatic air brakes had been released and recharging.

1.11.4 Train handling on Field Hill before the emergency brake application

The braking performance of the train had been satisfactory up to Stephen. It was only after the entire train was on the descending grade that the LE noted that the train was not braking as expected.

Based on LER data, the LE made 5 separate service brake pipe reductions during the descent, yet the train continued to gain speed. Table 5 lists the brake pipe reductions in psi, the resultant brake pipe pressure (BPP) in psi and the corresponding air flow readings in cubic feet per minute (CFM).

Table 5. Sequence of brake pipe reductions and air flow values* on the Field Hill descent

Time	Head end mileage	Speed (mph)	Train handling events
2128:13	123.12	8	Initiation of a 7 psi brake pipe reduction (starting BPP = 88 psi)
2128:27	123.15	9	Reduction of BPP to 81 psi
2128:37 to 2136:45	123.18 to 124.72	9 to 19	Fluctuation of air flow between 21 and 35 CFM
2137:01	124.80	19	Additional 3 psi brake pipe reduction (resultant BPP = 78 psi); air flow stops
2137:15 to 2145:46	124.88 to 126.41	19 to 12	Fluctuation of air flow between 20 and 31 CFM, until the next brake pipe reduction
2146:01	126.46	14	Additional 2 psi brake pipe reduction (resultant BPP = 76 psi)
2146:29 to 2146:33	126.58 to 126.60	15 to 16	Fluctuation of air flow between 20 and 24 CFM
2146:46	126.66	16	Additional 2 psi brake pipe reduction (resultant BPP = 74 psi); air flow less than 20 CFM
2147:19	126.82	19	Additional 2 psi brake pipe reduction (resultant BPP = 72 psi); air flow less than 20 CFM
2147:53	127.01	21	Reduction of BPP by 3 psi (resultant BPP = 69 psi)
2148:08	127.12	21	Application of the train brakes in emergency
2148:10	127.12	23	Beginning of BPP reduction from 69 to 0 psi

* Air flow values shown in the table do not represent total brake pipe flow; they represent only the flow from the air brake system on the mid-train remote locomotive (UP 5359), which was 1 of the 3 operative sources of compressed air on the train. Additional air flow readings from the lead locomotive were not

available due to the loss of the LER data. The LER on the tail-end remote locomotive was a legacy device that did not record air flow information.

1.11.5 Emergency stop

In spite of the incremental brake pipe pressure reductions, the train continued to accelerate down Field Hill.

At 2147, and as the head end of the train approached Mile 127, the speed of the train reached 20 mph (5 mph above the maximum authorized speed). In the next minute, the LE, and separately the conductor, simultaneously applied the train brakes in emergency, which brought the train to a full stop at Mile 127.46, some 1 minute 25 seconds later at 2149:33. The conductor had opened the emergency brake valve located at the conductor's work station as a back-up measure in response to the LE's actions to bring the train to an emergency stop.

In this situation, because of the train's speed, the brakes were applied in emergency before the automatic brake application reached full service, i.e., about a 26 psi brake pipe reduction. The automatic brake application had reached a 19 psi brake pipe reduction when the brakes were applied in emergency.

The train came to a stop with its tail end blocking the east siding switch at Partridge, preventing rail traffic in either direction through this location. As a result, 4 trains had to be stopped or held on the Mountain Subdivision and 7 trains stopped or held on the Laggan Subdivision.

1.12 Recovering from an emergency brake application on Field Hill

1.12.1 Emergency brake recovery procedure

After the emergency stop on Field Hill, operating instructions and procedures required that the crew hold a job briefing with the trainmaster to determine the best course of action, and whether to recover the emergency brake application.

The GOI in effect at the time of the occurrence stated, in part:

> **32.9 Uncontrolled Movements – Stop Required:**
>
> Any movement descending a **Heavy or Mountain** grade that attains a speed 5 MPH above permissible speed is considered an uncontrolled movement and must be stopped immediately by whatever means is available, including (if necessary) using an EMERGENCY brake application.
>
> The movement must not proceed until it has been determined that sufficient braking is available to control the movement. This may require securing the train to recharge the brake system and/or the use of retainers.[37]

[37] Canadian Pacific, *General Operating Instructions* (effective 14 October 2015, revised 06 September 2018), Section 1, Item 32.9, p.17.

The train handling procedures in effect at the time for the Laggan Subdivision made a distinction between the actions to be taken for a first emergency stop and a second emergency stop, stating in part,

> **1.0 Train handling procedure**
>
> The train handling procedure on page 4, and the following instructions in paragraphs A, B, C and D apply to westward freight trains in which the weight per operative brake is 100 tons or greater.
>
> Note: All westward trains experiencing an emergency brake application beyond mile 123.5 must communicate with the on duty trainmaster via the RTC and be governed by their instructions.
>
> **A. Emergency brake recovery procedure** – […] Trains which are stopped between mile 125.7 and Signal 1363 Field with the train air brakes in emergency, must be governed as follows:
>
> **First Emergency Brake Application:**
>
> Before the emergency PCS [pneumatic control switch] is recovered, all crew members (ie: locomotive engineer and conductor and trainmaster) must perform a job briefing to discuss with each other the use of retainer valves. In the application GOI section 1, item 14.2 and 40.3, set retaining valves to the HP (high pressure) position on at least 75 percent of the loaded cars. When discussing the use of retainers and/or hand brakes, consider train location, amount of train on the mountain grade weather and rail conditions and any other conditions present that may affect the braking of the train. If abnormal conditions such as weather or poor braking train dictate that the application of hand brakes is necessary to secure the train while recharging, then apply a hand brake on at least 75 percent of the cars and set retaining valves to the HP position on at least 75 percent of the loaded cars.
>
> **Second Emergency Brake Application:**
>
> Apply retainers on 100% of the loaded cars and 40 handbrakes on the head end of the train.[38]

1.12.2 Methods for recovering from an emergency brake application

To recover from an emergency brake application, retainers, hand brakes, or a combination of both can be used. Retainers and hand brakes serve different purposes. Once the decision is made to apply retainers or set hand brakes, the task is performed by the conductor.

1.12.2.1 Setting retainers

Freight rail cars are equipped with a retainer, which is a pressure retaining valve connected to the brake cylinder exhaust port (figures 11 and 12).

[38] Canadian Pacific, *Laggan Subdivision (Incl Copithorne Spur) Train Handling Procedures* (13 October 2015), Section 1.0.

Figure 11. Retainer (Source: Canadian National Railway Company, with TSB annotations)

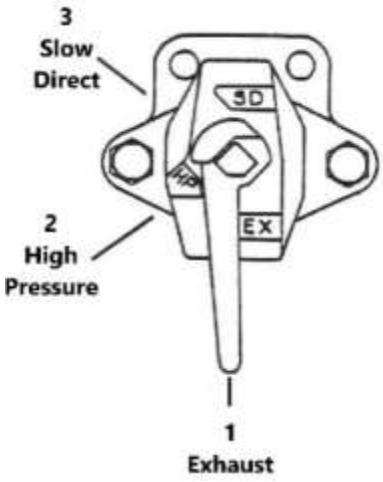


Figure 12. Retainer on a rail car (Source: TSB)



The purpose of retainers is to retain air pressure[39] in the car brake cylinders, when required, after the train brakes are released and while the air storage reservoirs are being recharged on the cars.

Setting a retainer on a car is a straightforward process that requires the 3-position retainer handle to be manually moved to the HP position. Setting retainers on an entire train is relatively manageable by a lone conductor, because they are visible and accessible from the ground, and the conductor does not need to board each car.

Setting retainers on a stationary train does not provide additional brake retarding force while the train brakes remain applied. Rather, retainers are intended to provide a residual amount of braking force after the train brakes are released. This may help hold the train in a stationary position or control the speed while the air brake system is being recharged.[40]

1.12.2.2 Applying hand brakes

All railway rolling stock is equipped with a hand brake, a mechanical brake device that will secure the car independently of the air brake system. Hand brakes are manually applied (and tightened) by turning the hand brake wheel (Figure 13). This causes the brake shoes to be pressed against the wheel tread surface to prevent the wheels from moving or to retard their motion. The effectiveness of a hand brake is directly proportional to the amount of force exerted by the person applying the brake, which can vary widely from one person to another.

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39 More information on retainers can be found in Appendix A – Locomotive and freight car brakes.

40 It should be noted that the function of the retainer does not begin until the recovery of the emergency brake application begins, i.e., the air brakes are released and the recharging process begins.

Figure 13. Conductor applying a hand brake (Source: TSB)



Applying hand brakes requires care in safely negotiating the right-of-way, boarding the car by means of the ladder and grab irons and positioning at the hand brake. Conductors are required to establish a three-point stance before cranking the hand brake wheel clockwise to take up chain slack before applying maximum force on the crank. Variations in car design (i.e., access ladders, grab irons and platforms) require adaptations in the approach to accessing each hand brake crank and dismounting the car.[41] Overall, applying effective brake force to the car is subject to the operator's fitness, physical size and individual technique.

In contrast to setting retainers, applying hand brakes requires significantly more time and energy to accomplish correctly. Setting hand brakes on 75% of the cars of a typical loaded grain train is a demanding task for a lone conductor, the success of which is dependent on multiple factors such as experience, physical strength, endurance and technique. In winter conditions on mountain grade, the task is made more difficult by bulky winter clothing and personal protective equipment, coupled with potentially deep snow along the right-of-way; it requires a sustained effort over several hours.

Setting hand brakes on trains situated on main tracks can interrupt rail traffic, with corresponding repercussions on operations across the network. Unlike retainers, however, hand brakes do not rely on the train's residual BCP for effectiveness.

Although hand brakes were not applied on the occurrence train, in support of this investigation, the TSB conducted mechanical testing and human factors assessment of issues related to hand brake securement of freight trains on mountain grades. Appendix E provides a summary of the results from this study.

41 Canadian Pacific Railway Work Instruction Booklet, (General Operating Instructions 8 December 2015) Section 12.6: Securing Equipment by Applying Handbrakes, pp. 28–29.

1.12.3 Job briefing after the emergency stop

A job briefing between the inbound crew and the trainmaster was held after the emergency stop, as required by the FHOP. The focus was on the shared interpretation of the instructions, which describe actions and considerations required after the emergency stop.

Given the conductor's relative inexperience, the job briefing took the form of a conversation between the trainmaster and the LE. The trainmaster had dealt with emergency stops in mountain grade a dozen times as a supervisor and once as a conductor. His understanding was that the routine procedure had always been to use only retainers after a first emergency, and to include hand brakes after a second emergency, should one subsequently occur. Hand brakes would also be required to secure trains with mechanical problems that required repairs before resuming their descent.

The LE, in his previous experience as a conductor, had once dealt with an emergency stop on Field Hill. On that occasion, he first applied retainers, but the train speed could not subsequently be controlled and the train had to be put into emergency a second time, at which point hand brakes were applied to secure the train before recovering from the emergency brake application.

During the discussion, the LE mentioned the applied air flow events that he had observed along the way; however, the trainmaster did not perceive this information to be related to the difficulty controlling the train and indicated that he would look into it at a later date during a follow-up review of the LER download.

The trainmaster assessed that the inbound crew could recover the emergency brake application and bring the train to Field. There was no mention of how much time was left on the inbound crew's work clock. The trainmaster opted for the use of the retainers, set on the HP position, on 75% of the cars (84 cars). Factors such as the rail surface conditions, the extreme cold temperature, and the length of time that the train might remain stationary were not discussed.

The trainmaster's decision to apply only retainers was not questioned. The job briefing was centred on the use of the FHOP to guide development of a plan to bring the train safely down Field Hill. As such, guidance on retainer use contained in the FHOP was chosen over the use of hand brakes as the intent was to perform a "release and catch" and get underway. The decision to use retainers while recovering the emergency brake application was communicated to the RTC director.

After the job briefing, at about 2230, the conductor began to set the retainers on 84 (75%) of the cars, as decided by the trainmaster and per the FHOP. The task, which was made more difficult by the mountainous terrain, the extreme cold, and the darkness, took about 1 hour. The conductor returned to the locomotive at approximately 2330.

1.13 Crew-to-crew transfer and delays

When the train was stopped in emergency at 2150, the inbound crew was in its last hour of a 10-hour shift, which was scheduled to end at 2230.

The RTC director, on hearing of the situation, recognized that setting retainers and recovering the emergency brake application would take the inbound crew past the end of their shift. As a result, he made the decision to call in a relief crew.

There was already a crew in Field. The members of this crew—an LE, a conductor, and a conductor trainee—were due to come on duty at 2230 to relieve a different train. The director had them reassigned to the occurrence train. The relief crew left Field at the beginning of their shift as scheduled, at 2230, and made their way to Yoho by road vehicle, which took approximately 15 minutes.

A series of circumstances contributed to delaying the relief crew. Because of the train's location, the relief crew had to travel about 2 miles by rail in a snow removal track unit from Yoho to get to the lead locomotive. Doing pre-checks and readying the snow removal track unit took time, and the delays were compounded when a switch fouled with frozen snow had to be cleaned before the snow removal track unit could get under way. In total, the relief crew was delayed in Yoho for approximately 1.5 hours.

The relief crew arrived at the train at around 0020 and held a job briefing with the inbound crew. The members of the inbound crew then boarded the snow removal track unit to travel to Yoho.

At 0031, in preparation for resuming the trip, the relief LE told the RTC that he was waiting to ensure that the snow removal track unit and all personnel were clear of the main track before cancelling his joint authority with the track foreman; he indicated that, after receiving the "all-clear" confirmation, he would recover the emergency brake application, charge the brake system, and then proceed down to Field. At that point, the train had been stationary on the mountain grade in extreme cold temperatures, ranging from −25 °C to −28 °C, for almost 3 hours.

About 10 minutes later, at 0042, shortly before the snow removal track unit and all on-board personnel were clear of the main track, the train began to roll uncontrolled.

1.14 Train dynamics simulation

The TSB laboratory completed a series of train dynamics simulations using the Train Energy and Dynamics Simulator (TEDS) software program. The simulations examined factors such as speed, acceleration, in-train forces, braking efficiency, and stop distance. It showed the following:

- The average efficiency of the air brake system on the occurrence train was about 60% to 62% of nominal expected values.
- The train derailed mainly due to the high-speed centrifugal forces combined with the lateral force that was generated by moderate in-train buff forces.

1.15 Brake retarding force calculations

Brake retarding force calculations were made to find out how much BCP would have been required to safely descend the average 2.2% Field Hill grade, stop the train with an emergency brake application, and hold the train stationary on the hill.

The train departed Alyth Yard with the brakes cut out on 2 of the 112 cars because the brakes were defective. All calculations regarding braking forces took this into account and were based on 110 cars having operative brakes. The calculated brake retarding force values were numerically rounded to the nearest whole number for simplicity of presentation. For more information on the calculations used to obtain these values, see TSB laboratory report LP014/2022.

The TEDS train dynamics simulation analysis results for braking efficiency and stopping distance verify and support the accuracy of the calculated values.

1.15.1 Brake retarding force required to maintain a constant speed

Given the total tonnage of the occurrence train (approximately 15 000 tons) and the average 2.2% grade, a total retarding force of 630 050 pounds would have been needed to maintain a train speed of 15 mph while descending Field Hill. With the locomotives' DB set at mid- to high-range (75% of maximum), they would have been providing 220 500 pounds. The remainder of the brake retarding force needed, 409 550 pounds, would have had to be generated by the 110 of the 112 grain cars to maintain a constant speed. Each car would have been required to provide a net retarding force of about 3720 pounds corresponding to a brake shoe force of 12 400 pounds.[42]

The brake effort calculations show that the 112-car loaded unit grain train with 110 cars with operational air brakes would have needed 25 psi average BCP on each operative car to maintain the train speed at 15 mph on the 2.2% descending grade. Theoretically, in the absence of leakage, a BCP of this magnitude can be obtained with a 10 psi brake pipe reduction.

According to the LER data, the brake pipe pressure had been reduced by 19 psi during the descent, prior to the emergency brake application that brought the train to a stop. For a 19 psi reduction, the corresponding theoretical BCP should amount to 40 psi.

1.15.2 Brake retarding force generated by the emergency brake application

At 2148:08, the train brakes were applied in emergency while the train speed was approaching 21 mph on the 2.2% descending grade. The train speed reduced during the next 85 seconds and the head end came to a stop on the main track around Mile 127.46, about midway between the Partridge siding switches. The train stopped after covering a distance of 1815 feet with the train brakes applied in emergency and with a full application of the DBs on the lead locomotive.

Based on a stopping distance of 1815 feet, a retarding force of roughly 923 520 pounds would be required to bring the train to a stop on the 2.2% average descending grade. The 3 locomotives would deliver about 145 850 pounds of retardation due to the application of the independent brakes on the remote locomotives and the retention of full DBs on the lead

[42] The retarding force is equal to the brake shoe force multiplied by the coefficient of friction between the brake shoe and the wheel tread. For composite brake shoes (commonly used on rail cars), the coefficient of friction varies from 0.48 to 0.28. A value of 0.32 was used in the calculations.

locomotive.[43] The remaining 777 670 pounds would have to be provided by the 110 cars with operative brakes.

During the emergency brake application, the retarding force of each car would be roughly 7070 pounds on the wheels or a corresponding brake shoe force of 22 090 pounds. To generate this force, the required average pressure in the brake cylinder on each car would have to be 47 psi.

With the train's brake pipe and combined reservoir fully charged, an emergency brake application would have theoretically produced an average of 77 psi BCP in emergency.

1.15.3 Brake retarding force required to hold the train stationary after the emergency stop

While the train was stopped with the brakes applied in emergency at Partridge, the total brake retarding force required to hold the train on the 2.2% grade was estimated to be about 593 360 pounds. This force needed to be provided by the 3 locomotives and the 110 cars with operative brakes. All 3 locomotives had full independent brakes applied (72 psi on DP lead, 45 psi on DP remotes), providing a retarding force of roughly 85 060 pounds. The remainder of the retarding force needed (508 300 pounds) had to be provided by the cars (4620 pounds per car).

In order to deliver the required net retarding force of 4620 pounds, the corresponding brake shoe force would have to amount to 14 440 pounds. To generate such a force, the average pressure in the brake cylinder on each car would have to be at least 31 psi, representing an average brake retarding force per car of 40% of the theoretical maximum. If the BCP were to drop below this average, the train would not remain stationary, but would start to roll and accelerate down the grade.

1.16 Air brake system leakage

Train air brake systems must be sufficiently charged with compressed air to operate as designed and to provide the expected amount of brake retarding force when required.

The air brake system on a rail car comprises many components (brake pipe, control valve, auxiliary/emergency reservoir, brake cylinder), each containing many couplings, seals, and gaskets that are prone to air leaks.

Air brake leakage is the leakage that exists in any part of the car air brake equipment from the air hose coupling gasket on one end of the car to the air hose coupling gasket on the other end of the car. It is commonly categorized as brake system leakage and brake pipe leakage. Brake system leakage refers to leakage in the car control valve (CCVs) and the air storage reservoirs; it includes brake pipe leakage. Brake pipe leakage includes leakage in

[43] DB functionality was not available on the remotely controlled locomotives while the air brakes were applied in emergency. Although the 2 DP remote locomotives were providing DB retarding force while the train was descending Field Hill, all DB retarding force that had been available was immediately removed by the legacy DP system when the air brakes were applied in emergency. This amounted to a loss of about 98 000 pounds of DB retarding force per locomotive, or 196 000 pounds in total.

the brake pipe, hose assembly, angle cock, combined cut-out cock and dirt collector, couplings, branch pipe, tee, and flange fittings. Aside from system leakage, additional leakage can result from loss of air from the brake cylinders when the air brakes are applied.

The leakage of compressed air from air brake components is a fundamental problem in cold ambient temperatures. Air brake leakage typically increases with decreasing temperature, and can become quite pronounced in extreme cold ambient temperatures. Many of the seals and gaskets in the air brake system are made of rubber or a composite material. The effects of cold temperatures on rubber can vary, depending on its composition, age, and wear.[44] Also, cold temperatures are generally known to decrease rebound resilience, making the rubber stiffer and less effective at preventing leakage. This is particularly the case for air brake components with extended time in service, such as CCV gaskets, brake cylinder packing cup gaskets, and old brake pipe flange gaskets.

If the leakage of compressed air becomes excessive, or interferes with the normal operation of the air brake equipment, the brakes may not apply at all, produce less than the expected amount of retarding force, or unintentionally release after a period of time. A car that does not provide the expected amount of braking force does not fully contribute to the retarding force on a train.

1.16.1 Detection of air leaks during brake tests

The leakage of compressed air, and the effects of air leakage, can be detected when freight cars and locomotives undergo various tests and inspections, such as the No. 1 brake test, the single car test (SCT), and the brake cylinder leakage test (which is only performed as part of the SCT).

Brake inspection and various test procedures are covered in the industry-approved AAR Standard S-486,[45] in TC-approved *Railway Freight and Passenger Train Brake Inspection and Safety Rules*,[46] and in CP's GOIs. These procedures evaluate the functional response of the CCVs for service and emergency brake application commands, as well as the proper release of the brakes.

For more information, see Appendix B – Inspection and testing of air brake systems.

1.16.2 Compensating for air brake system leakage

The air brake system has 2 important features that are designed to compensate for air leakage:

- Quick service limiting valve (QSLV) BCP maintaining: during service brake applications, CCVs maintain the BCP to approximately 8 to 12 psi, regardless of the

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44 New-generation rubber formulations are designed to function without degradation at temperatures down to −40 °F (AAR Standard S-4001, "Rubber Products – Performance Testing").

45 Association of American Railroads, Standard S-486, "Brakes and Brake Equipment Code of Air Brake System Tests for Freight Equipment – Single Car Test" (revised 2018).

46 Transport Canada, *Railway Freight and Passenger Train Brake Inspection and Safety Rules* (17 November 2017), Part II: Brake Test Requirements, section 11: No. 1 Brake Test, pp. 12–13.

air brake application in effect. The QSLV functionality is inoperative during an emergency brake application because the brake pipe pressure is reduced to 0 psi.

- Brake pipe pressure maintaining: locomotive automatic air brake valves provide brake pipe pressure maintaining to replenish the loss of compressed air due to leakage effects.

1.16.2.1 Quick service limiting valve brake cylinder pressure maintaining

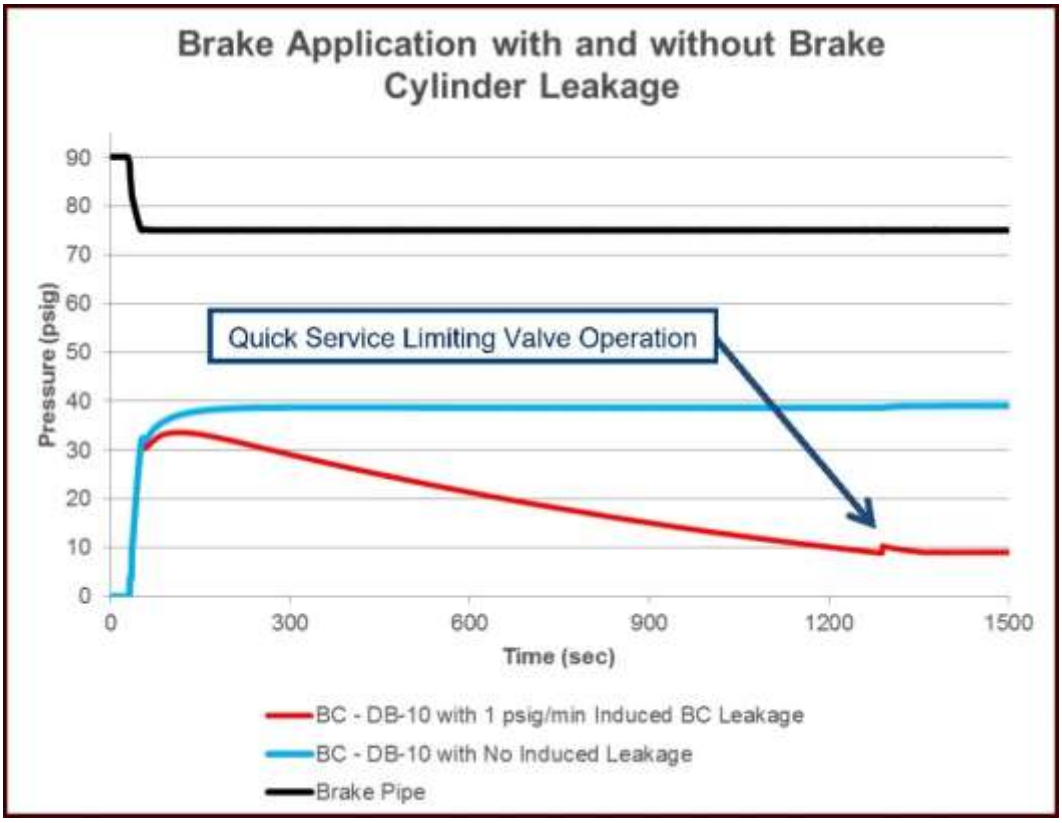
CCVs incorporate a QSLV, which regulates the BCP between 8 psi and 12 psi in response to a minimum reduction brake application (7 psi reduction in the brake pipe pressure).

The QSLV also has a pressure maintaining feature, which helps ensure that the BCP does not drop below 10 psi during subsequent brake pipe reductions when there is leakage in the brake cylinder, provided the leakage is not excessive. Figure 14 illustrates how this feature works.

In response to a brake application amounting to a 15 psi brake pipe reduction, the BCP will increase rapidly from 0 psi to about 37.5 psi. In the absence of leakage, the BCP will remain at that level and will not trigger the operation of the QSLV.

When there is brake cylinder leakage, however, the BCP will start declining progressively over time in proportion to the leakage rate. In the example shown in Figure 14, for an initial leakage rate of 1 psi per minute, the pressure reaches 35 psi and then drops down to 10 psi in about 20 minutes. When the BCP drops below 10 psi, the operation of the QSLV is triggered. At this point, the BCP is maintained at about 8 to 12 psi, roughly the equivalent of a minimum brake application, thus preventing the car brakes from becoming completely ineffective.

Figure 14. Quick service limiting valve – braking degradation curve following a brake application (15 psi brake pipe reduction) (Source: A. Aronian and L. Vaughn, "NYAB Brake Cylinder Maintaining Trials Update," presented at the Air Brake Association Conference, Minneapolis, Minnesota, United States [October 2015])



Since 2014, new generation CCVs can also include a brake cylinder maintaining (BCM) feature in addition to the QSLV pressure maintaining feature. BCM is available not only for minimum brake applications, but also up to a full-service brake application. More information on this feature is provided in section 1.23.2.

1.16.2.2 Brake pipe pressure maintaining

When there is leakage in the air brake system, whether from the cars' air brake components or the car-to-car end hose coupling, the air needed to replenish the leaked air comes from the brake pipe. To compensate for the loss of air in the brake pipe, locomotive automatic brake valves have a brake pipe pressure maintaining feature that allows compressed air from the locomotive air brake system to flow into the brake pipe in direct proportion to brake pipe leakage. The air is supplied at a controlled rate to avoid causing an unintended release of the train brakes.

During service brake applications, brake pipe pressure maintaining allows the selected brake pipe pressure reduction to be maintained for long periods of time. This feature allows a train to descend a long mountain grade with the brakes remaining continuously applied as needed. Otherwise, controlling train speed on long descending grades would be difficult.

Without brake pipe pressure maintaining, leakage will cause the brake pipe pressure to continually decrease after the brakes have been applied. This can cause an undesired

reduction in brake pipe pressure resulting in an increase in braking effort on the cars, leading to a potential stall condition of the train on the descending grade. Eventually, the brake pipe pressure will drop to 0 psi.

1.16.3 Effects of air leakage on brake application propagation

1.16.3.1 Leakage from the car control valves

When a reduction in brake pipe pressure is made from a locomotive to apply the brakes on a train, the pressure reduction at the locomotive will propagate outward as a pressure wave along the brake pipe. At the same time, the function of the locomotive automatic brake valve will change from pressure-maintaining mode (supplying air into the brake pipe) to pressure-reduction mode (brake pipe reduction).

Once the pressure reduction wave reaches each individual car, the pressure differential between the brake pipe and the auxiliary reservoir will normally cause the CCV balancing valve to allow compressed air to move from the auxiliary reservoir into the brake cylinder to apply the car brakes. However, the presence of excessive air leakage through the CCV service portion can create a localized reduction in brake pipe pressure and interfere with how the CCV responds. Consequently, a small brake pipe pressure reduction, such as 1 to 2 psi, can become diminished and attenuated to a point where it is insufficient to further reduce the pressure drop induced by the leakage. If this happens, the CCV may not respond to the brake pipe pressure reduction and fail to make the desired brake application.

1.16.3.2 Leakage from the auxiliary reservoir

The leakage of compressed air from a car's auxiliary reservoir is another factor that can negatively impact the total amount of brake retarding force on a train.

The auxiliary reservoir is connected to the brake pipe through the CCV. If leakage from the auxiliary reservoir becomes excessive, to a point where the reservoir pressure drops 1.5 to 2.0 psi below the brake pipe pressure, the CCV will initiate a localized, undesired release of a car's service brake application.

Auxiliary reservoir leakage is difficult to detect. Since the leakage is typically not audible, it can be easily missed during walking, drive-by, or pull-by inspections, such as the ones performed as part of the No. 1 brake test. Also, under the inspection conditions of the No. 1 brake test, the leakage seldom results in a brake release. For these reasons, a test for auxiliary reservoir leakage is required when performing an automated single car test (ASCT).[47]

SCTs, however, are performed infrequently. In addition, unless the car is equipped with a 4-port adapter connection that allows the SCT apparatus to be connected directly to various parts of the air brake system, there is no quantitative way to directly check for auxiliary

[47] In an automated single car test, an approved test device is used to verify the operation of the air brake system on an individual car. For more information, see Appendix B – Inspection and testing of air brake systems.

reservoir leakage during an SCT.[48] On cars where the SCT apparatus must be connected to the end-of-car air hose, auxiliary reservoir leakage can only be indirectly assessed through 2 different tests: the multi-step system leakage test and the brake cylinder leakage test.

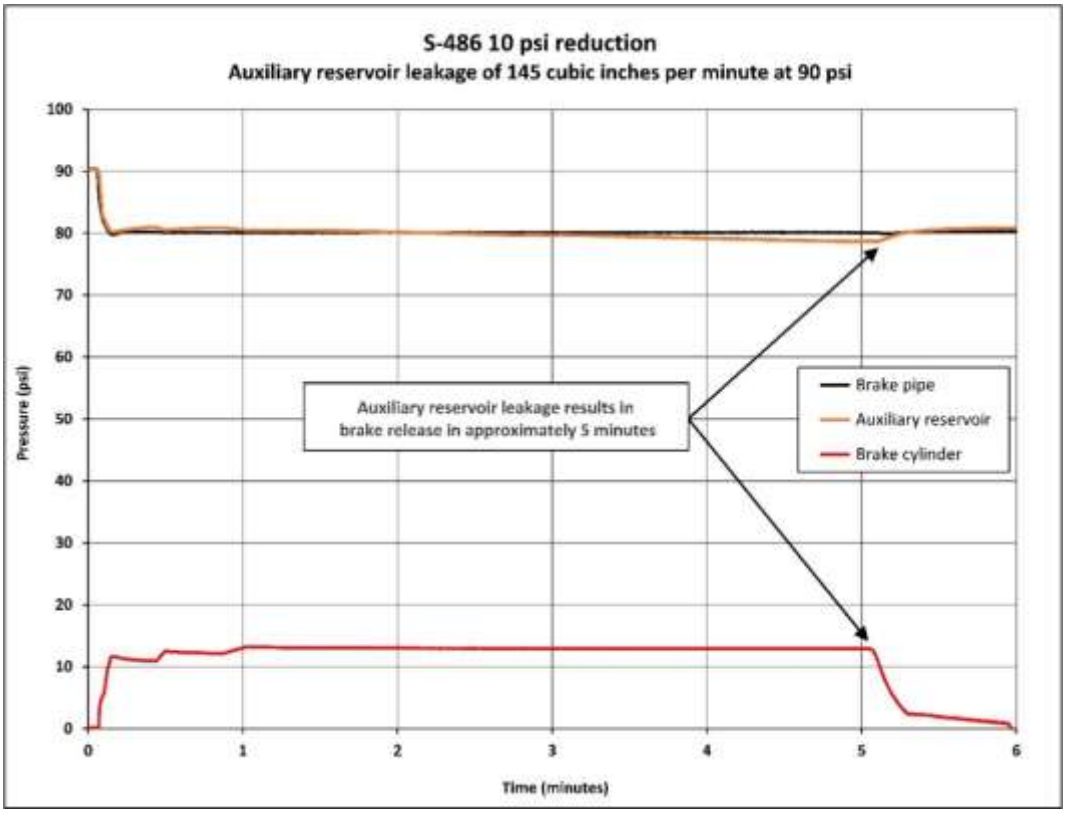
The multi-step system leakage test (described in AAR Specification S-486, Section 3.5) is used to detect system leakage in general, not auxiliary reservoir leakage in particular. The test measures the overall leakage of compressed air from the car's brake pipe, auxiliary and emergency reservoirs, combined dirt collector and cut-out cock, and all brake pipe couplings. When leakage is detected, the source could be any of these components. The maximum allowable system leakage rate during this test is 225 cubic inches per minute.

As its name indicates, the brake cylinder leakage test (described in AAR Specification S-486, Section 3.14) is designed to check for brake cylinder leakage and measure the leakage rate. For this test, the brakes must remain applied on the car for 4 minutes and the measured change in BCP due to leakage must be less than 1 psi during the last minute, i.e., 1 psi/minute. If the brakes release during this test, it can provide an indication that the auxiliary reservoir is leaking and that the leakage rate is greater than 145 cubic inches per minute.

Figure 15 shows the effect of auxiliary reservoir leakage on a brake application. In this example, air leakage of 145 cubic inches per minute (the maximum allowable leakage rate from the auxiliary reservoir) was induced in the auxiliary reservoir, a 10 psi brake pipe reduction was made, and the brakes were held for 5 minutes, which was 1 minute longer than the time stipulated in the S-486 brake cylinder leakage test. At the end of this extended-duration test, an undesired brake release occurred.

[48] On a car not equipped with a 4-port adapter, auxiliary reservoir leakage can be detected by performing a soap and bubble test on specific component fittings, except for minimal leakage. Regarding this test, the AAR standard S-486, Section 3.5, System Leakage, Test 3.5.2 states, in part, "Soap both reservoir pipes, fittings, and gaskets. No leakage allowed."

Figure 15. Release of 10 psi brake application due to auxiliary reservoir leakage (Source: K. Carriere and B. Gallagher, "Brake System Forensics," in: *Proceedings of the 99th Annual and Technical Conference of the Air Brake Association, Inc.*, Chicago, Illinois, 13–14 September 2007, with TSB formatting and annotations)



The occurrence train comprised a mixture of cars, some equipped with a 4-port adapter and some without. It is possible that some of the cars had developed auxiliary reservoir leakage in excess of 145 cubic inches per minute since their last SCT, which went undetected during various field brake tests, leading to an undesired release of the brakes during a service brake application on these cars.

1.16.3.3 Leakage from the brake cylinder

The leakage of compressed air is expected to occur from a rail car, particularly during the colder winter operating season. The leakage rate can vary considerably from car to car depending on several factors. Most of the leakage that may occur will not interfere with the proper operation of the car's air brake system, nor is it detrimental to the car's brake effectiveness. The brake cylinder, however, is one air brake component that can be critically affected by leakage. The effectiveness of the air brakes on a car is dependent on the amount of initial pressure that builds up in the brake cylinder in direct response to a brake application command from the controlling locomotive and how long the pressure is retained. The loss of BCP on a car due to leakage will reduce the brake force provided by the car. A brake cylinder that has a significant amount of leakage may completely bleed off in emergency to the point where the brake shoes no longer contact the wheel tread surface, rendering the brakes completely ineffective. A car that does not provide the expected amount of braking force does not fully contribute to the retarding force on a train.

To compensate for leakage, the locomotive automatic air brake system will provide brake pipe pressure maintaining to replenish the loss of compressed air due to the combined leakage that occurs throughout the train. While this is highly beneficial, the brake cylinders on a car are only pressure maintained to a maximum of approximately 8 to 12 psi, regardless of the air brake application in effect. For the vast majority of train operating scenarios (that involve operating trains on grades of less than 1% and other locations where brake applications are only required for a few minutes), this amount of BCP is more than adequate to safely control train speed and stop the train whenever required. However, brake cylinder leakage can be particularly problematic for a heavy-weight train descending a long grade where the air brakes will remain applied for a longer duration. For example, descending the 13.5-mile Field Hill grade at 15 mph requires air brakes to remain engaged and provide a constant amount of brake retarding force for over 52 minutes.

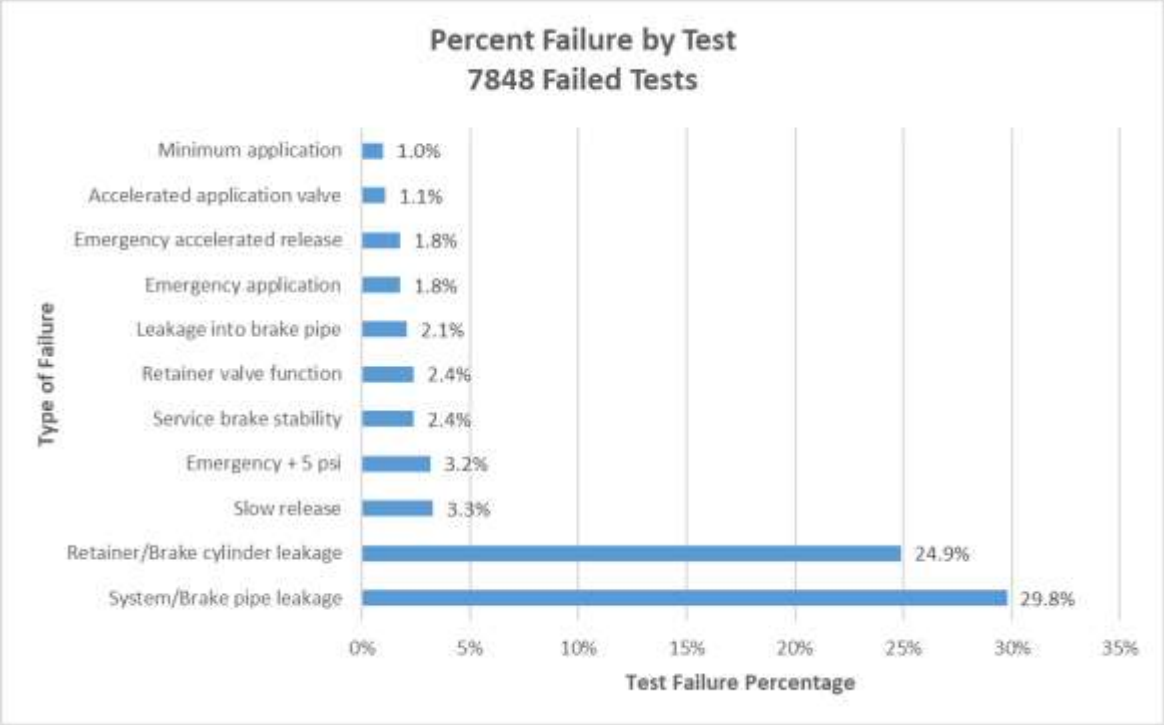
The maximum allowable brake cylinder leakage is 1 psi per minute during a 1-minute test interval, per AAR Standard S-486, Code of Air Brake System Tests for Freight Equipment - Single Car Test. With leakage of air from the brake cylinder, even within acceptable limits, the force exerted by the piston is reduced, resulting in less effective braking on that car.

As an example, at an average leakage rate of 1 psi per minute on each car, the occurrence train would have lost 52 psi of BCP on the descent of Field Hill, which represents an 81.3% loss in braking capacity. Nearing the bottom of the descent, the remaining BCP on the train would have been the equivalent of a minimum reduction brake application (7 psi), which would have been insufficient for the train to maintain the maximum allowable speed of 15 mph.

Brake cylinder leaks are worsened by the deterioration of packing cup gaskets due to aging and wear, as well as by the degradation of the grease lubricating the packing cup system. These leaks are accentuated in cold temperatures, when rubber packing cups, gaskets, and grease harden and contract. At the time of the occurrence, there was no requirement to perform periodic maintenance on rail car brake cylinders. Therefore, brake cylinders could remain in service for long periods of time.

Brake cylinder leakage remains the second highest cause of failure during the single car test, after CCV failures (Figure 16).

Figure 16. Percentage of single car test failures by cause of failure (Source: E. Gaughan and K. Carriere, "Troubleshooting a freight car brake system" presented at the Air Brake Association annual conference, Indianapolis, Indiana [September 2013]. TSB edited for clarity.)

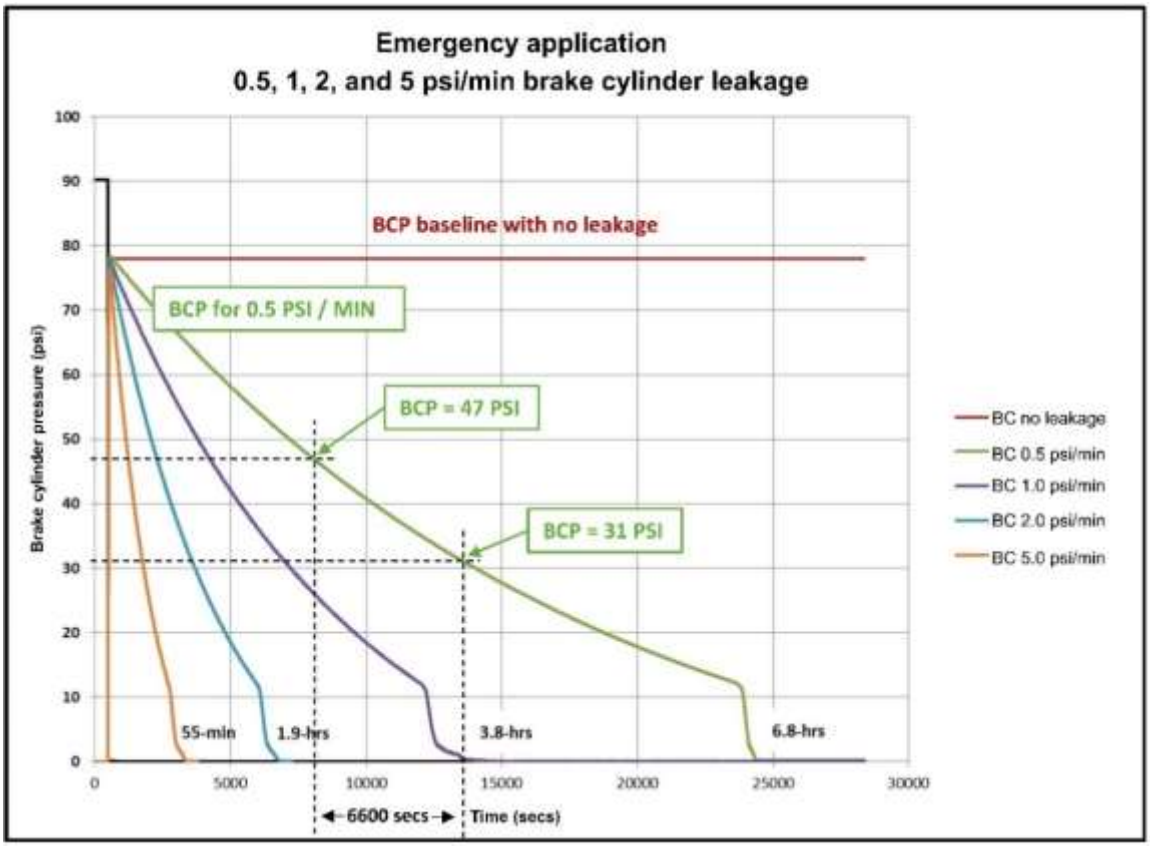


1.16.3.3.1 Brake cylinder leakage after an emergency brake application

Wabtec Corporation (Wabtec) performed tests on its 150-car AAR-approved test rack to measure the change in BCP following an emergency brake application with various induced leakage rates.[49] The brake equipment in the test rack apparatus emulates braking systems on 50-foot cars. Figure 17, derived from these tests, represents BCP degradation for various leakage rates. It describes the evolution of BCP after an emergency application, as all pressures start at around 77 psi at time zero for a fully charged air brake system. The graph shows that, for an initial leakage rate of 0.5 psi per minute, the drop from 47 psi BCP down to 31 psi (the pressure at which the brake force becomes insufficient to hold the occurrence train stationary on the hill) will take about 6600 seconds (1 hour and 50 minutes).

49 K. Carriere, "Initiatives in Braking Maintenance Methodology," presented at the Canadian Air Brake Club – Western Chapter (03 February 2020).

Figure 17. Brake cylinder pressure degradation after an emergency application (Source: Wabtec, with TSB annotations)



1.16.3.4 Other factors affecting the propagation of air brake applications

Excessive brake pipe leakage can also result in degraded performance of braking effort after a split reduction[50] when there are extended time intervals between the successive brake pipe reductions. When the pressure maintaining function is active, the air flow into the brake pipe clashes with the brake pipe exhaust, rendering it insufficient for some CCVs to properly sense and respond to any subsequent brake pipe pressure reduction that may follow the initial minimum brake application.

1.17 Monitoring the brake pipe air flow

There are various types of air flows associated with the operation of the air brake system, such as charging flow, release flow, and applied flow. A flow indicator in the locomotive cab provides useful information about these different flow conditions, whether changing or steady-state.

"Charging flow" refers to the flow that occurs while the brake pipe and the air storage reservoirs on the cars are being filled with compressed air. The maximum flow occurs immediately after the LE releases the train air brakes. The flow will gradually reduce and

[50] A split reduction is a minimum reduction followed by subsequent small brake pipe reductions without releasing and re-applying the brakes.

eventually level off to a steady-state value once the brake pipe and car air storage reservoirs are fully charged.

After the brake system is fully charged, any "steady-state flow" that exists indicates the brake pipe is being pressure maintained to compensate for leakage from the air brake system. The amount of flow is proportional to the leakage, and there may be no evident flow if minimal leakage exists.

Under normal circumstances, when brake pipe pressure is reduced to apply the brakes on a train, the air flow value decreases and stabilizes again to a steady-state value.

A rise in air flow when the air brakes are applied is referred to as "application flow" or "applied air flow" and is indicative that one of the following undesired events could be occurring:

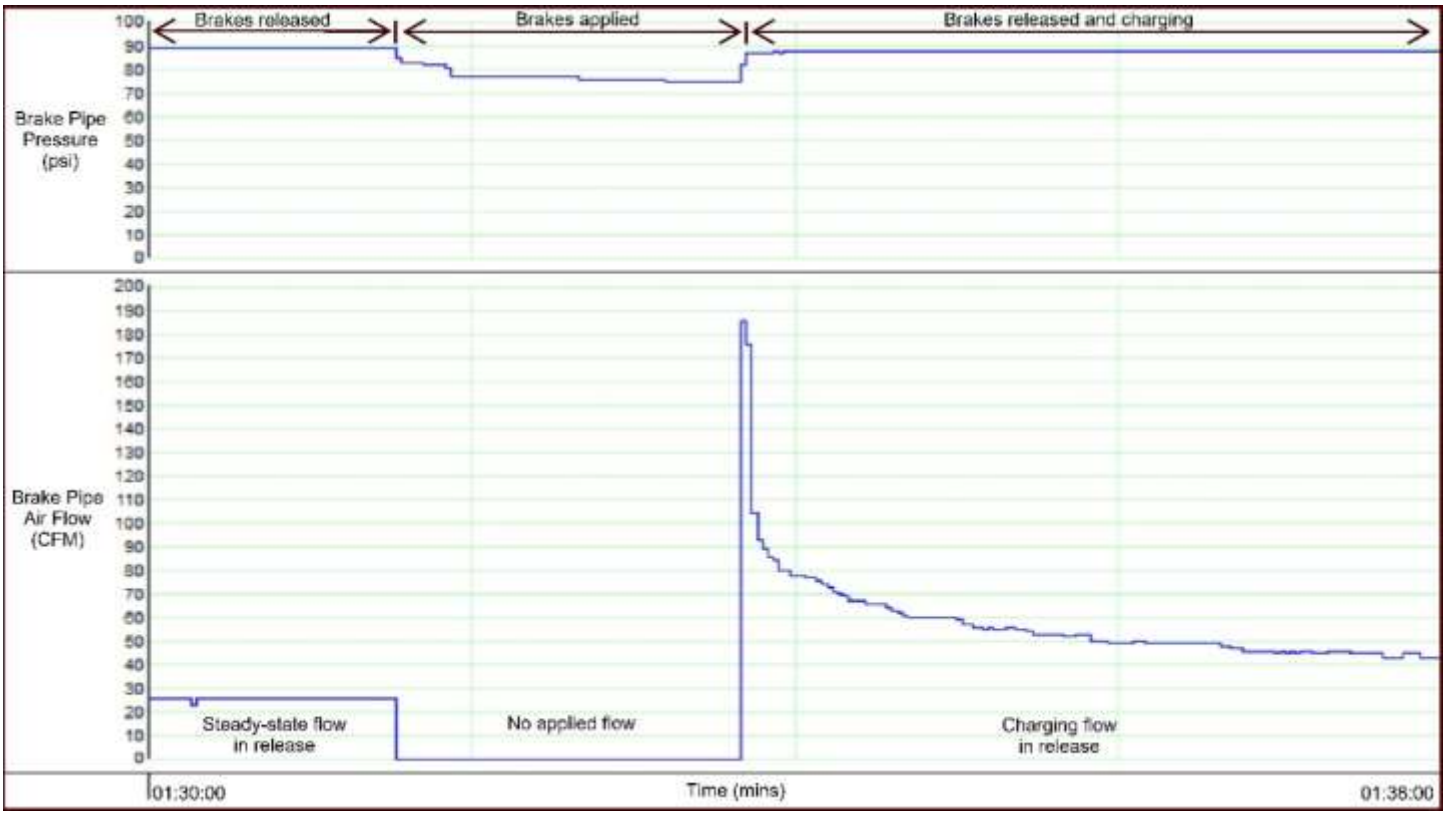
- the brakes on the train are releasing (unintentionally); or
- there are other sources of air leakage, notably leakage through the bottom cover exhaust port of the New York Air Brake (NYAB) DB-10 service portion of the CCV and/or leakage through the brake cylinder packing cup gasket.

In the presence of leakage from CCV service portions or brake cylinders, the air flow in the brake pipe will increase rather than decrease when a brake application is made. This will result in the additional flow of compressed air from the brake pipe through these sources of leakage. This will, in turn, trigger the locomotive brake pipe pressure maintaining feature to re-engage to:

- replenish the air that is being leaked through these air brake components; and
- maintain the air pressure in the brake pipe.

Figure 18 shows the 3 different flow conditions associated with the operation of the air brakes.

Figure 18. Brake pipe air flow (Source: TSB)



On a DP train, air flows not only from the lead controlling locomotive, but also from operative remote locomotives, which serve as additional air brake pressure control points and provide supplemental sources of compressed air for brake pipe charging and pressure maintaining. The air flow contribution for each of the linked DP locomotives is individually displayed on the DP operations screen that is monitored by the LE. The total air flow being supplied to the train's air brake system is the combined total coming from all DP locomotive air sources.

1.17.1 Air flow measurements and brake system leakage

Wabtec investigated changes in brake pipe air flow associated with degraded brake system performance.[51] The investigation involved analyzing selected LER data files, as well as conducting a series of laboratory tests on a 150-car test rack, to examine the response of the air brake system to various leakage conditions. Some of these tests were designed to re-create additional leakage effects that are known to occur on brake equipment that has outlived its effective service life, particularly when operating in cold-temperature environments. This research and analysis effort, based on leakage and air flow assessments, yielded new insight that can be used by industry, and particularly LEs, to better assess leading indicators of and diagnose degraded braking efficiency.

51 E. W. Gaughan, "Applied Flow Diagnostics - Hidden in Plain Sight," submitted for the Air Brake Association conference, Minneapolis, Minnesota, United States (September 2019).

The rack test data confirmed that, for a constant leakage rate, brake pipe air flow decreases when brake pipe pressure is reduced to apply the brakes on a train. The data also confirmed that larger brake pipe pressure reductions will result in a proportionately larger decrease in air flow. As the Wabtec test report states, in part,

> The corresponding brake system analogy is that the air flow with the brakes applied – 'applied flow' - will be less than the flow with the brakes released – 'release flow' for any given condition.[52]

Additional rack tests were conducted to measure the impact on air flow when the leakage rate was increased, to re-create the effect of additional sources of leakage on some of the cars when the air brakes are applied. For the tests, various levels of brake cylinder leakage were induced on 75 of the 150 cars in the test rack. Table 6 shows the change in applied flow associated with various levels of brake cylinder leakage when the 90 psi brake pipe pressure was reduced by 10 psi. These tests were focused on the brake cylinder leakage, and therefore CCVs were not included as a source of leakage, although defective CCVs can also have gaskets that leak and this can vent pressure from the brake pipe, reservoir, and/or brake cylinder.

Table 6. Applied air flow vs leakage on 75 cars with a 10 psi brake pipe reduction (Source: TSB, based on E. W. Gaughan, "Applied Flow Diagnostics - Hidden in Plain Sight", submitted for the Air Brake Association conference, Minneapolis, Minnesota [September 2019])

Brake cylinder leakage rate (psi/min)	Brake pipe air flow with 10 psi brake application (CFM)	Total change in brake pipe air flow compared to no leakage (CFM)
0*	8.6**	n/a
1	10.7	2.1
2	12.2	3.6
5	16.1	7.5

* No brake cylinder leakage

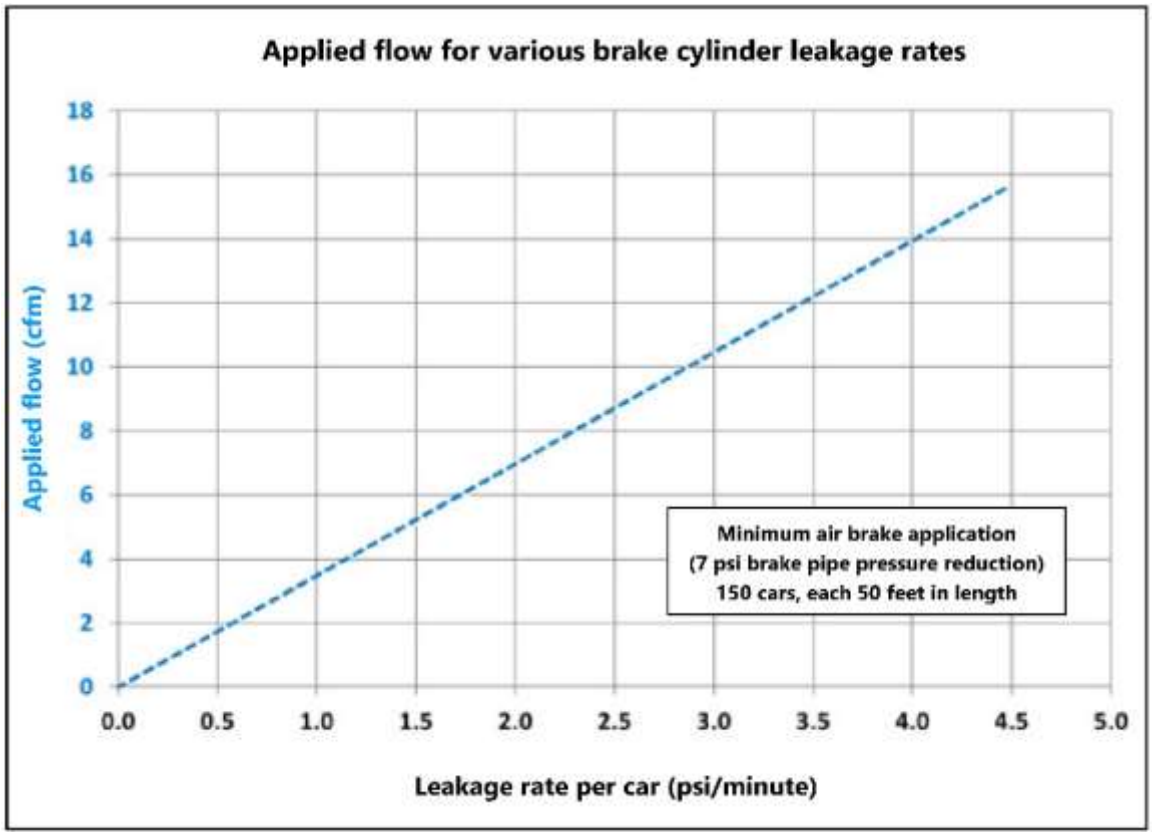
** Flow decreased by 1.4 CFM compared to 10 CFM flow with the brakes released and with no leakage

A brake cylinder leakage of 1 psi/minute (the AAR S-486 maximum acceptable limit during an SCT) on 75 of the 150 cars will result in an increase of about 2.1 CFM in applied air flow after a 10 psi brake pipe reduction. Double-digit increases in applied air flow when brakes are applied would indicate excessive brake cylinder leakage, as well as leakage at CCV gaskets.

Figure 19 shows how the demand on brake pipe flow increases to compensate for various rates of brake cylinder leakage. The graph presents results of tests performed on the Wabtec 150-car test rack using a minimum brake pipe pressure reduction (7 psi). If all 150 cars on the rack had leaking brake cylinders at a rate of 3 psi/minute, the total increase in applied air flow would only be about 10 CFM. An air flow increase of this magnitude would be noticeable only when there was already air flow of 20 CFM or greater circulating in the brake pipe (flow below 20 CFM is shown as 0 on the locomotive air flow meter).

52 Ibid.

Figure 19. Applied flow increase for 150 cars, each 50 feet in length (Source: Wabtec, with TSB annotations)

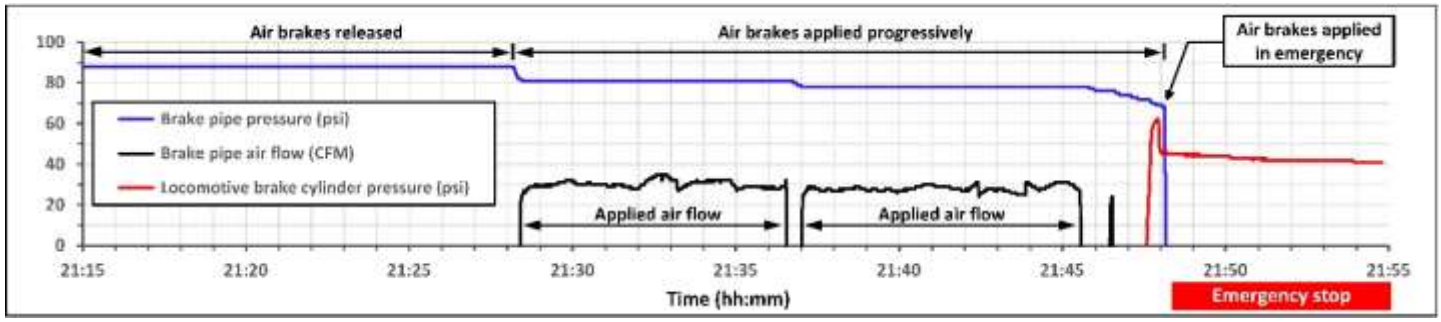


1.17.1.1 Applied air flow readings before the emergency stop

Shortly after departing Alyth Yard, the inbound LE noticed an increase in brake pipe air flow whenever the air brakes were applied (see section 1.17.2 for details). These applied air flow events occurred while bringing the train to a stop for train meets at Keith, Banff, and Eldon. In addition, a sudden and unexpected increase in air flow appeared shortly after making a 7 psi minimum brake pipe pressure reduction as the head-end of the train was starting to descend Field Hill. About 8 minutes later, when the brake pipe pressure was further reduced by 3 psi, another applied flow was observed.

Data from the event recorder on the UP 5359 mid-train remote locomotive show a sudden and unexpected increase in air flow of up to 35 CFM a few seconds after a brake pipe reduction during the initial descent into Partridge. This is illustrated in Figure 20.

Figure 20. Graph showing the unexpected increase in air flow as the train descended Field Hill (Source: TSB, based on data from the UP 5359 locomotive event recorder)



Just prior to the emergency application, 3 incremental brake pipe pressure reductions of 2 psi each were made. However, there was no air flow reading following these reductions because the brake pipe leakage was diminished, due to the following reasons: the brake pipe pressure was reduced; there was not enough time to lap[53] the brake pipe reduction and activate the pressure maintaining feature to generate increased air flow; and the total flow was less than 20 CFM.

Sources of increased air flow may be due to air brake system leaks, where

> […] brake equipment that has outlived its effective service life may result in generating leakage only when the brake is applied. Defective control valves may vent brake pipe, reservoir or cylinder pressure when applied. Leakage out of brake cylinders will result in a decrease in pressure to the threshold of the quick service limiting valve or the brake cylinder maintaining feature resulting in an increased demand on brake pipe.[54]

1.17.2 Air flow meter

Locomotives are equipped with a brake pipe air flow indicator, commonly referred to as the air flow meter (AFM). The AFM displays the measured rate of air flow, expressed in cubic feet per minute (CFM), flowing from the locomotive's air reservoir into the train's brake pipe. The AFM is the primary means used by an LE to monitor the movement of air into the brake pipe due to a pressure differential, such as when the brakes are applied, released, or while the brake pipe is being charged or pressure maintained.

The AFM is also used during mandated air brake qualification tests, such as the No. 1 or No. 1A.[55] The AFM display reading is used during these tests to determine that the total air

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53 The position of a brake valve when the pressure being controlled is being neither increased nor decreased.

54 E.W. Gaughan, "Applied Flow Diagnostics - Hidden in Plain Sight," submitted for the Air Brake Association conference in Minneapolis, Minnesota, United States (September 2019).

55 A No. 1A brake test is performed by qualified train crew members, whereas a No. 1 brake test is performed by certified car inspectors. For more information on the No. 1 brake test, see Appendix B – Inspection and testing of air brake systems.

flow into the brake pipe does not exceed the maximum allowable regulatory limit [56] when the air brakes are released.

On locomotives equipped with operator display screens, the air flow is shown in a box identified as "Flow" (Appendix A, Figure A5). The value displayed on the screen indicates the amount of air flow going from the locomotive main reservoir into the brake pipe.

When the train brake system is being replenished, the air flow indicator displays a high value, typically higher than 60 CFM. As the system becomes charged, the value displayed comes down, indicating a decrease of flow. The air flow indicator and the LER download will show 0 for any air flow below 20 CFM. Displayed air flow values (20 CFM and higher) normally occur only when the air brakes are released and while the brake pipe and car air storage reservoirs are being replenished.

An LE monitors the AFM for expected changes in air flow that indicate the air brake system is responding to air brake application and release commands. Unexpected changes in air flow can provide an indication about important changes that are occurring in the brake system, whether due to temperature-sensitive leakage effects, or an emergent condition such as an undesired brake release.

Brake cylinder leakage normally goes undetected, unless the LE observes a sudden rise in air flow during a service brake application and understands the implications. The LE has no other indication of systemic brake cylinder leakage, except the fact that the commanded brake application fails to produce the required and expected speed retardation on the train.

1.17.3 Attention and information displays

When operating a locomotive, an LE is required to periodically monitor various operating gauges, including the AFM. The information displayed by the AFM can provide important feedback on braking effectiveness. By design, high air flow events leading to exceedances will not generate exceptional aural or visual caution on the operator display screen.

"Sensory conspicuity" refers to the ability of an object to capture the attention of an observer who does not necessarily expect it to be present or is looking the other way.[57] Characteristics of warnings, objects, or conditions that are likely to attract an operator's attention include areas or objects that differ greatly from their backgrounds in terms of brightness, colour, and texture; flickering or flashing stimuli; objects of large size; and objects that are moving.[58] Red flashing lights and an audible warning are typical characteristics of warnings that are designed to attract attention.

The AAR *Manual of Standards and Recommended Practices* stipulates that, in terms of design philosophy, the urgency of rail information conveyed by an alarm shall be indicated by the

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56 Transport Canada, *Railway Freight and Passenger Train Brake Inspection and Safety Rules* (17 November 2017), Part I: General, section 7.8, p. 8.

57 P. L. Olson, R. Dewar, and E. Farber, "Vision, audition, vibration and processing of information," *Forensic Aspects of Driver Perception and Response*, 3rd edition (Lawyers & Judges Publishing Company, Inc., 2010).

58 B. S. Oken, M. C. Salinsky, and S. M. Elsas, "Vigilance, alertness, or sustained attention: Physiological basis and measurement," *Clinical Neurophysiology*, Vol. 117 (2006), pp. 1885–1901.

background colour (that is, alarms with red backgrounds are most urgent, alarms with yellow backgrounds are less urgent, and alarms with white backgrounds are the least urgent).[59]

"Cognitive conspicuity" concerns the importance and relevancy of information to an operator's context,[60] such as air flow information when braking. To ensure that the most important visual cues for a specific scenario are detected by the operator, the cues need to be easily discriminated as the most relevant and not masked or weakened by other more noticeable cues.

Older, more traditional air flow meters had a design philosophy in line with these recommended practices. They were associated with amber warning lights and auditory feedback from the 26L automatic brake valve, which indicated to an LE when the air flow was increasing above normal parameters. With more modern locomotives, information is presented on a smart display, where the air flow indicator is not associated with any alarms, alerts, or colour coding.

The design of the AFM on the occurrence locomotive displayed a small white number that did not flash, or change colour or prominence, regardless of the circumstances or the flow rate that was displayed. The manner in which data is displayed requires a level of interpretation from the LE to inform follow-on actions if and when required.

1.18 Testing of the recovered cars

After the occurrence, testing was conducted on the 13 cars that remained upright and the tail-end remote locomotive (CEFX 1040) to identify underlying factors that contributed to the loss of braking control on the occurrence train.

The tests were conducted outdoors in cold ambient temperatures similar to the conditions that existed at the time of the occurrence. Additional tests were later conducted in the warmer temperatures of a shop environment.

The 13 cars (Table 7) represented about 11% of the total 112[61] cars on the occurrence train.

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59 Association of American Railroads (AAR), *Manual of Standards and Recommended Practices*, section M: Locomotives and Locomotive Interchange Equipment, S-591: Locomotive System Integration Operating Display (2007, updated 25 February 2010).

60 P. A. Hancock et al., "Driver workload during differing driving manoeuvres," *Accident Analysis and Prevention*, Vol. 22, No. 3. (1990), pp. 281–290.

61 Two of the 112 cars on the train had their air brakes cut out. However, the 2 cars were included for analytical purposes and comparison with the 13 recovered cars, given that they provided additional data points in terms of fundamental statistics (age, maintenance history, car control valve (CCV), wheel temperature detector (WTD) data).

Table 7. Characteristics of the brake systems on the 13 recovered cars

Car position	Car designation	Year built	Car age (years) *	Make and model of car control valves on occurrence train		Brake cylinder mounting location (model)	Slack adjuster
				Service portion	Emergency portion		
1	SOO 119682	1998	21	NYAB DB-10	NYAB DB-20	Body	Yes
2	COER 354009	2016	3	Wabco ABDX	Wabco ABDX	Body	Yes
3	SOO 115417	1994	25	Wabco ABDX	Wabco ABDX	Truck (TMX)	Yes
4	CP 602554	1976	43	Wabco ABD	Wabco ABD	Truck (Wabcopac)	No
5	CP 608497	1985	34	Wabco ABD	Wabco ABDW	Truck (Wabcopac)	No
6	CP 602255	1976	43	Wabco ABD	Wabco ABD	Truck (Wabcopac)	No
7	CP 607911	1984	35	Wabco ABD	Wabco ABDW	Truck (Wabcopac)	No
8	SOO 118863	1997	22	Wabco ABDX	Wabco ABDX	Truck (TMX)	Yes
9	SOO 113918	1995	24	Wabco ABDX	Wabco ABDX	Truck (TMX)	Yes
10	SOO 119626	1998	21	NYAB DB-10	NYAB DB-20	Body	Yes
11	CP 604013	1977	42	Wabco ABD	Wabco ABDW	Truck (Wabcopac)	No
12	DME 51387	2005	14	NYAB DB-10	NYAB Wabco ABDW	Body	Yes
13	COER 354979	2007	12	NYAB DB-10	NYAB DB-20	Body	Yes

* Age of car at the time of the occurrence

1.18.1 Outdoor testing

The outdoor testing took place in Banff, Alberta. The locomotive and the 13 cars were placed at the west end of the Banff siding track located at Mile 82.1 of the Laggan Subdivision.

A test plan was developed with the main goal to verify the performance of the air brake system on the locomotive and the cars, and to identify underlying factors that contributed to the loss of braking control on the occurrence train. Various test teams were assembled and included representation from CP and TC.

Tests were performed outdoors in Banff during the 3-day period of 08 February to 10 February 2019. These dates were selected because the ambient temperatures for those days were forecast to be below −20 °C, which would replicate, as closely as possible, the conditions that existed at the time of the occurrence.

A series of tests was performed on the locomotive and the cars assembled as a train and included a visual inspection, a No. 1A brake test, a brake system leakage test, and brake cylinder leakage tests (with and without the retainers applied). A cold-temperature SCT was performed on each car individually.

1.18.1.1 Visual inspection

A visual inspection was performed on the locomotive and 13 loaded grain cars. The inspection confirmed that the air hoses were coupled, the angle cocks between all pieces of rolling stock were all in the fully open position and there was no visible damage on any of the air brake equipment. The empty/load device sensor arms were confirmed in the loaded

position on all 13 loaded cars. The wheel tread surfaces and brake shoes were further examined for any evidence of heat stress damage. The wheel tread surfaces showed only medium blueing on less than half of all the wheelsets.[62]

1.18.1.2 No. 1A brake test

A No. 1A brake test using the air flow method was conducted on the locomotive and the cars assembled as a train. The test was successfully completed and served to verify that 11 of the 13 cars met the requirements of the test. The 2 exceptions were CP 602554 (brakes did not apply) and COER 354979 (piston retracted while the test was in progress).

1.18.1.3 Brake system leakage test

A standing brake test[63] was performed to measure brake system air leakage. The standing brake test requires only 2 measurements, taken at fixed intervals. If the 2 measurements are equal, no leakage exists. If the 2 measurements are different, a leakage rate is calculated.

A simplified brake pipe pressure drop test procedure was used because of the relatively small number of cars involved, the small total volume of compressed air in the brake system, and the cold ambient temperature. The simplified procedure consisted of the following steps:

- charging the brake systems to 90 psi
- applying the air brake on each rail car by making a 15 psi reduction in brake pipe pressure
- waiting for the brake pipe pressure to settle at 75 psi and match the pressure setting on the locomotive's equalizing reservoir
- closing (isolating) the brake pipe by cutting out the locomotive automatic brake to disable the brake pipe pressure maintaining feature
- monitoring leakage from the brake pipe for approximately 60 seconds

With the source of compressed air cut out, the measured brake pipe pressure had dropped from 75 psi to 72 psi after 60 seconds elapsed, yielding a leakage rate of 3 psi/min.[64]

1.18.1.4 Cold-temperature brake cylinder leakage test

Two key indicators of air brake performance and braking effectiveness on a car are the amount of initial pressure that builds up in the brake cylinder in direct response to a brake application command from the controlling locomotive and how long the pressure is retained.

To gain insight into possible underlying factors that contributed to, or resulted in, a loss of braking control on the train, an extended brake cylinder leakage test was conducted on each of the 13 recovered cars. The test used a script based on available LER data (Table 8), to

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62 Wheel blueing is discussed in more detail in section 1.19.1.

63 A standing brake test is a non-regulatory specialized test performed under specific operational requirements to verify the continued application of the air brakes on the cars for an extended period of time.

64 In North America, the allowable maximum air flow to qualify a train when using the brake pipe leakage method of testing is 5 psi/min.

replicate the train handling actions taken by the LE while the train was descending Field Hill, including the emergency stop at Partridge. The results served to characterize the air brake performance of each of the recovered cars immediately prior to the emergency stop.

Table 8. Test script used for assessing the cars' air brake performance in cold-temperature extended brake leakage testing*

Step	Elapsed time	Brake pipe reduction (psi)	Brake pipe pressure (psi)
1	00:00:00	Minimum	84
2	00:07:44	8	82
3	00:08:29	10	80
4	00:17:30	12	78
5	00:18:14	14	76
6	00:18:48	15	75
7	00:19:18	17	73
8	00:19:29	19	71
9	00:19:44	21	69
10	00:19:50	Emergency	0

* The tests began with the air brake released and fully charged to 90 psi.

1.18.1.4.1 Service brake applications

At step 6 of the test script, from a fully charged brake pipe, i.e., 90 psi, a series of brake pipe pressure reductions totaling 15 psi had reduced brake pipe pressure to 75 psi. The measured average BCP for the 13 cars was 21 psi, or 57% of the theoretical maximum value of 38 psi (in the absence of brake cylinder leakage).

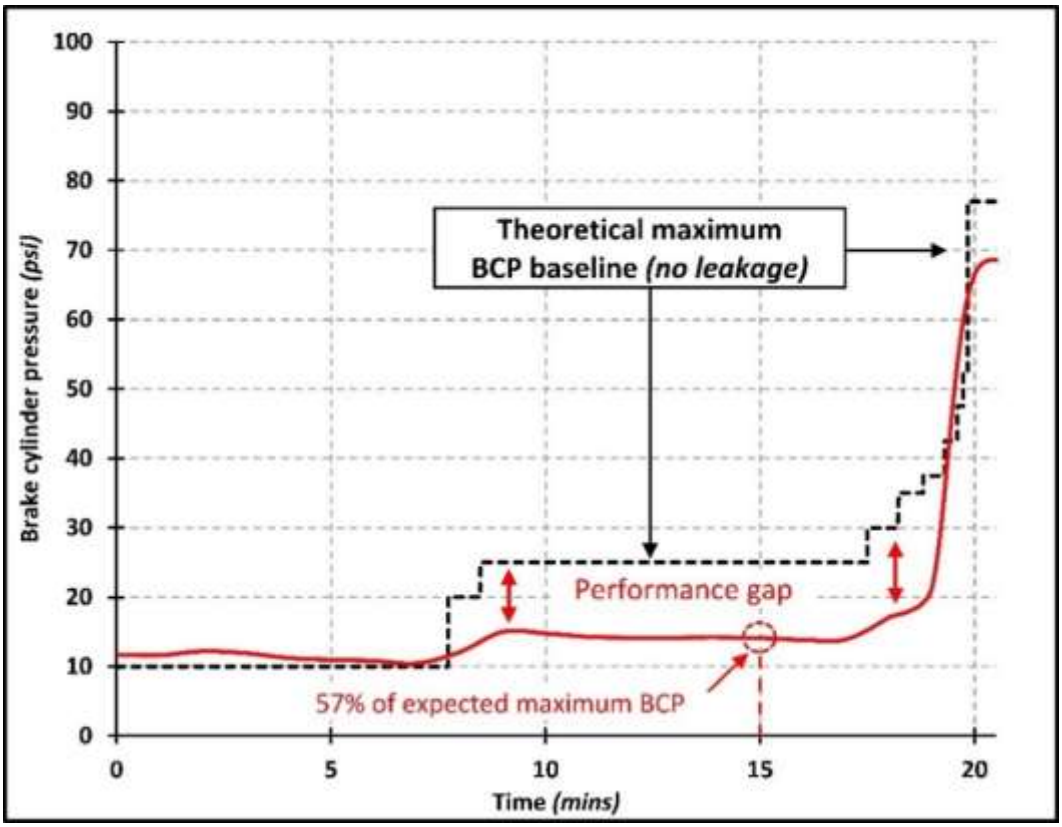
The BCP on 5 of the cars (38% of the total number of cars) was between 0 psi and 10 psi. These cars essentially had ineffective air brakes during service applications.

Six of the cars (46% of the total number of cars) did not respond as expected to the successive series of small incremental brake pipe pressure reductions and showed a lower than expected increase in BCP.

The cars with reduced brake pressure would not be expected to have blueing on the wheel surface.

Figure 21 shows how aggregated BCP from the test performed on 08 February 2019, at temperatures of −19 °C to −21 °C, changed over time. From the test measurements, the average BCP for the 13 recovered cars was calculated and plotted over a 20-minute timeframe (solid line in Figure 21). As reference, the theoretical maximum BCP baseline without leakage is shown as a dashed line.

Figure 21. Aggregate brake cylinder pressure for all 13 cars from the 08 February 2019 service brake application test (Source: TSB)

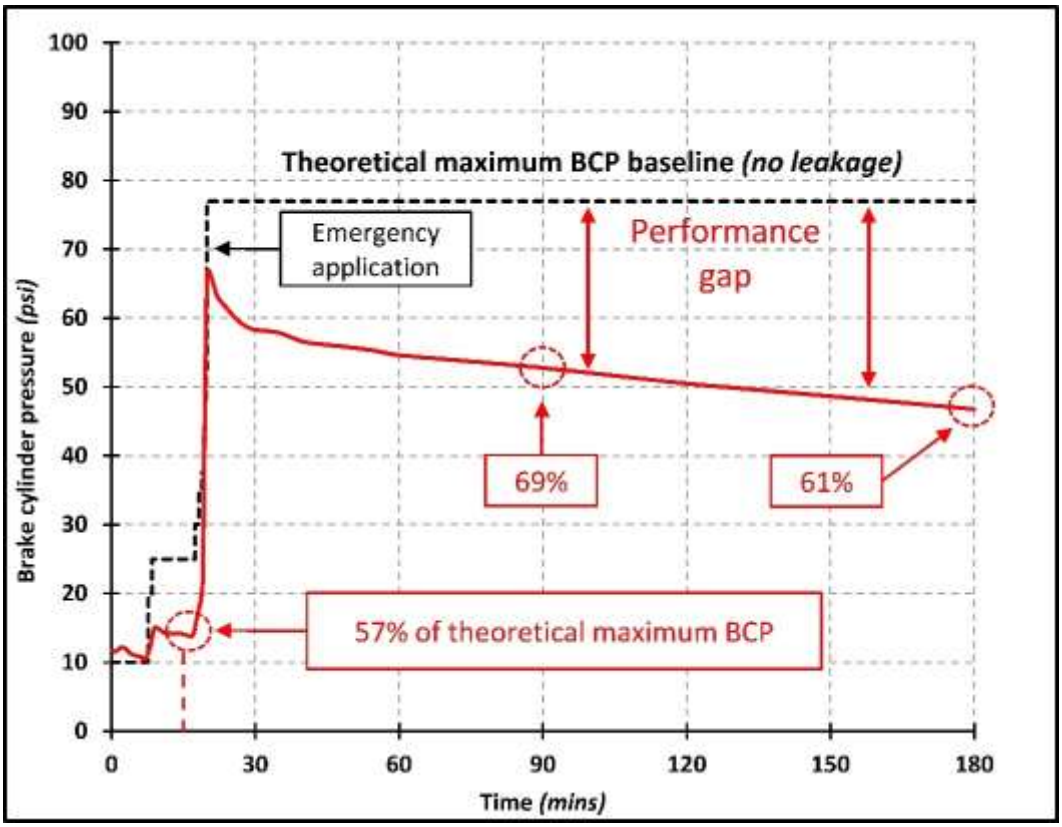


1.18.1.4.2 Emergency brake application

All 13 cars responded to the emergency brake application with increased BCP. The test duration was 180 minutes. The average BCP started at 67 psi (87% of the theoretical maximum) and then declined to 47 psi at the end of the test. After 90 minutes, the average BCP was 69% of the emergency brake theoretical maximum. After 180 minutes, the average BCP was 61% of the emergency brake theoretical maximum, and 9 cars (69% of the total cars) had a BCP of at least 50 psi.

Figure 22 shows how aggregated BCP from the test conducted on 08 February 2019 changed over time during the emergency brake application. This figure further extends the time duration expressed in Figure 21 from 20 minutes to 180 minutes (3 hours). From the test measurements, the average BCP for the 13 recovered cars was calculated and plotted.

Figure 22. Aggregate brake cylinder pressure for all 13 cars from the 08 February 2019 emergency brake application test (Source: TSB)



1.18.1.5 Brake cylinder leakage test with retainer

The FHOP require that the retainers be set to the HP position on at least 75% of loaded cars on a westbound freight train stopped in emergency beyond Mile 123.5 of the Laggan Subdivision.

Setting retainers on a stationary train does not provide any additional brake retarding force while the train brakes remain applied. Rather, the retainers are intended to provide a residual amount of braking force after the train brakes are released. This may help hold the train in a stationary position or control the speed while the air brake system is being recharged.

The HP setting is designed to nominally hold up to 20 psi of compressed air in the brake cylinder after the car air brake is released. In a situation where the cylinder pressure is less than 20 psi when the air brake is released, the retainer will initially hold whatever pressure existed at that time.

During the tests performed outdoors in Banff, the leakage of compressed air from the car air brake cylinders was measured with the retainer set up to operate in the HP position. Brake cylinder leakage was measured after releasing an emergency brake application.

At the end of the test (1 hour and 45 minutes), it was observed and recorded that:

- 3 cars (23% of the total number of cars) had a BCP in the 18 to 20 psi range;
- 3 cars (23% of the total number of cars) had a BCP in the 7 to 15 psi range;

- 7 cars (54% of the total number of cars) had leaked down to 0 psi; and
- the average residual BCP for the 13 cars was 50% or less of theoretical maximum (i.e., had leaked down to 10 psi or less.)

1.18.1.6 Cold-temperature automated single car test

A cold-temperature ASCT was conducted on 25 February 2019 between 0230 and 0930. The ambient temperature decreased from −22 °C to −28 °C during that time. The test was performed on each of the 13 cars using an ASCT device. All 13 grain hopper cars failed the test; 12 cars failed because of excessive leakage (brake cylinder or CCV) and 1 car failed the "disconnect test" (receiver check valve leakage test).

In a shop environment, a full AAR S-4027 ASCT would be sequentially followed until all test steps are successfully passed. However, this approach was not practical during the outdoor testing at Banff due to the extreme cold ambient temperatures and the lengthy time that would be involved to repair and retest. A car that did not fully complete a particular test step was considered to have failed the test. A failed test step is indicative of an issue with the air brake system but not necessarily a reduced braking effectiveness. The effect, for example, could be high leakage that will increase recharging time without necessarily having an adverse effect on braking performance.

1.18.1.7 Test of the dynamic brakes on the remote locomotives

Tests were performed on the recovered tail-end locomotive (CEFX 1040) to verify the operational characteristics of the DP system and confirm how the system regulated the brake retarding force produced by the locomotive's DB and the independent brake in response to an emergency brake application.

The tests confirmed that, because the locomotive was set up for DP remote operation on the occurrence train, it would have lost DB control after the emergency brake application, and its independent brake would have been regulated to a maximum of 45 psi.

This was the expected behaviour:

- On older DP systems, DB holding is not functionally available on remotely controlled locomotives that are linked to the lead DP locomotive via DP radio communication.
- Regulating the independent brake to a maximum of 45 psi on DP remote locomotives in response to an emergency brake application is a legacy design characteristic of the DP system, intended to avoid thermal-mechanical damage to the locomotive wheels.

These test results, while expected, confirmed an important safety detail: when the train stopped in emergency at Partridge, it lost the DB retarding force that had been available on the 2 DP remote locomotives, UP 5359 and CEFX 1040. This amounted to a loss of about 98 000 pounds of DB retarding force per locomotive, or 196 000 pounds in total.

1.18.2 Shop-conducted testing

1.18.2.1 Automated single car test

Additional testing on the 13 recovered cars was conducted at the CP maintenance shop in Port Coquitlam, BC, from 07 May to 08 May 2019. Each car was given a full ASCT while at ambient temperature within the shop.

Test results indicate that 6 cars (45% of the total number of cars) failed the ASCT: 3 cars failed the parts of the test that would result in reduced braking performance, while the other 3 cars failed the parts of the test that would have no influence on the braking performance.

By cross-referencing these ASCT results with wheel temperature data collected prior to the occurrence, the investigation determined that 2 of the cars that failed the ASCT also had cold wheels, indicating that the brake system response on these cars was ineffective. The other cars that failed the ASCT did not have a record of cold wheels.

One car showed marginal cold wheels at the detector located at Mile 111.7 of the Mountain Subdivision, but it did pass the ASCT.[65] This result indicates the car had brake cylinder leakage that was less than the failure threshold of 1 psi/minute. However, a brake cylinder leakage rate of less than 1.0 psi/min would still result in reduced brake effectiveness if a brake application was held over an extended period.

1.18.2.2 Brake cylinder leakage tests

In addition to the ASCTs, the 13 recovered cars were also tested for brake cylinder leakage during extended periods of time. These tests were conducted to see if the cars had a lower-than-condemnable level of brake cylinder leakage, which could still result in loss of brake effectiveness when brakes on the occurrence train were left applied for an extended period.

The extended brake cylinder leakage tests were conducted to emulate the in-service train brake applications for the occurrence train cars and monitor their brake cylinder leakage rates over an extended period, under normal shop environment temperature range.

During the extended brake cylinder leakage tests, the brakes on 1 car did not apply, and could not be tested further. This same car also showed cold wheels when descending Field Hill after the accident, while en route from Banff to Port Coquitlam.

Four other cars showed various levels of leakage during the retainer tests, losing 40% of the BCP in 6 minutes. These 4 cars did not show any cold wheel while en route to Port Coquitlam. However, their leakages, caused at the retainer piping or brake cylinder level, would have had a negative impact on the BCP retention, resulting in ineffective retainers.

[65] According to the AAR S-486 SCT procedure, brake cylinder leakage is to be monitored during 1 minute, and the fail threshold is 1 psi/minute.

1.19 Brake efficiency based on wheel data

Insight into the train's brake efficiency before the derailment can be obtained from an examination of the train's wheels and from a review of wheel temperature data.

1.19.1 Wheel examination

The wheels recovered from the occurrence site were examined for tread blueing.

Tread blueing on railway wheels, which is caused by the frictional heat generated during a heavy or extended brake application, can be used as a qualitative measure to indicate the relative braking force applied to each wheel. The absence of blueing indicates inoperative or ineffective brakes.[66]

Overall, 724 of the 932 wheels (78% of the total) from the train were examined for blueing. An evaluation of the level of blueing and the percentage of wheel tread blued was conducted using the following scale:

- 0 (None) (Figure 23)
- 1 (Very light)
- 2 (Light)
- 3 (Medium)
- 4 (Heavy)
- 5 (Very heavy) (Figure 24)

[66] A freight train shall operate with no less than eighty-five (85) percent of the train brakes operative (Transport Canada, *Railway Freight and Passenger Train Brake Inspection and Safety Rules* [17 November 2017], Part I: General, section 7.1, p 7). "Operative" means a brake that applies as well as releases and is in a suitable condition to retard and/or stop equipment.

Figure 23. Wheel tread with no blueing (Source: TSB)



Figure 24. Wheel tread with very heavy blueing (Source: TSB)

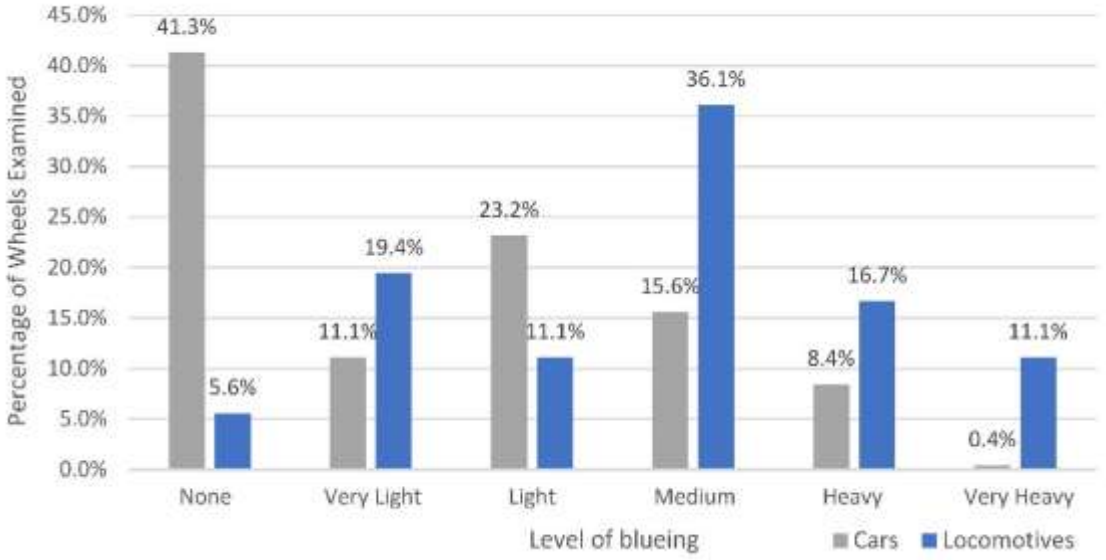


Figure 25 compares the blueing distribution of the car wheels with the blueing of the locomotive wheels. While the car blueing distribution is skewed to the left (less effective car brakes), the locomotive blueing distribution has a bell shape slightly skewed to the right, suggesting that most of the brakes were operative.

Roughly 41% of the examined car wheels did not have any indication of blueing while 11% had very light blueing. Approximately 9% of the car wheels showed heavy or very heavy blueing.

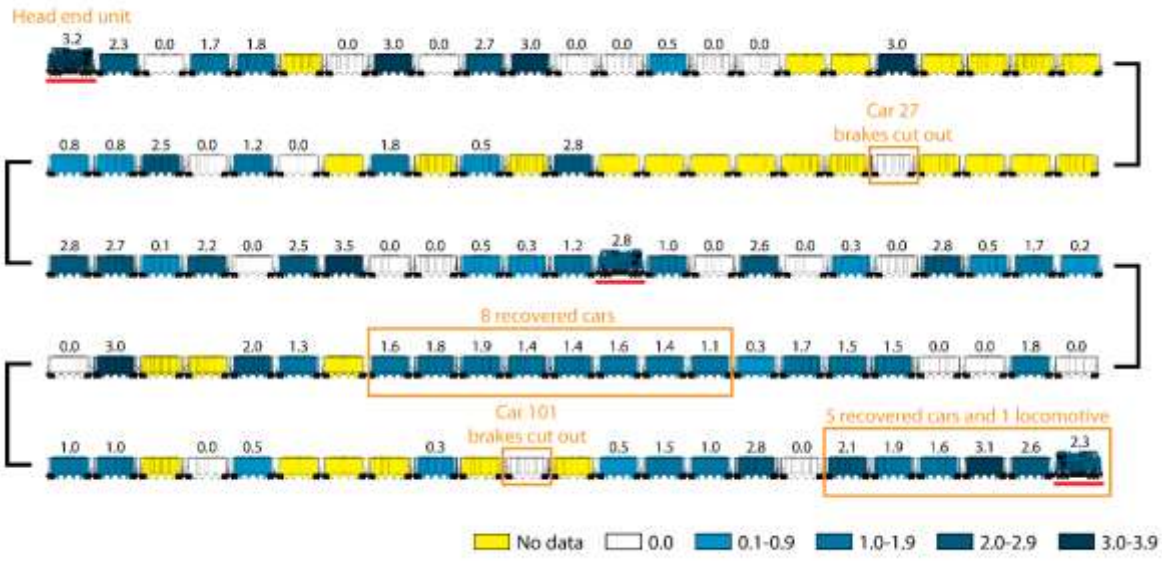
In contrast to the wheels on the cars, the majority of the wheels on the locomotive, almost 64%, had medium, heavy, or very heavy blueing; less than 6% did not have any indication of blueing. High levels of blueing on locomotives can be attributed to the locomotive BCP, which is maintained directly from the locomotive main reservoir whenever the locomotive brakes are applied. When compared to the DP lead locomotive, the 2 DP remote locomotives had less blueing on the wheels, as expected; this is because on the remote locomotives, BCP was being limited to a maximum of 45 psi after the emergency brake application (as opposed to 72 psi for the lead locomotive).

Figure 25. Blueing level of examined wheels, comparing locomotives to cars (Source: TSB)



The serial numbers were collected from the inside hub of each set of wheels and were cross-referenced with the car numbers and axle position of each examined wheelset. Figure 26 shows the level of blueing of the wheels on each car and locomotive in the train. The shade of blue depicts the level of blueing observed; no data were available for the cars in yellow. Data were not available for all of the car wheels; therefore, an average value (per car) was used in all cases. Blueing levels tended to be random throughout the train. There were 35 grain cars that had wheels showing no blueing or blueing level 1 (very light blueing).

Figure 26. Pictorial representation of blueing on the occurrence train* (Source: TSB)



* The blueing scale on this image is 0 to 3.9 instead of 0 to 5 because the number for each car is the average of all the wheels examined on that car.

1.19.2 Wheel temperature data

The wheel temperature on a car is directly related to the brake shoe retarding force; therefore, it can be used to evaluate brake health. It also serves as a relative measure of braking efficiency when compared to other cars on the same train.

Under sustained application of the train air brakes, such as on a long descending grade, the temperature of the wheels will increase significantly above the ambient temperature. Theoretically, similar cars under similar conditions would exhibit similar wheel temperatures. However, cars providing effective brake force will show elevated wheel temperatures, while those with ineffective brake force would have substantially colder wheel temperatures relative to other wheels on the train.

Wheel temperature data are recorded by wheel temperature detectors (WTD), also known as cold wheel detectors. WTDs use infrared sensor technology to assess the wheel temperatures of passing trains that have been subjected to very recent braking conditions. They flag wheels that are relatively cold compared to train average wheel temperatures.

Sites equipped with WTDs are connected to a communication network, to allow the inspection data from a passing train to be automatically transmitted and stored electronically at a centralized location where they can be analyzed later using automated analysis algorithms.

1.19.2.1 Canadian Pacific's wheel temperature detectors between Calgary and Vancouver

Initially, wheel temperature data were captured at CP to ensure that air brakes were properly released to prevent excessively high wheel temperatures, which could lead to a wheel failure. However, since October 2008, CP has been using WTDs at selected wayside inspection sites to detect cold wheels and to provide a performance-based assessment of car braking on loaded unit coal trains operating in the BC coal loop.

Although car wheel temperature on coal trains was the initial focus for utilizing WTD technology, the wheel temperature data for all trains passing by a WTD are captured. Scanned wheel temperatures are matched to specific car numbers. CP has 5 WTD sites on mountain grade between Calgary and Vancouver—1 on the Laggan Subdivision at Mile 130.2 and 4 on the Mountain Subdivision: Mile 14.2, Mile 30.2, Mile 95.1, and Mile 111.7.

1.19.2.2 Previous recorded temperature measurements for the occurrence cars

Normally, the wheel temperatures for all 112 cars on the train would have been measured when it passed by the detector located on the Laggan Subdivision at Mile 130.2. However, data were not collected at that WTD for any of the cars on the day of the occurrence because a power outage had rendered it inoperative.

As an alternative source of data, the temperature record was obtained for each of the occurrence train's 112 cars on their previous loaded trip west to Vancouver. The cars had last been scanned while they were being moved on 1 of 3 separate westbound loaded unit grain trains that had passed by the detectors at Mile 95.1 and Mile 111.7 on the Mountain Subdivision during the last 2 weeks of January 2019 (Table 9). When the WTD

measurements were taken the local ambient temperature ranged from −0.5 °C to −3.9 °C—considerably different from the colder ambient temperatures to which the occurrence train was exposed.

Table 9. Breakdown of wheel temperature detector data obtained from 3 westbound unit grain trains from the last 2 weeks of January 2019

Scan date	Scan time (Pacific Standard Time)			Ambient temperature (°C)	Number of occurrence cars
	Mile 95.1	Mile 111.7	Difference		
2019-01-18	1304	1350	46 minutes	−0.8 to −1.2	28
2019-01-19	2313	2355	41 minutes	−0.5 to −0.6	12
2019-01-21	1032	1113	41 minutes	−3.2 to −3.9	72

The data contained individual wheel temperature measurements for all 8 wheels on each of the 112 cars (896 wheels in total).[67]

While a train is in motion with its air brakes released, the car wheels will typically have a temperature of 35 °F to 50 °F above ambient, due to the friction heat generated by the effects of wheel-rail contact and rolling resistance. When the train's brakes are applied, the temperature of the car wheels are expected to increase significantly. Wheels that do not contribute to the car's braking effort remain cold when the brakes are applied; cold wheels are therefore an indication of reduced brake efficiency. A single cold wheel on a car may not necessarily mean that the overall braking performance on that car has been greatly affected. However, the greater the number of cold wheels in a dataset, the greater the likelihood that any given car may have several cold wheels, thus a lower average wheel temperature and a degradation in braking effectiveness.

The number and percentage of cold wheels for the cars on the train were calculated using the data collected at the Mile 111.7 site during the last 2 weeks of January. For this purpose, individual wheels were considered to be cold if their temperature was less than or equal to 70 °F. While a different temperature threshold could have been selected, 70 °F is a reasonable characterization of a categorically cold wheel. In addition, at the time of the occurrence, CP was also using 70 °F to identify cold wheels on coal trains. Based on these calculations, 123 of the wheels (14% of the total 896 wheels) were cold.

The measured temperature for the wheels can be used to further analyze the WTD temperature data, to evaluate overall brake efficiency of the rail cars on the train. In order to depict the entire braking performance of the train, a comprehensive characterization of car temperature data (average of all 8 wheels) using a ranking with several temperature thresholds is required. A ranking system such as the one shown in Table 10 allows the

[67] Although 2 of the cars on the train had their air brakes cut out, these 2 cars had operative air brakes during their previous loaded trip west to Vancouver. The cars were included in the statistical analysis because meaningful wheel temperature data were available for them and the additional data points were representative of the general braking performance of the occurrence train.

integration of additional criteria and provides a more complete picture of the braking behaviour of the 112 cars.[68]

Table 10. Car average temperature ranking criteria

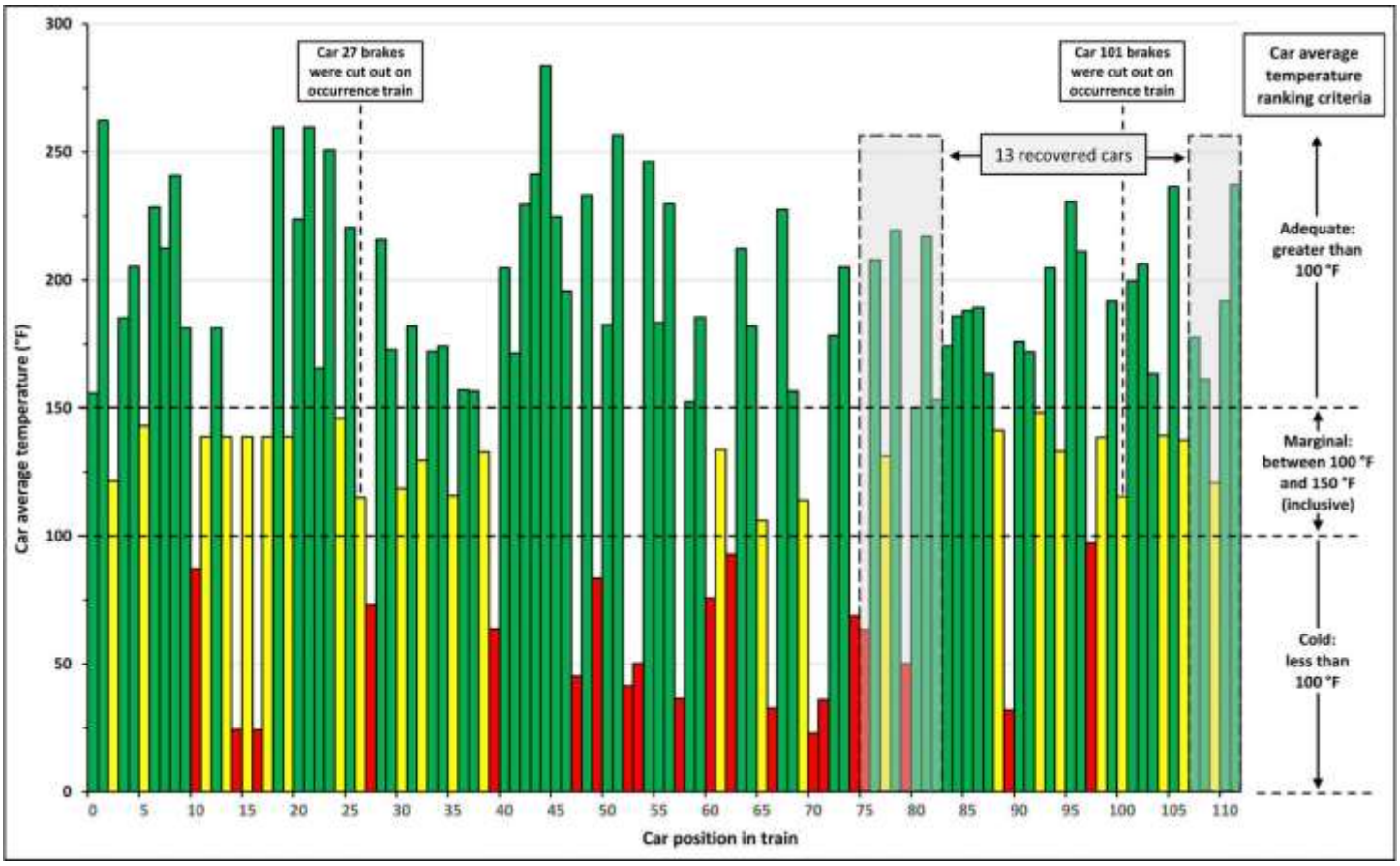
Ranking	Temperature threshold (°F)
Adequate	Greater than 150
Marginal	From 100 to 150
Cold	Less than 100

Cars providing effective brake force will show elevated wheels temperatures while those with ineffective brake force would have substantially colder wheel temperatures relative to the majority of other wheels on the train.

Using data obtained from the WTD at Mile 111.7, Figure 27 shows the average temperature for each of the 112 cars on the train, from the head end (left) to the tail end (right). The cars are shown in different colours based on their average temperature, to reflect their respective ranking in terms of brake effectiveness. As the figure illustrates, there were significant differences in car temperature, and several of the cars had an average well below 100 °F, a clear indication that their brakes were either ineffective or completely inoperative.

[68] The temperature thresholds for this ranking system are based on wheel temperature data from grain trains that operated on the Mountain Subdivision. In this system, a temperature of 150 °F and higher is considered adequate, and corresponds to the average wheel temperature for grain trains.

Figure 27. Average car temperature for the 112 cars on the train, based on data from the wheel temperature detector at Mile 111.7 (Source: TSB)



* Cars in position 27 and 101 had their brakes cut out on the day of the occurrence, and therefore did not contribute to the train's braking capacity.

** The average car temperatures conveyed in the figure are based on warmer ambient temperatures than on the day of the occurrence.

Table 11 shows the number and percentage of cars and the average temperature[69] in the 3 different ranking groups. At the Mile 111.7 detector, 60% of cars had adequate braking, 22% had marginal braking performance, and 18% had inoperative braking systems.

Table 11. Car average temperature ranking at the Mile 95.1 and Mile 111.7 detectors

Ranking	Mile 95.1 detector		Mile 111.7 detector	
	Number and percentage of cars	Average temperature (°F)	Number and percentage of cars	Average temperature (°F)
Adequate	58 (52%)	201	67 (60%)	201
Marginal	31 (28%)	128	25 (22%)	131
Cold	23 (21%)	49	20 (18%)	55

The car identification markings were used to segment the 112 cars into their fleet of origin. Table 12 presents the car average temperature distribution for all 112 cars segmented by

69 Average temperature of all the 8 wheel positions.

car fleet. The SOO fleet, equipped primarily with a body-mounted brake system, shows the overall highest average car temperature and the largest percentage of cars with a ranking of adequate.

Table 12. Car average temperature distribution for all 112 cars, by car fleet, based on data from the wheel temperature detector at Mile 111.7

Car fleet	Car count	Average temperature (°F)	Standard deviation	Number and percentage of cars by car average temperature ranking		
				Adequate	Marginal	Cold
SOO	51	175.1	67.2	37 (73%)	6 (12%)	8 (16%)
Leased	21	153.6	61.8	11 (52%)	6 (29%)	4 (19%)
CP*	40	141.7	52.3	19 (48%)	13 (33%)	8 (20%)
Totals	**112**	**159.2**	**62.7**	**67 (60%)**	**25 (22%)**	**20 (18%)**

* 2 cars in the CP 384000-384999 series and 38 Government of Canada cars in the CP 600000–608591 series

Table 13 compares the braking efficiency of the 13 cars recovered from the accident site to the 99 derailed cars. The table illustrates the number and percentage of cars for the 3 different ranking groups based on the data from the WTD at Mile 111.7. In terms of the percentage of cars, 69% of the 13 recovered cars were ranked as having adequate braking compared to 59% for the 99 derailed cars.

Table 13. Number and percentage of cars in each car average temperature ranking for the 13 recovered cars and the 99 derailed cars, based on data from the wheel temperature detector at Mile 111.7

Car average temperature ranking	99 derailed cars (%)	13 recovered cars (%)	Total cars (%)
Adequate	58 (59%)	9 (69%)	67 (60%)
Marginal	23 (23%)	2 (15%)	25 (22%)
Cold	18 (18%)	2 (15%)	20 (18%)

1.19.2.3 Cold cars on preceding unit grain trains

Between 01 February and 03 February 2019, 5 westbound loaded unit grain trains passed by the WTD located at Mile 130.2 of the Laggan Subdivision. The relief LE operated one of these trains as recently as the day before the accident and had completed a safety hazard report indicating the need for using a heavier brake application than usual to control train speed.

The wheel temperature data for these trains are listed in Table 14. A significant percentage of cold cars were detected on the trains. The percentage of cold cars climbed from 22% to 56% when the outside temperature dropped from −2.8 °C to −25.6 °C.

Table 14. Data from wheel temperature detectors for 5 prior westbound grain trains, 01 to 03 February 2019

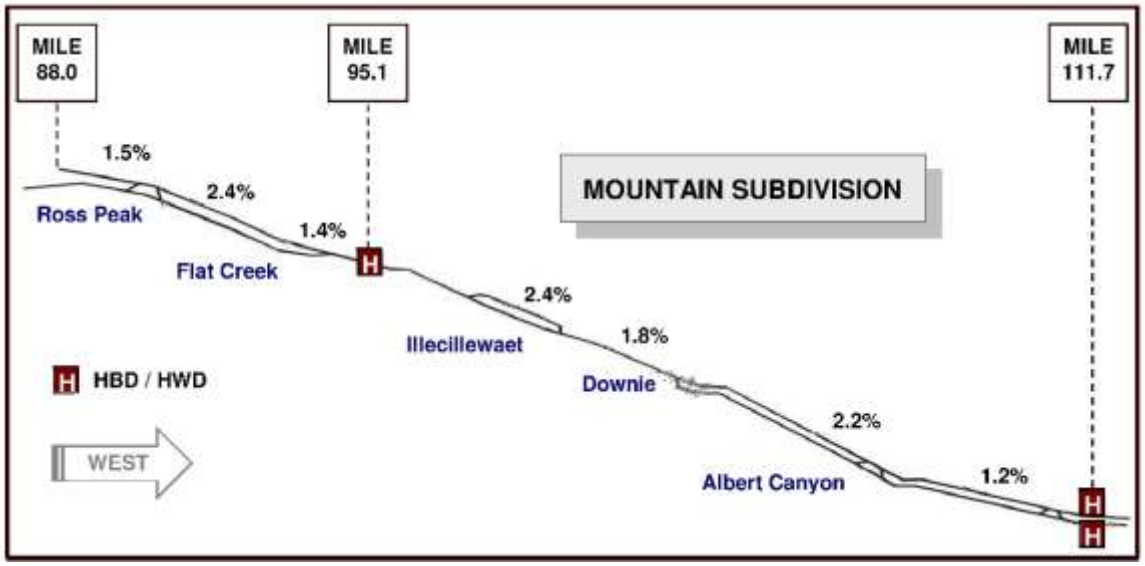
Date	Time	Ambient temperature (°C)	Train	Speed (mph)	Number of locomotives	Cars	Average wheel temperature (°F)	Number of cold cars (%)
2019-02-01	2106	−2.8	301-296	8	3	114	209.9	25 (22%)
2019-02-02	1339	−2.2	303-578	13	3	112	238.5	28 (25%)
2019-02-02	1931	−17.8	301-436	10	3	108	160.8	49 (45%)
2019-02-03	1037	−25.6	303-676	14	3	110	133.7	62 (56%)
2019-02-03	1103	−25.6	303-698	11	3	111	157.0	61 (55%)

1.19.3 Automated train brake effectiveness study

In 2008, CP began an automated train brake effectiveness (ATBE) study as a means of exploring ways of using WTD technology to identify cars with ineffective brakes on trains in its closed-loop coal service. The work done by CP to use detectors to identify cars with brake system issues was novel in the industry at the time. The system looks at all the train wheels under braking conditions, identifies the normal range of temperature for the cars, and then flags those cars that deviate from the normal range, both hot and cold wheels. These cars are then inspected for stuck or ineffective brakes.

CP coal trains originate in south-eastern BC and travel north to Golden, BC, located around Mile 35 on the Mountain Subdivision. From Golden, trains travel westward and CP used the WTDs at Mile 95.1 and Mile 111.7 on the Mountain Subdivision for this study (Figure 28).

Figure 28. Mountain Subdivision wheel temperature detector sites used in the automated brake effectiveness study on coal trains (Source: A. Aronian, M. Jamieson, and K. Wachs, "Automated Train Brake Effectiveness Test Process at Canadian Pacific", proceedings of the ASME/ASCE/IEEE 2012 joint rail conference, Philadelphia, Pennsylvania [17-19 April 2012])



Note: Detector sites at Mile 95.1 and Mile 111.7 (denoted by H) have both hot box detector and hot wheel detector capability.

On the Mountain Subdivision, the train air brakes will initially be applied to control train speed around Mile 89 and the car wheel temperatures will start to increase. By the time a train passes by the Mile 95.1 detector, the brakes will have remained applied for about 20 minutes and the wheel temperatures will have stabilized. The Mile 111.7 detector site is located about 16.6 miles further away, at which point the air brakes will have remained applied for an additional 40 to 45 minutes. Overall, a train will normally have the air brakes applied for well over one hour while descending the 20 miles of sustained mountain grade.

In 2011, CP received an exemption from TC to test its ATBE technology within its closed-loop coal operations in Canada.[70] The technology allowed more timely and targeted maintenance practices, which contributed to an overall improvement of coal train air brake performance.

In 2015, TC, the National Research Council of Canada (NRC) and CP initiated a joint research project to assess ATBE as an alternative to or in combination with the No. 1 brake test. The ATBE research examined wheel temperature data from a series of WTDs located at the bottom of long descending grades, where prolonged air brake applications are required to control train speed.

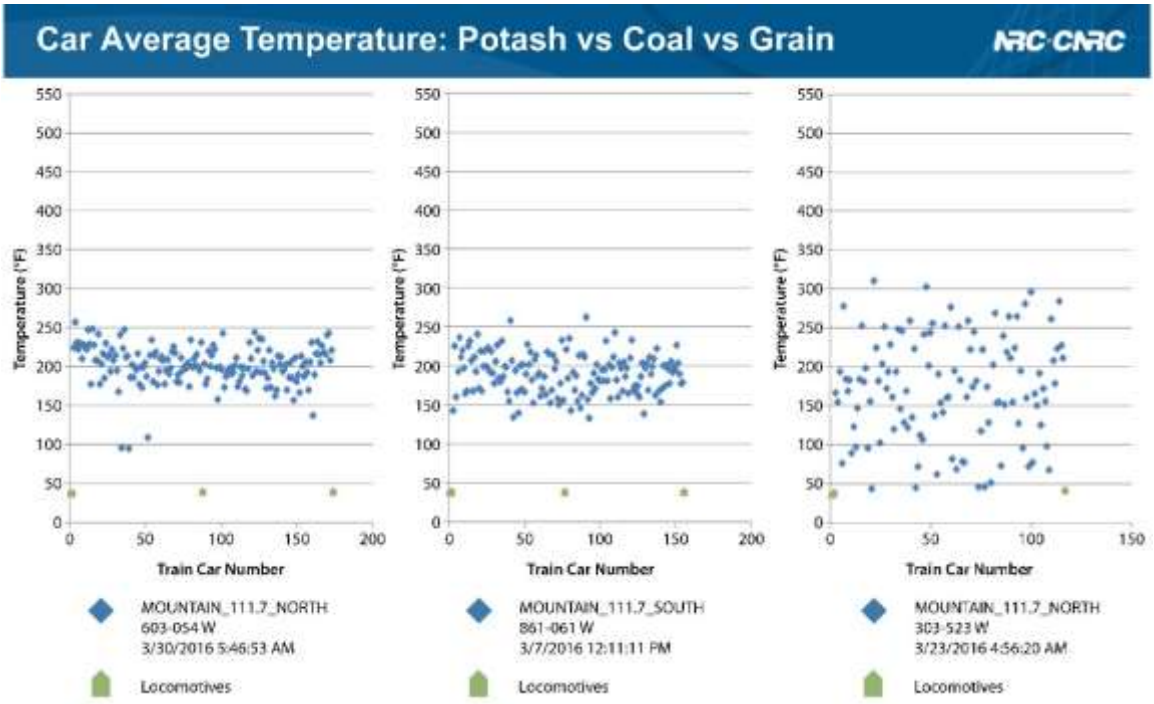
A preliminary scoping study[71] was conducted to test whether the NRC could replicate CP's coal fleet results using the same datasets, and to test the methodology on other bulk

70 Minister of Transport, *Notice of exemption pursuant to section 22 of the Railway Safety Act, chapter R-42* (17 June 2011).

71 National Research Council of Canada, *Preliminary Analysis of CP Wheel Temperature Data and Test Plan* (15 July 2016).

commodity train types: potash and grain unit trains. Average car temperature readings (the average temperature of the 8 wheels on a car) for the coal and potash trains showed similar clustering of temperature data. The grain unit train data showed a lower average temperature and greater temperature variation (Figure 29), mostly due to the disparities between the cars (braking system type, age, etc.).

Figure 29. Temperature distribution for potash, coal and grain unit trains (Source: National Research Council of Canada)



In 2016, preliminary research[72] results showed that, compared with other car types, the grain cars had a higher number of cold wheels while braking. Subsequently, as part of an independent research initiative, a comparison of ATBE data and No. 1 brake test results was conducted on a sample of 44 grain trains, each with an average of 112 rail cars per train. ATBE testing identified 695 cars with inoperative brakes (14% defect rate) while the No. 1 brake test identified 5 cars (0.1% defect rate).

A random sampling of 14 of the cars identified by the ATBE testing was sent for an ASCT and inspection. All of the cars in the sample that were identified with ineffective brakes by the ATBE method failed the ASCT.

The final ATBE report was issued by the NRC on 04 October 2018.[73]

72 National Research Council of Canada, *Preliminary Analysis of CP Wheel Temperature Data and Test Plan* (15 July 2016).

73 National Research Council of Canada, *Automated Test Brake Effectiveness (ATBE) Test Technology Demonstration and Assessment* (04 October 2018).

1.19.3.1 Applying the automated train brake effectiveness methodology to grain trains

At the time of the occurrence, CP had a waiver from TC authorizing the use of ATBE to assess the effectiveness of the brakes, which was applicable to the coal fleet exclusively. Therefore, there were no formalized criteria to set specific thresholds for identifying grain cars that deviate from the normal range of wheel temperature. Consequently, a slightly different approach was required to assess and categorize the wheel temperature data for the cars on the occurrence train.

Coal cars and grain cars are similar in terms of loaded weight and braking characteristics. For instance, on the occurrence train, each loaded grain car weighed 129 tons on average, while a loaded coal car weighs about 143 tons on average, a difference of only 10%. The tons per operative brake characteristics of the occurrence train were also quite similar to a typical loaded coal train.

These similarities provided the rationale for adapting the coal train ATBE methodology to grain cars.

The ATBE methodology uses train average temperature and standard deviation (SD)[74] as criteria to identify cold cars. Therefore, these values were calculated for the 112 cars on the train based on WTD data collected at Mile 95.1 and Mile 111.7 in the last 2 weeks of January 2019 (Table 15).

Table 15. Highest, lowest, and average car temperatures, with standard deviation, of the 112 cars on the occurrence train at Mile 95.1 and Mile 111.7 in the last 2 weeks of January 2019

Wheel temperature detector site	Car temperature (°F)			
	Highest	Lowest	Average	Standard deviation
Mile 95.1	295.3	26.3	149.7	65.7
Mile 111.7	283.8	23.0	159.2	62.7

In terms of overall air brake performance of a train, the most representative metrics in Table 15 are the overall average temperature and the SD. The average temperature and the SD values need to be correlated with values that are considered to represent acceptable braking performance for the conditions under which the data were obtained. Typically, train-specific results would be compared and ranked against a large representative baseline sample population of similar trains. However, there were no ATBE data for grain cars, and hence data from coal trains were used.

As shown in Table 15, an average temperature of 159.2 °F and an SD of 62.7 °F were obtained at the detector site at Mile 111.7 of the Mountain Subdivision. In comparison, WTD

[74] Standard deviation is a measure of the spread or variation of the data from the mean (average value). When data are more homogenous (less variation and more bunched and closely fit to the average), the standard deviation is smaller.

data presented in the ATBE paper[75] showed an average wheel temperature of 242 °F and an SD of 50 °F for loaded coal trains going over the same detector.

The ATBE rules at CP considered a coal car to have ineffective brakes if the temperature of one wheel was less than or equal to

- 70 °F, and
- 3 SDs from the overall average wheel temperature for the train.

However, the criterion of less than 3 SDs would give a negative threshold value in the case of the cars that comprised the occurrence train, due to the low average car temperatures and the large spread of temperatures between cars, as compared to the WTD data for coal trains. Consequently, for the purposes of this investigation, a car average temperature threshold of 1.5 SDs from the average is more meaningful and provides reasonable representation of the braking performance. The use of 1.5 SDs is one of the methods recommended by the NRC in its preliminary scoping study of ATBE. For the occurrence train, 1.5 SDs from the overall average wheel temperature corresponds to 65.2 °F.

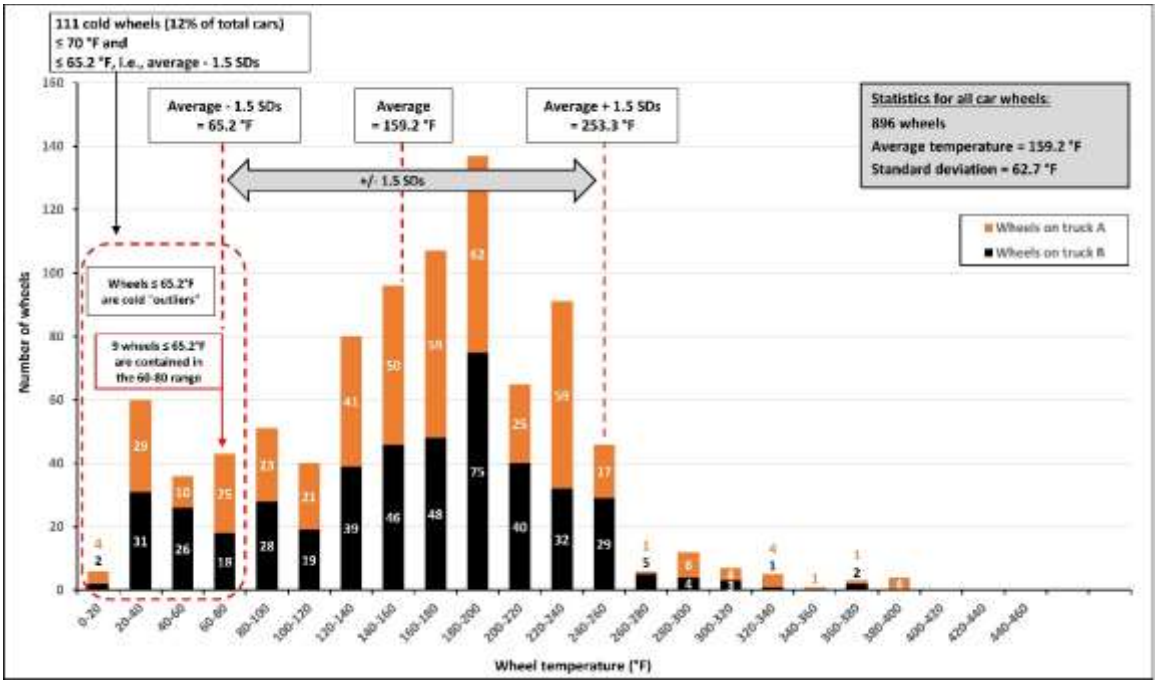
Using the modified criteria (70 °F and 1.5 SDs), the analysis of the entire temperature dataset collected at the Mile 111.7 site determined that 111 wheels (12% of the total 896 wheels) were cold.

Figure 30 is a histogram of the wheel distribution by temperature range for all 896 wheels, based on data obtained from the WTD at Mile 111.7 of the Mountain Subdivision. The large double-headed arrow shows the band of temperatures that are within 1.5 SDs (i.e., 94.1 °F) on either side of the average wheel temperature (i.e., 159.2 °F).

In this figure, wheels below 80 °F (145 wheels) are shown in the dashed rectangular box on the left. Of these, 111 met the criteria for cold wheels (less than 70 °F and 1.5 SDs, i.e., 65.2 °F).

[75] A. Aronian, M. Jamieson, and K. Wachs, "Automated Train Brake Effectiveness Test Process at Canadian Pacific", proceedings of the ASME/ASCE/IEEE 2012 joint rail conference, Philadelphia, Pennsylvania, 17-19 April 2012.

Figure 30. Wheel distribution by temperature range for the cars on the occurrence train, based on the data obtained from the detector at Mile 111.7 (Source: TSB)



1.20 Brake shoe friction fade

The investigation considered the possibility of brake shoe friction fade playing a role in the occurrence.

The friction between the brake shoe and the wheel tread is critical to maintaining the required brake retarding force. The brake shoe coefficient of friction depends on several factors such as shoe surface condition, the rotational speed of the wheel, applied braking force, and duration of the brake application. Contaminants such as snow and ice can reduce the coefficient of friction. Brake shoe friction fade, also known as friction fade, can also alter this coefficient of friction, resulting in a degradation of retarding force.

When the automatic brake is applied, heat is generated at the brake shoe/wheel tread interface. The amount of heat generated is proportional to brake horsepower (BHP),[76] which itself is proportional to speed and brake retarding force. Heavier cars need a higher retarding force for speed control when descending grades and therefore generate higher temperatures and are exposed to higher BHP.

When the thermal capacity of a brake shoe is exceeded for a sufficient length of time, the coefficient of friction may be lowered and friction fade may occur. When excessive heat build-up occurs, the coefficient of friction between a brake shoe and the wheel tread is lowered, leading to a significant loss of brake retarding force. Studies have shown that

[76] Brake horsepower equals the retarding force times speed, divided by 375. The retarding force is expressed in pounds and the speed in mph.

friction fade does not occur on 36-inch-diameter wheels, such as the wheels on the occurrence train, when BHP is 30 or less.[77]

1.20.1 Friction fade on the train

From Stephen (where the initial brake pipe reduction occurred) to the emergency application of the brakes, the speed of the train varied from 8 mph to 21 mph. Using the brake retarding force of 409 550 pounds calculated in section 1.15, and given a speed varying from 8 mph to 21 mph, the resulting BHP would have been between 10 and 26. Therefore, brake shoe friction fade was not likely a factor while bringing the train to a stop.

However, during the uncontrolled movement, the train accelerated to 53 mph. On those cars with effective brakes, the conditions necessary for friction fade would have existed: at this speed, the BHP would have exceeded 30 and could have reached as high as 67.

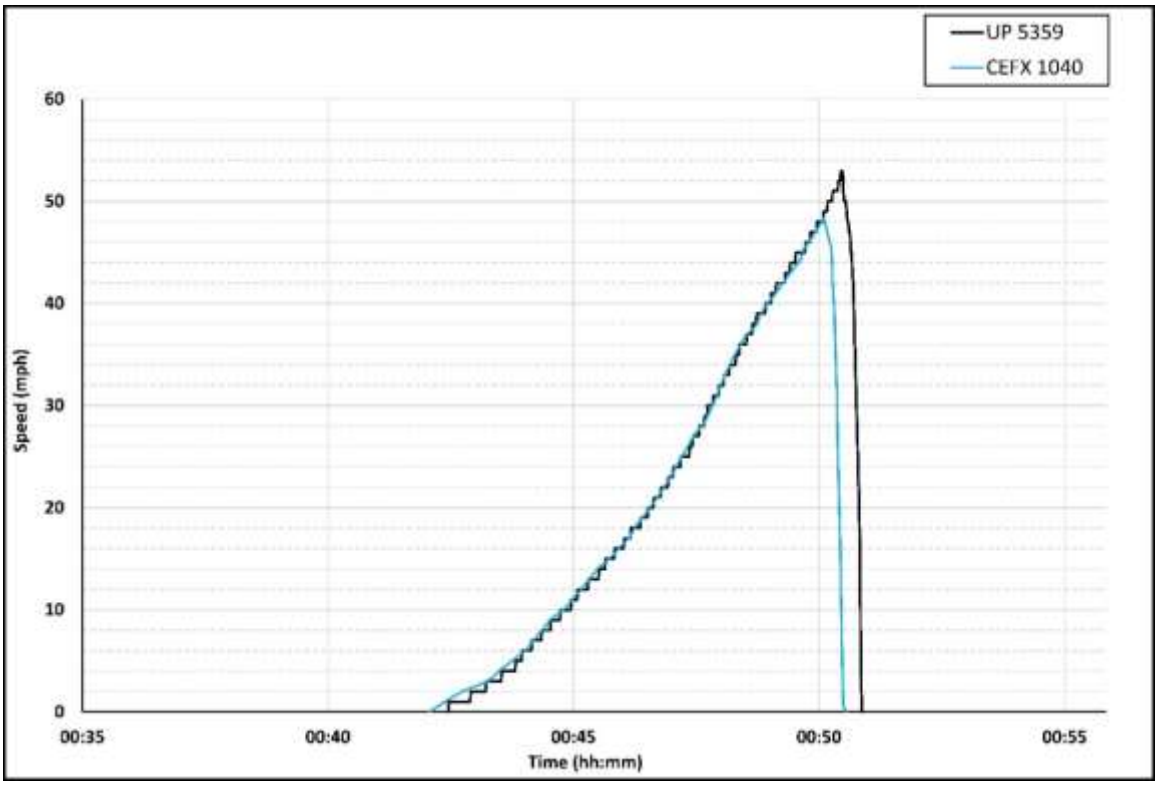
1.20.1.1 Speed profiles for the mid-train and tail-end locomotives

To further assess the impact of friction fade and how it contributed to the high rate of speed reached by the uncontrolled movement, the LER speed data were analyzed. The data represent the actual performance of the occurrence train in response to all of the specific operating conditions and dynamic variables acting on the train.

From the time the train started to roll on its own with the train brakes applied in emergency, up to when it derailed at a speed of about 53 mph, about 8.5 minutes elapsed. Figure 31 shows the LER speed profile plotted over this time period for the DP mid-train locomotive (UP 5359) and for the DP rear locomotive (CEFX 1040). The data from CEFX 1040 show that the speed of the rear locomotive dropped rapidly from about 48 mph to 0 mph when the rear portion of the train derailed. The data from UP 5359 show that, about 23 seconds later, the speed of the mid-train locomotive dropped rapidly from 53 mph to 0 mph as the middle portion of the train derailed. The data from the UP 5359 are shown as a stepped line because the LER captured speed as an integer value, whereas the CEFX 1040 LER captured speed to 1 decimal point.

[77] D. Chen, "Analysis of Brake Failure and Runaway Accidents in Mountain Terrain in Canada," *Proceedings of the 2013 ASME Joint Rail Conference*, Knoxville, TN, Report No. JRC2013-2402.

Figure 31. Speed profiles from the locomotive event recorder for the mid-train locomotive (UP 5359) and rear locomotive (CEFX 1040) during the uncontrolled movement (Source: TSB)



1.20.1.2 Friction fade for various accelerations

There are 3 key fundamental variables that significantly influence train speed during an uncontrolled movement: net grade force, net BCP, and brake shoe coefficient of friction. If the coefficient of friction degrades due to friction fade, the acceleration of the train will increase in proportion to the change in friction.

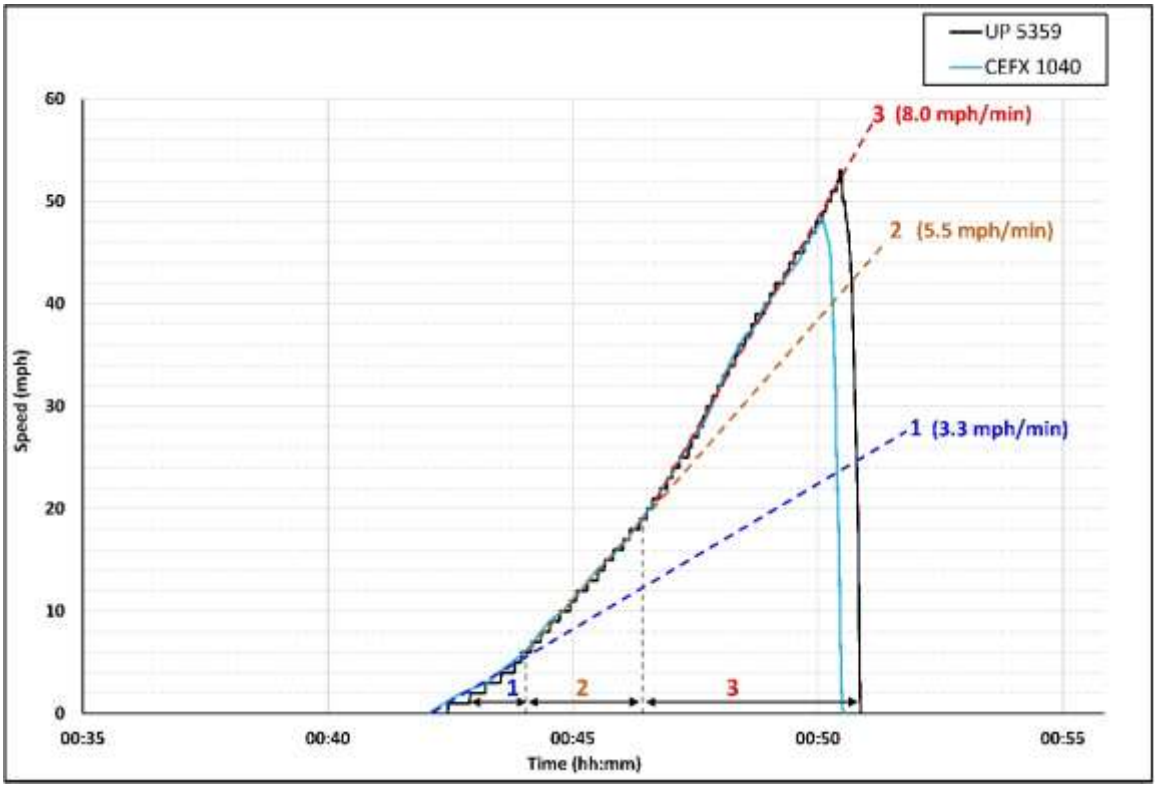
A close examination of the speed data shown in the graph above indicates that the rate of change in speed did not remain constant throughout the uncontrolled movement. To quantify this, 3 speed ranges were identified that each had a similar characteristic related to the rate of change in speed. For each range of speeds, an average acceleration in mph/min was calculated to determine how the acceleration changed during the uncontrolled movement. The results indicate 3 distinct changes in acceleration occurred, each specific to a range of speeds. Table 16 shows the 3 speed ranges and the calculated average acceleration of each speed range.

Table 16. Calculated accelerations for the 3 speed ranges that occurred during the uncontrolled movement (Source: TSB)

Speed range (mph)	Duration	Acceleration (mph/min)
0.0 to 6.1	2 mins 1 sec	3.3
6.1 to 19.1	2 mins 23 secs	5.5
19.1 to 53.0	4 mins 2 secs	8.0

The 3 accelerations are illustrated in Figure 32 as 3 trend lines superimposed on the speed plots from Figure 31.

Figure 32. Trend lines for the 3 distinct accelerations during the uncontrolled movement (Source: TSB)



The trend lines are labeled 1 to 3 and indicate a higher acceleration with increasing trend line number:

- Trend line 1 illustrates that the train had a constant acceleration of 3.3 mph/min during the first 2 minutes and 1 second while the speed increased from 0.0 mph to 6.1 mph. Throughout this speed range, a higher brake shoe friction is inherently expected. Thus, the acceleration trend line is not as steep as it is for trend line 2.
- Trend line 2 illustrates that the acceleration remained constant at 5.5 mph/min during the next 2 minutes and 23 seconds while the speed increased from 6.1 mph to 19.1 mph. In this speed range, the initial amount of brake shoe friction will decrease and, in the absence of friction fade, is normally expected to start levelling out and gradually reach a near constant amount of friction.

- Trend line 3 illustrates that the acceleration remained constant at 8.0 mph/min during the last 4 minutes and 2 seconds while the speed increased significantly from 19.1 mph to 53 mph, at which point the lead locomotive derailed. During this time, the wheel tread surface and brake shoe temperatures would have quickly increased, and continued to increase (on the cars that were providing a high brake shoe force, i.e., the cars with a BCP of 50 psi or more), creating the conditions that lead to friction fade.

The analysis results, in summary, show that friction fade would not have been a significant factor in the first 4.5 minutes during which the speed of the uncontrolled movement increased from 0 mph to 20 mph. However, once the speed of the uncontrolled movement reached about 20 mph, a significant (45%) increase in acceleration is evident, represented by the difference in trend lines 2 and 3. The faster rate of change in speed above 20 mph, acceleration trend line 3, is attributable to friction fade.

1.20.1.3 Calculated speeds for the train with and without friction fade

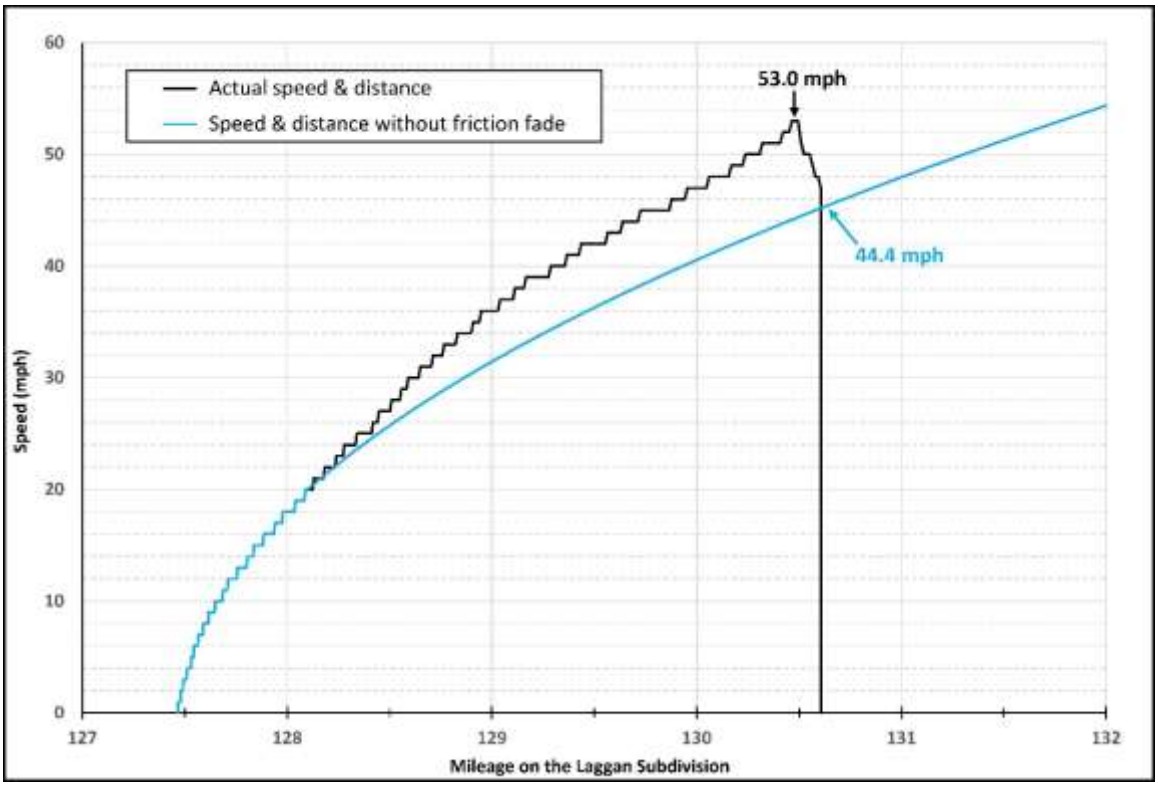
Additional analysis was done to estimate the speed trajectory that the uncontrolled movement would have followed had friction fade not occurred.

The investigation determined that the head-end portion of the occurrence train derailed within a few seconds after the mid-train portion. Thus, the maximum speed attained on the lead locomotive would have been similar to the maximum speed of the mid-train locomotive. Therefore, the LER speed and distance data from the mid-train locomotive was used as surrogate data to determine the speed of the lead locomotive from the time the train started to roll on its own, up to when it derailed at a speed of about 53 mph. Additionally, the theoretical speed of the train without friction fade, from 19.1 to 53 mph, was extrapolated by using the average acceleration of 5.5 mph/min calculated for the pre-fade speed range of 6.1 mph to 19.1 mph and applying it to the friction fade range.

Figure 33 shows speed versus distance plots for the lead locomotive with, and without, friction fade. The values for the actual speed and distance traveled were captured by the UP 5359 LER, but with the distance offset by 3349 feet to represent the actual location of the lead locomotive in the train (instead of the mid-train locomotive). As the figure illustrates:

- In this occurrence, the lead locomotive attained the maximum speed of 53 mph just before arriving at the Kicking Horse River bridge; friction fade was present and the train was accelerating at 8.0 mph/min.
- Had friction fade not been present, the increase in speed would have occurred at the slower rate of 5.5 mph/min, and the train's speed at the Kicking Horse River bridge would have been 44.4 mph, a reduction of 8.6 mph.

Figure 33. Calculated speeds for lead locomotive with and without friction fade (Source: TSB)



TSB calculations determined that the theoretical tip-over speed threshold on a 10° curve for a locomotive would be about 53.9 mph.

In the 02 December 1997 occurrence in which CP grain train No. 353-946 rolled uncontrolled at high speed on Field Hill, the 2 head-end locomotives and first car successfully negotiated the 9° curve at Mile 134.4 while travelling at about 47 mph.[78]

1.21 Car control valve malfunction in extreme cold temperatures

CCVs respond to decreases and increases in brake pipe pressure by applying and releasing/recharging the brakes of the cars they control. They are composed of 2 portions—a service portion and an emergency portion—as well as the pipe bracket where the portions are connected.

In extreme cold environments, the internal rubber gaskets and O-rings of the CCV can shrink, resulting in air leakage. Rubber components on older CCVs are especially susceptible to leaks in extreme cold temperatures.

1.21.1 Worn rubber seals

Teardowns and testing of selected service (NYAB DB-10) and emergency (NYAB DB-20 and Wabtec) portions from the January 2018 loss of control occurrence on CN's Luscar

78 TSB Railway Investigation Report R97C0147.

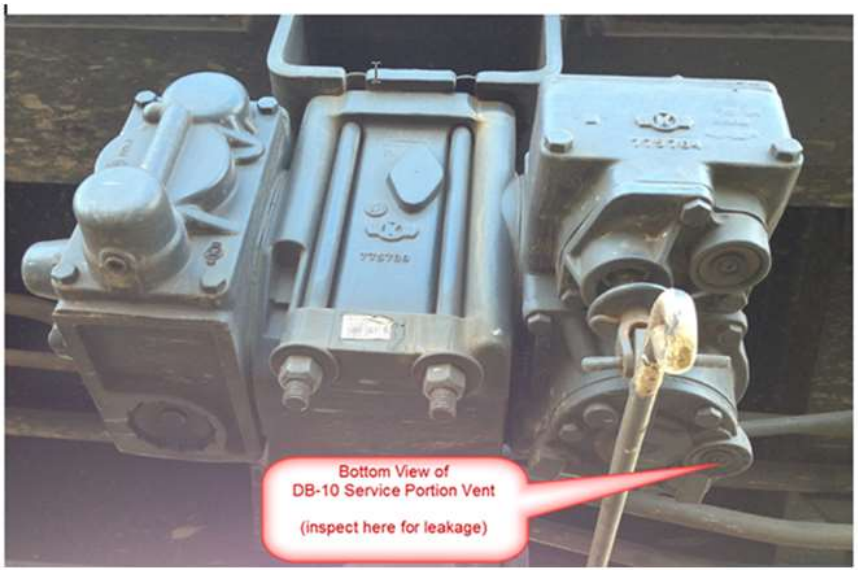
Industrial Spur[79] showed that worn and deteriorated rubber seals resulted in excessive leakage from the CCVs during extreme cold temperatures. The leakage resulted in the valves malfunctioning in response to service and emergency brake applications. These situations would only occur at extremely low operating temperatures. ASCTs conducted before the occurrence on those service portions during periodic testing and maintenance at temperatures above 4.4 °C (40 °F) had not identified valves that needed to be removed from service due to this condition.

1.21.2 DB-10 car control valves: Association of American Railroads circular letter

In 2013, NYAB investigated concerns regarding malfunction of the DB-10 service portion during brake applications in extreme cold ambient temperatures. The results of the investigation were issued in NYAB General Letter GL-490, *Cold Temperature DB-10 Auxiliary Reservoir Leakage*, dated 09 September 2013.[80] The letter was distributed to the rail industry by the AAR through Maintenance Advisory MA-143 (Circular Letter C-12027) on 25 October 2013. The circular is provided in Appendix F.

The NYAB general letter described a condition characterized by increased brake pipe air flow and auxiliary reservoir leakage after applying the brakes. The increased air flow was caused by leakage from the bottom cover exhaust port of the DB-10 service portion due to a worn rubber seal (Figure 34).

Figure 34. Bottom view of DB-10 service portion showing the bottom cover exhaust port (Source: New York Air Brake)



The following elements were outlined in the letter:

- Individual cars with excess leakage from the CCV might not be able to maintain a service brake application (potentially resulting in an undesired release).

79 TSB Rail Transportation Safety Investigation Report R18E0007.

80 New York Air Brake General Letter (GL) 490, *Cold Temperature DB-10 Auxiliary Reservoir Leakage*, Issue 01 (09 September 2013).

- The excess air flow may result in increased brake application on the rear portion of the train and result in dragging brakes.
- SCTs conducted at temperatures above 40 °F (4.4 °C) will not identify valves that need to be removed from service due to this condition.
- DB-10 CCV portions subject to high vibration in high-mileage service may develop low-temperature leakage at some point in time above 13 years of age.
- Trains experiencing high air flow with the brakes applied should be inspected for the presence of suspect DB-10 service portions.

On 01 November 2018, NYAB issued General Letter GL-49003 to reinforce the message presented in GL-490 and to include DB-20 emergency portions. The following revised corrective actions were recommended:[81]

- Any DB-10 service portion experiencing one or more of the described symptoms should be removed from service as soon as practical and refurbished per NYAB Maintenance Specification NYR-332.
- In addition, any DB-20 emergency portion partnered with the above removed DB-10 service portion that is original equipment manufacturer (OEM)/"clean, oil, test and stencil" (COT&S) date-coded the same age, is older or has no legible date code should be removed.

1.21.2.1 Canadian Pacific Bulletin CPSB048-13

After the distribution of NYAB General Letter GL-490 by the AAR through Maintenance Advisory MA-143 (Circular Letter C-12027), CP issued Bulletin CPSB048-13 in November 2013 as a maintenance advisory to train operations staff (Appendix G). The 1-page bulletin described functional behaviour related to specific control valve types in cold operations, with a discussion of symptoms and effects, stating in part,

> while enroute, should the Locomotive Engineer notice an increase in flow during a brake application, the crew must advise the RTC. The RTC will notify the Mechanical desk in the Operations Centre, who will arrange for an inspection of the train at a suitable Mechanical location.[82]

Bulletin CPSB048-13 was rescinded in 2014 as it had been issued to the crews for information purposes and it was not deemed necessary to reissue it or include its contents in the monthly operating bulletin indefinitely. CP still expected LEs to monitor brake pipe air flow regularly; however, they were no longer required to report applied air flow events to the RTC.

1.21.3 Weeper port issues on DB-10 service portions

Brake pipe leakage has a strong effect on the overall performance of train brake application signal propagation. For the brakes to apply, the brake pipe must be reduced by 1.5 to 2 psi

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81 New York Air Brake, General Letter (GL) 49003, *Cold Temperature DB-10 & DB-20 Auxiliary Reservoir*, Issue 03 (01 November 2018).

82 Canadian Pacific, *System Bulletin CPSB048-13* (18 November 2013).

below the auxiliary reservoir pressure. The brake pipe pressure drop must be sufficiently rapid and of sufficient magnitude to overcome the stabilizing effect of the weeper port. The weeper port is a very tiny passage in the service portion that connects the brake pipe to the auxiliary reservoir. It provides stability to prevent normal fluctuations and gradual changes in brake pipe pressure from triggering an undesired brake release. Furthermore, the brake pipe pressure reduction must generate a steady and appreciable pressure differential for it to be sensed by the CCV.

Modern electronic air brake systems on freight locomotives have made it possible to implement and control brake pipe reductions to within 1 to 2 psi. However, the same response is not necessarily available on the CCVs of older freight cars, which are still very common throughout North America.

Various field and laboratory tests were conducted by CCV manufacturers and the AAR between 2002 and 2004 to evaluate the response of some CCVs to small stepped brake pipe reductions.[83] The tests indicated that 1 psi stepped brake pipe reductions following a minimum brake reduction resulted in almost no additional BCP build-up on some freight cars. The tests also incorporated a few minutes of wait time between each stepped reduction, to give enough time for the CCVs to respond to the brake pipe reductions. Most cars did not respond to the incremental 1 psi brake pipe pressure reductions, and the dwell time between reductions also resulted in the auxiliary reservoir pressure being depleted into the brake pipe through the weeper port. As a result, no additional BCP developed during the stepped reductions and through the incremental depletion of the auxiliary reservoir pressure.

These tests showed that a train operating with a series of such CCVs would not achieve expected brake performance and an increase in retardation in response to small incremental stepped brake pipe pressure reductions. The CCV design most susceptible to this condition was the one that included a DB-10 service portion manufactured by NYAB before 2005. In 2005, the AAR Specification S-464 was changed to address this issue on new and reconditioned service portions.[84] Therefore, the condition would only be present on DB-10 service portions that had not been reconditioned since then. In the occurrence train, 47 grain cars were equipped with NYAB's DB-10 service portions, 27 of which (24% of the train consist) had old units that were never reconditioned.

1.21.4 Examination of the train's car control valves

Overall, 86.6% of the portions were recovered from the wreckage and were examined. Due to the extensive damage sustained by the derailed cars and their rolled-over positions at the derailment site, only 25% (49 of 194) of the examined portions were matched to the car on which they were installed at the time of the occurrence.

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83 R. Gayfer, "Performance Characteristics of AAR Pneumatic Brake Systems to Small Brake Pipe Reductions," presented at the Air Brake Associations Conference (2002).

84 Association of American Railroads, *Manual of Standards and Recommended Practices*, Section E: Brakes and Brake Equipment, Specification S-464: Test Rack, 150-Car, Performance Testing Procedure of freight control valves, (updated in 2005).

1.21.4.1 Make and model of car control valve portions

The recovered portions originated from 2 main manufacturers—Wabtec and NYAB (Table 17). There were 3 Wabtec models: ABDX, ABDW and ABD. The ABDX service portion is the newest valve model and was introduced in 1989,[85] while the ABDW emergency portion was introduced in 1976.[86] The 3rd model of Wabtec valves was the ABD model, introduced in 1962.[87] The NYAB portions were the DB-10 service portion and the DB-20 emergency portion that were approved by the AAR in the early 1990s.

Table 17. Examined brake valve portions by make and model

Make	Model	Number of examined portions	Percentage of all examined portions
Wabtec	ABDX	42	21.7
	ABDW	13	6.7
	ABD	51	26.3
	Total Wabtec	106	54.6
NYAB	DB-10	47	24.2
	DB-20	41	21.1
	Total NYAB	88	45.4

1.21.4.2 Date of manufacture

None of the CCV portions had any direct stencil providing information about their age or date of manufacture. Just over 60% (119 of 194) of the recovered valve portions had legible serial numbers. Less than 25% of the recovered Wabtec portions had OEM identification tags (OEM ID tags).

AAR data show that only 30% of the valves in the railway industry are currently bar-coded and entered in the AAR database. The AAR issued new requirements in 2016 to have bar codes on each valve portion to indicate the date of manufacture and of last reconditioning.

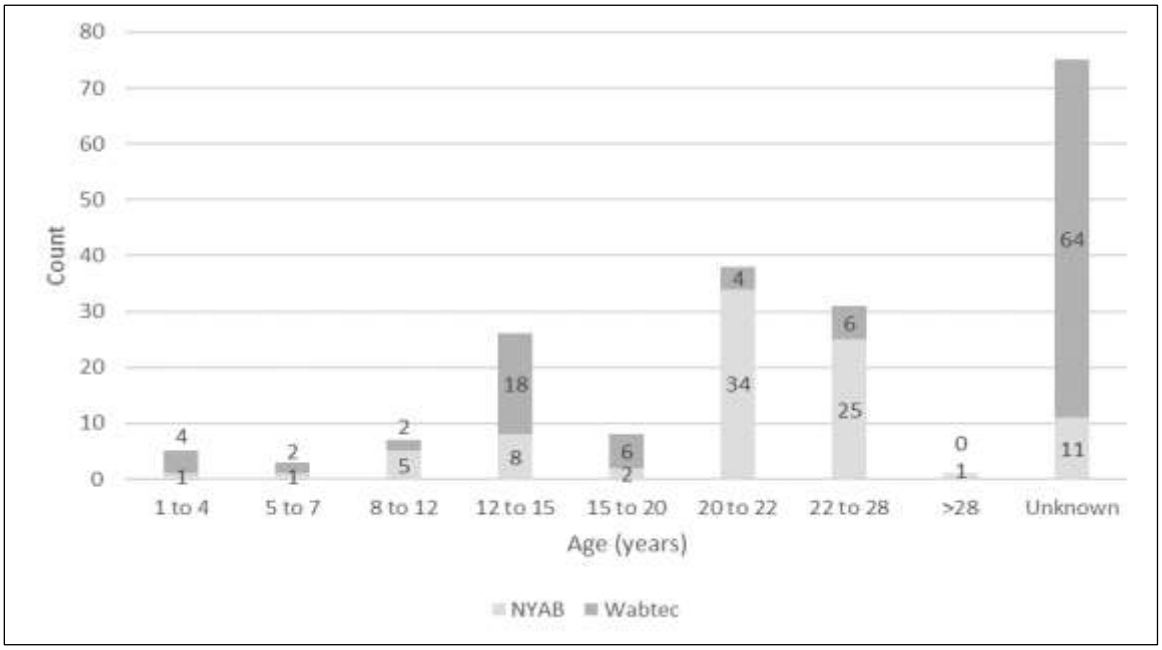
According to the age ranges provided by the manufacturers, 78 portions on the occurrence train with known dates of manufacture were older than 15 years (Figure 35). Wabtec introduced OEM ID tags and serial numbers only after 1996, which suggests that the Wabtec portions with no OEM ID tags were likely manufactured prior to that date. When the Wabtec portions with no OEM ID tags are added to the 78 portions mentioned above, the total number of portions older than 15 years is 142 (63% of the total).

85 W. Middleton, R. Morgan and R. Diehl, *Encyclopedia of North American Railroads* (Indiana University Press, 2007), p. 1099.

86 Ibid.

87 Ibid.

Figure 35. Distribution of the control valve portions by age and manufacturer (Source: TSB)



1.21.4.3 Date of last reconditioning

About 46% of recovered portions (89 units) had no information concerning their last reconditioning COT&S dates. Out of the valves manufactured by Wabtec, 40 portions (38%) had not been reconditioned over the last 15 years.

The train consist included 47 grain cars equipped with NYAB DB-10 service portions, of which 36 were manufactured before 2005, including 27 (24% of the train consist) that were never reconditioned.

Maintenance requirements for CCVs at the time of the occurrence were condition-based, where the cars were required to undergo an SCT test at least every 60 months[88] using an automated or a manual SCT device. Cars that failed this SCT required CCVs to be replaced based on the type and nature of the failures. Previously, CCVs were required to be reconditioned or replaced on a time-based regime. In the 1930s, this interval was every 3 years. It gradually increased to 16 years between the 1960s and the late 1980s. It was eventually eliminated in the 1990s[89] and replaced by the AAR condition-based replacement policy.[90]

88 Association of American Railroads, *Field Manual of the AAR Interchange Rules*, Rule 3: Testing of Air Brakes.

89 K. Carriere, "Initiatives in Braking Maintenance Methodology," presented at the Canadian Air Brake Club – Western Chapter (03 February 2020).

90 Association of American Railroads, Circular Letter c-7777 (20 December 1991).

1.21.5 Actions taken by the Association of American Railroads

Following a 10 January 2018 occurrence at Luscar Industrial Spur in Leyland, Alberta, in which a freight train rolled uncontrolled while proceeding down a mountain grade,[91] and in response to a number of other occurrences in Canada and the U.S., the AAR looked into the issue of leakage from older CCVs in extreme cold temperatures.

The AAR determined that old rubber parts inside CCVs cannot be depended upon to prevent leakage in extreme cold temperatures. As a result, the AAR has defined conditions under which CCVs should be replaced due to their age and exposure to service conditions in cold temperatures. Circular Letter C-13556 was issued to that effect on 30 April 2020, seeking industry comments, with a target implementation date of 01 July 2020. This new requirement applies to freight cars with CCVs older than 13 years since their last COT&S date, which will be working north of the 37th parallel during winter months. The AAR has also designated a new and unique repair code (WMC 1K) to identify the replacement of such over-age CCVs.

The entire text of the July 2021 revision is listed as follows:

> […]
>
> 2. When Car is on Shop or Repair Track for Any Reason
>
> a. Vacant
>
> 3. As Noted Below:
>
> a. Service and/or emergency portion control valves with a manufacture or recondition date (whichever is later) of 13 years may be renewed, and if over 14 years must be renewed for over age cause on a car if:
>
> (1) The car will be part of a unit train service carrying coal, grain, High Hazardous Flammable Class 3 Commodity, or Toxic Inhalation Hazard (TIH/PIH) service; and
>
> (2) Operates any part of its route in territory above the 37th parallel for any length of time within the date range of November 1st thru April 1st
>
> (a) Car does not need to be operating north of the 37th parallel at the time of renewal
>
> (b) Renewal may occur at any point throughout the year[92]

The issue of renewing older NYAB's DB-60 CCVs was introduced as a bill by the U.S. House Committee on Transportation and Infrastructure (T&I) in 2020, and was folded into the *Moving Forward Act*. The bill called for trains operating north of the 37th parallel to renew any DB-60 CCV manufactured before 01 January 2006. The requirement would have come into effect on unit trains starting on 01 August 2022, and on all other merchandise trains starting on 01 August 2024. The bill called for the U.S. Government to track the progress of

91 TSB Rail Transportation Safety Investigation Report R18E0007.

92 Association of American Railroads, *Field Manual of the AAR Interchange Rules* (July 2021), Rule 4.A.2-3.

phasing out these brake valves and the number of trains still operating with them.[93] After the January 2021 change in U.S. Administration, this bill was no longer in motion, but it had gained high importance for the AAR to implement changes to the Field Manual Rule 4, to require time-based renewals of old CCVs in unit train operation.

1.22 Comparison between the recovered cars and the derailed cars

Some of the fundamental statistics (age, CCVs, maintenance history, WTD data) between the 13 recovered cars and the 99 derailed cars[94] were compared to determine to what extent the test results of the 13 recovered cars could represent the braking performance of train 301-349 as it operated through Partridge at the time of the occurrence.

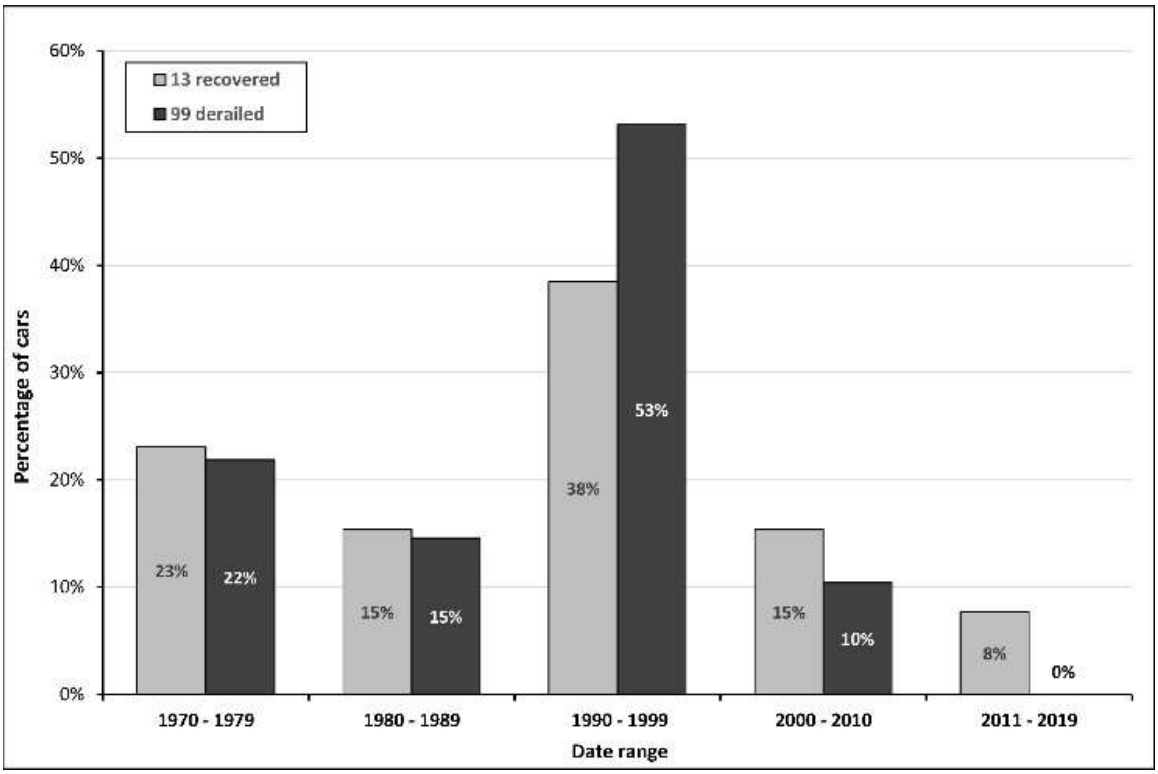
As Figure 36 shows, the recovered cars were similar in age to the derailed cars. This was confirmed by an independent-samples Student's t-test, which showed that there was no significant difference in the ages of recovered cars (M=26.1 years, SD=12.8 years) and derailed cars (M=27.9 years, SD=10.1); t (107)=0.602, p = 0.549.[95]

93 J. Marsh, "Putting the brakes on brakes," FreightWaves, (05 July 2020) at https://www.freightwaves.com/news/putting-the-brakes-on-brakes (last accessed on 02 August 2021).

94 Although 2 cars on the occurrence train had their air brakes cut out, these cars had operative air brakes during their previous loaded trip west to Vancouver. The 2 cars were included for analytical purposes and comparison with the 13 recovered cars, given that they provided additional data points in terms of fundamental statistics (age, maintenance history, CCV, WTD data).

95 A Student's t-test is a statistical test of the equality of the means (M) of 2 groups. The t-statistic is a measure of the difference between 2 group means. The further the t-statistic is from zero, the lower the probability that it could occur by chance. By scientific convention, if the probability (p) of a result is less than .05 (i.e., it falls in the most extreme 5% of the t-distribution), it is accepted as a meaningful result (i.e., it is statistically significant).

Figure 36. Age of derailed and recovered cars from the occurrence train (Source: TSB, using data from the Universal Machine Language Equipment Register (UMLER) database, maintained by the Association of American Railroads)



1.22.1 Car control valves

Of the 13 recovered cars, 4 were equipped with NYAB DB-10 service portions. One of those 4 cars had the DB-10 service portion replaced in 2010. The other 3 cars (23% of the total recovered cars) were susceptible to leakage; 1 had a 12-year-old valve and the other 2 had DB-10 service portions that had not been reconditioned in the last 13 years.[96]

Similarly, 47 grain cars in the train were equipped with NYAB DB-10 service portions, of which 27 (24%) had old units that were never reconditioned.

Of the 13 recovered cars, 5 (38%) were equipped with the oldest version Wabtec ABD service portions. Similarly, 51 cars out of 112 cars (45%) in the train were equipped with ABD service portions.

1.22.2 Wheel temperature data

Data from the Mile 111.7 WTD for the 13 recovered cars and the 99 derailed cars destroyed in the derailment were compared. Their summary statistics are presented in Table 18, and a histogram of the wheel distribution by temperature range for both groups of cars is shown in figures 37 and 38.

96 These 2 cars had a proper brake application response during the outdoor tests; however, the outside temperature was not as cold as the day of the occurrence.

Independent-samples Student's *t*-tests were conducted to compare individual wheel temperatures of the 13 recovered cars and the 99 derailed cars at 2 locations (Mile 95.1 and Mile 111.7). Mile 95.1 wheel temperatures were not significantly different for recovered cars (M=160.7, SD=67.7) compared to derailed cars (M=148.2, SD=73.7); t (894)=1.634, p = 0.103, nor were Mile 111.7 wheel temperatures significantly different for recovered cars (M=160.1, SD=62.7) compared to derailed cars (M=159.1, SD=71.4); t (894)=1.634, p = 0.103. These results demonstrate that individual wheel temperatures of recovered cars were not significantly different from those of the derailed cars.

Table 18. Summary wheel temperature statistics for the 13 recovered cars and the 99 derailed cars

Rail cars	Average wheel temperature (°F)	Standard deviation (°F)	Total wheels	Cold wheels
13 recovered cars	160.1	57.9	104	13 (13%)
99 derailed cars	159.1	63.6	792	99 (13%)

Figure 37. Wheel distribution by temperature range for the 13 recovered cars (Source: TSB)

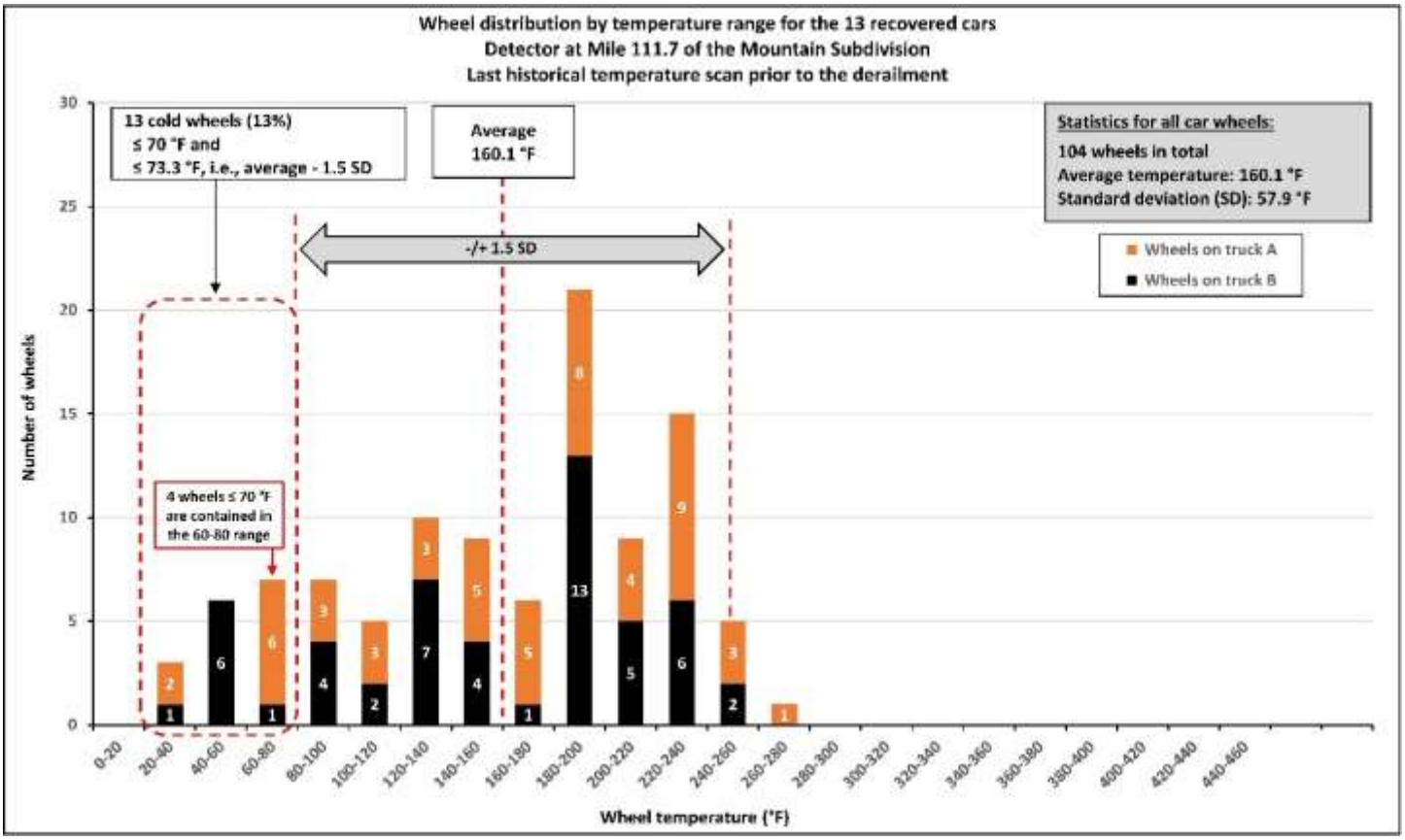
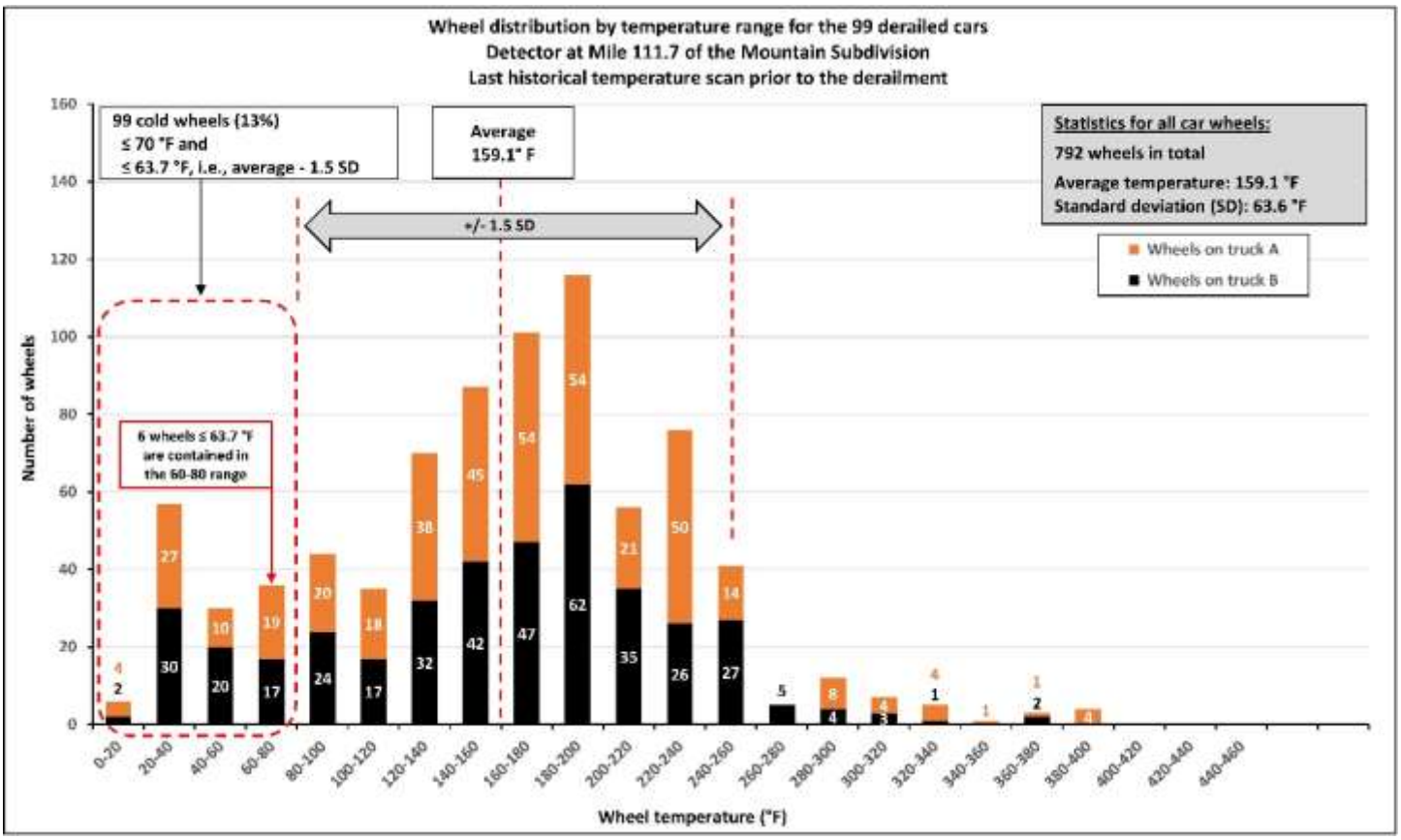


Figure 38. Wheel distribution by temperature range for the 99 derailed cars (Source: TSB)



Taken together, these tests and observations of the fundamental car characteristics (age, maintenance history, CCVs, WTD data) demonstrate that the 13 recovered cars are representative of the cars on the entire train.

Due to the strong interdependence between air pressure losses and temperature, the brake cylinder leakage rate when the WTD data were obtained (with an ambient temperature between −0.5 °C and −3.9 °C) is lower than the rate that would have existed on the occurrence train when the ambient temperature was between −20 °C and −28 °C. Therefore, the brake performance of the train while it was operating through Partridge would have been more degraded than suggested by the WTD results.

The Banff test results from the 13 cars were obtained in temperatures similar to that of the accident. In addition, the ASCT results on the 13 cars provide an accurate representation since they were conducted outdoors, during the night, and in extreme cold temperatures (ambient temperature in the same range as the night of the occurrence). All of the cars failed the SCT for various causes related to cold temperature leakages and malfunctions. As equipment and temperature were not different from occurrence conditions, the test results were statistically extrapolated to determine the most likely braking performance (with confidence intervals) of the occurrence train.

Results of the service brake application tests conducted in Banff on the 13 recovered cars revealed that the probability of a car having deficient braking due to inadequate BCP was p = 0.46 [95% confidence interval of 0.19 to 0.73]. According to that confidence

interval, it was 95% probable that between 19 and 73 cars of the 99 derailed cars had deficient braking. Adding the 6 recovered cars with deficient braking to that range yields a 95% probability that between 25 cars and 79 cars of the 112-car train had deficient braking due to inadequate BCP after 19 minutes of the Banff test conditions, with 52 cars being the most likely number of cars with deficient braking. This number of cars with deficient braking explains why the train's speed could not be maintained at or below the maximum allowable authorized speed of 15 mph when descending Field Hill.

1.23 Developments in freight train brake technology

Many technological advancements have been developed and are available to North American railways to enhance train brake performance. The Class I railways have been receptive to assessing these advancements, but have not fully implemented them. At the time of the occurrence, there were no regulatory requirements for their implementation. Key emerging technologies are listed below.

1.23.1 Automatic parking brakes

Automatic parking brakes are an alternative to hand brakes; one of their greatest advantages is that they require no human intervention. Two major brands of automatic parking brakes are available on the market today: NYAB's ParkLoc brake cylinder and Wabtec's APB (automatic park brake).

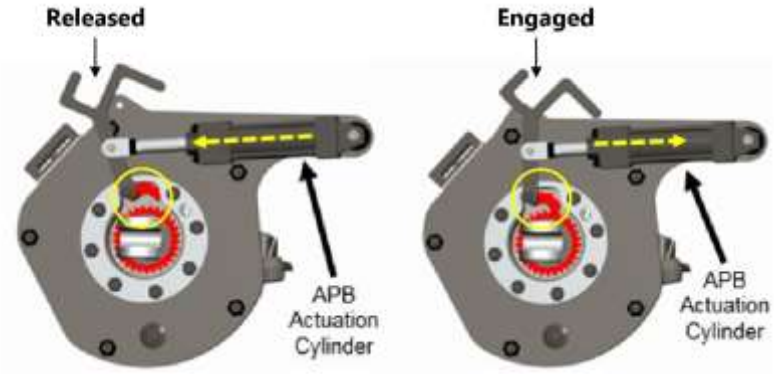
Automatic parking brakes are brake cylinders equipped with an automatic, mechanically operated latch that locks and retracts the brake cylinder piston as needed depending on the pressure in the brake pipe.

When the brake pipe pressure is depleted (e.g., after a penalty or an emergency brake application), the system automatically locks the brake cylinder piston in the extended position, thereby retaining the brake force. The brake pipe pressure thresholds that trigger this feature vary between models, but usually automatic parking brakes engage when the pressure is in the 10 to 20 psi range.

Once the brake pipe pressure increases again (in the range of 40 to 45 psi depending on the model), the system automatically releases the lock and retracts the brake cylinder piston, which releases the brake force. It is also possible to manually disengage the lock, regardless of the pressure in the brake pipe, to drain the car's air pressure for maintenance or repairs.

Figure 39 illustrates the basic functionality of Wabtec's APB design. The image on the left shows the APB in a released state, with the latching mechanism disengaged. The image on the right shows the APB in the locked, mechanically held state.

Figure 39. Diagram of TMX cylinder showing the APB automatic parking brake released (left) and engaged (right) (Source: Wabtec, with TSB annotations)



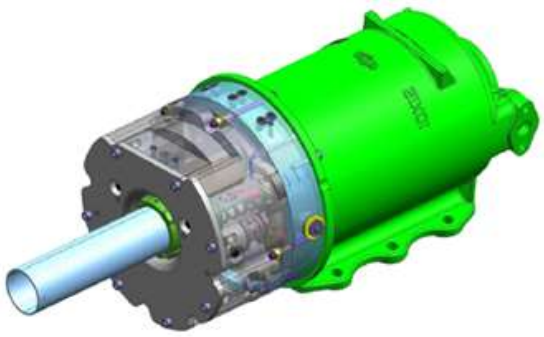
Automatic parking brakes can be configured for use on both truck-mounted and body-mounted brake systems, and they can be retrofitted on existing freight cars with no need to make modifications to the air brake system.

Figure 40 shows NYAB's ParkLoc brake cylinder configured for use on a truck-mounted brake system on Wabash National freight cars. Figure 41 shows the ParkLoc brake cylinder configured for use on a standard body-mounted brake system as a retrofit solution.

Figure 40. ParkLoc brake cylinder configured for use on a truck-mounted brake system for Wabash National freight cars (Source: New York Air Brake)



Figure 41. ParkLoc brake cylinder configured as a retrofit for a body-mounted brake system (Source: New York Air Brake)



Wabtec's APB is an integrated add-on to the non-pressure head of truck-mounted and body-mounted brake cylinders (Figure 42). The latching function is operated by a secondary mechanism that requires only 2¼ cubic inches of air to activate. The APB can also be integrated with a body-mounted brake cylinder (Figure 43).

Figure 42. Wabtec APB (Source: Wabtec)

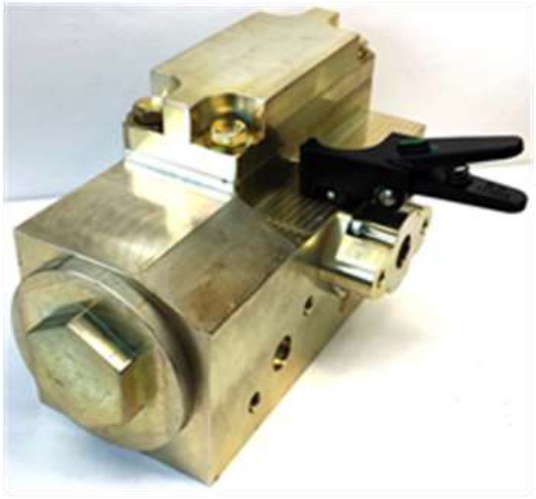


Figure 43. Wabtec APB integrated with a body-mounted brake cylinder (Source: Wabtec)



Wabtec also manufactures a pneumatic control module for the APB (Figure 44). The pneumatic control is a manifold connected to the APB, brake pipe, and auxiliary reservoir on each car for manual control of the automatic air brake.

Figure 44. Control module for Wabtec's APB automatic parking brake (Source: Wabtec)



In this design, a ball valve can be manually closed on each car to isolate the APB from the brake pipe, thereby maintaining the parking brake in the applied state while the brake pipe is recharging. It has a similar function as retainers on traditional hand brakes, with some notable exceptions:

- The pneumatic control module retains the full brake force, contrary to traditional retainers which retain only 20 psi of brake pipe pressure when set to the HP position.
- These modules also do not release the brake force even when the BCP becomes depleted due to leaks.

1.23.2 Brake cylinder maintaining feature

The QSLV on all AAR-approved CCVs is equipped with a pressure maintaining feature. This feature ensures that the pressure in the brake cylinder remains between 8 and 12 psi, even when brake cylinder leakage exists. The QSLV replenishes any air that leaks from the brake cylinder by diverting brake pipe air into the brake cylinder. This feature, however, is effective only as long as air pressure exists in the brake pipe; it is not available during an emergency brake application, because applying the brakes in emergency depletes the brake pipe pressure completely.

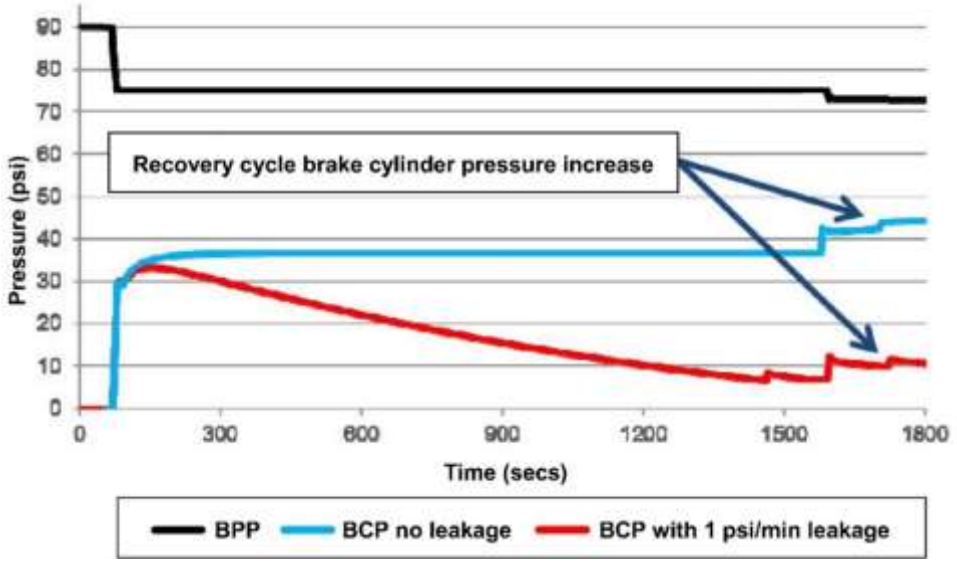
Since 2014, CCVs have included a brake cylinder maintaining (BCM) feature in addition to the QSLV pressure maintaining feature. BCM is available not only for minimum brake applications, but also up to a full-service brake application.[97] The extended operating range of BCM offsets air leakage from the brake cylinder by diverting brake pipe air into the brake cylinder to maintain it at the targeted BCP levels in response to automatic brake applications.

According to AAR Standard S-486, the maximum acceptable limit of brake cylinder leakage during an SCT is 1 psi/minute.[98] Figure 45 illustrates BCM activation at this leakage rate for an automatic brake application of 15 psi brake pipe reduction. It shows that, without BCM, the initial BCP of 37 psi will leak down to the 8 to 12 psi maintained by the QSLV after 20 minutes (1200 seconds) of a sustained brake application on a long descending grade. The BCM feature will restore the pressure leaked off from the brake cylinder to its target level of 37 psi by using brake pipe air to offset the leakage.

97 A. Aronian and L. Vaughn, "NYAB Brake Cylinder Maintaining Trials Update", presented at the Air Brake Association Conference, Minneapolis, Minnesota (October 2015).

98 Association of American Railroads, *Manual of Standards and Recommended Practices*, Standard S-486: Brakes and Brake Equipment Code of Air Brake System Tests for Freight Equipment – Single Car Test (revised 2018).

Figure 45. Activation of brake cylinder maintaining feature for a 1 psi/minute leakage rate of brake cylinder pressure (Source: A. Aronian & L. Vaughn, "NYAB Brake Cylinder Maintaining and Field Trials Update", presented at the Air Brake Association Conference, Minneapolis, Minnesota [October 2015])



By maintaining the target BCP to compensate brake cylinder air pressure loss due to leakage, BCM improves the overall brake efficiency of the train's automatic brakes in extreme cold temperature. Improved brake efficiency, in turn, will improve train handling and maintain a uniform brake application to balance the train's speed on descending grades, even when cars have brake cylinder leakage. Field testing has proved that brake cylinder leakage of up to 2 psi/minute (double the maximum acceptable limit stated in AAR Standard S-486) can be mitigated by the BCM feature.

1.23.3 Dynamic brake retention on distributed power remote locomotives

DB holding is a feature that allows the DB on a locomotive to continue working in the event of an emergency brake application.

On territories where locomotives with DB are required, these locomotives must have the DB holding feature. TC's *Railway Locomotive Inspection and Safety Rules*, Part III: *Locomotive Inspection Requirements* sets forth the requirements for locomotive DB functionality. Section 21 (Brake System) states, in part,

> 21.2 A railway company shall file with the Department all territories on which locomotives with dynamic brake are required, as well as related instructions. This information shall be filed with the Department no later than ninety days from the approval of these rules.
>
> [...]
>
> 21.4 All existing freight locomotives intended to operate in territory as set out in subsection 21.2 shall be modified prior to December 31, 2010 to incorporate a dynamic brake holding feature if not already equipped.
>
> 21.5(a) Dynamic brake is considered a supplemental braking system however company instructions and procedures shall ensure that the friction brakes

> are sufficient by themselves, without the aid of dynamic brakes, to stop the train safely under all operating conditions.[99]

In addition, the AAR Specification S-5018 "Dynamic Brake Control" contains the following requirements with respect to DB brake holding in the context of emergency brake applications:

> 3.4 Locomotives with dynamic braking must be equipped with a dynamic brake-holding feature that operates in the following manner:
>
> 3.4.1 Maintains dynamic braking during a penalty or an emergency air brake application.[100]

The above requirements are considered to have been met when locomotives in the head-end locomotive consist, not subject to restrictions on the number of braking axles, have DB holding. There is no requirement for DB holding on mid-train or tail-end remote locomotives.

On older DP systems, DB holding is not available on remotely controlled locomotives that are connected to the lead locomotive via radio communication DP protocol. However, GE-Wabtec, the manufacturer of DP systems, has developed a DB retention feature, similar to the DB holding feature on lead locomotives, that retains full DB capability when the remote locomotives go into emergency. This feature provides added safety for high-tonnage trains following emergency brake applications made when descending heavy and mountain grade territories.

The DB retention feature was not available on the 2 DP remote locomotives on the occurrence train, UP 5359 and CEFX 1040. Consequently, after the train was stopped in emergency at Partridge, the DB system on these locomotives was disabled. In lieu of DB holding, the DP system applied up to 45 psi of independent BCP when the emergency brakes were applied on the remote locomotives. This is a design characteristic of DP systems, intended to avoid thermal mechanical damage to the locomotive wheels when bringing the locomotives to a stop in emergency. Full independent BCP (72 psi) is used only when the locomotive is stationary.

1.23.4 Electronically controlled pneumatic brake system

Since the inception of the air brake system in the 1870s, the brake technology on freight trains has improved in performance and design, but the basic principle has remained the same: the application and release of the train's air brakes is achieved through reductions and increases in the brake pipe pressure.

In the early 1990s, the AAR began looking into newer, more advanced brake technology, including the electronically controlled pneumatic (ECP) brake system.

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99 Transport Canada, *Railway Locomotive Inspection and Safety Rules* (03 July 2015), Part III: Locomotive Inspection Requirements, section 21: Brake System.

100 Association of American Railroads, Specification S-5018: Dynamic Brake Control (adopted 1971, last revised April 2020), section 3.4.

On a train equipped with ECP, a brake controller is installed on the locomotive, and a car control device (CCD) is installed on each car. The brake controller interprets the brake application and release commands that it receives from the locomotive's automatic brake handle and then sends an electronic wireline signal to the CCD on each car through an intra-car cable that runs the length of the train.

On the cars, the CCD interprets the signals and activates the CCV, thereby allowing air from the reservoir to travel into the brake cylinders, which provides the braking force. On an ECP system, the brake pipe's sole purpose is to supply air to the reservoirs on the cars; it remains in a continuously charging state. This is different from the role of the brake pipe in standard pneumatic brake systems, in which reductions in brake pipe pressure are used to apply the brakes by activating each car's CCV.[101]

ECP systems offer several advantages over standard pneumatic brake technology, including the following:

- **Near-instantaneous transmission** of brake application and release commands through the use of wireline electronic signals.
- **Remote monitoring of the brakes on each car from the locomotive cab**. At any given time, the locomotive operator can view the status of each individual car and its braking performance on the operator display screen.
- **Automatic car cut-out**: the system automatically senses cars that are not responding as expected to the braking commands and cuts them out.
- **Automatic penalty brake application**: when the ECP system detects that 15% or more of the cars on the train have ineffective brakes, it automatically makes a penalty brake application, which brings the train to a full stop. When this occurs, the brakes can be recovered only by setting off the bad order cars.[102]
- **Graduated brake release**. This feature allows the LE to reduce brake retardation effort without fully releasing the brakes and re-applying them (release and catch); this facilitates the task of properly balancing train speed during a continuous service brake application or when recovering from an emergency brake application.
- **Constant replenishing** of the brake pipe and car reservoirs.
- **Continuous brake cylinder pressure control**, which is the same as the BCM feature on cars not equipped with ECP.

ECP systems were nearly made mandatory by the U.S. Federal Railroad Administration in 2015. These systems would have been required on all unit trains carrying dangerous goods. However, this initiative was dropped in 2018 due to high initial implementation costs and

101 A. Aronian, K. Wachs, S. Bell et al., "Electronically-Controlled Pneumatic (ECP) Brake Experience at Canadian Pacific", presented at the 2011 International Heavy Haul Association Conference, Calgary, Alberta (19 June to 22 June 2011).

102 A. Aronian, K. Wachs, S. Bell et al., "Electronically-Controlled Pneumatic (ECP) Brake Experience at Canadian Pacific", presented at the 2011 International Heavy Haul Association Conference, Calgary, Alberta (19 June to 22 June 2011).

logistics issues regarding the interoperability of trains that have ECP systems with trains that have pneumatic conventional brakes.

However, runaway trains are still occurring, sometimes with fatal consequences. In addition to this occurrence, 5 other significant runaway train events have occurred in North America between 2017 and 2019 that would have been preventable with ECP.

In Canada:

- On 10 January 2018, Canadian National Railway Company freight train L76951-10, proceeding southward on the Luscar Industrial Spur, leaked compressed air from the air brake system in extreme cold temperature conditions and started to roll uncontrolled while descending the mountain grade to Leyland, Alberta. The train reached a maximum speed of 53 mph before it came to a stop at Mile 0.5.[103]

In the U.S.:

- In 2019, BNSF Railway trains in North Dakota ran away on 2 separate occasions (Dengate and Hettinger). In those occurrences, the cars were not able to propagate an emergency brake application after a pull-apart, which resulted in an uncontrolled movement.
- On 04 October 2018, a Union Pacific train with a pinched air hose ran away in Granite Canyon, Wyoming; it descended a steep grade uncontrolled at 50 mph before colliding into the back of a stationary train, resulting in 2 fatalities.
- On 02 August 2017, a 178-car CSX train ran away uncontrolled near Hyndman, Pennsylvania due to an undesired release of the brakes. After the train was brought to a stop and the emergency brake application was recovered, the train proceeded but subsequently derailed and released dangerous goods which caught fire.

1.23.5 High-capacity fade-resistant brake shoes

When the automatic brake is applied, heat is generated at the brake shoe/wheel tread interface. The amount of heat generated is proportional to BHP. Heavier cars need a higher retarding force for speed control when descending grades and therefore generate higher temperatures and are exposed to higher BHP.

When the thermal capacity of brake shoes is exceeded for a sufficient length of time, or when the speed of the train is increasing at a high rate, friction fade can occur and reduce the coefficient of friction. For a train to descend a long mountain grade at constant speed, any reduction in brake retarding force at those wheels where brake shoe friction fade is occurring must be compensated for by increasing the braking effort. The application of more brake shoe force can cause the wheels to be subject to even more friction fade due to the additional braking effort imposed upon them. This cycle of friction fade and higher brake force inputs will result in a spiralling condition of overall degradation of the retarding force available to control the train speed.

[103] TSB Rail Transportation Safety Investigation Report R18E0007.

AAR Specification M-926, first issued in 1964, is the standard used to manufacture high-friction composition brake shoes for rail cars. The grade test specified in M-926 requires brake shoes to be exposed to a 1450-pound net shoe force (equivalent to a BCP of 22 psi) at 20 mph for 45 minutes and produce a minimum retarding force of 400 pounds. Although a BHP value is not specified in this specification, the retarding force is equivalent to a coefficient of friction of no less than 0.28 and BHP of 21 at a temperature of 600 °F (316 °C).

Following 2 catastrophic runaway derailments in the United States in 1997 and 2000, a Brake Shoe Fade Task Force[104] was established to develop an appropriate grade test to address the higher shoe forces present on today's heavier cars. The task force proposed a heavy grade test where the net shoe force input was increased well beyond the level indicated in AAR Specification M-926. Fade-resistant brake shoes with improved performance were designed to the proposed specification. This led in 2008 to a new AAR Specification, M-997 (*Brake Shoe - High Friction Tread Conditioning, High Capacity*). It specifies a new heavy grade test requirement, which requires that rail car brake shoes retain a minimum of 600-pound retarding force when exposed to a 2250-pound brake shoe force (equivalent to 34 psi BCP) for 45 minutes at a speed of 20 mph. The retarding force is also equivalent to a minimum coefficient of friction of 0.27, but for a much higher brake force input.

Since 2008, 2 brake shoe manufacturers in North America have offered this type of high-capacity, fade-resistant brake shoe: Railway Friction Products (a subsidiary of Wabtec) and Anchor Brake Shoe Company LLC (a subsidiary of NYAB). These brake shoes are known today as Cobra TreadGuard (RFP-Wabtec) and WheelSaver (Anchor-NYAB).

The AAR has not mandated the use of high-capacity fade-resistant brake shoes on all 110-ton heavy axle load freight cars, but requires that they be replaced in kind when a freight car is so equipped.[105] North American railways have slowly[106] adopted these high-capacity brake shoes, partly because they cost more than the M-926 standard brake shoe. Other considerations include commodities being transported, territory of operation, and equipment utilization. Nevertheless, car owners and railways that operate in mountain grade territory can benefit from these fade-resistant brake shoes for their unit train operations because they add another level of safety.

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104 Composed of representatives of several North American railroads, the Transportation Technology Center, Inc., the AAR, and wheel and brake shoe manufacturers.

105 Association of American Railroads, *Field Manual of Interchange Rules* (2019), Rule 12, Section B: Correct Repair Chart for Brake Shoes.

106 A review of car repair billing records by the AAR for the years 2016 to 2020 indicates that the usage of Tread Guard and Wheel Saver brake shoes was as follows, expressed as a combined percentage of total brakes shoes applied:
2016: 22.3%
2017: 27.2%
2018: 27.7%
2019: 28.3%
2020: 30%

The TSB has previously discussed the use and benefits of fade-resistant brake shoes in its investigation report following an occurrence on 29 June 2006 in which a CN freight train locomotive and a loaded car of lumber derailed after losing control while descending the grade near Lillooet, BC.[107] In that investigation, it was noted that an AAR Standard for fade-resistant brake shoes had been established and fade-resistant brake shoes had been developed, but their use had not been made mandatory. Therefore, the Board was concerned that heavier cars would continue to be operated with the older specification brake shoe. The AAR has not yet adopted a framework providing for the mandatory use of high-capacity brake shoes for equipment in interchange service.

1.24 Training

1.24.1 Requirements and regulations

1.24.1.1 *Railway Employee Qualification Standards Regulations*

In Canada, federally regulated railways must abide by the *Railway Employee Qualification Standards Regulations* (the EQS Regulations). These regulations, which came into force in 1987, establish the minimum qualifications for LEs, transfer hostlers, conductors, and yard foremen. They apply to all railway employees performing the duties of the specified occupational category.

The training and qualification issue was examined by the 2017 *Railway Safety Act* (RSA) review panel. Its report, entitled *Enhancing Rail Safety in Canada: Working Together for Safer Communities*, included the following observations:

> Although Transport Canada certifies aviation and marine crew members, there are no provisions for certifying railway employees or approving railway training programs. As such, each company is awarded considerable latitude in preparing and providing training and certification tailored to the specific needs of its employees. The Review heard from some Transport Canada inspectors that they occasionally note gaps in the consistency of training (e.g., knowledge) of railway personnel, and while CN and CP have taken steps to address training gaps through company training centres in Winnipeg and Calgary, further efforts could be made to strengthen training requirements of railway personnel. […][108]

The EQS Regulations require railways to file with TC a description of all employee training programs and subsequent changes related to each occupational category. Railways are also required to submit an updated report to TC on their employee training programs each year.

The training curriculum required for conductors and LEs includes the following:

- Regulations No. 0-8, *Uniform Code of Operating Rules*
- railway radio regulations
- dangerous commodities

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107 TSB Railway Investigation Report R06V0136.

108 Transport Canada, *Enhancing Rail Safety in Canada: Working Together for Safer Communities*: The 2017 *Railway Safety Act* Review (2018), section 2.2: Training Within the Industry, p. 33.

- train marshalling
- air brake systems and tests
- freight car and train inspections
- passenger evacuation procedures

For LEs, additional required training includes locomotive operation, air brake and train handling.

Although the EQS Regulations require railway companies to file with TC information on their employee qualification program and any changes made to the program, the filings can be in the form of a summary and do not necessarily include all course content. While TC may occasionally conduct a cursory review of company submissions, the regulations do not require TC to review the course content in detail or to approve it.

1.24.1.2 *Railway Safety Management System Regulations, 2015* and *Railway Rules Governing Safety Critical Positions*

Regulatory requirements for the training and certification of railway operating employees are specified in the *Railway Safety Management System Regulations, 2015* (the SMS Regulations). Sections 25 to 27 of the SMS Regulations require a railway company to have a process for managing knowledge:

> A railway company must establish a list setting out
>
> (a) the duties that are essential to safe railway operations;
>
> (b) the positions in the railway company that have responsibility for the performance of each of those duties; and
>
> (c) the skills and qualifications required to perform each of those duties safely.[109]

The SMS Regulations also require that railway companies include the following in their SMS:

- a plan for ensuring that an employee who performs any of the duties referred to in the list has the skills, knowledge and qualifications required to perform their duties safely
- a method for verifying that an employee who performs any of the duties referred to in the list has the skills, knowledge and qualifications required to perform their duties safely
- a method for verifying that a supervisor who performs any of the duties referred to in the list has the skills, knowledge and qualifications required to perform their duties safely

The TC-approved *Railway Rules Governing Safety Critical Positions* were developed pursuant to section 20 of the RSA. Section 3 of those rules states the following:

[109] Transport Canada, SOR/2015-26, *Railway Safety Management System Regulations, 2015*, subsection 5(1).

A "Safety Critical Position" is herein defined as:

1. any railway position directly engaged in operation of trains in main track or yard service; and
2. any railway position engaged in rail traffic control.

Any person performing any of the duties normally performed by a person holding a Safety Critical Position, as set out in section 3 above, is deemed to be holding a Safety Critical Position while performing those duties.[110]

1.24.2 Canadian Pacific training program

1.24.2.1 Training for conductors

CP's training program for new conductors consists of classroom training and on-the-job training; the classroom portion includes:

- 2 weeks of initial classroom training (general orientation and basic safety instructions);
- a critical task sign-off prior to field training (assessment conducted in the field to confirm that the trainee is physically able to perform critical tasks);
- 4 weeks of on-the-job training, including yard and road trips with a coach;
- 2 weeks of additional classroom training, where trainees receive comprehensive rules and instructions training on various subjects, including safe work procedures, CROR, company GOIs, and special instructions; and
- 2 weeks in a simulated environment where trainees practice applying rules and GOIs as well as crew resource management (CRM) principles.

Following the classroom training, conductor trainees begin the practical portion of the training program. During on-the-job training, qualified conductors coach and mentor the trainees on the rules and instructions pertaining to the work, and on the specifics of the yard or territory. The trainees then put into practice what they learn in the classroom. On average, trainees complete on-the-job training to proficiency over a 5-month period and become qualified once a company manager, who observes them in the field, deems them ready.

1.24.2.2 Training for locomotive engineers

Qualified unionized conductors can apply after a 2-year period to become an LE by taking the following additional training:

- 4 weeks of classroom training, including one week of a detailed review of CROR, safety, and general rules.
- On-the-job training, during which the trainees complete a number of training trips on various subdivisions with a supervising LE until they are proficient at train handling. These trips also help to familiarize the trainees with the subdivisions within their territory.

[110] Transport Canada, TC 0-17, *Railway Rules Governing Safety Critical Positions* (16 June 2000).

- 2 weeks of mechanical classroom training, including troubleshooting, air brake systems, train handling instructions, fuel conservation, track/train dynamics, and DP.

After 3 months of combined classroom and on-the-job training, employees are recalled for a final examination. They then resume on-the-job training until they qualify.

1.24.2.3 Supervisor qualification and training

Trainmasters, as first-line supervisors, assume the general supervision of LEs and conductors and oversee the day-to-day train operations on their assigned territory. Trainmasters usually come from a qualified railway position (often related to train operations), but it is increasingly common for candidates to be hired from outside the railway industry. They receive extensive training in railway operations, including conductor and LE certifications.

Many railway companies in North America, including CP, also employ road foremen. This is also a supervisory role, but with a focus on the technical aspects of train operations (train handling, air brake operation, train dynamics). Road foremen are experienced LEs with high technical and operational expertise. They are responsible for training, coaching, and evaluating the performance of LEs and conductors. They intervene in complex operational situations, such as emergency brake recovery on a mountain grade, to share their experience and knowledge and provide solutions.

The position of road foreman for the Calgary terminal was vacant from 2016 to 2018. The road foreman duties were transferred to the trainmasters; however, no special training was provided to bridge the technical gap and the difference in experience that existed between the 2 positions.

At the time of the occurrence, there was 1 person holding the title of road foreman at the Calgary terminal, but the incumbent 's technical expertise and experience were similar to those of a trainmaster.

1.24.2.4 Field Hill training and certification

After 2 occurrences on Field Hill—one in 1997 which resulted in an uncontrolled high-speed descent and the derailment of 66 cars[111] and one in January 1998 in which a freight train handling 112 cars ran uncontrolled between the Upper Spiral Tunnel and Field[112]—CP made modifications to the FHOP. CP later initiated changes to its training program for both conductors and LEs working on the Laggan Subdivision.

111 TSB Railway Investigation Report R97C0147.

112 TSB Railway Investigation Report R98C0001.

1.24.2.4.1 Field Hill certification for conductors

Operating in mountain grade territory can significantly alter the complexity of a conductor's duties, introducing additional cognitive demands.[113]

After the accident in 1997, CP developed a training program for conductors operating on Field Hill entitled *Canadian Pacific Railway Calgary Terminal Field Hill Simulator Training*. The program put an emphasis on mountain and heavy grade operations and included the following activities:

- the review of the FHOP, including requirements of CROR, GOI, and application of retainers and hand brakes;
- the review of emergency, recovery, and undesired release scenarios;
- 5 trips down Field Hill with a qualified conductor;
- participation in 5 simulation trips accompanied by a field placement coordinator, with evaluations signed by both the trainee and the coordinator after each trip;
- a test to ensure conductors understood required procedures; and
- a final trip down Field Hill with a placement coordinator who assesses whether qualification was met.

The duration of the training was approximately 2 months longer than the standard conductor training, and conductors who completed it successfully received a Field Hill certification.

The training program was significantly modified in 2017–2018; it was accelerated, as there was a greater demand for conductors due to increased traffic levels. The new requirements for a conductor to work on Field Hill, up to the time of the occurrence, were reduced to classroom review of the FHOP using job aids and track schematics. The simulation trips on Field Hill were removed. Conductors were no longer required to be Field Hill–certified.

1.24.2.4.2 Field Hill certification for locomotive engineers

LEs must be certified for the subdivision on which they operate. On the Laggan Subdivision, the certification for LEs requires approximately 3 extra months of training specifically dedicated to Field Hill operations. The training also includes 3 to 4 days with a trainmaster to practise and qualify in the following skills:

- ascending and descending the mountain grade of Field Hill
- performing "stop and go" scenarios at Partridge and full service "release and catch" at Cathedral, while maintaining proper control of the train

A checklist specific to Field Hill was developed in 1998 to be used in conjunction with the Locomotive Engineer Evaluation Form to reflect special requirements when evaluating the performance of LEs on Field Hill. These forms facilitate evaluation of LE proficiency in the use of air brakes and DBs, and are to be completed by a supervisor. After the compulsory

[113] H. Rosenhand, E. Roth, and J. Multer, DOT/FRA/ORD-12/13, *Cognitive and Collaborative Demands of Freight Conductors Activities: Results and Implications of a Cognitive Task Analysis* (United States Department of Transportation, July 2012)

trips are completed successfully, the trainmaster qualifies the LE, and the LE's training record includes the "Field Hill–certified" designation. This training and certification were still in effect at the time of the occurrence.

1.24.2.5 Training and experience of the inbound crew and trainmaster

1.24.2.5.1 Conductor

The conductor on the inbound crew qualified after 5 months of training. During the on-the-job training period, she performed mostly yard service shifts accompanied by a qualified conductor. In addition, she took 3 trips on Field Hill and had practised approximately 8 simulator trips, but none on Field Hill. During the classroom training, the FHOP and the use of retainers were discussed but the need to observe piston position was not included, nor was the setting of retainers reinforced by in-the-field practice.

On the day of the occurrence, the conductor and the LE discussed retainers and practised setting them while waiting in a siding at Keith. The conductor's training and experience did not lead to an awareness for the need to observe piston position while setting retainers, which would have provided an indication of which brake cylinder pistons were fully retracted and would not provide the desired brake force.[114]

1.24.2.5.2 Locomotive engineer

The LE on the inbound crew was hired in November 2005 and initially qualified as a conductor in May 2006. He started his LE training in January 2012 and qualified in August 2012. During his on-the-job training, he was taking 2 to 3 trips a week, coached by senior LEs. He had followed the program specifically designed for Field Hill operations and was Field Hill–certified.

1.24.2.5.3 Trainmaster

The trainmaster joined CP in 2008 as an RTC where he gained some preliminary experience dispatching the Laggan Subdivision during his first year of service. He qualified as a conductor in 2013 and as an LE in 2015. He became trainmaster in January 2016, after taking the managers' training programs. He was not Field Hill–certified. At the time of the occurrence, he had taken over 100 trips as an LE, most of them on mountainous territory on the Cranbrook and Windermere subdivisions, and had worked on the Laggan Subdivision as a conductor.

1.25 Coaching assessments and proficiency testing

CP regularly conducts coaching assessments (pre-qualification evaluations and field placement trips) on trainees and proficiency testing (efficiency tests and ride-along trips)

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[114] Brake cylinder piston position can provide a visual indication of whether the air brake is applied on a car. An extended piston signifies that there is sufficient pressure (i.e., 3 psi) to overcome the return spring. While setting retainers, observation of brake cylinder piston extension provides an indication that there is sufficient BCP to extend the piston. If the brake cylinder piston is not extended, there is no BCP on the car and setting the retainer would be to no advantage.

on qualified crew members to evaluate their skills in train operation and adherence to rules and procedures.

The investigation reviewed the results of the assessments and tests conducted for the members of the inbound crew.

1.25.1 Coaching assessments

Coaching assessments are performed as part of the training program, to evaluate the performance of trainees before they qualify for their respective positions.

1.25.1.1 Inbound locomotive engineer

Coaching assessments for the LE on the inbound crew were completed 12 times during his training in 2012. Of these assessments, 9 were pre-qualification evaluations and 3 were field placement trips. All were on the Laggan Subdivision.

After each pre-qualification evaluation, the accompanying evaluation officer (trainmaster or road foreman) completed a report that indicated the name of the officer and the LE trainee, the date, and the trip location. The report also provided a checklist of operational tasks covered in the evaluation, such as terminal preparation, switching en route, descending a heavy or mountain grade, and CRM.

A report was also completed by the LE instructor after each field placement trip. In these reports, the LE's performance for each evaluated operational task was rated from 1 to 4. A rating of 1 meant "needs improvement," a rating of 2 meant "developing," a rating of 3 meant "achieved standard," and a rating of 4 meant the task was not performed. The LE's performance for these tasks received an equal number of 2 and 3 ratings.

All reports for the pre-qualification evaluations and the field placement trips also contained constructive comments and indicated that the LE's performance on the evaluated tasks was satisfactory.

1.25.1.2 Inbound conductor

Pre-qualification evaluations for the conductor on the inbound crew were completed 26 times during her training in 2018. Out of the 26 evaluations, 3 took place while on trains operating westward on the Laggan Subdivision; the others took place either in yards or on the Red Deer Subdivision. Pre-qualification evaluations are not required to be conducted on a particular subdivision.

After each pre-qualification evaluation, the trainer completed a report which indicated the name of the trainer and the conductor trainee, the date, and the train number. The report also provided a checklist of operational tasks covered in the evaluation. For each operational task, the conductor trainee's performance was rated from 1 to 4. Eighty percent of the time, the conductor trainee's performance was rated as a 2. The evaluation form also included a comment section, which was filled out 42 percent of the time. None of the tasks rated or comments provided were related to conditions relevant to this occurrence.

1.25.2 Proficiency tests

There are 2 main methods of conducting proficiency tests for qualified crew members:

- **efficiency tests**, in which crew members are observed, usually from the ground, to assess their on-the-job performance and their adherence to regulations and safe work practices, and
- **ride-along trips**, in which a supervisor observes crew members while riding in the locomotive cab.

As part of proficiency testing, supervisors may also review event recorder downloads, monitor radio communications, and take radar speed measurements.

Supervisors conduct proficiency tests at random, except in situations where an employee is known to require more attention. For this reason, the number of tests that an employee receives can vary from year to year, and some employees could be tested significantly more often than others, if they happen to be on duty when the trainmaster is conducting tests.

1.25.2.1 Efficiency tests

CP's 2019 *T&E Manager Safety Accountabilities* document specifies that each trainmaster must conduct 10 efficiency tests per week, or 40 per month.[115] The document does not specify the number of efficiency tests to be taken for each supervised employee.

The results of the efficiency tests for the inbound crew are shown in tables 19 and 20. The investigation determined that failed tests were not assessing operational tasks relevant to the occurrence.

Table 19. Results of efficiency tests for the inbound locomotive engineer, 2012 to 2018

Year	Number of tests taken	Number of tests passed	Number of tests failed
2012	3	3	0
2013	40	31	9
2014	45	45	0
2015	34	31	3
2016	36	35	1
2017	29	27	2
2018	15	15	0

[115] Canadian Pacific, *T&E Manager Safety Accountabilities* (01 February 2019).

Table 20. Results of efficiency tests for the conductor, 2018 to 2019

Year	Number of tests taken	Number of tests passed	Number of tests failed
2018	30	28	2
2019	2	2	0

1.25.2.2 Ride-along trips

At CP, all active train and engine employees on the territory are expected to be accompanied by a supervisor for a train ride-along at least once every 12 months.

CP's 2019 *T&E Manager Safety Accountabilities* document, which was in effect at the time of the occurrence, specifies that trainmasters are required to ride with LEs and conductors to ensure crew proficiency and compliance 2 times per week or 8 times per month.[116]

The results of ride-along trips are recorded on trip evaluation reports. These reports include date, time, names of employee and officer, and test code. The performance of the employee is indicated as a simple pass or fail, based on a subjective assessment by the trainmaster; there are no additional comments that could indicate areas in which the employee's performance was especially commendable, or identify weaknesses and promote corrective measures.

From the time he qualified in 2012 to the day of the occurrence, the LE on the inbound crew was accompanied by a supervisor on 39 ride-along trips (Table 21).

Table 21. Number of ride-along trips taken by the locomotive engineer on the inbound crew from 2013 to the day of the occurrence

Year	Number of trips
2013	8
2014	11
2015	4
2016	5
2017	5
2018	6

From the time she qualified in 2018 to the day of the occurrence, the conductor on the inbound crew was accompanied by a supervisor on 9 ride-along trips.

The TSB requested the results of these trips, but CP was unable to provide them; the documentation stated that the results were "unknown."

116 Ibid.

1.26 Best practices in developing competence

The Rail Safety and Standards Board in the United Kingdom published a guidance document entitled *Good Practice Guide on Competence Development*.[117] The guide, developed in consultation with the railway industry, was intended to provide best practices for developing comprehensive systems to manage competence rather than simply ensuring compliance with regulations.

"Competence" refers to the overall ability to function effectively in a position and results from the combination of functional, technical, and non-technical skills. According to the guide, non-technical skills include situational awareness, decision making, and workload management, which have been shown to play a key role in incidents and accidents.

The Office of Rail Regulation in the United Kingdom published a guide entitled *Developing and Maintaining Staff Competence*. The guide recognizes that training programs should be sufficient to prepare individuals to handle expected operations and that experience, obtained under supervision, allows individuals to carry out progressively more complex tasks.

> Training and development seek to create a level of competence for the individual or team, sufficient to allow individuals or teams to undertake the operation at a basic level. Initially, this will be under direct supervision, which will become less direct. Over time, as knowledge and practical experience grow, operations can be carried out at a more complex level.[118]

The guide recognizes that competence development is an important contributor to managing risks, specifying that the first step in developing a competence management system is to identify activities that affect operational safety and that are critical for controlling risk. This makes it possible to identify a combination of risk control measures and to take actions to develop competence where it is required to manage risks.

1.27 Previous recommendation concerning employee qualifications

The 17 June 2016 occurrence at the Canadian National Railway Company MacMillan Yard in Vaughan, Ontario, involving an uncontrolled movement during remote control locomotive system operations, highlighted deficiencies in the EQS Regulations.[119] Following the TSB investigation into this occurrence, the Board recommended that:

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117 United Kingdom Rail Safety and Standards Board, Document RS100, *Good Practice Guide on Competence Development*, Issue 1 (March 2013).

118 United Kingdom Office of Rail Regulation, Railway Safety Publication 1, *Developing and Maintaining Staff Competence*, second edition (2007), p. 2.

119 TSB Rail Transportation Safety Investigation Report R16T0111.

the Department of Transport update the *Railway Employee Qualification Standards Regulations* to address the existing gaps for railway employees in safety-critical positions related to training, qualification and re-qualification standards, and regulatory oversight.

TSB Recommendation R18-02

In its January 2021 response to this recommendation, TC said that it was in the process of identifying amendments to the EQS Regulations, and that stakeholder consultations on the proposed amendments would be launched by March 2021. In March 2021, the Board assessed TC's response to Recommendation R18-02 as having **Satisfactory Intent**.[120]

1.28 Crew resource management

CRM is a method of making effective use of available resources (human, hardware, and information) to mitigate emergent threats, such as abnormal equipment function or lapses in human performance, by putting into practice technical proficiency, teamwork, situational awareness, communication, and personal assertiveness.

CRM focuses on providing crews with the interpersonal skills required to carry out their tasks safely: "CRM training typically consists of an ongoing training and monitoring process through which personnel are trained to approach their activities from a team perspective rather than from an individual perspective."[121]

Since 1998, the TSB has investigated 5 main-track train collisions in which the effectiveness of CRM practices was considered (Appendix H).

1.28.1 Crew resource management training in the rail industry

Significant safety benefits have been accrued in the aviation and marine industries with the introduction of CRM. Given the prevalence of human factors in rail accident statistics, CRM training could yield significant safety benefits in the rail industry as well.[122]

CRM training is aimed at reducing human factors-related accidents. For example, it can provide crews with strategies to improve communication and interactions in order to align mental models,[123] increase situational awareness, and counter the effects of limited resources available to problem solvers who are closest to the situation.

Following a 1998 collision between 2 freight trains, the U.S. National Transportation Safety Board recommended that a number of railway stakeholders, including the regulator,

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120 TSB Recommendation R18-02: Training and qualification standards for railway employees in safety-critical positions, at https://www.tsb.gc.ca/eng/recommandations-recommendations/rail/2018/rec-r1802.html (last accessed June 2021)

121 S. S. Roop, C .A. Morgan, T. B. Kyte et al., DOT/FRA/ORD-07/21, *Rail Crew Resource Management (CRM): The Business Case for CRM Training in the Railroad Industry* (United States Department of Transportation, September 2007), p. 3.

122 Ibid., pp. 4–8.

123 Mental models are internal structures developed based on several factors, including experience, knowledge, perception, and comprehension of external cues available in the work environment.

operators, industry associations, and labour organizations, collaborate to develop and require CRM training in the railway industry. That training would cover, at a minimum, crew member proficiency; situational awareness; effective communication and teamwork; and strategies for challenging and questioning authority in an appropriate manner.[124]

Subsequent to this recommendation, the U.S. Federal Railroad Administration, in cooperation with academic and industry partners, developed and piloted rail CRM training.[125] Initial assessment of the pilot training showed increases in knowledge and improved attitudes toward CRM principles.[126]

However, this type of training is not mandatory in either Canada or the U.S. A review of the adaptation of CRM principles outside of aviation in 2010 found that, in the North American railway industry, "interest in CRM training principles remains sporadic."[127] The review also described voluntary initiatives by specific railways to implement CRM training, as well as industry initiatives to develop training materials for operators to use. For example, the review indicated that CP implemented a CRM training program targeted at new-hire conductors and trainmen in 1999.

1.28.1.1 Crew resource management training at Canadian Pacific

CP was one of the early adopters in the railway industry of CRM training. Since 1999, employees assigned to operational roles have undergone mandatory training in CRM, either online or via an instructor-led course. The training consists of a 1-hour presentation during the first week of the classroom portion of the conductor program and is 1 of 11 modules presented on the same day. CP's 6-weeks training for new hires puts a special emphasis on CRM, and its principles and techniques are practised through simulations over a 2-week period. CP does not provide recurrent CRM training to its operating employees when they requalify. From CP's perspective, since CRM principles are used daily in operations, the subject does not require recurrent training.

As stated in the most recent version of the CP CRM training module, the material was developed to "…pull together all the resources available to create a process that supports appropriate changes in the application of rules, training, and operating practices."[128] The CRM training is divided into the following fundamental areas:

- human factors

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124 United States National Transportation Safety Board, Railroad Accident Report NTSB/RAR-99/02, Collision of Norfolk Southern Corporation Train 255L5 with Consolidated Rail Corporation Train TV 220 in Butler, Indiana, March 25, 1998 (1999), pp. 32–33.

125 C.A. Morgan, L.E. Olson, T.B. Kyte and S.S. Roop, DOT/FRA/ORD-07/03.I, *Rail Crew Resource Management (CRM): Pilot Rail CRM Training Development and Implementation* (Washington, DC: United States Department of Transportation, February 2007).

126 Ibid., pp. 22–32.

127 B.J. Hayward and A.R. Lowe, "The migration of crew resource management training," in: B.G. Kanki, R.L. Helmreich and J. Anca (eds.), *Crew Resource Management*, Second Edition (San Diego, CA: Academic Press, 2010).

128 Canadian Pacific, *Crew Resource Management* online training (835 V4E), September 2013.

- situational awareness
- technical proficiency
- communication
- teamwork

1.28.2 Applied crew resource management

At CP's operational level, the core of CRM is expected to be practised during job briefings, in which individuals discuss operational issues and work plans.

1.28.2.1 Crew resource management and communications

One of the core principles of CRM is effective communication among team members. Checklists standardize team communications by giving crew members an objective framework that provides:

- a standard foundation for verifying vehicle configuration that will attempt to counteract any reduction in the crew's psychological and physical condition;
- a sequential framework to meet internal and external operational requirements;
- mutual supervision (cross-checking) among crew members;
- the ability to dictate the duties of each crew member in order to facilitate optimum crew coordination as well as logical distribution of workload;
- an enhanced team concept by keeping all crew members in the loop; and
- a quality control tool by management and regulators over the crews.

Operator checklists are widespread across transportation domains, notably in air and marine modes.[129] However, checklists are not generally used in railway operations.

1.28.2.2 Crew resource management and situational awareness

People working in operational environments make decisions by building a mental model of their operational environment. This mental model is supported by an individual's situational awareness, which refers to "the perception of elements in the environment within a volume of time and space, the comprehension of their meaning, and the projection of their status in the near future."[130] Situational awareness is a critical component of decision making and involves information-processing stages at which shortcomings may occur. These shortcomings may result in an incomplete or inadequate perception of the situation.

Accurate situational awareness represents a defence against operational hazards in complex organizations like railways. Appropriate situational awareness is based on access

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129 A. Degani and E. L. Weiner, "Cockpit Checklists: Concept, Design and Use". *Human Factors: The Journal of the Human Factors and Ergonomics Society*, Vol. 35, Issue 2 (1993), pp. 28–43.

130 M. Endsley, "Toward a Theory of Situation Awareness in Dynamic Systems," *Human Factors: The Journal of the Human Factors and Ergonomics Society*, Vol. 37, Issue 1 (1995), p. 36.

to the best available data that can be synthesized into useful information that front-line operators can use in decision making.

In addition to policies and regulations (e.g., mandatory event reporting), a robust CRM program acts as another potential defence against systemic hazards in complex organizations.

1.28.2.3 Crew resource management and decision making

Because they facilitate information sharing among team members, CRM strategies can help ensure that team interactions (i.e., communication and coordination) are effective in situations in which the command and decision-making power hierarchy is unclear or unbalanced among the team.

An authority gradient[131] is defined as an established or perceived distribution of power among members of a team. A steep gradient may result in a situation where decision making is centralized with a single individual, whose status, experience or decision-making style precludes consensus-based decision-making within the group.

In the railway hierarchy, a train crew will normally perceive the trainmaster as the authority. Conformity is often in response to a perceived authority, or in reaction to an authoritarian leader (steep gradient).

Good quality communication in the decision-making process is particularly important considering that the trainmaster's participation is almost always remote. As such, the trainmaster's role is "narrowly embedded" in the team, a situation in which, according to human factors research, the trainmaster depends heavily on "others for acquiring a basis for their decision making and may have little control over the authenticity or accuracy of the information provided."[132]

1.28.2.4 Crew resource management as mitigation to limited resources

In the context of the relationship between cognitive behaviour and human performance, human factors literature defines the concept of *bounded rationality* and its relationship to error.[133]

People working in industries such as the railway industry use their knowledge and available resources to pursue their goals based on their view of the situation. Further, safety is created when people are able to successfully "pursue goals and match procedures to situations […] resolve conflicts, anticipate hazards, accommodate variation and change, cope with surprise, work around obstacles, close gaps between plans and real situations, detect and recover from miscommunications and mis-assessments."[134]

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131 F. H. Hawkins, *Human Factors in Flight*, 2nd edition (Ashgate, 1993).

132 M.J. Van der Hoven (2001) cited in S. Dekker, *Second Victim: Error, Guilt, Trauma, and Resilience* (Routledge, 2013), p. 32.

133 D. D. Woods and R. I. Cook, "Perspectives on Human Error: Hindsight Biases and Local Rationality", in: F. T. Durso (ed.) *Handbook of Applied Cognition* (1999), pp. 8–9.

134 Ibid.

The bounded rationality phenomenon partly describes the mismatch between successful human performance and the limited resources available to people at the sharp end of operations (train crews), which may result in lapses or error. People's behaviour can be viewed as “rational,” though possibly erroneous, when seen from the point of view of their knowledge, their mindset, and the multiple goals they are trying to balance.[135]

1.29 Safety management systems

A safety management system (SMS) is a formal framework for managing risk that helps companies manage the safety of their operations by requiring them to

- identify hazards, assess the level of risk they represent, and take steps to reduce those risks where required;
- build a safety culture in day-to-day operations at all levels of the company; and
- involve company employees by
  - collaborating or consulting with them;
  - informing them of risks and how the company has dealt with these risks; and
  - developing a procedure for employees to report contraventions and safety hazards to the company, and a policy for protecting employees who report contraventions and safety hazards.

SMS was designed around evolving concepts about safety that are believed to offer greater potential for effective risk management. The traditional approach to regulatory oversight was based on inspections for compliance and enforcement activities. SMS, in contrast, seeks to ensure that organizations have processes in place to systematically manage risks. SMS has been progressively introduced in the Canadian transportation industry because, when combined with inspections and enforcement, it is more effective in reducing accident rates. SMS can improve safety effectiveness and efficiency because it

- promotes accountability and timely remedial actions in the management of safety, without TC prescribing one-size-fits-all requirements;
- enables companies to be more proactive by leveraging operational expertise to identify hazards, and assessing and reducing risks; and
- enables measures to be taken to reduce risks that may exceed regulatory standards.

SMS can enhance safety by companies managing safety risks before TC has to intervene, and before major safety issues emerge. SMS complements but does not replace the existing railway safety regulatory and oversight framework. Companies must continue to meet RSA requirements and associated regulations, rules and engineering standards.

1.29.1 Railway Safety Management Systems Regulations, 2015

In May 2013, the RSA was amended to enable improvements to the *Railway Safety Management Systems Regulations* and the implementation of regulations pertaining to

[135] D. D. Woods and R. I. Cook, "Perspectives on Human Error: Hindsight Biases and Local Rationality", in: F. T. Durso (ed.) *Handbook of Applied Cognition* (1999), p. 9.

administrative monetary penalties and railway operating certificates. The *Railway Safety Management System Regulations, 2015* (the SMS Regulations) came into force on 01 April 2015.

Under the SMS Regulations, federally regulated railway companies must develop and implement an SMS, create an index of all required processes, keep records, notify the Minister of Transport of proposed changes to their operations, and file SMS documentation with the Minister when requested.

The new regulations contain increased prescriptive requirements that outline how to achieve a result, and management-based requirements, which require the railways to develop and implement systems or processes but allows for flexibility in determining the most appropriate way to implement them based on company-specific factors.

Risk management is an important component of the SMS Regulations. One aspect of risk management consists of conducting analyses of the railway operations to identify hazards and safety issues, emerging trends or recurring situations. As part of the analysis, if a trend or recurring situation identified a safety concern, a risk assessment had to be performed to determine which mitigation or control measures to implement. Section 5 of the SMS Regulations states, in part,

> A railway company must develop and implement a safety management system that includes
>
> […]
>
> (e) a process for identifying safety concerns;
>
> (f) a risk assessment process;
>
> […]
>
> (i) a process for reporting contraventions and safety hazards;
>
> (j) a process for managing knowledge; […][136]

However, TC does not specifically define in the SMS Regulations what a safety concern is.

Section 13 of the SMS Regulations states, in part,

> A railway company must, on a continual basis, conduct analyses of its railway operations to identify safety concerns, including any trends, any emerging trends or any repetitive [*sic*] situations. The analyses must, at a minimum, be based on
>
> […]
>
> (e) any reports of contraventions or safety hazards that are received by the railway company from its employees;
>
> (f) any complaints relating to safety that are received by the railway company;
>
> (g) any data from safety monitoring technologies; […][137]

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136 Transport Canada, SOR/2015-26, *Railway Safety Management System Regulations, 2015* (as amended 01 April 2015), section 5.

137 Transport Canada, SOR/2015-26, *Railway Safety Management System Regulations, 2015* (as amended 01 April 2015), section 13.

Section 15 of the SMS Regulations lists the circumstances in which railway companies must conduct a risk assessment.

> A railway company must conduct a risk assessment in the following circumstances:
>
> (a) when it identifies a safety concern in its railway operations as a result of the analyses conducted under section 13;
>
> […]
>
> (c) when a proposed change to its railway operations, including a change set out below, may affect the safety of the public or personnel or the protection of property or the environment:
>
> […]
>
> (v) a change affecting personnel, including an increase or decrease in the number of employees or a change in their responsibilities or duties.[138]

1.29.2 Canadian Pacific's safety management system

In accordance with the SMS Regulations, CP has developed and implemented a detailed SMS. CP's SMS includes a hazard prevention program as well as a risk assessment policy and procedure, both of which are routinely updated and refined to support continuous improvement. With these 2 instruments, hazards can be reported, assessed, and mitigated.

1.29.2.1 Safety hazard reporting

As part of CP's SMS, and in accordance with CP's occupational health and safety requirements under the *Canada Labour Code*, train crews are required to file safety hazard reports when they experience or observe events that, in their experience, represent an unsafe circumstance that could lead to an accident.

CP's *Reporting Contraventions, Safety Hazards and Identifying Safety Concerns Procedure* in effect at the time of the occurrence outlines the situations in which a safety hazard report should be made and an analysis conducted to identify safety concerns, emerging trends or recurring situations:

> a) reports of railway occurrences and pertinent supporting documentation;
>
> b) reports of contraventions and/or Safety Hazards from employees;
>
> c) results of audits/inspections conducted internally or by a Railway Safety Inspector; identifying safety concerns at CP;
>
> d) complaints relating to safety received by the Company;
>
> e) any data from safety monitoring technologies; and
>
> f) conclusions from the Annual Report prepared as per the requirements of H&S 5551 Safety Management System (SMS) Continual Monitoring procedure.[139]

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138 Ibid, section 15.

139 Canadian Pacific, *Reporting Contraventions, Safety Hazards and Identifying Safety Concerns 2.0*, (last revised 19 December 2018), section 1.0, p. 1.

Hazard reports are submitted by employees on paper, or electronically using the Safety Hazard Reporting application.

Once a hazard has been reported, the procedure outlines the steps that should be taken to address the concern:

- The report is sent to the supervisor, who then must rate the severity of the issue, resolve the issue and provide a response back to the employee within 14 days.
- If not resolved, the safety hazard report goes to the workplace health and safety committee, who then has 30 days to resolve the issues and report back the results in writing to the employee.
- If the issue is still not resolved, there is a multi-stage escalation process that must be done in writing, beginning at the superintendent / director / assistant chief engineer level, and culminating at the Policy Committee. Each level has 30 days to respond.
- CP policy requires that all written records of the safety hazard reporting process be maintained for a period of 6 years.

1.29.2.1.1 Calgary Cross-Functional Health and Safety Committee

At the Calgary terminal, many safety hazards are addressed informally between staff and supervisors. In these cases, the incidents are not captured by the Safety Hazard Reporting application. When hazard reports submitted to a supervisor are not resolved within 14 days, they are forwarded to the Calgary Cross-Functional Health and Safety Committee (CCFHSC).

This committee has the authority to evaluate issues related to the *Canada Labour Code, Part II* and all associated occupational health and safety regulations for railways, CP's SMS, and any health and safety provisions in the various collective agreements. The committee consists of

- 6 representatives from employee union groups (Unifor diesel shop, Unifor car department, Teamsters Canada Rail Conference (TCRC) yardmen, TCRC brakemen/conductor, TCRC engineer, and United Steelworkers crew bus/clerk); and
- 3 representatives from the employer (general superintendent, diesel manager, mechanical car manager)[140]

1.29.2.1.2 Safety hazard reports of train handling issues on Field Hill

The investigation examined 3 years of the CCFHSC meeting minutes dating back to December 2016, focusing on the safety hazard reports and issues presented to the committee relating to train handling difficulties on Field Hill.

The meeting minutes showed that hazard reports were not always rated by a supervisor. In addition, some reports were closed out without any clear identification of the corrective

[140] Canadian Pacific, *Calgary Alyth Cross-Functional Workplace Health & Safety Committee 2019 Terms of Reference* (30 January 2019), p. 2.

action undertaken, or any indication of verification that the action had been completed or was effective.

The reported hazards discussed in the meeting minutes are summarized in Table 22.

Table 22. Summary of Calgary Cross-Functional Health and Safety Committee meeting minutes (December 2016 to January 2019)

Meeting month and year	Summary of meeting minutes related to Field Hill
December 2016	In the 14 December 2016 minutes, a new business item identified that train crews were reporting that they had to use full service, or nearly full service, braking to control speed in a manner consistent with speed restrictions. The minutes questioned whether cars were being properly maintained and/or if proper pre-departure brake tests were being conducted consistently between Alyth and Port Coquitlam yards.
January 2017	The 07 January 2017 minutes mentioned a hazard report in which a grain train crew indicated having difficulty controlling the train speed on Field Hill.
March 2017	The March 2017 minutes noted that the maintenance and/or pre-departure brake tests were not consistent between Alyth and Port Coquitlam yards. The action recommended for the reported train air brake issues was "better maintenance of the equipment."
April 2017	The December 2016 issue of having to use full service, or nearly full service, braking to control speed on Field Hill, and the January 2017 hazard report indicating a grain train crew having difficulty controlling speed, were listed as complete. There was no documentation to indicate what was done to list the items as complete.
January 2018	New business items in the meeting minutes indicated that trains were going down Field Hill in full service during extreme cold temperatures. The minutes also indicated that the crews had been advised that it was fine to take trains down Field Hill with more than the allowable limit of flow.[141]
March 2018	The issue identified in the January 2018 minutes related to braking on Field Hill in extreme cold was listed as complete. The documentation indicated that a bulletin would be issued by September 2018 to keep train speed under 10 mph when temperatures are colder than −25 °C.
March 2018	The March 2018 minutes identified a new issue regarding multiple trains that were proceeding onto Field Hill without having received a No. 1 brake test on the full train consist. Five of the 10 trains identified in the minutes were westbound loaded grain trains. Records for these 5 trains showed that instead of a No. 1 brake test, a No. 1A brake test was done.[142]
April 2018	Four (4) additional westbound loaded unit grain trains were reported to have received a No. 1A brake test instead of the No. 1 brake test. This information was added to the list of issues identified in March 2018.

[141] The *Railway Freight and Passenger Train Brake Inspection and Safety Rules*, state that, while en route, corrective action must be taken if the brake pipe air flow exceeds 60 cubic feet per minute (CFM) for conventional trains (Section 7.9), or 90 cubic feet per minute for trains with supplemental source(s) of air (Section 7.11)

[142] The No. 1 and No. 1A brake tests verify brake pipe integrity and continuity, brake rigging condition, air brake application and release, and piston travel on each car. A No. 1 brake test is performed by a certified car inspector, whereas a No. 1A brake test is performed by qualified train crew members.

Meeting month and year	Summary of meeting minutes related to Field Hill
May 2018	The issue identified in March 2018 was updated to include additional information regarding train 301-294 that was reported to have only had a No. 1A brake test. This train had to be placed in emergency by the LE upon leaving Cathedral. The application of the emergency brakes had been necessary because all service brake functional capacity had been used and the train was still accelerating after reaching a speed of 19 mph.
June 2018	The issue noted in March 2018 regarding the No. 1 brake test was listed as complete. As a recommended action, the minutes indicated that no train was to leave Alyth Yard without a No. 1 brake test, and that the RTC should be alerted to any trains arriving with only a No. 1A brake test. The minutes stated that the action was completed and that a bulletin would be issued; however, no due date was given for this action item.
August 2018	A safety hazard report indicated that train 199-09 went into emergency on Field Hill. The recommended action was to make a troubleshooting document for trainmasters, which they could use to help crews who need assistance following the Field Hill procedures.
August 2018	Train crews requested that the scanner at Mile 130.2 of the Laggan Subdivision be used for observing cars with air brakes not working.
September 2018	The August 2018 action to provide a troubleshooting document that trainmasters could use to help crews who need assistance following the Field Hill procedures remained open.
September 2018	The issue reported in August 2018 regarding the use of the scanner at Mile 130.2 for observing cars with air brakes not working was listed as complete however, the minutes did not indicate any action taken.
November 2018	The Field Hill troubleshooting document for trainmasters identified as a recommended action in August 2018 was listed as complete. The meeting minutes did not indicate the action taken. However, CP determined that the development of a troubleshooting tree for trainmasters was not required and therefore none was developed.

1.29.2.1.3 Safety hazard report on the day before the occurrence

In addition to the hazards listed in Table 22, on the day before the occurrence, the LE on the relief crew reported to the RTC that he had difficulties braking while coming down Field Hill on train 303-676, a loaded unit grain train. In fact, while descending the grade, the LE had been so close to a complete loss of control that he asked the RTC to clear the track ahead, including the tracks in Field. He had to fully apply the train brakes and use full locomotive DBs to maintain speed.[143] The LE completed a hazard report, in which he classified the hazard as "severe," but he had not yet had an opportunity to file it; it was discovered in the wreckage at the occurrence site after the accident.

Wheel temperature data for this train taken at Mile 130.6 of the Laggan Subdivision indicated that 56% of the cars had ineffective brakes.[144] Upon arrival at Field, the train was

[143] According to regulations, it must be possible to control train speed without relying on DBs. Rule 21.5(a) of the Transport Canada-approved *Railway Locomotive Inspection and Safety Rules* [03 July 2015] states: "Dynamic brake is considered a supplemental braking system however company instructions and procedures shall ensure that the friction brakes are sufficient by themselves, without the aid of dynamic brakes, to stop the train safely under all operating conditions."

[144] See Table 14 in section 1.19.2.3.

identified during an inbound inspection as having a large number of cars with the brakes not applied.

1.29.2.2 Risk assessments

CP's risk assessment procedure lists the conditions under which a risk assessment must be performed. It states, in part,

> - A "Safety Concern" (i.e. a hazard or condition that may present a direct safety risk to employees, or pose a threat to safe railway operations) is identified through analysis of safety data;
> - A proposed change to CP Operations that could:
>
> - introduce a new hazard to the workplace resulting in adverse effects;
> - negatively impact or contravene any existing policy, procedure, rule or work practice used to meet regulatory compliance or any CP requirements or standards;
> - create or increase a direct safety risk to employees, railway property, property transported by the railway, the public or property adjacent to the railway; and
> - require authority by a regulatory agency to implement.[145]

If any one of the above listed criteria is identified, this triggers a risk assessment. The procedure outlines how to assess each identified safety concern or change to operations using the CP risk assessment tool. The process involves identifying all potential hazards associated with the scope of the risk assessment and then determining all the potential undesired events that could occur as a result of exposure to the identified hazards. A risk assessment is then performed on each undesired event.

Table 23 summarizes the number of risk assessments conducted by CP between 2015 and 2018 under the company SMS.

Table 23. Canadian Pacific's risk assessments under the safety management system, by risk assessment category, 2015 to 2018

Year	Total risk assessments	Risk assessment category		
		Safety concern	Proposed change	Others
2015*	9	0	9	0
2016	26	3	23	0
2017	7	0	7	0
2018	13	1	10	2
Total	**55**	**4**	**49**	**2**

* Significant revisions to the SMS Regulations came into force in 2015.

According to CP risk assessment records for the years 2015 to 2018:

- 47% of the risk assessments were conducted in 2016.

[145] Canadian Pacific, *Risk Assessment Procedure*, version 2.0 (last revised 30 June 2017), section 2.1.1, p. 2.

- 7% were conducted as a result of a safety concern derived from an analysis of safety data.
- 89% were conducted as a result of a proposed change to operations.

There was no record that any analysis or risk assessment had been done following the train crews' filing safety hazard reports in which they were documenting their difficulties in controlling unit grain trains on Field Hill. Also, there were no indications that a risk assessment was used to validate the changes made to the FHOP between 1998 and 2015.

Since the new SMS Regulations came into effect in 2015, the TSB has investigated 6 other occurrences in which shortcomings in CP's SMS were identified as a risk factor. In some, CP did not consider its operational changes to be significant enough to require a risk assessment; in others, it did not identify and mitigate all hazards (Appendix I).

1.29.2.3 Internal audit of the safety management system

Internal SMS audits play a critical role in the system's continual improvement by providing the organization with an opportunity to assess the effectiveness of its safety management processes and to proactively take corrective measures.

Under sections 30, 31, and 32 of the SMS Regulations, a railway must conduct an audit of its SMS every 3 years and produce an action plan to address identified deficiencies.

In 2017, CP contracted Golder and Associates to audit its SMS. The company received the audit findings on 17 July 2017. Golder and Associates did not audit for regulatory non-compliance, but rather classified its findings as major non-conformances, minor non-conformances, and opportunities for improvement (see Appendix J).

The audit noted no major non-conformances. There were 3 findings related to safety hazard and risk assessment and 5 related to training and proficiency testing.

Findings related to safety hazards and risk assessments:

- Variability in the current practices for safety hazard reporting resulted in an incomplete or biased data set for trend analysis of safety concerns.
- Information from safety committee inspections and from locally-managed safety hazard reports was not evaluated for system-wide trends and safety concerns.
- There was an opportunity to conduct additional risk assessments where they could provide value or update understandings of relevant risk mitigation strategies.

Findings related to training and proficiency testing:

- Job aids that were used to help identify and control operational/occupational safety risks were not always complete.
- Employees involved in activities that may affect railway safety did not always have appropriate training.
- There was inconsistency in the performance of efficiency tests, with regard to the recording of results, failure rates, and the assignment of pass/fail grades.
- Instances of incomplete communication with workers/employees during efficiency/proficiency testing were reported.

- Concerns were expressed regarding the competency of CP managers/trainmasters during the execution of efficiency/proficiency tests.

CP procedures were in place to address audit findings.

1.30 Regulatory oversight of railway operations

Rail safety is governed by the RSA. TC promotes safe and secure transportation systems by developing safety regulations and standards, or in the case of railways, by facilitating the development of rules by the rail industry. TC is then responsible for enforcement. It also tests and promotes safety technologies and has introduced SMS regulations requiring railways to manage their safety risks.

To carry out the objectives of the RSA, TC's Rail Safety Directorate, located at TC headquarters in Ottawa, Ontario, is responsible for the development and enforcement of regulations and national standards, as well as for the implementation of monitoring, testing, and inspection programs. It also sets the direction for railway safety oversight through the development of policy and programs. Regional offices are responsible for the implementation of these nation-wide policies and programs. The planning and execution of SMS regulatory audits for the national railways (CN, CP and VIA Rail Canada Inc.) are performed by the SMS team based out of headquarters. For the federally regulated inter-regional railways, the planning and execution of SMS regulatory audits is the responsibility of regional offices.

Regional offices are also responsible for conducting assessments of the railways within each region, allocating regional inspection and auditing resources, and conducting any follow-up activities to ensure that the railways comply with the rules and regulations and are operating safely. The Prairie and Northern Region (PNR) is responsible for oversight of CP's Laggan Subdivision.

Regional railway safety inspectors monitor and promote regulatory compliance regarding railway operations, equipment, infrastructure, and grade crossings.

The tools and strategies available to TC to monitor the level of safety and compliance within the industry include

- inspections to verify compliance with rail safety regulatory requirements, to collect data, and to identify threats to rail safety that require corrective action;
- safety audits to verify compliance with regulatory requirements and to assess safety performance; and
- SMS audits to examine the company's SMS, or a portion of it, to assess its effectiveness and determine whether the company's actual operations conform to the procedures it developed to demonstrate compliance with applicable regulatory requirements.

Inspections and audits are complementary processes. While inspections look at conditions, audits look at systems and processes. Inspections can be used to help target future audits and to help monitor the corrective action taken following previous audits.

1.30.1 Safety inspections conducted by the Prairie and Northern Region

1.30.1.1 Car safety and maintenance inspections

From 2014–15 to 2018–19, TC PNR conducted car safety and maintenance inspections, as a part of its overall inspection program. Table 24 provides the inspection data (number of cars inspected and rate of defects identified)[146] for 3 groups of cars: CP covered hoppers, all railway covered hoppers and all cars handled by CP. The data for CP covered hopper cars is a subset of the other 2 groups.

The inspections were conducted in accordance with the *Railway Freight Car Inspection & Safety Rules.*

Table 24. Transport Canada's Prairie & Northern Region car inspections, fiscal years 2014–15 to to 2018–2019

Fiscal year	Canadian Pacific covered hopper cars		All railway covered hopper cars		All Canadian Pacific cars	
	Cars inspected	Defect rate	Cars inspected	Defect rate	Cars inspected	Defect rate
2014–15	645	14%	1015	13%	839	19%
2015–16	693	10%	1174	12%	869	14%
2016–17	335	10%	655	20%	455	14%
2017–18	591	13%	993	17%	692	16%
2018–19	1417	15%	1935	13%	1528	17%
5 years	3681	13%	5772	14%	4383	16%

1.30.1.2 Inspections of No. 1 brake test

TC's PNR began conducting No. 1 brake test inspections in June 2016. According to records provided, from 2016–17 to 2018–19, the inspectors checked 58 trains and identified 2 trains with less than 95% of the train brakes operative (3% defect rate).

1.30.2 Audits of Canadian Pacific's safety management system

1.30.2.1 Framework for the audits

TC's framework for conducting SMS audits of railways consists of the following phases:

- **Plan:** Planning includes data collection (data from TC and external sources like the TSB), selection of areas to audit and audit locations, with input from the railway.
- **Conduct:** Execution of the audit, including document reviews and interviews. While many of the documents are provided as part of a formal request, there are also items that come up in the course of an audit that will result in the review of other documents.
- **Report:** A draft report is prepared and circulated to the company for review and comment. The intent is to ensure accuracy. TC considers the response from the

[146] A defect refers to all safety defects, including but not limited to brake defects, identified during a safety inspection as per the *Railway Freight Car Inspection & Safety Rules*.

company and then produces a final report. Companies are required to respond to the findings in the final report with a corrective action plan.

- **Follow-up:** TC reviews the railway's corrective action plan, and there are ongoing communications between TC and the railway on its plan.[147]

In 2016, TC incorporated new safety data and regional risk information into its planning tools. A national review process to monitor all operators on compliance and ongoing safety issues was established to support more frequent and thorough SMS audits. TC has committed to auditing all elements of all Class 1 railways' SMS on a 3- to 5-year cycle.

In 2016–17, TC commenced the first cycle of railway SMS audits under the new SMS Regulations. The manual for conducting SMS audits, which was finalized and published in November 2017, outlined audit findings as follows:

> Non-compliance will indicate that one or more regulatory requirements has not been met; and deficiencies will identify when a railway has gaps in or has not fully carried out one or more of the processes, procedures, plans, or methods established for their safety management system (SMS).[148]

An audit report may also discuss opportunities for improvement. They allow the audit team to comment on the quality of a company's SMS. An opportunity for improvement is discretionary and does not form part of the audit findings.

Once the audit is complete, a draft report is provided to the railway for review and correction of factual errors. A final report is forwarded to the railway, and the railway replies with a corrective action plan within 30 days. The corrective action plan documents the company's commitments and sets completion targets.

TC's procedure indicates that it conducts follow-up of individual audits to verify that corrective action plans are implemented and that the audit findings were addressed. TC keeps records of interactions, but to date, has not completed system-wide tracking or validation of its comprehensive audit findings across the industry.

1.30.2.2 Audit findings

From 2016–17 and 2018–19, TC performed 3 audits of CP's SMS, the findings of which are summarized in Table 25.

Table 25. Transport Canada audit findings, by category, fiscal years 2016–17 to 2018–19

Category of finding	2016–17	2017–18	2018–19	Total
Non-compliance	6	0	1	7
Deficiency	0	3	1	4
Opportunity for improvement	1	0	3	4

147 Transport Canada, *Safety Management System Audit Manual*, 10 November 2017, p.10.

148 Ibid, p.7.

1.30.2.2.1 2016–2017 audit

In 2016–17, TC audited CP for compliance with the risk assessment process (sections 15 to 17 of the SMS Regulations), and the process for implementing and evaluating remedial action (sections 18 to 20 of the SMS Regulations). The audit identified non-compliances with the SMS Regulations. The non-compliances identified that CP

- did not always evaluate the effectiveness of remedial action designed to reduce or eliminate risk;
- was not reliably consulting with bargaining agents in the planning, execution and evaluation of changes to operations, risk identification and the evaluation of the effectiveness of remedial actions;
- did not reliably document what consultations were done; and
- did not reliably notify the Minister of a proposed change to operations that may affect safety.[149]

CP's response, sent 25 April 2017, expressed reservations with the audit process. CP believed TC's expectations were "unreasonable and inconsistent with SMS principles of continuous improvement."[150] CP was also concerned the audit did not balance SMS process strengths against the shortcomings identified.

Nevertheless, CP committed to the following corrective actions:

- Develop and rollout an online risk assessment training program for operation managers in Canada, that will clearly define expectations regarding the consultation of bargaining agents.
- Revise the risk assessment e-tool to align key roles to task, and to prompt documentation of involvement and consultation of bargaining agent.
- Where necessary, review and adjust steps for evaluating the effectiveness of remedial action.
- Review and revise CP health & safety procedures to ensure roles are clearly defined, clarify steps for evaluating safety action, and clarify what changes require Ministerial notification.

1.30.2.2.2 2017–18 audit

In 2017–18, as part of the risk-based planning process, TC evaluated CP's process for ensuring compliance with regulations and other instruments (sections 10 and 11 of the SMS Regulations), and its process for managing knowledge (sections 25 to 27 of the SMS Regulations).

The audit resulted in 0 non-compliances and 3 deficiencies regarding the process for managing knowledge:

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149 Transport Canada, *2016–17 Audit Report of Canadian Pacific Railway* (17 March 2017).

150 Canadian Pacific, letter from the CP Director Regulatory Affairs to the TC Director General Rail Safety (25 April 2017).

- CP's method for verifying employees were skilled and qualified for their duties had not been fully implemented.
- CP's method for ensuring that third parties operating on CP track had the required knowledge was not fully implemented.
- CP's method for verifying knowledge of third-party contractors working on CP property, but not working for CP, was not sufficiently detailed.

TC qualified its audit, noting that employees filling recently staffed positions did not have all the required skills and qualifications for their duties. For instance, in Winnipeg, 14 out of 22 employees in the position of trainmaster, assistant superintendent operations, or superintendent operations did not possess the required skills of an LE. TC did not define this situation as a deficiency or non-compliance.[151,152]

1.30.2.2.3 2018–2019 audit

In 2018–19, TC audited CP's compliance with the SMS Regulations with respect to the following processes: the process for managing railway occurrences (section 12 of the SMS Regulations), the process for identifying safety concerns (sections 13 and 14 of the SMS Regulations), the process for establishing targets and developing initiatives (sections 21 to 23 of the SMS regulations), and the process for reporting contraventions and safety hazards (section 24 of the SMS regulations).

The audit resulted in 1 non-compliance and 1 deficiency:

- With respect to the process for establishing targets and developing initiatives, the audit found that CP's SMS annual report to the accountable executive did not include conclusions of monitoring activities specifically related to safety targets.
- With respect to the process for reporting contraventions and safety hazards, the audit found that CP did not sufficiently communicate the introduction of the A-line (alert line), the company's new option for anonymous reporting of contraventions and safety hazards without fear of reprisal.

The audit also identified 3 opportunities for improvement, notably:

- In practice, workplace health and safety committees (WHSC) are restricted to investigations of fatal and disabling injuries; the CP procedure sets this restriction, but also requires the WHSC to participate in any occurrence that requires medical treatment (as required by Part II of the *Canada Labour Code*, 136(5)(g)).
- CP's discrimination and harassment policy should better prioritize the company's commitment to addressing potential instances of retaliation.
- WHSC minutes demonstrate that employee safety concerns are being reviewed, but do not consistently document actions taken.

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151 Transport Canada, *2017-18 Audit Report of Canadian Pacific Railway* (15 March 2017)

152 Canadian Pacific, letter from the CP Director Regulatory Affairs to the TC Director General Rail Safety (25 April 2017)

1.30.3 Previous recommendation concerning audits of the railway safety management system

Following its investigation into the Lac-Mégantic accident in July 2013, which directly caused the death of 47 people and destroyed the town's core and main business area,[153] the Board indicated that, with the new SMS Regulations to be adopted in 2015, TC had a legal and conceptual framework to require SMS implementation, but equally important was how the regulator would use these tools and what action it would take in the coming years. Furthermore, the Board stated that, until Canada's railways make the cultural shift to SMS, and TC ensures that the railways have effectively implemented SMS, the safety benefits from SMS would not be realized. The Board therefore recommended that

> the Department of Transport audit the safety management systems of railways in sufficient depth and frequency to confirm that the required processes are effective and that corrective actions are implemented to improve safety.
>
> **TSB Recommendation R14-05**

In its February 2021 response to this recommendation, TC indicated that, as of December 2020, it had completed its initial comprehensive audit of all federally regulated railways, which it had started in fiscal year 2016–17. As a result of these audits, TC requested corrective action plans where necessary, and it continues to follow-up to ensure that all railways have taken corrective action to address the findings. TC's response also indicates that, in June 2020, it approved a targeted audit framework for measuring the effectiveness of SMS processes, which is in the early stages of implementation.

In its March 2021 assessment of TC's response, the Board stated that it was encouraged by TC's progress and looked forward to receiving information on the findings related to the effectiveness of federal railways' SMS. Therefore, the Board considered the response to Recommendation R14-05 to show **Satisfactory Intent**.[154]

1.30.4 Regulatory oversight of occupational health and safety

Part II of the *Canada Labour Code* (the Code) defines occupational health and safety standards for employees working in a federally regulated business.

In a pamphlet summarizing the Code, Human Resources and Skills Development Canada provides the following information:

> The purpose of Part II of the *Canada Labour Code* is to prevent workplace-related accidents and injury, including occupational diseases.
>
> […]
>
> Through the provisions of the Code, employees have the right to be informed of known or foreseeable hazards in the work place and to be provided with the

153 TSB Railway Investigation Report R13D0054.

154 TSB Recommendation R14-05: Auditing of safety management systems, at https://www.tsb.gc.ca/eng/recommandations-recommendations/rail/2014/rec-r1405.html (last accessed January 2022).

> information, instruction, training and supervision necessary to protect their health and safety.
>
> […]
>
> Through their health and safety committee or representatives, employees are given the right to have access to government or employer reports relating to the health and safety of employees, […].[155]

The Canada Labour Program is a portfolio of Employment and Social Development Canada.[156] The program promotes safe, healthy, cooperative and productive workplaces by fostering good working conditions, constructive labour-management relations and workplaces free from discrimination.

A memorandum of understanding (MOU) was established in 1988 between Human Resources Development Canada – Labour Branch (HRDC–Labour) and TC to provide a joint administrative arrangement for the application and enforcement of the *Canada Labour Code*, Part II in the federal transportation sector. One of the principles of the MOU is that

> [b]oth departments will work together to achieve the purpose of the Code which is "to prevent accidents and injury to health arising out of, linked with or occurring in the course of employment".[157]

This is achieved by separating the responsibility for the application and enforcement of the Code in the federal transportation sector as follows: HRDC–Labour is responsible for off-board employees; and TC, on behalf of HRDC–Labour and pursuant to the MOU, is responsible for on-board employees.[158]

At least once every 3 years, TC conducts an on-site inspection of every railway company's health and safety committee activities with respect to employees who are subject to the *On Board Trains Occupational Health and Safety Regulations*.[159] Prior to this occurrence, the last inspection of CP's CCFHSC had been conducted on 14 January 2016. No non-compliances were noted.

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155 Human Resources and Skills Development Canada, *Information on Occupational Health and Safety – Pamphlet 1, Summary of Part II of the Canada Labour Code* at https://www.canada.ca/en/employment-social-development/services/health-safety/reports/summary.html (last accessed on 26 January 2022).

156 The department of Human Resources and Skills Development Canada was rebranded as Employment and Social Development Canada (ESDC) by the coming into force of the Economic Action Plan 2013 Act, No. 2.

157 Memorandum of Understanding Between Human Resources Development Canada and Transport Canada Respecting the Application and Enforcement of the *Canada Labour Code*, Part II at https://tc.canada.ca/en/aviation/commercial-air-services/workplace-health-safety-onboard-aircraft/mou-between-hrdc-tc (last accessed 18 November 2021).

158 An on-board employee is a person who is working on board a train while in operation, as defined in Annex 1 of the MOU, and an off-board employee is a person who is not working on board a train while in operation. Both on-board and off-board employees are covered by the Canada Occupational Safety and Health Regulations made pursuant to the Code.

159 Employment and Social Development Canada, SOR/87-184, *On Board Trains Occupational Health and Safety Regulations*.

1.31 Safety culture

A recognized definition of an organization's safety culture is "shared values (what is important) and beliefs (how things work) that interact with an organization's structures and control systems to produce behavioural norms (the way we do things around here)."[160]

The safety culture of an organization is the result of individual and group values, attitudes, perceptions, competencies, and patterns of behaviour that determine the commitment to, and the style and proficiency of, an organization's health and SMS.

An effective safety culture includes proactive actions to identify and manage operational risk. There are many descriptions of what constitutes a supportive and effective safety culture. One characterization describes 4 elements:[161]

- **Reporting culture:** Hazards, occurrences, and safety issues are freely reported within the organization without fear of reprisal.
- **Just culture:** Normal human error is viewed as a systemic problem and therefore is not punished. Malicious behaviour or negligence is punished. The methods of making the distinction are clearly stated and understood.
- **Learning culture:** The organization and individuals within it are continually learning to improve operational skills and to better understand their role in safety management. Lessons learned through experience are actively shared throughout the organization.
- **Informed culture:** Hazards and risks associated with an operation are well understood and people within an organization are provided with the necessary knowledge and skills to work safely. Employees understand how to participate in the safety management of the organization.

Aspects of a company's culture are revealed in its selection policies, operating procedures, and operational oversight, all of which can affect human performance. Practices that encourage operator responsibility, professionalism, and participation in safety matters can enhance operator attention to safety details; punitive practices do not. The way the process of issuing blame hinders the learning process is explained as follows: "where there is blame, there is no learning […] open minds close, the inquiry tends to cease, and the desire to understand the whole system diminishes."[162]

In April 2016, the TSB held a Transportation Safety Summit that brought together more than 70 senior executives and leaders representing operators, labour organizations, industry associations, and regulators from all modes of transportation. A broad consensus emerged from the discussions that, to effectively improve safety, SMS must clearly identify the systemic issues underlying behaviour. Further, effective communication and collaboration were key elements in building the trust necessary to address safety issues at

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160 B. Uttal, "The Corporate Culture Vultures," *Fortune* (17 October 1983), pp. 66–72, as cited by J. Reason in *Managing the Risks of Organizational Accidents* (Ashgate Publishing, 1997), p. 192.

161 International Civil Aviation Organization, Doc 9859, Safety Management Manual (2006), p. 4-15.

162 M. Paul, "Moving from blame to accountability," *The Systems Thinker*, Vol. 8, No. 1 (February 1997).

this level. However, the biggest challenge identified in terms of bringing about this type of "just" culture was the need to build trust and respect in organizations that may have a history of blame.[163]

1.31.1 Canadian Pacific's safety culture

In parallel with implementing an SMS, CP recognized the importance of building an effective safety culture. To help strengthen its safety culture, CP introduced the Home Safe initiative, which promotes both safety engagement and feedback: "By instilling […] the importance of [employees] taking responsibility for their own safety as well as the safety of their co-workers, [CP] can better ensure everyone goes home safe after each and every shift."[164] Through CP's Home Safe initiative, all employees, including managers, are trained to offer and ask for help, warn co-workers if they believe they are putting themselves or others at risk, as well as identify, report, and remove hazards.

CP's 2015 *Reporting Contraventions, Safety Hazards and Identifying Safety Concerns Procedure*[165] specifies that employees have a responsibility to report safety hazards and contraventions and outlines the steps to be followed to report and analyze contraventions and safety hazards. The procedure states that such reporting will not result in disciplinary action, provided that it is in good faith and does not involve criminal activity, malicious intent, or false or misleading information. The procedure also provides for multiple means of reporting hazards:

- verbally to a supervisor;
- in writing using a safety hazard report form if a supervisor is unavailable; or
- if an employee does not feel comfortable reporting directly to a supervisor, through "A-line," CP's anonymous, confidential, and independently maintained reporting process.

This procedure enables employees to report hazards and to do so without fear of reprisal, 2 key elements of an effective safety culture. When the risks associated with reported hazards are well understood and communicated, and when proactive action is taken to mitigate those risks, an organization's safety culture becomes even stronger.

At CP, train crews were actively reporting the safety hazards related to poor train braking performance on Field Hill. These reports were closed without conducting a risk assessment and with insufficient action taken by CP to address and mitigate the recurring hazard.

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163 Transportation Safety Board of Canada, *TSB Transportation Safety Summit 2016 – Proceedings* (21-22 April 2016), p. 7, at https://www.tsb.gc.ca/eng/qui-about/sst-tss/resume-summary.pdf (last accessed on 13 January 2021).

164 Canadian Pacific, "Culture of safety," at https://www.cpr.ca/en/safety/culture-of-safety (last accessed on 13 January 2021).

165 Canadian Pacific, *Reporting contraventions, safety hazards and identifying safety concerns procedure* (Procedure #H&S 5552), Version 4 (effective 26 November 2015, revised 20 December 2018).

1.32 Similar occurrences

From 1996 to 1998, 3 other occurrences involving uncontrolled train movements on Field Hill were reported to the TSB.

R96C0086 – On 13 April 1996, a CP freight train handling 112 cars rolled uncontrolled down a steep grade for approximately 4 miles, between Mile 128.8 on the Laggan Subdivision (Upper Spiral Tunnel) and Mile 0.15 on the Mountain Subdivision (Field Yard). There was no derailment, and no one was injured.[166]

R97C0147 – On 02 December 1997, CP train No. 353-946 derailed 66 cars during an uncontrolled high-speed descent. The train entered the east portal of the Upper Spiral Tunnel at about 25 mph and continued to accelerate. Sixteen cars derailed inside the Upper Spiral Tunnel, and, at Mile 134.4, 50 other cars derailed while the train speed was close to 47 mph. The 3 crew members were not injured.[167]

R98C0001 – On 02 January 1998, a 112-car CP freight train travelled uncontrolled between Mile 128.9 (Upper Spiral Tunnel) and Mile 136.6 (Field), reaching a speed of 42 mph. There was no derailment, and no one was injured.

1.33 TSB statistics on occurrences involving unplanned or uncontrolled movements

From 2010 to 2019, there were 589 occurrence reports to the TSB related to unplanned or uncontrolled movements[168] on all federally regulated railways in Canada (Table 26).

Table 26. Unplanned and uncontrolled movements reported to the TSB, 2010 to 2019

Type of unplanned or uncontrolled movement	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	Total
Loss of control	2	3	0	3	0	1	4	2	5	1	21
Switching without air brakes	10	16	12	24	21	22	18	21	27	31	202
Insufficient securement	25	32	44	42	38	37	29	39	34	46	366
Total	**37**	**51**	**56**	**69**	**59**	**60**	**51**	**62**	**66**	**78**	**589**

Note: The data summarizing the number of uncontrolled movements each year have not been adjusted to account for variations in the volume of rail traffic.

Uncontrolled movements generally fall into one of the following causal categories:

1. Loss of control: When an LE or remote control operator cannot control a locomotive, a car, a cut of cars, or a train when using the available air brakes of the locomotive or train, or both.

166 TSB Railway Investigation Report R96C0086.

167 TSB Railway Investigation Report R97C0147.

168 From the *Transportation Safety Board Regulations* (SOR/2014-37), Part 1, Reports, Mandatory Reporting, Accidents, subsection 5(1): "The operator of the rolling stock, the operator of the track and any crew member that have direct knowledge of a railway occurrence must report the following railway occurrences to the Board: […] h) there is an unplanned and uncontrolled movement of rolling stock […]"

2. Switching without air brakes: When a movement is being switched using the locomotive independent brakes only, with no air brakes available on the cars being switched. The vast majority of these incidents occur in rail yards.
3. Insufficient securement: When a car, a cut of cars, or a train is left unattended and begins to roll uncontrolled, usually due to
   - an insufficient number of hand brakes applied to a car, a cut of cars, or a train, or
   - faulty or ineffective hand brakes on a car (or on several cars).

Of the 589 occurrences,

- loss of control was the main factor in 22 (4%) of the cases, including this one,
- switching without air brakes was the main factor in 202 (34%) of the cases, and
- insufficient securement was the main factor in 365 (62%) of the cases.

Since 1994, the TSB has investigated an additional 36 occurrences that involved uncontrolled movements, including this one, of which 14 (39%) were due to a loss of control (Appendix K).

1.34 Previous recommendation and safety concern regarding uncontrolled movements

The Board has made 1 recommendation relating to runaway trains resulting from improper equipment securement under its definition of uncontrolled movements.

As a result of the TSB investigation into the Lac-Mégantic accident in July 2013,[169] the Board recommended that

> the Department of Transport require Canadian railways to put in place additional physical defences to prevent runaway equipment.
>
> **TSB Recommendation R14-04**

This recommendation specifically focuses on the insufficient securement of rolling stock. In response, TC has implemented several initiatives, including reinforced CROR Rule 112 securement requirements and the introduction of a comprehensive monitoring plan for this new rule. In its March 2021 assessment of TC's response, the Board stated that, despite actions taken, the current defences have not been sufficient to significantly reduce the number of uncontrolled movements to improve safety. Until the consultations with the railway industry and its labour representatives have occurred, strategies have been developed and physical defences are implemented, uncontrolled movements will continue to pose a risk to the rail transportation system. The Board assessed TC's response to Recommendation R14-04 as being **Satisfactory in Part**.[170]

169 TSB Railway Investigation Report R13D0054.

170 TSB Recommendation R14-04: Prevention of runaway trains: Unattended equipment, at https://www.bst-tsb.gc.ca/eng/recommandations-recommendations/rail/2014/rec-r1404.html (last accessed on 18 November 2021).

As a result of the investigation into the 2016 uncontrolled movement of equipment on the main track in Saskatoon, Saskatchewan,[171] the TSB determined that the desired outcome of significantly reducing the number of uncontrolled movements has not yet been achieved despite initiatives by TC and the industry. Consequently, the Board issued the following safety concern:

> The Board is concerned that the current defences are not sufficient to reduce the number of uncontrolled movements and improve safety.

1.35 TSB Watchlist

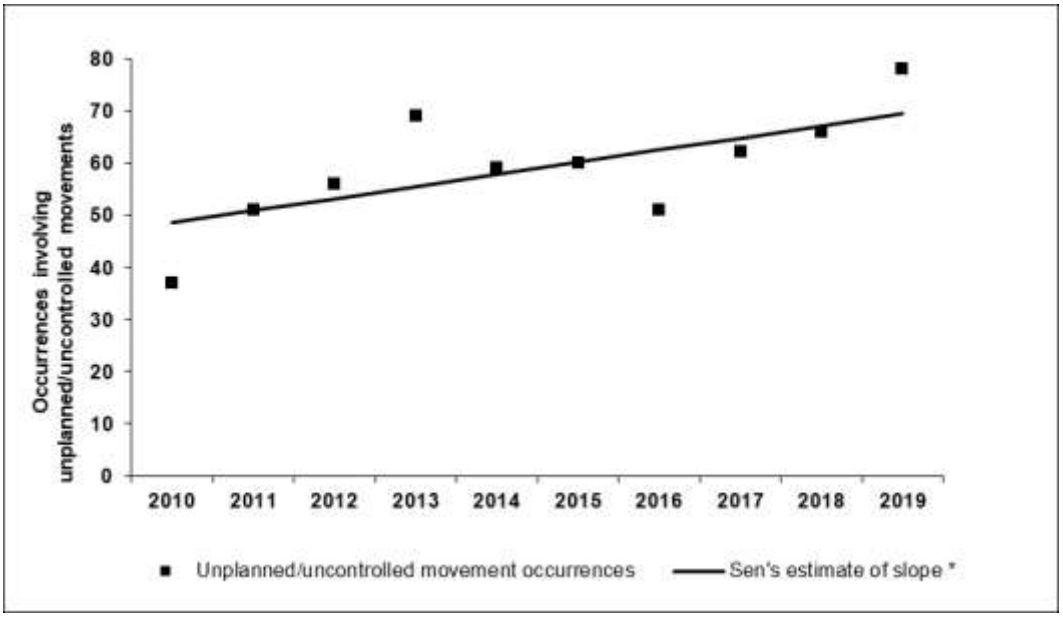
TSB Watchlist 2020 identifies the key safety issues that need to be addressed to make Canada's transportation system even safer. This occurrence points to 3 of these issues.

1.35.1 Unplanned/uncontrolled movement of railway equipment

Unplanned/uncontrolled movement of railway equipment is a Watchlist 2020 issue.

Unplanned/uncontrolled movements of railway equipment create high-risk situations that may have catastrophic consequences. From 2010 to 2019, the trend of unplanned/uncontrolled movements was on an upward trajectory, with a peak of 78 occurrences in 2019 (Figure 46).

Figure 46. Occurrences involving unplanned/uncontrolled movement of rail equipment, 2010 to 2019 (Source: TSB)



* Upward trend in occurrences over the period (τb = 0. 6293, p = 0.0119). Sen's estimate of slope is an unbiased estimator of the true slope of the trend line.

TC and the railway industry have taken some significant actions with additional administrative defences to prevent these occurrences, and actions to mitigate them through the use of

[171] TSB Railway Investigation Report R16W0074.

physical defences such as derail devices where appropriate. However, the desired outcome—to reduce the number of these types of occurrences—has not been achieved.

ACTIONS REQUIRED

Unplanned/uncontrolled movement of railway equipment

While all three categories of unplanned/uncontrolled movements share some common causes, they each require unique strategies either to prevent the occurrences from happening or to reduce the associated risks. TC, the railway companies, and labour unions must collaborate, devise strategies, and implement physical and administrative defences to address each type of uncontrolled movement. For the safety of railway workers and the public, the TSB wants to see a downward trend in the number of such occurrences.

1.35.2 Safety management

Safety management is a Watchlist 2020 issue.

Federally regulated railways have been required to have an SMS since 2001, and regulatory requirements were significantly enhanced in 2015. However, since then, companies' SMS have not produced the expected safety improvements associated with mature safety management and safety culture, as the rate of main-track train accidents has not improved. Recent TSB investigations have identified numerous shortcomings where hazards were not identified and effective risk-mitigation measures were not taken (TSB rail transportation safety investigations R17D0123, R17W0267, and R18H0039). The TSB believes that railway companies' SMS are not yet effectively identifying hazards and mitigating risks in rail transportation.

ACTIONS REQUIRED

Safety management will remain on the Watchlist for the rail transportation sector until safety data is collected and analyzed to reliably determine risk assessment and risk mitigation, leading to measurable safety improvement.

1.35.3 Regulatory surveillance

Regulatory surveillance is a Watchlist 2020 issue.

Some transportation companies are not managing their safety risks effectively, as evidenced by increases in the main-track train accident rate, the number of uncontrolled movements, and the recent number of employee fatalities. Furthermore, TC's follow-up and intervention is not always effective at changing unsafe operating practices.

ACTIONS REQUIRED

Regulatory surveillance will remain on the Watchlist for the rail transportation sector until TC oversight validates whether operator safety management systems are effective—i.e., that operators are identifying hazards and assessing risks, that effective risk-mitigation measures are being implemented, and that operators are validating the effectiveness of implemented safety actions. Moreover, when operators are unable to manage safety effectively, TC must intervene in a way that changes unsafe operating practices.

1.36 TSB laboratory reports

The TSB completed the following laboratory reports in support of this investigation:

- LP213/2019 – Brake control valve examination
- LP192/2019 – Wheels examination
- LP075/2020 – Train dynamic analysis
- LP214/2019 – Handbrake testing and human performance assessment
- LP014/2022 – Brake retarding force calculations

2.0 ANALYSIS

2.1 Introduction

Canadian Pacific Railway Company (Canadian Pacific or CP) train 301-349 began to roll on its own after having been stopped on the mountain grade of Field Hill, British Columbia (BC), in extreme cold temperatures with its brakes applied in emergency for 2 hours 52 minutes.

Hours earlier, as the entire train entered the steepest part of the grade at Mile 125.6 on the Laggan Subdivision near Partridge, BC, the inbound locomotive engineer (LE) was not able to maintain the train speed at or below the permissible speed of 15 mph. When the train speed had increased to more than 5 mph above the permissible speed, the crew applied the train brakes in emergency and brought the train to a stop at Mile 127.46.

Almost 3 hours later, shortly after a relief crew arrived, with the brakes still applied in emergency and with retaining valves (retainers) set to the high pressure (HP) position on 84 of the 112 cars, the train commenced its uncontrolled descent down the mountain.

Finding as to causes and contributing factors

The train accelerated down the mountain, negotiating the steep descending grade and sharp curves, until it reached 53 mph, a speed well beyond the maximum authorized speed of the track. This excessive speed resulted in high centrifugal forces that, combined with lateral forces generated by moderate in-train buff forces, caused the locomotive to tip over in a 9.8° curve and derail at Mile 130.6.

The 3 crew members on board the lead locomotive were fatally injured. The actions of the relief crew were in no way contributory to the train starting to roll uncontrolled. The analysis of this accident will focus on the following topics:

- crew and supervisor training
- the instructions and procedures governing Field Hill operations
- the factors that led to the degradation of the performance of the air brake system on the train
- the actions and decisions of the inbound crew and the trainmaster after the emergency brake application at Partridge
- available braking technology that could have helped prevent the accident
- crew proficiency
- the history of performance issues with the air brake systems on CP grain trains during winter operations
- hazard reporting and risk mitigation
- regulatory oversight

2.2 The accident

2.2.1 Before the emergency stop

The train crested the grade at Mile 122.4 near Stephen, BC. Once its entire mass occupied the grade, it accelerated much faster than anticipated.

In an attempt to control the train's speed, the inbound LE used a combination of locomotive dynamic brake (DB) and the lowest possible service brake application, i.e., a minimum reduction brake application, which was consistent with recommended train handling practices.

Once applied, freight train automatic brakes cannot be incrementally released; rather, they can only be further applied or completely released and recharged. For this reason, LEs are taught to use the lowest possible train brake application, in combination with locomotive DB, particularly during mountain grade operations. If additional braking effort is required for speed control, small incremental brake applications (i.e., 2 or 3 psi) are commonly used to supplement the initial minimum reduction brake application. In this occurrence, however, these incremental brake applications were ineffective, and the train continued to accelerate.

Finding as to causes and contributing factors

Once the train passed Mile 126, it had entered one of the steepest grades on Field Hill. At this point, the sequence of service brake applications made by the inbound LE, combined with the available locomotive DBs, could not maintain the train's speed below the maximum allowable limit of 15 mph. Therefore, as required by company instructions, the crew applied the brakes in emergency, bringing the train to a stop on Field Hill at Mile 127.46.

2.2.2 While stopped in emergency

Stopping the heavy unit train in emergency on a mountain grade, particularly in extreme cold temperature, had significant ramifications. Recovering from the emergency brake application required the crew to either use retainers to perform a release and catch on a steep descent or secure the train with hand brakes, an operation that could interrupt rail traffic for several hours. In contrast, a similar train stopped on level track would need only locomotive independent brakes to hold it stationary while the emergency brake application was recovered and the brake system was recharged.

To decide on a course of action, the inbound crew and the trainmaster held a job briefing, as required by the Field Hill operating procedures (FHOP).

Finding as to causes and contributing factors

The inbound crew and the trainmaster opted for retainers only, and the conductor subsequently set them to the high pressure position on 75% of the cars (84 cars) per the FHOP. Because the crew were close to the end of their shift, the RTC director ordered a

relief crew, who would recover the emergency brake application and complete the trip to Field.

A track occupancy permit was put in effect to facilitate the transport of the inbound crew and the relief crew between Yoho and Partridge in a snow removal track unit.

The members of the relief crew arrived about 2.5 hours after the train came to an emergency stop; the crew was delayed at Field because the LE opted to take a 2-hour advance call per the collective agreement and at Yoho due to problems with a switch. During this time, the train brake system's ability to hold the train stationary continued to diminish.

2.2.3 The uncontrolled movement

The relief crew and the inbound crew had a crew-to-crew transfer discussion, after which the members of the relief crew took control of the train. Before they could initiate the release and recharge of the air brakes in order to depart, they had to wait for the track occupancy permit to be cancelled. The relief LE indicated in conversation with the RTC that he would not recover the emergency brake application until it had been confirmed to him that the track ahead was not occupied.

Finding as to causes and contributing factors

About 10 minutes after the crew-to-crew transfer, the train began to roll on its own.

The uncontrolled train gradually accelerated, reaching a speed of 53 mph. The train was able to negotiate several sharp curves, including back-to-back reverse curves; however, the train was not able to negotiate the sharp 9.8° curve immediately before the Kicking Horse River bridge and it left the rails.

The locomotive overturned immediately before the bridge. The inertial force caused the locomotive to leave the curve on the high side (the right side in this case) and follow a straight-line trajectory; at the same time, the centrifugal force caused the locomotive to tip over and derail.

The track structure was in good condition and solidly frozen in the ground, and did not play any role in the derailment. The rails were well anchored to the ties and no wheel scratches or gouges were visible on top, suggesting that the wheels on the outside of the curve did not climb or roll over the outside rail. In addition, there were no signs of ground contact (scratches and soil residues) on the underside of the locomotive. The absence of scratches on the top of the rail and on the underside of the locomotive is consistent with the locomotive initially tipping over and leaving the track, then sliding a distance and finally coming to rest on its left side on the riverbed.

2.3 Training

Training and development seek to create a level of competence sufficient to allow individuals or teams, once they are qualified, to perform their respective duties safely.

According to Sections 25 to 27 of the *Railway Safety Management System Regulations, 2015* (the SMS Regulations), a railway company must also include the following in its SMS, with regard to employees who perform duties essential to safe railway operations:

- a plan for ensuring that they acquire the skills, knowledge and qualifications required to perform their duties safely, and
- a method for verifying that they have the skills, knowledge and qualifications required to perform their duties safely.

2.3.1 Training of the inbound crew

2.3.1.1 Conductor

The conductor on the inbound crew qualified in August 2018. On the night of the occurrence, it was the inbound conductor's 4th trip on Field Hill since qualifying. During the classroom portion of her training, she had never received simulator-based training for Field Hill. Moreover, most of her on-the-job training was spent on yard assignments. Nevertheless, she had been assigned to one of the most challenging territories in Canada and was expected to participate in job briefings and provide input regarding the best method to recover from the emergency brake application. With the ending of the Field Hill certification for conductors, and in the absence of tailored on-the-job training on Field Hill, she did not have adequate knowledge specific to mountain grade operations to offer any objective input into potential courses of action to take after the train was stopped in emergency.

Given that conductor training is standardized across the railway network, it is understandable that it should cover what is common to all territories, leaving any local particularity such as the effect of extreme cold temperatures on braking systems to dedicated sessions or on-the-job training.

Finding as to risk

If the classroom training does not address the unique needs of the territory where the employees will be working, and if the employees do not obtain the relevant on-the-job training on that territory, then they will not be adequately prepared and sufficiently trained to perform their duties safely, increasing the risk of an accident.

After the emergency stop on Field Hill, the conductor set retainers on 84 of the train's cars, as decided during the job briefing.

Setting retainers is not a task that conductors need to perform often, as it is rarely required except to facilitate a release and catch scenario after an emergency brake application on a descending heavy or mountain grade. On the day of the occurrence and for the first time, the conductor practised this task with the help of the inbound LE while waiting for another train in a siding at Keith, Alberta. Prior to that day, she had not received any training or instruction on how to set retainers, and she had not encountered this situation in the course of her duties.

Checking brake cylinder pistons while setting retainers allows a conductor to note which cars have already lost all brake cylinder pressure (BCP). Without having had training that

included this information, the conductor was not aware that observing piston position while setting retainers could have provided an indication of the condition of the brakes on the cars. This observation can prompt a discussion about the need for another course of action. Neither the trainmaster nor the LE raised the matter of piston position in discussion during the job briefing, nor were there instructions in the FHOP indicating that piston position should be checked when setting retainers.

Finding as to causes and contributing factors

Gaps in the training program meant that the inbound conductor was not aware of the need to observe brake cylinder piston position while setting retainers, and therefore retainers were likely applied to cars with ineffective brakes.

2.3.1.2 Locomotive engineer

The LE on the inbound crew qualified in August 2012. During his on-the-job training, he was taking 2 to 3 trips a week, coached by senior LEs. After qualification, he returned to his previous position as a conductor and worked as a relieving LE on various subdivisions when an assignment was available. He moved permanently to the Laggan Subdivision LE spare board in 2018.

LEs must be certified for the subdivision on which they operate. On the Laggan Subdivision, the certification for LEs requires approximately 3 extra months of training specifically dedicated to Field Hill operations, which includes trips to practise and qualify for the skill of descending the mountain grade and safely resuming operation when a train must be stopped on the mountain grade.

The LE had followed the program specifically designed for Field Hill operations and was Field Hill–certified.

CP's Field Hill certification program does not contain a module dedicated specifically to the challenges of train operations on mountain grade in extreme cold temperature. Such training could raise awareness of the issues associated with air brake system operations in extreme cold and increase vigilance on the part of LEs when they encounter situations similar to the one the inbound crew faced in this occurrence.

2.3.2 Trainmaster training

Supervision is an administrative control that supports or reinforces human factors aspects, including compliance with procedures, priorities, workload, rest requirements, engagement, and motivation. Supervisors, as authority figures, can have a significant impact on many of the factors that influence behaviours in the workplace.[172]

Individuals with any form of supervisory role need to be trained and competent. Competence includes technical skills as well as non-technical skills such as planning,

[172] M. Fleming, *Effective Supervisory Safety Leadership Behaviours in the Offshore Oil and Gas Industry*, Offshore Technology Report 1999/065 (2001), prepared by Robert Gordon University for the Health and Safety Executive.

communication, and delegation. Technical competence should include an understanding of the hazards and control measures associated with the work being supervised.

The trainmaster was qualified as an LE through the management training program, and had worked as an LE on other subdivisions. He had worked on the Laggan Subdivision as a conductor, and had experience dispatching the subdivision as an RTC, but had not worked as a qualified LE on this subdivision. Therefore, he never received the specific Field Hill training, which includes field practice and release and catch scenarios on mountain grade. In addition, although the trainmaster had completed approximately 100 trips as an LE, he had never operated a train on Field Hill. His training and hands-on experience did not include operating unit grain trains in extreme cold temperatures on mountain grades and he had not gained an intimate knowledge of the topographic features of the territory as an LE.

The available guidance in the FHOP referred to "abnormal braking conditions dictating the use of hand brakes." The occurrence train was placed in emergency because speed could not be maintained below the maximum allowed with the service brake applications that were made; yet the trainmaster did not perceive this to be an abnormal braking condition. Additionally, ambient temperature was below −25 °C, which affects the brake system.

Training programs should be sufficient to prepare individuals to respond to undesirable operating circumstances such as emergency stops on mountain grades.

Finding as to causes and contributing factors

The trainmaster's training and experience did not adequately prepare him to evaluate abnormal circumstances in the complex operating environment of Field Hill.

Complex operational events such as recovering from an emergency brake application on Field Hill were not historically managed by trainmasters but by road foremen. The trainmaster position and the road foreman position are complementary and both have a critical role in train operations: road foremen are specialists focused on the technical aspects of train and locomotive operations, and trainmasters are generalists who carry a diverse workload, spanning from the general supervision of LEs and conductors to the day-to-day train operations and logistics support (e.g., arranging a transport for train crews, conducting proficiency tests).

The road foreman position for the Calgary terminal was vacant from 2016 to 2018. During this period, the associated responsibilities and workload were absorbed by the trainmasters, who were not required to be Field Hill–certified, experienced LEs. This represented a loss of technical expertise and experience that was not addressed, which weakened the support given to crews to ensure safe train operations, particularly during emergencies.

Even though trainmasters assumed road foreman duties, they did not receive technical training and operational experience to acquire the required knowledge to ensure a smooth and safe transfer of those duties.

At the time of the occurrence, there was 1 person holding the title of road foreman at the Calgary terminal, but the incumbent's technical expertise and experience were similar to those of a trainmaster.

Finding as to risk

When specialist duties are transferred to a generalist position, unless technical training and operational experience bridge the gaps that exist between the 2 positions, there is an increased risk that these duties will not be performed adequately.

2.3.3 Training on crew resource management

In human performance research, examples regarding teamwork indicate that "good communications within the group, a high degree of situational awareness, and a comprehensive understanding of the decision-making process by all members of the group are all prerequisites for the creation of synergy and the effective performance of the team as a whole."[173] Crew resource management (CRM) training helps crew members give and receive input so that appropriate decisions are made.

CRM training is not mandatory in the Canadian rail industry, and therefore not part of the training curriculum required for conductors and LEs under the *Railway Employee Qualification Standards Regulations*.

CP provides initial CRM training to its new operating employees. This training provides valuable information to guide employees on how to work safely; however, it consists of a 1-hour module and is given at a time when the trainees are already trying to absorb a lot of new information. The relevance of the CRM information provided may not be fully appreciated at this phase in their training, particularly without practical exercises to connect the concepts presented to their application in the field.

In Canada, the *Commercial Air Service Standards* require scheduled airline operators to provide all flight crew members with initial and annual recurrent CRM training. VIA Rail Canada Inc. has been providing its LEs with an 8-hour CRM course followed by recurrent training every 3 years. In contrast, CP's CRM training is not recurrent and is offered only during initial training. Without recurrent CRM training, the principles of CRM may not be reinforced beyond the initial training.

[173] Royal Aeronautical Society, *Crew Resource Management: A Paper by the CRM Standing Group of the Royal Aeronautical Society* (1999).

Finding as to risk

When operating employees do not receive adequate initial and recurrent training in CRM, including how to make decisions when authority gradients are present, crew coordination and interaction may not be effective, increasing the risk of human factors–related accidents.

2.4 The emergency stop

2.4.1 Train handling before the emergency stop

2.4.1.1 Applied air flow events

Shortly after departing Alyth Yard, the inbound LE noticed an increase in air flow whenever the air brakes were applied (events known as applied air flow events). These occurred while bringing the train to a stop for train meets at Keith, Banff, and Eldon. In addition, a sudden and unexpected increase in air flow appeared shortly after making a 7 psi minimum brake pipe reduction as the head-end of the train was starting to descend Field Hill. About 8 minutes later, when the brake pipe pressure was further reduced by 3 psi, another applied flow was observed.

The locomotive event recorder (LER) data for the distributed power (DP) mid-train remote locomotive indicated an applied flow of up to 35 cubic feet per minute (CFM). In addition, the DP lead and rear locomotives were maintaining the brake pipe pressure and would have been expected to have a similar amount of flow after the brakes were applied.

An increase in brake pipe air flow is normally expected to occur only when the air brakes are released and while the brake pipe and car air storage reservoirs are being charged. A sudden and unexpected increase in air flow with the air brakes applied is indicative of excessive leakage or an unintentional brake release.

Finding: Other

Because the continuity of the brake pipe was never compromised in any way, and an unintentional brake release did not occur on the train before the derailment, the only remaining cause of the applied air flow was excessive leakage of air on one or more cars. This can result in depletion of BCP or the release of the air brakes on individual cars.

2.4.1.2 Running brake tests

Section 3, item 12.1 of CP's *General Operating Instructions* (GOIs) requires, in part, that a running brake test be performed on all trains to condition the brakes and verify their operability before descending grades 2% or greater.[174] In addition, the CP train handling procedures for the Laggan Subdivision specify that westbound trains are to make a running brake test before arriving at Mile 113.[175] This requirement ensures that the test is conducted while a train is still traversing various ascending grades with a moderate change

[174] Canadian Pacific, *General Operating Instructions* (revised 06 September 2018), Section 3, Item 12.1.

[175] Canadian Pacific, *Laggan Subdivision (Incl Copithorne Spur) Train Handling Procedures* (13 October 2015), Section 4.0.

in elevation. Beyond Mile 113, a train starts ascending steeper grades of up to 1%, making it more difficult to properly verify brake operability due to the slowing effect caused by the more pronounced change in elevation.

Once a train reaches Stephen (Mile 123.1), it starts a long and steep descent down Field Hill, during which the air brakes will remain applied for about 60 minutes before it arrives at Field (Mile 136.6).

The investigation determined that the occurrence train's automatic air brakes had been applied at 2 separate locations within 8.5 miles before reaching Mile 113. The first brake application was made while entering and bringing the train to a stop in the siding at Eldon, where the train waited for 90 minutes for 2 opposing trains to clear the area. The second brake application was made while the train was being backed out of the siding and brought to a stop at Mile 105.7.

The DBs were also applied during this reverse movement, and remained applied for the last 3600 feet. Additionally, the locomotive independent brakes were gradually applied in the final 30 seconds of the movement to help bring the train to a stop just clear of the east switch. The train then resumed its westward progress with no other brake applications being made from the time the train departed Eldon to when it arrived at Mile 113.

The 2 brake applications at Eldon were reviewed in the context of the requirements of the train handling procedures for the Laggan Subdivision and section 3, item 12.2 of the GOI. The GOI running brake test procedure states, in part, that the train brakes are to be applied with "sufficient force to verify the brakes are operating properly" and that "locomotive brakes should not be allowed to apply at this time."[176]

The brake applications at Eldon were made in the absence of blowing snow or snow accumulation above the top of the rail, and before the train arrived at Mile 113. Given the length of time the 2 brake applications remained in effect, and the conditions that existed at the time, each of the applications would have been sufficient to condition the brakes and assess the response of the brake application, and would have allowed brake system operability to be verified.

Although the DBs and independent brakes were used for part of the time the train made the reverse movement to back up clear of the Eldon east switch, these additional braking sources were not considered impediments for the LE to assess brake system operability. In contrast to the GOI section 3, item 12.2, which states that the "locomotive brakes should not be allowed to apply at this time,"[177] some railways, such as the Canadian National Railway Company (CN), specifically require the locomotive brakes to remain applied during a running brake test to ensure that they are also conditioned for service.[178]

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176 Canadian Pacific, *General Operating Instructions* (revised 06 September 2018), Section 3, Item 12.2.

177 Canadian Pacific, *General Operating Instructions* (revised 06 September 2018), Section 3, Item 12.2.

178 Canadian National Railway Company, *Locomotive Engineer Operating Manual*, Form 8960 (01 May 2016), Section G: Train Handling, Item G2.6: Winter Operation - Conditioning the Brakes.

When adverse weather conditions exist, such as freezing rain, snow accumulation above the top of the rail, or ambient temperatures below −15 °C,[179] it is critically important to keep braking surfaces clear of ice and snow and conditioned for service, and also to verify brake system operability before descending a steep grade. However, a successful running brake test, while of fundamental benefit, does not provide insight into potential leakage issues that can increasingly reduce brake efficiency on a train descending a long steep grade.

The meets at Eldon occurred earlier in the evening between 1900 and 2030, before the ambient temperature dropped into the extreme cold range, below −25 °C. When the train entered the siding, the brakes remained applied for about 35 minutes. When the train subsequently backed out of the siding, the brakes were applied for about 6 minutes. The recorded information indicated that the air brakes responded adequately during the 2 train stops; therefore, these stops would not have revealed any potential performance issue.

Finding: Other

The running brake test at Eldon did not reveal any consequential braking anomaly because brake system leakage had not yet been exacerbated by the extreme cold, the duration of the brake applications was not long enough for the leakage to adversely affect the air brake system performance, and the train was not on the mountain grade.

The cumulative effects of excessive air brake system leakage are more severe during a prolonged air brake application and especially so in extreme cold ambient temperatures.

2.4.2 Operators' mental model of the train's brake effectiveness

People working in complex operational environments make decisions by building a mental model of the operational environment. Because of the limitations to available data and sensory input, this mental model is never completely accurate. Normally, essential elements relating to the operation are properly accounted for, given training and experience supported by operating rules and procedures. Occasionally, however, the information required to build a mental model is corrupted or is obscured altogether, which in turn compromises a person's mental model of a situation and thus the rest of the decision-making process.

2.4.2.1 Repeated exposure to ineffective braking

Repeated exposure to a complex operational situation without adverse consequences can result in a gradual shift from a heightened state of alertness to a relaxed or normal state. Each successive exposure without adverse consequences reduces an individual's attention to the source of risk, particularly when cues used to assess the presence of risk are blurred, misinterpreted, or attributed strictly to normal variation in operating circumstances.

Safety hazard reports involving poorly braking unit grain trains descending Field Hill had been submitted by train crews in January and February for a number of years. The timing of these reports indicates that the braking of these trains was intermittently and seasonally

[179] Canadian Pacific, *General Operating Instructions* (revised 06 September 2018), Section 12.1.

problematic: that is, braking performance was particularly an issue when ambient temperatures were more likely to drop below −25 °C.

On 03 February 2019, the day before the occurrence, the relief LE had difficulty safely descending Field Hill on a loaded unit grain train due to poor brake performance. While descending the grade, he had been so close to a complete loss of control that he advised the RTC to clear the track ahead, including the tracks in Field. He had to make a full service application of the train brakes and use full locomotive DBs to maintain speed. After this trip, he completed a safety hazard report.

In CP operations, unit grain trains were so often operating close to the limits of their braking capacity during extreme cold temperatures that braking degradation became normalized. (emphasis added by J.Hicks not in original report)

Finding as to causes and contributing factors

Since braking performance degradation occurred seasonally on CP unit grain trains in extreme cold temperature, this condition had become normalized such that it was expected that close to maximum available braking would be required while descending Field Hill.

Consequently, LEs had developed a greater risk tolerance and had adapted their normal train handling practices on Field Hill on very cold days.

Finding as to risk

If train crews routinely operate under hazardous circumstances, such as braking performance degradation in extreme cold temperatures, each successful trip will increase risk tolerance and reduce a crew's ability to recognize, accurately evaluate, and manage the hazards in future, increasing the risk of an accident.

2.4.2.2 Inconspicuous air flow display

The Association of American Railroads (AAR) *Manual of Standards and Recommended Practices* stipulates that, in terms of design philosophy, the urgency of rail information conveyed by an alarm shall be indicated by the background colour (that is, alarms with red backgrounds are most urgent, alarms with yellow backgrounds are less urgent, and alarms with white backgrounds are the least urgent).

Although the operator display screen in the locomotive cab included a field for brake pipe air flow, the field was not particularly conspicuous among other information displayed. The "Flow" box on the operator display screen of the occurrence locomotive showed a small white number that did not flash, change colour, or change prominence, regardless of the circumstances or the flow rate that was displayed.

Even though an increase in brake pipe air flow after a train brake application is a known indicator of an unintentional release of the train brakes, the air flow meter on the locomotive's operator display screen was not designed to change its appearance in order to draw attention to potentially problematic changes in air flow rate. Despite the absence of such cues, the railway expected LEs to monitor brake pipe air flow effectively.

Finding as to risk

If established design principles are not applied to the display of safety-significant information on the locomotive's operator display screen, important cues may be missed, increasing the risk of accidents.

2.4.2.3 Diminished awareness of the importance of applied air flow events

Following unexpected or abnormal mechanical events, operators' decision making is conditioned by operational context and individual experience. Human factor literature[180] describes a bounded rationality that conditions an operator's perception based on limitations to available resources. Examples of resource limitations that operators must manage as they balance multiple and sometimes conflicting goals include adherence to a schedule, limited hours of service, and delays.

En route, the inbound LE observed an increase in air flow whenever the air brakes were applied. These applied air flow events occurred while bringing the train to a stop for train meets at Keith, Banff, and Eldon. An increase in air flow was also observed while the train was descending Field Hill. The earlier events were raised by the inbound LE in discussion with the trainmaster. The trainmaster did not perceive this information to be related to the difficulty controlling the train and indicated he would look into it at a later date during a follow-up review of the LER download.

After Bulletin CPSB048-13 was rescinded, the requirement to report such events was removed from crews' immediate duties. In the rail industry, making events reportable is an administrative defence linked to operational safety and control. Consequently, removing the requirement to report applied air flow events to the RTC downgraded the significance of these events as a symptom of brake system malfunction and likely decreased vigilance on the part of the inbound LE.

In complex systems, operators must process multiple forms of presented data to create a basis for operational decision making. Although the majority of normal equipment behaviour is displayed by instrumentation, discrete cues reflecting deeper system behaviour may be more difficult to perceive, especially if the result of certain interactions has not been designed into the system. Missing or misleading cues related to system behaviour may jeopardize effective situational awareness (i.e., the ability to perceive and comprehend a situation, and project its future status).[181] The impact on the decision-making process may emerge as follows:

- **Operators may not perceive the emerging situation correctly or at all**: they may not sense out-of-tolerance conditions if the system design does not map built-in warnings, cautions, or advisories to system behaviour. Alternatively, operators may perceive the emerging situation incorrectly if they determine that cues are related to other possible sources of trouble.

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[180] D. D. Woods and R. I. Cook, "Perspectives on Human Error: Hindsight Biases and Local Rationality," *Handbook of Applied Cognition* (1999), pp 8–9.

[181] M. Endsley, "Toward a Theory of Situation Awareness in Dynamic Systems," *Human Factors: The Journal of the Human Factors and Ergonomics Society*, Vol. 37, Issue 1 (1995), p. 36.

- **Operators may perceive, but not comprehend the situation**: e.g., applied air flow events can be linked to extraneous environmental factors that have an impact on the performance of the braking system.
- **Operators may comprehend certain cues but may not be able to forecast how the situation may be compounded later**: e.g., applied air flow events may be linked to the performance of the braking system but not to the performance of the retainers (i.e., the ability of the retainer to effectively preserve residual BCP required that residual BCP is present at the time the retainer is set).

Finding as to causes and contributing factors

Although the applied air flow events were noticed and discussed, their significance as a leading indicator of brake system malfunction may not have been fully understood, resulting in a missed opportunity to accurately diagnose the diminishing effectiveness of the train's air brake system.

2.4.3 Braking degradation on the train

The investigation determined that multiple underlying factors contributed to, or resulted in, a degradation of the train's braking performance, most notably leakage from the air brake system components (brake cylinder, car control valve, brake pipe, auxiliary/emergency reservoir), weak response to small incremental brake pipe pressure reductions, unintentional brake release, and aging equipment. Several of these conditions were exacerbated by the extreme cold temperature and reduced the margin of safety while the train was operating down the mountain grade in extreme cold temperatures.

Data from several sources were reviewed and analyzed in assessing the condition of the train's braking system:

- post-derailment rolling stock conditions
- LER data
- results of brake effort calculations and train dynamic simulations
- results from a series of tests performed on the locomotive and 13 grain cars recovered from the accident site
- wheel temperature measurements for the cars on the occurrence train based on previous trips under different ambient temperature conditions

2.4.3.1 Air leakage from the brake cylinder

The leakage of compressed air is expected to occur from a rail car, particularly during the colder winter operating season. The leakage rate can vary considerably from car to car depending on several factors. Most of the leakage that may occur will not interfere with the proper operation of the car's air brake system, nor is it detrimental to the car's brake effectiveness. The brake cylinder, however, is one air brake component that can be critically affected by leakage. The loss of BCP on a car due to leakage will reduce the brake force provided by the car. A brake cylinder that has a significant amount of leakage may completely bleed off to the point where the brake shoes no longer contact the wheel tread

surface, rendering the brakes completely ineffective. A car that does not provide the expected amount of braking force does not fully contribute to the retarding force on a train.

The brake cylinders on a car are only pressure maintained to a maximum of approximately 8 to 12 psi, regardless of the air brake application in effect. Brake cylinder leakage can be particularly problematic for a heavy weight train descending a long grade where the air brakes will remain applied for a longer duration.

The maximum allowable brake cylinder leakage is 1 psi per minute during a 1-minute waiting time, per AAR Standard S-486, "Code of Air Brake System Tests for Freight Equipment - Single Car Test." With leakage of air from the brake cylinder, even within acceptable limits, the force exerted by the piston is reduced, resulting in less effective braking on that car.

Brake cylinder leaks are worsened by the deterioration of packing cup gaskets due to aging and wear, as well as by the degradation of the grease lubricating the packing cup system. These leaks are accentuated in cold temperatures, when rubber packing cups, gaskets, and grease harden and contract. There is no requirement to perform periodic maintenance on rail car brake cylinders. Therefore, brake cylinders can remain in service for long periods of time.

During a series of incremental service brake applications on the 13 recovered grain cars performed after the occurrence, BCP dropped to 21 psi, or 57% of the theoretical maximum, after 19 minutes of sustained operation. These results strongly suggest that the air brake system on these cars would not have provided adequate braking effectiveness, therefore compromising the safe operation of a loaded unit grain train in a situation where the air brakes would need to remain applied for an extended duration, such as while descending a long mountain grade.

Post-occurrence testing determined that the depletion of the BCP on about 50% of the 13 recovered grain cars after 19 minutes of sustained operation resulted in the cars not providing the full expected amount of braking force. The performance of these 13 cars was shown to be representative of the other cars on the occurrence train.

Finding as to causes and contributing factors

Based on post-occurrence testing, it is likely that about 52 of the 112 cars on the occurrence train had reduced air brake effectiveness during the initial descent of Field Hill, and consequently an emergency brake application was necessary.

During the tests performed outdoors in Banff, the leakage of compressed air from the brake cylinders was measured with the retainer set to operate in the high pressure (HP) position. Brake cylinder leakage was measured after releasing a full service / emergency brake application. At the end of the test (1 hour and 45 minutes), it was observed and recorded that 7 of the 13 recovered cars (54%) had leaked down to 0 psi.

Finding as to causes and contributing factors

For the occurrence train, given the extreme cold temperature and the length of time the cars were stationary with the brakes applied, the rate of BCP loss on some cars with retainers set was likely excessive.

Finding as to risk

When trains operate in extreme cold temperatures, brake cylinder leakage will occur, increasing the risk that the use of retaining valves as a means to preserve braking capacity will not be effective.

2.4.3.1.1 Brake cylinder leakage and applied air flow

During tests on the 150-car test rack at Wabtec, a brake cylinder leakage of 1 psi/minute was applied to half the cars on the test rack, which resulted in an increase in air flow of about 2.1 CFM after a 10 psi brake pipe reduction. On the occurrence train, applied air flow values in the double digits were observed during the train's initial descent to Partridge, indicating that there was excessive brake cylinder leakage on a large number of cars on the train, as well as leakage from other sources such as the brake pipe, and from older gaskets in the car control valves (CCV).

According to the braking degradation curve,[182] a BCP of about 40 psi (generated by a 15 psi brake pipe reduction) will start dropping and will reach the quick service limiting valve (QSLV)–maintained pressure of 10 psi after about 20 minutes when the brake cylinder is leaking at an initial rate of 1 psi/minute. This behaviour was observed during the tests performed on the 13 recovered grain cars during the outdoor testing in Banff. In these tests, 38% of the cars essentially lost their braking effort during service applications: BCP dropped from 38 psi to values between 0 and 10 psi in 19 to 20 minutes.

Finding as to risk

For a train negotiating a long descending grade, where a brake application may be held for over 20 minutes, even with a brake cylinder leakage rate within the maximum acceptable limit specified in AAR Standard S-486 SCT (1 psi/minute), there is a risk that brake cylinder leakage will render the air brake system ineffective.

2.4.3.2 Ineffective small reductions in brake pipe pressure

In this occurrence, maintaining a maximum speed of 15 mph while descending the 2.2% mountain grade would have required the air brakes to be applied incrementally, to compensate for the continual loss of compressed air from the car brake cylinders.

Results of tests performed on the recovered cars indicated that, for the occurrence train, after 20 minutes of sustained brake operation, the BCP was likely depleted to the point where an emergency brake application was necessary to prevent any further acceleration and bring the train to a stop.

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[182] A. Aronian and L. Vaughn, "NYAB Brake Cylinder Maintaining Trials Update," Air Brake Association Conference, Minneapolis, Minnesota, United States, (October 2015).

The recovered cars were subjected to successive incremental brake applications (2 psi to 3 psi), over periods ranging from 7 to 20 minutes. Over 50% of the cars did not respond as expected and did not show much increase in BCP. This result highlights the importance of reducing brake pipe pressure by more than 2 to 3 psi when making successive air brake applications.

Finding: Other

Small incremental reductions in brake pipe pressure may not be sufficiently robust to propagate along the length of the brake pipe when there is a high-level air flow occurring simultaneously. They also can result in a pressure wave that cannot trigger the intended brake application response effectively on older or less sensitive CCVs.

2.4.3.2.1 Weak response of DB-10 service portions to small brake pipe reductions

Various field and laboratory testing by CCV manufacturers and the AAR showed that NYAB's DB-10 service portions made before 2005 did not respond as expected to small incremental brake pipe reductions following a minimum brake pipe pressure reduction. The brake applications resulted in almost no additional BCP build-up on some freight cars, and consequently the auxiliary reservoir pressure was depleted into the brake pipe through the weeper port, triggering an undesired brake release.

Finding as to causes and contributing factors

Twenty-seven cars on the occurrence train had DB-10 CCV service portions. It is likely that the response from these service portions to the small incremental brake applications that were made as the train was operating between Stephen and Partridge contributed to the difficulty in controlling train speed that led to the emergency brake application at Partridge.

2.4.3.3 Air leakage from the car control valves

CCVs respond to decreases and increases in brake pipe pressure by applying and releasing/recharging the brakes of the cars they control. In extreme cold environments, the internal rubber gaskets and O-rings of the CCV can shrink, resulting in air leakage.

The investigation determined that the rubber components on a number of CCVs on the train's cars had pre-existing conditions, which contributed to the diminished effectiveness of the train's braking system.

According to NYAB General Letter GL-490, the NYAB-Knorr DB-10 service portion on CCVs manufactured more than 13 years ago are susceptible to leakage issues from the bottom exhaust port in extreme cold temperatures due to a worn rubber seal within the service portion. This condition is characterized by increased brake pipe air flow and auxiliary reservoir leakage when the brakes are applied. Such leakage might result in an undesired release of a car's service brake application.

Following an uncontrolled movement on CN's Luscar Industrial Spur in 2018, additional NYAB testing identified problems with the DB-20 emergency portions. That testing determined that worn and deteriorated rubber seals resulted in excessive leakage from the CCVs during extreme cold temperatures. This leakage would result in the valves

malfunctioning in response to service and emergency brake applications. These situations would only occur at extremely low operating temperatures.

The occurrence train had 27 grain cars equipped with NYAB-Knorr's DB-10 service portions and DB-20 emergency portions manufactured more than 13 years ago.

Finding as to causes and contributing factors

It is highly probable that the air brake system on the 27 grain cars equipped with NYAB-Knorr's DB-10 service portions and DB-20 emergency portions manufactured more than 13 years ago could not maintain adequate braking effectiveness due to excessive leakage from worn and deteriorated rubber seals on these portions.

Until 1992, the replacement of CCVs was time-based. At the time of the occurrence, the replacement of CCVs was based on the valve's condition, as determined by a single car test (SCT). This practice presented serious safety risks for loaded unit trains descending mountain grades in extreme cold temperatures.

Finding: Other

The SCT, which is usually conducted in a shop or outdoor repair track environment at warmer temperatures, does not identify defective CCV conditions that manifest themselves in cold and extreme cold operating conditions.

2.5 The uncontrolled movement

2.5.1 Decision making after the emergency stop

2.5.1.1 Field Hill operating procedures

Operating instructions for the Laggan Subdivision can be found in CP time tables, GOIs, general bulletin orders (GBOs), special instructions (SIs), operating bulletins, and train handling procedures. The instructions applicable to Field Hill are contained in the FHOP.

2.5.1.1.1 Incremental revisions to the procedures

From their inception, the FHOP prompted the use of retainers as a first step in the recovery of the air brakes after an emergency stop on Field Hill.

From 1998 until 2012, the FHOP required the use of retainers on at least 65% of the cars and, if operating conditions (e.g., abnormal braking conditions) dictated the use of hand brakes, then hand brakes were to be applied to 100% of the cars. The use of hand brakes was left to the discretion of the crew based on their assessment of the train's performance, the weather, and rail conditions. The crew members could request guidance and technical advice from a road manager, but ultimately the decision to apply hand brakes in addition to setting retainers rested primarily with them.

In 2012, modifications to the FHOP made a distinction between the first and second emergencies with respect to the percentage of retainers and hand brakes to be applied.

- The percentage of retainers required after a first emergency increased from at least 65% of loaded cars to at least 75% of loaded cars, while the percentage of hand

brakes to be applied when abnormal conditions dictated dropped to at least 75% from 100%.

- After the second emergency, the requirements were to apply retainers on 100% of the loaded cars (from at least 65% of the loaded cars), along with 40 hand brakes on the cars at the head-end of the train, rather than on every car.

The changes made in 2012 made it clear in a note that "all westward trains experiencing an emergency brake application beyond mile 123.5 must communicate with the on duty Trainmaster via the RTC and be governed by their instructions," whereas in 2008 this applied in the event of second emergency brake applications only.

The 2012 FHOP also introduced a mandatory job briefing between the train crew and the trainmaster after the first emergency brake application. The job briefing is an important opportunity for crews and the trainmaster to share information on train performance, environmental factors, and any risks associated with train handling.

Together the job briefing and the guidance in the FHOP were the resources in effect at the time of the accident to support the development of a course of action following an emergency brake application on Field Hill.

2.5.1.1.2 Company procedural guidelines as opposed to prescriptive procedures

In the FHOP in effect at the time of the occurrence, the procedures for recovering from an emergency brake application on Field Hill were guidelines rather than a prescriptive emergency procedure. Tasks were discretionary, not mandatory, compelling operators to make decisions based on their combined experience and their understanding of the situation. The assumptions underlying the FHOP were that there was

- effective communication to achieve consensus between train crew and trainmaster on the condition of the train and its forecasted state;
- agreement between crew members;
- consideration of abnormal conditions such as weather or a poor-braking train and understanding of their impact;
- technical expertise from every participant in the job briefing; and
- operational knowledge, experience and qualifications for operating on the territory.

Because the FHOP were procedural guidelines rather than a prescriptive emergency procedure, they did not contain mandatory instructions driven by environmental or mechanical conditions. A guidelines approach carries a risk that operators closest to the emergency will misjudge the severity of the situation.

In this occurrence, the train had a potential loss of control event when the inbound crew was unable to control its speed, which led to the emergency stop at Partridge. At that time, the ambient temperature was in the range of temperatures known to cause abnormal air brake function—and it was getting colder. The FHOP said that "abnormal conditions" might dictate a course of action; however, they did not contain thresholds of abnormal conditions at which crew members would be required to take specific actions.

Finding as to causes and contributing factors

Even though the inbound crew experienced poor train braking performance that had required an emergency stop, the Field Hill operating procedures did not lead the crew and the trainmaster to conclude that the situation warranted applying hand brakes in addition to setting retainers.

To the extent that the FHOP were meant to guide employees' actions following emergency stops, they were very different from emergency management tools used in other transportation industries.

For example, quick reference checklists in commercial aviation are designed to direct users to take specific actions during emergencies. They are in an easy-to-read format and are inherently clear and unambiguous in listing abnormal equipment behaviour and providing instructions on the actions to take in response.

A checklist for an emergency stop on Field Hill might include specific conditions under which it is mandatory to apply hand brakes: for instance, a specific cold ambient temperature, the presence of applied air flow events, or the maximum length of time a train is permitted to be stationary.

Overall, such checklists are designed using a human-centred approach, which assumes that the crews using them have varied experience and are working in conditions of heightened stress; this approach reduces the opportunity for error.

Finding as to risk

If guidance on how to respond to an emergency situation is not explicit but instead relies on employees' interpretation of the situation, employees' decision making may not be precisely informed, increasing the risk of an unsafe course of action being implemented.

2.5.1.2 Job briefing

After the train stopped in emergency on Field Hill, a job briefing was required to take place per the FHOP. During this briefing, the trainmaster, with input and feedback from the inbound crew, would decide on the best course of action to recover from the emergency brake application.

2.5.1.2.1 Available methods for recovering from the emergency brake application

As a precondition for brake recovery after an emergency stop, the first prompted method outlined in the FHOP is to set retainers on at least 75% of the loaded cars before referring to the use of hand brakes. The FHOP indicate that, when considering whether to apply hand brakes after a first emergency brake application on Field Hill, the operators should base their decision on the situation (for instance train location on the hill, weather, or other conditions present that may affect the braking of the train). Should a second emergency brake application be necessary, the FHOP require retainers to be applied on 100% of the loaded cars, as well as 40 hand brakes at the head end of the train.

Leaving operators to choose between applying only retainers or using hand brakes after a first emergency is problematic, because these methods require different levels of effort,

have different purposes, and vary in effectiveness, particularly in extreme environmental conditions.

Setting retainers is relatively manageable by a lone conductor. Retainers, by design, use the car air brake system to entrap residual air pressure in the brake cylinder after the brakes are released and during recharge. The success of retainer use as a temporary means to help limit train acceleration during brake system release and recharge depends on components that may have already contributed to the deterioration of braking and that may already be compromised; therefore, the expected BCP and braking force may not be available.

Applying hand brakes, in contrast, requires significantly more time and energy to be done correctly. In winter months, this action is further complicated by bulky winter clothing restricting mobility and the difficulty of moving through snow alongside the train. Because of the time required, applying a large number of hand brakes can interrupt rail traffic for hours and can have profound repercussions on rail operations across the network.

Because of its wide-ranging implications, both for conductor workload and for railway operations, a decision to apply hand brakes is extremely difficult to make and substantiate in the absence of clear and objective decision criteria that are based on assessment of the hazard. In this occurrence, the crew members and the trainmaster were aware that the tail end of the train was blocking the east siding switch at Partridge, preventing the operation of other trains in either direction.

2.5.1.2.2 Trainmaster's assessment of the situation

Safety is created when operators successfully apply their knowledge to achieve operational goals within resource-constrained situations. The concept of bounded rationality in complex industries implies that resources, including the operator's knowledge, are invariably limited. As a result, the course of action developed on the basis of these resources may be incomplete or erroneous, especially when there are multiple goals to achieve with a limited set of resources to apply.

The trainmaster's assessment of the emergency stop was based on his experience with grain trains and the handling of over a dozen emergency stops where retainers were used routinely.

Finding as to causes and contributing factors

After the job briefing, during which critical factors, such as ambient temperature, brake system performance and the significance of the applied air flow events that might have prompted the application of hand brakes, the trainmaster decided that setting retainers was sufficient after this first emergency stop.

2.5.1.2.3 Trainmaster as technical lead in decision making

With regard to selecting a course of action to recover from an emergency brake application on Field Hill, decision authority of the trainmaster is built into the FHOP which states, in part, "All westward trains experiencing an emergency brake application beyond mile 123.5 must communicate with the on-duty trainmaster via the RTC and be governed by their

instructions."[183] As written, overall authority is assigned to the trainmaster, given the supervisory role, perceived higher level of experience within the group and company, and assumed deeper knowledge of emergency stops on Field Hill.

The decision-making process is informed by job briefings with train crews and is designed to build a shared understanding of the work to be done and the measures to be taken to ensure operational safety. In practice, crew members communicate critical information pertaining to safe train operations, which may include a discussion of potential hazards and the means to protect against them. For crew interactions to be effective in developing a course of action, participants ought to feel able to provide input such as technical expertise and experience while being receptive to input from other crew members who typically consist of people with different personalities, levels of experience, and seniority.

In this occurrence, the trainmaster's decision to apply only retainers was not questioned. The conductor did not have enough experience to offer an opinion, whereas the inbound LE had experience and knowledge of train performance in a variety of operating circumstances. He had operated the train from Alyth to Partridge and had experienced an unanticipated and inadequate response from a series of service brake applications on Field Hill, which led him to having to make an emergency brake application. The outcome of the job briefing was in accordance with the FHOP, where the inbound train crew abided by the trainmaster's interpretation of the situation in applying retainers.

The role of trainmaster as a decision-making authority in the FHOP is a critical leadership role, supported by job briefings where the exchange of technical information among the crew is vital. Trainmasters are normally contacted remotely and are therefore a narrowly embedded member of the team. Circumstances surrounding decisions may be worsened if the trainmaster does not have the requisite technical expertise and mountain grade experience to draw from when identifying risk in a complex operational situation.

In this occurrence, the trainmaster's effectiveness as technical leader in decision making was likely weakened given the mismatch between his experience, the lack of resources such as decision trees or other decision-making aids, and the requirements of supervising mountain grade operations on the Laggan Subdivision. As a consequence, opportunities for engaging the inbound crew's technical proficiency and situational awareness were likely reduced. The decision-making structure in the FHOP represents a potential weakness if the trainmaster is inadequately prepared for the role as technical leader. Although the possibility of creating a troubleshooting document for trainmasters was discussed in the Calgary Cross-Functional Health and Safety Committee (CCFHSC) meetings, as indicated in the CCFHSC meeting minutes for August 2018, such a document was never developed.

Finding as to causes and contributing factors

The trainmaster was not Field Hill–certified and had not previously experienced an emergency stop on Field Hill. As a result, his decision making likely relied on the direction

[183] Canadian Pacific, *Laggan Subdivision (Incl Copithorne Spur) Train Handling Procedures* (13 October 2015), Section 1.0.

outlined in the FHOP, which was commonly interpreted to mean that only retainers were to be applied after a first emergency stop on Field Hill.

2.5.2 Loss of retarding force while stopped on Field Hill

Table 27 shows the time and location for key events on Field Hill. As shown, the train had remained stationary with the brakes applied in emergency for about 2 hours and 52 minutes when the train started to roll on its own. At this point, a total of about 3 hours and 14 minutes had elapsed since the initial 7 psi brake pipe reduction had been made as the head end of the train started to descend Field Hill. During this entire period, brake cylinder leakage was occurring in varying amounts on the cars.

Table 27. Total elapsed time from first brake application to start of uncontrolled movement

Time	Location	Mile	Event	Time between events
2128:13	Stephen	123.12	Initial brake application	00:00:00
2149:33	Partridge	127.46	Emergency stop	00:21:20
0042:02	Partridge	127.46	Train movement starts	02:52:29
			Total elapsed time	03:13:49

Theoretical brake force calculations indicate that, given the weight of the train, the grade, the train speed, and the distance required for the train to come to a stop after the emergency brake application, an average BCP of about 47 psi would have been needed to develop the required brake force to stop the train. Once the train was stopped, the retarding force required to hold the train stationary on the 2.2% grade would have been provided in small part by the locomotives' independent brakes, but mainly it would have needed to be provided by the cars' braking system. Each car, on average, would have needed to provide at least 31 psi of BCP. As long as the BCP remained above this average, the train would be expected to remain stationary.

Finding as to causes and contributing factors

Three hours and 14 minutes after the initial brake application at Stephen, the average BCP likely decreased to below 31 psi. This rendered the retarding force insufficient to prevent the train from starting to roll uncontrolled down the mountain grade.

Tests conducted on a 150-car test rack at Wabtec determined the BCP degradation for various induced leakage rates. The results of these tests showed that, for a leakage rate of 0.5 psi per minute, the drop in BCP from 47 psi to 31 psi would take 1 hour and 50 minutes. Because it took 2 hours and 52 minutes for the average BCP in the occurrence train to decrease from 47 psi to below 31 psi, the brake cylinder average leakage rate would have been less than 0.5 psi per minute on the cars that had operational brakes. This leakage rate is within the maximum acceptable limit for the SCT brake cylinder leakage test specified in AAR Standard S-486 (1 psi/minute). However, the train was stationary on the mountain grade for too long to maintain an average BCP above the minimum 31 psi required to keep the train stationary.

2.5.3 Brake shoe friction fade

Trains operating in mountain territory can be subject to brake shoe friction fade. This can occur when the brakes remain applied for an extended period while the train is in motion. Brake shoe friction fade, also known as friction fade, occurs when wheel tread surface temperatures reach the point where the coefficient of friction between the high-friction composition brake shoes and the wheel treads drops off rapidly, usually when the brake horsepower (BHP) exceeds 30. The amount of heat generated is proportional to BHP, which itself is proportional to speed and brake retarding force.

TSB calculations show that from Stephen, where the initial brake pipe reduction was made, until the emergency stop at Partridge, the BHP remained well below the friction fade threshold.

However, during the uncontrolled movement, the train accelerated to 53 mph. On those cars with effective brakes, the conditions necessary for friction fade would have existed: at this speed, the BHP would have exceeded 30 and could have reached as high as 67.

This range of high BHP would have occurred only during the final 4 minutes of the total 8.5 minutes that the uncontrolled movement continued to gain speed on the descending mountain grade before derailing. This is a relatively short duration compared to most occurrences involving friction fade, a condition that usually develops more gradually due to a slower buildup of speed and brake force. However, any cars on the occurrence train that retained a BCP of at least 50 psi with the brakes applied in emergency would have had high brake shoe forces. On these cars, BHP would have exceeded 30 at a speed of about 12.5 mph.

The tests conducted outdoors in Banff on the 13 recovered cars revealed that 9 of the cars (69% of the total cars) had a BCP of 50 psi or greater with the brakes continuously applied in emergency for 3 hours.

These cars would have had a high BHP, and would have experienced friction fade during the uncontrolled movement. The cars would have similarly experienced friction fade and would have developed some degree of blue discoloration of the wheel tread surface.

Examination of the recovered wheelsets did reveal that 59% of the wheel tread surfaces throughout the train showed indications of blueing, which is synonymous with friction fade, with almost 10% of the wheel surfaces exhibiting severe (heavy and very heavy) blueing.

Finding as to causes and contributing factors

Brake shoe friction fade occurred on the cars with effective brakes, contributing to the high speed during the uncontrolled movement.

2.5.4 Proportion of cars with ineffective braking

A BCP that is less than expected, or that decreases over time due to leakage effects, is symptomatic of degraded braking effectiveness. Therefore, the percentage of the train's cars with ineffective brakes can be obtained by comparing the theoretical BCP and the effective pressure obtained during braking (service and emergency).

The retarding forces were calculated for the loaded grain train, based on its weight of approximately 15 000 tons and taking into account that 110 of the 112 cars had functioning brakes, and that the train was travelling on a 2.2% average descending grade. The calculations show the following:

- To maintain a train speed of 15 mph on the descending grade, the train would need 25 psi average BCP on each car, in combination with the mid-range locomotive DB. A 10 psi brake pipe pressure reduction should have produced a BCP of this magnitude, and a 19 psi brake pipe pressure reduction would have been expected to produce 40 psi of BCP. However, while the train was descending Field Hill, the application of incremental brake pipe pressure reductions totalling 19 psi did not produce the minimum 25 psi BCP required to maintain speed, and the train continued to accelerate.
- The retarding force required to bring the train to a stop from a speed of 23 mph in a distance of 1815 feet on the descending grade could be obtained with an average BCP of 47 psi. If the train had a fully effective braking system, an emergency brake application would have produced an average of 77 psi BCP. Therefore, each car on the train, on average, yielded only about 61% brake effort.
- The retarding force required to hold the train stationary after the emergency brake application on the descending grade could be obtained with an average BCP of 31 psi (40% of the theoretical maximum).

Finding: Other

Based on braking calculations, cars on the train yielded, on average, about 61% brake effort in response to the emergency brake application at Partridge. About 3 hours later, when the train began to roll on its own, the brake effort had degraded to less than 40% of theoretical maximum brake effort.

2.5.4.1 Proportion of cars with cold wheels

Wheel temperatures for all 112 cars were obtained from their previous loaded trip west to Vancouver, some 2 weeks before the occurrence. According to the wheel temperature detector (WTD) readings, roughly 18% of the cars were cold and approximately 60% of the cars in the train had effective brakes. However, these measurements were taken when the local ambient temperature ranged from −0.5 °C to −4.0 °C; it was much colder (−25.0 °C) when the occurrence train went into emergency.

Outside temperature plays a significant role in the efficiency of the braking system, and hence in the WTD wheel temperature results. Therefore, although the previous wheel temperature data collected by the WTDs revealed that 18% of the cars were “cold,” the data would not be expected to reflect, and likely overestimated, the braking performance of the occurrence train on the night it descended the mountain grade between Stephen and Partridge.

The performance of the braking system is likely better represented by the readings of 2 similar westbound unit grain trains that passed by the WTDs when the ambient temperature was similar to the temperature on the day of the occurrence. When these trains passed by the WTD located at Mile 130 on the Laggan Subdivision the day before the

occurrence, when the ambient temperature was −25.6 °C, the percentage of cold cars registered was 55% and 56%.

In extreme cold temperatures, some of the cars on the occurrence train that showed prior average wheel temperatures in the marginal range (between 100 °F and 150 °F inclusive) would have experienced further brake cylinder leakage, rendering their brakes ineffective; thus, the percentage of cars on the train with cold wheels on the day of the occurrence would have been much higher than the 18% recorded by the WTD on a previous trip.

Considering that the difference in temperature would have affected the occurrence train the same way it affected similar westbound unit grain trains, then the percentage of cold or ineffective braking cars on the occurrence train would have been similar (about 56%) at a similar outside temperature: i.e., −25.6 °C.

Finding: Other

Based on the comparison of WTD data for similar unit grain trains operating in extreme cold temperatures, i.e., below −25 °C, calculations indicate that the occurrence train was operating with at least 50% cold cars, as defined by the railway's WTD criteria, at the time of the occurrence.

2.5.4.2 Proportion of wheels with tread blueing

The wheels recovered from the occurrence site were examined for tread blueing.

Blueing of tread surfaces on rolling stock wheels, which is caused by the frictional heat generated during a heavy or extended brake application, can be used as a qualitative measurement of the relative braking force applied to each wheel.

Of the wheels examined, about 52% showed blueing categorized as Level 0 (no blueing) and Level 1 (very light blueing), indicating that they had not been subject to high frictional heat from the brake shoes pressed against the wheel tread. This in turn would indicate that the brakes on these cars were inoperative and marginally operative respectively.

The percentage of wheels with blueing at a Level 0 and Level 1 (totaling 52%) is comparable to the percentage of cold cars (totalling 56%) observed on the westbound grain trains that operated the day before the occurrence, when it was −25.6 °C.

2.6 Effectiveness of required air brake tests to identify cars with defective brakes

The negative effects of extreme low ambient temperatures on brake performance and brake force efficiency are well documented. However, it is very difficult to diagnose deficient air brake performance with the required air brake tests for trains or through periodic SCTs performed when the freight cars are inspected and tested inside the environment of a heated shop.

The train underwent and passed a No. 1 brake test before departing Alyth Yard. The test, performed by certified car inspectors on a stationary train, verifies that the air brake system is fully charged and that the air brakes apply and release in response to decreases and increases in brake pipe pressure. The test also involves inspecting the air brake system on

the train to verify that hoses are coupled, angle cocks are properly positioned, and brake rigging is intact and operational.

In addition to visually verifying that the brake cylinder pistons on each car have extended and retracted in response to the air brake application and release, inspectors also look for any apparent safety defects that might compromise the safe operation of each car. Although the No. 1 brake test can verify air brake system responsiveness by confirming that the brakes apply and release, it cannot determine the air brake system's effectiveness. Moreover, unlike automated train brake effectiveness (ATBE) testing, the No. 1 brake test assesses brake functionality on stationary trains but does not expose brake system defects that occur only while the train is in motion, such as intermittent leakage in hoses and piping and vibration-triggered CCV malfunctions.[184]

Finding as to causes and contributing factors

Both the WTD measurements and the safety hazard reports filed by train crews of westbound loaded unit grain trains confirm that the No. 1 brake tests performed in Alyth Yard did not adequately identify cars whose brakes would not be fully effective in the extreme cold temperature experienced by the occurrence train while descending Field Hill.

In times of extreme cold in the mountains, the temperature difference that can exist between Calgary and Stephen undoubtedly plays a significant role in the braking degradation experienced by these trains when they reach Field Hill.

The comparative study between No. 1 brake test data and ATBE data showed that the No. 1 brake test identifies only a very small fraction of the defective cars that WTDs could detect. The high number of cold wheels detected by the WTDs implies that a high number of grain trains having ineffective brakes are not captured by the No. 1 brake tests and inspections conducted by certified car inspectors at Alyth Yard.

Finding as to risk

Until train brake test methodologies accurately evaluate air brake effectiveness, trains operating in extreme cold temperatures may continue to have ineffective braking, increasing the risk of loss of control and derailment.

WTD data facilitates the identification of cars with marginal or poor braking performance that may manifest only while trains are in motion. The data are collected year-round and provide flexibility in proactively planning repairs on cars flagged with cold wheels. Also, the WTD data collected in winter allow railways to monitor the temperature sensitivity and performance of the car air brakes when they are most susceptible to leakage.

184 *Petition for a Waiver from 49 C.F.R. § 232.213; 232.75 and 232.103(f) for Extended Haul Trains, Movement of Defective Equipment and General Requirements for All Train Brake Systems*, prepared by Transportation Technology Center, Inc., and submitted by the Association of American Railroads (February 2016), Appendix 3: "Safety Assurance plan for using Wheel Temperature Detector Data as an Alternative to the Intermediate Brake Test".

Finding: Other

WTD data collected in winter for trains operating in temperatures of –25 °C or less provide valuable insight into overall train braking health. These WTD data could be used to establish winter operating criteria for the safe operation of unit grain trains in extreme cold temperatures.

The outdoor testing at Banff of the 13 recovered cars was performed in ambient temperatures that were as close as possible to the outdoor temperatures at the time of the occurrence. As part of this testing, a No. 1A brake test using the air flow method was successfully completed and served to verify that the cars, with one exception, were compliant with mandated air brake requirements.

All 13 cars subsequently failed an SCT conducted in the same outdoor cold-temperatures. When the 13 cars underwent another SCT months later at a car shop in warmer temperatures, 6 of the cars (45%) failed the test.

By cross-referencing WTD data (collected before the occurrence) for the 6 cars that failed the car shop SCT, it was determined that 2 of the cars had registered cold wheels and thus had a completely ineffective braking response. The other 4 cars did not register cold wheels. The test results from the outdoor testing at Banff clearly show that standardized air brake tests, such as the No. 1, No. 1A, and brake pipe leakage tests, do not reliably identify cars with ineffective brakes in extreme cold temperatures.

2.7 Developments in brake technology for freight trains

2.7.1 Automatic parking brakes

Conventional hand brakes must be applied manually on individual cars on a train. This task is time-consuming and labour-intensive.

Automatic parking brakes, by comparison, are applied and released automatically on all cars at once based on a train's brake pipe pressure, and therefore can secure a train in a very short time without manual intervention by train crews.

On a train equipped with automatic parking brake technology, as soon as the brakes are applied in emergency, depleting the brake pipe pressure, the automatic parking brakes engage, which fully secures the train on the mountain grade indefinitely, regardless of BCP loss due to leakage.

The automatic parking brake eliminates the need to set hand brakes on a train. However, once ready to get the train moving again, an LE would still need to perform a release and catch operation, and therefore it would still be necessary to apply retainers (or the pneumatic control module, if the automatic parking brake was equipped with this feature) on some of the cars.

Automatic parking brakes can be configured for use on both truck-mounted and body-mounted brake cylinders, and they can be retrofitted on existing freight cars with no need for modifications to the air brake system.

2.7.2 Brake cylinder maintaining feature

All AAR-approved CCVs have a QSLV pressure maintaining feature that ensures that the pressure in the brake cylinder remains between 8 and 12 psi even when brake cylinder leakage exists.

In addition to the QSLV pressure maintaining feature, all AAR-approved CCVs designed after 2014 incorporate a brake cylinder maintaining (BCM) feature, which compensates for air leakage not only during minimum brake applications, but also during full-service brake applications.

On trains equipped with these modern CCVs, it is no longer necessary to make progressive stepped brake applications to re-establish the targeted BCP levels even when there is leakage. BCM is used successfully to improve train brake performance and increase operational safety and efficiency. However, BCM can mask BCP leakage in the field, and is not active during an emergency application when brake pipe pressure has been fully exhausted.

2.7.3 Retention of dynamic brake force on remote locomotives

DB holding is a feature that allows the DB on a locomotive to continue working in the event of an emergency brake application. The DB holding feature is required for all territories on which locomotives with DB are dispatched. This requirement is currently considered to have been met when DB holding is available on the head-end locomotive consist.

On older DP systems, such as the one used on the occurrence train, DB holding is not available on remotely controlled locomotives that are linked to the lead locomotive via DP radio communication. Consequently, when the train went into emergency on Field Hill, DB was disabled on the 2 DP remote locomotives. This amounted to a loss of 98 000 pounds of DB retarding force per locomotive, or about 196 000 pounds in total.

Although locomotive DB is considered a supplemental brake system, DB retarding force provides an important additional margin of safety. For example, a single AC locomotive operating with the maximum available DB can provide effective braking force at speeds below 20 mph that is equivalent to about 4 cars having a full service brake application.

GE-Wabtec, the manufacturer of the DP control system, has recently developed a new software enhancement to enable full DB functionality to be retained on an operative DP remote locomotive during an emergency brake application, similar to the DB holding feature that is currently required on lead locomotives. Some North American Class 1 railways have implemented DB retention on remote locomotives as part of their normal DP operations enhancements. At the time of this occurrence, the 2 remote locomotives on the occurrence train were not equipped with the DB retention feature. Because the emergency brake application was not recovered, the pneumatic control switch remained open and DB functionality remained disabled on the DP remote locomotives.

Had the 2 DP remote locomotives on the occurrence train been equipped with DB retention, they could have continued to provide a combined maximum of 196 000 pounds of retarding force. This is significantly more retarding force than the combined 50 000 pounds of retarding force that resulted from the 45 psi independent BCP on each of the 2 remote

locomotives after the emergency brake application was made by the crew. Retarding force generated by DB is not subject to degradation due to brake shoe friction fade. The additional retarding force due to retaining maximum available DB on the 2 remote locomotives would have helped to slow the acceleration of the train to some extent, and helped increase the chances of the train successfully negotiating the sharp curve just before the Kicking Horse River bridge. However, it is not certain whether the train would have derailed nonetheless given all the train dynamics and variables involved.

2.7.4 Electronically controlled pneumatic brake systems

Electronically controlled pneumatic (ECP) brake systems offer several advantages over the standard pneumatic brake technology exclusively being used on freight trains in North America. Had the occurrence train been equipped with an ECP system, several of the braking issues that contributed to the uncontrolled movement could have been prevented or mitigated.

The occurrence train did not have a means of indicating on the operator display screen which cars were leaking. ECP systems have a remote monitoring feature that would have provided this information to the LE.

The investigation determined that, when the inbound LE on the occurrence train made the emergency brake application, over 30% of the cars would have had ineffective brakes. An ECP system would have automatically triggered a penalty brake application when 15% of the cars were detected to have ineffective brakes.

When the inbound LE stopped the train in emergency on Field Hill, the brake pipe pressure was reduced to 0 psi and the air storage reservoirs on the cars immediately stopped being charged. While the train remained stationary, BCP on many of the cars was depleted due to leakage effects until eventually there was not enough brake force to hold the train. An ECP system could have constantly charged the brake pipe to 90 psi and, in turn, the car reservoirs would have continuously charged and replenished the brake cylinders. This could have resulted in the brake cylinders being continuously maintained to the maximum target pressure when an air brake application was made.

Without ECP, cars can only be cut out when their brakes are found ineffective during a wayside inspection. In comparison, ECP systems have an automatic car cut-out feature that cuts out the cars with excessive brake cylinder leakage en route as soon as it detects the leakage.

On the occurrence train, some of the small (2 psi) brake pipe reductions were being attenuated as the air pressure wave propagated through each car and along the brake pipe. As a result, the intended air brake application commands were not reaching some of the cars, and those cars were not developing the higher BCPs that would have been expected from the brake pipe reductions. With an ECP system, the brake commands would have been sent to each car simultaneously via electronic signals, ensuring that small brake application commands could be fully received and executed.

On standard pneumatic brake systems, which were used on the occurrence train, brake effort can be increased by further reducing the brake pipe pressure, but the brakes cannot

be incrementally released; they must be completely released, then reapplied in a partially charged state (known as a release and catch). An ECP system, in contrast, has a feature that allows the brakes to be released incrementally. When train speed suddenly increases, the system can send out higher brake effort signals, then gradually release or reduce the brakes as the train speed stabilizes to comply with allowable track speed limits, thus removing the need for a release and catch. In addition, using this feature after an emergency brake application enables a train to be restarted directly from the locomotive cab, without the need to set any retainers, by releasing just enough brake pressure to get the train moving again at a safe speed.

ECP systems were nearly made mandatory by the U.S. Federal Railroad Administration in 2015. These systems would have been required on all unit trains carrying dangerous goods in the U.S. However, this initiative was dropped in 2018 due to high initial implementation costs and logistics issues regarding the interoperability of trains that have ECP systems with trains that have pneumatic conventional brakes.

However, loss of control events are still occurring, sometimes with fatal consequences. In addition to this occurrence, 5 other significant runaway train events have occurred in North America from 2017 to 2019.

2.7.5 High-capacity fade-resistant brake shoes

The train's speed when it derailed at the Kicking Horse River bridge was 53 mph. Trains equipped with high-capacity fade-resistant brake shoes experience lower effects of friction fade. Calculations based on LER data indicate that, in the absence of friction fade, the train's speed at the Kicking Horse River bridge would have been 44.4 mph, a speed at which other uncontrolled train movements on Field Hill have successfully negotiated similar curves.

The Board has previously investigated an uncontrolled movement in which a reduction in brake effectiveness due to brake shoe friction fade contributed to the accident (TSB Railway Investigation Report R06V0136). In that investigation, it was noted that an AAR Standard for fade-resistant brake shoes had been established and fade-resistant brake shoes had been developed, but their use had not been made mandatory. Therefore, the Board was concerned that heavier cars would continue to be operated with the older specification brake shoes. As of December 2021, the AAR has not adopted a framework providing for the mandatory use of high-capacity brake shoes for equipment in interchange service.

Finding as to risk

Until the use of fade-resistant brake shoes is made mandatory on unit trains operating through mountain grade territory, there is an increased risk that these trains will experience brake shoe friction fade and loss of control while descending long mountain grades.

2.7.6 Need for additional physical defences

As a result of the TSB investigation into the Lac-Mégantic accident in July 2013,[185] which directly caused the death of 47 people and destroyed the town's core and main business area, the Board recommended that

> the Department of Transport require Canadian railways to put in place additional physical defences to prevent runaway equipment.
>
> **TSB Recommendation R14-04**

This recommendation specifically focuses on the insufficient securement of rolling stock. In response, Transport Canada (TC) has implemented several initiatives, including reinforced CROR Rule 112 securement requirements and the introduction of a comprehensive monitoring plan for this new rule. In its March 2021 assessment of TC's response, the TSB stated that, despite actions taken, the current defences have not been sufficient to significantly reduce the number of uncontrolled movements to improve safety. Until the consultations with the railway industry and its labour representatives have occurred, strategies have been developed and physical defences are implemented, uncontrolled movements will continue to pose a risk to the rail transportation system. The Board assessed TC's response to Recommendation R14-04 as being **Satisfactory in Part**.[186]

Sound safety management requires the identification of hazards, the assessment of the associated risks and the development of risk mitigation strategies. Risks that cannot be eliminated must be managed. To manage risks, defence barriers can be used. These barriers can generally be categorized as administrative, physical, or a combination of the two. Administrative defences, e.g., rules or procedures, are generally not as effective as physical defences, e.g., a switch lock, a mechanical device or a built-in safety feature.

Since Recommendation R14-04 was issued, CROR Rule 112 (Securing Unattended Equipment) has been revised several times, a number of Ministerial Orders have been issued pertaining to train securement, and a new rule, CROR Rule 66 (Securing Equipment After an Emergency Brake Application on Grade), has been issued. All of these actions represent additional or enhanced administrative defences. None of them introduce any new physical defences.

The technological enhancements detailed above are examples of physical defences that are likely to have a positive effect on the frequency of unplanned and uncontrolled movements of railway rolling stock. There may be other physical defences under development that could lead to even greater safety.

Finding as to risk

Until additional physical defences are put in place, there is an ongoing risk that unplanned and uncontrolled movements of railway rolling stock will continue to occur, resulting in

185 TSB Railway Investigation Report R13D0054.

186 TSB Recommendation R14-04: Physical defences to prevent runaway equipment, at https://www.bst-tsb.gc.ca/eng/recommandations-recommendations/rail/2014/rec-r1404.html (last accessed 21 May 2021).

derailments, collisions and unacceptable risk to railway employees, the public and the environment.

2.8 Canadian Pacific

2.8.1 Coaching assessments and proficiency testing

CP conducts coaching assessments (pre-qualification evaluations and field placement trips) on trainees and proficiency tests (efficiency tests and ride-along trips) on qualified crew members to ensure that LEs and conductors have the required skills and qualifications to perform safety-critical duties.

Both the inbound LE and the inbound conductor received pre-qualification evaluations as part of their training.

- For the LE, who received his training in 2012, all tests were conducted on the Laggan Subdivision and focused on tasks relevant to the territory, which were well documented in the evaluation form. Test results always included constructive comments.
- For the conductor, who received her training in 2018, only 9% of pre-qualification evaluations were conducted on the Laggan Subdivision, making it difficult to determine how proficient she was on that territory. In addition, only 42% of the evaluations provided feedback to indicate which operational tasks she performed well during the tests, and in which areas she needed to improve.

Once they were qualified for their respective positions, both inbound crew members received ride-along trips every year as part of CP's proficiency testing. However, the results of these trips were not available. Without some documented measurement of ability, it is not possible to determine if train crews are safely performing the operational tasks required of their position.

CP's supervisors are required to conduct a given number of efficiency tests per week and per month; however, there are no minimum requirements regarding the number of tests that each employee is to receive each year. Consequently, some train crews can receive fewer tests than others.

In addition, the investigation found inconsistencies in how pre-qualification and proficiency tests are carried out:

- The pre-qualification evaluations for the inbound LE all had constructive comments, but most pre-qualification evaluations for the inbound conductor did not.
- There is a significant downward trend in the number of efficiency tests performed: in 2018, the number of tests conducted for the LE of the inbound crew was 50% less than in the 5 prior years.
- CP's SMS internal audit, carried out by Golder and Associates, identified inconsistencies in how proficiency tests were performed; according to the consultant's report, concerns were expressed regarding the competency of the CP managers/trainmasters who were conducting these tests.

Finding as to risk

Without a sufficient proficiency tests on all train crews, and without test results that consistently provide qualitative feedback, there is a risk that deficiencies in an employee's skills, qualifications, or knowledge will not be adequately identified and that corrective actions will not be taken to improve safety.

2.8.2 Railway winter operating plan

Brake system leakage in extreme cold temperatures can be particularly problematic in mountain grade territories, where safe train speed control on long descending grades requires higher levels of BCP for an extended length of time. Similarly, trains stopped on mountain grades with the air brake applied for an extended period may be prone to brake cylinder leakage, which can lead to uncontrolled movements, as in this occurrence.

The investigation determined that there had been ad hoc winter restrictions for Field Hill in the past, implemented by local supervisors. For instance, in 2014, the speed of the grain trains was limited to 10 mph when it was −20 °C or colder, and, if the temperature fell below −25 °C, grain trains were staged at night. In 2015, an operating bulletin was issued for westbound trains on the Laggan Subdivision, which restricted train speed to a maximum of 10 mph from the east siding switch at Partridge to Field when the temperature reading at the hot box detector at Mile 111.0 dropped below −25 °C, until braking was seen to be sufficient. However, at the time of this occurrence, neither CP's winter operating plan nor the FHOP contained specific direction to safely operate trains in mountain grade territories at times when extreme cold temperatures prevailed. Because the challenges of operating in extreme cold temperatures arise only intermittently, it is likely that the need to activate these measures was overlooked each year: when the problem went away, there was no longer a need for a solution.

Finding as to causes and contributing factors

From 2015 to the time of the occurrence, CP had not imposed restrictions on the operation of unit grain trains on Field Hill in extreme cold temperatures.

Given the effects of extreme cold temperatures on rail car air brake systems, when temperatures drop below −25 °C, curtailing operations may be the safest solution, for instance:

- cease operations when temperatures reach a pre-determined threshold, or move to daylight-only operations;
- implement enhanced testing protocols for the equipment, for example add a delay between the train brake application and the inspection of the equipment to ensure brake applications are sustained; and
- leverage technologies like ATBE to monitor on a real-time basis the number and recurrence of cold cars, and take appropriate actions based on the data to ensure safety.

Finding as to risk

If appropriate seasonal operational restrictions are not consistently activated every year to ensure the safety of unit train operations during extreme cold temperatures in mountain grade territory, there is an increased risk of loss of control and derailments.

2.8.2.1 Relief crew fitness for duty

Being "fit for duty" means reporting for work rested and prepared to maintain alertness for the duration of the tour of duty. From the human performance perspective, field accommodations provided to crews operating away from home are meant to preserve and promote rest before a tour of duty. Being rested and prepared is an important element of resiliency,[187] which is defined as the process of adapting effectively during adversity, trauma, threats, or significant sources of stress.

The relief crew had more than 8 continuous hours off-duty time, per established rest and fitness requirements. However, a power outage caused by a winter storm affected heating and electrical power at CP's bunkhouse where the relief crew was resting. Temperatures inside the bunkhouse facility had reportedly dropped to 8 °C. The propane gas–fuelled cooking stove was being used to generate heat to prevent the temperatures from dropping further.

The bunkhouse power outage, which resulted in a loss of heating, may have affected relief crew rest and fitness for duty.

Additionally, the power outage and communications failure contributed to logistics challenges for continued railway operations: e.g., crews could no longer be called for duty by telephone, nor receive GBOs at the bunkhouse.

Although the winter storm was beyond the control of the railway, contingency planning could have helped prepare for such events. For instance, the generator in Field had run out of fuel; reliable backup power and heat sources would have helped ensure that a comfortable environment conducive to acquiring restorative rest could be maintained at all times.

Finding as to risk

When designated rest facility conditions are not conducive to employees obtaining restorative rest, there is an increased risk that employees will be not be fully rested at the end of a designated rest period.

2.8.3 Safety management system

A safety management system (SMS) is an internationally recognized framework which allows companies to effectively manage risk and make operations safer. The TSB Watchlist emphasizes the need for SMS to be implemented effectively to ensure that hazards are proactively identified and that risks are mitigated to an acceptable level. The *Railway Safety*

187 S.M. Southwick and D.S. Charney, *Resilience: The Science of Mastering Life's Greatest Challenges*, New York, Cambridge University Press, 2012.

Management System Regulations, 2015 (the SMS Regulations), under which railways are responsible for managing their safety risks, stipulate that railways need to have a process to identify safety concerns and to implement and evaluate remedial action. Under the SMS Regulations, railways must also analyze their railway operations to identify any trends, emerging trends or repetitive situations.

Since 2015, TC has made significant progress in developing and implementing a program to educate industry and train staff to the new regulations, and to conduct a comprehensive audit program to ensure railway operators have an SMS that is in compliance with regulations. Railways have demonstrated that, on paper, they have all the elements required by the SMS Regulations, but safety data are not showing the expected improvements associated with an SMS that has been operational for 20 years.

Although some companies consider safety to be adequate as long as they are in compliance with regulatory requirements, regulations alone cannot foresee all risks unique to a particular operation. Effective safety management includes a need to continuously identify and mitigate hazards to manage risks. This is influenced by an organization's safety culture, which is characterized by shared values, attitudes, perceptions, competencies, and patterns of behaviour that interact toward enhancing safety.

2.8.3.1 Data collected from wheel temperature detectors

Under Section 13 of the SMS Regulations, railway companies are required to analyze data collected from safety monitoring technologies to identify safety concerns, trends or emerging trends, or repetitive situations. WTD data, as a safety monitoring technology, are subject to this provision.

As part of the post-derailment investigation, the WTD data for the 5 previous westbound grain trains were requested from CP and analyzed. The analysis indicated the trains had operated in various ambient temperatures from −2 °C to −26 °C and that a significant percentage of cold wheels were detected on these trains when they passed by the WTD located at Mile 130.2 on the Laggan Subdivision.

The data generally showed that the number of cold wheels increased significantly on trains that had operated in the colder temperatures. Two trains had been scanned by the WTD when the ambient temperature was below −25 °C, similar to the temperature on the day of the occurrence. For each of these 2 trains, about 56% of the cars were deemed to have ineffective brakes. Overall, these WTD analysis results corroborate the adverse effect that temperature can have on the braking performance of grain trains.

Finding as to causes and contributing factors

Even though WTD data were being collected and showed high percentages of ineffective brakes on grain trains in the 2 cold days before the occurrence, CP was not analyzing these data and did not initiate any specific action or corrective measures.

2.8.3.2 Hazard reporting

In accordance with the SMS Regulations, railway companies must conduct, on a continual basis, analyses of their railway operations to identify safety concerns, current or emerging

trends, or any repetitive situations. The analyses must be based on information such as reports of safety hazards submitted by employees and data from safety monitoring technologies.

A review of safety hazard reports submitted to CP's CCFHSC prior to the occurrence revealed multiple instances where train crews operating loaded unit grain trains that were travelling westward and descending Field Hill in winter operating conditions experienced difficulties controlling train speed. These reports documented air brake performance issues on unit grain trains that had successfully passed a No. 1 brake test.

According to the SMS Regulations and CP's *Reporting Contraventions, Safety Hazards and Identifying Safety Concerns Procedure*, safety hazard reports submitted by employees must be analyzed to identify trends or repetitive situations. **There is no indication in the CCFHSC records that such an analysis was carried out, even though the reported hazard conditions were recurring. In addition, the severity of the hazard reports was not consistently rated. Furthermore, some reports were closed out without any clear identification of the corrective action undertaken, nor any indication of verification that the action had been completed or was effective.**

(emphasis added by J. Hicks, not in original report)

Members of the CCFHSC were aware that loaded grain trains, even ones that passed a pre-departure air brake inspection, were experiencing speed control difficulties on Field Hill. The meeting minutes from August 2018 indicated that the train crews had requested that the scanner at Mile 130.2 of the Laggan Subdivision be used for observing cars whose air brakes were not working. Nevertheless, the meeting minutes indicated that individual notifications of this hazard were closed, yet new similar reports continued to be recorded through the reporting system.

Finding as to causes and contributing factors

Although CP's procedure for safety hazard reporting was actively followed at the Calgary terminal, the follow-up process was not effective at analyzing trends and resolving safety issues related to the performance of air brake systems in extreme cold temperatures on the grain car fleet operating on the Laggan Subdivision.

2.8.3.3 Risk assessments

Risk assessments are a cornerstone of a fully functioning and effective SMS, and are essential for a safe operating company. According to the SMS Regulations, railway companies must conduct a risk assessment in the following circumstances, among others:

- when a safety concern is identified through an analysis of the railway's operations;
- when a proposed change to the railway's operations may affect the safety of the public or personnel or the protection of property or the environment; and
- when there is a change affecting personnel, including an increase or decrease in the number of employees or a change in their responsibilities or duties.[188]

[188] Transport Canada, SOR/2015-26, *Railway Safety Management System Regulations, 2015* (as amended 01 April 2015), section 15.

2.8.3.3.1 Risk assessment of safety hazard reports

CP's SMS requires that a risk assessment be performed when a safety concern (a hazard or condition that may present a direct safety risk to employees, or pose a threat to safe railway operations) is identified through analysis of safety data.

(emphasis added by J. Hicks, not in original report)

Train crews consider the poor braking performance of unit grain trains to be a hazard that may present a direct safety risk to employees and pose a threat to safe railway operations. Consequently, when crews were having difficulties controlling their trains on Field Hill, they filed safety hazard reports. The review of the CCFHSC meeting minutes dating back as far as December 2016 show that, for at least the 3 winters before the occurrence, crews had filed hazard reports on this issue regularly through the proper channels. **Still, year after year, the reports on the poor braking of unit grain trains on Field Hill were closed, no risk assessment was conducted, and insufficient corrective action was taken.**

Finding as to causes and contributing factors

CP did not consider that the trend in safety hazard reports represented a "safety concern" per the SMS Regulations and it did not take sufficient action to address the underlying causes of ineffective braking of unit grain trains descending Field Hill in extreme cold temperatures.

Not considering the trend in safety hazard reports submitted by the crews to be safety concerns implies that CP considered the use of full braking capacity and emergency braking on Field Hill to have been an acceptable operating practice.

Finding as to risk

When operating practices to use a train's full braking capacity to control speed on mountain grades become normalized, the safety margin is seriously compromised, increasing the risk of an accident.

2.8.3.3.2 Risk assessment of changes to the Field Hill operating procedures

While important for day-to-day operations, risk assessments are particularly crucial when a company makes a change to its operations, since this is when new hazards may emerge.

In the 10 years preceding the occurrence, CP had made several incremental changes to the FHOP, including

- changes to the speed threshold at which trains were permitted to descend Field Hill,
- changes to the requirements for retainers and hand brakes after an emergency on Field Hill, and
- the introduction of a new requirement to hold a job briefing with a trainmaster after an emergency stop, and the transfer of decision authority to the trainmaster.

CP did not conduct a risk analysis to assess how these changes would impact safety.

To ensure that an equivalent level of safety is maintained when changing an operating policy or procedure, railways must analyze the impact of the forthcoming changes on train operations and determine what new hazards, if any, may be introduced. Mitigation measures can then be put in place and monitored to assess their effectiveness.

Finding as to risk

If railway companies modify their policies and procedures without identifying all hazards in advance, appropriate risk mitigation measures may not be implemented, increasing the risk that safety margins will erode.

2.8.3.3.3 Risk assessment of the change in conductor training on the FHOP

CP has a training program for conductors who will be operating on the Laggan Subdivision. The training, which is focused on mountain and heavy grade operations, is in addition to the general conductor training. In 2017–2018 this program was accelerated, because there was a greater demand for conductors due to increased traffic levels. The new requirements for a conductor to work on Field Hill were reduced to classroom review of the FHOP using job aids and track schematics. The simulation trips on Field Hill were removed and conductors were no longer required to be Field Hill–certified.

The SMS Regulations require that railway companies ensure that employees performing duties essential to safe railway operations (such as conductors) have the skills and qualifications required to perform their duties safely. However, when CP changed its training program for conductors on the Laggan Subdivision, it did not conduct a risk assessment of this change.

2.8.3.3.4 Risk assessment based on automated train brake effectiveness research data

In 2015, TC, the National Research Council of Canada (NRC) and CP initiated a joint research project to assess ATBE inspection technology as an alternative to, or in combination with, the No. 1 brake test. The results of this study, which was published on 04 October 2018, showed a high frequency of unit grain cars that had cold wheels while braking and greater variability in wheel temperature.

Researchers then conducted a comparative study between No. 1 brake test data and ATBE data. This study showed that No. 1 brake test identified only a very small fraction of the cars with ineffective brakes that ATBE could detect. These findings suggested that the No. 1 brake test may not be reliable for loaded unit grain trains operating on mountain grade.

Finding: Other

Neither CP nor TC, who were integral participants in the development and implementation of the ATBE research, used the study's findings on the condition of the grain hopper car fleet to initiate a risk assessment of unit grain train operations.

2.8.4 Safety culture

The 2007 report on the review of the *Railway Safety Act* (RSA) notes, "[t]he cornerstone of a truly functioning SMS is an effective safety culture."[189] An effective safety culture in a railway can significantly reduce the number of accidents and is the basis for an effective

[189] Transport Canada, *Stronger Ties: A Shared Commitment to Railway Safety: Review of the Railway Safety Act* (November 2007), Section 5.3, p. 68.

safety program. The strength of an organization's safety culture starts at the top and is characterized by proactive measures to eliminate or mitigate operational risks.

An organization with a strong safety culture will characteristically have a strong reporting culture. Such a culture not only enables personnel to report a safety concern without fear of reprisal, but also gives them the knowledge that when a safety issue is reported, it will be thoroughly reviewed and analyzed, and appropriate action will be taken. These actions encourage a just safety culture, where the workforce knows and agrees on what is acceptable and unacceptable, and where employees are engaged in the safety issues within their organization.

CP's Home Safe initiative promotes safety engagement and feedback. Through this initiative, employees are trained to identify, report, and remove hazards. A review of 3 years of CCFHSC meeting minutes showed that train crews were actively reporting the safety hazards they encountered that were related to train handling on Field Hill. However, even though the hazards were being reported, there was very little documented action in response to the reports.

Finding as to risk

If hazards are not properly identified and analyzed, gaps in safety defences can continue to go unnoticed and remain unmitigated, increasing the risk of accidents.

A positive safety culture is an informed culture, where hazards and risks associated with an operation are well understood and communicated. An example of risk in complex organizations like CP may be in how changes to operational procedures are assessed and communicated. For instance, CP's FHOP were changed incrementally throughout the 10 years preceding the occurrence. These procedures are technical guidance and as such are intended to help manage some of the hazards specific to train operations on Field Hill. When incremental changes to procedures are not assessed for linkages to new safety risks at the time they are introduced, the risk to train operations may increase.

CP's SMS internal audit identified inconsistencies in how CP applied its process for managing changes to operating procedures and instructions, and how the changes were communicated to the employees.

An informed culture is also one in which people within an organization are provided with the necessary knowledge and skills to work safely. CP's training for conductors and LEs on the Laggan Subdivision does not address the challenges of train operations on mountain grade in extreme cold temperatures. Such training could raise awareness of the issues and risks associated with air brake system operations in these conditions. When hazards and risk are not communicated to those who need this knowledge to perform safety-critical tasks, risk awareness will be reduced, increasing the potential for uninformed decisions to be made.

Another characteristic of a strong safety culture is the ability to learn from experience and share this knowledge throughout the organization. After distributing the NYAB General Letter GL-490, CP issued Bulletin CPSB048-13 in November 2013 as a maintenance advisory to train operations staff. This initiative allowed the dissemination of critical safety

information to alert train crews and increase their vigilance about applied air flow events caused by air leakage from the service portion of NYAB-Knorr DB-10 CCVs.

However, a year later, Bulletin CPSB048-13 was rescinded, even though the issue of the NYAB-Knorr DB-10 CCVs was still present. CP continued to operate unit trains equipped with old NYAB-Knorr DB-10 CCVs, and every winter, excessive air loss from these valves led to braking problems on the trains. However, the implications of excessive leakage and the risks on the braking system and on the retainers' residual pressure were not shared or well understood.

Bulletin CPSB048-13 was an administrative control that CP put in place to address a potential hazard identified by NYAB. When the bulletin was rescinded, there was no assessment of the hazards to determine if rescinding the bulletin would change the risk to the operation. In addition, train crews were not informed of any remedial actions that were taken in place of the bulletin.

An effective safety culture includes proactive actions to identify and manage operational risk. The identification of hazards within a risk assessment is critical to identifying the required mitigation measures needed, and is the foundation of an effective SMS.

Finding as to risk

If a railway company's SMS is not supported by a positive safety culture, its effectiveness at identifying and mitigating hazards is reduced, increasing the risk of accidents.

2.9 Transport Canada

2.9.1 Oversight of railway safety management systems

Federally regulated railways, such as CP, have been required to have an SMS since 2001. As part of the regulatory oversight of SMS, TC must be able to assess how effectively the railway is implementing its SMS. This oversight includes regularly assessing how the railway analyzes its operations to identify safety concerns, including any emerging trends or recurring situations.

Since the new SMS Regulations came into force in 2015, TC has focused its efforts in working with railways to ensure that they have developed and documented the SMS in accordance with TC's expectations. Comprehensive audits of the SMS continue to be performed to establish any gaps in this process.

In 2018–19, TC completed its auditing of each federally regulated railway's SMS to ensure that the essential SMS processes had been implemented. In 2020, TC began a 5-year audit cycle to evaluate the effectiveness of railways' SMS.

Finding: Other

Even though federally regulated railways have been required to have an SMS since 2001, and the new SMS Regulations were introduced in 2015, the effectiveness of every railway company's SMS has not yet been evaluated by TC.

2.9.2 Oversight of health and safety committee

Employment and Social Development Canada (ESDC) and TC have a shared responsibility to review the functionality of CP's health and safety committees, including the CCFHSC, as the CCFHSC involves both on-board and off-board employees. TC attends one CCFHSC meeting every 3 years, to review its effectiveness. In the last review by TC and ESDC, no issues were identified with how CP was conducting its meeting, or how it was resolving issues brought forward by employees. TC did not identify the shortcomings related to the closing of individual notifications of a recurring hazard, while similar reports continued to be recorded through the reporting system.

Finding as to causes and contributing factors

TC's oversight of the occupational health and safety committee in Calgary did not identify the lack of corrective action on the reported substandard braking performance of unit grain trains descending Field Hill.

2.9.3 Oversight of the training program

Railways provide TC with the information on their training programs, but TC does not assess the adequacy of these programs for each railway. There is no requirement for TC to review the course material or evaluate the program. Consequently, once railway companies have met the regulatory requirements in terms of training, consultation, and reporting, TC provides no further oversight with regard to the training of railway operating employees.

Finding as to risk

If there is no regulatory oversight of the relevance and effectiveness of training programs for railway operating employees, there is an increased risk that these programs will not be sufficiently robust to ensure that railway operating employees have adequate knowledge and experience to work safely.

3.0 FINDINGS

3.1 Findings as to causes and contributing factors

These are conditions, acts or safety deficiencies that were found to have caused or contributed to this occurrence.

1. Once the train passed Mile 126, it had entered one of the steepest grades on Field Hill. At this point, the sequence of service brake applications made by the inbound locomotive engineer, combined with the available locomotive dynamic brakes, could not maintain the train's speed below the maximum allowable limit of 15 mph. Therefore, as required by company instructions, the crew applied the brakes in emergency, bringing the train to a stop on Field Hill at Mile 127.46.

2. The inbound crew and the trainmaster opted for retainers only, and the conductor subsequently set them to the high pressure position on 75% of the cars (84 cars) per the FHOP. Because the crew were close to the end of their shift, the rail traffic control director ordered a relief crew, who would recover the emergency brake application and complete the trip to Field.

3. About 10 minutes after the crew-to-crew transfer, the train began to roll on its own.

4. The train accelerated down the mountain, negotiating the steep descending grade and sharp curves, until it reached 53 mph, a speed well beyond the maximum authorized speed of the track. This excessive speed resulted in high centrifugal forces that, combined with lateral forces generated by moderate in-train buff forces, caused the locomotive to tip over in a 9.8° curve and derail at Mile 130.6.

5. Even though the inbound crew had experienced poor train braking performance that had required an emergency stop, the Field Hill operating procedures did not lead the crew and the trainmaster to conclude that the situation warranted applying hand brakes in addition to setting retainers.

6. Since braking performance degradation occurred seasonally on Canadian Pacific unit grain trains in extreme cold temperature, this condition had become normalized such that it was expected that close to maximum available braking would be required while descending Field Hill.

7. Although the applied air flow events were noticed and discussed, their significance as a leading indicator of brake system malfunction may not have been fully understood, resulting in a missed opportunity to accurately diagnose the diminishing effectiveness of the train's air brake system.

8. After the job briefing, during which there was no discussion of the critical factors such as ambient temperature, brake system performance, and the significance of the applied air flow events that might have prompted the application of hand brakes,

the trainmaster decided that setting retainers was sufficient after this first emergency stop.

9. Gaps in the training program meant that the inbound conductor was not aware of the need to observe brake cylinder piston position while setting retainers, and therefore retainers were likely applied to cars with ineffective brakes.

10. The trainmaster was not Field Hill–certified and had not previously experienced an emergency stop on Field Hill. As a result, his decision making likely relied on the direction outlined in the Field Hill operating procedures, which were commonly interpreted to mean that only retainers were to be applied after a first emergency stop on Field Hill.

11. The trainmaster's training and experience did not adequately prepare him to evaluate abnormal circumstances in the complex operating environment of Field Hill.

12. Based on post-occurrence testing, it is likely that about 52 of the 112 cars on the occurrence train had reduced air brake effectiveness during the initial descent of Field Hill, and consequently an emergency brake application was necessary.

13. For the occurrence train, given the extreme cold temperature and the length of time the cars were stationary with the brakes applied, the rate of brake cylinder pressure loss on some cars with retainers set was likely excessive.

14. Twenty-seven cars on the occurrence train had DB-10 CCV service portions. It is likely that the response from these service portions to the small incremental brake applications that were made as the train was operating between Stephen and Partridge contributed to the difficulty in controlling train speed that led to the emergency brake application at Partridge.

15. It is highly probable that the air brake system on the 27 grain cars equipped with NYAB-Knorr's DB-10 service portions and DB-20 emergency portions manufactured more than 13 years ago could not maintain adequate braking effectiveness due to excessive leakage from worn and deteriorated rubber seals on these portions.

16. Three hours and 14 minutes after the initial brake application at Stephen, the average brake cylinder pressure likely decreased to below 31 psi. This rendered the retarding force insufficient to prevent the train from starting to roll uncontrolled down the mountain grade.

17. Brake shoe friction fade occurred on the cars with effective brakes, contributing to the high speed during the uncontrolled movement.

18. Both the wheel temperature detector measurements and the safety hazard reports filed by train crews of westbound loaded unit grain trains confirm that the No. 1 brake tests performed in Alyth Yard did not adequately identify cars whose brakes

would not be fully effective in the extreme cold temperature experienced by the occurrence train while descending Field Hill.

19. From 2015 to the time of the occurrence, Canadian Pacific had not imposed restrictions on the operation of unit grain trains on Field Hill in extreme cold temperatures.

20. Even though the wheel temperature detector data were being collected and showed high percentages of ineffective brakes on grain trains in the 2 cold days before the occurrence, Canadian Pacific was not analyzing these data and did not initiate any specific action or corrective measures.

21. Although Canadian Pacific's procedure for safety hazard reporting was actively followed at the Calgary terminal, the follow-up process was not effective at analyzing trends and resolving safety issues related to the performance of air brake systems in extreme cold temperatures on the grain car fleet operating on the Laggan Subdivision.

22. Canadian Pacific did not consider that the trend in safety hazard reports represented a "safety concern," per the *Safety Management System Regulations, 2015,* and it did not take sufficient action to address the underlying causes of ineffective braking of unit grain trains descending Field Hill in extreme cold temperatures.

23. Transport Canada's oversight of the occupational health and safety committee in Calgary did not identify the lack of corrective action on the reported substandard braking performance of unit grain trains descending Field Hill.

3.2 Findings as to risk

These are conditions, unsafe acts or safety deficiencies that were found not to be a factor in this occurrence but could have adverse consequences in future occurrences.

1. If the classroom training does not address the unique needs of the territory where the employees will be working, and if the employees do not obtain the relevant on-the-job training on that territory, then they will not be adequately prepared and sufficiently trained to perform their duties safely, increasing the risk of an accident.

2. When specialist duties are transferred to a generalist position, unless technical training and operational experience bridge the gaps that exist between the 2 positions, there is an increased risk that these duties will not be performed adequately.

3. When operating employees do not receive adequate initial and recurrent training in crew resource management, including how to make decisions when authority gradients are present, crew coordination and interaction may not be effective, increasing the risk of human factors–related accidents.

4. If train crews routinely operate under hazardous circumstances, such as braking performance degradation in extreme cold temperatures, each successful trip will increase risk tolerance and reduce a crew's ability to recognize, accurately evaluate, and manage the hazards in future, increasing the risk of an accident.

5. If established design principles are not applied to the display of safety-significant information on the locomotive's operator display screen, important cues can be missed, increasing the risk of accidents.

6. When trains operate in extreme cold temperatures, brake cylinder leakage will occur, increasing the risk that the use of retaining valves as a means to preserve braking capacity will not be effective.

7. For a train negotiating a long descending grade, where a brake application may be held for over 20 minutes, even with a brake cylinder leakage rate within the maximum acceptable limit specified in AAR Standard S-486 SCT (1 psi/minute), there is a risk that brake cylinder leakage will render the air brake system ineffective.

8. If guidance on how to respond to an emergency situation is not explicit but instead relies on employees' interpretation of the situation, employees' decision making may not be precisely informed, increasing the risk of an unsafe course of action being implemented.

9. If appropriate seasonal operational restrictions are not consistently activated year to year to ensure the safety of unit train operations during extreme cold temperatures in mountain grade territory, there is an increased risk of loss of control and derailments.

10. Until train brake test methodologies accurately evaluate air brake effectiveness, trains operating in extreme cold temperatures may continue to have ineffective braking, increasing the risk of loss of control and derailment.

11. Until the use of fade-resistant brake shoes is made mandatory on unit trains operating through mountain grade territory, there is an increased risk that these trains will experience brake shoe friction fade and loss of control while descending long mountain grades.

12. Until additional physical defences are put in place, there is an ongoing risk that unplanned and uncontrolled movements of railway rolling stock will continue to occur, resulting in derailments, collisions and unacceptable risk to railway employees, the public and the environment.

13. Without sufficient proficiency tests on all train crews, and without test results that consistently provide qualitative feedback, there is a risk that deficiencies in an employee's skills, qualifications, or knowledge will not be adequately identified and that corrective actions will not be taken to improve safety.

14. When designated rest facility conditions are not conducive to employees obtaining restorative rest, there is an increased risk that employees will be not be fully rested at the end of a designated rest period.

15. When operating practices to use a train's full braking capacity to control speed on mountain grades become normalized, the safety margin is seriously compromised, increasing the risk of an accident.

16. If railway companies modify their policies and procedures without identifying all hazards in advance, appropriate risk mitigation measures may not be implemented, increasing the risk that safety margins will erode.

17. If hazards are not properly identified and analyzed, gaps in safety defences can continue to go unnoticed and remain unmitigated, increasing the risk of accidents.

18. If a railway company's safety management system is not supported by a positive safety culture, its effectiveness at identifying and mitigating hazards is reduced, increasing the risk of accidents.

19. If there is no regulatory oversight of the relevance and effectiveness of training programs for railway operating employees, there is an increased risk that these programs will not be sufficiently robust to ensure that railway operating employees have adequate knowledge and experience to work safely.

3.3 Other findings

These items could enhance safety, resolve an issue of controversy, or provide a data point for future safety studies.

1. Because the continuity of the brake pipe was never compromised in any way, and an unintentional brake release did not occur on the train before the derailment, the only remaining cause of the applied air flow was excessive leakage of air on one or more cars. This can result in depletion of brake cylinder pressure or the release of the air brakes on individual cars.

2. The running brake test at Eldon did not reveal any consequential braking anomaly because brake system leakage had not yet been exacerbated by the extreme cold, the duration of the brake applications was not long enough for the leakage to adversely affect the air brake system performance, and the train was not on the mountain grade.

3. Small incremental reductions in brake pipe pressure may not be sufficiently robust to propagate along the length of the brake pipe when there is a high-level air flow occurring simultaneously. They also can result in a pressure wave that cannot trigger the intended brake application response effectively on older or less sensitive car control valves.

4. The single car test, which is usually conducted in a shop or outdoor repair track environment at warmer temperatures, does not identify defective car control valves conditions that manifest themselves in cold and extreme cold operating conditions.

5. Based on braking calculations, cars on the train yielded, on average, about 61% brake effort in response to the emergency brake application at Partridge. About 3 hours later, when the train began to roll on its own, the brake effort had degraded to less than 40% of theoretical maximum braking effort.

6. Based on the comparison of wheel temperature detector data for similar unit grain trains operating in extreme cold temperatures, i.e., below −25 °C, calculations indicate that the occurrence train was operating with at least 50% cold cars, as defined by the railway's wheel temperature detector criteria, at the time of the occurrence.

7. Wheel temperature detector data collected in winter for trains operating in temperatures of –25 °C or less provide valuable insight into overall train braking health. These wheel temperature detector data results could be used to establish winter operating criteria for the safe operation of unit grain trains in extreme cold temperatures.

8. Neither Canadian Pacific nor Transport Canada, who were integral participants in the development and implementation of the automated train brake effectiveness research, used the study's findings on the condition of the grain hopper car fleet to initiate a risk assessment of unit grain train operations.

9. Even though federally regulated railways have been required to have a safety management system since 2001, and the new *Railway Safety Management System Regulations* were introduced in 2015, the effectiveness of every railway company's safety management system has not yet been evaluated by TC.

4.0 SAFETY ACTION

4.1 Safety action taken

4.1.1 Transportation Safety Board of Canada

4.1.1.1 TSB Rail Safety Advisory Letter 04/19

The TSB sent Rail Safety Advisory Letter 04/19, "Prevention of uncontrolled train movements for trains stopped in emergency on grades of less than 1.8%," to Transport Canada (TC) on 11 April 2019.

The letter indicated in part that some leakage could create a reduced margin of safety when a train brake system is relied upon for an extended duration. It further stated that if a critical loss of brake cylinder pressure occurs due to leakage effects, an uncontrolled movement can result.

Finally, the letter indicated that, based on the preliminary calculations, an uncontrolled movement of a train stopped in emergency for an extended duration can occur on grades of less than 1.8%.

Given the potential consequences of an uncontrolled train movement, the letter indicated that TC might wish to ensure that effective safety procedures are applied to all trains stopped in emergency on both heavy grades and mountain grades.

4.1.1.2 TSB Rail Safety Advisory Letter 05/19

The TSB sent Rail Safety Advisory Letter 05/19, "Air brake system inspection and maintenance on grain hopper cars used in CP [Canadian Pacific] unit train operation," to TC on 11 April 2019.

The letter indicated that, following the accident, the TSB conducted air brake system testing from 08 to 10 February 2019 on the 13 grain hopper cars that did not derail. The testing determined the following:

- The air brake system on these cars would not provide adequate braking effectiveness to ensure the safe operation of a loaded unit grain train in a situation where the air brakes are required to remain applied for an extended duration, such as while descending a steep grade.
- Relative to the expected maximum pressure during the series of service brake applications, BCP dropped to 56% in 15 minutes.
- Relative to the expected maximum pressure from the emergency brake application, BCP dropped to 61% at the end of the 3-hour test period.

Because the 13 grain hopper cars represented about 11% of the 112 cars on the occurrence train, the test results generally represented the air brake performance on train 301-349 as it operated through Partridge and at the time of the occurrence.

Other observations relating to the air brake performance of the occurrence train included the following:

- All 13 grain hopper cars failed additional testing utilizing an automated single car test device. The ambient temperatures during testing (conducted 24 to 25 February 2019) ranged from −21 °C to −26 °C.
- The Association of American Railroads (AAR) Field Manual Rule 3 and AAR Manual of Standards and Recommended Practices Section E, Standard S-486 and Specification S-4027 do not require that testing be performed at the coldest ambient temperatures to which the cars may be exposed. Therefore, test results obtained in a repair shop environment, or in moderate outdoor temperatures, may not reveal air brake performance issues that can develop during extreme cold operating temperatures.

For unit bulk commodity trains operating on Field Hill, CP has implemented a number of risk mitigation measures. With warmer ambient temperatures in the spring, this seasonal relief will help restore air brake efficiency. However, given the potential consequences when uncontrolled movements occur, particularly in mountain territory, the TSB indicated that TC might wish to review the efficacy of the inspection and maintenance procedures for grain hopper cars used in CP's unit grain train operations (and for other railways as applicable), and ensure that these cars can be operated safely at all times.

4.1.1.3 TSB Rail Safety Advisory Letter 04/20

The TSB issued Rail Safety Advisory Letter 04/20, “Effectiveness of No. 1 brake test,” to TC on 17 April 2020.

The letter indicated that the occurrence train, CP train 301-349, received and passed a No. 1 brake test on 03 February 2019 before departing Alyth Yard in Calgary, Alberta. The test, performed by certified car inspectors on a stationary train, verifies that the train air brake system is working as intended before the train departs.

Further, the letter indicated that TC, the National Research Council of Canada, and CP initiated a joint research project on automated train brake effectiveness (ATBE) to assess ATBE as an alternative or in combination with the manual brake test currently regulated in Canada. The ATBE research examined wheel temperature data from a series of cold wheel detectors located at the bottom of long descending grades where prolonged air brake applications are required to control train speed. Researchers then conducted a comparison of ATBE data and No. 1 brake test results on a sample of 44 grain trains.

The ATBE test results and the hazard notifications of train braking anomalies on Field Hill both suggest that the No. 1 brake test does not reliably identify ineffective brakes in rail cars.

Given this information, TC was advised that an alternate approach to determining the effectiveness of freight car air brakes is required to ensure that departing trains have sufficient effective brakes to operate safely.

4.1.2 Transport Canada

On 08 February 2019, TC issued Ministerial Order 19-03 to a number of federal railways, including CP. The Ministerial Order indicated in part,

> When a train is stopped by an emergency brake application on a grade of 1.8% or greater (i.e. mountain grade), immediately apply a sufficient number of handbrakes, in accordance with the attached Appendix A, before recharging the air brake system to prevent involuntary movement of the equipment.

Ministerial Order 19-03 was to remain in effect until cancelled in writing by the Minister of Transport.

On 27 December 2019, TC provided a response to TSB rail safety advisory letters 04/19 and 05/19 indicating in part that it had commissioned SHARMA (a research and engineering consulting firm) to conduct an analysis to evaluate current practices and alternatives for train operations on mountain grade. TC expected to receive the analysis report in March 2020.

On 24 April 2020, TC approved the railway industry's proposed new *Canadian Rail Operating Rules* (CROR) Rule 66, Securing Equipment after an Emergency Brake Application on Grade, which outlines hand brake requirements for securing trains on heavy grades and mountain grades (i.e., any grade greater than 1.0%).

On 27 April 2020, TC issued Ministerial Order 20-08, which indicated in part,

> [I]n order to monitor the implementation of Rule 66 of the Canadian Rail Operating Rules approved by the Minister of Transport on April 24, 2020, all companies listed in Appendix A of MO 20-08 are required to report all occurrences of emergency brake applications when a train is stopped on heavy or mountain grade to Transport Canada. This reporting will begin on July 1, 2020, and last for 12 months until July 1, 2021.

The order also required reporting of all emergency brake applications to the proper authority.

Also on 27 April 2020, TC ordered, pursuant to section 36 of the *Railway Safety Act*, that federally regulated railway companies, including CP, file with TC by 25 May 2020 a copy of all company instructions related to CROR Rule 66. These requirements came into effect on 24 June 2020.

In December 2020, TC approved the use of automated train brake effectiveness technology in lieu of No. 1 air brake test requirements on CP's unit grain trains operating between points in Western Canada and the Port of Vancouver.

On 13 April 2021, Ministerial Order 19-03 was repealed as it was superseded by CROR Rule 66.

On 29 July 2021, TC issued Ministerial Order 21-04, which reimplemented the requirements of Ministerial Order 20-08, requiring railway companies to report all occurrences of emergency brake applications when a train is stopped on heavy or mountain grade. The Order came into effect on 01 September 2021 for a period of 12 months.

Following this occurrence, TC also undertook an occupational health and safety fatality investigation under the *Canada Labour Code*, Part II and as a result issued a Direction to the employer, CP, in September 2020. TC followed up with CP and verified that it had implemented corrective measures. A report of the investigation's findings, along with recommendations, was shared with the employer and its workplace health and safety committee on 09 October 2020.

4.1.3 Canadian Pacific

On 06 February 2019, CP issued System Bulletin CPSB-005-019, which revised the train handling procedures for the Laggan Subdivision with respect to recovering from an emergency brake application on mountain grades. The revised procedures indicated that, for the first 25 cars, hand brakes must be applied and retainers set to the high pressure (HP) position; the instructions also indicated that retainers must be set to the HP position on all remaining cars.

On 08 February 2019, CP issued Operating Bulletin OPER-AB-015-19 informing the Calgary Terminal of a revision to the train handling procedures for the Laggan Subdivision, to take effect that same day. This bulletin stated, in part,

> **4.0 Cold Weather Speed Restriction**
>
> If the HBD [hot box detector] at Mile 111.0 reports a temperature of -20 degrees Celsius or below, all movements with a Weight Per Operative Brake of 100 tons or greater must not exceed 10 mph between Signal 1267 and Field.
>
> **5.0 Undesired Release**
>
> All westward movements experiencing an undesired release of the air brakes between mile 125.7 and Field must stop, avoiding stopping the train inside the spiral tunnels if possible. Retainers must be set in the High Pressure (HP) position on 100% of the loaded cars. All undesired releases of the brakes must be reported immediately to the RTC, who in turn will advise the Trainmaster.
>
> **6.0 Emergency Brake Application Recovery (All Trains)**
>
> The following instructions apply to all trains stopped by an Emergency brake application on a Mountain Grade.
>
> 1. The conductor must immediately secure the movement with hand brakes as per GOI Section 4 Appendix A.[190]

On 12 February 2019, CP began testing wheels on all westbound grain trains passing by cold wheel sites installed on the Laggan Subdivision (Mile 130.2) and on the Mountain Subdivision (Mile 30.2, Mile 95.1, and Mile 111.7). As a result, over 5000 grain cars were found to have bad brakes and were bad ordered. In addition, also on 12 February 2019, CP began collecting and monitoring ATBE data for its grain car fleet to establish the effectiveness and accuracy of the process. Based on the results, the ATBE initial algorithms were adjusted for application to the grain car fleet.

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[190] This bulletin would require a train the same weight as the occurrence train to have 98 hand brakes applied if it were stopped in emergency at the same location as the occurrence.

On 25 February 2019, CP issued System Bulletin CPSB-009-19 regarding a revision to Section 1, Item 32.10B of the *General Operating Instructions*. This revision stated,

> During weather conditions described above, when trains are approaching a location which will require the use of the train air brake, the locomotive engineer must make an effective minimum brake application sufficiently in advance of that location to determine that brakes are working properly.

On 04 March 2019, CP made it mandatory, under its cold wheel repair program, to replace the 4 reservoir gaskets before conducting the single car test (SCT). CP also made it mandatory to use a calibrated soap and an applicator brush.

On 07 March 2019, CP issued System Bulletin CPSB-011-19 which states, in part,

> Raising CP's Number 1 brake test operative brake standard to 100% on all trains operating on the Canadian network, which is an increase from the regulatory standard of 95%.

Also in 2019, CP updated the wiring in its SD70 type locomotive to support a software modification that was developed in collaboration with the manufacturer. The change includes dynamic brake enhancements for distributed power trains to retain dynamic braking on all remote locomotives after an emergency brake application. Additional software changes, developed in collaboration with the manufacturer of CP's General Electric locomotive fleet, were implemented in 2021. By December 2021, out of 782 locomotives, 741 (approximately 95%) had the software update installed.

Following the occurrence, CP also developed an advanced locomotive engineer (LE) training (ALET) program to supplement LE skillsets and provide additional preparation for addressing adverse conditions in the field. This program was developed between April and September 2019 and integrated into LE training and requalification in October 2019. The 8-hour training, which expands on principles that were always present in the LE training programs, consists of a 2-hour refresher course on air brakes and 5 advanced simulation runs.

The 2-hour air brake refresher course covers the following topics:

- components and features of the air brakes
- cycle braking (re-applying in a state of false gradient)[191]
- the effects of split reductions as opposed to heavy straightaway reductions
- the effects of emergency brake application without the activation of the train
- information and braking system (TIBS)
- the effect of retainer valves when applied
- the effect of distributed power on the brake pipe

[191] When a train's air brake system is fully charged, the difference in air pressure between the head-end and the tail-end of the train is considered a true gradient. While the train air brake system is charging, any difference between the head-end pressure and the trail-end pressure is considered a false gradient.

With respect to adverse conditions, the 5 simulation runs included in the ALET program cover the following:

- response to end-of-train device communication failure
- response to distributed power communication failure
- response to minor and major change in air flow and brake pipe fluctuation
- response to an undesired release of the air brakes
- cycle brake procedures on heavy and mountain grades
- proper use of the dynamic brake
- train braking efficiency not working as anticipated
- emergency air brake recovery procedures

4.2 Safety action required

On 03 February 2019 at approximately 2136 Mountain Standard Time, Canadian Pacific Railway Company (Canadian Pacific or CP) freight train 301-349, a unit grain train hauling 112 cars, was descending the steep 2.2% grade of Field Hill near Field, British Columbia, on CP's Laggan Subdivision. When the locomotive engineer (LE) was unable to keep the train's speed at or below the maximum allowable speed of 15 mph, the brakes were applied in emergency to bring the train to a stop at Partridge, British Columbia (Mile 127.46).

After the emergency stop, it was decided to set retaining valves on 84 of the rail cars, a task that required approximately 1 hour. Retaining valves limit acceleration after brakes are released, allowing a train's air brakes to recharge as it continues its descent. Hand brakes were not applied.

It was also decided that a relief crew would take over care and control of the train and complete the trip to Field. A series of circumstances contributed to delaying the relief crew's arrival at the train; the relief crew prepared to get underway approximately 3 hours after the emergency stop.

Before the relief crew released the brakes to resume the trip, however, the train began to roll on its own, accelerating down the mountain. The runaway train travelled 3.14 miles, reaching a speed of 53 mph, but could not negotiate the sharp 9.8° curve immediately before the Kicking Horse River bridge. Two locomotives and 99 cars derailed. The 3 members of the relief crew on board were fatally injured.

The investigation identified a number of safety deficiencies that contributed to the accident, including the following:

- The degradation of air brake systems in extreme cold temperatures
- The limitations of current train brake test methodologies to accurately evaluate air brake performance in these temperatures
- The need for additional physical defences to prevent uncontrolled movement of rolling stock

- The need for better identification of hazards through reporting, data trend analysis, or risk assessments under CP's safety management system to support risk mitigation measures

4.2.1 Reducing the risk of uncontrolled movements through the implementation of periodic maintenance requirements for brake cylinders

In this occurrence, the brake cylinders on the freight cars were leaking compressed air, a situation exacerbated by their age and condition and the extreme cold temperature (the ambient temperature was in the range of −25 °C to −28 °C), reducing the braking capacity of the train's automatic air brake system. From post-occurrence testing, it was found that about 50% of the cars on the occurrence train had reduced air brake effectiveness during the initial descent of Field Hill and, as a result, an emergency brake application was necessary. Given the extreme cold temperature and the length of time the train's cars were stationary with the brakes applied at Partridge, the rate of brake cylinder pressure (BCP) loss on some cars was likely excessive. Consequently, about 3 hours later, the brakes could no longer hold the train, which began to roll on its own.

The leakage of compressed air from air brake components is a fundamental problem in cold ambient temperatures. Air brake leakage typically increases with decreasing temperature, and can become quite pronounced in extreme cold (at or below −25 °C). Many of the seals and gaskets in the air brake system are made of rubber or a composite material. The effects of cold-weather conditions on rubber can vary, depending on its composition, age, and wear. Also, cold-weather conditions are generally known to decrease rebound resilience, making the rubber stiffer and less effective at preventing leakage. This is particularly the case for air brake components with extended time in service, such as car control valve (CCV) gaskets, brake cylinder packing cup gaskets, and brake pipe flange gaskets.

Air leakage from the brake cylinders on rail cars can be especially problematic when descending a long steep grade, because a sufficient amount of BCP is needed for an extended period of time to maintain train speed. Descending the 13.5-mile Field Hill grade at 15 mph requires air brakes to remain engaged and provide a constant amount of brake retarding force for over 52 minutes.

To mitigate the risk of freight cars developing excessive air leakage from the brake cylinder, it is crucial that brake cylinders undergo regular testing and maintenance. However, there are no specific industry or regulatory requirements for regular maintenance on freight car brake cylinders.

The repair history for the 112 cars on the occurrence train showed that 23 cars (20.5%) had received brake cylinder replacement or servicing in the previous 5 years due to a failed single car test.

Brake cylinder leakage remains the second highest failure rate during the single car test, after CCV failures.

The railway industry has considered the problem of brake cylinder leakage. In 2011, the Association of American Railroads (AAR) Brake Systems Committee proposed to reduce by half the maximum brake cylinder leakage acceptable during a periodic single car test (SCT),

a test which verifies the intended operation of car brakes and ensures, among other things, that the brakes remain applied and do not exceed allowable leakage rates.

According to AAR Standard S-486,[192] the maximum acceptable limit of brake cylinder leakage during an SCT is 1 psi/minute. At this leakage rate, the occurrence train would have lost 52 psi of BCP on the descent of Field Hill, which represents an 81.3% loss in braking capacity and, nearing the bottom of the descent, the remaining BCP on the train would have been the equivalent of a minimum reduction brake application (7 psi), which is insufficient to maintain train speed at 15 mph. In comparison, if the proposed maximum acceptable leakage rate of 1 psi/2 minutes were adopted, a train descending Field Hill would retain enough BCP to complete the descent at 15 mph with only one supplemental brake application to compensate for leakage.

The proposal from the AAR Brake Systems Committee was not accepted. The industry did not consider this revision to the standard to be needed for all of North America, primarily because of the regional nature of the problem: the more stringent maximum leakage rate is only needed for steep descending grade operations in cold winter temperatures.

Brake cylinders used to be subject to "clean, oil, test and stencil" (COT&S) reconditioning on a regular basis, but these requirements were eliminated by the AAR in 1992.[193] Since then, the industry's approach to brake cylinder maintenance has become one of voluntary preventative maintenance or run-to-failure. However, as this occurrence has shown, without periodic, scheduled maintenance, brake cylinder leakage can jeopardize safe train operations when sustained brake applications are required, especially in cold weather conditions.

The requirements for COT&S had also been removed for CCVs in 1992. However, following a 10 January 2018 occurrence at Luscar Industrial Spur in Leyland, Alberta, in which a freight train rolled uncontrolled while proceeding down a mountain grade,[194] and in response to a number of other occurrences in Canada and the U.S., the AAR reconsidered this position and made rule changes that have re-introduced a COT&S schedule for CCVs in certain circumstances.[195] The AAR has defined conditions under which CCVs should be replaced due to their age and exposure to service conditions in cold-weather environments. This new requirement applies to freight cars operating north of the 37th parallel during winter months that have CCVs older than 13 years since their last COT&S date.

Brake cylinders are also prone to declining performance after extended periods in service without maintenance, including lubrication and renewal of safety-critical rubber gaskets and seals. However, unlike the recent re-implementation of COT&S requirements for CCVs,

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192 Association of American Railroads, Standard S-486, "Brakes and Brake Equipment Code of Air Brake System Tests for Freight Equipment – Single Car Test" (revised 2018).

193 S. Butler, "The Evolution of Freight Car Air Brake Testing on Repair Track", presented at the Air Brake Association Technical Conference, Chicago, Illinois (14 – 17 September 1997).

194 TSB Rail Transportation Safety Investigation Report R18E0007.

195 Association of American Railroads, *Field Manual of the AAR Interchange Rules* (July 2021), Rule 4.A.2-3.

there are no AAR requirements to service or replace brake cylinders on freight cars on a set time interval.

Excessive brake cylinder leakage of freight cars on steep descending grade territory in cold ambient temperatures increases the risks that loss of control events will occur due to degraded brake capacity. Uncontrolled movements of railway equipment, although low-frequency events, can create high-risk situations that may have catastrophic consequences.

For a train negotiating a long descending grade in cold weather conditions where a brake application will be held for an extended duration, such as Field Hill, with a brake cylinder leakage rate of 1 psi/minute—the maximum acceptable limit specified in AAR Standard S-486—there is a risk that brake cylinder leakage will render the air brake system ineffective. To prevent uncontrolled movements in these situations, brake cylinder leakage limits need to be regulated to a more stringent maximum acceptable level.

To mitigate the risk of freight cars developing excessive brake cylinder leakage, it is crucial that brake cylinders undergo regular, time-based, maintenance.

If Transport Canada and the railway industry do not take measures to prevent excessive brake cylinder leakage on freight cars, the risk of a loss of control due to insufficient braking capacity will persist, a risk that increases on steep descending grades, especially in cold ambient temperatures. Therefore, the Board recommends that

> the Department of Transport establish enhanced test standards and time-based maintenance requirements for brake cylinders on freight cars operating on steep descending grades in cold ambient temperatures.
>
> **TSB Recommendation R22-01**

4.2.2 Reducing the risk of uncontrolled movements through the implementation of automatic parking brake technology

The issue of uncontrolled movements of railway equipment is not a new one. The TSB has pointed out the need for robust defences to prevent uncontrolled movements since 1996. On 12 August of that year, all 3 occupants in the operating cab of a locomotive were fatally injured when their train collided head-on with a cut of 20 runaway cars near Edson, Alberta.[196] In its investigation report, the TSB indicated that the facts surrounding this occurrence raised some concerns, notably with respect to the secondary defences against runaways.

The issue came to the forefront again in 2013 when, on 06 July, a runaway train derailed in the centre of the town of Lac-Mégantic, Quebec, destroying the town's core and main business area, and causing the death of 47 people.[197] In its investigation report, the TSB indicated that equipment runaways are low-probability events that can have extreme consequences, and the cost to human life and our communities can be incalculable. For this reason, the Board recommended that

196 TSB Railway Investigation Report R96C0172.

197 TSB Railway Investigation Report R13D0054.

the Department of Transport require Canadian railways to put in place additional physical defences to prevent runaway equipment.

TSB Recommendation R14-04

Since then, the trend in the number of uncontrolled movements has been on an upward trajectory. In 2014, the year after the Lac-Mégantic accident, there were 59 occurrences; in 2019, there were 78, including this one. Unplanned/uncontrolled movements of railway equipment remains a current issue and is included in the TSB's Watchlist 2020, a list of issues that need to be addressed to make Canada's transportation system even safer.

In the years since Recommendation R14-04 was issued, in an effort to address these concerns, Transport Canada (TC) has implemented several initiatives aimed at reinforcing and clarifying requirements in the *Canadian Rail Operating Rules* (CROR) governing the application of hand brakes. These initiatives included a revision to Rule 112 in 2015, which provided the industry with a comprehensive hand brake application chart to respond to various operating situations when securing unattended equipment.

Following the occurrence at Field, TC again modified the CROR with new requirements for the use of hand brakes. It introduced Rule 66 (Securing Equipment after an Emergency Brake Application on Grade) for the securement of trains stopped in emergency on heavy grades and mountain grades.[198] The new rule also includes a comprehensive hand brake application chart. It came into effect on 24 June 2020.

A hand brake is a mechanical device used to secure railway equipment and prevent uncontrolled movements. Hand brakes are installed on all railway rolling stock. They are manually applied and tightened by turning the hand brake wheel. This causes the brake shoes to be pressed against the wheel tread surface to prevent the wheels from moving or to retard their motion.

For hand brakes to securely hold a train, the right number of them must be applied to generate the needed brake force.

The hand brake application chart in Rule 66 indicates the number of hand brakes that must be applied on a train based on train tonnage and descending grade. For instance, given the occurrence train's weight of approximately 15 000 tons and the average 2.2% grade on Field Hill, to meet the requirements of Rule 66, it would have been necessary to apply 75 hand brakes on the train after it had stopped in emergency.

There are several factors, however, that can reduce the effectiveness of hand brakes, most notably low input torque (the amount of force applied by the operator at the hand brake wheel), service wear, and reduced coefficient of friction (COF) of the brake shoes from rail conditions such as the presence of ice or snow. When some of the hand brakes on a train are not fully effective, more hand brakes are needed to achieve the brake force necessary to hold it stationary.

198 CP defines heavy grades as grades between 1.0% and 1.8% inclusive. Grades exceeding 1.8% are defined as mountain grades.

In practice, operators do not know how much force they are applying at the hand brake wheel, as hand brakes do not provide this type of feedback. Nor do they know the coefficient of friction of the brake shoes, or whether a hand brake's effectiveness is reduced due to service wear. The only available means to determine whether a sufficient number of hand brakes has been applied, therefore, is to perform a hand brake effectiveness test. This test involves releasing the air brakes to confirm that the train does not begin to roll. If the train does roll, more hand brakes must be applied, and the test performed again. In the operating scenarios covered by Rule 66, however, this test is not feasible for a train stopped on a heavy or mountain grade. In such circumstances it would be highly risky to release the air brakes, as the train could begin to roll quite quickly and it may not be possible to stop it again. Therefore, operators must rely on the pre-determined number of hand brakes mandated by the rule. If some hand brakes on the train are not fully effective, this number may not be enough, and there is a risk of uncontrolled movement.

Applying hand brakes is physically demanding and time consuming. Operators must board the car by climbing the side ladder, position themselves safely at the hand brake wheel, and crank the wheel clockwise to take up chain slack before applying maximum force on the crank. They must then dismount, walk to the next car, and repeat the manoeuvre. Applying a large number of hand brakes requires a sustained effort over several hours. As fatigue sets in, the force that operators are able to exert at each hand brake wheel may diminish over time; with lower input torque, the effectiveness of the hand brakes is reduced, requiring more hand brakes to be applied.

Table 28 shows how many hand brakes would be needed to hold a 15 000-ton train on a 2.2% descending grade, assuming 55 foot-pounds input torque (the force achieved by the participants in the human performance assessment), and a coefficient of friction in the range of 0.3 to 0.4. In the presence of brake cylinder leakage, an increasingly higher number of hand brakes would be needed as the pressure drops. According to this table, the 75 hand brakes mandated by Rule 66 would be sufficient, based on a COF of 0.39, and a BCP of 10 psi.

As the table shows, the number of hand brakes needed to hold a train varies greatly based on several variables, over which train crews have no control.

Table 28. Number of hand brakes required at an input torque of 55 foot-pounds to hold a 15 000-ton train on a 2.2% descending grade, based on the coefficient of friction of the brake shoes and the average brake cylinder pressure*

Coefficient of friction	Number of hand brakes required based on average brake cylinder pressure						
	77 psi**	65 psi	50 psi	35 psi	25 psi	10 psi	0 psi
0.30	42	40	46	55	67	102	162
0.31	40	39	44	53	64	98	156
0.32	39	37	43	51	62	95	151
0.33	37	36	41	50	60	92	146
0.34	36	35	40	48	58	88	141
0.35	35	34	38	46	56	86	136
0.36	34	33	37	45	54	83	132
0.37	33	32	36	44	52	80	128
0.38	32	31	35	42	51	78	124
0.39	31	30	34	41	49	75	120
0.40	30	29	33	40	48	73	116

* The numbers in this table assume a net hand brake ratio of 6.5%.

** A brake cylinder pressure of 77 psi corresponds to the pressure after an emergency brake application, when there is no brake cylinder leakage.

There is AAR-approved technology available for securing trains, which takes most of these variables out of the equation: automatic parking brakes for rail vehicles (APBs), such as Wabtec's Automatic Park Brake and New York Air Brake's ParkLoc. APB technology has been tested and approved for use on North American railways, but it has not been widely adopted.

APBs are brake cylinders equipped with an automatic, mechanically operated latch that locks the brake cylinder piston as needed depending on the pressure in the brake pipe. When the brake pipe pressure is depleted (e.g., after a penalty or an emergency brake application), the system automatically locks the brake cylinder piston in the extended position, thereby retaining the brake force. This occurs without any specific intervention or action by the train crew. Once the brake pipe pressure increases again, the system automatically releases the lock and retracts the brake cylinder piston, which releases the brake force. APBs can be configured for use on both truck-mounted and body-mounted brake systems, and they can be retrofitted on existing freight cars with no need to make modifications to the air brake system.

Because APBs lock the brake cylinder piston into position on the cars, their effectiveness is independent of input torque, and it is not affected by brake cylinder leakage. APBs, therefore, can hold a train on a steep grade indefinitely.

Uncontrolled movements of railway equipment, while low frequency events, can create high-risk situations that may have catastrophic consequences. TSB investigations into uncontrolled movements have revealed that the sequence of events almost always included inadequate train securement. TC has made several improvements to the rules governing the application of hand brakes. However, even with a comprehensive set of rules, it has been

demonstrated over the years that depending solely on the correct application of rules is not sufficient to maintain safety in a complex transportation system. The concept of "defence in depth" has shaped the thinking in the safety world for many years. Layers of defences, or safety redundancy, have proven to be a successful approach in many industries, to ensuring that a single-point failure does not lead to catastrophic consequences.

Better and more numerous administrative defences have not been successful in establishing safety redundancy against uncontrolled movements. To date, the Canadian railway industry and the regulator have yet to look beyond strengthening an administrative defense such as the use of hand brakes.

Until physical defences such as automatic parking brakes are implemented across the Canadian railway network, the risk of uncontrolled movements due to inadequate train securement will persist, especially on steep grades where the effectiveness of hand brakes cannot be tested. Therefore, the Board recommends that

> the Department of Transport require Canadian freight railways to develop and implement a schedule for the installation of automatic parking brakes on freight cars, prioritizing the retrofit of cars used in bulk commodity unit trains in mountain grade territory.
>
> **TSB Recommendation R22-02**

4.2.3 Risk management through hazard identification, data trend analysis, and risk assessments

A safety management system (SMS) is an internationally recognized framework that allows companies to effectively manage risk and make operations safer. Risk assessments are a cornerstone of a fully functioning and effective SMS, and are essential for safe operations. The *Railway Safety Management System Regulations, 2015* (the SMS Regulations) require railway companies to conduct risk assessments, including when a safety concern is identified. However, what constitutes a safety concern is not defined in the regulatory provisions, leaving it to interpretation.

To identify safety concerns, railway companies are required to conduct, on an ongoing basis, an analysis of their operations, current or emerging trends, or any recurring situations. These analyses are based on information such as reports of safety hazards submitted by employees and data from safety monitoring technologies.

CP's *Reporting Contraventions, Safety Hazards and Identifying Safety Concerns Procedure* defines safety concern as follows:

> Safety Concern-is a hazard or condition which could result in an undesired event that constitutes:
> - a threat to safe railway operations or could reduce the safety of railway operations; and
> - presents a direct safety risk to employees; railway property; property transported by the railway; the public or property adjacent to the railway.[199]

[199] Canadian Pacific, *Reporting Contraventions, Safety Hazards and Identifying Safety Concerns 2.0*, (last revised 19 December 2018), section 3.1, p. 10.

At the time of the occurrence, CP's procedure outlined the situations in which a safety hazard report should be made and an analysis conducted to identify safety concerns, emerging trends or recurring situations. It also identified the steps to be followed to progressively escalate a safety issue until it was resolved. However, the investigation revealed that the process was not always being followed, that hazard reports were not always rated or assessed, and that some reports were closed out without any clear indication of the corrective action undertaken or any indication of verification that the action had been completed or was effective.

Prior to this occurrence, safety hazard reports involving poorly braking unit grain trains descending Field Hill in cold winter weather had been submitted by train crews for a number of years in January and February. Although CP's procedure for safety hazard reporting was actively followed at the Calgary terminal, the follow-up process was not effective at analyzing trends. CP did not consider that the trend in safety hazard reports represented a "safety concern," as per the SMS Regulations, or by CP's own *Reporting Contraventions, Safety Hazards and Identifying Safety Concerns Procedure.*

The individual notifications of this hazard were closed, yet new similar reports continued to be recorded through the reporting system. Still, year after year, the reports on the poor braking of unit grain trains on Field Hill were closed, no risk assessment was conducted, and insufficient corrective action was taken. Since braking performance degradation occurred seasonally on CP unit grain trains in extreme cold temperature, this condition had become normalized such that it was expected that close to maximum available braking would be required while descending Field Hill.

Furthermore, Transport Canada's oversight of the occupational health and safety committee in Calgary did not identify the lack of corrective action on the reported substandard braking performance of unit grain trains descending Field Hill.

CP collects data from the wheel temperature detectors (WTD) on its network. These detectors facilitate the identification of cars with cold wheels, which is an indicator of poor braking performance. The data collected in winter allow the railway to monitor the temperature sensitivity and performance of the car air brakes when they are most susceptible to leakage. WTDs are a safety monitoring technology and, as such, data collected from these systems must be analyzed to identify safety concerns, trends or emerging trends, or recurring situations. However, at the time of the occurrence, this available data was not actively analyzed by CP and an opportunity was missed to identify the hazard and mitigate any risks related to the braking performance of grain trains in extreme cold temperatures.

Risk assessments must be conducted prior to implementing operational changes which have the potential to introduce new hazards or increase the level of severity of existing hazards. In the years preceding the occurrence, CP made several modifications to the operating procedures for Field Hill, such as changes to the speed threshold at which trains are permitted to descend Field Hill, and changes to the requirements for retainers and hand brakes after an emergency brake application. CP did not conduct a risk analysis to assess how these changes would impact safety.

The SMS Regulations require that railway companies ensure that employees performing duties essential to safe railway operations (such as conductors) have the skills and

qualifications required to perform their duties safely. However, when CP changed its training program for conductors on the Laggan Subdivision, it did not conduct a risk assessment of this change.

Since the new SMS Regulations came into effect in 2015, the TSB has investigated 11 occurrences, including this one, in which shortcomings in hazard identification, analysis of relevant railway safety data, or risk assessments were identified as a risk factor. Of these, 7 occurred in CP operations.

The Board issued a recommendation to the Department of Transport related to the effectiveness of railways' SMS in 2014, following its investigation into the July 2013 accident at Lac-Mégantic, Quebec. In its investigation report, the Board indicated that, until Canada's railways make the cultural shift to SMS, and TC makes sure that they have effectively implemented SMS, the safety benefits from SMS will not be realized. The Board recommended that

> the Department of Transport audit the safety management systems of railways in sufficient depth and frequency to confirm that the required processes are effective and that corrective actions are implemented to improve safety.
>
> **TSB Recommendation R14-05**

Since then, TC has completed its initial comprehensive audit of all federally regulated railways. As a result of these audits, TC requested corrective action plans where necessary, and stated that it continues to follow up to ensure that all railways have taken corrective action to address the findings. In its March 2021 assessment of TC's response, the Board stated that it was encouraged by TC's progress and looked forward to receiving information on the findings.

The effectiveness of railway SMS remains a concern and is included in the TSB's Watchlist 2020, a list of issues that need to be addressed to make Canada's transportation system even safer. As stated in the Watchlist, federally regulated railways have been required to have an SMS since 2001, and regulatory requirements were significantly enhanced in 2015. However, since then, companies' SMS have not produced the expected safety improvements associated with mature safety management and safety culture, as the rate of main-track train accidents has not improved. The TSB believes that railway companies' SMS are not yet effectively identifying hazards and mitigating risks in rail transportation. Safety management will remain on the Watchlist for the rail transportation sector until safety data is collected and analyzed to reliably determine risk assessment and risk mitigation, leading to measurable safety improvement.

An effective safety culture includes proactive actions to identify and manage operational risk. The identification of hazards within a risk assessment is critical to identifying the required mitigation measures needed, and is the foundation of an effective SMS.

When hazards are not identified, either through reporting, data trend analysis, or by evaluating the impact of operational changes, and when the risks that they present are not rigorously assessed, gaps in the safety defences can remain unmitigated, increasing the risk of accidents. Ultimately, it is the railway companies themselves which must ensure that they

have the culture, structures, and processes in place to allow for proactive identification of hazards, assessment of risks, and implementation of mitigation strategies. However, Transport Canada also has a responsibility to ensure that railway companies not only comply with the SMS regulations, but are also managing the risks in their operations effectively.

Until CP's overall corporate safety culture and SMS framework incorporate a means to comprehensively identify hazards, including the review of safety reports and data trend analysis, and assess risks before making operational changes, the effectiveness of CP's SMS will not be fully realized. Therefore, the Board recommends that

> the Department of Transport require Canadian Pacific Railway Company to demonstrate that its safety management system can effectively identify hazards arising from operations using all available information, including employee hazard reports and data trends; assess the associated risks; and implement mitigation measures and validate that they are effective.
>
> **TSB Recommendation R22-03**

This report concludes the Transportation Safety Board of Canada's investigation into this occurrence. The Board authorized the release of this report on 16 March 2022. It was officially released on 31 March 2022.

Visit the Transportation Safety Board of Canada's website (www.tsb.gc.ca) for information about the TSB and its products and services. You will also find the Watchlist, which identifies the key safety issues that need to be addressed to make Canada's transportation system even safer. In each case, the TSB has found that actions taken to date are inadequate, and that industry and regulators need to take additional concrete measures to eliminate the risks.

APPENDICES

Appendix A – Locomotive and freight car brakes

Train brakes

Locomotives are equipped with 2 air brake systems: automatic and independent.

The automatic brake system applies the brakes to each locomotive and to each car in the train as well; it is normally used during train operations to slow and stop the train.

Each locomotive also has an independent brake system, which applies air brakes on the locomotive only. Independent brakes are not normally used during train operations, but are primarily used as a parking brake, sometimes in conjunction with the hand brake on the locomotive.

Locomotives are also equipped with a dynamic brake (DB) system that makes use of locomotive traction motors to provide resistance against the rotation of axles.

Automatic brake system

A train's automatic brake system is supplied with air from compressors located on each operating locomotive. The air is filtered, dried, compressed, and stored in the locomotive's main reservoirs. Air pressure in the main reservoirs is maintained between 130 and 140 psi. These reservoirs supply air to each locomotive and individual car in a train through a brake pipe that runs the entire length of the train. The brake pipe of each locomotive and rail car of the train is connected to that of the next locomotive or rail car by an end hose.

The automatic brake system is equipped with a regulating valve that is used to set the air pressure supplied to the brake pipe to approximately 90 psi.[200] Given a sufficient amount of time, the entire train brake system will charge to 90 psi. The time to fully charge a train brake system is dependent on train length, the ambient temperature, the positioning of locomotives throughout the train, and the amount of leakage[201] throughout the train.

Rail cars are equipped with the following 6 basic air brake components: the brake pipe, a car control valve (CCV), auxiliary and emergency air reservoirs, a brake cylinder, and a retaining valve (Figure A1). A CCV assembly has 2 valve portions, a service portion and an emergency portion, both affixed to a pipe bracket (Figure A2). The CCV has 3 functions: to charge the auxiliary and emergency reservoirs from the brake pipe, to apply the brakes, and to release the brakes.

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200 Brake pipe air pressure can be set according to railway operating procedures. The most common brake pipe air pressure setting for freight train operations in North America is 90 psi.

201 Transport Canada regulations specify maximum allowable brake pipe leakage for train operations.

Figure A1. Freight car air brake components (Source: Canadian National Railway Company)

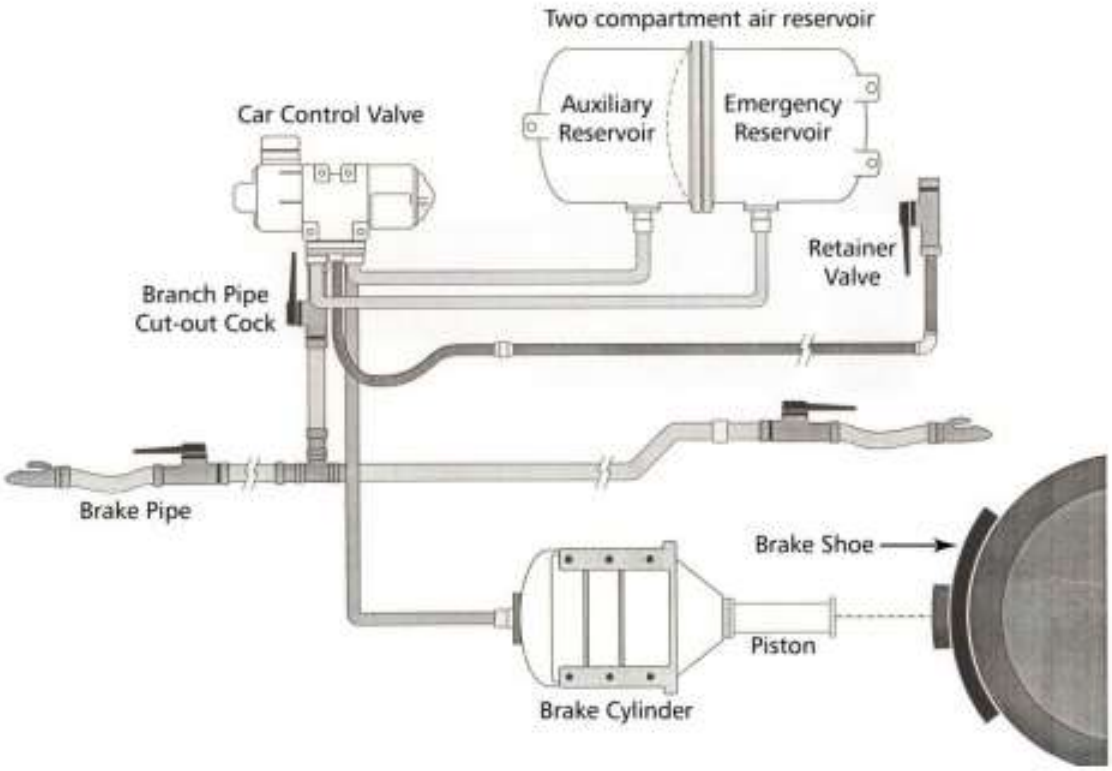
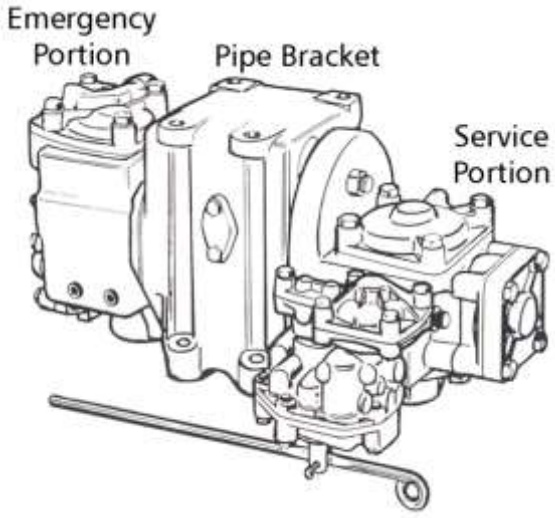


Figure A2. Freight car control valve (Source: Canadian National Railway Company)



The brake pipe acts to supply compressed air to each car[202] in the train when the train brakes are released and the system is being charged. The auxiliary reservoir on each car supplies compressed air to the brake cylinder when the brakes are applied and is recharged when the brakes are released. This action is controlled by the CCV reacting to changes in brake pipe pressure.

The brake pipe acts as a signal line to apply or release/recharge the train brakes. The signal is controlled from the automatic brake valve on the lead locomotive by changing the air pressure in the brake pipe. The principle of train air brakes is based on lowering brake pipe pressure to apply the brakes and increasing brake pipe pressure to release the brakes. The train air brake system must be sufficiently charged with compressed air to operate as designed.

When a freight train air brake system is sufficiently charged, the brakes are applied through a controlled reduction in brake pipe pressure. This is called a service reduction. Train brakes can be applied with a minimum application, which is the lightest brake possible, and gradually applied harder in stages until a full service[203] application is achieved. A service train brake application can be incrementally increased until a full-service brake application is achieved, but it cannot be incrementally released; it can only be fully released.

To apply the train brakes harder than a full-service application requires an emergency[204] brake application. This is done by venting the brake pipe air at an uncontrolled rate, allowing the pressure to drop rapidly to 0 psi. Once an emergency brake application is initiated, the drop in brake pipe pressure to 0 psi cannot be stopped.

The CCV on a freight car reacts to an abrupt drop in air pressure by allowing air pressure stored in the emergency reservoir to flow into the brake cylinder. The auxiliary reservoir is also used during an emergency brake application. This causes a faster and higher build-up of brake cylinder pressure, resulting in a harder brake application and a faster stop.

When a normal automatic brake application is required, the locomotive engineer (LE) moves the automatic brake valve handle (Figure A3) to the desired position. This action removes air from the brake pipe at a service rate. As each CCV senses a sufficient reduction in pressure, air flows from the auxiliary reservoir located on each car into that car's brake cylinder, applying the brake shoes to the wheels.

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202 Both the auxiliary and emergency reservoir on each car will charge to the same pressure as the brake pipe through the CCV. During normal operation, only the auxiliary reservoir is used to supply air to the brake cylinder. Emergency reservoir air is maintained until needed.

203 A full service brake is achieved when the air pressure in the auxiliary reservoir equalizes with the air pressure in the brake cylinder and the brake pipe. Further brake pipe service reductions will not apply the brakes any harder.

204 Provided that brake pipe pressure is above 40 psi, when the brake pipe air pressure drops at a rapid rate, it will cause the auxiliary and emergency reservoirs to equalize with the brake cylinder. This causes higher pressure in the brake cylinder than is possible with auxiliary air pressure alone.

Figure A3. Automatic brake valve handle (Source: Canadian National Railway Company)



To release the brakes, the LE moves the automatic brake valve handle to the release position. This action allows air to flow from the main reservoir back into the brake pipe, restoring pressure to 90 psi. Sensing an increase in brake pipe air pressure, the CCV on each car allows air to be released from the brake cylinder through its retaining valve, and the brake shoes are removed from the wheels.

To reapply the train brakes after a release requires the brake pipe pressure to again be reduced using the automatic brake valve. Before reapplying the train brakes, the system needs time to recharge. Not allowing sufficient time for the system to recharge may result in the brakes not applying or unintentionally releasing after a short time.

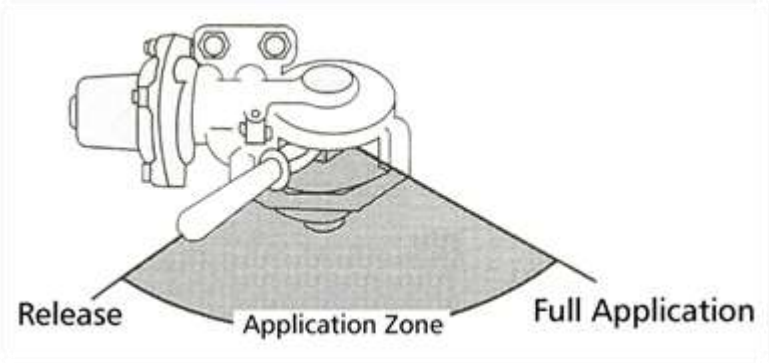
Independent brake system

On a locomotive, the independent brakes are also supplied with air from the main reservoir. Unlike the automatic brake system, the independent brake system is a direct air system. An independent brake valve controls a relay valve that will allow air from the main reservoir to flow into the brake cylinders on the locomotives only.

When a full independent brake application is required, the LE moves the independent brake valve handle (Figure A4) to the full application position, and air pressure is supplied to the locomotive brake cylinders. This causes the brake shoes to apply to only the locomotive wheels. Brake cylinder pressure can also be gradually increased or decreased as needed by moving the brake valve handle in the application zone.

To release the independent brakes, the LE moves the independent brake valve handle to the release position. This causes air to be released from the locomotive's brake cylinders, and the brake shoes are removed from the locomotive wheels. Air pressure in the locomotive brake cylinders is relative to the position of the independent brake valve handle.

Figure A4. Independent brake valve handle positions (Source: Canadian National Railway Company)



Control valves

Each car is equipped with a CCV, which is comprised of a service and an emergency portion. The train locomotive air compressors supply air pressure to each freight car through the brake pipe. Brake pipe air pressure comes through the branch pipe tee, then is fed to the CCV through the cut-out cock. The CCV supplies compressed air to the combined reservoir, included on each freight car. The combined reservoir comprises 2 separate sections: an auxiliary reservoir (handling the service brake applications), and an emergency reservoir (mainly supplementing air pressure for an emergency brake application).

When the freight car is fully charged (when the brakes are released), the pressure is equal to 90 psi in the brake pipe, as well as in the auxiliary and emergency reservoirs. During an automatic brake application, brake pipe pressure is reduced, which in turn signals the CCV to apply the brakes by directing air from the auxiliary reservoir into the brake cylinder on the freight car, thus extending the piston, moving the brake beams and setting the brake shoes against the wheels.

During each service brake application, the brake pipe and auxiliary reservoir pressures are equal on the freight car. The CCV monitors any pressure differential between the brake pipe and the auxiliary reservoir. Brakes are released when brake pipe pressure increases by 1.5 to 2 psi above auxiliary reservoir pressure.

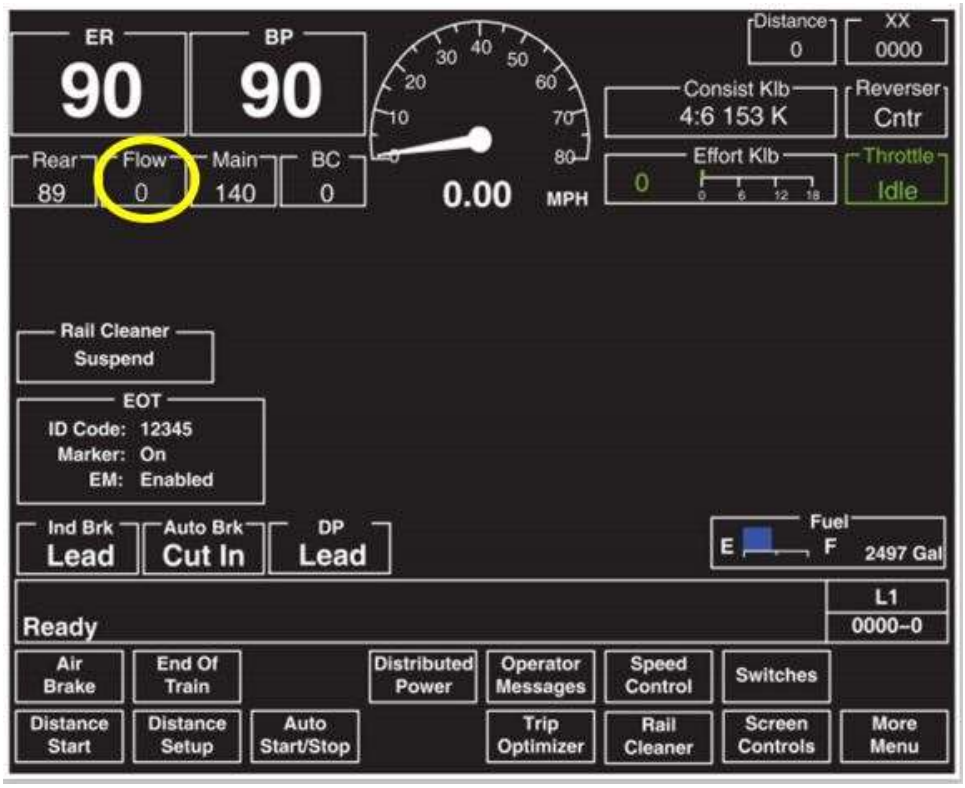
When an emergency brake application is initiated for the train, it is due to either the LE putting the air brake handle in emergency, or the freight car end hoses coming apart between cars. In either case, the CCVs sense the very rapid discharge of air pressure from brake pipe (brake pipe pressure would drop to 0 psi at a rate of 900-950 feet per second) and directs air pressure from both the auxiliary and emergency reservoirs into the brake cylinder to apply the maximum available braking force and bring the train to a stop.

Finally, when brakes are released, brake cylinder air pressure flows back through the CCV and is exhausted into atmosphere through the retaining valve.

Air flow display

On locomotives equipped with operator display screens, the air flow is displayed in a box identified as “Flow” (Figure A5). The value displayed on the screen indicates the amount of air flow into the brake pipe in cubic feet per minute (CFM). This type of air flow indicator displays 0 when the demand for air falls below 20 CFM.

Figure A5. GE operator display screen, with air flow indication circled (Source: General Electric, with TSB annotation)



When the train brake system is being charged, the air flow indicator will display a large value, typically higher than 60 CFM. This indicates that there is a high flow of air into the brake pipe. As the system becomes charged, the value displayed will come down, indicating a decrease of flow.

When the value on the air flow indicator stops falling and stabilizes, it indicates that the demand for air is steady and the system is fully charged. The pressure-maintaining feature of the automatic brake valve will compensate for brake pipe leakage. If there is leakage in the brake pipe, the flow value may not reach 0 CFM when the train brake system is fully charged.

Because the air flow indicator measures the rate of air flow to the brake pipe, it can also indicate

- the rate at which a train is being charged or recharged;
- a heavy demand of air in the brake pipe, if a hose has separated or ruptured; or
- a flow of air into the brake pipe as the pressure-maintaining feature of the automatic brake valve compensates for normal leakage.

If the air flow indicator shows an increased air flow while the brakes are applied, it could indicate that

- the brakes are releasing (unintentional release);
- somewhere in the train, a brake pipe coupling hose has come apart;
- somewhere in the train, there is a hose or brake pipe rupture; or
- there is excessive leakage.

Brake pipe pressure maintaining

Pressure maintaining is a feature of the automatic brake valve that allows air to flow into the brake pipe at a controlled rate to overcome normal brake pipe leakage without causing the brakes on the train to release. During service brake applications, it allows the selected brake pipe pressure reduction to be maintained for long periods of time. This feature allows trains to descend long mountain grades with the brakes applied as needed.

Without brake pipe pressure maintaining, leakage will cause the brake pipe pressure to continue falling after the brakes have been applied. Eventually, the brake pipe pressure will drop to 0 psi. Controlling train speed on long descending grades is difficult without brake pipe pressure maintaining.

Pressure maintaining is always functioning when a locomotive is set up to be the lead or controlling remote locomotive on the train. Pressure maintaining is disabled on locomotives set up for trail operation.[205]

Emergency braking

An emergency brake application is the maximum application of a train's air brakes during which the brake pipe pressure is rapidly reduced to 0, either from a separation of the brake pipe or operator-initiated action. Following an emergency brake application, the air from the auxiliary and emergency reservoirs combine in the brake cylinder. When brake pipe pressure is below 45 psi, a rapid reduction in brake pipe pressure cannot be relied upon to initiate an emergency brake application.

Pressure retaining valves

A pressure retaining valve, commonly called a retainer, is a manually operated valve that can be used to limit the release of air pressure from the brake cylinder after the automatic brake is released. The retainer has 3 settings, which are set by rotating the handle into the appropriate notches:

- The Direct Exhaust (DE) setting, also known as Exhaust (EX), which lets all the air pressure exhaust to the atmosphere. This is the default setting of the retainers on trains.

[205] When a locomotive is to be used in a trailing position in a multiple-unit locomotive consist, the MU-2A valve on the locomotive must be set to "Trail." This setting allows the air brake system on the trailing locomotive to be controlled from the lead locomotive

- The High Pressure (HP) setting, which is designed to nominally hold up to 20 psi of compressed air in the brake cylinder after the car air brake is released. This may help hold the train in a stationary position or control the speed while the air brake system is being recharged. In a situation where the cylinder pressure is less than 20 psi at the time when the air brake is released, the retainer will initially hold whatever pressure existed at that time.
- The Slow Direct (SD) setting, where brake cylinder pressure is fully depleted to atmosphere, but at a much slower rate, when a brake release is commanded.

The HP and SD settings become effective only after releasing the initial brake application. The use of retainers does not provide any additional brake retarding force while the train brakes remain applied. Rather, the retainers are intended to provide a residual amount of braking force after the train brakes (automatic air brakes) are released.

Dynamic brakes

The DB system is designed to be used as a supplementary braking system to the train air brake system. The DB system operates by electrically converting the traction motors of a moving locomotive into electric generators. One of the characteristics of a generator (traction motor) is to resist rotation when it is producing electricity. This resistance is caused by a magnetic field through which the traction motor armature rotates. The movement of the DB handle controls the strength of the magnetic field and the retardation effort. When DB is applied, traction motors are reversed, exercising a drag or braking effect on the train. The rotation of the traction motor armature through the magnetic field generates a current. This current is then sent to the resistor grids that produce heat. Fans mounted on the locomotive roof cool the resister grids and the heat is dissipated to atmosphere.

When only the locomotive DB is used, compressive or “buff” forces are concentrated behind the locomotives. When DB used in combination with train air brake systems, these forces are more evenly distributed throughout the train. DB use on long mountain grades prevents brake shoe friction fade on the locomotives because the locomotive traction motors provide resistance. There is no contact between wheel treads and brake shoes and no frictional heat is generated. When DB is used to supplement the train air brakes, less air brake force is needed, reducing the likelihood of brake shoe friction fade on the train and making it possible to reserve train air brake capacity for use in the event of an emergency.

Appendix B – Inspection and testing of air brake systems

No. 1 brake test

In accordance with the requirements of Transport Canada–approved *Railway Freight and Passenger Train Brake Inspection and Safety Rules* and CP's General Operating Instructions, the No. 1 brake test is conducted by certified car inspectors at locations where trains are made up or at specified locations for trains in service. The inspectors conducting the test must verify the brake pipe integrity and continuity, and the brake rigging condition on each car to ensure that the brakes meet the minimum requirements.

During the test, the brakes are applied and then the brake cylinder pistons are visually verified to ensure that the brakes have applied on each car and that the extension of brake cylinder piston is within specifications. After the brakes have been released, a second visual verification of the brake cylinder pistons is performed on each car to ensure that the brakes have in fact released. All trains departing designated safety inspection locations require at least 95% of the air brakes to be operative.[206]

The Transport Canada–approved *Railway Freight and Passenger Train Brake Inspection and Safety Rules* set the requirement for a No.1 brake test as follows:

> 11. No.1 BRAKE TEST
>
> 11.1 A No.1 brake test shall be performed by a certified car inspector(s) at safety inspection locations on:
>
> a) trains that are made up at that location;
>
> b) cars added to a train at that location;
>
> c) cars that are interchanged.
>
> d) If a train is made up at other than a safety inspection location, a No. 1 brake test will be performed at the safety inspection location designated for that train by the railway company in the direction of travel.
>
> 11.2 Exceptions: A No.1 brake test is not required on:
>
> a) trains operating over main tracks, between yards, up to a maximum of a thirty (30) mile (fifty (50) kilometre) radius. Such trains shall be engaged exclusively in the setting off or lifting of equipment at industry(s), and/or the transfer of equipment between yards, and they shall be filed with the Department.
>
> b) a block swap of cars that have been off air for no more than 24 hours or 48 hours after notifying the department.
>
> 11.3 A No.1 brake test shall verify:

206 "'[O]perative' means a brake that applies and releases and is in a suitable condition to retard and/or stop equipment." (Source: Transport Canada, *Railway Freight and Passenger Train Brake Inspection and Safety Rules* [17 November 2017], Section 3.24.)

a) the integrity and continuity of the brake pipe;

b) that the condition of the brake rigging on each car in the train meets the minimum requirement specified in Sections 20, 21 and 22 of these Rules;

c) that the application and release of the brakes on each car is performed by visible verification of the piston or brake indicator device displacement; and

d) that piston travel on each car is within the specified limits.

11.4 A pull-by inspection by a certified car inspector may be performed to verify the release of the train brakes.

11.5 Certified car inspectors shall report, in accordance with company procedures/work instructions, the results of all brake tests performed. Any brake system defect(s) discovered during the brake test and not repaired prior to departure shall be documented as bad order and reported to the conductor, or in his or her absence, the locomotive engineer. The conductor/engineer shall update the train brake status system with the identified defect(s). The results of the tests performed by certified car inspectors shall be retained for ninety-two (92) days.

11.6 After completing a No.1 brake test, a train may depart from a safety inspection location with ninety-five (95) percent of the train brakes operative, once every reasonable effort has been made to maintain one hundred (100) percent operative brakes. This requirement does not apply to cars referred to in Subsection 8.4 of these Rules.

11.7 A No. 1 brake test is not required at an interchange point and/or when entering Canada provided the locomotive engineer has access to records that indicate that a No.1 brake test, as per these Rules, or an initial terminal brake test by mechanical personnel in the United States, was performed.[207]

Single car test

A single car test[208] (SCT) verifies the operation of the air brake system on an individual car. Although testing can be performed outside on a designated repair track, the test is more often performed inside a repair shop facility at room temperature. The device used to conduct this test is equipped with a special control valve and flowmeter to verify the essential braking functions. During the test, pressure loss is measured in the brake cylinders for 4 minutes following a reduction of 10 psi in the brake pipe. The allowable pressure loss is 1 psi (or less).

According to the *Field Manual of the AAR Interchange Rules*, a SCT is required:

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207 Transport Canada, *Railway Freight and Passenger Train Brake Inspection and Safety Rules* (17 November 2017), Part II: Brake Test Requirements, Section 11: No. 1 Brake Test, pp. 12–13.

208 SCTs are performed in conformance with AAR Standard S-486.

- when a car is on a repair track or in a shop and has not received a SCT for more than a year;
- when a car has been in service without having had a SCT for a period of 5 years; or
- when a car has been in service without having a test done for a period of 5 years (8 years for new cars).[209]

The automated single car test (ASCT) is routinely used by railway maintenance personnel for inspecting, testing, and diagnosing car air brake system issues. In addition to testing for pronounced leakage (system, brake pipe, retainer leakage, reservoir), the ASCT will test such things as minimum application, service valve stability, service release, emergency vent valve operation, emergency accelerated release, and the operation of the empty/load device.

The test is not actually a single test, but rather a test program involving a progressive series of test steps, each individually designed to assess a particular aspect of air brake performance. Each test step must be successfully completed before progressing to the next step. If a given test step fails, the underlying problem must be investigated and repaired. Once the repair is completed, the test program is restarted to allow the test program to progress to the next test level. In a shop environment, the sequence of testing, troubleshooting, repairing, and retesting would be followed until all test steps are successfully passed.

Brake cylinder leakage test

The test procedure for brake cylinder leakage involves the following steps:

1. Apply a 10 psi brake reduction.
2. Wait 3 minutes after the brake pipe pressure has stabilized at 80 psi.
3. Take a reading of the pressure on the brake cylinder gauge.
4. Wait 1 minute.
5. Recheck the brake cylinder pressure.

209 Association of American Railroads, *Field Manual of the AAR Interchange Rules* (2018), Rule 3, Chart A.

Appendix C – Maintenance history of the cars on the occurrence train

The 112 grain cars on the train were assembled from 3 separate fleets of hopper cars, each with a different maintenance history. The investigation reviewed the replacement history of brake components, in particular the brake shoes, the brake cylinders, and the car control valves (CCVs).

The cars from each fleet were equipped with different brake systems and brake configurations (Table C1). The air brake arrangements on all cars were compliant with Association of American Railroads (AAR) specifications S-400 and S-401.

Table C1. Brake system configuration of the 112 grain cars on the occurrence train

Fleet	Number of cars	Brake cylinder type	Comments
SOO	29	Truck-mounted	Wabco TMX and New York Air Brake (NYAB) TMB-60 equipped with automatic slack adjuster
SOO	22	Body-mounted	Wabco or NYAB equipped with automatic slack adjuster
Leased	21	Body-mounted	Wabco or NYAB equipped with automatic slack adjuster
Canadian Pacific*	40	Truck-mounted	Wabcopac/Nycopac not equipped with slack adjuster

* 2 cars in the CP 384000-384999 series and 38 Government of Canada cars in the CP 600000–608591 series

Brake shoe replacements

Table C2 breaks down the total number of brake shoes replaced on the 112 cars during the previous 5 years according to the temperature categories used for the wheel temperature detector (WTD) data in section 1.19.2.3: cold (less than 100 °F), marginal (from 100 °F to 150 °F) and adequate (greater than 150 °F).

Table C2. Number and percentage of brake shoes replaced on cars in the occurrence train from 2014 to 2019, by car average temperature ranking

Car average temperature ranking	Number of cars	Brake shoes replaced	Percentage of brake shoes replaced per car
Adequate	67	858	12.8
Marginal	25	333	13.3
Cold	20	258	12.9

Car control valve replacements

The maintenance history indicates that a total of 70 CCV portions were replaced on the 112 cars during the last 5 years. Considering that each car has 2 valve portions (a service portion and an emergency portion), this represents a replacement rate of 31% in the 5 years. Table C3 breaks down the number of valve replacements for cars in each wheel temperature category.

Table C3. Number and percentage of car control valves replaced on cars in the occurrence train from 2014 to 2019, by car average temperature ranking

Car average temperature ranking	Number of cars	Valves replaced	Percentage of valves replaced per car
Adequate	67	29	21.6
Marginal	25	22	44.0
Cold	20	19	47.5

Single car tests

Table C4 shows the total number of single car tests performed on the 112 cars during the last 5 years, broken down by the temperature categories.

Table C4. Number of single car tests performed on the cars in the occurrence train from 2014 to 2019, by car average temperature ranking

Car average temperature ranking	Number of cars	Single car tests	Percentage of single car tests per car
Adequate	67	105	1.57
Marginal	25	57	2.28
Cold	20	55	2.75

Brake cylinder replacements

There are no AAR requirements to service or replace brake cylinders on freight cars on a time-based interval. The repair history for the 112 cars shows that 23 cars (20.5%) had received brake cylinder replacement or servicing in the last 5 years due to a failed single car test (Table C5).

Table C5. Number and percentage of cars from the occurrence train with brake cylinders replaced following a failed single car test, by type of brake cylinders installed, from 2014 to 2019

Brake cylinder type	Number of cars	Cars with cylinders replaced (%)
Truck-mounted Wabcopac	40	14 (35%)
Truck-mounted Wabco TMX	51	7 (13.7%)
Body-mounted	21	2 (9.5%)
Total	**112**	**23 (20.5)**

Appendix D – Itemized list of train handling events

The tables in this appendix describe train handling events compiled from locomotive event recorder (LER) data. The LER data from the mid-train remote locomotive (UP 5359) were used as the primary source of information. Although the locomotive was extensively damaged in the derailment, the LER memory module survived the accident and the LER data were successfully retrieved. Selected LER information from the tail-end remote locomotive (CEFX 1040) was included as well, where necessary. The data cover train handling events leading up to and including the train stopping in emergency on Field Hill.

Locomotive event recorder data for train handling events, by event

In these tables,

- "H/E Mile" refers to the mile at which the front of the head-end locomotive was located.
- "TE/DB (kip)"[210] refers to the force, in kilopounds, produced due to the application of tractive effort or dynamic brake (DB).
- "ER (psi)" refers to the pressure, in pounds per square inch, produced by the equalizing reservoir.
- "BPP (psi)" refers to the brake pipe pressure in pounds per square inch.
- "IND (psi)" refers to the pressure, in pounds per square inch, produced by the locomotive independent brake.
- Air flow values do not represent total brake pipe flow; they represent only the flow from the air brake system in the mid-remote locomotive (UP 5259), which was 1 of the 3 operative sources of compressed air on the train.
- The DB changes shown are those DB levels concurrent with changes to speed and air brake.

Table D1. The train enters Eldon siding, pulls down, and stops at the west end to clear the main track for an opposing train meet.

Item	Time (MST)	H/E Mile	Speed (mph)	Throttle position	TE/DB (kips)	DB notch	ER (psi)	BPP (psi)	Air flow (CFM)	IND (psi)
1	19:02:04	105.71	22	T6	46	0	89	88	0	0
2	19:07:18	106.96	10	T3	36	0	82	81	0	0
3	19:07:31	107.00	9	T2	17	0	79	79	0	0
4	19:09:40	107.14	0	Idle	0	0	80	78	0	53

[210] 1 kip = 1000 pounds

Table D2. The train is getting ready to depart Eldon siding but, because of a problem with the dual-control power switch at the east end of the siding, the train makes a reverse move eastward to back out of the siding, down an average 0.55% grade.

Item	Time (MST)	H/E Mile	Speed (mph)	Throttle position	TE/DB (kips)	DB notch	ER (psi)	BPP (psi)	Air flow (CFM)	IND (psi)
5	20:19:22	107.15	0	T1	0	0	89	85	89	71
6	20:19:39	107.15	1	T2	51	0	89	87	78	0
7	20:19:50	107.15	2	T3	51	0	90	87	67	0
8	20:21:53	106.77	18	T2	16	0	90	88	29	0
9	20:22:03	106.72	18	T1	4	0	90	88	27	0
10	20:22:31	106.57	19	Idle	0	0	90	88	26	0

Table D3. The train speed has just reached 21 mph and the maximum allowed speed is 25 mph; to control speed, the dynamic brake is applied.

Item	Time (MST)	H/E Mile	Speed (mph)	Throttle position	TE/DB (kips)	DB notch	ER (psi)	BPP (psi)	Air flow (CFM)	IND (psi)
11	20:22:53	106.44	21	Idle	0	Setup	90	88	22	0
12	20:23:25	106.25	20	Idle	70	6	90	88	0	0

Table D4. From a speed of 16 mph, and with the dynamic brakes still applied, an initial 9 psi brake pipe reduction is made, followed by a full service application (26 psi), to stop the train's head-end clear of the Eldon east switch.

Item	Time (MST)	H/E Mile	Speed (mph)	Throttle position	TE/DB (kips)	DB notch	ER (psi)	BPP (psi)	Air flow (CFM)	IND (psi)
13	20:24:41	105.85	16	Idle	81	7	79	79	0	0
14	20:25:10	105.76	4	Idle	25	8	61	62	0	30

Table D5. With the air brakes released to resume the westward trip, the train starts climbing the 17-mile long ascending grade between Eldon and Stephen; the throttle is progressively increased from notch position 2 to position 8.

Item	Time (MST)	H/E Mile	Speed (mph)	Throttle position	TE/DB (kips)	DB notch	ER (psi)	BPP (psi)	Air flow (CFM)	IND (psi)
15	20:25:47	105.75	0	T2	0	0	90	82	106	73
16	20:52:52	105.75	0	T3	53	0	89	83	103	18
17	20:26:18	105.75	1	T4	87	0	89	85	79	0
18	20:27:26	105.84	6	T5	76	0	89	88	56	0
19	20:27:54	105.90	9	T6	82	0	89	88	45	0
20	20:28:04	105.93	9	T7	102	0	89	88	41	0
21	20:28:25	105.99	11	T8	108	0	89	88	36	0
22	20:53:48	116.20	21	T8	67	0	89	88	0	0
23	21:17:20	121.50	12	T8	110	0	89	88	0	0

Table D6. The train is approaching the Stephen west signal (1229N); after 52 minutes operating in the throttle 8 position and at a speed of 12 mph, the train's speed is gradually reduced to 2 mph.

Item	Time (MST)	H/E Mile	Speed (mph)	Throttle position	TE/DB (kips)	DB notch	ER (psi)	BPP (psi)	Air flow (CFM)	IND (psi)
24	21:20:29	122.15	12	T7	105	0	89	88	0	0
25	21:20:32	122.16	11	T6	94	0	89	88	0	0
26	21:20:36	122.17	10	T5	71	0	89	88	0	0
27	21:20:47	122.20	9	T4	57	0	89	88	0	0
28	21:21:00	122.24	8	T5	54	0	89	88	0	0
29	21:21:17	122.28	9	T6	81	0	89	88	0	0
30	21:21:26	122.31	12	T7	103	0	89	88	0	0
31	21:22:38	122.52	12	T5	84	0	89	88	0	0
32	21:22:39	122.52	12	T6	74	0	89	88	0	0
33	21:22:42	122.53	12	T5	69	0	89	88	0	0
34	21:23:20	122.66	12	T3	47	0	89	88	0	0
35	21:23:24	122.67	10	T2	24	0	89	88	0	0
36	21:23:44	122.74	8	T1	10	0	89	88	0	0
37	21:24:07	122.80	5	Idle	0	0	89	88	0	0
38	21:24:37	122.85	2	T1	0	0	89	88	0	0
39	21:25:30	122.91	3	T2	28	0	89	88	0	0
40	21:25:53	122.93	3	T1	16	0	89	88	0	0

Table D7. The throttle is modulated between notch positions 2 and 3 to keep the train moving onto the steeper descending grade starting around Mile 123.

Item	Time (MST)	H/E Mile	Speed (mph)	Throttle position	TE/DB (kips)	DB notch	ER (psi)	BPP (psi)	Air flow (CFM)	IND (psi)
41	21:25:55	122.93	3	T2	21	0	89	88	0	0
42	21:26:44	122.97	3	T3	46	0	89	88	0	0
43	21:27:44	123.06	7	T2	36	0	89	88	0	0

Table D8. The head-end of the train starts to descend Field Hill.

Item	Time (MST)	H/E Mile	Speed (mph)	Throttle position	TE/DB (kips)	DB notch	ER (psi)	BPP (psi)	Air flow (CFM)	IND (psi)
44	21:27:49	123.07	7	T3	21	0	89	88	0	0

Table D9. A minimum automatic air brake application (7 psi brake pipe reduction) is made from a speed of about 9 mph to control train speed. This is the first air brake application since departing Eldon. The brake pipe pressure drops to 81 psi. The throttle is decreased to notch position 2.

Item	Time (MST)	H/E Mile	Speed (mph)	Throttle position	TE/DB (kips)	DB notch	ER (psi)	BPP (psi)	Air flow (CFM)	IND (psi)
45	21:28:13	123.12	8	T3	41	0	84	88	0	0
46	21:28:27	123.15	9	T3	38	0	83	81	0	0
47	21:28:34	123.17	9	T2	29	0	83	81	0	0

Table D10. About 10 seconds after the air brakes are applied, the air flow increases to 21 CFM

Item	Time (MST)	H/E Mile	Speed (mph)	Throttle position	TE/DB (kips)	DB notch	ER (psi)	BPP (psi)	Air flow (CFM)	IND (psi)
48	21:28:37	123.18	9	T2	17	0	83	81	21	0

Table D11. The throttle is modulated between notch position 1 and position 3, and the train speed increases to 10 mph; air flow fluctuates between 27 CFM and 32 CFM.

Item	Time (MST)	H/E Mile	Speed (mph)	Throttle position	TE/DB (kips)	DB notch	ER (psi)	BPP (psi)	Air flow (CFM)	IND (psi)
49	21:28:47	123.20	8	T1	8	0	83	81	27	0
50	21:29:23	123.28	7	T2	11	0	83	81	29	0
51	21:29:39	123.32	6	T3	26	0	83	81	30	0
52	21:30:00	123.36	7	T3	47	0	83	81	32	0
53	21:31:17	123.54	10	T2	23	0	83	81	29	0
54	21:31:33	123.59	10	T1	9	0	83	81	30	0
55	21:31:58	123.66	10	T2	9	0	83	81	28	0
56	21:32:16	123.71	10	T1	9	0	83	81	29	0

Table D12. The train is approaching the Lake O'Hara public crossing at Mile 123.9; the throttle is reduced to idle at Mile 123.75 to manage the train's speed over the crossing.

Item	Time (MST)	H/E Mile	Speed (mph)	Throttle position	TE/DB (kips)	DB notch	ER (psi)	BPP (psi)	Air flow (CFM)	IND (psi)
57	21:32:29	123.75	10	Idle	0	0	83	81	32	0

Table D13. The dynamic brakes are applied in preparation for the steeper grade ahead; the air flow increases to 33 CFM just before the Lake O'Hara crossing.

Item	Time (MST)	H/E Mile	Speed (mph)	Throttle position	TE/DB (kips)	DB notch	ER (psi)	BPP (psi)	Air flow (CFM)	IND (psi)
58	21:32:39	123.78	10	Idle	0	Setup	83	81	33	0
59	21:33:16	123.90	12	Idle	7	1	83	81	32	0

Table D14. As the train approaches Lake Wapta, the dynamic brake level has now been increased to maximum. The brake pipe pressure is further reduced by 2 to 3 psi; air flow briefly drops below 20 CFM, coincident with the brake application, and then increases to 20 CFM shortly after.

Item	Time (MST)	H/E Mile	Speed (mph)	Throttle position	TE/DB (kips)	DB notch	ER (psi)	BPP (psi)	Air flow (CFM)	IND (psi)
60	21:36:59	124.79	19	Idle	78	8	80	79	0	0
61	21:37:15	124.88	19	Idle	89	8	80	78	20	0

Table D15. As the grade levels out, the dynamic brake application is removed and the throttle is modulated between notch position 1 and position 4. The air flow remains steady around 27 to 29 CFM with the air brakes still applied.

Item	Time (MST)	H/E Mile	Speed (mph)	Throttle position	TE/DB (kips)	DB notch	ER (psi)	BPP (psi)	Air flow (CFM)	IND (psi)
62	21:38:34	125.24	14	Idle	0	0	80	78	28	0
63	21:38:44	125.28	14	T2	0	0	80	78	28	0
64	21:38:53	125.32	14	T3	12	0	80	78	29	0
65	21:39:09	125.38	13	T2	20	0	80	78	28	0
66	21:39:18	125.42	13	T3	13	0	80	78	27	0
67	21:39:42	125.51	13	T4	31	0	80	78	27	0

Table D16. The throttle is modulated between notch position 1 and position 3; the train speed reduces to 10 mph.

Item	Time (MST)	H/E Mile	Speed (mph)	Throttle position	TE/DB (kips)	DB notch	ER (psi)	BPP (psi)	Air flow (CFM)	IND (psi)
68	21:39:57	125.56	12	T3	31	0	80	78	28	0
69	21:39:59	125.57	12	T2	19	0	80	78	27	0
70	21:40:29	125.67	11	T1	7	0	80	78	28	0
71	21:40:30	125.68	11	T2	8	0	80	78	28	0
72	21:40:40	125.71	11	T1	8	0	80	78	28	0
73	21:40:59	125.76	10	T2	7	0	80	78	30	0
74	21:41:03	125.77	10	T3	21	0	80	78	30	0
75	21:41:21	125.83	10	T2	26	0	80	78	29	0
76	21:41:25	125.84	10	T1	8	0	80	78	29	0
77	21:41:36	125.87	10	T2	8	0	80	78	29	0
78	21:41:51	125.91	10	T1	9	0	80	78	28	0

Table D17. The throttle is placed in idle to control train speed, and the dynamic brakes set to the DB 6 position until a green signal indication is observed at Partridge east (at signal 1268). The train speed decreases from 10 to 7 mph with only about half of the train length on the 2.0% descending grade.

Item	Time (MST)	H/E Mile	Speed (mph)	Throttle position	TE/DB (kips)	DB notch	ER (psi)	BPP (psi)	Air flow (CFM)	IND (psi)
79	21:41:59	125.93	10	Idle	0	0	80	78	28	0
80	21:42:08	125.96	10	Idle	0	Setup	80	78	27	0
81	21:42:41	126.05	8	Idle	66	6	80	78	25	0
82	21:45:22	126.34	7	Idle	0	0	79	78	31	0
83	21:45:28	126.36	9	Idle	0	Setup	79	78	30	0

Table D18. The brake pipe pressure is reduced by an additional 1-2 psi and the dynamic brake is applied. The brake pipe pressure has now been reduced by 12 psi in total. Air flow briefly drops below 20 CFM, coincident with the brake application, and then increases again. The entire train is now on the 2.0% descending grade, and the train speed increases to 15 mph.

Item	Time (MST)	H/E Mile	Speed (mph)	Throttle position	TE/DB (kips)	DB notch	ER (psi)	BPP (psi)	Air flow (CFM)	IND (psi)
84	21:46.01	126.46	14	Idle	39	3	77	76	0	0
85	21:46:29	126.58	15	Idle	90	8	78	76	20	0

Table D19. In preparation for the train moving onto the steeper 2.2% descending grade, the brake pipe pressure is progressively reduced, initially by 1-3 psi, with a further reduction of 2-3 psi some 36 seconds later, and then after an additional 34 seconds, the total reduction reaches 19 psi. During this time, in spite of the brake pipe pressure reductions, the train speed increases from 16 to 22 mph (maximum allowed is 20 mph). Air flow is reduced and remains below 20 CFM (and is displayed as 0 CFM), coincident with the increased brake application. The initial increase in locomotive brake cylinder pressure at 2147:48 indicates the LE had started to move the emergency brake valve handle toward the emergency position in compliance with the Field Hill maximum speed threshold policy when the train speed reached 21 mph. The brakes were applied in emergency at 2148:08 and the distributed power (DP) radio command was received at the DP mid-train remote locomotive at 2148:10.

Item	Time (MST)	H/E Mile	Speed (mph)	Throttle position	TE/DB (kips)	DB notch	ER (psi)	BPP (psi)	Air flow (CFM)	IND (psi)
86	21:46:46	126.66	16	Idle	91	8	75	74	0	0
87	21:47:19	126.82	19	Idle	83	8	73	72	0	0
88	21:47:48	126.98	21	Idle	86	8	70	70	0	1
89	21:48:05	127.09	22	Idle	37	8	69	68	0	61
90	21:48:10	127.12	22	Idle	14	0	68	33	0	60

Table D20. The speed reaches 23 mph as the emergency brake application propagates along the brake pipe. The train continually slows down during the next 82 seconds and comes to a complete stop at 2149:33.

Item	Time (MST)	H/E Mile	Speed (mph)	Throttle position	TE/DB (kips)	DB notch	ER (psi)	BPP (psi)	Air flow (CFM)	IND (psi)
91	21:48:11	127.13	23	Idle	0	0	62	3	0	51
92	21:48:12	127.13	23	Idle	0	0	57	0	0	48
93	21:49:33	127.46	0	Idle	0	0	0	0	0	44

Appendix E – Mechanical testing and human factors assessment of train securement using hand brakes

Although hand brakes were not applied on the occurrence train, in support of this investigation, the Operational Services Branch of the TSB conducted mechanical testing and a human factors assessment of issues related to hand brake securement of freight trains on mountain grades. The objective was to determine how many hand brakes would have been needed to hold the train stationary on Field Hill, and whether it would have been possible for a lone conductor to apply on average sufficient torque to the required hand brakes to ensure that the train had the retarding force necessary to remain stationary.

Regulatory requirements regarding the number of hand brakes to apply on a train

As part of the study, the TSB reviewed regulatory requirements dictating the number of hand brakes to apply on a train in various situations.

Canadian Rail Operating Rules, Rule 112: Securing Unattended Equipment

CROR Rule 112 covers the securement requirements for unattended equipment. Because the occurrence train was not left unattended, Rule 112 did not apply. However, a review of this rule still provides valuable information for the purpose of this study, as it lists the minimum number of hand brakes that need to be applied on various grades and for different train weights when trains are unattended.

Given the occurrence train's weight of approximately 15 000 tons and the average 2.2% descending grade, had the train been left unattended, a minimum of 98 hand brakes would have been needed to secure it, according to the chart in CROR Rule 112 (g).[211]

Transport Canada Ministerial Order 19-03

Following this derailment, Transport Canada issued Ministerial Order MO 19-03 requiring train crews to immediately secure their trains with a pre-determined number of hand brakes (based on train tonnage and descending grade) following an emergency stop on mountain grades.

To meet the requirements of this Ministerial Order on the occurrence train, given the train tonnage and grade, it would have been necessary to apply hand brakes on 98 cars after the train was stopped in emergency on Field Hill.

Canadian Rail Operating Rules, Rule 66: Securing Equipment after an Emergency Brake Application on Grade

On 24 April 2020, the Minister of Transport approved CROR Rule 66, which covers the securement requirements after an emergency brake application on grade. This rule came into force on 24 June 2020 and replaced MO 19-03.

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211 Transport Canada, *Canadian Rail Operating Rules* (18 May 2018), Rule 112: Securing Unattended Equipment, p. 46.

Given the occurrence train's tonnage and the mountain grade, to meet the requirements of Rule 66, it would have been necessary to apply 75 hand brakes on the occurrence train after it stopped in emergency, which is 23 hand brakes less than the number required by CROR Rule 112.

Mechanical testing of the hand brakes on the recovered cars

The TSB performed mechanical testing on the 13 grain cars recovered from the occurrence site to determine the performance and efficiency of their hand brakes. The 13 cars represented 4 different car builders and ranged from 3 to 43 years of service. The mechanical testing was conducted at a Canadian Pacific car shop in Port Coquitlam, British Columbia.

The testing used various calibrated apparatus to measure the input torque and output forces involved, and followed a thorough test plan which covered various brake application scenarios.

Hand brake effectiveness on steep grades

CROR Rule 112 identifies the manner in which "hand brake effectiveness" must be tested. Item (vi) of the Rule states the following:

> (vi) **Testing Hand Brake Effectiveness**
> When testing the effectiveness of hand brakes, ensure all air brakes are released and:
>
> (a) Allow the slack to adjust. It must be apparent when slack runs in or out, that the hand brakes are sufficient to prevent the equipment from moving; or
>
> (b) Apply sufficient tractive effort to determine that the hand brakes prevent the equipment from moving when tractive effort is terminated.[212]

On steep grades, such as where the occurrence train was stopped, it would not be possible to release all the air brakes to test for applied hand brake effectiveness. Therefore, when trains are stopped in emergency on steep grades, they are secured by applying the pre-determined number of hand brakes on top of the emergency brake application.

In such conditions, generating a sufficient amount of retarding force to hold a train stationary depends on the applied hand brake force and on the amount of brake cylinder pressure (BCP) that is produced due to applying the train brakes in emergency.

The hand brake testing on the 13 recovered cars attempted to evaluate the net braking force that would have resulted from the combination of hand brakes and emergency air brakes on the occurrence train.

Hand brake net braking ratio

Grain hopper cars are equipped with a 22-inch diameter vertical hand-wheel-activated hand brake. These hand brakes are required by the AAR to generate a net braking ratio (NBR) greater than, or equal to, 10% of the gross weight of the loaded car at the time of

[212] Transport Canada, *Canadian Rail Operating Rules* (18 May 2018), Rule 112: Securing Unattended Equipment, p. 43.

manufacture. The AAR design specification also states that service wear should not result in the hand brake NBR being reduced below 6.5% on a rail car.[213]

The hand brake NBR is determined by dividing the sum of the generated brake shoe force at each hand brake wheel by the gross weight of the car, based on a force of 125 pounds applied at the hand brake wheel (115 foot-pounds of torque). The hand brake is required to generate the minimum NBR at a chain force of 3350 pounds.[214]

Testing objectives

The testing performed on the recovered cars consisted of baseline tests and tests simulating the conditions of the hand brakes applied over an emergency brake application.

Baseline tests were conducted with 2 primary objectives:

- to verify that the hand brake on each car met the minimum NBR per design requirements, and
- to determine, for a range of input torques on the hand brake wheel, the relationship between the input torque and the braking ratio.

Tests were then performed on the cars with their brakes applied in emergency. The primary objective of these tests was to examine hand brake retention as the air pressure in the brake cylinder decreased from a full emergency application to zero.

Test conclusions

Testing could not be performed on 2 of the 13 cars due to excessive brake beam rotation causing damage to the load sensors.

Four of the remaining 11 cars failed to meet the 6.5% minimum NBR design criterion given by the AAR, even at maximum torque value of 110 foot-pounds.

When the brake cylinders had leaked from an emergency application pressure to 25 psi, cars required at least 30 foot-pounds of torque to achieve a minimum NBR of 6.5%.

With only 10 psi BCP (minimum brake application), the cars required 75 foot-pounds or greater of input torque to the hand brake wheel to achieve an NBR of 6.5%.

If the hand brakes on the cars generated only the required design minimum NBR of 6.5%, as many as 111 hand brakes may have been needed to secure the occurrence consist (112 cars) on this grade, depending on the coefficient of friction (COF) of the brake shoes.

For an average value of 55 foot-pounds of torque at the hand brake wheel (average value of field tests conducted by the TSB), securing the occurrence train on the 2.2% grade would have required a minimum BCP of 10 psi as well as 73 to 102 hand brakes applied (depending on the COF of the brake shoes, which ranged from 0.3 to 0.4).

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213 Association of American Railroads (AAR), *Manual of Standards and Recommended Practices* (2018), Section E: Brake Design Requirements S-401, Paragraph 4.1.

214 Ibid, Paragraph 4.1.

For an average BCP of 25 psi on the freight cars, which is considered low (emergency BCP is 77 psi for a fully charged car with no leakage), the train would remain stationary with 48 to 67 hand brakes, depending on the COF of the brake shoes, which ranged from 0.3 to 0.4.

Table E1 shows how many hand brakes would be needed to hold the 15 000-ton occurrence train on the 2.2% descending grade of Field Hill, assuming 55 foot-pounds input torque, and a coefficient of friction in the range of 0.3 to 0.4. In the presence of brake cylinder leakage, an increasingly higher number of hand brakes would be needed as the pressure drops.

Table E1. Number of hand brakes required at an input torque of 55 foot-pounds to hold the 15 000-ton occurrence train on the 2.2% descending grade of Field Hill, based on the coefficient of friction of the brake shoes and the average brake cylinder pressure*

Coefficient of friction	Number of hand brakes required based on average brake cylinder pressure						
	77 psi**	65 psi	50 psi	35 psi	25 psi	10 psi	0 psi
0.30	42	40	46	55	67	102	162
0.31	40	39	44	53	64	98	156
0.32	39	37	43	51	62	95	151
0.33	37	36	41	50	60	92	146
0.34	36	35	40	48	58	88	141
0.35	35	34	38	46	56	86	136
0.36	34	33	37	45	54	83	132
0.37	33	32	36	44	52	80	128
0.38	32	31	35	42	51	78	124
0.39	31	30	34	41	49	75	120
0.40	30	29	33	40	48	73	116

* The numbers in this table assume a net hand brake ratio of 6.5%.

** A brake cylinder pressure of 77 psi corresponds to the pressure after an emergency brake application, when there is no brake cylinder leakage.

For an average hand brake torque value of 75 foot-pounds, the occurrence train would not need any additional BCP to hold it on the grade if between 112 and 83 hand brakes were applied (depending on the COF of the brake shoes, which ranged from 0.3 to 0.4)

Human performance assessment of the task of applying hand brakes

Ministerial Order MO 19-03 raised the possibility that hand brakes would be mandatory in more situations. It was important therefore during the hand brake testing to benchmark the modified single-conductor hand brake application task from a human performance perspective.

The primary objective of the human performance assessment of applying hand brakes was to predict the magnitude of retarding forces that could be generated by train crews to secure a heavy train stopped on a grade in operating conditions similar to that of the occurrence. The objectives were to

- quantify the average torque an operator can apply for a high number of hand brake applications;

- quantify the assumed degradation of torque applied along approximately 100 grain cars and the time required to complete the task; and
- analyze whether a lone conductor could secure a train effectively using hand brakes alone.

The testing was organized as an independent assessment during summer temperatures on level grade, reflecting ideal environmental conditions for participants. Operating on mountain grade in winter conditions with winter personal protective equipment would greatly increase the difficulty level of applying hand brakes.

The testing was performed on a cut of 115 grain cars. The cars were from several different manufacturers and had representation from a range of build dates. The cut of cars was located along a length of track with road access on each end and bordered on either side by farmland in Coalhurst, Alberta.

Seven participants (5 male and 2 female) of varying stature applied hand brakes to the first 100 cars. Half of the cars had BCP that replicated the condition of an emergency brake application, and the other half replicated the condition of cars with no air brake application. For safety, the remaining 15 cars were marked out of bounds and had their hand brake applied as an anchor for the entire cut.

The National Aeronautics and Space Administration (NASA) task load index (TLX) tool was used to collect and interpret participants' subjective workload[215] ratings in completing the task, targeting variables thought to influence efficiency (i.e., anthropometric variation, physical effort, cognitive workload, and individual technique).

The following assessments were done for each of the test participants:

- time required to complete the task
- torque values applied and average torque value for all 100 cars
- endurance evaluations
- movement along pathway, entraining and detraining times
- post-activity feedback

The time, effort, and performance of each participant was recorded during and after each individual assessment. Various anthropometric measurements were collected and a workload questionnaire administered to compare participants' effort and physical condition before, during, and after the task. The effects of car design and condition on participant performance were also recorded.

The results from these assessments are summarized below.

- The average time required to board a car and apply a single hand brake was 40.2 seconds.
- The average time required to apply 100 hand brakes was 2 hours and 5 minutes.
- The average achievable input torque over 100 hand brakes was 55 foot-pounds.

[215] Defined as the amount of effort people have to exert both mentally and physically to interact with an interface.

- The current hand brake design requires an input torque of 75 to 103 foot-pounds, depending on the COF, to secure the occurrence train with 84 hand brakes.
- Variations in workstation design (e.g., boarding ladders, grab irons) at the hand brake interface increased the difficulty of the task.
- The design of the hand brake wheel caused superficial injury to participants' hands even though they wore 2 pairs of work gloves.
- The average NASA TLX subjective workload score was 51/100, which is a moderate level of effort considering the physical and cognitive demands placed on the participants.
- Safe and effective successive application of 100 hand brakes would be unlikely for a person with reduced physical fitness (i.e., poor cardiovascular endurance and/or reduced musculoskeletal strength).

Brake stick

As an addendum to the human performance assessment, a brake stick was briefly trialled to determine its effectiveness.

A brake stick is a hand brake application and release tool used by some of the major American railways, including Norfolk Southern Railroad and Union Pacific Railroad. It is an extendable stick with a hook on one end and a handle on the other designed to engage with the spokes on the hand brake wheel (figures E1 and E2). Figure E1. Brake stick (Source: TSB)



Figure E2. Conductor using a brake stick to apply a hand brake from the ground (Source: Aldon Company, Inc.)



The limited-scope assessment did not formally assess the effectiveness of a brake stick to apply hand brakes; however, anecdotal observations indicate that such a device could greatly increase efficiency (i.e., reduce time and effort) of the task with a potential doubling of torque input.

Conclusions from the study

It would not have been possible for the average participant in this study to have secured the occurrence train on the mountain grade using hand brakes alone given the design and condition of the equipment provided.

Based on the average input torque of 55 foot-pounds seen in this study, between 116 and 162 hand brakes, depending on the COF of the brake shoes, would have been required to hold the 112-car occurrence train on the 2.2% grade.

Instead of setting retainers, applying 84 hand brakes at the average input torque of 55 foot-pounds would not have secured the train with the air brakes released, but would have slowed its descent rate.

The current hand brake design would require an input torque of 75 to 103 foot-pounds, depending on the COF of the brake shoes, for the occurrence train if 84 hand brakes had been applied. This input torque is higher than what the average participant could provide during the testing.

Appendix F – Association of American Railroads Circular Letter C-12027 and New York Air Brake General Letter GL-490

Thomas J. Stahura
Executive Director, Rules and Standards

ASSOCIATION OF AMERICAN RAILROADS

October 25, 2013

[C-12027]

Circular Letter

Subject: Maintenance Advisory-New York Air Brake DB-10 Service Portion Leakage Caused by Cold Weather Operations.

To: ALL SUBSCRIBERS **File Number:BSC-03.26.13**

New York Air Brake (NYAB) has been investigating concerns from several railroads regarding low temperature leakage issues which could cause train delays in yards and terminals. Evidence of the symptom begins with increased brake pipe air flow from the controlling (lead) locomotive after a brake application has been initiated. This increased head end air flow is caused by leakage from the bottom cover exhaust port of the DB-10 service portion on the brake control valve. This condition is most prevalent during cold weather conditions. The exact location of the leak is identified in the attached photograph. Additional information from NYAB is contained in the attached General Letter.

Inspection procedures and recommended disposition of the control valves are provided below:

Inspection and Repair:

Performed during terminal, intermediate brake tests or S-486 single car test:

1. During a brake application, any DB-10 service portion found blowing from the vent identified in the previous photo should be shopped and replaced with a new or reconditioned service portion per AAR Field Manual Rule 4. This leakage will be clearly identified by an audible blow of air.
2. If the person at the controls of the locomotive notes excessive air flow during application of the train brake, pay particular attention to an audible blow of air coming from the vent of any DB-10 service portion that may be in the consist.
3. Due to the nature of this condition, a single car test per S-486 is not required prior to valve replacement, but is required after the service portion is replaced.
4. Service portions found with the condition outlined in this MA should be reconditioned per NYAB Maintenance Specification NYR-332 prior to returning to service.

Equipment:

Any car equipped with a NYAB DB-10 service portion control valve is suspect.

Disposition:

Leaking control valve should be renewed and Single Car Tested per S-486.

1

Reporting and Billing:

AAR is issuing this Maintenance Advisory in accordance with AAR Rule 125:

- Severity Code 06 (AAR Defined)
- Activity Code ME (Car inspected and moving to shop)
- Bill per Rule 4 Job Code 1293, Why Made Code 13, Responsibility Code 01.
- Upon completion of repair, report Activity Code MH (car repaired and returned to service).

Questions should be directed to Steven Belport, — Brake Systems Committee Manager via email at Steven_Beluort@aar.com.

Sincerely,
Thomas J. Stahura
Executive Director, Rules and Standards

Safety and Operations
Association of American Railroads
425 Third Street, SW, Suite 1000, Washington D.C. 20024

Attachment(s):

1DB-60 leakage MA 2.doc (https://my.aar.org/myAAR/ePubs/Circulars/Circular Attachments/1DB-60 leakage MA 2.doc)
GL-490 DB-10 Cold Temperature Leakage.doc (https://my.aar.org/myAAR/ePubs/Circulars/Circular Attachments/GL-490 DB-10 Cold Temperature Leakage.doc)

2

General Letter

Cold Temperature DB-10 Auxiliary Reservoir Leakage

Introduction

NYAB has been investigating concerns from several railroads regarding low temperature air brake operating issues which could cause train delays in yards and terminals: at a train level, evidence of the symptom begins with increased Brake Pipe air flow from the controlling (Lead) locomotive after a brake application has been initiated. This increased head end air flow is caused by leakage from the bottom cover exhaust port of the DB-10 Service Portion on the brake control valve.

Complaint Validation

NYAB has concluded that DB-10 valve portions subject to high vibration in high mileage service may develop low temperature leakage some point in time above thirteen years of age. The affected valves can pass a Single Car Test at temperatures above freezing; however, they will fail the test at temperatures below freezing and will leak during a low temperature brake application. This condition is indicated by high Brake Pipe air flow and Auxiliary Reservoir leakage at the DB-10 Portion when brakes are applied.

A worn rubber seal within the DB-10 Service Portion is the primary cause of this condition. Locomotive pressure maintaining will compensate for the leakage thus increasing head end air flow with the brakes applied. Individual cars with excess leakage from the control valve may not be able to maintain a brake application and could release. However, in other conditions the excess air flow may result in increased brake application on the rear portion of the train and result in dragging brakes.

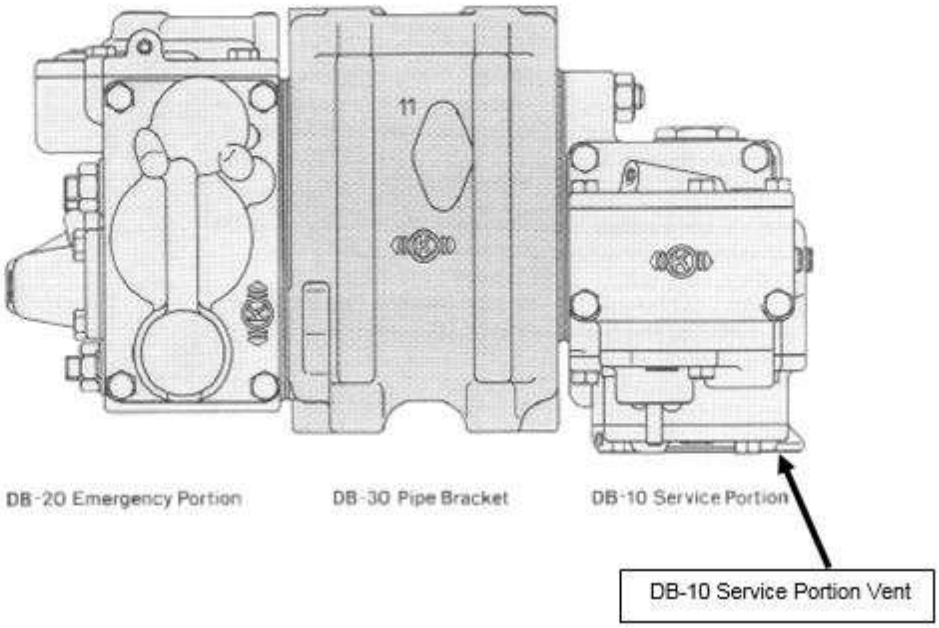
This situation is only evident at extreme low temperatures. Single Car Tests conducted at temperatures above 40°Fwill not identify valves that need to be removed from service due to this condition. Therefore, the following other means must be adopted to determine which valve portions should be removed from service.

Symptoms

- Observe: Car brakes apply, but air blows from the bottom vent of the DB-10 Service Portion
- Trains experiencing high air flow with the brakes applied should be inspected for the presence of suspect DB-10 Service Portions
- Dragging brake condition is sensed or observed during train operation

NEW YORK AIR BRAKE

General Letter: Cold Temperature DB-10 Auxiliary Reservoir Leakage



Recommended Corrective Action

Any valve portion experiencing one or more of the described symptoms should be removed from service as soon as practical and refurbished per New York Air Brake Maintenance Specification NYR-332.

Replacing any valve portion warrants Single Car Test of the brake system per Rule 3 of the Field Manual of the AAR Interchange Rules.

NYAB Contact Information

New York Air Brake Field Service can be contacted at: 24 Hour Technical Support Hotline: 1-800-645-4564

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Appendix G – Canadian Pacific bulletin CPSB048-13

CANADIAN PACIFIC Posted Date / Time: 11/18/13 – 0800 MST

SYSTEM BULLETIN

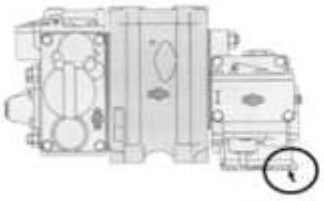
BULLETIN NO: CPSB048-13	**Date: Nov 18, 2013**
To: All Transportation Employees	**All Regions**

SUBJECT: AAR Maintenance Advisory - Control Valve Leakage

The AAR has issued a maintenance advisory in regards to leakage issues on cars with certain control valve types. The valves are fully operational, however when operating in cold weather, the leakage may in extreme cases cause a heavier than commanded brake application to occur. In addition, the manufacturer has advised that there is an exceptionally rare possibility of an undesired release of the brakes on those specific cars.

There are two key signs that can indicate that one or more of these valves are part of your train.

- When commanding a brake application (BP reduction), the engineer may notice an increase in flow on the air flow gauge. *(During normal brake applications, flow should not increase to any higher level than when brakes were released, i.e. true flow/gradient.)*
- When performing brake tests, (during inspection with the air brakes applied), a noticeable leak can be detected at the control valve on the car. *(Note: When the brake is released, the leak will stop.)*



Leakage will occur at this location

Required Actions if one or both of the above symptoms occur:

- While enroute, should the Locomotive Engineer notice an increase in flow during a brake application, the crew must advise the RTC. The RTC will notify the Mechanical desk in the Operations Centre, who will arrange for an inspection of the train at a suitable Mechanical location.

  In the event that the above condition exists and a undesired release of the brake occurs, the train must be stopped and inspection made with the brake applied to identify and cut-out any of the suspect valves.
- During a brake test inspection (brake applied), if there is an increase in flow and one or more of the suspected valves are identified, the suspected car(s) must be cut-out and the RTC notified.

Note: The condition must be noted on the Crew Information Form / Train Brake Status Form.

Mechanical personnel have been advised and will also be on the lookout for these cars when performing brake test inspections.

Work Smart, Stay Safe.

Appendix H – TSB investigations involving crew resource management at railway companies

R17W0267 – On 22 December 2017, a Canadian National Railway Company (CN) foreman and a helper were performing switching operations at CN's Melville Yard in Melville, Saskatchewan. The foreman was operating extra yard assignment Y1XS-01 using a remote control locomotive system (RCLS) when the foreman became pinned between the assignment and the lead car of an uncontrolled movement while applying a hand brake. The foreman received fatal injuries. There was no derailment and no dangerous goods were involved. In this occurrence, although the foreman and helper held 2 job briefings, several elements of the plan were not effectively communicated and/or coordinated. If crew members do not receive enhanced crew resource management training to develop skills in crew coordination and communication, there is an increased risk that inadequate crew communication will lead to unsafe operations.

R16E0051 – On 04 June 2016, CN train 112 was proceeding eastward on the Edson Subdivision when it collided at 18 mph with the tail end of CN train 302, which was stopped near Carvel, Alberta. No cars derailed as a result of the collision. There was minor damage to 1 empty hopper car on train 302. The investigation determined that the conductor, who was also a qualified locomotive engineer (LE) but with less experience than the occurrence LE, did not initially question the LE on the speed of the train while operating past the restricting signal.[216] In addition, the conductor did not further question the LE after it was decided not to report the collision. If operating employees are not trained in crew resource management, including how to make decisions when authority gradients are present, crew coordination and interaction may not be effective, increasing the risk of human factors–related accidents.

R07E0129 – On 27 October 2007, westbound CN train 417 was unable to stop prior to passing a stop signal near Peers, Alberta, on the Edson Subdivision and collided with eastbound CN train 342, which was entering the siding. Train 417's locomotives and 22 cars derailed. Five cars on train 342 derailed. The investigation determined that the conductor had deferred to the LE's experience and did not challenge his actions. It was also stated that, in the absence of procedures that recognize the risks inherent in an authority gradient, intra-cab communication can fail.

R98V0148 – On 11 August 1998, CP train 463 collided with the rear end of CP train 839 at Mile 78.0 of the Shuswap Subdivision, near Notch Hill, British Columbia. One car on train 463 and 2 cars on train 839 derailed. The investigation determined that neither the conductor nor the LE challenged each other's identification of signals; the authority gradient between the 2 crew members probably prevented the conductor from challenging the LE and expressing his concerns.

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[216] Transport Canada, *Canadian Rail Operating Rules*, Rule 436, states "Restricting - Proceed at RESTRICTED speed." Restricted speed is defined as "[a] speed that will permit stopping within one-half the range of vision of equipment, also prepared to stop short of a switch not properly lined and in no case exceeding SLOW speed. When moving at RESTRICTED speed, be on the lookout for broken rails." Slow speed is defined as "[a] speed not exceeding 15 miles per hour."

R96Q0050 – On 14 July 1996, Quebec North Shore and Labrador Railway (QNS&L) train FCS 45 collided with the tail end of stationary QNS&L train PH-475 at Mile 131.68 of the Wacouna Subdivision near Mai, Quebec. The last 3 cars of the stationary train derailed. The locomotive of the moving train was extensively damaged. The LE of the moving train sustained minor injuries. The investigation determined that at the time, there was no established crew resource management program in use on the railway that would ensure that all persons involved were aware of the most up-to-date, accurate information concerning the movement of trains and engines.

Appendix I – TSB investigations related to hazard identification, data trend analysis, and risk assessments at Canadian Pacific

R19C0002 – On 06 January 2019, at approximately 0655 Mountain Standard Time, the crew of Canadian Pacific Railway Company (CP) yard assignment CW11-06 was switching cars eastward into the classification tracks at Alyth C-Yard in Calgary, Alberta, when 56 cars disconnected from the movement and ran uncontrolled down the lead track into the designated emergency track, contacting a cut of stationary loaded hopper cars. As a result of the collision, a total of 22 cars derailed.

Alyth C-Yard, which had previously been used as a hump yard, was deactivated in 2013 and re-opened on 22 December 2018 as a flat switching yard. Although a risk assessment had been performed in anticipation of the operational change, a series of uncontrolled movements occurred in the first 16 days of operation, indicating that either some of the hazards that existed were not identified, or the applied risk mitigation strategies were inadequate. When an operational change takes place and the preceding risk assessment does not identify certain hazards, the associated risks may not be adequately mitigated, resulting in an increased potential for accidents.

R18H0039 – On 14 April 2018, at about 0215 Eastern Daylight Time, a CP yard foreman and a CP yard helper were performing switching operations at CP's Toronto Yard in Toronto, Ontario, using a remote control locomotive system (RCLS). The yard foreman was operating yard assignment T16-13 when it began to roll uncontrolled eastward on the Staines connecting track. There was no derailment or collision, and there were no injuries.

Because the majority of switching was taking place at the west end of the yard, the installation of derails was recommended for the west end of the yard to protect the main track from uncontrolled movements. When CP increased the amount of yard shifts working at any given time to 2 in February 2018, the second yard shift worked primarily at the east end of the yard. CP did not consider the addition of yard crews as a change to its operations, even though the second crew would be working primarily in the east end of the yard where no derails were installed. Consequently, a new risk assessment was not performed. Therefore, the opportunity to identify new hazards caused by the addition of the second crew working on the east end of the yard was missed.

R17D0123 – On 08 November 2017, CP yard assignment FS23 was performing switching operations in St-Luc Yard at Mile 46.9 of the CP Adirondack Subdivision, in Montréal, Quebec. At about 0600 Eastern Standard Time, while reversing southward in the dark at approximately 10 mph, the yard assignment struck and fatally injured the yard helper.

When the classification yard was closed in 2012, most of the switching operations at St-Luc Yard were moved to a section of the yard referred to as the "diamond" area, which had a significantly different configuration than the classification yard. Given the differences between the configuration of the classification yard and the diamond area, a task analysis of the yard helper and yard foreman roles for the diamond area would have been appropriate.

A task analysis could have identified the differences between the release zones, the risk of being foul of the tracks when releasing cars or turning switches, the presence of tripping hazards, and a reduction in the level of ambient lighting. Thus, mitigating measures such as

increased lighting, improved walking conditions, the identification of switches and their targets, and the modification of the switching leads and release zones could have been identified, reducing the risks to employees becoming foul of a track while performing switching operations.

Because CP did not consider the closing of the St-Luc classification yard to be a significant change to railway operations at St-Luc, no risk assessment was performed in 2012. Therefore, the opportunity to identify new hazards created by the change to switching at St-Luc Yard was missed.

R16C0065 – On 03 September 2016, at about 0925 Mountain Daylight Time, CP train 303-646, proceeding westward at approximately 22 mph at Mile 171.7 of the Brooks Subdivision, collided with the tail end of train 113-31, which was stopped on Track PT01, near Alyth Yard in Calgary, Alberta. Two locomotives on the head end of train 303-646 derailed, as did 2 covered hopper cars behind the locomotives. The last car on train 113-31, a 3-platform container car, also derailed. There were no injuries. No dangerous goods were released.

In June 2013, following the collapse of the Bonnybrook Bridge, CP had changed the designation of Track PT01 between Ogden and the begin/end interlocking limits at 12th Street East from main-track centralized traffic control (CTC) to non-main track. However, when rail traffic over the bridge resumed, CP did not put CTC back in service at this location. When it was decided to keep this section of track designated as non-main track, no risk assessment was conducted, nor was one required at that time.

Without a risk assessment, the railway was not specifically aware of the hazards and safety concerns of train crews when operating through this location. Therefore, no specific action had been taken by the railway to mitigate the potential hazards. The investigation determined that, if risk assessments are not conducted for changes to railway operations, potential hazards associated with the operational change may not be identified and appropriately mitigated, increasing the risk of accidents.

R16W0074 – On 27 March 2016, at about 0235 Central Standard Time, while switching in Sutherland Yard in Saskatoon, Saskatchewan, CP 2300 remote control locomotive system training yard assignment was shoving a cut of cars into Track F6. As the assignment was brought to a stop, empty covered hopper car EFCX 604991 uncoupled from the train, unnoticed by the crew. The car rolled uncontrolled through the yard and onto the main track within cautionary limits of the Sutherland Subdivision. The car travelled about 1 mile and over 2 public automated crossings before coming to a stop on its own. There were no injuries and no derailment. No dangerous goods were involved.

In early 2016, several operational changes were implemented by CP at Sutherland Yard. The operational changes prompted CP to complete a combined risk assessment in accordance with the *Railway Safety Management System Regulations, 2015*.

While the risk assessment covered RCLS operations and the introduction of a point protection zone, it did not consider the impact of reducing the number of train crews or the change in local practice to primarily switching without air. It also did not specifically identify potential hazards related to crew inexperience or an uncontrolled movement.

Therefore, remedial action to address a potential uncontrolled movement, such as the installation of a derail, was not considered or implemented to protect against uncontrolled movements while switching without air.

R16H0024 – On 06 March 2016, at approximately 1540 Eastern Standard Time, CP freight train 100-03 was proceeding eastward at about 35 mph when it collided with a stationary hi-rail vehicle at Mile 118.36. The foreman and machine operator had exited the hi-rail vehicle just before the collision.

As part of its SMS, CP collects and analyses safety data to identify emerging trends, including recurring situations where safety is compromised. In this occurrence, there was no indication that CP had specifically identified the upward trend of track units being operated outside their limits of authority, although CP had initiated work on its Employee in Charge system (a system designed to mitigate safety risks during track unit operation). If railway safety data are not regularly reviewed to identify trends, emerging trends or recurring situations, and appropriate action is not taken, safety risks may remain unidentified and unmitigated, increasing the risk of accidents.

Appendix J – Golder Associates audit of Canadian Pacific's safety management system (CP internal audit)

Under sections 30, 31, and 32 of the *Railway Safety Management System Regulations, 2015*, railway companies must conduct an audit of their safety management system (SMS) every 3 years and produce a safety action plan to address identified deficiencies.

In 2017, Canadian Pacific Railway Company (CP) contracted Golder Associates Limited to audit its SMS, and Golder delivered its findings on 17 July 2017. Golder categorized its findings as major non-conformances (MA), minor non-conformances (MI) and opportunities for improvement (OFI). The findings were also assessed for urgency using the following classification:

- **High Priority (HI) –** A high-priority finding is one that meets one or more of the following criteria:
  - Presents an imminent or escalating risk of significant health, safety, regulatory or reputational impact;
  - Is potentially non-compliant with a regulatory requirement;
  - Requires an unusual or significant allocation of effort, capital works, resources and / or time to rectify;
  - Must be addressed on a priority basis to enable the basic functioning of other elements of the SMS.
- **Moderate Priority (MO) –** A moderate-priority finding is one that meets one or more of the following criteria:
  - Will not result in significant health, safety, regulatory or reputational impact;
  - Can be corrected over time without risk of escalation or increasing severity;
  - Can be corrected within the usual Continual Improvement cycle of the SMS (e.g.: in an Annual Management Review process).
- **Low Priority (LO) –** A low-priority finding is one that meets one or more of the following criteria:
  - Has no directly associated risk of health, safety, regulatory or reputational impact;
  - Does not impede the functionality of any other element of the SMS; and
  - Can be corrected within the effort required for the regular ongoing maintenance of the SMS.[217]

Tables J1 and J2 present some of the findings and opportunities for improvement identified by this audit that are relevant to this occurrence.

[217] Golder Associates Limited, Canadian Pacific Safety Management System Audit (17 July 2017), Section 9.1.

Table J1. Select non-conformance findings from the 2017 audit of Canadian Pacific's safety management system (Source: Golder Associates Limited)

Finding No.	Priority	Finding statement
MI-12-1	MO	There appears to be an inconsistent level of investigation and analysis into incidents, including railway occurrences.
MI-12-1	MO	The effectiveness of workplace and safety committee inspections in some areas is not sufficient to verify or maintain compliance with legal requirements.
MI-13-2	MO	Variability in the current practices for safety hazard reporting results in an incomplete or biased data set for trend analysis of safety concerns.
MI-13-3	MO	Information from safety committee inspections and locally-managed Safety Hazard Reports is not evaluated for system-wide trends and safety concerns.
MI-24-1	MO	Reporting tools described in the reporting procedures are not well known and/or inconsistently used.
MI-26-1	MO	Some instances of lapsed mandatory refresher training requirements were reported.
MI-27-1	MO	Version control verification measures are lacking for some key operational safety documents.
MI-9-1	LO	Out-of-date safety policy posters were posted on bulletin boards and elsewhere in the workplace at Toronto and Coquitlam yards.
MI-20-1	LO	It is not clear how the current process for evaluating the effectiveness of remedial action involves the bargaining units.
MI-25-1	LO	Employees involved in activities that may affect railway safety do not always have appropriate training.
MI-29-1	LO	SMS procedure documents should be reviewed to ensure that the next scheduled review dates are accurate.

Table J2. Select opportunities for improvement of moderate priority identified in the 2017 audit of Canadian Pacific's safety management system (Source: Golder and Associates)

Finding No.	Priority	Finding statement
OFI-12-1	MO	Incident reports contained in the Incident Manager (IM) system do not include the information reported to the TSB during the initial report.
OFI-12-2	MO	The Initial Incident Report form is not referenced in the CP procedure with respect to incident reporting.
OFI-12-3	MO	There are inconsistencies in CP procedures and TSB Regulations with respect to definition of a railway occurrence.
OFI-13-1	MO	Job aids that are used to help identify and control operational/occupational safety risks are not always complete.
OFI-13-2	MO	Communication back to employees who have raised concerns is not always conducted in a prompt or effective manner.
OFI-13-3	MO	There is an opportunity to further enhance operational safety information sharing between CP and its contractors.
OFI-13-4	MO	There is an opportunity to enhance the information management tools, consistent with the operational criticality of the data.
OFI-15-1	MO	There is an opportunity to conduct additional risk assessments where they could provide value or update understandings of relevant risk mitigation strategies.

Finding No.	Priority	Finding statement
OFI-17-1	MO	Inconsistency was noted between risk assessments in the methods used to estimate likelihood.
OFI-21-1	MO	Current targets are only measured with lagging indicators, although several leading indicators are available.
OFI-25-1	MO	Instances were observed of a lack of clarity in the presentation and understanding of safety rules and requirements.
OFI-25-2	MO	The management of change process, as it relates to changes in operating procedures and instructions, is inconsistent between departments.
OFI-25-3	MO	There is no consistent way to confirm and demonstrate that communications on changes to rules have been received by individual employees.
OFI-26-1	MO	There is inconsistency in the performance of e-tests, with regard to the recording of results, the failure rates, and the assignment of pass / fail grades.
OFI-27-1	MO	Instances of incomplete communication with workers/employees during efficiency/proficiency testing were reported.
OFI-27-2	MO	Concerns were expressed regarding the competency of auditors during execution of efficiency/proficiency tests.
OFI-28-1	MO	While the principles of fatigue science stipulated in the SMS Regulations are considered in the scheduling model used by CP, the model does not consider other factors that may also contribute to fatigue.

Appendix K – TSB investigations involving uncontrolled movements

Occurrence number	Date	Description	Location	Cause
R19C0015 (this occurrence)	2019-02-04	Uncontrolled movement of rolling stock and main-track train derailment, Canadian Pacific Railway Company, freight train 301-349, Mile 130.6, Laggan Subdivision	Yoho, British Columbia	Loss of control
R18M0037	2018-12-04	Employee fatality, Canadian National Railway Company, yard assignment L57211-04, Mile 1.03, Pelletier Subdivision	Edmundston, New Brunswick	Insufficient securement
R18Q0046	2018-05-01	Non-main-track uncontrolled movement and derailment of rolling stock, Quebec North Shore and Labrador Railway, cut of cars	Sept-Îles, Quebec	Switching without air
R18H0039	2018-04-14	Uncontrolled movement of rolling stock, Canadian Pacific Railway Company, locomotive remote control system yard assignment T16-13, Mile 195.5, Belleville Subdivision	Toronto, Ontario	Loss of control
R18E0007	2018-01-10	Uncontrolled movement of rolling stock, Canadian National Railway Company, freight train L76951-10, Mile 0.5, Luscar Industrial Spur	Leyland, Alberta	Loss of control
R17W0267	2017-12-22	Employee fatality, Canadian National Railway Company, extra yard assignment Y1XS-01	Melville, Saskatchewan	Switching without air
R17V0096	2017-04-20	Non-main-track uncontrolled movement, collision, and derailment, Englewood Railway, Western Forest Products Inc., cut of cars	Woss, British Columbia	Switching without air
R16W0242	2016-11-29	Uncontrolled movement, collision, and derailment, Canadian Pacific Railway Company, ballast train BAL-27 and freight train 293-28, Mile 138.70, Weyburn Subdivision	Estevan, Saskatchewan	Loss of control
R16T0111	2016-06-17	Uncontrolled movement of railway equipment, Canadian National Railway Company, remote control locomotive system 2100 west industrial yard assignment, Mile 23.9, York Subdivision, MacMillan Yard	Vaughan, Ontario	Loss of control
R16W0074	2016-03-27	Uncontrolled movement of railway equipment, Canadian Pacific Railway Company, remote control locomotive system 2300 training yard assignment, Mile 109.7, Sutherland Subdivision	Saskatoon, Saskatchewan	Switching without air

Occurrence number	Date	Description	Location	Cause
R16W0059	2016-03-01	Uncontrolled movement of railway equipment, Cando Rail Services, 2200 Co-op Refinery Complex assignment, Mile 91.10, Quappelle Subdivision	Regina, Saskatchewan	Insufficient securement
R15D0103	2015-10-29	Runaway and derailment of cars on non-main track, Canadian Pacific Railway Company, stored cut of cars, Mile 2.24, Outremont Spur	Montréal, Quebec	Insufficient securement
R15T0173	2015-07-29	Non–main-track runaway, collision, and derailment, Canadian National Railway Company, cut of cars and train A42241-29, Mile 0.0, Halton Subdivision	Concord, Ontario	Switching without air
R13D0054	2013-07-06	Runaway and main-track derailment, Montreal, Maine & Atlantic Railway, freight train MMA-002, Mile 0.23, Sherbrooke Subdivision	Lac-Mégantic, Quebec	Insufficient securement
R12E0004	2012-01-18	Main-track collision, Canadian National Railway Company, runaway rolling stock and train A45951-16, Mile 44.5, Grande Cache Subdivision	Hanlon, Alberta	Insufficient securement
R11Q0056	2011-12-11	Runaway train, Quebec North Shore and Labrador Railway, freight train LIM-55, Mile 67.20, Wacouna Subdivision	Dorée, Quebec	Loss of control
R09D0053	2009-09-09	Non–main-track collision, VIA Rail Canada Inc., locomotive 6425, Montréal Maintenance Centre	Montréal, Quebec	Switching without air
R09T0057	2009-02-11	Runaway and non–main-track train derailment, Southern Ontario Railway, 0900 Hagersville Switcher, Mile 0.10 and Mile 1.9 of the Hydro Spur	Nanticoke, Ontario	Insufficient securement
R08V0270	2008-12-29	Non–main-track train runaway and collision, Kettle Falls International Railway, Waneta Turn Assignment, Mile 141.20, Kettle Falls Subdivision	Waneta, British Columbia	Loss of control
R07H0015	2007-07-04	Runaway rolling stock, Canadian Pacific Railway Company, runaway cut of cars, Mile 119.5, Winchester Subdivision	Smiths Falls, Ontario	Insufficient securement
R07V0109	2007-04-23	Non-main-track train derailment, Kootenay Valley Railway, 0700 Trail yard assignment, Mile 19.0, Rossland Subdivision	Trail, British Columbia	Loss of control
R06V0183	2006-09-03	Runaway and derailment, White Pass and Yukon Railway, work train 114, Mile 36.5, Canadian Subdivision	Log Cabin, British Columbia	Loss of control

Occurrence number	Date	Description	Location	Cause
R06V0136	2006-06-29	Runaway and derailment, Canadian National Railway Company, freight train L-567-51-29, Mile 184.8, Lillooet Subdivision	Lillooet, British Columbia	Loss of control
R05H0011	2005-05-02	Runaway and main-track train collision, Ottawa Central Railway, freight train 441, Mile 34.69, Alexandria Subdivision	Maxville, Ontario	Insufficient securement
R04V0100	2004-07-08	Uncontrolled movement of railway rolling stock, Canadian National Railway Company, train M-359-51-07, Mile 57.7, Fraser Subdivision	Bend, British Columbia	Loss of control
R03T0026	2003-01-21	Yard collision, Canadian Pacific Railway Company, car HOKX 111044, Mile 197.0, Belleville Subdivision, Toronto Yard	Agincourt, Ontario	Switching without air
R03T0047	2003-01-22	Yard collision, Canadian National Railway Company, tank car PROX 77811, Mile 25.0, York Subdivision	Toronto, Ontario	Switching without air
R99D0159	1999-08-27	Runaway cars, Canadian National Railway Company, Mile 69.4, Kingston Subdivision, Wesco Spur	Cornwall, Ontario	Insufficient securement
R98M0029	1998-09-24	Main-track runaway, collision, and derailment, Matapédia Railway, Canadian National Railway Company train A402-21-24, Mile 105.4, Mont-Joli Subdivision	Mont-Joli, Quebec	Insufficient securement
R98M0020	1998-07-31	Main-track runaway and collision, VIA Rail Canada Inc., passenger train 14 and uncontrolled five-pak movement, Mile 105.7, Matapédia Railway Mont-Joli Subdivision	Mont-Joli, Quebec	Insufficient securement
R97C0147	1997-12-02	Runaway and derailment, Canadian Pacific Railway Company, train 353-946, Laggan Subdivision	Field, British Columbia	Loss of control
R96C0172	1996-08-12	Main-track collision, Canadian National Railway Company, train 117 and uncontrolled movement of 20 cars, Mile 122.9, Edson Subdivision	Near Edson, Alberta	Insufficient securement
R96C0209	1996-10-09	Runaway cars, Canadian Pacific Railway Company, CP 0700 yard assignment, Mile 166.2, Willingdon Subdivision, Clover Bar exchange track	Edmonton, Alberta	Insufficient securement
R96T0137	1996-04-24	Runaway of 5 tank cars, Canadian National Railway Company, Mile 0.0, Hagersville Subdivision	Nanticoke, Ontario	Insufficient securement

Occurrence number	Date	Description	Location	Cause
R96C0086	1996-04-13	Runaway train, Canadian Pacific Railway Company, freight train 607-042, Mile 133.0, Laggan Subdivision	Field, British Columbia	Loss of control
R95M0072	1995-12-14	Runaway cars, Canadian National Railway Company, train 130-13, Mile 0.0, Pelletier Subdivision	Edmundston, New Brunswick	Insufficient securement
R94V0006	1994-01-18	Runaway train, Canadian National Railway Company, freight train 459-GP-18, Mile 175, Grande Cache Subdivision	Latornell, Alberta	Loss of control

GLOSSARY

AAR	Association of American Railroads (United States)
AFM	Air flow meter
APB	automatic parking brake
ASCT	automated single car test
ATBE	automated train brake effectiveness
BCM	brake cylinder maintaining
BCP	brake cylinder pressure
BHP	brake horsepower
BPP	brake pipe pressure
CCFHSC	Calgary Cross-Functional Health and Safety Committee
CCV	car control valve
CFM	cubic feet per minute
CN	Canadian National Railway Company
COT&S	“clean, oil, test & stencil”
CP	Canadian Pacific Railway Company
CRM	crew resource management
CROR	*Canadian Rail Operating Rules*
DB	dynamic brake
DP	distributed power
ECP system	electronically controlled pneumatic system
EQS Regulations	*Railway Employee Qualification Standards Regulations*
ER	equalizing reservoir
FHOP	Field Hill operating procedures
GBO	General Bulletin Order
GOI	General Operating Instructions
HP	high pressure
LE	locomotive engineer
LER	locomotive event recorder
mph	miles per hour
NRC	National Research Council of Canada
NYAB	New York Air Brake
OEM ID tag	original equipment manufacturer’s identification tag

OFI	opportunity for improvement
PNR	Prairie and Northern Region
psi	pounds per square inch
QSLV	quick service limiting valve
RSA	*Railway Safety Act*
RSI	railway safety inspector
RTC	rail traffic controller
SCT	single car test
SD	standard deviation
SI	special instruction
SMS	safety management system
SMS Regulations	*Railway Safety Management System Regulations, 2015*
TC	Transport Canada
TSB	Transportation Safety Board of Canada
WTD	wheel temperature detector

Attachment 12

LEDI Agency Roster Report for Canadian Pacific Police Service

Report Date: 12/14/2021

Last Name	First Name	Middle Name	Suffix	Gender	Ethnicity	Hired Date	Part Time Hours	Rank	Description	Signature	Date Signed
Column1 Column2	Column3	Column4	Column5	Column6	Column7 Column8	Column9	Column10	Column11	Column12 Column13	Column14	Column15
Clough	Kelly	Ray		M	CA	11-26-2018	N/A	Deputy Chief	Law Enforcement, Full Time	trlaw	8-27-2021 9:34:00 AM
Law	Todd	Raymond		M	CA	6-15-2011	N/A	Inspector	Law Enforcement, Full Time	trlaw	8-27-2021 9:34:00 AM
Black	Benjamin	Ray		M	CA	5-19-2021	N/A	Sergeant	Law Enforcement, Full Time	trlaw	8-27-2021 9:34:00 AM
Bless	Jayson			M	HI	8-4-2008	N/A	Special Agent	Law Enforcement, Full Time	trlaw	8-27-2021 9:34:00 AM
Lysaght	John	R		M	CA	10-7-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	8-27-2021 9:34:00 AM
Mullins	Kevin	Moon		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	8-27-2021 9:34:00 AM
Ramos	Jesus			M	HI	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	8-27-2021 9:34:00 AM
Davis	Collie		Jr.	M	AA	10-16-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	8-27-2021 9:34:00 AM
Gonzalez	Carlos	Angel		M	HI	7-16-2017	N/A	Special Agent	Law Enforcement, Full Time	trlaw	8-27-2021 9:34:00 AM
Clough	Kelly	Ray		M	CA	11-26-2018	N/A	Deputy Chief	Law Enforcement, Full Time	trlaw	1-28-2021 11:20:00 AM
Law	Todd	Raymond		M	CA	6-15-2011	N/A	Inspector	Law Enforcement, Full Time	trlaw	1-28-2021 11:20:00 AM
Bless	Jayson			M	HI	8-4-2008	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-28-2021 11:20:00 AM
Lysaght	John	R		M	CA	10-7-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-28-2021 11:20:00 AM
Mullins	Kevin	Moon		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-28-2021 11:20:00 AM
Nichols	Bruce			M	CA	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-28-2021 11:20:00 AM
Ramos	Jesus			M	HI	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-28-2021 11:20:00 AM
Davis	Collie		Jr.	M	AA	10-16-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-28-2021 11:20:00 AM
Cobbins	Olivia	M		F	AA	5-7-2017	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-28-2021 11:20:00 AM
Gonzalez	Carlos	Angel		M	HI	7-16-2017	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-28-2021 11:20:00 AM
Clough	Kelly	Ray		M	CA	11-26-2018	N/A	Deputy Chief	Law Enforcement, Full Time	trlaw	7-8-2020 3:50:00 PM
Law	Todd	Raymond		M	CA	6-15-2011	N/A	Inspector	Law Enforcement, Full Time	trlaw	7-8-2020 3:50:00 PM
Bless	Jayson			M	HI	8-4-2008	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-8-2020 3:50:00 PM
Lysaght	John	R		M	CA	10-7-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-8-2020 3:50:00 PM
Mullins	Kevin	Moon		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-8-2020 3:50:00 PM
Nichols	Bruce			M	CA	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-8-2020 3:50:00 PM
Ramos	Jesus			M	HI	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-8-2020 3:50:00 PM
Davis	Collie		Jr.	M	AA	10-16-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-8-2020 3:50:00 PM
Cobbins	Olivia	M		F	AA	5-7-2017	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-8-2020 3:50:00 PM
Gonzalez	Carlos	Angel		M	HI	7-16-2017	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-8-2020 3:50:00 PM
Clough	Kelly	Ray		M	CA	11-26-2018	N/A	Deputy Chief	Law Enforcement, Full Time	trlaw	2-13-2020 10:33:00 AM
Law	Todd	Raymond		M	CA	6-15-2011	N/A	Inspector	Law Enforcement, Full Time	trlaw	2-13-2020 10:33:00 AM
Bless	Jayson			M	HI	8-4-2008	N/A	Special Agent	Law Enforcement, Full Time	trlaw	2-13-2020 10:33:00 AM
Lysaght	John	R		M	CA	10-7-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	2-13-2020 10:33:00 AM
Mullins	Kevin	Moon		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	2-13-2020 10:33:00 AM
Nichols	Bruce			M	CA	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	2-13-2020 10:33:00 AM
Ramos	Jesus			M	HI	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	2-13-2020 10:33:00 AM
Davis	Collie		Jr.	M	AA	10-16-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	2-13-2020 10:33:00 AM
Cobbins	Olivia	M		F	AA	5-7-2017	N/A	Special Agent	Law Enforcement, Full Time	trlaw	2-13-2020 10:33:00 AM
Gonzalez	Carlos	Angel		M	HI	7-16-2017	N/A	Special Agent	Law Enforcement, Full Time	trlaw	2-13-2020 10:33:00 AM
Clough	Kelly	Ray		M	CA	11-26-2018	N/A	Deputy Chief	Law Enforcement, Full Time	trlaw	9-9-2019 4:07:00 PM
Law	Todd	Raymond		M	CA	6-15-2011	N/A	Inspector	Law Enforcement, Full Time	trlaw	9-9-2019 4:07:00 PM
Bless	Jayson			M	HI	8-4-2008	N/A	Special Agent	Law Enforcement, Full Time	trlaw	9-9-2019 4:07:00 PM
Lysaght	John	R		M	CA	10-7-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	9-9-2019 4:07:00 PM
Mullins	Kevin	Moon		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	9-9-2019 4:07:00 PM
Nichols	Bruce			M	CA	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	9-9-2019 4:07:00 PM
Ramos	Jesus			M	HI	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	9-9-2019 4:07:00 PM
Davis	Collie		Jr.	M	AA	10-16-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	9-9-2019 4:07:00 PM
Cobbins	Olivia	M		F	AA	5-7-2017	N/A	Special Agent	Law Enforcement, Full Time	trlaw	9-9-2019 4:07:00 PM
Gonzalez	Carlos	Angel		M	HI	7-16-2017	N/A	Special Agent	Law Enforcement, Full Time	trlaw	9-9-2019 4:07:00 PM
Clough	Kelly	Ray		M	CA	11-26-2018	N/A	Deputy Chief	Law Enforcement, Full Time	trlaw	1-9-2019 11:48:00 AM
Law	Todd	Raymond		M	CA	6-15-2011	N/A	Inspector	Law Enforcement, Full Time	trlaw	1-9-2019 11:48:00 AM
Bless	Jayson			M	HI	8-4-2008	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-9-2019 11:48:00 AM
Lysaght	John	R		M	CA	10-7-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-9-2019 11:48:00 AM
Mullins	Kevin	Moon		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-9-2019 11:48:00 AM
Nichols	Bruce			M	CA	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-9-2019 11:48:00 AM
Ramos	Jesus			M	HI	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-9-2019 11:48:00 AM
Davis	Collie		Jr.	M	AA	10-16-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-9-2019 11:48:00 AM
Cobbins	Olivia	M		F	AA	5-7-2017	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-9-2019 11:48:00 AM
Gonzalez	Carlos	Angel		M	HI	7-16-2017	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-9-2019 11:48:00 AM
Law	Todd	Raymond		M	CA	6-15-2011	N/A	Inspector	Law Enforcement, Full Time	trlaw	7-2-2018 3:15:00 PM
Walker	Bobby	A		M	CA	8-24-2015	N/A	Inspector	Law Enforcement, Full Time	trlaw	7-2-2018 3:15:00 PM
Bless	Jayson			M	HI	8-4-2008	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-2-2018 3:15:00 PM
Lysaght	John	R		M	CA	10-7-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-2-2018 3:15:00 PM
Mullins	Kevin	Moon		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-2-2018 3:15:00 PM
Nichols	Bruce			M	CA	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-2-2018 3:15:00 PM
Ramos	Jesus			M	HI	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-2-2018 3:15:00 PM
Davis	Collie		Jr.	M	AA	10-16-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-2-2018 3:15:00 PM
Cobbins	Olivia	M		F	AA	5-7-2017	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-2-2018 3:15:00 PM
Gonzalez	Carlos	Angel		M	HI	7-16-2017	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-2-2018 3:15:00 PM
Law	Todd	Raymond		M	CA	6-15-2011	N/A	Inspector	Law Enforcement, Full Time	trlaw	1-3-2018 2:08:00 PM
Walker	Bobby	A		M	CA	8-24-2015	N/A	Inspector	Law Enforcement, Full Time	trlaw	1-3-2018 2:08:00 PM
Bless	Jayson			M	HI	8-4-2008	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-3-2018 2:08:00 PM
Lysaght	John	R		M	CA	10-7-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-3-2018 2:08:00 PM
Mullins	Kevin	Moon		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-3-2018 2:08:00 PM
Nichols	Bruce			M	CA	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-3-2018 2:08:00 PM
Ramos	Jesus			M	HI	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-3-2018 2:08:00 PM
Davis	Collie		Jr.	M	AA	10-16-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-3-2018 2:08:00 PM
Cobbins	Olivia	M		F	AA	5-7-2017	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-3-2018 2:08:00 PM
Gonzalez	Carlos	Angel		M	HI	7-16-2017	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-3-2018 2:08:00 PM
Law	Todd	Raymond		M	CA	6-15-2011	N/A	Inspector	Law Enforcement, Full Time	trlaw	7-18-2017 9:52:00 AM
Walker	Bobby	A		M	CA	8-24-2015	N/A	Inspector	Law Enforcement, Full Time	trlaw	7-18-2017 9:52:00 AM
Bless	Jayson			M	HI	8-4-2008	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-18-2017 9:52:00 AM
Lysaght	John	R		M	CA	10-7-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-18-2017 9:52:00 AM
Mullins	Kevin	Moon		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-18-2017 9:52:00 AM
Nichols	Bruce			M	CA	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-18-2017 9:52:00 AM
Ramos	Jesus			M	HI	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-18-2017 9:52:00 AM
Davis	Collie		Jr.	M	AA	10-16-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-18-2017 9:52:00 AM
Cobbins	Olivia	M		F	AA	5-7-2017	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-18-2017 9:52:00 AM
Gonzalez	Carlos	Angel		M	HI	7-16-2017	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-18-2017 9:52:00 AM
Law	Todd	Raymond		M	CA	6-15-2011	N/A	Inspector	Law Enforcement, Full Time	trlaw	1-4-2017 11:12:00 AM
Walker	Bobby	A		M	CA	8-24-2015	N/A	Inspector	Law Enforcement, Full Time	trlaw	1-4-2017 11:12:00 AM
Reyes	Neil	Allen		M	AS	6-28-2010	N/A	Sergeant	Law Enforcement, Full Time	trlaw	1-4-2017 11:12:00 AM
Bless	Jayson			M	HI	8-4-2008	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-4-2017 11:12:00 AM
Lysaght	John	R		M	CA	10-7-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-4-2017 11:12:00 AM
Mullins	Kevin	Moon		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-4-2017 11:12:00 AM
Nichols	Bruce			M	CA	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-4-2017 11:12:00 AM
Ramos	Jesus			M	HI	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-4-2017 11:12:00 AM
Davis	Collie		Jr.	M	AA	10-16-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-4-2017 11:12:00 AM
Pepich	Benjamin	James		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-4-2017 11:12:00 AM
Law	Todd	Raymond		M	CA	6-15-2011	N/A	Inspector	Law Enforcement, Full Time	trlaw	7-11-2016 1:54:00 PM
Walker	Bobby	A		M	CA	8-24-2015	N/A	Police Officer	Law Enforcement, Full Time	trlaw	7-11-2016 1:54:00 PM
Reyes	Neil	Allen		M	AS	6-28-2010	N/A	Sergeant	Law Enforcement, Full Time	trlaw	7-11-2016 1:54:00 PM
Bless	Jayson			M	HI	8-4-2008	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-11-2016 1:54:00 PM
Lysaght	John	R		M	CA	10-7-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-11-2016 1:54:00 PM
Mullins	Kevin	Moon		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-11-2016 1:54:00 PM
Nichols	Bruce			M	CA	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-11-2016 1:54:00 PM
Ramos	Jesus			M	HI	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-11-2016 1:54:00 PM
Davis	Collie		Jr.	M	AA	10-16-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-11-2016 1:54:00 PM
Pepich	Benjamin	James		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	7-11-2016 1:54:00 PM
Law	Todd	Raymond		M	CA	6-15-2011	N/A	Inspector	Law Enforcement, Full Time	trlaw	1-5-2016 1:14:00 PM
Walker	Bobby	A		M	CA	8-24-2015	N/A	Police Officer	Law Enforcement, Full Time	trlaw	1-5-2016 1:14:00 PM
Reyes	Neil	Allen		M	AS	6-28-2010	N/A	Sergeant	Law Enforcement, Full Time	trlaw	1-5-2016 1:14:00 PM
Bless	Jayson			M	HI	8-4-2008	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-5-2016 1:14:00 PM
Lysaght	John	R		M	CA	10-7-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-5-2016 1:14:00 PM
Mullins	Kevin	Moon		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-5-2016 1:14:00 PM
Nichols	Bruce			M	CA	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-5-2016 1:14:00 PM
Ramos	Jesus			M	HI	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-5-2016 1:14:00 PM
Davis	Collie		Jr.	M	AA	10-16-2002	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-5-2016 1:14:00 PM
Pepich	Benjamin	James		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	trlaw	1-5-2016 1:14:00 PM
Law	Todd	Raymond		M	CA	6-15-2011	N/A	Inspector	Law Enforcement, Full Time	TRLAW	9-1-2015 9:12:00 AM
Reyes	Neil	Allen		M	AS	1-1-1900	N/A	Sergeant	Law Enforcement, Full Time	TRLAW	9-1-2015 9:12:00 AM
Bless	Jayson			M	HI	8-4-2008	N/A	Special Agent	Law Enforcement, Full Time	TRLAW	9-1-2015 9:12:00 AM

LEDI Agency Roster Report for Canadian Pacific Police Service

Report Date: 12/14/2021

Lysaght	John	R		M	CA	10-7-2002	N/A	Special Agent	Law Enforcement, Full Time	TRLAW	9-1-2015 9:12:00 AM
Pepich	Benjamin	James		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	TRLAW	9-1-2015 9:12:00 AM
Davis	Collie		Jr.	M	AA	10-16-2002	N/A	Special Agent	Law Enforcement, Full Time	TRLAW	9-1-2015 9:12:00 AM
Nichols	Bruce			M	CA	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	TRLAW	9-1-2015 9:12:00 AM
Ramos	Jesus			M	HI	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	TRLAW	9-1-2015 9:12:00 AM
Mullins	Kevin	Moon		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	TRLAW	9-1-2015 9:12:00 AM
Law	Todd	Raymond		M	CA	6-15-2011	N/A	Inspector	Law Enforcement, Full Time	TRLAW	9-1-2015 9:11:00 AM
Reyes	Neil	Allen		M	AS	1-1-1900	N/A	Sergeant	Law Enforcement, Full Time	TRLAW	9-1-2015 9:11:00 AM
Pepich	Benjamin	James		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	TRLAW	9-1-2015 9:11:00 AM
Davis	Collie		Jr.	M	AA	10-16-2002	N/A	Special Agent	Law Enforcement, Full Time	TRLAW	9-1-2015 9:11:00 AM
Bless	Jayson			M	HI	8-4-2008	N/A	Special Agent	Law Enforcement, Full Time	TRLAW	9-1-2015 9:11:00 AM
Lysaght	John	R		M	CA	10-7-2002	N/A	Special Agent	Law Enforcement, Full Time	TRLAW	9-1-2015 9:11:00 AM
Mullins	Kevin	Moon		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	TRLAW	9-1-2015 9:11:00 AM
Nichols	Bruce			M	CA	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	TRLAW	9-1-2015 9:11:00 AM
Ramos	Jesus			M	HI	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	TRLAW	9-1-2015 9:11:00 AM
Holman	Raymond	L		M	CA	8-17-1998	N/A	Deputy Chief	Law Enforcement, Full Time	RAYHOLMAN	1-12-2015 3:06:00 PM
Law	Todd	Raymond		M	CA	6-15-2011	N/A	Inspector	Law Enforcement, Full Time	RAYHOLMAN	1-12-2015 3:06:00 PM
Reyes	Neil	Allen		M	AS	1-1-1900	N/A	Sergeant	Law Enforcement, Full Time	RAYHOLMAN	1-12-2015 3:06:00 PM
Bless	Jayson			M	HI	8-4-2008	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-12-2015 3:06:00 PM
Lysaght	John	R		M	CA	10-7-2002	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-12-2015 3:06:00 PM
Mullins	Kevin	Moon		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-12-2015 3:06:00 PM
Nichols	Bruce			M	CA	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-12-2015 3:06:00 PM
Ramos	Jesus			M	HI	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-12-2015 3:06:00 PM
Pepich	Benjamin	James		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-12-2015 3:06:00 PM
Davis	Collie		Jr.	M	AA	10-16-2002	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-12-2015 3:06:00 PM
Holman	Raymond	L		M	CA	8-17-1998	N/A	Deputy Chief	Law Enforcement, Full Time	RAYHOLMAN	7-10-2014 10:26:00 AM
Law	Todd	Raymond		M	CA	6-15-2011	N/A	Inspector	Law Enforcement, Full Time	RAYHOLMAN	7-10-2014 10:26:00 AM
Reyes	Neil	Allen		M	AS	6-28-2010	N/A	Sergeant	Law Enforcement, Full Time	RAYHOLMAN	7-10-2014 10:26:00 AM
Bless	Jayson			M	HI	8-4-2008	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	7-10-2014 10:26:00 AM
Davis	Collie		Jr.	M	AA	10-16-2002	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	7-10-2014 10:26:00 AM
Lysaght	John	R		M	CA	10-7-2002	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	7-10-2014 10:26:00 AM
Mullins	Kevin	Moon		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	7-10-2014 10:26:00 AM
Nichols	Bruce			M	CA	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	7-10-2014 10:26:00 AM
Pepich	Benjamin	James		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	7-10-2014 10:26:00 AM
Ramos	Jesus			M	HI	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	7-10-2014 10:26:00 AM
Holman	Raymond	L		M	CA	8-17-1998	N/A	Deputy Chief	Law Enforcement, Full Time	RAYHOLMAN	1-10-2014 1:38:00 PM
Law	Todd	Raymond		M	CA	6-15-2011	N/A	Inspector	Law Enforcement, Full Time	RAYHOLMAN	1-10-2014 1:38:00 PM
Bless	Jayson			M	HI	8-4-2008	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-10-2014 1:38:00 PM
Davis	Collie		Jr.	M	AA	10-16-2002	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-10-2014 1:38:00 PM
Lysaght	John	R		M	CA	10-7-2002	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-10-2014 1:38:00 PM
Mullins	Kevin	Moon		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-10-2014 1:38:00 PM
Nichols	Bruce			M	CA	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-10-2014 1:38:00 PM
Pepich	Benjamin	James		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-10-2014 1:38:00 PM
Ramos	Jesus			M	HI	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-10-2014 1:38:00 PM
Reyes	Neil	Allen		M	AS	6-28-2010	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-10-2014 1:38:00 PM
Holman	Raymond	L		M	CA	8-17-1998	N/A	Deputy Chief	Law Enforcement, Full Time	RAYHOLMAN	8-16-2013 9:46:00 AM
Law	Todd	Raymond		M	CA	1-1-1900	N/A	Inspector	Law Enforcement, Full Time	RAYHOLMAN	8-16-2013 9:46:00 AM
Reyes	Neil	Allen		M	AS	1-1-1900	N/A	Sergeant	Law Enforcement, Full Time	RAYHOLMAN	8-16-2013 9:46:00 AM
Ramos	Jesus			M	HI	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	8-16-2013 9:46:00 AM
Bless	Jayson			M	HI	8-4-2008	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	8-16-2013 9:46:00 AM
Davis	Collie		Jr.	M	AA	10-16-2002	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	8-16-2013 9:46:00 AM
Lysaght	John	R		M	CA	10-7-2002	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	8-16-2013 9:46:00 AM
Mullins	Kevin	Moon		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	8-16-2013 9:46:00 AM
Nichols	Bruce			M	CA	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	8-16-2013 9:46:00 AM
Pepich	Benjamin	James		M	CA	1-1-1900	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	8-16-2013 9:46:00 AM
Holman	Raymond	L		M	CA	8-17-1998	N/A	Deputy Chief	Law Enforcement, Full Time	RAYHOLMAN	1-14-2013 11:17:00 AM
Law	Todd	Raymond		M	CA	1-1-1900	N/A	Inspector	Law Enforcement, Full Time	RAYHOLMAN	1-14-2013 11:17:00 AM
Bless	Jayson			M	HI	8-4-2008	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-14-2013 11:17:00 AM
Davis	Collie		Jr.	M	AA	10-16-2002	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-14-2013 11:17:00 AM
Lysaght	John	R		M	CA	10-7-2002	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-14-2013 11:17:00 AM
Mullins	Kevin	Moon		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-14-2013 11:17:00 AM
Nichols	Bruce			M	CA	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-14-2013 11:17:00 AM
Pepich	Benjamin	James		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-14-2013 11:17:00 AM
Ramos	Jesus			M	HI	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-14-2013 11:17:00 AM
Reyes	Neil	Allen		M	AS	1-1-1900	N/A	Special Agent in Charge	Law Enforcement, Full Time	RAYHOLMAN	1-14-2013 11:17:00 AM
Holman	Raymond	L		M	CA	8-17-1998	N/A	Deputy Chief	Law Enforcement, Full Time	RAYHOLMAN	1-14-2013 11:16:00 AM
Law	Todd	Raymond		M	CA	6-15-2011	N/A	Inspector	Law Enforcement, Full Time	RAYHOLMAN	1-14-2013 11:16:00 AM
Bless	Jayson			M	HI	8-4-2008	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-14-2013 11:16:00 AM
Davis	Collie		Jr.	M	AA	10-16-2002	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-14-2013 11:16:00 AM
Lysaght	John	R		M	CA	10-7-2002	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-14-2013 11:16:00 AM
Mullins	Kevin	Moon		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-14-2013 11:16:00 AM
Nichols	Bruce			M	CA	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-14-2013 11:16:00 AM
Pepich	Benjamin	James		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-14-2013 11:16:00 AM
Ramos	Jesus			M	HI	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-14-2013 11:16:00 AM
Reyes	Neil	Allen		M	AS	6-28-2010	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	1-14-2013 11:16:00 AM
Holman	Raymond	L		M	CA	8-17-1998	N/A	Deputy Chief	Law Enforcement, Full Time	RAYHOLMAN	10-12-2012 10:35:00 AM
Law	Todd	Raymond		M	CA	6-15-2011	N/A	Inspector	Law Enforcement, Full Time	RAYHOLMAN	10-12-2012 10:35:00 AM
Davis	Collie		Jr.	M	AA	10-16-2002	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	10-12-2012 10:35:00 AM
Lysaght	John	R		M	CA	10-7-2002	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	10-12-2012 10:35:00 AM
Bless	Jayson			M	HI	8-4-2008	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	10-12-2012 10:35:00 AM
Reyes	Neil	Allen		M	AS	6-28-2010	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	10-12-2012 10:35:00 AM
Mullins	Kevin	Moon		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	10-12-2012 10:35:00 AM
Nichols	Bruce			M	CA	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	10-12-2012 10:35:00 AM
Ramos	Jesus			M	HI	6-18-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	10-12-2012 10:35:00 AM
Pepich	Benjamin	James		M	CA	6-11-2012	N/A	Special Agent	Law Enforcement, Full Time	RAYHOLMAN	10-12-2012 10:35:00 AM

LEDI Agency Roster Report for Canadian Pacific Police

Report Date: 12/14/2021

Last Name	First Name	Middle Name	Hired Date	Rank	Date Signed
Column1 Column2	Column3	Column4	Column9	Column11	Column15
Clough	Kelly	Ray	11-26-2018	Deputy Chief	8-27-2021 9:34:00 AM
Law	Todd	Raymond	6-15-2011	Inspector	8-27-2021 9:34:00 AM
Black	Benjamin	Ray	5-19-2021	Sergeant	8-27-2021 9:34:00 AM
Bless	Jayson		8-4-2008	Special Agent	8-27-2021 9:34:00 AM
Lysaght	John	R	10-7-2002	Special Agent	8-27-2021 9:34:00 AM
Mullins	Kevin	Moon	6-11-2012	Special Agent	8-27-2021 9:34:00 AM
Ramos	Jesus		6-18-2012	Special Agent	8-27-2021 9:34:00 AM
Davis	Collie		10-16-2002	Special Agent	8-27-2021 9:34:00 AM
Gonzalez	Carlos	Angel	7-16-2017	Special Agent	8-27-2021 9:34:00 AM
Clough	Kelly	Ray	11-26-2018	Deputy Chief	1-28-2021 11:20:00 AM
Law	Todd	Raymond	6-15-2011	Inspector	1-28-2021 11:20:00 AM
Bless	Jayson		8-4-2008	Special Agent	1-28-2021 11:20:00 AM
Lysaght	John	R	10-7-2002	Special Agent	1-28-2021 11:20:00 AM
Mullins	Kevin	Moon	6-11-2012	Special Agent	1-28-2021 11:20:00 AM
Nichols	Bruce		6-18-2012	Special Agent	1-28-2021 11:20:00 AM
Ramos	Jesus		6-18-2012	Special Agent	1-28-2021 11:20:00 AM
Davis	Collie		10-16-2002	Special Agent	1-28-2021 11:20:00 AM
Cobbins	Olivia	M	5-7-2017	Special Agent	1-28-2021 11:20:00 AM
Gonzalez	Carlos	Angel	7-16-2017	Special Agent	1-28-2021 11:20:00 AM
Clough	Kelly	Ray	11-26-2018	Deputy Chief	7-8-2020 3:50:00 PM
Law	Todd	Raymond	6-15-2011	Inspector	7-8-2020 3:50:00 PM
Bless	Jayson		8-4-2008	Special Agent	7-8-2020 3:50:00 PM
Lysaght	John	R	10-7-2002	Special Agent	7-8-2020 3:50:00 PM
Mullins	Kevin	Moon	6-11-2012	Special Agent	7-8-2020 3:50:00 PM
Nichols	Bruce		6-18-2012	Special Agent	7-8-2020 3:50:00 PM
Ramos	Jesus		6-18-2012	Special Agent	7-8-2020 3:50:00 PM
Davis	Collie		10-16-2002	Special Agent	7-8-2020 3:50:00 PM
Cobbins	Olivia	M	5-7-2017	Special Agent	7-8-2020 3:50:00 PM
Gonzalez	Carlos	Angel	7-16-2017	Special Agent	7-8-2020 3:50:00 PM
Clough	Kelly	Ray	11-26-2018	Deputy Chief	2-13-2020 10:33:00 AM
Law	Todd	Raymond	6-15-2011	Inspector	2-13-2020 10:33:00 AM
Bless	Jayson		8-4-2008	Special Agent	2-13-2020 10:33:00 AM
Lysaght	John	R	10-7-2002	Special Agent	2-13-2020 10:33:00 AM
Mullins	Kevin	Moon	6-11-2012	Special Agent	2-13-2020 10:33:00 AM
Nichols	Bruce		6-18-2012	Special Agent	2-13-2020 10:33:00 AM
Ramos	Jesus		6-18-2012	Special Agent	2-13-2020 10:33:00 AM
Davis	Collie		10-16-2002	Special Agent	2-13-2020 10:33:00 AM
Cobbins	Olivia	M	5-7-2017	Special Agent	2-13-2020 10:33:00 AM
Gonzalez	Carlos	Angel	7-16-2017	Special Agent	2-13-2020 10:33:00 AM
Clough	Kelly	Ray	11-26-2018	Deputy Chief	9-9-2019 4:07:00 PM
Law	Todd	Raymond	6-15-2011	Inspector	9-9-2019 4:07:00 PM
Bless	Jayson		8-4-2008	Special Agent	9-9-2019 4:07:00 PM
Lysaght	John	R	10-7-2002	Special Agent	9-9-2019 4:07:00 PM
Mullins	Kevin	Moon	6-11-2012	Special Agent	9-9-2019 4:07:00 PM
Nichols	Bruce		6-18-2012	Special Agent	9-9-2019 4:07:00 PM
Ramos	Jesus		6-18-2012	Special Agent	9-9-2019 4:07:00 PM
Davis	Collie		10-16-2002	Special Agent	9-9-2019 4:07:00 PM
Cobbins	Olivia	M	5-7-2017	Special Agent	9-9-2019 4:07:00 PM
Gonzalez	Carlos	Angel	7-16-2017	Special Agent	9-9-2019 4:07:00 PM
Clough	Kelly	Ray	11-26-2018	Deputy Chief	1-9-2019 11:48:00 AM
Law	Todd	Raymond	6-15-2011	Inspector	1-9-2019 11:48:00 AM
Bless	Jayson		8-4-2008	Special Agent	1-9-2019 11:48:00 AM

LEDI Agency Roster Report for Canadian Pacific Police

Report Date: 12/14/2021

Lysaght	John	R	10-7-2002	Special Agent	1-9-2019 11:48:00 AM
Mullins	Kevin	Moon	6-11-2012	Special Agent	1-9-2019 11:48:00 AM
Nichols	Bruce		6-18-2012	Special Agent	1-9-2019 11:48:00 AM
Ramos	Jesus		6-18-2012	Special Agent	1-9-2019 11:48:00 AM
Davis	Collie		10-16-2002	Special Agent	1-9-2019 11:48:00 AM
Cobbins	Olivia	M	5-7-2017	Special Agent	1-9-2019 11:48:00 AM
Gonzalez	Carlos	Angel	7-16-2017	Special Agent	1-9-2019 11:48:00 AM
Law	Todd	Raymond	6-15-2011	Inspector	7-2-2018 3:15:00 PM
Walker	Bobby	A	8-24-2015	Inspector	7-2-2018 3:15:00 PM
Bless	Jayson		8-4-2008	Special Agent	7-2-2018 3:15:00 PM
Lysaght	John	R	10-7-2002	Special Agent	7-2-2018 3:15:00 PM
Mullins	Kevin	Moon	6-11-2012	Special Agent	7-2-2018 3:15:00 PM
Nichols	Bruce		6-18-2012	Special Agent	7-2-2018 3:15:00 PM
Ramos	Jesus		6-18-2012	Special Agent	7-2-2018 3:15:00 PM
Davis	Collie		10-16-2002	Special Agent	7-2-2018 3:15:00 PM
Cobbins	Olivia	M	5-7-2017	Special Agent	7-2-2018 3:15:00 PM
Gonzalez	Carlos	Angel	7-16-2017	Special Agent	7-2-2018 3:15:00 PM
Law	Todd	Raymond	6-15-2011	Inspector	1-3-2018 2:08:00 PM
Walker	Bobby	A	8-24-2015	Inspector	1-3-2018 2:08:00 PM
Bless	Jayson		8-4-2008	Special Agent	1-3-2018 2:08:00 PM
Lysaght	John	R	10-7-2002	Special Agent	1-3-2018 2:08:00 PM
Mullins	Kevin	Moon	6-11-2012	Special Agent	1-3-2018 2:08:00 PM
Nichols	Bruce		6-18-2012	Special Agent	1-3-2018 2:08:00 PM
Ramos	Jesus		6-18-2012	Special Agent	1-3-2018 2:08:00 PM
Davis	Collie		10-16-2002	Special Agent	1-3-2018 2:08:00 PM
Cobbins	Olivia	M	5-7-2017	Special Agent	1-3-2018 2:08:00 PM
Gonzalez	Carlos	Angel	7-16-2017	Special Agent	1-3-2018 2:08:00 PM
Law	Todd	Raymond	6-15-2011	Inspector	7-18-2017 9:52:00 AM
Walker	Bobby	A	8-24-2015	Inspector	7-18-2017 9:52:00 AM
Bless	Jayson		8-4-2008	Special Agent	7-18-2017 9:52:00 AM
Lysaght	John	R	10-7-2002	Special Agent	7-18-2017 9:52:00 AM
Mullins	Kevin	Moon	6-11-2012	Special Agent	7-18-2017 9:52:00 AM
Nichols	Bruce		6-18-2012	Special Agent	7-18-2017 9:52:00 AM
Ramos	Jesus		6-18-2012	Special Agent	7-18-2017 9:52:00 AM
Davis	Collie		10-16-2002	Special Agent	7-18-2017 9:52:00 AM
Cobbins	Olivia	M	5-7-2017	Special Agent	7-18-2017 9:52:00 AM
Gonzalez	Carlos	Angel	7-16-2017	Special Agent	7-18-2017 9:52:00 AM
Law	Todd	Raymond	6-15-2011	Inspector	1-4-2017 11:12:00 AM
Walker	Bobby	A	8-24-2015	Inspector	1-4-2017 11:12:00 AM
Reyes	Neil	Allen	6-28-2010	Sergeant	1-4-2017 11:12:00 AM
Bless	Jayson		8-4-2008	Special Agent	1-4-2017 11:12:00 AM
Lysaght	John	R	10-7-2002	Special Agent	1-4-2017 11:12:00 AM
Mullins	Kevin	Moon	6-11-2012	Special Agent	1-4-2017 11:12:00 AM
Nichols	Bruce		6-18-2012	Special Agent	1-4-2017 11:12:00 AM
Ramos	Jesus		6-18-2012	Special Agent	1-4-2017 11:12:00 AM
Davis	Collie		10-16-2002	Special Agent	1-4-2017 11:12:00 AM
Pepich	Benjamin	James	6-11-2012	Special Agent	1-4-2017 11:12:00 AM
Law	Todd	Raymond	6-15-2011	Inspector	7-11-2016 1:54:00 PM
Walker	Bobby	A	8-24-2015	Police Officer	7-11-2016 1:54:00 PM
Reyes	Neil	Allen	6-28-2010	Sergeant	7-11-2016 1:54:00 PM
Bless	Jayson		8-4-2008	Special Agent	7-11-2016 1:54:00 PM
Lysaght	John	R	10-7-2002	Special Agent	7-11-2016 1:54:00 PM
Mullins	Kevin	Moon	6-11-2012	Special Agent	7-11-2016 1:54:00 PM
Nichols	Bruce		6-18-2012	Special Agent	7-11-2016 1:54:00 PM

LEDI Agency Roster Report for Canadian Pacific Police

Report Date: 12/14/2021

Ramos	Jesus		6-18-2012	Special Agent	7-11-2016 1:54:00 PM
Davis	Collie		10-16-2002	Special Agent	7-11-2016 1:54:00 PM
Pepich	Benjamin	James	6-11-2012	Special Agent	7-11-2016 1:54:00 PM
Law	Todd	Raymond	6-15-2011	Inspector	1-5-2016 1:14:00 PM
Walker	Bobby	A	8-24-2015	Police Officer	1-5-2016 1:14:00 PM
Reyes	Neil	Allen	6-28-2010	Sergeant	1-5-2016 1:14:00 PM
Bless	Jayson		8-4-2008	Special Agent	1-5-2016 1:14:00 PM
Lysaght	John	R	10-7-2002	Special Agent	1-5-2016 1:14:00 PM
Mullins	Kevin	Moon	6-11-2012	Special Agent	1-5-2016 1:14:00 PM
Nichols	Bruce		6-18-2012	Special Agent	1-5-2016 1:14:00 PM
Ramos	Jesus		6-18-2012	Special Agent	1-5-2016 1:14:00 PM
Davis	Collie		10-16-2002	Special Agent	1-5-2016 1:14:00 PM
Pepich	Benjamin	James	6-11-2012	Special Agent	1-5-2016 1:14:00 PM
Law	Todd	Raymond	6-15-2011	Inspector	9-1-2015 9:12:00 AM
Reyes	Neil	Allen	1-1-1900	Sergeant	9-1-2015 9:12:00 AM
Bless	Jayson		8-4-2008	Special Agent	9-1-2015 9:12:00 AM
Lysaght	John	R	10-7-2002	Special Agent	9-1-2015 9:12:00 AM
Pepich	Benjamin	James	6-11-2012	Special Agent	9-1-2015 9:12:00 AM
Davis	Collie		10-16-2002	Special Agent	9-1-2015 9:12:00 AM
Nichols	Bruce		6-18-2012	Special Agent	9-1-2015 9:12:00 AM
Ramos	Jesus		6-18-2012	Special Agent	9-1-2015 9:12:00 AM
Mullins	Kevin	Moon	6-11-2012	Special Agent	9-1-2015 9:12:00 AM
Law	Todd	Raymond	6-15-2011	Inspector	9-1-2015 9:11:00 AM
Reyes	Neil	Allen	1-1-1900	Sergeant	9-1-2015 9:11:00 AM
Pepich	Benjamin	James	6-11-2012	Special Agent	9-1-2015 9:11:00 AM
Davis	Collie		10-16-2002	Special Agent	9-1-2015 9:11:00 AM
Bless	Jayson		8-4-2008	Special Agent	9-1-2015 9:11:00 AM
Lysaght	John	R	10-7-2002	Special Agent	9-1-2015 9:11:00 AM
Mullins	Kevin	Moon	6-11-2012	Special Agent	9-1-2015 9:11:00 AM
Nichols	Bruce		6-18-2012	Special Agent	9-1-2015 9:11:00 AM
Ramos	Jesus		6-18-2012	Special Agent	9-1-2015 9:11:00 AM
Holman	Raymond	L	8-17-1998	Deputy Chief	1-12-2015 3:06:00 PM
Law	Todd	Raymond	6-15-2011	Inspector	1-12-2015 3:06:00 PM
Reyes	Neil	Allen	1-1-1900	Sergeant	1-12-2015 3:06:00 PM
Bless	Jayson		8-4-2008	Special Agent	1-12-2015 3:06:00 PM
Lysaght	John	R	10-7-2002	Special Agent	1-12-2015 3:06:00 PM
Mullins	Kevin	Moon	6-11-2012	Special Agent	1-12-2015 3:06:00 PM
Nichols	Bruce		6-18-2012	Special Agent	1-12-2015 3:06:00 PM
Ramos	Jesus		6-18-2012	Special Agent	1-12-2015 3:06:00 PM
Pepich	Benjamin	James	6-11-2012	Special Agent	1-12-2015 3:06:00 PM
Davis	Collie		10-16-2002	Special Agent	1-12-2015 3:06:00 PM
Holman	Raymond	L	8-17-1998	Deputy Chief	7-10-2014 10:26:00 AM
Law	Todd	Raymond	6-15-2011	Inspector	7-10-2014 10:26:00 AM
Reyes	Neil	Allen	6-28-2010	Sergeant	7-10-2014 10:26:00 AM
Bless	Jayson		8-4-2008	Special Agent	7-10-2014 10:26:00 AM
Davis	Collie		10-16-2002	Special Agent	7-10-2014 10:26:00 AM
Lysaght	John	R	10-7-2002	Special Agent	7-10-2014 10:26:00 AM
Mullins	Kevin	Moon	6-11-2012	Special Agent	7-10-2014 10:26:00 AM
Nichols	Bruce		6-18-2012	Special Agent	7-10-2014 10:26:00 AM
Pepich	Benjamin	James	6-11-2012	Special Agent	7-10-2014 10:26:00 AM
Ramos	Jesus		6-18-2012	Special Agent	7-10-2014 10:26:00 AM
Holman	Raymond	L	8-17-1998	Deputy Chief	1-10-2014 1:38:00 PM
Law	Todd	Raymond	6-15-2011	Inspector	1-10-2014 1:38:00 PM
Bless	Jayson		8-4-2008	Special Agent	1-10-2014 1:38:00 PM

LEDI Agency Roster Report for Canadian Pacific Police

Report Date: 12/14/2021

Davis	Collie		10-16-2002	Special Agent	1-10-2014 1:38:00 PM
Lysaght	John	R	10-7-2002	Special Agent	1-10-2014 1:38:00 PM
Mullins	Kevin	Moon	6-11-2012	Special Agent	1-10-2014 1:38:00 PM
Nichols	Bruce		6-18-2012	Special Agent	1-10-2014 1:38:00 PM
Pepich	Benjamin	James	6-11-2012	Special Agent	1-10-2014 1:38:00 PM
Ramos	Jesus		6-18-2012	Special Agent	1-10-2014 1:38:00 PM
Reyes	Neil	Allen	6-28-2010	Special Agent	1-10-2014 1:38:00 PM
Holman	Raymond	L	8-17-1998	Deputy Chief	8-16-2013 9:46:00 AM
Law	Todd	Raymond	1-1-1900	Inspector	8-16-2013 9:46:00 AM
Reyes	Neil	Allen	1-1-1900	Sergeant	8-16-2013 9:46:00 AM
Ramos	Jesus		6-18-2012	Special Agent	8-16-2013 9:46:00 AM
Bless	Jayson		8-4-2008	Special Agent	8-16-2013 9:46:00 AM
Davis	Collie		10-16-2002	Special Agent	8-16-2013 9:46:00 AM
Lysaght	John	R	10-7-2002	Special Agent	8-16-2013 9:46:00 AM
Mullins	Kevin	Moon	6-11-2012	Special Agent	8-16-2013 9:46:00 AM
Nichols	Bruce		6-18-2012	Special Agent	8-16-2013 9:46:00 AM
Pepich	Benjamin	James	1-1-1900	Special Agent	8-16-2013 9:46:00 AM
Holman	Raymond	L	8-17-1998	Deputy Chief	1-14-2013 11:17:00 AM
Law	Todd	Raymond	1-1-1900	Inspector	1-14-2013 11:17:00 AM
Bless	Jayson		8-4-2008	Special Agent	1-14-2013 11:17:00 AM
Davis	Collie		10-16-2002	Special Agent	1-14-2013 11:17:00 AM
Lysaght	John	R	10-7-2002	Special Agent	1-14-2013 11:17:00 AM
Mullins	Kevin	Moon	6-11-2012	Special Agent	1-14-2013 11:17:00 AM
Nichols	Bruce		6-18-2012	Special Agent	1-14-2013 11:17:00 AM
Pepich	Benjamin	James	6-11-2012	Special Agent	1-14-2013 11:17:00 AM
Ramos	Jesus		6-18-2012	Special Agent	1-14-2013 11:17:00 AM
Reyes	Neil	Allen	1-1-1900	Special Agent in Charge	1-14-2013 11:17:00 AM
Holman	Raymond	L	8-17-1998	Deputy Chief	1-14-2013 11:16:00 AM
Law	Todd	Raymond	6-15-2011	Inspector	1-14-2013 11:16:00 AM
Bless	Jayson		8-4-2008	Special Agent	1-14-2013 11:16:00 AM
Davis	Collie		10-16-2002	Special Agent	1-14-2013 11:16:00 AM
Lysaght	John	R	10-7-2002	Special Agent	1-14-2013 11:16:00 AM
Mullins	Kevin	Moon	6-11-2012	Special Agent	1-14-2013 11:16:00 AM
Nichols	Bruce		6-18-2012	Special Agent	1-14-2013 11:16:00 AM
Pepich	Benjamin	James	6-11-2012	Special Agent	1-14-2013 11:16:00 AM
Ramos	Jesus		6-18-2012	Special Agent	1-14-2013 11:16:00 AM
Reyes	Neil	Allen	6-28-2010	Special Agent	1-14-2013 11:16:00 AM
Holman	Raymond	L	8-17-1998	Deputy Chief	10-12-2012 10:35:00 AM
Law	Todd	Raymond	6-15-2011	Inspector	10-12-2012 10:35:00 AM
Davis	Collie		10-16-2002	Special Agent	10-12-2012 10:35:00 AM
Lysaght	John	R	10-7-2002	Special Agent	10-12-2012 10:35:00 AM
Bless	Jayson		8-4-2008	Special Agent	10-12-2012 10:35:00 AM
Reyes	Neil	Allen	6-28-2010	Special Agent	10-12-2012 10:35:00 AM
Mullins	Kevin	Moon	6-11-2012	Special Agent	10-12-2012 10:35:00 AM
Nichols	Bruce		6-18-2012	Special Agent	10-12-2012 10:35:00 AM
Ramos	Jesus		6-18-2012	Special Agent	10-12-2012 10:35:00 AM
Pepich	Benjamin	James	6-11-2012	Special Agent	10-12-2012 10:35:00 AM

Attachment 13

Chapter 40 Canadian Pacific Employees - Investigation – Directive 40.1

Revision Date: 2008-02-25

Applicable CALEA Standards:	***Distribution:***	System
Not Applicable	***Date Effective:***	2008-02-25
	Re-Evaluation Date:	2011-02
	Originator:	Inspector Ric Ladouceur
	Total Pages:	1

PURPOSE:

Written Directive 40 outlines the Service's handling of investigation involving CP employees.

POLICY:
Members of the Service may become involved in both criminal and non criminal investigations, involving Canadian Pacific employees. The Service is committed to ensuring that:

1. Assuring compliance with all constitutional requirements during the interview of employees in a criminal investigation,
2. Restricting the investigation by members of CP employees in non-criminal matters and
3. Allowing an authorized representative to be present, if requested, during the interview of employees in a non-criminal investigation.

Chapter 40 Canadian Pacific Employees – 40.1 Investigation

40.1.1 Investigations

The investigation of any CP employee will be initiated only under the following conditions:

a. There are reasonable grounds to believe criminal misconduct has occurred,
b. There is a legitimate concern for the personal safety of one or more employees,
c. There is a threat or inference of threat to life, property or operations, or
d. When requested to conduct an investigation on behalf of a bona fide law enforcement, government or intelligence agency impacting national security.

In the U.S., an employee may request a representative be present during any interview concerning a non-criminal matter.

Criminal investigations will be conducted in accordance with Service Written Directives 1.2.3 Constitutional Rights – In custody Interview or Interrogation and Chapter 42 Criminal Investigation.

Chapter 52 Professional Standards– Public and Internal Complaints
Organizational Integrity – Directive 52.1
Procedure –Directive 52.2

Revision Date: 2007-09-20

Applicable CALEA Standards: ***52.1.1, 52.1.2, 52.1.3, 52.1.4 and 52.1.5 52.2.1, 52.2.2, 52.2.3, 52.2.1.4, 52.2.5, 52.2.6, 52.2.7 and 52.2.8***	***Distribution:***	System
	Date Effective:	2007-09-20
	Re-Evaluation Date:	2010-09
	Originator:	Inspector Ric Ladouceur
	Total Pages:	13

PURPOSE:

Written Directive 52.1 outlines the Service's handling process for public and internal complaints and other allegations of misconduct.

POLICY:

The professional image of the Service to a large extent depends upon the personal integrity and conduct of each member and investigation of complaints against members is imperative to maintenance of professional conduct. The image of the Service may be determined by the quality of a fair and impartial investigation into allegations of misconduct against members.

The Service is committed to conducting complaint investigations that are complete, thorough, transparent and timely, to ensure that the public have full and complete access to the public complaints procedures and to ensure a fair and equitable resolution for all complaint investigation for both the public and the member involved.

Chapter 52 Professional Standards – Public and Internal Complaints
52.1 Organizational Integrity

52.1.1 Complaint Investigation

All allegations of misconduct, including anonymous complaints, and violation of Service policy shall be investigated under the direction of the Professional Standards Unit.

PROOF: W=Written O=Observable I=Interview		
Item:	Frequency & #	Responsibility
W/ CD-001E and AD-0055E	1 per Region Annually where occurred	Admin HQ

Chapter 52 Professional Standards – Public and Internal Complaints
52.1 Organizational Integrity

52.1.2 Records – Maintenance and Security

All member complaint investigations records shall be compiled in a case file and be held by the member conducting the investigation. When not in use the case file shall be secured in a cabinet or briefcase with access restricted to the member conducting the investigation.

At the conclusion of the investigation the completed case management file shall be forwarded to the Inspector of the Professional Standards Unit (PSU) for review unless the documentation in the file is required for any disciplinary process or criminal process resulting from the investigation. In these instances the file will be held by the investigator pending the disciplinary or legal process. At the conclusion of the disciplinary or criminal process the case file will be forwarded to the Inspector of the PSU for review.

Following the review by the PSU the file will be forwarded to HQ and be stored in a secure file cabinet with access restricted to the Chief, Superintendent Support, Inspector PSU and the HQ admin.

Any electronic documents relating to an investigation will be forwarded to the admin HQ and be placed on the Police Admin Confidential Document folder. All items will be purged from the investigators computer at the conclusion of the investigations.

PROOF: W=Written O=Observable I=Interview		
Item:	Frequency & #	Responsibility
W/ File Storage HQ – Photo of file Cabinet	1 Annually	Admin HQ

Chapter 52 Professional Standards – Public and Internal Complaints
52.1 Organizational Integrity

52.1.3 Direct Access to the Chief

The Inspector of the Professional Standards Unit (PSU) is responsible for oversight of all matters relating to breaches of the Code of Appearance and Conduct and internal or public complaint. On matters relating to breaches of the Code of Appearance and Conduct and Internal or Public complaints the Inspector PSU shall report directly to the Chief.

Chapter 52 Professional Standards – Public and Internal Complaints
52.1 Organizational Integrity

52.1.3 Direct Access to the Chief

PROOF: W=Written O=Observable I=Interview		
Item:	Frequency & #	Responsibility
W/Correspondence between Inspector PSU and Chief	1 sample annually if occurred	Admin HQ

Chapter 52 Professional Standards – Public and Internal Complaints
52.1 Organizational Integrity

52.1.4 Public Complaint Process Information Available to the Public

The Service makes available information on the Public Complaints process by ensuring that the complaint procedures brochures (CD-006E) is available at all Service Offices.

The procedure and forms are also available on the CPR Intranet.

PROOF: W=Written O=Observable I=Interview		
Item:	Frequency & #	Responsibility
W/Sample Brochure and Photos of Brochures at Offices	1 Annually	District Calea Member

Chapter 52 Professional Standards – Public and Internal Complaints
52.1 Organizational Integrity

52.1.5 Annual Statistical Summary and Analysis

The Inspector of the Professional Standards Unit will conduct an annual review of all complaints against members of the service and internal investigations against members. A report shall be prepared and include a statistical summary and analysis of complaint and will include findings and recommendations where appropriate, The report will be made available to members of the service and the public.

PROOF: W=Written O=Observable I=Interview		
Item:	Frequency & #	Responsibility
W/Copy of Review		

Chapter 52 Professional Standards – Public and Internal Complaints
52.2 Procedures

52.2.1 Complaint Investigation

The following are authorized to conduct internal investigations relating to violations of the Service's ***Code of Appearance and Conduct*** outlined in written directive 26.1.1 and internal and public complaints outlined in written directive 52.2.9 A & B. These investigation will review all allegations and provide for the interview of witnesses and examination of fact to ascertain if there is any basis for the allegations. Information developed during this investigation may be used in the ***Disciplinary Investigation Process*** outlined in written directive 26.1.4.

a. Staff Sergeant/Sergeants/Senior Investigators in Charge (SIIC)

Staff Sergeant, Sergeants and SIICS may investigate minor breaches of the Code of Appearance and Conduct and minor public complaint for members as follows:

Staff Sergeants	Sergeants	SIICs
• Sergeants	• Constables	• Investigators
• SIICS	• Civilians	• Special Agents
• Investigators		• Civilians
• Constables		
• Civilians		

During these investigations the Staff Sergeant, Sergeants, and SIICs will report directly to the Inspector of the Professional Standards Unit who will oversee the investigation.

b. Inspector Professional Standards Unit

The Inspector of the Professional Standards Unit will investigate all minor breaches of the Code of Appearance and Conduct and minor public complaint for Staff Sergeants, Sergeants and SIICS and all major breaches of the Code of Appearance and Conduct and major public complaints.

In cases where a Superintendent is subject of the complaint the Chief may conduct the investigation or designate the Inspector of the Professional Standards Unit to conduct the investigation. In extreme cases the Chief may request the assistance of another police service to conduct the investigations.

The Inspector of the Professional Standards Unit will be responsible to oversee and review all investigations conducted by Sergeants and SIICS.

Chapter 52 Professional Standards – Public and Internal Complaints
52.2 Procedures

52.2.1 Complaint Investigation

The Superintendent Support HQ will be responsible to oversee and review all investigations conducted by the Inspector of the Professional Standards Unit unless otherwise directed by the Chief.

PROOF: W=Written O=Observable I=Interview		
Item:	Frequency & #	Responsibility
W/ CD-001E and AD-0055E	1 per Region Annually where occurred	Admin HQ

Chapter 52 Professional Standards – Public and Internal Complaints
52.2 Procedures

52.2.2 Notification of Chief and Inspector Professional Standards

All breaches of the code of appearance and conduct and public complaints will be reported to the Chief and the Inspector of the Professional Standards Unit (PSU) by the District Superintendent or Superintendent Support upon receipt of the complaint. The Chief will review the matter and determine who will conduct the investigation within the guidelines established in 52.1.1 items a. and b.

The Inspector of the PSU will log the complaint on an excel spreadsheet and issue a file number.

In the case of a public complaint the file number will be prefixed with PC followed by the year and a number. i.e. PC2006001

In the case of an internal complaint the file number will be prefixed with IC followed by the year and a number. i.e. IC2006001

PROOF: W=Written O=Observable I=Interview		
Item:	Frequency & #	Responsibility
W/ Documentation of Investigation Process – E-mail – Conference Call Minutes	1 Annually	Inspector PSU

Chapter 52 Professional Standards – Public and Internal Complaints
52.2 Procedures

52.2.3 Investigation Time Limits

All investigations relating to breaches of the Code of Appearance and Conduct and public or internal complaints shall be completed within ninety (90) days from the date the allegation became known, unless an extension is requested from and authorized by the Chief.

PROOF: W=Written O=Observable I=Interview		
Item:	Frequency & #	Responsibility
W/ Sample Complaint Case File	1 Annually	Inspector PSU

Chapter 52 Professional Standards – Public and Internal Complaints
52.2 Procedures

52.2.4 Informing the Complainant

The following are responsible to ensure that the complainant in any complaint is informed as follows:

a. Receipt of the Complaint

The Chief or his designate will be responsible to acknowledge receipt of the complaint in writing and if in the case of a public complaint forward a package containing the procedures and forms for submitting a complaint.

b. Status Reports

The member conducting the investigation will be responsible to periodically contact the complainant and inform them of the status of the investigation. All contact with the complainant will be documented in the case file for the incident.

c. Notification of the Results of the Investigation

At the conclusion of the investigation the Chief or his designate will provide the complainant the written results of the investigation.

PROOF: W=Written O=Observable I=Interview		
Item:	Frequency & #	Responsibility
W/ Documentation relating to notification	1 Annually	Admin HQ

Chapter 52 Professional Standards – Public and Internal Complaints
52.2 Procedures

52.2.5 Member Notification

The Chief or his designate shall provide the member subject of the investigation a written statement of the allegation, periodic status reports, as required, and the end result of the investigation. Such notification shall also include any rights and responsibilities relative to the investigation.

(Exception) The subject officer will **not** be notified if the misconduct is of a criminal nature and the investigation could be compromised by notification.

PROOF: W=Written O=Observable I=Interview		
Item:	Frequency & #	Responsibility
W/ Documented Notification	1 Annually	Admin HQ

Chapter 52 Professional Standards – Public and Internal Complaints
52.2 Procedures

52.2.6 Tests

During an investigation members will not:

a. Submit to medical or laboratory examinations
b. Submit to being photographed
c. Participate in a line-up
d. Submit financial disclosure statements, or
e. Submit to a polygraph test or similar test

Except as authorized by a judicial order or other legal process or upon consent of the member.

PROOF: W=Written O=Observable I=Interview		
Item:	Frequency & #	Responsibility
W/ Documentation when used	1 Annually	Admin HQ

Chapter 52 Professional Standards – Public and Internal Complaints
52.2 Procedures

52.2.7 Suspension from Duty

When a member is

i. Suspected of or charged with a criminal offence,
ii. Suspected of serious misconduct that would bring Service into disrepute or
iii. For reason of physical or psychological fitness for duty

The Chief, or in the absence of the Chief, a senior officer (Superintendent or Inspector) may elect to remove the member from active service by suspending the member from duty or reassigning them to an administrative position.

All suspensions will be done in accordance with the collective agreements or other Canadian Pacific Railway policy and procedure.

Upon suspension the member will surrender issued firearms, ammunition, baton, capsicum spray, cap badge, breast badge, wallet badge, belt badge and warrant card.

When a suspension has been issued by a Superintendent or Inspector, the Chief or his designate shall be immediately notified. If the Chief or his designate confirms the suspension, a letter must be served on the member confirming the suspension and outlining the cause. If not confirmed, a letter revoking the suspension must be served on the member.

A confirmed suspension shall remain if effect until revoked by the Chief and written revocation is served on the member.

During the suspension the member shall not exercise any of the powers vested in them as police officers or wear or use clothing or equipment that was issued to them in that capacity.

PROOF: W=Written O=Observable I=Interview		
Item:	Frequency & #	Responsibility
W/ Record of Purging- Sample Redacted Files	1 Annually	Inspector PSU

Chapter 52 Professional Standards – Public and Internal Complaints
52.2 Procedures

52.2.8 Conclusion of Fact Investigation Report

At the conclusion of any investigation of allegations against a member, a "conclusion of fact" report will be prepared by the investigating member and forwarded to the Inspector of the Professional Standards Unit and the Chief of Police.

The investigation may find as follows:

i. The complaint is unfounded
ii. There is no evidence to support the allegation
iii. The conduct was proper and within Service Policy and Guidelines
iv. The conduct violates Service policy, procedure or written directive or
v. The conduct violates the law

Where findings conclude that the behaviour of the member was inappropriate the investigator may make a recommendation for changes to policy, procedures or training and/or refer the matter to the disciplinary system outlined in written directive 26.1.4 or criminal charge.

The Chief will then rule on the findings of the investigation and direct whatever action he deems necessary. The chief or his designate will then notify the complainant and the subject officer of the findings in accordance with written directives 52.2.4 and 53.2.5

PROOF: W=Written O=Observable I=Interview		
Item:	Frequency & #	Responsibility
W/ Sample report	1 Annually	Admin HQ

Chapter 52 Professional Standards – Public and Internal Complaints
52.2 Procedures

52.2.9A Public Complaint Procedures

Types of Complaints

There are two different types of complaints that require investigation by the Professional Standard Unit. They relate to:

i. Policies or Procedures of the Police Service.
ii. The conduct of a Police Officer of the Service.

Chapter 52 Professional Standards – Public and Internal Complaints
52.2 Procedures

52.2.9A Public Complaint Procedures

Making a Complaint

Anyone may initiate a complaint with the Service by:

i. Sending in a written complaint to the Chief of Police or a District Officer.
ii. By telephone to the CPRPS Communication Centre at 1-800-716-9132.
iii. Attending any office of the CPRPS and completing a "COMPLAINT FORM" CD-001E in hard copy.

Any member who receives a complaint shall ensure that the form CD-001E is completed and forwarded through the chain of command.

The District Superintendent or Superintendent Support will be responsible to forward a copy of the CD-001E to HQ.

The complaint procedures brochures (CD-006E) must be available at all Service Offices

Members may obtain all forms relating to complaints against police in the Complaints Against Police subfolder of the Forms New subfolder in General Data folder on the Server.

Processing a Complaint

Policy

The Chief or his designate will review a complaint relating to the policy or procedures of the CPRPS and may alter the policy or take no further action. In this case no investigation is carried out and the complainant is notified in writing by HQ.

Conduct

The Chief will review the complaint and may find that the complaint is:

i. Frivolous or in bad faith. In this case no investigation is carried out and the complainant is notified in writing by HQ.
ii. Conduct that may constitute misconduct.

In cases where their may be misconduct the Chief will direct the Inspector of the Professional Standards Unit to arrange to have complaint investigated in accordance with written directive

Chapter 52 Professional Standards – Public and Internal Complaints
52.2 Procedures

52.2.9A Public Complaint Procedures

52.1.1.
The member conducting an investigation will initiate case file management that includes the Complaint Investigation Checklist Form AD-055E.

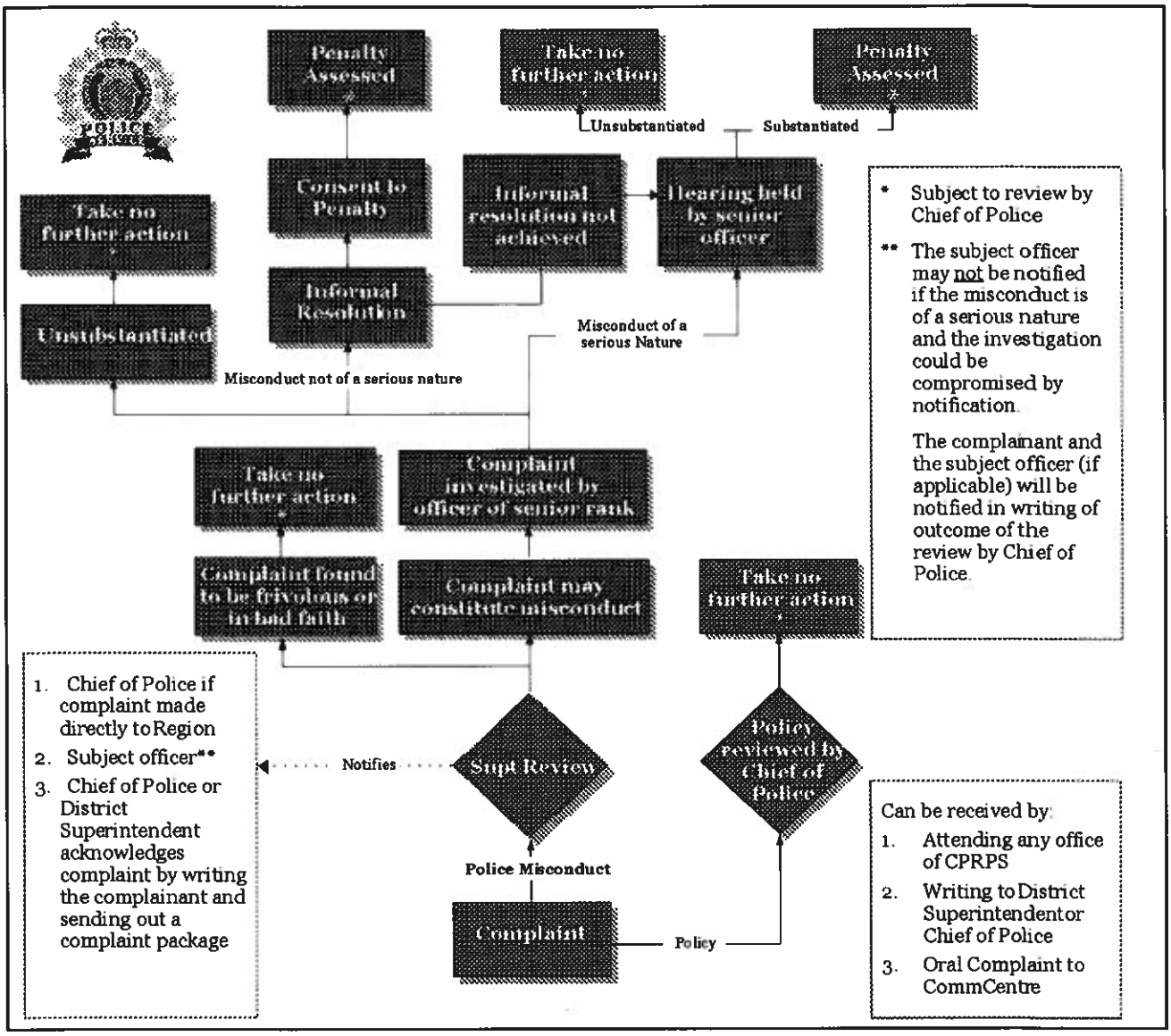
Note: At any time during the process the complainant may decide to withdraw the complaint against the member. In this case the complainant must fill out the "Complaint Withdrawal" form CD-003E.

This form will be forwarded to the Chief or his designate. This does not necessarily mean the matter will be terminated. The investigation may continue at the discretion of the Chief.

PROOF: W=Written O=Observable I=Interview		
Item:	Frequency & #	Responsibility
N/A		

See Procedure on next page

Canadian Pacific Railway Police Service
Public Complaint Procedure



Chapter 52 Professional Standards – Public and Internal Complaints
52.2 Procedures

52.2.9B Internal Complaint Procedures

Internal Complaint

There are two different types of complaints that require investigation by the Professional Standard Unit. They relate to:

i. Violations of the policies of the Police Service.
ii. The conduct of a Police Officer of the Service.

Making a Complaint

Any member may initiate a complaint against another member by sending in a written complaint in the form of an email to their immediate supervisor. In such cases the complaint will be forwarded to the Superintendent responsible for the area. The Superintendent is responsible to notify the Chief and the Inspector of the Professional Standards Unit in accordance with written directive 52.2.2

If the supervisor is the subject of the complaint the email may be sent to the Inspector of the Professional Standards Unit.

If the subject of the complaint is a senior officer the email may be sent directly to the Chief.

Processing a Complaint

Policy Violation or Conduct

The Chief will direct the Inspector of the Professional Standards Unit to arrange to have complaints relating to policy violation or the conduct of a member investigated in accordance with written directive 52.1.1.

The member conducting an investigation will initiate case file management that includes the Professional Standards Investigation Checklist Form AD-114E.

PROOF: W=Written O=Observable I=Interview		
Item	Frequency & #	Responsibility
N/A		

CANADIAN PACIFIC RAILWAY
POLICE SERVICE

Complaints Against Police

A Guide to Filing Complaints Against the Canadian Pacific Railway Police

Introduction

The Canadian Pacific Railway Police Service has established a procedure for addressing complaints received about the Service's policies and procedures or the conduct of a member of the Service

Defining a Complaint

There are two kinds of complaints. They relate to:

1. the policies or procedures of the Police Service
2. the conduct of a police officer

Making a Complaint

Anyone may initiate a complaint with the Service by:

1. Filling out the "Complaint Form" CD-001 in hard copy or on the Canadian Pacific Railway Police Service Website.
2. Sending a written complaint to the Chief or a District Officer.
3. Telephoning the Police Communication Centre at 1-800-716-9132 and making an oral complaint.

The Chief of Police or District Officer will acknowledge receipt of the complaints in writing, will forward a package[1] to the complainant and will notify the subject officer[2] (if applicable) of the receipt of a complaint.

[1] The package will contain the complaint procedures and forms to be completed. This package is also available at all CPRPS Detachments.

[2] In cases of misconduct of a serious nature the officer may not be notified if it will compromise the investigation.

Processing a Complaint

The Chief of Police will review a complaint relating to the policy or procedures of the Service.

The Chief of Police or his designate will arrange to have complaints relating the conduct of a member reviewed. The finding may be as follows:

1. Frivolous or in bad faith.
2. Behaviour that may constitute misconduct.

If the behaviour constitutes possible misconduct the matter will be investigated by a member of the Service with a higher rank than the member subject of the complaint.

The Chief of Police or his designate will keep the complainant apprised of the progress of the complaints in writing.

The investigation can result in:

1. The complaint being unsubstantiated.
2. Finding of evidence to support complaint

If the complaint is supported by evidence it may be dealt with as follows:

1. If the complaint is not of a serious nature the Informal Hearing Process may be utilized. (Penalty assessed)
2. If no agreement can be reached at the Informal Hearing Process or the conduct is of a serious nature a hearing will be conducted by a Senior Officer as designated by the Chief.

The hearing can result in:

1. Finding of innocence
2. Finding of guilt (Penalty Accessed)

In all cases the complainant and the subject officer will be notified in writing of outcome of the complaint review.

Filing a Complaint

Contact your local Canadian Pacific Railway Police service at:

Make an oral complaint by telephoning the Police Communication Centre at:

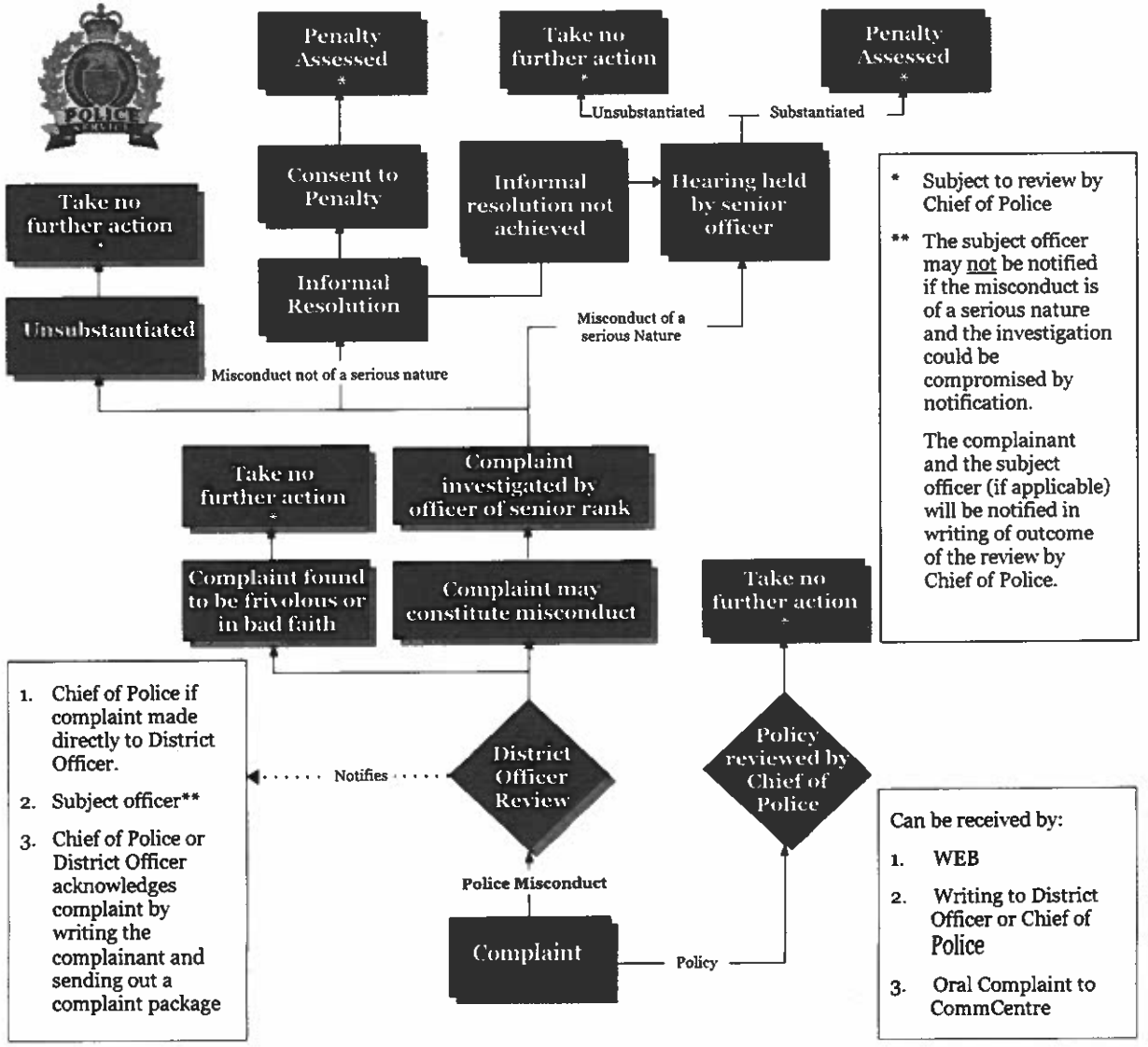
1-800-716-9132

or write to:

Chief of Police
Suite 157
Gulf Canada Square
401 - 9th Avenue S.W.
Calgary, Alberta
T2P 4Z4

CANADIAN PACIFIC RAILWAY

Canadian Pacific Railway Police Service
Complaint Procedure



CANADIAN PACIFIC
POLICE SERVICE

Policy #2012-0008-ADM
Version 1

Subject	**Canadian Pacific Employee Investigations**
Effective Date	September 1, 2012
Related Policy/Service Orders #	Service Order 09/06
Amended Policy	
Scope	All US Canadian Pacific Police Service Officers
Legislation/Guidelines referenced in policy	IL Railroad Police Act 610 ILCS 80

This policy serves as a replacement for Service Order 09/06 applicable only to Canadian Pacific Police Service officers in the US. Service Order 09/06 remains in effect for Canada until such time as it is rescinded or replaced.

1. Policy Statement

Canadian Pacific Police Service (CPPS) officers are duly appointed law enforcement officers under state and federal statutes. CPPS officers have the power and duty to preserve the peace, detain and arrest offenders, enforce laws, investigate accidents, and investigate crimes committed against railroad employees, railroad passengers and patrons, lading in the railroads' care, and railroad property.

2. Consequence

The policy and procedures contained herein are enforceable pursuant to Section 12.2.1.h of the Service Policy Manual.

3. Procedure

3.1 The purpose of all investigations is to determine the facts surrounding an incident. CPPS officers may initiate investigations of Canadian Pacific (CP) employees only under the following circumstances;

a. There is reason to believe that misconduct, such as criminal acts perpetrated against railroad employees or on or against railroad property, has occurred;
b. In response to an employee accident;
c. There is reason to believe that the interview of an employee could result in workplace violence; or
d. There is a legitimate concern for the personal safety of one or more employees.

3.2 CP employees may request to have a representative present during all interviews concerning a non-criminal matter.

3.3 CPPS officers will initiate CP employee investigations when there is reason to believe criminal activity has occurred.

3.4 All CPPS investigations will be conducted in a fair, impartial manner consistent with established police practices. CP employees under criminal investigation will be treated similarly to non-employees under criminal investigation.

3.5 All CPPS investigations require officers to conduct themselves professionally and with sensitivity to an individual's rights and any applicable collective bargaining agreement. Due to the unique nature of the employee – employer relationship, additional care will be taken when conducting a CP employee investigation.

3.6 Where probable cause exists, CPPS officers will act in compliance with existing law regarding arrest, search and seizure, and prosecution.

3.7 The decision to use CPPS officers to conduct interviews or investigations relating to any matter other than those stated above should be determined on a case-by-case basis. Authority to utilize CPPS officers in these instances must be approved and supervised by the Chief of Police or their designate.

3.8 CPPS officers will not serve notice of investigation on behalf of the railroad or deliver company mail to CP employees.

3.9 A CPPS officer may accompany a railroad official while the railroad official serves notice if the railroad official can clearly demonstrate a valid concern for personal safety.

Sponsor	Manager of PSD
Monitoring & Communication	N/A
Final Approval by	Chief of Police

History

Version	Revision By	Date

Subject	**Public Complaints Procedure (US)**
Effective Date	September 1, 2012
Related Policy/Service Orders #	
Amended Policy	Service Order 09/02
Scope	All US Canadian Pacific Police Service Members
Legislation/Guidelines referenced in policy	IL Railroad Police Act 610 ILCS 80

1. Policy Statement

Canadian Pacific Police Service (CPPS) is committed to conducting public complaint investigations that are thorough, transparent, timely and promote a fair and equitable resolution for all parties involved.

2. Consequence

The policy and procedures contained herein are enforceable pursuant to Section 12.2.1.h of the Service Policy Manual.

3. Authority

The Deputy Chief of Police, Support Services (hereafter referred to as the Deputy Chief) is accountable for ensuring the investigation of all complaints against members of the CPPS, subject to the provisions set out within this policy. In the event that an allegation of criminality or misconduct of a serious nature is made or becomes apparent during an investigation, the Deputy Chief may elect to have the investigation conducted by a 3rd party law enforcement agency (section 4.3.3 applies)

4. Procedures

4.1. Receiving a complaint.

Complaints may be initiated with the Service by:

- Submitting a written complaint, by any means, to Canadian Pacific Police Service, Suite 157 Gulf Canada Square, 401 9th Avenue SW, Calgary, AB T2P 4Z4;
- Telephoning the CPPS Control Centre (PCC) at 1-800-716-9132 and making a verbal complaint;
- In person to any member of the service at any CPPS detachment or office;
- Contacting Professional Standards Department by email or fax at Police_ProfessionalStandards@cppoliceservice.com, 403-319-7024.

Any member receiving a complaint must complete in full Part One of the Public Complaint Form CD0001E and forward it in an email to the Professional Standards Department at CPPS HQ for processing. If the complaint was taken by any PCC member, the on duty Sergeant at the PCC will ensure that all recordings relating to the interaction with the complainant and the incident under examination are retained.

4.2. Processing the complaint

Upon receipt of a complaint the Professional Standards Department will:

- Classify the complaint as a policy/procedure complaint or a member conduct complaint;
- Initiate a complaint file relating to the incident and assign a file number;
- Review the allegation to determine if the complaint maybe suitable for informal resolution, or must be handled using the formal process;
- Notify the Deputy Chief of the receipt of a complaint, and whether or not the complaint is to be handled by way of informal resolution;
- Acknowledge receipt of the complaint in writing to the complainant and provide a copy of the complaint brochure;
- Notify the subject member of the complaint, with a copy being forwarded to their accountable manager (Inspector or above). Included will be a copy of member notification form outlining the allegation(s).
- If the member's alleged conduct is criminal in nature and the notification could compromise the investigation, notification may be withheld;

4.3. Complaint Investigation

4.3.1 Informal Resolution

In some cases it may be possible to deal with the complaint by means of an Informal Resolution. This approach may be beneficial to both the complainant and the member who is the subject of the complaint by encouraging dialogue, exploring alternative perspectives and promoting understanding between all parties. It allows those involved to jointly find a solution to the matter.
Informal resolution may include providing the complainant with an explanation of the facts and circumstances surrounding the members conduct or otherwise attempting to clarify any misunderstandings between all parties involved.

The criteria for complaints suitable for Informal Resolution are:

- Allegations of misconduct of a minor nature;
- Complaints which do not involve misconduct such as a disagreement between the complainant and a member;
- Disputes as to the validity of a legal process; or,
- A misunderstanding of the limits of CPPS's jurisdiction and authority.

Informal Resolution can only proceed if both the complainant and the member involved agree to the process.

Informal resolution process

- When a complaint has been identified as suitable for the informal resolution process the Professional Standards Department will inform the subject member's accountable manager (Inspector or above) and provide all relevant details;
- The Inspector will contact all parties involved to discuss options and outcomes for resolving the complaint. In certain circumstances, the Inspector may designate this responsibility to a front line supervisor (Sergeant or Senior Special Agent);
- The manager or designate will attempt to resolve the situation by providing the complainant with an explanation of the facts and circumstances in order to clarify any misunderstandings between the member involved and the complainant;
- The manager will be responsible to submit a full report to the Professional Standards Department outlining the circumstances of the complaint and a description of how the matter was informally resolved;
- The Deputy Chief will review the outcome and direct any further action deemed appropriate;
- Matters not satisfactorily resolved will proceed to formal complaint investigation.

4.3.2 Formal Complaint Investigation.

- The Deputy Chief is accountable to ensure that all formal investigations are conducted according to this procedure and will appoint an officer, not below the rank of Inspector to conduct the investigation;
- The investigation shall include, but not be limited to, the review of policies and procedures, the review of reports and any video/audio recordings relating to the incident, inspection of the scene or other evidence and interviews of complainant, witnesses, member witnesses and the subject member;
- The Deputy Chief will review the progress of any investigation every 30 days, to ensure that the investigation is comprehensive and is being handled expeditiously;
- The investigation will be completed within 90 days from the receipt of the complaint. If any complaint investigation is not completed within 90 days, the Deputy Chief must notify the Chief of Police and request an extension to the 90 day limit;
- The investigating officer will prepare a final report to the Deputy Chief outlining:

1. The exact nature of the allegation;
2. The details of the member(s) involved;
3. All the established facts relating to the incident(s) that gave rise to the complaint;
4. Copies of all reports, photographs and statements obtained during the course of the complaint;
5. Correct statutory authorities, penal code violations, and policy or procedure infractions;
6. Conclusions;
7. Supporting evidence and any statutory authority to cover the members actions including case law cited.

- The investigating officer will make no recommendations in respect of disciplinary action at any time during the course of the investigation or include such recommendations within the final report;
- The Deputy Chief will review and append a report outlining recommendations which may include disciplinary action and submit to the Chief of Police for a final decision;
- The Chief of Police will provide a final ruling on the disposition of any complaint file and approve the commencement of disciplinary proceedings, if appropriate in accordance with disciplinary policies or the conditions of any relevant collective agreement.

4.3.3 Investigation by 3rd Party Agency

Any allegation that a member of the CPPS has committed a serious criminal offence will be investigated by CPPS only insofar as is necessary to substantiate the allegation. If the allegation is substantiated, or the evidence presented at the time of the initial allegation is so compelling that further investigation by the CPPS is unwarranted then the Deputy Chief may decide that the matter should be investigated by a 3rd Party law enforcement agency.

In such cases, the Professional Standards Department will notify the complainant and the subject member that the matter has been referred to a third party Law Enforcement Agency for further investigation.

4.4 Notifications

The Professional Standards Department will:

- Notify the complainant, in writing, of the outcome of the investigation;
- Notify the subject member, in writing, and inform management of any action to be taken.

4.5. Complaint Administration

The investigating officer will:

- Restrict access to and securely store hard copy and/or electronic case files and documentation when not in active use;
- Forward all hard copy and electronic files to Professional Standards at the completion of the investigation.

Professional Standards will:

- Document and update the complaint file regularly;
- Securely store completed complaint files and electronic documents.

5. Disciplinary Actions

At the conclusion of an investigation it may be necessary to implement either corrective action or a disciplinary action as described below:

5.1 Corrective Action

Corrective action is a non-disciplinary measure intended to correct unsatisfactory performance or conduct. Corrective actions include, but are not limited to; supervisory counseling, verbal reprimand, additional training or additional supervision.

5.2 Disciplinary Action

Disciplinary actions include the commencement of processes and procedures, as defined by the Human Resources department or as contained within any relevant collective agreement, that may result in a formal written reprimand, suspension, demotion or termination.

5.2.1 Disciplinary Interviews

- Any interview of a CPPS member in furtherance of disciplinary proceedings will be held in accordance with CP's established procedures for the conduct of such interviews;
- Interviewing officers will not offer any reward or inducement and shall not threaten or coerce anyone involved in the interview;
- Where the interview is in relation to an alleged criminal offence all steps will be taken to ensure that Miranda rights are read, explained and complied with as required by the criminal justice system.

5.2.2 Representation

- CPPS members who are the subject of a disciplinary interview are permitted to have a personal or union representative with them during the interview;
- CPPS members being interviewed in respect of an alleged criminal act have the right to consult with legal counsel and have legal counsel present during any such interview.

5.3 Right of Appeal

Any US based member of the CPPS who is subjected to disciplinary sanctions as a result of an investigation, will have the right to appeal the decision/disposition to the Illinois State Police in accordance with the Illinois Railroad Police Act.

Any CP employee that alleges abuse of authority or misconduct on the part of the carrier's police officers will also have the right to appeal any decision/disposition to the Illinois State Police in accordance with the Illinois Railroad Police Act.

6. Objective Oversight

Upon conclusion of the investigation the Chief of Police will provide details to Canadian Pacific's General Council for objective oversight.

Sponsor	Manager of Professional Standards Department
Monitoring & Communication	N/A
Final Approval by	Chief of Police

History

Version	Revision By	Date

Attachment 14

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

Annick Roy, as special administrator of the estate of Jean-Guy Veilleux, deceased,

Civil File No. 1:14-cv-113-JDL

Plaintiff,

v.

Rail World, Inc., et al.,

Defendants.

Marie-Josee Grimard, as special administrator of the estate of Henriette Latulippe, deceased,

Civil File No. 1:15-cv-00250-JDL

Plaintiff,

v.

Rail World, Inc., et al.,

Defendants.

Canadian Pacific Railway Company's amended motion to dismiss and incorporated memorandum of law in support of motion to dismiss

As allowed by Federal Rules of Civil Procedure 12(b)(2), (5) & (6), Canadian Pacific Railway Company seeks dismissal of plaintiffs' complaint for lack of personal jurisdiction (CP is not "at home" in Maine or the United States, and CP did not commit any conduct giving rise to plaintiffs' claims in Maine or the United States), inadequate service of process (CP authorized no U.S. agent to accept service of these complaints), forum non conveniens (Quebec is the proper forum) and failure to state a claim upon which relief can be granted (federal law preempts any claim against U.S. railroad conduct).

Introduction

Plaintiffs sued Canadian Pacific Railway Company (CP) to redress harm allegedly caused by a train derailment in Quebec. But no United States court has jurisdiction over CP: CP does not own tracks in the U.S.; is not incorporated in the U.S.; and does not operate in the U.S.—with the limited exception of bringing some trains a short distance over the border to safely hand off to the U.S. employees of a distinct U.S. company. *See In the Matter of an Arbitration Canadian Pacific Railway and Teamsters Canada Rail Conference.* 12/9/15. (Exh. A). If that were not enough, no CP derailment-related conduct took place in this country. CP's very limited U.S. presence coupled with the absence of any U.S. contribution to accident causation leave this Court wanting for personal jurisdiction.

Beyond that, plaintiffs have failed to properly serve: CP authorized no agent to accept process where plaintiffs attempted to serve (in Illinois and New York). And the proper forum for these lawsuits is Quebec, Canada—where the plaintiffs and witnesses can be found, and where the accident occurred. Without prerogative over CP, without service having been effected, and with an adequate and available Canadian forum, this Court should dismiss.

Even if this Court could exercise personal jurisdiction, service were proper, and Quebec were not the preferred forum, dismissal would nevertheless be compelled: a comprehensive federal regulatory scheme preempts all claims against U.S. railroad operations that might bear on the derailment. Plaintiffs seek to hold a railroad to common-law standards of care that deviate from the uniform federal requirements promulgated to promote rail and hazardous material safety. Thus even if U.S. law could be applied to a railroad that never touched the train in question in the U.S., this Court could not sanction the ad hoc regulation that plaintiffs' claims would visit upon CP.

Facts

A. Procedural history

On June 23 and July 2, 2015, plaintiffs filed amended complaints that added numerous parties, including CP. *Roy*, ECF Doc. No. 182 (amended complaint); *Grimard*, ECF Doc. No. 1 (amended complaint).[1] All defendants, other than CP, are in the process of settling through the Maine, Montreal & Atlantic (MMA) bankruptcy. In that proceeding, the U.S. bankruptcy trustee and the Canadian insolvency monitor secured over $400M (Canadian) to compensate claimants, including these plaintiffs. Defendants in these cases, other than CP, will eventually be dismissed, and an injunction will protect the settlors from further litigation.

On July 22, 2015, plaintiffs attempted to serve CP by sending the *R*oy summons and amended complaint to CT Corporation at 208 South LaSalle St., Suite 814, Chicago, IL 60604 and on July 30, 2015 sending those same papers to CT Corporation at 111 Eighth Avenue, New York, NY 10011. *Roy*, ECF Doc. Nos. 189, 219. The *Grimard* plaintiffs resorted to the same service scheme. *Grimard*, ECF Doc. Nos. 19, 53.

CP conducts no business in Illinois; accordingly CP never authorized any entity to accept legal papers in Illinois. Affidavit of William Tuttle, ¶ 3 (Tuttle Aff.).[2] In fact, plaintiffs could not have served CP anywhere in the United States: CP's only U.S. agents for service of process are in New York and Washington, D.C.; and CP *only* authorized those agents to accept securities and debt offering related service. *Id.* ¶ 4. The amended complaints implicate neither securities nor debt offerings. Hence, neither the *Roy* nor *Grimard* plaintiffs properly served CP.

[1] Except for the named plaintiff, the two amended complaints are identical; hence CP submits this single brief in support of both motions to dismiss.

[2] This affidavit (Exh. B) was filed and captioned in the related case *Samuel Audet v. Devlar Marketing, LLC*, 3:15-CV-2673-C (N.D. Tex.) and addresses the identical issue raised in Texas.

B. Plaintiffs' lawsuits lack a Maine connection

Despite the Maine filing of the amended complaints, the Maine district court (and every other U.S. district court or state court) lacks personal jurisdiction over CP. Plaintiffs seek to recover damages that a derailment allegedly inflicted in Canada. But in the U.S., CP never moved the train that gives rise to this litigation. *See generally* Clements Aff.[3]

On July 5-6, 2013, the responsible railroad (Maine, Montreal and Atlantic Canada; MMAC) left crude-oil-laden tank cars unattended on that railroad's main line. *Roy*, amended complaint ¶ 120. After the air brakes released, the train rolled downhill and derailed in Lac Mégantic. *Id*. at ¶¶ 121–125. The tank cars ruptured, and the crude oil fueled a fire that allegedly killed, injured, damaged, and polluted. *Id.* The Quebec government brought criminal charges against several MMAC employees for their role in the disaster.

Plaintiffs assert that the crude oil[4] should not have been transported in DOT-111 tank cars because that packaging lacks crashworthiness. *Id.* ¶¶ 73, *et seq.* ("unsuitability of DOT-111 tanker cars to transport crude oil"). The amended complaints further maintain that defendants failed to properly classify the lading. *See id*. ¶¶ 64-72, 94-98. Western Petroleum Company (a subsidiary of defendant World Fuel), the shipper, loaded the tank cars and classified the oil in North Dakota. *Id.* ¶¶ 90-96, 249. At all relevant times, the World Fuel defendants owned the oil.

During the ill-fated journey, the train passed through Minnesota, Wisconsin, Illinois, Indiana, and Michigan without incident and not under CP's control. *Id.* ¶ 103; Clements Aff.

[3] This affidavit (Exh. C) was also filed and captioned in the related case *Samuel Audet v. Devlar Marketing, LLC*, 3:15 CV-2673-C (N.D. Tex.) and addresses the identical issue raised in Texas litigation.

[4] U.S. Hazardous Material Regulations formally designate this lading as "Petroleum Crude Oil," but the more common reference is simply crude oil, or oil.

CP first became involved after the train crossed the international border that separates Detroit, Michigan from Windsor, Ontario. *Id.* Before the wreck, CP interchanged the tank cars to MMAC near Montreal and thereafter had no control over or involvement with the train. Clements Aff. ¶ 8. Upon interchange, CP decoupled CP liveried locomotives from the tank cars. Thereafter, MMA employees and power conducted all train operations.

C. CP lacks a United States presence

CP has no meaningful contacts with the U.S. Plaintiffs recognize CP's Canadian domicile: CP "is a Canadian company, headquartered in Calgary, Alberta, Canada." *Roy*, amended complaint ¶ 6. The plaintiffs spuriously allege that CP has "corporate offices in Minneapolis, Minnesota, and operates its trains throughout Canada and the United States . . ." *Id.* In fact, CP does not operate, own tracks, or have an office in the U.S. Clements Aff. ¶¶ 3, 4, 6. Instead, subsidiaries of a Canadian parent—distinct from CP and not named in this lawsuit, but doing business as Canadian Pacific, CPR, and CP—railroad in the U.S. *Id.* ¶ 3; Exh. A at 4.

Similarly, no CP-U.S. conduct can be connected to the derailment. In Canada, CP performed every action related to the tank cars that ultimately went on the ground at Lac Mégantic. *See generally* amended complaint; Clements Aff. The CP crews are all Canadians who do not work in the United States—except for very limited border incursions to bring some trains, but not the derailed train, to U.S. crews. Clements Aff. ¶ 4; Exh. A at 11-12. Notably, the collective-bargaining agreements that govern CP-train-crew employment have no application to the U.S. employees of separate U.S. subsidiaries. *Id.* ¶ 5; Exh. A at 12. Simply put, CP is anything but "at home" in the U.S.

D. Plaintiffs' version of events[5]

The amended complaints assert that CP operates over 14,000 miles of track in the United States and Canada. *Roy*, amended complaint ¶ 184. On those tracks CP allegedly moved 72 DOT-111 tank cars from North Dakota to Quebec, where the cars were turned over to MMAC. *Id.* introduction and ¶ 118. MMAC together with "its parent the Montreal, Maine and Atlantic Railway, Inc." (MMA) maintain a rail system in Quebec, Maine, and Vermont. *Id.* ¶ 105.

While in MMAC's custody and on "its main track near the town of Nantes, Quebec," MMAC's one person crew left the train unattended. *Id.* ¶ 120. A fire later ignited on the lead locomotive. The Nantes fire department put out the blaze and powered down the locomotive. Shutting off the engine relieved air brake pressure and eventually caused an air brake failure. Because inadequate hand brakes had been set, the train careened downhill toward Lac Mégantic, gained speed, derailed, and exploded; the ensuing fire killed forty-seven persons and destroyed much of the town. *Id.* ¶ 121-26. Shortly thereafter, MMAC and MMA sought insolvency protection in Quebec and Maine. *See, e.g.*, *In re Montreal Maine & Atlantic, Ltd.*, Chapter 11 Docket No. 13-10670 (Bankr. D. Me.). Recently, Lac Mégantic victims (all Canadian residents)—presumably out of the statute of limitations concerns—amended the complaints to join CP and many other defendants in Maine and sued CP in other U.S. jurisdictions.

E. Maine claim against CP

Count V charges CP with negligence. *Roy*, amended complaint at ¶¶ 183-91. Plaintiffs accuse CP of two wrongs. First, according to plaintiffs, CP should have declined to carry

[5] Although CP challenges many allegations bearing on personal jurisdiction, which Rule 12(b)(2) allows, Rule 12(b)(6) calls for the complaint to be regarded as true, and therefore for federal preemption purposes, CP briefly reviews the averred facts.

Bakken Formation crude oil in DOT-111 tank cars. *Id.* ¶¶ 73-89, 187(d).[6] Second, plaintiffs charge that all defendants, including CP, should have accurately classified the crude oil, should have known that the oil was wrongly classified, and should have ensured proper classification. *Id.* ¶¶ 94-98, 187(a-c). No pleaded fact says how CP could have discovered the misclassification or could have insisted upon a proper classification.

Plaintiffs contend that lading volatility warranted a "Packing Group I," classification rather than the listed "Packing Group III." *Id.* ¶ 96, 187(c). Packing Group I warns of "high danger." *Id.* ¶ 68-70. In contrast, a Packing Group III denotes a comparatively "low danger." *Id.* Without explaining why, paragraph 187 of the amended complaints maintains that CP breached classification and packaging duties with which the U.S. regulations charge no railroad.

F. Plaintiffs ignore the regulations

The amended complaints fail to take the covering federal regulations into account. Without regard to the regulatory scheme, the amended complaints state that the "*party offering a hazardous material for shipment* has the duty, among others:"

> (i) to properly identify and classify all hazardous materials related to the shipment; (ii) to determine which hazard class or classes characterize the hazard(s) associated with the material; (iii) to assign each material to a packing group, if applicable; and (iv) to ensure that the hazardous material is transported in appropriate packaging.

Id. ¶ 64 (emphasis added).

Federal law makes "a person [who] offer[s] a hazardous material for transportation" responsible for those undertakings. 49 C.F.R. § 173.22 – "Shipper's responsibility." According to the amended complaints, "the shipper was Western Petroleum Company, a subsidiary of

[6] The regulations designate the cars into which a shipper loads lading as "packaging." *Id.* ¶¶ 73-89.

World Fuel, and the consignee was Irving." *Id.* ¶ 262; *see also* ¶ 90. As a common carrier, CP offered nothing for shipment and certainly offered nothing in the U.S.

The amended complaints also cite Canadian transportation of dangerous goods regulations that obligate *consignors* to accurately classify cargo. *Id.* ¶ 65. But defendants, other than CP, consigned the crude oil for transport. The amended complaints maintain that "the consignor must ensure that [the goods] have the correct classification before they are transported into Canada." *Id.* And if the consignor suspects a Packing Group error, then Western Petroleum "must not allow a carrier to take possession of the dangerous goods for transport until the classification has been verified or corrected." *Id.* By turning the cars over to CP, Western Petroleum represented that the crude oil had been correctly classified, and CP had no reason to suspect otherwise.

Another Canadian regulation states that a "carrier who 'notices an error in classification or has reasonable grounds to suspect an error in classification while the dangerous goods are in transport must advise the consignor and must stop transporting the dangerous goods until the consignor verifies or corrects the classification.'" *Id.* Assuming that a Canadian regulation could create a duty in the U.S. (contrary to controlling federal law), the amended complaints assert no facts suggesting that CP suspected a classification error. While overlooked by the amended complaints, U.S. regulations authorize the carrier to rely on shipper classifications. 49 C.F.R. § 171.2(f).

Argument

I. Personal jurisdiction

Plaintiffs struggle to connect CP with the U.S. But CP never handled the cars that derailed in the U.S., and except for sometimes crossing the border for short distances at specific locations, CP never enters the U.S. Exh. A at 22. Bringing trains, but not the subject train, just into the U.S. so U.S. employees of an independent U.S. corporation can safely take over certainly does not make CP "at home" in the U.S.

A. Plaintiffs' burden

Without personal jurisdiction, this Court cannot proceed against CP. "Judicial analysis of personal jurisdiction is a 'fact-sensitive inquiry.'" *Scott v. Jones*, 984 F. Supp. 37, 42 (D. Me. 1997) (quoting *Sawtelle v. Farrell*, 70 F.3d 1381, 1388 (1st Cir. 1995)). "On a motion to dismiss for lack of personal jurisdiction, pursuant to Rule 12(b)(2), 'the plaintiff ultimately bears the burden of persuading the court that jurisdiction exists.'" *Henderson v. Laser Spine Institute*, 815 F. Supp. 2d 353, 366 (D. Me. 2011) (quoting *Astro–Med, Inc. v. Nihon Kohden Am., Inc.*, 591 F.3d 1, 8 (1st Cir. 2009)).

First Circuit courts "have at their disposal 'a trio of standards, each corresponding to a level of analysis, that might usefully be employed when a trial court comes to grips with a motion to dismiss for want of personal jurisdiction.'" *Id.* (quoting *Foster–Miller, Inc. v. Babcock & Wilcox Can.*, 46 F.3d 138, 145 (1st Cir. 1995)). "Of these standards—prima facie, preponderance-of-the-evidence, and likelihood-of-existence-of-necessary-facts—the Court employs the prima facie evidence standard as it is the 'most conventional' and is 'a useful means of screening out cases in which personal jurisdiction is obviously lacking.'" *Id.*

> In conducting a *prima facie* analysis, the court is required to take specific facts affirmatively alleged by the plaintiff as true (whether or not disputed), construing them in the light most favorable to the

Attachment 15

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

_____

IN RE: LAC MÉGANTIC TRAIN DERAILMENT LITIGATION — CIVIL ACTION

Docket No: 1:16-1001-JDL

_____

Transcript of Proceedings

Pursuant to notice, the above-entitled matter came on for **Oral Argument** held before **THE HONORABLE JON D. LEVY,** United States District Court Judge, in the United States District Court, Edward T. Gignoux Courthouse, 156 Federal Street, Portland, Maine, on the 13th day of July 2016 at 10:06 a.m. as follows:

Appearances:

For the Plaintiffs: Jeffrey D. Sternklar, Esquire
Ted A. Meyers, Esquire
Jason C. Webster, Esquire

For the Defendants: Timothy Robert Thornton, Esquire
Aaron P. Burns, Esquire
Mark F. Rosenberg, Esquire

For the Movant: Robert J. Keach, Esquire
Lindsay K. Zahradka, Esquire

Lori D. Dunbar, RMR, CRR
Official Court Reporter

(Prepared from manual stenography and computer aided transcription)

MR. KEACH: It was directly contrary to the statement he just made.

THE COURT: Mr. Keach, please. Yes.

MR. THORNTON: I thought I was up.

THE COURT: Yeah, the document that we're debating is not part of the record of this proceeding and, therefore, we don't need to discuss it further. Go ahead.

MR. THORNTON: Well, I think I can be brief. First of all, the Court doesn't even need to decide this motion if it rules in our favor in any one of the four previous motions. The parties today seek to add our -- DM&E, D and H, Canadian Pacific Limited, and Soo Line, and they -- the allegations of a common enterprise is nothing but conclusory allegations. There's absolutely no facts whatsoever that would support that. If the Court lacks personal jurisdiction, it must dismiss the complaint without prejudice, and there is no basis for suggesting that the complaint can be amended. If the complaint is in the wrong place, the Court can't allow the amendments. The Fagan versus Deutsche Bank case regards that litigation in the wrong place is litigation in the wrong place, and you can't fix it by amending it.

THE COURT: In your view what would it have

taken to allege and survive under Iqbal Twombly the common enterprise assertion?

MR. THORNTON: They would have to have some factual basis that these parties were working in a common enterprise and there isn't any. They talk about the ownership structure, but the ownership structure doesn't have anything to with the movement of this train, the loading of this train, the selection of tank cars for this train. It's just purely conclusory allegations regarding the ownership structure. There isn't even any allegation in the complaint that Soo Line was the receiving railroad that handed it off to CP north of the border. That -- the most that Mr. Sternklar could point to is some conclusory allegations in Paragraph 2 about the ownership structure. The ownership structure does not at all relate to in concert conspiracy kind of allegations as it relates to this particular movement.

THE COURT: All right. Anything further on this point?

MR. THORNTON: The only thing I'd have is on the relation back theory, they clearly intended to sue CP, they clearly intended to pursue against CP, they haven't re -- dismissed CP, and there's no showing of any mistake here. There's got to be a mistake on the

Attachment 16

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Samuel Audet, et al.,	§	
	§	
Plaintiffs,	§	**Case No. 3:15-CV-02673-C**
	§	
v.	§	
	§	
Devlar Energy Marketing, LLC, et al.	§	
	§	
Defendants.	§	

Affidavit of James Clements

1. I am James Clements, V.P. of Strategic Planning and Transportation Services of Canadian Pacific Railway Company (CP). In that capacity I am knowledgeable about CP's corporate structure and operations.

2. CP is a Canadian Corporation with a principal place of business at 7550 Ogden Dale Rd. S.E. Calgary, Alberta Canada. CP is the railroad operating subsidiary of Canadian Pacific Railway Limited, which is also a Canadian Corporation.

3. CP conducts almost no business in the United States, and no business in Texas, relating to railroad operations. CP subsidiaries, which are separate corporations with separate and distinct board of directors, operate railroads in the United States. Those subsidiaries operating in the United States just do business as "CP" or "Canadian Pacific" but are not CP. Unlike CP, the rail operations conducted by the U.S. subsidiaries are regulated by agencies of the U.S. federal government – e.g. the Surface Transportation Board and the Federal Railroad Administration. No CP subsidiary has operations in Texas.

4. CP Canadian crews do not run trains in the U.S., except for limited operations allowed by the Federal Railroad Administration for the safe movement of trains across the border between Canada and the U.S. to where CP crews dismount and turn the train over to crews employed by a U.S. subsidiary. Generally the extent of those limited operations is restricted to 10 miles or less from the Canada and U.S. Border. These limited operations never occur in Texas.

5. The collective-bargaining agreements for CP employees do not govern labor relations in the U.S. and therefore do not involve labor relations in Texas.

6. CP does not own right-of-way property in Texas or the U.S. Instead, U.S. subsidiaries hold title to any U.S. real estate, but neither CP nor any of its subsidiaries holds title to real estate in Texas.

7. CP does not transact business in Texas: no advertising or marketing directed at Texas, no mailing address, no in-state telephone number, no Texas bank accounts, no contracts performable by CP in the state, no local agent for service of process, and no records or physical location in Texas.

8. CP did not begin to operate the train that was interchanged with Montreal, Maine and Atlantic Railroad near Montreal and that ultimately derailed at Lac Mégantic until the train crossed the border into Canada. At no time did CP operate the train in Texas.

Subscribed and sworn to before me
This 20th day of August, 2015.

James Clements

Notary Public

CASSANDRA P. QUACH
Barrister and Solicitor

CASSANDRA P. QUACH NOTARY PUBLIC PROVINCE OF ALBERTA

Attachment 17

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

IN RE: LAC MEGÁNTIC TRAIN DERAILMENT LITIGATION	)	**1:16-cv-01001-JDL**

ORDER ON CANADIAN PACIFIC RAILWAY COMPANY'S AMENDED MOTION TO DISMISS

In July of 2013, a freight train operated by the Montreal Maine & Atlantic Railway, Ltd. ("MMA"), including its 72 carloads of crude oil, derailed in the town of Lac-Megántic, Quebec, leading to a series of explosions that destroyed part of the downtown area and killed 47 people. The next month, MMA filed a chapter 11 Bankruptcy proceeding in this District and simultaneously sought similar protection in Canada. The derailment also spawned litigation in both Illinois and Texas, with multiple plaintiffs (the "Plaintiffs") asserting claims for negligence and wrongful death against a multitude of defendants, all but one of whom, Canadian Pacific Railway Company ("CP"), have since settled.

The cases which comprised the Illinois and Texas litigation are all now before this court, having been ordered transferred to the District of Maine by me pursuant to the authority established in 28 U.S.C. § 157(b)(5). Two cases that were originally filed in the Circuit Court of Cook County, Illinois, *Roy v. Western Petroleum Co., et al.,* 1:14-cv-00113, and *Grimard v. Rail World, Inc., et al.,* 1:15-cv-00250, were removed to the U.S. District Court for the Northern District of Illinois before being transferred to the District of Maine in 2014. Another 35 cases followed the same

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trajectory from the Circuit Court of Cook County to the Northern District of Illinois before being transferred to the District of Maine in 2016,[1] along with two cases from the U.S. District Court for the Northern District of Texas. *See Audet, et al. v. Devlar Energy Marketing, LLC, et al.,* 1:16-cv-00105-JDL; *Boulanger, et al. v. Arrow Midstream Holdings, LLC, et al.,* 1:16-cv-00106-JDL. All 39 cases were eventually consolidated into the instant case in April 2016. *See* ECF No. 1.[2]

In December 2015, CP filed an Amended Motion to Dismiss the claims brought by the Plaintiffs in *Roy* and *Grimard*. 1:14-cv-00113, ECF No. 244; 1:15-cv-00250, ECF No. 79. CP's Amended Motion to Dismiss, along with the *Roy* and *Grimard* plaintiffs' response and CP's reply, were subsequently deemed filed in the

[1] *See Pepin v. Canadian Pacific Railway Company,* 1:16-cv-00120-JDL; *LaFontaine v. Canadian Pacific Railway Company,* 1:16-cv-00121-JDL; *Couture v, Canadian Pacific Railway Company,* 1:16-cv-00122; *Sevigny v. Canadian Pacific Railway Company,* 1:16-cv-00123-JDL; *Boulet v. Rail World, Inc.,* 1:16-cv-00124-JDL; *Cameron v. Rail World, Inc.,* 1:16-cv-00125-JDL; *Bolduc v. Canadian Pacific Railway Comany,* 1:16-cv-00126-JDL; *Bedard v. Rail World, Inc.,* 1:16-cv-00127-JDL; *Ratsch v. Rail World, Inc.,* 1:16-cv-00128-JDL; *Dube v. Canadian Pacific Railway Company,* 1:16-cv-00129-JDL; *Belanger v. Canadian Pacific Railway Company,* 1:16-cv-00130-JDL; *Gaboury v. Canadian Pacific Railway Company,* 1:16-cv-00131-JDL; *Begnoche v. Canadian Pacific Railway Company,* 1:16-cv-00132-JDL; *LaPierre v. Canadian Pacific Railway Company,* 1:16-cv-00133-JDL; *Bolduc v. Canadian Pacific Railway Company,* 1:16-cv-00134-JDL; *Faucher v. Rail World, Inc.,* 1:16-cv-00135-JDL; *Paquet v. Canadian Pacific Railway Company,* 1:16-cv-00136-JDL; *Martin v. Rail World, Inc.,* 1:16-cv-00137-JDL; *Turcotte v. Canadian Pacific Railway Company,* 1:16-cv-00138-JDL; *Belanger v. Canadian Pacific Railway Company,* 1:16-cv-00139-JDL; *Roy v. Canadian Pacific Railway Company,* 1:16-cv-00140-JDL; *Boulet v. Canadian Pacific Railway Company*, 1:16-cv-00141-JDL; *Dubois-Couture v. Canadian Pacific Railway Company*, 1:16-cv-00142-JDL; *Rodrigue v. Canadian Pacific Railway Company,* 1:16-cv-00143-JDL; *Begnoche v. Canadian Pacific Railway Company,* 1:16-cv-00144-JDL; *Dumas-Chaput v. Canadian Pacific Railway Company,* 1:16-cv-00145-JDL; *Dubois v. Rail World, Inc.,* 1:16-cv-00146-JDL; *Mercier v. Canadian Pacific Railway Company,* 1:16-cv-00147-JDL; *Picard v. Rail World, Inc.,* 1:16-cv-00148-JDL; *LaPoint v. Rail World, Inc.,* 1:16-cv-00149-JDL; *Champagne v. Canadian Pacific Railway Company,* 1:16-cv-00150-JDL; *Begnoche v. Canadian Pacific Railway Company,* 1:16-cv-00151-JDL; *Boulanger v. Rail World, Inc.,* 1:16-cv-00153; *Proteau v. Canadian Pacific Railway Company,* 1:16-cv-00154-JDL; *Veilleux v. Canadian Pacific Railway Company,* 1:16-cv-00156-JDL.

[2] All citations to the docket reference documents filed in case number 1:16-cv-01001-JDL unless otherwise indicated.

consolidated case and deemed applicable to all the Plaintiffs by agreement of all of the parties. ECF No. 1 at 2.

Oral argument on the Amended Motion to Dismiss took place on July 13, 2016. In addition to the Plaintiffs and CP, Robert J. Keach, the Estate Representative for the Postconfirmation MMA Estate, made a provisional appearance at the hearing subject to the court's ruling on his Motion to Intervene (ECF No. 10). I have denied the Motion to Intervene by a separate order.

CP raises four bases for dismissal: (1) lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2); (2) insufficient service of process pursuant to Federal Rule of Civil Procedure 12(b)(5); (3) the doctrine of *forum non conveniens*; and (4) federal preemption. For the reasons explained below, the Amended Motion to Dismiss is granted.

I. LACK OF PERSONAL JURISDICTION

CP contends that no United States court has jurisdiction over it because it owns no tracks in the U.S.; it is not incorporated in the U.S.; and it does not operate in the U.S., with the limited exception of bringing some trains a short distance over the U.S.-Canadian border to hand off the train to the U.S. employees of its U.S. affiliate. ECF No. 2 at 2. CP also asserts that these facts, combined with what it asserts is the lack of any U.S.-based causation to the accident in Lac Megántic, require dismissal of the Amended Complaint for lack of personal jurisdiction. *Id.*

A. Burden of Production

The plaintiff has the burden of establishing personal jurisdiction over a defendant. *Boit v. Gar-Tec Prods., Inc.,* 967 F.2d 671, 674-75 (1st Cir. 1992) (citation

omitted). When a defendant files a motion to dismiss for want of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2), "a district court may choose from among several methods for determining whether the plaintiff has met its burden." *Baskin-Robbins Franchising LLC v. Alpenrose Dairy, Inc.,* 2016 WL 3147645, at *3, --- F.3d --- (1st Cir. 2016) (quoting *Adelson v. Hananel,* 510 F.3d 43, 48 (1st Cir. 2007) (internal quotation marks omitted); *Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A.,* 290 F.3d 42, 50-51 (1st Cir. 2002)). The "most conventional" of these methods is the *prima facie* method, which "permits the district court to consider only whether the plaintiff has proffered evidence that, if credited, is enough to support findings of all facts essential to personal jurisdiction." *Foster–Miller Inc. v. Babcock & Wilcox Canada,* 46 F.3d 138, 145 (1st Cir. 1995) (quoting *Boit,* 967 F.2d at 675) (internal quotation marks omitted). "The *prima facie* showing of personal jurisdiction must be based on evidence of specific facts set forth in the record," *Boit,* 967 F.2d at 675, and requires the plaintiff to "go beyond the pleadings and make affirmative proof[,]" *United States v. Swiss American Bank, Ltd.,* 274 F.3d 610, 619 (1st Cir. 2001) (quoting *United Elec. Radio & Mach. Workers of Am. v. 163 Pleasant St. Corp.,* 987 F.2d 39, 44 (1st Cir. 1993); *see also Foster-Miller,* 46 F.3d at 145 ("To make a prima facie showing of this calibre, the plaintiff ordinarily cannot rest upon the pleadings, but is obliged to adduce evidence of specific facts.").[3]

[3] In its recent opinion in *Baskin-Robbins,* 2016 WL 3147645, at *3, for example, the First Circuit analyzed the plaintiff's *prima facie* showing of personal jurisdiction by examining documents outside of the complaint, including letters in the record between the parties, franchise renewal notices sent by the defendant to the plaintiff, and certain contract documents. *Id.* at *4-*6; *see also Boit,* 967 F.2d at 675; *Swiss American Bank,* 274 F.3d at 619; and *Foster-Miller,* 46 F.3d at 145.

B. Fifth Amendment Due Process

There is no dispute that personal jurisdiction in this case is governed by the Due Process Clause of the Fifth Amendment because the court's alleged subject matter jurisdiction derives from a federal statute, 28 U.S.C.A. § 1452(a) (2016), insofar as it is "related to" the MMA bankruptcy. *Swiss Am. Bank,* 274 F.3d at 618; *see also Auburn Mfg., Inc. v. Steiner Industries,* 493 F. Supp. 2d 123, 127 (D. Me. 2007). "[U]nder the Fifth Amendment, a plaintiff need only show that the defendant has adequate contacts in the United States as a whole, rather than with a particular state." *Swiss Am. Bank,* 274 F.3d at 618 (citing *United Elec., Radio & Mach. Workers,* 960 F.2d at 1085).

C. General and Specific Personal Jurisdiction

Ever since the Supreme Court's opinion in *International Shoe Co. v. State of Washington,* 326 U.S. 310 (1945), courts have divided the personal jurisidiction analysis into two parts: "general" and "specific" personal jurisdiction. *Donatelli v. Nat'l Hockey League,* 893 F.2d 459, 462-63 (1st Cir. 1990) (citing *Int'l Shoe,* 326 U.S. 310). General jurisdiction exists when the defendant has engaged in "continuous and systematic activity" in the forum. *Harlow v. Children's Hosp.,* 432 F.3d 50, 64 (1st Cir. 2005). Specific jurisdiction exists when "the cause of action . . . arises directly out of, or is related to, the defendant's forum-based contacts." *Id.* at 60-61. For both categories of personal jurisdiction, the defendant must have sufficient "minimum contacts" with the forum; those contacts must be purposeful; and the exercise of jurisdiction must be reasonable under the circumstances. *Id.* at 57. *See also Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

1. General Personal Jurisdiction

A court may exercise general personal jurisdiction over a foreign corporation "only when the corporation's affiliations with the State in which suit is brought are so constant and pervasive as to render it essentially at home in the forum State." *Daimler AG v. Bauman,* 134 S.Ct. 746, 751 (2014) (quotation omitted).[4] "[I]f such contacts do not exist in sufficient abundance, the general jurisdiction inquiry ends." *In re New Motor Vehicles Canadian Export,* 307 F. Supp. 2d 145, 150 (D. Me. 2004) (citing *Donatelli,* 893 F.2d at 465).

The Amended Complaint alleges that CP is a "Canadian company, headquartered in Calgary, Alberta, Canada, with corporate offices in Minneapolis, Minnesota, and [which] operates trains throughout Canada and the United States[.]" Case No. 1:14-00113, ECF No. 182 at 5, ¶ 6.[5] The Amended Complaint also alleges that CP is a "transportation, logistics, and management company which maintains over 14,000 miles of track extending throughout Canada and into the U.S. industrial centers of Chicago, Newark, Philadelphia, Washington, New York City, and Buffalo." *Id.* at 38, ¶ 184.

CP argues in its Motion to Dismiss that none of these pleaded facts render it "at home" in the United States. ECF No. 2 at 13. It notes that while the Amended

[4] The question presented in *Daimler AG* concerned the exercise of personal jurisdiction under the Due Process Clause of the Fourteenth Amendment, and therefore the contacts and affiliations being analyzed were with an individual state (California). *See Daimler AG,* 134 S. Ct. 746. Where, as here, the case concerns the proposed exercise of personal jurisdiction under the Due Process Clause of the Fifth Amendment, the contacts and affiliations under analysis are with the United States generally. *In re New Motor Vehicles Canadian Export,* 307 F. Supp. 2d 145, 150 (D. Me. 2004).

[5] The Amended Complaint is also found at case number 1:15-cv-00250-JDL, ECF No. 1 and in case numbers 1:16-cv-00120-JDL through 1:16-cv-00151-JDL, 1:16-cv-00153-JDL, and 1:16-cv-00154-JDL. The docket entry in each of these cases is ECF No. 1-2.

Complaint correctly alleges that it is a Canadian company that is headquartered in Canada, "[a]llegations about CP having corporate offices in Minnesota, and operating trains throughout the United States, including the State of Illinois are simply false." *Id.* (quotation marks omitted). CP also submitted the Affidavit of James Clements, its Vice President of Planning and Transportation Services, who states under oath that CP is the operating subsidiary of Canadian Pacific Railway Limited, which is also a Canadian corporation, and that "CP conducts almost no business in the United States." ECF No. 2-3 at 1. Clements states that CP train crews do not operate trains in the United States, "except for limited operations . . . where CP crews dismount and turn the train over to crews employed by a U.S. subsidiary." *Id.* at 2.

In opposing CP's motion to dismiss, the Plaintiffs contend that the allegations contained in the Amended Complaint properly encompass the activities of both CP and its U.S. affiliates. ECF No. 2-11 at 3-4. They also accuse CP of engaging in a "shell game of identifying its affiliates as 'doing business as CP.'" *Id.* at 3. Yet the Plaintiffs do not dispute the Clements Affidavit, nor offer evidence or legal authority to explain how the fact that CP and its affiliates do business under the same trade name is improper or renders CP "at home" in the United States. *See* ECF No. 2-11.

The Plaintiffs' have fallen short of what is required to make a prima facie showing of general personal jurisdiction because they have failed to "adduce evidence of specific facts" and instead have simply rested upon the pleadings. *Foster-Miller,* 46 F.3d at 145; *Swiss American Bank,* 274 F.3d at 619; *Boit,* 967 F.2d at 675. The undisputed record evidence establishes that CP is a Canadian corporation without continuous and systematic activity in the United States. The undisputed record

evidence establishes that CP is a Canadian corporation without continuous and systematic activity in the United States. *Cf. Waldman v. Palestine Liberation Org.*, --- F.3d ----, 2016 WL 4537369, at *12 (2d Cir. Aug. 31, 2016) (Record evidence demonstrated that defendants were not "at home" in the United States, where they were directed from and headquartered abroad). For this reason, I conclude that the Plaintiffs have not met the constitutional threshold for the court to exercise general personal jurisdiction over CP.

2. Specific Personal Jurisdiction

Specific jurisdiction allows a court to hear a particular case as long as "that case relates sufficiently to, or arises from, a significant subset of contacts between the defendant and the forum." *Phillips Exeter Acad. v. Howard Phillips Fund, Inc.*, 196 F.3d 284, 288 (1st Cir. 1999) (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall,* 466 U.S. 408, 414 (1984)). To determine whether specific jurisdiction exists in a given case, the court first must determine whether the claim at issue in the litigation "directly relates to or arises out of the defendant's contacts with the forum[,]" and if so, "whether those contacts constitute purposeful availment of the benefits and protections afforded by the forum's laws." *Swiss Am. Bank,* 274 F.3d 610, 620-21 (1st Cir. 2001) (quoting *Phillips Exeter*, 196 F.3d at 288). If these two requirements are met, the court must then determine whether the exercise of specific jurisdiction would be reasonable "in light of a variety of pertinent factors that touch upon the fundamental fairness of an exercise of jurisdiction." *Id.* at 621.

As *prima facie* support for CP's contacts with the United States, the Plaintiffs point to the undisputed fact that the train that derailed in Lac Megántic travelled

from North Dakota and through Illinois and other states before entering Canada. ECF No. 2-11 at 21. The Plaintiffs also cite the following statement that CP made before the Bankruptcy Court, in which it admitted that its U.S. subsidiaries operated the train: "CP subsidiaries, doing business as Canadian Pacific or Canadian Pacific Railway, conduct U.S. operations, including movement of the train that ultimately derailed from North Dakota to the Canadian border." *Id.* (citing *Keach v. World Fuel Svcs. Corp.* (the "Adversary Proceeding"), Bankr. Case No. 14-01001; CP's Motion to Dismiss the Adversary Proceeding, ECF No. 140-1 at 4). Neither this statement nor the undisputed fact that the train passed through several U.S. states constitutes evidence that CP, as opposed to its subsidiaries, did or failed to do anything on U.S. soil, and thus, neither supports the Plaintiffs' *prima facie* argument that CP had sufficient U.S. contacts for specific jurisdiction to exist. In fact, CP's statement tends to weaken the Plaintiffs' argument because it asserts that it was CP's U.S. subsidiaries, and not CP, that operated the train in the United States. *See* Adversary Proceeding, Bankr. Case No. 14-1001, ECF No. 140 at 4.

Finally, the Plaintiffs cite their allegation that CP "mislabeled the oil in the train or failed to take appropriate action in the United States to prevent the oil from exploding in the subsequent derailment[.]" ECF No. 2-11 at 21.[6] For the same reasons discussed above, this allegation in the Amended Complaint, standing alone, does not support specific jurisdiction because, under the *prima facie* method, a plaintiff opposing a motion to dismiss for want of personal jurisdiction must "go

[6] Although the plaintiffs did not provide a record citation for this allegation, it appears in the Amended Complaint in case no. 1:14-cv-113; ECF No. 182 at 40.

beyond the pleadings and make affirmative proof." *Swiss American Bank,* 274 F.3d at 619; *Boit,* 967 F.2d at 675; *see also Foster-Miller,* 46 F.3d at 145. For this reason, I conclude that the Plaintiffs have not met their burden of production for establishing specific personal jurisdiction.

3. Existence of Personal Jurisdiction in the Bankruptcy Court

The Plaintiffs also argue that CP is subject to either or both general and specific jurisdiction in this case because the Bankruptcy Court "considered, and rejected" CP's personal jurisdiction arguments and ruled that CP was amenable to the exercise of personal jurisdiction in the Adversary Proceeding. ECF No. 2-11 at 20 (citing the Adversary Proceeding, Bankr. Case No. 14-01001, ECF No. 152; ECF No. 154). The Plaintiffs contend that because the Bankruptcy Court is a unit of the District Court pursuant to 28 U.S.C.A. § 151 (2016), the Bankruptcy Court's finding applies in this case "for the same reasons, and to the same extent[.]" *Id.*[7]

CP concedes that personal jurisdiction was found to exist in the Adversary Proceeding, but maintains that the Bankruptcy Court never "considered and rejected" its personal jurisdiction arguments. ECF No. 2-15 at 2-3. CP also argues that the Bankrutpcy Court's analysis did not rely upon CP's alleged contacts with the United States. ECF No. 2-13 at 14. Instead, CP contends that the Bankruptcy Court ruled that it effectively consented to personal jurisdiction by participating in the Adversary Proceeding. ECF No. 2-15 at 3 (citing the Adversary Proceeding, Bankr. Case No. 14-1001, ECF No. 162 at 32-33). Consent to jurisdiction in one proceeding, CP argues,

[7] I note that the Plaintiffs do not cite any legal authority in support of this argument. *See id.*

does not waive the right to assert lack of personal jurisdiction in another case. *Id.* (citing *Akanani v. Aegis Defense Servs., LLC,* 976 F. Supp. 2d 13, 37 n.10 (D.D.C. 2014)).

The Bankruptcy Court's personal jurisdiction determination in the Adversary Proceeding is not controlling in this case because the Bankruptcy Court concluded that specific jurisdiction existed based on CP having filed a proof of claim. Adversary Proceeding, Bankr. Case No. 14-1001, ECF No. 162 at 32. The Bankruptcy Court's order made no mention of the contacts alleged by the Plaintiffs in this case, i.e., that CP operates a railroad network throughout the United States and mislabeled the oil on board the train or otherwise failed to take appropriate action in the United States to prevent the oil from exploding. *See id.* Furthermore, the Plaintiffs do not argue that CP's consent to jurisdiction in the Adversary Proceeding was a knowing and intelligent agreement to personal jurisdiction in this case, and they have not identified how such a conclusion should be implied by operation of law. *See* ECF No. 2-11.

4. Judicial Estoppel

The Plaintiffs also raise the doctrine of judicial estoppel as a basis for finding personal jurisdiction in this case.

CP filed an Objection to the Trustee's July 15, 2015, Plan of Liquidation (the "Confirmation Objection") in the MMA Bankruptcy, Bankr. Case No. 13-10670, ECF No. 1657, in which it argued that the proposed liquidation plan would "forcibly depriv[e] CP of the contractual indemnity and setoff rights" owed to it by Western

Petroleum Company ("WPC"). *Id.* at 18, ¶ 47. As part of this argument, CP claimed that:

> A U.S. rail carrier can only be held to the duties prescribed by U.S. railroad laws and regulations, and U.S. hazardous materials regulations. Beyond those federally dictated obligations CP Tariff 8, Item 20 made WPC responsible for classifying the oil and selecting the packaging. CP is therefore entitled to indemnification from WPC.

Id.

The Plaintiffs contend that by claiming entitlement to indemnification from WPC based upon U.S. railroad and hazardous materials laws and regulations, CP effectively conceded that it is a U.S. rail carrier. *See* ECF No. 2-11 at 22. As a consequence of having adopted this position, the Plaintiffs contend, CP was provided with "generous benefits in the form of negotiated 'proportionate judgment reduction' provisions that are incorporated into section 10.10 of the [C]onfirmation [O]rder." *Id.* (citing Bankr. Case No. 13-10670, ECF No. 1801 at 112-116).[8] The Plaintiffs claim that "CP is playing 'fast and loose' with this Court by arguing one position before the Bankruptcy Court in its Confirmation Objection, and arguing the exact opposite position here[,]" and urges that, pursuant to the doctrine of judicial estoppel, CP be barred from arguing a lack of personal jurisdiction based on the fact that CP's U.S. affiliate was the operator of the train. ECF No. 2-11 at 22-23.

[8] The document referred to by the Plaintiffs as the "Confirmation Order" is the Bankruptcy Court's Order Confirming Trustee's Revised First Amended Plan of Liquidation dated July 15, 2015 and Authorizing and Directing Certain Actions in Connection Therewith, Bankr. Case No. 13-10670, ECF No. 1801. Elsewhere in their Response to CP's Amended Motion to Dismiss (ECF No. 2-11), the Plaintiffs refer to the same document as the "Confirmation Plan." ECF No. 2-11 at 2 & n.2. For the sake of consistency, I refer to the document throughout this order as the "Confirmation Plan").

In *New Hampshire v. Maine,* the Supreme Court noted that, among the factors which "typically inform the decision whether to apply the doctrine [of judicial estoppel] in a particular case[,]" is whether the party taking an inconsistent position has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of the inconsistent position in a later proceeding would create "the perception that either the first or the second court was misled[.]"[9] [10] 532 U.S. 742, 750-51 (2001) (citing *Edwards v. Aetna Life Ins. Co.,* 690 F.2d 595, 599 (6th Cir. 1982). "Absent success in a prior proceeding, the party's later inconsistent position introduces no 'risk of inconsistent court determinations[.]'" *Id.* at 750-51 (quoting *United States v. C.I.T. Constr., Inc.,* 944 F.2d 253, 259 (5th Cir. 1991)).

The crux of CP's Confirmation Objection was that it was entitled to indemnification from WPC. Bankr. Case No. 13-10670, ECF No. 1657 at 18, ¶ 47. Section 10.10 of the Confirmation Plan ("Barred Persons and Barred Claims"), however, specifically bars CP from seeking indemnification from any of the released parties:

> [A]ny . . . Persons that hold, have held, or may hold a Claim . . . including, without limitation, Canadian Pacific Railway Company and any parent, affiliate or subsidiary thereof . . . are hereby permanently barred, enjoined, and restrained from commencing . . . in this Court, [or] in any federal or state court . . .any Claim . . . or Cause of Action against any of the Released Parties, including, without limitation, any personal injury,

[9] The other two factors are (1) whether a party's later position is "clearly inconsistent" with its earlier position, and (2) "whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped." *New Hampshire,* 532 U.S. at 750-51 (citations omitted).

[10] The Court also noted that there are no "inflexible prerequisites" and no exhaustive formula for determining when judicial estoppel applies. *Id.* at 750.

> property damage, wrongful death, ***indemnity***, contribution, reimbursement or subrogation claim . . . .

Bankr. Case No. 13-10670; ECF No. 1801 at 113 (emphasis added).

Accordingly, the Confirmation Plan forecloses an indemnity claim by CP against a released party such as WPC. *Id.* Assuming that CP's position before the Bankruptcy Court is actually inconsistent with its personal jurisdiction argument in this case, the former position was unsuccessful and, therefore, there is no "risk of inconsistent court determinations." *New Hampshire,* 532 U.S. at 750-51. Thus, judicial estoppel does not apply.

5. Conclusion Regarding Personal Jurisdiction

For the reasons discussed above, I conclude that the Plaintiffs have not met their burden of establishing personal jurisdiction over CP. With respect to general personal jurisdiction, the Plaintiffs failed to produce *prima facie* evidence showing that CP has engaged in continuous and systematic activity in the United States. With respect to specific personal jurisdiction, the Plaintiffs failed to produce *prima facie* evidence showing that CP had "a significant subset of contacts" with the United States which would constitute a purposeful availment of the benefits and protections afforded by American law. *See Phillips Exeter Acad.,* 196 F.3d at 288; *Swiss Am. Bank,* 274 F.3d 610. With respect to the Bankruptcy Court's ruling that CP was amenable to personal jurisdiction in the Adversary Proceeding, that ruling is not controlling in this case because it contains no discussion of CP's contacts with the United States and, instead, is based upon CP having filed a proof of claim. There is no suggestion that CP's proof of claim was a knowing and intelligent agreement to personal jurisdiction in this case. Finally, with respect to judicial estoppel, CP's

claimed entitlement to indemnification from WPC in the MMA Bankruptcy case was ultimately unsuccessful, and thus there is no risk of inconsistent court decisions.

II. INSUFFICIENT SERVICE OF PROCESS

CP also moves for dismissal due to insufficient service of process pursuant to Federal Rule of Civil Procedure 12(b)(5), and argues that although the Plaintiffs delivered a summons and copy of the Amended Complaint to CT Corporation in Chicago, Illinois, CP does not transact business in Illinois and never authorized CT Corporation or any other agent in Illinois to accept service on its behalf. ECF No. 2 at 17-18 (citing ECF No. 2-2 at 1, ¶¶ 3, 4). CP makes the same argument with regard to the Plaintiffs' subsequent delivery of a summons and copy of the Amended Complaint to CT Corporation in New York. *Id.* at 18. CP claims that CT Corporation in New York is only authorized to accept service for actions involving securities or debt offerings, neither of which are at issue in this case. *Id.* (citing ECF No. 2-2 at 1-2, ¶ 4). Therefore, CP contends, no authorized agent received process and service was not effected. *Id.*

Prior to the transfer and consolidation of claims against CP, thirty-eight amended complaints were filed in Illinois, Texas, and the District of Maine between June 23, 2015, and August 21, 2015.[11] CP filed motions to dismiss each of these amended complaints between August 21, 2015, and December 17, 2015,[12] arguing

[11] Although there were thirty-nine cases in total, no amended complaint was filed in *Boulanger,* 1:16-cv-00106-JDL.

[12] In Texas, CP filed a motion to dismiss the original complaint in *Boulanger,* 1:16-cv-00106-JDL, ECF No. 9, on Setpember 24, 2015. CP also filed a motion to dismiss the amended complaint in *Audet* on August 21, 2015, 1:16-cv-00105-JDL, ECF No. 9

among other things that service of process was insufficient. Therefore, the Plaintiffs had reason to believe as early as August 21, 2015, but no later than December 17, 2015, that the service of the Amended Complaint was deficient. However, it was not until the July 13, 2016, hearing that the Plaintiffs suggested that they should be permitted more time to complete service of process, after first conceding that service was insufficient. ECF No. 25 at 39:10-17.

As of the date of this Order, the Plaintiffs still have not filed proof of service upon CP in Canada or notified the court that service has been effected. Instead, the Plaintiffs argue that dismissal based upon insufficient service of process is inappropriate because the time limit for service of process has not yet run. *Id.* at 38-39. The Plaintiffs cite Federal Rule of Civil Procedure 4(m), which sets a 90-day time limit within which to effectuate service of process, but which they argue does not apply in this case because Rule 4(m) does not apply to service in a foreign country, which would be necessary to serve a Canadian company such as CP.[13] *Id.* at 38:12-20.

In Illinois, CP filed thirty-five motions to dismiss the amended complaints before the Cook County, Illinois, Circuit Court on October 7 and 8, 2015. *See Pepin,* 1:16-cv-00120-JDL; *LaFontaine,* 1:16-cv-00121-JDL; *Sevigny,* 1:16-cv-00123-JDL; *Boulet,* 1:16-cv-00124-JDL; *Bolduc,* 1:16-cv-00126-JDL; *Turcotte,* 1:16-cv-00138-JDL; *Boulet*, 1:16-cv-00141-JDL; *Rodrigue,* 1:16-cv-00143-JDL; *LaPoint,* 1:16-cv-00149-JDL; *Ratsch,* 1:16-cv-00128-JDL; *Dube,* 1:16-cv-00129-JDL; *Belanger,* 1:16-cv-00130-JDL; *Gaboury,* 1:16-cv-00131-JDL; *Belanger,* 1:16-cv-00139-JDL; *Picard,* 1:16-cv-00148-JDL; *Couture,* 1:16-cv-00122-JDL; *Cameron,* 1:16-cv-00125-JDL; *Bedard,* 1:16-cv-00127-JDL; *Begnoche,* 1:16-cv-00132-JDL; *Bolduc,* 1:16-cv-00132-JDL; *Faucher,* 1:16-cv-00135-JDL; *Paquet,* 1:16-cv-00136-JDL; *Martin,* 1:16-cv-00137-JDL; *Roy,* 1:16-cv-00140-JDL; *Dubois-Couture*, 1:16-cv-00142-JDL; *Begnoche,* 1:16-cv-00144-JDL; *Dumas-Chaput,* 1:16-cv-00146-JDL; *Poulan Dubois,* 1:16-cv-00146-JDL; *Champagne,* 1:16-cv-00150-JDL; *Begnoche,* 1:16-cv-00151-JDL; *Boulanger,* 1:16-cv-00153; *Proteau,* 1:16-cv-00154-JDL; *Veilleux,* 1:16-cv-00156-JDL.

[13] Prior to December 1, 2015, a plaintiff had 120 days within which to effectuate service pursuant to Federal Rule of Civil Procedure 4(m). Fed. R. Civ. P. 4(m) (2015 Revised ed.). The amended rule now requires service within 90 days, and states as follows:

Although the Plaintiffs' interpretation of Rule 4(m) is correct, they did not present it in their response to CP's Amended Motion to Dismiss, *see* ECF No. 2-11, and instead, as noted above, raised it for the first time at the July 13 hearing. Pursuant to Local Rule 7(b), the Plaintiffs were obliged and failed to assert their Rule 4(m) argument within 21 days after the Amended Motion to Dismiss was filed. LR 7(b). But even if the Plaintiffs had timely raised this issue, they have failed to present any evidence that they have taken steps in the approximately nine months since CP first filed its Amended Motion to Dismiss[14] to effectuate service under Rule 4(f), which governs service of an individual in a foreign country,[15] or under Rule 4(h)(2), which

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> **(m) Time Limit for Service.** If a defendant is not served within 90 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1).

[14] CP's Amended Motion to Dismiss was filed on December 17, 2015, in Case No. 1:14-cv-00114 (ECF No. 244) and Case No. 1:15-cv-00250 (ECF No. 79).

[15] Federal Rule of Civil Procedure 4(f) states as follows:

> **(f) Serving an Individual in a Foreign Country.** Unless federal law provides otherwise, an individual--other than a minor, an incompetent person, or a person whose waiver has been filed--may be served at a place not within any judicial district of the United States:
>
> **(1)** by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;
>
> **(2)** if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:
>
> **(A)** as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;
>
> **(B)** as the foreign authority directs in response to a letter rogatory or letter of request; or
>
> **(C)** unless prohibited by the foreign country's law, by:
>
> **(i)** delivering a copy of the summons and of the complaint to the individual personally; or
>
> **(ii)** using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

governs service upon a corporation "at a place not within any judicial district of the United States[.]" Fed. R. Civ. P. 4(h)(2).[16] The Plaintiffs have not provided any justification for their failure to effectuate service upon CP in Canada pursuant to either Rule 4(f) or Rule 4(h)(2). *See Freedom Watch, Inc. v. Org. of the Petroleum Exp. Countries,* 766 F.3d 74, 78 (D.C. Cir. 2014) ("If a defendant challenges the validity of service of process, the plaintiff bears the burden to demonstrate that the procedure employed to deliver the papers satisfies the requirements of the relevant portions of Rule 4.") (citation and quotation marks omitted). I therefore conclude that dismissal of the Amended Complaint without prejudice is appropriate due to insufficient service of process.

III. *FORUM NON CONVENIENS*

The doctrine of *forum non conveniens* permits discretionary dismissals on a case-by-case basis, "where an alternative forum is available in another nation which is fair to the parties and substantially more convenient for them or the courts." *Mercier v. Sheraton Intern., Inc.,* 981 F.2d 1345, 1349 (1st Cir. 1992) (*"Mercier II"*) (citing *Howe v. Goldcorp Invest., Ltd.,* 946 F.2d 944, 947 (1st Cir. 1991); *Royal Bed & Spring Co. v. Famossul Industria E Comercio de Moveis Ltda.,* 906 F.2d 45, 47 (1st Cir. 1990)). There is a strong presumption in favor of the plaintiff's forum choice, and

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(3) by other means not prohibited by international agreement, as the court orders.

[16] Federal Rule of Civil Procedure 4(h)(2) states as follows:

> **(h) Serving a Corporation, Partnership, or Association.** Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served . . . **(2)** at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).

the defendant bears the burden of proving both (1) the availability of an adequate alternative forum and (2) the likelihood of serious unfairness to the parties in the absence of a transfer to the alternative forum. *Mercier II,* 981 F.2d at 1349 (citing *Tramp Oil & Marine, Ltd. v. M/V Mermaid I,* 743 F.2d 48, 50 (1st Cir. 1984); *Koster v. Lumbermens Mut. Cas. Co.,* 330 U.S. 518, 524 (1947)) (other citations omitted).

There is no dispute in this case that Canada is an adequate alternative forum. *See* ECF No. 2-11 at 8. The *forum non conveniens* analysis therefore turns on whether the balance of convenience and judicial efficiency, on the one hand, and fairness to the parties, on the other, favors litigating the claims in Canada. *See Mercier II,* 981 F.2d at 1349. The Supreme Court has identified a number of public and private interest factors that guide this analysis. *See Iragorri v. Int'l Elevator, Inc.,* 203 F.3d 8, 12 (1st Cir. 2000).

A. The Private Factors

The private factors include the "relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; ... all other practical problems that make trial of a case easy, expeditious and inexpensive . . . [and] questions as to the [enforceability] of a judgment if one is obtained." *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501, 508 (1947).

These factors weigh in favor of concluding that Canada is the more appropriate forum to hear the Plaintiffs' claims. There is no dispute that the train that derailed was left unattended on MMA's main rail line in Quebec Province, where a fire on board a locomotive resulted in the train's air brakes being released, causing it to roll

downhill headed toward Lac Mégantic, where it derailed and exploded. Amended Complaint, ECF No. 28 at ¶¶120-125. Although the Plaintiffs maintain that the focus of their claims is on decisions allegedly made in the United States concerning labeling and classification of the oil, because the the actual derailment, explosion, and all resulting injuries took place in Canada, there is no doubt that substantial evidence necessary to establish the proximate cause of the disaster resides in Canada. Moreover, evidence related to damages is centered in Canada. Furthermore, the accident was investigated by Canadian authorities. Witnesses to the disaster and its aftermath are located in Canada and would be required to travel across an international border to testify if the case were tried in Maine, Illinois, or Texas. While crossing the U.S.-Canadian border from Quebec to Maine, Illinois, or even Texas is arguably not as burdensome as crossing other international borders, it could complicate obtaining the attendance of unwilling witnesses.

Language is another important factor that weighs in favor of trying the case in Canada. Many of the witnesses and Plaintiffs speak French as their first language.[17] It is likely that need for interpretive services will be greater if the case is tried in the United States. Trying the case in Canada and in close proximity to Lac Megántic would also permit factfinders to view the accident site.

The Plaintiffs do not dispute that they are domiciled in Canada, nor that French is the predominant language spoken by them, *see* ECF No. 2-11 at 8-10, nor

[17] As CP notes, "[a]pproximately 77% of Lac Mégantic residents speak only French, and less than a quarter speak any English." ECF No. 2-15 at 8 (citing Quebec Institut De la Statistique, Population By Knowledge of Official Languages (2006), http://www.stat.gouv.qc.ca/statistiques/recensement/2006/recens2006_05/langue/connlangoff05.htm)) .

that "some witnesses and documents undoubtedly are located in Canada[,]" *id.* at 10. But they assert that these facts are a "red herring" because the focus of their case will be on CP's alleged actions and inactions in the United States, and contend that more witnesses will hail from Illinois, Minnesota, and North Dakota than Quebec. *Id.* at 8, 10. The Plaintiffs also argue that this court must give deference to their decision to file suit in the United States rather than Canada. *Id.* at 9 (citing *Piper Aircraft Co. v. Ryan,* 454 U.S. 235, 255 (1981)).

The Plaintiffs' argument is not persuasive given their failure to dispute the Clements Affidavit, which establishes that CP is a Canadian company which "conducts almost no business in the United States," and whose crews do not operate trains in the United States. ECF No. 2-3. The stated focus of the Plaintiffs' cases and their rationale for opposing *forum non conveniens* dismissal thus hinges on the alleged acts and inaction of parties other than CP. This is not a "red herring," nor is it a viable basis for keeping the case in a U.S. court. Additionally, the deference that is normally owed to a plaintiff's choice of venue is weaker where, as here, the Plaintiffs are foreigners. *Piper Aircraft,* 454 U.S. at 255-56 ("Because the central purpose of any *forum non conveniens* inquiry is to ensure that the trial is convenient, a foreign plaintiff's choice deserves less deference.").

Thus, the private factors weigh in favor of *forum non conveniens* dismissal.

B. The Public Factors

The public factors include "the administrative difficulties flowing from court congestion; the local interest in having localized controversies decided at home; the interest in having the trial of a diversity case in a forum that is at home with the law

that must govern the action; the avoidance of unnecessary problems in conflict of laws, or in application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty." *Piper Aircraft,* 454 U.S. at 241 n.6 (citation and quotation marks omitted).

The Plaintiffs argue that the public factors do not weigh in favor of a Canadian forum because CP has failed to provide data showing that the courts of Quebec are not congested and because the United States has as great an interest in the proceedings as Canada, given that "CP's wrongful conduct resulted in dangerous rail cars filled with crude oil being loaded in North Dakota and transported through America's heartland." ECF No. 2-11 at 12-13. The Plaintiffs also argue that it is fair and reasonable for U.S. citizens to serve as jurors because the case involves "acts that put American citizens at risk of danger." *Id.* at 14.

I am not persuaded by the Plaintiffs' assertions for the same reasons noted above with respect to the private factors. Given that the derailment and explosion occurred in Canada, the pertinent public factors weigh in favor of trying the case in Quebec because that is the forum where the public has the greatest interest in the proceedings. Conversely, trying a case of this magnitude, a great deal of which would be conducted in a foreign language and which would address a major calamity that occurred in a foreign country, would impose a significant burden on U.S. citizens serving as jurors in the United States.

Consequently, I conclude that the balance of convenience and judicial efficiency, as well as fairness to the parties, favors having the claims litigated in Canada. *See Mercier II,* 981 F.2d at 1349.

C. *Res Judicata*

The Plaintiffs also argue that dismissal based upon *forum non conveniens* is improper because it is prohibited by § 10.7 of the Confirmation Plan, which the Plaintiffs contend is a final order entitled to preclusive effect and which may not be collaterally-challenged. ECF No. 2-11 at 5-6.

Section 10.7 of the Confirmation Plan states the following:

> Unless otherwise provided in this Plan, the Confirmation Order or a separate order of the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, entered in the Transferred WD Cases, or otherwise arising under applicable law in any court order and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in such applicable order, provided, however, that to the extent against any remaining defendant that is not a Released Party as of the Effective Date, the Trustee will cooperate with the plaintiffs in the Transferred WD Cases in seeking a transfer of such cases to the forum selected by such plaintiffs, and will cooperate in seeking from the District Court, in the order transferring such cases, a finding that the Settlement Agreements and transactions with Released Parties approved and implemented pursuant to this Plan were entered into in good faith pursuant to and in accordance with 740 ILCS 100/2(c).

Bankr. Case No. 13-10670, ECF No. 1801 at 111.

This provision thus obligates the Bankrutpcy Trustee, now the MMA Estate Representative, to cooperate with the Plaintiffs in their attempt to seek an order transferring the cases to the Plaintiffs' preferred venue. It does not obligate the District Court to grant such a transfer, nor does it prohibit dismissal based upon the doctrine of *forum non conveniens*.

I therefore conclude that dismissal without prejudice is appropriate based upon the doctrine of *forum non conveniens* for the reasons explained above.

IV. PREEMPTION

I need not, and therefore do not, address federal preemption as a potential basis for dismissal given my conclusions that dismissal is required based on lack of personal jurisdiction, insufficient service of process, and *forum non conveniens*.

V. CONCLUSION

For the reasons explained above, CP's Amended Motion to Dismiss (ECF No. 2) pursuant to Federal Rules of Civil Procedure 12(b)(2), 12(b)(5), and 12(b)(6) is **GRANTED.** The Amended Complaint (ECF No. 28) is hereby **DISMISSED** without prejudice.

SO ORDERED.

This 28th day of September 2016.

/s/ Jon D. Levy
U.S. DISTRICT JUDGE

Attachment 18

Roy v. Canadian Pac. Ry. Co. (In re Lac-Mégantic Train Derailment Litig.)

United States Court of Appeals for the First Circuit

June 2, 2021, Decided

No. 17-1108

Reporter
2021 U.S. App. LEXIS 16428 *; __ F.3d __

IN RE: LAC-MÉGANTIC TRAIN DERAILMENT LITIGATION;ANNICK ROY, as special administrator of the estate of Jean-Guy Veilleux, deceased, individually and as next friend of minor, F.R.V., ET AL., Plaintiffs, Appellants, v. CANADIAN PACIFIC RAILWAY COMPANY, Defendant, Appellee, SOO LINE RAILROAD COMPANY, d/b/a Canadian Pacific Railway; DELAWARE AND HUDSON RAILROAD COMPANY INC., d/b/a Canadian Pacific Railway; DAKOTA MINNESOTA AND EASTERN RAILROAD CORPORATION, d/b/a Canadian Pacific Railway; and CANADIAN PACIFIC RAILWAY LIMITED, Putative Defendants.

Prior History: [*1] APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE. Hon. Jon D. Levy, U.S. District Judge.

Counsel: Matthew W.H. Wessler, with whom Gregory A. Beck, Larkin Turner, Gupta Wessler PLLC, Ted A. Meyers, Peter J. Flowers, Craig D. Brown, Meyers & Flowers LLC, Jason C. Webster, The Webster Law Firm, Mitchell A. Toups, and Weller, Green, Toups & Terrell, LLP were on brief, for appellants.

Paul J. Hemming, with whom Leah Ceee O. Boomsma, Taft Stettinius & Hollister LLP, Mark F. Rosenberg, and Sullivan & Cromwell LLP were on brief, for appellee.

Judges: Before Lynch and Selya, Circuit Judges, and Katzmann,* Judge.

* Of the United States Court of International Trade, sitting by designation.

Opinion by: SELYA

Opinion

SELYA, Circuit Judge. This appeal requires us to decide, as a matter of first impression in this circuit, whether the Federal Rules of Bankruptcy Procedure (the Bankruptcy Rules) or the Federal Rules of Civil Procedure (the Civil Rules) govern cases that have come within the federal district court's jurisdiction as cases "related to" a pending bankruptcy proceeding. *28 U.S.C. § 1334(b)*. We conclude, as have the relative handful of other courts of appeals that have addressed the question, that the Bankruptcy Rules control.

This conclusion has a domino effect and, when put into context, determines the [*2] outcome of this appeal. Under *Bankruptcy Rule 9023*, the plaintiffs' motion for reconsideration was late and, thus, did not stop the accrual of the appeal period. In the absence of tolling, the plaintiffs' ensuing notice of appeal was untimely and, therefore, their appeal must be dismissed for want of appellate jurisdiction. The tale follows.

I

We sketch the relevant facts and travel of the case. The plaintiffs who are appellants here, listed in Appendix A, brought thirty-nine separate suits against a number of defendants in the wake of a tragic derailment and explosion in Lac-Mégantic, Canada, which caused many deaths, extensive personal injuries, and large-scale property damage. For present purposes, it suffices to say that in June of 2013, a Canadian refinery arranged for a transnational shipment of crude oil from North Dakota; a number of railroad companies participated in

the shipment of the purchased oil across the midwestern United States and into Canada; responsibility for the rail cars in which the oil was transported was eventually assumed by Montreal, Maine and Atlantic Railway (MMA); and the derailment occurred on July 6, 2013 (on MMA's watch).[1]

MMA sought the protection of the bankruptcy [*3] court in the District of Maine. In and out of Maine, lawsuits proliferated. These civil actions were instituted in several different jurisdictions. The plaintiffs' wrongful death suits were filed in state courts in Illinois and Texas. In due course, they were removed to federal district courts, some pursuant to *28 U.S.C. § 1334(b)* and some pursuant to *28 U.S.C. § 1332(a)*.

Defendant-appellee Canadian Pacific Railway Company (Canadian Pacific) was not among the defendants originally named in the plaintiffs' initial suits. The plaintiffs subsequently joined Canadian Pacific — allegedly a connecting carrier — as an additional defendant. Canadian Pacific has consistently maintained that it was not properly served with process in these actions.

In February of 2016, the plaintiffs — along with MMA's trustee in bankruptcy — petitioned the United States District Court for the District of Maine for an order transferring the cases to that district pursuant to *28 U.S.C. § 157(b)(5)*, which allows a district court having jurisdiction over a bankruptcy proceeding to order the transfer to it of any "personal injury tort and wrongful death claims" related to the bankruptcy proceeding. The court below concluded that transfer was appropriate and later centralized [*4] all of the plaintiffs' suits in the District of Maine. The court then created an omnibus docket captioned "In Re Lac-Mégantic Train Derailment Litigation," which became an umbrella docket for a wide swath of third-party claims (including the plaintiffs' suits).

After further jousting (not relevant here), the plaintiffs sought dismissal of their claims against all of the named defendants except Canadian Pacific. The district court granted this request pursuant to a settlement agreement that was part of MMA's plan of liquidation, which the district court had confirmed on November 18, 2015. See *In re Montreal Me. & Atl. Ry., Ltd., No. 1:15-mc-329, 2015 U.S. Dist. LEXIS 159391, 2015 WL 7302223 (D. Me. Nov. 18, 2015)*; see also *In re Montreal Me. & Atl. Ry., Ltd., Bk. No. 13-10670, 2015 Bankr. LEXIS 3737, 2015 WL 7431192 (Bankr. D. Me. Oct. 9, 2015)* (recommending approval of plan of liquidation). This left Canadian Pacific as the lone defendant in the plaintiffs' suits.

Canadian Pacific moved to dismiss the plaintiffs' consolidated complaint, asserting (among other things) lack of in personam jurisdiction, insufficient service of process, and forum non conveniens. The plaintiffs countered by moving for leave to file a second amended complaint, see *Fed. R. Civ. P. 15(a)*, in which they sought to add as defendants several Canadian Pacific subsidiaries based in the United States, including Soo Line Railroad Company (Soo Line). On September 28, 2016, the [*5] district court granted Canadian Pacific's motion to dismiss on jurisdictional grounds and denied the plaintiffs' motion to amend. The court denied all other pending motions as moot and entered final judgment in favor of Canadian Pacific.

On October 26, 2016 — twenty-eight days after the district court entered final judgment for Canadian Pacific — the plaintiffs moved for reconsideration in the district court of the denial of their motion to file an amended complaint. See *Fed. R. Civ. P. 59(e)*. They annexed a proposed "Revised Second Amended Complaint" that sought, as relevant here, to substitute Soo Line for Canadian Pacific as the party defendant. Canadian Pacific opposed the motion on a number of grounds, including timeliness. With respect to that ground, it argued that the Bankruptcy Rules controlled and that, therefore, the motion for reconsideration came too late. See *Fed. R. Bank. P. 9023* (allowing a fourteen-day window for motions for reconsideration). In a margin order, the district court summarily denied reconsideration.

On January 19, 2017, the plaintiffs filed this notice of appeal, purporting to challenge the denial of the motion for leave to amend. Roughly three months later, Canadian Pacific filed a motion for [*6] summary disposition under *First Circuit Local Rule 27(c)*, arguing that the plaintiffs' untimely motion for reconsideration lacked tolling effect and, thus, rendered the appeal untimely. The plaintiffs opposed this motion. On February 6, 2019, we denied the motion and set a briefing schedule. Oral arguments were heard on March

[1] The reader who desires further detail concerning the derailment and its horrific aftermath may consult earlier judicial opinions regarding various aspects of MMA's bankruptcy proceedings. See, e.g., *In re Montreal, Me. & Atl. Ry., Ltd., 956 F.3d 1, 2-3 (1st Cir. 2020)*; *In re Montreal Me. & Atl. Ry., Ltd., No. 13-10670, 2015 U.S. Dist. LEXIS 74006, 2015 WL 3604335, at *1 (D. Me. Jun. 8, 2015)*; *In re Montreal Me. & Atl. Ry., Ltd., 574 B.R. 381, 384-85 (Bankr. D. Me. 2017)*.

3, 2021.

II

In this venue, the plaintiffs argue that we have appellate jurisdiction and maintain that the district court abused its discretion when it denied their motion for leave to amend the complaint. Canadian Pacific, though, continues to press a threshold issue: it contends that we lack appellate jurisdiction because the plaintiffs' notice of appeal was untimely. This contention is premised on two interlocking assertions. To begin, Canadian Pacific asserts that the plaintiffs' motion for reconsideration, which was made outside the fourteen-day window prescribed by the Bankruptcy Rules for such motions, see *Fed. R. Bank. P. 9023*, did not toll the running of the appeal period, see *Fed. R. App. P. 4(a)* (specifying that in civil cases not involving the United States, notices of appeal must be filed within thirty days after the entry of judgment). Building on this foundation, Canadian Pacific asserts that the plaintiffs' notice of [*7] appeal, which was filed more than three months after the entry of final judgment and which did not enjoy the benefit of tolling, was untimely. We agree that the plaintiffs are unable to cross this threshold and, thus, our inquiry stops there.

We need not tarry. Federal courts are courts of limited jurisdiction and, in the absence of jurisdiction, a federal court is "powerless to act." *Am. Fiber & Finishing, Inc. v. Tyco Healthcare Grp., 362 F.3d 136, 138 (1st Cir. 2004)*. It follows that we must rigorously patrol the boundaries of our appellate jurisdiction. See *Commonwealth Sch., Inc. v. Commonwealth Acad. Holdings LLC, 994 F.3d 77, 82 (1st Cir. 2021)*; *Whitfield v. Mun. of Fajardo, 564 F.3d 40, 44 (1st Cir. 2009)*. If we find jurisdiction lacking, that is the end of the matter.

Here, the existence of appellate jurisdiction turns principally on the answer to the following question: do the Bankruptcy Rules or the Civil Rules govern the procedures in a case over which a federal court exercises *section 1334(b)* jurisdiction as one "related to" a pending bankruptcy proceeding? This question is outcome-determinative because even though the two sets of rules are congruent in many respects, they sometimes differ. One such difference is crucial here: the Bankruptcy Rules only allow fourteen days for the filing of a motion to reconsider, see *Fed. R. Bank. P. 9023*, whereas the Civil Rules allow twenty-eight days for that purpose, see *Fed. R. Civ. P. 59(e)*. And under either set of rules, [*8] only a timely motion for reconsideration tolls the running of the appeal period. See *Fed. R. Bank. P. 8002(b)(1)(B)*; *Fed. R. App. P. 4(a)(4)(A)(iv)*; see also *García-Velázquez v. Frito Lay Snacks Caribbean, 358 F.3d 6, 9 (1st Cir. 2004)* ("An untimely motion for reconsideration . . . will not toll the running of the notice of appeal period."). The plaintiffs' motion to reconsider, filed on October 26, 2016, was timely if the Civil Rules controlled but untimely if the Bankruptcy Rules controlled.

To answer this dispositive question, we first review the bankruptcy system and certain historical developments that contributed to its current configuration. We then attempt to untangle the intertwined strands that encase the determination of which set of rules applies to "related to" cases pending in a federal district court.

A

Our starting point is Congress's passage of the Bankruptcy Reform Act of 1978 (BRA), which created the modern bankruptcy system. Prior to that date, federal district courts exercised plenary jurisdiction over all bankruptcy matters, with the help of subalterns designated as referees in bankruptcy. See *Bankruptcy Act of 1898, Pub. L. No. 55-541, §§ 2, 33, 30 Stat. 544, 545-46 (1898)*. These referees acted much as special masters and resolved bankruptcy matters subject to the district court's review. See id.

The BRA abolished the referee system and established in its place a federal bankruptcy court attached to each federal [*9] judicial district. The bankruptcy courts were Article I courts, endowed by Congress with jurisdiction to resolve matters "arising under title 11 or arising in or related to cases under title 11." 28 U.S.C. § 1471(b), (c) (repealed 1984). But this new system hit a speed bump in 1982: the Supreme Court concluded that Congress's efforts to endow Article I bankruptcy courts with the ability to adjudicate matters that were merely "related to" claims arising under title 11 violated Article III. See *N. Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 86-87, 102 S. Ct. 2858, 73 L. Ed. 2d 598 (1982)*; see also U.S. Const. art. III. The Court drew a distinction between cases arising under title 11 of the United States Code (which implicated rights of congressional creation) and "related to" cases (which often implicated claims arising under state law independent of title 11). See *Marathon, 458 U.S. at 84-85*. The latter group of cases, the Court reasoned, could not be resolved by Article I judges, who did not enjoy the protections embedded in Article III of the Constitution. See *id. at 60*.

In the last analysis, Marathon was a judicial repudiation of Congress's attempt to confer upon Article I courts broad jurisdiction over all cases loosely connected to title 11 claims. Aware that its decision would lead to the dismantling of the recently created bankruptcy system, the Court stayed its judgment for several months [*10] so that Congress could pick up the pieces. See id. at 88. The stay expired without agreement on how to reconfigure the system in a post-Marathon world.

After several years in which federal district courts operated under makeshift rules,[2] Congress finally passed the Bankruptcy Amendments and Federal Judgeship Act of 1984 (BAFJA). See *Pub. L. No. 98-353, 98 Stat. 333 (1984)*. Among other things, BAFJA sought to ameliorate the jurisdictional infirmities pinpointed by the Marathon Court. Under the aegis of the new statute, district courts (not bankruptcy courts) could exercise jurisdiction over both bankruptcy cases arising under title 11 and those "related to" title 11 cases. *28 U.S.C. § 1334*. Withal, a district court could refer any such case to a bankruptcy court if it so elected. See *28 U.S.C. § 157(a)*.

In line with *28 U.S.C. § 1334*[3] and the teachings of Marathon, the procedures governing the new system distinguish between "core" and "non-core" cases and identify different final decisionmakers for each. *28 U.S.C. § 157(b)-(c)*. With respect to core cases (that is, those cases arising under title 11), bankruptcy courts may issue final orders. See id. *§ 157(b)(1)*. But with respect to non-core cases (that is, those cases "related to" core cases), a bankruptcy court may do no more than submit proposed findings of fact [*11] and conclusions of law to the district court, subject to de novo review. See id. *§ 157(c)(1)*.

It is beyond cavil that, in enacting BAFJA, Congress carefully distinguished between core and non-core cases to address the jurisdictional concerns that the Marathon Court had identified. That distinction informs our determination of which set of procedural rules — the Bankruptcy Rules or the Civil Rules — governs the adjudication of a non-core, "related to" case in a federal district court.

Precedent favors the Bankruptcy Rules: all three of the courts of appeals to have considered the issue have concluded that the Bankruptcy Rules apply to a non-core, "related to" case pending in a federal forum. See *In re Celotex Corp., 124 F.3d 619, 629 (4th Cir. 1997)* (holding that "[t]he entire body of Bankruptcy Rules . . . applies to" such cases); *Phar-Mor, Inc. v. Coopers & Lybrand, 22 F.3d 1228, 1238 (3d Cir. 1994)* (holding that "Bankruptcy Rules govern non-core, 'related to' proceedings before a district court"); *Diamond Mortg. Corp. of Ill. v. Sugar, 913 F.2d 1233, 1243 (7th Cir. 1990)* (concluding that "nothing in the literal terms of the pertinent [Bankruptcy] rules . . . even remotely suggests that they are to be applied differently in core and non-core proceedings"); cf. *Double Eagle Energy Servs., L.L.C. v. MarkWest Utica EMG, L.L.C., 936 F.3d 260, 264 (5th Cir. 2019)* (finding *Bankruptcy Rule 7004* applicable to "related to" case arising under state law). The leading treatise in the bankruptcy field [*12] also endorses this view. See *9 Collier on Bankruptcy ¶ 1001.01* (16th ed. 2016) (stating that both in the district court and the bankruptcy court, Bankruptcy Rules apply to "proceedings arising in or related to [core] cases"). It is against the backdrop of this emerging consensus that we turn to the question at hand.

B

We look first to the Bankruptcy Rules themselves — as we do in the case of any rules promulgated pursuant to a statute — for guidance in ascertaining the scope of their applicability. See *United States v. Bauzó-Santiago, 867 F.3d 13, 18 (1st Cir. 2017)*. By their own terms, the Bankruptcy Rules "govern procedure in cases under title 11 of the United States Code." *Fed. R. Bank. P. 1001*.

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[2] The Judicial Conference of the United States proposed the model emergency rule, in anticipation of the stay's expiration, in September of 1982. See Report of the Proceedings of the Judicial Conference of the United States, 91 (Sept. 22-23, 1982). Each federal district court proceeded to adopt its own version of the model rule, as a placeholder. For a full discussion of this history, the interested reader may consult Lawrence P. King, The Unmaking of a Bankruptcy Court: Aftermath of Northern Pipeline v. Marathon, 40 Wash. & Lee L. Rev. 99, 115-16 (1983).

[3] *Section 1334* declares that federal district courts have "original and exclusive jurisdiction of all cases under title 11" as well as "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." *28 U.S.C. § 1334(a)-(b)*. Although *section 1334* delineates two different categories of cases for jurisdictional purposes, it does not employ the core/non-core taxonomy found in *section 157*. See text infra. Even so, that taxonomy has become entrenched in federal law: cases arising under title 11 are core cases and "related to" cases are non-core cases. See, e.g., *Stern v. Marshall, 564 U.S. 462, 474-77, 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011)*; *Gupta v. Quincy Med. Ctr., 858 F.3d 657, 662 n.5 (1st Cir. 2017)*.

The question, then, is whether non-core, "related to" cases — like the plaintiffs' suits — are deemed to be cases under title 11.

Read in isolation, the language of *Rule 1001* is not dispositive of this question. The phrase "under title 11 of the United States Code" does not precisely mirror the definition of core and non-core cases found in *28 U.S.C. § 157*, and the phrase itself — standing alone — does not compel either a broad or a narrow reading. *Section 157* describes core cases as those "arising under title 11," yet *Rule 1001* omits the word "arising." It is difficult to say whether this omission was meant to signal a distinction or was merely a product [*13] of inartful drafting.

We think it important that this version of *Rule 1001* was adopted in 1987 — well after Congress enacted BAFJA. Thus, the drafters of the rule must have been aware of the core/non-core dichotomy that Congress created. Had the drafters wished to restrict the applicability of the Bankruptcy Rules to core cases alone, they simply could have used *section 157*'s definition of core cases. The fact that the drafters took a different tack suggests that the language employed should be read more broadly. Cf. *Ross v. Blake, 136 S. Ct. 1850, 1858, 195 L. Ed. 2d 117 (2016)* ("When Congress amends legislation, courts must 'presume it intends [the change] to have real and substantial effect.'" (quoting *Stone v. INS, 514 U.S. 386, 397, 115 S. Ct. 1537, 131 L. Ed. 2d 465 (1995)*)).

Further support for a broad reading of *Rule 1001* and the phrase "under title 11" is found in *section 157* itself. The statutory text provides that "[b]ankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11 . . . ." *28 U.S.C. § 157(b)(1)*. This language suggests that Congress envisioned a difference between "cases under title 11" and core cases. Such a conclusion follows from the venerable principle that, whenever possible, courts should construe statutes to give meaning to each word or phrase. See *Gustafson v. Alloyd Co., 513 U.S. 561, 574, 115 S. Ct. 1061, 131 L. Ed. 2d 1 (1995)*; *Akebia Therapeutics, Inc. v. Azar, 976 F.3d 86, 94 (1st Cir. 2020)*. Applying this principle, the fact that "cases [*14] under title 11" appears in addition to core cases "arising under title 11" lends credence to the view that these are two distinct (albeit overlapping) categories of cases. If both phrases were intended to define the same universe of cases, there would have been no point in Congress using two phrases and joining them with a conjunction. And although this juxtaposition does not compel a conclusion that non-core, "related to" cases fall within the "under title 11" taxonomy employed by the drafters of the Bankruptcy Rules, it surely leaves that door wide open. See *Phar-Mor, 22 F.3d at 1237 n.14* (explaining that, even though this phraseology does not "clearly encompass[] 'related to' cases, . . . it does not foreclose the possibility").

While our analysis to this point strongly suggests that the procedural aspects of non-core, "related to" cases adjudicated in federal district courts are governed by the Bankruptcy Rules, the sockdolager is found in the practicalities attendant to the efficient operation of the modern bankruptcy system. If the Civil Rules applied to non-core cases, a district court adjudicating both core and non-core cases in any given bankruptcy proceeding would need to apply two different sets of rules [*15] simultaneously. This anomaly would persist despite the fact that those cases likely would involve some of the same parties. So, too, a district court, reviewing a bankruptcy court's proposed findings of fact and conclusions of law in a non-core case, see *28 U.S.C. § 157(c)(1)*, would be bound to apply the Civil Rules after the bankruptcy court already had applied the Bankruptcy Rules. This curious twist would render nugatory *Bankruptcy Rule 9033(d)*, which directs the district court to conduct de novo review of a bankruptcy court's findings and conclusions. Such a convoluted procedural scheme would be in marked tension with the bankruptcy system's goal of resolving claims efficiently. See 98th Cong. Rec. S7620 (daily ed. Jun. 19, 1984) (statement of Sen. Dennis DeConcini) (explaining that proposed legislation sought "to balance effective bankruptcy administration with the constitutional concerns reflected in the Marathon decision"); see also Report of the Commission on the Bankruptcy Laws of the United States, 93d Cong. H.R. Doc. No. 93-137, pt. I, 2-5 (July 1973).

With such anomalies in mind, at least two of our sister circuits have explicitly warned against the procedural hybrid that would result from applying the Civil Rules [*16] to non-core, "related to" cases in federal district courts. See *Phar-Mor, 22 F.3d at 1236-37*; *Diamond Mortg., 913 F.2d at 1243*. As Judge Becker observed, such a hybrid would be "incompatible with the efficient disposition of bankruptcy cases," which was "the animating policy underlying the BAFJA." *Phar-Mor, 22 F.3d at 1237*. Similarly, Judge Cudahy noted that it would be "anomalous" for different rules to govern claims in the same court, given "the bankruptcy scheme's emphasis on centralization and efficiency." *Diamond Mortg., 913 F.2d at 1243*. We, too, think it

implausible that Congress could have intended to create such a Rube-Goldberg-like adjudicative contraption. We cannot imagine any reason why Congress would authorize jurisdiction for core and non-core cases in the same judicial district, see *28 U.S.C. 1334(b)*, but require the district court to apply a different set of rules to each. Such a step would be at cross-purposes with the drafter's admonition that the Bankruptcy Rules "shall be construed . . . to secure the just, speedy, and inexpensive determination of every case and proceeding." *Fed. R. Bank. P. 1001*.

This view is reinforced by the fact that the very existence of "related to" jurisdiction speaks to the efficiency goals of the bankruptcy system. "Related to" jurisdiction is designed to put everything in the same place [*17] and, thus, facilitates the efficient disposition of claims. See *In re G.S.F. Corp., 938 F.2d 1467, 1475 (1st Cir. 1991)* (explaining that a case is "related to" a bankruptcy proceeding if its resolution "could conceivably have any effect on the estate being administered in bankruptcy") (emphasis supplied) (internal quotation omitted). It seems obvious to us that the best way to effectuate this goal is for "both the bankruptcy judges and the district court judges [to] apply the same set of procedural rules in all proceedings having a nexus to a bankruptcy case." *Phar-Mor, 22 F.3d at 1237*.

That Congress took great care to preserve uniformity and efficiency in other areas of the Bankruptcy Rules is consistent with our appraisal of Congress's overarching goal. In Diamond Mortgage, for example, the court considered whether a particular service-of-process requirement in the Bankruptcy Rules applied to a non-core, "related to" case. See *913 F.2d at 1242-43*. The court concluded that creating mismatched procedural rules for core and non-core cases would serve only to frustrate BAFJA's objective of simplifying the bankruptcy system. See *id. at 1243*. The court found it telling that the drafters of the Bankruptcy Rules have made no effort to distinguish between core and non-core cases with respect to the [*18] service-of-process requirement. See id.

Similar reasoning can be applied to the facts at hand. Just as the drafters of the Bankruptcy Rules made no explicit distinction between core and non-core cases in formulating the service-of-process rule, they made no such distinction in formulating *Rule 1001*. And here — as in the Diamond Mortgage scenario — the drafters were aware of BAFJA's core/non-core distinction but eschewed that distinction when drafting *Rule 1001*.

We also recognize that *28 U.S.C. § 2075*, which empowers Congress to authorize bankruptcy rules proposed by the judiciary, places primacy in the United States Code. Accordingly, any conflict between a statutory provision and the Bankruptcy Rules would have to be resolved in favor of the former.[4] See *9 Collier on Bankruptcy ¶ 1001.01* ("In the event of inconsistency between the statute and the rules, the statute controls."). Here, however, we see no conflict between BAFJA and a broad construction of *Rule 1001*.

The plaintiffs have a fallback position. They strive to persuade us that a district court, presiding over a non-core, "related to" case, may choose to apply either the Civil Rules or the Bankruptcy Rules. We are not convinced: such a pick-and-choose approach cannot be gleaned from [*19] the statutory text, the Bankruptcy Rules, the Civil Rules, or any combination of those sources. To cinch the matter, the plaintiffs' position finds no purchase in the case law.

We begin by noting that the plaintiffs' argument is incompatible with the text of the Civil Rules. Congress expressly provided that the Civil Rules only apply to bankruptcy cases "to the extent provided by the [Bankruptcy Rules]." *Fed. R. Civ. P. 81(a)(2)*. This provision would make no sense if the plaintiffs' expansive notion of the district court's discretion was correct, and the canons of statutory interpretation do not favor constructions that reduce words or phrases within a statute to mere gibberish. See *Nat'l Ass'n of Mfrs. v. Dep't of Def., 138 S. Ct. 617, 632, 199 L. Ed. 2d 501 (2018)* (explaining that "the Court is 'obliged to give effect, if possible, to every word Congress used'" (quoting *Reiter v. Sonotone Corp., 442 U.S. 330, 339, 99 S. Ct. 2326, 60 L. Ed. 2d 931 (1979)*)).

What is more, nothing in either *section 157* or *Rule 1001* indicates that a district court has any discretion as to which set of rules applies in a given case. If district courts were to be accorded this considerable latitude, we think that either Congress or the drafters of the Bankruptcy Rules would have said as much. Read naturally, *section 157* instructs that the Civil Rules stop where the Bankruptcy Rules begin — a proposition that is antithetic [*20] to the plaintiffs' pick-and-choose

[4] This hierarchy does not have deep historical roots. Prior to 1978, the statute provided that "[a]ll laws in conflict with such rules shall be of no further force or effect after such rules have taken effect." *28 U.S.C. § 2075 (1964)*. But Congress amended the statute in 1978, deleting that sentence. See *28 U.S.C. § 2075 (1978)*.

approach.

We add, moreover, that the plaintiffs misconstrue the case law that they cobble together in support of the pick-and-choose approach. Contrary to the plaintiffs' representation, Diamond Mortgage says nothing about discretion: that case merely holds that if a court determines that the Bankruptcy Rules apply, it then "must determine the proper procedures to be followed in the case." *913 F.2d at 1241*. The court's statement that district courts "may apply the Bankruptcy Rules in appropriate cases," id., is not a commentary on the exercise of discretion in a particular case but, rather, an affirmation that Congress, by enacting BAFJA, enabled district courts to hear bankruptcy cases and apply the Bankruptcy Rules.[5]

Laboring to turn dross into gold, the plaintiffs note that the court below alluded to the Civil Rules on several occasions. That is true as far as it goes — but it does not take the plaintiffs very far. The Bankruptcy Rules incorporate many of the Civil Rules, see, e.g., *Fed. R. Bank. P. 7002*, and the plaintiffs have not pointed to any occasion when the court below purposed to address the question of which set of rules applied to the matters before it. And while greater [*21] clarity on the part of district courts is always to be applauded, a lack of clarity on the district court's part does not vitiate our obligation to determine which set of rules applies in this case.

In a variation on this theme, the plaintiffs try to spin this lack of clarity as unfairly sandbagging them. They suggest that they had no notice that the Bankruptcy Rules were controlling. On this record, there is no room for an equitable exception to the quintessentially legal determination of which set of rules applies to a particular case. Cf. *Bowles v. Russell, 551 U.S. 205, 214, 127 S. Ct. 2360, 168 L. Ed. 2d 96 (2007)* (holding that federal courts have "no authority to create equitable exceptions to jurisdictional requirements" such as the "timely filing of a notice of appeal").

Here, moreover, the plaintiffs' notice-based concerns ring hollow. After all, the plaintiffs joined in the request to transfer their cases from other federal courts to the District of Maine as cases "related to" a pending bankruptcy proceeding within the purview of *28 U.S.C. § 157(b)*.[6] At that time, the existing case law, though sparse, put them squarely on notice that the Bankruptcy Rules would apply. See *Celotex, 124 F.3d at 629*; *Phar-Mor, 22 F.3d at 1238*; *Diamond Mortg., 913 F.2d at 1241*. And the leading treatise on bankruptcy law reinforced this conclusion. See *9 Collier on Bankruptcy, ¶ 1001.01* ("Scope of *Rule 1001*"). Given [*22] this legal landscape, the plaintiffs scarcely can be heard to complain that they were not on notice that the Bankruptcy Rules likely would apply to the transferred cases.

We need go no further.[7] The text of the Bankruptcy Rules, read in conjunction with Congress's redesign of the bankruptcy system in 1984, makes pellucid that the Bankruptcy Rules apply to non-core, "related to" cases adjudicated in federal district courts under *section 1334(b)*'s "related to" jurisdiction. We so hold. To rule otherwise would not only create a split in the circuits and leave district courts in a procedural labyrinth but also would severely undermine Congress's efficiency-oriented goals.

III

Our holding that the Bankruptcy Rules govern the procedural aspects of this case ends the matter.[8] On these facts, *Bankruptcy Rule 9023* demands a finding that the plaintiffs' motion to reconsider was untimely and, therefore, the deadline for filing a notice of appeal

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[5] The plaintiffs' efforts to siphon out particular language from other cases is no more helpful. None of those cases, see *Rosenberg v. DVI Receivables XIV, LLC, 818 F.3d 1283 (11th Cir. 2016)*; *Phar-Mor, 22 F.3d 1228*, stands for the proposition that district courts have discretion to pick and choose whether to apply the Civil Rules or the Bankruptcy Rules in non-core, "related to" cases.

[6] Indeed, many of the plaintiffs' suits originally had been removed from state courts to federal district courts under the auspices of *28 U.S.C. § 1334(b)*.

[7] To be sure, it might be open to the plaintiffs to argue that even if their appeal is untimely with respect to the denial of their motion to amend, it is nonetheless timely with respect to the denial of their motion for reconsideration. See *Air Line Pilots Ass'n v. Precision Valley Aviation, Inc., 26 F.3d 220, 223-24 (1st Cir. 1994)*. Before us, however, they have not made that argument, so it is waived. See *United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990)*.

[8] Although the parties have briefed and argued other issues pertaining both to jurisdiction and to the merits, our holding makes it unnecessary to address them. See, e.g., *Vaquería Tres Monjitas, Inc. v. Comas-Pagán, 772 F.3d 956, 960 (1st Cir. 2014)*; *Deniz v. Mun. of Guaynabo, 285 F.3d 142, 149-50 (1st Cir. 2002)*.

expired thirty days after the district court entered final judgment on September 28, 2016. See *Fed. R. App. P. 4(a)*. Consequently, the plaintiffs' attempted appeal is untimely and must be dismissed for want of appellate jurisdiction. All parties shall bear their own costs.

So Ordered.

Appendix [*23] **A**

Roster of Plaintiffs-Appellants

Annick Roy, as special administrator of the estate of Jean-Guy Veilleux, deceased, individually and as next friend of minor, F.R.V.; Samuel Audet; Beland Audet; Emanuel Baillargeon; Sandra Baillargeon; Jean Boyle Barrett Beaudoin; Gabriel Beaudoin; Jocelyn Beaudoin; Raymond Beaudoin; Yves Bernier; Gerard Bolduc; Marie Claude Bouchard; Michel Bouchard; Suzie Bouchard; Pierrette Boucher Lafontaine; Rouville Boucher; Michel Boulanger; Daniel Boule; Pierre Boulet; Pierrette Boulet; Helene Bourgeois; Ghislain Champagne; Line Champagne; Denis Charest; Pascal Charest; Daniel Charrier; Sylvain Cote; Annette Doyon; Denise Dubois; Martial Dupiuis; Serge Faucher; Yves Faucher; Lea Favreau; France Fortier; Yannick Gagne; Daniel Gendron; Melanie Gerhard; Gravure Megantic; Mario Grimard; Group Exca Inc.; Nancy Guay; Eric Joubert; Jeannot Labrecque; Danielle Lachance; Lucille Lachance; Pierrette Lachance; Sylvie Lacroix; Angelique Lafontaine; Anna Lafontaine; Christian Lafontaine; Clement Lafontaine; Exca Lafontaine; Jonathan Lafontaine; Josie Lafontaine; Lisa Lafontaine; Luc Lafontaine; Marilou Lafontaine; Rosemary Lafontaine; Louise Lajeunesse; Guillaume Lapierre; [*24] Henriette Latulippe; Marcel Lavoie; Mayla; Marche Valiquette Ltee; Josee Morin; Clement Pepin; Yannick Pepin; France Picard; Louisette Picard; Mathieu Picard; Claude Plante; Manon Rodrigue; Doris Roy; Garage Jean Roy; Jean-Guy Roy; Ginette Roy; Julie Roy; Services Esthtiques Malya; Bernard St-Hilaire; Billy Turcotte; Celine Turcotte; Marc Vachon; Louise Valiquette; Philippe Valiquette; Rene Boutin; Sophie Boutin; Roxanne Boutin; Caroline Tremblay, individually and as representative of the estate of Guy Buldoc, deceased; as next friend of S.B., a minor; and as next friend of A-C.B., a minor; Jacques Bolduc; Solange Gaudreault; Mario Bolduc; Cynthia Boule, individually and as representative of the estate of Sylvie Charron, deceased; and as next friend of A.B., a minor; Jean-Guy Boule; Therese Pouliot, individually and as representative of the estate of Real Custeau, deceased; Simon Custeau, individually and as next friend of J.C., a minor; Sonia Pepin; Richard Custeau; Sylvie Custeau, individually and as representative of the estate of Suzanne Custeau, deceased; Michael Custeau; Karine Lafontaine; Rejean Custeau; Claude Turmel; Kathleen Bedard; Kim Turmel, individually and as next friend [*25] of A.L., a minor; as next friend of M.L., a minor; as next friend of L-A.N., a minor; and as next friend of E.N., a minor; Josee Bolduc; Vincent Nadeau; Guylaine St-Laurent, as representative of the estate of Natachat Gaudreau, deceased; Joanie Turmel; Chantal Gaudreau; Francois Poulin, individually and as representative of the estate of Lucie Vadnais, deceased; Estel Blanchet; Sylvie Vadnais; Pauline Theberge; Elisabeth Vadnais; Diane Giroux Rodrigue, as representative of the estate of Jacques Giroux, deceased; Marie-Eve Poulin; Andre Giroux; Serge Morin, individually and as co-representative of the estate of Kaven Morin, deceased; Raymond Lapointe; Nancy Ducharme, individually and as co-representative of the estate of Kaven Morin, deceased; Joannie Lapointe; Kathleen Morin; Lucie Boutin; Michael Vallerand; Genevieve Breton; Ginette Dostie; Taxi Megantic ENR; Fiducie Familiale Francois Jacques, individually and on behalf of the estate of Dominik Leblanc; Societe de Gestion Jean-Pierre Jacques Inc.; Dube Equipment de Bureau Inc.; 9020-1468 Quebec Inc.; Via Beaute Sante ENR; Bolduc Chaussures LTE; Clinique Dentaire Marie-Pier Dube Inc.; Michel Charland; Societe En Commandite Projet [*26] Shier; Jean Vadnais; Isabelle Beaudry; Clermont Pepin, as special administrator of the estate of Eric Pepin-Lajeunesse, deceased; Pascal Lafontaine, as special administrator of the estate of Karine LaFontaine, deceased; Louise Couture; Mario Sevigny; Marc-Antoine Sevigny; Louise Breton; Ginette Cameron; Manon Bolduc; Sandy Bedard, as special administrator of the estate of Michel Guertin, Jr.; Herbert Ratsch, as special administrator of the estate of Willfried Heinz Ratsch, deceased; Genevieve Dube; Michelle Gaboury, as special administrator of the estate of Kevin Roy, deceased; Gaston Begnoche, as special administrator of the estate of Talitha Coumi Begnoche, deceased; Dave Lapierre; Marie-Eve Lapierre; Lisette Bolduc; Steve Bolduc; Maude Faucher; Karine Paquet; Guy Paquet, as special administrators of the estate of Roger Paquet, deceased; Jacques Martin; Solange Belanger, as special administrator of the estate of Jimmy Sirois, deceased; Guy Boulet; Elise Dubois-Couture, as special administrator of the estate of David LaCroix-Beaudoin, deceased; Lily Rodrigue; Rejean Roy, as special

administrator of the estate of Mlissa Roy, deceased; Alexia Dumas-Chaput, as special administrator of [*27] the estate of Mathieu Pelletier, deceased; Theresa Poulan Dubois, as special administrator of the estate of Denise Dubois, deceased; Christiane Mercier, as special administrator of the estate of Marianne Poulin, deceased; Robert Picard; Justine Lapointe; Eric Bilodeau, as special administrator of the estate of Karine Champagne, deceased; Micheline Veilleux; Richard Turcotte, as special administrator of the estate of Elodie Turcotte, deceased; Marie-Josee Grimard, as special administrator of the estate of Henriette Latulippe, deceased; Alaine Bizier, individually and as representative of the estate of Diane Bizier, deceased; Steve Roy, individually and on behalf of minor Y.R.; Isabelle Boulanger, individually and as representative of the estate of Frederic Boutin, deceased; Colette Lacroix Boulet; Joanne Proteau, as special administrator of the estate of Maxime Dubois, deceased; Gabrielle Lapointe; Helen Lynn Barrett Beaudoin; Malya; Pierre Picard; Boutique de la Gare Inc.

End of Document

Attachment 19

SECTION 88

When railroads may designate police officers

Railroad (RRD) CHAPTER 49, ARTICLE 3

§ 88. When railroads may designate police officers. 1. Upon the application of any corporation owning or operating a railroad, express company operating over a railroad, or of any steamboat company, the superintendent of state police may appoint any person as a police officer, with all the powers of a police officer in cities and villages, for the preservation of order and of the public peace, and the arrest of

all persons committing offenses upon the land of or upon property in the custody of or under the control of such corporation, express company or steamboat company.

2. Such application shall be in writing, specifying the name, age, and address of each person for whom an appointment is sought.

3. The corporation, express company or steamboat company making any such application shall cause the fingerprints of each proposed appointee to be taken in the form and manner prescribed by the division of criminal justice services and one set of such fingerprints shall be forwarded to the division of criminal justice services, and one set to the federal bureau of investigation. Such fingerprints shall be searched by each agency against the fingerprint records in its files and be retained in the files of such agencies.

4. Reports of the results of such searches shall be reviewed by the superintendent of state police prior to granting an appointment to determine whether a proposed appointee is thereby shown to have been convicted of a crime in the state of New York or of any offense in any other place which if committed in the state of New York would have been a crime and no person who is determined by such review to have been so convicted shall receive an appointment under this section.

5. The corporation, express company or steamboat company making application shall also cause an investigation to be conducted in a manner satisfactory to the superintendent of state police of the character, qualifications and fitness of each proposed appointee and shall transmit to the superintendent of state police a report of the results of such investigation which shall be reviewed by the superintendent of state police and no person whom such investigation shows to be other than of good moral character shall receive an appointment under this section.

6. No person shall be granted an appointment as a police officer under this section unless and until the corporation, express company or steamboat company making application shall certify to the superintendent of state police that the proposed appointee has had the minimum police training required for local police officers by the municipal police training council of the office of local government, executive department, state of New York, or such equivalent training as may be specifically approved by the executive director of the municipal police training council or if the proposed appointee has not had such minimum training that he will receive the same within twelve months from the date of any appointment granted under this section.

7. No person shall be granted an appointment as a police officer under this section unless and until the corporation, express company or steamboat company making application shall certify to the superintendent of state police that the proposed appointee has had adequate firearms training or that before he is issued and/or is permitted to carry firearms and within six months from the date of any appointment made under this section, he will receive such training.

8. If any person who has not received the minimum police and/or firearms training described in subdivisions six and seven of this section shall be appointed a police officer under this section, the corporation, express company or steamboat company which made application for his or her employment shall furnish the superintendent of state police, within six months of the date of appointment, a certificate issued by an approved municipal police council training school or its equivalent as previously described in this section, certifying the successful completion by the appointee of the minimum training required and/or shall certify to the superintendent of state police within six months of the date of appointment that the appointee has received adequate training in the use of firearms and in the event such certificate and/or such certification are not furnished the superintendent of state police within the time prescribed herein, he or

she shall revoke the appointment.

9. The superintendent of state police shall file the certificate of appointment of any such person in the office of the department of state, and shall forthwith notify the person appointed, by mail, at the address specified in the application that the certificate has been so filed. Each such person shall, within fifteen days after such certificate shall have been filed, and before entering upon the duties of his office, take and subscribe the constitutional oath of office, and file it in the office of the department of state. The home address of the person appointed shall appear in the certificate of appointment, and whenever such address is changed the corporation, express company or steamboat company employing the person appointed shall file with the superintendent of state police a statement of the new address.

10. No person shall be appointed who is not an American citizen, and who has not, prior to the time of the filing of the application, filed in the office of the department of state his or her written consent to his or her appointment as such police officer.

11. No conductor, brakeman, fireman, engineer or other person actively engaged in the operation and movement of any train or car or set of cars shall be eligible for appointment as a police officer.

12. Each person designated to act as such police officer shall receive a license from the secretary of state and shall not be permitted to enter upon his or her duties as such police officer until he or she has actually received such license.

13. Every such police officer shall when on duty wear a metallic shield with the words "railroad police" or "steamboat police" or "express police" as the case may be and the name of the corporation, express company or steamboat company for which appointed inscribed thereon, which shall always be worn in plain view, except when employed

as a detective.

14. A person appointed police officer under this section shall not, while the appointment is in force, be employed by or perform any service for the corporation, express company, or steamboat company, in any other capacity than that of police officer and he or she shall not be permitted to exercise the duties or functions of a police officer except upon the property or in connection with the property connected with or under the control of the corporation, express company, or steamboat company, for which he or she has been appointed.

15. The compensation of every such police officer shall be such as may be agreed upon between him or her and the corporation, express company, or steamboat company, for which he or she is appointed and shall be paid by the corporation, express company, or steamboat company.

16. When any such corporation, express company, or steamboat company, shall no longer require the services of any police officer appointed under this section it shall file notice to that effect in the office of the department of state, and thereupon such appointment shall cease and be at an end.

17. The superintendent of state police may also at pleasure revoke or suspend the appointment of any such police officer by filing a notice of suspension or revocation thereof in the office of the department of state and mailing a notice of such filing to the corporation, express company or steamboat company for which he or she was appointed, and also to the person whose appointment is suspended or revoked, at his or her last home address as the same appears in the certificate of appointment or the latest statement thereof on file. An appointment suspended by the superintendent may be restored by him or her upon the filing of a restoration notice to the department of state, the person suspended, and his or her employer.

18. If such person thereafter, knowing of such revocation or having in any manner received notice thereof, exercises or attempts to exercise any of the powers of a police officer, under this section, he or she shall be guilty of a misdemeanor; and the filing and mailing of such notice, as above provided, shall be presumptive evidence that such person knew of the revocation.

Attachment 20

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6.0 OTHER ELEMENTS IN MANAGING INVESTIGATIONS

6.1 CRIMINAL ACTS

Criminal acts uncovered during an investigation need immediately to be reported to the applicable law enforcement agency and to the Chief, Pipeline Investigations at the Rail / Pipeline Investigations Branch.

In cases where an occurrence is believed to be the result of criminal or unlawful activity, law enforcement agency investigation activities shall take precedence over those of the TSB.

TSB assigned investigators may offer technical support to police if requested with approval of the DOI.

6.2 REGULATORY INFRACTIONS

Normally, regulatory infractions uncovered during an investigation should not be specifically reported to regulatory agencies. Rather, the problem may be brought to the attention of the on-site senior pipeline company officer.

At the same time, the assigned investigator shall apprise a Minister's Observer (if there is one) of facts surrounding an occurrence, including any facts that may suggest or indicate failure to comply with applicable regulations or orders. If no observer is present, regulatory infractions will be reported to the DOI by the IIL and the DOI will pass on any infraction notice at his discretion.

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6.0 OTHER ELEMENTS IN MANAGING INVESTIGATIONS

6.1 CRIMINAL ACTS

Criminal acts uncovered during an investigation need immediately to be reported to the applicable law enforcement agency and to the Chief, Rail Investigations at the Rail / Pipeline Investigations Branch.

In cases where an occurrence is believed to be the result of criminal or unlawful activity, law enforcement agency investigation activities shall take precedence over those of the TSB.

TSB assigned investigators may offer technical support to police if requested with approval of the DOI.

6.2 REGULATORY INFRACTIONS

Normally, regulatory infractions uncovered during an investigation need not be specifically reported to Transport Canada (TC). Rather, the problem may be brought to the attention of the on-site senior railway officer.

At the same time, the assigned investigator shall inform the Transport Canada Minister's Observer (if there is one designated) of facts surrounding an occurrence, including any facts that may suggest or indicate failure to comply with applicable regulations or orders. If no TC observer is present, regulatory infractions will be reported to the DOI by the ITL and the DOI will pass on any infraction notice at his discretion.

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INFRACTIONS

Criminal Acts

You must immediately advise both the applicable law enforcement agency and Head Office of any evidence of criminal acts that you discover during your investigation.

In cases where criminal or unlawful activity likely caused the occurrence, any law enforcement agency investigation activities will take precedence over those of the TSB. TSB investigators will continue to offer technical support as required.

Regulatory Infractions

Normally, you would not report to Transport Canada regulatory infractions uncovered during your investigation.

However, you must inform the Minister's Observer of the facts of an occurrence, including those which may suggest or indicate failure to comply with applicable regulations or orders.

TC Requests

Any request from TC enforcement personnel for documents or information must be in writing, must specify the part(s) of the documents required, and must be routed through the appointed Minister's Observer.

When TC enforcement request specific information that you have collected during your investigation, you must provide only:

- A certified copy of only original documents in TSB's possession that are required by the Aeronautics Act and Canadian Aviation Regulations; and
- TSB documents that contain only factual information that is not available elsewhere and that is not protected by the CTAISB Act, Access to Information Act, or Privacy Act.

Note: In exceptional cases, TC may require the original document required by law. In this situation, TSB would make a copy of the sections of the document required by its investigation, and the original document would be signed out to TC on a temporary basis and for a specific time period.

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2.7.7 *Your copy*

Once an SA has been issued, a copy of the correspondence as well as any subsequent correspondence is forwarded to the IIC, Safety Analyst, and the Regional / Head Office Operations managers.

2.7.8 *Urgent SDs*

Urgent safety deficiencies are those which are perceived to pose an immediate threat to public safety by virtue of the significant potential to cause or contribute to the severity of an accident. You must immediately report to your Operations Manager any information which you believe identifies an urgent safety deficiency.

The Operations Manager will inform the Head Office Operations Manager and DOI and appropriate action would initiate to ensure the timely communication of the deficiency.

2.7.9 *ISM audits*

It is important that the investigation examine the potential for ISM system deficiencies early on in the investigation. In the event that non conformities, or other deficiencies in the company or vessel system appear to be present, an in depth evaluation (audit) should be conducted to determine the extent of the deficiencies.

2.8 *Infractions*

2.8.1 *Criminal acts*

If there is any evidence of criminal acts discovered during your investigation, you must advise your Operations Managers as soon as possible. The Operations Manager is to advise the Head Office operations Manager and the DOI so the applicable law enforcement agency can be informed.

In cases where criminal or unlawful activity likely caused the occurrence, any law enforcement agency investigation activities will take precedence over those of the TSB. TSB investigators will continue to offer technical support as required.

2.8.2 *Regulatory infractions*

Normally, you would not report to Transport Canada regulatory infractions uncovered during your investigation.

However, you must inform the Minister=s Observer of the facts of an occurrence, including those which may suggest or indicate failure to comply with applicable regulations or orders.

A serious regulatory infraction is one that created significant potential to cause or contribute to the severity of an occurrence and, if left unattended, could reasonably be expected to cause or contribute to the severity of a future occurrence.

2.8.3 *Informing the Minister's Observer*

If you suspect, during the course of an investigation, a serious regulatory infraction, you must notify the Minister's Observer in writing. Your should also Liaise with the DOI or Manager, Head Office Operations.

The Notice to the Minister's Observer must contain details of the infraction, including the role you feel the infraction played in the occurrence under investigation, and the likely safety impact if failure to comply continues.

Attachment 21

Memorandum of Understanding

THIS ARRANGEMENT, made in duplicate as of the 19 day of August 2015

BETWEEN

THE ROYAL CANADIAN MOUNTED POLICE
(Hereinafter referred to as the "RCMP")

AND

THE CANADIAN TRANSPORTATION ACCIDENT INVESTIGATION AND SAFETY BOARD
(Hereinafter referred to as the "TSB")

1. BACKGROUND AND PURPOSE

1.1 The TSB and the RCMP wish to coordinate their activities with respect to transportation occurrences to ensure there is a complete and thorough investigation to promote public and transportation safety.

1.2 The purpose of this Memorandum of Understanding (MOU) is to provide for the coordination of the activities of the TSB and the RCMP with respect to transportation occurrences, as contemplated by section 17 of the *Canadian Transportation Accident Investigation and Safety Board Act* (1989) SC c.3 (*CTAISB Act*).

2. AUTHORITY

- *Royal Canadian Mounted Police Act, (1985) R.S.C. Chapter R-10*
- *Royal Canadian Mounted Police Regulations, SOR/88-361*
- *Canadian Transportation Accident Investigation and Safety Board Act, (1989) SC c 3*
- *Transportation Safety Board Regulations, SOR/2014-3714-37*

3. APPLICATION

3.1 This MOU applies to all transportation occurrences investigated by the TSB where the RCMP is the police force of local jurisdiction.

3.2 Where the RCMP is not the police force of local jurisdiction, the MOU applies to instances where the RCMP is conducting an investigation into a transportation occurrence under its federal policing mandate.

3.3 This MOU replaces the previous MOU between the Participants signed in 1994.

NOW THEREFORE THE PARTICIPANTS INTEND AS FOLLOWS:

4. DEFINITIONS:

4.1 In this MOU the following terms, in singular or plural form according to the context, are defined as follows:

"*CTAISB Act*" means *Canadian Transportation Accident Investigation and Safety Board Act*.

"Member" refers to a person employed as a police officer with the Royal Canadian Mounted Police.

"Peace Officer" as defined in the Criminal Code of Canada.

"Transportation occurrence" means an aviation occurrence, a railway occurrence, a marine occurrence or a pipeline occurrence as these terms are defined in the *CTAISB Act*.

5. CONCURRENT INVESTIGATIONS

5.1 The TSB has the authority to launch investigations to determine the causes and contributing factors of a transportation occurrence.

5.2 The RCMP has the authority to launch investigations to determine the presence of criminal activity related to a transportation occurrence.

5.3 Each Participant will inform the other Participant of any actions or activities that may impact on the other Participant's investigation.

5.4 Any disagreements between the Participants in relation to concurrent investigations will be resolved in accordance with section 13 of this MOU.

6. OBLIGATIONS OF THE RCMP

6.1 The RCMP will establish investigation procedures and practices to follow in relation to transportation occurrences as defined in the *CTAISB Act.*

6.2 Upon learning of a transportation occurrence to which the *CTAISB Act* applies, the RCMP will notify forthwith the TSB of the occurrence and provide pertinent particulars of that occurrence.

6.3 The RCMP will take all reasonable measures to ensure that the TSB has access to the accident site to document perishable evidence, access to data recorders, and immediate and exclusive access to on-board voice/video recorders, as well as timely access to witnesses.

6.4 When it is the police force of jurisdiction, the RCMP will assist the TSB in the initial response and the recovery of wreckage from transportation occurrences, within the operational capacity of the RCMP; and the RCMP will secure and protect the occurrence site to preserve the mutual interests of both the RCMP and TSB.

6.5 Any request by TSB for RCMP peace officer assistance is to be directed to the RCMP CROPS Officer in the respective RCMP Division who will assign someone to act as a local point of contact.

6.6 The RCMP Identification Services and the RCMP National Forensic Services and TSB Operational Services Branch and other branches of the TSB will each designate a person as a technical coordinator to ensure mutual needs and concerns of a technical nature are addressed.

6.7 A request by TSB for RCMP National Forensic Services is to be directed to the RCMP CROPS Officer in the respective RCMP Division who will assign someone to act as a point of contact.

6.8 Where the RCMP conducts an investigation with respect to an occurrence that is being investigated by the TSB, it will inform the TSB forthwith of its decision to investigate and the scope of such investigation.

6.9 The RCMP will not disseminate any information supplied by the TSB without prior consent of the TSB, except in response to a subpoena or other court order requiring production and discovery.

6.10 Where the RCMP is subject to a subpoena or other court order with regard to information supplied by the TSB, the RCMP will immediately notify the TSB of the subpoena or court order and the information to which it refers.

6.11 The RCMP, when requested, will supply statements, recordings, photographs, charts, and maps and any other information relative to an occurrence in an electronic format. The RCMP may refuse to disclose information that may, if released, compromise classified police techniques, wiretaps, police operations or investigations.

6.12 In the event the RCMP receives a request under the *Privacy Act* or the *Access to Information Act* for information supplied by the TSB, it will promptly notify the TSB of the request. For the purposes of the *Access to Information Act*, the TSB is the government institution with the "greater interest" in any information so supplied to the RCMP.

6.13 The RCMP will ensure that information, if stored or exchanged electronically, uses a technology approved for that level of sensitivity.

7. OBLIGATIONS OF TSB:

7.1 The TSB will establish investigation procedures and practices to follow in relation to transportation occurrences as defined in the *CTAISB Act.*

7.2 Upon learning of a transportation occurrence to which the *CTAISB Act* applies, the TSB will notify forthwith the RCMP of any occurrence in which the RCMP may have a direct interest, including occurrences in which there are indications of possible criminal activity, and provide pertinent particulars of that occurrence. Should the TSB call the RCMP National Operations Center (NOC), the TSB will

7.2.1. Provide the name and contact info of the TSB caller; and,

7.2.2. Provide information relevant to incident - location, type of incident and if they feel there is a National Security nexus.

7.3 The TSB will take all reasonable measures to ensure its investigation procedures and practices are compatible with investigation procedures and practices followed by the RCMP, coroners and medical examiners with respect to taking measures to preserve and protect any evidence so as to ensure its continuity and forensic integrity.

7.4 The TSB will, when requested by the RCMP, provide the RCMP with factual information, except on-board voice/video recordings, statements, or any other information that is privileged under the *CTAISB Act* or the disclosure of which could be detrimental to the object of the TSB.

7.5 Where the RCMP requires technical assistance, the TSB will assist the RCMP in the assessment of evidence, subject to the *CTAISB Act* and TSB policies.

7.6 The TSB will not disseminate any information supplied by the RCMP without prior consent of the RCMP, except in response to a subpoena or other court order requiring production and discovery.

7.7 Where the TSB is subject to a subpoena or other court order with regard to information supplied by the RCMP, the TSB will immediately notify the RCMP of the subpoena or court order and the information to which it refers.

7.8 In the event the TSB receives a request under the *Privacy Act* or the *Access to Information Act* for information supplied by the RCMP, it will promptly notify the RCMP of the request. For the purposes of the *Access to Information Act*, the RCMP is the government institution with the "greater interest" in any information so supplied to the TSB.

7.9 The TSB will ensure that the information, if exchanged or stored electronically, uses a technology approved for that level of sensitivity.

8. FINANCIAL ARRANGEMENTS

8.1 The TSB will assume the incremental cost of transportation, accommodation and other expenses specifically associated with those services performed by the RCMP for the TSB and not incurred in conjunction with routine RCMP responsibilities in accordance with the Treasury Board Policy on Interdepartmental Charging.

8.2 The RCMP will assume the incremental cost of transportation, accommodation and other expenses specifically associated with those services performed by the TSB for the RCMP and not incurred in conjunction with routine TSB responsibilities in accordance with the Treasury Board Policy on Interdepartmental Charging.

8.3 Both Participants will provide detailed supporting documentation for all costs submitted for reimbursement by the other Participant within 30 days of incurring the expense and, upon request, will collaborate with internal and external auditors of the other Participant.

8.4 Unless agreed otherwise, an estimate of costs will be discussed between both Participants before any work is initiated by any of the Participants on behalf of the other Participant.

9. MEDIA RELATIONS

9.1 Both Participants acknowledge that the TSB is to be the official spokesperson regarding any accident investigation that the TSB undertakes.

9.2 Each Participant may respond to requests for information from the media concerning its mandate and activities.

9.3 When both Participants have an ongoing interest in the matter, each Participant will endeavor to provide notice and details to the other Participant in advance of the release of formal communiqués or press releases, which may be of interest to, or impact on, the mandate or activities of the other Participant.

10. TERM

10.1 This MOU will come into effect upon the date of the last signature by the Participants and will remain in effect until September 1, 2020. This MOU may be extended upon the written consent of the Participants prior to termination of the current period.

11. EQUIPMENT

11.1 In areas where the RCMP is the police force of local jurisdiction, the RCMP and TSB will mutually assist in the provision of equipment, transportation, personnel, and facilities, subject to availability.

11.2 All RCMP assets provided in conjunction with this MOU are the property of the RCMP and will continue to remain so throughout the term of the MOU. Such assets will remain under the control of the RCMP. All RCMP assets are to be operated and handled in full compliance with all Government of Canada and RCMP policies, directives, procedures and guidelines.

12. DEPARTMENTAL REPRESENTATIVES:

12.1 The following officials are designated as the departmental representatives for purposes of this MOU and any notices required under this MOU will be delivered as follows:

For the RCMP:	For the TSB:
Assistant Commissioner Strategic Policy and External Relations 73 Leikin Drive Ottawa ON K1A 0R2 (613) 843-6279	Chief Operating Officer 200 Promenade du Portage 4th Floor Gatineau QC K1A 1K8 (819) 994-8004

13. DISPUTE RESOLUTION

13.1 In the event of a dispute arising from the interpretation or operation of this MOU, which cannot be resolved at the working level, it will be referred to the appropriate modal Director of Investigations at the TSB and the Divisional CROPS Officer at RCMP who will use their best efforts to resolve the matter amicably. If such negotiation fails, the matter will be referred to the Chief Operating Officer at the TSB and the Deputy Commissioner of Federal Policing of the RCMP. If such negotiation fails, the Participants may refer the matter to the Chair of the TSB and the Commissioner of the RCMP for final resolution.

14. MONITORING

14.1 The Participants will meet on an annual basis to review and assess the operation and effectiveness of this MOU.

15. TERMINATION

15.1 This MOU may be terminated by either Participant upon ninety (90) days written notice. Termination does not release a Participant from any obligations which accrued while the MOU was in effect.

16. AMENDMENT TO THE MOU

16.1 This MOU may only be amended by the written consent of the Participants.

17. APPROVAL

Signed by the authorized officers of the Participants:

For the RCMP:

Bob Paulson, Commissioner
Royal Canadian Mounted Police

Date: SEP 0 3 2015

For the TSB:

Kathleen Fox, Chair
Transportation Safety Board of Canada

Date: Aug. 19, 2015

Attachment 22

Memorandum of Understanding

THIS ARRANGEMENT, made in duplicate as of the 16th day of October 2020

BETWEEN

THE ROYAL CANADIAN MOUNTED POLICE
(Hereinafter referred to as the "RCMP")

AND

THE CANADIAN TRANSPORTATION ACCIDENT INVESTIGATION AND SAFETY BOARD
(Hereinafter referred to as the "TSB")

1. BACKGROUND AND PURPOSE

1.1 The TSB and the RCMP wish to coordinate their activities with respect to transportation occurrences to ensure there is a complete and thorough investigation to promote public and transportation safety.

1.2 The purpose of this Memorandum of Understanding (MOU) is to provide for the coordination of the activities of the TSB and the RCMP with respect to transportation occurrences, as contemplated by sections 15 and 17 of the *Canadian Transportation Accident Investigation and Safety Board Act* (S.C. 1989, c. 3) (*CTAISB Act*).

2. AUTHORITY

- *Royal Canadian Mounted Police Act* (R.S.C., 1985, c. R-10)
- *Royal Canadian Mounted Police Regulations, 2014* (SOR/2014-281)
- *Canadian Transportation Accident Investigation and Safety Board Act* (S.C. 1989, c. 3)
- *Transportation Safety Board Regulations* (SOR/2014-37)

3. APPLICATION

3.1 This MOU applies to all transportation occurrences investigated by the TSB where the RCMP is the police force of local jurisdiction.

3.2 Where the RCMP is not the police force of local jurisdiction, the MOU applies to instances where the RCMP is conducting an investigation into a transportation occurrence under its federal policing mandate.

3.3 This MOU replaces the previous MOU between the Participants signed in 2015.

NOW THEREFORE THE PARTICIPANTS INTEND AS FOLLOWS:

4. DEFINITIONS:

4.1 In this MOU the following terms, in singular or plural form according to the context, are defined as follows:

"*CTAISB Act*" means *Canadian Transportation Accident Investigation and Safety Board Act*.

"Member" refers to a person employed as a police officer with the Royal Canadian Mounted Police.

"Peace Officer" as defined in the Criminal Code of Canada.

"Transportation occurrence" means an aviation occurrence, a railway occurrence, a marine occurrence or a pipeline occurrence as these terms are defined in the *CTAISB Act*.

5. CONCURRENT INVESTIGATIONS

5.1 The TSB has the authority to launch investigations to determine the causes and contributing factors of a transportation occurrence.

5.2 The RCMP has the authority to launch investigations to determine the presence of criminal activity related to a transportation occurrence.

5.3 Each Participant will inform the other Participant of any actions or activities that may impact on the other Participant's investigation.

5.4 Any disagreements between the Participants in relation to concurrent investigations will be resolved in accordance with section 13 of this MOU.

6. RESPONSIBILITIES OF THE RCMP

6.1 The RCMP will establish investigation procedures and practices to follow in relation to transportation occurrences as defined in the *CTAISB Act*.

6.2 Upon learning of a transportation occurrence to which the *CTAISB Act* applies, the RCMP will notify forthwith the TSB of the occurrence and provide pertinent particulars of that occurrence.

6.3 The RCMP will take all reasonable measures to ensure that the TSB has access to the accident site to document perishable evidence, access to data recorders, and immediate and exclusive access to on-board voice/video recorders, as well as timely access to witnesses.

6.4 When it is the police force of jurisdiction, the RCMP will assist the TSB in the initial response and the recovery of wreckage from transportation occurrences, within the operational capacity of the RCMP; and the RCMP will secure and protect the occurrence site to preserve the mutual interests of both the RCMP and TSB.

6.5 Any request by TSB for RCMP Peace Officer assistance is to be directed to the RCMP CROPS Officer in the respective RCMP Division who will assign someone to act as a local point of contact.

6.6 The RCMP Identification Services and the RCMP National Forensic Services and TSB Operational Services Branch and other branches of the TSB will each designate a person as a technical coordinator to ensure mutual needs and concerns of a technical nature are addressed.

6.7 A request by TSB for RCMP National Forensic Services is to be directed to the RCMP CROPS Officer in the respective RCMP Division who will assign someone to act as a point of contact.

6.8 Where the RCMP conducts an investigation with respect to an occurrence that is being investigated by the TSB, it will inform the TSB forthwith of its decision to investigate and the scope of such investigation.

6.9 The RCMP will not disseminate any information supplied by the TSB without prior consent of the TSB, except in response to a subpoena or other court order requiring production and discovery.

6.10 Where the RCMP is subject to a subpoena or other court order with regard to information supplied by the TSB, the RCMP will immediately notify the TSB of the subpoena or court order and the information to which it refers.

6.11 The RCMP, when requested, will supply statements, recordings, photographs, charts, and maps and any other information relative to an occurrence in an electronic format. The RCMP may refuse to disclose information that may, if released, compromise classified police techniques, wiretaps, police operations or investigations.

6.12 In the event the RCMP receives a request under the *Privacy Act* or the *Access to Information Act* for information supplied by the TSB, it will promptly notify the TSB of the request. For the purposes of the *Access to Information Act*, the TSB is the government institution with the "greater interest" in any information so supplied to the RCMP.

6.13 The RCMP will ensure that information, if stored or exchanged electronically, uses a technology approved for that level of sensitivity.

7. RESPONSIBILITIES OF TSB:

7.1 The TSB will establish investigation procedures and practices to follow in relation to transportation occurrences as defined in the *CTAISB Act*.

7.2 Upon learning of a transportation occurrence to which the *CTAISB Act* applies, the TSB will notify forthwith the RCMP of any occurrence in which the RCMP may have a direct interest and provide pertinent particulars of that occurrence. Should the TSB call the RCMP National Operations Center (NOC), the TSB will provide:

7.2.1. Name and contact information of the TSB caller; and

7.2.2. The location of the incident and the type of incident.

7.3 The TSB will take all reasonable measures to ensure its investigation procedures and practices are compatible with investigation procedures and practices followed by the RCMP, coroners and medical examiners with respect to taking measures to preserve and protect any evidence so as to ensure its continuity and forensic integrity.

7.4 The TSB will, when requested by the RCMP, provide the RCMP with factual information, except on-board voice/video recordings, statements, or any other information that is privileged under the *CTAISB Act* or the disclosure of which could be detrimental to the object of the TSB.

7.5 Where the RCMP requires technical assistance, the TSB will assist the RCMP in the assessment of evidence, subject to the *CTAISB Act* and TSB policies.

7.6 The TSB will not disseminate any information supplied by the RCMP without prior consent of the RCMP, except in response to a subpoena or other court order requiring production and discovery.

7.7 Where the TSB is subject to a subpoena or other court order with regard to information supplied by the RCMP, the TSB will immediately notify the RCMP of the subpoena or court order and the information to which it refers.

7.8 In the event the TSB receives a request under the *Privacy Act* or the *Access to Information Act* for information supplied by the RCMP, it will promptly notify the RCMP of the request. For the purposes of the *Access to Information Act*, the RCMP is the government institution with the "greater interest" in any information so supplied to the TSB.

7.9 The TSB will ensure that the information, if exchanged or stored electronically, uses a technology approved for that level of sensitivity.

8. FINANCIAL ARRANGEMENTS

8.1 The TSB will assume the incremental cost of transportation, accommodation and other expenses specifically associated with those services performed by the RCMP for the TSB and not incurred in conjunction with routine RCMP responsibilities in accordance with the Treasury Board Policy on Interdepartmental Charging.

8.2 The RCMP will assume the incremental cost of transportation, accommodation and other expenses specifically associated with those services performed by the TSB for the RCMP and not incurred in conjunction with routine TSB responsibilities in accordance with the Treasury Board Policy on Interdepartmental Charging.

8.3 Both Participants will provide detailed supporting documentation for all costs submitted for reimbursement by the other Participant within 30 days of incurring the expense and, upon request, will collaborate with internal and external auditors of the other Participant.

8.4 Prior to any work being initiated by any of the Participants on behalf of the other Participant, the estimated cost related to the work required will be discussed. The participants will identify an acceptable maximum threshold amount of funds related to the estimated costs. Should the threshold amount be reached, the Participants will meet to review the detailed work to be performed, and mutually agree to a revised costing estimate/commitment.

9. MEDIA RELATIONS

9.1 Both Participants acknowledge that the TSB is to be the official spokesperson regarding any accident investigation that the TSB undertakes.

9.2 Each Participant may respond to requests for information from the media concerning its mandate and activities.

9.3 When both Participants have an ongoing interest in the matter, each Participant will endeavor to provide notice and details to the other Participant in advance of the release of formal communiqués or press releases, which may be of interest to, or impact on, the mandate or activities of the other Participant.

10. TERM

10.1 This MOU will come into effect upon the date of the last signature by the Participants and will remain in effect until September 1, 2025.

10.2 This MOU may be extended upon the written consent of the Participants prior to termination of the current period.

11. EQUIPMENT

11.1 In areas where the RCMP is the police force of local jurisdiction, the RCMP and TSB will mutually assist in the provision of equipment, transportation, personnel, and facilities, subject to availability.

11.2 All RCMP assets provided in conjunction with this MOU are the property of the RCMP and will continue to remain so throughout the term of the MOU. Such assets will remain under the control of the RCMP. All RCMP assets are to be operated and handled in full compliance with all Government of Canada and RCMP policies, directives, procedures and guidelines.

12. DEPARTMENTAL REPRESENTATIVES:

12.1 The following officials are designated as the departmental representatives for purposes of this MOU and any notices required under this MOU will be delivered as follows:

For the RCMP:	For the TSB:
Sean McGillis Executive Director Federal Policing Strategic Direction 73 Leikin Drive Ottawa ON K1A 0R2 (613) 843-5914	André Lapointe Chief Operating Officer 200 Promenade du Portage 4th Floor Gatineau QC K1A 1K8 (819) 994-8004

Changes to the designated departmental representatives will be upon written notification thereof to the other Participant.

13. DISPUTE RESOLUTION

13.1 In the event of a dispute arising from the interpretation or operation of this MOU, which cannot be resolved at the working level, it will be referred to the appropriate modal Director of Investigations at the TSB and the Divisional CROPS Officer at RCMP who will use their best efforts to resolve the matter amicably. If such negotiation fails, the matter will be referred to the Chief Operating Officer at the TSB and the Deputy Commissioner of Federal Policing of the RCMP. If such negotiation fails, the Participants may refer the matter to the Chair of the TSB and the Commissioner of the RCMP for final resolution.

13.2 The Participants understand that no dispute will be referred to any court, tribunal, arbiter, or any other biding forum or process.

14. MONITORING

14.1 The Participants will meet on an annual basis to review and assess the operation and effectiveness of this MOU.

15. TERMINATION

15.1 This MOU may be terminated by either Participant upon ninety (90) days written notice. Termination does not release a Participant from any obligations which accrued while the MOU was in effect. In particular, any obligations regarding confidentiality and use of information will survive the expiry of termination of this MOU.

16. AMENDMENT TO THE MOU

16.1 This MOU may only be amended by the written consent of the Participants as signed by their authorized officers or their delegates.

17. APPROVAL

This MOU reflects the good faith and spirit of cooperation of the Participants but is not legally binding on any of them. Signed by the authorized officers of the Participants:

For the RCMP:

Date: 2020.11.10

Brenda Lucki, Commissioner
Royal Canadian Mounted Police

For the TSB:

Fox, Kathy

Digitally signed by Fox, Kathy
DN: C=CA, O=GC, OU=TSB-BST, CN="Fox, Kathy"
Reason: I am the author of this document
Location: your signing location here
Date: 2020-10-18 16:41:14
TSB Phantom PDF Version: 9.7.0

Date: _____

Kathleen Fox, Chair
Transportation Safety Board of Canada

Protocole d'entente

LA PRÉSENTE ENTENTE est faite en deux exemplaires le 4ième jour de novembre 2020

entre

LA GENDARMERIE ROYALE DU CANADA
(appelée ci-après « GRC »)

et

LE BUREAU CANADIEN D'ENQUÊTE SUR LES ACCIDENTS DE TRANSPORT ET DE LA SÉCURITÉ DES TRANSPORTS
(appelé ci-après « BST »)

1. CONTEXTE ET OBJECTIF

1.1 Le BST et la GRC souhaitent coordonner leurs activités relatives aux accidents de transport afin de s'assurer qu'il y a une enquête complète et approfondie pour favoriser la sécurité du public et des transports.

1.2 Le présent protocole d'entente (PE) vise à assurer la coordination des activités du BST et de la GRC relatives aux accidents de transport, en vertu des articles 15 et 17 de la *Loi sur le Bureau canadien d'enquête sur les accidents de transport et de la sécurité des transports* (L.C. 1989, ch. 3) (*Loi sur le BCEATST*).

2. POUVOIRS

- *Loi sur la Gendarmerie royale du Canada* (L.R.C. 1985, ch. R-10)
- *Règlement de la Gendarmerie royale du Canada* (2014, DORS/2014-281)
- *Loi sur le Bureau canadien d'enquête sur les accidents de transport et de la sécurité des transports* (L.C. 1989, ch. 3)
- *Règlement sur le Bureau de la sécurité des transports* (DORS/2014-37)

3. APPLICATION

3.1 Le présent PE s'applique à tous les accidents de transport sur lesquels le BST a enquêté et pour lesquels la GRC est le service de police local.

3.2 Lorsque la GRC n'est pas le service de police local, le PE s'applique aux cas où la GRC mène une enquête sur un accident de transport dans le cadre de son mandat de police fédérale.

3.3 Le présent PE remplace le PE précédent entre les participants signé en 2015.

POUR CES MOTIFS, LES PARTIES CONVIENNENT DE CE QUI SUIT :

4. DÉFINITIONS :

4.1 Dans le présent PE, les termes ci-dessous, employés au singulier ou au pluriel selon le contexte, se définissent comme suit :

« *Loi sur le BCEATST* » signifie *Loi sur le Bureau canadien d'enquête sur les accidents de transport et de la sécurité des transports.*

« Membre » renvoie à une personne employée à titre de policier (ou policière) de la Gendarmerie royale du Canada.

« Agent de la paix » est défini dans le *Code criminel*.

« Accident de transport » désigne un accident aéronautique, ferroviaire, maritime ou de pipeline tel que défini dans la *Loi sur le BCEATST*.

5. ENQUÊTES PARALLÈLES

5.1 Le BST a le pouvoir de lancer des enquêtes pour déterminer les causes et les facteurs contributifs d'un accident de transport.

5.2 La GRC a le pouvoir de lancer des enquêtes pour déterminer la présence d'activités criminelles liées à un accident de transport.

5.3 Chaque participant informera l'autre participant de toute action ou activité qui pourrait avoir une incidence sur l'enquête de l'autre participant.

5.4 Tout désaccord entre les participants relativement à des enquêtes parallèles sera réglé conformément à l'article 13 du présent PE.

6. RESPONSABILITÉS DE LA GRC

6.1 La GRC établira les procédures et les pratiques d'enquête à suivre en ce qui concerne les accidents de transport définis dans la *Loi sur le BCEATST*.

6.2 Dès qu'elle est informée d'un accident de transport auquel s'applique la *Loi sur le BCEATST*, la GRC en informe immédiatement le BST et lui fournit les détails pertinents.

6.3 La GRC prendra toutes les mesures raisonnables pour s'assurer que le BST a accès au lieu de l'accident afin de documenter les éléments de preuve périssables, a accès aux enregistreurs de données et a un accès immédiat et exclusif aux enregistreurs audio-vidéo de bord, ainsi qu'un accès rapide aux témoins.

6.4 Lorsqu'il s'agit du service de police compétent, la GRC aidera le BST dans l'intervention initiale et la récupération des débris à la suite d'accidents de transport, dans les limites de la capacité opérationnelle de la GRC; et la GRC sécurisera et protégera le lieu de l'accident afin de préserver les intérêts mutuels de la GRC et du BST.

6.5 Toute demande d'aide d'un agent de la paix de la GRC présentée par le BST doit être adressée à l'officier responsable des enquêtes criminelles (OREC) de la division concernée de la GRC, qui désignera une personne-ressource locale.

6.6 Les Services d'identification de la GRC, les Services judiciaires nationaux de la GRC, la Direction des services à l'appui des opérations du BST et d'autres directions du BST désigneront chacun une personne comme coordonnateur technique pour veiller à ce que les besoins et les préoccupations mutuels de nature technique soient pris en compte.

6.7 Toute demande de Services judiciaires nationaux de la GRC présentée par le BST doit être adressée à l'OREC de la division concernée de la GRC, qui désignera une personne-ressource.

6.8 Lorsque la GRC mène une enquête sur un accident qui fait l'objet d'une enquête par le BST, elle informe immédiatement ce dernier de sa décision d'enquêter ainsi que de la portée de cette enquête.

6.9 La GRC ne diffusera aucun renseignement fourni par le BST sans le consentement préalable du BST, sauf en réponse à une assignation à comparaître ou à une autre ordonnance judiciaire exigeant la production et l'interrogatoire préalable.

6.10 Lorsque la GRC reçoit une assignation à comparaître ou une autre ordonnance judiciaire relativement à un renseignement fourni par le BST, la GRC préviendra immédiatement ce dernier, en précisant de quel renseignement il s'agit.

6.11 Sur demande, la GRC fournira des déclarations, des enregistrements, des photographies, des cartes et tout autre renseignement relatif à un événement en format électronique. La GRC peut refuser de communiquer des renseignements qui, s'ils sont divulgués, pourraient compromettre des techniques policières classifiées, des dispositifs d'écoute électronique, des opérations policières ou des enquêtes.

6.12 Si la GRC reçoit une demande en vertu de la *Loi sur la protection des renseignements personnels* ou de la *Loi sur l'accès à l'information* pour de l'information fournie par le BST, elle en informera rapidement le BST. Aux fins de la *Loi sur l'accès à l'information*, le BST est l'institution fédérale qui est « davantage concernée » par toute information ainsi fournie à la GRC.

6.13 La GRC veillera à ce que l'information stockée ou échangée électroniquement le soit au moyen d'une technologie approuvée pour ce niveau de sensibilité.

7. RESPONSABILITÉS DU BST

7.1 Le BST établira les procédures et les pratiques d'enquête à suivre en ce qui concerne les accidents de transport tels que définis dans la *Loi sur le BCEATST*.

7.2 Dès qu'il est informé d'un accident de transport auquel s'applique la *Loi sur le BCEATST*, le BST avisera immédiatement la GRC de tout accident dans lequel la GRC pourrait avoir un intérêt direct et lui fournira des détails pertinents sur cet accident. Lorsque le BST appelle le Centre national des opérations de la GRC, il doit fournir :

7.2.1. le nom et les coordonnées de l'appelant du BST;

7.2.2. le lieu de l'incident et le type d'incident.

7.3 Le BST prendra toutes les mesures raisonnables pour s'assurer que ses procédures et pratiques d'enquête sont compatibles avec les procédures et pratiques d'enquête suivies par la GRC, les coroners et les médecins légistes en ce qui concerne la prise de mesures pour préserver et protéger les éléments de preuve afin d'en assurer la continuité et l'intégrité médicolégale.

7.4 À la demande de la GRC, le BST fournira à la GRC des renseignements factuels, à l'exception des enregistrements audio-vidéo de bord, des déclarations

ou de tout autre renseignement protégé en vertu de la *Loi sur le BCEATST* ou dont la divulgation pourrait nuire à l'objet du BST.

7.5 Lorsque la GRC a besoin d'aide technique, le BST l'aidera à évaluer la preuve, sous réserve de la *Loi sur le BCEATST* et des politiques du BST.

7.6 Le BST ne diffusera aucun renseignement fourni par la GRC sans le consentement préalable de la GRC, sauf en réponse à une assignation à comparaître ou à une autre ordonnance judiciaire exigeant la production et l'interrogatoire préalable.

7.7 Lorsque le BST reçoit une assignation à comparaître ou une autre ordonnance judiciaire relativement à un renseignement fourni par la GRC, le BST préviendra immédiatement la GRC, en précisant de quel renseignement il s'agit.

7.8 Si le BST reçoit une demande en vertu de la *Loi sur la protection des renseignements personnels* ou de la *Loi sur l'accès à l'information* pour de l'information fournie par la GRC, il en informera rapidement la GRC. Aux fins de la *Loi sur l'accès à l'information*, la GRC est l'institution fédérale qui est « davantage concernée » par toute information ainsi fournie au BST.

7.9 Le BST veillera à ce que l'information stockée ou échangée électroniquement le soit au moyen d'une technologie approuvée pour ce niveau de sensibilité.

8. ACCORDS FINANCIERS

8.1 Le BST assumera le coût supplémentaire du transport, des frais d'hébergement et d'autres dépenses spécialement associés aux services fournis par la GRC pour le compte du BST et qui ne sont pas engagés dans le cadre des responsabilités courantes de la GRC, conformément à la Politique sur les imputations interministérielles du Conseil du Trésor.

8.2 La GRC assumera le coût supplémentaire du transport, des frais d'hébergement et d'autres dépenses spécifiquement associées aux services fournis par le BST pour la GRC et qui ne sont pas engagées dans le cadre des responsabilités courantes du BST conformément à la Politique sur les imputations interministérielles du Conseil du Trésor.

8.3 Les deux participants fourniront des pièces justificatives détaillées pour tous les coûts soumis pour remboursement par l'autre participant dans les 30 jours suivant l'engagement de la dépense et, sur demande, collaboreront avec les auditeurs internes et externes de l'autre participant.

8.4 Avant tout travail entrepris par l'un ou l'autre des participants au nom de l'autre participant, le coût estimatif du travail requis sera discuté. Les participants

déterminerons un montant maximal acceptable des fonds liés aux coûts estimatifs. Si le seuil est atteint, les participants se réuniront pour examiner le travail détaillé à effectuer et s'entendront mutuellement sur une estimation/un engagement des coûts révisés.

9. RELATIONS AVEC LES MÉDIAS

9.1 Les deux participants reconnaissent que le BST est le porte-parole officiel pour toute enquête sur un accident dont celui-ci est chargé.

9.2 Chaque participant peut répondre aux demandes d'information des médias concernant son mandat et ses activités.

9.3 Lorsque les deux participants ont un intérêt continu dans la question, chaque participant s'efforcera de fournir un avis et des détails à l'autre participant avant la diffusion des communiqués officiels ou des communiqués de presse, qui pourraient concerner le mandat ou les activités de l'autre participant ou avoir des répercussions sur eux.

10. DURÉE

10.1 Le présent PE prend effet à la date de la dernière signature des participants et demeurera valide jusqu'au 1er septembre 2025.

10.2 Le présent PE peut être prolongé sur consentement écrit des participants avant la fin de la période en cours.

11. ÉQUIPEMENT

11.1 Dans les régions où la GRC est le service de police local, la GRC et le BST s'entraideront pour fournir l'équipement, le transport, le personnel et les installations, sous réserve de leur disponibilité.

11.2 Tous les biens de la GRC fournis dans le cadre du présent PE appartiennent à la GRC et demeurent la propriété de celle-ci pour toute la durée du PE. Ces biens demeureront sous le contrôle de la GRC. Tous les biens de la GRC doivent être utilisés et manipulés en conformité avec toutes les politiques, les directives, les procédures et les lignes directrices du gouvernement du Canada ainsi que de la GRC.

12. REPRÉSENTANTS MINISTÉRIELS

12.1 Les responsables dont le nom figure ci-dessous sont désignés à titre de représentants ministériels dans le cadre du présent PE, et on doit envoyer à l'adresse suivante tout avis nécessaire en vertu du présent protocole :

Pour la GRC : Sean McGillis Directeur exécutif Orientation stratégique de la Police fédérale 73, promenade Leikin Ottawa (Ontario) K1A 0R2 613-843-5914	Pour le BST : André Lapointe Administrateur en chef des opérations 200, Promenade du Portage 4e étage Gatineau (Québec) K1A 1K8 819-994-8004

Tout changement de représentant ministériel désigné se fera sur avis écrit à l'autre participant.

13. RÉSOLUTION DE CONFLITS

13.1 En cas de différend découlant de l'interprétation ou de la mise en œuvre du présent PE et qui ne peut être réglé par le personnel, le différend sera soumis au directeur des enquêtes modales du BST et à l'OREC de la division concernée de la GRC qui feront tout ce qui est en leur pouvoir pour régler la question à l'amiable. Si cette négociation échoue, l'affaire sera soumise à l'administrateur en chef des opérations du BST et au sous-commissaire de la Police fédérale de la GRC. Si cette négociation échoue, les participants pourront soumettre l'affaire au président du BST et au commissaire de la GRC en vue d'une résolution finale.

13.2 Les participants comprennent qu'aucun différend ne sera soumis à une cour, un tribunal, un arbitre ou tout autre forum ou processus de soumission.

14. SURVEILLANCE

14.1 Les participants se réuniront une fois par an pour examiner et évaluer le fonctionnement et l'efficacité du présent PE.

15. RÉSILIATION

15.1 Le présent PE peut être résilié par l'un ou l'autre des participants au moyen d'un avis écrit de quatre-vingt-dix (90) jours. La résiliation ne libère pas un participant

des obligations qu'il a contractées lorsque le PE était en vigueur. En particulier, toutes les obligations relatives à la confidentialité et à l'utilisation de l'information survivront à l'expiration du présent PE.

16. MODIFICATION DU PE

16.1 Le présent PE peut seulement être modifié avec le consentement écrit des participants par l'entremise de leurs représentants autorisés ou leurs délégués.

17. APPROBATION

Le présent PE témoigne de la bonne foi et de l'esprit de collaboration des participants, mais il n'est juridiquement contraignant pour aucun d'eux. Signé par les représentants autorisés des participants :

Pour la GRC :

Brenda Lucki, commissaire
Gendarmerie royale du Canada

Date : 2020-11-10

Pour le BST :

Fox, Kathy

Digitally signed by Fox, Kathy
DN: C=CA, O=GC, OU=TSB-BST, CN="Fox, Kathy"
Reason: I am the author of this document
Location: your signing location here
Date: 2020-11-04 11:47:31
TSB Phantom PDF Version: 9.7.0

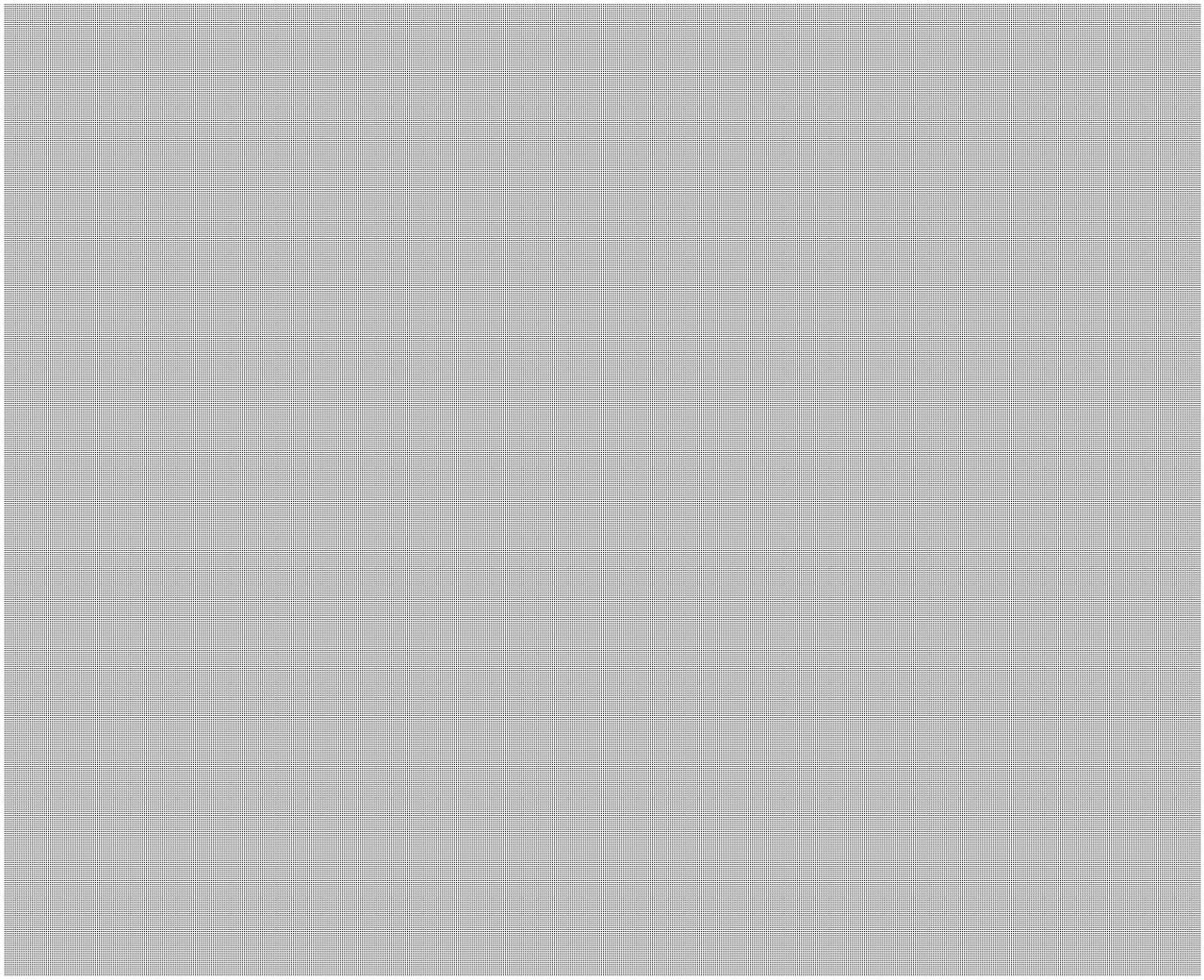
Kathleen Fox, présidente
Bureau de la sécurité des transports du Canada

Date : 4 novembre 2020

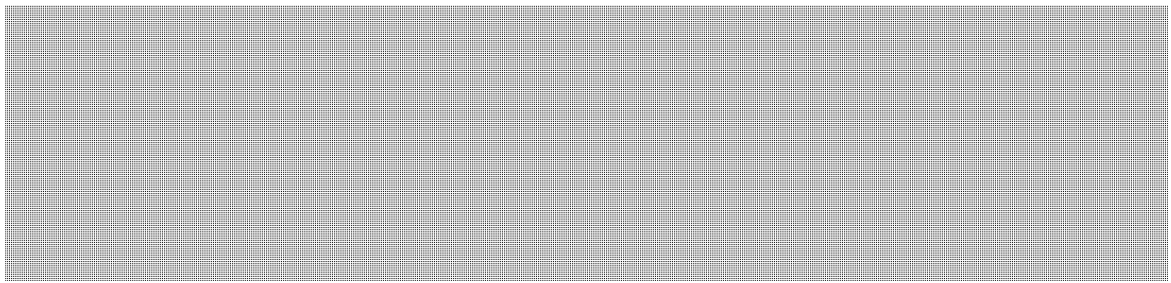
Attachment 23

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s.16(1)(c)(iii)
s.19(1)
s.20(1)(b)

Darlene,



-----Original Message-----
From: Roosenboom, Darlene <Darlene.Roosenboom@bst-tsb.gc.ca>
Sent: Tuesday, February 11, 2020 14:38
To: [redacted]@cpr.ca>
Subject: RE: R19C0015 [redacted]



A0165379_1-000001

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s.16(1)(c)(iii)
s.19(1)
s.20(1)(b)

Thanks
Darlene

Darlene Roosenboom
Specialist/Senior Investigator, Railway Operations / Rail - Head Office Operations Transportation Safety Board of Canada / Government of Canada
Darlene.Roosenboom@tsb-bst.gc.ca<mailto:Darlene.Roosenboom@tsb-bst.gc.ca> / Tel: (905) 771-7688<tel:(905)%20771-7688> / TTY: 819-953-7287<tel:819-953-7287>

Spécialiste/Enquêteur principal Opération de rail / Rail - Operations de l'administration centrale Bureau de la sécurité des transports du Canada / Gouvernement du Canada
Darlene.Roosenboom@bst-tsb.gc.ca<mailto:Darlene.Roosenboom@bst-tsb.gc.ca> / Tél.: (905) 771-7688<tel:(905)%20771-7688> / ATS: 819-953-7287<tel:819-953-7287> network.

-------- Original message --------
From: [redacted]@cpr.ca>
Date: 2020-02-11 4:29 p.m. (GMT-05:00)
To: "Roosenboom, Darlene" <Darlene.Roosenboom@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca>, [redacted]@cpr.ca>, Kunal [redacted]cpr.ca>, [redacted]@cpr.ca>
Subject: RE: R19C0015 [redacted]

Darlene,

[redacted]

A0165379_2-000002

Pages 3 to / à 4

are withheld pursuant to sections

sont retenues en vertu des articles

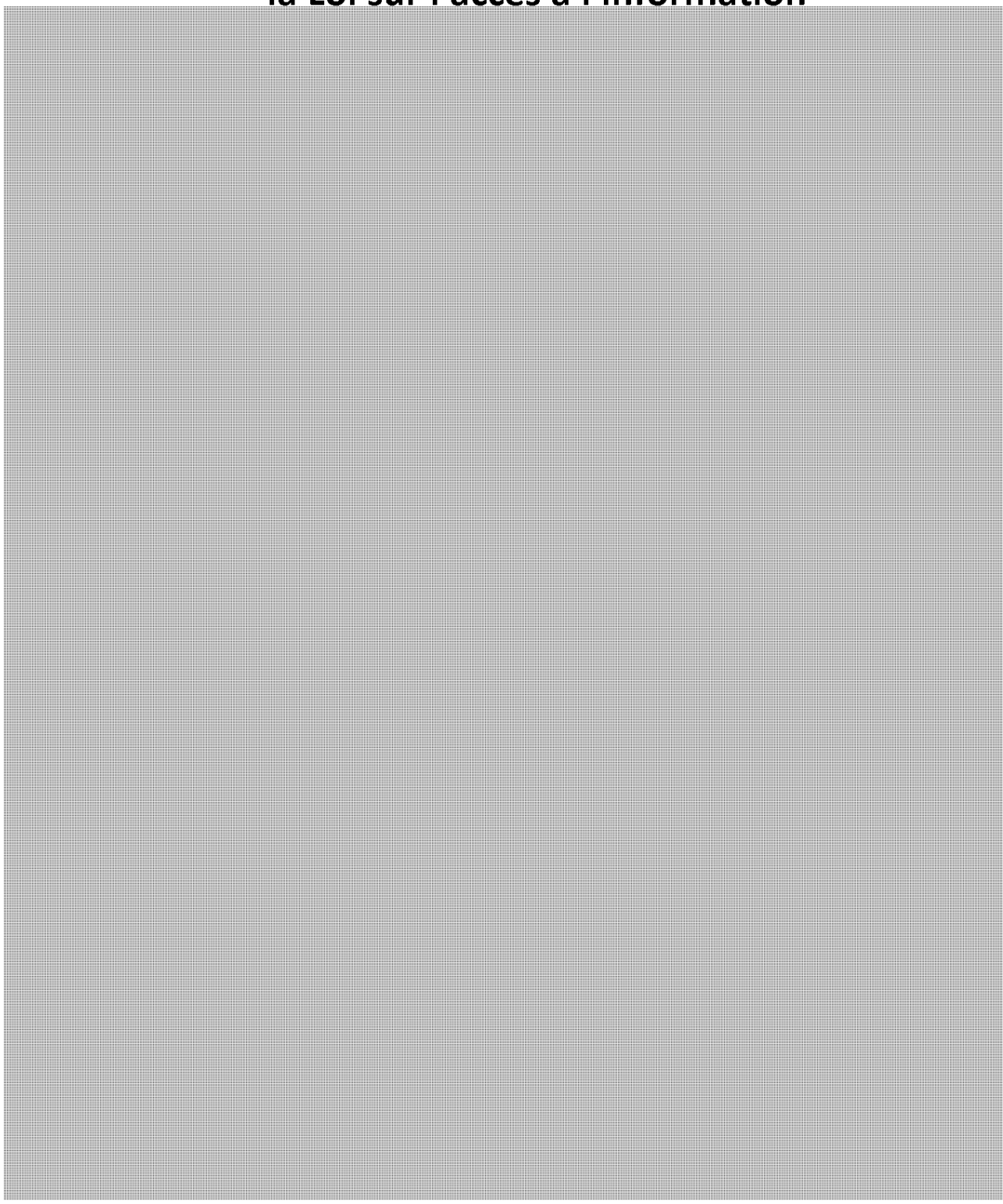
16(1)(c)iii), 19(1), 20(1)(b)

of the Access to Information Act

de la Loi sur l'accès à l'information

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s.16(1)(c)(iii)
s.19(1)
s.16(2)(c)



From: Roosenboom, Darlene <Darlene.Roosenboom@bst-tsb.gc.ca<mailto:Darlene.Roosenboom@bst-tsb.gc.ca>>
Sent: Thursday, January 30, 2020 06:51

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s.16(1)(c)iii)
s.19(1)
s.20(1)(b)

To: [redacted]@cpr.ca<mailto:[redacted]@cpr.ca>>
Subject: R19C0015 [redacted]

[redacted]

Darlene Roosenboom

Specialist/Senior Investigator, Railway Operations / Rail - Head Office Operations Transportation Safety Board of Canada / Government of Canada
Darlene.Roosenboom@tsb-bst.gc.ca<mailto:Darlene.Roosenboom@tsb-bst.gc.ca> / Tel: (905) 771-7688 / TTY: 819-953-7287

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s.16(1)(c)iii)
s.19(1)
s.20(1)(b)

Richards, Rosemary

From: [redacted]@cpr.ca>
Sent: Friday, February 14, 2020 11:29 AM
To: LeBlanc, Robert
Subject: FW: R19C0015 [redacted]

[redacted]

From: [redacted]@tsb-bst.gc.ca>
Sent: Thursday, August 01, 2019 18:31
To: [redacted]@cpr.ca>; [redacted]@cpr.ca>; [redacted]@cpr.ca>; [redacted]@cpr.ca>
Cc: R19C0015 <R19C0015@bst-tsb.gc.ca>; F[redacted]@cpr.ca>; Wallis, Mark <Mark.Wallis@tsb-bst.gc.ca>; Smith, Heather <Heather.Smith@tsb-bst.gc.ca>; LeBlanc, Robert <Robert.LeBlanc@tsb-bst.gc.ca>
Subject: R19C0015 [redacted]

[redacted]

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s.16(1)(c)iii)
s.19(1)
s.20(1)(b)

Don Crawford, BSc, CRSP

Senior Investigator / Railway-Pipeline
Transportation Safety Board of Canada / Government of Canada
Don.Crawford@tsb-bst.gc.ca / Tel: 403-299-3911 / Cel: [redacted] / TTY: 819-953-7287

Enquêteur princicpal / Rail-Productoduc
Bureau de la sécurité des transports du Canada / Gouvernement du Canada
Don.Crawford@bst-tsb.gc.ca / Tél.: 403-299-3911 / Tél. cell. [redacted] / ATS: 819-953-7287

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s.16(1)(c)iii)
s.19(1)
A0165381

Richards, Rosemary

From: [redacted]@cpr.ca>
Sent: Friday, February 14, 2020 1:15 PM
To: LeBlanc, Robert
Subject: RE: R19C0015 [redacted]

[redacted]

-----Original Message-----
From: LeBlanc, Robert <Robert.LeBlanc@tsb-bst.gc.ca>
Sent: Friday, February 14, 2020 10:55
To: [redacted]@cpr.ca>
Subject: RE: R19C0015 1[redacted]

[redacted]

Robert

Sent from my Bell Samsung device over Canada's largest network.

-------- Original message --------
From: [redacted]@cpr.ca>
Date: 2020-02-14 9:31 a.m. (GMT-07:00)
To: "LeBlanc, Robert" <Robert.LeBlanc@tsb-bst.gc.ca>
Subject: FW: R19C0015 [redacted]

[redacted]

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s.16(1)(c)(iii)
s.19(1)
s.20(1)(b)

From: Crawford, Don <Don.Crawford@tsb-bst.gc.ca>
Sent: Thursday, August 01, 2019 18:31
To: @cpr.ca>; @cpr.ca>; s @cpr.ca>; @cpr.ca>
Cc: R19C0015 <R19C0015@bst-tsb.gc.ca>; @cpr.ca>; Wallis, Mark <Mark.Wallis@tsb-bst.gc.ca>; Smith, Heather <Heather.Smith@tsb-bst.gc.ca>; LeBlanc, Robert <Robert.LeBlanc@tsb-bst.gc.ca>
Subject: R19C0015



Don Crawford, BSc, CRSP

Senior Investigator / Railway-Pipeline
Transportation Safety Board of Canada / Government of Canada
Don.Crawford@tsb-bst.gc.ca<mailto:Don.Crawford@tsb-bst.gc.ca> / Tel: 403-299-3911 / Cel: / TTY: 819-953-7287

Enquêteur principal / Rail-Productoduc
Bureau de la sécurité des transports du Canada / Gouvernement du Canada
Don.Crawford@bst-tsb.gc.ca<mailto:Don.Crawford@bst-tsb.gc.ca> / Tél.: 403-299-3911 / Tél. cell. : / ATS: 819-953-7287

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---------- IMPORTANT NOTICE - AVIS IMPORTANT ---------- Computer viruses can be transmitted via email. Recipient should check this email and any attachments for the presence of viruses. Sender and sender company accept no liability for any damage caused by any virus transmitted by this email. This email transmission and any accompanying attachments contain confidential information intended only for the use of the individual or entity named above. Any dissemination, distribution, copying or action taken in reliance on the contents of this email by anyone other than the intended recipient is strictly prohibited. If you have received this email in error please immediately delete it and notify sender at the above email address. Le courrier electronique peut etre porteur de virus informatiques. Le destinataire doit donc passer le present courriel et les pieces qui y sont jointes au detecteur de virus. L' expediteur et son employeur declinent toute responsabilite pour les dommages causes par un virus contenu dans le courriel. Le present message et les pieces qui y sont jointes contiennent des renseignements confidentiels destines uniquement a la personne ou a l' organisme nomme ci-dessus. Toute diffusion, distribution, reproduction ou utilisation comme reference du contenu du message par une autre personne que le destinataire est formellement interdite. Si vous avez recu ce courriel par erreur, veuillez le detruire immediatement et en informer l' expediteur a l' adresse ci-dessus. ---------- IMPORTANT NOTICE - AVIS IMPORTANT ----------

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s.16(1)(c)(iii)
s.19(1)

Richards, Rosemary

From: LeBlanc, Robert
Sent: Monday, February 17, 2020 11:15 AM
To: [redacted]
Subject: TSB [redacted]

[redacted]

[redacted]

Robert LeBlanc

Regional Senior Investigator / Rail / Pipeline
Transportation Safety Board of Canada / Government of Canada
Robert.LeBlanc@tsb-bst.gc.ca / Tel: 780-399-7528 / TTY: 819-953-7287

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s.16(1)(c)(ii)
s.19(1)

Richards, Rosemary

From: [redacted]@cpr.ca>
Sent: Tuesday, February 18, 2020 10:56 AM
To: LeBlanc, Robert
Cc: [redacted]
Subject: FW: R19C0015 [redacted]

Robert,

[redacted]

From: [redacted]
Sent: Friday, January 24, 2020 14:49
To: 'Don.Crawford@tsb-bst.gc.ca' <Don.Crawford@tsb-bst.gc.ca>
Cc: [redacted]@cpr.ca>; [redacted]@cpr.ca>; [redacted]@cpr.ca>; [redacted]@cpr.ca>
Subject: FW: R19C0015 [redacted]

[redacted]

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s.16(1)(c)(iii)
s.19(1)
s.20(1)(b)

[redacted]

From: Crawford, Don <Don.Crawford@tsb-bst.gc.ca>
Sent: Monday, January 06, 2020 11:16
To: [redacted]@cpr.ca>

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s.16(1)(c)(iii)
s.19(1)

Cc: R19C0015 <R19C0015@bst-tsb.gc.ca>, [redacted]@cor.ca
Subject: R19C0015 [redacted]

[redacted]

Don Crawford, BSc, CRSP

Senior Investigator / Railway-Pipeline
Transportation Safety Board of Canada / Government of Canada
Don.Crawford@tsb-bst.gc.ca / Tel: 403-299-3911 / Cel: [redacted] / TTY: 819-953-7287

Enquêteur princicpal / Rail-Productoduc
Bureau de la sécurité des transports du Canada / Gouvernement du Canada
Don.Crawford@bst-tsb.gc.ca / Tél.: 403-299-3911 / Tél. cell. : [redacted] / ATS: 819-953-7287

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s.16(1)(c)iii)
s.19(1)
s.20(1)(b)

Richards, Rosemary

From: LeBlanc, Robert
Sent: Thursday, February 20, 2020 2:28 PM
To: [redacted]
Cc: R19C0015; Hickli, Peter
Subject: FW: TSB Occurrence No R15C0015 - [redacted]

Attachments: [redacted]

[redacted]

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Robert LeBlanc

Regional Senior Investigator Rail / Pipeline
Transportation Safety Board of Canada
Government of Canada
Robert.LeBlanc@tsb-bst.gc.ca
Tel: 780-399-7528

s.16(1)(c)iii)
s.19(1)
s.20(1)(b)

From: LeBlanc, Robert
Sent: Tuesday, January 21, 2020 12:46 PM
To: @cpr.ca>
Cc: R19C0015 <R19C0015@bst-tsb.gc.ca>; Crawford, Don (Don.Crawford@tsb-bst.gc.ca) <Don.Crawford@tsb-bst.gc.ca>
Subject: RE: TSB Rail Occurrence R19C0015

Robert LeBlanc

Regional Senior Investigator / Rail / Pipeline
Transportation Safety Board of Canada / Government of Canada
Robert.LeBlanc@tsb-bst.gc.ca / Tel: 780-399-7528 / TTY: 819-953-7287

Enquêteur principal régional / Rail / Productoduc
Bureau de la sécurité des transports du Canada / Gouvernement du Canada
Robert.LeBlanc@bst-tsb.gc.ca / Tél.: 780-399-7528 / ATS: 819-953-7287

From: @cpr.ca>
Sent: Tuesday, January 7, 2020 04:17 PM
To: LeBlanc, Robert <Robert.LeBlanc@tsb-bst.gc.ca>
Subject: RE:

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s.16(1)(c)iii)
s.19(1)
s.20(1)(b)

[redacted]

From: LeBlanc, Robert
Sent: Friday, December 6, 2019 03:59 PM
To: [redacted]@cpr.ca>
Cc: R19C0015 <R19C0015@bst-tsb.gc.ca>; Crawford, Don (Don.Crawford@tsb-bst.gc.ca) <Don.Crawford@tsb-bst.gc.ca>
Subject: [redacted] TSB Rail Occurrence R19C0015 - [redacted]

[redacted]

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Robert LeBlanc

Regional Senior Investigator Rail / Pipeline
Transportation Safety Board of Canada
Government of Canada
Robert.LeBlanc@tsb-bst.gc.ca
Tel: 780-399-7528

s.16(1)(c)iii)
s.19(1)
s.20(1)(b)

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s.16(1)(c)iii)
s.19(1)

Richards, Rosemary

From: LeBlanc, Robert
Sent: Thursday, February 20, 2020 5:10 PM
To: [redacted]
Cc: R19C0015; Hickli, Peter
Subject: [redacted] TSB Occurrence No R15C0015 - [redacted]
Attachments: [redacted]

[redacted]

Robert LeBlanc

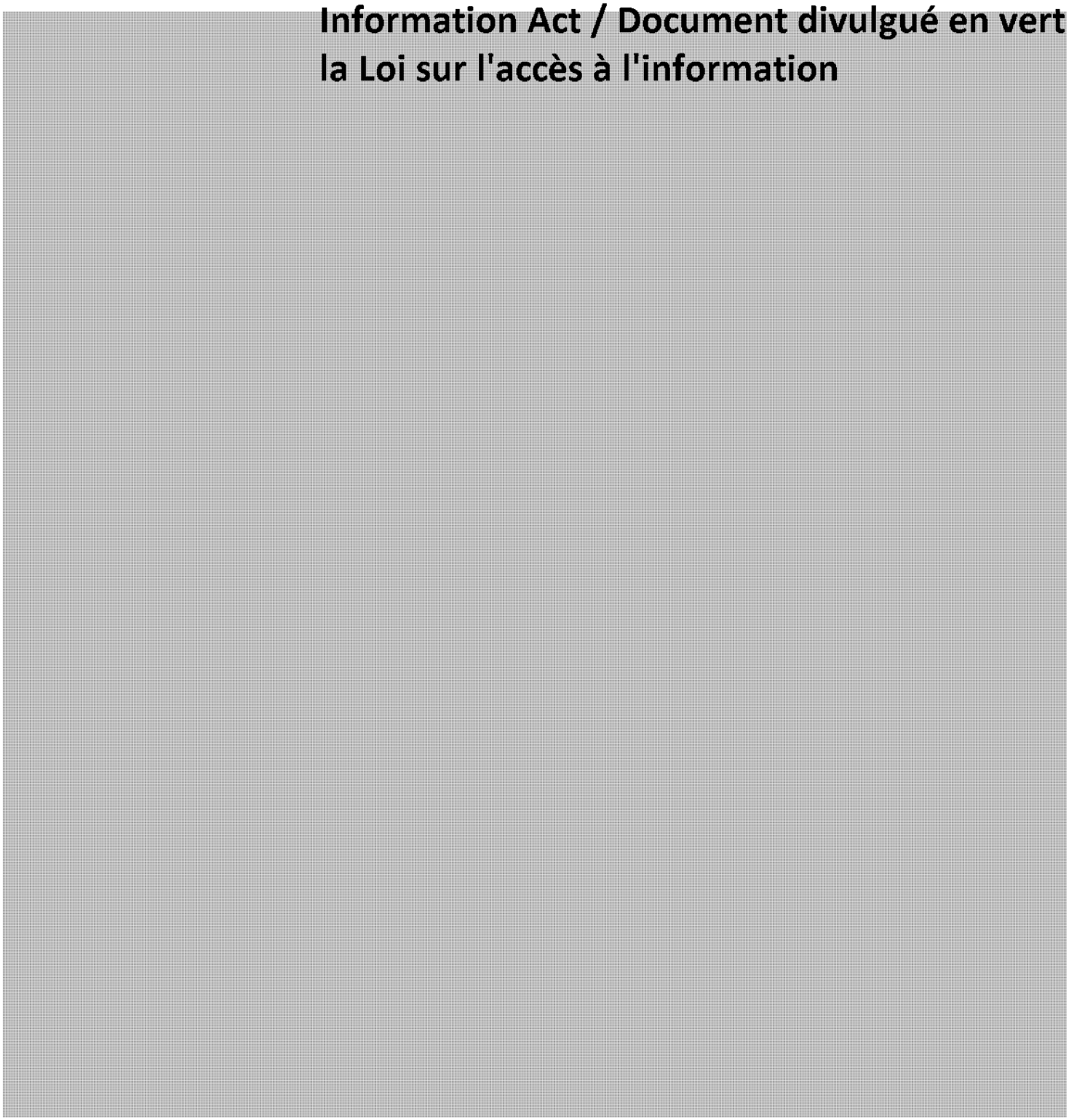
Regional Senior Investigator Rail / Pipeline
Transportation Safety Board of Canada
Government of Canada
Robert.LeBlanc@tsb-bst.gc.ca
Tel: 780-399-7528

From: LeBlanc, Robert
Sent: Thursday, February 20, 2020 12:28 PM
To: [redacted]@cpr.ca>
Cc: R19C0015 <R19C0015@bst-tsb.gc.ca>; Hickli, Peter (Peter.Hickli@tsb-bst.gc.ca) <Peter.Hickli@tsb-bst.gc.ca>
Subject: FW: TSB Occurrence No R15C0015 - [redacted]

[redacted]

A0165386_1-000021

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Robert LeBlanc

Regional Senior Investigator Rail / Pipeline
Transportation Safety Board of Canada
Government of Canada
Robert.LeBlanc@tsb-bst.gc.ca
Tel: 780-399-7528

s.16(1)(c)iii)
s.19(1)
s.20(1)(b)

From: LeBlanc, Robert
Sent: Tuesday, January 21, 2020 12:46 PM

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s.16(1)(c)(iii)
s.19(1)

To: [redacted]@cpr.ca>
Cc: R19C0015 <R19C0015@bst-tsb.gc.ca>; Crawford, Don (Don.Crawford@tsb-bst.gc.ca)<Don.Crawford@tsb-bst.gc.ca>
Subject: RE: [redacted] TSB Rail Occurrence R19C0015 - [redacted]

[redacted]

Robert LeBlanc

Regional Senior Investigator / Rail / Pipeline
Transportation Safety Board of Canada / Government of Canada
Robert.LeBlanc@tsb-bst.gc.ca / Tel: 780-399-7528 / TTY: 819-953-7287

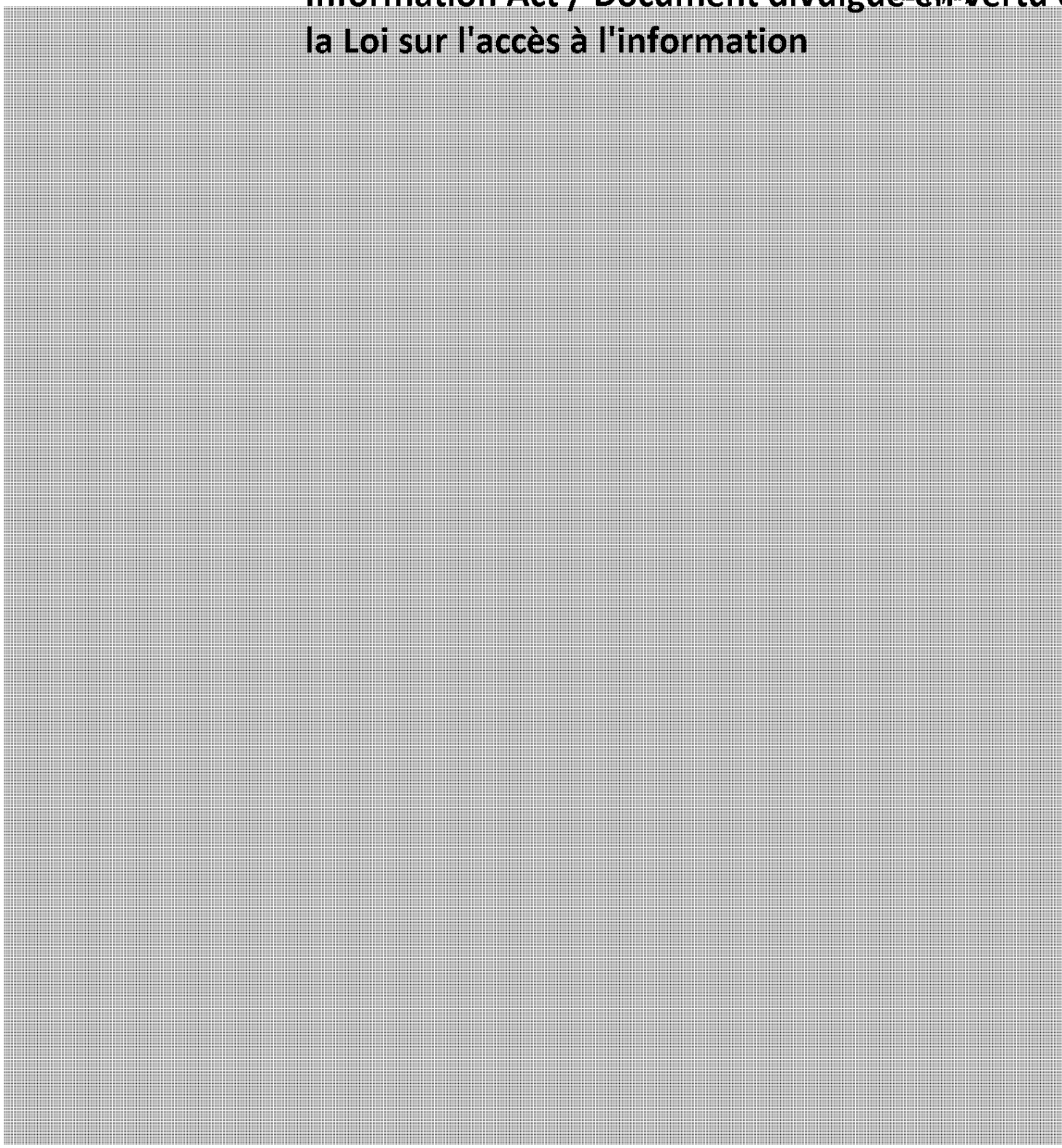
Enquêteur principal régional / Rail / Productoduc
Bureau de la sécurité des transports du Canada / Gouvernement du Canada
Robert.LeBlanc@bst-tsb.gc.ca / Tél.: 780-399-7528 / ATS: 819-953-7287

From: [redacted]@cpr.ca>
Sent: Tuesday, January 7, 2020 04:17 PM
To: LeBlanc, Robert <Robert.LeBlanc@tsb-bst.gc.ca>
Subject: [redacted]

[redacted]

From: LeBlanc, Robert
Sent: Friday, December 6, 2019 03:59 PM
To: [redacted]@cpr.ca>
Cc: R19C0015 <R19C0015@bst-tsb.gc.ca>; Crawford, Don (Don.Crawford@tsb-bst.gc.ca) <Don.Crawford@tsb-bst.gc.ca>
Subject: [redacted] TSB Rail Occurrence R19C0015 - [redacted]

Document released under the Access to Information Act / Document divulgué en vertu de la Loi sur l'accès à l'information
s.16(1)(c)iii)
s.19(1)
s.20(1)(b)



Robert LeBlanc

Regional Senior Investigator Rail / Pipeline
Transportation Safety Board of Canada
Government of Canada
Robert.LeBlanc@tsb-bst.gc.ca
Tel: 780-399-7528

Pages 25 to / à 27

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16(1)(c)iii), 20(1)(b)

of the Access to Information Act

de la Loi sur l'accès à l'information

Page 28

is not relevant

est non pertinente

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s.19(1)

De Rycke, Sebastien

From: Huot, Patrizia
Sent: Tuesday, January 28, 2020 4:08 PM
To:
Cc:
Subject: Statement

Importance: High

FYI As discussed.

http://www.tsb.gc.ca/eng/medias-media/decl-stat/2020/20200128.html

http://www.tsb.gc.ca/fra/medias-media/decl-stat/2020/20200128.html

Patrizia Huot, MA, LLB

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Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : / ATS : 819-953-7287

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Pages 30 to / à 32

are not relevant

sont non pertinentes

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s.19(1)
s.20(1)(b)
s.23

De Rycke, Sebastien

From: Huot, Patrizia
Sent: Thursday, January 30, 2020 1:55 PM
To: Fox, Kathy; Bratton, Alistair
Cc: Fedeski-Koundakjian, Paula; Mitsis, Kleo
Subject:
Attachments:

Importance: High

Patrizia Huot, MA, LLB

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19(1), 20(1)(b), 23

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is not relevant

est non pertinente

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s.19(1)
s.21(1)(a)
s.21(1)(b)
s.23

De Rycke, Sebastien

From: Huot, Patrizia
Sent: Wednesday, January 29, 2020 3:03 PM
To: Fox, Kathy
Subject:

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : / ATS : 819-953-7287

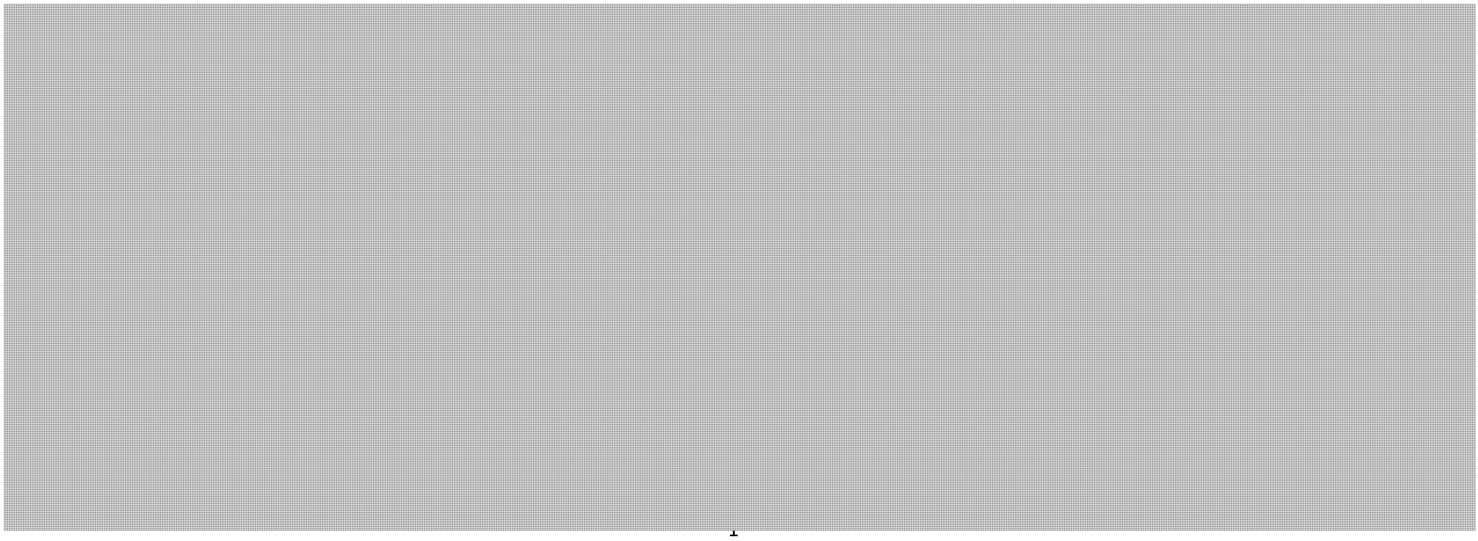
General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: / TTY: 819-953-7287

-----Original Message-----
From: Fox, Kathy <Kathy.Fox@bst-tsb.gc.ca>
Sent: Wednesday, January 29, 2020 2:58 PM
To: Lapointe, André <Andre.Lapointe@bst-tsb.gc.ca>; Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Subject:

Kathy Fox

Présidente / Bureau de la présidente
Bureau de la sécurité des transports du Canada / Gouvernement du Canada Kathy.Fox@bst-tsb.gc.ca / Tél. : (819) 994-8000 / ATS : 819-953-7287

Chair / Office of the Chair
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21(1)(a), 21(1)(b)

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s.19(1)
s.21(1)(a)
s.21(1)(b)
s.23

De Rycke, Sebastien

From: Fox, Kathy
Sent: Wednesday, January 29, 2020 2:58 PM
To: Lapointe, André; Huot, Patrizia
Subject: [redacted]

[redacted]

Kathy Fox

Présidente / Bureau de la présidente
Bureau de la sécurité des transports du Canada / Gouvernement du Canada Kathy.Fox@bst-tsb.gc.ca / Tél. : (819) 994-8000 / ATS : 819-953-7287

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[redacted]

A0165403_1-000043

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21(1)(a), 21(1)(b)

of the Access to Information Act

de la Loi sur l'accès à l'information

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De Rycke, Sebastien

From: [redacted]@cpr.ca>
Sent: Wednesday, January 29, 2020 2:56 PM
To: Fox, Kathy
Subject: Re: TSB Statement on CBC Report

Thank you for the email and comments around this unfortunate situation . The irresponsible manner CBC has been reporting and misrepresenting facts , in conjunction with the TSB s lead investigators inappropriate commentary , has been damaging to CP s reputation . Beyond taking necessary steps to protect our reputation and the truth , I have a strong view their actions were disrespectful / damaging to the families of the employees we tragically lost as well as our collective CP family . We appreciate and agree with your point that the investigators behavior contradicts the manner TSB strives to conduct their business in meeting its mandate . Thank you for the TSB s actions to address and correct the investigators actions .

Respectfully

[redacted]

On Jan 28, 2020, at 3:33 PM, Fox, Kathy <Kathy.Fox@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

[redacted]

I'm very sorry for the furor caused by statements from our (former) lead investigator on the Field investigation file. This is not how we conduct our business.

Here is the statement we just issued on our website, which has also been sent to journalists following this investigation.

https://www.bst-tsb.gc.ca/eng/medias-media/decl-stat/2020/20200128.html<https://urldefense.com/v3/__https://www.bst-tsb.gc.ca/eng/medias-media/decl-stat/2020/20200128.html__;!!Iww4!yTC2zrzZRS_g2YozrA-frPevCNwGnUHKA2bEQ6ZqqgsE_oe-oVixarikFVSlUgHeug$>

I would be pleased to discuss this further if you wish. I can be reached directly at the number below or on my cell phone at [redacted] Thank you.

Kathy Fox

Présidente / Bureau de la présidente
Bureau de la sécurité des transports du Canada / Gouvernement du Canada Kathy.Fox@bst-tsb.gc.ca<mailto:Kathy.Fox@bst-tsb.gc.ca> / Tél. : (819) 994-8000 / ATS : 819-953-7287

Chair / Office of the Chair
Transportation Safety Board of Canada / Government of Canada Kathy.Fox@tsb-bst.gc.ca<mailto:Kathy.Fox@tsb-bst.gc.ca> / Tel: (819) 994-8000 / TTY: 819-953-7287

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s.21(1)(a)
s.21(1)(b)
s.23

De Rycke, Sebastien

From: Huot, Patrizia
Sent: Wednesday, January 29, 2020 9:53 AM
To: Fox, Kathy; Lapointe, André
Cc: Vaezmir, Laudan
Subject: [redacted]

[redacted]

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations
Bureau de la sécurité des transports du Canada / Gouvernement du Canada
Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287
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Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

From: Fox, Kathy
Sent: Wednesday, January 29, 2020 9:52 AM
To: Huot, Patrizia ; Lapointe, André
Cc: Vaezmir, Laudan
Subject: [redacted]

[redacted]

Présidente / Bureau de la présidente
Bureau de la sécurité des transports du Canada / Gouvernement du Canada
Kathy.Fox@bst-tsb.gc.ca / Tél. : (819) 994-8000 / ATS : 819-953-7287
Chair / Office of the Chair
Transportation Safety Board of Canada / Government of Canada
Kathy.Fox@tsb-bst.gc.ca / Tel: (819) 994-8000 / TTY: 819-953-7287

From: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Sent: Wednesday, January 29, 2020 9:37 AM
To: Fox, Kathy <Kathy.Fox@bst-tsb.gc.ca>; Lapointe, André <Andre.Lapointe@bst-tsb.gc.ca>
Cc: Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: [redacted]

Kathy and André:

[redacted]

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations
Bureau de la sécurité des transports du Canada / Gouvernement du Canada
Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287
General Counsel / Office of the Chief Operating Officer
Transportation Safety Board of Canada / Government of Canada

s.19(1)
s.21(1)(a)
s.21(1)(b)
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s. 23

Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

[redacted]

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s.19(1)
s.21(1)(a)
s.21(1)(b)
s.23

De Rycke, Sebastien

From: Fox, Kathy
Sent: Wednesday, January 29, 2020 9:52 AM
To: Huot, Patrizia; Lapointe, André
Cc: Vaezmir, Laudan
Subject:
Attachments:

[redacted]

Présidente / Bureau de la présidente
Bureau de la sécurité des transports du Canada / Gouvernement du Canada
Kathy.Fox@bst-tsb.gc.ca / Tél. : (819) 994-8000 / ATS : 819-953-7287

Chair / Office of the Chair
Transportation Safety Board of Canada / Government of Canada
Kathy.Fox@tsb-bst.gc.ca / Tel: (819) 994-8000 / TTY: 819-953-7287

From: Huot, Patrizia
Sent: Wednesday, January 29, 2020 9:37 AM
To: Fox, Kathy ; Lapointe, André
Cc: Vaezmir, Laudan
Subject: [redacted]

[redacted]

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations
Bureau de la sécurité des transports du Canada / Gouvernement du Canada
Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : 819-635-2551 / ATS : 819-953-7287

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21(1)(a), 21(1)(b)

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s.19(1)
s.21(1)(a)
s.21(1)(b)
s.23

De Rycke, Sebastien

From: Fox, Kathy
Sent: Tuesday, January 28, 2020 4:56 PM
To: Huot, Patrizia; Lapointe, André
Cc: Fedeski-Koundakjian, Paula
Subject:

[redacted]

Kathy Fox

Présidente / Bureau de la présidente
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Kathy.Fox@tsb-bst.gc.ca / Tel: (819) 994-8000 / TTY: 819-953-7287

From: Vaezmir, Laudan **On Behalf Of** Huot, Patrizia
Sent: Tuesday, January 28, 2020 4:55 PM
To: Lapointe, André ; Fox, Kathy
Cc: Fedeski-Koundakjian, Paula
Subject:

[redacted]



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de la Loi sur l'accès à l'information

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s.19(1)

De Rycke, Sebastien

From: Fox, Kathy
Sent: Tuesday, January 28, 2020 4:34 PM
To: [redacted]@cpr.ca'
Subject: TSB Statement on CBC Report

[redacted]

I'm very sorry for the furor caused by statements from our (former) lead investigator on the Field investigation file. This is not how we conduct our business.

Here is the statement we just issued on our website, which has also been sent to journalists following this investigation.

https://www.bst-tsb.gc.ca/eng/medias-media/decl-stat/2020/20200128.html

I would be pleased to discuss this further if you wish. I can be reached directly at the number below or on my cell phone at [redacted] Thank you.

Kathy Fox

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s.19(1)
s.21(1)(a)
s.21(1)(b)
s.23

De Rycke, Sebastien

From: Huot, Patrizia
Sent: Tuesday, January 28, 2020 1:17 PM
To: Fox, Kathy; Lapointe, André
Cc: Vaezmir, Laudan; Fedeski-Koundakjian, Paula
Subject:
Attachments:

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations
Bureau de la sécurité des transports du Canada / Gouvernement du Canada
Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : / ATS : 819-953-7287

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A0165410_1-000054

Pages 55 to / à 59

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Pages 60 to / à 68

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sont non pertinentes

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s.19(1)

s.23

De Rycke, Sebastien

From: Lapointe, André
Sent: Monday, January 27, 2020 10:54 PM
To: Fox, Kathy; Huot, Patrizia
Subject: [redacted]

[redacted]

-------- Original message --------
From: "Fox, Kathy"
Date: 2020-01-27 10:51 p.m. (GMT-05:00)
To: "Huot, Patrizia" , "Lapointe, André"
Subject: [redacted]

[redacted]

Kathy Fox

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Chair / Office of the Chair

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Kathy.Fox@tsb-bst.gc.ca / Tel: (819) 994-8000 / TTY: 819-953-7287

-------- Original message --------
From: "Huot, Patrizia"
Date: 2020-01-27 10:48 p.m. (GMT-05:00)

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s.19(1)

s.23

To: "Fox, Kathy" , "Lapointe, André"
Subject: [redacted]

[redacted]

Sent from my Samsung Galaxy smartphone.

-------- Original message --------
From: "Fox, Kathy"
Date: 2020-01-27 10:48 p.m. (GMT-05:00)
To: "Huot, Patrizia" , "Lapointe, André"
Subject: [redacted]

[redacted]

Kathy Fox

Présidente / Bureau de la présidente

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Kathy.Fox@bst-tsb.gc.ca / Tél.: (819) 994-8000 / ATS: 819-953-7287

Chair / Office of the Chair

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-------- Original message --------
From: "Huot, Patrizia"
Date: 2020-01-27 10:43 p.m. (GMT-05:00)
To: "Fox, Kathy" , "Lapointe, André"
Subject: [redacted]

[redacted]

Sent from my Samsung Galaxy smartphone.

A0165416_2-000070

Pages 71 to / à 77

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s.19(1)
s.23

De Rycke, Sebastien

From: Huot, Patrizia
Sent: Monday, January 27, 2020 7:18 PM
To: Fox, Kathy; Lapointe, André
Cc: Jang, Kirby
Subject: [redacted]

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

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[redacted]

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s.19(1)
s.23

De Rycke, Sebastien

From: Huot, Patrizia
Sent: Monday, January 27, 2020 7:17 PM
To: Fox, Kathy; Lapointe, André
Cc: Jang, Kirby; Vaezmir, Laudan; Fedeski-Koundakjian, Paula
Subject: [redacted]

[redacted]

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations
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Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

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From: Fox, Kathy
Sent: Monday, January 27, 2020 7:09 PM
To: Huot, Patrizia ; Lapointe, André
Cc: Jang, Kirby
Subject: [redacted]

[redacted]

Kathy Fox

Présidente / Bureau de la présidente

Bureau de la sécurité des transports du Canada / Gouvernement du Canada

Kathy.Fox@bst-tsb.gc.ca / Tél.: (819) 994-8000 / ATS: 819-953-7287

A0165418_1-000082

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s.19(1)

s.23

Chair / Office of the Chair

Transportation Safety Board of Canada / Government of Canada

Kathy.Fox@tsb-bst.gc.ca / Tel: (819) 994-8000 / TTY: 819-953-7287

-------- Original message --------
From: "Huot, Patrizia" <Patrizia.Huot@bst-tsb.gc.ca>
Date: 2020-01-27 6:23 p.m. (GMT-05:00)
To: "Lapointe, André" <Andre.Lapointe@bst-tsb.gc.ca>, "Fox, Kathy" <Kathy.Fox@bst-tsb.gc.ca>
Cc: "Jang, Kirby" <Kirby.Jang@bst-tsb.gc.ca>
Subject: [redacted]

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations
Bureau de la sécurité des transports du Canada / Gouvernement du Canada
Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] ATS : 819-953-7287

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[redacted]

Pages 84 to / à 85
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19(1), 23

of the Access to Information Act
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s.19(1)

s.23

De Rycke, Sebastien

From: Lapointe, André
Sent: Monday, January 27, 2020 7:13 PM
To: Fox, Kathy; Huot, Patrizia
Cc: Jang, Kirby
Subject: [redacted]

[redacted]

-------- Original message --------
From: "Fox, Kathy"
Date: 2020-01-27 7:08 p.m. (GMT-05:00)
To: "Huot, Patrizia" , "Lapointe, André"
Cc: "Jang, Kirby"
Subject: [redacted]

[redacted]

Kathy Fox

Présidente / Bureau de la présidente

Bureau de la sécurité des transports du Canada / Gouvernement du Canada

Kathy.Fox@bst-tsb.gc.ca / Tél.: (819) 994-8000 / ATS: 819-953-7287

Chair / Office of the Chair

Transportation Safety Board of Canada / Government of Canada

Kathy.Fox@tsb-bst.gc.ca / Tel: (819) 994-8000 / TTY: 819-953-7287

-------- Original message --------
From: "Huot, Patrizia"
Date: 2020-01-27 6:23 p.m. (GMT-05:00)

Document released under the Access to Information Act / Document divulgué en vertu de la Loi sur l'accès à l'information
s.19(1)
s.23

To: "Lapointe, André" , "Fox, Kathy"
Cc: "Jang, Kirby"
Subject: [redacted]

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations
Bureau de la sécurité des transports du Canada / Gouvernement du Canada
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Transportation Safety Board of Canada / Government of Canada
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[redacted]

A0165419_2-000087

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19(1), 23

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de la Loi sur l'accès à l'information

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s.19(1)

s.23

De Rycke, Sebastien

From: Jang, Kirby
Sent: Monday, January 27, 2020 6:37 PM
To: Huot, Patrizia; Lapointe, André; Fox, Kathy
Subject:

[redacted]

Directeur / Enquêtes Rail/Pipeline

Bureau de la sécurité des transports du Canada / Gouvernement du Canada

Kirby.Jang@bst-tsb.gc.ca / Tél.: (819) 953-6470 / ATS: 819-953-7287

Director / Investigations Rail/Pipeline

Transportation Safety Board of Canada / Government of Canada

Kirby.Jang@tsb-bst.gc.ca / Tel: (819) 953-6470 / TTY: 819-953-7287

From: Patrizia.Huot@bst-tsb.gc.ca
Sent: January 27, 2020 6:23 PM
To: Andre.Lapointe@bst-tsb.gc.ca; Kathy.Fox@bst-tsb.gc.ca
Cc: Kirby.Jang@bst-tsb.gc.ca
Subject: [redacted]

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations
Bureau de la sécurité des transports du Canada / Gouvernement du Canada
Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer
Transportation Safety Board of Canada / Government of Canada
Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

[redacted]

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19(1), 23

of the Access to Information Act
de la Loi sur l'accès à l'information

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s.21(1)(a)
s.21(1)(b)
s.23

De Rycke, Sebastien

From: Huot, Patrizia
Sent: Monday, January 27, 2020 6:24 PM
To: Lapointe, André; Fox, Kathy
Cc: Jang, Kirby
Subject:

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: / TTY: 819-953-7287

Pages 95 to / à 97

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sont retenues en vertu des articles

21(1)(a), 21(1)(b), 23

of the Access to Information Act

de la Loi sur l'accès à l'information

Pages 98 to / à 101

are not relevant

sont non pertinentes

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s.19(1)

De Rycke, Sebastien

From: [redacted]cpr.ca>
Sent: Monday, January 27, 2020 6:01 PM
To: Huot, Patrizia
Cc: [redacted]
Subject: [redacted]latest story/latest request (privileged and confidential)

Follow Up Flag: Follow up
Flag Status: Flagged

From [redacted]

[redacted]
In the course of CBC's reporting today, we've learned the following:
- The TSB's lead investigator says "There is enough to suspect there's negligence here and it needs to be investigated by the proper authority."
-CP's main union has issued a release calling for the RCMP to conduct an independent investigation - AND - is calling on Transport Canada for the elimination of "Corporate Police" services like the CPPS and CN Police Do either of CP Railway ... or CPPS ...wish to respond to the views of either TSB's Don Crawford ... or TCRC?
We are publishing shortly, but are happy to add any input from you should their comments change your "no comment."

Thank you,

[redacted]

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s.19(1)

De Rycke, Sebastien

From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 6:13 PM
To: Huot, Patrizia
Cc: [redacted]
Subject: dave seglins on Twitter There is enough to suspect there's negligence here @TSBCanada 's lead investigator wants @RCMP to st
Attachments: dave seglins on Twitter There is enough to suspect there's negligence here @TSBCanada 's lead investigator wants @RCMP to st.png

Follow Up Flag: Follow up
Flag Status: Flagged

[redacted]

[redacted]
Canadian Pacific
[redacted]

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s.19(1)
s.21(1)(a)
s.21(1)(b)
s.23

De Rycke, Sebastien

From: Huot, Patrizia
Sent: Monday, January 27, 2020 6:24 PM
To: Lapointe, André; Fox, Kathy
Cc: Janq, Kirby
Subject: [redacted]

Follow Up Flag: Follow up
Flag Status: Flagged

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

[redacted]

A0165427_1-000104

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De Rycke, Sebastien

From: Huot, Patrizia
Sent: Tuesday, January 28, 2020 10:33 AM
To: [redacted]
Subject: FW: TSB/Don Crawford- Defamatory Statement Notice
Attachments: Letter to TSB - January 28, 2020.PDF

Follow Up Flag: Follow up
Flag Status: Flagged

Hi [redacted]

Let me know when you are free for a discussion. P

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations
Bureau de la sécurité des transports du Canada / Gouvernement du Canada
Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer
Transportation Safety Board of Canada / Government of Canada
Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

From: [redacted]
Sent: Tuesday, January 28, 2020 9:47 AM
To: Huot, Patrizia
Cc: Crawford, Don ; Fox, Kathy [redacted]
Subject: RE: TSB/Don Crawford- Defamatory Statement Notice

Ms. Huot,

Please see attached letter dated today.

Your prompt reply is appreciated.

[redacted] **Bennett Jones LLP**

4500 Bankers Hall East, 855 - 2nd Street SW, Calgary, AB, T2P 4K7
[redacted]@bennettjones.com
BennettJones.com

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s.19(1)

Bennett Jones

Bennett Jones LLP
4500 Bankers Hall East, 855 - 2nd Street SW
Calgary, Alberta, Canada T2P 4K7
Tel: 403.298.3100 Fax: 403.265.7219

e-mail: @bennettjones.com
Our File No.: 41567.121

January 28, 2020

Via Email

Transportation Safety Board of Canada
200 Promenade du Portage 4th Floor
Gatineau, Quebec
K1A 1K8

Attention: Ms. Patrizia Huot

Dear Ms. Huot:

Re: CBC/Seglins Enquiry and Transportation Safety Board ("TSB") Statement

I have been provided with a copy of the retraction/correction sent by the TSB to the CBC. Your prompt attention to this is much appreciated by CP Rail. However, the retraction leaves the inference that the lead investigator's view, in which he has prejudged the investigation before it is concluded, is a valid view held by an agent/employee of the TSB. In fact, it appears the CBC has read it just this way (as a result of your limited retraction) and has repeated the Crawford quote in a story released this morning updating yesterday's report. This simply suggests that the TSB is not in control and that its lead investigator's personal biased view is credible.

The TSB needs to confirm immediately that it retracts the view of Mr. Crawford, its employee and agent, for the reasons set out in your retraction sent to the CBC. to TSB's mandate and the scope of his statutory duties.

Further, in the CBC story posted 4 am ET January 25th, it is stated "Rob Stewart, a workplace facilities specialist who is consulting with the TSB, said a criminal investigation is needed." **The TSB needs to make clear that it and only it speaks for the TSB and it needs to get control of its employees and consultants otherwise it is being exposed by these individuals to a serious claim.**

If the TSB and Mr. Crawford do not immediately retract Mr. Crawford's statement, CP Rail will have no alternative but to commence proceedings against the TSB,

conclusions recognizing the TSB's own statement in the retraction that "...The investigation is ongoing... The TSB does not attribute blame or determine civil or criminal liability...". Please confirm

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that Mr. Crawford will be removed from this investigation and advise what steps will be taken to [redacted] with CP Rail matters.

Your and Mr. Crawford's urgent response is required. The harm and damage to CP Rail's reputation increases [redacted]

Yours, [redacted]

cc: Kathy Fox, Chair, Transportation Safety Board
Don Crawford, Regional Senior Investigator

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s.19(1)

De Rycke, Sebastien

From: Huot, Patrizia
Sent: Monday, January 27, 2020 6:45 PM
To: [redacted]
Cc: [redacted] Vaezmir, Laudan
Subject: RE: [redacted] re Crawford ([redacted]

Follow Up Flag: Follow up
Flag Status: Flagged

Thanks. p

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

-----Original Message-----
From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 6:45 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca>; [redacted]@cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re[redacted]re Crawford [redacted]

Here is [redacted]

[redacted]

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:23, [redacted]@cpr.ca> wrote:

Thank you the statement should be retracted immediately from our perspective

[redacted]

A0165431_1-000112

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[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:22, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========
Just saw it..Thanks

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

-----Original Message-----
From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 6:10 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca>; [redacted]@cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: [redacted] re Crawford

Apparently CBC just posted their story online with a quote from Crawford. I will send it to you momentarily

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:01, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========
Thanks. Will get back

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

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-----Original Message-----
From [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 5:57 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca> [redacted]@cpr.ca>
Subject: Seglins re Crawford

as discussed Patrizia see below - thank you

[redacted]

Canadian Pacific

[redacted]

[redacted]

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De Rycke, Sebastien

From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 7:13 PM
To: Huot, Patrizia
Cc: [redacted] Vaezmir, Laudan
Subject: Re: [redacted]re Crawford [redacted]

Follow Up Flag: Follow up
Flag Status: Flagged

Any word? We need this retracted before it gets circulated widely and harms our company's reputation

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:44, [redacted]cpr.ca> wrote:

Here is [redacted]

[redacted]

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:23, [redacted]@cpr.ca> wrote:

Thank you the statement should be retracted immediately from our perspective

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:22, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

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==========

Just saw it..Thanks

A0165432_1-000116

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Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

-----Original Message-----
From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 6:10 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca>; [redacted]@cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: [redacted]e Crawford

Apparently CBC just posted their story online with a quote from Crawford. I will send it to you momentarily

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:01, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========
Thanks. Will get back

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

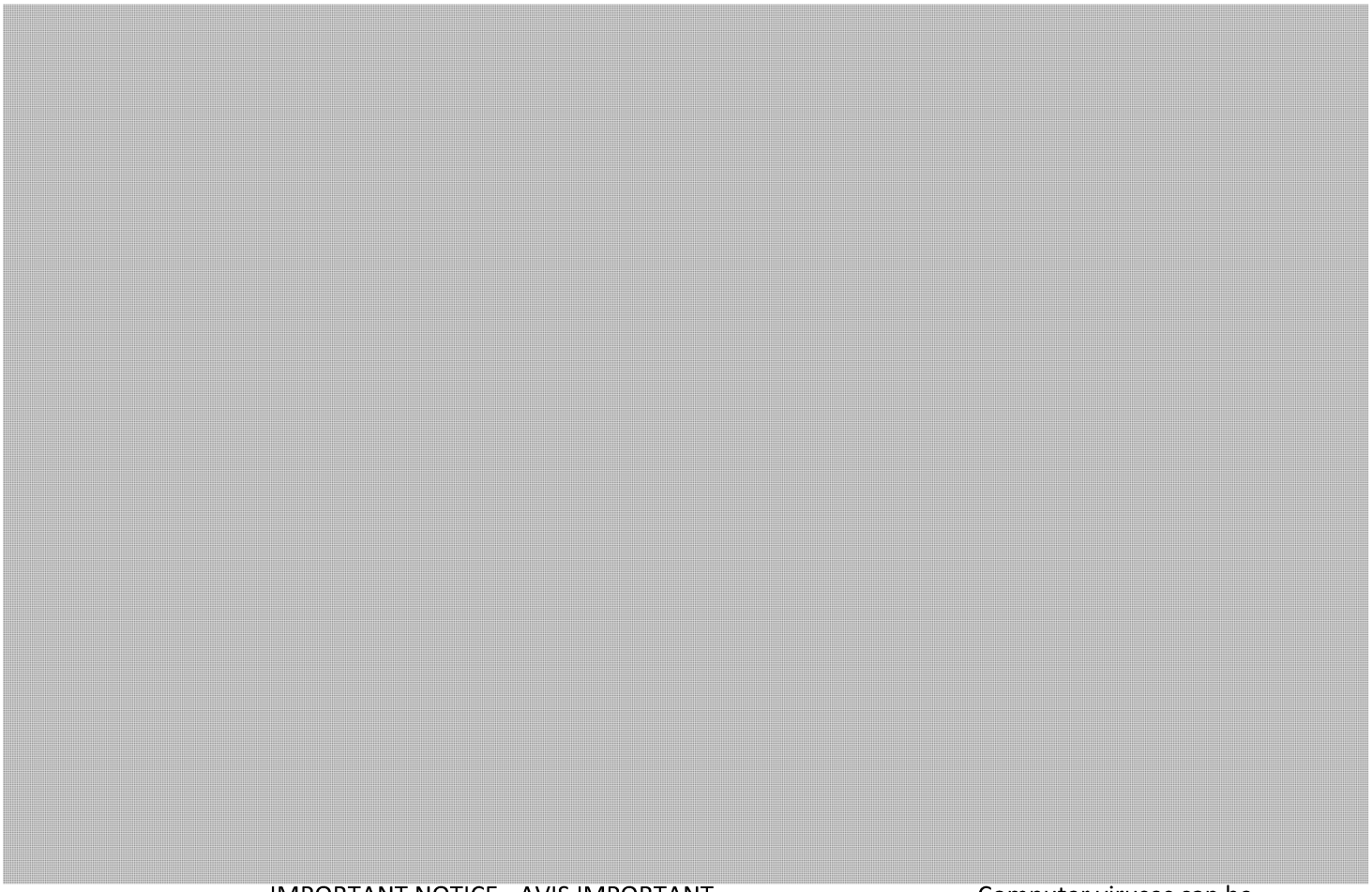
-----Original Message-----
From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 5:57 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca>; [redacted]@cpr.ca>
Subject: [redacted]re Crawford

as discussed Patrizia see below - thank you

[redacted]

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Canadian Pacific



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virus. L' expediteur et son employeur declinent toute responsabilite pour les dommages causes par un virus contenu dans le courriel. Le present message et les pieces qui y sont jointes contiennent des renseignements confidentiels destines uniquement a la personne ou a l' organisme nomme ci-dessus. Toute diffusion, distribution, reproduction ou utilisation comme reference du contenu du message par une autre personne que le destinataire est formellement interdite. Si vous avez recu ce courriel par erreur, veuillez le detruire immediatement et en informer l' expediteur a l' adresse ci-dessus. ---------- IMPORTANT NOTICE - AVIS IMPORTANT ----------
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A0165432_4-000119

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De Rycke, Sebastien

s.19(1)

From: Huot, Patrizia
Sent: Monday, January 27, 2020 7:14 PM
To:
Cc: Vaezmir, Laudan
Subject: RE: re Crawford

Follow Up Flag: Follow up
Flag Status: Flagged

Working on it

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: / TTY: 819-953-7287

-----Original Message-----
From: @cpr.ca>
Sent: Monday, January 27, 2020 7:13 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc @cpr.ca>; @cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: re Crawford (

Any word? We need this retracted before it gets circulated widely and harms our company's reputation

Canadian Pacific

On Jan 27, 2020, at 18:44, @cpr.ca> wrote:

Here is

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s.19(1)

Canadian Pacific

On Jan 27, 2020, at 18:23, @cpr.ca> wrote:

Thank you the statement should be retracted immediately from our perspective

Canadian Pacific

On Jan 27, 2020, at 18:22, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========

Just saw it..Thanks

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: / TTY: 819-953-7287

-----Original Message-----
From @cpr.ca>
Sent: Monday, January 27, 2020 6:10 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: @cpr.ca> @cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: re Crawford

Apparently CBC just posted their story online with a quote from Crawford. I will send it to you momentarily

Canadian Pacific

On Jan 27, 2020, at 18:01, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

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==========

Thanks. Will get back

A0165434_2-000121

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s.19(1)

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: / TTY: 819-953-7287

-----Original Message-----
From: @cpr.ca>
Sent: Monday, January 27, 2020 5:57 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: @cpr.ca> @cpr.ca>
Subject: re Crawford

as discussed Patrizia see below - thank you

Canadian Pacific



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sender company accept no liability for any damage caused by any virus transmitted by this email. This email transmission and any accompanying attachments contain confidential information intended only for the use of the individual or entity named above. Any dissemination, distribution, copying or action taken in reliance on the contents of this email by anyone other than the intended recipient is strictly prohibited. If you have received this email in error please immediately delete it and notify sender at the above email address. Le courrier electronique peut etre porteur de virus informatiques. Le destinataire doit donc passer le present courriel et les pieces qui y sont jointes au detecteur de virus. L' expediteur et son employeur declinent toute responsabilite pour les dommages causes par un virus contenu dans le courriel. Le present message et les pieces qui y sont jointes contiennent des renseignements confidentiels destines uniquement a la personne ou a l' organisme nomme ci-dessus. Toute diffusion, distribution, reproduction ou utilisation comme reference du contenu du message par une autre personne que le destinataire est formellement interdite. Si vous avez recu ce courriel par erreur, veuillez le detruire immediatement et en informer l' expediteur a l' adresse ci-dessus. ---------- IMPORTANT NOTICE - AVIS IMPORTANT ----------
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s.19(1)

De Rycke, Sebastien

From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 9:42 PM
To: Huot, Patrizia
Subject: Re: [redacted]e Crawford [redacted]

Follow Up Flag: Follow up
Flag Status: Flagged

Patrizia if you have a minute please give me a call. I don't understand where this statement leaves the matter vis-à-vis Mr. Crawford.

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 21:15, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

[redacted]
Here is a copy of what we just sent CBC in respect to the article.
We will also be taking further internal steps to deal with the matter. P

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

-----Original Message-----
From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 8:50 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca>; [redacted]cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: [redacted]e Crawford [redacted]

Thanks Patrizia

[redacted]
Canadian Pacific

A0165436_1-000124

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s. 19(1)

[redacted]

On Jan 27, 2020, at 20:41, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========

[redacted]

We will have a statement out in less than an hour.

I will send you a copy as soon as possible. P

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel [redacted] / TTY: 819-953-7287

-----Original Message-----
From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 8:05 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca>; [redacted]@cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: [redacted]re Crawford ([redacted]

Thank you Patrizia

[redacted]

On Jan 27, 2020, at 20:03, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========

[redacted]

I am on the phone.

I got your letter. Working on it. P

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

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General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada
Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel:
TTY: 819-953-7287

-----Original Message-----
From: @cpr.ca>
Sent: Monday, January 27, 2020 7:32 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: @cpr.ca>; @cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: re Crawford

Patrizia Please call me soon as you have a minute thanks

Canadian Pacific

On Jan 27, 2020, at 19:13, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========
Working on it

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell.
: / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada
Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel:
TTY: 819-953-7287

-----Original Message-----
From @cpr.ca>
Sent: Monday, January 27, 2020 7:13 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: @cpr.ca> @cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: re Crawford

Any word? We need this retracted before it gets circulated widely and harms our company's reputation

Canadian Pacific

A0165436_3-000126

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s.19(1)

On Jan 27, 2020, at 18:44, [redacted]@cpr.ca> wrote:

Here is [redacted]

[redacted]

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:23, [redacted]@cpr.ca> wrote:

Thank you the statement should be retracted immediately from our perspective

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:22, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========
Just saw it..Thanks

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell.
: [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada
Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] /
TTY: 819-953-7287

-----Original Message-----
From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 6:10 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca>; [redacted]@cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: [redacted]e Crawford

A0165436_4-000127

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s. 19(1)

Apparently CBC just posted their story online with a quote from Crawford. I will send it to you momentarily

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:01, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========
Thanks. Will get back

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

-----Original Message-----
From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 5:57 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca>; [redacted]@cpr.ca>
Subject: [redacted]re Crawford

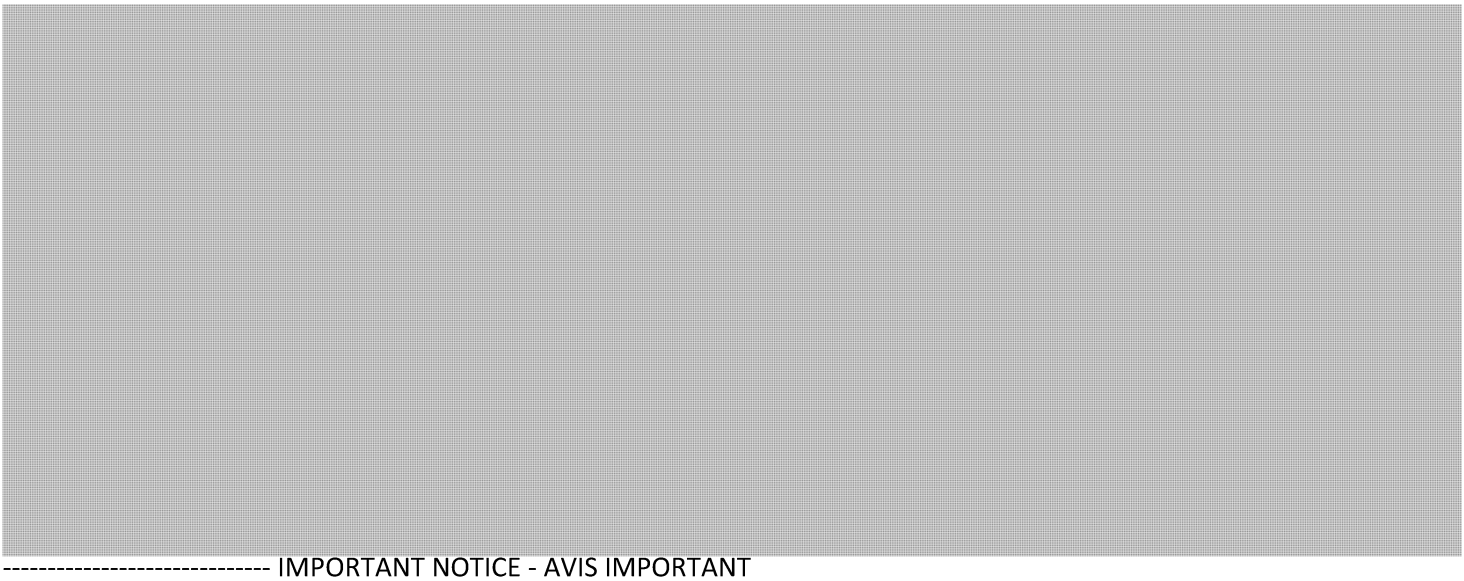
as discussed Patrizia see below - thank you

[redacted]
Canadian Pacific
[redacted]

[redacted]

A0165436_5-000128

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expediteur et son employeur declinent toute responsabilite pour les dommages causes par un virus contenu dans le courriel. Le present message et les pieces qui y sont jointes contiennent des renseignements confidentiels destines uniquement a la personne ou a l'
organisme nomme ci-dessus. Toute diffusion, distribution, reproduction ou utilisation comme reference du contenu du message par une autre personne que le destinataire est formellement interdite. Si vous avez recu ce courriel par erreur, veuillez le detruire immediatement et en informer l' expediteur a l' adresse ci-dessus.
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virus informatiques. Le destinataire doit donc passer le present courriel et les pieces qui y sont jointes au detecteur de virus. L' expediteur et son employeur declinent toute responsabilite pour les dommages causes par un virus contenu dans le courriel. Le present message et les pieces qui y sont jointes contiennent des renseignements confidentiels destines uniquement a la personne ou a l' organisme nomme ci-dessus. Toute diffusion, distribution, reproduction ou utilisation comme reference du contenu du message par une autre personne que le destinataire est formellement interdite. Si vous avez recu ce courriel par erreur, veuillez le detruire immediatement et en informer l' expediteur a l' adresse ci-dessus. ---------- IMPORTANT NOTICE - AVIS IMPORTANT ----------

<mime-attachment>
---------- IMPORTANT NOTICE - AVIS IMPORTANT ---------- Computer viruses can be transmitted via email. Recipient should check this email and any attachments for the presence of viruses. Sender and sender company accept no liability for any damage caused by any virus transmitted by this email. This email transmission and any accompanying attachments contain confidential information intended only for the use of the individual or entity named above. Any dissemination, distribution, copying or action taken in reliance on the contents of this email by anyone other than the intended recipient is strictly prohibited. If you have received this email in error please immediately delete it and notify sender at the above email address. Le courrier electronique peut etre porteur de virus informatiques. Le destinataire doit donc passer le present courriel et les pieces qui y sont jointes au detecteur de virus. L' expediteur et son employeur declinent toute responsabilite pour les dommages causes par un virus contenu dans le courriel. Le present message et les pieces qui y sont jointes contiennent des renseignements confidentiels destines uniquement a la personne ou a l' organisme nomme ci-dessus. Toute diffusion, distribution, reproduction ou utilisation comme reference du contenu du message par une autre personne que le destinataire est formellement interdite. Si vous avez recu ce courriel par erreur, veuillez le detruire immediatement et en informer l' expediteur a l' adresse ci-dessus. ---------- IMPORTANT NOTICE - AVIS IMPORTANT ----------

A0165436_8-000131

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s.19(1)

De Rycke, Sebastien

From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 6:45 PM
To: Huot, Patrizia
Cc: [redacted] Vaezmir, Laudan
Subject: Re: [redacted]e Crawford [redacted]

Follow Up Flag: Follow up
Flag Status: Flagged

Here is [redacted]

[redacted]

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:23, [redacted]@cpr.ca> wrote:

Thank you the statement should be retracted immediately from our perspective

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:22, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========
Just saw it..Thanks

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

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s. 19(1)

-----Original Message-----
From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 6:10 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca>; [redacted]cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: [redacted]re Crawford

Apparently CBC just posted their story online with a quote from Crawford. I will send it to you momentarily

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:01, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========
Thanks. Will get back

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

-----Original Message-----
From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 5:57 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca>; [redacted]@cpr.ca>
Subject: [redacted]re Crawford

as discussed Patrizia see below - thank you

[redacted]
Canadian Pacific
[redacted]

[redacted]

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s.19(1)



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individual or entity named above. Any dissemination, distribution, copying or action taken in reliance on the contents of this email by anyone other than the intended recipient is strictly prohibited. If you have received this email in error please immediately delete it and notify sender at the above email address. Le courrier electronique peut etre porteur de virus informatiques. Le destinataire doit donc passer le present courriel et les pieces qui y sont jointes au detecteur de virus. L' expediteur et son employeur declinent toute responsabilite pour les dommages causes par un virus contenu dans le courriel. Le present message et les pieces qui y sont jointes contiennent des renseignements confidentiels destines uniquement a la personne ou a l' organisme nomme ci-dessus. Toute diffusion, distribution, reproduction ou utilisation comme reference du contenu du message par une autre personne que le destinataire est formellement interdite. Si vous avez recu ce courriel par erreur, veuillez le detruire immediatement et en informer l' expediteur a l' adresse ci-dessus. ---------- IMPORTANT NOTICE - AVIS IMPORTANT ----------

A0165437_4-000135

Pages 136 to / à 144

are not relevant

sont non pertinentes

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s.19(1)

De Rycke, Sebastien

From: Huot, Patrizia
Sent: Monday, January 27, 2020 6:02 PM
To: [redacted]
Cc: [redacted] Vaezmir, Laudan
Subject: RE: [redacted] latest story/latest request (privileged and confidential)

Follow Up Flag: Follow up
Flag Status: Flagged

Thanks, will get back. P

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

-----Original Message-----
From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 6:01 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca>
Subject: [redacted] latest story/latest request (privileged and confidential)

From [redacted]

[redacted]

A0165443_1-000145

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A0165443_2-000146

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s.19(1)

De Rycke, Sebastien

From: Huot, Patrizia
Sent: Monday, January 27, 2020 6:02 PM
To:
Cc: Vaezmir, Laudan
Subject: RE: re Crawford

Follow Up Flag: Follow up
Flag Status: Flagged

Thanks. Will get back

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: / TTY: 819-953-7287

-----Original Message-----
From: @cpr.ca>
Sent: Monday, January 27, 2020 5:57 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: @cpr.ca>; @cpr.ca>
Subject: e Crawford

as discussed Patrizia see below - thank you

Canadian Pacific

A0165445_1-000147

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s.19(1)



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s.19(1)

De Rycke, Sebastien

From: Huot, Patrizia
Sent: Monday, January 27, 2020 6:22 PM
To:
Cc: Vaezmir, Laudan
Subject: RE: e Crawford

Follow Up Flag: Follow up
Flag Status: Flagged

Just saw it..Thanks

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: / TTY: 819-953-7287

-----Original Message-----
From: @cpr.ca>
Sent: Monday, January 27, 2020 6:10 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: @cpr.ca> @cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: e Crawford

Apparently CBC just posted their story online with a quote from Crawford. I will send it to you momentarily

Canadian Pacific

On Jan 27, 2020, at 18:01, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========
Thanks. Will get back

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : / ATS : 819-953-7287

A0165447_1-000149

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s.19(1)

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada
Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: / TTY: 819-953-7287

-----Original Message-----
From: @cpr.ca>
Sent: Monday, January 27, 2020 5:57 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: @cpr.ca>; @cpr.ca>
Subject: re Crawford

as discussed Patrizia see below - thank you

Canadian Pacific

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virus. L' expediteur et son employeur declinent toute responsabilite pour les dommages causes par un virus contenu dans le courriel. Le present message et les pieces qui y sont jointes contiennent des renseignements confidentiels destines uniquement a la personne ou a l' organisme nomme ci-dessus. Toute diffusion, distribution, reproduction ou utilisation comme reference du contenu du message par une autre personne que le destinataire est formellement interdite. Si vous avez recu ce courriel par erreur, veuillez le detruire immediatement et en informer l' expediteur a l' adresse ci-dessus. ---------- IMPORTANT NOTICE - AVIS IMPORTANT ---------- ---------- IMPORTANT NOTICE - AVIS IMPORTANT ---------- Computer viruses can be transmitted via email. Recipient should check this email and any attachments for the presence of viruses. Sender and sender company accept no liability for any damage caused by any virus transmitted by this email. This email transmission and any accompanying attachments contain confidential information intended only for the use of the individual or entity named above. Any dissemination, distribution, copying or action taken in reliance on the contents of this email by anyone other than the intended recipient is strictly prohibited. If you have received this email in error please immediately delete it and notify sender at the above email address. Le courrier electronique peut etre porteur de virus informatiques. Le destinataire doit donc passer le present courriel et les pieces qui y sont jointes au detecteur de virus. L' expediteur et son employeur declinent toute responsabilite pour les dommages causes par un virus contenu dans le courriel. Le present message et les pieces qui y sont jointes contiennent des renseignements confidentiels destines uniquement a la personne ou a l' organisme nomme ci-dessus. Toute diffusion, distribution, reproduction ou utilisation comme reference du contenu du message par une autre personne que le destinataire est formellement interdite. Si vous avez recu ce courriel par erreur, veuillez le detruire immediatement et en informer l' expediteur a l' adresse ci-dessus. ---------- IMPORTANT NOTICE - AVIS IMPORTANT ----------

A0165447_3-000151

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s.19(1)

De Rycke, Sebastien

From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 6:23 PM
To: Huot, Patrizia
Cc: [redacted] Vaezmir, Laudan
Subject: Re: [redacted]re Crawford

Follow Up Flag: Follow up
Flag Status: Flagged

Thank you the statement should be retracted immediately from our perspective

[redacted]

Canadian Pacific

[redacted]

On Jan 27, 2020, at 18:22, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========

Just saw it..Thanks

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

-----Original Message-----
From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 6:10 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca> [redacted]@cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: [redacted]re Crawford

Apparently CBC just posted their story online with a quote from Crawford. I will send it to you momentarily

[redacted]

Canadian Pacific

[redacted]

Document released under the Access to Information Act / Document divulgué en vertu de la Loi sur l'accès à l'information
s.19(1)

On Jan 27, 2020, at 18:01, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========

Thanks. Will get back

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: / TTY: 819-953-7287

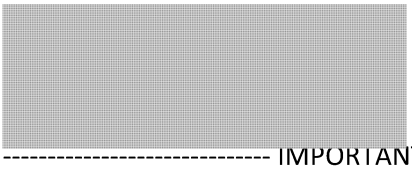
-----Original Message-----
From: @cpr.ca>
Sent: Monday, January 27, 2020 5:57 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: @cpr.ca>; @cpr.ca>
Subject: e Crawford

as discussed Patrizia see below - thank you

Canadian Pacific

A0165449_2-000153

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s.19(1)

De Rycke, Sebastien

From: @cpr.ca>
Sent: Monday, January 27, 2020 7:32 PM
To: Huot, Patrizia
Cc: Vaezmir, Laudan
Subject: Re: re Crawford

Follow Up Flag: Follow up
Flag Status: Flagged

Patrizia Please call me soon as you have a minute thanks

Canadian Pacific

On Jan 27, 2020, at 19:13, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========
Working on it

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: / TTY: 819-953-7287

-----Original Message-----
From: @cpr.ca>
Sent: Monday, January 27, 2020 7:13 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: @cpr.ca>; @cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: re Crawford

Any word? We need this retracted before it gets circulated widely and harms our company's reputation

Canadian Pacific

A0165451_1-000155

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s.19(1)

On Jan 27, 2020, at 18:44, [redacted]@cpr.ca> wrote:

Here is [redacted]

[redacted]

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:23, [redacted]@cpr.ca> wrote:

Thank you the statement should be retracted immediately from our perspective

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:22, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========
Just saw it..Thanks

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

-----Original Message-----
From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 6:10 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca>; [redacted]@cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: [redacted]re Crawford

Apparently CBC just posted their story online with a quote from Crawford. I will send it to you momentarily

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s.19(1)

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:01, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========
Thanks. Will get back

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

-----Original Message-----
From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 5:57 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca>; [redacted]@cpr.ca>
Subject: [redacted]re Crawford

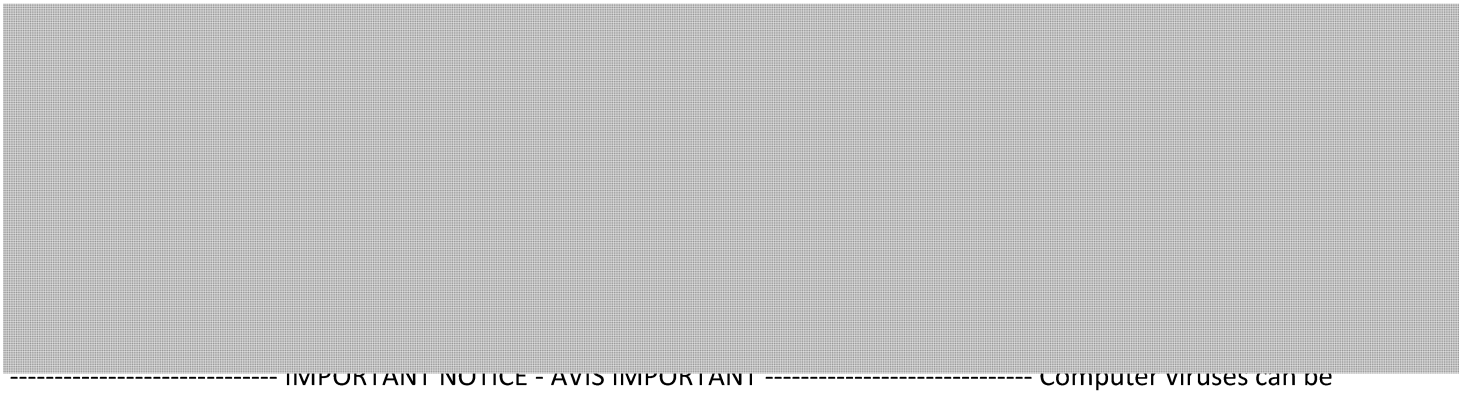
as discussed Patrizia see below - thank you

[redacted]
Canadian Pacific
[redacted]

[redacted]

A0165451_3-000157

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s.13(1)(a)



---------- IMPORTANT NOTICE - AVIS IMPORTANT ---------- Computer viruses can be transmitted via email. Recipient should check this email and any attachments for the presence of viruses. Sender and sender company accept no liability for any damage caused by any virus transmitted by this email. This email transmission and any accompanying attachments contain confidential information intended only for the use of the individual or entity named above. Any dissemination, distribution, copying or action taken in reliance on the contents of this email by anyone other than the intended recipient is strictly prohibited. If you have received this email in error please immediately delete it and notify sender at the above email address. Le courrier electronique peut etre porteur de virus informatiques. Le destinataire doit donc passer le present courriel et les pieces qui y sont jointes au detecteur de virus. L' expediteur et son employeur declinent toute responsabilite pour les dommages causes par un virus contenu dans le courriel. Le present message et les pieces qui y sont jointes contiennent des renseignements confidentiels destines uniquement a la personne ou a l' organisme nomme ci-dessus. Toute diffusion, distribution, reproduction ou utilisation comme reference du contenu du message par une autre personne que le destinataire est formellement interdite. Si vous avez recu ce courriel par erreur, veuillez le detruire immediatement et en informer l' expediteur a l' adresse ci-dessus. ---------- IMPORTANT NOTICE - AVIS IMPORTANT ----------
---------- IMPORTANT NOTICE - AVIS IMPORTANT ---------- Computer viruses can be transmitted via email. Recipient should check this email and any attachments for the presence of viruses. Sender and sender company accept no liability for any damage caused by any virus transmitted by this email. This email transmission and any accompanying attachments contain confidential information intended only for the use of the individual or entity named above. Any dissemination, distribution, copying or action taken in reliance on the contents of this email by anyone other than the intended recipient is strictly prohibited. If you have received this email in error please immediately delete it and notify sender at the above email address. Le courrier electronique peut etre porteur de virus informatiques. Le destinataire doit donc passer le present courriel et les pieces qui y sont jointes au detecteur de virus. L' expediteur et son employeur declinent toute responsabilite pour les dommages causes par un virus contenu dans le courriel. Le present message et les pieces qui y sont jointes contiennent des renseignements confidentiels destines uniquement a la personne ou a l' organisme nomme ci-dessus. Toute diffusion, distribution, reproduction ou utilisation comme reference du contenu du message par une autre personne que le destinataire est formellement interdite. Si vous avez recu ce courriel par erreur, veuillez le detruire immediatement et en informer l' expediteur a l' adresse ci-dessus. ---------- IMPORTANT NOTICE - AVIS IMPORTANT ----------
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A0165451_5-000159

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s.19(1)

De Rycke, Sebastien

From: Huot, Patrizia
Sent: Monday, January 27, 2020 8:04 PM
To:
Cc: Vaezmir, Laudan
Subject: RE: re Crawford (

Follow Up Flag: Follow up
Flag Status: Flagged

I am on the phone.

I got your letter. Working on it. P

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: / TTY: 819-953-7287

-----Original Message-----
From: @cpr.ca>
Sent: Monday, January 27, 2020 7:32 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: @cpr.ca> @cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: re Crawford (

Patrizia Please call me soon as you have a minute thanks

Canadian Pacific

On Jan 27, 2020, at 19:13, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========
Working on it

Patrizia Huot, MA, LLB

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s.19(1)

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: / TTY: 819-953-7287

-----Original Message-----
From: @cpr.ca>
Sent: Monday, January 27, 2020 7:13 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: @cpr.ca>; @cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: e Crawford

Any word? We need this retracted before it gets circulated widely and harms our company's reputation

Canadian Pacific

On Jan 27, 2020, at 18:44, @cpr.ca> wrote:

Here is

Canadian Pacific

On Jan 27, 2020, at 18:23, @cpr.ca> wrote:

Thank you the statement should be retracted immediately from our perspective

Canadian Pacific

On Jan 27, 2020, at 18:22, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

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S.19(1)

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========

Just saw it..Thanks

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: / TTY: 819-953-7287

-----Original Message-----
From: @cpr.ca>
Sent: Monday, January 27, 2020 6:10 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: @cpr.ca>; @cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: re Crawford

Apparently CBC just posted their story online with a quote from Crawford. I will send it to you momentarily

Canadian Pacific

On Jan 27, 2020, at 18:01, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========

Thanks. Will get back

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: / TTY: 819-953-7287

-----Original Message-----
From: @cpr.ca>
Sent: Monday, January 27, 2020 5:57 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: @cpr.ca>, @cpr.ca>
Subject: re Crawford

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S.19(1)

as discussed Patrizia see below - thank you

[redacted]

Canadian Pacific

[redacted]

[redacted]

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individual or entity named above. Any dissemination, distribution, copying or action taken in reliance on the contents of this email by anyone other than the intended recipient is strictly prohibited. If you have received this email in error please immediately delete it and notify sender at the above email address. Le courrier electronique peut etre porteur de virus informatiques. Le destinataire doit donc passer le present courriel et les pieces qui y sont jointes au detecteur de virus. L' expediteur et son employeur declinent toute responsabilite pour les dommages causes par un virus contenu dans le courriel. Le present message et les pieces qui y sont jointes contiennent des renseignements confidentiels destines uniquement a la personne ou a l' organisme nomme ci-dessus. Toute diffusion, distribution, reproduction ou utilisation comme reference du contenu du message par une autre personne que le destinataire est formellement interdite. Si vous avez recu ce courriel par erreur, veuillez le detruire immediatement et en informer l' expediteur a l' adresse ci-dessus. ---------- IMPORTANT NOTICE - AVIS IMPORTANT ----------
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A0165452_5-000164

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s.19(1)

De Rycke, Sebastien

From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 8:05 PM
To: Huot, Patrizia
Cc: [redacted] Vaezmir, Laudan
Subject: Re: [redacted] re Crawford [redacted]

Follow Up Flag: Follow up
Flag Status: Flagged

Thank you Patrizia

Sent from my iPad

> On Jan 27, 2020, at 20:03, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:
>
> This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.
>
> ==========
> [redacted]
>
> I am on the phone.
>
> I got your letter. Working on it. P
>
> Patrizia Huot, MA, LLB
>
> Avocate générale / Bureau de l'administrateur en chef des opérations
> Bureau de la sécurité des transports du Canada / Gouvernement du
> Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell.
> : [redacted] / ATS : 819-953-7287
>
> General Counsel / Office of the Chief Operating Officer Transportation
> Safety Board of Canada / Government of Canada
> Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] /
> TTY: 819-953-7287
>
>
> -----Original Message-----
> From: [redacted]@cpr.ca>
> Sent: Monday, January 27, 2020 7:32 PM
> To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
> Cc [redacted]@cpr.ca>; [redacted]
> [redacted]@cpr.ca>; Vaezmir, Laudan
> <Laudan.Vaezmir@bst-tsb.gc.ca>
> Subject: Re: [redacted] re Crawford [redacted]
>
> Patrizia Please call me soon as you have a minute thanks
>

A0165454_1-000165

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s.19(1)

> [redacted]
> [redacted]
> Canadian Pacific
> [redacted]
>
> On Jan 27, 2020, at 19:13, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:
>
> This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.
>
> ==========
> Working on it
>
> Patrizia Huot, MA, LLB
>
> Avocate générale / Bureau de l'administrateur en chef des opérations
> Bureau de la sécurité des transports du Canada / Gouvernement du
> Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell.
> : [redacted] / ATS : 819-953-7287
>
> General Counsel / Office of the Chief Operating Officer Transportation
> Safety Board of Canada / Government of Canada
> Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] /
> TTY: 819-953-7287
>
>
> -----Original Message-----
> From: [redacted]@cpr.ca>
> Sent: Monday, January 27, 2020 7:13 PM
> To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
> Cc: [redacted]@cpr.ca>; [redacted]
> [redacted]@cpr.ca>; Vaezmir, Laudan
> <Laudan.Vaezmir@bst-tsb.gc.ca>
> Subject: Re: [redacted]e Crawford [redacted]
>
> Any word? We need this retracted before it gets circulated widely and
> harms our company's reputation
>
> [redacted]
> [redacted]
> Canadian Pacific
> [redacted]
>
> On Jan 27, 2020, at 18:44, Jeff Ellis <Jeff_Ellis@cpr.ca> wrote:
>
>
> Here is [redacted]
> [redacted]
>
> [redacted]

A0165454_2-000166

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s.19(1)

>
> [redacted]
>
> [redacted]
>
> Canadian Pacific
> [redacted]
>
> On Jan 27, 2020, at 18:23, [redacted]@cpr.ca> wrote:
>
> Thank you the statement should be retracted immediately from our
> perspective
>
> [redacted]
>
> Canadian Pacific
> [redacted]
>
> On Jan 27, 2020, at 18:22, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:
>
> This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.
>
> ==========
> Just saw it..Thanks
>
> Patrizia Huot, MA, LLB
>
> Avocate générale / Bureau de l'administrateur en chef des opérations
> Bureau de la sécurité des transports du Canada / Gouvernement du
> Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell.
> : [redacted] / ATS : 819-953-7287
>
> General Counsel / Office of the Chief Operating Officer Transportation
> Safety Board of Canada / Government of Canada
> Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] /
> TTY: 819-953-7287
>
>
> -----Original Message-----
> From: [redacted]@cpr.ca>
> Sent: Monday, January 27, 2020 6:10 PM
> To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
> Cc: [redacted]@cpr.ca> [redacted]
> [redacted]@cpr.ca>; Vaezmir, Laudan
> <Laudan.Vaezmir@bst-tsb.gc.ca>
> Subject: Re: [redacted] re Crawford
>
> Apparently CBC just posted their story online with a quote from
> Crawford. I will send it to you momentarily
>
> [redacted]
>

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s.19(1)

> [redacted]
> [redacted]
>
> On Jan 27, 2020, at 18:01, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:
>
> This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.
>
> ==========
> Thanks. Will get back
>
> Patrizia Huot, MA, LLB
>
> Avocate générale / Bureau de l'administrateur en chef des opérations
> Bureau de la sécurité des transports du Canada / Gouvernement du
> Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell.
> : [redacted] / ATS : 819-953-7287
>
> General Counsel / Office of the Chief Operating Officer Transportation
> Safety Board of Canada / Government of Canada
> Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] /
> TTY: 819-953-7287
>
> -----Original Message-----
> From: [redacted]@cpr.ca>
> Sent: Monday, January 27, 2020 5:57 PM
> To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
> Cc: [redacted]@cpr.ca>; [redacted]
> <[redacted]@cpr.ca>
> Subject: [redacted]re Crawford
>
> as discussed Patrizia see below - thank you
>
> [redacted]
> [redacted]
> Canadian Pacific
> [redacted]
>

[redacted]

A0165454_4-000168

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> ---------- IMPORTANT NOTICE - AVIS IMPORTANT
> ---------- Computer viruses can be transmitted via
> email. Recipient should check this email and any attachments for the
> presence of viruses. Sender and sender company accept no liability for
> any damage caused by any virus transmitted by this email. This email
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> named above. Any dissemination, distribution, copying or action taken
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> intended recipient is strictly prohibited. If you have received this
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A0165454_5-000169

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A0165454_6-000170

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> personne que le destinataire est formellement interdite. Si vous avez
> recu ce courriel par erreur, veuillez le detruire immediatement et en
> informer l' expediteur a l' adresse ci-dessus.
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s.19(1)

De Rycke, Sebastien

From: Huot, Patrizia
Sent: Monday, January 27, 2020 8:41 PM
To: [redacted]
Cc: [redacted] Vaezmir, Laudan
Subject: RE: [redacted] re Crawford [redacted]

Follow Up Flag: Follow up
Flag Status: Flagged

[redacted]

We will have a statement out in less than an hour.

I will send you a copy as soon as possible. P

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

-----Original Message-----
From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 8:05 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca>; [redacted]@cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: [redacted] re Crawford [redacted]

Thank you Patrizia

Sent from my iPad

> On Jan 27, 2020, at 20:03, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:
>
> This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.
>
> ==========
> [redacted]
>
> I am on the phone.
>
> I got your letter. Working on it. P
>

A0165457_1-000172

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s.19(1)

> Patrizia Huot, MA, LLB
>
> Avocate générale / Bureau de l'administrateur en chef des opérations
> Bureau de la sécurité des transports du Canada / Gouvernement du
> Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell.
> : / ATS : 819-953-7287
>
> General Counsel / Office of the Chief Operating Officer Transportation
> Safety Board of Canada / Government of Canada
> Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: /
> TTY: 819-953-7287
>
>
> -----Original Message-----
> From: @cpr.ca>
> Sent: Monday, January 27, 2020 7:32 PM
> To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
> Cc: @cpr.ca>;
> < Vaezmir, Laudan
> <Laudan.Vaezmir@bst-tsb.gc.ca>
> Subject: Re: re Crawford
>
> Patrizia Please call me soon as you have a minute thanks
>
>
>
> Canadian Pacific
>
>
> On Jan 27, 2020, at 19:13, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:
>
> This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.
>
> ==========
> Working on it
>
> Patrizia Huot, MA, LLB
>
> Avocate générale / Bureau de l'administrateur en chef des opérations
> Bureau de la sécurité des transports du Canada / Gouvernement du
> Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell.
> : / ATS : 819-953-7287
>
> General Counsel / Office of the Chief Operating Officer Transportation
> Safety Board of Canada / Government of Canada
> Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: /
> TTY: 819-953-7287
>
>
> -----Original Message-----
> From: @cpr.ca>
> Sent: Monday, January 27, 2020 7:13 PM

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s.19(1)

> To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
> Cc: @cpr.ca>
> @cpr.ca>; Vaezmir, Laudan
> <Laudan.Vaezmir@bst-tsb.gc.ca>
> Subject: Re: re Crawford
>
> Any word? We need this retracted before it gets circulated widely and
> harms our company's reputation
>
>
>
> Canadian Pacific
>
>
> On Jan 27, 2020, at 18:44, @cpr.ca> wrote:
>
>
> Here is
>
>
>
>
>
>
>
>
>
>
> Canadian Pacific
>
>
> On Jan 27, 2020, at 18:23, @cpr.ca> wrote:
>
> Thank you the statement should be retracted immediately from our
> perspective
>
>
>
> Canadian Pacific
>
>
> On Jan 27, 2020, at 18:22, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:
>
> This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.
>
> ==========
> Just saw it..Thanks
>
> Patrizia Huot, MA, LLB
>
> Avocate générale / Bureau de l'administrateur en chef des opérations

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s.19(1)

> Bureau de la sécurité des transports du Canada / Gouvernement du
> Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell.
> : [redacted] / ATS : 819-953-7287
>
> General Counsel / Office of the Chief Operating Officer Transportation
> Safety Board of Canada / Government of Canada
> Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] /
> TTY: 819-953-7287
>
>
> -----Original Message-----
> From: [redacted]@cpr.ca>
> Sent: Monday, January 27, 2020 6:10 PM
> To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
> Cc: [redacted]r@cpr.ca>; [redacted]
> [redacted]@cpr.ca>; Vaezmir, Laudan
> <Laudan.Vaezmir@bst-tsb.gc.ca>
> Subject: Re: [redacted]re Crawford
>
> Apparently CBC just posted their story online with a quote from
> Crawford. I will send it to you momentarily
>
> [redacted]
> [redacted]
> Canadian Pacific
> [redacted]
>
> On Jan 27, 2020, at 18:01, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:
>
> This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.
>
> ==========
> Thanks. Will get back
>
> Patrizia Huot, MA, LLB
>
> Avocate générale / Bureau de l'administrateur en chef des opérations
> Bureau de la sécurité des transports du Canada / Gouvernement du
> Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell.
> : [redacted] / ATS : 819-953-7287
>
> General Counsel / Office of the Chief Operating Officer Transportation
> Safety Board of Canada / Government of Canada
> Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted]
> TTY: 819-953-7287
>
> -----Original Message-----
> From: [redacted]@cpr.ca>
> Sent: Monday, January 27, 2020 5:57 PM
> To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
> Cc: [redacted]@cpr.ca>; [redacted]
> [redacted]@cpr.ca>

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s.19(1)

> Subject: [redacted]re Crawford
>
> as discussed Patrizia see below - thank you
>
> [redacted]
>
> Canadian Pacific
> [redacted]
>
[redacted]
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A0165457_7-000178

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s.19(1)

De Rycke, Sebastien

From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 8:50 PM
To: Huot, Patrizia
Cc: [redacted] Vaezmir, Laudan
Subject: Re: [redacted]re Crawford [redacted]

Follow Up Flag: Follow up
Flag Status: Flagged

Thanks Patrizia

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 20:41, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========

[redacted]

We will have a statement out in less than an hour.

I will send you a copy as soon as possible. P

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

-----Original Message-----
From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 8:05 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca>; [redacted]@cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: [redacted]re Crawford [redacted]

Thank you Patrizia

Sent from my iPad

A0165459_1-000179

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s.19(1)

On Jan 27, 2020, at 20:03, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========

I am on the phone.

I got your letter. Working on it. P

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: /
TTY: 819-953-7287

-----Original Message-----
From: @cpr.ca>
Sent: Monday, January 27, 2020 7:32 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: @cpr.ca>; @cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: re Crawford

Patrizia Please call me soon as you have a minute thanks

Canadian Pacific

On Jan 27, 2020, at 19:13, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========
Working on it

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : / ATS : 819-953-7287

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s.19(1)

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada
Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: /
TTY: 819-953-7287

-----Original Message-----
From: Jeff Ellis <Jeff_Ellis@cpr.ca>
Sent: Monday, January 27, 2020 7:13 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: @cpr.ca>; @cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: e Crawford

Any word? We need this retracted before it gets circulated widely and harms our company's reputation

Canadian Pacific

On Jan 27, 2020, at 18:44, @cpr.ca> wrote:

Here is

Canadian Pacific

On Jan 27, 2020, at 18:23, @cpr.ca> wrote:

Thank you the statement should be retracted immediately from our perspective

Canadian Pacific

On Jan 27, 2020, at 18:22, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========
Just saw it..Thanks

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Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

-----Original Message-----
From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 6:10 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca>; [redacted]@cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: [redacted] re Crawford

Apparently CBC just posted their story online with a quote from Crawford. I will send it to you momentarily

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:01, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========
Thanks. Will get back

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

-----Original Message-----
From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 5:57 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca>; [redacted]@cpr.ca>
Subject: [redacted] re Crawford

as discussed Patrizia see below - thank you

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Canadian Pacific



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---------- IMPORTANT NOTICE - AVIS IMPORTANT ---------- Computer viruses can be transmitted via email. Recipient should check this email and any attachments for the presence of viruses. Sender and

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sender company accept no liability for any damage caused by any virus transmitted by this email. This email transmission and any accompanying attachments contain confidential information intended only for the use of the individual or entity named above. Any dissemination, distribution, copying or action taken in reliance on the contents of this email by anyone other than the intended recipient is strictly prohibited. If you have received this email in error please immediately delete it and notify sender at the above email address. Le courrier electronique peut etre porteur de virus informatiques. Le destinataire doit donc passer le present courriel et les pieces qui y sont jointes au detecteur de virus. L' expediteur et son employeur declinent toute responsabilite pour les dommages causes par un virus contenu dans le courriel. Le present message et les pieces qui y sont jointes contiennent des renseignements confidentiels destines uniquement a la personne ou a l' organisme nomme ci-dessus. Toute diffusion, distribution, reproduction ou utilisation comme reference du contenu du message par une autre personne que le destinataire est formellement interdite. Si vous avez recu ce courriel par erreur, veuillez le detruire immediatement et en informer l' expediteur a l' adresse ci-dessus. ---------- IMPORTANT NOTICE - AVIS IMPORTANT ----------
---------- IMPORTANT NOTICE - AVIS IMPORTANT ---------- Computer viruses can be transmitted via email. Recipient should check this email and any attachments for the presence of viruses. Sender and sender company accept no liability for any damage caused by any virus transmitted by this email. This email transmission and any accompanying attachments contain confidential information intended only for the use of the individual or entity named above. Any dissemination, distribution, copying or action taken in reliance on the contents of this email by anyone other than the intended recipient is strictly prohibited. If you have received this email in error please immediately delete it and notify sender at the above email address. Le courrier electronique peut etre porteur de virus informatiques. Le destinataire doit donc passer le present courriel et les pieces qui y sont jointes au detecteur de virus. L' expediteur et son employeur declinent toute responsabilite pour les dommages causes par un virus contenu dans le courriel. Le present message et les pieces qui y sont jointes contiennent des renseignements confidentiels destines uniquement a la personne ou a l' organisme nomme ci-dessus. Toute diffusion, distribution, reproduction ou utilisation comme reference du contenu du message par une autre personne que le destinataire est formellement interdite. Si vous avez recu ce courriel par erreur, veuillez le detruire immediatement et en informer l' expediteur a l' adresse ci-dessus. ---------- IMPORTANT NOTICE - AVIS IMPORTANT ----------

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s.19(1)

De Rycke, Sebastien

From: Huot, Patrizia
Sent: Monday, January 27, 2020 9:15 PM
To:
Cc: Vaezmir, Laudan
Subject: RE: re Crawford
Attachments: Re. your article: Train safety investigator wants RCMP to probe fatal CP mountain crash

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Here is a copy of what we just sent CBC in respect to the article.

We will also be taking further internal steps to deal with the matter. P

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations
Bureau de la sécurité des transports du Canada / Gouvernement du Canada
Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer
Transportation Safety Board of Canada / Government of Canada
Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: / TTY: 819-953-7287

-----Original Message-----
From:
Sent: Monday, January 27, 2020 8:50 PM
To: Huot, Patrizia
Cc: ; Vaezmir, Laudan
Subject: Re: e Crawford

Thanks Patrizia

Canadian Pacific

On Jan 27, 2020, at 20:41, Huot, Patrizia wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========

We will have a statement out in less than an hour.

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I will send you a copy as soon as possible. P

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

-----Original Message-----
From: [redacted]
Sent: Monday, January 27, 2020 8:05 PM
To: Huot, Patrizia
Cc: [redacted], Vaezmir, Laudan
Subject: Re: [redacted] re Crawford [redacted]

Thank you Patrizia

Sent from my iPad

On Jan 27, 2020, at 20:03, Huot, Patrizia wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========

[redacted]

I am on the phone.

I got your letter. Working on it. P

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell.
: [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] /
TTY: 819-953-7287

-----Original Message-----
From: [redacted]
Sent: Monday, January 27, 2020 7:32 PM
To: Huot, Patrizia
Cc: [redacted], Vaezmir, Laudan
Subject: Re: [redacted] re Crawford ([redacted]

Patrizia Please call me soon as you have a minute thanks

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 19:13, Huot, Patrizia wrote:

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==========

Working on it

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell.
: [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada
Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted]
TTY: 819-953-7287

-----Original Message-----
From: [redacted]
Sent: Monday, January 27, 2020 7:13 PM
To: Huot, Patrizia
Cc: [redacted] ; Vaezmir, Laudan
Subject: Re: [redacted] re Crawford [redacted]

Any word? We need this retracted before it gets circulated widely and harms our company's reputation

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:44, Jeff Ellis wrote:

Here is [redacted]

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:23, Jeff Ellis wrote:

Thank you the statement should be retracted immediately from our perspective

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:22, Huot, Patrizia wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========

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Just saw it..Thanks

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell.
: / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada
Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel:
TTY: 819-953-7287

-----Original Message-----
From:
Sent: Monday, January 27, 2020 6:10 PM
To: Huot, Patrizia
Cc: ; Vaezmir, Laudan
Subject: Re: re Crawford

Apparently CBC just posted their story online with a quote from Crawford. I will send it to you momentarily

Canadian Pacific

On Jan 27, 2020, at 18:01, Huot, Patrizia wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========

Thanks. Will get back

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell.
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General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada
Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: /
TTY: 819-953-7287

-----Original Message-----
From:
Sent: Monday, January 27, 2020 5:57 PM
To: Huot, Patrizia
Cc:
Subject: re Crawford

as discussed Patrizia see below - thank you

Canadian Pacific

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expediteur et son employeur declinent toute responsabilite pour les dommages causes par un virus contenu dans le courriel. Le present message et les pieces qui y sont jointes contiennent des renseignements confidentiels destines uniquement a la personne ou a l' organisme nomme ci-dessus. Toute diffusion, distribution, reproduction ou utilisation comme reference du contenu du message par une autre personne que le destinataire est formellement interdite. Si vous avez recu ce courriel par erreur, veuillez le detruire immediatement et en informer l' expediteur a l' adresse ci-dessus.
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is not relevant

est non pertinente

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s.19(1)

De Rycke, Sebastien

From: @cpr.ca>
Sent: Monday, January 27, 2020 9:29 PM
To: Huot, Patrizia
Cc: Vaezmir, Laudan
Subject: Re: re Crawford (

Follow Up Flag: Follow up
Flag Status: Flagged

Thank you for your assistance Patrizia

Canadian Pacific

On Jan 27, 2020, at 21:15, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

Here is a copy of what we just sent CBC in respect to the article.
We will also be taking further internal steps to deal with the matter. P

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: / TTY: 819-953-7287

-----Original Message-----
From: @cpr.ca>
Sent: Monday, January 27, 2020 8:50 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc @cpr.ca>; @cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: re Crawford (

Thanks Patrizia

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s.19(1)

[redacted]

On Jan 27, 2020, at 20:41, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========

[redacted]

We will have a statement out in less than an hour.

I will send you a copy as soon as possible. P

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

-----Original Message-----
From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 8:05 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca>; [redacted]@cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: [redacted]re Crawford [redacted]

Thank you Patrizia

Sent from my iPad

On Jan 27, 2020, at 20:03, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========

[redacted]

I am on the phone.

I got your letter. Working on it. P

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

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General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada
Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: /
TTY: 819-953-7287

-----Original Message-----
From: Jeff Ellis <Jeff_Ellis@cpr.ca>
Sent: Monday, January 27, 2020 7:32 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: @cpr.ca>; @cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: re Crawford

Patrizia Please call me soon as you have a minute thanks

Canadian Pacific

On Jan 27, 2020, at 19:13, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========
Working on it

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada
Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: /
TTY: 819-953-7287

-----Original Message-----
From: @cpr.ca>
Sent: Monday, January 27, 2020 7:13 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: @cpr.ca>; @cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: re Crawford

Any word? We need this retracted before it gets circulated widely and harms our company's reputation

Canadian Pacific

A0165466_3-000195

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S.19(1)

On Jan 27, 2020, at 18:44, @cpr.ca> wrote:

Here is

Canadian Pacific

On Jan 27, 2020, at 18:23, @cpr.ca> wrote:

Thank you the statement should be retracted immediately from our perspective

Canadian Pacific

On Jan 27, 2020, at 18:22, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========
Just saw it..Thanks

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel:
TTY: 819-953-7287

-----Original Message-----
From: @cpr.ca>
Sent: Monday, January 27, 2020 6:10 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: @cpr.ca>; @cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>

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s.19(1)

Subject: Re: [redacted]re Crawford

Apparently CBC just posted their story online with a quote from Crawford. I will send it to you momentarily

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:01, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========
Thanks. Will get back

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

-----Original Message-----
From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 5:57 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca>; [redacted]@cpr.ca>
Subject: [redacted]re Crawford

as discussed Patrizia see below - thank you

[redacted]
Canadian Pacific
[redacted]

[redacted]

A0165466_5-000197

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[redacted]

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expediteur et son employeur declinent toute responsabilite pour les dommages causes par un virus contenu dans le courriel. Le present message et les pieces qui y sont jointes contiennent des renseignements confidentiels destines uniquement a la personne ou a l'
organisme nomme ci-dessus. Toute diffusion, distribution, reproduction ou utilisation comme reference du contenu du message par une autre personne que le destinataire est formellement interdite. Si vous avez recu ce courriel par erreur, veuillez le detruire immediatement et en informer l' expediteur a l' adresse ci-dessus.
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this email by anyone other than the intended recipient is strictly prohibited. If you have received this email in error please immediately delete it and notify sender at the above email address. Le courrier electronique peut etre porteur de virus informatiques. Le destinataire doit donc passer le present courriel et les pieces qui y sont jointes au detecteur de virus. L' expediteur et son employeur declinent toute responsabilite pour les dommages causes par un virus contenu dans le courriel. Le present message et les pieces qui y sont jointes contiennent des renseignements confidentiels destines uniquement a la personne ou a l' organisme nomme ci-dessus. Toute diffusion, distribution, reproduction ou utilisation comme reference du contenu du message par une autre personne que le destinataire est formellement interdite. Si vous avez recu ce courriel par erreur, veuillez le detruire immediatement et en informer l' expediteur a l' adresse ci-dessus. ---------- IMPORTANT NOTICE - AVIS IMPORTANT ----------

<mime-attachment>
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s.19(1)

De Rycke, Sebastien

From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 7:32 PM
To: Huot, Patrizia
Cc: [redacted] Vaezmir, Laudan
Subject: Re: [redacted]e Crawford [redacted]

Follow Up Flag: Follow up
Flag Status: Flagged

Patrizia Please call me soon as you have a minute thanks

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 19:13, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========
Working on it

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

-----Original Message-----
From [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 7:13 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]cpr.ca>; [redacted]@cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: [redacted]e Crawford [redacted]

Any word? We need this retracted before it gets circulated widely and harms our company's reputation

[redacted]
Canadian Pacific
[redacted]

A0165467_1-000201

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S.19(1)

On Jan 27, 2020, at 18:44, [redacted]@cpr.ca> wrote:

Here is [redacted]

[redacted]

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:23, [redacted]@cpr.ca> wrote:

Thank you the statement should be retracted immediately from our perspective

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:22, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========
Just saw it..Thanks

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

-----Original Message-----
From [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 6:10 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca>; [redacted]@cpr.ca>; Vaezmir, Laudan <Laudan.Vaezmir@bst-tsb.gc.ca>
Subject: Re: [redacted]e Crawford

Apparently CBC just posted their story online with a quote from Crawford. I will send it to you momentarily

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s.19(1)

Canadian Pacific

On Jan 27, 2020, at 18:01, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========

Thanks. Will get back

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: / TTY: 819-953-7287

-----Original Message-----
From: @cpr.ca>
Sent: Monday, January 27, 2020 5:57 PM
To: Huot. Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: @cpr.ca> @cpr.ca>
Subject: re Crawford

as discussed Patrizia see below - thank you

Canadian Pacific

A0165467_3-000203

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[redacted]

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A0165467_5-000205

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s.19(1)

De Rycke, Sebastien

From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 6:10 PM
To: Huot, Patrizia
Cc: [redacted] Vaezmir, Laudan
Subject: Re: [redacted]e Crawford

Follow Up Flag: Follow up
Flag Status: Flagged

Apparently CBC just posted their story online with a quote from Crawford. I will send it to you momentarily

[redacted]
Canadian Pacific
[redacted]

On Jan 27, 2020, at 18:01, Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca> wrote:

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

==========
Thanks. Will get back

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations Bureau de la sécurité des transports du Canada / Gouvernement du Canada Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : [redacted] / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer Transportation Safety Board of Canada / Government of Canada Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: [redacted] / TTY: 819-953-7287

-----Original Message-----
From: [redacted]s@cpr.ca>
Sent: Monday, January 27, 2020 5:57 PM
To: Huot, Patrizia <Patrizia.Huot@bst-tsb.gc.ca>
Cc: [redacted]@cpr.ca>; [redacted]@cpr.ca>
Subject: [redacted]e Crawford

as discussed Patrizia see below - thank you

[redacted]
Canadian Pacific
[redacted]

[redacted]

A0165468_1-000206

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Pages 209 to / à 210

are not relevant

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Pages 211 to / à 212

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Pages 213 to / à 215

are not relevant

sont non pertinentes

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s.19(1)

De Rycke, Sebastien

From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 5:57 PM
To: Huot, Patrizia
Cc: [redacted]
Subject: [redacted] re Crawford

Follow Up Flag: Follow up
Flag Status: Flagged

as discussed Patrizia see below - thank you

[redacted]
Canadian Pacific
[redacted]

[redacted]

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De Rycke, Sebastien

From: Huot, Patrizia
Sent: Tuesday, January 28, 2020 4:08 PM
To:
Cc:
Subject: Statement

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

FYI As discussed.

http://www.tsb.gc.ca/eng/medias-media/decl-stat/2020/20200128.html

http://www.tsb.gc.ca/fra/medias-media/decl-stat/2020/20200128.html

Patrizia Huot, MA, LLB

Avocate générale / Bureau de l'administrateur en chef des opérations
Bureau de la sécurité des transports du Canada / Gouvernement du Canada
Patrizia.Huot@bst-tsb.gc.ca / Tél. : 819-994-0385 / Tél. cell. : / ATS : 819-953-7287

General Counsel / Office of the Chief Operating Officer
Transportation Safety Board of Canada / Government of Canada
Patrizia.Huot@tsb-bst.gc.ca / Tel: 819-994-0385 / Cel: / TTY: 819-953-7287

Page 219

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s.19(1)

De Rycke, Sebastien

From: [redacted]@cpr.ca>
Sent: Monday, January 27, 2020 6:13 PM
To: Huot, Patrizia
Cc: [redacted]
Subject: Train safety investigator wants RCMP to probe fatal CP mountain crash | CBC News

Follow Up Flag: Follow up
Flag Status: Flagged

https://www.cbc.ca/news/canada/cp-rail-crash-call-investigation-1.5441955

[redacted]
Canadian Pacific
[redacted]
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Pages 221 to / à 223

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Attachment 24

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

NOV 1 0 2021

S 219848

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

PAMELA FRASER

PLAINTIFFS

AND

CANADIAN PACIFIC RAILWAY LIMITED; KEITH CREEL; MARC GARNEAU; KATHLEEN FOX a.k.a. KATHY FOX; FAYE ACKERMANS; PAUL GEORGE DITTMAN; KENNETH POTTER; JOSEPH HINCKE; PATRIZIA HUOT; CP POLICE SERVICE CHIEFS AL SAUVÉ and KEN MARCHANT; JOHN DOE; JANE DOE; and OTHER UNKNOWN PERSONS

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

(a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
(b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

(a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

(a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,

(b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or

(d) if the time for response to civil claim has been set by order of the court, within that time.

Part 1: STATEMENT OF FACTS

Parties.

1. The Plaintiff, Ms. Pamela Fraser ("Ms. Fraser") is a resident of High River, Alberta, and is the mother of the deceased, Mr. Dylan Paradis. Dylan was a conductor with Canadian Pacific Railway ("CP Railway"). On February 4, 2019, Dylan died when Canadian Pacific Railway Ltd. Train 301 derailed near Field, British Columbia ("BC") alongside his crew members, Dylan Paradis, and Daniel Waldenberger-Bulmer.

2. The Defendant, Canadian Pacific Railway Limited. ("CP Railway"), is a Canadian corporation that is listed on the Toronto Stock Exchange and, as a Foreign Private Issuer, is listed on the New York Stock Exchange. CP Railway has operations in both Canada and the United States. In the United States, CP Railway operates in its direct capacity and/or through its subsidiaries that it oversees, controls, and to which it provides policing services through its in-house CP Police Service. In this claim, CP Railway and all its subsidiaries in the United States will be collectively referred to as "CP Railway". CP Railway is headquartered at 7550 Ogden Dale Road SE Calgary, Alberta T2C 4X9.

3. CP Railway created, facilitates, maintains, oversees, and provides operational direction to the Canadian Pacific Police Service ("CP Police Service") pursuant to sections 44 and 44.1 of the *Railway Safety Act*, RSC 1985, c 32 (4th Supp) ("*RSA*"). CP Police Service officers are sworn law enforcement officers. They have the same criminal law enforcement powers as public police officers in Canada and the United States. The CP Police Service is wholly owned by, is legally indistinct from, and answers directly to CP Railway. CP Police Service's Chief and law enforcement officers are full employees of CP Railway who are hired and remunerated by, and report directly to, CP Railway's civilian corporate management, including in operational matters in Canada and the United States.

4. Despite being based in Canada, being a Canadian citizen, and answering exclusively to private corporate civilians in Canada, CP Railway's Chief of Police has direct and overall command of all CP Railway police officers. The CP Railway Chief of Police's command extends to the CP Police Service officers who operate and enforce the criminal law on the sovereign territory of the United States of America, and against that country's citizens. The CP Police Service has no civilian

oversight body in the Canada or the United States. Under the *Railway Safety Act* in Canada and companion laws in the United States, CP Railway as a private company, is solely responsible for addressing and dispensing of all complaints against its police force, including any disciplinary actions against its primary law enforcement employee, the Chief of the CP Police Service. The CP Police Service also exercises police jurisdiction over all incidents such as deaths and serious injuries that happen during CP Railway's commercial operations in Canada and the United States.

5. CP Railway is currently in the process of acquiring Kansas City Southern Railway ("NYSE: KSU") that is headquartered in Kansas City, Missouri and which has operations in the United States and Mexico. The proposed company would be called Canadian Pacific Kansas City ("CPKC"). Under this acquisition, the new CPKC would be headquartered in Calgary, Alberta, Canada. Mr. Keith Creel, who is CP Railway's current President, Chief Executive Officer ("CEO"), and member of the Board of Directors, would become the CEO of the combined CPKC. whose global headquarters will be based in Calgary, Canada.

6. Under the proposed acquisition, KSU's sworn police officers and security personnel in the United States and Mexico would be consolidated under the unified command of a new CPKC Police Service leadership in Calgary. The overall CPKC leadership in Canada will ultimately report to Mr. Creel, the new CPKC Board of Directors, and civilian corporate leaders at the CPKC headquarters in Canada. The relevant authorities in the United States, including the Surface Transportation Board ("STB"), and Mexican regulators are currently reviewing the proposed combination. The STB is expected to release its final decision on the proposed combination some time in 2022.

7. The Defendant, Mr. Keith Creel ("Mr. Creel") became President and Chief Operating Officer for CP Railway in February 2013. In 2015, Mr. Creel was appointed to the CP Railway Board of Directors. In January 2017, Mr. Creel became the President and CEO for CP Railway. Previously, Mr. Creel was the Executive Vice-President and Chief Operating Officer at Canadian National Railway ("CN Railway"). In that capacity, he oversaw the CN Police Service which CN Railway continues to privately own and control pursuant to Sections 44 and 44.1 of the *RSA*. Before that, Mr. Creel held various positions at CN Railway, including the roles of Executive Vice-President Operations, Senior Vice-President Eastern Region, Senior Vice-President Western Region, and Vice-President of the Prairie Division.

8. The Defendants, John Doe, Jane Doe, and Other Unknown Persons are currently unidentified representatives of CP Railway. John Doe, Jane Doe, and Other Unknown Persons are responsible for directing and instructing CP Railway's representatives and agents regarding CP Railway's actions vis-a-vis the Transportation Safety Board ("TSB") which partly give rise to this Notice of Civil Claim.

9. CP Railway, Mr. Creel, John Doe, Jane Doe and Other Unknown persons will collectively be referred to as "the CP Railway Defendants".

10. The Defendant, Mr. Marc Garneau, is the Member of Parliament for the Québec constituency of Notre-Dame-de-Grâce—Westmount. When the Field, BC derailment which killed Dylan Paradis occurred, Mr. Garneau was also Canada's Minister of Transport, a position in which he served from November 2015 until January 2021. Between January 2021 and October 2021, Mr. Garneau served as Canada's Minister of Foreign Affairs.

11. As Canada's Minister of Transport, Mr. Garneau was responsible for the oversight and enforcement of Canada's transportation-related legislation. Section 3.1 of the *Railway Safety Act* enumerated Minister Garneau's official duties as Canada's Minister of Transport in part as:

> Minister's responsibilities respecting railway safety
>
> 3.1 The Minister is responsible for the development and regulation of matters to which this Act applies, including safety and security, and for the supervision of all matters connected with railways and, in the discharge of those responsibilities, the Minister may, among other things,
>
> > (a) promote railway safety and security by means that the Minister considers appropriate;
> >
> > (d) inspect, examine and report on activities related to railway matters; and
> >
> > (e) undertake other activities that the Minister considers appropriate or that the Governor in Council may direct.

12. The Defendants, Ms. Kathleen Fox, also known as Ms. Kathy Fox, Ms. Faye Ackermans, Mr. Paul George Dittman, Mr. Kenneth Potter, and Mr. Joseph Hincke were the Transportation Safety Board

members during the relevant period of this Claim. Collectively, they will be referred to as "the TSB members" who are jointly and severally liable under this Claim.

13. The Transportation Safety Board ("TSB" or "the Board"), which the above-noted TSB members preside over, is a federal tribunal constituted pursuant to section 4 of the *Canadian Transportation Accident Investigation and Safety Board Act*, SC 1989, c 3 ("*CTAISB Act*"). The TSB members' duties are prescribed under section 8 of the *CTAISB Act* and include establishing policies respecting the classes of transportation occurrences the Board investigates (section 8(1)(b)); establishing, either generally or in relation to specific classes of transportation occurrences, policies to be followed in the conduct of incident investigations (section 8(1)(c)); determining the causes and contributing factors of transportation occurrences (section 8(1)(e)); identifying any safety deficiencies as evidenced by transportation occurrences (section 8(1)(f)); and making such recommendations as they consider appropriate to improve railway and public safety (section 8(1)(g)). Pursuant to subsection 10(1)(b) of the *CTAISB Act*, the TSB must appoint investigators to staff positions within the agency.

14. The Defendant, Ms. Kathleen Fox, also known as Ms. Kathy Fox ("Ms. Fox"), is the Chairperson of the TSB. Ms. Fox was appointed to the TSB on August 21, 2014 and was reappointed on August 21, 2018. As Chairperson, pursuant to section 5(2) of the *CTAISB Act*, Ms. Fox is exclusively responsible for managing the TSB's personnel matters, financial matters, property matters and all other aspects of the Board's internal management (section 5(2)(a)), and for directing the TSB members and apportioning their work (section 5(2)(b)). In her capacity as a TSB member, Ms. Fox's duties are prescribed under section 8 of the *CTAISB Act*, as partially outlined above.

15. The Defendant, Ms. Faye Ackermans ("Ms. Ackermans"), is a TSB member. Ms. Ackermans was appointed to the TSB in July 2014. She was reappointed to the Board in July 2018. Before she was appointed as a TSB member, Ms. Ackermans was an employee of CP Railway for 25 years, beginning in 1982. While working for CP Railway, Ms. Ackermans held senior positions related to rail safety and regulatory affairs. Due to the length of her tenure at CP Railway, Ms. Ackermans presumptively continues to receive a pension from CP Railway. As a member of the TSB, Ms. Ackermans' duties are prescribed under section 8 of the *CTAISB Act*, as partially outlined above. Ms. Ackermans is the only TSB member with exclusive experience in the railway industry. Ms.

Ackermans has the most direct and detailed knowledge of CP Railway's operations, safety culture, and infrastructure.

16. The Defendant, Mr. Paul George Dittman ("Mr. Dittman"), is a member of the TSB. He was appointed in May 2017 and reappointed in May 2021. As a member of the TSB, Mr. Dittman's duties are prescribed under section 8 of the *CTAISB Act,* as partially outlined above.

17. The Defendant, Mr. Kenneth Potter ("Mr. Potter"), is a member of the TSB. He was appointed in June 2019. As a member of the TSB, Mr. Potter's duties are prescribed under section 8 of the *CTAISB Act,* as partially outlined above.

18. The Defendant, Mr. Joseph Hincke ("Mr. Hincke"), was a member of the TSB during the relevant period. Mr. Hincke was appointed to the Board in 2012. His replacement was appointed in September 2020. As a member of the TSB, Mr. Hincke's duties were prescribed under section 8 of the *CTAISB Act,* as partially outlined above.

19. The Defendant, Ms. Patrizia Huot ("Ms. Huot"), is the general counsel for the TSB. She has held this position since April 2015. As general counsel for the TSB, Ms. Partizia Huot advises the TSB and is an agent and representative of the TSB.

20. The Defendant, Chief of Police, Al Sauvé ("Chief Sauvé"), was appointed Chief of Police for the CP Police Service in June 2019. Chief Sauvé is the current Chief of Police. Chief Sauvé is based out of the CP Police Service and CP Railway's Calgary headquarters and is responsible for officers in both Canada and the United States. If CP Railway's bid to acquire Kansas City Southern railway obtains all regulatory approvals, Chief Sauvé would become the Chief of Police and the head of the new CPKC's security operations in Canada, the United States, and Mexico.

21. At the time of the Field, BC derailment of Train 301, Chief Sauvé was the CP Police Service's Deputy Chief, Operations (Canada).

22. The Defendant, (former) Chief of the CP Police Service, Ken Marchant ("Chief Marchant"), was the Chief of the CP Police Service for both Canada and the United States in February 2019, when the fatal Field, BC derailment occurred.

23. Collectively, Chief Sauvé and Chief Marchant will be referred to as the "CP Chiefs of Police".

Background Facts.

The Field, BC derailment of CP Railway Train 301 on February 4, 2019.

24. On the night of February 3, 2019, at approximately 21:48 (9:48 pm), MST, CP Railway's loaded unit grain train 301-349 ("Train 301") was travelling westwards from Calgary to Vancouver, BC. The train's crew brought the train to an emergency stop at Partridge, BC, on CP Railway's Laggan Subdivision (which represents a specific stretch of railway).

25. CP Railway Train 301 was comprised of 3 locomotive (engine) cars and 112 fully loaded grain cars, weighing more than 15,000 tons, and stretching two kilometers in length (approximately 6560 feet). During its journey to its final destination in Vancouver, the train was travelling westbound towards Field, BC.

26. Dylan and his two fellow crew members were at the CP Railway bunkhouse in Field, BC, when their CP Railway manager called them to replace the crew that had brought Train 301 to a stop at Partridge, BC, also known as Field Hill.

27. On February 3, 2019, the weather in Partridge, B.C., was windy with blowing snow and temperatures of -28°C. Accounting for the windchill factor, the temperature was as low as – 40°C.

28. When the previous crew brought Train 301 into its resting place at Partridge, the Engineer, had trouble controlling the train's speed with the air brakes and was compelled to resort to the train's emergency brakes. The crew eventually managed to stop the train at Partridge. The train's Engineer and Conductor contacted a CP Railway manager for instructions for how to proceed given the

braking issues and the hazardous weather conditions. The CP Railway manager made the decision to summon the replacement crew, of which Dylan was a member, to keep the train running that night.

29. Around the same time, and in contravention of the industry standards and CP Railway's own internal policies, CP Railway's management also instructed Train 301's initial crew to finish their shift and not to apply 75% of the handbrakes. Instead of instructing the initial crew to apply the handbrakes, the CP Railway manger instructed the crew to set "retainers" as a temporary measure instead.

30. The replacement crew, of which Dylan was a member, arrived about 2 hours and 45 minutes after CP Railway Train 301 had come to a stop at Partridge, BC. After a job briefing with the previous crew, the replacement crew began work on the train. Dylan's crew began taking the controls and stepped off the Train to apply the handbrakes for the safe release and recharge of the airbrakes, as the Timetable required.

31. Retainers need a threshold amount of air in them to effectively hold the train in place. However, due to the extremely cold temperatures, the air had been seeping out of the retainers on CP Railway Train 301 for the nearly 3-hour duration that Train 301 had been sitting on Field Hill. About 10 minutes after the replacement crew's arrival, the train's length and weight, the cold air, which was causing brake leakages, and the inherently deficient state of the brakes, all culminated in Train 301 suddenly starting to roll on its own and without the crew's intervention. The crew members, who were not on the train at that point, climbed aboard to try to stop it.

32. As the crew members had no proper braking systems available, or any other means of slowing or stopping the train, Train 301 continued its descent down Field Hill, gaining speed, and careening out of control. The Engineer, Andrew Dockrell, called in over the radio to the CP Railway bunkhouse that Train 301 was accelerating, declaring, "Emergency!", "The train is out of control!" and calling out the train's speeds over the radio. According to CP Railway's Timetable, and accounting for the weight of the train, that stretch of railway has a speed limit of 24km/hour (15 miles/hour). In their final communications over the radio, the Engineer, Andrew Dockrell, stated that the train was travelling at 92 km/hour (57 miles/hour).

33. Train 301 accelerated through the Upper Spiral Tunnel. The head of the train derailed about a third of a mile from the Lower Spiral Tunnel, killing all three crew members.

34. A total of 99 of CP Railway Train 301's cars and two locomotives derailed between the Upper Spiral Tunnel and Lower Spiral Tunnel near Field, BC. The train derailed at three points; first in the middle, then at the tail end, then finally the front engine where Dylan was situated. The main engine was found in a nearby river, by itself, on its side, and with the rest of the cars 100 meters away on the embankment. The momentum of CP Railway Train 301 had also pushed the engine further off the track.

35. It was approximately a two-to-seven-minute period from when CP Railway Train 301 started rolling to when it finally derailed, and approximately 15 minutes from when the replacement crew had taken over Train 301 until the train wreck came to a stop.

36. After the Field, BC derailment, the TSB discovered problems with the air brakes. The TSB's Rail Safety Advisory 617-05/19 states that the TSB tested CP Railway Train 301's brakes on 13 of the 112 cars that remained undamaged in the crash. The tests revealed that all of the tested brakes (11% of the train) were each incapable of holding any train on that grade of incline (2.2%) in similar weather conditions.

37. From these tests, the TSB determined that the sample was representative of the brakes' condition on all the cars and that none of the 112 cars had properly functioning brakes that would have been capable of stopping CP Railway's runaway train in those circumstances. The TSB concluded that before the derailment, CP Railway Train 301's braking system had been 0% effective. The TSB has not yet released its final investigative report into the derailment of CP Railway Train 301.

38. The triple fatality from the derailment of Train 301 on February 4, 2019 resulted in CP Railway becoming the default suspect pursuant to the Westray amendments to the *Criminal Code*, RSC 1985, c C-46. The operative framework that arose from these amendments requires that potential criminal conduct by an employer in a workplace fatality must be proactively precluded through diligent assessment, and not presumed at the outset. Thus, the fatal derailment of CP Railway Train 301 required independent and impartial police investigation to conclude or preclude the case for criminal

charges. Given that CP Railway have conceded that as employees, its CP Railway Police officers were automatically disqualified from investigating the corporation or the executive leaders they answered to, only the Royal Canadian Mounted Police ("RCMP") had the criminal and policing jurisdiction to conduct the necessary criminal investigation. CP Railway, including Mr. Creel, have insisted that the RCMP was involved from the very beginning and that it was also duty bound to investigate the fatal derailment of Train 301.

39. On July 22, 2020, about sixteen months after the fatal derailment of CP Railway Train 301, BNN Bloomberg published an interview with Mr. Keith Creel. During this interview, Mr. Creel states, in part, "…we've driven a tremendous amount of change, rapid change, since we started to turn this company around back in 2012. Rest assured we didn't get it all right. It's been a matter of public record, you know, we broke a lot of eggs, for lack of a better term."

TSB members and the TSB's General Counsel, acting individually, collectively, and in concert with CP Railway, impeded incident investigator Mr. Don Crawford's efforts to refer the Field, BC derailment of CP Railway Train 301 to independent law enforcement.

40. Mr. Don Crawford ("Mr. Crawford") has been a Regional Senior Investigator with the TSB since February 2014. Mr. Crawford was the original lead investigator that the TSB assigned to investigate the derailment of Train 301 near Field, BC.

41. During his investigation, and based on his training, skills, and experience, Mr. Crawford identified indicia of criminality with respect to the derailment of CP Railway Train 301. Pursuant to the TSB's internal policies, Mr. Crawford reported these indicia of criminality to his superiors and requested that the TSB refer the matter to independent police forces. Mr. Crawford's superiors within the TSB refused to refer the derailment of CP Railway Train 301 to outside police forces for a criminal investigation, including to the RCMP. Mr. Crawford's superiors, including the TSB members, either directly or through their designates, also barred Mr. Crawford from unilaterally referring the derailment of CP Railway Train 301 to outside police forces.

42. On January 27, 2020, the Canadian Broadcasting Corporation ("CBC") published an article titled, "Train safety investigator wants RCMP to probe fatal CP mountain crash". In this article, Mr. Crawford went public with his concerns about the need for an independent investigation into the

derailment of CP Railway Train 301. Mr. Crawford is quoted as saying, “There is enough to suspect there's negligence here and it needs to be investigated by the proper authority”. By “proper authority”, Mr. Crawford was referring to independent police forces with the authority to conduct criminal investigations given that the TSB has no such jurisdiction.

43. On June 21, 2021, the CBC published another article titled, “CP threatened lawsuit against safety watchdog after investigator spoke out about deadly crash”. This later article contained a hyperlink to redacted documents which the CBC obtained from the TSB through the federal *Access to Information Act*, RSC 1985, c A process (“ATIP”).

44. The TSB’s heavily redacted ATIP disclosures comprised of a series of correspondences between CP Railway’s representatives, including its in-house and outside legal counsel, and representatives of the TSB, including its Chairperson, Ms. Kathy Fox and the Board’s General Counsel, Ms. Patrizia Huot.

45. The TSB’s ATIP disclosure shows that on January 27, 2020, at 5:57pm, an undisclosed person with an email address ending in “@cpr.ca” sent an email to Ms. Patrizia Huot. The subject line of that email read, “Seglins re Crawford”. The text of that email reads, “as discussed Patrizia see below-thank you [redacted] Canadian Pacific [redacted]”.

46. The TSB’s ATIP disclosures also show that on January 27, 2020, at 6:01pm, an undisclosed person with an email address ending in “@cpr.ca” wrote an email to Ms. Patrizia Huot at the TSB. The text of that email appears to be quoting a journalist’s request for CP Railway’s comments in response to the CBC publishing the story in which it quoted Mr. Crawford.

47. The email that the unidentified CP Railway representative wrote to Ms. Patrizia Huot reads:

> From [redacted]
>
> In the course of CBC's reporting today, we've learned the following;
> -The TSB's lead investigator says "There is enough to suspect there's negligence here and it needs to be investigated by the proper authority.”
> -CP's main union has issued a release calling for the RCMP to conduct an independent investigation - AND - is calling on Transport Canada for the elimination of “Corporate

> Police" services like the CPPS and CN Police Do either of CP Railway or CPPS ..wish to respond to the views of either TSBs Don Crawford... or TCRC?
> We are publishing shortly, but are happy to add any input from you should their comments change your "no comment."
> Thank you,
>
> [redacted]

48. On January 27, 2020, at 6:01pm, Ms. Patrizia Huot sent an email to an undisclosed person with an email address ending in "@cpr.ca". This email reads, "Thanks. Will get back".

49. On January 27, 2020, at 6:10pm, an undisclosed person with an email address ending in "@cpr.ca" sent an email to Ms. Patrizia Huot at the TSB. This email reads, "Apparently CBC just posted their story online with a quote from Crawford. I will send it to you momentarily [redacted] Canadian Pacific [redacted]."

50. On January 27, 2020, at 6:13pm, an undisclosed person with an email address ending in "@cpr.ca" sent an email to Ms. Patrizia Huot at the TSB. The subject line of the email reads, "Train safety investigator wants RCMP to probe fatal CP mountain crash | CBC News". The text of this email reads, "https://www.cbc.ca/news/canada/cp-rail-crash-call-investigation-1.5441955 [redacted] Canadian Pacific [redacted]".

51. On January 27, 2020, at 6:13pm, an undisclosed person with an email address ending in "@cpr.ca" sent an email to Ms. Huot at the TSB. The subject line of the email reads, "dave seglins on Twitter There is enough to suspect there's negligence here @TSBCanada's lead investigator wants @RCMP to st[*sic*]". The entire body of the email is redacted except for the words, "Canadian Pacific".

52. On January 27, 2020, at 6:22pm, Ms. Patrizia Huot sent an email to an undisclosed person with an email address ending in "@cpr.ca". This email reads, "Just saw it..Thanks".

53. On January 27, 2020, at 6:23pm, Mr. Jeff Ellis, CP Railway's Chief Legal Officer and Corporate Secretary, sent an email to Ms. Patrizia Huot at the TSB. This email reads, "Thank you the statement should be retracted immediately from our perspective [redacted] Canadian Pacific [redacted]."

54. On January 27, 2020, at 6:45pm, an undisclosed person with an email address ending in "@cpr.ca" sent an email to Ms. Patrizia Huot at the TSB. The text of this email reads, "Here is [redacted] Canadian Pacific [redacted]".

55. On January 27, 2020, at 7:13pm, Mr. Jeff Ellis of CP Railway sent an email to Ms. Patrizia Huot. The text of this email reads, "Any word? We need this retracted before it gets circulated widely and harms our company's reputation [redacted] Canadian Pacific [redacted]."

56. On January 27, 2020, at 7:14pm, Ms. Patrizia Huot sent an email to an undisclosed person with an email address ending in "@cpr.ca". The text of this emails reads, "Working on it".

57. On January 27, 2020, at 7:32pm, Mr. Jeff Ellis of CP Railway sent an email to Ms. Patrizia Huot. The text of this email reads, "Patrizia please call me soon as you have a minute thanks [redacted] Canadian Pacific [redacted]".

58. On January 27, 2020, at 8:03pm, Ms. Patrizia Huot sent an email to an undisclosed person with an email address ending in "@cpr.ca". The text of this email reads, "[redacted] I am on the phone. I got your letter. Working on it. P.".

59. On January 27, 2020, at 8:05pm, an undisclosed person with an email address ending in "@cpr.ca" sent an email to Ms. Patrizia Huot at the TSB. The text of this email reads, "Thank you Patrizia [redacted]".

60. On January 27, 2020, at 8:41pm, Ms. Patrizia Huot sent an email to an undisclosed person with an email address ending in "@cpr.ca" The text of this email reads, "We will have a statement out in less than an hour. I will send you a copy as soon as possible. P".

61. On January 27, 2020, at 8:50pm, an undisclosed person with an email address ending in "@cpr.ca" sent an email to Ms. Patrizia Huot. The text of this email reads, "Thanks Patrizia [redacted] Canadian Pacific [redacted]."

62. On January 27, 2020, at 9:15pm, Ms. Patrizia Huot sent an email to an undisclosed person with an email address ending in "@cpr.ca". The text of this email reads, "[redacted] Here is a copy of what we just sent CBC in respect to the article. We will also be taking further internal steps to deal with the matter. P". The documents referred to in this email were not included in the ATIP disclosure.

63. On January 27, 2020, at 9:29pm, an undisclosed person with an email address ending in "@cpr.ca" sent an email to Ms. Huot at the TSB. The text of this email reads, "Thank you for your assistance Patrizia [redacted] Canadian Pacific [redacted]".

64. On January 27, 2020, at 9:42pm, an undisclosed person with an email address ending in "@cpr.ca" sent an email to Ms. Patrizia Huot at the TSB. The text of this email reads, "Patrizia if you have a minute please give me a call. I don't understand where this statement leaves the matter vis-à-vis Mr. Crawford. [redacted] Canadian Pacific [redacted]."

65. On January 28, 2020, at 9:47am, an undisclosed person sent an email to Ms. Patrizia Huot at the TSB. The email contained an attachment. The attachment was a demand letter on the letterhead of Bennett Jones LLP, dated January 28, 2020. The letter reads in part:

> If the TSB and Mr. Crawford do not immediately retract Mr. Crawford's statement, CP Rail will have no alternative but to commence proceedings against the TSB, [redacted] conclusions recognizing the TSB's own statement in the retraction that "...The investigation is ongoing... The TSB does not attribute blame or determine civil or criminal liability..."
>
> Please confirm that Mr. Crawford will be removed from this investigation and advise what steps will be taken to [redacted] with CP Rail matters.
>
> Your and Mr. Crawford's urgent response is required. The harm and damage to CP Rail's reputation increases [redacted].

CP Railway's outside counsel at Bennett Jones LLP copied Mr. Don Crawford, the presiding TSB investigator on the derailment, on this letter which threatened the TSB with legal action if it did not retract Mr. Crawford's public calls for an independent authority to investigate the derailment.

66. On January 28, 2020, Ms. Patrizia Huot sent an email, with links to a TSB media statement to an undisclosed person with an email address ending in, "@cpr.ca". The text of the email reads, "FYI, as discussed".

67. On January 28, 2020, the TSB's Chairperson, Ms. Kathy Fox, wrote an email to an undisclosed person with an email address ending in "@cpr.ca". The text of this email reads,

> I'm very sorry for the furor caused by statements from our (former) lead investigator on the Field investigation file. This is not how we conduct our business. Here is the statement we just issued on our website, which has also been sent to journalists following this investigation.
>
> https://www.bst-tsb.gc.ca/eng/medias-media/decl-stat/2020/20200128.html
>
> I would be pleased to discuss this further if you wish. I can be reached directly at the number below or on my cell phone at [redacted] Thank you.

68. On January 29, 2020, the TSB's Chairperson, Ms. Fox, received an email from an undisclosed person with an email address ending in "@cpr.ca". This email reads,

> Thank you for the email and comments around this unfortunate situation. The irresponsible manner CBC has been reporting and misrepresenting facts, in conjunction with the TSBs lead investigators inappropriate commentary, has been damaging to CP s reputation. Beyond taking necessary steps to protect our reputation and the truth I have a strong view their actions were disrespectful/damaging to the families of the employees we tragically lost as well as our collective CP family We appreciate and agree with your point that the investigators behavior contradicts the manner TSB strives to conduct their business in meeting its mandate. Thank you for the TSBs actions to address and correct the investigators actions

69. The TSB removed Mr. Crawford as the lead investigator into the derailment of Train 301 near Field, BC. On January 28, 2020, the TSB released its public media statement denouncing and rebuking Mr. Crawford's statement to the CBC. The TSB's public statement reads, in part, "…it was completely inappropriate for the lead TSB investigator in the Field investigation to voice any opinion implying civil or criminal liability. The TSB advised CBC late on 27 January 2020 that it does not share the view of this investigator."

Ms. Patrizia Huot, the TSB's General Counsel, refuses to provide Ms. Fraser with any information about whistleblower protections for Board investigators in general, or for Mr. Don Crawford in particular.

70. During or after the TSB members' coordinated strategy with CP Railway to prevent a criminal referral of the Field, BC derailment to the RCMP, Ms. Fraser's counsel wrote to Ms. Kathy Fox in her capacity as Chairperson of the TSB. In the September 2, 2020 letter, Ms. Fraser's counsel asked Ms. Fox questions about the TSB's policies and procedures for investigating railway related fatalities. The TSB provided responses in a letter dated November 5, 2020. These correspondences triggered related email correspondences.

71. The September 2, 2020 letter triggered a phone call between Ms. Fraser's counsel and Ms. Patrizia Huot. Following this phone call, on September 22, 2020, Ms. Patrizia Huot emailed Ms. Fraser's counsel stating that the answers he had posed in his September 2, 2020 would be provided shortly.

72. Ms. Fraser's counsel emailed Ms. Huot on January 21, 2021 requesting a response to the September 2, 2020 letter. Ms. Huot replied that the TSB's Communication department had already provided a response. Ms. Huot subsequently resent the Communication department's response through a letter dated November 5, 2020.

73. After reviewing the information provided in the November 5, 2020 letter, Ms. Fraser's counsel emailed Ms. Huot on February 9, 2021 requesting clarifications. Specifically, Ms. Fraser's counsel requested the legal authority to ground the TSB's express and implicit position that investigators could not make criminal referrals. After Ms. Huot did not reply, Ms. Fraser's counsel sent a follow-up email to her on February 19, 2021. In that email, he requested a response to the questions he had posed in his February 9, 2021 email to Ms. Huot. Ms. Huot replied by email that same day stating that she would provide an answer shortly.

74. On February 22, 2021, Ms. Huot emailed Ms. Fraser's counsel responding to the questions he had posed in his February 9, 2021 email. Ms. Huot did not provide any authority for the TSB's previous implication that its investigators were barred from making criminal referrals. Rather, Ms. Huot stated that section 7(2) of the *CTAISB Act* barred investigators from finding or assigning criminal or civil liability.

75. Ms. Fraser's counsel responded same day stating in part:

> I understand your position with respect to Section 7(2) of the CTAISB Act and how the TSB may not overtly assign fault. What is less clear to me is how this bars TSB investigators from reporting potential criminal or wrongful behaviour they may discover in the course of their investigations. A referral to law enforcement is not a finding of fault that would violate Section 7(2) of the CTAISB Act. In such cases, the police, prosecutors, or authority to whom the TSB investigators report to will determine whether to prosecute the case. The courts would then make an independent decision on whether to convict or acquit based on the case that the police and prosecution has built, and not the TSB investigator's investigative report under the CTAISB Act.

In this email, Ms. Fraser's counsel then explained in detail why TSB investigators were protected by the *Public Servants Disclosure Protection Act*, SC 2005, c 46. The email concluded with Ms. Fraser's counsel requesting Ms. Huot to provide the TSB's formal position on whether its investigators are protected by the *Public Servants Disclosure Protection Act*.

76. In an email dated February 28, 2021, Ms. Huot responded by stating:

> Thanks for your email. I am not in a position to speculate on the *Public Servants Disclosure Protection Act* to hypothetical scenarios. With respect to your other questions, please find enclosed the TSB Code of Values and Ethics (the Code). I want to point out that this Code was already raised in our letter dated November 5, 2020. Unfortunately, the Annexes referred in that letter were not attached–we apologize for that omission. You will also find attached the Coroners MOUs with TSB that may be of assistance to you.

77. In an email dated March 12, 2021, Ms. Fraser's counsel again requested that Ms. Huot confirm whether:

> a) TSB investigators are protected as whistle-blowers under the Public Servants Disclosure Protection Act, and
>
> b) Whether TSB investigators are legally permitted, or obliged, to report any evidence of criminality they uncover in their investigations to independent police forces.

78. Ms. Huot responded the same day in an email stating:

> Thank you for your email. I understand you had difficulty opening the attachments to my February 28, 2021 email. You have now received the Annexes in question from my colleague, Laudan Vaezmir (you acknowledged receipt on March 3, 2021).
> Regarding your first question, which you also asked in your February 22, 2021 email, as stated in my February 28, 2021 response to that email, I will not speculate on how the *Public Servants Disclosure Protection Act* applies to any hypothetical scenario. The TSB is committed to transparency and has provided answers to all of your questions; however, I will not speculate as to how very specific federal legal regimes apply to TSB employees in a factual vacuum.
>
> Regarding your second question, this is the same question asked as Question 12 from your September 2, 2020 email. The answer provided by the TSB in response in its November 5, 2020 email stands.
>
> I appreciate your interest in the TSB's mandate and its important work. However, I will not be responding to further correspondence that restates questions that have already been answered, or that I have indicated I cannot answer.

79. On March 16, 2021, Ms. Fraser's counsel responded by email to Ms. Huot. In this email, Ms. Fraser's counsel provides context for the previously posed questions by outlining the specific and non "hypothetical" case of Mr. Don Crawford and the TSB's public reprisals against him arising his statements.

80. Ms. Huot responded by email on March 26, 2021 stating that she would not be answering any more questions through informal requests as a result of ongoing litigation regarding the Field, BC derailment. Throughout the entirety of the email communications between Ms. Huot and Ms. Fraser's counsel, Ms. Huot continually avoided confirming or denying whether the whistle-blower protections under the *Public Servants Disclosure Protection Act* applied to Mr. Crawford or to TSB investigators generally.

The CP Defendants' coordinated efforts to prevent or impede a criminal probe into the derailment of CP Railway Train 301.

81. Before and after CP Railway delivered its private threats of legal action against the TSB and Mr. Don Crawford for calling for an independent (i.e., RCMP) investigation into the derailment of Train 301, CP Railway and its President and CEO, Mr. Keith Creel, adopted an elaborate and aggressive strategy to impede the initiation, continuation, expansion, or progress of any such investigation. The CP Railway Defendants executed this coordinated and unlawful strategy through a four-pronged approach in which the prongs, deployed in isolation and in coordination, would impede the independent criminal probe that Mr. Don Crawford for advocating for.

82. The first prong of CP Railway's strategy to prevent or impede any independent criminal investigation was its aforementioned initiative to threaten, cajole, and coopt the TSB. CP Railway took these actions to muzzle and sanction the incident investigator, Mr. Don Crawford, for publicly calling for the independent criminal investigation. Until Mr. Crawford made his comments to the CBC in January 2020, CP Railway had successfully prevented the independent criminal scrutiny and accountability that it allegedly supported.

83. The second prong of CP Railway's strategy to prevent or impede any independent criminal investigation involved reassuring the Train 301 victims' families that the derailment was a tragic but unavoidable accident for which CP Railway bore no blame. Under this prong, which Mr. Creel was principally responsible for implementing, the CP Railway Defendants further reassured Ms. Fraser that CP Railway would do everything in its power to provide Ms. Fraser with answers about what happened to their loved one. This included by cooperating with all relevant authorities that had jurisdiction over the derailment. By carefully implementing this second prong through calculated assurances and strategic compassion when Ms. Fraser was still in shock and grieving, Mr. Creel and CP Railway successfully stemmed Ms. Fraser's anger and impetus to assertively advocate for criminal and regulatory investigations into CP Railway and its leaders.

84. The third prong of the CP Railway Defendants' strategy to prevent or impede any independent criminal investigation into the derailment of Train 301 was to publicly take positions or make material omissions to assert that CP Railway was totally supportive of any applicable investigations into the derailment of Train 301 and was cooperating fully in all respects. This third prong was

designed to reassure the company's workers, shareholders, customers, public authorities in Canada and the United States, and the public in both countries, that CP Railway was fully cooperating to seek fulsome answers and accountability for the fatal derailment of Train 301.

85. The fourth prong of CP Railway's strategy to prevent or impede any independent criminal probe into the derailment of Train 301 involved the company's abuse of its in-house CP Police Service. This strategy involved CP Railway's civilian leadership directing, supporting, or allowing its police Chief and commanding officers to capture the investigative space by asserting jurisdiction over the derailment. By opening an investigation in which their corporate employer and leaders were implicated, the CP Police Chiefs wound a formidable perimeter of barrier tape around the epicentre of disaster, including around the evidence, witnesses, and locale of the tragedy. By expressly asserting exclusive, primary, or concurrent, jurisdiction over the derailment of Train 301, CP Railway and its Chiefs of Police effectively precluded the RCMP, in whole or in part, from establishing the primary and exclusive jurisdiction that was a prerequisite for a truly independent criminal investigation.

86. Whether or not the RCMP could, or should have, asserted jurisdiction on its own volition and notwithstanding the CP Police Service's own investigation does not absolve the CP Railway Defendants of their unlawful efforts to maximally or totally preclude independent criminal scrutiny of CP Railway. By leveraging the statutory imprimatur of the CP Police Service, CP Railway and its Police Chiefs unlawfully captured jurisdiction over a criminal inquiry in which the company and its leaders' potential liability were implicated in the deaths of three workers.

87. As part of the fourth prong of CP Railway's strategy to prevent or impede any independent criminal probe into the derailment of Train 301, Mr. Creel and CP Railway used the CP Police Service as a screen to prevent public and regulatory scrutiny of CP Railway's policing activities in Canada and the United States. As media scrutiny built around the Field, BC derailment, Mr. Creel and CP Railway made public statements that gave the impression that a series of thorough, fair, and independent investigations were already ongoing, including by the RCMP.

88. While publicly making those statements, Mr. Creel failed to disclose that CP Railway's Chiefs of Police were concurrently channelling their department's investigation away from CP Railway and

its leadership's potential criminal liability. Instead of the investigative integrity, transparency, and cooperation that they professed to support, the CP Railway Defendants and the Chiefs of Police were working to secure the company's predetermined exoneration. They did so in part through the Chiefs of Police's decision to limit their police department's investigation to the deceased workers even though a credible and thorough investigation could not exclude CP Railway, an employer in a *Westray* incident, from criminal scrutiny at the outset.

89. By focusing exclusively on the deceased workers' actions, Mr. Creel and CP Railway built a firewall between themselves and the flames of independent criminal scrutiny. This prevented the flames of accountability from advancing up the corporate hierarchy to illuminate CP Railway's enduring operational control over the CP Police Service. By capturing the investigative space that could eventually reveal these corporate governance and policing practices, CP Railway also minimized public and regulatory scrutiny into its historical practice of using the CP Police Service to criminally investigate and exonerate itself for deaths and serious injuries on the company's watch.

90. The balance of this section of the Claim provides further particulars of the actions that Mr. Creel, CP Railway and the Chiefs of Police took, individually and in concert, to deploy their strategy of preventing an independent criminal probe into the derailment of CP Railway Train 301.

91. Throughout Mr. Creel and CP Railway's private efforts to divert independent criminal scrutiny on the Field, BC derailment, Mr. Creel consistently took a contradictory position with the public and Dylan's family, including his mother, Ms. Pamela Fraser. On several occasions, Mr. Creel purported to support the independent investigation of the Field, BC derailment of Train 301 by the RCMP that his in-house and outside legal counsel were strenuously working to prevent in their private communications with the TSB members.

92. In a February 5, 2019 posting on the CP Railway website titled: "Feb 5 update on Field, B.C, derailment – A statement from CP's President and CEO", Mr. Creel stated:

> We continue to mourn the loss of our three CP family members. I spent the day at the derailment site yesterday, and I have not stopped thinking about this incident since it occurred.
>
> With any significant incident, there are many questions that need to be answered. As you are aware, CP immediately initiated an investigation and since then has collected a significant

amount of information which we will continue to analyze in order to determine the cause of the derailment. We have committed to fully cooperate with the Transportation Safety Board (TSB), Transport Canada (TC), and other agencies, and have provided information as requested. Through this concerted effort, we are establishing some key facts and gaining a preliminary understanding of the chain of events. We will provide further updates in due course. Additionally, the TSB will release its own independent findings at a later date.

In the meantime, CP crews, contractors and agencies are working diligently in challenging conditions to remove the damaged rail cars and equipment. We expect this process to take a number of days.

We remain in constant contact with both TC and the TSB. Once all necessary safety checks are complete, we will re-open this important stretch of track to restore service as soon as possible.

The entire CP family is grateful for the support we have received since yesterday's tragedy.

Sincerely,
Keith Creel
CP President and CEO

93. At paragraph 19(l) of the Chiefs of Police's "Response To Civil Claim" relating to the underlying causes of the CP Railway Train 301 derailment, the Chiefs corroborated Mr. Creel's February 5, 2019 Update which asserted that CP Railway had "immediately" investigated the Train 301 derailment. The CP Railway Chiefs of Police's Response corroborated Mr. Creel's Update by stating that the CP Police Service had:

> "… found no evidence that a criminal offence was committed by any party, which would support any continuing police investigation, and that none of the other investigating agencies ever advised that a criminal investigation should be undertaken." (Supreme Court of British Columbia Vancouver Registry Number S211085 – Dated May 31, 2021).

In their aforementioned "Response to Civil Claim", the CP Railway Chiefs of Police did not exclude CP Railway and its leadership from the CP Police Service's global exoneration of "any party" that could have been implicated in the fatal derailment.

94. At paragraphs 7 and 13 of the Constable Mark Tataryn's "Response To Civil Claim" relating to the underlying causes of the CP Railway Train 301 derailment, Constable Tataryn also confirmed Mr.

Creel's February 5, 2019 update in which Mr. Creel stated that CP Railway had investigated the Train 301 derailment. Constable Tataryn stated:

> "On or about February 8, 2019, the Defendant was assigned by his superior officers to serve as the primary investigator of the Derailment within the CPPS, as part of an investigative team with two other CPPS officer (the "Investigation")"
>
> "On or about March 5, 2019, the Defendant received directions from his superior officers with respect to the conduct of the investigation." (Supreme Court of British Columbia Vancouver Registry Number S211085 – Dated August 3, 2021).

95. However, despite Mr. Creel's February 5, 2019 Update where he asserted that CP Railway "immediately began an investigation" into the Field, BC derailment, in their "Response To Civil Claim" arising from the underlying merits of the derailment itself, Mr. Creel and CP Railway asserted at paragraph 20:

> "The CP Defendants further deny that CP Police Service members have any jurisdiction, duty, or obligation to investigate criminally their employer, CP, as alleged in the notice of civil claim. In the alternative, if CP Police Service members have any such jurisdiction, duty or obligation, CP Police Service members do not exercise any jurisdiction to investigate their employer criminally as any such investigation would be inappropriate under any circumstances. The jurisdiction of CP Police Service members is limited and does not replace or supersede the jurisdiction of any public agencies, including the RCMP. As a matter of law, the RCMP has jurisdiction throughout Canada, including on property owned by CP. Under the auspices of the *Royal Canadian Mounted Police Act,* RSC 1985, c R-10, the RCMP not only have jurisdiction to investigate offences that may occur on CP property but are duty-bound to do so." (Supreme Court of British Columbia Vancouver Registry Number S211085 – Dated May 4, 2021).

In the entirety of their "Response to Civil Claim", Mr. Creel and CP Railway did not reconcile how CP Police Service members had no jurisdiction to investigate their employer criminally "under any circumstances", and yet, CP Railway's in-house CP Police Service had, in fact, investigated and exonerated "any party", of potential criminality. The CP Railway Chiefs of Police's global exoneration of "any party" necessarily included their employer, CP Railway, which legally and logically, was the prime suspect under the Westray amendments to the *Criminal Code*.

96. In a February 6, 2019, letter to the Dockrell family, Mr. Creel wrote:

> "There are many questions to be answered and an investigation is ongoing to determine the cause of this tragic event. We have committed to fully cooperate with the Transportation Safety Board, Transport Canada, and other agencies, as they complete that investigation. Through this concerted effort, we will have a clearer understanding of what happened and be able to answer these questions. However, at this point, that investigation is led by the regulators and CP must respect that process."

97. Mr. Creel never updated Ms. Fraser on the nature and findings of the "investigation", or the cause of the tragic derailment.

98. In a press release dated January 25, 2020, CP Railway and Mr. Creel stated in part:

> "In the first article, dated January 24th, CBC states: "In a statement, the RCMP said it never had jurisdiction because the crash happened on CP property. RCMP says they've never done their own investigation, adding they 'of course would be willing' to step in if a request is made." This same message is repeated in a January 25th article.
>
> "As presented by the CBC this statement is both false and misleading," said Keith Creel, CP's President and CEO. "The way the stories are framed is both disgraceful and sensational. The RCMP can investigate whatever it sees fit in Canada, and they have been involved from the very beginning. As I said to CBC previously, we are open and willing to discuss anything with the RCMP, the TSB and all other agencies involved. We have been cooperating fully and will continue to do so."
>
> As a matter of law, the RCMP has jurisdiction throughout Canada, including on CP's property:
>
> - Pursuant to section 18 (a) of the RCMP Act, it is the duty of RCMP officers to investigate offences against the laws of Canada and the laws in force in any province. Section 11.1 (1) of the RCMP Act provides that every RCMP officer is a peace officer in every part of Canada and has all the powers, authority, protection, and privileges that a peace officer has by law. By virtue of the RCMP Act the RCMP not only have jurisdiction to investigate offences that occur on CP property but are duty-bound to do so.
>
> This overlapping jurisdiction is further acknowledged by the Transportation Safety Board (TSB), which is the lead investigator of this incident. The TSB's mandate, on its website, clearly states: "When the TSB investigates an accident, no federal department except the Department of National Defense and the Royal Canadian Mounted Police may investigate for the purpose of making findings as to the causes and contributing factors of the accident.""

99. On February, 3, 2020, the day before the first anniversary of the Field, BC derailment, Mr. Keith Creel sent out a "System Bulletin" to "All Operations Employees. The Bulletin head included the words: "SUBJECT: Marking one year since the Field, B.C. tragedy". The text beneath it further stated:

> "One year ago tomorrow, we lost CP family members Dylan Paradis, Daniel Waldenberger-Bulmer and Andrew Dockrell. Collectively, we are still grieving, and will be for some time.
>
> To honour these three individuals, tomorrow CP will be lowering flags across the network. Furthermore, we honour them with our continued commitment to safety, and to Home Safe. While you are integral to the CP family, you are even more important to your own family."

100. In Mr. Creel's System Bulletin to CP Railway's operations employees, Mr. Creel further states that:

> "CP continues to work with closely with the Transportation Safety Board (TSB), the lead investigator on this file. While we await the results of the independent TSB investigation, we are not waiting to make improvements. We implement new, and supplement existing, practices and standards whenever we see opportunities to improve. We never stop learning and looking for ways to innovate."

101. In his System Bulletin to CP Railway's employees, Mr. Creel ends by stating: "February 4, 2019 is a day we will never forget. Please continue to lean on and support each other." Mr. Creel's Bulletin to CP Railway employees did not mention that about five days before, CP Railway's Chief Legal Counsel and Corporate Secretary, Mr. Jeff Ellis, and CP Railway's outside counsel at Bennett Jones LLP, had been threatening the TSB and Mr. Don Crawford with legal action because Mr. Crawford publicly called for an independent criminal probe into the Field, BC derailment. Neither did Mr. Creel's Bulletin disclose to CP Railway's employees that his company's threats against the TSB and Mr. Don Crawford relied on the distress that Mr. Crawford's call for an independent criminal probe was allegedly causing the deceased workers' families.

102. In Mr. Creel's Bulletin to CP Railway employees, he also referred to the TSB as the "lead investigator of this file". However, Mr. Creel, knew, or should have known, that The TSB was only one of many agencies that had investigative jurisdiction, including coroners, labour authorities, and the RCMP which Mr. Creel publicly asserted was duty-bound to investigate the Field, BC

derailment. Mr. Creel did not inform CP Railway's employees that he and the company's leadership were privately working to ensure that the TSB, which has no criminal jurisdiction, did not refer the matter to the RCMP, which not only had that jurisdiction, but which Mr. Creel also insisted was duty-bound to investigate.

103. Additionally, by telling CP Railway employees that the TSB was still investigating the Field, BC derailment, Mr. Creel conceded that any final determinations regarding the derailment remained outstanding. However, five days earlier on January 29, 2020, in the threats of legal action that CP Railway delivered to the TSB, an unidentified CP Railway representative wrote to TSB Chair, Ms. Kathy Fox, that:

> "Beyond taking necessary steps to protect our reputation and the truth I have a strong view their actions were disrespectful/damaging to the families of the employees we tragically lost as well as our collective CP family".

104. Mr. Creel's Bulletin from just five days later, did not disclose that CP Railway's representative had privately asserted that CP Railway wanted to protect the "truth" that CP Railway had already determined regarding the derailment of Train 301. Mr. Creel's Bulletin did not disclose or explain how CP Railway could assert any "truth" while Mr. Creel was simultaneously telling the company's employees that this truth was still outstanding because the TSB investigation was ongoing.

105. Furthermore, the RCMP, which Mr. Creel repeatedly asserted was involved from the very beginning, and was purportedly duty-bound to investigate the Field, BC derailment, had not made any findings at that time. Therefore, CP Railway's corporate leaders could not legitimately invoke any exonerative "truth" to the TSB if they had not personally reviewed important evidence such as the event recorder data, interviewed employee witnesses, and the CP Railway's Chiefs of Police had not given them any investigative updates about the CP Police Service's investigation. Such access to evidence would have amounted to CP Railway's unlawfully interfering any ongoing regulatory and criminal processes. And yet, in their threats to the TSB, CP Railway's corporate leaders invoked an undetermined "truth" to threaten the TSB from making an independent criminal referral. This was even though Mr. Don Crawford, who had full and lawful access to the evidence, had independently determined that a *prima facie* case of criminality existed and should be referred to

independent law enforcement. Thus, the "truth" could only arise pursuant to investigations by the TSB and other law enforcement investigations, not from CP Railway's desire to protect its reputation or minimize legal scrutiny from authorities in Canada and the United States of America.

106. In the alternative, CP Railway's corporate leaders, including Mr. Creel, did obtain unlawful access to important evidence such as event recorders, witness statements from CP Railway's employees, the Chiefs of Police's updates on the operational aspects of the CP Police Service's investigation, and/or confidential information that the CP Police Service obtained through its interactions with the British Columbia Coroner's office. If so, CP Railway's corporate access to such evidence and witnesses, was unlawful. Even so, any self-exonerating conclusions that CP Railway's corporate leaders may have drawn from their review of the evidence in the derailment of Train 301 could not amount to a "truth" that justified threatening the TSB and Mr. Don Crawford for the latter's call for an independent criminal investigation. Mr. Creel's public statement in the Bulletin makes no mention of the "truth" that CP Railway was using to privately threaten the TSB.

107. Finally on Mr. Creel's Bulletin of February 4, 2020, he did not identify or elaborate on what "improvements" or "new" or supplementary improvements the company had been making since the Field, BC derailment, and what internal shortfalls had made those improvements necessary after the fatal tragedy.

108. In an October 26, 2020, letter to Ms. Pamela Fraser, Mr. Creel wrote, in part:

> "While there has been recent media coverage about the role of the RCMP in any investigation, the office of the federal Minister of Transportation has stated publicly that, "In this case, the Royal Canadian Mounted Police is a police service that would have the authority, if they feel it is warranted, to investigate such criminal conduct or alleged behaviour and recommend that criminal prosecution be commenced."
>
> Furthermore, in a back and forth discussion the CBC had with the RCMP, posted as part of an October 23, 2020 CBC story, the RCMP said it" ... never indicated that the RCMP could not investigate this matter."
>
> In short, as I have stated previously, the RCMP always has the legal authority and jurisdiction to investigate as it sees fit. Should the RCMP see a need to investigate further it will do so -that is not something CP decides. This has been confirmed by the RCMP itself, and by Transport Canada. It is unfortunate that misleading statements continue to be made in this regard. CP has

cooperated and continues to cooperate fully with all investigations and inquiries from regulatory and law enforcement agencies.

Once the Transportation Safety Board has issued its report I would be willing to meet with you to tell you what I can about the results of our own internal investigation and to answer any questions you may have. Should you have questions, do not hesitate to connect with Chad Rolstad, our Vice-President of Human Resources, or myself."

109. In their May 4, 2021 filed response to Ms. Fraser's separate civil claim arising directly from the derailment of CP Railway's Train 301 (Supreme Court of British Columbia File No. 211085), Mr. Creel, and the company's Board of Directors reiterated their position that the RCMP had jurisdiction over railway incidents at the company. They also asserted that the RCMP had the duty to investigate these incidents. As previously cited more extensively in this claim, paragraph 20 of their Response To Civil Claim (Supreme Court of British Columbia – Vancouver Registry File No. S211085 of May 4, 2021), these Defendants state, in part:

> "As a matter of law, the RCMP has jurisdiction throughout Canada, including on property owned by CP. Under the auspices of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10, the RCMP not only have jurisdiction to investigate offences that may occur on CP property but are duty-bound to do so."

110. At no point did Mr. Creel ever disclose to Ms. Fraser that CP Railway had privately threatened the TSB and Mr. Crawford with legal action to prevent the TSB from referring Mr. Crawford's legitimate concerns about criminal negligence to the RCMP. That referral for an independent police investigation into the derailment of Train 301, was the very outcome that Ms. Fraser wanted, and that Mr. Creel publicly asserted that the RCMP was "duty-bound" to pursue.

111. Furthermore, despite publicly asserting that the RCMP was duty-bound to investigate the Field, BC derailment, Mr. Keith Creel disclosed to Ms. Fraser that CP Railway, acting through the CP Police Service, had presented itself to the RCMP as the police force of primary, concurrent, or exclusive jurisdiction over the derailment. Mr. Creel also did not inform Ms. Fraser that, notwithstanding any RCMP failure in its duty to investigate the derailment of Train 301, CP Railway's police chief, Ken Marchant, and his senior officers had independently asserted jurisdiction over the incident. Chief Marchant and his senior officers defined the scope, parameters,

and objectives of their investigation without deferring to, or subordinating their investigation to the RCMP.

112. Mr. Creel never disclosed to Ms. Fraser that Chief Marchant and his senior officers had defined, oversaw, and directed the CP Police Service investigation into the derailment of Train 301, including the evidence collection and witness interviews with CP Railway employees. Mr. Creel also never disclosed to Ms. Fraser that, despite the protests of Constable Mark Tataryn who was assigned to the investigation, Chief Marchant and his senior officers had terminated their police investigation after only one month.

CP Railway sponsors the Canadian Association of Chiefs of Police 2019 Annual Conference a few months after the fatal Field, BC derailment.

113. Despite CP Railway's insistence on the RCMP's ongoing involvement and duty to investigate the fatal 2019 derailment of Train 301, and CP Railway's insistence that independent police forces have similar investigative powers in their relevant jurisdictions across Canada, around August 2019, CP Railway sponsored the 2019 Canadian Association of Chiefs of Police Conference ("CACP"). At that time, the RCMP, the CP Police Service, and the plurality of Canada's public police forces in jurisdictions where CP Railway operates, were CACP members. Further, when CP Railway sponsored the CACP annual conference, this was only six months after the Field, BC disaster and while the RCMP was purportedly seized of the Field, BC derailment, and the TSB was also conducting its non-criminal investigation.

114. On August 19, 2020, counsel for Ms. Fraser sent a letter via email to the CACP's then President, Chief Bryan Larkin, and the Co-Chairs of the CACP Law Amendments Committee, DC Norm Lipinski and DC Howard Chow. The correspondence, which was attached to an email titled: "CACP and Jurisdiction over Railway Related Matters", sought answers to a range of questions regarding the CACP and railway policing. These questions included the nature and extent of CACP members' policing jurisdiction over railway deaths and serious injuries, including as contemplated under the Westray amendments to the *Criminal Code*. The questions also inquired into whether the CACP members considered the CN Police Service and the CP Police Service as endowed with the

primary or exclusive criminal jurisdiction to investigate deaths and serious injuries that happened pursuant to their respective company's operations.

115. On September 9, 2020, Mr. Peter Cuthbert, the CACP's then Interim Executive Director, replied in an email in which he stated:

> Attention …..Tavengwa Runyowa
>
> On behalf of the President of the Canadian Association of Chiefs of Police (CACP), Chief Bryan Larkin and the Co Chairs of the CACP Law Amendments Committee, DC Norm Lipinski and DC Howard Chow, I wish to confirm receipt of your correspondence, dated Aug. 19, 2020 concerning the above subject matter. The Association have consulted with our legal advisers and I am sorry to advise you that the CACP have no intent in getting involved in this private litigation nor will be answering any of the proposed questions.
>
> Sincerely:
>
> Peter Cuthbert
> Interim Executive Director
> CACP

116. Mr. Cuthbert failed to explain why the CACP, the main association of Canada's publicly funded police forces, declined to disclose whether its members have, or could, criminally investigate CP Railway and CN Railway for deaths and serious injuries that happened pursuant to those companies' operations.

117. Even though both the CP Police Service and CN Police Service are members of the CACP, or, are at least actively involved in the association's lobbying and other activities, Mr. Cuthbert and the CACP declined to explain why these railway company's in-house police forces were members of the CACP and what policing powers they could exercise over their corporate owner's injurious conduct.

118. Mr. Cuthbert and the CACP also failed to explain how answering questions about CACP members' jurisdiction over railway incidents and public safety amounted to a private matter that the CACP did not need to respond to because of ongoing litigation against Canada's railway companies. As the most powerful group of Canadian police forces which receives taxpayer funds in both its

capacity as an association and through its individual members, the CACP had the duty to disclose its member's general jurisdiction over railway incidents.

119. Furthermore, Mr. Cuthbert did not explain why the CACP was refusing to answer general questions about its members' investigative jurisdiction when those members wield extraordinary criminal law powers that can deprive citizens of their life, liberty, security of the person and other constitutional rights. Through Mr. Cuthbert, the CACP demonstrated a deliberate effort to deny Canadians' right to due notice about which police forces can exercise what powers over them, in what context, and to whom they can report potential criminal wrongdoing in the railway context. CP Railway, through its involvement in the CACP, was the direct beneficiary of the CACP's refusal to answer questions about its jurisdiction over railway incidents.

120. On March 3, 2021, Ms. Fraser's counsel followed up with Mr. Cuthbert, raising various concerns about the impropriety of the CP Police Service's and CN Police Service's memberships in the CACP, particularly when other CACP members were responsible for investigating deaths and serious injuries that happened on a periodic basis at CN Railway and CP Railway. Ms. Fraser's counsel also inquired why the CACP was accepting CP Railway's sponsorship of the CACP's 2019 Annual Conference when CACP members had the jurisdiction to investigate the deaths and serious injuries that were not infrequent at CP Railway. Ms. Fraser's counsel further challenged the CACP's refusal to formally divulge whether the CP Police Service and the CN Police Service were members of the CACP. Ms. Fraser's counsel also inquired into why, despite the numerous deaths and serious injuries under both CP Railway and CN Railway's operations over the years, there were no publicly documented cases of CACP members ever criminally investigating or charging CP Railway and CN Railway. No one at the CACP including Mr. Cuthbert, Chief Larkin, DC Lipinski, and DC Howard ever responded to Plaintiff's counsel's March 3, 2021 queries.

Mr. Marc Garneau receives and ignores Constable Mark Tataryn's whistleblower complaint against CP Railway regarding the Field, BC derailment.

121. Within a month of assigning then CP Police Service constable Mark Tataryn to investigate the Field, BC derailment, the Chiefs of Police or their designates instructed him to terminate his investigation into the Field, BC derailment. The Chiefs of Police did so after they had instructed Constable Tataryn to limit his investigation to the potential actions of the deceased workers.

Constable Tataryn has publicly stated that his superior officers expressly wanted to impede any focus on CP Railway and its leadership's potential culpability for the derailment, and that CP Railway was attempting to cover up that potential culpability.

122. CP Railway subsequently accused Constable Tataryn of wrongdoing as a false pretext to tarnish his credibility for raising legitimate concerns about his superior officers' efforts to shield CP Railway and its civilian leaders from criminal law scrutiny. After CP Railway's Chiefs of Police terminated the Field, BC investigation, Constable Tataryn left the CP Police Service and is now a member of the RCMP.

123. Sometime before or after Constable Tataryn left the CP Police Service, he wrote to the Minister of Transport and the Attorney General of Canada regarding the Field, BC derailment and CP Railway's handling of that incident. Mr. Marc Garneau was Canada's Minister of Transport at the time. Given the nature of his office, the elevated public profile of the Field, BC disaster, and the CBC's repeated but unsuccessful efforts to interview him, Minister Garneau was fully aware of the live issues in the fatal derailment.

124. Additionally, Minister Garneau knew that one of the central issues was the fact that CP Railway, the primary party of interest in the tragic death of three workers, was a presumptive suspect under the Westray amendments to the *Criminal Code*. Mr. Garneau also knew that the CP Police Service, a wholly-owned and legally indistinct department of CP Railway, had asserted investigative jurisdiction over its own company's potential criminal liability.

125. Despite his overall powers over CP Railway and the CP Police Service under Section 3.1 of the *Railway Safety Act*, Mr. Garneau ignored Constable Tataryn's whistleblower complaint. Mr. Garneau willfully failed to immediately bar the CP Police Service from exercising jurisdiction and failed to protect the integrity of the evidence and witnesses who were all firmly under CP Railway's control. Mr. Garneau further failed in his duty to protect Constable Tataryn for mustering the courage to file a whistleblower complaint to the Minister of Transport. Mr. Garneau also failed in his duty to refer CP Railway's role in the derailment of Train 301 and Constable Tataryn's reports of an attempted coverup at CP Railway to the RCMP, and other interested authorities in Canada and the United States of America.

126. Minister Garneau also failed to refer Constable Tataryn's whistle-blower complaint and the other emergent safety and policing problems to relevant authorities in the United States where CP Railway has policing operations and has experienced fatalities and serious injuries in the past.

127. Even after Ms. Fraser's counsel wrote to Mr. Garneau seeking his leadership to ensure the total independence of railway police forces from their corporate owners and seeking the end of the prevalent criminal self-investigation model, Mr. Garneau refused to take any action. Instead, Mr. Garneau and his government have insisted that where a death or serious injury occurs during the operations of a railway company that owns its own police force, then that police force has the jurisdiction to investigate the company that owns it.

128. Public records from the Office of the Commissioner of Lobbying of Canada show that while serving as Canada's Minister of Transport between November 2015 and January 2021, Mr. Garneau or his staff met with representatives of CP Railway and CN Railway on 260 separate occasions. Ms. Fraser's counsel filed ATIP requests to obtain further particulars of many of these meetings, but the requests produced no records. Conversely, Mr. Garneau has resolutely refused to engage Ms. Fraser's inquiries and the CBC's numerous efforts to get answers to questions about private railway policing and railway companies' demonstrable abuses of police powers, including in the Field, BC derailment.

129. In his capacity as Canada's Minister of Transport, Mr. Garneau abandoned the duty that Section 3.1 of the *Railway Safety Act* imposed on him to protect public safety and the fair administration of justice by providing effective oversight of CP Railway and its police department. Minister Garneau expressly disavowed this important public duty and proactively supported CP Railway and other private railway companies' right to use their in-house police forces to investigate the tragic deaths and serious injuries of workers and other Canadians. By wielding his powers in the steadfast and unwavering defence of the railway companies' criminal self-investigation and exoneration model, Mr. Garneau effectively became the bodyguard of corporate misfeasance. Mr. Garneau's actions directly prejudiced Dylan Paradis and his loved ones. Mr. Garneau's inaction, and/or proactive efforts to insulate CP Railway from independent criminal law scrutiny, even after he received Constable Mark Tataryn's whistleblower complaint, was a wilful and intentional abandonment of his oath of office, and his duties under Section 3.1 of the *Railway Safety Act*.

Twenty-two months after the fatal derailment of CP Railway Train 301, the RCMP opens a criminal investigation into the case.

130. On or around December 2, 2020, Ms. Fraser filed a criminal complaint regarding the derailment of Train 301 in Field, BC with the RCMP.

131. On February 4, 2021, The Honourable Niki Ashton, Member of Parliament for Churchill-Keewatinook, formally read a petition in the House of Commons calling for a criminal investigation into the derailment of Train 301 in Field, BC. The petition had initially been submitted to the House of Commons' Petitions Office before the RCMP initiated its criminal investigation.

132. In the interim, the CP Police Service, which CP Railway owns, funds, staffs, and oversees on all matters, had conducted its own police investigation that had deliberately limited the parameters of the query to the actions of the deceased crew members and did not include CP Railway as a company. Specifically, the CP Police Service Chief at the time, Chief Ken Marchant, had limited the investigation solely to the question of whether Dylan, Andrew, or Daniel had caused or contributed to the derailment. Despite then CP Police Service Constable Mark Tataryn's efforts to expand the scope of the investigation to include CP Railway's potential liability, CP Railway's Chiefs of Police actively thwarted his attempts to pursue this line of inquiry. The CP Police Service Chiefs and their subordinates, acting on the instructions of CP Railway's corporate management, or with their endorsement, effectively thwarted any investigational focus on CP Railway as a company. They did so notwithstanding the *Westray* amendments to the *Criminal Code* that place employers' potential liability for workplace deaths as a foremost consideration that cannot be precluded at the outset. After an investigation that lasted for about a month, the CP Police Service purportedly found no evidence to justify criminal wrongdoing by any party. CP Police Service had exclusive access to, and control over, all relevant evidence during this time.

133. In December 2020, after a CBC documentary on the derailment of CP Railway Train 301 near Field, BC, and Ms. Fraser's criminal complaint, the RCMP eventually opened a criminal investigation into the derailment. This was the first time that an independent law enforcement agency has opened a criminal investigation into the fatal incident that did not preclude the potential criminal liability of a Canadian railway company with its own corporate police force. The RCMP's criminal investigation into the Field, BC derailment began approximately 22 months after the derailment of

CP Railway Train 301. Despite the months-long delay and other complications that CP Railway and its corporate police force's involvement caused with respect to the RCMP's investigation, the RCMP's investigation is ongoing.

The TSB's mandate, memoranda of understanding with the Royal Canadian Mounted Police, and the Board's legal obligation to report potentially criminal conduct regarding transportation incidents to the Royal Canadian Mounted Police.

134. The TSB's mandate is set out in section 7 of the *CTAISB Act*. Although subsection 7(2) restricts TSB members and staff from formally assigning fault or legal liability for transportation incidents, this restriction does not relieve the TSB from its duty to accurately report the causes of any such incidents, even if fault could be inferred from the TSB's findings. Further, Subsection 7(2) of *CTAISB Act* does not forbid the TSB from referring transportation incidents to other authorities that may formally assign fault or pursue proceedings that are intended to assign legal liability.

135. Since at least as early as October 1998, pursuant to its internal policy, the TSB members and staff have been mandated to report potentially criminal conduct uncovered during transportation occurrence investigations to independent police services. Clause 6.1 of the TSB's October 1998 internal handbook for investigators reads, in part, "Criminal acts uncovered during an investigation need immediately to be reported to the applicable law enforcement agency…" This clause is repeated verbatim in the December 1998 investigators' handbook.

136. The June 1, 2008, investigators' handbook reads, in part, "You must immediately advise both the applicable law enforcement agency and Head Office of any evidence of criminal acts that you discover during your investigation."

137. The June 2011 investigators' handbook reads, in part, "If there is any evidence of criminal acts discovered during your investigations, you must advise your Operations Manager as soon as possible. The Operations Manager is to advise the Head Office operations Manager and the DOI so the applicable law enforcement agency can be informed."

138. The Handbook does not require that the TSB must wait until after the conclusion of its investigation and the preparation of its final report before it can refer evidence of potential

criminality to law enforcement. Instead, the Handbook focuses on the prompt reporting of any such evidence of criminality "as soon as possible".

139. Through its Handbook, the TSB members' personal knowledge, and the TSB's statutory mandate, the TSB members and Ms. Patrizia Huot have always been aware that the integrity of criminal investigations, including of the associated physical and witness evidence, can be significantly, if not fatally, undermined by undue delays and improper custody. As such, they knew, or ought to have known, that not only did their internal policy require them to report evidence of potential criminality to independent law enforcement agencies, but the TSB members also had the duty to refer such matters immediately upon discovery, and without delay. Thereafter, the relevant police force(s) would determine whether criminal charges were warranted.

140. Further, acting on behalf of the TSB, Ms. Fox also signed a memorandum of understanding with the RCMP on August 19, 2015. Clause 7.2 of the memorandum reads, in part:

> "Upon learning of a transportation occurrence to which the *CTAISB Act* applies, the TSB will notify forthwith the RCMP of any occurrence in which the RCMP may have a direct interest, including occurrences in which there are indications of possible criminal activity, and provide pertinent particulars of that occurrence."

141. Ms. Fox signed the memorandum of understanding with the RCMP in 2015. Ms. Fox signed this memorandum notwithstanding Section 7(2) of the *CTAISB Act*, which she and her fellow TSB members later relied on to justify ignoring their duty to refer the Field, BC derailment to the RCMP, and to prevent Mr. Don Crawford from doing so. Ms. Fox and her fellow TSB members also violated the memorandum of understanding by publicly rebuking Mr. Don Crawford for openly calling for a criminal investigation by independent law enforcement. Instead of advancing the objectives of the memorandum, Ms. Fox and her fellow TSB members wielded their statutory authority and energies to advance CP Railway's private interests in protecting its reputation and preventing a legitimate criminal referral to independent law enforcement agencies.

142. On November 4, 2020, nearly two years after the Field, BC derailment of CP Railway Train 301, Ms. Fox signed a revised memorandum of understanding with the RCMP on behalf of the TSB. The new Clause 7.2 reads, in part:

> "Upon learning of a transportation occurrence to which the *CTAISB Act* applies, the TSB will notify, forthwith, the RCMP of any occurrence in which the RCMP may have a direct interest and provide pertinent particulars of that occurrence."

143. The revised November 4, 2020 memorandum of understanding, which Ms. Fox signed, removed wording regarding the TSB's duty to report potentially criminal transportation incidents to the RCMP. The revised November 4, 2020, memorandum of understanding did so by deleting the phrase, "including occurrences in which there are indications of possible criminal activity", which was included in section 7.2 version of the August 19, 2015 memorandum of understanding.

144. Contrary to the 2015 memorandum of understanding between the TSB and the RCMP, and contrary to the Board's own internal policies, the TSB members and their legal counsel, Ms. Patrizia Huot, willfully refrained from reporting the derailment of CP Railway Train 301 or any underlying indicia of criminality to the RCMP. They also rejected Mr. Don Crawford's expressed requests for the TSB to do so.

145. Complex incidents such as the derailment of Train 301 require specialized industry expertise to interpret. Such specialized expertise is necessary to distinguish between unavoidable incidents, cases of negligence, and even cases of criminal conduct by employers or other parties. Even though the TSB cannot formally establish criminal or other liability, the RCMP, with whom the TSB signed its memoranda of understanding, does not have that expertise. The RCMP and public police forces are not equipped to review and characterize the potentially criminal dimensions of such cases without the referrals and guidance of specialized authorities such as the TSB. Notwithstanding the RCMP's independent duty or ability to investigate, the TSB, its Board members, and its representatives, had an independent duty not to proactively thwart Mr. Don Crawford's efforts to refer the derailment to the RCMP. The TSB's duty to refer was not contingent on, or negated by, the RCMP's separate duty to assess and investigate the case.

146. In addition to their industry expertise and independence from transportation companies, TSB investigators directly handle evidence and often attend the scene in the immediate aftermath of a transportation incident. This unique combination of factors makes incident investigators, when acting in the scope of their expertise, the best-positioned persons to identify evidence of potential criminality and to make prompt, detailed, and learned referrals to law enforcement agencies.

147. The above factors are the very reasons that the TSB and the RCMP entered into the 2015 memorandum of understanding, and that the TSB's internal policies have long-mandated referrals of criminal indicia to independent law enforcement. The RCMP's general awareness that a transportation incident occurred does not eliminate the TSB's duty to still refer a matter to the RCMP as provided under the TSB's internal policies and memorandum of understanding. Such referrals provide the RCMP with the technical context that TSB investigators, including Mr. Crawford, can furnish the police with given these investigators' railway industry knowledge and technical expertise.

148. The TSB created its long-held internal policy (Handbook) and entered into its memoranda of understanding with the RCMP pursuant to the TSB's statutory authority under the *CTAISB Act*. By taking these steps, and notwithstanding Section 7(2) of the *CTAISB Act*, the TSB members and Ms. Patrizia Huot's official interpretation of this provision of their home statute did not preclude the referral of potential criminality to law enforcement agencies.

149. The TSB members and Ms. Patrizia Huot's historical interpretation of the *CTAISB* Act, their home statute, as permitting criminal referrals, is presumptively reasonable by law. Ms. Fraser relies on *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 for this statement of law.

150. Further, the TSB members know, or should have known, that no Canadian court has overturned the TSB's interpretation of Section 7(2) of the *CTAISB*, which is also legally correct. Nevertheless, the TSB members and Ms. Huot willfully and unlawfully abandoned the TSB's historical and prevailing interpretation of its home statute for the express purpose of shielding CP Railway from the scrutiny of independent law enforcement agencies, including the RCMP. TSB members and Ms. Huot similarly acted in bad faith when they publicly rebuked Mr. Don Crawford for making a media statement calling for such an independent criminal referral, after these Defendants had privately thwarted his prior and cumulative efforts for the TSB to make that referral.

The *Public Servants Disclosure Protection Act* protected Mr. Crawford's right to report wrongdoing without fear of retaliation, and to go public with his concerns about the fatal Field, BC derailment.

151. Public servants, such as Mr. Don Crawford, are protected by the *Public Servants Disclosure Protection Act*, SC 2005, c 46 for exposing wrongdoings they encounter during their public service duties. Public servants are protected from reprisals by their government employers, such as the TSB, pursuant to section 19 of the *Public Servants Disclosure Protection Act*. Section 2(1) of the *Public Servants Disclosure Protection Act* defines "public servant" as, "every person employed in the public sector, every member of the Royal Canadian Mounted Police and every chief executive" Further, section 2(1) defines "public sector" to include, "the departments named in Schedule I to the *Financial Administration Act* and the other portions of the federal public administration named in Schedules I.1 to V to that Act". The TSB is listed in Schedule II to the *Financial Administration Act*, RSC 1985, c F-11. Thus, as a TSB incident investigator, Mr. Don Crawford was, and continues to be, a public servant.

152. Upon encountering evidence of potential criminality during his investigation of the fatal Field, BC derailment, Mr. Crawford raised his concerns with his superiors in the TSB. The TSB members, either directly or through their subordinates, declined to refer the Field, BC derailment of CP Railway Train 301 to the RCMP or any other law enforcement agency that was independent from CP Railway. In light of the triple fatality that killed Ms. Fraser's son, Dylan, and his two crew mates, Mr. Crawford's concerns raised questions of public safety, a value that is at the core of the TSB's mandate.

153. Mr. Crawford's subsequent statement to the CBC arose in the context of the longstanding and inherent dangers that, by its nature, the Canadian railway industry can pose to railway workers and the Canadian public, especially in light of CP Railway's adoption of the Precision Scheduled Railroading business model. This method of running railway companies is associated with extensive cuts to safety and equipment maintenance, and pressuring employees to work in unsafe conditions such as extreme weather or even while suffering from dangerous levels of fatigue. Precision Scheduled Railroading, as enabled by the TSB's refusal to refer the derailment of Train 301 and other fatal incidents to independent law enforcement, endangers the life, health and safety of railway employees and Canadian citizens, generally.

154. According to the TSB, in the five years before the Field, BC derailment, there were 616 of deaths and serious injuries on Canada's railways. According to the Federal Railroad Administration, there were 38 deaths pursuant to CP Railway's operations in the United States during the same period.

155. Further, according to the TSB's annual statistical summary on transportation occurrences in the rail sector for 2019, the year of the Field, BC derailment of CP Railway Train 301:

> In 2019, 1246 rail accidents were reported to the TSB, up from the 2018 total of 1169, and a 17% increase from the previous 10-year (2009–2018) average of 1064.
>
> The main-track accident rate in 2019 was 3.3 accidents per million main-track train miles, up from 2.6 in 2018 and 42% above the 10-year average of 2.3.
>
> Rail fatalities totaled 72 in 2019, up from 57 reported last year and approximately the same as the previous 10-year average of 73. Crossing accident related fatalities totaled 28 in 2019, up from 19 in 2018 and trespasser fatalities totaled 38, up from 34 in the previous year. Five rail employees were fatally injured, which is above the 10-year average of 2 employee fatalities.
>
> Among all railway accidents reported to the TSB in 2019, 169 involved **dangerous goods**. This number was up from 125 in 2018. Eight accidents resulted in a dangerous goods release in 2019, compared with 4 in 2018, and the 10-year average of 4.

This declining safety record and increase in railway safety incidents constitute the general context in which the TSB's investigator, Mr. Crawford, made his public comments to the CBC regarding the need for independent criminal scrutiny of the derailment of CP Railway Train 301.

156. Unlike the TSB members, Ms. Patrizia Huot, and the TSB's other non-investigative staff, Mr. Crawford also had the general expertise and benefit of directly attending the scene of the Field, BC derailment. Mr. Crawford had the opportunity to independently review the available evidence, interview witnesses, and obtain a more informed level of insight into the disaster than the TSB members and Ms. Huot could not possibly attain from the TSB's offices in Ottawa. Mr. Crawford also had the opportunity to view the specifics of the Field, BC derailment to determine whether the immediate indicia of potential criminality he identified gave rise to, or reflected, broader, longstanding, and systemic public safety concerns that required immediate law enforcement attention.

157. Additionally, Mr. Crawford was an incident investigator and public servant who had the mandate to use his discretion, industry knowledge, awareness of the prevailing railway safety context, and independent appraisal of the Field, BC incident to decide whether the incident provided threshold indicia of criminality to refer to independent police forces. Pursuant to his duties as a public servant and his expertise as a railway industry incident investigator, Mr. Crawford attempted to trigger an independent law enforcement referral in accordance with TSB policies, memorandum of understanding with the RCMP, and the *CTAISB* Act from which they flowed. After the TSB members willfully impeded his requests and efforts for the TSB to refer the Field, BC derailment to independent police forces, Mr. Don Crawford had the right, and even the obligation, to go public with his concerns to the CBC.

158. At all relevant times, Mr. Don Crawford's actions were complaint with the *CTAISB* Act, and protected under the *Public Servants Disclosure Protection Act*. Subsection 8(d) of the *Public Servants Disclosure Protection Act* provides that, "an act or omission that creates a substantial and specific danger to the life, health or safety of persons" is a wrongdoing, that if exposed by a public servant, is a protected exposure pursuant to the *Public Servants Disclosure Protection Act.*

159. Section 19 of *Public Servants Disclosure Protection Act* allows public servants such as Mr. Crawford to report wrongdoings they encounter while conducting their duties to their supervisors without facing retaliation from their employers.

160. Section 16(1) of the *Public Servants Disclosure Protection Act* further empowers public servants to publicly disclose wrongdoing if;

> …there is not sufficient time to make the disclosure under those sections and the public servant believes on reasonable grounds that the subject-matter of the disclosure is an act or omission that (a) constitutes a serious offence under an Act of Parliament or of the legislature of a province; or (b) constitutes an imminent risk of a substantial and specific danger to the life, health and safety of persons, or to the environment.

161. After the TSB members and supervisors denied Mr. Don Crawford's requests for the TSB to comply with its legal duty to refer the Field, BC derailment to independent law enforcement, Mr. Crawford had the right to go public with his concerns under Section 16 of the *Public Servants*

Disclosure Protection Act. Given his unique industry expertise, the nature of the derailment, and his intimate understanding of any broader and ongoing public safety dangers that the derailment of CP Railway Train 301 had exposed or exemplified, Mr. Crawford's comments to the CBC were consistent with his rights and duties under both the *CTAISB* Act and the *Public Servants Disclosure Protection Act*. This was notwithstanding Ms. Patrizia Huot's and the TSB members' personal objections, and even CP Railway's protests regarding the potential damage that Mr. Don Crawford's statements to the CBC could have on CP Railway's reputation.

The common law "duty to report" protected, and even mandated Mr. Don Crawford's public comments to the CBC.

162. Separate and apart from the TSB's memorandum of understanding with the RCMP and its internal policies, Mr. Crawford, Ms. Fox, Ms. Ackermans, Mr. Dittman, Mr. Potter, and Mr. Hincke each had a common law duty to report any indicia of criminality to independent law enforcement agencies. Ms. Fraser relies on *Stuart v. Hugh,* 2011 BCSC 427 and *Wing Lee v. Jones*, 1953 CanLII 556 (MB QB) for this statement of law.

The Defendants' wilful impediment of an independent investigation into the Field, BC derailment violated Canada's obligations to the United States of America, and deprived American authorities of full and prompt notice in important matters regarding their national interests.

163. Canadian authorities, including the TSB, also have general duties of good governance that oblige them to consider and protect certain interests of the United States of America, and vice versa. These duties include information sharing agreements on matters of mutual interest such as customs and border security, national security, cross-border trade and investment, and law enforcement cooperation.

164. Canada also has good governance obligations to North American partners pursuant to Article 28.2 of the Agreement between the United States of America, the United Mexican States, and Canada 7/1/20 Text ("*USMCA*"). The *USMCA*'s "Good Regulatory Practices" Chapter includes Canada's commitment to promote the transparency, accountability, and the integrity of its public institutions. This includes those institutions that are mandated to enhance public safety and ensure

the lawful use of all public powers. The TSB members, Ms. Huot, Mr. Garneau, CP Railway in its capacity as the owner of a statutory, cross-border police force, and the CP Railway's Chiefs of Police, all had duties to comply with Canada's good governance obligations under Article 28.2 of the *USMCA*.

165. Through their individual and collective actions and inactions, the Defendants leveraged their official capacities to violate Article 28.2 of the *USMCA*, as adopted into Canadian law. The TSB members leveraged their official capacities to prevent, impede, delay, or mitigate the extent and immediacy of the legal scrutiny that CP Railway would otherwise have faced in the United States of America. Through their cumulative actions and omissions, the Defendants violated Canada's good governance and cooperation obligations to the United States of America, for the purposes of protecting CP Railway's commercial interests, reputation, and legal exposure in Canada and the United States of America.

166. All the Defendants knew, or should have known, that beyond the *USMCA*, specific authorities in the United States of America had direct interests in the broader, systemic issues that the Field, BC derailment exposed, and of which the incident itself was a demonstrative instance. These underlying issues include public safety; potential abuses of police powers; the United States of America's sovereign monopoly over criminal law enforcement on its territory; workplace safety; labour rights; civil and constitutional rights; corporate governance issues; and compliance with laws that regulate shareholder rights and the capital markets. The United States authorities that have always had a direct interest in the cross-border commercial and policing activities that the Field, BC derailment raised, but which the Defendants collectively worked to impede, include:

a. The United States Surface Transportation Board ("STB"), which is currently reviewing CP Railway's proposed acquisition of Kansas City Southern Railway, and any public interest implications the proposed merger raises in the United States of America;

b. The United States Department of Justice (civil rights and criminal divisions);

c. The Securities and Exchange Commission, which regulates CP Railway as a foreign issuer on the New York Stock Exchange, including by ensuring fulsome disclosures of all relevant issues in CP Railway's regulatory filings and public statements;

d. The United States House of Representatives Committee on Transportation and Infrastructure Subcommittee on Railroads, Pipelines, and Hazardous Materials, which is has been engaged with the question of the impacts of precision scheduled railroading has on workers, safety, and shippers;

e. The United States Department of Transportation Office of the Inspector General, which is responsible for enforcing integrity and investigating issues that touch on the Department of Transportation;

f. The United States Department of Homeland Security which cooperates with Canadian law enforcement agencies, including CP Railway, on security issues of cross-border concern;

g. The United States Department of Transportation and its agencies; and

h. The United States Department of Labour.

167. The Defendants knew, or ought to have known, that the above authorities have a direct interest in whether CP Railway's operational control of the CP Police Service, including in workplace deaths and serious injuries in which CP Railway was implicated, extend to CP Railway's commercial and policing operations in the United States of America. The Defendants also knew, or should have known, that the above listed authorities had a direct interest in whether CP Railway's threats against the TSB triggered any legal scrutiny in the United States of America. The same applies to CP Railway's sponsorship of the CACP's 2019 Annual Conference shortly after the Field, BC derailment while CACP members such a the RCMP had jurisdiction over such incidents at CP Railway. The Defendants also knew, or should have known, that the above listed authorities had a direct interest in whether CP Railway's handling of the evidence and witnesses in the derailment reflected a broader pattern that extended into the company's policing and commercial activities in the United States.

168. The Defendants should have been aware that American authorities had a particular interest in the above questions because CP Railway owns the cross-border CP Police Service whose officers in the United States of America and Canada and fall under the unified command of CP Railway's Chief of Police in Canada. The Defendants knew, or should have known, that notwithstanding whether American authorities chose to investigate or take any action regarding the systemic questions that the Field, BC derailment raised, the Defendants still had the duty to refrain from usurping these authorities' right to make their own independent determinations.

169. Furthermore, the Defendants knew, or should have known, that given the cross-border nature of CP Railway's commercial and policing operations, authorities in the United States of America also had a direct interest in the systemic safety practices that have arisen, in part, from CP Railway's longstanding use of the precision scheduled railroading business model. Although the Field, BC derailment was a discrete event, the Defendants knew, or should have known, that they all had the duty to consider the broader systemic implications of the derailment beyond the immediate tragedy and how those touched on American interests. Even if certain Defendants had no positive duty to directly alert American authorities of these systemic issues, they all had the duty to refrain from undermining any processes through which American authorities could draw broader insights in the context of their national interests.

170. By impeding American authorities' right and ability to obtain a prompt notice of the immediate and systemic issues that the Field, BC derailment raised, the Defendants' conduct also directly injured Ms. Fraser. If these authorities had promptly learned of the fully gravity of the underlying issues, they would have, or most probably would have, initiated a series of investigative and other steps to determine whether these underlying issues extended to the United States of America. That immediate scrutiny in a major market where CP Railway does business would have imposed an overwhelming deterrent on CP Railway's willingness to undermine the fulsome exploration of the safety and policing problems at the company. However, the regulatory cover that the CACP, TSB, Chiefs of Police, and Mr. Garneau endowed on CP Railway, insulated the company from the otherwise insurmountable deterrent effect of multi-agency scrutiny from the United States of America.

171. The combination of the protective screen that CP Railway obtained from public authorities in Canada, and American authorities' unawareness of the full extent of the cross-border implications of CP Railway's operations, emboldened CP Railway to take the brazen steps such as threatening the TSB and Mr. Crawford to prevent a criminal referral. The Defendants' cumulative failure to report the Field, BC issues to American authorities, and their willful suppression of criminal proceedings in which the United States had material interests, all contributed to Ms. Fraser's prejudice. This conduct caused or enabled the nearly two-year delay in the eventual RCMP investigation. It also enabled CP Railway to play an outsized and unlawful role in deploying its in-house police force to conduct a law enforcement investigation of a triple fatality in which the company was implicated. The delay and CP Railway's unlawful involvement in the investigation likely tainted the integrity of the evidence and the full viability of the ongoing RCMP investigation. This has caused Ms. Fraser significant pain and suffering, including worries that those who may have been responsible for Dylan's death may never be held accountable.

172. With particular respect to the TSB members and Ms. Huot, they violated the Government of Canada's duties to the United States of America by deliberately preventing the prompt referral of the Field, BC derailment to independent law enforcement. The TSB members knew, or should have known, that actively impeding a criminal probe in which the United States Government had material interests, would unduly diminish that government's ability to attain a threshold awareness of how that case affected those national interests. The TSB members' and Ms. Huot's duty to refrain from undermining the Canadian Government's good governance obligations to the United States of America persisted regardless of any direct reporting requirements these Defendants may have had to American authorities. This subset of Defendants are still public officers who work within the fabric of the Canadian government that owes legal duties of good governance under Section 28.2 of the *USMCA* and other cooperation agreements with the United States of America.

173. With particular respect to Mr. Marc Garneau, as Canada's Minister of Transport during the relevant period, his obligations, including under Section 3.1 of the *Railway Safety Act* and his Oath of Office, required that he resolutely served the public interest. Specifically, his obligations required that as Canada's Minister of Transport, he served Canada's interests through the promotion of a safe, efficient, and environmentally responsible transportation system. Mr. Garneau's office as a federal cabinet Minister also imposed the further duty for him to comply with, advance, and not

undermine the Government of Canada's legal, political, and diplomatic obligations to the United States of America. Thus, when three CP Railway workers died in the Field BC derailment at a Canadian company that also operated in the United States, as the Minister with overall authority over the *Railway Safety Act*, Mr. Garneau had the duty to take certain actions under Canada's good governance obligations.

174. First, Minister Garneau had the duty to immediately exercise his authority under Section 3.1 of the *Railway Safety Act* to ensure that CP Railway, directly or through the CP Police Service, played no role in any official investigation of the Field, BC derailment and other incidents. Mr. Garneau also had the duty to order the CP Police Service and CP Railway to secure all evidence, including electronic databases and event recorders in their custody to protect the integrity of that evidence. Mr. Garneau had the power to take such action through Ministerial Orders and/or other tools he had at his disposal pursuant to his duties to protect public safety and the integrity of the justice system.

175. After Constable Mark Tataryn filed a whistle-blower complaint with Minister Garneau regarding CP Railway's conduct before and after the derailment of CP Railway Train 301, Mr. Garneau had the power and duty to instruct the CP Police Service that, as employees and agents of CP Railway, the Chiefs of Police must immediately cease reporting to CP Railway on any operational matters arising from the Field, BC derailment or any subsequent incidents. Mr. Garneau knew, or should have known, that as a wholly owned department of CP Railway, the CP Police Service's powers under Sections 44 and 44.1 of the *Railway Safety Act*, did not authorize the police force to criminally investigate any case in which their company and corporate superiors were implicated. This included cases such as the Field, BC derailment in which CP Railway was a presumptive suspect under the *Westray* amendments to the *Criminal Code*.

176. Mr. Garneau also knew, or should have known, that it was his duty, and not an act of ministerial interference, to secure the overall, systemic integrity of the *Railway Safety Act* and the criminal justice system by preventing CP Railway from playing any role in the Field, BC case or any other case that raised policing issues. Mr. Garneau had the duty to take such action at a systemic level to ensure that CP Railway broadly complied with the principle of police independence, while

Mr. Garneau himself observed the principle by avoiding the operational aspects of any police investigation.

177. Second, Minister Garneau had the duty to immediately report any apparent misconduct or issues that touched on the interests of the United States of America to that country's government and relevant authorities. Mr. Garneau had this duty under Section 28.2 of the *USMCA* as well as under Canada's formal and informal cooperation agreements with the United States of America. At a minimum, Mr. Garneau had the duty to inform Canada's partners in the United States of America of CP Railway's safety and policing practices in Canada, as a mere question of providing notice without asserting any formal conclusions. Thus, American authorities could independently determine whether CP Railway's commercial and policing force operations on their sovereign American territory complied with the countries' laws and the company's obligations. This included American authorities' right to investigate whether CP Railway has exercised operational control over the CP Police Service in the United States of America. It also included whether CP Railway has ever used the CP Police Service to criminally investigate and/or exonerate itself for deaths and injuries to American citizens.

178. Mr. Garneau's duties to protect and advance the interests of the United States of America continued, if not increased, after Mr. Garneau was elevated to the post of Canada's Minister of Foreign Affairs in 2021. This role directly involved maintaining Canada's diplomatic, political, security, trade, and law enforcement cooperation with the United States of America. As Canada's Minister of Foreign Affairs, Mr. Garneau was a public officer with the legal duty to ensure Canada's compliance with its good governance and other obligations to the United States of America. This included his duty to promptly address any institutional governance issues within Canada, especially those that touched on Canada's obligations to the United States of America under Article 28.2 of the *USMCA*.

179. With respect to the CP Railway Defendants, their ownership and total control of the statutory, cross-border CP Police Service, endowed them with extraordinary criminal law enforcement powers in two sovereign states. The CP Railway Defendants knew, or should have known, that CP Railway's ownership of the statutory CP Police Service endowed CP Railway with public powers that are subject to the good governance and integrity obligations under Article 28.2

of the *USMCA*. These powers are also subject to a range of other laws, including those that govern the use of public and policing powers in Canada and the United States of America. Thus, the CP Railway Defendants' legal duties have always required them to wield their police powers solely in the interests of justice, and not to protect CP Railway's reputation, leaders, or private commercial interests in either country.

180. The CP Railway Defendants' legal duties also precluded them from deliberately undermining or attempting to prevent criminal investigations in which their potential liability was implicated. Thus, Mr. Creel knew, or should have known, that it was unlawful for him and CP Railway's Chiefs of Police to commission a company-led investigation into a derailment in which CP Railway was the prime suspect under the *Westray* amendments to the *Criminal Code*. Mr. Creel also knew, or should have known, that as CP Railway's President and CEO, it was also unlawful for him to spend the day at the scene of the derailment on February 4, 2019. On the very day of the triple fatality that presumptively implicated potential criminal liability, Mr. Creel had the duty to refrain from engaging with CP Police Service officers. He also had the duty to refrain from engaging, questioning, or being a prevalent presence around his traumatized employees who were also witnesses in the matter, but ultimately answered to him. By attending the scene, seeking and receiving information about the derailment, and directing CP Police Service investigation into an incident in which CP Railway was implicated, Mr. Creel undermined the integrity of the scene and the evidence at a most critical juncture. His February 5, 2019 Update on the CP Railway website is effectively a concession to unlawful conduct.

181. The CP Railway Defendants' legal duties also precluded them from threatening the TSB and Mr. Crawford with legal action to prevent the latter's legitimate calls for an independent criminal probe that could expose the deeper systemic safety and policing issues at CP Railway was unlawful. These actions delayed, impeded, and/or undermined American authorities' prompt and fulsome notice of whether CP Railway's threats and the underlying problems they intended to conceal, violated any laws in the United States of America.

182. With respect to CP Railway's Chiefs of Police, they were sworn law enforcement officers who, from Canada, directly oversaw and exercised operational command over police officers in the United States of America. CP Railway's Chiefs of Police effectively enforced the federal and state

criminal law against American citizens and have direct oversight of CP Police Service involvement in deaths or serious injuries that happened during CP Railway's operations in the United States of America.

183. The Chiefs of Police's law enforcement powers across an international border also entail the corresponding duties to deploy their powers strictly in the interests of citizens and public authorities in the Canada and the United States of America. The Chiefs of Police duties include:

a. Ensuing that all CP Police Service investigations are conducted with impartiality and without consideration of CP Railway's interests;

b. Ensuring that the CP Police Service leadership refrains from abetting CP Railway's unlawful conduct such as the company's threats against the TSB and its public safety investigators such as Mr. Don Crawford;

c. Ensuring that the CP Police Service strictly refrains from engaging, reporting to, or updating CP Railway and its civilian leaders about ongoing CP Police Service investigations, including sharing of sensitive evidence such as event recorder data;

d. Reporting any impropriety by CP Railway in death and injury investigations, or any other matter to independent law enforcement; and,

e. Proactively reporting any unlawful conduct that the CP Police Service uncovers at CP Railway to American authorities that have jurisdiction over that conduct.

The Defendants' willful, coordinated, and unlawful efforts to impede a criminal investigation into the fatal derailment of CP Railway Train 301 caused a nearly two-year delay in the initiation of the investigation.

184. The Defendants' individual and coordinated efforts to impede an RCMP investigation into the derailment of CP Railway Train 301 were decisive factors that caused the nearly two-year delay in the RCMP's criminal investigation, and to Ms. Pamela Fraser's prejudice. Any independent duty or opportunity that the RCMP had to promptly investigate the derailment of CP Railway Train 301,

did not remedy the unlawfulness of the Defendants' individual and cumulative contributions to the resulting delay.

185. With respect to the TSB members and Ms. Huot, their duty to refer the Field, BC derailment to the RCMP was especially important. The RCMP had no historical expertise in independently investigating, understanding, or interpreting evidence from incidents in the complex and highly specialized railway industry. Although this did not negate the RCMP's legal jurisdiction over the derailment of CP Railway Train 301, that did not relieve the TSB Defendants from their own duty to refer the derailment to the RCMP.

186. Further, the RCMP's failure to assert its primary jurisdiction to the exclusion of the CP Police Service did not relieve the TSB members and Ms. Huot of their duty to proactively provide the RCMP with the technical context that justified a criminal referral. The synergies between the RCMP's law enforcement expertise and the TSB's railway investigation expertise were the primary, if not, sole, reason why the TSB had internal policies that mandated such referrals. Mr. Don Crawford, the duly appointed incident investigator, had already internally presented a threshold case to justify TSB a criminal referral to the RCMP. The TSB members and Ms. Huot had no principled or valid legal reasons to impede their duty to make such a referral.

187. In particular, the TSB's internal policy and its 2015 and 2020 memorandum of understanding with the RCMP required such a referral. The TSB generated the internal policy on its own initiative, and freely engaged in the negotiations to conclude the memoranda of understanding with the RCMP. Thus, it is apparent that the TSB members' own official, long-held, and reasoned interpretation of subsections 7(2) and 7(3) of the *CTAISB Act* was that these provisons did not bar them from making criminal referrals to the RCMP. The TSB's amended 2020 version of its memorandum of understanding with the RCMP diluted, but did not eliminate, that referral obligation. Nevertheless, the TSB members and Ms. Huot willfully violated their criminal referral obligations under both their internal policy and memoranda of understanding with the RCMP. The TSB members and Ms. Huot then ignored Mr. Crawford's internal calls for such a TSB referral, and then relied on subsections 7(2) and 7(3) of the *CTAISB Act* to wrongfully justify their efforts to shield CP Railway from criminal scrutiny.

188. After causing this initial delay in the RCMP's criminal investigation into the fatal derailment of CP Railway Train 301, the TSB Defendants coordinated with CP Railway to muzzle and retaliate against Mr. Crawford for going public and calling for an independent criminal probe into the derailment in January of 2020.

189. The TSB members' press release of January 28, 2020, in which they distanced the TSB from Mr. Crawford's public statement to the CBC, went beyond merely stating that the TSB did not agree with his decision to speak publicly. The TSB members' media release went further to assert that the TSB, "does not share the view of this investigator." This statement conveyed the TSB members' formal, pre-emptive, and unwarranted assertion of a position on the merits of an investigation that was supposed to be ongoing. The TSB members took this position even though they could neither prove nor disprove Mr. Crawford's threshold impressions regarding the necessity of a referral to independent law enforcement. The TSB members' definitive and unwarranted position in support of CP Railway contrasts with Mr. Crawford's public statement which simply and appropriately called for an independent criminal investigation to determine whether criminality was implicated in the derailment of CP Railway Train 301.

190. Further, TSB members attacked the very merits of Mr. Crawford's assessment of the evidence that he had personally collected and reviewed, and that the TSB members and Ms. Huot had not. With the possible exception of Ms. Ackermans, who spent most of her professional career as a CP Railway employee, none of the other TSB members or Ms. Huot had the railway industry expertise or the qualifications to competently criticize Mr. Crawford's assessment of the evidence in the Field, BC derailment.

191. The TSB members' and Ms. Huot's refusal to refer the fatal derailment of CP Railway Train 301 to the RCMP from the very start, and CP Railway's threats to similarly prevent that same outcome, delayed the eventual initiation of the RCMP's investigation by nearly two years.

192. Mr. Garneau was also directly responsible for the nearly two-year delay in the RCMP's investigation. Mr. Garneau's decision to ignore Constable Tataryn's whistleblower complaint against CP Railway, and to take no action to ensure the effective independence of the CP Police Service from CP Railway's civilian leadership, abetted that delay. So did Mr. Garneau's failure to

inform relevant authorities in the United States of America about the evidence indicating that CP Railway had been criminally investigating and exonerating itself for deaths and serious injuries under the company's watch in Canada, and potentially, on American territory as well.

193. For their part, CP Railway's Chiefs of Police played a central and decisive role in the Defendants' cumulative strategy to impede and delay the RCMP's investigation. By exercising exclusive or concurrent jurisdiction, CP Railway's Chiefs of Police asserted their investigative pre-eminence and unfettered entitlement to direct a criminal investigation into the derailment of Train 301. By so doing, the Chiefs of Police explicitly, or implicitly, conveyed the message that the RCMP was a secondary, or at least not a superior, police force of jurisdiction. For almost two years, the RCMP unlawfully acquiesced to its subordinate role vis-à-vis the CP Police Service. The RCMP maintained this deference even after the CP Police Service terminated its police investigation into such a complex matter only a month after the derailment of CP Railway Train 301.

194. While CP Railway's Chiefs of Police were exercising control over important evidence and witnesses, the Chiefs were simultaneously reporting directly to the very company and corporate civilian leaders whose role in the fatal derailment was a live question in the Chiefs' investigation. When Constable Mark Tataryn expressed concerns that his superior officers were preventing him from extending the scope of his investigation to CP Railway's corporate ranks, the CP Railway Chiefs of Police intimidated, undermined, and silenced him before terminating the entire investigation. CP Railway's Chiefs of Police did not request the RCMP to formally investigate or provide the RCMP with the CP Police Service's full investigative record so that the "duty-bound" RCMP could advance its own investigation.

195. The CP Railway Defendants, led by Mr. Keith Creel, occupied the epicentre of the Defendants' cumulative efforts to impede the RCMP investigation. The CP Railway Defendants did so through the four-pronged strategy as enumerated in this claim. In summary, while the TSB members and Ms. Huot were privately coordinating with CP Railway's legal counsel to mitigate the fallout of Mr. Don Crawford's bona fide calls for a criminal referral to independent law enforcement, Mr. Keith Creel was publicly, insincerely, and wrongfully advancing the narrative that CP Railway supported such an investigation. Mr. Creel even went further to assert that such an investigation was not optional, but that the RCMP was "duty-bound" to conduct it. By publicly stating that the RCMP

was duty-bound to investigate the Field, BC derailment, Mr. Creel effectively conceded that CP Railway's legal counsel had acted unlawfully by threatening the TSB, in part, to prevent the criminal to prompt the RCMP's investigative duty.

196. CP Railway's Chief Legal Officer, Mr. Jeffrey Ellis, is a CP Railway employee and an agent of the company. CP Railway's outside counsel at Bennett Jones LLP is also the company's agent. In their interactions with the TSB, both CP Railway's in-house and outside counsel were acting pursuant to Mr. Keith Creel's direct or ultimate instructions, and on behalf of CP Railway. Thus, Mr. Creel and CP Railway's executive leadership knew, or should have known, that their employees' and agents' threats against the TSB were directed at impeding the very criminal investigation that Mr. Creel publicly asserted the RCMP was duty-bound to pursue.

197. Consequently, Mr. Creel's and CP Railway's "cooperate in public but impede in private" strategy successfully advanced their unlawful purpose of frustrating an independent criminal investigation into the derailment of CP Railway Train 301. In addition, Mr. Creel, CP Railway, and Chief Ken Marchant, and the CP Police Service's senior officers had supplemented this approach by unlawfully presenting the CP Police Service as a legitimate police force of jurisdiction. Through express assertions or by unilaterally initiating investigative steps, CP Railway and the CP Police Service leadership prevented the RCMP from exercising the total jurisdictional monopoly that the RCMP needed to maintain the integrity of the investigation. That integrity required the CP Police Service's full exclusion from any investigative capacity and duty to avoid conveying any impression that any such involvement was appropriate or lawful. By explicitly or implicitly presenting the CP Police Service as the RCMP's law enforcement equals, instead of as agents of the main suspect in a *Westray* investigation, CP Railway successfully undermined the RCMP's prompt initiation of the independent, impartial, and comprehensive criminal investigation that the Train 301 triple fatality warranted.

198. The fact that the RCMP should not have acquiesced to CP Railway's unlawful intrusion into an investigative arena in which the company's potential criminal liability was implicated does not remedy the unlawfulness of the delay and prejudice that CP Railway caused to the RCMP investigation.

199. Additionally, Mr. Keith Creel and CP Railway knew that it was improper, wrongful, and unlawful for CP Railway, as a private corporation, to endow any material benefit on the association of police forces whose members exercised nationwide jurisdiction over deaths and serious injuries that occurred under CP Railway's operations. This impropriety is particular to the RCMP, which Mr. Creel and CP Railway knew they had the duty to maintain an armlength suspect-police relationship under the Westray amendments to the *Criminal Code*. Mr. Creel and CP Railway knew, or should have known, that they could not initiate the sponsor-beneficiary relationship that they cultivated with the CACP, an association in which the RCMP is the largest member.

200. Mr. Creel's and CP Railway's sponsorship of the CACP while the RCMP was purportedly seized of the Field, BC investigation, and while the CACP was affirming its policing partnership with CP Railway perverted the integrity of the course of justice. Mr. Creel and CP Railway knew, or was recklessly indifferent to the fact that, their sponsorship of, and involvement in, the CACP could, or actually did, unduly influence the RCMP's inordinate delay in initiating the Field, BC investigation. This conduct was not only unlawful, but it was also inconsistent with CP Railway's public statements and policies of corporate governance. All these statements and policies confirm that Mr. Creel, CP Railway, and the companies' executive ranks were aware of the standards that applied to their conduct when they deliberately departed from those standards when they implemented their strategy to prevent an RCMP investigation, including by sponsoring the CACP's 2019 conference.

201. On the "Corporate Governance" section of CP Railway's website, the Chair of the Board of Directors, Ms. Isabelle Courville, articulated CP Railway's governance ethos as follows:

> Canadian Pacific has a culture of strong corporate governance and follows leading policies and practices. As a US and Canadian listed company, we regularly review these policies and practices to ensure all corporate governance obligations have been met or exceeded and to make changes and improvements where appropriate.
>
> CP's corporate governance practices are consistent with all applicable Canadian and U.S. regulatory guidelines and standards. As CP's securities are listed on the New York Stock Exchange (the "NYSE"), and the Toronto Stock Exchange (TSX), CP complies with best corporate governance practices in Canada and the U.S., including the requirements of the TSX and NYSE.

202. Page 3, parts 4, 5, and 6 of CP Railway's "Code of Ethics for Chief Executive Officer and Senior Financial Officers" mandates that Mr. Creel must:

> (4). "act in his or her capacity on behalf of CP in good faith, responsibly, with due care, competence and diligence, without misrepresenting material facts or allowing his or her independent judgment to be subordinated, and in compliance with all applicable laws, rules and regulations.
>
> (5) "conduct all activities on behalf of CP in an honest and ethical manner, including the ethical handling of actual or apparent conflicts of interest between the Covered Officer's personal and professional relationships;"
>
> (6) take all reasonable steps to proactively promote and support ethical behavior and adherence to this Code and CP's general Code of Business Ethics by CP employees, including, but not limited to, developing and communicating policies and directives from time to time that are designed to maintain and promote adherence to the general principals and standards outlined in such codes;

203. On Page 19 of CP Railway's "Code of Business Ethics", in Mr. Creel's "A Letter from the CEO", he states:

> Canadian Pacific (CP) is one of Canada's oldest and most iconic companies. We take pride in CP's historic legacy, its role as a business leader and its reputation for honesty, integrity and the faithful performance of its undertakings and obligations.
>
> Our ability to maintain this reputation depends on our actions and the choices we make as CP employees every day.
>
> Our values of accountability, diversity and pride hold that in all our relationships we will demonstrate our steadfast commitment to integrity, trust and respect. These values must inform and govern all our activities on behalf of CP. In varying measure, we all represent CP in our relations with others, whether customers, suppliers, other employees, competitors, governments, investors or the general public. Whatever the area of involvement and whatever the degree of responsibility, we have a duty to act in a manner that will enhance CP's reputation.
>
> No corporate code of conduct can comprehensively address all types of business conduct or employee activity, and CP's Code of Business Ethics is no exception. In situations not expressly dealt with, employees are expected to govern themselves by the general principles set out in the Code of Business Ethics as well as applicable laws and other CP policies.
>
> With this in mind, all employees should carefully read the Code of Business Ethics and ensure that they understand its provisions and underlying principles, for they constitute the minimum standards of behavior expected of us all.

204. At page 10 of CP Railway's "Code of Business Ethics", it further states:

> All dealings between employees of CP and public officials are to be conducted in a manner that will not compromise the integrity or reputation of any public official or CP.
>
> All CP employees must engage in ethical conduct and comply with all foreign and local anti-corruption and anti-bribery laws in any jurisdiction in which CP does business. Anti-corruption laws prohibit bribing any individual - including public officials - in exchange for a business advantage. Any participation, whether direct or indirect, in any bribes, kickbacks, illegal gratuities, indirect contributions or other similar payments to any individual, including public officials or business partners of CP, is forbidden. Reasonable gifts, hospitality and entertainment that are appropriate to the circumstances and are made in accordance with the Code are not bribes.

205. On its face, sponsoring an association of police chiefs whose police departments have jurisdiction over fatalities and serious injuries at CP Railway, was a brazen violation of CP Railway's own governance policies. This conduct also violated spirit and laws that Mr. Creel and CP Railway claim to fastidiously uphold. The applicable Canadian and American laws that these Defendant's sponsorship of the CACP and overall strategy of impeding an independent criminal investigation of the Field, BC derailment include, but are not limited to, the *Ontario Securities Act*, R.S.O. 1990, c.S5, the *Securities & Exchange Act* of 1834, and the New York Stock Exchange Rules.

206. Mr. Creel and CP Railway knew, or were recklessly indifferent to the fact, that conveying a benefit of calculable financial value to the CACP, particularly within seven months after the triple fatality that the RCMP purportedly had the duty to investigate and was allegedly seized of, was improper and unlawful. This act and its timing were particularly wrongful because CP Railway sponsored the 2019 CACP Annual Conference at a crucial period when the Field, BC derailment had focused the public's attention on corporatized policing in general. This public awareness happened against a backdrop on which for decades up to that point, CACP members had largely and persistently refused to investigate any deaths and serious injuries at CP Railway, invariably deferring such incidents to CP Railway's in-house police department.

207. Even if CP Railway's sponsorship of the CACP, and the CP Police Service's longstanding involvement in that association was not solely responsible for discouraging, delaying, or otherwise impeding the RCMP's investigation of the Field, BC derailment, that still does not absolve Mr. Creel and CP Railway for the unlawfulness of their conduct. Their CACP sponsorship still amounted to

probable violations of the very Canadian and United States corporate governance laws, policies, regulations, and standards that CP Railway and Mr. Creel purport to exceed.

208. Similarly, Mr. Creel's and CP Railway's strategy of publicly feigning support for an independent police investigation of the Field, BC derailment while privately working to impede the investigation by threatening the TSB and Mr. Don Crawford with legal action, was also a direct violation of the aforementioned governance standards in Canada and the United States. Mr. Creel, his fellow executives who participated in this strategy, and CP Railway as a company, acted with forethought, in calculated coordination, and in bad faith. Their callous disregard and subordination of Ms. Fraser's legitimate interests in a fulsome and independent investigation of their loved one's death has caused Ms. Fraser devastating emotional and psychological harm. That harm has been exacerbated by the potentially irreparable damage that the investigation's delay has imposed on their ongoing quest for answers.

209. Mr. Creel's and CP Railway's strategy of publicly expressing support for full and unfettered investigations into the Train 301 derailment, while privately frustrating the most consequential criminal inquiry, willfully misled the victims' families. By adopting this strategy, these Defendants also deprived regulators and other relevant authorities in Canada and the United States of the broader picture that the derailment painted about the highly profitable but hazardous practices that CP Railway and Mr. Creel deeply entrenched in their manifestation of the precision scheduled railroading business model.

210. Similarly, Mr. Creel's and CP Railway's strategy to impede a criminal investigation into the derailment of Train 301 wrongfully leveraged the company's total control of the CP Police Service to effectively endow CP Railway with impunity from the independent criminal law scrutiny. Beyond the victims' families, the other stakeholders who had legal, financial, and social interests in a full accounting of the findings a criminal probe could unearth about CP Railway's safety and policing practices include regulators, public authorities, shareholders, and members of the public in both Canada and the United States. By adopting their strategy of impeding any criminal investigation of the derailment of Train 301, Mr. Creel and CP Railway effectively suppressed and substantially delayed a criminal investigation that was of particular interest and consequence to these stakeholders.

211. Furthermore, Mr. Creel's and CP Railway's efforts to impede, or even prevent, an independent criminal investigation into the Field, BC derailment amounted to an unlawful stifling of market relevant information. Many of CP Railway's shareholders precondition their investment decisions on an unimpeachable Environmental, Social, and Governance ("ESG") profile. Others avoid the inordinate regulatory exposure and market uncertainty that CP Railway's safety and policing practices would trigger if the full scale of this practice attained public prominence. Investors also have a direct interest in how the business and policing practices, which under the Field, BC derailment, if curtailed by an awakened regulatory focus, would make CP Railway's business model, efficiency ratios, profits, and stock price less sustainable.

212. Cumulatively, the Defendants' coordinated and unlawful misconduct initially prevented and ultimately delayed the RCMP's criminal investigation into the Field, BC derailment by two years. The misconduct underlying the Defendants' individual and collective actions are direct elements of the causes of action that this Claim asserts against the Defendants.

The adverse impacts that the Defendants' actions caused to the criminal investigation of the fatal Field, BC derailment.

213. As a result of the criminal investigation that the Defendants impeded and prejudicially delayed, and whose prompt initiation would have better preserved evidence and provided a reliable source of information for Ms. Fraser, she continuously received new and often contradictory details about Dylan's death from various sources. Often, this happened without warning and was particularly traumatizing. These new, unexpected, and often graphic details re-traumatized Ms. Fraser as she constantly re-lived and re-imagined their loved one's final moments in new and more gruesome ways.

214. While Ms. Fraser continued to learn these gruesome details from informal channels, such as media reports, the fact that Dylan's death remained uninvestigated through a criminal lens by an independent law enforcement agency caused them severe distress, anxiety, and trauma. The TSB's immediate referral of the Field, BC derailment to the RCMP would have triggered the RCMP's duties to keep Ms. Fraser formally apprised about the ongoing investigation under the federal *Canadian Victims Bill of Rights* (S.C. 2015, c. 13, s. 2) and British Columbia's *Victims of Crime Act*, (RSBC 1996) Chapter 478).

215. The formal and periodic updates that law enforcement officers provide to victims and persons affected by traumatic events, such as Ms. Fraser, provide a significant degree of comfort. Such updates also would have provided Ms. Fraser with more reliable information than the informal and unverified reports from numerous sources that they could not verify. Acting in their official capacities and in concert with CP Railway, the TSB members' successful efforts to impede the initiation of an RCMP investigation by nearly two years deprived Ms. Fraser the benefit of reliable, vetted, official, and ongoing disclosures about their loved one's death for nearly two years. The lack of these disclosures significantly exacerbated the traumatic impact of the informal and often contradictory reports that Ms. Fraser had to endure from other sources.

216. As a result of the continued re-traumatization and the loss of hope for reliable and definitive answers that a thorough, independent criminal investigation could provide, and which initially unbeknown to her, the TSB members and CP Railway were actively impeding, Ms. Fraser developed post-traumatic-stress-disorder ("PTSD"). This psychiatric condition still causes her to have extreme emotional reactions to stressful events which trigger a resurgence of the trauma she has experienced. The nearly two-year delay of a proper, thorough and independent investigation into her son's death dramatically exacerbated her PTSD symptoms.

217. Further, when Mr. Don Crawford was the lead investigator, he was the only public official who provided some updates about his investigation to Dylan's family. Mr. Crawford's sincerity, professionalism, and attentiveness gave Ms. Fraser significant hope and comfort that some form of investigation was progressing, albeit not a criminal investigation. In contrast, after the TSB members removed Mr. Don Crawford from the Field, BC investigation, the new investigator did not keep Dylan's family updated about the investigation. The lack of contact from the replacement investigator, who constituted the only formal channel of information Ms. Fraser had, caused Ms. Pamela Fraser to continuously wonder if the investigation, which could not result in any legal liability for CP Railway, was even progressing. This significantly exacerbated their suffering and trauma.

218. In addition to her sensitivity to emotional triggers, the PTSD has caused Ms. Fraser to suffer impairments to her cognitive functions, such as poor short-term memory, difficulty processing information from competing sources, difficulty focusing, which causes daily tasks to be more time

consuming, and a lower tolerance for stress or change. Ms. Fraser has lost faith and trust in the institutions which are supposed to keep them and their loved ones safe.

219. Ms. Fraser's PTSD is aggravated by the stress of knowing that the delayed criminal investigation has also compromised the RCMP's ability to conduct the thorough investigation that the circumstances warranted. The passage of time and the CP Police Service Chiefs' direct involvement in the investigation, likely compromised the integrity of certain key pieces of evidence from the start. In particular, CP Railway and its Chiefs of Police's handling of Train 301's event recorders, CP Railway's handling of the train cars and other infrastructure in the immediate aftermath of the fatal derailment, and CP Railway's engagement with key witnesses who were company employees, likely complicated and may continue to impede the ongoing RCMP investigation. Further, due to the RCMP's delayed criminal investigation, Ms. Fraser has suffered persistent stress from the concern that witnesses' memories fade or become less reliable. Also, witnesses themselves may become less willing to come forward or be less forthcoming as they would have been when the events were fresh, and their courage to speak out was at its peak. Thus, Ms. Fraser has suffered from the anxiety of knowing that even if the RCMP's investigation results in criminal charges against any persons or entities, the delayed initiation of that investigation and the potentially compromised evidence it has encompassed may preclude criminal charges or convictions against other responsible persons.

220. Regardless of whether the RCMP's criminal investigation into the derailment of CP Railway Train 301 results in criminal charges or convictions, Ms. Fraser will forever wonder about the completeness and accuracy of the information that was uncovered through that investigation. The unwarranted delay in the RCMP's initiation of its criminal investigation, for which the TSB members, Ms. Huot, and CP Railway's representatives are responsible, has severely and, potentially, irreparably undermined the full and comprehensive administration of justice in the criminal case. Ms. Fraser may never know the whole truth about how and why Dylan died. They may never obtain a full accounting of the persons who were responsible and may never see some or all of those people brought to justice. This uncertainty has caused, and continues to cause, Ms. Fraser tremendous mental anguish, pain, and suffering.

221. Even if Ms. Fraser does obtain a full accounting of what happened and all responsible persons are held to account pursuant to the RCMP's investigation, the Defendants are still liable for their role in creating the nearly two-year delay to a criminal investigation. That delay and the Defendants' active efforts to thwart Mr. Crawford's efforts to ensure an independent criminal investigation of the derailment of CP Railway Train 301 still caused Ms. Fraser significant mental anguish which is compensable at law. Ms. Fraser relies on *Saadati v. Moorhead,* 2017 SCC 28, [2017] 1 S.C.R. 543.

Part 2: RELIEF SOUGHT.

1. The Plaintiff, Ms. Pamela Fraser, seeks damages for:

    a. General damages;
    b. Pecuniary losses;
    c. Non-pecuniary losses;
    d. Aggravated damages;
    e. Punitive damages;
    f. Damages pursuant to Section 24(1) of the Canadian *Charter of Rights and Freedoms*;
    g. Prejudgment interest in accordance with the *Court Order Interest Act*, RSBC 1996, c.79;
    h. Costs of this action; and
    i. Any such further and other relief as this Honourable Court may allow.

2. The relief sought is sought against each Defendant, jointly and severally. All Defendants are jointly liable for the damages.

3. Ms. Fraser further seeks aggravated and punitive damages against CP Railway, Mr. Keith Creel, John Doe, Jane Doe and Other Unknown Persons. In addition to their conduct as set out in this Claim, these CP Railway representatives and agents improperly and callously leveraged the Field, BC families' loss and grief to justify attacking Mr. Crawford's bona fide concerns about criminal negligence, and his calls for an appropriate authority to investigate the derailment of Train 301.

4. In the ATIP disclosures that the CBC obtained from the TSB, CP Railway, through its legal counsel, stated, "I have a strong view their [Mr. Crawford's] actions were disrespectful/damaging to the families of the employees we tragically lost as well as our collective CP family". This attack against Mr. Crawford's public comments to the CBC directly challenged, and helped to successfully prevent, the very outcome that Ms. Fraser wanted: an independent police investigation into CP Railway's potential criminal negligence which CP Railway did not control, direct, fund, influence, interfere with, or oversee as it did with the CP Police Service. Neither CP Railway, nor its legal counsel, had the right to speak for the families. Nor did they have the right to leverage the families' grief to prevent a criminal investigation into CP Railway for its role in precipitating that grief.

5. CP Railway's, Mr. Creel's, John Doe's, Jane Doe's, and Other Unknown Persons' willful and opportunistic invocation of the deceased workers' pain to advance the self-serving goal of deflecting the independent criminal scrutiny on CP Railway that Ms. Fraser desired, and without Ms. Fraser's knowledge, was high-handed, malicious, and reprehensible. This conduct amounted to bad faith that warrants punitive and aggravated damages against CP Railway, and its representatives and agents, Mr. Creel, John Doe, Jane Doe, and Other Unknown Persons. Invoking the sympathy and compassion which rightfully belonged to Ms. Fraser to justify CP Railway's, Mr. Creel's, John Doe's, Jane Doe's and Other Unknown Persons' unlawful threats and intimidation of Mr. Crawford and the TSB, was also reprehensible and high-handed conduct that warrants aggravated and punitive damages.

6. Ms. Fraser seeks further aggravated and punitive damages against Mr. Creel for his callous words during his interview with BNN Bloomberg in July of 2020, the same month that the TSB reported 79 railway related fatalities for 2019, and which included the Field, BC fatalities. In the BNN interview, Mr. Creel stated, "Rest assured we didn't get it all right. It's been a matter of public record, you know, we broke a lot of eggs, for lack of a better term". Mr. Creel knew, or demonstrated a reckless disregard, for the fact that the "massive change" that he helped to advance at CP Railway through the precision scheduled railroading model, was directly responsible for the "broken eggs" or the lives lost pursuant to CP Railway's operations. In the alternative, Mr. Creel knew, or was callously indifferent to, the fact that his public reference to "broken eggs would inevitably trigger a direct association between the commercial progress he touted and the devastating losses that the survivors of CP Railway's Train 301 recently had endured.

7. Dylan Paradis was a whole, complex, living person with a family and loved ones, with his own stories and a future to be filled with more experiences. The loss of his life devasted his loved ones and community. Mr. Creel's reference to the deaths of Dylan and his crew mates as "broken eggs", or his callous indifference to the impact that such a statement would have on them, was reprehensible and high-handed conduct that warrants aggravated and punitive damages.

Part 3: LEGAL BASIS.

Misfeasance in public office

The TSB members are liable for misfeasance in public office.

1. Ms. Kathy Fox, Ms. Faye Ackermans, Mr. Paul George Dittman, Mr. Kenneth Potter, and Mr. Joseph Hincke are each liable for misfeasance in public office. The TSB membership is federal statutory tribunal appointment and constitutes a public office. Each of the TSB members held that public office during the relevant period.

2. During their exercise of their public functions as TSB members, Ms. Fox, Ms. Ackermans, Mr. Dittman, Mr. Potter, and Mr. Hincke deliberately and unlawfully ignored their duties to refer the derailment of CP Railway Train 301 for independent criminal investigation as soon as the tragedy happened. Specifically, the TSB members violated their longstanding internal policy, memoranda of understanding with the RCMP, the public safety mandate that is inherent in the *CTAISB Act* from which these instruments were derived, and the common law duty to report.

3. The TSB members violated their public duties for the improper and unlawful purpose of protecting CP Railway's reputation, commercial interests, and the potential consequences that an independent criminal investigation would have on CP Railway and its leadership. These Defendants took their unlawful steps to the detriment of the deceased's, survivors', and public's right to a prompt, full, and independent criminal investigation into the Field, BC fatalities.

4. Ms. Fox's, Ms. Ackermans', Mr. Dittman's, Mr. Potter's, and Mr. Hincke's willful violation of their obligation to refer the Field, BC derailment of CP Railway Train 301 continued even after Mr. Crawford alerted these Defendants to the potential criminality behind this *Westray* incident. As statutory tribunal members whose legislated objective is to advance transportation safety, these Defendants abused their public offices by willfully and deliberately failing to act on Mr. Crawford's calls for the TSB to refer the incident to the RCMP.

5. In addition to unlawfully disregarding Mr. Crawford's calls for a criminal referral of the CP Railway derailment of Train 301, Ms. Fox, Ms. Ackermans, Mr. Dittman, Mr. Potter, and Mr. Hincke went further and took active, coercive, and punitive measures to thwart Mr. Crawford's independent intentions to exercise his legal right and duty to report the indicia of criminality in a triple fatality to independent law enforcement. These Defendants' abuse of their public offices to willfully and deliberately hinder Mr. Crawford's efforts to refer the derailment for an independent criminal investigation were for the improper and unlawful purposes of protecting CP Railway's reputation and commercial interests, and to insulate CP Railway from a legitimate criminal investigation into the derailment that killed Dylan.

6. While acting in their capacities as public officers, the TSB members, Ms. Fox, Ms. Ackermans, Mr. Dittman, Mr. Potter, and Mr. Hincke willfully and deliberately breached section 19 of the *Public Servants Disclosure Protection Act*, SC 2005, c 46. These Defendants did so through their public and internal reprisals against Mr. Crawford for his comments to the CBC after he had exhausted all internal channels to compel the TSB to comply with its referral obligations. These Defendants knew that their willful and deliberate breach of their statutory duty to refrain from retaliating against and muzzling whistleblowers such as Mr. Crawford would harm Ms. Fraser, and it actually did. By jointly threatening and intimidating Mr. Crawford into silence, and by removing him from the Field, BC investigation, the TSB members unlawfully leveraged their public offices and the Board's institutional credibility to undermine Mr. Crawford's legitimate calls for an independent criminal investigation.

7. Further, when CP Railway started privately threatening the TSB and Mr. Don Crawford with legal action, the TSB members knew that it was improper and unlawful to engage the suspect in a potential criminal matter in extended dialogue about the suspect's potential liability. Ms. Fox, Ms.

Ackermans, Mr. Dittman, Mr. Potter, and Mr. Hincke knew, or should have known, that even though the TSB had no criminal jurisdiction, this did not negate its duty to avoid being the willful or unwitting advocate of the main suspect in a *Westray* incident that had killed three CP Railway workers.

8. Given the importance of maintaining the investigative integrity of criminal matters, and the TSB's jurisdictional incapacity to criminally exonerate CP Railway, the TSB members had the duty to immediately direct CP Railway to the RCMP if CP Railway sought to engage the appropriate authority on the criminal aspects of the Train 301 derailment. The TSB members also had the duty to inform the RCMP about CP Railway's threats and attempts to impede the very referral that the TSB's memorandum of understanding with the RCMP, internal handbook, and common law duty to report, expressly mandated. Instead, the TSB members adopted a supplicatory role with CP Railway. The TSB, through Ms. Fox and its General Counsel, Ms. Huot, offered CP Railway profuse apologies and engaged in feverish efforts to pacify CP Railway's displeasure at the suggestion that the RCMP should investigate a triple fatality that happened on the company's watch.

9. The TSB members, particularly Ms. Ackermans, were intimately familiar with how the CP Police Service worked, and how its leadership had unlawfully asserted jurisdiction over *Westray* incidents at CP Railway over the years. Nevertheless, before and after the Field, BC derailment, the TSB members never challenged the CP Police Service's involvement in such investigations and how that involvement undermined the integrity of the evidence that the TSB relied upon in its own investigations.

10. The TSB members also knew that beyond the public interest in a comprehensive and independent criminal investigation of the Field, BC derailment, other authorities in Canada and the United States also had direct and direct legal interests in the scope and findings of such an investigation. The TSB members knew that CP Railway and the CP Police Service also had commercial and policing operations in the United States of America, and that these operations touched on Canada's trade, national security, and regulatory, and other legal obligations with various authorities across the border.

11. The TSB members, knew, or ought to have known, that their unique mandate and powers elevated their legal duties to the public, police, and other state authorities in Canada and the United States of America. TSB members knew that their investigators are the only authorities that based on their statutory mandate, are supposed to have the specialized industry expertise to gather, understand, interpret, and make informed inferences about evidence that other investigating authorities do not have the skill to undertake. The TSB members know that this industry sector expertise endows them with an "analytical luminol" that enables them to observe and extract meaningful insights about the causes of an industrial incident that other investigating authorities may deem banal and inconsequential.

12. The TSB members also know that under certain provisions such as sections 19, 21, 28 of the *CTAISBA*, the Board and its investigators have unique powers and exclusive access to certain evidence that other authorities are not entitled to in transportation incident investigations. The TSB's proprietary access to evidence in transportation incident investigations, and the industry expertise that it is supposed to wield, effectively make the TSB the main gatekeeper of important information regarding public safety across Canada's transportation sectors.

13. The Board members' ability to edit and determine the content of TSB investigators' final reports under Section 24(1) of the *CTAISBA* also endows the Board members, who do personally conduct the incident investigations, the power to determine what evidence and findings eventually enter the public domain. The TSB members know that although they Board cannot assign fault under Section 7(2) of the *CTAISBA*, other authorities that do not have the investigative jurisdiction, railway industry expertise, or the unrestricted access to certain evidence, rely on the TSB's work and cooperation to assess whether criminal or other liability arises from that work. The TSB members knew, or should have known that Section 7(2) of the *CTAISBA* also contemplated other authorities' reliance on the Board's work by providing that, "the Board shall not refrain from fully reporting on the causes and contributing factors merely because fault or liability might be inferred from the Board's findings".

14. In light of the above, the TSB members knew, or should have known, that any fatalities or incidents that raised systemic concerns about public safety or CP Railway's abuse of police powers in Canada directly touched on the interests of various authorities in the United States where CP Railway has

both commercial and policing operations. Consequently, the TSB members knew, or should have known, that it was unlawful for them to impede and sanction a statutory investigator who was acting in furtherance of a public safety mandate in which authorities in the United States of America had direct legal interests. The Board members' wilful disregard of their duty to immediately refer the Field, BC derailment to the RCMP after Mr. Don Crawford disclosed the evidence that justified such a referral, deprived other Canadian and American authorities of the prompt notification of an issue in which they had a material interest.

15. Even if the TSB has no proactive duty to report such matters to authorities in the United States of America, the TSB members must not wilfully and unlawfully suppress, undermine, or impede criminal investigations that directly impact American authorities' national interests. Despite their legal interests in the systemic governance, operational, and policing issues that the Field, BC derailment exposed, authorities in the United States of America are removed from the jurisdictional epicentre of the relevant events. Thus, the TSB members' actions still undermined their prompt and full awareness of how CP Railway and its CP Police Service Chiefs unlawful conduct in Canada, and the CP Railway's control over its American subsidiaries and police officers in the United States of America, may undermine the civil, constitutional, and other rights of American citizens. In particular, the constitutional implications of Canada-based corporations exercising criminal law powers against American citizens raise important questions about potential violations of due process protections for American citizens under the Fifth Amendment of the United States Constitution. The constitutional implications also include questions under the Fourth Amendment of the United States Constitution regarding the legal validity of arrests, searches, and seizures that CP Police Service officers conduct on sovereign American territory while under the control of a private corporation in Canada.

16. By choosing to disregard the domestic and cross-border implications of the Field, BC derailment and the systemic safety and policing issues the incident exposed, the TSB the TSB members acted unlawfully. This included by impeding a criminal investigation, which violated the Government of Canada's legal obligations to the United States of America under Article 28.2 of the *USMCA* (and as adopted into Canadian law). The TSB members decision to invest their allegiance in CP Railway and the company's desire to protect its reputation and avoid the independent criminal scrutiny that it publicly claimed to support was similarly unlawful.

17. The TSB members' collective actions regarding the fatal Field, BC derailment amounted to *prima facie* breaches of Canadian and American laws that prohibit:

    a. The willful impediment of criminal investigations;
    b. The withholding of crucial evidence of criminal consequence from law enforcement agencies;
    c. Threatening statutory investigators who are empowered with public safety mandates from making bona fide criminal referrals to law enforcement, and;
    d. Conspiring with suspects in potential criminal matters to frustrate the ends of justice and:
    e. Conspiring with suspects in potential criminal matters to prevent other relevant authorities from obtaining prompt, full, and impartial notice of criminal and regulatory matters that directly affect their jurisdictions and national interests.

18. Ms. Fox, Ms. Ackermans, Mr. Dittman, Mr. Potter, and Mr. Hincke knew, or should have known that their willful and deliberate failure to refer the fatal derailment of Train 301 to independent law enforcement would injure Ms. Fraser, and it did. Ms. Fox, Ms. Ackermans, Mr. Dittman, Mr. Potter, and Mr. Hincke knew, or should have known that by silencing and retaliating against Mr. Crawford for publicly calling for that outcome was also unlawful.

19. As the direct result of Ms. Fox's, Ms. Ackermans', Mr. Dittman's, Mr. Potter's, and Mr. Hincke's wilful misfeasance, Ms. Fraser has suffered damages, which include extreme distress, anxiety, loss of confidence in the justice system, and the ongoing stress and uncertainty regarding whether they will ever get justice. Ms. Fraser's intense anxiety and mental distress have been aggravated by their justified apprehension that the Defendants' unity of purpose in impeding the prompt initiation of a fulsome, independent police investigation into the Field, BC derailment is, or will, undermine the RCMP's belated and ongoing criminal probe.

20. In the alternative, Ms. Fox, Ms. Ackermans, Mr. Dittman, Mr. Potter, and Mr. Hincke were reckless and demonstrated a conscious disregard for the unlawfulness of their conduct, the impediments and damage it would impose on the proper administration of justice, the prejudicial delays it caused to the prompt initiation of the RCMP investigation, and the damages it caused Ms. Fraser.

21. For all the above reasons in this section of Ms. Fraser's Claim, Ms. Fox, Ms. Ackermans, Mr. Dittman, Mr. Potter, and Mr. Hincke are each liable for misfeasance in public office.

Ms. Faye Ackermans is further liable for misfeasance in public office.

22. In addition to the above grounds for the TSB members' liability, Ms. Ackermans is further liable for misfeasance in public office for failing to recuse herself from any decision making regarding the TSB's investigation into the derailment of CP Railway Train 301. Ms. Ackermans, through her senior roles in safety and regulatory affairs during her decades of employment with CP Railway, was in an irredeemable conflict of interest. This conflict disqualified her from having any input or involvement in any aspect of the CP Railway Train 301 derailment investigation. Such a conflict of interest could not be cured by the expiration of any "cooling off" period that otherwise allowed her to serve as TSB member presiding over investigations involving the numerous other transportation companies that are not her former employer.

23. Dylan's death was the direct result of a longstanding and well-established corporate safety culture at CP Railway. Ms. Ackermans was instrumental in, helped to shape, and was immersed in this safety culture as CP Railway evolved and implemented it over the decades. Her legacy in safety and regulatory affairs at CP Railway is forever engrained in the company's safety record and corporate DNA, even as CP Railway's culture has continued to evolve since her departure.

24. Even if Ms. Ackermans did not create or exacerbate CP Railway's corporate safety culture during her tenure at CP Railway, her decades-long employment inextricably links her to that culture. This endowed her with extraneous knowledge about CP Railway's people and internal workings, which negated her objectivity and disqualified her from taking part in any aspect of the Train 301 derailment investigation. Ms. Ackermans knew, or should have known, that as a member of a statutory tribunal with the duty to refer her former employer to law enforcement for a triple fatality, she had to recuse herself from any formal or informal participation in the Field, BC investigation at the outset, including from any decision on how to handle Mr. Crawford's request for the criminal referral. Thus, Ms. Ackermans knew, or should have known, that her continued involvement in the Field, BC matter gave rise to a reasonable apprehension of bias and disqualifying conflict of interest. Ms. Fraser relies on *College of Physicians and Surgeons of Saskatchewan v. Huerto*, 1996 CanLII

4920 (SK CA); *Walsh v. Mobile Oil Canada*, 2012 ABQB 527 (Alta. Q.B.); *Van Mol (Guardian ad litem of) v. Ashmore*, 2000 BCCA 413; *Eagle Resources Ltd. v. MacDonald*, [2002] A.J. No. 1230 ; *U.M.W.A., Local 1656 v. Elk Valley Coal Corp.*, 2009 ABCA 407; *Miller v. Council for Licensed Practical Nurses*, 1999 CanLII 19805 (NL SC); and *Newfoundland Telephone Company v. Newfoundland*, [1992] I S.C.R. 623.

25. Furthermore, based on the TSB's membership structure, Ms. Ackermans is the only railway focused subject-area expert. This endowed her with disproportionate and wrongful influence in framing the TSB's press release in which the TSB stated that it did "not share the view of this investigator". As the only TSB member with strictly railway-sector experience, the other TSB members could not have credibly and publicly undermined the merits of Mr. Crawford's findings about the indicia of criminality without her input. Without that input, the other TSB members' "views" about Mr. Crawford's findings were also otherwise devoid of any merit because none of them were trained in the forensic investigation of train derailments. They also did not personally attend the scene of the derailment, interview witnesses, or personally collect or assess the physical evidence. Ms. Ackerman's involvement in the Field, BC matter wrongfully endowed the TSB members' press release repudiating Mr. Don Crawford with undue public legitimacy. This was even though none of them had any scientific, experiential, or factual basis to take a contrary view from Mr. Crawford.

26. It was also wrongful and unlawful for Ms. Ackermans to participate in any discussions or decisions regarding the TSB's handling of CP Railway's threats of legal action against the TSB and Mr. Crawford. It was similarly wrongful and unlawful for Ms. Ackermans to participate in any discussions or decisions regarding the TSB's general obligation to refer the Field, BC derailment to the RCMP. Therefore, Ms. Ackermans' failure to recuse herself from any decisions or consultations regarding the derailment of Train 301 exacerbated her already irremediable conflict of interest. It biased, or is deemed to have biased, the TSB's eventual decisions to thwart the mandatory criminal referral to the RCMP. Ms. Ackermans' involvement in the Field, BC matter, while under a disqualifying conflict of interest, and while exercising her powers as a public officer, also constitutes an additional instance of misfeasance in public office.

27. Ms. Ackermans knew, or should have known, that the unlawful conflict of interest which she placed herself in would cause injury to Ms. Fraser, and such injury did result. The TSB members'

press release chastising Mr. Crawford for calling for an independent criminal investigation presented a united front between the TSB members and no expressed dissent by Ms. Ackermans. In the alternative, Ms. Ackermans was reckless and consciously disregarded the unlawfulness of her contribution towards the successful hinderance of a criminal referral of the Field, BC derailment to the RCMP, and for the injury this active impediment would, and eventually did cause, Ms. Fraser.

28. Ms. Fraser has suffered particularly intense distress given that Ms. Ackerman's status as a former CP Railway employee, especially considering the undeclared and irremediable conflict of interest arising from that career-long association. Ms. Fraser's severe distress has been exacerbated by the enhanced influence that Ms. Ackerman's railway experience has had, and will likely have, on her fellow TSB members who have little to no personal background in that industrial sector. Thus, Ms. Fraser has experienced the pronounced and often debilitating distress from the objectively justified apprehension that the TSB's investigation and final report on the Field, BC derailment will be concluded to wrongfully deflect, minimize, or even eliminate any adverse consequences on CP Railway. All the adverse effects that Ms. Fraser are experiencing are the direct result of the 22-month delay that the TSB Defendants entirely, or substantially, incurred on the RCMP's initiation of the criminal investigation into the derailment of Train 301.

29. As a direct result of Ms. Ackermans' misfeasance while in a public office, Ms. Fraser has suffered the damages that have been delineated in the foregoing parts of this Claim.

Ms. Patrizia Huot is liable for misfeasance in public office.

30. Ms. Huot is liable for misfeasance in public office. As the chief legal counsel to a federal, statutory tribunal, Ms. Huot occupies a public office. In communicating with CP Railway regarding Mr. Crawford's statement to the CBC, Ms. Huot was exercising her public function.

31. Ms. Huot deliberately and unlawfully hindered, or, in the alternative, abetted the TSB members' successful efforts to prevent the referral of the CP Railway Train 301 derailment for an independent criminal investigation. Ms. Huot initially did so on her own volition. She subsequently did so at the behest of CP Railway whose representatives she had direct and sustained email and telephone

communications with after the CBC article quoted Mr. Crawford's call for an independent probe into the derailment. Ms. Huot engaged in these communications to advance the improper purpose of insulating CP Railway from the scrutiny of a legitimate criminal investigation into a triple fatality that required such scrutiny under the Westray amendments to the *Criminal Code* and other provisions.

32. As a senior licensed legal professional, Ms. Huot knew, or should have known, that working to prevent Mr. Crawford's efforts to trigger an independent police investigation into the derailment of CP Railway Train 301 unlawfully violated the TSB's criminal referral policy, memoranda of understanding with the RCMP, the public safety mandate of *CTAISB* Act from which these instruments arose, and the common law duty to report. Ms. Huot also knew that her actions could injure Ms. Fraser, and such actions did in fact result in such injuries. In the alternative, Ms. Huot was reckless and displayed a conscious disregard for the unlawfulness of her conduct and the injury it caused Ms. Fraser.

33. During her exercise of her public function as the legal counsel to the TSB, Ms. Huot willfully and deliberately breached section 19 of the *Public Servants Disclosure Protection Act*. She did so through her internal facilitation of the TSB members' reprisals against Mr. Crawford. These reprisals included the TSB members decision to remove Mr. Crawford from the Field, BC investigation and to publicly chastise and undermine his investigative findings through the TSB members' January 28, 2020 press release. Ms. Huot's actions contributed to the TSB members' effective silencing of Mr. Crawford's efforts to provide independent law enforcement with crucial evidence about potential criminality in the Field, BC derailment. This had a direct and detrimental impact on the RCMP's initiation of its criminal investigation into the derailment of CP Railway Train 301 and constitutes misfeasance in public office.

34. In the alternative, Ms. Huot's direct collaboration with CP Railway's representatives and her abetment of the TSB members' unlawful reprisals against Mr. Crawford for his comments to the CBC, constitutes misfeasance in public office.

35. Ms. Huot knew, or should have known, that the willful and deliberate breach of her statutory duty under section 19 of the *Public Servants Disclosure Protection Act* could injure Ms. Fraser, and

eventually did. In the alternative, Ms. Huot demonstrated reckless and conscious disregard for the lawfulness of her conduct and for the injury it could cause Ms. Fraser, and eventually did.

36. As with the TSB members, Ms. Huot also knew, or should have known, that her duties as a public officer were subject to transparency, accountability, and good governance obligations under all applicable Canadian laws. These laws include all those that prohibit conspiring with suspects in criminal matters to prevent or impede police investigations and retaliating against statutory investigators for trying to refer potential criminal matters to independent law enforcement agencies.

37. Ms. Huot's conduct also violated Article 28.2 of the *USMCA* (and as adopted into Canadian law). Ms. Huot had the duty to promote, or at least not undermine, the good governance and transparent justice mechanisms that American authorities rely on to alert them of potential corporate misconduct that may have cross-border impacts in the United States of America. By actively impeding an independent criminal investigation into the derailment of CP Railway Train 301, Ms. Huot helped the TSB members to cut off a critical opportunity through which American authorities would have been more fulsomely informed from the outset.

38. As a direct result of Ms. Huot's misfeasance while in a public office, Ms. Fraser suffered the damages that have been delineated in the foregoing parts of this Claim.

Mr. Keith Creel is liable for misfeasance in public office.

39. Mr. Keith Creel is liable for misfeasance in public office. As the CEO of CP Railway, he oversees and is responsible for a statutory police force that enforces the criminal law against Canadian and American citizens. As the highest-ranking executive and authority who funds, controls, directs, and oversees the CP Police Service, Mr. Creel is a public officer. Ms. Fraser relies on *RWDSU v. Dolphin Delivery Ltd*., [1986] 2 SCR 573 and *R. v. Singh*, 2006 ABPC 324 for this statement of law. Further, as the CP Railway executive who directly oversaw and exercised operational oversight over the CP Police Service investigation into the fatal derailment of Train 301, Mr. Creel was CP Railway's public officer in charge at all relevant periods.

40. In his public capacity as a public officer, Mr. Creel deliberately and unlawfully, directly and through his agents, harassed, threatened, intimidated, or unlawfully coopted the TSB members and agents for the improper purpose of preventing the TSB's referral of the fatal derailment of Train 301 to independent law enforcement. Mr. Creel advanced this improper and unlawful purpose by threatening or coopting the TSB, either directly or through his agents, to:

    a) Publicly rebuke Mr. Crawford for calling for an independent criminal investigation;

    b) Remove Mr. Crawford from the CP Railway Train 301 investigation by relying on a legally invalid interpretation of the *CTAISBA Act*, and

    c) Ensure that notwithstanding Mr. Crawford's legitimate entreaties, the TSB did not make such a criminal referral on its own volition or allow Mr. Crawford to do so on his.

41. Mr. Creel also knew, or should have known, that the four-pronged strategy that he deployed to prevent, impede, or mitigate the impact of an independent criminal investigation into CP Railway's role in the derailment of Train 301, was wrongful and unlawful. Specifically, Mr. Creel knew, or should have known, that it was wrongful and unlawful:

    a) To threaten a statutory Board and its investigator because the investigator called for a bona fide criminal investigation into a triple fatality under CP Railway's watch;

    b) For Mr. Creel to make public statements, which through commission or material omissions, misled regulators, shareholders, customers, and the Canadian and American public about CP Railway's purported cooperation with all investigative authorities, including the RCMP. This was while Mr. Creel and CP Railway were privately working to thwart the sort of independent police investigation that they were claiming the RCMP was duty bound to conduct;

    c) It was also wrongful and unlawful for Mr. Creel and CP Railway to deliberately mislead the victims' families into believing that he, Mr. Creel, and CP Railway,

would not impede, and would actively cooperate in the investigation into the derailment of CP Railway Train 301. Mr. Creel and CP Railway made these accountability promises to the victims' families while privately wielding those families' trauma to threaten the TSB into refraining from referring the fatal Train 301 derailment for an independent criminal investigation;

d) It was further wrongful and unlawful for CP Railway, with Mr. Creel's knowledge and sanction, to sponsor the Canadian Association of Chiefs of Police 2019 Annual Conference within six months of the derailment of CP Railway Train 301. Mr. Creel knew, or should have known, that the RCMP, which he asserted was duty bound to investigate the triple fatality, was the largest CACP member. Mr. Creel also knew, or should have known, that most, if not all, the municipal police forces in municipalities in which CP Railway has operations across Canada were also CACP members.

In his response to Ms. Fraser's civil claim in the related Field, BC litigation (Court No. S-211084), Mr. Creel and CP Railway asserted that the CP Police Service cannot lawfully investigate CP Railway, including for workplace deaths and serious injuries. These means that the CACP members in places where CP Railway has operations, have been responsible for investigating such incidents at CP Railway over the years. Given these CACP police forces' criminal jurisdiction over CP Railway's Canada-wide operations, it was wrongful and unlawful for Mr. Creel and CP Railway to sponsor the police association whose members exercise nationwide jurisdiction over the company's potential criminal liability for Westray and other incidents. Mr. Creel knew, or should have known, that such sponsorship likely, or actually, was an unlawful inducement of public officers for unlawful ends. The CACP's refusal to explain or defend the nature and context of the sponsorship while its member, the RCMP was allegedly investigating CP Railway, further reinforces the unlawfulness of the conduct.

e) Finally, it was wrongful and unlawful for Mr. Creel and CP Railway to exercise direct, operational control over the CP Police Service, and to wield its criminal law enforcement powers to capture, in whole or in part, policing jurisdiction over the

Train 301 derailment. By capturing investigative jurisdiction, Mr. Creel and CP Railway, operating through the CP Police Chiefs, actively sidelined the RCMP from taking on the primary investigative role that it was mandated to assume, and necessarily to the total exclusion of the CP Police Service. Notwithstanding the RCMP's failure to unilaterally assert its mandatory jurisdiction, Mr. Creel and CP Railway's decision to install the CP Police Service as an accountability firewall to prevent independent criminal scrutiny of CP Railway's safety and policing practices still amounts to misfeasance in public office.

This conduct, in conjunction with CP Railway's threats against the TSB, its sponsorship of the CACP shortly after the derailment of Train 301, Mr. Creel's misleading public statements about supporting criminal investigations, and his company's misuse and control over its Chiefs of Police, whose income and bonuses CP Railway determines, violated, or likely violated, several Canadian and American laws. These laws included the *Ontario Securities Act*, RSO, 1990 c. S. 5, the United States Securities & Exchange Act of 1934, the Foreign Corrupt Practice Act of 1977; Chapters 27 and 28.2 of the *USMCA* as adopted into American and Canadian law; and other criminal and corporate integrity statutes in both countries.

42. Mr. Creel knew, or should have known, that his conduct was unlawful and would injure Ms. Fraser, which it did. In the alternative, Mr. Creel demonstrated a reckless and conscious disregard for the unlawfulness of his conduct, the injury it could cause Ms. Fraser, and the injury it actually caused them.

43. As a direct result of Mr. Creel's misfeasance while acting in the capacity as a public officer on a law enforcement related issue, Ms. Fraser has suffered the damages that have been delineated in the foregoing parts of this Claim.

John Doe, Jane Doe and Other Unknown Persons are liable for misfeasance in public office.

44. John Doe, Jane Doe, and Other Unknown Persons at CP Railway are liable for misfeasance in public office. As the representatives of CP Railway, they oversee and are responsible for a statutory police

force that enforces the criminal law against Canadian and American citizens. As high-ranking executives and authorities who fund, control, direct, and oversee the CP Police Service, a statutory police force, and who were contacting the TSB regarding law enforcement issues arising from three fatalities under CP Railway's watch, John Doe, Jane Doe and Other Unknown Persons were public officers. Ms. Fraser relies on *RWDSU v. Dolphin Delivery Ltd*., [1986] 2 SCR 573 and *R. v. Singh*, 2006 ABPC 324 for this statement of law.

45. In their capacities as public officers, John Doe, Jane Doe and Other Unknown Persons deliberately and unlawfully, either personally or through their agents, harassed, threatened, intimidated, or unlawfully coopted the members and agents of the TSB for the improper purpose of preventing the referral of a potentially criminal matter to independent law enforcement. These Defendants advanced this improper and unlawful purpose by acting through CP Railway's legal counsel, to threaten or coopt the TSB into, a) publicly rebuking Mr. Crawford for calling for an independent law enforcement investigation, b) removing Mr. Crawford from the CP Railway Train 301 investigation by relying on a legally invalid interpretation of the *CTAISBA Act*, and c) ensuring that notwithstanding Mr. Crawford's legitimate entreaties, the TSB did not make such a criminal referral on its own volition.

46. John Doe, Jane Doe and Other Unknown Persons knew, or should have known, that their conduct was unlawful, violated the laws of Canada and the United States as enumerated in the above section regarding Mr. Creel, and would injure Ms. Fraser, which it did. In the alternative, John Doe, Jane Doe and Other Unknown Persons demonstrated a reckless and conscious disregard for the unlawfulness of their conduct, the injury it could cause Ms. Fraser, and the injury it actually caused her.

47. As a direct result of John Doe's, Jane Doe's and Other Unknown Person's misfeasance while acting in the capacities as public officers on a law enforcement related issue, Ms. Fraser has suffered the damages that have been delineated in the foregoing parts of this Claim.

Mr. Marc Garneau is liable for misfeasance in public office.

48. Mr. Marc Garneau was a federal cabinet minister and Canada's Minister of Transport when the Field, BC derailment happened, and when Constable Mark Tataryn filed a whistleblower complaint, regarding that incident, with him. By wilfully failing to act on Constable Tataryn's whistle-blower complaint against CP Railway; failing in his statutory duty under Section 3.1 of the *Railway Safety Act* to properly regulate CP Railway; failing to systemic issues that underlay the Field, BC derailment to American authorities; and proactively disavowing jurisdiction over CP Railway's abuses of its police force, Mr. Garneau created a ministerial cordon of impunity that protected conduct he knew was unlawful.

49. Through his failures, Mr. Garneau not only prejudiced Ms. Fraser's right to independent criminal scrutiny of the Field, BC derailment, he also violated Canada's duties to its closest ally, the United States of America under Section 28.2 of the *USMCA*, as incorporated into Canadian law. As with the TSB members and Ms. Huot, Mr. Garneau's wilful failure to take action regarding the serious issues of abuse of police powers in which Canadian and American authorities had a material interest, amounted to misfeasance in public office.

50. Mr. Garneau knew, or should have known, that his conduct was unlawful, violated the laws of Canada and the United States as previously enumerated, and would injure Ms. Fraser, which it did. In the alternative, Mr. Garneau demonstrated a reckless and conscious disregard for the unlawfulness of his conduct, the injury it could cause Ms. Fraser, and the injury it actually caused them.

51. As a direct result of Mr. Garneau's misfeasance violation of his statutory duty to maintain the integrity of the extraordinary policing powers that the *Railway Safety Act* endowed on CP Railway, Ms. Fraser have suffered the damages that have been delineated in the foregoing parts of this Claim.

CP Police Service Chief Sauvé and former Chief Marchant are liable for misfeasance in public office.

52. The Chiefs of Police are liable for misfeasance in public office. As sworn law enforcement officers, their sole duty was to the administration of justice. However, they knew, or should have known that

CP Railway was threatening the TSB and Mr. Don Crawford with legal action for the latter's public calls for a criminal referral. The Chiefs of Police knew, or should have known, that Mr. Creel was simultaneously, and falsely, reassuring the public and the victims' families that CP Railway was cooperating with all investigations, and that the RCMP was even duty bound to criminally investigate the Field, BC derailment.

53. Although Chief Marchant had retired when CP Railway's legal counsel was threatening the TSB and Mr. Crawford, these actions were part of a broader and persistent chain of conduct that CP Railway had taken to prevent or impede any independent criminal investigation into the Field, BC derailment. Thus, retirement did not absolve Chief Marchant of his ongoing duty as a retired police officer to come forward with information regarding unlawful conduct that began under his watch and continued after he left the company.

54. Both Chief Sauvé and Chief Marchant violated their oaths of office when they unlawfully redirected their police powers from the resolute and impartial administration of justice to the service of CP Railway's efforts to avoid a criminal investigation into how three workers died horrific deaths at the company. Not only did they fail to stop the unlawful conduct at CP Railway, but they both actively sought to use the CP Police Service to shield CP Railway form the glare of law enforcement in Canada and also authorities in the United States where CP Railway has commercial and policing operations and has experienced fatalities and serious injuries in the past.

55. For their roles in abetting and supporting CP Railway's unlawful conduct, former Chief Marchant and Chief Sauvé are liable for misfeasance in public office.

Conspiracy.

The TSB members are liable for conspiracy by unlawful means.

56. Ms. Fox, Ms. Ackermans, Mr. Dittman, Mr. Potter, and Mr. Hincke are each liable for conspiracy by unlawful means. These Defendants unlawfully, actively, and willfully conspired with CP Railway, an entity whose operations they were investigating, to insulate that company from full criminal and regulatory scrutiny in Canada and the United States and to protect CP Railway's

reputation. Ms. Fox, Ms. Ackermans, Mr. Dittman, Mr. Potter, and Mr. Hincke knew that the *CTAISBA* Act did not preclude the TSB or Mr. Don Crawford from making criminal referrals to the RCMP or independent law enforcement. In fact, Ms. Fox had signed the TSB's memoranda of understanding with the RCMP and was aware of the handbook which mandated those very referrals.

57. Ms. Fox, Ms. Ackermans, Mr. Dittman, Mr. Potter, and Mr. Hincke knew, or ought to have known, that their unlawful conduct, as already enumerated in the claim, would cause injury to Ms. Fraser, and such injury did result.

58. As a direct result of Ms. Fox's, Ms. Ackermans', Mr. Dittman's, Mr. Potter's, and Mr. Hincke's unlawful conspiracy, Ms. Fraser has suffered the damages that have been delineated in the foregoing parts of this Claim.

Ms. Patrizia Huot is liable for conspiracy by unlawful means.

59. Ms. Huot is liable for conspiracy by unlawful means. She unlawfully, actively, and willfully conspired with the TSB members and CP Railway, an entity whose operations her agency was investigating, to insulate the company from criminal and full regulatory scrutiny in Canada and The United States, and to protect CP Railway's reputation.

60. Ms. Huot, as a licensed legal professional, knew, or should have known, that the *CTAISBA* Act did not preclude the TSB or Mr. Don Crawford from making criminal referrals to the RCMP or independent law enforcement. Her wrongful and unlawful conduct as already enumerated in this claim, would cause injury to Ms. Fraser. Ms. Huot's actions did in fact injure Ms. Fraser.

61. As a direct result of Ms. Huot's unlawful conspiracy with the other Defendants, Ms. Fraser has suffered the damages that have been delineated in the foregoing parts of this Claim.

Canadian Pacific Railway, Mr. Keith Creel, John Doe, Jane Doe and Other Unknown Persons are liable for conspiracy by unlawful means, or, in the alternative, conspiracy to injure.

62. CP Railway, Mr. Creel, John Doe, Jane Doe and Other Unknown Persons are liable for conspiracy by unlawful means. CP Railway, Mr. Creel, John Doe, Jane Doe, and Other Unknown Persons jointly unlawfully intimidated, threatened, or coopted a public statutory Board and its representatives into fulfilling CP Railway's unlawful demands to thwart any TSB referral of the CP Railway derailment of Train 301 to independent law enforcement. CP Railway, Mr. Creel, John Doe, Jane Doe, and Other Unknown Persons knew, or should have known, that their unlawful conduct, as already enumerated in this claim, would cause injury to Ms. Fraser, and such injury did result.

63. CP Railway, Mr. Creel, John Doe, Jane Doe, and Other Unknown Persons knew, or should have known, that the *CTAISBA* Act did not preclude the TSB or Mr. Don Crawford from making criminal referrals to the RCMP or independent law enforcement. These Defendants also knew or ought to have known that as a public officer and investigator with a public safety mandate, Mr. Crawford had the right to refer *prima facie* evidence of criminality he discovered to independent law enforcement agencies. The CP Railway Defendants also knew, or ought to have known that the *Public Servants Disclosure Protection Act* authorized Mr. Crawford to publicly call for criminal probes after the TSB members had internally impeded any such referral.

64. Furthermore, the CP Railway Defendants, through Mr. Keith Creel, had been publicly insisting that the RCMP was duty-bound to investigate the Field, BC derailment, a position which was consistent with Mr. Crawford's calls for such an investigation. Thus, the CP Railway defendants, knew that their threats against the TSB and Mr. Crawford were unlawful, and their insistence that that the *CTAISBA* Act precluded such a referral were disingenuous.

65. CP Railway, Mr. Creel, John Doe, Jane Doe, and Other Unknown Persons knew, or should have known, that their unlawful conduct as already enumerated in this claim, would cause injury to Ms. Frasers, and such injury did result.

66. In addition, and in the alternative, if CP Railway's, Mr. Creel's, John Doe's, Jane Doe's, and Other Unknown Persons' conduct was lawful, which is not conceded and is expressly denied, the predominant purpose of their conduct was to cause injury to Ms. Fraser, and such injury did result.

67. As a direct result of the CP Railway's, Mr. Creel's, John Doe's, Jane Doe's, and Other Unknown Persons' conspiracy by unlawful means, and/or conspiracy to injure, Ms. Fraser has suffered the damages that have been delineated in the foregoing parts of this Claim.

The CP Railway Chiefs of Police are liable for conspiracy by unlawful means, or, in the alternative, conspiracy to injure.

68. Former CP Police Service Chief Ken Marchant, and current Chief Al Sauvé, are liable for conspiracy by unlawful means. Despite being public officers with the singular duty to uphold the administration of justice, and not to protect the reputation or business interests of their employer, both CP Railway Chiefs of Police vested their loyalty in CP Railway. Both Chiefs made the conscious decision to report to Mr. Creel on operational police matters, including regarding the derailment of Train 301.

69. Chief Sauvé was CP Railway's top police officer when the company's legal counsel threatened the TSB and Mr. Don Crawford with legal action for publicly calling for an independent criminal investigation into the Field, BC derailment. Chief Sauvé knew, or should have known, that his corporate employer was actively attempting to impede a criminal investigation and was leveling threats against public officials to achieve that outcome.

70. Chief Sauvé also knew, or should have known, that Mr. Creel was publicly supporting such an investigation by the RCMP which the company has conceded the CP Police Service is disqualified from conducting with respect to CP Railway. And yet, Chief Sauvé allowed CP Railway to threaten the TSB and Mr. Crawford even though as a statutory police force, the CP Police Service, not CP Railway's corporate leaders, should have been the party engaging the TSB about any potentially criminal matters arising from the Field, BC derailment. The Chiefs of Police were willing and active participants who worked with their corporate superiors to position the CP Police Service as a, if not the, police force of jurisdiction. Thus, they could oust the already reticent RCMP from assuming investigative jurisdiction. This way, CP Railway, working with and through the Chiefs of Police, succeeded in creating a protective cordon of impunity around their role in the Train 301 derailment. This cordon that the Chief of Police created with CP Railway provided a shield that blocked the grave and systemic safety, governance, and policing problems at CP Railway from the proper

scrutiny authorities in the United States, the company's shareholders, customers, and the public.

71. Even though Chief Marchant had retired by the time CP Railway's counsel made the threats against the TSB and Mr. Crawford, still, Chief Marchant was aware of these ongoing going efforts and actively abetted them. His retirement did not absolve him of his ongoing duty to refrain from abetting and taking proactive steps to report unlawful conduct that started during his tenure and continued beyond it.

72. In addition, and in the alternative, if Chief Marchant's and Chief Sauvé's conduct was lawful, which is not conceded and is expressly denied, the predominant purpose of their conduct was to cause injury to Ms. Fraser, and such injury did result.

Section 7 of the *Canadian Charter of Rights and Freedoms.*

The TSB members violated Ms. Fraser's Section 7 Charter rights.

73. Ms. Fox, Ms. Ackermans, Mr. Dittman, Mr. Potter, and Mr. Hincke breached Ms. Fraser's Section 7 right to security of the person under the *Canadian Charter of Rights and Freedoms*, (*The Constitution Act*, 1982, Schedule B to the *Canada Act* 1982 (UK), 1982, c 11) ("*Charter*") when they deliberately, knowingly, and unlawfully hindered an independent criminal investigation into the derailment of Train 301 near Field, BC. As public officers in charge of a federal administrative agency, Ms. Fox, Ms. Ackermans, Mr. Dittman, Mr. Potter, and Mr. Hincke are each subject to the *Charter.*

74. These Defendants are public officers to whom the *Charter* applies. Their actions violated Ms. Fraser's right to security of the person by directly causing Ms. Fraser undue and protracted mental anguish, pain, and suffering that Ms. Fraser continues to experience to this day. Ms. Fox's, Ms. Ackermans', Mr. Dittman's, Mr. Potter's, and Mr. Hincke's violation of Ms. Fraser's Section 7 *Charter* rights were not in accordance with the principles of fundamental justice and the infringement of these rights are not justified under Section 1 of the *Charter*. The Defendants are jointly liable for *Charter* damages to Ms. Fraser pursuant to Section 24(1) of the *Charter*.

Ms. Patrizia Huot violated Ms. Fraser's Section 7 Charter rights.

75. Ms. Patrizia Huot violated Ms. Fraser's Section 7 rights to security of the person under the *Charter* when she deliberately, knowingly and unlawfully hindered an independent investigation into the derailment of Train 301 near Field, BC. As general counsel to a federal tribunal, Ms. Huot is subject to the *Charter.*

76. Ms. Huot violated Ms. Fraser's right to security of the person by directly causing Ms. Fraser undue and protracted mental anguish, pain, and suffering that she continues to experience. Ms. Huot's violation of Ms. Fraser's Section 7 *Charter* right was not in accordance with the principles of fundamental justice. The infringement of was not justified under Section 1 of the *Charter*. Ms. Huot is liable for *Charter* damages to Ms. Fraser pursuant to Section 24(1) of the *Charter*.

Mr. Marc Garneau violated Ms. Fraser's Section 7 Charter rights.

77. Mr. Marc Garneau was a federal cabinet minister and Canada's Minister of Transport when the Field, BC derailment happened, and when Constable Mark Tataryn filed a whistleblower complaint with him. As such, the *Charter* applied to Mr. Garneau.

78. Mr. Garneau was a direct and consequential contributor to the significant and prejudicial delay that the other Defendants engineered to shield CP Railway and its leaders from independent criminal investigation. By wilfully ignoring Constable Tataryn's whistle-blower complaint against CP Railway; failing in his statutory duty under Section 3.1 of the *Railway Safety Act* to properly regulate CP Railway; failing to refer the Field, BC derailment to the RCMP; and proactively disavowing jurisdiction over the company's abuses of its police force, Mr. Garneau created a ministerial cordon of impunity that protected conduct that he knew was unlawful.

79. Further, Mr. Garneau's decision to meet liberally with CP Railway and other railway representatives in 260 meetings and lobbying contacts, either directly or through his staff, while ignoring Ms. Fraser's similar entreaties to engage on how private railway companies were responsible for the tragic loss of lives, has further aggravated Ms. Fraser's mental anguish, pain and suffering. The lack of a paper trail generated from the 260 meetings and lobbying contacts that Mr. Garneau's office

had with CP Railway has similarly eroded Ms. Fraser's trust in public institutions and the transparency and accountability that Mr. Garneau and his Government have consistently promised it would guarantee for Canadians. Mr. Garneau's partiality and undue deference towards CP Railway further aggravated Ms. Fraser's PTSD and mental suffering. Ms. Fraser continues to suffer from often debilitating apprehensions that they will never obtain the full picture of what happened to Dylan or whether all the responsible parties will ever be held accountable

80. Mr. Garneau's violation of Ms. Fraser's Section 7 *Charter* rights was not in accordance with the principles of fundamental justice and their infringement of these rights are not justified under Section 1 of the *Charter*. Mr. Garneau is liable for *Charter* damages to Ms. Fraser pursuant to Section 24(1) of the *Charter*.

Canadian Pacific Railway, Mr. Keith Creel, John Doe, Jane Doe and Other Unknown Persons violated Ms. Fraser's Section 7 Charter rights.

81. CP Railway, Mr. Keith Creel, John Doe, Jane Doe and Other Unknown Persons violated Ms. Fraser's Section 7 rights to security of the person under the *Charter* when they deliberately, knowingly and unlawfully hindered an independent criminal investigation into the derailment of Train 301 near Field, BC. As the owners and overseers of the CP Police Service, a federal, cross-border police force, CP Railway, Mr. Keith Creel, John Doe, Jane Doe and Other Unknown Persons are subject to the *Charter.* Ms. Fraser relies on *RWDSU v. Dolphin Delivery Ltd*., [1986] 2 SCR 573 for this statement of law.

82. CP Railway, Mr. Keith Creel, John Doe, Jane Doe, and Other Unknown Persons at CP Railway violated Ms. Fraser's right to security of the person by directly causing Ms. Fraser undue and protracted mental anguish, pain, and suffering that Ms. Fraser continues to experience to this day. These Defendants' violations of Ms. Fraser's Section 7 *Charter* rights were not in accordance with the principles of fundamental justice and their infringement of these rights are not justified under Section 1 of the *Charter*. CP Railway, Mr. Keith Creel, John Doe, Jane Doe's and Other Unknown Persons are liable for *Charter* damages to Ms. Fraser pursuant to Section 24(1) of the *Charter*.

Relevant rules and enactments relied on.

83. Ms. Fraser relies on the following: the *Railway Safety Act*, RSC 1985, c 32 (4th Supp), the *Canadian Transportation Accident Investigation and Safety Board Act*, SC 1989, c 3, the *Criminal Code*, RSC 1985, c C-46, *the Canadian Charter of Rights and Freedoms*, the *Financial Administration Act*, RSC 1985, c F-11, the *Court Order Interest Act*, RSBC 1996, c.79, the *Public Servants Disclosure Protection Act*, SC 2005, c 46, *Victims of Crime Act*, RSBC 1996, c 478, the *Canadian Victims Bill of Rights*, SC 2015, c 13, s 2, the *Ontario Securities Act*, R.S.O. 1990, c.S5, the *New York Stock Exchange Rules* - Amended (NYSE-2021-61), *The Foreign Corrupt Practices Act of 1977* 15 U.S.C. §§ 78dd-1, et seq, the *Securities and Exchange Act 1934* 15 U.S.C. § 78a et seq, *The United States-Mexico-Canada Agreement* (USMCA) July 1 2020, the *Securities Act*, R.S.O. 1990, c. S.5, the *Constitution of the United States* 1788, and the *Securities & Exchange Act* of 1834.

Plaintiff's address for service:	Runyowa Law ATTN: Mr. Tavengwa Runyowa Royal Bank of Canada Building -7th Floor 2010 – 11th Avenue Regina, SK S4P OJ3
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E-mail address for service:	law@runyowa.com
Place of trial:	Vancouver, British Columbia
The address of the registry is:	800 Smithe Street, Vancouver, BC V6Z 2El

Date: 10 November 2021

For: Signature of Tavengwa Runyowa
(Lawyer for Plaintiffs)

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONSICE SUMMARY OF NATURE OF CLAIM:

The Plaintiff's claim seeks to hold the Defendants jointly and severally liable for their actions and omissions surrounding the communications between CP Railway and the TSB regarding Don Crawford's call for independent police to investigate the Field, BC derailment of Train 301 on February 4, 2019.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

□ a motor vehicle accident
□ medical malpractice
□ another cause
□ contaminated sites
□ construction defects
□ real property (real estate)
□ personal property
□ investment losses
□ the lending of money
□ an employment relationship
□ a will or other issues concerning the probate of an estate
☑ a matter not listed here
□ the provision of goods or services or other general commercial matters

Part 3: THIS CLAIM INVOLVES:

□ a class action
□ maritime law
□ aboriginal law
□ constitutional law
□ conflict of laws
☑ none of the above
□ do not know

Part 4: Enactments

□ Builders Lien Act
☑ Court Order Interest Act
□ Insurance (Motor Vehicle) Act
□ Insurance (Vehicle) Act
□ Motor Vehicle Act
□ Occupiers Liability Act
□ Supreme Court Act
□ Wills Variation Act
☑ Other

Attachment 25



CP IS PROUD TO SPONSOR THE 2019 CACP CONFERENCE

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CP

MEDIA ADVISORY

FOR IMMEDIATE RELEASE

August 9, 2019

114th Canadian Association of Chiefs of Police Annual Conference Schedule of Media Conferences and Releases

CALGARY, ALBERTA – The Canadian Association of Chiefs of Police (CACP) will be holding its 114th Annual Conference in Calgary, Alberta from August 11th to 14th, 2019. The conference is co-hosted with the Calgary Police Service.

The following provides a schedule of the media conferences that will take place and of the news releases to be issued during this period and to be made available at www.cacp.ca. (subject to change):

Sunday, August 11th, 2019

- **News Release – CACP/Motorola Solutions Awards of Excellence in Emergency Preparedness**
  - **Time:** 19:00 (Mountain Daylight Time)
  - **Purpose:** Announcement of the 2019 award recipients.

- **News Release – CACP Recognition Awards**
  - **Time:** 19:00 (Mountain Daylight Time)
  - **Purpose:** Announcement of the 2019 award recipients.

Monday, August 12th, 2019

- **News Release – CACP Award of Excellence for Combating Organized Crime**
  - **Time:** 10:00 (Mountain Daylight Time)
  - **Purpose:** Announcement of the 2019 award recipients.

- **Media Conference: Kick-off of the CACP's 114th Annual Conference – From the Top: A Strategic HR Approach**
  - **Time:** 10:15 a.m. (Mountain Daylight Time)
  - **Location:** Hyatt Regency Hotel Calgary, Neilson 2 Room
  - **Purpose:** To discuss the conference theme and objectives
  - **Speakers:** Chief Constable Adam Palmer, President of the CACP, and Chief Mark Neufeld from the Calgary Police Service
  - **News release:** To be issued following the media conference.

…/2

- **Media Tour of the CACP Policing Trade Show:**
  - **Time:** 10:45 (Mountain Daylight Time)
  - **Location:** Telus Convention Centre, Exhibition Hall C/D
  - **Purpose:** Get a glimpse of the latest products and services available to police services across Canada by visiting 150+ exhibits
  - **Escorts:** Natalie Wright, CACP Communications Advisor, and Lindsay Nykoluk, Public Affairs/Media Relations Unit, Calgary Police Service

- **News Release – New CACP Board of Directors**
  - **Time:** 17:00 (Mountain Daylight Time)
  - **Purpose:** Introduce the members of the Board of Directors of the CACP for 2019-2010.

Tuesday, August 13th, 2019

- **News Release – 2019 CACP Resolutions**
  - **Time:** 09:00 (Mountain Daylight Time)
  - **Purpose:** Introduce the resolutions adopted by the CACP membership during the Annual General Meeting on Monday, August 12th, including background information.

- **News Release – CACP Traffic Safety Awards**
  - **Time:** 12:00 (Mountain Daylight Time)
  - **Purpose:** Announcement of the recipients of the 2019 *CACP National Police Award for Traffic Safety* and the *CACP Lifetime Achievement Award for Traffic Safety*.

- **News Release – CACP International Policing Award**
  - **Time:** 13:45 (Mountain Daylight Time)
  - **Purpose:** Announcement of the 2019 recipient

Wednesday, August 14th, 2019

- **Media Conference: Annual Conference Wrap-up**
  - **Time:** 13:45 (Mountain Daylight Time)
  - **Location:** Hyatt Regency Hotel Calgary, Neilsen 2 Room
  - **Purpose:** Introduce the CACP's new vision statement, updated mission, pillars, national strategic policing priorities, action plan and any key highlights following the completion of the Annual Conference.
  - **Speaker:** CACP President, Chief Constable Adam Palmer
  - **News release:** To be issued following the news conference.

-30-

For further information or to arrange a media interview, please contact:

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Attachment 26

August 19, 2020 **BY EMAIL & COURIER**

Chief Constable Adam Palmer
President: The Canadian Association of Chiefs of Police
C/o Vancouver Police Department
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Vancouver, B.C.
Canada V5K 5J5

Email: cacp@cacp.ca

ATTN: Deputy Chief Constable Palmer, Deputy Chief Constable Howard Chow and Deputy Constable Norm Lipinski.

RE: Inquiry into the jurisdiction of Police Services across Canada to investigate railway accidents, the interaction between Public and Private Police services in Canada, and the willingness of CACP to assist in lobbying to amend the *Railway Safety Act*.

We are writing to you in your capacity as the President of the Canadian Association of Police Chiefs (CAPC). We have copied Deputy Chief Constable Howard Chow and Deputy Constable Norm Lipinski in their capacities as co-chairs of the CAPC's Law Amendments Committee.

Our firm represents Tara Jijian, Lori Desrochers, and Kaity Timmerman, whose loved ones, Jaime Jijian and Kevin Timmerman, died while working at Canadian Pacific Railway (CP Rail) and Canadian National Railway (CN Rail) properties, respectively. Our clients have actively sought answers regarding the deaths of Jamie and Kevin, but both CP Rail and CN Rail (and their respective police forces) have persistently refused to provide any information regarding the deaths. Further, the RCMP, Regina Police, and Saskatoon Police all declined to investigate the workplace deaths of Jamie Jijian and Kevin Timmerman, in deference to CP Police and CN Police. Before presenting our questions and requests to you, we will provide some context regarding the Canadian National Police Service, the Canadian Pacific Police Service, and the impact of Sections 44 and 44.1 of the *Railway Safety Act* on railway-related policing

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in Canada. We have the legal and evidentiary material to support the following background and are prepared to share it upon request.

Railway Safety Act Concerns

Our concerns regarding CN Police and CP Police are entrenched in Sections 44 and 44.1 of Canada's *Railway Safety Act* (the Act). See the Appendix to this letter for the text of the provisions. These provisions of the *Act* allow Canada's railway companies to create and control their own private police forces. These police forces are more than enhanced security units. They have all the powers of other public police forces such as the RCMP. However, their officers are full employees of the company; answer directly to its private corporate management. The officers can be dismissed without the companies seeking the permission of the courts that appointed them. Further, unlike police forces such as the RCMP and your other members, the railway police have no independent oversight body with governmental or civilian representation. The railway police services are wholly owned divisions of the railway companies and are not independent from them.

Although this situation is less of a concern when the railway police forces attend to policing incidents such as the theft of railway property, the problem arises when deaths, derailments, explosions and oil spills may be the direct result of company policy, action, or inaction. Although the private railway police officers swear oaths to uphold the law, as a practical matter, it is not realistic for a junior constable to investigate and question the senior management and corporate board that employs them.

For example, the 2019 Field, British Columbia derailment that killed three CP Rail workers and the recent derailment that spilled 1.2 million liters of oil in Guernsey, Saskatchewan, raise questions about the railway company's potential legal liability. However, when CP Police Service has primary, exclusive, or overlapping jurisdiction in relation to public police forces, this raises questions about whether thorough, fair, and independent investigations are being conducted into these human and environmental tragedies. To date, the RCMP has not actively investigated railway deaths to determine whether any criminal charges are warranted under the *Criminal Code*, including under the *Westray* amendments to the *Code*. Despite the hundreds of railway-related deaths across Canada over the last decade, and the numerous derailments and other incidents, the RCMP and other provincial and municipal police forces have deferred to the railway companies' own police forces.

With the exception of Lac Mégantic, there have been few, if any, independent investigations, criminal charges, or prosecutions of railway companies and their senior leadership. This is troubling especially given that the Transport Safety Board (TSB) reported 1172 railway related incidents in 2018 alone, a 7% increase over 2017 and a 13% increase from the 5-year average of 1035. The TSB also reported 57 rail-related deaths in 2018. It is statistically improbable that none of these incidents necessitated charges.

This outcome is not surprising given the railway companies control and employment of the very police officers who report to the senior management of the railway companies.

Clarifications we seek from the CACP.

We would like to be clear that we are not asking the CACP to become involved in the on-going litigation regarding Kevin's and Jamie's deaths. However, the CACP can provide clarity on the following questions regarding how its member police services interact with the private railway police services:

1. Are the CN Police Service and CP Police Service members of your organization?

2. Do the CACP member Police Services have any jurisdiction to investigate railway deaths, derailments, and other disasters? If so, is this jurisdiction concurrent, overlapping, or subordinate to the jurisdiction of the railway police services such as CP Police Service and the CN Police Service?

   > Context: Under Section 44(1)(3) of the *Railway Safety Act*, the railway police forces, including the CP Police Service and the CN Police Service, have jurisdiction within 500 meters of property that the railway company owns, possesses, or administers.

   While we understand that cooperation between police forces is common, we are interested in which police force takes precedence or exclusive jurisdiction over any such investigations.

3. Do CAPC members or the organization as a whole have formal or informal policies of handing over investigations regarding **railway worker** injuries, deaths, or railway disasters to the relevant railway police forces?

4. Do CACP members or the organization as a whole have formal or informal polices of handing over investigations regarding the injuries, deaths of **members of the public**, or railway disasters, to the relevant railway police forces?

5. Do CACP member Police Services (apart from railway police force, if they are members) have similar powers to arrest and charge persons for alleged offences relating to railway property, even if the alleged offender is not on the property and did not commit the alleged offence within 500m of railway property?

Context: Section 44(4) of the *Railway Safety Act* extends the railway polices' jurisdiction beyond the physical 500m on either side of railway property. The *Act* extends the railway police jurisdiction to offences that relate to the railway context, even if the person was not arrested in the area, or the alleged offence did not occur in the area. We would like to know whether the CACP member Police Services have identical, overlapping, concurrent, or any jurisdiction over such situations, or whether they are subordinate to the railway police under the *RSA*.

6. Sudden and/or violent deaths in Canada cannot be presumed to preclude foul play or criminal conduct at the outset. To your knowledge, when a CACP member Police Service (apart from railway police) receives a report of a death on railway property, as a matter of policy, practice, or law, do your members routinely investigate these deaths to exclude foul play or criminal negligence?

7. Do the CACP member Police Services' (apart from railway police) have the jurisdiction to mount criminal investigations under Sections 217.1, 22.2, 220, 221, or any other provisions of the *Criminal Code* for matters arising within 500m of railway property, or relating to matters that arose from railway property as set out under Section 44(4) of the *Railway Safety Act*?

8. Do the CACP's member Police Services have officers or investigators who are specifically trained in the investigation of industrial incidents and railway related incidents in particular?

   Context: This question goes beyond the investigation of criminality that happens on railway property (e.g. one worker assaulting another). We are concerned with the CACP Member Police Services' technical capacity to investigate industrial incidents to distinguish between true "accidents" and criminal acts (including criminal negligence) that causes injury, death, threats to public safety and environmental damage.

   Note that we are not referring to regulatory investigations such as those conducted by Transport Canada, the Transport Safety Board or occupational health and safety authorities. None of these investigations can give rise to criminal proceedings under the law. We are interested in criminal investigations as contemplated under the Westray amendments to the *Criminal Code* (Section 217.1) or related provisions such as Sections 22.2, 220, and 221. Such industrial incidents can be highly technical in nature.

The scenes of the railway incidents may not immediately indicate the role of criminal negligence or foul play as is often evident in crimes that most public police forces are engaged in. Typically, specially trained investigators with applicable forensic experiences are required to properly investigate complex industrial incidents.

We know that numerous police departments in British Columbia signed a memorandum of understanding with the RCMP and WorkSafe BC to provide specialized investigations services for such complex industrial accidents. Where founded, these investigations could lead to criminal referrals to the Attorney General of BC. However, this is only for British Columbia. We would like to know whether such capabilities exist in other jurisdictions in which your members operate.

9. If it is apparent that a railway death, injury, explosion, spill, or derailment may have been the outcome of corporate misfeasance, do CACP member Police Services (apart from railway police, if they are CACP members) have the authority to claim primary or exclusive jurisdiction over the investigation from the railway police services that answer to the railway companies?

10. If a railway police officer is alleged to have committed a criminal offence while engaged in their duties, do the CACP member Police Services' have the authority to investigate that potential crime? Have any CACP members ever conducted such investigations?

11. If a railway company own and controls its own police such as CP Rail and CN Rail, do the CACP member Police Services' still have the jurisdiction to investigate that **company**, its executives, board, or employees for potential *Criminal Code* offences? Have any CACP member Police Services ever done so?

12. When railway police request the help of CACP member Police Services' in carrying out tasks such as dealing with protests, jailing or transporting persons in custody, do the railway companies that control the police services pay the member Police Services for that service?

13. If a member of the public requests a CACP member Police Services to investigate a death, derailment, environmental disaster, or serious injuries that were allegedly caused by the railway company, its internal policies, or actions, do your member Police Services have the jurisdiction to initiate that investigation and without the involvement of the company's railway police forces?

We understand that the CACP is not a monolithic organization which imposes policies upon its members. However, any answers the CACP can provide to the above queries will be appreciated, including the CACP's formal position on whether private railway corporations should control police forces with the same public powers that your members exercise.

CACP and Amending the *Railway Safety Act.*

The mandate of the CACP states that: "The Association is dedicated to the support and promotion of efficient law enforcement and to the protection and security of the people of Canada". In keeping with this commitment, we request that the CACP joins us in advocating to the Federal Government and Parliament of Canada the following reforms to the *Railway Safety Act*:

1. The amendment of the *Railway Safety Act* so that Canadian railway companies cannot own and control their own police forces with full public powers. This reform will bring the RSA in line with the principle of police independence. Police forces should not answer to private corporations (CN Rail and CP Rail) both of which are controlled, at least in part, by non-Canadian management, shareholders, and boards of directors.

   The CEO of CP rail, Mr. Keith Creel, is an American citizen. About half the board of directors of CN Rail are also American citizens. The largest single shareholder in CN Rail is Cascade Investment LLC, the private investment vehicle of Mr. Bill Gates. The issue is not foreign participation in Canadian corporate life. The problem is the private ownership, control, or undue influence of federal Canadian police forces by private foreign persons and entities.

   We are not currently asserting that these foreign persons and entities have done anything wrongful with respect to the railway police forces. However, at the very least, that ownership, control, and influence alone is inconsistent with the principle of police independence.

2. To advocate for the creation of a new, independent, Public Railway Police of Canada, still funded by the railway companies but fully controlled by an independent oversight commission with civilian, government, and railway worker representation.

3. To advocate for a fully funded team of independent railway safety experts from within and outside of Canada to conduct criminal investigations into all railway-related deaths of Canadians in the past ten years, including those of Jamie Jijian and Kevin Timmerman.

Conclusion

We ask you to advocate for the above actions by challenging the federal government and Parliament to promote the necessary legislative reforms. Private railway companies must not be allowed to police themselves. Corporate controlled police forces threaten the Rule of Law and provide impunity that encourages unsafe workplace practices.

We look forward to hearing from you,

Tavengwa Runyowa

Tavengwa Runyowa
(Counsel for Tara Jijian, Lori Desrochers, and Kaity Timmerman)

Cc by courier: Deputy Chief Constable Howard Chow
The Canadian Association of Chiefs of Police
Law Amendments Committee
C/o Vancouver Police Department
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Cc by courier: Deputy Chief Constable Norm Lipinksi
The Canadian Association of Chiefs of Police
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C/o Delta Police Department
4455 Clarence Taylor Crescent
Delta, BC V4K 3E1.

APPENDIX ONE

The relevant sections of the *Railway Safety Act.*

Sections 44 and 44.1 of the *Railway Safety Act* read as follows:

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

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.

Power to take persons before a court

The police constable may take a person charged with an offence under Part III of the *Canada Transportation Act*, or any law referred to in subsection (1), before a court that has jurisdiction in such cases over any area where property owned, possessed or administered by the railway company is located, whether or not the person was arrested, or the offence occurred or is alleged to have occurred, within that area.

Court's jurisdiction

The court must deal with the person as though the person had been arrested, and the offence had occurred, within the area of the court's jurisdiction, but the court may not deal with the person if the offence is alleged to have occurred outside the province in which the court is sitting.

Dismissal or discharge of police constable

A superior court judge referred to in subsection (1) or the railway company may dismiss or discharge the police constable and the dismissal or discharge terminates the powers, duties and privileges conferred on the constable by this section.

Procedures for dealing with complaints

44.1 (1) If one or more police constables are appointed with respect to a railway company, the railway company must

(a) establish procedures for dealing with complaints concerning police constables;

(b) designate one or more persons to be responsible for implementing the procedures; and

(c) designate one or more persons to receive and deal with the complaints.

Procedures to be filed with Minister

(2) The railway company must file with the Minister a copy of its procedures for dealing with complaints and must implement any recommenda commendations concerning how the procedures are to be made public.

Attachment 27

Re: CACP and Jurisdiction over Railway Related Matters

Tavengwa Runyowa <law@runyowa.com>

Wed 2020-09-09 2:54 PM

To: Peter Cuthbert <peter.cuthbert@cacp.ca>

Attn: Mr. Cuthbert,

I received your email below. The CACP's refusal to get involved in any efforts to end corporate controlled railway police forces is on the record, and amounts to an endorsement of the principle. This is inconsistent with the CACP's mandate as stated on the CACP website: "'safety and security for all Canadians through innovative police leadership".

If the security of all Canadians matters to the CACP, your association should at least be concerned about the hundreds of railway-related deaths that required criminal investigations but that your members have deferred to the very railway companies that needed to be investigated.

The CACP's response to our letter is also inconsistent with the first and third sub-parts of CACP's "Advocacy" Strategic Pillar as provided on the CACP's website, which states:

1. We believe in advancing our profession and to promoting trust and legitimacy in our police services.
3. We counsel and work with government agencies to advance legislation, regulations and policies that support crime prevention, facilitate effective investigations, solve problems, and support a victim-centered and trauma-informed approach.

It does not promote public trust and legitimacy in the CACP's members when their umbrella organization expresses indifference towards corporatized policing and the numerous victims who have died on the railways. Nor does the CACP's response to our letter reflect an organization that is sincerely working to "facilitate effective investigations". As with the other quotes on the CACP's website, this appears to be a slogan than a bona fide commitment to ensuring that police investigations are effective in every context, including in the railways context.

The CACP appears unaware about how many families have been devastated and left with no answers about how their loved ones died on the railways. We urge the CACP to reconsider its refusal to seek reforms to private railway policing because your association's inaction would amount to an endorsement of the status quo. As more Canadians learn about the privatized policing on our nation's railways and the CACP's indifference to it, public confidence in your association and stated goals will be seriously undermined.

Further, beyond seeking the CACP's involvement in de-privatizing law enforcement in the railway context, our letter also asked the CACP a list of questions that your response below does not address. As the representative association of public police forces that have the duty to be transparent, it is troubling that the CACP would decline to answer the most basic questions that citizens are entitled to know about their police forces.

For example, through your response, is the CACP stating that it cannot disclose:

1. Whether or not the CP Police and CN Police services are members of the CACP? Is that a secret?
2. Whether the CACP members have jurisdiction over railway incidents? Is that a secret?
3. Whether your members ever investigate railway incidents? Is that a secret?
4. Whether your members have any training in investigating railway incidents? Is that a secret?
5. Whether your members endorse the idea of deferring criminal investigations to police forces that are owned and controlled by the companies that need to be investigated? Is that a secret also?

These questions go to the heart of law enforcement, a public function whose basic structures and policies should be a matter of open and candid disclosure. Your members are funded through taxpayer funds. In an open, democratic society where the rule of law is supposed to govern, it is troubling that Canada's police chiefs, the top law enforcement officers in the country, would proactively avoid responding to citizen requests about their policing powers and jurisdiction.

Again, we ask for the CACP's response to the questions we asked in our letter of August 19, 2020. Canadians have the right to know the powers and obligations of the police forces that are supposed to serve and protect them.

We look forward to your response.

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From: Peter Cuthbert <peter.cuthbert@cacp.ca>
Date: Wednesday, September 9, 2020 at 1:49 PM
To: Tavengwa Runyowa <law@runyowa.com>
Cc: Peter Cuthbert <peter.cuthbert@cacp.ca>
Subject: CACP and Jurisdiction over Railway Related Matters

Attention …..Travengwa Runyowa

On behalf of the President of the Canadian Association of Chiefs of Police (CACP) , Chief Bryan Larkin and the Co Chairs of the CACP Law Amendments Committee , DC Norm Lipinski and DC Howard Chow , I wish to confirm receipt of your correspondence , dated Aug. 19, 2020 concerning the above subject matter . The Association have consulted with our legal advisers and I am sorry to advise you that the CACP have no intent in getting involved in this private litigation nor will be answering any of the proposed questions.

Sincerely:

Peter Cuthbert
Interim Executive Director
CACP

Attachment 28

March 2, 2021 **– BY EMAIL –**

Chief Bryan M. Larkin
President, The Canadian Association of Chiefs of Police
Email: cacp@cacp.ca

Chief Constable Adam Palmer
Former President, The Canadian Association of Chiefs of Police
Email: cacp@cacp.ca

Director Peter Cuthbert
Interim Executive Director, The Canadian Association of Chiefs of Police
Email: peter.cuthbert@cacp.ca

Deputy Chief Constable Howard Chow
Chief Constable, Vancouver Police Department
CACP Law Amendments Committee

Deputy Constable Norm Lipinski
Chief Constable, Surrey Police Service
CACP Law Amendments Committee

ATTN: Chief Bryan Larkin, Mr. Peter Cuthbert, Deputy Chief Constable Palmer, Deputy Chief Constable Howard Chow, and Deputy Constable Norm Lipinski.

RE: Request for the Canadian Association of Police Chiefs to terminate the membership of the Canadian Pacific Railway Police Service and the Canadian National Railway Police Service and other requests.

On August 19, 2020, I wrote a letter to Chief Constable Palmer, in his capacity as the President of the Canadian Association of Chiefs of Police ("CACP"). I also copied Chief Constables Chow and Lipinski to that letter, which I wrote on behalf of my clients, Tara Jijian, Lori Desrochers and Kaity

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Timmerman, whose loved ones, Jamie Jijian and Kevin Timmerman, died while working for the Canadian Pacific Railway ("CP Railway") and Canadian National Railway ("CN Railway"), respectively (**Attachment 1**). I also represent Pamela Fraser, whose son Dylan Paradis, died in the Field, BC derailment of CP Railway Train 301 near Field, BC on February 4, 2019. Additionally, I also represent Eva Dockrell, Edward Dockrell, and Heather Dockrell, who are, respectively, the mother, brother, and sister of Andrew Dockrell. Andrew also died in the CP Railway Train 301 derailment near Field, BC. I have included Chief Larkin in this correspondence as he is now the President of the CACP.

For reasons we elaborate below, the purpose of this letter is to ask the CACP to take specific steps regarding the participation of the CN Police, CP Police, and private railway companies in the CACP. We also request the CACP to advance specific reforms the end the corporate ownership, control, and influence over private railway police forces.

As you know, Sections 44 and 44.1 of the *Railway Safety Act* empower Canada's private railway companies own, operate, and control the CP Police Service and CN Police Service, respectively. Although you declined to confirm these companies' membership in the CACP, we understand that both corporate police forces are members of your association.

In our August 19, 2020 letter, we asked the CACP a number of questions about your organization's mandate. Our questions focused on your members' jurisdiction over railway policing. We also raised the issue of police independence as it pertains to the CN Police and CP Police, and the CACP's working relationship with both police services (in light of the fact that they are owned by private corporations). We also raised concerns about how historically, CACP member police forces have invariably deferred the criminal investigation of railway fatalities, serious injuries, and environmental disasters involving CP Railway and CN Railway to these private companies' own police forces. We further provided you with statistics of the numerous derailments, fatalities, and other incidents which despite their staggering numbers, have never been investigated by any independent, public police force (including CACP members).

In our August 19, 2020 letter, we also posed several questions regarding the training that the CACP member police forces provide their officers regarding the investigation of potential workplace criminality (Westray laws). Despite these general questions that had nothing to do with the particulars of the Field, BC disaster, Mr. Peter Cuthbert, the CACP's Interim Executive Director, replied by email on September 9, 2020 stating (**Attachment 2**):

> "On behalf of the President of the Canadian Association of Chiefs of Police (CACP), Chief Bryan Larkin and the Co-Chairs of the CACP Law Amendments Committee, DC Norm Lipinski and DC Howard Chow, I wish to confirm receipt of your correspondence, dated Aug. 19, 2020 concerning the above subject matter. The Association have consulted with

our legal advisers and I am sorry to advise you that the CACP have no intent in getting involved in this private litigation nor will be answering any of the proposed questions."

On the same day, I replied to Mr. Cuthbert by email (**Attachment 2**). In my email, I raised our concerns about how the CACP's response contradicted your Association's self-declared mandate to promote trust and legitimacy in its police services, to work with government agencies to "facilitate effective investigations", and to support a "victim-centred and trauma-informed approach". We did not ask the CACP to get involved in any litigation but to simply answer questions that public police forces have an obligation to address in response to the citizens they serve. This includes the nature, extent, and limits of the CACP police forces' jurisdiction over specific subject matter (railway policing). Neither Mr. Cuthbert nor anyone at the CACP replied to my September 9, 2020 email.

My clients' current requests to the CACP.

This letter is to deliver the following requests to the CACP on behalf of my clients:

1. That the CACP terminates the membership, partnership, or collaboration of the CN Police Service and CP Police Service in the CACP.

2. That the CACP releases a public statement:

    a. Calling on the Canadian Government and Parliament to repeal of Sections 44 and 44.1 of the *Railway Safety Act* which empower private railway companies to own and control police forces with criminal law enforcement powers.

    b. Committing to ensure that notwithstanding any repeal of Sections 44 and 44.1 of the *Railway Safety Act*, the CACP members of local jurisdiction will work with the RCMP to independently investigate every railway death and serious injury without the involvement of the CN Police and CP Police.

    Given that CN Railway and CP Railway are default suspects in workplace incidents that cause injuries and fatalities, the CACP members must publicly commit to ensuring that the CN Police and CP Police play no role in criminally investigating any of these deaths, serious injuries, and environmental disasters involving CN Railway and CP Railway. Further, my clients request that the CACP publicly commits to ensuring that its member police forces shall comply with the victim notification requirements of the federal *Victims Bill of Rights Act* and provincial victims of crime statutes.

c. That the CACP discloses how much, in cash or in kind, CP Railway gave to the CACP to sponsor the CACP's 2019 annual conference, **and** whether this was the first financial or other material contributions that CP Railway or CN Railway have ever made to the CACP. If CP Railway's 2019 sponsorship was not the first financial or in-kind contribution, we ask that the CACP discloses all additional contributions that it has received from CP Railway or CN Railway.

In the attached Appendix, we elaborate on why the steps we request from the CACP are necessary under the current circumstances.

Thank you,



Tavengwa Runyowa

APPENDIX: REQUESTS FOR THE CANADIAN ASSOCIATION OF CHIEFS OF POLICE TO TERMINATE THE MEMBERSHIP OF, AND COLLABORATION WITH, THE CN POLICE SERVICE AND THE CP POLICE SERVICES.

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Emergent concerns about conflicts of interest undermine public confidence in the CACP and its member police forces.

The CP Police and CN Police's memberships in the CACP gives rise to serious conflicts of interest and pose a serious legitimacy problem that the CACP must address.

First, it is concerning that in the same year that CP Railway, which should have been the default suspect in the Field, BC disaster of 2019 under Westray laws, announced that it was "proud to sponsor" the CACP's 2019 conference (**Attachment 3**).[1] In that same year, the CP Police and CN Police also played a central role in shaping the Collaborative Protocol for Rail Death Investigations.[2] In any other circumstance, the CACP would not accept monies from, or collaborate with, parties that are, or are likely to be, suspects in criminal investigations that its members are responsible for. This expectation applies to regular citizens and every other legal entity. Railway companies should not be exempt from this core tenet of the rule of law.

At a minimum, the CP Railway sponsorship of the CACP conference and both CN Railway and CP Railway's involvement in creating the Collaborative Protocol raise questions about an apparent conflict of interest. It also raises the concerns that this state of affairs has damaged the integrity of the justice system and created a vacuum of criminal accountability in the railway sector. These concerns are exacerbated by the fact that both CP Police and the CN Police often hire former police officers, many of whom previously worked for CACP member police forces. This situation exacerbates the serious conflict of interest when CACP members must investigate some of their former employees, colleagues, and the private companies these former affiliates worked for.

The above concern is compounded by the fact that the RCMP initially declined to investigate the Field, BC disaster when it happened in 2019, the same year of CP Railway's sponsorship and the creation of the Collaborative Protocol railway incident investigations that the company involved in creating. The RCMP only agreed to investigate the Field, BC derailment almost two years later, after unrelenting media coverage and pressure from political leaders and the deceased workers families. At the very least, there is an apparent conflict of interest in CP Railway, a private corporation with a history of fatalities and serious injuries, sitting at the CACP table and sponsoring/influencing an organization whose members are mandated to investigate the company's potential criminal liability.

Second, given that the CN Police Service and the CP Police Service are legally indistinct from their parent companies, this means that both CN Railway and CP Railway, as private, for-profit corporations, are CACP members. Both corporations are sitting at the table and playing a central role in shaping Canada's approach to railway policing which includes the policing of railway corporations in Canada.

[1] https://cacp.ca/index.html?asst_id=1976
[2] https://www.blueline.ca/rail-death-investigations-summit-rolls-out-collaborative-protocol/

While a collaboration with railway police may seem like a reasonable approach on its face or to the outside viewer, the fact that these private police services are legally indistinct from their parent companies makes their collaboration with public police forces untenable.

Third, CN Police and CP Police's membership or participation in the CACP is also troubling because historically, CACP members such as the RCMP, Regina Police, and Saskatoon Police have invariably deferred jurisdiction of railway death investigations to the very corporate police forces that work for the railway companies. These private police forces' memberships in the CPCP represents and entrenches the resulting problem of private railway corporations criminally investigating and exonerating themselves. The CN Police and CN Police memberships in the CACP demonstrate that the CACP members have viewed, and continue to view, these privately controlled police forces (and their corporate parents) as colleagues. Thus, when public CACP member police forces attend the scenes of railway deaths, serious injuries, explosions, or toxic spills, they engage their CN Police and CP Police counterparts. Public CACP members treat these private polce forces as partners to defer jurisdiction to, rather than the agents of the prime suspects in a criminal investigation. The persistence of this problem has contributed to the invariable pattern of the CN Police and CP Police asserting, or accepting, jurisdiction over their own employer's or parent company's potentially criminal conduct. The acquiescence of public CACP members to these private police forces has systemically entrenched the violation of the principle of police independence.

Fourth, the CACP's response to our communications and questions regarding the CN Police and CP Police's membership in the CACP raise further concerns. The CACP's refusal to answer the most basic questions, including about who its members are, elevates the concern that the CACP is providing unconditional protection from scrutiny to its CN Police and CP Police colleagues, as well as the private corporations that own them.

The CACP is Canada's highest law enforcement association and should represent the highest levels of integrity, transparency, and commitment to the rule of law. Canadians expect the CACP and its members to rigorously protect the principle of police independence and to avoid formal collaborations with entities that the CACP's member police forces are legally required to investigate.

There have been other railway worker deaths before and after Field, BC, a period in which the CP Police and CN Police have collaborated with the CACP to develop policies and procedures regarding railway investigations in which their parent corporations had vested interests. It should be easy for the CACP to take a firm stance to terminate the CP Police and CN Police's membership and/or participation in the organization. The CACP has previously taken public positions on many topics of public interest. It is troubling that the CACP would decline to publicly commit to ensuing that railway incidents are independently investigated and are not tainted by the participation of the presumptive suspects with personal stakes in the outcomes of those criminal investigations.

Terminating the membership and/or collaboration that allows CN Railway and CP Railway to influence the very railway policing framework that they are subject to is a critical step to eliminating conflicts of interest and safeguarding the integrity of the justice system. Such a step is necessary to reassure the Canadian public that the CACP is dedicated to guaranteeing that rule of law applies equally to everyone in Canada's criminal justice system. It is also necessary for the CACP to take such a step to ensure that no person or entity can criminally investigate themselves or exercise undue influence over policies that affect their private interests. Therefore, it is crucial for the CACP to take a decisive position to ensure that the CN Police and CP Police membership and involvement in the CACP are terminated, notwithstanding a successful constitutional challenge to, or repeal of, Sections 44 and 44.1 of the *RSA*.

After the repeal of Sections 44 and 44.1 of the *Railway Safety Act*, CN Railway and CP Railway will have effective security alternatives for protecting their operations, workers, and the public.

CN Railway, CP Railway, and any other railway company that may seek to create a private police force under the *Railway Safety Act* can still effectively secure their operations without owning or controlling private police forces.

The private railway companies have argued that they need private police forces because public police forces are stretched and cannot adequately react to incidents within their jurisdiction. They have even argued for the expansion of their policing powers.[3] However, there are **two better and constitutionally compliant alternatives** that ensure the railway companies can still safeguard their operations without having the power to criminally investigate themselves.

The Private Security alternative to corporate-owned railway police forces.

The first alternative to CN Railway and CP Railway owning their own police forces is for them to convert these forces into private security companies that have not criminal law jurisdiction. After transforming their police forces into private security companies, CN Police and CP Police will retain the powers necessary to secure their parent companies' operations as well as protect the workers and the public. However, they will no longer have the authority to conduct criminal investigations, lay criminal charges, bring suspects before the courts, or exercise other strictly criminal law enforcement powers. These functions will be left to public police forces and prosecutors. This will eliminate the emergent concerns regarding conflicts of interest delineated above.

This private security alternative has proven to be a sufficient and satisfactory arrangement for every other corporation that owns and operates sensitive infrastructure that needs protection from

[3] https://tc.canada.ca/sites/default/files/migrated/cnrpa_rsa_review_dec_2017_2nd_submission.pdf.

trespass, sabotage, theft, and other threats. Further this has proven to be an effective arrangement for many other railways in Canada. There is no reason why CN Railway and CP Railway are exceptional and require criminal enforcement powers. As elaborated below, under Canadian laws, private security companies have all the powers to conduct the **necessary** protective functions without wielding the criminal law powers.

For example, private security guards across Canada can wield significant powers to arrest trespassers, act to preserve lives, prevent crimes in progress, protect private assets, restrain belligerent persons, and support and collaborate with other first responders. Private security guards can even carry firearms. Once private security guards detain suspects or thwart the commission of a crime, they must hand over any suspects to peace officers such as municipal police forces or the RCMP. These public police forces then handle any criminal investigations, charges, and prosecutions in conjunction with Crown attorneys.

A specific example of the legislated powers that private security companies can wield can be found in Ontario's *Private Security and Investigative Services Act*, 2005, S.O. 2005, c. 34. Under this Act, private investigators and security guards can obtain warrants to enter premises for a vast array of reasons[4] and use reasonably necessary force.[5] Further, the *Act* makes it unlawful for persons interacting with private investigators and private security guards to obstruct these official's activities[6], and imposes an obligation on relevant persons to produce certain materials on request from these officials.[7] This is the default system under which the plurality of private enterprises operate in Canada, including airlines, trucking companies, and other private corporations that have similarly complex, extended, and cross-border supply lines.

Private investigators and security guards can also call upon police officers to assist with matters such as executing warrants. Most importantly, private security guards do not have criminal enforcement powers and do not need them. These guards enjoy only as much authority as they need to protect property and persons within the immediate scope of their clients' assignments. However, the security companies must refer and defer all criminal enforcement matters to public police and prosecutors. This delineation of duties between private security guards, public police forces, and Crown prosecutors embodies and complies with the principle of police independence and the rule of law.

Finally, converting the CN Police and CP Police into a private security companies should **not** result in the loss of jobs for the companies' current police officers. The privatized "CN Security Service" and "CP Police Service" would largely maintain their current staff and structures, albeit, without any criminal law enforcement powers. Thus, converting CN Police and CP Police into private

[4] *Private Security and Investigative Services Act*, 2005, S.O. 2005, c. 34 Section 22(2), 22(3), 23(1), 23(2).
[5] *Ibid*, Section 22(6) and 23(3).
[6] *Ibid*, Section 22(7).
[7] *Ibid*, Section 22(8).

security companies provide for a "jobs neutral" approach. This approach preserves current jobs and reflects what should have happened when the Government of Canada privatized CN Railway in 1995.

In summary, there is nothing impeding CN Railway and CP Railway's ability to convert their police forces into private security companies that can effectively protect their operations, workers, and the public when Parliament repeals Sections 44 and 44.1 of the *Railway Safety Act*.

The Contract Policing alternative to private corporate police forces.

A second alternative to private corporate police forces under sections 44 and 44.1 of the *RSA* is for CN Railway and CP Railway to enter into **contract policing agreements** with the RCMP[8] or other public police forces. Notably, the RCMP's website lists the following benefits of its contract policing:

- RCMP members in contract policing maintain a federal policing presence across the country. They are deployable across jurisdictions when required and called upon to assist in major investigations, emergencies, and national events that are beyond the policing capacity of a province, territory, or municipality to address alone.

- Under the benefits of the contract policing model, the RCMP is able to provide top level security drawn from across the country for international events such as the 2010 Olympics and the G8/G20 summits.

- Contract policing allows for the seamless sharing of intelligence and high-level cooperation between all levels of policing.

- As Canada's national police force, the RCMP maintains national standards and policies across contract policing jurisdictions.

- The RCMP contributes to Canadian sovereignty as contract policing members are often the federal government's sole representative(s) in many remote and isolated areas.

All the above benefits of contract policing comprehensively address CN Railway and CP Railway's concerns about securing their operations and protecting the public, including in remote areas. Further, through contract policing, CN Railway and CP Railway can redirect their current policing budgets to paying for a **dedicated** number of police officers who are focused solely on protecting these companies' operations across Canada.

[8] https://www.rcmp-grc.gc.ca/ccaps-spcca/contract-eng.htm

As RCMP employees, the police officers would have jurisdiction across Canada and will benefit from the pre-existing collaborative relationships that the RCMP has with its counterparts in the United States. The RCMP officers would protect the railway companies' infrastructure and operations while, most importantly, **remaining legally and operationally independent** from these railway corporations. We trust that similar arrangements are also possible for CN Railway and CP Railway's operations in the United States.

The contract policing model would also mean that the repeal of Sections 44 and 44.1 of the *Railway Safety Act* would place no greater pressure on public police forces than they have at present. To the extent that CN Railway and CP Railway's new private security companies cannot conduct criminal law functions, through the contract policing agreements, these companies would finance the hiring, training, deployment, and accompanying logistics for any extra public (RCMP) police officers. These contracted officers would take on any additional workload that may arise from the conversion of the CN Police and CP Police into private security companies (if any).

Given that the contract policing option provides for both police independence and cross-country police coverage for CN Railway and CP Railway, there is no justifiable reason why these companies must own and control their police forces.

The RCMP's contract policing agreements are negotiated between the federal, provincial, and territorial governments. Given that Parliament enacted Sections 44 and 44.1 of the *Railway Safety Act*, that same Parliament can empower private railway companies, such as CN Railway and CP Railway, to benefit from such agreements, including via amendments to the relevant statutes and regulations that govern this area.

Alternatively, the Government of Canada has other powers and instruments to provide for such contract policing services to Canada's private railway companies. The CACP can work with the Government and the railway companies to implement this transition after, or notwithstanding, the repeal of Sections 44 and 44.1 of the *Railway Safety Act*. Regardless of how the contract policing model is implemented, it would allow CN Railway and CP Railway to effectively secure their operations without owning private police forces with the jurisdiction over the companies' potentially criminal conduct.

The CACP's action to implement our requests is important in light of the CN Police Service's efforts to expand the criminal jurisdiction of private railway police forces when the opposite outcome is imperative.

In an undated submission to the Parliamentary Railway Safety Act Review Committee, the Canadian National Railways Police Association ("CNRPA") expressed its desire to expand its jurisdiction outside of the 500m limits under the *Railway Safety Act* (**Attachment 4**).[9] The CNRPA attempts to justify this proposed expansion on its powers by arguing that the 500m limit has created confusion in the courts. However, the solution to any jurisdictional ambiguity is for the CN Police and CP Police to have no such criminal jurisdiction at all. Instead, they should leave the job of criminal investigations and presenting suspects to the courts to public police forces and collaborate with them as legally required. This is the model that all other corporations have followed to secure their operations, including dealing with trespassers, saboteurs, or parties attempting to steal company property.

Given the availability of the private security and contract policing options discussed above, this is not the time to be expanding the powers of private corporate police forces. The time has come to eliminate such powers and entrust them solely to public police forces whose sole mandate is to protect the Canadian public, not the financial interests of private, corporate shareholders.

Overall, the current structure of corporatized policing and criminal self-investigation are inconsistent with 21st Century policing and a 21st Century Canada. Both converting private police forces to private security force, and/or facilitating a contract policing model for private railway companies, will remedy the aforementioned ills of the current system. We trust that that CACP will decisively protect the integrity of our criminal justice system by, a) terminating the membership of CN Police and CP Police in the organization, and b) advocating for the Canadian Government and Parliament to repeal Sections 44 and 44.1 of the *Railway Safety Act* that allow private railway corporations to own police forces with criminal law powers.

We look forward to your timely response.

Thank you,

Tavengwa Runyowa

Tavengwa Runyowa

[9] https://tc.canada.ca/sites/default/files/migrated/cnrpa_rsa_review_dec_2017_2nd_submission.pdf

Attachment 29

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Canadian Police Information Centre
1200 Vanier Parkway,
Ottawa, Ontario.
K1A 0R2

Centre d'information de la police canadienne
1200, promenade Vanier
Ottawa (Ontario)
K1A 0R2

OUR FILE - NOTRE RÉFÉRENCE

March 1, 2007

GIT 122-5-35

YOUR FILE - VOTRE RÉFÉRENCE

Mr. W.G. Moody
Chief of Police
Canadian Pacific Railway Police Service
Suite 157 - 401 9th Avenue SW
Calgary, Alberta
T2P 4Z4

Dear Mr. Moody:

You will find enclosed, for your records, a signed copy of the Memorandum of Understanding between the Canadian Police Information Centre (CPIC) and the Canadian Pacific Railway Police Service which reflects your agency's access enhancements as a Category II (A) agency.

Should you require anything further please feel free to contact the CPIC Field Operations Section for Alberta/NWT or this office.

Hoping the above is satisfactory,

L. Tondreau
Client Agreements Analyst,
CPIC Program Policy

Encl.

cc: CPIC Field Operations Section Alberta/NWT
CPIC Field Operations Section Ont/Que/Nun
OIC Strategic Policy & Planning Branch (MHP-120-1-163)

HQ COMPLEX RECORDS
DOSSIERS COMPLEXE DG
AUG 15 2008
REV.76

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RECEIVED
MAR 0 5 2007

MEMORANDUM OF UNDERSTANDING

HQ COMPLEX RECORDS
DOSSIERS COMPLEXE DG
AUG 1 5 2008
REV. 76

THIS AGREEMENT, made in triplicate as of the 14th day of February 2007.

BETWEEN **CANADIAN POLICE INFORMATION CENTRE**
(hereinafter known as CPI Centre),
a National Police Service of the
ROYAL CANADIAN MOUNTED POLICE

AND

CANADIAN PACIFIC RAILWAY POLICE SERVICE
(hereinafter known as the agency)

BACKGROUND:

WHEREAS the agency has requested access to the Canadian Police Information Centre system;

AND WHEREAS the Canadian Police Information Centre is entering into this Memorandum of Understanding in accordance with the CPIC policy governing access/connections to the National Police Service Network (hereinafter known as the network) and the CPIC system;

AND WHEREAS the authority is delegated to the Director General of the CPI Centre pursuant to section 5(2), Royal Canadian Mounted Police Act, which provides the Commissioner of the Royal Canadian Mounted Police (RCMP) authority to delegate his powers;

AND WHEREAS the CPIC Advisory Committee is responsible for establishing the scope and content of CPIC data banks, files, categories and records; how the system is used and regulated; and the criteria to determine which agencies are eligible to use the system;

AND WHEREAS the CPIC Advisory Committee has granted the agency **Category II (A)** access to the CPIC system as described in the CPIC Reference Manual and as an exception access to the Intelligence Data Bank, this Memorandum of Understanding stipulates the conditions of that access for the agency.

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NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

DEFINITIONS:

1.1 In this Memorandum of Understanding (MOU) the following terms, in singular or plural form according to the context, are defined as follows:

"Ancillary Data Bank" as defined in the CPIC Reference Manual;

"CPIC" and "CPIC system" mean the Canadian Police Information Centre computer system, a National Police Service administered by the Royal Canadian Mounted Police;

"CPIC Advisory Committee" means a governing body that is composed of members of major city police departments in Canada and federal and provincial law enforcement representatives, and its chair is appointed by the Commissioner of the Royal Canadian Mounted Police;

"CPI Centre" means the Canadian Police Information Centre, a National Police Service administered by the Royal Canadian Mounted Police;

"CRPQ" means Centre de renseignements policiers du Québec;

"Identification Data Bank" as defined in the CPIC Reference Manual;

"Intelligence Data Bank" as defined in the CPIC Reference Manual;

"Interface" means any computerized device, other than that provided by the RCMP, which acts as a direct communications link between a user or data bank and the CPIC system;

"Investigative Data Bank" as defined in the CPIC Reference Manual;

"Instructional Data Bank" as defined in the CPIC Reference Manual;

"NPS" means National Police Services;

"NPSNet" means National Police Services Network;

"ORI" means Originating Agency Identifier;

"PSD" means Ontario Policing Services Division;

2. PURPOSE AND SCOPE

2.1 This MOU sets out the roles and responsibilities of the Parties in regards to the provision of access to designated agency employees to the CPIC databases as described herein.

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3. OBLIGATIONS OF CPI Centre

3.1 The CPI Centre will assign identifiers (ORI's) to the agency's system(s). These ORI's will accompany all transactions delivered across the network connection or interface to the CPIC system's NPSNet.

3.2 The CPI Centre shall permit on-line computer access to the following CPIC files or categories in accordance with the terms and conditions of this Memorandum of Understanding:

i) Standard query of the following Investigative Data Bank Files: Persons, Vehicles, Marine and Property;

Note 1: *As of 2003-07-07 access to the Persons file by Category II and III agencies excludes access to information contributed by municipal and provincial agencies in Quebec.*

Note 2: *Access to the Firearms Interest Police (FIP) sub-category of the Special Interest Police (SIP) category is restricted to Category I agencies, the Canadian Firearms Centre and provincial/territorial Chief Firearms Officers only.*

Note 3: *Access to youth information is predicated upon having provided documentation to CPI Centre confirming entitlement under Section 119, sub-section 1, Youth Criminal Justice Act.*

ii) Standard query of the Identification Data Bank;

iii) Standard query of the Intelligence Data Bank;

iv) Standard query of the Ancillary Data Bank files dealing with vehicle registered owner, driver licence information, wandering persons and inmate records, subject to such approvals as may be required from the appropriate access authorities;

Note: *Access to ancillary data banks is at the discretion of the respective owners of such data banks and may be withdrawn at their request.*

v) Standard maintenance access to Persons, Vehicles, Marine and Property files of the CPIC Investigative Data Bank in accordance with present CPIC policy (e.g. "hit" confirmation availability 24 hours per day, etc.). Maintenance access is restricted to those CPIC files and categories relating to the agency's mandate;

vi) Access to the CPIC communications system;

vii) Standard access to the CPIC Instructional Data Bank.

3.3 The CPI Centre, in cooperation with the RCMP CIO Sector, shall establish the speed/bandwidth and appropriate network security measures necessary to meet the agency's access needs.

3.4 The CPI Centre shall notify the agency ninety (90) days prior to any changes to the CPIC system/NPSNet which shall require modifications to the equipment or software used to access the CPIC system.

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4. OBLIGATIONS OF THE AGENCY

4.1 The agency agrees that any access to the CPIC system shall be for law enforcement functions/purposes only and, in accordance with CPIC policy and within the agency's legislated mandate.

4.2 The agency agrees that the CPIC system is not to be used for conducting security or reliability clearance checks of persons unless the licensing function is legislatively mandated. Further, the agency understands that only agencies with full law enforcement authority (Category I) can use CPIC to screen individuals entering into positions of trust with the vulnerable sector (i.e. children, elderly, disabled, etc.).

4.3 The agency agrees not to utilize the CPIC system for investigating civil matters.

4.4 The agency agrees that all authorized persons having terminal access to the CPIC system must undergo a criminal records check in accordance to the CPIC Reference Manual and proof of the security screening shall be made available to a CPI Centre auditor upon request.

4.5 The agency shall install any terminal accessing the CPIC system in a location where its operation is restricted to authorized personnel.

4.6 The agency agrees that, before any person is given access to a CPIC terminal, he/she shall receive appropriate training from the CPI Centre Field Operations Sections' personnel or from qualified personnel within the agency.

4.7 The agency agrees to implement strict measures to prevent network or computer security breaches which may result in the disclosure, the modification or the deletion of information obtained from or residing in the CPIC system.

4.8 The agency acknowledges ultimate responsibility for all access to the CPIC system from any device located on the agency's side of the network connection or interface.

4.9 The agency agrees not to disseminate any information obtained from the CPIC Ancillary Data Bank. The agency may not further disseminate any information obtained from any of the other CPIC data banks except where that use is consistent with the carrying out of its law enforcement duties and responsibilities. The agency may however disseminate CPIC information to another approved CPIC agency provided it does not conflict with provincial or federal privacy legislation and a Letter of Understanding is in place between the agencies concerned.

4.10 The agency will ensure that the REM keyword (Remarks) in all queries includes the name or a unique identifier of the requesting person, the reason, and the file number for which the query is being conducted. The agency further agrees that sufficient documentation will be placed on file to support the legitimacy of the queries conducted.

4.11 The agency shall report any and all known or suspected breaches of security or misuse of the system, and send the details of the breach and the result of the investigation to the appropriate CPI Centre Field Operations Section, PSD or CRPQ, with an information copy being sent to the Director General of the CPI Centre.

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4.12 The agency may use CPIC for licensing purposes provided that:

i) The licensing function of the agency is legislatively mandated;
ii) The agency is legally entitled to receive CPIC information, as identified in section 3.2 above, in carrying out its mandate;
iii) With the agreement of the law enforcement agency of jurisdiction, part of the screening process should include a check of local records;
iv) A copy of the Act with specific reference to the licencing function of the agency has been forwarded to the Director General of the CPI Centre.

4.13 The agency agrees to submit to the Director General of the CPI Centre a completed NPSNet Connection Authorization/Change Request form and a system diagram describing the agency's technical environment. The CPI Centre must be informed of all proposed changes to the agency's technical environment for consideration of their technical and security impact on the CPIC system, the NPSNet and the agency, in accordance with the CPIC Reference Manual at Part 1, Chapter 4.

Some examples of these types of changes are:

i) The addition of a network connection to another agency or an intranet or the internet;
ii) The addition of a new network type or new technology (e.g. a radio network, a dial-in connection, wireless access, or a virtual LAN/WAN service within a municipality);
iii) The addition of servers within the security perimeter which requires allowing public access through the agency's firewall; and
iv) The addition, replacement, or removal of security mechanisms such as firewalls or access control devices.

5. JOINT OBLIGATIONS

5.1 The agency and the CPI Centre acknowledge the necessity to respect the privacy of individuals and to protect the data available through the CPIC system. The agency and the CPI Centre shall comply with applicable provincial or federal access to information and privacy laws.

5.2 The agency shall report all complaints of CPIC policy violations to the appropriate CPI Centre Field Operations Section, Ontario Policing Services Division (PSD) or CRPQ, with an information copy being sent to the Director General of the CPI Centre, National Police Service. The user agency or agencies involved shall investigate thoroughly and expediently all complaints of CPIC policy violations. The results of the investigation, including corrective or disciplinary action taken, shall be reported to the Director General of the CPI Centre for the record and the annual report to the Advisory Committee, via their local Field Operations Section, PSD or CRPQ.

5.3 If complaints of CPIC policy violations cannot, for whatever reason, be resolved by the agency, the Director General of the CPI Centre shall have an investigation conducted through the appropriate CPI Centre Field Operations Section; or the Ontario Policing Services Division (PSD), if the agency is in Ontario; or the CRPQ, if the agency is in Quebec.

5.4 Information in the CPIC system is for investigational purposes only, and does not positively identify an article of property or a person. Output from CPIC must therefore not be acted upon without verification with the originator of any related record.

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6. FINANCIAL ARRANGEMENTS

6.1 The agency shall provide, at their expense, all computer equipment necessary to establish and maintain the network connection to the CPIC system. All costs associated with same shall be the responsibility of the agency with the exception of damages incurred through negligence on the part of RCMP employees.

6.2 The agency understands and agrees that the network connection and/or interface access to the CPIC network is contingent upon remaining compatible with all applications, networking and security changes authorized by the CPIC Advisory Committee. The agency is responsible for the cost of any upgrades required to maintain that compatibility.

6.3 Security measures will have to be in place to provide confidentiality, data integrity and system availability. These security measures must be discussed with and approved by the CPI Centre prior to the system implementation. All costs associated with these security measures shall be the responsibility of the agency.

7. DEPARTMENTAL REPRESENTATIVES

7.1 The regular liaison channels and points of contact of the Parties shall be:

(i) Canadian Pacific Railway Police Service - Calgary;
The Manager, CPI Centre Field Operations Section, Alberta/NWT.

(ii) Canadian Pacific Railway Police Service - Montreal;
The Manager, CPI Centre Field Operations Section, Ontario/Quebec/Nunavut.

(iii) Canadian Pacific Railway Police Service - Toronto;
The Manager, CPI Centre Field Operations Section, Ontario/Quebec/Nunavut.

(iv) Canadian Pacific Railway Police Service - Vancouver;
The Manager, CPI Centre Field Operations Section, British Columbia/Yukon.

(v) Canadian Pacific Railway Police Service - Winnipeg;
The Manager, CPI Centre Field Operations Section, Manitoba.

8. DISPUTE RESOLUTION

8.1 In the event of a dispute arising from the interpretation or operation of this MOU, it shall be referred to the Parties' representatives set out above, who shall use their best efforts to resolve the matter amicably.

8.2 If such negotiations fail, the Parties agree to refer the matter to the Director General of the CPI Centre and the Chief of Police for the Canadian Pacific Railway Police Service. This shall be the final level for conflict resolution within each of the organizations here above noted.

9. LIABILITY

9.1 Each party shall be responsible for any damages caused by the conduct of its employees or agents in carrying out the term of this MOU.

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9.2 The maintenance of accurate, up-to-date information is the responsibility of the CPIC agency contributing such information.

10. AMENDMENT TO THE MOU

10.1 This Agreement may be amended by mutual consent between the CPI Centre and the Canadian Pacific Railway Police at any time. Amendments shall only come into force after completion of applicable internal procedures by both Parties and written notification thereof.

11. TERM

11.1 This Memorandum of Understanding is not entered into, nor is this Memorandum of Understanding written as a formal or legally binding agreement, but is only a definite expression and record of purpose and intention of the Parties concerned to which each honourably pledge themselves.

11.2 Upon execution by both Parties, the Memorandum of Understanding supersedes any prior oral or written statements of any kind between the agency and the Canadian Police Information Centre.

11.3 This Memorandum of Understanding is effective from the date of signing.

12. AUDITS

12.1 The agency agrees to permit the CPI Centre auditors on-site for the purpose of auditing the use by the agency of the CPIC system and network(s) on which it operates to ensure compliance with the terms of this Memorandum of Understanding, CPIC policy, and the use and dissemination of information from the CPIC system. The agency further agrees to permit the CPI Centre auditors access to any computer terminal accessing the CPIC system, terminal operators and relevant CPIC documentation.

12.2 The agency agrees to provide the CPI Centre auditors with all applicable documentation to confirm the validity for entering records on the CPIC system and agrees to render all necessary assistance to the CPI Centre auditors to enable a complete physical audit of the agency's CPIC operations.

12.3 The agency agrees to remove or correct, at the request of an auditor, a record entry that does not conform with the CPIC Reference Manual.

13. TERMINATION

13.1 This Memorandum of Understanding may be terminated at any time upon ninety (90) days written notification by either of the Parties.

13.2 Upon the termination of this Memorandum of Understanding, the CPI Centre shall take the necessary steps to have the communications line(s) from the agency to the CPIC system disconnected and the agency shall return to the CPI Centre all software and hardware that may have been provided.

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14. NOTIFICATION OF CHANGES AFFECTING THE AGREEMENT

14.1 A review of the provisions of this Memorandum of Understanding by the CPI Centre shall occur at least every two (2) years from the date of signing.

14.2 A formal evaluation of the provisions of this Memorandum of Understanding by both Parties shall occur at least every four (4) years from the date of signing.

14.3 Both Parties undertake to notify each other in writing of any regulatory or policy changes that are likely to affect this agreement.

IN WITNESS WHEREOF, the agency has caused this Memorandum of Understanding to be duly signed at Calgary Alberta (city & province) this 22 day of February, 2007.

(Signed)

Name: Gary Moody

Title: Chief of Police

Agency: CPR Police

IN WITNESS WHEREOF, the CANADIAN POLICE INFORMATION CENTRE, a National Police Service of the ROYAL CANADIAN MOUNTED POLICE, has caused this Memorandum of Understanding to be duly signed at Ottawa, Ontario this 2 day of March, 2007.

Gordon L. Finck, Chief Superintendent
Director General
CPI Centre

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GIT-120-1-0102

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OCT 19 2006

Canadian Police Information Centre
1200 Vanier Parkway,
Ottawa, Ontario.
K1A 0R2

Centre d'information de la police canadienne
1200, promenade Vanier
Ottawa (Ontario)
K1A 0R2

OUR FILE - NOTRE RÉFÉRENCE
GIT 122-5-35

YOUR FILE - VOTRE RÉFÉRENCE

May 17, 2006

Chief W.G. Moody
Canadian Pacific Railway
Police Service Headquarters
Suite 157, 401 - 9th Ave. SW
Calgary, Alberta T2P 4Z4

Dear Chief Moody,

I am writing in reference to your letter dated April 19, 2006 with respect to the conditions for access to CPIC by the Canadian Pacific Railway Police Service, as outlined in the Memorandum of Understanding.

In 1997, your agency was granted the authority by the then OIC CPI Centre to use CPIC for the purpose of screening applicants applying for employment with the Canadian Pacific Railway. This agreement is in conflict with CPIC policy which states that this authority can only be conferred to Category I agencies.

The CPI Centre understands that since then, your agency has come to rely heavily on this special access in order to conduct the screening of applicants and we acknowledge that rescinding on this agreement without notice would create undue hardship. Nevertheless, I can not agree to extend this access indefinitely.

I understand from your letter that you will be seeking approval of the CPIC Advisory Committee to be granted Category I access. A duly completed application package must be submitted to the Manager, Alberta Field Operations by no later than October 1, 2006. You may wish to seek guidance from the Manager, S/Sgt. Dave Gazley at (780) 495-3043, to ensure that complete information is made available. The Advisory Committee will make the final determination on your application at the next meeting which is planned for mid-January, 2007.

I should caution you that should your request for Category I access be denied, your authority to conduct security checks on applicants will be rescinded immediately and, as such, you may wish to consider developing a contingency plan for such a possibility.

In view of above, I agree to extend the duration of the Memorandum of Understanding signed in May 1997 until the next Advisory Committee meeting.

...2

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CANADIAN PACIFIC RAILWAY

Police Service Headquarters
Suite 157, 401 – 9th Avenue SW
Calgary, Alberta T2P 4Z4
Phone: (403) 319-7013
Fax: (403) 319-7024
E-mail: Police_Administration_HQ@cpr.ca

Communications Centre
24 hour – 1-800-716-9132

W. G. Moody
Chief of Police

R.A. Manson
Superintendent
System Support

P.G. Fish
Superintendent
Director of Security

E.W. Ladouceur
Inspector
Professional Standards

G. A. MacDonald
Manager Performance Measures
& Project Management
System Headquarters

Dierdri Ho
Administrative Supervisor

April 19, 2006

Your File: GIT 122-5-35

J.E. Greer, Inspector
Officer in Charge, CPIC Program Policy,
Canadian Police Information Centre,
1200 Vanier Parkway,
Ottawa, Ontario, K1A 0R2

Dear Inspector Greer:

Re: Canadian Police Information Centre – Memorandum of Understanding Canadian Pacific Railway Police Service

As per your request dated March 17th, 2006 for signature on revised Memorandum of Understanding with respect to conditions of access to CPIC by our organization, please find enclosed said documents.

At this time, I also wish to formally advise that the **Canadian Pacific Railway Police Service** will be making application to the CPIC Advisory Committee for category I status and wish to be included on the agenda for the November 2006 sitting.

I also bring your attention to a request for consideration of extension of our existing MOU to enable the continuation of our security clearance checks for new employees at Canadian Pacific Railway. Correspondence between your Cpl. Parent, yourself and my Superintendent Manson appear to indicate an understanding of our predicament. We have been conducting these checks since the implementation of the MOU in 1999 and have made commitments to Transport Canada Security Directorate, Homeland Security and the Intelligence community based on this.

These checks have withstood the scrutiny of many CPIC audits since that time, and without exception, received a passing grade for compliance to the Policy and MOU. The immediate revision of the existing MOU and revoking of this privilege will place great hardship on us to maintain this expected level of security. The mechanisms are not in place to create an alternative in such short order and as previously stated, we are in the process of making application to become a CAT I agency.

Please advise your position on this matter and I look forward to your favorable consideration. If you have any questions or require clarification on any aspect of this request, please feel free to contact me at (403) 319-7006 or Superintendent Rod Manson at (403) 319-7005 or via email at gerry_moody@cpr.ca

Yours truly,

W.G. Moody
Chief of Police

WGM/ram

CPIC / RECEIVED
2006-05-417
APR 26 2006
CIPC / REÇU

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Protected "A"



MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT, made in triplicate as of the 16th day of March 2006.

BETWEEN **CANADIAN POLICE INFORMATION CENTRE**
(hereinafter known as CPI Centre),
a National Police Service of the
ROYAL CANADIAN MOUNTED POLICE

AND

CANADIAN PACIFIC RAILWAY POLICE SERVICE

(hereinafter known as the agency)

BACKGROUND:

WHEREAS the agency has requested access to the Canadian Police Information Centre system;

AND WHEREAS the Canadian Police Information Centre is entering into this Memorandum of Understanding in accordance with the CPIC policy governing access/connections to the National Police Service Network (hereinafter known as the network) and the CPIC system;

AND WHEREAS the authority is delegated to the Officer in Charge of CPI Centre pursuant to section 5(2), Royal Canadian Mounted Police Act, which provides the Commissioner of the Royal Canadian Mounted Police (RCMP) authority to delegate his powers;

AND WHEREAS the CPIC Advisory Committee is responsible for establishing the scope and content of CPIC data banks, files, categories and records; how the system is used and regulated; and the criteria to determine which agencies are eligible to use the system;

AND WHEREAS the CPIC Advisory Committee has granted the agency **Category II (A)** access to the CPIC system as described in the CPIC Reference Manual, this Memorandum of Understanding stipulates the conditions of that access for the agency.

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NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

DEFINITIONS:

1.1 In this Memorandum of Understanding (MOU) the following terms, in singular or plural form according to the context, are defined as follows:

"Ancillary Data Bank" as defined in the CPIC Reference Manual;

"CPIC" and "CPIC system" mean the Canadian Police Information Centre computer system, a National Police Service administered by the Royal Canadian Mounted Police;

"CPIC Advisory Committee" means a governing body that is composed of members of major city police departments in Canada and federal and provincial law enforcement representatives, and its chair is appointed by the Commissioner of the Royal Canadian Mounted Police;

"CPI Centre" means the Canadian Police Information Centre, a National Police Service administered by the Royal Canadian Mounted Police;

"CRPQ" means Centre de renseignements policiers du Québec;

"Identification Data Bank" as defined in the CPIC Reference Manual;

"Interface" means any computerized device, other than that provided by the RCMP, which acts as a direct communications link between a user or data bank and the CPIC system;

"Investigative Data Bank" as defined in the CPIC Reference Manual;

"Instructional Data Bank" as defined in the CPIC Reference Manual;

"NPS" means National Police Services;

"NPSNet" means National Police Services Network;

"ORI" means Originating Agency Identifier;

"PSD" means Ontario Policing Services Division;

2. PURPOSE AND SCOPE

2.1 This MOU sets out the roles and responsibilities of the Parties in regards to the provision of access to designated agency employees to the CPIC databases as described herein.

3. OBLIGATIONS OF CPI Centre

3.1 CPI Centre will assign identifiers (ORI's) to the agency's system(s). These ORI's will accompany all transactions delivered across the network connection or interface to the CPIC system's NPSNet.

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3.2 CPI Centre shall permit on-line computer access to the following CPIC files or categories in accordance with the terms and conditions of this Memorandum of Understanding:

I) Standard query of the following Investigative Data Bank Files: Persons, Vehicles, Marine and Property;

Note 1: *As of 2003-07-07 access to the Persons file by Category II and III agencies excludes access to information contributed by municipal and provincial agencies in Quebec.*

Note 2: *Access to the Firearms Interest Police (FIP) sub-category of the Special Interest Police (SIP) category is restricted to Category I agencies, the Canadian Firearms Centre and provincial/territorial Chief Firearms Officers only.*

Note 3: *Access to youth information is predicated upon having provided documentation to CPI Centre confirming entitlement under Section 119, sub-section 1, Youth Criminal Justice Act.*

ii) Standard query of the Identification Data Bank;

iii) Standard query of the Ancillary Data Bank files dealing with vehicle registered owner, driver licence information, wandering persons and inmate records, subject to such approvals as may be required from the appropriate access authorities;

Note: *Access to ancillary data banks is at the discretion of the respective owners of such data banks and may be withdrawn at their request.*

iv) Access to the CPIC communications system;

v) Standard access to the CPIC Instructional Data Bank.

3.3 CPI Centre, in cooperation with the RCMP CIO Sector, shall establish the speed/bandwidth and appropriate network security measures necessary to meet the agency's access needs.

3.4 CPI Centre shall notify the agency ninety (90) days prior to any changes to the CPIC system/NPSNet which shall require modifications to the equipment or software used to access the CPIC system.

4. OBLIGATIONS OF THE AGENCY

4.1 The agency agrees that any access to the CPIC system shall be for law enforcement functions/purposes only and, in accordance with CPIC policy and within the agency's legislated mandate.

4.2 The agency agrees that the CPIC system is not to be used for conducting security or reliability clearance checks of persons unless the licensing function is legislatively mandated. Further, the agency understands that only agencies with full law enforcement authority (Category I) can use CPIC to screen individuals entering into positions of trust with the vulnerable sector (i.e. children, elderly, disabled, etc.).

4.3 The agency agrees not to utilize the CPIC system for investigating civil matters.

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4.4 The agency agrees that all authorized persons having terminal access to the CPIC system must undergo a criminal records check in accordance to the CPIC Reference Manual and proof of the security screening shall be made available to a CPI Centre auditor upon request.

4.5 The agency shall install any terminal accessing the CPIC system in a location where its operation is restricted to authorized personnel.

4.6 The agency agrees that, before any person is given access to a CPIC terminal, he/she shall receive appropriate training from CPI Centre Field Operations Sections' personnel or from qualified personnel within the agency.

4.7 The agency agrees to implement strict measures to prevent network or computer security breaches which may result in the disclosure, the modification or the deletion of information obtained from or residing in the CPIC system.

4.8 The agency acknowledges ultimate responsibility for all access to the CPIC system from any device located on the agency's side of the network connection or interface.

4.9 The agency agrees not to disseminate any information obtained from the CPIC Ancillary Data Bank. The agency may not further disseminate any information obtained from any of the other CPIC data banks except where that use is consistent with the carrying out of its law enforcement duties and responsibilities. The agency may however disseminate CPIC information to another approved CPIC agency provided it does not conflict with provincial or federal privacy legislation and a Letter of Understanding is in place between the agencies concerned.

4.10 The agency will ensure that the REM keyword (Remarks) in all queries includes the name or a unique identifier of the requesting person, the reason, and the file number for which the query is being conducted. The agency further agrees that sufficient documentation will be placed on file to support the legitimacy of the queries conducted.

4.11 The agency shall report any and all possible breach of security or misuse of the system, and send the details of the breach and the result of the investigation to the appropriate CPI Centre Field Operations Section, PSD or CRPQ, with an information copy being sent to the OIC CPI Centre.

4.12 The agency may use CPIC for licensing purposes provided that:

i) The licensing function of the agency is legislatively mandated;
ii) The agency is legally entitled to receive CPIC information, as identified in section 3.2 above, in carrying out its mandate;
iii) With the agreement of the law enforcement agency of jurisdiction, part of the screening process should include a check of local records;
iv) A copy of the Act with specific reference to the licencing function of the agency has been forwarded to the Officer in Charge of CPI Centre.

4.13 The agency agrees to submit to the Officer in Charge CPI Centre a completed NPSNet Connection Authorization/Change Request form and a system diagram describing the agency's technical environment. The CPI Centre must be informed of all proposed changes to the agency's technical environment for consideration of their technical and security impact on the CPIC system, the NPSNet and the agency, in accordance with the CPIC Reference Manual at Part 1, Chapter 4.

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Some examples of these types of changes are:

i) The addition of a network connection to another agency or an intranet or the internet;
ii) The addition of a new network type or new technology (e.g. a radio network, a dial-in connection, wireless access, or a virtual LAN/WAN service within a municipality);
iii) The addition of servers within the security perimeter which requires allowing public access through the agency's firewall; and
iv) The addition, replacement, or removal of security mechanisms such as firewalls or access control devices.

5. JOINT OBLIGATIONS

5.1 The agency and CPI Centre acknowledge the necessity to respect the privacy of individuals and to protect the data available through the CPIC system. The agency and CPI Centre shall comply with applicable provincial or federal access to information and privacy laws.

5.2 The agency shall report all complaints of CPIC policy violations to the appropriate CPI Centre Field Operations Section, Ontario Policing Services Division (PSD) or CRPQ, with an information copy being sent to the OIC CPI Centre, Information and Identification Services Directorate. The user agency or agencies involved shall investigate thoroughly and expediently all complaints of CPIC policy violations. The results of the investigation, including corrective or disciplinary action taken, shall be reported to the OIC CPI Centre for the record and the annual report to the Advisory Committee, via their local Field Ops., PSD or CRPQ.

5.3 If complaints of CPIC policy violations cannot, for whatever reason, be resolved by the agency, the OIC CPI Centre shall have an investigation conducted through the appropriate CPI Centre Field Ops. Section; or the Ontario Policing Services Division (PSD), if the agency is in Ontario; or the CRPQ, if the agency is in Quebec.

5.4 Information in the CPIC system is for investigational purposes only, and does not positively identify an article of property or a person. Output from CPIC must therefore not be acted upon without verification with the originator of any related record.

6. FINANCIAL ARRANGEMENTS

6.1 The agency shall provide, at their expense, all computer equipment necessary to establish and maintain the network connection to the CPIC system. All costs associated with same shall be the responsibility of the agency with the exception of damages incurred through negligence on the part of RCMP employees.

6.2 The agency understands and agrees that the network connection and/or interface access to the CPIC network is contingent upon remaining compatible with all applications, networking and security changes authorized by the CPIC Advisory Committee. The agency is responsible for the cost of any upgrades required to maintain that compatibility.

6.3 Security measures will have to be in place to provide confidentiality, data integrity and system availability. These security measures must be discussed with and approved by CPI Centre prior to the system implementation. All costs associated with these security measures shall be the responsibility of the agency.

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7. DEPARTMENTAL REPRESENTATIVES

7.1 The regular liaison channels and points of contact of the Parties shall be:

(I) Canadian Pacific Railway Police Service - Montreal;
The Manager, CPI Centre Field Operations Section, Ontario/Quebec/Nunavut.

(ii) Canadian Pacific Railway Police Service - Toronto;
The Manager, CPI Centre Field Operations Section, Ontario/Quebec/Nunavut.

(iii) Canadian Pacific Railway Police Service - Thunder Bay;
The Manager, CPI Centre Field Operations Section, Ontario/Quebec/Nunavut.

(iv) Canadian Pacific Railway Police Service - Winnipeg;
The Manager, CPI Centre Field Operations Section, Manitoba.

(v) Canadian Pacific Railway Police Service - Calgary;
The Manager, CPI Centre Field Operations Section, Alberta.

(vi) Canadian Pacific Railway Police Service - Vancouver;
The Manager, CPI Centre Field Operations Section, British Columbia/Yukon.

8. DISPUTE RESOLUTION

8.1 In the event of a dispute arising from the interpretation or operation of this MOU, it shall be referred to the Parties' representatives set out above, who shall use their best efforts to resolve the matter amicably.

8.2 If such negotiations fail, the Parties agree to refer the matter to the Officer in Charge of CPI Centre and the Chief of Police for the Canadian Pacific Railway Police Service. This shall be the final level for conflict resolution within each of the organizations here above noted.

9. LIABILITY

9.1 Each party shall be responsible for any damages caused by the conduct of its employees or agents in carrying out the term of this MOU.

9.2 The maintenance of accurate, up-to-date information is the responsibility of the CPIC agency contributing such information.

10. AMENDMENT TO THE MOU

10.1 This Agreement may be amended by mutual consent between CPI Centre and the Canadian Pacific Railway Police Service at any time. Amendments shall only come into force after completion of applicable internal procedures by both Parties and written notification thereof.

11. TERM

11.1 This Memorandum of Understanding is not entered into, nor is this Memorandum of Understanding written as a formal or legally binding agreement, but is only a definite expression and record of purpose and intention of the Parties concerned to which each honourably pledge themselves.

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11.2 Upon execution by both Parties, the Memorandum of Understanding supersedes any prior oral or written statements of any kind between the agency and the Canadian Police Information Centre.

11.3 This Memorandum of Understanding is effective from the date of signing.

12. AUDITS

12.1 The agency agrees to permit CPI Centre auditors on-site for the purpose of auditing the use by the agency of the CPIC system and network(s) on which it operates to ensure compliance with the terms of this Memorandum of Understanding, CPIC policy, and the use and dissemination of information from the CPIC system. The agency further agrees to permit the CPI Centre auditors access to any computer terminal accessing the CPIC system, terminal operators and relevant CPIC documentation.

12.2 The agency agrees to provide CPI Centre auditors with all applicable documentation to confirm the validity for entering records on the CPIC system and agrees to render all necessary assistance to the CPI Centre auditors to enable a complete physical audit of the agency's CPIC operations.

12.3 The agency agrees to remove or correct, at the request of an auditor, a record entry that does not conform with the CPIC Reference Manual.

13. TERMINATION

13.1 This Memorandum of Understanding may be terminated at any time upon ninety (90) days written notification by either of the Parties.

13.2 Upon the termination of this Memorandum of Understanding, CPI Centre shall take the necessary steps to have the communications line(s) from the agency to the CPIC system disconnected and the agency shall return to CPI Centre all software and hardware that may have been provided.

14. NOTIFICATION OF CHANGES AFFECTING THE AGREEMENT

14.1 A review of the provisions of this Memorandum of Understanding by CPI Centre shall occur at least every two (2) years from the date of signing.

14.2 A formal evaluation of the provisions of this Memorandum of Understanding by both Parties shall occur at least every four (4) years from the date of signing.

14.3 Both Parties undertake to notify each other in writing of any regulatory or policy changes that are likely to affect this agreement.

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IN WITNESS WHEREOF, the agency has caused this Memorandum of Understanding to be duly signed at CALGARY, ALBERTA (city & province) this 20th day of APRIL, 2006.

(Signed)

Name: Mr. William Gerry Moody

Title: Chief of Police

Agency: Canadian Pacific Railway Police Service

IN WITNESS WHEREOF, the CANADIAN POLICE INFORMATION CENTRE, a National Police Service of the ROYAL CANADIAN MOUNTED POLICE, has caused this Memorandum of Understanding to be duly signed at Ottawa, Ontario this 11 day of May, 2006.

Gordon L. Finck, Chief Superintendent
Officer in Charge
CPI Centre

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HQ COMPLIANCE RECORDS
DOCUMENTS COMPLETE BC
APR 6 2005
REV. 6

TA 100-5

Royal Canadian Mounted Police

Agreement for the Provision of Services

THIS AGREEMENT, made in duplicate as of the 31st of May, 2004

BETWEEN THE ROYAL CANADIAN MOUNTED POLICE AS REPRESENTED BY THE OFFICER IN CHARGE OF CANADIAN LAW ENFORCEMENT TRAINING "DEPOT" DIVISION, HEREINAFTER REFERRED TO AS "R.C.M.P."

AND CANADIAN PACIFIC POLICE AS REPRESENTED BY CHIEF W.G.MOODY HEREINAFTER REFERRED TO AS CANADIAN PACIFIC POLICE.

WHEREAS Canadian Pacific Police has requested the R.C.M.P. to provide a Criminal Investigators Course in Regina, Saskatchewan. The R.C.M.P. has agreed to provide that service.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. **THE SERVICE**

1.1 The R.C.M.P. will undertake to provide;

a) Instruction for one, two (2) week Criminal Investigators Course scheduled from May 31st - June 11, 2004.

b) Qualified instructors from the R.C.M.P., outside Resources and the R.C.M.P. Training Academy.

1.2 Training shall take place at the R.C.M.P. Training Academy, Regina.

1.3 The total number of candidates attending the course shall not exceed 16.

1.4 One training day will consist of eight hours.

PAYMENT

2.1 Canadian Pacific Police will pay for all expenses incurred by the R.C.M.P. for this service. This price includes course preparation, delivery, course materials, overtime, and the facilities in Regina, Saskatchewan. This also includes meals and accommodation for course candidates commencing May 30th and terminating June 11th, 2004. The cost of the course in total will not exceed $35,000.00. A detailed account of these expenses will be submitted to Canadian Pacific Police after the completion of training.

May 31, 2004

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2.2 Are you on FIS? Yes / No. If yes, please provide your

recipient reference code : _____

recipient authorization code _____

for billing purposes.

Financial Contact Person: _____

Phone #: _____

Fax #: _____

2.3 Payment will be due thirty days from date of invoice from the R.C.M.P..

2.4 Payment received after thirty days from date of invoice shall be subject to interest fees. Those interest charges will be equivalent to the rate set by the Bank of Canada plus three percent.

2.5 Cost quoted are subject to unforeseen circumstances of which the client is to be notified in advance. These costs are to be borne by the client if he/she so desire to proceed with the course.

3. RELATIONSHIP

3.1 This is an Agreement for the performance of a service and the R.C.M.P. is engaged under the Agreement as an independent contractor for the sole purpose of providing a service. The R.C.M.P. has the right to determine how the service will be delivered and is not subject to the direction or supervision of the Canadian Pacific Police.

3.2 This Agreement does not create the relationship between the parties as legal partners, joint venturers nor as agents or principals of the other.

3.3 This Agreement is not intended to be a legally binding between the parties but is only intended to serve as a definitive expression of the purpose and intention of the parties, to which they honourably pledge themselves.

4. OWNERSHIP

4.1 The Canadian Pacific Police shall not use the information acquired in any manner except as reasonably required for the purpose of this course

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4.2 The course content, and the training material developed by CLET, alone or in conjunction with the Canadian Pacific Police, remains the property of the RCMP. Any reproduction, dissemination or other unauthorized use is strictly prohibited without the express written consent of CLET.

5. INDEMNIFICATION & EXEMPTION

5.1 The Canadian Pacific Police shall indemnify and save harmless the R.C.M.P. from and against and be responsible for any and all claims, damages, loss, costs and expenses including any legal fees, compromise or settlement which the R.C.M.P. may at any time incur or suffer as a result of or arising out of any injury (including death) suffered by any person or persons or loss of or damage to property of others which may be or be alleged to be caused by or suffered as a result of entering into or performing this Agreement.

5.2 The R.C.M.P. shall not be responsible for any bodily harm or personal injury or property damage of any nature whatsoever that may be suffered or sustained by the Canadian Pacific Police and its' members, employees, officers or agents in the performance of this Agreement unless it is caused by the negligent act of a member of the R.C.M.P. in the performance of his or her duties.

6. TERMINATION

6.1 This Agreement may be terminated through submission of a written notice of termination by any party to this Agreement at least thirty days prior to the commencement of delivery of service; provided that where the Canadian Pacific Police terminates the Agreement, they will be responsible for expenses incurred by the R.C.M.P. prior to receipt of notice of termination.

6.2 Confirmed reservations for courses/conferences require that facilities be "blocked" in anticipation of that particular activity. Consequently, those same facilities cannot be considered available for other client bookings during that same time frame. To protect the RCMP Training Academy from loss of revenue due to late cancellations, the following policy has been implemented as of April 1, 2001.

a) Cancellations, without penalty, will be received more than ninety (90) days prior to the scheduled arrival date of the participants.

b) Cancellations received between the ninetieth (90th) day and sixty first (61st) day prior to the scheduled date of arrival of the participants will result in a penalty billing of ten percent (10%) of the total costs associated with the event.

c) Cancellations received between the sixtieth (60th) day and the thirty first (31st) day prior to the scheduled event of arrival of the participants will result in a penalty billing of fifty percent (50%) of the total costs associated with the event.

d) Cancellations received thirty (30) days or less, prior to the scheduled date or arrival of the participants, will result in a penalty billing of one hundred percent (100%) of the total costs associated with the event.

e) Deferral of a course/conference and/or other training 30 days or less prior to the scheduled arrival date of the participants will be considered a cancellation, thereby subject to the penalty clause.

CUT OFF DATE	DAY RANGE	LOST REVENUE	AMOUNT
	90 days to 61 days	10%	
	60 days to 31 days	50%	
	30 days or less	100%	

The reservation will be confirmed upon receipt of this signed agreement. If this agreement is not received within 15 working days of the dates of issue (below), this reservation is cancelled.

Date of issue and mailing: May 31, 2004

Issued by: Insp. R.T. (Bob) Smart

Title: Officer in Charge, Canadian Law Enforcement Training Unit

Signature: _____

Client Representative:

I have read and concur with the RCMP Cancellation policy as stipulated above.

_____ May 31/04
Signing Authority Date

6.3 The R.C.M.P. shall be absolved of any costs incurred by the course candidates/clients in relation to transportation and accommodations if the course is cancelled thirty (30) days prior to the scheduled course date.

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7. **ENTIRE AGREEMENT**

This Agreement constitutes the entire Agreement between the parties and supersedes all previous negotiations, communications and other Agreements relating to it unless they are incorporated by reference in the Agreement.

8. **AMENDMENT OF AGREEMENT**

The parties may, with the written agreement of all parties, amend this Agreement or conclude subsidiary agreements.

9. **ADDRESS OF PARTIES**

Communication between parties shall be forwarded to the following addresses:

To Canadian Pacific Police

Chief W.G. MOODY
Canadian Pacific Railway Police
Suite 157
Gulf Canada Square
401 - 9th Ave. S.W.
Calgary, Alberta T2P 4Z4
Phone: 403-319-7006
Fax:403-319-7024

To the R.C.M.P. at:

OIC Training Academy
Box 6500
REGINA, Saskatchewan S4P 3J7

Phone: 306-780-5786
Facsimile 306-780-3466

IN WITNESS WHEREOF the parties have signed this 31st day of May, 2004.

Chief W.G. Moody
Canadian Pacific Police

~~Sgt. S. Papillo A/OIC~~ Insp. R.T. Smart.
Canadian Law Enforcement Training

May 11, 2004

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K100.17-C-499
CARDED
FICHE

PROTOCOL AGREEMENT

Between

The Royal Canadian Mounted Police
11140 - 109 Street
Edmonton, Alberta
T5G 2T4
(hereinafter referred to as the "RCMP")

HQ COMPLEX
DOSSIERS COMPLEXE
AUG AOUT 31 2005
REV. 51

And

Canadian National Police
415 - 10004 - 104Avenue
Edmonton, Alberta
T5J OK2
(hereinafter referred to as "CN Police")

1. PURPOSE AND OBJECTIVE

To allow the CN Police to use the Firing Range in the RCMP Headquarters Building at 11140 -109 Street, Edmonton, Alberta for the purpose of conducting handgun qualifications.

2. LIAISON CHANNELS / POINTS OF CONTACT

For the RCMP, the Non-commissioned Officer in Charge of Training Section, Edmonton or the person acting in the position will be responsible for the day to day administration of the agreement.

For CN Police, Constable Thornton Root will be responsible for the day to day administration of the agreement.

Formal contact channels for this agreement

For the RCMP
Commanding Officer
Royal Canadian Mounted Police
11140 - 109 Street
Edmonton, Alberta
T5G 2T4

For CN Police
Officer in Charge
Canadian National Police
415-10004-104 Street
Edmonton, Alberta
T5J OK2

3. AMENDMENTS AND CANCELLATIONS

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Amendments to this agreement may be negotiated by either party. The Agreement shall not be varied by any oral agreement or representation or otherwise than by an instrument in writing of concurrent or subsequent date hereto duly executed by the parties

The RCMP or the CN POLICE may cancel this agreement on 30 days written Notice of Intention to cancel or sooner if the terms of the cancellation are mutually acceptable to both parties.

4. TERMS AND PROCEDURES OF LETTER OF AGREEMENT

4.1 CN POLICE may book the "K" Division Range when required by contacting the NCO i/c Training or his delegate. RCMP needs will have priority over CN POLICE bookings. Term of this agreement will be June 15, 2000 to March 31St, 2003.

4.2 CN POLICE agree to pay the sum of $350.00 for each day of use or part thereof. The RCMP will invoice CN POLICE on a monthly basis for use and CN POLICE will pay the invoice within 30 days of invoice date.

4.3 While using the range CN POLICE will have present at all times an a member of CN POLICE who has been trained by the RCMP as a Basic Firearms Instructor. These instructors will also undergo a ½ day local training course with RCMP "K" Division on Range procedures and Lead Concerns.

4.4 CN POLICE will adhere to all RCMP Range Safety rules and standards.

4.5 The RCMP may at any time during the use by the CN POLICE enter the range and observe to ensure that safety guidelines are being met.

4.6 CN POLICE accepts all responsibility for any injury to their personnel or damage to their property while using the Range or while in the RCMP Building.

4.7 CN POLICE will be responsible for any damage to RCMP property or equipment caused by their use of the facility.

4.8 CN POLICE shall indemnify and save harmless, the RCMP from and against and be responsible for any and all claims damages, loss, costs and expenses including legal fees, compromise or settlement which the RCMP may at any time incur or suffer as a result of or arising out of any injury (including death) suffered by any person or loss of or damage to which may be caused or suffered as a result of entering into this Agreement.

5. DISPUTE RESOLUTION

If any dispute arises regarding the application of the Agreement, it will be resolved using the channels described in the LIAISON CHANNELS / POINTS OF CONTACT clause of this Agreement.

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RAY CORNELL
INSPECTOR
Pacific Division
CN Police

DATE: 16 August, 2000

D.N. McDermid
Assistant Commissioner
Commanding Officer
"K" Division
Royal Canadian Mounted Police
DATE: July 05 / 2000

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K100-17-5-719

CARDEX FICHE

HQ COMPLEX RECORDS
DOSSIERS COMPLEX
SEP 20 2005
REV. 51

RADIO LIAISON CIRCUIT
"MEMORANDUM OF UNDERSTANDING"

MEMORANDUM OF UNDERSTANDING entered into as of 2002 August 8th

BETWEEN **THE ROYAL CANADIAN MOUNTED POLICE (RCMP)**
"K" DIVISION
PROVINCE OF ALBERTA
- and -
CN Police
Province of Alberta

WITH RESPECT TO RADIO LIAISON CIRCUIT ESTABLISHED ON ROYAL CANADIAN MOUNTED POLICE CHANNELS.

1. **Requirement for Circuit:**

   for investigative liaison and emergency purposes

2. **Area of Operation:**

   See Attached List

3. **Description of RCMP Frequency (ies):**

   a) See Attached Mobile Frequency List
   b) N/A
   c) N/A
   d) N/A

4. **Type and Quantity of Radio Equipment:**

   Mobile 8 Portables 8

5. **The CN Police Acknowledge and Agrees That:**

   a) approval by the RCMP to establish a liaison circuit is based on agreement of the conditions outlined in Appendix A which is attached.

DATE: August 8, 02	CN Approving Authority Inspector Benoit TESSIER Walker Yard Operation Building 10229 - 127 Avenue Edmonton, Alberta T5E 0B9
DATE: 02-08-15	William M. SWEENEY Commanding Officer RCMP "K" Division Edmonton, Alberta

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RADIO LIAISON CIRCUIT
"MEMORANDUM OF UNDERSTANDING"
Appendix 'A'

a) The approval by the RCMP to establish a liaison will not create a need for technical changes by the RCMP;

b) the CN Police has a fully established radio network;

c) approval by the RCMP does not place an operational responsibility or legal liability on members of the RCMP when acting in support of the CN Police;

d) the sole purpose of the radio liaison circuit is the exchange of operational information of mutual interest or in emergency situations;

e) the radio liaison circuit will not be interconnected until a letter of consent is received from the RCMP;

f) the mobile radio equipment that contain the RCMP channels will only be installed in departmental vehicles and not those that may be provided for private personal use;

g) the approval for the radio liaison circuit is restricted to the RCMP channels noted herein only;

h) the CN Police will procure the necessary radio equipment;

i) any change in the requirement, area of operation, description of RCMP frequencies or type and quantity of radio equipment requires RCMP formal approval and must be reflected in an amendment to this understanding;

j) accepted police radio operating procedures and regulations will be adhered to;

k) the RCMP or the CN Police may, at any time, terminate the established radio liaison circuit in writing;

l) the requirement for this understanding will be reviewed annually by the Regional Informatics NCO In Charge of the area to determine if there is an ongoing need for the authorization:

m) Direct access to Operational Communication Centres (OCC's) is not permitted;

n) Operational Communication Centres (OCC's) are under no obligation whatsoever to support non-RCMP groups or agencies for status, queries or any other services; and

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o) Canadian Police Information Centre (CPIC) and Police Information Retrieval System (PIPS) records queries will be performed only in accordance with CPIC/PIRS policies and procedures;

p) Approval of this application does not imply blanket authority for all areas of Alberta, but rather only to the operational area(s) defined in the Memorandum of Understanding (MOU);

q) Any misuse of privileges will result in the immediate termination of access and possible revocation of the MOU.

r) Agency owned or purchased equipment will not have the capability to transmit Emergency RTT's or RTT to the Communication Center.

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CN Police Patrol Areas
for the Purpose of RCMP Radio Liaison Circuit

CN Police Sub-Division	Route and Prominent City/Town
Wainwright	Edmonton to Chauvin along Highway #14
Camrose	Edmonton to Mirror along Highway #21
Edson	Edmonton to Edson along Highway #16
Sangudo and Westlock	Edmonton to Grande Prairie along Highway #43 and Highway #2
Vegreville	Edmonton to Lloydminster along Highway #16
Edmonton	215th Street on the west end of Clover Bar on the east along Highway #16 in Edmonton only
Edson and Tete Juane	Edson to Alberta/British Columbia border along Highway #16 and Secondary Highway to Grande Cache
Sarcee	Calgary to Hanna along Highway #21, to Camrose along Highway #21, to Red Deer along Highway #2, to Drumheller along Highway #64 and Highway #11 to Rock Mountain House

2001 April 10 (as provided by Cst. Raymond Spencer - CN Police)

Canada

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Royal Canadian Mounted Police / Gendarmerie royale du Canada

Security Classification / Designation
Clasification/Designation securitaire

Commanding Officer
"K" Division
11140-109 Street
Edmonton, Alberta T5G 2T4

Your file votre reference

Our file Notre reference

K1620-2- 1

CN Police
Inspector Benoit TESSIER
Walker Yard Operation Building
10229 - 127 Avenue
Edmonton, Alberta rf5E 0B9

Dear Inspector TESSIER,

Re: Memorandum of Understanding - Liaison Communications

In accordance with the "Memorandum of Understanding" between the RCMP and the CN Police, this will serve as your authority to license and install the following RCMP frequencies in your radio equipment:

Seet Attached Mobile Frequency List
N/A
N/A
N/A

Yours truly

William M. SWEENEY
Commanding Officer
RCMP "K" Division

Canada

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MOBILE FREQUENCY SCHEDULE
RCMP "K" DIVISION - ALBERTA

Channel	Transmit	Receive	CTCSS

*Not Available in the Grande Prairie Area

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R.C.M.P. ALBERTA - DETACHMENT and REPEATER

DETACHMENT&REPEATER DETACHMENT&REPEATER DETACHMENT&REPEATER DETACHMENT &REPEATER

NORTHERN ALBERTA DISTRICT

N.A.D. HQ	A4
N. Alberta OCC	A4

Morinville Area

Alexis (sat)	A8
Alexander (sat)	B4
Athabasca	A1
Barrhead	B7
Boyle	A8
Desmarais	B1
Fox Creek	B3
Ft. Saskatchewan	A2
Gibbons	B4
Mayerthorpe	A8
Morinville	B4
Redwater	B3
Sherwood Park (AUT)	A7
Slave Lake	B9
Smoky Lake	A9
St. Albert (Aut)	A4
Swan Hills	B6
Westlock	B7
Whitecourt	A3

Peace River Area

Assumption	B4
Beaverlodge	A3
Cadotte Lake (RP)	A6/B2
Fairview	B3
Faust	B9/A2
Fort Vermilion	A8/B8
Fox Lake (sat)	B8
Grande Prairie(AUT)	A9/B8
Grimshaw	B2
High Level	B7
High Prairie	A7/A2
Manning	A3
McLennan	A2
Peace River	B2
Red Earth Creek	A4
Spirit River	B4
Valleyview	A4

Fort McMurray Area

Anzac	A4/B5 A6/A7
Conklin/Chip Lk	A5
Janvier (sat)	A9
Fort Chipewyan	A3
Fort McKay	B7
Fort McMurray (AUT)	A2

St. Paul Area

Andrew (sat)	B3
Bonnyville	B1
Calling Lake (sat)	A2
Cold Lake	A2
Elk Point	B7
Lloydminster	F Div
Kitscoty	B9
Lac La Biche	A3
Saddle Lake (sat)	B6
St. Paul	B4
Tofield	B2
Two Hills	B8
Vegreville	B8
Vermilion	B9
Viking	B8
Wainwright	B6

Edson Area

Beaumont	A5
Breton	A1
Calmar (sat)	A5
Devon	A5
Drayton Valley	B1
Edm. Airport	A5
Edson	B2
Enoch (sat)	B5
Evansburg	A8
Grande Cache	A1/A6
Hinton	A2
Jasper	A4/A5
Leduc	A5
Paul Band (sat)	B5
Spruce Grove	B5
Stony Plain	B5
Thorsby	A1

SOUTHERN ALBERTA DISTRICT

S.A.D. HQ.	A4
S.A.lberta OCC	B8

Red Deer Area

Bashaw	B6
Camrose	B6
Consort	A3
Coronation	A3
Didsbury	B5
Forestburg	B3
Hobbema	A6
Innisfail	B8
Innisfail Kenneis	19
Killam	B3
Olds	B5
Ponoka	A6
Provost	B7
Red Deer	B8
Red Deer City (AUT)	A7
Rimbey	B7
Rky. Mtn. House	B3/A9
Stettler	A8
Sundre	A5
Sylvan Lake	B7
Three Hills	B4
Wetaskiwin City	C3
Wetaskiwin Rural	A6

Calgary Area

Airdrie	A1
Banff	A3
Bassano	B7
Beiseker	A1
Brooks	A5
Calgary	A4
Canmore	A6
Cochrane	B2
Drumheller	A7
Gleichen	B7
Hanna	B6
High River	A2
Kananaskis	A6/B3
Lake Louise	B6
Okotoks	A2
Oyen	A9
Strathmore	B7
Tsuu T'ina Nation	A4
Turner Valley	A2

Lethbridge Area

Dow Island	B2
Cardston	A8
Claresholm	B8
Crowsnest Pass	A2
Foremost	B2
Fort MacLeod	B2
Lethbridge	B4
Milk River	A9
Nanton	A6/B8
Peigan	A7
Picture Butte	B4
Pincher Creek	A7
Raymond	A9
Redcliff	B6
Taber	A3
Vulcan	B5
Waterton Park	A8
Waterton Park (May/Oct)	

AUT - Autonomous Detachment
SAT - Satellite Detachment
RP - Regional Police

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Royal Canadian Mounted Police

Memorandum of Understanding

HQ COMPLEX RECORDS
DOSSIERS COMPLEXE QG
DEC 0 5 2005

THIS AGREEMENT, made in duplicate as of the of June 2005

BETWEEN THE ROYAL CANADIAN MOUNTED POLICE AS REPRESENTED BY THE OFFICER IN CHARGE OF CANADIAN LAW ENFORCEMENT TRAINING "DEPOT" DIVISION, HEREINAFTER REFERRED TO AS "R.C.M.P."

AND CN POLICE SERVICES, AS REPRESENTED BY REGENT ST-HILAIRE, HEREINAFTER REFERRED TO AS "CN POLICE SERVICES".

WHEREAS CN Police Services has requested the R.C.M.P. to provide a Basic Firearms Instructors Course in Ottawa, Ontario. The R.C.M.P. has agreed to provide that service.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. **THE SERVICE**

1.1 The R.C.M.P. will undertake to provide;

1) Instruction and co-ordination for one, Basic Firearms Instructors Course from June 18 - 24, 2005.

b) Qualified instructors from the R.C.M.P. Training Academy.

1.2 Training shall take place at the Connaught Range, 35 Shirley Boulevard, Nepean, Ont, K2K 2W6.

1.3 The total number of candidates attending the course shall not exceed 1.

1.4 One training day will consist of eight hours.

2. PAYMENT

2.1 CN Police Services will pay for all expenses incurred by the R.C.M.P. for this service. This price includes course preparation, instruction, co-ordination, course materials, overtime, travel, meals, accommodations for the instructors, airfares, etc. The cost of the course in total will not exceed $2,600.00. This price **DOES NOT** include meals and accommodations for the candidates or their travel expenses. A detailed account of these expenses will be submitted to CN Police Services after the completion of training.

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2.2 Are you on FIS? Yes / No. If yes, please provide your

recipient reference code

and your recipient authorization code

Financial Contact Name:

Phone:

Fax:

2.3 Payment will be due thirty days from date of invoice from the R.C.M.P..

2.4 Payment received after thirty days from date of invoice shall be subject to interest fees. These interest charges will be equivalent to the rate set by the Bank of Canada plus three percent.

2.5 Costs quoted are subject to unforeseen circumstances of which the client is to be notified in advance. These costs are to be borne by the client if he/she so desire to proceed with the course.

3. RELATIONSHIP

3.1 This is an Agreement for the performance of a service and the R.C.M.P. is engaged under the Agreement as an independent contractor for the sole purpose of providing a service. The R.C.M.P. has the right to determine how the service will be delivered and is not subject to the direction or supervision of CN Police Services.

3.2 This Agreement does not create the relationship between the parties as legal partners, joint venturers nor as agents or principals of the other.

3.3 This Agreement is not intended to be a legally binding between the parties but is only intended to serve as a definitive expression of the purpose and intention of the parties, to which they honourably pledge themselves.

4. OWNERSHIP

4.1 CN Police Services shall not use the information acquired in any manner except as reasonably required for the purpose of this course.

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4.2 The course content, and the training material developed by CLET, alone or in conjunction with CN Police Services, remains the property of the RCMP. Any reproduction, dissemination or other unauthorized use is strictly prohibited without the express written consent of CLET.

5. TERMINATION

5.1 This Agreement may be terminated through submission of a written notice of termination by any party to this Agreement at least thirty days prior to the commencement of delivery of service; provided that where the CN Police Services terminates the Agreement, they will be responsible for expenses incurred by the R.C.M.P. prior to receipt of notice of termination.

5.2 The R.C.M.P. shall be absolved of any costs incurred by the course candidates/clients in relation to transportation and accommodations if the course is cancelled thirty (30) days prior to the scheduled course date.

6. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties and supersedes all previous negotiations, communications and other Agreements relating to it unless they are incorporated by reference in the Agreement.

7. AMENDMENT OF AGREEMENT

The parties may, with the written agreement of all parties, amend this Agreement or conclude subsidiary agreements.

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8. **ADDRESS OF PARTIES**

Communication between parties shall be forwarded to the following addresses:

To CN Police Services

Mr. Regent St-Hiliare
Manager, Administration
CN Police Services
935 de LaGauchetiere St. West, 11th Floor
Montreal, Quebec
H3B 2M9

Ph: 514-399-4236
Fax: 514-399-8846

To the R.C.M.P. at:

OIC Canadian Law Enforcement Training Unit
Box 6500
REGINA, Saskatchewan
S4P 3J7

Phone: 306-780-5786
Facsimile 306-780-3466

IN WITNESS WHEREOF the parties have signed this 2nd day of ~~June~~ September, 2005.

Mr. Regent St-Hiliare
CN Police Services

For R.C.M.P.

Insp. J.R.R. (Bob) Bourget, insp.
Oi/c Canadian Law Enforcement Training

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Canadian Police Information Centre
1200 Vanier Parkway,
Ottawa, Ontario.
K1A 0R2

Centre d'information de la police canadienne
1200, promenade Vanier
Ottawa (Ontario)
K1A 0R2

OUR FILE - NOTRE RÉFÉRENCE
GIT 122-5-43
YOUR FILE - VOTRE RÉFÉRENCE
HQ COMPLEX RECORDS
DOSSIERS COMPLEXE DG
SEP 19 2006
REV. 12

Le 5 juin 2006

Monsieur Serge Meloche
Chef, Police du Canadien National
935, de la Gauchetière Ouest
Montréal (Québec)
H3B 2M9

Cher Monsieur Meloche,

Sujet: Centre d'information de la police canadienne - Protocole d'entente

Veuillez trouver ci-joint pour vos dossiers la copie du Protocole d'entente entre la Police du Canadien National et le Centre d'information de la police canadienne qui a maintenant été signé par la GRC.

Merci de votre collaboration afin de faire la mise à jour de ce document.

Sincèrement,

Cap. Guy Parent
Politiques relatives aux programmes
Centre d'information de la police canadienne

....une partie intégrante des Services nationaux de police du Canada

cc: Insp. Wendell Davis, Sous-direction de la planification et des politiques stratégiques

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PROTOCOLE D'ENTENTE

entre

POLICE DU CANADIEN NATIONAL
DÉPARTEMENT DES ENQUÊTES
(CI-APRÈS APPELÉ LE SERVICE)

et le

CENTRE D'INFORMATION DE LA POLICE CANADIENNE
(CI-APRÈS APPELÉ LE CIPC)
un
Service national de police
de la
GENDARMERIE ROYALE DU CANADA

1. POUVOIR

Le **Centre d'information de la police canadienne (CIPC)** conclut le présent protocole d'entente conformément aux principes directeurs du CIPC régissant les services utilisateurs de catégorie II (A), énoncés dans le *Manuel de référence du CIPC*, et en vertu des pouvoirs délégués à l'officier responsable du Centre IPC aux termes du paragraphe 5 (2) de la *Loi sur la Gendarmerie royale du Canada*, qui autorise le Commissaire de la Gendarmerie royale du Canada (GRC) à déléguer les pouvoirs qui lui sont attribués.

2. OBJET

ATTENDU QUE le Comité consultatif du CIPC a autorisé le Service de catégorie II (A) à avoir accès au système du CIPC, conformément aux dispositions du *Manuel de référence du CIPC*, le présent protocole d'entente établit les modalités de l'accès accordé au Service.

3. OBLIGATIONS DES PARTIES

1. Le CIPC autorise l'accès direct aux fichiers ou aux catégories du CIPC ci-dessous, conformément aux modalités du présent protocole d'entente :

    1. la consultation ordinaire des fichiers de la banque de données d'enquête (personnes, véhicules, navigation et biens);

        Remarque 1 : *L'accès à la sous-catégorie Personne d'intérêt - Armes à feu (PIAF) de la catégorie Intérêt particulier pour la police (IPP) est réservé exclusivement aux services utilisateurs de catégorie I, au Centre canadien des armes à feu et aux contrôleurs des armes à feu provinciaux et territoriaux.*

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Remarque 2 : *Pour pouvoir accéder à l'information concernant des adolescents, il faut avoir fourni au préalable la documentation nécessaire au CIPC confirmant le droit d'accès en vertu du paragraphe 119(1) de la* Loi sur le système de justice pénale pour adolescents.

2. la consultation ordinaire des fichiers de la banque de données de l'Identité judiciaire;

3. la consultation ordinaire des fichiers des permis de conduire, des propriétaires de véhicules immatriculés, des personnes errantes et des détenus, dans la banque de données auxiliaires, avec l'approbation, au besoin, des autorités compétentes;

Remarque : *Il appartient aux détenteurs des banques de données de décider si l'accès à leurs banques de données est autorisé ou non. Les droits d'accès peuvent être retirés à leur demande.*

4. l'accès au système de communication du CIPC;

5. l'accès normal aux fichiers de la base de données de formation du CIPC;

2. Le Service doit se procurer, à ses frais, un terminal en ligne directe et assumer les coûts des lignes de communication donnant accès au système du CIPC. Le Service assume également les coûts de maintenance du matériel, à l'exception des coûts rattachés aux dommages causés par la négligence des employés de la GRC.

3. Il relève de la responsabilité du Service de veiller à ce que les terminaux dont il fait l'acquisition satisfont aux exigences du CIPC. Le Service doit assumer les coûts de mise à niveau des terminaux pour les rendre compatibles avec le système du CIPC, ainsi que tout autre coût lié à la non compatibilité.

4. Le Service doit installer les terminaux du système du CIPC dans un endroit où leur utilisation est limitée aux personnes autorisées et convient de ne pas débrancher ou de ne pas déplacer tout terminal donnant accès au système du CIPC sans d'abord avoir avisé la Section de l'exploitation locale du CIPC. L'officier responsable du Centre IPC a le pouvoir d'examiner toutes les questions qui ont trait à l'emplacement des terminaux.

5. Le CIPC et le Service reconnaissent le besoin de respecter la vie privée des personnes et de protéger les données disponibles par le biais du système du CIPC. Le Service s'engage à se conformer aux dispositions de la *Loi sur la protection des renseignements personnels*, de la *Loi sur l'accès à l'information,* des lois provinciales relatives à la protection des données et des lignes directrices pertinentes du Conseil du Trésor du Canada. Le Service doit aussi se conformer aux politiques et aux modalités du *Manuel de référence du CIPC*.

6. Le Service convient que toutes les personnes autorisées à avoir accès au terminal du CIPC devront faire l'objet d'une vérification des antécédents judiciaires et des fichiers locaux. Pour ce qui est de la vérification des antécédents judiciaires, il faut envoyer une fiche dactyloscopique (formule C-216C) à la Direction des services d'information et d'identité judiciaires de la GRC ou à un technicien autorisé par la GRC à utiliser le Système automatisé d'identification dactyloscopique (SAID). La vérification des fichiers locaux doit être faite par le service de catégorie I du territoire de compétence visé. Conformément aux principes directeurs du CIPC, les pièces attestant l'habilitation sécuritaire seront mises à la disposition d'un vérificateur du CIPC sur demande.

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7. Avant qu'une personne ne puisse avoir accès à un terminal du CIPC, le Service convient que cette personne devra recevoir la formation appropriée du personnel d'une Section de l'exploitation locale du CIPC ou de personnes qualifiées du Service.

8. Le Service convient que le terminal donnant accès au système du CIPC ne doit être utilisé qu'à l'appui des enquêtes autorisées et autres activités menées conformément aux principes directeurs du CIPC et en vertu du mandat du Service. Le Service convient également que le système du CIPC ne peut être utilisé pour effectuer la vérification de l'habilitation sécuritaire ou de la fiabilité de personnes sauf si la fonction d'attribution de permis est prévue par la loi. En outre, le Service convient que seuls les services utilisateurs détenant tous les pouvoirs d'application de la loi (catégorie I) peuvent utiliser le CIPC pour vérifier la fiabilité de personnes appelées à travailler auprès d'un groupe vulnérable (enfants, personnes âgées, personnes handicapées, etc.).

9. Le Service convient que tout branchement à Internet doit être fait conformément à la politique du CIPC précisée à l'article 4 du chapitre I.4 du *Manuel de référence du CIPC*. Le Service convient également de faire approuver par l'officier responsable du Centre IPC l'interconnexion à un autre réseau local ou externe. Le Service devra alors examiner et évaluer le niveau de sécurité de son système informatique et présenter les résultats de cette vérification.

10. Le Service reconnaît que l'accès au système du CIPC par un moyen autre qu'un dispositif de liaison directe ou une interface par service d'accès à distance tel qu'un appareil portatif ne servira qu'aux consultations.

11. Le Service doit s'assurer que le mot-clé REM (Remarques) dans toutes les consultations comprend le nom de la personne effectuant la consultation, le numéro du dossier en cause et le motif de la consultation. Le Service convient également d'inscrire suffisamment de renseignements dans le dossier pour justifier la légitimité des consultations effectuées.

12. Le Service convient de ne pas diffuser les renseignements obtenus dans la banque de données auxiliaires du CIPC (véhicules immatriculés, permis de conduire, dossiers de détenus et personnes errantes). Le Service convient de ne pas diffuser davantage les renseignements obtenus dans les autres banques de données du CIPC, sauf lorsque la diffusion des données est conforme à l'accomplissement des tâches et des responsabilités en matière d'application de la loi du Service. Toutefois, le Service peut diffuser des renseignements du CIPC à un autre service utilisateur approuvé du CIPC, pourvu que la diffusion respecte les lois provinciales et fédérales en matière de protection des renseignements personnels et que les deux services signent une lettre d'entente à cet effet.

13. Le Service doit signaler toutes les plaintes de contravention aux principes directeurs du CIPC à l'officier responsable du Centre IPC par l'intermédiaire de la Section de l'exploitation locale du CIPC compétente. Si la plainte est réglée par le Service, les résultats de l'enquête, dont les mesures correctives ou disciplinaires prises, doivent être communiqués à l'officier responsable du Centre IPC, aux fins d'inclusion dans le dossier et le rapport annuel au Comité consultatif du CIPC. Si le Service ne réussit pas à résoudre la plainte, l'officier responsable du Centre IPC demandera qu'une enquête soit menée par la Section de l'exploitation locale du CIPC compétente.

14. Le Service convient de permettre aux vérificateurs du CIPC d'effectuer sur les lieux une vérification de l'exploitation du système du CIPC par le Service, afin d'assurer la conformité avec les modalités du présent protocole d'entente et les principes directeurs

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du CIPC, ainsi que de l'utilisation et de la diffusion des renseignements obtenus dans le système du CIPC. Le Service convient également de mettre à la disposition des vérificateurs du CIPC tout terminal relié au système du CIPC, les opérateurs de terminaux et tous les documents pertinents.

15. Le Centre IPC doit, dès que cela est possible, aviser le Service de tout changement apporté au système du CIPC qui requiert des modifications au matériel ou au logiciel nécessaires pour y avoir accès.

16. Le Service convient de ne pas utiliser le système du CIPC pour faire enquête sur des affaires civiles.

4. LIAISONS

1. Voici les liaisons et les personnes-ressources pour les deux parties.

(1) Le Chef, Police du Canadien National

(2) Le gestionnaire de la Section de l'exploitation locale du CIPC - Ontario/Québec/Nunavut.

2. Tout différend au sujet du présent protocole d'entente sera réglé par voie de consultation entre l'officier responsable du Centre IPC et le chef, Police de Canadien National. Leur décision sera définitive en ce qui a trait à la résolution des différends au sein des deux organisations en cause.

5. MODIFICATION OU ANNULATION

1. Le présent protocole d'entente peut être modifié avec le consentement écrit des deux parties.

2. Le présent protocole d'entente peut être annulé en tout temps moyennant un préavis écrit de 90 jours par l'une des deux parties.

3. À l'expiration du présent protocole d'entente, le Centre IPC fera débrancher les lignes de communication reliant le Service au système du CIPC. Le Service devra remettre au Centre IPC tous les logiciels et tout le matériel qui lui auront été fournis.

6. EFFET JURIDIQUE

1. Le présent protocole d'entente n'est pas conclu ni rédigé à titre d'entente officielle ou d'entente ayant force obligatoire. Il ne représente que l'expression précise et documentaire des objets et intentions auxquels s'engagent les parties intéressées.

2. Dès sa signature par les deux parties, le présent protocole d'entente remplace et annule toute déclaration orale ou écrite antérieure liant le Service et le CIPC.

7. EXAMEN

1. Le Centre IPC examinera les dispositions du présent protocole d'entente au moins tous les deux ans à compter de la date de signature.

2. Les deux parties effectueront une évaluation officielle des dispositions du présent protocole d'entente au moins tous les quatre ans à compter de la date de signature.

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EN FOI DE QUOI, le Service a fait dûment signer le présent protocole d'entente à _____ le ___ jour
(ville et province)
de _____ 2006.

CHEF
POLICE DE CANADIEN NATIONAL

_____
Serge Meloche

EN FOI DE QUOI, le CENTRE D'INFORMATION DE LA POLICE CANADIENNE, un Service national de police de la GENDARMERIE ROYALE DU CANADA, a fait dûment signer le présent protocole d'entente à Ottawa (Ontario) le ___ jour
de _____ 2006.

CENTRE D'INFORMATION DE LA POLICE CANADIENNE

L'officier responsable du Centre IPC,

_____
Gordon L. Finck, surintendant principal

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THIS ARRANGEMENT, made in duplicate this 20th day of February, 2007.

BETWEEN THE ROYAL CANADIAN MOUNTED POLICE (HEREINAFTER REFERRED TO AS **"RCMP"**)

AND

THE CANADIAN ASSOCIATION OF CHIEFS OF POLICE (HEREINAFTER REFERRED TO AS **"CACP"**)

BACKGROUND

The Canadian Association of Chiefs of Police (CACP), in partnership with the Justice Institute of British Columbia, is hosting their annual Human Resources Conference in Victoria B.C. from April 1 to 3, 2007

Target Audience:

- Chiefs of police, Deputy Chiefs, Police Executives, HR Managers, Professional Standards, Researchers, Senior Government Managers, Police Service Board Members, Police Association Executives, Private Security Executives

Conference Objectives:

- We live in an era where global issues have become domestic issues, where it is necessary to be prepared for the unexpected, and to plan for events which, in the past, were considered unthinkable. Policing must keep pace with the stresses of social change, and through its human resources practices foster enhanced leadership and a new corporate competence to address these challenges.

Conference Chairs:

- Director, Ontario Police College
- Toronto Police Service

The total cost of the conference is estimated to be approximately $100,529.23

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NOW THEREFORE THE Participants AGREE AS FOLLOWS:

1. DEFINITIONS

In this Memorandum of Understanding (MOU) the following terms, in singular or plural form according to the context, are defined as follows:

CACP - Canadian Association of Chiefs of Police
HR - Human Resources

2. PURPOSE AND SCOPE

This Arrangement sets out the roles and responsibilities of the participants in hosting the CACP HR conference.

3. OBLIGATIONS OF THE ROYAL CANADIAN MOUNTED POLICE

1.1 The RCMP intends to:

- Pay a maximum of $15,000 including all taxes, towards the hosting of this event.
- Deputy Commissioner Barbara George is a member of the CACP HR Committee and sits on the organizing committee for this year's HR Conference April 1-3, 2007

4. OBLIGATIONS OF CANADIAN ASSOCIATION OF CHIEFS OF POLICE

- As part of hosting the CACP HR Conference, the CACP will provide the following to the RCMP:
-Verbal recognition by CACP at opening or closing session.
- Inclusion in CACP general signage display (prominent location) at entrance to plenary sessions
- Two registrations for the conference ($495+GST x 2)
- Opportunity to introduce and/or participate in morning or afternoon panel session
- Preferred seating at the reception & dinner on April 1, 2007

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In addition the RCMP consents to the use by CACP of:
- RCMP logo & name prominently displayed on conference binder cover page
- RCMP name/logo on display screens at start of plenary sessions

5. FINANCIAL ARRANGEMENTS

The RCMP will pay $15,000 towards the administrative costs associated with the hosting of this event.

The RCMP agrees to pay up to:

- $6,000 of audio visual rental equipment and technician fees;
- $7,500 of fees for professional development of the program;
- $1,500 for the development and printing of the conference binder.

The funds may not be used for any hospitality costs.

The RCMP intends to pay the funds following receipt of detailed invoices from CACP and copies of the supplier's invoices. (taxes included)

The total cost of the conference is estimated to be approximately $100,529.23

The method of payment to be used is payment by cheque.

6. TERM

This agreement shall commence upon execution by the participants and shall expire on ***April 30, 2007.***

7. DEPARTMENTAL REPRESENTATIVES

The following officials are designated as the departmental representatives for purposes of this arrangement and any notices required under this arrangement shall be delivered as follows:

In the case of the RCMP, to
Deputy Commissioner Barbara George

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Deputy Commissioner Human Resources
RCMP HQ

In the case of CACP, to :
Director, Ontario Police College
Chair of the CACP HR Committee,
582 Somerset Street West, Ottawa, Ont, K1R 5K2

8. **DISPUTE RESOLUTION**

In the event of a dispute arising from the interpretation or operation of this Arrangement, it shall be referred to the participants' representatives set out above, who shall use their best efforts to resolve the matter amicably.

9. **TERMINATION**

This arrangement may be terminated by either participant upon ten (10) days written notice. Termination does not release a participant from any obligations which accrued while the arrangement was in force.

10. **MONITORING**

Upon termination of this arrangement, each participant will meet to discuss, evaluate and review the effectiveness of this agreement.

11. **AMENDMENT**

This Arrangement may only be amended by the written consent of the participants.

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Canadian Association of Chiefs of Police

Date: 2 APR - 07

Director,
Ontario Police College
Chair of the CACP HR Committee,

Royal Canadian Mounted Police

Date: 2007/03/27

Beverley A. Busson
Commissioner

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JUN 12 2007
REV. 7

THIS ARRANGEMENT, made in duplicate as of the 2nd day of March 2007

BETWEEN

THE ROYAL CANADIAN MOUNTED POLICE
(HEREINAFTER REFERRED TO AS "RCMP")

AND

THE CANADIAN ASSOCIATION OF CHIEFS OF POLICE
(HEREINAFTER REFERRED TO AS **"CACP"**)

BACKGROUND:

The Canadian Association of Chiefs of Police (CACP) is hosting its 1st Quality Assurance Conference in Ottawa from September 30th to October 3rd 2007.

The RCMP intends to cost share this conference up to a maximum of $25,000 (Canadian) including all taxes.

Target Audience:

- Police Service Program Managers
- Law Enforcement Agency Executives
- Police Governing Board Executives
- Police Board Members

Conference Theme and Objectives:

- The pursuit of quality assurance in law enforcement
- The various law enforcement agencies will have the opportunity to share administrative best practices and continuous networking to better serve our communities.
- The participant will be able to implement a process to monitor and assess the overall effectiveness of their respective agencies quality program.
- The participant will bring back a set of specific quality assurance skills and tools to enhance quality assurance in their own department.

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Conference Chairs:

York Regoional Police Services
Inspector Luc Delorme, RCMP

NOW THEREFORE THE PARTICIPANTS' INTENTS ARE AS FOLLOWS:

1. In this Memorandum of Understanding (MOU) the following terms, in singular or plural form according to the context, are defined as follows:

CACP - Canadian Association of Chiefs of Police
QA - Quality Assurance

2. **PURPOSE AND SCOPE**

This Arrangement sets out the roles and responsibilities of the participants in the sponsoring and hosting of this annual conference.

3. **OBLIGATIONS OF THE ROYAL CANADIAN MOUNTED POLICE**

- The RCMP intends to cost share this conference up to a maximum of $25,000 (Canadian) including all taxes
- Internal Audit, Evaluation and Review, Chief Audit Executive M. Brian Aiken will deliver the opening and closing remarks at the conference
- Management Review and Quality Assurance Director Superintendent René-Pierre Tremblay will deliver sessions on External Audit, Internal Audit, Evaluation, Management Review and Quality Assurance
- Internal Audit, Evaluation and Review Manager M. Dave Coderre will deliver a session on Continual Auditing
- Management Review and Quality Assurance Officer in Charge Inspector Luc Delorme will participate in a panel discussion: Re " Quality Assurance Issues"

4. **OBLIGATIONS OF CANADIAN ASSOCIATION OF CHIEFS OF POLICE**

As part of hosting its first Quality Assurance Conference, the CACP will provide the following to the RCMP:

- Verbal recognition by CACP at opening ceremonies
- Display of the RCMP logo at plenary sessions and on conference CD
- Two registrations for the conference
- Preferred seating at the dinner
- Recognition of RCMP on CACP web site

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- **In addition the RCMP consents to the use by CACP of:**

  RCMP logo & name prominently displayed on the conference binder cover page
  RCMP name/logo on display screens at the start of plenary sessions

5. FINANCIAL ARRANGEMENTS

The RCMP will pay, on a cost sharing basis, 50% of the administrative costs associated with the hosting of this conference up to a maximum of $25,000, including but not limited to:

The rental of audio – visual equipment, and technician fees
Translation services
Professional development program i.e.; speakers costs, accommodation, travel, printing of program
CACP administrative/logistics costs
Planning teams costs and follow-up/evaluation meeting

The funds may not be used for any hospitality costs.

All costs of the conference must be made available to the RCMP to ensure the % of cost covered does not exceed 50 % of the overall cost.

The RCMP intends to provide the funds following receipt of detailed invoice from the CACP and copies of the suppliers' invoices. (GST included).

The administrative costs associated with the hosting of this conference up to a maximum of $25,000 will be paid entirely by the RCMP Chief Audit Executive's budget.

The RCMP intends to pay the funds prior to the QA conference

The method of payment to be used is payment by cheque

The total cost of the conference estimated by the CACP is approximately $ 130, 000.00

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6. TERM

This arrangement shall commence upon execution by the participants and shall expire on **October 15th, 2007.**

For any administrative costs incurred by CACP, in fiscal year 2006-07 must be invoiced to the RCMP prior to March 31st 2007 and the remaining by October 15th, 2007.

7. DEPARTMENTAL REPRESENTATIVES

The following officials are designated as the departmental representatives for purposes of this arrangement and any notices required under this arrangement shall be delivered as follows:

In the case of the RCMP, to
Inspector Luc Delorme,
Officer in charge, Management Review and Quality Assurance, 295 Coventry Rd, Ottawa, Ont., K1A 0R2

In the case of CACP, to:

Executive Director, CACP
582 Somerset Street West, Ottawa, Ont., K1R 5K2

8. MONITORING

Upon completion of this operation, a debriefing will be scheduled to evaluate and discuss lessons learned from planning and delivery of the conference on or about 24th of October 2007 at CACP Headquarters, Ottawa, Ontario. Each agency entered into this arrangement is responsible for capturing a full description of their commitments and obligations identified throughout the conference and preparation leading to the conference.

9. TERMINATION:

This arrangement may be terminated by either participant upon thirty (30) days written notice. Termination does not release a participant from any obligations which accrued while the arrangement was in force.

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10. DISPUTE RESOLUTION

In the event of a dispute arising from the interpretation or operation of this Arrangement, it shall be referred to the participants' representatives set out above, who shall use their best efforts to resolve the matter amicably.

11. AMENDMENT

This Arrangement may only be amended by the written consent of the participants.

Signed by the authorized officers of the participants:

Canadian Association of Chiefs of Police

Executive Director

Date 2007/03/23

Royal Canadian Mounted Police

Commissioner Bev Busson

Date 2007/03/17

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Memorandum of Understanding

THIS ARRANGEMENT, made in duplicate as of the 15th day of August 2007

BETWEEN

THE ROYAL CANADIAN MOUNTED POLICE
(HEREINAFTER REFERRED TO AS "RCMP")

AND

THE CANADIAN ASSOCIATION OF CHIEFS OF POLICE
(HEREINAFTER REFERRED TO AS "CACP")

BACKGROUND

The Canadian Association of Chiefs of Police (CACP) is hosting their Annual Conference in Calgary, Alberta from August 19 to August 22, 2007.

The RCMP has agreed to cost share this event up to a maximum of $25,000 (Canadian) including all taxes.

Target Audience:

Canadian Chiefs of Police and senior police executives

Conference Theme:

Confidence in Crisis

THE PARTICIPANTS INTEND AS FOLLOWS:

1. **DEFINITIONS**

In this Memorandum of Understanding (MOU) the following terms, in singular or plural form according to the context, are defined as follows:

CACP - Canadian Association of Chiefs of Police
RCMP - Royal Canadian Mounted Police
Participant - CACP or RCMP
Arrangement - Memorandum of Understanding
MOU - Memorandum of Understanding

Feuillets de transmission par télécopieur / Post-it™ Fax Note 7671B	Date: 20071114	# of pages / Nbre de pages: 4
To / A: Christina Bowman	From / De: Patricia Bennett	
Co./Dept. / Cie/Service: HQ Acct Ops	Co. / Cie: SPPO HQ	
Phone # / N° de tél: (613)990-8654	Phone # / N° de tél: (613)993-3201	
Fax # / N° de télécopieur: (613)949-4580	Fax # / N° de télécopieur: (613) 998-4453	

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2. PURPOSE AND SCOPE

This Arrangement sets out the roles and responsibilities of the Participants in the hosting of this annual conference.

3. OBLIGATIONS OF THE RCMP

The RCMP agrees to provide financial assistance with related cost of the event.

3.1 The RCMP agrees to certify and process an invoice from CACP for the simultaneous translation of conference sessions and translation of conference reports and presentations. This invoice will not exceed $25,000.

4. OBLIGATIONS OF CACP

As part of hosting the CACP Annual Conference, the CACP will provide the following to the RCMP:

4.1 The CACP intends to cover the remaining costs of the conference.

5. FINANCIAL ARRANGEMENTS

The RCMP will pay for the administrative costs associated with the hosting of this event up to a maximum of $25,000, including but not limited to:

- the rental of audio-video equipment
- fees in support of translation, interpretation, and other related direct costs stemming from the conference

THE FUND MUST NOT BE USED FOR ANY HOSPITALITY COSTS

The RCMP agrees to provide the funds following receipt of detailed invoices from CACP and copies of the suppliers invoices (GST included).

6. TERM

The Arrangement will commence upon execution by the Participants and will expire on October 22, 2007.

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7. DEPARTMENTAL REPRESENTATIVES

The following officials are designated as the departmental representatives for purposes of this Memorandum of Understanding and any notices required under this MOU will be delivered as follows:

In the case of the RCMP,

Leslie Cook
Inspector
RCMP - Strategic Policy and Planning Directorate
1200 Vanier Parkway
Ottawa, Ontario K1A 0R2

613-993-3596

In the case of the CACP to,

Executive Director, CACP
582 Somerset Street
Ottawa, Ontario K1R 5K2

613-233-1106

8. DISPUTE RESOLUTION

In the event of a dispute arising from the interpretation or operation of this MOU, it will be referred to the Participants' representatives set out above, who will use their best efforts to resolve the matter amicably.

9. AMENDMENT TO THE MOU

This Arrangement may only be amended by the written consent of the Participants.

10. MONITORING

Upon termination of this Arrangement, each Participant will meet to audit, evaluate and review the effectiveness of this Arrangement.

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11. **TERMINATION:**

This Arrangement may be terminated by either Participant upon thirty (30) days written notice. Termination does not release a Participant from any obligations which accrued while the Arrangement was in force.

Signed by the authorized officers of the Participants:

Royal Canadian Mounted Police

Date: 2007-08-15

Graham Muir
Acting Assistant Commissioner, SPPD
1200, Vanier Parkway
Ottawa, Ontario, K1A 0R2

Canadian Association of Chiefs of Police

Date: 2007/08/15

~~Executive Director~~, CACP
582 Somerset ~~Street~~
Ottawa, Ontario K1R 5K2

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FEB 1 1 2008
REV. 52

Memorandum of Understanding

THIS ARRANGEMENT, made in duplicate as of the 26th,day of October 2007

BETWEEN

THE ROYAL CANADIAN MOUNTED POLICE
(HEREINAFTER REFERRED TO AS "RCMP")

AND

THE CANADIAN ASSOCIATION OF CHIEFS OF POLICE
(HEREINAFTER REFERRED TO AS "CACP")

BACKGROUND

The CACP's Crime Prevention Committee, of which three officers from the RCMP are members, is supporting a conference entitled "International Congress on Street Gangs" in Montreal October 28th to 31st, 2007. One of the primary deliverables of the conference is to explore the development of a comprehensive and holistic strategy – one that contributes to the development of a framework to guide government, communities and policing interventions and investments.

NOW THEREFORE THE PARTICIPANTS INTEND FOLLOWS:

1. DEFINITIONS:

In this Memorandum of Understanding (MOU) the following terms, in singular or plural form according to the context, are defined as follows:

"Arrangement" means Memorandum of Understanding
"MOU" means Memorandum of Understanding
"CACP" means Canadian Association of Chiefs of Police
"CPSD" means Crime Prevention through Social Development

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2. PURPOSE AND SCOPE:

This arrangement sets out the roles and responsibilities of the participants in supporting the international conference, "International Congress on Street Gangs".

3. OBLIGATIONS OF THE RCMP:

3.1 The RCMP agrees to certify and process invoices from the CACP for various administrative and logistical costs of the conference. These invoices will not exceed $20,000.00 and will be based on the following budget.

CACP Administration & Logistic Costs:	$ 11,350
Pre/Onsite Registration (4000)	
Conference Programming (4000)	
Conference Booklet (2000)	
Audio Visual Slideshow (700)	
Website Maintenance (650)	
AV Equipment	$ 1,000
Printing	$ 2,650
Translation: Conference Brochure:	$ 2,000
Speaker Fee & Honorarium	$ 3,000

4. OBLIGATIONS OF CACP:

4.1 The CACP intends to cover the remaining costs of the conference from the funding received through various other agencies and private supporters.

5. FINANCIAL ARRANGEMENTS:

The RCMP will contribute a maximum of $20,000.00
The CACP will contribute a maximum of $300,500.00

The RCMP agrees to certify and process invoices from CACP in an amount not to exceed $20,000.00 for various conference related expenses such as goods and services, as specified in Section 3 of this MOU. The CACP agrees to provide a detailed invoice to the RCMP no later than November 30th, 2007. The RCMP will pay the maximum sum of $20,000.00 no later than 60 days after the receipt of the invoice.

6. TERM:

This arrangement will commence upon execution by the participants and will expire on December 31st, 2007.

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7. DISCLOSURE AND USE OF INFORMATION:

The proceedings of the conference will be posted on the CACP website and the report will be distributed to participants, including the CACP Crime Prevention Committee members, and other interested parties.

8. DEPARTMENTAL REPRESENTATIVES:

The following officials are designated as the departmental representatives for purposes of this arrangement and any notices required under this arrangement will be delivered as follows:

For the RCMP: Name C/Supt F.G. Macaulay Title DG Strategic and Policing Agreements Address 1200 Vanier Parkway Telephone 613 993 4712	For the CACP: Name Title Executive Director Address 582 Somerset Street West Ottawa, ON K1R 5K2 Telephone (613) 233-1106

9. LIABILITY:

Each participant will be responsible for any damages caused by the conduct of its employees or agents in carrying out the terms of this arrangement.

10. DISPUTE RESOLUTION:

In the event of a dispute arising from the interpretation or operation of this arrangement, it will be referred to the participants' representatives set out above, who will use their best efforts to resolve the matter amicably.

11. INTELLECTUAL PROPERTY RIGHTS:

Presentations will be placed on the CACP website for all conference participants to view immediately following the conference with approval from the speakers. The material is not for sale.

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12. MONITORING:

Upon completion of this operation, a debriefing will be scheduled with the CACP Crime Prevention Committee to evaluate and discuss lessons learned. Each agency entered into this arrangement is responsible for capturing a full description of their commitments and obligations identified throughout the operation.

13. TERMINATION:

This arrangement may be terminated by either participant upon thirty (30) days written notice. Termination does not release a participant from any obligations which accrued while the arrangement was in force.

14. AMENDMENT TO THE ARRANGEMENT:

This arrangement may only be amended by the written consent of the participants.

Signed by the authorized officers of the participants:

For the CACP:

Date: 30/oct/07.

Name:
Title: Executive Director
Address: 582 Somerset Street West
Ottawa, Ontario, K1R 5K2
Telephone: 613-233-1106

For the RCMP:

J Macaulay Date: 07/10/24

Name: C/Supt F.G. Macaulay
Title: Director General,
Strategic and Policing Agreements
Address: 1200 Vanier Parkway
Ottawa, Ontario, K1A 0R2
Telephone: 613-993-4712

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THIS ARRANGEMENT, made in duplicate as of the 25th day of January 2008

BETWEEN

THE ROYAL CANADIAN MOUNTED POLICE
(HEREINAFTER REFERRED TO AS "RCMP")

AND

THE CANADIAN ASSOCIATION OF CHIEFS OF POLICE
(HEREINAFTER REFERRED TO AS **"CACP"**)

BACKGROUND

This International conference in Canada will raise public awareness, engage industry in a meaningful manner and promote the Canadian, Australian, British, Italian and American government's commitment in addressing the crime. The 3rd Meeting of the International Virtual Global conference is to be hosted by the National Child Exploitation Coordination Centre (NCECC) and coordinated by Canadian Association of Chiefs of Police (CACP).

The RCMP intends to cost share this conference up to a maximum of $15,000 (Canadian) including all taxes.

Target Audience :

* Law Enforcement Personnel
* Internet & Telecommunication service Providers
* Non Government Organizations
* Child Advocacy Group
* Government Policy makers
* Technology Sector
* Educational Executives
* Judiciary
* Crown Prosecutors
* Internet Content Hosts
* Payment Providers

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Conference Theme & Objective:

The 3rd International Virtual Global Taskforce Conference highlights the need for law enforcement, government, industry and non government agencies to cooperate globally to fight child exploitation. The conference aims to build an awareness and understanding of the challenges faced when fighting a borderless cross jurisdictional crime. The Conference recognizes that no one agency, organization or company can win the fight of protecting our most vital resource, our children, alone. It can only be achieved with international cooperation, as demonstrated by the Virtual Global Taskforce.
The conference will reflect on what has worked in the past, highlight the lessons learned, and determine how to take the International cooperation forward in the future.

Conference Chairs:

*

* Superintendent Earla-Kim McColl, RCMP OIC NCECC, VGT Representative, Canada

*

NOW THEREFORE THE PARTICIPANTS INTEND AS FOLLOWS:

1. In this Memorandum of Understanding (MOU) the following terms, in singular or plural form according to the context, are defined as follows:

   "RCMP" means THE ROYAL CANADIAN MOUNTED POLICE
   "CACP" means THE CANADIAN ASSOCIATION OF CHIEFS OF POLICE
   "NCECC" means THE NATIONAL CHILD EXPLOITATION COORDINATION CENTRE
   "Arrangement" means Memorandum of Understanding
   "MOU" means Memorandum of Understanding

2. **PURPOSE AND SCOPE:**

   This Arrangement sets out the roles and responsibilities of the participants in the sponsoring and hosting the 3rd International Virtual Global Taskforce annual conference.

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3. OBLIGATIONS OF THE RCMP:

* The RCMP intends to cost share this conference up to a maximum of $15,000 (Canadian) including all taxes.
* As part of a partnership, RCMP paid the cost relate to Translation Services / Audio Visual Equipment.
* Superintendent Earla-Kim McColl, RCMP OIC NCECC, VGT Representative, Canada will deliver the opening and closing remarks at the conference.

4. OBLIGATIONS OF CACP:

The CACP operates on a cost recovery basis and will organize the conference in its entirety overseeing advertising, registration, finance, speakers, moderators, food and beverage, audio visual, conference booklets, slide shows, onsite signage, communications, corporate sponsorships, volunteers and websites.

- **In addition the RCMP consents to the use by CACP of:**

  RCMP logo & name prominently displayed on the conference binder cover page
  RCMP name/logo on display screens at the start of plenary sessions

5. FINANCIAL ARRANGEMENTS:

Translation expenses for the 3rd International Virtual Global Taskforce Conference are details as follow :

Translators for Plenary Sessions	$ 6,000.00
Written Translation	$ 1,000.00
Audio Visual & Simultaneous Interpretation Equipment	$ 8,000.00

The Translation Services costs associated with the hosting of this conference up to a maximum of $ 15,000.00 will be paid entirely by the NCECC budget. ???

The method of payment to be used is payment of invoice by cheque from RCMP's account payable.

6. TERM:

This Arrangement will commence upon execution by the Participants and will expire on February 20th, 2008.

Released under the provisions of the Access to Information Act / Divulgué en vertu de la loi sur l'accès à l'information

7. DEPARTMENTAL REPRESENTATIVES

The following officials are designated as the departmental representatives for purposes of this arrangement and any notices required under this arrangement shall be delivered as follows:

In the case of the RCMP, to
Superintendent Earla-Kim McColl, ,
Officer in charge, RCMP NCECC,
1200 Vanier Parkway, Room C-252 Ottawa, Ont., K1A 0R2

In the case of CACP, to:

Executive Director, CACP
582 Somerset Street West, Ottawa, Ont., K1R 5K2

8. MONITORING

Each agency entered into this arrangement is responsible for capturing a full description of their commitments and obligations identified throughout the conference and preparation leading to the conference.

9. TERMINATION:

This arrangement may be terminated by either participant upon thirty (30) days written notice. Termination does not release a participant from any obligations which accrued while the arrangement was in force.

10. DISPUTE RESOLUTION

In the event of a dispute arising from the interpretation or operation of this Arrangement, it shall be referred to the participants' representatives set out above, who shall use their best efforts to resolve the matter amicably.

Processed under the provisions of the Access to Information Act / Traité en vertu de la loi sur l'accès à l'information

11. AMENDMENT

This Arrangement may only be amended by the written consent of the Participants.

Signed by the authorized officers of the Participants:

For the Canadian Association of Chiefs of Police:

Date: 30/Jan/08.

Executive Director
582 Somerset Street West,
Ottawa, Ontario
K1R 5K2
(613) 233-1106

For the NCECC:

Date: 2008 Jan 31.

Superintendent Earla-Kim McColl, RCMP OIC NCECC
1200 Vanier Parkway Room C-252
Ottawa, Ontario
K1A 0R2
(613) 990-8399

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JUL 30 2008
REV. 77

MOBILE FREQUENCY SCHEDULE
RCMP "K" DIVISION - ALBERTA

RADIO LIAISON CIRCUIT
"MEMORANDUM OF UNDERSTANDING"

MEMORANDUM OF UNDERSTANDING entered into as of 2004 June 16

BETWEEN **THE ROYAL CANADIAN MOUNTED POLICE (RCMP)**
"K" DIVISION
PROVINCE OF ALBERTA
- and -
~~**CN Police**~~
Province of Alberta

C-993

WITH RESPECT TO RADIO LIAISON CIRCUIT ESTABLISHED ON ROYAL CANADIAN MOUNTED POLICE CHANNELS.

FILE COPY

1. **Requirement for Circuit:**
   ~~for~~ For investigative ~~laision~~ and emergency purposes
2. **Area of Operation:**
   See Attached List
3. **Description of RCMP Frequency (ies):**
   a) Seet Attached Mobile Frequency List
   b) N/A
   c) N/A
   d) N/A
4. **Type and Quantity of Radio Equipment:**
   Mobile - Portables -
5. **The CN Police Acknowledges and Agrees That:**
   a) approval by the RCMP to establish a liaison circuit is based on agreement of the conditions outlined in Appendix which is attached.

~~DATE:~~ Benoit Tessier June 16, 2004	Benoit TESSIER Inspector - CN Police 10229 - 127 Avenue Edmonton, Alberta T5E 0B9
Wm Sweeney DATE: 04-07-08	William M. SWEENEY Commanding Officer RCMP "K" Division Edmonton, Alberta

RADIO LIAISON CIRCUIT
"MEMORANDUM OF UNDERSTANDING"
APPENDIX

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Royal Canadian Mounted Police / Gendarmerie royale du Canada

Commanding Officer / Commandant divisionnaire

July 6, 2004

CN Police
Attention: Inspector Benoit Tessier
Walker Yard Operation Building
10229 - 127th Avenue
Edmonton AB T5E 0B9

File reference
K1620-28-19-6

Dear Inspector Tessier:

Re: Memorandum of Understanding - Liaison Communication

In accordance with the "Memorandum of Understanding" between the RCMP and the CN Police, this will serve as your authority to license and install the following RCMP frequencies in your radio equipment:

See attached Mobile Frequency List
N/A
N/A
N/A

Yours truly,

W.M. Sweeney
Assistant Commissioner
Commanding Officer "K" Division

11140 - 109 Street
Edmonton, AB T5G 2T4

phone: 780,412-5444; fax: 412-5601

Canada

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Royal Canadian Mounted Police
Gendarmerie royale du Canada

1200 Vanier Parkway
Ottawa, Ontario
K1A 0R2

1200, promenade Vanier
Ottawa (Ontario)
K1A 0R2

Protected A

THIS AGREEMENT, made in duplicate as of the 10th day of March 2005

BETWEEN THE ROYAL CANADIAN MOUNTED POLICE (HEREINAFTER REFERRED TO AS **"RCMP"**)

AND

THE CANADIAN ASSOCIATION OF CHIEFS OF POLICE (HEREINAFTER REFERRED TO AS **"CACP"**)

BACKGROUND

The Canadian Association of Chiefs of Police (CACP), in partnership with the Justice Institute of British Columbia, is hosting their annual Human Resources Conference in Vancouver from March 20 to 22, 2005.
The RCMP has agreed to cost share this event up to a maximum of $20,000.

Target Audience:
- Chiefs of police, senior police executives, high potential succession management candidates, front line commanders and public safety executives.

Conference Objectives:
- Develop the understanding needed and contemporary tools to act upon essential human resources needs
- Maximize potential of the workforce
- Improve organizational performance through people management

The total cost of the conference is estimated to be approximately $98,979.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

In this agreement the following terms, in singular or plural form according to the context, are defined as follows:

CACP - Canadian Association of Chiefs of Police
HR - Human Resources

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2. PURPOSE AND SCOPE

This Agreement sets out the roles and responsibilities of the parties in hosting the CACP HR conference.

3. OBLIGATIONS OF THE ROYAL CANADIAN MOUNTED POLICE

1.1 The RCMP agrees to:

- **Pay a maximum of $20,000 towards the hosting of this event.**
- **Deputy Commissioner Loeppky will be a guest lunch speaker on "The importance of human resources to police executives".**
- **C/Supt. Graham Muir will be a panel speaker addressing "Performance Improvement, Bridging the Gap".**

4. OBLIGATIONS OF CANADIAN ASSOCIATION OF CHIEFS OF POLICE

As part of hosting **the CACP HR Conference, the CACP will provide the following to the RCMP as a Platinum sponsor:**
-- Verbal recognition by CACP at opening or closing session.
-- Inclusion in CACP general signage display (prominent location) at entrance to plenary sessions
- Two registrations for the conference ($495+GST x 2)
- Recognition as the exclusive sponsor of an entire day
- Opportunity to introduce and/or participate in morning or afternoon panel session
- Preferred seating at the reception & dinner.

In addition, the RCMP consents to the use by CACP of;
RCMP logo & name prominently displayed on conference binder cover page
- RCMP name, logo & corporate message displayed as a full page in the conference binder at the start of the Day 2 or Day 3 agenda.
- RCMP name/logo on display screens at start of plenary sessions

5. FINANCIAL ARRANGEMENTS

The RCMP will pay $20,000 towards the administrative costs

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associated with the hosting of this event, including but not limited to the rental of audio -video equipment, conference binders and , professional speaker fees.

The funds may not be used for any hospitality costs.

The RCMP agrees to pay the funds prior to the conference taking place.

6. TERM

This agreement shall commence upon execution by the parties and shall expire on ***March 22, 2005.***

7. DEPARTMENTAL REPRESENTATIVES

The following officials are designated as the departmental representatives for purposes of this agreement and any notices required under this agreement shall be delivered as follows:

In the case of the RCMP, to
C/Supt. Pat McDonell,
National Development & Resourcing Services
RCMP HQ

In the case of CACP, to :
Deputy Commissioner
Chair of the CACP HR Committee,
582 Somerset Street West, Ottawa, Ont, K1R 5K2.

8. DISPUTE RESOLUTION

In the event of a dispute arising from the interpretation or operation of this Agreement, it shall be referred to the parties' representatives set out above, who shall use their best efforts to resolve the matter amicably.

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9. AMENDMENT

This Agreement may only be amended by the written consent of the parties.

Signed by the authorized officers of the parties:

Canadian Association of Chiefs of Police

Date: 11/MAR./05

Executive Director
Canadian Association of Chiefs of Police,

Royal Canadian Mounted Police

Date: 2005-03-14

C/Supt. Pat McDonell,
National Development & Resourcing Services

Royal Canadian Mounted Police

Date: 16 MAR 05

Mr. Mark Podolak
Procurement Officer

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Unclassified

Memorandum of Understanding

THIS ARRANGEMENT, made in duplicate as of the 1 day of May, 2008

BETWEEN

THE ROYAL CANADIAN MOUNTED POLICE
(HEREINAFTER REFERRED TO AS "RCMP)

AND

THE CANADIAN ASSOCIATION OF CHIEFS OF POLICE
(HEREINAFTER REFERRED TO AS "CACP)

BACKGROUND

The Canadian Association of Chiefs of Police (CACP) is hosting a Canadian Law Enforcement Cyber Crime Conference in Toronto, Ontario from May 12 to 15, 2008. The RCMP has agreed to provide financial support in order to offset direct expenses up to a maximum of $25,000 (Canadian) including all taxes.

TARGET AUDIENCE

Federal, provincial and municipal Canadian law enforcement personnel working in the digital forensic analysis of evidence.

CONFERENCE OBJECTIVES

To promote the ideals and principles of law enforcement technological crime investigators while providing a forum for the exchange of information concerning pure computer crime. This conference will focus on technological crime investigations by law enforcement agencies with an emphasis on providing participants with best practices, lessons learned, case reviews and future trends, and on building partnerships.

THE PARTICIPANTS INTEND AS FOLLOWS:

1. DEFINITIONS

In this Memorandum of Understanding (MOU) the following terms, in singular or plural form according to the context, are defined as follows:

CACP – Canadian Association of Chiefs of Police

RCMP – Royal Canadian Mounted Police

Participants – CACP and/or RCMP

Arrangement – Memorandum of Understanding

MOU – Memorandum of Understanding

2. PURPOSE AND SCOPE

The Arrangement sets out the roles and responsibilities of the Participants in the hosting of this annual conference.

3. OBLIGATIONS OF THE RCMP

The RCMP agrees to provide financial assistance for direct costs related to the event, as specified below.

3.1 The RCMP agrees to certify and process an invoice from CACP for the direct costs associated with simultaneous translation of conference sessions and translation of conference reports and presentations.

and/or

3.2 The RCMP agrees to certify and process an invoice from the CACP for the direct costs associated with rental of audio-visual equipment.

and/or

3.3 The RCMP agrees to certify and process an invoice from the CACP for the direct costs associated with development of conference packages for attendees.

3.4 The combined costs of the invoices outlined in Sections 3.1, 3.2 and 3.3 of this Arrangement will not exceed $25,000 CDN (including GST).

4. OBLIGATIONS OF CACP

As host of the 2008 Canadian Law Enforcement Cyber Crime Conference in Toronto, the CACP will provide the following to the RCMP:

4.1 Supporting documentation showing the direct expenses incurred relating to any expenses to be covered by the RCMP.

4.2 The CACP intends to cover the remaining cost of the conference excluding those listed in section 3.1, 3.2 and 3.3 of this document.

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5. FINANCIAL ARRANGEMENTS

The RCMP will pay for a portion of the direct costs associated with the hosting of this event up to a maximum of $25,000 CDN, including but not limited to:

- direct costs for the rental of audio-video equipment,
- direct costs in support of translation & interpretation, and
- direct costs associated with the development of conference packages for attendees.

THE RCMP WILL NOT REIMBURSE ANY HOSPITALITY COSTS.

The RCMP agrees to provide the funds following receipt of:

- detailed invoices from CACP confirming receipt of the goods and/or services,
- confirmation that the goods and/or services were suitable, and
- copies of the suppliers' invoices (GST included).

6. TERM

The Arrangement will commence upon execution by the Participants and will expire on June 30, 2008.

7. DEPARTMENTAL REPRESENTATIVES

The following officials are designated as the departmental representatives for purposes of this Memorandum of Understanding, and any notices required under this MOU will be delivered as follows:

In the case of the RCMP:
Inspector Carole Bird
OIC Program Management Support Services
Technological Crime Branch, RCMP
1426 St. Joseph Blvd, Room 2200
Ottawa, Ontario K1A 0R2
613-990-1353

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In the case of the CACP:

Executive Director, CACP
582 Somerset Street
Ottawa, Ontario K1R 5K2
613-233-1106

8. DISPUTE RESOLUTION

In the event of a dispute arising from the interpretation of this MOU, it will be referred to the Participants' representatives named above, who will use their best efforts to resolve the matter amicably.

9. AMENDMENT TO THE MOU

This Arrangement may be amended only by the written consent of both Participants.

10. MONITORING

Upon termination of this Arrangement, each Participant will meet to evaluate and review the effectiveness of this Arrangement.

11. TERMINATION

The Arrangement may be terminated by either Participant upon 30 days written notice. Termination does not release a Participant from any obligations which accrued while the Arrangement was in force.

Signed by the authorized officers of the Participants:

Royal Canadian Mounted Police

R.B. Rogerson, A/Commr.
Technical Operations
1200 Vanier Parkway
Ottawa, Ontario K1A 0R2

Date: 2008-05-15

Canadian Association of Chiefs of Police

Executive Director, CACP
582 Somerset Street
Ottawa, Ontario K1R 5K2

Date: 2008-05-01

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Protected "A"

Memorandum of Understanding

Regina, Saskatchewan

THIS ARRANGEMENT, made in duplicate as of the 29th October, 2010

(herein referred to as the Arrangement)

BETWEEN

The Royal Canadian Mounted Police
National Law Enforcement Training
RCMP Training Academy
(herein referred to as the RCMP)

AND

CN Police Service
(herein referred to as CN Police)

Herein collectively referred to as the "Participants"

BACKGROUND

The RCMP has been providing training to CN Police Service over the past 15 years in many different facets. The relationship between the RCMP and the CN Police Service has been positive.

1. PURPOSE AND SCOPE:

The purpose and scope of this MOU are outlined as follows:

1.1 CN Police has requested the RCMP to provide a Law Enforcement Investigators Course Level II. The RCMP has agreed to provide that service;

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2. OBLIGATIONS OF THE RCMP:

The RCMP intends to:

2.1 Develop, deliver and manage the curriculum content to the course candidates. Training will be delivered in English.

2.2 Provide coordination assistance as it relates to course set-up and materials.

2.3 Provide qualified instructors from:

November 29th – December 3rd, 2010

2.4 Locate training sites for the delivery of the program for the above noted dates which are:

a) RCMP "Depot" Division Facilities

2.5 Provide meals and accommodations for the course candidates.

3. OBLIGATIONS OF CN POLICE SERVICES:

CN Police intends to:

3.1 Pay all costs for services supplied and materials as set out in the Financial Arrangements portion of this Arrangement;

3.2 To provide transportation to and from the RCMP Training Academy for their personnel;

3.3 If participants from CN Police have a learning disability, it is the responsibility of CN Police to provide the appropriate tools for the participant to be able to partake in the course;

3.4 CN Police will notify the RCMP prior to the course to advise if there are any participants with learning disabilities.

3.5 Participants are required to bring laptops, digital cameras and flashlights with them for the duration of the course.

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4. FINANCIAL ARRANGMENTS:

4.1 CN Police will pay for all expenses incurred by the R.C.M.P. for this service. This includes:

a. Instructional Salary @ rate of $41.00/hour;

b. Meals and Accommodations at Depot Division at a rate of $70.00 person/night;

c. Rental of Facilities at Depot Division - Classroom @ rate of $28.00/hour.

d. Course materials;

e. Overtime by RCMP Facilitators if there is a need;

4.2 The total cost for this training will not exceed $18,500.00.

4.3 Are you on FIS? Yes/No. If yes, please provide your:

Department Code:

IS Org Code:

IS Reference Code:

Financial Contact Name:

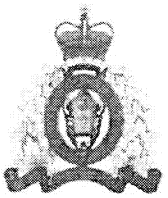
Phone: Fax:

4.4 Costs quoted are subject to unforeseen circumstances of which the client is to be notified in advance. These costs are to be borne by the client if he/she desires to proceed with the course.

5. TERM:

This Arrangement will commence upon execution by the Participants and will expire on December 4th, 2010.

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6. CONFIDENTIALITY AND USE OF INFORMATION:

6.1 CN Police will not use the information acquired in any manner except as reasonably required for the purpose of this course;

6.2 The course content and the training material developed by the R.C.M.P., alone or in conjunction with CN Police, remains the property of the RCMP. Any reproduction, dissemination or other unauthorized use is strictly prohibited without the express written consent of the RCMP, Learning and Development Directorate.

7. DEPARTMENTAL REPRESENTATIVES:

The following officials are designated as the departmental representatives for purposes of this Arrangement and any notices required under this Arrangement will be delivered as follows:

For the RCMP: Name: S/Sgt. R.T. (Bob) Miller Title: i/c National Law Enforcement Training Address: RCMP Training Academy P.O. Box 6500 5600 – 11th Avenue Regina, Saskatchewan S4P 3J7 Telephone: 306-780-5819 Fax: 306-780-7520	For CN Police: Name: Daniel Ritchie Inspector Address: CN Police Services 11717 - 138th St. Surrey, British Columbia V3R 6T5 Ph: 604-589-6647 Fax: 604-589-6584

8. LIABILITY:

Each participant shall be responsible for any damages caused by the conduct of its employees or agents in carrying out the terms of this Arrangement.

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9. DISPUTE RESOLUTION:

In the event of a dispute arising from the interpretation or operation of this Arrangement, it will be referred to the Participants' representatives set out above, who will use their best efforts to resolve the matter amicably.

10. TERMINATION:

This Arrangement may be terminated by either Participant upon thirty (30) days written notice. Termination does not release a Participant from any obligations which accrued while the Arrangement was in force. Notice to amend or terminate this Arrangement will be provided to the supervisors of each departmental representative.

11. AMENDMENTS:

This Arrangement may be amended with the mutual consent of all Participants and must be confirmed in writing. The RCMP representative will ensure all requests for any amendments or changes to this Arrangement are forwarded to the RCMP Arrangement Authority for review and amending of the Arrangement accordingly.

CN Police representative is responsible for administering, managing the program and amending the Arrangement, on behalf of CN Police with the expectations of the Participants.

12. ENTIRE ARRANGEMENT:

This Arrangement constitutes the entire Arrangement between the Participants and supersedes any previous negotiations, communications and other Arrangements relating to it unless they are incorporated by references in the Arrangement. This Arrangement may only be amended by the written consent of the Participants.

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For CN Police:

Mr. Daniel Ritchie
Inspector
CN Police Service

For the Royal Canadian Mounted Police

Assistant Commissioner Roger L. Brown
Commanding Officer, RCMP Depot Division

IN WITNESS WHEREOF the participants have signed this 7th day of November, 2010.

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Protected "A"

Memorandum of Understanding

Regina, Saskatchewan

THIS ARRANGEMENT, made in duplicate as of the 29th October, 2010

(herein referred to as the Arrangement)

BETWEEN

The Royal Canadian Mounted Police
National Law Enforcement Training
RCMP Training Academy
(herein referred to as the RCMP)

AND

CN Police Service
(herein referred to as CN Police)

Herein collectively referred to as the "Participants"

BACKGROUND

The RCMP has been providing training to CN Police Service over the past 15 years in many different facets. The relationship between the RCMP and the CN Police Service has been positive.

1. PURPOSE AND SCOPE:

The purpose and scope of this MOU are outlined as follows:

1.1 CN Police has requested the RCMP to provide a Law Enforcement Investigators Course Level I. The RCMP has agreed to provide that service;

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2. OBLIGATIONS OF THE RCMP:

The RCMP intends to:

2.1 Develop, deliver and manage the curriculum content to the course candidates. Training will be delivered in English.

2.2 Provide coordination assistance as it relates to course set-up and materials.

2.3 Provide qualified instructors from:

November 22nd – November 26th, 2010

2.4 Locate training sites for the delivery of the program for the above noted dates which are:

a) RCMP "Depot" Division Facilities

2.5 Provide meals and accommodations for the course candidates.

3. OBLIGATIONS OF CN POLICE SERVICES:

CN Police intends to:

3.1 Pay all costs for services supplied and materials as set out in the Financial Arrangements portion of this Arrangement;

3.2 To provide transportation to and from the RCMP Training Academy for their personnel;

3.3 If participants from CN Police have a learning disability, it is the responsibility of CN Police to provide the appropriate tools for the participant to be able to partake in the course;

3.4 CN Police will notify the RCMP prior to the course to advise if there are any participants with learning disabilities.

3.5 Participants are required to bring laptops with them for the duration of the course as this course has been put on a CD rather than a hard copy.

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4. FINANCIAL ARRANGMENTS:

4.1 CN Police will pay for all expenses incurred by the R.C.M.P. for this service. This includes:

a. Instructional Salary @ rate of $41.00/hour;

b. Meals and Accommodations at Depot Division at a rate of $70.00 person/night;

c. Rental of Facilities at Depot Division - Classrooms @ rate of $28.00/hour.

d. Course materials;

e. Overtime by RCMP Facilitators if there is a need;

4.2 The total cost for this training will not exceed $14,500.00

4.3 Are you on FIS? Yes/No. If yes, please provide your:

Department Code:

IS Org Code:

IS Reference Code:

Financial Contact Name:

Phone: Fax:

4.4 Costs quoted are subject to unforeseen circumstances of which the client is to be notified in advance. These costs are to be borne by the client if he/she desires to proceed with the course.

5. TERM:

This Arrangement will commence upon execution by the Participants and will expire on November 27th, 2010.

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6. CONFIDENTIALITY AND USE OF INFORMATION:

6.1 CN Police will not use the information acquired in any manner except as reasonably required for the purpose of this course;

6.2 The course content and the training material developed by the R.C.M.P., alone or in conjunction with CN Police, remains the property of the RCMP. Any reproduction, dissemination or other unauthorized use is strictly prohibited without the express written consent of the RCMP, Learning and Development Directorate.

7. DEPARTMENTAL REPRESENTATIVES:

The following officials are designated as the departmental representatives for purposes of this Arrangement and any notices required under this Arrangement will be delivered as follows:

For the RCMP: Name: S/Sgt. R.T. (Bob) Miller Title: i/c National Law Enforcement Training Address: RCMP Training Academy P.O. Box 6500 5600 – 11th Avenue Regina, Saskatchewan S4P 3J7 Telephone: 306-780-5819 Fax: 306-780-7520	For CN Police: Name: Daniel Ritchie Inspector Address: CN Police Services 11717 - 138th St. Surrey, British Columbia V3R 6T5 Ph: 604-589-6647 Fax: 604-589-6584

8. LIABILITY:

Each participant shall be responsible for any damages caused by the conduct of its employees or agents in carrying out the terms of this Arrangement.

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9. DISPUTE RESOLUTION:

In the event of a dispute arising from the interpretation or operation of this Arrangement, it will be referred to the Participants' representatives set out above, who will use their best efforts to resolve the matter amicably.

10. TERMINATION:

This Arrangement may be terminated by either Participant upon thirty (30) days written notice. Termination does not release a Participant from any obligations which accrued while the Arrangement was in force. Notice to amend or terminate this Arrangement will be provided to the supervisors of each departmental representative.

11. AMENDMENTS:

This Arrangement may be amended with the mutual consent of all Participants and must be confirmed in writing. The RCMP representative will ensure all requests for any amendments or changes to this Arrangement are forwarded to the RCMP Arrangement Authority for review and amending of the Arrangement accordingly.

CN Police representative is responsible for administering, managing the program and amending the Arrangement, on behalf of CN Police with the expectations of the Participants.

12. ENTIRE ARRANGEMENT:

This Arrangement constitutes the entire Arrangement between the Participants and supersedes any previous negotiations, communications and other Arrangements relating to it unless they are incorporated by references in the Arrangement. This Arrangement may only be amended by the written consent of the Participants.

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For CN Police:

Mr. Daniel Ritchie
Inspector
CN Police Service

For the Royal Canadian Mounted Police

Assistant Commissioner Roger L. Brown
Commanding Officer, RCMP Depot Division

IN WITNESS WHEREOF the participants have signed this 7th day of November, 2010.

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Royal Canadian Mounted Police

Memorandum of Understanding

THIS AGREEMENT, made in duplicate as of the 16th of November, 2006.

BETWEEN THE ROYAL CANADIAN MOUNTED POLICE AS REPRESENTED BY THE OFFICER IN CHARGE, CANADIAN LAW ENFORCEMENT TRAINING UNIT & INTERNATIONAL TRAINING SECTION, RCMP, HUMAN RESOURCE SECTOR, LEARNING & DEVELOPMENT DIRECTORATE, HEREINAFTER REFERRED TO AS "R.C.M.P."

AND

CN POLICE SERVICE, AS REPRESENTED BY INSP. HENRY H. MacNEIL, HEREINAFTER REFERRED TO AS "CN POLICE SERVICE".

WHEREAS CN Police Service has requested the R.C.M.P. to provide a one week course on Scenes of Crime Officer Training in Winnipeg, Manitoba. The R.C.M.P. has agreed to provide that service.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. **THE SERVICE**

1.1 The R.C.M.P. will undertake to provide;

a) A classroom, qualified instructors, course material for a five (5) day course scheduled to take place from January 8th -12th, 2007.

1.2 Training shall take place at the R.C.M.P. HQ in Winnipeg, Manitoba.

1.3 The total number of candidates attending the course shall not exceed 1.

1.4 One training day will consist of eight hours.

PAYMENT

2.1 CN Police Service will pay for all expenses incurred by the R.C.M.P. for this service. This price includes rental of a classroom, Instructional costs, Course Materials, meals will be a la carte for the candidate, etc. The cost of the course in total will not exceed $2,650.00. A detailed account of these expenses will be submitted to CN Police Service after the completion of training.

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2.2 Are you on FIS? Yes / No. If yes, please provide:

Recipient Reference Code:

Recipient Authorization Code:

Financial Contact

Person: INSP HENRY H. MACNEIL

Phone #: (204) 231-7810

Fax #: (204) 231-7796

2.3 Payment will be due thirty days from date of invoice from the R.C.M.P..

2.4 Payment received after thirty days from date of invoice shall be subject to interest fees. These interest charges will be equivalent to the rate set by the Bank of Canada plus three percent.

2.5 Cost quoted are subject to unforeseen circumstances of which the client is to be notified in advance. These costs are to be borne by the client if he/she so desire to proceed with the course.

3. **RELATIONSHIP**

3.1 This is an Agreement for the performance of a service and the R.C.M.P. is engaged under the Agreement as an independent contractor for the sole purpose of providing a service. The R.C.M.P. has the right to determine how the service will be delivered and is not subject to the direction or supervision of the CN Police Service.

3.2 This Agreement does not create the relationship between the parties as legal partners, joint venturers nor as agents or principals of the other.

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4. **OWNERSHIP**

4.1 CN Police Service shall not use the information acquired in any manner except as reasonably required for the purpose of this course.

4.2 The course content, and the training material developed by CLET, alone or in conjunction with CN Police Service, remains the property of the RCMP. Any reproduction, dissemination or other unauthorized use is strictly prohibited without the express written consent of CLET.

5. **INDEMNIFICATION & EXEMPTION**

5.1 The CN Police Service shall indemnify and save harmless the R.C.M.P. from and against and be responsible for any and all claims, damages, loss, costs and expenses including any legal fees, compromise or settlement which the R.C.M.P. may at any time incur or suffer as a result of or arising out of any injury (including death) suffered by any person or persons or loss of or damage to property of others which may be or be alleged to be caused by or suffered as a result of entering into or performing this Agreement.

5.2 The R.C.M.P. shall not be responsible for any bodily harm or personal injury or property damage of any nature whatsoever that may be suffered or sustained by the CN Police Service and its' members, employees, officers or agents in the performance of this Agreement unless it is caused by the negligent act of a member of the R.C.M.P. in the performance of his or her duties.

6 **TERMINATION**

6.1 This Agreement may be terminated through submission of a written notice of termination by any party to this Agreement at least thirty days prior to the commencement of delivery of service; provided that where CN Police Service terminates the Agreement, they will be responsible for expenses incurred by the R.C.M.P. prior to receipt of notice of termination.

6.2 The R.C.M.P. shall be absolved of any costs incurred by the course candidates/clients in relation to transportation and accommodations if the course is cancelled thirty (30) days prior to the scheduled course date.

7. **ENTIRE AGREEMENT**

This Agreement constitutes the entire Agreement between the parties and supersedes all previous negotiations, communications and other Agreements relating to it unless they are incorporated by reference in the Agreement.

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8. **AMENDMENT OF AGREEMENT**

The parties may, with the written agreement of all parties, amend this Agreement or conclude subsidiary agreements.

9. **ADDRESS OF PARTIES**

Communication between parties shall be forwarded to the following addresses:

To CN Police Service

Insp. Henry H. MacNeil
CN Police Service
821 Lagimodiere Blvd
"M" Building
Winnipeg, Manitoba
R3C 2Z6

Phone: (204) 231-7810
Fax: (204) 231-7796

To the R.C.M.P. at:

Officer In Charge,
Canadian Law Enforcement Training Unit &
International Training Section, RCMP,
Human Resource Sector,
Learning & Development Directorate
295 Coventry Road, 2nd Floor
Ottawa, Ontario
K1A 0R2

Phone: 613-993-3547
Facsimile 613-990-3686

IN WITNESS WHEREOF the parties have signed this _____ day of November, 2006.

Insp. Henry H. MacNeil
CN Police Service

06-12-14

Insp. J.R.R. (Bob) Bourget, insp.
Oi/c Canadian Law Enforcement Training &
International Training Section

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Protected "A"

Memorandum of Understanding

THIS ARRANGEMENT, made in duplicate as of the 27th day May, 2013

(herein referred to as the Arrangement)

BETWEEN

The Royal Canadian Mounted Police
National Law Enforcement Training
RCMP Training Academy
(herein referred to as the RCMP)

AND

CN Police

(herein referred to as CN Police)

Herein collectively referred to as the "Participants"

Basic Firearms Instructors Course
Regina, Saskatchewan

BACKGROUND

The RCMP has been providing training to CN Police Service over the past 15 years in many different facets. The relationship between the RCMP and the CN Police Service has been positive.

1. PURPOSE AND SCOPE:

The purpose and scope of this MOU are outlined as follows:

1.1 CN Police has requested the RCMP to provide a Ten (10) day Basic Firearms Instructors Course. The RCMP has agreed to provide that service;

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2. OBLIGATIONS OF THE RCMP:

The RCMP intends to:

2.1 Deliver and manage the identified curriculum content to the course candidate.

2.2 Provide coordination assistance as it relates to course set-up and materials.

2.3 Provide qualified instructors from June 3 – June 14, 2013.

2.4 Provide the appropriate course material to the candidates.

2.5 Provide Inert Training Rounds for the candidates.

2.6 Provide the training site.

2.7 Provide accommodations and meals for the candidates.

3. OBLIGATIONS OF CN POLICE:

CN Police intends to:

3.1 Pay all costs as for services supplied and materials as set out in the Financial Arrangements portion of this Arrangement;

3.2 Provide transportation for the candidates to, from and during the course (if staying on campus, there is no need for transport);

3.3 CN Police will provide ammunition and all equipment listed in Section 7;

3.4 Inform candidates that they should expect to work additional hours and the agency should make the appropriate arrangements with the candidates for any concerns.

3.5 Inform candidates that they are required to maintain professional conduct for the duration of the course including after hours. If this is not adhered to, at the discretion of the OIC National Law Enforcement Training, the candidates will be asked to depart the course.

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Protected "A"

3.6 All candidates/participants must have a current/valid Security Clearance in good standing from CN Police and may be subject to further security checks at the discretion of RCMP Departmental Security Section.

4. FINANCIAL ARRANGMENTS:

4.1 CN Police will pay for all expenses incurred by the R.C.M.P. for this service. This includes:

a. Course preparation.

b. Coordination and facilitation of the course material.

c. Any overtime incurred by the facilitators/coordinator.

d. Course material.

e. Foam inserts.

f. Portion of the facility rental for the course.

g. Accommodations and meals.

4.2 The total cost for this training will not exceed $7,500.00 for 2 candidates.

4.3 Are you on FIS? Yes/No. If yes, please provide your:

Department Code:

IS Org Code:

IS Reference Code:

Financial Contact Name:

Phone: Fax:

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4.4 Costs quoted are subject to unforeseen circumstances of which the client is to be notified in advance. These costs are to be borne by the client if he/she desires to proceed with the course.

5. TERM:

This Arrangement will commence upon execution by the Participants and will expire on June 15th, 2013.

6. CONFIDENTIALITY AND USE OF INFORMATION:

6.1 CN Police will not use the information acquired in any manner except as reasonably required for the purpose of this course;

6.2 The course content and the training material developed by the R.C.M.P. remains the property of the RCMP. Any reproduction, dissemination or other unauthorized use is strictly prohibited without the express written consent of the RCMP, Learning and Development Directorate.

7. EQUIPMENT:

7.1 Provide Hearing Protection.

7.2 Provide Eye Protection for the candidates.

7.3 Provide Soft Body Armour for the candidates.

7.4 The risk of damage or theft is to be arranged between CN Police and the facility with the understanding that the RCMP will exercise due diligence in the handling and care of the equipment.

7.5 Candidates are to be in full working uniform for the duration of the course (with baseball caps).

7.6 Provide Issue Firearm/magazines.

7.7 Provide Duty Belt including flashlight.

7.8 Provide Cleaning Kits for the candidates.

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8. DEPARTMENTAL REPRESENTATIVES:

The following officials are designated as the departmental representatives for purposes of this Arrangement and any notices required under this Arrangement will be delivered as follows:

For the RCMP:	For CN Police:
Name: Richard D. Thibault Title: Inspector Address: National Law Enforcement Training 5600 - 11th Avenue P.O. Box 6500 Regina, Saskatchewan S4P 3J7 Telephone: 306-780-7560 Fax: 306-780-3466	Name: Daniel Ritchie Inspector Address: CN Police Services 11717 - 138th St. Surrey, British Columbia V3R 6T5 Ph: 604-589-6647 Fax: 604-589-6584

9. LIABILITY:

Each course participant shall be responsible for any damages caused by the conduct of its employees or agents in carrying out the terms of this Arrangement.

10. DISPUTE RESOLUTION:

In the event of a dispute arising from the interpretation or operation of this Arrangement, it will be referred to the Participants' representatives set out above, who will use their best efforts to resolve the matter amicably.

11. TERMINATION:

This Arrangement may be terminated by either Participant upon thirty (30) days written notice. Termination does not release a Participant from any obligations which accrued while the Arrangement was in force. Notice to amend or terminate this Arrangement will be provided to the supervisors of each departmental representative.

12. AMENDMENTS:

This Arrangement may be amended with the mutual consent of all Participants and must be confirmed in writing. The RCMP representative will ensure all requests for any amendments or changes to this Arrangement are forwarded to the RCMP Arrangement Authority for review and amending of the Arrangement accordingly.

The CN Police representative is responsible for administering, managing the program and amending the Arrangement on behalf of CN Police with the expectations of the Participants.

13. ENTIRE ARRANGEMENT:

This Arrangement constitutes the entire Arrangement between the Participants and supersedes any previous negotiations, communications and other Arrangements relating to it unless they are incorporated by references in the Arrangement. This Arrangement may only be amended by the written consent of the Participants.

For CN Police:

Mr. Daniel Ritchie
Inspector
CN Police Service

For the Royal Canadian Mounted Police

Chief Superintendent Louise Lafrance,
Commanding Officer
RCMP "Depot" Division

IN WITNESS WHEREOF the participants have signed this 7th day of June, 2013.

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A JOINT FORCES OPERATION

WORKING AGREEMENT

BETWEEN

ROYAL CANADIAN MOUNTED POLICE

CANADIAN PACIFIC POLICE

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ARTICLE I

Purpose and Scope

1.01 This Joint Forces Operation Working Agreement shall be in full force and effect, and govern all Joint Forces Operations undertaken by the parties to this Agreement, unless otherwise agreed.

1.02 The Joint Forces Operation, hereinafter referred to as J.F.O., shall work in concert within the operational policies of participant police organizations in order to attain the specific goals as described in the overall Operational Plan.

1.03 Members from J.F.O. police forces will share jurisdiction at points in the Province of Alberta on matters related to their mandate, however, J.F.O. members will continue to be regulated by their respective sensitive source policies.

ARTICLE II

Term

2.01 The term of this Agreement will commence on the day stipulated in the Operational Plan and will operate subject to a specifically identified review period unless terminated before the identified period lapses.

ARTICLE III

Unit Composition

3.01 The unit will reflect total integration of unit functions and responsibilities. Police personnel assigned to the J.F.O. will include members identified in the Operational

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Plan. These assignments may be altered from time-to-time at the discretion of the respective agencies and in consultation with each other. However, in keeping with the integration philosophy and team concept practised with the J.F.O., no long-term re-deployment of personnel will be initiated. Vacancies shall be staffed immediately.

ARTICLE IV
Command

4.01 A J.F.O. will be commanded by members of said J.F.O. who are identified in the Operational Plan. The J.F.O. commander(s) shall follow the chain of command within their own police organization.

4.02 The Officer(s) in charge of the J.F.O. shall have responsibility for the administrative direction of all personnel assigned to the J.f.O. with the exception of staffing, career development and discipline.

Breaches of discipline identified by the Officer(s) in charge shall be reported to the appropriate supervisor of the police force of which the offender is a member, to be dealt with according to the provisions of the Police Act which governs that offender.

ARTICLE V
Costs

5.01 Extraordinary expenses unique to the J.F.O. will be divided equally between the organizations or, in the case of operational or training expenses, as per past practice.

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Any future costs arising from the development or rental of a computer system or hardware associated with a system will be borne by the developing agency.

Any future costs arising from the development or rental of an integrated computer system or hardware associated with an integrated system will be borne equally by each agency.

5.02 J.F.O. partners will equally share technical costs not previously or separately budgeted for relating to integrated operations. Technical equipment owned by the J.F.O. partners shall remain subject to each party's policy, however, will be made available to the J.F.O. as required.

5.03 J.F.O. partners will equally share in the cost of overtime incurred by electronic technicians, locksmith and any other specialist which is required and approved for use in the operation.

5.04 J.F.O. partners will equally share in the cost of civilian line monitors for the duration of the operation.

5.05 In the event that the interception of private communications will be prepared and used as evidence, the J.F.O. partners agree to equally share in the costs of preparation where the evidence relates to a C.P.R. employee. The Royal Canadian Mounted Police will bear the costs of preparation if the charges will not include an employee of the C.P.R.

5.06 The J.F.O. partners will equally share in the costs of informant/agent fees and expenses which are approved by the Senior Management Group.

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5.07 J.F.O. partners will equally share in the cost of vehicles or space rented for stationary surveillance as approved by Senior Management Group.

ARTICLE VI
Motor Vehicles and Aircraft

6.01 All costs pertaining to the leasing of surveillance vehicles for stationary use, boats and aircraft approved by the Senior Management Group shall be approved in compliance with financial policies of the J.F.O. partners.

6.02 All motor vehicles, boats and aircraft leased pursuant to Article 6.01 above shall be used exclusively by the J.F.O. partners.

6.03 J.F.O. partners agree to the shared use of police motor vehicles during the terms of this Agreement which use shall be restricted to the members of the J.F.O.

6.04 Police motor vehicles and aircraft owned or leased by the J.F.O. partners, being operated by members of each of the other's police forces, shall not be involved in duties other than those pertaining specifically to the J.F.O.

6.05 Where it is determined that a police force member of either of the J.F.O. partners, while operating a police motor vehicle belonging to the other and acting within the scope of duties or employment, by gross negligence causes damage to such police motor vehicle or is involved in an accident resulting in injury, loss or damage, whether personal or to property which may occur, the police force or service whose member did so cause the damage shall indemnify and save harmless the other police

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force or service and its individual members from any and all claims, demands, actions, causes or action, suits and costs, which may be brought against or incurred by the owner of the police motor vehicle by any person or persons for said injury, loss or damage, including all costs and expenses to effect repairs to the police motor vehicle so damaged.

6.06 Where injury, loss or damage, whether personal or to property which may occur in the circumstances described in Article 6.05 above result not from the gross negligence of the operator, but rather from the negligence of the owner, due to fault, defect or improper maintenance of the police motor vehicle, or such other causes unrelated to the manner of the operation of the police motor vehicle, the owner of the said police vehicle shall bear responsibility for all resultant injury, loss or damages whether personal or to property and shall indemnify and save harmless the operator's employer from any and all claims, demands, actions, causes of action, suits and costs, which may be brought against or incurred by the operator's employer.

ARTICLE VII
Indemnification

7.01 One J.F.O. partner shall indemnify another J.F.O. partner from any and all calamus, demands, actions, causes of action, suits and costs which may be brought against the former J.F.O. partner by reason of any act or omission on the part of any member of the J.F.O. in respect of or in relation to this Agreement or the activities of the J.F.O., and the reverse will also apply.

7.02 Articles 6.05 and 6.07 inclusive above do not preclude

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the application of any existing legal expense and/or indemnification clauses contained in current collective working agreements of either of the J.F.O. partners.

ARTICLE VIII
Administration

8.01 All members assigned to the J.F.O. will be provided with appropriate keys and identification by the J.F.O. partners' departments. These items will be returned to the issuing police force or service at the termination of this Agreement, or upon the members transferring out of the unit.

8.02 The management of the J.F.O. partners will conduct regular audits of the J.F.O. in a prescribed format and time interval in accordance with respective participants' review policy. The audit will be conducted by those appointed by senior management or their designate(s).

8.03 The laying of charges resulting from the J.F.O. shall be carried out on the following basis:

(a) Charges related to employees of Canadian Pacific who are engaged with transactions involving other Canadian Pacific employees will be filed by the Canadian Pacific Police.

(b) Charges filed in relation to information obtained directly or indirectly from the interception of private communications, shall be filed by the Royal Canadian Mounted Police.

(c) Charges to be filed on approval of Senior Management Group.

(d) Charges filed after approval by Senior Management Group cannot be dealt with by Stay of Proceedings without approval of the Senior Mangement Group.

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8.04 The extension or termination of the interception of private communications shall be carried out at the discretion of the Royal Canadian Mounted Police, N.C.O. in charge of the project.

8.05 The execution of search warrants and/or arrests made in relation to information obtained directly or indirectly from the interception of communications shall be made at the discretion of the Case Manager. The Case Manager will obtain reliable input from investigative members in making the decision.

8.06 It is agreed that there are two primary targets, one of which is a C.P. Rail employee. Where it may appear that information obtained directly or indirectly from the interception of private communications may result in the arrest and or execution of a search warrant against the non-C.P. Rail employee targeted and where such action may result in the termination of the project:
It is agreed that any arrests and/or search warrants executed against one target to the exclusion of the other must be carried out only after the Case Manager obtains a consensus decision from the Senior Management and Working Management Teams.

ARTICLE IX
Office Location

9.01 The location of the office of the J.F.O. will be maintained in Medicine Hat Police Service Building, 884 - 2nd Street S.E., Medicine Hat, Alberta.

ARTICLE X
Termination

10.01 This Agreement may be terminated upon written notice by any party to the others given in accordance with Article 11.02 below of this Agreement.

ARTICLE XI
General Conditions

11.01 Time shall be of the essence.

11.02 All notices, requests, demands or other communications by the terms hereof required or permitted to be given by one party to the other shall, unless otherwise specifically provided for herein, be given in writing and be personally served or posted by registered mail, postage pre-paid, addressed to such other parties or delivered to such other parties in a manner as prescribed in the Operational Plan.

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Any notice, request, demand or other communication given by mail as aforesaid and posted anywhere in Alberta, shall be deemed to have been received on the fifth business day following the posting thereof.

11.03 Nothing herein contained, or otherwise arising, shall constitute parties hereto as partners with one another, nor shall anything contained herein constitute, or be deemed to constitute, either of the parties hereto as agents for the other except as expressly provided herein.

11.04 The parties hereto covenant and agree to do such things, to attend such meetings and to execute such further documents, agreements and assurances as may be deemed necessary or advisable from time to time in order to carry out the terms and conditions of this Agreement in accordance with their true intent.

11.05 The captions of this Agreement form no part of this Agreement and shall be deemed to have been inserted for convenience only.

11.06 This Agreement, in conjunction with the cost identified in Article 6.01 above, which will be reviewed as required, represents the entire agreement between the parties hereto and supersedes all other agreements, documents, written and oral understandings between the parties. All other terms, conditions, representations and warranties are herein merged.

11.07 No amendment or variation to the provisions of this Agreement shall be binding upon either party unless it is evidenced in writing and signed by all parties.

11.08 No waiver by either party hereto of any breach of any of the terms of this Agreement shall be effective to bind that party unless same be expressed in writing by the party and any waiver so given shall extend only to the particular breach waived and shall not limit or affect any rights with respect to any other or future breach.

11.09 This Agreement shall not be assigned by either of the parties hereto.

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IN WITNESS WHEREOF Supt. B. GILROY , on behalf of the Canadian Pacific Police, on behalf of the Canadian Pacific Police Investigator L. GRIGG, on behalf of the Royal Canadian Mounted Police Supt. L.T. HICKMAN , on behalf of the Royal Canadian Mounted Police Sgt. H.G. RICHDALE.

Signed, Sealed and Delivered on behalf of the Canadian Pacific Police.

_____
(Witness)

_____
(B. GILROY)

Signed, Sealed and Delivered on behalf of the Canadian Pacific Police.

_____
(Witness)

_____
(L. GRIGG)

Signed, Sealed and Delivered on behalf of the Royal Canadian Mounted Police.

_____
(Witness)

_____
(L.T. HICKMAN) Supt.

Signed, Sealed and Delivered on behalf of the Royal Canadian Mounted Police.

_____
(Witness)

_____
(H.G. RICHDALE) Sgt.

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Royal Canadian Mounted Police

HQ COMPLEX RECORDS
DOSSIERS COMPLEXE DG
DEC 0 2005
REV. 4

Agreement for the Provision of Services

THIS AGREEMENT, made in duplicate as of the 29th of June 2005.

BETWEEN THE ROYAL CANADIAN MOUNTED POLICE AS REPRESENTED BY THE OFFICER IN CHARGE OF CANADIAN LAW ENFORCEMENT TRAINING "DEPOT" DIVISION, HEREINAFTER REFERRED TO AS "R.C.M.P."

AND

CANADIAN PACIFIC POLICE AS REPRESENTED BY CHIEF W.G. MOODY HEREINAFTER REFERRED TO AS "CANADIAN PACIFIC POLICE".

WHEREAS Canadian Pacific Police has requested the R.C.M.P. to provide a nine (9) day Fraud/Search Warrant Course. The R.C.M.P. has agreed to provide that service.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. **THE SERVICE**

1.1 The R.C.M.P. will undertake to provide;

1) Instruction and co-ordination for the Fraud/Search Warrant Course scheduled from June 20 - 29, 2005.

b) Qualified instructors from the R.C.M.P. Training Academy and "F" Division.

1.2 Training shall take place at the R.C.M.P. Training Academy

1.3 The total number of candidates attending the course shall not exceed 18.

1.4 One training day will consist of eight hours.

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b) PAYMENT

2.1 Canadian Pacific Police will pay for all expenses incurred by the R.C.M.P. for this service. This price includes course preparation, instruction, co-ordination, course materials, overtime, accommodations and breakfast at a hotel for the candidates, facility rental, lunches at the Training Academy for the candidates/facilitators/actors, etc. The cost of the course in total will not exceed $40,000.00. A detailed account of these expenses will be submitted to Canadian Pacific Police after the completion of training.

2.2 Are you on FIS? Yes / No. If yes, please provide your

recipient reference code

and your recipient authorization code

Financial Contact Name:

Phone:
Fax:

2.3 Payment will be due thirty days from date of invoice from the R.C.M.P..

2.4 Payment received after thirty days from date of invoice shall be subject to interest fees. These interest charges will be equivalent to the rate set by the Bank of Canada plus three percent.

2.5 Costs quoted are subject to unforeseen circumstances of which the client is to be notified in advance. These costs are to be borne by the client if he/she so desire to proceed with the course.

3. RELATIONSHIP

3.1 This is an Agreement for the performance of a service and the R.C.M.P. is engaged under the Agreement as an independent contractor for the sole purpose of providing a service. The R.C.M.P. has the right to determine how the service will be delivered and is not subject to the direction or supervision of Canadian Pacific Police.

3.2 This Agreement does not create the relationship between the parties as legal partners, joint venturers nor as agents or principals of the other.

3.3 This Agreement is not intended to be a legally binding document between the parties but is only intended to serve as a definitive expression of the purpose and intention of the parties to which they honourably pledge themselves.

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4. OWNERSHIP

4.1 Canadian Pacific Police shall not use the information acquired in any manner except as reasonably required for the purpose of this course.

4.2 The course content, and the training material developed by CLET, alone or in conjunction with Canadian Pacific Police, remains the property of the RCMP. Any reproduction, dissemination or other unauthorized use is strictly prohibited without the express written consent of CLET.

5. TERMINATION

5.1 This Agreement may be terminated through submission of a written notice of termination by any party to this Agreement at least thirty days prior to the commencement of delivery of service; provided that where the Canadian Pacific Police terminates the Agreement, they will be responsible for expenses incurred by the R.C.M.P. prior to receipt of notice of termination.

5.2 The R.C.M.P. shall be absolved of any costs incurred by the course candidates/clients in relation to transportation and accommodations if the course is cancelled thirty (30) days prior to the scheduled course date.

6. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties and supersedes all previous negotiations, communications and other Agreements relating to it unless they are incorporated by reference in the Agreement.

7. AMENDMENT OF AGREEMENT

The parties may, with the written agreement of all parties, amend this Agreement or conclude subsidiary agreements.

8. **ADDRESS OF PARTIES**

Communication between parties shall be forwarded to the following addresses:

To Canadian Pacific Police

Chief W.G. Moody
Canadian Pacific Railway Police
Suite 157
Gulf Canada Square
401 - 9th Ave. S.W.
Calgary, Alberta T2P 4Z4

Phone: 403-319-7006
Facsimile 403-319-7024

To the R.C.M.P. at:

OIC Training Academy
Box 6500
REGINA, Saskatchewan S4P 3J7
Facsimile 306-780-3466

IN WITNESS WHEREOF the parties have signed this 29th day of June, 2005.

for Chief W.G. Moody
Canadian Pacific Police

For R.C.M.P.

Insp. J.R.R. (Bob) Bourget, insp.
Oi/c Canadian Law Enforcement Training

Attachment 30

RE: Follow up re: Access to Information Act request A-2021-04366

Cost, Patrick <Patrick.Cost@rcmp-grc.gc.ca>

Fri 2021-08-13 12:37 PM

To: Jessica-Lynn St. Pierre Hicks <stpierj@runyowa.com>

Good afternoon

Your request was for the following:

- All memoranda of understanding or internal policies regarding Royal Canadian Mounted Police's collaboration with Canadian National Railway Police Service and Canadian Pacific Railway Police Service; 2. All memoranda of understanding between the Royal Canadian Mounted Police and American authorities regarding railway operations; 3. A copy of the Collaborative Protocols of Railway Investigations and communications between the RCMP and the CP Police Service and CN Police Service regarding these protocols and any of the three police forces' collaborations within the Canadian Association of Chiefs of Police; and 4. All reports sent by the Royal Canadian Mounted Police to the Minister of Public Safety and the Minister of Transport regarding railway policing, including matters of the jurisdiction of the CN Police Service and the CP Police Service, and any police independence controls put in place for cases where railway investigations focus on the parent corporations of CP Railway and CN Railway. The applicable time period is January 1, 2001 to present.

As per your request, we conducted a search for records from January 1, 2001 to the date on your request which was May 18, 2021. There are no other MOUs between the RCMP and CP Police regarding access to the CPIC between January 1, 2001 and 2007. There are no other MOUs between the RCMP and CN Police regarding access to the CPIC between January 1, 2001 and 2006.

As for obtaining MOUs prior to January 1, 2021, you will need to make a new request through our office.

Patrick Cost
Disclosure Unit/Unité de divulgation
Access to Information and Privacy Branch/Sous-direction de l'accès à l'information et des renseignements personnels
RCMP/GRC Mailstop #61
73 Leikin Drive
Ottawa, Ontario
K1A 0R2
Canada
patrick.cost@rcmp-grc.gc.ca

From: Jessica-Lynn St. Pierre Hicks <stpierj@runyowa.com>
Sent: August 13, 2021 12:15 PM
To: Cost, Patrick <Patrick.Cost@rcmp-grc.gc.ca>
Cc: Tavengwa Runyowa <law@runyowa.com>; Brandon Cain <brandon.cain@runyowa.com>
Subject: Follow up re: Access to Information Act request A-2021-04366

Good afternoon,

Thank you, our office received the response to our request for information, A-2021-04366, through your email of August 4, 2021.

This is a follow up question to that request based on the response received. The response package mentions memoranda of understanding between the RCMP and CP Railway dated 1997 and/or

1999 regarding access to the CPIC data bases. Could you please provide copies of those MOUs? Further, if there are parallel MOUs of similar dates with CN Railway regarding access to the CPIC data bases, we request copies of those, as well.

Lastly, as a point of clarification, can you confirm whether the MOU between CP Railway and the RCMP from 2007 regarding access to the CPIC data base is the most recent MOU between these parties regarding such access? Similarly, is the 2006 MOU between CN Railway and the RCMP regarding the same the most recent MOU regarding such access between these parties?

Your continued assistance is greatly appreciated.

Kind regards,

Jessica-Lynn Hicks
Legal Assistant
Runyowa Law Professional Corporation
7th Floor, Royal Bank Building
2010 11th Avenue
Regina, SK S4P 0J3

Office: (306)206-2800
Fax: (306)206-2701
Cell: (226)347-2046
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Attachment 31

ROB MAGAZINE

How our CEO of the Year, CP Rail's Keith Creel, pulled off the biggest deal of 2021

Archrival CN's bully bid for Kansas City Southern looked like it would spoil the railway veteran's own plan for expansion. but after one of the most masterful counteroffensives the industry has seen, Creel emerged victorious (and paid less, too)

JASON KIRBY ›

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LYNDON FRENCH/THE GLOBE AND MAIL

CEOS OF THE YEAR

THE NEWCOMER

THE CORPORATE CITIZEN

THE INNOVATOR

THE STRATEGIST

THE GLOBAL VISIONARY

One morning this past March, Keith Creel—like so many other remote workers during the pandemic—sat alone in his home office doing paperwork. Unlike the rest of us toiling from our basements, the Canadian Pacific Railway CEO was in Florida putting the finishing touches on a US$25-billion agreement to buy Kansas City Southern Railway Co. (KCS).

Even as he signed the documents, Creel knew it was only a matter of time before someone put forward a rival bid. KCS, the smallest of the seven large-scale North American railways, was the industry's sole remaining takeover prize of any significance, meaning a successful CP–KCS merger would likely be the last major railroad transaction ever. And the combined companies—to be renamed Canadian Pacific Kansas City—would become the only railway seamlessly connecting Canada, the United States and Mexico. That's no small thing at a time when congested ports around the world are spurring manufacturers to bring more of their production back to North America, giving the merged company a competitive edge.

Creel couldn't say for sure who would try to scuttle the deal—his money was on CP's archrival, Canadian National Railway—or when, but it was coming.

Creel got the answer to both questions a month later, when his phone rang as he passed through Calgary's international airport after arriving from Chicago. "It was about 5:50 a.m., and as soon as I saw that 514 area code, I knew it was JJ," says Creel, referring to CN CEO Jean-Jacques Ruest, who had called from Montreal to say CN would announce its own bid shortly.

What followed was one of the most effective counteroffensives the industry has ever seen. The twisting—and at times bitter—showdown put 53-year-old Creel's demanding and hands-on leadership style to the test, while also revealing him to be a shrewd strategist. By the time the dust settled, CN had secured, then lost, its own vastly richer US$30-billion deal to acquire KCS—its hopes dashed by a U.S. regulatory decision that Creel had insisted from the outset would doom the takeover. That set the tracks for CP to re-emerge victorious in September with a sweetened US$27-billion purchase price (still US$3 billion lower than CN's).

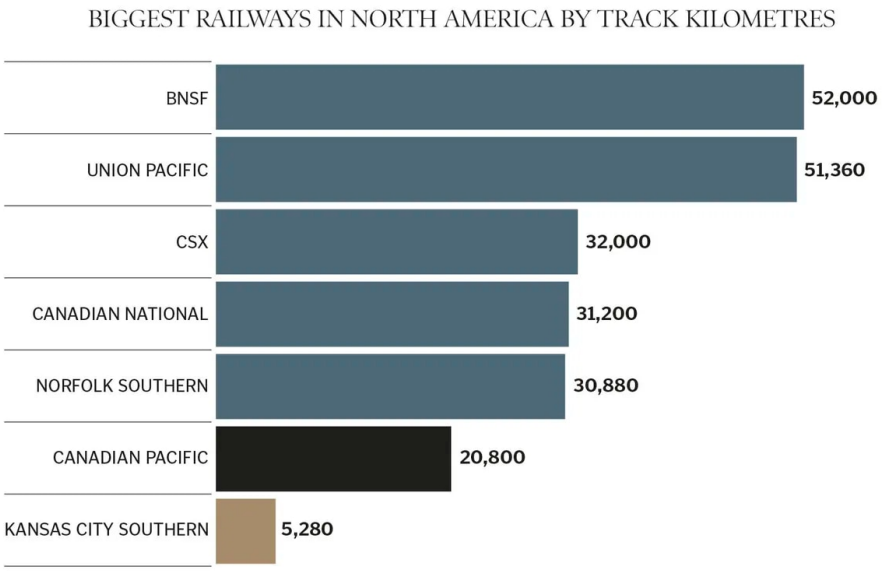
"If you look at how things unfolded, he was the only one from start to finish in this whole

THE GLOBE AND MAIL

As Creel argued to Ottensmeyer, only CP's takeover of KCS met the bar for being judged under the pre-2001 rules. Its tracks from Canada stopped in Kansas City, where KCS's line began before stretching down into Mexico. "We are the 6th- and 7th-smallest railways. If we put our two companies together, we were still creating the smallest railroad in the industry," says Ottensmeyer. Based on their 2020 annual results, a combined CP-KCS would have posted revenue of US$8.7 billion, with CP accounting for US$6 billion of that, and employed close to 20,000 people. By comparison, CN—North America's third-largest railway—generated US$11 billion in revenue that year. "Keith firmly believed, even though a lot of people didn't always agree with him, that the simplicity of putting our two companies together didn't change the balance of power in the industry," says Ottensmeyer.

After CP's takeover was formalized in March, Creel's close-knit team of executives doubled down on the long hours needed to plan the integration and prepare regulatory applications. Calls and emails from the boss at all hours of the night were the norm. "My mind goes at a hundred miles an hour sometimes, and they were always available," says Creel.

STORY CONTINUES BELOW ADVERTISEMENT



Under CP's proposed deal, an independent voting trust would buy and hold KCS's shares. That would allow its shareholders to be paid out quickly, while ensuring management could run the company independently until regulators carried out their full merger review, a process that could stretch on for more than a year. Because of its oversight role of the industry, the U.S. Surface Transportation Board (STB) would need to approve any voting trust proposal. The STB gave the nod to CP's trust in May, having already ruled that the company's bid would be judged under the less-stringent merger rules that existed prior to 2001, since the two railways had no overlapping routes and would still be the smallest of the major industry players.

Meanwhile, Creel prepared for that inevitable rival bid. During the third weekend of April, he summoned his team via Zoom to prepare for a hypothetical higher offer from CN. "The focus was on the economics of what CN might pay and what we could afford to counter with," says Creel. When the CN offer was announced two days later, he was stunned by the US$30-billion price tag. "It was an egregious amount of money that weaponized the balance sheet," he says. "Because we'd just gone through that valuation process, I knew right away we couldn't beat them. We couldn't afford a bidding war."

As it turned out, CN's timing worked to CP's advantage. Creel and CP's chair, Isabelle Courville, had both arrived in Calgary for a board meeting that was already scheduled for later that morning, ahead of the company's annual general meeting the next day. Courville asked Creel if he still believed in the deal given CN's vastly higher bid. "Keith told me, 'This is our deal,'" says Courville. "After that, we were in fighting mode."

It took Creel, a devout Christian and man of deep faith, the night to fully develop his strategy for combatting CN. "I woke up at about two o'clock in the morning. I'd been praying about it and reflecting on it and thinking about it, and the overarching thought that came to my head was just, Your best weapon is the weapon of truth," he says.

Which was exactly the message he delivered to shareholders at the following morning's virtual AGM. "I'm going to focus on the truth, because the truth matters," he said. He would go on to repeat the word "truth" another 108 times and the word "fact" more than 40 times over the course of the call.

The truth, as Creel saw it, was simple. Only a CP merger could hope to receive regulatory approval. While CN admitted it competed directly with Kansas City along a 112-kilometre stretch of track between New Orleans and Baton Rouge, which it eventually promised to sell off, Creel believed regulators would find the companies competed for customers over a much wider area. He would know—Creel worked as a senior executive at CN prior to joining CP, where he was recruited and mentored by the legendary railroader Hunter Harrison. "Creel cut his teeth in the railroad business as an operator and worked along some of the lines that regulators would be closely examining," says Seidl. "He had intimate knowledge of the overlaps with the other deal."



LYNDON FRENCH/THE GLOBE AND MAIL

The investor call left its mark on those who tuned in. "There are only a few CEO monologues you get to hear in your career that really stand out," says Steve Hansen, an analyst with Raymond James. "Hunter Harrison had a couple. The one where Keith talked about facts was epic."

Even when Kansas City's board of directors endorsed the pricey CN bid in May and CP withdrew its offer, Creel ordered his regulatory and integration teams to keep working on the assumption that CN's would be rejected by regulators. It helped that just days after the new merger was announced, the STB confirmed CN's bid would be subject to the stricter merger rules laid out in 2001, while the U.S. Department of Justice said CN's proposal posed "additional dangers to competition" relative to CP's plan.

The late evenings and 2 a.m. calls from the CEO intensified. Because of COVID, roughly 95% of the internal meetings and calls with bankers to hash out the initial deal and then battle with CN were done remotely, from executives' homes. "My wife, Ginger, had to live all the ups and downs and ins and outs of that journey," says Creel. "It consumed seven or eight months of our lives. But she was unwavering in her support and counsel."

In a battle that required Creel to sway KCS's shareholders and U.S. regulators to his way of thinking, he also leaned heavily on his communications team. The fight over the voting trusts that would hold KCS's shares during the merger review under both the CP and CN plans was a case in point. How regulators interpreted each company's voting trust would be seen as a proxy for how regulators would view the merits of each merger proposal. Since CN's voting trust was similar in structure to the one regulators had already approved for CP,

the larger railway argued it should get the same treatment.

"They tried to minimize their bad facts with that narrative. It was almost offensive," says

Creel, who likened it to standing in the 10-items-or-less aisle at a grocery store with a bag of milk while someone ahead of you has an overflowing cart and refuses to use the correct lane. It wasn't the smoothest of analogies, but Creel liked the message it sent—that benefits should depend on following the rules—and told his team to turn it into a comic. Two days later, a half-page cartoon advertisement of CN's Ruest sitting in a shopping cart overflowing with regulatory baggage ran in The Washington Post.

In the end, Creel's steadfast conviction that regulators would see things his way proved correct. In late August, the STB unanimously rejected CN's voting trust proposal, saying it posed a threat to competition and the public interest because CN and KCS indirectly fought for business over a wider area than CN claimed. Analysts interpreted the ruling's forceful language one way: a CN-KCS merger would never fly. CN, which immediately came under pressure from its large shareholders, axed the takeover attempt, and in October CN's Ruest said he would retire as CEO and step down from the company's board of directors next year.

STORY CONTINUES BELOW ADVERTISEMENT

The day after Ottensmeyer told Creel KCS would accept the sweetened takeover offer CP had launched in August, Creel flew his team to Kansas City for a group dinner with their new counterparts to overcome any lingering awkwardness from the bruising five-month ordeal. After all, relationships will be critical as CP and KCS navigate the remaining regulatory hurdles, then begin the three-year process of integrating the two railways' networks.

At the end of October the companies filed their merger application with the STB. CP says it expects to get approval in the second half of 2022, while shareholders are set to vote on the deal by the end of this year. Analysts don't see any obstacles at this point. "Even in an era where the Biden administration has put more scrutiny on mergers of all types across all industries, this one has gotten favourable reviews from regulators thus far," says Hansen.

Meanwhile, Creel—who signed a contract in March that will see him lead CP until at least 2026—is deeply involved in meshing the two companies together. CP's integration team never stopped planning, he says, and already has a detailed list of the track extensions and railyard investments that will be needed, and how many new hires it will take to get the job done. It's a three-year plan that will allow Canadian Pacific Kansas City to "tie a bow" on the merger by 2025. That will include a retooled logo featuring CP's iconic beaver (which Creel revived and even helped design when he took over as CEO in 2017). "I'm a very hands-on operating CEO," he says, "and I get involved in those discussions."

Does Creel, whose intense conviction guided him this far, feel any uncertainty about what comes next? "There's not a doubt in my mind."

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