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- BY EMAIL -

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Attn: Mr. Finn and Ms. Circelli,

RE: CN Railway – Ms. Pamela Fraser’s shareholder proposals and additional requests.

I represent Ms. Pamela Fraser who filed two shareholder proposals regarding reforms to CN Railway’s bonus structure and the independence of the company’s railway police force. We had a phone conversation with you both on January 13, 2021 in which we discussed Ms. Fraser’s proposals. In late December of 2020, the CN Railway Board of Directors had declined to put Ms. Fraser’s proposals to her fellow shareholders. The purposes of our phone call were to: a) discuss the objectives behind Ms. Fraser’s proposals; b) for you to provide us with information on how CN Railway handles the police independence, safety, and performance bonus matters that Ms. Fraser’s proposals raised; and, c) for us to provide you

with clarifications that would help the CN Railway Board to review its initial refusal to put Ms. Fraser's proposals before CN Railway's shareholders. In advance the relevant CN Railway Board subcommittee meeting on January 25, 2021 and the full Board meeting on 26, 2021, we provide this letter and accompanying package for the Board's consideration. As the contents of this package reflect, we ask the Board to reconsider its decision to decline putting Ms. Fraser's proposals before her fellow shareholders. Further, this package presents information and supporting evidence that should galvanize the CN Railway Board to advance reforms that are consistent with the Board's legal duties to the company, shareholders, and the Canadian public.

Ms. Pamela Fraser's requests to the CN Railway Board of Directors.

Based on the contents of this letter and the accompanying attachments, Ms. Fraser requests the following of the CN Railway Board:

1. That the CN Railway Board approve Ms. Fraser's shareholder proposals for inclusion in the upcoming circular to shareholders **and** endorses the proposals themselves;
2. That on behalf of CN Railway, the Board resolves to write a formal letter to the Prime Minister of Canada, the federal Minister of Transport, and the leaders of all federal opposition parties to request and endorse:
 - a. The repeal of Sections 44 and 44.1 of the *Railway Safety Act*, which authorize private railway companies to own and operate police forces;
 - b. The amendment Sections 30 - 33 of the *Canadian Transportation Accident Investigation and Safety Board Act*, (S.C. 1989, c. 3) to allow Transport Safety Board incident investigators to make criminal referrals to the RCMP, independent police forces, and Canada's attorneys general. Currently, these provisions bar investigators from making criminal referrals even if they find evidence justifying such investigations against potentially responsible parties.

As the CN Railway Board will become aware from the contents of this letter, advancing the statutory reforms above will more effectively and permanently entrench police independence in the Canadian railway system. The proposed reforms will also resolve numerous and unpredictable challenges that the current regime poses for the company without undermining CN Railway's ability to secure its operations and protect the public.

3. That, given the CN Railway Board's fiduciary duty to shareholders and the general public (as discussed further in this letter), the Board notifies the shareholders of the issues that we raise in this correspondence, the repercussions that arise from them, and how the Board intends to address them. In particular, the Board has a duty to investigate and address potentially unlawful conduct

within the company; to make necessary reports to law enforcement; to submit any applicable reports and filings to regulators; and to notify shareholders about the implications of any threshold issues.

4. That the CN Railway Board directs the CN Railway management to disclose to Ms. Fraser the copies of any internal policies and procedure documents that confirm CN Railway's assertion that the CN Police is **operationally** independent from CN Railway as a corporate entity. We trust that these internal policies detail how the company ensures that CN Police officers can conduct independent criminal investigations into railway incidents, including cases where their corporate parent may be implicated. We also expect that CN Railway's policies confirm that in both principle and in practice, CN Railway consistently refers the investigation of fatalities and serious injuries in its operations to outside police of jurisdiction. This is important because during our phone call of January 13, 2021, you stated that in such cases, CN Police does not investigate such incidents, and that the outside police forces of jurisdiction investigate and decide whether to lay charges.

This police independence issue is crucial to the CN Railway Board's consideration of Ms. Fraser's shareholder proposals and other requests. As you will see from the accompanying Appendix and related attachments, the evidence contradicts CN Railway's assertions that CN Police is operationally independent from the company, and that it leaves the criminal investigation of fatalities and serious injuries to the outside police of jurisdiction.

The attached Appendix provides the relevant arguments and supporting documents to support Ms. Fraser's requests above. Declining to put Ms. Fraser's proposal before the CN Railway shareholders would send a troubling message. Shareholders, particularly those who are committed to ethical investing and high Environmental, Social, and Governance ("ESG") standards deserve to review Ms. Fraser's proposals. CN Railway shareholders deserve the opportunity to consider these proposals in light of the arguments and evidence we have provided. This is critical given the Board's refusal to forward Ms. Fraser's proposals to shareholders on the purported basis that CN Police already operates independently, and that the company's current workplace safety incentives are adequate. The evidence demonstrates otherwise.

Ms. Fraser asks the CN Railway Board to promote transparency, accountability, and full disclosure in the interests of shareholders and the public interest that CN Police is legally obliged to serve. Ms. Fraser is cognizant of the fact that the current Board was not constituted when some of the key events outlined in this package occurred. Nevertheless, the current Board has the duty to address the repercussions of any acts and omissions that CN Railway's previous directors and leaders may have made. The current directors have the benefit of a fresh perspective and are sufficiently removed from previous corporate and leadership decisions to approach the proposed reforms with the detached analysis they deserve.

All parts of the attached Appendix provide crucial information and evidence that we ask the CN Railway Board to carefully consider. However, we would like to emphasize the final two sections because

they focus on solutions **going forward**. As a shareholder and member of the North American railroader family, Ms. Fraser is interested in reforms that are workable and that benefit the company, its workers, and the public. She recognizes the critical economic role that railway companies play in Canada's supply chain. Therefore, her shareholder proposals and other requests, particularly her request for the Board's support for the repeal of Sections 44 and 44.1 of the *Railway Safety Act*, are made in the spirit of instituting productive, rather than obstructive, change.

The "**Brinks Solution**" detailed in the attached Appendix illuminates how CN Railway can protect its extended supply lines and infrastructure without the need for a private police force. We also explain how this reform will provide a powerful enhancement to CN Railway's risk management strategy that will better protect the company from numerous legal and commercial jeopardies of substantial and indeterminate scope. In summary, if the CN Police Service is converted into a private security company, it will have virtually all of the necessary powers to protect the company's infrastructure. CN Railway's security guards would be able to carry weapons, conduct arrests, obtain warrants to enter various premises, and do so outside the geographical jurisdiction provided under the *Railway Safety Act*.

The existing laws of Canada and its provinces already empower private security companies to conduct the core activities for which CN Railway uses its current police force. As is the case with all other corporations that have similarly extended and sensitive infrastructure, a private "CN Security Service" would hand over the criminal investigation and prosecution of suspects to public police forces and Crown prosecutors. CN Railway and its private security service would still cooperate and collaborate with these outside authorities as need. This is the prevailing system that has successfully governed all other commercial enterprises across all industries in North America. This "private security/public police" model ensures both the security of business operations **and** the independence of investigating police forces. Thus, there is no principled reason why CN Railway requires a dedicated police force with the power to enforce the *Criminal Code* and related criminal laws.

Further, there is no reason why CN Railway should conduct, lead, or be involved in directing any criminal investigations, particularly those in which its corporate parent is implicated. However, this is exactly what happened in at least one instance involving CN Railway that we cover below. There is an apparent divergence between how CN Railway claims it ensures police independence, and how CN Police's independence works in practice.

In the section immediately following the "Brinks Solution" in the attached Appendix, we discuss the option of **contract policing**. In addition to transforming the CN Police into a private security company, CN Railway contract policing would allow CN Railway to supplement the security of its operations as needed. This option would allow CN Railway to maintain a stable, capable, and constant policing presence to secure its assets and protect the public across Canada. Contract policing, implemented alone or in combination with the transformation of CN Police into a private security company, negates

any justification for CN Railway to own a private police force. A contract policing model would also transfer significant legal and other liabilities from CN Railway to independent police forces.

In the event of a railway tragedy or disaster, CN Railway should not have to worry about defending itself from any legal proceedings regarding its potential liability while also defending itself from post-incident allegations of how its police officers' deliberately or inadvertently interference with criminal and other investigations. Transforming CN Police into a private security company and adopting a contract policing model are prudent risk management strategies that will protect the security of the company's operations and mitigate many legal jeopardies.

We request the CN Railway Board's response to Ms. Fraser's requests, particularly regarding her shareholder proposals, by **5pm EST on January 29, 2021**.

Thank you,

Tavengwa Runyowa

Tavengwa Runyowa

(Counsel for Ms. Pamela Fraser).

**APPENDIX: FURTHER RECORDS AND
ARGUMENTS IN SUPPORT OF MS. PAMELA
FRASER'S SHAREHOLDER PROPOSALS AND
OTHER REQUESTS TO THE CN RAILWAY BOARD
OF DIRECTORS.**

TABLE OF CONTENTS

SUMMARY OF OUR TELECONFERENCE WITH MR. FINN AND MS. CIRCELLI, AND THE POSITIONS THAT CN RAILWAY TOOK ON JANUARY 13, 2021 8

THE LEGAL DUTIES OF CN RAILWAY’S BOARD OF DIRECTORS..... 10

THE ENHANCED AND ADDITIONAL DUTIES OF CN RAILWAY’S BOARD OF DIRECTORS AS THE INDEPENDENT OVERSEERS OF A STATUTORY POLICE FORCE. 11

REASONS THAT THE CN RAILWAY BOARD SHOULD SUPPORT MS. FRASER’S SHAREHOLDER PROPOSALS AND OTHER REQUESTS..... 12

CN Police’s criminal proceedings against Mr. Scott Holmes (2010): CN Railway, as a corporation, used its wholly owned CN Police force and public criminal law powers to fight private civil disputes with its former employee..... 12

Contrary to CN Railway’s assertions, the company’s policies do not ensure that CN Police always remains independent in conducting its investigations, including those that may implicate CN Railway as a corporation..... 15

The case of Kevin Timmerman and how CN Railway’s ownership of CN Police violated the integrity of the criminal investigation into Kevin’s death.15

Contrary to CN Railway’s assertions, the RCMP, OPP, and other police forces have confirmed their positions that they defer jurisdiction of death and serious injury investigations to private railway police, not vice versa.16

Even the Canadian Association of Police Chiefs (CACP), of which CN Police is a member, has added to the jurisdictional confusion by declining to confirm whether its other members investigate private railway companies with their own police forces.18

THE “BRINKS SOLUTION”: CONVERTING THE CN POLICE SERVICE INTO A PRIVATE SECURITY COMPANY WILL ALLOW CN RAILWAY TO CONTINUE PROTECTING ITS OPERATIONS AND THE PUBLIC BUT WITHOUT THE LEGAL JEOPARDIES OF RUNNING A POLICE FORCE..... 19

AFTER THE REPEAL OF RSA S. 44 AND S. 44.1, CN RAILWAY CAN SECURE ITS OPERATIONS AND PROTECT THE PUBLIC JUST AS EFFECTIVELY THROUGH CONTRACT POLICING AGREEMENTS WITH PUBLIC POLICE FORCES. 21

CN Railway has too few police officers across an extensive geographical area to justify owning its dedicated police force. 22

WHY SUPPORTING MS. FRASER’S SHAREHOLDER PROPOSALS AND OTHER REQUESTS IN THIS PACKAGE WILL PROTECT THE COMPANY’S INTERESTS AND ENHANCE SHAREHOLDER VALUE..... 23

Mitigating and preventing the indeterminate legal liability against CN Railway that would damage shareholder value and interests. 23

Maintaining a corporate police force potentially exposes CN Railway to unnecessary and damaging disputes with Aboriginal Canadians..... 26

SUMMARY OF OUR TELECONFERENCE WITH MR. FINN AND MS. CIRCELLI, AND THE POSITIONS THAT CN RAILWAY TOOK ON JANUARY 13, 2021.

The following is a summary of the key points from our teleconference with Mr. Finn and Ms. Circelli on January 13, 2021 regarding Ms. Pamela Fraser's two shareholder proposals.

- The CN Railway Board had not wavered from its decision to decline placing Ms. Fraser's proposal before CN Railway's shareholders in the company's upcoming circular. However, following our call on January 13, 2021, Mr. Finn and Ms. Circelli stated that they would have a discussion with the Board before the relevant subcommittee and full Board meetings on January 25 and 26 of 2021, respectively. The full CN Railway Board will consider Ms. Fraser's proposal in light of our call and thereafter, affirm, or change its position about putting Ms. Fraser's proposals before CN Railway's shareholders.
- CN Railway's position was that it already has the appropriate safeguards to ensure that its corporate (private) and policing (public service) incarnations do not conflict. Despite CN Railway owning the CN Police Service, Mr. Finn and Ms. Circelli stated that CN Police operates independently from the company's corporate side. They also stated that the corporate management never interferes with, controls, directs, influences, gets involved with, or has access to CN Police's operational matters and investigations.
- Further, it was CN Railway's position that in all cases involving deaths and serious injuries in the course of CN Railway's operations, as a matter of policy and practice, CN Railway calls in independent outside police forces to the scenes on the incidents. Mr. Finn and Ms. Circelli also asserted that the CN Police does not investigate any potential criminality arising from such fatal or injurious incidents (including potential *Westray* and other workplace violations by CN Railway as a company, its personnel, and its leadership).
- Mr. Finn and Ms. Circelli stated CN Railway's position that the Parliament of Canada found it wise to grant companies such as CN Railway with private policing powers, and that other avenues apart from Ms. Fraser's proposals are preferable for changing the regulatory framework of private policing under the *Railway Safety Act*. It is in light of Parliament's trust that CN Railway has purportedly ensured that its officers do not investigate any deaths or serious injuries, leaving those to independent local police of jurisdiction. Also, CN Police officers only attend the scene of a fatality or serious injury to preserve it. Thereafter, when the outside police of jurisdiction arrive, CN Police officers step back and only help if asked by those local police of jurisdiction.

- We shared a common understanding on the fact that the Transportation Safety Board (“TSB”) has no criminal jurisdiction, and that its investigations cannot lead to any criminal charges or referrals in cases of railway fatalities, serious injuries, and other disasters.
- Mr. Finn and Ms. Circelli said that CN Railway’s current policies and procedures are adequate to ensure safety and police independence, such that Ms. Fraser’s shareholder proposal on this issue is unnecessary. At our request, Ms. Circelli committed to looking into providing us with copies of the internal policies that purportedly ensure that there are no conflicts of interest or corporate breaches of the CN Police’s independence. Mr. Finn and Ms. Circelli also emphasized the skill and training of CN Police officers and assured us that CN Railway’s policies and historical handling of police independence were well established and effective.
- Mr. Finn and Ms. Circelli stated that CN Railway as a corporation has never abused its CN Police powers since the company’s inception. Thus, the Board felt that there was no justification for putting Ms. Fraser’s police independence proposal before shareholders.
- Mr. Finn and Ms. Circelli stated that the CN Railway Board has carefully considered and balanced all relevant factors in structuring the company’s current bonus scheme. They did not expressly state that the CN Railway Board opposed the new bonus scheme that Ms. Fraser is proposing. However, we got the impression that the Board’s initial refusal to put Ms. Fraser’s bonus proposal to shareholders was unlikely to change after the full Board meets on January 26, 2020.
- Mr. Finn confirmed that after our phone conversation, we will remain in touch to discuss the issues as needed, particularly after you have had the chance to brief the Board about our phone call and the issues we had discussed. We tender this package in light of that undertaking to engage in continued discussions.

In order to frame the arguments and evidence we provide in support of Ms. Fraser’s shareholder proposals and other requests, the first two sections below discuss the CN Railway Board’s legal duties. While we trust that the CN Railway Board members are aware of their individual and collective duties, revisiting the subject will provide the Board with important context for the key issues that are particular to Ms. Fraser’s proposals and requests. The section immediately below canvasses the duties of corporate directors in general, including under the *Canada Business Corporations Act*. The section that follows thereafter discusses the CN Railway Board’s duties as “**public officers**” by virtue of their oversight role of a corporation, which by virtue of its full ownership of the CN Police Service, is also a public criminal law enforcement agency. This second “public” capacity goes beyond safeguarding shareholder value and imposes further obligations on the Board to protect the public interest and the integrity of public offices.

The distinction between the two categories of legal duties above is not only important to contextualize the Board’s responsibilities. It also establishes how those duties conflict and are potentially

irreconcilable. The minefield of difficulties that arise from these conflicting duties validate Ms. Fraser's call for the conversion of CN Police into a private security company. These difficulties also affirm the position that, in the interim, the Board should place her shareholder proposal on police independence before other shareholders and actively support the proposal. Nothing will be lost by exercising due diligence in formalizing a policy that CN Railway argues already exists, but which the evidence demonstrates the company has not complied with. Instead, the current Board would get the deserved recognition for demonstrating that it is taking proactive steps to address the apparent corporate breaches of CN Police's independence, and resolving the jurisdictional confusion among police forces that has undermined the integrity of many fatality and serious injury investigations.

THE LEGAL DUTIES OF CN RAILWAY'S BOARD OF DIRECTORS.

All corporate board members have the responsibility to act honestly and to discharge their duties in good faith while exercising their powers in the best interests of the corporation.¹ These duties are both collective and individual.² Further, directors have a minimum duty to ensure that the corporation meets its statutory and other legal obligations.³

The duties of CN Railway Board members include protecting the corporation's Environmental Social and Governance (ESG) rating, a metric which is of increasing importance to shareholders and the general public.⁴ Large institutional investors, such as Cascade Investments LLC and the Bill and Melinda Gates Foundation (CN Rail's largest shareholders⁵), increasingly focus on responsible investment, ESG, and the social/ethical values underlying these investment principles. It is in CN Railway's best interests for the company to conduct its business in accordance with these values. The notion of CN Railway's private management controlling or influencing criminal investigations (through its CN Police Service) in which its own conduct is under scrutiny is not only unlawful, but also inconsistent with the ethical investment and ESG frameworks.

If the CN Railway Board does not address the independent policing issue and the other concerns below, it would undermine the corporation's ESG profile in the long term, alienate shareholders, potentially trigger divestments, and undermine customers' and the public's goodwill. As you know, CN Railway was added to the Dow Jones Sustainability Index ("DJSI") in November 2020. The CN Railway Board has the duty to defend the company's inclusion in that Index and the benefits it endows. Based on

¹ *Canada Business Corporations Act*, Section 122(1).

² *Tyler v. Envacon Inc.*, 2012 ABQB 631 (CanLII), at paras 14 and 68 <<http://canlii.ca/t/ftfbg>>.

³ *BCE Inc. v. 1976 Debentureholders*, [2008] 3 S.C.R. 560, 2008 SCC 69 at para 38. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6238/index.do>.

⁴ <https://www.otpp.com/documents/10179/1163214/Maple+8+CEO+ESG+Statement/4d05df81-6968-4790-%E2%80%8Ea18d-b7462c2dfb8d>

⁵ <https://www.google.com/search?client=firefox-b-d&q=tci+fund+management+esg> AND <https://www.bloomberg.com/news/articles/2020-11-19/billionaire-hohn-s-tci-presses-canada-railways-on-emissions-plan>.

the arguments and supporting documents we provide in this Appendix, the DJSI inclusion process gave undue weight to only one of the three ESG factors. It is in the best interests of CN Railway to address any potential adverse impacts on the company's ESG rating, its DJSI inclusion, and the commercial/market benefits that arise from the factors. Supporting Ms. Fraser's proposals and requests to transform the CN Police Service into a private security company, and in the interim, to include and support Ms. Fraser's shareholder proposals in the upcoming circular, would advance these interests.

THE ENHANCED AND ADDITIONAL DUTIES OF CN RAILWAY'S BOARD OF DIRECTORS AS THE INDEPENDENT OVERSEERS OF A STATUTORY POLICE FORCE.

It is also important to note that the duties of CN Railway's Board of Directors are broader than those of most other corporate directors. CN Railway is also a law enforcement agency through its full ownership of the CN Police Service, which is a federal, statutory police force whose officers are public servants.⁶ CN Railway's total ownership its police force, the company's powers to appoint the persons who deal with complaints against CN Police (*RSA S. 44.1*), and CN Police's power to enforce the *Criminal Code*, all endow CN Railway's Board and leadership with state powers. These powers come with corresponding obligations under the *Canadian Charter of Rights and Freedoms* (including under Section 7).⁷ Therefore, the duties of the CN Railway Board are not limited to protecting the interests of the corporation as a commercial entity and shareholder value. The Board members' legal duties also extend to protecting the public, proactively ensuring that the company complies with the criminal law and the *Charter*, and advancing the administration of justice in general.

In light of the above, it is evident that CN Railway's Board of Directors are "public officers" to whom particular and additional duties apply. The law is clear that the status of "public officer" is not limited to persons who work for governmental or state bodies. The determinative traits are the nature of the **functions** the individual carries out, and the powers that they wield.⁸ For example, in *R v. Singh*, the Court found that Mr. Singh, a private driving instructor, was a public officer because he was appointed to discharge a public duty (qualifying people seeking driver's licences).⁹ The individual's position must be one where "[t]he public is entitled to expect that public officials entrusted with these powers and responsibilities exercise them for the public benefit" (para 37). Thus, persons holding positions that touch on the public interest, including the CN Railway Board members, must be answerable to the public in a way that private officials do not have to be.¹⁰ This affirms the point that CN Railway's Board of Directors, executive management, and CN Police officers are all "public officers" with respect to their duties to safeguard worker and public safety as provided under Sections 44 and 44.1 of the *Railway Safety Act*.

⁶ <https://www.CNr.ca/en/safety-site/Documents/Common%20Questions.pdf>.

⁷ *RWDSU v. Dolphin Delivery Ltd.*, [1986] 2 S.C.R. 573 E.g. para 38. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/181/index.do>.

⁸ *Goyal v. Niagara College of Applied Arts and Technology*, 2018 ONSC 2768 para 68; *R v. McMoran*, 1948 CarswellOnt 12.

⁹ *R. v. Singh*, 2006 ABPC 324 (CanLII), <http://canlii.ca/t/1q2w4>.

¹⁰ *R. v. Singh*, 2006 ABPC 324 (CanLII), <http://canlii.ca/t/1q2w4> at para 37, citing *R. v. Boulanger*, 2006 SCC 32, para 52.

REASONS THAT THE CN RAILWAY BOARD SHOULD SUPPORT MS. FRASER'S SHAREHOLDER PROPOSALS AND OTHER REQUESTS.

The imperative for CN Railway's Board to support Ms. Fraser's shareholder proposals and other requests arises from our January 13, 2021 teleconference where Ms. Circelli stated that there have been no instances of abuse of CN Police powers in the company's history. Below, we provide two examples which rebut that position. We do so to support the conclusion that CN Railway's shareholders, especially those who value the company's ESG and ethical investing profiles, deserve to know about these issues. CN Railway's shareholders deserve to be aware of, and to express their support for reforms that will address the demonstrated inadequacies in the company's police independence protections, and tCN Railway's bonus incentives for promoting workplace safety.

CN Police's criminal proceedings against Mr. Scott Holmes (2010): CN Railway, as a corporation, used its wholly owned CN Police force and public criminal law powers to fight private civil disputes with its former employee.

During our January 13, 2020 teleconference with Mr. Finn and Ms. Circelli, they stated that there have been no corporate abuses or conflicts of interests involving CN Railway's ownership of CN Police. They made this point in the context of asserting that Ms. Fraser's shareholder proposal on police independence was unnecessary because current policies already guaranteed the independence of CN Police. The case of Mr. Scott Holmes demonstrates why it is paramount for the Board to advance Ms. Fraser's request for the conversion of CP Police into a private security company and, in the interim, for the Board to support her shareholder proposal on police independence.

Attachment 1 is a letter from Mr. Scott Holmes' legal counsel, Mr. Lacy, including extracts from official preliminary inquiry transcripts. The transcripts reflect the cross-examinations of Constable Robert Zawerbny, Inspector Bruce Power, and Inspector Ben Fusco. All three were CN Police officers who were involved in the company's criminal and civil disputes with the former employee, Mr. Holmes. This document is in the public domain. We have independently verified the transcripts' authenticity.

As the Board can see from Mr. Lacy's cover letter to various public officials, he detailed how CN Railway leveraged CN Police to advance the company's private civil disputes against Mr. Holmes. The transcripts show that CN Railway's corporate management breached the sacred firewall between CN Police's criminal enforcement role and CN Railway's private corporate interests. No police force is, and never should be, the adjunct of private corporate interests. The CN Police was supposed to be focused solely on the independent criminal investigation of Mr. Holmes, and the public interest that underlies all criminal law enforcement actions. It is not relevant whether Mr. Holmes was liable in both the criminal and civil contexts. The issue is that CN Railway was not supposed to create a war room through which it

could direct police officers who were exercising criminal law jurisdiction to assist with the corporation's private litigation arising from the same facts. We understand that this was the central reason why the criminal prosecution of Mr. Holmes collapsed.

We take no position on the merits of CN Railway's civil or criminal disputes with Mr. Holmes. The sole purpose of the attached transcript extracts is to rebut CN Railway's assertions that it has never abused its corporate ownership of CN Police, and that existing policies are adequate to ensure CN Police's independence. The *Holmes* case makes it apparent that notwithstanding the validity of the company's criminal and civil grievances against Mr. Holmes, CN Railway's corporate control and influence over CN Police's criminal investigation violated the principle of police independence, a cornerstone of the rule of law.¹¹

This is a serious matter. The integrity of police investigations requires that the police force is notionally and practically independent. This is why Canadian provinces have laws and procedures that govern when private parties can access police records for non-criminal law enforcement purposes such as civil litigation. These processes are carefully controlled, with judges reviewing the police records to determine what can be disclosed, and if anything, what records should be redacted etc. Outside of the carefully circumscribed legal frameworks, private parties do **not** have the *de facto* right to access police records and evidence. Private parties also have no authority to compel police officers to provide them with open access to information and evidence arising from the police's criminal investigations. Therefore, CN Railway, as a corporation, had a duty to place solid firewalls between its criminal investigation into CN Railway and its civil dispute with Mr. Holmes. The conduct reflected in the attached transcripts raises serious concerns about the legal complications that will inevitably arise for CN Railway each time it faces a legal matter with civil and criminal aspects.

Even if CN Railway makes its best efforts to avoid the recurrence of further *Holmes* scenarios, and has internal polices to protect the independence of the CN Police Service, this does not resolve the fundamental problem. There is an inherent conflict of interest in CN Railway owning the CN Police Service, employing its police officers who report to management, and having the sole authority to appoint the persons who oversee complaints against its police force.

As you know, Canada's public police forces are subject to independent civilian oversight and operate physically, and functionally apart from the municipalities that fund them. It is this "police-municipality-civilian oversight" separation that provides the minimum safeguards for police independence. In the case of CN Railway, all three functions are under the control or influence of CN Railway as a corporation. CN Railway's good faith and internal policies do not negate the fact that

¹¹ *R. v. Campbell*, [1999] 1 S.C.R. 565 at para 29. https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1692/index.do?site_preference=normal.

principles such as conflict of interest, apprehension of bias, and police independence, are as much about perception as they are about reality. As the Federal Court of Canada stated in *Threader*: “Manifestly, the public service will not be perceived as impartial and effective in fulfilling its duties if **apparent** conflicts between the private interests and the public duties of public servants are tolerated.”¹²

CN Police officers are public servants. They have the duty to enforce the criminal law and uphold the administration of justice in the public interest. However, there is an apparent conflict of interest between their public duties as police officer and their private duties of loyalty as CN Railway employees. As the Court stated in *Threader*, such conflicts should not be tolerated. Further, as the old adage goes, “justice should not only be done, but should manifestly and undoubtedly be seen to be done”¹³. The fact that the *Railway Safety Act* allows CN Railway to own its own police forces does not absolve the company of its duty to avoid any conflicts of interests and violations of police independence. Further, the fact that CN Police is a creature of statute does not absolve the CN Board of its duty to consider the additional legal, business, risk management, cross-border, and ESG implications of owning such a police force.

We understand that the CN Railway Board may not be constituted as it was when the events in the *Holmes* transcript transpired. However, the CN Railway Board members at the time had the duty to ensure that the company’s statutory police force and criminal law powers were not abused to advance CN Railway’s private corporate interests. The *Holmes* transcripts highlight why it is critical for the current CN Railway Board to approach the Prime Minister, Minister of Transport, and federal opposition leaders to express the company’s support for the repeal of Sections 44 and 44.1 of the *Railway Safety Act*. For the same reason, the Board should support the statutory empowerment of TSB investigators to make criminal referrals where the investigators deem it appropriate.

The CN Railway Board can further demonstrate its commitment to the independence of the CN Police Service. The Board should do so by supporting Ms. Fraser’s shareholder proposal that calls for CN Railway and the CP Police to formally relinquish any role; exclusive, primary, or proximate, in the investigation of railway deaths and serious injuries. The enforcement of this proposal would persist in its own right and in parallel to the implementation of Ms. Fraser’s proposed reforms to the *Railway Safety Act* and the *Canadian Transportation Accident Investigation and Safety Board Act*.

We do not know the extent to which CN Police has been involved in CN Railway’s litigation with Mr. Holmes since the company’s criminal case collapsed. However, we found no CN Railway filings with the SEC that mention any *Holmes* litigation and the revolving door between CN Railway’s corporate incarnation and its CN Police Service. Given the centrality of the CN Police Service’s involvement in investigations with potential regulatory, criminal, civil, public relations, insurance, and operational strategy implications, the issue of CN Police’s independence appears to raise reporting obligations. From Ms.

¹² *Threader v. Canada (Treasury Board)*, [1987] 1 F.C. 41 para. 16.

¹³ *Brouillard Also Known As Chatel v. The Queen*, 1985 CanLII 56 (SCC), [1985] 1 SCR 39, <<https://canlii.ca/t/1fv1g>> at para 13.

Fraser's perspective, she is troubled that CN Railway, as a corporation, inserted itself into what was supposed to be an independent criminal investigation. Her greater concern is that if this brazen conduct happened on the *Holmes* case, how many of CN Railway's other criminal investigations, including fatality investigations, were also tainted by such corporate interference? This ethical issue casts significant doubt on whether the CN Police Service can be truly independent and avoid the legal, business, and political risks that CN Railway's ownership of its police force currently pose to the company. At a minimum, the *Holmes*, *Timmerman*, and other cases raise questions that CN Railway's shareholders deserve to know about and express their positions on through their votes. This issue goes to the very identity of CN Railway as a company and how it conducts its business.

Contrary to CN Railway's assertions, the company's policies do not ensure that CN Police always remains independent in conducting its investigations, including those that may implicate CN Railway as a corporation.

The case of Kevin Timmerman and how CN Railway's ownership of CN Police violated the integrity of the criminal investigation into Kevin's death.

We obtained the attached police record on behalf of Ms. Lori Desrochers and Ms. Kaity Timmerman from the Saskatoon Police Service via Saskatchewan's Freedom of Information process (**Attachment 2**). I represent Ms. Desrochers and Ms. Timmerman in a separate legal proceeding involving CN Railway. We have been dealing with your Regina counsel, Mr. Jason Clayards, regarding Ms. Desrochers and Ms. Timmerman's legal dispute with CN Railway. PLEASE NOTE: This package and the remedies it seeks are focused solely on advancing Ms. Fraser's shareholder proposal and the other requests she makes herein. You will also note that Ms. Fraser's proposals and requests to the CN Railway Board are **prospective** in nature. Supporting them do not require or amount to the Board's concession on any issues arising from Ms. Desrochers and Ms. Timmerman's case. Ms. Fraser's proposals and requests to the CN Railway Board also do not seek the Board to comment or address any issues arising from that case.

The sole reason we have raised Kevin's case and provided the associated documents is to address the point that Ms. Circelli and Mr. Finn made during our January 13, 2021 conference call regarding Ms. Fraser's shareholder proposals. Specifically, Ms. Circelli and Mr. Finn stated that as a matter of policy and practice, the CN Police Service **does not** investigate railway deaths and serious injuries. Instead, the CN Police Service notifies the relevant police of jurisdiction, which then decides whether to criminally investigate or to lay any charges in the incident. Ms. Circelli and Mr. Finn took this position to justify the Board's position that Ms. Fraser's shareholder proposal regarding CN Police's investigations reflected standard practice, and hence, was unnecessary to place before CN Railway's shareholders. Ms. Fraser, who was on the teleconference and is similarly bereaved, sought and obtained the permission of Ms. Desrochers to provide you with the relevant information and documents that rebut Mr. Finn and Ms.

Circelli's assertions about how CN Police worked in practice. Thus, we raise Kevin Timmerman's case for the sole purpose of bolstering Ms. Fraser's shareholder proposal regarding CN Police's handling of fatality investigations going forward. Nevertheless, we will leave it up to CN Railway to decide if, and to what extent, to include Mr. Clayards in the matter of Ms. Fraser's shareholder proposal and other requests.

The Saskatoon Police initially attended the scene of Kevin's death. However, after discussions between CN Police, the RCMP and Saskatoon Police, the CN Police assumed investigative jurisdiction over the other two police forces (**Attachment 2 page 108-113**).

Any death, particularly when it is violent, unnatural, and untimely, must be investigated to preclude foul play or criminal culpability. In Ms. Desrochers' and Ms. Timmerman's case, the Saskatoon Police acquiesced and handed the investigation over to CN Police officers who were employees of CN Railway, a default suspect in the death of Kevin Timmerman. This contradicts CN Railway's stated position that CN Police does not investigate fatalities and leaves that to outside police forces.

It is problematic that the main party of interest in a death investigation under the *Westray* framework, CN Railway, could seek or accept jurisdiction over that very investigation from two other public police forces. As a question of the rule of law, fairness, and accountability, suspects should not be able to preclude police of jurisdiction from the criminal investigation into the suspect's conduct. Conversely, public police forces should not be subordinating themselves and acquiescing to the very suspects whose conduct should be the subject of a criminal investigation.

Contrary to the CN Board's position, Kevin Timmerman's case is the norm, and not the exception. We contacted police departments across Canada to ask whether they had any jurisdiction to investigate railway deaths and serious injuries. The RCMP initially told Ms. Desrochers that it had no jurisdiction to investigate Kevin's death. After we pressed the matter, RCMP Commissioner Lucki eventually conceded that the RCMP did have jurisdiction but that the railway police forces are the police of "primary jurisdiction" (**Attachment 3**). Only after persistent public pressure about CP Railway's Field, BC derailment did the RCMP eventually open a criminal investigation into that case, even though it still has not explained why it has disavowed such jurisdiction for years (including in Ms. Desrochers case: **Attachment 3**).

Contrary to CN Railway's assertions, the RCMP, OPP, and other police forces have confirmed their positions that they defer jurisdiction of death and serious injury investigations to private railway police, not vice versa.

In the case of Ms. Tara Jijian, my other client whose husband died while working at CP Railway in Regina, both the Regina Police and RCMP disavowed jurisdiction over any criminal investigation into Jamie's death. Both deferred to the CP Police Service, which did not disavow its jurisdiction over the

matter, despite being an incarnation of CP Railway that was supposed to be the subject of the investigation. The CP Police also refused to provide any answers about its relationship with CP corporate or about the conduct of its investigation (**Attachment 4**). Ms. Jijian's case is a matter of public record.

We understand that the CN Railway Board has no direct knowledge or involvement in CP Railway policing incidents. We cite Ms. Jijian's case for the sole purpose of demonstrating that as a general proposition, Canada's public police forces have persistently deferred criminal investigations of railway deaths and serious injuries to private railway police forces. This casts doubt on CN Railway's assertion that it defers such investigations to outside public police forces. Given the numerous deaths and serious injuries that have occurred in CN Railway's operations since the company's privatization, at least some of the police forces we consulted should have verified that CN Railway has historically referred these matters to them. Instead, they seem unaware that this has been CN Railway's longstanding policy (e.g. **Attachments 2 and 4**). In fact, as the Kevin Timmerman case shows, not only has CN Railway's police force failed to consistently refer these matters to independent police force, CN Police has accepted jurisdiction over criminal investigations in which its corporate parent is a party of interest.

The Ontario Provincial Police, which despite acknowledging that it has jurisdiction to investigate railway deaths, serious injuries, and other disasters, also confirmed that it has never criminally investigated or charged a Canadian railway company (**Attachment 5**). This is despite hundreds of deaths and injuries among railway workers and members of the public. The CN Railway Board should be galvanized by the need to clarify this jurisdictional confusion. This confusion persists despite CN Railway's stated position that its police force does not criminally investigate any railways deaths and serious injuries under its watch, and defers to outside police force. If both CN Police and outside police force are disavowing primary or exclusive jurisdiction (e.g. RCMP, Saskatoon Police), or are conceding that they have never investigated such incidents (e.g. OPP), this has implications for CN Railway's Board. As public officers and directors of a publicly listed corporation that owns and operates a statutory police force, the CN Railway Board members have a legal duty to promptly address this accountability vacuum in criminal law enforcement. The Board can do so by:

- a) Including Ms. Fraser's shareholder proposal on police independence in the upcoming circular and formally endorsing the proposal;
- b) Initiating the transformation of CP Police into a private security company;
- c) Lobbying the federal government and federal opposition parties to repeal Sections 44 and 44.1 of the *Railway Safety Act*;
- d) Lobbying the federal government and federal opposition parties to repeal Sections 30 - 33 of the *Canadian Transportation Accident Investigation and Safety Board Act*.

The accountability vacuum in railway policing has deprived many victims of fatal railway incidents and serious injuries of the right to full, competent, and independent criminal investigations. Regardless of whether any of these investigations may have led to convictions or exonerations, these victims and their loved ones had the right to a criminal process to validate either outcome.

Even the Canadian Association of Police Chiefs (CACP), of which CN Police is a member, has added to the jurisdictional confusion by declining to confirm whether its other members investigate private railway companies with their own police forces.

At **Attachment 6**, you will find a series of communications we had with the Canadian Association of Police Chiefs (“CACP”). In our letter of August 19, 2020, we asked the CACP a number of questions about its member forces’ jurisdiction over investigations of railway deaths and serious injuries. We raised the concern that when private railway companies own and control police forces, this undermines those forces’ independence. As the apex of Canadian policing, the CACP has a duty to be transparent about fundamental issues such as the jurisdiction of its members and its positions on the rule of law and police independence. As you can see from our subsequent correspondences, the CACP flatly refused to answer any of these fundamental questions. The CACP even refused to confirm whether or not CN Police and CP Police are members of the Association. Our letter to the CACP posed basic questions that any citizen would expect Canada’s primary law enforcement association to answer. In a thriving democracy such as Canada, questions regarding police power and independence should not be treated as state secrets.

The CACP’s position presents two difficulties that are relevant to Ms. Fraser’s shareholder proposal and other requests. First, the CACP’s position affirms Ms. Fraser’s concerns about CN Railway’s alleged policy of consistently requesting outside police to investigate railway deaths and serious injuries. If that were the case, the CACP, with members right across Canada, should have corroborated CN Railway’s position. Instead, the CACP demonstrated a resolute unwillingness to confirm whether any of its members ever criminally investigated any railway deaths or serious injury involving a private railway company that has its own police force.

Viewed in light of the RCMP, OPP, Regina Police, and Saskatoon Police’s persistent deference to railway police in fatality and serious injury investigations, it is apparent that the CACP’s other members similarly defer to private railway police forces. This situation demonstrates why it is important for CN Railway to forward Ms. Fraser’s police independence proposal to her fellow shareholders. Doing so will demonstrate the Board’s commitment to ensuring jurisdictional clarity in this important area of criminal law enforcement.

Second, the CACP’s response to our queries raises the concern that CN Police and CP Police’s membership in the CACP affected the CACP’s response. CN Police and CP Police are owned by Canada’s

largest private railway corporations that CACP members across Canada have the duty to criminally investigate in the event of a death, serious injury, or environmental disaster. At the same time, these railway companies have full membership that gives them a seat and participatory rights at the CACP table. This means that the CACP chiefs formally recognize the CN Police and CP Police chiefs as colleagues and equals. But because the CN Police and CP Police chiefs serve at the pleasure of CN Railway and CP Railway as private corporations, the CACP has essentially made colleagues out of entities whose actions they are often called upon to investigate. This raises the issue of another serious and untenable conflict of interest (apparent and actual). CN Police, and by default, CN Railway, should not be seen as sitting at the table where Canada's police chiefs are discussing important questions where CN Railway's private corporate interests are often at stake. This problem will be resolved if CN Railway transforms its CN Police Service into a private security company, and by necessary implication, withdraws from CACP membership. This would remove the taint of conflict that the CN Police Service's membership in the CACP currently poses.

The perception and reality of unimpeachable corporate governance has a direct and significant financial value. CN Railway's inclusion in the Dow Jones Sustainability Index is an example of market recognition that comes from companies' resolute compliance with increasing market demand for greater corporate accountability and ethical conduct. We are confident that the plurality of shareholders, particularly those who value ESG measures and ethical investing, would be troubled to learn of the CACP's ambivalence to the concerns we raised with the association. We also expect that the plurality of Ms. Fraser's fellow shareholders would not approve of the serious conflicts of interest, negative public perception, and the implications that CN Police's membership in the CACP raises. These are not only questions of corporate governance and ethics. Supporting Ms. Fraser's shareholder proposals and other requests would greatly enhance CN Railway's ESG and ethical investing profile, thus, enhancing the company's shareholder value.

THE “BRINKS SOLUTION”: CONVERTING THE CN POLICE SERVICE INTO A PRIVATE SECURITY COMPANY WILL ALLOW CN RAILWAY TO CONTINUE PROTECTING ITS OPERATIONS AND THE PUBLIC BUT WITHOUT THE LEGAL JEOPARDIES OF RUNNING A POLICE FORCE.

Ms. Fraser requests that the CN Railway Board implements the conversion of the CN Police Service into a private security company such as Brinks Canada Limited. It is important to note that the *Railway Safety Act* only **permits** private railway companies to own and control private police forces. The *Railway Safety Act* does not **require** that they operate such private police forces. Therefore, there is nothing impeding CN Railway's ability to convert CN Police into a private security company if Parliament repeals Sections 44 and 44.1 of the *Railway Safety Act*.

The repeal of these provisions will not only enhance the rule of law, it will still allow CN Railway to secure the corporate and public security interests that CN Police currently protects. That is because 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.

The above describes the default system under which the plurality of private enterprises operate in Canada. This includes airlines, trucking companies, and other private corporations that have similarly complex, extended, and cross-border supply lines. For example, as referenced above, under Ontario laws, private investigators and security guards can carry firearms.¹⁴ Under the *Private Security and Investigative Services Act*, 2005, S.O. 2005, c. 34, private investigators and security guards obtain warrants to enter premises for a vast array of reasons¹⁵ and use reasonably necessary force.¹⁶ Further, the *Act* makes it unlawful for persons interacting with private investigators and private security guards to obstruct these official's activities¹⁷, and imposes an obligation on relevant persons to produce certain materials on request from these officials.¹⁸

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 client assignments, and must refer and defer all criminal enforcement matters to public police and prosecutors. This delineation of duties between private security guards and public police and Crown attorneys is a model that not only works well. It is also the embodiment of the principle of police independence and an expression of the rule of law that the plurality of Canadian companies are subject to.

Finally, on this point, converting the CN Police into a private security company should not result in the loss of jobs for current CN Police officers. A privatized “CN Security Service” would largely maintain its current structures and security, albeit, without any criminal law enforcement powers. Ms. Fraser’s proposal of privatizing CN Police is a “jobs neutral” approach. It preserves current jobs and reflects what should have happened when the Government of Canada privatized CN Railway in 1995.

¹⁴<http://www.mcscs.jus.gov.on.ca/english/PrivateSecurityandInvestigativeServices/RequirementsSecurityGuardsandPrivateInvestigators.html>.

¹⁵ *Private Security and Investigative Services Act*, 2005, S.O. 2005, c. 34 Section 22(2), 22(3), 23(1), 23(2).

¹⁶ *Ibid*, Section 22(6) and 23(3).

¹⁷ *Ibid*, Section 22(7).

¹⁸ *Ibid*, Section 22(8).

AFTER THE REPEAL OF RSA S. 44 AND S. 44.1, CN RAILWAY CAN SECURE ITS OPERATIONS AND PROTECT THE PUBLIC JUST AS EFFECTIVELY THROUGH CONTRACT POLICING AGREEMENTS WITH PUBLIC POLICE FORCES.

Even if CN Railway is concerned about the agility and availability of public police forces to attend to its security needs if Parliament repeals Sections 44 and 44.1 of the *Railway Safety Act*, the company has an effective solution that does not require it to own a private police force with public powers. One effective solution is for CN Railway to enter into a **contract policing agreement** with the RCMP¹⁹ or other police forces. Notably, the RCMP's website states the following about the 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's concerns about securing its operations and protecting the public, including in remote areas. Further, through contract policing, CN Railway can secure a dedicated number of police officers who are focused solely on its cross-Canada operations. As RCMP officers, they would have jurisdiction across Canada and would protect the CN Railway interests while remaining independent from the company. We trust that similar arrangements are also possible for CN Railway's operations in the United States.

¹⁹ <https://www.rcmp-grc.gc.ca/ccaps-spcca/contract-eng.htm>

The contract policing model would also mean that the repeal of Sections 44 and 44.1 of the *Railway Safety Act* would not place greater pressure on public police forces. To the extent that CN Railway's new private security company cannot conduct police functions, the contract policing agreements would finance the hiring, training, deployment, and accompanying logistics for any extra police officers to cover any added caseload that the privatization of the CN Police may impose. Given the contract policing option that provides for both police independence and cross-country police coverage, there is no justifiable reason why CN Railway must own and control a police force.

The RCMP's contracts 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 could empower private railway companies, such as CN 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. Regardless of how this contract policing model is implemented, it would allow CN Railway to effectively secure its operations without the complications of owning a private police force that exercises criminal law enforcement powers.

CN Railway has too few police officers across an extensive geographical area to justify owning its dedicated police force.

CN Railway only has approximately 70 police officer in Canada. We are unaware of how many police officers it has in the United States, but we expect that those numbers are not multiples of its Canadian figures. Even if CN Police's numbers in the United States are **ten times** those in Canada, this would amount to **770** police officers in both countries. This total would be **one sixth** of the police officers in the **Montreal Police (SPVM)**.²⁰ These are modest numbers for a police force that is responsible for approximately **32,831 km** of railway track and numerous complex facilities across North America. It is not plausible that such a small number of police officers can deploy more quickly to any scene of a policing event faster than the local police of jurisdiction. This is particularly the case with trespass, theft of property, vandalism, and obstruction of railway operations. Many of these events, even when serious, occur and terminate very quickly. The 70 Canadian CN Police officers and the (generously) hypothetical 770 officers across Canada and the United States are stretched too thin to constitute a rapid reaction capacity that necessarily requires exclusive policing powers. Such powers are better wielded by local police of jurisdiction and any private security services the company can retain or create.

²⁰ https://rapportspvm2019.ca/rapport/SPVM%20Stats_2019_ANG_FINAL.pdf

WHY SUPPORTING MS. FRASER'S SHAREHOLDER PROPOSALS AND OTHER REQUESTS IN THIS PACKAGE WILL PROTECT THE COMPANY'S INTERESTS AND ENHANCE SHAREHOLDER VALUE.

Including Ms. Fraser's shareholder proposals in the company's circular and proactively supporting the objectives they advance is in the best interests of both CN Railway and its shareholders. The same applies to Ms. Fraser's other requests that the Board can advance on its own and pursuant to its inherent powers, notwithstanding any formal shareholder proposal. Ms. Fraser's shareholder proposals and other requests address significant structural concerns that compromise CN Railway's interests and shareholder value. The reasons are outlined in the following subsections.

Mitigating and preventing the indeterminate legal liability against CN Railway that would damage shareholder value and interests.

As discussed in an earlier section of this Appendix, there has been confusion about who has jurisdiction to investigate railway disasters such as deaths and serious injuries. To restate the important context for this section, CN Railway Board's position is that as a matter of policy, the company's CN Police Service does not criminally investigate these incidents. Instead, CN Railway calls outside police forces that investigate the incidents and decide whether to lay any criminal charges. However, as you can see from our correspondences with the RCMP²¹, the Ontario Provincial Police²², Regina Police Service²³, and the Saskatoon Police Service²⁴, those very police forces contradict the CN Railway Board's position. These police officers assert that they have no jurisdiction to conduct these criminal investigations and that CN Railway (and CP Railway) police have that duty.

Alternatively, where the public police forces do not deny their own criminal jurisdiction, they still defer to the primary jurisdiction of railway police. For example, Ms. Desrochers' Freedom of Information disclosure from the Saskatoon Police clearly indicates that CN Police and Saskatoon Police turned their mind to the jurisdiction issue before deciding that CN Police should take over the investigation. This is important because the fatal incident occurred on CN Railway's property. There were no reports of outside intruders who entered upon the premises and precipitated the events that led to Kevin's death. All indicia were that this was a workplace death, which under the *Westray* laws, meant that CN Railway's conduct as an employer was supposed to be under scrutiny from the start. This was regardless of whether CN Railway was actually liable for any *Criminal Code* offences relating to Kevin Timmerman's death. Nevertheless, despite the internal and undisclosed policies that CN Railway allegedly had in place to ensure that external

²¹ Attachment 2

²² Attachment 6

²³ Attachment 7

²⁴ Attachment 4

police forces investigated Kevin's death, CN Police officers still assumed jurisdiction to investigate CN Railway, the very corporate employer they answered to.

We have reason to believe that the above approach has been the default before and since Kevin's death. We are also aware that CN Railway Police has never criminally charged the corporation or any of its officers for causing deaths or serious injuries. The RCMP's investigation into the Field, BC disaster of February 4, 2019 is the first criminal investigation of a private railway company that owns a police force. Even that investigation started almost two years later and after constant pressure from multiple stakeholders and media coverage. Now that the RCMP has finally conceded that it has the jurisdiction to investigate private railway companies even if they have their own police forces, that will be the standard approach going forward. This evolving landscape places CN Railway in needless jeopardy. Every time there is a railway death and serious injuries in which the company, officers, and personnel may be implicated, will raise questions about CN Railway's role in any criminal investigation.

It is more important than ever to legally formalize the separation between CN Railway and the CN Police Service. The integrity of a potential crime scene and witness testimonies are indispensable to the criminal justice process. Going forward, if civilian CN Railway personnel or police officers handle any evidence, clean up the scene of a fatal incident, direct the police work, this could give rise to potential obstruction of justice and other criminal charges. The same could happen if any company agents obtain information and access to evidence that non-police officers are prohibited from accessing, or assume any investigative capacity in the criminal process.

Converting CP Police into a private security company, leading the repeal Sections 44 and 44.1 of the *Railway Safety Act*, and engaging in a contract policing arrangements with the RCMP or other public police forces, would provide legal certainty for the company. Currently, the ambiguous lines between CN Police and CN Railway corporation on one hand, and between CN Police and public police forces on the other, presents a minefield of potential legal jeopardy. Even when CN Railway conducts itself in good faith, these blurred lines of authority can trigger criminal, regulatory, civil, and other potential liabilities. The uncertainty of potential liability and the protracted duration of many of these legal proceedings can have a suppressive impact on managerial flexibility and decision-making. CN Railway management should be focused on running a business and enhancing shareholder values, rather than running a police force that imposes public duties on them that may conflict with their duties as private corporate officers.

If CN Railway transforms its police force into a private security company and/or retains contract policing services from public police forces, the company will free its leadership from tiptoeing between private corporate obligations and its public policing obligations. If CN Railway's leadership is constantly conflicted about where to draw the line between the company's law enforcement and commercial functions, that will create managerial hesitancy, promote excessive caution decision-making, and ultimately impede the strategic agility and bold action that promotes shareholder value.

The significant cross-border, economic, trade, and diplomatic implications of allowing private Canadian railway companies to control their own police forces.

There are significant cross-border, economic, trade, and diplomatic implications of private companies such as CN Railway to control their own private police forces. CN Police Service in the United States is similarly endowed with criminal enforcement powers at both the state and interstate levels.²⁵ With this in mind, we invite the CN Railway Board to consider the repercussions of an event such as the Lac Mégantic explosion in the United States occurring under the auspices of CN Railway or CP Railway company. If the tragic event was the result of the company actions or omissions at any level, and could have been prevented by proactive policing, American citizens would rightly ask some difficult questions.

For example, why was the American public placed under the jurisdiction of police officers who were answerable to private corporate management based across an international border in Montreal or Calgary? Worse, why do such police officers have any involvement with any subsequent criminal investigation into the causes of such disaster when those officers answer to the very company under investigation? Even if American citizens accept the legitimacy of a Canadian company controlling a federal police force in the United States, how can the American public trust that any CN Police investigation will be independent and thorough when there are publicly available examples such as the Holmes and Timmerman cases that indicate otherwise?

CN Railway may be entirely blameless for any such disasters and may have rigorously enforced its police independence policies at that point. However, this may not matter. The Canadian and American public are unlikely to accept a status quo in which they relinquish substantive police independence protections in favour of CN Railway's representations that the company follows those policies. This is particularly the case when CN Railway as a company has a direct, substantial, and material interest in the outcome of any criminal investigation in which the independence of the CN Police Service is in question.

The above is why the reforms we request are so urgent. Given the alarming number of derailments, explosions, toxic spills and deaths in the Canadian railway system over the years, it may be a matter of time until similar incidents start to raise questions about Canadian rail companies' control or undue influence over police officers with criminal law powers in the United States. This is not a hypothetical concern. This issue has been simmering in the United States over the years. See for example, this New York Times report:

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

²⁵ <https://www.cn.ca/en/safety/cn-police-service/>

We cannot speak to the merits of the allegations in the article above. That is not our objective. The issue is that at a minimum, the story reflects that this private railway policing issue has been a longstanding subject of discussion in the United States. If a serious railway incident occurs south of the border and a Canadian company is involved, the meniscus of discontent could spill over and damage CN Railway's relationships south of the border, cause a diplomatic incident, and unduly affect the Canadian brand generally.

Essentially, indeterminate risk and the potential for indeterminate liability compromise business operations, profitability, and competitive corporate strategy. These risks and liabilities would also distract CN Railway's management from the company's core business, all of which will be detrimental to CN Railway's shareholder value.

Maintaining a corporate police force potentially exposes CN Railway to unnecessary and damaging disputes with Aboriginal Canadians.

Under the *Railway Safety Act*, CN Police has jurisdiction of at least 500m on either side of its railway lines. Under Section 41(4) of the *RSA*, CN Police has broader authority to take law enforcement actions outside of this range. CN Railway's operations also pass through or near many aboriginal lands across Canada (contested or otherwise). The means that the CN Police Service has jurisdiction over Aboriginal lands and persons. The Wet'suwet'en railway blockades of early 2020 demonstrated the challenges of policing in such a context. We do not speak for Canada's Aboriginal peoples, but it is beyond dispute that they have had a highly contentious history with railway companies and private police forces since the early years of the Canadian federation.

From Ms. Fraser's perspective as a shareholder, there is no benefit for CN Railway or Canada's Aboriginal peoples, for the latter to be subjected to the corporatized policing model that is a central part of many of their historic grievances. Thus, it is best if CN Railway formally divests itself from maintaining a police force that could become entangled in the inevitably acrimonious issue of exercising criminal law powers against Aboriginal peoples. We understand that both CN Police and CP Police conducted policing operations during in the Wet'suwet'en First Nation blockades, but they had a notably subdued presence compared to the RCMP, Ontario Provincial Police and other public police forces. The involvement of railway police did not become a topic of sustained and extensive public comment in that case, but this may not be the case in the future.

Notwithstanding the substance of the concerns underlying the protests, the Wet'suwet'en blockades of 2020 proved that public police forces, working in concert with the railway companies, have the capacity to manage policing events across Canada's railway network. Public police forces have many more police officers across the country. Their greater numbers and geographical dispersion also give them

the capacity to deal with immediate threats in any given locality. Furthermore, the CACP's "Railway Incident Guide" and the broader CACP framework provides for collaboration of police forces across Canada with respect to managing railway incidents. Therefore, public police forces are not new to the area of railway policing.

In light of the above, there is no benefit to CN Railway continuing to assert criminal jurisdiction over Aboriginal territories and persons. Doing so will likely have the effect of exacerbating the company's adversarial relationship with peoples it has shared a troubled history with. If CN Railway converts CN Police into a private security company and relinquishes its direct criminal jurisdiction over First Nations territories and peoples, the company can then rely on public police forces such as the RCMP to address any policing issues that intersect with Aboriginal peoples. Under the status quo, there is no benefit to CN Railway wielding its criminal law powers to protect its private interests against Aboriginal peoples who have endured a traumatic history with private corporate police. As a long-term concern, it is not a question of if, but when a threshold altercation may occur that will cause untenable problems for CN Railway's brand and business interests.

The CN Railway Board should proactively foreclose on unpredictable, complicated, and damaging consequences of its potential policing disputes against Aboriginal peoples. It is in the CN Railway's best interests to resolutely focus on its commercial activities and to outsource sensitive policing matters to independent, public police forces. These independent police forces that can assume the legal and other liabilities that may arise from adverse policing interactions against Aboriginal peoples. Public police forces also have Charter obligations that are more carefully circumscribed by constitutional jurisprudence that has been generated over a long history that is sensitive to the special status of Canada's aboriginal peoples.

In conclusion, Ms. Fraser reiterates her request for the CN Railway Board to advocate for the Parliament to repeal of Sections 44 and 44.1 of the *Railway Safety Act* and her proposed amendments to Sections 30 - 33 of the *Canadian Transportation Accident Investigation and Safety Board Act*. Lastly, Ms. Fraser reiterates her request for the CN Railway Board to include and supporting both of her shareholder proposals in CN Railway's upcoming circular to shareholders.

Sincerely,



Tavengwa Runyowa
(Counsel for Ms. Pamela Fraser).

Table of Contents

1. Letter from Lacey Holmes counsel to Police Chiefs and Minister of Public Safety - Transcripts of CN Police Interviews PUBLIC DOMAIN DOCUMENT - July 4, 2011	PDF Page 29
2. Saskatoon Police Investigation Disclosure May 20, 2020	PDF Page 92
3. Letter to RCMP Commissioner and her Reply Letters	PDF Page 127
4. Letters to CP Police and Mr. Runyowa in Tara Jijian Matter	PDF Page 150
5. Letter to Ontario Provincial Police + Reply regarding Railway Policing	PDF Page 159
6. Letter to the Canadian Association of Chiefs of Police - August 19, 2020 RE- Railway Policing in Canada	PDF Page 167
7. Regina Police Services' Disclosure - CP Incident	PDF Page 179

Attachment 1

Attachment 2



May 20, 2020

Tavengwa Runyowa
2010 – 11th Avenue
Royal Bank Building – 7th Floor
Regina, SK S4P 0J3

Dear Sir:

Re: Your Access to Information Request
Our File No.: 2020-0072

Thank you for your Access to Information Request, received on April 24, 2020, and proof of familial relations from your client on May 2, 2020. Your request was for access to the following:

The record(s) we are seeking contains any investigation or incident reports Produced by the Saskatoon Police Service in regards to the railway accident which occurred on April 9, 2015 at the CN Rail Yard located in Saskatoon, Saskatchewan, which caused the death of Kevin Timmerman. This includes; all notes, transfer documents to other police services, and any records reflecting which Police Service had jurisdiction to investigate or lay charges.

We have reason to believe such records exist because the Saskatoon Police Service is listed as an 'interveners' by Transport Canada in their report regarding the April 9th, 2015 accident at the Saskatoon CN Rail Yard.

We are seeking these records because we are the legal counsel for Lori Desrochers (Executrix of the Kevin Timmerman's estate and the power of Attorney for the deceased individual's children) in a Civil Litigation where the death of Kevin Timmerman is the primary fact based matter.

Please find attached records responsive to your request. Please note that, pursuant to section 8 of *The Local Authority Freedom of Information and Protection of Privacy Act* (the Act), some of the information contained in the attached records has been withheld because release may disclose information with respect to a lawful investigation, may facilitate the commission of an offence, and may disclose personal information of individuals other than your client and Mr. Timmerman.

Access to this information is denied pursuant to sections 14(1)(c), 14(1)(j) and 28(1) of the Act, which provide:

14(1) A head may refuse to give access to information, the release of which could:

...

(c) interfere with a lawful investigation or disclose information with respect to a lawful investigation;

...

(j) facilitate the commission of an offence or tend to impede the detection of an offence;

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If you have any questions please contact the writer at (306) 975-8259 or kayla.oishi@police.saskatoon.sk.ca.

Yours truly,



Kayla Oishi
Access and Privacy Officer
Legal Services Division

Enclosure



**SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY**

GO# SP 2015-31448

DEATH - ACCIDENTAL

FREEDOM OF INFORMATION

Purpose: **FREEDOM OF INFORMATION (FOR THEIR USE ONLY)**

Date Released: **Friday, 2020-Apr-24**

Time Released: **14:44**

Authorized by: **10002-OISHI, KAYLA**

Released by: **10002-OISHI, KAYLA**

RELEASED TO

Business: **FOIP**

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SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY

GO# SP 2015-31448

DEATH - ACCIDENTAL

General Occurrence Information

Main offence: DEATH - ACCIDENTAL - COMPLETED
Operational status: INACTIVE (CLOSED)
Location: 1700 BLOCK CHAPPELL DR, SASKATOON
District: 12 Zone: 12 Atom: 711
Approved on: Friday, 2015-Apr-10 by: 264 HARMON, KIRBY HAL
Reported on: Friday, 2015-Apr-10 01:55
Occurred on: Thursday, 2015-Apr-09 22:30
Drugs/alcohol involved: Drugs and/or alcohol were not involved
Submitted by: 434 PRINGLE, DARREN ROBERT Org unit: Northwest Patrol "D"

CCJS Information

CCJS Status: FOUNDED NOT CLEARED
Offences committed: DEATH - ACCIDENTAL - COMPLETED
Location type: 12-OTHER COMMERCIAL/CORPORATE PLACES
Study flag: Information - can be concluded, MRE

Related Event(s)

CP SP 2015 - 31448

Related Person(s)

1. COMPLAINANT 1 - 28(1) (Case-specific)

Sex: 28(1), Born on: 28(1)
Residing at: 28(1)

Phone numbers

Type	Phone #	Ext.
28(1)		

Linkage factors

Statement taken: 28(1) WITNESS

Master Name Summary

Name: 28(1)
Sex: 28(1), Born on: 28(1)
Residing at: 28(1)

Phone numbers

Type	Phone #	Ext.
28(1)		

2. WITNESS 1 - 28(1) (Case-specific)

Sex: 28(1), Born on: 28(1)
Residing at: 28(1)



SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY

GO# SP 2015-31448

DEATH - ACCIDENTAL

28(1)

Phone numbers

Type	Phone #	Ext.
28(1)		

Linkage factors

Statement taken: 28(1) WITNESS

Master Name Summary

Name: 28(1)
Sex: 28(1), Born on: 28(1)
Residing at: 28(1)

Phone numbers

Type	Phone #	Ext.
28(1)		

3. WITNESS 2 - 28(1) (Case-specific)

Sex: 28(1), Born on: 28(1)
Residing at: 28(1)

Phone numbers

Type	Phone #	Ext.
28(1)		

Particulars

Driver's licence: 28(1)

Linkage factors

Statement taken: 28(1) WITNESS

Master Name Summary

Name: 28(1)
Sex: 28(1) Born on: 28(1)
Residing at: 28(1)

Phone numbers

Type	Phone #	Ext.
28(1)		

4. WITNESS 3 - 28(1) (Case-specific)

Sex: 28(1), Born on: 28(1)
Residing at: 28(1)



**SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY**

GO# SP 2015-31448

DEATH - ACCIDENTAL

Phone numbers

Type	Phone #	Ext.
28(1)	[REDACTED]	[REDACTED]

Master Name Summary

Name: 28(1)
 Sex: 28(1) Born on: 28(1)
 Residing at: 28(1)

Phone numbers

Type	Phone #	Ext.
28(1)	[REDACTED]	[REDACTED]

5. INVOLVED 1 - AIROUC, NOEL (Case-specific)

Sex: 28(1)
 Residing at: WINNIPEG
 MANITOBA

Phone numbers

Type	Phone #	Ext.
BUSINESS	(204) 599-8006	(Primary)

Particulars

Occupation: INVESTIGATOR
 Employed by: LABOUR CANADA WINNIPEG OFFICE

Master Name Summary

Name: AIROUC, NOEL
 Sex: 28(1)
 Residing at: WINNIPEG
 MANITOBA

Phone numbers

Type	Phone #	Ext.
BUSINESS	(204) 599-8006	(Primary)

6. INVOLVED 2 - 28(1) (Case-specific)

Sex: [REDACTED] Born on: 28(1)
 Residing at: 28(1)

Phone numbers

Type	Phone #	Ext.
28(1)	[REDACTED]	[REDACTED]

Master Name Summary

Name: 28(1)
 Sex: [REDACTED] Born on: 28(1)
 Residing at: 28(1)



**SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY**

GO# SP 2015-31448

DEATH - ACCIDENTAL

28(1)

Phone numbers

Type	Phone #	Ext.
28(1)		

7. INVOLVED 3 - MOLLISON, IAN (Case-specific)

Sex: 28(1), Born on: 28(1)
Residing at: 28(1)

Particulars

Occupation: **FIREFIGHTER**

Master Name Summary

Name: **MOLLISON, IAN STEWART**
Sex: 28(1), Born on: 28(1)
Residing at: **16 - 110 KEEVIL CRES, SASKATOON
SASKATCHEWAN**

Phone numbers

Type	Phone #	Ext.
28(1)		
28(1)		

8. INVOLVED 4 - FARAGO, JASON (Case-specific)

Sex: 28(1) Born on: 28(1)
Residing at: **3111 DIEFENBAKER DR, SASKATOON**

Master Name Summary

Name: **FARAGO, JASON GILES**
Sex: 28(1) Born on: 28(1)
Residing at: **3111 DIEFENBAKER DR, SASKATOON
SASKATCHEWAN**

Phone numbers

Type	Phone #	Ext.
28(1)		
BUSINESS	(306) 665-2001	(Primary)
28(1)		

Person Alias(es)/Associate(s)

- FARGO, JASON**
Sex: 28(1)
Type of link: **ALIAS**

9. INVOLVED 5 - MCGURK, MATT (Case-specific)

Sex: 28(1) Born on: 28(1)

Particulars



SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY

GO# SP 2015-31448

DEATH - ACCIDENTAL

Occupation: PARAMEDIC

Master Name Summary

Name: MCGURK, MATTHEW PARAMEDIC , MD

Sex: 28(1) , Born on: 28(1)

Residing at: 28(1)

Phone numbers

Type	Phone #	Ext.	
BUSINESS	(306) 975-8808		(Primary)
28(1)			

10. OTHR POLICE 1 - BUSCH, TYLER , RCMP (Case-specific)

Sex: 28(1)

Residing at: 515 CENTENNIAL DR S, MARTENSVILLE
SASKATCHEWAN

Phone numbers

Type	Phone #	Ext.	
BUSINESS	(306) 975-1610		(Primary)

Particulars

Occupation: CONSTABLE

Employed by: RCMP MARTENSVILLE DET

Email address: TYLER.BUSCH@RCMP-GRC.GC.CA

Master Name Summary

Name: BUSCH, TYLER , RCMP

Sex: 28(1)

Residing at: 515 CENTENNIAL DR S, MARTENSVILLE
SASKATCHEWAN

Phone numbers

Type	Phone #	Ext.	
BUSINESS	(306) 975-1610		(Primary)

11. OTHR POLICE 2 - KYTE, JORDAN , RCMP (Case-specific)

Sex: 28(1) Born on: 28(1)

Residing at: 1701 CHAPPELL DR, SASKATOON
SASKATCHEWAN

Particulars

Occupation: CONSTABLE

Employed by: CN POLICE

Email address: JORDAN.KYTE@CN.CA

Master Name Summary



SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY

GO# SP 2015-31448

DEATH - ACCIDENTAL

Name: KYTE, JORDAN KEVIN , RCMP

Sex: 28(1) Born on: 28(1)

Residing at: 28(1)

Phone numbers

Type	Phone #	Ext.
28(1)		

12. DECEASED 1 - TIMMERMAN, KEVIN (Case-specific)

Sex: MALE, Born on: 1964-Aug-02

Residing at: DECEASED 2015APR09
SASKATCHEWAN

Phone numbers

Type	Phone #	Ext.
HOME	(306) 760-1281	

(Primary)

Particulars

Occupation: CONDUCTOR

Employed by: CN

Driver's licence: 10986610 SASKATCHEWAN

Master Name Summary

Name: TIMMERMAN, KEVIN

Sex: MALE, Born on: 1964-Aug-02

Residing at: DECEASED 2015APR09
SASKATCHEWAN

Phone numbers

Type	Phone #	Ext.
HOME	(306) 760-1281	

(Primary)

Related Business(es)

1. INVOLVED 1 - FIRE HALL # 2

Located at: 3111 DIEFENBAKER DR, SASKATOON
SASKATCHEWAN

Type: MUNICIPAL POLICE AND FIRE

2. INVOLVED 2 - MD AMBULANCE CARE LTD

Located at: 430 MELVILLE ST, SASKATOON
SASKATCHEWAN, S7J4M2

Phone: (306) 975-8800

Type: HOSPITAL-AMBULANCE SERVICE

3. INVOLVED 3 - CN RAILWAY YARDS

Located at: 1701 CHAPPELL DR, SASKATOON
SASKATCHEWAN



**SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY**

GO# SP 2015-31448

DEATH - ACCIDENTAL

Phone: (306) 956-5525

Type: TRANSPORTATION-BUS-CAB-TRAIN-ETC

Complaint Information

Incident Location

Address: 1701 CHAPPELL DR

Zone: 12

General Information

Type: FOLLOWUP

Case type: INDUSTRIAL ACCIDENT Priority: 2

Time received: 22:31:50

Dispatched: 22:34:23 Enroute: 22:34:54

Scene: 22:41:36

Cleared: 04:52:47

How received: 911

Unit ids: #1 - 173 #2 - 102

Call taker ID: E1 SEXAUER, JILL ANN

Remarks: SOMEONE HAS BEEN HIT BY A TRAIN IN THE WEST END OF THE YARD..STAFF MEMBER ..MD NOTIFIED WILL MEET EMERG STAFF AT CURLING RINK ON CHAPPELL DR

Complainant Information

Name: 28(1)

Address: 0 CHAPPELL DR

Home telephone: (306) -

Business telephone: (306) 956-5688

Clearance Information

Remarks: KEVIN TIMMERMAN 68-8-2 DECEASED. CN POLICE/TRANSPORT CANADA CONDUCTING MAIN INVEST, SPS ASSIST COMPLETE

Final Case type: INDUSTRIAL ACCIDENT

Reporting officer1: 434- PRINGLE, DARREN ROBERT

Report expected: Yes

Founded: Yes

Cleared by: NO FURTHER ACTION REQ'D

Additional Remarks

04/09/2015 22:34:44 NOT SURE WHAT HAPPENED JUST THAT IT IS AN EMPLOYEE...NOT RESPONSIVE NOT BREATHING E1 8749



**SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY**

GO# SP 2015-31448

DEATH - ACCIDENTAL

Narrative: SYNOPSIS - 1

Author: **434 PRINGLE, DARREN ROBERT**

Related date/time: **Friday, 2015-Apr-10 02:09**

On 2015-Apr-09 at 2240 hrs the Saskatoon Police Service assisted the CN Police with an accident investigation at CN Chappell Yards, Saskatoon.

A westbound CN freight train had stopped to allow Kevin Timmerman 1964-Aug-2 to disembark and manipulate a track switch. As Timmerman was returning to his stopped westbound train, he was walking too close to the tracks on which an eastbound train was travelling and struck by a protrusion from one of the freight cars. The blow propelled him some distance east, where he came to rest on his front.

After being removed from beside the tracks by EMS, Timmerman went into cardiac arrest in the ambulance. Resuscitation attempts were unsuccessful and he was pronounced as deceased in the Trauma Unit at Royal University Hospital at approximately 2342 hrs.

CN Police, in conjunction with Transport Canada, have assumed responsibility for the further investigation of this file. SPS involvement in this investigation is concluded at this time.



**SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY**

GO# SP 2015-31448

DEATH - ACCIDENTAL

foot was turned outwards. It appeared there was a break to the right bicep/shoulder area. I was unable to see any injuries on Timmerman's back.

At 0027 hours the Coroner Sheila Enns arrived in trauma room 1 and began her assessment.

After receiving permission from Sgt. Pringle we left Royal University Hospital as continuity of Timmerman's body was no longer required.

This concludes my report and involvement with this file.



**SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY**

GO# SP 2015-31448

DEATH - ACCIDENTAL

Narrative: DETAILS - 1

Author: 434 PRINGLE, DARREN ROBERT

Related date/time: Friday, 2015-Apr-10 02:36

Sgt D. Pringle #434 will state:

On 2015-Apr-09 at 2241 hrs I attended to the CN Chappell Yards at 1700 Chappell Dr, Saskatoon for a report of a male who had been hit by a train. En route to the call Communications had advised the male was unresponsive and not breathing. Upon arrival I was escorted to the scene of the accident by a CN vehicle. I advised Communications and Csts Paulsen and Jenkins as to the western location of the accident site.

Upon arriving I exited and observed a stopped train facing westbound on a north set of tracks, 50 metres east of the scene. I observed a stopped train facing eastbound on a south set of tracks, and the scene appeared to be in the middle of the length of cars for that train. There was a male lying between the north and south set of tracks. He was lying on his left side, arms outstretched and legs outstretched. I noticed blood to be readily apparent on his left leg near the ankle and blood on the top of his head. The male was breathing shallowly and had his eyes open. When he exhaled his breath emerged as a moan. He was clad in tan coloured work pants and jacket and boots.

There were two CN employees standing beside the man. They advised his name was "Kevin". Kevin was unresponsive to his name being called. Cst Paulsen arrived and began to talk to him. I examined him for deadly bleeds, finding no apparent source of blood except for a gash on the left ankle and some blood dripping from an unseen wound to the top and left side of his head. One of the males pointed to a ballcap approximately 100 feet away and stated that he believed the location of the ballcap to be near where Kevin was struck by the train. 14(1)(c)

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Cst Jenkins was directed by Cst Paulsen to obtain a statement from this employee and the second one with him.

EMS arrived with Saskatoon Fire Department. The paramedics and Fire EMTs took over assessing Kevin and preparing him for transport. Cst Paulsen began to obtain names and interview other employees who had shown up at the scene.

Cst Tyler Busch of the RCMP arrived and stood by while Kevin was being assessed. I was directed by a Medic to go and assist with getting a stretcher. A/Sgt Flath had just arrived and assisted me in that task. We stood by while Kevin was prepared for transport and then I assisted in carrying him on a spine board to the stretcher, and then helped move the stretcher over the rocks to the ambulance.

CN Police Constable Jordan Kyte arrived. Kyte, Busch and I had a quick discussion about who would have responsibility for the file. It was decided that CN Police would have the main responsibility since the accident had occurred on their property with their equipment and their employee. I and the Constables present from the SPS would assist him with interviews and whatever other tasks he needed completing. Cst Busch would handle Next of



**SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY**

GO# SP 2015-31448

DEATH - ACCIDENTAL

Kin information since it emerged from talking to the TrainMaster that Kevin was from Melville. He also provided Kevin's full name as Kevin Timmerman and obtained his date of birth and phone number from someone back at the office.

I was advised by Cst Paulsen that EMS needed SPS assistance in the ambulance in addition to the two firefighters who were on board. I directed her to go with Kevin for continuity and to assist and Cst Jenkins and I would remain at scene, he obtaining statements and me phoning the various investigating authorities. I asked A/Sgt Flath to go with Cst Paulsen and escort the ambulance to RUH if needed, in his police vehicle.

Cst Paulsen advised me shortly after these taskings, that Kevin had gone into cardiac arrest. I relayed this information to Cst Busch to tell his members in Melville and Cst Kyte who was speaking to his Inspector via cell. The ambulance departed shortly afterwards.

Once I confirmed that Cst Jenkins was either getting or had gotten a written statement from all involved, I updated A/S/Sgt Jorgenson on the scene. I then called Saskatchewan OH&S and was put in contact with manager Shelley Chirpillo. She advised that the matter would require a federal investigator to be contacted because it involved CN. She gave me the number of 1-800-641-4049.

At 2334 hrs I called that number and was transferred to a Labour Canada investigator Noel Airouc in Winnipeg. I explained the situation to him and he stated he would get an investigation ramped up on his end and would contact the Saskatoon Labour Canada member. He advised that under the authority of his office nothing at the scene was to be moved, including either east and westbound trains. He asked to be called again with any updates.

I advised Cst Kyte of my conversation with Airouc and that he was directing that no trains be moved. Cst Kyte agreed and telephoned his Inspector to update him. At my request regarding media inquiries, he also advised me to tell the Watch Commander that if the SPS was pressed for a News Release, we could provide one. However he directed any further inquiries beyond the initial release be referred to the CN Public Inquiry line at 1-888-888-5909. I called A/S/Sgt Jorgenson and relayed this information to him, should he need it.

Cst Busch advised that members in Melville had an address for Timmerman and were going to go and see if anyone was home.

At approximately 2345 I was sitting in my vehicle making notes and I noticed that the MWS updated with the CAD entry for this call that Cst Paulsen had confirmed that Timmerman was deceased. I relayed this information to Csts Busch and Kyte, which they then passed onto their respective personnel. Cst Busch advised that the initial address for Timmerman had not been correct and RCMP Melville members were continuing to locate NOK info.

I called A/S/Sgt Jorgenson back and updated him on the matter. I also advised that our assistance was coming to an end since all statements that needed to be obtained had been done so by Cst Jenkins.

I then spoke to Cst Kyte and requested that he make copies of the written statements for Cst Jenkins, since I was leaving the original statements



**SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY**

GO# SP 2015-31448

DEATH - ACCIDENTAL

with him for his investigation. They departed for the CN Police office in the Yards. I called S/Sgt Harmon with SPS MCU to make sure there was no reason that he saw need for sending any of his investigators out. He agreed there was no need to send anyone from MCU and suggested I make the offer of Ident for pictures of the scene. I had seen an RCMP Collision Reconstructionist at scene earlier but did not know if that member had taken any pictures.

When Cst Kyte returned with Cst Jenkins I made the offer of SPS Ident. He didn't see the need for our Ident to attend. I then phoned Airouac back and advised that the injured CN employee had now died. Airouac advised that he had notified Transport Canada and that they would be assuming the investigation. I advised Airouac that SPS involvement in the matter was winding down and asked if he wanted continuity of Timmerman's body kept by the SPS. Airouac was content with continuity being maintained by RUH personnel, so I passed my cell phone to him to coordinate a go forward strategy with Cst Kyte.

As Cst Kyte spoke to Airouac, Cst Busch approached and advised that the RCMP members in Melville had located the parents of Timmerman and were providing the notification at the present moment. Cst Kyte concluded the phone call with Airouac and advised me that he didn't think there was anything further the SPS could do to assist the CN Police. Cst Jenkins and I then departed the scene at 0022 hrs.

Upon arriving at HQ I advised A/S/Sgt Jorgenson that the RCMP were making the NOK notification.

I then pulled a picture off SGI of Kevin timmerman from Melville with the same date of birth. In looking at the picture it appeared one in the same with the male I had seen injured at the scene. I showed it to Cst Paulsen for confirmation and she advised there had been a Birth Certificate in the possession of Timmerman giving the same details. I was satisfied that the make who was deceased had been Kevin R. Timmerman of Melville, PIC# 10986610.

I spoke with A/Sgt Berg at the Reader Desk to arrange for the dayshift B Platoon Reader to get a copy of this report sent over to Cst Kyte once it was completed.

This concludes my involvement in the matter.



SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY

GO# SP 2015-31448

DEATH - ACCIDENTAL

Narrative: DETAILS - 2

Author: 862 JENKINS, SEAN

Related date/time: Friday, 2015-Apr-10 02:58

On 2015Apr09 at 2234 hrs while working patrol in marked patrol car #173 with Cst Paulsen #752 we received dispatch to a disturbance at 1701 Chappell Drive.

Dispatch informed us that someone had been hit by a train in the west end of the yard. MD was notified and staff will meet emerg at the curling rink on Chappell Drive.

At 2241 hrs we arrived on scene and I observed multiple rail workers standing around another rail worker who was on the ground. The rail worker on the ground is now known to me as Kevin Timmerman. Timmerman was lying on his left side and was moaning. Timmerman had blood on his face.

As Sgt Pringle #434 was attending to Timmerman along with other rail staff workers I began questioning the rail workers who were standing around. I spoke with a 28(1) 14(1)(c)

[REDACTED]

I met with a 28(1) 14(1)(c), who had began filling out a statement with Cst Paulsen.

[REDACTED]

I met with the 28(1) 14(1)(c)

[REDACTED]

I met with Cst Jordan Kyte, 28(1), who was an officer with the CN Police. Kyte took me to his office at the rail yard and photocopied the statements I had obtained. Kyte kept the originals of the statements and provided me with photocopied versions.

This concludes my involvement with this report.



**SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY**

GO# SP 2015-31448

DEATH - ACCIDENTAL

Narrative: DETAILS - 4

Author: 479 PARRANTO, PRESTON PETER

Related date/time: Friday, 2015-Apr-10 11:56

Acting Sgt. Parranto reports working a day shift on 2015Apr10 when I was approached at the beginning of my shift by Sgt. Pringle from 'D' Platoon. Sgt. Pringle requested that I forward a copy of this report in relation to this file to Cst. Jordan Kite (not spelt) of CN Police Service.

On 2015Apr10 at approximately 1130 hours, I did contact Cst. Jordan Kite via phone and advised him that I had printed off a copy of the report and I would leave it at the front Service Centre for him to pick up. I advised him to attend in uniform so he was readily identifiable as a CN police officer and able to have access to this file.

The report was printed off and placed in an envelope upon which I did tape his card to the front so it could easily be identified as the report that he was to pick up when he did attend the Service Centre.

This concludes my involvement in this matter.



**SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY**

GO# SP 2015-31448

DEATH - ACCIDENTAL

Narrative: DOCUMENT LIST - 1

Author: 434 PRINGLE, DARREN ROBERT

Related date/time: Friday, 2015-Apr-10 03:24

Notes of Sgt Pringle #434.

Copy of SGI Customer Profile showing picture of Kevin Timmerman.



**SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY**

GO# SP 2015-31448

DEATH - ACCIDENTAL

Narrative: NOTE TO PROSECUTOR (CONFIDENTIAL) - 1

Author: 434 PRINGLE, DARREN ROBERT

Related date/time: Friday, 2015-Apr-10 03:22

28(1)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY

GO# SP 2015-31448

DEATH - ACCIDENTAL

Related Attachment - Officer Notes

Attachment Description: SGT. PRINGLE #434

15-31448
434
X

2241 Call # 15-31448 / 2231
14(100) CN Chappell yds

(VI) TIMMERMAN, Kevin
[REDACTED]
[REDACTED]
[REDACTED]

cn Police
[REDACTED]

Cat. Jordan KYTE
- boed in Steam
1701 Chappell Dr
[REDACTED]
[REDACTED]

RCM P-
Cat. Tyler BUSCH
[REDACTED]
[REDACTED]

SISA [REDACTED]

Federal Offrs
[REDACTED]

Noel AIROUAC
[REDACTED]

P.O. Box 1728 • Saskatoon, SK • S7N 3B8 • T. (306) 975-8200 • C. (306) 370-5807
F. (306) 975-8389 • E. darren.pringle@police.saskatoon.sk.ca
www.saskatoonpoliceservice.ca

SASKATOON POLICE SERVICE
Stewart - Spence - Division
Sgt. Darren Pringle #434
Northwest Division
D Pringle



SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY

GO# SP 2015-31448

DEATH - ACCIDENTAL

- Paulsen to hospital in ambulance.

- Fibroth excising EMS to RVH.

- VI info from Train waste.

- Wits interviewed by Paulsen - written reports obtained

- CN Police one lead - SPS assist to them.

- NOK by RCMP of their Buoch

- Stent signs left & Kyle. Copies for us to scan.


* - Snow frozen on peg Airavoc - told to Kyle.

- Call to Airavoc c before Canada at 800-641-4049.

Info from Shelley Chippello @ Sask OH+S.

56

- VI laying on left side arms out forward, legs out stretched.


SASKATOON POLICE SERVICE
Forward - Speed - Steady
Sgt. Darren Pringle RCM
 Northwest Division
 D Platoon
 PO Box 1728 • Saskatoon, SK • S7N 3R8 • T. (306) 978-8300 • C. (306) 370-9807
 F. (306) 375-8333 • E. darren.pringle@police.saskatoon.sk.ca
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SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY

GO# SP 2015-31448

DEATH - ACCIDENTAL

- blood on head & left side of face - blood on right ankle.

- No deeply bleeds observed.

- VI breathing shallow - eyes open but unresponsive - Pupils are moans -

- Wearing tan work pants/shirt + boots.

- hat (BB cap) laying right side up on rocks 90 ft W of VI.

- Hat's label was that of VI.

- No blood trail or smears on rocks - just blood underneath where VI is.

- Airvac advised Trans-Canada will be investigating.

2345 Paulsen updated - is 10 ft was in cardiac arrest in ambulance and never regained. 14(1)(0) 5th @ RVH called time of death.

P.O. Box 1728 • Saskatoon, SK • S7N 3B6 • T: (306) 975-8300 • C: (306) 370-8807
F: (306) 975-8338 • E: darren.primo@police.saskatoon.sk.ca
www.saskatoonpoliceservice.ca

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Sgt. Darren Primo #434
Northwest Division
D Platoon



SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY

GO# SP 2015-31448

DEATH - ACCIDENTAL

Parkson in, Elkh
Streeting.

Busch, Kyle + Amos

all reported on 10-45.

Busch advised parents
located in Melville +
NOK occurring.

cn police and advises
is OK for SPS to do
media release if reqd
but to refer media
to CN Public Inq #
of 888-888-5909.

S/Sgt Hansen called -
MEU not reqd.

0022 Cleared scene - Kyle
not require any
further assistance.



SASKATOON POLICE SERVICE

Stewart - Stewart - Stewart

Sgt. Darren Pringle #434
Northwest Division
D Platoon

P.O. Box 1728 • Saskatoon, SK • S7N 3B6 • T. (306) 975-8300 • C. (306) 370-9827
F. (306) 975-8393 • E. darren.pringle@police.saskatoon.sk.ca

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**SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY**

GO# SP 2015-31448

DEATH - ACCIDENTAL

Related Attachment - Driver Information/Registration

Attachment Description: **TIMMERMAN, KEVIN**


SGI AutoFund Application

Page 1 of 1

Occ # 15-31448
Dodge # 434
(Please Mark) No

Customer Profile

Customer 10986610 Plate Kevin R PO Box 2877 Melville, SK 
Timmerman

Photo	Customer Information	Customer Standing	Driver & Vehicle Standing
	Kevin R Timmerman PO Box 2877 Melville, SK S0A 2P0 Date of Birth: 02Aug1964	Status: Eligible for MC SDR , RED Due	Associated Plates: , All(3) , Active(1) , Inactive(2) , Registration Eligibility Due(1) Suspended: No Driver History

This page generated on 10Apr2015 02:09 AM at TABITHA/AFRDSR by Connor Prediger through Access Manager

<https://autofundinquiry.sgi.sk.ca/afApp/CustomerInfo/CustomerProfileQuery.do?doAction...> 4/10/2015



SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY

GO# SP 2015-31448

DEATH - ACCIDENTAL

Related Attachment - Officer Notes

Attachment Description: CST. JENKINS #862

Occ# 15-31448
Badge# 862
Charge Yes No

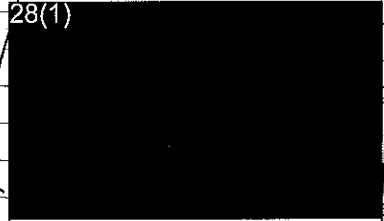


R:2231 14(1)(i) 15-31448
D:2234 1701 Chappell Dr
A:2241

Someone has been
hit by a train on
the west end of the
yard. Staff member
was notified will
meet emergency staff
at curling rink
on Chappell Dr.

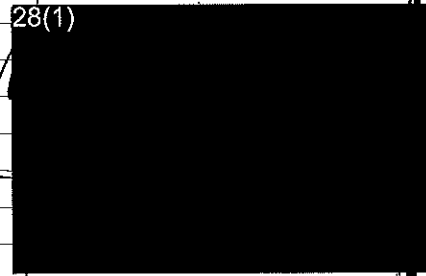
142

28(1)



sd [Kam TIMMERMAN

28(1)





SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY

GO# SP 2015-31448

DEATH - ACCIDENTAL

28(1), 14(1)(c)



2 of 4



SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY

GO# SP 2015-31448

DEATH - ACCIDENTAL



28(1)

R
2320
with

[Cst. Jordan KYTE
[REDACTED] 146
[REDACTED]

all photocopied statements
for CN police.

- Arrived on scene
- Saw TIMMERMAN
on ground by
tracks w/ multiple
rail workers around
him.
- blood on head.
- moaning.
- Fire on scene
leading to him
- 5 spoke [REDACTED] 28(1)
- got statements [REDACTED] 147
- was very traumatic
I wrote it for him.

3084




SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY

GO# SP 2015-31448

DEATH - ACCIDENTAL

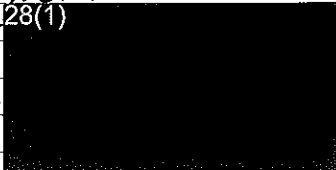
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Honour - Spirit - Vision



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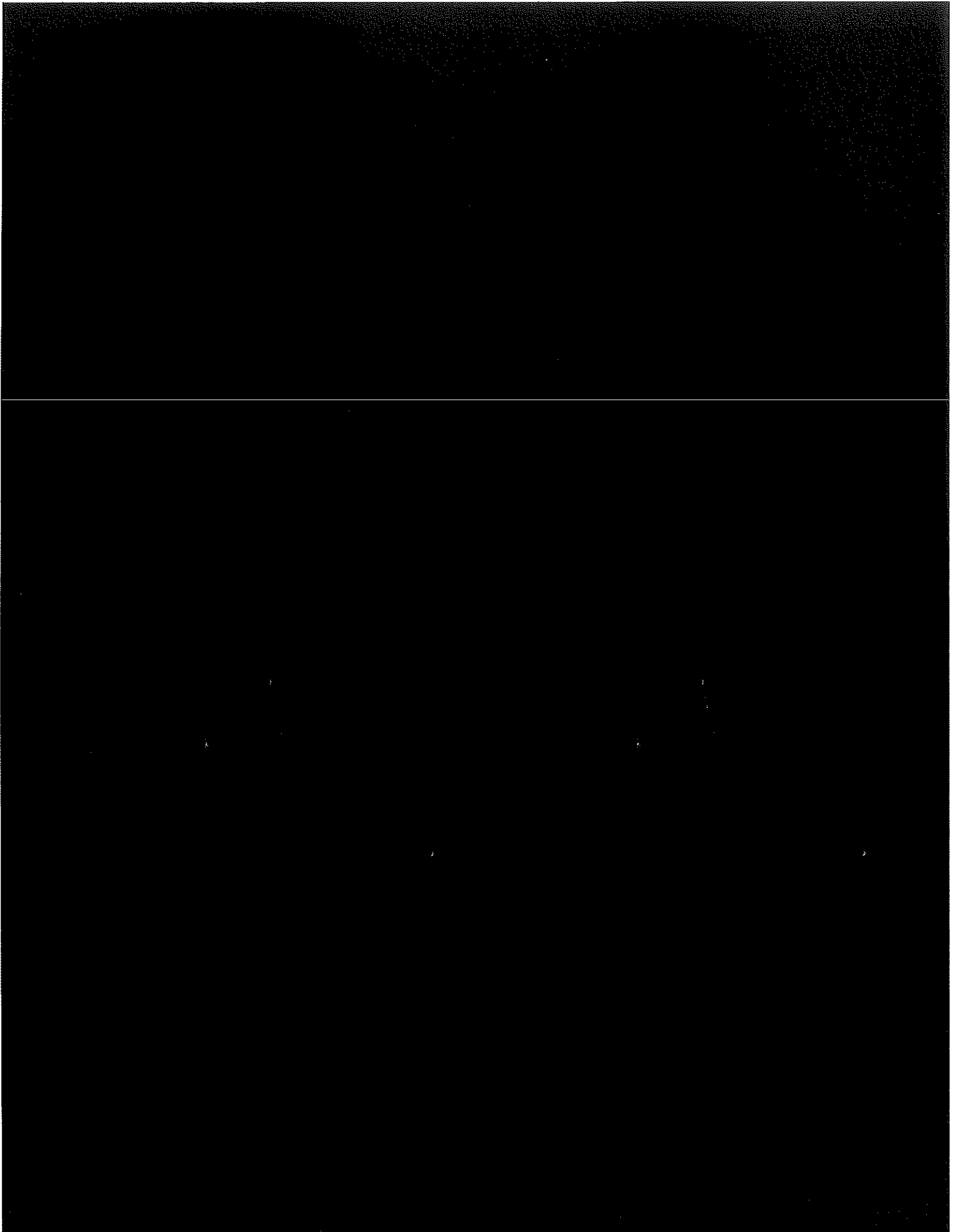
I obtained statements
from
 28(1)

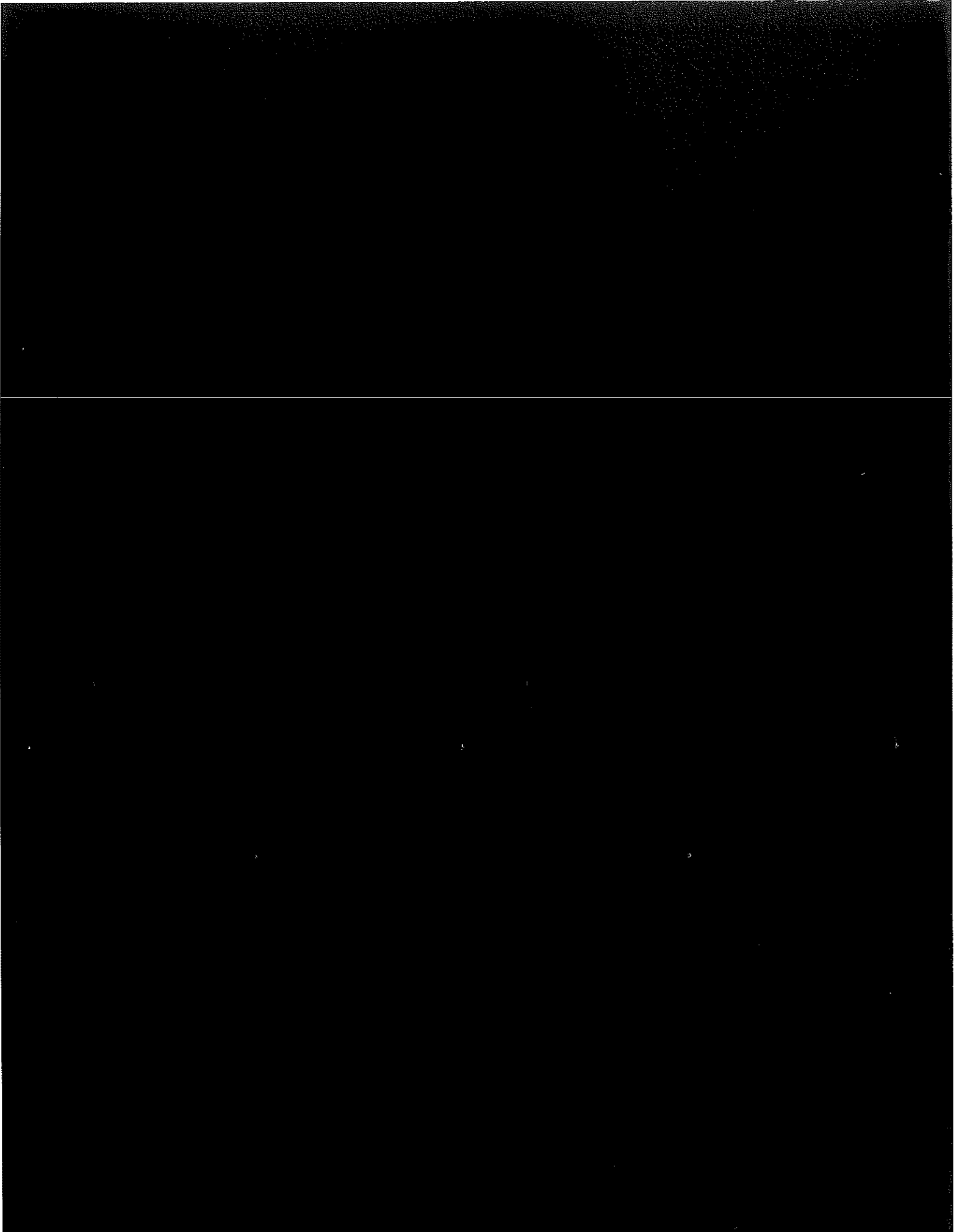


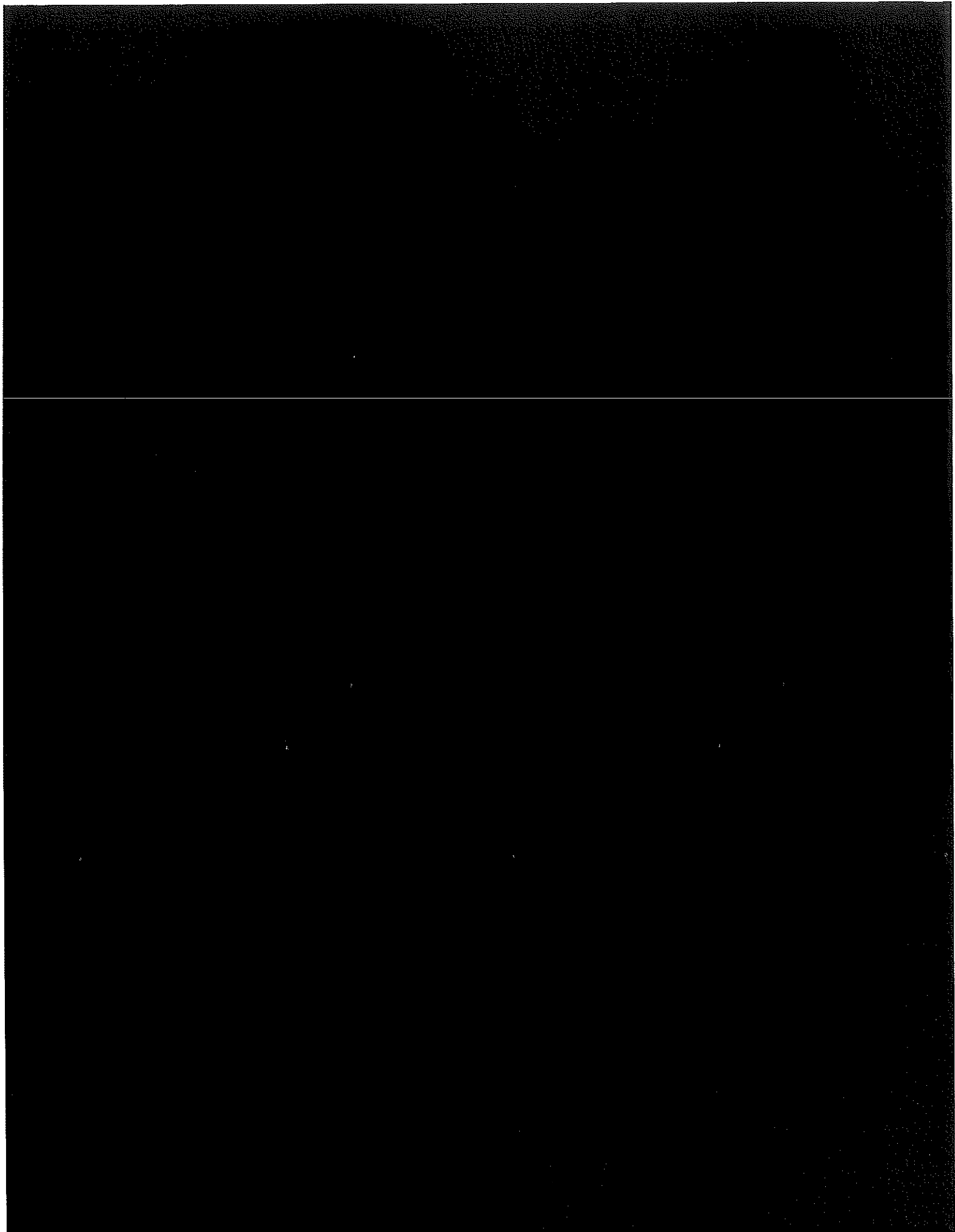
Supp ✓

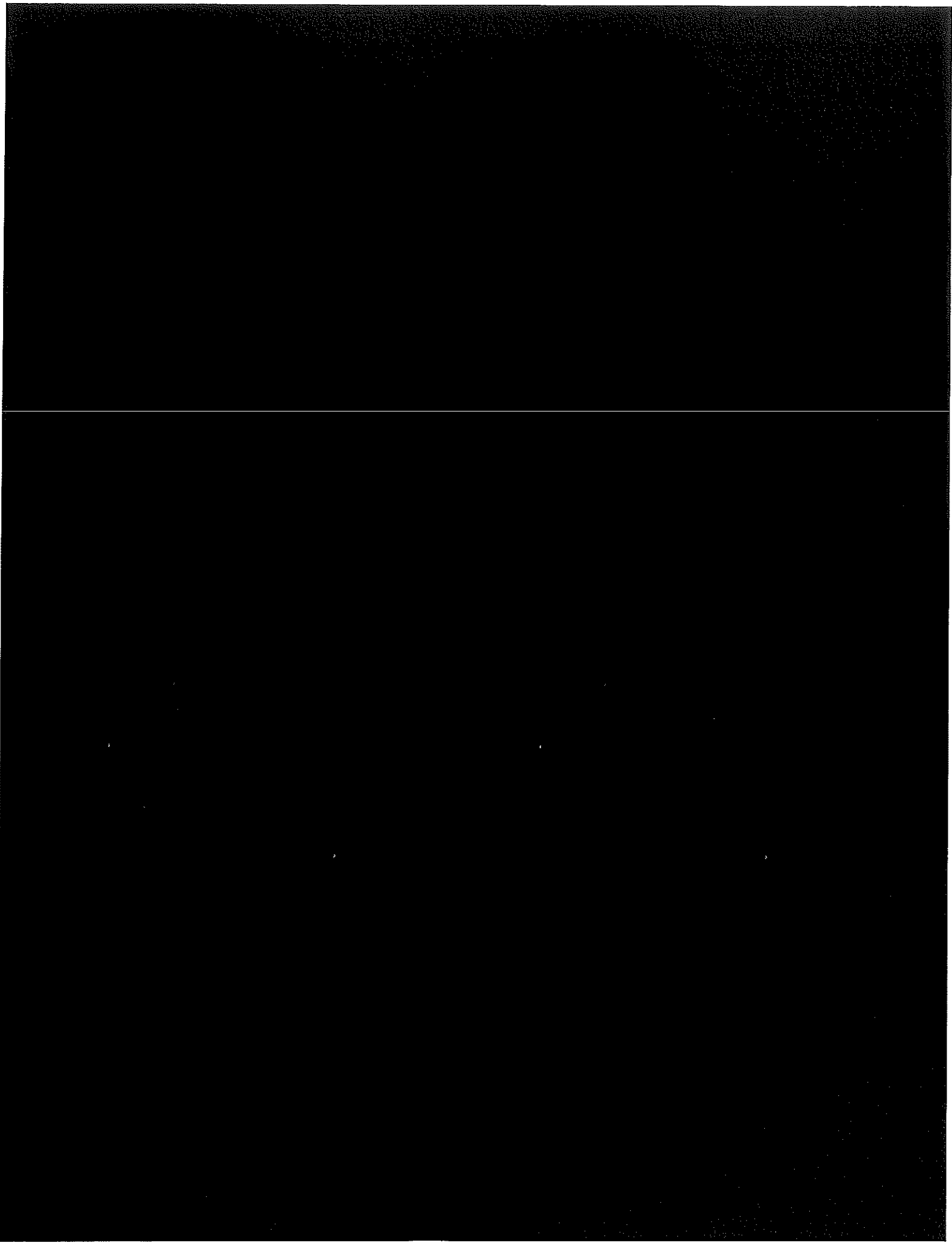
149

149











**SASKATOON POLICE SERVICE
GENERAL OCCURRENCE HARDCOPY**

GO# SP 2015-31448

DEATH - ACCIDENTAL

***** END OF HARDCOPY *****

Attachment 3

Ms. Michelaine Lehaie
Chairperson
Civilian Review and Complaints Commission for the RCMP
P.O. Box 1722, Station B
Ottawa, ON K1P 0B3

URGENT: BY COURIER

Fax: 613-952-8045

Commissioner Brenda Lucki
RCMP National Headquarters
Headquarters Building
73 Leikin Drive
Ottawa ON K1A 0R2

Fax: 613-993-0260

Attn: Ms. Lehaie and Commissioner Lucki,

RE: Open letter to the RCMP's jurisdiction and concerns arising from its working relationship with the railway police forces.

I am contacting you in your respective capacities as Chairperson of the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police (RCMP) and Commissioner of the RCMP. I represent Tara Jijian whose husband died while working at the CP Rail yard in Regina (2013). I also represent Lori Desrochers and Kaity Timmerman who are the survivors of Kevin Timmerman. Kevin was Lori's ex-husband and Kaity's father. He died while working at the CN Rail yard in Saskatoon (2015). I raise my clients' cases only to provide the background for the concerns we present in this letter. My clients' cases raise important questions about Canadian railway policing and the RCMP's jurisdiction and involvement in this arena.

Specifically, my reasons for contacting you arise from the ongoing railway protests in support of the Wet'suwet'en First Nation, the blockades related to that dispute, and the capacity of the RCMP's involvement. Although we seek your responses to all of our questions below, the most immediate

concern is that based on the RCMP's own public statements, the police force should not be involved in any aspect of these protests or other protests on railway property. Further, the RCMP must take a proactive and even-handed approach to railway-related policing. This means conducting investigations into deaths, derailments, explosions, and toxic spills, regardless of whether railway police services claim jurisdiction or not. We also request that the RCMP conducts thorough investigations into the cases of Jamie Jjian and Kevin Timmerman. The questions I pose to you in this letter will remain relevant even after the current Wet'suwet'en dispute has been resolved. These questions are of significant public interest for **three reasons**.

First, we are concerned with what appears to be a double standard in how the RCMP responds to railway policing incidents. The evidence suggests that when Canada's railway companies need assistance, for example, with policing the Wet'suwet'en protestors and their supporters, the RCMP readily intervenes. However, when there is a workplace death, derailment, oil spill, or other railway incident that may be attributable to railway companies themselves, the RCMP defers to the private police forces that the companies fund and control. For example, CN Police Service and CP Rail Police Service officers are full employees of the respective companies. However, they enjoy all the powers of public police forces across Canada, including the authority to arrest and lay criminal charges. This is unacceptable because those railway police forces' officers do not have a civilian or public oversight body. Instead, they report directly to the very corporate leadership whose actions may need to be investigated to determine if any charges should be laid against the company for wrongdoing.

Effectively, given that Transport Canada and the Transportation Safety Board do not, and will not investigate to lay charges or make criminal referrals, these railway companies get to police themselves through the officers they employ. The RCMP's deference to these police forces and the RCMP's record of failing to investigate numerous cases of potential corporate misfeasance is at the heart of the questions below.

Second, we are concerned that the RCMP is partly responsible for a jurisdictional ambiguity in Canadian railway policing. Despite our efforts, we have been unable to determine where the RCMP's jurisdiction ends and the railway polices' begins. The only demarcation we have been able to identify is that the RCMP acts if the railway companies request its assistance but refrains from doing so when the company police assert their jurisdiction. It seems that where the railway companies are implicated in the harmful incidents, they preclude the RCMP's involvement and in those cases, the RCMP acquiesces. However, when the railway companies face policing challenges from outside factors, e.g. from protestors, they request the RCMP's assistance and the RCMP readily complies. This leaves railway police forces, which report to and are funded by the corporation to decide when independent scrutiny and involvement of public law enforcement occurs.

Citizens have the right to know which law enforcement agencies have authority over them. As with the Wet'suwet'en protests, Canadians have the right to know whether they are being subjected to the powers of police forces with the jurisdiction to demand identification, detain, arrest, or lay criminal charges against them. This is part of the clarity we seek from the RCMP in the context of the Wet'suwet'en protests, and in the context of railway tragedies that are attributable to the railway companies. CP Rail for example seems to have taken a contradictory position on the jurisdictional question from the RCMP so we need clarity.

This jurisdictional ambiguity has created a vacuum of accountability. That accountability vacuum has denied justice to many people and communities that have been devastated by railway-related incidents across Canada. With respect to Jamie Jijian and Kevin Timmerman's deaths, the RCMP declined to investigate, instead deferring to the CP Police Service and CN Police Service that reported to the corporate entities that should have been investigated. Despite their efforts to obtain further information (supporting documents attached), Tara, Lori, and Kaity remain in the dark about the railway police's investigations into Jamie's and Kevin's deaths.

As you will see further below, given the startling number of railway incidents across Canada, including numerous fatalities, it is statistically improbable that none of these incidents warranted criminal charges. This is largely because of the jurisdictional vacuum in which people such as my clients are left with nowhere to turn to when the RCMP, municipal/provincial police forces, Transport Canada and the Transport Safety Board all wash their hands of important investigations and allow the railway companies to investigate themselves. We have found no cases in which any of these railway police investigations ever led to charges let alone prosecutions. This is unsurprising. Those who investigate themselves tend to exonerate themselves.

Third, if Canadian railway companies appoint, control, and fund their own police officers under Sections 44 and 44.1 of the *Railway Safety Act*, and can preclude the RCMP from investigations at will, the railway companies should not be able to delegate any tasks to publicly funded police forces. Why should Canadian taxpayers subsidize railway police forces by calling in the RCMP to deal with issues such as the Wet'suwet'en protests that do not involve company conduct but prevent the RCMP in cases where company conduct is an issue? It is one matter for police to cooperate across jurisdictions but quite another for a privately funded police force to outsource its work to the public purse. CN Police Service, CP Police Service, and Via Rail Police Service should be front and centre at all Wet'suwet'en-related protests across Canada. They should enforce all injunctions, arrests, dismantling of barricades etc. The railways cannot have it both ways; exerting jurisdiction over certain incidents and then calling in the RCMP to handle the politically sensitive protests.

Given the above, the following are the questions for which we seek the RCMP and its oversight body's responses:

- **Question 1:** In light of Sections 44 and 44.1 of the *Railway Safety Act* (R.S.C. 1985, c. 32, 4th Supp.), does the RCMP have the **jurisdiction** to conduct any policing functions on the property of Canadian railway companies, or relating to individuals implicated in policing matters within the railway police forces' jurisdiction? If so, pursuant to what legal authority?

This question is important because it highlights the jurisdictional ambiguity I raised above. While commenting on the CP Rail derailment that killed three CP Rail workers in Field, British Columbia in February of 2019, CP Rail recently released a statement arguing that although the RCMP had allegedly disavowed its jurisdiction to investigate the tragedy, the RCMP actually had both the **jurisdiction** and the **duty** to investigate the deaths pursuant to Sections 18(a) and 11.1 of the RCMP Act. CP Rail's statement states in part (Attachment 1):

"To be clear, the RCMP was immediately on-site post incident and the RCMP always has the legal authority and jurisdiction to investigate as it sees fit,"

...

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. (Underlining added).

<https://www.cpr.ca/en/media/cp-corrects-inaccuracies-in-cbc-reporting-of-field-b-c-derailment>.

CP Rail's statement is inconsistent with our experience with the RCMP. When Tara Jijian asked the RCMP's White Butte detachment to investigate the death of her husband, Jamie Jijian, at the CP Rail yard in Regina, the detachment told her that it and the RCMP as a whole, had no jurisdiction to do so. The RCMP officer told her that she had to resort to the CP Police Service (Attachment 2, 13). As detailed further below, when Tara Jijian approached CP Police Service for answers about any investigation that the force had conducted into her husband's death. The CP Police Service refused to provide any details, including about how the railway police force

was funded and whether its civilian management could initiate or terminate any investigations (Attachment 3,4,5,6).

Also, in a separate court case with documents in the public domain, CN Rail Police officers were cross-examined about their working relationship with management. As you can see from the transcript which is attached to a letter that the accused's counsel sent to the Minister of Transport and other police chiefs, there appears to be a revolving door between the police's public interest powers and the corporation's private interests (Attachment 7). When police officers who are legally bound to uphold the law on behalf of society are leveraged as tools of private corporate litigation, this undermines the very fabric of our democracy. It also gives rise to questions about interference with the administration of justice.

If CP Rail and the RCMP take different positions on the RCMP's jurisdiction, this is problematic as it leaves Canadians in the dark about which law enforcement body is at the helm. It raises questions about whether the meritorious cases have been falling through the cracks of the justice system. If the RCMP has always had the jurisdiction to investigate railway deaths, derailments, spills, and explosions, and with the goal of determining whether criminal or quasi-criminal charges are warranted, then the RCMP has failed numerous Canadian such as my clients. It would mean that the RCMP has been deferring to the railway police forces, which are funded, appointed through, and controlled by the companies whose actions warrant investigation.

Before we can reach any conclusions on this point, we request an unequivocal statement from the RCMP about whether it has the jurisdiction to investigate railway incidents such as workplace fatalities, derailments, railway explosions, and releases of harmful substances into the environment.

- **Question 2:** In light of Sections 44 and 44.1 of the *Railway Safety Act* (R.S.C. 1985, c. 32, 4th Supp.) and assuming the RCMP has the jurisdiction to investigate incidents on railway property, does the RCMP have the independent **duty** to conduct any policing actions on the property of Canadian railway companies, or relating to individuals implicated in policing matters within the railway police forces' jurisdiction?
- **Question 3:** If the RCMP has, and always had, the jurisdiction and duty to investigate railway-related deaths, serious injuries, derailments, oil spills and other railroad incidents, has the RCMP ever investigated, charged, or facilitated the criminal or statutory prosecution of any Canadian railway company, its **management, board of directors or officers?**

This question is important because as noted above, the CP Rail Police claims that the RCMP has always had the jurisdiction to investigate railway incidents from a policing lens (which is beyond Transport Canada and the TSB's respective mandates).

- <https://www.cpr.ca/en/media/cp-corrects-inaccuracies-in-cbc-reporting-of-field-b-c-derailment>.

However, considering the number of railway incidents that would warrant investigation over the years, we were unable to find any cases where the RCMP investigated and advanced charges, such as for criminal negligence. As you know, the Westray amendments to the *Criminal Code* were specifically designed to address workplace-related deaths, which are often of gravity that elevate them beyond as occupational health and safety incidents (i.e. administrative proceedings).

- <https://www.justice.gc.ca/eng/rp-pr/other-autre/westray/p1.html>.

When people die violent, sudden, or unnatural deaths, criminal liability and the necessary investigations cannot be precluded upfront. This means that when employees die in the course of their employment, or railway explosions kill people in Canadian cities, criminal liability can only be ruled out after a thorough and independent investigation. That has not happened to for the vast majority of victims. The disparity between railway incidents and the laying of criminal charges is stark. According to the TSB:

Overall, **1172 railway accidents** were reported to the TSB in 2018, a **7% increase over 2017 and a 13% increase from the 5-year average of 1035**. Most of the increase relates to non-main-track derailments of 5 or fewer cars. There were 57 rail-related fatalities reported in 2018, well below the 5-year average of 74, 34 of which involved trespassers. The number of crossing-accident fatalities was the same as in 2017 (19) and similar to the 5-year average (21), but the number of serious injuries due to crossing accidents nearly doubled (42) compared to 2017 (22) and to the 5-year average (24).

Further, between 2008 and 2018, the TSB reported more than 800 railway-related fatalities and more than 10,000 rail accidents for the same period.

- <https://www.tsb.gc.ca/eng/stats/rail/2018/sscr-ssro-2018.html>.

Despite these alarming statistics, we were unable to identify any cases where the RCMP independently investigated and criminally charged any railway company (or its corporate officers, board, or and management) for any of these incidents (with the potential exception of Lac-Mégantic). We were also unable to find any cases that proceeded to a prosecution or conviction. It is statistically improbable that none of these incidents and deaths were due to the railway companies' corporate actions or omissions. Even if we are wrong in this respect, this cannot be presumed without fulsome investigations. That is why it is critical for Canadians to understand which police service is really responsible for investigating these incidents and advancing prosecutions. It is our position that the railway police are disqualified because of an untenable conflict of interest. Their officers would be investigating the superiors to whom they report. That leaves the RCMP which would have to build the expertise and obtain the funding for such complex investigations. However, these should not be obstacles that frustrate the pursuit of justice.

As you know, the Transport Safety Board and Transport Canada investigation reports are neither intended nor permissible for use in legal proceedings, criminal or otherwise. Therefore, neither Transport Canada nor the TSB can deliver the justice that even CP Police Service asserts the RCMP has the jurisdiction and duty to do so. If that fact is not in dispute, we request that the RCMP opens criminal investigations into Jamie Jijian's and Kevin Timmerman's deaths.

- <https://www.tsb.gc.ca/eng/qui-about/index.html>.

Given that rail police officers work directly for the rail companies and are answerable to corporate management, this raises questions about whether the RCMP has been deferring any investigations of fatal and other serious incidents to the very management that may be responsible. Hence, in addition to requesting investigations into Jamie Jijian and Kevin Timmerman's deaths, we also request the RCMP's clarification of what criminal investigations and charges it has laid with respect to railway deaths, serious injuries, explosions, derailments, and the discharge of hazardous material into the environment.

- **Question 3:** If Canada's railway police forces have primary jurisdiction over policing incidents within 500 meters of railway property and have the jurisdiction over persons whose actions touch on railway affairs (*Railway Safety Act*, Section 44(3)), has any railway company ever asked the RCMP to investigate a fatality or other railway disaster (i.e. with the view of determining whether any criminal or quasi-criminal charges should be laid)? Please clarify the existence of

any relevant memoranda of understanding or other legal agreement or requests (formal or otherwise), between the RCMP and railway police forces operating across the Canada/US border. Please also clarify whether the railway companies pay the RCMP for providing this assistance (if any).

- **Question 4:** With respect to the Wet'suwet'en First Nation protests, did the CN Rail Police Service, the CP Police Service, or Via Rail Police Service, formally request the RCMP to participate in, or take over policing actions related to these protests anywhere in Canada?

This question is important because the RCMP needs the legal authority to conduct policing operations in areas that are not within its jurisdiction. If CP Rail's January 25, 2020 public statement is correct and the RCMP has jurisdiction and duty to investigate railway incidents, then the public deserves to know that RCMP officers involved in the Wet'suwet'en First Nation protests have the authority to be acting in that and similar capacities. The public also has the right to know why, in spite of having the jurisdiction and duty to conduct railway-related policing, the RCMP has not taken a consistent role in investigating and laying charges relating to the numerous deaths and fatalities on Canada's railways.

Compounding the ambiguity around the jurisdictional relationship between the RCMP and the railway police forces is Ms. Lahaie's recent public reply to the BC Civil Liberties Association.

- <https://www.crcc-ccetp.gc.ca/en/CRCC-Response-Concerns-RCMP-Actions-Wetsuweten-Territory>.

In that letter, Ms. Lahaie states that the RCMP has no legal authority to make identity checks and searches on protestors seeking to block the pipeline project on Indigenous territory. It appears that when constitutionally exercised, these are standard police powers. Therefore, if the RCMP cannot exercise them, is Ms. Lahaie's letter implying that it is the CP Rail Police that the jurisdiction to conduct these policing activities. On its face, Ms. Lahaie's letter appears to deny the jurisdiction (in whole or in part), that CP Rail's January 25, 2020 public statement asserts the RCMP has, hence our request for clarification.

The question around which police force has jurisdiction over the Wet'suwet'en First Nation protests and railway policing in general is also important because railway companies fund their own police forces. If they are calling on the RCMP, municipal police forces, and or the Ontario Provincial Police to conduct law enforcement

functions on railway property, then these railway companies would be outsourcing their law enforcement functions to Canadian taxpayers? We understand that cooperation between all police forces is an indispensable part of effective policing. However, there is a difference between cross-jurisdictional cooperation and the transfer of financial responsibility for a privately controlled police force to the taxpaying public.

The public needs an unequivocal statement from the RCMP's oversight body about the extent of the RCMP's jurisdiction and whether it should be involved at all in any protests or policing events within railway police jurisdiction. Furthermore, as a question of transparency and accountability, the public deserves to know the extents and limits of law enforcement powers, what police officers can do, where they can do it, and whether their jurisdiction can be shared, and if so, to what extent. Below is further background that we hope will help you appreciate why the questions above are so critical.

We look forward to your response to the questions above. Below is a general background information on my clients and how their situations reflect the concerns we have raised through our questions.

Thank you,



Tavengwa Runyowa
(Counsel for Tara Jjian, Lori Desrochers, and Kaity Timmerman)

TARA JIJIAN AND LORI DESROCHERS' FAILED EFFORTS TO GET ANY LAW ENFORCEMENT AGENCY TO ACT.

Tara Jijian (and her sons) and Lori Desrochers (and her daughter, Kaity Timmerman).

I represent two clients, Tara Jijian and Lori Desrochers, whose loved ones died in work-related incidents at CP Rail and CN Rail, respectively. I represent Tara and Lori in their litigations against CP Rail and CN Rail, respectively. The matter is ongoing, but its merits are unrelated to the purposes of this letter. The real issue is that in our advocacy, we learned that the railway police, at least in Saskatchewan, is deemed to have exclusive jurisdiction over all railway property, pursuant to Section 44 and 44.1 of the *Railway Safety Act*, and that this precludes RCMP jurisdiction over matters arising within 500 metres of railway property. Section 44(4) expands this territorial jurisdiction by extending to policing incidents arising from, or relating to the railways:

44(4) 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.

Tara's husband, Jamie Jijian, was crushed to death between two rail cars at the CP Rail yard in Regina, 2013. Sometime after Jamie's death, Tara received a leaked summary of a copy of Transport Canada's investigation report into Jamie's death (Attachment 8). Upon reviewing the conclusions, it is apparent that a formal police investigation was necessary to determine whether the hazards in the CP Rail yard and the company's culture and decisions warranted any charges. However, with Transport Canada and the TSB disavowing any criminal referrals and CP Police declining to disclose any aspect of their investigation (Attachment 3,4,5,6,9), the causes behind Jamie's death remain in a black box and only CP Rail has the key.

See Attachment 2, of this letter in which Tara Jijian approached the RCMP requesting that the RCMP conduct a criminal investigation into her husband's death. Note the response in which the RCMP states that it had no jurisdiction to do so and that the CP Police Service had that jurisdiction (Attachment 13). Also note Attachment 11 of this letter in which Tara makes the same request to the Regina Police Service, and the similar response she got from that RCMP (Attachment 12). It therefore appears that at least in Saskatchewan, only the railway police forces have the jurisdiction to address policing matters on rail property or relating to the railways themselves.

Lori Desrochers' ex-husband, Kevin Timmerman, died at the CN Rail yard in Saskatoon in 2015. Lori is power of attorney to their daughter, Kaity, who has a disability. Lori also made efforts to obtain clarity about what happened to Kevin. The TSB gave her its report, but Transport Canada was the main investigator of that incident. Transport Canada refused to give Lori the report until her request to the Prime Minister's office (Attachment 16,17) led to the release of a heavily redacted report (Attachment 10). CN Police Service declined to provide any information on its own investigation (Attachment 14,15).

Both Jamie and Kevin's loved ones remain in the dark about what truly happened.

The roles of Transport Canada, Transportation Safety Board and Human Resources and Skills Development Canada.

Although Transport Canada, TSB, and HRSDC conducted investigations, these were not done with the view of facilitating criminal investigations. The TSB and Transport Canada have never made any such referrals to any law enforcement authorities, and we understand that such referrals are not within their mandate. When people die violent, sudden, and unnatural deaths, there can be no presumption that precludes criminal investigations. In the post-Westray era, there can be no assumption that workplace-related deaths are merely regulatory/occupational health and safety incidents. See for example:

- <https://www.justice.gc.ca/eng/rp-pr/other-autre/westray/p1.html>.
- *R. v. Kazenelson*, 2018 ONCA 77 (CanLII), <<http://canlii.ca/t/hq2qk>>.

This is why the RCMP must take decisive steps to aerate the jurisdictional vacuum that its inaction on railway deaths and incidents has left. The public needs answers to our question and my clients deserves justice for their loved ones. Criminal investigations into the deaths of Jamie Jijian and Kevin Timmerman are necessary.

Royal Canadian Mounted Police
Commissioner



Gendarmerie royale du Canada
Commissaire

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Les valeurs de la GRC reposent sur l'intégrité, l'honnêteté,
le professionnalisme, la compassion, le respect et la responsabilisation

MAY 08 2020

Mr. Tavengwa Runyowa
Runyowa Law
2010 11th Avenue
7th Floor
Regina, Saskatchewan
S4P 0J3

Dear Mr. Runyowa:

Thank you for your correspondence of February 27, 2020. My deepest sympathies to Tara Jijian, Lori Desrochers, Kaity Timmerman, and their families for the loss of their loved ones, Jamie Jijian and Kevin Timmerman.

Your correspondence highlights the complexities of investigations of this nature and the multitude of parties that are involved. The role of the Royal Canadian Mounted Police (RCMP) within the Province of Saskatchewan is governed by the *Royal Canadian Mounted Police Act, RCMP Regulations, 2014*, the common law, the *Saskatchewan Police Act, 1990*, and the Provincial Police Service Agreement with Saskatchewan. With respect to the matters raised in the letter, the RCMP is not the police of jurisdiction in either the City of Regina or the City of Saskatoon and is therefore not in a position to intervene in investigations in those jurisdictions by other law enforcement agencies.

More generally, RCMP members are required to perform all duties that are assigned to peace officers in relation to the preservation of the peace, the prevention of crime, and the apprehension of criminals, offenders, and others who may be lawfully taken into custody. The RCMP may also provide assistance to other law enforcement agencies at their request, provided that the requested assistance falls within the mandate of the RCMP.

Your letter raises the broader approach to workplace injuries and fatalities. In 2017, through a joint statement by the Minister of Justice and Attorney General and the Minister of Employment, Workforce Development and Labour, the Government of Canada committed to implementing measures to help ensure that section 217.1 of the *Criminal Code*, commonly referred to as the Westray Law, is applied effectively.

In addition, the Department of Justice published three fact sheets in August 2019 addressing criminal liability for workplace deaths and injuries. The three fact sheets, *Background on the Westray Law*, *Criminal Code Offences and their Application by the Courts*, and *Sentencing of Individuals and Organizations*, have also been used to create awareness and build upon the knowledge and understanding in this area.

As part of the commitment to do more to ensure proper training in the provisions of the Westray Law, the RCMP has collaborated with partners to develop an online training course for law enforcement, workplace health and safety inspectors, and crown prosecutors on conducting criminal investigations related to workplace deaths and serious injuries. The training will provide strategies and best practices to better coordinate investigations across federal, provincial and territorial jurisdictions. It is also designed to raise awareness and support the amendments to the *Criminal Code* created by the Westray Law.

The RCMP agrees that more has to be done to mobilize awareness for the specific provisions of the Westray Law. The RCMP will continue to work with its partners in an effort to ensure that all stakeholders are aware and informed of these provisions in an effort to build a safer tomorrow for workers, employers, and all Canadians.

Thank you for taking the time to write on this important issue.

Kindest regards,



Brenda Lucki
Commissioner

c.c.: Ms. Michelaine Lahaie
Chairperson
Civilian Review and Complaints Commission for the RCMP

Civilian Review and
Complaints Commission
for the RCMP



Commission civile d'examen
et de traitement des plaintes
relatives à la GRC

Office of the Chairperson

Bureau de la présidente

May 21, 2020

Tavengwa Runyowa
Runyowa Law
Royal Bank Building
2010 – 11th Avenue
7th Floor
Regina, SK S4P 0J3

Dear Mr. Runyowa:

The Civilian Review and Complaints Commission for the Royal Canadian Mounted Police (“the Commission”) received your correspondence, dated February 27, 2020, in which you requested that the Commission answer several questions about Canadian railway policing and the RCMP’s jurisdiction in that field. Your letter was also addressed to Commissioner Brenda Lucki of the Royal Canadian Mounted Police (“RCMP”).

You explained that you represent Tara Jijian, whose husband, Jamie Jijian, died while working at the CP Rail yard in Regina in 2013. You also represent Lori Desrochers and Kaity Timmerman, who are the survivors of Kevin Timmerman, who died while working at the CN Rail yard in Saskatoon in 2015. You stated that you raised your clients’ cases only to provide background for the concerns you were presenting in your letter.

In your correspondence, you set out several concerns, including your contention that there appears to be a double standard with regard to how the RCMP responds to railway-related incidents; that the jurisdiction of the RCMP with regard to railway policing is ambiguous; and that railway police forces should consistently exercise their jurisdiction, as opposed to “outsourcing” their work in certain cases to publicly-funded police forces such as the RCMP.

You asked five questions of the Commission and the RCMP. These questions concerned the RCMP’s jurisdiction to conduct policing functions with regard to railways; whether the RCMP has a duty to carry out those functions; whether the RCMP has done so in the past and whether railway companies have asked them to do so; and whether railway police forces asked the RCMP to take over policing actions related to the recent railway blockade protests.

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P.O. Box 1722, Station B, Ottawa, Ontario K1P 0B3 | C.P. 1722, succursale B Ottawa (Ontario) K1P 0B3

Canada

Letter Regarding Pamela Fraser CN Shareholder Proposal

In conclusion, you expressed that the public requires an unequivocal statement from the Commission about the extent of the RCMP's jurisdiction and whether the RCMP should be involved at all in protests or policing events within railway police jurisdiction.

The Commission's mission is to deliver a robust complaint process that holds the RCMP accountable for its activities and the conduct of its members. The Commission does so in an independent and impartial manner that is accountable to Canadians.

After careful review, the Commission has determined that the concerns you have outlined do not appear to qualify as conduct of RCMP members in the performance of a duty or function under the Royal Canadian Mounted Police Act ("RCMP Act"). Therefore, they do not fall within the Commission's mandate. You do not appear to be challenging the conduct of specific RCMP members, but rather, raising questions of a more general nature regarding RCMP jurisdiction and practices in railway policing matters. These questions are more appropriately addressed to the RCMP Commissioner, and it is my understanding that she provided you with a response, dated May 8, 2020.

Although you refer in your letter to some of your clients' interactions with RCMP members, you also explained that you raised your clients' cases only to provide background for your concerns. Please note that the RCMP Act contains a one-year time limit for submitting a public complaint, unless there are good reasons for the Commission to consider extending the time limit.

The issues you raise are important and I take them seriously, especially as they relate to incidents in which people have tragically lost their lives.

The jurisdictional issues concerning policing of railway matters are indeed complex. As you know, the investigation of *Criminal Code* offences falls within the jurisdiction of each province. In most provinces, the RCMP has been contracted to serve as the provincial police force, and thus is granted the mandate to enforce the *Criminal Code* within that province. However, even within provinces that have policing contracts with the RCMP, certain municipalities—applying powers granted to them by the province—have established their own police forces, which are responsible for the investigation of criminal offences.

As you know, specialized police forces such as the CP Police Service and the CN Police Service have also been established, and their jurisdictions are prescribed by law.

In a situation involving a deceased person, the "police of jurisdiction" ("POJ") respond. If a homicide is suspected, the POJ will lead the investigation. If the death appears to have been accidental, then the Coroners Service will investigate with assistance from the POJ as required. If the death was evidently the result of a workplace or industrial

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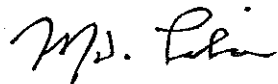
accident, then an agency such as WorkSafe Saskatchewan (occupational health and safety) will be involved in determining the cause(s) and recommending measures to prevent similar incidents in the future. The Transportation Safety Board may have a role if the occurrence involved a railway that is within the legislative authority of Parliament.

All POJ police forces are empowered to enforce the provisions of the *Criminal Code*, including the sections commonly referred to as the "Westray Law," which amended how criminal liability of corporations is established in cases of workplace death or injury.

As described above, the Commission will not be processing your letter as a public complaint. Please note that public complaint processes are also available for complaints concerning the actions of members of the Regina Police Service (Professional Standards Section or Saskatchewan Public Complaints Commission), the Saskatoon Police Service (Professional Standards Unit or Saskatchewan Public Complaints Commission), the Canadian Pacific (CP) Police Service (Professional Standards Department), and the Canadian National (CN) Police Service (Chief of Police).

I extend my sincere condolences to your clients, Ms. Jijian, Ms. Desrochers, and Ms. Timmerman, and I thank you for bringing these important issues to the attention of the Commission.

Sincerely,



Michelaine Lahaie
Chairperson

cc: RCMP Commissioner Brenda Lucki

August 17, 2020

SENT BY COURIER & EMAIL

Commissioner Brenda Lucki
Royal Mounted Canadian Police
RCMP National Headquarters
Headquarters Building
73 Leikin Drive
Ottawa ON K1A 0R2

Ms. Michelaine Lahaie
Chairperson
Civilian Review and Complaints Commission
for the RCMP
P.O. Box 1722, Station B
Ottawa, ON K1P 0B3

RCMP.Commissioner-Commissaire.GRC@rcmp-grc.gc.ca

Michelaine.Lahaie@crcc-ccetp.gc.ca

police_professionalstandards@cppoliceservice.com

Attn: Commissioner Brenda Lucki and Chairperson Michelaine Lahaie,

**Re: Further Clarification on the Royal Canadian Mounted Police's ("RCMP")
interaction with private railway policing in Canada.**

This letter is in response to your letters of May 8th, 2020 and May 21st, 2020 in which the RCMP declined to open a new investigation into Jamie Jijian and Kevin Timmerman's workplace deaths at the Regina CP Rail yard (Regina) and CN Rail yard (Saskatoon) respectively. We request that the RCMP provides further clarifications on certain points that your letters did not address:

1. Does the RCMP have concurrent, overlapping, or subordinate jurisdiction to the railway police services such as CP Police Service and the CN Police Service (with respect to railway related incidents)?

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. Your letter stated that the RCMP did not have the “investigational lead” in Jamie and Kevin’s case. Please clarify what this means. Does this mean the RCMP has jurisdiction to investigate but that jurisdiction is subordinate to that of the railway police forces? Also clarify whether the RCMP has the authority to **unliterally** initiate or take over the investigation into railway incidents despite any protest or inaction by railway police.

2. Does the RCMP have formal or informal policies of handing over investigations regarding **railway worker** injuries, deaths, or railway disasters to the relevant railway police forces?
3. Does the RCMP have formal or informal policies of handing over investigations regarding the injuries, deaths of **members of the public** to the relevant railway police forces?
4. Does the RCMP 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 police’s jurisdiction beyond the 500m on either side of railway property. The Act extends the railway police jurisdiction to offences that relate to the railway industry, even if the alleged offender was not arrested within the 500m area, or the alleged offence did not occur in the area. We would like to know whether in such cases the RCMP has identical, overlapping, or concurrent powers or whether in this context, the RCMP is subordinate to the railway police’s under the *RSA*.

5. Sudden and/or violent deaths in Canada cannot be presumed to preclude foul play or criminal conduct at the outset. When a RCMP receives a report of a death on railway property, as a matter of policy, practice, or law, does the RCMP investigate these deaths to exclude foul play or criminal negligence?
6. Does the RCMP have police officers or investigators who are specifically trained in railway related investigations? If so, what is the nature of the training and does the RCMP retain other experts, e.g. forensic specialists to help?

Context: This question goes beyond the RCMP investigating criminality that happens on railway property (e.g. one worker assaulting another). We are concerned with the RCMP’s technical capacity to review industrial incidents to distinguish between true “accidents” and criminal acts (including criminal negligence) that cause injury or death.

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 officials. None of these investigations can give rise to criminal proceedings. 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, involving subject matter that regular RCMP officers are not trained to deal with. 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 experience are required to properly investigate complex industrial incidents.

7. As a question of law, policy, or practice, does the RCMP attend the site of every railway incident such as a death, injury, explosion, spill, or derailment, **if** CP Police Service or CN Police Service are already present on scene? If so, does the RCMP hand over jurisdiction once railway police, employees, or the Coroner have taken over the scene?
8. If it is apparent that a railway death, injury, explosion, spill, or derailment may have been the outcome of corporate misfeasance (of CN Rail or CP Rail), does the RCMP have the authority to replace the railway police as the police of primary jurisdiction given that the railway police services answer directly to the railway companies?
9. If a railway company owns and controls its own police force, can the RCMP still investigate that company, its executives, board, or employees for potential *Criminal Code* offences relating to their jobs? Has the RCMP ever done so?
10. Given the centrality of the principle of police independence to Canada's legal system, is it the RCMP's position that it must still cede the "investigational lead" to the railway police forces that are controlled by the railway corporations under investigation (where a death, derailment or other disaster may have been the companies' fault)?
11. If a railway police officer commits a criminal offence while engaged in their duties, does the RCMP have the authority to investigate that potential crime? Has the RCMP ever conducted such investigations?
12. When railway police forces request the help of RCMP officers in carrying out tasks such as jailing or transporting persons in custody, does the railway pay the RCMP for that service?

13. If a member of the public requests the RCMP to investigate a death or serious injury that was allegedly caused by the railway company, its internal policies, or actions, can the RCMP initiate that investigation without the involvement of the railway police forces?

Once again, we are not seeking the RCMP's involvement in our on-going litigation regarding Jamie and Kevin's deaths. We only seek to obtain clarity about the RCMP's powers, jurisdiction, and policies, and practices. Your response to the above inquires will be appreciated.

Sincerely,

Type text here

Tavengwa Runyowa

Tavengwa Runyowa

(Counsel for Tara Jijian and Lori Desrochers)

Cc: Kathleen Roussel
Director of Public Prosecutions
Public Prosecution Service of Canada
160 Elgin Street – 12th Floor
Ottawa, Ontario K1A 0H8

Email: ppscoru@ppsc-sppc.gc.ca

Royal Canadian Mounted Police
Commissioner



Gendarmerie royale du Canada
Commissaire

Guided by Integrity, Honesty, Professionalism, Compassion, Respect and Accountability

Les valeurs de la GRC reposent sur l'intégrité, l'honnêteté,
le professionnalisme, la compassion, le respect et la responsabilisation

SEP 24 2020

Mr. Tavengwa Runyowa
Runyowa Law
2010 11th Avenue
7th Floor
Regina, Saskatchewan
S4P 0J3

Dear Mr. Runyowa:

Thank you for your correspondence of August 17, 2020, regarding the jurisdictional responsibility over the investigation of workplace injuries and fatalities.

As noted in my previous correspondence, your letters highlight the complexities of investigations of this nature and the multitude of parties that are involved. With respect to the matters raised, I reiterate that the Royal Canadian Mounted Police (RCMP) is not the police of jurisdiction in either Regina or Saskatoon and is not in a position to interject in investigations of other law enforcement agencies.

In terms of the other questions raised in your letter, each investigation is unique and will be dependent on the facts in each case. In addition, RCMP decisions are made, as you correctly point out, to be consistent with the principle of police operational discretion.

In reference to your questions about RCMP policy, you will find information on how to make an Access to Information request on the RCMP website at www.rcmp-grc.gc.ca/en/making-a-request-the-access-information-act.

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- 2 -

The RCMP continues to collaborate with partners to address the important issues of workplace injuries and fatalities.

I regret that I cannot be of further assistance. Thank you again for taking the time to write.

Kindest regards,

A handwritten signature in cursive script, appearing to read "B. Lucki".

Brenda Lucki
Commissioner

c.c.: Ms. Michelaine Lahaie
Chairperson
Civilian Review and Complaints Commission for the RCMP

Attachment 4

August 26, 2016

BY COURIER

Mr. Ken Marchant: Chief of Police
Canadian Pacific Railway Police Service
Building #5
7550 Ogden Dale Rd. SE
Calgary, AB T2C 4X9

Dear Chief Marchant,

**RE: Query about CP Rail Police's jurisdiction and ability to investigate
the death of Jamie Jijian AT CP Rail yard in Regina.**

I represent Tara Lee Jijian, the widow of Jamie Jijian, a CP Rail employee who died at the company's rail yard in Regina on January 12, 2013. Jamie was crushed to death between two rail cars. Although this was the terminal event, Jamie's death was the result of systemic misconduct and negligence at several rungs of the CP Rail leadership.

Further, we have reason to believe that the safety culture that led to his death (and other safety-related incidents at CP) arose from leadership decisions that were focused on cutting costs and increasing profits at the expense of worker safety. While we acknowledge that CP Rail's leadership has the right to balance competing objectives in its business, no commercial considerations can overcome the requirement to provide for worker's basic safety under the applicable legislation.

My client and I have gathered evidence and witnesses who can support our allegation that Jamie's death was not only preventable, but was precipitated by the wrongful actions of at least two CP Rail employees at a supervisory level. Further, before his death, Jamie had expressed concerns about the safety of his work environment and the cursory training he received for a job that was fraught with hazards. Having reviewed the most recent case law on the Westray Bill, we assert that the facts surrounding Mr. Jijian's death easily meet the threshold for criminal convictions under the *Criminal Code* (See cases below).

- Verdict: *R. v Vadim Kazenelson*, 2016 ONSC 25 (CanLII), <http://canlii.ca/t/gmv0x>.

- Sentencing: *R. v Vadim Kazenelson*, 2015 ONSC 3639 (CanLII), <<http://canlii.ca/t/gjr51>>.

Earlier this year, we submitted evidence a witness list to the Regina Police and then the RCMP. We requested that they investigate the matter. Both police forces declined to do so on a jurisdictional basis. We understand that ordinarily, CP Rail Police has jurisdiction over incidents that occur on CP Rail property and its immediate vicinity. However, in this case, we are concerned that CP Rail may not be the appropriate authority to handle this investigation. Our understanding is that CP Rail Police reports to CP Rail's management, and works under the auspices of the company's management and board of directors. If true, we are concerned that this relationship would preclude CP Rail Police from investigating potential wrongdoing that may extend to the individuals it is answerable to.

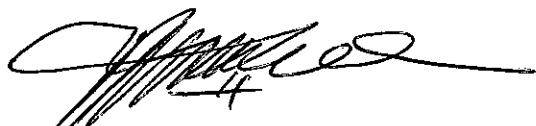
We emphasize that we are not alleging wrongdoing by any senior member of CP Rail's management or board of directors. We are asserting that at this stage, it appears that specific decisions that may have facilitated Jamie's death were made at higher levels than that of his immediate supervisors. While a comprehensive investigation may conclude otherwise, it would be premature to discard this possibility beforehand. Although our current position is that CP Rail should not be in charge of this specific investigation, we hope that your responses to the following questions will help us determine how we should proceed with the evidence at hand.

1. Is the CP Rail Police directly answerable to CP Rail's management and/or board of directors?
2. Does CP Rail Police provide periodic reports on the status of the force's work to the Board and/or company management?
3. Who decides the size of CP Rail Police's budget, and who disburses that money to the force?
4. Does any part of CP Rail Police's budget derive from CP Rail's operational budget/resources?
5. Does CP Rail's board of directors, management, and/or staff review or audit CP Rail Police's financial documents?

6. Who is responsible for recruiting or replacing the CP Rail Chief of Police?
7. Can CP Rail's board and/or management instruct CP Rail Police to initiate or terminate any investigations?
8. Can CP Rail's management or board instruct CP Rail Police on any other aspects of the force's work?
9. When an internal incident happens (e.g. a work-related fatality) that may require CP Rail Police's attention, which persons within the company are required to bring the matter to the attention of CP Rail Police?
10. Does CP Rail have written internal policies or guidelines on how investigations should be initiated, documented, managed, or conducted? If so, can you please disclose this document?
11. Was CP Rail informed of Jamie Jijian's death in 2013? If so by who?
12. Did CP Rail Police conduct a formal investigation into Jamie Jijian's death?
13. If CP Rail conducted an investigation into Jamie's death, please furnish us with any conclusions about that investigation? To our knowledge, no one was ever charged or prosecuted. Please confirm whether this was the case.
14. Since January of 2013, have any members of the CP Rail Police been former employers of CP Rail or any other Canadian railway operator?

Your assistance with these questions will help us to determine our next steps, including submitting all the evidence and witnesses we have to initiate an investigation. Also, please advise if based on your assessment of the above questions, CP Rail would be in a position to handle the investigation into Jamie Jijian's death. We look forward to your response.

Thank you,



Tavengwa Runyowa



Ken Marchant
Chief of Police
CP Police Service

Bldg #5 - 7550 Ogden Dale Rd
Calgary, AB T2C 4X9

24/7 1 800 716 9132
T 403 303 8837
ken_marchant@cppoliceservice.com

September 26, 2016

Runyowa Law
7th Floor, 2010 – 11th Avenue
Regina, Saskatchewan S4P 0J3
Attention: Tavengwa Runyowa

Dear Sir;

Re: Query to Canadian Pacific Police Service

I wish to acknowledge your letter dated August 26, 2016, which was received in our office on August 30, 2016. Within the letter you have raised a number of preliminary questions that you claim require answers to before determining your next steps.

Be advised that I am not prepared to respond to these queries regarding the structure and administration of Canadian Pacific Police Service. The need for answers to these questions relating to matters of budgets, recruiting, reporting structures and other administrative matters has no bearing on matters related to Canadian Pacific Police Services obligations to enforce the law. Your letter and its attendant request questions the integrity of this Police Service and the legislative authority under which the Police Service operates.

As you have raised the responses to these questions as a determinative element of the steps you wish to take going forward I assume you have the information you require.

While you may not be aware, I would advise this matter was investigated by the proper Federal Agencies tasked with oversight of rail operations in Canada.

Trusting the foregoing is satisfactory.

Ken Marchant
Chief of Police



October 5, 2016

Ken Marchant
Chief of Police
CP Police Service
Building #5 - 7550 Ogden Dale Rd
Calgary, AB T2C 4X9

Dear Chief Marchant,

RE: Investigation into the death of Jamie Jijian

I received your letter dated September 26, 2016. Your letter states that you are unwilling to respond to our queries regarding the structure and administration of CP Rail Police Service. It also states that matters of your police force's budgets, recruiting, reporting structures, and other administrative matters have no bearing on CP Rail's obligations to enforce the law. Your response is inconsistent with CP Rail Police's disclosure obligations as a public, statutory body. The CP Rail Police's website confirms that CP Rail police:

"Members can detain, arrest, use force, search and compel people to court and although they are employed by the railway company they are deemed to **public servants** the same as city police who are employed by the municipality but are agents of the Crown."

CP Rail Police's "Common Questions" section of the website also states that:

"In Canada CP Police Service members are employed by Canadian Pacific Railway but are **public servants, sworn to the Crown to uphold the law and protect the public**. They are the same as city police who are employed by the municipality but are agents of the Crown."

Therefore, unlike a private company, CP Rail Police has a public mandate to be transparent about its structures, powers, and procedures, especially if members of the public have questions about how justice was administered in a given instance. The general information we requested is neither privileged nor confidential. Further, CP Rail Police has a Professional Standards department that processes information requests. This is consistent with access to information requests that all provincial and federal government bodies must entertain as part of their public transparency mandates.

Your letter also states that Jamie Jijian's death was investigated by other federal agencies. I believe that you are referring to Transport Canada's investigation. This proposition is problematic for two reasons.

First, Transport Canada does not have the mandate to investigate or prosecute potential violations of the *Criminal Code*. CP Rail Police does. The evidence and witness list that we have accumulated concerns *potential* criminal liability in relation to Jamie Jijian's death. Therefore, given that Jamie Jijian died at the CR Rail workplace, it is reasonable to conclude that CP Rail Police had, or should have had some role in any investigation. This is expected, even when foul play is not immediately evident. It is also reasonable to conclude that at the very least, the circumstances of Jamie's death should have raised questions about a potentially criminal component beyond a mere regulatory shortfall (which is Transport Canada's focus). However, Jamie's survivors have no idea if CP Police ever followed up on leads that would have identified potential violations of the Westray amendments to the Criminal Code.

Second, even Transport Canada's regulatory investigation, which appears to be the only inquiry that took place into Jamie's death, was secretive and appears to have been incomplete. My client managed to obtain a copy of the main body of Transport Canada's report, which the CBC obtained through other channels. Transport Canada had refused to release any part of that report. The Ministry still refuses to release this report or its appendices. Of the portions that became public, the Transport Canada report paints a troubling picture. It shows that CP Rail was responsible for many major shortfalls that precipitated Jamie's death. The report also shows that CP Rail strenuously resisted efforts to make the necessary reforms to the systemic issues that led to this terminal incident. Transport Canada has provided no answers as to what further actions were taken after that report was created, and whether CP Rail ever provided answers to the material questions surrounding Jamie's death. Worse, despite the findings of wrongdoing in that report, no person or entity was ever sanctioned or fined in any way. CP Rail has remained tightlipped and has refused to entertain Ms. Jijian's queries about the death of her husband. Transport Canada has refused to engage her either.

This case is especially troubling because it sends a message to workers that they are more likely to get accountability and transparency if they are the victims of homicide outside the workplace compared to within the workplace. The fact that workers can die at work as the result of employer misconduct, and their survivors get no news or resolution beyond a secret regulatory investigation is unacceptable.

This is why we wrote our initial letter. We want to know if at all CP Rail investigated this matter, and if so, what the conclusion was. If not, we also want to know why. Additionally, we need to know whether if initiated, any such investigation would put CP Police in direct conflict with the leadership that directs its affairs, and which *may* have been partly responsible for Jamie's death. Given the devastating impact that Jamie Jijian's death had on his family, his survivors have the right to question how relevant authorities handled this matter and what the relationships were between the various entities that must be engaged to ensure that justice is done.

With these points in mind, we are submitting a Request for Access to Records to the Professional Standards Department, which has a mandate to deal with such requests. I have attached a copy of that request for your reference. Ms. Jijian has a direct interest in any material or records relating to her husband's death and has authorized me to pursue this matter on her behalf. She also has the general right as a citizen to obtain administrative, structural, and financing information about a public body that had the sole mandate to conduct a criminal investigation into the death of her husband. If the Professional Standards Department will not disclose any of the information we seek, we will then proceed to challenge this decision as necessary.

Thank you,

A handwritten signature in black ink, appearing to read 'Tavengwa Runyowa', with a stylized flourish extending to the right.

Tavengwa Runyowa



Ken Marchant
Chief of Police
CP Police Service

Bldg #5 - 7550 Ogden Dale Rd
Calgary, AB T2C 4X9

24/7 1 800 716 9132
T 403 303 8837
ken_marchant@cppoliceservice.com

November 9, 2016

Runyowa Law
7th Floor, 2010 – 11th Avenue
Regina, Saskatchewan S4P 0J3
Attention: Tavengwa Runyowa

Dear Sir;

Re: Investigation into the death of Jamie Jijian

Thank you for your letter dated October 5, 2016, captioned in the above referenced line.

I acknowledge receipt with your letter of a Request for Access to Records to the Professional Standards Department. This has been forwarded to the appropriate official charged with responding to such requests.

The absence of a response to the remainder of your letter should not be understood to be acquiescence to the contents thereof.

Trusting this is satisfactory.

Ken Marchant
Chief of Police



Attachment 5

February 25, 2020

BY COURIER

Commissioner Thomas Carrique
Ontario Provincial Police
General Headquarters
Lincoln M. Alexander Building
777 Memorial Avenue
Orillia, ON, L3V 7V3

Dear Commissioner, Carrique,

RE: Open letter raising questions about the Ontario Provincial Police's jurisdiction over railway-related policing incidents in Ontario, and the OPP's working relationship with railway police forces.

I represent Tara Jijian whose husband died while working at the CP Rail yard in Regina (2013). I also represent Lori Desrochers and Kaity Timmerman who are the survivors of Kevin Timmerman. Kevin was Lori's ex-husband and Kaity's father. He died while working at the CN Rail yard in Saskatoon (2015). I raise my clients' cases only to provide the background for the concerns we present in this letter that are relevant to Ontario. My clients' cases raise important questions about Canadian railway policing and the Ontario Provincial Police's (OPP) jurisdiction and involvement in this arena.

This letter arises from, but extends beyond, the ongoing railway protests involving the Wet'suwet'en First Nation, the blockades related to those protests, and the capacity of the OPP's involvement. The OPP has been active in policing this dispute, including by arresting protestors and removing blockades along rail lines. The questions I raise in this letter will remain relevant even after the Wet'suwet'en dispute is resolved. That is because they relate to important questions about your police force's jurisdiction and whether your officers have the authority to be involved in these protests in any capacity.

Our questions are as follows:

- **Question 1:** In light of Sections 44 and 44.1 of the *Railway Safety Act* (R.S.C. 1985, c. 32, 4th Supp.) which provide that private railway companies may own, appoint, and control their own police forces, does the OPP have the independent **jurisdiction** to conduct any policing functions within 500 meters of property owned or controlled by Canada's railway companies? If so, pursuant to what legal authority?
- **Question 2:** In light of Sections 44 and 44.1 of the *Railway Safety Act* (R.S.C. 1985, c. 32, 4th Supp.) which provide that private railway companies may own, appoint, and control their own police forces, does the OPP have the independent **duty** to conduct any policing functions within 500 meters of property owned or controlled by Canada's railway companies? If so, pursuant to what legal authority?
- **Question 3:** In light of Sections 44 and 44.1 of the *Railway Safety Act* which provide that private railway companies own, appoint, and control their own police forces, does the OPP have the independent jurisdiction and/or duty to conduct any policing functions relating to individuals implicated in policing matters within the railway police forces' jurisdiction (beyond the 500 meter zone)? If so, pursuant to what legal authority?
- **Question 4:** If the OPP has, and always had, the jurisdiction to investigate railway-related deaths, serious injuries, derailments, oil spills and other harmful railroad incidents, has the OPP ever investigated, charged, or facilitated the criminal or regulatory prosecution of any Canadian railway company, its **management, board** or **officers**?

When people die violent, sudden, or unnatural deaths, criminal liability and the necessary investigations cannot be precluded upfront. This means that when employees die in the course of their employment, or railway explosions kill people in Canadian cities, criminal liability can only be ruled out after a thorough and independent investigation. That has not happened to for the vast majority of victims. The disparity between railway incidents and the laying of criminal charges is stark. According to the TSB:

Overall, **1172 railway accidents** were reported to the TSB in 2018, a **7% increase over 2017 and a 13% increase from the 5-year average of 1035**. Most of the increase relates to non-main-track derailments of 5 or fewer cars. There were 57 rail-related fatalities reported in 2018, well below the 5-year average of 74, 34 of which involved trespassers. The number of crossing-accident fatalities was the same as in 2017 (19) and similar to the 5-year average (21), but the number of serious injuries due to crossing accidents nearly doubled (42) compared to 2017 (22) and to the 5-year average (24).

Further, between 2008 and 2018, the TSB reported more than 800 railway-related fatalities and more than 10,000 rail accidents for the same period.

- <https://www.tsb.gc.ca/eng/stats/rail/2018/sser-ssro-2018.html>.

Despite these alarming statistics, we were unable to identify any cases where the OPP independently investigated and criminally charged any railway company (or its corporate officers, board, or and management) for any of these incidents. We were also unable to find any cases that proceeded to a prosecution or conviction. It is statistically improbable that none of these incidents and deaths were due to the railway companies' corporate actions or omissions. Even if we are wrong in this respect, this cannot be presumed without fulsome investigations. That is why it is critical for Canadians to understand which police service is really responsible for investigating these incidents and advancing prosecutions. It is our position that the railway police are disqualified because of an untenable conflict of interest. Their officers would be investigating the superiors to whom they report.

As you know, the Westray amendments to the Criminal Code were specifically designed to address workplace-related deaths and injuries.

- <https://www.justice.gc.ca/eng/rp-pr/other-autre/westray/p1.html>

The Westray amendments were made in recognition that such cases cannot be assumed to be confined to regulatory occupational health and safety incidents. When people die violent, sudden, or unnatural deaths, criminal liability cannot be precluded. This means that when employees die in the course of their employment, or railway explosions kill people in Canadian cities, criminal liability can only be ruled out after a thorough and independent investigation. The disparity between railway incidents and the laying of criminal charges is stark.

That is why it is critical for Canadians to understand which police service is really responsible for investigating these incidents and advancing prosecutions. If railway police are solely responsible, then they too should shoulder the burden of policing protestors on railway property.

As you know, the Transport Safety Board and Transport Canada investigations are not intended to be used for legal proceedings and are not conducted to facilitate prosecutions.

- <https://www.tsb.gc.ca/eng/qui-about/index.html>.

Given that railway police officers work directly for the rail companies and are answerable to corporate management, this raises questions about whether the OPP has been deferring any investigations of fatal and other serious incidents to the very management that may be responsible. Hence, we request the OPP's clarification of what criminal investigations it has ever conducted and what charges it has ever laid with respect to Canadian railway deaths, serious injuries, explosions, derailments, and discharges of hazardous materials into the environment.

- **Question 5:** If Canada's railway police forces have primary jurisdiction over policing incidents within 500 meters of railway property and jurisdiction over persons whose actions touch on railway affairs (Railway Safety Act, Sections 44 and 44.1), has any railway company ever asked the OPP to investigate a workplace fatality or other railway disaster (i.e. with the view of determining whether any criminal or quasi-criminal charges should be laid)? Please clarify the existence of any memoranda of understanding, request for assistance, or other relevant legal agreements (formal or otherwise) between the OPP and Canada's railway police forces. Please also clarify whether the railway companies reimburse the OPP for providing any assistance (if any).
- **Question 6:** With respect to the Wet'suwet'en First Nation protests, did the CN Rail Police Service, the CP Police Service, or Via Rail Police Service, formally request the OPP to participate in, or take over policing actions related to these protests anywhere in Canada?

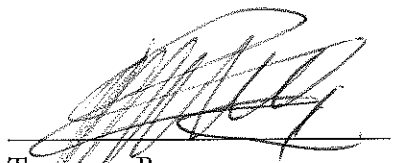
The public needs an unequivocal statement from the OPP regarding the extent of the police force's jurisdiction and the basis for its involvement in any protests or policing events within railway police jurisdiction. Furthermore, as a question of transparency and accountability, the public deserves to know the extents and limits of law enforcement powers, what OPP police officers can do, where they can do it, and whether their jurisdiction is shared.

Given the above and Sections 44 and 44.1 of the *Railway Safety Act*, it appears that the OPP has no jurisdiction to be arresting any Wet'suwet'en-related protestors. There is a difference between police forces cooperating on one hand, and one police force delegating its work to another. The latter situation is what appears to be happening with the Wet'suwet'en situation. Even if the railway police's jurisdiction is concurrent with that of the OPP or the OPP's jurisdiction is not "primary", that does

not dispense of all the underlying concerns. Another concern relates to the potential redirection of public funds to private companies with a mandate to fund their own policing. By taking the leading role in policing such protests, the OPP may be subsidizing private railway companies' law enforcement bills, and at the public's expense. The railway companies cannot have it both ways. They cannot summon the OPP to assist with arresting protestors while remaining in the background, and then foreclose on the OPP's investigation of incidents that implicate the company (deaths, derailments, explosions etc.). That is unless the OPP has expressly disavowed such jurisdiction, notwithstanding any positions taken by the railway companies. In any event, it appears that the railway police forces are outsourcing the politically volatile task of dealing with the Wet'suwet'en protests to the OPP, the RCMP and other public police forces.

There is compelling evidence that jurisdictional ambiguity between the railway police forces and other law enforcement bodies has led to an accountability vacuum in Canadian policing. That was the case with my clients in Saskatchewan. It appears that meritorious cases across Canada, including in Ontario, are not being consistently and fully investigated because the railway police forces with the jurisdiction over these incidents, are employed by the very the subjects of their investigations. If the OPP has the jurisdiction to investigate such incidents, this would provide citizens with clarity on whether they can approach the OPP to conduct investigations into railway-related incidents from a policing perspective (beyond the non-punitive and prospective correctional goals of the TSB and Transport Canada investigations). This includes fatalities, injuries, derailments, and releases of hazardous gases into the environment. We look forward to your response to the questions above.

Thank you,



Tavengwa Runyowa

(Counsel for Tara Jijian and sons, Lori Desrochers, and Kaity Timmerman).

Ministry of the
Attorney General
Civil Law Division

Ministère du
Procureur général
Division du droit civil

Legal Services Branch
Ministry of the Solicitor General

Direction des services juridiques
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E-mail: Chris.Diana@ontario.ca

June 25, 2020

Via Email to law@runyowa.com

Mr. Tavengwa Runyowa
Runyowa Law
Royal Bank Building
7th Floor 2010-11th Avenue
Regina SK S4P 0J3

Dear Mr. Runyowa:

Re: Open Letter raising questions about the OPP's jurisdiction over rail-way-related policing incidents in Ontario, and the OPP's working relationship with railway police forces

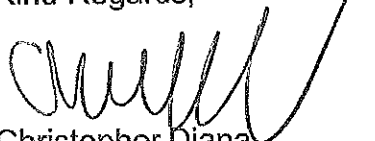
I am counsel with the Legal Services Branch, Ministry of the Solicitor General. In that capacity, I act on behalf of the Commissioner of the Ontario Provincial Police (OPP) with respect to various matters. I have reviewed your letter to Commissioner Carrique with respect to railway-related policing incidents in Ontario. I am pleased to respond on his behalf.

I note your questions about policing jurisdiction of the OPP. The OPP's jurisdiction is set out in the *Ontario Police Services Act*, R.S.O. 1990, c. P.15, and the legal responsibilities and duties of its officers are established in various statutes and the common law. The OPP has jurisdiction to police areas in Ontario that are not policed by municipal police services, including areas adjacent to railways.

While the OPP polices areas adjacent to railways, including investigating death or injury involving railways/trains as a result of vehicles or pedestrians being struck, we have not been able to identify any incidents of the OPP charging railway companies for workplace fatalities or railway disasters.

With regard to the recent protest activity in relation to the We'etsutween land issue, the OPP's role is to ensure public safety and enforce the law. The OPP respects the right of everyone to freedom of expression and peaceful assembly. However, the OPP is legally obligated to assist the Sheriff in enforcing injunctions pursuant to section 141(2) of the *Courts of Justice Act*. As there are currently matters before the court with respect to such protests, it would not be appropriate for me to comment or provide any further information.

Kind Regards,



Christopher Diana
Senior Counsel

Attachment 6

August 19, 2020

BY EMAIL & COURIER

Chief Constable Adam Palmer
President: The Canadian Association of Chiefs of Police
C/o Vancouver Police Department
3585 Graveley St.
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

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 CACP 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 policies 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
3585 Graveley St.
Vancouver, B.C. Canada V5K 5J5.

Cc by courier: Deputy Chief Constable Norm Lipinski
The Canadian Association of Chiefs of Police
Law Amendments Committee
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 recommendations concerning how the procedures are to be made public.

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.

Tavengwa Runyowa
Runyowa Law
7th Floor, Royal Bank Building
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Fax: 306-206-2701
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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

AttentionTravengwa 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 7



Regina Police Service

Working together to keep Regina safe

Your File _____

Our File _____

CONFIDENTIAL

March 19, 2020

Runyowa Law
7th Floor RBC Building
2010 – 11th Avenue
Regina, SK
S4P 0J3

Dear Tavengwa Runyowa

Re: *The Local Authority Freedom of Information and Protection of Privacy Act*
Access to Information Request #20-0043

This is in response to your Access to Information request pursuant to *The Local Authority Freedom of Information and Protection of Privacy Act*, received by the Regina Police Service on February 27, 2020 quoted as follows:

“Jamie Jijian – Regina Police Service File – RA13002117. The record we are seeking contains any investigation or incident reports produced by the Regina Police Service in regards to the railway accident which occurred on January 12th, 2013 at the CP Rail Yard property in Regina, Saskatchewan, which caused the death of Jamie Jijian. This includes; all notes, transfer documents to other police services, and any records reflecting which Police Services had jurisdiction to investigate or lay charges.”

We have processed your access request. Three pages of the responsive record(s) have been withheld in full. Those records are withheld under sections 14(1) (k) and 28(1) of *The Local Authority Freedom of Information and Protection of Privacy Act* (the “Act”) which states:

14(1)(k) A head may refuse to give access to a record, the release of which could interfere with a law enforcement matter or disclose information respecting a law enforcement matter.

28(1) No local authority shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 29.

The remaining responsive records are attached. Pursuant to section 8 of the Act, some of the information contained in the enclosed records has been redacted. The detailed sections supporting the excising of particular information are indicated on the face of each page in lieu of the original text. We have redacted the excepted information so that we could disclose to you the remaining information in the records.





Regina Police Service
Working together to keep Regina safe

Your File _____

Our File _____

The redacted information is withheld from disclosure under sections 13(2), 14(1) (e), 14(1)(k) and 28(1) of the Act which states:

13(2) A head may refuse to give access to information contained in a record that was obtained in confidence, implicitly or explicitly, from another local authority or a similar body in another province or territory of Canada.

14(1) (e) A head may refuse to give access to a record, the release of which could reveal investigative techniques or procedures currently in use or likely to be used.


14(1)(k) A head may refuse to give access to a record, the release of which could interfere with a law enforcement matter or disclose information respecting a law enforcement matter.

28(1) No local authority shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 29.

I have included a copy of all above-noted sections of the Act for your reference.

If you wish to request a review of this decision, you may complete a Request for Review form and forward it to the Saskatchewan Information and Privacy Commissioner within one year of this notice. A copy of this form can be found at <http://www.qp.gov.sk.ca/documents/Forms/L27-1R1-B.pdf> or you may contact the Saskatchewan Information and Privacy Commissioner at 306-787-8350.

If you have any questions, please contact me at 306-777-8656 or by email at info@reginapolice.ca.

Sincerely, 

Access and Privacy Officer

Enclosure(s)



Index of Records

Regina Police Service

Access to Information Request #20-0043

March 20, 2020

Table 1** released in full, released in part, withheld in full

Page No.	General Description	Status	LA FOIP Exemptions
1 - 13	Regina Police Service File RA13002117	Released in part	13(2), 14(1)(e), 14(1)(k), 28(1)
3 Pages	Print Card and Witness Statements	Withheld in full	14(1)(k), 28(1)

Table 2

LA FOIP Exemptions	Page No.
13(2)	8,11
14 (1)(e)	12
14(1)(k)	8,11
28(1)	1,2,3,5,6,7,10,12

General Report

SN30025

Task: T130009596 [Init rpt - Closed] Due: 2013/01/13 05:23

Occurrence: RA13002117 Sudden Death [8540.0003] @2013/01/12 03:09

Author: #799 BOON, B.

Report time: 2013/01/12 05:33

Entered by: #799 BOON, B.

Entered time: 2013/01/12 05:33

Report:

1. On 2013/01/12 at approx 0310hrs Sgt Dandrea, Cst Lawson and myself were dispatched to the the CP rail yards in the area directly North the Casino Parkade for a report of an industrial accident. EMS, RFD were also dispatched.

2. Canadian Pacific Railway called in stating that one of the conductors was pinned between two rail cars. Further information was that the male that was pinned was unconscious.

3. Upon arrival, an RFD member directed myself and Cst Lawson to where the male was trapped. We crossed over 4 sets of train tracks to where we located Sgt Dandrea who directed us towards a male pinned between two rail cars. The male in the CP rail yard was located directly North of the Casino Parkade. The male was wearing a blue construction parka and was level with a ladder was situated on the side of the South side of the rail car as if he had been standing on it. The rail car that the the male was riding on ran parrallel with another train track of which was full of rail cars. The tracks were approx 4 feet apart of one and other, but drew closer together, and eventually connected to one and other. The male identified as Jamie JIJIAN was pinned between two rail cars where the two tracks connect into one. I was informed by EMS that JIJIAN was deceased.

4. Sgt Dandrea tasked me to obtain a statement²⁸⁽¹⁾

28(1)

28(1)

- 28(1) JIJIAN²⁸⁽¹⁾ were moving rail cars into track F3.
- Prior to the move, 28(1) asked the 28(1) how full the track would be once the rail cars had all been added. The supervisor said that the track would be full.
- 28(1)
- JIJIAN was on the last railcar and was instructed to advise them over the radio way in advance before F3 connected with F4 and if they were going to run out of room they would put the rail cars elsewhere.
- 28(1) asked JIJIAN if he was comfortable with the move and JIJIAN said that he was.
- 28(1) JIJIAN told them over the radio that there was room for 10 cars/500 feet. 28(1)
- 28(1) JIJIAN told him over the radio that there was room for 10 cars, 28(1)
- 28(1) asked JIJIAN how much room he had to which JIJIAN replied "lots". 28(1)
- 28(1) meaning the railcars came to an immediate stop. This would have still left approx 7 railcars of free space before F3 connected to F4 according to JIJIAN's information.
- After the rail cars stopped moving, 28(1) radioed JIJIAN to see if he was clear, but there was no answer. 28(1) continued to call JIJIAN but JIJIAN did not respond. 28(1) tried calling JIJIAN, but JIJIAN did not respond to 28(1) either.
- At approx 0305hrs 28(1) attended to the rail car that JIJIAN was riding on and located him pinned to another railcar on F4 where F3 connects to F4. JIJIAN was unconscious and unresponsive.
- 28(1) phoned the 28(1) advising him of the incident and informed him to phone emergency responders.
- 28(1) stated that JIJIAN was in good spirits when he started work and was talking about how he had a new job at IPSCO and that he only had a few shifts left with CP rail. 28(1) JIJIAN misjudged that amount of room he actualy had when he communicated that he had room for 10 cars.

Restricted

28(1)

5. 28(1) 28(1) had the same verbal recollection of what JIJIAN had communicated to them about how much room there was for rail cars in F3 before it connected to F4. 28(1)

6. Coroner, 28(1) attended and conducted her investigation of JIJIAN's death. Ident, Cst Fleece also attended and photographed the scene. Refer to Cst Fleece's supplement report for further details of the scene.

7. We remained on scene until approx 0650hrs when Cst Otitoju and Cst Heileger relieved us of our position.

8. Cst Fleece was still photographing the scene when we left, and once he was finished, it was going to be arranged for the train cars to move to free JIJIAN from where he was pinned. I advised Cst Fleece that JIJIAN 28(1) 28(1) therefore his fingerprints would need to be obtained.

9. Refer to other reports for other details of this occurrence. CP police member, 28(1) was given the file number 28(1) 28(1)

10. Involvement concluded.

Supplementary Occurrence Report

SN30025

Task: T130009591 [Follow-up report - Closed] Due: 2013/01/13 05:21

Occurrence: RA13002117 Sudden Death [8540.0003] @2013/01/12 03:09

Author: #526 DANDREA, R.

Report time: 2013/01/12 05:24

Entered by: #526 DANDREA, R.

Entered time: 2013/01/12 05:24

Report:

1. On 13/01/12 at approx 0311 Hrs I was dispatched to the area of the CP Rail tracks just behind the Casino parking lot on South Railway and St John St for a report of a CP Rail worker who had been caught between two trains.

2. I arrived at the same time as EMS and Regina Fire Dept. We were led to the scene by ²⁸⁽¹⁾ [redacted]. We crossed two other sets of train tracks which held trains and had to climb over the trains to get to the scene of the accident. Due to the tight area between the trains I could only get to approx 20 feet from the victim, JIJIAN. His body was intact but he was wedged between two train cars that had side swiped one another. JIJIAN was hanging onto a ladder on the side of one of the cars when the two trains made contact. His body was approx four feet off of the ground.

3. Csts. Boon and Lawson attended a short time later and began collecting names of witnesses and taking statements. ²⁸⁽¹⁾ [redacted]

²⁸⁽¹⁾ [redacted] I advised Comm Center to notify the Coroner. A short time later I spoke to Coroner ²⁸⁽¹⁾ [redacted] ²⁸⁽¹⁾ [redacted]

4. Cst. Fleece attended a short time later followed by ²⁸⁽¹⁾ [redacted] at approx 0420 hrs. I took them both to the scene and ²⁸⁽¹⁾ [redacted] got to within a few feet to view the body. ²⁸⁽¹⁾ [redacted] spoke to CP Rail employees including ²⁸⁽¹⁾ [redacted] advising them of the situation and protocol.

5. ²⁸⁽¹⁾ [redacted]

6. IEIS revealed that a next of kin ²⁸⁽¹⁾ [redacted]
²⁸⁽¹⁾ [redacted]

7. I cleared the scene at 0530 hrs and updated the Watch Commander. Sgt. Lamer was then advised of the incident as he was to take over the investigation as the day shift supervisor.

8. Forward to main file.

Supplementary Occurrence Report

SN30025

*Task: T130009672 [Follow-up report - Closed] Due: 2013/01/13 08:17**Occurrence: RA13002117 Sudden Death [8540.0003] @2013/01/12 03:09**Author: #696 HEILIGER, A.**Report time: 2013/01/12 12:25**Entered by: #696 HEILIGER, A.**Entered time: 2013/01/12 12:25***Report:**

1. On 13/01/12 Cst. Otitoju and I were dispatched to relieve Cst. Lawson and Cst. Boon at the Canadian Pacific Railway yard, just north of the Casino employee parking lot.
2. We arrived onscene at 0650 hours and met with Cst. Fleece and Sgt. Lamer.
3. We positioned out police car on the cleared road just south of the scene on the tracks. Cst. Fleece advised us that the trains were very close together and it was difficult to attend to the position where the deceased was pinned. He stated that CP was going to move one of the trains shortly, but had not done so yet.
4. We remained on scene until 0812 hours. No one entered or exited the scene on the tracks while we were present.
5. This concludes my involvement. Forward to main file.

Supplementary Occurrence Report

SN30025

Task: T130009896 [Follow-up report - Closed] Due: 2013/01/13 18:10

Occurrence: RA13002117 Sudden Death [8540.0003] @2013/01/12 03:09

Author: #586 LAMER, D.

Report time: 2013/01/12 18:10

Entered by: #586 LAMER, D.

Entered time: 2013/01/12 18:10

Report:

1. On 13/01/12 at approx. 06:30 hours, I attended to the scene of the industrial accident at the CP rail yard, in the 2100 block of South Railway.

2. Cst's Boon and Lawson were on scene, along with the coroner, ²⁸⁽¹⁾ CP police and staff and Cst. Fleece from IDENT. Cst. Fleece was taking photos of the scene.

3. The scene was not going to be held by the police. Cst Heiliger and Otitoju came to the scene to provide relief for Cst Lawson and Cst Boon. They remained at the scene for a short period, until it was decided that police were not going to be responsible for the scene. Occupational Health and Safety, the Coroner and CP Rail was looking after the investigation into how the death took place.

4. I was informed by the corner that she wished to have me do the notification of JIJIAN, Jamie's family. ¹⁴⁽¹⁾
^(k)

5. At approx. 10:20 hours, I was contacted by ²⁸⁽¹⁾ to have me start to notify the next of kin.

⁶ ²⁸⁽¹⁾ ²⁸⁽¹⁾ ²⁸⁽¹⁾ ²⁸⁽¹⁾ informed me that JIJIAN, Jamie had a wife and three children. I was not aware of this and neither was anyone else that I had spoke to from CP.

7. I then took ²⁸⁽¹⁾ to 71 Irvin Cres, and met with JIJIAN, Tara. She answered the door and I informed her as to why I was there and that her husband had been killed in the accident while at work. As expected she was extremely upset and in shock. She called her mother, BIASUTTO, Marnia to come and be with her and Linda at the residence.

8. I provided all the family members with the file number, my phone number and the coroner information and phone number. I also let them know that staff from CP Rail was going to come and speak with them. They were very upset, but had no further question for me.

9. I told the coroner that the family had been notified.

10. That concluded my involvement in the file.

Supplementary Occurrence Report

SN30025

Task: T130010787 [Follow-up report - Closed] Due: 2013/01/15 09:34

Occurrence: RA13002117 Sudden Death [8540.0003] @2013/01/12 03:09

Author: #586 LAMER, D.

Report time: 2013/01/14 09:40

Entered by: #586 LAMER, D.

Entered time: 2013/01/14 09:40

Report:

1. On 13/01/14, at approx. 09:30 hours, I spoke to the family of the victim JIJIAN, Jamie. They called me to ask to get his personal effects, keys, wallet, cell phone returned to the family.
2. Those items were exhibited by Cst. Fleece. There is no need to keep the items. I provided ²⁸⁽¹⁾ with the file number.
3. Task sent to EMU for FYI.
4. Follow up concluded.

Supplementary Occurrence Report

SN30025

Task: T130009784 [Follow-up report - Closed] Due: 2013/01/13 13:33*Occurrence:* RA13002117 Sudden Death [8540.0003] @2013/01/12 03:09

Author: #650 FLEECE, G.
Entered by: #650 FLEECE, G.

Report time: 2013/01/15 10:57
Entered time: 2013/01/15 10:58

Report:

RA13002117

Notebook 2152 (039) Pages 040, 041 and 042

Submitted

1. On 13/01/12 at 03:39 hours, I was contacted by the communication center. I was requested to attend to the C.P. Rail yard for an industrial accident.
2. I arrived on scene at 04:24 hours. The scene was located directly north of 1600 Halifax Street or directly north of the Casino Regina Building. I met with CST BOON and CST LAWSON who informed me that the victim was Jamie JIJIAN.
3. I followed SGT DANDREA and the coroner ²⁸⁽¹⁾ into where the scene was. I observed that I crossed four train tracks and the victim was pinned between two cars on the fourth and fifth tracks from the south. I also observed that the victim JIJIAN was intact, in an upright position, facing north and approx four feet off of the ground.
4. I also observed that there was deep snow covering the tracks. The train car on the south veered north and hit the stationary train on the north. The north train car was a flat bed with large pipes strapped to it while the south train car was a gondola filled with scrap metal.
5. The scene was photographed, with limited access to the victim.
6. Once the scene was photographed as I had found it, the south train car was to be moved to remove the

victim as well as photograph the victim closer and both sides of the train cars.

7. Due to unknown delays the train was not moved until after sunrise.

8. 13(2) [REDACTED]

9. The rest of the scene was photographed 14(1)(k) 14(1)(k)
14(1)(k) Hospital Morgue 14(1)(k) The victim was transported to the Regina Pasqua

10. At 12:05 hours, I was handed a bag of the victim's personal effects that were later exhibited in E.M.U. to be picked up at a later date by the victim's family. The personal effects were a cell phone, three key rings and a wallet with all contents.

11. At 12:07 hours, I fingerprinted the victim, with the coroner's permission. The right thumb #1 and right index finger #2 were fingerprinted 14(1)(k)

12. All photographs were downloaded 14(1)(k) [REDACTED]

13. This concludes F.I.U. involvement at this time.

Supplementary Occurrence Report

SN30025

Task: T130034456 [Follow-up report - Closed] Due: 2013/03/05 07:30

Occurrence: RA13002117 Sudden Death [8540.0003] @2013/01/12 03:09

Author: #650 FLEECE, G.
Entered by: #650 FLEECE, G.

Report time: 2013/02/13 07:15
Entered time: 2013/02/13 07:15

Report:

1. The fingerprints from the victim JIJIAN confirmed that the victim was JIJIAN. 14(1)(k)
14(1)(k)

2. 14(1)(k)
14(1)(k)

3. The victim has been identified as JIJIAN, Jamie Shane 1973/04/24.
4. This concludes F.I.U. involvement in the coroner's investigation at this time.

RA13002117

V → JANIE JIJIAN
73/04/04

28(1)

~~04:24~~ called by comm center
03:39

04:24 left PO arrived at
scene

- Directly N of Eagles Club
1600 Halifax St.
- 4 tracks from south.
- several feet off of ground
pinned between two
cars.

Dispatch from CAD Details

SN30025

Created time: 2013/01/12 18:50

Call created: 2013/01/12 03:09:14 CS

Caller

CANADIAN PACIFIC LIMITED; -- 2305 DEWDNEY AV (306 777-0805)

Event remarks

Timestamp	Operator	Line	Remark
20130112030913CS	5145	0	SPECIAL ADDRESS COMMENT:
20130112030913CS	5145	1	14(1)(e)
20130112030913CS	5145	2	BUS SASKTEL 30635900768091 REGN_POLICE 306 777 6271REGN_FIRE 306 777
20130112030913CS	5145	3	6924REGIONAL_COMM 306 569 5973
20130112030913CS	5145	4	CONDUCTOR PINNED BETWEEN 2 RAIL CARS...
20130112030913CS	5145	5	DOESNT SOUND LIKE HE IS CONSCIOUS... CN IS NOT ONSCENE...
20130112030924CS	5153	0	** Event P13002117 was viewed at: 20130112030924CS
20130112030924CS	5153	1	** >>>> by: 5153 on terminal: pd01
20130112030938CS	5145	0	*** CN IS TRYING TO DIRECT EMS SOUNDS LIKE THE BEST WAY TO GET THERE MAY BE BY
20130112030938CS	5145	1	THE CASINO..
20130112030955CS	5145	0	** BACKSIDE THRU THE CASINO BETWEEN THE PARKADE/TOWN AND COUNTRY..
20130112031006CS	5145	0	** Event Location changed from "8 AVE/WINNIPEG ST: BEHIND MAGNOLIA ON CPR RAIL"
20130112031006CS	5145	1	to "SASKATCHEWAN DR/BROAD ST: BEHIND MAGNOLIA ON CPR RAIL" at: 13/01/12 03:10:06
20130112031006CS	5145	2	** >>>> by: SEANNA PARKER on terminal: cmp1
20130112031037CS	5145	0	CP IS TRYING TO GET THE OTHER TRAINS TO STOP..
20130112031112CS	5145	0	WILL BE CLOSER TO WINNIPEG ST BUT OFFICERS WILL NEED TO GO THRU OFF SOUTH
20130112031112CS	5145	1	RAILWAY BY TOWN & COUNTRY..
20130112031344CS	5861	0	WATCH ADVISED
20130112031551CS	5145	0	EMS IS ONSCENE...
20130112033756CS	5153	0	REQ CORONER
20130112034113CS	5861	0	CORONER IS 28(1) IDENT MEMBER CST FLEECE ER
20130112034203CS	5125	0	CP CONFIRMS ALL TRAINS IN THE AREA HAVE BEEN STOPPED
20130112043021CS	5147	0	28(1)
20130112043021CS	5147	1	TO SGT DANDREA 306-313-0633
20130112063834CS	5146	0	1- NEED DAY CAR TO RELIEVE 14

Persons

Name	Race	Sex	Height	Age	Height	Weight	Hair	Eyes	Remarks
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Vehicles

Color	Year	Make	Model	License	Type	Province	License Year	Remarks
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Towed

Created	Towed to	Unit Member	Tow date/time	Towed from	Reason	Make	Model	Color (1)	Color (2)	Province	Vehicle year	License	VIN
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