

# **Appendix A:**

Canadian National Railway  
Shareholder Proposal  
Correspondence

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# TAB 1

December 3, 2020

- BY COURIER -

Canadian National Railways (Headquarters)  
935 de La Gauchetière Street West  
Montreal, Quebec  
Canada H3B 2M9

Attn: Board of Directors for Canadian National Railway,

**RE: CN Railway - Shareholder Proposals being made by Pamala Fraser.**

My name is Ms. Pamela Fraser of 515 Home PI SE, High River, Alberta T1V 1K1. I am the owner of 54 shares of Canadian National Railway Company (CNR.TO). I hold these shares through my Credential Qtrade Securities Inc. account that is managed by OMP portfolio managers. Based on the attached account summary from Credential, these shares are currently valued at approximately \$6,352.56.

Under Section 137 of the *Canada Business Corporations Act* owners of voting shares are entitled to make shareholder proposals for consideration at the Annual Shareholder Meeting. Under Section 46 of the *Canada Business Corporations Regulations, 2001*, the person making a shareholder proposal must have been the owner of the required amount of shares for more than six months prior to the date listed by the corporation for submission, and the shares must have a value in excess of \$2,000.00. I have been the owner of these shares for longer than six months and they are valued at more than the minimum value.

Please find attached to this letter two separate shareholder proposals that I wish to put forward for inclusion in this year's CN Management Information Proxy Circular. If further information is required under Section 137(1.4) of the *Canada Business Corporations Act* regarding my ownership of shares, please let us know at your earliest convenience.

Please direct any further communications about my shareholder proposals through my lawyer, Mr. Tavengwa Runyowa of Runyowa Law, in Regina, Saskatchewan. His contact information is:

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

Office phone: 306-206-2800

Cell: 306-209-9973

Fax: 306-206-2701

Email: [law@runyowa.com](mailto:law@runyowa.com)

Thank you,

**PAMELA FRASER**

---

Pamela Fraser

**Signature:**   
PAMELA FRASER (Dec 3, 2020 12:23 MST)

**Email:** [pamalama2@gmail.com](mailto:pamalama2@gmail.com)

December 3, 2020

- BY COURIER -

Canadian National Railways (Headquarters)  
935 de La Gauchetière Street West  
Montreal, Quebec  
Canada H3B 2M9

Attn: The Board of Directors for Canadian National Railway,

**RE: CN Railway - Shareholder Proposals being made by Pamala Fraser.**

I represent Ms. Pamela Fraser of 515 Home PI SE, High River, Alberta T1V 1K1. Ms. Fraser owns 54 shares of Canadian National Railway Company (CNR.TO). I understand that she holds these shares through her Credential Qtrade Securities Inc. account that is managed by OMP portfolio managers. Based on the account summary she attached from Credential, these shares are currently valued at approximately \$6,352.56.

Under Section 137 of the *Canada Business Corporations Act* owners of voting shares are entitled to make shareholder proposals for consideration at the Annual Shareholder Meeting. Under Section 46 of the *Canada Business Corporations Regulations, 2001*, the person making a shareholder proposal must have been the owner of the required amount of shares for more than six months prior to the date listed by the corporation for submission, and the shares must have a value in excess of \$2,000.00. Ms. Fraser has been the owner of these shares for longer than six months and they are valued in excess of the minimum value.

This being the case, please find attached to this letter two separate shareholder proposals that Ms. Fraser wishes to put forward for inclusion in this year's CN Management Information Proxy Circular. If further information is required pursuant to Section 137(1.4) of the *Canada Business Corporations Act* regarding her ownership of shares, please let us know at your earliest convenience.

Please direct any correspondence regarding these Shareholder Proposals to me. Our contact information is on our letterhead. However, you may also reach me directly on my cell phone at 306-209-9974. Further, apart from that number, e-mail is my preferred method of communication as I usually do not use the fax machine.

Sincerely,

*Tavengwa Runyowa*

Tavengwa Runyowa

(Representative of Ms. Pamela Fraser)

**Proposal - Request for the Board of Directors to institute a new safety-centred bonus system.**

**RESOLVED – That for the first CN Railway worker death in any applicable period, every manager and corporate officer’s performance bonus is automatically cut by 20% from the higher of the previous or current year’s projected figure, with further deductions of 15% for each subsequent death up to a maximum of 80%. Separately, every “serious injury” to a worker automatically deducts 2% from all managers’ and corporate officers’ bonuses up to an additional 14%.**

*Supporting statement.*

In safety conscious workplaces, every worker death is preventable. Even deaths and serious injuries whose causes appear limited to worker error have systemic foundations. Further, worker safety and profitability are allies, not antagonists. In modern industrial nations such as Canada and the United States, it has been demonstrated that safer workplaces enjoy higher worker morale, fewer workdays lost to injuries, and less hiring and training expenses.

The case of Alcoa Corporation, under the leadership of Mr. Paul O’Neil, affirmed the principle that in the long term, worker safety and profitability rise in tandem. Although, price-to-earnings ratios and stock prices are important, in the contemporary industrial landscape, these measures are only sustainable as the by-products of skillful and rigorous promotion of corporate values such as workplace safety.

In 2019, the Transport Safety Board (TSB), reported 1,243 railway accidents. This represents an 18% spike in the 5-year average. In 2019, the TSB reported 72 rail-related fatalities, a 20% spike in the 5-year average. These figures reflect 360 deaths and 6,215 accidents between 2014 and 2019. A substantial number of these incidents involved CN Railway operations.

Corporate strategy and remuneration policy must align with the objectives they intend to accomplish. Tying bonuses more resolutely with workplace and public safety will create a climate of collective responsibility that will reward CN Railway managers and corporate officers for “putting *their* money where their workers’ safety is”. The proposed bonus system is structured to provide an additional and galvanizing incentive for managers and corporate officers to hold each other accountable. Safety shortfalls by one manager or corporate officer will impose financial accountability on them all.

As ESG and the values that inspired its creation become increasingly important for investors and the public, there is no better expression of a corporation’s commitment to its customers, workers, and society than tying management’s bonuses to their collective success in securing workplace safety. The incentive to promote profitability in tandem with safety will also spark the



corporate imagination to redirect the focus from the expedience that often places these goals at odds. This proposal is bold, and necessarily so. Quantum leaps tend to require massive risks. In this case, grafting safety into the DNA of corporate strategy via the performance bonus system poses a modest risk to corporate leaders who are already tasked to guarantee workplace safety. Passing this resolution will make CN Railway the world's safest railway company by a comfortable margin.

**Proposal – The criminal investigation of all railway worker deaths and serious injuries by independent police forces in Canada and the US.**

**RESOLVED - That the Board shall require the CN Police Service to cede and proactively request the criminal investigation of all workplace deaths and serious injuries to the RCMP and independent police forces in Canada and the US. CN Police must play no investigative role in these cases.**

**Supporting statement.**

The CN Police Service has the same criminal law enforcement powers as Canada's public police forces. However, CN Police is wholly owned and controlled by CN Railway. As employees, CN Police officers are directly answerable to the corporation. This includes in criminal investigations. CN Railway can terminate its police officers without resorting to the courts that formalized their appointments. CN Police has no independent civilian oversight body. In Canada, CN Railway solely appoints the persons who address public complaints against its police force, and by extension, the corporation.

The above is problematic. The Westray laws require employers' potential criminal liability to be at the forefront of all investigations of workplace deaths and serious injuries. Therefore, CN Police's control over criminal investigations into the conduct of the corporate management it reports to, undermines public confidence in the integrity, impartiality, and independence of such investigations.

The status quo violates the legal principle of police independence, which requires police forces to be operationally independent, especially from the parties whose actions are under investigation. Canadians and Americans expect that all criminal investigations of railway fatalities and serious injuries are not controlled by the corporations that may be responsible.

The privatization of criminal law enforcement is inconsistent with Canadians' and Americans' conception of good, accountable, and modern governance. This situation threatens to jeopardize CN Railway's Environmental, Social, and Governance (ESG) rating, a metric of increasing importance to investors and the public.

In 2019, the Transport Safety Board (TSB), reported 1,243 railway accidents, an 18% spike in the 5-year average. In 2019, the TSB reported 72 rail-related deaths, a 20% spike in the 5-year average. These figures reflect 360 deaths and 6,215 accidents between 2014 - 2019. Given these high figures, the public perception is that certain railway companies' ownership of the investigating police forces explains the near-zero rate of criminal prosecutions. Unfortunately, the TSB and Transport Canada have no authority for criminal investigations or referrals. Only a proactive company policy of requesting independent police investigations will address this accountability deficit.

CN Railway faces significant and indeterminate risks by continuing to exercise *de facto* and *de jure* control over criminal investigations. For example, if a mass casualty event such as the Lac Mégantic disaster happens on either side of CN Police's cross-border jurisdiction, CN Railway would face debilitating public and legal scrutiny in Canada and the US. This is inevitable if the company criminally investigates itself, or its police employees are alleged to have squandered preventive opportunities. The legal, commercial, diplomatic, political, governance, and public relations costs of rejecting this resolution are unacceptably high.

# TAB 2

**FW: Important Package Regarding CN Railway Board Of Director's Legal Duties And Consideration Of Ms. Pamela Fraser's Shareholder Proposals In Company's Upcoming Circular.**

Tavengwa Runyowa <law@runyowa.com>

Fri 2021-01-22 4:10 PM

To: Brandon Cain <brandon.cain@runyowa.com>

 1 attachments (10 MB)

LETTER TO CN RAILWAY BOARD OF DIRECTORS REGARDING MS. PAMELA FRASER'S SHAREHOLDER PROPOSALS AND THE BOARD'S UPCOMING MEETINGS ON JANUARY 25 AND 26, 2021.pdf;

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

Phone: 306-206-2800  
Fax: 306-206-2701  
Email: [law@runyowa.com](mailto:law@runyowa.com)  
[www.runyowa.com](http://www.runyowa.com)

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**From:** Tavengwa Runyowa <law@runyowa.com>

**Date:** Friday, January 22, 2021 at 2:15 PM

**To:** Cristina Circelli <Cristina.Circelli@cn.ca>, Sean Finn <Sean.Finn@cn.ca>

**Cc:** Alain Dussault <Alain.Dussault@cn.ca>, Pam Fraser <pamalama2@gmail.com>, Christina Bender <christina.bender@runyowa.com>, "Jessica-Lynn St. Pierre Hicks" <stpierj@runyowa.com>

**Subject:** Important Package Regarding CN Railway Board Of Director's Legal Duties And Consideration Of Ms. Pamela Fraser's Shareholder Proposals In Company's Upcoming Circular.

Good afternoon Mr. Finn and Ms. Circelli,

Find attached the package I promised to send you on behalf of Ms. Pamela Fraser. Please direct this package to the attention of the CN Railway Board members in advance of their meetings next week. The records and details we provide in this package raise important legal, business, and other considerations that the Board has a duty to account for in determining how to deal with Ms. Fraser's shareholder proposals and the other requests she makes herein.

This package largely arises from our teleconference call on January 13, 2021 but covers additional issues as well. We point out consequential inconsistencies between the positions you took on behalf of the Board on our call and records and evidence we have provided. In light of this, Ms. Fraser respectfully asks that the CN Railway Board includes both of her proposals in the upcoming circular to her fellow shareholders, and actively encourages shareholders to support the proposals.

Ms. Fraser also asks the CN Railway Board to use its inherent powers to act on the other requests she makes, notwithstanding any formal shareholder proposal on these additional points. While these other matters are framed as requests, they go to heart of the Board's duties, shareholder value, and the interests of CN Railway as a corporation. The Board has a duty to consider them based on their independent merits and the issues they raise.

We seek the Board's response by **January 29, 2021**. Ms. Fraser needs to consider her options if the Board declines to reverse its decision on her shareholder proposals, which will likely impact her other requests as well.

Thank you,

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

Phone: 306-206-2800  
Fax: 306-206-2701  
Email: [law@runyowa.com](mailto:law@runyowa.com)  
[www.runyowa.com](http://www.runyowa.com)

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**From:** Cristina Circelli <Cristina.Circelli@cn.ca>  
**Date:** Tuesday, January 12, 2021 at 4:36 PM  
**To:** Tavengwa Runyowa <law@runyowa.com>  
**Cc:** Sean Finn <Sean.Finn@cn.ca>, Alain Dussault <Alain.Dussault@cn.ca>  
**Subject:** RE: Shareholder Proposals on behalf of Ms. Pamela Fraser - Dial-In No. : 1-877-871-9527

Dear Mr. Runyowa,

Please find below the dial-in (no code) number for our call tomorrow, **January 13, 2021 at 1:30 PM ET (12:30 PM CST)**, with Sean Finn, Executive Vice-President Corporate Services and Chief Legal Officer of CN:

Dial-In No. : 1-877-871-9527

Best regards,

Cristina



**Cristina Circelli**

Vice-President, Deputy Corporate Secretary and General Counsel  
T. 514-399-4135

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---

**From:** Tavengwa Runyowa <law@runyowa.com>  
**Sent:** Thursday, December 24, 2020 2:47 PM  
**To:** Cristina Circelli <Cristina.Circelli@cn.ca>  
**Cc:** Sean Finn <Sean.Finn@cn.ca>; Alain Dussault <Alain.Dussault@cn.ca>  
**Subject:** Re: Shareholder Proposals on behalf of Ms. Pamela Fraser

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Thank you for the clarification. Enjoy your holidays.

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**From:** Cristina Circelli <Cristina.Circelli@cn.ca>  
**Sent:** Thursday, December 24, 2020, 10:36 a.m.  
**To:** Tavengwa Runyowa  
**Cc:** Sean Finn; Alain Dussault  
**Subject:** RE: Shareholder Proposals on behalf of Ms. Pamela Fraser

Dear Mr. Runyowa,

Thank you for confirming your availability for a call on **January 13, 2021 at 1:30 PM ET (12:30 PM CST)**. I will send the conference call details shortly.

We look forward to discussing the proposal with you in January and until that time we are not in a position to confirm that it meets the conditions for inclusion in our next information circular.

Due to the running of the 21-day delay prior to our first meeting to obtain the necessary details, we must at this time provide the formal rejection pending reconsideration set out in my email communication. This step however is being taken to allow us to have a discussion and gain a full understanding of the proposals to ensure that we are meeting our responsibilities to the Company, our shareholders and employees.

Thank you for your understanding. Safety is a core value at CN and of deep importance to us. We are sensitive to the tragic loss suffered by Mrs. Fraser, particularly at this time of year.

Best regards,  
Cristina



**Cristina Circelli**

Vice-President, Deputy Corporate Secretary and General Counsel  
T. 514-399-4135

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---

**From:** Tavengwa Runyowa <[law@runyowa.com](mailto:law@runyowa.com)>  
**Sent:** Wednesday, December 23, 2020 6:15 PM  
**To:** Cristina Circelli <[Cristina.Circelli@cn.ca](mailto:Cristina.Circelli@cn.ca)>  
**Cc:** Sean Finn <[Sean.Finn@cn.ca](mailto:Sean.Finn@cn.ca)>; Alain Dussault <[Alain.Dussault@cn.ca](mailto:Alain.Dussault@cn.ca)>; Paul Butcher <[Paul.Butcher@cn.ca](mailto:Paul.Butcher@cn.ca)>  
**Subject:** Re: Shareholder Proposals on behalf of Ms. Pamela Fraser

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Thank you, Ms. Circelli,

January 13, 2020 at that time works. Please confirm whether this is a formal rejection of the proposal pending reconsideration.

Regards,

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

Phone: 306-206-2800  
Fax: 306-206-2701  
Email: [law@runyowa.com](mailto:law@runyowa.com)  
[www.runyowa.com](http://www.runyowa.com)

*Runyowa Law Office is physically closed until further notice due to COVID 19 concerns. We are working remotely, so please send all communications via email as we do not have convenient access to our mail or fax machine. Note that we are not responsible for any delayed responses to mail or fax communications during this unprecedented time. For any urgent matters, please call our office number # (306) 206-2800 to leave a voicemail and we will get back to you as soon as possible. Thank you for your understanding.*

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---

**From:** Cristina Circelli <[Cristina.Circelli@cn.ca](mailto:Cristina.Circelli@cn.ca)>  
**Date:** Wednesday, December 23, 2020 at 4:57 PM  
**To:** Tavengwa Runyowa <[law@runyowa.com](mailto:law@runyowa.com)>  
**Cc:** Sean Finn <[Sean.Finn@cn.ca](mailto:Sean.Finn@cn.ca)>, Alain Dussault <[Alain.Dussault@cn.ca](mailto:Alain.Dussault@cn.ca)>, Paul Butcher <[Paul.Butcher@cn.ca](mailto:Paul.Butcher@cn.ca)>  
**Subject:** RE: Shareholder Proposals on behalf of Ms. Pamela Fraser

Dear Mr. Runyowa,

Thank you for your email.

I am confirming that Sean Finn, Executive Vice-President Corporate Services and Chief Legal Officer is available for a call on January 13<sup>th</sup> between 1:30 PM -3:00 PM ET or Friday, January 15<sup>th</sup> between 2:00 PM – 5 PM ET, in the New Year. Please let us know which date and time you work best for you.

Once we have had the opportunity to discuss Ms. Fraser's proposals with you in early January 2021 and obtain additional details and information, we will then determine whether they meet the conditions for inclusion in our next information circular. We are therefore not in a position to

accept the proposals at this time.

We look forward to speaking with you in the New Year and wish you all the best for the holiday season.

Best regards,

Cristina Circelli



**Cristina Circelli**

Vice-President, Deputy Corporate Secretary and General Counsel  
T. 514-399-4135

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---

**From:** Tavengwa Runyowa <[law@runyowa.com](mailto:law@runyowa.com)>  
**Sent:** Tuesday, December 15, 2020 5:27 PM  
**To:** Cristina Circelli <[Cristina.Circelli@cn.ca](mailto:Cristina.Circelli@cn.ca)>  
**Cc:** Sean Finn <[Sean.Finn@cn.ca](mailto:Sean.Finn@cn.ca)>; Alain Dussault <[Alain.Dussault@cn.ca](mailto:Alain.Dussault@cn.ca)>; Paul Butcher <[Paul.Butcher@cn.ca](mailto:Paul.Butcher@cn.ca)>  
**Subject:** Re: Shareholder Proposals on behalf of Ms. Pamela Fraser

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Thank you, Ms. Circelli,

I am available to discuss Ms. Fraser's proposal with Mr. Finn and any other CN representatives in early 2021. Any date after January 4, 2021 works for me. Afternoon are best. The only dates I cannot make are Jan 10<sup>th</sup> and 11<sup>th</sup> but I am otherwise open.

Regards,

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

Phone: 306-206-2800  
Fax: 306-206-2701  
Email: [law@runyowa.com](mailto:law@runyowa.com)  
[www.runyowa.com](http://www.runyowa.com)

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---

**From:** Cristina Circelli <[Cristina.Circelli@cn.ca](mailto:Cristina.Circelli@cn.ca)>  
**Date:** Tuesday, December 15, 2020 at 9:18 AM  
**To:** Tavengwa Runyowa <[law@runyowa.com](mailto:law@runyowa.com)>  
**Cc:** Sean Finn <[Sean.Finn@cn.ca](mailto:Sean.Finn@cn.ca)>, Alain Dussault <[Alain.Dussault@cn.ca](mailto:Alain.Dussault@cn.ca)>, Paul Butcher <[Paul.Butcher@cn.ca](mailto:Paul.Butcher@cn.ca)>  
**Subject:** Shareholder Proposals on behalf of Ms. Pamela Fraser

Dear Mr. Runyowa,

Attached please find a copy of a letter from Sean Finn on behalf of CN regarding the shareholder proposals dated December 3, 2020.

We would be pleased to have a call early in 2021 to discuss the shareholder proposals with you as representative of Ms. Fraser.

Please let us know what date and time work best for you. Look forward to speaking with you.

Best regards,



Cristina Circelli



**Cristina Circelli**

---

Vice-President, Deputy Corporate Secretary and General  
Counsel  
T. **514-399-4135**

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# TAB 3

January 21, 2021

- BY EMAIL -

Co: Mr. Sean Finn  
Executive Vice President  
Corporate Services and Chief Legal Officer  
Canadian National Railways (Headquarters)  
935 de La Gauchetière Street West  
Montreal, Quebec  
Canada H3B 2M9

Email: [Sean.Finn@cn.ca](mailto:Sean.Finn@cn.ca)

Ms. Cristina Circelli  
Corporate Services and Chief Legal Officer  
Canadian National Railways (Headquarters)  
935 de La Gauchetière Street West  
Montreal, Quebec  
Canada H3B 2M9

Email: [Cristina.Circelli@cn.ca](mailto:Cristina.Circelli@cn.ca)

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.**



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## **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.<sup>1</sup> These duties are both collective and individual.<sup>2</sup> Further, directors have a minimum duty to ensure that the corporation meets its statutory and other legal obligations.<sup>3</sup>

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.<sup>4</sup> Large institutional investors, such as Cascade Investments LLC and the Bill and Melinda Gates Foundation (CN Rail's largest shareholders<sup>5</sup>), 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

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<sup>1</sup> *Canada Business Corporations Act*, Section 122(1).

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

<sup>3</sup> *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>.

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

<sup>5</sup> <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.<sup>6</sup> 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).<sup>7</sup> 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.<sup>8</sup> 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).<sup>9</sup> 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.<sup>10</sup> 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*.

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

<sup>7</sup> *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>.

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

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

<sup>10</sup> *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.<sup>11</sup>

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

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<sup>11</sup> *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](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.”<sup>12</sup>

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”<sup>13</sup>. 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.

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

<sup>13</sup> *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.<sup>14</sup> 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 reasons<sup>15</sup> and use reasonably necessary force.<sup>16</sup> Further, the *Act* makes it unlawful for persons interacting with private investigators and private security guards to obstruct these official's activities<sup>17</sup>, and imposes an obligation on relevant persons to produce certain materials on request from these officials.<sup>18</sup>

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.

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

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

<sup>16</sup> *Ibid*, Section 22(6) and 23(3).

<sup>17</sup> *Ibid*, Section 22(7).

<sup>18</sup> *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 RCMP<sup>19</sup> 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.

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<sup>19</sup> <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)**.<sup>20</sup> 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.

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<sup>20</sup> [https://rapportspvm2019.ca/rapport/SPVM%20Stats\\_2019\\_ANG\\_FINAL.pdf](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 RCMP<sup>21</sup>, the Ontario Provincial Police<sup>22</sup>, Regina Police Service<sup>23</sup>, and the Saskatoon Police Service<sup>24</sup>, 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

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<sup>21</sup> Attachment 2

<sup>22</sup> Attachment 6

<sup>23</sup> Attachment 7

<sup>24</sup> 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.<sup>25</sup> 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>.

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<sup>25</sup> <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,



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Tavengwa Runyowa  
(Counsel for Ms. Pamela Fraser).

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# Attachment 1

July 4, 2011

TO:

The Honourable Mr. Vic Toews  
Minister of Public Safety  
House of Commons  
Ottawa, Canada  
K1A 0A6

Mr. Jasbir Sandhu  
Member of Parliament  
Public Safety Critic  
House of Commons  
Ottawa, Canada  
K1A 0A6

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Ontario Civilian Police Commission  
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H.M. (Mike) Metcalf  
Chief of Police  
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Bradley S. Duncan  
Chief of Police  
London Police Service  
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Gentlemen,

I am criminal counsel to Mr. Scott Holmes who was formerly accused of fraud related offences arising from alleged wrongdoing against his former employee, Canadian National Railway (herein CN). All charges against Mr. Holmes have been stayed by the Crown Attorney's Office with an undertaking that they will not be reinstated, after there had been a partial preliminary hearing. The only witnesses to testify at that hearing were CN police officers involved in the investigation. Although the Crown is not required to give reasons for staying the proceedings, it is clear that the improper conduct of the investigating police agency necessitated that the prosecution be ended before any adjudication on the merits. Mr. Holmes has asked me to assist him in initiating a complaint against the peace officers who investigated him and brought charges against him.

At the outset, I want to alert you that Mr. Holmes has recently initiated a civil proceeding against the CN police service and individual members of CN arising from their conduct. Notwithstanding that he will seek civil recovery for their conduct, having acted for Mr. Holmes on the criminal matter and having reviewed the criminal disclosure materials and cross-examined CN police officers, it is my view that the conduct of CN police officers raises more than simply



civil issues. The conduct of the CN police in this case rises to potential criminality that should be investigated by an independent police force. Additionally, the conduct of the CN police raises fundamental questions about the independence and objectivity of that police force and whether the conduct of individual officers fell below that which was expected in the circumstances.

As I understand it, any complaint against CN police officers is to be forwarded to the Chief of Police for CN. This is obviously problematic in this case given that the conduct of the former Chief of Police is in issue and that Mr. Holmes has launched a civil suit against the CN police. I am nonetheless addressing this document to the Chief of Police to conduct a disciplinary investigation in addition to send this complaint to the Chair of the Ontario Civilian Police Commission. I would urge the Chief to refer the matter to an outside police agency for that purpose. I am also asking the Chair of the OCPD to commence an investigation into the conduct of the police officers and the Chief of Police pursuant to ss.22 and 25 of the *Police Services Act* (Ont.).

I am also addressing this letter to the Chief of Police for the London Police Service and the Chief of Police for the Peel Regional Police. I am doing so because some of the conduct, which I believe would support a criminal charge against members of the CN police, arises in their respective jurisdictions. Finally, I am addressing the letter to the Minister of Public Safety and the Public Safety Critic for the Official Opposition because of the broader public policy issues raised by the conduct of the CN Police.

I will attempt to provide as much detail as possible concerning the complaint we are making to assist you in your respective roles. Broadly, the complaint can be categorized as follows:

1. Members of the CN police service failed to conduct an independent and objective investigation in accordance with their oath as police officers;
2. The CN Police Service improperly and inappropriately took direction from a civilian Board of Directors and were clearly in a conflict of interest;
3. Members of the CN police service swore false informations before a judicial officer giving rise to potential perjury and/or attempt to obstruct justice charges; and
4. Members of the CN police service improperly utilized the arrest and other criminal law powers as “leverage” against Mr. Holmes.

## **Background**

Although the Canadian National Railway was formerly a Crown corporation, it is now privately owned. The **Canadian National Railway Police Service** is a private police service operated and administered by Canadian National Railway (CN). The police service was established in 1923 with sworn officers operating in Canada. Officers are sworn under s.44(1)

of the *Railway Safety Act* which grants officers the same powers of arrest as any police officer in Canada acting as a “peace officer” under s.2 of the *Criminal Code*. Their federal oath of office primarily directs their duties 'on and along' the lines of the CN. Section 44 of the *Act* provides, in part, as follows:

*Appointment*

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

*Limitation*

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

*Jurisdiction*

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

## **Allegations emerge**

In June of 2008 CN received an “anonymous” letter suggesting that Scott HOLMES was committing fraud by awarding CN contracts to companies that he was associated with and also selling scrap metal that belonged to CN. The letter provided CN with some names of companies to investigate. The evidence at the preliminary hearing confirmed that CN directed their own private police force to investigate the allegations. On June 26, 2008 at 9:07 a.m. an email was sent to the then Chief of Police for CN (Serge Meloche) from John Dalzell, an executive with CN Civil (VP Risk Management). The email forwarded the anonymous letter that was sent to CN and had been reviewed by Human Resources. Mr. Dalzell directed that the CN Police initiate a police investigation. As Inspector Bruce Power of CN Police confirmed at the preliminary hearing (September 9, 2010, p.17, ll.1 to 25 and p.21, ll.5 to 25):

Q. Okay. And I just want to take you through what happens. The e-mail then gets forwarded on by John Dalzell, the e-mail string to Serge Meloche, right?

5 A. Correct.

Q. Who's your chief at the time?

A. Yes.

Q. When Serge Meloche tells you to do something, you do it, right?

10 A. Yes.

Q. And if you see the e-mail string from John Dalzell, it says "Serge..."

A. Yes.

15 Q. ... "let's initiate an investigation into the allegations immediately and make sure that we have all bases covered in terms of any additional employees involved. Keep me in the loop on all developments. Thanks." So, I just want to be clear about this. This e-mail string then gets forwarded on to you, right...

20 A. Yes.

Q. ...by -- by Chief Meloche...

A. Correct.

Q. ...and it's clear to you that this is a direction to you to commence a criminal investigation, correct?

25 A. Yes.

...

21.

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A. Yes.

Q. ...right? You were copied, you got the string?

A. Yes.

5 Q. So, it says, "Serge, let's initiate an investigation into the allegations immediately and make sure that we have all bases covered in terms of any addition employees and follow-up. Keep me in the loop on all developments. Thanks." And in fact, when it gets forwarded to you, Chief Meloche doesn't say anything, he just forwards you that string, right?

A. Yes.

Q. And you understood that he was directing you to do what Mr. Dalzell had indicated he wanted done?

A. Yes.

15 Q. There's no question about that? It's very clear to you that when Serge Meloche forwards you that string, he's telling you you do what VP risk management, Mr. Dalzell, wants and that's to commence a criminal investigation, right?

A. Yes, and I....

Q. And that's what you do, right?

A. Yes.

Q. Okay. So, in terms of not writing it or otherwise, I appreciate you didn't write it but it was very clear to you....

A. I understood it, yes, to commence an investigation.

Q. What you clearly understood was you were being directed by the chief to initiate a criminal investigation which was being directed by VP of risk management, Mr. Dalzell, correct?

A. Correct.

AG 0087 (rev.07-01)

**Publication Ban**

At the same time that CN were directing their police force to investigate the criminal allegations, they also retained civil counsel to pursue a civil claim against my client.

### **CN police taking inappropriate direction**

The officer-in-charge of the police investigation (Constable Robert Zawerbny) initially reported to Acting Inspector Bruce Power until August of 2008 when he then started to report to Inspector Fusco. Inspector Power testified on August 23, 2010 at the preliminary hearing. Inspector Power confirmed that the internal reporting structure of CN police was such that they reported to CN Corporate. He testified as follows (p.6, l.30 to p.7, l.10):

Q. So the command structure for CN police,  
30 | although it's a police agency, is that ultimately the reporting

is through internally CN Corporate, correct?

A. Yes.

During the course of the CN police investigation officers would prepare investigative summaries detailing what efforts had been made in the police investigation and what future steps would be in relation to the police investigation. These investigative summaries were shared with CN in-house counsel (Nizam Hasham) and other members of the CN executive who were instructing civil counsel. It was clear that CN and the CN police viewed the civil and criminal proceeding as a "joint venture." On July 8, 2008 (prior to the civil proceedings commencing and prior to any criminal proceedings being initiated) an investigative summary was prepared by the CN police. In terms of the future steps to be taken in relation to the criminal investigation, the summary indicated that there was to be "***A joint venture with CN law department in relations to possible civil action suit.***"

Officer Zawerbny was cross-examined about the "joint-venture" with the CN Law department during the police investigation. He testified as follows (August 18, 2010 p.40, ll.15 to 20):

A. It may have been a phone call at, at the  
20 | beginning like I said I was getting stuff from the law  
department, Nizam, information and in a way I guess we were  
working with them in relations to a civil action suit.

And at page 75, ll.1 to 10 on the same date:

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5 Q. Yeah. And of course what that speaks to, sir, I'm going to suggest to you again is because at that point in time it was viewed as a joint venture between civil and criminal to try and build a case together as against Mr. Holmes, isn't that fair?

10 A. With these documents stating that that would be fair to say.

Q. Okay.

A. As I said before though I--obviously management was involved and the law department was involved from the beginning.

He further testified as follows (August 18, 2010 p.45, l.10 to p.46, l.25):

30 Q. Yeah. Okay. But CN management doesn't say look we're hands off, we're not going to do anything because we're the alleged victims here and we're going to leave it to you guys to carry out your investigation any way you feel is appropriate. That doesn't happen, does it?

5 A. Like I said, through this investigation with emails and all that no it doesn't, it looks like management were receiving or involved in it.

10 Q. Right. That unlike most criminal investigations that you're familiar with--what you're normally familiar with is this model, the model is victim, alleged victim, report's alleged crime.

A. Yes.

15 Q. Police interview alleged victim and then carry out their investigation independently to determine the truth of the allegation or not, correct?

A. Yes.

20 Q. This was not that paradigm, this was different, because it was the alleged victim not only reporting the crime, right, they've got their own police officers to investigate it, correct?

A. Yes.

25 Q. And as you know from reviewing various correspondence and other things, emails etcetera, they would direct from time to time how the investigation might be carried out, right?

A. Yes, I would sees (sic) through some emails that they were...

And at p.54 (August 18, 2010, ll.10 to 20):

A. Yes I was concerned with my criminal investigation and, and being a police officer I know there's certain information I cannot give out.

10 Q. Okay. Does it not concern you now if the people above you, reviewing it as a joint venture, and then you were being directed to do certain things that weren't truly independent of the whole civil side of CN, doesn't that concern you today as a police officer that you might have been used like that for the purpose of investigating this fraud?

15 A. Yes, that would concern me today and it concerned me when this investigation was going on.

In a subsequent investigative summary written on July 17, 2008 by the CN police, it was noted that CN civil would be applying for a Norwich Pharmacol order that would "allow

CN to force banks to covertly share banking information with CN about where the proceeds of the alleged fraud are flowing.” Officer Zawerbny confirmed that as of July 17, 2008 he understood that CN civil would use whatever orders they could obtain civilly to further the police investigation. He testified as follows (August 18, 2010, p.78, ll.20 to p.79, l.10):

25 | Q. And what’s clear is that CN the victim, the  
alleged victim was going to use whatever they could on the civil  
side to help the police investigate the criminal, isn’t that  
clear in that memo, sir?

A. It is clear in the memo, yes, the way it’s  
written down here.

30 | Q. Right. And that’s--the memo accurately  
reflects the state of affairs as between CN police and CN civil  
as of July 17<sup>th</sup>, right?

A. Yes, that’s, that’s what it states here.

Inspector Bruce Power testified that he had never been involved in a “joint venture” with CN Civil before but he was directed to treat the criminal investigation that way. He testified as follows (Sept. 9/10, p.28, l.10 to p.29, l.20):

20 | Q. And in the course of your history with CN as a  
police officer exercising a public duty, how many times had you  
engaged in joint ventures with anyone in relation to possible  
civil actions?

A. Never.

25 | Q. And in terms of your dealings with the CN law  
department, how many times had you ever engaged in joint  
ventures with respect to civil actions with the CN law  
department?

A. Never, not to my....

30 | Q. Okay. This -- this idea that your criminal  
investigation was to be a joint venture with CN law department,  
first of all, I want to be fair to you, it didn’t originate with



~~FRASER POWER~~ OF CAN.

you, right? You're not the originator of that idea?

A. No.

Q. The originator of that idea was actually CN law department, correct?

5 A. I'm not sure from what department but I -- I had directions for sure to have that...

Q. Okay.

A. ...venture...

Q. That's fair enough.

10 A. ...but I'm not sure what the....

Q. So, let's trace back the directions. Your directions were from Serge Meloche...

A. Correct.

15 Q. ...right, that this criminal investigation was going to be a special one, at least as far as you were concerned, it never happened before?

A. Correct.

Q. And it was going to be a joint venture with the CN civil law department, right...

20 A. Correct.

Q. ...for a possible civil action as well, right?

A. Correct.

Inspector Power went on to acknowledge that engaging in a "joint venture" with CN civil was inconsistent with the oath he had taken as a police officer (September 9, 2010, p.34, ll.5 to 15):

5 Q. Most likely not? Sir, I'll give you a chance  
to answer that again. Is it most likely not? In light of the  
oath you took as a police officer not to show favour to one side  
or another, I'm going to say it's not most likely not,  
absolutely not, you would never have, in fulfilling your oath as  
10 a police officer, engaged in a joint venture with CN law  
department in relation to a possible civil action suit, isn't  
that right?

A. Correct.

15 Q. Because to do that is inconsistent with at  
least what you understood your role to be as a police officer,  
fair enough?

A. Yes.

It was learned through the disclosure in the criminal file that during the course of the police investigation on July 20, 2008, Nizam Hasham complained to the CN Chief of Police (Officer Melcohe) that the officer in charge of the criminal investigation of Scott Holmes was not keeping him in the loop on the details of the criminal investigation. Mr. Hasham complained to Chief Meloche who in turn communicated the concern to Officer Zwarbeny's immediate superior (Inspector Power). Mr. Hasham's conversation was summarized as follows (p.86, l.15 to 30):

15 Q. Okay. And what recorded is that Nizam was  
upset with Zaverbny that Nizam had relayed that he wanted  
Zaverbny to do work, that he wanted sharing of information, that  
he wanted detail, detail to detail per minute updates on what  
you were doing, that he has got witness statements, Nizam did,  
20 but he got those witness statements from witnesses that you had  
interviewed already because you had given the witness statements  
to the witnesses but wouldn't give them to Nizam. And that  
Meloche told Nizam that the police can't give copies but  
witnesses can give their own copies. That Nizam indicated that  
25 they were looking to follow up on the Complete Excavating  
invoices. The Concentrating (sic) and Efficient Construction  
invoices. And that there was to be a conference call arranged  
with Nizam to sort this all out. Do, do you--does that  
generally refresh your memory about the nature of the  
30 conversation you had with Inspector Power?

A. Yes it does.

Inspector Power confirmed that he was contacted by Chief Meloche of the CN police on July 20, 2008 and was told that Hasham had been complaining that the police had not been living up to their end of the "joint-venture" with CN Civil. He testified as follows (September 9, 2008, p.66, ll.5 to 15; and p.67, ll.5 to 25):

10 Q. And what I'm going to suggest to you happened  
was as follows. Serge Meloche had a meeting with you on July  
20<sup>th</sup>, 2008, and said, 'Look, I'm getting some heat from Nizam  
Hasham about the communication as between Officer Zaverbny and  
Nizam,' is that fair?

A. Yes.

15 Q. That he expressed to you, this is Chief  
Meloche, that Nizam had told him that Zaverbny wasn't keeping up  
his end of the deal in terms of the sharing of information for  
this joint venture, correct?

A. Correct.

10 Q. Right. He's making it clear to you that, look, the state of affairs with respect to the sharing of information from criminal to civil was not adequate. I mean, that's the point of this meeting, is for him to express to you he's not happy that he's getting these complaints from Nizam...

A. M'hmm.

Q. ...right?

15 A. M'hmm.

Q. Correct?

A. Correct.

20 Q. Okay. And the reason I said detail by detail, you know, basically minute by minute, blow by blow of the police investigation because you make a note, 'Sharing of information, detail to detail per minute.' And I'm going to suggest to you that that was Chief Meloche's way of saying to you that that's what expected in terms of the co-operation with CN civil, they get a play by play, detail by detail, minute by minute account  
25 of the criminal investigation, correct?

A. Correct.

### **Police being given a copy of confidential and privileged "civil litigation strategy" memorandum**

During the course of the preliminary hearing, Officer Zawerbny was cross-examined about the role of CN – civil in directing or influencing the criminal investigation. It was revealed through cross-examination that on July 22, 2008 (6 days before Scott Holmes was first charged), legal counsel for CN civil (Nizam Hasham) who was providing instructions to civil counsel for CN (Mr. Peter Griffin) emailed Inspector Power of the CN Police whom Officer Zawerbny reported to. Mr. Hasham forwarded a document prepared by Mr. Griffin which was intended to be "Privileged and confidential." Mr. Hasham also forwarded an email he had received from Peter Griffin which set out the litigation strategy for CN and what Mr. Griffin believed CN would need for the purpose of demonstrating "fraud" and moving forward the civil claim.

The email from Peter Griffin to Hasham, which was in turn forwarded to the police read, in part, as follows:

20

25

30

I've also suggested and hopefully you have been able to put this into place, that the Sousa brothers be told that if there was any potential for anything further to happen business wise between Complete Trax and CN they need to sit down with CN and its lawyers and essentially tell them what was going on with Holmes and the business with CN. It seems unlikely you could ever resurrect a relationship of trust with Complete Trax if the information you believe is correct proves to be true. By the same token It is in their

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interest to cooperate. If they refuse to cooperate that is the sort of evidence which we need for a Norwich Order. The sooner we pull this evidence together the sooner we will have a solid basis upon which to seek the necessary orders. It is not realistic to expect that we will get to court within days where there is still important work to be done.

The timing of Hasham having forwarded Peter Griffin's litigation strategy to the police was the subject of cross-examination of Officer Zawerbny. He testified as follows (August 19, 2010, p.90, l.5 to p.91, l.10):

10 Q. And then just so happens two days later after Power has the conversation with Meloche, just so happens two days later after Power has the conversation with Meloche where it's being expressed that the lawyer for risk management is very unhappy with the cooperation being shown by CN police in the sharing of information. You then happen to receive on July 22nd at 1:48 the litigation strategy of Peter Griffin, right?

A. I'm sorry, you mentioned risk manager?

15 Q. I thought he was in the risk management said, the lawyer on the--I'm sorry, that was the vice-president, sorry, CN civil lawyer. It just so happens that after the CN internal corporate lawyer complains about the state of affairs vis-à-vis the sharing of information by you to him, two days 20 later you receive this email where it's forwarded onto you, this litigation strategy for CN civil as recorded by Peter Griffin, right?

A. Yes.

25 Q. That's the timing, that's the sequence of events, right?

A. Yes.

When questioned about why this email was forwarded to him, Inspector Power agreed that it was a reasonable inference that he was getting direction on the type of evidence and information that the police should attempt to obtain to assist CN with their civil claim. He testified as follows (September 9, 2010, p.97, l.1 to p.98, l.20):

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5 lead criminal investigator knew all that? Why? Why does the  
lead criminal investigator need to know what Peter Griffin in  
all his wisdom thinks he needs for a successful civil  
application? Why does Zawerbny need to know that? Can you give  
me any conceivable reason why Zawerbny needs to know Peter  
Griffin's litigation strategy to help CN civil?

A. No.

10 Q. Well, there is one. There is one obvious  
inference, right? You'd agree with me one of the obvious  
inferences is -- I don't put the blame on you, so you  
understand. One of the obvious inferences is you knew you were  
to co-operate with CN civil, right?

A. Yes.

15 Q. CN civil had a goal in mind which required  
obtaining certain types of evidence, correct?

A. Yes.

20 Q. And to the extent that this was going to be a  
joint venture and continued to be a joint venture, well, the  
criminal investigators should know what civil needed, right?  
Isn't that a fair inference? Why else -- right? That's a fair  
inference, right?

A. It's a fair inference.

25 Q. Because why else would you need to know all  
that, right? Why else would you need to know Peter Griffin's  
litigation strategy unless CN management was trying to put their  
thumb on the criminal investigation, right?

A. M'hmm.

Q. You agree with me, right?

A. Yes.

30 Q. And I understand you're walking this really  
impossible line, Meloche is telling you to co-operate with  
Nizam, I get that, that's part of this, right?

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A. Yes.

Q. Nizam's demanding to know what's going on with the criminal investigation, right? Correct?

A. Yeah.

5 Q. You've never experienced this before, the involvement of CN civil in your criminal investigation, right?

A. Right.

Q. You have in mind your oath as a police officer to conduct things fairly and independently, right?

A. Right.

10 Q. At the same time, CN is doing your paycheque, right?

A. Yes.

15 Q. I mean, and then -- and then you get things like this sent to you from CN civil, "For your information," which you then pass on, "Privileged and confidential." You pass on to the lead investigator. Sir, taking all of that together, you have to agree with me that this is extremely problematic in terms of the independence issue, would you agree with me?

20 A. Yes.

Officer McCallum, who was unaware of the email because he had not become involved in the police investigation until later, also testified that this type of email from CN Civil would "absolutely" create a red flag about the role and propriety of CN Civil's involvement in the police investigation. He testified (August 23, 2010, p.133, ll.15 to 30) that:



15 Q. That's what--that's the context of this document. And this document then gets sent from Nizam to Bruce Power, Inspector Power at the time, Acting Inspector Power, on July 22nd, 2008 at 1:48 p.m. And, you know, we read this and think about what we were talking about, you and I there, that discussion, dialogue we were having back and forth about the independence of the police and then we see a document like this, 20 which is a memorandum from the civil lawyer being sent to CN civil, which gets forwarded to the police, about the type of evidence they need in order to pursue civil damages against Mr. Holmes. I mean, this is the type of thing that sends out red flags for you, doesn't it, in terms of the role of CN civil in 25 this?

A. Absolutely.

### **Police not pursuing investigative steps because of direction from alleged victim**

One of the most shocking things that was revealed during the course of the preliminary hearing and a review of the disclosure is that the officer in charge of the CN police investigation was “directed” by CN civil to stand-down the investigation of the Sousa brothers (other potential accused) and not interview them so that CN civil could interview them first.

Officer Zawerbny was cross-examined about his interest in interviewing the Sousa brothers. He confirmed that they were important “suspects or witnesses.” He noted that he had received an email on July 3, 2008 which included a statement that had been taken from the Sousa brothers by management and it was the intention of the police to attempt to interview them. However, Officer Zawerbny was specifically directed to hold off doing so (August 19, 2010, p.65, l.25 to p.66, l.10):

25 Q. And you think, sir, that that was just pure coincidence that one of your investigative goals became to interview the Sousas and on July 22nd, 2008, you were advised by your Inspector Power through this email that that happened to be one of the things that CN civil wanted for the purposes of their civil litigation against my client in this...

30 A. No, because I was told to stand down when I was going to interview the Sousas.

5 Q. Right. And you were told to stand down because  
CN civil had a strategy that they wanted to use first, which was  
to try and use the fact of future work as the strategy, right?  
And it was Inspector Power told you hey, wait, hold on, hold  
back, don't go to them yet, we're going to try and do this a  
little different way, right?

10 A. Yes.

Q. Right. So that your criminal investigation and  
what you wanted to do was starting to be dictated by what the  
civil lawyers had instructed CN they wanted to do, right?

A. I don't know what discussions Bruce Power...

15 Q. No, no, no, just look at what happened. You,  
Mister independent investigator want to go and interview the  
Sousas. You, according to you, formulate that idea in early  
August and then what happens, Inspector Power tells you to hold  
off, look, hold off, CN civil has a way of doing this, they're  
20 going to approach them about work and use their suasion over  
them, right? Right?

A. I was advised to stand down, do not interview  
them in relations to something with the civil side...

25 Q. Right.

A. ...yes, I was told that.

Q. Stand down because that may interfere with  
civil's strategy and plan, right?

A. If that's civil--yes it could.

30 Q. Well, look at it, its civil strategy, it's  
recorded July 22nd, Mr. Griffin's conveniently recorded his

5 strategy for us, he solidified it in an email dated July 17th,  
thankfully he's a diligent lawyer who records things like that.  
So we know that was the strategy and then you're told to hold  
off your criminal investigation because CN civil wants to deal  
with it first, right? Has that even happened to you ever in  
10 your career as a criminal--as a police officer, ever that you're  
told, hey, hold off a criminal investigation in that respects  
the civil lawyers want to get there first, has that ever  
happened to you before?

A. I--no.

Q. No.

15 A. No, I...

Q. Highly unusual right?

A. Yes.

Q. If some other victim, alleged victim came  
forward and said, hey don't go interview this potential witness  
20 because you see my civil lawyer is suing the guy for assaulting  
me and he wants to get to the guy first and we think we can make  
him talk, you'd say, look, that's completely inappropriate, I'm  
not going to dictate the way I conduct my criminal investigation  
by what the CN, by what the victim's civil lawyer wants to do,  
25 right?

A. Yes.

Q. That would be your reaction.

A. Yes.

30

5 Q. But yet you're being advised to do that very  
thing, hold off interviewing material witnesses, potential  
suspects even, because CN civil wants to get there first,  
through their lawyers Lenczner Slaght, does that not appear to  
you, sir, to be completely improper?

10 A. I do agree that it had discussion with Bruce  
Power about it and, and yes I was frustrated and yes, that is  
improper.

Q. And you were overruled, right?

A. Yes.

15 Q. And notwithstanding your personal view that it  
was improper you followed the orders of Inspector Power and when  
I say that I don't mean to mock you for that, I hope you don't  
get that impression. But you felt constrained by the  
relationship, you as employee following orders, you felt  
constrained in terms of what you could do, fair enough?

20 A. He's my inspector, at the end, you know, we had  
our discussions, I stated my views, and I was advised at the end  
to stand down, don't interview the Sousas at this time.

Q. Right. It was like you were overruled  
effectively, right?

25 A. Yes.

Q. Yeah. In a situation that you now agree as you  
have to that it seemed completely improper of you, right?

A. Yes.

Officer Zawerbny agreed that the reasonable inference was that CN civil was attempting to direct the criminal investigation in a way that would assist the CN civil litigation strategy. He testified as follows on August 19, 2010 at p.58, l.30:

25 Q. Okay. Fair enough. Let me ask you this, now  
as I put it to you, you're the investigator on this file and I  
put it to you today August 19th, 2010, and I say to you, look at  
this, it's the CN civil litigation strategy before they've done  
anything on the civil side, they haven't moved for anything yet  
30

5 on the civil side, and this is being sent by the internal lawyer  
at CN to your boss who is turn is forwarding it to, and I said  
to you as of today, isn't it a reasonable inference on the basis  
of those circumstances, that it looks like you're being directed  
to investigate in a way that would help the civil side? Doesn't  
it seem to be a reasonable inference?

10 A. I would say yes, why Nizam, again, and Bruce  
would send that to me. I never requested this they were sending  
me information.

Inspector Ben Fusco was also questioned about the propriety of CN civil directing that witnesses not be interviewed. He confirmed that the CN police would not ordinarily take direction from CN civil and, in fact, should not take direction from CN civil regarding who to interview in the context of a criminal investigation. He testified (August 23, 2010, p.62, l.1 to p.63, l.5) that:

MR. LACY: Q. Sir, before the break we were talking about what you called hypotheticals, that you didn't want to comment on, with respect to the propriety of certain things happening. Let me ask you this, has it ever happened to you during the course of a CN Police investigation that members of CN management have told you not to interview a potential witness, to allow CN civil the opportunity to interview them first, for the purposes of their civil claim?

A. Never.

Q. If that had ever happened, would you view that as improper?

A. There again, it would all depend on what the investigation was, how far into the investigation I was.

Q. Should CN civil ever be directing, in your view, the timing of interviewing of witnesses?

A. No.

Q. So why would it matter where you were with respect to the investigation? CN civil should have nothing to do with the manner in which the CN Police investigate, correct?

A. Right.

Q. And if I suggested to you that in this case the officer-in-charge, Officer Zawerbny, testified under oath that he wanted to interview two potential witnesses and he was told to stand down and not interview them, because CN management did not want him to do that, were you aware of that?

A. No.

Q. If that had come to your attention, you would have taken steps to figure out what was going on, right?

A. Yes.

Q. That would have caused you concerns about the role of CN management in the investigation, correct?

A. Yes.

## **CN police provided with draft statement of claim against Holmes**

In-house counsel at CN, Nizam Hasham, forwarded a draft statement of claim prepared by Mr. Griffin on behalf of CN to various persons within CN including Inspector Powers of the CN Police. The email forwarding the draft statement of claim was sent on July 23, 2008 at 4:55 p.m. (5 days prior to Mr. Holmes' first arrest). Inspector Power testified as follows regarding having received that email (*September 9, 2010*, p.89, 1.5 to p.90, 1.30):

5

A. No, I don't.

10

Q. To the extent that Nizam was seeking your input when it said, "Please see the draft statement of claim in this matter. Please comment as soon as possible. Thank you." Would there be any conceivable reason in the world, and you can expand that to the universe if you'd like, any conceivable reason using your wildest imagination why you would need to comment on a statement of claim, a draft statement of claim? Can you think of any reason?

15

A. Absolutely none.

Q. I mean, I've exhausted my imagination so that's why I want to call on your imagination. Is there any -- anything that you can think of that you would be able to provide any input on on a statement of claim?

20

A. Absolutely nothing.

Q. Is there any reason that you can imagine, envision, using the most creative tools available to you as to why you would be being provided with a copy of a statement of claim?

25

A. I have no idea.

30

Q. When we talk about the joint venture and that blurring of the line we've talked about a little bit today, this document to the extent that it was provided to the CN police to comment, this statement, a draft statement of claim was provided to the CN police for comment. You have to agree with me that that would seem to further enforce the idea that there was a real problem here in the blurring of the line? Do you agree with me?

A. Yes.

5

Q. That this document to the extent that it was provided to the CN police would seem to support the suggestion that these were not independent investigations, that this was, in fact, a joint venture, as between CN civil and CN criminal, correct? CN criminal being the police?

A. Yes.



The officer-in-charge, Officer Zwarbney was cross-examined on August 19, 2010 at pages 92, 1.10 to p.98, 1.5 on having been provided with this document:

Q. So whether it was you were copied directly that day or Bruce Power when he got it he forwarded it to you. You saw the draft statement of claim, right?

A. Yes.

10 Q. And this is again an email from Peter Griffin to Nazim (ph) and it says, or Nizam I don't know how he pronounces it. "Here is our first cut of the statement of claim, affidavits to follow." Right?

A. Yes.

15 Q. And he--Mr. Griffin sends it to Nizam at 4:15 and at 4:55 it's being forwarded to a number of people, including I'm suggesting Bruce Power and you. And that sort of accords with your recollection, right?

A. Yes.

20 Q. And if we look at the statement of claim it names my client, right? It names Jennifer Flynn, Mr. Tiley's client, correct?

A. Yes.

25 Q. Names various companies associated with them as well as other people, correct?

A. Correct.

30 Q. And if you look at the nature of the claim, it says, "Damages of \$20,000,000 for fraud, deceit, conversion and conspiracy." By this time you hadn't sworn out an information,

5 by July 23rd you hadn't sworn out an information to charge my  
client yet, right?

A. Yes.

Q. You haven't done that yet. It talks about a  
Mareva Injunction, Anton Pillar order, right?

A. Yes.

10 Q. It talks about damages for fraud, deceit,  
breach of contrast, breach of trust, breach of confidence,  
punitive damages, do you see that?

A. Yes.

15 Q. And it purports to set out in some detail a  
factual summary of the information available to CN to support  
the claim of fraud, right?

A. Yes.

20 Q. I know we went through your background and  
training yesterday, you're not trained as a lawyer at all,  
right?

A. That is correct.

Q. Okay. You don't have any legal training at all  
other than police training, correct?

A. Correct.

25 Q. And had you ever seen a statement of claim  
before?

A. From civil proceedings?

Q. Yeah.

A. No.

30

5 Q. Had you ever been asked to comment on a civil claim before by CN internal civil by Nizam or anyone else connected with CN railway?

A. No.

10 Q. I mean, that's not the normal state of affairs that you're contacted to comment on a statement of claim is it?

A. No.

15 Q. No. And the email from Nizam says, "Please see the draft statement of claim in this matter. Please comment as soon as possible. Thank you." Now, that's what it says, right? Right? Right there.

A. Yes.

20 Q. I read that accurately, right? Now, sir, you're going to have to help me, because for the life of me I tried to think of any possible reason why, any reason why you or other police officers would be asked to comment on a draft statement of claim in respect to the civil proceeding that you're telling us is supposed to be separate and apart from your independent police investigation. And I can't think of anything that comes to my mind, but maybe I lack imagination. So why don't you tell me. Why don't you tell me why you believe you were asked to comment it? I'm not asking you why Nizam asked you, I'm asking you why you believe you were asked to comment on the statement of claim.

25 MR. LACY: And while you think about that I'm going to ask that be marked as exhibit...

30 COURTROOM CLERK: Thirteen.

MR. LACY: ...thirteen.

EXHIBIT NUMBER 13: Draft statement of claim -  
Produced and Marked.

5  
10  
A. As I stated before I don't know why. I was sent documents I did not request them. Who that question is, there's multiple names. I don't know whether it was directed to me or all of us. I didn't respond to it. I didn't comment on it. He, he sent it to me, I don't know why, you'd have to ask him.

Q. Are you sure you didn't comment on it?

30 Q. This email being sent to you is not like a witness statement being forwarded to you, right? You agree with me that it's different in substance?

A. Yes.

5 Q. It's not like here is the notes of the interview with David Roy, it's not like that, right?

A. No.

Q. It's not like that.

A. No.

10 Q. It's, you know, here's the work produced of these really qualified and expensive lawyers that we hired at Lenczner Slaght, here's the statement of claim, here's their work product, you know, we wanted to send it on to you to, to CN police. I mean, that's kind of odd, right?

A. Them sending me civil?

15 Q. Sending you this draft statement of claim that Peter Griffin prepared or people working with Peter Griffin. You don't find that odd at all?

A. I would answer me being--odd, no 'cause I don't know why they're sending it to me.

20 Q. No, because that's the claim, you didn't ask for it, right?

A. Yes.

Q. You didn't think you had any business commenting on it, right?

25 A. Yes.

Q. You from your perspective I guess you'd say you weren't interested in it, were you?

A. I did read it, I recall that.

30 Q. I know you read it but from your perspective you weren't interested in it in the sense of having an interest

in it. Or did you have an interest in it?

5

A. I did read it.

Officer McCallum confirmed that asking the police to comment or review a draft statement of claim was unprecedented in his professional experience of over 30 years of police work and that it was “astounding” that CN civil had done so (August 23, 2010, p.135, 1.5 to p.136, 1.10):

10 Q. No. I mean, it's incredulous for me to even  
suggest that almost, isn't it? And--and I'm going to show you  
Exhibit 13, just on the theme of independence and objectivity.  
Exhibit 13 is a document, an email document. Again, Mr. Griffin  
sends an email to Nizam Hasham, the civil lawyer for CN and I  
15 think the evidence is going to show that he's the lawyer  
directing the civil claim, okay, against Scott Holmes. And then  
on July 23rd, at 4:55 p.m., Nizam sends this and among the  
people who receive this document are Bruce Power, Inspector  
Bruce Power with CN Police, okay. And it says, "Please see the  
20 draft statement of claim in this matter. Please comment as soon  
as possible. Thank you." And then if you turn the page, what  
you see inside this document is you see basically it's the draft  
document prepared by the civil lawyers for CN, setting out all  
of their allegations against Scott Holmes, all of their  
25 allegations in respect of his involvement in the alleged fraud.  
And they're asking for comments and Nizam is asking Bruce Power,  
who is the Inspector in charge of the investigation, to comment  
on the civil claim. I mean, this is astounding, isn't it?

30 A. I--I--I think it is. I've never seen anything  
like that. I've never experienced that in my professional  
experience.

Q. And, again, when we talk about independent  
objectivity, this, combined with the other documents, even  
standing alone, this raises huge red flags for you, doesn't it?

5 A. If I had been part of the investigation then,  
absolutely.



Officer Zwarbeny further confirmed that the improper involvement of CN civil in the police investigation continued throughout the entirety of the investigation (August 19, 2010, p.69, l.25 to p.70, l.15):

25 Q. Okay. So it happened more than once that that  
you'd get these directions not to do something when you were of  
the view you should be doing a certain thing, saying, no don't  
do that right now civil is doing something right now. Hold off  
on that investigative avenue, right?

30 A. With the Sousas yes.

5 Q. No it happened more than that, it happened more  
than just the Sousas, right?

A. Well, I...

Q. Right?

10 A. As we discussed earlier with the arrest  
warrant.

Q. Right. That's right, that's another example.  
There's other examples too, right, throughout the investigation  
that happened.

A. Throughout the investigation?

Q. Yeah, especially in these early stages.

15 A. I would say throughout the investigation, not  
just in the early stages.

The improper involvement of CN civil in the direction of the criminal investigation was such that the officer-in-charge of the criminal investigation testified that, in retrospect, he would have requested more independence if he had been the one deciding how to investigate the matter. He testified as follows (August 20, 2010, p.21, ll.20 to p.22, l.10):

25 Q. If you were to make the call, if you were the one making the call in retrospect, it should have been given to an external police agency with more experience and that was truly independent from CN, do you agree or disagree?

A. I would request more resources and manpower.

Q. And you'd also request more independence, wouldn't you have?

A. Yes I would.

30 Q. And you have requested that you not have to answer to CN civil, and you be allowed to conduct the

5 investigation how you chose to conduct the investigation, isn't that fair too?

Q. Sorry?

A. You would have preferred that you were able to conduct the investigation as you chose to, as you chose to as opposed to being told to stand down, for example?

10 A. Yes.

The evidence at the preliminary hearing made it clear that Officer Zawerbny believed he was being used as a dupe by CN Civil and that his criminal investigation was improperly directed by them. He confirmed that he had grounds to lay charges against other parties but was specifically directed by his superiors who were reporting to CN civil not to do so and to "focus on Scott Holmes." He testified as follows (Aug 20, 2005, p.96, l.10 to p.101, l.10):

A. Yes.

10

Q. And the decision as to who should or should not be arrested and charged with these offences, where did the buck stop? Who is the person I can ask as to why certain people were arrested and certain people weren't? Who do I ask? Do I ask you that? Or was that decision made higher up?

A. Ask my inspector

15

Q. Inspector Fusco?

A. Yes.

Q. Or Inspector Power?

A. Inspector Fusco.

20

Q. Because in terms of reasonable and probable grounds to believe an offence has been committed by various people, the circle of people who would fall under the umbrella of reasonable and probable grounds is much larger than the three accused that are before the court, right?

A. Yes.

25

Q. Because to your mind there was reasonable and probable grounds to believe Janice Holmes committed a criminal offence right?

A. Yes.

30

Q. I guess. I mean if she stood in the same position as Jennifer Flynn, right?

A. Yes.

5 Q. Of course both Janice Holmes and we know she knew the way the companies were being used, right? You knew that from various communications she had with the police, right?

A. Yes.

10 Q. Okay. You don't have any information that Jennifer Flynn knew anything about the way the companies were being used, right? You know that her name's on corporate documents.

A. Corporate documents, banks, cheques.

15 Q. Right. She's a signatory by name on various companies and accounts, right?

A. Yes.

20 Q. But you had no other evidence suggesting she had knowledge of any secret commission or fraud, other than the fact of her name being on various accounts and companies, nothing else, right?

A. And the cheques

Q. And the cheques, yeah. That's it, right?

A. Yes.

25 Q. Okay. So let's just expand the umbrella of people you believe you had reasonable and probable grounds to charge, we have Janice Holmes, right?

A. Yes.

Q. Okay. Sousa brothers?

A. Yes.

30 Q. Yes. Murray Fussee?

A. Murray Fussee?

Q. Fussee.

5 A. I would consider himself a person of interest in that.

Q. Okay. Well, who else then besides the two Sousa brother, Janice Holmes, who else?

A. There was Scott Albert Pole that...

10 Q. Scott, Scott Albert Pole, you have reasonable and probable grounds. Anyone else?

A. I meant Scott Albert Pole as a person of interest. The--at the end of this investigation I felt that, that I had enough evidence on Scott Holmes, Jennifer Flynn, Wayne Dobbie, Rick and Mike Sousa.

15 Q. And Janice Holmes?

A. And Janice Holmes.

Q. Right. And someone told you and directed you not to charge Janice Holmes, right?

20 A. No.

Q. You made that decision all by yourself?

A. We were using her as a witness.

Q. You made that decision all by yourself? Did you make that decision all by yourself?

25 A. No.

Q. You were directed not to charge her and directed to use her as a witness, right?

A. Yes.

Q. Yes. By Inspector Fusco, right?

30 A. Yes.

5

Q. The one who we know is reporting up the chain of command to CN civil, right?

A. To his chief, yeah.

Q. Yeah, Chief Meloche...

A. Yes.

Q. And up...

10

A. Yes.

Q. ...the chain of command.

A. Yes.

Q. ...to CN civil.

A. Yes.

15

Q. The Sousa brothers, you weren't using them as witnesses you were told you weren't allowed to talk to them, right?

A. Yes.

20

Q. And you never did go back and take statements form them, right?

A. No I did not

Q. So they weren't witnesses, right, for you at least on the criminal matter?

25

A. Sorry, sorry, repeat that?

Q. They were not witnesses for you on the criminal matter.

A. No.

Q. Someone told you not to charge them, right?

A. Yes just to focus on...

30

Q. On Scott Holmes.

A. Yes.

5 Q. And Jennifer Flynn.  
A. Yes.  
Q. Because you could use Jennifer Flynn as leverage vis-à-vis Scott Holmes, right? That was the thinking?  
A. Yes at some point.  
10 Q. Yeah, that's the thinking, charge the wife, that's good leverage against the husband, right?  
A. Yes.  
Q. Yeah. And that's the current thinking, right?  
A. Yes.  
15 Q. Yeah. And the Sousa brothers you had been told to stand down in terms of following up on interviews with them, and then when you formulate ground to charge them Fusco says to you, look, don't worry about the Sousa brothers, right? Don't worry about going after them, right?  
A. Yes.  
20 Q. Right. And do you think it's just pure coincidence, sir, that the people who you were directed not to go after criminally, Janice Holmes and the Sousa brothers turn out to be cooperating witnesses on the on civil proceedings for CN? Do you think that's just pure coincidence?  
25 A. I don't know what discussions were but it doesn't seem like a coincidence.  
Q. No it doesn't, does it? It seems like someone in the background is trying to shape things in a certain way, and the civil and the criminal are really still that joint  
30 venture that we saw talked about much earlier, right?

5 A. Yes.  
Q. Doesn't it seem to you, sir, like, you're being used as dupe by CN civil to carry out this criminal investigation and then ultimately just charge selected people? Doesn't it seem when you look at it like that that you're being used as a dupe?  
10 A. Yes.

After 3 days of cross-examination and a review of the manner in which the criminal file was investigated, Officer Zwarbeny agreed that the criminal investigation was improperly influenced by CN civil, was not truly independent, and was "poisoned" by that improper involvement. He testified as follows (August 20, 2010, p.151, l.10 to p.152, l.20):

5 | Q. There appeared to be improper influence from  
the civil side, right?

A. Yes.

10 | Q. You were giving directions that were contrary  
to independence and objectively, correct? They didn't sit well  
with you. You were giving directions to do things that did not  
sit well with your view of independence and objectivity.

A. Yes.

...



30

Q. And you think you have evidence to establish what you have to establish, but what's also clear in all of that, in terms of various directions the investigation would take from time to time you were getting directions that seemed inconsistent with your views as a police officer, right?

A. Yes.

5

Q. And I don't know if you've ever heard this analogy, sir, but you know, when the well is poisoned it's pretty difficult to then just extract the poison from the well water. Have you ever heard that before?

A. No.

10

Q. But you understand the analogy?

A. Yes.

Q. You know, it's must maybe a little bit of poison but it's pretty hard once it's happened to extract it from the water, right?

15

A. Yes.

Q. And when you think about this case and everything that we've talked about and everything you've been cross-examined on, and everything that happened in terms of what was going above you and the directions you were getting, this is a case that seems, when you look at it now, seems to be there was a little bit of poison in that well, doesn't there?

20

A. Yes.

By their own admission, the police officers involved in the investigation were not acting independently and objectively and were being "directed" by the alleged victim's counsel in terms of future investigative steps. This is extremely problematic from a policing perspective and from the perspective of public accountability. The internal corporate structure of CN is such that peace officers who are tasked with discharging a public duty became the pawns of a private corporation where the private interests of CN are at stake. It was never contemplated that the CN police force could be used this way. As "peace officers" under the *Criminal Code* they are entitled to seek search warrants, production orders and arrest warrants. The lack of objectivity and independence in this investigation was compounded by the potential criminal conduct on the part of the officers in utilizing those provisions to further their investigation improperly and by swearing false informations before judicial officers.

## **False information presented to a Justice of the Peace**

Within a month of being asked to investigate the matter, on July 28, 2007 CN police officer Robert Zawerbny swore an Information charging Mr. Holmes with one count of fraud over \$5,000 and one count of accepting secret commissions. The Officer also sought, and obtained, a warrant for Mr. Holmes' arrest. In doing so he testified under oath that Mr. Holmes could not be found and that it was feared he had fled to Florida. He testified as follows:

THE COURT: Okay. All right. So, have, have – you're here for a warrant. Have you tried to serve him?

DETECTIVE ZAWERBNY: Uh, yes. Apparently Scott Holmes is nowhere to be found.

THE COURT: Last known address?

DETECTIVE ZAWERBNY: Last known address is the 10-1027 Charelodow Road 5 Simcoe, Count of North Fol. We believe he may be in Florida. There is a an address where he attends in Florida on a regular basis.

”””

THE COURT: So, you've made all reasonable attempts to, to arrest the gentleman, or find him?

DETECTIVE ZAWERBNY: Yes, we've, we've actually had a private security company at his residence for a number of days and he cannot be located.

THE COURT: Okay, so you're seeking a warrant in the first?

DETECTIVE ZAWERBNY: Yes.

The officer's evidence under oath was deliberately false or materially misleading. He was appearing on behalf of CN to obtain an arrest for Scott Holmes which could have led to him being immediately arrested by any peace officer on the basis that there had been attempts to find Scott Holmes so that they could arrest him and there was a fear he had fled the jurisdiction. Neither statement was true. Either Zawerbny knew it not to be true or he ought to have known had he had made any kind of diligent, reasonable inquiry. Zawerbny was cross-examined about this at the preliminary hearing. There were no legitimate attempts to serve Scott Holmes or arrest him prior to obtaining the arrest warrant. Additionally, the information available made it clear that Scott Holmes had not fled the jurisdiction. The CN police were also in possession of a report prepared by a private investigative agency (Eagle Investigations) which made it clear that Holmes had not fled the jurisdiction.

Zawerbny conceded under cross-examination that he had misled the issuing justice of the peace (August 18, 2010, p.143, ll.10 to 25):

15 Q. Is there any other way to take the answer to,  
"Have you tried to serve him?" "Uh, yes." Does that accurately  
reflect any state of affairs?

A. No.

Q. So it's not, not potentially misleading, on the  
face of it, putting aside what your expressed intention is  
today, on the face of it its misleading, correct, sir?

20 A. What I was...

Q. I didn't ask you what you were trying to do.  
On the face of it its misleading wasn't it?

A. Yes.

The police made no attempt to locate Mr. Holmes to effect the arrest. Not so coincidentally, eight days after criminal charges were laid on August 6, 2008 CN issued a statement of claim against Scott Holmes and brought an *ex parte* application for an Anton Pillar Order and a Mareva injunction, both of which were granted on August 8, 2008. The effect of the civil orders was that all of Mr. Holmes property anywhere situated in the world was seized. Although Mr. Holmes appeared with counsel during the course of the civil proceedings, no attempt was ever made by the CN police to arrest him. In fact, when I became aware of the existence of an arrest warrant, CN police indicated that they had no intention of acting on the warrant.

### **Improper use of arrest warrant power**

I first became aware of the existence of the criminal charges as a result of reviewing an Information to Obtain a Search Warrant that was obtained by the CN police in relation to the residence of a third party. That Information to Obtain was obtained through the Court office in London in September of 2008. The warrant was obtained before a Justice of the Peace in London. Upon becoming aware of the existence of the criminal charges, I wrote to CN Police by letter dated September 23, 2008 after speaking to an officer on the phone to determine if they wanted Scott Holmes to surrender. In his letter summarizing the conversation, it was confirmed that the police were not intending to arrest Mr. Holmes and were "continuing" their investigation. I wrote in part as follows:

You indicated that you first became involved with this matter in early September although the matter had been under investigation by the CN police prior to that time. You indicated that you were aware that there was a warrant for Mr. Holmes' arrest. When you reviewed the matter, you were of the belief that it was premature to effect an arrest pursuant to that warrant (although it was taken out on July 28/08) and directed that the warrant be removed from CPIC. The basis of directing that the warrant not be executed and removed from CPIC was because CN was still "investigating" the matter.

When I questioned whether you would be rescinding the warrant, you indicated that you would not be. However, you assured me that the police would not simply go to Mr. Holmes' residence to effect an arrest. When the CN police determine that it is "timely" to effect the arrest, you indicated that I would be contacted so that arrangements can be made for Mr. Holmes to surrender. You further indicated that it was the present intention of the CN police to release Mr. Holmes on a Promise to Appear and an Undertaking rather than holding him for a judicial interim release hearing.

I wrote to CN police again on September 26, 2008 and advised of his concerns regarding the propriety of CN police investigating the alleged criminal allegations when CN was the alleged victim of the fraud. In that letter, I indicated that:

As set out in my earlier correspondence, I am counsel to Mr. Scott Holmes. I am also counsel to Complete Excavating.

I am writing this letter because I am becoming increasingly concerned about the conduct of the CN police during your ongoing "criminal" investigation of my clients. I would urge you to reassess the propriety and jurisdiction of the CN police in continuing to investigate this matter.

As you are aware, CN is involved in civil litigation with my client. That litigation has resulted in CN obtaining various Court orders and production of information on a compelled basis pursuant to those orders. The allegations that form the heart of the civil proceedings are also at the heart of the criminal investigation being conducted by the CN police (which, as part of its investigation, accessed various CN corporate record databases and other records provided by CN and relied upon interviews with various CN employees).

CN police authority as "peace officers" is governed by s.44(1) of the *Railway Act*. Given the nature of the investigation over the alleged fraudulent activity engaged in and the scope of that investigation, I question whether the jurisdiction contemplated by s.44(1) is being properly exercised here and whether it even extends to an investigation of this nature. In any event, regardless of whether there is "jurisdiction" for the CN police to investigate these alleged offences, the dual role of CN (as plaintiff in the civil proceeding obtaining compelled production from my clients) and as employer of the CN police is entirely inappropriate or, at the very least, raises the appearance of impropriety. I am cemented in this view in light of the conduct of the CN police during the course of the investigation.

I have confirmed in writing with you and Inspector Fusco that you obtained a warrant for the arrest of my client on July 28/08. However, notwithstanding the existence of that warrant, I have also confirmed that it is not the intention of CN police at this time to "effect" the warrant and it has been removed from CPIC (although it was on there at one time). It appears that whatever purported "reasonable and probable grounds" existed to obtain the warrant, they no longer exist so as to

justify executing it. Additionally, the information provided to me by you and Inspector Fusco with respect to the warrant is at odds with what other members of the CN Police have sworn to under oath. The fact that an arrest warrant has been obtained but that the investigation is still “continuing” (and my client’s surrender is not being sought) only furthers my belief that CN police and CN are improperly using the criminal process to advance civil interests. This would be a most serious abuse of both the civil and criminal court process. Furthermore, the conduct of the CN police during this investigation suggests that you have lost sight of the limits of your authority and are acting as advocates for CN rather than independent investigators.

...

If it is the intention of CN or the CN police to continue to “investigate” this matter on the basis that there are reasonable and probable grounds to believe that there was “criminal” conduct, I would urge you to refer the matter to an independent and objective police force such as the Ontario Provincial Police. This might go some way, albeit belatedly, to ensuring that my client’s constitutional rights are not infringed by CN.

On October 2, 2008, I contacted the Crown Attorney for the Peel Region (where the arrest warrant had been taken out) and the charges laid to advise him of the fact of the charges and the outstanding arrest warrant. I also sought disclosure from the Crown given the existence of the outstanding charges. On October 21, 2008 Crown counsel (Mr. Felix) stayed the Information against Mr. Holmes pursuant to s.579(1) of the *Criminal Code*.

CN police also misled justices of the peace in various search warrants and production order applications. They did so by failing to disclose the “joint-venture” with CN civil and the involvement of CN civil in the investigation. They also relied on the suggestion that Scott Holmes had been “evading arrest” even when it was clear that they had no interest in arresting him. In fact, even after the original charges against my client were stayed by the Crown, the police continued to rely on the fact of the charge and the allegation that Holmes was evading arrest to secure court orders (by testifying under oath that he had been charged and was evading arrest). A summary of some of the Court orders where false statements were made include the following:

**July 29/08**

**Production Orders for Various Banking Records**

Zawerbny relied on the fact of the charges and HOLMES’ seeking evade arrest to obtain various production orders in respect of various financial institutions.

The Informant did not disclose the status of the parallel civil proceedings where productions were being made of the material being sought on the Criminal side.

**Aug 13/08**

**Continuation of Production Orders obtained**

Basis of original production order had materially changed – Holmes was not evading. CN knew where he was and he was represented by counsel who had responded to civil matter. Notice of Intent to defend had been filed day previously to knowledge of CN. Yet CN continued to rely on his alleged evasion as a basis for the Orders.

The Informant did not disclose the status of the parallel civil proceedings where productions were being made of the material being sought on the Criminal side.

**Aug 28/08**

**Continuation of Production Orders obtained**

Basis of original production order had materially changed – Holmes was not evading. CN knew where he was and he was represented by counsel who had responded to civil matter.

The Informant did not disclose the status of the parallel civil proceedings where productions were being made of the material being sought on the Criminal side.

**October 23/08**

**Michael Bossy Group (Accountant's office)**

Detective McCallum was sworn Informant. This ITO is particularly egregious. The Information was sworn October 22, 2008. The day prior (October 21, 2008) the Criminal charge against Holmes was stayed by the Crown. CN police were aware of this. This was not disclosed in the ITO.

The Informant relied on the existence of the July 28, 2008 charge to get the warrant. Additionally, the Informant relied on Scott Holmes' wishing to evade arrest to get the warrant. The Informant suggested that Holmes' had gone into hiding since becoming aware of the police investigation.

The Informant did not disclose any of the chronology related to contact with criminal counsel for Holmes.

The Informant did not disclose concerns raised in the correspondence regarding propriety of police conduct.

The Informant did not disclose the status of the parallel civil proceedings where productions were being made of the material being sought on the Criminal side.

Officer Zawerbny oversaw the preparation of most if not all of the Informations to Obtain the various production orders and search warrants. By his own admission, he was of the view

that the involvement of CN civil in the police investigation was improper and he voiced those concerns to his superiors. Although he was required to provide full, fair and frank disclosure to issuing justices he never alerted those judicial officers to his concerns. He testified at the preliminary hearing as follows (August 19, 2010, p.70):

20 Q. Okay. So throughout the investigation. Okay. I'm kind of jumping ahead a littler bit but maybe this is a good time to do it, if you personally had a view about the propriety of what was happening, when the time came for you to sit down and be the person who was going to swear under oath that there were grounds to believe getting a production order would afford evidence of an offence...

A. Yes.

25 Q. ...the first thing I'm going to suggest to you is that none of this concern you had is reflected in any of the background information or the documents that you swore in support of the production orders, right?

A. Yes.

And at page 75 of the same transcript:

5 Q. Right. Well, you're the one going in front of a justice of the peace and you're the one who's swearing under oath about the context of the investigation and the history of the investigation. I can take you to your ITOs it talks about all of that.

A. Yes.

10 Q. But not once in any of the ITOs that you ever swear under oath do you ever alert the issuing justice to this issue that's arisen in your own mind about the propriety of CN civil's involvement in the criminal investigation. Not once do you do that, do you?

15 A. No.

20 Q. And I guess it kind of begs the question, sir, if it's about making full fair and frank disclosure and you personally have a view with respect to the propriety of part of the investigation surely it occurred to you that that should be in the information to obtain, didn't it?

A. It never occurred to me.

And page 77:

20 Q. Oh, I know it didn't occur to you, sir, in  
retrospect, I mean part of the test for the issuance of judicial  
authorization is not just reasonable grounds to believe it'll  
afford evidence there's also an interest of justice component.  
25 And in retrospect given this issue about the impropriety of the  
civil involvement which had never happened to you in your  
career, today as we talk about it, it ought to have been set out  
in the informations to obtain, right, sir? Doing it today you  
surely would have included it, right?

30 A. Yes.

The conduct of the CN police officers who swore documents under oath before judicial officers that were patently false and or materially misleading raises the potential for perjury charges and/or obstruction of justice charges. Police officers who are sworn to uphold the law should not be flouting the law for the purpose of their employer (CN). These are serious matters that should be investigated fully.

### **Arrest of Jennifer Flynn for an improper purpose**

Over a year after the initial charges were stayed, on Friday November 6, 2009 Scott Holmes and his spouse, Jennifer Flynn, were arrested by members of the CN police and held for a bail hearing. The following morning they were released on the consent of the Crown on their own undertakings. They were both charged with various fraud and accepting secret commission offences. The circumstances of Mr. Holmes' arrest and, in particular, the arrest of Ms. Flynn raise serious issues about the conduct of CN police officers and their improper use of *Criminal Code* powers.

It is clear, based on the objective record, that Jennifer Flynn stood in no different position than Scott Holmes' former wife (Janice Holmes) in terms of culpability with respect to the alleged criminal conduct. It is also clear that Janice Holmes (who cooperated with CN civil) was never arrested nor charged with any offence. What became apparent during the preliminary hearing was that the sole purpose in arresting Jennifer Flynn and detaining her was to use her as leverage as against Scott Holmes. Additionally, the police specifically chose to arrest them both on Friday evening knowing that it would force them to spend a night in custody. Some excerpts from the evidence include the following (August 20, 2010, p.94 to 97):



5

Q. I know you chose Friday, I can, I can look at the record and know what you did. That's not an answer to the question. The question was why Friday and not Monday? Why? Do you have an answer for that?

A. Do it before the weekend.

10

Q. You wanted to do it knowing he'd have to spend the night in custody, right?

A. He would have, yes.

Q. You did it with that in mind to make sure that he'd have to spend the night in custody, right?

15

A. Yes.

Q. And you did it with, with having in mind you wanted to make sure that Jennifer Flynn had to spend the night in custody, right?

A. Yes

20

Q. And your hope was that by arresting Jennifer Flynn and making her have to spend a night in custody that maybe you could put some pressure on her to talk to the police, right? Right?

A. Yes.

25

Q. Right. It was calculated to try and put some pressure on Mr. Holmes' spouse to sell him out and give a statement to the police, right?

A. Yes.

30

Q. And in fact that was all part of the arrest plan wasn't it? Wasn't it?

5  
10  
15  
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25  
30

A. Yes.

Q. And that was part about--part of what was discussed with Inspector Fusco, correct? Correct?

A. I, I believe so, yes,

Q. Because in fact the truth is that the only basis for arresting Jennifer Flynn is that her name appears on various corporate documents, right?

A. Yes.

Q. Associated with various companies, correct?

A. Yes.

Q. In that way Jennifer Flynn stood in the exact same position as Janice Holmes did years earlier with respect to various companies, correct?

A. Yes.

Q. And we know Janice Holmes never got arrested, right?

A. No she did not.

Q. She did not. But Jennifer Flynn stands in exactly the same position Jennifer Holmes did--sorry, Jennifer Flynn stands in exactly the same position Janice Holmes did, correct?

A. Yes.

Q. Yes. But of course Janice Holmes is not currently married to Scott Holmes, right?

A. Yes.

Q. And she was already cooperating with the police, right?

R. v. Holmes

R. v. Flynn

R. v. Dobbie

Robert Zawerbny - Cr-ex. by Mr. Lacy

A. Yes she was.

5 Q. So no point arresting her, but if you arrest Jennifer Flynn that may put some pressure on her to want to talk to the police, right?

A. Yes.

10 Q. And the decision as to who should or should not be arrested and charged with these offences, where did the buck stop? Who is the person I can ask as to why certain people were arrested and certain people weren't? Who do I ask? Do I ask you that? Or was that decision made higher up?

A. Ask my inspector

15 Q. Inspector Fusco?

A. Yes.

Q. Or Inspector Power?

A. Inspector Fusco.

20 Q. Because in terms of reasonable and probable grounds to believe an offence has been committed by various people, the circle of people who would fall under the umbrella of reasonable and probable grounds is much larger than the three accused that are before the court, right?

A. Yes.

25 Q. Because to your mind there was reasonable and probable grounds to believe Janice Holmes committed a criminal offence right?

A. Yes.

30 Q. I guess. I mean if she stood in the same position as Jennifer Flynn, right?

Publication Ban

97.

R. v. Holmes

R. v. Flynn

R. v. Dobbie

Robert Zawerbny - Cr-ex. by Mr. Lacy

A. Yes.

5 Q. Of course both Janice Holmes and we know she knew the way the companies were being used, right? You knew that from various communications she had with the police, right?

A. Yes.

10 Q. Okay. You don't have any information that Jennifer Flynn knew anything about the way the companies were being used, right? You know that her name's on corporate documents.

A. Corporate documents, banks, cheques.

15 Q. Right. She's a signatory by name on various companies and accounts, right?

A. Yes.

20 Q. But you had no other evidence suggesting she had knowledge of any secret commission or fraud, other than the fact of her name being on various accounts and companies, nothing else, right?

A. And the cheques

Q. And the cheques, yeah. That's it, right?

A. Yes.

25 Q. Okay. So let's just expand the umbrella of people you believe you had reasonable and probable grounds to charge, we have Janice Holmes, right?

A. Yes.

Q. Okay. Sousa brothers?

A. Yes.

30 Q. Yes. Murray Fussee?

A. Murray Fussee?

Publication Ban

And at p.100 of the same day:

97.

R. v. Holmes

R. v. Flynn

R. v. Dobbie

Robert Zaverbny - Cr-ex. by Mr. Lacy

A. Yes.

5 Q. Of course both Janice Holmes and we know she knew the way the companies were being used, right? You knew that from various communications she had with the police, right?

A. Yes.

10 Q. Okay. You don't have any information that Jennifer Flynn knew anything about the way the companies were being used, right? You know that her name's on corporate documents.

A. Corporate documents, banks, cheques.

15 Q. Right. She's a signatory by name on various companies and accounts, right?

A. Yes.

20 Q. But you had no other evidence suggesting she had knowledge of any secret commission or fraud, other than the fact of her name being on various accounts and companies, nothing else, right?

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Q. And the cheques, yeah. That's it, right?

A. Yes.

25 Q. Okay. So let's just expand the umbrella of people you believe you had reasonable and probable grounds to charge, we have Janice Holmes, right?

A. Yes.

Q. Okay. Sousa brothers?

A. Yes.

30 Q. Yes. Murray Fussee?

A. Murray Fussee?

Publication Ban

As noted above, the police purposely sought to arrest Holmes and Flynn on a Friday night so that they would have to spend a night in custody. Additionally, the police claimed they held them for a bail hearing because they wanted conditions on their release that would preclude them from leaving the country. During the preliminary hearing, it was pointed out to the police officers that they could have released both Holmes and Flynn on conditions from the police station including a condition that they not leave the country. The officers claimed that they were not aware of that but when confronted with the *Criminal Code* provisions acknowledged that it was so. Officer McCallum testified as follows (August 20, 2010, p.87 to 89):

87.

R. v. Holmes

R. v. Flynn

R. v. Dobbie

Robert Zawerbny - Cr-ex. by Mr. Lacy

A. Yes.

5 Q. That might even be the Region of Peel, if you wanted to, right?

A. Yes.

10 Q. So your standard form contemplates a condition of release by the officer in charge by way of an undertaking requiring someone to remain within the Province of Ontario, right?

A. Yes.

Q. Or remain within the country of Canada, right?

A. Yes.

15 Q. Or remain within the Region of Peel, right?

A. Yes.

Q. That's your standard form, right?

A. Yes.

20 Q. Okay. But if that was too much work to look at what the standard form said you could have consulted your *Criminal Code*, right?

A. Yes.

25 Q. Now, this one's a 2010 *Criminal Code* but you can take my word for it, it hasn't changed, okay? Just read this, this is under section 499, "Released from custody by officer in charge where arrest made with warrant." Okay?

A. Yes.

30 Q. There's conditions set out, conditions for release, 1 a, b, and c. And then there's additional conditions set out under 2 a and following, do you see that?

Publication Ban

88.

R. v. Holmes

R. v. Flynn

R. v. Dobbie

Robert Zawerbny - Cr-ex. by Mr. Lacy

A. Yes.

5 Q. And it says 2a, to remain within the territorial jurisdiction, right?

A. Yes.

10 Q. Sir, you had the ability to impose a condition of release on Ms Flynn by way of an undertaking, right?

A. Yes.

15 Q. She didn't have to be held for a bail hearing did she? Did she?

A. No.

15 Q. And she didn't have to be arrested the way you arrested her, she could have just arranged for her surrender, right?

A. Yes.

20 Q. You could have made those arrangements with Ms Flynn, right?

A. Yes.

Q. And you chose not to, right?

A. Yes.

25 Q. And you chose not to because that was part of the strategy vis-à-vis the arrest of Mr. Holmes, right? We'll get him where it hurts. We're going to arrest him right outside of his ex-wife's home, the woman who's been giving us information all along, in the presence of his daughter and we'll arrest his current spouse too at the same time. That was all part of the plan, wasn't it?

30  
Publication Ban



Officer McCallum testified that in light of the ability to release Holmes on a condition that he not leave the country and deposit his passport, there was no basis to hold him for a bail hearing (August 23, 2010, p.154 to 156):

5 Q. But you could ask for a condition that they remain in the Province of Ontario, right?

A. Yes.

Q. That's what an O.I.C. can do, right?

A. An O.I.C. can do that, yes.

10 Q. Right. I mean, that would effectively result in a court order that prevented the person from leaving the country, right?

A. Yes, it could.

15 Q. And the part about the passport, you know what's kind of surprising about that? Maybe you didn't know this, I don't know, but you know on the form, Undertaking Given to a Peace Officer, it's actually attached to the information, because this is Mr. Dobbie, okay, but this is an undertaking, the Form 11.1, look at number (d), "Deposit my passport with name of peace officer or other person designated." It seems that the officer-in-charge did have the ability to designate that, didn't they?

20 A. I don't know why that wasn't done then.

Q. No, I--I--I don't either. It's kind of surprising, isn't it?

25 A. Well, that was the big thing. That was the big thing, that they wouldn't leave the--the country.

Q. Well, did anyone look at the form that was in the possession of the CN Police, to look at what the undertaking form said?

30 A. I can't speak to the other officers, I can only speak to myself and--and no, I did not.

5 Q. No. And the problem is and I appreciate, you know, officers make mistakes from time to time, but this was a pretty important thing, because if you're going to effect an arrest and ultimately keep someone in custody for a bail hearing, when you talk about the ladder principle, you have to consider alternative means of release first, right?

10 A. I--I agree. I mean--I mean, in my opinion, I mean, Mr.--Mr. Holmes and Ms Flynn, in my experience, met--met the criteria for release and I can't--I can't speak to why it wasn't done or why the--the lead Detective suggested otherwise. I mean, I can take it one step further, I don't know why the charges weren't laid in Simcoe or Norfolk County.

15 Q. Well, that's a good--very good question.

A. I mean....

Q. But....

A. But I mean, that wasn't my call.

20 Q. Yeah. You and I won't answer all the questions today. Let--let's answer this one. Look at Section 499(2)(d) of the Criminal Code, which is the provision that applies when someone is arrested and it talks about release on an undertaking. You see Section (d), it talks about ordering the person to deposit his or her passport? Do you see that?

A. Yes, I do.

25 Q. And it mirrors the form that's used actually by the CN Police, because what I'm showing you attached to the information is Mr. Dobbie's undertaking that he signed. And you see (d) allows you to require someone to deposit a passport, right?

30 A. Yes.

R. v. Holmes & Flynn & Dobbie  
Scott McCallum - Cr-ex.

Q. So as I understand your evidence, during this meeting--thanks.

A. You're welcome.

5 Q. During this meeting--I'm going to return the informations before I lose them. During this meeting about arresting Mr. Holmes and holding him for a bail hearing, the main reason for holding him was to get this condition that he not possess a passport, right, that he deposit his passport with the police or court?

10 A. That was one of the things, yes.

Q. Well, that was the one you brought up actually.

A. Right.

15 Q. Okay.

A. That's what I felt was the most important.

Q. 'Cause all of the other ones could have been done by way of an undertaking, right?

A. Yes, they could have.

20 Q. And that one it turns out, could have been done by way of an undertaking, too.

A. Yes, it could have.

25 Q. And I don't know, did anyone ever talk to you about what had been agreed to as between Inspector Fusco and counsel for Mr. Holmes?

A. Well, I understand that there was some correspondence shared between Inspector Fusco and yourself.

Q. Yeah.

30 A. And I understand, if memory serves me right, that--that there was a pre-arrangement agreed upon between you and Inspector Fusco.

**Publication Ban**

It should also be noted that arresting Holmes and holding him for a bail hearing was in breach of the agreement that the officers had reached with counsel for Mr. Holmes (in correspondence a year earlier) that he would voluntarily attend at the police station and be released on an undertaking. That agreement is documented in correspondence with CN police. Ultimately, Mr. Holmes and Ms. Flynn were released the following day from Court on their own undertakings given to a justice.

The improper conduct of the police officers continued after the arrest in that they questioned Mr. Holmes before he had an opportunity to consult with counsel even though he had made a request to do so. It was the evidence of Zawerbny (August 20, 2010, p.106) that he believed that this was the appropriate and lawful procedure:

15 Q. But prior to giving them the opportunity to  
speak to a lawyer your evidence is you can proceed to ask them  
questions and they can choose to answer or not answer, right?  
Right?

A. Yes.

Q. Right.

A. If they wish...

20 Q. That's your understanding with all you  
extensive training as police officer, that's your understanding  
of how it, how it works. You can ask them if they want to speak  
to a lawyer, they say yes, you say, well, I'll make those  
arrangements whenever and in the meantime you can continue  
proceed to question the person and ask him or her if they want  
25 to answer questions, right? I've got that all right, right?

A. Yes, because if they wish to change and not--if  
they wish to choose and not to exercise their rights.

Q. Okay. And that's your model, based on your  
understanding that's the way you approached this arrest, right?

30 A. Yes.

Zawerbny's understanding is completely wrong. The Supreme Court of Canada has made it clear that once a detainee requests the opportunity to speak to counsel, the police are obligated to hold off questioning to allow a reasonable opportunity to consult with counsel (*R. v. Prosper* [1994] 3 S.C.R. 236).

## Request

The conduct of the CN police in this case raises serious concerns. There is ample basis to investigate the matter for potential criminal charges and/or professional disciplinary action against the impugned officers. Unfortunately, the corruption of the police in this case was at the highest level. The officers and the CN police generally need to be held accountable for their actions. The conduct of the officers should be investigated for potential criminal charges by the London Police Service (where various production orders and search warrants were obtained) or the Peel Regional Police Service (where the arrest warrant and other production orders were obtained). The Chief of Police for CN should be referring the matter of potential disciplinary proceedings to an outside agency to investigate independently and objectively. Failing that, the Ontario Civilian Police Commission should investigate the matter and, if appropriate, discipline the officers. But the conduct of the CN police in this case also raises larger public safety issues.

CN is a company that is traded publicly in Canada and in the United States of America. They are no longer a Crown corporation. Notwithstanding that, they have employees that are “peace officers” that enjoy the same rights and privileges as other police officers. The only difference appears to be that they are not accountable for their actions and will take direction from the Board of Directors of CN. This is highly problematic. I would urge the Minister of Public Safety to conduct a review of the CN police and the role of CN police vis-à-vis the company they work for. I would also urge the Minister to review the propriety of the continued existence of this private police force.

I appreciate that this document is lengthy and detailed. However, my client is also prepared to meet with any officer who is assigned to investigate the matter objectively to provide a full and complete statement. Additionally, I would be prepared to meet with any independent investigator to walk them through the documentation in support of this request. I have not included herein copies of the preliminary hearing transcripts or copies of the exhibits filed at the preliminary hearing. However, should anyone wish to obtain copies of those materials to investigate the matter, we will gladly provide that material. The accountability of the police to the public is critical. The CN Police need to be held accountable beyond what they may be liable for civilly.

Thank you for your consideration of this request, which you will no doubt take seriously. We look forward to your respective responses.

Sincerely,  
LACY WILKINSON LLP

Michael W. Lacy

# Attachment 2



May 20, 2020

Tavengwa Runyowa  
2010 – 11<sup>th</sup> Avenue  
Royal Bank Building – 7<sup>th</sup> 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;

...

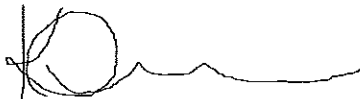
(j) facilitate the commission of an offence or tend to impede the detection of an offence;

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.

If you would like to exercise your right to request a review of this decision, you may do so by completing a "Request for Review" form and forwarding it to the Saskatchewan Information and Privacy Commissioner within one year of this notice. Your completed form can be forwarded to #503 – 1801 Hamilton Street, Regina, Saskatchewan, S4P 4B4. This form is available at the same location which you applied for access or by contacting the Office of the Information and Privacy Commissioner at (306) 787-8350 or at [webmaster@oipc.sk.ca](mailto:webmaster@oipc.sk.ca).

If you have any questions please contact the writer at (306) 975-8259 or [kayla.oishi@police.saskatoon.sk.ca](mailto: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)		
<b>BUSINESS</b>	<b>(306) 665-2001</b>	<b>(Primary)</b>
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

**Narrative: DETAILS - 3**

Author: 752 PAULSEN, TAMARA

Related date/time: Thursday, 2015-Apr-09 02:40

On 2015Apr09 at 2234 hours, while on routine patrol with Cst. Jenkins 862, in marked Patrol Car 173, we were dispatched to an industrial accident at the CN rail yards located at 1701 Chappell Drive in Saskatoon, SK. Dispatch stated someone has been hit by a train in the west end of the yard. Staff member. MD notified will meet emergency staff at the curling rink on Chappell Drive.

At 2234 hours dispatch received another update that the complainant was not sure what happened just that it is an employee who is not responsive and not breathing. They also clarified that this individual was not under the train.

Sgt. Pringle was a few seconds ahead of us and we arrived at 2241 hours in the far west end of the rail yard almost at the highway 7 overpass.

I ran over to the north main track where there was a gathering of people around a male lying on the rocks. This male was laying on his left side in the recovery position. I observed a small amount of blood on the rocks and blood on the back of his skull. The male who was later identified as Kevin Timmerman was making moaning noises and was breathing. His eyes did not appear to be focusing on anything and when I spoke to him he was not responsive. I also observed Silvia coming from the left side of Timmerman's mouth.

I observed what I believed to be Timmerman's hat lying approx. 90' west of where Timmerman's body was laying.

At 2244 hours Fire arrived on scene and began working on Timmerman. At this time I went and spoke with a 28(1) [redacted] train #314 which hit Timmerman. 14(1)(c) [redacted]

[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted] 28(1) [redacted]  
[redacted]

I requested 28(1) [redacted] to begin writing a statement which Cst. Jenkins did finish with 28(1) [redacted] as I was requested to go with MD to the hospital.

MD arrived on scene shortly after Fire personnel did. Fire and Paramedics placed Timmerman on a stretcher and got him into the Ambulance. A short time after Timmerman was placed in the Ambulance he began to go into cardiac arrest at which time Fire member Ian Mollison and Jason Farago assisted MD staff Matt McGurk in doing CPR.

I was advised by Matt McGurk that we were going to be going to Royal University Hospital. Matt McGurk placed the Lucas CPR machine on Timmerman at approx. 2314 hours at which time we also began travelling on route to RUH with A/Sgt. Flath as the Ambulance escort.

We arrived at RUH at 2331 hours and went into trauma room #1.

RUH medical staff began working on Timmerman until 2342 hours when Dr. Nick Bouchard called the time of death.

Timmerman had massive trauma to the back of his skull. There was a large cut approx. 8" long and a few inches wide located on the left calf area. There was the right leg had a break mid way up the shin and Timmerman's



**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  
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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  
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**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

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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.





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DEATH - ACCIDENTAL

**Narrative: DOCUMENT LIST - 1**

Author: 434 PRINGLE, DARREN ROBERT

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

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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]



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  
- based in Storn  
1701 Chappell Dr  
[REDACTED]  
[REDACTED]

RCMP -  
Cat. Tyler BUSCH  
[REDACTED]  
SISA [REDACTED]

Federal Offrs  
[REDACTED]

Noel AIROUAC  
[REDACTED]

P.O. Box 1728 • Saskatoon, SK • S7N 3B8 • T. (306) 975-4200 • C. (306) 370-5807  
F. (306) 975-4339 • E. darren.pringle@police.saskatoon.sk.ca  
www.saskatoonpoliceservice.ca

SASKATOON POLICE SERVICE  
Storn - Spirit - 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 Pritchard  
 Northwest Division  
 D Platoon  
 PO Box 1728 • Saskatoon, SK • S7N 3R8 • T. (306) 978-8300 • C. (306) 370-9807  
 F. (306) 379-8339 • E. darren.pritchard@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.

- Witness 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 @ R/VH called time of death.

P.O. Box 1728 • Saskatoon, SK • S7N 3B6 • T: (306) 975-8300 • C: (306) 370-8807  
F: (306) 975-8238 • E: darren.primel@police.saskatoon.sk.ca  
www.saskatoonpoliceservice.ca

**SASKATOON POLICE SERVICE**  
*Strenuous - Efficient - Polite*

**Sgt. Darren Pringle** #324  
Northwest Division  
D Division



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 - Spence - Wilson*

Sgt. Darren Pringle #434  
Northwest Division  
D Platoon

P.O. Box 1728 • Saskatoon, SK • S7N 3B6 • T. (306) 975-8300 • C. (306) 370-9827  
R. (306) 975-8993 • 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/AFROSPR by Connor Prediger through Access Manager

<https://autofundinginquiry.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)



2015



SASKATOON POLICE SERVICE  
GENERAL OCCURRENCE HARDCOPY

GO# SP 2015-31448

DEATH - ACCIDENTAL



28(1)

R  
2320  
with

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

gave photocopied statements  
for CN police.

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

3084




SASKATOON POLICE SERVICE  
GENERAL OCCURRENCE HARDCOPY

GO# SP 2015-31448

DEATH - ACCIDENTAL

**SASKATOON POLICE SERVICE**  
*Honour - Spirit - Vision*

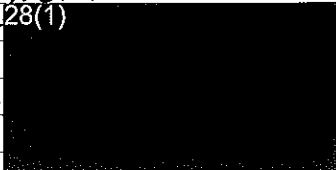


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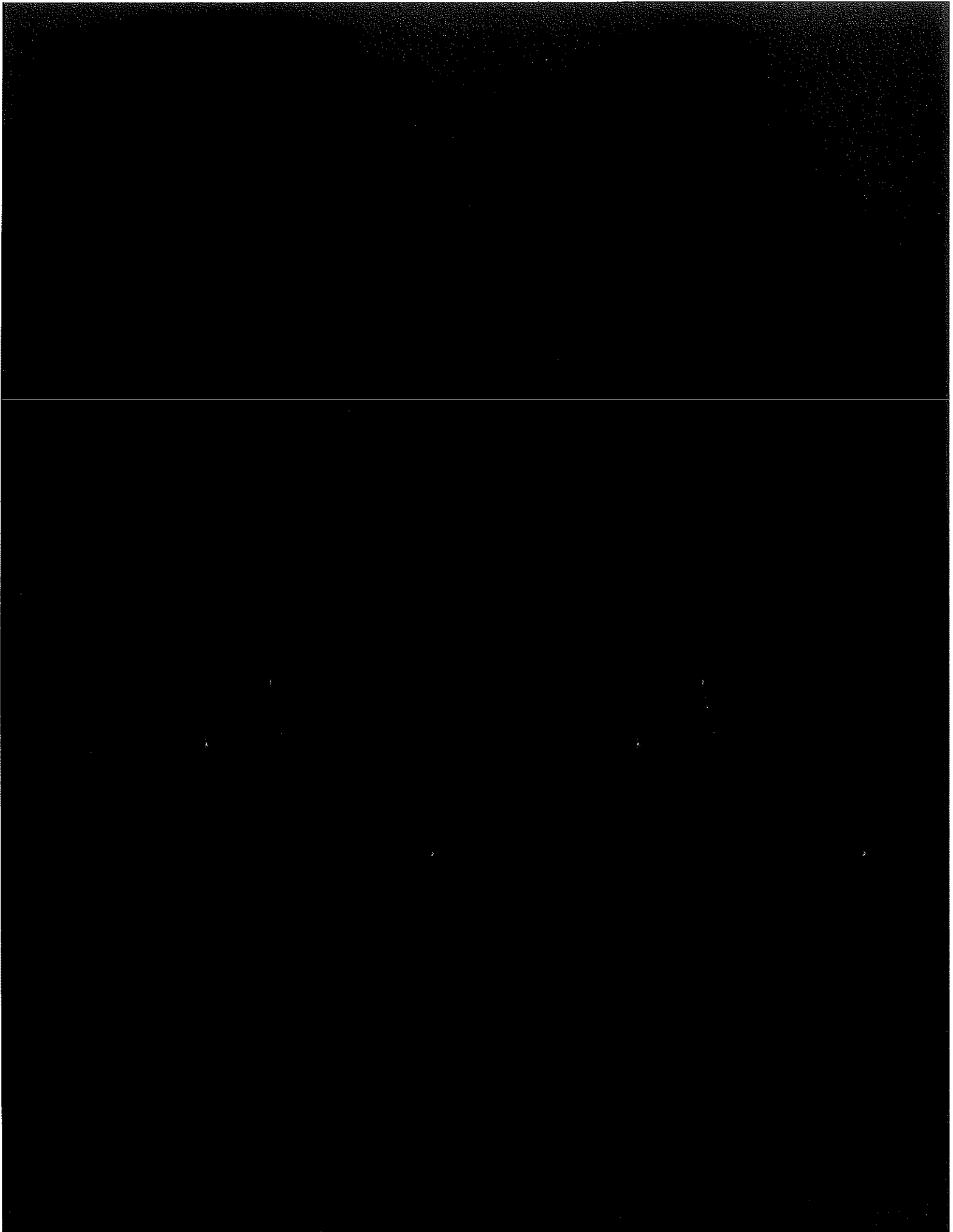
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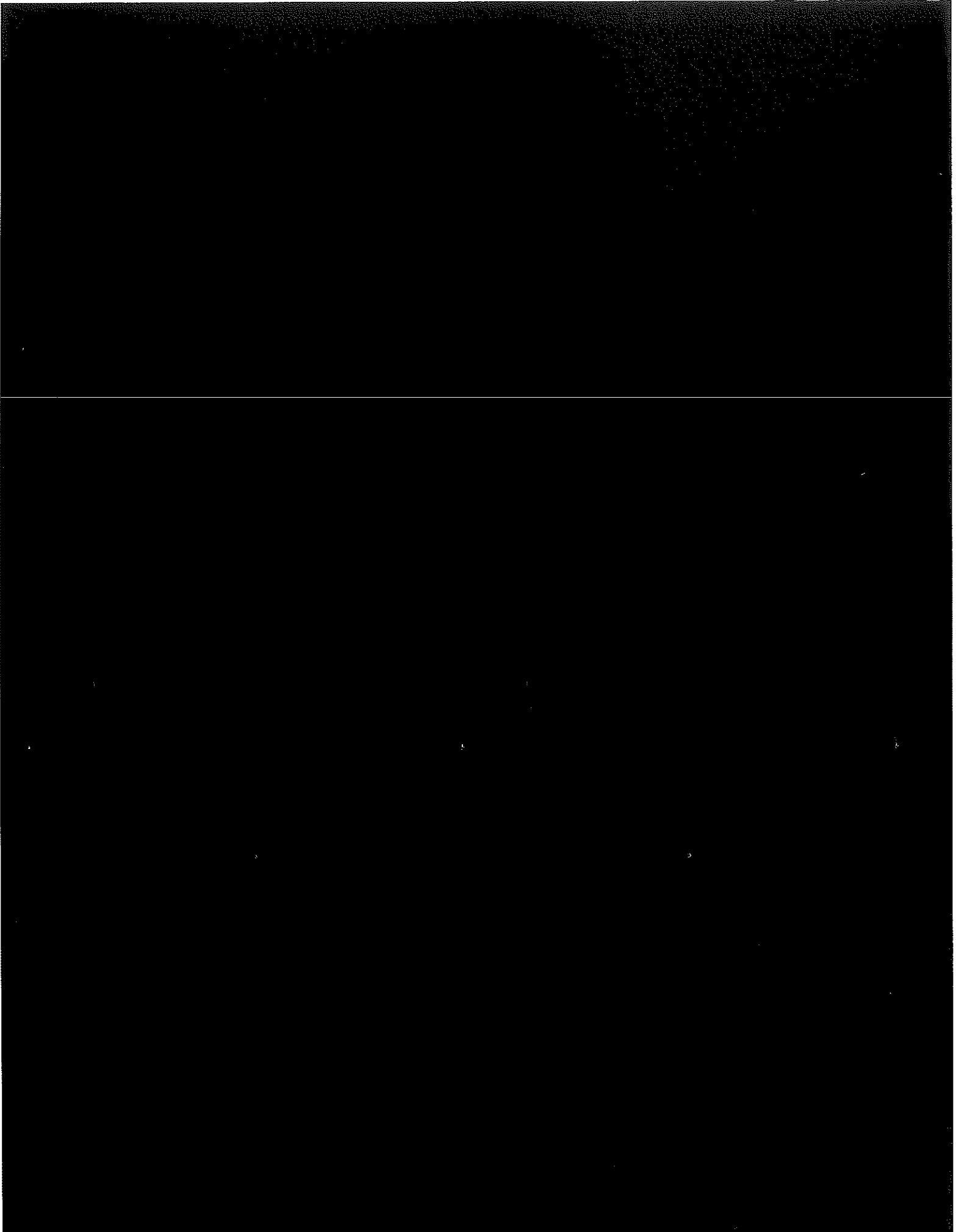


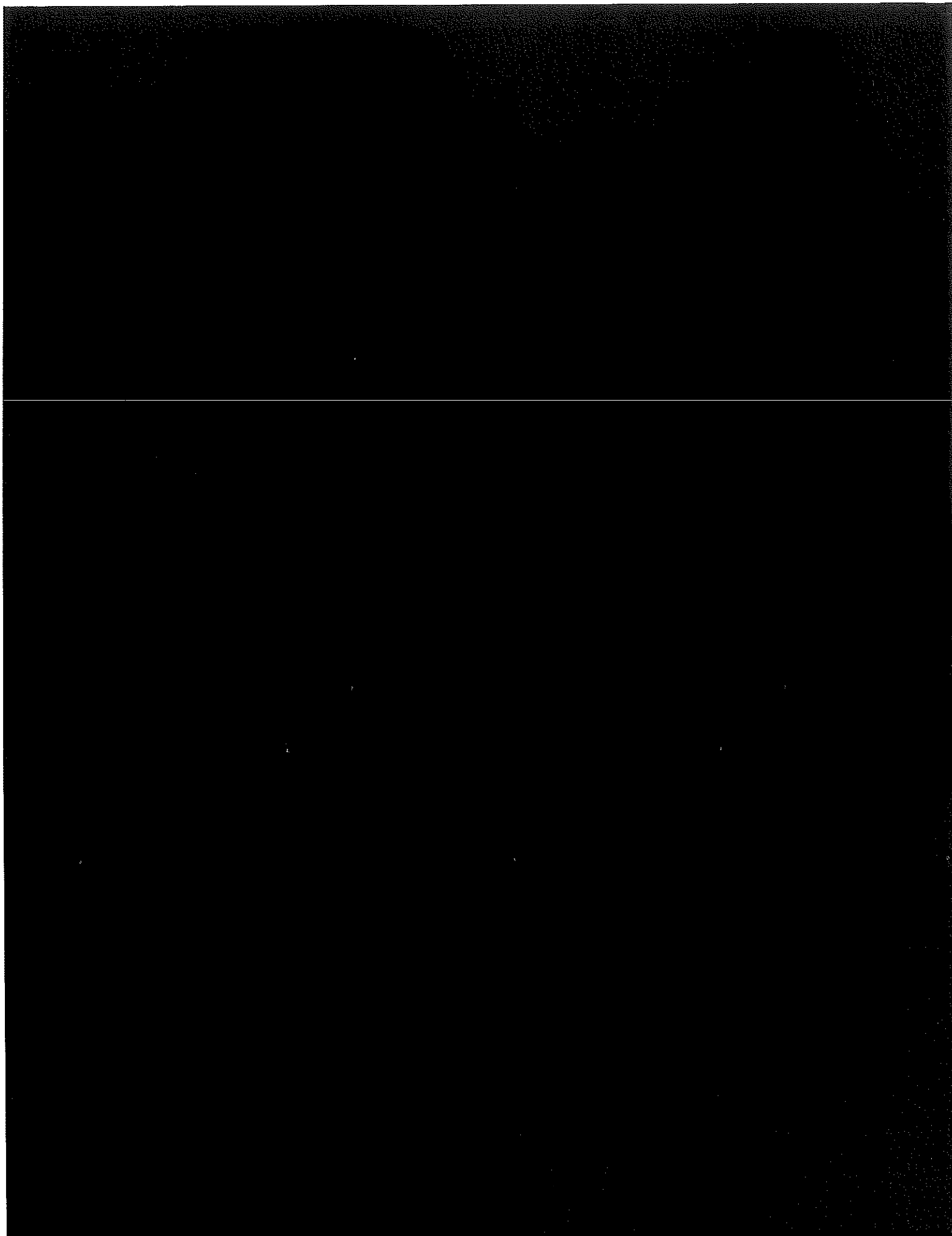
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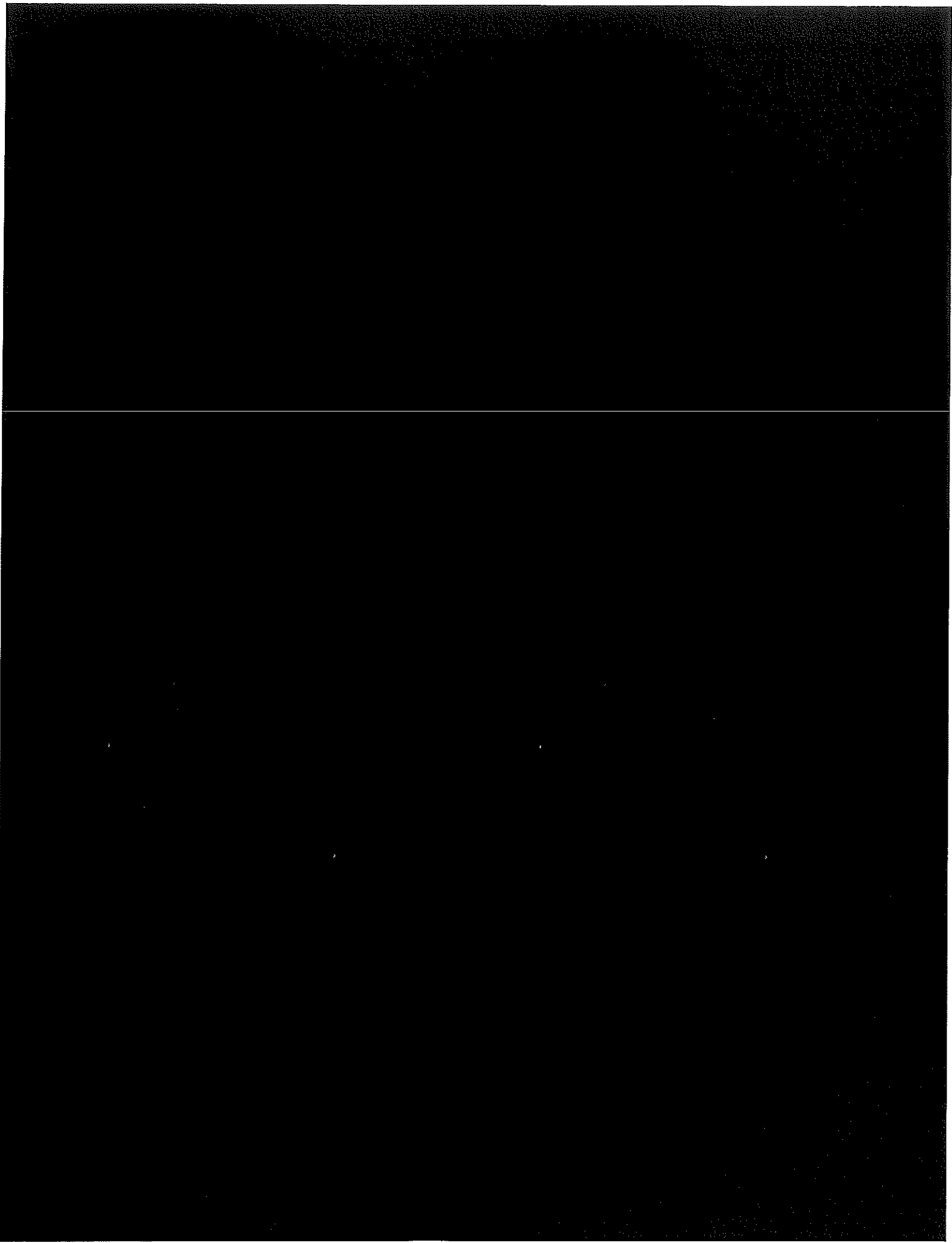
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**SASKATOON POLICE SERVICE  
GENERAL OCCURRENCE HARDCOPY**

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 Jijian 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, 4<sup>th</sup> 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, 4<sup>th</sup> 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.

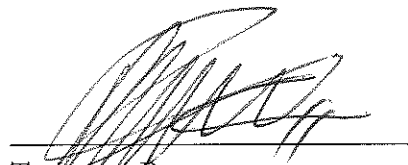
The question around which police force has jurisdiction over the Wet'suwet'en First Nation protests and railway policing in general is also important because railway companies fund their own police forces. If they are calling on the RCMP, municipal police forces, and or the Ontario Provincial Police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



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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

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

**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 – 11<sup>th</sup> Avenue  
7<sup>th</sup> 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.

.../2

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

.../3



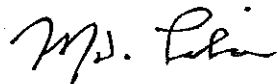
accident, then an agency such as WorkSafe Saskatchewan (occupational health and safety) will be involved in determining the cause(s) and recommending measures to prevent similar incidents in the future. The Transportation Safety Board may have a role if the occurrence involved a railway that is within 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](mailto:RCMP.Commissioner-Commissaire.GRC@rcmp-grc.gc.ca)

[Michelaine.Lahaie@crcc-ccetp.gc.ca](mailto:Michelaine.Lahaie@crcc-ccetp.gc.ca)

[police\\_professionalstandards@cppoliceservice.com](mailto: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 8<sup>th</sup>, 2020 and May 21<sup>st</sup>, 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 – 12<sup>th</sup> Floor  
Ottawa, Ontario K1A 0H8

Email: [ppscoru@ppsc-sppc.gc.ca](mailto: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](http://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.

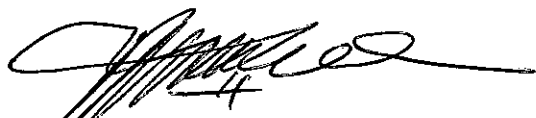
We emphasize that we are not alleging wrongdoing by any senior member of CP Rail's management or board of directors. We are asserting that at this stage, it appears that specific decisions that may have facilitated Jamie's death were made at higher levels than that of his immediate supervisors. While 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

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Calgary, AB T2C 4X9

24/7 1 800 716 9132  
T 403 303 8837  
ken\_marchant@cppoliceservice.com

September 26, 2016

Runyowa Law  
7<sup>th</sup> Floor, 2010 – 11<sup>th</sup> 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

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T 403 303 8837  
ken\_marchant@cppoliceservice.com

November 9, 2016

Runyowa Law  
7<sup>th</sup> Floor, 2010 – 11<sup>th</sup> 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, 4<sup>th</sup> 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, 4<sup>th</sup> 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?

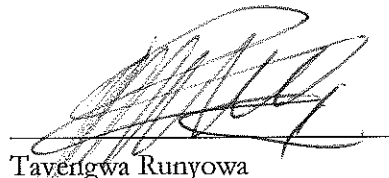
The public needs an unequivocal statement from the OPP regarding the extent of the police force's jurisdiction and the basis for its involvement in any protests or policing events within railway police jurisdiction. Furthermore, as a question of transparency and accountability, the public deserves to 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](mailto:Chris.Diana@ontario.ca)

June 25, 2020

Via Email to [law@runyowa.com](mailto: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**

---

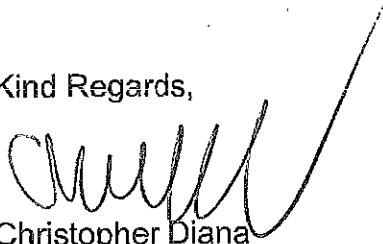
I am counsel with the Legal Services Branch, Ministry of the Solicitor General. In that capacity, I act on behalf of the Commissioner of the Ontario Provincial Police (OPP) with respect to various matters. I have reviewed your letter to Commissioner Carrique with respect to railway-related policing incidents 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](mailto: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  
2010 11th Avenue  
Regina, SK S4P 0J3

Phone: 306-206-2800  
Fax: 306-206-2701  
Email: [law@runyowa.com](mailto:law@runyowa.com)  
[www.runyowa.com](http://www.runyowa.com)

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---

**From:** Peter Cuthbert <peter.cuthbert@cacp.ca>  
**Date:** Wednesday, September 9, 2020 at 1:49 PM  
**To:** Tavengwa Runyowa <law@runyowa.com>  
**Cc:** Peter Cuthbert <peter.cuthbert@cacp.ca>  
**Subject:** CACP and Jurisdiction over Railway Related Matters

Attention .....Travengwa Runyowa

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

Sincerely:

Peter Cuthbert  
Interim Executive Director  
CACP

# Attachment 7



# Regina Police Service

Working together to keep Regina safe

Your File \_\_\_\_\_

Our File \_\_\_\_\_

CONFIDENTIAL

March 19, 2020

Runyowa Law  
7<sup>th</sup> Floor RBC Building  
2010 – 11<sup>th</sup> 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 12<sup>th</sup>, 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](mailto: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

<b>Page No.</b>	<b>General Description</b>	<b>Status</b>	<b>LA FOIP Exemptions</b>
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

<b>LA FOIP Exemptions</b>	<b>Page No.</b>
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 statement <sup>28(1)</sup>

28(1)

28(1)

- 28(1) JIJIAN <sup>28(1)</sup> were moving rail cars into track F3.
- Prior to the move, <sup>28(1)</sup> asked the <sup>28(1)</sup> 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. <sup>28(1)</sup> 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. <sup>28(1)</sup>
- 28(1) JIJIAN told him over the radio that there was room for 10 cars, <sup>28(1)</sup> asked JIJIAN how much room he had to which JIJIAN replied "lots". <sup>28(1)</sup> <sup>28(1)</sup> 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, <sup>28(1)</sup> radioed JIJIAN to see if he was clear, but there was no answer. <sup>28(1)</sup> continued to call JIJIAN but JIJIAN did not respond. <sup>28(1)</sup> tried calling JIJIAN, but JIJIAN did not respond to <sup>28(1)</sup> either.
- At approx 0305hrs <sup>28(1)</sup> 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 <sup>28(1)</sup> 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. <sup>28(1)</sup> 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 <sup>28(1)</sup> [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. <sup>28(1)</sup> [redacted]

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

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

5. <sup>28(1)</sup> [redacted]

6. IEIS revealed that a next of kin <sup>28(1)</sup> [redacted]  
<sup>28(1)</sup> [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, <sup>28(1)</sup> 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. <sup>14(1)</sup>  
<sup>(k)</sup>
5. At approx. 10:20 hours, I was contacted by <sup>28(1)</sup> to have me start to notify the next of kin.  
<sup>28(1)</sup> <sup>28(1)</sup> <sup>28(1)</sup>
6. <sup>28(1)</sup> <sup>28(1)</sup> 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 <sup>28(1)</sup> 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 <sup>28(1)</sup> [redacted] 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 <sup>28(1)</sup> 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.

\* Conductor riding on back guiding train as train backing up.

- Dep snow on tracks

- train car derailed hitting station train car.

- derailed car empty scrap metal bin

- Stationery had large pipe

- Photographed scene

12:05 bag of personal effects given by me.

12:07 RT #1 RT #2

12:20 left property

17:00 cell phone

3 x rings of keys

Wallet with contents

650-001 6710

Photos down loaded

# 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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# TAB 4

Jean Marc Huot  
Direct: +1 514 397 3276  
Mobile: (514) 397-3435  
jmhuot@stikeman.com

February 4, 2021

**Mr. Tawengwa Runyowa**

**Runyowa Law**  
Royal Bank Building  
7th Floor 2010 – 11th Avenue  
Regina, Saskatchewan, Canada S4P 0J3

**Re : Canadian National Railway Company Limited ('CN')**

Dear Mr. Runyowa:

This is further to your correspondence of December 3, 2020, January 21, 2021 and February 1, 2021 addressed to CN concerning the two shareholder proposals submitted on behalf of Ms. Pamela Fraser, of which we are in receipt.

We are acting as corporate legal counsel to CN in connection with its upcoming annual meeting of shareholders and its proxy circular to be prepared for that purpose.

We hereby confirm to you that CN will include in its proxy circular for its 2021 annual meeting of shareholders Ms. Fraser's two shareholder proposals together with the supporting statements that you provided in your December 3, 2020 correspondence.

We would appreciate if you could address to the undersigned any correspondence directed for CN concerning the shareholder proposals in connection with CN's annual shareholders meeting.

Yours very truly,

STIKEMAN ELLIOTT LLP



Jean Marc Huot

JH/pl

# TAB 5



February 8, 2021

BY EMAIL: [jmhuot@stikeman.com](mailto:jmhuot@stikeman.com)

Mr. Jean Marc Huot  
Stikeman Elliot LLP  
41<sup>st</sup> Floor - 1155 René-Lévesque Blvd. W.  
Montréal, QC Canada H3B 3V2

Dear Mr. Huot,

**RE: Ms. Pamela Fraser's shareholder proposals and other matters regarding for CN Railway's upcoming management circular and annual meeting.**

I received your letter of February 4, 2021 in which you confirmed the CN Railway Board's intention to include Ms. Pamela Fraser's two shareholder proposals in the company's upcoming circular to shareholders. We appreciate the confirmation. On behalf of Ms. Fraser, I would like to pose the following outstanding questions to the Board.

1. Ms. Fraser would like to know whether the CN Railway Board intends to endorse or oppose her two shareholder proposals in the upcoming management circular.
2. In my January 21, 2020 package to the CN Railway Board, Ms. Fraser also requested that CN Railway takes affirmative steps to advance the repeal of Sections 44 and 44.1 of the *Railway Safety Act*. These provisions allow for private railway companies such as CN Railway to own police forces with full criminal law enforcement powers across Canada. Mr. Fraser also requested the Board's simultaneous action to amend Sections 30 to 33 of the *Canadian Transportation Accident Investigation and Safety Board Act*. The amendments would enable TSB investigators to make criminal referrals to independent police forces where they deem it appropriate to do so.

Notwithstanding any shareholder proposals, the CN Railway Board has the authority to take such steps in the best interests of the corporation, Ms. Fraser is confident that her additional requests will advance. Our package January 21, 2020 package to the CN Railway Board elaborates on the reasons why, and provides viable and better methods for CN Railway to secure its operations and protect the public without maintaining a fully-fledged police force. In particular, we raised the prospect of employing a contract

policing model and/or converting CN Railway Police into a private security company. These options would free CN Railway from the indeterminate regulatory, commercial, public relations, and political risks of owning and controlling a cross border police force.

Ms. Fraser believes that beyond the taint of a corporatized police force operating in the 21<sup>st</sup> Century and exercising jurisdiction over aboriginal peoples and other Canadians, the CN Police Service is a significant liability that undermines shareholder value. Ms. Fraser needs the Board's explicit response to whether in principle, it intends to advance the aforementioned statutory reforms she has identified to divest the company of the undue risks of owning a private police force.

3. In our January 13, 2021 teleconference with Mr. Finn and Ms. Circelli, they undertook to look into retrieving CN Railway's policies for guaranteeing the operational independence of the CN Police Service from CN Railway's corporate leadership. Despite two requests since that call, they have not provided us with those written policies. I trust that you understand the importance of such policies, which should be readily available documents given their centrality to the corporation's governance. Therefore, Ms. Fraser reiterates her request for CN Railway to provide her with CN Railway's written policies on how it protects the independence of the CN police Service.
4. Given the COVID-19 situation and the fact that the 2021 shareholder meeting will likely be virtual, please advise on the logistics of Ms. Fraser's ability to discuss her proposals at the meeting pursuant to Section 137(1) of the *CBSA*. We plan to co-present the proposals as I am best placed to explain the legal aspects while she can elaborate on why she asserts that her proposals, if adopted, would benefit CN Railway. The logistics would have been easier if the meeting were in-person but in all likelihood, she and I will be in different locations. Please advise that you can accommodate us both via videoconference on the date of the meeting.
5. Please confirm when the 2021 shareholder meeting will occur and when we can expect the company to send out the upcoming circular to shareholders.

Thank you,

*Tavengwa Runyowa*

Tavengwa Runyowa

(Counsel for Ms. Pamela Fraser).

# TAB 6


**Re: Canadian National Railway Company**

Tavengwa Runyowa <law@runyowa.com>

Wed 2021-02-17 6:01 PM

To: Jean Marc Huot <jmhuot@stikeman.com>

Cc: Pam Fraser <pamalama2@gmail.com>; Christina Bender <christina.bender@runyowa.com>; Brandon Cain <brandon.cain@runyowa.com>

 1 attachments (185 KB)

LETTER TO MR. JEAN MARC HUOT REGARDING MS. PAMELA FRASER'S SHAREHOLDER PROPOSALS FOR 2021 MANAGEMENT CIRCULAR.pdf;

Dear Mr. Huot,

On February 8, 2020, I emailed you the attached letter regarding Ms. Pamela Fraser's two shareholder proposals that the CN Railway Board agreed to include in its upcoming circular to the company's shareholders. My letter sought the Board's clarification of whether:

1. The Board intends to formally endorse Ms. Fraser's proposals in the circular and at the meeting;
2. The Board will also endorse and advance Ms. Fraser's other requests to the CN Railway Board i.e. for the Board to initiate the process of transforming the CN Police into a private security company and/or to adopt a contract policing model (effectively ending the private police force in its current incarnation);
3. The Board will provide us with CN Railway's internal policy for ensuring the independence of the CN Police from its corporate parent (a policy that during our January 13, 2021 teleconference call, Ms. Circelli and Mr. Finn insisted the company has always had).
4. The Board will confirm when the upcoming shareholder circular will be distributed, when this year's (2021) annual meeting will be held, and the logistics to allow Ms. Fraser to present her proposals to shareholders at the upcoming meeting, and to adequately prepare.

The Board's positions on the above issues directly affect Ms. Fraser's legal interests. The Board's responses will affect the nature and scope of the steps that Ms. Fraser takes to protect and advance them. We ask for the CN Railway Board's response to the above by **5pm EST on Wednesday, February 24, 2021**.

Thank you,

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

Phone: 306-206-2800  
Fax: 306-206-2701  
Email: [law@runyowa.com](mailto:law@runyowa.com)  
[www.runyowa.com](http://www.runyowa.com)

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**From:** Jean Marc Huot <jmhuot@stikeman.com>

**Date:** Thursday, February 4, 2021 at 2:33 PM

**To:** Tavengwa Runyowa <law@runyowa.com>

**Subject:** Canadian National Railway Company

Dear Mr. Runyowa,

Please see the attached letter.

Yours truly,

Jean Marc Huot

**Jean Marc Huot**

514 397-3276  
jmhuot@stikeman.com

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## **Stikeman Elliott**

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**Stikeman Elliott S.E.N.C.R.L., s.r.l.** Avocats

**Stikeman Elliott LLP** Barristers & Solicitors

[1155 boul. René-Lévesque Ouest, 41e étage, Montréal, QC H3B 3V2 Canada](#)

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TAB 7

Jean Marc Huot  
E-mail: [jmhuot@stikeman.com](mailto:jmhuot@stikeman.com)

February 26, 2021

Mr. Tavengwa Runyowa  
Runyowa Law  
Royal Bank Building  
7<sup>th</sup> Floor 2010 – 11<sup>th</sup> Avenue  
Regina, Saskatchewan  
S4P 0J3

Dear Mr. Runyowa,

Re: Canadian National Railway Company

I am in receipt of your email of February 17, 2021 and your letter of February 8, 2021.

As advised by CN and acknowledged by you on behalf of Ms. Fraser in your February 8 letter, CN has accepted to include your client's shareholder proposals in its management proxy circular for CN's annual meeting of shareholders scheduled for April 27, 2021. The management proxy circular, which will be publicly available in late March, will contain CN's response and the CN Board of Director's recommendation to all shareholders in relation to your client's shareholder proposals, as well as the details and logistics of the annual meeting.

Once the Company has finalized the technical details for the virtual platform to be used at the annual meeting and the information is available, I will contact you with the details as to the manner in which Ms. Fraser, as a shareholder, can participate in the virtual meeting and introduce her proposals if she so wishes, and the available length of time allocated. Alternatively, the Company can read Ms. Fraser's proposal to the assembly as well as the Company's response and proceed to a vote by ballot on the proposal.

As you have acknowledged, the other questions raised in your February 8 letter go beyond the processes for the shareholder proposals and, as such, will be dealt in due course and separately from such proposals.

Yours very truly,



Jean Marc Huot

TAB 8



**Re: Canadian National Railway Company**

Tavengwa Runyowa <law@runyowa.com>

Mon 2021-03-01 6:16 PM

To: Jean Marc Huot <jmhuot@stikeman.com>

Cc: Brandon Cain <brandon.cain@runyowa.com>; Christina Bender <christina.bender@runyowa.com>

📎 1 attachments (166 KB)

Document1 (005) (002) (002) (002)[4].docx;

Dear Mr. Huot,

Thank you for your attached letter of February 26, 2021.

1. Ms. Fraser does not wish for CN Railway to read her proposals at the shareholder meeting because that would amount to simply restating the text of that the shareholders will already have. This concern is especially salient if the CN Railway Board intends to oppose her proposals. The objective of presenting proposals is to allow the shareholder to qualify, elaborate, and provide further details than are possible through the statutory word limit for such proposals. Ms. Fraser requests that I co-present her proposals with her at the annual meeting on April 27, 2021. The proposals involve legal questions and implications that I am best positioned to address. Ms. Fraser can speak to the reasons for why she asserts that it is in CN Railway's best interests for shareholders to pass the proposals. There is no prejudice to anyone by facilitating our joint presentation. In fact, it will allow Ms. Fraser's fellow shareholders to obtain a comprehensive view of the proposals' merits so they can make informed decisions. Please confirm that the CN Railway Board will accommodate Ms. Fraser's presentation as requested.
2. Can we conclude that the CN Railway Board's unwillingness to state whether it will support Ms. Fraser's shareholder proposals at this point means that the Board intends to oppose them? The Board's position will certainly affect how we will prepare and articulate her presentation at the meeting. Please confirm if the Board insists on waiting until it releases the circular to disclose its position.
3. Your attached letter also states that the CN Railway Board will address Ms. Fraser's other requests separately. These requests are for the CN Railway Board to convert the CN Police into a private security company and/or engage a contract policing model whereby the company hires dedicated police officers from public police forces to secure its operations. Can you please provide us with a timeline for when we expect to hear back from CN Railway about this?

Thank you,

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

Phone: 306-206-2800  
Fax: 306-206-2701  
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**From:** Jean Marc Huot <jmhuot@stikeman.com>

**Date:** Friday, February 26, 2021 at 1:20 PM

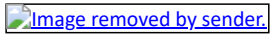
**To:** Tavengwa Runyowa <law@runyowa.com>

**Subject:** Canadian National Railway Company

Mr. Runyowa,

Please see the attached letter.

**Jean Marc Huot**  
514 397-3276  
[jmhuot@stikeman.com](mailto:jmhuot@stikeman.com)



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# TAB 9

**Re: Canadian National Railway Company - Ms. Pamela Fraser's Shareholder Proposal On The Independence Of The CN Police And Request For CN Railway's Internal Policies For Securing That Independence.**

Tavengwa Runyowa <law@runyowa.com>

Tue 2021-03-02 3:36 PM

To: Jean Marc Huot <jmhuot@stikeman.com>

Cc: Brandon Cain <brandon.cain@runyowa.com>; Christina Bender <christina.bender@runyowa.com>

Good afternoon, Mr. Huot,

Yesterday, I sent you an email in response to your letter of February 26, 2021. In my email from yesterday, I raised a number of questions for your response but forgot to restate Ms. Fraser's request for CN Railway's internal policy for ensuring the independence of the CN Police from CN's corporate management. We have asked the CN Railway Board at least three times for this internal policy that Mr. Finn and Ms. Circelli insisted that CN Railway has. They also insisted that this policy has guided the company's conduct with respect to the investigation of serious injuries and fatalities that have occurred in the course of CN Railway's operations over the years. In summary, they stated that these internal policies, which are not public to our knowledge, already accomplish the objectives of Ms. Fraser's proposal.

CN Railway's internal policies for ensuring the independence of its federal, statutory police force are not only important from the perspective of ensuring transparency for the public that the CN Police serves. These policies are also directly implicated in Ms. Fraser's shareholder proposal which seeks to require CN Railway to proactively report serious injuries and deaths to independent police forces for criminal investigation (under the Westray amendments to the Criminal Code and other applicable laws). CN Railway shareholders cannot properly assess and vote on Ms. Fraser's proposal if they have no access to the very policies and practices that underly the proposal.

It is particularly important for CN Railway to disclose its policies and structures for ensuring the independence of CN Police if the Board intends to recommend that shareholders vote against Ms. Fraser's proposal. We do not see how the Board could insist that CN Railway has robust and adequate policies for securing the independence of CN Police but decline to disclose these policies and other records that corroborate the company's compliance with them.

We look forward to your response.

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---

**From:** Jean Marc Huot <jmhuot@stikeman.com>

**Date:** Friday, February 26, 2021 at 1:20 PM

**To:** Tavengwa Runyowa <law@runyowa.com>

**Subject:** Canadian National Railway Company

Mr. Runyowa,

Please see the attached letter.

Jean Marc Huot  
514 397-3276  
jmhuot@stikeman.com

---



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# TAB 10

## Re: Canadian National Railway Company

Tavengwa Runyowa <law@runyowa.com>

Fri 2021-03-12 1:19 AM

To: Jean Marc Huot <jmhuot@stikeman.com>

Cc: Pam Fraser <pamalama2@gmail.com>; Christina Bender <christina.bender@runyowa.com>; Brandon Cain <brandon.cain@runyowa.com>

Dear Mr. Huot,

Please confirm if the CN Railway Board intends to respond to my emails of March 1, 2021 and March 2, 2021. Particularly, we sought to know:

1. Whether CN Railway has internal policies to ensure the independence of the CN Police from corporate management, and when we can expect to receive copies of those policies. Mr. Fin and Ms. Circelli insisted that CN has such policies during our teleconference of January 13, 2021. We need the policies and any other documents verifying their application in practice in order to prepare MS. Fraser's presentation to the CN Railway shareholders. Ms. Fraser wants to ensure that all the shareholders have access to records that will help them to determine whether her proposal on police independence replicates the current system as Mr. Finn and Ms. Circelli stated.
2. We would also like to know whether the CN Railway Board intends to support or oppose Ms. Fraser's two shareholder proposals. We understand that the management circular will be released in the next couple of weeks or so. Ms. Fraser would appreciate as much notice as possible as the Board's response may affect how she prepares for her presentation at the shareholder meeting.
3. When will the CN Railway Board address the issue of transforming the CN Police into a private security company, and adopting a contract policing model to ensure separation of CN Railway's law enforcement and commercial functions?
4. We need confirmation that CN Railway will accommodate both Ms. Fraser and myself in presenting her two shareholder proposals at the April 27, 2021 shareholder meeting.

We are confident that the tide is turning against the notion of private police forces in Canada and the United States. Ms. Fraser and many other shareholders believe that it is commercially and legally beneficial for the railway companies to proactively take the initiative to end this corporate ownership of police forces.

We look forward to the Board's response to all the above.

Thank you,

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**From:** Jean Marc Huot <jmhuot@stikeman.com>

**Date:** Friday, February 26, 2021 at 1:20 PM

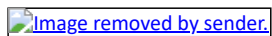
**To:** Tavengwa Runyowa <law@runyowa.com>

**Subject:** Canadian National Railway Company

Mr. Runyowa,

Please see the attached letter.

Jean Marc Huot  
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jmhuot@stikeman.com



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# TAB 11

## FW: Canadian National Railway Company

Tavengwa Runyowa <law@runyowa.com>

Tue 2021-03-23 2:58 PM

To: Brandon Cain <brandon.cain@runyowa.com>

*Runyowa Law Office is physically closed until further notice due to COVID 19 concerns. We are working remotely, so please send all communications via email as we do not have convenient access to our mail or fax machine. Note that we are not responsible for any delayed responses to mail or fax communications during this unprecedented time. For any urgent matters, please call our office number # (306) 206-2800 to leave a voicemail and we will get back to you as soon as possible. Thank you for your understanding.*

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---

**From:** Jean Marc Huot <jmhuot@stikeman.com>

**Date:** Tuesday, March 23, 2021 at 9:24 AM

**To:** Tavengwa Runyowa <law@runyowa.com>

**Subject:** Canadian National Railway Company

Dear Mr. Runyowa,

As previously mentioned in our correspondence to you, CN has accepted to include your client's two shareholder proposals in its Management Proxy Circular for the upcoming annual general meeting of CN's shareholders scheduled for April 27, 2021. The text of the shareholder proposals as well as the supporting statements, as submitted by you on behalf of your client, will appear in the Circular in their entirety.

Accordingly, CN has complied with any obligations that it may have under the Canada Business Corporations Act in respect of your client's proposals. CN's response to the proposals will be included in the Circular and your client will have access to it in the same manner and at the same time as all other CN shareholders. Your client will also be in a position to participate in the meeting in the same manner as all shareholders and subject to the same limits as to time allotted for interventions. The details of the functioning of the meeting on the virtual platform will be included in the Circular. The Meeting will be governed by the customary rules of corporate procedure, and your client will be permitted to briefly present her proposals within the allotted time limits. Once the Circular will have become public this week, I will be available to answer questions that you may have in respect of the mechanics of the Meeting.

The other points that you raise in your email are not in our view related to the presentation of shareholder proposals at a meeting of shareholders under the Canada Business Corporations Act. Rest assured that CN's Board of Directors is fully cognizant of its fiduciary duties and fully complies with them at all times.

Yours truly,

Jean Marc Huot

Jean Marc Huot  
514 397-3276  
[jmhuot@stikeman.com](mailto:jmhuot@stikeman.com)

---

**De :** Tavengwa Runyowa <[law@runyowa.com](mailto:law@runyowa.com)>

**Envoyé :** Friday, March 12, 2021 2:19 AM

**À :** Jean Marc Huot <[jmhuot@stikeman.com](mailto:jmhuot@stikeman.com)>

**Cc :** Pam Fraser <[pamalama2@gmail.com](mailto:pamalama2@gmail.com)>; Christina Bender <[christina.bender@runyowa.com](mailto:christina.bender@runyowa.com)>; Brandon Cain <[brandon.cain@runyowa.com](mailto:brandon.cain@runyowa.com)>

**Objet :** Re: Canadian National Railway Company

Dear Mr. Huot,

Please confirm if the CN Railway Board intends to respond to my emails of March 1, 2021 and March 2, 2021. Particularly, we sought to know:

1. Whether CN Railway has internal policies to ensure the independence of the CN Police from corporate management, and when we can expect to receive copies of those policies. Mr. Fin and Ms. Circelli insisted that CN has such policies during our teleconference of January 13, 2021. We need the policies and any other documents verifying their application in practice in order to prepare MS. Fraser's presentation to the CN Railway shareholders. Ms. Fraser wants to ensure that all the shareholders have access to records that will help them to determine whether her proposal on police independence replicates the current system as Mr. Finn and Ms. Circelli stated.
2. We would also like to know whether the CN Railway Board intends to support or oppose Ms. Fraser's two shareholder proposals. We understand that the management circular will be released in the next couple of weeks or so. Ms. Fraser would appreciate as much notice as possible as the Board's response may affect how she prepares for her presentation at the shareholder meeting.
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We are confident that the tide is turning against the notion of private police forces in Canada and the United States. Ms. Fraser and many other shareholders believe that it is commercially and legally beneficial for the railway companies to proactively take the initiative to end this corporate ownership of police forces.

We look forward to the Board's response to all the above.

Thank you,

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**From:** Jean Marc Huot <[jmhuot@stikeman.com](mailto:jmhuot@stikeman.com)>  
**Date:** Friday, February 26, 2021 at 1:20 PM  
**To:** Tavengwa Runyowa <[law@runyowa.com](mailto:law@runyowa.com)>  
**Subject:** Canadian National Railway Company

Mr. Runyowa,

Please see the attached letter.

Jean Marc Huot  
514 397-3276  
[jmhuot@stikeman.com](mailto:jmhuot@stikeman.com)

---

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# TAB 12

# Schedule D | Shareholder Proposals

Shareholder proposals have been submitted for consideration at the Meeting by Ms. Pamela Fraser, an individual investor holding at least \$2,000 worth of CN common shares. The full text of the proposals and supporting comments are set out in italics below, together with the Company's response thereto and the Board of Directors' vote recommendation.

## Proposal #1 – Request for the Board of Directors to institute a new safety-centred bonus system

**RESOLVED** – That for the first CN Railway worker death in any applicable period, every manager and corporate officer's performance bonus is automatically cut by 20% from the higher of the previous or current year's projected figure, with further deductions of 15% for each subsequent death up to a maximum of 80%. Separately, every "serious injury" to a worker automatically deducts 2% from all managers' and corporate officers' bonuses up to an additional 14%.

### Supporting statement

*In safety conscious workplaces, every worker death is preventable. Even deaths and serious injuries whose causes appear limited to worker error have systemic foundations. Further, worker safety and profitability are allies, not antagonists. In modern industrial nations such as Canada and the United States, it has been demonstrated that safer workplaces enjoy higher worker morale, fewer workdays lost to injuries, and less hiring and training expenses.*

*The case of Alcoa Corporation, under the leadership of Mr. Paul O'Neil, affirmed the principle that in the long term, worker safety and profitability rise in tandem. Although, price-to-earnings ratios and stock prices are important, in the contemporary industrial landscape, these measures are only sustainable as the by-products of skillful and rigorous promotion of corporate values such as workplace safety.*

*In 2019, the Transport Safety Board (TSB), reported 1,243 railway accidents. This represents an 18% spike in the 5-year average. In 2019, the TSB reported 72 rail-related fatalities, a 20% spike in the 5-year average. These figures reflect 360 deaths and 6,215 accidents between 2014 and 2019. A substantial number of these incidents involved CN Railway operations.*

*Corporate strategy and remuneration policy must align with the objectives they intend to accomplish. Tying bonuses more resolutely with workplace*

*and public safety will create a climate of collective responsibility that will reward CN Railway managers and corporate officers for "putting their money where their workers' safety is". The proposed bonus system is structured to provide an additional and galvanizing incentive for managers and corporate officers to hold each other accountable. Safety shortfalls by one manager or corporate officer will impose financial accountability on them all.*

*As ESG and the values that inspired its creation become increasingly important for investors and the public, there is no better expression of a corporation's commitment to its customers, workers, and society than tying management's bonuses to their collective success in securing workplace safety. The incentive to promote profitability in tandem with safety will also spark the corporate imagination to redirect the focus from the expedience that often places these goals at odds. This proposal is bold, and necessarily so. Quantum leaps tend to require massive risks. In this case, grafting safety into the DNA of corporate strategy via the performance bonus system poses a modest risk to corporate leaders who are already tasked to guarantee workplace safety. Passing this resolution will make CN Railway the world's safest railway company by a comfortable margin.*

The Board of Directors recommends that shareholders vote **AGAINST** this proposal for the following reasons:

Safety is a core value that guides CN's actions and decisions at all times throughout the organization. Our goal is to be the safest railroad in North America by cultivating an unwavering safety culture with all of our managers and employees.

The Board recommends a vote against this proposal because it is of the view that CN's short term incentive compensation plan already incorporates a strong safety component applicable to all management employees irrespective of their functions and that the mechanism suggested by the proposal would not achieve incremental improvement to safety.

There is nothing more important to CN than running a safe railway. CN's commitment to an unwavering safety culture is anchored by training and leadership in establishing and maintaining safe work practices, the implementation of new safety technologies and capital investments.

CN's extensive ongoing safety training program, *Looking Out for Each Other*, is an integral part of CN's safety culture that focuses on exposure to risk and risk reduction before injuries and accidents occur through a focus on continuous prevention and open dialogue. It is a vital safety mindset that employees are taught and encouraged to integrate into their daily practices. It is a peer to peer program that focuses on raising awareness among all employees on the top causes of incidents and injuries, and on identifying and reviewing safe work procedures, training employees to be aware of their surroundings and recognize potential at risk work practices, and teaching employees how to provide constructive feedback to peers.

Our *Life Critical Rules* aim to embed safety further throughout the organization by addressing the day-to-day activities that have the potential to cause serious harm or loss of life. Every employee is taught to understand and follow these rules, and to ensure their peers do the same.

In 2020, CN also introduced a new safety leadership training program that teaches employees the importance of controlling exposures to risk, and on developing the attitudes and behaviours required for a safe workplace.

CN is also implementing new technology to drive improved safety and engineering-out risk and human error. For example, CN is installing powerful sensor and artificial intelligence (AI) technology into specially equipped automated track inspection cars positioned in existing train service, enabling track inspections at normal track speed, without the need for bringing additional equipment onto the track. In 2020, using this new autonomous technology, CN inspected 375,000 miles of track, with some of our key corridors receiving up to 20 times more inspections than with previously methodologies.

CN's new Automated Inspection Portals feature ultra-high-definition cameras that capture 360 degree view of a train as it travels at normal track speed. This method of railcar maintenance, using machine learning algorithms, improves inspection quality, frequency, and railcar reliability. Both these innovations in automation – the track inspection cars and train inspection portals – increase inspection frequency and quality and play an essential role in preventing incidents. The goal is to eventually eliminate the risk of human error.

CN's compensation structure already contains a strong safety component which connects all management employees to safety as a core value and underlines the message that safety is everyone's responsibility whether in the field or at all management levels. CN's annual incentive bonus program provides for a component of 10% which is conditional on the attainment of corporate safety performance targets designed to embed the importance of safety across the organization and measure improvement achieved and progress to be made within the organization. The safety component of CN's bonus program was first applied to executive management in 2017 to set the tone at the top and has since been extended to all senior management employees in 2019 and recently to all of CN's 4,850 management employees in 2021.

The Board is of the view that CN's management compensation program as set out in this Management Information Circular is appropriately balanced to enhance the railroad's safety culture at the management

level and to drive the attainment by CN employees of high level of safety, including through infrastructure investments, technology, training and the right message from the top management.

The proposal suggests a punitive approach. Not only is that approach not consistent with best practices, but it is broadly thought of as not being effective to deter unsafe behaviors and effect the lasting changes required to embed a safety culture and improve safety performance. The Board and the Company continue to be focused on the safety of CN's employees and on aiming for the elimination of all tragic accidents, and are of the view that the Company's strategy, including its training programs, investments and its bonus plan are the appropriate route to accomplish that objective.

For these reasons, the Board of Directors recommends that shareholders vote **AGAINST** this proposal.

## Proposal #2 – The criminal investigation of all railway worker deaths and serious injuries by independent police forces in Canada and the US

**RESOLVED** – That the Board shall require the CN Police Service to cede and proactively request the criminal investigation of all workplace deaths and serious injuries to the RCMP and independent police forces in Canada and the US. CN Police must play no investigative role in these cases

### Supporting statement

*The CN Police Service has the same criminal law enforcement powers as Canada's public police forces. However, CN Police is wholly owned and controlled by CN Railway. As employees, CN Police officers are directly answerable to the corporation. This includes in criminal investigations. CN Railway can terminate its police officers without resorting to the courts that formalized their appointments. CN Police has no independent civilian oversight body. In Canada, CN Railway solely appoints the persons who address public complaints against its police force, and by extension, the corporation.*

*The above is problematic. The Westray laws require employers' potential criminal liability to be at the forefront of all investigations of workplace deaths and serious injuries. Therefore, CN Police's control over criminal investigations into the conduct of the corporate management it reports to, undermines public confidence in the integrity, impartiality, and independence of such investigations.*

*The status quo violates the legal principle of police independence, which requires police forces to be operationally independent, especially from the parties whose actions are under investigation. Canadians and Americans expect that all criminal investigations of railway fatalities and serious injuries are not controlled by the corporations that may be responsible.*

*The privatization of criminal law enforcement is inconsistent with Canadians' and Americans' conception of good, accountable, and modern governance. This situation threatens to jeopardize CN Railway's Environmental, Social, and Governance (ESG) rating, a metric of increasing importance to investors and the public.*

*In 2019, the Transport Safety Board (TSB), reported 1,243 railway accidents, an 18% spike in the 5-year average. In 2019, the TSB reported 72 rail-related deaths, a 20% spike in the 5-year average. These figures reflect 360 deaths and 6,215 accidents between 2014–2019. Given these high figures, the public perception is that certain railway companies' ownership of the investigating police forces explains the near-zero rate of criminal prosecutions. Unfortunately, the TSB and Transport Canada have no authority for criminal investigations or referrals. Only a proactive company policy of requesting independent police investigations will address this accountability deficit.*

*CN Railway faces significant and indeterminate risks by continuing to exercise de facto and de jure control over criminal investigations. For example, if a mass casualty event such as the Lac Mégantic disaster happens on either side of CN Police's cross-border jurisdiction, CN Railway would face debilitating public and legal scrutiny in Canada and the US. This is inevitable if the company criminally investigates itself, or its police employees are alleged to have squandered preventive opportunities. The legal, commercial, diplomatic, political, governance, and public relations costs of rejecting this resolution are unacceptably high.*

The Board of Directors recommends that shareholders vote **AGAINST** this proposal for the following reasons:

The Board of Directors believes that the CN Police Service is paramount to protecting the safety of CN's employees, assets and operations as well as the communities throughout our large network of 19,500 route miles of track which spans Canada and the United States and is the only railroad connecting Canada's Eastern and Western coasts with the U.S. South.

### Status

The CN Police Service ("CNPS") was created almost a hundred years ago by an act of the Parliament of Canada and entrusted with the responsibility to protect property owned, possessed or administered by the railways and the protection of persons and property on that property. CN officers, in Canada, have peace officer status and have federal jurisdiction to enforce all the laws of Canada and the Provinces. In the United States, CNPS officers have peace officer status granted by various state statutes and have been given inter-state jurisdiction by the US Secretary of Transportation.

### Mission

The mission of CNPS is to protect the safety of CN's employees, its assets and operations and to protect the safety of the public against the risks associated with railway operations. Through prevention and intervention, CNPS helps foster a better, more efficient and safer railway for all.

CNPS fulfills its mission through enforcement and education. For more than 20 years, in Canada and the United States, all CN employees, police officers, and risk managers, from train crews to retirees, have been promoting the importance of safety at highway railway crossings and warning of the danger of trespassing on railway property.

Each year, CNPS offers the *CN All Aboard for Safety Operation Lifesaver* presentation to more than 100,000 students in more than 700 schools in Canada and the United States. The presentations include videos, demonstrations, activities and informational handouts.

CNPS conducts safety blitzes at busy highway railway crossings with local police services to help make drivers aware of the importance of safety.

CNPS is also uniquely positioned to detect and prevent crimes that could threaten the safety of CN's employees, the public in general or the integrity of the railway operations. Its law enforcement status fosters coordination and cooperation with other law enforcement agencies, including the US Federal Bureau of Investigation and the Department of Homeland Security on matters such as terrorism and cyber threats. It also allows it to participate in international programs designed to facilitate the efficient cross-border movement of goods, such as the Canadian Partners in Protection ("PIP") Program and the US Customs Trade Partnership Against Terrorism ("CTPAT") programs.

Public policing agencies do not have sufficient resources to commit to policing a railway network that spans national and international jurisdictions, nor do they have the technical expertise. The railway is best and uniquely positioned to do so.

#### **Governance**

CNPS, its jurisdiction and its relationship with CN were established by statute. CNPS officers, while employees of CN, are first and foremost officers of the law and, as such, recognized as public servants required to operate independently from the Company. That independence is safeguarded by rigorous protocols, procedures and policies.

In 2014, CNPS adopted a formal policy governing communication of information to CN employees. The purpose of the policy was to manage the communication of information from CNPS to other employees of CN in a manner that safeguards the exercise of CNPS officers' duties as public peace officers and ensures an appropriate level of discretion and independence in CNPS officers' statutory powers of investigation, arrest and prosecution. The policy prohibits, amongst other, CNPS officers from disclosing information arising out of, or collected by means of, the exercise of CNPS officers' powers of investigation, arrest and prosecution as public peace officers, including information that may become relevant to a criminal investigation or statutory prosecution.

Consistent with the requirements of the Railway Safety Act in Canada and its policy objective of bringing accountability to the railway police, CN has also established a comprehensive procedure for dealing with complaints concerning police constables, including complaints against its Chief or Assistant Chief, which have been filed with the Minister of Transport in Canada.

CNPS fulfills a crucially important role in the protection of the safety of employees, operations and communities. Its specialized expertise and its ability to be present and to protect employees and assets throughout the extensive geography of CN's North American network are unique and paramount to the best interest of CN and its shareholders.

The shareholder proposal would not in any way improve the safety of employees and communities, nor the quality of investigations of workplace deaths and injuries. It would most likely have the opposite effect.

As a matter of policy, and notwithstanding its authority and expertise, CNPS defers investigation of workplace accidents resulting in fatalities or serious injuries to the local police agency, the RCMP or the regulators. Nevertheless, often first to the scene of an accident given its proximity, CNPS will typically take necessary action to preserve the evidence. When investigative authorities arrive at the scene, CNPS offers its full cooperation and its extensive experience and expertise in the investigation of the types of accidents that occur in railway operations. This cooperation ensures an optimal investigative outcome without creating any issue of conflict, real or apparent.

For these reasons, the Board of Directors recommends that shareholders vote **AGAINST** this proposal.