

# **Appendix B:**

Interactions with RCMP,  
Saskatoon Police Service,  
and Ontario Provincial  
Police regarding  
Jurisdictional Issues with  
Railway Police

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# TAB 1

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  
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Attn: Ms. Lehaie and Commissioner Lucki,

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

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

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

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

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

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

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

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

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

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

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

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

- **Question 1:** In light of Sections 44 and 44.1 of the *Railway Safety Act* (R.S.C. 1985, c. 32, 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,



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  
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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  
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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

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

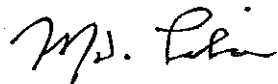
accident, then an agency such as WorkSafe Saskatchewan (occupational health and safety) will be involved in determining the cause(s) and recommending measures to prevent similar incidents in the future. The Transportation Safety Board may have a role if the occurrence involved a railway that is within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

.../2



- 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

November 17, 2020

**SENT BY EMAIL & COURIER**

Commissioner Brenda Lucki  
Royal Canadian Mounted Police  
RCMP National Headquarters  
Headquarters Building  
73 Leikin Drive  
Ottawa, ON K1A 0R2  
[RCMP.Commissioner-  
Commissaire.GRC@rcmp-grc.gc.ca](mailto:RCMP.Commissioner-Commissaire.GRC@rcmp-grc.gc.ca)

Ms. Michelaine Lahaie  
Chairperson  
Civilian Review and Complaints Commission for  
the RCMP  
P.O. Box 1722, Station B  
Ottawa, ON K1P 0B3  
[Michelaine.Lahaie@crcc-ccetp.gc.ca](mailto:Michelaine.Lahaie@crcc-ccetp.gc.ca)

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 as it pertains to the February 4, 2019  
Field, B.C. derailment of CP Rail Train 301.**

This letter is further to our letter of August 17, 2020 seeking clarification on the RCMP's interactions and seemingly overlapping jurisdiction with private railway police forces in Canada. August 17, 2020 correspondence was with respect to our other clients, Tara Jijian, Lori Desrochers, and Kaity Timmerman. We received Commissioner Lucki's September 24, 2020 response.

In Commissioner Lucki's September 24, 2020 letter, she stated, "each investigation is unique and will be dependent on the facts in each case." As such, to facilitate clarity in these discussions, we are now writing with regards to another specific case based on similar issues.

We have been retained by Ms. Pam Fraser, the mother of Dylan Paradis. Dylan was one of the three crew members who died in the February 4, 2019, Field, BC derailment of Canadian Pacific Rail ("CP Rail") Train 301. Pursuant to Sections 6 - 8 of the *Canadian Victims Bill of Rights* and all applicable obligations that the RCMP has to account to the public, we have the following questions with respect to the RCMP's involvement in the Field, BC railway disaster.

As you are aware, the families of the Field, BC train fatalities have tried to get answers about why their loved ones died in such a senseless tragedy. They have been horrified to learn that the company potentially responsible for the deaths, CP Rail, exercises full ownership and control of a public, federal police force that has primary criminal jurisdiction over the incident. To date, no independent police investigation has occurred beyond any CP Police Service's investigation, which CP Rail corporation has not disclosed, and has total control over. This letter provides the background to specific questions we need both the RCMP and its oversight body to address.

According to the Golden-Field RCMP February 4, 2019 press-release:

RCMP in Golden are assisting the Transportation Safety Board of Canada (TSB) in investigating a train derailment which occurred early this morning.

Just after midnight (MST) on February 4, 2019, Golden RCMP officers were called to investigate a possible Canadian Pacific train derailment near Field, BC.

Upon arrival at the site, officers discovered a train carrying grain hopper cars had derailed near Spiral Tunnels in Yoho National Parks, Field, BC.

Three people were found unresponsive and pronounced dead at the scene. Their identities have not been confirmed.

TSB is investigating along with the Employment Safety Standards Canada, RCMP and the BC Coroners Service.<sup>1</sup>

**Question 1:** Upon arriving on the scene, what was the RCMP's role and jurisdiction at the scene?

The CBC later reported that in emails with the RCMP, the news corporation had been told that the RCMP are not investigating the Field, BC incident, further citing an email from an RCMP spokesperson who stated: "The incident occurred on CP property; as such, that agency [CP Rail] has jurisdiction. ...No independent investigation was commenced by the RCMP."<sup>2</sup> Though it was further noted: "The RCMP added that they "of course would be willing" to step in if asked."<sup>3</sup>

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<sup>1</sup> RCMP, February 4, 2019, Golden-Field RCMP Assisting in Canadian Pacific derailment, available at: <http://bc.rcmp-grc.gc.ca/ViewPage.action?siteNodeId=2100&languageId=1&contentId=58133>.

<sup>2</sup> CBC, January 25, 2020, Families of CP Rail workers killed in B.C. mountain crash demand investigation reopened, available at: <https://www.cbc.ca/news/canada/cp-rail-b-c-crash-1.5439690>

<sup>3</sup> CBC, January 25, 2020, Families of CP Rail workers killed in B.C. mountain crash demand investigation reopened, available at: <https://www.cbc.ca/news/canada/cp-rail-b-c-crash-1.5439690>

**Question 2:** Is it therefore your position that the RCMP's jurisdiction is secondary to that of CP Rail's privately-owned police force? If so, can the RCMP exercise primary jurisdiction if the matter appears to involve the railway company, which I trust you agree, cannot criminally investigate itself?

On January 25, 2020, CP Rail's CEO, Mr. Keith Creel, responded to the above CBC article by stating:

The RCMP can investigate whatever it sees fit in Canada, and they have been involved from the very beginning. As I said to the CBC previously, we are open and willing to discuss anything with the RCMP, the TSB and all other agencies involved. We have been cooperating fully and will continue to do so.<sup>4</sup>

**Question 3:** In what way has CP Rail been cooperating with the RCMP in the Field, BC crash?

**Question 4:** In what way has the RCMP been involved "from the very beginning" in the Field, BC crash?

Mr. Creel further told the CBC on another occasion:

We've worked in lockstep with the RCMP from the very beginning. They still retain jurisdiction over that investigation. If they're [going to] step in or research or investigate anything that they haven't looked at prior to [that], they're certainly welcome to do that and we'll work in partnership to make sure we the facts available to them as we know it.<sup>5</sup>

**Question 5:** Again, in what capacity has CP Rail been working "in lockstep with the RCMP from the very beginning" and on whose initiative?

**Question 6:** Based on the above, do you agree that the RCMP does not require CP Rail's permission or request to investigate the Field, BC incident or any other railway matter?

In a recent October 26, 2020 letter from Mr. Creel to Ms. Fraser, Mr. Creel provided the following quote from the office of the federal Minister of Transportation:

"In this case, the Royal Canadian Mounted Police is a police service that would have the authority, if they feel it is warranted, to investigate such criminal conduct or alleged behaviour and recommend criminal prosecution be commented."<sup>6</sup>

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<sup>4</sup> CP, January 25, 2020, CP corrects inaccuracies in CBC reporting of Field, B.C. derailment, available at: <https://www.cpr.ca/en/media/cp-corrects-inaccuracies-in-cbc-reporting-of-field-b-c-derailment>

<sup>5</sup> CBC, CP Rail willing to work with RCMP on train derailment probe, CEO says, available at: <https://www.cbc.ca/player/play/1686309955879>

<sup>6</sup> Letter from Keith Creel, to Pamela Fraser, October 26, 2020, attached as Attachment 1.

Mr. Creel once again provided his position that “the RCMP always has the legal authority and jurisdiction to investigate as it sees fit. Should the RCMP see a need to investigate further it will do so- that is not something that CP decides.”<sup>7</sup>

**Question 7:** Once again, how does the RCMP reconcile its position that the “RCMP would be willing to step in when asked”, when the federal Minister of Transportation and the CEO of CP’s position is that the RCMP has the independent legal authority and jurisdiction to investigate as you (the RCMP) sees fit?

In January 2020, the RCMP provided statements to the media that the RCMP would be “reviewing the file to determine next steps”<sup>8</sup>, which as indicated in a secondary article, would mean “reviewing the investigation”.<sup>9</sup>

**Question 8:** Which “file” does this refer to?

**Question 9:** What exactly does “reviewing” an investigation entail and is this to independently determine whether criminal charges will be laid?

**Question 10:** Is this approach of reviewing a separate investigation, instead of starting its own investigation, a standard practice for the RCMP?

**Question 11:** Is it the RCMP’s position that “reviewing” the previously conducted investigation is appropriate in this situation because the lead TSB investigator (Don Crawford) felt that the evidence supported a case for a criminal investigation, and that CP Police investigator (Mark Tataryn) reported corporate interference in his investigation (including pointing to evidence tampering?).

**Question 12:** What were the results of your “review” of the investigation?

In the year following the Field, BC railway disaster, several entities, public interest groups and individuals, as well as the families and loved ones of the deceased, have called for an independent RCMP investigation into the Field, BC disaster, including:

- The TSB lead safety investigator, Don Crawford<sup>10</sup>;
- CP Police investigator, Mark Tataryn- whom we now understand works for the RCMP;

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<sup>7</sup> Letter from Keith Creel, to Pamela Fraser, October 26, 2020, attached as Attachment 1.

<sup>8</sup> Global News, January 28, 2020, RCMP called to investigate Field, B.C. train derailment that killed 3 CP crew members, available at: <https://globalnews.ca/news/6473846/fatal-field-bc-cp-train-derailment-rcmp-investigation/>

<sup>9</sup> The Golden Star, January 29, 2020, RCMP to review fatal Field train derailment investigation after evidence points to ‘cover up’, available at: <https://www.thegoldenstar.net/news/rcmp-to-review-fatal-field-train-derailment-investigation-after-evidence-points-to-cover-up/>

<sup>10</sup> CBC, January 27, 2020, Train safety investigator wants RCMP to probe fatal CP mountain crash, available at: <https://www.cbc.ca/news/canada/cp-rail-crash-call-investigation-1.5441955>

- The Alberta Federation of Labour<sup>11</sup>;
- Teamsters Canada<sup>12</sup>;

In previous correspondence, Commissioner Branda Lucki provided that where “the RCMP is not the police of jurisdiction”, they are “not in a position to intervene in investigations in those jurisdictions by other law enforcement agencies”.<sup>13</sup> Commissioner Lucki further provided that “[t]he 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.”<sup>14</sup>

**Question 13:** If the RCMP is not the police of jurisdiction in railway matters, had not received a formal request from CP Rail to investigate, and/or does not have the investigational lead on the matter, under what authority is the RCMP reviewing the Field, BC file?

In the following correspondence, Chairperson Lahaie had further elaborated:

... 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 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.<sup>15</sup>

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<sup>11</sup> Alberta Federation of Labour, January 28, 2020 Press Release: ALF demands independent investigation into the deaths of three CP Rail Calgary workers, available at: <https://www.afl.org/pressrel28jan20>

<sup>12</sup> Global News, January 28, 2020, RCMP called to investigate Field, B.C. train derailment that killed 3 CP crew members, available at: <https://globalnews.ca/news/6473846/fatal-field-bc-cp-train-derailment-rcmp-investigation/>

<sup>13</sup> May 8, 2020 Letter to Mr. Runyowa from Commissioner Brenda Lucki.

<sup>14</sup> May 8, 2020 Letter to Mr. Runyowa from Commissioner Brenda Lucki.

<sup>15</sup> May 21, 2020 Letter to Mr. Runyowa from Chairperson Michelaine Lahaie.

**Question 14:** Is it the RCMP Commission's position that the RCMP is not the "police of jurisdiction" and cannot investigate railway incidents? Please reconcile this with the RCMP's own position that it **does** have jurisdiction, but not the "investigational lead".

**Question 15:** Is it the RCMP Commission's position that in cases involving workplace deaths, the RCMP requires an agency such as WorkSafe BC, WorkSafe Saskatchewan or their provincial counterparts to recommend a criminal investigation before the RCMP can commence such an investigation on railway property?

In her correspondence, Chairperson Lahaie had further stated:

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.<sup>16</sup>

Commissioner Lucki's letter further mentions the RCMP's commitment to do more to ensure proper training in the provisions of the Westray Law. As you are aware, the Westray Law (the Government of Canada's response to the Westray mine fatalities) comprises of legislation amending the *Criminal Code*, reinforcing the legal duties that corporate and corporate decision makers owe to their employees. This elevated responsibility of corporations for the health and safety of their employees means that employer criminal negligence must be at the forefront of investigations in situations of workplace accidents.

**Question 16:** How is the RCMP placing criminal negligence at the forefront of railway safety investigations when the RCMP automatically defers investigative jurisdiction to railway corporations' police forces from the outset?

The lack of independent criminal investigations into railway deaths is distressing to the deceased's families. The RCMP's consistent deference to the railway companies that need to be subjected to the investigations has prejudiced many Canadians' rights to criminal accountability. Our clients and Canadians deserve answers to the above questions and clarification of the seeming contradictions in your positions. We look forward to your response.

Thank you,

  
Tavengwa Runyowa

---

<sup>16</sup> May 21, 2020 Letter to Mr. Runyowa from Chairperson Michelaine Lahaie.

Attachment 1 to November 17, 2020 Letter  
from Runyowa Law on behalf of Ms. Fraser



**Keith Cree**  
*President and Chief Executive Officer*

7550 Ogden Dale Road SE  
Calgary Alberta T2C 4X9  
Canada

T 403 319 7600

October 26, 2020

Pamela Fraser  
515 Homeplace SE  
High River, AB T1V 1K1

Dear Pamela,

I want to personally thank you for attending the October 14, 2020 memorial dedication at the Royal Canadian Pacific Pavilion. Thank you for taking the time to travel to be together, and for sharing your stories and thoughts. It was an honour to be there with you.

The monument that will soon be installed in Field will forever tell the story of the commitment and professionalism of Andrew, Dylan and Daniel.

As I noted at the dedication, I cannot imagine the pain and heartache you have endured during this process. Please know that the prayers and thoughts of my own family and of the entire 12,000-strong CP family remain with you, always.

In the weeks ahead we will provide you with a commemorative video of the October 14 ceremony, including the comments from the people who worked closely with Andrew, Dylan and Daniel.

While there has been recent media coverage about the role of the RCMP in any investigation, the office of the federal Minister of Transportation has stated publicly that, "In this case, the Royal Canadian Mounted Police is a police service that would have the authority, if they feel it is warranted, to investigate such criminal conduct or alleged behaviour and recommend that criminal prosecution be commenced." Furthermore, in a back and forth discussion the CBC had with the RCMP, posted as part of an October 23, 2020 CBC story, the RCMP said it "... never indicated that the RCMP could not investigate this matter."

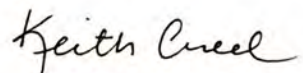
In short, as I have stated previously, the RCMP always has the legal authority and jurisdiction to investigate as it sees fit. Should the RCMP see a need to investigate further it will do so – that is not something CP decides. This has been confirmed by the RCMP itself, and by Transport Canada. It is unfortunate that misleading statements continue to be made in this regard. CP has cooperated and continues to cooperate fully with all investigations and inquiries from regulatory and law enforcement agencies.



.../2

Once the Transportation Safety Board has issued its report I would be willing to meet with you to tell you what I can about the results of our own internal investigation and to answer any questions you may have. Should you have questions, do not hesitate to connect with Chad Rolstad, our Vice-President of Human Resources, or myself.

Respectfully,

A handwritten signature in black ink that reads "Keith Creel". The signature is written in a cursive, flowing style.

Keith Creel  
President and Chief Executive Officer

# TAB 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;

...

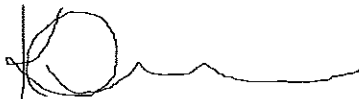
(j) facilitate the commission of an offence or tend to impede the detection of an offence;

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**

**\*\* DISCLAIMER \*\***

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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)



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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)



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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)





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DEATH - ACCIDENTAL

28(1)

Phone numbers

Type	Phone #	Ext.
28(1)		

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

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

Particulars

Occupation: FIREFIGHTER

Master Name Summary

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

Phone numbers

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

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

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

Master Name Summary

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

Phone numbers

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

Person Alias(es)/Associate(s)

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

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

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

Particulars



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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

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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.
<b>HOME</b>	<b>(306) 760-1281</b>	

**(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.
<b>HOME</b>	<b>(306) 760-1281</b>	

**(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**

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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.





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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





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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



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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.



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GENERAL OCCURRENCE HARDCOPY

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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) [REDACTED] 14(1)(c) [REDACTED]

[REDACTED]

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

[REDACTED]

I met with the 28(1) [REDACTED]. 14(1)(c) [REDACTED]

I met with Cst Jordan Kyte, 28(1) [REDACTED], 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.



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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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**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.



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DEATH - ACCIDENTAL

**Narrative: NOTE TO PROSECUTOR (CONFIDENTIAL) - 1**

Author: 434 PRINGLE, DARREN ROBERT

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

28(1)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



SASKATOON POLICE SERVICE  
GENERAL OCCURRENCE HARDCOPY

GO# SP 2015-31448

DEATH - ACCIDENTAL

Related Attachment - Officer Notes

Attachment Description: SGT. PRINGLE #434

15-31448  
434  
X

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

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

cn Police

Cat. Jordan KYTE  
- based in Stearn  
1701 Chappell Dr  
[REDACTED]  
[REDACTED]

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

Federal Offrs -  
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  
Stewart - Spence - Division  
Sgt. Darren Pringle #434  
Northwest Division  
D Pringle



SASKATOON POLICE SERVICE  
GENERAL OCCURRENCE HARDCOPY

GO# SP 2015-31448

DEATH - ACCIDENTAL

- Paulsen to hospital in ambulance.

- Fibth exiting EMS to RVH.

- VI info from Train master.

- Wits interviewed by Paulsen - written reports obtained

- CN Police one lead - SPS assist to them.

- NOK by RCMP of Mrs Budd.


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

\* - Snow frozen on per Anavac - told to Kyle.

- Call to Anavac in before Canada at 800-641-4049.

Info from Shelley Chippello @ Sask OH+S.

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

  
**SASKATOON POLICE SERVICE**  
*Forward - Speed - Steady*  
 Sgt. Darren Phillips  
 Northwest Division  
 D Platoon  
 PO Box 1728 • Saskatoon, SK • S7N 3R8 • T. (306) 978-8300 • C. (306) 270-9807  
 F. (306) 978-8339 • E. darren.phillips@police.saskatoon.sk.ca  
 www.saskatoonpoliceservice.ca





SASKATOON POLICE SERVICE  
GENERAL OCCURRENCE HARDCOPY

GO# SP 2015-31448

DEATH - ACCIDENTAL

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

- No deeply bleeds observed.  
- VI breathing shallow - eyes open but unresponsive - Pupils are moans -

- Wearing tan work pants/shirt + boots.

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

- Hat's label was that of VI.

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

- Airvac advised Trans-Canada will be investigating.

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



SASKATOON POLICE SERVICE

Stonewall - Oxbow - Wilton

Sgt. Darren Pringle MS2  
Northwest Division  
0 Platoon

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



SASKATOON POLICE SERVICE  
GENERAL OCCURRENCE HARDCOPY

GO# SP 2015-31448

DEATH - ACCIDENTAL

Parkson in, Fildes  
steering.

Busch, Kyle + Amos

all reported on 10-45.

Busch advised parents  
located in Melville +  
NOK occurring.

CR Police Insp advises  
is OK for SPS to do  
media release if reqd  
but to refer media  
to CR 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) 370-9807  
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) [Redacted]

sd [Kam TIMMERMAN

28(1) [Redacted]



**SASKATOON POLICE SERVICE**  
**GENERAL OCCURRENCE HARDCOPY**

GO# SP 2015-31448

DEATH - ACCIDENTAL

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

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



P.O. Box 1728 • Saskatoon, SK • S7K 3R6 • T. 306-975-8300 • F. 306-975-9359

[www.saskatoonpoliceservice.ca](http://www.saskatoonpoliceservice.ca)

2 of 4



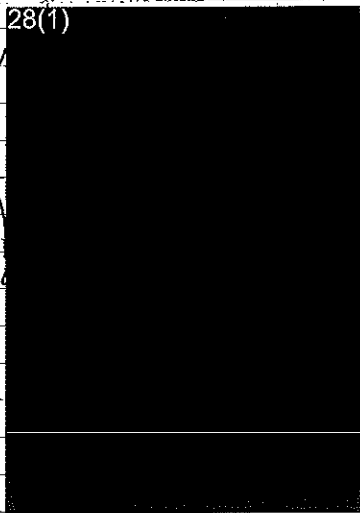
SASKATOON POLICE SERVICE  
GENERAL OCCURRENCE HARDCOPY

GO# SP 2015-31448

DEATH - ACCIDENTAL



28(1)



R  
2320  
with

Cst. Jordan KYTE  
[Redacted]  
[Redacted] 146

all photocopied statements  
for CN police.

- Arrived on scene  
Saw TIMMERMAN  
on ground by  
tracks w/ multiple  
rail workers around  
him.

- blood on head.  
- moaning.  
- Fire on scene

tending to him  
- 5 spoke up [Redacted] 28(1)

- got statements [Redacted] 147  
- was very traumatic  
I wrote it for him.

3084




# SASKATOON POLICE SERVICE GENERAL OCCURRENCE HARDCOPY

GO# SP 2015-31448

DEATH - ACCIDENTAL

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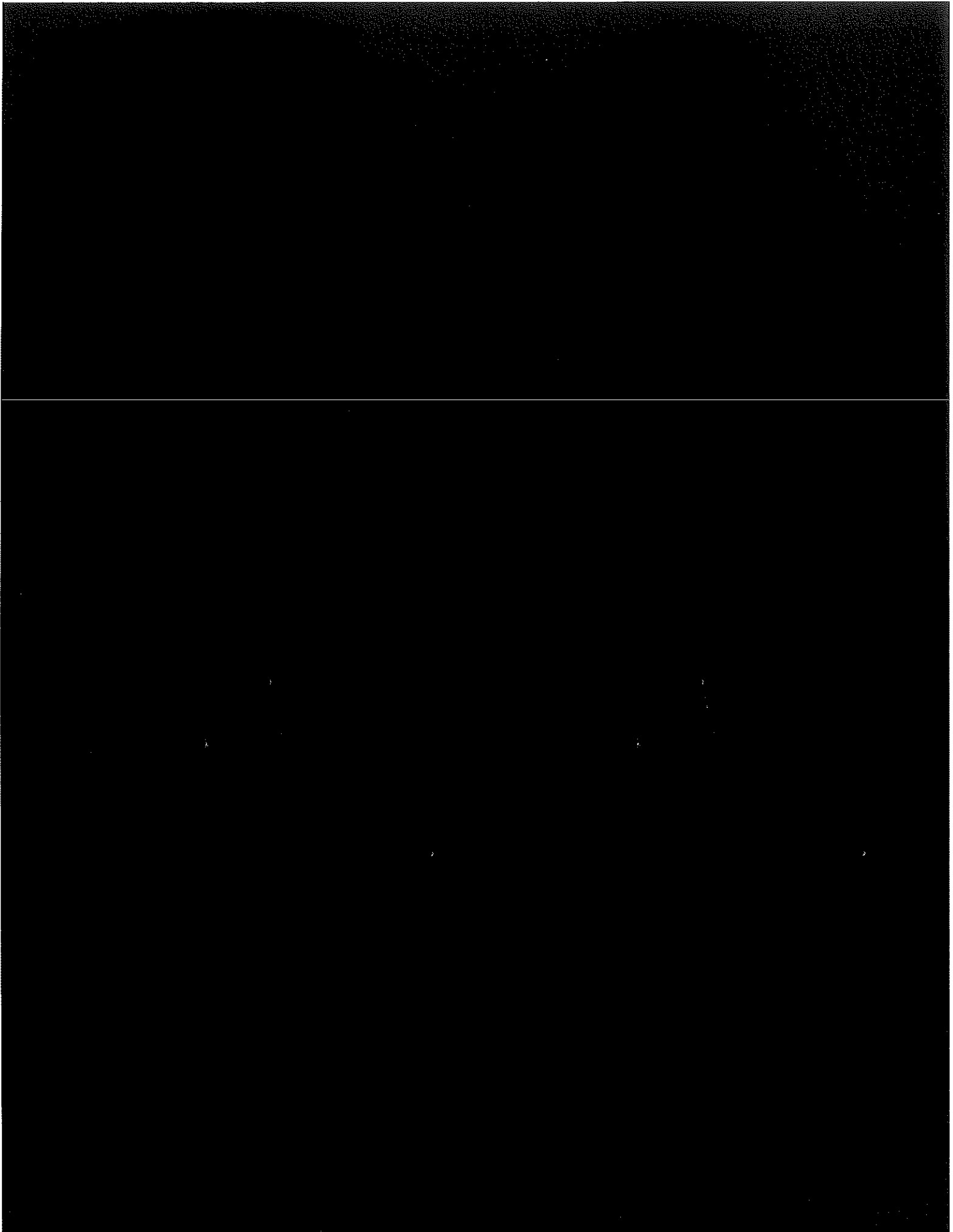
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I obtained statements  
from  
28(1)

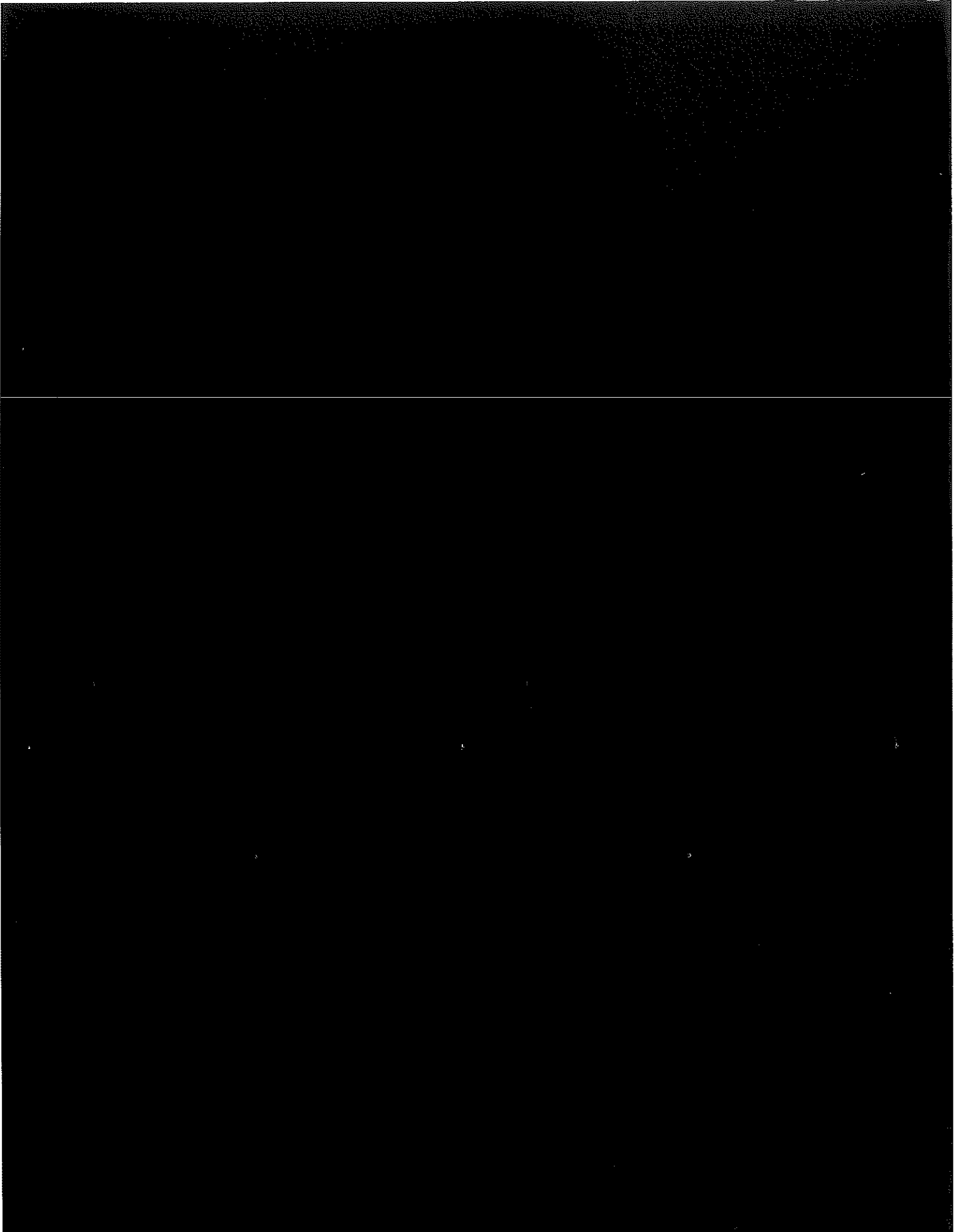
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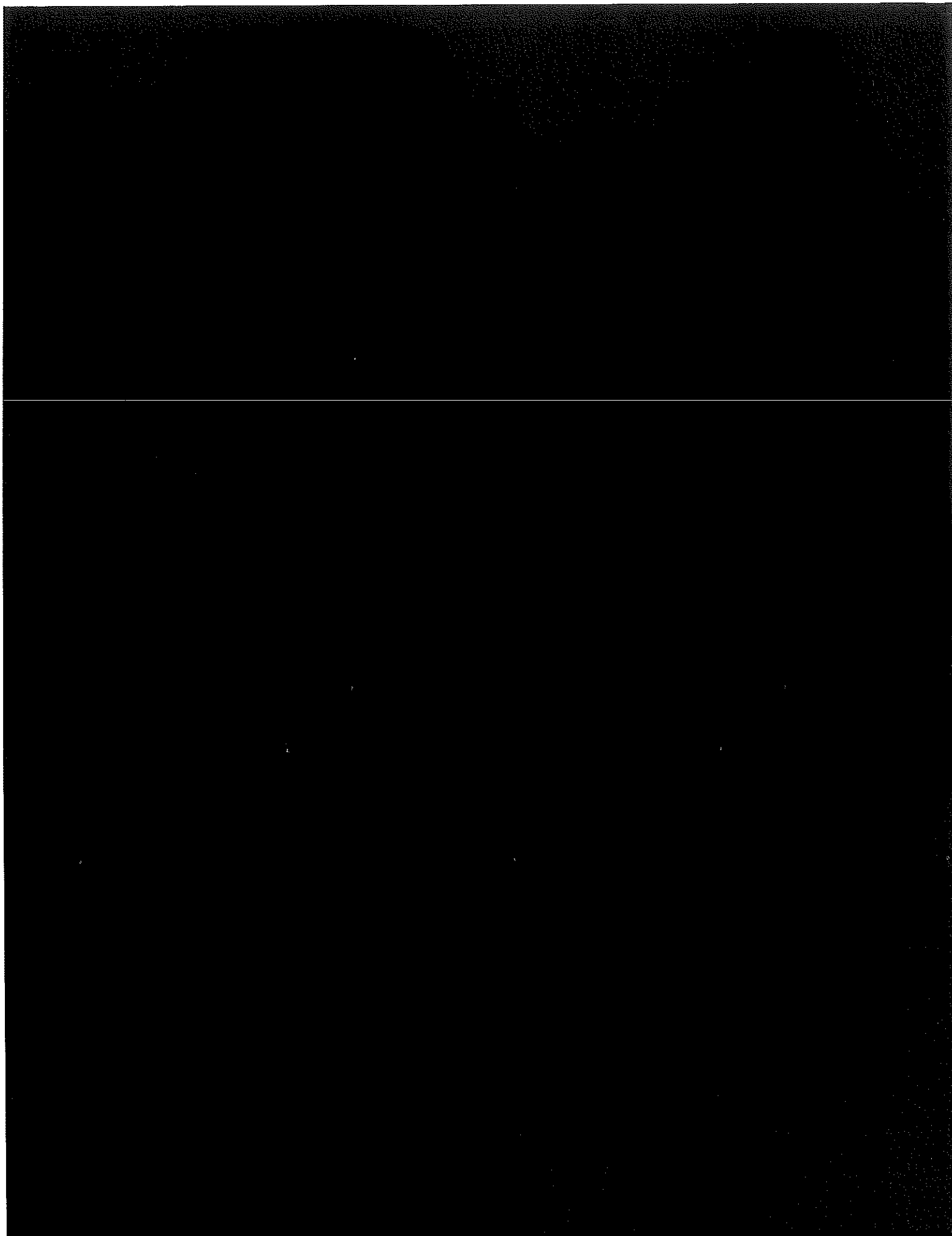
149

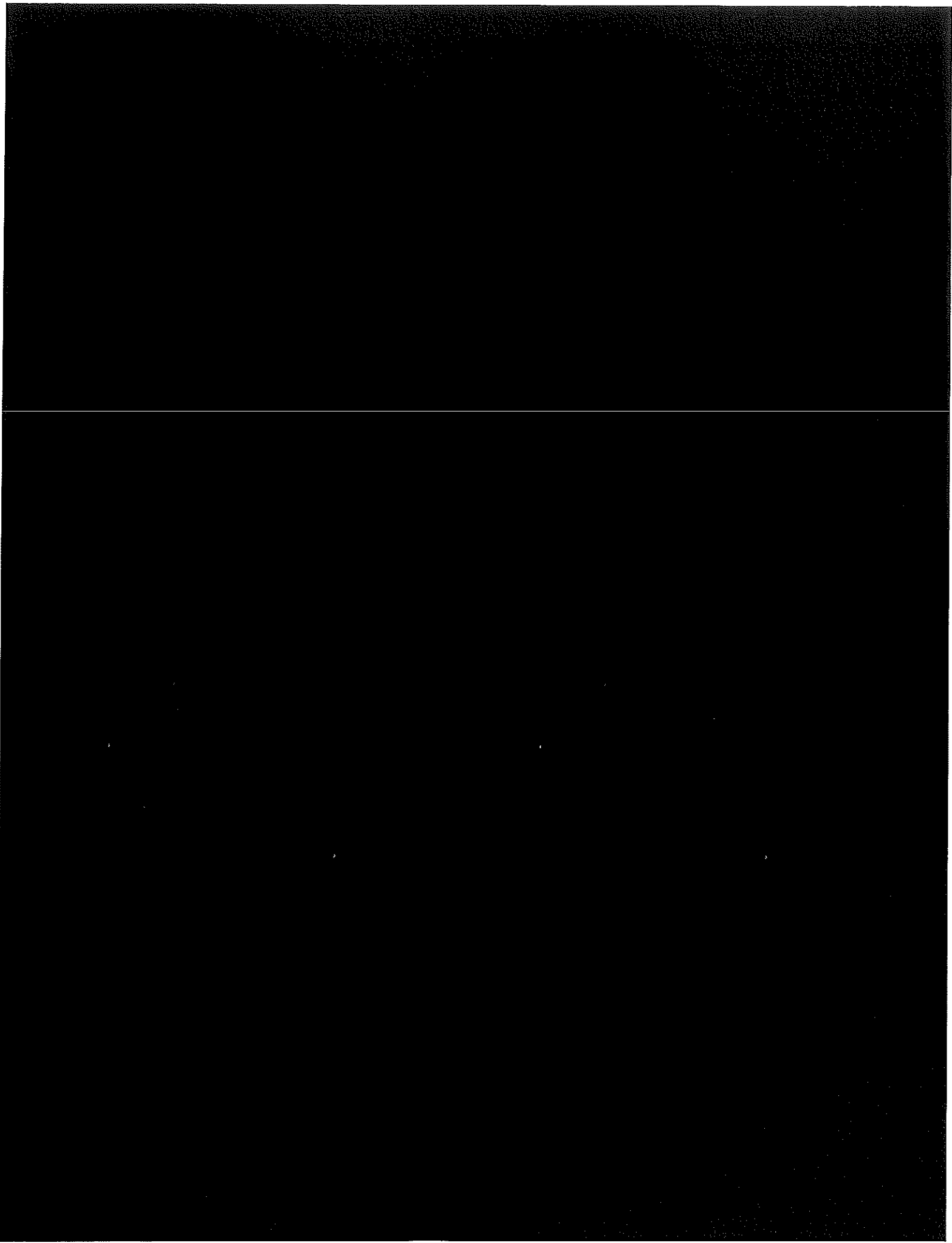
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**SASKATOON POLICE SERVICE  
GENERAL OCCURRENCE HARDCOPY**

GO# SP 2015-31448

**DEATH - ACCIDENTAL**

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

**\*\*\* CONFIDENTIAL \*\*\***

# TAB 3

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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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,

A handwritten signature in black ink, appearing to read 'Christopher Diana', with a long, sweeping flourish extending upwards and to the right.

Christopher Diana  
Senior Counsel

# TAB 4

**To: The RCMP Saskatchewan Major Crimes Unit.**

**Chief of Police Troy Cooper – Saskatoon Police Service.**

---

**RE: CRIMINAL COMPLAINT  
REGARDING THE DEATH OF KEVIN  
TIMMERMAN AT THE CANADIAN  
NATIONAL RAILWAY (“CN RAILWAY”)  
YARD IN SASKATOON ON  
APRIL 10, 2015.**

**March 2, 2021**

**BY COURIER**

RCMP Major Crimes Unit  
6101 Dewdney Ave  
P.O. Box 2500  
Regina SK S4P 3K7

Police Chief Troy Cooper  
Saskatoon Police Service  
PO Box 1728  
Saskatoon, SK S7K 3R6

ATTN: Saskatchewan RCMP Major Crimes Unit and the Saskatoon Police Service Chief Troy Cooper:

**RE: Formal criminal complaint on behalf of Ms. Lorelei Desrochers and Ms. Kaity Timmerman regarding the death of Kevin Timmerman at the CN Railway yard in Saskatoon on April 10<sup>th</sup>, 2015.**

I represent Ms. Lorelei Desrochers (“Lori”) and Ms. Kaity Timmerman (“Kaity”) who are the ex-wife and daughter of Kevin Timmerman, respectively. Lori is Kaity’s mother and power of attorney. Kevin Timmerman died while working at the CN Railway yard on April 10<sup>th</sup>, 2015. This letter is Lori and Kaity's formal criminal complaint requesting the RCMP and the Saskatoon Police to launch a joint criminal investigation into Kevin’s workplace death pursuant to the Westray amendments to the *Criminal Code* and other applicable provisions.

**The RCMP and Saskatoon Police Service wrongfully ceded the criminal investigation of Kevin’s death to the CN Police Service.**

For background, when Kevin died, both the RCMP and the Saskatoon Police Service attended the scene. However, after your respective officers’ discussions with the CN Railway Police, the collective decision was that the CN Police should take over the investigation. **Attachment 1** of this letter is the disclosure we obtained from the Saskatoon Police Service via the Saskatchewan Freedom of Information process (pages 15-16). Since Kevin’s death, Lori reached out to both the RCMP and the Saskatoon Police to request a criminal investigation into Kevin’s death. Both your police forces declined to do so on the purported basis that you did not have the jurisdiction to investigate and that the CN Police had had that jurisdiction.

As you may know, CN Police is a wholly-owned subsidiary of CN Railway as a private corporation. This means that the CN Police is not independent of CN Railway as a private enterprise, and legally, is a manifestation of that very corporation. This meant that when Kevin died, the RCMP and Saskatoon Police handed over the death investigation to the very company that was the primary party of interest in that unnatural death. As you are aware, under the Westray laws, the employers' potential criminal liability must always be at the forefront of an injurious workplace incident. CN Railway was supposed to be the subject of the investigation, and not the investigating authority. Not only are suspects in criminal investigations legally incapable of investigating themselves; CN Police's investigation of its corporate parent also violates the principle of police independence and the rule of law.

**The RCMP and Saskatoon Police's decision to cede investigative jurisdiction to CN Police was inconsistent with the principle of police independence and the rule of law.**

As the Supreme Court of Canada has affirmed, the principle of police independence requires police forces to be operationally independent, including from the Crown, the government, and the municipalities which fund them.<sup>1</sup> This is why, for example, the federal Minister of Public Safety cannot direct the RCMP to conduct a criminal investigation in a particular manner. The same applies to mayors and city councillors who cannot mandate or interfere in municipal police investigations. This is an integral and indispensable requirement for the rule of law.

Prime Minister Justin Trudeau has also affirmed the principle of police independence when the federal government was facing public pressure to get involved in how the RCMP and other police forces were handling the Wet'suwet'en First Nation railway blockades.<sup>2</sup> Therefore, the RCMP and Saskatoon Police should not have ceded criminal jurisdiction to the primary party of interest in the investigation.

Since Kevin died, it has now become clear that the RCMP and public police forces have the jurisdiction to investigate railway related deaths, serious injuries, and other incidents. As you may be aware, the RCMP recently launched criminal investigations into the Field, BC derailment of 2019 that killed three CP Rail crew members. The RCMP initially stated that it had no jurisdiction but even CP Railway's CEO, Mr. Keith Creel, who oversees CP Police, insisted that the RMCP had such jurisdiction.<sup>3</sup> Further, we also contacted RCMP Commissioner Lucki on the jurisdiction question. As you can see from **Attachment 2**, she confirmed that the RCMP did have jurisdiction, but not "primary jurisdiction". This means that in policing matters where private railway companies such as CN Railway are the presumptive suspects, as required under the Westray framework, they cannot have the primary jurisdiction.

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<sup>1</sup> For example, *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).

<sup>2</sup> <https://www.ctvnews.ca/politics/canada-doesn-t-tell-police-what-to-do-trudeau-says-of-rail-blockades-1.4811999?cache=eqlkpruxkingCN%3FclipId%3D89563>

<sup>3</sup> <https://www.CNr.ca/en/media/CN-corrects-inaccuracies-in-cbc-reporting-of-field-b-c-derailment>



As there are no vacuums of criminal jurisdiction in Canada, the RCMP and/or other police forces of jurisdiction have the authority to investigate. This is why the RCMP's British Columbia Major Crime Division is now investigating the Field, BC derailment. That investigation is of CP Railway as a company. Therefore, the company's own CP Police Service is automatically disqualified from criminally investigating its corporate parent.

**The imperative for the RCMP and the Saskatoon Police to jointly investigate the death of Kevin Timmerman, particularly through the Westray lens.**

Given the above, particularly the Westray focus on employers, the RCMP and Saskatoon Police should not have relinquished the criminal investigation of Kevin's death to the CN Police. This is why it is urgent for the RCMP and Saskatoon Police to now open a fresh criminal investigation without the involvement of the CN Police Service. Lori, Kaity, and Kevin's loved ones deserve to know what happened to him, not just the mechanics of his death, but the underlying causes, and whether CN Railway is criminally liable.

We also invite you to reach out to the CN Police Service Chief, Stephen Covey, for his confirmation that his police force cannot, and will not, investigate railway deaths and serious injuries. As you can see from the CN Railway website, Mr. Covey is listed among CN Railway's civilian executive management<sup>4</sup>. These executives are his colleagues. Furthermore, you will also note from his profile that he has a police-civilian role because in addition to being the Chief of Police, he is also in charge of the Risk Mitigation (civilian/executive function). As you can also see from his profile, Mr. Covey used to be Chief of CN Police only but is now both Chief of Police and Chief Security Officer. The consolidation of private executive and policing functions disqualifies him and his police force from investigating Kevin's death.

Furthermore, CN Railway's Chief Legal Counsel, Mr. Sean Finn, and General Counsel, Ms. Cristina Circelli, confirmed to us that CN Police does not investigate workplace deaths or serious injuries (more in attached Appendix). They confirmed that in such cases, they call outside police of jurisdiction such as the RCMP and local police, which then investigate and decide whether to lay any criminal charges.

Given the damaging impact that this jurisdictional ambiguity has on justice and accountability for workers and others who are injured on the railways, it is critical that the RCMP and Saskatoon Police act to prevent this longstanding miscarriage of justice. There have been hundreds of deaths on Canada's railways over the past decades or so, many involving workers such as Kevin. The railway and public police force's mutual disavowal of jurisdiction has deprived all victims of railway deaths the benefit of

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<sup>4</sup> <https://www.cn.ca/en/about-cn/company-officers/>


independent criminal investigations, that are required under the Westray framework, because the RCMP and other police of jurisdiction have deferred these matters to the very companies they were supposed to be investigating. Thus, Lori and Kaity urge the RCMP and Saskatoon Police to start mitigating the prejudice caused by your police forces' decision to cede the investigation of Kevin's death to the CN Police Service.

As CN Railway has already stated that it defers to independent outside police to investigate fatalities and serious injuries, Lori and Kaity reiterate their request for you to open a joint criminal investigation into Kevin's death. In particular, Lori and Kaity request investigations in two independent aspects of Kevin's death. The first is of the events that led up to Kevin's death, including the corporate decisions, business strategy, and other background factors that may have culminated in, and facilitated Kevin's death. The second capacity is of post-death events, particularly whether CN Railway's handling of its own criminal investigation gives rise to obstruction of justice and other charges relating to the interference and undermining of a criminal investigation.

The information contained herein should assist with the RCMP and Saskatoon Police's investigation, particularly in defining the nature and scope of the investigation at the outset. You may already be familiar with some of the information, but I trust that some of it will be new and valuable to your efforts.

This letter and attached **Appendix** below outlines known, or highly probable facts that are relevant to your joint investigation of Kevin Timmerman's death. We have included case law that is relevant to clarifying the grounds for potential criminal charges against CN Railway as a corporation **and** against specific individuals within the corporate hierarchy. Lori and Kaity are keen to ensure that your investigation thoroughly considers the potential criminal liability of any CN Railway representatives, without discounting the potential liability of the leaders at its highest levels. This focus on senior leadership is of great concern to Lori and Kaity given the systemic hazards for which there is reason to believe extend beyond Kevin's case. If you have any questions or need further clarification regarding the information below, please contact me at [law@runyowa.ca](mailto:law@runyowa.ca). You can also call me at 306-209-9974.

Sincerely,

  
Tavengwa Runyowa  
(Counsel for Lorelei Desrochers and Kaity Timmerman).

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## **THE RCMP AND SASKATOON POLICE HAVE CRIMINAL JURISDICTION OVER KEVIN TIMMERMAN'S DEATH.**

The RCMP and the Saskatoon Police have the jurisdiction to criminally investigate Kevin Timmerman's workplace death because:

- a) The CN Police is automatically disqualified because it is a wholly-owned subsidiary of CN Railway, Kevin's employer and the presumptive suspect in Kevin Timmerman's death. It is a fundamental principle of the Canadian justice system and a core pillar of the rule of law that no party, private or public, can criminally investigate their own conduct. Given that the CN Police is disqualified from investigating its own corporate parent's potential criminal liability, the only other police of jurisdiction are the RCMP and Saskatoon Police Service. As there are no jurisdictional vacuums in Canada's legal system, the RCMP and Saskatoon Police necessarily have criminal jurisdiction over this workplace fatality that happened in Saskatoon. The RCMP's jurisdiction over Kevin's death arises from **Section 18(a) of the *RCMP Act***. The Saskatoon Police Service's powers arise from **Section 25 of the *Saskatchewan Police Act, 1990***.
- b) CN Railway itself confirmed to us that as a matter of policy, the CN Police do not investigate workplace deaths or serious injuries and that it defers to local police of jurisdiction. For this, you may confirm with Mr. Sean Finn, CN Railway's Executive Vice-President Corporate Services and Chief Legal Counsel, and with Ms. Cristina Circelli, CN Railway's Vice President, Deputy Corporate Secretary and General Counsel. They did not explain why the CN Police exercised jurisdiction over Kevin's death in 2015 but their position that CN Police does not investigate such matters was unequivocal.
- c) Following the Field, BC disaster, the RCMP eventually opened a criminal investigation into that derailment, despite having initially deferred to the CP Police Service. As you may know from public reports, the actions of the CP Police and its working relationship is implicated in that investigation. Suffice to say that the RCMP's assumption of jurisdiction in the Field, BC matter reflects the RCMP's acceptance that it can exercise primary jurisdiction over railway police forces.
- d) As evident at **Attachment 3** the "Lacy Letter" and accompanying transcript extracts provide an explicit and alarming example of why the CN Police is not independent from, and has been subordinate to, CN Railway's corporate management. We have independently verified the authenticity of those transcripts (more on that in the following section). The RCMP and the Saskatoon Police Service cannot leave a workplace death investigation to a police force that is manifestly under the control of CN Railway, the main party of interest in the investigation.

- e) Given the fact that the CN Police assumed jurisdiction over Kevin's death, and contrary to CN Railway's stated policy to the contrary, the CN Police itself must be the subject of the RCMP and Saskatoon Police's fresh investigation into Kevin's death. As elaborated further below, there are questions of potential obstruction of justice when a party, CN Railway, and its Police force, take over an investigation where their own conduct is under criminal scrutiny. Therefore, Ms. Desrochers and Ms. Timmerman's complaint goes beyond the investigation of the events that led to Kevin's death but also CN Railway's involvement in the **post-fatality** criminal investigation. Ms. Desrochers and Ms. Timmerman deserve to know the extent to which CN Railway's corporate leaders were involved with, or influenced, that post-fatality investigative stage.

For all the above reasons, the RCMP and Saskatoon Police Service not only have the jurisdiction to investigate Kevin's death, it is also urgent that they do so. This is especially since both police forces initially deferred that investigation to CN Railway, the presumptive prime suspect. Canadians deserve to know that their law enforcement officers are willing to take all practical steps to address or mitigate their failures that frustrate criminal investigations into tragic deaths. Ms. Desrochers and Ms. Timmerman deserve at least that much.

### **IMPORTANT CONTEXT FOR WHY THE CN POLICE SERVICE DOES NOT, AND SHOULD NOT, HAVE JURISDICTION OVER THE CRIMINAL INVESTIGATION OF KEVIN TIMMERMAN'S DEATH.**

**Context: 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.**

To appreciate why Ms. Desrochers and Ms. Timmerman are concerned with the integrity of the CN Police's handling of its investigation into Kevin's death, we provide the case of Mr. Scott Holmes as context. Mr. Holmes' case affirms our concerns that the CN Police are an adjunct and an instrument of CN Railway's private corporate interests.

Mr. Holmes was a former CN Railway employee who was dismissed for alleged criminal misconduct. CN Railway reported the matter to its wholly-owned CN Police Service. CN Railway and Mr. Holmes had also sued each other civilly for disputes that arose from the same issues that CN Railway was criminally investigating.

**Attachment 3** is a letter that Mr. Scott Holmes' legal counsel, Mr. Lacy, sent to several officials in 2010 regarding Mr. Holmes' preliminary inquiry. The letter includes extracts from 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 Service 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 you can see from Mr. Lacy's cover letter to the 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, or ever 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 either or both the criminal and civil contexts. However, 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.

**The integrity of police investigations requires that the police force is notionally and practically independent.**

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 these 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 and its civil dispute with Mr. Holmes. Given this background, the RCMP and Saskatoon Police's investigation should not only determine whether CN Railway or any of its leaders should be held criminally responsible for Kevin's death it should also determine whether the manner in which they handled the subsequent investigation should give rise to criminal charges such as obstruction of justice. If the RCMP and Saskatoon Police officers who deferred to the CN Police were unaware that the principle of police independence deprived the CN Police from taking over the investigation, that is one matter. However, based on CN Railway's own confirmation, it recognizes that its police force must be independent and cannot investigate deaths and serious injuries in which the company's own conduct is implicated. To confirm that position, we refer you to Board of Directors which told us this

through Mr. Sean Finn, Executive Vice-President, Corporate Service and Chief Legal Officer, and Ms. Cristina Circelli, CN Railway's Vice President, Deputy Corporate secretary and General Counsel.

Both Mr. Finn and Ms. Circelli confirmed the above position in the context of speaking to me about a shareholder proposal that one of my other clients submitted to the Board regarding the reform of the CN Police Service (to guarantee police independence). With all this in mind, it is important for the RCMP and Saskatoon Police to cast a wide net that is not limited to the events leading up to Kevin's death. Instead, the Holmes cases justifies why your investigation should also extend to how the CN Police and CN Railway handled the ensuing investigation in contravention of the principle of police independence, and in a manner that may give rise to obstruction of justice and the other charges below.

### **THE TRANSPORT SAFETY BOARD RAIL SAFETY ADVISORY LETTER AND TRANSPORT CANADA REPORT AS STARTING POINTS FOR THE CRIMINAL INVESTIGATION INTO KEVIN'S DEATH.**

The only authorities that conducted any form of investigation into Kevin's death, apart from the CN Police Service, were the Transport Safety Board and Transport Canada. However, as you may know, neither authority has the jurisdiction to conduct **criminal** investigations into railway fatalities, serious injuries, and other incidents. In fact, they are expressly barred from attributing any fault and their investigators' evidence and findings are presumptively precluded from use in other legal proceedings.<sup>5</sup> Nevertheless, the RCMP and the Saskatoon Police can still secure certain evidence through the courts.

We have attached the heavily redacted Transport Canada report that Ms. Desrochers obtained via the federal access to information process (**Attachment 4**), and the TSB's Rail Safety Advisory Letter – 06/15 of its investigation (**Attachment 5**). You will note that at page 4 of the latter document, the report speaks of how CN Railway Yard Traffic Controller ("YTC") failed to communicate a change in the workplan to Kevin and that CN Railway did not require the communications of such changes despite the hazardous conditions. This issue should provide a clean and discrete starting point for the RCMP and Saskatoon Police Service to investigate CN Railway's failures to find out who was responsible. The RCMP and Saskatoon Police Service can compel records through the courts and obtain unredacted copies of all relevant documents.

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<sup>5</sup> *Canadian Transportation Accident Investigation and Safety Board Act* (S.C. 1989, c. 3) Sections 30 – 33.



## POTENTIALLY APPLICABLE CRIMINAL CHARGES AGAINST CN RAILWAY AS A COMPANY AND ITS AFFILIATED INDIVIDUALS.

### **Breach of trust by a public officer: Section 122 of the *Criminal Code*.**

We ask the RCMP to consider and make determinations about criminal charges against specific persons under Section 122 of the *Criminal Code*: “Breach of trust by a public officer”. This charge is specific to how CN Railway handled the criminal investigation into Kevin’s death. As you can see from **Attachment 1**, we obtained the Saskatoon Police’s report into Kevin’s death via the Saskatchewan Freedom of Information process. As you can see from page 15-16, the RCMP and Saskatoon Police allowed CN Police to assume jurisdiction over the investigation of Kevin’s death. As a police force that was wholly owned by CN Railway, the primary party of interest under the Westray laws, the suspect became the investigator.

Therefore, there must be an inquiry into who in CN Railway decided that its own police force could handle a criminal investigation into its own conduct. No suspect in a criminal investigation should control evidence, interview witnesses, or play any active role in the conduct of the investigation. In Kevin’s case, this is critical because the CN Police closed their investigation without laying any charges and refused to disclose any aspect of its investigation to Lori and Kaity. As you know, police forces have prescribed duties of disclosure via the *Canadian Victims Bill of Rights*<sup>6</sup> and the *Victims of Crime Act*<sup>7</sup>. Therefore, it raises questions of transparency and accountability for the CN Police to refuse to disclose anything about its criminal investigation of its parent corporation. Worse, any person who condoned, instructed, or participated in CN Police’s decision to take over the investigation of Kevin’s death, or directed it towards exonerating the company may be liable for a criminal breach of trust by a public officer.

*CN Railway’s Executive officers, Board members, chiefs of police, and constables are “public officers”.*

Although CN Railway is a private company, its Chief Executive Officer, President, Executive management, Board members, and managers, are “public officers” or “officials” given their total control and oversight of the CN Police Service. Thus, these aforementioned corporate persons, given their duty to oversee, instruct, terminate, and/or summon these police officers to provide information, are also public “officials” for the purposes of the criminal law.

The “public officer” status of the CN Police Service Chief and officers is straightforward. CN Police Service officers are granted all the same powers as Canada’s other public police under the *Railway*

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<sup>6</sup> <https://laws-lois.justice.gc.ca/eng/acts/c-23.7/page-1.html>

<sup>7</sup> <https://pubsaskdev.blob.core.windows.net/pubsask-prod/1493/V6-011.pdf>

*Safety Act*. CN Police Service itself provides that its officers are public servants.<sup>8</sup> This is consistent with the Supreme Court of Canada’s recognition of the public nature of, and *Charter* application to, private railway companies in *Dolphin Delivery*.<sup>9</sup> Thus, the CN Railway management and Board of Directors are public officers as they oversee, fund, supervise, and own the CN Police Service as a subsidiary of the corporation. The CN Police Service has no independent legal existence outside of CN Railway’s corporate structure. Under Sections 44(1) of the *Railway Safety Act*, CN Police constables are hired by the company that then nominates them for their commission by the courts. However, the company can terminate the CN Police officers without seeking leave from the courts (*RSA*, Section 44(6)).

Unlike other police forces that are subject to independent civilian oversight bodies, Section 44.1(1) of the *RSA* empowers CN Rail as a private corporation to designate the persons who deal with public complaints against the CN Police Service, and by extension, the company. Also, as criminal law enforcement agents, CN Railway police officers are public servants and “officials” as provided under the “public duty” definition in Section 118 of the *Criminal Code*. Suffice to say that persons who control and oversee a statutory police force of civil servants are “public officers”. Furthermore, 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 individuals serve, and the powers they wield.<sup>10</sup>

For example, in *R v Singh*, the Court found that Mr. Singh, a private driving instructor, qualified as a public official because he was appointed to discharge a public duty.<sup>11</sup> Mr. Singh was found guilty of breach of public trust by a public officer for falsifying documents relating to a driving certification, a matter of public interest. To be a public officer, 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”. Thus, persons holding oversight responsibilities over a statutory police force are “public officers” for the purposes of the criminal law. Thus, any conduct by otherwise private individual that touches on the police force’s work and mandate (e.g. public safety) triggers the public officer status. In this case, CN Railway’s CEO, President, Police Chief, CFO, Board of Directors, and other corporate representative or their agents who are answerable to the public for CN Police’s actions and public safety are “public officers”.<sup>12</sup>

Thus, we reiterate our request for the RCMP to investigate, review related evidence, and interview relevant witnesses with the view of determining whether charges of breach of trust by a public officer apply to CN Railway’s corporate officers, managers, and employees. All of them would have known about, and potentially provided instructions to, the CN Police regarding how to deal with Kevin’s death and

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<sup>8</sup> <https://www.CNr.ca/en/safety-site/Documents/Common%20Questions.pdf> AND <https://www.CNr.ca/en/careers/operations/police-service>.

<sup>9</sup> *RWDSU v. Dolphin Delivery Ltd.*, [1986] 2 S.C.R. 573 at para 38. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/181/index.do>.

<sup>10</sup> *Goyal v. Niagara College of Applied Arts and Technology*, 2018 ONSC 2768 para 68; *R v McMorran*, 1948 CarswellOnt 12.

<sup>11</sup> *R. v. Singh*, 2006 ABPC 324 (CanLII), <http://canlii.ca/t/1q2w4>.

<sup>12</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.

other fatalities. We have reason to believe that there is not separation between CN Railway as a private corporation pursuing shareholder value and as a law enforcement agency. This is important because of the principle of police independence which requires that police forces operate without the influence of outside parties, including the municipal and governmental authorities that may fund and oversee them.

Further, CN Railway's CEO, President, CFO, Board members, managers, and executive management, are responsible for instituting and implementing all corporate policies and operational decisions for the company. If any of those decisions led to a corporate culture that disregarded or deliberately undermined safety in pursuit of profit and a higher stock price, and precipitated Kevin's death, then the RCMP should consider criminal charges regardless of how high ranking the persons may be. At the very least, these corporate officials are necessary witnesses with key information about the corporate decisions preceding Kevin and the aftermaths of his death.

**Other potential criminal charges to be considered in relation to investigating the potential criminal culpability of CN Railway's Executive Management, Board of Directors, managers, and CN Police Chief.**

- Criminal Code Section 217.1 - Duty of persons directing work: Specific to the causes of Kevin's death.

“Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a *legal duty* to take *reasonable steps* to prevent bodily harm to that person, or any other person, arising from that work or task.”

- Criminal Code Section 22.1– Organization's criminal liability: Criminal liability of CN Railway as a corporation and law enforcement body.

In respect of an offence that requires the prosecution to prove negligence, an organization is a party to the offence if

(a) acting within the scope of their authority

(i) one of its representatives is a party to the offence, or

(ii) two or more of its representatives engage in conduct, whether by act or omission, such that, if it had been the conduct

(b) the senior officer who is responsible of the aspect of the organizations' activities that is relevant to the offence departs – or the senior officers, collectively, depart – markedly

from the standard of care that, in the circumstances, could reasonably be expected to prevent a representative of the organization from being a party to the offence.

- Criminal Code Section 217 - Criminal negligence: Relating to the culture of safety and specific business strategy decisions at CN Railway in general, and specific shortfalls that caused Kevin's death in particular.
- Criminal Code Section 22.2 – Other offences – organizations.

In respect of an offence that requires the prosecution to prove fault – other than negligence – an organization is a party to the offence if, with the intent at least in part to benefit the organization, one of its senior officers:

(a) acting within the scope of their authority, is a party to the offence;

(b) having the mental state required to be a party to the offence and acting within the scope of their authority, directs the work of other representatives of the organization so that they do the act or make the omission specified in the offence; or

(c) knowing that a representative of the organization is or is about to be a party to the offence, does not take all reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.

- **NOTE:** *Criminal Code* sections 22.1, 22.2 and 217.1 are not themselves offences under which individuals or organizations can be criminally charged. Rather, these sections assist in making it easier for the Crown to prove other criminal offences. In particular, the new duties created by sections 22.1, 22.2 and 217.1 would likely dovetail with *Criminal Code* sections:<sup>13 14</sup>
  - Criminal negligence causing death
  - Criminal negligence causing bodily harm
  - Manslaughter by unlawful act
  - Unlawfully causing bodily harm.

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<sup>13</sup> “Criminal liability for workplace deaths and injuries – Background on the Westray Law,” Government of Canada Department of Justice, 2020. [Online]. Available: <https://www.justice.gc.ca/eng/rp-pr/other-autre/westray/p1.html>.

<sup>14</sup> “Criminal liability for workplace deaths and injuries – Criminal Code Offences and their Application by the Courts”, Government of Canada Department of Justice, 2020. [Online]. Available: <https://www.justice.gc.ca/eng/rp-pr/other-autre/westray/p2.html>

- Criminal Code Sections 129 and 139 - Obstruction of justice: Relating to why CN Police and their corporate overseers assumed criminal investigative jurisdiction over their own conduct, how they handled the evidence and witnesses, and they came to the conclusion that they were not criminally liable. CN Railway has told us that as a matter of practice, their police force does not investigate railway deaths, which indicates that they turned their mind to the police independence issue. However, Kevin's case says otherwise (**Attachment 3**).

Another relevant case with respect to obstruction of justice is the Supreme Court of Canada decision in *R. v. Wijesinha*, [1995] 3 S.C.R. 422<sup>15</sup>: This was a case where a lawyer was convicted of obstruction of justice for providing false affidavits to mislead a Law Society of Upper Canada investigation into his conduct. Many cases have dealt with obstruction of justice but this one is important because it highlights some key principles.

- Obstruction of justice can apply to conduct that happens in the investigative stages, including that of an administrative process.
- The lawyer in question was sentenced to 18 months in prison for providing the false affidavits to the Law Society, which despite being an administrative tribunal with no criminal powers, was deemed as being of equal levity as the courts in terms of lawyer's duty to be truthful and to obstruct the fact-finding process.

The Supreme Court of Canada upheld an obstruction of justice charge against a private lawyer (not a public officer) involving a relatively minor transgression in an administrative proceeding where there were no fatalities. Thus, it is apparent that the gravity of corporate officers potentially interfering with the integrity of a criminal police investigation, if established, justifies obstruction of justice charges. The *Wijesinha* decision shows that although the criminal burden of proof is high, obstruction is a serious matter, even where no direct harm is visited upon other persons.

Obstruction of justice would also extend to the wilful violation of the principle of police independence.<sup>16</sup> In Kevin's case, potential obstruction charges would apply to any member of the CN Rail leadership or CN Police officer who knowingly handled evidence, prevented CN Police from referring the matter to outside police forces, gave direction, sought information, or participated in the process that led to the CN Police exonerating CN Railway of any criminal liability. Only a thorough inquiry about the process that followed CN Police's assumption of jurisdiction to the closing of the file will show who should be charged for obstruction of justice.

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<sup>15</sup> <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1294/index.do>

<sup>16</sup> *R. v. Campbell*, [1999] 1 S.C.R. 565. <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1692/index.do>.

- Criminal Code Section 126 – Contravention or conspiracy to contravene a statute: Applicable to potential violations of police independence duty inherent to CN Police Service under Sections 44 and 44.1 of the *Railway Safety Act* and Section 103 of the *Canada Labour Code*.

### **Examples of successful convictions for serious workplace injuries and deaths.**

The Government of Canada Department of Justice Fact Sheets outlines details of successful convictions with workplace serious injuries and death:<sup>17</sup>

1. *R v Transpavé*, 2008 QCCQ 1598.
2. *R v Metron Construction Corporation*, 2013 ONCA 541.
3. *R v Stave Lake Quarries Inc.*, [2016] BCJ No. 2583.
4. *R v Kazenelson*, 2015 ONSC 3639; 2018 ONCA 77.
5. *R v. Scrocca*, 2010 QCCQ 8218.
6. *R v. Hritchuk*, 2012 QCCS 4525.
7. *R v. Fournier*, [2016] QCCS 5456.

### **UNDERSTANDING CRIMINAL NEGLIGENCE WITH WORKPLACE FATALITIES & SERIOUS INJURIES.**

Peer-reviewed research into workplace incident causation from public inquiries of serious incidents demonstrates that a significant or substantial contributing cause is organizational factors. In the pursuit of ever greater profits and the desire of organizational members to rise through the corporate ranks, organizations and their decision makers can drift into consequences resulting in serious workplace injuries and fatalities. This drift is most often caused by acts or omissions attributable to poor management<sup>18</sup> and/or operational shortcutting which is a time-tested profit booster and an indicator of

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<sup>17</sup> “Criminal liability for workplace deaths and injuries – Sentencing of individuals and organizations”, Government of Canada Department of Justice, 2020. [Online]. Available: <https://www.justice.gc.ca/eng/rp-pr/other-autre/westray/p3.html>

<sup>18</sup> B. A. Turner, “Causes of Disaster: Sloppy Management,” *British Journal of Management* vol. 5, no. September 1993, pp. 215–219, 1994

a dysfunctional safety culture that puts production before people.<sup>19 20 21 22 23 24 25</sup> This becomes a concern when this drift crosses the Rubicon into criminal negligence.

To prove criminal negligence, the Crown must demonstrate that the defendant adverted to an obvious and serious risk to the lives or safety of the victims and failed to act, or gave no thought to the risk and the need to take care.

## **PERSONS WHO THE RCMP AND SASKATOON POLICE SERVICE SHOULD INTERVIEW OR INVESTIGATE.**

Based on the information we have, and that is in the public domain, there are adequate grounds for the RCMP to focus its investigation on the following persons and/or to interview them. At this point, we do not assert that they are personally liable for criminal conduct. However, they hold offices that make them likely to possess important information to guide your investigation. This is critical because the events that led to Kevin's death may appear to be limited to the railyard and the immediate mechanics of his death. Under the Westray framework, the RCMP and Saskatoon Police have a duty to take a broader view, including the general corporate culture and context that may have facilitated a specific incident.

For example, if there were prevailing practices such as the truncation of safety procedures to ensure that trains run on time despite the hazards this caused, this may have a direct effect on how specific corporate policies precipitated Kevin's death. The evidence and arguments we provide in this document will demonstrate that there is an overarching culture of poor workplace safety at CN Railway, and that Kevin's death was a manifestation of that broader culture, and not an unfortunate but isolated incident.

The RCMP should interview the following persons about the broader safety issues at CN Railway that led to Kevin's death **and** how CN Railway handled the aftermath of Kevin death. Both aspects are important because potential criminality in this case arises from these distinct pre- and post-death periods:

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<sup>19</sup> N. Leveson, "A new accident model for engineering safer systems," *Safety Science*, vol. 42, no. 4, pp. 237–270, 2004

<sup>20</sup> J. Reason, *Managing the Risks of Organizational Accidents*. Taylor and Francis. Kindle Edition, 1997.

<sup>21</sup> D. Cooper, *Navigating the Safety Culture Construct: A Review of the Evidence*. B-Safe Management Solutions Inc., 2016.

<sup>22</sup> J. Hovden, E. Albrechtsen, and I. A. Herrera, "Is there a need for new theories, models and approaches to occupational accident prevention?," *Safety Science*, vol. 48, no. 8, pp. 950–956, 2010.

<sup>23</sup> A. Flynn and J. Shaw, *Safety Matters: A Guide to Health & Safety at Work*. Management Briefs, 2008.

<sup>24</sup> W. C. Li and D. Harris, "Pilot error and its relationship with higher organizational levels: HFACS analysis of 523 accidents," *Aviat. Sp. Environ. Med.*, vol. 77, no. 10, pp. 1056–1061, 2006.

<sup>25</sup> A. O'Dea, R. Flin, and A. Dea, "The Role of Managerial Leadership in Determining Workplace Safety Outcomes," *Heal. Saf. Inf.*, pp. 1–77, 2003.

- The former President and CEO, Mr. Claude Mongeau who presided over CN Railway at during the period that Kevin died (2010 – 2016). Mr. Mongneau is currently an officer with Cenovus Energy<sup>26</sup>;
- The current CN Railway CEO, President, and Board member, Mr. Jean-Jacques Ruest;
- Current CN Police Chief, Stephen Covey (Chief since 2010);
- CN Railway’s Executive Vice President and Chief Financial Officer, Mr. Ghislain Houle;
- Members of CN Railway’s Board of Directors;
- Any forensic experts (individuals or companies) that may have handled, extracted data, interpreted, and reached conclusions;
- Senior CN Railway **managers** who were responsible for the deployment, maintenance, and general oversight of the trains in the Saskatoon railyard;
- The CN Railway track and car maintenance **crew** at the Saskatoon railyard;
- The CN Railway **executives** (senior managers, vice presidents, board members) responsible for workplace and public safety; and corporate officials responsible for liaising with Transport Canada and the TSB.
- The Yard Traffic Coordinator who was working in the railyard the day that Kevin died.

Other necessary witnesses and persons of interest include any corporate officers who designed and implemented CN Railways’ corporate policies to enhance the company’s efficiency ratio, productivity, and stock price. In addition to the Board of Directors, Mr. Houle’s role as CFO, Mr. Mongneau’s role as former President and CEO, and Mr. Ruest’s role as CEO, President, and Board member make them particularly important witnesses to interview on these issues. As CFO, Mr. Houle’s duties include compliance, control, governance, efficiency, strategic leadership, engaging regulators and shareholders, enhancing financial efficiency, and guiding the company to business ethics.<sup>27</sup> Thus, as CFO, Mr. Houle is an indispensable witness who can provide a bridge between seemingly routine business strategy decisions which may give rise to criminal misconduct.

For example, CN Railway’s stock price rose from around **\$11** in January of 2003 to about **\$129** today in 2021. Some of the profit maximization reforms that CN Railway is reported to have conducted

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<sup>26</sup> <https://www.cenovus.com/about/our-board/claude-mongeau.html>

<sup>27</sup> <https://www.CNacanada.ca/en/career-and-professional-development/professional-development-resources/teamwork-and-leadership-skills/chief-financial-officer-role-and-expectations>



was the implementation of deep cuts in personnel and overworking employees.<sup>28</sup> While such decisions may appear to be limited to corporate strategy and labour relations, they significantly impact worker safety. When viewed through the lens of the Westray laws, an investigating authority determines whether these strategies are a part of a longstanding practice, or pattern of practices, that precipitated Kevin's death. As CFO and CEO respectively, Mr. Houle and Mr. Jean-Jacques Ruest are critical witnesses who can speak to the corporate decisions that may be implicated in the RCMP's criminal investigation. Mr. Ruest was not the CEO when Kevin died in 2015, but will have institutional knowledge of how CN Railway has worked with and exercised control over the CN Police Service. Mr. Mongneau can speak to the relevant period of his tenure.

We have reason to believe that CN Railway could not have boosted its efficiency ratio, profits, and stock price to the extent it has through business acumen alone. Specific corporate strategy areas to review include policies and decisions about cuts/reductions in worker training (duration and depth), rushed safety inspections, the assignment of smaller numbers of personnel to tasks that require greater numbers for safe execution, and changes in protocols around safety checks on trains and equipment. The Company's CEO and Chief Financial Officer would be the persons best placed to provide this information. If they are unwilling to do so, the RCMP can subpoena records and witnesses that document specific strategic decisions that CN Railway has taken over time, including Board minutes and resolutions, safety audits, train logs, and other documents reflecting operational changes that prioritize boosting speed and efficiency while lowering costs.

Just as importantly, many of these records will likely be located in CN Railway's facilities in the United States, including CN Railway Police's custody in that country. Cooperation with US authorities will likely be necessary to ensure that you are securing all relevant records, witnesses, and evidence.

While some of this corporate conduct and strategy may seem outside of the RCMP's general scope of investigation, these points of inquiry are vital to establishing the potentially applicable *Criminal Code* provisions, which are discussed below.

## **QUESTIONS FOR PERSONS OF INTEREST AND KEY WITNESSES.**

### **Questions for Chief Stephen Covey of the CN Police Service.**

1. Why did the CN Police Service take over jurisdiction over Kevin's death when CN Railway policy prohibited it, and the CN Police worked for CN Railway, the presumptive suspect under the Westray amendments to the *Criminal Code*?

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<sup>28</sup> <https://www.thestar.com/calgary/2019/12/01/cn-rail-strike-fatigue-rail-workers.html>

2. The CN Police Service mandate includes the duty “to prevent and detect crime”<sup>29</sup>. Does this include reviewing corporate policy decisions and actions around the running of the trains to ensure that these are compliant with safety standards and expectations?
3. The CN Police Service mandate includes the duty to “conduct criminal and accident investigations”.<sup>30</sup> Has the CN Police ever investigated fatal derailments to determine whether the incidents are the result of CN Railway’s corporate decisions, actions, omissions, or misconduct?
4. Did Chief Covey, or any CN Police officers and civilian staff discuss their investigation into Kevin’s death with CN Railways’ CEO, CFO, managers, executive officers, or Board of Directors? If so, what was the content of those discussions, when did they happen, and are there any records of these interactions?
5. Did anyone in CN Railways’ management, executive leadership, or Board of Directors instruct Chief Covey, or his police officers and civilian staff to limit CN Police’s investigation of Kevin’s death to Kevin’s actions and those of the CN Railway employees who were directly involved in running the trains that night?
6. Did Chief Covey and the CN Police Service decide to limit the scope of the CN Police’s investigation of Kevin’s death to Kevin’s actions and those workers in the immediate vicinity? If so, who made that decision and was it on the instruction of anyone on the CN Railway corporate side? If so, why?
7. Did anyone among CN Railways’ management, executive offers, or Board of Directors instruct Chief Covey, or his police officers and civilian staff to divert or avoid directing the CN Police investigation into Kevin’s death from the actions of CN Railways’ CEO, managers, executive officers, or Board of Directors?
8. What steps, if any, did Chief Covey, and his police officers and civilian staff take to secure the evidence in the CN Police’s investigative file? What steps, if any, did they take to make sure that no one outside the CN Police Service, including the executive officers, managers, and Board of Directors had no access to it?

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<sup>29</sup> <https://www.CNr.ca/en/careers/operations/police-service>

<sup>30</sup> <https://www.CNr.ca/en/careers/operations/police-service>

9. Did CN Police Chief Covey, or his police officers and civilian staff, formally or informally brief CN Railway's CEO, CFO, managers, executive officers, or Board of Directors about the CN Police's investigation into Kevin's death? If so, when, and what was the content of those briefings? Are there any records from that briefing?
10. Does Chief Covey know if anyone in the CN Police or CN Railway corporate leadership accessed the CN Police computer system or evidence in the CN Police's investigation of Kevin's death?
11. Did Chief Covey, or his police officers and civilian staff ever interview CN Railway's CEO, executive officers, managers, or Board of Directors to determine what role, if any, they or the company may have played in causing Kevin's death?
12. Did CN Police immediately secure the scene of Kevin's death, securing the evidence, including the black boxes on the train, or did CN Police allow the company's managers and employees to secure both the scene and evidence collected from it?
13. Did Chief Covey, or his police officers and civilian staff review and secure the data on the event recorders of the train that struck Kevin? The event recorders contain the vital information about the accident. Therefore, it is critical for the RCMP to determine who secured the event recorders; who extracted and interpreted the data; whether CN Railway management and Board of Directors viewed that data or received any reports about its contents and implications; where the data and event recorders were stored; and whether independent outside forensic investigators conducted any of these functions. Chief Covey must know the answers to these questions including whether the data on them still intact, and whether CN Railway's non-police employees, officers, executive, Board of Directors, or managers had access to, or custody over those black boxes at any point since the derailment.

**Questions for Mr. Jean-Jacques Ruest (CN Railway CEO, President, and Board member), Mr. Claude Mongneau, and Executive(s) in charge of risk management and safety.**

1. At any point, did any member of CN Railway's management talk to CN Police Chief Covey or any CN Police officers or civilian staff about the death of Kevin Timmerman?
2. Did any member of CN Railway's management provide any instructions to CN Police Service or its officers about how to handle the criminal investigation into Kevin's death?

3. Did any member of CN Railway's management instruct current Chief Covey, or any CN Police officers or civilian staff about the conduct of the CN Police investigation, including its scope, the handling of the fatality scene, collection of evidence, witnesses to interview (or not), persons to exclude from scrutiny?
4. Did any member of CN Railway's management have access to the CN Police Service's computer system on which evidence in Kevin's death investigation was stored?
5. Did any member of CN Railway's management have access to the CN Police Service's physical evidence regarding Kevin's death? Did any of them access that evidence at any point since Kevin's death?
6. Did any member of CN Railway's management instruct, or expressly allow CN Police or CN Railway employees to clean up the scene of the Saskatoon car-collision , including removing the wreckage of the train, the movement of the body of the deceased, gathering of the evidence, liaisons with the RCMP and coroner etc.?
7. Did any member of CN Railway's management give instructions to CN Police, officers, civilian staff, managers to restart the railway traffic as soon as the scene of Kevin's fatality was cleaned up?
8. Did any member of CN Railway's management provide the CN Railway Board of Director with a briefing(s) on the CN Police's investigation and findings with respect to Kevin's death? If so, when, and what was the content of those briefings? Is there any documentation capturing it?
9. Does the CN Railway Board of Directors have copies of resolutions or meeting minutes and agendas that the company generated regarding the CN Police investigation into Kevin's death?
10. It is pertinent that CN Railway's management provide records and answers regarding the company's strategic objectives and action plans to boost its operating ratio, profits, and stock price from each of the last 10 years. Any refusal to comply can be addressed via relevant court orders.

### **Questions for CN Railway's Board of Directors.**

In the case of a serious incident such as the death of a worker, Chief Covey likely provided the CN Railway's management and Board of Directors with updates about the CN Police's ongoing investigation. Whether the Board provided Chief Covey and the CN Police any instructions or learned

pertinent information about the investigation is a matter that requires investigation. Further, the Board members may be able to divulge details of potential obstruction, including whether anyone on the Board or in management, was actively involved in, or influenced, the CN Police investigation of Kevin's death in any way.

Members of CN Railway's Board of Directors also possess the business perspective to understand the company's operational decisions over the years; decisions that may have precipitated or manifested in Kevin's death. Namely, as discussed earlier, CN Rail's stock price has spiked in the past two decades. This has happened in tandem with strategic and commercial decisions that have a direct bearing on safety. Examples include the accelerated promotion of employees to roles for which they are not qualified to safely perform; deep personnel cuts that result in workers engaging in tasks that require more people to safely conduct; rushed maintenance and truncated safety protocols; a systemic culture of working employees for long hours that lead to excessive fatigue and an increased likelihood of injuries and deaths.

Questions for the CN Railway Board of Directors include the same ones listed under Chief Covey, Mr. Ruest, Mr. Mongneau, and the CN Police Service above.

### **THE TEAMSTERS CANADA AND OTHER RAILWAY UNIONS: CAN PROVIDE KEY INFORMATION, EVIDENCE, WITNESSES, AND TECHNICAL CONTEXT.**

Given the above, the Teamsters and other railway unions will also provide you with useful background on the systemic safety issues at CN Railway, and information specific to Kevin's death. As worker representatives, the unions have detailed, knowledgeable, and longstanding historical knowledge about how the railways function, and the gradual changes to the company's safety culture that may have contributed to Kevin's death. They can succinctly point to any marked departures from industry standards or minimum safety expectations that could warrant criminal charges. Further, their workers were onsite and likely helped to clean up the scene of Kevin's death.

### **SUMMARY OF THE FLAWED AND POTENTIALLY WILFULLY INADEQUATE INVESTIGATION BY THE CN POLICE SERVICE.**

- There is a serious and unresolved contradiction between CN Railway's assertion that its police force does not handle death investigations, and the CN Police's decision to assume jurisdiction over the investigation of Kevin's death. As the Westray amendments to the *Criminal Code* require that potential employer conduct be at the forefront, it will be important for the RCMP and Saskatoon Police to investigate why this disparity occurred, and how the CN Police arrived as the

undisclosed and secretive conclusion that its parent company was not criminally liable for Kevin's death.

- Notwithstanding their automatic disqualification from investigating their corporate parent, the CN Police are not qualified or trained in workplace criminality (fatality and serious injury) investigations. They are not trained in forensic investigation of complex industrial disasters, or in the commercial/corporate strategies and regulatory aspects that underly any given incident. At a minimum, they had a duty to secure the relevant outside expertise to meet their obligations to secure the site of Kevin's death, to properly investigate, and to enforce the *Westray* and other applicable criminal laws.

## **REPORTS OF A SYSTEMIC PATTERN OF UNSAFE WORK CONDITIONS IN CN RAILWAY'S PURSUIT OF GREATER PROFITS AND INCREASING STOCK PRICE.**

### **Corporate decisions affecting the safety of employees on the job.**

Publicly available reports, including statements from labour unions have asserted the following that need to be verified or refuted through a thorough investigation:

- CN Rail has steadily decreased the training provided to their employees, many of whom who work in high-risk positions.
- CN Rail has decreased the minimum number of employees required for certain tasks, in an effort to cut costs, while putting excessive responsibility on individual employees, and creating higher chance of injurious and fatal incidents.
- CN Rail has also been hiring employees with no railway education, training, or experience, then, as stated, providing insufficient training before placing them in positions that require significantly more training for safe operations.

- Employees have reported often facing the decision whether to complete an unsafe task or whether to lose their job for refusing.
- Employees have reported constant pressure from management and corporate decision makers to keep trains moving despite risk to safety. The Teamsters and other railway unions should be able to provide the RCMP with more information about this, including referrals to specific workers.

## **RELEVANT RECORDS AND EVIDENCE FOR THE RCMP AND SASKATOON POLICE TO SECURE.**

Records and evidence that are relevant to the above-mentioned aspects of the investigation and potential criminal charges, include but are not limited to any:

- The Transport Canada and the Transport Safety Board's investigative reports into Kevin's death (can be compellable by Court order);
- Internal emails between corporate decision makers, the Board of directors and management with the investigative team from CN Police and the company derailment team;
- Board resolutions discussing safety and/or decreasing operational costs;
- Written or transcribed reports or briefing notes/presentations, of CN Police of management reporting to the CN Railway Board about Kevin's death;
- Notes of the CN Police officers who were involved with the investigation into Kevin's death, including physical and electronic evidence;
- Communications between CN Railway's safety officers, or managers in charge of safety with executive management, CN Police, and the CN Railway Board;
- Documents which direct the CN Police to limit scope of investigation to preclude corporate or managerial responsibility for Kevin's death;

- CN Police’s investigative file, including computer systems, software, and servers;
- Coroner’s files on Kevin’s death;
- Audio recordings from the radio channel while the train was travelling in the yard (if separate from the event recorders);
- Any downloaded files, expert reports, and communications about, the data that was on the event recorder;
- Safety reports filed with CN Rail by employees;
- CN Railway’s communications with the outside first responders.

**ADDITIONAL WITNESSES TO INTERVIEW.**

Additional witnesses that are relevant to the above-mentioned angles of investigation, include but are not limited to:

- The Yard Master, who we understand was in charge and may have been at the centre of the events that led to Kevin’s death (See the TSB report into Kevin’s death as a starting point);
- The engineer of the train that struck Kevin Timmerman;
- Saskatchewan Coroner’s Service personnel who dealt with Kevin’s death;
- The paramedics who attended the scene of Kevin’s death;
- CN Railway’s safety manager(s) and executives;
- CN Police personnel who were involved in CN Police’s investigation;
- Any individuals who may have had access to the CN Police’s file on the investigation of Kevin’s death



- Maintenance crew members who were on site and colleagues who helped clear up the scene of Kevin's death;

As stated above, if you have any questions or need clarification, do not hesitate to contact me at [law@runyowa.com](mailto:law@runyowa.com). On behalf of Lori and Kaity, thank you for your commitment to a thorough and in-depth investigation into Kevin Timmerman's death.

Sincerely,

*Tavengwa Runyowa*

Tavengwa Runyowa

(Counsel for Lorelei Desrochers and Kaity Timmerman).

# TAB 5

March 25<sup>th</sup>, 2021

**DELIVERED BY COURIER**

Police Chief Troy Cooper  
Saskatoon Police Service  
PO Box 1728  
Saskatoon, SK S7K 3R6

Headquarters:  
76 - 25th Street East  
Saskatoon, SK S7K 3P9

Dear Chief Cooper,

**RE: Inquiry Regarding “CRIMINAL COMPLAINT TO THE RCMP AND SPS ON BEHALF OF LORELEI DESROCHERS AND KAITY TIMMERMAN REGARDING THE DEATH OF KEVIN TIMMERMAN - MARCH 2, 2021 - With Attachments (5)”.**

---

I am legal counsel for Ms. Lorelei Desrochers and Ms. Kaity Timmerman. On the instructions of my clients, I filed a criminal complaint against the Canadian National Railway (CN Railway) with both the RCMP and your office at the Saskatoon Police Service on March 4<sup>th</sup>, 2021. The complaint related to the 2015 death of former CN Railway employee, Mr. Kevin Timmerman, at the CN Railway yard in Saskatoon.

On March 5<sup>th</sup> 2021, FedEx confirmed that it had delivered my clients' criminal complaint to the front desk of the Saskatoon Police Service Headquarters located at 76 - 25<sup>th</sup> Street East, Saskatoon SK. For clarity find attached the FedEx confirmation receipt which shows that Saskatoon Police Service staff member named “C.Claire” signed for the delivery of my clients' criminal complaint with the tracking number #784366715017.

On March 25<sup>th</sup>, 2021, one of my staff members made several phone calls to the Saskatoon Police Service and spoke with various staff and officers at your headquarters. We inquired about whether the

Saskatoon Police Service had processed the criminal complaint and had started the investigative process. The Saskatoon Police Service employees confirmed that your police force has no digital or written record of ever receiving Ms. Desrochers and Ms. Timmerman's criminal complaint that we sent through FedEx.

We request that Saskatoon Police Service confirms the receipt of this current letter and formally acknowledges the duplicate package we are including with it. Additionally, also find a new copy of the original criminal complaint package included with this letter.

My clients are deeply troubled by the fact that their criminal complaint the Saskatoon Police Service received could go missing. This is a serious concern that extends beyond my clients because it raises the question of how many other criminal complaints are filed and lost in the Saskatoon Police Service's system. For many reasons, including the threat of personal peril, it is often difficult for citizens to file criminal complaints with the police in the first place. Therefore, it is important that when citizens do file such complaints, the Saskatoon Police Service is diligent in effectively handling and reviewing them. This is especially the case when such complaints contain critical evidence whose stewardship can impact the occurrence and integrity of any subsequent investigation or criminal prosecution.

On behalf of my clients, we ask that:

1. The Saskatoon Police Service opens a criminal file and investigation into the 2015 death of Kevin Timmerman at the CN Railway yard in Saskatoon.
2. That the Saskatoon Police Service consults and collaborates with the RCMP in the joint investigation of the death of Kevin Timmerman at the CN Railway yard in Saskatoon.
3. That the Saskatoon Police Service provides us with confirmation when the investigation into Kevin Timmerman's death has formally started. We also ask the Saskatoon Police Service to keep us updated about the progress of the criminal investigation as required under Sections 6 – 8 of the *Canadian Victims Bill of Rights* and Sections 2.1 the Saskatchewan *Victims of Crime Act* (particularly Section 2.1(f)).
4. Saskatoon Police Service conduct an internal investigation into how and why Ms. Desrochers and Ms. Timmerman's criminal complaint disappeared. The internal investigation should also look into whether the Saskatoon Police Service has adequate structures and protocols for handling and ensuring the integrity of criminal complaints that are submitted to it.

5. As a CACP member police force, the Saskatoon Police Service makes a public and formal announcement that it opposes the continued membership and involvement of CN Police and CP Police in the CACP (more below).

As you can see from Ms. Desrochers' and Ms. Timmerman's criminal complaint against CN Railway, the Saskatoon Police Service and the RCMP previously rebuffed their efforts to seek such an investigation. The Saskatoon Police Service simply deferred to the jurisdiction of CN Railway without even considering the merits of the complaint. In the attached package, you will see that we provided you with the Saskatoon Police Service's police records showing that the RCMP and your police department handed over the investigation of Kevin's death to the CN Police Service, a wholly-owned subsidiary of CN Railway. Under the estray amendments to the *Criminal Code*, CN Railway was the prime suspect in Kevin's death.

My clients' concerns about the Saskatoon Police Service's handling of the criminal complaint are worsened by the fact that CN Railway, through its CN Police Service, is a member of the Canadian Association of Police Chiefs ("CACP"), which the Saskatoon Police Service is also a member of. This gives the impression that regardless of the merits of my clients' criminal complaint, the RCMP and Saskatoon Police Service are unwilling to investigate CN Railway because the RCMP and Saskatoon Police Service regard the private corporation as a law enforcement partner, and not the prime suspect in criminal investigations under the Westray laws.

Separately, we have written to the CACP about this issue (**See supplementary package**). In our correspondence with the CACP, we asked why for years, the CACP has allowed private for-profit railway corporations with many foreign shareholders to enjoy membership in Canada's most powerful police association. We also asked the CACP why it accepts the sponsorship of the private railway corporations (CP Railway corporation) that the CACP public police forces have the mandate to investigate whenever there is a railway fatality, serious injury, environmental incident, or other railway disaster.

[https://cacp.ca/index.html?asst\\_id=1976](https://cacp.ca/index.html?asst_id=1976)

We are still waiting for the CACP to reply to our latest correspondence. Through its acting president, Mr. Peter Cuthbert, the CACP had previously refused to even address the issue of private, corporatized policing within the CACP. It undermines public confidence in Canada's police forces when citizens such as Ms. Timmerman and Ms. Desrochers face significant resistance to action and accountability when they file criminal complaints with the police. Canadians should not be forced to invest tremendous efforts to secure criminal accountability for their loved ones. Canadians should not have to seek legal counsel to get answers and action from the police forces' that are mandated to serve and protect them. Ms. Desrochers, Ms. Timmerman, and all Canadians deserve a responsive and

independent criminal justice process, especially when grieving the losses of their loved ones. To date, the Saskatoon Police Service, RMCP, and other CACP members have failed to honour this right. We trust that going forward you will give this matter the urgent attention it deserves, including by responding positively to my clients' requests above.

We look forward to hearing from you.

Thank you,

*Tavengwa Runyowa*

Tavengwa Runyowa

(Counsel for Ms. Lorelei Desrochers and Ms. Kaity Timmerman).

# TAB 1

Dear Customer,

The following is the proof-of-delivery for tracking number: 784366715017

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**Delivery Information:**

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<b>Status:</b>	Delivered	<b>Delivered To:</b>	Receptionist/Front Desk
<b>Signed for by:</b>	C.CLAIRE	<b>Delivery Location:</b>	76 25TH ST E
<b>Service type:</b>	FedEx Priority Overnight		
<b>Special Handling:</b>	Deliver Weekday; No Signature Required		Saskatoon, SK, S7K3R6
		<b>Delivery date:</b>	Mar 5, 2021 11:05

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**Shipping Information:**

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<b>Tracking number:</b>	784366715017	<b>Ship Date:</b>	Mar 4, 2021
		<b>Weight:</b>	0,44 LB/0,2 KG

**Recipient:**  
POLICE CHIEF TROY COOPER, SASKATOON POLICE SERVICE  
PO BOX 1728  
Saskatoon, SK, CA, S7K3R6

**Shipper:**  
RUNYOWA LAW PROFESSIONAL CORPORATIO, RUNYOWA LAW  
PROFESSIONAL CORPORATIO  
2010 - 11th Avenue  
7th Floor  
Regina, SK, CA, S4P0J3

**Reference** 6927824



Thank you for choosing FedEx





March 25, 2021

Dear Customer,

The following is the proof-of-delivery for tracking number: 784366715017

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<b>Status:</b>	Delivered	<b>Delivered To:</b>	Receptionist/Front Desk
<b>Signed for by:</b>	C.CLAIRE	<b>Delivery Location:</b>	
<b>Service type:</b>	FedEx Priority Overnight		
<b>Special Handling:</b>	Deliver Weekday; No Signature Required		Saskatoon, SK,
		<b>Delivery date:</b>	Mar 5, 2021 11:05

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**Shipping Information:**

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<b>Tracking number:</b>	784366715017	<b>Ship Date:</b>	Mar 4, 2021
		<b>Weight:</b>	0.44 LB/0.2 KG
<b>Recipient:</b>		<b>Shipper:</b>	
Saskatoon, SK, CA,		Regina, SK, CA,	

**Reference**                      6927824

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<b>From:</b>	RUNYOWA LAW PROFESSIONAL CORPORATION 2010 - 11th Avenue 7th Floor Regina, SK S4P 0J3 CA 306/206-2700	<b>To:</b>	POLICE CHIEF TROY COOPER PO BOX 1728 Saskatoon, SK S7K3Y6 CA 3062062800
<b>Shipment Date:</b>	3/4/2021	<b>Tracking Number:</b>	784366715017
<b>Estimated Total:</b>	\$31.08 CAD	<b>Estimated Delivery By:</b>	Friday 3/5/2021 12:00:00 PM
<b>Service Type:</b>	Priority Overnight	<b>Package Type:</b>	FedEx Envelope
<b>Package Sequence:</b>	Single	<b>Package Weight:</b>	0.2 KG(s)
<b>Declared/Carriage Value:</b>	\$0.00 CAD	<b>Pick-Up Option:</b>	Will use scheduled pickup at my location
<b>Signature Option:</b>	Delivery without signature	<b>Sender Reference:</b>	6927824 : RUNYOWA LAW PROFESSIONAL CORPORATION
<b>Saturday Delivery:</b>	No		

76 25<sup>th</sup> Street East

Saskatoon

# TAB 2

**ATTN: Chief Larkin et. al. - Letter Requesting Action Regarding The CN Police and CP Police Membership In The CACP And Railway Policing In Canada.**

Tavengwa Runyowa <law@runyowa.com>

Wed 2021-03-03 5:13 PM

To: cACP@cACP.ca <cACP@cACP.ca>; peter.cuthbert@cACP.ca <peter.cuthbert@cACP.ca>

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

📎 1 attachments (2 MB)

LETTER TO CACP ON TERMINATION OF CP POLICE AND CN POLICE MEMBERSHIP - March 3rd 2021 - With Attachments.pdf

**Attn: Chief Bryan Larkin, Chief Constable Adam Palmer, Director Peter Cuthbert, Deputy Chief Constable Howard Chow, and Deputy Chief Constable Norm Lipinski:**

I represent the families of CP Railway and CN Railway employees whose loved ones died at work in the past ten years. On August 19, 2020, I sent a letter to the Canadian Association of Chiefs of Police ("CACP") to inquire about the criminal investigation of railway fatalities, serious injuries, and other incidents (letter included in attached document). The focus of my letter was on the jurisdiction of CACP members to investigate these incidents, and their jurisdictional relationship with the Canadian National Railway Police Service ("CN Police") and the Canadian Pacific Police Service ("CP Police"). In my clients' cases, the CN Railway and CP Railway's corporate-owned police forces exercised jurisdiction over the death investigations, to the exclusion of public police forces (CACP members).

In September of 2020, Mr. Cuthbert replied to me on behalf of the CACP. In his email, he refused to provide any answers to our questions, including whether the CN Police and CP Police were members of the CACP. He also declined to answer questions about the jurisdictional relationship that CACP members have with the CP Police and CN Police. On the same day, I replied to Mr. Cuthbert's email. In my response, I detailed how the CACP's mandate and the public nature of its members' duties required the CACP to provide a minimum level of transparency about the issues we raised. I restated our request for the CACP to respond to our questions but neither Mr. Cuthbert nor anyone at the CACP replied to my email (correspondences also attached).

In the attached package, we raise concerns about serious conflicts of interest and miscarriages of justice arising from the CACP's relationship with CP Police and CN Police. For example, the CN Police and CP Police are the wholly-owned subsidiaries of two private, for-profit corporations, CN Railway and CP Railway, respectively. Under the Westray amendments to the *Criminal Code*, as employers, these corporations are the default suspects in criminal investigations of workplace injuries and fatalities. And yet, both private corporations, through the police forces that they control, are members of the CACP. This is problematic because CACP's public police members are responsible for investigating these very companies in the event of railway deaths, fatalities, serious injuries, and other incidents.

In the attached letter, we also raise concerns about CP Railway's apparent sponsorship of the CACP's 2019 Annual Conference. CP Railway proudly announced this sponsorship of the CACP conference in 2019, after CP Railway Train 301 derailed near Field, BC, killing three employees.

[https://cACP.ca/index.html?asst\\_id=1976](https://cACP.ca/index.html?asst_id=1976)

The RCMP initially declined to criminally investigate the Field, BC incident, leaving that to CP Railway's privately owned police force, which answers directly to corporate management, and has no independent civilian oversight body. As you know, the CP Police closed its criminal investigation into the Field, BC derailment after a month. CP Railway also terminated Constable Mark Tataryn after he concerns about CP Railway's corporate interference with the CP Police investigation in which he was involved. The RCMP only launched a criminal investigation into the Field, BC incident in December 2020, and only after persistent media scrutiny and pressure from various advocates.

After extensive research and queries, we have found no case where any CACP member has ever criminally investigated either CP Railway or CN Railway for a workplace death, serious injury, or toxic spill. This is despite the facts that there have been hundreds of deaths, serious injuries, toxic spills and other incidents in the past few decades. As you know, the TSB has no authority to attribute fault or conduct criminal investigations so only public police forces (CACP members) have that mandate. CN Railway and CP Railway cannot criminally investigate and exonerate themselves. The inaction of public police forces and their invariable deference to the very corporations they should be investigating reflects a serious and longstanding vacuum of criminal accountability for railway deaths, serious injuries, and other incidents. This inaction is also a stain on the administration of justice in Canada. As we detail in the attached package, the time has come for:

- A. The CACP to terminate the membership and collaborative involvement of CP Police and CN Police in the CACP;
- B. The CACP to publicly commit to proactively ensuring that its members conduct full criminal investigations into railway deaths, serious injuries, and environmental disasters without deferring to, or involving, the CN Police and CP Police;
- C. That the CACP publicly commits to conducting criminal railway investigations in which CN Railway and CP Railway are regarded as presumptive suspects and not as colleagues (as required under the Westray laws);

D. That the CACP formally requests the Government of Canada and the Parliament of Canada to repeal Sections 44 and 44.1 of the *Railway Safety Act* which authorizes Canada's private railway companies to own and control police forces with full criminal law enforcement powers. In the attached letter we detail two alternatives that will allow these companies to effectively secure their operations and protect the public without owning a statutory police force. These alternatives include transforming their companies' police forces into **private security companies**, and the adoption of a **contract policing services** (further details in attachment).

E. That the CACP provides responses to the questions I asked in my August 2020 letter;

F. That the CACP discloses what other sponsorship, financial or in-kind, have CN Railway and CP Railway given to the CACP.

Private police forces that facilitate the ability of private corporations to criminally investigate themselves are vestiges of the 19<sup>th</sup> Century. Corporatized police forces that are solely answerable to private shareholders do not belong in modern Canada. Further, under the *Railway Safety Act*, these police forces also exercise jurisdiction over aboriginal lands and peoples who have had a troubled history with corporate policing. Beyond that concern, there are serious constitutional questions about whether Canada's aboriginal peoples can even be subjected to the criminal jurisdiction of private corporations.

As Canada's highest and most authoritative police authority, the CACP has the duty to safeguard the integrity of the criminal justice system. Adopting and advancing the steps we have presented above and in the attached package will protect that integrity.

We hope that you will confirm the CACP's imminent intention to implement our requests in full, and look forward to your response.

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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# TAB 3

March 2, 2021

– BY EMAIL –

Chief Bryan M. Larkin  
President, The Canadian Association of Chiefs of Police  
Email: [cacp@cacp.ca](mailto:cacp@cacp.ca)

Chief Constable Adam Palmer  
Former President, The Canadian Association of Chiefs of Police  
Email: [cacp@cacp.ca](mailto:cacp@cacp.ca)

Director Peter Cuthbert  
Interim Executive Director, The Canadian Association of Chiefs of Police  
Email: [peter.cuthbert@cacp.ca](mailto:peter.cuthbert@cacp.ca)

Deputy Chief Constable Howard Chow  
Chief Constable, Vancouver Police Department  
CACP Law Amendments Committee

Deputy Constable Norm Lipinski  
Chief Constable, Surrey Police Service  
CACP Law Amendments Committee

ATTN: Chief Bryan Larkin, Mr. Peter Cuthbert, Deputy Chief Constable Palmer, Deputy Chief Constable Howard Chow, and Deputy Constable Norm Lipinski.

**RE: Request for the Canadian Association of Police Chiefs to terminate the membership of the Canadian Pacific Railway Police Service and the Canadian National Railway Police Service and other requests.**

On August 19, 2020, I wrote a letter to Chief Constable Palmer, in his capacity as the President of the Canadian Association of Chiefs of Police (“CACP”). I also copied Chief Constables Chow and Lipinski to that letter, which I wrote on behalf of my clients, Tara Jijian, Lori Desrochers and Kaity

Timmerman, whose loved ones, Jamie Jijian and Kevin Timmerman, died while working for the Canadian Pacific Railway (“CP Railway”) and Canadian National Railway (“CN Railway”), respectively (**Attachment 1**). I also represent Pamela Fraser, whose son Dylan Paradis, died in the Field, BC derailment of CP Railway Train 301 near Field, BC on February 4, 2019. Additionally, I also represent Eva Dockrell, Edward Dockrell, and Heather Dockrell, who are, respectively, the mother, brother, and sister of Andrew Dockrell. Andrew also died in the CP Railway Train 301 derailment near Field, BC. I have included Chief Larkin in this correspondence as he is now the President of the CACP.

For reasons we elaborate below, the purpose of this letter is to ask the CACP to take specific steps regarding the participation of the CN Police, CP Police, and private railway companies in the CACP. We also request the CACP to advance specific reforms the end the corporate ownership, control, and influence over private railway police forces.

As you know, Sections 44 and 44.1 of the *Railway Safety Act* empower Canada’s private railway companies own, operate, and control the CP Police Service and CN Police Service, respectively. Although you declined to confirm these companies’ membership in the CACP, we understand that both corporate police forces are members of your association.

In our August 19, 2020 letter, we asked the CACP a number of questions about your organization’s mandate. Our questions focused on your members’ jurisdiction over railway policing. We also raised the issue of police independence as it pertains to the CN Police and CP Police, and the CACP’s working relationship with both police services (in light of the fact that they are owned by private corporations). We also raised concerns about how historically, CACP member police forces have invariably deferred the criminal investigation of railway fatalities, serious injuries, and environmental disasters involving CP Railway and CN Railway to these private companies’ own police forces. We further provided you with statistics of the numerous derailments, fatalities, and other incidents which despite their staggering numbers, have never been investigated by any independent, public police force (including CACP members).

In our August 19, 2020 letter, we also posed several questions regarding the training that the CACP member police forces provide their officers regarding the investigation of potential workplace criminality (Westray laws). Despite these general questions that had nothing to do with the particulars of the Field, BC disaster, Mr. Peter Cuthbert, the CACP’s Interim Executive Director, replied by email on September 9, 2020 stating (**Attachment 2**):

“On behalf of the President of the Canadian Association of Chiefs of Police (CACP), Chief Bryan Larkin and the Co-Chairs of the CACP Law Amendments Committee, DC Norm Lipinski and DC Howard Chow, I wish to confirm receipt of your correspondence, dated Aug. 19, 2020 concerning the above subject matter. The Association have consulted with



our legal advisers and I am sorry to advise you that the CACP have no intent in getting involved in this private litigation nor will be answering any of the proposed questions.”

On the same day, I replied to Mr. Cuthbert by email (**Attachment 2**). In my email, I raised our concerns about how the CACP’s response contradicted your Association’s self-declared mandate to promote trust and legitimacy in its police services, to work with government agencies to “facilitate effective investigations”, and to support a “victim-centred and trauma-informed approach”. We did not ask the CACP to get involved in any litigation but to simply answer questions that public police forces have an obligation to address in response to the citizens they serve. This includes the nature, extent, and limits of the CACP police forces’ jurisdiction over specific subject matter (railway policing). Neither Mr. Cuthbert nor anyone at the CACP replied to my September 9, 2020 email.

### **My clients’ current requests to the CACP.**

This letter is to deliver the following requests to the CACP on behalf of my clients:

1. That the CACP terminates the membership, partnership, or collaboration of the CN Police Service and CP Police Service in the CACP.
2. That the CACP releases a public statement:
  - a. Calling on the Canadian Government and Parliament to repeal of Sections 44 and 44.1 of the *Railway Safety Act* which empower private railway companies to own and control police forces with criminal law enforcement powers.
  - b. Committing to ensure that notwithstanding any repeal of Sections 44 and 44.1 of the *Railway Safety Act*, the CACP members of local jurisdiction will work with the RCMP to independently investigate every railway death and serious injury without the involvement of the CN Police and CP Police.

Given that CN Railway and CP Railway are default suspects in workplace incidents that cause injuries and fatalities, the CACP members must publicly commit to ensuring that the CN Police and CP Police play no role in criminally investigating any of these deaths, serious injuries, and environmental disasters involving CN Railway and CP Railway. Further, my clients request that the CACP publicly commits to ensuring that its member police forces shall comply with the victim notification requirements of the federal *Victims Bill of Rights Act* and provincial victims of crime statutes.

- c. That the CACP discloses how much, in cash or in kind, CP Railway gave to the CACP to sponsor the CACP's 2019 annual conference, **and** whether this was the first financial or other material contributions that CP Railway or CN Railway have ever made to the CACP. If CP Railway's 2019 sponsorship was not the first financial or in-kind contribution, we ask that the CACP discloses all additional contributions that it has received from CP Railway or CN Railway.

In the attached Appendix, we elaborate on why the steps we request from the CACP are necessary under the current circumstances.

Thank you,

*Tavengwa Runyowa*  
Tavengwa Runyowa

**APPENDIX: REQUESTS FOR THE CANADIAN  
ASSOCIATION OF CHIEFS OF POLICE TO  
TERMINATE THE MEMBERSHIP OF, AND  
COLLABORATION WITH, THE CN POLICE SERVICE  
AND THE CP POLICE SERVICES.**

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## **Emergent concerns about conflicts of interest undermine public confidence in the CACP and its member police forces.**

The CP Police and CN Police's memberships in the CACP gives rise to serious conflicts of interest and pose a serious legitimacy problem that the CACP must address.

**First**, it is concerning that in the same year that CP Railway, which should have been the default suspect in the Field, BC disaster of 2019 under Westray laws, announced that it was "proud to sponsor" the CACP's 2019 conference (**Attachment 3**).<sup>1</sup> In that same year, the CP Police and CN Police also played a central role in shaping the Collaborative Protocol for Rail Death Investigations.<sup>2</sup> In any other circumstance, the CACP would not accept monies from, or collaborate with, parties that are, or are likely to be, suspects in criminal investigations that its members are responsible for. This expectation applies to regular citizens and every other legal entity. Railway companies should not be exempt from this core tenet of the rule of law.

At a minimum, the CP Railway sponsorship of the CACP conference and both CN Railway and CP Railway's involvement in creating the Collaborative Protocol raise questions about an apparent conflict of interest. It also raises the concerns that this state of affairs has damaged the integrity of the justice system and created a vacuum of criminal accountability in the railway sector. These concerns are exacerbated by the fact that both CP Police and the CN Police often hire former police officers, many of whom previously worked for CACP member police forces. This situation exacerbates the serious conflict of interest when CACP members must investigate some of their former employees, colleagues, and the private companies these former affiliates worked for.

The above concern is compounded by the fact that the RCMP initially declined to investigate the Field, BC disaster when it happened in 2019, the same year of CP Railway's sponsorship and the creation of the Collaborative Protocol railway incident investigations that the company involved in creating. The RCMP only agreed to investigate the Field, BC derailment almost two years later, after unrelenting media coverage and pressure from political leaders and the deceased workers families. At the very least, there is an apparent conflict of interest in CP Railway, a private corporation with a history of fatalities and serious injuries, sitting at the CACP table and sponsoring/influencing an organization whose members are mandated to investigate the company's potential criminal liability.

**Second**, given that the CN Police Service and the CP Police Service are legally indistinct from their parent companies, this means that both CN Railway and CP Railway, as private, for-profit corporations, are CACP members. Both corporations are sitting at the table and playing a central role in shaping Canada's approach to railway policing which includes the policing of railway corporations in Canada.

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<sup>1</sup> [https://cacp.ca/index.html?asst\\_id=1976](https://cacp.ca/index.html?asst_id=1976)

<sup>2</sup> <https://www.blueline.ca/rail-death-investigations-summit-rolls-out-collaborative-protocol/>

While a collaboration with railway police may seem like a reasonable approach on its face or to the outside viewer, the fact that these private police services are legally indistinct from their parent companies makes their collaboration with public police forces untenable.

**Third**, CN Police and CP Police's membership or participation in the CACP is also troubling because historically, CACP members such as the RCMP, Regina Police, and Saskatoon Police have invariably deferred jurisdiction of railway death investigations to the very corporate police forces that work for the railway companies. These private police forces' memberships in the CACP represents and entrenches the resulting problem of private railway corporations criminally investigating and exonerating themselves. The CN Police and CP Police memberships in the CACP demonstrate that the CACP members have viewed, and continue to view, these privately controlled police forces (and their corporate parents) as colleagues. Thus, when public CACP member police forces attend the scenes of railway deaths, serious injuries, explosions, or toxic spills, they engage their CN Police and CP Police counterparts. Public CACP members treat these private police forces as partners to defer jurisdiction to, rather than the agents of the prime suspects in a criminal investigation. The persistence of this problem has contributed to the invariable pattern of the CN Police and CP Police asserting, or accepting, jurisdiction over their own employer's or parent company's potentially criminal conduct. The acquiescence of public CACP members to these private police forces has systemically entrenched the violation of the principle of police independence.

**Fourth**, the CACP's response to our communications and questions regarding the CN Police and CP Police's membership in the CACP raise further concerns. The CACP's refusal to answer the most basic questions, including about who its members are, elevates the concern that the CACP is providing unconditional protection from scrutiny to its CN Police and CP Police colleagues, as well as the private corporations that own them.

The CACP is Canada's highest law enforcement association and should represent the highest levels of integrity, transparency, and commitment to the rule of law. Canadians expect the CACP and its members to rigorously protect the principle of police independence and to avoid formal collaborations with entities that the CACP's member police forces are legally required to investigate.

There have been other railway worker deaths before and after Field, BC, a period in which the CP Police and CN Police have collaborated with the CACP to develop policies and procedures regarding railway investigations in which their parent corporations had vested interests. It should be easy for the CACP to take a firm stance to terminate the CP Police and CN Police's membership and/or participation in the organization. The CACP has previously taken public positions on many topics of public interest. It is troubling that the CACP would decline to publicly commit to ensuring that railway incidents are independently investigated and are not tainted by the participation of the presumptive suspects with personal stakes in the outcomes of those criminal investigations.

Terminating the membership and/or collaboration that allows CN Railway and CP Railway to influence the very railway policing framework that they are subject to is a critical step to eliminating conflicts of interest and safeguarding the integrity of the justice system. Such a step is necessary to reassure the Canadian public that the CACP is dedicated to guaranteeing that rule of law applies equally to everyone in Canada's criminal justice system. It is also necessary for the CACP to take such a step to ensure that no person or entity can criminally investigate themselves or exercise undue influence over policies that affect their private interests. Therefore, it is crucial for the CACP to take a decisive position to ensure that the CN Police and CP Police membership and involvement in the CACP are terminated, notwithstanding a successful constitutional challenge to, or repeal of, Sections 44 and 44.1 of the *RSA*.

**After the repeal of Sections 44 and 44.1 of the *Railway Safety Act*, CN Railway and CP Railway will have effective security alternatives for protecting their operations, workers, and the public.**

CN Railway, CP Railway, and any other railway company that may seek to create a private police force under the *Railway Safety Act* can still effectively secure their operations without owning or controlling private police forces.

The private railway companies have argued that they need private police forces because public police forces are stretched and cannot adequately react to incidents within their jurisdiction. They have even argued for the expansion of their policing powers.<sup>3</sup> However, there are **two better and constitutionally compliant alternatives** that ensure the railway companies can still safeguard their operations without having the power to criminally investigate themselves.

*The Private Security alternative to corporate-owned railway police forces.*

The first alternative to CN Railway and CP Railway owning their own police forces is for them to convert these forces into private security companies that have not criminal law jurisdiction. After transforming their police forces into private security companies, CN Police and CP Police will retain the powers necessary to secure their parent companies' operations as well as protect the workers and the public. However, they will no longer have the authority to conduct criminal investigations, lay criminal charges, bring suspects before the courts, or exercise other strictly criminal law enforcement powers. These functions will be left to public police forces and prosecutors. This will eliminate the emergent concerns regarding conflicts of interest delineated above.

This private security alternative has proven to be a sufficient and satisfactory arrangement for every other corporation that owns and operates sensitive infrastructure that needs protection from

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<sup>3</sup> [https://tc.canada.ca/sites/default/files/migrated/cnrpa\\_rsa\\_review\\_dec\\_2017\\_2nd\\_submission.pdf](https://tc.canada.ca/sites/default/files/migrated/cnrpa_rsa_review_dec_2017_2nd_submission.pdf).

trespass, sabotage, theft, and other threats. Further this has proven to be an effective arrangement for many other railways in Canada. There is no reason why CN Railway and CP Railway are exceptional and require criminal enforcement powers. As elaborated below, under Canadian laws, private security companies have all the powers to conduct the **necessary** protective functions without wielding the criminal law powers.

For example, private security guards across Canada can wield significant powers to arrest trespassers, act to preserve lives, prevent crimes in progress, protect private assets, restrain belligerent persons, and support and collaborate with other first responders. Private security guards can even carry firearms. Once private security guards detain suspects or thwart the commission of a crime, they must hand over any suspects to peace officers such as municipal police forces or the RCMP. These public police forces then handle any criminal investigations, charges, and prosecutions in conjunction with Crown attorneys.

A specific example of the legislated powers that private security companies can wield can be found in Ontario's *Private Security and Investigative Services Act*, 2005, S.O. 2005, c. 34. Under this Act, private investigators and security guards can obtain warrants to enter premises for a vast array of reasons<sup>4</sup> and use reasonably necessary force.<sup>5</sup> Further, the *Act* makes it unlawful for persons interacting with private investigators and private security guards to obstruct these official's activities<sup>6</sup>, and imposes an obligation on relevant persons to produce certain materials on request from these officials.<sup>7</sup> This is the default system under which the plurality of private enterprises operate in Canada, including airlines, trucking companies, and other private corporations that have similarly complex, extended, and cross-border supply lines.

Private investigators and security guards can also call upon police officers to assist with matters such as executing warrants. Most importantly, private security guards do not have criminal enforcement powers and do not need them. These guards enjoy only as much authority as they need to protect property and persons within the immediate scope of their clients' assignments. However, the security companies must refer and defer all criminal enforcement matters to public police and prosecutors. This delineation of duties between private security guards, public police forces, and Crown prosecutors embodies and complies with the principle of police independence and the rule of law.

Finally, converting the CN Police and CP Police into a private security companies should **not** result in the loss of jobs for the companies' current police officers. The privatized "CN Security Service" and "CP Police Service" would largely maintain their current staff and structures, albeit, without any criminal law enforcement powers. Thus, converting CN Police and CP Police into private

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<sup>4</sup> *Private Security and Investigative Services Act*, 2005, S.O. 2005, c. 34 Section 22(2), 22(3), 23(1), 23(2).

<sup>5</sup> *Ibid*, Section 22(6) and 23(3).

<sup>6</sup> *Ibid*, Section 22(7).

<sup>7</sup> *Ibid*, Section 22(8).

security companies provide for a “jobs neutral” approach. This approach preserves current jobs and reflects what should have happened when the Government of Canada privatized CN Railway in 1995.

In summary, there is nothing impeding CN Railway and CP Railway’s ability to convert their police forces into private security companies that can effectively protect their operations, workers, and the public when Parliament repeals Sections 44 and 44.1 of the *Railway Safety Act*.

*The Contract Policing alternative to private corporate police forces.*

A second alternative to private corporate police forces under sections 44 and 44.1 of the *RSA* is for CN Railway and CP Railway to enter into **contract policing agreements** with the RCMP<sup>8</sup> or other public police forces. Notably, the RCMP’s website lists the following benefits of its contract policing:

- RCMP members in contract policing maintain a federal policing presence across the country. They are deployable across jurisdictions when required and called upon to assist in major investigations, emergencies, and national events that are beyond the policing capacity of a province, territory, or municipality to address alone.
- Under the benefits of the contract policing model, the RCMP is able to provide top level security drawn from across the country for international events such as the 2010 Olympics and the G8/G20 summits.
- Contract policing allows for the seamless sharing of intelligence and high-level cooperation between all levels of policing.
- As Canada’s national police force, the RCMP maintains national standards and policies across contract policing jurisdictions.
- The RCMP contributes to Canadian sovereignty as contract policing members are often the federal government’s sole representative(s) in many remote and isolated areas.

All the above benefits of contract policing comprehensively address CN Railway and CP Railway’s concerns about securing their operations and protecting the public, including in remote areas. Further, through contract policing, CN Railway and CP Railway can redirect their current policing budgets to paying for a **dedicated** number of police officers who are focused solely on protecting these companies’ operations across Canada.

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<sup>8</sup> <https://www.rcmp-grc.gc.ca/ccaps-spcca/contract-eng.htm>



As RCMP employees, the police officers would have jurisdiction across Canada and will benefit from the pre-existing collaborative relationships that the RCMP has with its counterparts in the United States. The RCMP officers would protect the railway companies' infrastructure and operations while, most importantly, **remaining legally and operationally independent** from these railway corporations. We trust that similar arrangements are also possible for CN Railway and CP Railway's operations in the United States.

The contract policing model would also mean that the repeal of Sections 44 and 44.1 of the *Railway Safety Act* would place no greater pressure on public police forces than they have at present. To the extent that CN Railway and CP Railway's new private security companies cannot conduct criminal law functions, through the contract policing agreements, these companies would finance the hiring, training, deployment, and accompanying logistics for any extra public (RCMP) police officers. These contracted officers would take on any additional workload that may arise from the conversion of the CN Police and CP Police into private security companies (if any).

Given that the contract policing option provides for both police independence and cross-country police coverage for CN Railway and CP Railway, there is no justifiable reason why these companies must own and control their police forces.

The RCMP's contract policing agreements are negotiated between the federal, provincial, and territorial governments. Given that Parliament enacted Sections 44 and 44.1 of the *Railway Safety Act*, that same Parliament can empower private railway companies, such as CN Railway and CP Railway, to benefit from such agreements, including via amendments to the relevant statutes and regulations that govern this area.

Alternatively, the Government of Canada has other powers and instruments to provide for such contract policing services to Canada's private railway companies. The CACP can work with the Government and the railway companies to implement this transition after, or notwithstanding, the repeal of Sections 44 and 44.1 of the *Railway Safety Act*. Regardless of how the contract policing model is implemented, it would allow CN Railway and CP Railway to effectively secure their operations without owning private police forces with the jurisdiction over the companies' potentially criminal conduct.

**The CACP's action to implement our requests is important in light of the CN Police Service's efforts to expand the criminal jurisdiction of private railway police forces when the opposite outcome is imperative.**

In an undated submission to the Parliamentary Railway Safety Act Review Committee, the Canadian National Railways Police Association (“CNRPA”) expressed its desire to expand its jurisdiction outside of the 500m limits under the *Railway Safety Act* (**Attachment 4**).<sup>9</sup> The CNRPA attempts to justify this proposed expansion on its powers by arguing that the 500m limit has created confusion in the courts. However, the solution to any jurisdictional ambiguity is for the CN Police and CP Police to have no such criminal jurisdiction at all. Instead, they should leave the job of criminal investigations and presenting suspects to the courts to public police forces and collaborate with them as legally required. This is the model that all other corporations have followed to secure their operations, including dealing with trespassers, saboteurs, or parties attempting to steal company property.

Given the availability of the private security and contract policing options discussed above, this is not the time to be expanding the powers of private corporate police forces. The time has come to eliminate such powers and entrust them solely to public police forces whose sole mandate is to protect the Canadian public, not the financial interests of private, corporate shareholders.

Overall, the current structure of corporatized policing and criminal self-investigation are inconsistent with 21<sup>st</sup> Century policing and a 21<sup>st</sup> Century Canada. Both converting private police forces to private security force, and/or facilitating a contract policing model for private railway companies, will remedy the aforementioned ills of the current system. We trust that that CACP will decisively protect the integrity of our criminal justice system by, a) terminating the membership of CN Police and CP Police in the organization, and b) advocating for the Canadian Government and Parliament to repeal Sections 44 and 44.1 of the *Railway Safety Act* that allow private railway corporations to own police forces with criminal law powers.

We look forward to your timely response.

Thank you,

  
Tavengwa Runyowa

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<sup>9</sup> [https://tc.canada.ca/sites/default/files/migrated/cnrpa\\_rsa\\_review\\_dec\\_2017\\_2nd\\_submission.pdf](https://tc.canada.ca/sites/default/files/migrated/cnrpa_rsa_review_dec_2017_2nd_submission.pdf)

# Attachment 1

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.

# Attachment 2

## Re: CACP and Jurisdiction over Railway Related Matters

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

Wed 2020-09-09 2:54 PM

To: Peter Cuthbert <[peter.cuthbert@cacp.ca](mailto: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 3





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## Canadian Association of Chiefs of Police

Safety and security for all Canadians through innovative police leadership

# MEDIA ADVISORY

## FOR IMMEDIATE RELEASE

August 9, 2019

## 114<sup>th</sup> Canadian Association of Chiefs of Police Annual Conference Schedule of Media Conferences and Releases

**CALGARY, ALBERTA** – The Canadian Association of Chiefs of Police (CACP) will be holding its 114<sup>th</sup> Annual Conference in Calgary, Alberta from August 11<sup>th</sup> to 14<sup>th</sup>, 2019. The conference is co-hosted with the Calgary Police Service.

The following provides a schedule of the media conferences that will take place and of the news releases to be issued during this period and to be made available at [www.cacp.ca](http://www.cacp.ca). (subject to change):

### Sunday, August 11<sup>th</sup>, 2019

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- **News Release – CACP/Motorola Solutions Awards of Excellence in Emergency Preparedness**
  - **Time:** 19:00 (Mountain Daylight Time)
  - **Purpose:** Announcement of the 2019 award recipients.
- **News Release – CACP Recognition Awards**
  - **Time:** 19:00 (Mountain Daylight Time)
  - **Purpose:** Announcement of the 2019 award recipients.

### Monday, August 12<sup>th</sup>, 2019

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- **News Release – CACP Award of Excellence for Combating Organized Crime**
  - **Time:** 10:00 (Mountain Daylight Time)
  - **Purpose:** Announcement of the 2019 award recipients.
- **Media Conference: Kick-off of the CACP's 114<sup>th</sup> Annual Conference – From the Top: A Strategic HR Approach**
  - **Time:** 10:15 a.m. (Mountain Daylight Time)
  - **Location:** Hyatt Regency Hotel Calgary, Neilson 2 Room
  - **Purpose:** To discuss the conference theme and objectives
  - **Speakers:** Chief Constable Adam Palmer, President of the CACP, and Chief Mark Neufeld from the Calgary Police Service
  - **News release:** To be issued following the media conference. .../2

- **Media Tour of the CACP Policing Trade Show:**
  - **Time:** 10:45 (Mountain Daylight Time)
  - **Location:** Telus Convention Centre, Exhibition Hall C/D
  - **Purpose:** Get a glimpse of the latest products and services available to police services across Canada by visiting 150+ exhibits
  - **Escorts:** Natalie Wright, CACP Communications Advisor, and Lindsay Nykoluk, Public Affairs/Media Relations Unit, Calgary Police Service
- **News Release – New CACP Board of Directors**
  - **Time:** 17:00 (Mountain Daylight Time)
  - **Purpose:** Introduce the members of the Board of Directors of the CACP for 2019-2010.

## Tuesday, August 13<sup>th</sup>, 2019

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- **News Release – 2019 CACP Resolutions**
  - **Time:** 09:00 (Mountain Daylight Time)
  - **Purpose:** Introduce the resolutions adopted by the CACP membership during the Annual General Meeting on Monday, August 12<sup>th</sup>, including background information.
- **News Release – CACP Traffic Safety Awards**
  - **Time:** 12:00 (Mountain Daylight Time)
  - **Purpose:** Announcement of the recipients of the 2019 *CACP National Police Award for Traffic Safety* and the *CACP Lifetime Achievement Award for Traffic Safety*.
- **News Release – CACP International Policing Award**
  - **Time:** 13:45 (Mountain Daylight Time)
  - **Purpose:** Announcement of the 2019 recipient

## Wednesday, August 14<sup>th</sup>, 2019

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- **Media Conference: Annual Conference Wrap-up**
  - **Time:** 13:45 (Mountain Daylight Time)
  - **Location:** Hyatt Regency Hotel Calgary, Neilsen 2 Room
  - **Purpose:** Introduce the CACP's new vision statement, updated mission, pillars, national strategic policing priorities, action plan and any key highlights following the completion of the Annual Conference.
  - **Speaker:** CACP President, Chief Constable Adam Palmer
  - **News release:** To be issued following the news conference.

### For further information or to arrange a media interview, please contact:

**Natalie Wright**  
Canadian Association of Chiefs of Police  
Communications Advisor  
[communications@cacp.ca](mailto:communications@cacp.ca)  
613.838.8807

**Lindsay Nykoluk**  
Public Affairs/Media Relations Unit  
Calgary Police Service  
[LNykoluk@calgarypolice.ca](mailto:LNykoluk@calgarypolice.ca)  
403.703.6043

# Attachment 4

Thank you to the Railway Safety Act Review Committee for allowing the CNRPA to present this additional submission related to proposed changes to the Railway Safety Act.

The Canadian National Railways Police Association (CNRPA) represents all Canadian Railway Police Constables and Sergeants of the CN Police Service. As such, we are able to present a number of our members concerns, as they are the ones who work within the CN Rail Yards, Intermodal facilities, and all CN property/infrastructure including multiple CND-US border crossings. Our members represent the frontline in rail safety and security and are an integral part of Railway Safety in Canada.

The purpose of this letter is to identify and clarify how the CNRPA believes to enhance the Railway Safety Act with changes which would improve railway safety and security measures. This letter will itemize specific concerns that 1) need to be addressed and 2) should be addressed. It will also describe how to best accomplish these proposed changes. This document will also include various references to illustrate and support the CNRPA's position relative to these proposed changes.

There are a number of items in the RSA that can be addressed within the present framework. The first item that needs to be addressed is to eliminate the 500 meter jurisdictional limit. Railway Police are already defined under section 2 of the criminal code as peace officers without limitation. However, this 500 meter limit has proven to confuse some officials in the court system and in many cases has been a detriment to the railway police and the justice system. Fortunately, there are many case law decisions that speak to and clarify the point of jurisdiction and authority, but the removal of this set distance would only benefit the railway police to carry out their intended policing and security functions.

The South Coast British Columbia Transit Police based in New Westminster BC are a great example of this. They patrol 134 km of rail, 57 rail stations, 1,400 buses and 200 bus routes. All officers "primary duties" are related to properties owned by the Transit authority however they are sworn without limitation as provincial police officers in BC and are expected to act in the event they come upon an emergency or unsafe situation. They then notify the local police of jurisdiction and work together. As it stands, railway police operate marked police cars in full police uniform and the public expects them to help when called upon in the community. They are in fact already bound to act as per the criminal code yet the 500 meter "jurisdiction" wording in the RSA causes issues administratively with the courts in the carrying out of their day to day duties. [www.transitpolice.ca](http://www.transitpolice.ca)

As you are aware, whether it be a Provincial or Federal court matter, legal counsel will look at any items to assist their client at trial. It has been our experience that some agents/counsel will purposely look to the RSA to confuse the facts in the hopes of clearing their clients. The removal of the 500 meter limit would remove this confusion and allow a number of cases to progress through the court process without unnecessary cost or delay.

The next step would involve the modernization of Railway Policing and related standards. This would confirm that the proper individuals, professionally trained with the right tools are doing the job for the Railways and Canadian alike. Such standards would have to be legislated in a federal framework or tied to Provincial standards already in place in the specific province in which the officer works.

It is the CNRPA's belief that an enhanced RSA can provide the government a means of strategically addressing current and future transportation security threats. Railway Police are often the first line of defence when dealing with these types of threats. However, it is the CNRPA's opinion that the current RSA is too basic and deficient due to the lack of standards for railway police. There are no clear and distinct areas of focus for Canadian railway companies to follow when deploying their police services. Security concerns within this critical infrastructure are ever increasing. To enhance railway safety and security, railway police must be given better resources, better tools and stronger legislation.

As we already know, local police and all levels of government are facing increased policing demands with higher workloads, which are already put on far too few officers while dealing with ballooning budgets for policing services. Local police in many cases are not able to address railway safety and security concerns in a timely manner and any calls relating to railway are typically placed at the bottom of their priority list. This could put any Canadian railways and the communities within which they operate in serious jeopardy.

The only way to ensure adequate and appropriate safety and security of any Canadian railway, is to revisit and revamp how we carry out our function, and give the railway police a better framework in which to operate and carry out the policing and security function. These standards would include but are not limited to:

- Employ minimum training standards within the act which focus on rail safety and security in addition to basic and enhanced police training.
- Employ minimum hiring standards such as requirements for basic police training, and qualifications for new hires. To fall in line with all police services in Canada.
- Make railway police an essential service under the RSA and have minimum staffing levels for all railway police services. CN Police and CP Police have similar small numbers police officers while VIA presently has only a few officers but their numbers are growing.
- Proper equipment in line with municipal and federal policing counterparts. This would include but not limited to: long guns, CEWs, facilities with proper detention capabilities, etc...
- Proper civilian oversight with an identified mandate and clear, transparent process. This could be achieved by aligning officers with their pre-existing provincial standards and/or respective Provincial Police Services Acts or creating a similar Federal/National model .

The first two pages above provided for improvements that could be accomplished within the present RSA framework, while referencing the appropriate federal and/or provincial legislation. If it becomes apparent that the above recommendations would not or could not be accomplished within the present RSA and/or railway management interests then another step to consider would be the amalgamation of all railway police services into one group.

Simply put all railway police together under one umbrella answering to Transport Canada and funded by the railways. A levy on every single car load being shipped can be imposed much like the airline industry has security fees. These levies can be used to make railway police cost neutral to each company while greatly enhancing railway security across all networks with ONE clear focus and ONE mandate for all under one management structure as the Canadian Transport Police. This unified model would also allow for expansion in the future in to other federally regulated critical transportation infrastructure.

The model for the British Transport Police can be relied upon in which all private railways use a similar model to pay for mandated rail police service which is administered by the government. ([www.btp.police.uk](http://www.btp.police.uk)). Furthermore, a research paper based on a Canadian railway police model, titled "McClellandIvanproject" has also been included for you review.

Thank you again for the opportunity to present this most important information to you. The CNRPA feels that the removal of the 500 meter restriction is something that can easily be accomplished quickly under the present framework, while the remaining suggestions will need more time and review. Should the RSA Review Committee feel a need to secure more information, the CNRPA would be more than willing to be part of any future review and/or discussions on this topic.

NOTE: A number of legal and other references have also been attached as separate attachments.

Again – these are just a few suggestions on how to improve the Railway Safety Act and to make it better aligned with present realities, with a clear and transparent mandate that focusses on the needs of the railways, industry, employees, government and the communities in which railways operate.

Respectfully Yours,

CNRPA

# TAB 6



**FW: ATTENTION Tavengwa Runyowa re: Criminal Complaint Request - Death of Kevin Timmerman**

Tavengwa Runyowa <law@runyowa.com>

Thu 2021-04-08 3:27 PM

To: Lori Desrochers <lordes@live.ca>; Christina Bender <christina.bender@runyowa.com>; Brandon Cain <brandon.cain@runyowa.com>  
FYI.

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:** Thursday, April 8, 2021 at 3:27 PM

**To:** "Gipman, Jaime (Police)" <Jaime.Gipman@Police.Saskatoon.Sk.CA>

**Subject:** Re: ATTENTION Tavengwa Runyowa re: Criminal Complaint Request - Death of Kevin Timmerman

Thank you, Jaime.

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:** "Gipman, Jaime (Police)" <Jaime.Gipman@Police.Saskatoon.Sk.CA>

**Date:** Thursday, April 8, 2021 at 3:26 PM

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

**Subject:** RE: ATTENTION Tavengwa Runyowa re: Criminal Complaint Request - Death of Kevin Timmerman

Hi Tavengwa,

I am not sure who your staff member talked to when they enquired as to whether the SPS received the original correspondence that was delivered on March 5, 2021, but I can assure you we did not lose the first package. As stated previously both packages have been forwarded to our Legal Services Division for review. I will forward this message to them so they are aware of your office is enquiring about a response.

Jaime

---

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

**Sent:** Thursday, April 08, 2021 2:33 PM

**To:** Gipman, Jaime (Police) <Jaime.Gipman@Police.Saskatoon.Sk.CA>

**Cc:** Brandon Cain <brandon.cain@runyowa.com>; Jessica-Lynn St. Pierre Hicks <stpierj@runyowa.com>; Jessica-Lynn St. Pierre Hicks <stpierj@runyowa.com>

**Subject:** Re: ATTENTION Tavengwa Runyowa re: Criminal Complaint Request - Death of Kevin Timmerman

[Warning: This email originated outside our email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.]

Hello Jaime. Can you please advise on when we can expect to hear back? My clients are anxious given the delay caused by the loss of the first package.

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:** "Gipman, Jaime (Police)" <[Jaime.Gipman@Police.Saskatoon.Sk.CA](mailto:Jaime.Gipman@Police.Saskatoon.Sk.CA)>

**Date:** Thursday, April 8, 2021 at 2:15 PM

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

**Subject:** RE: ATTENTION Tavengwa Runyowa re: Criminal Complaint Request - Death of Kevin Timmerman

You're welcome.

---

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

**Sent:** Thursday, April 08, 2021 2:12 PM

**To:** Gipman, Jaime (Police) <[Jaime.Gipman@Police.Saskatoon.Sk.CA](mailto:Jaime.Gipman@Police.Saskatoon.Sk.CA)>

**Subject:** Re: ATTENTION Tavengwa Runyowa re: Criminal Complaint Request - Death of Kevin Timmerman

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Thank you, Jaime.

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:** "Gipman, Jaime (Police)" <[Jaime.Gipman@Police.Saskatoon.Sk.CA](mailto:Jaime.Gipman@Police.Saskatoon.Sk.CA)>

**Date:** Thursday, April 8, 2021 at 2:10 PM

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

**Subject:** ATTENTION Tavengwa Runyowa re: Criminal Complaint Request - Death of Kevin Timmerman

Good afternoon,

I can confirm that our office received two packages in regards to the above request on March 5, 2021, and April 6, 2021 (your letters dated March 2, 2021 and March 25, 2021). Please note that your correspondence is currently being reviewed by our Legal Services Division, and you can expect to receive a response in due course.

Thank you.

Jaime

**Jaime Gipman | Executive Assistant | Executive Office | Saskatoon Police Service**

☎ Office: 306.975-8286 | ✉ [jaime.gipman@saskatoonpolice.ca](mailto:jaime.gipman@saskatoonpolice.ca) |

P.O. Box 1728 | Saskatoon, SK | S7K 3R6

Treaty 6 Territory and Homeland of the Métis

Connect with us on [[twitter.com/saskatoonpolice](https://twitter.com/saskatoonpolice)]Twitter, [[instagram.com/saskatoonpolice](https://www.instagram.com/saskatoonpolice)]Instagram & [Facebook](#)

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TAB 7



April 13, 2021

Runyowa Law  
7<sup>th</sup> Floor, 2010 11<sup>th</sup> Avenue  
REGINA SK S4P 0J3

Via e-mail: law@runyowa.com  
(1 page)

Attention: Mr. Tavengwa Runyowa

**Re: Request for an Investigation**

Our File: 21-14

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Thank you for your letter dated March 2, 2021 and your subsequent letter dated March 25<sup>th</sup>, 2021. Your March 25, 2021 letter indicates that you were advised your initial letter was lost, but I can confirm that is inaccurate and apologize for any confusion.

In your letters you request that the RCMP and the Saskatoon Police Service (“SPS”) launch a joint criminal investigation into Mr. Timmerman’s workplace death pursuant to the Westray amendments to the *Criminal Code* and other applicable provisions. We write to advise that the SPS will not be commencing a criminal investigation into this matter, as per your request, as this matter falls within the jurisdiction of the CN Police Service. Pursuant to the *Railway Safety Act*, the CN Police Service is responsible for the enforcement of the laws of Canada or a province related to property owned, possessed or administered by a railway company and the protection of persons and property on that property. Further, the members of the CN Police Service have the powers of a peace officer, including those vested through the *Criminal Code of Canada*. There is also a public complaint process available which addresses standard complaints, criminal allegations and complaints against the Chief, Deputy Chief or Assistant Chief. We kindly suggest that you refer your request to the attention of the CN Police Service and/or to their public complaint process.

With regards to the CN Police’s membership in the Canadian Association of Chiefs of Police (“CACP”), membership is solely within the discretion of the CACP and must be dealt with by them directly.

Yours truly,

**Ashley M. Smith**  
**Legal Services Division**

AMS/rab