

RCMP responses to CBC News re: fatal train derailment near Field, BC in February 2019

December 9, 2019

CBC's Dave Seglins to RCMP Staff Sergeant Janelle Shoihet
(Senior Media Relations Officer BC RCMP)

Staff Sergeant -

Can you help me track back on what RCMP's involvement was in investigating the February 4, 2019 CP train derailment at the Spiral Tunnels?

I've been working on this story for a few months, and understand CP Police were conducting a criminal investigation into potential criminal negligence. CP have told me they did a thorough investigation, which is now closed with no charges.

But CP is also saying telling us that "Royal Canadian Mounted Police ("RCMP") and Transport Canada ("TC") were on scene immediately following the derailment, both having full jurisdiction to investigate as they deemed appropriate."

So I'm a little confused about who had jurisdiction and responsibility to investigate potential criminal code violations.

To that end - could you answer the following:

- 1) What was RCMP's role in the investigation of the CP Rail fatal train derailment February 4, 2019 near Field BC?
- 2) If RCMP commenced an investigation, what has come of that investigation?
- 3) If RCMP did not commence an investigation of its own - why not?

Hoping you can assist.

Thanks,

DS

RCMP to CBC News

Hi Dave,

Here is the link to our press release.

Golden-Field RCMP Assisting in Canadian Pacific Train Derailment
<http://goldenfield.bc.rcmp-grc.gc.ca/ViewPage.action?siteNodeId=2136&languageId=1&contentId=58133>

The investigation fell within the jurisdiction of the CP Police, as such it was led by that agency. The Transportation Safety Board also investigated. The RCMP's role was to assist the CP Police and the TSB in their investigations, by assisting at the initial scene and as, and when required following initial attendance. No independent investigation was commenced by the RCMP. For your reference, generally when the RCMP is not the police of jurisdiction, as was the case here, the police of jurisdiction has to make a specific request for independent investigation by the RCMP.

Hope that helps
Janelle

S/Sgt. Janelle Shoihet
Senior Media Relations Officer
E Division Communication Services

CBC News to RCMP

Janelle,

Thanks for this. This is also what I understood.

However, our story is focused on why CP Police failed to examine potential criminal liability by the company itself - and why, according to CP Police's own front-line investigator on the file the case was 'covered up.'

In response to questions from CBC, CP Police Chief Al Sauve today informed us, in part, that RCMP were onsite and might well have conducted an investigation into what is ultimately a major industrial accident.

CPPS Chief Al Sauve has told CBC:

"In relation to the derailment that occurred near Field Hill on February 4, 2019, CPPS served in its official capacity as a law enforcement agency to secure the derailment site and to maintain peace and order.

CPPS was also joined by the RCMP, which had jurisdiction at this location and had full and complete investigative authority over any and all matters related to this incident. Additionally, CPPS provided assistance to other regulatory agencies such as Transport Canada, the Transportation Safety Board, Employment and Social Development Canada, British Columbia's

Coroners' Services, environmental agencies and any other agencies needing access to the derailment site, or otherwise needing support."

So, I have three follow-up questions:

- 1) What does the RCMP say in response to CP Police Chief Sauve's assertion that RCMP had jurisdiction and 'full and complete investigative authority'?
- 2) On what basis did the RCMP conclude the investigation of this fatal crash was the jurisdiction of CPPS?
- 3) Did CP Rail or CPPS at any point request RCMP to conduct an independent investigation into the causes of the crash?

Please confirm receipt - and thanks in advance.

DS

December 11, 2019

RCMP to CBC News

Hi Dave,

My apologies for the delay in getting back to you, yesterday got away from me.

I have confirmed that my previous response is accurate, that the RCMP role was as the assisting agency and given that CP was investigating, there was no request or requirement for the RCMP to conduct a parallel investigation. The incident occurred on CP property as such that agency has jurisdiction.

Many thanks,
Janelle

S/Sgt. Janelle Shoihet
Senior Media Relations Officer
E Division Communication Services

January 2, 2020

CBC News to RCMP

Janelle,

I'm getting closer to publication...and wanted to check back.

Has RCMP BC...or federal ... been asked to investigate this crash (even in recent weeks)?

I ask, because based on your previous, it is our understanding the RCMP is not investigating.

(We asked the TSB whether they are invoking their MOU with RCMP... and our understanding to date ...is that they have not).

I don't want to have this wrong if something has changed in recent weeks.

Please let me know.

Thanks - and Happy New year.

DS

RCMP to CBC News

Hi Dave,

The status has not changed. To date we have not received any additional requests to assist CP with its investigation but of course would be willing to do so should a request be made.

Many thanks,.

J

January 9, 2020

CBC News to RCMP

Hey Janelle,

Sorry to be coming back to you on this CP Rail derailment case

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We're getting close to publishing - on CBC TV's fifth estate, and across our TV, radio and online.

In an on-camera interview this week, CP Rail CEO Keith Creel just placed responsibility for this investigation at the feet of the RCMP.

He claims, on camera, that:

"We've worked in lockstep with the RCMP from the very beginning. They still retain jurisdiction over that investigation. If they wanna step in or research or investigate anything that they haven't looked at prior to now, they're certainly welcome to do that."

I'm wondering two things:

- 1) Any response from RCMP to his latest statement?
- 2) Given this will be on TV - could you (or someone) go 'on camera' to express the RCMP's position in this case?

I'm happy to chat further about this.

Our research concludes that there is a real jurisdictional blind-spot in the law in cases like this - where railway police are not fully investigating the potential criminal liabilities of their own corporations.

Our reporting wants to shine light on this, through this case, to allow lawmakers opportunity to consider a fix - so that serious cases like this don't escape proper police investigation in future.

So, I've appreciated your/RCMP's position to date (RCMP not having jurisdiction, deferring to CP Police, and open to a request from CP).

I'm hoping RCMP can go on camera to say just that.

What do you think?

DS

January 13, 2020

RCMP to CBC News

Hi Dave,

Given the RCMP was the assisting agency and the CP was the primary investigating agency, all communications should be handled by CP. I will have to respectfully decline the opportunity for an on camera statement, even to re-iterate what I have already provided.

Many thanks,
Janelle

January 25, 2020

CBC News to RCMP

Janelle and Chris,

Sorry to be contacting you on a Saturday. But it is an urgent matter.

CP Rail has issued a statement claiming CBC has reported "inaccuracies" about who had jurisdiction and the duty to investigate potential criminal negligence in the crash of that CP freight train on February 4, 2019 near Field, BC. This affects articles on our website - and a major CBC fifth estate documentary airing tomorrow evening.

We need clarification ASAP...on some urgent questions-

- 1) What do you say to the CP Statement (pasting CP's statement below)?
- 2) What do you say to CP's suggestion that the RCMP are "duty bound" to investigate, inferring such a duty applied in this case if the RCMP considered criminal negligence a possibility in the crash?
- 3) Has CP Rail and/or CP Police Service made a request of the RCMP to investigate?
- 4) If so when, precisely?
- 5) Is the RCMP going to investigate this train crash?
- 6) Is it possible RCMP has overlapping jurisdiction, and could have chosen to investigate of its own volition as CP suggests?
- 7) Why didn't the RCMP launch an investigation into this major industrial accident?

Happy to chat to clarify these questions. M 416-949-4083.

Forgive me, but I'm copying a number of my colleagues because this issue affects happening right now in our newsroom.

I'm pasting info below for ease of reference

Thanks,
DS

I'm reviewing my notes (for ease of reference) and see the following:

-Dec 9 you indicated "generally when the RCMP is not the police of jurisdiction, as was the case here, the police of jurisdiction has to make a specific request for independent investigation by the RCMP.

-Dec 11 "I have confirmed that my previous response is accurate, that the RCMP role was as the assisting agency and given that CP was investigating, there was no request or requirement for the RCMP to conduct a parallel investigation. The incident occurred on CP property as such that agency has jurisdiction"

-Jan 2 "The status has not changed. To date we have not received any additional requests to assist CP with its investigation but of course would be willing to do so should a request be made"

-Jan 13 "Given the RCMP was the assisting agency and the CP was the primary investigating agency, all communications should be handled by CP. I will have to respectfully decline the opportunity for an on camera statement, even to re-iterate what I have already provided."

CP's Statement of today (Jan 25, 2020)

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

Canadian Pacific Railway Limited (TSX: CP) (NYSE: CP) is responding to inaccuracies reported by CBC News in recent stories about the February 4, 2019 Field, B.C. derailment.

In the first article, dated January 24th, CBC states: "In a statement, the RCMP said it never had jurisdiction because the crash happened on CP property. RCMP says they've never done their own investigation, adding they 'of course would be willing' to step in if a request is made." This same message is repeated in a January 25th article.

"As presented by the CBC this statement is both false and misleading," said Keith Creel, CP's President and CEO. "The way the stories are framed is both disgraceful and sensational. The RCMP can investigate whatever it sees fit in Canada, and they have been involved from the very beginning. As I said to CBC previously, we are open and willing to discuss anything with the RCMP, the TSB and all other agencies involved. We have been cooperating fully and will continue to do so."

Despite what has been reported, the CBC is well aware of the RCMP's involvement and even referred to it in a prior story it published:

From a February 5, 2019 CBC story: "RCMP said they are assisting in the investigation, along with Employment Safety Standards Canada and the B.C. Coroners Service."

The RCMP also issued a press release on February 4, 2019 outlining its involvement.

As a matter of law, the RCMP has jurisdiction throughout Canada, including on CP's property:

Pursuant to section 18 (a) of the RCMP Act, it is the duty of RCMP officers to investigate offences against the laws of Canada and the laws in force in any province. Section 11.1 (1) of the RCMP Act provides that every RCMP officer is a peace officer in every part of Canada and has all the powers, authority, protection, and privileges that a peace officer has by law. By virtue of the RCMP Act the RCMP not only have jurisdiction to investigate offences that occur on CP property but are duty-bound to do so.

This overlapping jurisdiction is further acknowledged by the Transportation Safety Board (TSB), which is the lead investigator of this incident. The TSB's mandate, on its website, clearly states: "When the TSB investigates an accident, no federal department except the Department of National Defense and the Royal Canadian Mounted Police may investigate for the purpose of making findings as to the causes and contributing factors of the accident."

The CBC has a duty to ensure its reports are accurate and not misleading and should immediately correct its stories. Furthermore, the B.C. RCMP media team confirmed to CP that it is available to speak to the CBC and can assist with any required clarifications on jurisdiction and authority and are available at 778 290 2929.

"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," Creel said.

CP has cooperated and continues to cooperate fully with all investigations and inquiries from regulatory and law enforcement agencies. Despite assertions from the CBC that investigations have concluded, they remain active, particularly by the TSB and Employment and Social Development Canada. These investigations are independent, complex and in-depth, and as such, take time.

About Canadian Pacific

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

CBC holds lengthy background call with RCMP senior communications staff.

Transcript not available.

RCMP's Dawn Roberts to CBC News

Hi

Thanks for reaching out today and for the discussion with your colleagues as you work to ensure accuracy and clarity.

I am working remotely from the office and connected with my senior managers.

Based on all discussion I wish to provide the below:

As we indicated in February and again in December the lead agencies handling the investigations in the fatal train derailment were CP Police as the police of jurisdiction. TSB and the BC Coroner were also investigating.

We are mindful that the TSB investigation is still underway and therefore we will restrict our comments accordingly.

The RCMP did attend during the initial incident as emergency responders and then acted as an assist agency - as and when required to the CP Police, TSB and BC Coroner.

The RCMP has the authority to investigate criminal matters in this area and across Canada.

In this case - CP Police was the POJ (police of jurisdiction) and we assisted and did not launch a parallel or concurrent investigation. This is not a unique situation and aligns with other derailment cases in BC. Similar protocols are used in BC for workplace or industrial incidents in which Workplace.BC is the POJ and we are available to assist.

We are aware of your recent reports and the information made public.

I can confirm that the RCMP is reviewing the file to determine our next steps.

Thanks for reaching out.

Dawn

Dawn Roberts
Director in charge BC RCMP Comms

January 30, 2020

CBC News to RCMP

Dawn and Janelle,

CBC is preparing to publish a follow up story about the crash of CP Rail's Train 301, near Field B.C. on February 4, 2019.

CBC has already published a series of reports, found here:

Police officer suspects internal 'coverup' by CP Rail in fatal B.C. mountain crash

<https://www.cbc.ca/news/canada/cp-derailment-investigation-coverup-alleged-1.5436018>

Families of CP Rail workers killed in B.C. mountain crash demand investigation be reopened

<https://www.cbc.ca/news/canada/cp-rail-b-c-crash-1.5439690>

Train safety investigator wants RCMP to probe fatal CP mountain crash

<https://www.cbc.ca/news/canada/cp-rail-crash-call-investigation-1.5441955>

CBC's The Fifth Estate "Runaway Train: Investigating a CP Rail crash"

<https://www.youtube.com/channel/UCa-bX3gZC3YnCThIGM5d38Q>

We have a number of questions:

1) On Monday January 27, 2020 RCMP indicated it is "reviewing the file to determine our next steps." What is the status and/or conclusion of this review? What have you determined for "next steps?"

2) CPPS Chief Al Sauve has told CBC News that the RCMP "... had – and continues to have – full and complete investigative authority over any and all matters related to this incident."

Further, CP's CEO Keith Creel has stated his willingness to assist the RCMP stating "We've worked in lockstep with the RCMP from the very beginning... They still retain jurisdiction over that investigation. If they want to step in or research or investigate anything that they haven't looked at prior to now, they're certainly welcome to do that. And we'll work in partnership to make sure we make the facts available to them as we know them."

Will the RCMP commence an independent police investigation into this crash?

3) Why or why not?

4) Have you received any formal requests from any of CP, CPPS, TSB, TC or any other individual or agency to conduct and lead an independent investigation of the February 4, 2019 CP derailment?

Please confirm receipt.

We ask for a reply no later than 12 noon ET Friday January 31.

Thanks in advance,

CBC News to RCMP

Dawn and Janelle,

Please confirm receipt of my email from this AM.

Also, I'm pasting here the statement CP provided to CBC on their position of who has responsibility for conducting a criminal investigation, despite being "police of jurisdiction" as you've pointed out.

DS

Dave,

As we have stated to you repeatedly, CP fully supports an independent investigation into the Field derailment. In fact, such investigations are on-going, led by the Transportation Safety Board (TSB) and Employment and Social Development Canada (ESDC/Labour Canada).

The TSB is the independent federal agency tasked with investigating transportation-related incidents to determine any causes and contributing factors.

CP is open and willing to review the facts surrounding this event with the RCMP, the TSB and other authorized agencies and continues to cooperate fully. It is the prerogative of the RCMP to decide if it wishes to investigate, not CP.

January 30, 2020

RCMP to CBC News

Hi Dave,

As indicated before we did work as an assist agency during the initial response to the fatal train derailment, but did not conduct a separate or parallel investigation into the matter. The RCMP has not received any formal requests from any other agencies or individuals involved in the February 2019

incident. We understand the concerns and are connecting with the other authorities that have ongoing investigations underway, including the Transportation Safety Board and Employment and Social Development Canada. No decisions have been made at this time around the next steps, but the RCMP are actively engaged in the matter. We commit to providing you an update once decisions are made.

Thank you,
Janelle

S/Sgt. Janelle Shoihet
Senior Media Relations Officer, Communication Services
RCMP E Division HQ / Government of Canada

October 21, 2020

CBC News to RCMP

Dawn, Janelle, and RCMP Media HQ,

CBC here ... circling back on this issue of whether RCMP will investigate alleged criminal negligence by CP Rail in the mountain train derailment fatalities near Field, BC in February of 2019.

1) Has anything changed from your perspective?

At last communication in the winter, you told us RCMP was reviewing the matter.

This was after you at first said RCMP had no jurisdiction.

Then, you clarified saying RCMP has jurisdiction, but that you were deferring to CP Rail itself and had no request by CP Police to step in.

CP Police Service won't investigate their own company bosses.

Both a CPPS police officer (now in the RCMP) and the lead crash investigator at the TSB (until he was demoted) called on the RCMP to conduct an independent, outside criminal investigation into suspected criminal negligence.

The dead men's families are calling for the same, as have the rail workers union (Teamsters Railway Conference of Canada) which last week wrote to the Ministers of Transport, Labour and the Attorney General calling on them to intervene.

Transport Minister Marc Garneau's office this afternoon told us 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."

At this point, the RCMP has had more than nine months.

2) What has the RCMP done to review this matter?

3) What is the RCMP's conclusion?

4) Why does this case not warrant an investigation of potential criminal negligence by CP Rail and its officers (as per the Westray Law, Criminal Code section 217.1 which establish a legal duty for employers and managers to ensure all reasonable steps to prevent workers suffering bodily harm)?

5) Why is RCMP refusing to investigate?

CBC is preparing to publish a story in the next day or two - so we respectfully request your reply no later than tomorrow (Thursday) at 3 PM ET.

Can you please confirm receipt, and let us know if you need any further clarification.

Many thanks in advance,

DS

October 22, 2020

RCMP to CBC News

Hi Dave,

We are not in a position to expand or provide specifics with respect to the RCMP's engagement or steps underway at this time but can confirm we are reviewing the matter.

We are aware of the concerns and allegations that have been raised. For clarity, we never indicated that the RCMP could not investigate this matter. The RCMP did attend the incident when it occurred, and were an assisting agency to CP, who was the primary criminal investigative agency on the case. Other agencies based on their mandates were also involved. We have consulted with the Transportation Safety Board and Transport Canada who have undertaken investigations into this incident in order the guide decisions moving forward.

As we have indicated in the past we are committed to providing you an update once we are in a position to do so.

Many thanks,
Janelle