

## **TRANSPORT CANADA responses to CBC News re: Direction against CP Rail**

**October 13, 2020**

### **CBC News to Transport Canada Media Relations:**

Folks,

Transport Canada has issued a direction to CP Railways related to TC's Labour Code investigation into the fatal crash of CP Train 301 in Field, BC in February of 2019.

1. What is the direction issued?
2. What were the failings identified?
3. What, if any, response has there been from CP?

Please confirm receipt.  
We'd ask for a reply by 5 PM Et today.

Thanks

DS

### **Transport Canada Media Relations Reply to CBC News:**

Good afternoon Dave,

Our thoughts continue to be with the families and communities affected by the derailment near Field, British Columbia on February 4, 2019.

Following the accident, Transport Canada immediately issued a Ministerial Order to mandate the use of handbrakes when a train is stopped on a steep grades (please see our news release for details, available online at:

<https://www.canada.ca/en/transport-canada/news/2019/02/minister-garneau-orders-precautionary-safety-measures-following-canadian-pacific-derailment-near-field-british-columbia.html>

The department has since made these measures permanent by incorporating them into the Canadian Rail Operating Rules. More information can be found here:

<https://www.canada.ca/en/transport-canada/news/2020/04/minister-of-transport-issues-orders-to-reduce-derailments-and-improve-rail-safety.html>

Transport Canada completed an investigation on behalf of Employment and Social Development Canada into these fatalities, in keeping with a memorandum of understanding between the two departments, because this workplace accident involved the death of employees working onboard trains.

In accordance with subsection 144(5) of Part II of the Canada Labour Code, Transport Canada cannot publicly share the details of an occupational health and safety investigation, including details of compliance activities that may have been undertaken.

Any contraventions identified during occupational health and safety investigations are taken very seriously by Transport Canada. The department's delegated rail safety inspectors swiftly bring them to the attention of the employer so that it may develop corrective action with the aim of preventing future similar workplace accidents for its employees working onboard its trains.

The Transportation Safety Board (TSB) of Canada is the lead federal organization in Canada for investigating transportation accidents for cause and contributing factors. They are currently investigating the derailment, and more information can be found on this webpage :

<https://tsb.gc.ca/eng/enquetes-investigations/rail/2019/R19C0015/R19C0015.html>

Should you have any question on the TSB's investigation, please communicate directly with them at (819) 994-8053 or [media@tsb.gc.ca](mailto:media@tsb.gc.ca)

Kind regards,

Cybelle Morin

Senior Advisor, Media Relations, Communications Group  
Transport Canada / Government of Canada

**CBC News reply to Transport Canada Media relations, cc Ministers Office:**

Folks (cc'ing communication in the Minister's office, Amy Butcher),

Let me understand this.

Transport Canada, as regulator and public watchdog, conducts an investigation into a fatal crash on Canada's railways, It finds a problem, and issues a "directive" for corrective action. And then the regulator refuses to

explain to the public and grieving families what it has found, or what it has ordered in terms of enhancing public safety along the railway?.

That is absurd and as anti-democratic as I can imagine.

Be that as it may, Section 144(5) says the Minister can approve the release of this information.

The absurdity of the secrecy provisions notwithstanding, will the Minister of Transport please review this request and respond as to whether he believes the public should be kept in the dark?

Thank you.

DS

**Transport Minister's communication staff to CBC News:**

Thanks – will look into this and get back to you.

(additional back and forth)

**October 20, 2020**

**CBC News to Transport Minister Marc Garneau:**

Dear Minister,

As you know, Transport Canada has issued a directive to Canadian Pacific Railway stemming from a Canada Labour Code investigation into the fatality of three CP employees killed in a runaway train derailment in the BC mountains in February 2019.

While your department has declined to discuss the directive given to CP, you as Minister can disclose and publish this safety information if you are “satisfied that the publication or disclosure is in the interest of occupational health and safety or the public interest....” Canada Labour Code Section 144 (5).

The safety of rail transportation in general, and the February 4, 2019 crash of CP train 301 specifically, on CP rail's main east-west route through British Columbia is a matter of significant public interest.

1) Will you agree to the release of the Transport Canada directive issued to CP Rail stemming from the TC workplace fatality investigation into the crash of a CP train near Field BC in February 2019?

2) If not, why not?

3) What is Transport Canada requesting of CP as a result of this directive?

4) What is being done currently to ensure safe rail operations along CP's Field Hill, given the failings identified in the direction?

Further, the Teamsters Canada Rail Conference (TCRC) is calling on you, as Minister of Transport, to intervene in the case of the February 4, 2019 tragedy to "call for a full and independent investigation by the Royal Canadian Mounted Police into the circumstances of the tragedy at Field, British Columbia which resulted in the deaths of three (3) members of the TCRC."

TCRC cites a CBC News / fifth estate investigation which found a string of failures and known hazards at CP Rail contributed to the deadly crash.

TCRC calls the lone police investigation into the crash by CP's own police force "hopelessly tainted due to the lack of independence," and notes both the lead CPPS officer and the lead investigator with the Transportation Safety Board initially involved in the case both called for an outside RCMP probe.

The RCMP maintains CPPS has jurisdiction and has declined to investigate without an invitation from CP Rail - the very company under examination.

Currently, there has been no independent police investigation into potential criminal negligence by the company, and outside investigation has been stymied by the presence of the corporation's own CP Police Service.

5) Will you call on the RCMP to conduct a full, independent investigation into the case?

6) Why or why not?

7) Why are Canada's two main railways, CN and CP allowed to police and investigate themselves -- with use of federally authorized railway police forces whose existence often curtails outside police forces from conducting independent investigations into potential crimes involving the railway companies?

Please confirm receipt.

We request a reply no later than 2 PM Wednesday October 21, 2020.

Thanks,

DS

October 21, 2020

**Transport Minister Marc Garneau's office replies to CBC News:**

Dave

To answer your questions

*1) Will you agree to the release of the Transport Canada directive issued to CP Rail stemming from the TC workplace fatality investigation into the crash of a CP train near Field BC in February 2019? / 2) If not, why not?*

Transport Canada is responsible for the administration and enforcement of Part II (occupational health and safety) of the Canada Labour Code (the Code) and pursuant regulations for federally regulated employees working on board trains. On behalf of the Minister of Labour, Transport Canada is mandated to conduct occupational health and safety investigations into workplace accidents occurring on board trains

Subsection 144(5) of Part II of the Canada Labour Code prevents Transport Canada from publishing or disclosing any information related to an investigation, including the release of information concerning Directions issued to a federally regulated workplace following an investigation. Once an investigation is completed, Part II of the Canada Labour Code limits the distribution of the final investigative report, including any Directions, to the workplace parties: the employer, the Workplace Health and Safety Committee (comprising employer and union representatives) or the Health and Safety representative. As these reports may contain personal information, all other interested parties should request a copy of the report by way of an Access to Information request. This is to allow the department to meet the requirements of the Privacy Act and the Access to Information Act (e.g., ensure that appropriate exemptions and exceptions are applied, including ensuring that no personal information is disclosed).

*3) What is Transport Canada requesting of CP as a result of this directive?*

As mentioned, in accordance with subsection 144(5) of Part II of the Canada Labour Code, Transport Canada cannot publish or disclose any information about an investigation.

Transport Canada enforces and ensures compliance with the Canada Labour Code by following up on all Directions issued by our Department to ensure employers have implemented the corrective actions as stipulated in the Direction.

*4) What is being done currently to ensure safe rail operations along CP's Field Hill, given the failings identified in the direction?*

Transport Canada issued a Ministerial Order on February 8, 2019 under the Railway Safety Act to all railway companies mandating the use of handbrakes should a train be stopped on steep grades after an emergency use of the air brakes. Please consult the news release <<https://www.canada.ca/en/transport-canada/news/2019/02/minister-g-arneau-orders-precautionary-safety-measures-following-canadian-pacific-derailment-near-field-british-columbia.html>> for more information on the Ministerial Order.

Transport Canada has since made these measures, that is rule 66, permanent by incorporating them into the Canadian Rail Operating Rules <<https://tc.canada.ca/en/rail-transportation/rules/canadian-rail-operating-rules/operation-movements>>.

Transport Canada has completed its investigation of this accident.

We believe every Canadian has the right to a healthy and safe workplace, and to return home safely at the end of their work day.

That's why we are committed to strengthening rail safety in Canada by putting additional safety measures in place to prevent future accidents like this one.

*5) Will you call on the RCMP to conduct a full, independent investigation into the case? / 6) Why or why not?*

The responsibility to investigate any criminal conduct lies with any police service that has jurisdiction over the area where the accident occurred or where an alleged criminal behavior has occurred insofar as the matter subject to the investigation is within that police service mandate. 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. Please contact the RCMP for more information.

*7) Why are Canada's two main railways, CN and CP allowed to police and investigate themselves -- with use of federally authorized railway police forces whose existence often curtails outside police forces from conducting independent investigations into potential crimes involving the railway companies?*

The cause of the derailment is still under investigation by the Transportation Safety Board of Canada (TSB), while Transport Canada, on behalf of the Minister of Labour conducted its own separate, independent Occupational Health and Safety (OHS) investigation under the Canada Labour Code. With any OHS investigation, if serious contraventions to the Code were to be found, Transport Canada would consider recommending to the Minister of Labour that they refer the matter to the Public Prosecution Service of Canada.

Transport Canada does not oversee the Canadian Pacific Police Service. In Canada, Canadian Pacific Police Service members are appointed by a judge of a superior court in Canada for the enforcement of the Canada Transportation Act, as well as for the enforcement of Canadian or provincial laws as they relate to the protection of property owned, possessed, or administered by a railway company, and for the protection of persons and property on that property.

As defined by Section 2 of the Criminal Code, CP Police Service members have exactly the same powers as police officers in Canada. That said, regulatory or criminal prosecution associated with an accident involving Canadian Pacific does not primarily and exclusively depend on the CP Police Service. As mentioned above, Transport Canada is responsible to investigate regulatory compliance with the Canada Labour Code and the Railway Safety Act, and any police service that has jurisdiction to investigate retains such jurisdiction regardless of whether railway police services investigate.