

2015 - 166

Identifier Number:

Transport File: 3500-17-6

**FORM 1
(Section 487)**

Information to obtain a search warrant (487)

**Canada,
Province of Alberta,
Judicial District of Calgary**

Introduction

1. This is the information of Robert W. BLAIR, a public officer of Transport Canada, Government of Canada, in the city of New Westminster, in the Province of British Columbia. I am appointed by the Minister of Transport as a Railway Safety Inspector under Section 27(1) of the *Railway Safety Act*. I am currently assigned to Rail Safety (Operations and Equipment) Surface Branch of Transport Canada.
2. I am a member of Transport Canada (Rail Safety) and have been since 2001. I was employed by Canadian National Railway and British Columbia Railway for 23 years where I was employed in various Mechanical and Operations positions including Railway Carman, Supervisor, Terminal Supervisor, and Commodity Car Control.
3. On May 13, 2015 I made an earlier application for a Search Warrant and Assistance Order to Her Worship Justice of the Peace Deborah M HANLY. At that time Her Worship refused to issue the warrant as sought and provided a written Rejection Notice. A copy of the Application including the draft warrant and assistance order, the Information to Obtain presented to Justice of the Peace HANLY and the Rejection Notice are appended as Appendix 1 this Information to Obtain.
4. The contents of my previous Information to Obtain are still true. Since making that application, I have done further investigation and redrafted my original application to address the concerns outlined in the Rejection Notice.
5. I have personal knowledge of the information set out in this Information To Obtain a search warrant, except where information is stated to be from other sources. I believe all of the information set out in this Information to Obtain to be true and given in good faith.



6. I have reasonable grounds to believe and do believe these offences have occurred:

a. Count 1 –

That on February 15th, 2015 Canadian Pacific Railway Company Ltd., contravened the Emergency Directive, "Securement of Railway Equipment", dated October 29th, 2014 issued under Section 33 of the *Railway Safety Act* by leaving unattended equipment (57 railway cars) near Mile 117, South Track, Mountain Subdivision without using handbrake securement as directed as per the Emergency Directive, dated October 29th, 2015 thereby committing an offence contrary to section 41(2)(e) of the *Railway Safety Act*.

b. Count 2 –

That on or about February 15th, 2015 Mark JACKSON, a Company Officer of Canadian Pacific Railway Company Ltd., by virtue of section 43 of the *Railway Safety Act* did direct and, or authorize a violation of the Emergency Directive, "Securement of Railway Equipment", dated October 29th, 2014 issued under Section 33 of the *Railway Safety Act* by directing that equipment to wit 57 railway cars, be left unattended near Mile 117, South Track, Mountain Subdivision without using handbrake securement as directed as per the Emergency Directive, dated October 29th, 2014 thereby committing an offence contrary to section 41(2)(e) of the *Railway Safety Act*.

7. The *Railway Safety Act* is an Act to ensure the safe operations of railways. It provides the Minister of Transport authority to issue Emergency Directives if needed, under Section 33 of the Act. Section 33 provides as follows:

EMERGENCY DIRECTIVES

Minister may send emergency directives

33. (1) If the Minister is of the opinion that there is an immediate threat to safe railway operations or the security of railway transportation, the Minister may, by emergency directive sent to a company, order it

(a) either absolutely or to the extent specified in the directive, to stop using the kind of railway works or railway equipment or following the maintenance or operating practice that poses the threat; or

(b) to follow a maintenance or operating practice specified in the directive if the threat is posed by the company's failure to follow that practice.

Directive despite compliance with law

(1.1) The Minister may issue an emergency directive even though

(a) the construction of the railway work was undertaken in accordance with the law in force at the time; and

(b) using the railway equipment or following or not following the maintenance or operating practice is in accordance with this Act or any regulations or rules made under it.

Duration

(2) An emergency directive has effect during such period, not exceeding six months, as is specified in the directive.

Emergency directive to contain statement of reasons

(3) An emergency directive shall contain a statement of the Minister's reasons for holding the opinion by reason of which the directive was given.

Minister may rescind emergency directives

(4) The Minister may, by notice sent to the company, rescind an emergency directive, in which case the directive ceases to have effect.

Inconsistency between emergency directives, regulations, rules or orders

(5) In the event that there is an inconsistency between an emergency directive and a regulation made under subsection 18(1) or (2.1) or a rule in force under section 19 or 20, the emergency directive prevails to the extent of the inconsistency.

Minister may renew emergency directives

(6) The Minister may, before the expiration of the period during which an emergency directive has effect, by notice sent to the company, renew the directive for a further specified period commencing on the expiration of the previous period and not exceeding six months and, if the Minister does so, this section, except this subsection, applies to the directive as renewed.

8. Pursuant to Section 41(2)(e) of the *Railway Safety Act* it is an offence to contravene an Emergency Directive issued under section 33. Section 41 provides as follows.

41. (1) Every person who contravenes a provision of this Act is guilty of an offence and liable

(a) on conviction on indictment,

(i) in the case of a corporation, to a fine not exceeding one million dollars, and

(ii) in the case of an individual, to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding one year, or to both; or

(b) on summary conviction,

(i) in the case of a corporation, to a fine not exceeding five hundred thousand dollars, and

(ii) in the case of an individual, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months, or to both.

(2) A person is guilty of an offence if the person contravenes

(a) a regulation made under subsection 7(1) or section 7.1, 18, 24, 37, 47 or 47.1;

(b) an order made by the Minister or a railway safety inspector under subsection 7(2) or 19(1) or section 31 or 32;

(c) a requirement made by the Agency under subsection 16(3) or 26(3);

(d) a rule in force under section 19 or 20;

(e) an emergency directive made by the Minister under section 33;

(f) a requirement under subsection 39.1(2) to carry out a security measure;

(g) a railway operating certificate issued under section 17.4; or

(h) an order made under section 36.

9. On October 29, 2014 the Minister sent an Emergency Directive to all railway companies and local railway companies pursuant to section 33 of the *Railway Safety Act*. This Emergency Directive amongst other things provided directions on the use of handbrakes for unattended equipment in high risk areas. This Emergency Directive as attached Appendix 2 to this affidavit.

10. The *Railway Safety Act* also provides that Officers, director or agents of the corporation can be guilty for directing, authorizing, assenting, acquiescing in or participating in the commission of an offence.

Section 43 is as follows:

43. Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence, and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

Glossary

11. Based on my experience, I know that meaning of the following terms.

△ 16/15

“**RTC**” is the Rail Traffic Controller. An RTC controls the flow of traffic of trains and equipment of the main rail line outside of railway yards (e.g. on subdivisions of a mainline).

“**Chief RTC**” is the Chief Rail Traffic Controller, also known as the Director Operations Centre. The Chief RTC supervises the RTC.

“**Tabular General Bulletin Orders**” is an order issued by the RTC that describes the trains authority to be on the track and list the restrictions that the train must abide by (e.g. speed restrictions)

“**Train Consist**” a list supplied to the train crew showing the locomotives, rail cars, tonnage carried, and the rail car location in the train.

Grounds to Believe Things Will Afford Evidence of the Offences

12. I have reasonable grounds to believe and do believe that the following things will afford evidence of the offences listed in paragraph 6 of this ITO:

Electronic voice records to be found on the electronic voice records computer

- a. Electronic radio voice recordings for Canadian Pacific Railway, Mountain Subdivision, recorded from 1700 February 14th, 2015 to 0600 February 15th, 2015 between the Crew of Train 401 and the Rail Traffic Controller assigned to the Mountain Subdivision. These electronic radio voice recordings are only to pertain to train movement instructions, switching instructions, handbrake instructions/directions and securement instructions for Train 401.
- b. Electronic radio voice recordings for Canadian Pacific Railway, Mountain Subdivision, recorded from 1700 February 14th, 2015 to 0600 February 15th, 2015 between the Crew of Train 401 and the Chief RTC. These electronic radio voice recordings are only to pertain to train movement instructions, switching instructions, handbrake instructions/directions and securement instructions for Train 401.
- c. Electronic telephone or radio voice recordings, recorded from 1700 February 14th, 2015 to 0600 February 15th, 2015 between Mark JACKSON and the Chief RTC and the Canadian Pacific Railway Operations Centre. These electronic telephone or radio voice recordings are only to pertain to train movement instructions, switching instructions, handbrake instructions/directions and securement instructions for Train 401.

Electronic emails and train documentation to be found on (1) the computer of the RTC and (2) the computer of the Chief RTC

- d. Electronic emails concerning Train 401 between 1700 February 14th, 2015 to 0600 February 15th, 2015. These electronic emails are only to pertain to train movement instructions, switching instructions, handbrake instructions/directions and securement instructions for Train 401. These electronic emails are also only to pertain to emails between Mark JACKSON, the Chief RTC and/or the RTC.
- e. The following electronic documents: Movement Instructions, name of conductor and locomotive engineer, Tabular General Bulletin Orders, and Train Consist pertaining to Train 401 operated by Conductor PACEY between Golden, British Columbia and Station Name Sign (SNS) White near Mile 123.4, Mountain Subdivision, Canadian Pacific Railway, Province of British Columbia.
- f. Electronic data created or used by the Transfer Information Editor program for Director Operations Centre (known as "Chief"), and the Rail Traffic Controllers on duty concerning Train 401 between 1700 February 14th, 2015 to 0600 February 15th, 2015. These electronic data are only to pertain to train movement instructions, switching instructions, handbrake instructions/directions and securement instructions for Train 401.

Cast of Characters

- 13. This Information to Obtain sets out the results of a continuing investigation into the affairs of a large, complex, and national railway company. In order to assist in the presentation of my grounds for belief, the following is a list of the "Cast of Characters".
- 14. Canadian Pacific Railway Conductor **Stefaney PACEY**. She was the conductor for and on Train 401. Conductor PACEY was in charge of the application of handbrakes on train 401 on February 14 and 15, 2015.
- 15. Canadian Pacific Railway Locomotive Engineer **Curtis AYOTTE**. He was the Locomotive Engineer for and on Train 401 on February 14 and 15, 2015.
- 16. Union Representative **Jamie LIND**. He was the Legislative Representative, Teamsters Canada Rail Conference (TCRC) union official who received the initial email from Conductor PACEY and transmitted this email to Transport Canada.
- 17. Superintendent BC Interior Division **Mark JACKSON**, Canadian Pacific Railway Company officer who allegedly directed or authorized unattended equipment not to have handbrakes applied.
- 18. The person occupying the role of the Director Operations Centre also known as "**Chief RTC (Rail Traffic Controller)**" who is a person at the Canadian Pacific Railway Operations Centre in Calgary, Alberta. The Chief RTC position is occupied twenty four hours a day, seven days a week. As a result, the names of the individuals will change frequently and

f *AWP*

therefore the name of the individual or individual occupying this post on February 14 and 15, 2015 are unknown.

19. The person occupying the role of the **RTC (Rail Traffic Controller)** who is also a person at the Canadian Pacific Railway Operations Centre in Calgary, Alberta. This position oversees train operations in the field. Each position occupies a "desk" reflecting a given area of oversight. Trains will not run in these areas without authorization or authority from a RTC with responsibility for those areas. This position is occupied twenty four hours a day, seven days a week. As a result the names of the individuals will change frequently and therefore the name of the individual or individual occupying this post on February 14 and 15, 2015 are unknown.

Reasonable Grounds to Believe

20. I have reasonable grounds to believe and do believe that the offences listed in paragraph 6 of this ITO occurred and that the things listed in paragraph 12 of this ITO will afford evidence of the said offences and will be found at the following locations:
 - a. The electronic voice recordings listed in subparagraphs 12a-c, will be located on the designated computer that stores electronic voice recordings at Building 1, 7550 Ogden Dale Road S.E., Calgary, Province of Alberta.
 - b. The electronic emails and train documents listed in subparagraph 12d-f, will be located on the designated RTC computer and designated Chief RTC computer at Building 1, 7550 Ogden Dale Road S.E., Calgary, Province of Alberta.
21. The grounds for my belief are as follows:
22. On February 16th, 2015 Transport Canada Rail Safety Inspector Todd HORIE received an email from Jamie LIND, a Union Representative at Canadian Pacific Railway, Revelstoke, British Columbia. The email was a forwarded email from Conductor PACEY concerning a failure to apply hand brakes on train 401 on February 14th and 15th. The forwarded email was discussed between HORIE and Transport Canada Inspector Geoff CAMPBELL. Inspectors CAMPBELL and HORIE decided to begin an investigation into the matter. I received and reviewed a hard copy of the email received from LIND to HORIE. I also discussed with HORIE the contents of that email and the decision to commence an investigation.
23. In the course of this investigation, Transport Canada Rail Safety Inspector Derek SIMENAC and I discussed the operations of the Rail Traffic Control Centre. SIMENAC formerly was employed by Canadian Pacific Railway as a Rail Traffic Controller and as an Assistant Manager RTC in Calgary, Province of Alberta from 1997 and 2002. In his present employment as a Transport Canada Rail Safety Inspector, he is familiar with the Canadian Pacific Rail Traffic Centre and has remained current in his knowledge of the Canadian Pacific

Railway RTC system. He has remained current by conducting RTC Audits, Inspections and investigations of Canadian Pacific Railway. SIMENAC advised me that:

- a. The Director Operations Centre is also known as "Chief RTC (Rail Traffic Controller)". This is a position at the Canadian Pacific Railway Operations Centre in Calgary, Alberta. This position is occupied twenty four hours a day, seven days a week. As a result the names of the individuals changes frequently.
 - b. RTC (Rail Traffic Controller) is a position at the Canadian Pacific Railway Operations Centre in Calgary, Alberta. RTC authorize and control the movement of all equipment, including trains. RTC's oversee train operations in the field. Each position occupies a "desk" reflecting a given area of oversight. Trains will not run in these areas without authorization or authority from a RTC with responsibility for those areas. This position is occupied twenty four hours a day, seven days a week. As a result the names of the individuals changes frequently.
 - c. Each area of railway tracks known as a subdivision is supervised by RTCs who control equipment movement by radio voice direction and by the use of hard copy directions, movement instructions, name of conductor and locomotive engineer and documents known as Tabular General Orders, Train Consists, and Train Information Sheets.
 - d. These directions, instruction and documents are also stored electronically on the designated computer of the RTC and the designated computer of the Chief RTC.
 - e. From this Centre the RTC and the Chief can communicate with trains operating in the field. Instructions received from supervisors in the field can be relayed to train crews via the RTC's radio. These radio communications are recorded and retained at Building 1, 7550 Ogden Dale Road S.E., Calgary, Alberta on a designated computer for storing voice communications.
 - f. The Operations Centre is located at Building 1, 7550 Ogden Dale Road S.E., Calgary, Alberta.
 - g. Canadian Pacific Railway keeps a schedule indicating who is occupying each post at a given time. However, individuals very frequently switch their scheduled shift and therefore schedules are not representative of who was actually working on a given day.
24. Inspectors CAMPBELL and HORIE attempted through the months of February and March to set up interviews with Conductor PACEY and Locomotive Engineer Curtis AYOTTE. Due to Transport Canada work commitments and scheduling issues, it was not possible to interview

PACEY and AYOTTE in a timely manner. Inspector HORIE informed me of the attempts and the delays. As a result, so far it has only been possible to interview Conductor PACEY and no interview has been conducted with Engineer AYOTTE.

25. On March 26th, 2015 I was assigned to the investigation that was initiated by Transport Canada Inspector Geoff CAMPBELL and Inspector HORIE regarding an alleged violation of the Emergency Directive, dated October 29th, 2015 under section 33 of the *Railway Safety Act*. On March 30, 2015 I received and reviewed copies of CAMPBELL's investigative notes.
26. I am advised that Conductor Stefane PACEY was contacted by Transport Canada Inspector Todd HORIE. An interview was conducted with PACEY on April 29th, 2015 here in New Westminster by myself and with HORIE present. Amongst other things PACEY told me the following relevant information:
 - a. PACEY is employed as a Railway Conductor by Canadian Pacific Railway and was working as such on February 14th, 2015 when she was assigned to train 401.
 - b. PACEY's work assignment was to move train 401 from Donald, Mile 52, Mountain Subdivision, Canadian Pacific Railway to Revelstoke, BC.
 - c. During the course of her tour of duty, PACEY was directed to set off railway cars at Greely storage track, Mountain Subdivision, Canadian Pacific Railway.
 - d. Leaving the unattended equipment in high risk locations would require handbrakes to be applied to the standing cut (cars which are left behind while the setoff is being done) in accordance with the Emergency Directive.
 - e. PACEY noted via radio communication to the Rail Traffic Controller (located in Building 1, 7550 Ogden Dale Road S.E., Calgary, AB) that there was insufficient time to complete the assigned movement as directed.
 - f. PACEY was directed not to apply handbrakes to the standing cut. She was also informed that the direction came from Mark JACKSON, then employed as Superintendent, BC Interior Division, Canadian Pacific Railway.
 - g. PACEY subsequently left the standing cut without the handbrakes applied as directed.
 - h. PACEY stated that the Train 401 standing cut included railway tank cars carrying dangerous goods.
 - i. PACEY understands and knows that Railway radio communications between the Rail Traffic Controller ("RTC") and train crews are recorded.
27. On May 4, 2015 I spoke with Transport Canada Rail Safety Inspector Susan BOAN. Inspector BOAN has been an inspector with Transport Canada since 1998. She has been at the Canadian Pacific RTC Center during the course of her inspection duties. She was last there in March 2014. She has confirmed that the items requested are located at and in Building 1. She further stated and confirmed that radio recordings, voice recordings, RTC planning sheets, transfers, emails, management notes, and employees' notes would be at Building 1, 7550 Ogden Dale Road S.E., Calgary, Province of Alberta.

28. On May 12th, 2015 I spoke with Transport Canada Rail Safety Inspector Derek SIMENAC. He stated and confirmed that radio recordings, voice recordings, train documentation, Tabular General Bulletin Order, and a Train Consist would be found in Building 1, 7550 Ogden Dale Road S.E., Calgary, Province of Alberta. SIMENAC previously was employed by Canadian Pacific Railway as a Rail Traffic Controller and Assistant Manager-Rail Traffic Control. He is familiar with Canadian Pacific Railway's computer system and computer programs. SIMENAC stated that the electronic records are in Building 1. In particular, he advised me that electronic radio voice recordings and telephone voice recordings are located on the designated computer that stores electronic voice recordings at Building 1, 7550 Ogden Dale Road S.E., Calgary, Province of Alberta. He also advised me that electronic email correspondence between the RTC, Chief RTC and Mark Jackson are located on the designated RTC computer and designated Chief RTC computer at Building 1, 7550 Ogden Dale Road S.E., Calgary, Province of Alberta. Finally he also advised me that the following electronic documents are also located on the designated RTC computer and designated Chief RTC computer at Building 1, 7550 Ogden Dale Road S.E., Calgary, Province of Alberta: the Movement Instructions, name of conductor and locomotive engineer, Tabular General Bulletin Orders, and Train Consist.
29. Based upon his experience he advised that the electronic recordings and electronic documents are discussed in the previous paragraph are kept as standard industry practice.
30. Inspector SIMENAC advised me that a computer system program known as "Transfer Information Editor" allows the transfer of train information from Rail Traffic Controller to Rail Traffic Controller during such events as shift change. The program which is accessible from the Operations Centre is propriety software to ensure important information regarding information about a subdivision, train crew, or train is passed along to the next RTC.
31. Inspector SIMENAC also advised me that the things sought are an industry standard and are necessary records and documentation for the functioning and operations of any Railway Company. He also states that the things sought are required to be retained by the Company under the Safety Management System Regulations under the *Railway Safety Act*. He also advised me that the electronic data created by or used by the Transfer Information Editor are stored electronically on the designated computer of the RTC and the designated computer of the Chief RTC at Building 1, 7550 Ogden Dale Road S.E., Calgary, Province of Alberta.
32. Inspector SIMENAC also advised me that job titles, job descriptions, and organizational names change frequently. He also advised that radio voice and telephone voice communications are recorded as standard practice. Whereas there is no set time limit for deletion of the radio voice and telephone voice recordings, the recordings can be deleted, erased, or lost.
33. My railway experience as a Terminal Supervisor, Supervisor Yard Operations, Commodity Car Coordinator, and as a Transport Canada Rail Safety Inspector reaffirms my belief that things sought will be at the location stated. In my experience all items, material and information sought in the Search Warrant are used in the normal and usual course of

Handwritten signature and initials, possibly "KWB", in the bottom right corner of the page.

business by Canadian Pacific Railway at Building 1, 7550 Ogden Dale Road S.E., Calgary, Province of Alberta.

Investigative and Search Techniques

34. The things sought in this ITO will be copied using a portable external hard drive, DVD disk, or flash drives. Through the assistance of Canadian Pacific Railway employees the documents and data will be searched using time, date, person/position, train number parameters to narrow down the search and to be as least invasive as possible. No data will be deleted from their system.
35. Though the assistance of Canadian Pacific Railway, Officers will be able download the recordings by using the proprietary software located on a computer terminal at that location. The recordings will be searched and located using time, date, person/position parameters. These recordings will be copied using a portable external hard drive, DVD disk, or flash drives. No data will be deleted from their system.
36. The Transfer Information Editor program will provide evidence on Train 401's location and details. This information will show that the train was planned to set off the 57 cars in question and where.
37. At no time will there be a "wholesale" collection of information, data, recordings, or any other information media.
38. Using the search techniques and criteria noted above, the unnecessary removal of documents and data will be prevented.

APPLICATION FOR AN ASSISTANCE ORDER

39. I have spoken with Transport Canada Rail Safety Inspector Susan BOAN and she confirmed that entrance to the RTC center located in Building 1, 7550 Ogden Dale Road S.E. is protected by "card lock". She also stated that the computer systems and programs are "password" protected.
40. I have also spoken with Transport Canada Rail Safety Inspector Derek SIMENAC who also confirms that the computer and programs are "password" protected. He also stated that this is an industry standard for RTC centers such as the one located at Building 1, 7550 Ogden Dale Road S.E. He has used the computer systems during his employment as a Rail Traffic Controller (RTC) and as a Assistant Manager Rail Traffic Control with Canadian Pacific Railway. SIMENAC also has used these systems when conducting inspections while employed as a Transport Canada Rail Safety Inspector.
41. As the Transfer Information Editor is proprietary software protected by log in information accessibility will require assistance from Canadian Pacific Railway

employees authorized for that program. Additionally, the assistance of Canadian Pacific Railway employees will allow less disruption at the Operations Centre meaning less impact on the running of the business.

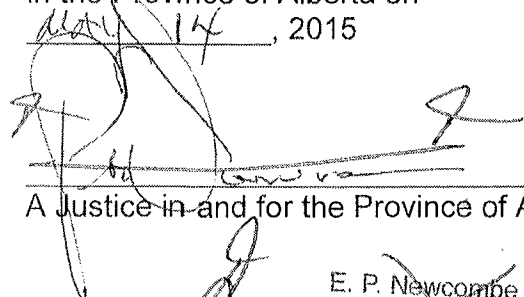
42. Based upon this information, I believe that an Assistance Order, Pursuant to Section 487.02 of the Criminal Code, requiring the assistance of employees of Canadian Pacific Railway to facilitate access to the computer systems located at the RTC centre in Building 1, 7550 Odgen Dale Road S.E. is necessary in order to give effect to the terms of the warrant.

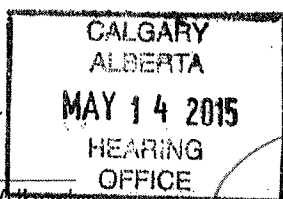
CONCLUSION


43. I will be attending and participating in the search.
44. I am requesting the assistance of Rail Safety Inspectors Todd HORIE, Ron DOLINSKI and Derek SIMENAC, all appointed by the Minister of Transport as Railway Safety Inspectors under Section 27(1) of the *Railway Safety Act*. Both HORIE and SIMENAC are experienced in Railway Operation matters and are public officers.
45. I am also requesting the assistance of the Calgary Police Service in the execution of this warrant.
46. I am also requesting that Canadian Pacific Railway shall provide, to Public Officers participating in this investigation, such assistance to provide written records or copies of any electronic records by printing or downloading the records pertaining to this investigation.
47. I will be filing a Report to Justice, Form 5.1, Section 489.1 *Criminal Code of Canada* within Ten days of the search of all things seized.
48. I believe that all the facts and matters set forth in this Information To Obtain are true.
49. I make this Information To Obtain in support of an application for a search warrant pursuant to section 487, 487(2.1) and 487.02 of the Criminal Code.

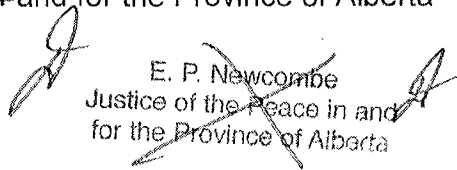
Sworn before me at Calgary,
in the Province of Alberta on


May 14, 2015


A Justice in and for the Province of Alberta




(Informant Signature)
ROBERT BLAIR
5006


E. P. Newcombe
Justice of the Peace in and
for the Province of Alberta


M. C. Dunkley
Justice of the Peace
in and for the Province of Alberta

APPENDIX 2

This is Exhibit B
to the Information of

Emergency Directive Pursuant to Section 33 of the *Railway Safety Act*

ROBERT W. BLAIR
Sworn before me this

14 day of May

Securement of Railway Equipment

M. C. Dunkley
Justice of the Peace
in and for the Province of Alberta
A.D. 2015
[Signature]
Justice of the Peace
in and for
The Province of Alberta

To: All Railway Companies and Local Railway Companies

Section 33 of the *Railway Safety Act* (the Act) gives the Minister of Transport the authority to issue an Emergency Directive to any company when the Minister is of the opinion that there is an immediate threat to safe railway operations or the security of railway transportation.

In light of new information released as a result of the investigation into the derailment at Lac-Mégantic in July 2013, I am of the opinion that more robust defences are required to prevent the risk of any future uncontrolled motion of railway equipment. Notwithstanding the fact that new rules pertaining to the securement of railway equipment have since been adopted by the industry and that practices related to the securement of railway equipment have improved, there remains sufficient residual risk that without additional layers of defence, uncontrolled motion of railway equipment could still occur, with possibly catastrophic consequences.

Although I remain confident in the strength of the regulatory regime for railway transportation in Canada, I am of the opinion that, in the interest of ensuring the continued safety and security of railway transportation, there is an immediate need for railways to improve their operating practices respecting the securement of railway equipment.

Pursuant to section 33 of the Act, all companies are hereby ordered to:

1. Ensure that in the application of Rule 112 of the *Canadian Rail Operating Rules* (CROR), that the number of hand brakes applied to railway equipment or movements, not including any hand brakes applied to locomotives in the lead consist, meets or exceeds the numbers shown in the Chart attached as Appendix A.
2. Ensure that the adequacy of the hand brake application is confirmed and tested by releasing all air brakes and conducting a push-pull test, or allow or cause slack to adjust. There must be confirmation that there is no further movement under the push-pull or allow or cause slack to adjust test.
3. Ensure that in the application of Rule 112(a)(i) of the CROR, in addition to hand brakes required in #1 above, after the hand brake effectiveness test is performed, all hand brakes must be applied on all locomotives in the lead consist of an unattended movement.
4.
 1. Ensure that when equipment or movement are left unattended on **main track**, in addition to any securement requirements in Rule 112 of the CROR, at least one additional physical securement measure or mechanism is also used. The additional physical securement measures or mechanisms must prevent equipment from uncontrolled motion and must be one or more of the following:
 - Permanent derails used within their design specifications;
 - Mechanical emergency devices;
 - Mechanical lock parking brake once approved by the Association of American Railroads (AAR);
 - Reset Safety Control (RSC) with roll-away protection where air pressure is maintained or auto start is provided;
 - Moving the equipment to a track protected with derails or bowled terrain verified by survey or track profile; or
 - Other appropriate physical securement device accepted by Transport Canada.
 2. Ensure that when equipment or movement are left unattended on **sidings**, and in other **high risk locations** as determined in a risk assessment, in addition to any securement requirements in Rule 112 of the CROR, at least one additional physical securement measure or mechanism is also used. The additional physical securement measures or mechanisms must prevent equipment from uncontrolled motion and must be one or more of the following:
 - Permanent derails used within their design specifications;

APPENDIX 2

- Mechanical emergency devices;
 - Mechanical lock parking brake once approved by the Association of American Railroads (AAR);
 - Reset Safety Control (RSC) with roll-away protection where air pressure is maintained or auto start is provided;
 - Moving the equipment to a track protected with derails or bowled terrain verified by survey or track profile; or
 - Other appropriate physical securement device accepted by Transport Canada.
3. Ensure that when equipment is left unattended by the operating crew while actively **switching, picking up or setting off enroute**, the standing portion must be left with hand brakes applied as per Item 1 above, and air brakes applied on all remaining cars as an additional physical securement measure. A qualified employee must conduct a visual verification to confirm that the cars have not moved, the hand brakes chains are tight, and the airbrake pistons are fully extended. This verification must be carried out at 2 hour intervals. If any movement is detected, additional hand brakes must be applied.
 5. Require that when one or more locomotives, secured by hand brakes, are left on main track while coupled to railway equipment secured by hand brakes, the air brake system must be sufficiently charged, the locomotive must maintain air brake pressure, at least a minimum air brake application must be made and the independent air brake must be fully applied. When it is necessary to shut down the locomotives or if the locomotives are not left running, locomotives must be secured by hand brakes, the railway equipment not including the locomotives must have hand brakes applied as per Item 1 above, and tested as per Item 2 above. The brake pipe on the remaining equipment must be left fully vented by placing the automatic brake handle in "Handle Off" or "Emergency" position.
 6. Ensure that in the application of the definition of "unattended" in the CROR which reads "When an employee is not in close enough proximity to take effective action.", "an employee" is interpreted to mean "an employee who is trained and qualified to stop the unintended motion of railway equipment".
 7. Ensure that a qualified employee verifies the proper securement of any unattended railway equipment without delay when the railway has knowledge that a trespasser or an emergency responder has been in contact with the equipment.

Pursuant to section 33 of the *Railway Safety Act*, this Emergency Directive takes effect immediately and is to remain in effect until 2359hrs EST on April 29, 2015.

Assistant Deputy Minister
Safety and Security

Date

APPENDIX 2

Appendix B

6970184 Canada Ltd.
Agence métropolitaine de transport
Amtrak
Arnaud Railway Company
Battle River Railway
Big Sky Railway Operated by Last Mountain Railway
Boundary Trail Railway Company
Burlington Northern Santa Fe Railway Co.
Canadian National Railway Company
Canadian Pacific Railway Company
Cando Contracting Ltd. (Barrie-Collingwood)
CANDO Ltd.
Canpotex
Cape Breton and Central Nova Scotia Railway
Capital Railway
Carlton Trail Railway
Central Maine & Québec Railway Canada Inc.
Central Manitoba Railway Inc.
Chemin de fer Charlevoix
Chemin de fer Québec Gatineau
Chemin de fer Roberval Saguenay (Rio Tinto Alcan)
Chemin de fer Sartigan
CSX Intermodal Terminals Inc.
CSX Transportation Inc.
Eastern Maine Railway
Essar Steel Algoma
Essex Terminal Railway Company
GO Transit
Goderich and Exeter Railway Company Limited
Great Canadian Railtour Company Ltd.
Great Sandhills Railway
Great Western Railway Ltd.
Hudson Bay Railway Company
Huron Central
Huron Central Railway Inc.
International Bridge and Terminal Company
Keewatin Railway Company
Kettle Falls International Railway Company
Knob Lake and Timmins Railway Inc.
Lake Line Railway Company

APPENDIX 2

Last Mountain Railway (101115529 Saskatchewan Ltd.)
Minnesota, Dakota & Western Railway Company
Nipissing Central Railway Company
Norfolk Southern Railway Company
Northwood Pulp Mill Canfor
Ontario Northland
Ontario Southland Railway Inc.
Ontario Southland Railway Inc.
Orford Express
Port Colborne Railway (Part of Trillium)
Port Stanley Terminal Railway Incorporated
Prairie Dog Central Railway
Quebec North Shore and Labrador Railway Company
RailLink Canada Ltd.
RailServe
Rio Tinto Alcan
Société du chemin de fer de la Gaspésie
South Simcoe Railway Heritage Corporation
Southern Ontario Locomotive Restoration Society
Southern Rails Cooperative Ltd.
Southern Railway of British Columbia (and Southern Railway of Vancouver Island Limited)
St. Lawrence & Atlantic Railroad (Quebec) Inc.
Stewart Southern Railway
Sydney Coal Railway Inc.
The Toronto Terminals Railway Company Limited
Thunder Rail Ltd. (Arborfield)
Torch River Rail Inc.
Trillium Railway
Tshiuetin Rail Transportation Inc.
Union Pacific Railroad Company
VIA Rail Canada Inc.
Wabush Lake Railway Company, Limited
West Coast Express Ltd.
West Coast Railway Museum
White Pass and Yukon Route
York-Durham Heritage Railway Association

Date modified:
2014-10-29

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Identifier Number:

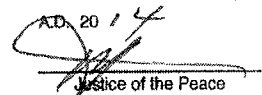
Police File: 3500-17-6.

FORM 1
(Section 487)

This is Exhibit A
to the Information of
ROBERT W. BLAIR
Sworn before me this

Information to obtain a search warrant (487)

14 day of MAY

A.D. 2014


M. C. Dunkley
Justice of the Peace
in and for
The Province of Alberta

Canada,
Province of Alberta,
Judicial District of Calgary

Introduction

1. This is the information of Robert W. BLAIR, a public officer of Transport Canada, Government of Canada, in the city of New Westminster, in the Province of British Columbia. I am appointed by the Minister of Transport as a Railway Safety Inspector under Section 27(1) of the *Railway Safety Act*. I am currently assigned to Rail Safety (Operations and Equipment) Surface Branch of Transport Canada.
2. I am a member of Transport Canada (Rail Safety) and have been since 2001. I was employed by Canadian National Railway and British Columbia Railway for 23 years where I was employed in various Mechanical and Operations positions including Railway Carman, Supervisor, Terminal Supervisor, and Commodity Car Control.
3. I have personal knowledge of the information set out in this Information To Obtain a search warrant, except where information is stated to be from other sources. I believe all of the information set out in this Information To Obtain to be true and given in good faith.
4. I have reasonable grounds to believe these offences have occurred;
 - a. Count 1 –
That on February 15th, 2015 Canadian Pacific Railway Company Ltd., contravened the Emergency Directive, "Securement of Railway Equipment", dated October 29th, 2014 issued under Section 33 of the *Railway Safety Act* by leaving unattended equipment (57 railway cars) near Mile 117, South Track, Mountain Subdivision without using handbrake securement as directed as per the Emergency Directive, dated October 29th, 2015 thereby committing an offence contrary to section 41(2)(e) of the *Railway Safety Act*.
 - b. Count 2 –



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That on or about February 15th, 2015 Mark JACKSON, a Company Officer of Canadian Pacific Railway Company Ltd., by virtue of section 43 of the *Railway Safety Act* did direct and/or authorize a violation of the Emergency Directive, "Securement of Railway Equipment", dated October 29th, 2014 issued under Section 33 of the *Railway Safety Act* by directing that equipment to wit 57 railway cars, be left unattended near Mile 117, South Track, Mountain Subdivision without using handbrake securement as directed as per the Emergency Directive, dated October 29th, 2014 thereby committing an offence contrary to section 41(2)(e) of the *Railway Safety Act*.

5. The *Railway Safety Act* is an Act to ensure the safe operations of railways. It provides the Minister of Transport authority to issue Emergency Directives if needed, under Section 33 of the Act. Section 33 provides as follows:

EMERGENCY DIRECTIVES

Minister may send emergency directives

33. (1) If the Minister is of the opinion that there is an immediate threat to safe railway operations or the security of railway transportation, the Minister may, by emergency directive sent to a company, order it

(a) either absolutely or to the extent specified in the directive, to stop using the kind of railway works or railway equipment or following the maintenance or operating practice that poses the threat; or

(b) to follow a maintenance or operating practice specified in the directive if the threat is posed by the company's failure to follow that practice.

Directive despite compliance with law

(1.1) The Minister may issue an emergency directive even though

(a) the construction of the railway work was undertaken in accordance with the law in force at the time; and

(b) using the railway equipment or following or not following the maintenance or operating practice is in accordance with this Act or any regulations or rules made under it.

Duration

(2) An emergency directive has effect during such period, not exceeding six months, as is specified in the directive.

Emergency directive to contain statement of reasons

(3) An emergency directive shall contain a statement of the Minister's reasons for holding the opinion by reason of which the directive was given.

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Minister may rescind emergency directives

(4) The Minister may, by notice sent to the company, rescind an emergency directive, in which case the directive ceases to have effect.

Inconsistency between emergency directives, regulations, rules or orders

(5) In the event that there is an inconsistency between an emergency directive and a regulation made under subsection 18(1) or (2.1) or a rule in force under section 19 or 20, the emergency directive prevails to the extent of the inconsistency.

Minister may renew emergency directives

(6) The Minister may, before the expiration of the period during which an emergency directive has effect, by notice sent to the company, renew the directive for a further specified period commencing on the expiration of the previous period and not exceeding six months and, if the Minister does so, this section, except this subsection, applies to the directive as renewed.

6. Pursuant to Section 41(2)(e) of the *Railway Safety Act* it is an offence to contravene an Emergency Directive issued under section 33. Section 41 provides as follows.

41. (1) Every person who contravenes a provision of this Act is guilty of an offence and liable

(a) on conviction on indictment,

(i) in the case of a corporation, to a fine not exceeding one million dollars, and

(ii) in the case of an individual, to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding one year, or to both; or

(b) on summary conviction,

(i) in the case of a corporation, to a fine not exceeding five hundred thousand dollars, and

(ii) in the case of an individual, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months, or to both.

(2) A person is guilty of an offence if the person contravenes

(a) a regulation made under subsection 7(1) or section 7.1, 18, 24, 37, 47 or 47.1;

(b) an order made by the Minister or a railway safety inspector under subsection 7(2) or 19(1) or section 31 or 32;

APPENDIX 1

- (c) a requirement made by the Agency under subsection 16(3) or 26(3);
 - (d) a rule in force under section 19 or 20;
 - (e) an emergency directive made by the Minister under section 33;
 - (f) a requirement under subsection 39.1(2) to carry out a security measure;
 - (g) a railway operating certificate issued under section 17.4; or
 - (h) an order made under section 36.
7. On October 29, 2014 the Minister sent an Emergency Directive to all railway companies and local railway companies pursuant to section 33 of the *Railway Safety Act*. This Emergency Directive amongst other things provided directions on the use of handbrakes for unattended equipment in high risk areas. This Emergency Directive as attached Appendix 1 to this affidavit.
9. The *Railway Safety Act* also provides that Officers, director or agents of the corporation can be guilty for directing, authorizing, assenting, acquiescing in or participating in the commission of an offence.

Section 43 is as follows:

43. Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

Prosecco
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Grounds to Believe Things Will Afford Evidence of the Offences

10. I believe that the following things will afford evidence of the offences set out above;
1. All radio voice recordings for Canadian Pacific Railway, Mountain Subdivision, recorded from 1700 February 14th, 2015 to 0600 February 15th, 2015 between the Crew of train 401 and the Canadian Pacific Railway Rail Traffic Control (RTC) Center.
 2. Telephone or radio voice recordings, recorded from 1700 February 14th, 2015 to 0600 February 15th, 2015 between Mark JACKSON and the Director Rail Traffic Control (known as "Chief") and the Canadian Pacific Railway Rail Traffic Control Center.
 3. Electronic and written records for Director Rail Traffic Control (known as "Chief"), and the Rail Traffic Controllers on duty including but not limited to RTC planning sheets, Transfers, Train Information Sheet (TIS), emails, management notes, and employees' notes concerning train 401 between 1700 February 14th, 2015 to 0600 February 15th, 2015.

MB

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4. Full train documentation, Tabular General Bulletin Order, and Consist pertaining to Train 401 operated by Conductor PACEY between Golden, British Columbia and Station Name Sign (SNS) White near Mile 123.4, Mountain Subdivision, Canadian Pacific Railway, Province of British Columbia.

Reasonable Grounds To Believe

11. I have reasonable grounds to believe that the above noted offences occurred and that the above described items to be searched for are located at Building 1, 7550 Ogden Dale Road, Calgary, Province of Alberta and that these items will afford evidence of the said offences. My grounds for my belief are as follows:
12. On February 16th, 2015 Transport Canada Rail Safety Inspector Todd HORIE received an email from Jamie LIND, a Union Representative at Canadian Pacific Railway, Revelstoke, British Columbia. The email was a forwarded email from Conductor PACEY concerning a failure to apply hand brakes on train 401 on February 14th and 15th. The forwarded email was discussed between HORIE and Transport Canada Inspector Geoff CAMPBELL. Inspectors CAMPBELL and HORIE decided to begin an investigation into the matter. I received and reviewed a hard copy of the email received from LIND to HORIE. I also discussed with HORIE the contents of that email.
13. Inspectors CAMPBELL and HORIE attempted through the months of February and March to set up interviews with Conductor PACEY and Engineer Curtis AYOTTE. Due to Transport Canada work commitments and scheduling issues, it was not possible to interview PACEY and AYOTTE in a timely manner. Inspector HORIE informed me of the attempts and the delays. As a result, so far it has only been it was possible to interview Conductor PACEY and no interview has been conducted with Engineer AYOTTE.
14. On March 26th, 2015 I was assigned to the investigation that was initiated by Transport Canada Inspector Geoff CAMPBELL and Inspector HORIE regarding an alleged violation of the Emergency Directive, dated October 29th, 2015 under section 33 of the *Railway Safety Act*. On March 30, 2015 I received and reviewed copies of CAMPBELL's investigative notes.
15. I am advised that Conductor Stefane PACEY was contacted by Transport Canada Inspector Todd HORIE. An interview was conducted with PACEY on April 29th, 2015 here in New Westminster by myself and with HORIE present. Amongst other things PACEY told me the following relevant information:
 - a. PACEY is employed as a Railway Conductor by Canadian Pacific Railway and was working as such on February 14th, 2015 when she was assigned to train 401.
 - b. PACEY's work assignment was to move train 401 from Donald, Mile 52, Mountain Subdivision, Canadian Pacific Railway to Revelstoke, BC.
 - c. During the course of her tour of duty, PACEY was directed to set off railway cars at Greely storage track, Mountain Subdivision, Canadian Pacific Railway.

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- d. Leaving the unattended equipment in high risk locations would require handbrakes to be applied to the standing cut (cars which are left behind while the setoff is being done) in accordance with the Emergency Directive.
 - e. PACEY noted via radio communication to the Rail Traffic Controller (located in Calgary, AB) that there was insufficient time to complete the assigned movement as directed.
 - f. PACEY was directed not to apply handbrakes to the standing cut. She was also informed that the direction came from Mark JACKSON, then employed as Superintendent, BC Interior Division, Canadian Pacific Railway.
 - g. PACEY subsequently left the standing cut without the handbrakes applied as directed.
 - h. PACEY stated that the Train 401 standing cut included railway tank cars carrying dangerous goods.
 - i. PACEY understands and knows that Railway radio communications between the Rail Traffic Controller ("RTC") and train crews are recorded.
16. On May 4, 2015 I spoke with Transport Canada Rail Safety Inspector Susan BOAN. Inspector BOAN has been as inspector with Transport Canada since 1998. She has been at the Canadian Pacific RTC Center during the course of her inspection duties. She was last there in March 2014. She has confirmed that the items requested are located at and in Building 1. She further stated and confirmed that radio recordings, voice recordings, RTC planning sheets, transfers, Train Information Sheet (TIS), emails, management notes, and employees' notes and train records would be at Building 1, 7550 Ogden Dale Road in Calgary, AB.
 17. On May 12th, 2015 I spoke with Transport Canada Rail Safety Inspector Derek SIMENAC. He stated and confirmed that radio recordings, voice recordings, train documentation, Tabular General Bulletin Order, and a Train Consist would be found in Building 1, 7550 Ogden Dale Road, Calgary, Province of Alberta. SIMENAC previously was employed by Canadian Pacific Railway as a Rail Traffic Controller and Assistant Manager-Rail Traffic Control. He is familiar with Canadian Pacific Railway's computer system and computer programs. SIMENAC stated that the electronic records are in Building 1. Based upon his experience he advised that the radio recordings, voice recordings, train documentation, Tabular General Bulletin Order, and a Train Consist are kept as a standard industry practice.
 18. Inspector SIMENAC also advised me that the things sought are an industry standard and are necessary records for the functioning and operations of any Railway Company. He also states that the things sought are required to be retained by the Company under the Safety Management System Regulations under the *Railway Safety Act*.
 19. My railway experience as a Terminal Supervisor, Supervisor Yard Operations, Commodity Car Coordinator, and as a Transport Canada Rail Safety Inspector reaffirms my belief that things sought will be at the location stated. In my experience all items, material and

RWB

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information and particularly the email correspondence sought in the Search Warrant are used in the normal and usual course of business by Canadian Pacific Railway at Building 1, 7550 Ogden Dale Road, Calgary, Province of Alberta.

20. I believe on reasonable grounds that the said things are in the place of business of Canadian Pacific Railway located at Building 1, 7550 Ogden Dale Road Southeast, Calgary, Alberta.

APPLICATION FOR AN ASSISTANCE ORDER

21. I have spoken with Transport Canada Rail Safety Inspector Susan BOAN and she confirmed that entrance to the RTC center located in Building 1, 7550 Ogden Dale Road is protected by "card lock". She also stated that the computer systems and programs are "password" protected.
22. I have also spoken with Transport Canada Rail Safety Inspector Derek SIMENAC who also confirms that the computer and programs are "password" protected. He also stated that this is an industry standard for RTC centers such as the one located at Building 1, 7550 Ogden Dale Road. He has used the computer systems during his employment as a Rail Traffic Controller (RTC) and as a Assistant Manager Rail Traffic Control with Canadian Pacific Railway. SIMENAC also has used these systems when conducting inspections while employed as a Transport Canada Rail Safety Inspector.
23. Based upon this information, I believe that a Assistance Order, Pursuant to Section 487.02 of the Criminal Code, requiring the assistance of employees of Canadian Pacific Railway to facilitate access to the computer systems located at the RTC centre in Building 1, 7550 Ogden Dale Road is necessary in order to give effect to the terms of the warrant.

CONCLUSION

24. I will be attending and participating in the search.
25. Documents seized will be certified true copies.
26. I am requesting the assistance of Rail Safety Inspectors Todd HORIE, Ron DOLINSKI and Derek SIMENAC, all appointed by the Minister of Transport as a Railway Safety Inspectors under Section 27(1) of the *Railway Safety Act*. Both HORIE and SIMENAC are experienced in Railway Operation matters and are public officers.
27. I am also requesting the assistance of the Calgary Police Service in the execution of this warrant.
28. I am also requesting that Canadian Pacific Railway shall provide, to Public Officers participating in this investigation, such assistance to provide written records or copies of any electronic records by printing or downloading the records pertaining to this investigation

APPENDIX 1

- 29. I believe that all the facts and matters set forth in this Information To Obtain are true, notwithstanding any omission on my part to specifically so state in any one or more of the grounds or elsewhere in the Information.
- 30. I make this Information To Obtain in support of an application for a search warrant pursuant to section 487, 487(2.1) and 487.02 of the Criminal Code

Sworn before me at Calgary,
in the Province of Alberta on
May 13, 2015

W. M. O'Leary
A Justice in and for the Province of Alberta

[Signature]
(Informant Signature)

CALGARY
ALBERTA
MAY 13 2015
HEARING
OFFICE

[Signature]

APPENDIX 1

Appendix 1

Emergency Directive Pursuant to Section 33 of the *Railway Safety Act*

Securement of Railway Equipment

To: All Railway Companies and Local Railway Companies

Section 33 of the *Railway Safety Act* (the Act) gives the Minister of Transport the authority to issue an Emergency Directive to any company when the Minister is of the opinion that there is an immediate threat to safe railway operations or the security of railway transportation.

In light of new information released as a result of the investigation into the derailment at Lac-Mégantic in July 2013, I am of the opinion that more robust defences are required to prevent the risk of any future uncontrolled motion of railway equipment. Notwithstanding the fact that new rules pertaining to the securement of railway equipment have since been adopted by the industry and that practices related to the securement of railway equipment have improved, there remains sufficient residual risk that without additional layers of defence, uncontrolled motion of railway equipment could still occur, with possibly catastrophic consequences.

Although I remain confident in the strength of the regulatory regime for railway transportation in Canada, I am of the opinion that, in the interest of ensuring the continued safety and security of railway transportation, there is an immediate need for railways to improve their operating practices respecting the securement of railway equipment.

Pursuant to section 33 of the Act, all companies are hereby ordered to:

1. Ensure that in the application of Rule 112 of the *Canadian Rail Operating Rules* (CROR), that the number of hand brakes applied to railway equipment or movements, not including any hand brakes applied to locomotives in the lead consist, meets or exceeds the numbers shown in the Chart attached as Appendix A.
2. Ensure that the adequacy of the hand brake application is confirmed and tested by releasing all air brakes and conducting a push-pull test, or allow or cause slack to adjust. There must be confirmation that there is no further movement under the push-pull or allow or cause slack to adjust test.
3. Ensure that in the application of Rule 112(a)(i) of the CROR, in addition to hand brakes required in #1 above, after the hand brake effectiveness test is performed, all hand brakes must be applied on all locomotives in the lead consist of an unattended movement.
4.
 1. Ensure that when equipment or movement are left unattended on **main track**, in addition to any securement requirements in Rule 112 of the CROR, at least one additional physical securement measure or mechanism is also used. The additional physical securement measures or mechanisms must prevent equipment from uncontrolled motion and must be one or more of the following:
 - Permanent derails used within their design specifications;
 - Mechanical emergency devices;
 - Mechanical lock parking brake once approved by the Association of American Railroads (AAR);
 - Reset Safety Control (RSC) with roll-away protection where air pressure is maintained or auto start is provided;
 - Moving the equipment to a track protected with derails or bowled terrain verified by survey or track profile; or
 - Other appropriate physical securement device accepted by Transport Canada.
 2. Ensure that when equipment or movement are left unattended on **sidings**, and in other **high risk locations** as determined in a risk assessment, in addition to any securement requirements in Rule 112 of the CROR, at least one additional physical securement measure or mechanism is also used. The additional physical securement measures or mechanisms must prevent equipment from uncontrolled motion and must be one or more of the following:
 - Permanent derails used within their design specifications;

This is exhibit "1" to the information of

Robert W. BLAIR
Sworn before me this

13 day of MAY

A.D., 20

R. M. [Signature]
Justice of the Peace
in and for
The Province of Alberta

[Handwritten signature]

APPENDIX 1

- Mechanical emergency devices;
 - Mechanical lock parking brake once approved by the Association of American Railroads (AAR);
 - Reset Safety Control (RSC) with roll-away protection where air pressure is maintained or auto start is provided;
 - Moving the equipment to a track protected with derails or bowled terrain verified by survey or track profile; or
 - Other appropriate physical securement device accepted by Transport Canada.
3. Ensure that when equipment is left unattended by the operating crew while actively **switching, picking up or setting off enroute**, the standing portion must be left with hand brakes applied as per Item 1 above, and air brakes applied on all remaining cars as an additional physical securement measure. A qualified employee must conduct a visual verification to confirm that the cars have not moved, the hand brakes chains are tight, and the airbrake pistons are fully extended. This verification must be carried out at 2 hour intervals. If any movement is detected, additional hand brakes must be applied.
 5. Require that when one or more locomotives, secured by hand brakes, are left on main track while coupled to railway equipment secured by hand brakes, the air brake system must be sufficiently charged, the locomotive must maintain air brake pressure, at least a minimum air brake application must be made and the independent air brake must be fully applied. When it is necessary to shut down the locomotives or if the locomotives are not left running, locomotives must be secured by hand brakes, the railway equipment not including the locomotives must have hand brakes applied as per Item 1 above, and tested as per Item 2 above. The brake pipe on the remaining equipment must be left fully vented by placing the automatic brake handle in "Handle Off" or "Emergency" position.
 6. Ensure that in the application of the definition of "unattended" in the CROR which reads "When an employee is not in close enough proximity to take effective action.", "an employee" is interpreted to mean "an employee who is trained and qualified to stop the unintended motion of railway equipment".
 7. Ensure that a qualified employee verifies the proper securement of any unattended railway equipment without delay when the railway has knowledge that a trespasser or an emergency responder has been in contact with the equipment.

Pursuant to section 33 of the *Railway Safety Act*, this Emergency Directive takes effect immediately and is to remain in effect until 2359hrs EST on April 29, 2015.

Assistant Deputy Minister
Safety and Security

Date

Appendix A

Required Number of Hand Brakes for Securing Equipment or Movements Left Unattended

Total Tons:	Maximum Grade									
	< 0.8%	0.8%	1.0%	1.2%	1.4%	1.6%	1.8%	2.0%	2.2%	> 2.2%
0 - 2000		6	6	8	10	10	12		12	
> 2000 - 4000	One (1) hand brake plus one (1) additional hand brake for every ten (10)	6	8	12	14	16	18	20	22	
> 4000 - 6000	cars or platforms.	10	14	16	20	24	28	30	34	

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> 6000									
- 8000	12	18	22	26	32	36	42		46
> 8000									
- 10000	16	22	28	34	40	46	52		58
>									
10000 -	22	30	40	48	58	66	76		84
14000									
>									
14000 -	28	40	50	62	74	86			
18000									
>									
18000 -	36	50	64	78	94				
22000									
>									
22000 -	42	58	76	94					
26000									
>									
26000									

Refer to Company Instructions and at a minimum use column to the left plus 10% additional handbrakes for every 0.2% grade increase.

Appendix B

- 6970184 Canada Ltd.
- Agence métropolitaine de transport
- Amtrak
- Arnaud Railway Company
- Battle River Railway
- Big Sky Railway Operated by Last Mountain Railway
- Boundary Trail Railway Company
- Burlington Northern Santa Fe Railway Co.
- Canadian National Railway Company
- Canadian Pacific Railway Company
- Cando Contracting Ltd. (Barrie-Collingwood)
- CANDO Ltd.
- Canpotex
- Cape Breton and Central Nova Scotia Railway
- Capital Railway
- Carlton Trail Railway
- Central Maine & Québec Railway Canada Inc.
- Central Manitoba Railway Inc.
- Chemin de fer Charlevoix
- Chemin de fer Québec Gatineau
- Chemin de fer Roberval Saguenay (Rio Tinto Alcan)
- Chemin de fer Sartigan
- CSX Intermodal Terminals Inc.
- CSX Transportation Inc.
- Eastern Maine Railway
- Essar Steel Algoma
- Essex Terminal Railway Company
- GO Transit
- Goderich and Exeter Railway Company Limited
- Great Canadian Railtour Company Ltd.
- Great Sandhills Railway
- Great Western Railway Ltd.
- Hudson Bay Railway Company
- Huron Central

AWB.

APPENDIX 1

Huron Central Railway Inc.
 International Bridge and Terminal Company
 Keewatin Railway Company
 Kettle Falls International Railway Company
 Knob Lake and Timmins Railway Inc.
 Lake Line Railway Company
 Last Mountain Railway (101115529 Saskatchewan Ltd.)
 Minnesota, Dakota & Western Railway Company
 Nipissing Central Railway Company
 Norfolk Southern Railway Company
 Northwood Pulp Mill Canfor
 Ontario Northland
 Ontario Southland Railway Inc.
 Ontario Southland Railway Inc.
 Orford Express
 Port Colborne Railway (Part of Trillium)
 Port Stanley Terminal Railway Incorporated
 Prairie Dog Central Railway
 Quebec North Shore and Labrador Railway Company
 RailLink Canada Ltd.
 RailServe
 Rio Tinto Alcan
 Société du chemin de fer de la Gaspésie
 South Simcoe Railway Heritage Corporation
 Southern Ontario Locomotive Restoration Society
 Southern Rails Cooperative Ltd.
 Southern Railway of British Columbia (and Southern Railway of Vancouver Island Limited)
 St. Lawrence & Atlantic Railroad (Quebec) Inc.
 Stewart Southern Railway
 Sydney Coal Railway Inc.
 The Toronto Terminals Railway Company Limited
 Thunder Rail Ltd. (Arborfield)
 Torch River Rail Inc.
 Trillium Railway
 Tshiuetin Rail Transportation Inc.
 Union Pacific Railroad Company
 VIA Rail Canada Inc.
 Wabush Lake Railway Company, Limited
 West Coast Express Ltd.
 West Coast Railway Museum
 White Pass and Yukon Route
 York-Durham Heritage Railway Association

Date modified:
 2014-10-29



CANADA
Province of Alberta

Case Number:
Identifier Number: 3500-17-6

**IN THE PROVINCIAL COURT OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

A Warrant to Search

Pursuant to Section 487 of the Criminal Code

And

An Assistance Order

Pursuant to Section 487.02 of the Criminal Code

To the Peace Officers in the City of Calgary in the province of Alberta or to the Public Officers, Robert BLAIR, Todd HORIE, Derek SIMENAC and Ron DOLINSKI.

WHEREAS it appears on the sworn information of Inspector Robert BLAIR that there are reasonable grounds for confirming that there are things that will afford evidence in respect of an offence under the *Railway Safety Act*, to wit:

1. All radio voice recordings for Canadian Pacific Railway, Mountain Subdivision, recorded from 1700 February 14th, 2015 to 0600 February 15th, 2015 between the Crew of train 401 and the Canadian Pacific Railway Rail Traffic Control (RTC) Center.
2. Telephone or radio voice recordings, recorded from 1700 February 14th, 2015 to 0600 February 15th, 2015 between Mark JACKSON and the Director Rail Traffic Control (known as "Chief") and the Canadian Pacific Railway Rail Traffic Control Center.
3. Electronic and written records for Director Rail Traffic Control (known as "Chief"), and the Rail Traffic Controllers on duty including but not limited to RTC planning sheets, Transfers, Train Information Sheet (TIS), emails, management notes, and employees' notes concerning train 401 between 1700 February 14th, 2015 to 0600 February 15th, 2015.
4. Full train documentation, Tabular General Bulletin Order, and Consist pertaining to Train 401 operated by Conductor PACEY between Golden, British Columbia and Station Name Sign (SNS) White near Mile 123.4, Mountain Subdivision, Canadian Pacific Railway, Province of British Columbia.

In respect of which one or more offences have been committed contrary to the following section(s) of the *Railway Safety Act*, namely:

Count 1 –

That on February 15th, 2015 Canadian Pacific Railway Company Ltd., contravened the Emergency Directive, "Securement of Railway Equipment", dated October 29th, 2014 issued under Section 33 of the *Railway Safety Act* by leaving unattended equipment (57 railway cars) near Mile 117, South Track, Mountain Subdivision without using handbrake securement as directed as per the Emergency Directive, dated October 29th, 2015 thereby committing an offence contrary to section 41(2)(e) of the *Railway Safety Act*.

Count 2 –

That on or about February 15th, 2015 Mark JACKSON, a Company Officer of Canadian Pacific Railway Company Ltd., by virtue of section 43 of the *Railway Safety Act* did direct and, or authorize a violation of the Emergency Directive, "Securement of Railway Equipment", dated October 29th, 2014 issued under Section 33 of the *Railway Safety Act* by directing that equipment to wit 57 railway cars, be left unattended near Mile 117, South Track, Mountain Subdivision without using handbrake securement as directed as per the Emergency Directive, dated October 29th, 2014 thereby committing an offence contrary to section 41(2)(e) of the *Railway Safety Act*.

Herein after referred to as the "offences" is in the places, namely:

- **Canadian Pacific Railway, Building 1, 7550 Ogden Dale Road, Calgary, Alberta**

THIS IS, THEREFORE to authorize any peace officer or public officer to make entry of the said place between the hours of 12:00 pm and 9:00 pm on May 13, 2015. and thereafter to search for said things, as the case may, and to deal with it according to law.

Assistance Order
Pursuant to Section 487.02 of the Criminal Code

IT IS FURTHER ORDERED THAT Canadian Pacific Railway Company Limited, shall provide, to Public Officers participating in this investigation, such assistance required to facilitate access to the computer systems located at the RTC centre in Building 1, 7550 Ogden Dale Road is in order and to provide written records or copies of any electronic records by printing or downloading the records pertaining to this investigation to any member

DATED at the City of Calgary in the said Province of Alberta

This 13th day of May, 2015.

A Justice of the Peace, in and for the Province of Alberta



CANADA

Province of Alberta

Case Number:

Identifier Number: 3500-17-6

**IN THE PROVINCIAL COURT OF ALBERTA
JUDICIAL DISTRICT OF CALGARY**

A Warrant to Search

Pursuant to Section 487 of the Criminal Code

And

An Assistance Order

Pursuant to Section 487.02 of the Criminal Code

To the Peace Officers in the City of Calgary in the province of Alberta or to the Public Officers, Robert BLAIR, Todd HORIE, Derek SIMENAC and Ron DOLINSKI.

WHEREAS it appears on the sworn information of Inspector Robert BLAIR that there are reasonable grounds for confirming that there are things that will afford evidence in respect of an offence under the *Railway Safety Act*, to wit:

1. All radio voice recordings for Canadian Pacific Railway, Mountain Subdivision, recorded from 1700 February 14th, 2015 to 0600 February 15th, 2015 between the Crew of train 401 and the Canadian Pacific Railway Rail Traffic Control (RTC) Center.
2. Telephone or radio voice recordings, recorded from 1700 February 14th, 2015 to 0600 February 15th, 2015 between Mark JACKSON and the Director Rail Traffic Control (known as "Chief") and the Canadian Pacific Railway Rail Traffic Control Center.
3. Electronic and written records for Director Rail Traffic Control (known as "Chief"), and the Rail Traffic Controllers on duty including but not limited to RTC planning sheets, Transfers, Train Information Sheet (TIS), emails, management notes, and employees' notes concerning train 401 between 1700 February 14th, 2015 to 0600 February 15th, 2015.
4. Full train documentation, Tabular General Bulletin Order, and Consist pertaining to Train 401 operated by Conductor PACEY between Golden, British Columbia and Station Name Sign (SNS) White near Mile 123.4, Mountain Subdivision, Canadian Pacific Railway, Province of British Columbia.

In respect of which one or more offences have been committed contrary to the following section(s) of the *Railway Safety Act*, namely:

Count 1 –

That on February 15th, 2015 Canadian Pacific Railway Company Ltd., contravened the Emergency Directive, "Securement of Railway Equipment", dated October 29th, 2014 issued under Section 33 of the *Railway Safety Act* by leaving unattended equipment (57 railway cars) near Mile 117, South Track, Mountain Subdivision without using handbrake securement as directed as per the Emergency Directive, dated October 29th, 2015 thereby committing an offence contrary to section 41(2)(e) of the *Railway Safety Act*.

Count 2 –

That on or about February 15th, 2015 Mark JACKSON, a Company Officer of Canadian Pacific Railway Company Ltd., by virtue of section 43 of the *Railway Safety Act* did direct and, or authorize a violation of the Emergency Directive, "Securement of Railway Equipment", dated October 29th, 2014 issued under Section 33 of the *Railway Safety Act* by directing that equipment to wit 57 railway cars, be left unattended near Mile 117, South Track, Mountain Subdivision without using handbrake securement as directed as per the Emergency Directive, dated October 29th, 2014 thereby committing an offence contrary to section 41(2)(e) of the *Railway Safety Act*.

Herein after referred to as the "offences" is in the places, namely:

- **Canadian Pacific Railway, Building 1, 7550 Ogden Dale Road, Calgary, Alberta**

THIS IS, THEREFORE to authorize any peace officer or public officer to make entry of the said place between the hours of _____ and _____ pm on May ____, 2015, and thereafter to search for said things, as the case may, and to deal with it according to law.

Assistance Order
Pursuant to Section 487.02 of the Criminal Code

IT IS FURTHER ORDERED THAT Canadian Pacific Railway Company Limited, shall provide, to Public Officers participating in this investigation, such assistance required to facilitate access to the computer systems located at the RTC centre in Building 1, 7550 Ogden Dale Road is in order and to provide written records or copies of any electronic records by printing or downloading the records pertaining to this investigation to any member

DATED at the City of Calgary in the said Province of Alberta

This 13th day of May, 2015.

A Justice of the Peace, in and for the Province of Alberta

IN THE MATTER OF THE APPLICATION
 For a Search Warrant (Section 487)
 Pursuant to the Information To Obtain
 Sworn by R. BURK on the
13 day of May, 2015.
 (the "ITO" and "Application")

APPENDIX 1

REJECTION NOTICE

The Application is rejected because:

- Statutory defects as follows:
 - Incorrect section of Criminal Code for warrant sought
 - Statutory element(s) missing as follows: _____
 - Not sworn before a Justice of the Peace or Judge

CALGARY
 ALBERTA
 MAY 13 2015
 HEARING
 OFFICE

- Defects in content as follows:
 - Insufficiently corroborated conclusory statements
 - State-dated surveillance or corroboration
 - Unattributed source or hearsay
 - Insufficient reliability of confidential informant
 - Insufficient grounds for believing existence of things to be found on
 "computers",
 "hard drives",
 "cloud"
 - Insufficient grounds for believing offence(s) committed
 - Insufficient connection between offence(s) and things to be found in the search
 - Insufficient grounds connecting search site to offence(s) and things to be found in the search

- Other defects as follows:
 - Search for "things" over broad
 warrant for minimally invasive
 search? Better
 - No mention of "Documents + Data" location to be searched
 "Email" "Electronic + written records" confusing. No
 warrant provision to seize data or digital records
 Dep Sec Rv. Vu + Fearon + comply
- 13 MAY, 2015. W.M. Hanly Deborah M. Hanly
 Justice of the Peace
 Judge-Provincial Court of Alberta and for the Province of Alberta

REV: July 9, 2009

MISSING
 Format: ① Cast of Characters

② Investigative + Search Techniques re: digital

③ Report to a Justice

④ Paragraph numbers

⑤ Address

S/B South East
 or S.E.

SEE Also!

Hutchinson's Search Warrant Manual

2015