

Lawyer for families of rail workers killed in 2019 Canadian Pacific derailment: “There are a hundred different ways that things can go wrong, all linked to profit”

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Do you work for CP Rail? We want to hear from you. Write to cpworkersrfc@gmail.com or contact the WSWS to share your experiences and help build the CP Workers Rank-and-File Committee.

In February 2019, Canadian Pacific Train 301 derailed on a steep grade near Field, British Columbia, killing the three crew members on board—conductor Dylan Paradis, engineer Andrew Dockrell and trainee conductor Daniel Waldenberger-Bulmer.

In the three years since the accident, the families of Paradis and Dockrell have been engaged in a legal battle to uncover the truth about what happened.

Last March, the Transportation Safety Board (TSB), a federal agency tasked with investigating accidents on Canada's railways, released its grossly overdue final report into the derailment. It was a scathing indictment of the criminal policy of Precision Scheduled Railroading (PSR) that has produced hazardous working conditions akin to those that prevailed on the railroads in the 19th century. However, the TSB can only issue non-binding recommendations to Transport Canada, the federal agency tasked with issuing rules for the railroads.

Also in March, the Teamsters union sabotaged the struggle of CP Rail workers for improved health and safety conditions and better work scheduling, prompting rank-and-file workers at Canada's second largest railroad to establish the CP Workers Rank-and-File Committee.

In an interview with the CP Workers Rank-and-File Committee, Pam Fraser, Paradis' mother, stated, “We thought that the Teamsters union would be a supportive partner in our initiatives to effect change but they went by the wayside.” “Unions,” she continued, “don't seem to have any power anymore. Workers cannot even strike.”

In its founding statement, the CP Workers Rank-and-File Committee advanced a program calling for workers' control of health and safety and scheduling, which the committee explained could only be achieved by building a mass movement of rail workers across North America.

“Let us organize a common struggle against the rampant profiteering and corporate-union-imposed dictatorship that currently dominates North America's railroads!” the statement declared. “If [CP Rail CEO Keith] Creel and his corporate buddies plan on building a multi-national railway to ship cargo and exploit workers from the Canadian Arctic to tropical Mexico, then we will build a multi-national worker-led counter-offensive of Canadian, American, and Mexican railroaders to stop corporate profiteering at the expense of our health, safety, and very lives.”

Regina-based lawyer Tavengwa Runyowa, whose legal team is representing two of the Field victims' families, recently spoke with the WSWS about the case. This is the second two of a two-part interview.

Part One examined Runyowa's views on the TSB report. Part Two will discuss the regulatory system more broadly and how it is rigged in favour of the highly profitable railroad operators.

In June 2021, two petitions initiated by Dylan Paradis' mother, Pam Fraser, were filed in parliament demanding that the Canadian government allow TSB investigators to make referrals of potential criminal violations to the RCMP and protect them from reprisals. The petitions were shelved after parliament was dissolved ahead of the September 2021 federal elections.

Two new parliamentary petitions were filed in early May. The first was initiated by Lori Desrochers. Her former partner, veteran conductor Kevin Timmerman, was killed in CN Rail's Saskatoon yard in 2015. “To this day,” Runyowa commented, “no public authority, including the CN Police, the RCMP, the Saskatoon Police Service, the TSB, Transport Canada, and Saskatchewan's Chief Coroner, has fully explained the details of Kevin Timmerman's death to his loved ones.”

“In fact, Saskatchewan's Chief Coroner, Mr. Clive Weighill, was the Chief of the Saskatoon Police Service when Kevin Timmerman died. It was his police officers and subordinates who documented that they handed over the Kevin Timmerman matter to CN Rail's police to investigate the very employer that they report to.”

“Years later, Mr. Weighill became the Chief Coroner who continues to insist that Kevin Timmerman's death was an ‘accident’. This was even after he agreed to reopen the coroner's investigation but refused to recuse himself from the file when Ms. Desrochers and Ms. Timmerman pointed to the conflict of interest between himself and his former police department that had allowed CN Rail to investigate itself in the ‘accident’.”

Lori's petition seeks a government-mandated inquiry into the impact of private railway police forces on public safety and the administration of justice in Canada and the US.

The second petition, initiated by Pam Fraser, seeks to replace private railway police forces with a federal public railway police of Canada that would be funded by the railway companies but answerable to an independent civilian oversight commission.

“With Lac Mégantic (a 2013 derailment and explosion that killed 47 people) and Field, there is this growing focus on the railway companies which have never really been challenged or had this level of scrutiny before,” commented Runyowa. “We're hoping these petitions will be a

galvanizing centre that forces the government to at least say something.”

The federal government’s continued sanctioning of the railways literally policing themselves isn’t Runyowa’s only complaint with the way Ottawa regulates the railways. “Beyond corporate self-policing, fatigue is another major and unresolved issue that the federal government has failed to act decisively on,” he insisted. “If you’re tired and you’re driving a multi-thousand-tonne train, you’re a danger to yourself and many others. If the Prime Minister cannot stand up and acknowledge that, then we’ve got serious problems.”

Runyowa’s initial focus is on reforming Sections 44 and 44.1 of the Railway Safety Act, which allows private corporations to operate police forces.

“However, we feel that amending the Act does not go far enough,” he said. “Removing any conflicts of interest but keeping the private police in place means that public police forces across the country will investigate all railway accidents depending on where they happen. Public police forces simply do not have the specialized railway expertise, will, and resources to properly investigate these cases. It will result in a patchwork of investigations of different competencies across the country.”

“In fact, both the CN Police Service and CP Police Service Chiefs of Police are members of the Canadian Association of Chiefs of Police (CACP). These railway police chiefs are corporate employees who answer to the companies’ corporate Chief Legal Officers, who is the final arbiter on all disciplinary issues relating to the Chiefs. This means that through their chiefs of police, CN Rail and CP Rail are effectively members of the CACP and exercise significant influence in shaping how railway incidents involving the companies are investigated.

“If the CACP sees CN Rail and CP Rail as law enforcement partners, how can Canadians trust that its public police forces would properly investigate these railway companies, even if the companies themselves stopped investigating themselves?

“A troubling example of the cozy relationship between the CACP and the railway companies is CP Rail’s sponsorship of the CACP 2019 Annual Conference. CP Rail provided that sponsorship several months after the Field, BC derailment, which the RCMP initially failed to investigate, and in a year when there were other deaths and serious injuries at the company. We asked the CACP to explain why it has accepted sponsorship from a party of interest in railway deaths occurring under its members’ watch, including the RCMP. The CACP refused to answer and told us to not contact them again.

“The fact that the police chiefs of publicly funded law enforcement agencies can display such hostility to accountability is shocking. It evokes the conduct one would expect in countries where the rule of law and accountability are token concepts. Beyond its members being publicly funded institutions, the CACP as an association also receives funding from the Government of Canada. Considering this double-dose of public funding and the CACP’s representation of most of Canada’s police forces, it is troubling that the CACP would accept the sponsorship of a railway company that its members are supposed to investigate in the public interest, while also giving railway companies a seat at the table to influence how its members will investigate those companies.

“Another troubling example is the CN Police Service’s participation in the creation of the Collaborative Protocol for Rail Death Investigations that the Ontario Association of Chiefs of Police launched in May of 2019. We have been unable to secure a copy of this document, but the last entities that should be allowed to work on the creation of the framework on railway death investigations are the railway companies who are often implicated in those deaths.”

Runyowa detailed how conflict of interest issues between the railway regulators and company police are rife. “We need police officers who are fully independent and TSB employees that do not work for the railways and are not looking for jobs with the railways after they retire,” he stated.

“We need really strong conflict of interest rules around that because I think it’s a combination of fear and the hesitance of jeopardizing lucrative future opportunities in the private sector that work together to prevent regulators from taking action.

“That’s one of the reasons why we’ve got serious issues with one of the TSB board members [Faye Ackermans] being a former CP rail employee. She worked there for 26 years or so and not in an unimportant capacity. By the time she finished, she was dealing with the safety portfolio. According to the board, she doesn’t take a pension from them, but that doesn’t matter. By taking part in preparing TSB reports into serious railway incidents in which her former employer was involved, and where she helped to build the safety culture, she is adjudicating her own legacy. Even if she left CP Railway many years ago, she is still dealing with her former colleagues who are tied to the culture she helped create, or at least worked in.

“When a devastating event such as the Field, BC derailment happens, and which is of such great consequence to her former employer and former colleagues, Ms. Ackermans must recuse herself from any involvement on that file. To our knowledge, she did not recuse herself and was involved in the drafting of the final report, which the Board can edit, notwithstanding what the investigator initially wrote. How can the victims’ families know if they are getting the whole truth when the TSB Board member with the most knowledge about railways was a senior and decades-long employee of the very company under investigation?

“Mr. Crawford, the TSB investigator on the ground, interpreted the evidence and used his independent judgment to say there’s something that needed to be referred for an independent criminal investigation. It was not up to people without railway experience and certainly not up to Ms. Ackermans, who has railway experience but is connected to the company in question, to second guess him and to deny his request to refer the matter to the RCMP. This is one of the key elements at the core of the lawsuit.

“We have to get rid of these conflicts of interest and the revolving door between industry and the public sector. And we have to make sure that the police that are supposed to be investigating are taken out of the railway companies’ control and given the proper resources to conduct rigorous investigations, including hiring non-policing forensic experts.”

Pam Fraser’s legal team currently has two sets of lawsuits in the courts. The first is directed against CP Rail and the CP Police, and concerns the defendants’ alleged role in the fatal derailment and how they handled the immediate aftermath. The second set concentrates on CP Rail’s alleged efforts to impede an independent criminal investigation and the TSB’s removal of Don Crawford from the investigation after he recommended a criminal investigation by the RCMP.

“The law requires all police officers to be operationally independent from the authorities that hire and pay them,” Runyowa said. “But it seems like the railway chiefs of police, who are corporate employees who answer to the corporations’ Chief Legal Counsel, are mere extensions of the corporate personality.”

Runyowa concluded by stressing that the political decision to deregulate the railways has proven disastrous for worker and public safety. “What really needs to be emphasized is that we can talk about brakes, fatigue, weather, and it’s very easy to get lost in the minutia,” he explained. “But we need to figure out why all of this is happening. There’s a profit motive on the one hand, and the fact that our government made the decision to deregulate the railway industry on the other. Deregulation means that the government turns around and takes a nap while corporations get to grade their own homework. Lo and behold, they always pass with flying colours.

“It’s really important not to underestimate the extent to which the deregulation of the railway industry basically allowed the federal government to give the railway companies keys to the castle. It’s only been with a significant amount of luck that there hasn’t been another big

disaster like Lac-Mégantic, which was so devastating in its human toll.

“This bigger piece needs to be fixed and the only person who can fix it is the Prime Minister. He’s avoided commenting on this issue as his ministers of transport have. But we can talk about the TSB report ad nauseam. I don’t feel that that report is going to make any change that is significant.

“The recommendation on automatic brakes may get accepted, but we understand from various sources that this [change] is already a widespread practice. If so, by formalizing it, the Minister of Transport would be giving the appearance of taking bold and decisive action when, in fact, he is merely reinforcing a pre-existing trend. And, when you have problems that can manifest in 50 different ways, you can have a derailment any time. It’s a massive infrastructure involving many people and moving pieces running across the continent and there are a hundred different ways that things can go wrong, all of which are linked to profit.”



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