

**FEDERAL COURT**

B E T W E E N:

*(Court Seal)*

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F I L E D	FEDERAL COURT COUR FÉDÉRALE  1-MAY-2024  Svetlana Dobrota (A.B) Vancouver, BC	D É P O S É
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CANADIAN PACIFIC RAILWAY COMPANY

Applicant

and

CANADIAN TRANSPORTATION ACCIDENT INVESTIGATION  
AND SAFETY BOARD

Respondent

AN APPLICATION UNDER s.44 of the *Access to Information Act*, RSC 1985, c A-1

**NOTICE OF APPLICATION**

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Applicant. The relief claimed by the Applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Calgary, Alberta.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor or, if the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date 1-MAY-2024 Issued by Original Signed By Svetlana Dobrota  
(Registry Officer)

Address of  
local office: Canadian Occidental Tower  
635 Eighth Avenue S.W.  
4th Floor  
Calgary, Alberta  
T2P 3M3

TO CANADIAN TRANSPORTATION ACCIDENT INVESTIGATION  
AND SAFETY BOARD  
200 Promenade du Portage  
4<sup>th</sup> Floor, Place du Centre  
Gatineau, Québec  
K1A 1K8

AND TO: Office of the Information Commissioner of Canada  
30 Victoria St.  
Gatineau, Québec  
K1A 1H3

AND TO: The Attorney General of Canada

## APPLICATION

THIS IS AN APPLICATION FOR JUDICIAL REVIEW pursuant to section 44(1) of the *Access to Information Act*, RSC 1985, c A-1 (the “*Act*”) in respect of the decision of the Canadian Transportation Accident Investigation and Safety Board (the “Board”) dated April 12, 2024 in its file no. A-2022-00055 (the “Decision”) to disclose certain records (the “Confidential Records”) which had been requested to be disclosed under the *Act*.

THE APPLICANT MAKES THIS APPLICATION FOR:

1. An Order declaring that subsection 20(1) of the *Act* applies to the Confidential Records and that they are therefore exempt from disclosure under the *Act*;
2. An Order prohibiting the Board from disclosing the Confidential Records;
3. In the alternative, an Order severing the Confidential Records pursuant to section 25 of the *Act*;
4. An Order awarding the Applicant its costs of this proceeding including all disbursements and applicable HST; and
5. Such further and other relief as counsel may request and this Court deems just.

THE GROUNDS FOR THE APPLICATION ARE:

1. The Applicant, Canadian Pacific Railway Company (doing business under the name Canadian Pacific Kansas City “CPKC”) operates an interprovincial and international railway in North America. CPKC is one of the six Class I railway companies in North America, operating in a highly competitive transportation environment where the protection of confidential operational and business information is essential to the safety and success of its operations.
2. By letter dated April 5, 2023, the Applicant was informed of a request made pursuant to the *Act* for the following information (the “Request”):

“R19C0015 – Amended Request: R19C0015 “Please provide: A copy of the Safety Hazard Report; - The mid train handling data from 2149:33 to time of derailment; - Inbound and Relief crew hours of service from Feb. 3 – Feb 4, 2019”.

3. The letter attached records, including the Confidential Records, and invited the Applicant to make submissions as to why some or all of the information should not be disclosed to the public.
4. By letter dated July 26, 2023, the Applicant informed the Board that it objected to the disclosure of the records, including the Confidential Records, on the grounds that the records were exempt from disclosure under subsection 20(1) of the *Act*.
5. By way of interim correspondence, the Board proposed partial severance of the Confidential Records and sought the Applicant’s position.
6. By letter dated April 12, 2024, the Board issued the Decision in which the Board informed the Applicant that it intended to disclose the Confidential Records in their entirety on the basis that they were not exempt from disclosure under subsection 20(1) of the *Act*.
7. The Confidential Records contain confidential commercial and/or technical information of the Applicant that was supplied to the Board in confidence and is exempt from disclosure under paragraph 20(1)(b) of the *Act*.
8. The Applicant provided the Confidential Records to the Board, or an investigator of the Board, on the reasonable expectation that the Confidential Records would be treated confidentially and/or were protected by privilege pursuant to the *Canadian Transportation Accident Investigation and Safety Board Act*, SC 1989 c 3.
9. The Confidential Records contain information the disclosure of which could reasonably be expected to prejudice the Applicant’s competitive or financial

position within the meaning of paragraph 20(1)(c) of the Act, and as such, must not be disclosed.

10. In making the Decision with respect to the Confidential Records, the Board failed to discharge its duty to refuse to disclose information falling under subsection 20(1) of the Act, despite having previously acknowledged that at least a portion of the Confidential Records were exempt from disclosure by proposing partial severance.
11. Sections 20(1), 44, 47, 51 of the *Access to Information Act*, RSC 1985, c A-1.
12. Section 30 of the *Canadian Transportation Accident Investigation and Safety Board Act*, SC 1989, c 3.
13. Part 5 and Rules 151 and 152 of the *Federal Courts Rules*, SOR/98-106.
14. Such further and other grounds as the Applicant may advise and this Honourable Court may permit.

This Application will be supported by the following material:

1. The affidavits to be filed by the Applicant in this proceeding; and
2. Such further and other materials as the Applicant may advise and this Honourable Court may permit.



May 1, 2024

I HEREBY CERTIFY that the above document  
is a true copy of the original *issued out of*  
the Court on 1-MAY-2024

Dated 1-MAY-2024



*Svetlana Dobrota*

**BLAKE, CASSELS & GRAYDON LLP**

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