



The Honourable Omar Alghabra PC, MP
Minister of Transport
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January 3, 2023

Esquimalt & Nanaimo Railway

Dear Minister Alghabra,

As a national organisation representing passengers and sustainable public transportation from coast to coast, we are writing to ask you take immediate action to secure the future of the Esquimalt & Nanaimo Railway on Vancouver Island.

As you will be aware, the B.C. Court of Appeal has set a March 14, 2023 deadline for Canada to respond in *Snaw-Naw-As First Nation vs Attorney General for Canada and Island Corridor Foundation*. The Court's ruling was deeply critical of Canada for its failure to answer the original case.

The Island Corridor Foundation, which is comprised of regional districts and 14 First Nations, was also seeking funding from Infrastructure Canada to repair and reactivate the line, which became stalled in 2017 as a result of the lawsuit, seeking reversion due to inactivity, creating a paradox.

“What is conspicuously absent in all of this is Canada. Rather than acting in the public interest and engaging in an assessment of whether the rail corridor continues to be required to fulfill the public purpose for which it was created, Canada has withdrawn any consideration of infrastructure funding pending resolution of this litigation.

“Canada’s absence also leaves ICF in limbo in its quest to secure infrastructure funding, and alone in its defence of this litigation...ICF is not entitled to hold the lands indefinitely without some restoration of rail service, or a concrete plan to do so...”

As we understand the situation, you can resolve this paradox by confirming to the Court that Canada still considers the railway to be “in the public interest” and a “Crown Corridor” as defined in the Te'mexw Treaty Association Agreement-in-Principle, which the federal government wishes to retain for railway use to secure the long-term future of sustainable transportation for all people on Vancouver Island.

It would be appropriate to accompany this statement with confirmation that Canada remains committed to the modern treaty process, including addressing the land base question.

Such a statement of Canada's position, and a willingness to work in partnership to develop a funding agreement to advance the project, would clear the way for Canada and British Columbia to undertake a detailed evaluation of the business case that has been prepared by the ICF, which we believe is prudent and financially sound, avoiding expenditures where they are not needed, and also identifying industries waiting to be served by rail.



Although we understand that Transport Canada awaits guidance from the Province of British Columbia, and that shortline railways fall under Provincial jurisdiction, the Government of Canada has a clear responsibility for the matter before the Court:

- The Government of Canada, through then-Transport Minister David Collenette, stepped in to prevent the railway from being abandoned in 2002, setting the stage for its transfer from Canadian Pacific Railway to what became the ICF.
- VIA Rail Canada continues to assert its objective of reinstating passenger service on Vancouver Island, suspended since 2011, in its annual Corporate Plans.
- The Government of Canada is responsible for reconciliation with First Nations. It was the Government of Canada that took their ancestral lands for the railway, and it was Canada, not British Columbia, which was sued by the Snaw-Naw-As First Nation.

Should the Court deadline not be met, the rail corridor – the railway, trails, and other properties – falls into limbo and faces piecemeal reversion to individual Nations. If the corridor is broken up, the opportunity to provide low-carbon, all-weather mobility and logistics in Vancouver Island would be lost forever, yet Highway 1/19 already suffers worsening congestion and increasingly frequent closures over the Malahat due to severe weather, through which the railway would be able to operate.

It would also be at best a Pyrrhic victory for the plaintiffs. Canada should be under no illusions that the narrow railway strip at issue, alongside the now much wider highway corridor, would materially address the need for a truly adequate land base or contribute to fulsomely addressing the injustices inherent in the original Douglas Treaties. Moreover, the only other option to support the future growth of the Island's population and economy would be the further widening of that highway at enormous cost.

Meanwhile, for Canada to remain silent would be tantamount to contempt for the Court and would signal Canada's disinterest in constructively engaging with the reconciliation and modern treaty process and in fulfilling its moral obligation to ensure the personal safety of Indigenous Women and Girls, and all other peoples, when traveling on the Island.

We are thankful for Canada's investments in the Arctic Corridor and support of the Keewatin Railway and Tshiuetin Rail Transportation, all of which contribute to reconciliation. With strong First Nations representation on the ICF, we believe Vancouver Island presents a similar opportunity for federal leadership that empowers all peoples to move forward together.

Sincerely,

T.W. Johnson

Terence Johnson
President, Transport Action Canada