

Ratepayers' Meeting 2021
Village of Elbow Council Response
Regarding "Canadian Pacific (CP)" Pedestrian Rail Crossing
as presented by Councillor Trevor Dament

The Canadian Transport Agency (CTA) does not "advocate" causes. The Agency is an independent quasi-judicial tribunal that can help resolve disputes between railway companies and road authorities when they want to construct or reconstruct a road crossing.

There are 3 possible dispute resolution options: *Facilitation, Mediation or Adjudication*

Adjudication is the formal process where our Members would either authorize or deny a crossing request based on the arguments presented by the parties. The Municipality (Elbow) never submitted a formal application to the Agency for this case.

Facilitation and Mediation are informal processes. This case never reached the mediation phase. The case officer for this case gathered the information and forwarded it to CP to see if they wanted to try to resolve the issue directly with the Municipality. From that point on, the parties negotiated directly with one another and this constituted the Facilitation phase.

- CP's stance is a "No" to mediation if we are not willing to close an existing crossing.
- CTA has never advocated a 5th crossing (pedestrian or otherwise).
- CP would advocate alternative measures such as signage or fencing if closure of an alternate crossing is not an option. This would be the Village of Elbow's expense. If approved for RSIP it would cover up to 80% of the Village's expenses.
- The Village of Elbow's argument during the Adjudication process would have to show that a 5th crossing is required to mitigate safety issues. While 4 others are available within a 1 mile radius I suspect that alone strengthens CP's argument.
- With our frequency of trains and number of available crossings, a tribunal ruling in our favour is quite low.
- Neither CP nor CTA can mandate another Road Authority to close because of our request.
- If the CTA ruled in our favour, they cannot mandate Transport Canada RSIP funding.
- An application fee of \$2500 is required along with the engineered drawings (at the Village of Elbow's cost) before we can apply for RSIP funding.
- RSIP funding is not automatic. It is allotted on a risk management basis. Again, with train frequency and the number of available and active crossings we are considered "quite low" as a risk factor and may never be approved for any funding at all.
- This application must be submitted before any construction begins.

QB ruling Montreal vs CP was in court for several years and even after the judge's ruling in Montreal's favour in 2019 construction hasn't been started.

****COMMENT ADDED BY THE CTA****

The ruling came out in 2019 but the City submitted its application for Adjudication in 2017. It is Decision No. 34-R-2019. In the Decision, the Agency authorized 3 pedestrian crossings at the City's costs. I do not know for sure that NO construction was ever started but I can tell you that there have been numerous news articles on the subject and that as recently as this June, the Agency was still receiving enquiries from Citizens who are not happy with the way things are.

Closing Statement

In summary, it seems unlikely that the Village of Elbow would be able to successfully argue the need for another crossing and the risk of considerable costs are an additional detriment.

While Council is very concerned with everyone's safety, we neither maintain nor sanction use of the "shortcut" used to traverse the tracks other than usual mowing of the ditches on both sides. We encourage using one of the 4 active crossing available to you.

Village of Elbow Council
August 23, 2021