

Appendix C:

Communications with
Canadian Association of
Police Chiefs regarding
Railway Police

August 19, 2020

BY EMAIL & COURIER

Chief Constable Adam Palmer
President: The Canadian Association of Chiefs of Police
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Email: cacp@cacp.ca

ATTN: Deputy Chief Constable Palmer, Deputy Chief Constable Howard Chow and Deputy Constable Norm Lipinski.

RE: Inquiry into the jurisdiction of Police Services across Canada to investigate railway accidents, the interaction between Public and Private Police services in Canada, and the willingness of CACP to assist in lobbying to amend the *Railway Safety Act*.

We are writing to you in your capacity as the President of the Canadian Association of Police Chiefs (CAPC). We have copied Deputy Chief Constable Howard Chow and Deputy Constable Norm Lipinski in their capacities as co-chairs of the CAPC's Law Amendments Committee.

Our firm represents Tara Jijian, Lori Desrochers, and Kaity Timmerman, whose loved ones, Jaime Jijian and Kevin Timmerman, died while working at Canadian Pacific Railway (CP Rail) and Canadian National Railway (CN Rail) properties, respectively. Our clients have actively sought answers regarding the deaths of Jamie and Kevin, but both CP Rail and CN Rail (and their respective police forces) have persistently refused to provide any information regarding the deaths. Further, the RCMP, Regina Police, and Saskatoon Police all declined to investigate the workplace deaths of Jamie Jijian and Kevin Timmerman, in deference to CP Police and CN Police. Before presenting our questions and requests to you, we will provide some context regarding the Canadian National Police Service, the Canadian Pacific Police Service, and the impact of Sections 44 and 44.1 of the *Railway Safety Act* on railway-related policing

in Canada. We have the legal and evidentiary material to support the following background and are prepared to share it upon request.

Railway Safety Act Concerns

Our concerns regarding CN Police and CP Police are entrenched in Sections 44 and 44.1 of Canada's *Railway Safety Act* (the Act). See the Appendix to this letter for the text of the provisions. These provisions of the *Act* allow Canada's railway companies to create and control their own private police forces. These police forces are more than enhanced security units. They have all the powers of other public police forces such as the RCMP. However, their officers are full employees of the company; answer directly to its private corporate management. The officers can be dismissed without the companies seeking the permission of the courts that appointed them. Further, unlike police forces such as the RCMP and your other members, the railway police have no independent oversight body with governmental or civilian representation. The railway police services are wholly owned divisions of the railway companies and are not independent from them.

Although this situation is less of a concern when the railway police forces attend to policing incidents such as the theft of railway property, the problem arises when deaths, derailments, explosions and oil spills may be the direct result of company policy, action, or inaction. Although the private railway police officers swear oaths to uphold the law, as a practical matter, it is not realistic for a junior constable to investigate and question the senior management and corporate board that employs them.

For example, the 2019 Field, British Columbia derailment that killed three CP Rail workers and the recent derailment that spilled 1.2 million liters of oil in Guernsey, Saskatchewan, raise questions about the railway company's potential legal liability. However, when CP Police Service has primary, exclusive, or overlapping jurisdiction in relation to public police forces, this raises questions about whether thorough, fair, and independent investigations are being conducted into these human and environmental tragedies. To date, the RCMP has not actively investigated railway deaths to determine whether any criminal charges are warranted under the *Criminal Code*, including under the *Westray* amendments to the *Code*. Despite the hundreds of railway-related deaths across Canada over the last decade, and the numerous derailments and other incidents, the RCMP and other provincial and municipal police forces have deferred to the railway companies' own police forces.

With the exception of Lac Mégantic, there have been few, if any, independent investigations, criminal charges, or prosecutions of railway companies and their senior leadership. This is troubling especially given that the Transport Safety Board (TSB) reported 1172 railway related incidents in 2018 alone, a 7% increase over 2017 and a 13% increase from the 5-year average of 1035. The TSB also reported 57 rail-related deaths in 2018. It is statistically improbable that none of these incidents necessitated charges.

This outcome is not surprising given the railway companies control and employment of the very police officers who report to the senior management of the railway companies.

Clarifications we seek from the CACP.

We would like to be clear that we are not asking the CACP to become involved in the on-going litigation regarding Kevin's and Jamie's deaths. However, the CACP can provide clarity on the following questions regarding how its member police services interact with the private railway police services:

1. Are the CN Police Service and CP Police Service members of your organization?
2. Do the CACP member Police Services have any jurisdiction to investigate railway deaths, derailments, and other disasters? If so, is this jurisdiction concurrent, overlapping, or subordinate to the jurisdiction of the railway police services such as CP Police Service and the CN Police Service?

Context: Under Section 44(1)(3) of the *Railway Safety Act*, the railway police forces, including the CP Police Service and the CN Police Service, have jurisdiction within 500 meters of property that the railway company owns, possesses, or administers.

While we understand that cooperation between police forces is common, we are interested in which police force takes precedence or exclusive jurisdiction over any such investigations.

3. Do CACP members or the organization as a whole have formal or informal policies of handing over investigations regarding **railway worker** injuries, deaths, or railway disasters to the relevant railway police forces?
4. Do CACP members or the organization as a whole have formal or informal policies of handing over investigations regarding the injuries, deaths of **members of the public**, or railway disasters, to the relevant railway police forces?
5. Do CACP member Police Services (apart from railway police force, if they are members) have similar powers to arrest and charge persons for alleged offences relating to railway property, even if the alleged offender is not on the property and did not commit the alleged offence within 500m of railway property?

Context: Section 44(4) of the *Railway Safety Act* extends the railway polices' jurisdiction beyond the physical 500m on either side of railway property. The *Act* extends the railway police jurisdiction to offences that relate to the railway context, even if the person was not arrested in the area, or the alleged offence did not occur in the area. We would like to know whether the CACP member Police Services have identical, overlapping, concurrent, or any jurisdiction over such situations, or whether they are subordinate to the railway police under the *RSA*.

6. Sudden and/or violent deaths in Canada cannot be presumed to preclude foul play or criminal conduct at the outset. To your knowledge, when a CACP member Police Service (apart from railway police) receives a report of a death on railway property, as a matter of policy, practice, or law, do your members routinely investigate these deaths to exclude foul play or criminal negligence?
7. Do the CACP member Police Services' (apart from railway police) have the jurisdiction to mount criminal investigations under Sections 217.1, 22.2, 220, 221, or any other provisions of the *Criminal Code* for matters arising within 500m of railway property, or relating to matters that arose from railway property as set out under Section 44(4) of the *Railway Safety Act*?
8. Do the CACP's member Police Services have officers or investigators who are specifically trained in the investigation of industrial incidents and railway related incidents in particular?

Context: This question goes beyond the investigation of criminality that happens on railway property (e.g. one worker assaulting another). We are concerned with the CACP Member Police Services' technical capacity to investigate industrial incidents to distinguish between true "accidents" and criminal acts (including criminal negligence) that causes injury, death, threats to public safety and environmental damage.

Note that we are not referring to regulatory investigations such as those conducted by Transport Canada, the Transport Safety Board or occupational health and safety authorities. None of these investigations can give rise to criminal proceedings under the law. We are interested in criminal investigations as contemplated under the Westray amendments to the *Criminal Code* (Section 217.1) or related provisions such as Sections 22.2, 220, and 221. Such industrial incidents can be highly technical in nature.

The scenes of the railway incidents may not immediately indicate the role of criminal negligence or foul play as is often evident in crimes that most public police forces are engaged in. Typically, specially trained investigators with applicable forensic experiences are required to properly investigate complex industrial incidents.

We know that numerous police departments in British Columbia signed a memorandum of understanding with the RCMP and WorkSafe BC to provide specialized investigations services for such complex industrial accidents. Where founded, these investigations could lead to criminal referrals to the Attorney General of BC. However, this is only for British Columbia. We would like to know whether such capabilities exist in other jurisdictions in which your members operate.

9. If it is apparent that a railway death, injury, explosion, spill, or derailment may have been the outcome of corporate misfeasance, do CACP member Police Services (apart from railway police, if they are CACP members) have the authority to claim primary or exclusive jurisdiction over the investigation from the railway police services that answer to the railway companies?
10. If a railway police officer is alleged to have committed a criminal offence while engaged in their duties, do the CACP member Police Services' have the authority to investigate that potential crime? Have any CACP members ever conducted such investigations?
11. If a railway company own and controls its own police such as CP Rail and CN Rail, do the CACP member Police Services' still have the jurisdiction to investigate that **company**, its executives, board, or employees for potential *Criminal Code* offences? Have any CACP member Police Services ever done so?
12. When railway police request the help of CACP member Police Services' in carrying out tasks such as dealing with protests, jailing or transporting persons in custody, do the railway companies that control the police services pay the member Police Services for that service?
13. If a member of the public requests a CACP member Police Services to investigate a death, derailment, environmental disaster, or serious injuries that were allegedly caused by the railway company, its internal policies, or actions, do your member Police Services have the jurisdiction to initiate that investigation and without the involvement of the company's railway police forces?

We understand that the CACP is not a monolithic organization which imposes policies upon its members. However, any answers the CACP can provide to the above queries will be appreciated, including the CACP's formal position on whether private railway corporations should control police forces with the same public powers that your members exercise.

CACP and Amending the *Railway Safety Act*.

The mandate of the CACP states that: "The Association is dedicated to the support and promotion of efficient law enforcement and to the protection and security of the people of Canada". In keeping with this commitment, we request that the CACP joins us in advocating to the Federal Government and Parliament of Canada the following reforms to the *Railway Safety Act*:

1. The amendment of the *Railway Safety Act* so that Canadian railway companies cannot own and control their own police forces with full public powers. This reform will bring the RSA in line with the principle of police independence. Police forces should not answer to private corporations (CN Rail and CP Rail) both of which are controlled, at least in part, by non-Canadian management, shareholders, and boards of directors.

The CEO of CP rail, Mr. Keith Creel, is an American citizen. About half the board of directors of CN Rail are also American citizens. The largest single shareholder in CN Rail is Cascade Investment LLC, the private investment vehicle of Mr. Bill Gates. The issue is not foreign participation in Canadian corporate life. The problem is the private ownership, control, or undue influence of federal Canadian police forces by private foreign persons and entities.

We are not currently asserting that these foreign persons and entities have done anything wrongful with respect to the railway police forces. However, at the very least, that ownership, control, and influence alone is inconsistent with the principle of police independence.

2. To advocate for the creation of a new, independent, Public Railway Police of Canada, still funded by the railway companies but fully controlled by an independent oversight commission with civilian, government, and railway worker representation.
3. To advocate for a fully funded team of independent railway safety experts from within and outside of Canada to conduct criminal investigations into all railway-related deaths of Canadians in the past ten years, including those of Jamie Jijian and Kevin Timmerman.

Conclusion

We ask you to advocate for the above actions by challenging the federal government and Parliament to promote the necessary legislative reforms. Private railway companies must not be allowed to police themselves. Corporate controlled police forces threaten the Rule of Law and provide impunity that encourages unsafe workplace practices.

We look forward to hearing from you,

Tavengwa Runyowa

Tavengwa Runyowa
(Counsel for Tara Jijian, Lori Desrochers, and Kaity Timmerman)

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Cc by courier: Deputy Chief Constable Norm Lipinski
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APPENDIX ONE

The relevant sections of the *Railway Safety Act*.

Sections 44 and 44.1 of the *Railway Safety Act* read as follows:

Police Constables

Appointment

44 (1) A judge of a superior court may appoint a person as a police constable for the enforcement of Part III of the [Canada Transportation Act](#) and for the enforcement of the laws of Canada or a province in so far as their enforcement relates to the protection of property owned, possessed or administered by a railway company and the protection of persons and property on that property.

Limitation

(2) The appointment may only be made on the application of a railway company that owns, possesses or administers property located within the judge's jurisdiction.

Jurisdiction

The police constable has jurisdiction on property under the administration of the railway company and in any place within 500 m of property that the railway company owns, possesses or administers.

Power to take persons before a court

The police constable may take a person charged with an offence under Part III of the [Canada Transportation Act](#), or any law referred to in subsection (1), before a court that has jurisdiction in such cases over any area where property owned, possessed or administered by the railway company is located, whether or not the person was arrested, or the offence occurred or is alleged to have occurred, within that area.

Court's jurisdiction

The court must deal with the person as though the person had been arrested, and the offence had occurred, within the area of the court's jurisdiction, but the court may not deal with the person if the offence is alleged to have occurred outside the province in which the court is sitting.

Dismissal or discharge of police constable

A superior court judge referred to in subsection (1) or the railway company may dismiss or discharge the police constable and the dismissal or discharge terminates the powers, duties and privileges conferred on the constable by this section.

Procedures for dealing with complaints

44.1 (1) If one or more police constables are appointed with respect to a railway company, the railway company must

- (a) establish procedures for dealing with complaints concerning police constables;
- (b) designate one or more persons to be responsible for implementing the procedures;
and
- (c) designate one or more persons to receive and deal with the complaints.

Procedures to be filed with Minister

(2) The railway company must file with the Minister a copy of its procedures for dealing with complaints and must implement any recommendations concerning how the procedures are to be made public.

Re: CACP and Jurisdiction over Railway Related Matters

Tavengwa Runyowa <law@runyowa.com>

Wed 2020-09-09 2:54 PM

To: Peter Cuthbert <peter.cuthbert@cacp.ca>

Attn: Mr. Cuthbert,

I received your email below. The CACP's refusal to get involved in any efforts to end corporate controlled railway police forces is on the record, and amounts to an endorsement of the principle. This is inconsistent with the CACP's mandate as stated on the CACP website: "safety and security for all Canadians through innovative police leadership".

If the security of all Canadians matters to the CACP, your association should at least be concerned about the hundreds of railway-related deaths that required criminal investigations but that your members have deferred to the very railway companies that needed to be investigated.

The CACP's response to our letter is also inconsistent with the first and third sub-parts of CACP's "Advocacy" Strategic Pillar as provided on the CACP's website, which states:

1. We believe in advancing our profession and to promoting trust and legitimacy in our police services.
3. We counsel and work with government agencies to advance legislation, regulations and policies that support crime prevention, facilitate effective investigations, solve problems, and support a victim-centered and trauma-informed approach.

It does not promote public trust and legitimacy in the CACP's members when their umbrella organization expresses indifference towards corporatized policing and the numerous victims who have died on the railways. Nor does the CACP's response to our letter reflect an organization that is sincerely working to "facilitate effective investigations". As with the other quotes on the CACP's website, this appears to be a slogan than a bona fide commitment to ensuring that police investigations are effective in every context, including in the railways context.

The CACP appears unaware about how many families have been devastated and left with no answers about how their loved ones died on the railways. We urge the CACP to reconsider its refusal to seek reforms to private railway policing because your association's inaction would amount to an endorsement of the status quo. As more Canadians learn about the privatized policing on our nation's railways and the CACP's indifference to it, public confidence in your association and stated goals will be seriously undermined.

Further, beyond seeking the CACP's involvement in de-privatizing law enforcement in the railway context, our letter also asked the CACP a list of questions that your response below does not address. As the representative association of public police forces that have the duty to be transparent, it is troubling that the CACP would decline to answer the most basic questions that citizens are entitled to know about their police forces.

For example, through your response, is the CACP stating that it cannot disclose:

1. Whether or not the CP Police and CN Police services are members of the CACP? Is that a secret?
2. Whether the CACP members have jurisdiction over railway incidents? Is that a secret?
3. Whether your members ever investigate railway incidents? Is that a secret?
4. Whether your members have any training in investigating railway incidents? Is that a secret?
5. Whether your members endorse the idea of deferring criminal investigations to police forces that are owned and controlled by the companies that need to be investigated? Is that a secret also?

These questions go to the heart of law enforcement, a public function whose basic structures and policies should be a matter of open and candid disclosure. Your members are funded through taxpayer funds. In an open, democratic society where the rule of law is supposed to govern, it is troubling that Canada's police chiefs, the top law enforcement officers in the country, would proactively avoid responding to citizen requests about their policing powers and jurisdiction.

Again, we ask for the CACP's response to the questions we asked in our letter of August 19, 2020. Canadians have the right to know the powers and obligations of the police forces that are supposed to serve and protect them.

We look forward to your response.

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From: Peter Cuthbert <peter.cuthbert@cacp.ca>
Date: Wednesday, September 9, 2020 at 1:49 PM
To: Tavengwa Runyowa <law@runyowa.com>
Cc: Peter Cuthbert <peter.cuthbert@cacp.ca>
Subject: CACP and Jurisdiction over Railway Related Matters

AttentionTravengwa Runyowa

On behalf of the President of the Canadian Association of Chiefs of Police (CACP) , Chief Bryan Larkin and the Co Chairs of the CACP Law Amendments Committee , DC Norm Lipinski and DC Howard Chow , I wish to confirm receipt of your correspondence , dated Aug. 19, 2020 concerning the above subject matter . The Association have consulted with our legal advisers and I am sorry to advise you that the CACP have no intent in getting involved in this private litigation nor will be answering any of the proposed questions.

Sincerely:

Peter Cuthbert
Interim Executive Director
CACP

ATTN: Chief Larkin et. al. - Letter Requesting Action Regarding The CN Police and CP Police Membership In The CACP And Railway Policing In Canada.

Tavengwa Runyowa <law@runyowa.com>

Wed 2021-03-03 5:13 PM

To: cACP@cACP.ca <cACP@cACP.ca>; peter.cuthbert@cACP.ca <peter.cuthbert@cACP.ca>

Cc: Christina Bender <christina.bender@runyowa.com>; Brandon Cain <brandon.cain@runyowa.com>

📎 1 attachments (2 MB)

LETTER TO CACP ON TERMINATION OF CP POLICE AND CN POLICE MEMBERSHIP - March 3rd 2021 - With Attachments.pdf;

Attn: Chief Bryan Larkin, Chief Constable Adam Palmer, Director Peter Cuthbert, Deputy Chief Constable Howard Chow, and Deputy Chief Constable Norm Lipinski:

I represent the families of CP Railway and CN Railway employees whose loved ones died at work in the past ten years. On August 19, 2020, I sent a letter to the Canadian Association of Chiefs of Police ("CACP") to inquire about the criminal investigation of railway fatalities, serious injuries, and other incidents (letter included in attached document). The focus of my letter was on the jurisdiction of CACP members to investigate these incidents, and their jurisdictional relationship with the Canadian National Railway Police Service ("CN Police") and the Canadian Pacific Police Service ("CP Police"). In my clients' cases, the CN Railway and CP Railway's corporate-owned police forces exercised jurisdiction over the death investigations, to the exclusion of public police forces (CACP members).

In September of 2020, Mr. Cuthbert replied to me on behalf of the CACP. In his email, he refused to provide any answers to our questions, including whether the CN Police and CP Police were members of the CACP. He also declined to answer questions about the jurisdictional relationship that CACP members have with the CP Police and CN Police. On the same day, I replied to Mr. Cuthbert's email. In my response, I detailed how the CACP's mandate and the public nature of its members' duties required the CACP to provide a minimum level of transparency about the issues we raised. I restated our request for the CACP to respond to our questions but neither Mr. Cuthbert nor anyone at the CACP replied to my email (correspondences also attached).

In the attached package, we raise concerns about serious conflicts of interest and miscarriages of justice arising from the CACP's relationship with CP Police and CN Police. For example, the CN Police and CP Police are the wholly-owned subsidiaries of two private, for-profit corporations, CN Railway and CP Railway, respectively. Under the Westray amendments to the *Criminal Code*, as employers, these corporations are the default suspects in criminal investigations of workplace injuries and fatalities. And yet, both private corporations, through the police forces that they control, are members of the CACP. This is problematic because CACP's public police members are responsible for investigating these very companies in the event of railway deaths, fatalities, serious injuries, and other incidents.

In the attached letter, we also raise concerns about CP Railway's apparent sponsorship of the CACP's 2019 Annual Conference. CP Railway proudly announced this sponsorship of the CACP conference in 2019, after CP Railway Train 301 derailed near Field, BC, killing three employees.

https://cACP.ca/index.html?asst_id=1976

The RCMP initially declined to criminally investigate the Field, BC incident, leaving that to CP Railway's privately owned police force, which answers directly to corporate management, and has no independent civilian oversight body. As you know, the CP Police closed its criminal investigation into the Field, BC derailment after a month. CP Railway also terminated Constable Mark Tataryn after he concerns about CP Railway's corporate interference with the CP Police investigation in which he was involved. The RCMP only launched a criminal investigation into the Field, BC incident in December 2020, and only after persistent media scrutiny and pressure from various advocates.

After extensive research and queries, we have found no case where any CACP member has ever criminally investigated either CP Railway or CN Railway for a workplace death, serious injury, or toxic spill. This is despite the facts that there have been hundreds of deaths, serious injuries, toxic spills and other incidents in the past few decades. As you know, the TSB has no authority to attribute fault or conduct criminal investigations so only public police forces (CACP members) have that mandate. CN Railway and CP Railway cannot criminally investigate and exonerate themselves. The inaction of public police forces and their invariable deference to the very corporations they should be investigating reflects a serious and longstanding vacuum of criminal accountability for railway deaths, serious injuries, and other incidents. This inaction is also a stain on the administration of justice in Canada. As we detail in the attached package, the time has come for:

- A. The CACP to terminate the membership and collaborative involvement of CP Police and CN Police in the CACP;
- B. The CACP to publicly commit to proactively ensuring that its members conduct full criminal investigations into railway deaths, serious injuries, and environmental disasters without deferring to, or involving, the CN Police and CP Police;
- C. That the CACP publicly commits to conducting criminal railway investigations in which CN Railway and CP Railway are regarded as presumptive suspects and not as colleagues (as required under the Westray laws);

D. That the CACP formally requests the Government of Canada and the Parliament of Canada to repeal Sections 44 and 44.1 of the *Railway Safety Act* which authorizes Canada's private railway companies to own and control police forces with full criminal law enforcement powers. In the attached letter we detail two alternatives that will allow these companies to effectively secure their operations and protect the public without owning a statutory police force. These alternatives include transforming their companies' police forces into **private security companies**, and the adoption of a **contract policing services** (further details in attachment).

E. That the CACP provides responses to the questions I asked in my August 2020 letter;

F. That the CACP discloses what other sponsorship, financial or in-kind, have CN Railway and CP Railway given to the CACP.

Private police forces that facilitate the ability of private corporations to criminally investigate themselves are vestiges of the 19th Century. Corporatized police forces that are solely answerable to private shareholders do not belong in modern Canada. Further, under the *Railway Safety Act*, these police forces also exercise jurisdiction over aboriginal lands and peoples who have had a troubled history with corporate policing. Beyond that concern, there are serious constitutional questions about whether Canada's aboriginal peoples can even be subjected to the criminal jurisdiction of private corporations.

As Canada's highest and most authoritative police authority, the CACP has the duty to safeguard the integrity of the criminal justice system. Adopting and advancing the steps we have presented above and in the attached package will protect that integrity.

We hope that you will confirm the CACP's imminent intention to implement our requests in full, and look forward to your response.

Thank you,

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March 2, 2021

– BY EMAIL –

Chief Bryan M. Larkin
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Chief Constable Adam Palmer
Former President, The Canadian Association of Chiefs of Police
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Director Peter Cuthbert
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Deputy Chief Constable Howard Chow
Chief Constable, Vancouver Police Department
CACP Law Amendments Committee

Deputy Constable Norm Lipinski
Chief Constable, Surrey Police Service
CACP Law Amendments Committee

ATTN: Chief Bryan Larkin, Mr. Peter Cuthbert, Deputy Chief Constable Palmer, Deputy Chief Constable Howard Chow, and Deputy Constable Norm Lipinski.

RE: Request for the Canadian Association of Police Chiefs to terminate the membership of the Canadian Pacific Railway Police Service and the Canadian National Railway Police Service and other requests.

On August 19, 2020, I wrote a letter to Chief Constable Palmer, in his capacity as the President of the Canadian Association of Chiefs of Police (“CACP”). I also copied Chief Constables Chow and Lipinski to that letter, which I wrote on behalf of my clients, Tara Jijian, Lori Desrochers and Kaity

Timmerman, whose loved ones, Jamie Jijian and Kevin Timmerman, died while working for the Canadian Pacific Railway (“CP Railway”) and Canadian National Railway (“CN Railway”), respectively (**Attachment 1**). I also represent Pamela Fraser, whose son Dylan Paradis, died in the Field, BC derailment of CP Railway Train 301 near Field, BC on February 4, 2019. Additionally, I also represent Eva Dockrell, Edward Dockrell, and Heather Dockrell, who are, respectively, the mother, brother, and sister of Andrew Dockrell. Andrew also died in the CP Railway Train 301 derailment near Field, BC. I have included Chief Larkin in this correspondence as he is now the President of the CACP.

For reasons we elaborate below, the purpose of this letter is to ask the CACP to take specific steps regarding the participation of the CN Police, CP Police, and private railway companies in the CACP. We also request the CACP to advance specific reforms the end the corporate ownership, control, and influence over private railway police forces.

As you know, Sections 44 and 44.1 of the *Railway Safety Act* empower Canada’s private railway companies own, operate, and control the CP Police Service and CN Police Service, respectively. Although you declined to confirm these companies’ membership in the CACP, we understand that both corporate police forces are members of your association.

In our August 19, 2020 letter, we asked the CACP a number of questions about your organization’s mandate. Our questions focused on your members’ jurisdiction over railway policing. We also raised the issue of police independence as it pertains to the CN Police and CP Police, and the CACP’s working relationship with both police services (in light of the fact that they are owned by private corporations). We also raised concerns about how historically, CACP member police forces have invariably deferred the criminal investigation of railway fatalities, serious injuries, and environmental disasters involving CP Railway and CN Railway to these private companies’ own police forces. We further provided you with statistics of the numerous derailments, fatalities, and other incidents which despite their staggering numbers, have never been investigated by any independent, public police force (including CACP members).

In our August 19, 2020 letter, we also posed several questions regarding the training that the CACP member police forces provide their officers regarding the investigation of potential workplace criminality (Westray laws). Despite these general questions that had nothing to do with the particulars of the Field, BC disaster, Mr. Peter Cuthbert, the CACP’s Interim Executive Director, replied by email on September 9, 2020 stating (**Attachment 2**):

“On behalf of the President of the Canadian Association of Chiefs of Police (CACP), Chief Bryan Larkin and the Co-Chairs of the CACP Law Amendments Committee, DC Norm Lipinski and DC Howard Chow, I wish to confirm receipt of your correspondence, dated Aug. 19, 2020 concerning the above subject matter. The Association have consulted with

our legal advisers and I am sorry to advise you that the CACP have no intent in getting involved in this private litigation nor will be answering any of the proposed questions.”

On the same day, I replied to Mr. Cuthbert by email (**Attachment 2**). In my email, I raised our concerns about how the CACP’s response contradicted your Association’s self-declared mandate to promote trust and legitimacy in its police services, to work with government agencies to “facilitate effective investigations”, and to support a “victim-centred and trauma-informed approach”. We did not ask the CACP to get involved in any litigation but to simply answer questions that public police forces have an obligation to address in response to the citizens they serve. This includes the nature, extent, and limits of the CACP police forces’ jurisdiction over specific subject matter (railway policing). Neither Mr. Cuthbert nor anyone at the CACP replied to my September 9, 2020 email.

My clients’ current requests to the CACP.

This letter is to deliver the following requests to the CACP on behalf of my clients:

1. That the CACP terminates the membership, partnership, or collaboration of the CN Police Service and CP Police Service in the CACP.
2. That the CACP releases a public statement:
 - a. Calling on the Canadian Government and Parliament to repeal of Sections 44 and 44.1 of the *Railway Safety Act* which empower private railway companies to own and control police forces with criminal law enforcement powers.
 - b. Committing to ensure that notwithstanding any repeal of Sections 44 and 44.1 of the *Railway Safety Act*, the CACP members of local jurisdiction will work with the RCMP to independently investigate every railway death and serious injury without the involvement of the CN Police and CP Police.

Given that CN Railway and CP Railway are default suspects in workplace incidents that cause injuries and fatalities, the CACP members must publicly commit to ensuring that the CN Police and CP Police play no role in criminally investigating any of these deaths, serious injuries, and environmental disasters involving CN Railway and CP Railway. Further, my clients request that the CACP publicly commits to ensuring that its member police forces shall comply with the victim notification requirements of the federal *Victims Bill of Rights Act* and provincial victims of crime statutes.

- c. That the CACP discloses how much, in cash or in kind, CP Railway gave to the CACP to sponsor the CACP's 2019 annual conference, **and** whether this was the first financial or other material contributions that CP Railway or CN Railway have ever made to the CACP. If CP Railway's 2019 sponsorship was not the first financial or in-kind contribution, we ask that the CACP discloses all additional contributions that it has received from CP Railway or CN Railway.

In the attached Appendix, we elaborate on why the steps we request from the CACP are necessary under the current circumstances.

Thank you,

Tavengwa Runyowa
Tavengwa Runyowa

**APPENDIX: REQUESTS FOR THE CANADIAN
ASSOCIATION OF CHIEFS OF POLICE TO
TERMINATE THE MEMBERSHIP OF, AND
COLLABORATION WITH, THE CN POLICE SERVICE
AND THE CP POLICE SERVICES.**

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Emergent concerns about conflicts of interest undermine public confidence in the CACP and its member police forces.

The CP Police and CN Police's memberships in the CACP gives rise to serious conflicts of interest and pose a serious legitimacy problem that the CACP must address.

First, it is concerning that in the same year that CP Railway, which should have been the default suspect in the Field, BC disaster of 2019 under Westray laws, announced that it was "proud to sponsor" the CACP's 2019 conference (**Attachment 3**).¹ In that same year, the CP Police and CN Police also played a central role in shaping the Collaborative Protocol for Rail Death Investigations.² In any other circumstance, the CACP would not accept monies from, or collaborate with, parties that are, or are likely to be, suspects in criminal investigations that its members are responsible for. This expectation applies to regular citizens and every other legal entity. Railway companies should not be exempt from this core tenet of the rule of law.

At a minimum, the CP Railway sponsorship of the CACP conference and both CN Railway and CP Railway's involvement in creating the Collaborative Protocol raise questions about an apparent conflict of interest. It also raises the concerns that this state of affairs has damaged the integrity of the justice system and created a vacuum of criminal accountability in the railway sector. These concerns are exacerbated by the fact that both CP Police and the CN Police often hire former police officers, many of whom previously worked for CACP member police forces. This situation exacerbates the serious conflict of interest when CACP members must investigate some of their former employees, colleagues, and the private companies these former affiliates worked for.

The above concern is compounded by the fact that the RCMP initially declined to investigate the Field, BC disaster when it happened in 2019, the same year of CP Railway's sponsorship and the creation of the Collaborative Protocol railway incident investigations that the company involved in creating. The RCMP only agreed to investigate the Field, BC derailment almost two years later, after unrelenting media coverage and pressure from political leaders and the deceased workers families. At the very least, there is an apparent conflict of interest in CP Railway, a private corporation with a history of fatalities and serious injuries, sitting at the CACP table and sponsoring/influencing an organization whose members are mandated to investigate the company's potential criminal liability.

Second, given that the CN Police Service and the CP Police Service are legally indistinct from their parent companies, this means that both CN Railway and CP Railway, as private, for-profit corporations, are CACP members. Both corporations are sitting at the table and playing a central role in shaping Canada's approach to railway policing which includes the policing of railway corporations in Canada.

¹ https://cacp.ca/index.html?asst_id=1976

² <https://www.blueline.ca/rail-death-investigations-summit-rolls-out-collaborative-protocol/>

While a collaboration with railway police may seem like a reasonable approach on its face or to the outside viewer, the fact that these private police services are legally indistinct from their parent companies makes their collaboration with public police forces untenable.

Third, CN Police and CP Police's membership or participation in the CACP is also troubling because historically, CACP members such as the RCMP, Regina Police, and Saskatoon Police have invariably deferred jurisdiction of railway death investigations to the very corporate police forces that work for the railway companies. These private police forces' memberships in the CACP represents and entrenches the resulting problem of private railway corporations criminally investigating and exonerating themselves. The CN Police and CP Police memberships in the CACP demonstrate that the CACP members have viewed, and continue to view, these privately controlled police forces (and their corporate parents) as colleagues. Thus, when public CACP member police forces attend the scenes of railway deaths, serious injuries, explosions, or toxic spills, they engage their CN Police and CP Police counterparts. Public CACP members treat these private police forces as partners to defer jurisdiction to, rather than the agents of the prime suspects in a criminal investigation. The persistence of this problem has contributed to the invariable pattern of the CN Police and CP Police asserting, or accepting, jurisdiction over their own employer's or parent company's potentially criminal conduct. The acquiescence of public CACP members to these private police forces has systemically entrenched the violation of the principle of police independence.

Fourth, the CACP's response to our communications and questions regarding the CN Police and CP Police's membership in the CACP raise further concerns. The CACP's refusal to answer the most basic questions, including about who its members are, elevates the concern that the CACP is providing unconditional protection from scrutiny to its CN Police and CP Police colleagues, as well as the private corporations that own them.

The CACP is Canada's highest law enforcement association and should represent the highest levels of integrity, transparency, and commitment to the rule of law. Canadians expect the CACP and its members to rigorously protect the principle of police independence and to avoid formal collaborations with entities that the CACP's member police forces are legally required to investigate.

There have been other railway worker deaths before and after Field, BC, a period in which the CP Police and CN Police have collaborated with the CACP to develop policies and procedures regarding railway investigations in which their parent corporations had vested interests. It should be easy for the CACP to take a firm stance to terminate the CP Police and CN Police's membership and/or participation in the organization. The CACP has previously taken public positions on many topics of public interest. It is troubling that the CACP would decline to publicly commit to ensuring that railway incidents are independently investigated and are not tainted by the participation of the presumptive suspects with personal stakes in the outcomes of those criminal investigations.

Terminating the membership and/or collaboration that allows CN Railway and CP Railway to influence the very railway policing framework that they are subject to is a critical step to eliminating conflicts of interest and safeguarding the integrity of the justice system. Such a step is necessary to reassure the Canadian public that the CACP is dedicated to guaranteeing that rule of law applies equally to everyone in Canada's criminal justice system. It is also necessary for the CACP to take such a step to ensure that no person or entity can criminally investigate themselves or exercise undue influence over policies that affect their private interests. Therefore, it is crucial for the CACP to take a decisive position to ensure that the CN Police and CP Police membership and involvement in the CACP are terminated, notwithstanding a successful constitutional challenge to, or repeal of, Sections 44 and 44.1 of the *RSA*.

After the repeal of Sections 44 and 44.1 of the *Railway Safety Act*, CN Railway and CP Railway will have effective security alternatives for protecting their operations, workers, and the public.

CN Railway, CP Railway, and any other railway company that may seek to create a private police force under the *Railway Safety Act* can still effectively secure their operations without owning or controlling private police forces.

The private railway companies have argued that they need private police forces because public police forces are stretched and cannot adequately react to incidents within their jurisdiction. They have even argued for the expansion of their policing powers.³ However, there are **two better and constitutionally compliant alternatives** that ensure the railway companies can still safeguard their operations without having the power to criminally investigate themselves.

The Private Security alternative to corporate-owned railway police forces.

The first alternative to CN Railway and CP Railway owning their own police forces is for them to convert these forces into private security companies that have not criminal law jurisdiction. After transforming their police forces into private security companies, CN Police and CP Police will retain the powers necessary to secure their parent companies' operations as well as protect the workers and the public. However, they will no longer have the authority to conduct criminal investigations, lay criminal charges, bring suspects before the courts, or exercise other strictly criminal law enforcement powers. These functions will be left to public police forces and prosecutors. This will eliminate the emergent concerns regarding conflicts of interest delineated above.

This private security alternative has proven to be a sufficient and satisfactory arrangement for every other corporation that owns and operates sensitive infrastructure that needs protection from

³ https://tc.canada.ca/sites/default/files/migrated/cnrpa_rsa_review_dec_2017_2nd_submission.pdf.

trespass, sabotage, theft, and other threats. Further this has proven to be an effective arrangement for many other railways in Canada. There is no reason why CN Railway and CP Railway are exceptional and require criminal enforcement powers. As elaborated below, under Canadian laws, private security companies have all the powers to conduct the **necessary** protective functions without wielding the criminal law powers.

For example, private security guards across Canada can wield significant powers to arrest trespassers, act to preserve lives, prevent crimes in progress, protect private assets, restrain belligerent persons, and support and collaborate with other first responders. Private security guards can even carry firearms. Once private security guards detain suspects or thwart the commission of a crime, they must hand over any suspects to peace officers such as municipal police forces or the RCMP. These public police forces then handle any criminal investigations, charges, and prosecutions in conjunction with Crown attorneys.

A specific example of the legislated powers that private security companies can wield can be found in Ontario's *Private Security and Investigative Services Act*, 2005, S.O. 2005, c. 34. Under this Act, private investigators and security guards can obtain warrants to enter premises for a vast array of reasons⁴ and use reasonably necessary force.⁵ Further, the *Act* makes it unlawful for persons interacting with private investigators and private security guards to obstruct these official's activities⁶, and imposes an obligation on relevant persons to produce certain materials on request from these officials.⁷ This is the default system under which the plurality of private enterprises operate in Canada, including airlines, trucking companies, and other private corporations that have similarly complex, extended, and cross-border supply lines.

Private investigators and security guards can also call upon police officers to assist with matters such as executing warrants. Most importantly, private security guards do not have criminal enforcement powers and do not need them. These guards enjoy only as much authority as they need to protect property and persons within the immediate scope of their clients' assignments. However, the security companies must refer and defer all criminal enforcement matters to public police and prosecutors. This delineation of duties between private security guards, public police forces, and Crown prosecutors embodies and complies with the principle of police independence and the rule of law.

Finally, converting the CN Police and CP Police into a private security companies should **not** result in the loss of jobs for the companies' current police officers. The privatized "CN Security Service" and "CP Police Service" would largely maintain their current staff and structures, albeit, without any criminal law enforcement powers. Thus, converting CN Police and CP Police into private

⁴ *Private Security and Investigative Services Act*, 2005, S.O. 2005, c. 34 Section 22(2), 22(3), 23(1), 23(2).

⁵ *Ibid*, Section 22(6) and 23(3).

⁶ *Ibid*, Section 22(7).

⁷ *Ibid*, Section 22(8).

security companies provide for a “jobs neutral” approach. This approach preserves current jobs and reflects what should have happened when the Government of Canada privatized CN Railway in 1995.

In summary, there is nothing impeding CN Railway and CP Railway’s ability to convert their police forces into private security companies that can effectively protect their operations, workers, and the public when Parliament repeals Sections 44 and 44.1 of the *Railway Safety Act*.

The Contract Policing alternative to private corporate police forces.

A second alternative to private corporate police forces under sections 44 and 44.1 of the *RSA* is for CN Railway and CP Railway to enter into **contract policing agreements** with the RCMP⁸ or other public police forces. Notably, the RCMP’s website lists the following benefits of its contract policing:

- RCMP members in contract policing maintain a federal policing presence across the country. They are deployable across jurisdictions when required and called upon to assist in major investigations, emergencies, and national events that are beyond the policing capacity of a province, territory, or municipality to address alone.
- Under the benefits of the contract policing model, the RCMP is able to provide top level security drawn from across the country for international events such as the 2010 Olympics and the G8/G20 summits.
- Contract policing allows for the seamless sharing of intelligence and high-level cooperation between all levels of policing.
- As Canada’s national police force, the RCMP maintains national standards and policies across contract policing jurisdictions.
- The RCMP contributes to Canadian sovereignty as contract policing members are often the federal government’s sole representative(s) in many remote and isolated areas.

All the above benefits of contract policing comprehensively address CN Railway and CP Railway’s concerns about securing their operations and protecting the public, including in remote areas. Further, through contract policing, CN Railway and CP Railway can redirect their current policing budgets to paying for a **dedicated** number of police officers who are focused solely on protecting these companies’ operations across Canada.

⁸ <https://www.rcmp-grc.gc.ca/ccaps-spcca/contract-eng.htm>

As RCMP employees, the police officers would have jurisdiction across Canada and will benefit from the pre-existing collaborative relationships that the RCMP has with its counterparts in the United States. The RCMP officers would protect the railway companies' infrastructure and operations while, most importantly, **remaining legally and operationally independent** from these railway corporations. We trust that similar arrangements are also possible for CN Railway and CP Railway's operations in the United States.

The contract policing model would also mean that the repeal of Sections 44 and 44.1 of the *Railway Safety Act* would place no greater pressure on public police forces than they have at present. To the extent that CN Railway and CP Railway's new private security companies cannot conduct criminal law functions, through the contract policing agreements, these companies would finance the hiring, training, deployment, and accompanying logistics for any extra public (RCMP) police officers. These contracted officers would take on any additional workload that may arise from the conversion of the CN Police and CP Police into private security companies (if any).

Given that the contract policing option provides for both police independence and cross-country police coverage for CN Railway and CP Railway, there is no justifiable reason why these companies must own and control their police forces.

The RCMP's contract policing agreements are negotiated between the federal, provincial, and territorial governments. Given that Parliament enacted Sections 44 and 44.1 of the *Railway Safety Act*, that same Parliament can empower private railway companies, such as CN Railway and CP Railway, to benefit from such agreements, including via amendments to the relevant statutes and regulations that govern this area.

Alternatively, the Government of Canada has other powers and instruments to provide for such contract policing services to Canada's private railway companies. The CACP can work with the Government and the railway companies to implement this transition after, or notwithstanding, the repeal of Sections 44 and 44.1 of the *Railway Safety Act*. Regardless of how the contract policing model is implemented, it would allow CN Railway and CP Railway to effectively secure their operations without owning private police forces with the jurisdiction over the companies' potentially criminal conduct.

The CACP's action to implement our requests is important in light of the CN Police Service's efforts to expand the criminal jurisdiction of private railway police forces when the opposite outcome is imperative.

In an undated submission to the Parliamentary Railway Safety Act Review Committee, the Canadian National Railways Police Association ("CNRPA") expressed its desire to expand its jurisdiction outside of the 500m limits under the *Railway Safety Act* (**Attachment 4**).⁹ The CNRPA attempts to justify this proposed expansion on its powers by arguing that the 500m limit has created confusion in the courts. However, the solution to any jurisdictional ambiguity is for the CN Police and CP Police to have no such criminal jurisdiction at all. Instead, they should leave the job of criminal investigations and presenting suspects to the courts to public police forces and collaborate with them as legally required. This is the model that all other corporations have followed to secure their operations, including dealing with trespassers, saboteurs, or parties attempting to steal company property.

Given the availability of the private security and contract policing options discussed above, this is not the time to be expanding the powers of private corporate police forces. The time has come to eliminate such powers and entrust them solely to public police forces whose sole mandate is to protect the Canadian public, not the financial interests of private, corporate shareholders.

Overall, the current structure of corporatized policing and criminal self-investigation are inconsistent with 21st Century policing and a 21st Century Canada. Both converting private police forces to private security force, and/or facilitating a contract policing model for private railway companies, will remedy the aforementioned ills of the current system. We trust that that CACP will decisively protect the integrity of our criminal justice system by, a) terminating the membership of CN Police and CP Police in the organization, and b) advocating for the Canadian Government and Parliament to repeal Sections 44 and 44.1 of the *Railway Safety Act* that allow private railway corporations to own police forces with criminal law powers.

We look forward to your timely response.

Thank you,


Tavengwa Runyowa

⁹ https://tc.canada.ca/sites/default/files/migrated/cnrpa_rsa_review_dec_2017_2nd_submission.pdf

Attachment 1

August 19, 2020

BY EMAIL & COURIER

Chief Constable Adam Palmer
President: The Canadian Association of Chiefs of Police
C/o Vancouver Police Department
3585 Graveley St.
Vancouver, B.C.
Canada V5K 5J5

Email: cacp@cacp.ca

ATTN: Deputy Chief Constable Palmer, Deputy Chief Constable Howard Chow and Deputy Constable Norm Lipinski.

RE: Inquiry into the jurisdiction of Police Services across Canada to investigate railway accidents, the interaction between Public and Private Police services in Canada, and the willingness of CACP to assist in lobbying to amend the *Railway Safety Act*.

We are writing to you in your capacity as the President of the Canadian Association of Police Chiefs (CAPC). We have copied Deputy Chief Constable Howard Chow and Deputy Constable Norm Lipinski in their capacities as co-chairs of the CAPC's Law Amendments Committee.

Our firm represents Tara Jijian, Lori Desrochers, and Kaity Timmerman, whose loved ones, Jaime Jijian and Kevin Timmerman, died while working at Canadian Pacific Railway (CP Rail) and Canadian National Railway (CN Rail) properties, respectively. Our clients have actively sought answers regarding the deaths of Jamie and Kevin, but both CP Rail and CN Rail (and their respective police forces) have persistently refused to provide any information regarding the deaths. Further, the RCMP, Regina Police, and Saskatoon Police all declined to investigate the workplace deaths of Jamie Jijian and Kevin Timmerman, in deference to CP Police and CN Police. Before presenting our questions and requests to you, we will provide some context regarding the Canadian National Police Service, the Canadian Pacific Police Service, and the impact of Sections 44 and 44.1 of the *Railway Safety Act* on railway-related policing

in Canada. We have the legal and evidentiary material to support the following background and are prepared to share it upon request.

Railway Safety Act Concerns

Our concerns regarding CN Police and CP Police are entrenched in Sections 44 and 44.1 of Canada's *Railway Safety Act* (the Act). See the Appendix to this letter for the text of the provisions. These provisions of the *Act* allow Canada's railway companies to create and control their own private police forces. These police forces are more than enhanced security units. They have all the powers of other public police forces such as the RCMP. However, their officers are full employees of the company; answer directly to its private corporate management. The officers can be dismissed without the companies seeking the permission of the courts that appointed them. Further, unlike police forces such as the RCMP and your other members, the railway police have no independent oversight body with governmental or civilian representation. The railway police services are wholly owned divisions of the railway companies and are not independent from them.

Although this situation is less of a concern when the railway police forces attend to policing incidents such as the theft of railway property, the problem arises when deaths, derailments, explosions and oil spills may be the direct result of company policy, action, or inaction. Although the private railway police officers swear oaths to uphold the law, as a practical matter, it is not realistic for a junior constable to investigate and question the senior management and corporate board that employs them.

For example, the 2019 Field, British Columbia derailment that killed three CP Rail workers and the recent derailment that spilled 1.2 million liters of oil in Guernsey, Saskatchewan, raise questions about the railway company's potential legal liability. However, when CP Police Service has primary, exclusive, or overlapping jurisdiction in relation to public police forces, this raises questions about whether thorough, fair, and independent investigations are being conducted into these human and environmental tragedies. To date, the RCMP has not actively investigated railway deaths to determine whether any criminal charges are warranted under the *Criminal Code*, including under the *Westray* amendments to the *Code*. Despite the hundreds of railway-related deaths across Canada over the last decade, and the numerous derailments and other incidents, the RCMP and other provincial and municipal police forces have deferred to the railway companies' own police forces.

With the exception of Lac Mégantic, there have been few, if any, independent investigations, criminal charges, or prosecutions of railway companies and their senior leadership. This is troubling especially given that the Transport Safety Board (TSB) reported 1172 railway related incidents in 2018 alone, a 7% increase over 2017 and a 13% increase from the 5-year average of 1035. The TSB also reported 57 rail-related deaths in 2018. It is statistically improbable that none of these incidents necessitated charges.

This outcome is not surprising given the railway companies control and employment of the very police officers who report to the senior management of the railway companies.

Clarifications we seek from the CACP.

We would like to be clear that we are not asking the CACP to become involved in the on-going litigation regarding Kevin's and Jamie's deaths. However, the CACP can provide clarity on the following questions regarding how its member police services interact with the private railway police services:

1. Are the CN Police Service and CP Police Service members of your organization?
2. Do the CACP member Police Services have any jurisdiction to investigate railway deaths, derailments, and other disasters? If so, is this jurisdiction concurrent, overlapping, or subordinate to the jurisdiction of the railway police services such as CP Police Service and the CN Police Service?

Context: Under Section 44(1)(3) of the *Railway Safety Act*, the railway police forces, including the CP Police Service and the CN Police Service, have jurisdiction within 500 meters of property that the railway company owns, possesses, or administers.

While we understand that cooperation between police forces is common, we are interested in which police force takes precedence or exclusive jurisdiction over any such investigations.

3. Do CACP members or the organization as a whole have formal or informal policies of handing over investigations regarding **railway worker** injuries, deaths, or railway disasters to the relevant railway police forces?
4. Do CACP members or the organization as a whole have formal or informal policies of handing over investigations regarding the injuries, deaths of **members of the public**, or railway disasters, to the relevant railway police forces?
5. Do CACP member Police Services (apart from railway police force, if they are members) have similar powers to arrest and charge persons for alleged offences relating to railway property, even if the alleged offender is not on the property and did not commit the alleged offence within 500m of railway property?

Context: Section 44(4) of the *Railway Safety Act* extends the railway polices' jurisdiction beyond the physical 500m on either side of railway property. The *Act* extends the railway police jurisdiction to offences that relate to the railway context, even if the person was not arrested in the area, or the alleged offence did not occur in the area. We would like to know whether the CACP member Police Services have identical, overlapping, concurrent, or any jurisdiction over such situations, or whether they are subordinate to the railway police under the *RSA*.

6. Sudden and/or violent deaths in Canada cannot be presumed to preclude foul play or criminal conduct at the outset. To your knowledge, when a CACP member Police Service (apart from railway police) receives a report of a death on railway property, as a matter of policy, practice, or law, do your members routinely investigate these deaths to exclude foul play or criminal negligence?
7. Do the CACP member Police Services' (apart from railway police) have the jurisdiction to mount criminal investigations under Sections 217.1, 22.2, 220, 221, or any other provisions of the *Criminal Code* for matters arising within 500m of railway property, or relating to matters that arose from railway property as set out under Section 44(4) of the *Railway Safety Act*?
8. Do the CACP's member Police Services have officers or investigators who are specifically trained in the investigation of industrial incidents and railway related incidents in particular?

Context: This question goes beyond the investigation of criminality that happens on railway property (e.g. one worker assaulting another). We are concerned with the CACP Member Police Services' technical capacity to investigate industrial incidents to distinguish between true "accidents" and criminal acts (including criminal negligence) that causes injury, death, threats to public safety and environmental damage.

Note that we are not referring to regulatory investigations such as those conducted by Transport Canada, the Transport Safety Board or occupational health and safety authorities. None of these investigations can give rise to criminal proceedings under the law. We are interested in criminal investigations as contemplated under the Westray amendments to the *Criminal Code* (Section 217.1) or related provisions such as Sections 22.2, 220, and 221. Such industrial incidents can be highly technical in nature.

The scenes of the railway incidents may not immediately indicate the role of criminal negligence or foul play as is often evident in crimes that most public police forces are engaged in. Typically, specially trained investigators with applicable forensic experiences are required to properly investigate complex industrial incidents.

We know that numerous police departments in British Columbia signed a memorandum of understanding with the RCMP and WorkSafe BC to provide specialized investigations services for such complex industrial accidents. Where founded, these investigations could lead to criminal referrals to the Attorney General of BC. However, this is only for British Columbia. We would like to know whether such capabilities exist in other jurisdictions in which your members operate.

9. If it is apparent that a railway death, injury, explosion, spill, or derailment may have been the outcome of corporate misfeasance, do CACP member Police Services (apart from railway police, if they are CACP members) have the authority to claim primary or exclusive jurisdiction over the investigation from the railway police services that answer to the railway companies?
10. If a railway police officer is alleged to have committed a criminal offence while engaged in their duties, do the CACP member Police Services' have the authority to investigate that potential crime? Have any CACP members ever conducted such investigations?
11. If a railway company own and controls its own police such as CP Rail and CN Rail, do the CACP member Police Services' still have the jurisdiction to investigate that **company**, its executives, board, or employees for potential *Criminal Code* offences? Have any CACP member Police Services ever done so?
12. When railway police request the help of CACP member Police Services' in carrying out tasks such as dealing with protests, jailing or transporting persons in custody, do the railway companies that control the police services pay the member Police Services for that service?
13. If a member of the public requests a CACP member Police Services to investigate a death, derailment, environmental disaster, or serious injuries that were allegedly caused by the railway company, its internal policies, or actions, do your member Police Services have the jurisdiction to initiate that investigation and without the involvement of the company's railway police forces?

We understand that the CACP is not a monolithic organization which imposes policies upon its members. However, any answers the CACP can provide to the above queries will be appreciated, including the CACP's formal position on whether private railway corporations should control police forces with the same public powers that your members exercise.

CACP and Amending the *Railway Safety Act*.

The mandate of the CACP states that: "The Association is dedicated to the support and promotion of efficient law enforcement and to the protection and security of the people of Canada". In keeping with this commitment, we request that the CACP joins us in advocating to the Federal Government and Parliament of Canada the following reforms to the *Railway Safety Act*:

1. The amendment of the *Railway Safety Act* so that Canadian railway companies cannot own and control their own police forces with full public powers. This reform will bring the RSA in line with the principle of police independence. Police forces should not answer to private corporations (CN Rail and CP Rail) both of which are controlled, at least in part, by non-Canadian management, shareholders, and boards of directors.

The CEO of CP rail, Mr. Keith Creel, is an American citizen. About half the board of directors of CN Rail are also American citizens. The largest single shareholder in CN Rail is Cascade Investment LLC, the private investment vehicle of Mr. Bill Gates. The issue is not foreign participation in Canadian corporate life. The problem is the private ownership, control, or undue influence of federal Canadian police forces by private foreign persons and entities.

We are not currently asserting that these foreign persons and entities have done anything wrongful with respect to the railway police forces. However, at the very least, that ownership, control, and influence alone is inconsistent with the principle of police independence.

2. To advocate for the creation of a new, independent, Public Railway Police of Canada, still funded by the railway companies but fully controlled by an independent oversight commission with civilian, government, and railway worker representation.
3. To advocate for a fully funded team of independent railway safety experts from within and outside of Canada to conduct criminal investigations into all railway-related deaths of Canadians in the past ten years, including those of Jamie Jijian and Kevin Timmerman.

Conclusion

We ask you to advocate for the above actions by challenging the federal government and Parliament to promote the necessary legislative reforms. Private railway companies must not be allowed to police themselves. Corporate controlled police forces threaten the Rule of Law and provide impunity that encourages unsafe workplace practices.

We look forward to hearing from you,

Tavengwa Runyowa

Tavengwa Runyowa
(Counsel for Tara Jijian, Lori Desrochers, and Kaity Timmerman)

Cc by courier: Deputy Chief Constable Howard Chow
The Canadian Association of Chiefs of Police
Law Amendments Committee
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Law Amendments Committee
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Delta, BC V4K 3E1.

APPENDIX ONE

The relevant sections of the *Railway Safety Act*.

Sections 44 and 44.1 of the *Railway Safety Act* read as follows:

Police Constables

Appointment

44 (1) A judge of a superior court may appoint a person as a police constable for the enforcement of Part III of the [Canada Transportation Act](#) and for the enforcement of the laws of Canada or a province in so far as their enforcement relates to the protection of property owned, possessed or administered by a railway company and the protection of persons and property on that property.

Limitation

(2) The appointment may only be made on the application of a railway company that owns, possesses or administers property located within the judge's jurisdiction.

Jurisdiction

The police constable has jurisdiction on property under the administration of the railway company and in any place within 500 m of property that the railway company owns, possesses or administers.

Power to take persons before a court

The police constable may take a person charged with an offence under Part III of the [Canada Transportation Act](#), or any law referred to in subsection (1), before a court that has jurisdiction in such cases over any area where property owned, possessed or administered by the railway company is located, whether or not the person was arrested, or the offence occurred or is alleged to have occurred, within that area.

Court's jurisdiction

The court must deal with the person as though the person had been arrested, and the offence had occurred, within the area of the court's jurisdiction, but the court may not deal with the person if the offence is alleged to have occurred outside the province in which the court is sitting.

Dismissal or discharge of police constable

A superior court judge referred to in subsection (1) or the railway company may dismiss or discharge the police constable and the dismissal or discharge terminates the powers, duties and privileges conferred on the constable by this section.

Procedures for dealing with complaints

44.1 (1) If one or more police constables are appointed with respect to a railway company, the railway company must

- (a) establish procedures for dealing with complaints concerning police constables;
- (b) designate one or more persons to be responsible for implementing the procedures;
and
- (c) designate one or more persons to receive and deal with the complaints.

Procedures to be filed with Minister

(2) The railway company must file with the Minister a copy of its procedures for dealing with complaints and must implement any recommendations concerning how the procedures are to be made public.

Attachment 2

Re: CACP and Jurisdiction over Railway Related Matters

Tavengwa Runyowa <law@runyowa.com>

Wed 2020-09-09 2:54 PM

To: Peter Cuthbert <peter.cuthbert@cacp.ca>

Attn: Mr. Cuthbert,

I received your email below. The CACP's refusal to get involved in any efforts to end corporate controlled railway police forces is on the record, and amounts to an endorsement of the principle. This is inconsistent with the CACP's mandate as stated on the CACP website: "safety and security for all Canadians through innovative police leadership".

If the security of all Canadians matters to the CACP, your association should at least be concerned about the hundreds of railway-related deaths that required criminal investigations but that your members have deferred to the very railway companies that needed to be investigated.

The CACP's response to our letter is also inconsistent with the first and third sub-parts of CACP's "Advocacy" Strategic Pillar as provided on the CACP's website, which states:

1. We believe in advancing our profession and to promoting trust and legitimacy in our police services.
3. We counsel and work with government agencies to advance legislation, regulations and policies that support crime prevention, facilitate effective investigations, solve problems, and support a victim-centered and trauma-informed approach.

It does not promote public trust and legitimacy in the CACP's members when their umbrella organization expresses indifference towards corporatized policing and the numerous victims who have died on the railways. Nor does the CACP's response to our letter reflect an organization that is sincerely working to "facilitate effective investigations". As with the other quotes on the CACP's website, this appears to be a slogan than a bona fide commitment to ensuring that police investigations are effective in every context, including in the railways context.

The CACP appears unaware about how many families have been devastated and left with no answers about how their loved ones died on the railways. We urge the CACP to reconsider its refusal to seek reforms to private railway policing because your association's inaction would amount to an endorsement of the status quo. As more Canadians learn about the privatized policing on our nation's railways and the CACP's indifference to it, public confidence in your association and stated goals will be seriously undermined.

Further, beyond seeking the CACP's involvement in de-privatizing law enforcement in the railway context, our letter also asked the CACP a list of questions that your response below does not address. As the representative association of public police forces that have the duty to be transparent, it is troubling that the CACP would decline to answer the most basic questions that citizens are entitled to know about their police forces.

For example, through your response, is the CACP stating that it cannot disclose:

1. Whether or not the CP Police and CN Police services are members of the CACP? Is that a secret?
2. Whether the CACP members have jurisdiction over railway incidents? Is that a secret?
3. Whether your members ever investigate railway incidents? Is that a secret?
4. Whether your members have any training in investigating railway incidents? Is that a secret?
5. Whether your members endorse the idea of deferring criminal investigations to police forces that are owned and controlled by the companies that need to be investigated? Is that a secret also?

These questions go to the heart of law enforcement, a public function whose basic structures and policies should be a matter of open and candid disclosure. Your members are funded through taxpayer funds. In an open, democratic society where the rule of law is supposed to govern, it is troubling that Canada's police chiefs, the top law enforcement officers in the country, would proactively avoid responding to citizen requests about their policing powers and jurisdiction.

Again, we ask for the CACP's response to the questions we asked in our letter of August 19, 2020. Canadians have the right to know the powers and obligations of the police forces that are supposed to serve and protect them.

We look forward to your response.

Tavengwa Runyowa
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From: Peter Cuthbert <peter.cuthbert@cacp.ca>
Date: Wednesday, September 9, 2020 at 1:49 PM
To: Tavengwa Runyowa <law@runyowa.com>
Cc: Peter Cuthbert <peter.cuthbert@cacp.ca>
Subject: CACP and Jurisdiction over Railway Related Matters

AttentionTravengwa Runyowa

On behalf of the President of the Canadian Association of Chiefs of Police (CACP) , Chief Bryan Larkin and the Co Chairs of the CACP Law Amendments Committee , DC Norm Lipinski and DC Howard Chow , I wish to confirm receipt of your correspondence , dated Aug. 19, 2020 concerning the above subject matter . The Association have consulted with our legal advisers and I am sorry to advise you that the CACP have no intent in getting involved in this private litigation nor will be answering any of the proposed questions.

Sincerely:

Peter Cuthbert
Interim Executive Director
CACP

Attachment 3



CP IS PROUD TO SPONSOR THE 2019 CACP CONFERENCE

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Canadian Association of Chiefs of Police

Safety and security for all Canadians through innovative police leadership

MEDIA ADVISORY

FOR IMMEDIATE RELEASE

August 9, 2019

114th Canadian Association of Chiefs of Police Annual Conference Schedule of Media Conferences and Releases

CALGARY, ALBERTA – The Canadian Association of Chiefs of Police (CACP) will be holding its 114th Annual Conference in Calgary, Alberta from August 11th to 14th, 2019. The conference is co-hosted with the Calgary Police Service.

The following provides a schedule of the media conferences that will take place and of the news releases to be issued during this period and to be made available at www.cacp.ca. (subject to change):

Sunday, August 11th, 2019

- **News Release – CACP/Motorola Solutions Awards of Excellence in Emergency Preparedness**
 - **Time:** 19:00 (Mountain Daylight Time)
 - **Purpose:** Announcement of the 2019 award recipients.
- **News Release – CACP Recognition Awards**
 - **Time:** 19:00 (Mountain Daylight Time)
 - **Purpose:** Announcement of the 2019 award recipients.

Monday, August 12th, 2019

- **News Release – CACP Award of Excellence for Combating Organized Crime**
 - **Time:** 10:00 (Mountain Daylight Time)
 - **Purpose:** Announcement of the 2019 award recipients.
- **Media Conference: Kick-off of the CACP's 114th Annual Conference – From the Top: A Strategic HR Approach**
 - **Time:** 10:15 a.m. (Mountain Daylight Time)
 - **Location:** Hyatt Regency Hotel Calgary, Neilson 2 Room
 - **Purpose:** To discuss the conference theme and objectives
 - **Speakers:** Chief Constable Adam Palmer, President of the CACP, and Chief Mark Neufeld from the Calgary Police Service
 - **News release:** To be issued following the media conference. .../2

- **Media Tour of the CACP Policing Trade Show:**
 - **Time:** 10:45 (Mountain Daylight Time)
 - **Location:** Telus Convention Centre, Exhibition Hall C/D
 - **Purpose:** Get a glimpse of the latest products and services available to police services across Canada by visiting 150+ exhibits
 - **Escorts:** Natalie Wright, CACP Communications Advisor, and Lindsay Nykoluk, Public Affairs/Media Relations Unit, Calgary Police Service
- **News Release – New CACP Board of Directors**
 - **Time:** 17:00 (Mountain Daylight Time)
 - **Purpose:** Introduce the members of the Board of Directors of the CACP for 2019-2010.

Tuesday, August 13th, 2019

- **News Release – 2019 CACP Resolutions**
 - **Time:** 09:00 (Mountain Daylight Time)
 - **Purpose:** Introduce the resolutions adopted by the CACP membership during the Annual General Meeting on Monday, August 12th, including background information.
- **News Release – CACP Traffic Safety Awards**
 - **Time:** 12:00 (Mountain Daylight Time)
 - **Purpose:** Announcement of the recipients of the 2019 *CACP National Police Award for Traffic Safety* and the *CACP Lifetime Achievement Award for Traffic Safety*.
- **News Release – CACP International Policing Award**
 - **Time:** 13:45 (Mountain Daylight Time)
 - **Purpose:** Announcement of the 2019 recipient

Wednesday, August 14th, 2019

- **Media Conference: Annual Conference Wrap-up**
 - **Time:** 13:45 (Mountain Daylight Time)
 - **Location:** Hyatt Regency Hotel Calgary, Neilsen 2 Room
 - **Purpose:** Introduce the CACP's new vision statement, updated mission, pillars, national strategic policing priorities, action plan and any key highlights following the completion of the Annual Conference.
 - **Speaker:** CACP President, Chief Constable Adam Palmer
 - **News release:** To be issued following the news conference.

For further information or to arrange a media interview, please contact:

Natalie Wright
Canadian Association of Chiefs of Police
Communications Advisor
communications@cacp.ca
613.838.8807

Lindsay Nykoluk
Public Affairs/Media Relations Unit
Calgary Police Service
LNykoluk@calgarypolice.ca
403.703.6043

Attachment 4

Thank you to the Railway Safety Act Review Committee for allowing the CNRPA to present this additional submission related to proposed changes to the Railway Safety Act.

The Canadian National Railways Police Association (CNRPA) represents all Canadian Railway Police Constables and Sergeants of the CN Police Service. As such, we are able to present a number of our members concerns, as they are the ones who work within the CN Rail Yards, Intermodal facilities, and all CN property/infrastructure including multiple CND-US border crossings. Our members represent the frontline in rail safety and security and are an integral part of Railway Safety in Canada.

The purpose of this letter is to identify and clarify how the CNRPA believes to enhance the Railway Safety Act with changes which would improve railway safety and security measures. This letter will itemize specific concerns that 1) need to be addressed and 2) should be addressed. It will also describe how to best accomplish these proposed changes. This document will also include various references to illustrate and support the CNRPA's position relative to these proposed changes.

There are a number of items in the RSA that can be addressed within the present framework. The first item that needs to be addressed is to eliminate the 500 meter jurisdictional limit. Railway Police are already defined under section 2 of the criminal code as peace officers without limitation. However, this 500 meter limit has proven to confuse some officials in the court system and in many cases has been a detriment to the railway police and the justice system. Fortunately, there are many case law decisions that speak to and clarify the point of jurisdiction and authority, but the removal of this set distance would only benefit the railway police to carry out their intended policing and security functions.

The South Coast British Columbia Transit Police based in New Westminster BC are a great example of this. They patrol 134 km of rail, 57 rail stations, 1,400 buses and 200 bus routes. All officers "primary duties" are related to properties owned by the Transit authority however they are sworn without limitation as provincial police officers in BC and are expected to act in the event they come upon an emergency or unsafe situation. They then notify the local police of jurisdiction and work together. As it stands, railway police operate marked police cars in full police uniform and the public expects them to help when called upon in the community. They are in fact already bound to act as per the criminal code yet the 500 meter "jurisdiction" wording in the RSA causes issues administratively with the courts in the carrying out of their day to day duties. www.transitpolice.ca

As you are aware, whether it be a Provincial or Federal court matter, legal counsel will look at any items to assist their client at trial. It has been our experience that some agents/counsel will purposely look to the RSA to confuse the facts in the hopes of clearing their clients. The removal of the 500 meter limit would remove this confusion and allow a number of cases to progress through the court process without unnecessary cost or delay.

The next step would involve the modernization of Railway Policing and related standards. This would confirm that the proper individuals, professionally trained with the right tools are doing the job for the Railways and Canadian alike. Such standards would have to be legislated in a federal framework or tied to Provincial standards already in place in the specific province in which the officer works.

It is the CNRPA's belief that an enhanced RSA can provide the government a means of strategically addressing current and future transportation security threats. Railway Police are often the first line of defence when dealing with these types of threats. However, it is the CNRPA's opinion that the current RSA is too basic and deficient due to the lack of standards for railway police. There are no clear and distinct areas of focus for Canadian railway companies to follow when deploying their police services. Security concerns within this critical infrastructure are ever increasing. To enhance railway safety and security, railway police must be given better resources, better tools and stronger legislation.

As we already know, local police and all levels of government are facing increased policing demands with higher workloads, which are already put on far too few officers while dealing with ballooning budgets for policing services. Local police in many cases are not able to address railway safety and security concerns in a timely manner and any calls relating to railway are typically placed at the bottom of their priority list. This could put any Canadian railways and the communities within which they operate in serious jeopardy.

The only way to ensure adequate and appropriate safety and security of any Canadian railway, is to revisit and revamp how we carry out our function, and give the railway police a better framework in which to operate and carry out the policing and security function. These standards would include but are not limited to:

- Employ minimum training standards within the act which focus on rail safety and security in addition to basic and enhanced police training.
- Employ minimum hiring standards such as requirements for basic police training, and qualifications for new hires. To fall in line with all police services in Canada.
- Make railway police an essential service under the RSA and have minimum staffing levels for all railway police services. CN Police and CP Police have similar small numbers police officers while VIA presently has only a few officers but their numbers are growing.
- Proper equipment in line with municipal and federal policing counterparts. This would include but not limited to: long guns, CEWs, facilities with proper detention capabilities, etc...
- Proper civilian oversight with an identified mandate and clear, transparent process. This could be achieved by aligning officers with their pre-existing provincial standards and/or respective Provincial Police Services Acts or creating a similar Federal/National model .

The first two pages above provided for improvements that could be accomplished within the present RSA framework, while referencing the appropriate federal and/or provincial legislation. If it becomes apparent that the above recommendations would not or could not be accomplished within the present RSA and/or railway management interests then another step to consider would be the amalgamation of all railway police services into one group.

Simply put all railway police together under one umbrella answering to Transport Canada and funded by the railways. A levy on every single car load being shipped can be imposed much like the airline industry has security fees. These levies can be used to make railway police cost neutral to each company while greatly enhancing railway security across all networks with ONE clear focus and ONE mandate for all under one management structure as the Canadian Transport Police. This unified model would also allow for expansion in the future in to other federally regulated critical transportation infrastructure.

The model for the British Transport Police can be relied upon in which all private railways use a similar model to pay for mandated rail police service which is administered by the government. (www.btp.police.uk). Furthermore, a research paper based on a Canadian railway police model, titled "McClellandIvanproject" has also been included for you review.

Thank you again for the opportunity to present this most important information to you. The CNRPA feels that the removal of the 500 meter restriction is something that can easily be accomplished quickly under the present framework, while the remaining suggestions will need more time and review. Should the RSA Review Committee feel a need to secure more information, the CNRPA would be more than willing to be part of any future review and/or discussions on this topic.

NOTE: A number of legal and other references have also been attached as separate attachments.

Again – these are just a few suggestions on how to improve the Railway Safety Act and to make it better aligned with present realities, with a clear and transparent mandate that focusses on the needs of the railways, industry, employees, government and the communities in which railways operate.

Respectfully Yours,

CNRPA