



Surface Transportation Board
Washington, D.C. 20423-0001

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MEMORANDUM

TO: Cynthia T. Brown, Chief, Section of Administration, Office of Proceedings

FROM: Ellen Erichsen, Chief of Staff

RE: Ex Parte Communication Related to Docket No. FD 36500

DATE: September 7, 2022

On June 13, 2022, Chairman Oberman's office received a package from Runyowa Law detailing what the sender describes as a whistleblower complaint related to the application by Canadian Pacific Railway Limited (Canadian Pacific) to purchase Kansas City Southern and its railroad affiliates (KCS). Because Canadian Pacific filed a notice of intent to file an application to acquire KCS on March 23, 2021, and an application to acquire KCS on October 29, 2021, in Docket No. FD 36500, this communication is a prohibited ex parte communication pursuant to the Board's decision in Petition of Fieldston Co., Inc. to Establish Procedures Regarding Ex Parte Communication in Railroad Merger Proceedings, Docket No. EP 619 (STB served Jan. 8, 1997). Please place this memo and the enclosed material in the public docket of Docket No. FD 36500.

June 7, 2022

CONFIDENTIAL & URGENT

Chairman Martin Oberman
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Dear Chairman Oberman,

**RE: Whistleblower complaint regarding the Canadian Pacific Railway's Pending
Merger with Kansas City Southern Railway.**

SUMMARY

*This whistleblower complaint is to provide the United States Surface Transportation Board ("STB") with information relevant to its review of **Canadian Pacific Railway's** proposed merger with **Kansas City Southern Railway**. Specifically, this complaint provides prima facie evidence of CP Railway's abuse of its statutory, cross-border police force, the CP Police Service, whose American police officers fall under the operational command of a Chief of Police and civilian executives in Canada. The abuses in question, and CP Railway's general exercise of criminal law powers in the United States, threaten the integrity of **criminal law enforcement, workplace-public safety, national security, civil-constitutional rights, customs & immigration enforcement, and the sovereignty** of the United States, its peoples, and the general public interest.*

If the STB approves the merger without accounting for the latent but consequential issues in this complaint, that will reward CP Railway for its abuses of its cross-border police powers, while entrenching and expanding the potentially irreversible damage that the company's policing activities impose on American interests (especially after CP Railway integrates the Kansas City Southern Railway police into the Canada-based CP Police Service). The complainants request that:

- A) The STB blocks the merger **unless** CP Railway first provides the STB with full and exonerative responses to, and corroborating records regarding, all the outstanding issues identified in this complaint. This includes the role that the CP Police Service and its Canada-based corporate overseers played in the criminal investigations of hundreds of deaths and serious injuries of American citizens at CP Railway's U.S. operations;*

- B) *The STB refers the issues in this complaint to the United States Department of Justice and Federal Bureau of Investigation to investigate the potentially criminal implications of the issues raised in this complaint;*
- C) *If approved, the STB preconditions the merger on CP Railway relinquishing all police powers in the United States; only securing contract policing services under F.R.A. Rule 81 FR 88127 (CFR: 49 CFR 207); barring all corporate/managerial control and direction of the CP Police Service; and surrendering all its police records regarding operations in the United States to the Department of Justice, FBI, and Department of Transportation Office of the Inspector General to assist with any investigations arising from point (B) above, and to maintain the integrity of records that should not be in the possession of a private foreign corporation.*

THE SUBSTANCE OF THE COMPLAINT.¹

I am filing this whistleblower complaint on behalf of my clients, whose loved ones died while working for Canadian Pacific Railway (“CP Railway”) in Canada. My clients are Ms. Pamela Fraser, Ms. Eva Dockrell, Mr. Edward Dockrell, and Ms. Heather Dockrell. Ms. Fraser lost her son, Dylan Paradis, in the February 4, 2019, derailment of CP Railway Train 301 near Field, British Columbia. The Dockrells lost Andrew Dockrell in the same derailment. All my clients live in the Greater Calgary area. The fatal incident is the subject of an ongoing criminal investigation by the Royal Canadian Mounted Police. Through representing our clients, we uncovered the evidence upon which this complaint is based, and which has broader public interest implications in both the United States and Canada.

As you are aware, CP Railway in its various corporate incarnations in the United States and Canada is advancing a proposed merger with the Kansas City Southern Railway of Missouri. The purpose of this whistleblower complaint is to present the STB with *prima facie* evidence of CP Railway’s serious abuses of its police powers. This complaint also alerts the STB to the national interest implications of CP Railway’s ongoing policing activities in the United States, which justify blocking the merger (if CP Railway fails to provide full rebuttals and commits to all the conditions that the STB may impose to ensure the merger does not undermine any American interests). NOTE: My clients are not requesting that the STB disclose any records or information that CP Railway provides, or that the STB unearths while investigating the issues in this complaint.

The *prima facie* evidence accompanying this complaint includes official and verifiable documents from government sources, law enforcement agencies, governmental reports, disclosures pursuant to freedom of information requests, and official court documents. In particular, on **June 2, 2022**, Canada’s **Parliamentary Standing Committee on Transport, Infrastructure, and Communities** released its report on railway safety which affirms a key basis for the issues in this

¹ Please note that I am not a lawyer in the United States of America. By submitting this whistleblower complaint, I make no assertions about the application of American laws.

complaint. The Committee recommended corresponding reforms to railway policing in Canada, and the Government's response is pending. In summary the detailed complaint and *prima facie* evidence in this whistleblower package raise the following issues:

1. **CP Railway's abuse of its cross-border police powers – the company asserting police jurisdiction over death and serious injuries under the company's watch:** The evidence reflects that CP Railway has asserted of policing jurisdiction over, and self-exonerated itself for, deaths and serious injuries that occurred under the company's operations (and for which the company's potential criminal liability was in question). The available evidence arose largely in the Canadian context. However, key indicia point to a potentially similar historical and prevailing pattern in the United States.

At a minimum, it is crucial for the STB to request CP Railway to provide answers and records regarding how its police force has exercised any policing jurisdiction and exonerated the company for deaths, serious injuries, and other incidents at the company's American operations. Similarly important is the role that corporate management played, and whether the CP Police Service police kept them apprised or took instructions from management as (employees) subordinates, rather than as independent police officers investigating a party of interest. The necessity of such queries is important given the **25 employee deaths** and **7,349 reportable injuries** at CP Railway's American operations between January 1990 and December 2021. For the same period, CP Railway had a total of **366 deaths** and **10,136 reportable injuries** for both employees and non-employees (United States Bureau of Transportation Statistics);

2. **Serious workplace/public safety issues:** This complaint provides evidence concerning workplace and public safety issues at CP Railway over the years, at least in Canada. The Canada **Transportation Safety Board's 2022 investigative report** into the Field, British Columbia derailment of February 4, 2019, provides some significant insights into a corporate culture and conduct that prioritized improving productivity goals at the expense of workplace/public safety including issues such as **worker fatigue, the disregard of worker safety reports, inadequate and unduly accelerated worker training, and the use of old cars with worn brakes etc.**
3. **Sovereignty implications of CP Railway's cross-border command and control of law enforcement officers in the United States:** By commanding police powers in the United States from Canada while not legally police officers in the United States, CP Railway's Chief of Police and the corporate executives to whom he answers infringes on America's indivisible sovereign authority over its criminal law enforcement powers. Further, it is likely a violation of Americans' civil and constitutional rights to be subjected to criminal jurisdiction and police actions of officers whose authority emanates from, and who answer, to a foreign corporate civilians (who themselves answer to private shareholders from, many of who are not American citizens or entities);

4. **Unlawful attainment and continued exercise of police powers in the United States or, in the alternative, misleading American courts about the nature of CP Railway's American operations:** The approval of a merger that does not review the evidence and seek answers from CP Railway would risk expanding the potential prejudice arising from this issue deeper into the United States.
5. **Potential impersonation of police officers through the CP Police Service's Canada-based police chief and civilian command over American police officers from Canada.** Americans who interact with and submit to the authority of CP Police Service officers in the United States do so on the basis that these officers represent a legitimate legal authority in every respect. However, CP Railway's American police officers only have their policing authority pursuant to their Canada-based employers' application for that authority in the United States. Hence, CP Railway's American police officers are merely a reflection of their foreign-based overseers whose law enforcement powers in the United States are potentially illegitimate. As such, by exercising direct command over, and operational direction to, their American police officers while not endowed with police commissions in the United States, CP Railway's Chief of Police and the civilian executives to whom he answers, could be effectively impersonating police powers. We have raised this issue with the company which has provided no substantive response or rebuttal;
6. **National security implications** in the United States arising from CP Railway's corporate control and command of the CP Police Service's American police officers from Canada. The CP Police Service's Chief of police and the corporate civilian executives to whom he answers in Canada obtain direct or indirect access to sensitive law enforcement and national security information relating to policing activities on United States territory. They do from the American officers they employ and command, but without meeting the citizenship and security clearance requirements that are often associated with access to such highly sensitive information in police/national security databases in the United States (from both the CP Police Service database and from access to shared information from other law enforcement agencies);
7. **Breach of American's privacy:** This complaint provides documents reflecting CP Railway's potential cross-border breach of Americans' privacy through the company's unlawful corporate access to the Canadian Police Information Centre database, which contains information from Canada's police forces and international partners (including the United States). CP Railway accessed this database for the non-policing and unauthorized purpose of screening job applicants to the company. The evidence suggested that this pattern continued for years after the RCMP requested that the company stops the practice;

8. **Potential infringement of Native American rights:** The potential constitutional, sovereignty, and civil rights implications of subjecting Native American bands, (whose territory through which CP Railway's operations pass through in the U.S) to the criminal law enforcement powers of a private foreign corporation and its civilian executive leadership;
9. **CP Railway threatening statutory investigators to prevent a criminal referral of the Field, British Columbia derailment to independent law enforcement;**
10. **CP Railway's violation of the principle of police independence:** Exercising unlawful control of, and interfering with, the constitutionally protected principle that police forces must remain operationally independent, including from the authorities that fund them;
11. **CP Railway's misrepresentation of its Environmental, Social, and Governance (ESG) profile:** CP Railway's public statements and regulatory filings do not reflect the conduct and issues captured in this complaint, all of which raise serious governance issues that ethical investors would likely express an interest in. Again, we raised this issue with the company, which has failed to provide substantive rebuttals but continues to resist making the necessary corrective regulatory filings, public disclosures, and taking steps to investigate and remediate these issues.

Although we have accumulated significant evidence regarding the above allegations, the weight of the evidence varies depending on the issue. CP Railway may be able to provide acceptable rebuttals to many of the above issues. However, the threshold evidence or inferable conclusions across all the issues, even if subsequently addressed, warrant CP Railway providing adequate and exonerative responses. The complainants remain prepared to provide the STB with any assistance it requires in investigating this whistleblower complaint.

Thank you,

Tavengwa Runyowa

Tavengwa Runyowa

(Representing Ms. Pamela Fraser, Ms. Eva Dockrell, Mr. Edward Dockrell, and Ms. Eva Dockrell).

**US-STB DETAILED WHISTLEBLOWER COMPLAINT RE: CANADIAN
PACIFIC RAILWAY AND PENDING MERGER WITH KANSAS CITY
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INTRODUCTION.

This whistleblower complaint is against the Canadian Pacific Railway Company ("CP Railway"). The complaint is filed by Runyowa Law Professional Corporation of Regina, Saskatchewan, Canada on behalf of Ms. Pamela Fraser of High River, Alberta, Canada, and her co-complainants, Ms. Lorelei Desrochers, of St. Malo, Manitoba, Canada, Mr. Edward Dockrell of Calgary Alberta, Canada and Ms. Heather Dockrell of Calgary, Alberta, Canada.

CP Railway is in the process of merging with US-based railroad Kansas City Southern. This merger is currently under the review of the Surface Transportation Board ("STB").

The issues arising from this whistleblower complaint relate to evidence we have unearthed which points to CP Railway's gross and longstanding abuses of its corporate police force, the Canadian Pacific Police Service ("CP Police Service"), and failure to disclose, in whole or in part, these abuses to the company's shareholders and to relevant authorities on both sides of United States-Canada border, potentially including the STB.

Please note:

1. **IMPORTANT:** Ms. Lori Desrochers, one of our other clients whose loved one died while working at Canadian National Railway, filed two shareholder proposals with CP Railway regarding the CP Police Service (Exhibit 1 – Bates Number 57). CP Railway's management declined to include these proposals in its 2022 management circular to shareholders (Exhibit 2 - Bates Number 67). In response, Ms. Desrochers' legal counsel sent CP Railway's management a package explaining why they needed to put these issues before shareholders, and how management had a personal interest in not bringing these issues to shareholders (Exhibit 3 - Bates Number 69). Note that this latter Exhibit provides documents that duplicate much of the material in this package. However, because it was prepared for the limited purpose of addressing Ms. Desrochers' dispute regarding the shareholder proposals, it does not furnish the more comprehensive coverage of a whistleblower complaint that this current submission provides. CP Railway ultimately rejected to address this subsequent letter (Exhibit 4 -Bates Page 446).
2. The STB's handling of this complaint is time sensitive given the STB and the Committee of Foreign Investment in the United States ("CFIUS") advanced stage of its review of the proposed CP Railway-Kansas City Southern Railway merger.

The issues detailed in this complaint relate to matters that directly impact the propriety of that merger as it would extend CP Railway's policing powers even further into the United States of America. Given the abuse of police powers and serious legal issues that CP Railway's current operations in the

United States already entail, there is some urgency in the STB understanding the full repercussions of allowing a merger that could entrench and expand the abuses and legal violations in question.

3. We are in the continuing the process of gathering further information and evidence that may be relevant to this complaint. Therefore, this submission is to formally initiate my clients' complaint, but we expect to supplement it as we obtain more details and verification.
4. My clients are currently involved in various legal proceedings involving CP Railway and Canadian National Railway ("CN Railway") in Canada. We are prepared to share the details to the extent that the STB may be interested in, and that the complainants are not otherwise prohibited from sharing by relevant rules and laws. However, the complainants have put some of the evidence they have accumulated from the public domain. This is either through court filings that are open to public access or other information that we have secured through other non-confidential means (such as freedom of information legislation). However, my clients are fully aware that by providing the STB with the information in this complaint, the principle of investigative integrity likely means that your ability to share any information about your investigations with us will be limited.
5. Although the information the complainants provide in this complaint is extensive and the issues may involve complex queries, we believe that the STB's powers could greatly simplify the necessary queries, especially if the preliminary efforts are coordinated with other authorities such as the United States Department of Transport and the Department of Justice. This is in part because CP Railway has already taken public positions that make it easier for US regulatory authorities to determine what to look for and where. These public positions should also make it difficult for the company to decline to answer questions from one authority without violating its reporting obligations to another.

For example, asking CP Railway whether its corporate-owned police force, the CP Police Service, has ever criminally investigated and exonerated the corporation for any deaths or serious injuries under the company's watch should compel the company to concede that it has done so. We trust that the United States also has laws which provide that no entity can criminally investigate and exonerate itself. This is including through the police force that the company directly controls, and whose officers are directly answerable to the corporation's management.

The initial evidence we provide in this complaint shows that the CP Police Service, which answers directly to CP Railway's corporate management, has done just that in Canada. We are also in the process of confirming that CP Railway has done so in many other instances in Canada, beyond what we currently have evidence for, and potentially in the United States as well.

If the full extent of the legal violations we have identified are as widespread as the evidence suggests, this means that CP Railway, through its police force, has deprived hundreds, if not thousands, of American and Canadian families of independent criminal investigations into deaths and serious injuries that have happened under the company's watch. We trust that the United States has

equivalent criminal laws that apply to workplace safety (e.g. Westray law in Canada), and the operational independence of police forces that can investigate any potentially criminal incidents (R v. Campbell in Canada paras 29 – 33). The evidence in this complaint not only demonstrates CP Railway's violation of the Westray laws and the principle of police independence, but the company's willful misrepresentations about its wrongdoing to its shareholders and the American and Canadian public.

Given that CP Railway has already taken public positions on the above, and that we have gathered evidence that should help the STB focus its inquiries on the necessary questions that CP Railway will need to address to satisfy the STB about the issues in this complaint.

JURISDICTION OF THE SURFACE TRANSPORTATION BOARD TO ADDRESS THIS WHISTLEBLOWER COMPLAINT REGARDING THE PENDING CP CP-KCS MERGER.

The complainants believe that the Surface Transportation Board has the jurisdiction to consider this whistleblower complaint under Title 49 U.S.C. § 721 and § 10101. The relevant parts of Title 49 U.S.C. read as follows:

SUBTITLE I—DEPARTMENT OF TRANSPORTATION CHAPTER 7—SURFACE TRANSPORTATION BOARD SUBCHAPTER II—ADMINISTRATIVE

§ 721. Powers

(a) IN GENERAL.—The Board shall carry out this chapter and subtitle IV. Enumeration of a power of the Board in this chapter or subtitle IV does not exclude another power the Board may have in carrying out this chapter or subtitle IV. The Board may prescribe regulations in carrying out this chapter and subtitle IV.

SUBTITLE IV—INTERSTATE TRANSPORTATION CHAPTER 101—GENERAL PROVISIONS

§ 10101. Rail transportation policy

In regulating the railroad industry, it is the policy of the United States Government—

....

(3) to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board;

....

(8) to operate transportation facilities and equipment without detriment to the public health and safety;

(9) to encourage honest and efficient management of railroads;

....

(11) to encourage fair wages and safe and suitable working conditions in the railroad industry;

As evinced in the above quoted text, the Surface Transportation Board shall carry out the policies as enumerated in subtitle IV, which includes ensuring rail safety, safe working conditions public health, and the honest management of railroads. Each of these subjects are triggered by the contents of this whistleblower complaint.

**FORMAL STEPS THE COMPLAINANTS REQUEST THE US-STB TO TAKE
WITH RESPECT TO THE CP RAILWAY-KCS MERGER REVIEW.**

- 1. That the STB blocks the proposed merger unless CP Railway provides full and exonerative responses on all issues in this whistleblower complaint.**

The complainants request that the STB investigates the issues enumerated above in this complaint. The investigation would likely include asking CP Railway to provide information on its policing operations in the US, whether its police force has ever exercised jurisdiction (partial or total) over deaths and serious injuries in the U.S., and obtaining CP Railway's responses regarding all the other issues in this whistleblower complaint. Unless CP Railway provides the STB with full and exonerative responses to the **nine (9)** issues and related evidence in this complaint, the complainants suggest that the STB block the merger. The complainants do not request or expect either the STB or CFIUS to disclose any information to them and understand that the integrity of any investigations and records are paramount.

- 2. Refer the relevant aspects of complaint to other authorities for joint or concurrent investigations.**

The information and evidence provided in this complaint points to potential offences which overlap with, and extend beyond, the STB's remit. We understand that the STB often coordinates with other agencies including public law enforcement agencies in such cases. Based on the subject matter of this complaint, we believe the following authorities likely have an interest in reviewing this matter or may be required to do so under their mandates. These agencies likely include, but are not limited to, the following:

The Department of Justice (Criminal Division, Civil Rights Division, and the Federal Bureau of Investigations).

We understand that the Department of Justice has recently adopted a particular interest in policing related matters, including through the investigation it opened into the Minneapolis Police. The use and abuse of police powers, especially by foreign entities exercising criminal law powers in the United States and against American citizens, is likely to be of interest to the Department.

The US Department of Homeland Security.

The CP Police Service is entrusted with extremely sensitive information and powers across the United States-Canada border. This includes its access to the CPIC. What is less clear is whether the Department of Homeland Security and the companies' shareholders are aware of CP Railway's abuses of its police force, and whether the company has leveraged its cross-border police powers to undermine or prevent the full and independent investigation of deaths and serious injuries of American citizens for decades.

The United States Department of Transportation.

The Department of Transportation oversees American railroads and liaises with Canadian government partners. We understand that the Department technically oversees the railway police. However, given our experience in Canada, it appears that they may be unaware of the full significance of what has been going on at CP Railway and in railway policing in general. The Department's jurisdiction over railway safety likely means it would be interested in a non-American company's potential self-policing and self-exoneration in the deaths and serious injuries of American citizens and other potential abuses.

IMPORTANT CONTEXT ABOUT PRIVATE RAILWAY POLICE FORCES AND CP RAILWAY'S POLICING OPERATIONS IN THE UNITED STATES AND CANADA.

To help the STB appreciate the nature and gravity of the issues in this complaint, it is important to provide the legal and historical background of private railway policing in Canada and how CP Railway's policing operations extend into the United States.

Canada's *Railway Safety Act* and its empowerment of corporate owned railway police forces.

The STB is probably aware of how corporate railway policing works in Canada, and even more so in the United States. Nevertheless, for the sake of comprehensiveness and context, this complaint will review the statute that governs the CP Police Service in Canada and how that law indirectly endows CP Railway's civilian leaders in Canada with de facto control over law enforcement officers who wield criminal law powers in the United States.

Sections 44 and 44.1 of Canada's *Railway Safety Act*, R.S.C., 1985, c. 32 (4th Supp.) allows the country's private railway companies to own, control, and operate private corporate police forces. The relevant provisions of the *Railway Safety Act* are available here:

- <https://laws-lois.justice.gc.ca/eng/acts/R-4.2/page-14.html#h-425729>

Under the relevant provisions of the *Railway Safety Act*, the CP Police Service officers obtain their police powers through the Canadian courts upon the company's nomination. Contrary to popular belief, corporately owned railway police forces such as the CP Police Service are not private security companies. CP Police Service officers have full police powers to arrest, investigate, and charge suspects just like any other police force in Canada and the United States. However, CP Police Service officers are also full corporate employees who CP Railway hires, directs, disciplines, and can terminate without seeking the leave of the courts which appointed them.

Further, the CP Police Service has no independent civilian oversight body in Canada or the United States. Even the CP Police Service Chief of Police is based in Canada, and answers directly to CP Railway's corporate management in Calgary. We understand that CP Railway's corporate management determines the Police Chief's salary, bonuses, and benefits.

Although the CP Police Service's Chief, currently Mr. Al Sauv , is based in Canada and is a Canadian citizen, he is the unified chief of all CP Police Service officers, including those working for the company's operations in the United States. CP Police Service officers in the United States similarly obtain their policing powers through American courts but, after they are sworn in, they too become exclusive employees of CP Railway and answer to Chief Sauv  in Canada (who in turn, answers to CP Railway's corporate management in Canada). Effectively, CP Railway's Canada-based corporate executives and civilians, who are not American citizens or residents, through Chief Sauv , fully control a statutory police force that exercises criminal law powers against United States citizens.

The link between railway safety, precision scheduled railroading (PSR), profits, and railway policing at CP Railway.

As a private corporation, CP Railway's Canada-based corporate leaders owe their primary fiduciary duty to the company's shareholders, and not the public on either side of the Canada-United States border. Therefore, unlike other police forces whose sole duty is to the public interest and the administration of justice, CP Police Service's loyalties are divided between the public interest and their duty as employees of a corporation whose management have a fiduciary duty to maximize profit and shareholder value. The CP Railway police officer's legal duty of loyalty¹ to the corporation and its shareholders is relevant because it is inextricable from the otherwise legitimate objectives of profit and stock price maximization. When a police

¹ E.g. *Zoic Studios B.C. Inc. v. Gannon*, 2015 BCCA 334 (CanLII), at para 29 <<https://canlii.ca/t/gkbl2>>; *RBC Dominion Securities Inc. v. Merrill Lynch Canada Inc.*, 2008 SCC 54 (CanLII), para 15, [2008] 3 SCR 79, <<https://canlii.ca/t/212w5>>; *Genesis Fertility Inc. v. Yuzpe*, 2021 BCCA 420 (CanLII), para 28 <<https://canlii.ca/t/jk8g2>>.

officer is burdened with the duty of loyalty and fidelity they owe to a corporation as an employee, they are forced to balance that with their conflicting duty as a law enforcement officer to investigate and lay criminal charges against the corporation in the interests of justice (for fatal and injurious incidents).

The precision railroading model that CN Railway pioneered, and which CP Railway has subsequently adopted and used to significantly bolster both its profits and stock price, has been associated with significant compromises in safety. These safety incidents include deaths, serious injuries, environmental spills, and incidents involving hazardous materials that the CP Police has asserted policing jurisdiction over.

These unsafe but profitable practices that have been associated with precision railroading include excessive worker hours (fatigue), rushed safety inspections, reduced maintenance schedules, and the undue focus on running trains on ambitious schedules despite contrary safety indicators. We understand that the United States Congress House Committee on Transportation and Infrastructure is currently investigating these safety-related aspects of precision railroading:

- <https://transportation.house.gov/news/press-releases/chairs-defazio-and-payne-jr-request-gao-study-on-the-impacts-of-precision-scheduled-railroading-on-workers-safety-and-shippers>

Public police forces' and authorities' deference to private railway police forces have facilitated the type of misconduct that is the subject of this complaint.

These public authorities, which include public police forces, coroners, and railway regulators, may cooperate with the CP Police Service in railway incident investigations. However, it is typically the company's police force that is deemed to have the exclusive right and discretion to determine whether any criminal investigation should be conducted and if so, whether any criminal charges should be laid. As the evidence shows, in Canada, the railway companies' own police forces have never charged their parent companies for any deaths, serious injuries, derailments, environmental disasters etc.

When the railway companies' police forces assume control of the scenes of incident investigations and assert exclusive policing jurisdiction over important tasks such as evidence collection, other authorities of parallel jurisdiction simply defer any potentially criminal aspects to the companies' police forces (including the CP Police Service). Our queries confirm that in an overwhelming number of cases, other investigative authorities, including independent public police forces, simply decide that the CP Police Service (or other railway company police force), is the police of jurisdiction. Therefore, even if the incident implicates any criminal conduct, the CP Police Service assert police jurisdiction with public police forces assuming a supporting, secondary role.

Under the Westray amendments to Canada's *Criminal Code*, the Canadian Parliament created special laws that focus on employers' criminal liability for deaths and serious injuries of workers. In other words,

Canada's *Criminal Code* demands that employers be primary suspects in incidents of worker death or serious injury. Given that corporate policy and management decisions are often responsible for such incidents, the jurisdictional deference that the company's corporate police forces obtain means that they can control, influence, and/or direct any investigations into the company's conduct, and invariably exonerate themselves.

In Canada, public police forces have interpreted Sections 44 and 44.1 of the *Railway Safety Act* as empowering corporate police forces to assume jurisdiction over any investigations of their parent companies' potentially criminal conduct. We have reason to believe this is the case in the United States as well. If so, this means that the victims of the dozens of deaths and serious injuries that have taken place at CP Railway in the United States over the decades have likely been denied independent criminal investigations. This is the result of a foreign-based company's police force, whose corporate employers may have been responsible for the deaths or injury in question, exercised policing jurisdiction over the criminal investigations of their own company and superiors. Not only does this violate the *nemo iudex in causa sua* principle, but it also violates the principle of police independence when a suspect controls and decides the outcome of a criminal investigation into their own conduct.

This systemic and historic deference is important to understanding why CP Railway's brazen conduct has long escaped the scrutiny that would have deterred the abuses we detail in this complaint. This jurisdictional deference problem has been hiding in plain sight partly because public police forces have largely viewed the corporate railway police forces as law enforcement partners, not as employees and agents of the main parties of interests in railway incidents. Our communications with public police forces in Canadian jurisdictions where CP Railway has operations have confirmed this pattern. In support of this assertion, the STB should review our communications with the Canadian Association of Chiefs of Police ("CACCP") which is an association that represents 95% of Canada's police departments. See the **second subheading under Section 5** at: <https://cnrailshareholders2021.com/>. See the attachment with the PDF of our communications with the CACP at **Section 14(q)**.

This background on private railway policing should enable the STB to appreciate how the substance of this complaint gives rise to potential securities violations and other unlawful conduct that justifies referrals to other law enforcement and regulatory authorities in the United States.

By presenting itself as a law enforcement partner to public authorities in the U.S. and Canada, CP Railway has immunized itself from legal scrutiny for deaths and serious injuries at its operations.

It appears that because CP Railway has presented itself as a law enforcement partner to police forces and public authorities in Canada and the United States, the company has successfully created a blind spot in these public authorities' jurisdictional gaze.

This official recognition as a law enforcement partner, without direct and regular oversight of its

investigations into its own policing and commercial conduct, is at the center of the problem. This situation has allowed CP Railway to wrongfully benefit from the ill-defined distinction between its police force's legitimate powers to investigate potential crimes against company property, personnel, and the public; versus its illegitimate use of such powers to investigate and exonerate itself for potentially criminal conduct.

Effectively, CP Railway's power to criminally investigate and exonerate itself, and public authorities' historical acquiescence to that status quo, have effectively placed the company above the law in the United States and Canada. This situation places those who are killed or injured on CP Railway property, in a justice vacuum that has prevailed for decades in both the United States and Canada. We trust that this situation raises serious constitutional, labour, civil rights, criminal justice, and sovereignty implications in the United States, as it does in Canada.

Before approving the merger, the complainants request the STB to consider the public interest implications of expanding CP Railway's policing powers deeper into the United States. If CP Railway cannot provide the STB with fulsome and exonerative rebuttals regarding all the issues in this whistleblower complaint, the STB's approval of the merger would inadvertently endorse all CP Railway's abuse of police powers and the legal prejudices arising from the company's command of law enforcement officers in the United States by Canada-based corporate leaders.

NINE (9) LEGAL AND PUBLIC INTEREST IMPEDIMENTS TO THE PENDING CP-KCS MERGER ARISING FROM CP RAILWAY'S ABUSE OF ITS POLICE FORCE AND ITS OVERALL POLICING ACTIVITIES IN THE UNITED STATES.

As stated in the "Introduction", my firm represents Ms. Pamela Fraser, Mr. Edward Dockrell and Ms. Heather Dockrell on this whistleblower complaint. Ms. Fraser lost her son, Dylan Paradis, when he was killed in the February 2019 derailment of CP Railway Train 301 near Field, British Columbia. Mr. Edward Dockrell and Ms. Heather Dockrell lost their brother, Andrew Dockrell, who was killed in the same derailment. We have represented these clients on related legal matters in Canada. In the process of doing so, we came upon evidence of serious corporate abuses with potentially cross-border reach.

As previously stated, CP Railway created, owns, controls, and has disciplinary oversight of the CP Police Service pursuant to Sections 44 and 44.1 of the *Railway Safety Act* in Canada. As the STB may be aware, and as we understand the issue, in the US, each state in which CP Railway operates is responsible for granting policing powers to CP Police Service officers. The US federal government augments the state specific powers by Interstate Authority granted by the US Secretary of Transportation (Code 49USC28101).

The entrenchment of criminal law powers in private railway corporations has produced some unintended consequences, the full impact of which (to our knowledge) has not been comprehensively reviewed in the United States or Canada. However, this complaint is not strictly about the legal framework

which empowers CP Railway to operate a cross-border police force. This complaint is about how CP Railway has abused its police force and continues to do so without any accountability to public authorities.

Legal Issue #1 for Merger Review: Abuse of police powers –CP Railway has exercised jurisdiction over, and exonerated itself of, criminal liability for deaths and serious injuries at its operations.

Criminal liability for workplace deaths, anchoring fatal and injurious incidents in the Canadian criminal law, and likely, its American analogs.

When a CP Railway worker dies pursuant to the company's operations in Canada, the CP Police Service has taken over the ensuing police investigations. Other Canadian police forces have invariably deferred to the CP Police Service, even though the police force is legally indistinct from CP Railway and its officers report directly to the company's executive management through their Chief of Police. Naturally, this is problematic because suspects in regulatory and potentially criminal incidents should not be investigating and exonerating themselves. This is concerning when considering the *Westray* amendments to Canada's *Criminal Code*, which focuses on employers as the default suspects or parties of interest in workplace deaths or serious injuries.

For further details about Canada's *Westray* laws, see the Canadian Department of Justice's and the Parliament of Canada's websites on these laws and why they were enacted to better capture corporate criminality.

- <https://www.justice.gc.ca/cng/rp-pr/other-autre/westray/p1.html>
- https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/372LS457E

We trust that the United States has similar laws regarding gross negligence or other criminal conduct for which employers may be criminally liable with respect to workplace deaths, serious injuries, and other incidents. Or in the very least, other criminal laws of general application likely capture willful and dangerous employer conduct which harms workers and the general public.

Given that employers are directly implicated in workplace deaths and serious injuries that happen on their watch, these very employers should not take over, or have any operational role in, police investigations in which they may be criminally liable. Even if the employer is subsequently vindicated, as a question of investigative integrity, they must play no role and exercise no influence over the investigation. This section of the whistleblower complaint is to detail how CP Railway, through its CP Police Service, has unlawfully asserted police jurisdiction over deaths and serious injuries at its Canadian operations, and thus, unlawfully deprived numerous workers and other Canadians of independent criminal investigations. The complaints request that the STB fully investigates whether CP Railway Ltd., has similarly investigated and exonerated itself in the hundreds of deaths and thousands of injuries at its American subsidiaries (more below). If so, the

company deprived the deceased and seriously injured of independent criminal investigations into their tragedies. Before CP Railway is rewarded with a merger that would endorse this injustice and potentially extend its capacity to extend such prejudice to more Americans, the company must first fully account for how its police force has handled all the deaths and injuries at its U.S. operations.

CP Railway's practice of asserting criminal jurisdiction over deaths and serious injuries on the company's watch.

CP Railway has unlawfully leveraged and abused its wholly-owned CP Police Service to prevent or undermine independent criminal investigations into numerous fatal, injurious, and other major incidents that have happened pursuant to its operations in both Canada, and potentially, the United States.

On June 3, 2022, Canada's Parliamentary Standing Committee on Transport, Infrastructure and Communities released its report on "Railway Safety and the Effects of Railway Operations in the Surrounding Communities in which they Operate" (Exhibit 5 – Bates Number 448). At page 17 of the report, the multi-partisan Committee made Recommendation 20 to the Government which stated: "That the Government of Canada amend Section 44 and 44.1 of the Railway Safety Act to remove the potential conflict of interest from the jurisdiction of private railway police in investigations involving their companies." This Parliamentary report is based in part on the culmination of evidence showing that the CP Police Service asserted jurisdiction over derailment of CP Railway Train 301 near Field, British Columbia derailment in February of 2019. Court filings in proceedings which the whistleblowers are involved, also confirm that not only did the CP Police Service assert jurisdiction over the incident, the most senior officers, including the Chief and Deputy Chief (Canada), mandated that the investigating officers shut down the investigation after a month, and exonerated the company of any criminal wrongdoing.

It is important to note that how the unified CP Police Service handled the Field derailment is directly relevant to how the same leadership have handled deaths and serious injuries at CP Railway Ltd.'s American subsidiaries. For context, U.S. Government published data shows that CP Railway had **10,504 casualties** between 1990-2021, **366 of which were fatal**. Additionally, the data shows that **7,349** of the casualties were Railway Employees at CP Railway during that time frame with an additional **25 fatalities** among that category of people. If CP Railway's practice of self-investigation and self-exoneration through the CP Police Service has been the norm over the years in the United States, such conduct could give rise to legal violations that also touch on the investigative jurisdiction of the **United States Department of Justice** (Civil Rights Division, Criminal Division, and the Federal Bureau of Investigation), the **Department of Homeland Security**, and the **Department of Transportation**.

From our queries to date, we have found no instance of the CP Police Service ever laying criminal charges or facilitating the prosecution of CP Railway or its leaders for the above deaths and serious injuries in the United States. In fact, our preliminary research show that American police forces defer such cases to the CP Police Service and to the railway owned police services.

To anchor this self-investigation practice in Canada, the available record confirms that the CP Police Service has asserted jurisdiction over deaths and serious injuries in which CP Railway is implicated in Canada. In their joint Responses to Civil Claim ("RTCC") that respond to Ms. Fraser's and the Dockrell's lawsuits over the Field, British Columbia derailment of CP Railway Train 301, both the former and current CP Police Service Chiefs of Police conceded that CP Police Service **had** investigated the fatal derailment of Train 301 and exonerated all parties, necessarily including CP Railway and its corporate leaders, of any criminal liability (Exhibit 6 pages 4-5 para 19(c)(d)(k)(l) - Bates Number 495).

Further, in his own response to the claim, Constable Mark Tataryn also conceded that he participated in that very investigation while employed as a CP Police Service Officer (Exhibit 7, page 2 para 7-8 and 13 - Bates Number 506). However, in their response to the claim, CP Railway as a corporation, its CEO, Mr. Keith Creel, and the Board of Directors contradicted the Chiefs and Constable Tataryn by asserting that it would be unlawful and inappropriate under any circumstances for the CP Police Service to investigate the company and their corporate superiors (Exhibit 8 paragraph 20 - Bates Number 513).

Further still, as part of a legal process that the Defendant triggered to obtain a determination that the Dockrell and Fraser claims cannot proceed because they are barred under British Columbia's *Workers Compensation Act*, the CP Railway Company tendered an affidavit from Shelly McInnis, CP Railway's Managing Director, Human Resources (Exhibit 9 - Bates Number 539). At paragraphs 11 – 17 of Ms. McInnis' sworn affidavit, despite being a senior corporate employee, she makes representations on behalf of the purportedly independent CP Police Service. At paragraph 14 of her affidavit, Ms. McInnis states:

"The CPPS initiated an emergency response as first responders to the Workplace Accident, and assisted local authorities and CP Railway including to: locate and access the scene of the Workplace Accident through challenging weather conditions; maintain peace and order at the scene; locate and provide any assistance to the emergency response crew and other first responders; secure the scene and evidence for other investigative agencies as requested; and, gather and return the effects of the deceased crew members. The CPPS also conducted a limited investigation into the circumstances of the Workplace Accident to determine whether any of the crew were impaired by drugs or alcohol." [Emphasis added.]

The underlined section contradicts Chiefs of Polices' assertion that the CP Police Service found no criminality by any party, which necessarily includes the CP Railway Company that operated Train 301. That indicates that the CP Police Service engaged in a broader, open-minded query that followed the evidence to the conclusion that no person was responsible for criminal activity. An investigation that was limited to whether the three deceased workers were impaired by drugs or alcohol could not have absolved any potential party, including CP Railway Company of criminal conduct. Effectively, the Chiefs of Police **did** investigate, or at least considered CP Railway Company's potential liability before dismissing it. However, Ms. McInnis, speaking for the CP Railway Company, confidently asserts a narrower scope that contradicts the Company's position. The effect of this contradiction is that the if the Chiefs of Police and the CP Police Service officers

did conduct the broader investigation that they assert, and exonerated CP Railway, then this was unlawful and inappropriate as CP Railway states at paragraph 20 of its virtually identical responses to the Dockrell and Fraser claims.

Based on how the CP Police Service handled this investigation under its current and former Chiefs, this indicates that the CP Police Service, answering to management, may have investigated and exonerated CP Railway's American incarnations and the corporate civilians to which they answer, in 331 deaths and 8362 reportable injuries that have happened during CP Railway's American operations between 2011 and 2020 (Exhibit 10 - Bates Number 592). If so, all these people were denied independent criminal investigations or assessment to determine CP Railway's potential criminal liability.

As detailed further in these submissions, the common pattern in such cases is that the CP Police Service attends the scene of a fatality or serious injury. If another police force has also attended, the CP Police Service asserts jurisdiction or the other police forces yield to the CP Police Service as the police of jurisdiction. This is what happened with the Royal Canadian Mounted Police ("RCMP"), which initially claimed it did not have primary jurisdiction over the Field, British Columbia derailment and that the CP Police Service did. However, almost two years after the derailment, the RCMP subsequently launched a criminal investigation in December 2020 after media pressure and CP Railway's insistence that the RCMP had the duty to investigate (not the CP Police Service).

Separately, former CP Police Service Constable Tataryn, who the Chiefs deployed to investigate the case, apparently pushed to direct the investigation on CP Railway's possible role in the derailment.² However, according to his response to the Fraser and Dockrell claims, the CP Police Service unilaterally shut down the investigation merely 30 days after the derailment and without his consent (see Exhibit 7 page 2 para 7-8 and 13 - Bates Number 506). If this was indeed the case, this was a direct violation of the principle of police independence that the Supreme Court of Canada found to preclude such interference in a police constable's inherent right to investigate and lay charges as they see fit, not based on their superiors' dictates. *R. v. Campbell*, [1999] 1 S.C.R. 565 at paras 29-33 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1692/index.do>.

We trust that in the United States, police officers are also supposed to be operationally independent, including from the very authorities that fund them. Given the CP Police Service Chiefs' admission that they investigated and exonerated all parties in the Field, BC incident of criminal liability (necessarily including CP Railway), and CP Railway's assertion that such an investigation would be inappropriate and unlawful, it is in the public interest for the STB to determine the extent to which CP Railway may have used its CP Police Service to shield itself from independent criminal scrutiny the United States. A merger approval that significantly expands the police powers of CP Railway's component companies in the U.S. without considering evidence of the

² "Police officer suspects internal 'coverup' by CP Rail in fatal B.C. Mountain crash: Canadian Pacific Railway police investigated its own company after fatal derailment." <https://www.cbc.ca/news/canada/cp-derailment-investigation-coverup-alleged-1.5436018>.

companies' potential abuses of those powers would be contrary to the American public interest and public safety. It would also reinforce the injustice that numerous Americans suffered because CP Railway used its cross-border CP Police Service to exonerate itself of potential criminal liability for their deaths and serious injuries.

Legal Issue #2 for Merger Review: For years, CP Railway repeatedly ignored worker safety reports before the Field, BC derailment of 2019 (Canada Transportation Safety Board).

CP Railway has seen significant safety issues which are exacerbated and encouraged by its aggressive precision scheduled railroading model. CP Railway adopted this business model when Mr. Hunter Harrison became CP Railway's CEO in June, 2012. These safety issues are most potently illustrated by the Transportation Safety Board's (TSB) investigative report on the Field, British Columbia derailment of Train 301 (Exhibit 11 -Bates Page 613). The TSB report found several safety deficiencies which contributed to the accident including insufficient training of employees, inaccurate safety evaluations including the company's train brake test evaluation methodologies, as well as inadequate reviews or responses of safety hazard reports submitted by crew members, among others. Each of these safety deficiencies is a direct result of the precision scheduled railroading business model employed by CP Railway. This model prioritizes keeping trains running on time in the pursuit of profits over ensuring the safety of crew members and the general public.

The concern with this issue is the extent to which CP Railway's approach to training across its American and Canadian networks created latent and ongoing hazards to public safety in both countries, and of which the Field, BC incident was a real-life manifestation. The STB may wish to more thoroughly examine CP Railway's safety practices with respect to the current adequacy of its crew training, staffing complements, fatigue management, and overall safety practices, to determine whether they pose undue dangers to American workers and communities. The subsections below rely on the Canada TSB's investigative report into the Field, BC incident to highlight long standing concerns that have been pervasive about across the company's operations.

CP Railway's years-long practice of ignoring employees' Safety Hazard Reports.

CP Railway failed to address safety hazard reports submitted by its employees concerning the very issues which directly led to the fatal derailment of Train 301. CP Railway employees assigned to the Laggan Subdivision of tracks were aware of the safety risks associated with that stretch of track in frigid winter temperatures. They attempted to rectify these risks by alerting CP Railway of the dangers and safety issues, only for CP Railway to ignore the issue repeatedly. **Page 11 of the TSB report** states:

Safety hazard reports involving poorly braking unit grain trains descending Field Hill in cold winter temperatures had been submitted by train crews in January and February for a number of years. As individual notifications of this hazard were closed, new, similar reports continued to be recorded through the reporting system. Although CP's procedure for safety hazard reporting was actively followed at the Calgary terminal, the trend analysis it required was not being done. **Consequently,**

year after year, the reports on the poor braking of unit grain trains on Field Hill were closed, no formal risk assessment was conducted, and insufficient corrective action was taken. (Emphasis added).

More alarmingly, the TSB investigation found that CP Railway was actively closing safety hazard report files without any indication that the hazard had been addressed. Specific to the Laggan Subdivision, the TSB report states at page 182:

Train crews consider the poor braking performance of unit grain trains to be a hazard that may present a direct safety risk to employees and pose a threat to safe railway operations. Consequently, when crews were having difficulties controlling their trains on Field Hill, they filed safety hazard reports. The review of the CCFHSC meeting minutes dating back as far as December 2016 show that, for at least the 3 winters before the occurrence, crews had filed hazard reports on this issue regularly through the proper channels. **Still, year after year, the reports on the poor braking of unit grain trains on Field Hill were closed, no risk assessment was conducted, and insufficient corrective action was taken.** [emphasis added].

Analyzing and appropriately addressing identified safety risks from employees' safety hazard reports takes time and money, causing delays to train schedules and increased expenses for CP Railway. An inevitable inference is that CP Railway did not address the risks identified in the repeated safety hazard reports regarding Field Hill in an effort to increase profits despite the increased risk to employee lives. Most chillingly, Andrew Dockrell, a member of the relief crew who was fatally injured in the Field, British Columbia derailment, had filled out another safety hazard report about ineffective braking on Field Hill the day before the derailment. The yet unfiled report was found among the wreckage of Train 301 in which he died.

The above are only three of many extensive contributing factors which led to the fatal derailment of Train 301. For a complete account, see Exhibit 11-TSB Report (Bates Number 613). What all the contributing factors have in common is CP Railway's adoption of unsafe measures and practices that maximizes profits while making railway operations less safe; a consequence of the aggressive application of the precision scheduled railroading business model. If CP Railway successfully merges with Kansas City Southern Railway, this risks extending CP Railway's application of its precision scheduled railroading business model deeper into the United States, expanding the plethora of safety concerns for workers and the public.

Although the Field, British Columbia incident may have made CP Railway more diligent, the STB should take little comfort in that. Given how aggressively CP Railway has applied the PSR model, and how notable its operating ratio has improved, and its stock price having risen over the past decade, the company likely has little margin for implementing the significant, important, but profit-impacting changes that stronger labour and safety practices would impose on the company. Therefore, despite any lessons learned, it is not a foregone conclusion that the company's safety profile has improved significantly, and across all its operations. At a minimum, the STB may wish to put CP Railway to the task of providing records and answers regarding all the safety issues in the TSB report.

Insufficient Training for Crew Members.

After adopting the precision scheduled railroading business model, CP Railway deprioritized sufficient levels of training for crew members and their supervisors as a cost saving measure. This led to the accelerated promotion and assignment of inexperienced personnel to potentially hazardous tasks they were unqualified to handle. The Laggan Subdivision of the tracks, where the CP Railway Train 301 fatal derailment occurred, was a particularly difficult stretch of track. It is a steep mountain grade and, in the winter, when the derailment occurred, it experiences extremely cold temperatures. When the train was brought to an emergency stop at the top of Field Hill, the crew, along with the trainmaster, were tasked with determining the appropriate next steps. The crew which brought the train to an emergency stop at the top of Field Hill had not received the appropriate training or gained sufficient experience working in these extreme conditions to be capable of determining the most appropriate course of action. **The TSB report on Field, B.C. at page 10 states:**

At the time of the occurrence, CP's Field Hill certification program did not have a module on the particular challenges of operating a train on mountain grade in extreme cold conditions. This kind of training could make locomotive engineers more aware of the issues associated with air brake system operations in extreme cold and increase their vigilance when they encounter situations similar to those that arose in this occurrence.

...

If the classroom training does not address the unique needs of the territory where the employees will be working, and if the employees do not obtain the relevant on-the-job training on that territory, they will not be adequately prepared to perform their duties safely.

The deficient training that CP Railway provided to its crew stemmed from its drive to meet commercial demand, and by necessary implication, to increase profits. **The TSB stated at page 114 of its report:**

The training program was significantly modified in 2017–2018; it was accelerated, as there was a greater demand for conductors due to increased traffic levels. The new requirements for a conductor to work on Field Hill, up to the time of the occurrence, were reduced to classroom review of the FHOP using job aids and track schematics. The simulation trips on Field Hill were removed. Conductors were no longer required to be Field Hill–certified.

The TSB report found that CP Railway offered insufficient training to its employees and that this was a direct contributing factor to the fatal derailment.

Inaccurate Train Brake Testing Methodologies.

CP Railway utilized inaccurate train brake testing methodologies, likely because they were cheaper and more time-efficient than more accurate and fulsome train brake testing methodologies. CP Railway employees conducted the required tests of the brakes on Train 301 prior to the derailment. The train braking test which CP Railway required provided an inaccurate assessment of the functionality of the train's braking capacity. Further, CP Railway's de-prioritization of maintenance of rail cars due to the cost, resulted in faulty, inefficient brakes. The STB may wish to investigate CP Railway's use of "bad ordered cars", which we understand the company used well past the condition of safe operation. CP Railway workers in both countries, including the railway unions would be able to provide more information. In any event, CP Railway Train 301's deficient braking capacity was a primary cause of the fatal derailment of the train on Field Hill. The TSB's post-incident testing of the train's braking capacity found that:

The average efficiency of the air brake system on the occurrence train was about 60% to 62% of nominal expected values. (page 9 of TSB report).

The TSB report further states at page 77:

As the figure illustrates, there were significant differences in car temperature, and several of the cars had an average well below 100 °F, a clear indication that their brakes were either ineffective or completely inoperative.

The ineffective brakes of Train 301 were not an anomaly; they are the standard at CP Railway. At page 156 of its report, the TSB found:

"In CP operations, unit grain trains were so often operating close to the limits of their braking capacity during extreme cold temperatures that braking degradation became normalized."

It is apparent that CP Railway's decision to utilize inaccurate train brake testing methodologies and to avoid regular maintenance of its rail cars is a conscious and deliberate decision to prioritize profits over safety.

Conclusion on CP Railway's safety issues that the STB should investigate before approving the merger with the Kansas City Southern Railway.

The Field, BC derailment of CP Railway Train 301 and the Canada TSB investigative report into the disaster exposed a single nodule and an extended chain of safety concerns at the company that are connected to CP Railway's aggressive PSR business model. Before approving CP Railway's pending merger with Kansas City Southern, the STB should determine the extent to which the identified defects in the Canada TSB report represent a broader and latent safety culture that extends to the company's American operations. Approving a merger that rewards a company that willfully causes public and worker safety danger would inadvertently condone such harmful conduct and encourage such behaviour in the future across the merged company's expanded network.

Legal Issue # 3 for Merger Review: The operational command that CP Railway's Chief of Police and corporate civilian leaders in Canada exercise over CP Police Service personnel in the United

States violates America's sovereignty, Americans' civil/constitutional rights, raises national security risks, and amounts to the unlawful exercise of police powers by foreign persons.

CP Police Service's Chief of Police, who commands the companies' American police officers, is a Canadian citizen, based in Canada. Based on records secured from freedom of information requests, neither Chief Sauvé nor his predecessor, Chief Ken Marchant, are sworn police officers with any authority to exercise police power in at least one (Exhibit 12 and 12.1 - Bates Number 868), and probably all, the states in which the CP Police Service operates. However, the CP Police Service's Chief of Police in Canada, currently Chief Al Sauvé, is the unified Chief for the entire CP Police Service. His Deputy Chief in the United States reports to him under a unified command structure, in which Chief Sauvé is the ultimate authority. The CP Police Service lists only one website for the entire force and, for example, in the state of Illinois the CP Police Service's disciplinary procedure places the Chief of Police in Canada as the ultimate authority in all disciplinary matters relating to his officers in the state (Exhibit 13 - Bates Number 875). As these documents reflect, records relating to investigations of complaints against CP Police Service officers are sent to Canadian headquarters, indicating the centralization of command and discipline of American police officers in the hands of foreign persons outside of American soil.

The above issue regarding the CP Railway Chief of Police and his corporate employers' operational control over the company's American police officers was one of the issues that Ms. Desrochers' raised in her 2022 shareholder proposals to CP Railway. Such control is especially troubling given that these same American police officers attend the scenes of workplace fatalities and reportable injuries in which CP Railway may be responsible.

Furthermore, we understand that the unified CP Police Service either shares the same database across the United States-Canada border or has an integrated system that allows the Chief of Police and his corporate superiors in Canada access to sensitive records of CP Police Service investigations and databases in the United States. Note that CP Railway refused to include Ms. Desrochers' proposals in its 2022 management circular to shareholders or to rebut the allegations in the related correspondences (See the companion **Shareholder Package** contained in (Exhibit 3 – Bates Number 69)).

This issue of cross-border command of police powers raises serious questions about whether non-American police officers (Chief of Police) and their civilian employers in Canada, who cannot themselves conduct law enforcement activities in the United States, can command criminal law powers against American citizens on American soil. This also raises significant questions around likely breaches of the United States of America's total and inalienable sovereignty over its criminal law enforcement, and the civil/constitutional rights of American citizens to be free from being subjected to the cross-border criminal law powers of foreign persons.

The notion of Canadian Chief of Police commanding American officers from Canada and on behalf

of a private civilian leadership with no mandatory, independent civilian oversight body in the United States, should also raise important **national security concerns** in the United States. The Canada based police Chiefs, presumably, as the superiors to American police officers, have access through those American officers to American policing databases. This provides the Canada based Chiefs, and the Canadian civilian corporate executives they report to, access to countless Americans' personal and highly confidential information, including individual Americans' interactions with police forces, whether they were ever suspects in criminal investigations, and countless other pieces of highly sensitive information that Canadians would otherwise not have access to.

The final concern around CP Railway's cross-border control of the CP Police Service's American officers and access to its databases and operational activities is the legal implications it may have on the Chief of Police and the civilian leaders who he answers to in Canada. The reasoning here mirrors that in the previous Issue regarding the CP Railway Company, how it has no railroad operations in the United States, and the legitimacy of the CP Police Service in the country. Again, the only reasons that America citizens surrender to the authority of the CP Police Service's officers is because they believe that the officers wear the insignia of a duly authorized police force.

Other American police forces and public authorities also cooperate with, and cede jurisdiction to, the CP Police Service on the assumption that the police force lawfully obtained its powers to operate in the United States, and that its police officers in the country are exercising their law enforcement duties pursuant to legitimate law enforcement authority. However, because the legitimacy and validity of those police officers' authority flows from appointments made through a foreign Chief of Police and civilians with no legitimate police authority in the United States, then the officers themselves could not be exercising legitimate policing authority.

The implication is that the CP Police Service Chief and corporate employers in Canada, through the American officers they command and direct, are likely liable for **depriving American citizens of their rights under color of law**. If their authority to command American police officers is illegitimate and unlawful, but they nevertheless provide operational direction and obtain information about policing operations and sensitive evidence from other authorities, then they are unlawfully inducing such compliance and cooperation through color of law. This also means that even though they may not conduct on-the-ground police operations in the United States, the CP Police Service Chief of Police and the corporate leaders to whom he reports in Canada may also be effectively **impersonating police officers**, as contemplated under a purposive reading of 18 U.S. Code § 912 and equivalent state laws.

Legal Issue # 4: CP Railway unlawfully obtained and is unlawfully using its police powers in the United States of America, or, in alternative, misled American courts about the nature of its operations to escape potential liability in the Lac Mégantic disaster lawsuit.

Evidence in the public domain suggests that a) the CP Police Service and its police officers are operating pursuant to policing powers that CP Railway unlawfully obtained and that its police officers cannot validly exercise, or b) CP Railway misled American courts about the nature of its operations in the United States to evade a civil suit relating to the Lac Mégantic explosion in Quebec, Canada, or c) the CP Railway's Canadian subsidiary has been exercising unlawful control over CP Police Service officers who are the legal employees of CP Railway's independent and "arms-length" subsidiaries. Depending on the verification of which corporate incarnation of CP Railway is the legal employer of CP Police Service officers in the U.S. (which we are seeking), one of the aforementioned and finite possibilities must apply, all would give rise to a different form serious unlawfulness. If CP Railway fails to rebut and provide an alternative and exonerative scenario, the STB should block the merger with Kansas City Southern in the public interest.

All the above alternative scenarios implicate potentially unlawful conduct that CP Railway must explain before it expands its American policing presence through its acquisition of the Kansas City Southern police force. To premise the issues in this section, the following subsection details the various legal incarnations of CP Railway across the United States-Canada border. The subsequent subsection then references details from court records in the Lac Mégantic litigation that exposed CP Railway's potentially unlawful conduct upon which this section is based. Thereafter, the implications of the Lac Mégantic litigation on the lawfulness of CP Railway's policing activities in the United States are discussed.

The significance of CP Railway's various legal incarnations in Canada and the United States.

For the purposes of clarity, in this section, the relationship between CP Railway's various corporate manifestations in Canada and the United States must be clarified. The Canadian Pacific Railway Ltd. ("CP Railway Ltd.") is the main holding company that is listed on the New York Stock Exchange and Toronto Stock Exchange. The Canadian Pacific Railway **Company** "CP Railway Company") is the Canadian operating subsidiary of CP Railway Ltd., and purportedly has no operations in the United States. CP Railway Ltd., has other subsidiaries in the United States including operating subsidiaries such as the Soo Line Company, Delaware and Hudson Railway Company Inc., Dakota Minnesota & Eastern Railroad Corporation etc.

According to the CP Railway **Company**, as a Canadian subsidiary, it operates independently and at arm's length from CP Railway Ltd.'s other subsidiaries. Further, CP Railway has insisted that the CP Police Service has no independent legal identity, and that it is merely an organizational umbrella for its police officers (Exhibit 8 at paragraph 19 and Exhibit 6 at paragraph 8(e)). This background is an important starting point for the question of which legal incarnation of the CP Police Service officers in the United States work for. Regardless of the answer to that question, for which we are currently seeking official confirmation, all available options point to a

unlawful outcome with respect to the CP Police Service's operations in the United States. However, there is no doubt that regardless of which incarnation of CP Railway employs the CP Police Service officers, there is a *prima facie* case of unlawful conduct that CP Railway must address notwithstanding, and before, its acquisition of Kansas City Southern Railway and its police force.

Context: The CP Railway Company's litigation in the United States with respect to the Lac Mégantic disaster of 2013.

One of CP Railway Limited's American subsidiaries is the **Soo Line**, which was implicated in the Lac Mégantic explosion of 2013. However, the plaintiffs'/survivors' families named the Canadian Pacific Railway **Company** as a defendant, and not the Soo Line. Canadian Pacific Railway **Company** successfully argued that under federal bankruptcy laws, it could not be named as a plaintiff in the United States because it had no effective operational presence in the country, and despite being a co-subsiary of the CP Railway Ltd., was independent and operated at arm's length from the Soo Line. Therefore, CP Railway **Company** argued that the Lac Mégantic families had erred by suing it instead of the Soo Line subsidiary which did have such a presence in the U.S. The plaintiffs' misnaming likely resulted from the fact that the Soo Line and the CP Railway Ltd.'s other American subsidiaries apparently operate under the trade name of "CP Railway" in the United States but are legally distinct from the **Company**.

In support of its position that it could not be sued in the United States, CP Railway **Company** made submissions before the United States District Court District Court of Maine that CP Railway Company, "conducts no business in Illinois". (Exhibit 14 at page 3 - Bates Number 900).

Further, at page 2 of the same submissions to the Court, the CP Railway Company stated that, "CP does not own tracks in the U.S.; is not incorporated in the U.S.; and does not operate in the U.S.— with the limited exception of bringing some trains a short distance over the border to safely hand off to the U.S. employees of a distinct U.S. company". (Emphasis Added).

Lastly, in the same proceedings before the United States District Court – District of Maine, counsel for the CP Railway **Company** explained that CP Railway Company and the other subsidiaries of CP Railway Limited are distinct corporations and cannot be interchanged. In support of this counsel stated, "...the allegations of a common enterprise is nothing but conclusory allegations. There's absolutely no facts whatsoever that would support that" (Exhibit 15 at page 92 - Bates Number 910 and Exhibit 16 - Bates Number 914). Throughout the Court proceedings related to the Lac Mégantic disaster, CP Railway Company vehemently insisted that no United States Court had jurisdiction over it because it has no operations in the United States. Yet, CP Police Service officers in the United States of America, who are registered as law enforcement officers in Illinois and the other states in which they operate, fall under the overall command of a Chief of Police who is an employee of the CP Railway **Company** in Canada (Exhibit 13 - Bates Number 875, Exhibit 12 and 12.1 - Bates Number 868).

We have found no evidence of the Soo Line or any other American subsidiary directly employing CP Police Service officers in its individual capacity or in conjunction with CP Railway Ltd's other subsidiaries in the United States of America. If these "CP Railway" subsidiaries employed and appointed CP Police Service officers directly, the officers would not legally fall under the overall command of CP Railway **Company**, a Canadian company which purportedly has no operations in the United States of America. CP Railway Company's position succeeded at both levels of courts in the relevant proceedings in the U.S., in part, if not entirely on the basis that the plaintiffs named the "Company" which apparently has no operational presence upon which it could be named as a plaintiff under American laws (Exhibit 17 and 18 - Bates Number 917 and 942 Respectively).

Further, in CP Railway Limited's "Corporate Sustainability Data Supplement 2020" the corporation further affirms the position that the CP Railway Company only operates in Canada:

This report covers Canadian Pacific Railway Limited ("CPRL") and its subsidiaries' ("CP" or the "Company") activities and performance across our entire network in Canada and the U.S. CPRL is a holding company and is the direct parent company of Canadian Pacific Railway Company ("CPRC"). CPRC is a common carrier that conducts railway operations in Canada. CPRC has network access to the U.S. market directly through four wholly owned subsidiaries: Soo Line Railroad Company ("SOO Line"), a Class 1 railway operating in the U.S. Midwest; Dakota, Minnesota and Eastern Railroad ("DM&E"), which operates in the U.S. Midwest; Delaware and Hudson Railway Company, Inc. ("D&H"), which operates between Eastern Canada and the U.S. Northeast; and effective June 2020, Central Maine & Québec Railway US Inc. ("CMQ US"), which operates in Maine and Vermont.

In the Data Supplement, "Limited" makes the distinction between "Company" (Canadian operating subsidiary) and its American subsidiaries such as Soo Line. Thus, the "Company" only obtains market access through Limited's other legally distinct subsidiaries in the United States of America, then this confirms that the "Company" **does not** have its own independent railroad operations in the country. With this background in mind, the following subsections detail the unlawful outcomes that arise with respect to CP Police Service's operations in the United States based on the CP Railway Company's positions with respect to its operational presence in the United States.

Unlawful Scenario A: CP Railway has no American operations and unlawfully obtained policing powers in the United States that its police officers cannot validly exercise in the country.

Unlawful Scenario A is based on the working premise that the CP Police Service officers in the United States **are** employed by the CP Railway **Company** that is headquartered in Calgary, Canada (where the police department is headquartered, and where its Chief of Police is also based as a "Company" employee). If the CP Railway Company is the legal employer of the CP Police Service's American police officers, and the CP Railway Company truly has no operational presence in the United States (as the Company claimed in the Lac Mégantic litigation), then the Company unlawfully obtained its police powers in the United States. Further, through its officer who answer to the Canadian Chief of Police and corporate leadership in Canada continue

to operate unlawfully in the United States. That is because such a railroad company's operational presence is a legal prerequisite for hiring railroad police officers in the United States. To understand this issue, one must first review the operational presence for railway companies' ability to hire police officers in the United States.

In order to lawfully hire or appoint police officers in the United States, railway companies must have operations in the country and State that its police officers are assigned to protect and patrol. There is no freestanding eligibility for any railway company from anywhere in the world to hire railway police officers in the United States of America if that railway company has no operational presence or property to protect in the country.

For example, in the *Illinois Railroad Police Act* (610) ILCS 80, only a "registered rail carrier", as defined in the Section 18c-7201 of the *Illinois Vehicle Code*:

"...may provide for the appointment and maintenance of a police force to aid and supplement the police forces of any municipality in the protection of its property and the protection of persons and property of its passengers and employees, or in furtherance of the purposes for which the railroad is organized." (Emphasis Added).

Logically, "its" must refer to a company with operations in the United States. Further, "the purposes for which the railroad is organized" could not refer to a railroad that has no threshold property or employees in the United States, as CP Railway Company argued in the Lac Mégantic litigation. However, the CP Police Service officers operate and are based in 14 U.S. states, (including Illinois and other non-border states), where the CP Railway Company denies having operations.

Further, Article II Sections (1) and (2) of the *Illinois Vehicle Code* that the *Illinois Police Act* refers to respectively state that:

- (1) General Provisions. Except as provided in subsection (2) of this Section, no person shall operate as a rail carrier, and no person shall begin or continue construction of any track or other facilities, other than the repair or replacement of existing plant, for use in operations as a rail carrier unless such person has registered with the Commission as a rail carrier.
- (2) Exceptions. Each rail carrier operating within the State of Illinois on the effective date of this Chapter shall automatically be deemed, as of that date, to have registered as a rail carrier for purposes of this Section. Such constructive registration shall expire on the 180th day after the effective date of this amendatory Act of 1985.

From the cited provisions of the *Illinois Railroad Police Act* and the *Illinois Vehicle Code*, it is apparent that only railway companies with some operational presence in Illinois can employ railroad police officers. Logically, without any railroad operations, including employees or infrastructure to secure in Illinois, CP

Railway is ineligible to lawfully appoint or employ police officers in the state. However, CP Police Service officers do operate in Illinois. If they are employees of the Canada-confined CP Railway Company, then they are unlawfully exercising police powers by conducting law enforcement operations for a railroad company without the operational presence to legally hire police officer in Illinois.

The laws of North Dakota similarly provide this “operational presence” requirement as a prerequisite for railroad companies to retain police officers in the state.

North Dakota Century Code Title 49 Public Utilities

49-10.1-05. Railroad police. Railroad police officers who are designated by a railroad to be licensed under the laws of this state, while within the scope of employment with the railroad, have the authority of a “law enforcement officer” as defined under section 12.1-01-04 for the purpose of: 1. Arresting an individual committing a felony on railroad property or associated with railroad equipment; 2. Arresting an individual committing a misdemeanor involving railroad property or relating to persons or property being transported by the railroad, or awaiting transportation by the railroad; 3. Issuing a citation to an individual committing an infraction or noncriminal offense on or relating to railroad property, or to individuals or property being transported by the railroad, or awaiting transportation by the railroad; and 4. Removing an individual from a train who has no right to be there, or who is engaging in a conduct prohibited by title 12.1.

Similarly, the laws of Vermont indicate that only railroads with an operational presence in the state are eligible to hire police officers.

Vermont Statutes Title 5 – Aeronautics and Surface Transportation. Chapter 68 – Construction And Operation Of The Road. Subchapter 8: RAILROAD POLICE

§ 3755. Commissions.

Upon petition of a person or corporation owning or operating a railroad, the Commissioner of Public Safety may, subject to the provisions of section 3757 of this subchapter, commission any employees of the railroad as the person or corporation designates to act as police officers in and upon the premises and equipment owned, managed, or used by a railroad, shall issue commissions to the employees so commissioned, and shall have the authority to rescind such commissions. (Added 1981, No. 104, § 1; amended 2013, No. 141 (Adj. Sess.), § 14, eff. July 1, 2015.)

Given the above, the CP Railway Company’s employment of CP Police Service officers without the operational presence in the United States and Vermont would amount to the Company’s unlawful exercise of police powers in Vermont.

Further still, the laws of Indiana have the same operational presence prerequisite for a railroad company's retention of railroad police officers.

Indiana General Assembly IC 8-3 Chapter 17 IC 8-3-17-1 Appointment, qualifications, and terms.

Sec. 1. Upon the application in writing of a company owning, leasing, using, or operating a railroad in Indiana accompanied by the statements of three (3) reputable Indiana citizens testifying to the moral character of the applicant, the Indiana department of transportation shall appoint and commission persons the company designates and the department finds to be suitable and qualified persons, to act as policemen for the company, upon the premises of the company, or elsewhere within Indiana, when engaged in the discharge of their duties as policemen for that company.

The above are a few examples of states in which the CP Railway employs police officers (who according to the company's website, operate in 14 U.S. states). The “**operational presence**” requirement is not only a legal requirement but a logical necessity. For example, a European railway company with no railroad operations in the United States could not apply to a U.S. state government to hire police officers “at large” in the United States (with the police officers being the only employees). The same applies for the CP Railway Company which must have operations that precondition hiring police officers. However, under no incarnation of this arrangement could the CP Railway **Company**, which has no real operational presence in the United States, be legally able to provide such policing service to its fellow CP Railway Ltd. subsidiaries that actually have railroad operations in the United States.

In summary, railway officers' ability to conduct law enforcement operations on behalf of a specific railway company in the United States, arises from the railway company actually having railroad operations for the officers to protect in the United States. This means that if CP Police Service officers in the United States, are legally the employees of the Canadian CP Railway **Company**, they are the employees of a railroad company that does not meet the “operational presence” criterion for hiring police forces in the country. The inevitable implication is that the CP Railway Company could not, and cannot, lawfully hire police officers anywhere in the U.S. As such, its current police officers in the United States are conducting law enforcement activities on American soil under unlawfully obtained police powers.

In the alternative, these American CP Police Service officers never had valid police powers, and their jurisdiction have been void from the date of employment. Either way, under Possible Scenario A, these police officers would have been engaged unlawfully engaged in law enforcement activities in the United States, and exercising criminal law powers over American citizens for decades. Although the rank-and-file CP Police Service officers are likely unaware of this serious issue, the CP Railway Company that hired them to purportedly activate their policing powers must be aware of this issue, especially in light of the Company's position in the Lac Mégantic U.S. litigation. Thus, under this Scenario, the CP Railway Company, its executive

leadership in Canada, and its Chief of Police in Canada, would be responsible for the legal consequences of the unlawful exercise of police powers in the United States.

*Possible Scenario B: The CP Railway Company **does** have an operational presence in the United States but misled American Courts to successfully evade the Lac Mégantic litigation.*

Possible Scenario B is based on the working premise that the CP Railway Company **does** have an operational presence in the United States and is the legal employer of the CP Police Service officers across the 14 American states where its police officers operate (including Illinois, Vermont, Indiana and North Dakota). If so, then the CP Railway Company misrepresented itself to the American courts in order to successfully evade the potential liability of being a defendant in the Lac Mégantic litigation in the United States. Making material misrepresentations to a Court in order to evade legal liability is unlawful. If that is what happened, the CP Railway, in any of its legal incarnations, must be held accountable. The companies and their corporate leaders must not be permitted to expand their commercial and policing powers in the United States, the country where it would have misled local courts about its operations in the country, and to the prejudice of the administration of justice.

Possible Scenario C: The American subsidiaries of the CP Railway Ltd. are the legal employers of the CP Police Service's American police officers but have unlawfully relinquished operational command over these officers to a Canadian corporation.

Under possible Scenario C, the CP Police Service's officers are legally employed by one of CP Railway Ltd.'s American subsidiaries. Even this scenario manifests a different form of unlawfulness that the STB should examine before CP Railway is allowed to merge with Kansas City Southern, and to integrate the latter's police force into the Canada-headquartered CP Police Service.

If the CP Police Service officers in the United States are legally employed by one or more of CP Railway Ltd.'s American subsidiaries, this may resolve the question of whether they are working for a company(s) with an operational presence in the United States. However, this scenario creates a new problem. The CP Police Service is a unified cross-border police service without bifurcated legal identities across the United States Canada border. It has one overall Chief of Police based in Canada who exercises operational command over all CP Police Service officers, including those in the United States. Although there is a highest-ranking police officer or "Deputy Chief" of the CP Police Service in the United States, that individual is subordinate to the CP Police Service's overall Chief who is based in Canada and is an employee of the CP Railway Company (currently Mr. Al Sauv  ).

Until June 2019, Chief Sauv   was the "Deputy Chief, Operations – Canada" after which he was promoted to be the overall Chief of the CP Police Service for both Canada and the United States. However, Chief Al Sauv   is an employee of the CP Railway Company, and is not a commissioned police officer in the United States (Exhibit 6 at paragraph 8(f)). He is also not on the roster of commissioned CP Police

service officers in the State of Illinois where he commands American police officers (Exhibit 12 and 12.1 – Bates Number 868). Further, as evident from the CP Police Service's filings with Illinois police regulators, in disciplinary matters, the progression/escalation of complaints involving CP Police Service officers in the United States rise all the way to the Chief of Police and Chief Legal Officer at Canadian headquarters, which are in Canada (Exhibit 13 – Bates Number 875).

Therefore, if the CP Police Service's police officers in the United States are legally employed by American subsidiaries of CP Railway Ltd., then the CP Railway Company, through its Chief of Police who is not a police officer or resident in the United States, is unlawfully exercising operational command and control over statutory police officers on sovereign American territory where his employer does not have railroad operations. Given that the CP Police Service Chief and the corporate civilian leaders he answers to have no police commissions in the United States, under "Possible Scenario C", they would all be exercising unlawful control or influence over police operations and criminal law powers in the United States. It would also mean that CP Railway Ltd.'s American subsidiaries, which have operations in the United States, have unlawfully relinquished command of their statutory police officers in the country to a foreign corporation with no operational presence in the U.S., and which argued before American courts that it was "arms-length" from these U.S., subsidiaries.

If the American subsidiaries obtained police powers through their operational presence in the United States but then delegated operational control of those officers to the CP Railway Company, a corporation that operates only in Canada, that would not only be unlawful, it would also raise national security concerns for the United States. Foreign-based corporate civilians and their Chief of Police should not have access to investigative information, databases, and other sensitive law enforcement records that require police commissions and varying levels of security clearances to access in the United States.

In fact, in places such as New York State, non-American citizens cannot be police officers in the state (Exhibit 19 at section 10, Bates Numbers 952), a condition that is often concurrent with residency requirements in some states. Without police commissions in the US, and potentially without American citizenship either, Chief Al Sauvé's command over American police officers and access to sensitive law enforcement information/records relating to the United States is likely unlawful from a national security perspective.

CP Railway's policing activities in the United States may amount to the deprivation of American's rights under color of law and the impersonation of police officers.

The unlawful hiring or unlawful delegation of control over uniformed police officers who elicit compliance based on their apparent law enforcement authority could amount to the offence of "**deprivation of rights under color of law**" by all persons responsible for knowingly authorizing, overseeing, directing, providing official cover for, or directing arrests, using force, or securing compliance with the CP Police Service

powers in the United States of America.

If CP Police Service officers in the United States of America, their Chief of Police who commands them from Canada, and corporate leaders to who he reports to, have never had the legitimate authority to exercise operational control of police powers in the United States of America, or if those powers were unlawfully obtained, this could also give rise to potential violations of Title 18 U.S.C.A. § 912 (**falsely impersonating a police officer**), U.S.C.A. § 702 (**unauthorized wearing of uniform**) or Title 18 U.S.C.A. § 913 (making arrest or search while impersonating federal officer, agent, or employee), and equivalent state laws where the CP Police Service operates.

NOTE: The complainants and their Canadian legal counsel are not legal experts on American law and could not authoritatively make legal conclusions about the interpretation and application of the aforementioned laws to the CP Railway's policing activities in the United States of America. However, the *prima facie* evidence of the CP Police Service and its Canadian command structures potentially conducting law enforcement operation in the United States of America without validly obtained legal authority raises sufficiently important issues.

Also, if the analysis or premises upon which this section is based are erroneous, CP Railway's Ltd. and its Canadian and American subsidiaries must provide exonerative clarification the full nature of their cross-border law enforcement operations in the United States before the merger is approved. It would not be in the American public interest for the STB to allow CP Railway, in any of its corporate manifestations, to expand its policing operations deeper into the United States by merging with Kansas City Southern and using the KSC's police force to stretch its legally questionable police powers to the Mexican border.

Legal Issue # 5 for Merger Review: Approving the merger in light of CP Railway's threats against Canada Transport Safety Board members and their public safety investigator to prevent an independent criminal investigation of the Field, B.C. derailment, would undermine the American public interest.

This Issue centers on how after the Field, B.C. derailment of CP Railway Company's Train 301, CP Railway's civilian leadership, through their in-house and outside legal counsel, threatened the Transportation Safety Board and its incident investigator, Mr. Don Crawford. CP Railway made the threats of legal action because of the investigator's public comments that an independent police needed to investigative evidence of potential criminal negligence in the triple fatality.

The Canadian Transportation Safety Board ("TSB") can investigate transportation incidents but has no criminal jurisdiction or the authority to determine legal liability. However, dating at least as far back as 1998 (Exhibit 20 – Bates Number 959), the TSB has had internal policies that required the referral of any indicia of criminality the Board uncovered during its incident investigations to be reported to the Royal

Canadian Mounted Police (“RCMP”). Moreover, the RCMP and the TSB separately entered a memorandum of understanding in 2015 which stated, in part (Exhibit 21 – Bates Number 964):

“Upon learning of a transportation occurrence to which the CTAISB Act applies, the TSB will notify forthwith the RCMP of any occurrence in which the RCMP may have a direct interest, including occurrences in which there are indications of possible criminal activity, and provide pertinent particulars of that occurrence.”

This indicates that despite not having a criminal mandate or the ability to formally find fault, the TSB members understood that their own statute did not prevent them from making referrals to the RCMP or independent police forces to investigate potential criminality. It should be noted that the TSB and RCMP subsequently changed their MOU in the aftermath of the Field derailment in 2020 (Exhibit 22 – Bates Number 973)

Mr. Don Crawford (“Mr. Crawford”) was the Regional Senior Investigator from the TSB who was assigned to investigate the February 4, 2019 derailment of Train 301 near Field, British Columbia. During his investigation, and based on his training, skills, and experience, Mr. Crawford identified indicia of criminality with respect to the derailment of CP Railway Train 301. Pursuant to the TSB’s internal policies and memorandum of understanding with the RCMP, Mr. Crawford reported these indicia of criminality to his superiors and requested that the TSB refer the matter to the RCMP. Mr. Crawford’s superiors within the TSB refused to refer the derailment of CP Railway Train 301 to outside police forces for a criminal investigation. Mr. Crawford’s superiors also barred Mr. Crawford from unilaterally referring the derailment of CP Railway Train 301 to outside police forces.

On January 27, 2020, the Canadian Broadcasting Corporation (“CBC”) published an article titled, “Train safety investigator wants RCMP to probe fatal CP mountain crash”. In this article, Mr. Crawford went public with his concerns about the need for an independent investigation into the derailment of CP Railway Train 301.

On June 21, 2021, the CBC published another article titled, “CP threatened lawsuit against safety watchdog after investigator spoke out about deadly crash”. This later article contained a hyperlink to redacted documents which the CBC obtained from the TSB through the federal *Access to Information Act*, (RSC 1985, c A-1) process (Exhibit 23 - Bates Number 990). The TSB’s heavily redacted disclosures comprised of a series of correspondences between CP Railway’s representatives, including its in-house and outside legal counsel, and representatives of the TSB, including its Chairperson, Ms. Kathy Fox and the Board’s General Counsel, Ms. Patrizia Huot. The correspondence shows CP Railway’s representatives insisting that the TSB take measures against Mr. Crawford in response to his public statements and the TSB representatives acquiescing to that insistence.

Notable excerpts of the correspondence include:

- Mr. Jeff Ellis, CP Railway's Chief Legal Counsel and Corporate Secretary, stating in an email to Ms. Patrizia Huot, "Any word? We need this retracted before it gets circulated widely and harms our company's reputation [redacted] Canadian Pacific [redacted]." Ms. Patrizia Huot replied, "Working on it".
- Ms. Patrizia Huot sent an email to an undisclosed person with an email address ending in "@cpr.ca". The text of this email reads, "We will have a statement out in less than an hour. I will send you a copy as soon as possible. P".
- Ms. Patrizia Huot sent an email to an undisclosed person with an email address ending in "@cpr.ca". The text of this email reads, "[redacted] Here is a copy of what we just sent CBC in respect to the article. We will also be taking further internal steps to deal with the matter. P"
- An undisclosed CP Railway representative sent an email to Ms. Patrizia Huot containing an attachment. The attachment was a demand letter which reads in part:

If the TSB and Mr. Crawford do not immediately retract Mr. Crawford's statement, CP Rail will have no alternative but to commence proceedings against the TSB, [redacted] conclusions recognizing the TSB's own statement in the retraction that "...The investigation is on going... The TSB does not attribute blame or determine civil or criminal liability..." Please confirm that Mr. Crawford will be removed from this investigation and advise what steps will be taken to [redacted] with CP Rail matters. Your and Mr. Crawford's urgent response is required. The harm and damage to CP Rail's reputation increases [redacted]

- The TSB's Chairperson, Ms. Kathy Fox, wrote an email to an undisclosed CP Railway representative. The text of this email reads,

I'm very sorry for the furor caused by statements from our (former) lead investigator on the Field investigation file. This is not how we conduct our business. Here is the statement we just issued on our website, which has also been sent to journalists following this investigation. <https://www.bst-tsb.gc.ca/cng/medias-media/decl-stat/2020/20200128.html> I would be pleased to discuss this further if you wish. I can be reached directly at the number below or on my cell phone at [redacted] Thank you.

- Ms. Fox received a reply email from an undisclosed CP Railway representative. This email reads:

Thank you for the email and comments around this unfortunate situation. The irresponsible manner CBC has been reporting and misrepresenting facts, in conjunction with the TSBs lead

investigators inappropriate commentary, has been damaging to CP's reputation. Beyond taking necessary steps to protect our reputation and the truth I have a strong view their actions were disrespectful/damaging to the families of the employees we tragically lost as well as our collective CP family. We appreciate and agree with your point that the investigators behavior contradicts the manner TSB strives to conduct their business in meeting its mandate. Thank you for the TSB's actions to address and correct the investigators actions.

At the insistence of CP Railway, Ms. Huot and the TSB prepared a statement which distanced the TSB from Mr. Crawford's public statements. Further, Mr. Crawford was removed as the lead investigator of the derailment. In 2020, the RCMP and the Canada TSB amended their MOU to remove the explicit reference to criminal conduct in their referral arrangement. However, the remaining text of the MOU clearly retains that referral obligation. This issue is critical for public safety because the TSB and its equivalents in the United States have the technical expertise to understand the mechanics of railway incidents that public police forces do not have. Often, the public police force members that attend the scenes of derailment have no special forensic training unique to the industry and cannot distinguish between a regular accident and potential criminal negligence. This is why the RCMP and TSB entered into the 2015 MOU. It allows the RCMP's to obtain referrals and even qualified assistance in understanding the mechanics of what if before them. Therefore, when Mr. Crawford, the TSB's incident investigator, identified indicia of potential criminality and calls for a referral to independent law enforcement, CP Railway should not have threatened him and the Board with legal action.

Worse, while CP Railway was privately threatening the TSB with legal action, in public, CP Railway's CEO, President and Board member, Mr. Creel, was making public statements about transparency and working with relevant authorities to get to the bottom of what happened in Field, British Columbia. Further, he and CP Railway have expressly stated that not only does the RCMP have the jurisdiction to investigate such incidents, the RCMP is "duty-bound" to investigate. Essentially, CP Railway was delivering private threats to the TSB to prevent referral for a criminal investigation that the corporation claimed the RCMP was obliged to conduct. The RCMP eventually opened that criminal investigation in December 2020.

Further details of the relevant correspondences can be found in the Notice of Civil Claim, filed on behalf of our clients, and attached to this complaint (Exhibit 24 - Bates Number 1159). Please note, the allegations in the claim have not yet been proven in Court and the parties are in the process of exchanging replies and response on the allegations. However, the Notice of Civil Claim provides a thorough recitation of the relevant facts and despite the prof of those facts being pending in court, we have the verification documents of Mr. Creel's public statements that we can provide on demand. In summary, CP Railway intimidated and coerced an independent federal tribunal into undermining and retaliating against its investigator when that investigator's public statements threatened CP Railway's reputation.

Irrespective of the TSB's acquiescence to CP Railway's threats, CP Railway knew, or should have known, that it was unlawful to threaten an independent government tribunal and its investigator to prevent a

legitimate criminal referral regarding the company's potential liability for a triple fatality under its watch.

Legal Issue #6 for Merger Review: CP Railway's potential violation of the United States *Foreign Corrupt Practices Act* ("FCPA").

This section relates to CP Railway's potential violation of the *Foreign Corrupt Practices Act* through the company's sponsorship of the Canadian Association Chiefs of Police ("CACAP") while the CACP's largest member, the RCMP, was purportedly involved in reviewing the Field, B.C. derailment of CP Railway Train 301.

The Field, B.C. derailment gave rise to significant media reporting regarding CP Railway's safety culture and the company's focus on improving its operating ratio, which had led to the deaths of the three crew members, including Andrew Dockrell and Dylan Paradis. As previously stated, the CP Police Service officer who was assigned to investigate the matter, Constable Tataryn, went public with his allegations that his superiors and the company were engaged in coverup to deflect attention away from the company. The RCMP eventually opened a criminal investigation into the matter. That investigation is ongoing. The relevant media articles that covered this issue can be found at:

- Police officer suspects internal 'coverup' by CP Rail in fatal B.C. mountain crash:
<https://www.cbc.ca/news/canada/cp-derailment-investigation-coverup-alleged-1.5436018>
- RCMP launch probe into Canadian Pacific runaway train crash that killed 3 crew members.
<https://www.cbc.ca/news/canada/rcmp-cp-rail-crash-derailment-1.5844293>

The Field, B.C. derailment of CP Railway Train 301 gives rise to other potentially unlawful conduct because around August 2019, CP Railway sponsored the 2019 Canadian Association of Chiefs of Police Conference ("CACAP") (Exhibit 25 - Bates Number 1249). At that time, the RCMP, the CP Police Service, and the plurality of Canada's public police forces in jurisdictions where CP Railway operates, including the RCMP, were CACP members. Further, when CP Railway sponsored the CACP annual conference, this was **only six months after the Field, B.C. disaster**³ while CP Railway was claiming that the RCMP had been involved with the Field, B.C. derailment from the very beginning. The full details of this issue can be found in the civil claim that Ms. Fraser filed in the Supreme Court of British Columbia against CP Railway and other parties arising from this and other conduct (Exhibit 24 paras 113-120 - Bates Number 1159). That claim also addresses the grounds for the other forms of misconduct that this complaint levels against CP Railway and its leadership.

³ There were also other deaths and serious injuries at CP Railway that year so the Field, BC incident was not the only incident in which CP Railway was implicated.

On August 19, 2020, counsel for Ms. Fraser sent a letter via email to the CACP's then President, Chief Bryan Larkin, and the Co-Chairs of the CACP Law Amendments Committee, DC Norm Lipinski and DC Howard Chow (Exhibit 26 - Bates Number 1253). The correspondence, which was attached to an email titled: "CACP and Jurisdiction over Railway Related Matters", sought answers to a range of questions regarding the CACP and railway policing. These questions included the nature and extent of CACP members' policing jurisdiction over railway deaths and serious injuries, including as contemplated under the Westray amendments to the Canada's *Criminal Code*. The questions also inquired into whether the CACP members considered the CP Police Service and the CN Police Service as endowed with the primary or exclusive criminal jurisdiction to investigate deaths and serious injuries that happened pursuant to their respective company's operations.

On September 9, 2020, Mr. Peter Cuthbert, the CACP's then Interim Executive Director, replied in an email in which he stated (Exhibit 27 - Bates Number 1263):

Attention ...Tavengwa 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

Mr. Cuthbert failed to explain why the CACP, the main association of Canada's publicly funded police forces, declined to disclose whether its members have, or could, criminally investigate CP Railway and CN Railway for deaths and serious injuries that happened pursuant to those companies' operations.

Even though both the CP Police Service and CN Police Service are members of the CACP, or, are at least actively involved in the association's lobbying and other activities, Mr. Cuthbert and the CACP declined to explain why these railway company's in-house police forces were members of the CACP and what policing powers these railway police forces could exercise over their corporate owner's injurious conduct.

Mr. Cuthbert and the CACP also failed to explain how answering questions about CACP members' jurisdiction over railway incidents and public safety amounted to a private matter that the CACP did not need to respond to because of ongoing litigation against Canada's railway companies. As the most powerful group of Canadian police forces which receives taxpayer funds, the CACP had the duty to disclose its members'

general jurisdiction over railway incidents.

Furthermore, Mr. Cuthbert did not explain why the CACP was refusing to answer general questions about its members' investigative jurisdiction when those members wield extraordinary criminal law powers that can deprive citizens of their life, liberty, security of the person and other constitutional rights. Through Mr. Cuthbert, the CACP demonstrated a deliberate effort to deny Canadians' right to due notice about which police forces can exercise what powers over them, in what context, and to whom they can report potential criminal wrongdoing in the railway context. CP Railway, through its involvement in the CACP, was the direct beneficiary of the CACP's refusal to answer questions about its jurisdiction over railway incidents.

On March 3, 2021, Runyowa Law followed up with Mr. Cuthbert, raising various concerns about the impropriety of the CP Police Service's and CN Police Service's memberships in the CACP, particularly when other CACP members were responsible for investigating deaths and serious injuries that happened on a periodic basis at CN Railway and CP Railway (Exhibit 28 - Bates Number 1266). Runyowa Law also inquired why the CACP was accepting CP Railway's sponsorship of the CACP's 2019 Annual Conference when CACP members had the jurisdiction to investigate the deaths and serious injuries that were not infrequent at CP Railway. Runyowa Law further challenged the CACP's refusal to formally divulge whether the CP Police Service and the CN Police Service were members of the CACP. Runyowa Law also inquired into why, despite the numerous deaths and serious injuries under both CP Railway's and CN Railway's operations over the years, there were no publicly documented cases of CACP members ever criminally investigating or charging CP Railway and CN Railway. No one at the CACP including Mr. Cuthbert, Chief Larkin, DC Lipinski, and DC Howard ever responded to counsel's March 3, 2021, queries.

In summary, the timing of CP Railway's sponsorship to the CACP, only a few months after the derailment of CP Railway Train 301, potentially amounts to a violation of the *Foreign Corrupt Practices Act*, or equivalent corruption-based laws, as it can be viewed as an unlawful inducement to law enforcement officers whose members are responsible for investigating deaths and serious injuries at the company in general, and the Field, British Columbia investigation, in particular. The STB and American authorities would need to investigate the particulars of CP Railway's donation to the CACP, who authorized it, what the stated reasons for the sponsorship were, who at CP Railway's corporate arm was in touch with which person(s) at the CACP regarding this sponsorship, and whether the CP Railway Board of Directors was aware of the sponsorship and documented all internal interactions relating to it.

Legal Issue # 7 for Merger Review: CP Railway's unlawful use of the Canadian Police Information Centre ("CPIC") database and the company's potential violation of the confidential law enforcement information and privacy of American citizens.

Freedom of information disclosure from the Royal Canadian Mounted Police.

On May 18, 2021, Runyowa Law filed a federal access to information request with the RCMP seeking records documenting the formal working relationship between the RCMP and CP Railway and CN Railway. This was with respect to railway policing with a particular interest in the handling of deaths and serious injuries. The RCMP disclosed a series of memoranda of understanding which it concluded with both the CP Police Service and CN Police Service. The first 11 pages of the attached document are important for context but the most consequential are pages 10 and 11 of 13 (Exhibit 29 pages 10 and 11 of the PDF numbering - Bates Number 1279).

In these pages, there are correspondences between an RCMP's representative and the then CP Police Service Chief. The RCMP is alerting the CP Police Service that the CP Police Service had been granted the ability to use the Canadian Police Information Centre ("CPIC") database, which the RCMP manages, to screen CP Railway job applicants and that this was not a permissible purpose for using the database. It seems that the RCMP and CP Police Service's own memoranda of understanding, or their respective interpretations, had led CP Railway corporate, which oversees its in-house CP Police Service, to use the database for non-law enforcement purposes between 1999 and, at least until around, 2006.

In the RCMP's 2006 memorandum of understanding ("MOU") with CP Police Service, CP Police Service is categorized as a **Category II** agency. This restricted its access to the CPIC database for particular purposes. As discussed, CP Railway, through the CP Police Service, was accessing the database for prohibited purposes. After they applied for a Category I class, which would have granted them the ability to rightfully obtain fuller access, they were denied. However, there is a major difference between the 2006 MOU (i.e. before the RCMP knew that CP Railway was unlawfully using the data base) and the 2007 MOU (after the failed attempt to become Category I). The 2007 MOU provides exceptional access which Category II agencies are usually denied, namely, access to the "Intelligence Data Bank". So, even though they were denied being classified as a Category I agency, CP Railway still successfully negotiated for deeper access to the CPIC databases than they would normally be allowed as a Category II agency. Note that this same concession is not provided to CN Railway in their mirror MOU from 2006. If they ever renegotiated a subsequent MOU, it was not provided but it appears that CP Railway may still have far greater access to the CPIC database than a private corporation should.

In follow-up requests to the RMCP, they confirmed that the attached MOUs represent the only records on file (Exhibit 30 - Bates Number 1393) and hence, these versions are likely still operational. We do not know whether CP Railway has continued to access the CPIC database for human resources purposes or is acting in compliance with the applicable authority in Canada. The same concern arises with respect to the CP Railway's potentially similar private, human resources use of the CPIC and American law enforcement databases that contain intelligence and policing information about American citizens, enforcement partners, law enforcement activity, and law enforcement agencies.

As a private company, CP Railway should not have been using the CPIC to conduct background checks on its employees. The company should also not have access to the highest category of policing access. It is unclear whether the corporate side still has such access or if the CP Police Service provides information from the database to management for any other purposes. However, there is no dispute that the access the attached document reflects is far greater than what is required for human resources purposes. There are different frameworks through which CP Railway, and other private employers can obtain criminal record checks without accessing the full level of the CPIC.

For example, the RCMP website states:

"Private companies that perform name-based checks do not have access to police databases. They enter into agreements with municipal police services to conduct name-based criminal record checks of the RCMP's Canadian Police Information Centre (CPIC) system. This normally includes a check of the National Repository of Criminal Records based on the applicant's name and date of birth and may include checks of other national databanks."

If private companies that perform regular criminal record checks cannot access the CPIC database, a private corporation should not be able to do so for human resources purposes. For that purpose, CP Railway was supposed to go through the RCMP and other municipal police forces in Canada and the US to obtain these security checks for all its personnel, including its CP Police Service officers.

Given what these documents indicate, the STB may be concerned about CP Railway's handling and abuse of sensitive police security information. The relevant sections of the attached document Exhibit 29 pages 10 and 11 - Bates Number 1279) also reflect unaccountability. The STB may wish to ask CP Railway about how it accesses police databases in Canada and the USA. The STB may also wish to investigate how the proposed merged CP Railway-Kansas City Southern corporation will ensure that no information about American citizens, or relating to internal American affairs, ends up seeping across the border through the CP-KCS' police officers in the US and Canada, and to the corporate civilians in those countries whose commercial decisions may be responsible for deaths, serious injuries, and other policing incidents in America.

Potential legal implications in the United States and Canada of CP Railway using the highly confidential CPIC for human resources purposes.

There are several legal issues that arise as a result of CP Railway accessing the CPIC, including:

- It means that CP Railway's civilian personnel may have access to information that it could leverage against its own police officers after they join the company. These are the same police officers who are supposed to be independent from the company and free to hold their company and leaders accountable without fear.

- Systemic and potentially longstanding violations of Canada's federal Privacy Act and potentially its United States equivalents. It may still be ongoing given how CP Railway appears to have continued getting privileged access to the CPIC database.
- Criminal record checks that are obtained through standard public channels are usually bare bones, simply confirming that a person has a record or not. The systems that police use for law enforcement, such as the CIPC, will have more extensive information than the record checks the police release to the public and employers seeking clearance for a worker. This potentially includes information about pardons, offences committed while a minor, immunity agreements, witness protection, information of whether someone was a suspect in a case but never charged, information on confidential informants, or references to persons who were implicated in criminal matters but were not the focus of the police investigation.

Therefore, CP Railway (Human Resources), through the CP Police Service that was conducting the criminal record checks, had access to the more detailed backend of the CIPC system, which had this more detailed information about applicants and subsequent employees. This meant that if the CP Police Service shared this information in some form with CP Railway's Human Resources, which they likely did given the purpose of the checks, then the CP Police Service accessed and disclosed far more information to CP Railway's civilian leadership and personnel than the law allowed.

In Canada, police officers are not allowed to access even their own department's databases without bona fide reasons to do so, e.g. investigations that they are actively working on. It is even worse when a corporation accesses the database of a federal police force with information from or about international partners such as the USA. For context, see this media article on a Calgary Police officer who was caught snooping on police records. Presumably many US states and federal law enforcement bodies place similar limitations on their ability to access citizens' information and police records.

- <https://www.cbc.ca/news/canada/calgary/calgary-police-officer-charged-privacy-database-breaches-1.6008099>

Legal Issue # 8 for Merger Review: Merger may extend CP Railway's American subsidiaries' operations through numerous Native American territories, raising constitutional and civil rights issues around a foreign-controlled police force expanding potentially unlawful criminal jurisdiction over Native American peoples and lands.

We understand that as in Canada, CP Railway's American subsidiaries have property, tracks, and other infrastructure that passes through Native American lands in the United States. Based on our understanding, many Native American bands have certain sovereignty, autonomy, self-governance, and self-policing rights on their territory. At the same time, railway police forces are endowed with police powers that are based on the property and infrastructure that lies on certain Native American lands. This raises the

issue of the potential violation of Native American's civil, territorial, and constitutional rights when a foreign-based corporation whose Chief of Police commands police officers in the United States (directly or as delegated by American subsidiaries on CP Railway Ltd.) assert criminal jurisdiction on Native lands.

NOTE: The complainants do not claim to speak for Native Americans and are not familiar with the laws that govern this area in the United States. The complainants merely flag this issue because Ms. Pamela Fraser is a member of the Woodland Cree First Nation of the Hudson's Bay area in Ontario, so this is a matter to which she is sensitive. We are advocating around this issue in Canada and trust that the STB may wish to consider the corresponding legal complications of entrenching and extending CP Railway's potential infringement of Native American rights in the United States by expanding the company's territorial policing powers via the integration of the Kansas City Southern Railway police with the Canada-headquartered CP Police Service.

Unlawful Conduct # 9: CP Railway actively misleads the public, regulators, and shareholders about policing, ESG, and its safety record.

Not only has CP Railway abused its police force, the company, both through commission and/or omission, has also misled shareholders and regulators about those abuses by never fully disclosing them in any context. Most of the evidence arose in the context of CP Railway's Canadian operations. However, based on the centralization of the entire company's Canada-United States corporate and policing operations in Calgary, the evidence strongly suggests that the same issues extend to CP Railway's operations on the American side of the border. The evidence we provide herein will allow the STB and other American authorities to determine where and how to look for confirmatory information of the longstanding wrongdoing in question.

CP Railway's control over, and apparent abuses of, the corporate CP Police Service likely extend into the company's United States operations.

Further, and just as importantly for the STB, we have reason to believe that the manner in which CP Railway handled the derailment of Train 301 in Field, B.C. (as outlined in the above sections), is consistent with how they have handled other deaths and serious injuries in Canada and the United States. If so, it means that the dozens of Americans who have died or have been seriously injured at CP Railway's operations in both Canada and the United States have been denied independent criminal investigations because the CP Police Service has taken over these police investigations by either proactively precluding public police forces, or because of the latter's acquiescence or deference to the CP Police Service.

For context, please review the United States Bureau of Transportation Statistics, "Transportation Fatalities by Mode". The railway section provides aggregate data for each year from 1960 to 2020. The data

does not include serious injuries. It also does not break down the figures by the railway companies in question, but this functionality exists.

- <https://www.bts.gov/content/transportation-fatalities-mode>

These fatality numbers are significant, and some of which occurred on CP Railway property (please see Exhibit 10), which the CP Police Service presumably assumed jurisdiction of, or was improperly involved with, to some extent. The CP Police Service is a single entity under the company with common standards and practices across the border, directed by one unifying chief of police, and it is our understanding that the way the company handled the derailment of Train 301 reflects standard practice, rather than an aberration.

The STB should also review this New York Times article from 2015. The article raises concerns about private railway police in the United States.

- www.nytimes.com/2015/05/29/us/complaints-rise-against-nations-railroad-police.html

The article mentions CN Railway's corporate police force and serious civil rights implications of privatizing criminal law enforcement powers. The article does not address the sovereignty, civil rights, and constitutional implications of a foreign domiciled and controlled police department enforcing the criminal law against American citizens.

Even if the CP Police Service did not exercise exclusive investigative jurisdiction over deaths and serious injuries under its watch, any degree of investigative activity by the CP Police Service would have compromised the integrity of any police investigation. This would mean that the deaths and serious injuries of American citizens were never fully investigated by independent police forces, or at all. As long as questions about CP Railway's potential role in frustrating the proper administration of justice for numerous deceased and injured workers and their loved one remains outstanding, it would not be in the public interest for the STB to approve a merger that would reward and extend such legal prejudice to greater swaths of the American homeland.

POTENTIAL OFFENCES APPLICABLE TO CP RAILWAY'S CONDUCTED UNDER AMERICAN LAWS.

CP Railway's handling of its police force in Canada, and its total control over its officers in the United States, gives rise to the following potential abuses and offences in the United States. The complainants understand that the STB does not have criminal jurisdiction, hence their request for referrals to other authorities that do. However, the nexus between the issues at play and the potential application of criminal laws elevates the public interest and public safety concerns that the STB does have jurisdiction to consider in

approving the merger. Therefore, the potentially applicable offences inform the potential gravity of the conduct in question, and the consequences it could have on American interests if the merger review process does not consider a thorough assessment of these issues. If CP Railway does not rebut the *prima facie* evidence and issues in this whistleblower complaint, the underlying conduct could give rise to potential:

1. Obstruction of justice, witness tampering, and any offences relating to the willful tainting of evidence in potential criminal matters (corporate civilian leaders and their employees exercising criminal jurisdiction over deaths, serious injuries, and other incidents in which the company is implicated).
2. Securities violations including material misrepresentations to shareholders, regulators, and the public.
3. Offences relating to public endangerment arising from CP Railway's use of its CP Police Service to conceal the prevalence and consequences of corporate safety practices that pose dangers to workers and the public.
4. Violation of American citizen's privacy including, potentially, under the United States *Privacy Act*.
5. Violations of Americans' civil rights. Potentially including Americans' **Fourth and Fifth Amendment rights**.
6. Violations of the United States' indivisible and total **sovereignty over the enforcement of its criminal law powers** against its citizens and on its sovereign territory.
7. Deprivation of rights under color of law and the abetting of deprivation of rights under color of law.
8. Laws prohibiting the **impersonation of police officers/powers**.

Potential criminal and other legal liabilities for deaths, serious injuries, and other policing related events that have occurred pursuant to CP Railway's operations.

U.S. Government published data (<https://safetydata.fra.dot.gov/OfficeofSafety/Default.aspx>) shows that CP Railway had **10,504** casualties between 1990-2021, **366 of which were fatal**. Additionally, the data shows that **7,349 of the casualties** were Railway Employees at CP Railway during that time frame with an additional **25 fatalities** among that category of people. (Exhibit 10 - Bates Number 592). It is unclear which manifestation of CP Railway accounts for these statistics (subsidiaries or CP Railway Company). Nevertheless, at least some of these incidents may give rise to criminal or other offences that are the United States of America's equivalent of Canada's *Westray* laws.

Notwithstanding limited access to United States data, there is no evidence that any independent law enforcement agency or authority in the United States has ever investigated deaths and serious injuries at CP Railway through a criminal, civil rights, or constitutional lens. The STB should have the powers and access to relevant data on all deaths and serious injuries at CP Railway in the United States, which police force

exercised any investigative jurisdiction from a policing perspective, and whether the CP Police Service asserted exclusive, overlapping, or concurrent jurisdiction over these incidents.

Nevertheless, any degree of involvement by CP Police Service officers, their police chief in Canada, and CP Railway's corporate ranking in the United States and Canada, would have been unlawful. The only questions are the nature and extent of that involvement, and by who. However, it should be beyond doubt that as agents and officers of CP Railway, the company that is implicated in these deaths and serious injuries of Americans on United States soil, should play no investigative role, but rather should be regarded as parties of interest and/or witnesses.

Obstruction of justice, witness tampering, and other offences arising from its police force asserting jurisdiction over fatal and injurious incidents in which the company was implicated.

If CP Railway's conduct in Canada reflects its historical practice in the United States of America, the implications would be tremendous. It would mean that CP Railway, working through its CP Police Service officers in the United States who answer to police chiefs and executives in Canada, have exercised jurisdiction over deaths and serious injuries that have happened pursuant to CP Railway's US operations. This would mean that the company knowingly, and willfully deprived numerous American citizens of independent criminal investigations into all these deaths and serious injuries. Any involvement which CP Railway's corporate executives had in their company's police investigations, especially if such involvement directed the police towards exoneration, gives rise to potential obstruction of justice and witness tampering.

Although CP Railway may not necessarily be liable for criminal or other wrongdoing for every death or serious injury under its watch, even the mere act of exercising jurisdiction and representing itself as a legitimate investigative authority rather than a party of interest compromised the integrity of those investigations. When workers or members of the public die violent and unnatural deaths, there can be no presumption that no criminal or other liability is involved. That prospect must be actively precluded by independent authorities including those with the jurisdiction to determine potential criminal liability. Such potential liability cannot be presumed or precluded by the very party who bears potential liability for the death (or serious injury).

Determining how CP Railway has exercised exclusive, joint, or concurrent jurisdiction over deaths and serious injuries in the United States is critical. This will help the STB to determine the nature and extent to which CP Railway may have unlawfully caused deaths and serious injuries of American citizens over the decades, and may have played a role in frustrating independent criminal investigations. Whether CP Railway exercised exclusive, joint, or concurrent jurisdiction over these incidents does not alter the fact that the company's own police force should have played no role when the company's potential liability was in question.

Securities violations - CP Railway has persistently misrepresented its ESG profile, particularly with

respect to governance.

Part of CP Railway's message to shareholders is that it is a responsible, ethical, and safety conscious company. For example, see the following link where the company touts its purportedly high governance standards:

- [Home - Canadian Pacific Corporate Sustainability Report \(www.cpr.ca\)](http://www.cpr.ca)

A company criminally investigating and exonerating itself for the deaths and serious injuries of dozens of workers over the past few decades is not consistent with the high governance standards that CP Railway publicly claims to uphold. Especially with the rise in ESG factors as key investment considerations for many investors, CP Railway's public touting of its Governance culture and ethics is at odds with its conduct.

CP Railway's material misrepresentations regarding price sensitive information surrounding its policing, safety, and related business model amount to *prima facie* violations of American securities laws.

Separate from the above, CP Railway's apparent use of its private police force has the effect of manipulating price-sensitive information. Stock prices rise and fall based on the market's assessment of numerous factors and information.

Generally, bad news regarding a company imposes downward pressures on stock prices while positive news has the opposite effect. Workplace deaths, serious injuries, and other incidents such as environmental spills or explosions at industrial companies tend to be the sort of negative news that the markets watch for. If such incidents are reflective of systemic problems in the company or could lead to criminal or regulatory investigations and sanctions that can distract the company, this can negatively impact the company's share price. This could be on the short term or long term. The latter is more likely when the company is forced to adjust its business model to be more cautious or to adjust in a manner that reduces profitability. The same applies if regulatory and criminal investigations place key corporate leaders in personal jeopardy or if any investigations last for protracted periods that cast a legitimate pall over the company's prospects.

In light of the above, a company's ability to suppress, limit, or craft the narrative around otherwise damaging events can artificially sustain a company's stock price higher than it would be if the market had the full extent of the information. As one of the few corporations that are legally empowered to own private police forces which have asserted exclusive jurisdiction over investigations in which the company's potential misfeasance is implicated, CP Railway had long held the ability to suppress negative and price sensitive information from shareholders. After extensive research it is evident that no independent Canadian police force has ever criminally investigated CP Railway for a workplace death, serious injury, or any other incident. The public police forces which were contacted have deferred these matters to the CP Police Service, which

has never charged, let alone facilitated a successful prosecution of the company or any of its personnel and leaders.

Given the sheer number of deaths and serious injuries in Canada over the last few decades and the Westray amendments to the *Criminal Code* that have been in place since the mid-1990s, it is statistically improbable that CP Railway bore no fault in any of these incidents. Even if it did not, this outcome should be arrived at through independent criminal investigations and not by CP Railway's own corporate police force. The question then becomes whether CP Railway's shares would have rose as meteorically as they did since the company introduced precision railroading if every death that occurred under the company's purview was properly and thoroughly investigated by an independent police force. Would investors be as bullish about the stock if such independent investigations tainted the company's governance reputation, suppressed its more cavalier workplace safety tendencies, and imposed a veil of uncertainty on the company as criminal investigations mounted?

The power to maintain a lid on bad news, including by owning a police force that can insulate the company from the most serious type of legal scrutiny (criminal law) is not only potent but can help keep a stock price and the sustainability of profits artificially high. Therefore, CP Railway's apparent abuses of the CP Police Service that it fully controls have likely suppressed bad news that would have deterred many investors that are sensitive to the Social and Governance factors of the ESG triad.

For further context on why this issue is so critical, see the following link from the US House of Representatives: "*Chairs DeFazio and Payne, Jr. Request GAO Study on the Impacts of Precision Scheduled Railroading on Workers, Safety and Shippers - T&I Chairs to GAO: "Stakeholders are concerned that the rise of the PSR model has come at the expense of long-term capital investments, reduced rail infrastructure, affected service for some shippers, and caused dramatic workforce cuts and safety concerns"*

- <https://transportation.house.gov/news/press-releases/chairs-defazio-and-payne-jr-request-gao-study-on-the-impacts-of-precision-scheduled-railroading-on-workers-safety-and-shippers>

At the link, it states:

"Chair of the House Committee on Transportation and Infrastructure Peter DeFazio (D-OR) and Chair of the Subcommittee on Railroads, Pipelines, and Hazardous Materials Donald M. Payne, Jr. (D-NJ) are requesting the U.S. Government Accountability Office (GAO) to examine the impacts that the implementation of precision scheduled railroading (PSR) by Class I railroads is having on workers, safety, freight shippers, passenger railroads, and long-term management of the nation's railroads."

The article at the link that quotes Congressman DeFazio also states:

“PSR in practice means the bottom line drives the decisions,” said Chair DeFazio. “Longer trains, unhappy shippers, and a workforce pushed to do more with less is not a model to chase after – unless you’re on Wall Street. But we can’t let hedge fund managers write the rules of railroading. Last Congress, my Committee heard from various stakeholders concerned for the immediate and long-term impacts of PSR. This study, passed by the House last year in my surface transportation reauthorization bill, the INVEST in America Act, will help us find ways to address the impacts this railroad management strategy has on workers, freight shippers, passenger railroads, and rail safety.”

The precision railroading business model, and the safety concerns it has raised, continues to be the railway industry standard. See for example, this article on worker fatigue at CN Railway, a commonly cited consequence of precision railroading, which has the safety implications that Congressman DeFazio identifies in the above quote:

- <https://www.theguardian.com/world/2019/nov/25/canadian-national-rail-workers-strike-fatigue-safety>

Combined with the ability that the CP Police Service appears to have given CP Railway to suppress the emergence of negative characterization from safety incidents under its watch, the negative implications of its precision railroading business model may be lost to investors and market participants.

Deprivation of rights under color of law, the abetting of deprivation of rights under color of law, and laws prohibiting the impersonation of police officers/powers.

CP Railway and its leadership’s command of American police officers, including in arrests and incidents where the company may be implicated, likely amount to deprivation of rights under color of law, the abetting of deprivation of rights under color of law, and violation of laws prohibiting the impersonation of police officers/powers.

With respect to these offenses, it is relevant that CP Railway’s Chief of Police and corporate civilians in Canada are not sworn police officers in at least one United States jurisdiction in which the CP Police Service operates (Exhibit 12 and 12.1 - Bates Number 868). However, they have wielded state and federal statutory powers inherent in their American police officers’ authorization as law enforcement officers by directly commanding those officers in operational matters from Canada. Thus, when CP Police Service officers conduct law enforcement actions in the United States and represent themselves as police officers to persons on American soil, these police officers receive official recognition and deference because the persons they interact with assume that the company’s police officers are fully authorized to act as law enforcement officers.

When persons such as investigative suspects, witnesses, and other public authorities on American soil recognize and yield to the apparent authority of CP Police Service officers, few, if any, are aware that these very police officers are acting at the sole behest of, and under the command of, foreign corporate executives and a police chief who is not certified as a police officer under the laws of the United States where he commands police officers. See Exhibit 12 and 12.1 - Bates Number 868, which confirms that Chief Al Sauv  is not a registered police officer in the State of Illinois where the CP Police Service operates. Therefore, the American persons and authorities with whom the CP Police Service's American police officers interact with are acquiescing, ultimately, to the authority of foreign entities and persons whose wielding of criminal law powers from outside American soil is likely unlawful, unconstitutional, and therefore invalid.

Regardless of the inherent merits of any given CP Police Service arrest or investigation, this does not remedy the unlawfulness of the fact that these police powers are being exercised on behalf of, and with the operational involvement of foreign persons and entities with no lawful authority to do so in the United States of America. Consequently, any arrests or adversarial policing conduct by the CP Police Service in the United States may amount to unlawful "remote control" and command over criminal law powers that are legally invalid but still elicit compliance "under color of law".

Further, American citizens' and public authorities' recognition of, or compliance with, CP Police Service's uniformed police officers based on their official insignia and statutory powers may amount to the unlawful impersonation of police/public officers. The fact that the police officers are duly individually certified to operate as law enforcement officers in the United States does not remedy the problem that they are still the corporate employees of a foreign corporation and but-for that foreign corporation's employment, the police officers would not have received their policing powers in the United States. Thus, CP Police Service officers are merely an expression of the foreign entity, CP Railway, its civilian leaders, and its non-American Chief of Police. This is not a classic case of direct impersonation of police officers. It is an indirect impersonation of police powers by CP Railway and its Chief of Police in Canada, but as expressed through their American police officers who constitute the credible public face of CP Railway's exercise of criminal law powers in the United States.

THE POTENTIAL PAPER TRAIL, LEADS, AND QUESTIONS THAT THE STB AND OTHER INVESTIGATING AUTHORITIES MAY FIND PRODUCTIVE TO PURSUE.

Should the STB or other US authorities elect to commence an investigation into the above noted issues, the following is avenues of investigation which may be productive to pursue. Many of these avenues are ones which we have also pursued, however without the authority to compel disclosure or to provide protective cover, we have had limited success. The STB in conjunction with other US authorities can compel CP Railway to answer relevant questions and provide certain documentation that can verify the allegations in this complaint. Therefore, the STB and the other United States authorities with whom it may coordinate on an investigation may benefit from pursuing information about, or from, the following. NOTE: the

complainants are not requesting or expecting that the STB and any other government agency can, or will, disclose these documents to them. The complainants under the importance of investigative integrity and the fact that public bodies' investigative product the obtain from any party, including the following, may never be fully disclosed to the public, if at all.

The CP Police Service's investigative records of deaths, serious injuries, and other incident investigations in the United States.

The CP Police Service records documenting its investigations into deaths, serious injuries, and other major incidents (e.g. environmental spills) in the United States and Canada over the past 20 years lie at the epicenter of any inquiry. These records should disclose which police officers attended and whether the CP Police Service had exclusive, joint, or any involvement in the ensuing police investigations. The records will also disclose whether the CP Police Service took instructions from, reported to, or allowed the company's civilian leadership to access any evidence on the police file. The CP Police Service's records will also disclose indicia of the company's involvement in the injurious and fatal incidents.

In Canada, the Westray amendments to the *Criminal Code* presume that the employer is the focus in workplace death and serious injury police investigations. We trust that the United States has equivalent laws for employer criminal liability at state and federal levels. Therefore, records showing that CP Railway's corporate leaders inserted themselves into or obtained updates on such incident investigations could amount to obstruction of justice, witness tampering, and other potential offences. This is especially the case if the CP Police Service officers asserted jurisdiction over these incidents and reported to CP Railway's corporate management (or received corporate direction) about the operational aspects of such ongoing investigations, suppressed or failed to expose systemic safety issues in the company, or deliberately excluded CP Railway as a party of interest in the police force's incident investigations.

Any direct evidence of CP Railway "keeping a lid" on negative price sensitive information that could lead to deeper scrutiny of the company's safety and operational practices in Canada and the United States would be in the CP Police Service records. It will be critical for all relevant authorities to play a role in determining whether CP Railway has systemically denied American workers and citizens of their right to independent criminal investigations of deaths and serious injuries in the United States.

Notwithstanding any need to legally compel CP Railway to disclose relevant information to the STB and other authorities, the STB should find that a simple request for the records or questions confirming how the CP Police Service has handled workplace deaths and serious injuries may trigger disclosure. In the alternative, a preliminary step may be to request sworn affidavits from the CP Railway's Board of Directors members and executive leadership affirming that CP Railway has never exercised any operational control over its police forces, never investigated itself criminally through the CP Police Service, and clarify the independence mechanisms it has between the corporate and policing arms of the company.

At a minimum, asking CP Railway whether the CP Police Service has ever investigated deaths and serious injuries under the company's watch in the United States, exclusively, in parallel, or in conjunction with other investigating authorities, should trigger the right answers, or direct the STB where to focus its efforts. Note that CP Railway may attempt to evade through semantics by insisting that the CP Police Service only plays a supporting role while other police forces are free to independently investigate incidents at the company. However, if CP Railway is a party of interest in a workplace incident, its police officers should play no role beyond the immediate preservation of life.

As a sworn law enforcement officer, CP Police Service Chief Al Sauvé may be the most cooperative and knowledgeable person to contact.

The CP Police Service as an independent entity, particularly Chief Al Sauvé, will likely provide valuable knowledge and insight. Chief Sauvé's powers and obligations as a law enforcement officer in Canada, and effectively in the United States (through his operational control of officers in the United States), place unique and onerous pressures on him to cooperate with American authorities. That is because as a police officer, Chief Sauvé is supposed to be legally independent from CP Railway. His duties as an officer of the law supersede any duty of loyalty that he may have to CP Railway as a corporate employee. Of all the people who are likely to cooperate and provide the most helpful information, Chief Sauvé will likely be the most helpful.

Disclaimer: The complainants do not speak for Mr. Sauvé and the complainants are adverse in interest to him. Nevertheless, valuable lines of inquiry that the STB may pursue with Chief Sauvé in his capacity as a law enforcement officer include the following. Again, the complainants are not seeking that the STB disclose its findings to them, but use the findings strictly for the merger review process and to refer the matter to other relevant authorities in the United States:

- 1) Does Chief Al Sauvé supervise CP Police Service officers in the United States, including in operational matters such as workplace death and serious injury investigations that occur under CP Railway's watch?
- 2) Is Chief Al Sauvé a sworn police officer who can conduct police work in the United States like the officers he oversees in the United States? If not, on what authority can a foreign-based, non-American police officer direct and supervise police officers in the United States?
- 3) Is Chief Sauvé an American citizen? If not, he would be a foreign citizen controlling a statutory, multi-state police force that enforces the criminal law in the United States against American citizens. There may be sovereignty and civil rights (potentially 4th and 5th Amendment) violations associated with this arrangement.
- 4) Under Chief Al Sauvé's watch, and from his knowledge of existing records from before his tenure, has the CP Police Service ever exercised exclusive, concurrent, or overlapping police jurisdiction over a death, serious injury, or other potentially criminal incident that happened pursuant to CP Railway's operations in Canada and/or the United States?

- 5) Is Chief Al Sauvé aware of any instances where CP Railway's civilian leadership or personnel have directed CP Police Service officers on operational matters?
- 6) Has Chief Al Sauvé, or his designates, ever provided briefings or updates to CP Railway's corporate leadership regarding workplace death, serious injury, and other CP Police Service investigations? If so, can he disclose the briefing reports, memos etc.?
- 7) Can Chief Sauvé provide to the STB records of all death and serious injury incident files at CP Railway in the United States over the past 20 years?
- 8) Is Chief Sauvé aware of any potentially unlawful conduct relating to CP Railway's operations that he did not refer to independent police forces, or did not direct the CP Police Service to fully and thoroughly investigate?
- 9) Is Chief Al Sauvé prepared to provide a sworn statement or affidavit confirming that all his answers to the above questions are truthful, and that he is willing to fully cooperate with American regulators without consulting or apprising CP Railway's corporate leadership of his cooperation?
- 10) Will Chief Sauvé undertake to ensure that neither he nor CP Railway's executive leaders attempt to dissuade, retaliate against, or otherwise prevent any current or previous CP Police Service officers from cooperating with the STB and any other investigating American authorities regarding the issues in this tip/complaint? His duty as a police officer in Canada binds him to enforce his independence from CP Railway as per the Supreme Court of Canada's decision regarding the constitutional sanctity of the principle of police independence in:

- *R. v. Campbell*, [1999] 1 S.C.R. 565 at paras 29 – 34 https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1692/index.do?site_preference=normal

- 11) To whom does CP Police Service Chief Al Sauvé report to within the CP Railway corporation?
- 12) Who determines Chief Al Sauvé's salary, bonuses, and benefits?
- 13) On what metrics does CP Railway base Chief Sauvé's bonuses?

This question goes to Chief Sauvé's independence from CP Railway. It would raise significant concerns about obstruction of justice and undue influence if the corporate leaders whose policies and actions are responsible for deaths and serious injuries on the company's watch also determined Chief Sauvé's at-risk compensation.

- 14) Has Chief Al Sauvé received bonuses in years where there were deaths and serious injuries under the company's watch?
- 15) Did Chief Sauvé attend the autopsies of any of the three CP Railway workers who died in the Field, British Columbia derailment of Train 301?

- 16) Did Chief Sauvé require CP Police Service officers to sign non-disclosure agreements beyond their inherent duties of confidentiality as police officers, to prevent them from making any disclosures that harmed or undermined CP Railway's private interests?
- 17) Did Chief Al Sauvé or his predecessor, Chief Ken Marchant, provide CP Railway's corporate leadership, including Mr. Keith Creel, with updates and operational details about the CP Police Service's investigation into the Field, B.C. derailment? This includes direct access or narrative reports about the cause of the derailment and the contents of Trian 301's event recorders.

Please note that the complainants understand that STB and any other investigating authorities would not ordinarily share any evidence they obtain in such matters, if at all. We provide these questions because, based on our experience with the issues, not only is Chief Sauvé the most likely person to cooperate, but his answers could also significantly catalyze any investigations and save the STB and other authorities significant time and resources.

The CP Railway Police Association should also have critical information for American authorities.

The CP Railway Police Associations ("CPRPA"), which is the labour union for CP Police Service officers, may also provide critical information. Our office has received anonymous correspondences from CP Police Service officer(s) who support my clients' advocacy efforts for the creation of independent railway police forces that do not answer to the company. It is apparent that these police officers unable to investigate safety-related corporate decisions or make allegations against the corporate employers who write their pay cheques.

We understand from several sources that many current and former CP Police Service officers want to speak more freely about the policing and safety issues at CP Railway, but they are afraid to do so. The best way to overcome that fear is to provide them with regulatory cover. If they are compelled to answer questions that the STB and other American authorities require for law enforcement, public protection, and regulatory purposes, CP Railway will have no choice but to allow its police officers to cooperate. Those police officers will also benefit from compelled cooperation because that is less likely to trigger the fear of retaliation that unsolicited disclosures to authorities such as the STB can often trigger. If these CP Police Service officers believe they are protected from retaliation, or that their compelled disclosures will prevent such retaliation, we strongly believe they will provide a tremendous amount of information about CP Railway's policing of fatal and injurious incidents, and the company's other potential abuses of its corporate police force in general.

The CP Railway Board of Directors will have relevant information.

The CP Railway's Board of Directors' minutes and records disclosing any communications between the CP Police Service, corporate executives, and the Board of Directors over the past 11 years or so will also

provide relevant information. This is with specific reference to records regarding workplace safety generally, and the CP Police Service's investigations into all workplace deaths and serious injuries over that period. We have reason to believe that CP Railway's most senior leaders have long been aware of the issues we have raised in this tip/complaint and have exercised direct operational control of the company's police force in that manner. Such direct control of a statutory police force in operational matters would be illegal in Canada under the principle of police independence and likely in the United States as well. Further, it would give CP Railway the ability to keep a lid on price-sensitive bad news that could also give rise to potential criminal liability for the company and its officers.

CONCLUSION.

Through various legal proceedings in which the issues in this complaint have surfaced, CP Railway has failed to rebut the substance of the allegations. Equally troubling is the fact that CP Railway's management refused to include my client, Lorelei Desrochers', shareholder proposals on the CP Police Service in the corporation's 2022 management information circular. As you can see from the text of one of Ms. Desrochers' shareholder proposals at Exhibit 1 (Bates Number 57), she proposes that CP Railway makes full and accurate disclosures about concerns with the company's CP Police Service to the STB and other American and Canadian authorities with legal interests in the issues underlying this complaint. Since CP Railway refused to include Ms. Desrochers' proposals in its 2022 circular, the parties have been engaged in litigation to determine whether the proposals must be included in the 2023 circular.

Notwithstanding the outcome of the aforementioned legal proceedings, that does not dispense of CP Railway's freestanding duty to be prompt and forthright in making submitting regulatory disclosures and updates that public authorities need to properly execute their mandates. Whether, how long, and to what extent CP Railway has abused its statutory police force in Canada and the United States impacts America's national interest across numerous dimensions including national security, administration of the criminal law, public safety, civil and constitutional rights, and America's national sovereignty.

By refusing to rebut the substance of the issues in the proposals while also refusing to make full disclosures to the STB and other authorities, it appears that CP Railway is stridently attempting to prevent the STB, CFIUS, and other authorities from delving into the issues and evidence in this complaint. This raises an important question for the STB to consider before approving the CP Railway-Kansas City Southern Railway merger: Why would CP Railway's management wish to avoid making regulatory disclosures and to satisfy shareholders and other stakeholders that there are no concerns with the corporation's cross-border law enforcement activities? This is inconsistent with the words of Mr. Keith Creel, CP Railway's President, CEO, and Board member who said the following in a glowing profile that Canada's Globe & Mail magazine published when it named him CEO of the Year because of his progress on the CP Railway-Kansas City Souter merger (Exhibit 31 – Bates Number 1396). The Globe & Mail article quotes Mr. Creel as stating:

"It took Creel, a devout Christian and man of deep faith, the night to fully develop his strategy for combatting CN. "I woke up at about two o'clock in the morning. I'd been praying about it and reflecting on it and thinking about it, and the overarching thought that came to my head was just, Your best weapon is the weapon of truth," he says.

Which was exactly the message he delivered to shareholders at the following morning's virtual AGM. "I'm going to focus on the truth, because the truth matters," he said. He would go on to repeat the word "truth" another 108 times and the word "fact" more than 40 times over the course of the call." (Emphasis Added).

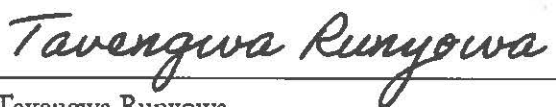
The complainants respectfully request the STB to put Mr. Creel and CP Railway to the task of answering the pressing questions about CP Railway's cross-border policing activities and prima facie evidence of the corporation's abuses of its police powers in the United States. If the company and its leaders are sincere in their commitment to tell the truth, then it should not take an extensive investigation or significant resources for the company to provide fulsome answers to written question around the **nine** issues that the complainants have raised in this complaint. The Globe & Mail article ends with the following quote from Mr. Creel, which appears to indicate that the merger approval is a foregone conclusion:

'Does Creel, whose intense conviction guided him this far, feel any uncertainty about what comes next? "There's not a doubt in my mind."'

Respectfully, there may be no doubt on Mr. Creel's mind, but the complainants believe that as long as CP Railway has not addressed the issues in this complaint, which have impacted thousands of lives on both sides of the United States-Canada border, there must be doubt on the STB members' and Americans' minds about whether the merger is a foregone conclusion. The hundreds of Americans who died at CP Railway's operations, and the thousands who were injured under the company's watch deserve the truth about what role CP Railway played in the investigations of their tragedies. They deserve the truth about whether they were denied independent criminal investigations from the outset as the complainants' Canadian experience reflects. American citizens also deserve the truth about whether CP Railway, a foreign-based corporation, is violating their civil-constitutional rights, is violating their country's sovereign monopoly over their criminal law powers, is undermining public safety, and is posing an unacceptable national security concern.

The complainants remain prepared to provide any further assistance that the STB may need.

Thank you,


Tavengwa Runyowa
(Counsel for the whistleblower complainants).