

# APPLIED PROJECT

APRJ 699

## **An Exploratory Study of the Accountability and Governance of Railway Police within Canadian Pacific**



**Submitted by:** Ivan McClelland

**Coach:** Lucien Cortis

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## Abstract

Canadian Pacific Railway (CP) is one of Canada's oldest corporations and builders of North America's first transcontinental railway. CP operates 15,500 miles of track in Canada and the United States, employs approximately 14,500 people, owns 1600 locomotives and reported operating revenue of \$4.9 billion (CAD) in 2008.

CP has its own police department known as the Canadian Pacific Police Service (CPPS) that operates across the CP network and has its headquarters in Calgary, Alberta. CPPS officers have peace officer status in all jurisdictions in which they operate.

The CPPS is considered within CP to be just another department reporting to an operational Vice-President. This organizational alignment leads to the perception that the CPPS is a private police force that operates as an extension of CP management. A number of legal actions have resulted from a perceived conflict of interest and allegations of inappropriate use of police powers have occasionally arisen. The purpose of this applied project is to address the primary research question;

*“How can the Railway Police within CP be organized for more effective governance and accountability?”*

Although this research project is primarily concerned with addressing this question it also explores the rationale behind the existence of railway police and questions its business value.

The research took the form of a qualitative exploratory study and comprised a number of discrete activities:

- Comprehensive literature review of academic theories and practices in this area
- Review of public policy and legislation relating to police governance and accountability
- Internet searches and document reviews
- Informal interviews with key stakeholders and peer groups

The research revealed that the predominant societal view is that policing should be the preserve of the state or public police. However, the railway operating companies as owners of mass private property and faced with unreliable or non-existent public policing became reliant upon railway police out of necessity. The distinction of private property versus public property is a major obstacle to the public police being able to police the railway environment.

The literature review revealed that it is the use of force or more accurately the misuse of force by police that is the greatest driver for robust governance and external civilian oversight of police. The fact that the police have the legal ability to apply force in the execution of their duties has resulted in greater oversight of their actions. Consequently the contemporary normative view is that external civilian oversight is required to hold police accountable.

A comparative analysis demonstrates that the governance and accountability of the Canadian Pacific Police Service falls far below this societal expectation and widespread public policy. This situation is exacerbated by CP's senior management who are very competent business managers but who are not well positioned to understand the requirements of a publicly accountable police service.

A review of the pertinent case law and judgements revealed that the railway police although acknowledged as employees of the railway companies are not considered to be servants of those companies. Instead the judicial system views railway police as being public servants required to operate independently from the railway company as officers of the law, not as company employees. This legal relationship between the CPPS and the rest of the company is not well understood by CP management and is not acknowledged in the organizational design.

The analysis of the business value created or preserved by CPPS demonstrates that the CPPS are uniquely positioned to help mitigate the impacts associated with unintentional events. Through enforcement and education the CPPS can reduce the number of accidents that have an adverse impact on train operations. The CPPS can improve both public & company safety and can offer tangible benefits in respect of train fluidity. In addition, the law enforcement status and high level security clearance enhances the resiliency of the company facilitating a rapid response to emerging threats.

A number of recommendations are outlined that would position CP to be able to demonstrate a progressive approach to the management of railway police. The governance structure recommended would allow CP to demonstrate that external oversight is being incorporated into the organization. The accountability mechanisms suggested minimize any conflict of interests and remove the perception of the powerful railway company with its own private army.

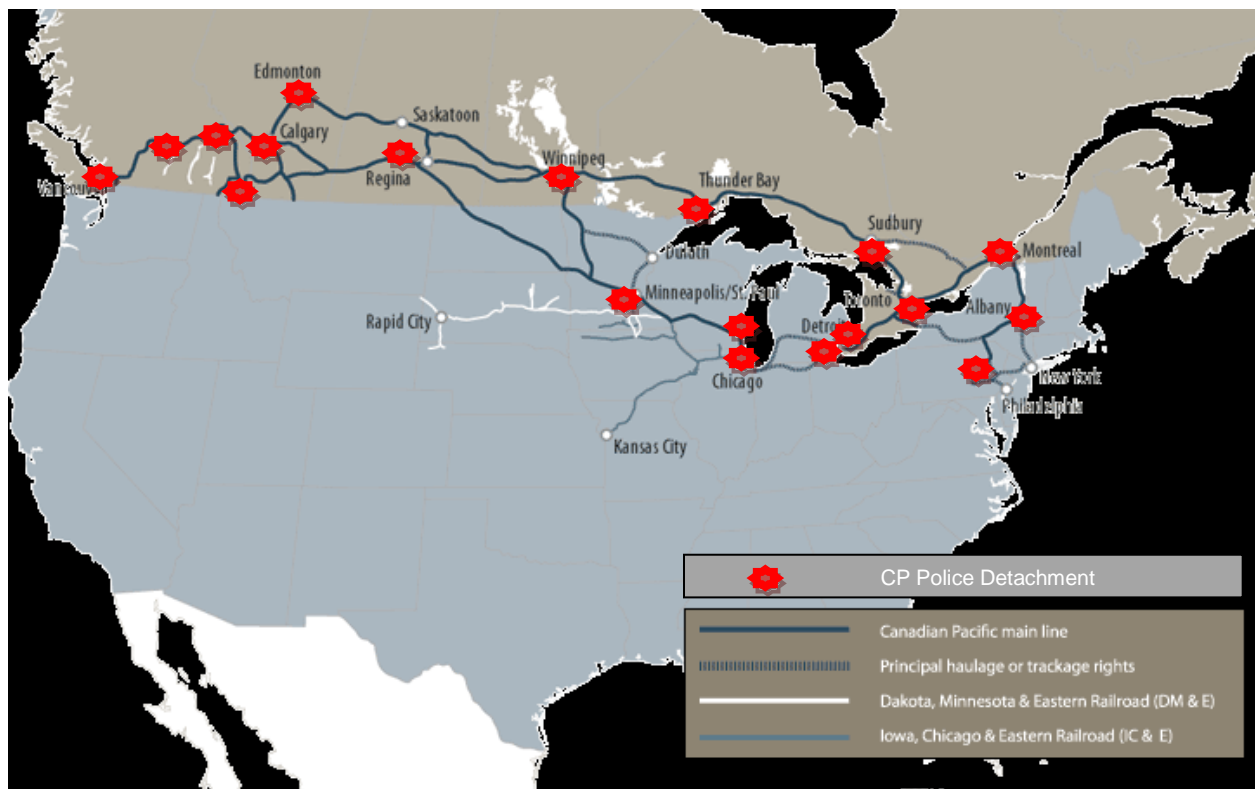
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## 1. Introduction

Canadian Pacific Railway (CP) is one of Canada's oldest corporations and North America's first transcontinental railway. Although the corporation initially operated passenger services, today CP is a freight railway owner and operator based in Calgary Alberta. CP is one of six 'class 1' railways<sup>1</sup> in North America and operates over a 15,500 mile network of track in six Canadian Provinces and 14 US States. The company employs approximately 15,000 people, owns 1600 locomotives and reported operating revenue of \$4.9 billion (CAD) in 2008 (Canadian Pacific, 2009).

Like all class 1 railways, CP has its own police department known as the Canadian Pacific Police Service (CPPS) that operates across the entire CP network, in all States and Provinces. In addition to uniformed officers who patrol railway property and public streets the CPPS operates a 24/7 emergency communications centre that acts as a dispatch centre and is the principle point of contact in any railway emergency. The map below shows the CP railway network and the locations of CPPS detachments.



<sup>1</sup> The American Association of Railroads defines a class 1 railroad as one that has annual operating revenue in excess of \$346.8 million (USD).

CPPS officers, in Canada, have peace officer status as defined by Section 2 of the Canadian Criminal Code and have federal jurisdiction to enforce all the laws of Canada and the Provinces. In this respect they substantially have the same powers and authority as the Royal Canadian Mounted Police although the Railway Safety Act limits the exercise of these powers to railway property and a distance of 500m from this property. In the United States CPPS officers have peace officer status granted by various state statutes and they have been given inter-state jurisdiction by virtue US Code Title 49 Section 28101.

While CPPS officers are employees of Canadian Pacific, they have taken an oath or commission to serve the Crown (or State) and consequently they have a reporting relationship to the criminal justice system and to a large extent must operate with demonstrable independence from the company that employs them. Yet the CPPS is considered within the company to be just another department reporting to a Vice-President level within the organizational hierarchy. This organizational alignment leads to the perception that the CPPS is merely a private police force that operates as an extension of CP management and enforces laws only when it is in the best interests of the company.

## 2. Research purpose & Research Questions

The perception that the CPPS is merely an extension of CP's management team is one that has been problematic for both the CPPS and CP. A number of legal actions have resulted from the perceived conflict of interest and allegations of inappropriate use of police powers have arisen following a recent labour dispute. The purpose of this applied project is to address the primary research question;

“How can the Railway Police within CP be organized for more effective governance and accountability?”

In addition to the legal actions faced by CP, a very pro-labour US administration has indicated that they will take steps to minimize the ability of railroad<sup>2</sup> police in respect of discipline investigations. The first tangible sign that this is a reality occurred in the State of Michigan which has recently introduced legislation<sup>3</sup> requiring State Police oversight of some railway police investigations, potentially undermining the effectiveness of CPPS officers in that State.

Asking how the CPPS should be positioned within the CP organizational design always prompts a number of other questions such as:

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<sup>2</sup> The terms railway and railroad are used interchangeably, however the term railroad is used almost exclusively within the United States.

<sup>3</sup> (610 ILCS 80/) Railroad Police Act.

- Why do we need our own police department?
- What business value do we derive from maintaining the police function?
- Why do police need to be organized differently after all they are just another department within the company?

While this research project will primarily be concerned with addressing the question related to accountability, oversight and governance, it would be incomplete if it did not explore the rationale behind the existence of railway police and question its business value. Examination of the business value provides the contextual framework to facilitate a deeper understanding of the issues that make the accountability question crucial to the organization. If the railway police offer true business value then the company should seek to preserve that value proposition now and in the future.

This project is within the management domain of organizational analysis as it relates to the question of how CP reconciles the apparently conflicting public / private accountabilities within a business structure. However given the duality of railway policing the project must also examine to some extent the impact of evolving public policy on the structure and organization of policing within CP.

### 3. Literature Review

#### 3.1 Origins of modern policing

In charting the evolution of modern public policing systems South (1987) identifies that the origins of the public system lie in private policing organized by private self interests. The first protectors of peace arose in feudal times, when the peace being protected was the private peace associated with a lord's geographic domain and property. Private policing was the only type of social control mechanism in existence as the industrial revolution started when wealthy land and property owners sought to protect their interests and means of production. The sole accountability of private police was to the employer whether this was a local magistrate, mill owner or money lender. As industrial capitalism expanded so too did the power and influence of governmental bodies and increasingly the private peace protected by private police agencies became the collective public peace (South, 1987).

The origins of public policing are traditionally seen as coinciding with the formation of the Bow Street Runners in 1750. These runners were employed by London's Bow Street Magistrates to assert the will of the court and to detect crime and bring offenders before the courts. South (1987) dispels the traditional view when he quotes an earlier work by Radzinowicz, who describes the runners as

*“A closely knit cast of speculators in the detection of crime, self seeking and unscrupulous, but also daring and efficient when the daring and efficiency coincided with their private interests.”*

It wasn't until the Police in Ireland Act in 1785 that the first public police truly emerged, controlled by government rather than a private enterprise. By the mid 1800's state control had introduced the public police systems that we see today (South, 1987). By the 1960s the public or state policing model was the prevalent model, but since that time private policing has re-emerged. In some countries, particularly the United States private policing is now a major provider of social control and protector of the public & private good. (Shearing, 2006)

### **3.2 Emergence of Railway Police**

The evolution of railway policing challenges the 'private to public' developmental path. The earliest known railway police were formed in the United States in 1849 and were created by the Baltimore and Ohio Railroad (Union Pacific Police, 2008). They were deputized by the Preston County Sheriffs department to legitimize their operations under the protection of public policing. The railroad police became a private entity a few years later when Allan Pinkerton formed his famous detective agency (Union Pacific Police, 2008) and the railroads became the first major customers of this service.

The same progression from public railway policing to private policing is again evident within Canada. In 1880 the Canadian Government entered into an agreement with the newly created Canadian Pacific Railway. The agreement required CP to build a transcontinental rail system to unite the country, in return for government financing and investment (Canadian Pacific Archives, 2007). As the construction proceeded west, the government assigned members of the North West Mounted Police (later to become the Royal Canadian Mounted Police) to protect railway and construction operations (Duncan, 1988). The construction was finished in 1886 when the first transcontinental train completed its inaugural journey from the Pacific coast to the Atlantic terminal in Montreal. The North West Mounted Police (NWMP) continued their protection of the railway in the west but the railway had no protection in the rest of the country, and by late 1887 the NWMP could no longer provide resources to the service of the railway. After a short period where the railway suffered an increasing amount of criminality, the government of the day decided that this critical infrastructure was in need of protection and they created legislation<sup>4</sup> that enabled the railway companies to appoint their own railway police (Duncan, 1988). The legislation that continues to enable the existence of railway Police in Canada today has hardly changed since the original 1888 act.

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<sup>4</sup> The Railway Act of Canada 1888



### 3.3 Private vs. Public

The predominant contemporary societal view is that policing should be the preserve of the state or public police. Yet one perspective on why private policing exists is based on the need, real or perceived, to supplement inadequate state or public policing (Wood & Dupont, 2006). This could be applied to the railway policing environment as the formation of railway police arose as public policing was incapable of providing a service to the railway. The rationale for the continued existence of railway police has not changed significantly from this time. Public policing agencies neither have sufficient resources to commit to policing the railway environment nor are they well positioned to police an entity that crosses national and international jurisdictional boundaries. Consequently the railway operating companies, faced with unreliable or non-existent public policing became reliant upon railway police out of necessity rather than unimpeded free choice (Wood & Dupont, 2006).

Another view of the need for railway police is obtained by asking the question “If the Railway Police don’t look after the property, who does?” The railways in North America were one of the first owners of ‘mass private property’ and they continue to own mass private property that crosses all jurisdictional and national boundaries (Hermer, Kempa, Shearing, Stenning, & Wood, 2005). CP alone owns or operates approximately 15,500 miles of track and the property immediately adjacent to it, thousands of bridges and other structures and hundreds of railway yards and administrative buildings. The existing legal view is that private property will not be policed by the public police for the purposes of maintaining the peace or providing security from harm (Law Commission of Canada, 2006), instead this is the sole responsibility of private property owners. Public police would only enter such property at the invitation of the property owner or in response to a crime or emergency, they would not routinely patrol such property unless some prior arrangement existed that would facilitate this level of activity (Shearing, 2006).

Hermer et. al. (2005) argue that the public use of mass private property is such that the state police must now have a legitimate need to provide policing services as indeed they could be considered to be public places. In this context they perceive mass private property to be areas such as shopping malls, entertainment complexes and to some extent office complexes. These are spaces that the public use and frequent extensively and the transition between public and private property becomes more of a technically rather than an observable boundary being crossed. As the railway travels through many towns and cities could they be considered in the same manner?

Stenning (2006) observes that the distinction between public and private policing is not as clear as it was a few decades ago. As public agencies struggle with budget and resource constraints, there has been a move to greater reliance on the private sector to provide key services. In some areas this has involved private security companies

moving into some traditional public police roles, such as prisoner transportation or operation of speed enforcement equipment (Stenning, 2006). This raises the question of accountability in the minds of the public and to some extent the police departments that contract the services (Shearing, 2006).

### **3.4 Social Responsibility**

The idea that corporate social responsibility and society are mutually dependant is particularly true of the railways (Sexty, 2002). The railways in Canada shaped the development of the country and the geographic distribution of the population. Almost all of the urban centres west of Ontario exist because they serviced the railway in some way or another and the railways still play a major role in the economies of many such communities (Canadian Pacific Archives, 2007). However railway activities can be highly disruptive to these communities; they create noise, disrupt traffic flows and can be a source of danger as they transport dangerous goods. The fact that there is an on-going safety issue associated with railway operations merely elevates the requirement for CSR activities to a point where it becomes a societal expectation (Sexty, 2002).

As peace officers, railway police have a unique ability to influence the high-risk behaviours of the public. The ability to enforce laws, make arrests and compel people to court<sup>5</sup>, are influence mechanisms not available to other industry sectors. This is of great significance to the railway industry as hundreds of people are killed every year in accidents involving moving trains (Operation Lifesaver, 2009). Investment in railway police could be a significant demonstration in Corporate Social Responsibility (CSR) on the part of any railway company, provided that police powers are used appropriately and not merely to advance the interests of the company.

Sexty (2002) proposes a diagnostic typology for stakeholder analysis and by applying this to CP's stakeholder list and overlapping where the CPPS contribute major effort it is clear that there is alignment between the more problematic stakeholder groups and CPPS efforts. This alignment does not arise out of a purely reactive stance on the part of CPPS, although that does account for some of the interactions. Instead CPPS and CP in general adopt a risk based approach to such relations and formulate proactive strategies for issue management (Canadian Pacific, 2009). In this role the CPPS could be perceived as a buffer department that helps to insulate the core operations of the company from the external environment (Daft, 2006).

### **3.5 Operational Environment**

The railway companies are unique within the North American business environment as they operate within the only industry sector that is permitted by federal laws to form and operate private police departments to protect their assets and operations. Yet the role of the modern railway police goes far beyond the corporate security role suggested by

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<sup>5</sup> Railway Safety Act, 1985 Sec 44.

mere protection activities. In Canada the enabling legislation that permits the formation of railway police is the Railway Safety Act (Sec. 44, c1985 as amended) and this provides an indication that the modern view of the railway police is much more oriented to safety issues.

The idea that the external environment needs to be controlled to help the technical core of the company to operate is particularly relevant to a railway company that operates a highly distributed and continuous network across the continent (Daft, 2006). The railways are very exposed to influences from the external environment that can significantly affect their operations. Everything from regulation, weather, urban development, population changes and crime can affect the safe, efficient and profitable operation of the system. Faced with these uncertainties the company has a number of choices about the level of risk it is willing to accept (Gardner, 2008). The common business paradigm is to accept more risk to operational efficiency as the cost of controlling these risks is far greater than the consequence cost if the risks materialize. Gardner's (2008) work supports this view and suggests that risk managers have overstated some risks and collectively we are in a state of paranoia and do not have an objective view of risk.

Should CP then have a high risk tolerance for things that may impact their operations? The answer to this question may lie in an unexpected area. The railway industry is a mature industry and is to a large extent highly commoditized. The only major opportunity that railway companies have to differentiate their products is based on the destinations that they serve (Porter, 1980). Therefore cost leadership may be the only way to gain some competitive advantage, as is evident from the focus that all the railway companies have on their operating ratio. While all of the actors in this sector have a focus on cost control few have adopted a focus on lean management as championed by Toyota (Liker, 2004) and as now being proposed by CP's senior management.

A key tenant of lean management is predictability; 'everything in its place and a place for everything' (Liker, 2004). Indeed the work of a security department has been described as attempting to create and sustain a predictable operating environment (McClelland, 2008). Having a predictable operating environment helps to eliminate waste, especially when malicious incidents occur that create the need for unnecessary work, rework, movement and storage (Liker, 2004). As CP moves towards adoption of a lean management approach to business processes and operations, the need for discipline, standardization and predictability become much more important than the acceptance of risk approach. A deeper understanding of the business benefit of this approach is gained through an examination of the total cost of risk events.

The traditional approach has been to look at the cost of maintaining departments that reduce or mitigate risk, the 'head count approach' (Atkinson, Kaplan, & Young, 2000). When considering a lean management approach, costs should be considered

holistically and the balance between the costs of preventative departments should be weighed against the consequence costs of unintended events (McClelland, 2008). In addition the incremental costs of maintaining employees to manage recovery or mitigation efforts, and having to purchase and locate equipment used to aid in recovery must also be considered (Liker, 2004).

### 3.6 Use of Force

Although I have described the earliest public police as being little more than thugs, the use of violence by police is legitimised by statute and common law. Society gives the police the task of bringing criminals to justice and of preserving the peace. In order to discharge these functions the police have the legal right to use, or threaten to use, force (Skolnick & Fyfe, 1993). It may even be fair to say that the monopoly on the right to use force by police is the central defining feature of the police (Skolnick & Fyfe, 1993). But this right to apply force is somewhat at odds with the traditional view of police officers as being “citizens in uniform” (Stewart, 2006) and the doctrine of policing by consent. The police are not the military, empowered by government to battle a mortal enemy; instead they are made up of citizens from the same society that they police. Consequently societal expectation is that the police use of force is reasonable and is within the norms accepted by that society (Bayley, 2006). It is the use of force or more accurately the misuse of force by police that is the greatest single driver for robust governance and external civilian oversight of police.

### 3.7 Accountability

The Law Commission of Canada (2007) identifies that police are held accountable through a number of mainly external mechanisms. These can be codified as follows:

- **Political Accountability.** This is achieved through relationships to governing bodies and through the normal political process.
- **Legal Accountability.** This accountability to the judicial system is intrinsic to the police role although this tends to be on a case by case basis as each matter is before the court.
- **Administrative Accountability.** This includes accountability to police boards, commissions, auditors and others with defined authority over policing matters.
- **Public Accountability.** Through freedom of information, public reporting and disclosure requirements.
- **Ad hoc Accountability.** Through Royal Commissions, Grand Jury inquiries or other public inquiries.

Not all of these mechanisms apply for all police agencies and some may be permanent while others have a limited applicability.

The concepts of public accountability and civilian oversight of the police are relatively new concepts and have emerged as public confidence in the public police has been

eroded due to publicised acts of misconduct by a number of officers (Bayley, 2006). The lack of acceptance of private governments as described by Shearing (2006) have also driven an intuitive rejection of private policing on the basis that police act in the public interest and therefore must be accountable to the public they police. (Shearing, 2006)

Since the 1970's, there has been a proliferation of accountability mechanisms for all agencies involved in the administration of the criminal justice system (Stenning, 2006). These have predominantly been external accountability mechanisms or agencies such as civilian review boards, inspectorates, Police Commissions, government agencies of one type or another.

The contemporary normative view is that external civilian oversight is required to hold police accountable otherwise they will abuse the power that society and the justice system has bestowed upon them (Skolnick & Fyfe, 1993). This view arises out of repeated and highly publicized instances of inappropriate behaviour by individual officers and the apparent inability of police agencies to stop these events occurring. The predominant thinking is that there is a significant deterrent effect on others by holding the wrong doers responsible and overtly punishing them (Bayley, 2006). This is basically the same doctrine as public executions and floggings as a means to assert social and cultural control. The long term effectiveness of this approach as a societal control mechanism is doubtful.

The deterrence approach is also called into question by Bayley (2006) who suggests that external oversight is rarely as effective as internal oversight. Only the insiders know how controls can be circumvented in ways not easily discovered during the relatively brief and mostly superficial visits or inspections by outside agencies. He argues that the way to change the behaviours of a few rotten apples is to change the barrel.

There is also the suggestion that the growth of external control agencies has weakened or even negated the efficacy of internal control and accountability mechanisms within police agencies (Bayley, 2006). This erosion occurs because of an over-reliance on external mechanisms and decreasing confidence in the transparency of internal controls leading to an abrogation of responsibility for internal controls (Stenning, 2006).

Bayley proposes a model for police accountability that challenges the conventional external civilian oversight that has become commonplace. In his "Principles of Responsible Policing" Bayley (2006) proposes a new paradigm in civilian external oversight that focuses on the efficacy of the police management in preventing misconduct. This is a fundamental shift as the deterrence view is the predominant one and the intuitive call for 'heads to roll' after an incident of misconduct feeds this view. In Bayley's model external expert civilian oversight focuses on the cultural environment,

the development and sustainable implementation of policies and the appropriate discharge of discipline.

### 3.8 Governance

Although the conventional understanding of governance is closely related to control or authority, Wood & Dupont (2006) describe governance as “Conscious attempts to shape and influence the conduct of individuals, groups and wide populations in furtherance of a particular objective.” Within the context of Canadian public police, governance refers to the activities of institutions with authority to give direction to the police (Law Commission of Canada, 2006). These institutions are known in Canada by a variety of nomenclatures such as Police Boards, Police Commissions and Public Police Oversight Committees but whatever the name they all generally have the authority to establish standards, budgets and resources levels (Graham). In some cases these bodies also appoint the chief officer of the police and occasionally all senior officers.

The need for such governance bodies arises from the desire to ensure the adequate oversight of the police but also to protect the independence of the police. The need for independence is to ensure that the police are free from undue political interference and to avoid use of the police for political purposes (Graham). This concept of independence also extends to the interaction between the governance body and the police. The accepted paradigm is that the governance body may give direction on non operational matters such as policies, standards and other strategic issues. The governance body may not however give direction on day to day policing or the discharge of responsibilities under the judicial system or in support of the criminal code (Law Commission of Canada, 2006). This operational independence is summarized well in the following quote:

*“The Chief Constable is accountable to the Board for the overall policy of the force and the level and quality of service provided to the community. It is important to stress, however, that the day-to-day professional policing decisions are matters that are reserved to the force itself. The authority of the individual constable to investigate crime, to arrest suspects and to lay information before a justice of the peace comes from the common law and the Criminal Code and must not be interfered with by any political or administrative person or body. Overall Policies, objectives and goals, however, are matters that properly belong to civilian authority and police boards have the duty to see that the force operates within established policy and has the right to hold the Chief Constable accountable for these matters.”* (British Columbia Police Commission, 1980)

Although the concept of police oversight is relatively recent, arising out of well publicized incidents of misuse or abuse of authority by police (Bayley, 2006) the idea that the state or government can be the only providers or enablers of governance is being challenged. Shearing (2006) describe the emerging trend in policing and security governance; nodal governance as opposed to centralized or state governance. This is compatible with a view of the emergence of private governments and the governance models that evolve with them (Shearing, 2006). Shearing describes a private government as a non-state agency that is not merely the provider of governance on behalf of a state agency but as the auspices of governance in their own right.

The concept of a nodal governance approach also supports the emerging view that policing is no longer the sole responsibility of the state (Cooley, 2005) instead it is a shared responsibility with policing services coming from both the private and public sectors. Cooley (2005) and others describe modern policing as a network of actors working collaboratively to ensure the public and private peace and delivering security to all. If this network theory of policing reflects the emerging reality, then the actual points where policing functions occur would be accurately described as the nodes (Shearing, 2006). Governance would then be exercised at each such node in line with societal expectations and existing mechanisms, without direct influence of governments.

If CP can be described as an example of this class of private government, then the idea of nodal governance is relevant to CP and CPPS in particular. Examination of the nodal model may confirm that CP possesses the principal characteristics of this governance model. If this is the case then clearly there is a requirement for a contemporary accountability structure.

### **3.9 Organization**

To determine what accountability mechanisms will be appropriate for CP it will be necessary to understand the organizational design of the company and the current state of accountability for CPPS within that design. Daft (2006) codifies organizational design concepts and relates the strategic goals of the organization to its internal structure. This is useful in understanding the existing organizational design within CP and in doing so some of the incompatibilities with CPPS become evident. Daft's work particularly sheds some light on why the pluralistic nature of the CPPS is a source for potential for intra-organizational conflict.

The work explores many of the influences, both external and internal on the design and structure of an organization (Daft, 2006). Taxonomies for understanding the nature of departmental and functional processes provide insight into how design can affect the efficacy of a strategy or process. The dimensional analysis in particular can help place CPPS within this taxonomy and determine the appropriate governance and oversight model.

## 4. Research Design and Data Collection

The main research question to be resolved in this applied project is “How can the Railway Police within CP, be organized for more effective governance and accountability?” The research design was mainly qualitative and primarily took the form of an exploratory study. This approach was apposite as there is a comparatively small collection of academic works in this area and no measurable data that can provide any meaningful insight into this research question. The research typology is mainly a content analysis but incorporates many elements of a case study.

### 4.1 Content analysis approach

A review of legislation pertaining to police governance and accountability revealed the minimum required standards of these areas as set out in various Provincial Police Acts and the Royal Canadian Mounted Police Act. The Ontario Police Services Act was one of the first to be enacted and other provincial statutes have closely followed this model. I have used the Ontario Act as being representative of all such legislation rather than quoting each individual act. In particular any legislation relating directly to railway police was examined although, as this paper will identify, the lack of such specific legislation is a major concern.

Internet searches on the terms ‘Police Governance’ or ‘Police Accountability’ revealed numerous documents, news stories, police websites and police commission websites. A large number of news articles and editorials were returned during these searches and it was interesting to note that these proliferated in the days following any high profile incident involving police use of force.

Academic works on this subject are limited and some are quite dated, however a small handful of authors have published a number of works that explore the relationship between the state or public police and the private police, although in this regard they are codifying private security as being private police. These authors do present a view of accountability and theories on governance models which offer differing views on how these could or should be achieved.

### 4.2 Case Study Approach

A number of informal interviews and discussions were held during the research period and continue even as this research paper is being drafted. The individuals involved in these discussions can be sorted into five different groups as follows:

1. Chiefs of Police from public or governmental police departments
2. Chiefs of Police from North American class 1 railways
3. Management and employees from Canadian Pacific Railway
4. Members of the public



## 5. Government representatives

Although the types of discussions did not differ greatly with members from each group the views expressed were widely divergent and served to reinforce the group demarcation outlined above.

## 5. Results

The content analysis of the predominant academic works in this area is set out in the pervious literature review section of this paper. Additional context was gained by reviewing other documentary sources:

### 5.1 Legislative review

As previously stated the enabling legislation that allows for the creation and operation of railway police is contained within Section 44 of the Railway Safety Act (1985 c.32 4<sup>th</sup> Supplement) which states:

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

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

The wording and extent of jurisdiction have not changed substantially since the original authority was set out in the Railway Act of 1888. Early challenges to the authority of the railway police set out the common law view and to some extent determined the relationship with the company. One of the first challenges was answered in a judgement from case before the Ontario Division Court (Nagarino Vs. Canadian Pacific Railway Company, 1908)

*“For the public safety, for the benefit of all, it was found expedient that the statute [Railway Act 1888] should provide for the appointment of Constables who in one sense are under the direction of these large corporations, the railway companies, but in another sense are quite independent and have a distinctly independent and public duty to perform. As soon as a person is sworn as a Constable under the Act, as in this case, it becomes immediately his duty, like any other*

*constable to make reasonable efforts within the scope of his employment, in order to detect crime and bring criminals to punishment, and that aside altogether from the person of his company.”*

Some years later the Alberta Supreme court were also asked to rule on a similar issue and decided that:

*“Obviously the intention was to create a sort of Dominion Police. They are to be appointed on the nomination of the Railway Authorities and doubtless must be paid by them, but when appointed they are public Constables just as much as in the case of Constables appointed and paid by municipalities. They are officers of the law (...) they are to protect not merely the railway property and the officials but the public generally both in person and property.” (R Vs. O'Brien, 1919)*

This judgement challenges the then historic paradigm of private police being solely accountable to their employers (South, 1987). The relationship between the railway police and the company that employs them was clearly defined in 1906 when a judge of the Ontario Division Court stated:

*“...For the like reasons such peace officers appointed on the recommendation under the authority of a competent legislation by a railway company, must be regarded as officers of the law and not as servants of the company.” (Thomas Vs. Canadian Pacific Railway Company , 1906)*

There have been few other common law rulings in respect of the authority of railway police as these three cases have established the predominant legal precedent. Any subsequent challenges have failed at lower courts as the precedents have been cited and accepted without the cases being referred to the highest courts. This legal view is still current as shown by the Law Commission of Canada (2007) who referred to the railway police as being public servants and not even questioning that there would be a contrary view.

## **5.2 Discussion reviews**

The results from the informal interviews and discussions show areas where the various groups are aligned but more often they show that the groups have divergent views on key areas.

### *Group 1: Chiefs of Police*

Interactions with this group comprised of one to one discussions and informal interviews held during the annual meetings of the Alberta Association of Chiefs of Police and the Canadian Association of Chiefs of Police. The key findings from this group were:

- That civilian oversight and governance of the police in the form of Police Commissions is the normal and correct approach.
- All were consistent in their concern that railway police had no form of external governance and they could not reconcile that this is not contrary to the public interest.
- All welcomed the move towards independent review of public complaints against the police and independent investigation of serious incidents involving police officers. All the chiefs welcomed the opportunity to remove the perception of a conflict of interest that arises when police departments investigate their own officers. Although where such investigations still occur the chiefs expressed the view that they are the most thorough and objective investigations that their services could perform as they are likely to come under considerable scrutiny.
- Operationally railway police are viewed as being part of the policing network and as such are no different from other public police agencies.
- There was a poor understanding of the limits of railway police jurisdiction and when most felt that the limits were both irrelevant and outdated, especially as most railway officers also have provincial Special Constable Status to enforce the laws of the Provinces anywhere within that Province. (Police, 2009)
- While the RCMP officers shared these views to some extent it was apparent that they felt that the governance and oversight coming from central government was sufficient. The RCMP officers also rejected outright any civilian oversight of their complaints and investigation process although they accepted that there was increasing public concern on this topic.

### *Group 2: Chiefs of Railway Police*

This group is made up of the chiefs and deputy chiefs from the following agencies:

*Canadian Pacific Police Service*

*Canadian National Police Service*

*Burlington Northern Santa Fe Police*

*Union Pacific Police*

*Norfolk Southern Police Department*

*CSX Transportation Police*

*Kansas City Southern Police*

*Amtrak Police*

Information was obtained during a round table discussion during a quarterly meeting of this group and from individual discussions in informal settings peripheral to the main

meeting. An obvious dichotomy of opinion emerged from this group with the Canadian entities having a view that was not the same as the US entities. The results from this group are shown in the table below:

	<b>Canadian Agencies</b>	<b>US Agencies</b>
<b>External civilian oversight</b>	Desirable but unlikely to occur as companies would not support it	Not required or even considered as a possibility
<b>Independent review of complaints</b>	Desirable but would require legislative change at either the Federal or Provincial level or both.	Not required and would be vigorously opposed in any State that tried to introduce it.
<b>Independent investigation of serious incidents involving police officers</b>	Desirable and already in place in three provinces. Chiefs indicated that where provision did not exist they would ask other agencies (RCMP) to step in and investigate.	For the most part this occurs as part of the State centric legislation that creates railroad police for police use of force that results in serious injury or death.
<b>Jurisdictional limits</b>	Well defined in Canada but are increasingly irrelevant and outdated	Inconsistent as they vary from State to State. Harmonization is desirable
<b>Independence from Company</b>	All agreed that operational independence from the company is a legal requirement and necessary to avoid liability arising out of real or perceived conflicts of interest. It was also agreed by all parties that this concept was not well understood or supported by company management.	

(Chiefs, 2009)

### *Group 3: Canadian Pacific management*

Interactions with this group occur on a daily basis and the questions under scrutiny in this paper are discussed in formal and informal settings in one to one meetings and committee environments. This group's views can be summarized as follows:

- Civilian oversight of the police function is understood but it is generally perceived that it is not desirable in the company environment as it presents other risks such as:
  - Potential for a loss of control of CPPS and the budget associated with it
  - Potential to add costs associated with the administration of this governance group
  - Spectre of union involvement in the governance of policing
- Minimal recognition that the accountability model is flawed or out of step with societal expectation for the police in general. 'It's not broken why does it need to be fixed?'
- Very little understanding of limits of jurisdiction imposed by virtue of being peace officers. Desire for railway police to be more proactive on enforcing internal company policies without understanding the limitations imposed by the Charter of Rights and Freedoms and the Miranda Act.

- No apparent comprehension of the “public servant” (Thomas vs. CPR 1906) status of CPPS. There was universal recognition that police were different but few could articulate why.
- Budget decisions for police funding are driven by the company’s own appetite for risk, the risk to the public at large is not considered. (Management, 2009)

#### *Group4: The public*

Members of the public were engaged in a number of informal situations both while in the presence of uniformed railway police officers and when no uniformed railway police were evident. The public showed a wide divergence of knowledge on the role and history of railway policing, from train enthusiasts at one end of the spectrum who were very knowledgeable to others who had no idea that railway police even existed. The public at large see little differentiation when it comes to policing, “police are police” and generally they should all be the same. The public expressed the following views:

- Police cannot be trusted to investigate themselves and must be subject to external oversight. The oversight body did not have to be a civilian body as long as it was capable of demonstrating impartiality and objectivity in its investigations.
- All police should have civilian governance to guide policy formulation and to allocate correct resources.
- The need for separate railway police force was not recognized but neither was the distinction between public and private property well understood. Additionally the multi-jurisdictional composition and deployment of the railway police was neither acknowledged nor understood. (Public, 2009)

#### *Group 5: Government and Regulators*

Representatives of government departments and regulatory bodies were spoken to on a number of occasions usually subsequent or peripheral to formal meetings on other matters. They were reluctant to discuss issues directly for fear of being misquoted or perceived as giving guidance contrary to current policy. I have drawn a number of conclusions from these interactions that summarize the content of these discussions:

- Transport Canada (TC), the owners of the enabling legislation are reluctant to be prescriptive on how railway companies should run their police departments, consequently The Railway Safety Act has no provisions regarding the operation of the railway police function.
- TC believes that the rules regarding railway police accountability, standards and procedures are embedded in other legislation such as various Police Acts.
- Public Safety Canada, Justice Canada and various Provincial Solicitor General’s offices have no provisions built into legislation regarding the accountability,

governance, standards and procedures for railway police. The predominant view is that railway police fall under the jurisdiction of the Minister for Transport Canada. (Canada, 2009)

- In the US the Transportation Security Administration representatives have indicated that they anticipate more regulation relating directly to the role and activities of railroad police and early indications from the new US administration seem to validate that view.
- State legislators vary greatly in their views on railroad police. The state of Minnesota refuses to recognise the legitimacy of railroad police while other states (Michigan for example) grant railroad police the same powers and jurisdiction as the state police. (Justice, 2009)

## 6. Analysis

The analysis of the research is divided into two parts in line with the two research questions that are under discussion. Part one of the analysis will focus on the need for a railway police function within CP and the potential business value that they add. Part two will examine the governance and accountability question and review the current organizational design.

### 6.1 Part One – Business value analysis

Canadian Pacific has articulated their vision statement as; *“To be the safest and most fluid railway in North America”* (Canadian Pacific, 2009). There are very sound business reasons to choose safety and fluidity as strategic objectives.

The Railway environment is a dangerous industrial environment with dangers for those that work on the railway and for the communities that are contiguous to the railway. All railways want to have a safe environment to protect their employees and the public at large but also to avoid liability and the prospect of increased costs and increasing regulation. The type of regulation that results from railway safety incidents is graphically demonstrated in the 2008 Metrolink train crash is outlined in Case Study 1. In this case, the principle US regulator implemented regulation that addressed the cause of the incident and also mandated the widespread implementation of an innovative but immature technology. Although the true cost implications of this decision are as yet unknown some industry observers have estimated the financial impact on the industry to be significant.

Clearly safety must be a major concern to the railways but so must operational performance which why train fluidity is a strategic focus area. Ensuring trains move on time, suffer no delays, move at the highest average velocity and do not spend excessive time in maintenance facilities; all lead to lower costs through the reduced need for crews and moving assets. All railways publish operational performance information that includes average monthly speed and terminal dwell<sup>6</sup>. These performance statistics are viewed by competitors and financial analysts who use them to assess the operational performance of the company. (Management, 2009) Consequently market valuation can be affected by poor performance metrics as well as customer satisfaction who want on-time delivery of goods.

If safety and fluidity are important to the railway it is reasonable then to assume that the police service would be sensitive to these needs. The CPPS have aligned their mission statement to support the company vision but have also managed to take into account the public nature of their responsibilities:

*“To help Canadian Pacific become the safest and most fluid Railway in North America by appropriate application of police powers to:*

- *Enhance public safety*
- *Ensure the fluidity of train operations*
- *Identify and mitigate risk, and*
- *Protect shareholder and customer value”*

(Canadian Pacific Police Service, 2008)

### **6.1.1 Business Value**

The analysis of business value starts with a summary of the activities that CPPS perform focusing on the four areas highlighted in the CPPS mission statement.

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<sup>6</sup> Terminal dwell refers to the length of time a loaded rail car would sit in a rail yard during its journey.

#### **Case Study 1. Metro Link crash**

*On Saturday September 13<sup>th</sup>, 2008 a Metrolink commuter train collided with a Union Pacific freight train. 25 people died including the engineer from the commuter train and over 70 people were injured. (Beasley, 2008)*

*In the days that followed speculation that the engineer on the Metrolink train had passed a red light was confirmed along with the fact that he was using his cell phone to text friends in the seconds before the crash.*

*Within days of the crash the Federal Railroad Administration (FRA) had issued regulations governing the use of cell phones by train crews and mandating the introduction of Positive Train Control (PTC) on all trains. PTC refers to technology that is capable of preventing train-to-train collisions, overspeed derailments, and casualties or injuries to roadway workers (e.g., maintenance-of-way workers, bridge workers, signal maintainers) operating within their limits of authority as a result of unauthorized incursion by a train. PTC is also capable of preventing train movements through a switch left in the wrong position.*

*Prior to October 2008, PTC systems were being voluntarily installed by various carriers. However, the*

## *Public Safety*

The two main areas of concern for the CPPS in respect of public safety are 'at grade' road/rail crossing accidents and trespasser accidents. In 2008 there were 214 rail crossing accidents in Canada, resulting in 26 fatalities and 36 serious injuries. In the same year there were 73 accidents involving trains and persons trespassing on the railway. These 73 accidents resulted in the death of 47 trespassers and a further 20 received serious injuries. In total 73 members of the public were killed by trains in Canada during 2008. Although this number has steadily declined in the last few years, early indications in 2009 suggest that this rate will increase in 2009 despite a significant decrease in rail traffic. (Transportation Safety Board, 2009)

The obvious risks to the public compel the railway companies to act to improve public safety, not only to meet safety regulation but also to discharge their common law duty of care to the public. This is where the societal expectation around Corporate Social Responsibility comes to the fore as the public can be adversely impacted by the company's operations (Sexty, 2002). Not only is CP a large company with operations that affect many communities, it has an operation that can and does result in fatalities. Investing in CPPS and providing a visible commitment to public safety has a major benefit to CP in establishing the company as a socially responsible entity. This positions the company well to avoid regulatory intervention and helps to address community concerns when approval for construction projects is sought.

The CPPS address the public safety priorities in a number of ways:

- **Crossing enforcement programs.** In the first quarter of 2009 the CPPS detected 317 crossing offences, such as vehicles failing to stop when crossings are activated by approaching trains, speeding through crossings and vehicles hitting crossing infrastructure. Subsequent to detecting these offences 212 charges have been laid. (Canadian Pacific Police Service, 2009)
- **Trespasser abatement programs.** Trespassing on a railway track or railway company property is a federal offence and is also an offence under various provincial statutes. In the first quarter of 2009 the CPPS interdicted 841 trespassers of which 404 were charged. (Canadian Pacific Police Service, 2009)
- **Education and awareness programs.** The CPPS deliver hundreds of presentations a year in cooperation with the Operation Lifesaver. These presentations are targeted in areas with a high risk of trespass and to industry segments that can impact crossing safety such as road transportation companies. (Operation Lifesaver)



## *Fluidity*

The corporate vision to be the most fluid railway in North America is about minimising delays and keeping trains moving. Unfortunately delays are a reality within the rail industry and have a number of controllable and uncontrollable causes. Controllable delays are those caused by:

- Train marshalling and track utilization
- Track capacity constraints
- Crew availability and dispatch
- Mechanical maintenance and defects
- Track, bridge and infrastructure maintenance and renewal programs

Uncontrollable delays can have numerous causes but include:

- Weather
- Track, bridge, structural, signal or rolling stock failures
- Train, crossing and trespasser accidents
- Malicious actions by others, including vandalism, sabotage and protest actions

The CPPS can positively influence the delays experienced by the railway particularly in the area of uncontrollable delays. The crossing enforcement and trespasser abatement programs that are performed by CPPS can help to reduce the number of delays due to crossing and trespass accidents. But when accidents do occur CPPS can help to minimise the delay and impact to rail operations.

A review of crossing accidents experienced by CP in the period 2006-2008 showed that each accident led to an average delay<sup>7</sup> of 3.23 hours (194 minutes) affecting an average of 5 trains per incident. However when the CPPS members attend the accident scene the average delay is reduced to 1.32 hours (80 minutes). This means that CPPS attendance at an accident scene reduces average delay by 1.91 hours (115 minutes) (Canadian Pacific Police Service, 2009). The average number of such incidents per year is 83, if CPPS attended every incident the delay reduction would be equal to:

$$1.91 \text{ Hours} \times 5 \text{ (affected trains)} \times 85 \text{ (incidents)} = 811 \text{ hours}$$

The cost savings generated by this reduction in delay is very difficult to calculate as the cost incurred both directly and indirectly is highly situational. The direct costs that include fuel used and crew wages have been accepted by the courts to be \$303 per train per hour of delay (Canadian Pacific Police Service, 2009). The indirect costs have

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<sup>7</sup> For the purposes of this study delay time was calculated as the time the train was stopped due to the incident to the time that the train was released by police of jurisdiction.

not been quantified but can include the cost associated with relief crews, crew transportation, railway response to the incident, reissuing waybills or customs forms for cross border traffic and lading claims made by customers. A conservative estimate of the indirect costs would be \$1,500 per hour per train. This would give an average total cost of \$1,803 per hour of delay. Based on these costs the financial benefit from reduction in delay of having CPPS attend every crossing accident would be;

$$811 \text{ hours} \times \$1803 = \$1,462,233$$

The same is true for other types of incidents that involve public police such as the circumstances outlined in case study 2.

#### *Case Study 2*

*In January 2009 the Ontario Provincial Police (OPP) received a report of a body lying across the railway tracks on the outskirts of Kenora, Ontario. The OPP called the CPPS Communications Centre and asked that all rail traffic be halted and they asked for the attendance of a CPPS officer.*

*Upon arrival at the scene the OPP discovered a decapitated body partially lying across the rails, but the quickly ascertained that this was not a suicide but a murder as there was a blood trail leading from a Tim Horton's nearby. The investigating officer called for forensic services and informed CP that the line would be closed for up to 48 hours.*

*When the CPPS officer arrived and spoke with the OPP officer he advised them that this was a CP main line and that a 48 hour delay would have major community and safety impacts due to trains being held across the network, potentially locking crossings and being stopped in the middle of communities. As a result of the CPPS officer's interdiction one track was opened within 12 hours and the other was opened after 16 hours. This incident affected 21 trains; the cost has not been assessed.*

Trespass accidents are a significant source of delays and in these cases the public police will demand closure of the railway for considerable periods of time to facilitate their investigation. Attendance of CPPS to these events invariably leads to early release of the train and its crew as CPPS can assist the investigating police service as to exactly what type of information they require from the crew and about the train. The introduction of forward facing video cameras on trains called Lococam®, allows officers on the scene the ability to see exactly how the accident occurred. CPPS officers are equipped to download the Lococam® image and provide on the scene to the investigating officer and the coroner.

All of these activities help to ensure the fluidity of the railway and improves asset utilization. But CPPS also assist when major incidents occur such as major derailments. CPPS will help the public police to control the scene but will also help the

recovery of the rail service by implementing or facilitating the set up of staging areas, directing traffic and securing the scene to:

- Protect evidence & facilitate an expeditious investigation
- Prevent trespass that could lead to injuries or other public safety consequences
- Protect and prevent the theft of customer's goods

### *Identification and mitigation of risk*

Risk identification can take many forms and similarly so can the mitigation. An officer patrolling an area can observe over a period of time that the area is a high trespass area. The mitigation of that risk can involve enforcement and education initiatives, but a holistic approach would involve the placement or renewal of signage, installation or repair of fencing and in the worst cases, restrictions on train speed or implementation of mandatory whistling for passing trains (CP Police, 2002).

Some risks require a greater degree of analysis as solutions are not readily apparent and are more complex. CPPS has a crime and statistical analyst who examines reported incidents to identify trends and emerging risks. The analyst recently undertook a study of unattended vehicular accidents<sup>8</sup> at CP crossings and discovered that 10 crossings accounted for one third of all such reported incidents across the CP rail network. Furthermore these 10 crossings were consecutive crossings on a single subdivision<sup>9</sup> and all were located within a First Nations reserve. The solution would not be a simple case of enforcement programs but would involve engaging the First Nations Police and the tribal elders. This effort is still on going and the area remains a higher risk consequently CP has implemented a speed restriction for traffic travelling along this subdivision.

### *Protecting Shareholder and customer value*

Protecting value can be as simple as protecting the company and its customers from loss. Visible patrolling by uniformed officers in marked police vehicles has a significant deterrence effect on potential wrong doers and can also help to detect criminals who would attack or steal company or customer assets. The CPPS are responsible for the security of all CP assets and in this respect they are providing security i.e. the ability to deter, detect and respond to unwanted acts (Law Commission of Canada, 2006) perpetrated by persons with malicious intent.

Unfortunately the railways are still seen as a potential target by modern day bandits, no longer hoping to hold up the train and steal vast quantities of gold or money (Union Pacific Police, 2008). Instead the modern day bandit will break into containers on

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<sup>8</sup> 'Unattended vehicular accidents' is how the railway describes accidents that occur at crossings when no train is involved.

<sup>9</sup> Rail lines are divided into subdivisions for the purposes of rail traffic control and easy identification of location. Each subdivision on a main line is usually around 150 kilometres long and every mile has a mileage marker to facilitate exact placement within the subdivision.

stationary trains in the hope of finding some saleable commodity. In some areas of Detroit an container train that stops for more than 5 minutes will be broken into, so CPPS will escort or protect every CP container train passing through this area, but trains can be as long as 2 miles, consequently the police are not always successful at preventing theft. In the first quarter of 2009 CPPS reported 85 containers had been breached and product stolen and a further 297 containers had been breached and nothing was stolen. This number has fallen when compared to 2008 due to lower volumes of rail traffic meaning that traffic is more fluid and container trains are not static for long periods of time.

### *6.1.2 Summary of Business Value*

The previous section outlined the sort of activities undertaken by the CPPS and although this list is not exhaustive it does convey a sense of how the CPPS operates on a day to day basis. In essence the CPPS tries to control the uncertainty inherent in the external environment (Daft, 2006). This uncertainty is particular problematic for the railway as it is so geographically diverse crossing many socio-cultural, geo-political, economic and metrological regions. The CPPS acts in a buffering role trying to absorb some of the uncertainty from the external environment allowing the technical core (operations) continue to move trains. When Daft (2006) described this type of buffering role he was referring to departments that somehow insulate operations from external uncertainty and to some extent trying to control that environment. Departments like Public affairs and media departments not only try to protect corporate reputation but try to control the message and reputation of the company. The railway police however go far beyond what Daft had envisaged for a buffering department, they can bring legal powers to bear quickly to address unwanted behaviours or mitigate risks. The police can even prevent certain behaviours from occurring by their presence application of legal powers and through the application of force. This uniquely positions railway police as an asset that only two other Canadian companies have available to them, albeit they are the direct competitors of CP.

### *SWOT Analysis*

The existence of railway police within CP brings with it some unusual problems and benefits. An external and internal scan in the form of a SWOT analysis (Porter, 1980) maybe beneficial in analyzing the business benefit CP may derive from the CPPS.

INTERNAL	<b>Strengths</b>
	<ul style="list-style-type: none"> <li>• Company has ability to provide direction on Police policy and strategy</li> <li>• Federal or Inter-state authority and are not bounded by traditional jurisdictions affecting public police</li> <li>• Comprehensive knowledge of railway operations and challenges</li> <li>• Ability to deal with public police as peers and influence decisions that affect rail operations</li> <li>• Police status permits access to security sensitive and law enforcement information that companies are normally prevented from accessing, leads to more comprehensive threat and risk assessments</li> </ul>
INTERNAL	<b>Weaknesses</b>
	<ul style="list-style-type: none"> <li>• Police independence and status as public servants means that company has no ability to direct CPPS on day to day operations or on how to apply police powers</li> <li>• Geographic distribution can mean inconsistent levels of coverage across network.</li> <li>• Bounded by Charter of Rights, or Miranda Act limiting actions especially when it comes to search of company employees for non-criminal matters</li> <li>• Revenue protecting function as opposed to revenue producing</li> </ul>
EXTERNAL	<b>Opportunities</b>
	<ul style="list-style-type: none"> <li>• Ability to bid for contract policing opportunities<sup>10</sup> such as transit systems or policing communities that are contiguous to the railway</li> <li>• Ability to protect movement of sensitive trains to ensure safety and security - allows CP to compete in certain business segments (e.g. movement of military equipment and munitions)</li> <li>• Ability to operate the Detroit River Tunnel as an international border crossing with minimal interference from border protection agencies</li> </ul>
	<b>Threats</b>
<ul style="list-style-type: none"> <li>• Litigation arising out of abuse of powers or use of force</li> <li>• Potential for adverse media coverage arising out of use of police powers whether lawful or not<sup>11</sup></li> <li>• Escalating cost due to need for compliance with standards and policies imposed by the criminal justice system or regulators</li> </ul>	

**6.1.3 Alternatives**

If CP decided that CPPS would no longer exist, what alternatives exist for CP to provide security to the railway and to respond to incidents or address public safety concerns?

<sup>10</sup> The CPPS already earns revenue from the Montreal transit system (AMT) for the provision of police services to cover trackside policing issues and patrol Windsor Station.

<sup>11</sup> In 2008 CPPS arrested a number of CP employees during a labour dispute in which members of the Teamsters Union were blockading a CP facility and failed to obey lawful instructions given by CPPS members. The arrests were videotaped by the union and publicised by them as CP using its Police as an oppressive arm of management. Civil litigation is currently before the courts.

## *Asset protection*

The fact that the railway is private property limits the ability to use the public police as a means to protect railway assets. Shearing (2006) and others have explored the concept of mass private property and suggested that this type of property now falls mainly under the domain of the public police. Certainly the railway network is mass private property but not in the context discussed by Shearing.

When the public are being invited onto the private property for example in shopping complexes or recreation parks, then public police would have some precedent for providing policing (Law Commission of Canada, 2006). But the public are not invited onto railway property although in many places they must cross it. There remains an all-encompassing prohibition from authorized access in the form of trespassing laws at the federal, state and provincial levels. These prohibitions change the nature of railway property and remove it from this new understanding of mass private property. This effectively removes the ability of public police to provide security of any kind to railway property although can and do still respond to individual incidents but only in a reactive capacity and not as a pro-active or preventative capacity (Shearing, 2006).

Consequently CP has four alternative choices in this area

- **Have no security in place at any facility.** This would save the cost associated with the provision of security services but could lead to escalating criminality and loss and damage to assets and customer consignments. There is also a potential legal issue as the company could be failing to provide a secure workplace.
- **Deploy security guards.** This would not save on cost but would eliminate some of the potential liability issues that the CPPS may present. However security guards have no flexibility to deploy across jurisdictional boundaries and have limited powers to deal with trespassers, apart from demanding their departure from the property.
- **Deploy security technology.** Minimal cost savings would be realised and with a 15,000 mile network the technology cannot be ubiquitous enough to prevent and detect all incidents. Technology alone cannot provide a physical response capability and consequently it cannot be successful when deployed in isolation.
- **Hybrid system of security guards and technology.** This would be the most expensive arrangement but it is the one used most commonly in industry. The reach and detection capabilities of security guards are enhanced by technology, but the guards provide the response capability. Again the size and cross jurisdictional nature of the railway network limits the efficacy of this security design.

## Incident Response

Accidents and incidents do occur on the railway on a frequent basis. This means that flexible incident response is a much higher priority to the railway than perhaps to a company operating a number of fixed assets. The CPPS do act as first responders to many railway incidents but more often than not the public police will be closer and have significant more resources to act in a first responder role.

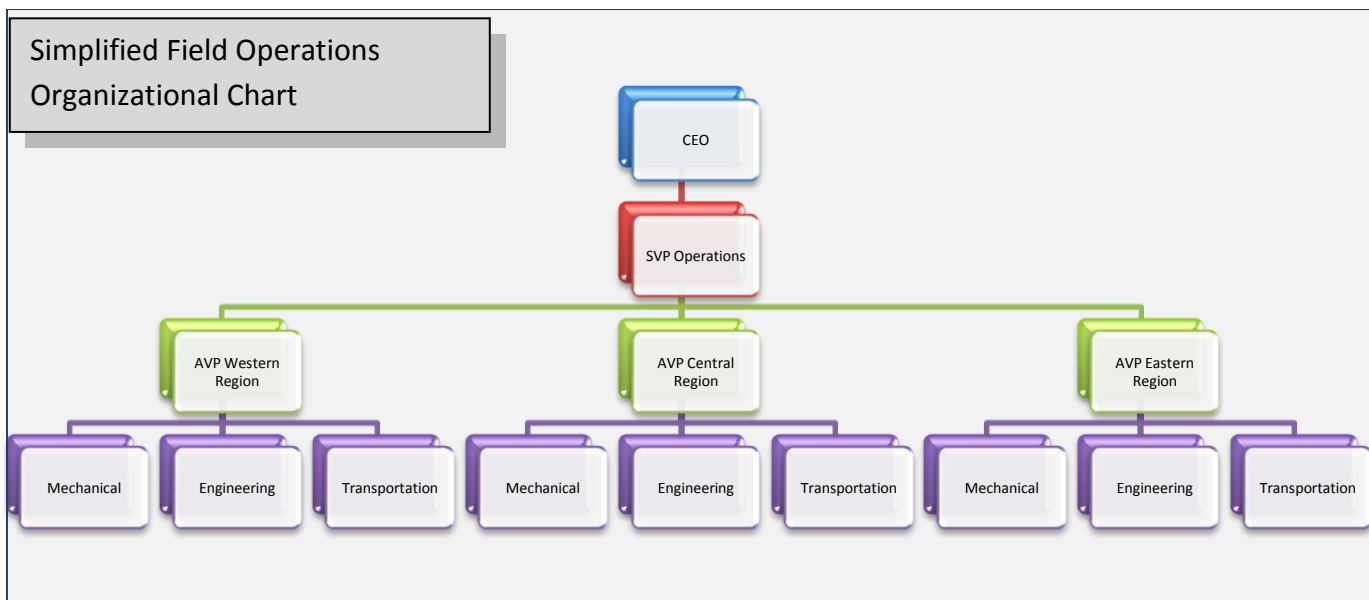
CP could certainly depend on the services of public police to respond to incidents without the support of CPPS. But the public agencies would limit themselves to incident response and their lack of understanding of railway operations would lead to longer delays and extended recovery periods. In addition they would not do any enforcement activities in respect of railway crossing or trespasser abatement as they have limited expertise in the former and the private nature of railway property prevents them from fulfilling the latter.

## 6.2 Part Two – Organizational design

To understand the organizational dilemma now faced by the CPPS within the CP organizational design it is necessary to review how the company is structured.

### 6.2.1 Current Organizational Design

The simplified organizational chart below shows the structure of the Field Operations (FOPS) function at CP. It is evident that CP has adopted a mainly geographic organizational structure (Daft, 2006). Each Assistant Vice President (AVP) has the operational functions under his or her control for their respective regions.



For example the AVP for the western region has the following span of control for operations in his region.

**AVP Western Region**  
(Saskatchewan, Alberta, British Columbia)

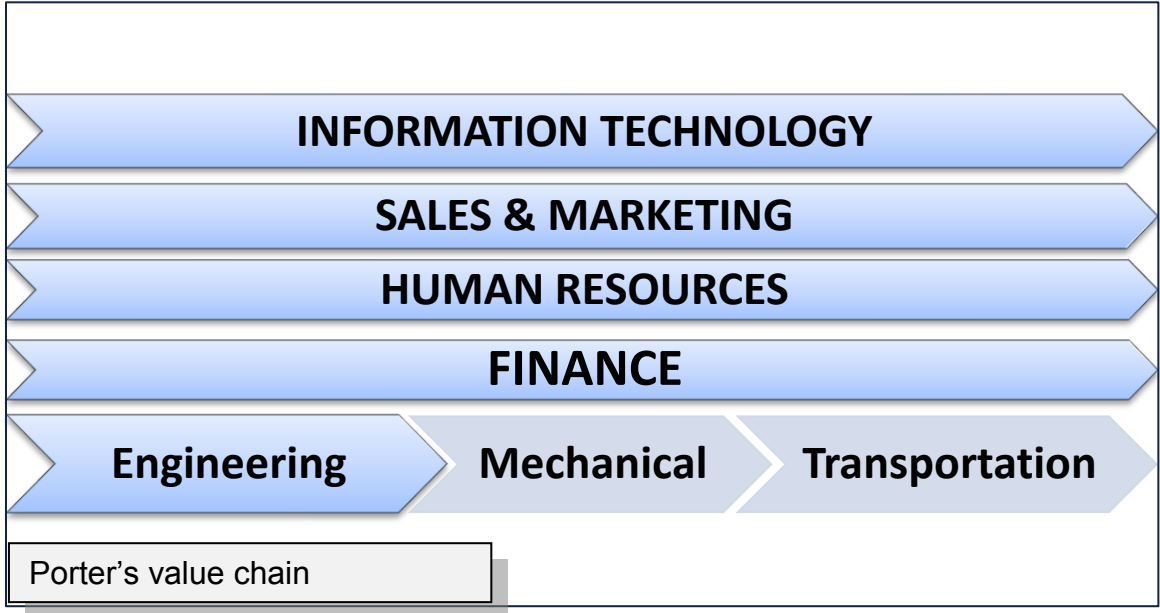
- Engineering**
- Track construction & maintenance
  - Signals & Communications
  - Trackside infrastructure

- Mechanical**
- Maintenance of all rolling stock
  - maintenance of all locomotives

- Transportation**
- train marshalling & Dispatching
  - Crews
  - Scheduling
  - Train control

Additional support services such as sales & marketing, IT, finance and human resources have resources deployed within each region but they are under the control of central management. Historically CP had a functional organizational design (Daft, 2006) with each function reporting to a VP level manager. When the shift to the geographic structure occurred the functional VPs remained in place and still provide governance to the function but provide no real operational management. This leads to some conflict as the question is often raised as to who has the service delivery responsibility?

For the most part the structure within CP supports Porter's view of the value chain where the operational departments that deliver the service, i.e. moving trains, freight & passengers, are supported by functions that provide centralized services to all (Porter, 1980).





Examination of this model reveals that the former functional VPs do not fit neatly into Porter's model, nor do they fit with the geographic structure. There are other indications of a fundamental structural deficiency at CP (Daft, 2006):

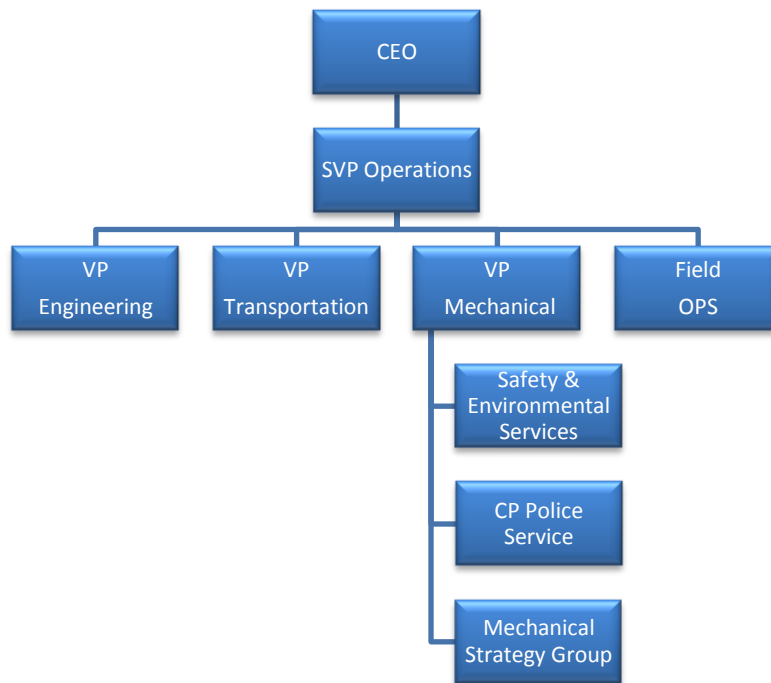
- **Decisions Making.** At CP this essential process is lengthy and highly formalized, through requirements for multiple stakeholder consultations and approvals sign-offs. The unity of command inherent in purely functional designs is lost in a hybrid of functional and geographical structures (Daft, 2006).
- **Response to innovation.** CP is very slow to respond to changes in market conditions or changing expectations of customers. The railway industry is a very mature industry and innovation in product offerings are rare, but rail companies must be able to respond quickly to changes in customer needs and economic conditions. CP has demonstrated in the current recession that is ill equipped to move with flexibility and speed (Management, 2009).
- **Conflict is evident.** This is very evident across the organization as independent functions compete for resources and capital and inter-department consultation is stifled. For example the sales team, pushed to increase revenue, are entering into agreements that the field operations teams are incapable of delivering (Management, 2009).

### *6.2.2 How is the Police Service Organized?*

The CPPS is a department within the Operational Risk portfolio that has been assigned to the VP of Mechanical Services. This structure was introduced when the company moved to the current geographic design and a number of departments were placed under the former functional VPs as it was felt they would now be underemployed (Management, 2009). See Chart below.

Under this structure the Chief of Police reports to the VP of Mechanical and has a line reporting relationship to the Senior VP of operations. No other department or manager has any oversight of the police service and even the internal audit department has no responsibility for overseeing the activities of the Police.

Benchmarking the reporting relationship of CPPS within CP with the other Railway Police departments demonstrates that CPPS much lower in the organization than their peers (Chiefs, 2009). Although there is some variety in structure all other railway police report to at least the Chief Operating Officer level within their respective organizations.



*Accountability*

The chief of Police is accountable to the VP of Mechanical for achievement of personal performance targets and to a lesser extent for the performance of the CPPS. The VP of mechanical has final budget approval and must authorize certain processes that are related to administration of the CPPS rather than the execution of their criminal justice role.

Comparing the accountability systems that are in place for CPPS to the five external mechanisms indicated by the Law Commission of Canada (2007) shows that the level of accountability for CPPS falls far below that of the public police.

Accountability Type	Public Police	CP Police Service
Political	<ul style="list-style-type: none"> <li>Police Act &amp; legislated requirements</li> </ul>	<ul style="list-style-type: none"> <li>None</li> </ul>
Legal	Judicial and legal system based on merits of each case	
Administrative	<ul style="list-style-type: none"> <li>Police Boards, Commissions, auditors &amp; others</li> </ul>	<ul style="list-style-type: none"> <li>VP of Mechanical services</li> </ul>
Public	<ul style="list-style-type: none"> <li>Freedom of information Act, Public reporting &amp; disclosure</li> </ul>	<ul style="list-style-type: none"> <li>None</li> </ul>
Ad Hoc	<ul style="list-style-type: none"> <li>Royal Commissions, Grand Juries &amp; public inquiries</li> </ul>	<ul style="list-style-type: none"> <li>The same provisions exist but have never been exercised</li> </ul>

### *Political Accountability*

Although TC have created the enabling legislation (RSA, 1985) they have not created any supporting legislation or regulations governing the standards, methods of operation, accountability or governance of the railway police. Ultimately the Minister of Transport has some accountability for this type of policing but the absence of any supporting requirements means that railway police have no formal reporting relationship to TC or any other political body (Canada, 2009). The fact that the railway police are not covered by any Police Act in Canada is a significant oversight on the part of central government. This has created the situation that the security guard who greets visitors to CP's corporate headquarters is the subject of more regulated requirements than the armed railway police officer parked in a marked police car on the street outside. (Officers, 2009)

### *Legal Accountability*

The same degree of legal accountability is applied to the railway police as the public police. They are legally responsible for the execution of their powers granted under the criminal code and if their actions deviate from the normative view then the legal system can pass judgement accordingly. Similarly if the conduct of railway police crosses the line into criminal conduct, then the legal system can hold them accountable through the court system (Bayley, 2006).

### *Administrative Accountability*

Public police achieve this through police commissions and boards that operate with a clearly defined mandate as set out in the various Police Acts. This accountability includes budget approval, reporting of complaints, discipline issues and performance of the Police Service. When necessary the Police commission can also conduct public or private inquiries to investigate a matter relevant to the board (Government of Ontario, 1990).

CPPS are accountable to the VP of mechanical for budget approval and performance of some individual performance targets. There are no formal reporting mechanisms for CPPS to report the number of public complaints or how they were dealt with.<sup>12</sup> Similarly the management of CP have not previously received reports on police productivity or use of force and have never conducted any form of formal inquiry into the actions of CP Police (Management, 2009).

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<sup>12</sup> The only requirement that Transport Canada have imposed on railway police is contained in section 46 of the Railway Safety Act. This requires Railway police to have a public complaints process that must be lodged with the minister of Transport. However no requirements exist to report details of complaints, their investigation or disposition.

### *Public Accountability*

As CP is a private corporation and not part of any order of Government it is not obliged to have any form of public disclosure other than that required by financial reporting requirements. Consequently CPPS is not subject to any Freedom of Information Act requirements nor can any individual or agency make a disclosure request under that type of enactment. The additional lack of any reporting requirements to any order of government means that CPPS operates with no routine public scrutiny or accountability.

### *Ad Hoc Accountability*

The CPPS have not come under the scrutiny of any public inquiry in living memory of any serving officer and archival searches were unable to locate any evidence that the service has ever been subject to such scrutiny (Officers, 2009).

### *Governance*

If governance can be described as shaping and influencing the conduct of CPPS in furtherance of a particular objective (Wood & Dupont, 2006) then the CPPS is devoid of governance. But in reality the term governance when applied in relation to the police is now taken to mean external civilian oversight (Cooley, 2005). Again CPPS fails to demonstrate any form of police governance.

In reality the strategy, policies and performance objectives of the CPPS are formulated by the chief of police and rubber stamped by the VP of mechanical. No other formal mechanism exists to communicate the policing priorities of the key internal or external stakeholders. Of course stakeholders do communicate information on expectations and challenges and these are taken into account when developing policing strategy, but this is not embodied in process or any form of oversight.

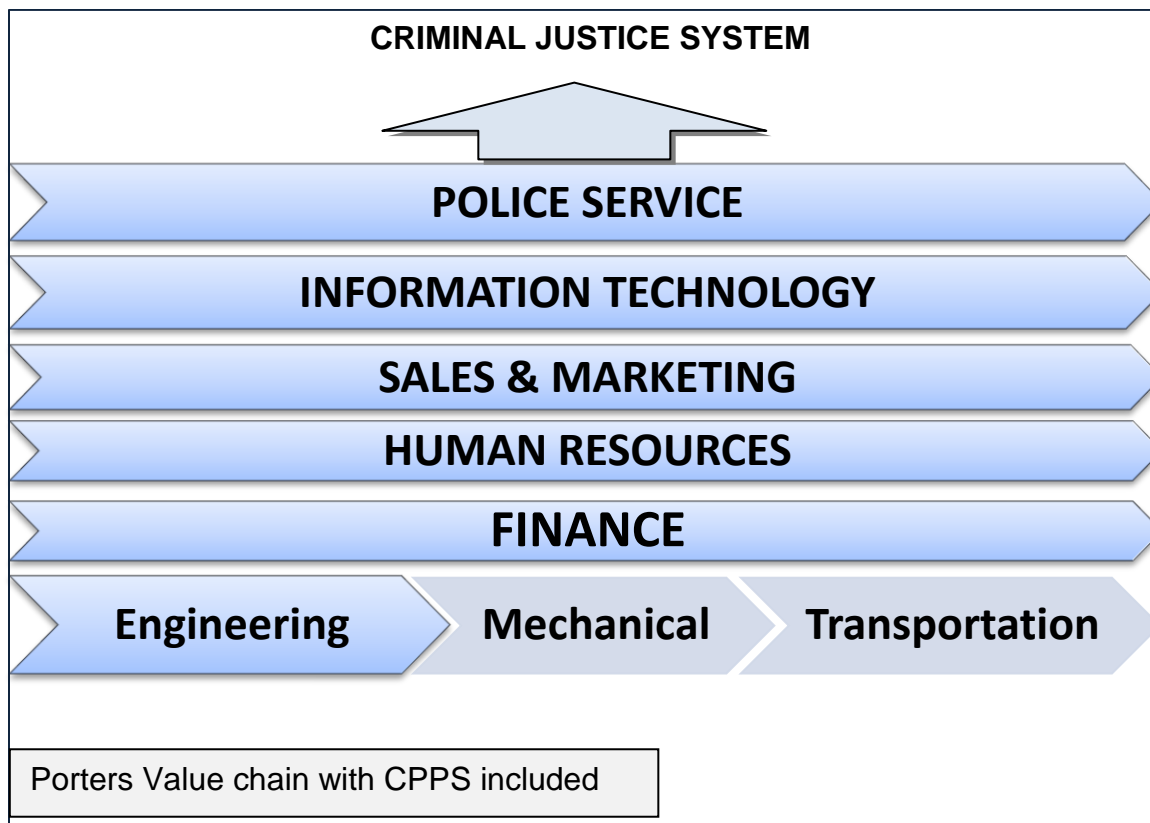
The Police Act requires that police commission members become very familiar with the policing function so that they can both understand the needs of the service and the constraints placed upon it in the service of the community (Government of Ontario, 1990). Most provincial police commissions and boards are required to undertake mandatory training and spend time 'on the ground' with police to develop a comprehensive understanding of the function (British Columbia Police Commission, 1980). Yet within CP this has not happened and so CPPS remains as a business enigma by very competent business managers who have no understanding of the policing role. Consequently governance is abrogated to the senior police officer who is a subject matter expert and is inappropriately trusted to manage the police service.

#### *6.2.2 Why is change required?*

Although there are many managers within CP that do not see the need to change the governance of CPPS there are some factors that have not been adequately considered.

### *Discontinuity with business model*

There are many facets of the CPPS that make them more than just another department in a large corporation. The most significant from the corporation's perspective is that CPPS are not servants of the company but are public servants (Thomas Vs. Canadian Pacific Railway Company , 1906). This means that unlike other employees company managers cannot direct the day to day activities of CPPS officers (Law Commission of Canada, 2006). It is a reality that some activities of the CPPS may not be in the interests of CP management especially when CPPS officers arrest company employees or managers for criminal offences. Far from assisting CP in delivering their service to customers sometime CPPS will conflict with the company's service delivery, if the public good is compromised. This discontinuity with the predominant business model can be graphically demonstrated by inserting CPPS into Porter's value chain model as shown below (Porter, 1980). The pluralistic relationships of the CPPS have the potential to create conflict and if company interests conflict with public interests the CPPS must err on the side of public interest.



### *Use of Force*

As peace officers CPPS have the lawful authority to use force in the execution of their duties. On rare occasions this may involve the use of lethal force as CN Railway Police recently demonstrated when the came under fire and shot and killed the suspect

(Chicago Breaking News Centre, 2009). Of course not all applications of force are as readily justifiable as returning fire when fired at. The famous video footage of the Rodney King beating at the hands of the Los Angeles Police Department had major repercussions for the LAPD, to officers concerned and the governance and accountability of policing in the United States (Skolnick & Fyfe, 1993).

Canada now has its own Rodney King type of incident involving four members of the RCMP who deployed a conductive energy weapon on a subject in Vancouver Airport. This incident led to the death of the subject, a Polish national Mr. Robert Dziekanski, and is now the subject of a high profile inquiry. The inquiry has sparked much public debate and is the subject of multiple legal proceedings by the victim's family and by the officers involved (CBC News, 2009). Already there are indications that the accountability of the RCMP is being called into question as they have no external civilian oversight.

CPPS do routinely use force in the execution of their duties, in fact every arrest is a use of force in that liberty is being restrained against the will of the detainee. Every year the CPPS records numerous incidents of force being used, ranging from physical restraint to deployment of OC (pepper) spray (Canadian Pacific, 2009). Firearms are drawn on numerous occasions but no shots have been discharged by CPPS officers since 1982.<sup>13</sup>

If CPPS officers are involved with a use of force that leads to a death in suspicious or non-justifiable circumstances it will be reasonable to assume there will be significant pressure to investigate all aspects of the circumstances. The question of governance and accountability will be central issues in this inquiry (Skolnick & Fyfe, 1993) especially as the structure of railway policing deviates considerably from the normative standard required in various Police Acts (Bayley, 2006).

### *Independence*

The need to demonstrate the independence of the CPPS from the influence of CP management is important if both entities are to avoid allegations of conflict of interest. The independence of police from their governing bodies and from political interference is embodied in legislation (Government of Ontario, 1990) and guidance documents (British Columbia Police Commission, 1980). In the business context this is not dissimilar to the requirements for internal audit departments. But while the need for independence of the audit function is recognized and embodied in law the same is not true for railway police. Consequently the independence of CPPS is not considered in the organizational design as business managers do not recognize the need.

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<sup>13</sup> In fact CPPS reported that service weapons were discharged on 12 separate occasions in 2008 but all of these incidents were to euthanize injured or problematic wildlife.

## 7. Recommendations

As a result of this analysis a number of steps can be taken to improve the governance and accountability of the police function within CP. If implemented these recommendations would:

- Allow CP to demonstrate the independence and objectivity of the police service and counter allegations of a conflict of interest
- Allow CP to mitigate the impact of any post incident inquiry
- Permit CP to demonstrate a responsible approach to management of the police service that would position the company well if any regulator decided to introduce new regulations in respect to railway police
- Increase the credibility of the police service as a public safety agency

### *1. Establish a Police Oversight Committee*

CP should establish a police oversight committee, comprised of 6 people that should include representation from the following groups:

- CP Executive Management
- CP Board of directors
- Representatives (2) from communities that are greatly affected by Railway operations
- Representation from a public policing agency
- CPPS Chief of Police

This group should be formed as soon as possible and immediately given training into the role of police and the role of police commissions (Graham). This body will have power to approve the budget, strategy and major policies of the CPPS. This committee would fit within the concept of nodal governance (Shearing, 2006) and would help to demonstrate CP's commitment to societal expectations in this area.

This group would meet on a quarterly basis although this could be extended to biannually once the committee is fully functional and knowledgeable. The cost associated with implementation would be limited to some training and familiarization costs in the first year and then only travel costs and honoraria payable to the four members of the committee that are not full time CP employees. By timing meetings of this group to coincide with other board meetings the necessity to travel would be reduced and thus the overall cost would be lower. The expenses associated with these meetings would be approximately 0.5% of the current CPPS annual budget and could be covered within the existing budget.

## *2. Establish a framework for internal and external accountability*

CP Should immediately establish a framework of internal and external accountability for the CPPS. This would include regular reporting to the police oversight committee of matters such as complaints against police, use of force reports, disciplinary proceedings and details of significant incidents or investigations (disclosure rules permitting).

This framework should also include voluntary public disclosure of CPPS performance, staffing levels and complaints as required by the Police Act (Government of Ontario, 1990). While compliance with the act is not required it would demonstrate that CPPS is compliant with the spirit of the act and has nothing to hide.

While this falls short of full civilian oversight of the CPPS it demonstrates that CP is committed to public safety and increases the public confidence in the CPPS.

There is no cost implication associated with implementation of this recommendation. The costs for the oversight committee as discussed previously would cover the reported part of this recommendation and the public disclosure portion would be achieved by simply posting the CPPS annual report on the public facing website.

## *3. Advocate legislative change*

CP should immediately engage the Minister of Transport Canada and advocate legislative change to bring the railway police under the scope of a Police Act. This will clarify CP's responsibilities for the operation of the police service and specify the nature of governance and accountability required. Inclusion of Railway Police into a Police Act defers much of the liability now faced by CP in respect of operation of the CPPS, as CP will no longer be applying its own interpretation of effective police management.

There would be no additional cost for lobbying activities as CP already has extensive contact with Transport Canada and this subject area would be introduced in the course of normal business. It is doubtful if any regulation would create additional expense other than already discussed in respect of oversight.

## *4. Consider creating separate legal entity*

A research effort should be started to examine the possibility of creating the CPPS as a separate not-for-profit legal entity. This new entity would report to the governance committee as outlined in recommendation #1 but would be independent from CP. If legally and technically possible this structure would have many advantages, including:

- Highly visible independence from CP
- Potential taxation benefits for both CP and the CPPS entity
- Improved access for CPPS to government grants and funds for law enforcement agencies



- Ability to bid for contract policing opportunities without the spectre of municipalities contributing to corporate profits

There may be some cost associated with implementing this study and for the legal work required to create the separate entity, but these should be more than offset by a more favourable taxation status and by the potential to earn revenue in the form of policing contracts.

## 8. Conclusions

This project has examined the current governance and accountability mechanisms for modern police departments operating in Canada today. By comparison it has been demonstrated that the governance and accountability of the Canadian Pacific Police Service falls far below the modern societal expectation and widespread public policy. This situation is exacerbated by CP's senior management who are very competent business managers but who are not well positioned to understand the requirements of a public police service.

The legal relationship between the CPPS and the rest of the company is not well understood by CP management and even though the common law on the subject is very clear and has stood the test of time and a number of challenges. The fact that CPPS officers are public servants and not company servants (Thomas Vs. Canadian Pacific Railway Company , 1906) is not acknowledged either in the organizational design or in the day to day interactions between the CPPS and company management.

The analysis of the business value created or preserved by CPPS demonstrates that the CPPS are uniquely positioned to help mitigate the impacts associated with unintentional events. Through enforcement and education the CPPS can also reduce the number of train accidents that have 3<sup>rd</sup> party causes. Clearly the CPPS can improve both public and company safety and can offer tangible benefits in respect of train fluidity. In addition the law enforcement status and high level security clearance of CPPS permits access to sensitive information that is not available to any other industry sector. While this information cannot be shared with the company it enhances the resiliency of the company to be able to respond very quickly to emerging threats.

CP could consider disbanding the CPPS and move to a more traditional security model utilizing security technology and security guards. But as the analysis shows this will be a costly undertaking and security guards do not have the advantages in terms of mobility and wide ranging powers that can affect outcomes. In addition this could be contrary to the broader public interest as security personnel have legal powers to

address unlawful behaviour and could lower the public perception of CP's commitment to safety.

The recommendations outlined in this paper, if implemented, would position CP to demonstrate a responsible and progressive approach to management of their railway police. The governance structure recommended would allow CP to retain a significant degree of control but at the same demonstrating that external oversight is being incorporated into an international organization. The accountability mechanisms would show that CP is working to minimise any conflict of interests and remove the perception of the powerful railway company with its own private army (Union Pacific Police, 2008).

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