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CACCP Bulletin

Canadian Association of Chiefs of Police

Spring 2015



*Safety and security for all
Canadians through innovative
police leadership*

Register today for the CACP 2015 Annual Conference in Québec City!

The Québec City Police Department is delighted to welcome the 110th Annual Conference of the Canadian Association of Chiefs of Police,
August 16 to 19, 2015.

Inscrivez-vous dès aujourd'hui à la Conférence annuelle 2015 de l'ACCP à Québec!

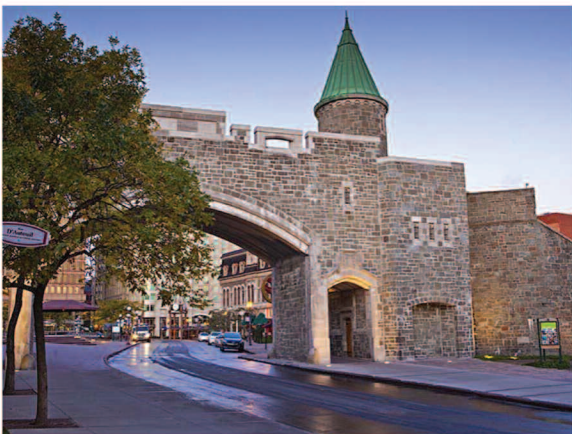
Le Service de police de la Ville de Québec est heureux d'accueillir la 110e Conférence annuelle de l'Association Canadienne des Chefs de Police du 16 au 19 août 2015.

ACCP/CACP
QUÉBEC 2015

The theme of this year's conference is **Radicalization: Prevent, Act, Restore**. An impressive professional program has been developed with the following sessions:

- Understanding Radicalization: The Process, the Opportunities, the Extremes and the Impacts
- Current Trends In "Glocal" Terror: What Police Need to Know about Risk Based Security
- Managing the Threat to Canada: Innovative Approaches to Prevention and Training

For the complete agenda, registration and accommodation information, please visit www.cacpconference.ca



*Le thème de cette année est **Radicalisation : Prévenir, agir, rétablir**. Un solide programme professionnel a été élaboré. Il comprend les séances suivantes :*

- *Comprendre la radicalisation : Le processus, les occasions, les extrêmes et les répercussions*
- *Tendances de la terreur « mondia-locale » : Ce que la police doit savoir au sujet des mesures de sécurité axées sur les risques*
- *Gérer la menace au Canada : Façons innovatrices d'aborder la prévention et la formation*

Pour trouver le programme complet, les modalités d'inscription et les renseignements sur l'hébergement, rendez-vous à www.cacpconference.ca/fr

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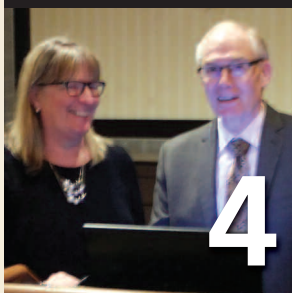
10 **CURBING
CONTRABAND
CRIME**

ON THE COVER...

CACP President, Chief Clive Weighill addresses delegates at the 16th Reboot Privacy and Security Conference in Victoria, BC February 11, 2015.

Canadian Association of Chiefs of Police

Spring 2015



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PRESIDENT'S MESSAGE



I came away from the Economics of Community Safety Summit recently pleased to see that our conversation has shifted from a focus on the cost of policing to the cost of community safety. The Summit addressed the drivers of cost increases over the past decade, and how government, governance and police organizations can work together collectively to improve the services being delivered to our communities. We are working differently, and research has helped us build a solid foundation for our desired future - a future built on the four pillars of community safety, partnerships, innovation and effectiveness.

Many communities are already making great strides towards that goal. I was able to share our experiences in Saskatoon. When we examined our 2014 calls for service we found that none of the top 10 dispatched call categories were criminal. The 11th most frequent call for service was assault; break and enter came in at number 13. Only 28% of the dispatched calls we responded to were criminal in nature. Further examination suggested that efforts to end homelessness could help us reduce the number of calls for service. Partnering with other agencies to get just 10 people into sustained housing has already helped us reduce the number of police responses and costs to the community, not just for policing but for myriad other services, ranging from ambulance usage, emergency room admissions, psychiatric help, courts and corrections. We are looking forward to monitoring progress on this effort.

We can learn so much from research and from sharing our experiences. The CACP Research Foundation sponsored report on the economics of community safety and security has recently been released. I encourage everyone to read it, and give us your insights on what is working in your communities, and what continues to prove challenging.

The theme for this year's annual conference, to be held in Quebec City, is radicalization. At the Annual General Membership meeting we will be highlighting our "Town Hall" segment. It is scheduled for Monday afternoon to ensure all members at the conference have the opportunity to participate. I look forward to getting your input for the direction of our Association.

A handwritten signature in black ink, appearing to read 'Clive Weighill'.

*Chief Clive Weighill,
CACP President*

CALENDAR OF EVENTS

**Police Professional Standards Conference
Enhancing Public Trust through Innovative
Professional Standards Practices**
Date: May 11 – 13, 2015
Location: The Fairmont Queen Elizabeth Hotel,
Montreal, QC

**COMGIC Educational Workshop 2015
Outlaw Motorcycle Gang Education – A New Direction**
Date: June 9 – 11, 2015
Location: Sheraton Parkway Toronto North,
Richmond Hill, ON

110th CACP Annual Conference
Date: August 16 – 19, 2015
Location: Quebec City, QC

**2015 Canadian National Criminal Interdiction
Conference**
Date: October 13 – 16, 2015
Location: Delta Kananaskis, Kananaskis, AB

IACP 2015 Annual Conference
Date: October 24-27, 2015
Location: Chicago, Illinois USA

WELCOME TO NEW MEMBERS

Mid July 2014 - March 2015

The CACP welcomes new members who have joined the Association between July, 2014 and March, 2015, and congratulates members who have achieved Lifetime membership.

ACTIVE MEMBERS

Chief Superintendent Rosemary Abbruzzese, RCMP
Capitaine Nathalie Barbeau, Sûreté du Québec
Superintendent Tyler Bates, RCMP
Deputy Commissioner Brad Blair, Ontario Provincial Police
Inspector John Brewer, RCMP
Assistant Commissioner Byron Boucher, RCMP
Detective Inspector Steve Clegg, Ontario Provincial Police
Chief Superintendent Warren Coons, RCMP
Superintendent Jean Cormier, RCMP
Chief Superintendent Charles Cox, Ontario Provincial Police
Inspector Jerome Engele, Saskatoon Police Service
Inspector Brian Ford, Fredericton Police Force
Chief Superintendent William (Bill) Fordy, RCMP
Chief John Foster, Woodstock Police Force
Mr. Jason Fraser, York Regional Police
Mr. Sylvain Gaudet, Sûreté du Québec
Inspector Martin Gaudet, Fredericton Police Force
Inspector Robert Gehl, Victoria Police Department
Deputy Chief Anthony Harder, Edmonton Police Service
Mr. Jack Heiser, Director, Saskatoon Police Service
Mr. Drew Johnston, Toronto Police Service
Inspector Daniel Jones, Edmonton Police Service
Inspector David Kotowski, Calgary Police Service
Ms. Manon Landry, Service de police de la ville de Montréal
Superintendent John MacDonald, RCMP
Mr. Jonathon Markus, Saskatoon Police Service
Superintendent Kathryn Martin, Toronto Police Service
Deputy Chief Glen McCloskey, Saint John Police Force
Inspector Joan McKenna, Ottawa Police Service
Inspector Lauri Morin, Regina Police Service
Chief Rodney Nahwegahbow, UCCM Anishnaabe Police Service
Superintendent Christopher Nicholas, Ontario Provincial Police
Chief Superintendent Harold O'Connell, RCMP
Chief Superintendent Louis-Philippe Plourde, RCMP
Inspector Mike Powell, Port Hope Police Service
Superintendent Murray Power, RCMP
Superintendent Tammy Pozzobon, Calgary Police Service
Mr. Martin Prud'Homme, Sûreté du Québec
Superintendent Steve Rai, Vancouver Police Department
Inspector Christopher Rheaume, Ottawa Police Service
Superintendent Ray Robitaille, Calgary Police Service
Acting Superintendent Gordon Sneddon, Toronto Police Service
Inspector Darren Sweazey, Woodstock Police Service

Superintendent Kevin Thaler, Waterloo Regional Police Service
Chief Superintendent Philippe Thibodeau, RCMP
Deputy Chief Kent Thom, Oak Bay Police Department
Chief Superintendent Sandy Thomas, Ontario Provincial Police
Superintendent David Truax, Ontario Provincial Police
Deputy Chief Paul VandeGraaf, Cobourg Police Service
Mr. Tony Yaacoub, RCMP
Superintendent Kim Yeandle, Toronto Police Service
Deputy Chief Ken Weatherill, Hamilton Police Service
Acting Chief Derek West, Dryden Police Service
Inspector Blair White, Calgary Police Service
Ms. Jennifer White, Ottawa Police Service

ASSOCIATE MEMBERS

Mr. Francois Bellefeuille, Canadian Security Intelligence Service
Mr. Luciano Bentenuto, Security Services
Mr. Robert Baxter, Radius Security
Mr. Don Beardall, Public Prosecution Service Board
Mr. Martin Cheliak, Canadian Bank Note Company Ltd
Mr. Danny Fournier, Rothmans Benson and Hedges Canada
Ms. Tricia Geddes, Canadian Security Intelligence Service
Mr. David Guscott, PRIMECorp Inc.
Ms. Ursula Hendel, Public Prosecution Service of Canada
Ms. Darlene Kohinski, Winnipeg Airports Authority
Ms. Rita Notarandrea, Canadian Centre on Substance Abuse
Mr. Christian Rousseau, Public Safety Canada
Ms. Natasha Thiessen, Public Prosecution Service Board
Mr. Michael Webb, E-Comm 9-1-1 & PRIMECorp

LIFE MEMBERS

Chief Constable Jim Cessford (Rtd), Delta Police Department
Chief Rodney Freeman (Rtd), Woodstock Police Service
Director Gaétan Labbé (Rtd), Service de police de la ville de Sherbrooke
Chief Constable Peter Lepine (Rtd), West Vancouver Police Department
Chief van McClelland(Rtd), Canadian Pacific Police Service
Deputy Chief Dan McDonald (Rtd), Peel Regional Police
Chief Tom McKenzie (Rtd), Lethbridge Regional Police Service
Deputy Chief Robert Morin (Rtd), Regina Police Service
Assistant Commissioner Beck Randall (Rtd), RCMP
Chief Superintendent Everett Summerfield (Rtd), RCMP
Chief Joseph Tomei (Rtd), Orangeville Police Service
Inspector Lance Valcour(Rtd), Ottawa Police Service

SO WHAT IS REALLY IMPORTANT TO THE CACP?

2015 President's Council on Strategic Direction

By Ruth Montgomery, CACP Support

The President, CACP Board of Directors, Provincial/Territorial Association Presidents, CACP Committee Chairs and invited guests met in January, 2015 to discuss how the CACP can best support efforts to ensure that Canadian communities are safe and secure.

Matt Torigian, Deputy Minister, Ontario Minister of Community Safety and Correctional Services and Gwen Boniface, Deputy Executive Director, IACP shared comments on the issues they are working to address. Many are consistent with the priority issues Canadian chiefs are wrestling with. Matt emphasized the need to bring forward issues of concern through the political leadership and Gwen highlighted opportunities to enhance cross border collaboration to address issues of mutual concern.

All Provincial Presidents provided brief overviews of accomplishments and emphasized the need to continue to develop strategies to ensure community safety can be sustained. They called for the need for multi-sector and multi-agency collaboration and the examination of alternative service delivery models to increase the effectiveness and efficiency of community safety and security services. The most often cited concerns across the country were:

- *mental health in the workplace*
- *collective agreements and arbitration decisions*
- *increasing fear of police officers, manifested in requests to carry weapons off duty and to police in clusters*

Policy and practice related to body worn cameras was the most often cited equipment issue. Systems and effective management of social media ranked highest in the communications and technology areas. Of note was that 4 provincial representatives raised issues of public trust ranging from decreasing confidence in policing to the need for standardization of policy and SIUs. Operational issues cited spanned the gamut from cyber-crime to impaired driving, and included radicalization and extremism, mental health, and organized crime. Two provinces are

examining court house security and 3 provinces/territories reported missing and murdered indigenous women as a priority issues.

Committee chairs, Tim Smith, Manager, CACP Government Relations, and Eldon Amoroso, CACP website project manager, provided overviews of the work they are doing to support CACP priorities and the challenges they are encountering in their work. Clive Weighill and Astrid Ahlgren presented a summary of the white paper being prepared for Public Safety's Summit on the Economics of Community Safety.

A lively and fruitful discussion culminated with the President committing to addressing the following as CACP priorities for 2015-2016:

- *mental health*
- *First Nations Policing*
- *sustainability of community safety and accountability*
- *700 MHz*
- *information sharing -e.g. privacy, lawful access*
- *public perception of policing, including professionalism and ethics, accountability, and use of force*
- *radicalization and violent extremism*
- *operationalization of Committees to ensure consistency with, and support for CACP priorities*
- *enhanced communications to members*
- *evidence based research*
- *crime prevention*

The President closed the meeting by saying that he is looking to the membership for strategic and forward looking direction. Comments and contributions can be made directly to the President at clive.weighill@police.saskatoon.sk.ca

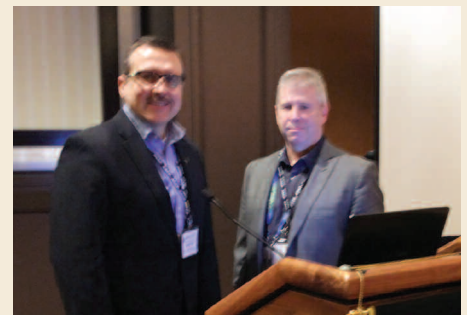
The white paper and the Summit report will be posted on the CACP website.



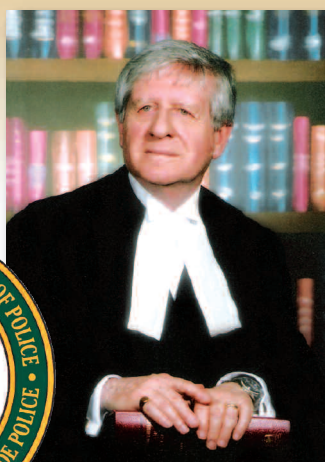
Ms Gwen Boniface, Deputy Director, IACP and Saskatoon Chief Clive Weighill, President, CACP



Ms Kathy Wunder, Director of Information Technology, Vancouver Police Department, Mr. Eldon Amoroso, CACP website project manager and CACP President, Clive Weighill



Deputy Commissioner Scott Tod, OPP and C/Supt. Jeff Adam, RCMP, Human Resources and Learning Committee



CACCP - LAW CORNER MARCH 2015

By: *The Honourable René J. Marin CM OMM OOnt.**

Two Supreme Court of Canada decisions of high interest to CACCP Members

MR. BIG OPERATION REVISITED

Readers will recall my report on Mr. Big in the Fall CACCP Magazine.

In *R. v. Hart* 2014 SCC 52, the Supreme Court, brought several important changes to police investigations utilizing the Mr. Big Operation model, relied upon by police forces in Canada.

Contrary to some media reports, the Court, in *Hart*, did not totally prohibit all Mr. Big Operations; however it expressed strong concerns as to the reliability of confessions obtained by this method.

In assessing the reliability of statements obtained, as a result of a Mr. Big operation, trial judges must, heretofore, critically assess the:

1. *length of the police operation;*
2. *number of interactions between the police and the accused;*
3. *nature of the relationship between the undercover police officers and the accused;*
4. *inducements offered;*
5. *any threats made;*
6. *conduct of the interrogation itself;*
7. *personality of the accused - age, sophistication and mental stability.*

Using these factors, a determination must be made, as to what extent the reliability of the confession is trustworthy or called into doubt, under the circumstances in which it was made.

The Court identified markers of reliability, which could be derived from the confession itself, the:

1. *level of details contained;*
2. *the discovery of additional evidence;*
3. *whether it identifies any element of the crime not previously made public;*
4. *whether it accurately describes mundane details of the crime the accused would not likely know, unless he or she had committed the crime;*
5. *discovery of confirmatory evidence.*

Moldaver J, speaking for the Court, referred to these directives as 'new common law rule of evidence', on the issue of admissibility of statements.

The Court expressed concerns not only on the issue of reliability but focused on possible police misconduct in such operations. The danger of police abuse, in such cases, cannot be minimized.

A few months later, the Supreme Court, in *R.v. Mack*, 2014 SCC 58, returned to the issues raised in *Hart*, and used the opportunity to apply the framework, earlier propounded on a Mr. Big Operation.

In *Mack*, the police, seeking information on a missing person, received information, *Mack* had confessed to his roommate and another to the killing. An investigation was launched. It had two components:

- *A Mr. Big operation; and*
- *A wiretap authorization to intercept the calls of the suspect.*

During the Mr. Big Operation, *Mack*, twice admitted to undercover police, he shot the victim and burned his body. This information led

the policed to search a firepit, where fragments of bones and teeth, identified as belonging to the victim, were identified, along with shell casings determined to have been fired from a gun found in Mack's apartment.

Mack was arrested and charged with first degree murder. At the time of arrest, a Mr. Big Operation had been in progress, for four months. Mack had participated in 30 'scenarios' with undercover agents and received approximately \$5,000. for work and expenses.

At trial, it was conceded by the prosecutor the wiretap authorization did not comply with the requirements of the Criminal Code, violated s. 8 of the Charter and no evidence, derived from the calls was adduced.

However the Crown sought to adduce two confessions to undercover agents during the Mr. Big Operation. Counsel for Mack, sought to exclude these confessions, arguing they were so intertwined with the illegal wiretap operation, and should be excluded under s. 24(2) of the Charter. This submission was rejected.

Mack testified he made the admissions to the undercover officers, out of desire for money, protection and a belief the confessions were necessary for self-preservation and to 'sound big and tough and bad like them'. His counsel therefore sought exclusion of the confessions.

The trial judge, however refused and ruled s. 24(2) was not engaged in the Mr. Big Operation. He cautioned the jury in relation to the testimony of the undercover agent, provided a Vetrovec warning in relation to that evidence and Mack was convicted.

An appeal from conviction was dismissed by the Alberta Court of Appeal and Mack appealed to the Supreme Court of Canada. The appeal was dismissed.

First the Supreme Court agreed s. 24(2) was not engaged in the confession to the undercover agents. The connection between the illegally intercepted calls and the confessions to the agents was tenuous. The Court refused to intervene on that issue.

On the issue as to whether Mack's confession was admissible under the framework developed in Hart, the Court ruled the probative value of the confessions was high because of the abundance of evidence potentially confirmatory. A Mr. Big confession will be excluded where its prejudicial effect outweighs its probative value, or where it is the product of an abuse of process.

The Court observed:

- *Mack's purported confession to his acquaintances gave the same motive for the killing as it did to the undercover officers.*
- *All purported confessions made reference to the burning of the body.*
- *Mack, immediately after confessing to one undercover agent, led him to the firepit in which the victim's remains lay undiscovered.*
- *Shell casing fired from the gun found in Mack's apartment were found in the firepit on his father's property.*

On the totality of the evidence, the confession's prejudicial effect was limited. It did not reveal unsavoury facts about Mack's

personal history, nor was Mack invited to participate in any scenario involving violence.

On the whole, Mack was not presented with overwhelming inducements and there was no abuse of process. He had work which would have paid more, than what was offered by the undercover officers. At most, the undercover officers created an air of intimidation by referring to violent acts committed by members of the organization. Mack was not coerced into confessing.

Under the Hart framework, it falls to the trial judge to adequately instruct the jury as to how to approach such confessions. The Court offered the following guidance:

- *The jury should be instructed, the reliability of the confession is for their determination (the need for independent confirmation);*
- *The trial judge should review with the jury the factors relevant to the confession and the evidence surrounding it;*
- *The length of the operation;*
- *The number of interactions between the police and the accused;*
- *The nature and extent of the inducement offered;*
- *The presence of threats, if any;*
- *The conduct of the interrogation itself; and*
- *The personality of the accused.*

In addition:

- *The trial judge should discuss whether the confession contains markers of reliability (or unreliability);*
- *The level of details in the confession;*
- *Whether the confession led to the discovery of additional evidence;*
- *Whether it identified elements of evidence not previously made public; and*
- *Whether the confession accurately described mundane details of the crime the accused would not likely have known if he had not committed it.*

The jury should be reminded, simulated criminal activity was fabricated and encouraged by agents of the state.

The Court noted the jury was properly instructed to 'carefully consider whether the themes of violence and the level of inducements may reasonably have compromised the reliability' of the confessions. The jury was also instructed it had to 'assess the environment, the themes of easy money, violence, the importance of honesty and integrity, any offers of exit points, and any threats or intimidation' The appeal was dismissed.

The facts in Mack stand in stark contrast with those in Hart on several aspects. To name only a few:

- *The length of the operation;*
- *The amount paid to suspect;*
- *The operating mind of the suspect;*
- *Markers of reliability; and*
- *Independent confirmation.*

Police are not required to provide their personal cell phones to a detained person

The Alberta Court of Appeal, in R. v. Taylor (2013), 302 C.C.C. (3d) 181, in dealing with the failure to give an opportunity to implement a detained person's right to counsel under s. 10 (b) of the Charter found that providing the accused a personal cell phone would not have disrupted or interfered with the police investigation.

It found an overall denial of right to counsel both at the scene and later at the hospital where Taylor had been brought for medical care. After noting the young officer admitted, it was an error, resulting from his ignorance of the law and inexperience. The failure to allow the accused his rights to counsel resulted in exclusion of the evidence and an acquittal.

The decision of the was unsuccessfully appealed to the Supreme Court of Canada [(2014) 311 C.C.C.(3d) 285]. While the Court confirmed the exclusion of evidence, it made it clear, the police did not have to provide their personal cell phones to an individual so detained.

It stated at [page 296]:

27The Crown takes issue with this finding, and I agree that in light of privacy and safety issues, the police are under no duty to provide their own cell phone to a detained individual. However, it had this to say about the obligation to provide access.

Page 297:

[35] The result of the officers' failure to even turn their minds that night to the obligation to provide access, meant that there was virtually no evidence about whether a private call would have been possible, and therefore no basis of assessing the reasonableness of the failure to facilitate access. In fact, this is a case of not so much about delay in facilitating access, but about its complete denial. It is difficult to see how this ongoing failure can be characterized as reasonable. Mr. Taylor's s.10(b) rights were clearly violated. With respect, the trial judge erred in concluding otherwise.

Abella J. referring to Grant, (para. 85) alluded to 'the seriousness of the Charter-infringing state conduct, the impact of the breach on the Charter-protected interest of the accused, and societal interest in an adjudication on the merits' before dismissing the appeal.

She concluded at [page 299]:

[42] After weighing all the relevant considerations, in my view the seriousness of the Charter breach and the impact of the police conduct on Mr. Taylor's interests are such that the admission of the evidence would so impair public confidence in the administration of justice as to warrant the exclusion of the evidence.

As she aptly put it, Constitutional rights, cannot be displaced by assumptions of impracticality.



POLICE PROFESSIONAL STANDARDS CONFERENCE

MAY 11-13, 2015

Fairmont Queen Elizabeth, Montreal, Qc

Enhancing Public Trust through Innovative Professional Standards Practices

CONFERENCE OBJECTIVES

- To encourage and facilitate the exchange of ideas regarding professional standards best practices, investigative strategies, trends and models within police organizations; and,
- To deliver training and intervention systems to reduce the occurrences of police misconduct.

For more information and to register go to www.cacp.ca

CACP AWARDS 2015

The CACP recognizes the important work done by police agencies and their members across Canada. Do you know someone who deserves recognition for the work they've done? Nominate them for a CACP award. Details and submission criteria are available on the CACP website at www.cacp.ca.

Nominations for the 2015 Canadian Banks Law Enforcement Award the Policing Partnerships Award, and the Canadian Council of Motor Transport Administrators Policing Partnerships Award, have already closed.



BANK OF CANADA BANQUE DU CANADA

Law Enforcement Award of Excellence for Counterfeit Deterrence

Submit your nomination now

Why? The Bank of Canada has established the Law Enforcement Award of Excellence for Counterfeit Deterrence to recognize the efforts of Canadian law enforcement personnel in bank note counterfeiting prevention, deterrence and enforcement. Because of your efforts, counterfeiting rates remain low.

How? Easy! Nominate someone by 30 April 2015.

Who? Any police officer or employee of an accredited police service in Canada is eligible for this award. It could also be given to an employee of a college or university. The subject matter of the nomination must relate to Canadian bank notes.

Where? Winners and their guest will be provided travel expenses to the 2015 CACP annual conference in Québec, Québec in August 2015, where they will be honoured at an awards ceremony.

What? For more information about the award criteria and how to submit a nomination: www.bankofcanada.ca/banknotes

Remember, nominations must be received by April 30, 2015



The CACP International Policing Award recognizes CACP affiliated members, agencies or teams who have made an outstanding contribution in the last calendar year to :

- *fostering closer cooperation between Canadian police agencies and an international partner(s);*
- *working on a successful multinational investigation, demonstrating knowledge of the complexity and global effect of the investigation;*
- *contributing to foreign law enforcement capacity building, possibly through innovative projects,*
- *fostering democratic principles and respecting the Rule of Law;*
- *contributing to Canadian policing, public safety and criminal justice through the identification, interpretation and application of global policing experience(s);*
- *contributing outside of normal duties to a project that fosters Canadian values and projects a positive image of police in society.*

Nominations submission deadline: May 1, 2015



The CACP/Motorola Awards for Emergency Preparedness recognizes excellence in combined efforts by police, fire and emergency medical services to contribute to the quality of life in Canadian communities by in preparing for response to natural or man-made disasters. There are two awards:

- *Emergency Preparedness Program*
- *Emergency Response Exercise*

Nominations submission deadline: May 15, 2015



The CACP/Accident Support Services National Police Award for Traffic Safety and the Road Safety Lifetime Achievement Awards recognizes excellence, dedication and initiative in the field of traffic safety by enforcement agencies across Canada. The purpose of the awards is to identify and commend:

- *individuals or agencies that have made an outstanding contribution to road safety during the previous calendar year through educational, enforcement, training or community based programs.*
- *individuals who have devoted a significant portion of their career to furthering traffic safety initiatives.*

Nominations submission deadline: June 15, 2015



OPP Commissioner Vince Hawkes and Ms Jennifer Vornbrock, Vice President, Mental Health Commission of Canada, at the CACP Strategies for Psychological Health and Safety in Police Organizations



Barrie Chief Kimberley Greenwood, Co-Chair of the CACP Crime Prevention Committee with (L-R) Leona Rodall, Harbourfront Community Centre, Dr. Harriet MacMillan, McMaster University, Mr. Sheldon Kennedy, Sheldon Kennedy Child Abuse Centre, the Minister of Health, the Honourable Rona Ambrose, Margaret Leslie, Mothercraft Toronto and local partners at the Government of Canada announcement of a 10-year, \$100 million investment to prevent, detect and combat family violence and child abuse

Curbing Contraband Crime

By Edward R. Myers

When Canadians call on law enforcement (LE) to keep them safe, they expect that the government will provide the legal platform for that public safety policy. For more than a decade, until last fall, Canadians had to contend with a situation of lawlessness in their communities as cigarette smugglers infiltrated their lives and brought organized crime onto their streets. Throughout this time, police in Canada have had neither the mandate nor the resources to combat the rise in contraband-related criminal activity. The job was left to the RCMP to use federal excise tax laws to deal with the problem.

In the fall of 2014, the Federal Government passed Bill C-10, an Act to amend the Criminal Code (trafficking in contraband tobacco). The three main changes brought about by C-10 include:

- *Bill C-10 amends the Criminal Code to expand jurisdiction for contraband tobacco offences to include provincial Attorneys General, not just the Federal Attorney General, which effectively means that all police forces, not just the RCMP, can enforce the new provisions;*
- *Bill C-10 creates a new Criminal Code offence that pertains to the selling or movement of unstamped tobacco products; and,*
- *The new law creates a hybrid offence that permits police to proceed by way of indictment or by way of summary conviction to accord with the seriousness of the offence. The maximum penalties for these new offences include up to 5 years imprisonment for an indictable offence and 2 years in jail for a summary conviction.*

While the enactment of Bill C-10 will have the effect of empowering provincial and local police forces to fight tobacco smuggling, the evidence from recent large scale busts like the one in Montreal that linked tobacco smuggling to Italian Mafia connections serve to correct the view by some LE that tobacco smuggling isn't a crime worthy of their attention.

Mandate and Resources

With the passage of Bill C-10, LE across Canada now have the mandate to investigate and pursue individual large scale offenders and related criminal networks that support tobacco diversion and tax cheating. At the end of the day, enforcement of C-10 will provide the means for reversing one of the most pernicious aspects of the contraband tobacco trade: the moral demise of many otherwise law-abiding groups such as farmers and retail operators who have been forced by the lure of the large paydays offered by the illicit tobacco trade into a life of deceit and subterfuge.

Legislation such as C-10 is a key to butting out the anti-social effects of cigarette smuggling but it is only half the solution. The other component is the resources that are required by LE to carry out the legislated mandate. Richard Marianos is the former Assistant Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) of the U.S. Department of Justice. Marianos has spent more than 27 years fighting crime and contraband in the U.S. His experience at the "frontline" of crime has led him to recommend that Canada focus on three critical areas of resource support for C-10.

"First, we need to understand that the clandestine nature of the smuggling business means that we have to be smarter and more knowledgeable than the bad guys. The illicit tobacco industry generates four times the financial proceeds for organized crime as does the trafficking in narcotics. So, law enforcement needs to use current technology, including social media, to listen to the criminal networks communicate. Then we need to employ data fusion centers so that we can talk among ourselves and share intelligence that is not accessible to the criminal networks."

"Next, I would recommend that a Canadian national training program be established that consistently and comprehensively delivers practical content that

will assist LE in investigation, surveillance, and reporting techniques that will build a major case file that will result in successful prosecutions of offenders and networks." Marianos recommends that the development of this training program be carried out under the auspices of the CACP to ensure national cohesiveness and interprovincial cooperation.

Finally, Marianos suggests that Canada adopt a nationwide policy of allowing the financial proceeds from a contraband bust to be used to fund law enforcement operations. In the U.S., this is referred to as "Churning" operations. By allowing police to use the financial resources recovered in a contraband bust, LE gets to operate on a level playing field with the outlaws from a financial resources point of view and can thereby fund undercover operations.

Marianos cautions that care be taken to ensure that any Canadian Churning developments be implemented with an abundance of administrative oversight. "While the prospect of additional financial resources to fight organized crime groups is always welcome, major pitfalls can emerge with issues such as entrapment and corruption. However, done right, a Churning capability will be helpful in providing key resources in the fight against illicit tobacco and its knock-on criminal regimes."

With Bill C-10 providing the legislative platform on contraband tobacco, the stage is set for Canadian LE to respond with the criminal intelligence, training and financial resources to implement the public safety policy that will remove the criminal incentive that has accompanied the illicit tobacco trade in Canada for decades.

Note on the author:

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