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August 1, 2004

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**RE: CACP LAC Annual Report 2003/2004**

We are pleased to present the 2003/2004 Annual Report of the Law Amendments Committee of the Canadian Association of Chiefs of Police. The Law Amendments Committee experienced another active and rewarding year as you will see from our summary of activities set out below.

At the Annual Conference in Halifax, the Committee unveiled the computer-based addition to the CACP webpage entitled ***Bills, Briefs and Other Business***. This site is a valuable tool which allows CACP members to review and study issues which are being studied by the LAC.

The number of issues faced by the Committee arising from changes to the law which affect policing continues to present a challenge. The attached report lists the activities in detail, but I would like to highlight the issue related to Interprovincial Police Jurisdiction. This is an issue which has been on the CACP agenda for the last several years, and I am pleased to advise that through the hard work of Superintendent Gord Schumacher of the Winnipeg Police Service, draft legislation has now been produced and is being considered by Provinces and Territories across Canada.

It is with considerable regret that I confirm for you that two long-standing members of the LAC have now left the Committee. RCMP A/C Bill Lenton has been a member of the LAC for several years and the co-chair for the last year. Bill was an important member of the Committee, quick to contribute his wisdom and involvement in an array of issues. We wish him well in his retirement. RCMP S/Sgt Dan Beaudesne has been on the Committee since the mid-1990's and was a valued contributor. We wish him well in his new duties.

It is my pleasure to advise you that Chief Superintendent Frank Ryder of the Ontario Provincial Police has kindly agreed to be the Co-chair of the LAC. Frank has been an enthusiastic member of the Committee for several years and will bring his considerable experience in criminal law matters to this new role.

The Lawfully Authorized Electronic Surveillance Committee is a subcommittee composed of technical experts from policing across Canada. This is a very active committee and produced the very detailed and comprehensive submission for the CACP in response to a Justice Canada consultation on the topic of Lawful Access. I wish to acknowledge and thank the subcommittee Chair, Doug MacCheyne of the Toronto Police Service, and Committee Advisor Al Sauv e of the Edmonton Police Service.

Another significant development has been the fostering of sound and valued partnerships with the Heads of Prosecution Committees that have been formed to examine complex issues such as the Prevention of Miscarriages of Justice, Disclosure and the Management of Mega Cases. This partnership recognizes that effective change in the Justice Sector requires collaboration between all stakeholders in the Justice System and identifies the Canadian Association of Chiefs of Police as a key stakeholder that can provide value added advice/feedback on legislative or process changes.

Providing advice to the CACP and its members on the emerging law in the area of law enforcement is an ever-increasing challenge. The complexity of the law and the increasing multi-jurisdictional nature of legal development in Canada require LAC members to contribute increasing time and commitment to the task. I wish to thank each and every member of the Committee for his or her significant contribution to this important work. I would like to especially commend Cori Bourgon of the Ottawa Police Service for her essential work in support of the Committee.

Sincerely

Vincent Westwick  
Co-Chair  
Law Amendments Committee

## **ABOUT THE COMMITTEE**

- ***Committee Membership***

There have been some significant changes to the membership of LAC. A/C Bill Lenton has retired from the RCMP this spring. His participation in the work of the LAC will be missed. As well, RCMP Staff Sgt Dan Beaudesne, a long-standing member of the LAC has moved on to new duties. Dan was one of the longest serving members on the LAC. The efforts of both these committee members is acknowledged and appreciated.

RCMP A/Commissioner Earl Moulton, Commanding Officer of "F" Division, Saskatchewan, has joined Law Amendments Committee. As well as having a background in law, A/Commissioner Moulton brings experience from different regions of the Country. Richard Begin of the Sûreté du Québec has also joined the Committee in the last year. He is the Director of Criminal Investigation Services and brings to the Committee a wealth of operational experience, as does our newest member, Chief Superintendent Mike McDonell of the R.C.M.P.

Overall, committee membership represents policing at all levels and from all regions of the country.

- ***Committee Chair***

The LAC is often called to work directly with government, on formal consultations, presentations to Parliament, and meeting with officials and other partners in the Criminal Justice System. In order to put the best face forward for the CACP and for policing, the Law Amendments Committee moved to a co-chair format. Vincent Westwick has been a co-chair of the Law Amendments Committee since 1999. Past co-chairs have included Commissioner Boniface of the Ontario Provincial Police, the late Chief David MacKinnon, and most recently, A/C Bill Lenton of the RCMP.

With the retirement of A/C Lenton, Chief Superintendent Frank Ryder has agreed to take on co-chair responsibilities.

- ***Law Amendment Committee Meetings***

The Law Amendments Committee has historically met at the CACP Annual Conference and once or perhaps twice during the year. With increased demands for consultation, new legislation and an ever-expanding portfolio of changes in statutes and case law, there has been increasing pressure for more

Committee meetings. Regrettably, the high cost of travel has limited the opportunities for face-to-face meetings.

The solution has been to have meetings by way of video/teleconferencing. This would not have been possible without the efforts of A/C Bill Lenton, and without the kind generosity of the RCMP. These video/tele conferences have increased committee work without the usual impact of travel costs on our budget. We would like to take this opportunity to thank, in particular, Sandra Lofaro of the RCMP who has organized each of these conferences.

### **2003/2004 SIGNIFICANT ACCOMPLISHMENTS**

The agenda of the Law Amendments Committee is both broad and detailed. Some of the significant projects of the past year are highlighted below:

- ***Bill Briefs and Other Business***

The Law Amendments Committee is especially proud of the ***Bills Briefs and Other Business***. This web based information system, available for CACP members is designed to provide both highlights of the CACP position and detailed analysis of current issues. The format allows the user to see in one page the following information in concise format:

- **Background**
- **CACP position**
- **Key Points**
- **Contact person(s)**

It is intended that the reader can quickly search this page to obtain an overview of information about a legal issue and be better able to understand and support the CACP position. By way of “links” on an accompanying page, ***Bills Briefs and Other Business*** provides the reader with detailed supporting documentation such as research papers, legislative reviews or press commentaries. This page will also include CACP previous submissions and resolutions on the topic. There are currently eleven topics on ***Bills Briefs and Other Business*** but plans call for more topics to be added by the LAC as well as inviting other Committees to include topics.

- ***Interprovincial Police Jurisdiction***

For some time police in Canada have been called upon to conduct serious investigations out of their home jurisdiction. Recently, the multi-jurisdictional

nature of the Outlaw Motorcycle Gangs, organized crime and even terrorist investigations has affirmed that need. It was felt that there was a requirement for an enhanced legislative framework to ensure a statutory basis for police officers performing police duties in another jurisdiction. Model legislation was developed which is now being considered by the legislatures of several provinces. Although not a responsibility of the Federal Government, this initiative was assisted greatly by Justice Canada and the Department of Public Safety and Emergency Preparedness.

- ***Lawful Access***

Lawful access refers to the ability of law enforcement and security agencies to intercept private communications pursuant to a lawful authority. There are presently two fundamentally important and problematic issues surrounding the matter of lawful access. Firstly, the ability of law enforcement and security agencies to intercept private communications has been compromised because new technologies are not “interceptable”. Secondly, many telecommunication companies have adopted the mindset that they should be paid by law enforcement for carrying out the terms of a court order. Taken to its logical conclusion, this approach would seriously compromise the ability of the police to contend with serious crime in as much as finite investigative budgets would be undermined.

- ***Lawfully Authorized Electronic Surveillance sub-Committee***

The LAES is a sub-committee of the Law Amendments Committee and is made up of technical experts from police agencies across Canada. Their function is to provide technical and practical advice on the development of new legislation in the Lawful Access area. This is a very hardworking and dedicated group of professionals who developed and submitted on behalf of the CACP a detailed and comprehensive submission in response to Justice Canada’s request for consultation input.

- ***Parliamentary Presentations***

Over the last while the CACP has made formal representations to Parliament on the following Bills:

- Bill C-17 (Public Safety Bill) February 2003
- Bill C-23 (Sex Offender Registry), June 2003

- ***Work with the Heads of Prosecution***

The Heads of Prosecution (HOP) is a Committee formed by the Federal, Provincial and Territorial Deputy Ministers Responsible for Justice. HOP has formed subcommittees to look into important issues in the criminal justice system. This is an important and very positive development.

## **SUMMARY OF ACTIVITIES**

Attached is a brief summary of only a few of the subject areas that have been a focus of Law Amendments activity.

### **1- Capital Market Fraud (C-13)**

Bill C-13 received Royal Assent on March 29, 2004. It should come into effect no earlier than July 31st 2004. A note was posted to *Bills, Brief and Other Business* in October 2003. Representations were made twice to Justice Canada during LAC meetings in Calgary and Ottawa in 2004, so that model forms could be drafted by Justice Canada for the envisaged production orders.

### **2- Organized Crime in Securities Market**

This is one of the aspects covered by C-13. The Bill gives jurisdiction to the Attorney General of Canada for fraud cases and to Integrated Market Enforcement Teams made up of RCMP investigators, federal lawyers and other investigative experts dedicated solely to capital market fraud cases which are being established in Toronto, Vancouver, Montreal and Calgary.

### **3- Criminal Liability of Organizations (C-45)**

Bill C-45 came into effect on March 31, 2004. A *Bills Briefs and Other Business* note was posted in October 2003. Another note concerning its impacts on police management was circulated to LAC members in 2004 and has since been posted to the CACP website for all CACP members.

### **4- Competition Act**

The LAC sent a lengthy memorandum in September of 2003, in response to the National Consultation on the Competition Act conducted by the Public Policy Forum. It also participated in the roundtable organized in Montreal in November of 2003. On April 8, 2004, the PPF issued its final report. The contribution of the CACP is mentioned, both for its written submissions and its participation in the roundtable.

## **5- Court Orders**

Closely related to cost issue in the lawful access topic is the broader legal/policy question as to whether the police or security agencies should ever be obliged to pay a third party for complying with an order of the court. This question transcends the lawful access context as it relates to any court order issued during the course of a criminal investigation involving any third party. Accordingly, if telecommunications companies have the right to “charge” the police fees for complying with court orders, it follows that other institutions or individuals may claim the right to do so as well if these institutions are made the subject of a search warrant. This proposition is contrary to the history of criminal law but also is inconsistent with an impartial and fair investigative philosophy.

## **6- Firearms**

The Law Amendments Committee continues to work with the Canada Firearms Centre. Whenever opportunities exist, members of the LAC make submissions with respect to the program and its impact on policing. In spite of the controversy, the CACP remains supportive of the program and believes it serves a valuable tool in public and police officer safety. Vincent Westwick represents the CACP on the Program Advisory Committee, a committee recommended by the consultant’s review of the program in January 2003.

## **7- Identity Theft**

In response to the resolution submitted by the CACP through the Law Amendments Committee, and submissions by other stakeholders, the Federal Department of Justice has been actively engaged in the development of strategies to provide tools for more effective investigation of those victimized by Identity Theft. These strategies will include potential legislative amendments. Research is ongoing to develop a comprehensive package of provisions to combat Identity Theft. The Federal Department of Justice has recognized that the CACP is a key stakeholder and have assured the Law Amendments Committee (LAC) that any provisions developed will be presented to the CACP (LAC) for extensive consultation.

## **RESOLUTIONS - 2003**

### **1- Vehicle Re-winning**



The CACP supported the recommendations brought forth by Project 6116, a national committee to reduce auto theft, to amend the *Criminal Code of Canada*, by creating an indictable offence prohibiting the altering, obliterating or removal of a vehicle identification number or any secondary identification number.

## **2- Fees for Court Orders**

The CACP called upon the Government of Canada to amend the *Criminal Code of Canada* to prohibit the imposition of a fee by any person in relation to a court order made pursuant to a criminal investigation.

## **3- Sexual Orientation to form part of “Identifiable Groups” in CCC**

The CACP urged the Government of Canada to amend the *Criminal Code of Canada* to add sexual orientation to the list of identifiable groups in section 318(4).

## **4- Indecent Act**

The CACP urged the Government of Canada to amend sections 173(1)(a) and (b) and 173(2) of the *Criminal Code of Canada* to make these offences dual procedure, punishable by indictment or summary conviction, and that section 487.04 of the *Criminal Code of Canada* be amended to change the indecent act sections in 173(1)(a) and (b), and 173(2) from ‘secondary designated offences’ to ‘primary designated offences’ which require mandatory DNA profile submissions by convicted offenders to the National Databank.

## **COURT INTERVENTIONS**

### **R v Mann**

This matter arose out of a search and seizure in December of 2000. It called into question the degree of power police have when searching and when detaining individuals for the purposes of an investigation. Along with the Attorney General of Canada, the CACP intervened in that case since the original decision by the court concluding the search was unreasonable, impacted negatively on the police community in relation to its existing search and seizure protocols.

On July 23<sup>rd</sup>, 2004, the Supreme Court of Canada released its decision and found that prior to engaging in a pat-down search the officer must believe,

within the precincts of articulable cause, that a safety risk exists and in the event of a detention as a result of an investigation, the detention must be brief or there could be a breach of Charter rights.

A positive outcome from the Mann decision was the endorsement by the Supreme Court of Canada that investigative temporary detentions are justified in law and that pat-down searches are justified if there is an articulable reason to search the suspect for the purposes of officer safety.

### **KEY INITIATIVES FOR 2005**

The Law Amendments Committee will be engaged in preparing for and potentially participating in two parliamentary reviews, the review of the provisions of Bills C36 and C24.

### **FALL AGENDA**

All of our meeting dates and locations have been established for the 2004/2005 year. The dates are as follows:

OCTOBER 2004

**Friday, October 8**

Video-Tele Conference 11:00-3:00 EST

sites booked: NOC, C Montreal, F Regina, J Fredericton, O London,  
Winnipeg

PS, Edmonton PS, Calgary PS & Audio

JANUARY 2005

**Friday 14 January & Saturday 15 January**

location of meeting Montreal

MARCH 2005

**Friday 11 March**

Video-Tele Conference 11:00-3:00 EST

sites booked: NOC, C Montreal, F Regina, J Fredericton, O London,  
Winnipeg

PS, Edmonton PS, Calgary PS & Audio

MAY 2005

**Friday 6 May & Saturday 7 May**

location of meeting Montreal

JUNE 2005

**Thursday 16 June**

Video-Tele Conference 11:00-3:00 EST  
sites booked: NOC, C Montreal, F Regina, J Fredericton, O London,  
Winnipeg  
PS, Edmonton PS, Calgary PS & Audio

AUGUST 2005

CACP Conference in Ottawa

**Saturday 20 August & Sunday 21 August**

Conference begins Monday 22 August-Thurs 25 August

OCTOBER 2005

**Friday 14 October**

Video-Tele Conference 11:00-3:00 EST  
sites booked: NOC, C Montreal, F Regina, J Fredericton, O London,  
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