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CANADIAN ASSOCIATION OF CHIEFS OF POLICE

Leading progressive change in policing

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Resolution 01/2003

VEHICLE RE-VINNING

Submitted by the Law Amendments Committee

WHEREAS auto theft in Canada is a growing concern involving many facets of organized crime such as money laundering, drug trafficking, and recruitment of youth as a labour pool to steal vehicles, and;

WHEREAS a survey of law enforcement agencies by the Canadian Centre for Justice Statistics indicates that 60% of organized crime rings in Canada deal in the illicit theft, and trafficking of stolen vehicles, and;

WHEREAS it is estimated the costs of motor vehicle theft in Canada are more than $800 million, resulting in a significant societal impact, and;

WHEREAS innocent consumers who have purchased a stolen vehicle are at risk of suffering financial loss arising from the potential seizure of their vehicle, payment of outstanding loans, and litigation over possession and ownership of their vehicle, and;

WHEREAS innocent consumers are unknowingly purchasing stolen vehicles that have been stripped of their original identity by organized vehicle theft rings who remove or obliterate the original vehicle identification number and replace it with one of fraudulent origin, and;

WHEREAS Section 354 (2) of the *Criminal Code* currently sets out a presumption that the removal or partial removal of a vehicle identification number is, absent evidence to the contrary, *proof* the item *was obtained* and that the person in possession *knew it was obtained* by an indictable offence, and;

WHEREAS while the presumption set out above provides police investigators with justification for the seizure of the motor vehicle for examination to determine the true identity of the vehicle, judicial decisions have prevented the operation of the presumption to prove the person in possession knew it was obtained by crime, and;

WHEREAS the act of removing, altering or obliterating vehicle identification numbers to facilitate the illicit trafficking in stolen vehicles is not a clearly defined criminal act in itself, and;

WHEREAS those who engage in removing, altering or obliterating vehicle identification numbers from stolen motor vehicles for economic gain should be prosecuted for an offence that clearly defines their criminal actions.

THEREFORE BE IT RESOLVED that the Canadian Association of Chiefs of Police, in support of recommendations brought forth by Project 6116: A National Committee to Reduce Auto Theft Sub-Committee on Organized Vehicle Theft Rings, calls upon the Government of Canada through the Solicitor General of Canada and the Minister of Justice and Attorney General, to amend the *Criminal Code*, by creating an indictable offence which prohibits the altering, obliterating or removal of a vehicle's identification number or any secondary identification number.

Resolution 01/2003

VEHICLE RE-VINNING

COMMENTARY:

Presently an offender who removes a vehicle identification number from a motor vehicle cannot be charged under Section 354 (2) of the *Criminal Code* unless evidence can be adduced that the accused had knowledge of the stolen status of the vehicle. The presumption of guilty knowledge provided in 354 (2) has been found to be a violation of the presumption of innocence under Section 11(d) of the Charter of Rights and Freedoms (*R.* v. *Boyle* (1983), 5 C.C.C. (3d) 193 (C.A.).

In order to address this gap, a specific offence must be created for the actions of removing, altering or obliterating a vehicles primary identification number, or any of the vehicles secondary numbers. This would allow a subject to be prosecuted for altering, obliterating or removing a vehicle identification number in circumstances where it cannot be proven that the person knew the vehicle was stolen. Such an offence would also discourage the trade in stolen vehicle parts, which is facilitated through the removal of secondary identification numbers.

Further, many organized auto theft operations are based on purchasing motor vehicle wrecks (salvage) for the purpose of obtaining the vehicle identification number. A similar make and model vehicle is then stolen, into which the salvage vehicle identification number is installed or a counterfeit of the number plate is installed. Auto theft operations based on this modus operandi allow stolen automobiles to be registered under the salvage vehicle identification number, and greatly reduce the chances of discovering that the registered vehicle is actually a cloned stolen vehicle.

Moreover, a conviction registered for altering, obliterating or removing a motor vehicle identification number would more clearly identify a person's involvement in organized vehicle theft rings, as opposed to those persons convicted of simple possession of a stolen vehicle (an offence of general application). This information would be of value to police investigators and Crown prosecutors alike.

The illicit domestic and international trade in re-vinned vehicles, and the impact of organized auto theft on private and corporate citizens in Canada clearly warrants this proposed amendment to the *Criminal Code*.

Resolution 02/2003

FEES FOR COURT ORDERS

Submitted by the Law Amendments Committee

WHEREAS in carrying out their duties to protect life and property and apprehend criminals, police in Canada frequently receive, obtain and execute orders made by the courts pursuant to the *Criminal Code* and other federal and provincial statutes, and;

WHEREAS failure to comply with an order of the court can result in civil and criminal sanctions including criminal contempt of court, and;

WHEREAS it is vital to the administration of justice and the protection of the public that orders of the courts made during the course of a criminal investigation such as search warrants and assistance orders be effectively and efficiently executed, and;

WHEREAS the growth in modern information technologies means that very often the subject matter of the court order or evidence being sought can only or best be acquired with the help or expertise of the person or agencies to which the order is directed, and;

WHEREAS there is an emerging trend in Canada for some corporations and organizations to endeavor to impose a fee or fees upon police agencies as a prerequisite to compliance with the court order, and;

WHEREAS this emerging trend with respect to the attempt to impose fees on law enforcement agencies as a prerequisite to compliance with court orders diminishes the authority of the courts and compromises the rule of law, and;

WHEREAS the Canadian Association of Chiefs of Police believes that it is in the interests of all Canadians that the authority of the courts remain unchallenged and that all citizens, corporate or otherwise, be required to comply with court orders made in the course of a criminal investigation without attempting to impose extrajudicial conditions such as a fee for service.

THEREFORE BE IT RESOLVED that the Canadian Association of Chiefs of Police calls upon the Government of Canada through the Minister of Justice and Attorney General, 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.

Resolution 02/2003

FEES FOR COURT ORDERS

COMMENTARY:

In the landmark case of *Hunter* v. *Southam Inc*., the Supreme Court of Canada determined that privacy rights of Canadians could best be protected when state searches and seizures have received prior authorization from the courts. Prior authorization of searches allows the courts to protect the rights of Canadians from unnecessary or unwarranted intrusions on their liberty and privacy.

Similarly, Parliament has mandated certain procedures that law enforcement and national security agencies must follow in order to have searches and seizures court authorized. These procedures are primarily found in Parts VI and XV of the *Criminal Code*, and relate to the issuance of court orders for the lawful interception of private communications and search warrants, as well as Orders requiring a person to provide assistance, where that person's assistance is reasonably required to give effect to the warrant or order.

To comply with constitutionally mandated thresholds, investigations are often labour intensive, time consuming, and costly. The preparation of warrants and authorizations can be particularly resource intensive, and taxing on scarce police resources. Law enforcement agencies and national security agency budgets are already under pressure from a variety of causes, including an increasingly complex legal environment, the demands of growth, inflationary pressures, and advancements in technology. The costs of investigating criminal occurrences and the activities of organized crime are already key considerations in the conduct of investigations, and in some cases, whether investigations can be conducted at all.

Unfortunately, police and national security agencies across Canada are increasingly inundated with requests for the payment of costs from corporate entities (primarily the telecommunications industry) who are required to provide assistance to the execution of authorizations and warrants. In some cases, corporations have insisted on the payment of a fee as a prerequisite to compliance with the court order. There is no lawful basis for the imposition for these fees.

Instead, in Canada the Supreme Court has acknowledged that citizens are under a general civic duty to assist law enforcement agencies in the maintenance and preservation of the law. The court has examined the duties of our citizens and found that citizen assistance is essential to the fulfillment of already difficult tasks performed by law enforcement. Further, the court recognized the limited resources that society is able to spend on law enforcement activity in general (*Thompson Newspapers Ltd* v. *Director of Investigation & Research* (1990), 54 C.C.C. (3d) 417 (SCC)).

In view of the foregoing, it is the position of the CACP that the imposition of fees as a prerequisite to compliance with a court order is a diminishment of the issuing court, is contrary to the interests of effective law enforcement, public security and the administration of justice, and should be expressly unlawful.

Therefore, the Canadian Association of Chiefs of Police calls upon the Minister of Justice to amend the *Criminal Code of Canada* to prohibit the imposition of a fee by any person in relation to a court order made under the criminal law of Canada.

Resolution 03/2003

TO ADD SEXUAL ORIENTATION TO THE IDENTIFIABLE GROUPS LISTED IN SECTION 318(4) OF THE *CRIMINAL CODE OF CANADA*

Submitted by the Law Amendments Committee

WHEREAS equal protection and treatment of all citizens are fundamental to a fair justice system, and;

WHEREAS the Canadian Charter of Rights and Freedoms section 15(1) ensures that "every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination", and;

WHEREAS the Supreme Court of Canada has consistently interpreted section 15(1) of the Charter as including sexual orientation as an identifiable group that is protected by these principles, and;

WHEREAS the present *Criminal Code* hate propaganda sections (318 and 319) do not explicitly protect members of the public distinguished by sexual orientation, and;

WHEREAS the brutal murder of Aaron Webster, a gay man, in November 2001, in Vancouver, British Columbia has once again drawn attention to these provisions of the *Criminal Code.*

THEREFORE BE IT RESOLVED that the CACP urges the Government of Canada through the Minister of Justice and Attorney General to amend the *Criminal Code of Canada* to add sexual orientation to the list of identifiable groups in section 318(4).

Resolution 03/2003

TO ADD SEXUAL ORIENTATION TO THE IDENTIFIABLE GROUPS LISTED IN SECTION 318(4) OF THE *CRIMINAL CODE OF CANADA*

COMMENTARY:

Section 318(4) provides protection under the hate propaganda provisions of the *Criminal Code of Canada* in sections 318 and 319 for four identifiable groups, race, religion, ethnic origin and colour. Sexual orientation is not included in this list.

In Vancouver, 62% of the acts of physical violence against groups protected under the sentencing provisions of section 718.2 of the *Criminal Code of Canada*, which include the groups listed in section 318(4) and sexual orientation, are on the basis of sexual orientation. School age children are tormented with hate references based on homosexual pejoratives and several cases of teen suicide have been linked to bullying and violence based on sexual orientation.

The history of persecution of people on the basis of sexual orientation is similar to the stories of the other groups protected under section 318(4) and not in keeping with public expectations in a caring and tolerant nation.

The Supreme Court of Canada has considered sexual orientation as an analogous group for the purpose of section 15 of the Canadian Charter of Rights and Freedoms. Section 32 of the Charter requires all provincial and federal legislation to conform to the charter. Further, the Supreme Court of Canada has repeatedly recognized the discriminatory circumstances that homosexuals have faced socially, politically and economically.

It is hoped that, by explicitly adding sexual orientation to section 318(4), the improvement in conditions for the groups currently listed in section 318(4) will logically and equally extend to those who require protection on the basis of their sexual orientation.

Resolution 04/2003

TO AMEND THE INDECENT ACT SECTIONS OF THE *CRIMINAL CODE*

Submitted by the Law Amendments Committee

WHEREAS Section 173(1)(a) and (b) provide that everyone who wilfully does an indecent act in a public place with the intent to insult or offend any person is guilty of an offence punishable on summary conviction, and;

WHEREAS Section 173(2) provides that every person who, in any place for a sexual purpose, exposes his or her genital organs to a person under the age of 14 years is guilty of an offence punishable on Summary Conviction, and;

WHEREAS in documented records from the Canadian Centre for Justice Statistics, the Violent Crime Linkage and Analysis System and a separate Winnipeg Police Service review of convicted indecent act offenders over a 10 year period, it was found that the victims of these crimes were overwhelmingly female, or children under 14 years of age, and the perpetrators were predominantly male, and;

WHEREAS the current classification of indecent act offences as summary conviction does not allow police agencies across Canada the lawful authority to fingerprint and photograph offenders, and;

WHEREAS being a summary conviction offence there is a six month restriction in which offenders may be prosecuted, and;

WHEREAS the Winnipeg Police Service review of 232 convicted indecent act offenders revealed that offenders had disproportional convictions for other sex related, violence / stalking or property offences.

THEREFORE BE IT RESOLVED that the Canadian Association of Chiefs of Police urges the Government of Canada through the federal Minister of Justice and Attorney General to amend sections 173(1)(a) and (b) and 173(2) of the *Criminal Code* to make these offences dual procedure, punishable by indictment or summary conviction, and;

BE IT FURTHER RESOLVED that section 487.04 of the *Criminal Code* be amended to change the indecent act sections 173(1)(a) and (b) as well as section 173(2) from “secondary designated offences” to “primary designated offences” which require mandatory DNA profile submissions by convicted offenders to the national databank.

Resolution 04/2003

TO AMEND THE INDECENT ACT SECTIONS OF THE *CRIMINAL CODE*

COMMENTARY:

In Canada, deviant sexual offenders who commit indecent acts every day are traumatizing women, children and the vulnerable. These offenders are predominantly male who strike fear into their victims for their own personal satisfaction. Sexual offences have been shown in numerous studies to have very high recidivism rates and it is not uncommon for these offenders to escalate in their crimes.

The summary conviction classification of these offences hampers police agencies' ability to bring these offenders to justice. The six month restriction is one example of where perpetrators cannot be prosecuted even if their identity is known. The Winnipeg Police Service study provided statistics in this regard pertaining directly to indecent act offences. In addition, this classification does not allow fingerprinting or photographing of offenders, which continues to create investigative hardships for law enforcement.

Indecent Act offenders have been shown to have a predisposition to commit other more serious and violent crimes; changing the status of these offences to "primary designated offences" will aid in identifying offenders early as a result of the mandatory DNA profile submission criteria in place for convicted offenders.

Resolution 05/2003

MOTOR VEHICLE THEFT

Submitted by the Law Amendments Committee

WHEREAS motor vehicle theft is a serious and expanding problem in Canada, generating large profits for organized vehicle theft rings with minimal risk, and is a public safety issue due to the serious injury and deaths of innocent citizens and police officers resulting from traffic collisions involving stolen motor vehicles driven by youths, and;

WHEREAS only 12% of motor vehicle thefts in Canada are cleared by arrest and motor vehicle theft is a low risk entry level crime for youth into organised criminal groups, and;

WHEREAS stolen motor vehicles are often used in the commission of other crimes such as home invasions and robberies, and;

WHEREAS the *Criminal Code of Canada* currently provides for a separation of intent and purpose for the act of house breaking and the commission of theft incident to the house break, as set out in Section 348 of the *Criminal Code,* and;

WHEREAS this separation of theft via house break from the existing offence for theft, as set out in Section 322 of the *Criminal Code,* allows for more effectual prosecutions, enhanced statistical analysis and monitoring of court outcomes and sentencing practices, and;

WHEREAS the *Criminal Code of Canada* does not provide a specific and separate offence category for motor vehicle theft, and;

WHEREAS this absence of a specific offence category results in an inability to prosecute for the specific offence of motor vehicle theft and therein resulting in the registering of convictions without a clear depiction of the nature of the offence.

THEREFORE BE IT RESOLVED that the Canadian Association of Chiefs of Police, in support of Project 6116: A National Committee To Reduce Auto Theft, calls upon the Government of Canada through the Minister of Justice and Attorney General, to enact legislation creating a separate offence under the *Criminal Code of Canada* with respect to theft of a motor vehicle.

Resolution 05/2003

MOTOR VEHICLE THEFT

COMMENTARY:

Auto Theft is currently reported on Uniform Crime Reporting with all other thefts over and under $5,000. From an information point of view, it is important to have auto theft under and over $5000 as specific offences in order to obtain data on court outcomes and sentencing practices and to provide opportunities for other enhanced statistical analysis. At this time, vehicle thefts cannot be isolated from other thefts.

The offence of breaking and entering was, no doubt, created to be distinct from general theft, due to the specific nature of the offence in terms of an intrusion into someone's home. A similar case could be made for vehicle theft in that a car/truck is generally the most valuable possession of a typical citizen, and one in six vehicle thefts are from a private driveway or garage.

Recent research has indicated that, with increased security devices on new models, a greater proportion of older vehicles are now being stolen for joy-riding and to commit other crimes. Many of these vehicles could be valued at under $5,000, therefore requiring separate auto theft offences for vehicles valued above and below $5000.

The following wording is suggested for the *Criminal Code* amendment:

1) Paragraph 334 (a) of the *Criminal Code* is replaced by the following:

   (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, where the property stolen is a testamentary instrument or what is stolen is not a motor vehicle but has a value exceeding five thousand dollars;

2) The Act be amended by adding the following after Section 334:

   334.1 (1) Every one who commits theft of a motor vehicle, where the value of that vehicle exceeds five thousand dollars, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, or

   (a) is guilty
   (i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or

   (ii) of an offence punishable on summary conviction,

where the value of the motor vehicle does not exceed five thousand dollars.

Resolution 06/2003

THEFT OF DATA

Submitted by the Electronic Crime Committee

WHEREAS the proliferation of information technology and the widespread use of the Internet have greatly enhanced the ability of unauthorized persons to acquire, without permission or colour of right, sensitive, confidential information and intellectual property, and;

WHEREAS the judgment of the Supreme Court of Canada in *R. v. Stewart*, [1988] 1 S.C.R. 963, holds that the offence of theft does not include the unauthorized acquisition of confidential information or data, and;

WHEREAS the limited sanction provided by s. 17 of the *Copyright Act* fails to properly address the societal harm associated with the unauthorized acquisition of confidential information and intellectual property, and;

WHEREAS the economic losses associated with the unauthorized acquisition of confidential information and intellectual property can cause the ruination of a company and financial losses and great hardship to individual citizens, and;

WHEREAS the recognition of the increasingly important role that confidential information and intellectual property plays in the well being of the Canadian economy must include proper, comprehensive legal protection for such data, and;

WHEREAS the United States of America, and other jurisdictions, have legislation in place for protection from economic espionage, and the protection of trade secrets, and intellectual property, and;

WHEREAS there is currently no legislation that addresses the theft of data or intellectual property, and;

WHEREAS cases of 'theft of data' must be prosecuted as fraud and the prosecution is thereby obliged to establish economic deprivation and as such many cases of wrongdoing escape any sanction.

THEREFORE BE IT RESOLVED that the Canadian Association of Chiefs of Police calls upon the Government of Canada through the Minister of the Solicitor General, the Minister of Justice and Attorney-General to amend the *Criminal Code* to create an offence of unauthorized acquisition or theft of confidential information or data in any form.

Resolution 06/2003

THEFT OF DATA

COMMENTARY:

Since the creation of information technology, digital information or data has been used in the everyday lives of all Canadian citizens and businesses. Data is stored on a variety of media and is invisible to the naked eye and for all intents and purposes, intangible.

The judgment of the Supreme Court of Canada in *R. v. Stewart*, [1988] 1 S.C.R. 963, holds that the offence of theft does not include the unauthorized acquisition of confidential information or data. Since that time, law enforcement and prosecutors have been unable to investigate the theft of data, as there was no federal statute that explicitly criminalized the unauthorized acquisition of confidential information and intellectual property. The economic losses associated with the unauthorized acquisition of confidential information including personal information and intellectual property can cause the ruination of a company and financial losses and great hardship to individual citizens.

The *Economic Espionage Act*, 1996, makes the theft or misappropriation of trade secrets a criminal offence, and is the first U.S. federal law that purports to both broadly define and severely punish such misappropriation and theft.

As more Canadians and Canadian enterprises conduct business on-line, data containing personal biographical information and corporate secrets become susceptible to unauthorized access by inside employees and attacks from the outside.

Resolution 07/2003

PRESERVATION ORDER

Submitted by the Electronic Crime Committee

WHEREAS the Council of Europe *Convention on Cyber-Crime* is an international treaty that provides signatory states with legal tools to help in the investigation and prosecution of computer crime, including Internet-based crime, and crime involving electronic evidence, and;

WHEREAS Canada had signed the *Convention* which calls for the criminalization of certain activities relating to computers, the adoption of procedural powers in order to investigate and prosecute cyber-crime, and the promotion of international cooperation through mutual legal assistance and extradition in a criminal realm that knows no borders, and;

WHEREAS a procedural mechanism in the Council of Europe *Convention on Cyber-Crime* that does not exist in Canadian law is the concept of a preservation order, and;

WHEREAS law enforcement requires the ability to obtain a court order requiring the expeditious preservation of specified computer data, including traffic data, that has been stored by means of a computer system, in particular where there are grounds to believe that the computer data is particularly vulnerable to loss or modification, and;

WHEREAS law enforcement requires the ability to preserve specified stored computer data. Legislation must be able to instruct the person to preserve the data and maintain the integrity of the data for a period of time as long as necessary (up to a period of ninety days) to enable law enforcement to seek its disclosure, and;

WHEREAS preserved traffic data should be made available regardless of whether one or more service providers are involved in the transmission of that communication. Preserved traffic data should be disclosed to law enforcement or a person designated by that authority, of a sufficient amount of traffic data to enable law enforcement to identify the service providers and the path through which the communication was transmitted.

THEREFORE BE IT RESOLVED that the Canadian Association of Chiefs of Police calls upon the Government of Canada through the Solicitor General and the Minister of Justice and Attorney General, to amend the *Criminal Code* to create the ability to seek a court order for the preservation of data in any form.

Resolution 07/2003

PRESERVATION ORDER

COMMENTARY:

The Council of Europe *Convention on Cyber-Crime* is an international treaty that provides signatory states with a framework to help in the investigation and prosecution of computer crime, including Internet-based crime, and crime involving electronic evidence.

As a permanent observer to the Council of Europe, Canada was invited to participate in the negotiation of the *Convention*. As of August 2002, 33 countries had signed the *Convention*, including Canada and most of its G8 partners. The *Convention* calls for the criminalization of certain offences relating to computers, the adoption of procedural powers in order to investigate and prosecute cyber-crime, and the promotion of international cooperation through mutual legal assistance and extradition in a criminal realm that knows no borders.

A procedural mechanism in the Council of Europe *Convention on Cyber-Crime* that does not exist in Canadian law is the concept of a preservation order. A preservation order acts as an expedited judicial order that requires service providers, upon being served with the order, to store and save existing data that is specific to a transaction or client. The order is temporary, remaining in effect only as long as it takes law enforcement agencies to obtain a judicial warrant to seize the data or a production order to deliver the data. For example, a preservation order could require an Internet service provider (ISP) not to delete specific existing information relating to a specific subscriber. It is meant as a stopgap measure to ensure that information vital to a particular investigation is not deleted before law enforcement officials can obtain a search warrant or production order.

Resolution 08/2003

PUBLIC SAFETY RADIO COMMUNICATIONS

Submitted by the Informatics Committee

WHEREAS the safety of citizens, police officers, and other public safety personnel is directly dependent on operational mobile radio communications, and;

WHEREAS on a daily basis, public safety officers and personnel work together for the safety of citizens, and;

WHEREAS there is an urgent need to coordinate all efforts in radio spectrum management within and in between jurisdictions, and;

WHEREAS public safety is not mentioned within the Acts regulating spectrum management in Canada.

THEREFORE BE IT RESOLVED that the CACP urges the Minister for Industry Canada to follow-up on the recommendations made in the "Public Safety Radio Communications Project" report presented to Industry Canada in March 2003. In particular, as an order of first priority, Industry Canada should convene a meeting of senior officials from major public safety organizations to look at forming a body that can represent public safety organizations, and;

BE IT FURTHER RESOLVED that Industry Canada be urged to set aside funding for the meetings and the creation of a representative body that could advise the Radio Advisory Board of Canada (RABC) and the Minister on this most crucial of issues, and;

BE IT FURTHER RESOLVED that Industry Canada and the appropriate federal departments initiate changes to the various Acts regulating mobile radio communications to ensure that public safety spectrum needs are treated as a national priority and legislated as such.

Resolution 08/2003

PUBLIC SAFETY RADIO COMMUNICATIONS

COMMENTARY:

The purpose of this resolution is to address the need for an improved effort to coordinate common public safety radio communications in Canada.

This issue was partially addressed in a resolution (2002 CACP Conference) entitled "Canada/US Common Radio Spectrum" wherein the CACP requested that separate spectrum be allocated for the public safety sector. Since that date RBP Associates and L'Abbé Consulting Services have conducted a study, initiated by Industry Canada. The results clearly show that police, fire and ambulance services as well as other groups related to public safety are all "doing their own thing" and there is not one body that can speak on behalf of the Public Safety Community. A business architecture is required to show how the public safety community operates in the radio environment to illustrate the point in the time continuum of an emergency does communication via radio take place, with whom, and whether it requires secure voice. As such, it is timely that the Canadian Association of Chiefs of Police works with Industry Canada and the other associations representing fire, ambulance services and other public safety groups to form a "Public Safety Communications Counsel". This council would be able to assist the Radio Advisory Board of Canada (RABC) and Industry Canada in formulating a strategy towards common radio spectrum between agencies not only in Canada but between Canadian and American agencies. The safety of Canadian and US citizens requires a greater amount of cooperation in this crucial area.

Resolution 09/2003

INTEROPERABILITY AND INFORMATION-SHARING

Submitted by the Informatics Committee

WHEREAS front line police officers are the first responders in most situations and are the primary resource for dealing with the ever-growing variants of crime, and disaster, it is essential that police organizations optimize the potential of individual officers and teams and ensure they are able to:

- provide effective first response to the range of operational situations they encounter;
- communicate with each other and with other first responders from Fire and EMS;
- rapidly pass information/intelligence to operational command for the appropriate specialized assessment/ response;
- access all relevant information resources directly and quickly, and;

WHEREAS there is no current coordinating body to ensure that initiatives and tools and systems are developed and implemented to meet the needs of all first responders.

THEREFORE BE IT RESOLVED that the CACP requests the Solicitor General to establish a national coordinating committee with representation from federal, provincial and municipal stakeholders, including governing authorities. This national coordinating committee will have the mandate to:

- ensure first responders have the tools and systems in place to communicate with each other at the scene of an operational situation, and
- ensure that the technology is in place to permit law enforcement organizations and agencies to share information between their electronic databases, and
- ensure that the laws which inhibit law enforcement's capability to share information are amended to permit law enforcement to exchange and share electronic information in a timely fashion.

Resolution 09/2003

INTEROPERABILITY AND INFORMATION-SHARING

COMMENTARY:

The purpose of this resolution is to call upon government to demonstrate a leadership role by establishing a national coordinating committee to enhance and expand interoperability and information sharing among first responders.

Interoperability and information sharing is the key to efficient, effective and safe operation by first responders. Generally police and first responders in many jurisdictions are looking at ways to better communicate and interact with each other and each other's information systems. However, there are many hurdles including legal, technological and practical impediments. The Informatics Committee believes that it is timely for the Federal Department of the Solicitor General to establish a national coordinating committee with representation from federal, provincial and municipal authorities. As outlined in the resolution, the national coordinating committee would have a mandate to explore solutions to the legal, technological and practical problems associated with interoperability and information sharing.

Resolution 10/2003

CANNABIS REFORM LEGISLATION

Submitted by the Drug Abuse Committee

WHEREAS the CACP and the Canadian Police Association adopted a joint statement in March 2002 on Illegal Drugs, subsequently adopted by Resolution 2002-13 in August 2002 which called upon the Government of Canada to establish Alternative Measures that had meaningful, appropriate and graduated consequences; and,

WHEREAS on May 27, 2003 the government introduced Bill C-38, Cannabis Reform Legislation, which authorizes a police officer to issue a ticket to a person in unlawful possession of 15 grams or less of cannabis (marihuana) and/or 1 gram or less of cannabis resin but removes the discretionary enforcement option to proceed by way of a criminal charge; and,

WHEREAS the offence does not provide for graduated consequences for repeat offences, and is therefore not a meaningful or appropriate consequence to act as a deterrent. The bill did not incorporate an appropriate range of Alternative Measures to address personal possession of less than 15 grams of cannabis; and,

WHEREAS Bill C-38 is silent for the possession of cannabis for those in high risk occupations such as, but not limited to: airline pilots, emergency services providers, health care professionals and operators of public transit; and,

WHEREAS the government funding for a new National Drug Strategy is not consistent with its pledge in the Liberal Red Book III of $420M over four years nor is it commensurate with the costs associated to substance abuse estimated in excess of $18B per year. The message conveyed to society implies that cannabis is not harmful.

THEREFORE BE IT RESOLVED that the CACP urges:

The Prime Minister and the Government of Canada to provide funding for Canada's National Drug Strategy consistent with its Red Book Promise of $420M and commensurate to the costs associated to substance abuse;

The Minister of Justice and Attorney General to create legislation for Alternative Measures for personal possession of 15 grams or less of cannabis, or 1 gram or less of cannabis resin, and to retain the discretionary option to proceed by way of criminal charge;

The Minister of Justice and Attorney General to create a penalty structure that is meaningful, appropriate with graduated consequences to serve as a deterrent for ALL repeat drug offences, including possession of small quantities of cannabis.

The Minister of Justice and Attorney General to create a category of aggravating factors which will provide for increased penalties for ALL drug offences such as, but not limited to: in a public place, including in or around schools and parks, in a motor vehicle, boat or any motorized conveyance; for those engaged in high risk occupations such as: airline pilots, air traffic controllers, emergency services providers, operators of public transit or health care professionals; and ALL drug offences committed in the company of a person under the age of 18 years.

The Minister of Justice and Attorney General retain the discretion for police officers to proceed either by criminal charge or issuance of a ticket for a contravention as circumstances dictate.

Resolution 10/2003

CANNABIS REFORM LEGISLATION

COMMENTARY:

The government's proposed "Cannabis Reform Legislation" will have an impact on policing in general and on drug enforcement specifically. It will therefore be necessary to obtain government support to maintain public confidence through effective legislative changes that policing can confidently implement.

Resolution 11/2003

NATIONAL INITIATIVE ON MARIHUANA (CANNABIS) GROW OPERATIONS – SUPPLY REDUCTION

Submitted by the Drug Abuse Committee

WHEREAS the CACP adopted Resolution 2002-11, National Drug Enforcement Initiative For Grow-Ops based on the following:

That marihuana grow operations (MGO) are causing severe problems to law enforcement, our communities, and our economy.

The threat to public safety includes residents and children in or near MGOs and clandestine chemical labs and which are increasingly fortified and include booby traps designed to cause serious injury.

Many facets of organized crime, including outlaw motorcycle gangs, are reaping the enormous profits of marihuana cultivation, often in residential areas of our communities across Canada.

There is a serious economic impact, including the costs from hydro theft, escalating enforcement, insurance (residential and commercial) and the cost of complex investigations and court proceedings.

There are serious life safety threats and violence to citizens, police officers and emergency services personnel including fire, EMS and hydro.

Substance abuse is a devastating health and community safety problem with negative social, public safety and economic consequences exceeding $18 billion dollars annually.

THEREFORE BE IT RESOLVED that the CACP calls upon the Solicitor General to engage his counterparts in each provincial and territorial government to take a leadership role in funding and coordinating a national initiative on MGOs including public and private sector partner engagement such as hydro, insurance and real estate organizations and ALL components of the criminal justice system.

AND FURTHER BE IT RESOLVED that the CACP calls upon the Minister of Justice and Attorney General to create penalties which have minimum jail sentences for the two (2) new cultivation offences that, as now proposes to effectively lower the current penalties for cultivation of Cannabis. These sentences must have a deterrent effect on individuals convicted of cultivation and discourage others from coming to Canada intent on this purpose.

Resolution 11/2003

NATIONAL INITIATIVE ON MARIHUANA (CANNABIS) GROW OPERATIONS – SUPPLY REDUCTION

COMMENTARY:

Due in part to the public's perceived liberalization of drug laws, there has been a considerable increase in marihuana grow operations. There is an immediate need for an increase in investigative resources and legislative amendments in order to meet the mandate of public safety.

Resolution 12/2003

MARIHUANA FOR MEDICAL PURPOSES

Submitted by the Drug Abuse Committee

WHEREAS the CACP policy concerning Marihuana for Medical Purposes recognizes a clear distinction between authorized medical practice versus illicit drug use. This resolution does not prejudice the CACP's position against the illicit use of cannabis for non-medical purposes; and,

WHEREAS it is the position of the CACP Drug Abuse Committee that police officers in Canada require access to a complete list of people authorized by Health Canada under the *Medical Marihuana Access Regulations (MMAR)* or Section 56 of the *Controlled Drugs and Substances Act* to possess or produce marihuana (cannabis). The ability to confirm whether someone is authorized is required on a 24 hours a day, seven days a week basis. Presently they do not have such access; and,

WHEREAS police officers need to exercise due diligence when embarking on investigations into those persons suspected of unlawfully possessing or producing marihuana which may or may not involve the execution of a search warrant; and

WHEREAS on July 9th 2003, the Government of Canada adopted an interim policy on the provision of marihuana for medical purposes. This makes marihuana seeds available to persons authorized to produce marihuana for medical purposes. This also provides a legal source of dried marihuana to individuals authorized to use marihuana for medical purposes who are unable to produce it themselves or supply the seeds to a person who can produce it on their behalf; and

WHEREAS the interim policy also authorizes doctors who, pursuant to *MMAR*, have been endorsing applications for patients to lawfully receive and convey amounts of marihuana under 30 grams to their patients.

THEREFORE BE IT RESOLVED that the CACP urges Minister of Health to implement the following:

Provide police with 24 hour, 7 days a week access to up to date, confirmed data of the names and addresses of all individuals (including doctors) authorized to possess and produce marihuana under the *MMAR*;

To distribute marihuana for medical purposes subject to the provisions of the *MMAR* on a doctor's prescription through regulated existing pharmacies as is the current policy with all other prescribed medication.

To require people authorized to possess or produce marihuana to provide safe storage and compliance with safety standards when involved in production/cultivation;

To specify in the legislation that persons authorized to possess marihuana, when consuming, do so in an environment that does not affect other people or infringe on their right not to be subjected to the effects of an illegal substance, specifically not in public**.**

To fully fund a comprehensive national research project that will clearly establish whether or not there are any medicinal benefits to be derived from marihuana use, in particular, through smoking.

Resolution 12/2003

MARIHUANA FOR MEDICAL PURPOSES

COMMENTARY:

Since the Minister of Health's response to the use of "Marihuana for Medical purposes", there has been considerable anxiety from law enforcement in the governance of marihuana legal accessibility, authorization to possess and grow and accredited identification of authorized patients. This resolution will serve to identify the unresolved law enforcement issues.

Resolution 13/2003

SUPERVISED INJECTION DRUG SITES

Submitted by the Drug Abuse Committee

WHEREAS it is the position of the CACP, Drug Abuse Committee that the Minister of Health incorporate the following issues into the application process prior to authorizing the establishment of Supervised Injection Sites (S.I.S.):

- any pilot sites must be independently audited nationally and the results made public.

- a renewed, appropriately resourced National Drug Strategy framework, which includes prevention, education, research, rehabilitation and enforcement.

- the inclusion of scientific research methodology and instruments, such as the Canadian Institute for Health Research's (CIHR) rigorous threshold for clinical trials.

- clear and objective terms and conditions, such as; a time sensitive framework, a limited and targeted site selection, similar for example, to the pilot Drug Treatment Court project.

- ongoing evaluations which are conducted independent of the applicant.

- a feasibility study requirement to confirm the identified need and full support, including the development of protocols for key stakeholders.

- that the police be provided with access to a 24 hour, 7 days a week database that will confirm individuals as valid participants to the site as well as whether they are regular attendees to the site.

- the development of a communication strategy with key stakeholders: social, medical, counseling, law enforcement, the community and Canadians at large.

- Health Canada-led risk assessment, liability and training issues for staff and volunteers within an S.I.S.

- an evaluation of the impact on the community, such as: violent and property crime victimization, social and physical disorder, resistance or support from local citizens and businesses and zoning issues; and

WHEREAS some members of the CACP Drug Abuse Committee sat on the Federal, Provincial, Territorial Committee on Injection Drug Use and participated in discussions raising concerns about collateral issues. These discussions occurred prior to the preparation and release of a report in 2001 by all Ministers of Health titled **"Reducing the Harm Associated with Injection Drug Use in Canada";** and

WHEREAS the CACP, Drug Abuse Committee uses the term "**Supervised Injection Sites"** in place of the term "**Safe Injection Sites"** given that there is no known safe means of injecting illegal drugs; and

WHEREAS in December 2002, the Parliamentary Committee on the Non Medical Use of Drugs issued their final report complete with recommendations. In Recommendation #23, **"With regard to safe injection facilities, the Committee recommends that the Government of Canada remove, any federal regulatory or legislative barriers to the implementation of scientific trials and pilot projects, and assist and encourage the development of protocols to determine the effectiveness of safe injection facilities in reducing the social and health problems related to injection drug use"; and**

WHEREAS Health Canada issued a document entitled "**Draft – Interim Guidance Document on Pilot Safe Injection Sites"** to receive applications for an exemption under Section 56 of the *Controlled Drugs and Substances Act* for Safe Injection Facilities.

WHEREAS the CACP, Drug Abuse Committee advised the Minister of Health on December 16, 2002 that the CACP Drug Abuse Committee could not support the proposed framework as it then was, given the serious unresolved concerns affecting not only the police, but the community at large; and

WHEREAS on June 24, 2003 Health Canada approved in principle the Vancouver Coastal Health Authorities' application for an exemption under Section 56 of the *Controlled Drugs and Substances Act* to launch a supervised injection site pilot research project. This approval was accompanied by 1.5 million dollars in funding support for an evaluation over four years.

WHEREAS Health Canada has decided to allow supervised injection drug sites to open prior to adequate treatment facilities (resources) being available,

THEREFORE BE IT RESOLVED that supervised injection sites should only be considered as a last resort, and;

BE IT FURTHER RESOLVED that the CACP not support pilot supervised injection sites until the Minister of Health can ensure that adequate treatment programs including, but not limited to, effective work programs, counseling and housing in the area being considered for a Supervised Injection Site are in place, and;

BE IT FURTHER RESOLVED that the presence of these programs be the first test before an application is considered and/or approved, and;

BE IT FURTHER RESOLVED that the CACP urges the Minister of Health to incorporate the issues identified by the CACP Drug Abuse Committee into the application process prior to authorizing the establishment of supervised injection sites, and;

BE IT FURTHER RESOLVED that the CACP urges the Minister of Health to be mindful that the final decision to establish a pilot supervised injection site is subject to challenges and judicial review and that due diligence with respect to risk management, in ensuring safer and healthier communities including resolution of all concerns identified by law enforcement agencies that have jurisdiction (ie. federal, provincial and municipal).

Resolution 13/2003

SUPERVISED INJECTION SITES

COMMENTARY:

Another Health Canada announcement of allowing for the operation of "Supervised Injection Drug Sites" will impact on policing. As prominent stakeholders in the potential success of these sites, law enforcement calls upon the government to ensure public and community safety through effective regulations and review of site applications and procedures.

Resolution 14/2003

DRUG RECOGNITION EXPERTISE

Submitted by the Drug Abuse Committee

WHEREAS impaired driving is the leading criminal cause of death in Canada with approximately 1,500 fatalities resulting from impaired driving each year, 75,000 Canadians are impacted by impaired driving annually; and,

WHEREAS a Manitoba student survey on the prevalence of drug use indicated that young people were more likely to **"toke and drive"** than "**drink and drive"**; and,

WHEREAS estimates indicate a range of 5% to 12% of impaired driving in Canada is due to drug impairment; and,

WHEREAS the Government of Canada introduced Cannabis Reform Legislation on May 27th, 2003 which proposes to lessen the penalties for unlawful possession of 15 grams or less of cannabis marihuana, or 1 gram or less of cannabis resin; and,

WHEREAS diverse opinion throughout the world about cannabis use, public opinion, controversy, and speculation about legislative change and use of the term "**decriminalization**" and many other factors have resulted in confusion about the harm from cannabis use; and,

WHEREAS observable skills and techniques known as **"Drug Recognition Expertise"** have been developed and are being used to identify the presence of four categories of drugs in the human body; and,

WHEREAS police officers in the United States, and to a very limited extent, in Canada, who are certified to use the skills are competent to apply the skills in the detection of drug impaired driving; and,

WHEREAS the Government of Canada on May 27th, 2003 announced, through the Ministers of Health and Justice and the Solicitor General of Canada, a renewed National Drug Strategy which significantly under funded Drug Recognition Expertise (D.R.E.) training by identifying only $910,000.00 over five years for all of Canada; and,

WHEREAS amounts/levels of various drugs in the bloodstream have not been established for legal impairment and offences have not been identified as in the alcohol category offence of **"Drive Over 80 mg"**; and,

WHEREAS current federal legislation for impaired driving does not legally require a driver to submit to field sobriety testing for drivers suspected of drug impairment, testing for which would be essential; and,

WHEREAS there are no roadside screening devices in Canada presently certified for use in drug impaired driving enforcement; and,

WHEREAS police officers do not presently have the authority to temporarily suspend the licence of a driver they reasonably suspect is impaired by drugs. However, provincial/territorial legislation in Northwest Territories and British Columbia allows for a 24 hour suspension, as per s.215 of the *Motor Vehicle Act* of British Columbia and s.116 of the *Motor Vehicle Act* of the Northwest Territories.

THEREFORE BE IT RESOLVED that the CACP urges the Minister of Justice and Attorney General to do the following:

Enact legislation requiring a driver suspected of driving while impaired by alcohol or drugs to submit to **"Field Sobriety Testing for Drug Recognition".**

Enact legislation allowing for a mandatory blood sample to be taken, including using reasonable force, for evidentiary purposes.

Enact legislation authorizing a police officer to temporarily suspend the driver's licence for 24 hours for a person suspected, of driving while drug impaired, and;

BE IT FURTHER RESOLVED that the CACP support for cannabis reform is contingent upon technology and training being in place to allow front line officers to appropriately assess the level of impairment by drugs.

Resolution 14/2003

DRUG RECOGNITION EXPERTISE

COMMENTARY:

Due to an increase in drug use, public's perception of liberalization of drug laws and the Government proposed Cannabis Reform Legislation, there is an added burden on policing which requires necessary training in drug recognition and effective legislative amendments to deal with the onset of drug impairment. The resolution addresses these concerns.

Resolution 15/2003

RESPONSABILITIES OF HEALTH CANADA UNDER THE CDSA

Submitted by the Drug Abuse Committee

WHEREAS Health Canada is responsible for all inspections of licensed manufacturers, producers, wholesalers and distributors of chemical products covered by the CDSA for their potential use as precursor chemicals; and,

WHEREAS Health Canada is responsible for the licensing approval and revocation of individuals and/or organizations authorized to grow hemp for commercial purposes; and,

WHEREAS Health Canada is responsible for the licensing approval and revocations of individuals including third parties to grow and possess specific amounts of cannabis for medical purposes; and,

WHEREAS Health Canada is ultimately responsible and has a mandate to work with the Colleges of Physicians and Surgeons in addition to the Registrars of Pharmacies to monitor, investigate and reduce the incidents of double doctoring and the misuse of pharmaceutical products for illicit purposes; and,

WHEREAS Health Canada is responsible for the issuance of authority under Section 56 of the *CDSA* for supervised injection sites for medical and research purposes; and,

WHEREAS all individuals, groups and/or commercial entities must conform to prescribed regulations, terms and conditions related to their particular approval or exemption under the *CDSA* and Health Canada is the lead Agency responsible to ensure the integrity and compliance to these conditions; and,

WHEREAS Health Canada has few, if any, resources committed to ensuring compliance to the CDSA and its companion regulations and enforcement of the regulations is not being actively pursued or this responsibility is de facto falling in the hands of the police; and,

WHEREAS Health Canada's Office of Controlled Substances, that had in excess of 120 Inspectors, is no longer staffed for Inspection purposes.

THEREFORE BE IT RESOLVED that the CACP calls upon the Minister of Health to immediately review the scope of that Department's role in ensuring adequate compliance, verification, and enforcement of the *CDSA* and its regulations; and,

That the Minister of Health makes public the results of that review and the existing resources that are available to meet her mandate and where that is insufficient, to move aggressively to rectify this serious deficiency; and,

That the Ministry of Health (should it be established that they cannot fulfill their mandate) turns over the responsibility, by mandate, for these activities to law enforcement with appropriate funding.

Resolution 15/2003

RESPONSABILITIES OF HEALTH CANADA UNDER THE CDSA

COMMENTARY:

Drugs have been at the forefront in the past year. Both the Senate and Parliament have struck committees examining drug issues and tabled reports / recommendations. Health Canada has taken a lead role in the renewal of Canada's Drug Strategy. However, over time, there seems to have been a deterioration in the ability of Health Canada / CDS secretariat to meet its role and responsibilities in their mandate. This resolution calls on the Government to implement a review and effect appropriate adjustments.

Resolution 16/2003

NEEDS IN THE BATTLE AGAINST ORGANIZED CRIME

Submitted by the Organized Crime Committee

WHEREAS the Canadian Association of Chiefs of Police continues to be concerned about the significant advances of organized crime in Canada, and;

WHEREAS organized crime enterprises represent an escalating threat to public safety and the economic stability of Canada, and;

WHEREAS there is an absence of required resources, effective organized crime legislation and processes available to law enforcement,

THEREFORE BE IT RESOLVED that the CACP undertake to determine the gaps between the current level of threat from organized crime, existing tools and resources dedicated to law enforcement, other components of the criminal justice system, and those that are deemed necessary to effectively detect, disrupt, dismantle and prevent organized crime enterprises operating in Canada, and;

BE IT FURTHER RESOLVED that the CACP petition the Federal and Provincial Governments to provide a favourable response to address the gaps identified in order to provide optimum safety and security for Canadians and ensure our economic well being.

Resolution 16/2003

NEEDS IN THE BATTLE AGAINST ORGANIZED CRIME

COMMENTARY:

Over the years the International law enforcement community has achieved many notable successes in the fight against organized crime, however, much remains to be done. The Organized Crime Committee of the CACP has been working towards improved legislation and processes, resourcing of specialized units targeting organized crime as well as greater consistency and coordination of enforcement at the national level.

One of the major challenges faced by law enforcement in Canada is the lack of an accurate threat assessment in order to identify the most credible organized crime priorities that will provide decision makers with the information necessary to initiate targeted enforcement projects that also include discretionary enforcement, all of which is intelligence driven.

The CACP Organized Crime Committee is proposing to the members the adoption of a national organized crime threat assessment strategy.

Resolution 17/2003

STRATEGY FOR ORGANIZED CRIME INVESTIGATIONS

Submitted by the Organized Crime Committee

WHEREAS there has been an evolution of police strategies during the last decade in regards to the fight against organized crime, and;

WHEREAS the police community across Canada has recognized the need for organized crime enforcement to be "Intelligence Led", and;

WHEREAS Criminal Intelligence Service Canada (CISC) has produced the first threat assessment of Canadian organized crime groups, and;

WHEREAS the threat assessment represents the end product of all our efforts in the criminal intelligence field, and;

WHEREAS Canadian law enforcement agencies consider the collection and sharing of criminal intelligence a critical element in the strategic fight against organized crime.

THEREFORE BE IT RESOLVED that the CACP Organized Crime Committee be mandated to develop a 'National Intelligence Led Model' protocol for the strategic investigation of organized crime enterprises operating in Canada, and;

BE IT FURTHER RESOLVED that the 'National Intelligence Led Model' be submitted to the CACP members for adoption at the 2004 CACP annual conference.

Resolution 18/2003

EX-GRATIA PAYMENTS MADE IN RELATION TO THE EXECUTION OF COURT ORDERS

Submitted by the Organized Crime Committee

WHEREAS Canadian law enforcement and national security agencies annually obtain and execute thousands of Court Orders in relation to private residences, businesses and institutions, and;

WHEREAS some telecommunications service providers are demanding payment of fees by law enforcement and national security agencies in relation to the execution of Court Orders, including Orders associated with the lawful interception of private communications, and;

WHEREAS there is no practical or legal distinction between a Court Order that requires the assistance of a telecommunications service provider in the execution of a lawful intercept Authorization or any other type of Court Order such as a search warrant that requires third party assistance, and;

WHEREAS by volunteering to make *ex gratia* payments to telecommunications providers with respect to the execution of Court Orders, law enforcement and national security agencies establish an inappropriate expectation of payment in relation to all third party assistance Orders made by the Courts, and;

WHEREAS the vast majority of organized crime investigations are conducted with the aid of electronic surveillance techniques such as the lawful interception of private communications, therefore the investigations themselves may be affected by the ability of the law enforcement agency to make the aforementioned *ex gratia* payments.

THEREFORE BE IT RESOLVED that all Canadian police agencies who are not presently bound by contract, agree to the cessation or suspension of all *ex gratia* payments of any claim associated with assistance rendered in relation to the execution of any Court Orders until the matter is resolved through the legislative process; and;

BE IT FURTHER RESOLVED that the Canadian Association of Chiefs of Police urges the Minister of Justice to take immediate action to clearly prohibit the charging of “fees” for the execution of Court Orders.

Resolution 18/2003

EX-GRATIA PAYMENTS MADE IN RELATION TO THE EXECUTION OF COURT ORDERS

COMMENTARY:

NOTE: This resolution concerns *ex gratia* payments, meaning a voluntary payment that is not compelled by operation of law (ex. contract or statute).

Law enforcement and national security agencies conduct investigations with the aid of many diverse techniques. Lawful access is one such method. In the context of telecommunications, it consists of the interception of communications and the search and seizure of information carried out pursuant to judicial orders. In Canada, such powers are prescribed in the *Criminal Code* and other acts of Parliament such as the *Competition Act.* These powers are carefully limited to recognize and protect the rights of people in Canada, including the right to privacy and other rights guaranteed by the *Canadian Charter of Rights and Freedoms*.

For law enforcement and national security agencies, lawful access is an essential tool in the prevention, investigation and prosecution of serious offences and the investigation of security threats to Canada. Deregulation of the telecommunications industry, new and emerging technologies, and costs associated to the development of software and mechanisms to deliver such information has jeopardized law enforcement's abilities to continue using the valuable tool of lawful access.

Recently, certain telecommunications service providers have attempted to charge costs to police agencies in relation to their compliance with the assistance provisions contained in court orders (specifically, search warrants). Law enforcement agencies must realize that, by agreeing to voluntarily pay these claims on an *ex gratia* basis, they are also tacitly agreeing to pay for assistance provided in relation to all court orders (e.g., banks, insurance companies, hospitals, etc.). The financial impact of this decision on policing will be significant. Also, the equitable administration of justice will be affected by the police agencies' ability to pay.

Most, if not all organized crime investigations employ lawful intercept techniques. Having to pay for the execution of court orders will seriously impact all criminal investigations but given the frequency with which these techniques are used, organized crime investigations will be impacted to a greater extent.

It is recommended that for those Agencies who are concerned about the cessation of *ex gratia* payments, they consider placing the funds in question into a separate account until this matter has been resolved, either by the courts or through the legislative process.