

CACP Law Amendments Committee

2015-2016 Annual Report

President Weighill:

As co-chairs of the Law Amendments Committee (LAC), we are pleased to present to you the annual report of the LAC for the year 2015-2016.

During the past year the LAC continued to focus on the following legislative priorities:

- Spencer decision on warrants for basic subscriber information – working on a legislative response
- Bill C-13 (*Protecting Canadians from Online Crime Act*)
- Encryption concerns – legislative reform being sought
- Amendments to the *Criminal Code* to expand offences provided for within s.183 CC
- Amendments to the *Canada Post Corporation Act* to allow for seizures for more crimes
- Amendments to the *Identification of Criminals Act* to provide for fingerprinting on arrest
- Amendments to the *Criminal Code* to “shut-down” dial-a-dope phone numbers
- Examining options under the *Explosives Act* to prevent the misuse and criminal/terrorist use of reactive targets

Each of the above priorities has a champion assigned to it and resolutions have been forwarded with regard to most of them. An updated “responsibilities list” is attached outlining the various responsibilities and tasks assigned to each member of the LAC. The above priorities will remain for 2016-2017.

Although few Bills relating to policing priorities were introduced during parliamentary session 42-1 (2015-12-03 to present), the LAC remained very active in publicly voicing CACP’s positions on law reforms:

- In February 2016, CACP was invited by the Standing Senate Committee on Legal and Constitutional Affairs, to speak to the issue of delays in criminal proceedings. LAC was identified as the appropriate resource and A/Commr Joe Oliver appeared before the Committee on February 25¹. A/Commr Oliver described the serious nature of the issues and itemized a number of factors that contribute to delays, as well as initiatives that would minimize them.
- In June 2016, CACP was again invited by the Standing Senate Committee on Legal and Constitutional Affairs to speak to Bill S-217 (*An Act to Amend the Criminal Code (detention in custody)*). This private member’s bill was first introduced by former MP Brent Rathberger following the murder of RCMP Cst David Wynn and wounding of Aux. Cst Derek Bond after the release of career criminal Shawn Rehn. The Bill was re-introduced by Senator Bob Runciman during the current session of parliament.

¹ <http://www.parl.gc.ca/content/sen/committee/421/LCJC/03EV-52407-e.HTM>

LAC members Det/Supt. Dave Truax (OPP) and Rachel Huntsman (RNC), as well as OPS counsel Lara Malashenko appeared for CACP on June 16.² While supporting the objectives of the Bill, they voiced CACP's concerns about feasibility and overreach, and proposed alternative amendments.

The LAC had thorough discussions and consultations with government and association officials on law enforcement issues and possible legislative solutions, including:

- Updates from Public Safety Canada (Trevor Bhupsingh, Director General, Law Enforcement and Border Strategies directorate);
- *Going Dark* (Gwen Boniface, Deputy Executive Director, International Association of Chiefs of Police);
- Cybercrime and lawful access issues (Karen Audcent, Senior Counsel and Team Leader, Justice Canada);
- Canada-US Preclearance Agreement (Heather Richardson, Director, International Affairs Division, PS, and other reps. from Justice Canada and RCMP);
- Expansion of s. 183 CC offences (Karen Audcent, Senior Counsel and Team Leader, Justice Canada) followed by a meeting with A/Commr Joe Oliver and Det/Supt. Dave Truax at Justice Canada in Ottawa; and
- Victim Justice Network (Priscilla de Villiers, Executive Director).

LAC also received briefing from police experts on a variety of law enforcement issues and challenges including: creation of a publically available High Risk Child Sex Offenders database in accordance with Bill C-26 (*Tougher Penalties for Child Predators Act*), impact of encryption on criminal investigations, public safety threat posed by reactive targets (aka exploding tartgets), modernization of the RCMP's Central Communications Intercept Systems (CenCIS III); the hidden internet (Darknet), peer-to-peer (P2P) file sharing in child sexual exploitation cases, and creation of new humanitarian indices following amendments to *DNA Identification Act*.

The Eighth National Reinventing Criminal Justice Symposium took place in Montreal in January 2016. The LAC assisted in organizing this event and several members participated. Former LAC co-chairs Francis Brabant and Murray Stooke, and D/Comm Peter Henschel represent the CACP and the police community on the Symposium's Steering Committee. This year's theme was *Innovation in Criminal Justice Response to Vulnerable Persons*. The discussion centered on how the criminal justice system responds to vulnerable persons: those with significant disadvantages due to historical or social factors, mental health, or addiction, who are disproportionately likely to be offenders or to be victims of crime. LAC members in attendance, as well as other law enforcement officials contributed greatly to the discussion. The [final report](#) is available online.

Through the LAC, the CACP retains two seats on the Justice Efficiencies and Access to Justice Steering Committee. These positions are held by former LAC co-chairs Francis Brabant and Murray Stooke. This is a very important Committee which is closely linked with the development of criminal law and public policy in Canada. Committee membership

²<http://senparl.vu.parl.gc.ca/XRender/en/PowerBrowser/PowerBrowserV2?fk=431371&globalStreamId=3&useragent=Mozilla/5.0>

includes FPT deputy ministers, chief judges, bar associations and police representatives.³ The committee formed 4 subcommittees where CACP is represented: Bail, Intersection of Family and Criminal Justice Systems, Alternative Measures and Preliminary Inquiries. The LAC was canvassed in January 2016 to identify best practices relating to the intersection of family and criminal justice systems.

The LAC coordinated an intervention on behalf of the CACP before the Supreme Court of Canada in *R. v. Saeed* (SCC File 36328), which was supported by the Edmonton Police Service (D/C Greg Preston and Det. Dave Lynass) and deals with search incident to lawful arrest of complainant DNA on the body of a suspect (penile swabs). On June 23 2016, the SCC rendered judgment⁴ and not only dismissed the accused's appeal, but reversed the majority judgement of the ABCA on the s.8 violation, and decided that the search did not. The majority distinguished *Stillman* and recognized an adapted power to search. The decision and CACP's intervention was widely reported in the national media, including the Globe and Mail⁵ and CBC News.

Sincerely,

Greg Preston

Joe Oliver

³ <http://www.justice.gc.ca/eng/rp-pr/csj-sjc/esc-cde/accuse/index.html>

⁴ 2016 SCC 24 : <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16023/index.do>

⁵ <http://ecocidealert.com/?p=20064>

Highlights for the Year 2015/2016

Appearances before the Standing Senate Committee on Legal and Constitutional Affairs

- February 25, 2016: Delays in Criminal Proceedings
- June 16, 2016: Bill S-217

Discussions and consultations with government and association officials

- Updates from Public Safety Canada (Trevor Bhupsingh, Director General, Law Enforcement and Border Strategies directorate);
- *Going Dark* (Gwen Boniface, Deputy Executive Director, International Association of Chiefs of Police - IACP);
- Cybercrime and lawful access issues (Karen Audcent, Senior Counsel and Team Leader, Justice Canada);
- Canada-USA Preclearance Agreement (Heather Richardson, Director, International Affairs Division, PS, and other reps. from Justice Canada and RCMP);
- Expansion of s. 183 offences (Karen Audcent, Senior Counsel and Team Leader, Justice Canada) followed by a meeting with A/Commr Joe Oliver and Det/Supt. Dave Truax at Justice Canada in Ottawa; and
- Victim Justice Network (Priscilla de Villiers, Executive Director).

Symposium: Re-inventing Criminal Justice

The 8th Symposium – themed Innovation in Criminal Justice Response to Vulnerable Persons – was held in January 2016 in Montreal. The LAC assisted in organizing this event and several members participated. Former LAC co-chairs represent the CACP on the Symposium’s Steering Committee. As in past, the 2016 Symposium included representatives of the judiciary, Crown Prosecutors, defence counsel, senior government officials and the police.

Other 2015-2016 Work

- LAC review, development, and presentation of the 2016 resolutions to the CACP
- Ongoing work on the ticketing option for marijuana and potentially other offences
- *Spencer* legislative aftermath
- Seek amendments of the *Canada Post Corporation Act* allowing to make seizures for contraband being sent through Canada Post
- Seek amendments to the *Criminal Code* to address (and remove) distribution / publishing of harmful / offensive images of child abuse
- Seek amendments to the *Identification of Criminals Act* to provide for fingerprinting on arrest

CACP Intervention Program

The CACP continues to intervene in cases before the Supreme Court of Canada. The purpose of such intervention is to provide to the Court a police perspective and, where appropriate, provide submissions on the impact that might flow from a change in the law. The views of the CACP in this regard have been welcomed.

During this reporting period, with the support of the CACP Board of Directors, the LAC facilitated intervener status on behalf of the CACP in one case - see above for greater details. On June 23 2016, the SCC rendered judgment and not only dismissed the accused's appeal, but reversed the majority judgement of the ABCA on the s.8 violation. The decision and CACP's intervention was widely reported in the national media, including the Globe and Mail and CBC News.

Bills Update

See attachment

Meetings

August 2015, Quebec City

December 2015, Ottawa

May 2016, St-John's

Membership

See attachment