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GAZETTE

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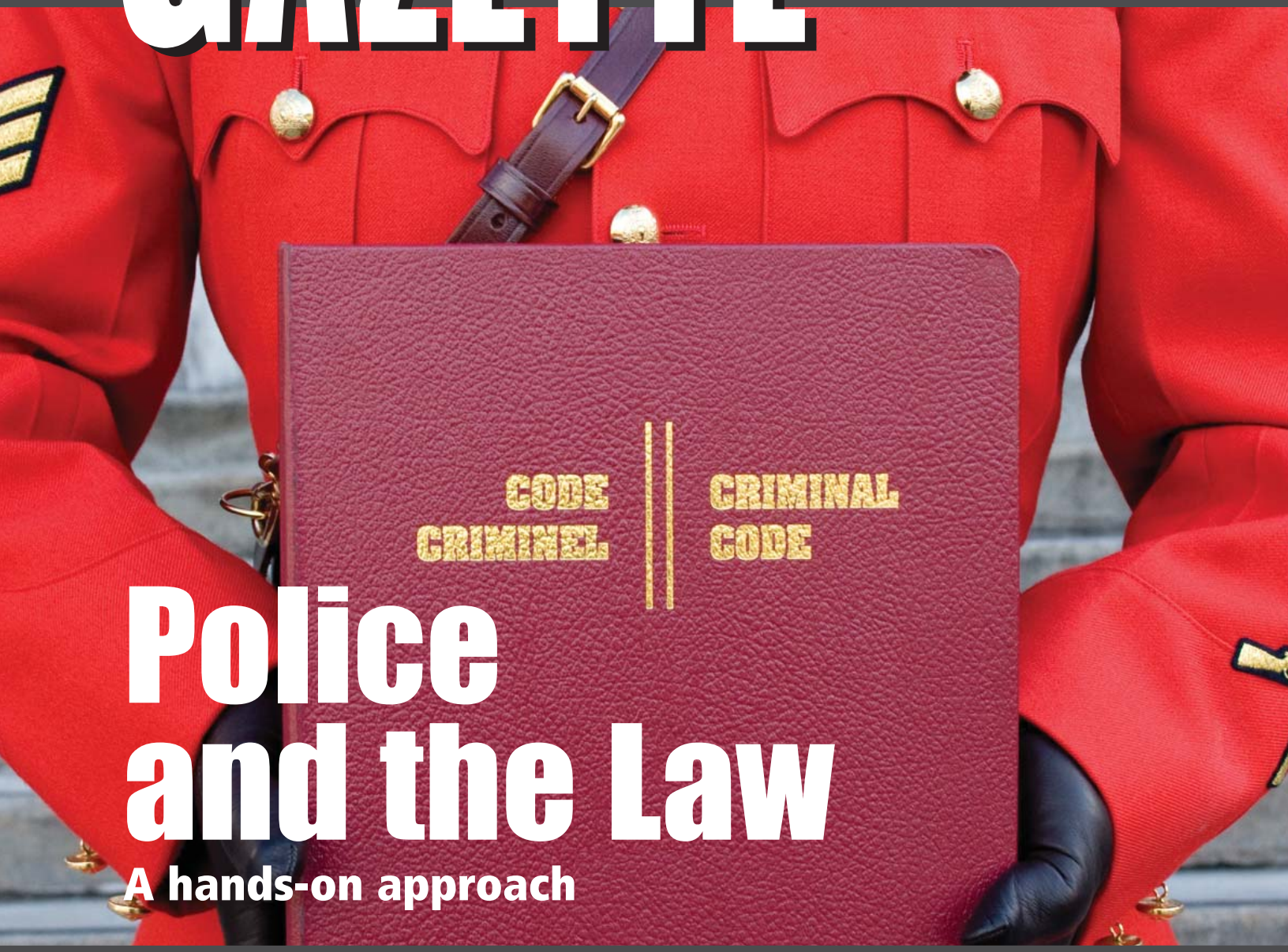

Police and the Law

A hands-on approach

Mega-trials
Beating the clock on disclosure

Anti-biker laws
Curbing crime in South Australia

Emotional survival
Tips for police on coping with stress

Royal Canadian Mounted Police | Gendarmerie royale du Canada

Canada

Police and the law

When we speak of "the law," we certainly think of law makers, police, Crown attorneys and judges, but not often about how these separate entities work together. In this issue, we take a closer look at how police and the work they do supports the legal system, and vice versa — often with great results.

We begin with an article by Gazette writer Caroline Ross on the challenges that police face in providing full and timely Crown disclosure for a complex mega-trial like Air India. She highlights some innovative partnerships that helped police and prosecutors "beat the clock" on disclosure — a daunting task for those involved.

It's a definite advantage to have dedicated Crown attorneys working directly with police specialty units. In our second cover article, we look at how this arrangement has benefited three RCMP units.

Caroline Ross also explores how effective sex offender legislation can enable proactive information sharing between different countries and jurisdictions. Read about four leading examples from around the world.

From the RCMP's Legal Services team, find out how the Charter applies to Canadian police conducting extraterritorial investigations abroad. The two cases cited show that the rules are not always as straight forward as you might think.

When police are called to an incident, how they should respond is not always black or white, and depends on the often complex changing dynamics of the situation. "In a society where laws are in place to protect citizens from violence, legal accommodation must be made for police to use reasonable force in the course of their duties." So explains Brenda Zanin, a communications expert at the RCMP, who takes readers through the legal responsibilities and and factors that police must consider, including the tools available to them, when assessing how to respond appropriately in each encounter.

Meanwhile, RCMP Insp Stephen Thatcher highlights another legal topic of interest to police: negligent investigation. He draws upon the Supreme Court of Canada's decision in Hill vs. Hamilton-Wentworth Police Services Board and describes how this decision could impact police across Canada.

From our U.S. partners, we hear from Bobbi Bernstein, deputy chief, Criminal Section at the Department of Justice. She outlines the successful collaboration between police agencies and prosecutors in the Avenues Gang case — the first time U.S. federal hate crime statutes were used to prosecute racially motivated crime by street gangs. We also get 10 useful tips from former U.S. prosecutor Val Van Brocklin on how to testify convincingly in court. And former U.S. federal prosecutor John Kroger talks about his book *Convictions* and the seven years he spent prosecuting Mafia capos, drug kingpins and Enron executives.

From South Australia, we learn how new legislation in that region combines civil and criminal law to disrupt and restrict the activities of criminal organizations, their members and their associates. Detective Chief Inspector Damian Powell, South Australia Police, explains how prevention initiatives within the new act will help police there better tackle biker gangs.

Finally, Nick Taylor, a senior lecturer in law at the University of Leeds, looks at the prolific use of video surveillance cameras in the United Kingdom. He explores the legal implications of using covert and overt cameras in public places and the fine balance between privacy and security.

With these articles and many others on such topics as policing and stress, demographic trends, veterinary forensics and child advocacy, we hope you'll find something of interest in our first issue of 2009.

Katherine Aldred

More to explore on police and the law from the Canadian Police College Library

www.cpc.gc.ca/library_e.htm

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Cover

Departments

ON THE COVER

Whether it's ensuring disclosure requirements are met on time or that an investigation is soundly conducted, heeding the right legal advice or knowing the limits in an international investigation, when it comes to policing and the law, it pays to go by the book.

Chad Robertson

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TECHNOLOGIES ENHANCE CADET TRAINING

The Cadet Training Program at RCMP Depot Division has embarked on a technology-driven training initiative that will better prepare cadets for high-stress police work and improve officer skill retention over the long term.

The project involves several cutting-edge technologies acquired in early 2008. Eight virtual driving simulators expose cadets to emergency vehicle operations that can't be safely replicated in the real world, while several interactive use-of-force simulators challenge cadets to defuse tense situations that involve uncooperative or armed suspects. Depot training staff will employ additional equipment to track eye-gaze patterns and physiological responses like heart rate and skin temperature as cadets navigate the scenarios.

"The most difficult thing to train for is the acute kind of crisis that happens unanticipated, on the spur of the moment, when somebody on the street pulls a weapon on you or takes a severe action that you have to respond to instantaneously," says Dr. Garry Bell of Depot Training Innovation and Research. "With this equipment, (we're) trying to expose cadets in a very integrated, seamless way to experiences that reflect the full spectrum of response, including the transition between low-risk situations and extreme, high-demand police work."

The added physiological feedback will help cadets learn how their bodies react under heavy stress, says Bell, so they can better anticipate and manage those reactions in the real world.

But the training initiative doesn't end there.

"Another big factor with the new technology is that we can record individual data," says Insp Gerry Gourlay, officer in charge of Skills Training at Depot. "Over the years, we want to follow the cadets as they're constables, to see how well their skills are maintained in the field."

The resulting data should help Canadian police forces improve officer training and recertification processes, says Bell. The data will also allow RCMP Depot Division to verify training baselines and assess the value of the training simulators before employing them more widely.

Courtesy RCMP Depot Division

A cadet practises winter driving techniques in one of eight new virtual driving simulators at the RCMP training depot in Regina, Saskatchewan.

The initiative is a partnership between the RCMP and the Canadian Police Research Centre, with input from an advisory board of Canadian and American police forces.

— Caroline Ross

INTERNET SAFETY, YOUTH-APPROVED

Want to know the best ways to protect kids from online exploitation? Ask the kids.

That was the purpose behind the first International Youth Advisory Congress (IYAC) on online safety and security, held in London, England, from July 17 to 21, 2008. Some 150 young people from 19 countries came together to learn how government, law enforcement, industry, media and educational institutions are protecting kids from online exploitation, then drafted their own recommendations for what each sector could do better.

"The kids came up with some awesome ideas," says RCMP Cst Lois Cormier, who attended the Congress as a chaperone to the 20 Canadian delegates, aged 14 to 16. "There was no sugar coating. What they had to say was straight to the point, and everything they want is doable."

Key recommendations include placing a standard "report abuse" button on all web browser toolbars and social networking sites, adding Internet safety components to school curriculums, educating parents about Internet safety, and requiring countries to enact stiff, consistent criminal sentencing for online predators.

Over 20 such recommendations will be amalgamated in the Children and Young Persons Global Online Charter, which will be submitted to the United Nations Convention on the Rights of the Child in 2009.

Peter Nikic

Twenty Canadian students aged 14 to 16 shared ideas with young people from 18 other countries at the first International Youth Advisory Congress on online safety and security, held last July in London, England.

For Canadian delegates Tasha Riddell and Alex Morgan, both 16, the conference highlighted the need to spread the word about Internet safety, particularly among younger children. Riddell and Morgan each plan to hold information sessions at their local schools, and Morgan hopes to network with his IYAC peers to create something even bigger.

"I'd like to make an international online safety day," says Morgan. "There's a lot of security and infrastructure in place on the Internet, but if no one knows about it and no one knows how to use it, then it's just dead weight. It's like it's not even there."

IYAC is an industry-sponsored initiative led by the United Kingdom's Child Exploitation and Online Protection Centre, with support from the Virtual Global Taskforce of law enforcement agencies against online child abuse.

— Caroline Ross

MOUNTIE'S MEMOIRS MAY ALTER HISTORY

The personal collection of one of Canada's first and most influential mounted policemen is back in Canada, and history could be rewritten as a result.

Hundreds of thousands of letters, diaries, photos and other items belonging to Mountie Sam Steele (1849–1919) were repatriated from England to Canada on June 19, 2008, after being held by Steele's descendants for almost 90 years. The collection went to auction in 2005 and was purchased through a public–private funding arrangement co-ordinated by the University of Alberta. It is a treasure trove of Canadiana.

"(Sam Steele) is a person who literally had his hand in almost every significant event related to the opening of the Canadian West," says Ernie Ingles, Vice-Provost and Chief Librarian at the University of Alberta. "That element of Canadian history will probably be revisited through this collection."

Steele was the third man to join the new North West Mounted Police — the precursor to the RCMP — in 1873. He helped lead the Great March West, participated in the Riel Resistance, policed the construction of the Canadian Pacific Railway, and kept order during the Klondike gold rush before entering a military career in 1900.

Steele was a keen observer of his time, and historians are particularly intrigued by his almost daily letters to his wife, many of which contain observations different from his official dispatches.

Supt Greg Peters, Director of the RCMP Strategic Partnerships and Heritage Branch, had a chance to read some of those letters during a visit to England in 2005.

"We read (Steele's) thoughts on the prime minister, some personal issues he had with Lord Strathcona," says Peters. "This (collection) will really change the face of Canadian history."

Most of the collection will be housed at the University of Alberta Libraries, where items will be digitized and placed online for free public access.

Some 60 physical artifacts — including Steele's medals and uniforms — will reside at the Glenbow Museum in Calgary, Alta.

RCMP

Born in Ontario, Sam Steele was one of Canada's first mounted policemen and a keen observer of his time.

The collection also covers Steele's military career, during which he commanded Lord Strathcona's Horse and helped establish the South African Constabulary. Steele died of influenza in England in 1919.

— Caroline Ross

MILESTONE YEAR FOR DNA DATA BANK

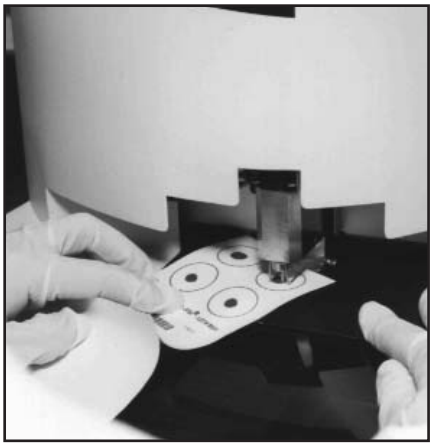
Canada's National DNA Data Bank (NDDB) celebrated two milestones in 2008.

On January 1, it welcomed full proclamation of Bill C-18, a legislative amendment that enables Canadian police to collect DNA samples from a wider range of Criminal Code offenders. On August 29, the NDDB recorded its 10,000th "offender hit" — or match between the DNA profile of a convicted offender and a forensic sample obtained from a crime scene.

"(The NDDB) is one of the best tools we have today to exonerate the innocent as well as assist in conviction of the guilty," says Dr. Ron Fourney, Director of National Services and Research at RCMP Forensic Science and Identification Services. "(The 10,000th hit) demonstrates that the process itself is working. There are terrific partnerships associated with this."

Since beginning operations in June 2000, the NDDB has amassed over 144,500 convicted offender profiles and 44,500 crime scene profiles, all based on DNA samples collected by Canadian police agencies.

Convicted offender samples are processed by the NDDB in Ottawa, while crime scene samples are handled by forensic laboratories operated by the RCMP and the governments of Ontario and Quebec. An agreement with Interpol allows the RCMP to share DNA information in support of international investigations while respecting Canadian privacy and security laws.



RCMP

Bill C-18 is the most recent in a series of legislative amendments designed to enable NDDB operations. The bill increases the number of Criminal Code offences eligible for DNA sampling from 68 to over 250. It also mandates sampling for the 16 most serious offences — including murder, manslaughter and aggravated assault — and increases the sampling frequency for lesser offences such as residential break and enter.

Since Bill C-18 took effect, the NDDB has seen a surge in the number of convicted offender samples submitted for processing. As of August 31, 2008, sampling was up 78 per cent over the previous year, says Dave Morissette, acting RCMP officer in charge of the NDDB.

"The NDDB is like any other bank: the more you have in it, the better interest you have," says Fourney. "Our interest is in public safety."

— Caroline Ross

A case for the dogs?

The emerging field of veterinary forensics

Ever consider bringing a forensic veterinarian into an investigation involving animal cruelty? If not, you might be missing out on some important evidence, says Dr. Melinda Merck, senior director of veterinary forensics with the American Society for the Prevention of Cruelty to Animals. Merck advises American law enforcement on some 50 cases each year, and, as she tells the Gazette's *Caroline Ross, animal cruelty and other crimes are definitely connected.*

ASPCA

Dr. Melinda Merck, forensic veterinarian with the American Society for the Prevention of Cruelty to Animals, uses a forensic illumination light to examine a puppy for bodily fluids and other latent signs of abuse.

What value does a forensic veterinarian bring to a case?

Human crime scene investigators don't know animal behaviour. They can miss significant evidence because they don't know where to look. With a veterinarian either at the scene or evaluating photos or video, they will be able to account for pieces of evidence that may have been missed at the outset.

How does evidence of trauma differ between humans and animals?

Animals don't bruise visibly — not easily. When you do see bruising on the skin, that is from some sort of severe trauma. Animals also have some injuries that are unique to them. With head trauma on the side of the head or the ear, they can get pinpoint hemorrhages in the ear canal lining. Medical examiners don't see that in humans.

What was your last case?

Two nights ago, in Florida, there was a sexual assault of a dog and the guy had taken a video of himself. They needed me to review the tape and discuss the pain and suffering of the animal in order to lay charges.

Is there a correlation between animal cruelty and other crimes?

Yes — huge. Different studies indicate that people who have committed animal cruelty or animal abuse are five times more likely to have committed other violent crimes. They're three times more likely to have drug-related offences. With dog fighting, you always find drugs, and you almost always find illegal firearms. I would say that in over 90 per cent of my cases, there are other charges in addition to animal cruelty and animal abuse. It doesn't surprise me anymore. It's almost like a given that we're going to find something.

How can police officers take advantage of these connections?

It's a warning sign, especially in juveniles. Individuals (who commit animal cruelty) are currently committing other crimes, have committed other crimes, or will commit other crimes. Law enforcement can also use animal cruelty as grounds for a search warrant. I've seen cases where police have a suspected drug dealer and can't get enough evidence for a search warrant, but (the suspects) have dogs chained up outside with no shelter or food or water. The police use animal cruelty as probable cause to get a search warrant, then bust (the suspects) for drug dealing.

> **"Different studies indicate that people who have committed animal cruelty or animal abuse are five times more likely to have committed other violent crimes."**

Does the policing community have any misconceptions regarding veterinary forensics?

I've had several jurisdictions tell me that they have withheld information from the veterinary medical examiner because they worry about bias. They equate a veterinarian — someone who cares about the welfare of animals — with someone who is (pro-)animal rights. But you can't make that assumption. It's our job to be objective, to let the facts and science speak for themselves. If we're not objective, we won't be successful in court.

What is the future of veterinary forensics?

I think we're going to see it (become) more specialized. We're going to see animal crimes units and more links with animal crimes and other crimes. Our (U.S.) federal drug enforcement agency has formed an animal-fighting task force because they realize that if they investigate animal fighting, they're going to get the drugs (associated with it). Eventually, I think we're going to see special prosecutors and special courts, like we do now for juveniles. Animal cruelty cases are very difficult to package and present in court. They're offensive cases. You need a special mindset to deal with that. ■

BEATING the clock on DISCLOSURE

Lessons from the Air India prosecution

By Caroline Ross

In October 2000, the clock started ticking for members of the RCMP Air India Task Force.

Charges had just been laid in the 1985 bombing of Air India flight 182,* and the Vancouver-based task force was under the gun to meet its Crown disclosure requirements.

Specifically, the task force had to sift through 15 years of investigational materials, prepare a file containing all information that might assist the defence in its case, and identify every item that the RCMP was legally required to withhold — and it had to do so in a timely and thorough manner, or risk the chance that the court might stay proceedings based what it deemed to be an unnecessary delay in providing the accused with a fair trial.

"You're talking about a file that was, at the time of the prosecution, about 11 million pages worth of information," says Insp Dan Bond, the task force's disclosure co-ordinator until he became team commander in late 2005.

Not an easy task, but one that the RCMP was able to meet, thanks to some innovative partnerships with the British Columbia (B.C.) Crown prosecution team, the global intelligence community and defence counsel.

The disclosure challenge

Under Canadian case law, the Crown and its agents have a duty to provide (or disclose) all relevant state-held information to defence counsel prior to the start of a criminal trial.

The laws do not apply to two types of information: that which is clearly irrelevant to the case, and that which is subject to claims of privilege. Privilege laws allow police to withhold certain information

on the grounds that disclosing it would compromise the safety, security or operational integrity of the person, organization or country that provided the information.

However, disclosure processes require police and prosecutors to briefly summarize all withheld documents for defence counsel as part of a larger disclosure file. Defence is then free to challenge Crown disclosure during the pre-trial period. If those challenges accumulate to such a degree that the Crown cannot respond without undue delay, the court may decide to stay proceedings on the grounds that the accused person's right to a timely trial has been violated.

The Air India reality

With 11 million pages of information collected over 15 years, and an investigation spanning seven countries, the Air India Task Force and its Crown partners faced a huge challenge in providing full and timely disclosure.

Not only was the volume of information staggering, but much of the material was subject to privilege claims by informants, police and intelligence agencies. Most significantly, the Canadian Security Intelligence Service (CSIS) held a thick intelligence file on the suspects.

To further complicate matters, the Air India investigation was still ongoing and the agencies involved were still assessing their information holdings. New material was constantly coming forward. CSIS, for example, provided the RCMP with 15 years worth of wiretap evidence after the trial began in April 2003.

In fact, the initial Crown disclosure — some 27,900 pages handed to defence counsel in November 2000 — was only a drop in the bucket. Over the next four years, millions more documents would come to light and the Crown would receive an additional 3,000 disclosure requests from defence. If any trial seemed doomed to collapse under the weight of disclosure, it was Air India.

Close communication

Perhaps anticipating the work ahead of them, the RCMP task force and Crown prosecutors began collaborating as early as 1996 to assess the file.

In the months prior to charge approval, the police task force formed a dedicated trial preparation unit that would focus on disclosure and other pre-trial issues. The unit later moved into shared office space with the 15-member Crown prosecution team and a contingent of investigators and lawyers from CSIS. The RCMP installed a copy of its Air India database on a local server, and the parties hunkered down to vet, organize, redact and disclose the file on an ongoing basis.

"There are very good reasons for jurisdictional boundaries between what the investigative group does and what the prosecution team does, but you have to blend those in a big case," says Robert Wright, QC, who led the Crown prosecution team and is now executive director of criminal appeals and special prosecutions for the Attorney General of B.C. "Personalities become a big deal, of course, but you do need lawyers involved early."

The team also brought foreign partners to the table during the pre-trial and trial proceedings. Bond describes how representatives from the FBI spent several months working out of the shared Vancouver office, making real-time decisions on privileged information related to one of the trial's key witnesses, an American.

"Reaching out and having a level of communication early in the process, engaging the agencies that hold the infor-

The initial Crown disclosure — some 27,900 pages handed to defence counsel in November 2000 — was only a drop in the bucket.

> **"The days of arresting everybody, throwing cuffs on them and going on to the next file are over."**
>
> **Insp Kevin MacLeod**

mation within your investigative record — that's paramount to addressing those disclosure issues," says Bond. "It was one of the reasons why we had no significant issues with respect to disclosure that ever placed the trial process in jeopardy."

Partnering with defence counsel

The trial process also had to survive thousands of defence requests to view withheld materials — and many of those materials were as new to police and prosecutors as they were to defence counsel. It was a veritable log jam, says Bond. But Wright had a unique solution.

Under normal circumstances, police and prosecutors would be required to review every disputed document and determine what information could be released to defence. If Crown chose to retain privilege, the defence could apply to the trial judge — or, for claims of CSIS privilege, to the Federal Court in Ottawa — for a court hearing. In the case of Air India, that process would have taken years, says Michael Code, defence attorney for one of the accused and now a professor of law at the University of Toronto. "We were talking about rooms full of materials that the Crown had never looked at or that CSIS was holding and the RCMP hadn't even seen."

So Wright proposed a different plan of attack. With consent from CSIS and other third parties, the Crown allowed the three defence teams to sign undertakings stating that they could review certain materials first-hand, on the condition that they would not take notes, make copies or disclose the information to their clients. Any items of value — and there weren't many in the end, says Code — would be assessed by police and prosecutors on a case-by-case basis.

"Long story short, in these hundreds of thousands of documents, not one application had to be made to Federal Court," says Wright. "It was huge, absolutely huge, in working our way through this process."

But Code stresses that the undertaking system isn't always a viable option for the Crown. "You have to be sure you're dealing with (defence) lawyers of very high integrity, whose undertaking you completely trust."

Air India and beyond

One thing is for certain: major prosecutions like Air India require major resources.

"We have to make sure that we commit sufficient resources to the whole process of disclosure," says Bond, noting that, for police, it's after the arrests are made and the charges are laid that the real work begins.

But it's a constant struggle to find those resources in an era where major cases occur more frequently and qualified officers are in short supply, says Insp Kevin MacLeod, officer in charge of RCMP investigative standards and practices in B.C.

Temporary solutions do exist — like hiring former police officers on civilian contracts, or holding "quick start" meetings to identify and allocate available resources — but the problem won't disappear until officer recruitment and development can keep pace with operational demand, says MacLeod.

And that, he says, could take years. "The days of arresting everybody, throwing cuffs on them and going on to the next file are over." ■

* On June 23, 1985, Air India flight 182, en route from Montreal to New Delhi, exploded in the air off the coast of Ireland, killing all 329 persons aboard. Two B.C. residents were later arrested and charged with planting a suitcase bomb. The incident remains the deadliest case of terrorism in Canadian history.

Managing witnesses in a mega-trial

RCMP civilian member Fiona Flanagan has a unique job: she's in charge of co-ordinating witnesses for most high-risk, high-profile criminal trials involving the RCMP in British Columbia.

And she has no shortage of work. Since 1999, she has managed over 400 witnesses for trials related to the Air India bombing, the Pickton murders and organized crime or gang activity.

"I'm the liaison between the RCMP and Crown counsel to co-ordinate accommodation, transportation and the comfort of civilian and police witnesses," says Flanagan. "I handle all the logistical items that regular members really don't have time to do anymore."

Depending on the case, Flanagan may assist police by serving subpoenas, organizing tabletop and route-planning exercises, or arranging courtroom security. She regularly collaborates with police specialty units, local partners, court services, customs and immigration and the airport authority.

Flanagan also meets with the majority of Crown civilian witnesses before they testify, to familiarize each person with the courtroom and trial processes. And she provides every police witness with an information package specifying the parameters of giving evidence during a major trial — a detail that many officers appreciate, she says.

"I basically empower the witnesses, always emphasizing that I'm not telling (them) what to say, but that (they) have rights in that (witness) box," says Flanagan.

At present, Flanagan operates as a team of one, and her position is a bit of a novelty within the RCMP. But she says her role will become more important as criminal investigations grow in scope and complexity.

"These mega-trials just keep cropping up," says Insp Dan Bond, team commander of the RCMP Air India Task Force. "It's become apparent, at least in this division (B.C.), that we need someone with Fiona's skill set to manage witnesses and help get these cases through court."

— Caroline Ross

Legal advice, close at hand

The advantages of in-house counsel

Sgt Mike Merritt

Crown counsel France Biron (right) discusses an affidavit with IPOC investigators Sgt Taro Tan.

By Caroline Ross

In 2002, when the Toronto-based Integrated National Security Enforcement Team (INSET) was breaking new ground in terms of anti-terrorism investigation, INSET investigators knew their efforts were legally sound.

That's because they had two Crown counsel working right in their office, providing them with real-time advice on tricky issues like handling information from foreign agencies, dealing with national security privilege and applying for wiretap authorizations.

"Being right in the unit, you would pick things up by osmosis," says Ontario Crown counsel Sandy Tse, who advised the INSET until 2008. "My familiarity with the things that were going on, the ease with which I could communicate, my ability to be really, really familiar with the ongoing investigations — (it all meant) my advice was better-grounded."

The arrangement also kept police better apprised of their legal responsibilities, and Tse was even able to run specialized training sessions to address relevant legal issues like search-and-seizure and lawful justification.

Stronger evidence

In-house counsel — provincial or federal Crown attorneys who are "embedded" in police specialty units — are becoming more common across the RCMP, and it's easy to see why.

"We're saving a lot of time with them right in our office," says Sgt Daniel Campeau of the Integrated Proceeds of Crime (IPOC) unit in Ottawa. "They know the project, they know what's going on. It's a plus for us."

The IPOC is charged with seizing, restraining and forfeiting property obtained through criminal activities. The unit's three in-house counsel spend much of their time reviewing affidavits for the various court orders required the build each case, looking for legal loopholes and ensuring that every document is strong enough to hold up during future court proceedings.

"We're here to try and resolve problems before they happen," says IPOC counsel France Biron. "What looks like a simple search warrant sometimes (establishes) the foundation of an investigation. If that brick at the bottom of your building is not good, whatever you put on top of it might crumble."

Stronger policy

The benefits of dedicated counsel extend beyond investigative operations.

Susan Alter provides legal advice to the RCMP's National Child Exploitation Co-ordination Centre (NCECC), a policy centre responsible for supporting Canadian police forces on investigations related to online child exploitation.

Over the last year, Alter has collaborated with police, government and industry stakeholders to address some of the legal impediments facing these Internet-based investigations, and to develop workable solutions for law enforcement in an environment where technology is often one step ahead of the law.

For example, when Public Safety Canada held a consultation on the question of accessing customer name and address information in the modern telecommunications world, Alter co-ordinated an RCMP submission in support of policing requirements. She also worked with the RCMP technological crime branch and the non-profit Canadian Internet Registration Authority (CIRA) to develop a form that allows Internet child exploitation investigators to request registrant name and address information from CIRA without a search warrant.

"Susan has been a great representative at the table," says Supt John Bilinski, officer in charge of the NCECC. "For me as a manager of a program like this, it is a tremendous advantage to be able to make informed decisions from an operational or organizational perspective, and ensure that the laws and policies are respected."

Eyes on the prize

But there are challenges for police and Crown who work in close quarters.

Lawyers must remain objective and avoid getting swept up in the investigational momentum, says Tse, and police officers must be willing to recognize the long-term benefit of a few moments' consultation with legal counsel, says Biron.

Both parties must also be able to blend their different working cultures.

"They are Crown and we are police officers," says Campeau. "Sometimes we don't see things the same way, but I think that's the way it should be. At the end of the day, the final product is the most important thing." ■

Managing sex offenders: legislation that works

By Caroline Ross

If you want to effectively manage convicted sex offenders, you need more than just a functioning sex offender registry — you need legislation that permits police to share offender data with appropriate partners in a proactive manner.

That's where Canadian legislation falls short, says RCMP Insp Pierre Nezan, officer in charge of Canada's National Sex Offender Registry. Canadian police can't share offender data with parole services, for example, nor can they alert other countries of travelling offenders who are not subject to investigation. "It's very restrictive," says Nezan.

Other nations, however, have enacted innovative information-sharing arrangements that empower the broader offender management community. Here's a look at some global best practices.

United Kingdom (U.K.)

U.K. police forces have been exchanging offender data with prison and probation services since 2001, thanks to a series of Multi-Agency Public Protection Arrangements (MAPPA) formalized in the *Criminal Justice and Court Services Act 2000.*

Under the MAPPA, police, prison and probation services have a shared statutory obligation to identify, assess and manage high-risk offenders — and a statutory authority to share information in support of these goals. Since 2003, the partners have also had a reciprocal duty to co-operate with social service agencies that provide health care, social care, housing and education.

"All agencies that play a part in offenders' lives need to be tied together in terms of information sharing," says Mark Ashthorpe, Detective Chief Inspector of Public Protection and Offender Management for the Hampshire Constabulary. "Looking at risk assessment and management processes, if you don't tie those things together, then you're going to miss important clues about future harm."

It can be a challenge to ensure ongoing buy-in for local MAPPA meetings, Ashthorpe says, but the re-offending rate for MAPPA-managed offenders is extremely low.

Australia

The *Australian Passports Act 2005* gives Australian police forces the power to request that the government cancel or refuse passports for registered sex offenders who are likely to commit child sex offences overseas.

The arrangement is key given the frequency with which Australian sex offenders travel to other countries, says Peter Brown, capacity development manager for CrimTrac, the agency responsible for the Australian National Child Offender Registry.

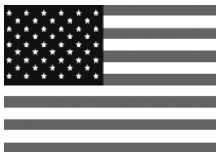
As of September 2007, the Australian government had cancelled or refused 11 passports at the request of the Australian Federal Police, according to a report by the Australian Senate Standing Committee on Legal and Constitutional Affairs.

Ireland

In 2008, police forces in Ireland and Northern Ireland (a country within the U.K.) signed a memorandum of understanding formalizing the exchange of sensitive personal information on registered sex offenders who travel between the two countries.

The agreement allows police charged with offender management to exchange information directly, without going through Interpol. It's a crucial provision given the fact that offenders can move quickly and freely over the unmanned border with Northern Ireland, says Det/Sgt Michael Lynch of the Domestic Violence and Sexual Assault Investigation Unit for *An Garda Síochána*, Ireland's national police force.

"Most of the time Interpol works fine," says Lynch, "but sometimes, by the time the information gets through, it could be too late."



United States (U.S.)

Each state maintains its own sex offender registry, and many states have laws empowering police and partner agencies to proactively share offender data.

In Virginia, for example, state police partnered with U.S. Immigration and Customs Enforcement to identify and locate registered, foreign-born sex offenders, 171 of whom were placed into removal proceedings. And in Washington state, agencies responsible for corrections, juvenile rehabilitation and mental health are required to provide local police with detailed risk assessments of registered sex offenders released from their facilities.

"The offenders know we're sharing information and that we're all on the same page," says Det Bob Shilling of the Seattle Police Department Sex and Kidnapping Offender Unit. "(They know) it's not going to be worth their while to try and pull anything." ■

All agencies that play a part in offenders' lives need to be tied together in terms of information sharing,"

Det Chief Insp Mark Ashthorpe

Will the new drug-impaired driving provisions make our roads safer?

The panellists
Cpl Evan Graham, national co-ordinator, Drug Recognition Expert Program, RCMP**Hal Pruden**, legal counsel, Criminal Law Policy Section, Department of Justice Canada
Prof. R. Solomon and Prof. E. Chamberlain, Faculty of Law, University of Western Ontario, and consultants to Mothers Against Drug Driving Canada
Paul Boase, Chief Road Users, Road Safety and Motor Vehicle Regulation, Transport Canada, with **Douglas J. Beirness**, Canadian Centre on Substance Abuse

On July 2, 2008, new legislation regarding drug-impaired driving came into force in Canada under the Tackling Violent Crime Act (Bill C-2). The new provisions enable police to conduct mandatory roadside testing and assessment of suspected drug-impaired drivers, and to impose stiffer penalties on drivers who are found to be impaired.

Cpl Evan Graham

Legislation contained in Bill C-2 gives police the authority to compel suspected impaired drivers to undergo Standardized Field Sobriety Tests (SFSTs) — a battery of validated divided-attention tests that are used to elevate suspicion of impaired driving to probable grounds — and an evaluation by a trained police Drug Recognition Expert.

The Drug Evaluation and Classification (DEC) Program was initiated in California in the late 1970s and introduced in British Columbia in 1995. It became a national program in 2004. Despite being voluntary at the time, a surprisingly high number of drivers complied with the request to undergo the evaluation to determine if they were impaired by drugs.

The full scope of the drug-impaired driving problem in Canada is not known. However, post-mortem studies conducted in British Columbia (1999) and Quebec (2000) show that 20 per cent of drivers killed in crashes in their respective provinces had impairing levels of drugs in their systems. In addition, a recent roadside survey in British Columbia found that of the more than 1,500 drivers stopped, 8.8 per cent tested positive for alcohol and 10.1 per cent for drugs.

Drugs include illicit drugs, prescription pharmaceuticals and over-the-counter medications. It does not matter if the drug is lawful or illicit. If the driver is impaired, the consequence is the same. With the ever-increasing number of prescriptions issued in Canada, abuse and ignoring warnings on the prescription label will likely add to the number of drug-impaired drivers.

Prior to July 2, Canadian police laid an average of 75 charges per year using the DEC Program. Since Bill C-2 came into effect, almost 100 charges have been laid using Drug Recognition Experts (evaluators as defined by the Criminal Code Regulations). There are currently 294 certified Drug Recognition Experts across Canada, with a further 100 in the process of becoming certified.

As knowledge of the Drug Recognition Evaluation program increases and the number of trained Drug Recognition Experts grows, the number of cases of drug-impaired driving will also surely grow. This will translate into safer roads for all Canadians by giving police the tools necessary to investigate drug-impaired drivers. The combination of enforcement and education will eventually translate into a reduction in the number of persons who drive while impaired by drugs.

Hal Pruden

On July 2, 2008, Drug Recognition Evaluation (DRE) legislation, contained in Statutes of Canada 2008, chapter 6 (formerly Bill C-2 of the 2nd Session of the 39th Parliament), came into force.

Prior to the 2008 Criminal Code amendments, police officers essentially had to rely on evidence of drug-impaired driving "falling into their lap." While the Supreme Court of Canada has upheld the constitutionality of the police using voluntary sobriety tests, there was no compulsion on a driver to comply with requests for such tests, as there is for alcohol breath or blood testing.

Over the years, scientists consistently advised against a "legal limit" drug-driving offence similar to that for alcohol because there are only a handful of drugs for which scientists can agree on the threshold level at which the general population of drivers would be impaired. Instead, the scientists highly favoured DRE as a tool to investigate the existing drug-impaired driving offence.

The DRE legislation was drafted to parallel, as closely as possible, the demands that police are authorized to make for alcohol breath and blood testing.

First, for DRE testing, there is a roadside screening element. An officer who suspects a driver of having alcohol or a drug or a combination of these in the body can require, by demand, that the driver perform roadside sobriety tests prescribed by regulation.

Second, if the officer has a reasonable belief that a driver has committed an offence under Criminal Code section 253 related to drug-impaired driving, the officer can require, by demand, that the driver perform a drug recognition evaluation prescribed by regulations. This is conducted by a specially trained officer who is an "evaluating officer" under the regulations.

Third, if the evaluating officer identifies a family of drugs as causing impairment of the ability to drive (reasonable belief standard), the evaluating officer can demand a sample of blood, oral fluid or urine for forensic scientists to analyze for the presence of a drug. The latter step is also a safeguard for the driver because the analysis might confirm that the driver did not have any drugs on board, let alone the identified family of drugs.

Through the DRE legislation, Parliament has contributed to road safety by giving police legislatively mandated tools to better investigate drug-impaired driving. Ultimately, it is the combined efforts of police agencies, governments, organizations, families and individuals that will make our roads safer.

Profs. R. Solomon and E. Chamberlain

Bill C-2 provides a much needed framework for the enforcement of Canada's prohibition on drug-impaired driving. Although Canada's first drug-impaired driving offence was enacted in 1925, the police were not given any practical means of gathering the evidence necessary for laying such charges. Consequently, those who drove while impaired by drugs were largely immune from criminal sanction.

This gap in the law became more problematic with the recent rise in drug-impaired driving. A series of national, regional and provincial surveys indicated that driving after drug use had become commonplace in recent years, and that the rate of driving after cannabis use had increased, particularly among youth. While the exact causal role of various drugs in crashes requires more research, it is clear that drug use constitutes a significant traffic safety problem. For example, a Canada-wide study estimated that drug use alone or in combination with alcohol contributed in 2005 to approximately 385 traffic fatalities, 22,722 traffic injuries and 75,059 property-damage-only collisions.

Bill C-2 creates a strong framework for drug-impaired driving enforcement that parallels the Criminal Code's alcohol-impaired driving provisions. Physical co-ordination testing (commonly referred to as Standard Field Sobriety Testing or SFST) provides a reliable and relatively quick method of screening drivers for impairment at roadside. Drivers who are reasonably believed to be impaired by drugs can then be subject to Drug Recognition Evaluation (DRE) testing.

Developed and widely used in the United States since the 1980s, DRE has proven to be reliable when conducted by trained and certified evaluation officers. Given the rigorous standards for DRE, the rise in drug-impaired driving in Canada, and the lack of any other practical means to test for drug impairment, DRE should withstand Charter scrutiny.

Will these new drug-impaired driving provisions make Canadian roads safer? In our view, these provisions will ensure that drug-impaired drivers will no longer be immune to criminal liability. However, several factors will limit the deterrent impact and thus the traffic safety benefits of the new law. DRE is complex, technical and time-consuming, Canadian judges are unfamiliar with it, and the initial drug-impaired driving charges will be aggressively defended and subject to a flurry of Charter challenges.

In order to increase the traffic safety impact of the new law, the public, and particularly young drivers, need to be made aware of its existence and rationale, as well as the risks of drug-impaired driving. Once properly informed, Canadians will view the new provisions as a necessary, reliable and minimally intrusive means of addressing our growing problem of drug-impaired driving.

Paul Boase and Douglas J. Beirness

While there have been reductions in deaths related to alcohol-impaired driving, these improvements have slowed in recent years and alcohol still remains a sizable road safety challenge. This raises the question, why complicate impaired driving enforcement by adding the Drug Recognition Evaluation program and possibly complicate prosecutions

Evidence suggests that the drug-driving problem is increasing. Phone surveys show that illicit drug use among the general population is on the rise. Drugs are harder to detect by a police officer and prior to Bill C-2, there was no legal requirement for drivers to provide a bodily fluid sample to test for drugs. In addition, the population is aging and more and more drivers may be using prescription drugs. Many of these drugs affect a driver cognitively or physically and we are unsure of the impacts if mixed with small amounts of alcohol. On-road surveys and testing of fatally injured drivers suggest a significant proportion of drivers had been using drugs prior to driving.

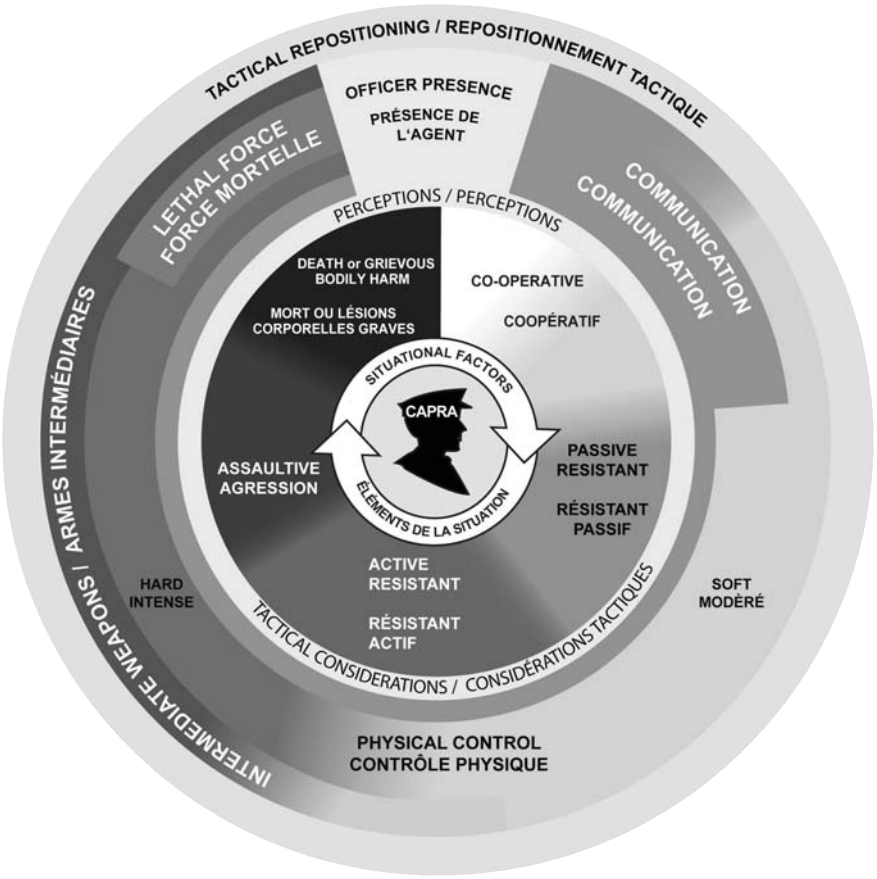
The on-road survey data also suggest that patterns of use related to drugs are different than for alcohol. Drug-impaired drivers can be on the road at any time during the day or any day of the week, and seem more evenly distributed across drivers' ages. This suggests that addressing the drug-impaired driving issue will require a strategy different than the one used for alcohol.

The new drug-impaired driving laws send a message to the driving public that drugs are a safety problem to be considered beforegetting behind the wheel, and they will be convicted if caught.

The new law will increase the level of research into the size of the problem as well as the resources to address the roadside measurement of drugs. It should also increase the number of officers trained in using the Standardized Field Sobriety Test, which will aid in drug and alcohol-impaired driving investigations — and make our roads safer. ■

RCMP use of force and the law

By Brenda Zanin
Senior Communications Strategist
Community, Contract and
Aboriginal Policing Services, RCMP



The latest Incident Management Intervention Model, pictured above, will be applied once RCMP officers are trained in its use, likely in 2009.

In a society where laws are in place to protect citizens from violence, legal accommodation must be made for police to use reasonable force in the course of their duties.

In the RCMP this responsibility is not conferred on individuals until they are carefully screened through interviews and criminal records checks, tested for initial skills and abilities, and they have completed their training at the RCMP's Training Academy at Depot in Regina, Sask. This is followed by applied training in the field.

The further development of RCMP members after graduation occurs through many encounters and experiences — as well as through mentoring from senior members — in small towns, rural areas and larger municipalities in RCMP jurisdiction. While community policing makes up a large portion of many members' daily work — meeting with citizens' groups, visiting schools, enforcing traffic regulations — there are occasions where all their physical preparation, tactical training and colleagues' recollections will come to the fore in the face of a violent, dangerous confrontation with a person who is endangering him- or herself and others.

If the subject refuses to comply with police orders and presents a threat of violence, the member may have to resort to force to gain control of the situation — aided by tools such as the baton, Oleoresin Capsicum spray (pepper spray), the conducted energy weapon (CEW) or TASER, or sometimes, if death or grievous bodily harm are threatened, the firearm.

Within what kind of legal framework does a member work, to be allowed to exert physical force on another person? And how does the RCMP interpret that framework in such a way that all members know what is expected of them and are guided by a consistent model of response?

Section 25 of the *Criminal Code of Canada* describes how a person, acting under authority, is protected or justified in using force when necessary. That person must have reasonable grounds to believe that his actions are required to preserve himself "or any one under his protection from death or grievous bodily harm."

When police officers are called to an incident, they must assess the situation and respond appropriately. They must use force only if necessary, and the force used must be commensurate with the threat presented. In a fairly benign case, a simple verbal command may achieve the needed result. The officer's other options may be a so-called "soft-hand" approach — guiding a person in the desired direction with an open hand on the shoulder or elbow. The various choices are depicted on a bull's eye graphic known as the RCMP's Incident Management Intervention Model (IMIM), a powerful guide that members apply following detailed instruction and scenario-based training.

In the past, police agencies referred to a "continuum of force" that followed a linear path through the softer approaches, on to batons or other intermediate weapons, and culminating in "lethal force" — the police firearm. However, the volatile situations that police encounter seldom follow a linear path. Things may seem completely out of control and then subside into something quite different, for whatever reason,

in a matter of seconds. Or, a situation that appears fairly calm on the surface may change utterly when, for example, a suspect suddenly displays a weapon.

Members are trained to opt for the least injurious means to gain control, in keeping with the Criminal Code phrase "use as much force as necessary" (Section 25).

The circular IMIM takes into account the ebb and flow of a situation in a way that a linear continuum could not. It outlines the various levels of force available, based on subject behaviour and other situational factors. A police officer can use the model after the fact in articulating the reasons for the choices made. The model also serves as an educational and operational tool, and provides a reference for judicial purposes when cases go before the courts.

The RCMP adjusts the IMIM and policies relating to the CEW on an ongoing basis, and makes adjustments as required. For example, recent changes related to the CEW include an increased frequency of recertification, from every three years to annually, for police officers who are trained in CEW use. RCMP divisions are using enhanced reporting mechanisms to capture data around any situation where a CEW is deployed, and work is ongoing to expand this reporting to include all uses of force by an officer.

In the interest of transparency, better analysis and enhanced accountability, the RCMP is developing additional means to record and track all uses of force.

Data collected is forwarded to National Headquarters where it is analyzed and incorporated into quarterly reports to track CEW usage. This is part of an ongoing effort to ensure the CEW is used appropriately and in compliance with policy. Annual reports on CEW usages will also be produced.

The RCMP is working with the Commission for Public Complaints Against the RCMP, other police services, medical experts and others to further enhance our policies, training, practices and reporting requirements relating to CEWs.

In the interest of transparency, better analysis and enhanced accountability, the RCMP is developing an additional means to record and track all uses of force, including other policing tools, notably the baton and Oleoresin Capiscum (pepper spray). The Subject Behaviour Officer Response (SBOR) reporting system will capture all use-of-force interventions, with all the context surrounding the situation. Data gathered will also be in a format that supports analysis and the determination of trends across divisions.

The RCMP is reaching out to the wider policing community to share the SBOR system and by adapting its IMIM to align with the National Use of Force Framework of the Canadian Association of Chiefs of Police. This effort to find commonalities with other models is designed to foster a common vocabulary around use of force for the Canadian law enforcement community. Ultimately this will mean a greater degree of public accountability and a better understanding of police interventions. ■

If a subject refuses to comply with police orders and presents a threat of violence, the officer may have to resort to force to gain control — aided by tools such as the baton, pepper spray or the conducted energy weapon, pictured in the dramatization below.

RCMP Depot Division, LTCS

Does the Charter apply to police action abroad?

By Arryn M. Ketter
RCMP Legal Services

Does the Charter apply to extraterritorial enforcement activities of Canadian police? The answer, like that of many legal questions, is "it depends". Two recent decisions of the Supreme Court of Canada, *R. vs. Hape* [1] and *Canada (Justice) vs. Khadr* [2], look at the complex interplay between domestic and international law in the context of extraterritorial law enforcement activity.

Section 7 of the Criminal Code provides jurisdiction to prosecute in Canada a certain limited number of designated offences, such as terrorism offences and sexual offences against children, even where the offence is committed outside Canada. However, the Code is silent on the jurisdiction of law enforcement officers when they are outside of Canada — with good reason. With few exceptions, there is no jurisdiction for Canadian officials to exercise law enforcement powers abroad.

Where a Canadian police officer crosses the border, she is not, as the Supreme Court noted, stripped of her status, but her ability to exercise police powers — such as the power to search, detain or arrest — is "necessarily curtailed" because Canada has "no jurisdiction to authorize enforcement abroad."

As a general rule, Canadian officers can participate in investigations abroad, but must do so under the laws of the foreign state. This rule derives from a number of important principles of international law. These principles prohibit the extraterritorial application of one country's laws in another state because "the only limits on state sovereignty are those to which the state consents or that flow from customary or international law." Thus, Canadian police officers cannot exercise their police powers in another state without that state's consent because there are no police powers at international law that would serve to limit state sovereignty.

> **"As a general rule, Canadian officers can participate in investigations abroad, but must do so under the laws of the foreign state."**

Does this mean that the Charter simply does not apply when Canadian officials are working abroad? Not surprisingly, the answer is not so simple.

The majority for the Supreme Court in *Hape* does state that "since extraterritorial enforcement (of Canada's laws) is not possible, and enforcement is necessary for the Charter to apply, extraterritorial application of the Charter is impossible." In *Hape*, a perimeter search of private premises in the Turks and Caicos was conducted without a warrant. The accused alleged that his Charter right was breached because the RCMP officers did not have a warrant that they would require to conduct such a search in

Canada.

The Court rejected the argument: "To comply with the Charter, the RCMP officers would have had to obtain a warrant that is unavailable under Turks and Caicos law. It would constitute blatant interference with Turks and Caicos sovereignty to require that country's legal system to develop a procedure for issuing a warrant in the circumstances simply to comply with the dictates of the Charter."

As a result of the principles of sovereign equality, non-intervention and comity, the Court concluded that Charter standards cannot apply to searches and seizures conducted in another state. The approach taken by the majority in *Hape* expects the Canadian police officer acting abroad to comply with the laws of the country in which the activities occur. This is what the principles of sovereign equality, non-intervention and comity require.

However, this does not mean that Canadian police officers participating in investigations abroad may ignore Charter values with impunity. The evidence obtained as a result will be subject to the Charter's fair trial safeguards and to another important exception to the principle of comity, the requirement to comply with a state's international human rights obligations.

Where a Canadian police officer participates in an activity abroad that, while legal in that country, would be a violation of Canada's international human rights obligations, the activity may constitute a violation of the Charter and the accused may subsequently have a remedy under the Charter for the breach.

In *Khadr*, unanimous Court held that "the principles of international law and comity of nations, which normally require that Canadian officials operating abroad comply with local law, do not extend to participation in processes that violate Canada's international human rights obligations." Where they do, the Charter applies.

Despite the importance of international co-operation in combating transnational crime, deference to local law and the principle of comity "ends where clear violations of international law and fundamental human rights begin."

> **"It is expected that the values of the Charter will guide Canadian police officers when participating in investigations abroad."**

Mr. Khadr was interviewed by agents from the Canadian Security Intelligence Service with respect to matters connected to the charges he faced and they shared the interview results with the U.S. authorities when Khadr was incarcerated at Guantanamo Bay. The U.S. Supreme Court considered the legality of the detentions at Guantanamo Bay for the period during which these activities occurred.

The Court held that, during the relevant time, the detainees, including Mr. Khadr, had been illegally denied access to habeas corpus (the right to be brought before a judge to challenge the legality of one's detention) and the procedures established to prosecute the detainees, including Mr. Khadr, violated the Geneva Conventions.

In the view of the Supreme Court of Canada, this was sufficient to establish violations of Canada's international human rights obligations. The Court found that if Canadian officials were participating in a process that violated Canada's obligations at international law, then the Charter applies "to the extent of that participation."

What, then, constitutes participation? The Court acknowledged that merely conducting the interview of a Canadian citizen detained abroad under a process that violates international human rights obligations might not constitute participation, but providing the fruits of the interviews to the regime that has detained the individual does. Mr. Khadr was thus entitled to disclosure under section 7 of the Charter of information given to the Americans to "mitigate the effect of Canada's participation by passing on the product of the interviews to U.S. authorities."

It is expected that the values of the Charter will guide Canadian police officers when participating in investigations abroad. That a given activity is legal in the country where the investigation is taking place is not a defence where that activity would violate Canada's international human rights obligations. Admissibility of the evidence is not the sole consideration. The Canadian police officer who participates in law enforcement action abroad must consider herself bound by Canada's international human rights obligations. Where the Charter ends, Canada's international human rights obligations begin.

The Court recognizes the dilemma presented by transnational crime, where people, property and funds move quickly and easily across borders, but where law enforcement action is confined by state boundaries. Lebel J. for the majority of the Court persuasively argues that "in a co-operative investigation, Canada cannot simply walk away when another country insists on following its own investigation and enforcement procedures rather than ours. That would fall short not only of Canada's commitment to other states and the international community to provide assistance in combating transnational crime, but also of Canada's obligation to Canadians to ensure that crimes having a connection with Canada are investigated and prosecuted." However, as *Khadr* reminds us, where that procedure violates Canada's international human rights obligations, we stay at our own peril. ■

1. 2007 Supreme Court of Canada 26
2. 2008 Supreme Court of Canada 28

Another Hill to climb

The tort of negligent police investigation in Canada

Insp Stephen N.S. Thatcher, LLB
Pacific Region Grievance Adjudications
S/Sgt Jeffrey Wright (Rtd), LLB
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Members Representative Unit, RCMP

If there remained any doubt that policing is being judged as a profession rather than an occupation, that doubt was removed by the Supreme Court of Canada's decision in *Hill vs. Hamilton-Wentworth Regional Police Services Board*, 2007 Supreme Court of Canada 41 (*Hill*).

At issue in *Hill* was whether the tort of negligent investigation ought to be recognized in policing. In a 6-3 decision, the Court determined that this cause of action, which previously had only nascent recognition in Ontario and Quebec, exists generally in Canadian law. The decision opens the door to successful civil claims against police officers whose conduct is not consistent with the standard to which other professionals are held, namely that of a reasonable practitioner in similar circumstances.

Mr. Hill, an aboriginal, was investigated in connection with 10 financial institution robberies that occurred between December 1994 and January 1995. The evidence against him was primarily based on witness identification from a photo lineup and pictures published in the media. Although investigators received a tip that identified two other men, "Frank," a Spaniard, and "Pedro," a Cuban, as the robbers, police nevertheless arrested Hill and charged him with 10 counts of robbery.

While Hill was in custody, two similar robberies took place. Police not only received a further tip that a "Frank" had committed all the robberies, but a police officer not directly connected to the Hill investigation suggested to investigators that the perpetrator could be Francesco Sotomayer. Not only did Sotomayer and Hill look similar, investigators felt that the photographs in evidence from the first robbery bore a closer resemblance to Sotomayer than Hill.

For various reasons, primarily connected with identification evidence, the 10 charges against Hill were reduced to one. Although found guilty at trial, he successfully appealed.

Hill spent more than 20 months in custody for a crime he did not commit. Following his acquittal, Hill brought a civil action against the Hamilton-Wentworth Regional Police Services Board, several individual officers of that department and the Crown prosecutors involved in the preliminary inquiry and trial. The claims were advanced on the basis of negligence, malicious prosecution and breach of rights protected by the *Canadian Charter of Rights and Freedoms*. The claim of negligence was dismissed by the trial judge, but Hill appealed. The Court of Appeal of Ontario, while unanimously recognizing the existence of the tort of negligent investigation, split on the question of whether the police had in fact been negligent, with the majority finding that they had not. Both Hill and the police appealed — Hill from the finding that there had been no negligence and the police from the finding that the tort of negligent investigation existed. The majority of the judges in the Supreme Court of Canada found that the tort does exist, but that Hill had not established that investigators had been negligent, at least according to the standards prevailing in 1995.

The majority reviewed the law of negligence as it has developed in Canada and concluded that its principles could be applied in circumstances in which police focus on a *specific* suspect as part of an investigation. They restated the basic element of negligence: that there be a prima facie duty of care not negated or limited by any policy considerations. A prima facie duty of care is determined by assessing whether it is reasonably foreseeable that a negligent act by one party would harm the other, and if so, whether there is sufficient proximity between the two parties to warrant the first party being under an obligation to avoid causing such harm.

The majority determined there is sufficient proximity between police officers and a *particularized* suspect to find such a duty exists. Perhaps more significantly, the majority also found that there was no competing policy reason to negate that duty. This conclusion was founded in part on the "unfortunate reality . . . that negligent policing has now been recognized as a significant contributing factor to wrongful convictions in Canada" (para. 36), and that since the existing torts of false arrest, false imprisonment, and malicious prosecution do not capture all potential negligent acts that could arise in an investigation, "to deny a remedy in tort is, quite literally, to deny justice" (para. 35).

To be successful in a negligent investigation claim, a plaintiff like Hill would have to establish on a balance of probabilities not only that the conduct of the investigators breached the duty of care he was owed by them, but that he suffered a compensable loss that he would not have suffered but for their negligence. Moreover, police conduct need not be the only contributing cause in order for the police to be found liable. Others involved in the justice system or particular prosecution may also have acted negligently. Only if the actions of any of these other players "are so significant that the same damage would have been sustained even if the police had investigated responsibly" will causation not be established against the police (para. 94). Exactly how significant a factor in causation the negligent investigation must be remains an open question but will be highly fact driven.

In assessing whether or not the police officers had been negligent in their investigation of Mr. Hill, the Court first had to determine by what standard of care their conduct was to be judged. In recognition of the fact that police, like other

professionals, exercise professional discretion, the majority adopted and applied the established test of professional liability, that of a reasonable practitioner in like circumstances. In police negligence cases, therefore, the "appropriate standard of care is the overarching standard of a reasonable police officer in similar circumstances" (para. 73).

It is important to understand that the measure is not one of perfection, nor one informed by hindsight. In this context, the law of negligence does not require that investigators perform perfectly, but permits errors that a reasonable investigator might have made in all the circumstances prevailing at the time the conduct being challenged was undertaken. In short, deference will be paid to the use of professional judgment so long as the exercise of that discretion was itself reasonable. Thus, the reasonable officer standard is tolerant of " 'mere errors of judgment' that any reasonable professional might have made" (para. 73).

The majority looked at the conduct of the defendant officers to determine if they had breached their duty to Hill and concluded they had not. In reaching that decision the Court observed that "this was not a case of tunnel-vision or blinding oneself to the facts" (para. 88) and the events unfolded at a time when "awareness of the danger of wrongful convictions was less acute than it is today" (para. 88). The Court also recognized that elements of the investigation, notably the photo lineup procedure, would likely be considered substandard by the time it heard the case but were not contrary to practices widely used in 1995. In the result, Hill was unable to establish that the standard of care had been breached, and his claim was unsuccessful.

While the majority felt their decision would not open the floodgates to litigation, there clearly is a risk that police agencies and their officers will be required to defend an increasing number of civil claims of negligence. Although individual police officers are, in many jurisdictions across Canada, generally protected to some extent from personal liability for their torts, they nevertheless share an interest with their employers in reducing their exposure to claims of negligence. While the obvious (and sadly impractical) solution is to avoid making all negligent mistakes, proper training and supervision are imperative, as is the ability to articulate why defendant police officers (and their employers) acted in a manner that was reasonable in the circumstances. Concurrently, in the discipline realm, *Hill* also has implications for police organizations in terms of the handling of investigation of allegations of misconduct by police officers.

The dissenting reasons are worthy of review, but space does not permit a full discussion here. The minority felt there were significant policy considerations that ought to negate a duty of care even if one were found to exist, and they point to potential issues that might arise in civil litigation, including the spectre that an accused might succeed in a claim of negligent investigation even if not factually innocent (as legal innocence is not necessarily coincident with innocence in fact).

In the view of many investigators, a criminal trial of an accused is really a trial of the investigation. In the wake of *Hill*, civil actions arising from claims of negligent investigation are likely to be de facto trials of the investigator. This case is required reading for all investigators and their managers and removes any doubt that, along with the privileges of a profession, policing also encompasses corresponding professional responsibilities. ■

Serious and organized crime control in South Australia

By Damian Powell
Detective Chief Inspector
Crime and Intelligence Faculty
South Australia Police

Since July 2007, the South Australia Police (SAPOL) has been supporting the Government of South Australia in the development of innovative legislation to more effectively reduce the threat and impact of serious and organized crime. This approach focuses on introducing new and unique prevention legislation, expanding traditional criminal laws and enhancing criminal asset forfeiture laws.

SAPOL

SAPOL's Crime Gangs Task Force conducted vehicle, licence and roadworthiness checks involving 100 participants of the Gypsy Jokers Poker Run in March 2008.

The criminal environment

In South Australia, serious and organized crime impacts all levels of society and presents ongoing challenges for governments and law enforcement agencies. It is varied in scope, expertise, sophistication and influence. It has substantial social and economic costs on the state.

Outlaw motorcycle gangs (OMGs) are considered a serious organized crime threat in South Australia due to their impact and influence across all levels of crime.

Their illegal activities extend to any commodity from which profit can be derived, and they are adaptive in expanding their criminal activities into new markets. Recent trends have OMGs expanding their reach and influence to lesser-known street gangs who undertake the high-risk aspects of the criminal activity.

Prior to commencing its work on legislative reform, SAPOL undertook a comprehensive environmental scan of legislative and law enforcement issues dealing with OMGs — both within Australia and overseas — to identify new options to more effectively deal with these issues. There were several key findings, which have been accepted by the South Australian government:

- Legislative reform in the past has been reactive and relied heavily upon the criminal law, criminal justice system and associated rules of evidence.
- Legislative reform has focused on the crime as the problem. The alternate view in South Australia is that criminals' ability to associate in order to build networks, groups and syndicates is the problem, while the commission of crime is the symptom.
- The criminal justice system relies heavily on the participation and co-operation of witnesses. Practiced intimidation and violence by those involved in serious and organized crime towards witnesses has proven to be an effective means of circumventing the effect of the criminal law.
- Legislation that has proven successful in South Australia in reducing the impact of serious and organized crime has combined civil (administrative) law prevention — or exclusion initiatives — with criminal law sanctions for any breach.

Combining civil and criminal law

On September 4, 2008, *The Serious and Organized Crime (Control) Act 2008* came into operation in South Australia. The Act is the first of a number of legislative initiatives related to the South Australian government's holistic legislative reform tackling serious and organized crime.

The Act seeks to disrupt and restrict the activities of organizations, their members and their associates involved in serious crime, and to protect members of the public from violence associated with criminal organizations. Its innovation lies in the combined use of civil and criminal law initiatives that seek to prevent those organizations and persons involved in serious criminal activity from associating

with each other before criminal offences are committed.

Prevention initiatives within this Act include declared organizations, control orders, public safety orders and a new offence of criminal associations.

Declared organizations: The Act authorizes the Attorney General of South Australia to issue a declaration about an organization where satisfied, on the balance of probabilities, that the members of the organization associate for the purpose of organizing, planning, supporting, facilitating or engaging in serious criminal activity, and the organization represents a risk to public safety and order in South Australia. The declaration is a legal status assigned to an organization recognizing that its members present a risk to public safety as a result of their criminality. The declaration becomes the means by which specific legal disabilities can be applied to those members without unnecessarily impacting the broader community.

Unlike other international organized crime laws, the declaration process in South Australia does not impose any sanction on individuals or the organization. However, it does provide the means by which new prevention laws, such as control orders, public safety orders and criminal associations can be applied against individual members of that organization. Once issued, a declaration remains in force indefinitely until revoked by the Attorney General. A privative clause protects the Attorney General's decision from judicial review.

Control orders: The strength of gangs and other serious and organized crime groups lies in their close cohesion, code of silence and ability to congregate together to plan and undertake criminal activity. Control orders seek to break down the strength of gangs and criminal groups by preventing and restricting such associations. The Act authorizes a Magistrates Court (lower level court) to make orders prohibiting or restricting the activities of members of declared organizations and others who engage in serious criminal activity. Restrictions include preventing those persons from attending specified premises, possessing dangerous articles or prohibited weapons, or associating with other members of declared organizations or with persons suspected of being engaged in serious criminal activity. The burden of proof once again is on the balance of probabilities. Contravention of an order imposes a maximum period of imprisonment of five years.

Public safety orders: The Act authorizes a police inspector or higher rank to issue time-limited orders — up to 72 hours — against individuals or members of a group, where the presence of a person or a group of people presents a serious risk to public safety or security. The order may prohibit persons from attending a public event or place, or being within a specified area. The order may be extended for a longer period of time upon authorization from a Magistrate. Criminal intelligence may be used to support the grounds for an order and, where an order is issued for seven days or less, no right of appeal applies. Specific legislative provisions protect criminal intelligence from general disclosure. Contravention of an order carries with it a maximum period of imprisonment of five years.

Criminal associations: A new offence relating to criminal associations will assist police in disrupting and discouraging associations with persons of a prescribed class — that is, members of declared organizations, persons subject to control orders, and persons with criminal convictions for major indictable offences (penalty of more than five years imprisonment) or convictions under the Act.

An offence occurs where a person associates with a person of the prescribed class six or more times in any 12-month period. Limited exemptions apply as does a defence of a "reasonable excuse." Exemptions include association in the course of lawful employment, custody or close family relations, unless the prosecution can provide evidence that such association was not reasonable. In addition to disrupting the activities of criminal networks, the new offence seeks to prevent the expansion of gangs and other criminal groups by "warning off" potential recruits, including street gangs. A conviction under this law carries with it a maximum period of imprisonment of five years.

Supporting provisions

Legislative provisions supporting these initiatives provide for the presentation of broader information as evidence than would otherwise be admissible in criminal proceedings — evidence including, but not limited to, the use of criminal intelligence and criminal records of current and past members of the group.

Safeguards designed and contained within the Act include an independent annual review of the use of the legislative powers by a retired Supreme Court or District Court judge; annual reporting of these review findings to both houses of Parliament; a review of the legislation after four years; and a sunset clause on the legislation after five years.

The Act is also supported by the development of a range of traditional criminal law and criminal asset forfeiture enhancements that cover drugs, firearms, unexplained wealth and declared drug trafficker legislation, as well as specific organized crime offences akin to Canadian organized crime legislation.

The extent of legislative reform currently underway in South Australia is the product of continued assessment of the serious and organized crime environment, its challenges and the need to develop new and innovative approaches to enhance community safety. SAPOL Assistant Commissioner Tony Harrison says that "with this suite of new laws, South Australia will have a comprehensive and flexible approach to prevent or disrupt the broad and evolving range of organized crime activities." ■

Detective Chief Inspector Powell has 20 years service with SAPOL. In 2006, he was the operations inspector in SAPOL's Organized Crime Investigation Branch and, until September 2008, he managed the SAPOL legislative reform project in the development of new laws targeting serious and organized crime in South Australia.

Fuelled by hate

Multi-agency effort succeeds in precedent-setting case

At first, the 1999 murder of Kenny Wilson looked like just another example of a black man being gunned down in the streets of Los Angeles. But the case turned out to be much more. Thanks to a co-operative effort between state and federal police and prosecutors, it represented the first time that U.S. federal hate crime statues were used to prosecute a racially motivated crime committed by a street gang. Bobbi Bernstein of the U.S. Department of Justice recounts the joint effort that led to this successful outcome.

By Bobbi Bernstein
Deputy Chief, Criminal Section
U.S. Department of Justice

"What's up? Wanna kill a nigger?"

Those words, spoken by a member of the Avenues gang — a violent Latino street gang in Los Angeles — led to the senseless murder on April 18, 1999, of Kenny Wilson, a young black man who died in a hail of bullets as he tried to park his car on a public street in L.A.

For months, Wilson's murder went unsolved. The case finally broke open when the Los Angeles Police Department (LAPD) received information from hardened Avenues gang-banger "Listo" Velez,* who was angry at his gang and decided to go to the police.

Velez told detectives that he and some fellow gang members had been out cruising the streets in a stolen van on April 18, looking for rival gang members to shoot. At about three o'clock in the morning, after they had failed to find any "enemies," the gang member who was driving suddenly blurted out, "What's up? Wanna kill a nigger?"

Velez and the others spotted a black man driving slowly up the street, looking for a parking spot. The gang members reportedly whooped and laughed, agreeing that shooting the black stranger was a great idea. Three of the Avenues — including one named "Clever" de Leon — jumped out of the van, while Velez stayed behind as a lookout. The threesome opened fire on the car, hitting Wilson in the neck and severing his carotid artery. As Wilson slumped over the steering wheel, the Avenues jumped back in the van and drove off, laughing and celebrating.

Armed with Velez's account of the murder, LAPD detectives went to Clever de Leon, the Avenues gang member who Velez claimed had fired the shotgun at the back of Wilson's car. De Leon confessed to the detectives and confirmed much of Velez's account.

> **"The law required proof that Wilson...had been killed because of his race, not because he happened to drive past a group of violent gang-bangers who were looking to shoot someone."**

The detectives took the case to the L.A. District Attorney, who prosecuted de Leon on the basis of his own confession. However, the District Attorney declined to prosecute the other gang members because of a California law barring prosecution based on the uncorroborated testimony of accomplices.

Recognizing the potential importance of the racist statement that led to the killing, the detectives contacted federal authorities.

The federal hate crime statute

Federal investigators and prosecutors analyzed the facts under the federal hate crime law, 18 U.S.C. § 245, which grants federal jurisdiction in cases where prosecutors can prove that a defendant committed an act of violence both because of the race of the victim and because the victim was exercising a specific federally protected right, such as the right to enjoy a public education, hold a job or use a state-sponsored facility.

For the Wilson case, the right to use a state-sponsored facility offered the most hope — after all, Wilson had been killed while parking his car on a public street. But the law required proof that Wilson was killed not only while using the street, but actually because he was using the street. It also required proof that he had been killed because of his race, not because he happened to drive past a group of violent gang-bangers who were looking to shoot someone.

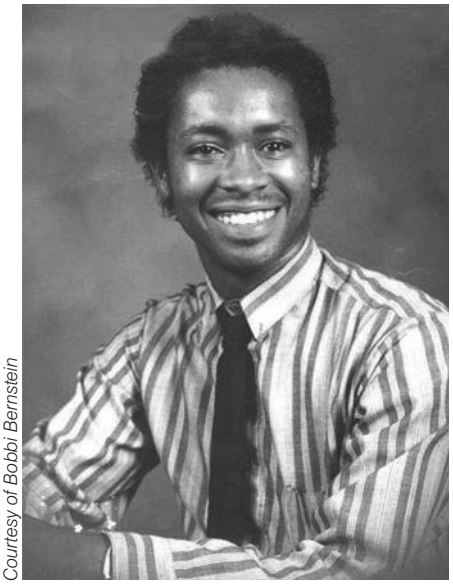
Developing the evidence

As the FBI went back and talked in detail with Velez, de Leon and other Avenues gang members, a more complete story began to unfold.

First, the Avenues, like many violent street gangs, were territorial in nature. They felt they "owned" certain neighbourhoods, parks and streets in L.A., including the street where Wilson was gunned down.

Second, the Avenues had two missions: to keep rival gang members, of any race, out of their territory; and to keep blacks, whom the gang hated, out of the neighbourhood. The witnesses talked about gang members harassing and attacking black people, whether or not those black people belonged to a gang.

These pieces of information changed the entire case. The FBI tracked down black people who had lived in the gang's neighbourhood, and learned that they had constantly been harassed and attacked by members of the Avenues, including the



Courtesy of Bobbi Bernstein

Kenny Wilson was gunned down in the streets of Los Angeles simply because he was black. His case marked the first time U.S. federal hate crime statues were used to prosecute a racially motivated crime committed by a street gang.

very gang members responsible for killing Wilson.

The hate crime charge became much stronger because the evidence showed that the murder was the result of Wilson's race and his use of a public street claimed by the gang. More importantly, the evidence supported a much broader conspiracy charge.

The civil rights conspiracy charge

The federal civil rights conspiracy statute, 18 U.S.C. § 241, requires the prosecution to prove that the defendants conspired to violate a federally protected right, such as the right to occupy a home without facing violent intimidation because of race. The investigators focused on a six-year period during which the Avenues had used force and threats to interfere with the housing rights of black people by attacking those who moved or tried to move into the neighbourhood.

Through a conspiracy charge, the prosecution would be able to offer evidence not only of Wilson's murder, but also of other acts of racial intimidation or violence that were aimed at interfering with black people's housing rights.

The prosecution team interviewed a young man named Don Powers, who had been a member of the Crips, a black L.A. gang, until he moved with his mother and sisters into Avenues territory. The Avenues immediately began targeting Powers and his family with racial slurs and threats. They eventually began attacking and shooting at Powers, and one night left two white chalk outlines on the family driveway, surrounded by the message "Avenues — niggers get out."

The team also met a clean-cut man named David Wilson, who reported that one night he had been hanging out in his back yard in Avenues territory when a group of gang members jumped the fence, stuck a gun in his face and announced "This is Avenues!" As Wilson turned and ran into his home, the gang members yelled after him, "Why you runnin', nigger?!"

The prosecution team also interviewed Jimmie Isher, who said that he and his siblings had been threatened and harassed almost immediately upon moving into Avenues territory. After one incident, Isher called the police. When a black officer showed up to take a report, the gang members got in his face and boldly called him a "nigger."

During the course of the investigation, federal authorities also learned that another black man had been murdered by Avenues because of his race. Chris Bowser had lived in the neighborhood and had been threatened, harassed and attacked by the gang for years. In December 2000, Bowser was waiting at a bus stop when two Avenues ran up, shot him three times in the head, and left him to die in the street.

One of the co-operating gang members explained that the gang particularly hated Bowser and targeted him for extra beatings and intimidation because he not only lived in Avenues territory, but had the nerve "to walk around the streets like he had a right to be there." This comment was strong evidence in support of the conspiracy charging criminal interference with housing rights.

The hate crime charge became much stronger because the evidence showed that the murder was the result of Wilson's race and his use of a public street claimed by the gang.

The trial

Although the defendants tried to claim that the acts of violence were aimed only at people the Avenues believed were rival gang members, the prosecution had a fail-proof response.

Prosecutors could point to the other victims of racial harassment, like David Wilson, Jimmie Isher and Don Powers's family, all of whom were not gang members. And they could point to Powers himself, who was a rival gang member but was repeatedly attacked as a "nigger," not a "Crip."

The prosecution could also point to Kenny Wilson and Chris Bowser, neither of whom were gang members, but whose lives ended in violence because they were black and they dared to enter a neighbourhood claimed by the gang.

Finally, the prosecution could point to the black police officer who responded to the Jimmie Isher incident.

Outcome

At the end of the trial, a jury convicted four Avenues defendants on all counts, and specifically found that the Wilson and Bowser murders were part of a conspiracy to interfere with black people's right to live where they choose. One defendant was sentenced to life in prison without parole, while the three others each received two life terms. A fifth defendant fled the country before trial and remains a fugitive. ■

* The names of the witnesses have been changed for this article.

Ten tips for winning courtroom confrontations

Courtesy of Val Van Brocklin

Speak plainly when you testify, advises Val Van Brocklin. When you sound like a regular person, the jurors can identify with you.

The last thing an officer wants to communicate is a cavalier attitude towards the truth.

By Val Van Brocklin

Of all the many facets of police work, none subjects an officer to more intense, public, microscopic scrutiny than an appearance in court. The officer's reputation and that of his or her agency can be enhanced or destroyed by one courtroom appearance. And, if one officer loses credibility in court, it can raise a doubt about the entire case.

Courtroom training and preparation is not intended to remove all anxiety from this high-stakes encounter. It should, however, arm you with the confidence to testify effectively even in the throes of such pressure.

While you can't control the questions you will be asked in court, or the style and tactics of the opposing attorney, there's plenty you can do to ensure you will be an effective witness. Here are 10 tips for winning your courtroom confrontations.

1. The oath: make your first impression count

People who testify frequently may come to view the oath as a rote exercise and may communicate this belief in their demeanor. They may only partially raise their hand and hold their fingers in a relaxed, cupped posture. They may start to be seated while saying, "I do." Consider what this communicates, even unintentionally, about your respect for the truth.

Much of a juror's impression about credibility is based upon the witness' demeanor rather than what the witness actually says. The last thing an officer wants to communicate is a cavalier attitude towards the truth. The oath provides a unique opportunity for the officer to make a strong, credible first impression within which all subsequent testimony will be viewed.

Think of the oath as a ceremonial salute and give it due respect. Look at and listen to the person administering it. Make eye contact with the jury as, or immediately after, you say "I do." The oath is your word of honour to the jury that they can trust you.

2. Listen carefully and think before you speak

Look and be attentive. This communicates to the jury that you care. Take time to think and organize your thoughts. This allows you to set the pace of cross examination. Opposing counsel will often try to make cross examination rapid-fire, hoping you will be hurried into testifying in error. Also, when you don't take this time, you tend to add information that the question does not call for, which leads us to the next tip.

3. Answer the question being asked

Don't add information to your answer that the question does not specifically ask for. This just expands the scope of your testimony and provides the opposing counsel with more material to cross examine you on.

4. Look at the jury

Eye contact is important to establish your credibility, but don't look like you're watching a tennis match. Switch your eye

contact between the lawyer questioning you and the jury like you would in a natural conversation with a group of people.

5. Speak plainly

Something happens to police officers when they testify. They go from regular sounding people to this:

Counsel: "Would you observe these photographs and tell me if these items were seen by you that day?"

Officer: "Yes, sir. All items depicted in the five photos were later observed by this officer while I was observing the said property which was observed in the trunk of the vehicle."*

Here's what a judge had to say about how law enforcement witnesses testify: "The agents involved speak an almost impenetrable jargon. They do not get into their cars; they enter official government vehicles. They do not get out of or leave their cars; they exit them…They do not go to a particular place; they proceed to its vicinity… A person does not tell them his name; he identifies himself." **

The judge's reaction aside, the reason not to testify like this is that when you do, you sound pompous. The jurors can't identify with you, which means that when the opposing counsel attacks you, the jury won't care. When you sound like a regular person, the jurors can identify with you and will not look kindly on the opposing counsel attacking you without justification.

6. Keep your cool

This is critical. If you can't remain calm and even-tempered on the stand with everyone watching, the jury has every right to be suspicious about how you conduct yourself on the street when no one but the defendant is watching. This is why the opposing counsel will try and provoke you. Defence attorneys know how the jury will respond to a police officer who becomes defensive, hostile, impatient, wisecracking or sarcastic on the stand.

7. Treat both attorneys alike

Remain sincere and dignified on the stand no matter who is asking the questions. Think of yourself as the jurors' witness, regardless of who subpoenaed you. When your voice or body language changes on cross examination, if you become defensive, evasive, or hostile, the jury notices and you appear biased.

8. Testify definitely

Constantly qualifying your answers with "I think," "I believe so," or "To the best of my recollection" weakens the impact of your testimony and suggests you're not concerned with the jury hearing accurate facts. Also, qualifying your answers usually occurs on cross examination, which makes you appear evasive and biased.

If you do not recall, say so. Likewise, if you do not know the answer to a question, say that. Otherwise, answer definitely.

If you do not recall, say so. Likewise, if you do not know the answer to a question, say that. Otherwise, answer definitely.

9. Candidly admit mistakes

If you've made a mistake during the investigation that raises a reasonable doubt about the defendant's guilt, you won't be testifying at trial. If you are testifying, whatever mistakes you made do not raise such a doubt.

If you realize after you complete your police report that you made a mistake, advise the government's attorney immediately. She can determine whether such an error needs to be disclosed to opposing counsel and whether the mistake should be brought out on direct examination.

Candidly admitting a mistake in court can actually enhance your credibility. When a person looks you in the eye and says, "I made a mistake," how do you feel about them? Most of us think that person is honest. If the jury thinks that about you, you've won your courtroom confrontation. Don't miss such an opportunity.

Honest mistakes about unimportant facts do not raise a doubt about the defendant's guilt. Instead they show officers are testifying truthfully to their own recollections.

10. Remember who is on trial

Have you ever felt defensive on the stand? That's a sure sign you're losing your courtroom confrontation. If you feel defensive, you will act defensively. What kind of people act defensively? Guilty people and people with something to hide — and that's what the jury sees.

Have you ever heard the phrase, "the defence attorney puts everyone on trial but the defendant?"

That's because opposing counsel knows that if she can make you feel defensive, you will act defensively and you will lose your credibility with the jury.

Remember, you have nothing to be defensive about. It is not your job to help win the case. That's the job of the government's attorney. Stay vigilant but calm in the fact that if you are testifying, there is sufficient evidence of the defendant's guilt.

Conclusion

The confrontation a police officer must win in court is the credibility confrontation. At the end of your testimony, the jury must believe you.

Look forward to practising these pointers and winning the credibility confrontation in court. ■

Val Van Brocklin is a public speaker, trainer and author with over 10 years experience as a U.S. prosecutor. In addition to her personal appearances, she appears on television, radio and webcasts, and in newspapers, magazines, online articles and books. Her website can be viewed at ***www.valvanbrocklin.com.***

* Rodney R. Jones, Charles M. Sevilla and Gerald F. Uelmen, *Disorderly Conduct: Verbatim Excerpts from Actual Court Cases* (W. W. Norton & Company, 1999), p. 42.

** *U.S. vs. Marshall*, 488 F.2d 1169, 1170 n. 1 (9th Cir. 1973).

Proportionality and the use of video surveillance in the United Kingdom

By Nick Taylor
Senior lecturer in law
University of Leeds, U.K.

Without doubt, the United Kingdom (U.K.) leads the world in the video surveillance of its citizens. The use of public-space video surveillance in the U.K. has grown enormously in the past two decades, to a position where cameras are now seen as a normal and largely accepted part of city and town street infrastructure.

Video surveillance is utilized inside and outside of most major shops, banks, leisure facilities, schools, hospitals, and other government and council property. Mobile head cameras are increasingly operated by police and local council street patrols, and law enforcement agencies increasingly engage in covert video surveillance in a variety of circumstances.

Of course, such surveillance — whether overt or covert — brings with it questions relating to regulation, accountability and the protection of rights.

For many years, the lack of any legal regulation of closed-circuit television (CCTV) surveillance — an off-the-shelf and highly visible response to crime — meant that important questions regarding accountability and infringement of rights were largely ignored.

Similarly, increasingly sophisticated techniques in covert surveillance were adopted throughout the 1980s and 1990s as a response to the policing of risk. The rush to use visual surveillance was not always based on — or supported by — reliable evidence of a relevant need.

Only in the past decade has the law begun to catch up with such pervasive and sophisticated techniques by demanding that surveillance operations reflect a proportionate response to an identifiable problem.

Regulating overt surveillance

The use of overt video surveillance in the U.K. is now regulated by the *Data Protection Act 1998* (DPA), which provides protection for individual privacy and ensures that those who gather information are held accountable.

An obvious question when one considers overt public-space surveillance is whether individual privacy is involved at all. The debate is a long standing one, but for the U.K., the position of the European Court of Human Rights is clear: "The normal use of security cameras per se, whether in the public street or on premises such as shopping centres or police stations, where they serve a legitimate and foreseeable purpose, do not raise issues" in relation to private life. The overt nature of public-space cameras also tends to suggest that there is no reasonable expectation of privacy in such a location.

The use of public-space cameras becomes more problematic when images are systematically or permanently recorded and retained. According to the European Convention on Human Rights, such recordings must be justified by a legitimate legal aim (such as crime prevention), and they must amount to a proportionate interference with private life, which basically translates as the least intrusive method available to satisfy the overall objective.

There is also an expectation of privacy in relation to how the information gathered is stored and used. In the U.K., the DPA requires that those who process data (which includes images recorded by CCTV) must do so in accordance with a number of data protection principles. The principles specify that the data must be processed fairly and lawfully and for specified purposes; that it must be relevant and not excessive; that it must be accurate; and that measures should exist to prevent its unlawful or unauthorized use.

Though such terminology does not necessarily sit comfortably with the recording of images, the U.K. Information Commissioner's Office provides a detailed code of practice as to what is required of CCTV operators in practical terms. Some operators' responsibilities under the code are as follows:

- Provide adequate signage to make people aware of who is carrying the surveillance out and for what reason. Without signage, the surveillance may be deemed to be covert.
- Respect confidentiality. This requires the masking of images that are broadcast to a wider audience unless there are countervailing public interest factors.
- Do not collect excessive data. For example, if cameras are intended to capture images of people waiting for public transport late at night, is it acceptable for the cameras to be operating 24/7?
- Obtain adequate data, meaning that CCTV images must be reasonably clear and fit for the purpose of the surveillance. It is often the case that CCTV systems are not well maintained, resulting in images that cannot provide reliable evidence.

Only in the past decade has the law begun to catch up with such pervasive and sophisticated techniques by demanding that surveillance operations reflect a proportionate response to an identifiable problem.

In sum, these requirements facilitate effective accountability and proportionality in the sense of ensuring the least intrusion upon privacy while still achieving the legitimate objective.

Although the legislation and its associated code of practice provide a comprehensive regulatory framework, the major drawback is that it arrived long after the implementation of many CCTV programs. Therefore, the core legal requirements were never part of the original thought process when the CCTV programs were drawn up. Furthermore, the DPA is a complex piece of legislation that is not well understood — even by seasoned practitioners like law enforcement agencies — and this can only dilute its effectiveness.

The challenges of covert surveillance

The use of covert video surveillance raises clearer issues in relation to personal privacy. With covert cameras, there is no opportunity for the target of the surveillance to consent to the practice; therefore, there is a greater possibility that the subject would have an expectation of privacy.

In the U.K., the *Regulation of Investigatory Powers Act 2000* (RIPA) provides that law enforcement agencies must obtain internal authorization (subject to external audit by the Office of Surveillance Commissioners) for the practice of directed surveillance (that which is not conducted on residential premises or in a vehicle — such surveillance is known as intrusive surveillance and involves a more robust authorization procedure).

Directed surveillance is defined as follows: it is covert, it is for the purpose of a specific investigation, it is not an immediate response to events, and it is likely to result in obtaining private information about a person. However, this definition does present law enforcement agencies with difficulties making a determination whether certain practices require prior authorization.

The major difficulty relates to the interpretation of the likelihood of obtaining private information. For example, if an operation involves the covert filming of a crime hot spot such as a parking lot where vehicle crime is common, should an authorization be sought? What about the potential for collateral intrusion, which is the recording of private information about others who are not targets of the operation? The difficulty in approaching such questions has led many law enforcement bodies to adopt a safety-first or risk-averse approach to such surveillance operations, erring on the side of requesting authorization — a necessarily bureaucratic process — in all cases.

But does this safety-first response reflect an ethical approach that shows concern for individual rights? A surveillance operation that displays an ethical approach is one that does not, for example, make generalizations about expectations of privacy in parking lots but pays very close attention to the specific facts of the individual case. It is only by close scrutiny of the individual circumstances that one can demonstrate that a proportionate interference with privacy is being taken. Generalizations and common principles can only serve to defeat the search for proportionality.

Maintaining accountability

Both the DPA and RIPA require a somewhat heavy bureaucratic burden but arguably this is necessary to ensure that potentially intrusive surveillance practices remain accountable. It is important to note that the use of surveillance tactics and human rights do not and should not represent a conflict.

Crucially, policing initiatives that maintain moral authority and community support are those which are carried out according to transparent ethical standards. The use of surveillance techniques is no exception. ■

Getting the guilty verdict

Federal prosecutor draws from over 200 successful convictions

Former U.S. federal prosecutor John Kroger knows how to handle large, complex cases. Between 1997 and 2003, he successfully prosecuted Mafia capos, drug kingpins and crooked Enron executives — and he describes it all in his new book Convictions *(Farrar, Straus and Giroux, 2008). Recently sworn in as Attorney General of Oregon, Kroger took some time to chat with* Gazette *writer Caroline Ross about his years as a federal prosecutor in eastern New York. **

Which case stands out for you and why?

Probably the single case that was most rewarding was the prosecution of a Mafia captain named Gregory Scarpa Jr. Scarpa was allegedly involved in well over a dozen homicides, and we charged him with six. The investigation took more than a decade. I was brought in at the end of the case to try it in court. It was a six-week-long trial and very complicated, based primarily on the testimony of former Mafia members. At the end of the day, we won and he's going to be in federal prison for what I expect will be the remainder of his life.

How do you get hardened Mafia criminals to co-operate with your case?

Defendants of any kind are only going to co-operate if they view it as being in their best interests to do so. You might have great legal leverage — they might be facing a murder charge and the prospect of life in prison unless they co-operate — but they're also risking their life by turning against the Mafia. You have to spend a lot of time getting them comfortable with the idea of going into the Witness Security Program and taking a new identity, the idea of changing sides. But ultimately, they're professional criminals. Lots of them knew this day might come, and getting them to admit that they committed crimes is relatively easy.

Is the situation with white-collar defendants different?

It's 180 degrees different. No white-collar defendants think of themselves as criminals. To get them to the point where they're willing to plead guilty and co-operate with the government investigation is a huge challenge. A lot of these defendants have a lot of money, and they're able to hire very talented defence attorneys. That is the single biggest thing that makes white-collar cases harder to win (than drug or violence cases).

What are some other differences between Mafia and white-collar cases?

In a Mafia case, there simply isn't going to be much documentary evidence, and there may be no physical or forensic evidence at all. The Mafia (like other professional organized crime groups) are very good at destroying evidence. Your real challenge is to find some evidence of the crime, get witnesses who don't want to co-operate to co-operate, try to infiltrate those criminal organizations. White-collar cases are very, very different because you usually start with a huge volume of potential evidence — in the Enron case we started with something like 10 million documents. The problem isn't, "How do we gather information?" The problem is, "We have more information than we can handle."

Steve Dipaola

John Kroger was the first U.S. federal prosecutor to cross-examine a sworn Mafioso — an experience he describes in his book *Convictions*.

How did you tackle that challenge in the Enron case?

We put together a great team of very financially sophisticated agents to work through all the documents. We scanned everything into searchable databases that allowed us to explore the evidence more rapidly and more strategically. Then we really had to prioritize. One of the unique aspects about Enron was that by the time we started to investigate the crime, we were following in the wake of nine months of very good work by investigative journalists and congressional committees that had held hearings. In some ways, we started with a road map of potential areas to investigate. You just don't have that in anything but a remarkable case like Enron. ■

> **"No white-collar defendants think of themselves as criminals. To get them to the point where they're willing to plead guilty and co-operate with the government investigation is a huge challenge."**

** U.S. federal prosecutors not only prosecute cases in court, they also play a direct role in ongoing criminal investigations. Under U.S. law, federal investigation agencies like the FBI must obtain authorization from federal prosecutors before proceeding with wiretaps, search warrants, arrest warrants, immunity orders and most subpoenas.*

Just the facts

Civil disorder — a public disturbance involving group violence — can escalate quickly and place persons or property at risk of harm. Whether it's a riot, an aggressive protest, or even a peaceful demonstration gone astray, civil disorder certainly challenges the police response. Here are some facts about civil disorder from around the globe.

Police statistics indicate that the number of mass protests in China rose from 8,700 in 1993 to over 58,000 in 2003 — an increase of more than 560 percent in a decade.

Six per cent of Canadians surveyed by Statistics Canada in 2003 said they had participated in a march or public demonstration during the previous 12-month period. Participation rates were higher among Canadians with higher levels of education or household income.

Of 512 respondents to a British government consultation on managing protests around Parliament, over 95 per cent felt that legislative requirements for demonstrators to notify police in advance of protesting were not justified on security grounds, on grounds that the business of Parliament needs special protection, or by a need to safeguard wider public enjoyment of the space.

Civil disorder most often occurs in large cities and is more common during the summer months.

A recent study of riots in India between 1973 and 1999 found that the number of riots decreased between 10.5 and 12.1 per cent for each extra rupee per capita spent on social services in the preceding period. Use of police had an opposite effect: for every additional 25 police officers used in one period, there was one additional riot five years later.

Looting and setting fires are the most common activities associated with civil disorder.

Of the 9,000 people arrested for riot activity after the Rodney King verdict in 1992, approximately 40 per cent had prior criminal records and 30 per cent were on probation or parole for criminal convictions.

Over the last 10 years, the United States has experienced an increase in "celebratory riots" — fan violence in response to college sports victories. Most rioters are young, white males engaged in "feats of skill" like hurling bottles or flipping cars, says research from Kent State University.

Suicide rates tend to decrease during extended periods of civil unrest, according to a University of Ulster study on the Irish Troubles. The study suggests that people who join together against a perceived threat develop a sense of community that supercedes individual circumstances.

Canada enlisted 6,000 police officers to provide security during the 2001 Summit of the Americas in Quebec City. The three-day event attracted over 20,000 protesters and resulted in 403 arrests.

SOURCES: RAND Corporation, "Chinese government responses to rising social unrest": **www.rand.org/pubs/testimonies/CT240**; Statistics Canada, "2003 General Social Survey on Social Engagement": **www.statcan.ca/english/freepub/89-598-XIE/2003001/article.htm**; Home Office, "Managing protest around parliament": **www.homeoffice.gov.uk/documents/cons-2007-managing-protest**; Peninsula Emergency Preparedness Committee (PEP-C), "Civil disorders": **www.pep-c.org/civildisorders**; City of Roseville, California, "Multi-hazard mitigation plan": **www.roseville.ca.us/fire/emergency_preparedness/multi_hazard_mitigation_plan.asp**; MICROCON, Research Working Paper 3 (RWP3), "Carrot or stick? Redistributive transfers versus policing in contexts of civil unrest": **www.microconflict.eu/publications/research_working_papers.html**; California State Senate Special Task Force on a New Los Angeles, "New initiatives for a new Los Angeles": **www.usc.edu/libraries/archives/cityinstress/newinit/contents.html**; Education Law Consortium, "An analysis of issues related to celebratory riots at higher education institutions": **www.educationlawconsortium.org/forum/journal05.htm**; CNN news, "Rioting: the new campus craze": **www.cnn.com/2004/EDUCATION/02/26/life.rioting.reut/index.html**; Unviersity of Ulster, "Suicide rates after the Troubles": **news.ulster.ac.uk/releases/2005/1806.html**; The Globe and Mail, "Summit of the Americas": **www.theglobeandmail.com/series/summit2001**

Emotional survival for police officers

By Kevin M. Gilmartin, PhD

Policing has always been considered a highly demanding profession in terms of stress and strain. After all, no one calls an officer for assistance because things are working normally.

The work day of a law enforcement professional can range from mundane encounters with the public to intense situations such as searching buildings, making high-risk arrests, and detecting bombs or narcotics. But it is this very lack of mundane predictability, combined with a desire to assist one's fellow citizens, that attracts many officers into the profession.

To function tactically during high-risk operations demands a high level of expertise. For the most part, the officer masters the necessary safety skills to survive these situations. However, the law enforcement profession presents a unique challenge for the officer who must develop different skills — many of which go beyond street survival — over the course of an entire career.

Responding to high-risk calls demands an elevated level of alertness, engagement in the moment, quick thinking and the capacity to perform well under high stress. This is not unlike what a professional athlete experiences during competition. However, there is often a long-term cost of being able to perform in these high-demand situations: failure to survive emotionally.

Many officers who begin their careers with unbridled enthusiasm end up, over the course of their careers, suffering problems in both their personal lives and their long-term relationships with their agencies. Is there a connection between the type of officer who, early in his career, likes the emotional intensity offered by police work and the officer who may experience personal and professional difficulty as his career progresses? The answer is yes, and here is why.

When the officer is engaged in a potentially intense situation, he is, physically speaking, functioning at an elevated level of sympathetic branch autonomic nervous system arousal. This is the part of the brain that controls functioning when the individual is in at-risk situations. This state is not unpleasant to experience, and competent field officers function best in this mode, just like the professional athlete whose performance improves when the game is on the line.

The officer who excels at work may, unfortunately, be the off-duty officer who has not gone fishing in three years, has a mountain bike with two flat tires and has a treadmill that has had clothes piled on it for the last three months.

The downside of being able to perform well in intense situations is that each action has an equal and opposite reaction. A police officer who must make split-second decisions at work doesn't even want to think when he returns home at the end of a shift. The sympathetic branch basically turns on when alertness is required and the parasympathetic branch — which promotes rest and energy-conservation — turns on when detachment and disengagement is the order of the day.

Although these physical reactions are absolutely normal, the problem for police officers is that, when at work, they are not called to engage when "normal" situations are taking place. All encounters in the field are potentially high risk; only hindsight tells us if no risk was actually present.

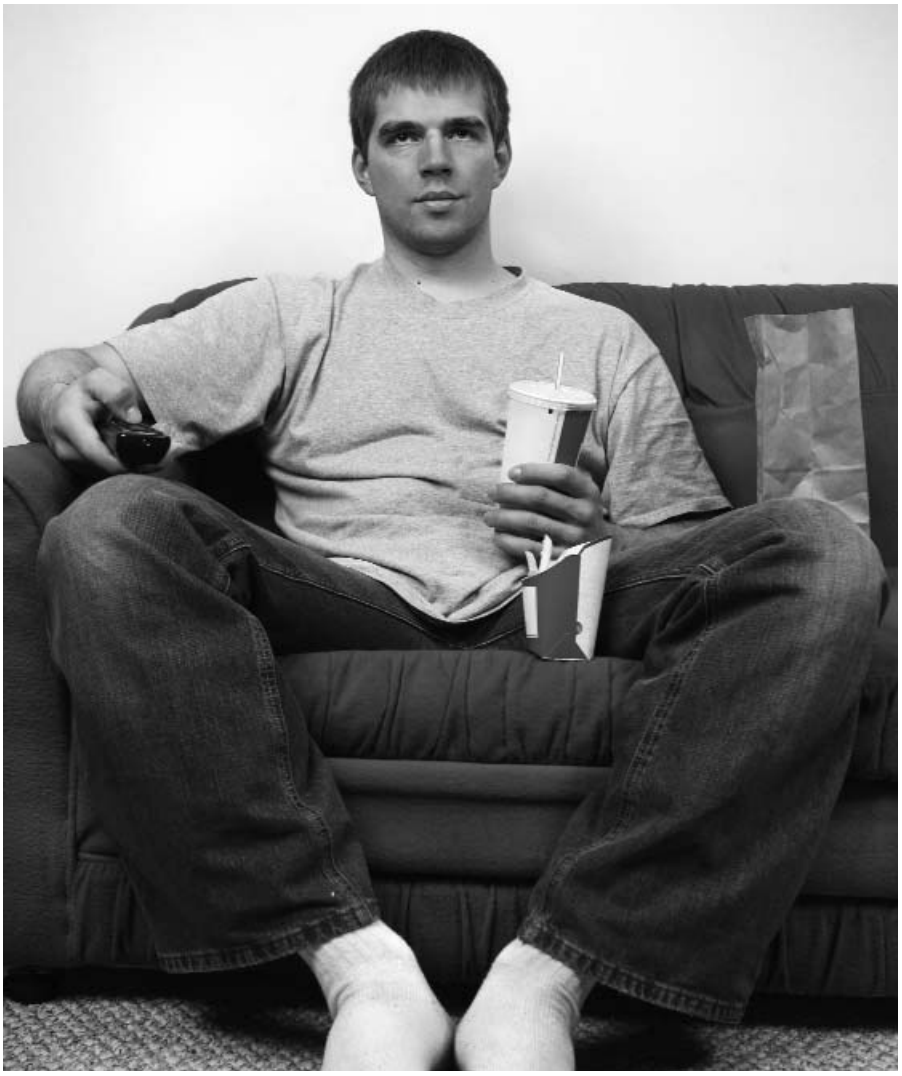
During work hours, a police officer must be able to move quickly into the sympathetic autonomic range of functioning so that a split-second tactical decision to shoot or don't shoot is made with confidence and expertise. But similarly, when off duty, the transition from the sympathetic branch to the parasympathetic branch is pronounced among police officers — more so than in other people. This produces an officer who can make a very rapid decision in the field, but at home when asked, "What would you like for dinner, honey?" can only respond with, "What ever you want to cook honey, I don't care."

It is this level of disengagement during off-duty hours that typically spells doom for both the personal life and the long-term job satisfaction of many excellent police officers. And, as the officer becomes more competent in the field, he can become more incompetent in the skills required to function while off duty due to the reduced levels of activity and engagement in the officer's non-work life.

Some officers interpret or explain this disengagement as simply "feeling tired," and they compound the problem by spending their personal time in a sedentary state, watching television and detaching from others. They become reinvigorated only when they are plugged back into their work. As the years go by, their personal relationships suffer because they experience those relationships only in the detached states of apathy and indifference. Many marriages and domestic relationships fail as a result.

The officer who excels at work may, unfortunately, be the off-duty officer who has not gone fishing in three years, has a mountain bike with two flat tires and has a treadmill that has had clothes piled on it for the last three months. Not only is this sedentary lifestyle detrimental to the officer's physical fitness, but it will also reduce his professional effectiveness.

Another important factor is that the officer's skills and competencies are tied to a role that is ultimately controlled by his police organization. When that agency faces times of change or transition, this can create significant emotional impact for the officer who defines himself by his



Off-duty disengagement and inactivity impact not only your own personal health and welfare, but also that of your domestic partner and your children.

profession. Again, this impact is even more pronounced as the officer becomes more specialized. How many special-assignment officers have spent years embittered because management transferred them out of narcotics, K-9 or SWAT against their will? This disillusionment can colour the rest of an officer's career if he is trained only to face tactical challenges and not emotional challenges.

An officer must be able to focus his awareness and skill development in areas of emotional survival to maintain both professional and personal life competencies. The solution is not to engage less in the professional role, but rather to commit more to the non-work roles.

Here are three quick emotional survival strategies for police officers that can positively impact their personal and professional well-being:

Have a plan for managing your personal time. Do not wait until you "feel like doing something" to engage in an activity. When you return home after a day of being in the engaged, alert state, you will never feel like doing things. Spontaneity does not come easily to an off-duty officer. Use a calendar or write a list of activities that you will engage in off duty. Do not wait until the feeling moves you, because it won't. Just get up and do it. You will feel better and have more energy.

Give yourself an absolute minimum of 30 minutes of non-stop aerobic exercise daily. This serves two functions. First, it physically breaks the inertia of parasympathetic disengagement and permits other activities to take place. Second, it provides the necessary long-term benefit of physical well-being and stress reduction. Walking or jogging with your spouse is also far more beneficial time for any relationship than sitting and staring blankly at a television set. Off-duty disengagement and inactivity impact not only your own personal health and welfare, but also that of your domestic partner and your children.

Invest in non-work-related skills that you control. This gives you the ability to can handle the emotional bumps and setbacks that always come whenever someone is heavily committed to a role that an agency controls. The best police officers are also the best fly fishermen, the best moms or dads, the best Harley riders, the best hockey coaches. These are activities you control, and you must engage in them even when every fibre of your body tells you to just sit, watch television and do nothing.

Remember, it is not a matter of caring less about work; it is a matter of caring more about the non-work roles. Police officers who keep their strategies of emotional survival as well-tuned as their strategies for street survival become the best all-around survivors. ■

Dr. Kevin M. Gilmartin is a behavioural sciences consultant who spent 20 years working in law enforcement. He is the author of the book Emotional Survival for Law Enforcement: A Guide for Officers and their Families *(E-S Press, 2002).*

Demography as destiny?

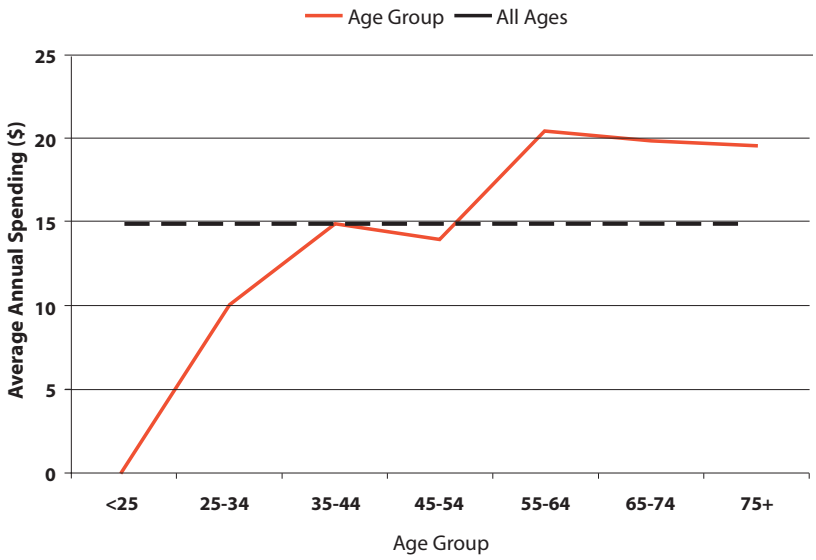
The implications of Canadian demographic trends for policing

By Richard A. Loreto, PhD
President, R.A.L. Consulting Ltd.

David Foot, the respected academic and author of the best-selling book *Boom, Bust & Echo: Profiting From the Demographic Shift in the 21st Century*, has popularized the study of demography. Demographers seek to understand market or public-policy implications and trends associated with net natural population increase (the difference between births and deaths), as well as the migration of people between cities, regions or countries, and the distribution of characteristics such as age, sex, ethnicity and race across the population.

Demographic analysis is a valuable strategic planning tool. By looking at the demographic trends in Canada, one can draw conclusions about implications for policing now and in the future.

Household Spending by Age of Household Head
Home Security Services, Canada, 2006 (annual $ per person)



Source: Statistics Canada, Survey of Household Spending 2006, and R.A.L. Consulting Limited.

Demographic analysis

Foot's work has established population aging as a key trend in Canada that is projected to continue for the foreseeable future. The aging of the baby boomers born between 1947 and 1966 drives this trend. The cohorts that followed the boomers — the bust (1967 to 1979) and the echo (1980 to 1995) — are smaller in size and will not have the same impacts on the marketplace and public policy as will the boomers.

Foot's central contention is that "demographics explain about two-thirds of everything." Although demographic analysis utilizes a wide range of data, he observes that the most useful variable for projecting economic behaviour is the age composition of the population.

For example, the age variable is recognized as an important predictor of criminal behaviour (although there is substantial debate over both the magnitude and scope of its impact). From Foot's perspective, younger persons are more likely than older persons to participate in the "crime workforce," and furthermore, persons in different age groups are more likely to commit different types of crimes.

"The typical teenager's crime is one in which he doesn't come into contact with his victim (for example, break-and-enter)," writes Foot. "A person in his late 20s, if he stays in the crime field, will move . . . from breaking into homes to robbing banks. The 29-year-old's crime is more violent than the 19-year-old's."

Although behaviour can change over time, Foot suggests that participation rates by age for many activities remain stable. He acknowledges that participation rates can be impacted by other economic and social factors such as recessions, income levels, unemployment rates, marital status and ethnicity; however, the impacts of these factors do not diminish the analytical power of the age factor.

"The number of people who will participate in a given activity is two-thirds predictable because of the age factor," writes Foot.

Moreover, other non-age factors are not absent from demographic projections based on age. Embedded within the assumptions regarding fertility, mortality and migration that support population projections are past economic, social, legislative and technological trends.

Demographic trends in Canada

Applying Foot's approach to Canada, the key demographic trends are as follows.

First, Canada's population is projected to grow at a declining rate as a result of aging. In 2008, around one-quarter of Canadians were age 55 or older. Statistics Canada projects that by 2021, one-third of Canadians will be 55 or older. The share of Canadians under the age of 25 falls from approximately one-third to one-quarter in the same period. The aging trend is not uniform across the provinces.

Both Quebec and the Atlantic region exhibit an older age profile than either Ontario or the western provinces, mostly due to the differential impact of migration.

Second, Canada's population growth is increasingly impacted by international migration, a trend that is also changing Canada's ethnic and racial composition. In 2008, one-third of population growth was attributable to net natural population increase. By 2021, that share will be less than one-quarter. Statistics Canada projects that the visible minority population will increase from 13 per cent in 2001 to somewhere between 19 and 23 per cent in 2017. Furthermore, the median age of the visible minority population in 2017 will be 35.5 compared to 43.4 for other Canadians.

Third, Canada's labour force reflects the aging and diversity trends. In 1976, there were 2.8 labour force entrants aged 15 to 24 for every worker aged 55 to 64 who might retire. By 2007, there were 1.3 younger workers for every potential retiree. In addition, data from the 2006 census shows that visible minorities constitute 15 per cent of both the overall labour force and its entry cohort.

Fourth, population growth continues to be skewed towards the largest metropolitan areas, especially Toronto, Montreal and Vancouver. According to the 2006 census, two in three Canadians live in a census metropolitan area, and one in three live in either Toronto, Montreal or Vancouver. Population growth in the largest census metropolitan areas is driven by immigration. Toronto, Montreal and Vancouver account for 70 per cent of recent immigrants.

Finally, the aboriginal population, both on and off the reserves, is growing and is younger than the non-aboriginal population. By 2017, Statistics Canada projects that the aboriginal population will be 20 per cent larger than it was in 2001, and the median age of aboriginals will be 27.8 compared to 41.3 for all Canadians.

Implications for policing

Analytical work carried out by R.A.L. Consulting Ltd. suggests that demographic trends have significant implications for policing in three areas: recruitment, service delivery and aboriginal policing.

Demographic trends have significant implications for policing in three areas: recruitment, service delivery and aboriginal policing.

Recruitment: Police officers appear to retire earlier than other workers. In 2006, the share of police officers aged 55 to 64 was five per cent compared to 13 per cent for the overall labour force. Hence, the pressure to recruit will remain high both due to service delivery demands and the need to replace retirees.

A major implication of the demographic trends identified earlier is that a recruitment strategy must be multi-focused. Looking ahead, there are five opportunities regarding recruitment:

- "Re-inventing" the mature worker by retaining some officers who might otherwise retire
- Competing in the youth market that is projected to decrease in size
- Maximizing labour force participation of females (only about 20 per cent of officers are female, compared to 47 per cent of workers in the overall labour force)
- Recruiting from the diverse immigrant flow
- Identifying areas where technology can enhance productivity through either assisting or replacing staff

Service delivery: An analysis of data from Statisics Canada's Incident-based Uniform Crime Reporting Survey shows that over the past 10 years a substantial share of accused persons are under the age of 40. The under-40 cohort is projected to decline gradually for the next 30 years. This trend holds out the prospect of reallocating resources among the various areas of enforcement activity.

An aging population has a greater fear of victimization, even if this fear is often out of proportion with reality. One barometer of this trend is household spending on security services. This area of consumer spending is projected to increase 44 per cent faster than all consumer spending between 2007 and 2017. Households headed by a person 45 or older account for over three-fifths of consumer spending on home security services in Canada. The implication for policing is that the perception of victimization by a large group of aging boomers will need to be managed carefully.

Aboriginal policing: Based on demographic projections carried out for Public Safety Canada, R.A.L. Consulting has identified four strategic implications for police in relation to Canada's young, growing aboriginal population:

- Increased allocation of human and material resources to RCMP contract and First Nations policing services to meet the projected increase in service demand
- A major delivery focus on non-urban areas, particularly reserves, in Saskatchewan, Manitoba and the territories
- Enhanced programs for both aboriginal crime prevention and victim services
- Priority recruitment of aboriginal officers

Conclusion

Demography may not be destiny but, to paraphrase Foot, it is two-thirds of destiny. Therefore, strategic planning for both operational and administrative policing purposes must be based on systematic demographic analysis. ■

R.A.L. Consulting Ltd. is a management-consulting firm based in Hamilton, Ontario. The firm specializes in using demographic analysis to manage issues impacting clients' products, services, work forces and marketing approaches. For more information, visit ***www.ralconsulting.ca.***

Latest research in law enforcement

The following are excerpts from recent research related to justice and law enforcement. To access the full reports, please visit the website links at the bottom of each summary.

Exploring the links: firearms, family violence and animal abuse in rural communities

By Dr. Deborah Doherty and Dr. Jennie Hornosty for the Canada Firearms Centre

Despite the growing body of literature on family violence, there are few studies that deal specifically with family violence in a rural context. None have examined extensively the social and cultural context of firearms in rural homes and the impact this may have on women dealing with abuse. Yet we know from our previous research that the availability of firearms in rural homes is a perceived threat by abused rural women. We also know that threats often extend to family pets and farm animals.

The current study examines family violence, firearms and pet abuse within a rural context where firearms are positively valued. The major goal of the study was to examine, from a broad regional perspective, the various dimensions or forms in which firearms serve as instruments of control, intimidation and abuse in family violence situations, with a view to expanding the information base and gaining a better understanding of the risk factors that lead to, or escalate, firearms victimization of women and children in rural homes.

The research was carried out in New Brunswick and Prince Edward Island in 2005–2007, over an 18-month period. We used both surveys (of which we received 391) and semi-structured interviews and focus groups (involving a total of 72 participants).

Pets and/or farm animal are often threatened, harmed or neglected as a means of controlling an abused woman.

Some common and recurring themes that emerged include:

- Firearms, mostly long guns, are thought to be readily available in most rural homes
- A significant portion of (firearms) are unregistered
- Women who are experiencing firearms victimization tend not to tell the police or others about their experiences for a variety of reasons
- While abuse sometimes involves having a firearm pointed at them, the very presence of firearms serves to silence women, even when the threats are indirect
- The fear of firearms misuse can become a community concern affecting family, neighbours and service providers who are scared to call the police when they witness abuse for fear of retaliation
- Police response to family violence situations is not standardized and unless an incident specifically involves a firearm, police may not search for and seize the firearms in the home
- Pets and/or farm animal are often threatened, harmed or neglected as a means of controlling an abused woman, and it is common for women to delay seeking help out of fear for their animals

To access the full report — including recommendations based on the authors' research — please visit: ***www.unbf.ca/arts/CFVR/FamilyViolenceontheFarmandinRuralCommunitiesResearchTeam.php***

Dealing with environmental harm: green criminology and environmental law enforcement

By Rob White for the Tasmanian Institute of Law Enforcement Studies (Australia)

Concern about the environment is now starting to have greater resonance within the criminal justice field. The aim of this paper is to introduce readers to some of the key concepts of green or environmental criminology, and to explore issues pertaining to how law enforcement agencies such as the police deal with environmental harm.

The paper begins by briefly describing the three core areas of green criminology, which broadly speaking relate to environmental justice, ecological justice and species justice. This is followed by a discussion of the nature and dynamics of environmental crime and the challenges these pose from the point of view of definition, disputation and action. The next section explores practical and organizational matters relating specifically to environmental law enforcement. The paper concludes by raising questions for law enforcement officials and others working in the criminal justice field about how best to negotiate and deal with environmental harms now and into the future.

Dealing with environmental harm is bound to challenge our conceptions of "harm," our notions of "crime" and our

capabilities as analysts and practitioners in the criminal justice field.

From an analytical point of view, conceptualization of harm ought not to rely upon the legal–illegal distinction per se, especially since some of the world's most environmentally disastrous practices are in fact still legal. Criminological intervention may well entail the exposure of negative, degrading and hazardous practices as a prelude to the banning and close control of such practices.

Debate will occur over when preventive measures need to be introduced as a precautionary measure. Differences in opinion over future consequences mean that those who take action now (such as protesting against a large polluting pulp mill) for the sake of up-and-coming generations may well be criminalized in the present. But the history of law reform is built precisely upon such tensions. For police, these pose great challenges in terms of professionalism, perceived neutrality in conflicts and expenditure of time, energy and resources vis-à-vis public-order policing.

There are some forms of environmental harm that cannot be contained easily due to the enormous scope of the problem. For example, the transnational movement and illegal dumping of toxic waste will require international co-operation amongst police from different nation-states. Co-ordination of environmental law enforcement will require free exchange of information and constant surveillance across borders.

Environmental law enforcement ought to be based upon a problem-solving approach, but it is not always easy to discern what is accurate or true when it comes to specific environmental harms.

There is a need, therefore, for multi-disciplinary approaches to the study of environmental harm. On the other hand, we have to be aware that there are major industries of "denial" of environmental harm, including both corporations and governments, and this places pressure on police to act in non-partisan ways, and in a manner that upholds the rule of law universally.

To access the full report (TILES Briefing Paper No. 5, November 2007), please visit:
www.utas.edu.au/tiles/publications_and_reports/index.html

Research accordingly suggests that it is time for police to shift from person-based policing to place-based policing.

Place-based policing

By David Weisburd
for the Police Foundation
(United States)

The core practices of policing assume that people, whether victims or offenders, are the key units of police work. Catching criminals and processing them through the criminal justice system remains the predominant police crime prevention strategy.

In turn, policing today continues to be geographically organized into units such as police precincts or beats that have little to do with the crime places that recent research has identified as central to understanding crime.

In this essay, I am going to argue that police should put places rather than people at the center of police practices. My point is not simply that places should be considered in policing but that they should become a key component of the databases that police use; of the geographic organization of police activities; of the strategic approaches that police employ to combat crime and disorder; and in the definitions of the role of the police in urban settings.

Place-based policing is theoretically based on "routine activities theory" (Cohen and Felson 1979; Felson 1994), which identifies crime as a matter of the convergence of suitable targets (e.g., victims), an absence of "capable guardians" (e.g., police), and the presence of motivated or potential offenders.

Basic research suggests that the action of crime is at very small geographic units of analysis, such as street segments or small groups of street blocks. Such places also offer a stable target for police interventions, as contrasted with the constantly moving targets of criminal offenders.

Evaluation research provides solid experimental evidence for the effectiveness of place-based policing and contradicts the assumption that such interventions will just move crime around the corner. Indeed, the evidence available suggests that such interventions are much more likely to lead to a diffusion of crime control benefits to areas nearby.

Research accordingly suggests that it is time for police to shift from person-based policing to place-based policing. While such a shift is largely an evolution in trends that have begun over the last few decades, it will nonetheless demand radical changes in data collection in policing, in the organization of police activities, and particularly in the overall world view of the police.

To access the full report (Ideas in American Policing, No. 9, January 2008), please visit:
www.policefoundation.org/docs/library.html

The Child Advocacy Centre of Niagara

A multidisciplinary response to victims of abuse

By Roy Hardman
Chairman of the Board of Directors
Child Advocacy Centre of Niagara

When the Child Advocacy Centre of Niagara (CACN) opened its doors on September 16, 2008, it became the first centre of its kind in Canada.

From this one site in St. Catharines, Ont., a 16-member child advocacy support team — with members from the Niagara Regional Police, Family and Children's Services (FACS) of Niagara, the mental health and medical communities, and the Crown — provides a comprehensive and timely response to allegations of child maltreatment. The goal is to treat victimized children and investigate and prosecute their abusers through a multidisciplinary approach.

Collaborating for children

The CACN's interdisciplinary approach is crucial to reducing trauma to children and families involved in abuse investigations. The centre can provide immediate medical attention if required, counsel children and their families where necessary, and provide a comforting environment for children to accurately tell the details of their abuse so that police can obtain irrefutable evidence of the crimes. The CACN provides a safe place for abused children, many of whom are under the age of 10, to start becoming children again.

The simplicity of the CACN is that it provides a base from which children and their families can receive all necessary professional services in one location. This arrangement immediately maximizes the likelihood of successful treatment of the child and successful prosecution of the offender.

Prior to the CACN's existence, child protection workers, police officers, medical and mental health professionals, prosecutors and other attorneys frequently subjected child victims of abuse to multiple interviews. The interviews typically occurred at each professional's office, and the process resulted in the child being repeatedly asked to recount the details of the abuse. This created additional trauma to the child and jeopardized the accuracy of the details of the abuse.

When an abused child enters the CACN, he or she meets one of the team members in a comforting and relaxed environment that helps reduce the child's trauma and allows the child to accurately disclose the details of the abuse. Depending on the case, a police officer or a FACS member will conduct the interview only once the child's trauma has diminished.

Cases are referred to the team through a number of sources, including teachers, principals, caregivers, churches, social workers and the victims themselves.

Police officers become involved when the abuse is determined to be criminal and when charges are likely to be laid. As part of the team, police work closely with FACS to ensure all aspects of the case are covered.

The goal is to treat victimized children and investigate and prosecute their abusers through a multidisciplinary approach.

Building a legacy

The CACN is a community-driven initiative, governed by a board of directors and supported by the 12 municipalities of Niagara.

It is modelled after more than 600 similar centres located throughout the United States — the first of which dates back to 1985, when Alabama Congressman Bud Cramer organized an effort to create a better system for dealing with abused children in the city of Huntsville.

In Niagara, the idea to open a child advocacy centre came about in 1989, when Lynda Filbert, a FACS of Niagara director, attended a conference in the United States. There, she learned about the U.S. centres and returned encouraged to bring the concept to Canada.

After much discussion, plans to create the centre began in 2002. FACS board member Frank Parkhouse was mandated with forming a board of directors that would be responsible for developing and implementing a child advocacy centre within the municipalities of Niagara.

The CACN did not materialize overnight. In fact, it took four years of dedicated hard work by a board of directors committed to reducing child abuse within their communities, as well as extensive financial and volunteer support from the municipalities of Niagara, before the centre could open its doors.

Results-oriented

The CACN is determined to match the results of its U.S. model — results that include increasing the conviction rate for child abusers by 30 per cent, reducing the time from disclosure to trial from 18 months to six months, achieving faster court times, increasing the number of plea bargains so fewer children need to appear in court, and employing a multidisciplinary team approach to increase the flow of information and facilitate training across fields.

The CACN also hopes to reduce the broader costs of child abuse for the communities it serves.

In 1995, the estimated direct economic costs of child sexual abuse in Canada exceeded $3.6 billion — a figure that includes, but is not limited to, total costs for health care, social and public services, and treatment programs.

The indirect costs are difficult to assess; they reflect the long-term consequences of intimacy violence and include costs related to addressing mental health problems, substance abuse, teen pregnancy, special education requirements pertaining to learning disabilities and/or emotional problems, welfare service requirements, homelessness and criminal behaviour.

The need for child advocacy centres in Canada is great. In Niagara, this need is supported by concerning statistics from FACS that exposed 708 cases of physical abuse and 343 cases of sexual child abuse within the municipalities of Niagara in 2006–2007. These statistics reveal that one in three girls and one in five boys in Niagara will be physically and/or sexually assaulted prior to reaching the age of 18. The CACN wants to reduce these horrific statistics through the conviction of more offenders and by educating potential victims, caregivers and school teachers about the centre and its program.

The centre will be measuring its results and reporting back to its stakeholders and other potential centres on its progress. These measurements will be critical in determining and correcting any non-conformance to the planned strategy of the program, and in ensuring that the centre reaches its goals of reducing trauma to the child victims and increasing convictions of their perpetrators.

The CACN's partners are committed to a goal of eliminating child abuse, but until that remarkable day happens, they will work toward reducing the trauma to these young victims and helping them become children again. They are continually supportive with new ideas and suggestions for improvement.

The centre has also partnered with the Red Cross and in 2009 will be participating in an advocacy component with the Red Cross RespectED violence and abuse prevention program. The program trains children, schools and organizations on how to recognize child abuse, what to do about it, and where to go for help.

We are proud to be the first in Canada to establish a child advocacy centre. Although we are open and functioning according to plan, we will continue to develop strategic plans for the improvement to the quality of life for these children and their non-offending families. We will ensure the centre's financial sustainability long into the future and provide assistance to help other communities in their pursuit to establish child advocacy centres. ■

Transforming organizational culture and climate

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Change management is a hot topic as many organizations wrestle with new and often morphing complexities of social, economic and public policy pressures, as well as the body blow of baby boomer retirements.

The RCMP is well into what is likely one of the most complex organizational change processes in Canadian history, due to the unique organizational structure of the RCMP, the force's deep history and culture, and its role as a national icon. This journey of transformation has already uncovered a great deal about the culture of policing and about the top attributes that employees and commanders consider important in leadership.

In late 2007, the government-appointed Task Force on Governance and Cultural Change in the RCMP produced a report setting out 49 recommendations related to organizational structure, oversight, accountability, leadership, workload, employee wellness, governance and management. While the RCMP had already completed a number of internal studies related to organizational development, the report "Rebuilding the Trust: Task Force on Governance and Cultural Change in the RCMP, December 2007," served as a catalyst for further action on a large scale.

In early 2008, the RCMP took a number of key transformative steps. First, the senior executive articulated a vision for change stating that the RCMP will be "an adaptive, accountable, trusted organization of fully engaged employees demonstrating outstanding leadership and providing world-class police services."

The vision is the heart of a draft transformation plan that builds upon the deep culture and history of the RCMP, recognizing that the most successful organizational change occurs when new ideas are linked to the best of the past. The plan is premised on the belief that there is more "right" than "wrong" in the RCMP, but that what is wrong must be addressed. It also recognizes that lasting change must also include changes in individual behaviour and attitudes.

Every prevailing assumption about leadership, supervision and effective delivery of police services was open to healthy questioning, research and analysis.

The force also established a network of widespread and ongoing national input, drawing ideas from all categories of employees and all regions of the country. Every prevailing assumption about leadership, supervision and effective delivery of police services was open to healthy questioning, research and analysis. This approach captures the emotional and professional needs of employees through two-way communications and turns that powerful human energy into productive and positive action.

The change process offers many early insights into police culture and organizational behaviour. For example, the thousands of employee comments and numerous internal research studies received to date indicate the following:

- Regardless of years of service or rank, police officers and civilian employees agree that their top workplace needs are to be fairly treated, have their feedback taken seriously, have easily available help and support, know what their supervisors expect, have work place conflicts resolved quickly, and have work-life balance.
- All employee ranks, from junior constables to commissioned officers, agree that the following attributes are very important in a police leader: being a good listener, having strong ethics, treating everyone fairly, being concerned about employee morale, encouraging teamwork, and being an excellent communicator. In fact, these attributes all score slightly higher than the need for a leader to have a long history of operational policing or have formal training in leadership and management.
- It is vital to understand how the deep history, values and traditions of policing culture play a role in shaping the current system structures of leadership and management, and how those structures affect the workplace climate. Only then can sustainable change to daily actions occur — change that improves the climate and transforms system structures, ultimately redefining the culture.

People don't automatically resist change. Change occurs constantly in our lives and is often welcomed or accepted because it is understood. Change is resisted only when employees feel they don't have any say or power and have little or no information about how the change directly helps them. The RCMP change process is mitigating such fear of change by ensuring widespread employee empowerment and a constant flow of information from trusted, local sources. ■