

A costly, but necessary, review

THE ASSOCIATION IN DEFENCE of the Wrongly Convicted (AIDWYC) has called on the federal government to conduct a systemic review of the criminal convictions that involved so-called 'Mr. Big' police stings.

The request follows a landmark ruling July 31 by a unanimous Supreme Court of Canada that in future all confessions police obtain from the targets of the police operations must be presumptively inadmissible on grounds their prejudicial effect outweighs any probative value.

AIDWYC said last Thursday that in light of the ruling, the Justice Ministry should set up a working group to conduct a retroactive review of hundreds of convictions. The group's founder, Toronto lawyer James Lockyer, acknowledged that the process could take a couple of years, but said it is 'worth doing'.

If we have a substantial number of people who've been wrongly convicted sitting in jail, then we should work to find and identify them.

AIDWYC estimates that more than 350 Mr. Big investigations have been conducted across Canada since the early 1990s, when the technique was first used by the RCMP in British Columbia.

Used mainly in murder cases where police have a main suspect but little or no evidence to back up their theory, the sting operations involve undercover police officers posing as members of criminal organizations that are trying to recruit new members.

The test case before the Supreme Court involved a Gander, NL, man who was suspected as having drowned his twin three-year-old daughters in 2002. Unable to obtain any evidence to corroborate their theory but aware of the fact the suspect was unemployed and on welfare, the undercover officers posed initially as employees of a trucking firm that needed more drivers, and later told him the shipments he would be making involved drugs or other contraband. More than \$400,000 was spent sending him on trips as far west as Vancouver before he was interviewed by an officer posing as the fictitious firm's Mr. Big and invited to confess his role in his daughters' deaths as a means of showing he was an appropriate permanent recruit.

Concluding that in the circumstances the confessions were not trustworthy and not in any way corroborated by independent evidence, Mr. Justice Michael Moldaver upheld an appeal court ruling that the confessions were inadmissible at any new trial. (The Crown has since confirmed that there won't be one.)

Clearly, the court ruling will have a profound impact on future trials, by making it much tougher to have confessions to a Mr. Big admitted as trustworthy. Critics are already warning that the ruling will mean longer trials and more acquittals.

However, it will also sharply reduce the potential for wrongful convictions.

Despite the fact that Mr. Big operations have led to hundreds of convictions, it should be fairly easy to sort out which, if any, may have been wrongfully obtained.

A starting point in the AIDWYC-requested review should be an invitation to defence counsel involved to alert the Justice ministry to cases where there was no corroborative evidence.

Justification for such a review can be seen in Mr. Justice Moldaver's comments on the risk of wrongful convictions:

'Experience in Canada and elsewhere teaches that wrongful convictions are often traceable to evidence that is either unreliable or prejudicial. When the two combine, they make for a potent mix' and the risk of a wrongful conviction increases accordingly. Wrongful convictions are a blight on our justice system and we must take reasonable steps to prevent them before they occur.'