

In Defence of Mr. Big: Legitimate Operations Aid in Investigations

[R. v Buckley, 2018 NSSC 1 \(CanLII\)](#)

by [K. Bee for Robson Crim](#) — [Robson Crim](#)



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Controversy and confusion surround Mr. Big Operations (MBOs) in Canada. Many Canadians are unaware that MBOs exist and attempt to illicit confessions from those that the police believe to be guilty of an offence – typically murder. MBOs in essence, are operations done by planting undercover police officers around the suspect and attempting to foster some form of relationship. These operations will have the suspect start to work for an “organization” that ends up being a criminal organization. For the suspect to move up in the “organization” they must give up information about their alleged crime to a “Mr. Big”. This information is gathered by the undercover officers often under threat, or the promise to make the charges disappear. Once a confession is elicited, the suspect is arrested and charged with the crime.

These operations have gathered controversy over the years. Some Canadians believe MBOs are unfair and starkly against Charter rights, while others believe that it is a means that allows police officers to arrest guilty individuals that otherwise would not have been caught.



The Supreme Court of Canada laid out a two-pronged test to determine if a MBO would be admissible as evidence before the court in the case of R v Hart. This test came about due to concerns surrounding MBOs in Canada. The first concern was that the confessions gained from suspected individuals were unreliable due to the circumstances that brought the confession about. The second, is in regard to the prejudicial effects surrounding these confessions. Finally, there is a high concern for police misconduct that may occur. According to R v Hart "a Mr. Big confession will be excluded where its prejudicial effect outweighs its probative value, or where it is the product of an abuse of process". These two indicia provide guides for the courts to determine if a MBO should be admitted as evidence or if the confession was unfairly obtained. The Supreme Court of Canada upheld this ratio in R v Mack which was released later that same year.

Hart and Mack provide an example of a failed MBO and a successful MBO by applying the Court's two-pronged test. Hart was an example of a confession that was deemed to be unreliable due to the circumstances. Hart was socially isolated and the MBO became the primary source of Hart's daily interactions. The undercover officers became his life-line and the coercive power that these officers held over Hart led the court to believe that the confession was not reliable. Conversely, in Mack, Mack was not under a strong influence of the "organization" he became a part of, nor was he threatened when asked about the murder he was a suspect of. As such, the confession in Mack was held to be valid and the MBO evidence was allowed in the conviction.

The application of the two-pronged test upholds Canadian morals and values and balances them with seeking out justice in Canadian society. Canadians are quick to judge MBOs and find fault with them claiming that these operations go against fundamental aspects of the Charter, however the reality surrounding these operations is that they are heavily scrutinized and quick to be thrown out of court if there is any question regarding their validity. Further, they do not come under right to silence protections of the Charter nor Canadian common law protections pertaining to voluntariness because the suspect is neither detained nor subjectively aware that a person in authority is questioning them.

A recent case in 2015 was an example of a MBO that was held to be inadmissible due to the lack of evidence beyond the confession. The courts hold MBOs to a high standard for them to be admissible to prevent police misconduct in the operations. The 2015 case was against John Buckley and cost close to \$300,000. Buckley was on welfare when the "organization" offered him a job paying \$20 per hour. With little other job prospects, Buckley accepted the job and the MBO began. Many parallels between Buckley and Hart emerged with the emphasis on the financial dependence the accused had on the "organization", as well as a lack of evidence surrounding the murder weapon. These were untimely the reasons that the confession from the MBOs were deemed to be inadmissible.

Complaints surrounding the cost of failed MBOs are prevalent and easy to find, however, they are simply a cost of conducting police work. Many police operations are costly, yet necessary for the arrest and conviction of guilty individuals. Without incurring these costs, many criminals would be getting away with illegal activities in society. Canada has found a balance in upholding Charter rights of Canadians, while still being able to gain the imperative information to prosecute guilty members of society. These MBOs, while prima facie unfair and seemingly against Charter values, are in reality, held to high standards of operation to ensure that they are gaining truthful confessions and valuable information that will be upheld in court. According to the letter of the law and when conducted properly, these investigations never engage the Charter nor trouble the common law rule against improperly obtained confessions.

As a society, Canada values justice and truth in the judicial system. Many laws are passed to protect Canadians rights and to prevent police misconduct. The rules surrounding MBOs are no different. These operations are a tool carefully used by police officers to gain the necessary information to place guilty individuals under arrest. When the operation goes astray or the evidence gained is questioned, the courts will throw out all evidence from the MBO, again upholding Canadian values for both justice and truth in the judicial system.

Citations:

R v Buckley, [2018 NSSC 1](#)

R v Hart, [2014 SCC 52](#)

R v Mack, 2014 SCC 58

<http://www.cbc.ca/news/canada/nova-scotia/john-buckley-mr-big-sting-operation-hackman-1.4554039>