

Mr. Big (police procedure)

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Mr. Big (sometimes known as the "Canadian technique") is a covert investigation procedure used by undercover police to elicit confessions from suspects in cold cases (usually murder). Police officers create a fictitious grey area or criminal organization and then seduce the suspect into joining it. They build a relationship with the suspect, gain their confidence, and then enlist their help in a succession of criminal acts (e.g., delivering goods, credit card scams, selling guns) for which they are paid. Once the suspect has become enmeshed in the criminal gang they are persuaded to divulge information about their criminal history, usually as a prerequisite for being accepted as a member of the organization.

The Mr. Big technique was developed by the Royal Canadian Mounted Police (RCMP) in British Columbia, with the first documented case taking place in March of 1965 during the investigation of David Louis Harrison, a former Vancouver police constable who was tried and convicted for taking part in the robbery of \$1.2 million of cancelled currency from the Canadian Pacific Merchandise Services warehouse in Vancouver. Harrison was convicted using evidence gained by Cpl. Allan Richards, posing as crime syndicate hoodlum, John Clarke, and his sting partner, police operative, Al Brooks. Harrison testified that he believed John Clarke was a violent syndicate hoodlum. Harrison testified that Clarke was often packing a gun, that Clarke carried a vial of nitroglycerine around his neck that he would throw at a police car if it got too close to him, and that he was afraid he would be harmed if he didn't play along.^[1]

The Mr. Big tactic has been used in more than 350 cases across Canada as of 2008.^[2] The RCMP claim that the person of interest was either cleared or charged in 75% of cases (the rest remaining unresolved and requiring further investigation). Of the cases prosecuted, an estimated 95% result in a conviction.^[3]

The use of this technique is essentially prohibited in some countries, including the United Kingdom^[4] and the United States.^[5] In Germany, which has high standards for what comprises a voluntary confession, it may be more difficult to use confessions obtained by this technique.^[5] The procedure has been used by police in Australia^[6] and New Zealand,^[7] and its use has been upheld by courts in both countries.

Description

In a Mr. Big case, the police usually place the suspect, typically someone socially isolated and financially disadvantaged, under extended surveillance, typically for weeks. Having thus learned about the suspect's personality and habits, the police develop an interactive scenario. Pretending to encounter the suspect by happenstance, an undercover operative solicits a small favor from the suspect, such as fixing a flat tire. Exploiting this acquaintanceship, the operative soon offers entertainment, gifts, companionship, meals, and eventually employment.^[8]

The undercover operative pays the suspect appreciable money for petty tasks, such as counting cash or making deliveries, associated with fictitious criminal activity. As these tasks grow in importance and frequency, the suspect is treated as an "up-and-comer" in a criminal organization. As many as 50 operatives may be involved, crafting "a steady escalation in association, influence and pressure, leading up to the creation of an atmosphere in which it is deemed appropriate to encourage the target to confess".^[9] Eventually, the suspect is introduced to Mr. Big, the fictitious crime organization's kingpin, who is actually a skilled police interrogator.

Employing enticements and threats, Mr. Big tells the suspect of receiving incriminating information about the suspect from the police, whose impending arrest threatens the gang, to explain why Mr. Big must know the unsolved crime's details. Mr. Big may offer to clean up the situation by framing someone else, or Mr. Big might claim that a mole within the police department can tamper with incriminating evidence. Sometimes, the confession is demanded to show good faith, loyalty, or trustworthiness or serve as "insurance" to Mr. Big. The final meeting is usually recorded.^[8]

Once the police either obtain a confession or become convinced of the suspect's innocence, the lavish lifestyle and elaborate underworld evaporate, and (where a confession has been obtained) the suspect is arrested. The Mr. Big technique is often a last resort in cold cases, or where the police's strong suspicion is paired with insufficient evidence. The Mr. Big technique has been used to secure convictions in hundreds of cases and has been highly effective in obtaining confessions from suspects. Still, the technique also gives some innocent suspects compelling motivation to remain in the criminal organization; to maintain the new lifestyle and new friends, falsely confessing to Mr. Big may then seem an acceptable risk.

Legal history

The Andy Rose case

In October 1983, Andrea Scherpf and Bernd Göricke were murdered in Chetwynd, Canada. In 1991, Andy Rose was convicted of these killings, relying almost exclusively on testimony from a woman who claimed she saw him the night of the murder "drunk and covered in blood... claiming to have killed two people".^[10] Rose was sentenced to a minimum of 15 years in prison. The conviction was overturned on a technicality in 1992, but a new trial was ordered immediately, and Rose remained in prison. In 1994, Rose was again sentenced to a minimum of 15 years in prison, again almost exclusively on testimony from the woman who claimed to see him in Chetwynd, and his next appeal was denied in 1996.^[10] Rose was released on bail in 1997, when his second conviction was overturned on a technicality.

Mounting evidence against a possible third conviction complicated the developments for the Crown attorney's refile, including the witness against Rose being off on her timing by at least two weeks and a man in California committing suicide after confessing to his wife – with numerous consistent details – to murdering two people near Chetwynd in October 1983. In January 1999, an undercover operative of the RCMP contacted Rose to gain his trust in hopes of obtaining a confession through a Mr. Big operation.^[11] In the next eight months, the investigator befriended Rose. Rose was seduced into illegal activities, for which he received about \$5,900 (equivalent to \$9,000 in 2021).^[10] After eight months, the "gang" told him that they could gather information about his upcoming case and change the evidence for him so he would not have to go back to prison, or even to court. However, this support would only be granted if he became a recognized gang member, and it would be important to impress Mr. Big.^[10] At the meeting with Mr. Big in July 1999, Rose repeatedly reaffirmed his

innocence. Then Mr. Big made it clear to him that he wanted to hear a confession and that Rose, known for his alcohol abuse, should consider this with a beer. After a few beers, Rose confessed.^[10] Based on this confession, the Crown filed for a third trial.^[10]

The third trial collapsed in 2001, and the proceedings against Rose were stayed, with the ability for the Crown to refile charges to a court.^[10] Rose's innocence was proven due to lack of DNA evidence and he was acquitted.^[12]

The Rafay–Burns case

Canadians Atif Rafay and Sebastian Burns were sentenced to life for the 1994 murders, in Bellevue, United States, of Rafay's father, mother and sister, despite the lack of physical evidence and the presence of multiple alibis, on the basis of a Mr. Big confession.^[13] Rafay and Burns are supported by multiple innocence projects and as of 2016 had been appealing their case for over a decade.^[14] The Netflix documentary series *The Confession Tapes* covers the Rafay–Burns case in the first two episodes.^[13]

The Nelson Hart case

The flaws of the Mr. Big procedure came to light during the *R. v Hart* case. Nelson Hart, of Newfoundland, Canada, was charged in June 2005 with the deaths of his 2-year-old twin daughters who died as a result of drowning on Sunday, August 4, 2002. Hart claimed that he had taken the girls, Krista and Karen, to Little Harbour where there was a small wharf. Krista fell off the wharf, and Hart (who could not swim) panicked and left to get help, leaving the other child. In a later interview, Hart claimed that he had had a small seizure at the time that Krista fell into the water. Karen ostensibly fell in the water during Hart's absence. He drove home and returned with his wife. Krista was found alive but died at the hospital, and Karen was pronounced dead at the scene.

The Mr. Big operation began in October 2002. Preliminary surveillance revealed that Hart was socially isolated, had few friends and went everywhere with his wife. He was also on social insurance with only a grade four education, and had a history of seizures, which became more frequent after a car crash in 1998. The first contact took place when he was paid for assisting in finding an operative's sister. He was then asked to make some truck deliveries for which he was well paid. A friendship with his operatives developed. He began dealing in fake credit cards, forged passports, and counterfeit casino chips. Hart was made to believe that the gang was nationwide, with branches in Vancouver, Montreal and Halifax. As time went on, the seriousness of the illegal activities increased, along with the lucrativeness of the payoffs. He and his wife were treated to luxurious trips around the country, extravagant shopping sprees and expensive dinners. Hart aspired to join the gang as a full-time member.

In the late spring of 2003 he was introduced to the "boss" (Mr. Big) who told Hart that something had come up from Hart's past that the criminal organization needed to take care of. Mr. Big confronted Hart about the death of his daughters, and would not accept his seizure explanation. Under pressure, Hart confessed to pushing the girls off the wharf. Hart then brought Mr. Big and some operatives to the scene of the crime, to re-enact the drownings. This event was videotaped and served as the primary foundation of the prosecution's case at trial. In March 2007, a jury convicted him of two counts of first-degree murder.

Hart appealed his conviction. In 2012, in a 2–1 split decision the Court of Appeal allowed the appeal and ordered a new trial. According to Chief Justice Green, Hart

was in the control of the state in a manner that was equivalent in degree to detention. It was not reasonable to expect that he would have any reason, or take any opportunity, to leave the organization. That meant he had to subscribe to the culture of the organization and to ensure that he continued to receive the approbation of Mr. Big. Although he obviously wanted to maintain that he had an innocent explanation for the deaths of his daughters, he eventually succumbed when it became clear that Mr. Big would accept no other answer than one which accepted his proposition that he was responsible for their murder. For Mr. Hart in the circumstances in which he found himself there was very little downside to telling Mr. Big what he wanted to hear, since he believed the operatives were not police and he had been assured that any information he gave would be kept from the authorities. On the other hand, in his mind, Mr. Hart had a great deal to lose if he did not accede to the required admission.^[15]

The appeal court perceived Hart's section 7 Charter protections to have been breached.

The Crown appealed this decision to the Supreme Court of Canada, whose decision was released on July 31, 2014.^[16] Writing for a unanimous majority, Justice Moldaver declared that confessions arising from Mr. Big operations would henceforth be considered "presumptively inadmissible, subject to a two-pronged admissibility analysis". The court ruled that the onus is on the Crown to overcome this presumption by demonstrating that the probative value of the evidence resulting from a Mr. Big operation, including the confession, outweighs its prejudicial effect (prong 1). Confirmatory evidence would constitute a "powerful guarantee of reliability". In other words, evidence found during a Mr. Big operation would be a vital factor on the issue of reliability, and not the confession per se. The confession itself should be considered carefully to evaluate the markers of reliability. Markers of reliability include components of the confession that coincide with evidence that is known to investigators, information that is unknown to the public, and mundane details that would only be known to the person who had committed the crime. In future operations this evidentiary requirement might shift the goal from getting a confession to unearthing conclusive evidence. The Supreme Court also alerted trial judges to the possible dangers of abuse of process which might take place during Mr. Big stings, and of the need for careful scrutiny during the trials (prong 2). An abuse of process has occurred when police "overcome the will of the accused and coerce a confession",^[17] as was said to have taken place in *R. v. Hart*. Overwhelming inducements, veiled threats of violence, and intimidation are examples of conduct that could be considered an abuse of process by the police.

The Dax Mack case

Following the landmark ruling of *R. v. Hart* the Supreme Court of Canada issued another Mr. Big ruling on September 26, 2014.^[18] Dax Mack was suspected of murdering his roommate, who at the time was considered a missing person. A friend of Mack's came forward to the police with claims that Mack had confessed to him about murdering his roommate. With this information, the police began a four-month Mr. Big operation which resulted in two confessions to undercover officers. Mack described shooting the victim and burning his body. During the Mr. Big operation Mack participated in roughly 30 crime scenarios, none of which included high levels of violence and he was paid approximately \$5,000 for his work. Eventually the operation led undercover officers to a fire pit in a

wooded area that belonged to Mack's father. The search resulted in the discovery of the victim's burned remains, as well as shot gun casings which matched a gun that was confiscated from the defendant's apartment. Mack was tried and found guilty of first degree murder by a jury.

Using the 2-pronged analysis from the Hart (2014) ruling, the Supreme Court dismissed Mack's appeal in another unanimous decision. They concluded that the probative value of the confession, which was supported by discovery of new evidence, outweighed any prejudicial effect. The Court also found no abuse of process in the conduct of the undercover officers involved in the investigation.

The Kelly case

The Court of Appeal for Ontario found in *R. v. Kelly*^[19] that presumption of inadmissibility established in *R. v. Hart* was applicable even in circumstances without the hallmarks of a usual Mr. Big operation. The court found that the promise of a large payout from an insurance fraud scheme had the same potential for the same dangers as traditional Mr. Big cases set out in *Hart*.^[20]

See also

- Entrapment
- Mr. Big, 2007 documentary film
- Sting operation
- Brett Peter Cowan

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External links

- "[Someone Got Away With Murder](http://www.cbc.ca/fifth/episodes/from-the-archives/someone-got-away-with-murder)" (<http://www.cbc.ca/fifth/episodes/from-the-archives/someone-got-away-with-murder>), episode of *The Fifth Estate* on a wrong confession forced by Mr. Big procedure
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