

Procedural changes to admissibility of confession statements

The Law Reform Commission today (Wednesday) announced the publication of a consultation paper containing a number of options for reform of the way in which the admissibility of confession statements is determined in criminal cases.

The Secretary of the Commission, Mr Stuart Stoker explained that the consultation paper is concerned only with the procedural question as to how the admissibility of confession statements is determined at trial, and does not look at the substantive law, or of the procedures to be adopted for the questioning of suspects by law enforcement agencies.

Mr Stoker pointed out that at present, before the prosecution can introduce evidence of an accused's confession statement to a criminal trial, the prosecution must satisfy the court "beyond reasonable doubt" that the statement was given voluntarily.

Where the case is being heard before a jury, the judge will exclude the jury while he hears evidence as to the way in which the statement was obtained in what is called a "voir dire", or "trial within a trial".

At the end of the "voir dire", the judge will rule as to whether or not the confession statement is admissible.

Only when the judge rules that the confession is admissible will the confession statement be put before the jury for their consideration as part of the evidence against the defendant.

Mr Stoker said that the principal reasons for excluding the jury from the "voir dire" are, first, that the question of admissibility is a matter of law for the judge alone to decide and, second, that there is a risk that members of the jury would be unable to exclude from their minds details of a confession once they had heard it, even if it were subsequently ruled inadmissible.

The Commission's consultation paper points out, however, that finding an alternative to the "voir dire" would save both court time and costs.

Under the present practice, much court time is spent by the trial judge sitting alone hearing the witnesses in a "voir dire" to determine admissibility, only to have the same witnesses called over again before the jury to consider the question of evidential weight once the confession statement is admitted. The same evidence is often relevant both to the issue of admissibility and to the jury's assessment of weight and credibility.

It is against this background that the Commission considers it now timely to examine the issue of admissibility of confession statements, with a view to identifying ways to reduce the extensive time and resources devoted in jury trials to the hearing of evidence at the "voir dire".

The consultation paper presents a number of possible options, with their respective advantages and disadvantages, for procedural reform.

Three main options for reform are proposed in the paper for consideration:

- * granting the court a discretion to direct that the question of admissibility be dealt with in the presence of the jury;

- * making the determination of the issue of admissibility of confession statements a matter for the jury in all cases; and

- * granting the court a discretion to direct that the question of admissibility be dealt with in the presence of the jury, coupled with a lowering of the standard of proof for determining voluntariness to that of civil proceedings (on "a balance of probabilities"), rather than the existing criminal standard ("beyond reasonable doubt").

Mr Stoker said that the Commission has reached no firm view as to which of these options should be pursued, and was seeking the views of the public.

He said that while the Commission invited comment principally on the specific options for procedural reform identified in the consultation paper, it would also welcome thoughts on other means of improving the present procedure in jury trials for determining the admissibility of confession statements in criminal cases.

The consultation period will end on February 28, 1999. Written submissions can be sent to the Law Reform Commission Secretariat before that date.

Copies of the Consultation Paper are available on request from the Law Reform Commission Secretariat, 20th Floor, Harcourt House, 39 Gloucester Road, Wan Chai, Hong Kong.

End/Wednesday, November 25, 1998

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