

Press Release

The Law Reform Commission of Hong Kong has submitted to the Government a package of proposals covering admission of statements in courts which it says are essential in tackling the problem effectively – but which will also be controversial.

The proposals put forward by the Commission are intended to deal with a feature of criminal trials in Hong Kong which has in recent years become a problem.

This is the very large number of cases in which a confession statement made to the police is challenged at trial and sought to be excluded from the evidence on the ground that it was improperly obtained.

The report is based on the unanimous report of a sub-committee composed of a High Court Judge, barristers, solicitors and non-lawyers. It was chaired by Mr. T.S. Lo.

A spokesman for the Commission said that in making its recommendations the Commission realises that “some of the proposals will be controversial.”

He said: “It is convinced, however, that if the problems surrounding this aspect of Hong Kong’s system of criminal justice are to be tackled effectively, the dove-tailing proposals it has put forward will have to be implemented.”

The Commission believes the package would go a long way towards ensuring that suspects in police custody were properly treated.

The Commission also believes:

- * The large number of trials within a trial – or “voir dire” – that occur at present would be substantially reduced;
- * Law enforcement agencies’ treatment of suspects would be more strictly controlled;
- * Juries would be made aware of the silence of the accused when questioned by law enforcement agencies;
- * Suspects would be able to more quickly complain of alleged mistreatment;
- * The opportunities for concocting false allegations would greatly be reduced;
- * A confession statement would more rarely have to be kept from the jury; and

- * The jury would more often be entrusted to decide whether a confession statement was true or false.

However, the spokesman also pointed out that while the sub-committee was unanimous in its view, the Commission itself only decided by a majority vote on one of the proposals. This was whether the jury should be entitled to draw on adverse inference from an accused's refusal to answer questions put by the police as whether the judge and the prosecution, as well as the defence, should be able to comment to the jury about it.

The spokesman explained: "This division of opinion reflects the differing views expressed by lawyers here and in the United Kingdom."

By a majority decision the Commission supports the Sub-committee and recommends that in such circumstances the jury should be able to draw on adverse inference and the judge and the prosecution should be allowed to comment.

In making the recommendation the Commission maintains that the accused person should be warned as soon as possible that if he refuses to answer questions there could be adverse consequences – the jury could infer he was trying to conceal his guilt but this inference could never on its own lead to a conviction.

The spokesman said that in Hong Kong the defence challenged the admissibility of confession statements in almost 90 per cent of cases – against only 10.5 per cent of the cases in the Crown Court in England.

And, in Hong Kong in cases where the prosecution seeks to rely on a confession statement, almost half the time of the court is spent on the *voire dire*.

The Commission maintains that apart from the time and expense of *voire dire*s, there were three serious effects:

- * Public confidence in the integrity and competence of the police was undermined;
- * There was the suspicion that a considerable number of defendants would not have been acquitted if their confessions had been admitted; and
- * Public concern was increased that the accused was not receiving fair treatment at the hands of the police.

The central recommendation of the report is that where the prosecution wishes to introduce a confession statement at a trial, the accused must be brought before an independent examiner within 24 hours of being charged.

The spokesman explained: "The examiner will ask the accused a series of questions designed to elicit any complaints as to his treatment by the law enforcement agency.

"If the accused makes no complaint at this stage his statement becomes automatically admissible at the trial, without the need for a *voire dire*.

"Where a complaint is made to the examiner, he may take steps to arrange for the accused to be medically examined and to remove him from police custody into that of the Correctional Services Department.

"At the subsequent trial the *voire dire* will be held in the same manner as at present."

This would not prevent an accused from challenging the truth or accuracy of any statement. But the challenge would have to be made in the course of the trial in the presence of the jury.

The Commission considered it essential that the examiner should be independent of the police, the judiciary and the prosecution authorities. He should be bilingual and have the same degree of authority and public standing as a Justice of the Peace.

"An examiner could be expected to undertake his duties for up to three hours on one day a month – so a total of around 960 examiners would be needed," said the spokesman.

The Commission believes that the introduction of the examiner system would achieve a number of major objectives:

- * It would provide a means of monitoring law enforcement agencies;
- * It would discourage law enforcement officers from maltreating an accused;
- * It would reduce the number of *voire dire* proceedings and cut court costs and time;
- * It would tend to discourage false allegations by an accused; and
- * There would be an enhancement of the public image of the police and of their morale.

The report contains a large number of other interconnected proposals relating to the powers of the police to question people, warnings given to accused persons, and the rights of suspects held in custody.

The report also covers the requirements to be included in the Standing Orders of the various law enforcement agencies.

The spokesman said the Commission and its sub-committee had carried out extensive consultation with the professional legal bodies, law enforcement agencies and interested organisations.

The report is now on sale to the public and the Government as has been given a copy.

“It will be for the Government to decide whether to implement the proposals,” said the spokesman.