

Admissibility of confession statements in criminal proceedings

The Law Reform Commission today (July 13) announced the publication of its report on the way in which the admissibility of confession statements is determined in criminal trials.

The Secretary of the Commission, Mr. Stuart Stoker, explained that the law currently provides that before the prosecution can introduce evidence of an accused's confession statement to a criminal trial, they 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 usually 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". Only when the judge rules that the confession was made voluntarily will the confession be put before the jury for their consideration as part of the evidence against the accused.

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 might be unable to exclude from their minds details of a confession once they have heard it, even if it is subsequently ruled inadmissible.

The present practice has raised concern that 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. Finding an alternative to the "voir dire" would save both court time and costs.

In November 1998 the Commission published a consultation paper which set out a number of options for reform, with their advantages and disadvantages.

Mr Stoker said that the general sentiment of the majority of those who commented on the consultation paper was against change along the lines proposed in the consultation paper. The principal argument against change was that the "voir dire" provides an important protection to the rights of the accused, and acts as a disincentive to abuse by

members of the law enforcement agencies. The Commission concluded that while there are undoubtedly adverse cost and efficiency implications of the present procedure for determining admissibility of confession statements, those must be balanced with the need to adequately protect an accused person's rights. The Commission was further persuaded that reform of the procedure for determining the admissibility of confession statements is to look at the problem from the wrong end: if adequate mechanisms are built in to prevent abuse at the time the confession is made, the need to rely on the "voir dire" becomes academic.

The Commission has therefore concluded that none of the options for change contained in the consultation paper should be adopted, and that the present "voir dire" procedure governing the admissibility of confession statements should be retained.

Mr Stoker said that while the options contained in the consultation paper were not generally supported, a number of other suggestions for reform had been made by those responding to the consultation paper, and the Commission had endorsed some of these. They include:

- * the greater use of video recording of interviews;
- * the implementation in full of the recommendations of the Commission's earlier "Arrest" report; and
- * the Administration should reconsider its earlier rejection of the Commission's proposal in its 1985 report on "Confession Statements and their Admissibility in Criminal Proceedings" to introduce a system of lay-panelists who would provide an accused person with an early opportunity to raise any complaint of mistreatment by the law enforcement agency in whose custody he was held.

Copies of the report are available on request from the Law Reform Commission Secretariat, 20th Floor, Harcourt House, 39 Gloucester Road, Wanchai, Hong Kong, or can be download from the Internet at <http://www.info.gov.hk/hkreform>.

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