

A Protocol for Police Interviews of Witnesses and Suspects?

The Government has now presented its amendments to the Criminal Procedure Code (“CPC”).

Members will remember that in 2009 the Law Society submitted a memorandum to Government commenting on the draft amendments.¹ Subsequently, representatives from the Society and various stakeholders were invited by the Ministry of Law to participate in several working group dialogue sessions on the draft amendments. A few of the Society’s recommendations have been acted on by the Government but most have not. I will leave a general review of the revised CPC for a more detailed discussion in another forum, but I wish to discuss one recommendation which was made and not implemented. In para 3.55(xix) of the Society’s recommendation, we stated “that limitations be imposed on the length of any continuous period of interrogation of a witness, and that provisions be enacted for reasonable rest periods and meal breaks (and the adequacy of the facilities for rest and meals)”. Admittedly, there was no discussion of this recommendation in our report (mainly because it was inserted at the last minute in my request). However belated, I think it is worth raising this particular topic for reflection.

In England, the Code of Practice on Detention, Treatment and Questioning of Persons by Police Officers of the Police and Criminal Evidence Act 1984 (Code C of PACE),² provides a detailed protocol on how persons detained for questioning are to be treated. To give some examples:

1. At least two light meals and one main meal should be offered in any 24 hour period. Drinks should be provided at meal times and upon reasonable request between meals. Whenever necessary, advice shall be sought from the appropriate health care professional;
2. Subject to certain exceptions, in any period of 24 hours a detainee must be allowed a continuous period of at least eight hours for rest, free from questioning, travel or any interruption in connection with the investigation concerned. This period should normally be at night or other appropriate time which takes account of when the detainee last slept or rested;
3. Subject to certain exceptions, breaks from interviewing should be made at recognised meal times or at other times that take account of when an interviewee last had a meal. Short refreshment breaks are to be provided at approximately two hour intervals. Meal breaks should normally last at least 45 minutes and shorter breaks after two hours should last at least 15 minutes;
4. People being questioned or making statements shall not be required to stand;

¹ Accessible at <
http://www.lawsociety.org.sg/feedback_pc/pdf/ReportofCouncilLawSocietyDraftCPCBill2009.pdf>, last accessed on 20 May 2010.

² Accessible at <
[http://webarchive.nationalarchives.gov.uk/20100413151426/http://police.homeoffice.gov.uk/publications/operational-policing/2008_PACE_Code_C_\(final\)2835.pdf?view=Binary](http://webarchive.nationalarchives.gov.uk/20100413151426/http://police.homeoffice.gov.uk/publications/operational-policing/2008_PACE_Code_C_(final)2835.pdf?view=Binary)>, last accessed on 20 May 2010, which runs to no less than 87 pages.

5. As far as practicable interviews shall take place in interview rooms which are adequately heated, lit and ventilated;
6. Cells in use must be adequately heated, cleaned and ventilated. They must be adequately lit, subject to such dimming as is compatible with safety and security to allow people detained overnight to sleep; and
7. Blankets, mattresses, pillows and other bedding supplied shall be of a reasonable standard and in a clean and sanitary condition.

New South Wales in Australia has a specific section in its Law Enforcement (Powers and Responsibilities) Act 2002 which provides as follows:

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- (1) The custody manager for a detained person must ensure that the person is provided with reasonable refreshments and reasonable access to toilet facilities.
- (2) The custody manager for a detained person must ensure that the person is provided with facilities to wash, shower or bathe and (if appropriate) to shave if:
 - (a) it is reasonably practicable to provide access to such facilities, and
 - (b) the custody manager is satisfied that the investigation will not be hindered by providing the person with such facilities.

The New South Wales Police Force's Code of Practice for CRIME (Custody, Rights, Investigation, Management and Evidence), further prescribes *inter alia* the following:³

- (a) Provision of at least two light meals and one main meal in any 24 hour period. Provision of drinks at meal times and when they are requested (if reasonable); and
- (b) Where possible allowing a person who has been in police custody for longer than 24 hours supervised access to the exercise yard for one hour or two 30 minutes periods each day.

Accordingly, in England and New South Wales (at least), there has been put in place a detailed protocol designed to ensure fair and humane treatment of suspects and witnesses.

In contrast, there is no legal code or published protocol in Singapore governing the way in which suspects or witnesses are questioned by the police or other Government agencies. The practice appears to prohibit a suspect or witness from recording his or her interviews, and a copy of the statement is not furnished to the suspect or witness after it is completed. Having an accompanying person at the interview is also discouraged even though there is no law against this.

³ Accessible at <

http://www.police.nsw.gov.au/about_us/policies_and_procedures/legislation_list/code_of_practice_for_crime>, last accessed on 20 May 2010.

Although I do not do a great deal of criminal work, I have acted for enough clients in criminal matters over the years to have had experience of my clients being subjected to long and trying investigations by Government agencies. One recent example was a client who was interviewed by a Government agency for 36 hours with virtually no break and certainly no extended period of rest as recommended by the English and New South Wales protocols. The effect of such prolonged interrogation was that the interviewee ended up making statements which were questionable as to whether they reflected his true feelings or recollections – people who are extremely tired and have been subjected to repeated stress without the opportunity to consult an independent lawyer tend to say things which are often the suggested words of the interviewer rather than their own, and have to be regarded with caution, if not suspicion. We can argue about the rights and wrongs of many things in our CPC, but it seems to me hard to argue against the introduction of some ground rules in controlling the manner which persons detained for questioning by the authorities, even if we do not go down the road of video or audio recording of interviews.

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