

KEEP YOUR MOUTH SHUT

It is a great mystery to criminal defence lawyers why their clients insist upon singing to the police about all of the various crimes they've committed. Just as mystifying is the apparent need of accuseds to make up cock and bull stories. Either way, the crown prosecutors have little difficulty thereafter in hanging the clients with their own tongues.

Perhaps the most naive approach is taken by those people who blithely confess to all their misdeeds in the mistaken belief that it cannot be used against them because it wasn't in writing and they didn't sign anything. While they seem to know that hearsay cannot generally be used against them, they fail to understand that if they were the one who said it, it isn't hearsay because they are a direct party in the matter and can always take the stand and deny it.

A confession, whether written or oral, is generally admissible against you as proof of your guilt (and what better proof is there?) as long as it was not obtained by unfair methods. The unfair methods are such things as threats or inducement and, even then, they have to be fairly serious to get the evidence ruled inadmissible. Forget the stuff you see on TV about the "fruit of the poisonous tree doctrine" (all evidence that flows from the tainted evidence is tainted too) because that tree doesn't grow in Canada. It only grows in the USA.

The police, of course, know all of this. They know how far they can go so they naturally try to make sure they stay within the established bounds of fair play. They (and their supervisors) hate to see one of the bad guys get off because of their mistake or excessive enthusiasm.

However, proof of guilt by confession is still the easiest way to get a conviction so there is a certain temptation to the constabulary to bend the rules a bit in order to get the desired result. As an eighteenth century jurist once said, "Tis much pleasanter to sit in the shade and rub hot peppers in a poor devil's eyes than to go out into the hot sun to seek out hard evidence."

Every now and again the police step over the line a bit but, even when they do, they don't usually step over the line very far and even the dimmest of constables knows enough not to advertise the fact. Most times, however, there isn't much of a need for such tactics.

The police are trained to extract confessions without offending the rules and, contrary to the opinions of some, most police are quite good at what they do. They are particularly adept at the art of subtle suggestion, at suggesting that confession is good for your soul. While it may well be good

for your soul, it is not so good for your criminal record and it makes it particularly hard for your defense counsel.

The antidote, however, is to rely upon your rights. Everyone has the right to remain silent, an inalienable right to keep their mouth shut. It is a very powerful right but it isn't much use to you when your gums are flapping. The flip side of the coin is that pretty much anything you do say can and will be used against you. Rest assured that if it is bad, they'll use it.

A lot of people tend to think that there is really no need to know all this stuff - that it is only for criminals and those sorts of folks. However, if you happen to get into a motor vehicle accident or have one too many before you run into the checkstop you may soon find out that these rules apply to you, too. Lawyers are well aware of the phenomenon whereby the most vociferous proponents of law and order can turn their strongly held beliefs upside down when it comes to themselves or their immediate family.

The long and the short of it, then, is that if you know you're in the wrong, then keep your mouth shut. That's probably what your lawyer is going to tell you when you call him. It's no guarantee that you won't get convicted but it works just fine for not making things any worse than they already are.

If you keep your mouth shut, the police may know that you're guilty but they will have a much more difficult time proving it. When you're the suspect, silence is golden.