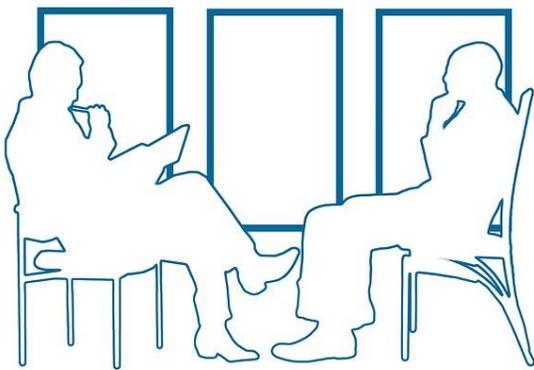


Teaching Interviewing Techniques to Forensic Accountants Is Critical

By Scott F. Porter and D. Larry Crumbley

The importance of excellent interviewing skills cannot be overstated. In the context of a fraud investigation, such skills are vital when facing the ethical, legal, and psychological challenges of a suspect interview. The most successful interviewers command these skills because they are the beneficiaries of comprehensive training. With proper training and practice, these interviewers possess skills that assist them in shaping optimal investigative outcomes.

Despite the challenges that a forensic interview does present, the forensic accounting profession is not at the leading edge in interview training; this distinction appears to be held by the police profession.



Certainly in Canada, the perception that police investigators are superior interviewers to forensic accountants is widely held. For example, the Diploma in Investigative Forensic Accounting (DIFA) program offered through the University of Toronto turns to the police profession to train its DIFA professionals. This reliance also extends to private practice as many forensic accounting firms employ former police investigators to lead investigative interviews. Thus, in Canada the forensic accounting profession is often dependent upon police investigators to elicit crucial evidence from interview subjects, notwithstanding

that the forensic accountant has a greater command over the technical financial skill set required to solve white collar crimes.

Police investigators in Canada receive comprehensive training which contributes to their reputation as being excellent interviewers. To teach the most comprehensive interview tactics, the Canadian Police College (CPC) educates its investigators about the complexities of the suspect interview. This enhanced training provides its investigators with an invaluable foundation, which incorporates techniques for interviewing both witnesses and suspects. However, this training focuses on suspect interviewing and its unique challenges. More specifically, police investigators receive training under a standardized interview model as part of a ten-day program.¹ This interview model equips the investigators with the psychological tools necessary to interview suspects within the parameters of the law. In simplistic terms, Ramamoorti and Olsen (2007) believe that the best forensic investigators learn to “*think like a crook to catch a crook.*”

In comparison to police investigator training, forensic accountants are not exposed to a similar type of comprehensive standardized interview training. As an example, the Canadian DIFA curriculum provides

¹ Polygraph examiners receive three months of interview training that incorporates the standard ten-day program and expands to teach its investigators polygraph techniques.

its students with only one day of interview training, which is significantly shorter than the ten-day training afforded to police investigators. Further, the Canadian or U.S. forensic accounting profession does not have a standardized interview model to truly equip its professionals with the interview tools required to elicit confessions ethically.

The aforementioned discrepancies in training lead to producing an incomplete investigative skill set. While it is true that forensic accountants in Canada and the U.S. are exceptionally prepared to understand the technical complexities associated with white-collar crime, they are not afforded the opportunity to become skilled through a standardized interview model. While it is also true that the forensic accounting profession does have some seasoned interview experts, at present, the majority of their skills are developed through experience, and not through a standardized model of training. Should these professionals not transfer their interviewing knowledge into a standardized interview model that would benefit the next generation of forensic accounting professionals? Should these professionals not assess the relative merits of other professionals' interview models and generate its own model in order to truly complete the forensic accounting investigative skill set?

The forensic accountant, and not the police investigator, possesses the requisite skills to solve the most complex financial crimes. Accordingly, the forensic accountant and not the police investigator should lead the investigative interviews. While accountants have learned a great deal from police investigators, the profession has become too complacent in this relationship. If the profession strives to be the premiere investigative accounting designation, a comprehensive skill set should be taught to allow the next generation of forensic accountants to become more accomplished interview experts. In order to develop this quintessential skill set, the profession must develop the leading interviewing model.

INTERVIEWING IN NORTH AMERICA

The layperson (and some accountants) may ask, "*What does forensic accounting have to do with police work?*" There are obvious differences between the stereotypes of the two professions. Police officers are often viewed as willing to do whatever it takes to solve a crime, even if it involves unscrupulous tactics. The public's perception of police interviewing is partially derived from mainstream television shows such as *CSI* and *Law and Order*. These TV shows often depict police interviews as aggressive and confrontational, relying on deception and trickery as required.

In contrast, forensic accountants are viewed as conservative and less aggressive. In contrast to stereotypic views, forensic accountants may become impatient and aggressive in conducting suspect interviews. Similarly, the examination of real life police interviews, will sometimes deviate from expectations and are instead subtle in nature. Whatever the approach and although the training may be different, the two professions still serve a similar purpose. Both forensic accountants and police officers seek to gather evidence and objectively determine the factual basis underlying the investigation.

Police investigators investigate a more comprehensive array of crimes than the financial crimes to which forensic accountants are exposed. Accordingly, police investigators address hardened criminals where sometimes the evidence is limited and circumstantial in nature. Because of limited evidence, it is common-place for innocent subjects to be interrogated (a so-called accusatory interview) for the

purpose of eliciting information from a suspect.² The leading interview model taught to police officers in North America is the REID³ model of interviewing (or some derivative of it) (Snook, *et al.*, 2010). Under REID, the investigator is taught to conduct a non-accusatory interview, followed by a behavioral analysis interview. REID recommends that the investigator look for both verbal and non-verbal cues to deception. If the investigator senses that the suspect is guilty, an accusatory interview commences. Some experts question the morality of using the REID technique which they describe as psychological coercion, resulting in people being wrongfully convicted of crimes. In addition, these same experts also are questioning the scientific reliability of the deception detection techniques advocated by REID. They insist that the techniques are not reliable and can lead an investigator astray.

INTERVIEWING IN BRITAIN

In Britain, there has been a recognition that the emphasis on obtaining a confession has led to false accusations and dubious interview tactics. Accordingly, accusatory interviewing is no longer practiced. Instead, British police officers are trained under the PEACE⁴ model of interviewing. The PEACE model is an approach where the investigator asks the suspect for a complete account of his or her story, and challenges the discrepancies in that account, as required. Some researchers and academics are calling for investigative interviewing reform in Canada, also. More specifically, these critics recommend implementing the PEACE model in place of the REID model. Although a non-accusatorial interviewing approach will result in fewer false confessions, questions remain as to its effectiveness.

TO WHAT EXTENT ARE POLICE OFFICERS TRAINED IN INTERVIEWING?

The Canadian Police College (CPC) advises that basic police officers (street cops) receive limited interview training, while police investigators receive two weeks of interview training (10 days). The investigator training teaches a standardized interview model that addresses the legal, psychological, and ethical considerations of interviewing. Investigators are taught how to interview both witnesses and suspects, with the REID method utilized for suspect interviews. The most sophisticated interviewers are also polygraph examiners. A polygraph examiner's training incorporates the two-week training into his or her more complex three month program.

HOW ARE FORENSIC ACCOUNTANTS TRAINED IN INTERVIEWING?

The forensic accounting profession does not train its investigators to nearly the same level as police investigators are trained. Some readers may take from this fact the impression that the training does not

² The term interrogation and interviewing have different connotations. This article seeks to add clarity to perceptual differences. A future article will explore the philosophical and strategic differences of interviewing and interrogation.

³ Lawyers Fred E. Inbau and John E. Reid created the Reid Technique in the 1940s and 1950s. REID is an interrogation model, and its concepts are explored in a future article. There are other interrogation interview models, such as the Kinesic model and Wicklander Zuluwski model.

⁴ PEACE is an interview model developed by police, lawyers, and psychologists in the UK. PEACE is an acronym that stands for: Planning and preparation; Engage and explain; Account; Closure; and Evaluation. The concepts underlying the PEACE model of interviewing are explored extensively in another article.

highlight the true complexities of investigative interviewing. Interviewing is a form of communication and evidence gathering. In the context of forensic accounting, interviewing is used to elicit critical information from witnesses and suspects. Accordingly, few skills are as crucial to all accountants as interviewing. Those who have a greater command of interviewing are better positioned to obtain evidence and solve crimes. Taking the problem a step further, the accountant who is skilled at interviewing is better served in all walks of life, both professionally and personally.

The forensic accounting profession is not at the leading edge of investigative interview training. This criticism is not pointed at any one professional body; it is remarkably difficult to find comprehensive corporate interview training in general. For experienced accountants, brief seminars are offered that simply scratch the surface of a complex field. The techniques taught are not consistent, and practitioners are not always afforded enough time to fully develop the skills learned.

The DIFA program allots only one day to investigative interview training. Its current training incorporates police and polygraph assistance, currently taught by Frank Wozniak – a former police investigator and polygraph expert. Students learn lie-detection techniques advocated by REID that include both verbal and non-verbal indicators of deception. Wozniak openly acknowledges that there is much unresolved debate as to the scientific reliability of such lie-detection techniques. Accordingly, he cautions students that these techniques are simply “*one star in the greater constellation,*” and an investigator should assess the evidence in totality prior to making any assumptions.

Numerous studies question the reliability of detecting either verbal or non-verbal cues to deception, and an investigator’s odds of detecting a lie are limited to chance probability. Accordingly, time spent teaching investigators lie-detection methods might be redirected to instruct them in more valuable facets of interviewing. More specifically, the teachings should explore “interrogation questioning” techniques more fully, even though this term brings to the mind many negative connotations.

In the corporate world, many police-trained instructors feel compelled to avoid teaching the concepts of “interrogation.”⁵ Wozniak explains that “*accounting professionals cringe when hearing the term interrogation and seek for a softer approach based on concepts similar to the PEACE model, and that is what I teach.*” He further indicates that accountants’ perception of interrogation is misconstrued and is based on perceptions of Guantanamo Bay and the water boarding techniques utilized in the pursuit of Al Qaeda. Wozniak explains that interrogation is simply systematic questioning that instills the investigator with confidence. His view is echoed in *Black’s Law Dictionary*, which defines interrogation as “*the formal or systematic questioning of a person.*” (Black and Garner, 2004) By avoiding the teachings of “interrogation,” Wozniak believes that accountants are missing out on the opportunity to learn specialized questioning techniques that are imperative to a successful investigative outcome.

NEED FOR A NEW ACCOUNTING INTERVIEWING STANDARD

Has the time come for the accounting profession to re-evaluate its approach to interview training? This article suggests that the answer to this question is a resounding “yes.” Interviewing is a complex discipline that provides its practitioners with many ethical, legal, and psychological challenges.

⁵ In liaising with the CPC, they also informed one of the authors that many corporate professionals are hesitant to explore interrogation methods.

Accordingly, the accounting profession should be at the forefront of developing an interviewing model that suits the corporate world and is consistent with ethical principles. To do so, the profession needs to closely examine the leading interview models and assess their relative merits and deficiencies.

The two leading interview technique models used in the world of interviewing are the previously mentioned REID and PEACE models. REID is taught to investigators in North America, while PEACE is taught to investigators in the UK. The REID model begins with a non-accusatory interview process that teaches its investigators to gather facts and to assess whether the interview subject is deceptive. If the interviewer is reasonably certain of the suspect's guilt, the investigator is taught to interrogate the subject in order to persuade the suspect to tell the truth. PEACE suggests that the investigator stops short of interrogation, and instead instructs its investigators to challenge interview subjects about inconsistencies in their statements of account. Despite their philosophical differences, there are many similarities between REID and PEACE. For example, both models advocate rapport-building and open-ended questioning. Accordingly, the forensic accounting profession should isolate the differences between the two models and assess the aspects that best equip its professionals to properly investigate the complexities of white-collar crime.

MOTIVATIONAL INTERVIEWING

Forensic accountants can also enhance their interviewing skills by examining the psychology profession. Psychologists interview their patients in order to elicit information and help the patient choose the proper path to change. Many psychologists utilize the concept of Motivational Interviewing⁶ to make progress with difficult patients.

MI is an interview approach used with subjects that are resistant to change. MI in the therapeutic context provides the therapist with systematic tools to explore change. This technique allows the therapist to explore the patient's ambivalence. However, the exploration is in a manner through which the patient is more likely to choose the proper path to change. For example, even though there is a tremendous amount of "evidence" supporting the hazards to smokers' health, they often remain steadfast in their commitment to smoke. When approached confrontationally, they become further entrenched in their position. Oftentimes, smokers rationalize their behavior, similar to fraudsters rationalizing their crime. In simplified terms, for a smoker to quit, the desire must come from within. Similarly, the decision to confess should be that of the suspect. The most effective health practitioners challenge their patients in an ethical manner, while creating the emotional environment conducive to change. MI provides those practitioners with the tools to effect the required change.

TIME FOR CHANGE

The accounting profession, including forensic accountants, and internal and external auditors, must develop a more solid foundation of interview training. The profession has interviewing experts that can bring the benefit of their knowledge to the next generation of professionals. Would the profession not be better served by translating that experience into a standardized interview model? Would it not be well served to develop its own corporate interview model in consultation with law enforcement officers

⁶ Dr. Stephen Rollnick and Dr. William Miller documented the concepts of Motivational Interviewing ("MI") in 1989. The concepts of MI are explored extensively in another article.

and psychologists? The forensic accounting profession does not need to re-invent the wheel; instead, the profession needs to apply existing principles and make interview training more comprehensive, consistent, and applicable to the forensic accounting environment. The forensic accounting profession needs to tailor an interview model consistent with its ethical principles, so that the profession can further entrench its position as the leading forensic accounting experts.

A key point to consider when reading this article is that a forensic accountant's goal is not to necessarily elicit a confession. The accountant's goal is to objectively examine all forms of evidence with the goal of reporting a factual truth. Accordingly, a forensic accountant must tread carefully when conducting his or her investigation and should consider all alternatives in his or her thought process. The salient point is that forensic accountants must remain true to their principles of objectivity at all times, while also maintaining the necessary professional skepticism. The skilled forensic accountant arrives at the truth, whether that results in a confession or not.

THE ROLE OF THE INTERVIEWER

There are many factors that lead to confessions. The accountant needs to be acutely aware of the roles that evidence, experience, and interviewer's demeanor play in the interview's outcome.

SUSPECT INTERVIEWS

Some may question the need for training and practice for the forensic accountant with respect to suspect interviews. Suspect interviews are less common than witness interviews, because there tends to be more witnesses than suspects, and suspects often choose to invoke their right to silence (Watkins, *et al.*, 2011).

Despite witness interviews being more common than suspect interviews, there are many instances where the suspect does in fact talk to the forensic accountant or auditor. In the civil context, consider an employee suspended⁷ over a fraud allegation who wants to provide his or her side of the story to the investigator. In the criminal context, police resource restrictions frequently require accountants to conduct suspect interviews and generate a report of their findings. Additionally, Canadian regulatory investigators speak with their members as part of the self-governance process (i.e., Chartered Accountants). In regulatory proceedings, the investigator meets with members who are required to respond to allegations against them. Because the regulatory process may compel its members to speak with the appointed investigator, members are frequently interviewed. Even if there are fewer opportunities to meet with suspects than witnesses, when called upon, the accountant needs to be equipped with the proper tools.

NO SUBSTITUTE FOR EXPERIENCE

Of course, it is extremely difficult to simplify interviewing techniques into a single model. Consistent with many aspects of professional disciplines, accountants must improve their interviewing skills

⁷ For an active employee in an employment setting, under the duty to cooperate concept, an employee may be expected to be interviewed, or an employer may have the right to terminate the employee. Before an employee is terminated, the employee should be interviewed to gather evidence.

through actual practice. In doing so, the accountant incorporates personal style into the context of legal and ethical parameters. Investigative interviewing training is important and valuable, but there is no substitute for experience.

EVIDENCE IN THE INVESTIGATIVE INTERVIEW

Along with experience, the importance of evidence in a suspect interview cannot be overstated. Studies have consistently shown that strong evidence is the primary reason suspects choose to confess. In a February 2011 study, three Canadian criminology specialists highlighted evidence importance by examining factors contributing to confessions (Deslauriers-Varin, *et al.*, 2011). The purpose of this study was to fill in gaps in past research and to examine the key factors that influence the offender's decision to confess. The study was done with 221 prisoners who were serving sentences for greater than two years in a federal prison. The researchers examined, among other things: individual and socio-demographic characteristics; criminological factors (such as repeat versus first-time offenders); and contextual factors (such as feelings of guilt); the role of legal advice; and the strength of police evidence. The study found that in situations where inmates classified the police evidence as strong, 80 percent of the first time offenders and 51 percent of the repeat offenders confessed to their crimes under police questioning. When police evidence is strong, criminological and contextual factors have a reduced impact on the suspect's decision to confess (Deslauriers-Varin, *et al.*, 2011).

Studies also have shown that the methods that the interviewer uses to introduce the evidence are important. A 2005 Swedish study (Hartwig, *et al.*, 2005) indicated that the timing of evidence disclosure by the investigator can be a valuable deception detection tool. The study concluded that deceptive statements were more easily determined (68%) when evidence was disclosed later in the interview by the investigator. In essence, if the investigator introduces evidence to the suspect too early, a suspect can more easily concoct false stories in an attempt to discredit that evidence. To simplify, if the suspect doesn't know what "cards" (evidence) the interviewer possesses, it is more difficult for he or she to falsify a story attempting to refute that evidence. Moreover, the accountant is in a better position to question the suspect's inconsistencies by confronting a deceitful suspect with contradictory evidence. This study demonstrates that not only is evidence important; but the accountant who strategically utilizes the evidence in his or her possession is more apt to achieve optimal investigative outcomes.

INTERVIEWER CONDUCT

Studies also have been done to examine the importance of the interviewer's demeanor in an investigative interview. An Australian study (Kebbell & Hurren, 2006) was conducted to examine the views of both convicted sex offenders and police officers as pertaining to effective investigative interviewing approaches. The study highlighted not only that the competent use of evidence is important, but also the importance of empathy and rapport-building. The results suggested the most effective approaches were non-aggressive and consisted of compassion, honesty, and neutrality. In addition, 63% of the subject offenders indicated that confessions would be less likely if the police officers were aggressive.

Consistent with the 2006 Australian study, a highly referenced 2002 study (Holmberg & Christianson, 2002) also demonstrated the importance of the investigator's approach in the confession interview. This

study was performed in Sweden and consisted of 43 murderers and 40 sexual offenders. The research focused on the offenders' experiences in police interviews and their inclination to admit or deny crimes. The researchers concluded that police interviews marked by dominance are mainly associated with a higher proportion of denials; whereas a humanitarian approach is associated with admissions. Overall, the odds of admissions were 3.19 times greater for individuals who perceive the interviewer to be taking a humanitarian approach. Similarly, the odds of admissions were 5.92 times greater for offenders who believed they were treated with respect during the interview. The researchers noted that when suspects feel respected and acknowledged, they gain more confidence and autonomy. In turn, the suspect's increased comfort creates the requisite conditions to confess.

The aforementioned studies bode well for the accounting profession because the findings are consistent with its values. An accountant who carefully gathers evidence and properly plans his or her interviews in a competent manner is most likely to be successful. Further, the gentler, humane approach to interviewing appears to be most effective in obtaining confessions. Interviewing is difficult, especially when dealing with suspects. Further contributing to that difficulty, the interviewer needs to establish a rapport and obtain a confession within the parameters of the law.

WHAT IS A LEGAL CONFESSION?

CONFESSION VS. ADMISSION

The layperson often does not distinguish between a confession and an admission. One could argue that many investigators also consider the terms to be synonymous. *Black's Law Dictionary* (2004) specifically distinguishes the two terms as follows:

A confession is an acknowledgment in express words by the accused... of the truth of the main fact charged or of some essential part of it. The distinction between admissions...and confessions... is the distinction...between admissions of fact from which the guilt of the accused may be inferred by the jury and the express admission of guilt itself. (Black & Garner, 2004).

To summarize, a confession is a complete account of the facts required to establish guilt; whereas an admission is an acknowledgement of a fact. For example, consider a suspect that acknowledges being aware of a fraud, or makes a comment such as "*I did it.*" These comments fall short of being a confession and are instead treated as admissions. Confessions include all the necessary elements for the prosecution to prove the *actus reus* (act) and *mens rea* (guilty mind) of the offense. The interviewer needs to obtain these facts to ensure that the statement is complete.

IMPORTANCE OF THE CONFESSION

The confession is an important piece of evidence. As Justice Byron White stated:

The defendant's own confession is probably the most probative and damaging evidence that can be admitted against him...Certainly, confessions have a profound impact on the jury, so much so that we may justifiably doubt its ability to put them out of mind even if told to do so." (*Bruton v. United States*,

1968)

Clearly, confessions are formidable pieces of evidence. They reduce the burden on the judicial system and provide the victim with a sense of closure. However, an accountant must not be overly focused on obtaining a confession. A forensic accountant must continue to remain skeptical, but objective throughout the interview process.

CONFESSION LAWS – CANADA

An entire article could be written on the admissibility of confession evidence which is beyond the scope of this article. However, an overview of the legal considerations for statement admissibility serves as an important component of an investigative interviewing article. The investigator that is familiar with the laws pertaining to suspect interviews is best equipped to handle its challenges effectively. In most cases, the accountant should consult with legal counsel prior to conducting suspect interviews.

Criminal Proceedings

In criminal law, the confession rule governs the admissibility of statements. In summary, statements made to persons in authority (generally persons of the state) must be made voluntarily.

Regulatory Proceedings

Given that accountants are not often conducting interviews in the criminal arena, it is important to consider other proceedings. In regulatory law, the confession rule does not apply per se because generally members of a regulatory body don't have the "right to remain silent" in the regulatory proceedings. However, confessions would be governed by the principles of natural justice in order to ensure that proceedings are fair. In turn, if the statement was obtained under duress or oppressive conditions, its veracity could be highly questionable and could affect the weight that would be given to this evidence by the tribunal.

Civil Proceedings

In the civil context, a judge would assess the confession based on the facts at hand. Consistent with regulatory proceedings, if the statement was obtained under duress or oppressive conditions, its veracity could be highly questionable.

THE CONFESSION RULE

The confession rule is a doctrine of English common law which states that confessions must be made voluntarily (*Ibrahim v. R*, 1914). It was established in 1914 in the Ibrahim case. In 1922, the Supreme Court of Canada ("SCC") adopted the *Ibrahim* rule, holding that the prosecution must establish voluntariness in order for a confession to be admissible (*Prosko v. the King*, 1922). In 2000, the SCC refined the confession rule as part of the *Oickle* case (*R. v. Oickle*, 2000). In *Oickle*, the SCC held that the Crown must show that any statement made to a person in authority (i.e., a police officer), must be made

voluntarily (absent threat or promises, oppression, and of operating mind) in order to be admissible. There are two interesting concepts to examine with respect to the confession rule: *persons in authority* and *voluntariness*.

PERSONS IN AUTHORITY

The confession rule only applies to a person in authority who is generally an employee of the state (i.e., a police officer). The Canadian Supreme Court articulated the principle as follows:

The definition of a "person in authority" typically refers to those formally engaged in the arrest, detention, examination, or prosecution of the accused and so applies to police officers and prison officials or guards....The proper test for "person in authority" examines first the objective status of the person to whom the confession or statement was made, and only where they are identified as someone formally engaged in the arrest, detention, interrogation, or prosecution of the accused, is it then necessary to examine whether the accused believed that the person could influence or control the proceedings against him or her. Only in the rarest of cases will non-traditional persons in authority fall into this category, and it still must be objectively established on the facts that such persons had actual control in the proceedings. (*R. v. Hodgson*, 1998).

An interesting issue arises as to whether an accountant can be considered a person in authority in certain circumstances. As noted above, the SCC indicates that only in the rarest cases will nontraditional persons fall into this category, and it still must be objectively established that such person has actual control over the proceedings. However, consider the accountant that is interviewing an employee who is suspected of fraud. If that employee believes that the accountant controls whether or not a police report is made, perhaps the accountant could be viewed as a person in authority and therefore be subject to the same rules as police officers in obtaining confessions voluntarily and informing the suspect of their legal and Charter rights. This factor does raise an interesting debate.

This debate surfaced at the Newfoundland Supreme Court in the year 2000. In *R. v. Reid* (2000), the judge viewed statements made by the suspect to two forensic accountants employed by KPMG, as inadmissible because the forensic accountants were persons in authority and the corresponding confession was not obtained voluntarily. The judge arrived at the conclusion by considering the suspect's perception of the forensic accountants as being persons in authority. The facts of the case were as follows:

- The suspect was accused of defrauding her employer of money;
- The employer had, to the suspect's knowledge, gone to the police about the matter. The police informed the employer that they had a new policy whereby they would not lay charges unless a forensic audit was done at the employer's expense,⁸ and
- The company retained KPMG to conduct a forensic audit.

In doing so, the suspect's manager made a comment in front of her about the need for employees to

⁸ This decision also highlights the importance of investigative interviewing for forensic accountants. Accountants are being asked to take a greater role in suspect interviews because of police resource restrictions.

cooperate with KPMG. The judge ruled that Reid's statements were inadmissible because the accused reasonably believed that the forensic accountants were persons in authority, and the statements were not obtained voluntarily. The accused felt that any information she gave to the forensic accountants would be passed on to the police and used to determine if a prosecution should commence. The KPMG representatives did not inform the accused that she was not obliged to answer their questions. Accordingly, the judge ruled that the statements were not voluntary. Forensic accountants need to be aware of this situation, because it provides defense lawyers with a precedent to render confessions as inadmissible, when forensic accountants do not take the necessary precautions.

Private Persons

Questions arise as to what rules must be followed when the forensic accountant is not viewed as a person in authority. For example, the forensic accountant may be a private investigative practitioner who is not perceived as acting for the state. The Canadian Supreme Court addressed the notion of private persons and confessions by stating that little weight should be attached to a statement obtained in oppressive conditions, as follows:

I would suggest that in circumstances where a statement of the accused is obtained by a person who is not a person in authority by means of degrading treatment such as violence or threats of violence, a clear direction should be given to the jury as to the dangers of relying upon it...the statement may very well be either unreliable or untrue. (*R. v. Hodgson*, 1998)

The impact of the SCC decision is clear: confessions obtained through inhumane treatment may well be deemed unreliable and even untrue.

VOLUNTARY STATEMENTS

The contemporary rules pertaining to the admissibility of confessions are articulated by the SCC in *Oickle* (*R. v. Oickle*, 2000). In considering statements made to persons in authority, the courts will examine the following three factors to determine whether the statement is voluntary and admissible: • Threats or promises; • An atmosphere of oppression; and • An operating mind. Even though these three factors apply only in the criminal law context, the forensic accountant is best served by following the spirit of these rules in conducting his or her investigations, regardless of legal forum.

THREATS OR PROMISES

Confessions must be obtained absent threats or promises from the investigator, and this absence is the core of the confession rule dating back to *Ibrahim*. In *Ibrahim*, the courts ruled that statements would be inadmissible if they were the result of "fear of prejudice or hope of advantage" (*Ibrahim v. R*, 1914). Accordingly, an accountant needs to be careful. If he or she makes comments to the effect of "it would be better to tell" or it would be "better if they confessed," and those comments lead to corresponding confessions, then the court traditionally rules the confession inadmissible (*R. v. Oickle*, 2000). On the

other hand, phrases like “*it would be better if you told the truth*” should not automatically require exclusion (*R. v. Oickle, 2000*). Instead, as in all situations, the trial judge must examine the entire context of the confession to determine whether it is involuntary and correspondingly inadmissible.

In addition, the interviewer must tread carefully when offering promises to the accused. The courts have said that if a police officer says “*if you don’t confess, you’ll spend the rest of your life in jail. Tell me what happened, and I can get you a lighter sentence,*” then clearly that is an improper inducement. In those situations, the suspect is not confessing voluntarily, but merely as a result of a *quid pro quo* offer of benefit (*R. v. Oickle, 2000*).

Interestingly enough, a police officer is allowed to make spiritual inducements to the suspect. For example, the officer is permitted to tell the suspect that he or she will feel better if he or she confesses. The courts have ruled that the results of such inducements are beyond the officer’s control and are accordingly admissible. In addition, there has not been a *quid pro quo* offer or induced offer suggested by the investigator. The Canadian Supreme Court stated:

Very few confessions are inspired solely by remorse. Often the motives of an accused are mixed and include a hope that an early admission may lead to an earlier release or a lighter sentence. If it were the law that the mere presence of such a motive, even if promoted by something said or done by a person in authority, led inexorably to the exclusion of a confession, nearly every confession would be rendered inadmissible.... There can be few prisoners who are being firmly but fairly questioned in a police station to whom it does not occur that they might be able to bring both their interrogation and their detention to an earlier end by confession. (*R. v. Oickle, 2000*).

The lesson for the accountant is clear. The interviewer should choose his or her words carefully when conducting a suspect interview. In addition, having some knowledge of the law can assist the interviewer in obtaining a confession statement that is considered admissible.

AN ATMOSPHERE OF OPPRESSION

The Canadian courts will view a confession as involuntary if the confession was obtained in an atmosphere of oppression. The courts have considered these factors as oppression: depriving the suspect of food, clothing, water, sleep, medical attention; denying access to counsel; and aggressive, intimidating questioning for a prolonged period of time (*R. v. Oickle, 2000*).

Fabricated Evidence

A most interesting consideration of oppressive conditions is the interviewer's use of nonexistent evidence. The courts view this tactic as dangerous, as it can result in false confessions; namely because false evidence is often crucial in convincing an innocent suspect that his or her protestations of innocence are futile. Nevertheless, the courts have said that confronting the suspect with inadmissible or fabricated evidence *is not necessarily grounds for excluding a statement on its own*. Instead, fabrication is a relevant consideration in determining whether a statement is involuntary when

combined with other factors (*R. v. Oickle*, 2000). This article suggests that this example is where the accountant's professional ethics expect more of its practitioners than does the law. More specifically, a forensic accountant should not concoct evidence because to do so would contravene his or her professional standards of ethics.

AN OPERATING MIND

In order for a statement to be viewed as voluntary, the suspect must be of operating mind. The Canadian Supreme Court has defined an operating mind as one "*which requires that the accused have sufficient cognitive capacity to understand what he is saying and what is being said.*" (*R. v. Whittle*, 1994)

In the context of the forensic accountant, this phrase does not require significant discussion as the majority of our suspects are likely of an operating mind. Nevertheless, the forensic accountant should be aware of this rule.

IMPORTANCE OF THE LAW

The aforementioned rules should be considered by a forensic accountant in all suspect interviews regardless of whether they pertain to criminal, administrative, or civil proceedings. Their importance is amplified in the criminal context as the rules form the subjective test for the trier of fact to determine the admissibility of the confession. As previously stated, the forensic accountant should consult with legal counsel prior to conducting such an important interview.

ETHICAL CONSIDERATIONS

In addition to the legal requirements imposed upon the interviewer, there are additional ethical considerations that arise when the investigative practitioner selects his or her questioning techniques. The two questioning methods that practitioners use to obtain information from suspects are interviews and interrogations. Although the terms are often used interchangeably, there are significant philosophical and strategic differences between the two concepts which are discussed in a future article.

CONCLUSION

This article has identified some of the ethical, legal, and psychological challenges that arise in an investigative interview. Accordingly, forensic accountants need proper training in order to combat such challenges. The forensic accounting profession is currently not providing a consistently comprehensive level of training to assist its practitioners with the challenges that the investigative interview presents. In order for the forensic accounting profession to complete the investigative skill set of its future professionals, the profession must communicate a new prevailing message that investigative interview training is critical to shaping positive investigative outcomes. More specifically, forensic accountants must be equipped with comprehensive interview training to minimize their reliance on the police. The forensic accountant and not the police investigator has the requisite skills to solve complex financial

crimes. Accordingly, the forensic accountant and not the police investigator should drive the investigative interview process. Police teachings have served the accounting profession well; however, accountants must strive to be even better. To truly complete the forensic accountant's skill set, the profession must deliver the irrefutably supreme interview model. The profession is ready, and the time is now.

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