

The 24-Hour Clock:

The relationship between sec.503 C.C. and duration of an interrogation.

Part 1

By Gino Arcaro M.Ed., B.Sc.

I. Interrogation Time limit

What is the time limit for a police interrogation?

How long can the police interrogate an arrested person?

There is no concrete time limit in Canadian law. The answer is found in the combined effect of:

- i. sec. 503 Criminal Code,
- ii. sec 515(11) C.C.,
- iii. sec. 9 Charter, and
- iv. R. v. Oickle (2000) SC.C.
- v. R. v. Storrey (1990) SC.C.
- vi. R. v. Singh (2007) SC.C.
- vii. R. v. Manninen (1987) SC.C.

II. Provisions

Sec 503 C.C.

1) A peace officer who arrests a person, with or without warrant, or to whom a person is delivered under subsection 494(3) C.C. or into whose custody a person is placed under subsection 163.5(3) of the *Customs Act* shall cause the person to be detained in custody and, in accordance with the following provisions, to be taken before a justice to be dealt with according to law:

(a) where a justice is available within a period of twenty-four hours after the person has been arrested by or delivered to the peace officer, the person shall be taken before a justice without unreasonable delay and in any event within that period, and

(b) where a justice is not available within a period of twenty-four hours after the person has been arrested by or delivered to the peace officer, the person shall be taken before a justice as soon as possible, unless, at any time before the expiration of the time prescribed in paragraph (a) or (b) for taking the person before a justice,

(c) the peace officer or officer in charge releases the person under any other provision of this Part, or

(d) the peace officer or officer in charge is satisfied that the person should be released from custody, whether unconditionally under subsection (4) or otherwise conditionally or unconditionally, and so releases him.

Sec 515(11) C.C.

Where an accused who is charged with an offence mentioned in section 469 is taken before a justice, the justice shall order that the accused be detained in custody until he is dealt with according to law and shall issue a warrant in Form 8 for the committal of the accused.

Sec. 9 Charter

9. Everyone has the right not to be arbitrarily detained or imprisoned.

R. v. Oickle (2000) S.C.C.

“Intuitively implausible as it may seem, both judicial precedent and academic authority confirm that the pressure of intense and **prolonged questioning** may convince a suspect that no one will believe his or her protestations of innocence, and that a conviction is inevitable. In these circumstances, holding out the possibility of a reduced charge or sentence in exchange for a confession would raise a reasonable doubt as to the voluntariness of any ensuing confession. An explicit offer by the police to procure lenient treatment in return for a confession is clearly a very strong inducement, and will warrant exclusion in all but exceptional circumstances.”

R. v. Storrey (1990) S.C.C.

The following rules emerged from this landmark case:

1. Interrogation, as part of the “intention to continue an investigation of a crime” after arrest is made *may* justify a bail hearing delay within the 24-hour clock.
2. Interrogation constitutes a reasonable post-custody detention for sec. 9 Charter purpose
3. In this case, an 18-hour interrogation was justified within the context of that specific investigation. 18 hours is not the time limit in every case.
4. It is “improper conduct” to take an accused back to the police station after he has been remanded in custody by a provincial judge. He must be taken to a provincial jail.

R. v. Singh (2007) S.C.C.

This landmark case relates to the right to remain silent. Unlike the American *Miranda* rule that prohibits questioning after an arrested person invokes his right to remain silent, Canadian police are allowed to try to change the arrested person’s decision with reasonable persuasion. However, there is a limit. Interrogation must end when the arrested person’s free will no longer exists. Consequently, an abstract time limit is imposed based on a *contextual situation where the arrested person has: (a) invoked the*

right to silence, and (b) reasonable persuasion failed to change the arrested person's mind, and (c) the arrested person is no longer capable of decision-making.

R. v. Manninen (1987) S.C.C.

Questioning must end after the arrested person invokes his right to counsel. It cannot continue until the right to counsel is exercised. Interrogation cannot start or resume until the arrested person receives consultation from a lawyer.

III. Translation

Sec. 503 C.C. imposes a 24 hour post-custody detention clock where one of a series of decisions must be made to release the arrested person or to bring his/her to a justice for a bail hearing. The full 24-hours is not automatic. 24 hours is the upper limit. The 24 hour clock is the time limit to make the following decisions:

- a. If RICE is fulfilled and the offence is summary conviction, dual procedure or indictable with a max penalty of 5 year or less, the arrested person must be released.
- b. If RICE is not fulfilled or the offence is indictable with a maximum penalty of over 5 years, a bail hearing must be conducted as soon as practicable without unjustified delay.
- c. If a justice is available, the bail hearing must be conducted “without unreasonable delay” and “within” the 24 hour time limit.

There is no concrete time that constitutes “unreasonable delay.”

The 24-hour clock may be violated only if a justice is unavailable.

Sec 515(11) C.C. explains post-bail hearing custody rules relating to persons arrested for murder. Section 515(11) mandates that a warrant in Form 8 be issued. Usually, a Form 8 warrant instructs the police **where** to bring the arrested person and **when**: (i) “forthwith” (ii) to a “prison.” The question is whether post-remand interrogations at the police station are lawful.

Sec. 9 Charter compels the police to justify every minute of post-custody detention.

R. v. Oickle prohibits “prolonged” interrogations *if* the excessive duration is accompanied by “intense pressure” and a quid pro quo such as a promise of leniency. The word “prolonged” cannot be read alone. It does not apply in isolation. It is an abstract concept that must be read in combination with the abstract phrase “intense pressure” and a promise of leniency.

R. v. Storrey (1990) provides authority to delay a bail hearing for the purpose of interrogating the arrested person. This authority works in conjunction with *Oickle*.

R. v. Manninen (1987) both stops and starts the clock. The clock stops by invoking the right to counsel. The clock starts by exercising the right to counsel.

R. v. Singh (2007) stops the clock only when the combined effect of three things happen: (i) the right to silence is invoked, (ii) the police fail to change the accused's mind, and (iii) the arrested person's free will is overborne to the point where his decision-making ability is non-functional.

Part 2 of "The 24-hour clock" will examine related case law, including.

R.v. Ansari (2008)

R. v. Daunt (2005)

R. v. Precourt (1976)