

Mitigating the Risk Posed by a Toolbox Suspect Interview Model



Dealing with an accusatory wolf in sheep's clothing
"I used to be a wolf, but I'm all right now-ow-owwwwwww!"

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Over the last few years, several Canadian police agencies, and the New Zealand Police, have adopted the principles that underpin the PEACE Investigative Interviewing framework, a scientifically-supported technique, based on the Cognitive Interview Model, the Conversation Management approach, and the Strategic Use of Evidence theory. However, rather than accept the pure PEACE framework, they created similar, hybrid, phased interview models that incorporated many of the basic principles of the PEACE framework, but added an accusatory phase similar to, but not identical to the controversial Reid Technique. The common thread was that the approach functioned as a toolbox; wherein, the interviewer could start with a non-accusatory interview, but morph into an accusatory phase, if and when required. In Canada, the accusatory phase was added for special circumstances, where the interviewee chose not to engage in conversation during the initial, non-accusatory component. It was only to be used in cases where the following criteria had been met¹:

- the interview would be audio and video recorded in its entirety;
- it would be used only after a non-accusatory interview had either been tried, or was deemed to be ineffective;
- it would only be used in situations where there was already strong evidence of guilt;
- it would only be used on non-vulnerable interviewees;
- it would be used in situations where valuable physical evidence could be found, such as a missing body, or stolen property, once it was apparent that efforts to obtain an admissible utterance had been exhausted. This would have an obvious non-prosecutorial agenda;
- it would be used to generate voluntary conversation in situations where the suspect had chosen not to speak;
- it would be used by interviewers who had received training from experts in the technique

¹ The author was a member of the committee that developed the RCMP Phased Interview Model for Suspects

With this litany of prerequisites and safeguards in place, how could the use of an accusatory phase go wrong? As seen in a New Zealand case that recently received heavy judicial criticism of their similar toolbox approach², that also had an accusatory phase, a real and present danger does exist. When used by people who aren't trained well enough, are inexperienced, are investigatively immature, or who lack the requisite critical thinking skills, the accusatory tool in the box could be similar to giving a child a handgun. Whereas, pulling the trigger could be easily done, knowing when to pull it, and where to point the firearm would be the areas of risk. While there would always be a concern that students of any interview model could misuse the product, this should not be used to minimize or ignore the danger. Let's look at this using a hockey analogy:



Wayne Gretzky was one of the best hockey players to lace up skates. He was so brilliant that he could give and receive passes in areas that would be dangerous for less-skilled players. An example would be passing in front of his own net. With him, it worked. With others, it often got intercepted by the opposition and led to a goal. He was that good. However, his moves and strategy would never have been appropriate training content for the kids who idolized him. Why? Because they wouldn't have had the skill or ability to execute them successfully.

There is a difference between training an NHL player and a Peewee.

It is the same with interview training. If the technique were too complicated for junior interviewers, or too ambiguous or vague to be fully grasped by every practitioner, it would eventually be used incorrectly.

The moral to this story: if you have a toolbox that allows for, whether intentional or not, an accusatory, guilt-presumptive, confession-oriented phase that uses minimization or maximization themes, it would not be a matter of "if" it would be used unlawfully or unethically, it would be a matter of "when". So, what is the solution?

Proposed Solution:

Have an Interview Manager available for planning and preparation, and monitoring of complex and serious interviews

Having an extremely experienced interviewer designated to oversee all aspects of complex and serious interviews, from pre-interview planning to post-interview evaluation, could minimize many of the potential risks. A recent study from the University of Portsmouth was able to support this concept³, and that was in reference to the use of a non-accusatory model that would have posed less risk than a toolbox model. This Interview Manager would be able to offer advice regarding legal issues (voluntariness and detention), as well as technique-related concerns (oppression, coercion, presumptive guilt, confession orientation, and evidence presentation). The downside would be the associated cost, so the Interview Manager would have a role limited to high-risk investigations. Nevertheless, it could satisfy the dual role of reducing the number of unreliable or false confessions, while providing a mentor to reduce post-course drift.

² <https://www.stuff.co.nz/national/crime/129474504/police-fail-to-keep-details-of-controversial-interviewing-model-secret>

³ <https://www.miragenews.com/better-outcomes-for-high-stake-investigations-836157/>

Create a cadre of subject-matter-resources to act as mentors in the field

For less-serious investigations, the Interview Manager could be replaced by an Interview Resource, who would be able to mentor developing interviewers. They would be able to provide guidance on a part-time basis, while still doing their primary function. This would serve the dual purpose of developing the local interviewers, as well as future Interview Managers. The Interview Resource would have to receive special training, and continue to excel as an interview practitioner.

Employ a contrarian to review the interviews

To reduce the dangers associated with interviewer and even Interview Manager bias and tunnel vision, a contrarian (devil's advocate) role should be built into the process. This knowledgeable and experienced interviewer would be responsible for challenging legal decisions, as well as potentially risky interview techniques. An experienced critical thinker, who was courageous enough to speak his/her mind, could weed out issues posing either legal and/or ethical ramifications. This would be achieved by making the interviewer articulate what was done, why it was done, and whether the information obtained should be considered admissible in court. In some cases, this would prevent abhorrent cases from making it to court. The contrarian role has proven itself to be a valuable asset to the major case management process, so it could be as effective for interviewing.

Have a training system that requires recertification. Must include scenarios and feedback

To decrease post-course drift (where over time a student strays from what was taught), it would be beneficial to have a recertification process. This could be in the form of realistic scenario training, or by reviewing a sample of videos from the field. This could tell the training staff and Interview Managers whether there should be any concerns regarding the interview model, how it was being taught, or a combination of both.

Create a system to review interviews to see trends, both good and bad

The training unit should proactively and continuously review field interview videos to keep a finger on the pulse of how the model is being used. If, for example, there appeared to be a tendency to use the accusatory phase inappropriately, efforts should be made to immediately intervene. Reviewing court rulings, and speaking with prosecutors, would also be invaluable.

The following Canadian case is an example of the value in reviewing interview rulings before poor behaviour becomes an embarrassment, or endemic to an entire agency:

<https://www.canlii.org/en/mb/mbca/doc/2022/2022mbca61/2022mbca61.html?autocompleteStr=R%20v%20Z%20mbca%202022&autocompletePos=1#document>

Allow academia to review and study real interviews

A recurring theme is that the academics don't understand real-world interviewing, and interviewer practitioners don't understand or appreciate scholarly research. Practitioners often complain that

the research into, and critique of, an interview model could not be relevant, and should not be afforded any weight, because it was conducted in an unrealistic laboratory environment. Unfortunately, when the academics request access to real police interviews, it is done in vain. It is time for academics and police agencies to work together, and that requires sharing the information currently held by the police. Privacy concerns, and investigative integrity should and would be respected; however, both could probably be resolved through a contractual process between the police and the university. Until such a process were developed, the police would have no choice but to accept what they often claim to be a misunderstanding of the work they do. A good example is found in the scholarly review of the RCMP Phased Interview Model for Suspects by Dr. Brent Snook⁴:

“We also explore the challenges inherent in combining accusatorial and information gathering techniques into a hybrid toolbox approach. We conclude that advocating for an interview protocol that contains dangerous or untested practices may hinder the RCMP’s ability to achieve their purported goals of obtaining voluntary statements and accurate information.”

As a member of the RCMP committee that developed the current phased approach, I question some of the opinion in Dr. Snook’s assessment, and do believe some aspects were misrepresented or misunderstood. It was based primarily, if not entirely, on a review and interpretation of a manual prepared by Sgt. Darren Carr. Having said that, if Dr. Snook and his team had been given access to more material, specifically interview videos, perhaps the outcome would have been more fair, and possibly favourable to the model. Regardless of whether it’s fair, as with other areas of our life, if we aren’t willing to provide information, we will often have to accept that another person may misinterpret it, while trying to fill in the gaps.

Another example of possible academic misrepresentation of a hybrid interview model, albeit this time favourable to the technique, was the review of the New Zealand CIPEM (Complex Investigation Phased Engagement Model). As with Dr. Snook’s review of the RCMP Phased Model, opinions appeared to have been formed without having actually observed any interviews using the models. The New Zealand case also serves as a warning to the police to have their models assessed by independent academic institutions, as “farming out” research opportunities could be viewed as problematic due to a perceived conflict of interest.

In August last year, Fitzgerald asked interviewing expert and former New Zealand Police employee Dr Mary Schollum to review CIPEM, a move he said was a “natural progression” of implementing such a model. Schollum found that it was in line with international best practice and “employed a wide range of techniques that research has shown to be efficient, effective and ethical in eliciting accurate and reliable information when interviewing suspects”.

She did not; however, speak to anyone who had used the CIPEM, or look at case specifics or video examples of where it had been used.⁵

⁴ <https://psycnet.apa.org/record/2020-39185-001>

⁵ <https://www.stuff.co.nz/national/crime/129474504/police-fail-to-keep-details-of-controversial-interviewing-model-secret>

Use a psychologist

A hybrid, toolbox model could amplify the likelihood of false, or even involuntary (inherently unreliable) confessions, when used on vulnerable persons. For this reason, interviews of people with mental health concerns, intellectual or cognitive deficits, substance abuse issues, or overall operating mind concerns (ability to fully appreciate the consequences of choosing to speak to the police), should be afforded extra vigilance. I know that many interviewers say they research their interviewee first to look for vulnerabilities, but perhaps the following teaching rules should be applied to fully grasp the futility of that approach alone:

Rule #1: always know your audience

Rule #2: you'll never always know your audience.

Due to the second rule, a prudent interviewer would seek advice from a psychologist, preferably one familiar with investigative interviewing. Police officers rarely possess the education and experience required to professionally evaluate the ability of a vulnerable suspect to make the choices required of an admissible interview. The optimal safeguard, would be for the psychologist to monitor the entire interview, to give advice on the suspect's ability to understand legal issues (voluntariness and detention), including comprehension concerns related to relevant choices. A professional, confident interviewer should not fear the guidance of a psychologist, as the insight into the deleterious effects of an accusatory posture could prove invaluable.

Conclusion

Developing an interview model, or subsequent training in that technique, would rarely cleanse the interview world of performance issues, particularly if that model were comprised of components and principles that were vague, ambiguous, or contextually-used, which, to be honest, would describe all the good ones. If the playbook, so-to-speak, were written in black and white, yet expected to be applied in shades of gray, deviation from good practice would be inevitable. In fact, even in the best interview models, problems arise from student and instructor drift, as well as myriad human factors, such as inexperience, bias, poor judgment, or a win-at-all-cost attitude. Often, the best efforts would lead to mitigation of the risk, as opposed to complete eradication.

No technique would be free of false or involuntary confessions, regardless of whether it had an accusatory phase; however, a hybrid model would render it more likely to cause them. As this risk was known to organizations such as the RCMP, at the time the accusatory phase was added to the Phased Interview Model, it would be incumbent upon that organization to be vigilant, and proactively seek to mitigate it. Without such preventative action, and mere words are not enough, something bad will certainly happen. Cultural and attitudinal problems, ones that fester and thrive beyond the classroom, require courageous supervision from Interview Managers, as well as other specialist investigative oversight in the field. Much like dog training, a vicious dog may be taken for walks, but only on a short leash. Otherwise, it could be as dangerous as a wolf.