



**THE EVIDENCE (VIDEOTAPING OF CHILD COMPLAINANTS)
REGULATIONS 1990**

PAUL REEVES, Governor-General

ORDER IN COUNCIL

At Wellington this 9th day of July 1990

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 231 of the Evidence Act 1908 (as inserted by section 3 of the Evidence Amendment Act 1989), and, in relation to preliminary hearings, pursuant also to section 212 of the Summary Proceedings Act 1957, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

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| <ol style="list-style-type: none"> 1. Title and commencement 2. Interpretation 3. Application 4. Persons present during videotaping 5. Matters to be recorded 6. Equipment failure 7. Master tape and working copy 8. Master tape 9. Working copy | <ol style="list-style-type: none"> 10. Purposes for which videotape may be shown 11. Copies of working copy 12. Production and retention of master tape in Court 13. Obligation to give transcript to defence before preliminary hearing 14. Destruction and custody of tapes Schedule |
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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Evidence (Videotaping of Child Complainants) Regulations 1990.

(2) These regulations shall come into force on the 28th day after the date of their notification in the *Gazette*.

2. Interpretation—In these regulations, unless the context otherwise requires,—

“Commissioner” means the Commissioner of Police under the Police Act 1958:

“Director-General” means the Director-General of Social Welfare, being the chief executive of the Department of Social Welfare appointed under section 35 of the State Sector Act 1988:

“Master tape”, in relation to a videotape, has the meaning given to it by regulation 7 of these regulations:

“Videotape” means any visual recording produced by electronic means; and includes any associated sound recording:

“Working copy”, in relation to a videotape, has the meaning given to it by regulation 7 (2) of these regulations.

3. Application—These regulations apply where, in any case described in section 23c of the Evidence Act 1908 or section 185CA of the Summary Proceedings Act 1957, the complainant’s evidence is to be admitted in the form of a videotape.

4. Persons present during videotaping—(1) Subject to subclauses (2) and (3) of this regulation, while the videotaping of the complainant’s evidence is taking place, the only persons present shall be the interviewer, the complainant, and any person who is needed to operate the equipment.

(2) Where the interviewer considers that it is in the interests of the complainant to have a person present to support the complainant, the interviewer may allow an appropriate person to be present for that purpose, but that person shall not take any part in the interview.

(3) Where the first or preferred language of the complainant is other than English, or the complainant is unable to hear or speak but is able to communicate by sign language, a suitably qualified interpreter may also be present.

5. Matters to be recorded—(1) The videotape shall show the following matters:

(a) The interviewer stating the date, and the time at which the recording starts:

(b) Each person present (including the complainant) identifying himself or herself:

(c) The interviewer—

(i) Determining that the complainant understands the necessity to tell the truth; and

(ii) Obtaining from the complainant a promise to tell the truth, where the interviewer is satisfied that the complainant is capable of giving, and willing to give, a promise to that effect:

(d) The interview in its entirety:

(e) Where, for any reason, a break is taken during the interview, the interviewer stating that fact, the duration of the break, and the reasons for it:

(f) Where, for any reason, the interviewer decides to conclude the interview without asking all the intended questions, the interviewer stating that fact, and the reasons for the premature conclusion:

(g) The interviewer stating the time at which the recording is finishing.

(2) No particular form of words shall be necessary for the purposes of subclause (1) (c) (ii) of this regulation (either by the interviewer or the complainant) so long as the overall effect is a promise by the complainant to tell the truth.

(3) In addition to the matters specified in subclause (1) of this regulation, an analogue clock, with a second sweep-hand, correctly recording the time shall be clearly visible throughout the videotape.

(4) Where, in accordance with regulation 4 (2) of these regulations, a person is present during the interview to support the complainant, that person also shall be clearly visible throughout the videotape.

6. Equipment failure—If, during the interview, the video equipment fails and the fault cannot be rectified immediately, the videotape shall be removed and dealt with in accordance with the succeeding provisions of these regulations, and the interview shall be recommenced as soon as practicable on another videotape.

7. Master tape and working copy—(1) There shall be 2 videotapes made of an interview, being the master tape and the working copy.

(2) For the purposes of these regulations,—

(a) The master tape shall be either—

(i) One of the videotapes used in a twin-deck machine or in linked machines recording simultaneously; or

(ii) The only videotape used in a single-deck machine; and

(b) The working copy shall be either—

(i) The second videotape used in a twin-deck machine or in linked machines recording simultaneously; or

(ii) A copy of the master tape made as soon as practicable after the conclusion of the interview.

8. Master tape—(1) The master tape shall be sealed with a certificate in the form set out in the Schedule to these regulations.

(2) The master tape shall be placed in safe custody with the Police.

(3) The Police shall keep a record of the date on which the master tape was received into safe custody, and of the particulars of any dealings with the tape thereafter.

9. Working copy—(1) The working copy shall be identified by a copy of the certificate in the form in the Schedule to these regulations, and placed in safe custody with the Police.

(2) A record shall be kept of every person who views the videotape, including the name and designation of each such person and the date on which that person viewed the videotape. The record shall be kept with the working copy.

10. Purposes for which videotape may be shown—The videotape may be shown by the Police for the following purposes only:

(a) To determine whether—

(i) Any, and if so what, charges should be laid; or

(ii) Care or protection proceedings should be instituted:

- (b) To allow any of the following persons to know the case against him or her:
 - (i) A person suspected of having committed an offence against the complainant;
 - (ii) A defendant to any charge laid in respect of which the videotape may be used in evidence;
 - (iii) An accused in respect of any indictment presented in respect of which the videotape may be used in evidence;
- (c) To allow the complainant to see the videotape;
- (d) To allow any solicitor or counsel representing any person referred to in paragraph (b) of this regulation or representing the complainant to see the videotape;
- (e) To enable the Commissioner or any other member of the Police to discharge his or her duties under any enactment;
- (f) To assist the Police in any further investigations relating to suspected offences of a sexual nature that may have been committed by any person referred to in paragraph (b) of this regulation.

11. Copies of working copy—(1) Nothing in regulation 9 of these regulations prevents the Police from making copies of the working copy.

(2) Where the Department of Social Welfare requires a copy of the videotape for the purpose of—

- (a) Allowing the complainant to see the videotape; or
- (b) Enabling the Director-General, or any social worker employed in the Department of Social Welfare, to discharge his or her duties under any enactment,—

that Department may request the Police to supply a copy of the videotape to the Department for that purpose.

(3) The Police, on receiving a request under subclause (2) of this regulation, shall supply to the Department of Social Welfare either—

- (a) The working copy; or
- (b) A copy of the working copy.

(4) The Department of Social Welfare shall place in safe custody every working copy or copy of a working copy supplied to that Department under subclause (3) of this regulation.

(5) Where the copy supplied to the Department of Social Welfare under subclause (3) (a) of this regulation is the working copy, that copy shall be returned to the Police upon request.

(6) Subject to subclause (4) of this regulation, the provisions of these regulations relating to the working copy shall also apply, with any necessary modifications, to each copy made of the working copy.

12. Production and retention of master tape in Court—(1) Where a videotape of the complainant's evidence is to be used in any proceedings, the master tape shall be produced, together with a typed transcript of the interview prepared by the Police.

(2) Once produced, the master tape shall be retained in Court custody until destroyed or erased in accordance with regulation 14 of these regulations.

13. Obligation to give transcript to defence before preliminary hearing—(1) Where the evidence of the complainant is to be given in the form of a videotape at a preliminary hearing, the prosecutor shall cause a

typed transcript of the interview prepared by the Police to be given to the defendant or the defendant's solicitor at least 7 days before the date on which the hearing is to commence.

(2) If the Court at the hearing is satisfied that subclause (1) of this regulation has not been complied with, the Court may adjourn the hearing to allow further time for the defendant to consider the transcript.

14. Destruction and custody of tapes—(1) For the purposes of this regulation, “the destruction date” means the date of the expiry of the period of 7 years commencing with—

(a) The date on which the proceedings are finally determined; or

(b) If for any reason no proceedings are brought, the date on which the videotape was originally made.

(2) The Police shall retain custody of the master tape until it is produced in Court, or (if for any reason no proceedings are brought) until the destruction date.

(3) On the destruction date, the Court or (as the case may require) the Police shall destroy or erase the master tape.

(4) Subject to regulation 11 of these regulations, the Police shall, until the destruction date, retain custody of—

(a) The working copy; and

(b) Any copy made for Police purposes.

(5) Where the Department of Social Welfare has, pursuant to a request under regulation 11 of these regulations, obtained the working copy or a copy of the working copy, that Department shall, subject to regulation 11 (5) of these regulations, retain custody of the working copy or the copy of the working copy until the destruction date.

(6) On the destruction date, the working copy shall be erased or destroyed—

(a) By the Police; or

(b) Where the working copy is in the custody of the Department of Social Welfare, by that Department.

(7) On the destruction date,—

(a) The Police shall erase or destroy any copy of the working copy in the custody of the Police; and

(b) The Department of Social Welfare shall erase or destroy any copy of the working copy in the custody of that Department.

(8) Until the destruction date, the master tape, the working copy, and every copy of the working copy shall be retained in such a way as to preserve the privacy of the persons recorded on it.

Regs. 8 (1), 9 (1)

SCHEDULE

**CERTIFICATE FOR MASTER TAPE (or WORKING COPY) OF VIDEOTAPE OF
INTERVIEW WITH CHILD COMPLAINANT**

Tape reference:

Date of interview:

Location of interview:

Time of commencement:

Time of conclusion:

Duration and reasons for breaks or premature conclusion of interview:
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Name of complainant:

Date of birth of complainant:

Address of complainant:

Guardians of complainant:

Name and designation of interviewer:

Name and designation of other persons present at interview:
.....

Cross reference to other interviews with complainant:

I certify that the contents of this certificate are correct.

.....
Signature of Interviewer

.....
Date of Certificate

MARIE SHROFF,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on the 28th day after the date of their notification in the *Gazette*, prescribe the procedure to be followed where the evidence of the complainant is to be given by videotape in certain cases. Broadly, those cases are ones of a sexual nature involving a complainant who, at the commencement of the proceedings, is under the age of 17 years.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 12 July 1990.
These regulations are administered in the Department of Justice.