

On The Need to Ensure Better Comprehension of Interrogation Rights

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Canadians who are detained by law enforcement officers are afforded the right to silence and the right to legal counsel. The comprehension of these rights is needed in order to protect the rights and freedoms of detainees and to ensure that any statement that provides probative evidence is admissible in court. In this article, we review the research on comprehension of interrogation rights. We present evidence that the documents used to deliver interrogation rights to adults and youths inhibit comprehension because they are too complicated. We conclude the article by providing recommendations on how to increase understanding of these important rights.

Les Canadiens qui sont détenus par des policiers ont le droit de garder le silence et de consulter un avocat. La compréhension de ces droits est nécessaire pour protéger les droits et libertés des détenus et pour veiller à ce que toute déclaration qui fournit une preuve probante soit admissible devant un tribunal. Dans cet article, les auteurs examinent la recherche sur la compréhension des droits relatifs aux interrogatoires. Ils font la preuve que les documents visant les droits relatifs aux interrogatoires des adultes et des jeunes sont incompréhensibles parce que trop compliqués. Ils concluent l'article en formulant des recommandations sur la façon d'accroître la compréhension de ces droits importants.

1. CANADIAN INTERROGATION RIGHTS

When Canadians are detained or arrested by law enforcement officers, they are automatically relegated to a position of disadvantage as they are deprived of their liberty and risk self-incrimination.¹ In order to help redress the power imbalance that is inherent in being detained, Canadians are afforded two particularly impor-

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¹ *R. v. Bartle*, 1994 CarswellOnt 1164, 1994 CarswellOnt 100, [1994] 3 S.C.R. 173, 92 C.C.C. (3d) 289, 33 C.R. (4th) 1; The risk of false self-incrimination is heightened if detainees are exposed to coercive questioning techniques; Saul M. Kassin et al., "Police-induced confessions, risk factors, and recommendations: Looking ahead", (2010) 34 *Law and Human Behavior* 49.

tant legal protections. These protections, which are contained in the *Canadian Charter of Rights and Freedoms* (henceforth referred to as *The Charter*), are the right to legal counsel and the right to silence.²

Section 10(b) of *The Charter* states that “Everyone has the right on arrest or detention to retain and instruct counsel without delay and to be informed of that right”. As clarified in subsequent cases, the right to legal counsel includes four rights.³ First, interviewees can assert the right to retain and instruct counsel (i.e., a lawyer) without delay. Second, interviewees have the right to access immediate legal advice irrespective of financial status (i.e., duty counsel). Third, interviewees have the right to obtain basic information about how to access any available services that provide free preliminary legal advice (e.g., phone number). Fourth, people have the right, upon being charged with a crime, to access legal counsel free of charge where an accused meets prescribed financial criteria set up by provincial Legal Aid plans. All questioning must cease until the accused either waives these rights or has had a reasonable opportunity to exercise them.

Section 7 of *The Charter* states that “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice”. The courts have interpreted this right to guarantee a pre-trial right to silence based on the fundamental right to choose whether to make a statement to the police, the confession rule that the statement must be voluntary, and the principle against self-incrimination that a person cannot be compelled to speak.⁴ Unlike the right to legal counsel, the right to silence is not absolute because interviewers are not required to advise detainees of this right and they are not required to obtain an explicit waiver of this right before asking questions.⁵ In fact, the right to legal counsel should be viewed as forming a part of the protection of the right to silence because the primary goal of allowing an individual access to legal counsel is to gain information regarding their legal rights — the most important of which is their right to remain silent.⁶ In the case of adults, normally a brief consultation with a lawyer, even a duty counsel, will be sufficient and there is no right to have the lawyer present during the investigation.⁷

Given the importance of the aforementioned rights in ensuring the protection of detainees, case law has stressed the need to provide information regarding the right to legal counsel in a comprehensive and comprehensible manner. As stated by Justice Lamer in *R. v. Bartle* (1994), “Unless they are clearly and fully informed of

² Section 10(b) and section 7, respectively. Similar rights are provided to detainees in the U. S.; see *Miranda v. Arizona*, 384 U.S. 436 (Sup. Ct., 1966); affirmed 385 U.S. 890 (Sup. Ct.).

³ *Bartle*, *supra* note 1; *R. v. Brydges*, 1990 CarswellAlta 648, 1990 CarswellAlta 3, 74 C.R. (3d) 129, 53 C.C.C. (3d) 330, [1990] 1 S.C.R. 190.

⁴ *R. v. Hebert*, 1990 CarswellYukon 7, 1990 CarswellYukon 4, [1990] 2 S.C.R. 151, 77 C.R. (3d) 145, 57 C.C.C. (3d) 1; *R. v. Singh*, 2007 CarswellBC 2589, 2007 CarswellBC 2588, 2007 SCC 48, [2007] 3 S.C.R. 405, 225 C.C.C. (3d) 103, 51 C.R. (6th) 199.

⁵ *Hebert*, *supra* note 4.

⁶ *Hebert*, *supra* note 4.

⁷ *R. v. Sinclair*, 259 C.C.C. (3d) 443, 77 C.R. (6th) 203, 2010 CarswellBC 2679, 2010 CarswellBC 2664, 2010 SCC 35, [2010] 2 S.C.R. 310.

their rights at the outset, detainees cannot be expected to make informed choices and decisions about whether or not to contact counsel and, in turn, whether to exercise other rights, such as their right to silence”.⁸ Case law also demands that the standard for a valid waiver of the right to legal counsel be high.⁹ As a general rule, a waiver of legal rights will only be valid if the detainee understands their rights, understands how those rights can be exercised, and appreciates the consequences of giving up those rights.

It is common practice for law enforcement officers to read passages of text containing these rights, known colloquially as cautions, to adult detainees. Although administration of the right to silence caution is not required, law enforcement officers typically read it alongside the counsel caution.¹⁰ Absent special circumstances (e.g., obvious mental disability, language issues, declared lack of understanding), the courts appear to be satisfied that an individual is informed fully of his or her legal rights — and are therefore protected properly and capable of making an informed decision about waiving their rights — if a caution is recited aloud.¹¹

When youths are detained or arrested, they arguably face a greater disadvantage than adults. The developmental immaturity of young people makes them a vulnerable population who are at an increased risk in interrogation settings. Specifically, youths generally lack the cognitive abilities necessary to navigate the complexities of an interrogation, are more apt to comply with the requests from authority figures (e.g., police officers), and more likely to internalize information suggested to them during questioning.¹² Controlled experimental research has shown that adolescents are much more likely to make a false confession than young adults in a mock interrogation situation.¹³ A review of wrongful conviction cases suggests that the same trend exists in real-world situations, as almost half of the cases involving youths included a false confession — compared to approximately 15% of the cases with adults.¹⁴

⁸ *Bartle*, *supra* note 3 at page 193.

⁹ *R. v. Clarkson*, [1986] 1 S.C.R. 383, 1986 CarswellNB 104, 1986 CarswellNB 14, 50 C.R. (3d) 289, 25 C.C.C. (3d) 207.

¹⁰ Brent Snook, Joseph Eastwood & Sarah MacDonald, “A Descriptive Analysis of How Canadian Police Officers Administer the Right to silence and Right to legal-Counsel Cautions” (2010) 52:5 *Canadian Journal of Criminology and Criminal Justice* 545. In this particular study the right to silence caution was delivered in almost 90% of the observed interviews.

¹¹ *Brydges*, *supra* note 3.

¹² Jessica Owen-Kostelnik, N. Dickon Reppucci & Jessica R. Meyer, “Testimony and Interrogation of Minors: Assumptions about Maturity and Morality” (2006) 61 *American Psychologist* 286.

¹³ Allison D. Redlich & Gail S. Goodman, “Taking Responsibility for an Act not Committed: The Influence of Age and Suggestibility”, (2003) 27 *Law and Human Behavior* 141.

¹⁴ Samuel R. Gross, Kristen Jacoby, Daniel J. Matheson, Nicholas Montgomery & Sujata Patil, “Exonerations in the United States 1989 Through 2003”. (2005) 95 *Journal of Criminal Law and Criminology* 523.

In response to the presumed difficulties youths have in dealing with interrogations, enhanced legal protections have been created for them. These protections are contained primarily in Section 146 of the *Youth Criminal Justice Act*, which states that law enforcement officers must explain to youths — in language appropriate to their age and understanding — that they are not obligated to provide a statement, any statement given may be used as evidence against them in court proceedings, they can consult with counsel and a parent/adult relative/appropriate adult, and any statement that is given must be in the presence of counsel or a parent/adult relative/appropriate adult, unless the youth desires otherwise.¹⁵ As is the case with adult detainees, these rights can only be waived if the youth understands the rights and the consequences of giving them up.¹⁶

Similar to the creation process of adult cautions, individual police organizations have designed forms to facilitate the delivery of legal rights to youths — known colloquially as youth waiver forms. Although the process of delivering the form differs across organizations and officers, the forms are typically read out loud while the youth follows along on a written copy.¹⁷ Youths then sign the form as an indication they received the rights and understood them. Case law has made it clear that — due to the requirement that the explanation must be given in language suitable to a particular youth's age and understanding — officers must also learn about the functioning and experience of a particular young person (e.g., education level, learning disability) and tailor the explanation of the rights to their capabilities.¹⁸ Therefore, simply delivering a standard youth waiver form will, by itself, not necessarily constitute compliance with the requirements for a full understanding of legal rights. It has also been recognized, however, that carefully-crafted waiver forms can provide an effective framework for informing youths of their legal rights.¹⁹

2. RESEARCH ON ADULT POLICE CAUTIONS

The past decade has seen the publication of numerous studies on the comprehensibility of Canadian police cautions. An initial study in 2008, which tested the comprehensibility of a right to silence caution by university students, found that comprehension levels were low — 43% received a perfect score on comprehension and 15% did not understand any of their legal rights.²⁰ It was also reported that many participants indicated a willingness to waive their right to silence because they (erroneously) believed that statements they made could be used in their de-

¹⁵ *Youth Criminal Justice Act* (2002), online: <<http://laws.justice.gc.ca/eng/Y-1.5/page1.html>>.

¹⁶ *R. v. H. (L.)*, [2008] 2 S.C.R. 739, 2008 SCC 49, 2008 CarswellNS 455, 2008 CarswellNS 454, 59 C.R. (6th) 1, 234 C.C.C. (3d) 301.

¹⁷ Although no empirical data exists on exactly how the forms are delivered, informal conversations with police officers suggests that this is the most common approach.

¹⁸ *L.T.H.*, *supra* note 25.

¹⁹ *R. v. S. (S.)*, 2007 ONCA 481, 2007 CarswellOnt 4152, 222 C.C.C. (3d) 545.

²⁰ Timothy E. Moore & Karina Gagnier, "You Can Talk If You Want To": Is the Police Caution on the "Right to Silence" Understandable?" (2008) 51 *Criminal Reports* 233.

fence.²¹ A conceptual replication of that study in 2010 found that only 4% of participants fully understood a right to silence caution and 13% understood more than half of the information in the caution.²² Similarly, only 7% of participants displayed full comprehension of the legal counsel caution, and 23% understood more than half of the information in the caution. There was also no relationship between participants' ratings of confidence in their answer and the actual accuracy of their answer.

A third study measured how well a sample of university students comprehended their legal rights and found that participants comprehended approximately 30% of them.²³ A more recent study gauged the comprehension of cautions by a sample of ex-offenders and reported comprehension levels that were similar to the levels found with student populations. On average, the ex-offenders comprehended one third of the information in the cautions and only 12% of them understood more than half of the information.²⁴

The results from these studies are converging to produce a clear and consistent message — adults do not understand the contents of Canadian police cautions.²⁵ In fact, it is rare for adults to understand even half of the information contained in a caution. It must also not be forgotten that the conditions under which comprehension was tested in those studies was ideal, as the cautions were presented at acceptable speeds of delivery (i.e., less than 200 words per minute) under non-stressful conditions. It seems likely that comprehension levels may even be a little lower in real police interviews where there are higher levels of stress and the cautions are often delivered at high rates of speed.²⁶

21 As stated by McIntyre J. “As a general rule, the statements of an accused person made outside court . . . are receivable in evidence against him but not for him”; *R. v. Simpson*, 1988 CarswellBC 753, 1988 CarswellBC 52, [1988] 1 S.C.R. 3, C.C.C. (3d) 481, 62 C.R. (3d) 137.

22 Joseph Eastwood & Brent Snook, “Comprehending Canadian Police Cautions: Are the Rights to Silence and Legal Counsel Understandable?” (2010) 28 *Behavioral Sciences & the Law* 366.

23 Joseph Eastwood, Brent Snook & Sarah Chaulk, “Measuring Reading Complexity and Listening Comprehension of Canadian Police Cautions” (2010) 37 *Criminal Justice and Behavior* 453.

24 Sarah J. Chaulk, Joseph Eastwood & Brent Snook “Measuring Police Caution Comprehension in Adult Offenders” (in press) *Canadian Journal of Criminology and Criminal Justice*.

25 Canada is not unique in this regard, as research from both the U.K. and the U.S. has shown people struggle to understand the content of the legal documents in those countries: See Susanne Fenner, Gisli H. Gudjonsson, & Isabel C. H. Clare, “Understanding of the Current Police Caution (England & Wales) among Suspects in Police Detention” (2002) 12 *Journal of Community and Applied Social Psychology* 83; Grisso (1981); and Richard Rogers, “A Little Knowledge is a Dangerous Thing: Emerging Miranda Research and Professional Roles for Psychologists” (2008) 63 *American Psychologist* 776.

26 Snook, *supra* note 8. An analysis of speed of delivery found that the average speech rates for both cautions exceeded acceptable levels for ensuring listening comprehension (e.g., over 200 wpm).

There are many potential factors that contribute to the observed low levels of caution comprehension in adults. One glaring problem pertains to the “legalese” nature of the cautions. Indeed, one reading of any Canadian police caution is likely to lead to the thought that the caution was created to meet legal criteria, but not to meet comprehension criteria. This potential complexity explanation was examined recently through an empirical analysis of Canadian police cautions.²⁷ A total of 38 right to legal counsel and 38 right to silence counsel cautions were obtained from Canadian police organizations. The cautions contained a number of features that resulted in them being classified as too difficult for the average Canadian to understand. Specifically, the majority of the legal counsel cautions were written above a grade six level,²⁸ contained linguistically complex sentence structure, contained words that are difficult for people to comprehend (e.g., *duty counsel*), and were overly lengthy (e.g., the caution used in Saint John New Brunswick contained 133 words). The silence cautions, although less complex overall, also contained phrases not well understood by the general public (e.g., given in evidence). The cautions also did not contain any features to make them more understandable when listening to the rights being read aloud. Despite being quite lengthy, there were no explicit instructions for officers to pause between the delivery of various pieces of information to allow the interviewee to think about what was being said, no structure to allow the listener to organize the information in memory in a meaningful way, and no instructions regarding what to do with the information being provided (e.g., its importance and/or how to interpret it).²⁹

The complexity analysis also found a wide variation between the content of cautions being used by Canadian police organizations.³⁰ This variation is not overly surprising because policing in Canada is primarily a provincial responsibility — therefore organizations would naturally develop their cautions independently of each other. The current empirical data on this issue suggests that this variation matters little because comprehension levels are subpar regardless of the caution being used. This variation will soon matter, however, because some organizations are taking steps to simplify their legal cautions; this means that people in certain parts of the country may have a much greater understanding of their interrogation rights than people in parts of the country where the modifications have not been

²⁷ Eastwood, *supra* note 12.

²⁸ One large-scale study of literacy levels in Canadian offenders found that 80% were considered functionally illiterate (below a grade 10 reading level), and 20% were reading below a grade 6 level; James E. Muirhead & Robert Rhodes, “Literacy Level of Canadian Offenders” (1998) 49:2 *Journal of Correctional Education* 59.

²⁹ See Donald L. Rubin, “Listenability as a Tool for Advancing Health Literacy” (2012) 17 *Journal of Health Communication* 176, for a discussion of how to make passages of text more “listenable” and easier for people to understand when delivered orally.

³⁰ Research on *Miranda* warnings in the U.S. has also found large variations between warnings from different jurisdictions and high levels of complexity with regards to the structure of the warnings; Richard Rogers, Lisa L. Hazelwood, Kenneth W. Sewell, Kimberly S. Harrison & Daniel W. Shuman, “The Language of *Miranda* Warnings in American Jurisdictions: A Replication and Vocabulary Analysis” (2008) 32 *Law and Human Behavior* 124.

made. One easy way to avoid concerns of justice inequality is to create a comprehensible police caution that is applied in a standardized manner across the country.

The combined concerns of legal literacy and caution complexity led researchers to create, using two different methods of simplification, a legal counsel caution that would be highly comprehensible.³¹ First, caution complexity was reduced by eliminating words that are difficult to understand (e.g., *retain*) and used infrequently in everyday communications (e.g., *detained*), and by breaking the information into shorter and less complex sentences. Second, listening complexity was reduced in the following ways: informing participants, before the caution is delivered, of the nature of the upcoming information and what they are expected to do with that information after the caution was delivered; informing participants that they have four legal rights and notifying them before each right is mentioned; and repeating the content of each sentence, immediately after each sentence was delivered, in a slightly different manner. The full version of that new caution is below:

I am going to read you the police caution. The police caution describes the rights that you have when being interviewed by the police. I want you to listen carefully to the caution as I am reading it and think about the information that you hear. This is important, as I will ask you to tell me what the caution means when I finish reading it. I will start reading the caution now.

You have four rights that you need to know about: First, you have the right to hire and talk to your own lawyer right away. This means that you can hire and talk to any lawyer you want before I ask you any more questions. Second, you have the right to free legal advice from a government lawyer right away. This means that you can talk to a free lawyer and get free legal advice before I ask you any more questions. Third, if you want this free legal advice, I will give you a telephone number to call. This means that you can get a phone number from me that will let you call for the free legal advice I just mentioned. Fourth, if you are charged with a crime, you can apply for a free lawyer to help with your case. This means that if you do end up being charged with a crime, you can apply to get a lawyer to help you for free.

The effect of the new caution on legal literacy was first tested with university students in a manner that was consistent with the previous comprehension studies (e.g., low stress, controlled experimental environment). The data made it clear that the modifications led to significantly higher levels of comprehension. Participants who heard the modified caution understood just over 70% of their legal rights, which was a 40% improvement over those who heard a standard caution. A second set of more recent studies presented this same caution within the context of a mock interrogation and found that the improvement in comprehension remained in this more ecologically valid setting.³² These findings suggest that the modified caution may be effective in increasing the comprehension of legal rights in real life settings.

³¹ Joseph Eastwood & Brent Snook, "The Effect of Listenability Factors on the Comprehension of Police Cautions" (2012) 36 *Law and Human Behavior* 117.

³² Brent Snook, Kirk Luther, Joseph Eastwood, R. Collins & S. Evans, "Advancing Legal Literacy: The Effect of Listenability on the Comprehension of Interrogation Rights" (2014) *Legal and Criminological Psychology*. Advance online publication.

Similar effects of modifying a right to silence caution have also been reported.³³ A caution was modified by: adding a sentence to alert suspects to the fact that they would receive two important pieces of information that they needed to understand (i.e., the right to counsel and the right to silence); adding an explicit statement of the right to silence (i.e., “You have the right to remain silent”); moving the interrogative statement “Do you wish to say anything in answer to the charge?” to the end of the caution; adding a statement mentioning that whatever they say can be used against them in court, and; adding a statement outlining that a refusal to talk cannot be used against them in court. Participants who received the modified caution comprehended more information than those who received the standard caution. More importantly, participants in the modified caution condition were better able to recall the two fundamental rights contained in the silence caution — that they do not have to make a statement and that any statement made can be used as evidence against them.

These studies make it clear that using empirical methods to simplify written documents leads to an increase in legal literacy. In all cases, an existing caution was made significantly more comprehensible by simplifying the written structure and wording, adding explanations after each original sentence, organizing the information in a logical manner, and informing listeners regarding the information that they were about to receive. Although comprehension levels are still less than perfect, these studies demonstrate that more can be done by law enforcement agencies to increase legal literacy.

3. RESEARCH ON YOUTH WAIVER FORMS

A study in 2012 involved the collection of 50 youth waiver forms from Canadian police organizations.³⁴ The content of the waiver forms were analyzed using a process similar to the one described above for adult police cautions. The complexity analysis showed that the forms were lengthy, written at a relatively high-grade level, contained complex sentences, and included numerous difficult words (e.g., *indictable*, *retain*). Although there was wide variation between forms in wording and structure — which raises questions again about procedural equality — the high level of complexity was relatively consistent across the sample. For example, 80% of the forms contained at least one section that required a post-secondary reading level to comprehend, and on average each form contained 23 difficult words (greater than grade 7 education needed to comprehend).³⁵

³³ Krista Davis, C. Lindsay Fitzsimmons, & Timothy E. Moore, “Improving the Comprehensibility of a Canadian Police Caution on the Right to Silence” (2011) 26 *Journal of Police and Criminal Psychology* 87.

³⁴ Joseph Eastwood, Brent Snook & Kirk Luther, “Measuring the Reading Complexity and Oral Comprehension of Canadian Youth Waiver Forms” (2012) *Crime & Delinquency*, Advance Online Publication.

³⁵ Juvenile *Miranda* warnings in the U.S. have also been shown to be highly complex, in some cases even more so than adult warnings; Richard Rogers, Hayley L. Blackwood, Chelsea E. Fiduccia, Jennifer A. Steadham, Eric Y. Drogin & Jill E. Rogstad, “Juvenile *Miranda* Warnings: Perfunctory Rituals or Procedural Safeguards?” (2012) 39 *Criminal Justice and Behavior* 229.

In the second part of that study, a representative waiver form was presented to a small group of high school students ranging from grade 10 to 12 and comprehension was assessed. The results showed that the students recalled about 40% of the information regarding their rights correctly. Despite the low levels of comprehension the students reported uniformly that they understood their rights. In other words, confidence in the accuracy of their understanding did not correspond with actual understanding. A follow-up comprehension study was conducted with two different waiver forms and a larger sample of students ranging from grade 7 to 11.³⁶ The results showed that students recalled less than 20% of the information in the form. Responses to multiple choice questions also revealed some disturbing misconceptions. For example, nearly half of the youths believed that they had to answer *all* questions asked by the police — as opposed to having to answer only the questions that they wanted to answer. As with other studies, it was found that students almost uniformly responded that they understood the content of the waiver forms despite the low levels of actual comprehension.

Research has shown that the waiver forms used by Canadian police organizations are ineffective in facilitating the comprehension of legal rights. As reviewed above, comprehension was well below 50%.³⁷ Such findings are troubling because they were found using non-offender samples who typically have greater cognitive capacities than offender samples,³⁸ and testing was performed in ideal conditions. Of course, the waiver forms are meant to only facilitate the comprehension process, and law enforcement officers are required to ascertain the functional level of each individual youth to ensure the rights are delivered at an appropriate level. However, there is no compelling evidence to suggest that officers have the ability to make these determinations. Given the complexity of such assessments and the multitude of factors that could impact a youth's level of cognitive functioning, expecting officers to be *de facto* clinical psychologists is an unrealistic burden to impose on them. Absent major procedural changes such as requiring the mandatory presence of an appropriate adult or lawyer whenever a youth is interviewed,³⁹ it appears that the development and use of a simplified and comprehensible waiver form would be the most effective and realistic way of ensuring comprehension of legal rights. Although it is not a legal requirement, it is also recommended that police interviewers take additional steps to verify and ensure comprehension of legal rights when interacting with young detainees (e.g., get them to repeat the rights back in their own words) rather than merely reciting the words contained in a youth waiver form.

³⁶ Stuart Freedman, Joseph Eastwood, Brent Snook & Kirk Luther, "Safeguarding Youth Interrogation Rights: The Effect of Grade Level and Reading Complexity of Youth Waiver Forms on the Comprehension of Legal Rights" (2014) *Applied Cognitive Psychology*. Advance online publication.

³⁷ Similarly low levels of comprehension have been found with juvenile *Miranda* warnings in the U.S., see *Rogers*, *supra* note 14. As stated by Rogers, juvenile warnings are the result of a "well-intentioned but misguided effort to produce better understanding" (p. 779). We echo that statement with regards to Canadian youth waiver forms.

³⁸ *Owen-Kostelnik*, *supra* note 10.

³⁹ See Sarah Medford, Gisli H. Gudjonsson & John Pearse "The Efficacy of the Appropriate Adult Safeguard During Police Interviewing" (2003) 8 *Legal and Criminological Psychology* 253, for a review of the effectiveness of this approach in the U.K.

4. CONCLUSION AND RECOMMENDATIONS

Legislation and case law in Canada have recognized the need for detainees to be protected when faced with a police interrogation, and have provided legal protections in the form of the right to receive legal advice and the right to choose whether or not to make a statement about the matter under investigation. These protections are particularly important considering the coercive tactics that police sometimes employ to elicit a confession.⁴⁰ It is vital that detainees are informed fully about their rights and understand how to exercise them because incomplete comprehension means that detainees are not being protected and that any statements that are obtained may be ruled inadmissible in court. The research reviewed above makes it clear that documents being used to deliver these legal rights to adult and youth detainees are not facilitating comprehension. As a consequence, it is likely that the majority of individuals facing a police interrogation misconstrue their rights and are unable to exercise or waive their rights.

The current mismatch between the requirement of comprehension of legal rights by the courts and the observed lack of comprehension of those rights highlights a critical problem that needs to be solved. Although attention must be paid to the specific needs of individual detainees, certain steps should be taken to ensure the comprehension levels of legal rights are uniformly high in Canadian interrogation rooms. Based on current research findings, we offer three recommendations to advance legal literacy of detainees. First, to avoid variations in protections across jurisdictions, a single police caution and a single youth waiver form should be used across the country and delivered in a standardized way. These documents should be simplified in both wording and structure according to the criteria described above. Second, the documents should be delivered in a manner that ensures the detainee can hear and process each individual piece of information. This would include, for example, speaking at a low speech rate, pausing after delivering each sentence of the document, and repeating legal rights. Third, comprehension should be verified by asking detainees to explain the rights in their own words, and interrogators should correct all misconceptions in the explanations that are provided.⁴¹ This is an important step, as people appear to be unwilling or unable to report deficits in their own understanding of the legal rights. Given that policing is a provincial responsibility, the chances of these recommendations being implemented would be increased greatly if professional bodies such as the Canadian Association of Chiefs of Police (CACP) and the Canadian Police Association (CPA) advocated for such reform. Additionally, amendments should be made to the *Canadian Criminal Code* (CCC) that would codify the procedures surrounding the delivery of rights to adults and youths.

⁴⁰ Saul M. Kassin, Steven A. Drizin, Thomas Grisso, Gisli H. Gudjonsson, Richard A. Leo & Allison D. Redlich, "Police-Induced Confessions: Risk Factors and Recommendations" (2010) 34 *Law and Human Behaviour* 3.

⁴¹ *Snook*, *supra* note 8. Although it was relatively rare for an officer to verify comprehension and correct misconceptions within the interviews assessed in this study, when they did so it was always done correctly — suggesting that officers have the ability to perform this function.

The implementation of the aforementioned recommendations is not burdensome for law enforcement organizations or the Canadian government. In fact, such changes have already been made as part of the reformation of investigative interviewing practices in at least one police organization in Canada.⁴² In turn, all interested parties within the justice system — including detainees, police organizations, the courts, the government, and the general public — would be assured that detainees are protected and that resulting statements would be admissible in court. When high levels of legal literacy are obtained, and we believe that such a goal is achievable with some simple alterations to current procedures, everybody wins.

⁴² Brent Snook, Joseph Eastwood, Michael Stinson, John Tedeschini & John C. House, “Reforming Investigative Interviewing in Canada” (2010) 52:2 *Canadian Journal of Criminology and Criminal Justice* 203.

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