

**THE RIGHT TO SILENCE: INVESTINGATING THE
COMPREHENSIBILITY OF CANADA'S POLICE CAUTION**

KRISTA M. DAVIS

A THESIS SUBMITTED TO THE FACULTY OF GRADUATE STUDIES
IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR
THE DEGREE OF

MASTER OF FINE ARTS

GRADUATE PROGRAM IN PSYCHOLOGY
YORK UNIVERSITY
TORONTO, ONTARIO

JULY 2010



Library and Archives
Canada

Published Heritage
Branch

395 Wellington Street
Ottawa ON K1A 0N4
Canada

Bibliothèque et
Archives Canada

Direction du
Patrimoine de l'édition

395, rue Wellington
Ottawa ON K1A 0N4
Canada

Your file *Votre référence*
ISBN: 978-0-494-68280-7
Our file *Notre référence*
ISBN: 978-0-494-68280-7

NOTICE:

The author has granted a non-exclusive license allowing Library and Archives Canada to reproduce, publish, archive, preserve, conserve, communicate to the public by telecommunication or on the Internet, loan, distribute and sell theses worldwide, for commercial or non-commercial purposes, in microform, paper, electronic and/or any other formats.

The author retains copyright ownership and moral rights in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

In compliance with the Canadian Privacy Act some supporting forms may have been removed from this thesis.

While these forms may be included in the document page count, their removal does not represent any loss of content from the thesis.

AVIS:

L'auteur a accordé une licence non exclusive permettant à la Bibliothèque et Archives Canada de reproduire, publier, archiver, sauvegarder, conserver, transmettre au public par télécommunication ou par l'Internet, prêter, distribuer et vendre des thèses partout dans le monde, à des fins commerciales ou autres, sur support microforme, papier, électronique et/ou autres formats.

L'auteur conserve la propriété du droit d'auteur et des droits moraux qui protègent cette thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

Conformément à la loi canadienne sur la protection de la vie privée, quelques formulaires secondaires ont été enlevés de cette thèse.

Bien que ces formulaires aient inclus dans la pagination, il n'y aura aucun contenu manquant.


Canada

**THE RIGHT TO SILENCE: INVESTIGATING
THE COMPREHENSIBILITY OF CANADA'S POLICE
CAUTION**

by **Krista M. Davis**

a thesis submitted to the Faculty of Graduate Studies of York
University in partial fulfillment of the requirements for the degree
of

MASTER'S OF ARTS

©2010

Permission has been granted to: a) YORK UNIVERSITY LIBRARIES to lend or sell copies of this dissertation in paper, microform or electronic formats, and b) LIBRARY AND ARCHIVES CANADA to reproduce, lend, distribute, or sell copies of this dissertation anywhere in the world in microform, paper or electronic formats and to authorize or and to authorize or and procure the reproduction, loan, distribution or sale of copies of this dissertation anywhere in the world in microform, paper or electronic formats.

The author reserves other publication rights, and neither the dissertation nor extensive extracts from it may be printed or otherwise reproduced without the author's written permission.

ABSTRACT

Modifications to Canada's police caution on the right to silence were made to help increase its comprehensibility. It was hypothesized that university participants who received the modified caution during a mock interrogation would score significantly higher on measures of comprehension than those who received the standard caution. Interviews were also conducted with clients from the Aboriginal Legal Services of Toronto (ALST) to elucidate factors that influence the decision to waive legal rights during custodial interrogations. Results indicate that comprehension was significantly higher among those that received the modified caution and that those with higher comprehension scores were more likely to exercise their right to silence. Moreover, ALST clients reported that coercive and manipulative techniques were commonly used by police to gain a legal rights waiver. These findings suggest that clarifying and standardizing Canada's legal rights will lead to better comprehension and greater protection against false or coerced confessions.

ACKNOWLEDGEMENTS

It is with pleasure that I extend my gratitude to the many people who made this Master's thesis possible. I would first like to thank my supervisor, Dr. Timothy Moore, for his guidance and support over the past two years, as well as Dr. Regina Schuller for her sound advice and assistance through the writing of this thesis. I would also like to express my thanks to my co-researcher Lindsay Fitzsimmons for her hard work and encouragement throughout the duration of this project.

I would like to extend my gratitude to the staff from the Aboriginal Legal Services of Toronto (ALST), especially Jonathan Rudin and Colette Pagano, who graciously supported the implementation of this research project. I am grateful to the university students and ALST clients who participated in the study.

I would also like to thank my family and friends for their support and editorial expertise.

Finally, I wish to thank the Social Sciences and Humanities Research Council and the Ontario Graduate Scholarship program for their financial support.

TABLE OF CONTENTS

Abstract	iv
Acknowledgements	v
Table of Contents	vi
List of Tables	viii
List of Figures	ix
Introduction	1
Importance of the right to silence	4
Factors that influence comprehension and the decision to waive legal rights	5
Cognitive functioning	5
Stress	7
Language and culture	8
Delivery of rights	8
Innocence	10
Comprehension of legal rights	11
Research on the Canadian Caution on the Right to Silence	15
Overview of Research	17
Study 1	19
Method	19
Participants	19
Materials	20

Assessment Instruments.....	21
Procedures.....	23
Results.....	23
Discussion.....	28
Study 2.....	30
Method.....	30
Participants.....	30
Materials.....	30
Assessment Instruments.....	31
Procedures.....	31
Results.....	31
Discussion.....	34
General Discussion.....	39
References.....	44
Appendices.....	51
Appendix A: Caution Versions from Moore and Gagnier (2008).....	52
Appendix B: Informed Consent Forms.....	53
Appendix C: Guilty and Innocent Scenario Scripts.....	56
Appendix D: Caution Versions.....	57
Appendix E: University Sample Questionnaires.....	58
Appendix F: Scoring Rubric.....	76
Appendix G: Semi-structured Interview: ALST Sample.....	80

List of Tables

Table 1: Percentage of Participants Who Waived Their Right to Silence.....	28
Table 2: Real Life Arrest and Interrogation Experiences Compared to Video.....	32
Table 3: Percentage of Participants Who Received and Enacted Their Legal Rights.....	33
Table 4: Reasons for Enacting or Waiving Right to Silence.....	35
Table 5: Where Participants Learned to Remain Silent.....	36

List of Figures

Figure 1: Proportion of participants who correctly recalled the two prongs of the caution.....	24
Figure 2: Average scores on cued response questions by condition.....	25

To protect criminal suspects from possible coercion during interrogation, all citizens are provided legal rights, some of which are covered under the Canadian Charter of Rights and Freedoms (1982). Upon arrest, suspects are routinely informed by police of the right to counsel and the right to remain silent. These rights provide suspects with protection against self-incrimination and (possible) false confessions during custodial interrogations in which suspects are under state control and vulnerable to coercion (Paccioco & Stuesser, 2008; Stuesser, 2003). However, the comprehensibility and utility of the right to silence has been called into question by several legal professionals and forensic psychologists (Abramovitch, Peterson-Badali, & Rohan, 1995; Eastwood & Snook, 2010; Eastwood, Snook, & Chaulk, 2010; Moore & Gagnier, 2008; Stuesser, 2003). If suspects do not have an adequate understanding of their legal rights, these rights essentially become empty formalities that are ineffective safeguards against coercion.

There has recently been some indication that Canada's caution regarding the right to silence fails to protect suspects, particularly when compared to its counterpart in the United States (Moore & Gagnier, 2008; Stuesser, 2003). In the United States, the right to silence is delivered to suspects through the *Miranda* warning. The landmark decision in *Miranda v. Arizona* (1966) established that, in order to preserve the fifth Amendment right against self-incrimination, custodial suspects must be provided protection in the form of the *Miranda* warning during interrogation (Rogers, 2008). The *Miranda* warning is composed of five separate prongs including the right to silence and a caution about the risk of waiving this right (Rogers, 2008). Under the *Miranda* warning, the right to silence is read as follows: "You have the right to remain silent, anything you say will be used

against you in a court of law”. The warning is relatively blunt, and clearly indicates that anything the suspect says will be used against that person in court. In contrast to its counterpart, the caution on the right to silence in Canada remains (a) ambiguous, and (b) not mandated by law (Moore & Gagnier, 2008). Instead, Canada’s right to counsel and right to silence are somewhat entwined according to common law. The right to counsel is clearly outlined under section 10(b) of the Canadian Charter of Rights and Freedoms, which states that “everyone has the right on arrest or detention...to retain and instruct counsel without delay and... to be informed of that right”. The right to silence is more equivocal as it is not explicitly stated in the Charter. In *R. v. Herbert* (1990) it was determined that the right to silence is confirmed when Charter sections 7 and 10(b) are contemplated together. It has further been established that when a detainee exercises his or her right to counsel they have, *ipso facto*, made an informed choice on enacting their right to silence, owing to the fact that an attorney would instruct the suspect to remain silent (*R. v Herbert*, 1990, ¶ 52 – 55):

The detained suspect, potentially at a disadvantage in relation to the informed and sophisticated powers at the disposal of the state, is entitled to rectify the disadvantage by speaking to legal counsel at the outset, so that he is aware of his right not to speak to the police and obtains appropriate advice with respect to the choice he faces. Read together, ss. 7 and 10(b) confirm the right to silence in s. 7 and shed light on its nature. . . . The state is . . . obliged to allow the suspect to make an informed choice about whether or not he will speak to the authorities. To assist in that choice, the suspect is given the right to counsel. [The Charter] seeks

to ensure that the suspect is in a position to make an informed choice by giving him the right to counsel. The guarantee of the right to counsel in the Charter suggests that the suspect must have the right to choose whether to speak to the police or not, but it equally suggests that the test for whether that choice has been violated is essentially objective. Was the suspect accorded his or her right to consult counsel?

And at ¶73:

... [T]here is nothing in the rule to prohibit the police from questioning the accused in the absence of counsel after the accused has retained counsel. Presumably, counsel will inform the accused of the right to remain silent.

In Toronto and much of Ontario, police typically inform citizens of their right to silence through a standard caution that reads: “You are charged with (name of crime). Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so, but whatever you say may be given in evidence”. The caution in Canada is much more complex than its *Miranda* counterpart. In the Canadian caution, whatever a suspect says may be given in evidence, unlike the *Miranda* warning which specifically states that statements made by the accused will be used against the suspect in court. Canadian suspects could wrongly infer that they have the opportunity to make an exculpatory statement during an interrogation, when in reality “as a general rule, statements of an accused person made outside court are not receivable in evidence *for* [italics added] him” (*R v. Simpson*, 1988, p.4). When compared to the right to silence in

the United States, it is apparent that Canada's right to silence provides only minimal and inadequate protection for suspects (Stuesser, 2003).

Importance of the Right to Silence

In essence, the right to silence is meant to protect suspects from making an inculpatory statement or confession that could be used against them during a criminal trial. Confessions are considered to be one of the strongest determinants of guilt and "once offered into evidence, it is extremely difficult for defense counsel to overcome the impact a defendant's inculpatory statements might have on a judge or jury" (Oberlander, Goldstein, & Goldstein, 2003, p. 335). This is disconcerting given that police often employ a variety of physical and psychological tactics in order to obtain a confession. For instance, police may hold the suspect in custody for extended periods of time and may manipulate the accused by exaggerating evidence, making implicit promises to release the suspect, or promises for a more lenient sentence (Oberlander et al., 2003). Inherently, police possess significant power over the accused during the interrogation process; to balance this power differential, suspects are afforded legal rights to protect themselves against possible coercion.

Most importantly, however, the right to silence provides protection against false or coerced confessions, where a suspect admits to a crime that they have not committed, often to escape the physical or psychological distress of the interrogation. Although it is difficult to comprehend why a person would ever confess to a crime they did not commit (Henkel, Coffman, & Dailey, 2008), for many suspects the psychological pressure of the interrogation situation has, indeed, led to false confessions and wrongful convictions. In

the last few decades there have been numerous cases in which innocent suspects ‘confessed’, were convicted, and later exonerated on the basis of DNA evidence (Drizin & Leo, 2004; Kassin, 1997; Kassin, Drizin, Grisso, Gudjonsson, Leo, & Redlich, 2008; Kassin & Gudjonsson, 2004). Kassin (2008) reported that of the 200+ cases exploring miscarriages of justice by the Innocence Project, 25% involved false confessions. The frequency of such false confessions, however, could potentially be minimized if the right to silence were properly understood and asserted by suspects.

Factors that Influence Legal Rights Waivers

It may seem surprising, given the coercive nature of the interrogation process, that suspects do not routinely invoke their right to silence. Leo (1996) explored police investigations in the United States through naturalistic observation and found that approximately 78% of the 175 suspects who were read their legal rights waived the right to silence. Given the substantial proportion of suspects that choose to waive their right to silence, researchers have begun to explore some of the factors that influence legal rights waivers.

Cognitive Functioning. In order to make an informed decision about waiving legal rights it is essential to have at least a basic understanding of what those rights mean and what it means to give them up. Suspects who have limited cognitive abilities may be at risk of misinterpreting and, thus, waiving their legal rights. For instance, rights are afforded to young people under the assumption that they will be able to use them appropriately. From a cognitive perspective, this means that adolescents must recognize that they have these rights, understand their meaning, and appreciate the consequences of

waiving them (Abramovitch et al., 1995). According to Piaget's (1952) cognitive theory, however, young people between the ages of 12 and 15 are still in the process of developing higher order cognitive skills, which are characterized by the ability to deal with hypothetical situations, evaluate hypotheses, and deduce conclusions—the very type of cognitive abilities that are required by suspects to make informed and insightful decisions about waiving legal rights. Thus, adolescents between the ages of 12 and 15 may be at particular risk of making a rash decision to waive their rights. Further research has revealed that the rate at which cognitive skills develop varies, suggesting that some older adolescents and young adults may also lack the skills needed to properly process the information provided in police cautions (Capon & Kuhn, 1979; Keating & Clark, 1980; Tomlinson-Keasey, 1972).

Making an informed decision about waiving legal rights not only requires an understanding of what those rights mean, but also requires the ability to evaluate the possible consequences of waiving or enacting those rights. Again, young people may be at a disadvantage given that decision-making skills continue to develop across childhood and well into adolescence (Scott & Grisso, 1997). Young people, whose decision making abilities are not yet fully mature, may be hindered from making responsible and insightful decisions about waiving their right to silence (Peterson-Badali et al., 1999). For instance, young people have been found to display an increased propensity to comply with authority figures, sometimes at the expense of acting in their own best interest (Grisso et al., 2003). Adolescents may be inclined to waive their legal rights due to the desire to please police officers (Grisso et al., 2003), the belief that they should never disobey

authority (Kassin et al., 2008), or the belief that police are “helpers” that protect the community. Adolescents have also been found to weigh short-term consequences more heavily than long-term consequences (Drizin & Leo, 2004; Scott & Grisso, 1997). The desire to escape the coercion of the interrogation situation may heavily impact a young person’s decision to waive their rights. On a similar note, Finlay and Lyons (2002) have found that it is common amongst the intellectually impaired to acquiesce in social situations. Meaning that they are predisposed to say ‘yes’ or agree to statements and questions in order to please the other party or because they may not understand or know how to answer a question. Thus, young people and those with intellectual impairments may be at an increased risk of making an uninformed decision about waiving their legal rights.

Stress. The stress experienced during arrest and interrogation may also impact a suspect’s ability to understand and enact their legal rights. The nature of police interrogations has been described by Kassin (2005) as “inherently coercive” (p. 218). Interrogations are designed to promote a sense of isolation, anxiety, and despair in order to overcome resistance from the suspect and elicit a confession (Kassin, 2005; Kassin & McNall, 1991; Kassin et al., 2008). The inverted-U hypothesis predicts that people perform optimally at moderate levels of arousal, but at low and high levels of arousal performance declines (Yerkes & Dodson, 1908). The high level of arousal experienced in an interrogation may impact a suspect’s information-processing and decision-making abilities. More specifically, stress has been found to disrupt cognitive functioning in two primary ways--people 1) tend to jump to conclusions and 2) fail to consider all available

options (Byrnes, 2002; Keinan, 1987). Ultimately, the stress of the interrogation may impede cognitive functioning thereby limiting a suspect's ability to comprehend and properly evaluate the risks of waiving their legal rights.

Language and Culture. Given the multi-cultural nature of Canada's population there are additional concerns regarding language and culture that may hinder comprehension. Newcomers to Canada, whose first language is not English, may have difficulty understanding the legal terminology used in the Canadian caution. Cultural differences, including attitudes towards authority and knowledge of the legal system, may also play an important role in caution comprehension and legal rights waivers. For instance, Kassin and Norwick (2004) indicate that Asian cultures often place greater importance on respect for authority. Those who value respect for authority may be more apt to waive their legal rights during an interrogation in order to comply with police.

Delivery of Rights. The method by which the caution is delivered can also have an impact on legal rights waivers. In Canada, police typically read the caution aloud to suspects. Listening comprehension, however, is thought to require additional cognitive demands over reading comprehension. In an arrest and interrogation situation, suspects must first process the information delivered in the caution and then use that information to make an informed decision about waiving their rights (Rogers et al., 2007). Generally, the ability to process verbal information is limited by the fact that individuals are not able to control the pace of information processing and must rely solely on short term memory (Rubin, Hafer, & Arata, 2000). Complex sentences delivered verbally have been found to have a particularly detrimental effect on working memory (Baddeley, 1994). In terms of

the oral delivery of legal rights, the use of unfamiliar phrases and legal terms may limit the amount of information that can be cognitively processed, even by the most attentive suspects (Rogers, Shuman, & Drogin, 2008). In the United Kingdom legal rights are provided to suspects through both a verbal and written caution, thereby increasing the likelihood that suspects will be able to cognitively process and understand their legal rights (Home Office, 2008). Furthermore, Eastwood and Snook (2010) found that participants were better able to comprehend a Canadian version of the caution on legal rights when the information was presented sentence by sentence in written format, than when it was presented verbally.

Difficulties with listening comprehension may be exacerbated depending on the manner with which police recite the caution. Police can read the caution slowly and carefully to ensure understanding, or in a rapid and rote fashion, which may ultimately limit cognitive processing (Grisso, 1998). In addition, police officers often use the same coercive and manipulative techniques to obtain waivers that they use to obtain confessions (Kassin & Norwick, 2004). Although the formal duty of the interrogating officer is to gather facts pertaining to the crime (Hartwig, Granhag, & Vrij, 2005; King & Snook, 2009), pre-interrogation investigations are commonly executed in order to determine which suspects are to be questioned about the commission of a criminal act (Kassin et al., 2008). When a suspect is deemed guilty in the pre-interrogation interview, they proceed to the interrogation room. Leo (2008) suggests that the purpose of an interrogation is to obtain an incriminating statement from the accused, since by this time, the accused is already presumed guilty by police. Thus, the goal of the interrogating

officer, to obtain a confession, contrasts starkly with the purpose of the right to silence, which is meant to protect suspects from making a confession. When reading suspects their legal rights police may minimize the importance of rights, present the rights as mere formalities (DeClue, 2007; Leo, 1996), present information without ensuring actual understanding (Rogers et al., 2007), or pressure suspects into compliance (Abramovitch et al., 1993). Given that the very officer who informs suspects of their right to silence is often the agent who may pressure them to make a statement, suspects may experience conflict and confusion when faced with the decision to waive or invoke their rights.

Innocence. An important predictor of whether a suspect will waive the right to silence is the person's actual innocence or guilt. Research has shown that participants who play the role of innocent suspects are more likely to waive their right to silence than those who are guilty (Kassin & Norwick, 2004; Moore & Gagnier, 2008). In Kassin and Norwick's study researchers went to significant lengths to induce innocent and guilty mind sets by having participants commit mock thefts. Following the staged crime, participants were apprehended, read their *Miranda* rights, and given the opportunity to waive or invoke their legal rights. Overall, 58% of participants chose to waive their right to silence. The innocent participants were significantly more likely to waive their right to silence (81%) than the guilty participants (36%). When asked to report their reason for waiving the right to silence, innocent participants reported that they felt they had nothing to hide (Kassin & Norwick, 2004). "The truth will set you free" is an unfortunate myth within the criminal justice system and may put innocent suspects at risk for false confessions.

The fact that innocent participants were more likely to waive their right to silence suggests that people have a readily available “social script” that guides actions and decision making when they perceive themselves to be innocent. There are two social psychological theories that may help to explain why suspects believe that their innocence will act as a protective factor. One theory, the illusion of transparency, suggests that people often overestimate the degree to which others are able to discern their internal state of mind (Gilovich, Savitsky, & Medvec, 1998). In arrest and interrogation encounters, innocent suspects may believe that their innocence is more evident to police investigators than it really is (Hartwig, Granhag, & Strömwall, 2007). Another theory, the belief in a just world, indicates that individuals often believe that people get what they deserve and deserve what they get (Lerner & Miller, 1978). Innocent suspects may believe that justice will prevail and their innocence will, ultimately, preclude a conviction, but as Kassin (2005) has noted “innocence” puts innocent people at risk for false confessions.

Comprehension of Legal Rights

Central to the discussion of legal rights waivers, is the degree to which suspects are actually able to understand their rights. If suspects are not able to comprehend the meaning and utility of their legal rights they are ill equipped to use these rights for protection against false confession. Overall, the general adult population has been found to have the highest degree of comprehension of the *Miranda* warning (Grisso, 1980). Grisso (1980) compared comprehension amongst a group of 260 adults and 431 youth and found that adults were more likely to obtain perfect scores on measures assessing

comprehension compared to adolescents. Basic comprehension, however, does not necessarily translate into the ability to implement legal rights. Kassin et al. (2008) reported that many adults and youth who possessed a basic understanding of their legal rights were, nevertheless, unable to grasp the actual *implication* of these rights.

To better understand deficits in the comprehension of legal rights, researchers have begun to explore the comprehensibility of the actual cautions through which these rights are delivered. The exact wording of *Miranda* warnings in the United States varies from jurisdiction to jurisdiction. Rogers, Harrison, Shuman, Sewell, & Hazelwood (2007) investigated reading comprehensibility of warnings across the United States and found that reading comprehension varied from a Grade 2.8 to postgraduate level. Similar disconcerting results were found by Rogers, Hazelwood, Sewell, Shuman, & Blackwood (2008) when they examined the content and comprehensibility of juvenile *Miranda* warnings; reading levels varied from a Grade 2.2 to post-college level. Clearly, reading levels at the post-college and postgraduate level would make it difficult for a large portion of suspects, including young persons, those with cognitive deficits, and those with limited education, to comprehend their legal rights. Further investigation of juvenile *Miranda* warnings by Rogers, Hazelwood, et al., (2008) revealed a number of concerns regarding vocabulary. They found that salient words such as “right” require at least a grade eight reading level and other words used in the warning such as “retain,” “counsel,” “coerced,” “duress,” “induce,” and “waiver” required anywhere from a Grade 10 to college level education. It is clear that many of the youth who come into contact with the law would not be able to meet these vocabulary demands.

Given the complexity and variability of the *Miranda* warning, it is not surprising that research has consistently found that adolescents display significant difficulties understanding their legal rights. Researchers from the United States have raised particular concern over the deficits in comprehension that are found among youth under the age of 15 years (Grisso, 1980). Researchers from Canada have also revealed that younger adolescents have particular difficulties understanding their legal rights. Abramovitch et al. (1995) found that overall, 67% of youth in their sample were able to understand the Canadian caution on the right to silence. When they explored comprehension level by grade, however, they found that 89% of Grade 13 participants understood their right to silence, while only 33% of Grade 6 participants displayed adequate understanding. This is disconcerting given that Canada's *Youth Criminal Justice Act* covers children as young as 12 years of age. Abramovitch, Higgins-Biss and Biss (1993) further investigated legal rights waivers amongst 113 adolescents in Grades 6, 8, 10, and 12. The authors reported that the majority of youth who understood their rights refused to sign a waiver, meaning that they chose to enact their rights, while a majority of those who did not understand their rights signed the waiver, thereby giving up their rights. These results indicate that young people who understand their rights are actually more apt to exercise them, while youth who do not understand their rights are more inclined to waive them, putting themselves at risk of false confession.

It should be noted that research on comprehension and legal rights waivers is often limited by the fact that the stress induced by an actual arrest and interrogation is absent in the laboratory. Abramovitch et al. (1995) note that the stress experienced in a

real life interrogation would likely impede comprehension, suggesting that understanding may actually be worse in real life than what is indicated in the literature. To explore this hypothesis, Peterson-Badali, Abramovitch, Koegl, & Ruck (1999) retroactively investigated the experiences of 50 adolescents with previous arrest and interrogation experience. Approximately 60% of participants reported that they were informed of their legal rights by police, but only 10% of these were asked whether they understood their rights. Furthermore, 61% of respondents indicated that they were asked to answer police questions, and 18% of these were asked to waive their right to consult with a parent prior to questioning. Of the participants who were questioned, 59% waived their right to silence or their right to consult with a parent. Reasons for waiving rights were largely related to misconceptions. Youth reported that they spoke to police because they thought they had to, they wanted to have their say, they felt pressured, they wanted to go home, they wanted to talk to a lawyer, or because they thought police already knew the details of the crime.

Concerns have also been raised over the degree of comprehension found among populations with psychiatric and developmental disorders. Cooper and Zapf (2008) found that psychiatric patients diagnosed with a range of mental health concerns including psychotic, mood, substance use, and personality disorders displayed impaired comprehension of the *Miranda* warning when compared to a “normal” adult population. Individuals with cognitive impairments have likewise been found to display deficits in comprehending their legal rights (Everington & Fulero, 1999; Fulero & Everington, 1995; O’Connell, Garmoe, & Goldstein, 2005). These findings are of specific concern

given that the above populations are overly represented in the federal inmate population (Canadian Public Health Association, 2004; Steury, 1993; Teplin, 1984). Taken together, the research on caution comprehension suggests that young people and those with various cognitive disabilities and psychiatric diagnoses may be at a disadvantage in terms of understanding and enacting their legal rights during a custodial interrogation.

Research on the Canadian Caution on the Right to Silence

Regarding Canada's right to silence, Eastwood, Snook, and Chaulk (2010) investigated reading complexity and listening comprehension of 44 different police cautions used across Canada. They found that the cautions varied in terms of their complexity, but generally the right to silence was more straightforward than the right to counsel. Reading comprehension of the right to silence was found to vary across jurisdictions from a Grade 4 to Grade 8.4 level, and the right to counsel ranged from a Grade 4.3 to Grade 8.5 level. Eastwood, Snook, and Chaulk (2010) further tested listening comprehension of three caution versions found in Canada that varied in complexity. Comprehension was consistently poor across the three conditions, regardless of complexity. In each case, participants were only able to understand approximately one third of the information presented. Given the wide diversity and shortcomings of current legal rights cautions, there is some hope that a standardized and simplified caution on the right to silence may help to increase comprehension amongst suspects.

In another recent Canadian study, Moore and Gagnier (2008) explored two central factors affecting legal rights waivers, comprehension and innocence. In the first part of their study they sought to determine whether changes made to the current caution on the

right to silence used in Toronto (“You are charged with X. Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so, but whatever you say may be given in evidence”) would lead to better comprehension amongst a university sample. Moore and Gagnier’s (2008) study was largely driven by the realization that the current caution is linguistically complex. In practice, the caution is read straight from the beginning to end, despite the fact that the second sentence (“Do you wish to say anything in answer to the charge?”) is an interrogative. The organization of the caution violates discourse pragmatics that would prompt a pause so that the suspect could answer the question (Moore & Gagnier, 2008). The second sentence is also an invitation for the suspect to talk to police, which contradicts the purpose of the caution to inform suspects of their right to remain silent. The terminology is, likewise, problematic. For instance, the word “unless” can be difficult for non-native speakers, “obliged” is a low frequency word, and “in evidence” is a legal term that may not be well understood by those unfamiliar with legal terminology (Moore & Gagnier, 2008).

In response to these concerns, Moore and Gagnier (2008) created three different versions of the caution that modified the wording and structure to increase comprehensibility (see Appendix A). These three versions, including the standard version, were delivered to 93 undergraduate students between the ages of 17 and 49, who were later tested on how well they understood the right to silence. The second part of Moore and Gagnier’s (2008) study sought to replicate findings from Kassin and Norwick (2004), in which innocent participants were more likely to waive their right to silence than guilty participants. In Moore and Gagnier’s (2008) study, however, participants were

simply instructed to imagine that they were guilty or innocent and report whether they wished to waive their right to silence.

Results of their study did not reveal a significant difference in comprehension between any of the caution versions, but the authors did find that only 43% of their university sample received a perfect score on comprehension, indicating modest overall understanding of the right to silence. Furthermore, 34% of participants indicated that they would waive their right to silence, suggesting that they were not able to understand its implications. Consistent with Kassin and Norwick's (2004) findings, those participants who imagined themselves innocent were more likely to waive their right to silence. Participants reported that they waived their right because they wanted to appear cooperative, they wanted the opportunity to give their side of the story, and, most importantly, many believed that statements made could be used in their *defence* (Moore & Gagnier, 2008). Despite the fact that the modified cautions did not lead to greater comprehension, the limited understanding and misconceptions exhibited by participants suggests that there is room, and certainly need, for improvements when it comes to the comprehensibility of Canada's police cautions.

Overview of Research

The current two-part study was designed to build upon Moore and Gagnier's (2008) research on caution comprehension and legal rights waivers. In Study 1, a number of changes were implemented to the caution to determine whether additional modifications to the right to silence caution would lead to better comprehension. First, the modified caution in the proposed study goes above and beyond the changes proposed

by Moore and Gagnier (2008). Whereas Moore and Gagnier (2008) simplified the wording and structure of the caution, the modifications in the current study included further revisions to language, sentence composition, and structure, as well as additional information regarding the risk of waiving the right to silence. Second, comprehension in the current study was assessed using open-ended questions, as well as yes/no questions, word definitions, and sentence definitions, to more thoroughly evaluate comprehension. A secondary goal of Study 1 was to further assess the notion that innocent participants would be more likely than guilty participants to waive their legal rights. To explore these two goals, a sample of university students was recruited to represent a population with minimal criminal experience and, thus, limited exposure to the caution on the right to silence. Based on prior research that has demonstrated rather modest comprehension of the Canadian caution, it was hypothesized that participants who received the modified version would show significantly greater comprehension compared to participants who received the standard version. Past research has also revealed that innocent participants were more likely to waive their right to silence than those with a guilty mindset (Kassin & Norwick, 2004). Thus, it was hypothesized that the mere act of imagining one's self innocent would more frequently lead to a waiver of rights than would imagining one's self guilty.

For Study 2, a sample of legal service users was recruited to better understand legal rights waivers amongst those with experience in the criminal justice system. Moore and Gagnier's (2008) study explored comprehension of the right to silence amongst a university sample only. Due to their relatively high level of education and literacy,

university students are not representative of those who would typically come into contact with the criminal justice system. The original intention was to test comprehension of the modified caution on a university sample as well as a sample of clients from the Aboriginal Legal Services of Toronto (ALST). During pilot testing, however, it became apparent that preconceived notions of legal rights confounded the ALST participants' responses to comprehension questions. The ALST participants had difficulty distinguishing between their past experiences with the caution and the caution that they heard in the video. Consequently, ALST clients' perceptions and interpretations of their past arrest and interrogation experiences were assessed in an attempt to gain insights into legal rights waivers from those with first-hand experience of the Canadian legal system. Given the explorative nature of Study 2, no hypotheses were made.

Study 1

Method

Participants

Participants for Study 1 comprised a sample of 105 university students recruited through undergraduate level psychology courses and the Undergraduate Research Participant Pool at York University (both Keele and Glendon campuses). Students who participated in the study received partial course credit towards their final grade. Gender was not controlled for in the current sample (18% male, 82% female) given that past research has revealed comprehension scores to be consistent across gender (Grisso, 1980). Participants ranged in age from 17 to 44 ($M = 20.93$, $SD = 5.24$). Fifty-three percent of the sample was White, 10% South-Asian, 8% East-Asian, 8% Black, and 21%

was of other racial/ethnic origin. The sample consisted largely of participants with no previous arrest experience (only 7% of participants had experienced a previous arrest).

Materials

All participants who agreed to take part in the study were required to sign an informed consent form at the outset (see Appendix B). Details were provided regarding the purpose of the study, participation requirements, confidentiality, and the freedom to withdraw from participation at any time. During testing sessions, participants were read one of two scripts instructing them to imagine themselves in an arrest and interrogation situation in which they were either guilty or innocent (see Appendix C). Participants were also presented with a short video clip depicting a police officer reading either a standard Canadian caution or the modified caution (see Appendix D for script). The video clips were recorded by a research assistant specifically for the current study and featured the same Caucasian, male, retired police officer reading the caution in a slow and careful manner. The rate of speech for the standard and modified cautions were calculated to be 175 words per minute, which is considered to be within the optimal range for listening comprehension (Carver, 1982; Jester & Travers, 1966).

The modified caution was borne of several changes to the standard caution aimed at enhancing comprehensibility of the right to silence. First, a sentence was included 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). Second, an explicit statement of the right to silence was added (i.e., “You have the right to remain silent”). This is similar to that found in the *Miranda* warning in the United States. Third,

an explanation of the right to silence was also included (i.e., “This means that you don’t have to say anything if you don’t want to. If you do say anything, whatever you say can be used against you in court”), to counteract possible reading difficulties with the word *right*, which requires at least an 8th Grade level education. Fourth, the interrogative from the standard caution (“Do you wish to say anything in answer to the charge?”) was moved to the end of the paragraph as per proper discourse pragmatics. Fifth, simplified language was used to inform suspects that whatever they say can be used against them in court. Finally, information was added to inform suspects that their refusal to talk cannot be used against them in court.

Readability measures were applied to both the standard and modified cautions. The standard caution received a Flesch Reading Ease score of 56.1, which is classified as a Readability Level of “fairly difficult” and a Flesch-Kincaid Grade level of 8.6. The modified caution received a Flesch Reading Ease score of 61.3, which is classified as a Readability Level of “standard” and a Flesch-Kincaid Grade level of 7.5. The right to counsel portion of the caution was identical in both conditions.

Assessment Instruments. Two parallel versions of the Questionnaire for Caution Comprehension were created for the current study to assess comprehension of the standard caution and the modified caution (see Appendix E). The questionnaires were derived from Moore and Gagnier’s (2008) measure and the Test of Charter Competency (Olley, 1993). The questionnaire employs several different forms of questions—inviting a variety of response styles—in order to thoroughly assess comprehension. The first portion of the questionnaire requires participants to recall the caution that they heard and to

indicate whether or not they wished to waive their right to silence and their reason for doing so. A total of 10 questions from each parallel version of the Questionnaire for Caution Comprehension were used to assess participants' comprehension of the right to silence. Total comprehension scores could range from a possible score of 0 to 14. The first comprehension question is an open-ended, free recall question in which participants are required to describe, from memory, the caution that they heard. The remaining comprehension questions require a cued response; these included five "yes/no" type questions to further evaluate overall understanding of the caution as well as two sentence definition questions and two word definition questions to assess knowledge of specific components of the caution. Five likert type rating scales were also included to assess participants' impressions of the caution that they heard (i.e., clarity, complexity, speed, difficulty, and understandability). Finally, participants were required to fill in demographic information regarding age, sex, major, year of study, and ethnicity. A debriefing form was attached to the end of the questionnaire to provide participants with details of the study and opportunity for them to report any comments or concerns.

The Questionnaire for Caution Comprehension was scored using a standard scoring rubric. The scoring rubric was developed based on scoring criteria used by Moore and Gagnier (2008) and from the Test of Charter Comprehension (Olley, 1993). The recall questions and sentence and word definition questions were assessed against a set of criteria denoting specific examples of a three point, two point, or one point response (see Appendix F). The yes/no questions were simply awarded a single point for a correct

response. Total comprehension scores for each participant were computed by summing the scores for each comprehension question.

Procedure

There were two testing conditions based on the hypothetical mind set of the participant (guilty or innocent) and the version of the caution (standard or modified) that the participant received. Participants were tested in small groups of 5 to 20 people. They were instructed verbally by a researcher to imagine themselves in either a guilty or innocent scenario and were asked to watch a short clip of a police officer reading either the standard or modified caution. Following the video, each participant was provided a questionnaire booklet and asked to complete it to the best of their abilities, from beginning to end to prevent participants from going back to change their answer. In order to establish interrater reliability, two independent judges scored comprehension questions from a random sample of 20 questionnaires. Kappa values ranged between .82 and 1.00. The remaining questionnaires were coded independently by the two judges.

Results

To test the first hypothesis, a 2 x 2 Analysis of Variance was conducted to determine whether total comprehension scores were influenced by caution version or guilt. An alpha level of .05 was used for all statistical tests. Analyses revealed that there was an overall effect of caution version on total comprehension, whereby participants

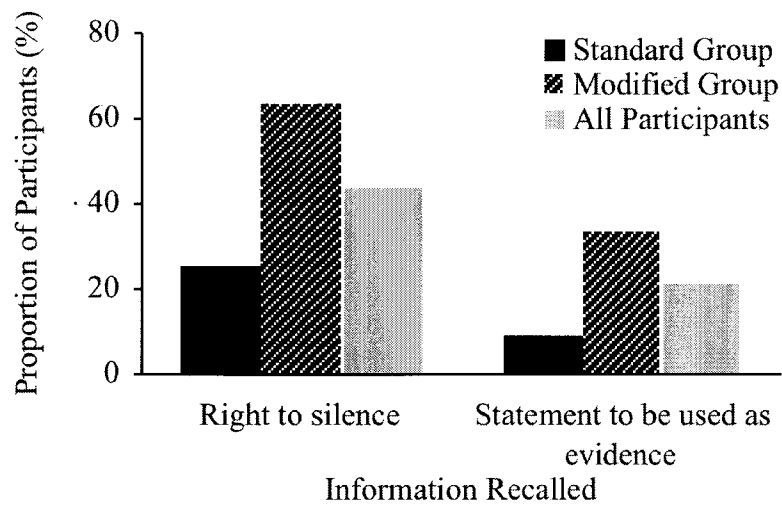


Figure Caption

Figure 1. Proportion of participants who correctly recalled the two prongs of the caution.

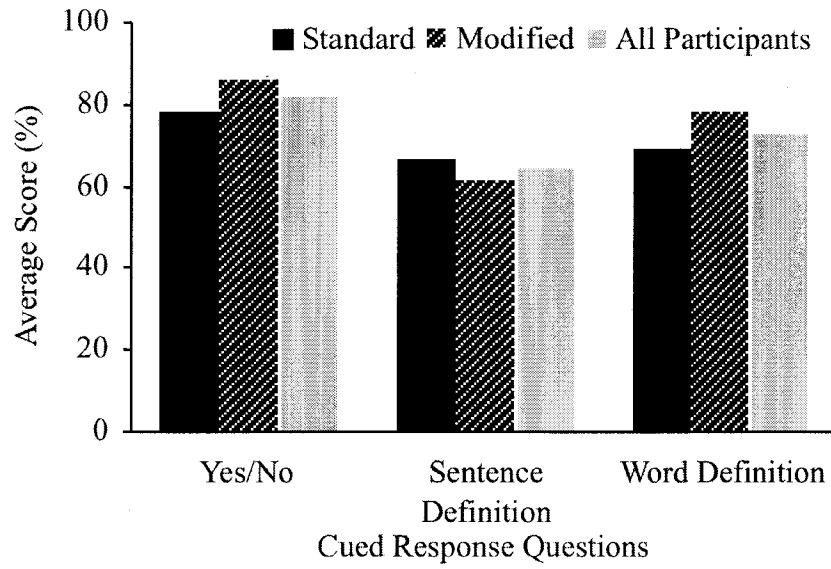


Figure Caption

Figure 2. Average scores on cued response questions by condition.

assigned to the modified caution condition displayed significantly better comprehension ($M = 10.04$, $SD = 2.12$) than those in the standard caution condition ($M = 8.94$, $SD = 1.85$), $F(1, 101) = 7.50$, $p < .01$, partial $\eta^2 = .01$. Participants in both conditions appeared to perform poorest on questions assessing free recall as opposed to questions requiring a cued response (see Figure 1 and Figure 2). The questions assessing free recall were best able to differentiate between participants in the modified and standard conditions. A Chi Square Test of Independence revealed that participants in the modified condition were better able to recall that they did not have to make a statement to police than those in the standard condition $\chi^2(1, N = 105) = 16.16$, $p < .01$, $V = .39$ (see Figure 1). Participants in the modified condition were also better able to recall that their statement could be used as evidence than those in the standard condition $\chi^2(1, N = 105) = 8.57$, $p < .01$, $V = .29$ (see Figure 1). Participants' impressions of the caution versions did not differ significantly by caution version $t(103) = -1.2$, $p = .25$, partial $\eta^2 = .01$.

Overall, 27.62% of participants chose to waive their right to silence and talk to police. A Chi Square Test of Independence revealed that the decision to waive the right to silence, however, was not influenced by the version of the caution that participants received $\chi^2(1, N = 105) = 0.36$, $p = .55$, $V = .06$. Guilty participants reported waiving their right to silence for various reasons including, to show that they were cooperative, to show that they were honest, to try and talk their way out of the charge, and to explain their side of the story. Innocent participants reported waiving their right to silence to try and explain the situation, to prove their innocence, or because they thought their statement could help them in court. A t -test was run to determine whether the decision to enact the

right to silence was associated with greater comprehension. Those who enacted their right to silence indeed had overall greater comprehension ($M = 9.86, SD = 1.92$) scores than those who waived their right to silence ($M = 8.52, SD = 2.11$), $t(103) = -3.10, p < .01$, partial $\eta^2 = .09$.

To test the second hypothesis, that participants who imagined themselves guilty would be more likely to enact their right to silence, a multiway frequency analysis was conducted to develop a logit model in which waiver status (enacted right, waived right) was treated as the dependent variable and both caution version (standard, modified) and mindset (guilty, innocence) were treated as predictors. This analysis resulted in a model with a first order effect of waiver status in which participants were more likely to enact their rights (72.38%) than to waive their rights (27.62%). This was qualified, however, by a marginally significant three-way association involving waiver status, caution condition, and mindset, $z = -1.81, p = .07$. Supporting the findings above, participants who invoked a guilty mindset were more likely to invoke their right to silence, but only in the modified condition. A Chi Square Test of Independence revealed that there was no difference in waiving the right to silence between guilty and innocent participants in the standard caution group $\chi^2(1, N = 53) = 0.49, p = .35, V = .10$. The results approached significance, however, in the modified group, whereby guilty participants were more likely than innocent participants to enact their right to silence $\chi^2(1, N = 52) = 3.71, p = .05, V = .27$ (see Table 1).

Table 1

Participants' Decisions to Waive or Enact Right to Silence by Caution Condition and Mindset

Condition	Innocent <i>n</i> (%)		Guilty <i>n</i> (%)	
	Waived	Enacted	Waived	Enacted
Standard Caution	7(6.67%)	20 (19.05%)	9(8.57%)	15(14.28%)
Modified Caution	9(8.57%)	17(16.19%)	4(3.81%)	24(22.86%)
All Participants	16(15.24%)	37(35.24%)	13(12.38%)	39(37.14%)

Discussion

Results revealed that participants who received the modified caution scored higher on comprehension than those who received the standard caution. Moreover, those that scored higher on comprehension were significantly more likely to enact their right to silence. Similar to Abramovitch et al's (1993) findings, it appears that when participants are able to understand their rights they are actually more able and willing to enact them. These results suggest that changing the wording and structure of the caution on the right to silence may increase comprehension amongst suspects and ultimately reduce the number of waivers during custodial interrogations. A review of response patterns revealed that recall was particularly difficult for participants, although participants were consistently better able to recall the modified caution as opposed to the standard caution. Thus, while recalling details of the caution may be part of the challenge for suspects, the

modifications that were made to the caution appeared to render the right to silence easier to remember than the standard caution.

The second hypothesis, however, was not supported. Contrary to the well-documented notion that innocence puts innocent suspects at risk of waiving the right to silence, results in the current study indicated that innocent and guilty participants were equally likely to talk to police. Specifically, 15.24% of the innocent participants and 12.38% of the guilty participants waived the right to silence. Further analyses, however, revealed that the effect of guilt status on the decision to waive or enact the right to silence approached significance amongst the group of participants who received the modified caution (those who displayed better comprehension). Within this group, innocent participants were less likely to enact the right to silence. Indeed, 3.81% of guilty participants, compared to 8.57% of innocent participants in the modified condition chose to talk to police. The results of the present study suggest that, rather than innocence placing innocents at risk, perhaps guilt plays a (paradoxical) protective role for suspects, provided that they understand the rights being delivered. That is, when guilty suspects understand that what they say will be used against them they are more likely to keep quiet.

In the present study, comprehension and not innocence had a significant effect on the decision to waive or invoke the right to silence. In general, past studies pointing to innocent suspects' propensity to waive the right to silence do not appear to have considered comprehension as a factor contributing to this decision. In Kassin and Norwick's (2004) study, for example, no effort was made to determine whether

participants understood their legal rights or the implications of waiving such rights. More research is needed, but perhaps comprehension contributes more to a suspect's decision to waive or invoke the right to silence than was previously suspected.

Study 2

Method

Participants

Participants for Study 1 comprised a sample of 38 clients (79% male, 21% female) from ALST who were recruited through program staff. All clients received \$20.00 as compensation for their participation. ALST clients ranged in age from 18 to 48 ($M = 28.76$, $SD = 9.37$). None of the clients were actively involved in legal cases at the time of interview. Arrest rates ranged from a single arrest to over 50 arrests, with the majority of participants having between 2 and 10 arrests.

Materials

All participants who agreed to participate in the study were required to sign an informed consent form at the outset (see Appendix B). Details were provided regarding the purpose of the study, participation requirements, confidentiality, the freedom to withdraw participation at any time, and monetary compensation. Participants were asked to watch a video clip of a police officer reading the standard caution only. The video clip featured a Caucasian, male, retired police officer reading the caution in a slow and careful manner. The rate of speech was calculated to be 175 words per minute, which is considered to be within the optimal range for listening comprehension (Carver, 1982; Jester & Travers, 1966).

Assessment Instruments. The ALST clients participated in a semi-structured interview (see Appendix G) designed to assess their real life experiences in arrest and interrogation situations. The interview invited participants to recall their first and most recent arrests and to answer a series of questions regarding these experiences.

Participants were first asked to compare their real-life experiences of the caution to the reading depicted in the video. Participants were also asked to recall whether they were read their legal rights, whether they enacted these rights, and their reasons for doing so. While some questions required mutually exclusive answers (e.g., “Did you contact a lawyer?”), many questions allowed participants to provide a free narrative of their experiences (e.g., “How do your experiences being arrested compare to what you saw in the video?”). Answers to such open-ended questions were reviewed and categorized based on common response patterns.

Procedure

Participants were first invited to watch the video clip of the police officer reading the standard caution. Following the video, participants were asked a series of questions as outlined in the semi-structured interview (see Appendix F). All interviews were audio taped and transcribed.

Results

Given the categorical nature of the data collected from interviews with ALST clients, descriptive statistics were calculated to determine the frequency with which clients were read their legal rights during arrest and the frequency with which they choose to enact these rights. As indicated above, participants were asked to recall their

first and most recent arrest, but, given the difficulties they had remembering their first arrest, only data on the most recent arrest are reported below. Participants were first asked to compare their own experiences to the video of the police officer reading aloud the standard caution on the right to counsel and right to silence. While 26% of participants felt that the video version of the caution closely reflected their real life experiences, 74% found that the video was more clear and straightforward than in real life. Participants reported that in real life police often failed to read the caution in its entirety, used violence or verbal aggression, waited extended periods of time before reading rights, attempted to manipulate clients into waiving their rights, and were less clear and informative (see Table 2).

Table 2

Real Life Arrest and Interrogation Experiences Compared to Video

Experience in Real Life	<i>n</i>	%
Similar	10	26
Caution not delivered in its entirety	11	29
Violence/verbal aggression by police	12	32
Not as clear	3	78
Caution delivered after delay	4	11
Manipulation	5	13
Other	1	3

ALST clients were asked to recall during their most recent arrest whether they were read their legal rights and whether they chose to enact these rights (see Table 3).

Interestingly, 13% of participants reported not having been informed of their right to contact a lawyer and 24% reported not being informed of their right to remain silent. Even more disconcerting was the fact that 47% reported not being given the phone number to contact legal aid. In terms of waiving their legal rights, 37% of participants said they did not contact a lawyer, and 34% said they chose to speak with police.

Participants were asked to explain why they decided to contact (or not to contact) a lawyer. Half of those who said they had contacted a lawyer reported doing so for some assistance during the interrogation. The other half of participants reported contacting a lawyer for a multitude of reasons (e.g., because they wanted to or felt that they had to, because they liked their lawyers, or because they knew that police would use what was

Table 3

Percentage of Participants Who Received and Enacted Their Legal Rights

	Yes	No	Not Available
	<i>n</i> (%)	<i>n</i> (%)	<i>n</i> (%)
Right to counsel delivered	29 (76%)	5 (13%)	4 (11%)
Legal aid number delivered	12 (32%)	18 (47%)	4 (11%)
		Had lawyer: 4 (11%)	
Contacted lawyer	24 (63%)	14 (37%)	---
Right to silence delivered	26 (68%)	9 (24%)	3 (8%)
Talked to police	13 (34%)	22 (58%)	3 (8%)

said against them). Twenty-nine percent of participants who said they did not contact a lawyer indicated that they called someone else (e.g., a friend or family member). Another

29% said they did not contact a lawyer because they were not given the opportunity to make a phone call or because there were significant delays in receiving their phone call. Fifty percent of those who said they did not contact a lawyer made their decision based on a multitude of personal reasons (e.g., they knew that they were guilty, they did not believe in their lawyer's abilities, or they waited until court to contact a lawyer).

Participants were also asked to describe their reason for talking (or not talking) to police (see Table 4). The most common reason that participants reported for waiving their right to silence was police manipulation. In terms of enacting the right to silence, half of those that reported that they had not talked to police did so because of prior knowledge on the right to silence. Participants who said they chose not to speak with police were asked how they had learned that they should remain silent (see Table 5). A majority of participants indicated that they had learned through family and friends (64%) or through personal experiences (54%) within the criminal justice system. Only one participant indicated that they were informed by the actual caution.

Discussion

The results from the ALST client interviews provide further insight into additional factors, besides comprehension, that can influence the decision to waive legal rights. When asked to compare their personal experiences to the delivery of the caution depicted in the video, 32% of participants reported experiencing some type of physical or verbal aggression by police. For instance, one participant reported being taken by police to a remote area of the city, being physically abused, and then being brought to the station for questioning. Several participants also reported having experienced racism during the

Table 4

Reasons for Enacting or Waiving Right to Silence

Reason	<i>N</i>	%
Waived right to silence (<i>n</i> = 13)		
Admitted to crime	3	24
Manipulated by police	5	38
To go home	2	15
Talk my way out of charge	2	15
Explain my side of the story	3	23
Enacted right to silence (<i>n</i> = 22)		
Did not want to talk	3	14
Knew statement could be used against me	9	41
Lawyer advised me not to talk	2	9
Knew I did not have to talk	2	9
Mistrust of police	2	9
Other	4	18

Table 5

Where Participants Learned to Remain Silent

Where learned	<i>N</i>	%
Family and Friends	14	64
Media	2	9
Lawyer	3	14
Experience	12	55
Caution	1	5

interrogation. In one instance a suspect was reportedly told by police “to go back to your reserve”. Eleven percent of participants reported being informed of their rights only after a significant delay. Manipulation was also reported by 13% of participants, which included for example, being asked to “help the police out” or being told by police that they would be put in jail or remain in custody if they did not talk.

This type of police coercion and manipulation is particularly troublesome given the overrepresentation of Aboriginal peoples in Canada’s criminal justice system (Perreault, 2009). It has been reported that the over-policing of Aboriginal peoples is one of the major factors responsible for their overrepresentation in Canadian prisons (Rudin, 2005). Over-policing means that Aboriginal peoples tend to be the target of increased police surveillance and harsher punishment by police. As such, it is imperative that legal rights, such as the right to remain silent, are implemented to protect against incarceration. As Rudin (2005) has noted, Aboriginal society often gives prominence to being responsible for one’s actions, thus, Aboriginal people often plead guilty to offenses for

which they actually have a legitimate defense. While efforts are being made elsewhere in the criminal justice system to reduce the problem of overrepresentation, it is clear that Aboriginal people are at risk of waiving their rights, making it increasingly important to ensure that legal rights are properly understood and executed.

Another concerning trend was the degree to which suspects were reportedly not informed of their legal rights. Almost 13% of participants indicated that they were not told that they could contact a lawyer, 24% of suspects said they were not told about their right to silence, and almost half of participants (47%) said they were not provided with the number for legal aid. While reasons for not being given legal rights remains unclear, one participant reported that the police officer(s) that had arrested him had known him from a previous arrest and, thus, the officer(s) did not feel the need to read his rights a second time. Clearly, suspects that are not informed of their legal rights do not have the opportunity to invoke them. While the common law “voluntariness rule” is meant to ensure that statements made in the absence of an informed decision to speak are not admissible in court (Paciocco & Stuesser, 2008), it is clear that additional safeguards are needed to ensure that each and every suspect is provided their legal rights, no matter how many times they have been arrested.

When it came to waiving their legal rights, 37% of ALST clients said they chose to waive their right to counsel and 34% reported having waived their right to silence. The majority of those that said they waived their right to counsel reported doing so for personal reasons. In contrast, the most common reason for waiving the right to silence was attributed to police manipulation. For instance, participants reported that police made

false promises, faked evidence, or read legal rights only after the suspect had begun talking. These tactics are similar to the coercive and manipulative techniques that have been reportedly used by police in order to gain a confession during an interrogation (Kassin & Norwick, 2004). Other participants that talked did so in an attempt to talk their way out of the crime, to explain their side of the story, or because they wanted to admit guilt. Those clients that attempted to talk their way out of the crime or to explain their side of the story were likely unaware of the fact that whatever they said would be used against them and that their statement could not be used as exculpatory evidence. As discussed above, the current caution fails to inform suspects that whatever they say will be used against them in court. This essential information was added to the modified caution in Study 1 in the hopes of deterring suspects from making a statement of their innocence.

Surprisingly, a majority of the ALST sample reported enacting their legal rights, contrary to what was found in Leo's (1996) participant observation study, in which 78% of suspects waived their right to silence. However, it is important to keep in mind that the ALST sample consisted largely of clients with multiple arrest histories who were familiar with the arrest and interrogation process. Indeed, 41% of those that chose not to talk were familiar with the notion that whatever they said could be used against them and 9% were aware that they did not have to say anything to police. When asked how they came to this understanding, 64% reported that they had learned from family and friends, and 55% had learned through past experiences. These results provide insight into Grisso's (1980) findings in which respondents with previous experience in the criminal justice system

were better able to understand the *function* of legal rights than non-offender populations, despite the fact that the former were not better at understanding words and phrases used in the caution. Functional knowledge of legal rights in the current study appeared to be gained through previous experience or through family and friends.

General Discussion

Results from the current research demonstrate two important ways in which the right to silence fails to protect Canadian citizens. In Study 1 it was revealed that the comprehensibility of the current caution on the right to silence was less than optimal, given that the modifications made to the terminology and structure of the caution increased comprehension levels amongst participants. In order to uphold the integrity of the right to silence and other legal rights, it is essential to ensure that the cautions through which these rights are delivered are designed to maximize comprehension amongst suspects. The results from Study 2 revealed a number of additional factors that can influence legal rights waivers in real life arrest and interrogation situations. ALST clients reported that police frequently used coercive and manipulative tactics in an attempt to obtain legal rights waivers. Paciocco and Stuesser (2008) indicate that many acts of persuasion used to obtain waivers are permitted by the court as long as they are within limits. The degree to which a waiver can be considered completely voluntary when made under manipulation and coercion, however, remains questionable, indicating that some type of restriction should be implemented. Taken together these findings suggest that simplifying the wording and structure of the caution on the right to silence will help to increase comprehension among detainees and empower suspects in enacting their right to

silence. In addition to increasing the comprehensibility of the caution, however, safeguards are also needed to standardize the arrest and interrogation process so that suspects have a meaningful choice as to whether they wish to waive or enact their right to silence.

In addition to the manipulative and coercive tactics reported by ALST clients, Snook, Eastwood, and MacDonald (2010) indicate that police investigators sometimes read the right to silence at a rate so fast as to preclude comprehension and that they rarely attempt to verify that suspects understand their rights. This may reflect an inherent dilemma for police when warning suspects of their legal rights. Police deliver the caution to help ensure that any subsequent statement is admissible; however, police may also feel that an interrogation is essential. As such, an investigator may hope for a waiver and may pressure the suspect to make one, or may make efforts (conscious or not) to ensure that the caution is not well understood. In Canada, as in the United States, the right to counsel and right to silence cautions vary across jurisdictions. Due to this lack of standardization, vital information is sometimes omitted and the terminology and wording can be extremely confusing (Eastwood, Snook, & Chaulk, 2010). Reforms aimed at increasing caution comprehensibility might include a standardized, country-wide videotaped caution presented to all suspects at the outset of an investigation along with a written version. In this way, issues of coercion, delivery speed, suspect literacy, and the potential that police may omit or paraphrase information, would be minimized.

While the results from Study 1 provide important information regarding caution comprehension, there are several important limitations to be considered. First, the

findings from the current study are limited in their generalizability given that the sample was relatively small and consisted solely of undergraduate students. The sample also consisted of 82% female participants, which may not be representative of those who are most likely to come into contact with the criminal justice system. In terms of future research, it will be important to determine whether the modified caution results in increased comprehension across a variety of populations, especially those with less education and those who are more likely to come into contact with the criminal justice system. For instance, youth under the age of 15, who have been found to have limited understanding of their legal rights, may benefit more from modifications to the caution. Another limitation was that the stress inherent in real life arrest and interrogation situations was absent in the current study. While it was not feasible to induce stress in the current study, it is important to consider how stress may affect comprehension. Perhaps we would find that stress is so powerful as to nullify the beneficial effects of the simplifications made to the modified caution, narrowing the gap in comprehension between the standard and modified conditions. Conversely, perhaps the benefits of simplifying the caution would become more pronounced in a stressful situation, increasing the divide between comprehension in the standard and modified conditions.

The comprehension scores that were obtained from participants who received the modified caution suggest that there is still room for further improvement. Even with a well-educated sample, being tested under optimal conditions, the average total comprehension score for participants who received the modified caution was 72%. Ideally, caution comprehension should be perfect. It seems clear that the structure and

wording of the standard caution are problematic. Future research might expand on the present design, using the same modified version of the caution, while manipulating other factors presumed to have a detrimental effect on comprehension such as the rate of speech or the manner of delivery. A study similar to Eastwood and Snook's (2010) employing our modified caution, in print form, might also produce further improvements in comprehension. In fact, in the United Kingdom police are legislated under the Police and Criminal Evidence act (1984) to provide suspects with both an oral and written notice of their legal rights to ensure adequate understanding (Home Office, 2008). If comprehension were found to increase significantly with a written form of the modified caution, the implications would be clear, namely that reforms to police procedures might include administering a linguistically simpler version of the caution, in written and oral form.

The data collected from the ALST sample in Study 2 is also subject to methodological limitations. Similar to the university sample, the ALST sample was relatively small and recruited strictly from a metropolitan area, hence, limiting the generalizability of findings. Of particular importance is the fact that some participants that were interviewed discussed themes of racism. Future research might explore arrest and interrogation experiences of other cultural minorities to gain a better understanding of the delivery and enactment of legal rights in Canada. Finally, the data collected from ALST clients were based solely on retrospective memories that may have been subject to lapses or biases. In terms of future research, it would be interesting to conduct a participant observation study similar to Leo's (1996), in which custodial interrogations

are directly observed in order to record the frequency with which police deliver rights, and suspects enact them.

Despite the limitations of the current study, the above results provide important insight into the role of comprehension in legal rights waivers and alternative factors that can influence waivers during arrests and interrogations. Several areas for future research in this area have been highlighted. Given the current concerns with false confessions and wrongful convictions within North America, it will be essential to further explore the role that legal rights play in protecting (or failing to protect) suspects and what changes can be made to uphold the integrity of such rights.

References

- Abramovitch, R., Higgins-Biss, K. L., & Biss, R. (1993). Young persons' comprehension of waivers in criminal proceedings. *Canadian Journal of Criminology*, 309-322.
- Abramovitch, R., Peterson-Badali, M., & Rohan, M. (1995). Young people's understanding and assertion of their rights to silence and legal counsel. *Canadian Journal of Criminology*, 1-18.
- Baddeley, A. (1994). The magical number seven: Still magic after all these years? *Psychological Review*, 101(2), 353-356.
- Byrnes, J. P. (2002). The development of decision-making. *Journal of Adolescent Health*, 31, 208-215.
- Canadian Charter of Rights and Freedoms, being Part I of the Constitution Act, 1982, enacted by the Canada Act 1982 (U.K.), c. 11, Sched. B. (R.S.C. (1985), Appendix II, No. 44.
- Canadian Public Health Association. (2004). A health care needs assessment of federal inmates in Canada. *Canadian Journal of Public Health*, 95, S1-S68.
- Capon, N., & Kuhn, D. (1979). Logical reasoning in the supermarket: Adult females' use of a proportional reasoning strategy in an everyday context. *Developmental Psychology*, 15(4), 450-452.
- Carver, R. P. (1982). Optimal rate of reading prose. *Reading Research Quarterly*, 18, 56-88.

- Cooper, V. G., & Zapf, P. A. (2008). Psychiatric patients' comprehension of *Miranda* rights. *Law and Human Behavior, 32*, 390-405.
- DeClue, G. (2007). Oral *Miranda* warnings: A checklist model and presentation. *The Journal of Psychiatry and Law, 35*, 421-441.
- Drizin, S. A., & Leo, R.A. (2004). The problem of false confessions in the post- DNA world. *North Carolina Law Review, 82*, 891-1008.
- Eastwood, J., & Snook, B. (2010). Comprehending Canadian police cautions: Are the rights to silence and legal counsel understandable? *Behavioral Sciences and the Law, 28*, 366-377.
- Eastwood, J., Snook, B., & Chaulk, S. J. (2010). Measuring reading complexity and listening comprehension of Canadian police cautions. *Criminal Justice and Behavior, 37*, 453-471.
- Everington, C., & Fulero, S. M. (1999). Competence to confess: Measuring understanding and suggestibility of defendants with mental retardation. *Mental Retardation, 37*(3), 212-220.
- Finlay, W. M. L., & Lyons, E. (2002). Acquiescence in interviews with people who have mental retardation. *Mental Retardation, 40*(1), 14-29.
- Fulero, S. M., & Everington, C. (1995). Assessing competency to waive *Miranda* rights in defendants with mental retardation. *Law and Human Behavior, 19*(5), 533-543.

- Gilovich, T., Savitsky, K., & Medvec, V. H. (1998). The illusion of transparency: Biased assessments of others' ability to read one's emotional states. *Journal of Personality and Social Psychology*, 75(2), 332-346.
- Grisso, T. (1980). Juveniles' capacities to waive *Miranda* rights: An empirical analysis. *California Law Review*, 68, 1134-1166.
- Grisso, T. (1998). *Forensic Evaluation of Juveniles*. Sarasota, FL: Professional Resource Press.
- Grisso, T., Steinberg, L., Woolard, J., Cauffman, E., Scott, E., Graham, S., et al. (2003). Juveniles' competence to stand trial: A comparison of adolescents' and adults' capacities as trial defendants. *Law and Human Behavior*, 27(4), 333-363.
- Hartwig, M., Granhag, P. A., & Strömwall, L. A. (2007). Guilty and innocent suspects' strategies during police interrogations. *Psychology, Crime and Law*, 13(2), 213-227.
- Hartwig, M., Granhag, P. A., & Vrij, A. (2005). Police interrogation from a social psychology perspective. *Policing and Society*, 15, 379-399.
- Henkel, L. A., Coffman, K. A. J., & Dailey, E.M. (2008). A survey of people's attitudes and beliefs about false confessions. *Behavioral Sciences and the Law*, 26, 555-584.
- Home Office (2008). *Police and Criminal Evidence Act, 1984, Codes of Practice*. Retrieved May 14, 2010 from <http://webarchive.nationalarchives.gov.uk/20100413151426/http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/pace-code-intro/index.html>

- Jester, R. E., & Travers, R. M. W. (1966). Comprehension of connected meaningful discourse as a function of rate and mode of presentation. *The Journal of Educational Research, 59*, 297-302.
- Kassin, S. M. (1997). The psychology of confession evidence. *American Psychologist, 52*(3), 221-233.
- Kassin, S. M. (2005). On the psychology of confessions: *Does innocence put innocents at risk?* *American Psychologist, 60*(3), 215-228.
- Kassin, S. M. (2008). The psychology of confessions. *Annual Review of Law and Social Science, 4*, 193-217.
- Kassin, S. M., Drizin, S. A., Grisso, T., Gudjonsson, G. H., Leo, A. R., & Redlich, A. D. (2008). *Police-Induced Confessions: Risk Factors and Recommendations*. Retrieved November 25, 2008, from <http://www.apls.org/links/whitepaperconfessions.html>
- Kassin, S. M., & Gudjonsson, G. H. (2004). The psychology of confessions a review of the literature and issues. *Psychological Science in the Public Interest, 5*(2), 33-67.
- Kassin, S. M., & McNall, K. (1991). Police interrogations and confessions: Communicating promises and threats by pragmatic implication. *Law and Human Behavior, 15*(3), 233-251.
- Kassin, S. M., & Norwick, R. J. (2004). Why people waive their *Miranda* Rights: The power of innocence. *Law and Human Behavior, 28*(2), 211-221.
- Keating, D. P., & Clark, L. V. (1980). Development of physical and social reasoning in adolescence. *Developmental Psychology, 16*(1), 23-30.

- Keinan, G. (1987). Decision making under stress: Scanning of alternatives under controllable and uncontrollable threats. *Journal of Personality and Social Psychology, 52*(3), 639-644.
- King, L., & Snook, B. (2009). Peering inside a Canadian interrogation room: An examination of the Reid model of interrogation, influence, tactics and coercive strategies. *Criminal Justice and Behavior, 36*, 674-694.
- Leo, R. A. (1996). Inside the interrogation room. *The Journal of Criminal Law and Criminology, 86*(2), 266-303.
- Leo, R. A. (2008). *Police Interrogation and American Justice*. Cambridge, A: Harvard University Press.
- Lerner, M. J., & Miller, D. T. (1978). Just world research and the attribution process: Looking back and ahead. *Psychological Bulletin, 85*(5), 1030-1051.
- Miranda v. Arizona*, 384 U.S. 436 (1966).
- Moore, T. E., & Gagnier, K. (2008). "You can talk if you want to": Is the police caution on the 'right to silence' understandable? *Criminal Reports, 51*, 233-249.
- Oberlander, L. B., Goldstein, N. E., & Goldstein, A. M. (2003). Competence to confess. In I. B. Weiner (Ed.) & A. M. Goldstein (Vol. Ed.), *Handbook of psychology: Vol. 11. Forensic psychology* (pp. 335-358). New York: John Wiley and Sons.
- O'Connell, M. J., Garmoe, W., & Goldstein, N. E. S. (2005). *Miranda* comprehension in adults with mental retardation and the effects of feedback style on suggestibility. *Law and Human Behavior, 29*(3), 359-369.

- Olley, M. C. (1993). *Competency to understand charter cautions: A preliminary investigation*. Unpublished master's thesis, Simon Fraser University, Burnaby, British Columbia, Canada.
- Paciocco, D. M., & Stuesser, L. (2008). *The law of evidence* (5th ed.). Toronto, ON: Iriwin Law.
- Perreault, S. (2009). The incarceration of Aboriginal people in adult correctional services. *Juristat*, 29, 4-27.
- Peterson-Badali, M., Abramovitch, R., Koegl, C. J., & Ruck, M. D. (1999). Young people's experience of the Canadian youth justice system: Interacting with police and legal counsel. *Behavioral Sciences and the Law*, 17, 455-465.
- Piaget, J. (1952). *The origins of intelligence in children* (2nd Ed., M. Cook, Trans.). New York: International Universities Press.
- Piaget, J. (1972). Intellectual evolution from adolescence to adulthood. *Human Development*, 15, 1-12.
- R. v. Hebert*, (1990) 2 S.C.R. 151.
- R. v. Simpson*, (1988) 1 S.C.R. 3.
- Rogers, R. (2008). A little knowledge is a dangerous thing ... emerging Miranda research and professional roles for psychologists. *American Psychologist*, 63(8), 776-787.
- Rogers, R., Harrison, K. S., Shuman, D. W., Sewell, K. W., & Hazelwood, L. L. (2007). An analysis of Miranda warnings and waivers: Comprehension and coverage. *Law and Human Behavior*, 31, 177-192.

- Rogers, R., Hazelwood, L. L., Sewell, K. W., Shuman, D. W., & Blackwood, H. L. (2008). The comprehensibility and content of juvenile Miranda warnings. *Psychology, Public Policy, and Law*, 14(1), 63-87.
- Rogers, R., Shuman, D. W., & Drogin, E. Y. (2008). *Miranda* rights...and wrongs: Myths, methods, and model solutions. *Criminal Justice*, 5-9.
- Rubin, D. L., Hafer, T., & Arata, K. (2000). Reading and listening to oral-based versus literate-based discourse. *Communication Education*, 49(2), 121-133.
- Rudin, J. (2005). *Aboriginal peoples and the criminal justice system*. Retrieved June 22, 2010, from http://www.attorneygeneral.jus.gov.on.ca/inquiries/ipperwash/policy_part/research/index.html
- Snook, B., Eastwood, J., & MacDonald, S. (in press). A descriptive analysis of how Canadian police officers administer the right-to-silence and right-to-legal counsel cautions. *Canadian Journal of Criminology and Criminal Justice*.
- Scott, E. S., & Grisso, T. (1997). The evolution of adolescence: A developmental perspective on juvenile justice reform. *Journal of Criminal Law and Criminology*, 137, 157-171.
- Steury, E. H. (1993). Criminal defendants with psychiatric impairment: Prevalence, probabilities and rates. *The Journal of Criminal Law and Criminology*, 84(2), 352-376.
- Stuesser, L. (2003). The accused's right to silence: No doesn't mean no. *Manitoba Law Journal*, 29(2), 149-170.

- Teplin, L. A. (1984). Criminalizing mental disorder: The comparative arrest rate of the mentally ill. *American Psychologist*, 39(7), 794-803.
- Tomlinson-Keasey, C. (1972). Formal operations in females from eleven to fifty-four years of age. *Developmental Psychology*, 6(2), 364.
- Yerkes, R. M., & Dodson, J. D. (1908). The relation of strength of stimulus to rapidity of habit-formation. *Journal of Comparative Neurology and Psychology*, 18, 459-482.

Appendix A

Caution Versions from Moore and Gagnier (2008)

Standard caution in Toronto:

You are charged with X. Do you wish to say anything in answer to the charge?
You are not obliged to say anything unless you wish to do so, but whatever you say may be given in evidence

Modified cautions used in Moore and Gagnier's (2008) study (changes italicized):

- 1) You are charged with X. Do you wish to say anything in answer to the charge?
You *don't have* to say anything unless you wish to do so, but whatever you say may be given in evidence
- 2) You are charged with X. You *don't have* to say anything unless you wish to do so, but whatever you say may be given in evidence. *Do you wish to say anything in answer to the charge?*
- 3) You are charged with X. You *don't have* to say anything unless you wish to do so, but whatever you say may be *used against you*. *Do you wish to say anything in answer to the charge?*

Modified caution for the current study:

You are charged with X. You have the right to remain silent. This means that you don't have to say anything if you don't want to. If you do say anything, whatever you say can be used against you in court. If you refuse to say anything, your refusal cannot be used against you in court. Do you want to say anything about the charge?

Appendix B

Informed Consent Forms

Informed Consent Form – University Sample

You are invited to participate in a study on police cautions that is being conducted under the supervision of Dr. Timothy Moore and Dr. Regina Schuller. The study has been reviewed and approved by the Human Participants Review Subcommittee of York University and conforms to the standards of the Canadian Tri-Council Research Ethics Guidelines. Any questions concerning the ethics of this study may be directed to the Manager of Research Ethics of York University, Ms. Alison Collins-Mrakas, 309 York Lanes, 416-736-5914, acollins@yorku.ca.

The objective of this study is to investigate police procedures used in the Canadian Criminal Justice System. If you decide to participate in the study you will be asked to imagine yourself in an arrest and interrogation situation, you will then watch a short video of a standard procedure used by police following arrest, and, finally, you will be asked to answer a series of questions about the procedure used in the video. The entire process will take approximately 30 minutes. All of the answers and information that you provide will be kept confidential. Your name will not be associated with the collected data in any way. All of the data that are obtained will be stored under lock and key at York University for a period of two years and will be destroyed after this time. Results from this study may be published in the future; however, individual data will not be presented (only group summary data will be reported).

For your participation, you will receive credit towards your introduction psychology course, as outlined by the Undergraduate Research Participant Pool. If you choose to participate you have the right to not answer any question and are free to withdraw from the study at any time without suffering negative consequences. Your withdrawal will not affect your relationship with the researchers, York, or any other group associated with the project, nor will it affect your promised remuneration (i.e. you will still receive the credit). If you choose to withdraw, all of the data that you provided will be destroyed.

There are no known potential risks associated with participation in this study. Potential benefits include developing an understanding of the research process and methods used in psychology, as well as a greater insight into the criminal justice system and its procedures. You will be provided with an opportunity to share your opinions on the research topic following participation.

If you have any questions while participating in the study please feel free to ask. If any questions are not addressed during the study or you wish to find out more about the study, please contact one of the following investigators:

Principal Investigator: Krista Davis
 Graduate Student
krista16@yorku.ca.

Supervisors: Dr. Timothy E. Moore
TimMoore@glendon.yorku.ca

Dr. Regina Schuller
schuller@yorku.ca.

Your signature indicates that you have read the above consent form, understand all of its contents, and have agreed to participate in this study.

Participant's Signature

Date

Principal Investigator's Signature

Date

Informed Consent Form – Aboriginal Legal Services

You are invited to participate in a study on police cautions that is being conducted under the supervision of Dr. Timothy Moore and Dr. Regina Schuller. The study has been reviewed and approved by the Human Participants Review Subcommittee of York University and conforms to the standards of the Canadian Tri-Council Research Ethics Guidelines. Any questions concerning the ethics of this study may be directed to the Manager of Research Ethics of York University, Ms. Alison Collins-Mrakas, 309 York Lanes, 416-736-5914, acollins@yorku.ca.

The objective of this study is to investigate police procedures used in the Canadian Criminal Justice System. If you decide to participate in the study you will be asked to imagine yourself in an arrest and interrogation situation, you will then watch a short video of a standard procedure used by police following arrest, and, finally, you will be asked to answer a series of questions about the procedure used in the video. The entire process will take approximately 30 minutes and will be audio recorded to ensure accuracy. All of the answers and information that you provide will be kept confidential. Your name will not be associated with the collected data in any way. All of the data that are obtained will be stored under lock and key at York University for a period of two years and will be destroyed after this time. Results from this study may be published in the future; however, individual data will not be presented (only group summary data will be reported).

To thank you for your participation, you will receive \$20.00. If you choose to participate you have the right to not answer any question and are free to withdraw from the study at any time without suffering negative consequences. Your withdrawal will not affect your relationship with the researchers, York, the Aboriginal Legal Services of Toronto, or any

other group associated with the project, nor will it affect your promised remuneration (i.e. you will still receive the \$20.00). If you choose to withdraw, all of the data that you provided will be destroyed.

There are no known potential risks associated with participation in this study. Potential benefits include developing an understanding of the research process and methods used in psychology, as well as a greater insight into the criminal justice system and its procedures. You will be provided with an opportunity to share your opinions on the research topic following participation.

If you have any questions while participating in the study please feel free to ask. If any questions are not addressed during the study or you wish to find out more about the study, you may contact one of the following investigators:

Principal Investigator: Krista Davis
 Graduate Student
krista16@yorku.ca.

Supervisors: Dr. Timothy E. Moore
TimMoore@glendon.yorku.ca

Dr. Regina Schuller
schuller@yorku.ca.

Your signature indicates that you have read the above consent form, understand all of its contents, and have agreed to participate in this study.

 Participant's Signature

 Date

 Principal Investigator's Signature

 Date

Appendix C

Guilty and Innocent Scenario Scripts

Guilty Scenario To begin with, I would like you to imagine yourself being arrested by the police for breaking and entering. Imagine that you know for certain that you have committed this crime. You are now sitting alone in the interrogation room when a police investigator comes in, sits down, and presents you with a caution that is routinely delivered to suspects at the beginning of an interrogation.

Innocent Scenario To begin with, I would like you to imagine yourself being arrested by the police for breaking and entering. Imagine that you know for certain that you have not committed this crime. You are now sitting alone in the interrogation room when a police investigator comes in, sits down, and presents you with the caution that is routinely delivered to suspects at the beginning of an interrogation.

Appendix D

Caution Versions

Standard Caution I am arresting you for breaking and entering. It is my duty to inform you that you have the right to retain and instruct counsel without delay. You have the right to telephone any lawyer you wish. You also have the right to free advice from a legal aid lawyer. If you are charged with an offence, you may apply to the Ontario Legal Aid Plan for assistance. 1-800-265-0451 is a number that will put you in contact with a legal aid duty counsel lawyer for free legal advice RIGHT NOW. Do you understand? Do you wish to call a lawyer now? (PAUSE)

You are charged with breaking and entering. Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so, but whatever you say may be given in evidence.

Modified caution I am arresting you for breaking and entering. There are two important things you need to know.

First of all, you have the right to retain and instruct counsel without delay. You have the right to telephone any lawyer you wish. You also have the right to free advice from a legal aid lawyer. If you are charged with an offence, you may apply to the Ontario Legal Aid Plan for assistance. 1-800-265-0451 is a number that will put you in contact with a legal aid duty counsel lawyer for free legal advice RIGHT NOW. Do you understand? Do you wish to call a lawyer now? (PAUSE)

Secondly, you are charged with breaking and entering. You have the right to remain silent. This means that you don't have to say anything if you don't want to. If you do say anything, whatever you say can be used against you in court. If you refuse to say anything, your refusal cannot be used against you in court.

Do you want to say anything about the charge?

Appendix E

University Sample Questionnaires

Questionnaire of Caution Comprehension: Modified caution version

Below are a number of questions about what the police officer just said in the video that you watched. Try to answer as best you can and remember that all your answers will be kept confidential. If you have any questions let me know.

Remember what the police officer said.

Remember that he asked you whether you wished to say anything in answer to the charge. You want to do what is best for you.

Will you answer yes, and talk to the police officer, or will you answer no, and **not** talk to the police officer? (circle one)

Yes

No

1 – You answered either “**yes**” or “**no**” when the police officer asked you whether you wished to say anything in answer to the charge. Please explain why you answered either “**yes**” or “**no**”?

2 – Please describe, in your own words, what you thought the police officer was saying:

3 – What do you believe the purpose of the police officers instructions were?

4 - Please describe some of the reasons why you might want to say something to the police:

Please describe some of the reasons that you might NOT want to say something to the police:

5 – Thinking again about why you said “yes” or “no” to talking to the police, which, if any, of the following reasons apply to your choice. Would you have said “yes” or “no” because... (check all that apply)

- You wanted to be cooperative
- You did not want to say anything that would make you look guilty
- You had nothing to hide
- You wanted legal advice
- You did not want to say something that could later be used against you
- You wanted to explain your side of the story
- You wanted to get something on the record that could later be used to prove your innocence
- Other (specify _____)

6 – Please answer the following questions about what the police officer was saying in the video. Do you think that the police officer was saying that...(check either yes or no).

- a) you have to talk to the police because if you don't your silence will be used against you in court? _____ Yes _____ No
- b) you can decide not to talk to the police, but if you don't talk your silence will be used against you in court? _____ Yes _____ No
- c) you can decide to talk to the police, but whatever you say can be used against you in court? _____ Yes _____ No
- d) you can decide to talk to the police, and if you do your explanation can help you in court? _____ Yes _____ No
- e) you can decide to talk to the police, and if you do they will see that you are cooperative? _____ Yes _____ No

7 – Please write down, in your own words, the meaning of following sentences:

a. You don't have to say anything if you don't want to.

b. If you do say anything, whatever you say can be used against you in court.

c. If you refuse to say anything, your refusal cannot be used against you in court.

8 – Below are specific words that the officer used in the video that you watched. Please write down the meaning of each word.

a. Right

b. Against

12 - Please answer the following questions based on your general knowledge of the criminal justice system.

On a scale of one to six, please indicate your agreement to the given statements.

a) Once a suspect has asserted his or her right to silence, police are then required to immediately stop the questioning process. (circle one)

Strongly disagree 1 2 3 4 5 6 **Strongly agree**

b) Some suspects voluntarily falsely confess. (circle one)

Strongly disagree 1 2 3 4 5 6 **Strongly agree**

c) Suspects who are innocent can be led to believe they are guilty of a crime they did not commit. (circle one)

Strongly disagree 1 2 3 4 5 6 **Strongly agree**

d) Innocent suspects are more likely than guilty suspects to waive their right to remain silent, believing that their innocence will ultimately protect them. (circle one)

Strongly disagree 1 2 3 4 5 6 **Strongly agree**

e) Police officers and investigators are better able than lay people (i.e. non-police) to recognize false confessions, or innocent suspects. (circle one)

Strongly disagree 1 2 3 4 5 6 **Strongly agree**

f) The more confident a witness is, the more accurate his or her testimony/statements are likely to be. (circle one)

Strongly disagree 1 2 3 4 5 6 **Strongly agree**

13 - Demographic Information. Please answer the following questions about yourself:

a) Sex (check one): Male Female Other

b) Age: _____ years

c) Year of study (circle one): 1 2 3 4 other

d) Major _____

e) First language: _____

f) Have you ever been arrested? Yes No

g) Please select the group(s) you believe best describe the group(s) with which you most identify.

Native Canadian (First Nations, Inuit, Metis, etc.)

South Asian (East Indian, Pakistani, etc.)

East Asian (Chinese, Japanese, etc.)

Latin American (Brazilian, Mexican, etc.)

Black (African, Caribbean, etc.)

White (Western European, Eastern European, etc.)

Other

Questionnaire of Caution Comprehension: Standard Caution Version

Below are a number of questions about what the police officer just said in the video that you watched. Try to answer as best you can and remember that all your answers will be kept confidential. If you have any questions let me know.

Remember what the police officer said.

Remember that he asked you whether you wished to say anything in answer to the charge. You want to do what is best for you.

Will you answer yes, and talk to the police officer, or will you answer no, and **not** talk to the police officer? (circle one)

Yes

No

3 – What do you believe the purpose of the police officers instructions were?

4 - Please describe some of the reasons why you might want to say something to the police:

Please describe some of the reasons that you might NOT want to say something to the police:

5 – Thinking again about why you said “yes” or “no” to talking to the police, which, if any, of the following reasons apply to your choice. Would you have said “yes” or “no” because... (check all that apply)

- You wanted to be cooperative
- You did not want to say anything that would make you look guilty
- You had nothing to hide
- You wanted legal advice
- You did not want to say something that could later be used against you
- You wanted to explain your side of the story
- You wanted to get something on the record that could later be used to prove your innocence
- Other (specify _____)

6 – Please answer the following questions about what the police officer was saying in the video. Do you think that the police officer was saying that...(check either yes or no).

- a) you have to talk to the police because if you don't your silence will be used against you in court? _____ Yes _____ No
- b) you can decide not to talk to the police, but if you don't talk your silence will be used against you in court? _____ Yes _____ No
- c) you can decide to talk to the police, but whatever you say can be used against you in court? _____ Yes _____ No
- d) you can decide to talk to the police, and if you do your explanation can help you in court? _____ Yes _____ No
- e) you can decide to talk to the police, and if you do they will see that you are cooperative? _____ Yes _____ No

7 – Please write down, in your own words, the meaning of following sentences:

a. You are not obliged to say anything unless you wish to do so.

b. Anything you do say may be given in evidence.

8 – Below are specific words that the officer used in the video that you watched. Please write down the meaning of each word.

a. Obligated

b. Evidence

12 - Please answer the following questions based on your general knowledge of the criminal justice system.

On a scale of one to six, please indicate your agreement to the given statements.

a) Once a suspect has asserted his or her right to silence, police are then required to immediately stop the questioning process. (circle one)

Strongly disagree 1 2 3 4 5 6 **Strongly agree**

b) Some suspects voluntarily falsely confess. (circle one)

Strongly disagree 1 2 3 4 5 6 **Strongly agree**

c) Suspects who are innocent can be led to believe they are guilty of a crime they did not commit. (circle one)

Strongly disagree 1 2 3 4 5 6 **Strongly agree**

d) Innocent suspects are more likely than guilty suspects to waive their right to remain silent, believing that their innocence will ultimately protect them. (circle one)

Strongly disagree 1 2 3 4 5 6 **Strongly agree**

e) Police officers and investigators are better able than lay people (i.e. non-police) to recognize false confessions, or innocent suspects. (circle one)

Strongly disagree 1 2 3 4 5 6 **Strongly agree**

f) The more confident a witness is, the more accurate his or her testimony/statements are likely to be. (circle one)

Strongly disagree 1 2 3 4 5 6 **Strongly agree**

13 - Demographic Information. Please answer the following questions about yourself:

a) Sex (check one): Male Female Other

b) Age: _____ years

c) Year of study (circle one): 1 2 3 4 other

d) Major _____

e) First language: _____

f) Have you ever been arrested? Yes No

g) Please select the group(s) you believe best describe the group(s) with which you most identify.

Native Canadian (First Nations, Inuit, Metis, etc.)

South Asian (East Indian, Pakistani, etc.)

East Asian (Chinese, Japanese, etc.)

Latin American (Brazilian, Mexican, etc.)

Black (African, Caribbean, etc.)

White (Western European, Eastern European, etc.)

Other

Appendix F

Scoring Rubric

Question 2 “Please describe in your own words, your understanding of what was communicated in the caution (e.g. ideas, concepts).”

3 points

Response must clearly indicate three central ideas:

- A. The suspect has the right to remain silent.
- B. Anything that the suspect says can be used against them in a court of law.
- C. If the suspect chooses not to talk to the police their silence cannot be used against them in a court of law.

2 points

Response clearly indicates two of the central ideas listed above, but is missing one of the central ideas.

1 point

Response clearly indicates one of the central ideas listed above, but is missing two of the central ideas.

0 points

A response that that includes none of the central concepts listed above and demonstrates a lack of understanding of the central ideas.

Question 6 “Please answer the following questions about the meaning of the caution that you heard. *Do you think that the police officer was saying that...*(check either yes or no).”

1 point for each correct answer

- a) No; b) No; c) Yes; d) No; e) No

Question 7: Sentence Comprehension “Please right down, in your own words, the meaning of the following sentences”

You are not obliged to say anything unless you wish to do so

or

You don't have to say anything if you don't want to.

2 points

A. A statement that one does not have to say anything to the police, but that one may speak freely if one wishes to do so. The right to not speak should be clearly implied if it is not specifically stated.

B. A paraphrase regarding one's choice or implied choice of whether or not to talk, without explanation.

Examples: You don't have to say anything to the police, but you can; they can't make you say anything; if you want to say something you can. You have a choice of whether or not to say anything. You don't have to say anything unless you wish to do so.

1 point

- A. Choice or implied choice is present, but rationale for the right is erroneous, illogical, or inaccurate.
- B. The idea that it is better not to say anything under any circumstances.
- C. A statement of the right not to say anything without mention of the right to speak freely if one desires.

Examples: You don't have to answer the questions. You don't have to say anything if you don't want to. You can choose to make a response. I don't have to speak unless I feel I have to (does not indicate the desire to speak freely). I am not required to speak unless I feel the need.

0 points

- A. Response indicating lack of understanding.
- B. The idea that you must remain silent.
- C. The idea that you have to talk, stated generally or under certain circumstances, or that if you do not talk, it will go against you either with police or in court.

Anything you do say may be given in evidence.

or

If you do say anything, whatever you say can be used against you in court.

2 points

The idea that confession or any other provision of information can be repeated in court and can be used as evidence to convict the suspect. That is, what you say can be brought up in court and may be incriminating.

Examples: Anything I say can be used in a legal proceeding, in a court of law; it may or may not be used against me depending on what I say; I can be questioned about it in a court of law. If you say something, it may be used against you in a court of law.

1 point

- A. The idea that if you talk to the police or provide any information, it may be used in court, without indicating that it may be incriminating to the suspect.
- B. The idea that if you talk to the police or provide any information, it may be incriminating to the suspect, without indicating that it may be used in court or some other legal proceeding.
- C. A response which would qualify as a 2-point response, except that erroneous qualifiers have been added which spoil the response or indicate only partial understanding. Included here are responses referring to consequences in settings other than the court hearing.

Examples: Anything I say could be used against me. Whatever you do say can be presented in court. Whatever I say may be used as proof.

0 point

- A. Response indicating lack of understanding.
 - B. Failure to indicate that anything you say either may be used in court or that it may be incriminating to the suspect.
- Examples: You'd be held responsible for anything you say. Whatever I say will be supporting something. What I say could be used to help me in court.

If you refuse to say anything, your refusal cannot be used against you in court.

2 points

A statement which reflects the idea that if one decides not to talk to the police or to remain silent, this silence or choice to remain silent cannot be used as incriminating evidence against the person.

1 point

A statement which reflects that you cannot get in trouble if you remain silent or that you are allowed to refuse to say anything, but is ambiguous as to whether the silence can be brought and used in court.

0 points

- A. Response indicating a lack of understanding
- B. Failure to indicate that the choice to remain silent cannot be brought up in court and used against that person or cannot be used as evidence

Question 8: "Below are several words. Each word is used in a sentence. Please write down in your own words what the word means."

2 points – An explanation similar to the given definition.

1 point – A partial definition or an accurate synonym.

0 points – Responses indicating a lack of understanding; an incorrect definition; or an incorrect synonym.

Obliged: Required by law, duty, or gratitude to do something

1 point

Responses must clearly indicate why something (the behaviour) is required (i.e., a feeling, conscience).

Examples: Expected. Had to. Necessary. Forced. Felt he had to. Obligated; he felt he had to. Obligated, felt compelled to. Feel a need to. Feel compelled. Kind of forced to; your conscience is telling you to.

Note: "Obligated" is not an acceptable 1-point answer unless a further and correct explanation is provided.

0 point

Examples: Told; asked. Honoured. Felt freely to. An obligation; owed. Thankful.

Evidence: Something legally presented before a court, as a statement of a witness, an object (e.g., a gun, a DNA sample), which bears on or establishes the point in question.

2 points

Examples: Information that was presented against the person pertaining to the case. The material which is used in litigation to prove innocence or guilt. The information relied upon to establish innocence or guilt.

Note: Responses should mention or clearly imply the court as the context.

1 point

Examples: Something to support something. Something that is used to prove something. The information presented. Proof; the facts. Fact.

0 point

Examples: What was presented to whoever. Physical, verbal, not necessarily actual stuff.

Right: That to which a person has a just claim; a power, privilege, etc. that belongs to a person by law, nature or tradition.

1 point

Examples: Like a privilege that you're entitled to. An act which no one can legally prevent you from doing. An inherent privilege. Something you're entitled to. Allowed to. Opportunity. Privilege. A choice. What you're allowed to do.

0 point

Examples: An obligation. The okay. You are able to; something in your favour most of the time.

Against: Being opposed to or against someone or something.

2 points

Examples: Not for you. Not in one's favour. Does not benefit you. Makes you look guilty. Against you. Doesn't help you.

1 point

Examples: Not good. Makes you look stupid.

0 points

Examples: Bad. Not right.

Appendix G

Semi-structured Interview: ALST Sample

Aboriginal Legal Services of Toronto Questionnaire

I would like you to watch a video of a police officer reading to you your legal rights. After you are done I am going to ask you some questions about how your own personal experiences compare with what you saw in the video.

1) **Have you ever been arrested?** Yes No

2) **How many times have you been arrested?** _____

3) **How do your experiences being arrested compare to what you saw in the video? Is that how it happens in real life?**

4) **I want you to think about the very first time that you were ever arrested and brought to the police station for an interrogation or to be questioned.**

Basic information about first arrest.

a) **How old were you?** _____

b) **Where were you arrested?** _____

Overview of information provided during first arrest.

a) **Can you tell me a bit about what happened during your first arrest?** (try to find out details about the crime and if it fits the requirements for an arrest)

b) **During your first arrest did the police tell you what your rights were?**

Yes No

Right to counsel

a) **The first time you were arrested did the police tell you that you could contact a lawyer?** Yes No

- b) Did the police provide you with the # for legal aid? Yes No
- c) Did you contact a lawyer or duty counsel lawyer? Yes No

Why or why not? _____

- d) (If they did not contact a lawyer) Do you wish that you had contacted a lawyer? Yes No

Right to Silence

- a) The first time you were arrested did the police tell you that you did not have to talk to the police if you did not want to? Yes No
- b) Did you talk to the police the first time you were arrested? Yes No

Why (what made you decide to talk?, why did you want to talk?, what did you want to say?, what did you tell them?) or why not?

- c) If they did not talk to police ask: How did you know (learn) not to talk to the police? (family, friends, TV, lawyers, other?)

5) Now I want you to think about your most recent arrest when you were brought to the police station for an interrogation or to be questioned.

Basic information about first arrest.

- a) How old were you? _____
- b) Where were you arrested? _____

Overview of information provided during first arrest.

- a) Can you tell me a bit about what happened during your most recent arrest? (try to find out details about their crime and if it fits the requirements for an arrest)

c) **During your most recent arrest did the police tell you what your rights were?** Yes No

Right to counsel

a) **The most recent time you were arrested did the police tell you that you could contact a lawyer?** Yes No

b) **Did the police provide you with the # for legal aid?** Yes No

c) **Did you contact a lawyer?** Yes No

Why or why not? _____

d) (If they did not contact a lawyer) **Do you wish that you had contacted a lawyer?** Yes No

Right to Silence

a) **The most recent time you were arrested did the police tell you that you did not have to talk to the police if you did not want to?** Yes No

b) **Did you talk to the police the most recent time you were arrested?** Yes No

Why (what made you decide to talk?, why did you want to talk?, what did you want to say?, what did you tell them?) or why not? _____

c) If they did not talk to police ask: **How did you know (learn) not to talk to the police?** (family, friends, TV, lawyers, other?)

6) If they have changed from talking to the police the first time to not talking to the police the second time ask:

a) **What changed from your first arrest to your most recent arrest that made you not want to talk to police?**

7) **The goal of our study is to try to find a way so that everyone will know their legal rights when they are first arrested. Sometimes it is difficult for people to understand their legal rights when arrested. Can you think of some ways that might make it easier for people to understand their rights? What would have been helpful for you?**

8) **Finally, I just need you to answer a few questions about yourself.**

_____ Male, _____ Female, _____ Other (for tester to answer only)

a) **How old are you?** _____

b) **What is the highest level of education that you have completed?**

- _____ No Formal Education
 _____ Some Elementary School
 _____ Graduated Elementary School
 _____ Some High School
 _____ Graduated High School
 _____ Some College/University
 _____ Graduated College/University

c) **What is your first language:** _____