

# When Both Sides are Mistaken: Layperson and Legal Professionals' Misconceptions of Canadian Suspects' Legal Rights Upon Arrest

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**Abstract** Canadian criminal suspects have notably limited access to legal counsel upon arrest compared to suspects in the U.S. Additionally, prior research has shown significant misunderstanding of police warnings informing suspects of their rights upon arrest. This paper presents three studies on Canadians' comprehension of criminal suspects' rights upon arrest, with a focus on the right to counsel. Study 1 ( $N=80$ ) and Study 2 ( $N=377$ ) examined Canadian layperson's comprehension, knowledge, and perceptions of legal rights upon arrest. In turn, Study 3 ( $N=78$ ) investigated Canadian legal professionals' perceptions of laypersons' knowledge of those rights. Results from these three studies indicated there is substantial confusion about the right to counsel for Canadian criminal suspects. These results also support previous research demonstrating problems with comprehension of Canadian police cautions. Taken together, the findings of the present research pose significant concern for an increased risk of false confessions from Canadian suspects who enter an interrogation with limited knowledge and understanding of their legal right to counsel.

**Keywords** interrogation · confession · right to lawyer · law · rights upon arrest

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## Canadians' Comprehension of the Right to Counsel on Arrest

At first glance, legal rights upon arrest afforded to criminal suspects in Canada appear to be equal to those of suspects in the United States, but are actually more restrictive in many ways (Patry et al. 2014). In a broad sense, criminal suspects' legal rights upon arrest in both the U.S. and Canada are quite similar; that is, both countries provide a right to silence and a right to legal counsel, free of charge to suspects who cannot afford to pay (R. v. Brydges 1990; R. v. Bartle 1994; Canadian Charter of Rights and Freedoms 1982). However, when focusing on the specifics of what these legal rights entail, it is revealed that Canadian suspects' rights are more limited than those afforded to suspects in the U.S., particularly the right to legal counsel.

In the U.S., the 6<sup>th</sup> Amendment entitles criminal defendants to have legal representation present during police questioning; suspects can assert this right at any time, and police must cease questioning when counsel is requested (Miranda v. Arizona 1966). Additionally, U.S. suspects have the right to in-person consultation with a lawyer immediately upon arrest (e.g., Dearborn 2011; Escobedo v. Illinois 1964). Although Canadian suspects are also afforded the right to legal counsel upon arrest, recent Supreme Court of Canada rulings have limited this right (R. v. Sinclair 2010; R. v. Willier 2010; R. v. McCrimmon 2010). Canadian suspects do not have the right to have a lawyer present during questioning, and the right to legal counsel is generally limited to a single conversation with a lawyer, even if this counsel consists only of a brief telephone consultation (R. v. Sinclair 2010). Furthermore, Canadian criminal suspects are not entitled to advice from the lawyer of their choosing; if a detainee requests a specific lawyer who is unavailable or otherwise unwilling to take the case, then legal advice from duty counsel (free of cost)

satisfies the defendant's right (R. v. Willier 2010; R. v. McCrimmon 2010). Changes to a suspect's circumstance may trigger a renewed right to counsel, for example new procedures involving the suspect (e.g., a polygraph test), a change in jeopardy, or new information suggesting the suspect did not understand his or her rights (R. v. Sinclair 2010).

Thus, Canadian criminal suspects can exhaust their right to counsel with a single brief telephone call before the interrogation begins. It is presumed that during this short phone consultation the lawyer will instruct the detainee to exercise their right to silence (R. v. Hebert 1990); and this instruction from legal counsel is sufficient to proceed with questioning. Following a satisfactory consultation with a lawyer, requests for additional counsel have no legal effect (R. v. Sinclair 2010). Police have the authority to question suspects extensively, and to deny every request for additional legal advice. Police routinely inform suspects of their right to silence during the caution, but suspects generally have no legal mechanism to stop an interview or speak to a lawyer once they have had an opportunity to talk with counsel (barring a change in circumstance as mentioned above).

There are two main rights presented in Canadian police cautions to arrested suspects, i.e., the warning of the right to silence and the right to legal counsel. The right to legal counsel is arguably the more important of the two components, as police are not legally required to inform suspects of their right to silence (R. v. Papadopoulos 2006). A problem can arise when a suspect does not understand their immediate right to speak with a lawyer and therefore unknowingly forfeits both rights by not seeking legal advice right away.

There are many possible reasons for miscomprehension of the caution including a) the stressful situation it is usually delivered in, b) cognitive functioning of the suspect, c) culture, d) language, and e) media-based misconceptions about rights and legal process (e.g., Davis et al. 2011; Rogers et al. 2011; Scherr and Madon 2012). Researchers have also focused on the linguistic features of varying jurisdictional cautions presented to samples of adults (e.g., Clare et al. 1998; Eastwood and Snook 2012; Kassin and Gudjonsson 2004; Moore and Gagnier 2008; Snook et al. 2014), as well as youths (Abramovitch et al. 1993, 1995; Freedman et al. 2014).

Although it has been established that U.S. criminal suspects are afforded a higher level of access to legal counsel than Canadian suspects, in practice the safeguards in place may be lacking, and U.S. suspects may not actually profit from these additional rights. Decades of research have examined comprehension of *Miranda* warnings in the U.S. in both adult and juvenile populations (Colwell et al. 2005; Frumkin et al. 2012; Goldstein et al. 2003; Grisso 1981). Consistently these studies show dramatic deficits in comprehension, both in field research and laboratory studies. Most suspects do not fully understand the warning. Suspects are generally very likely to waive their rights, and data also indicate that a) innocent

suspects are most likely to waive their rights, and b) those who waive their rights are more likely to confess to crimes they did not commit (Rogers et al. 2008, 2010; Rogers 2011). Similar studies conducted in Europe and the UK have also shown low comprehension of police warnings regarding suspects' rights (Clare et al. 1998; Fenner et al. 2002; Cooke and Philip 1998).

In Canada, Eastwood and Snook (2010) found that only 3.6 percent of undergraduate participants understood all components of the right to silence, and 7.1 percent of participants understood all components of the right to legal counsel. In a sample of 60 Canadian offenders, Chaulk et al. (2014) found similar results: a significant lack of comprehension of the police caution. On average offenders comprehended only 37% of the right to silence portion of the caution, and 26.67% of the right to counsel portion (Chaulk et al. 2014). The researchers noted that these results confound the commonly held assumption that offenders would have more knowledge of their legal rights as they have had direct experience with the legal system, a finding also shown in past research which indicates that both offender samples and non-offender samples have low comprehension of police cautions (Cooke and Philip 1998; Fenner et al. 2002; Grisso 1981).

Inconsistent phrasing and delivery may further complicate the Canadian police caution. There is no standard caution used by all law enforcement agencies in Canada, and not all agencies provide a written caution to suspects for their review. Eastwood et al. (2010) examined cautions from 38 different Canadian jurisdictions and found numerous inconsistencies in terms of readability and comprehension level across cautions (Eastwood et al. 2010). Snook et al. (2010) observed verbal caution delivery in practice and found that although police officers did deliver both parts of the caution (the right to counsel and the right to silence), they did not recite it verbatim in the majority of instances. As a result, parts of the caution were sometimes left out or put into the officer's own words. The researchers also observed that police interviewers rarely verified the suspect's understanding of their rights before they started questioning. In an extensive review, Snook et al. (2012) coded 80 police interview transcripts and concluded that police interviewers are not following best-practice rules, and monopolize talking time while rarely asking open-ended questions. Combined, these results suggest that police procedures before, and during, questioning increase the risk of false confessions by Canadian suspects.

Police cautions in Canada do not mention limitations to the right to counsel or the right to silence. While previous research has largely focused mainly on comprehension of the caution, there is a lack of research focused on Canadian's general knowledge of legal rights, particularly the important limitations to these rights (e.g., no right to halt the interview, no right to have counsel present). Similarly, there is a shortage of research assessing legal professional's opinions on layperson knowledge of rights upon arrest. Thus, the present research

was designed with two specific goals: 1) to measure Canadian citizens' caution comprehension and general knowledge of suspects' rights upon arrest, and 2) to measure legal professionals' perceptions of public understanding of suspect rights upon arrest. Study 1 examined laypersons' knowledge of rights upon arrest and comprehension of a standard police caution; Study 2 measured layperson knowledge of Canadian suspects' rights upon arrest in more depth, especially with respect to some key aspects of that right, which are not currently included in standard police cautions; Study 3 surveyed legal professionals about their perceptions of public understanding of the waiver and knowledge of criminal suspects' rights upon arrest.

## Study 1

Study 1 utilized both online and in person testing to examine laypersons' comprehension of a standard police waiver, and general knowledge of Canadian criminal suspects' rights upon arrest.

## Method

### *Participants*

Study 1 participants consisted of ( $N = 80$ ) laypersons (non-legal professionals) from Eastern Canada. The sample was composed of undergraduate students ( $n = 65$ ), and non-student community members ( $n = 15$ ). Students were 52% female ( $n = 34$ ) with a median age of 23 ( $M = 23.9$ ,  $SD = 5.5$ ). Community members were 80% female ( $n = 12$ ), with a median age of 45 ( $M = 43.4$ ,  $SD = 14.0$ ). Of the student sample, 85% indicate that English was their first language. All of the community participants were native English speakers. Students were compensated one bonus point toward an eligible course for their participation through a Psychology Department research participation bonus point system.

## Materials & Procedure

**Students** Students participated in-person in a psychology laboratory setting. In small groups (1-6 people), students listened to an audio recording of a police caution, and then responded to 8 True/False statements pertaining to the rights contained in the police caution. Participants were spaced an ample distance apart to ensure confidentiality of responses. All tasks were administered in a paper-based format.

The caution used in this study was obtained from the Halifax Regional Police Department, in Nova Scotia, Canada. The caution was delivered verbally via two audio recordings, one for each part of the caution (i.e., the right to silence and the right to counsel), which was read aloud at a

normal rate of speech by a male volunteer. The caution differed in a couple of minor ways from the actual cautions given by the police: the reason for arrest was omitted, and the actual phone numbers to duty counsel were replaced with numerical strings.

**Community members** Community members participated in an online questionnaire about criminal suspects' rights upon arrest. The questionnaire was conducted online via SurveyMonkey platform. Community members participated online as this platform was considered to be more easily accessible for them. Additionally, the online platform allowed participants to partake in the study at any time from any location where they had Internet access. The questionnaire contained the same 8 True/False questions that the student participants responded to.

## Results & Discussion

Chi-square analyses indicated that there were no significant differences between student and community participants' knowledge of suspect rights upon arrest; chi-square values ranged from .19 to 4.29, all  $p > .05$ . Knowledge of the police caution was analyzed by running descriptive frequencies to assess percentages of correct responses. Overall, participants exhibited significant confusion about Canadian criminal suspect rights upon arrest (see Table 1). The average number of correct responses to the 8 True/False questions was  $M = 5.3$  ( $SD = 1.0$ ). About 75% of participants erroneously believed that suspects have the right to have counsel present during police questioning, and that the police must stop questioning if a suspect requests a lawyer. Furthermore, 40% incorrectly indicated that the police must stop questioning a suspect who has told the police they will remain silent.

The data from Study 1 support prior research, which has shown the incomprehensibility of Canadian police cautions (Eastwood and Snook 2010, 2012). Student participants who listened to the police caution exhibited clear confusion about criminal suspects' rights upon arrest. It is also worth noting the troubling absence of differences between student participants, who listened to a standard caution, and non-student lay participants who were not given the caution. These data must be interpreted with caution, however: the samples were small for both student and non-student lay persons, and the data was gathered through means that could affect generalizability (e.g., convenience and snowball sampling). Furthermore, student participants were exposed to only one of the many versions of the standard cautions administered by police in Canada. Additional research is necessary to replicate and extend the present findings.

**Table 1** Study 1: Layperson knowledge of criminal suspects' rights upon arrest (%)

	True	False
Arrested persons have the right to speak with a lawyer immediately.	*73.7	26.3
Arrested persons have the right to call any lawyer they want.	*82.5	17.5
Arrested persons have the right to be given the number of a lawyer who is on call at Legal Aid, if requested.	*92.5	7.5
Arrested persons have the right for a lawyer to be present during questioning.	78.8	*21.2
The police cannot continue to question a suspect after they have chosen to their right to remain silent.	42.5	*57.5
The police cannot continue to question a suspect after they have requested a lawyer.	66.3	*33.7
A suspect's responses can be used in court as evidence.	*95.0	5.0
The police must inform the suspect of the reason for their arrest during the caution	*77.5	22.5

Note.  $N=80$ . \* denotes correct response. Differences in responses between students and members of the general public did not significantly differ on any questions, chi-squares  $p > .05$ .

## Study 2

Using web-based study materials, the focus of Study 2 was to examine laypersons' general knowledge and understanding of Canadian criminal suspects' rights upon arrest. In addition to direct questions about rights upon arrest, participants' applied understanding of rights upon arrest was evaluated using a series of arrest scenario vignettes.

## Method

### Participants

Study 2 consisted of consisted of ( $N=377$ ) laypersons (non-legal professionals) from Eastern Canada. The sample was composed of undergraduate students ( $n=341$ ) and community participants ( $n=36$ ). Female respondents accounted for 68% of the total sample ( $n=256$ ), and participants ranged in age from 18–64 ( $M = 23$ , mode = 19). Of the student sample, 79% indicated their ethnicity as Caucasian, while 97% of the community participants were Caucasian. Participants were recruited through various methods such as poster advertisements, and a social media posting. Students were compensated one bonus point toward an eligible course for their participation through a Psychology Department research participation bonus point system. Snowball sampling was also used in an attempt to increase the non-student sample. All participants were entered in a draw to win a \$150 Visa gift card. Respondents who took part in the study and referred another person to participate were given an additional ballot entry into the prize draw.

## Materials & Procedure

Data was collected using the online survey software Qualtrics to allow participation from any location where respondents had a computer and Internet access. First,

participants were asked a series of 20 True/False questions related to knowledge of rights upon arrest (see Table 2). These questions were based primarily on the three relevant Supreme Court cases from 2010 (R. v. Willier 2010; R. v. McCrimmon 2010; R. v. Sinclair 2010). There were 15 questions about Canadian suspects' right to counsel, four questions relating to the right to silence; plus one additional question relating to more general rights upon arrest (right to be informed of charges upon arrest). The goal of the 20 True/False questions in Study 2 was to expand upon the True/False questions from Study 1, and focus on more specific aspects of the right to counsel outlined in the three Supreme Court Rulings from 2010, rather than on a caution. Of the 20 True/False questions, 4 are the exactly the same or focus on the same content as the 8 True/False questions in Study 1.

Next, to test applied knowledge of rights upon arrest, participants responded to 13 vignettes (average length = 100 words). The majority of vignettes were again based on the three 2010 Supreme Court rulings. Several additional vignettes were fictional arrest situations in which the right to counsel and/or right to silence specifically played a role. After reading each vignette, participants responded to a binary yes/no question as to whether the suspect's Charter rights had been breached. Participants were also asked to evaluate the typicality of the situation portrayed in each vignette (on a 1–7 scale ranging from 'not at all typical' to 'completely typical'). Of the 13 arrest vignettes, only one contained a breach of the suspect's rights. Thus, the correct response was "no breach" in 12 of the 13 situations.

## Results & Discussion

Participant knowledge of Canadian criminal suspects' rights upon arrest is presented in Table 2. Overall performance on the 20-item scale ranged from 4 to 19, with a mean of 10.5 ( $SD = 2.5$ ) and a modal score of 10 out of 20. The mean number of correct responses to the subset of 4 questions related to the

**Table 2** Study 2: Laypersons' general knowledge of Canadian suspects' legal rights upon arrest (%)

	True	False
An arrested person has the right to have a lawyer present with them during an interrogation. <sub>c</sub>	86.3	*13.7
An arrested person has the right to stop an interrogation until they have a lawyer present. <sub>c</sub>	76.5	*23.5
An arrested person has the right to stop an interrogation for a second consultation with a lawyer. <sub>c</sub>	52.5	*47.5
An arrested person has the right to speak to a specific lawyer of his/her choice. <sub>c</sub>	89.2	*10.8
An arrested person has the right to try and contact a lawyer of his/her choice within a reasonable amount of time, upon arrest. <sub>c</sub>	*91.8	8.2
An arrested person has the right to speak to a lawyer a second time after an initial consultation. <sub>c</sub>	72.0	*28.0
An arrested person, who initially spoke to a free Legal Aid lawyer that was provided to them, has the right to later speak to a specific lawyer of his/her choice. <sub>c</sub>	73.4	*26.6
An arrested person has the right to silence during an interrogation. <sub>s</sub>	*91.0	9.0
The police cannot continue to interrogate an arrested person if they have chosen to exercise their right to silence. <sub>s</sub>	44.1	*55.9
An arrested person, who initially waived their right to counsel, can speak to a lawyer once the interrogation has started. <sub>c</sub>	*60.7	39.3
An arrested person, who has talked to a lawyer and expressed satisfaction with that consultation, generally does not get to speak to a lawyer a second time before, or during, an interrogation. <sub>c</sub>	*49.9	50.1
An arrested person has the right to end an interrogation by asking to have a lawyer present. <sub>c</sub>	71.0	*29.0
An arrested person has the right to end an interrogation by exercising their right to silence. <sub>s</sub>	65.2	*34.8
An arrested person has the right to end an interrogation by asking to be returned to their cell. <sub>s</sub>	41.4	*58.6
Generally, an arrested person does not have the right to a second consultation with a lawyer, unless they have been laid with new charges. <sub>c</sub>	*41.4	58.6
An arrested person has the right to speak to a lawyer a second time if they are going to be given a polygraph test. <sub>c</sub>	*73.9	26.1
An arrested person does not have the right to be told upon arrest what they are being charged with.	18.5	*81.5
An arrested person does not have the right to speak to a lawyer a second time if the first time they were intoxicated and didn't understand their rights. <sub>c</sub>	23.2	*76.8
An arrested person always has the right to a second consultation with a lawyer. <sub>c</sub>	59.9	*40.1
An arrested person does not have the right to speak to a lawyer again before participating in a line-up. <sub>c</sub>	28.2	*71.8

Note.  $N=377$ . \* Denotes correct response. Items with subscript "c" relate to the right to counsel; items with subscript "s" relate to the right to silence.

right to silence was 2.4 ( $SD = 1.1$ ) with a mode of 3; performance on the subset of 15 questions pertaining to the right to counsel was 7.3 ( $SD = 2.0$ ) with a mode of 6.

Applied rights upon arrest knowledge was measured through participants' judgments about whether the situations described in the 13 vignettes constituted a breach of the suspects' Charter rights, see Table 3. The average number of correct breach responses to the vignettes was 7.7, with a median and mode of 8. Error rates were higher than 35% for eight of the 13 scenarios, and were as high as almost 80% in one instance (scenario 4).

The data from Study 2 provide substantial evidence of participant confusion regarding Canadian criminal suspects' legal rights upon arrest, particularly in respect to the right to counsel. Participants demonstrated high levels of inaccuracy as measured by both the direct true/false knowledge questions, as well as the more applied vignette scenarios. These results demonstrate a concerning lack of knowledge or understanding

of criminal suspects' rights upon arrest in a sample of Canadian laypeople. Considering the available evidence on waiver comprehension, both from prior research (Eastwood and Snook 2010, 2012; Eastwood et al. 2010; Freedman et al. 2014) and also from Study 1 of the present paper, the data from Study 2 point to a need to educate the Canadian public about criminal suspects' legal rights upon arrest.

### Study 3

Study 3 examined legal professionals' (i.e., police officers, sheriffs, and criminal lawyers) opinions of laypeople's knowledge of rights upon arrest, including perceptions of public understanding of the caution, the efficacy of the caution given to suspects, and public awareness of rights upon arrest more generally.

**Table 3** Study 2: Vignette brief descriptions (fact basis) and layperson judgments of Charter rights breaches (%)

Vignette number and summary (fact basis)	Breach judgments	
	Yes	No
1. Two phone calls with lawyer prior to interrogation, request for additional counsel denied. Interrogation continued (Sinclair)	69.6	*30.4
2. Phone call with lawyer prior to interrogation, subsequent request to have lawyer present granted (Fictional)	11.9	*88.1
3. Suspect denied legal consultation. (Fictional)	*55.3	44.7
4. Phone call with lawyer prior to interrogation, request to have lawyer present denied by police (Sinclair, McCrimmon)	78.9	*21.1
5. Suspect did not want a lawyer before interrogation began, interview stopped for consultation with a lawyer. (Fictional)	15.6	*84.4
6. Lawyer of choice not available at time of arrest, suspect consulted with free counsel instead. Interrogation the next day stopped so that the suspect could call lawyer of choice. (Willier)	15.9	*84.1
7. Phone call with lawyer prior to interrogation, request to halt to the interview denied, interview continued after renewed notification of right to silence. (Sinclair)	38.8	*61.2
8. Phone call with lawyer prior to interrogation, request for additional counsel denied. Interrogation continued (Sinclair)	60.2	*39.8
9. Phone call with lawyer of choice prior to interrogation. Interview stopped for second consultation with counsel. (Fictional)	12.0	*88.0
10. Phone call with lawyer of choice prior to interrogation. Suspect declared exercise of right to silence. Interview continued. (Sinclair)	44.6	*55.4
11. Lawyer of choice not available at time of arrest, suspect consulted with free counsel instead and expressed satisfaction with advice. Request denied to halt interrogation for consultation with lawyer of choice. (McCrimmon)	62.9	*37.1
12. Phone call with lawyer of choice prior to interrogation. Interview stopped when suspect indicated exercise of right to silence. (Fictional)	14.1	*85.9
13. Suspect had phone consultation with free counsel and expressed satisfaction with advice prior to interrogation. Request denied to halt interrogation for consultation with lawyer of choice. (McCrimmon)	56.8	*43.2

Note. *N*=377. \* Denotes correct response.

**Method**

*Participants*

Study 3 consisted of (*N*=78) legal professionals. This sample was composed of both law enforcement professionals (*n*=64) (drawn from two groups: police officers, *n*=50, and sheriffs, *n*=14), and lawyers (*n*=14). Law enforcement professionals were 17% female (*n* = 11), with a median age of 41 (*M* = 41.5, *SD* = 9). Lawyers were 33% female (*n* = 5), with a median age of 47 (*M* = 48.3, *SD* = 15.7); most lawyers (86%; *n* = 13) were criminal defense lawyers. All legal professionals indicated that they were Canadian citizens.

**Materials & Procedure**

**Sheriffs** The sample of sheriffs participated in-person in interview rooms within a sheriffs department in a mid-sized Atlantic Canadian city. In small groups (1-3 people), the sheriffs completed a ‘legal professionals opinion survey’ to provide their estimation of how well the general public

understands the police caution. The survey contained 9 questions, which were similar to those found in the rights questionnaire that was utilized in Study 1; however, they were phrased to elicit a true or false response in the form of an opinion about layperson’ knowledge of rights upon arrest (for example, “the general public fully understand their rights as delivered by the police caution”). Participants were spaced an ample distance apart to ensure confidentiality of responses. All tasks were administered in a paper-based format.

**Police Officers & Lawyers** An email link was sent out to the sample of police officers and sample of lawyers inviting them to participate in the same previously described ‘legal professionals opinion survey’, conducted online on SurveyMonkey. This online platform was used to reach a larger number of police and lawyer respondents; it allowed them to participate from any location at any time, as long as they had a computer and Internet access. The professional opinion survey asked police officers about their perceptions of laypeople understanding of suspects’ rights on arrest and comprehension of the police caution.

## Results & Discussion

The majority of police officers reported having delivered the caution to a suspect (92%), and 88% indicated that they had to explain the caution to a suspect who did not understand it. Additionally, 90% of the officers indicated that they had experience questioning a suspect in custody. Some lawyers reported having delivered the caution to a suspect (28.57%) and half of these lawyers also reported having questioned suspects (14.29%). Over half of the lawyers indicated that they needed to explain the caution to a client who did not understand it (57.14%).

Chi-square analyses were used to determine whether there were any significant differences between the samples of law enforcement professionals and lawyers. Results indicated there were significant differences between these two samples on 6 or the 9 legal professionals opinion questions. Specifically, there was a significant difference in law enforcement and lawyer responses on the following items: 1) “*the general public fully understand their rights as delivered by the police caution*” ( $\chi^2 = 13.31, p < .001, \phi = -.41$ ), 2) “*people understand they have a right to legal counsel*” ( $\chi^2 = 6.42, p = .011, \phi = .29$ ), 3) “*arrested persons know they can call any lawyer they want*” ( $\chi^2 = 13.24, p < .001, \phi = .41$ ), 4) “*arrested persons understand they are able to call the duty lawyer at Legal Aid if they request to do so*”, ( $\chi^2 = 4.46, p = .035, \phi = .24$ ), 5) “*arrested persons understand that their responses to questions can be used in court as evidence*” ( $\chi^2 = 6.97, p = .008, \phi = .30$ ), and 6) “*arrested persons understand that the police must inform them of the reason for their arrest during the caution*”,  $\chi^2 = 13.24, p < .001, \phi = .41$ , see Table 4.

Law enforcement professionals were far more likely to endorse as true the statement that members of the public fully understand their rights as delivered through the standard police caution (61%) compared to criminal lawyers (7%); they were also more likely to think that suspects believe they can call any lawyer they want (78% as compared to 29% of lawyers). Law enforcement participants were also more likely than lawyers to think that suspects understand they have a right to legal counsel (97% versus 79%), that they can call the duty counsel at Legal Aid (88% versus 64%), and that any statements could be used against them in court (83% vs 50%). Overall, these data show a clear pattern: compared to criminal lawyers, law enforcement professionals have much more faith in the police caution, and generally much stronger sense that criminal suspects understand their rights.

These results generally suggest that law enforcement professionals have high confidence in the efficacy of the caution, criminal suspects’ comprehension of police cautions, and more general understanding of their rights upon arrest. Considering the available data, both from previous studies (e.g., Eastwood and Snook 2010, 2012) and also the present research, the data from law enforcement professionals can be

seen as overconfidence in suspects’ knowledge and the comprehensibility of the police caution. The present data also show clear differences between participants with different professional backgrounds: law enforcement professionals’ views are in some respects more distorted than criminal lawyers. There are several noteworthy limitations to these data however: the sample sizes were small, and limited to professionals in a small Atlantic Canadian city. Furthermore, it may be the case that professionals volunteering to participate in a study such as this are not representative of the population of professionals in their respective fields. Additional research is necessary in order to determine the reliability and generalizability of these findings.

## General Discussion

The purpose of the present research was two-fold. First, we aimed to replicate past research examining Canadian caution comprehension. The second goal was to extend upon prior research by exploring Canadian layperson general legal knowledge (particularly in regards to the right to legal counsel), and legal professionals’ beliefs about this knowledge. A wealth of data has already demonstrated clear problems with the comprehensibility of police cautions in Canada (e.g., Abramovitch et al. 1993, 1995; Eastwood and Snook 2010; Moore and Gagnier 2008), and similar data from other jurisdictions, particularly the U.S. (e.g., Rogers 2011; Rogers et al. 2008, 2011; Clare et al. 1998; Fenner et al. 2002), illustrate that warning comprehensibility is a widespread problem.

## Caution Comprehension

The first concerning finding of the present reach was the absence of differences in participant performance between students, who heard a standard caution before responding, and non-student community participants, who were not exposed to the warning. Although these results are based on a small sample size (particularly of the community layperson sample) and thus lacking power, if they are indicative of a trend that would be supported by further research with a larger and more generalizable sample of respondents, it would be a troubling phenomenon. These data do raise concerns about the applied value of the current police warnings. Fortunately, researchers are making some progress at improving the comprehensibility of police warnings (e.g., Davis et al. 2011; Eastwood and Snook 2010; Moore and Gagnier 2008; Snook et al. 2014; Freedman et al. 2014). The present research reinforces the importance of these efforts: there is a clear need for more research on comprehensibility of Canadian police cautions, particularly with respect to improving the language of waivers.

**Table 4** Study 3: Law enforcement officers’ and criminal lawyers’ perceptions of public understanding of rights upon arrest (%)

	Law Enforcement		Criminal Lawyers	
	True	False	True	False
<b>The general public fully understand their rights as delivered by the police caution.</b>	60.9	39.1	7.1	92.9
<b>People understand they have a right to legal counsel.</b>	96.9	3.1	78.6	21.4
<b>Arrested persons know they can call any lawyer they want.</b>	78.1	21.9	28.6	71.4
<b>Arrested persons understand they are able to call the duty lawyer at Legal Aid if they request to do so.</b>	87.5	12.5	64.3	35.7
Arrested persons believe they have a right for a lawyer to be present during questioning.	50.0	50.0	28.6	71.4
There is a belief that the police cannot continue to question a suspect after they have chosen to their right to remain silent.	31.3	68.8	21.4	81.6
There is a belief that the police cannot continue to question a suspect after they have requested a lawyer.	32.8	67.2	14.3	85.7
<b>Arrested persons understand that their responses to questions can be used in court as evidence.</b>	82.8	17.2	50.0	50.0
<b>Arrested persons understand that the police must inform them of the reason for their arrest during the caution.</b>	78.1	21.9	28.6	71.4

Note. **Bold** indicates statistically significant differences between law enforcement officers’ responses and criminal lawyers’ responses, chi-square values  $p \leq .05$ .

### Rights Upon Arrest Knowledge

One area that is not adequately covered in standard Canadian police cautions is the right to legal counsel on arrest. While suspects are told that they have the right to legal counsel, to our knowledge no jurisdiction in Canada informs suspects of the limitations to this right. The three Supreme Court of Canada rulings from 2010 (*R. v. Sinclair*; *R. v. Willier*; and *R. v. McCrimmon*) make it abundantly clear that the right to counsel is completely exhausted once a suspect has had satisfactory advice from counsel, which could be as limited as a brief telephone call with a lawyer. The results from Study 2 display a serious lack of laypersons’ general knowledge regarding legal rights upon arrest; of particular concern is the lack of knowledge regarding the right to counsel. Up to 86% of respondents incorrectly believed the statement “an arrested person has the right to have a lawyer present with them during an interrogation”. Although these results could be interpreted as limited, based on the predominantly student sample, they are analogous to previous findings (e.g., Abramovitch et al. 1995; Clare et al. 1998; Eastwood and Snook 2010).

### Legal Professionals’ Beliefs

The present research also highlights the generally distorted beliefs of law enforcement professionals with respect to the efficacy of the police caution for communicating suspects’ rights upon arrest, and more generally their views about the public’s knowledge of criminal

suspects’ rights. There is a stark contrast between law enforcement professionals’ views and the data from criminal lawyers. It is possible this difference is stemming from the sequence of events a Canadian suspect would experience upon arrest, including the administration of a police caution, and ensuing outcome. Law enforcement professionals are generally interacting with suspects very early on, and thus when the caution is provided to suspects, they have a high confidence in comprehension. When criminal lawyers are interacting with suspects, it is usually following arrest and often just prior to, during, or even after questioning. This later interaction between lawyer and arrested individual may demonstrate a more accurate account of diminished comprehension. Of course, further research on a national scale is necessary in order to determine if these results are reliable and generalizable.

If the current data are indicative of a general trend, which we suspect they are, then it will be important for researchers to collaborate with the law enforcement community to educate police about the non-comprehensibility of police cautions, and layperson confusion about criminal suspects’ rights more generally. On the other hand, the present data from legal professionals show that there is some awareness among law enforcement professionals, as well as criminal lawyers, of public misunderstanding of criminal suspects’ rights on arrest. While 60% of the police erroneously estimate that the standard warning is an effective means of communicating to suspects their Charter rights upon arrest, the other 40% of the sample understand that the warning is ineffective.



## Looking Ahead

Legally, Canadian criminal suspects clearly have a more restricted right to legal counsel upon arrest when compared to suspects in the U.S. or other justice systems, such as the United Kingdom (Patry et al. 2014). Data from prior studies, as well as the current research, demonstrates a palpable problem with the comprehensibility of police cautions in Canada. The current research also illustrates a serious lack of laypersons' awareness of the limitations to the right to counsel for criminal suspects in Canada. Though these findings must be replicated and extended in further research, there seems to be a clear a need for reform.

We believe there are two basic paths to improving public understanding of criminal suspects' rights upon arrest: 1) improve the language of the caution, including additional information about the limitations on the right to counsel, and 2) media campaigns to improve public awareness. In our opinion, suspects should be told that they do not have the right to additional counsel barring a significant change in legal circumstances, and informed that they do not have the right to have counsel present during police questioning. In regards to the right to silence, we feel suspects should be told that the police are not required to stop questioning a suspect if they indicate they wish to remain silent. Ideally, police organizations would be willing to partner with researchers on either or both of these fronts. However, progress is possible with or without police participation. Researchers can continue to develop improvements to the language of police cautions, and they may be able to launch media campaigns for improving public awareness with the support of government and/or non-profit organizations other than the police.

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