ARCARO'S INTERROGATION CASE LAW BOOK

VOLUME1

GINO ARCARO

Arcaro's Interrogation Case Law Book

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Volume Series – the breakdown

When I was a rookie detective, my team's staff-sergeant assigned me to put together a book called "Interrogation Case Law of the Week" for the detective office. That was 1984. No internet, no world-wide web, no Google, no Youtube, no social media. I thought it was an initiation. Hazing.

Case law decisions were sent to me. I had to put them into a binder in some sort of logical order. I soon discovered that one binder would not be enough. The Charter was only two years old in 1984. The Confessions Rule was in its never-ending evolution. There was no shortage of decisions.

I had trouble figuring out how to organize the Cases. I tried to make a table of contents. I tried to make chapters. Finally, I asked my partner for advice. "Should I make separate volumes or cram it all into one binder?" He told me not to expect any help from him or anyone else in the detective office, never to ask any questions, and to figure it out on my own. To solve the problem, I simply added new cases at the back of the binder.

Then I was assigned to make an interrogation case law presentation to the entire detective office. Teach the rest of the detectives about new case law, including Charter decisions. Another prank I thought; I was a 26-year-old detective, on a six-month probationary period, in an office full of old-school veteran detectives, many old enough to be my father or grandfather. I thought this was part of the test that I was told about on my first day as a detective: *"If you fuck up once, you're back in uniform."*

My lesson plans for the presentation were a nightmare – a jigsaw puzzle straight out of the box – pieces all over the place. A mess. All the literature I had read up to that point centered on Rules of Evidence – mechanical recitation of Rules of Evidence without the practical application part. Memorize and regurgitate without instruction on how to put in into practice. So I did the same. I just threw one Rule of Evidence after another up on the screen, in no particular order. But I didn't get kicked out of the detective office.

Several years later, I started teaching in college to wannabe-cops straight out of high school without any law enforcement experience as a point of reference. It wasn't until I copied how I taught football – rules first, playbook second – that my lesson plans finally began to take shape. It's the same format I've used for this book series. Because I believe it's impossible to write one book about Canadian interrogation case law, I've divided the series into Volumes.

Volumes one and two explain the basics rules of confession admissibility that have undergone significant change in the 21st century. Subsequent Volumes explain the case law in relation to the interrogation sequence.

Volume One: How the "Contemporary Confessions Rule," from *R. v. Oickle* (2000) applies to confession admissibility.

Volume Two: Focuses on Sec. 24(2) Charter, the landmark case *R. v. Grant* (2009) and the basic case laws that deal with how to prevent Charter violations. Part Two of this volume teaches how to get a "true confession."

Volume Three: The beginning of the "Playbook." Derivative Case Law: Case law decisions that are derived from the Confessions Rule and Charter cases (those that apply interrogation laws).

Volume Four: Case law relating to all the information that an accused person or suspect has to be informed of, including the caution and Charter rights to silence, reason for arrest, and right to counsel.

Volume's Five - Eight: Explanation of "contextual" proper inducement, referring to case law interrogation strategies that have been cleared for use to get a true confession.

Assumptions

The use of the word, "Charter" refers to the Charter of *Rights and Freedoms*, from the *Constitution Act, 1982.*

The term, "Criminal Code" or abbreviation, "C.C." refers to the *Criminal Code R.S.C., 1985, c.C-46.*

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Chapter Zero

CONTINUED

Chapter Zero

It's Easy to Put Down if you Don't Look Up.

Long ago, I renamed 'Preface' in my books to 'Chapter Zero' for one reason – to encourage the audience to read it instead of passing it over. The word 'Preface' had a reputation of being boring. Chapter Zero sounds more interesting. I was hoping to attract more readers to the preface in order to help them decide whether the book was interesting enough to *keep* reading. If Chapter Zero bombs, readers drop it. If it doesn't bomb, they won't be able to put it down. Dual meaning. Readers won't be able to stop reading it and they won't criticize it without reading all of it. If you're going to put something down, you need to build a case. You need strong evidence. The same applies to the topic of interrogation

It's easy to put down if you don't look up. It's always been fashionable to put down the police, the whole concept of interrogation, even the word 'interrogation' itself without looking up – looking up the full extent of confession rules of evidence, including countless case law decisions. But, it's almost impossible to look it all up because of the sheer volume of interrogation case law that keeps growing.

Chapter Zero is the starting point – it sets the tone for this module. This Chapter Zero has 10 Points:

Point #1: The beginning and ending of this book are the same.

Try to carry a heavy burden. You can't. No one can. It will crush you if you don't lift it off. Think of how many times in our lives we've had to get something we've done wrong off our chest to save our soul from extended torture. Think of how difficult it was to hold it inside, to lock up a secret sin. There's an inner force that drives the truth out of us for our own good. Confessing wrongdoing is natural.

Despite what critics want us to believe, confessing the truth is not 'psychological manipulation.' The need to tell *someone* the whole story, or parts of it, is driven by a force of nature – one that applies pressure until the truth leaks out all at once or in small pieces over time. Think of how often it has happened to you – when you've spilled the truth to *someone* and when someone has leaked the truth effortlessly to you, for no apparent reason.

I learned to keep this in mind when an investigation became a heavy burden – the truth will be told to someone. Guaranteed. The key is finding that person or becoming that person. Or both.

Point #2: This book boils down to one word – conscience.

Here's the conclusion of this module: "Make the conscience work." Triple meaning – make it work out, make it work right, make it do all the work. Use your conscience, appeal to the suspect's conscience. That's the simple conclusion that I always focus on because it's too easy to get lost in the sea of interrogation rules of evidence and interrogation case law if you lose focus. This conclusion is a two-way street; i) your conscience is your best guide in the interrogation to get the truth, and, ii) the suspect's conscience makes the interrogation as simple or as complicated as it can get.

Every interrogation is a psychological battle of conscience. No exceptions. Getting a true confession is an exercise that pits conscience versus conscience. When there's a match, the suspect tells you the truth. When there isn't, you won't get the truth. The suspect's conscience is either your partner or your worst enemy. It depends on how strong or weak it is and how strong or weak you can make it.

The conscience is the force of nature that always wins. It always gets its way. It either brings peace by driving the truth or it builds an inner hell until the truth is told. It all depends on the exercise of free will. The connection between the fitness of conscience, free will, and soul is part of the interrogation **intangibles** – the behind-the-scenes work that can't always be seen.

Point #3: There is no interrogation rulebook or interrogation playbook in the Criminal Code.

The Criminal Code explains how to search for physical evidence, how to seize physical evidence – breath and blood samples – how to charge an offender, when you can arrest an offender, but there is no "how-to-get-a-true-clean confession," no concrete guidelines for the police to follow, no "interrogation model" in Canadian law that tells you exactly how to get a confession from a suspect. The Charter draws boundaries but gives no strategy. You have to figure it out by studying the interrogation rulebook and playbook that are spread out over Canadian statutes and case law.

It's hard to believe that we're well into the 21st century but there's still no Canadian statute or provision called "Admissibility of Adult Confessions." Confession laws are governed by the Confessions Rule and section 24(2) Charter that only explains the intended outcome – confessions have to be voluntary, reliable, and Charter-violation-free. It's the equivalent of football rulebook that would say, *"touchdowns have to be clean and penalty-free"* while providing no how-to rules to achieve a penalty-free touchdown. The solution is to research case law.

Why is case law important for interrogation? Because that's where interrogation strategy is found. To become an interrogation expert, you have to become a case law expert. Case law answers what-if questions. These answers form an instruction manual. But the problem is volume and mixed messages. Case law is almost infinite. Not all of it is binding law but all of it is persuasive law. And researching it takes time – time that you don't have when you're working in the field or on the frontline.

Point #4: Nothing just happens.

I was a police officer for 15 years, from 1975-1990. Nine years uniform branch, six years as a detective. There's nothing I loved more than interrogation. Nothing was a bigger investigative challenge. The pressure, the degree of difficulty, the significance, sense of urgency… it never got boring. I became obsessed with learning how to become an expert interrogator. My training included a detective course at Ontario Police College that included advanced interrogation rules of evidence. I learned from mentors. I volunteered to write a case law book for my detective office. I studied as much psychology as possible in university. I taught it and wrote about it. But it all started in the uniform patrol branch. Nothing was better than doing it, as a uniform officer, shift-by-shift, call-after-call, traffic stop-after-traffic stop. Formal interrogation happens in a room at a police station but frontline interrogations are the building blocks.

Outside of Hollywood, star interrogators are not born. They're made. They're developed through a long, painful process of high and lows during practice and by putting into practice. Contrary to popular belief, there are no rookie wonders who can step into the role of "star interrogator." During my twenty-year college law-enforcement teaching career, I heard all sorts of delusion from college freshmen/women – *I want to be a detective, I want to be a forensics expert, I want to work undercover… everything except I want to be a uniform patrol officer.* I lost count of how many times I had to burst bubbles and explain real-life to them – *you need to spend a lot of time on the frontline.* Translation: not just any time, quality time. You have to start in the uniform branch, you have to spend many years on frontline patrol where you learn the true fundamentals of investigative strategy, and then you have to compete for advancement with all the other officers who work just as hard as you or even harder.

Most college students didn't want to hear the truth because the truth truly can be painful. The police rookie sensation is the same fictional character as Santa Claus and the Easter Bunny. Developing interrogation expertise is a process that starts the moment your swearing-in ceremony wraps up and the pictures are posted on Facebook, and travels a very slow journey. Every domestic, every disturbance, every death you respond to, every drunk driver, every speeder you stop is another step toward interrogation expertise. Enjoy the ride because you can't press rewind. There's no instant replay on a uniform career.

I spent nine years in uniform and I still miss it. Sacred memories. If you're in uniform, slow down. Don't be in a hurry to get out after a couple of years. Soak it all in. Put aside wild ambitions of instant career gratification and let professional nature take its course. I've taught college students to change their perspective of instant gratification from the all-or-nothing detective badge to the inner reward of the journey by getting better call-by-call. Nothing beats practical real-life experience. Interrogation expertise doesn't just happen.

Nothing just happens. Not overnight or accidentally or randomly. It happens for reason. We make it happen or don't. Fucking things up is part of the learning process. A big part. The key is to investigate every failure. Coaching football taught me the power of studying losing. Studying losing is the key to winning in any profession, by whatever definition you attach to it. My definition of winning is simple – calling out your best. Doing the best job for those who are counting on it. Consistent high-performance. It's the mark of a true professional – full-out, flawless execution, full-time. Anything less and you're disrespecting the profession, disrespecting the citizens and victims who depend on your professionalism, disrespecting your team, and disrespecting yourself. Half-assed, low-performance, bungling amateurism is a disservice to your true boss – the taxpayers.

Point #5: Confessions don't just happen either.

Being pissed off motivates all crime. Pissed off at self, pissed off at someone else, pissed off at the world, pissed off at being broke, pissed off at things not going one's way. Jealousy, hatred, frustration, bitterness. The same inner conflict that promotes crime, produces a true confession. That's the basic fundamental that governs interrogation psychology – crime and confessions are both attempts to solve an inner conflict. A true confession is the resolution of inner conflict. Crime always fails get the job done, making the inner conflict worse.

Sometimes a suspect will confess instantly. Sometimes it takes time. But no true confession just happens. Every true confession happens *for* a reason and *because of* a reason. The main reason is to end an inner fight caused by Cognitive dissonance[1] and replace it with inner peace. There are two paths to peace – confession or rationalization. Both work. Both do the trick. Both bring peace. But only a true confession brings lasting peace. Rationalization is a band-aid solution that can't stop the bleeding forever. Rationalization can cover up a scratch but it will never fully heal a wound. Confession stops the inner fight before it knocks you out.

Cognitive dissonance is the interrogator's strongest partner. It is an inner conflict caused by acting contrary to personal beliefs. In other words, inconsistency – believing one thing but doing another. Cognitive dissonance is a type of guilt that, left unchecked, turns into a burning inner hell that takes a toll on the soul, torturing the soul in an attempt to kill it off for good. Every human being has a natural desire to be guilt-free. Peace is not just a dream; it's a basic survival need. Spilling your guts saves you from rotting your guts. Cognitive dissonance is unnatural; peace is natural. Cognitive dissonance makes *true* confessions happen naturally. True confession is a homeopathic remedy for a tortured soul, an all-natural cure generated internally. All it takes is pressing the right switch – appeal to the conscience.

1 Festinger, Leon. (1957). *A Theory of Cognitive Dissonance.* Stanford, CA: Stanford University Press.

Point #6: The way to weaken the defence is to score points.

Another challenge of interrogation is overcoming the *presumption of guilt* against the police – that suspicion of wrongdoing that so often hangs over your head when you walk into an interrogation room, do your job right and walk out with a true confession from suspect. It can easily put you on the defensive.

My detective partner and I interrogated a suspect for one break and enter. He confessed to a total of 17 crimes – more break and enters, robberies, and thefts. Then he gave up three of his accomplices for even more crimes. It happened almost in record-breaking time. Short, sweet and to the point. It was the kind of interrogation that contradicted point #3 above – it was too easy. We did nothing special. There was no prolonged questioning. The suspect cleared his conscience almost immediately, without a lot of work. Every detective experiences that kind of no-brainer true confession, the kind where the suspect does all the work and you get credit for it. The kind that reminds you of how simple it can be to get the truth. The kind that makes you believe that it will always be easy, but of course, it won't.

The next night, a uniform officer phoned me at my desk from the uniform briefing room. The officer gave up the patrol sergeant doing the briefing; told me he had announced the results of our interrogation to an entire platoon of uniform officers and implied that we beat the confessions out the suspect. I immediately went to the briefing room, told the patrol sergeant personally that he lied, told the platoon that the patrol sergeant lied, and told the platoon the truth about exactly what had happened. I told the patrol sergeant that if I was victim of any more false allegations, I would sue him.

False allegations are serious business that needs to be corrected instantly. They can't be tolerated because tolerance rewards, empowers, and encourages the liar to do it again. Others will follow. This was a perfect example of the severity of the presumption of guilt – it invades your own team. False allegations are expected by the people you arrest but not from your own team. The cleanest interrogation was tainted by lies that unjustifiably raised doubt about the voluntariness of the confession. That's how easy it is to raise doubt – a few words.

Coaching football taught me several important lessons that relate directly to interrogation and the presumption of guilt:

The defence doesn't just want to stop you, they want you to drop out. They want to break your will so you stop trying. They want to change the way you work so you live in the darkness of fear and doubt. The same applies in law enforcement. The key is focusing on doing your job better than they do.

Never forget that the defence has the easiest job – raising doubt. The police and prosecution have the toughest job – erasing doubt. Don't take it personal, don't make it personal. Raising doubt is simple because it's part of human nature to doubt – to doubt self, to doubt others. Erasing doubt takes evidence. Building a case. A case of hardcore, overwhelming, honest, truthful evidence.

The defence wants to win before the game even starts. The defence wants to score points before the court proceedings begin. They have the presumption of guilt on their side. They want the presumption of your guilt to raise the doubt level about your interrogation/confession before the trial starts. Often, they have help from the media to cast a shadow over your your morals, your ethics and your integrity. The more psychological work they do before court, the less they have to do during court.

Don't fight the defense, score points. Everyone has a role in the criminal justice system. Your job is to score points with evidence. The defence tries to shut you out. Build the strongest case possible by stacking one piece of evidence onto another. Every piece of evidence scores a point. Run up the score. Don't complain about losing when you haven't scored enough points.

Point # 7: High credibility rating, high return.

Personal credibility is the most forgotten element affecting confession admissibility. Expertise won't save you if no one believes you. Bad reputation, bad return. The biggest investment you can make in your career is scoring a high credibility rating.

Your personal credibility is just as important as any interrogation strategy. A fact that's easy to forget in the swamp of endless case law is that your personal credibility is directly connected to the admissibility or exclusion of a confession. The problem is that high credibility rating doesn't just happen, and it's not permanent, not guaranteed, not proportionate. The presumption of interrogation guilt can make you feel that you're always fighting an uphill battle for credibility, but the truth can stand up to any attack.

High credibility rating is built over time with evidence. You won't get awarded instant high credibility by default. You've got to score a lot of points to get a high credibility score. Then you have to work to sustain it. There's no promise that you will be deemed credible for your entire career because losing points is easier and happens faster than scoring points. Protecting your credibility is investment protection. Guard the points you accumulate because all it takes is one bad play and your score plummets. If your credibility drops, you've got a long road back. This magnifies the severity of the presumption of guilt – your credibility always has an opponent. The bad news is that there's always a fight for your credibility. The good news is that you can go undefeated with the right work.

Lifting and lowering your credibility rating boils down to a war of words, a battle to win the minds of those in charge of passing judgment. Part of the police job description is target practice. You're a target for false allegations, for lies. This is not a "you-against-the-world" speech. Far from it. I've experienced it first-hand, just like you have, in frontline law enforcement. It's just real-life. You're a target for lies because it's part of the fight for the truth.

Point #8: I call it "interrogation" instead of "interview" for a reason. I replaced "elicit" with "search."

I've been advised to call this series "investigative interviewing" to make it sound politically correct but I can't because the Supreme Court of Canada uses the word "interrogation." For example: The S.C.C. uses the word "interrogation" a total of 130 times in two landmark cases: (i) *R. v. McCrimmon* (2010)[2]; (ii) *R. v. Oickle* (2000).[3] There's nothing wrong with the word interrogation. That's what questioning a suspect for the purpose of getting a true confession is called. Interviews are for witnesses and job candidates. Exploratory interviews are intended to figure out who is a suspect and who isn't. If "interrogation" is a bad label it's because the presumption of guilt is winning the fight.

Some true confessions happen without any interrogation – the suspect confesses instantly, all on his/her own, without any questioning or effort by the police. Most true confessions won't happen that easy. They need to

2 http://S.C.C..lexum.org/decisia-S.C.C.-csc/S.C.C.-csc/S.C.C.-csc/en/item/7878/index.do?r=AAAAAQATaW50ZXJyb2dhdGlvbiBncmFudAAAAAAAAAE

3 http://S.C.C..lexum.org/decisia-S.C.C.-csc/S.C.C.-csc/S.C.C.-csc/en/item/1801/index.do?r=AAAAAQATaW50ZXJyb2dhdGlvbiBncmFudAAAAAAAAAE

be searched for. I used to use the word "elicit" but I've replaced it with "search." Finding citizens who an offender has confessed to needs a "search." "Getting" or "obtaining" a true confession is slang for "searching" – search the conscience for the truth. Confessions are unique evidence because they are composed entirely of words. Like breath samples and blood samples, words are self-incriminating evidence that emerge from the body and like all other evidence, they have to be searched for.

Point #9: The difference between success and failure is what's given up.

Quadruple meaning: The difference between success and failure by whatever definition you chose depends on:

i. how easy you give up;

ii. what bad habits you give up;

iii. what the suspect gives up;

iv. who the suspect gives up.

It's easy to give up when something seems too tough to do. It's easy to do a job wrong instead of doing it right. It's easy to lie about the truth and lie to protect others, especially if you've been conditioned to do this in the past.

This is not a book about how to get a confession at any cost. It's a book about giving up – what to give up and what not to give up. It's about how to get the truth to make sure you've got the right guy, to make sure you never get the wrong guy, and to make sure that the victims and the public get in return what they've given up – tax dollars, trust, and hope.

Point #10: The reason I wrote this book was to make a difference.

"... the exact scope of the Confessions Rule has been the subject of debate over the past century..."

– Supreme Court of Canada[4]

"The law concerning the voluntariness of statements, made by accused persons, to a person in authority, has not always been a model of clarity."

– Justice M. Dambrot, Ontario Superior Court of Justice[5]

Let those two statements sink in. Take a moment and re-read them. They are understatements about how complex and confusing interrogation laws are in Canada. Confession and interrogation laws have been "debated" for over 100 years. They have not been a "model of clarity." It's not an exaggeration to call it chaos. But it's easy for lawyers, judges, and the media to criticize the police who have to make split-second decisions to apply this mess of laws on the frontlines. It's truly hard to believe, but the police are the only ones in the entire criminal justice system who have to unclutter the clutter with rapid-fire decisions. Everyone else does after-the-fact analysis. The police are the only ones who face the test head- on. Everyone else marks the test with the 20/20 vision of hindsight.

4 R. v. Hebert (1990) 57 C.C.C. (3d) 1 (S.C.C.).
5 R. v. Dalzell (2003) CanLII 49355 (ON S.C.).

The system is set up for police failure. Here's what I mean - the academic playing field is extremely tilted. Academic imbalance. Judges, defence lawyers, and prosecutors all have law degrees. Most police officers don't. Policing education doesn't compare with that of the rest of the CJS. Interrogation education and training is nowhere near what it needs to be to balance the playing field. I can make a strong argument that interrogation expertise needs an undergraduate psychology degree and a graduate degree in law. And more higher learning in communication, leadership, and interpersonal relationship skills.

I used to complain that interrogation laws work against the police. *The bad guy gets all the breaks. The bad guy has all the advantages.* Not true. I was narrow-minded. I didn't see the truth until I pursued my education. Complaining about interrogation laws was the equivalent of complaining that my football team should be allowed to jump offside, interfere or hold, just to make it easier to win. The bottom-line is that developing investigative and interrogation expertise takes unwavering commitment to continuing education. It takes a passion for life-long learning.

I've changed careers from police officer to college law-enforcement professor to business owner and football coach but I never stopped being a citizen, father, grandfather, and taxpayer. Like many Canadians, my family has been affected by life-threatening crime. My motivation for writing this book is to help balance the academic playing field and to help with the public safety fight. My motivation is to help officers juggle their careers and personal lives with life-long learning because there's no greater social challenge than public safety. If we can't protect our citizens, we have a big problem because no other social institution will work well.

Based on personal experience, I know how difficult it is to research interrogation laws, how difficult it is to learn and understand them, and how difficult it is to get it right in the interrogation room and then in court. This book is my attempt to help make it less difficult. My writing style is simple – I don't preach, I teach… myself. I talk to myself. I use the word "you" throughout the book for two reasons: (i) it's worked in my other textbooks to make them less academically boring; (ii) "you" also means, "me." Not one word in this book is directed at you per se. I write to myself and share it with the intention of trying to make difference in a world that sorely needs it.

Peace.

Gino Arcaro

Part I: The Basics

Chapter 1
Triple Play

There are three case law rulings that set the focus for interrogation and confessions. These are three case law statements that build the base for interrogation ideology and strategy right off the bat. They prove *value, right, purpose* – the evidentiary value of a confession, the right to interrogate, and the purpose of an interrogation. This triple play of case law defends and justifies interrogation ethics while providing the starting point of interrogation strategy.

Value: *"Confessions are among the most useful types of evidence. Where freely and voluntarily given, an admission of guilt provides a reliable tool in the elucidation of crime, thereby furthering the judicial search for the truth and serving the societal interest in repressing crime through the conviction of the guilty."*

– Supreme Court of Canada[6]

This statement is strong enough to prioritize investigative objectives by making the search for a true confession made to *anyone* as the central focus of any investigation. Not the only priority, the top priority. True confessions made to *anyone* should be at the top of the investigative objective list because no evidence is stronger. There are several types of strong evidence but a true confession has a special place in a league of its own. It's the reason why, *"Did s/he confess?"* is at the top of the list of questions asked when an arrest is made in a major crime. A true confession is generally viewed as the definitive proof of guilt. A true confession is not the end of an investigation but it ends any doubt about whether the right or wrong person was arrested and charged.

A confession **to the police** can be the most valuable evidence in any case because it can remove all doubt about guilt in the minds of judges and jurors if it passes three tests:

i. voluntary/reliability

ii. Charter credibility, and

iii. testimony credibility.

A confession **to a citizen** has even higher value because it has to pass only the credibility test. These tests are the equivalent of forensic tests for physical evidence.

Since true confessions are the most valuable evidence, it stands to reason that interrogation is the number one investigative skill since it should result in a true confession. Interrogation expertise should be at the top of the training goals for any officer who wants to become a detective or wants to make a career as a patrol officer.

Of all the investigative skills, none are more important and more challenging to learn and develop than interrogation. Training and practical experience. Education and action. The secret to developing interrogation expertise is *R.E.P.S. – Repeatedly Experience Practical Skills.*

6 R. v. Smith (1989) 50 C.C.C. (3d) 308 (S.C.C.) at 324.

Right to interrogate: *"A police officer is entitled to question any person whether reasonable grounds or mere suspicion exists, to determine whether an offence has been committed or who committed it."*

– Ontario Court of Appeal[7]

This statement answers simple, basic questions:

1. Do the police need reasonable grounds to formally or informally interrogate a person? No.
2. Can the police interrogate on mere suspicion? Yes.
3. Does this rule apply to the frontline as well as the formal interrogation room? Yes.
4. Can you force a person to answer your questions? No.

The right to ask questions is simple and basic although we're all governed by the laws of human decency and professionalism. You don't have to make apologies for asking interrogation questions, formally or informally when talking to a suspect or accused person or trying to make a list of suspects or confirming/deleting them from the suspect list. Accordingly, it's not illegal, immoral, or unethical to ask, for example, "Did you rob that store? " or, "Why did you break into that place?" You don't need reasonable grounds to ask a question. If the person doesn't want to answer, they have the right to remain silent. Of course, there's a strategic time and place to ask direct formal and informal interrogation questions but my point is that this case law rule is a basic fundamental to remember when you doubt yourself about whether you have the right to ask questions. The time and place to ask direct questions does need strategic purpose but never forget you have the right to ask questions without reasonable grounds, especially if you're on the frontline responding to a life-and-death emergency. The right to ask questions is a legal and ethical strategy to develop proper suspicion or confirm/eliminate it. But always remember that you can't force an answer. Unlike a demand for a breath sample, there's no demand for "answers" in Canadian law.

Purpose: *"Hopefully, admissions of guilt in such a context may contribute to the person's rehabilitation and reintegration into society as a responsible individual."*

– Supreme Court of Canada[8]

This is a powerful message – the purpose of a confession is the redeeming quality of the confession, a benefit for both the offender and the public. Print this and carry it with you. Show it to suspects during interrogations. It's not an inducement to teach a suspect what the law states about the redeeming quality of a confession and it will do the job of appealing to the suspect's conscience. Emphasize the two key words - *rehabilitation and reintegration.*

According to this statement, you should be applauded every time a suspect gives you a true confession. The criminal justice system and society in general should commend you for starting the rehabilitation and reintegration process. When the media, lawyers, or anyone else questions your motives for interrogation, recite this statement made by the Supreme Court of Canada verbatim. Memorize it. Cite the case – *R. v. Smith* (1989) 2 SCR 368. Handout printed copies of the quote. Be sincere. Don't be a smart ass. Mean it straight from the heart. The purpose of interrogation, according the S.C.C., is to help rehabilitate and reintegrate the offender. If you don't try to interrogate a suspect, you're actually neglectful. If the offender doesn't confess, you've failed to help the offender and society. The rehabilitation and reintegration process is stalled without a confession. You can go one step further – confession is spiritual reconciliation. It heals the soul. Repairing the soul is the biggest part of the rehabilitation process.

7 R .v. Moran (1987) 36 C.C.C. (3d) 225 (ONT.CA).
8 R. v. Smith (1989) 50 C.C.C. (3d) 308 (S.C.C.) at 324.

This S.C.C. statement of purpose implies the following:

1. Questioning a suspect is an *expectation.* It is part of the police function. It's their job. They are expected to question potential suspects and determine the truth for the purpose of starting the rehabilitation and reintegration process.

2. A true, voluntary confession is a *change agent* and vital for social improvement.

3. True, voluntary confessions are a *crime prevention* strategy. They are *proactive public safety strategy.* A rehabilitated offender won't become a recidivist. Preventing crime is the primary aim of law enforcement. A confession is a fast, cost-effective method that enables offenders to become productive members of society.

4. The *absence* of a confession means multiple benefits are lost. Not trying to get a confession or failing to get one costs the offender and the public in potential recidivism.

Here's the first lesson in interrogation strategy – state the purpose. Inform the suspect why you're questioning him or her. Teach the suspect the redeeming benefits of confessing. Include the source – the Supreme Court of Canada. It's not an illegal inducement to tell the truth by teaching law and stating a fact. There's no illegal promise or threat by telling a suspect that the top court in the country stated that a confession can rehabilitate and reintegrate. And it accomplishes the goal of all interrogation strategy – appeal to the conscience and trigger the inner compulsion to confess.

When should you tell the suspect? At what point of the interrogation should you invoke this statement? The answer is found in the "strategize and improvise" decision-making model. Build a general plan before you start the interrogation and adapt to the unexpected and ever-changing circumstances of any conversation, including interrogation. Don't wing it but don't script it. Analyze your case. What are the strengths and weakness of your evidence? What factors will appeal directly to this specific suspect?

Here are your options – open with the Court's statement or choose to delay it. The first option is to use it as the first play, the primary strategy that opens the interrogation. Tell the suspect right off the bat exactly what the S.C.C. said. This can set the tone by building the right focus – away from external consequences. The right focus is for the suspect to solve his/her most immediate problem – guilt. Cognitive dissonance – the growing pressure of inner conflict that, left unchecked, will explode into an inner hell. That focus is what triggers the *self-generated confession,* the type of confession that the S.C.C. has ruled passes the voluntary/ reliability test for confession admissibility.

The second option is use the rehabilitation/reintegration strategy as backup – inform the suspect of it after other strategies have built the interrogation base. Your choice is part of the decision-making process that characterizes every interrogation. All dialogue, including interrogation, is a series of decisions made about what to ask, what to answer, and what to comment on. Every word spoken and all silence during an interrogation is a product of a decision, consciously or subconsciously made. Nothing just happens during an interrogation. Nothing is said randomly. Every word spoken and all silence is decided through habit, the hardwiring of thought and speech created through repeated practice until it becomes second-nature communication – speech fingerprint. Listen to yourself closely. Pay attention to how you converse casually and how you question anybody, professionally or privately. You'll find predictable patterns – speech DNA that positively identifies you. Or negatively identifies you. It all depends on what type of impact you make on your audience – positive or negative.

You can do the same with your audience. Listen to those involved in your conversation. Paying attention will identify habitual speech patterns that reveal the person's inner workings – mind, heart, soul. What we say shows what we think. How we say it shows how we think.

The decision to use any interrogation strategy depends on the conclusions drawn from pre-interrogation analytics – what strategy will appeal the fastest and the strongest to the offender's conscience? What will make the biggest impact on the offender's compulsion to confess, triggering the inner urge to reconcile cognitive dissonance by telling the truth? The "strategize & improvise" approach will build a general plan and develop the ability to adapt while the interrogation is in progress. Scripted interrogations are inflexible and can't predict the outcome of every question/comment. Winging it won't work out because unstructured dialogue misses the target due to randomness – no aim, no direction.

Delivering the rehabilitation/reintegration case law statement will generate an outcome. It may generate a verbal response or silence but it will strike a chord if you get the message across. *Striking the chord* is the goal of every interrogation strategy. Appealing to the conscience and triggering the inner compulsion to confess using the all-natural approach – setting in motion the inner sense of right and wrong. Every true confession happens after the chord is struck. No exception. Instant confessions and delayed confessions all happen after the chord is struck. Every investigator has hardcore evidence of how many people an offender has told about wrongdoing without any interrogation prompting whatsoever. The volume of confessions made to citizens (persons not-in-authority) is overwhelming proof that the inner urge to confess is a force of nature that works without any police questioning. Conversely, offenders don't confess when the chord is not struck, when the conscience is not relied on to work out the problem.

How many times you use the same play depends on rapid-fie analysis of the outcome. The number of times you say the same thing depends on whether it is working or not. Confessions are solution to two problems – misconduct and guilt, the chain reaction between wrongdoing and paying the price internally. You'll never go wrong by repeating what the S.C.C. has taught us about the connection between confession and rehabilitation/reintegration.

How many different ways can you effectively, legally, and morally say the same thing? Plenty. Be creative, speak from the heart, and combine other important strategies, especially emphasise the connection between choice/free will and truth/honesty, for example:

- Telling the truth is life-changing. It's your choice.
- Telling the truth is the first step to rehabilitation, to becoming a productive member of society. You control that choice.
- Telling the truth is the moral way to heal what needs to be healed. You control the decision.
- Nothing changes inside us until we tell the truth. It's completely up to you.
- The first step in changing ourselves is telling the truth. No one can force you to tell the truth. No one can force you to change.
- Nothing changes inside ourselves as long as we keep bullshitting ourselves. Note: street-talk has a purpose. Street-talk is the official language in many places. I've never read a case law decision that directly bans profanity. But, case law is clear about the context – the big picture. How words like 'bullshit' are perceived depends on the context, specifically how it affected the suspect's free will.

There's a line that you can't cross. Street-talk benefits include speaking at the level of the suspect's sophistication. Contrary to popular myth, interrogation rooms don't pit saints versus sinners. Social values have changed. Words like 'bullshit' are not considered gratuitous obscenity in every social world. How can we condemn street-talk when it has become the official language in some social circles? Street-talk does have a purpose as long as you don't cross the line.

- The first step in rehabilitation is healing the soul. It starts with honesty. Telling the truth is healing. We all have free will. Life is about choices. What we become or don't become is our choice. Its starts with honesty. We can lie to ourselves but don't expect positive change. Self-deception is a trap, a viscous cycle that keeps us the same without moving forward. Telling the truth is powerful. It rehabilitates and helps you get on with your life by reintegrating in society so you can make a positive impact on the world.

None of this is preaching. Coaching football taught me the power of motivational speaking. There's a direct connection between inspirational communication and interrogation. Telling the truth instead of lying requires change. The best way to change people is to give them hope. The best way to convince someone to tell the truth is to teach them about hope and show them a sign of hope as an act of good faith. Hopelessness promotes more of the same. Every time someone has told you the truth, you've lifted their soul. Every time you've told the truth to someone else, they lifted your soul. Believe it. Review your past interrogations. Whether you're a uniform officer or detective, analyze your past and you'll find common ground – soul-lifting.

Healing the soul makes a powerful impact on any guilty offender. Anyone who is carrying the burden of a crime needs to relieve the inner hell of guilt. In the same case as the reintegration comment, *R. v. Smith* (1989), the S.C.C. added the following statement:

"There is nothing inherently wrong with the taking of a statement from a person who feels the ***need*** *to relieve guilt pressures and who therefore waives his right to counsel."*

The S.C.C. made it clear – "relieving guilt pressure" is real. It's an inner motivation for offenders to confess. It's not a "want," it is a "need." But needs are not created equal. There are ordinary needs and there are ones that you can't live without – basic survival needs. When guilt turns up the pressure, relieving it becomes a basic survival need – much more than an ordinary need. The reason is that guilt is painful. Pain is distracting. It gets in the way of peace, breaking focus on what we want to do with our lives. Getting rid of guilt is a top priority because it blocks the peace and happiness that we make a life out of striving for. And most importantly, "there is nothing inherently wrong" with the strategy of emphasizing that "need" by taking a confession from the suspect. Relieving guilt pressure is part of the soul-healing process. It's part of the interrogation **intangibles** – what works behind-the-scenes can't always be seen. The intangibles are what makes interrogation challenging and controversial. What can't be seen becomes a mystery. Mysteries are filled with uncertainties. Uncertainties promote one of the worst types of fear – fear of the unknown. Fear it, criticize it. The controversy surrounding interrogation stems from fear of the intangibles that remain unknown to the uninformed.

The Triple Play case law is the starting point of the ethical interrogation mindset. High-performance of any skill starts at the top with the right mindset. In this case, the right mindset is to adopt the case law thinking – think exactly like Canadian courts think. Speak the message of Canadian courts by translating it into ordinary language during every interrogation. It's the simple common-sense approach – follow the leader. It's the defence mechanism that silences the critics. Crisis management through case law management.

The Triple Play shows that true confessions are a solution to two problems – misconduct and guilt: the chain reaction between wrongdoing and paying the price internally. You'll never go wrong by maintaining that perspective – an interrogation is meant to be a problem-solver not a means to condemn. Interrogation is a solution to the problem of misconduct and guilt, not a punishment. Telling the truth is a natural pain-reliever, not a pain-inducer. Critics won't call interrogation "psychological manipulation" when you speak the case law language of Canadian courts. They'll call it "necessary."

A true, admissible confession is valuable evidence. Developing interrogation skill doesn't just happen. It takes practical experience and training. Arcaro's *Interrogation Case Law Book* is a training and research source that will facilitate the development of interrogation expertise.

Author Gino Arcaro is an ex-police officer/detective and ex-college professor. His six law enforcement books are used across Canada in both policing and teaching settings.

Public Prosecution Service of Canada
Cited under "Criminal Law Reference Works," Arcaro's *Criminal Investigation: Forming Reasonable Grounds*" is short-listed as a resource available to Crown Prosecutors, with regards to policing matters.

Military Police: Since 2005, *Criminal Investigation: Forming Reasonable Grounds* has been cited by the Canadian Forces National Investigation Service as a supplementary investigation reference manual for use by Military Police. *Basic Police Procedures* has since been added to to this short list of resource materials. For more information or to purchase a law enforcement book, please visit: www.ginoarcaro.com.