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PUBLIC OPINION AND EXCLUDING EVIDENCE UNDER SECTION 24(2) OF THE *CHARTER*: A RECENT POLL

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PUBLIC OPINION AND EXCLUDING EVIDENCE UNDER SECTION 24(2) OF THE *CHARTER*: A RECENT POLL

Matthew Wolfson*

I. INTRODUCTION

Since the advent of the *Canadian Charter of Rights and Freedoms*,[1] the Supreme Court of Canada has frequently considered what investigative techniques employed by police are disreputable to the justice system at large. The technique of most importance is the constitutional provision that allows the judiciary to exclude evidence based on such considerations—section 24(2) of the *Charter*. Since establishing the system's repute is part of the formal legal test for admissibility of improperly obtained evidence, judges typically perform a mental exercise, imagining what the "reasonable person" would find acceptable. An assumption of this paper is that it is helpful for jurists to inquire into the views of the Canadian citizenry in order to arrive at a realistic conception of the "reasonable person."

The aim of this study is to compare the outcomes of five of the Supreme Court of Canada's landmark section 24(2) analyses with public opinion as to when evidence is justly excluded from criminal trials. Accordingly, this study includes a survey conducted in 2011 to more fully understand what evidence-gathering measures are truly disreputable in the eyes of the Canadian citizenry. The survey was designed and administered for a graduate research paper in Criminology and Criminal Justice Policy at the University of Guelph. The survey is intended to capture any variance or overlap between the views of a sample of ordinary citizens and the Supreme Court of Canada's judgments on evidence exclusion. To contextualize this survey, a brief history of the exclusionary rule in Canada and a discussion of public opinion in juridical tests is provided in this paper.

II. THE EXCLUSIONARY RULE IN CANADA

The Canadian constitutional practice of excluding improperly obtained evidence predates the entrenchment of the *Charter*. However, when evidence was excluded under common law, the reason for doing so had less to do with ensuring procedural correctness. In the pre-*Charter* days of the common law, convictions could only be based on reliable evidence, and the common law thus always contained rules meant to ensure that confessions given to police were accurate.[2]

Morissette aptly articulates the common law's emphasis of truth over the intrinsic value of "proper" policing: "beat a man into confessing, and he could lie. The evidence is unreliable, and thus must be excluded. Beat a man and pump his stomach to find the stolen diamonds he

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[1] *Canadian Charter of Rights and Freedoms*, s 8, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

[2] Hamish Stewart, "The Confessions Rule and the Charter" (2009) 54:3 McGill LJ 517 at 522.

swallowed, the diamonds can be admitted as reliable evidence."[3] In cases of treason, for example, the English ruling houses of the Tudors and Stewarts ruled that admitting confessions required two witnesses given the suspicions raised by self-incrimination for such a serious offence.[4]

A few centuries later, the common law rule for exclusion was expounded on in *Waricshall's Case.* Here, it was held that a statement could not be used if there was a promise, threat, or coercion involved in its attainment because such inducements could affect the reliability of the confession.[5] In 1914, it was held in *Ibrahim v R* that a confession would be inadmissible if it was made out of "fear of prejudice or hope of advantage from a person of authority."[6] In short, until the few years leading up to the advent of the *Charter*, evidence was admissible if it was reliable. The manner in which it was obtained was generally irrelevant.

Even until just a few years before the advent of the *Charter*, the emphasis was still placed on the reliability of the evidence rather than the rights of the accused. This was demonstrated in the case of *R v Wray*.[7] Wray, a juvenile, was held in police custody and not given an opportunity to speak with counsel before confessing to a murder. Soon after confessing, he escorted the police to the swamp where he had left the murder weapon. The Supreme Court of Canada held that the trial judge erred in excluding the evidence on the grounds that he did not have the authority to "exclude admissible evidence because in his opinion, it would bring the administration of justice into disrepute. The test of admissibility of evidence…is whether it is relevant to the matters in issue."[8] The court held in *Wray* that evidence may be excluded only when it is gravely prejudicial to the accused and where its probative value is so trifling that its admission as evidence at trial would be unfair.[9]

While it is true that there was no formal, constitutional entrenchment of legal rights before the *Charter*, there were some limited means to deem evidence inadmissible on the grounds of fairness. Just before the advent of the *Charter*, another notable case suggested a shift on the approach to exclusion. Conway also noted that in *Rothman v The Queen*, the court ruled that the accused could not have his confession admitted into evidence if he was not in the proper state of mind to give it.[10] In other words, the accused had to confess wilfully and voluntarily. Rothman was kept in a police holding cell after refusing to speak to police about the allegations against him. A plainclothes officer was able to elicit from Rothman a confession of possessing a controlled substance by questioning him while posing as a co-confined truck-driver. The court came to the conclusion that the accused had the requisite voluntariness to make a valid confession as he did not believe that he was speaking to an authority figure. As such, there was no coercion or advantage promised to him had he confessed. Justice Martland stated for the majority: "the Court is not immediately concerned with the truth or reliability of the statement made by the accused, but with the question as to whether the statement he has made was free and voluntary, with the stated rules and whether the confession was the utterance of an operating

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[3] Yves-Marie Morissette, "The Exclusion of Evidence under the *Canadian Charter of Rights and Freedoms*: What to Do and What Not to Do" (1984) 29:4 McGill LJ 521 at 523 [Morissette].
[4] Rosiland Conway, "No Man's Land: Confessions, Not Induced by Fear of Prejudice or Hope of Advantage" (1984) 42:1 UT Fac L Rev 26 at 27 [Conway].
[5] *Ibid*.
[6] *Ibid*, citing [1914] AC 599 at 609 (HK PC).
[7] [1971] SCR 272 at 273, 1970 CanLII 2 [*Wray*].
[8] *Ibid* at 287, citing *Kuruma v R*, [1955] AC 197 at 203.
[9] *Ibid* at 293.
[10] Conway, *supra* note 4, citing [1981] 1 SCR 640 at 671-72, 1981 CanLII 23.

mind."[11] This represents a pre-*Charter* decision that emphasized a rights-based approach and a standard of fairness apart from the reliability of the evidence obtained.

III. THE *CHARTER* ERA OF EXCLUSION

Since Canada adopted the *Charter*, the judiciary has had an expanded role as a guardian of civil liberties. Among its new duties was that of excluding the exclusion of evidence from criminal proceedings if its collection was found in ways that violated such rights.[12]

Despite the fact that the court now had an entrenched rights-document providing for the remedy of evidence exclusion, the new provisions left the court with considerable interpretive challenges. The court would now have to determine not only how investigative techniques would have contravened *Charter* rights, but also the contexts in which they would be egregious to warrant exclusion. This was a role that greatly expanded upon the determination of a prejudicial effect as required in *Wray*. At a minimum, the *Charter* would require the court to decide if: (1) the accused's *Charter* rights have been infringed; and (2) if so, admitting evidence collected by way of a rights violation would negatively affect the reputation of the justice system. The second condition is of particular importance. If the court were to find that admitting the evidence would not harm the repute of the justice system, it could be admitted despite a clear rights violation.

The cases *R v Collins*[13] and *R v Stillman*[14] were significant developments in the court's struggle to determine the disrepute element of section 24(2). In the case of *Collins*, a police officer seized the accused by her throat and tackled her to prevent her from swallowing a balloon of heroin. Since the Crown had not proved the officer's probable grounds for a search, the court regarded the tackle as unreasonable,[15] and the evidence was excluded under the *Charter*.[16] After completing the first step of determining whether the police had committed a rights violation, the Supreme Court of Canada in *Collins* spoke to a three-prong test, which required judges to consider three elements: (1) whether or not the admission of evidence would render the trial unfair (much of this evaluation would depend on whether or not there was real evidence which would exist irrespective of a *Charter* violation, and if this evidence could possibly be discovered without a breach of the *Charter*); (2) the seriousness of the *Charter* violation (for instance, whether it was flagrant or inadvertent); and (3) the effects of excluding the evidence.[17] In other words, the court decided that, other things being equal, it is more likely that evidence obtained by a *Charter* violation should not be excluded if it were likely to be found regardless of the *Charter*-infringing conduct. This would include if the evidence could have easily been found through other legal means available to the police or if the rights violation was innocuous. In essence, this ruling clarified a constitutional prohibition against the kind of "conscriptive evidence" gathering tactics employed in *Wray*. At the same time, it clarified judges' ability to admit evidence where circumstances would permit.

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[11] *Ibid*.
[12] *Supra* note 1, s 24(2) ("Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute").
[13] [1987] SCR 265, 1987 CanLII 84 [*Collins* cited to SCR].
[14] [1997] 1 SCR 607, 1997 CanLII 384 [*Stillman*].
[15] *Collins*, *supra* note 13 at paras 29, 45.
[16] *Supra* note 1, s 8 ("Everyone has the right to be secure against unreasonable search or seizure").
[17] *Supra* note 13 at paras 37-39.

In *Stillman*, the Supreme Court of Canada made the condition of fairness the primary criterion for excluding evidence. Fairness was to be adjudicated primarily on conscription and the discoverability of evidence. Stillman, accused of murder, was coerced by threat of force to surrender dental impressions, hair samples from his scalp, and pubic hair samples, even after his counsel notified the police that he would not consent to giving statements or surrendering any bodily samples. The court ruled that the evidence-gathering techniques violated the accused's right to be free from unreasonable search and seizure, and was thus excluded. One reason for this decision was that bodily integrity is among the highest privacy interests.[18] It is also worth noting that a tissue that Stillman discarded in a wastebasket was used for DNA testing, and was held to be admissible on the grounds that the rights-infringing conduct in obtaining it was not serious.[19] In this case, the majority of the court decided to narrow the *Collins* test by considering two questions, which related only to the discoverability criterion: (1) whether the evidence was conscripted (i.e. whether the accused was compelled to aid in the investigation against him/herself); and (2) whether the evidence could have been discovered without the rights violation.[20] After *Stillman*, evidence would be far more likely excluded when it was conscripted and could not have been found without such conscription.

IV. THE CURRENT TEST

In 2009, the Supreme Court of Canada finally responded to the critique that the previous section 24(2) tests resulted in "all-but-automatic exclusion" of non-discoverable conscripted evidence.[21] In *Grant*, the court devised a more robust test to address additional considerations relevant to section 24(2). In *Grant*, three Toronto police officers spotted the accused in a neighbourhood known for frequent criminal activity. The police asked him to identify himself and whether he had a criminal history. While questioning the accused, he adjusted his jacket, and the officers told him to keep his hands in front of him. The officers also asked as to whether he was carrying "anything [he] shouldn't." As a uniformed officer was questioning Grant, two plainclothes officers took positions behind the uniformed officer, blocking his path forward. In doing so, the court found that the officers unwittingly detained Grant,[22] and thus triggered his *Charter* right to a caution.[23] Under these conditions, Grant admitted to having cannabis and a gun, resulting in his arrest.

The Supreme Court of Canada found that although the police violated Grant's rights, they did so in an unwitting and non-egregious manner.[24] While the *Charter* violation called for exclusion of the evidence, the public interest in the adjudication of a gun-related case and the merits of the evidence weighed strongly in favour of its admission.[25] The court took the opportunity to refine its decisions in *Collins* and *Stillman* by offering a revised test for deciding whether to exclude evidence. This test requires three factors to be balanced: (1) the seriousness

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[18] *Stillman, supra* note 14 at paras 50, 87.
[19] *Ibid* at para 128.
[20] *Ibid* at para 107.
[21] *R v Grant*, 2009 SCC 32 (CanLII) at para 64, [2009] 2 SCR 353 [*Grant*].
[22] *Ibid* at paras 47-52.
[23] *Ibid*; *Charter, supra* note 1, s 9 ("Everyone has the right not to be arbitrarily detained or imprisoned." Section 10(b) of the *Charter* reads as follows: "Everyone has the right on arrest or detention…to retain and instruct counsel without delay and to be informed of that right…").
[24] *Grant, supra* note 21 at paras 133, 140.
[25] *Ibid*.

of the *Charter*-infringing state conduct; (2) the impact of the infringement on the accused; and (3) the public interest in adjudication on the merits of the case.[26] Consequently, if a piece of evidence is not collected in a *Charter*-compliant manner, but the infringement is not egregious and the crime is serious, the court would now be more likely to admit the evidence.

The invocation of the public interest in *Grant* is significant because it arguably invites the courts to consider the views of the community in performing the section 24(2) test. Arguably, the third prong of the *Grant* test goes to the heart of section 24(2), as it connotes public confidence in the administration of justice.

A corollary to a judicial inquiry into community views and standards is a consideration of public confidence in the courts. According to some researchers, overall confidence in the courts is closely linked to their specific decisions.[27] This underlines the importance of public opinion polls on what the community finds to be shocking, fair, and reputable in the legal context. While it is generally accepted that the "public interest" element is best determined by the "reasonable person" test and by Parliament, public polls may be of help in evaluating what community values the courts find to be related to section 24(2) analyses.

V. THE CONTROVERSY OVER POLLING THE PUBLIC ON MATTERS OF SECTION 24(2)

The Supreme Court of Canada has clearly stated that public clamour cannot be the test for admitting evidence. There are several Supreme Court of Canada opinions where this controversy was explicitly discussed. In *R v Therens*, Justice LeDain in dissent wrote:

> I am also of the opinion that the question of whether evidence must be excluded because, having regard to all the circumstances, its admission would bring the administration of justice into disrepute is a question of law which may be determined by a court without evidence of the actual or likely effect of such admission of public opinion. Obviously, the application of the relevant factors or considerations will turn in some cases on matters of fact which must be established by evidence, but the meaning and application of the standard in s. 24(2) is, like other questions of admissibility of evidence, a question of law. A court is the best judge of what would bring the administration of justice into disrepute. There is no reliable evidentiary basis for determining what the actual effect on public opinion would be of the admission of evidence in the circumstances of a particular case.[28]

Also, in *Collins*, Justice McIntyre wrote:

> I do not suggest that we should adopt the 'community shock' test or that we should have recourse to public opinion polls and other devices for the sampling of public opinion. I do not suggest that we should seek to discover some theoretical concept of

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[26] *Ibid* at paras 91-97.

[27] James L Gibson & Gregory A Caldiera, "Blacks and the United States Supreme Court: Models of Diffuse Support" (1992) 54:4 J Politics 1120; David Adamany & Joel B Grossman, "Support for the Supreme Court as a National Policymaker" (1983) 5:4 Law & Pol'y Q 405 at 406; Joseph Tanenhaus & Walter F Murphy, "Patterns of Public Support for the Supreme Court: a Panel Study" (1981) 43:1 J Politics 24; Joseph F Fletcher & Paul Howe, "Canadian Attitudes toward the Charter and the Courts in Comparative Perspective" (2000) 6:3 IRPP Choices 4 [Fletcher].

[28] [1985] 1 SCR 613, 1985 CanLII 29 (SCC) at para 78 [*Therens*].

> community views or standards on this question. I do suggest that we should adopt a method long employed in the common law courts and, by whatever name it may be called, apply the standard of the reasonable man.[29]

The main objections of public polling that have been stated by the Supreme Court of Canada are: (1) the evidence would likely be unreliable as no survey could convey all of the circumstances about a case so as to allow the case to be understood; (2) if survey-based evidence were required for a certain case, and the accused could not bear the costs of obtaining the polling evidence, its absence would reduce the availability of a section 24 remedy; and (3) the public may not have reasonable views.[30] Like the Supreme Court of Canada, Morissette argues that conducting opinion polls on section 24(2) issues could amount to "trial by mob" and that most Canadians are likely unaware of the existence of this section.[31] As such, "judges should concentrate on what they do best: finding within themselves, with cautiousness and impartiality, a basis for their own decisions, [and] articulating their reasons carefully."[32]

Dale Gibson, on the other hand, found advantages to public polls. He pointed to Justice Seaton's comment, "the views of the community at large, developed by concerned and thinking citizens, ought to guide the courts when they are questioning whether or not the admission of evidence would bring the administration of justice into disrepute."[33] Gibson posited the possibility that without data, courts may simply be unable to represent the community beyond the limits of their own views.[34] Although the court may have reason to be wary of polling, the findings may indicate whether judicial standards of disrepute are comparable to those of the citizenry. It is the position of this paper that a judge's independent consideration of opinion polls, read for the sake of informing his/her knowledge of public views of section 24(2) cases, would not conflict, but rather enhance, his or her ability to realistically conceive of the "reasonable person" in everyday society.

Former Chief Justice Lamer contends that a barometer of public opinion cannot simply measure the repute of the justice system. To him, the public would unduly favour admitting evidence, and that even egregious police practices might not shock the public.[35] His arguments are consistent with other surveys' findings of public attitudes toward the exclusion of evidence in hypothetical section 24 cases of drunk driving, possession/distribution of illicit drugs, and crimes against the person. Bryant, Gold, and Stevenson found that the public heavily favoured the admission of evidence even when rights violations occur.[36] For instance, in hypothetical cases where police officers seized drugs while unaware that the applicable search warrant had an error,

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[29] *Supra* note 13 at para 51. Justice McIntyre also draws reference to *R v Strachan*, 25 DLR (4th), 1986 CanLII 1281 (BCCA) at para 88, in which Associate Justice Esson gives support for McIntyre's view, but also argues that when applying section 24(2), judges must also have a regard for the prevailing views of the community.

[30] *Therens, supra* note 28 at para 78; *Collins, supra* note 13 at paras 32-33.

[31] Morissette*, supra* note 3 at 537.

[32] *Ibid* at 538.

[33] Dale Gibson, "Shocking the Public: Early Indications of the Meaning of "Disrepute" in Section 24(2) of the Charter" (1983) 13 Man LJ 495 at 497 [Gibson], citing *R v Collins*, 148 DLR (3d) 40, 1983 CanLII 271 (BCCA) at para 27.

[34] *Ibid* at 497-498.

[35] The Right Honourable Antonio Lamer, "Protecting The Administration of Justice From Disrepute: The Admissibility of Unconstitutionally Obtained Evidence In Canada" (1998) 42:2 Saint Louis ULJ 345 at 354-55.

[36] Alan W Bryant et al, "Public Attitudes Toward the Exclusion of Evidence: Section 24(2) of the Canadian Charter of Rights and Freedoms" (1990) 69:1 Can Bar Rev 1 [Bryant].

85.2% of the respondents were in favour of admission of the evidence.[37] The respondents' support for admission dropped to only 62.1% in cases where the police flagrantly searched the suspect's home without a warrant or exigent circumstances.[38]

Given these findings, the former Chief Justice may very well have been right in assuming that the public would usually favour admission of evidence collected through *Charter* violations. Regardless of the results, the greater role that perceptions of repute play in the new *Grant* test call for greater consideration of the contemporary Canadian conscience. It is for this reason that a study such as this is called for.

This point was aptly articulated by Justice L'Heureux-Dubé in her dissent in *R v Burlingham*. Citing the Bryant study, she stated:

> One of [the purposes of s. 24(2) of the Charter] is therefore to ensure that the institution charged with upholding those fundamental values does not lose legitimacy in the eyes of those whose values it is entrusted to protect.
>
> Given the role of s 24(2) of the *Charter* , it is just as important that we remain faithful to the spirit and purpose of this remedial provision as it is to remain consistent with the purpose of the individual rights and freedoms guaranteed within the *Charter*…
>
> ...
>
> I note, as well, the findings of carefully conducted surveys which suggest that, although the Canadian public shares this Court's views as to what factors are important in the exclusion of evidence under section 24(2) , there is a material gap between public opinion and this Court regarding how those factors would be applied: see A. W. Bryant, M. Gold, H. M. Stevenson and D. Northrup, "Public Attitudes Toward the Exclusion of Evidence: Section 24(2) of the Canadian Charter of Rights and Freedoms " (1990), 69 *Can. Bar Rev.* 1, and "Public Support for the Exclusion of Unconstitutionally Obtained Evidence" (1990), 1 *S.C.L.R.* (2d) 555. On one hand, I am in basic agreement with the concern expressed in *Collins,* at p. 282, that "[t]he *Charter* is designed to protect the accused from the majority, so the enforcement of the *Charter* must not be left to that majority". I am also sensitive to the fact that public opinion surveys, no matter how carefully culled, are rarely without their weaknesses. On the other hand, however, given that the express purpose of s. 24(2) is to maintain the repute of the justice system, I believe that we also cannot dismiss them completely out of hand. A periodic "reality check" is both healthy and necessary in order to ensure that the discretion to exclude evidence under s. 24(2) is exercised in conformity with long-term community values.[39]

This study was not conducted with the purpose of advancing "trial by mob." It is meant to serve as the "reality check," which Justice L'Heureux-Dubé aptly notes to be healthy. It is in this way that this study may be useful.

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[37] *Ibid* at 27.

[38] *Ibid*. See also *Ibid* at 42 (Respondents were significantly more supportive of exclusion when rights violations become more egregious, or flagrant, but were also slightly more supportive of the admission of evidence when the nature of a crime was more severe – indicating congruence with the section 24(2) factors deemed important by the SCC).

[39] [1995] 2 SCR 206, 1995 CanLII 88 at paras 72-74 [*Burlingham*].

VI. METHODOLOGY

The primary purpose of this study is to measure the congruence between the sentiments of the Canadian citizenry and the judgments of the Supreme Court of Canada on the exclusion of evidence in criminal cases.

A vignette-survey was distributed to ninety-nine respondents.[40] It was composed mostly of items questioning respondents for their opinions as to whether certain evidence ought to be admitted or excluded. These vignettes described the actual facts of five Supreme Court of Canada cases: *Grant,*[41] *R v Harrison,*[42] *R v Suberu,*[43] *R v Morelli,*[44] and *Stillman.*[45] Upon hearing a brief explanation of the purpose of section 24(2) and reading the facts of each case, participants were asked to imagine themselves as Supreme Court of Canada Justices and decide to either admit or exclude the evidence in question. In order to minimize bias, the vignettes divulged minimal information regarding the character, race, socio-economic status, and prior convictions of each of the accused. After choosing whether they would want the evidence to be admitted or excluded, respondents read a very condensed summary of the majority opinion for each case. Where the respondents' initial judgments were different from the majority opinion, they were then asked if the majority's reasoning changed their minds.[46]

In addition to descriptions of the cases' facts, the vignettes included hypothetical alterations of the facts of each case. In other words, respondents were asked to consider a scenario in which all the facts of the previous case would remain the same—save for one particular fact being changed. The purpose of tweaking the facts was to measure if variation in responses was due to the rights-violating conduct of the police (flagrant or unwitting), the impact of the violation on the accused, the seriousness of the offence, and the centrality of the evidence (i.e. how necessary the evidence is for securing a conviction).[47]

VII. LIMITATIONS

It should be noted that the sample used in this study was not expected to be a statistically significant representation of the Canadian population. Such a sample would be ideal, but due to the time constraints of this project, this was not possible. It is also worth noting that the ninety-nine surveys were not distributed using simple random sampling, but instead, quasi-random sampling techniques. Pedestrians passing by were approached by the surveyor and asked to participate.

Although all participants did not have an equal chance of being selected, some measures were taken to draw a more representative sample. Three different sampling sites were chosen:

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[40] See Appendix A for summaries of these cases and survey questions as provided to the respondents.
[41] *Supra* note 21.
[42] 2009 SCC 34, [2009] 2 SCR 494 [*Harrison*].
[43] 2009 SCC 33, [2009] 2 SCR 460 [*Suberu*].
[44] 2010 SCC 8, [2010] 1 SCR 253 [*Morelli*].
[45] *Supra* note 14.
[46] Some respondents initially answered "Not Sure" and then again answered "Not Sure" as to whether or not they would change their answers after reading the reasoning of the court. See Appendix B, tables 2.3, 2.5, 3.3, 3.5, 3.7, 4.3, 4.5, 5.3, 6.5, 6.7, 6.9. For these tables, the items "No" and "Not Sure" were collapsed together. This is because one saying that he or she was unsure before, and is still unsure as to whether s/he would change his/her answer is synonymous with saying that s/he would not change his/her original answer.
[47] See Appendix A, table 1.

Stone Road Shopping Mall in Guelph, Ontario, Jackson Square in Hamilton, Ontario, and Dundas Square in Toronto, Ontario. Forty-five surveys were administered in Guelph, thirty were administered in Toronto, and twenty-four were administered in Hamilton. These particular cities were chosen largely for higher pedestrian traffic.

Another method used was the distribution of a five-dollar inducement for each survey completed. This provided an incentive for participation apart from any special interest in criminal law.[48]

Once all of the survey data were collected, they were analyzed and expressed in percentage tables made with the Statistical Program for the Social Sciences (SPSS). The percentage tables show the proportions of the respondents that would admit the evidence in each scenario, those that would exclude it, the valid percentages of such proportions, and the margin of error for each statistic.[49]

For the purposes of illustrating how the considerations of the current section 24(2) test applies to the cases of the survey, I have organized each case by the seriousness of the rights violation, the alleged crime and the seriousness measured by its maximum sentence, the type of rights violation, and the outcome variable—the court's ruling.

VIII. FINDINGS

The case fact summaries, judgment synopses, and accompanying survey questions shown below are presented as they were on the survey. The percentage tables have been added to follow their respective survey items.[50]

IX. DISCUSSION

(a) INITIAL OBSERVATIONS AND A PREFERENCE FOR ADMISSION

A cursory glance of the figures leads to the conclusion that the sample is generally in favour of the admission of evidence. A significant majority of the sample would admit the evidence in all cases except for *Stillman.*[51] For instance, in *Suberu*, the court ruled to have the evidence admitted, and the sample overwhelmingly agreed (76.8% for admission).[52] Conversely, although six of the seven justices ruled that the evidence ought to be excluded in *Harrison*, the sample overwhelmingly disagreed (71.7% for admission).[53] For *Morelli*, a staggering 83.8% (eighty-three respondents) of the sample would have the evidence admitted, whereas the Supreme Court of Canada's reasoning persuaded only 26.8% (twenty-two respondents) of those eighty-three respondents to change their response.[54] This would bring the total number of respondents opting to admit down to 60.6% of the sample (sixty respondents), which is still a

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[48] For frequencies on the sample demographics, see Appendix A.

[49] Margin of error was calculated as $x = \pm 2.58\sqrt{p(1-p)/n}$. A factor of (2.58) was used in order to have a 99% confidence level as opposed to a 95% confidence level. This seemed prudent given the small sample size. It is also worth mentioning that the margin of error cannot be strictly relied upon, as the respondents were not selected through simple-random sampling.

[50] See Appendix B.

[51] See Appendix B, tables 2.1, 3.1, 4.1, 5.1, 6.1.

[52] See Appendix B, table 4.1.

[53] See Appendix B, table 3.1.

[54] See Appendix B, tables 5.1, 5.2.

clear majority. Assuming that the public finds possession of child pornography to be particularly odious, people may have opted to admit evidence based on the nature of the charge more than any other factor. When considering the responses for other cases, the results show more tempered and rights-conscious attitudes.

(b) EGREGIOUS POLICE CONDUCT

One clear finding presented by the data is that, although they tended to favour admission in most cases, respondents opted to exclude in greater numbers when the rights-infringing conduct of the police became more egregious. This shows some congruence between the public's and the court's different reasoning. For instance, upon reading the facts of *Stillman*, only 35.7% of respondents would admit the bodily samples taken by force, while 59.2% would exclude it. Of the fifty-eight respondents that would initially exclude those samples, 46.6% (twenty-seven respondents) would admit the discarded tissue, and 50% (twenty-nine respondents) would exclude it.[55] Since a majority of respondents would exclude the conscripted evidence, and approximately half of that majority would admit the tissue, there seems to be some overlap between the logic of the public and the court regarding the seriousness of a rights violation.

For the portion of the survey on *Grant*, the facts were tweaked such that the officers' conduct would be considerably more egregious. When testing if this change of circumstances would alter responses, the data again suggested a public disdain for aggressive behaviour from state authorities. After reading only the facts from *Grant*, 63.3% of the sample would admit the evidence.[56] This agreement with the court's decision to admit could be due, at least in part, to the fact that the officers' detention of the accused was unwitting and the legal definition of detention was still unclear.[57] However, in the hypothetical survey question, the police threaten Grant in order to coerce him into emptying his pockets, which is clearly more egregious rights-infringing conduct. Once the police conduct was made to appear more problematic, a substantial number of respondents decided to change their answers on admissibility. 70.5% (forty-three respondents) of the sixty-two who originally answered "admitted" would change their answers in light of such conduct.[58]

Like *Grant*, the facts of *Suberu* were also tweaked to examine the effect that the egregiousness of *Charter* infringing conduct had on responses. In the revised scenario, the officer forces a preliminary search on the suspects' vehicle before questioning anyone at the scene. The new scenario sharply divided those who initially wanted admission. Of the seventy-six respondents who originally answered "admitted" in *Suberu*, 43.4% (thirty-three respondents) would change their answers in such circumstances.[59]

In general, these revisions to the facts of the case demonstrate that, although respondents may lean toward evidence admission, it appears that they generally consider the nature of police conduct to be a factor in admissibility.

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[55] See Appendix B, table 6.1.
[56] See Appendix B, table 2.1.
[57] *Grant, supra* note 21 at para 133.
[58] See Appendix B, table 2.4.
[59] See Appendix B, tables 4.4, 4.5.

(c) NATURE OF THE CRIME

When police violence and intimidation is absent, it appears that respondents do not take other factors into account. For *Stillman* and *Harrison*, facts relating to the severity of the offence were tweaked. Respondents were given revised scenarios where most of the facts remained unchanged, but the accused would be arrested for a different offence. For *Stillman*, those who previously would admit the bodily samples (thirty-five respondents) were asked if they would change their answer if the same tactics were used to solve a robbery instead of a murder. Of those thirty-five, only 21.9% changed their answer, whereas 59.4% of those did not.[60] However, the public does not necessarily take the nature of the crime into account. For *Harrison*, respondents who originally answered excluded were asked if they would change their answers if the body of a dead child were found in the exact same way the cocaine was discovered. Of these twenty-one respondents, 57.1% would change their answers under such circumstances, and only 33.3% would not. These results suggest that, at least to some degree, the severity of the crime is a consideration for the public's conception of judicial repute in the exclusion of evidence.

(d) THE CENTRALITY OF EVIDENCE

The results of the study suggest that the centrality of evidence to the case is not a salient factor for the public's consideration. If there were additional evidence that could be used in lieu of illegally taken evidence, the respondents' decisions to admit would be relatively unaffected. For instance, of the seventy-one respondents who would admit the evidence in *Harrison*, 60.3% would not change their answers if there were other evidence that would guarantee a conviction.[61]

Similarly, the data shows that if there were an absence of additional admissible evidence, the respondents' opinions to exclude would be unchanged. Of the fifty-six respondents who would exclude the conscripted evidence presented in *Stillman*, only 10.7% would change their answers if the police had not recovered the tissue and it were impossible to convict without it.[62] These findings suggest that public opinion on excluding evidence is not affected by the amount of additional evidence that could be used to secure convictions.

(e) SUMMARY OF INITIAL FINDINGS

While the public does not replicate the court's approach, popular sentiment is agreeable to *some* of the factors identified by the court. For instance, some of the survey items under the *Grant* and *Stillman* cases indicate that the public does have an understanding of basic legal rights in the face of egregious police conduct. Yet to the public, this factor shadows other factors, for example, the "severity of the offence" has a minor impact and the "centrality of the evidence to the case" has barely any influence at all. Given the limitations of this study, it is difficult to draw conclusions about the relative weight of each factor. However, further research based on a broader random sample might be able to determine such weighting using a regression analysis.

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[60] See Appendix A at 3; see Appendix B, tables 6.8, 6.9.
[61] See Appendix A at 2; see Appendix B, tables 3.4, 3.5.
[62] See Appendix B, tables 6.6, 6.7.

(f) THE SAMPLE'S AGREEMENT WITH THE COURT

As stated, with the exception of *Stillman*, the sample agreed with the court only when it ruled to admit evidence. The position that the Supreme Court of Canada line of reasoning in section 24(2) cases may be lost on the Canadian citizenry is further supported by the respondents' reluctance to change their answers.[63] In fairness, the summarized accounts lack the nuance and detail of the full judgments, and may be less persuasive as a result of the survey design. For each case, the reasoning only persuaded a minority of those who initially disagreed with the respective judgments. However, those initially agreeing with the court and the "persuaded" combined together suggests that the court is closer to public sentiment than the numbers initially suggest.

By adding the total number of respondents who had been persuaded by the court (from both the opposite opinion and "not sure" responses) to the number of those who initially agreed with each respective judgment, one arrives at an adjusted agreement with the court. The adjusted figures for agreement with the court are as follows: (1) initial support for the verdict in *Grant* was 63.3% (sixty-two respondents), whereas the adjusted support was 76.3% (seventy-four respondents); (2) initial support for the verdict in *Harrison* was 21.2% (twenty-one respondents), whereas the adjusted support was 55.2% (fifty-three respondents); (3) initial support for the verdict in *Suberu* was 76.8% (seventy-six respondents), whereas the adjusted support was 84.7% (eighty-three respondents); (4) initial support for the ruling in *Morelli* was 11.1% (eleven respondents), whereas the adjusted support was 34.7% (thirty-four respondents); and (5) initial support for excluding the conscripted evidence in *Stillman* was 59.1% (fifty-eight respondents), whereas adjusted support was 69.4% (sixty-eight respondents).[64]

The figures for adjusted support show that the majority of respondents agreed with the court's verdicts for all cases except for *Morelli*. Whereas only 11.1% of the respondents' initial verdicts matched that of the court's for *Morelli*, 34.3% agreed with the ruling after reading its reasoning, giving an extra 23.6% in support. This constituted the second largest increase in support of the five cases.[65] Furthermore, the reasoning of the *Harrison* judgment converted the highest amount of support. Only 21.2% of respondents initially arrived at the same verdict as the court, but when agreement with the court was adjusted, this figure rose to 55.2%.[66] This rise in support placed *Harrison* in the class of cases where the court's decision had a majority approval.[67] It is interesting to note that respondents' initial verdicts matched those of the court less often when it ruled to exclude. However, when the reasoning was explained, these were the judgments that had the highest levels of persuasion.[68]

(g) GENERAL SUPPORT FOR LEGAL RIGHTS

One finding of particular interest was the sample's support for the admission or exclusion of illegally collected evidence. Of the ninety-five participants that responded as to whether the

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[63] See Appendix B, tables 2.2, 2.3, 3.2, 3.3, 4.2, 4.3, 5.2, 5.3, 6.1, 6.4.
[64] See Appendix B, table 8.1.
[65] See Appendix B, table 8.1.
[66] See Appendix B, table 8.1.
[67] It is important to note that this is only a slight majority; The error of ±13.1% suggests that the majority of the population may actually disagree with the Court.
[68] It could be that those respondents who were zealous in protecting civil liberties were much less likely to be persuaded by the court than those who were quick to answer "Admit."

court should admit evidence collected by way of a *Charter* violation, 41.0% answered that the court exclude such evidence, and only 4.2% answered that it should admit. 53.7% answered that the court's decision should depend on the circumstances of the case.[69] 60.4% of the ninety-six respondents answered that the court should take the nature of the rights infringing conduct into account, whereas only 25.0% stated that it should not.[70] 60.4% of the ninety-six respondents stated that the court should take the nature of the crime into account when admitting or excluding evidence, whereas only 27.1% stated that it should not.[71]

The data drawn from the vignette descriptions did not correspond with the data outlined in tables 7.1 through 7.6. For instance, while table 7.2 shows that the vast majority of respondents support the right to retain and instruct counsel in principle, the first response of 63.3% of ninety-eight respondents was to admit the evidence for *Grant*. It is important to recall that although the Supreme Court of Canada admitted the evidence in *Grant*, a section 10(b) rights-violation was found by the court. Certainly, the respondents' expressed desires to protect counsel and caution rights did not proportionately conform to their sentiments about the admissibility of evidence in specific cases.

There was another disconnect between the respondents' answers to the vignette questions and their sentiments toward unreasonable search and seizure in general. Although table 7.3 shows that a significant majority agreed with this *Charter* guaranteed protection in principle, the first response of 71.7% of respondents was to admit the evidence in *Harrison*. Discrepancies such as this suggest that when considering the facts of the case, the public may not be as supportive of legal rights as they would claim. However, there are other potentially effective remedies and deterrents against abuses (such as legal aid for suits against the police), so it is possible that individuals are reacting against the remedy rather than abandoning a philosophical commitment to legal rights. Future research could explore citizens' support for other possible alternative remedies for *Charter* violations, as well as their thoughts on the efficacy of exclusion.

Furthermore, although 60.4% of the respondents stated that the nature of the crime ought to be taken into account by the court, respondents did not seem to take the nature of the crime into consideration when the facts of the cases were tweaked. As discussed, of the thirty-two respondents who initially would have admitted the evidence in *Stillman*, only 21.9% would change their answer if the crime were less severe.

In general, the disparity between general approval of a right in principle and the disagreement with specific results might be attributable to differences about interpretation. After all, it is entirely possible that one could be committed to a *Charter* right in principle, but not agree with the judicial articulation of it in a particular case. This may suggest a failure to interpret the *Charter* in a fashion that everyday Canadians would agree with – indicating that the reasonable man is not the common man. Additional data would be required to make such a strong conclusion. It is raised here merely to help explain the public's views, which might otherwise be thought to be conflicted or contradictory.

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[69] See Appendix B, table 7.4.
[70] See Appendix B, table.7.5.
[71] See Appendix B, table 7.6.

(h) COMPARISONS TO OTHER RESEARCH

Two research projects that had research designs very similar to this study were those employed by Bryant,[72] and by Fletcher.[73] Bryant used random digit dialling to collect a sample of 842 adults representative of the Canadian population. Unlike the present study, their survey questions did not refer to any actual Supreme Court of Canada cases, nor did it thoroughly describe the facts of each case. Instead, their survey's vignettes were described far more generally by describing simple, hypothetical, non-specific scenarios in which the police violated rights.

The similarities between the Bryant study's findings and the present study's were remarkable. 60.2% of their sample stated that a court should consider the nature of the crime when deciding to admit/exclude evidenc,[74] whereas 60.4% (fifty-eight respondents) of this study's sample agreed that the court should take this into consideration. 50.7% of their respondents stated that a court should consider how *Charter* rights were violated when deciding to admit/exclude evidence,[75] whereas 60.4% (fifty-eight respondents) of this study's sample agreed that a court should take this into consideration. The consistency between these two datasets supports the proposition that the judiciary's basic formula for determining disrepute in section 24(2) cases is defensible.[76]

When comparing the Bryant study's vignettes to those of the present study, the results were quite similar. Like the respondents of the present study, the nature of the crime had a small but notable effect. The authors described a scenario in which the police pull over an accused man to the side of the road for driving while intoxicated, but deny the accused his right to retain and instruct counsel before administering a breathalyzer test. When their respondents were asked whether the breathalyzer results should be excluded, 77.8% of their respondents wanted the evidence admitted if the accused had hit and killed someone, whereas 67.1% would want it admitted if he had not.[77] The authors then describe a scenario in which the accused unsuccessfully attempts to call a lawyer and following this failure, the breathalyzer is administered. Under these circumstances, 88.3% would admit the evidence if the accused had hit and killed someone, and 89.8% would admit the evidence if he had not.[78] These differences are not significant in comparison to some of the other tweaks employed in both studies. Their results are very similar to that of the present study. They show that the serious nature of the crime does not greatly affect respondents' opinions as to whether evidence should be excluded. Similarly to the present study's results, the egregiousness of police conduct had a much greater effect on their respondents' opinions. For instance, 62.1% of their sample stated that if a police officer were to seize drugs from an accused's home without a warrant, those drugs should be admitted.[79]

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[72] *Supra* note 36.
[73] *Supra* note 27.
[74] Bryant, *supra* note 36 at 19.
[75] *Ibid*.
[76] It ought to be noted that the survey questions themselves could have indeed influenced participants to respond in a certain way. Future research could benefit from asking respondents open-ended questions about evidence exclusion, such as what factors they think that the Court should consider in the s. 24(2) analysis.
[77] Bryant, *supra* note 36 at 24.
[78] *Ibid.*
[79] *Ibid* at 27.

However, when posed with the scenario in which police would have a warrant with a written error that they were unaware of, support for admission jumped to 85.2%.[80]

In regards to the right to counsel, Bryant's sample showed a disdain for police misconduct as strong as the present study's sample. Their respondents were asked if a confession should be admitted when derived from the police's refusal to cease questioning. 80.0% answered that the evidence should be admitted if the crime had been a murder and 80.4% answered that it should be admitted if the crime had been an assault.[81] However, when asked if a confession should be admitted if the police threatened violence, the sample's support for admission dropped to 53.3% if the crime had been a murder, and 55.2% if the crime had been an assault.[82] Similarly to the results of the present study, the Bryant sample shows a general agreement with the Supreme Court of Canada as to the factors that ought to be considered in evidence exclusion.

The study conducted by Fletcher and Howe[83] differed from the Bryant study by questioning respondents about the verdicts of actual Supreme Court of Canada cases. One of these cases was the early *Charter* case of *Therens*, which clarified the right to counsel in impaired driving cases.[84] Fletcher and Howe used data collected from two samples that were questioned about whether the court should have admitted or excluded evidence in this case. The samples were collected in 1987 and in 1999. The authors noted:

> In 1987, we asked a general question about the right to counsel and found very nearly unanimous support among Canadians for the right of a person who has been arrested or detained by the police to consult a lawyer. Using a question based on the *Therens* case, we further learned that support for the right to counsel plummets when an infringement of the right entails, as the *Charter* requires, the exclusion of evidence in court.[85]

All of these studies consistently show that the public supports basic legal rights in principle, but when the protection of such rights entails evidence exclusion, the public becomes much less supportive. Of the 1030 size sample taken in 1987, 66.9% would want the court to admit the breathalyzer sample obtained in the *Therens* case, and of the 1005 size sample taken in 1999, 70.2% would want it admitted.[86] Fletcher and Howe note that in *Therens*, like *Grant,* legal uncertainty made the arresting officer's mistake less egregious, and the respondents showed more support for admission than for the other cases described in their study.[87] Thus, like the results of the study, and those of the Bryant study's respondents', support for admission fell when the police's conduct was not described as innocuous.

All three studies, including the present one, indicate general agreement with the legal rights outlined in the *Charter*; they all indicate a public reluctance to exclude evidence. Furthermore, they all indicate that the public is more willing to see evidence excluded when abuse of rights by police become more flagrant.

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[80] *Ibid*.
[81] *Ibid* at 33.
[82] *Ibid*.
[83] Fletcher, *supra* note 27.
[84] *Supra* note 28.
[85] Joseph F Fletcher & Paul Howe, "Supreme Court Cases and Court Support: The State of Canadian Public Opinion" *IRPP Choices* 6:3 (May 2000) 4 at 34.
[86] *Ibid*.
[87] *Ibid*.

X. CONCLUSION

In both constitutional text and jurisprudence, the views of the Canadian community are necessary for determining the admissibility of evidence when the repute of the judicial system is clearly invoked. This study has explored the association between public opinion and the Supreme Court of Canada's views on judicial repute. Although the vast majority of the public may be supportive of *Charter* rights, it has also revealed a preference to admit more evidence. This is perhaps due to the public's perception of trials as primarily truth-seeking exercises. This could mean that the public loses confidence in the justice system when, in their minds, a court goes too far to remedy rights violations. These findings also suggest that the public does not give equal weight (or in some cases, any weight at all) to factors the court considers salient (such as the nature of the crime or the presence of additional evidence). In particular, the public seems to be more sensitive to police misconduct than other factors, whereas the court treats it as simply one factor among several.

This study demonstrates a basic level of public support for section 24(2) and its method of application. The Supreme Court of Canada has always refused to consider public opinion polls in informing the section 24 jurisprudence. It has not been the position of this paper to propose that judges base their section 24(2) analyses on polls alone. The court can and should retain its judicial independence. When determining disrepute, it should not "respond to public clamour."[88] At the same time, this does not mean that it should remain oblivious to expressions of societal values. If aware of these expressions, the judiciary could address public concerns within their judgments and this could strengthen the very foundations on which the law rests.

[88] *Collins*, *supra* note 13 at para 49, citing *R v Collins* (1983), *supra* note 33 at para 27.

APPENDIX A: CASE SUMMARIES AND SURVEY QUESTIONS AS PROVIDED TO RESPONDENTS

TABLE 1 Case overview table

Case	Seriousness of rights violated	Alleged crime and maximum sentence	Alleged crime and rights violation	Ruling
R v Grant	Innocuous and unwitting error	Unlawful possession of a firearm: fairly serious (two years for the first offense, and five years for the second offense)	Arbitrary detention and denial of right to retain counsel	Admitted (7-0)
R v Harrison	Egregious and flagrant	Possession of cocaine with intention to distribute: quite serious (imprisonment for life)	Arbitrary detention and unreasonable search and seizure	Exclude (6-1)
R v Suberu	No violation	Fraud: fairly serious (two years)	Arbitrary detention and denial of right to retain counsel	Admitted (5-2)
R v Morelli	Innocuous and unwitting error and misleading warrant	Possession of child pornography: quite serious (five years)	Unreasonable search and seizure	Excluded (4-3)
R v Stillman	Egregious and flagrant and threatening	First degree murder: extremely serious (imprisonment for life with no possibility of parole for 25 years)	Violation of security of person/ unreasonable search and seizure	Tissue admitted/samples excluded (5-3)

1. *R v GRANT*

Facts:

- Three officers are patrolling a school area known for assaults and drug-related activity
- The two plain clothes officers drive by the accused who appears to be fidgeting with his pockets and constantly pulling his pants up
- A uniformed officer steps out of his police car onto the sidewalk and questions the accused about what he is doing in the area
- The officer's fears and suspicions are further aroused when he notices the accused is still fidgeting with the pockets of his coat
- The officer then orders the accused to keep his hands in front of him
- The two other plain-clothes officers take positions behind the uniformed officer, blocking the accused's path away from the three officers
- The officers identify themselves as police, but they do not inform him of his rights to counsel or silence
- They proceed to ask him if he "has anything he shouldn't", and feeling intimidated by the three larger policemen, he replies, "a small bag of weed" and "a firearm". The firearm is found to be loaded
- He is read his rights and arrested

The gun and testimonial evidence should be:
Admitted Excluded Don't know Won't answer

The Court's Answer:

- The accused came to the court with five firearm offenses
- The evidence was admitted, and the accused was convicted of all charges except weapons trafficking—four judges agreeing with the majority opinion, and two judges partially concurring **(seven to zero for the outcome)**
- The questions asked were directed at gaining evidence against the accused. Thus, he was detained and was not told that he had a right to call a lawyer
- <u>The conduct of the police was not in bad faith</u> as the police were not sure of what defined a legal detention. Thus, admission would not reflect badly on the justice system
- <u>As the gun was proof of a serious crime,</u> to exclude would reflect badly on the justice system

If you answered **"Excluded"** or "**Not Sure**", does the reasoning of the court change your answer?
Yes No Not Sure Won't Answer

If you first answered **"Admitted"** or "**Not Sure**", would you change your answer if the police found the gun by threatening to beat the accused if he didn't empty his pockets?
Yes No Not Sure Won't Answer

2. *R v HARRISON*

Facts:

- The accused's Dodge Durango S.U.V. is stopped by a police officer because it does not have a front license plate, and it is being driven at the speed limit of 90 km/h with a line of nine cars behind it
- Upon following the car, the officer realizes that it was registered in Alberta, and thus does not require a front plate
- The officer chooses to pursue the vehicle regardless so that he can uphold the integrity of the police service, and starts questioning the two men inside
- The officer is then told by radio dispatch that the vehicle had been rented from Vancouver airport
- The officer becomes suspicious because he knows that it is common for drug dealers to transport drugs from Vancouver to Toronto in rented cars

- The officer questions the accused as well as the passenger and hears conflicting stories from the two men
- The officer runs a computer check on the accused and finds that his license is suspended
- The officer then arrests the accused for driving with a suspended license and searches the car (because he had just been arrested)
- The officer finds 35kg of cocaine with a street value of four-million dollars in cardboard boxes

The cocaine evidence should be:
Admitted Excluded Don't know Won't answer

The Court's Answer:

- The accused came to the court with a charge of trafficking cocaine
- The evidence was excluded and the accused was acquitted - five agreeing with the majority opinion and one dissenting (**six to one for the outcome)**
- The search was based on a hunch - not on reasonable grounds
- This was an obviously unreasonable search and a disregard for rights
- The court needed to disregard the evidence and let the police know that warrantless/unreasonable searches are unacceptable

If you answered **"Admitted"** or "**Not Sure**", does the reasoning of the court change your answer?
Yes No Not Sure Won't Answer

If you first answered**, "Admitted"** or "**Not Sure**", would you change your answer if the drugs had not been necessary to convict?

E.g.: Suppose that other police officers had a tape from a road-side camera showing the men handling the drugs outside of their car.
Yes No Not Sure Won't Answer

If you first answered**, "Excluded"** or "**Not Sure**", would you change your answer if the dead body of a child were found in a similar manner?
Yes No Not Sure Won't Answer

3. *R v SUBERU*

Facts:

- A police officer responds to a call about two people using a stolen credit card
- The officer sees the two suspects talking with a store clerk, and approaches the three men
- When the officer approaches, the accused tells him "He (Suberu's friend) did this, not me, so I guess I can go", and he begins to walk away
- The officer then says to the accused, "Wait a minute. I need to talk to you before you go anywhere" and follows the accused to his van without telling him he could see a lawyer
- From outside the driver's window, the officer asks the accused his name and where he had driven from
- The officer is then told by radio transmission that two suspects had used a stolen credit card at an LCBO and WalMart earlier that day. He is also told that one of the store's staff had seen the vehicle make and license plate of the suspects' car
- The officer notices that the description matches the very vehicle the accused is sitting in and that it has shopping bags from WalMart and the LCBO inside
- Based on probable grounds, the officer places the accused under arrest for fraud and warns him of his right to counsel

The shopping bags and statements made to the police should be:
Admitted Excluded Don't know Won't answer

The Court's Answer:
- The accused came to the court with a charge of fraud
- The evidence was admitted and the conviction stood - one agreeing with the majority opinion, three concurring and two dissenting (**five to two for the outcome)**
- According to the court, being told to wait did not result in a detention because there was no significant psychological or physical restraint
- A detention only takes place when there is a significant psychological or physical restraint (and the reasonable person thinks s/he cannot leave)
- By telling the accused to wait, the officer was just trying to find out who was involved in the incident – a justifiable police practice
- <u>The accused was still free to choose whether or not to cooperate, and thus did not need to be told that he had the right to see a lawyer</u>

If you answered **"Excluded"** or "**Not Sure**", does the reasoning of the court change your answer?
Yes No Not Sure Won't Answer

If you first answered **"Admitted"** or "**Not Sure**"**,** would you change your answer if before the accused had a chance to speak, the officer ordered the accused to take him to his vehicle so it could be searched?
Yes No Not Sure Won't Answer

4. *R v MORELLI*

Facts:
- Accused lives with his wife and two children
- The accused's wife calls for a computer technician to install high-speed internet, but this is unknown to the accused
- The technician notices that the accused has two links saved in his favorites browser entitled "Lolita Porn" and "Lolita XXX" - dated four months prior
- These two links are found among countless links to legal pornographic websites
- The technician also notices that the client's webcam is hooked-up to a video-tape recorder and pointed towards a child's play-area with several toys
- The technician is unable to finish his work, so he returns the next day to find the toys cleaned up and the webcam pointed at the computer-desk's chair
- Concerned for the safety of the children, the technician later informs a social worker of what he had seen, who then contacts the RCMP
- The investigating RCMP constable consults two other police officers in the computer crimes unit
- The officers tell the constable that such offenders frequently access child pornography on a regular basis and often store images and videos of such on backup devices. Thus, the offending behavior can be expected to continue
- The constable gets a warrant to search the suspect's computer, where pornographic images of children are found on the hard-drive, as well as on CD's and floppy-disks

The evidence (computer hard-drive, disks, and floppy disks) should be:
Admitted Excluded Don't know Won't answer

The Court's Decision:

- The accused comes to the court with a charge of possession of child pornography
- The evidence was excluded and the accused was acquitted - one writing for the majority opinion, three concurring, one dissenting, and two concurring with the dissenting opinion **(four to three for the outcome)**
- The court ruled that to be in possession of child pornography, one must knowingly store the data as an "object" that can be transferred and controlled
- The two favourites (among many legal sites) gave grounds to believe that the accused was viewing/accessing illegal pornography, but not necessarily possessing it
- The information of the child's play-area was irrelevant and unnecessarily painted a demonizing picture of the accused
- Because the warrant was defective, the search was unreasonable
- **The justice system would look bad if were to admit evidence taken from the most private "place" - in the home - on the basis of misleading, inaccurate, and incomplete warrants**

If you answered **"Admitted"** or "**Not Sure**", does the reasoning of the court change your answer?

Yes No Not Sure Won't Answer

5. *R v STILLMAN*

Facts:

- A fourteen year-old girl was found dead in a river with semen in her vagina and a bite-mark on her stomach after a night of partying with LSD and alcohol in the woods
- The seventeen year-old accused was strongly suspected to have killed the girl after returning home with mud and blood on his clothing
- Two unrelated witnesses reported to have driven by a man walking with the girl the night that she was killed (close to where her body was later found)
- Soon after the killing, the accused was brought to RCMP headquarters
- The accused was allowed to contact his lawyers, who then notified the police that he would not consent to giving any statements or bodily evidence
- Despite this, the police, by threat of force (telling the accused that "things would get ugly" if he did not comply) took plasticine dental impressions, hair, and pubic hair samples from the accused
- This caused the suspect to sob uncontrollably and throw a tissue in the garbage, which was then seized for DNA evidence
- The accused was later arrested

The dental, hair, and pubic hair samples should be:

Admitted Excluded Don't know Won't answer

The tissue thrown in the garbage should be:

Admitted Excluded Don't know Won't answer

The Court's Reasoning:

- The accused came to the court with a charge of first-degree murder
- A new trial was ordered with the hair samples, buccal swabs and dental impressions excluded, but the mucous sample from the tissue would to be admitted in the new trial. three agreeing with majority opinion, one concurring, three dissenting **(five to three for the outcome)**
- It would make the trial unfair, and it would reflect badly on the court to allow self-incriminating evidence taken by force
- Taking the swabs, dental impressions, and hair samples without a warrant or consent constituted an invasion of the most sacred place of privacy—his own body

- The tissue, however, was voluntarily left by the accused in a wastebasket where the he did not have a reasonable expectation to privacy. Therefore, it would not reflect badly on the court to admit the tissue

If you first answered, **"Admitted"** or "**Not Sure**" to the dental impressions, hair and swabs, does the reasoning of the court change your answer?
Yes No Not Sure Won't Answer

If you first answered, **"Excluded"** or "**Not Sure**" to the dental impressions, hair and swabs, would you change your answer if a conviction were not possible without the tissue?
Yes No Not Sure Won't Answer

If you first answered, **"Admitted"** or "**Not Sure**" to the dental impressions, hair, and swabs, would you change your answer if the police collected evidence in the same way, but the crime had been a robbery?
Yes No Not Sure Won't Answer

6. ADDITIONAL KNOWLEDGE QUESTIONS

How familiar are you with the *Canadian Charter of Rights and Freedoms*?
Not Familiar Somewhat Quite Very Won't answer

The *Charter* states that anyone who is arrested or detained has the right to promptly speak to a lawyer and be informed of that right without delay. Do you think this is the way the law should be?
Yes No Don't know Won't answer

The *Charter* says the police must have a search warrant before they enter someone's house or car to search for evidence of a crime (without reason to believe the crime is being committed). Do you think this is the way law should be?
Yes No Don't know Won't answer

Do you think judges SHOULD or SHOULD NOT allow evidence the police get by breaking the rules of the *Charte*r to be used in court?
Should Should not It depends Don't know Won't answer

When a judge decides to admit or exclude evidence collected by police while breaking the rules of the *Chart*er, should his/her decision depend on the nature of the crime (how serious the crime was)?
Yes No Don't know Won't answer

When a judge decides to admit or exclude evidence collected by police while breaking the rules of the *Chart*er, should his/her decision depend on how the police broke the rules?
Yes No Don't know Won't answer

APPENDIX B: SURVEY DATA

TABLE 1 Respondents' demographic information

TABLE 1.1 Gender

Gender	Total (N)	Valid percentage	Percentage of sample
Male	63	63.6% ±12.5%	63.6%
Female	36	36.4% ±12.5%	36.4%
Other	0	0.0% ±0.0%	0.0%
Total	99	100.0%	100.0%

Note: There are no missing cases

TABLE 1.2 Age

Age	Total (N)	Valid percentage	Percentage of sample
18-29	58	58.6% ±12.8%	58.6%
30-50	27	27.3% ±11.6%	27.3%
51-64	11	11.1% ±8.1%	11.1%
65+	3	3.0% ±4.4%	3.0%
Total	99	100%	100.0%

Note: There are no missing cases

TABLE 1.3 Individual income

Income per year	Total (N)	Valid percentage	Percentage of sample
Under $20,000	48	54.5 % ±13.7%	48.3%
$20,000-$50,000	20	22.7% ±11.5%	20.2%
$50,000-$85,000	12	13.6% ±9.4%	12.1%
$85,000-$100,000	6	6.8% ±6.9%	6.1%
Over $100,000	2	2.2% ±3.8%	2.0%
Total	88	100%	88.9%

Note: There are eleven missing cases

TABLE 1.4 Highest level of educational attainment

Education	Total (N)	Valid percentage	Percentage of sample
Some high-school	10	10.3% ±8.0%	10.1%
High-school graduate	13	13.4% ±9.1%	13.1%
Some college/university	33	34.0% ±12.4%	33.3%
College/university graduate	31	32.0% ±12.%	31.3%
Some graduate/professional school	4	4.1% ±5.2%	4.0%
Masters/professional school graduate	5	5.2% ±5.9%	5.1%
Some PHD work	0	0.0% ±0.0%	0.0%
PHD	1	1.0% ±2.6%	1.0%
Total	97	100%	98.0%

Note: There are two missing cases

TABLE 1.5 Canadian citizenship

Canadian Citizen	Total (N)	Valid percentage	Percentage of sample
Yes	97	98.0% ±3.6%	98.0%
No	2	2.0% ±3.6%	2.0%
Total	99	100.0%	100.0%

Note: There are no missing cases

TABLE 2 Respondents' judgments regarding *R v Grant*

TABLE 2.1 Respondents' judgments as to whether the gun in *R v Grant* ought to have been admitted or excluded

Judgments of Respondents	Total (N)	Valid percentage	Percentage of sample
Admit	62	63.3% ±12.6%	62.6%
Exclude	29	29.6% ±11.9%	29.3%
Not sure	7	7.1%±6.6%	7.1%
Total	98	100.0%	99%

Note: There is 1 missing case

TABLE 2.2 Respondents who would want the gun excluded in *R v Grant*, but decided to change their answers after reading the court's reasoning

Changed answers	Total (N)	Valid percentage	Percentage of admitted
Yes	6	22.2% ±20.4%	20.7%
No	20	74.1% ±21.8%	69.0%
Not sure	1	3.7%±9.4%	3.4%
Total	27	100.0%	93.1%

Note: There are 2 missing cases

TABLE 2.3 Respondents who were unsure of whether they would want the gun admitted or excluded in *R v Grant*, but decided to change their answers after reading the court's reasoning

Changed answers	Total (N)	Valid percentage	Percentage of not sure
Yes	6	85.1% ±34.7%	85.7%
No	1	14.3% ±34.1%	14.3%
Total	7	100.0%	100.0%

Note: There are no missing cases

TABLE 2.4 Respondents who would want the gun admitted in *R v Grant*, but would change their answers if the police officers had threatened the accused with harm if he were to not empty his pockets

Would change answer	Total (N)	Valid percentage	Percentage of admitted
Yes	43	70.5% ±15.1%	69.4%
No	10	16.4% ±12.2%	16.1%
Not sure	8	13.1%±11.1%	12.9%
Total	61	100.0%	98.4%

Note: There is 1 missing case

TABLE 2.5 Respondents who were unsure of whether they would want the gun admitted or excluded *R v Grant*, but would change their answers if the police officers had threatened the accused with harm if he were to not empty his pockets

Would change answer	Total (N)	Valid percentage	Percentage of admitted
Yes	4	66.7% ±49.6%	57.1%
No	2	33.3% ±49.6%	28.6%
Total	6	100.0%	85.7%

Note: There is 1 missing case

TABLE 3 Respondents' judgments regarding *R v Harrison*

TABLE 3.1 Respondents' judgments as to whether the cocaine in *R v Harrison* ought to have been admitted or excluded

Judgments of Respondents	Total (N)	Valid percentage
Admit	71	71.7% ±11.7%
Exclude	21	21.2% ±10.6%
Note sure	7	7.1% ±6.7%
Total	99	100.0%

Note: There are no missing cases

TABLE 3.2 Respondents who would want the cocaine admitted under *R v Harrison*, but decided to change their answers after reading the court's reasoning

Changed answers	Total (N)	Valid percentage	Percentage of admitted
Yes	29	42.6% ±15.5%	40.8%
No	32	47.1% ±15.6%	45.1%
Not sure	7	10.3%±9.5%	9.9%
Total	68	100.0%	95.8%

Note: There are three missing cases

TABLE 3.3 Respondents who were unsure as to whether they would want the cocaine admitted or excluded under *R v Harrison*, but decided to change their answers after reading the court's reasoning

Changed answers	Total (N)	Valid percentage	Percentage of not sure
Yes	3	42.9% ±48.2%	42.9%
No	4	57.1% ±48.2%	57.1%
Total	7	100.0%	100.0%

Note: There are no missing cases

TABLE 3.4 Respondents who would want the cocaine admitted under *R v Harrison*, but would change their answers if the court had additional evidence that would guarantee a conviction

Would change answer	Total (N)	Valid percentage	Percentage of admitted
Yes	18	26.5% ±13.8%	14.1%
No	41	60.3% ±15.3%	57.7%
Not sure	9	13.2%±10.6%	12.7%
Total	68	100.0%	95.8%

Note: There are three missing cases

TABLE 3.5 Respondents who were unsure of whether they would want the cocaine admitted or excluded under *R v Harrison*, but would change their answers if the court had additional evidence that would guarantee a conviction

Would changed answer	Total (N)	Valid percentage	Percentage of not sure
Yes	3	42.9% ±48.2%	42.9%
No	4	57.1% ±48.2%	57.1%
Total	7	100.0%	100.0%

Note: There are no missing cases

TABLE 3.6 Respondents who would want the cocaine excluded in *R v Harrison*, but would change their answers if the dead body of a child were found using identical techniques

Would change answer	Total (N)	Valid percentage	Percentage of excluded
Yes	12	57.1% ±27.9%	57.1%
No	7	33.3% ±26.5%	33.3%
Not sure	2	9.6% ±16.6%	9.6%
Total	21	100.0%	100.0%

Note: There are no missing cases

TABLE 3.7 Respondents who were unsure of whether they would want the cocaine admitted or excluded in *R v Harrison*, but would change their answer if the dead body of a child were found using identical techniques

Would change answer	Total (N)	Valid percentage	Percentage of not sure
Yes	3	60.0% ±56.5%	37.5%
No	2	40.0% ±35.7%	25.0%
Total	5	100.0%	62.5%

Note: There are two missing cases

TABLE 4 Respondents' judgments regarding *R v Suberu*

TABLE 4.1 Respondents' judgments as to whether the statements and shopping bags in *R v Suberu* should be admitted or excluded

Judgments of Respondents	Total (N)	Valid percentage
Admit	76	76.8% ±10.9
Exclude	17	17.2% ±9.8%
Not sure	6	6.1% ±6.2%
Total	99	100.0%

Note: There are no missing cases

TABLE 4.2 Respondents who would want the shopping bags and statements excluded under *R v Suberu*, but decided to change their answers after reading the court's reasoning

Changed answer	Total (N)	Valid percentage	Percentage of excluded
Yes	5	31.3% ±29.9%	29.4%
No	8	50.0% ±32.3%	47.0%
Not sure	3	18.8% ±25.2%	17.7%
Total	16	100.0%	94.1%

Note: There is one missing cases

TABLE 4.3 Respondents who were unsure of whether they would want the statements and shopping bags excluded under *R v Suberu*, but decided to change their answers after reading the court's reasoning

Would change answer	Total (N)	Valid percentage	Percentage of not sure
Yes	2	33.3% ±49.6%	33.3%
No	4	66.6% ±49.7%	66.6%
Total	6	100.0%	100.0%

Note: There are no missing cases

TABLE 4.4 Respondents who would want the statements and shopping bags admitted in *R v Suberu*, but would change their answers if the officer forced a preliminary search of the suspects' car before they could speak

Would change answer	Total (N)	Valid percentage	Percentage of admitted
Yes	33	43.4% ±14.6%	43.4%
No	35	46.1% ±14.8%	46.1%
Not sure	8	10.5% ±9.1%	10.5%
Total	76	100.0%	100.0%

Note: There are no missing cases

TABLE 4.5 Respondents who were unsure of whether or not they would want the statements and shopping bags in *R v Suberu* admitted or excluded, but would change their answers if the officer forced a preliminary search of the suspects' car before they could speak

Would change answer	Total (N)	Valid percentage	Percentage of not sure
Yes	2	50.0%±64.5%	33.3%
No	2	50.0%±64.5%	33.3%
Total	4	100.0%	66.7%

Note: There are two missing cases

TABLE 5 Respondents' judgments regarding *R v Morelli*

TABLE 5.1 Respondents' judgments as to whether the floppy discs, CDs, and hard drives in *R v Morelli* should be admitted or excluded

Judgments of Respondents	Total (N)	Valid percentage
Admit	83	83.8% ±9.6%
Exclude	11	11.1% ±8.1%
Not sure	5	5.1% ±5.7%
Total	99	100.0%

Note: There are no missing cases

TABLE 5.2 Respondents who would want the floppy discs, CDs, and hard drives admitted in *R v Morelli*, but decided to change their answers after reading the court's reasoning

Changed answer	Total (N)	Valid percentage	Percentage of admitted
Yes	22	26.8% ±12.6%	26.5%
No	53	64.6% ±13.6%	63.9%
Not sure	7	8.5% ±7.9%	8.4%
Total	82	100.0%	98.8%

Note: There is one missing case

Table 5.3 Respondents who were unsure of whether they would want the floppy-discs, CDs, and hard-drives excluded or admitted in *R v Morelli*, but decided to change their answers after reading the court's reasoning

Changed answer	Total (N)	Valid percentage	Percentage of not sure
Yes	1	20.0% ±46.2%	20.0%
No	4	80.0% ±46.2%	80.0%
Total	5	100.0%	100.0%

Note: There are no missing cases

TABLE 6 Respondents' judgments regarding *R v Stillman*

TABLE 6.1 Respondents' judgments regarding the dental, hair and swab samples cross-tabulated with judgments regarding the tissue

		Tissue (N)				
		Admit	Exclude	Not sure	Total	Cumulative percentage
Dental, hair, and swabs (N) Valid percentage	Admit	(21) 60.0% ±21.4%	(12) 34.3% ±20.7%	(2) 5.7% ±10.1%	(35) 35.7% ±12.5%	100%
	Exclude	(27) 46.6% ±16.9%	(29) 50.0% ±16.9%	(2) 3.4% ±6.1%	(58) 59.2% ±12.8%	100%
	Not sure	(3) 60.0% ±56.5%	(0) 0.0% ±0.0%	(2) 40.0% ±56.5%	(5) 5.1% ±5.7%	100%
	Total	(51) 52.0% ±13.0%	(41) 41.8% ±12.9%	(6) 6.1% ±6.2%	(98) 100%	100%

Note*:* Percentages should be read horizontally. There is one missing case.

TABLE 6.2 Respondents' judgments as to whether the dental, hair, and swab samples in *R v Stillman* ought to have been admitted or excluded

Judgments of Respondents	Total (N)	Valid percentage	Percentage of sample
Admit	35	35.4% ±12.5%	35.4%
Exclude	58	59.1% ±12.8%	59.6%
Not sure	5	5.1% ±5.7%	5.1%
Total	98	100.0%	99.0%

Note: There is one missing case

TABLE 6.3 Respondents' judgments as to whether the tissue in *R v Stillman* should be admitted or excluded

Judgments of Respondents	Total (N)	Valid percentage	Percentage of sample
Admit	51	52.0% ±13.0%	51.5%
Exclude	41	41.8% ±12.9%	41.4%
Not sure	6	6.1% ±6.2%	6.1%
Total	98	100.0%	99.0%

Note: There is one missing case

TABLE 6.4 Respondents who would want the dental, hair, and swab samples admitted in *R v Stillman*, but decided to change their answers after reading the court's reasoning

Changed answer	Total (N)	Valid percentage	Percentage of admitted
Yes	8	23.5% ±18.8%	22.9%
No	23	64.6% ±21.2%	65.7%
Not sure	3	8.5% ±21.9%	8.5%
Total	34	100.0%	98.1%

Note: There is one missing case

TABLE 6.5 Respondents who were unsure of whether they would want the dental, hair and swab samples admitted under *R v Stillman*, but decided to change their answers after reading the court's reasoning

Changed answer	Total (N)	Valid percentage	Percentage of not sure
Yes	2	40.0% ±56.5%	40.0%
No	3	60.0% ±56.5%	60.0%
Total	5	100.0%	100.0%

Note: There are no missing cases

TABLE 6.6 Respondents who would want the dental, hair, and swab samples under *R v Stillman* excluded, but would change their answers if there were no tissue, and it would be impossible to convict without it

Would change answer	Total (N)	Valid percentage	Percentage of excluded
Yes	6	10.7% ±10.7%	10.1%
No	43	76.8% ±14.6%	72.9%
Not sure	7	12.5% ±11.4%	11.9%
Total	56	100.0%	94.9%

Note: There are two missing cases

TABLE 6.7 Respondents who were unsure of whether they would want the dental, hair and swab samples admitted in *R v Stillman*, but would change their answers if there were no tissue, and it would be impossible to convict without it

Would change answer	Total (N)	Valid percentage	Percentage of not sure
Yes	1	20.0% ±46.2%	20.0%
No	4	80.0% ±46.2%	80.0%
Total	5	100.0%	100.0%

Note: There are no missing cases

TABLE 6.8 Respondents who would admit the dental, hair and swab samples under *R v Stillman*, but would change their answer if the crime were a robbery and evidence was collected in a similar manner

Changed answer	Total (N)	Valid percentage	Percentage of admitted
Yes	7	21.9% ±18.9%	20.0%
No	19	59.4% ±22.4%	54.3%
Not sure	6	18.8% ±17.8%	17.1%
Total	32	100.0%	91.4%

Note: There are three missing cases

TABLE 6.9 Respondents who were unsure of whether they would want the dental, hair and swab samples admitted under *R v Stillman*, but would change their answer if the crime were a robbery and evidence was collected in a similar manner

Would change answer	Total (N)	Valid percentage	Percentage of not sure
Yes	1	20.0% ±46.2%	20.0%
No	4	80.0% ±46.2%	80.0%
Total	5	100.0%	100.0%

Note: There are no missing cases

TABLE 7 Respondents' answers to additional knowledge questions

TABLE 7.1 Respondents' Degree of Familiarity With the *Canadian Charter of Rights and Freedoms*

Level of Familiarity (Code Value)	Total (N)	Valid percentage	Percentage of excluded
Not Familiar (1)	22	22.9% ±11.1%	22.2%
Somewhat (2)	58	60.4% ±12.9%	58.6%
Quite (3)	9	9.4% ±7.7%	9.1%
Very (4)	7	7.3% ±6.8%	7.1%
Total	96	100.0%	97.0%

Note: There are three missing cases. The mean is Somewhat (2.1).

TABLE 7.2 Respondents' Opinion as to Whether There Ought to be the Right to Retain and Instruct Counsel as Stated in the *Canadian Charter of Rights and Freedoms*

Respondents' answer	Total (N)	Valid percentage	Percentage of sample
Yes	91	94.8% ±6.0%	91.9%
No	4	4.2% ±5.3%	4.0%
Not sure	1	1.0% ±2.6%	1.0%
Total	96	100.0%	97.0%

Note: There are three missing cases.

TABLE 7.3 Respondents' opinion as to whether or not the police ought to require a search warrant to search a residence when a peace officer has no reason to believe that someone is being harmed or evidence is about to be destroyed within the home

Respondents' answer	Total (N)	Valid percentage	Percentage of sample
Yes	73	76.0% ±11.3%	73.7%
No	16	16.7% ±9.8%	16.2%
Not sure	7	7.3% ±6.8%	7.1%
Total	96	100.0%	97.0%

Note: There are three missing cases.

TABLE 7.4 Respondents' opinions as to whether the court should or should not allow evidence collected resulting from violations of rights outlined in the *Canadian Charter of Rights and Freedoms*

Respondents' answer	Total (N)	Valid percentage	Percentage of sample
Should	4	4.2% ±5.3%	4.0%
Should not	39	41.0% ±13.0%	39.4%
It depends	51	53.7% ±13.2%	51.5%
Not sure	1	1.1% ±2.8%	1.0%
Total	95	100.0%	95.9%

Note: There are four missing cases.

TABLE 7.5 Respondents' opinions as to whether or not the nature of the crime ought to be taken into account by the court when admitting/excluding evidence

Respondents' answer	Total (N)	Valid percentage	Percentage of sample
Yes	58	60.4% ±12.9%	58.6%
No	26	27.1% ±11.7%	26.3%
Not sure	12	12.5% ±8.7%	12.1%
Total	96	100.0%	97.0%

Note: There are three missing cases.

TABLE 7.6 Respondents' opinions as to whether or not the nature of *Canadian Charter of Rights and Freedoms* infringing conduct ought to be taken into account by the court when admitting/excluding evidence

Respondents' answer	Total (N)	Valid percentage	Percentage of sample
Yes	58	60.4% ±12.9%	58.6%
No	24	25.0% ±11.4%	24.2%
Not sure	14	14.6% ±9.2%	14.1%
Total	96	100.0%	97.0%

Note: There are three missing cases.

TABLE 8 Adjusted agreement with the court's majority opinion

Case	Verdict	Adjusted Agreement (N)	Valid Percentage	Percentage of Sample	Missing Cases	Change in Valid
R v Grant	Admit	74	76.3% ±11.1	74.7%	2	+7.0%
R v Harrison	Exclude	53	55.2% ±13.1	53.5%	3	+33.0%
R v Suberu	Admit	83	84.7% ±9.4	83.8%	1	+7.9%
R v Morelli	Exclude	34	34.7% ±12.4	34.3%	1	+23.6%
*R v Stillman**	Exclude	68	69.4% ±12.0	68.7%	1	+10.3%

*conscripted evidence only