

Chapter 8

Legal Authorities

Handling Information and the Personal Information Protection and Electronic Documents Act

It is safe to say that security guards will deal with various articles of information while working, just think of our objective in security: protect people, property and INFORMATION. A security guard should know the process on how to handle, sort, disseminating, and destroying information of a personal nature.

Personal Information Protection and Electronic Documents Act. (P.I.P.E.D.A.)

The *Personal Information Protection and Electronic Documents Act* (**PIPEDA**) is a Canadian law relating to data privacy. It governs how private-sector organizations collect, use and disclose personal information in the course of commercial business. In addition, the Act contains various provisions to facilitate the use of electronic documents. PIPEDA became law on 13 April 2000 to promote consumer trust in electronic commerce. The act was also intended to reassure the European Union that the Canadian privacy law was adequate to protect the personal information of European citizens.

Personal information may not be disclosed without consent unless:

- on reasonable grounds, it could be useful in investigation of a crime against the Laws of Canada;
- used in respect to an emergency that effect life, health or security of an individual;
- It is used for statistical, scholarly study or research.

Collected information can only be used for the purposes for which it was collected. Companies shall have a Privacy Policy that specifically deals with the use, storage, and destruction of the personal information it collects:

- It must identify the purpose for which the personal information will be used.
- Employees have the right to review their information and insure it is correct and up to date.
- Once the information is no longer required, the information shall be destroyed.

Storage & Destruction

Safe Storage of Information

The methods of protection should include:

- physical measures (i.e. locked filing cabinets and restricted access to offices);
- organizational measures (i.e. security clearances and limiting access on a “need-to-know” basis); and
- technological measures (i.e. the use of passwords and encryption).

Destruction of Information

- Personal information that is no longer required to fulfill the identified purposes should be destroyed, erased, or made anonymous. Organizations shall develop guidelines and implement procedures to govern the destruction of personal information.

Definitions under the Act

Personal Information – means information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization.

Record – includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine-readable record and any other documentary material, regardless of physical form or characteristics, and any copy of any of those things.

Relevant Sections under the Act

Schedule 1 (Section 5)

Principles set out in the National Standard of Canada entitled *Model Code for the Protection of Personal Information, CAN/CSA-Q830-96*

4.1 Principle 1 – Accountability

An organization is responsible for personal information under its control and shall designate an individual or individuals who are accountable for the organization’s compliance with the following principles.

4.1.1

Accountability for the organization's compliance with the principles rests with the designated individual(s), even though other individuals within the organization may be responsible for the day-to-day collection and processing of personal information. In addition, other individuals within the organization may be delegated to act on behalf of the designated individual(s).

4.1.2

The identity of the individual(s) designated by the organization to oversee the organization's compliance with the principles shall be made known upon request.

4.1.3

An organization is responsible for personal information in its possession or custody, including information that has been transferred to a third party for processing. The organization shall use contractual or other means to provide a comparable level of protection while the information is being processed by a third party.

4.1.4

Organizations shall implement policies and practices to give effect to the principles, including:

- (a) implementing procedures to protect personal information;
- (b) establishing procedures to receive and respond to complaints and inquiries;
- (c) training staff and communicating to staff information about the organization's policies and practices; and
- (d) developing the information to explain the organization's policies and procedures.

4.3 Principle 3 – Consent

The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.

Note: In certain circumstances personal information can be collected, used, or disclosed without the knowledge and consent of the individual. For example, legal, medical, or security reasons may make it impossible or impractical to seek consent. When information

is being collected for the detection and prevention of fraud or for law enforcement, seeking the consent of the individual might defeat the purpose of collecting the information. Seeking consent may be impossible or inappropriate when the individual is a minor, seriously ill, or mentally incapacitated. In addition, organizations that do not have a direct relationship with the individual may not always be able to seek consent.

4.3.7

Individuals can give consent in many ways. For example:

- (e) consent may be given at the time that individuals use a product or service.

4.4 Principle 4 – Limiting Collection

The collection of personal information shall be limited to that which is necessary for the purposes identified by the organization. Information shall be collected by fair and lawful means.

4.4.1

Organizations shall not collect personal information indiscriminately. Both the amount and the type of information collected shall be limited to that which is necessary to fulfill the purposes identified.

4.5 Principle 5 – Limiting Use, Disclosure, and Retention

Personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Personal information shall be retained only as long as necessary for the fulfillment of those purposes.

4.5.2

Organization should develop guidelines and implement procedures with respect to the retention of personal information. These guidelines should include minimum and maximum retention periods. Personal information that has been used to make a decision about an individual shall be retained long enough to allow the individual access to the information after the decision has been made. An organization may be subject to legislative requirements with respect to retention periods.

4.5.3

Personal information that is no longer required to fulfill the identified purposes should be destroyed, erased, or made anonymous. Organizations shall develop guidelines and implement procedures to govern the destruction of personal information.

4.7 Principle 7 - Safeguards

Personal information shall be protected by security safeguards appropriate to the sensitivity of the information.

4.7.1

The security safeguards shall protect personal information against loss or theft, as well as unauthorized access, disclosure, copying, use or modification. Organizations shall protect personal information regardless of the format in which it is held.

4.7.2

The nature of the safeguards will vary depending on the sensitivity of the information that has been collected, the amount, distribution, and format of the information, and the method of storage. More sensitive information should be safeguarded by a higher level of protection.

4.7.3

The methods of protection should include

- (a) physical measures, for example, locked filing cabinets and restricted access to offices;
- (b) organizational measures, for example, security clearances and limiting access on a “need-to-know” basis; and
- (c) technological measures, for example, the use of passwords and encryption.

4.7.4

Organizations shall make their employees aware of the importance of maintaining the confidentiality of personal information.

4.9 Principle 9 – Individual access

Upon request, an individual shall be informed of the existence, use, and disclosure of his or her personal information and shall be given access to

that information. An individual shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.

Note: In certain situations, an organization may not be able to provide access to all the personal information it holds about an individual. Exceptions to the access requirements should be limited and specific. The reasons for denying access should be provided to the individual upon request. Exceptions may include information that is prohibitively costly to provide, information that contains references to other individuals, information that cannot be disclosed for legal, security, or commercial proprietary reasons, and information that is subject to solicitor-client or litigation privilege.

Additional Legislation

Security guards can encounter situations where they need to be familiar with the following legislation:

- Employment Standard Act, 2000
- Labour Relations Act, 1999
- Liquor License Act
- Provincial Offences Act
- Residential Tenancies Act, 1996
- Trespass to Property Act

Employment Standard Act, 2000

The ESA sets out rights of employees and requirements that apply to employers in most Ontario workplaces. Unionized members should talk to their union reps before contacting the Ministry of Labour if they believe their rights have been violated.

Most commonly used sections:

Hours of Work

Daily Limit - The maximum number of hours most employees can be required to work **in a day** is *eight* hours or the number of hours in an established regular workday, if it is longer than eight hours. The only way the daily maximum can be exceeded is by *written agreement*.

Weekly Limit - The maximum number of hours most employees can be required to work **in a week** is 48 hours. The weekly maximum can be exceeded by *written* agreement and approval of the Director of Employment Standards.

Rest Periods

Employees must, with two exceptions, receive at least eight hours free from work in between successive shifts. "Successive shifts" are two shifts following one after another, whether or not there is time off in between the shifts. It includes "split shifts", "on call shifts", "back-to-back" shifts, as well as the ordinary daily shifts.

Overtime Pay

For most employees, whether they work full-time, part-time, are students, temporary help agency assignment employees, or casual workers, overtime begins after they have worked 44 hours in a work week. After that time, they must receive overtime pay.

Overtime pay is 1½ times the employee's regular rate of pay. (This is often called "time and a half.")

For example, an employee who has a regular rate of \$12.00 an hour will have an overtime rate of \$18.00 an hour ($12 \times 1.5 = 18$). The employee must therefore be paid at a rate of \$18.00 an hour for every hour worked in excess of 44 in a week.

Minimum Wage

Minimum wage is the lowest wage rate an employer can pay an employee. Most employees are eligible for minimum wage, whether they are full-time, part-time, casual employees, or are paid an hourly rate, commission, piece rate, flat rate or salary. Some employees have jobs that are exempt from the minimum wage provisions of the Employment Standards Act, 2000 (ESA).

Current general minimum wage in the Province of Ontario is \$14 per hour. (as of January 1, 2018).

Vacation Time & Pay

Vacation Time - Employees earn a minimum of two week vacation time upon completion of every 12-month vacation entitlement year. The ESA does not provide for any increases to the two-week vacation time entitlement although a contract of employment or collective agreement may do so. As of January 1, 2018, workers are entitled to at least 3 weeks' vacation after 5 years with the same employer.

Vacation Pay - Employees must receive a minimum of 4% wages earned (excluding vacation pay) during the period for which the vacation is given, if their period of employment is less than 5 years. 6% if employed greater than 5 years.

For example, suppose a person earned gross wages of \$16,000.00 in their vacation entitlement year. They would be entitled to four per cent of \$16,000.00 as vacation pay--\$640.00.

Public Holidays

Ontario has nine public holidays:

New Year's Day	Victoria Day	Canada Day
Family Day	Labour Day	Good Friday
Thanksgiving Day	Christmas Day	Boxing Day

Most employees who qualify are entitled to take these days off work and be paid public holiday pay. Alternatively, they can agree in writing to work on the holiday and they will be paid:

- public holiday pay plus premium pay for the hours worked on the public holiday.
- their regular rate for hours worked on the holiday, plus they will receive another day off (called a "substitute" holiday) with public holiday pay. If the employee has earned a *substitute* day off with public holiday pay, the public holiday pay calculation is done with respect to the four work weeks before the work week in which the *substitute* day off falls.

Leave of Absences

ESA looks at the following conditions that would fall under this category:

Pregnancy leave - Pregnant employees have the right to take pregnancy leave of up to 17 weeks, or longer in certain circumstances, of unpaid time off work. A pregnant employee is entitled to pregnancy leave whether she is a full-time, part-time, permanent or contract employee provided that she:

works for an employer that is covered by the ESA, **and**
was hired at least 13 weeks before the date her baby is *expected* to be born (the "due date").

Note that an employee does not have to *actively* work the 13 weeks prior to the due date to be eligible for pregnancy leave. It is only necessary that she be hired at least 13 weeks before the baby is expected to be born.

Parental leave - Both new parents have the right to take parental leave of up to 35 or 37 weeks of unpaid time off work. A new parent is entitled

to parental leave whether he or she is a full-time, part-time, permanent or contract employee provided that the employee:

works for an employer that is covered by the ESA, **and**

was employed for at least 13 weeks before commencing the parental leave.

An employee does not have to *actively* work in the 13-week period preceding the start of the parental leave. The employee could be on layoff, vacation, sick leave or pregnancy leave for all or part of the 13-week qualifying period and still be entitled to parental leave. The ESA only requires the employee to have been *employed* by the employer for 13 weeks before he or she may commence a parental leave.

Family Medical Leave - Unpaid, job-protected leave of up to 28-weeks to provide care or support to specified family members and people who consider the employee to be like a family member in respect of whom a qualified health practitioner has issued a certificate indicating that he or she has a serious medical condition with a significant risk of death occurring within a period of 26 weeks. The medical condition and risk of death must be confirmed in a certificate issued by a qualified health practitioner.

An employee may also be entitled to take up to eight weeks family caregiver leave for some specified individuals.

The specified family members for whom a family medical leave may be taken are:

- The employee's spouse.
- A parent, step-parent or foster parent of the employee or the employee's spouse.
- A child, step-child or foster child of the employee or the employee's spouse.
- A child who is under legal guardianship of the employee or the employee's spouse.
- A brother, step-brother, sister or step-sister of the employee.
- A grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse.
- A brother-in-law, step-brother-in-law, sister-in-law or step-sister-in-law of the employee.
- A son-in-law or daughter-in-law of the employee or the employee's spouse.
- An uncle or aunt of the employee or the employee's spouse.
- A nephew or niece of the employee or the employee's spouse.
- The spouse of the employee's grandchild, uncle, aunt, nephew or niece.

- A person who considers the employee to be like a family member, provided the prescribed conditions, if any, are met.
- Any individual prescribed as a family member for the purposes of this section.

Personal Emergency Leave

An employee can take up to 10 days leave, at least 2 of which are paid per calendar year, due to:

- Personal illness, injury or medical emergency, **or**
- Death, illness, injury, medical emergency or urgent matter relating to the following family members:
 - A spouse*;
 - A parent, step-parent, foster parent, child, step-child, foster child, grandparent, step-grandparent, grandchild or step-grandchild of the employee or the employee's spouse;
 - The spouse of an employee's child;
 - A brother or sister of the employee;
 - A relative of the employee who is dependent on the employee for care or assistance.

*Note: "spouse" includes both married and unmarried couples, of the same sex or the opposite sex.

Organ Donor Leave - Organ donor leave is unpaid, job-protected leave of up to 13 weeks, for the purpose of undergoing surgery to donate all or part of certain organs to a person. In some cases, organ donor leave can be extended for an additional period of up to 13 weeks. An employee is entitled to organ donor leave whether he or she is a full-time, part-time, permanent, or contract employee. The employee must meet the following criteria to qualify for organ donor leave:

- The employee is covered by the Employment Standards Act (ESA);
- Have been employed by his or her employer for at least 13 weeks;
- Undergoes surgery to donate all or part of one of the following organs to another person: Kidney, Liver, Lung, Pancreas, Small bowel.

Reservist Leave -

Employees who are reservists and who are deployed to an international operation or to an operation within Canada that is or will be providing assistance

in dealing with an emergency or its aftermath (including search and rescue operations, recovery from natural disasters such as flood relief, military aid following ice storms, and aircraft crash recovery) are entitled under the ESA to unpaid leave for the time necessary to engage in that operation.

In the case of an operation outside Canada, the leave would include pre-deployment and post-deployment activities that are required by the Canadian Forces in connection with that operation.

In order to be eligible for reservist leave, you must have worked for your employer for at least six consecutive months. Generally, reservists must provide their employer with reasonable written notice of the day on which they will begin and end the leave. Reservist leave is only available to reservists who gave their required notice and were deployed on operations on or after December 3, 2007.

Employees on a reservist leave are entitled to be reinstated to the same position if it still exists or to a comparable position if it does not. Seniority and length of service credits continue to accumulate during the leave.

Unlike other types of leave, an employer is entitled to postpone the employee's reinstatement for two weeks after the day on which the leave ends or one pay period, whichever is later. Also, the employer is not required to continue any benefit plans during the employee's leave. However, if the employer postpones the employee's reinstatement, the employer is required to pay the employer's share of premiums for certain benefit plans related to his or her employment and allow the employee to participate in such plans for the period the return date is postponed.

Domestic/Sexual Violence Leave – Up to 10 individual days and up to 15 weeks of job protected leave by an employee who has been employed by an employer for at least 13 consecutive weeks. The first 5 days of leave in every calendar year would be paid.

Child Death Leave – Up to 104 weeks from any cause of death, and increased crime-related disappearance of a child leave from 52 to 104 weeks, by an employee who has been employed by an employer for at least 6 consecutive months.

Critical Illness Leave – An employee who has been employed by his or her employer for at least six consecutive months is entitled to a leave of absence without pay to provide care or support to a critically ill minor child who is a family member of the employee if a qualified health practitioner issues a certificate that sets out the period during which the minor child requires the care or support.

Termination Notice and Pay

Termination of Employment Defined

A number of expressions are commonly used to describe situations when employment is terminated. These include "let go," "discharged," "dismissed," "fired" and "permanently laid off."

Under the Employment Standards Act, 2000 (ESA) a person's employment is terminated if the employer:

- dismisses or stops employing an employee, including an employee who is no longer employed due to the bankruptcy or insolvency of the employer;
- "constructively" dismisses an employee and the employee resigns, in response, within a reasonable time;
- lays an employee off for a period that is longer than a "temporary layoff".

Notice - When an employee is terminated, the written notice required under the ESA is generally determined by how long someone has been employed by an employer.

Notice of termination of employment, once given, cannot be withdrawn without the consent of the employee.

The following chart specifies the periods of statutory notice required.

Length of Employment	Notice Required
Less than 3 months	None
3 months but less than 1 year	1 week
1 year but less than 3 years	2 weeks
3 years but less than 4 years	3 weeks

4 years but less than 5 years	4 weeks
5 years but less than 6 years	5 weeks
6 years but less than 7 years	6 weeks
7 years but less than 8 years	7 weeks
8 years or more	8 weeks

Pay - An employee who does not receive the written notice required under the ESA must be given termination pay in lieu of notice. Termination pay is a lump sum payment equal to the *regular wages* for a *regular work week* that an employee would otherwise have been entitled to during the written notice period. An employee earns vacation pay on his or her termination pay. Employers must also continue to make whatever contributions would be required to maintain the benefits the employee would have been entitled to have he or she continued to be employed through the notice period.

Labour Relations Act, 1995

The Labour Relations Act, 1995 governs both the process by which a trade union acquires bargaining rights and the procedures by which trade unions and employers engage in collective bargaining; the Act applies primarily to workplaces in the private sector, but also applies to certain parts of the public sector (municipal workers, hospital employees, Ontario Hydro, etc.) with some modifications.

Purposes

The following are the purposes of the Act:

1. To facilitate collective bargaining between employers and trade unions that are the freely-designated representatives of the employees.
2. To recognize the importance of workplace parties adapting to change.
3. To promote flexibility, productivity and employee involvement in the workplace.

4. To encourage communication between employers and employees in the workplace.
5. To recognize the importance of economic growth as the foundation for mutually beneficial relations amongst employers, employees and trade unions.
6. To encourage co-operative participation of employers and trade unions in resolving workplace issues.
7. To promote the expeditious resolution of workplace disputes. 1995, c. 1, Sched. A, s. 2.

Provincial Offences Act

The Ontario Provincial Offences Act governs how charges are processed and prosecuted in the Ontario courts. The Provincial Offences Act applies to all Ontario statutes (and regulations), municipal by-laws, and some federal contraventions.

The Provincial Offences Act governs the proceedings of individuals and corporations charged with offences under the various acts in the Province of Ontario, for example issuing a parking ticket under the act.

In general, the only time that Security Guards will be engaged in enforcement activities that fall under the Provincial Offences Act is when they are licensed under specified municipalities to assist in the enforcement of Parking Violations. As always make sure to refer to your Post/Standing orders to see what is required from you, the security guard, when it comes to your location of work/employment.

Relevant Sections under the Act

“Provincial offences officer” means,

- (a) a police officer,
- (b) a constable appointed pursuant to any Act,
- (c) a municipal law enforcement officer referred to in subsection 101 (4) of the *Municipal Act, 2001* or in subsection 79 (1) of the *City of Toronto Act, 2006*, while in the discharge of his or her duties,
- (d) a by-law enforcement officer of any municipality or of any local board of any municipality, while in the discharge of his or her duties,
- (e) an officer, employee or agent of any municipality or of any local board of any municipality whose responsibilities include the enforcement of a by-law, an Act or a regulation under an Act, while in the discharge of his or her duties, or

- (f) a person designated under subsection (3); (“agent des infractions provinciales”)

Designation of provincial offences officers

3. A minister of the Crown may designate in writing any person or class of persons as a provincial offences officer for the purposes of all or any class of offences. R.S.O. 1990, c. P.33, s. 1 (3).

“Parking infraction”, Part II

14. In this Part,

“parking infraction” means any unlawful parking, standing or stopping of a vehicle that constitutes an offence.

Certificate and notice of parking infraction

15. (1) A provincial offences officer who believes from his or her personal knowledge that one or more persons have committed a parking infraction may issue,
- (a) a certificate of parking infraction certifying that a parking infraction has been committed; and
 - (b) a parking infraction notice indicating the set fine for the infraction.

Arrest without warrant

145. Any person may arrest without warrant a person who he or she has reasonable and probable grounds to believe has committed an offence and is escaping from and freshly pursued by a police officer who has lawful authority to arrest that person, and, where the person who makes the arrest is not a police officer, shall forthwith deliver the person arrested to a police officer. R.S.O. 1990, c. P.33, s. 145.

Use of force

146. (1) Every police officer is, if he or she acts on reasonable and probable grounds, justified in using as much force as is necessary to do what the officer is required or authorized by law to do.

Use of force by citizen

- (2) Every person upon whom a police officer calls for assistance is justified in using as much force as he or she believes on reasonable and probable grounds is necessary to render such assistance. R.S.O. 1990, c. P.33, s. 146.

Residential Tenancies Act, 1996

The purposes of this Act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants, and to provide for the adjudication of disputes and for other processes to informally resolve disputes.

Relevant sections under the Act

Privacy

- 25.** A landlord may enter a rental unit only in accordance with section 26 or 27

Entry without notice

Entry without notice, emergency, consent

- 26.** (1) A landlord may enter a rental unit at any time without written notice,
- (a) in cases of emergency; or
 - (b) if the tenant consents to the entry at the time of entry.

Same, housekeeping

- (2) A landlord may enter a rental unit without written notice to clean it if the tenancy agreement requires the landlord to clean the rental unit at regular intervals and,
- (a) the landlord enters the unit at the times specified in the tenancy agreement;
 - (b) if no times are specified, the landlord enters the unit between the hours of 8 a.m. and 8 p.m.

Entry to show rental unit to prospective tenants

- (3) A landlord may enter the rental unit without written notice to show the unit to prospective tenants if ,
- (a) the landlord and tenant have agreed that the tenancy will be terminated or one of them has given notice of termination to the other;
 - (b) the landlord enters the unit between the hours 8 a.m. and 8 p.m.; and
 - (c) before entering, the landlord informs or makes a reasonable effort to inform the tenant of the intention to do so.

Entry with notice

27. (1) A landlord may enter a rental unit in accordance with written notice given to the tenant at least 24 hours before the time of entry under the following circumstances:
- 1. To carry out repair or replacement or do work in the rental unit
 - 2. To allow a potential mortgagee or insurer of the residential complex to view the rental unit.
 - 3. To allow a person who holds a certificate of authorization within the meaning of the *Professional Engineers Act* or a certificate of practice within the meaning of the *Architects Act* or another qualified person to make a physical inspection of the rental unit to satisfy a requirement imposed under subsection 9 (4) of the *Condominium Act, 1998*.
 - 4. To carry out an inspection of the rental unit, if,
 - (i) the inspection is for the purpose of determining whether or not the rental unit is in a good state of repair and fit for habitation and complies with health, safety, housing and maintenance standards, consistent with the landlord's obligations under subsection 20 (1) or section 161, and
 - (ii) it is reasonable to carry out the inspection.
 - 5. For any other reasonable reason for entry specified in the tenancy agreement.

Translation – Sections 25-27 set out entry by the landlord with and/or without consent of the tenant.

Entry by canvassers

28. No landlord shall restrict reasonable access to a residential complex by candidates for election to any office at the federal, provincial or municipal level, or their authorized representatives, if they are seeking access for the purpose of canvassing or distributing election material.

Translation – Self Explanatory

Termination only in accordance with the Act

37. (1) A tenancy may be terminated only in accordance with this Act.

Termination by notice

- (2) If a notice of termination is given in accordance with this Act and the tenant vacates the rental unit in accordance with the notice, the tenancy is terminated on the termination date set out in the notice.

Restriction on recovery of possession

39. A landlord shall not recover possession of a rental unit subject to a tenancy unless,
- (a) the tenant has vacated or abandoned the unit; or
 - (b) an order of the Board evicting the tenant has authorized the possession.

Distress abolished

40. No landlord shall, without legal process, seize a tenant's property for default in the payment of rent or for the breach of any other obligation of the tenant.

Disposal of abandoned property if unit is vacated

41. (1) A landlord may sell, retain for the landlord's own use or otherwise dispose of property in a rental unit or the residential complex if the rental unit has been vacated in accordance with,
- (a) a notice of termination of the landlord or the tenant;

- (b) an agreement between the landlord and the tenant to terminate the tenancy;

Where eviction order enforced

- (2) Despite subsection (1), where an order is made to evict a tenant, the landlord shall not sell, retain or otherwise dispose of the tenant's property before 72 hours after the enforcement of an eviction order.

Same

- (3) A landlord shall make an evicted tenant's property available to be retrieved at a location close to the rental unit during the prescribed hours within 72 hours after the enforcement of an eviction order.

Translation – Sections 37-41 deal with evictions and how notice must be given, and the process for property recovery by the evicted tenant. It also set out limitations on the landlord as to what he can/can not do with evicted tenants property.

Liquor Licence Act

The **Liquor Licence Act of Ontario** is a provincial act in Ontario dealing with licensing and possession of alcohol. In most cases, the act impacts eateries requiring a licence to serve alcohol.

The origins of this act lie in the Prohibition period when alcohol was deemed illegal.

Under the provisions of the act, alcohol is still sold by the province at the LCBO, but also sold by non-government locations like *The Beer Store* and the *Wine Rack*.

Definitions under the Act

Alcohol – Means a product of fermentation or distillation of grains, fruits, or other agricultural products and includes synthetic alcohol (ethanol)

Liquor – Means spirits, wine and beer or any combination thereof and includes any alcohol in a form appropriate for human consumption as a beverage, alone or in combination with other matter.

Spirits – Means any beverage containing alcohol obtained by distillation.

Wine – Means any beverage containing alcohol in excess of the prescribed amount obtained by the fermentation of the natural sugar contents of fruits, including grapes, apples and other agricultural products containing sugar, and including honey and milk.

Beer - means any beverage containing alcohol in excess of the prescribed amount obtained by the fermentation of an infusion or decoction of barley, malt and hops, or of any similar products in drinkable water.

Relevant Sections under the Act

Licence or permit required

5. (1) No person shall keep for sale, offer for sale or sell liquor except under the authority of a licence or permit to sell liquor or under the authority of a manufacturer's licence.

Soliciting orders

- (2) No person shall canvass for, receive or solicit orders for the sale of liquor unless the person is the holder of a licence or permit to sell liquor or unless the person is the holder of a licence to represent a manufacturer.

Delivery for fee

- (3) No person shall deliver liquor for a fee except under the authority of a licence to deliver liquor.

Exception

- (4) Subsections (1), (2) and (3) do not apply to the sale or delivery of liquor by or under the authority of the Liquor Control Board of Ontario under the *Liquor Control Act*. R.S.O. 1990, c. L.19, s. 5.

Licence required, ferment on premise facility

- 5.1 No person shall operate a ferment on premise facility except under the authority of a licence to operate such a facility. 2006, c. 34, s. 16 (4).

Translation – This section simply states that for anyone to make or produce any form of alcohol created for human consumption, a licence is required to do so. Think of the

**“brew your own beer” or “make your own wine” shops.
These businesses need to have a licence to operate.**

Unlawful purchase

27. No person shall purchase liquor except from a government store or from a person authorized by licence or permit to sell liquor. R.S.O. 1990, c. L.19, s. 27.

Translation – Self explanatory

Sale to intoxicated persons

29. No person shall sell or supply liquor or permit liquor to be sold or supplied to any person who is or appears to be intoxicated. R.S.O. 1990, c. L.19, s. 29.

Translation – Self explanatory

Rules, permissions, for people under 19 years of age

30. (1) No person shall knowingly sell or supply liquor to a person under nineteen years of age. R.S.O. 1990, c. L.19, s. 30 (1).

Idem

- (2) No person shall sell or supply liquor to a person who appears to be under nineteen years of age. R.S.O. 1990, c. L.19, s. 30 (2).

Permitting possession or consumption

- (3) No licensee or employee or agent of a licensee shall knowingly permit a person under nineteen years of age to have or consume liquor in the licensee’s licensed premises. R.S.O. 1990, c. L.19, s. 30 (3).

Idem

- (4) No licensee or employee or agent of a licensee shall permit a person who appears to be under nineteen years of age to have or consume liquor in the licensee’s licensed premises. R.S.O. 1990, c. L.19, s. 30 (4).

Exception to subsections. (3) and (4)

- (5) Subsections (3) and (4) do not prohibit a licensee or employee or agent of a licensee from permitting a person eighteen years of age to be in possession of liquor during the course of the person's employment on the licensee's licensed premises. R.S.O. 1990, c. L.19, s. 30 (5).

Translation – Self explanatory

Unlawful possession or consumption

Definition

31. (1) In this section, "residence" means a place that is actually occupied and used as a dwelling, whether or not in common with other persons, including all premises used in conjunction with the place to which the general public is not invited or permitted access, and, if the place occupied and used as a dwelling is a tent, includes the land immediately adjacent to and used in conjunction with the tent. R.S.O. 1990, c. L.19, s. 31 (1).

Unlawful possession or consumption

- (2) No person shall have or consume liquor in any place other than,
- (a) a residence;
 - (b) premises in respect of which a licence or permit is issued; or
 - (c) a private place as defined in the regulations. R.S.O. 1990, c. L.19, s. 31 (2).

Exception

- (3) Subsection (2) does not apply to the possession of liquor that is in a closed container. R.S.O. 1990, c. L.19, s. 31 (3).

Translation – Self explanatory

Unlawful consumption or supply of alcohol

33. No person shall,
- (a) drink alcohol in a form that is not a liquor; or
 - (b) supply alcohol in a form that is not a liquor to another person, if the person supplying the alcohol knows or ought to know that the other person intends it to be used as a drink. R.S.O. 1990, c. L.19, s. 33.

Translation – mouth wash, hand sanitizer, some cleaning supplies, some medicine and anything else that has alcohol in it is not meant to be consumed as a drink unless it's purpose is to be a consumable beverage. Alcohol can be found in many everyday items, not all of these items are meant to be consumed by the human body.

Removing person from premises

- 34.** (1) The holder of a licence or permit issued in respect of premises shall ensure that a person does not remain on the premises if the holder has reasonable grounds to believe that the person,
- (a) is unlawfully on the premises;
 - (b) is on the premises for an unlawful purpose; or
 - (c) is contravening the law on the premises. R.S.O. 1990, c. L.19, s. 34 (1).

Idem

- (2) The holder of a licence or permit may request a person referred to in subsection (1) to leave the premises immediately and if the request is not forthwith complied with may remove the person or cause the person to be removed by the use of no more force than is necessary. R.S.O. 1990, c. L.19, s. 34 (2).

Translation – Self explanatory

Smart Serve Ontario

Security guards may be hired to work in establishments licensed to sell alcohol. The Liquor License Act governs the sale of alcohol in Ontario and the Act is endorsed by the Alcohol and Gaming Commission of Ontario. In order to work in a licensed establishment, the client may ask the security guard to get **Smart Serve Ontario**.

Smart Serve training revolves around problem solving the issues surrounding safe and responsible practices when selling and serving alcohol. It has been made mandatory as of January 2008.

Smart Serve applies to:

- New liquor sales license holders, including new license applicants, license transfer applicants and temporary transfer applicants intending to operate an establishment.
- Managers, servers of beverage alcohol and **security staff**
- Stadium licensees, their managers, server and **security staff**
- Servers and **security staff** working at catered event
- When ordered by the Alcohol and Gaming Commission of Ontario for disciplinary reasons

Topics covered by **Smart Serve** include:

- Types of licenses
- Facts about alcohol
- How alcohol affects the body
- Recognizing signs of intoxication
- Legal rights and responsibilities
- Civil liability
- Prevention and intervention
- Forms of acceptable identification

Some **DON'TS** of **Smart Serve**:

- Allow guests to drink and drive
- Let people under the age of 19 drink
- Encourage excessive drinking or serve alcohol to anyone you suspect may already be intoxicated
- Permit drunken, violent or disorderly conduct
- Allow guests to take out or bring in liquor

While **Smart Serve Ontario** is a non-profit organization, there is a cost to taking the course. Depending on where it is being held the cost of the course will vary. The course can be done online or in a class room setting.

Trespass to Property Act

Trespass to Property Act of Ontario is provincial law in Ontario dealing with illegal entry into private and public property. As a provincial law, the penalties and mechanisms of enforcement are also provincial. This is important inasmuch as, under the Canadian system, criminal law is within the realm of the federal authority, so anyone violating this Act would be subject to quasi-criminal not full criminal enforcement. The Act is an attempt to put on the statute books what was formerly recognized by the common law. It is most often used by private property owners to keep unwanted individuals off the property. There are many methods of notifying unwanted individuals that they have been banned (for future access) but the most common is a personal notice to the offender.

Trespass to Property Act

R.S.O. 1990, CHAPTER T.21

Definitions

1. (1) In this Act,

“occupier” includes,

- (a) a person who is in physical possession of premises, or
 - (b) a person who has responsibility for and control over the condition of premises or the activities there carried on, or control over persons allowed to enter the premises,
- even if there is more than one occupier of the same premises; (“occupant”)

“premises” means lands and structures, or either of them, and includes,

- (a) water,
- (b) ships and vessels,
- (c) trailers and portable structures designed or used for residence, business or shelter,
- (d) trains, railway cars, vehicles and aircraft, except while in operation. (“lieux”) R.S.O. 1990, c. T.21, s. 1 (1).

School boards

(2) A school board has all the rights and duties of an occupier in respect of its school sites as defined in the *Education Act*. R.S.O. 1990, c. T.21, s. 1 (2).

Trespass an offence

2. (1) Every person who is not acting under a right or authority conferred by law and who,

- (a) without the express permission of the occupier, the proof of which rests on the defendant,
 - (i) enters on premises when entry is prohibited under this Act, or
 - (ii) engages in an activity on premises when the activity is prohibited under this Act; or
- (b) does not leave the premises immediately after he or she is directed to do so by the occupier of the premises or a person authorized by the occupier,

is guilty of an offence and on conviction is liable to a fine of not more than \$2,000. R.S.O. 1990, c. T.21, s. 2 (1).

Colour of right as a defence

- (2) It is a defence to a charge under subsection (1) in respect of premises that is land that the person charged reasonably believed that he or she had title to or an interest in the land that entitled him or her to do the act complained of. R.S.O. 1990, c. T.21, s. 2 (2).

Prohibition of entry

3. (1) Entry on premises may be prohibited by notice to that effect and entry is prohibited without any notice on premises,
- (a) that is a garden, field or other land that is under cultivation, including a lawn, orchard, vineyard and premises on which trees have been planted and have not attained an average height of more than two metres and woodlots on land used primarily for agricultural purposes; or
 - (b) that is enclosed in a manner that indicates the occupier's intention to keep persons off the premises or to keep animals on the premises. R.S.O. 1990, c. T.21, s. 3 (1).

Implied permission to use approach to door

- (2) There is a presumption that access for lawful purposes to the door of a building on premises by a means apparently provided and used for the purpose of access is not prohibited. R.S.O. 1990, c. T.21, s. 3 (2).

Limited permission

4. (1) Where notice is given that one or more particular activities are permitted, all other activities and entry for the purpose are prohibited and any additional notice that entry is prohibited or a particular activity is prohibited on the same premises shall be construed to be for greater certainty only. R.S.O. 1990, c. T.21, s. 4 (1).

Limited prohibition

- (2) Where entry on premises is not prohibited under section 3 or by notice that one or more particular activities are permitted under subsection (1), and notice is given that a particular activity is prohibited, that activity and entry for the purpose is prohibited and all other activities and entry for the purpose are not prohibited. R.S.O. 1990, c. T.21, s. 4 (2).

Method of giving notice

5. (1) A notice under this Act may be given,
- (a) orally or in writing;
 - (b) by means of signs posted so that a sign is clearly visible in daylight under normal conditions from the approach to each ordinary point of access to the premises to which it applies; or
 - (c) by means of the marking system set out in section 7. R.S.O. 1990, c. T.21, s. 5 (1).

Substantial compliance

- (2) Substantial compliance with clause (1) (b) or (c) is sufficient notice. R.S.O. 1990, c. T.21, s. 5 (2).

Form of sign

6. (1) A sign naming an activity or showing a graphic representation of an activity is sufficient for the purpose of giving notice that the activity is permitted. R.S.O. 1990, c. T.21, s. 6 (1).

Idem

- (2) A sign naming an activity with an oblique line drawn through the name or showing a graphic representation of an activity with an oblique line drawn through the representation is sufficient for the purpose of giving notice that the activity is prohibited. R.S.O. 1990, c. T.21, s. 6 (2).

Red markings

7. (1) Red markings made and posted in accordance with subsections (3) and (4) are sufficient for the purpose of giving notice that entry on the premises is prohibited. R.S.O. 1990, c. T.21, s. 7 (1).

Yellow markings

- (2) Yellow markings made and posted in accordance with subsections (3) and (4) are sufficient for the purpose of giving notice that entry is prohibited except for the purpose of certain activities and shall be deemed to be notice of the activities permitted. R.S.O. 1990, c. T.21, s. 7 (2).

Size

- (3) A marking under this section shall be of such a size that a circle ten centimetres in diameter can be contained wholly within it. R.S.O. 1990, c. T.21, s. 7 (3).

Posting

- (4) Markings under this section shall be so placed that a marking is clearly visible in daylight under normal conditions from the approach to each ordinary point of access to the premises to which it applies. R.S.O. 1990, c. T.21, s. 7 (4).

Notice applicable to part of premises

8. A notice or permission under this Act may be given in respect of any part of the premises of an occupier. R.S.O. 1990, c. T.21, s. 8.

Arrest without warrant on premises

9. (1) A police officer, or the occupier of premises, or a person authorized by the occupier may arrest without warrant any person he or she believes on reasonable and probable grounds to be on the premises in contravention of section 2. R.S.O. 1990, c. T.21, s. 9 (1).

Delivery to police officer

- (2) Where the person who makes an arrest under subsection (1) is not a police officer, he or she shall promptly call for the assistance of a police officer and give the person arrested into the custody of the police officer. R.S.O. 1990, c. T.21, s. 9 (2).

Deemed arrest

- (3) A police officer to whom the custody of a person is given under subsection (2) shall be deemed to have arrested the person for the purposes of the provisions of the *Provincial Offences Act* applying to his or her release or continued detention and bail. R.S.O. 1990, c. T.21, s. 9 (3).

Arrest without warrant off premises

10. Where a police officer believes on reasonable and probable grounds that a person has been in contravention of section 2 and has made fresh departure from the premises, and the person refuses to give his or her name and address, or there are reasonable and probable grounds to believe that the name or address given is false, the police officer may arrest the person without warrant. R.S.O. 1990, c. T.21, s. 10.

Motor vehicles and motorized snow vehicles

11. Where an offence under this Act is committed by means of a motor vehicle, as defined in the *Highway Traffic Act*, or by means of a motorized snow vehicle, as defined in the *Motorized Snow Vehicles Act*, the driver of the motor vehicle or motorized snow vehicle is liable to the fine provided under this Act and, where the driver is not the owner, the owner of the motor vehicle or motorized snow vehicle is liable to the fine provided under this Act unless the driver is convicted of the offence or, at the time the offence was committed, the motor vehicle or motorized snow vehicle was in the possession of a person other than the owner without the owner's consent. 2000, c. 30, s. 11.

Damage award

12. (1) Where a person is convicted of an offence under section 2, and a person has suffered damage caused by the person convicted during the commission of the offence, the court shall, on the request of the prosecutor and with the consent of the person who suffered the damage, determine the damages and shall make a judgment for damages against the person convicted in favour of the person who suffered the damage, but no judgment shall be for an amount in excess of \$1,000. R.S.O. 1990, c. T.21, s. 12 (1).

Costs of prosecution

- (2) Where a prosecution under section 2 is conducted by a private prosecutor, and the defendant is convicted, unless the court is of the opinion that the prosecution was not necessary for the protection of the occupier or the occupier's interests, the court shall determine the actual costs reasonably incurred in conducting the

prosecution and, despite section 60 of the *Provincial Offences Act*, shall order those costs to be paid by the defendant to the prosecutor. R.S.O. 1990, c. T.21, s. 12 (2).

Damages and costs in addition to fine

- (3) A judgment for damages under subsection (1), or an award of costs under subsection (2), shall be in addition to any fine that is imposed under this Act. R.S.O. 1990, c. T.21, s. 12 (3).

Civil action

- (4) A judgment for damages under subsection (1) extinguishes the right of the person in whose favour the judgment is made to bring a civil action for damages against the person convicted arising out of the same facts. R.S.O. 1990, c. T.21, s. 12 (4).

Idem

- (5) The failure to request or refusal to grant a judgment for damages under subsection (1) does not affect a right to bring a civil action for damages arising out of the same facts. R.S.O. 1990, c. T.21, s. 12 (5).

Enforcement

- (6) The judgment for damages under subsection (1), and the award for costs under subsection (2), may be filed in the Small Claims Court and shall be deemed to be a judgment or order of that court for the purposes of enforcement. R.S.O. 1990, c. T.21, s. 12 (6).

Relevant Sections under the Act

Section 2 – This section outlines the 3 ways that someone can become a trespasser:

1. Enters when entry is prohibited
2. Engages in prohibited activity
3. Fails to leave when directed.

Section 3 – This section outlines that the occupier has the right to prohibit entry.

Section 5 – This section outline the way that notice is to be given:

1. Orally
2. Writing

Section 9 – This section outlines that a police officer, occupier, or a person designated by the occupier may arrest someone who is in violation of section 2.

Criminal Code

Definition of Offences

Indictable offence - is more serious than a summary conviction offence. Conviction of an indictable offence exposes you to greater penalties. Examples would include: murder, manslaughter, robbery, rape, assault, break and enter, wounding.

Summary Offence - In Canada, summary offences are referred to as **summary conviction offences**. As in other jurisdictions summary conviction offences are considered less serious than indictable offences because they are punishable by shorter prison sentences and smaller fines. These offences appear both in the federal laws of Canada and in the legislation of Canada's provinces and territories. Examples would include: cause disturbance, theft under \$5000.00, shoplifting.

Criminal Offence – is as referred to as a Hybrid offence and is an offence for which the prosecutor has the option of charging as an offence punishable by summary conviction or as an indictable offence.

Arrest

Definition: *To take away the person's freedom of movement against their will.*

Technically, you can verbally command or touch the person once you have decided to arrest them. Lightly touch and steer them in the direction you wish them to go. When you identify yourself and your position, you establish your authority. When you inform the person that they are under arrest, you comply with legal requirement of the Criminal Code and the Canadian Charter of Rights and Freedom.

When you tell the person that they are under arrest, you verbally indicate their loss of freedom and when you touch their arms, you have physically indicated their loss of freedom. If you follow this procedure every time you will have a successfully completed a legal arrest.

As a security guard we have already seen that you will have specific authorities under various Acts and Regulations. The Criminal Code is no different. The code covers authorities/guidelines granted to private citizens (which is what you are). Sections covered would be the ability to arrest and various times that you would be able to use force in certain conditions.

CRIMINAL CODE SECTION 494 – Arrest Without Warrant.

1. Anyone may arrest without warrant;
 - a) a person whom he finds committing an indictable offence; or
 - b) a person who, on reasonable grounds, he believes
 - i) has committed a criminal offence and
 - ii) is escaping from and freshly pursued by persons who have lawful authority to arrest that person

2. The owner or a person in lawful possession of property, or a person authorized by the owner or by a person in lawful possession of property, may arrest a person without a warrant if they find them committing a criminal offence on or in relation to that property and
 - a) they make the arrest at that time; or
 - b) they make the arrest within a reasonable time after the offence is committed and they believe on reasonable grounds that it is not feasible in the circumstances for a peace officer to make the arrest.

3. Anyone other than a peace officer who arrests a person without warrant shall forthwith deliver the person to a peace officer.

4. For the greater certainty, a person who is authorized to make an arrest under this section is a person who is authorized by law to do so for the purposes of section 25.

Translation – this section covers off the 3 time when a private citizen can make an arrest. They are:

1. You find the person committing an indictable offence.
2. Fresh Pursuit (verbal component = reasonable and probable grounds)
3. You find the person committing a criminal offence on or in relation to the property. (at the time of or within a reasonable time)

It also states that if a private person who arrests without warrant shall forthwith deliver the person to a Peace Officer.

Canadian Charter of Rights and Freedoms

The Canadian Charter of Rights and Freedoms is a bill of rights entrenched in the Constitution of Canada. It forms the first part of the Constitution Act, 1982. The Charter guarantees certain political rights to Canadian citizens and civil rights of everyone in Canada from the policies and actions of all areas and levels of government. It is designed to unify Canadians around a set of principles that

embody those rights. The Charter was signed into law by Queen Elizabeth II of Canada on April 17, 1982 along with the rest of the Act.

PART I

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

GUARANTEE OF RIGHTS AND FREEDOMS

Rights and freedoms in Canada

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

FUNDAMENTAL FREEDOMS

Fundamental freedoms

2. Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

MOBILITY RIGHTS

Mobility of citizens

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

Rights to move and gain livelihood

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

- (a) to move to and take up residence in any province; and
- (b) to pursue the gaining of a livelihood in any province.

Limitation

(3) The rights specified in subsection (2) are subject to

(a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and

(b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

Affirmative action programs

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

LEGAL RIGHTS

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Search or seizure

8. Everyone has the right to be secure against unreasonable search or seizure.

Detention or imprisonment

9. Everyone has the right not to be arbitrarily detained or imprisoned.

Arrest or detention

10. Everyone has the right on arrest or detention

(a) to be informed promptly of the reasons therefor;

(b) to retain and instruct counsel without delay and to be informed of that right; and

(c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

Proceedings in criminal and penal matters

11. Any person charged with an offence has the right

- (a) to be informed without unreasonable delay of the specific offence;
- (b) to be tried within a reasonable time;
- (c) not to be compelled to be a witness in proceedings against that person in respect of the offence;
- (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
- (e) not to be denied reasonable bail without just cause;
- (f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment;
- (g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;
- (h) if finally acquitted of the offence, not to be tried for it again and, if finally found guilty and punished for the offence, not to be tried or punished for it again; and
- (i) if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.

Treatment or punishment

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Self-crimination

13. A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence.

Interpreter

14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

EQUALITY RIGHTS

Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Affirmative action programs

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.⁽⁸⁴⁾

OFFICIAL LANGUAGES OF CANADA

Official languages of Canada

16. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.

Advancement of status and use

(3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.

Proceedings of Parliament

17. (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.⁽⁸⁶⁾

Parliamentary statutes and records

18. (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.⁽⁸⁸⁾

Proceedings in courts established by Parliament

19. (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament⁽⁹⁰⁾

Communications by public with federal institutions

20. (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where

(a) there is a significant demand for communications with and services from that office in such language; or

(b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.

Continuation of existing constitutional provisions

21. Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.⁽⁹²⁾

Rights and privileges preserved

22. Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French.

MINORITY LANGUAGE EDUCATIONAL RIGHTS

Language of instruction

23. (1) Citizens of Canada

(a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or

(b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,

have the right to have their children receive primary and secondary school instruction in that language in that province.⁽⁹³⁾

Continuity of language instruction

(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

Application where numbers warrant

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province

(a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

(b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

ENFORCEMENT

Enforcement of guaranteed rights and freedoms

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Exclusion of evidence bringing administration of justice into disrepute

(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.

GENERAL

Aboriginal rights and freedoms not affected by Charter

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and

(b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.⁽⁹⁴⁾

Other rights and freedoms not affected by Charter

26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.

Multicultural heritage

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

Rights guaranteed equally to both sexes

28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.

Rights respecting certain schools preserved

29. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.⁽⁹⁵⁾

Application to territories and territorial authorities

30. A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory and the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be.

Legislative powers not extended

31. Nothing in this Charter extends the legislative powers of any body or authority.

Protection of Property**CRIMINAL CODE SECTION 35 - Defence - property**

- (1) A person is not guilty of an offence if
- (a) they either believe on reasonable grounds that they are in peaceable possession of property or are acting under the authority of, or lawfully assisting, a person whom they believe on reasonable grounds is in peaceable possession of property;
 - (b) they believe on reasonable grounds that another person
 - (i) is about to enter, is entering or has entered the property without being entitled by law to do so,
 - (ii) is about to take the property, is doing so or has just done so, or
 - (iii) is about to damage or destroy the property, or make it inoperative, or is doing so;

- (c) the act that constitutes the offence is committed for the purpose of
 - (i) preventing the other person from entering the property, or removing that person from the property, or
 - (ii) preventing the other person from taking, damaging or destroying the property or from making it inoperative, or retaking the property from that person; and
- (d) the act committed is reasonable in the circumstances.

- (2) Subsection (1) does not apply if the person who believes on reasonable grounds that they are, or who is believed on reasonable grounds to be, in peaceable possession of the property does not have a claim of right to it and the other person is entitled to its possession by law.
- (3) Subsection (1) does not apply if the other person is doing something that they are required or authorized by law to do in the administration or enforcement of the law, unless the person who commits the act that constitutes the offence believes on reasonable grounds that the other person is acting unlawfully.

Common Offences

Here is a list of the most common encountered offences that a security guard might encounter while working. These sections are self explanatory:

CRIMINAL CODE SECTION 264 - Criminal harassment

- (1) No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.

Prohibited conduct

- (2) The conduct mentioned in subsection (1) consists of
 - (a) repeatedly following from place to place the other person or anyone known to them;
 - (b) repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;
 - (c) besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or
 - (d) engaging in threatening conduct directed at the other person or any member of their family.

Punishment

- (3) Every person who contravenes this section is guilty of
- (a) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or
 - (b) an offence punishable on summary conviction.

CRIMINAL CODE SECTION 264.1 – Uttering Threats

- 1) Everyone commits an offence who, in any manner, knowingly utters, Conveys or causes any person to receive a threat
- a) to cause, death or bodily harm to any person;
 - b) to burn, destroy or damage real or personal property; or
 - c) to kill, poison or injure an animal or bird that is the property of another person.

CRIMINAL CODE SECTION 265 – Assault

1. A person commits an assault when
- a) Without the consent of another person, he applies force intentionally to that other person, directly or indirectly;
 - b) He attempts or threatens, by act or gesture, to apply force to another person, if he has, or causes that other person to believe upon reasonable grounds that he has, present ability to affect his purpose; or
 - c) While openly wearing or carrying a weapon or an imitation thereof, He accosts or impedes another person or begs.
 - d) This section applies to all forms of assault, including sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm and aggravated sexual assault.

CRIMINAL CODE SECTION 430 – Mischief

Every one commits mischief who willfully

- a) destroys or damages property;
- b) renders property dangerous, unless, inoperative or ineffective;
- c) obstructs, interrupts or interferes with lawful use, enjoyment or operation of property; or

- d) obstructs, interrupts or interferes with any person in lawful use, enjoyment or operation of property.

CRIMINAL CODE SECTION 348 – Breaking and Entering

Every one who

- a) Breaks and enters a place with the intent to commit an indictable offence therein,
- b) Breaks and enters a place and commits an indictable offence therein, or
- c) Breaks out of a place after
- (i) committing an indictable offence therein, or
 - (ii) entering the place with the intent to commit an indictable offence therein.

CRIMINAL CODE SECTION 322 – Theft

Every one commits theft who fraudulently and without color of right takes, or fraudulently and without color of right converts to his use or to the use of another person, anything, whether animate or inanimate, with intent,

- a) to deprive, temporarily or absolutely, the owner of it, or a person who has a special property or interest in it, of the thing or of his property or interest in it;
- b) To pledge it or deposit it as security.
- c) To part with it under condition with respect to its return that the person who parts with it may be unable to perform; or
- d) To deal with it in such a manner that it cannot be restored in the condition in which it was at the time it was taken or converted.

CRIMINAL CODE SECTION 343 – Robbery

Every one commits robbery who

- a) steals, and for the purpose of extorting whatever is stolen or to prevent or overcome resistance to stealing, uses violence or threats of violence to a person or property;
- b) steals, from a person and, at the time he steals or immediately before or immediately thereafter; wounds, beats, strikes or uses any personal violence to that person
- c) assaults any person with intent to steal from him; or

d) steals from any person while armed with an offensive weapon or imitation thereof

CRIMINAL CODE SECTION 354 - Possession of property obtained by crime

(1) Every one commits an offence who has in his possession any property or thing or any proceeds of any property or thing knowing that all or part of the property or thing or of the proceeds was obtained by or derived directly or indirectly from

- (a) the commission in Canada of an offence punishable by indictment; or
- (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.

Obliterated vehicle identification number

(2) In proceedings in respect of an offence under subsection (1), evidence that a person has in his possession a motor vehicle the vehicle identification number of which has been wholly or partially removed or obliterated or a part of a motor vehicle being a part bearing a vehicle identification number that has been wholly or partially removed or obliterated is, in the absence of any evidence to the contrary, proof that the motor vehicle or part, as the case may be, was obtained, and that such person had the motor vehicle or part, as the case may be, in his possession knowing that it was obtained,

- (a) by the commission in Canada of an offence punishable by indictment;
- or
- (b) by an act or omission anywhere that, if it had occurred in Canada, would have constituted an offence punishable by indictment.

Definition of "vehicle identification number"

(3) For the purposes of subsection (2), "vehicle identification number" means any number or other mark placed on a motor vehicle for the purpose of distinguishing the motor vehicle from other similar motor vehicles.

Exception

(4) A peace officer or a person acting under the direction of a peace officer is not guilty of an offence under this section by reason only that the peace officer or person possesses property or a thing or the proceeds of property or a thing mentioned in subsection (1) for the purposes of an investigation or otherwise in the execution of the peace officer's duties.

Punishment

355. Everyone who commits an offence under section 354

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars; or

(b) is guilty

(i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or

(ii) of an offence punishable on summary conviction,

where the value of the subject-matter of the offence does not exceed five thousand dollars.

CRIMINAL CODE SECTION 175(1) – Causing Disturbance

Every one who

- a) not being in a dwelling-house, causes a disturbance in or near a public place,
 - (i) by fighting, screaming, shouting, swearing, singing or using insulting or obscene language,
 - (ii) by being drunk, or
 - (iii) by impeding or molesting other persons,
- b) openly exposes or exhibits an indecent exhibition in a public place,
- c) loiters in a public place and in any way obstructs persons who are in that place, or
- d) disturbs the peace and quiet of the occupants of a dwelling house by discharging firearms or by disorderly conduct in a public place or who, not being an occupant of a dwelling-house comprised in a particular building or structure, disturbs the peace and quiet of the occupants of a dwelling-house comprised in the particular building or structure by discharging firearms or by disorderly conduct in any part of a building or structure to which, at any time of such conduct, the occupant of two or more dwelling-houses comprised in a building or structure have access as of right or by invitation, expressed or implied,

Is guilty of an offence punishable on summary conviction.

Tort Law

Tort Law is often referred to as Common Law. Tort /Common law is the body of the law which allows an injured person to obtain compensation from the person who caused the injury.

In security, this could apply to the application of handcuffs to an individual. It is reasonable to assume once a person has been arrested that handcuffs might be applied if the person constitutes a danger to the security guard, himself/herself, or the general public at large. It also presumes that once a person is under these conditions (arrest) that the arresting person is responsible for the arrested parties health and safety.

