

Module 7: Canadian Legal System

Canadian Criminal Court System

Understanding the Canadian Criminal Court System

In Canada, the criminal court system plays a pivotal role in administering justice. Security guards often find themselves involved in legal processes, where their responsibilities include preparing for legal proceedings, presenting evidence, and ensuring witnesses are well-prepared for testimony. It is crucial for security guards to conduct thorough investigations with the mindset that any case could proceed to trial. This approach ensures that all procedural and administrative tasks are handled meticulously, avoiding any potential errors that could impact the outcome of court proceedings.

Legal Status of Security Guards under the Criminal Code (Canada)

Security guards in Canada possess the same legal powers as any other citizen, with no additional authority. The Criminal Code (Canada) delineates the boundaries within which security guards must operate during their duties. It states that all private citizens enforcing the law are protected provided they:

- Act on reasonable grounds,
- Are justified in their actions, and
- Use only the necessary amount of force.

All three conditions must be satisfied to avoid criminal charges or civil lawsuits.

Security guards must have a foundational understanding of the Canadian legal system, which includes knowing the rights shared by all citizens, the powers that can be exercised, and the responsibilities that accompany these powers. This module focuses on the role of criminal law and its implications for those in the security services industry. By the end of this module, students should be able to answer the following three essential questions:

Key Questions for Understanding Criminal Law

1. What is Criminal Law?

Criminal law is generally defined as legislation enacted to serve public interests such as maintaining public peace, order, security, health, and morality. In Canada, the foundation of criminal law is the Federal Criminal Code (Canada).

Our individual backgrounds shape how we perceive "the law." For instance, someone from a country plagued by corruption may view the law differently compared to someone from a society with minimal corruption. However, for practical purposes, we need a clear, common definition that security personnel can understand and apply: **Law:** Rules regulating the conduct of society members, created, recognized, and sanctioned by the government.

2. What Purpose Does Criminal Law Serve?

Criminal law is a subset of the rules that govern our daily behavior, setting standards of conduct for everyone in society. Its primary purpose is to protect citizens, ensuring peace and safety by regulating behavior. It grants certain powers to individuals to enforce these rules, such as the ability of police officers and, in specific cases, private citizens, to arrest those who break the law. The Criminal Code (Canada) outlines these arrest powers for security guards.

A person accused of a criminal offense has the right to appear in court to address the accusation. The court must be convinced of the individual's guilt, either through a guilty plea or a guilty verdict after a trial, before imposing punishment. Not all individuals can be held accountable under the Criminal Code (Canada), such as children under twelve or individuals with mental illnesses who do not comprehend their wrongdoing.

The federal government is responsible for creating criminal laws, encapsulated in the Criminal Code (Canada). Other societal rules, like those in the Highway Traffic Act, may impose penalties but do not fall under criminal law. Subsection 91(27) of the Constitution Act, 1867, grants only the federal government the power to enact criminal law. Provinces can create quasi-criminal offenses and procedures similar to those in the Criminal Code (Canada). Convictions under provincial or municipal law do not result in a criminal record, though records are kept for other purposes.

3. How Are Laws Made?

Under the Canadian constitution, only the Parliament of Canada and the provincial Legislative Assemblies can create legislation. However, the creation of law isn't limited to these bodies. Federal and provincial governments can pass statutes and regulations, which can delegate law-making authority to others. For example, some regulations are prepared by departments and approved by Cabinet, or authority can be delegated to municipalities to enact bylaws, as authorized by the Municipal Act, 2001.

Examples of municipal bylaws include:

- Traffic control and speed regulations,
- Prohibitions on using or discharging firearms and crossbows within city limits.

The process of law-making involves extensive preparation. Government administrators discuss and consult with community groups to identify necessary regulations. A lead department often handles provincial legislation, ensuring the draft legislation is practical and enforceable before presenting it to Cabinet.

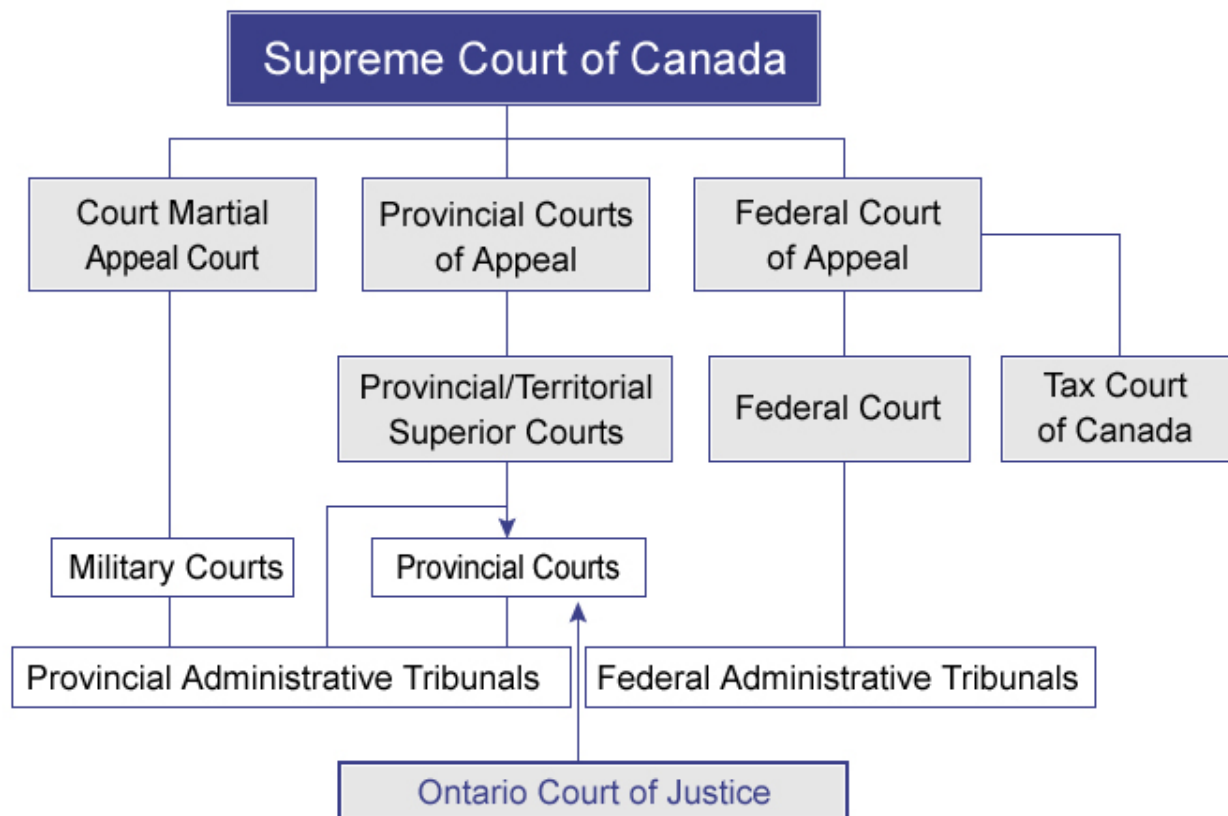
Passing a law is just the beginning; compliance and enforcement are crucial. The police, courts, and Crown prosecutors play key roles in enforcing criminal law. Police investigate crimes and,

with prosecutors, lay charges. Prosecutors present cases in court, with judges determining if the laws in the Criminal Code (Canada) have been violated.

The Court Structure

Overview of the Canadian Court System

Outline of Canada's Court System



The courts in Canada are responsible for determining whether an individual has violated a law and, if so, deciding the appropriate consequences. The Canadian court system is structured into four tiers:

1. **Supreme Court of Canada:** At the top of the hierarchy, the Supreme Court of Canada serves as the ultimate appellate court for the nation. It hears appeals from both the federal court system, led by the Federal Court of Appeal, and the provincial court systems, each headed by its respective Court of Appeal. Unlike the United States Supreme Court, the Supreme Court of Canada operates as a national court of last resort.
2. **Federal Court of Appeal and Provincial Courts of Appeal:** The next level consists of the Federal Court of Appeal and the various Provincial Courts of Appeal. Additionally, two of these provincial appellate courts serve as the appellate courts for the three federal

territories in Northern Canada: Yukon Territory, Northwest Territory, and Nunavut Territory.

3. **Federal Court, Tax Court of Canada, and Provincial/Territorial Superior Courts:** Below the appellate courts are the Federal Court, the Tax Court of Canada, and the Provincial and Territorial Superior Courts of general jurisdiction. These courts are central to the Canadian judicial system and possess inherent jurisdiction alongside the authority granted by federal and provincial statutes.
4. **Provincial Courts:** At the base of the hierarchy are the Provincial Courts, which are usually divided into divisions based on subject matter. Common divisions include Traffic, Small Claims, Family, and Criminal.

Foundations of the Canadian Legal System

The Canadian legal system is rooted in the British common law tradition, a legacy of its Commonwealth heritage. However, Quebec retains a civil law system from its French colonial past. Both legal systems operate under the framework of the Canadian Constitution and the Canadian Charter of Rights & Freedoms.

Constitution of Canada: The supreme law of the country, all other laws must conform to the Constitution. The Constitution Act, 1867, established the foundation for the federal system of government, dividing powers between federal and provincial authorities. The Constitution Act, 1982, solidified the entire Constitution, introduced a mechanism to nullify inconsistent laws, and provided an amendment formula.

Charter of Rights & Freedoms: Included in the Constitution Act, 1982, the Charter guarantees a comprehensive bill of rights, safeguarding fundamental freedoms and rights for all Canadians.

This hierarchical and multi-faceted court system, along with its foundational legal principles, ensures a robust and fair judicial process across Canada.

Courts in Canada

Supreme Court of Canada

The Supreme Court of Canada is the highest court in the country and has served as the court of last resort for all legal matters since 1949. Prior to this, cases could be appealed to the Judicial Committee of the Privy Council in the United Kingdom.

Superior Courts

Section 92 courts, commonly known as Superior Courts, are present throughout Canada. Judges in these courts are appointed through a federal process, but the administration of these courts is handled by the provinces.

Appellate Courts and Federal Court System

Each province and territory has its own appellate courts, and there is also a federal court system that deals with specific issues such as immigration, patents, and maritime law, as stipulated in the Federal Court Act.

Legal Traditions

Stare Decisis

Canadian law, like other common law jurisdictions, operates on the principle of stare decisis, meaning that courts must follow the decisions of higher courts. Although provincial courts are not bound by the decisions of courts in other provinces, these decisions are often treated as persuasive and are frequently followed as if they were binding. Only the Supreme Court of Canada can issue rulings that bind all courts in the country.

Influence of Other Courts

The Ontario Court of Appeal, for example, is frequently consulted for guidance by other provinces, especially on issues related to evidence and criminal law. Due to Canada's historical ties with the United Kingdom, decisions made by the House of Lords before 1867 remain binding unless overturned by the Supreme Court of Canada. Similarly, decisions by the Privy Council before the termination of appeals in 1949 continue to be binding. Even after gaining full sovereignty, Canadian courts still regard these historical decisions as highly persuasive.

Summary

The Canadian court system is robust and hierarchical, ensuring that legal matters are addressed fairly and consistently. The influence of legal traditions and historical ties with the UK continues to shape the interpretation and application of law in Canada.

Quebec Civilian System

Under Section 92 of the Constitution, Quebec is allowed to maintain its civilian system in areas within provincial jurisdiction, governed by the Civil Code of Quebec. Despite this, the court system remains based on common law principles, as it falls under federal jurisdiction.

Criminal Law

Criminal law in Canada defines criminal offenses, oversees the processes for apprehending, charging, and trying suspected individuals, and sets penalties and treatment methods for convicted offenders. The Federal government has the exclusive authority to enact criminal law, resulting in a unified Criminal Code applicable across the entire country.

Provincial Law

Provincial laws, or Acts, are legislations passed by Canada's ten provincial governments to regulate or control matters under their constitutional authority. Each province also manages "quasi-criminal" offenses, which do not result in a criminal record. These offenses typically involve morally or socially blameworthy conduct and include violations under the Food and Drugs Act, Highway Traffic Act, Income Tax Act, and Occupational Health and Safety Act.

Civil Law

Civil law deals with disputes between individuals, focusing on private relations rather than criminal, military, or religious issues. The most common civil cases include tort claims, contract disputes, and landlord/tenant issues. Other areas of civil law cover divorce and family law, wills, and property disputes.

Tort Law

Tort law aims to address wrongs done to individuals and provide relief from wrongful acts, typically through monetary compensation. The goal is to offer full compensation for proven harms. Unlike torts, crimes are viewed as offenses against the public, even though the victim may be an individual.

Procedural Law

Procedural law in Canada covers various aspects of the justice system. Laws of evidence dictate the admissibility of evidence in courts and tribunals, with jurisdiction determining the governing rules. The functioning of courts is regulated by codified civil procedure laws in each province.

Case Law

Canadian law comprises two main sources: case law and legislation. Case law consists of written decisions by judges in court cases and tribunals at all court levels across the country. These decisions guide future rulings in similar cases.

Common Law

Common law is not codified but is based on precedent, guiding judges in subsequent cases with similar circumstances. It is derived from past judicial decisions rather than written legislation.

For further definitions and information about Canada's court system, visit the Government of Canada's website [here](#).

The Charter of Rights and Freedoms

The Canadian Charter of Rights and Freedoms guarantees certain fundamental rights and freedoms to everyone in Canada, including Canadian citizens, visitors, and those awaiting permanent residency. These rights encompass a wide range of liberties, such as the right to vote, freedom of expression, and freedom of religion.

Key Rights and Freedoms Relevant to Security Guards

- **Right to Live in Freedom and Safety:** Everyone in Canada has the right to personal freedom and safety. Security guards must respect and protect this right in the course of their duties.
- **Right to Protection from Unreasonable Search and Seizure:** Individuals have the right to not be subject to unreasonable searches or the confiscation of their belongings. Security guards must ensure that any search or seizure they conduct is justified and lawful.

For a detailed understanding and further information on the Charter, you can access a copy of the Canadian Charter of Rights and Freedoms [here](#).

The Charter of Rights and Freedoms – A History Explained

Historical Context

Canada was originally established as a British colony. Despite gaining substantial autonomy and self-governance over time, Canada remained under certain aspects of British rule. For instance, while Canada operated as a self-governing nation, it was still part of the British Empire and subject to British legislative enactments. Decisions made by the Supreme Court of Canada could be reviewed by the English High Court, the Privy Council.

The Canada Act and the Introduction of the Charter

In 1982, a significant shift occurred with the passage of the Canada Act by the British Parliament, which ended the British Government's ability to pass legislation affecting Canada. Concurrently, on April 17, 1982, the Canadian federal government introduced the Canadian Charter of Rights and Freedoms.

Fundamental Rights and Freedoms Guaranteed by the Charter

The Charter ensures a range of fundamental rights for all citizens, including:

- **Right to Life, Liberty, and Security:** Section 7 guarantees the right to life, liberty, and security, and protects individuals from being deprived of these rights except in accordance with the principles of fundamental justice.

- **Protection from Unreasonable Search and Seizure:** Section 8 ensures that everyone is secure against unreasonable searches or seizures.
- **Protection from Arbitrary Detention or Imprisonment:** Section 9 protects individuals from being arbitrarily detained or imprisoned.
- **Rights on Arrest or Detention:** Section 10 provides rights to individuals upon arrest or detention, including the right to be informed of the reasons, to retain and instruct counsel, to be informed of this right, and to judicial review.
- **Rights Respecting Court Procedure:** Various sections guarantee procedural rights, such as the right to an interpreter and the right to equality before the law (Section 15).

Guaranteed Freedoms

The Charter also protects several fundamental freedoms:

- **Freedom of Religion:** The right to practice any religion or no religion at all.
- **Freedom of Expression:** The right to express opinions and ideas without interference.
- **Freedom of Association:** The right to associate with others, including the formation of groups or unions.
- **Freedom of Public Assembly:** The right to gather publicly for peaceful purposes.

Supreme Law and Judicial Authority

The Charter is the supreme law of Canada. Section 52 grants courts the authority to declare any federal, provincial, or municipal legislation unconstitutional if it conflicts with the Charter. This ensures that all laws and actions by the government comply with the principles and rights outlined in the Charter, solidifying its role as a cornerstone of Canadian law and civil rights.

The Charter of Rights and Freedoms: Key Sections and Their Importance for Security Guards

Primacy of the Constitution of Canada

Section 52(1): "The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect."

This establishes that the Constitution is the ultimate legal authority in Canada. Laws that conflict with the Constitution, including the Charter of Rights and Freedoms, are invalid. Judicial review, where courts evaluate the constitutionality of laws, has become standard practice. Courts are obliged to nullify any legislation that contradicts the Charter.

The Saving Provision

Section 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."

This means that rights and freedoms are not absolute. Governments can pass laws that limit these rights if they can justify that the limitations are reasonable and necessary in a free and democratic society. For example, laws against drinking and driving restrict individual freedoms but are justified by the need to protect public safety.

Fundamental Freedoms

Section 2: Everyone has the following fundamental freedoms:

- **(a) Freedom of conscience and religion:** The right to hold religious beliefs without fear of discrimination or reprisal.
- **(b) Freedom of thought, belief, opinion, and expression:** Protects all forms of expression, including spoken, written, and acted out forms. This also includes the right to say nothing and the right to picket peacefully.
- **(c) Freedom of peaceful assembly:** The right to gather peacefully.
- **(d) Freedom of association:** The right to associate with others to pursue common goals.

Security guards must respect these freedoms while performing their duties. For instance, when managing a strike or a protest, they should recognize that peaceful picketing is protected under freedom of expression.

Rights Relevant to Security Guards

Sections 7 through 14 detail specific rights that are particularly relevant to the work of security guards:

- **Section 7: Life, Liberty, and Security of Person** "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."
- **Section 8: Search or Seizure** "Everyone has the right to be secure against unreasonable search or seizure."
- **Section 9: Detention or Imprisonment** "Everyone has the right not to be arbitrarily detained or imprisoned."
- **Section 10: Arrest or Detention** "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; (c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful."

- **Section 11: Proceedings in Criminal and Penal Matters** 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) 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; (h) if finally acquitted, not to be tried again for the same offence; (i) to the benefit of the lesser punishment if the punishment for the offence has changed between the time of commission and sentencing.
- **Section 12: Treatment or Punishment** "Everyone has the right not to be subjected to any cruel and unusual treatment or punishment."
- **Section 13: Self-Incrimination** "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."
- **Section 14: Interpreter** "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."

Understanding and respecting these rights is crucial for security guards in carrying out their duties legally and ethically.

A Day in the Life of a Security Guard

You are working as a security guard for a large commercial building in downtown Toronto. Today, your team has been alerted about a planned protest that will be passing by your building.

As a legal occupier of the property, your security agency, hired by the property owner or management, has the authority to enforce the building's private property rules. Your primary task is to observe the crowd and ensure the safety of the building and its tenants.

In Canada, it is essential to balance the Charter-protected freedom of peaceful assembly with the need to maintain order and security. Even if the protest is noisy or the opinions of the crowd are disagreeable, their right to gather peacefully must be respected. However, this freedom does not extend to actions such as:

- Damaging property (e.g., breaking windows)
- Assaulting or intimidating individuals
- Entering private property without a legitimate reason

Key Points for Managing the Protest

1. **Observation:** The presence of security guards respectfully observing the protest can often deter criminal behavior. Your role is to monitor the crowd without escalating tensions.
2. **Understanding Boundaries:** Be aware of what constitutes protected behavior under the Charter. Peaceful assembly and freedom of expression are protected rights, but these do not cover illegal actions.
3. **Identifying Illegal Behavior:** Be vigilant for actions that cross the line into illegal or dangerous territory, such as:
 - Vandalism
 - Physical violence
 - Trespassing on private property
4. **Engagement:** If necessary, engage with protestors calmly and respectfully. Your goal is to ensure safety and order without infringing on their rights.
5. **Documentation:** Keep detailed records of the protest, including any incidents of illegal behavior. This documentation can be crucial if further action is required.

Scenario Execution

As the protest approaches your building, you and your team take up strategic positions where you can observe without obstructing the protestors. You notice that most of the crowd is peaceful, though noisy. Some are chanting slogans and holding signs, but they are staying on public property and not causing harm.

At one point, a few protestors start to approach the building's entrance. You approach them calmly, reminding them that they must stay off private property. They comply without incident, and you continue to monitor the crowd.

Later, you observe a small group trying to vandalize a storefront window. At this point, you alert your team and approach the individuals, reminding them that their actions are illegal. You call for police assistance while ensuring the safety of yourself and others.

By the end of the day, the protest passes without significant incident, thanks to your team's diligent observation and measured response.

Conclusion

The role of a security guard during a protest is challenging but crucial. By respecting the Charter rights of protestors while ensuring the safety and security of the building and its occupants, you help maintain a balance between lawful expression and order.

Legal Rights

Life, Liberty, and Security of Person

Section 7 of the Canadian Charter of Rights and Freedoms: 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.

Since 1982, Canadian courts have interpreted this section to protect the rights to live, to move freely, and to maintain personal safety. These rights can only be restricted by the state under specific conditions, such as lawful arrest. For example, a person lawfully arrested for robbing a bank can have their liberty limited for the sake of justice and public safety.

Principles of Fundamental Justice: These are basic fairness principles that are expected in a just legal system. Violations of Section 7 typically involve:

- Not treating the accused as innocent until proven guilty.
- Denying the accused the opportunity to fully defend against charges.
- Having an unreasonable or biased body conduct the trial.

Right Against Self-Incrimination: The Supreme Court of Canada has ruled that a person's freedom should not be jeopardized by something they said during the offence or trial. This protection includes:

- The right of a witness to avoid self-incriminating testimony.
- Preventing the use of an accused's testimony in subsequent court proceedings.
- The right to remain silent during investigations.

Waiver of Rights: An accused person can waive their right to silence, but courts require clear evidence that the accused fully understood this right and its consequences. For example, in **R. v. Whittle**, the court found that a mentally ill accused could not waive his right to silence as he did not understand it, rendering any statement he made invalid.

Coerced Statements: Statements made under pressure or feeling compelled, especially to an authority figure, are not considered valid waivers. Courts frequently find Charter rights violations in such cases. Police officers must ensure that any statement or search conducted is understood to be voluntary. Failure to do so can lead to case dismissal. Security guards, being in positions of authority, must also respect these principles.

Key Points for Security Guards

1. **Respecting Rights:** Be aware of the legal rights of individuals, particularly regarding self-incrimination and the right to silence.
2. **Voluntary Statements:** Ensure that any statements obtained from individuals are given voluntarily, without coercion.

3. **Understanding Waivers:** Recognize that a waiver of rights must be fully informed and voluntary to be valid.
4. **Authority and Conduct:** Conduct yourself in a manner that respects the principles of fundamental justice and avoids coercion or undue influence over individuals in your care.

By upholding these legal rights, you not only comply with the Charter but also contribute to a fair and just security practice.

Search or Seizure

Section 8 of the Canadian Charter of Rights and Freedoms: Everyone has the right to be secure against unreasonable search or seizure.

This section protects individuals from unjustified intrusions into their privacy. It ensures that personal property cannot be searched or seized without a valid reason. If a police officer or security guard conducts an unreasonable search or seizure, any evidence obtained may be inadmissible in court, potentially compromising the entire case.

Key Points about Search and Seizure:

1. **Test for Reasonableness:**
 - **Justified Need:** There must be a justified reason for the search or seizure to ensure it is reasonable and necessary.
 - **Privacy Rights:** Individuals have a right to privacy, and this right should not be infringed upon without sufficient cause.
2. **Waiver of Privacy Rights:**
 - **Informed Consent:** A person can waive their right to privacy, but courts are careful in determining if the waiver was given knowingly and voluntarily.
 - **Full Knowledge Requirement:** For a waiver to be valid, the person must fully understand their right to be free from unreasonable search or seizure and the implications of waiving that right.
3. **Case Example - R. v. Borden:**
 - **Consent and Scope of Use:** In this case, police obtained consent to take a blood sample from an accused person for a sexual assault investigation. However, they used the sample in two separate investigations without informing the accused. The court ruled that the accused should have been informed about the intended use of the evidence in both cases. This demonstrates the importance of transparency and informed consent in waiving privacy rights.

Application for Security Guards:

- **Adherence to Rights:** Security guards must respect the privacy rights of individuals and avoid conducting searches or seizures without proper justification.

- **Informed Waivers:** If an individual consents to a search, ensure they fully understand their right to refuse and the consequences of their consent.
- **Documentation and Evidence:** Maintain clear records of any searches or seizures conducted, including the reasons for the action and confirmation of informed consent if applicable.

By understanding and respecting the principles of Section 8, security guards can ensure their actions are lawful and uphold the rights guaranteed by the Charter, thereby contributing to a fair and just security practice.

Detention or Imprisonment

Section 9 of the Canadian Charter of Rights and Freedoms: Everyone has the right not to be arbitrarily detained or imprisoned.

Detention occurs when a person:

- Has their liberty taken away by physical constraint.
- Is controlled by another person through demands or directions.
- Believes they have no choice but to follow the commands of another person.

Examples of Detention:

1. **Physical Restraint:**

- **Scenario:** A loss prevention officer (LPO) observes a shoplifter stealing a jacket, approaches the individual, places a hand on their arm, and informs them they are under arrest. The LPO restrains the individual and guides them to the security office, where the person is allowed to call a lawyer.
- **Analysis:** The accused's liberty is clearly taken away as they are physically restrained and not free to leave. This constitutes detention.

2. **Control Through Demands:**

- **Scenario:** In a similar shoplifting situation, the LPO sternly tells the accused they saw them steal a jacket and instructs them to accompany the LPO to the office. The LPO does not touch the accused, but the accused complies.
- **Analysis:** The accused submits to the control of the LPO through the LPO's demands, resulting in detention.

3. **Perceived Lack of Choice:**

- **Scenario:** The LPO did not directly observe the accused stealing but suspects it after losing sight of the accused. The LPO tells the accused they believe a jacket was stolen and asks the accused to come to the office for questioning. The accused feels intimidated and believes they have no choice but to comply.
- **Analysis:** The accused's belief that they must follow the LPO's commands, due to the LPO's manner, constitutes detention. A judge may consider this an

unreasonable detention, potentially leading to any obtained evidence being thrown out.

Key Points about Detention or Imprisonment:

- **Justification:** Any detention must be justified by the circumstances and viewed through the perspective of a reasonable person. People cannot be randomly stopped or detained without reasonable and probable grounds.
- **Arbitrary Detention:** Random stops or detentions without a valid reason or based on mere suspicion are prohibited. Detention decisions must be based on solid evidence and justified by the situation.

Application for Security Guards:

- **Respect for Rights:** Security guards must ensure that detentions are justified and not arbitrary. Any action that restricts an individual's liberty should be backed by reasonable and probable grounds.
- **Informed Actions:** When detaining someone, security guards should clearly inform the individual of the reason for the detention and ensure their rights are respected, including the right to legal counsel.
- **Documentation:** Proper documentation of the circumstances and reasons for any detention is crucial to ensure that actions can be justified if reviewed by a court.

By understanding and respecting Section 9, security guards can conduct their duties lawfully, ensuring they do not infringe upon the rights guaranteed by the Charter, and maintaining a fair and just approach to security enforcement.

Arrest or Detention

Section 10 of the Canadian Charter of Rights and Freedoms: Everyone has the right on arrest or detention: (a) To be informed promptly of the reasons for their arrest or detention. (b) To retain and instruct counsel without delay and to be informed of that right. (c) To have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

Explanation of Rights under Section 10:

1. **Right to be Informed Promptly:**
 - **Clause 10(a):** Once an individual is detained or arrested, they must be informed of the reasons for their arrest or detention as soon as possible. For security guards, this means telling the arrested person why they are being detained immediately after taking them into custody.

- **Practical Application:** If a security guard arrests someone, they should clearly and promptly communicate the reason for the arrest to the individual. This ensures that the person understands the nature of the accusation against them.
2. **Right to Counsel:**
- **Clause 10(b):** This clause requires that the detained or arrested individual be informed of their right to legal counsel (a lawyer) without delay. The individual must understand the reasons for their detention or arrest to appreciate the necessity of legal representation.
 - **Counsel Definition:** Under section 2 of the Criminal Code (Canada), "counsel" refers to a barrister or solicitor authorized by law to perform legal proceedings.
 - **Practical Application:** Security guards must inform the detained person of their right to contact a lawyer. This includes providing access to a telephone and a list of local lawyers or the toll-free number for duty counsel. The right to counsel means the individual can make multiple phone calls if needed, and discussions with their lawyer must be private to ensure confidentiality.
3. **Validity of Detention:**
- **Clause 10(c):** The detained individual has the right to challenge the legality of their detention. If the arrest or detention is found to be unlawful, the individual must be released.
 - **Practical Application:** This clause ensures that any person who believes their detention is unjust can have it reviewed by a court. Security guards must be aware that if they unlawfully detain someone, the individual has the right to be released.

Security Guard Responsibilities:

- **Informing Detainees:** Clearly and promptly inform the detained person of the reasons for their arrest.
- **Providing Access to Legal Counsel:** Ensure the detained person knows their right to contact a lawyer and facilitate this process by providing access to a phone and necessary contact information.
- **Privacy and Safety:** Allow the detainee to speak privately with their lawyer while ensuring that the person cannot escape, destroy evidence, or access weapons.
- **Lawful Detention:** Ensure all detentions are lawful and based on reasonable grounds. Unlawful detentions can lead to the individual's release and potential legal consequences for the security guard or their employer.

By adhering to these guidelines, security guards can ensure they respect and uphold the legal rights of individuals as outlined in Section 10 of the Canadian Charter of Rights and Freedoms.

Proceedings in Criminal and Penal Matters

Section 11 of the Canadian Charter of Rights and Freedoms: Any person charged with an offence has the right to:

(a) To be informed without unreasonable delay of the specific offence:

- **Explanation:** An individual must be promptly informed of the specific criminal charge against them. This ensures they understand what they are being accused of, allowing them to prepare an adequate defense.
- **Practical Application:** When a security guard detains someone on suspicion of a crime, they must ensure the individual is told of the specific offence they are being charged with as soon as possible.

(b) To be tried within a reasonable time:

- **Explanation:** This right ensures that an accused person is not left in legal limbo for an extended period. A trial should be held within a timeframe that is fair and just.
- **Practical Application:** Legal authorities must ensure that criminal proceedings are conducted swiftly, respecting the accused's right to a timely trial.

(c) Not to be compelled to be a witness in proceedings against that person in respect of the offence:

- **Explanation:** An accused person cannot be forced to testify against themselves in their trial. This protects individuals from self-incrimination.
- **Practical Application:** Security guards and law enforcement officers must respect an individual's right to remain silent and not compel them to provide evidence against themselves.

(d) To be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal:

- **Explanation:** The principle of presumption of innocence is fundamental in Canadian law. It requires that an individual is considered innocent until the prosecution can prove their guilt beyond a reasonable doubt.
- **Practical Application:** Security guards and law enforcement officers must treat detained individuals as innocent until a court determines otherwise. This ensures a fair and impartial judicial process.

(e) Not to be denied reasonable bail without just cause:

- **Explanation:** Accused individuals should be granted bail unless there are significant reasons to deny it, such as a risk of flight or danger to the public.
- **Practical Application:** Legal authorities must evaluate the necessity of detaining an accused person before trial and provide bail unless there are compelling reasons not to.

(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:

- **Explanation:** For serious offences, individuals have the right to a trial by jury, which allows a group of peers to determine guilt or innocence.
- **Practical Application:** Courts must provide the option of a jury trial for serious criminal charges, respecting the accused's right to a fair trial process.

(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:

- **Explanation:** An individual cannot be convicted for an act that was not considered a crime at the time it was committed. This principle protects against retroactive criminalization.
- **Practical Application:** Legal systems must ensure that individuals are only charged and tried for actions that were illegal at the time they occurred.

(h) If finally acquitted of the offence, not to be tried again for it and, if finally found guilty and punished for the offence, not to be tried or punished for it again:

- **Explanation:** This right protects against double jeopardy, ensuring that an individual cannot be tried or punished more than once for the same offence.
- **Practical Application:** Courts must respect final acquittals and convictions, preventing the re-prosecution of individuals for the same crime.

(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 be given the benefit of the lesser punishment:

- **Explanation:** If the law changes to reduce the punishment for an offence, the individual should benefit from the lesser penalty.
- **Practical Application:** Judges must apply the more lenient punishment if the law has changed to reduce penalties for a crime between its commission and sentencing.

Security Guard Responsibilities:

- **Informing of Charges:** Ensure detained individuals are promptly informed of the specific charges against them.
- **Respecting Rights:** Treat individuals as innocent until proven guilty and avoid compelling them to testify against themselves.
- **Ensuring Fair Treatment:** Support the accused's right to timely and fair trials, reasonable bail, and protection against double jeopardy and retroactive criminalization.

By understanding and respecting these rights, security guards can contribute to the fair treatment of individuals in the criminal justice system, upholding the principles of justice and human rights as outlined in Section 11 of the Canadian Charter of Rights and Freedoms.