



CHAPTER 8: LEGAL AUTHORITIES

LEARNING OBJECTIVES:

This unit will help you to learn:

There are four components in this section:

1. Handling information and PIPEDA

- List procedures for handling, storing, disseminating, and destroying information of a personal nature
- Explanation on how to keep information secure while ensuring that it is maintained in a manner consistent with PIPEDA

2. Additional legislation

- Address the relevant sections of the Personal Information Protection and Electronic Documents Act (PIPEDA) regarding the protection of personal information
- introduction to the relevant sections to each act, addresses the risks and dangers associated with private security
- Explanation on how each act can impact the safety and effectiveness on site
- Explanation on how to complete his/her duties within lawful authority
- Differences in private versus public property
- Employment Standards Act, 2000
- Labour Relations Act, 1995
- Liquor Licence Act
- Provincial Offences Act
- Residential Tenancies Act, 2006
- Trespass to Property Act



3. Criminal Code of Canada

- Explain the difference between indictable and summary offences and a security guard's authority to arrest (e.g. citizen's arrest)
- List the most common offences encountered by security guards
- Review the sections of the code regarding defense of property and defense of persons
- Explain criminal harassment, mischief, assault, theft, causing disturbances, breaking and entering and possession of stolen property under the code
- Defense of property and defense of persons
- Case examples regarding critical incidents and abuse of authority

4. Tort law.

- Explanation on the common elements of tort law in security situations



HANDLING INFORMATION AND THE P.I.P.E.D.A.

Personal information handling is governed by the Personal Information Protection and Electronic Documents Act (PIPEDA). As a security guard, it is important to be familiar with this act and understand the guidelines for handling personal information. This includes understanding how to collect, use, disclose, and dispose of personal information in a manner that is compliant with PIPEDA. This includes understanding the rights of individuals to access their personal information, and the responsibilities of organizations to protect personal information from unauthorized access or disclosure.

It is essential for security guards to be aware of the proper procedures for handling information of a personal nature to ensure compliance with PIPEDA and to protect the privacy of individuals.

P.I.P.E.D.A.

The Personal Information Protection and Electronic Documents Act (PIPEDA) is a Canadian legislation that establishes guidelines for private sector organizations in regards to the collection, use, and disclosure of personal information in the course of commercial business.

The Act was passed on April 13, 2000 and its main objective is to promote consumer trust in electronic commerce. It also aims to assure the European Union that Canadian privacy laws are adequate to protect the personal information of European citizens.

According to PIPEDA, personal information cannot be disclosed without consent, except in certain circumstances such as:

- When there are reasonable grounds to believe that it could be useful in the investigation of a crime against the laws of Canada.
- In the event of an emergency that affects the life, health, or security of an individual.
- When it is used for statistical, scholarly study, or research.
- Moreover, personal information can only be used for the purposes for which it was collected. Companies are required to have a Privacy Policy that specifically addresses the use, storage, and destruction of personal information.



The Policy should include:

- A statement identifying the purpose for which the personal information will be used.
- The right for employees to review their information and ensure that it is correct and up-to-date.
- A provision for the destruction of information once it is no longer needed.

❖ INFORMATION STORAGE AND DESTRUCTION

Proper storage of information is crucial in protecting personal data from unauthorized access, theft, or loss. In order to ensure the safety and security of information, organizations should implement a combination of physical, organizational, and technological measures.

❖ PHYSICAL MEASURES:

Locked filing cabinets and restricted access to offices are examples of physical measures that can be implemented to protect information.

❖ ORGANIZATIONAL MEASURES:

Security clearances and limiting access on a “need-to-know” basis are examples of organizational measures that can be implemented to protect information.

❖ TECHNOLOGICAL MEASURES:

The use of passwords and encryption are examples of technological measures that can be implemented to protect information.

❖ DESTRUCTION

Once personal information is no longer required to fulfill the identified purposes, it should be destroyed, erased, or made anonymous. Organizations should develop guidelines and implement procedures to govern the destruction of personal information. This can include methods such as shredding paper documents, wiping electronic storage devices, and securely disposing of information containing devices.



TERMS UNDER THE ACT

❖ PERSONAL INFORMATION

Refers to information about an identifiable individual, but does not include the name, title, or business contact information of an employee of an organization.

❖ RECORD

Includes any type of document, correspondence, or other material regardless of its physical form or characteristics. This includes but is not limited to letters, books, plans, maps, drawings, diagrams, photos, films, microforms, sound recordings, videos, machine-readable records, and any copies of these items.

❖ 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

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.

Principle 2 – Identifying purpose

The purposes for which personal information is collected shall be identified by the organization at or before the time the information is collected.

Principle 3 - Consent

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



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.

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 fulfilment of those purposes.

Principle 6 — Accuracy

Personal information shall be as accurate, complete, and up-to-date as is necessary for the purposes for which it is to be used.

Principle 7 — Safeguards

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

Principle 8 — Openness

An organization shall make readily available to individuals' specific information about its policies and practices relating to the management of personal information.

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 requirement 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.

Principle 10 — Challenging Compliance

An individual shall be able to address a challenge concerning compliance with the above principles to the designated individual or individuals accountable for the organization's compliance.

PIPEDA AND SECURITY GUARD

PIPEDA, or the Personal Information Protection and Electronic Documents Act, is a federal law in Canada that governs the collection, use, and disclosure of personal information by private sector organizations in the course of commercial activity. PIPEDA requires organizations to protect personal information against unauthorized access, use, or disclosure, and to take appropriate measures to securely store and destroy this information when it is no longer needed.

When it comes to the storage and destruction of personal information under PIPEDA, security guards may play an important role in ensuring compliance with the law. This could involve a number of different tasks, including:

❖ COLLECTION OF INFORMATION

Security guards may help organizations ensure that personal information is collected with a person's consent and in compliance with relevant laws. They may help to identify where personal information is collected and work to ensure that it is only used for its intended purpose.

❖ MONITORING ACCESS TO INFORMATION

Security guards may be responsible for monitoring access to areas where personal information is being stored. They may need to implement access control measures, such as security cameras, identification cards, or biometric scanners, to ensure that only authorized personnel are able to access this information.



❖ ENSURING SECURE STORAGE

In order to comply with PIPEDA, personal information must be stored in a secure manner. Security guards may be responsible for ensuring that the proper safeguards are in place to protect this information, such as secure storage containers or encrypted devices. They may also need to conduct regular audits or inspections of these storage areas to ensure that they are still secure.

Security guards can help to ensure that personal information is properly secured when it is being stored. They may control access to areas where personal information is stored and may check that IT systems and databases are using appropriate security measures. They will also need to ensure that records are accurate and up-to-date.

❖ DISSEMINATION OF INFORMATION

In some cases, security guards may need to share personal information with third parties such as the police, under specific circumstances. Before sharing out any information, they will need to verify that the third party has a legitimate need to know and that they agree to protect the privacy of the personal information in accordance with PIPEDA.

❖ PROPER DISPOSAL OF INFORMATION

When personal information is no longer needed, it must be disposed of in a way that ensures it is not accessible by unauthorized individuals. Security guards may be responsible for ensuring that this information is properly shredded, incinerated or securely deleted from digital devices. They may also need to follow specific procedures to ensure the secure disposal of this information, such as separating physically the different types of documentation before destroying it.

By implementing appropriate measures for the storage and destruction of personal information, security guards can help protect the rights and privacy of individuals and ensure compliance with PIPEDA.

WHAT OBLIGATIONS DO BUSINESSES HAVE UNDER THE PIPEDA?

Prior to collecting, using, or disclosing a person's personal information for reasons other than those that are explicitly stated and lawful, the PIPEDA mandates that organisations get that person's consent, whether it be expressed, implied, or deemed, from them. This



is why the PIPEDA, which defines personal information as "information about an identifiable individual," secures the data of all Canadian citizens.

The PIPEDA considers the following categories of personal information to satisfy this definition:

- Name, Age, ID card, and income-related information.
- Race, nationality, or ethnic origin.
- Marital status, Blood type, Medical, employment, or education history.
- DNA information.
- Driver's license or social insurance number
- opinions, evaluations, social status
- Employee files, medical records, loan records, credit records,
- Photographs, email addresses
- Computer Internet protocol (IP) addresses

In contrast, the following categories of personal data are not protected by the PIPEDA:

- Personal data that is managed in accordance with the Privacy Act by agencies of the Canadian federal government.
- Governments in a province or territory and the people who work for them.
- Business contact details, such as a worker's name, business address, job title, email address, or phone number, are gathered, used, and revealed in order to get in touch with them regarding their job or line of work.
- The gathering, use, or disclosure of personal data by an organization for editorial, literary, or artistic goals.

WHAT SANCTIONS ARE IMPOSED FOR PIPEDA VIOLATIONS?

Companies that intentionally disregard PIPEDA standards for proactive security measures, reporting data breaches, or maintaining records of data breaches may be subject to fines of up to 100,000 CAD per violation.

The law also specifies three situations in which PIPEDA infractions might result in criminal charges, and the OPC regulates all compliance with the PIPEDA:

- The deliberate deletion of data after getting a request to examine that data.



- Retaliatory actions taken against staff members who make an effort to abide by PIPEDA rules.
- Obstructing or hampering investigations after a PIPEDA complaint has been made.

For Example, Police enter your building and approach to the security guard. They have a warrant out for the arrest of a resident. They are permitted entry by the guard. The guards enter the resident's suite and knock on the door. There is no response and no indication that the resident is at home. The police do not request entry into the suite and do not do so either.

The scenario comes up again and again in the days that follow. Frustrated, an guard leaves his card and requests that security let him know when the resident comes home.

As the resident arrives home, the security guard calls the police officer, thinking he is performing his civic duty. The resident is taken into custody by the police when they visit the residence again.

Did the security guard violate any rules? PIPEDA privacy rights of the resident, were they violated? Both questions are most likely answered in the affirmative.

It wasn't a problem letting the police in, only giving them access. When police submit a properly written warrant or when a crime is being committed or about to be committed, building workers should allow police entrance.

The guard was able to read the arrest warrant that the police had in this instance delivered. The guard permitted the police to enter and approach the suite after making sure that the owner's information was correct and after writing down the guard's badge number. The police didn't request access to the suite.

The security guard made a mistake when he watched the access card reader and shared the data with a third party without the proper permission. For the purposes of PIPEDA, information regarding a person's location that is acquired through the swipe of a building access card is probably going to be considered as personal information about the person. Under PIPEDA, the disclosure of personal information often necessitates the individual's knowledge and agreement.



SURVEILLANCE UNDER PIPEDA

Security guards, many of whom are employed by businesses and condominiums, must keep in mind that PIPEDA protects images and video captured during business for use as evidence or as a deterrent. Because security often uses cameras to monitor buildings for safety and to deter crime.

The PIPEDA's main concern is found in subsection 5(3) is “an overarching requirement” that is superimposed on an organization’s other obligations to ensure that their purposes for collection, use and disclosure of personal information are limited to only those which a reasonable person would consider appropriate in the circumstances.

For instance, the PIPEDA's clause 7(1)(b) enables data acquisition without consent if :
it is reasonable to expect that the collection with the knowledge or consent of the individual would compromise the availability or the accuracy of the information and the collection is reasonable for purposes related to investigating a breach of an agreement or a contravention of the laws of Canada or a province.

Organizations using surveillance to deter crime or to investigate employee misconduct often rely on the exception found in paragraph 7 (1) (b) to justify their actions. Despite that, organizations must first and foremost be able to demonstrate that their purpose in resorting to video-surveillance without consent is one that a reasonable person would consider appropriate in the circumstances [compare with subsection 5(3)], even if organizations can demonstrate that their use of video-surveillance falls within the consent exception of paragraph 7 (1) (b).

This case is particularly interesting since it has the dual elements of surveillance and the disclosure of a memorandum. While the Commissioner concluded that surveillance complaint was not-well-founded, the personal information complaints were considered well-founded and resolved.

Since the institution of the Act, surveillance has been found to be one of the most contentious issues. Key case summaries, which are helpful in learning to distinguish between appropriate and inappropriate surveillance, as well as the importance of protection of sensitive information, can be found on the Office of the Privacy Commissioner of Canada website.



ADDITIONAL LEGISLATION

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

EMPLOYMENT STANDARD ACT

The Employment Standards Act (ESA) outlines the rights and responsibilities of both employees and employers in most workplaces within the province of Ontario. It is important for employees who are members of a union to first consult with their union representatives before reaching out to the Ministry of Labour if they believe their rights under the ESA have been violated.

❖ HOURS OF WORK:

The Hours of Work standard sets limits on the amount of time employees can be required to work each day and each week.

The daily limit is eight hours or the length of an established regular workday, if it exceeds eight hours. Exceptions to this limit can only be made through written agreement.

The weekly limit is 48 hours and can be exceeded through written agreement and the approval of the Director of Employment Standards.

❖ REST PERIOD:

Employees are entitled to a minimum of eight hours of uninterrupted rest between successive work shifts, with the exception of certain circumstances. This applies to all types of shifts, including consecutive, split, on-call, and back-to-back shifts.



❖ OVERTIME PAY

Most employees, including those who work full-time, part-time, are students, temporary help agency assignment employees, or casual workers, are eligible for overtime pay after working 44 hours in a given workweek. Overtime pay is calculated at 1.5 times the employee's regular rate of pay.

For instance, if an employee's regular rate of pay is \$18.00 per hour, their overtime rate will be \$18.00 per hour ($12 \times 1.5 = 18$). Therefore, the employee must be paid at a rate of \$18.00 per hour for every hour worked over 44 hours in a week.

❖ MINIMUM WAGE

The minimum wage is the lowest pay rate that an employer is legally allowed to pay to an employee. This applies to a wide range of employees, regardless of their working hours, job type, and pay method. However, there are certain exemptions to the minimum wage provisions under the Employment Standards Act, 2000 (ESA) for certain types of employment.

As of October 2022, the general minimum wage in the Province of Ontario is set at \$15.50 per hour. It is advisable to check the Ontario.ca website for any updates on the current minimum wage rate.

❖ VACATION TIME & PAY

The Employment Standards Act (ESA) sets out the minimum requirements for vacation time and pay for employees in Ontario. Upon completion of every 12-month period, employees are entitled to a minimum of two weeks of vacation time. However, this minimum may be increased through a contract of employment or collective agreement. Additionally, as of January 1, 2018, workers are eligible for at least three weeks of vacation after five years with the same employer.

In terms of vacation pay, employees are entitled to a minimum of 4% of their wages earned (excluding vacation pay) during the period for which the vacation is given, if their period of employment is less than five years. If the employee has been employed for more than five years, the minimum vacation pay increases to 6%.



For example, if an employee earned \$16,000 in gross wages during their vacation entitlement year, they would be entitled to \$640 in vacation pay, based on the 4% minimum rate.

❖ PUBLIC HOLIDAYS

Employees who qualify for statutory holidays in Ontario are entitled to take off these nine designated days and receive public holiday pay. Alternatively, they can choose to work on the holiday and receive additional pay.

They will be paid their regular rate for the hours worked, plus public holiday pay. Additionally, they may also receive a substitute holiday with public holiday pay. This substitute holiday is calculated based on the four weeks preceding the week in which the substitute holiday falls.

The nine public statutory holidays in Ontario are: New Year's Day, Family Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Christmas Day, and Boxing Day.

❖ LEAVE OF ABSENCES

In Ontario, there are currently 13 types of leave of absence that employees may be eligible for, as of 2020. These leaves are intended to provide employees with the ability to take time off work while still maintaining job protection. These types of leaves include:

- Pregnancy/Parental,
- Sickness,
- Family Responsibility,
- Bereavement,
- Emergency,
- Reservist,
- Family Medical,
- Family Caregiver,
- Critical Illness,
- Child Death,
- Crime-related Child Disappearance,
- Organ Donor, and
- Domestic/Sexual Violence.



❖ PREGNANCY / PARENTAL LEAVE

Pregnancy and Parental Leave are two types of job-protected leave in Ontario that allow employees to take time off work to care for a newborn or newly adopted child.

PREGNANCY LEAVE: An employee who is pregnant is entitled to take a leave of absence without pay for up to 17 weeks, unless her due date is less than 13 weeks after she started working for the employer. The employee may begin her pregnancy leave on the day that is 17 weeks before her due date or the day she gives birth, whichever is later.

PARENTAL LEAVE: After the birth or adoption of a child, a parent is entitled to take a leave of absence without pay for a period of time to care for the child. The length of the parental leave depends on whether or not the employee also took a pregnancy leave. If the employee took a pregnancy leave, the parental leave will end 61 weeks after it began. If the employee did not take a pregnancy leave, the parental leave will end 63 weeks after it began.

REINSTATEMENT: Employees who take pregnancy or parental leave have the right to return to the same position they held prior to going on leave. If that position no longer exists, the employer must reinstate the employee to a comparable position. Additionally, there is no requirement for an employee to have been actively working for a certain period of time or to take the full amount of the leave.

❖ FAMILY MEDICAL LEAVE

The Family Medical Leave provisions are in place to ensure that employees are able to take up to 28 weeks of unpaid leave from their job to provide care or support to certain family members who have a serious medical condition and are at significant risk of dying within a period of 26 weeks, without facing any negative consequences from their employer. This leave applies to the following family members of the employee:

- Spouse, parents, step-parents, or foster parents of the employee or the employee's spouse
- Children, step-children, or foster children of the employee or the employee's spouse



- Children under legal guardianship of the employee or the employee's spouse
- Brothers, step-brothers, sisters, or step-sisters of the employee
- Grandparents, step-grandparents, grandchildren, or step-grandchildren of the employee or the employee's spouse
- Brothers-in-law, step-brothers-in-law, sisters-in-law, or step-sisters-in-law of the employee
- Sons-in-law or daughters-in-law of the employee or the employee's spouse
- Uncles or aunts of the employee or the employee's spouse
- Nephews or nieces of the employee or the employee's spouse
- Spouses of the employee's grandchild, uncle, aunt, nephew, or niece
- People who the employee considers to be like family, provided that any prescribed conditions are met
- Any other individuals who may be prescribed as family members for the purpose of this section.

❖ FAMILY CAREGIVER LEAVE

The family caregiver leave provisions are in place to give employees the right to take time away from work without pay to provide care or support to certain family members who have a serious medical condition. Unlike the family medical leave provisions, the family caregiver leave does not have a requirement that the family member be at significant risk of dying within a period of 26 weeks.

This means that employees are able to take leave to care for a family member with a serious medical condition regardless of their prognosis. Under these provisions, employees are eligible for up to eight weeks of unpaid leave each year for each specified family member. This leave can be taken in a single block or in multiple blocks, depending on the needs of the employee and the family member. Overall, this leave enables employees to balance their work and caregiving responsibilities without facing penalties from their employer.



❖ SICK LEAVE

An employee who has been working for an employer for at least two consecutive weeks is eligible to take a leave of absence for personal illness, injury or medical emergency.

The employee is entitled to take up to 3 days off each year without pay. The employee is required to inform their employer in advance or as soon as possible by any means of notice (oral, written, voicemail, etc.).

The employee is allowed to take a part-day off as sick leave, but the employer can count it as one day for the purpose of the 3-day leave entitlement. If an employee works for a portion of the day and takes a part-day off as sick leave, they are entitled to be paid for the time worked that day.

❖ FAMILY RESPONSIBILITY LEAVE

Employees are eligible for a family responsibility leave of up to 3 days per calendar year for situations involving illness, injury, medical emergency, or urgent matters involving certain family members. These family members include the employee's spouse, parents, step-parents, foster parents, children, step-children, foster children, grandparents, step-grandparents, grandchild, step-grandchild, spouse of a child, brother or sister, and any other relative who depends on the employee for care or assistance. The employee must inform the employer of the leave in advance or as soon as possible through appropriate means of notice. The employer may also count a partial day off as a full day's leave, but the employee is entitled to be paid for the hours worked on that day.

❖ BEREAVEMENT LEAVE

The bereavement leave provisions are in place to offer employees who have been employed for at least two consecutive weeks with the opportunity to take up to two days of unpaid leave from work each calendar year. This leave is granted in the event of the death of certain relatives.

❖ ORGAN DONOR LEAVE

Employees who have been employed by their employer for at least 13 weeks and who are undergoing surgery for the purpose of donating all or part of certain organs to other persons, are provided with the right to take up to 13 weeks of job-protected, unpaid leave



from work. This leave is intended to allow these employees to recover from the surgery, and it can be extended for medical reasons for a further period of up to 13 weeks.

❖ RESERVIST LEAVE

The reservist leave provisions are set in place to provide employees with the right to take unpaid leave from work when they are not able to perform their duties as a reservist employee, who has worked for their employer for at least six consecutive months, because of a deployment to a Canadian Forces operations. This leave is intended to support the reservist employees who are serving in the military and help them to manage their work and military commitments.

❖ THE DOMESTIC/SEXUAL VIOLENCE LEAVE

The Domestic/Sexual Violence Leave provisions are in place to give employees who have been employed for at least 13 weeks the ability to take two separate allotments of leave within a calendar year. The first allotment is 10 days, and the second is 15 weeks, for the purpose of addressing domestic or sexual violence that the employee or their child has experienced or been threatened with.

The leave must be used for specific reasons such as seeking medical attention, accessing professional counseling, relocating temporarily or permanently, seeking law enforcement and legal assistance, and accessing victim services. The first five days of leave are paid, while the remaining days are unpaid.

❖ THE CHILD DEATH LEAVE

The Child Death Leave provisions are designed to provide employees who have been employed by their employer for at least six months with the right to take unpaid time off work in the event of the death of their child. The leave entitlement is up to 104 weeks, and it must be taken in a single period. However, if the employee is charged with a crime in relation to the death of the child or if the child was a party to a crime in relation to their death, there is no entitlement to this leave.

❖ THE CRIME-RELATED CHILD DISAPPEARANCE LEAVE

The Crime-related Child Disappearance Leave provisions are similar to the Child Death Leave provisions in that they provide employees who have been employed by their employer for at least six months with the right to take unpaid time off work if a child of



the employee disappears as a probable result of a crime. The leave entitlement is also up to 104 weeks, and it must be taken in a single period. This leave is intended to provide support for employees who have experienced the traumatic event of a child disappearing as a result of a crime.

❖ CRITICAL ILLNESS LEAVE

The critical illness leaves provisions allow employees who have been employed for at least six months to take unpaid time off work to provide care or support to a critically ill minor child or adult family member. The leave is provided in two different durations, 37 weeks for a minor child and 17 weeks for an adult, and it can be taken within a 52-week period. An employee can qualify for the leave again after the 52-week period ends.

❖ EMERGENCY LEAVE

The emergency leave provisions provide employees with the right to take unpaid time off work when an emergency is declared by the Lieutenant Governor in Council or the Premier and the employee meets certain eligibility criteria. The leave is intended for the duration of the public emergency.

There are also provisions for infectious disease emergency leave. Employees are entitled to take unpaid leave if they are unable to perform their duties due to certain reasons related to a designated infectious disease. The list of designated infectious diseases is specified in Ontario Regulation 66/20.

❖ TERMINATION NOTICE AND PAY

The Employment Standards Act, 2000 (ESA) defines a number of situations when an employee's employment can be considered as terminated. This can include situations when an employer dismisses or stops employing an employee, "constructively" dismisses an employee and the employee resigns as a result, or lays an employee off for a period that is longer than a "temporary layoff."

In most cases, when an employer ends the employment of an employee who has been continuously employed for at least three months, the employer must provide the employee with either written notice of termination, termination pay, or a combination of both (as long as the notice and the number of weeks of termination pay together equal the length of notice the employee is entitled to receive).



The written notice required under the ESA is generally determined by how long the employee has been employed by the employer. Once given, notice of termination of employment cannot be withdrawn without the consent of the employee.

However, certain employees are not entitled to notice of termination or termination pay under the ESA. Examples include employees who are guilty of wilful misconduct, disobedience, or wilful neglect of duty that is not trivial and has not been condoned by the employer, construction employees, employees on temporary layoff, employees who refuse an offer of reasonable alternative employment, and employees who have been employed for less than three months.

A constructive dismissal occurs when an employer makes a significant change to a fundamental term or condition of an employee's employment without the employee's actual or implied consent. This can be a complex and difficult subject, and can be reviewed with the Employment Standards Information Centre.

An employee can also be on a temporary layoff when an employer cuts back or stops the employee's work without ending his or her employment, such as when there is not enough work to do. In these situations, the employee's employment is not considered as terminated, and they may be able to return to work when the employer's operations resume.

When an employer terminates an employee's employment and does not provide the written notice as required by the Employment Standards Act, 2000 (ESA), the employer must compensate the employee with termination pay. This pay is a one-time payment that is equivalent to the employee's regular wages for a typical work week, for the duration of the notice period that the employee was entitled to receive.

Additionally, the employee is entitled to earn vacation pay on the termination pay and the employer is obliged to continue making contributions towards the employee's benefits that they would have been entitled to if they had continued working during the notice period.

❖ TERMINATION AND SEVERANCE OF EMPLOYMENT

If a building services provider is replaced, the new supplier may:

- Hire the employees of the previous contractor
- Not hire the employees of the previous contractor



Most of the time, if the new provider decides not to hire the workers, they must be treated as if their previous employer had severed or terminated their employment. In that situation, the provider would adhere to the ESA's Part XV: Termination and Severance of Employment clauses.

❖ TERMINATION PAY VS SEVERANCE PAY

Employers must give notice of termination. Termination pay is given in place of a notice of termination of employment. Severance pays, on the other hand, is given to more senior workers who have worked for a company for five years or more and who have a payroll in Ontario of at least \$2.5 million or who have terminated the employment of 50 or more people in the previous six months. Severance pays honours an employee's years of service while compensating for the loss of seniority and employment-related benefits.

Consider the following legislation:

❖ What defines termination

56. (1) An employer terminates the employment of an employee for purposes of section 54 if,

- The employer dismisses the employee or otherwise refuses or is unable to continue employing him or her;
- The employer constructively dismisses the employee and the employee resigns from his or her employment in response to that within a reasonable period; or
- The employer lays the employee off for a period longer than the period of a temporary lay-off. 2000, c. 41, s. 56 (1).

❖ Pay instead of notice

An employer may terminate the employment of an employee without notice or with less notice than is required under section 57 or 58 if the employer,

- Pays to the employee termination pay in a lump sum equal to the amount the employee would have been entitled to receive under section 60 had notice been given in accordance with that section; and
- Continues to make whatever benefit plan contributions would be required to be made in order to maintain the benefits to which the employee would have been



entitled had he or she continued to be employed during the period of notice that he or she would otherwise have been entitled to receive. 2000, c. 41, s. 61 (1); 2001, c. 9, Sched. I, s. 1 (14).

❖ What constitutes severance?

An employer severs the employment of an employee if,

- The employer dismisses the employee or otherwise refuses or is unable to continue employing the employee;
- The employer constructively dismisses the employee and the employee resigns from his or her employment in response within a reasonable period;
- The employer lays the employee off for 35 weeks or more in any period of 52 consecutive weeks;
- The employer lays the employee off because of a permanent discontinuance of all of the employer's business at an establishment; or
- The employer gives the employee notice of termination in accordance with section 57 or 58, the employee gives the employer written notice at least two weeks before resigning and the employee's notice of resignation is to take effect during the statutory notice period. 2000, c. 41, s. 63 (1); 2002, c. 18, Sched. J, s. 3 (24).

❖ Entitlement to severance pay

An employer who severs an employment relationship with an employee shall pay severance pay to the employee if the employee was employed by the employer for five years or more and,

- The severance occurred because of a permanent discontinuance of all or part of the employer's business at an establishment and the employee is one of 50 or more employees who have their employment relationship severed within a six-month period as a result; or
- The employer has a payroll of \$2.5 million or more. 2000, c. 41, s. 64 (1).

❖ Payroll

For the purposes of subsection (1), an employer shall be considered to have a payroll of \$2.5 million or more if,



- The total wages earned by all of the employer's employees in the four weeks that ended with the last day of the last pay period completed prior to the severance of an employee's employment, when multiplied by 13, was \$2.5 million or more; or
- The total wages earned by all of the employer's employees in the last or second-last fiscal year of the employer prior to the severance of an employee's employment was \$2.5 million or more. 2000, c. 41, s. 64 (2); 2001, c. 9, Sched. I, s. 1 (16).

An employee would not be entitled to severance or termination pay from a new building services supplier for the following reasons:

- The worker is still employed with the previous provider;
- The employee's work with the previous provider included providing services at the premises but who did not perform his or her job primarily at those premises during the 13 weeks before the date the new provider began to provide services;
- The employee's duties at the location included delivering services, but who was
- Not actively employed on the day when the new provider started providing services;
- Did not execute the majority of their work on the property over the last 13 weeks that they were actively employed;
- The employee did not perform his or her job at the premises for at least 13 weeks during the 26-week period before the new provider began to provide services (this does not include any time the employee was on pregnancy, parental, family medical, personal emergency, declared emergency, or reservist leave, or time the building services were not being provided);
- A reasonable employment offer from the new provider is rejected by the employee.

When a company providing building services, such a contract security firm, considers taking over as a new service provider at a facility, a lot of information might be offered. This is done so the bidder may choose wisely whether to assume supply of services and retain workers.



According to **Bill 7**, the incumbent security provider must offer you employment, either at the same workplace or in a position that is comparable to the one you hold now.

The following details can be read on the Ministry of Labor website. It is adapted from Building Services Providers in your Guide to the Employment Standards Act of 2000.

A prospective client may request details on:

- The classification of each employee's position or its description;
- The hourly rate that each employee was actually paid;
- The date when the provider employed each employee;
- Any time period that the present provider is considered to have worked during in accordance with the ESA's continuity of employment regulations;
- Before the request date, the employee worked at the location, but not exclusively there for the 13 weeks prior to the request date;
- The total number of non-overtime hours each employee worked each week for the 13 weeks before the information request was submitted, or the number of hours each employee works in a regular work day and a regular work week if their hours of work fluctuate from week to week;
- The total number of weeks each employee worked at the location over the 26 weeks prior to the information request (excluding any time when services were temporarily suspended or while an employee was on maternity, parental, family medical, personal, or reserve leave);
- A declaration showing whether each employee falls under one of the following clauses:
 - The employee's position involved performing services on-site, but neither the employee was actively employed on the day the request was made nor did the employee spend the majority of the previous 13 weeks of active employment on-site.



Building services providers have the right to request each employee's name, residential address, and phone number after they are given a contract and take over providing the building's services.

Building owners or managers have the right to request the relevant information from the current or former service provider if they receive a request for information from the new or potential new service provider.

Under this rule, anyone who obtains information on employees is required to keep the information private. Just the following uses are permitted for the information: whether a bid to take over service provision will be made, and if so, on what conditions; how many employers will be kept on if the deal is awarded.

LABOUR RELATIONS ACT

The Labour Relations Act, 1995 is a legislation that governs the process of trade union acquiring bargaining rights and the procedures of collective bargaining between trade unions and employers.

This Act mainly applies to the private sector workplaces but also certain parts of the public sector such as municipal workers, hospital employees, and Ontario Hydro with certain modifications.

The main goal of the Act is to facilitate collective bargaining between employers and trade unions that are freely designated representatives of the employees. Additionally, the Act aims to:

- Recognize the importance of workplace parties adapting to change, promote flexibility, productivity, and employee involvement in the workplace,
- Encourage communication between employers and employees, recognize the importance of economic growth as the foundation for mutually beneficial relations amongst employers, employees, and trade unions,
- Encourage co-operative participation of employers and trade unions in resolving workplace issues and promote the expeditious resolution of workplace disputes.



Collective Bargaining Ontario provides neutral collective bargaining information and resources for use by the labour relations community, the public and all levels of government.

The following are examples of personnel that fall under federal jurisdiction:

- The federal government,
- Interprovincial railways,
- bus or trucking firms,
- Airlines,
- Telephone services,
- Banks,
- Television and radio stations, and
- Grain elevators.

Employees not protected by any type of legislation governing collective bargaining, such as the following are exempt from the LRA's provisions:

- Employed as housekeepers in private residences, farmers, trappers, and hunters
- Labor conciliators and labour mediators, Provincial judges.
- Workers doing plant cultivation and landscaping. (Employees of employers whose main line of business is not in agriculture or horticulture, as well as those involved in the growth and cutting of timber, are covered by the LRA.)
- Person who performs managerial duties in the Board's perspective. The Board considers how much oversight and control the individual has over others while making this decision. For instance, Does the individual have the authority to hire and fire people, grant time off, award promotions or wage increases, or make choices requiring the use of independent judgement and discretion? Non-working forepersons are typically perceived as managers in the industrial industry, whereas



lead hands are typically seen as workers. A person is not automatically considered managerial because of their title.

- Individuals who, in the Board's perspective, are involved in confidential labour relations concerns. [Sections 1(3), 2(a)–(c), I & (j)]

However, keep in mind that not all self-employed people are regarded as independent contractors, even if they do not require the standards and safeguards of the LRA.

On occasion, individuals who claim to be self-employed are not. The term "dependent contractor" refers to a contractor who is so reliant on the person paying them for their services that they are more like employees than independent businesspeople.

For instance, some truck or taxi drivers may be dependent contractors even though they own their own vehicle. The LRA provides coverage for dependent contractors. [s. 1(1)]

The LRA regulates both the procedures used by unions and employers to engage in collective bargaining as well as how a union obtains its right to bargain (the system where employees deal collectively with their employer through their trade union). The LRA encourages the rapid resolution of workplace conflicts.

Following are the results of the LRA:

- It gives employees the right to join a trade union and have a trade union represent them (where most employees agree). [ss. 2, 5]
- It protects the right of employees to choose a trade union free from interference, intimidation or coercion by their employer, any other person, or any other trade union. [ss. 70, 72, 76]
- It places a duty on unions to fairly represent the employees for whom they bargain and to provide their members with basic information about the conduct of union affairs [ss. 74, 92].

The objectives of the LRA are emphasized in Section 2 of the Labour Relations Act of 1995.



The following are the seven goals listed in section two:

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.

❖ THE REGULATION FOR SECURITY GUARD UNDER LRA

Security guards have the right to unionize under Section 14 of the LRA.

Security guards

(1) This section applies with respect to guards who monitor other employees or who protect the property of an employer.

Trade union with members other than guards, etc.

(2) Unless the employer notifies the Board that it objects, a trade union that admits to membership persons who are not guards or that is chartered by or affiliated with an organization that does so may be certified as the bargaining agent for a bargaining unit composed solely of guards.



Mixed bargaining unit

(3) Unless the employer notifies the Board that it objects, a bargaining unit may include guards and persons who are not guards.

If objection

If the employer objects, the trade union must satisfy the Board that no conflict of interest would result from the trade union becoming the bargaining agent or from including persons other than guards in the bargaining unit.

Conflict of interest

The Board shall consider the following factors in determining whether a conflict of interest would result:

- The extent of the guards' duties monitoring other employees of their employer or protecting their employer's property.
- Any other duties or responsibilities of the guards that might give rise to a conflict of interest.
- Such other factors as the Board considers relevant.

Certification

If the Board is satisfied that no conflict of interest would result, the Board may certify the trade union to represent the bargaining unit. 1995, c. 1, Sched. A, s. 14.

The OLRB hears cases, renders judgements, and settles disagreements. Decisions, which must be fair and unbiased, are made based on the facts presented, the arguments put out by the parties, and the interpretation and conclusion of the relevant statutes and case law.

Jurisprudence

The branch of philosophy concerned with the law and the principles that lead courts to make the decisions they do

The collection of rules imposed by authority; "civilization presupposes respect for the law"; "the great problem for jurisprudence to allow freedom while enforcing order"



The Ontario Labour Relations Board website states that “(t)he OLRB’s mandate is to provide, as an independent tribunal, excellence in administrative justice through the effective resolution of labour and employment disputes.”

The OLRB has jurisdiction to manage applications filed under the following Acts:

- Ambulance Services Collective Bargaining Act, 2001, S.O. 2001, c.10
- Colleges Collective Bargaining Act, R.S.O. 1990, c.C.15
- Community Small Business Investment Funds Act, S.O. 1992, c.18
- Crown Employees Collective Bargaining Act, 1993, S.O. 1993, c.38
- Education Quality Improvement Act, S.O. 1997, c.31
- Employment Standards Act, R.S.O. 1990, c.E.14
- Environmental Bill of Rights Act, 1993, S.O. 1993, c.28
- Environmental Protection Act, R.S.O. 1990, c.E.19, which gives the Board jurisdiction under the following legislation:
 - Environmental Assessment Act, R.S.O. 1990, c.E.18
 - Environmental Protection Act, R.S.O. 1990, c.E.19
 - Ontario Water Resources Act, R.S.O. 1990, c.O.40
 - Pesticides Act, R.S.O. 1990, c.P.11
 - Fisheries Act, R.S.C. 1985, c.F-14
 - Nutrient Management Act, 2002, S.O. 2002, c. 4
 - Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4
 - Hospital Labour Disputes Arbitration Act, R.S.O. 1990, c.H.14
 - Labour Relations Act, 1995, S.O. 1995, c.1
 - Occupational Health and Safety Act, R.S.O. 1990, c.O.1
 - Ontario Provincial Police Collective Bargaining Act, 2006, S.O. 2006 c. 35 Schedule B
 - Public Service Act, R.S.O. 1990, c.P.47
 - Public Sector Dispute Resolution Act, 1997, S.O. 1997, c.21
 - Public Sector Labour Relations Transition Act, 1997, S.O. 1997, c.21
 - Smoke-Free Ontario Act, S.O. 1994



The OLRB's duties include looking into labour complaints:

- Issuing reinstatement and compensation orders
- Accrediting unions as bargaining agents, issuing cease-and-desist orders in relation to illegal strikes and lockouts
- Issuing reinstatement and compensation orders
- Accrediting unions as bargaining agents, issuing cease-and-desist orders in relation to illegal strikes and lockouts
- Offering arbitration in the construction industry, and hearing appeals under the Employment Standards Act and the Occupational Health and Safety Act.
- The Ontario Labor Relations Board is in charge of union formation, de-unionization, certification, and decertification.

It collaborates with the Workplace Safety and Insurance Appeals Tribunals, Colleges Relations Commission, Education Relations Commission, Human Rights Tribunal of Ontario, and Pay Equality Hearings Tribunal.

The OLRB was established in 1948 by section 2 of the Labor Relations Act, 1948. It continues under subsection 11(1) of the Labor Relations Act, 1995 S.O 1995. It is an adjudicative agency of the Government of Ontario. Although the OLRB is responsible to the Legislature, through the Ministry of Labor, the decisions it makes is completely independent of either.

PROVINCIAL OFFENCES ACT

The Provincial Offences Act (POA) is a law that governs the handling and prosecution of charges in the courts of Ontario. It applies to all laws and regulations enacted by the province, as well as municipal by-laws and certain violations of federal laws.

The POA sets out the procedures for individuals and corporations who have been charged with offences under any of the laws in Ontario, such as when a person receives a parking ticket. Additionally, the act also allows for security guards to enforce parking regulations in certain municipalities, provided they have the appropriate licensing.

The aim of this Act is to replace the summary conviction method for the prosecution of provincial offences, including the clauses introduced by reference to the Criminal Code (Canada), with a procedure that represents the distinction between provincial offences and criminal offences.



Regulatory (non-criminal) offences classified as provincial offences include, but are not limited to:

- Speeding, negligent driving, using a hand-held phone while driving, improperly fastening a seatbelt, and not turning in an insurance card are all violations.
- Parking a car powered by gas close to a sewer;
- Illegally owning a slingshot;
- Leaving a fire scene before it has been put out;
- Failing to adhere to the safety requirements of the Federal Regulations allow inexperienced staff to transport dangerous products;
- Failing to adhere to the safety requirements of the Federal Regulations unstable load taking a trip without paying the correct fare;
- Bringing a bicycle aboard a train despite it being forbidden;
- Bringing a camera, a video recorder, a movie camera, or a similar instrument onto a public transportation system without permission;
- Smoking in a closed-off workplace;
- Selling alcohol to a minor or being inebriated in public

Review the list from above once more. Be aware that a range of law enforcement organizations have the authority to issue tickets, including:

- City by-law enforcement officer
- Local Police Services
- GO Transit
- Ministry of the Environment
- Ministry of Health and Long-Term Care
- Ministry of Labour
- Ministry of Natural Resources
- Ministry of Transportation
- Ontario Provincial Police
- Workplace Safety and Insurance Board



- Toronto Transit Commission

These are the 10 sections that constitute the Provincial Offenses Act:

- 1) Commencement of Proceedings by Certificate of Offence
 - 2) Commencement of Proceedings for Parking Infractions
 - 3) Commencement of Proceeding by Information
 - 4) Trial and Sentencing
 - 5) General Provisions
 - 6) Young Persons
 - 7) Appeals and Review
 - 8) Arrest, Bail and Search Warrants
 - 9) Orders on Application Under Statutes
 - 10) Agreements with Municipalities Concerning Administrative Functions and Prosecutions
- If you do not respond to the ticket within 15 days, you may be convicted of the offence you are charged with.
 - If you are convicted you would be required to pay the set fine, court costs and, if it is not a parking ticket, the victim fine surcharge by the due date.

Failure to pay the fine imposed upon conviction by the due date will result in one or more of the following:

- For certain offences, including parking infractions, the Ontario Ministry of Transportation could refuse to issue or validate your vehicle permit
- For certain offences, including speeding, your driver's license could be suspended
- **You will be charged an additional administrative fee**
- Your defaulted fine will be referred to a collection agency



- Your defaulted fine information will be given to a credit bureau.

Read and follow the instructions provided on back of the ticket. Within 15 days of receiving the ticket, you must choose one of the following options:

- Plead guilty and pay out of court
- Plead guilty but make submissions about penalty (e.g., amount of fine or time to pay)
- Go to trial.
- If you need more time to pay a provincial offence fine, visit the court office noted on the back of your ticket.
- If you just received the ticket but cannot pay right away, you will be required to see a Justice of the Peace to plead guilty but ask for extra time to pay.
- If you have already been convicted, you will be asked to fill out a form that will be reviewed by a Justice of the Peace. This form will require you to fill in all of the information regarding your ticket including how much you have paid so far and a specific date that you would like it extended to.

RESIDENTIAL TENANCIES ACT

The Residential Tenancies Act (RTA) aims to safeguard the rights of individuals who rent residential properties by prohibiting unjustified rent hikes and unjust evictions. It also sets up a system for controlling rental rates, ensuring fairness for both landlords and tenants, and provides a mechanism for resolving disputes and alternative methods for informal dispute resolution.

❖ RELEVANT SECTIONS UNDER THE RESIDENTIAL TENANCIES ACT:

PRIVACY

A landlord may enter a rental unit only in accordance with section 26 or 27

Entry without notice, emergency, consent

55 Nugget Avenue, Unit#207,
Scarborough, Ontario, M1S 3L1

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(416) 906-4011

Safety1security@gmail.com



- (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.
- (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.
- (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.

SECURITY GUARD DUTIES FOR PRIVACY UNDER RTA

As a security guard, it's important to understand the privacy provisions of the RTA when working in or around rental properties. These provisions provide guidelines for how landlords and tenants can access each other's units and what types of information can be shared about tenants.

Under the RTA, landlords must obtain permission from tenants before entering their units. While landlords have the right to access their units for certain reasons, such as to make repairs or show the unit to prospective tenants, they must provide notice to the tenant in advance and obtain permission before doing so.

Similarly, security guards who need to access a rental property should do so in accordance with the RTA's privacy provisions and obtain permission from the tenant if necessary.



The RTA also requires that landlords protect the privacy of their tenants' personal information. This means that landlords should only share tenants' personal information for legitimate reasons and with the tenants' consent.

When working as a security guard in or around rental properties, it's important to be mindful of this privacy requirement when interacting with landlords and tenants.

To give an example, let's say a security guard named Mike is working at an apartment building and receives a complaint about noise from one of the units. If Mike needs to enter the unit to investigate the complaint, he should first identify himself to the tenant and obtain permission to enter.

If the tenant is not present or refuses to allow entry, Mike should follow the guidelines set out in the RTA and obtain permission from the landlord before entering the unit.

Overall, understanding the privacy provisions of the RTA is important for security guards who are working in or around rental properties to maintain respectful and lawful interactions with landlords and tenants while upholding their duty to ensure the safety and security of the property.

ENTRY WITH NOTICE

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:

- To carry out repair or replacement or do work in the rental unit
- To allow a potential mortgagee or insurer of the residential complex to view the rental unit.
- 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.
- To carry out an inspection of the rental unit, if,
- 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
- It is reasonable to carry out the inspection.



- For any other reasonable reason for entry specified in the tenancy agreement.

ENTRY BY CANVASSERS

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.

SECURITY GUARD DUTIES FOR CANVASSERS UNDER RTA

Under the Residential Tenancies Act (RTA) in Ontario, landlords are required to give tenants notice before entering their rental unit, except in certain emergency situations. However, there are some exceptions to this requirement when it comes to entry by canvassers.

Canvassers are individuals who go door-to-door to solicit residents for political, religious, charitable, or business purposes. Under the RTA, a landlord may permit canvassers to enter a tenant's unit to canvas residents, but some conditions apply:

- The canvasser must have the landlord's written permission to enter the building and enter each unit for canvassing purposes.
- The landlord must provide notice to tenants (such as through a notice posted in the building) informing them of the canvassing activity and the dates and times that canvassers will be entering.
- The canvasser must wear identification approved by the landlord and leave the unit when requested by the tenant.

As a security guard, if you notice canvassers entering the building, you should ensure that they are following the guidelines set out in the RTA. You may also want to notify the landlord of the activity, especially if it has not been properly communicated to tenants.

If a canvasser attempts to enter a tenant's unit without following the guidelines and the tenant does not wish to speak with them or asks them to leave, the canvasser must immediately exit the unit. If the canvasser refuses to leave, the tenant can call the police to have them removed.



To give an example, let's say that a security guard named Sarah is working in an apartment building and notices a group of canvassers entering the building. Sarah should review the notices posted throughout the building to confirm that the canvassing activity has been properly coordinated with the landlord, and that the canvassers have permission to enter the units. If Sarah notices any issues, she should contact the landlord to ensure that the activity is conducted in accordance with the RTA.

Overall, it's important for security guards to understand the guidelines related to entry by canvassers under the RTA, as it helps to ensure that tenants' rights to privacy are being respected while also allowing legitimate canvassing activities to take place.

Termination only in accordance with the Act

A tenancy may be terminated only in accordance with this Act.

- 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.

SECURITY GUARD DUTIES FOR TERMINATION UNDER RTA

Termination under the Residential Tenancies Act (RTA) in Ontario, Canada, refers to the process by which a tenancy agreement is legally ended. Termination may occur for a number of reasons, including non-payment of rent, persistent violation of the lease agreement or community standards, or at the end of a lease term.

As a security guard, you may be involved in the termination process in several ways. For example, you might be responsible for notifying tenants of a termination notice, assisting with the removal of tenants' belongings if eviction occurs, and ensuring that tenants vacate the unit in a timely and safe manner.

The RTA provides specific guidelines on how termination should be conducted in order to ensure that both the landlord and the tenant's rights are respected. These guidelines vary depending on the reason for termination, but typically include:

- NOTICE REQUIREMENTS: Landlords must give tenants written notice of their intent to terminate the tenancy agreement. The notice must state the reason for the termination and the date on which the tenancy will end. The amount of notice required depends on the reason for termination.



- **RENTAL PAYMENTS:** If termination is due to non-payment of rent, landlords must follow specific procedures outlined in the RTA. They must give tenants written notice of the arrears, file a notice of termination with the Landlord and Tenant Board, and apply for an eviction order if necessary.

- **EVICTION:** If a tenant refuses to vacate the unit after receiving notice of termination, landlords must file an application for an eviction order with the Landlord and Tenant Board. They must also obtain a writ of possession from the court, which allows law enforcement officials to physically remove the tenant if necessary.

As a security guard, you may be responsible for ensuring that tenants vacate the unit peacefully and that their belongings are removed in a safe manner. You may also be involved in monitoring the removal process to ensure that there is no damage to the unit or the property.

To give an example, let's say that a security guard named Mark is working at an apartment building where a tenant has repeatedly violated the terms of their lease agreement. If the landlord decides to terminate the tenancy agreement due to this violation, Mark may be responsible for notifying the tenant of the termination notice and ensuring that they vacate the unit in a timely and safe manner. If the tenant refuses to leave, Mark may be involved in the eviction process to ensure that it is carried out in accordance with the law.

Overall, it's important for security guards to be familiar with the guidelines around termination under the RTA to ensure that they are able to carry out their duties effectively and in compliance with the law.

Restriction on recovery of possession

A landlord shall not recover possession of a rental unit subject to a tenancy unless,

- The tenant has vacated or abandoned the unit; or
- An order of the Board evicting the tenant has authorized the possession.

Distress abolished

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

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 notice of termination of the landlord or the tenant;
- An agreement between the landlord and the tenant to terminate the tenancy;

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.

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.

LIQUOR LICENCE ACT

The LLA, or Liquor License Act, is a legislation that governs the licensing and possession of alcohol in the province. It primarily affects establishments such as restaurants and bars, which are required to obtain a license in order to serve alcohol to their patrons.

The origins of this act can be traced back to the Prohibition era, when alcohol was deemed illegal. However, under the provisions of the LLA, alcohol is now sold by the province through outlets such as the LCBO, as well as by non-government retailers such as The Beer Store and the Wine Rack.

The act includes various definitions for terms related to alcohol, such as "alcohol" which refers to a product of fermentation or distillation of grains, fruits or other agricultural products, including synthetic alcohol (ethanol).

"LIQUOR" is defined as 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" refer to any beverage containing alcohol obtained by distillation, while "wine" refers to 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" is defined as 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:

License or permit required

No person shall keep for sale, offer for sale or sell liquor except under the authority of a license or permit to sell liquor or under the authority of a manufacturer's license.

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

No person shall deliver liquor for a fee except under the authority of a license to deliver liquor.

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.

License required, ferment on premise facility

No person shall operate a ferment on premise facility except under the authority of a license to operate such a facility.

Unlawful purchase

No person shall purchase liquor except from a government store or from a person authorized by license or permit to sell liquor.

Sale to intoxicated persons

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.

Rules, permissions, for people under 19 years of age



- No person shall knowingly sell or supply liquor to a person under nineteen years of age.
- No person shall sell or supply liquor to a person who appears to be under nineteen years of age.
- 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
- 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.
- 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 person's employment on the licensee's licensed premises.

Unlawful possession or consumption

"RESIDENCE" means a place that is 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.

No person shall have or consume liquor in any place other than,

- A residence.
- Premises in respect of which a license or permit is issued; or
- A private place as defined in the regulations.

Subsection (2) does not apply to the possession of liquor that is in a closed container.

Unlawful consumption or supply of alcohol

No person shall,

- Drink alcohol in a form that is not a liquor; or



- 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.

Removing person from premises

The holder of a license 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,

- Is unlawfully on the premises;
- Is on the premises for an unlawful purpose; or
- Is contravening the law on the premises.

The holder of a license 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

THE REGULATION FOR SECURITY GUARD UNDER LLA

The daily responsibilities of many security guards are highly relevant to this statute. Compliance with the Liquor Licence Act and its rules is a must whether working at a restaurant, bar, or event involving alcohol, whether it be on a college campus, in a sports arena, in a casino, tavern, or bar, etc.

Security guards not only assist with events but may also be involved in the planning and advice stages of risk mitigation on a university or college campus, for example, where socially responsible behavior is required at all licensed establishments and alcohol-related events, whether on or off campus.

JOB REQUIREMENT

Protecting and ensuring the safety of customers and employees both inside and outside the establishment while upholding all liquor license regulations pertaining to the serving of alcoholic beverages.



DUTIES AND RESPONSIBILITIES:

- Open and close games.
- Inspect bathrooms on opening of shift and closure of shift, and every half hour during shift. R.S.O. 1990, c. L.19, s. 34 (1) (2).
- **LIMIT** alcohol consumption of patrons through constant supervision of room. R.S.O. 1990, c. L.19, s. 29.
- **IDENTIFY** patrons who need to be cut off or ejected before over service of alcohol. R.S.O. 1990, c. L.19, s. 39.
- **MONITOR** occupancy by frequent counts of patrons.
- Inspect identification of patrons for age in relation to liquor laws. R.R.O. 1990, Reg. 719, s. 30 (2).
- Monitor all entrances and exits during operation. R.S.O. 1990, c. L.19, s. 34 (5). R.S.O. 1990, c. L.19, s. 34 (6).
- **MAINTAIN** accurate record of barred people by making entries in the bar logbook. S. 7 O. Reg. 352/07, s. 1.
- **RESOLVE** conflict by exercising diplomacy and public relation skills.
- Break up fights by restraining principals and ejecting them.
- Report to RCMP for certain incidents. 1994, c. 37, s. 14. R.S.O. 1990, c. L.19, s. 34 (3).
- Fill out incident reports for accurate record keeping. S. 7 O. Reg. 352/07, s. 1.
- Help disabled individuals in and out of taxis.
- Summon taxis for all patrons who request it.
- Inspect outside premises and ravine for vagrants after bar has closed.
- Respond to security matters at front desk when asked to do so.
- Enforce no smoking law in bar.
- Ensure only Hotel Guests and Astro Hill residents leave by the rear entrance.



The Liquor License Act (LLA) in Ontario, Canada is a law that governs the sale, service, and consumption of alcohol. It includes rules and regulations for licensed establishments that sell or serve alcohol, such as bars, restaurants, and nightclubs.

As a security guard, you may be working at a licensed establishment and have a role in ensuring that the establishment is in compliance with the LLA.

This may involve monitoring the premises, checking IDs, and handling situations where customers become intoxicated or engage in disorderly conduct.

One key area of the LLA that security guards should be aware of is the prohibition of serving alcohol to minors (those under 19 years of age). The LLA sets out specific rules around checking identification and ensuring that patrons are of legal age before serving them alcohol. As a security guard, you may be responsible for checking IDs and preventing minors from accessing alcohol.

To give an example, let's say that a security guard named Maria is working at a bar that serves alcohol. One evening, a group of young people enters the bar and tries to order drinks. Maria asks to see their identification and discovers that one member of the group is only 18 years old. After informing the bartender of the minor's age, they deny service to the group and inform them that they cannot serve alcohol to anyone under the age of 19. Maria ensures that the group leaves the premises and notifies the manager of the incident.

Additionally, the LLA includes provisions related to responsible alcohol consumption, which include cutting off service to individuals who are visibly intoxicated, and taking measures to prevent disorderly conduct or violence. As a security guard, you may be responsible for monitoring the establishment for such incidents and taking appropriate measures to prevent them.

To give another example, let's say that a security guard named John is working at a nightclub and notices that a patron has become visibly intoxicated and is becoming aggressive towards other customers. John contacts the bartender and informs them that the patron needs to be cut off from alcohol. John then approaches the patron and explains the situation, escorting the patron out of the nightclub if necessary to prevent any further incidents. Overall, understanding the LLA is important for security guards who work at licensed establishments, as it helps to ensure that the establishment is in compliance with the law and the safety of patrons is prioritized.



When you reread it, you will see that powerful verb like "protect," "ensure," "enforce," "limit," "identify," "inspect," and "eject" are used. Furthermore, take note of how frequently such action verbs refer to upholding regulations governing liquor licenses.

The security guard in this position must be proactive in risk management, particularly when it comes to concerns between alcohol and the law, as well as occupancy by-laws and anti-smoking rules.

You will realize how crucial your records and reports can be to you and your employer should an incident occur or it be necessary to establish a duty of care as you continue to research the laws and bylaws that security guards follow.

Examine the following Act sections:

- R.S.O. 1990, c. L.19, s. 39.
- R.S.O. 1990, c. L.19, s. 44 (5-12).
- R.S.O. 1990, c. L.19, s. 49.
- R.S.O. 1990, c. L.19, s. 61 (1).

Although an employer or employee may violate the LLA in a variety of ways, the following five violations are five that are excessively frequent.

SERVING MINORS (Serving Minors, Failure to Inspect Identification) [30(1-4) (8) (10)]

- The license holder shall ensure that, before liquor is sold or served to a person apparently under the age of nineteen years, an item of identification of the person is inspected. R.R.O. 1990, Reg. 719, s. 41 (1).
- If a condition of the liquor sales license prohibits the entry of persons under nineteen years of age at the premises to which the license applies, the license holder shall ensure that an item of identification is inspected before admitting the person to the premises. R.R.O. 1990, Reg. 719, s. 41 (2).
- The item of identification must include a photograph of the person and state his or her date of birth and must reasonably appear to have been issued by a government. R.R.O. 1990, Reg. 719, s. 41 (3).



- Without limiting the generality of subsection (3), the item of identification may be any of the types prescribed in subsection (5). R.R.O. 1990, Reg. 719, s. 41 (4).
- The following types of identification are prescribed for the purpose of subsection 30 (6) of the Act:
 - (i) A driver's license issued by the Province of Ontario with a photograph of the person to whom the license is issued.
 - (ii) A Canadian passport.
 - (iii) A Canadian citizenship card with a photograph of the person to whom the card is issued.
 - (iv) A Canadian armed forces identification card.
 - (v) Revoked: O. Reg. 230/03, s. 23 (1).
 - (vi) A photo card issued by the Liquor Control Board of Ontario.

At the request of an inspector designated under section 43 of the Act, the license holder or an employee of the license holder shall request evidence as to the age of a person on the premises to which the license applies. O. Reg. 63/98, s. 14; O. Reg. 354/07, s. 8.

Hold the ID in your hands and look at it closely when inspecting it. Remove it from any containers. Criminal and civil charges may be brought as a result of serving minors. Even if the youngster did not get alcohol directly from the employees, the license holder may still be held accountable for serving the person. For someone to be held accountable, it only needs to be proven that the kid was on the property and was given alcohol by a friend or family member.

RISK MANAGEMENT: make sure that children aren't getting drinks from obliging relatives or stealing sips of alcohol from their parents.

INTOXICATION (Allowed Drunkenness, Alcohol Sold to a Person Appearing to Be Intoxicated, Allowed Possession of Drugs on Property, Over-Service) [29]

- The license holder shall not permit drunkenness, unlawful gambling or riotous, quarrelsome, violent or disorderly conduct to occur on the premises or in the adjacent washrooms, liquor and food preparation areas and storage areas under



the exclusive control of the license holder. R.R.O. 1990, Reg. 719, s. 45 (1); O. Reg. 230/03, s. 25.

- The license holder shall not permit a person to hold, offer for sale, sell, distribute or consume a controlled substance as defined in the Controlled Drugs and Substances Act (Canada) on the premises or in the adjacent washrooms, liquor and food preparation areas and storage areas under the exclusive control of the license holder. R.R.O. 1990, Reg. 719, s. 45 (2); O. Reg. 247/02, s. 17; O. Reg. 24/04, s. 1.

Avoid problems before they arise. Watch the door. Refuse to let drunken consumers in. Be cautious of the risk of contaminated beverages, especially when there are female patrols. If you suspect or witness evidence of tampered drinks, report it to the police. Make sure a victim is secure. If a person exhibits three or more indicators of intoxication, use intoxication management procedures.

Remember that you are responsible and liable for the safety of anybody who may encounter them after they leave the venue if people seem to be intoxicated. firmly but politely stop the flow of alcohol. To assist people, sober up and drain alcohol from their systems, offer water and other non-alcoholic beverages. Keep in mind that you are liable for anyone you force to leave because they are intoxicated.

❖ OVERCROWDING

The license holder is responsible for making sure that no more people than the permitted number of people are present on the premises to which the license is applied, including any of the license holder's workers. O. Reg. 346/93, s. 7.

The maximum penalty is \$5000.

Customers are seriously at risk from crowding. Every place has a maximum capacity. Be sure to include employees, musicians, managers, and other attendees when determining the total number of persons present.

DISORDERLY CONDUCT (Quarrelsome, violent and disorderly conduct; permitted violent and disorderly conduct; disorderly conduct; permitted drunkenness, violent and disorderly conduct)

45.1 The license holder shall ensure that reasonable measures are in place and reasonable efforts are made to deter disorderly conduct on property adjacent to and in



the vicinity of the premises and to minimize damage, nuisance or other harm to such property arising out of disorderly conduct engaged in by patrons of the license holder or persons attempting or waiting to enter the premises or leaving the premises. O. Reg. 354/07, s. 9.

45.2 The license holder shall ensure that the license holder or a manager appointed by the license holder maintains control over the premises, including exercising control over who is permitted to enter the premises or remain on the premises and the activities that are permitted to occur on the premises. O. Reg. 354/07, s. 9.

Maximum Penalty 45.1-2: Up to \$5000

Security aids management in keeping a handle on the business, customer admission, and activity. Security also protects the general public, employees, a company's liquor license, and its capacity to operate. Controlling a situation preserves goodwill, a priceless asset.

Be a good neighbor and deal with behavior that can affect the neighborhood. To prevent or reduce injury brought on by customers who are not on the premises, reasonable precautions must be taken.

A good staff-to-customer ratio will guarantee that events are properly monitored. The security guard's regular procedure when an incident occurs is to properly document it in the incident log. Keep track of offences, participants, who, what, when, where, and your response.

Serving or allowing consumption outside hours (Service outside prescribe hours; Failure to clear signs of service)

- Except for December 31, liquor may be sold and served only between 11 a.m. on any day and 2 a.m. on the following day. O. Reg. 163/96, s. 5.
- On December 31, liquor may be sold and served only between 11 a.m. on any day and 3 a.m. on the following day. O. Reg. 163/96, s. 5.

Maximum Penalty: Up to \$3000

The license holder shall ensure that evidence of liquor that has been served and consumed on the premises is removed within forty-five minutes after the end of the period during which liquor may be sold and served under the license. R.R.O. 1990, Reg. 719, s. 29.



Maximum Penalty: Up to \$2000

Although exceptions exist, [notably New Year's Eve (1100-0300) or New Year's Eve Special Occasion Permits (SOPs close extends from 0100 to 0200 hours) service stops at 0200 hours.

More than two drinks being available at last call can be construed as increasing consumption. After 0245, no sales or services are permitted, and by that time, all glasses, ice, alcoholic beverages, and other items must be removed from the premises. After-hours parties are not permitted on the property for staff.

SMART SERVE ONTARIO

Smart Serve Ontario is a training program that focuses on promoting safe and responsible practices when selling and serving alcohol. The program is endorsed by the Alcohol and Gaming Commission of Ontario and is mandatory for certain individuals working in licensed establishments that sell alcohol.

Maximum Penalty: Up to \$5000

Find out how to recognize intoxication:

- The inability to speak clearly or quickly,
- Red eyes,
- Excessive perspiration,
- Slurred speech,
- Decreased alertness
- Wandering or weaving
- Sleepiness and conspicuously shallow breathing.

Smart Serve Requirements:

The Smart Serve program is mandatory for the following individuals:



- 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 events
- When ordered by the Alcohol and Gaming Commission of Ontario for disciplinary reasons

Topics Covered:

The Smart Serve training program covers the following topics:

- 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

Prohibited Practices:

The Smart Serve program prohibits the following practices:

- Allowing guests to drink and drive
- Letting people under the age of 19 drink
- Encouraging excessive drinking or serving alcohol to anyone you suspect may already be intoxicated
- Permitting drunken, violent or disorderly conduct

- Allowing guests to take out or bring in liquor

Availability and Cost:

The Smart Serve training program is available online or in a classroom setting. There is a cost associated with taking the course. For more information, visit smartserve.ca.

TRESPASS TO PROPERTY ACT

The Trespass to Property Act (TPA) is a law in the province of Ontario that deals with unauthorized entry into private and public property. This law is significant because while criminal law is under federal jurisdiction, violations of the TPA are considered quasi-criminal, rather than fully criminal.

The TPA codifies what was previously established under common law. It is commonly used by private property owners to keep unwanted individuals off their property.



There are several ways to inform individuals that they are not allowed on a property in the future, but the most common method is through a personal notice. Security guards can act as representatives of the property owner and are authorized to bar or arrest anyone who they find trespassing on the property, including those who are:

- Entering a location where entry is prohibited
- Engaging in prohibited activities while on the property
- Refusing to leave when directed to do so by a representative of the property



If a security guard makes an arrest under the TPA, they are required to notify the police as soon as possible and release the arrested person into police custody.

Let's compare this to section 494 (Arrest without Warrant and Release from Custody) of the Criminal Code, which states the following:

ARREST WITHOUT WARRANT BY ANY PERSON

Any one may arrest without warrant

- A person whom he finds committing an indictable offence; or
- 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.

ARREST BY OWNER OF PROPERTY

Any one who is

- 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 without warrant a person whom he finds committing a criminal offence on or in relation to that property.

DELIVER TO POLICE OFFICER

Section nine specifies that occupiers must hand over to the police any individual they have arrested without warrant. Section 494 (3) of the Criminal Code also stipulates this. While security guards have the right to arrest individuals, they do not have they do not have the right to release individuals from custody.

Trespassing is characterized as an unauthorized entrance, invasion, or incursion upon another person's property.

There are three ways to respond to trespassing:

- Civil action
- Provincial statute (Petty Trespass Act)



- Criminal Code offence under section 177 (trespassing at night). Also see sections 38-42 for defense of property

The upkeep of safe, secure, and orderly settings is the responsibility of security guards acting as agents for property owners or managers. They are tasked with the responsibility of upholding the rules and regulations imposed by the property owner/manager, although having no more authority than regular residents.

If security guards fail to ensure safety and someone is injured while they are on duty, the courts may hold them civilly accountable. Law requires security personnel to keep a safe environment in addition to enforcing rules and regulations.

Property owners have the right to restrict how their assets are used and to safeguard them. Security guards are permitted to represent owners and management. Security personnel have a responsibility to manage and safeguard property on behalf of management.

❖ MANAGING TRESPASSER

People may be asked to leave a facility or property if they don't follow its rules and regulations, or they may be arrested and handed over to the police.

For instance, it is obvious that youths who are caught smoking in the restroom of a building, shop, etc. that has displayed no smoking signs are disobeying the property's laws.

ARE THEY BREAKING THE LAW? They are, indeed. It is common knowledge that carrying out forbidden actions on someone else's property constitutes trespassing.

HOW DOES ONE GET RID OF A TRESPASSER? A trespasser is typically removed by first asking them to leave, followed by an escort off the property. Making a citizen arrest is a possibility, but since citizens have the power to make arrests but not releases, there is no turning back from it.

Those who are being held by a civilian must be turned over to the police. Failing to do so might lead to charges and a lawsuit being brought against all personnel, including security guards.



Sometimes people are unaware that they are on private land. Give them a "STATEMENT OF OWNERSHIP" to let them know they are trespassing. Sayings like "you are on private land" or "you are on company property" can be used to alert others that they are trespassing. Do not forget to always deal with trespassers in a respectful and professional manner.

Be firm but fair, identify yourself, and explain the regulations. Give them a window of time to leave the premises that is both reasonable and precise. When accompanying someone leave the premises, keep a courteous and suitable distance of between eight and ten feet. If trespassers do not depart when asked, contact law enforcement.

Include statements of ownership and trespassing events in your reports! Keep in mind that ACTUS REUS AND MENS REA must be able to support an offence. You must be able to demonstrate both that an offence was done (Actus Reus, or "guilty act") and that the person did it knowingly and purposefully (Mens Rea – guilty mind). Also keep in mind that any reports generated during business serve as proof of what happened and safeguard both you and your employers.

WHO IS NOT CONSIDERED AS A TRESPASSER? Not every person trying to enter a building is trespassing. Trespassers do not include invitees and licensees, who have a legal right to be on a property and have been given express authorization to do so. Examples of invitees include meter readers, travelling salespeople, and warrant-carrying Police officers.

TRESPASSING SIGNS AND BARRIERS

There are many ways to identify private property as such. The most obvious approach to identify a piece of property as private is to post a sign that reads No Trespassing or Private Property. The same effect of a No Trespassing sign can be achieved by a continuous barrier, such as a fence. Because fencing would be impracticable or expensive, markers are frequently employed in jurisdictions. In Ontario, landmarks like trees may be painted with red paint to indicate the limits of private property.

According to the Trespass to Property Act, prohibited actions need to be marked with red signs (either words or graphic representations). Yellow signs warn that entry is restricted to specific approved activities only. Markings must be posted at each entry point, be easily seen, and be enclosed in a circle with a diameter of 10 centimeters.



Signs are not always necessary to inform persons of trespassing breaches under section three. You can always presume that the following means no trespassing:

Any land used for agriculture, including Gardens, Fields, Lawns, Orchards, Vineyards, anywhere with cultivated trees that are, on average, no taller than two meters.

The doors that appear to be offered for access to buildings on properties can be assumed to be open to people for legitimate purposes. Access is assumed to be prohibited if such doors are barred, enclosed in fencing, or located behind a locked gate.

If there is signage indicating that a particular activity is permitted or if verbal permission has been obtained, it should be highlighted that people may enter the land for the sole purpose of engaging in that lawful activity. But if a security guard takes away that invitation, everyone must leave. They are trespassing if they fail to comply.

According to federal legislation, trespassing is prohibited. The Criminal Code's Sections 38 to 42 deal with defending real and personal property as well as trespasser assault.

ASSAULT BY TRESPASSER

“A trespasser who resists an attempt by a person who is in peaceable possession of a dwelling-house or real property, or a person lawfully assisting him or acting under his authority to prevent his entry or to remove him, shall be deemed to commit an assault without justification or provocation. R.S., c. C-34, s. 41.”

Let's look at assault by trespasser in section 38.

“Where a person who is in peaceable possession of personal property lays hands on it, a trespasser who persists in attempting to keep it or take it from him or from any one lawfully assisting him shall be deemed to commit an assault without justification or provocation. R.S., c. C-34, s. 38.”

Security guards must always be careful not to use more force than is required to deter trespassing or to expel a trespasser. The Criminal Code allows for charges of assault without cause or provocation against trespassers who oppose a security agent trying to bar their admission or remove them.

In addition, under the Criminal Code, trespassers who seek to keep or take items that security guards are legally in possession of may be punished with assault without cause or provocation.

Section 177 of the Criminal Code pertains to trespassing at night.



“Everyone who, without lawful excuse, the proof of which lies on him, loiters or prowls at night on the property of another person near a dwelling-house situated on that property is guilty of an offence punishable on summary conviction.” [R.S., c.C-34, s.173.]

To illustrate the problems, let's dissect that into its component parts.

Without justification

Not all people trying to enter private property are trespassers. Trespassers do not include licensees (individuals with written authorization to be on a property) or invitees (individuals with a valid permit to be there). Examples of invitees include metre readers, travelling salespeople, and Police officers with warrants.

Prowls or loiters at night

Only those who loiter or prowl at night close to a residence on another person's property are subject to the trespassing at night offence. The Criminal Code defines darkness as occurring between 1800 and 6:00. (9 p.m. to 6 a.m.). Loitering is the act of walking around with no apparent destination. Prowling is a covert, covert, or clandestine movement that may be made in imperceptible increments.

On the property of another person

Trespassers are neither the owners nor occupants of the property they are on, nor are they licensees.

Near a dwelling house on that property

Prowling around on private land at night, especially close to a dwelling, constitutes trespassing. A dwelling house is defined under the Criminal Code as a permanent or movable abode and everything connected to it.

If you can demonstrate that a person loitered or prowled at night near a dwelling house located on another person's property without a valid reason to be there, you have committed the crime of nighttime trespass.

THE CRIMINAL CODE OF CANADA

The Criminal Code of Canada is a federal law that outlines the powers and responsibilities of private citizens, including security guards. This code establishes the legal framework for criminal offenses and their corresponding penalties. As a security guard, it is important to understand the different types of offenses and the authorities granted to you under the Criminal Code.



WHAT CONSTITUTE IN A CRIMINAL ACT?

One of the key distinctions in the Criminal Code is the difference between indictable and summary offenses.

❖ INDICTABLE OFFENSES;

Considered more serious and carry greater penalties, such as longer prison sentences and larger fines. Examples of indictable offenses include murder, manslaughter, robbery, rape, assault, and break and enter.

For indictable offences, there are several different procedures available following an indictment in a preliminary hearing or by a grand jury, depending on the severity of the offence.

A provincial court judge presides over the trial of some indictable offences. Certain offences do not allow for jury trials. Unless the Attorney General and the defendant agree to a trial without a jury, a case involving a particularly serious indictable offence, such as murder, must be tried before a judge and jury.

Alternatively, the Criminal Code offers the accused the option to elect a superior court judge, a provincial court judge, or a superior court judge and jury to preside over their trial.

Except for crimes involving murder or treason, which are prosecuted in superior courts, indictable offences are frequently tried in provincial courts. Persons accused with an indictable offence are required to appear in court personally. The police can still charge a person years after the offence because there is no statute of limitations for indictable crimes.

Indictable offences, which are more frequently tried by federally appointed courts, entail tougher punishments than less serious offences, which can be prosecuted by summary conviction.

❖ SUMMARY OFFENSES;

Considered less serious and are punishable by shorter prison sentences and smaller fines.



Examples of summary offenses include causing a disturbance, theft under \$5000, and shoplifting.

A summary conviction offence in Canada is one that has a lower sentence of punishment and is less serious than an indictable offence. These matters are heard in provincial court, and the accused is not given a choice of venue nor does he or she have a right to a jury trial.

The defendant must be charged with a crime within six months of the offence, remain unrested, and show up in court on a specific day and time. If the judge does not order the accused to present in person, a lawyer or agent may appear on their behalf.

Except for a few specified offences, such as sexual assault, where the maximum jail penalty is 18 months, the maximum sentence for a summary conviction offence under the Criminal Code is a fine of \$2,000 and/or six months in jail.

❖ HYBRID OFFENSES;

The prosecutor has the option of charging as either an indictable or summary offense. This type of offense is considered to be in between the two other categories in terms of severity, and the ultimate charge will depend on the discretion of the prosecutor.

In jurisdictions where hybrid offenses are recognized, prosecutors have the discretion to charge individuals with either a misdemeanor or felony, and the decision will depend on the specific facts of the case. For example, a simple assault with no prior criminal history may be prosecuted as a misdemeanor, while an assault with a weapon and a significant history of criminal behavior may be prosecuted as a felony.

Some examples of hybrid offenses include theft, assault, drug possession, and DUI. Each state has its own laws and guidelines regarding the classification and punishment of hybrid offenses.

As a security guard, it is important to be familiar with the different types of offenses outlined in the Criminal Code and the corresponding penalties. This will help you to understand the legal implications of any situation that may arise in the course of your work.



❖ LEGALITY

A violation of a contemporary criminal statute, whether by commission or omission, is a criminal offence. Criminal law safeguards society from crimes like murder and rape, for example, which are both illegal acts. A crime, in general, is an act of omission or commission that contravenes a political or moral law. Not all legal transgressions are crimes. Contractual breaches and the majority of traffic infractions, for instance, do not fall under the purview of criminal law.

❖ ACTUS REUS

The Latin term for "guilty act." It refers to the physical act of committing a crime. To prove actus reus, the prosecution must show that the defendant committed an act that is prohibited by law.

For example, if someone is accused of theft, the prosecution must show that the defendant took property that did not belong to them, without the owner's consent.

❖ MENS REA

The Latin term for "guilty mind." It refers to the mental element of committing a crime. To prove mens rea, the prosecution must show that the defendant had the intent to commit the prohibited act. There are several levels of mens rea that can be proven, including intentionally, recklessly, or negligently.

For example, if someone is accused of murder, the prosecution must show that the defendant intended to cause the victim's death, or that they acted with reckless disregard for human life.

❖ CAUSATION

Causation under the Canadian Criminal Code (CCC) refers to the element of a criminal offence that requires a direct link between the accused's conduct and the resulting harm or prohibited outcome. In other words, the prosecution must establish that the accused's actions caused the harmful or prohibited consequence in order to convict them of the offence.



❖ HARM

Harm under the Canadian Criminal Code (CCC) refers to the injury or damage caused by criminal conduct. A criminal offence must involve some form of harm, whether physical, psychological, or financial, or a risk of harm in the case of an attempt to commit an offence, to be considered a criminal offence under the CCC.

Section 222 of the CCC defines the offence of homicide, which involves causing the death of a person. Section 265 defines the offence of assault, which includes the application of force, either directly or indirectly, or an act that causes a reasonable fear of such application of force, without the person's consent.

❖ CONCURRENCE

Concurrence under the Canadian Criminal Code (CCC) refers to the requirement that the mental element, or mens rea, and physical element, or actus reus, of a criminal offence must exist simultaneously for an individual to be convicted of that offence.

For example, consider the offence of theft under section 322(1) of the CCC. The actus reus of theft is the taking of someone else's property without consent, and the mens rea is the intention to deprive the owner of that property permanently or temporarily. For a person to be convicted of theft, both the act of taking the property and the intention to deprive the owner must be present at the same time.

❖ PUNISHMENT

When someone is found guilty of breaking the law, the courts must lawfully punish them or impose certain consequences on their behalf.

ARREST:

The process of arrest (Citizen's arrest) involves taking away an individual's freedom of movement against their will. To carry out an arrest, a security guard can verbally command the person or physically touch them in order to guide them in the direction they wish them to go.

It is important for the security guard to clearly identify themselves and their position of authority, as this establishes their right to make the arrest.



When informing the person that they are under arrest, the guard is fulfilling the legal requirements outlined in the Criminal Code and the Canadian Charter of Rights and Freedoms. By verbally stating that the person is under arrest, the guard is indicating that the individual's freedom has been taken away.

Additionally, by physically touching the person's arms, the guard is physically indicating that their freedom has been restricted.

By following this procedure every time an arrest is made, the security guard can ensure that the arrest is legally valid and has been carried out in accordance with the laws and regulations in place.

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.

ARRESTING SOMEONE AS A SECURITY GUARD

❖ What steps must I take to make an arrest?

If you make an arrest, be respectful of the individual and make an effort to limit any humiliation to them. If you're going to make an arrest, make it as soon as you catch the person doing the crime, not later.

However, keep in mind that this may not always apply depending on the circumstances, such as the location and the manner of the crime. As you already know from this lesson, if you choose to make an arrest for a crime you discover is being committed on or in connection with property you have the authority to protect, it might not be treated the same way as other crimes you could come across as a security guard.

You must adhere strictly to all laws pertaining to arrest. The timing and method of your arrest are crucial. You can face charges for making a false arrest if you arbitrarily detain someone.

❖ WHEN MAKING AN ARREST, YOU MUST TAKE THE FOLLOWING ACTIONS:

1. IDENTIFY YOURSELF.

If you are asked for proof you must show your security license. You may also want to show it if you think the arrested person is unsure of your actions or authority. If you are in uniform, you will not usually be asked for identification.

2. TELL THEM THAT YOU ARE ARRESTING THEM AND WHY YOU ARE ARRESTING THEM.

Be specific about this. For example, "You are being arrested for breaking the front window on this building."

3. THE PERSON MUST UNDERSTAND WHY THEY ARE BEING ARRESTED.

If they don't understand, explain it in other words. Record exactly what you say to them and what they say to you in response.



2. ASK THE PERSON TO GO WITH YOU.

If they resist, take them firmly but gently by the back of the upper arm and indicate by words and physical gesture that the person is to accompany you. If you are concerned about your safety then it is best not to touch the person.

3. TELL THE PERSON THAT THEY CAN CALL A LAWYER.

Say, "It is my duty to inform you that you have the right to retain and instruct counsel without delay. You may call any lawyer you want. Free legal aid is available if you want it. Do you understand?" If the person does not understand, explain in other words. You could say, "You have the right to call a lawyer, friend or family member now." Record exactly what you say to them and what they say to you in response.

You must give them a phone book or the legal aid phone number if they need it. Be sure that they have privacy to make their call.

If the person is a young offender, they must contact a parent, relative, guardian or other adult. If they don't do this, then you must contact someone on their behalf.

4. WARN THE PERSON

"You are not obliged to say anything, unless you wish to do so, but whatever you say may be given in evidence. Do you understand?" If necessary, explain that they don't have to say anything, but if they do, you will record what they say and their words may be used in court.

5. TURN THE PERSON OVER TO THE POLICE as soon as possible.

Keep a detailed record of the whole arrest.

√ Show date, place, who was present, start time, and finish time of interview.

√ Be sure to record anything the person says about the crime. Use the person's exact words.



SCENARIO#1

You are on your way home from your security shift at a concert While sitting on the subway, you witness a male enter the train and begin to punch and kick a female who was sitting near you on the subway The female begins to scream and ask for help. Do you have the legal authority to arrest the attacker? Why or why not?

Yes, you have the legal authority to arrest the aggressor under section 494 because he is committing an indictable offence.

SCENARIO#2

Two months ago John Moore was caught shoplifting from an electronics store in the retail mall where you work The security guard on duty at the time advised John that he was barred from returning to the property for a period of one year John was given a written trespass notice as well as verbally informed of his banning Today, while on duty patrolling the mall you discover John walking through the mall He has not signed in with security or provided any reason for entering the property. Do you have the legal authority to arrest John?

Yes, you have the authority to arrest John because he has committed the offence of entering where entry prohibited under the trespass to property act

SUMMARY

| Things to Do | Things to Say |
|---------------------------------------|--|
| Identify yourself | "I'm a security guard for..." |
| Inform the person | "You are under arrest for..." |
| Make Sure that the person understands | "Do you understand why you're being arrested?" |
| Direct the person to a private area | "Please come with me" |
| Allow the person to call in private. | "It is my duty to advise you that you have the right to promptly retain and direct counsel. Any attorney can be reached via phone. If you want it, you can get free legal assistance. Do you understand it?" |
| Warn the person | You are not required to speak unless you want to, but everything you say may be used as evidence. Do you understand? |
| Record what you say and response | Write down everything the person and you have spoken. |



COMMON OFFENCES

People breaking several laws are something that Police officers, law enforcement employees, security personnel, and regular individuals encounter daily throughout the province. How often have you witnessed a vehicle break a stop sign or a red light, someone dump trash on the ground, or someone take something from a store without paying?

You must first comprehend why the conduct that was committed is unlawful and be confident that you have the power to act under the conditions in order to react to these activities in a way that is appropriate.

Most of the offences encountered by security guards:

- Causing Disturbance (Section 175 CC)
- Break and Enter (Section 348 CC)
- Theft (Section 334 CC)
- Mischief (Section 430 CC)
- Possession of stolen property (Section 355 CC)
- Assault (Section 266 CC)

CRIMINAL CODE SECTION 175 – CAUSING DISTURBANCE

In Canadian Criminal law, causing disturbance is an offence under Section 175(1)(a) of the Criminal Code. It involves behavior that disturbs the peace and comfort of others in a public place or a place where the public has access.

The key element of this offence is that the behavior causes a disturbance to others in the vicinity, rather than causing harm or danger.

Examples of behavior that may constitute causing a disturbance include but are not limited to, being excessively loud, fighting or engaging in verbal abuse in public, interrupting a religious gathering, making unreasonable noise while having a party, or using abusive or obscene language in a public place.

To prove the offence of causing disturbance, the prosecution must establish that the accused engaged in disruptive behavior that caused a disturbance and that others in the area were disturbed by this behavior.



The prosecution must also show that the accused intended to cause the disturbance or was reckless as to whether their behavior would cause a disturbance.

The penalty for causing a disturbance is a summary conviction with a maximum punishment of six months imprisonment and/or a fine of up to \$5,000.

If the accused was violent during the disturbance or threatened violence, the more severe charges could be laid depending upon the circumstances.

The offence is intended to protect individuals' rights to peaceful enjoyment of public spaces and to prevent disturbance to the public order. It is important to understand that what can cause disruption to some may not be considered disturbing behavior to others.

The behavior must be assessed objectively and take into consideration the norms of the surrounding environment.

SCENARIO:

A security guard working at a concert venue is alerted by concert-goers that there is a group of rowdy individuals causing a disturbance near the front of the stage. The group is shouting and pushing each other, causing other concert-goers around them to become uneasy and uncomfortable.

ANSWER:

Based on the scenario, it appears that a disturbance is being caused by the rowdy group of individuals. Causing a disturbance is a criminal offense that involves engaging in disruptive behavior that interferes with the peace and quiet of others in a public place.

As a security guard, the appropriate action to take would be to approach the group and try to calm them down or to remove them from the venue if necessary. The security guard should use verbal de-escalation techniques and try to reason with the group, informing them that their behavior is causing discomfort to others around them. If the group refuses to comply, the security guard should call for backup or the police, if necessary, to help in handling the situation in a safe and peaceful manner. The security guard's responsibility is to ensure the safety of all concert-goers and prevent any further disruptions from taking place.



CRIMINAL CODE SECTION 264 - CRIMINAL HARASSMENT

Criminal harassment, often known as stalking, is described as harassing behavior, such as persistently following, contacting, or keeping watch over a person's residence. It's against the law to act in this way. It is about abuse of power rather than being a symbol of affection.

There are also many different types, such as **SEXUAL HARASSMENT** (unwanted sexual words, deeds, actions, gestures, symbols, and behaviors that make the target feel uncomfortable), **RACIAL HARASSMENT** (words, deeds, and actions that are specifically intended to make the target feel degraded because of their ethnic background), and **RELIGIOUS HARASSMENT** (verbal, psychological, or physical actions used against a person or people because they chose to practice a specific-based religion).

Criminal harassment is an offence under Section 264 of the Canadian Criminal Code (CCC), which refers to a repeated or persistent course of conduct that causes another person to fear for their safety or the safety of anyone known to them. This conduct can include anything from unwanted communication, following or watching the victim, cyberbullying, or stalking.

The offence of criminal harassment requires that the accused engage in a course of conduct that is reasonably perceived as threatening or intimidating by the victim. The accused must have a specific intent to harass the victim and must have been aware of or reckless as to the fear the victim experienced.

To establish the offence of criminal harassment, the prosecution must prove that a course of conduct was repeated enough times or persisted long enough that any reasonable person would perceive it as a threat. This repeated behavior must also not be trivial or innocuous and must have caused the victim to fear for their safety or the safety of someone they know.

The CCC defines criminal harassment as a distinct offence that is separate from other types of assault or threats. It is meant to protect individuals from prolonged or persistent targeted fear, even if there is no immediate threat of violence.

The penalty for criminal harassment is a maximum sentence of 10 years imprisonment if indicted, or 18 months imprisonment and/or a fine of up to \$5,000 if tried summarily.



It is important to note that the Canadian Criminal Code also recognizes the serious nature of stalking behaviors under section 162.1, which refers to cyberstalking, and section 162.2, which refers to traditional forms of stalking. These offences also require that the accused engage in a course of conduct that causes fear and are often charged in conjunction with offences of criminal harassment.

SCENARIO:

A security guard working at a retail store notices a man who has been coming in every day for the past week and staring intently at one of the female employees. The security guard hears from the female employee that she has also received numerous anonymous phone calls at home and on her personal mobile phone, in which the caller breathes heavily and either hangs up or makes threatening remarks. The employee believes that the man who has been coming into the store is the person who has been calling her.

ANSWER:

Based on the scenario, it appears that criminal harassment may be taking place. Criminal harassment occurs when someone engages in a course of conduct that causes another person to fear for their safety or the safety of someone else. The course of conduct must involve repeated or persistent behavior, such as stalking, watching, or communicating with the victim.

In this scenario, the man's repeated staring at the female employee and the anonymous phone calls she has received, in which the caller breathes heavily and makes threatening remarks, suggest that criminal harassment may be occurring. As a security guard, the appropriate action to take would be to report the incidents to the store's management and the police immediately. The employee should also be advised to keep a log of all the incidents and to inform her family and friends about the situation. It is important to take criminal harassment seriously and to ensure that the victim is protected from harm.

CRIMINAL CODE SECTION 264.1 – UTTERING THREATS

Uttering threats is a criminal offence under section 264.1 of the Canadian Criminal Code (CCC), which deals with a person making a statement or gesture that threatens violence against another person. The threat can be explicit, implied or conditional and must be directed at a specific person so that they fear for their safety or feel that harm will come to them.



To qualify as an uttering threat, the prosecution must establish that the accused person had the intention to cause fear of bodily harm in the victim. The fear can be for the safety of the victim, someone they know, or property that is precious to them. The victim does not need to be present for the threat to be made or have knowledge of the threat.

The offence of uttering threats also covers threats made through electronic communication or on social media platforms like Facebook, Twitter, etc.

The definition of an uttering threat can vary depending on the nature of the threat. For example, conditional threats that require an act to be performed to avoid the threatened harm or threats made in the context of domestic violence will be handled differently.

The Canadian Criminal Code treats the offence of uttering threats as a hybrid offence, which can be prosecuted as an indictable offence or a hybrid offence dependent upon the severity of the offence. The maximum sentence for an indictable offence is five years of imprisonment, and a maximum penalty of 18 months imprisonment for a summary offence.

Uttering threats is viewed as a serious criminal offence in Canada, and prosecution may be sought in cases where a threat is perceived to be legitimate and the person fears for their safety. Victims of threatened violence should contact the police immediately and seek a protection and restraining order.

SCENARIO:

A security guard working at a corporate office building receives a report from an employee that another employee has been making threatening statements. The employee has stated that they are going to bring a weapon into the building and cause harm to one of their coworkers who they believe has been spreading rumors about them.

ANSWER:

Based on the scenario, it appears that the employee's statements constitute uttering a threat, which is a criminal offense that involves making threatening statements that cause another person to fear for their safety.

As a security guard, the appropriate action to take would be to report the employee's statements to the appropriate authorities, such as the police or the company's management. The security guard should document the details of the reports and be



prepared to provide any relevant information or witness statements that may be useful in an investigation.

The security guard should also take precautionary measures to ensure the safety of other employees and the general public, such as increasing patrols or requesting additional security personnel. It is important to take any threats seriously, and the security guard should always err on the side of caution to prevent harm to innocent people.

CRIMINAL CODE SECTION 265 – ASSAULT

Assault is an offence under section 265 of the Canadian Criminal Code (CCC), which involves applying force to another person without their consent, either directly or indirectly. It also includes attempts or threats of force that cause a reasonable fear of immediate harm to the person.

The CCC defines assault as "the intentional application of force without an individual's consent." The term "violence" does not need to be present because the application of force, including touching, pushing or hitting, suffices to classify the offence as an assault. Assault can occur in a physical or non-physical context, ranging from a physical altercation to cyberbullying.

For an assault charge to be successful, the prosecution must prove that the accused caused contact, either directly or indirectly, with another person, and that the victim did not consent to the contact. The prosecution must also prove that the accused acted intentionally or recklessly and knew the contact was not consensual, regardless of the force applied.

Assault is a hybrid offence in Canada, and the penalty depends on the circumstances and severity of the assault. If prosecuted as a summary offence, the maximum penalty is six months in jail, whereas if prosecuted as an indictable offence, the maximum penalty is five years in jail.

The law also recognizes different forms of assault, such as sexual assault, aggravated assault, and assault with a weapon, which attract higher penalties based on the nature of the offence.

Assault is taken very seriously in Canada, and victims of assault should immediately report the assault to the police and seek medical assistance. It is the responsibility of the



prosecution to prove beyond a reasonable doubt that the accused is guilty of the offence of assault.

SCENARIO#1:

A security guard working at a nightclub witnesses a fight breaking out between two patrons. One patron throws a punch and hits the other in the face, causing visible injuries.

ANSWER:

Based on the scenario, it appears that the patron who threw the punch may have committed assault, which is a criminal offense that involves intentionally or recklessly causing bodily harm to another person.

As a security guard, the appropriate action to take would be to intervene immediately and separate the two patrons. The security guard should call for backup or the police if necessary to ensure the situation is under control. The security guard should observe the scene and gather any relevant information that may assist in an investigation. The security guard should also administer first aid to the injured patron and call for emergency medical assistance, if required.

It is important to document the incident with as much information as possible, including the names and contact information of any witnesses. The security guard should also follow any company policies, procedures, or legal protocols related to reporting and documenting incidents of assault. The security guard's primary role is to ensure the safety and well-being of all patrons and staff and to prevent further incidents from occurring.

SCENARIO#2:

A security guard working at a college campus responds to a report of a sexual assault that occurred in one of the dormitories. A female student reports that a male student entered her dorm room without permission and sexually assaulted her.

ANSWER: Based on the scenario, it appears that the male student may have committed sexual assault, which is a criminal offense that involves engaging in non-consensual sexual activity with another person.



As a security guard, the appropriate action to take would be to respond immediately, offer support to the victim, and call for emergency medical assistance if required. It is important to preserve the crime scene and not disturb any evidence that may be useful in an investigation. The security guard should also provide the victim with information on how to contact the police, counseling services available on campus, and medical support services.

The security guard should ensure that the victim is safe and protected from the perpetrator and should document the incident with as much information as possible, including the victim's account of events, any physical evidence or injuries, and the name and description of the perpetrator. The security guard should also note the location and time of the incident and any witnesses who can corroborate the victim's account of events.

It is important to remember that sexual assault is a serious crime, and the victim should be treated with respect, dignity, and compassion. The security guard should act in accordance with relevant legal and ethical guidelines and should always prioritize the safety and well-being of all individuals involved.

CRIMINAL CODE SECTION 322 – THEFT

What does theft mean? A person must steal something from its owner in order to commit this crime in order to deny the owner access to it. No mistake has been made by the individual taking the item; they are aware that it is not theirs.

In general, a theft is finished when:

- Fraudulently and lack of coloration of a right to an article;
- Transforms it for his or her own purposes;
- With the purpose of robbing the owner of it.

Before we examine the real Criminal Code, let's review some fundamental definitions:

PROPERTY refers to anything that is the object of ownership, whether it is valuable or not, mobile or immovable, tangible or immaterial, visible or invisible. Real property, such as real estate, or chattels, which essentially include everything else, can be meant.



FRAUDULENT means a deliberate activity, not just an accident or reckless behavior in the context of these sections of the Criminal Code of Canada.

INTENT must be demonstrated in all the cases. It implies that the individual committing the theft must have intended for the implications of his or her conduct to occur naturally. Although if it is impossible to understand the thoughts of someone who is committing an act of crime (in the absence of a confession), an offender's behavior frequently betrays their true intentions.

For instance, a shoplifter's activities in hiding an item frequently indicate that he or she is planning to steal the item.

The act of merely putting anything in your pocket, however, could not be sufficient to prove your intention to steal. This is the reason retailers frequently wait until the offender walks past the cash register and onto the street or into a mall's common walkway before apprehending them. It makes it exceedingly difficult for the defendant to claim that they meant to pay for the item before leaving the property.

Deprive is to take something away or seize something... to rob a property owner of possession, usage, or advantage without intending to replace it... Retain property without intending to return it to its owner or with the intention of returning it only if the owner pays a reward or other compensation for its return, buys the property back, leases it, etc. Any interest in property may not be sold, given, pledged, or otherwise disposed of, nor may it be made subject to a third party's claim.

The concept of "Color Of Right" refers to a person's sincere belief in a set of facts that, if true, would tend to support that person's behavior.

Theft is an offence under section 322 of the Canadian Criminal Code (CCC), which involves taking or attempting to take something without the owner's consent and with the intent to deprive the owner of that thing permanently or temporarily.

To qualify as theft under the CCC, the prosecution must prove that the accused intended to steal the item, and the item belongs to someone else. The prosecution must also prove that the accused did not have any right or authority to take the item or that the accused was not entitled to take it.

The offence of theft also covers stealing through fraudulent means such as forgery and identity theft.



The CCC treats theft as a hybrid offence, which can be prosecuted as an indictable offence or a summary offence, depending upon the severity of the offence. The maximum sentence for an indictable theft is ten years imprisonment whereas the maximum penalty for a summary conviction offence is two years less a day and/or a fine of up to \$5,000.

The CCC also recognizes different forms of theft such as robbery, break and enter, and theft over \$5,000, which attract higher penalties based on the nature of the offence.

Theft is considered a serious crime in Canada, and people accused of this offence should expect to face criminal charges. If a person is found guilty of committing theft under the CCC, they are likely to face jail time and a hefty fine depending upon the circumstances surrounding the theft offense.

Regardless of the value of the item stolen, stealing is illegal, and anyone who falls foul of the law risks facing criminal consequences.

SCENARIO:

A security guard working in a retail store sees a customer walking out with a pair of shoes on without paying for them. The security guard recognizes that the customer has stolen the shoes.

ANSWER:

Based on the scenario, it appears that the customer has committed theft, which is a criminal offense that involves taking property belonging to another person without their consent, with the intention of permanently depriving them of that property.

As a security guard, the appropriate action to take would be to apprehend the individual and detain them while the store manager is notified of the situation. The security guard should collect as much information as possible about the incident, including the description of the stolen item, the time the theft occurred, and any other relevant details.

The security guard should avoid using unnecessary force or violence during the apprehension and should follow any company policies, procedures or legal protocols related to apprehension and detention. The security guard should also ensure that the individual is treated with respect and courtesy while being detained. If the individual is



taken into police custody, the security guard should provide any relevant information or witness statements that may be useful in an investigation.

Additionally, the security guard may need to make a report of the incident and file a theft report with the police. It is important to follow any legal procedures and comply with relevant regulations and guidelines when dealing with thefts.

CRIMINAL CODE SECTION 348 – BREAKING AND ENTERING

This crime encompasses a wide range of circumstances in which property is invaded without the owner's permission and used for illegal purposes. Property entered may comprise residential dwellings (a house, apartment, hotel/motel room, trailer, or condominium, for example), as well as other establishments like a warehouse, business, or retail center.

Break and enter, also known as burglary, is a criminal offence under section 348 of the Canadian Criminal Code (CCC), which involves entering a place without the owner's consent with the intent to commit an indictable offence, such as theft or assault.

To qualify as a break and enter offence under the CCC, the prosecution must prove that the accused entered a building or structure without the consent of the owner or occupant, committed or intended to commit an indictable offence inside the building or structure, and that the entry was done without lawful authority.

The entry may consist of any breaking of an entry, including breaking a window, opening an unlocked door, or gaining access to the property by any illegitimate means. The prosecution must also prove that the accused intended to commit an indictable offence inside the property after gaining entry.

The CCC also recognizes aggravated break and enter, which involves breaking and entering with an intent to commit an indictable offence and being armed with a weapon, causing bodily harm, or threatening to use a weapon or causing harm.

PUNISHMENT

Break and enter is an indictable offence under CCC, and the maximum penalty for this offence is life imprisonment, depending upon the aggravating circumstances.

The break and enter offence is taken seriously in Canada, and anyone accused of the offence can expect to face criminal charges. Victims of break-ins should call the police



immediately and report the incident to their home insurance company to get help with the damage and losses caused by the crime.

It is important to note that the prosecution must prove beyond a reasonable doubt that the accused is guilty of the break-and-enter offence. If the prosecution does not meet its burden of proof, the accused cannot be found guilty of the offense.

SCENARIO:

A group of burglars attempted to break into a jewelry store in the middle of the night. However, the security guard on duty heard the noise and quickly went to investigate. He discovered the burglars trying to cut through a window to gain entry into the store. How does the Security Guard resolve this issue?

ANSWER:

In this scenario, the group of burglars attempted to commit break and enter into the jewelry store. However, the involvement of the security guard who responded quickly prevented them from succeeding.

The security guard's actions of calling the authorities helped in apprehending the burglars before they could cause any harm or steal any valuable items. The burglars would be subject to the Criminal Code penalties for their attempted break and enter offense, including imprisonment for a term up to life imprisonment, depending on the severity of the offense.

CRIMINAL CODE SECTION 354 - POSSESSION OF STOLEN PROPERTY

In Canada, possession of stolen property is a criminal offence under section 354 of the CCC. A person commits an offence in relation to stolen property when they have possession of any property that they know or should know has been obtained by an indictable offence. It is important to note that in Canada, there are two types of offences: indictable offences and summary conviction offences. Indictable offences are more serious crimes that can carry higher penalties, including imprisonment for more than six months.

To be convicted of possession of stolen property, the prosecution must prove that the accused had the property in their possession or control, and that the property was stolen. Additionally, the prosecution must prove that the accused either knew that the property



was stolen, or should have known that it was stolen. This means that the accused could be convicted of the offence even if they did not actually steal the property themselves.

If a person is convicted of possession of stolen property, they could face serious penalties, including fines and imprisonment for a term not exceeding 10 years. It is also worth noting that a person could face other charges related to the stolen property, depending on the circumstances of the offence.

Here are a few examples of possession of stolen property under the Canadian Criminal Code:

1. A man purchases a bicycle from a friend for a very low price, but he has a suspicion that the bicycle was stolen. However, he decides to buy it anyway because he thinks it's a good deal. In this case, the man could be charged with possession of stolen property if it is indeed proven that the bicycle was stolen.
2. A woman is found to be in possession of several expensive designer handbags, which the police later determine were stolen from a luxury store. Even if the woman claims that she did not know the bags were stolen, she could still be charged with possession of stolen property because she should have known that the handbags were not acquired through legal means.
3. A man finds a wallet on the street and decides to keep the cash found inside it. Later, it is discovered that the wallet was stolen from someone's car. In this case, the man could be charged with possession of stolen property, as he knowingly kept the stolen cash.

SCENARIO:

Tristan is the owner of a pawn shop. One day, a man named Jack comes into the shop and offers to sell an expensive watch for a fraction of its actual value. Tristan thinks that the watch is too good to be true, but Jack insists that he had bought it and needed quick cash. Tristan then buys the watch from Jack and adds it to his inventory. Later, the police come into the shop, question Tristan, and find out that the watch was stolen.

ANSWER:

In this scenario, Tristan is in trouble for the possession of stolen property, even though he bought it from Jack in good faith. According to the law, a person who is in possession



of or buys stolen property without knowing it's stolen is guilty of an offense. However, if Tristan can prove that he didn't know that the watch was stolen, he may not face serious criminal charges.

It would be recommended that in the future, Tristan should be more careful and take the necessary steps to verify that items offered for sale in his pawn shop are not stolen.

CRIMINAL CODE SECTION 430 – MISCHIEF

Mischief is a criminal offence in Canada that involves intentionally causing damage to property or interfering with property that belongs to someone else without their consent. The offences related to mischief are outlined in section 430 of the Criminal Code.

To be found guilty of mischief under the CCC, the prosecution must prove that the accused intentionally caused damage or interference to property that belongs to someone else. The penalty for mischief in Canada is determined by the amount of damage caused, and can range from fines to imprisonment for a term not exceeding 10 years.

Here are a few examples of mischief under the CCC:

- 1. GRAFFITI:** A person intentionally spray-paints graffiti on a building without the owner's permission. This would be considered an act of mischief, as it involves damaging the property of someone else.
- 2. VANDALISM OF PUBLIC PROPERTY:** A person smashes the windows of a parked car or bus stop, causing damage to public property without permission. This could also be considered mischief under the CCC, because they intentionally caused damage to property that belongs to someone (in this case, the public).
- 3. PROPERTY INTERFERENCE:** A person sneaks into a construction site overnight and moves equipment around, damaging some machinery and delaying the construction project. This would be considered an act of mischief, because the person interfered with property belonging to another person, and caused damage.
- 4. POLITICAL PROTESTS:** In some cases, political protests or demonstrations that result in damage to property could be considered mischief under the CCC. For example, protesters who damage the storefront of a business they believe is unethical would likely be charged with mischief.



It is important to note that each situation is unique, and the specific factors involved will determine whether or not an act of damage or interference constitutes mischief under the Canadian Criminal Code.

DAMAGE referred as irrespective of whether the item is physically harmed or destroyed, refers to a reduction in the item's usefulness or value. The injuries will require more than a minor inconvenience to repair, the court will want to be sure of that. The injury must be demonstrated to the court as requiring more than a minimal inconvenience to repair.

DANGER TO LIFE refers to a threat to life that results directly from an action (or from a decision not to take an action, if there is a responsibility to take an action). If there is a risk to life, it must result directly from the property damage and not just be a side effect of the means. So, for instance, if damage is done to a railway line and a train is overthrown and some people are hurt, the harm is caused by damaging with the property;

OBSTRUCTING, INTERRUPTING OR INTERFERING WITH THE USE OF PROPERTY

means that the offenders deny the owners or others to access or use of the property. A person who is a part of a human barricade that blocks access to property. Also, the court determined that numerous people engaged in mischief when they "interfered with the legal enjoyment" of an aircraft carrier by attaching themselves to an anchor chain and impeding the raising or lowering of the anchor.

SCENARIO:

Lisa is a security guard at a cinema. One day, while she's on her regular patrol, she spots a group of teenagers trying to sneak into a restricted area of the cinema. She confronts them and tells them to leave, but one of them decides to play a prank and spray paints graffiti on the wall. Lisa intervenes and calls the police, but the group manages to flee from the scene before the police arrive.

ANSWER:

In this scenario, the teenager's actions constitute mischief, which is a criminal offense involving willful destruction, damage, or interference with any property. As a security guard, Lisa did her part in trying to deter the teenagers from entering restricted areas but was not able to prevent them from damaging cinema property.



However, as a witness to the incident, Lisa would be able to provide evidence to the police about the perpetrators' identities and actions. Lisa will need to maintain accurate documentation of the incident, including any CCTV footage, personal details of the perpetrators, and details of the damages caused. Lisa should also notify her supervisor and cooperate with the police in their investigation.

CRIMINAL CODE SECTION 34 – DEFENSE OF PERSON

Defense of a person is a legal defense that can be raised when a person uses force to defend themselves, or another person, against an imminent attack. In Canada, the defense of a person is outlined in section 34 of the CCC.

According to the CCC, a person is entitled to use reasonable force to defend themselves or someone else if they believe on reasonable grounds that force is being used or threatened against them or someone else, and if the force they use is reasonable in the circumstances. It is important to note that the force used must be proportional to the threat posed, and should not go beyond what is necessary to prevent harm.

Here are a few examples of situations where defense of a person could be used as a legal defense under the Canadian Criminal Code:

1. PHYSICAL ASSAULT: A person is walking home from work at night and is approached by an individual who attempts to physically assault them. The person takes out pepper spray and uses it to temporarily blind the attacker, allowing them to escape. The person could argue that they used reasonable force in self-defense, as pepper spray is a non-lethal method of preventing harm.

2. DEFENDING ANOTHER PERSON: A woman sees a man physically attacking a child in a park. The woman intervenes and uses force to prevent the man from causing further harm to the child. The woman could argue that she was defending the child using reasonable force, as the child was in imminent danger.

3. HOME INVASION: A person wakes up in the middle of the night to find an intruder in their home. The person uses a baseball bat to subdue the intruder and call the police. The person could argue that they used reasonable force in defense of their home and their personal safety.

It is important to note that the use of force in self-defense must be reasonable and proportional to the threat faced. Any use of excessive force or violence beyond what is



necessary to prevent harm can result in serious criminal charges, such as assault or even manslaughter if the person dies as a result of the force used.

SCENARIO:

Samantha is walking home from work and is suddenly confronted by a man who pulls out a knife and tries to rob her. Samantha fights back, punching the robber and knocking the knife out of his hand. The man comes at her again, but a passerby, Tom, sees the struggle and intervenes by grabbing the robber and holding him down until the police arrive. Will Tom face any charges?

ANSWER:

In this scenario, Samantha acted in self-defense and Tom acted in the defense of another person. Self-defense involves the use of reasonable force to protect oneself from harm, while defense of another person involves the use of reasonable force to protect another person from harm. It would be advised to Samantha and Tom to cooperate with the authorities in their investigation, and upon presenting the facts and evidence that self-defense and defense of another person were necessary, they'd likely not face any legal charges.

However, it's important to note that there's a fine line between what is considered reasonable force and excessive force when it comes to self-defense and defense of a person, so it's vital to act with caution and use only the necessary means to protect oneself or others during a confronting situation.

CRIMINAL CODE SECTION 35 – DEFENSE OF PROPERTY

Defense of property is a legal defense that can be raised when a person uses force to protect their property against theft, damage or trespass. However, it is important to note that in Canada, the use of force to defend property is more limited than the use of force to defend a person. This is because the law generally values human life and safety over property. The defense of property is outlined in section 35 of the Criminal Code.

According to the CCC, a person may use force to prevent the commission of an offence against their property if they believe on reasonable grounds that such an offence is being committed. Note that the force used must be proportionate to the threat posed and must not go beyond what is necessary to prevent the offence.



Here are some examples of the defense of property under CCC:

1. A person sees a stranger walking up to their front door trying to pick the lock. The homeowner uses force to push the stranger away from the door, and prevent the invasion of their home.
2. A store owner sees a person attempting to steal an expensive item from their store. The store owner waits until the thief is outside the store, and then uses reasonable force to retrieve the item, as long as it does not mean a physical confrontation.
3. A car owner is leaving their car parked in a parking lot, and they notice a person breaking into their car. They can use reasonable force to stop the person from stealing or causing damage to their car, as long as it is proportionate to the threat posed.

In each of these scenarios, the individual had a reasonable belief on the imminent attack on their property, and used reasonable and proportionate force to prevent it. It is important to note that the force used to defend property cannot be excessive and should always be proportional to the threat posed. Any use of excessive force or violence beyond what is necessary can lead to legal consequences

SCENARIO:

Mary's home has been burglarized twice in the past year. One night, she hears noise downstairs and goes down to investigate. She sees a stranger inside her house, trying to steal her television. Mary grabs a baseball bat and confronts the stranger, hitting him and forcing him to leave the house. Later, the stranger presses charges against Mary, claiming that she used excessive force. Will Mary face any charges?

ANSWER:

In this scenario, Mary acted in defense of property, which involves the use of reasonable force to protect one's property from harm. However, the stranger claimed that Mary used excessive force. As per the law, an individual can use force to protect their property but only to a reasonable extent. In Mary's case, it'd depend on how much force she used against the stranger to protect her TV.

It would be advised that Mary will need to defend herself against the charges, stating that her actions were reasonable considering her home had previously been burglarized. She may need to prove that her force was reasonable and proportional to the threat she faced. If found guilty, Mary may face criminal charges and civil liability for any injuries the stranger may have sustained. Therefore, it's essential to understand the boundaries of what's considered reasonable force when it comes to defense of property.



ABUSE OF POWER OR POSITION

Security guards are authorized to perform certain duties in order to protect people and property, but they must operate within the legal boundaries set out by law. In some cases, security guards may overstep their legal authority and abuse their power. This can take many forms, including the use of excessive force, unwarranted searches or detentions, and other forms of intimidation or harassment.

Examples of security guard abuse of power can include:

- 1. USE OF EXCESSIVE FORCE:** A security guard uses excessive force against an individual while attempting to detain them or remove them from the property. This can include physical violence, such as punching, kicking or hitting someone.
- 2. CONDUCTING UNWARRANTED SEARCHES:** A security guard searches an individual without any lawful authority to do so, such as when there is no suspicion of theft or other criminal activity.
- 3. INTIMIDATION TACTICS:** A security guard threatens an individual with arrest or legal action if they do not comply with their demands, even if there is no legal basis for such action.
- 4. DISCRIMINATION:** A security guard unfairly targets individuals based on their race, ethnicity or other personal characteristics, leading to differential treatment or unwarranted suspicion.

It's important to note that security guards do have certain legal powers to carry out their duties, but they must do so within the legal boundaries set out by law. If a security guard abuses their power, they could face serious legal consequences, including criminal charges, loss of employment, or legal action by the affected individuals.

SCENARIO:

An example of security guard abuse of power could be a situation where a security guard at a mall detains and searches a shopper without any reasonable grounds or suspicion of theft. The security guard may use their position of authority to intimidate the shopper and force them to comply with their demands, without any legal basis for doing so.

In such a scenario, the security guard has overstepped their legal boundaries and acted outside of their powers. This could be considered a form of abuse of power, as they have used their position to carry out actions that they are not authorized to perform, such as detaining or conducting a search without legal justifications.



If a security guard is suspected of abusing their power, the individual affected by their actions can lodge a complaint against them. The mall or business where the security guard is employed also has a responsibility to ensure that their personnel are acting within their legal boundaries and adhering to ethical practices. If the actions of the security guard rise to the level of criminal conduct, they could be charged under criminal law, and may face fines, imprisonment or other penalties if found guilty

TORT LAW

Tort law encompasses a broad range of legal claims involving harm or injury to others. In the context of security guards, a security guard might be involved in various types of torts, including:

1. INTENTIONAL TORTS: These involve intentional actions taken by a person that cause harm or injury to another person or their property. For example, having a physical altercation with someone, household agents, or making a false arrest.

One example of an intentional tort in the context of security guards is excessive force. If a security guard uses more force than necessary to subdue a suspect or detain a person, they could be liable for assault and battery.

2. NEGLIGENCE OR UNINTENTIONAL TORTS: These involve unintentional actions taken by a person that cause harm or injury to another person or their property. For example, unintentionally leaving a gate open that leads to injury to another person, or failing to document an incident.

One example of a negligent tort in the context of security guards could involve failing to adequately check and secure premises, leading to the theft or injury to a person on the premises.

3. STRICT LIABILITY TORTS: These are legal claims where liability is imposed without proof of negligence or intent. These types of torts may occur if the security provider fails to ensure safety to the people or the premises.

One example of a strict liability tort in the context of security guards could involve failing to properly staff a site with trained personnel, resulting in theft or other safety incidents.

Overall, security guards are responsible for ensuring the safety of people and property. They're an essential component of ensuring safety and helping to prevent legal claim or



potential lawsuits. Therefore, it's crucial for them to understand different types of torts and take necessary measures to minimize the risk of such incidents from happening.

SCENARIO:

Juan is a security guard at a local construction site. One day, a pedestrian walks through the site and trips over an unsecured board, injuring their ankle. The pedestrian seeks legal action against the construction site and Juan, claiming negligence against them for not ensuring the site was safe for pedestrians.

ANSWER:

In this scenario, the pedestrian's claims are based on negligent tort law. As a security guard, Juan has a duty to ensure the safety and security of the construction site and the people who enter it. In failing to secure the board, Juan could be deemed negligent and held liable for the pedestrian's injuries.

Juan and the construction site to take necessary actions immediately. They should fully cooperate with the pedestrian to show empathy in the situation and gather necessary information, such as eyewitness accounts and accident reports, to understand what happened.

If it's found that the construction site didn't put up necessary safety barriers or take adequate measures to prevent accidents, there could be grounds for a negligent tort claim. Therefore, it's essential for security guards to take an active role in ensuring safety and to conduct regular safety checks to minimize the risk of potential accidents.