

## STREET LAW SMARTS #13

### SECURITY GUARDS

Security guards are privately employed by individuals, companies or organizations and are usually responsible for protecting persons and property (e.g. at a shopping mall or apartment building). They are not members of the local police and their powers are more limited. However, they do have the authority in certain circumstances to:

- ask you to leave from private property;
- arrest you for certain offences; or
- detain or search you.

Security guards are not allowed to use unnecessary force and, in the vast majority of circumstances, are not permitted to carry or use a handgun. Security guards may use a baton and handcuffs but a baton may only be used by security guards for defensive purposes. The company they work for must be licensed for this and the individual security guard must be trained.

#### Asking you to leave private property

Under the *Trespass to Property Act*, security guards can ask you to leave specific privately-owned property. They can also ask you to stop doing prohibited acts on the property. If you fail to abide by either request, you can be arrested by the security guard and given a ticket under the *Trespass to Property Act*. Security guards do not have to give a reason to ask you to leave the private property. However, they are not allowed to ask you to leave based on discriminatory reasons (for example, on the basis of race or religion or age).

#### Powers of arrest

In addition to making an arrest for trespassing under the *Trespass to Property Act*, security guards can also make a “citizen’s arrest” under certain circumstances such as:

- If they see you committing an indictable offence (includes all but the most minor criminal offences);
- If they see you commit a criminal offence on or against the property (e.g. shoplifting, destruction to property or graffiti, causing a disturbance on the property); or
- If they see you being chased by someone whom they believe has the authority to arrest you.

Security guards can use reasonable force to arrest you and to hold you until the police arrive. Once a security guard has arrested you, they cannot change their mind and “unarrest” you. When possible, they must give you notice by informing you of the reason for the arrest. They must turn you over to the police as soon as possible.

An arrest by a security guard could include any of the following:

- they inform you that you're under arrest;
- they touch you in a way that exerts some force (does not have to be excessive); or
- they create a situation where you are unable to leave.

If you leave after being arrested, you could be charged with resisting arrest.

### **Investigated but not arrested?**

Unless you have been placed under arrest, a security guard cannot generally detain you for questioning or further investigation. If a security guard detains you without arresting you, this may be false imprisonment.

### **Statements to security guards**

You do not have to give your name or show identification to a security guard. They must give you an opportunity to leave the property before arresting you for trespassing.

### **Statements on arrest**

Be careful about what you say and do when arrested or detained by a security guard. There is a risk that any statement you make or evidence gathered by security guards during your arrest may be used against you in court. Ask if you can speak to a lawyer, and if you are not given the opportunity to speak to a lawyer, then wait until the police arrive and immediately ask to speak to a lawyer.

### **Searches**

A security guard can only search you if they arrest you or if they have your permission.

### **Upon arrest**

Upon arrest, security guards can only search you if it is done reasonably and if:

- if guards think you pose a danger and are searching to ensure you have no weapons; or
- it is being done to stop you from destroying evidence.

Security guards' powers to search are much more limited than those of police officers. In most cases, even if you stole something, the guard should wait until the police arrive and let them conduct a search. You should always discuss the circumstances of a search with your lawyer.

### After you give permission

If there are signs in a store stating that people who enter the store are consenting to having their bags searched and you enter the store, then security guards may assume that you agreed to a search.

Security guards cannot threaten you in order to carry out a search. If a security guard searches you illegally but does not arrest you, the evidence can probably still be used against you.

Security guards can also search lockers on private property (e.g. a bus station) without getting a warrant or the consent of the person that rented the locker.

For information related to security guards, see:

**Street Law Smarts #12: Stops and searches by police**

**Street Law Smarts #14: Tickets**

**Street Law Smarts #17: Trespassing**

### **Complaints**

Complaints about the conduct of security guards can be made to the Private Security and Investigative Services Branch of the Ontario government.

You can also make a complaint with the security company that employs the security guard and/or the company that is employing the security company.

Complaints to the Private Security and Investigative Services Branch can be made for allegations where the security guard breached the Code of Conduct or other requirements under the *Private Security and Investigative Services Act* and its regulations.

You should file your complaint within 90 days after the incident happens. Complaints may be filed after this date but you must obtain consent from the Registrar to do so.

To make a complaint, you must complete and sign a public complaint form and send it to the Private Security and Investigative Services Branch of the Ministry of Community Safety and Correctional Services. A public complaint form is available at:  
[http://www.mcscs.jus.gov.on.ca/english/PSIS/PublicComplaints/PSIS\\_complaints.html](http://www.mcscs.jus.gov.on.ca/english/PSIS/PublicComplaints/PSIS_complaints.html).

To obtain more information on this process, contact:

Private Security and Investigative Services Branch

416-212-1650 (Toronto area) or 1 (866) 767-7454

[http://www.mcscs.jus.gov.on.ca/english/PSIS/PSIS\\_main.html](http://www.mcscs.jus.gov.on.ca/english/PSIS/PSIS_main.html)