

## STREET LAW SMARTS #2

## SPECIAL CONSTABLES AND SECURITY GUARDS

There are generally two kinds of "security guards" but they have very different powers.

**Security Guards**

Security guards are not sworn by the Toronto Police Service. They do not carry weapons although some security guards can use handcuffs. The company they work for must be licensed for this and the individual security guard must be trained.

You do not have to give your name or show ID to a security guard. They must give you an opportunity to leave the property. It is not legal for them to arrest you for refusing to identify yourself or show your ID.

Security guards can ban you from property and they do not have to give you a reason for the ban. They are not allowed to ban people for discriminatory reasons (for example, on the basis of race or youth) but because they do not have to give a reason for the ban, discrimination can be difficult to prove.

Security guards cannot ban tenants from their own buildings or the guests of tenants

Security guards can **arrest** you under certain circumstances, including:

- ◆ when they see you committing an indictable (usually more serious) offence
- ◆ when they see you committing a criminal offence on or against the property (e.g. shoplifting, destruction to property or graffiti, causing a disturbance on the property, being on property when you're not allowed to be there)
- ◆ when they see you being chased by someone whom they believe has the authority to arrest you

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)
- ◆ they create a situation where you are unable to leave

If you leave after they arrest you, you could be charged with resisting arrest

If a security guard **arrests** you, you have the same rights you would have if you were arrested by a police officer including the right to contact a lawyer. **They must turn you over to the police as soon as possible.**

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. They must turn you over to the police. A security guard can only **search** you if they (1) arrest you or (2) have your permission.

- (1) If they search you after arresting you, the search must be reasonable:
  - they can search you to make sure you have no weapons if they think you pose a danger
  - they can search you to stop you from destroying evidence
 Their powers to search are much more limited than those of police officers. In most cases, even if you stole something, they should wait until the police arrive and let them conduct a search. You should always discuss the circumstances of a search with your lawyer.
- (2) Security guards cannot threaten you to get you to agree to a search. They may be allowed to assume that you agreed to a search if there are signs in the store stating that people who enter the store are consenting to having their bags searched.

If a security guard searches you illegally but does not arrest you, the evidence can probably still be used against you.

## Special Constables

Special Constables with the Toronto Transit Commission (TTC) and Toronto Community Housing Corporation (TCHC (public/subsidized housing)) are sworn in by the Toronto Police Service. TTC Special Constables are also designated as Provincial Offences Officers.

Special Constables carry aspms or batons but **not** firearms. They carry either pepper spray (TTC) or pepper foam (TCHC).

They have the same powers as Toronto Police officers to enforce:

- the *Criminal Code of Canada*
- the *Controlled Drugs and Substances Act* (e.g. possessing cocaine or other illegal drugs)
- the *Trespass to Property Act* (e.g. entering a place when entry is not allowed or has been temporarily or permanently prohibited)
- the *Liquor License Act* (e.g. being intoxicated in a public place)

Special Constables can exercise their powers on all TTC and TCHC property (including TTC subways, streetcars and buses), respectively. They can exercise their powers off TTC and TCHC property as long as the incident partly occurred on TTC or TCHC property.

They can detain, arrest, search people or their belongings including cars (under certain circumstances), and can take alleged offenders to police stations.

If they search you illegally, usually anything found in that search cannot be used as evidence against you

## **Complaints**

### Complaints Against Security Guards

To make a complaint against the conduct of a security guard call Licensing Board of the Ministry of Public Safety and Security at (416) 326-0050.

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

- ◆ This is a very complicated area of the law. If you have questions talk to a criminal lawyer.

### TTC Special Constables

To make a complaint against a TTC Special Constable, call the Corporate Security Complaint Co-ordinator at (416) 393-3111 or write to:

Toronto Transit Commission  
Corporate Security Department  
1900 Yonge Street  
Toronto, Ontario  
M4S 1Z2

Complaints made against TTC Special Constables are reviewed by the Professional Standards Division of the Toronto Police Service. You must generally make your complaint within **6 months** of the incident out of which the complaint arises.

### TCHC Special Constables

You can make your complaint to the police through their complaints process (see **Street Law Smarts #8: Complaints**) or to TCHC. To make your complaint to TCHC, call their security dispatch call centre at (416) 921-2323. They will take down your information and pass it to an investigator employed by TCHC. The investigator will interview you and then pass the information to the police who will decide whether to investigate or pass it back to TCHC for investigation. A written report will be sent to the Director of Security at TCHC who makes the final decision about the appropriate sanction (if any). The entire process from filing the complaint to the decision being made should occur within 90 days. Usually you must make your complaint within **6 months** of the incident out of which the complaint arises.