CHAPTER 5

Private Security Search and Seizure Policies and Practices

No substantial empirical research has yet been undertaken, in Canada or elsewhere, which examines in detail the search and seizure policies and practices of private security personnel. From more general research into the phenomenon of private security, however, some data on search policies and practices are available. In this chapter, we shall review the limited information on this subject which is available, and attempt to place private security search and seizure practices within the more general context of private security work, and the environment of private justice within which private security personnel function. Only within this wider context can private security search and seizure practices be properly understood.

Controlling Access

As we have noted in Chapter 2 of this study, private security operates in a wide variety of environments, ranging from very public places (e.g., a shopping mall) to very private places (e.g., a corporate head office or a diplomat's private residence). In between these two extremes lies a continuum of more or less public places, to which different sectors of the general public have varying degrees of access, either by general or by specific invitation. A factory or a large nickel mine, for instance, is not a public place in the same sense that a shopping mall is. But nor is it a private place in the sense that a private residence is. It is, rather, a public place to which perhaps two or three thousand members of the public have regular daily access as workers, and a much more limited

number of people have routine access as maintenance crews, salesmen, delivery men, etc..

Two characteristics of the access of the public (or some limited sector of it) to more or less public places are of importance to an understanding of private security work and the exercise of private security powers. In the first place, access is never unlimited. Even in a shopping mall, not all places are equally public; as a shopper, one may have a generally free access to open areas and merchandising areas of a shopping mall, but not to the stockrooms and staff areas. One's access is limited by the purpose for which access is granted, and one of the major functions of private security personnel is the policing of these limits. In performing this policing function, private security personnel are generally expected to use whatever means are available and effective, including sometimes search and seizure procedures.

The second important quality of public access to privately-owned public places, is that such access is usually in some way essential to the success of the enterprise being carried on in the place. A factory cannot function as a factory unless the workforce has sufficient freedom of access to various places in it to be able to perform the work necessary to the production of whatever it is that the factory was established to produce. Nor could it function as a factory if workers or visitors had such freedom of access as would disrupt and interfere with the production process. This means that private security personnel, in policing access, must not only enforce the necessary limits of access, but must also ensure that necessary access is not limited. This is because the essential purpose of private security is to protect and promote the enterprise it is hired to police, and concepts of law enforcement or crime control are generally subordinate to this overall purpose.[278]

Property Protection and Loss Prevention

Access control, while it is a central function of private security, is of course not its only function. Protection of property from damage or loss is an equally important objective. Again, however, this is not an end in itself, but a means to ensuring the effectiveness of the enterprise being policed, and it is only in this wider context that private security strategies and procedures (including search

procedures) for the protection of property can be properly understood. Under these circumstances, abstract notions of "justice" or "crime" will inevitably occasionally become subordinated to the more immediate goals of the enterprise being policed. Thus, for instance, whatever corporate managers may feel about the rightness or wrongness of theft, they will not usually instruct or even permit their security force to adopt a strategy and procedures to combat it which result in substantial impairment of the enterprise being protected. Powers such as those of search and seizure, therefore, are viewed not so much as instruments of law enforcement or crime control, as tools of effective business management. "Justice", in such environments, becomes essentially privately defined and privately enforced. In this chapter, we shall consider some of the factors and interest groups which influence these private notions of "justice", and how such notions are practically translated into private security search and seizure policies and practices.

Research Findings

The environments in which private security functions are so diverse, and the implications of these environments for effective security so varied, that generalizations about private security search and seizure practices are difficult to make convincingly. In interviewing private security personnel, we found this to be a constantly recurring theme. Security directors see themselves primarily not as instruments of criminal justice or law enforcement, but as major actors in securing private property. And the nature of that property, and the activities which are expected to be carried out on it, are by far the strongest determinants of the security practices and procedures they adopt. This is undoubtedly why so many in-house security directors appear to be so ready to differentiate themselves not only from the public police, but also from other in-house security directors in other fields of activity. The dissimilarities between the job of a hospital security director and that of a retail store security director may well be greater than the similarities, in terms of the demands which their respective environments make upon the allocation of security resources. Each sees himself as a specialist. Which is perhaps why in-house security directors so often hold more generalist contract security personnel in such low esteem.

Research on private security has so far been of a quite general nature which has not adequately distinguished the impact of different environments on the private security role. Even where these distinctions have been made, they have been explored in terms of varying organizational structures of private security forces, rather than in terms of the impact of different environments on specific security practices such as search and seizure.[279] All that can be offered at this stage, therefore, are some findings about private security search and seizure policies and practices culled from the more general research, together with some hopefully suggestive illustrations of the wide variety of such policies and practices which were observed during the course of preparing this study.

The only research to date which has attempted to explore, in a general way, the exercise of powers by private security personnel in Canada, is Shearing and Farnell's study of licensed manned contract security in Ontario.[280] To what extent search and seizure policies and practices revealed by this study's findings may reflect the search and seizure policies and practices of in-house security forces, or even of contract security forces in jurisdictions other than Ontario, remains largely a matter of speculation. Although it has not been substantiated by research, however, there is some reason to believe that contract security personnel may be more cautious in exercising powers such as search and seizure than in-house personnel, and contract security agencies and their clients less willing to authorize the exercise of such powers than in-house security employers. This is because, in the case of contract security agencies, the possibility of gaining a reputation for attracting law-suits as a result of wrongful exercise of such powers would seriously threaten an agency's ability to secure future contracts. In the case of clients of contract security, authorization for the exercise of such powers is also perhaps likely to be less willingly given, because in practice effective control and supervision of contract security employees is likely to be more difficult to maintain than would be the case with an in-house force, and because security contracts not infrequently contain provisions exempting the contract security agency from liability for the actions of contract security employees while working for the client.[281]

(1) *Authorization.* The great majority of the respondents (71% of guards and 77% of investigators) in Shearing and Farnell's study reported that they were *not* expected to search persons

suspected of having committed a crime.[282] Of those who indicated that they were expected to conduct searches under such circumstances, the majority indicated that such instructions were given by the security agency rather than by the client.[283] Respondents in this study were not asked about comparable policies regarding random search procedures, where no criminal activity on the part of the person searched is necessarily suspected.

On the question of policies with respect to the use of force in conducting searches, again the great majority of Shearing and Farnell's respondents (86% of guards, 79% of investigators) reported that they were not expected to use force in conducting searches. Four per cent of the guards who responded to this question indicated that they did not know whether they were expected to use force for this purpose or not.[284]

(2) *Training re Search Powers.* Shearing and Farnell asked contract security agencies what training they provided to their personnel, to familiarize them with their legal powers (of arrest, search, seizure, etc.). In response to the question: "Does your agency train all new employees?", 26% of security guard agencies, 27% of investigation agencies, and 19% "dual" agencies (i.e., those which employ guards and investigators) indicated that they do not.[285] Only 32% of guard agencies, but 89% of dual agencies, indicated that they include training about legal powers in their training programs for guards. Forty-seven per cent of investigation agencies, and 70% of dual agencies, indicated that they include such subjects in their training programs for investigators.[286] All agencies which give such training indicated that it was mostly given at the agency prior to the agent being sent on any assignment, although some agencies indicated that such training is also given on the job or at the agency during assignments.[287] Fifty per cent of guard agencies, 65% of investigation agencies, and 40% of "dual" agencies, reported that they do not offer their employees any training which is additional to basic pre-employment or on-the-job training.[288]

In order to provide some verification of these agency-reported data, Shearing and Farnell also asked security employees about the training they had received. Eight per cent of guards and 6% of investigators reported having received no training before being sent to work.[289] Less than half of the respondents (43% of guards and 39% of investigators) indicated that training with respect to legal powers had been included in their training program.[290] Only

26% of the guards, but 53% of the investigators, reported that they had been given the opportunity to take further training by their agency after starting work.[291] Forty per cent of the guards indicated that their total basic training lasted half a day or less, 19% that it lasted a whole day, 14% two days, 14% three days, 6% one week, and 7% more than one week. For investigators, by contrast, the figures were: 10% two days, 10% one week, and 80% more than one week.[292] The majority of respondents (55% of guards and 35% of investigators) indicated that training was given by their agency supervisor. Only 7% of guards and 2% of investigators reported having received training from the clients for whom they worked.[293] Sixty-two per cent of guards and 71% of investigators felt that the training they had received was adequate. Thirty-six per cent of guards and 23% of investigators felt that they had not been given enough training, while 2% of guards and 6% of investigators felt that their training was not sufficiently relevant.[294]

Shearing and Farnell also asked guards and investigators questions designed to test their knowledge of the law and their legal powers. Three questions about private security powers of search were included, and the overwhelming majority of both guards and investigators answered these questions correctly.[295]

(3) *Exercise of search powers.* With respect to the actual exercise of search powers, Shearing and Farnell asked their subjects whether searching employees for theft or searching vehicles for theft were part of their job, and how frequently they conducted such searches on their current assignment. With respect to searching employees for theft, 34% of the respondents indicated that they did this "frequently" as part of their current assignment, 11% "occasionally", and 55% "never". As to searching vehicles for theft, 16% reported doing so "frequently", 3% "occasionally", and 81% "never." Three per cent of respondents reported doing "airport pre-boarding" tasks (presumably including random searches) "frequently", and 1% "occasionally".[296] Asked if they had ever needed to use force to carry out a lawful search during their current assignment, 6% of guards and 5% of investigators responded that they had.[297]

These data portray search as a security technique which is quite commonly resorted to by private contract security personnel, but which is normally accomplished without resort to force, and therefore presumably with the consent, or at least acquiescence, of the person being searched. The data seem to imply that the exercise

of *Criminal Code* and other powers to search without consent or a warrant is discouraged within private security. This is reflected not only in the instructions given to private security personnel by their employers and clients, but also in the relative infrequency with which guards and investigators receive training regarding such legal powers.

Factors Influencing Search Policies and Practices

In the course of interviews with security personnel during the preparation of this study, it became clear that there are several reasons for this reluctance on the part of private security to exercise powers of search without consent. These reasons may be roughly divided into legal reasons and business reasons.

(1) *Legal factors.* Despite the fact that most security personnel appear to believe that they have a right to search a person whom they legally arrest even though they are not peace officers — a belief which, as has been pointed out in the preceding chapter, does not appear to be clearly supported by any legal authority — most also seem to think that making arrests is too risky from a legal point of view. As we have noted in the previous chapter, it is only recently (since the decision of the Supreme Court of Canada in *R. v. Biron*[298]) that the traditional view that a citizen's arrest will be illegal if the suspect is subsequently acquitted of the offence for which he was arrested, for whatever reason, has come to be questioned. Even now, as has been pointed out above, there is no clear authority for the proposition that a citizen's arrest will be considered legal, despite a subsequent acquittal, if a reasonable person in the circumstances would have honestly believed he was witnessing the commission of an offence. Whatever may actually be the law on this point, however, it is evident that most private security personnel still believe that a citizen's arrest is made entirely at one's own legal risk. Consequently, many private security personnel will contend that other than in the most flagrant cases, if persuasion fails to detain a suspected thief, it is better to watch stolen goods be carried away than risk making an arrest.

These impressions appear to be supported by Shearing and Farnell's findings. Asked whether they were expected to detain persons whom they suspected of committing a crime, only just over half (54%) of the guards, and just under a quarter (24%) of the investigators in their sample indicated that they were.[299] Thirty-five

per cent of guards and 45% of investigators indicated that they had found it necessary to detain persons during the course of their work.[300] Asked how they had accomplished this the last time they had detained someone, 52% of the guards and 46% of the investigators who responded to this question indicated that they had simply told the person to stay. Twenty-nine per cent of the guards and 36% of the investigators indicated that detention had been effected using verbal threats, and 12% of guards and 14% of investigators indicated that physical force had been used. Only 2% of the guards and 4% of the investigators indicated that they had actually arrested the person.[301] When asked whether they tell a person he is under arrest when they have detained him against his will, only 10% of the guards and 34% of the investigators indicated that they do. Eighty-five per cent of the guards and 40% of the investigators responded that "it depends on circumstances", and 5% of the guards and 26% of the investigators replied that they do not tell the suspect he is under arrest in such circumstances.[302]

This concern to avoid leaving a suspect with the impression that he is under arrest, when he has been detained against his will, appears to involve a misconception as to the scope of legal liability for unlawful detentions (the tort of false imprisonment), and may be interpreted as an attempt to take advantage of public ignorance of civil rights. For, in order to establish the tort of false imprisonment, it is not necessary to establish that an arrest was made, but merely that the plaintiff was unlawfully detained. Any detention without consent and without specific legal authority (whether technically an arrest or not) will be unlawful for these purposes. It will be clear from our brief review of the arrest power in the preceding chapter, that in order to legally detain someone against his will, a lawful arrest must usually be made, and that for persons who are not peace officers, a lawful arrest usually requires that the person making the arrest must find the person whom he is arresting committing an offence (or at least "apparently" comitting one). The cases make it reasonably clear, furthermore, that in the absence of this requirement the courts will often hold a detention to be involuntary (and therefore unlawful) where the person who agrees to stay does so after being threatened or being told that he must stay.[303] Attempts to use "persuasion" or subtle intimidation will not normally be recognized by the courts as turning what would otherwise be an unlawful arrest into a lawful detention.

Many private security personnel appear to be aware of the delicate legal position in which such attempts at detention by

persuasion may place them if they are practised on someone who knows his legal rights. They accordingly recommend that only the most courteous forms of persuasion should be attempted, and that if these fail, the matter should never be pressed. Such personnel will often accompany such advice with anecdotes about how often they have had to watch helplessly as suspects walk away with stolen merchandise or company property.

One remedy (from the private security perspective) for this situation, of course, would be to accord to all private security personnel the powers of peace officers for arrest. Very few private security personnel advocate such an extreme remedy. Quite commonly heard, however, is the suggestion that private security personnel should be given a more limited power to legally detain a suspected thief until the public police can be called. Opinion seems to be divided, however, as to whether such a power should be accompanied by a limited power of immediate search, comparable to that currently accorded to peace officers making a lawful arrest. Those who urge such a search power argue that without it, the power to detain would be largely useless since the security officer would be powerless to prevent disposal or destruction of evidence prior to the arrival of the public police.[304]

Many private security personnel stress that no additional detention or search powers should be granted to private security personnel unless minimum standards of training, fitness, etc. have also been imposed on them, e.g., through licensing or some other from of legal regulation. Such regulation, it is urged, would also have to provide for greater public accountability of private security personnel, and more effective avenues of redress against wrongful exercise of powers by them. Standards of this kind, it is stressed, would have to be imposed on *all* private security personnel exercising such powers, and could not remain limited to certain contract security personnel as at present.[305]

Search warrants appear to be very rarely applied for or executed by private security personnel, and in practice never issued to private security personnel who are not peace officers. There seems to be a common belief among private security personnel that a search warrant can only be executed by a public policeman[306], although this does not appear to be a legal requirement at present. Many private security personnel express the view that if a matter is serious enough to justify a search warrant, it is likely to be a matter for the public police and not one which should be dealt with by private security personnel without such assistance.

With respect to the various other statutory powers of search and seizure outlined in the preceding chapter, these appear to be little known even by many of those private security personnel who hold peace officer status. They do not in practice seem to represent an important source of authority for private security personnel.

(2) *Business Factors.* The legal risks involved in resorting to coercive legal search powers are by no means the only factors which private security personnel take into account in shaping their policies and practices with respect to such powers. This is evidenced by the fact that private security personnel will often decline to exercise search powers against a person's will even where clear legal authority to do so (e.g., as a result of implied or express consent arising out of acceptance of a unilateral notice limiting access to property, or out of a clear contractual term) exists.

The strongest influence over the exercise of search powers by private security personnel may perhaps be described as the fear of loss of "good will". Whatever may be the legal rights arising out of a given situation these will rarely take precedence, in the minds of security personnel or those who establish policy for them, over the need to maintain "good will". Whether the "good will" sought to be preserved is that of customers (e.g., in a retail or hotel environment), of clientele (e.g., in a hospital environment) or of the work force (in almost any industrial or commercial environment), it is likely to be the major consideration governing the selection of security procedures generally, and in the exercise of search and seizure powers in particular. The importance of "good will", furthermore, is likely to be measured in terms of its contribution to the overall success of the enterprise being policed. One training manual consulted during the preparation of this study expresses this approach characteristically:

> "...the traditional concept of plant protection is one of law enforcement. We must all know, and we must all believe, that plant protection has no relationship with police work...
>
> This brings us to the concept that the plant protection objective is not a police and law enforcement objective, but an objective that is an aid to the production of goods and services. The new concept of plant protection's relation to production must replace the old concept. It is up to all members of any Security Company at all times to promote the idea that plant protection is related to production. They must also, at all times, use every argument to show that plant protection is not related to law enforcement...
>
> The modern concept presupposes an engineering approach to the problem. The old concept does not. The new concept is an *aid to production.* The old concept is a *burden on production.*"

The operationalization of such an approach does not, of course, rule out search procedures. Indeed, it will often be seen as mandating them. In determining what procedures to adopt, and what persons shall be subject to such procedures, however, private security personnel will usually be particularly concerned to assess the likely reaction of the various important constituencies (customers, work force, etc.) to such procedures, and the significance of that reaction for the success of the enterprise which such procedures are intended to serve.

Such an assessment will necessarily involve consideration not only of the relative power and status of the constituency it is proposed to subject to search, but also of the product of service which is being provided to that constituency. A high-class store selling very expensive items to a presumably rich clientele is less likely to adopt spot searches as a condition of entry onto its premises than a large discount store providing "bargains" to a poorer clientele. A workforce represented by a strong union is less likely to tolerate arbitrary search procedures than one which is unorganized and relatively powerless in the face of the exercise of such management authority. Yet, it may be easier or more worthwhile to enforce search procedures around the time of contract negotiations than at other times.[307] Fans wishing to see a "once only" rock concert or sporting event may be willing to tolerate more thorough search procedures than regular visitors to a routine event which is competing with other similar attractions, etc..

Another business consideration which influences the choice of procedures, and which is related to the concern over "good will", is the desire to avoid introducing the public police into the security environment other than in the most extreme cases. The notion that having the public police in evidence is "not good for business" — because it may engender unease on the part either of the workers or of the customers — is commonly expressed by private security personnel, and is probably often a major motivating factor in the establishment of many private security forces in the first place, especially in-house forces where uniforms do not have to be worn. This thinking was encapsulated, somewhat ironically, in the remark of one plant security officer interviewed during the preparation of this study, in which he explained that the reason he felt peace officer status (which he held as a special constable) was important to his work, was that it allowed him to deal with certain matters within the plant without having to involve the public police. This, he felt, was much better for morale within the plant,

and allowed problems to be dealt with according to procedures with which the workers were familiar, rather than through less familiar police and criminal justice procedures.

Another, at first sight somewhat circular, reason for the reluctance to avoid procedures which may result in involvement of the public police, is the feeling, especially common among industrial security personnel, that the public police are insufficiently sensitive to the work/production environment, and consequently cannot be relied upon to conduct investigations in such a way as to minimize disruption of this environment.[308] As we shall see below, private security search procedures often appear to be carefully designed to suit industrial conditions, even to the point of specifying how much an employee shall be paid for time spent undergoing such procedures. Specifications like this, of course, not only serve to satisfy union concerns, but also effectively discourage search practices which might be considered "unproductive" from a management viewpoint.

Associated with the desire to avoid public police involvement, and particularly relevant to search and seizure procedures, is the desire not to lose control over merchandise or company property which may be the subject of dispute. Procedures which are likely to involve resort to the public criminal justice system are frequently avoided for this reason. Keeping merchandise or company property in storage so that it can be used as evidence in some possibly distant court hearing, is understandably viewed with considerable disfavour not only by many private security personnel, but also by those who hire them.

Reasons for Search Procedures

It will be apparent from the foregoing that the paramount reason for the adoption of search procedures — and indeed of virtually any security procedure — by private security personnel, is to enhance the functioning and success of the enterprise being policed. Within this overall framework, however, some quite specific factors which motivate search procedures are discernible.

The most obvious of these reasons for the adoption of search procedures, is the desire to prevent property losses to the company or institution being protected. In the retail context, of course, this is usually the exclusive reason behind search procedures, whether

they involve customers or employees. Prevention of property loss may involve a concern about theft — in which case the size of items which can be stolen is likely to have a major influence over what search procedures are adopted — or a concern about vandalism or sabotage.

Another reason for search procedures is the protection of life. The security guards searching for objects which could be used as missiles, at the entrance to a rock concert or political meeting, are likely to be concerned more about the dangers to the performer than about the dangers to the place where he is performing. The same, obviously, is true of private security personnel who are hired to give personal protection to executives, diplomats, etc..

Protection of confidentiality or privacy is also frequently a reason for the adoption of search procedures. This may involve preventing photographic or sound recording devices from being brought into some private gatherings.

The enforcement of certain agreements may also provide a reason for search procedures. On a construction site, for instance, searches may be conducted to ensure that a contractor is not using materials which are of an inferior quality to those contracted for. In one industrial site which was visited during the course of preparing this study, security personnel indicated that vehicle searches which were conducted regularly by the security staff were designed principally to satisfy the union that jobs involving driving skills were only done by those who were hired for these jobs.

Safety or health concerns also motivate private security search procedures. This kind of concern may, for instance, lead to searches for combustible objects in dangerously flammable areas, searches to detect objects which may be contaminated with radio-activity, or searches for non-sterile objects in areas which, for medical reasons, must be kept germ free.

Lying behind many of these reasons for searches are two factors which may exert considerable influence over security procedures (including search procedures), but about which little detailed information is currently available. These are the demands which are placed on the operators of various enterprises by potential legal liability, and the demands of insurance companies. There is little dispute that in the realm of civil liability, not only are the causes of action gradually being expanded by the courts, but also

the standards of care demanded of operators of various industrial and commercial enterprises are being raised, as are the damages which are awarded when a breach of these standards is proved. The recent, and notorious, "Connie Francis Case"[309] in the United States, in which the well-known singer was awarded almost $1.5 million against a motel chain as a result of being sexually assaulted by an assailant who entered her motel room through a sliding patio door, represents a growing trend in that country towards the imposition of a higher duty of care owed by operators in the hospitality industry. In an article which reviews the astonishing trends towards increased liability which the United States courts have established for that industry, Wallace and Sherry note that:

> "There has been almost exponential growth in cases outside the hotel area that involve negligence in the form of inadequate or non-existent security standards.[310]

The authors note that the trend towards stricter liability has been accompanied by a trend towards greater control over the kinds of techniques and equipment which private security personnel may employ to protect their employers against such liability. This, they argue, is leading to an increasing dilemma for private security, which they describe as "the conflict between greater standards of care on the one hand and restraints, on the other hand, against taking the necessary precautionary steps."[311]

While there is no doubt that Canadian courts have by no means gone so far as their counterparts in the United States in imposing stricter liability for the results of inadequate security procedures, private security personnel in this country are quick to point out the relative ease with which such legal innovations in the United States seem to penetrate Canadian judicial thinking.[312]

Such legal developments also inevitably filter through eventually to the insurance industry, and some private security personnel in Canada point to the growing influence of insurance companies over their choice of security procedures. While shoplifting losses are not currently an insurable risk, major thefts and property damage caused by vandalism and sabotage are. The extent to which insurance companies may go in requiring various security measures (including search procedures) to be undertaken as a condition for granting coverage for losses or legal liability is by no means clear, and requires further study. In the past, however, insurance companies have shown little reluctance to impose quite specific security requirements as a condition for

insurance coverage[313], and apparently are free to incorporate broad exemption clauses into insurance contracts whereby the liability to meet claims is nullified if such security measures are not adequately effected.[314]

The variety of reasons for private security search policies and practices, and of the factors which influence them, reflects the wide variety of environments in which private security personnel operate, and of interests which they protect. Other than giving virtually carte blanche to private security personnel to conduct searches "on consent", our current law takes little account of these different reasons for the establishment of search procedures. It may be, however, that any restructuring or clarifications of the law in this area should take account of such matters, bearing in mind that some reasons for searches — and thus for interfering with the freedom of citizens — may be more socially justifiable than others. In this sense, a uniform and inflexible law of search, designed for instance to accomplish only law enforcement goals, may not be the most socially desirable goal.

The other important aspect of these various reasons for search procedures by private security personnel, is that many, if not all, of them, in the context of private security work, are seen as calling for random searches rather than searches "on suspicion". This is because private security personnel tend to view their work as essentially preventative rather than punitive. In this view of the private security role, the deterrent and preventative effects of random search procedures are seen not only as more effective, but also as more acceptable, than searches only "on suspicion".

Securing Consent

The fact that the great majority of searches by private security personnel are apparently made "on consent" rather than through the exercise of coercive legal powers, makes the issue of consent, and how it is obtained, the central issue in any discussion of private security search policies and practices. As has been noted in the previous chapter of this study, the law allows great latitude to private security in this regard, and places few restraints on the manner in which legally valid consent to search procedures may be obtained. Provided it is not obtained by fraud or outright intimidation, such consent will normally be recognized as legally valid, and as justifying search procedures which may substantially

interfere with individual privacy and freedom. Despite the fact that submission to such procedures may be highly self-incriminating, none of the "safeguards" which have been built into other potentially self-incriminating situations by the courts (e.g., the requirement to explain reasons for an arrest, the requirement to "caution" a suspect before interrogating him, etc.), have been incorporated into the law governing searches. Indeed, if anything, the law appears to go to some lengths to protect the person conducting a search by requiring the person alleging an illegal search to bear the burden of proving lack of consent in order to establish civil or criminal liability. As we have noted earlier, this apparent solicitude for the person conducting the search appears to be a reflection of the fact that the law of search has been developed principally as a matter ancillary to rights of property ownership and possession, rather than as a matter of individual civil liberties. An illegal search is not *by itself* an offence or a civil wrong (although, of course, it may involve either), nor does it in this country legally taint evidence obtained as a result of it, as it does in the United States.

As might be expected, private security personnel take full advantage of their right to conduct consensual searches where it is felt that this can be accomplished without unduly prejudicing the interests of the company or institution being protected. Consent for such searches is obtained by means of verbal persuasion, unilaterally published notices stipulating submission to search procedures as a condition of admission to or exit from premises, and through written contractual or other agreements.

(1) *Verbal Persuasion.* Techniques of verbal persuasion, and the possible impact of uniforms in such situations, have already been considered in this study, and do not need further elaboration here, other than to point out the rather obvious fact that private security personnel understandably do not go out of their way to inform persons subjected to such searches of their right not to be searched. Silence on this matter is generally, and not surprisingly, considered more effective in securing cooperation with search procedures.

(2) *Unilateral Notices.* The use of unilateral notices to secure submission to search procedures is also well known, and regularly resorted to by private security personnel. Whatever the law may say about the rights of security personnel to search persons who, having entered after reading such notices, later decline to submit to search procedures, many private security personnel indicate that

they would never insist on conducting searches under such circumstances. The instructions on this point contained in one security manual which was consulted during the preparation of this study, seem to reflect a common approach to this problem by many private security managers. Under the heading "Voluntary Searches", the manual lists the various ways in which consent to search procedures may be obtained, including "agreements or notices which specify search of vehicles or persons on entry/exit is a condition of entry." The manual goes on to note that: "Persons who do not wish to agree to the procedure need not enter or may leave their vehicle outside, etc.".This is followed by the instruction that:

> "*NOTE:* Where a person refuses to abide by the notice or agreement, even where in writing, a search shall not be made while on or when exiting (company) property, *UNLESS* the search is made on specific authority of a statute . . .
>
> If a person refuses to abide by the notice or agreement, then action can include:
> (a) cancellation of contract, or portions thereof,
> (b) cancellation of parking privileges (vehicle not allowed on (company) property)
> (c) other administration or disciplinary action depending on the agreement, notice or regulations in effect."

This instruction hints strongly at the private pressures which may be brought to bear in securing consent to search procedures, as well as the reluctance to authorize any action which could lead to involvement of police or other outside agencies other than in extreme cases (i.e., those where search can be made on statutory authority). The clear impression from this instruction is that while notices or agreements are to be used to encourage cooperation with random search procedures, they are not to be used to coerce it.

(3) *Management Rights and Collective Agreements.* A common method of securing general consent to search procedures in industrial and commercial settings is through collective agreements. This method differs significantly from other methods of securing consent in that it involves collective rather than individual consent. Once such a collective agreement is signed and ratified, all the workers who are covered by it can be considered to have given their consent to its provisions, whether they actually know the details of these provisions or not. Consequently the presence and power of a union in many such situations is likely to

be the major factor in determining who is to be subjected to search procedures, what type of search procedures are to be used, and what consequences will arise as a result of searches. Obviously, this gives to unions great power in protecting or neglecting individual freedoms.

Typically, a collective agreement contains a "Management Rights" clause. Such a clause will normally include union recognition of exclusive functions of the company, including "maintaining order, discipline and efficiency", and the right to "discharge and discipline for just cause". In many companies the management rights clause is considered sufficient authority for management, through its security department, to impose security procedures (including search procedures), and to discipline or ultimately discharge any employee who refuses to comply with them.

The normal source of the resolution of disputes over the meaning or scope of clauses in collective agreements are decisions (awards) of tripartite boards of arbitration. Such awards bind only the parties to the agreement, and do not therefore have the force of law which court decisions have. Nevertheless, arbitrators frequently invoke previous decisions of other arbitrators to lend weight to their own decisions, and in the process of negotiating collective agreements arbitration awards carry considerable persuasive force.

In a few arbitration awards, the application of the concept of "management rights" to search procedures has been considered, and from these decisions some generally accepted principles seem to be emerging. The typical situation in which such an award arises is where management, pursuant to the management rights clause, promulgates rules and regulations which include mandatory submission by employees to certain search procedures. In one company visited during the preparation of this study, such company rules stipulated that "vehicles and lunch pails may be subject to searches at any time." In another the rules stated that: "An employee who commits any of the following offences may be subject to disciplinary action up to and including dismissal either initially or on repetition." Among the 23 offences listed was: "Refusal to submit to lunch-pail or parcel check on entering or leaving premises". In a third, company employees were provided with personal lockers in which to store their belongings while at work. On joining the company, they were required to pay a small deposit on the combination lock provided for the lockers, and to

sign a form which included the statement that: "I further acknowledge that the company may from time to time carry out locker inspection excluding my presence".

A failure to comply with such rules often leads to disciplinary action by the company, which in turn may lead to the initiation of a grievance by the employee, usually backed by the union. If such a grievance is not resolved through informal settlement, it may go to arbitration.

Labour arbitrators have tended to uphold such rules as valid exercises of management rights under collective agreements. In one such arbitration award, the board of arbitration held that random inspection of lunch-pails by company security officers had been the "unchallenged practice of the company for many years" and "had become a term of the grievor's employment."[315] In another case, the board held that: "Human nature being what it is, in the case of a company employing hundreds of persons, a rule or regulation requiring inspection of lunch boxes and personal packages of employees when leaving the plant premises is not unreasonable".[316]

While these cases involved search procedures relating to vehicles, parcels, tool-boxes, lockers, etc. a much cited award in 1961 dealt with the validity of a requirement of submission to personal search as a term of employment. The procedure was described in the award as follows:

> "The procedure of a spot check is that a number of employees, say six to ten, are selected at random by the plant protection officers and requested to step into the gate house where each is asked if he has any company property on his person. The employee is then asked if he objects to being searched. If there is no objection, the employee is then "frisked". The officers were instructed not to irritate the men and not to search an employee if he objected. The position of the company is that it had the right to search but did not exercise the right unless the employee consented; if the employee withheld his consent, this was just cause for discharge according to the company."[317]

In a lengthy award, the arbitrator in this case analyzed the various ways in which such a company right might be established. After noting that "the evidence did not disclose that stealing of company property was a major problem of the (company)", the arbitrator indicated that the only way in which such a right of personal search could be established was (a) pursuant to a lawful arrest, (b) pursuant to an express term of the grievor's employment, or (c)

pursuant to an implied term of the grievor's employment. After dismissing the first two grounds as not relevant to the case at hand, the arbitrator went on to consider under what circumstances a right of personal search might be considered to be an implied term of employment. If there was such an implied right, he argued, it must have existed,

> "(1) Because every master has this right to search his servant; or
>
> (2) By reason of the size and nature of this company's operations, it is necessary and implied that the company has the right; or
>
> (3) Because past practice has established the right of search as a term of employment."[318]

Dealing with the first of these possibilities, the arbitrator noted that:

> "The learned counsel for the company expressed the view that management generally, that is, of all industrial plants, retail stores, large and small, offices, etc., has the right to give this order and the disobedience of it is cause for discharge. This argument is of course on the premise that the order is lawful by reason of the employer-employee relationship — that every employer has the right to issue the order because of that relationship. With respect, I do not agree... It is my conclusion that this right at common law did not exist and that the master at common law was in no better position than any other individual with respect to searching the person of his servant without his consent... I do not believe the common law has been modified to give the employer this extraordinary authority over an individual today... In my opinion, then, the relationship of master and servant in itself did not justify the company's action in this grievance."[319]

Dealing with the second possible justification for such a right, the arbitrator held that:

> "There was no attempt by the company to prove that the right of search was more necessary in its operations than is the case with any other firm or place of business. There was no evidence to show that losses by theft was a major problem with the company and that the other security measures such as opening tool boxes, obtaining passes for parcels and opening parcels and the right to search vehicles were not sufficient to control stealing from the plants.[320]

And on the third possible justification, the arbitrator held that:

> "As set out, the evidence was somewhat contradictory as to the frequency and extent of the practice of the company in carrying out spot checks. My conclusion from all the evidence is that the company carried out spot checks over the years but not frequently nor widespread enough to establish the practice as an implied term of employment. I find that it was regular practice

accepted by the employees to: (1) open and show their lunch boxes as they left the company premises; (2) obtain a pass for parcels which were examined at the gate; and (3) have their vehicles searched on leaving the company premises, but that there was no general acceptance by the employees of the company's right to search the person."[321]

Noting that the grievor had been under the impression that when a person was searched it was because the company suspected him of theft, the arbitrator added that:

"If spot checks were given publicity and explained to the employees, that is, that their purpose was to serve as a deterrent and that the person being searched was not under suspicion of theft, the embarrassment of being searched on a spot check might well be eliminated."[322]

Finally, in upholding the grievance, the arbitrator concluded that:

"In conclusion, the right to search an individual is a serious invasion of personal freedom. An employee could only lose his fundamental right of refusing to be searched by the clearest kind of evidence."[323]

In a much more recent arbitration award, the principles enunciated in the *Chrysler* award were adopted and applied to searches of lunch-pails and parcels. In this case, the mining company involved admitted that such searches had not been established by past practice, but argued that recent bomb attacks against Hydro installations not far from the company's property, and bomb threats at certain of its mines, coupled with the fact that the nature of the company's business involved the storage of large quantities of explosives on company premises, and their availability for use by its employees, justified the company in taking special precautions against theft of these explosive materials. In upholding the company's right to conduct lunch-pail and parcel searches under such circumstances, the arbitration board held that:

"It may be that an employer must show some justification for an inspection of lunch pails and parcels where such has not been an accepted practice. Such justification is certainly much easier to establish than that which would permit a personal search... In the instant case, justification for inspection is found in the circumstances of the bombings and threats which were the immediate occasion for increased security measures, and in the nature of the company's operations involving widespread storage and use of explosives. Those circumstances, in our view, would justify the inspection of lunch pails and parcels in a systematic, non-discriminatory manner, as was the case here. While it is naturally, we think, an unpleasant thing to be subject to inspection, there was nothing in the procedures to justify any degree of personal embarrassment to the grievor as an individual or as a union member."[324]

The board also noted that:

> "Where the inspection was carried out, it was carried out on all persons, indiscriminately, and was not just for the hourly-paid work force. There is no question, then, of the sort of embarrassment which would be involved in a search of the person, or in being singled out for inspection."[325]

These awards are of importance, despite the fact that they do not carry general legal force, because the principles which they enunciate are likely to be highly influential in contract negotiations between unions and management over security procedures in general, and search procedures in particular, in the workplace. Such negotiations are always carried out with an eye not only to the relative political and economic strengths of the parties to them, but also to what ruling could be gained if a matter were pursued to arbitration. They illustrate, too, that in practical terms consent to searches by private security personnel in the workplace involves a great deal more than simply express written or verbal consent of individuals, and that under appropriate circumstances consent to search procedures may be implied as a term of employment even though it is not expresssed in any agreement between the employee and his employer, written or otherwise, and has not been established by past practices. The *Chrysler* award, furthermore, seems to suggest that under appropriate circumstances, consent even to personal searches may be implied in this way.

We have been concerned so far with situations in which consent is secured by management pursuant to the general "management rights" clause in collective agreements. In many cases, however, this is not necessary because the collective agreement will contain specific clauses dealing with security procedures. In such cases, of course, such clauses will bind every member of the collective bargaining unit covered by the agreement, regardless of their personal feelings about searches. The nature and scope of such provisions vary greatly, and will depend largely on the relative power of the union vis-a-vis the company, and on what other matters happen to be on the bargaining table at the time of contract negotiations. Less complex provisions may involve simply a letter of understanding, addressed to the union local and appended to an agreement, such as the following:

> Dear Sirs:
>
> *Re: Right to Search*
>
> This letter will confirm the understanding and agreement between the Company and the Union, who are parties to a collective agreement, with

respect to the Company's practice of requiring employees to submit to a search of personal belongings on request of the Company.

The Union recognizes the need and right of the Company in this respect and the obligation of employees to submit to a search on request, it being understood that a female employee may request that the search be made by a female representative of the Company.

It is further understood and agreed that the Union will cooperate in publicizing this Company rule and will advise employees that refusal to submit to a search will be a basis for discipline.

Yours very truly,
(Company name)
(Signature)
Personnel Manager

Receipt of and Agreement with the
foregoing is hereby acknowledged:

(Signature) _____
(Name of Union Local)

Some provisions with respect to search procedures in union contracts, however, are very detailed and comprehensive, and clearly designed to meet all the requirements of minimum disruption of the production process, and minimum dissatisfaction on the part of the work force. An example of such provisions is reproduced in Appendix E of this report[326], together with a company memorandum outlining the specific search procedures established in pursuance of them. The particular plants to which those provisions apply are plants in which precious metals are manufactured and the nature of the product (in terms of its very small size and considerable value) was thus a major influencing factor over the negotiation of these provisions. The provisions, however, allow for very extensive powers to search "an employee and his effects while he is on Company premises". While the company undertakes to "generally employ a random sampling procedure" in conducting such searches, it nevertheless "reserves the right to institute selective sampling, as it deems necessary, to ensure the security of its resources". The contract contains detailed provisions for the compensation of employees for time spent going through the search procedures, as well as for the regular collection by the company of statistics on the search procedures. The company undertakes to review these statistics every thirteen weeks, in order to ensure that employees are adequately compensated for time actually spent in search procedures, and to adjust the levels of compensation if necessary. The company undertakes to provide

copies of these statistics to the union president when requested. The contract also stipulates that "the above may only be changed, at any time, by the mutual agreement between the Company and the Union." Finally, "the Union reserves the right to grieve as per the Collective Agreement".

A "letter of intent" appended to this agreement, and also reproduced in Appendix E to this report, elaborates further on these procedures, and makes it clear that in this instance search procedures may be backed up by lie-detection tests. The company undertakes to train a union representative in P.S.E. (psychological stress evaluation[327]), and to allow him to review P.S.E. tapes and charts, but only with the written consent of the interviewed employee, and only in cases in which personal searches took place. The company agrees to consult with the union "regarding the structure of the questions to be asked in the P.S.E. interview", and to "publicize the questions so that an employee will know questions he may be asked before being tested". The letter of intent also stipulates that "each person tested under P.S.E. will be asked if he was intimidated by the interviewer and his response will be recorded on the tape". Finally, the letter provides that an employee's car is considered one of his effects and is subject to search while it is on the company's premises, but that such search can only be made in the employee's presence.

The specific search procedures adopted by the company under these provisions, as set out in the company memorandum, involve an unusually sophisticated selection procedure, which the company claims is designed to "ensure the *random* and *impersonal* principle in all steps of this type of selection process." The procedure requires the employee, at the end of his shift, to pick a stick out of a large barrel. Each stick has a different coloured tip — some "clear", some red, and some red and black — but the colour of the tip cannot be seen by the employee until he has drawn the stick out of the barrel. If the employee picks a "clear" stick, he will proceed only through "parcel search". A red stick would require him to submit to a personal search by a security officer using a metal detector (similar to those used at airports), excluding a search of his feet. A red and black stick requires him to submit to a personal search by metal detector including a search of his feet. If metal is detected, he may be required to remove his footwear and submit both it and his feet to more detailed search with a metal detector.

(4) *Other Contracts.* Consent to more or less limited search procedures may be secured through all kinds of other contractual or quasi-contractural terms. We have already referred to the practice whereby employees in many companies are given (sometimes on payment of a small rental fee) locker space in which to keep their personnal belongings while working, and their work clothes and tools while not working. Not infrequently, such agreements involve a condition that gives management some rights to search the lockers, either in the presence of the worker or excluding his presence. In many large mining, lumber or construction projects, especially in more remote areas, full housing or bunk-house accommodation is provided to the workers, often at nominal rents.[328] Agreements for such accommodation sometimes contain provisions to the effect that such housing shall be subject to normal security (including perhaps search procedures) in operation on the project.

Where work is contracted out to a sub-contractor (e.g., on a large construction site), it is again not uncommon to find provisions in the contract requiring the contractor's employees to conform to security procedures (including search procedures) established by the contracting company in control of the site. The same is sometimes true of situations (e.g., in shopping malls, large office complexes, etc.) in which commercial space is rented to tenants by a corporate landlord.

Contracts of membership of various organizations or institutions (e.g., libraries) are often sources of consent to search procedures. Often such a contract will simply involve a stipulation that the member agrees to abide by the rules and regulations of the institution, and the requirement to comply with search procedures is found in the rules and regulations themselves.

The Context of Private Security — Private Justice Systems[329]

It will be clear from the preceding descriptions that in a great many settings in which private security is the predominant instrument of policing, rights to search, and rights not to be searched, are in practice entirely negotiable. Indeed, to speak of "rights" at all in this context is perhaps a little misleading, since to the legal mind the term "rights" generally refers to claims which are enforceable through the public legal system. As we have noted

previously in this study, however, private security personnel and those with whom they principally interact tend, more often than not, to eschew recourse to the public legal system, and avoid where possible the exercise of powers which will inevitably result in involvement of public authorities. This appears to be as true of those who hold quasi-public appointments as peace officers (e.g., as special constables, railway constables, etc.) as of those who do not. Instead recourse is had to what may be called private justice systems, to resolve disputes which arise within the private security environment. An appreciation of the nature of such private justice systems is essential to a proper understanding of private security policies and practices, and it is to a consideration of this wider context of private justice that we must now turn.

Private justice systems do not conform to any uniform model, any more than private security forces do. This is because such systems tend to be localised, and adapted to the peculiarities of the environments in which they operate. Little is known about the wide variety of such systems, because until recently they have not attracted the attention of criminologists and other social scientists. Perhaps the simplest way to explain what a private justice system looks like, and how it differs from our formal criminal justice system, however, is to examine, through an example, the way each of the two systems might deal with the same incident. The incident we shall take, by way of example, is the unauthorized removal of company property by an employee. Let us suppose that employee X, who works in a tool manufacturing plant, is found to be routinely removing tools from company property without authorization, in order to use them in his basement construction project at home. As a result of random search procedures, this is discovered by a security officer who is employed and paid by the company. On making this discovery, the security officer has a number of possible choices of action.[330] He may decide to do nothing about it, regarding it as a pecadillo which is so insignificant that it is not worth treating it as a problem. Alternatively, he may take a very serious view of employee X's behaviour and call in the public police to investigate, thus invoking the formal criminal justice system. Or, as a third option, he may decide that this is a matter most effectively resolved through internal company procedures. In this last case, he will be invoking what we have called a private justice system. If he selects either of these last two options, he is essentially deciding to treat the matter as a problem of social control which requires some resolution. The conception of the problem, the process of resolution, and the outcomes of the resolution process, however, are likely to differ dramatically according to the option he chooses.

In choosing the option of calling in the police to investigate the incident, the security officer would essentially be adopting the assumptions and objectives of the formal criminal justice system. In particular, calling in the police involves treating the incident as a crime — i.e., as an offence against the state (in this case theft) which involves not simply the employee and the company, but the wider society. It also results in the company losing most of the initiative in determining how the matter shall be dealt with, and what would be an appropriate outcome of this process. Finally, it submits the dispute to an adversarial adjudicative resolution process in which the determination of the employee's guilt or innocence and of an appropriate coerced sentence, if guilty, will be the principal objectives.

From the company's point of view, deciding to submit the matter for resolution by the formal criminal justice involves some very important implications. They may temporarily or permanently lose the employee's services, they may temporarily lose the use of the tools which were removed (while they are held as trial exhibits), they may have to expend considerable money and manpower in assisting the police to investigate the case, in presenting evidence before the court, etc.. Furthermore, the court process will offer no guarantees that the tools will ultimately be restored to the company. The company may also have to spend time and money hiring and training a new employee to replace employee X. Finally, the more general problem of tool loss, of which employee X's behaviour represents but one example, will not have been addressed. Other less tangible considerations might also be of relevance to the company. These might include the likely effect on the morale of other employees of involving the formal criminal justice system in such a case, the possibility that this course of action might lead to union intervention or even industrial strike action in support of employee X, etc..

If the company, for all or any of these reasons, decided not to invoke the formal criminal justice system, but to resolve the matter through its own private justice system, a radically different set of assumptions, objectives, processes and outcomes are likely to be brought into play. We may consider each of these in turn.

(1) *Assumptions.* Dealing with the matter internally involves the adoption of quite different assumptions about the nature of the problems posed by employee X's behaviour. In the first place, the incident is likely to be viewed not principally, if at all, as a crime,

but as a problem of "loss prevention". As a problem of loss prevention, the incident will be seen as one which is of principal concern to the company and its employee, and only of marginal concern to other persons (e.g., in terms of the likely effect on the price of tools which a persistent loss problem at the factory will involve — even this, however, is likely to be viewed principally in terms of a problem of competitiveness for the company). Secondly, it is likely that the emphasis on loss will lead the company to take a course of action which goes beyond dealing with the individual incident at hand. The problem is likely, therefore, to be viewed principally as part of a general loss prevention problem, rather than simply as a problem of how to punish or compensate for a particular incident.

(2) *Objectives.* A whole host of objectives are likely to be given prominence which would be given less or no emphasis by the criminal justice system. Some of these might be: maintaining optimum production at the factory; minimization of disruption of management-employee relations; recovering the stolen tools with as little cost as possible; maintaining employee X on staff if possible; minimizing the possibility of company-union conflict; developing a strategy to minimize future tool losses at the plant, etc.. It is likely, too, that many of the objectives of the formal criminal justice system will also be shared by the company's private justice system, although perhaps given different emphasis and priority.

(3) *Processes.* The process of resolution is likely to be quite different in a private justice system than in the criminal justice system, involving different participants in different roles. If the plant in which employee X works is unionized, the dispute would almost certainly be resolved through recourse to a well-established grievance procedure, the basic form of which would be laid down in the collective agreement covering the bargaining unit of which employee X is a member. This process would normally commence with some disciplinary action by the employer (e.g., a notice of suspension or dismissal), which would then be made the subject of a grievance by employee X. Resolution of the grievance will normally go through a series of steps in the predetermined procedure, each of which is progressively more formal. The initial steps, however, are likely to be highly informal, involving discussions and negotiation between employee X, his supervisor, a union representative and a representative of the security department. In the event that the plant is not unionized, the resolution procedure is likely to be governed by *ad hoc* negotiations, or by

procedures established by past practice within the plant. In either case, as in the case of an official grievance procedure, emphasis is likely to be placed on minimum disruption of work at the plant.

Only the investigative stage of this procedure is likely to be very similar to the public criminal justice process, and even at this stage the private justice system, being concerned with the incident principally as a symptom of a wider loss prevention problem, is likely to launch a much more broadly-based investigation than could be expected from investigators preparing a case for a court hearing. In particular, the extent to which employee X's behaviour is typical or atypical of behaviour of other employees at the plant is likely to be a prime point of concern in the investigation of the incident. During the whole investigative and resolution process, employee X is likely to be represented, if at all, not by his lawyer but by fellow workers or a union official.

Adjudication, in a formal sense, is likely to be given quite low priority in the initial process of resolution of the problem. The private justice system is likely to be concerned with the allocation of guilt or innocence (blame) only to the extent that it makes the implementation of a wider solution to the wider problem (of loss prevention) more feasible. Thus, for instance, if a wider solution is found to be more acceptable to the union or employees if employee X is not formally held to be "guilty" of removing the tools, such a finding is not likely to be sought or made. The matter of employee X's conduct is thus more likely to be resolved through negotiation, mediation and settlement, than through any formal adjudicative process. This process is likely to involve a wide range of people, e.g., from the union, from the personnel department, from the security department, and from higher management. If the process is unsuccessful, resort may well be had to some form of arbitration, by an arbitrator who is acceptable to all or most of the interested parties involved. The arbitrator's award, even though it is theoretically binding on the parties, may still be the subject of further negotiation (e.g., between the union and company management at the time of collective bargaining). The final resolution of the dispute is thus always liable to be a product of negotiated settlement.

(4) *Outcomes.* The range of outcomes which are considered by a private justice system are likely to be much broader than those considered in most cases before the criminal courts. Obviously, some of the outcomes which might be considered by the courts (e.g., imprisonment of employee X) would not normally be

contemplated by a private justice system. Any disposition of employee X's case by the private justice system at the company, however, is likely to be as much, if not more, concerned with the general problem of loss prevention as with the fate of employee X.[331] One such company, for instance, when faced with problems similar to those discussed here, agreed, as part of the resolution of a particular case, to establish a tool lending library for employees. Another agreed to offer employees a very substantial discount on the price of any tools they bought from the company. In each case, the union concerned agreed that if the company met these undertakings, automatic dismissal would be considered a just and fair penalty for any employee found removing tools from the company premises without authorization in the future. Any dissatisfaction with the company's security procedures generally, or with its search procedures in particular, by which such offences are detected, might also be made the subject of changes as part of the resolution of the dispute.

In terms of a more specific outcome to deal with employee X, again it is likely that a private justice system will give much greater priority to restitution and/or compensation than to punishment in the form of dismissal, fines (in the form of docking pay, etc.) and other dispositions most commonly associated with the criminal courts.

It will be apparent that private justice systems incorporate many values which are foreign to the public criminal justice system, or at least place such values in quite different orders of priority. For this reason, they tend to evoke quite negative reactions from many professionals (including police and lawyers) who are more used to the values and procedures of the public criminal justice system. In the light of the scant knowledge which we currently have about these private justice systems, however, it is perhaps presumptuous at this point to assume that the kind of justice they dispense is necessarily inferior to the kind of justice dispensed by our public criminal justice system.

It is important to realize that such private justice systems flourish today partly as a result of dissatisfactions with the public criminal justice system, and partly as a result of significant structural changes which are occurring within our society. We should not be blind to the possibility that such systems, because of their sensitivity to the environments in which they operate, and because of their diversity, may offer a more realistic and palatable

resolution of social problems within those environments than our public criminal justice system is able to do, as it currently operates. For these reasons, private justice systems hold out the promise of some valuable insight into the kinds of innovations which might be desirable within our public criminal justice system. They should, therefore, not simply be dismissed as is all too often the case, as undesirable competition to the public criminal justice system which should, at best, be reluctantly tolerated and, at worst, strictly regulated or eliminated entirely.

Summary

No substantial empirical research has yet been undertaken to examine in detail the search and seizure policies and practices of private security personnel. From more general research into private security, however, some data on these matters are available, but they do not distinguish between policies and practices in different environments in which private security personnel operate. Since the major goal of all private security activities is to enhance the success of the particular enterprise being policed, however, the peculiar characteristics of the environment in which private security operates are of critical importance in determining what procedures (including search procedures) are adopted, and how they are implemented.

Access control, loss prevention and property protection are the major functions of private security which lead to the resort to search procedures. Such procedures are also adopted for such reasons as the protection of life, the protection of confidentiality or privacy, the enforcement of contractual and other agreements, and the maintenance of health and safety standards. The desire to avoid legal liability in tort, as well as the need to secure liability and other insurance coverage, are also influential factors lying behind the adoption of security procedures, including search procedures.

Existing research shows that, within the contract security industry at least, searches are commonly resorted to, but that coercive search procedures are rarely encouraged by security managers or others who set security policies. There is some reason to believe, however, that companies and institutions employing in-house security forces may be more ready to sanction search procedures than those employing contract security services.

Contract security guards appear to have little training, but good knowledge, about their legal powers of search.

The fact that the exercise of coercive search powers, even when they are available, is discouraged appears to be based on a belief within private security circles that the exercise of such powers is too risky from the point of view of legal liability. It also seems to spring from a desire not to become involved with the public criminal justice system, but rather to rely on internal resources for dispute resolution. Few private security personnel advocate substantially greater powers for such personnel, although many feel that, if minimum standards were imposed on all sectors of private security, limited powers of temporary detention and on-the-spot searches would be justified.

Search warrants appear to be very rarely applied for or executed by private security personnel, and in practice never issued to private security personnel who are not peace officers.

Companies and institutions employing private security take full advantage of the latitude which the law gives them to secure consent to search procedures through implied or express agreement. Even where the legal requirements of consent have been met, however, many private security personnel demonstrate a reluctance to insist on conducting a search in the face of a refusal to submit to such procedures. Instead, they prefer to rely on other pressures which may be applied through resort to the private justice systems, within the context of which most private security personnel operate.

Collective agreement to search procedures is commonly secured through union contracts. Such agreements generally limit search procedures to searches of purses, packages, lockers, vehicles, etc., although some provide for personal searches and even lie-detection tests of those found in possession of company property. Arbitrators in industrial disputes over the years have given limited recognition to search procedures as a management right, and have spelled out guidelines for the exercise of such rights. Such rights include random as well as selective search procedures. In truth, however, the exercise of such search powers, and their outcomes, remain a matter of negotiation, even after an adjudicative arbitration of a formal grievance has been made. In consequence, the "rights" of workers in such situations depend on a variety of factors, including the presence and strength of a union,

the circumstances of collective bargaining, and the general production and labour relations situation in the company.

Private security search and seizure policies and practices can only be properly understood when viewed in the context of the private justice systems in which they operate. Such systems do not conform to any uniform model, but share relatively informal negotiated procedures and outcomes as a common characteristic. Individual incidents tend to be dealt with in terms of wider problems, with the overall success of the enterprise, rather than any fixed or objective concepts of "justice", seen as the major objective. Although many features of the public criminal justice system are to be found in private justice systems, such systems characteristically bring into play a radically different set of assumptions, objectives, processes and outcomes.

Although such private justice systems commonly evoke a negative reaction from lawyers and others involved in the public criminal justice system, it is important to realize that they flourish partly as a result of dissatisfactions with that public criminal justice system, and partly as a result of signficant structural changes which are occurring within our society. We have insufficient knowledge about the operations of such systems to be able to say with any certainty whether the justice dispensed by them is in any way inferior to the justice dispensed by our public criminal justice system. All of these reasons suggest that any inclination to regulate or eliminate such systems should be tempered with caution and open-mindedness. It may be that valuable insights into the kinds of innovations which might be desirable within our public criminal justice system, can be gained from the study of such systems of private justice.

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APPENDIX A

Recommendations re Peace Officer Status

Freedman and Stenning, 1977, at pp. 271-274

Peace Officer Status

[In Chapter Two] we have reviewed what we believe to be the unsatisfactory state of the law relating to the definition of "peace officer" status and its implications. As we noted earlier in this chapter, the legal "peace officer"/"private citizen" dichotomy is the major vehicle through which the law currently addresses itself to private security, and consequently it has substantial implications with respect to most of the law described in the remaining chapters of the Report. Although, for reasons described by Stenning and Cornish in their report, *The Legal Regulations and Control of Private Policing and Security in Canada: A Working Paper**, we cannot accurately estimate how many private security personnel in Canada have peace officer status, it seems probable that, while such persons do not represent a major percentage of the total private security population, they are by no means negligible in numbers. We believe that serious efforts should be made to discover under what circumstances peace officer status is accorded to private security personnel, and to ensure that in the future the current confusions over the implications of peace officer status are cleared up. A person who is appointed a peace officer, for instance, should be fully aware of what his or her legal duties are and, as exactly as possible, what his or her powers are. This is clearly not the case under the current state of the law. A number of ways of achieving this desired objective suggest themselves. In the first place, the law could provide that no person shall be considered to have peace officer status unless his or her appointment expressly states that this is the case; it seems to us that the current law which creates a presumption that someone who acts as a peace officer or testifies that he is one, is deemed to be one, is unnecessary and

* Stenning and Cornish, 1975, at pp. 207-209.

likely to lead to undesirable confusion and uncertainty. In the 1970's it should not be beyond the limits of feasibility to require that if a person claims to be a peace officer, having special powers and duties, he or she should be expected to produce, if required, positive proof of the fact in the form of a certificate of appointment.

Secondly, the definitions of "peace officer" in the *Criminal Code* and other Federal and Provincial legislation should be amended to eliminate the existing confusion as to exactly who is or is not included within them.

Thirdly, if it is intended to maintain the current scheme of things whereby some peace officers may have more limited powers and protections than others, we recommend that two steps should be taken. In the first place, the form of appointment for a peace officer should specify in detail the purposes for which he or she is appointed a peace officer, in a manner which leaves as little doubt as possible as to whether he or she is a "peace officer" for the purposes of specific legislative provisions relating to peace officers. It may be that standard peace officer appointment forms could be designed to achieve this purpose of ensuring certainty about the extent and implications of a peace officer appointment. The second step we recommend is a thorough review of existing legislative provisions (especially those in the *Criminal Code*) in which peace officers are intended to be covered by the provision. Thus, for example, if it is intended that only public police constables and officers are to be allowed to demand samples of breath under S.235 of the *Criminal Code,* this should be explicitly specified in that legislative provision so as to leave as little doubt on the matter as possible. Various other significant examples of the need for such clarification may be found in Chapters Two and Three of this Report.

Fourthly, we recommend that minimum qualifications for appointment as peace officers should be specified by law. Peace officers, by definition, are vested with duties and powers which are not granted to ordinary citizens. They are accorded special privileges, immunities and protections which do not apply to the remainder of society. We believe that criteria should be established, and written into law, for the appointment of a person as a peace officer. We believe that these criteria should expressly take the private security industry and its role into account, and should reflect the desired relationship between it and the public police in

providing for the overall policing and security needs of the community. Finally, we believe that qualifications for peace officers should be adopted which include the satisfactory completion of some training with respect to the powers, duties, jurisdiction and protections of peace officers. If a peace officer is to be permitted to use a firearm without having to obtain a permit for it (S.100 of the *Criminal Code*)*, in the course of his work, suitable training should be a pre-condition of appointment.

*See now, Sections 90 and 96 of the *Code,* as amended by S.C. 1976-77, c.53, s.3.

APPENDIX B

Sections 38-42 of the Criminal Code

Defence of Property

DEFENCE OF MOVABLE PROPERTY — Assault by trespasser.

38. (1) Every one who is in peaceable possession of movable property, and every one lawfully assisting him, is justified

(a) in preventing a trespasser from taking it, or

(b) in taking it from a trespasser who has taken it, if he does not strike or cause bodily harm to the trespasser.

(2) Where a person who is in peaceable possession of movable property lays hands upon it, a trespasser who persists in attempting to keep it or take if from him or from any one lawfully assisting him shall be deemed to commit an assault without justification or provocation. 1953-54, c.51, s.38.

DEFENCE WITH CLAIM OF RIGHT — Defence without claim of right.

39. (1) Every one who is in peaceable possession of movable property under a claim of right, and every one acting under his authority is protected from criminal responsibility for defending that possession, even against a person entitled by law to possession of it, if he uses no more force than is necessary.

(2) Every one who is in peaceable possession of movable property, but does not claim it as of right or does not act under the authority of a person who claims it as of right, is not justified or protected from criminal responsibility for defending his possession against a person who is entitled by law to possession of it. 1953-54, c.51, s.39.

DEFENCE OF DWELLING.

40. Every one who is in peaceable possession of a dwelling-house, and every one lawfully assisting him or acting under his authority, is justified in using as much force as is necessary to prevent any person from forcibly breaking into or forcibly entering the dwelling-house without lawful authority. 1953-54, c.51, s.40.

DEFENCE OF HOUSE OR REAL PROPERTY — Assault by trespasser.

41. (1) Every one who is in peaceable possession of a dwelling-house or real property and every one lawfully assisting him or acting under his authority is justified in using force to prevent any person from trespassing on the dwelling-house or real property, or to remove a trespasser therefrom, if he uses no more force than is necessary.

(2) 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. 1953-54, c.51, s.41.

ASSERTION OF RIGHT TO HOUSE OR REAL PROPERTY - Assault in case of lawful entry —Trespasser provoking assault.

42. (1) Every one is justified in peaceably entering a dwelling-house or real property by day to take possession of it if he, or some person under whose authority he acts, is lawfully entitled to possession of it.

(2) Where a person

(a) not having peaceable possession of a dwelling-house or real property under a claim of right, or

(b) not acting under the authority of a person who has peaceable possession of a dwelling-house or real property under a claim of right,

assaults a person who is lawfully entitled to possession of it and who is entering it peaceably by day to take possession of it, for the purpose of preventing him from entering, the assault shall be deemed to be without justification or provocation.

(3) Where a person

(a) having peaceable possession of a dwelling-house or real property under a claim of right, or

(b) acting under the authority of a person who has peaceable possession of a dwelling-house or real property under a claim of right,

assaults any person who is lawfully entitled to possession of it and who is entering it peaceably by day to take possession of it, for the purpose of preventing him from entering, the assault shall be deemed to be provoked by the person who is entering. 1953-54, c.51, s.42.

APPENDIX C

Regulations under Alberta's Private Investigators and Security Guards Act, R.S.A. 1970, c.283

ALBERTA REGULATION 568/65

THE PRIVATE INVESTIGATORS AND SECURITY GUARDS ACT

1. These Regulations may be cited as "Private Investigators and Security Guards Regulations." [A.R. 568/65]

2. In the Regulations

(a) "Act" means The Private Investigators and Security Guards Act, 1965.

(b) Reference to forms are to the forms in the Schedule. [A.R.568/65]

PART I

APPLICATION FOR LICENCES

3. All applications for licences or renewal of licences under The Private Investigators and Security Guards Act shall be made to the Administrator on the forms provided by the Schedule. [A.R. 568/65]

4. (1) An applicant for a licence under the Act

(a) shall be at least 21 years of age in the case of an applicant for a private investigation agency licence or a security guard agency licence;

(b) shall be at least 18 years of age in the case of an applicant for a private investigators or security guards licence;

(c) shall be of good character.

(2) An applicant for a licence under the Act, other than a renewal of a licence, shall, upon request, have his fingerprints taken.

(3) Where the Administrator refuses to issue a licence or a renewal of a licence he shall give written reasons for his decision.
[A.R. 568/65; 208/70; 188/73]

5. (1) An applicant for

(a) a Private Investigation Agency Licence, or

(b) a Security Guard Agency Licence

shall forward to the Administrator an application in Form A.

(2) An applicant for

(a) a Private Investigator's Licence, or

(b) a Security Guard's Licence

shall forward to the Administrator an application in Form B.

(3) An applicant for the renewal of

(a) a Private Investigation Agency Licence, or

(b) a Security Guard Agency Licence

shall forward to the Administrator an application in Form C.

(4) An applicant for the renewal of

(a) a Private Investigator's Licence, or

(b) a Security Guard's Licence

shall forward to the Administrator an application in Form D.
[A.R. 568/65; 181/74]

AFFIDAVITS

6. (1) Each applicant for a licence shall attach to the application an affidavit in Form E.

(2) Repealed A.R. 181/74.

[A.R. 568/65; 208/70: 188/73; 181/74]

LICENCES

7. Licences issued by the Administrator shall be:

(a) Private Investigation Agency Licence	Form H
(b) Security Guard Agency Licence	Form I
(c) Private Investigator's Licence	Form J
(d) Security Guard's Licence	Form K

[A.R. 568/65]

LICENCE FEES

8. (1) The fees payable for licences under the Act shall be:

(a) Private Investigation Agency Licence	$100.00
(b) Security Guard Agency Licence	$100.00
(c) Private Investigator's Licence	$ 10.00
(d) Security Guard's Licence	$ 10.00

(2) The fees payable for licences under the Act issued on or after September first of each year shall be one half of the fee stated in subsection (1). [A.R. 568/65; 444/66; 188/73]

9. (1) Where a person who holds a private investigation agency licence or security guard agency licence dies, the Administrator may without payment of a fee grant a temporary licence to his executor or administrator, and in such a case all employees of the deceased person who hold licence under this Act shall be deemed to be licensed as employees of the executor or administrator.

(2) Where the Administrator receives an application for a licence he may, if special circumstances exist, issue a temporary licence in Form R pending his decision for a period stated in the licence but not exceeding three months.

(3) A temporary licence issued under authority of subsection (2) terminates upon the issue of the permanent licence and the temporary licence shall be returned to the Administrator.

(4) When a temporary licence is issued by the Administrator there will be no refund or fees paid for a licence unless the final decision of the Administrator is against the issuing of a permanent licence. [A.R. 568/65; 188/73]

SECURITY

10. (1) A security bond, as required by section 7 of the Act, shall be deposited with the Administrator before any licence is issued to a Private Investigation Agency or a Security Guard Agency.

(2) The security bond shall be in Form P and comply with the following conditions:

(a) The security bond company shall be licensed under The Alberta Insurance Act.

(b) The bond shall be in the penal sum of $5,000.00 and payable to the Provincial Treasurer of the Province of Alberta.

(c) The terms of the bond shall ensure the faithful, honest and lawful conduct of the licensee and his employee.

(3) One security bond will suit the requirements of section 7 of the Act in cases where a private investigation agency licence and a security guard agency licence is to be issued in the name of the same person or company and the form of the bond mentioned in subsection (2) may be suitably modified provided the bond recognizes that the person or company to whom the security bond is issued will be authorized to do business as both a private investigation agency and a security guard agency, and that the one bond is intended to apply to both functions.
[A.R. 568/65; 188/73; 181/74]

IDENTIFICATION CARDS

11. The holder of a licence under this Act shall be issued with an identification card bearing the signature of the Administrator, which will be in the form prescribed hereunder:

(a) Private Investigation Agency Licence	Form L
(b) Security Guard Agency Licence	Form M
(c) Private Investigator Licence	Form N
(d) Security Guard Licence	Form O

[A.R. 568/65]

12. No person shall be in possession of an identification card unless it bears the signature of the Administrator. [A.R. 568/65]

13. Repealed A.R. 181/74.

14. Repealed A.R. 142/75.

PART II

ADVERTISING

15. (1) Pursuant to section 23 of the Act, where in the opinion of the Administrator, any person is making false, misleading or deceptive statements in any advertisements, circulars, pamphlets or similar material, the Administrator may order the immediate cessation of the use of such material.

(2) The holder of a security guard agency licence or a private investigation agency licence will forward for the information of the Administrator, a copy of all circulars, pamphlets or similar material used for advertising the services of the agency.
[A.R. 568/65; 188/73]

SURRENDER OF LICENCES

16. (1) Where a licence under the Act is suspended, cancelled or terminated, or where the licensee ceases to be employed by the agency, the licence or licences shall be returned forthwith to the Administrator together with the identification card or cards issued to the licensee.

(2) When a licence has been cancelled due to termination of employment with the agency for whom the licence has been issued, it cannot be reactivated except through a new application and the payment of the prescribed fee. [A.R. 568/65; 188/73]

17. Where a private investigation agency licence or a security guard agency licence is terminated due to the death of the licensee, the licence or licences and the identification card or cards shall be returned forthwith to the Administrator and held by him pending the granting of a temporary licence to the executor or administrator of the estate. [A.R. 568/65]

APPEALS

18. to 22. Repealed A.R. 188/73.

UNIFORMS AND EQUIPMENT

23. (1) Uniforms and equipment worn by security guards including badges and rank insignia must be of a colour, pattern and design approved in writing by the Administrator.

(2) A security guard will not wear a uniform, equipment, badge or insignia similar in colour, pattern or design to the uniforms, equipment, badges or insignia used by the municipal police or the Royal Canadian Mounted Police located in the area in which the security guard intends to be employed.

(3) The uniform worn by a security guard shall plainly display the words "Security Guard" on each shoulder of the outermost garment of the uniform being worn.

(4) A security guard shall not wear on a uniform any insignia or badge which uses or displays the word "Police".

(5) A security guard shall not wear as part of his uniform a combination of belt and shoulder strap commonly known as Sam Browne equipment or any belt and shoulder strap of this type which may be similar in design to the belt and shoulder strap equipment normally worn by municipal police or members of the Royal Canadian Mounted Police.

(6) Notwithstanding subsection (5), a security guard who has been authorized and granted a permit to carry a restricted weapon as described in the Criminal Code, while in the execution of the specific duty provided for in section 33, subsection (2) of these Regulations, may wear Sam Browne equipment when actually carrying the restricted weapon and performing the specific duty for which the permit has been issued. [A.R. 568/65; 188/73]

24. to 26. Repealed A.R. 444/68.

27. (1) A security guard shall wear a uniform while employed as a security guard.

(2) A private investigator who is also licensed as a security guard, shall not act as a private investigator while in uniform. [A.R. 568/65]

RECORDS AND RETURNS

28. In addition to the requirements set out in section 13, clause (a) of the Act, the holder of a private investigator agency licence or security guard agency licence shall keep complete records of the name and address of each person acting for or employed by the holder of such licence and record the exact date that employment commenced and terminated and this information shall be included in the return made annually to the Administrator as required by section 14 of the Act. [A.R. 188/73]

29. (1) A private investigation agency rendering the return required by section 14 of the Act, will supply the undermentioned information regarding work in the year covered by the return:

(a) The number of investigations carried out.

(b) A breakdown of the types of investigations.

(c) to (e) Repealed A.R. 444/66.

(2) The security guard agency rendering the return required by section 14 of the Act, will supply the undermentioned information regarding work in the year covered by the return:

(a) The number of businesses under the contract for security guard service.

(b) Repealed A.R. 444/66.

(c) The number of types of security guard services supplied by the agency:
  (i) Escorts
  (ii) Patrolling
  (iii) Others

[A.R. 568/65; 444/66]

GENERAL

30. A licensee shall not act as a collector of accounts, or bailiff, or undertake, or hold himself out or advertise as undertaking to collect accounts, or act as a bailiff for any person either with or without remuneration. [A.R. 568/65]

31. A person to whom a licence is granted under the provisions of the Act is not an authorized peace officer. [A.R. 568/65]

32. A person appointed as a constable or special constable under The Police Act may not hold a licence as a private investigator or a private investigation agency.
[A.R. 568/65; 188/73]

32.1 (1) A person licensed as a security guard, a security guard agency, a private investigator or a private investigation agency shall not carry a restricted weapon as described in the Criminal Code of Canada.

(2) Notwithstanding subsection (1), the local registrar of firearms as defined in the Criminal Code of Canada may authorize a person licensed under the Act to carry a restricted weapon in the execution of a specific duty if the application is supported by a recommendation from a senior member of the police force located in the area in which the specific duty is to be performed that

(a) the nature of the work to be performed by the licensee is such that it is necessary and in the public interest that the licensee be permitted to carry a restricted weapon,

(b) the licensee is fully trained in the use of restricted weapons,

(c) the licensee has a complete knowledge and awareness of the law with respect to the use of force, and

(d) the licensee is fully qualified to obtain a permit to carry a restricted weapon as is required by the Criminal Code of Canada. [A.R. 188/73]

32.2 The holder of a security guard agency licence or private investigation agency licence shall not use the word "police" in the title name of the agency, its letterhead, advertising material or in any other way that may create the impression the agency is performing a police function. [A.R. 188/73]

33. The Regulations under The Private Investigators and Security Guards Act as authorized by Alberta Regulation 435/65 are repealed. [A.R. 568/65]

34. These regulations come into force on the fifteenth day of November, 1965. [A.R. 568/65]

Form A
(Sec. 6)

ALBERTA
SOLICITOR GENERAL
THE PRIVATE INVESTIGATORS AND SECURITY GUARDS ACT
APPLICATION FOR PRIVATE INVESTIGATION AGENCY AND/OR
SECURITY GUARD AGENCY LICENCE

.....
DATE

APPLICATION is hereby made by .....

to carry on business under the trade name of.....

..... at .....
(address)

....., for a licence to engage in the business of employing and/or hiring Private Investigators and/or Security Guards.

Name of applicant, including each partner of a partnership.

1. (A) NAME: .....
ADDRESS: .....
PLACE AND DATE OF BIRTH: .....
(B) NAME: .....
ADDRESS: .....
PLACE AND DATE OF BIRTH: .....
(If more space required, use separate sheet of paper.)

2. (A) The principal officer or place of business in Alberta will be located at .....
(B) The branch offices in Alberta will located at.....
.....

3. I have been a resident in or carrying on business in the Province of Alberta for six months immediately preceding the date of this application and my address during this period was.....
.....

4. The business reputation of the applicant(s) is well known to the following three persons (none of whom are related):

(A) NAME: .....

ADDRESS: .....

BUSINESS OR OCCUPATION: .....

(B) NAME: .....

ADDRESS: .....

BUSINESS OR OCCUPATION: .....

(C) NAME: .....

ADDRESS: .....

BUSINESS OR OCCUPATION: .....

5. I enclose the licence fee of ..... ($.....) Dollars payable to the Provincial Treasurer.

[A.R. 590/65; 181/74]

Form B
(Sec. 6)

ALBERTA
SOLICITOR GENERAL
THE PRIVATE INVESTIGATORS AND SECURITY GUARDS ACT
APPLICATION FOR LICENCE AS PRIVATE INVESTIGATOR AND/OR SECURITY GUARD

.....
(DATE)

1. Application is made by:
NAME (in full): .....

ADDRESS: .....

PLACE AND DATE OF BIRTH: .....
for a licence as private investigator and/or security guard.

2. My place of residence and employment during the immediate past three years prior to the filing date of this application were as follows:

.....

.....

3. The licensed private investigation agency and/or security guard agency by whom I will be employed is .....

.....
(Name and Address of Agency)

4. Has the applicant been convicted of an offence under the Criminal Code of Canada or are there any proceedings now pending that may lead to such conviction? (If affirmative, give particulars, including the Offence, Penalty Imposed, Date and Place of Conviction.)

.....

.....

.....

5. Has the applicant any experience in investigation, police duties and security guard work? (If affirmative, give particulars) .....

.....

.....

6. Has the applicant ever been refused a licence as a Private Investigator and/or Security Guard in Alberta or any other Province in Canada? (If affirmative, give particulars): .....

.....

.....

.....

7. The character of the applicant is well known to the following persons (none of whom are related to the applicant):

(A) NAME: .....

ADDRESS: .....

BUSINESS OR OCCUPATION: .....

(B) NAME: .....

ADDRESS: .....

BUSINESS OR OCCUPATION: .....

8. I enclose the licence fee of ..... ($.....) Dollars payable to the Provincial Treasurer.

.....

Signature of Applicant

[A.R. 590/65; 181/74]

Form C

ALBERTA
SOLICITOR GENERAL
THE PRIVATE INVESTIGATORS AND SECURITY GUARDS ACT
APPLICATION FOR RENEWAL OF A PRIVATE INVESTIGATION AGENCY AND/OR SECURITY GUARD AGENCY LICENCE

The undersigned hereby applies for a renewal as a Private Investigation Agency and/or Security Guard Agency and furnishes the following information in support thereof:

1. Application is hereby made by .....

..... to carry on business under the trade name of

.....

.....

at.....
(address)

2. (A) Branch Office, if any: .....

.....
(place and address)

(B) Name of Branch Manager(s): .....

.....

3. (A) Name and address of each partner of a partnership:

NAME: .....

ADDRESS: .....

(B) NAME: .....

ADDRESS: .....

4. Statement of any change in the facts set out in the application for licence or any prior application renewal:

.....

5. There is no unsatisfied judgments recorded against the applicant except as follows:.....

.....

.....

6. I enclose the licence fee of ..... ($.....) Dollars payable to the Provincial Treasurer.

DATED this..... day of .....

19..... .

.....

.....

Signature of Applicant

[A.R. 590/65; 181/74]

Form D

ALBERTA
SOLICITOR GENERAL
THE PRIVATE INVESTIGATORS AND SECURITY GUARDS ACT
APPLICATION FOR RENEWAL OF A PRIVATE INVESTIGATION AND/OR SECURITY GUARD LICENCE

The undersigned hereby applies for a renewal of a licence as a private investigator and/or security guard and furnishes the folllowing information in support thereof:

1. Name of applicant: .....

2. Address of applicant: .....

.....

3. Name and address of employer: .....

.....

4. Statement of any change in the facts set out in the application for licence or any prior application for renewal: .....

.....

.....

5. I enclose the licence fee of ..... ($.....) Dollars payable to the Provincial Treasurer.

DATED this ..... day of ....., 19..

.....
Signature of Applicant

[A.R. 590/65; 208/70; 181/74]

Form E

ALBERTA
SOLICITOR GENERAL
THE PRIVATE INVESTIGATORS AND SECURITY GUARDS ACT
AFFIDAVIT

I, ...

OF THE..... OF .....

IN THE PROVINCE OF..... MAKE OATH AND SAY:
That I have made application for a licence under The Private Investigators and Security Guards Act;

1. That I have not been convicted of any offence under the Criminal Code of Canada and that there are not any proceedings pending that might lead to such conviction (other than the following):

.....

.....

.....

2. That I have not been refused a licence to act as a Private Investigator and/or Security Guard in Alberta or any other Province in Canada (other than the following):

.....

.....

3. That I have never used a name other than the name given in this affidavit (other than the following):

.....

.....

SWORN BEFORE ME AT THE

.....

OF .....

IN THE.....

OF .....

THIS.....

DAY OF ..... , 19.....

.....

A JUSTICE OF THE PEACE
IN AND FOR THE PROVINCE
OF ALBERTA.

.....

Signature of Applicant

[A.R. 590/65; 181/74]

Form F Repealed A.R. 181/74.

Form G Repealed A.R. 181/74.

Form P

BOND

under

THE PRIVATE INVESTIGATORS AND SECURITY GUARDS ACT

KNOW ALL MEN BY these presents that .....

of ..... in the Province of

..... (hereinafter called the Principal)

and..... a body corporate and being a guarantee and surety authorized to do business in the Province of Alberta (hereinafter called the Surety) are bound unto Her Majesty the Queen in the penal sum of five thousand dollars of lawful money of Canada to be paid to the Provincial Treasurer of the Province of Alberta, for which payment well and truly to be made, the Principal and Surety jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns firmly by these presents.

SIGNED, sealed and dated the ..... day

of ..... in the year of

Our Lord one thousand, nine hundred and .....

WHEREAS the Principal has applied for a licence under The Private Investigators and Security Guards Act by which when issued the Principal will be authorized to do business in the Province of Alberta as a private investigation agency and/or security guard agency from the .....

day of..... , 19.....

to the thirty-first day of December, 19..... , both days inclusive.

NOW THE CONDITION of the above written bond or obligation is such that if upon the granting of such licence(s), the Principal and his employees faithfully observe the provisions of the said Act and all regulations thereunder, and faithfully perform all his or their duties thereunder, then this obligation shall be void and of no effect but otherwise shall be and remain in full force and virtue.

IF THE PRINCIPAL or any employee of the Principal fails in any respect to observe faithfully the said Act and all regulations made thereunder or to perform his or their duties as a private investigation agency and/or security guard agency or private investigator and/or security guard the Surety agrees to pay any and all claims under this bond within a period of sixty days after such claims are submitted to him by the Administrator, provided that the aggregate amounts of such claims shall not exceed the penal sum of this bond.

PROVIDED always, that if the Surety at any time gives three calendar months' notice in writing to the Principal and to the Provincial Treasurer of the Province of Alberta of its intention to put an end to the suretyship hereby entered into then this bond and all accruing responsibility on its part of its funds and property shall from and after the last day of such three calendar months aforesaid cease and terminate insofar as concerns any acts or deeds of the Principal subsequent to such determination, but the Surety and its funds and property shall be and remain liable hereon for all or any deeds, acts or defaults done or committed by the Principal or his employees in the business as a private investigation agency and/or security guard agency from the date of this bond up to such determination.

Signed, sealed and delivered by the above named.....
.....
the Principal in the presence of
.....
....

Sealed and delivered by the above named.....
..... the
Surety, ...
and countersigned by.....
.....
and.....
....

[A.R. 568/65; 181/74]

Form Q Repealed A.R. 181/74.

Form R

TEMPORARY LICENCE
GOVERNMENT OF THE PROVINCE OF ALBERTA
DEPARTMENT OF THE SOLICITOR GENERAL
THE PRIVATE INVESTIGATORS AND SECURITY GUARDS ACT

Under The Private Investigators and Security Guards Act, and the regulations and subject to the limitations thereof,

.....
(name and address of licensee)

.....
is licensed to act as a private investigator/security guard while in the employ of

.....
(Name of employer)

.....

.....
(Address of employee)

This licence terminates on the ..... day

of ..... , 19....., or on the date that a permanent licence is granted.

DATED this ..... day of..... , 19.....

.....
Administrator

NOTE: This temporary licence must be returned to the Administrator when expired or replaced by a permanent licence.

[A.R. 188/73; 181/74]

APPENDIX D

Shoplifting Detention Statutes in the United States[1]

The so-called shoplifting detention statutes which have been enacted in 40 of the States in the United States[2], find their origin in some modifications of the common law developed by the State courts. In 1936, a California court[3] held that a businessman has a limited privilege to detain a customer whom he reasonably suspects of theft, or of attempting to leave his store with merchandise without paying for it. This common law privilege, however, is a very restricted one, and may only be exercised for the limited purpose of conducting a short on-the-spot investigation to discover whether the suspected individual is in fact attempting to steal merchandise or to leave without paying for it. Such an investigation, however, must not be unduly coercive, nor must the detention be for an unreasonable length of time, or continue after the customer's innocence of wrongdoing has become reasonably plain.

The cases make it reasonably clear that the common law privilege could, under certain circumstances, justify a search, at least of personal belongings (purses, briefcases, etc.), provided physical violence is not used.[4] Furthermore, the common law privilege applies to authorized employees or agents of the businessman, and is not limited, as are many of the statutory provisions, to retail merchants. The American Law Institute's Second Restatement of Torts, defines the privilege in the following terms:

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1. For more detailed consideration of these statutory provisions and their origins, consult: Yale Law Journal, 1953; Kerr, 1959; Bock, 1963; American Law Institute, 1965, Vol. I, at pp. 202-204; Prosser, 1971; Brazener, 1973; and U.S. Department of Justice, 1976.

2. For a tabulated summary of these statutes, see U.S. Department of Justice, 1976, at pp. D1-D6.

3. *Collyer v. S.H. Kress & Co.* (1936) 5 Cal, 2d 175.

4. See, e.g., *Bonkowski v. Arlan's Department Store* (1969) 162 N.W. 3d 347.

> "One who reasonably believes that another has tortiously taken a chattel upon his premises, or has failed to make due cash payment for a chattel purchased or services rendered there, is privileged, without arresting the other, to detain him on the premises for the time necessary for a reasonable investigation of the facts."[5]

It is clear that such a privilege could have substantial impact in protecting private security personnel from civil liability for conducting routine security investigations in a wide variety of situations.

This common law privilege does not appear to have been given explicit recognition by Canadian courts, although certain *dicta* in *Perry v. Woodwards Ltd.*[6] suggest that the privilege may be part of our law.

The privilege must be distinguished from the privilege to use reasonable force for the recaption of chattels, now embodied in Sections 38 and 39 of our *Criminal Code,* in that the temporary detention privilege "protects the actor who has made a reasonable mistake as to the wrongful taking."[7] As we noted earlier, however, Sections 38 and 39 could be interpreted in a way which would make them almost identical to the privilege, if the courts adopted a similar approach to interpreting the words "has taken" in them, as was taken in interpreting the words "finds committing" in Section 450 of the *Code,* by the Supreme Court of Canada in *R. v. Biron.*[8]

In 40 states in the United States, statutory provisions have been enacted which codify, and sometimes extend, this common law privilege. Such statutes vary considerably, but are generally limited to "mercantile establishments", and do not therefore apply to all of the wide variety of environments in which private security personnel must function. Many of the statutes, however, provide immunity from criminal as well as civil liability for temporary detentions made under the statute. In some cases, the statutes limit the amount and nature of available damages in the event that liability is established.

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5. American Law Institute, 1965, at p. 202.

6. (1929) 4 D.L.R. 751

7. American Law Institute, 1965, at p. 203.

8. (1975) 30 C.R.N.S. 109.

Most of the statutory provisions specify that temporary detentions may be made only for the limited purpose of investigation, questioning or recovery of merchandise, and that such detentions must be effected in a "reasonable manner" and for a "reasonable time". Since what constitutes "reasonable manner" and "reasonable time" are matters of fact for the jury, the question of whether a search, and what kind of search, may be permitted under such statutory provisions is always one the answer to which will depend on the particular circumstances of each case. In only one of the statutes is search enumerated specifically as one of the legitimate purposes of such temporary detentions.[9] These cases in which the statutes have been applied, however, appear to stress the importance of the absence of violence in effecting lawful detentions. They also stress that such detentions may not be used in order to extract signed confessions or releases from liability.[10]

9. Oklahoma Stat. Ann. (1970) (Suppl. 1971) 22, 1343. We were, unfortunately unable to obtain a copy of this statute during the period of preparation of this study.

10. For a comprehensive review of the cases, see Brazener, 1973.

APPENDIX E

Example of Search Provisions in a Collective Agreement

ARTICLE 43

Security — Plant

43.01 The Union acknowledges the right of the Company to search an employee and his effects while he is on the Company premises. The Company acknowledges the right of an employee to be treated with dignity and courtesy during the selection and search procedure.

43.02 The Company will generally employ a random sampling procedure but reserves the right to institute selective sampling, as it deems necessary, to ensure the security of its resources.

43.03 Each employee will be required to wear on his person in the manner prescribed, while he is on the premises of the Company, the identification card(s) issued to him and will be restricted to those areas of the building(s) as determined by the access coding issued to him by the Company.

43.04 Each employee who is detained, as a result of being selected and searched during his mealtime break, will be granted the corresponding amount of time at the end of his scheduled meal-time break.

43.05 Each employee who is not selected for search may depart during the last five (5) minutes of his scheduled shift and will be paid to the end of his scheduled shift.

43.06 Each employee who, as a result of being selected and searched:

(a) within the last fifteen (15) minutes of his scheduled shift in the case of employees working in the Melting, Plating, Concast, Wire Extrusion and Maintenance Operations.

or

(b) within the last five (5) minutes of his scheduled shift in the case of all other employees,

may depart upon the completion of being searched or within the last five (5) minutes of his scheduled shift whichever occurs later and will be paid to the end of his scheduled shift.

43.07 Each employee who:

(a) is detained beyond the end of his scheduled shift,

or

(b) enters the selection and search procedure after the end of his scheduled shift for reasons other than working overtime and is detained,

as a result of being selected and searched, will be paid, at the rate of time and one-half, for the time he is detained within the search area, beyond the end of his scheduled shift.

It is understood and agreed that such an employee referred to in 43.07 (a) and 43.07 (b) above, will not be entitled to the supper money allowance referred to in Article 27.

43.08 Each employee:

(a) upon his intended departure following his scheduled hours of overtime,

or

(b) upon his intended authorized early departure,

will be paid for an additional five (5) minutes at the applicable rate of pay.

43.09 The parties agree to review the search time statistics recorded during the period April 8, 1975 to May 7, 1975 inclusive to establish if the total time allotment of 5 minutes per day for each employee for the above period was sufficient to meet or exceed the total time detained within the search area in the case of any employee.

It is agreed that only the statistics of an employee who was actively at work for a minimum of 50% of the above period will be used and that the statistics of any employee who obviously delayed or hindered the selection and search procedure will be eliminated.

If the total time allotment for any employee is not sufficient to meet the total time that employee is detained, in the search area during the above period, the allotment for all employees will be adjusted upwards, in one minute increments, to meet the total detained time of that employee, commencing the second Monday following the end of the above period.

Similarly, the Company will review the statistics recorded during subsequent 13 week periods, excluding any plant shutdown period, using the same criteria as above.

If the total time allotment for any employee exceeds or is not sufficient to meet the total time that employee is detained, in the search area, during each subsequent 13 week period, the allotment for all employees will be adjusted either downwards or upwards but not below the 5 minutes per day employee base. Adjustments, if required, will commence the second Monday following the end of each 13 week period.

The Company will provide photostat copies of search data time sheets to the Union President when requested.

For the purpose of the above "time...detained" shall mean time spent in the search area starting not earlier than the last 5 minutes of an employee's scheduled shift.

43.10 The above may only be changed, at any time, by the mutual agreement between the Company and the Union.

43.11 The Union reserves the right to grieve as per the Collective Agreement.

Security— Plant

43.01 The Union acknowledges the right of the Company to search an employee and his effects while he is on the Company premises. The Company acknowledges the right of an employee to be treated with dignity and courtesy during the selection and search procedures.

43.02 The Company will employ whatever procedures it deems necessary to ensure the security of its resources. However, the Company agrees to consult with the Union regarding any change in search procedures affecting members of the bargaining unit.

43.03 Each employee who is detained as a result of being searched during his mealtime break, will be granted the corresponding amount of time at the end of his scheduled mealtime break.

An employee detained beyond his scheduled hours of work will be paid at the rate of time and one half times his regular hourly rate for such time he is detained within the search and/or interview area(s).

LETTER OF INTENT

April 14, 1976

Dear

The following items outline our intended initial course of action in ensuring the security of our resources in the plant.

1. The Company will train a suitable union representative in P.S.E.

2. The union representative trained in P.S.E. will be allowed to review tapes and charts, upon the company receiving written consent of the interviewed bargaining unit employee: however, this review will be limited to instances in which personal search took place and the review will be done in the presence of a company official. All tapes and charts are the property and will remain the property of Limited.

3. Management will consult with the union regarding the structure of the questions to be asked in the P.S.E. interview. The company will publicize the questions so that an employee will know questions he may be asked before being tested in P.S.E. Management will determine the questions and will not negociate their structure with the union.

4. A second bargaining unit member may not be present during a P.S.E. interview. Each person tested under P.S.E. will be asked if he was intimidated by the interviewer and his response will be recorded on the tape.

5. The Company will ensure that the P.S.E. questions are in the context of the person being interviewed.

6. An employee's car is considered one of his effects and is subject to search while it is on the Company's premises. However, in the event of searching an employee's car, the employee will be present and paid for the duration of the search of his car. Such an employee may have a union representative present if he so requests; however, the Company will not pay the time of such representative.

7. The Union has a right to grieve as per the Collective Agreement.

Yours very truly,

for

Personnel Manager.

SECURITY NOTICE

PICK-A-STICK SELECTION SEARCH PROCEDURE

We are changing this procedure to ensure the *random* and *impersonal* principle in all steps of this type of selection process.

Until now:

a CLEAR STICK - determined that the person who picked it passed for a "parcel" search only.

a RED TIPPED STICK - determined that the person who picked it was selected for metal detection search.

Some persons selected by the red stick method were also selected for metal detection scanning of the feet to ensure that precious metal was not hidden in foot covering. This was done by giving guards and witnesses a pre-set number sequence. It was random and impersonal but had some faults.

In future some sticks will be coloured with RED and BLACK. This will determine that the person who picks it is completely scanned including feet.

Therefore if you pick:

COLOUR	*THIS MEANS*	*INSTRUCTION*
CLEAR STICK	same as before	place the clear stick in the middle container in rack and proceed through parcel inspection.

COLOUR	*THIS MEANS*	*INSTRUCTION*
RED TIPPED STICK	you are selected for metal detection search of all except feet	HOLD ON TO THE STICK. *TAKE* it to the search rooms. *SHOW* it to the expeditor for recording with name, time, etc. *HAND* it to the guard. The colour will instruct him/her in what to do.
RED & BLACK TIPPED STICK	you are selected for metal detection search *including* feet	HOLD ON TO THE STICK. *TAKE* it to the search rooms. *SHOW* it to the expeditor for recording with name, time, etc. *HAND* it to the guard. The colour will instruct him/her in what to do.

Metal Detection Search of Feet

On request, the employee raises each foot separately from the floor so that the guard can scan it with the metal detector.

If no metal is indicated by the metal detector there is no need to remove shoes.

If metal is indicated by the metal detector the employee must remove his/her shoes, boots, overshoes, etc. for inspection to ensure they contain no precious metal and raise each shoeless foot for scanning by the metal detector.

Endnotes

1. See Shearing and Farnell, 1978, Chapter 1.

2. See Shearing and Stenning, 1977, at p. 6.

3. As Hadden, 1971, states (at p. 240): "The forms of action may have passed away, but the forms of legal thought still rule us to the grave."

4. See Jeffries, *et al.*, 1974; Stenning and Cornish, 1975; Stenning, 1975; Freedman and Stenning, 1977; Jeffries, 1977; Farnell and Shearing, 1977; Shearing and Stenning, 1977; and Shearing and Farnell, 1978.

5. The analysis in this chapter largely summarizes the findings of research conducted at the Centre of Criminology, University of Toronto, from 1973 to the present. These findings are reported in the following publications, which are listed in the references, above at pages 143-146: Jeffries *et al.*, 1974; Stenning and Cornish, 1975; Freedman and Stenning, 1977; Jeffries, 1977; Farnell and Shearing, 1977; Shearing and Stenning, 1977; Shearing and Farnell, 1978.

6. For a further discussion of this definitional issue, see e.g., Freedman and Stenning, 1977, Chapter 1; Shearing and Farnell, 1978, Chapter 2.

7. The question of vicarious liability is discussed further at pp. 96-104; see also Freedman and Stenning, 1977, Chapter 4.

8. The exception is Prince Edward Island. The most recent and comprehensive survey of this legislation in Canada will be found in Stenning and Cornish, 1975.

9. See Draper and Nicholls, 1976 (British Columbia); Québec Commission de Police, 1976; and Bill 87, currently before the Ontario Legislature.

10. See, e.g., Section 19 of the Alberta *Private Investigators and Security Guards Act*, R.S.A. 1970, c.283, as amended by S.A. 1973, c.45, 3.9, reproduced at pp. 50-51 of this study, A similar provision is to be found in S.43 of Bill 87, currently before the Ontario Legislature.

11. Warren, in Jeffries *et al.*, 1974, at p. 53.

12. See Shearing and Stenning, 1977, pp. 19-21.

13. Shearing and Farnell, 1978, note however that there is some evidence to suggest that this growth rate may now be levelling off: see fn. 8, on p. 112 of their report.

14. Shearing and Farnell, 1978, at pp. 88-89. The authors note that these estimates were confirmed by the agency executives whom they interviewed. They note, too that public police in Ontario showed a growth rate of 32 per cent between 1967 and 1974, compared with a growth rate of 65 per cent in the licensed manned contract security industry: see fn. 9, on p. 113 of their report.

15. Shearing and Farnell, 1978, at p. 89.

16. This figure includes all public police in Ontario, in whatever capacity, except R.C.M.P. headquarters and training staff in Ottawa. It also includes almost 500 police cadets, but does not include civilian staff: see Statistics Canada, *Police Administration Statistics,* 1975 and 1976 (Annual: Cat. No. 85-204), Table 1, at p. 30.

17. E.g., cash-carrying armoured car personnel, burglar alarm respondents, security consultants, etc.

18. See Shearing and Stenning, 1977, at pp. 74-79; and Shearing and Farnell, 1978, Chapter II.

19. Toronto *Globe and Mail,* 23rd January, 1975.

20. See Shearing and Stenning, 1977, at p. 64.

21. Ontario, Task Force on Policing, 1974, at p. 38.

22. *Ibid.*, at p. 110.

23. Shearing and Stenning, 1977, at p. 63.

24. See e.g., the Law Reform Commission's Working Papers, No. 3, 1974 (Sentencing), Nos. 5 and 6, 1974 (Restitution and Compensation, and Fines), and No. 7, 1975 (Diversion).

25. Shearing and Stenning, 1977, at p. 65.

26. Freedman and Stenning, 1977, at p. 270.

27. See Shearing and Farnell, 1978, Chapter 3.

28. (1604) 5 Coke 91; 77 E.R. 194, at p. 195.

29. (1904) 123 Iowa 368; 98 N.W. 881.

30. As quoted by Morrow, J., in *Re McAvoy* (1971) 12 C.R.N.S. 56, at p. 60.

31. For a modern judicial review of these circumstances, see, e.g., *Eccles v. Bourque, Simmonds and Wise* (1975) 1 W.W.R. 609 (S.C.C.)

32. See e.g., the now classic statement to this effect in *Rice v. Connolly* (1966) 2 All E.R. 649. A unique provision in New Brunswick's new *Police Act,* 1977, c. P-9.2, will change this law for certain persons in that Province. Section 36(1) of this Act provides that: "Peace officers and persons licensed pursuant to the *Private Investigators and Security Guards Act* other than police officers and members of the Royal Canadian Mounted Police who have knowledge of or who are investigating criminal offences shall immediately notify the police force or the Royal Canadian Mounted Police, as the case may be, responsible for policing the area where the alleged offence took place of such knowledge or investigation." Failure to observe this obligation is a summary conviction offence under S.36(2) of the Act.

33. For a review of the current law in Ontario governing inn-keepers, see Amirault and Archer, 1978.

34. In *R. v. Lavoie* (1968) 1 C.C.C. 265, at p. 266, the New Brunswick Court of Appeal held that the word "includes" in S.138 of the *Code* was not intended to indicate that the definition of "public place" in that Section is exhaustive, or to exclude "the ordinary dictionary meaning" of those words.

35. See Sections 138 and 179(1). If legislation currently before Parliament is enacted, there will soon be two separate definitions of "public place" even within the *Code* itself; the general definition (in Sections 138 and 179(1)), and a more specific definition for the purposes of the offence of soliciting, under S.195.1 of the *Code:* see Clause 24 of Bill C-51, An Act to Amend the Criminal Code...etc. Under the proposed new definition, "public place", for the purposes of the Section, will include "any means of transportation located in or on a public place". The Supreme Court of Canada has ruled, in *Hutt v. The Queen* (1978) 2 W.W.R. 247, that such places are not included under the definition of "public place" under S.179(1) of the *Code.*

36. See the *Liquor Act,* R.S.S. 1965, c.382, ss.2(t)(v), and *R. v. Severight* (1973) 23 C.R.N.S. 28.

37. See *Zeller's (Western) Ltd. v. Retail Clerks Union, Local 1518* (1962) 36 D.L.R. (2d) 581; *Zeller's (Western) Ltd. v. Retail Clerks Union, Local 1518* (1963) 42 D.L.R. (2d) 583; *Grosvenor Park Shopping Centre Ltd. v. Waloshin et al* (1974) 46 D.L.R. (2d) 750: and *R. v. Peters* 1970) 2.C.C.C. (2d) 336 and (1971) 170 D.L.R. (3d) 128n.

38. (1976) 25 C.C.C. (2n) 186.

39. (1971) 17 D.L.R. (3d) 128n.

40. (1976) 25 C.C.C. (2d) 186, at p. 202.

41. (1978) 38 C.C.C. (2d) 303.

42. *Ibid.,* at p. 304.

43. *Ibid.,* at p. 305.

44. See, e.g., *R. v. P.* (1968) 3 C.C.C. 129; *R v. Lavoie* (1968) 1 C.C.C. 265; *R. v. Hogg* (1971) 15 C.R.N.S. 196; *R. v. Benolkin* (1977) 36 C.C.C. (2d) 206; *R. v. Goguen* (1977) 36 C.C.C. (2d) 570; *Hutt v. The Queen* (1978) 2 W.W.R. 247; and *R. v. Gaudreault* (1978) Ont. C.A., as yet unreported.

45. (1971) 1 W.W.R. 147. The court had to decide whether a beverage room is a public place for the purposes of S.160(1)(a) of the *Criminal Code* (causing a disturbance in a public place).

46. (1976) 25 C.C.C. (2d) 186.

47. Arthurs, 1965, at p. 357, has described it picturesquely as "the difficulty of forcing public law pegs into private law pigeonholes".

48. See e.g., *R. v. Zelensky* (1978) 2 C.R. (3d) 107, in which the Supreme Court of Canada considered the position of restitution in the criminal law.

49. Note that even in *Harrison v. Carswell* (1976) 25 C.C.C. (2d) 186, in which the Supreme Court of Canada upheld the right of a corporate shopping plaza owner to eject a trespasser, the majority, in support of its decision, emphasized "the right of the *individual* to the enjoyment of property" etc. (*emphasis* added). See quote from the case, at p. 20, above.

50. For an exposition of the law on this point, see e.g., *R. v. Lawson* (1973) 22 C.R.N.S. 216.

51. Flavel, 1973, at p. 14.

52. (1976) 25 C.C.C. (2d) 186, at p. 191.

53. *Ibid.*, at p. 192.

54. *Ibid.*, at p. 193.

55. *Ibid.*, at p. 193.

56. *Ibid.*, at p. 194.

57. *Ibid.*, at p. 196.

58. *Ibid.*, at p. 202.

59. The author gratefully acknowledges the helpful comments and advice of Professer Eric Colvin during the preparation of this Chapter.

60. 1867, 30-31 Vict., c.3 (U.K.), as amended; R.S.C. 1970, App. II, No. 5.

61. Shearing and Farnell, 1978, at p. 122. See also Tables 6.9 and 6.10, at pp. 135 and 136 of their report.

62. As Shearing and Stenning, 1977, report at p. 45 of their report: "A leader in this field has been the Federal Department of Supply and Services which has attempted to develop standards for government security contractors, and in the early 1970's established training courses for guard and supervisory personnel in the private contract security industry. In the mid-seventies, however, these courses were abandoned, and responsibility for them was turned over to Provincial governments."

63. See, e.g., Sections 449 and 450 of the *Criminal Code*, specifying arrest powers.

64. See, e.g., Section 25 of the *Criminal Code*, which deals with protection of persons acting under authority, reproduced at p. 83 of this study.

65. R.S.C. 1970, c. R-2, as amended.

66. See also Section 5 of the *National Harbours Board Act*, R.S.C. 1970, c.N.-8, which contains similar provisions with respect to the appointment of constables to police national harbours. Some C.P. railway constables also work as security officers in C.P. hotels.

67. This industry was declared so by statute; but in *Pronto Uranium Mines Ltd. v. Ontario Labour Relations Board* (1956) O.R. 862, the court held that such legislation could also be justified under the more general "peace, order and good government" power.

68. R.S.C. 1970, c. L-1, as amended.

69. The bargaining unit, interestingly enough, is a local of the United Steelworkers of America, which of course also represents the miners in the company. This certification was unsuccessfully challenged before the Canada Labour Relations Board in 1975: see *United Steelworkers of America v. Denison Mines Ltd.* (1973-75) 6 C.L.L.C. 1157. Under S.11 of the Ontario *Labour Relations Act*, R.S.O. 1970, c.232, as amended, such joint certification would not be possible. Interestingly, at the time of writing, the in-house security force is in the process of applying for decertification, on the grounds that such joint membership in the same bargaining unit as other employees of the mine poses intolerable problems of conflict of interest for the guards and for the union. This was the main argument of the company in opposing the original certification.

70. Shearing and Stenning, 1977, at p. 39.

71. See *Johannesson v. West St. Paul* (1952) 1 S.C.R. 292.

72. Shearing and Stenning, 1977, at p. 38.

73. In *Di Iorio and Fontaine v. The Warden of the Common Jail of the City of Montreal, and Brunet and Others* (1976) 34 C.R.N.S. 57; *R. v. Zelensky* (1978) 2 C.R. (3d) 107; *Attorney General of Quebec and Keable v. Attorney General of Canada and Solicitor General of Canada and Others* (1978) S.C.C. as yet unreported; and *R. v. Hauser*, as yet undecided by the Supreme Court.

74. At p. 22 of his reasons for judgment.

75. See, e.g., the observations of Dickson, J., in the *Di Iorio* case (see fn. 73, above). Similar comments may be found in *Re Adoption Act* (1938) S.C.R. 398, and in *In Re Prohibitory Liquor Laws* (1895) 24 S.C.R. 170.

76. See *Harrison v. Carswell* (1976) 25 C.C.C. (2d) 186, at p. 194.

77. There is no dispute as to the Provincial legislature's authority to enact powers for the enforcement of Provincial laws.

78. On appeal from the Alberta Court of Appeal: see *Re Hauser and the Queen* (1978) 37 C.C.C. (2d) 129.

79. Sub-paragraphs (a), (b) and (d) - (f) of the definition are omitted here, as they concern special instances of peace officer status which are not particularly germane to this study.

80. Freedman and Stenning, 1977, at pp. 29-30.

81. See also *R. v. Jones and Huber* (1975) 30 C.R.N.S. 127, in which Magistrate O'Connor said, at p. 135: "...it is not for the council of the City of Whitehorse to determine who is a peace officer for the purposes of the *Criminal Code*. That can only be done by Parliament.".

82. See e.g, *Attorney-General of Ontario* v. *Attorney-General of Canada* (1894) A.C. 189, at pp. 200-201.

83. R.S.C. 1970, c.A-3.

84. S.C. 1973, c.20.

85. As we have noted above, the constitutionality of legislation which affects private security only as it operates within a specific field of activity (e.g., aeronautics) will be justified according to which legislative authority has legislative competence in relation to that particular field of activity.

86. (1978) 2 C.R. (3d) 107.

87. *Ibid.,* at pp. 115-116.

88. On appeal from *Re Hauser and The Queen* (1978) 37 C.C.C. (2d) 129.

89. R.S.C. 1970, c.A-3, as amended by 1973, c.20.

90. Section 5.1 of the *Aeronautics Act,* R.S.C. 1970, C.A-3, as amended by 1973, c.20.

91. R.S.O. 1970, c.351, as amended.

92. New Brunswick is the exception. Special constables can also be appointed under S.10 of the Federal *R.C.M.P. Act,* R.S.C. 1970, c.R-9.

93. Shearing and Farnell, 1978, at p. 204.

94. Jeffries, unpublished research finding.

95. Freedman and Stenning, 1977, at p. 56.

96. For example, the University of Toronto Police Force.

97. For example, Ontario Hydro security employees.

98. For example, Canadian Pacific security officers.

99. For further discussion of special constables, see Stenning and Cornish, 1975, at pp. 196-212; and Freedman and Stenning, 1977, at pp. 54-63.

100. R.S.C. 1970, c.R-2.

101. The definition of "railway" in the statute does not appear to be broad enough to cover hotels owned by a railway company.

102. *Railway Act,* R.S.B.C. 1960, c. 329, Sections 273-274.

103. *Railway Act,* R.S.O. 1950, c. 331, Sections 220-227 (not since consolidated, but still in force), and the *Ontario Northland Transportation Commission Act,* R.S.O. 1970, c.326, Section 24(6).

104. *Railway Act,* R.S.Q. 1964, c. 290, Sections 248-249.

105. *Railway Act,* R.S.S. 1965, c. 134, Section 189.

106. R.S.C. 1970, c.N-8, Section 5.

107. R.S.O. 1970, c.395.

108. R.S.N. 1970, c.312, Section 6.

109. R.S.O. 1970, c. 351.

110. See, e.g., Section 35 of Manitoba's *Private Investigators and Security Guards Act,* R.S.M. 1970, c.P132.

111. Section 30 of the *Private Investigators and Security Guards Act,* R.S.O. 1970, c.362.

112. See Stenning and Cornish, 1975, at p. 205 for a review of this dispute.

113. R.S.A. 1970, c.283, Section 19, as amended by S.A. 1973, c.45, Section 9.

114. R.S.O. 1970, c.362, which is the subject of complete repeal and replacement by Bill 87, currently before the Ontario legislature. The new provision with respect to peace officer status will be found in Section 43 of the Bill.

115. (1963) 2 C.C.C. 97.

116. (1972) 9 C.C.C. (2d) 433.

117. (1973) 6 W.W.R. 687.

118. (1973) 10 C.C.C. (2d) 250.

119. (1972) 9 C.C.C. (2d) 433.

120. Freedman and Stenning, 1977, at p. 272.

121. See Appendix A to this study, at p. 147.

122. In Shearing and Farnell's, 1978, study of contract security in Ontario, 41 per cent of guards and 76 per cent of investigators indicated that they were *not* expected to detain persons whom they suspected of committing a crime: see Shearing and Farnell, 1978. Table 10:6 at p. 257.

123. Freedman and Stenning, 1977, at p. 84.

124. At p. 151.

125. See e.g., *R. v. Taylor* (1970) 73 W.W.R. 636; *R. v. Kellington* (1972) 7 C.C.C. (2nd) 564; *R. v. Stanley* (1977) 36 C.C.C. (2d) 216; and *R. v. Baxter* (1975) 27 C.C.C. (2d) 96.

126. See, e.g., *Reid v. De Groot and Brown* (1963) 2 C.C.C. 327, *Lebrun v. High-Low Foods Ltd* (1968) 69 D.L.R. (2d) 433; *Priestman v. Colangelo and Smythson* (1959) 124 C.C.C. 1; *Woodward v. Begbie* (1962) 132 C.C.C. 145; *Goyer v. Gordon* (1965) 3 C.C.C. 175; *Dendekker v. F.W. Woolworth Co. Ltd.* (1975) 3 W.W.R. 429; and *Eccles v. Bourque, Simmonds and Wise* (1975) 1 W.W.R. 609.

127. See Alberta *Petty Trespass Act,* R.S.A. 1970, c.273; British Columbia *Trespass Act,* R.S.B.C. 1960, c.387, as amended by S.B.C. 1967, c.54; Manitoba *Petty Trespass Act,* R.S.M. 1970, c.P50, Ontario *Petty Trespass Act,* R.S.O. 1970, c.347; and Quebec *Agricultural Abuses Act,* R.S.Q. 1964, c.130.

128. The recent, as yet unreported, decision of the Supreme Court of Canada in *R. v. Moore*, however, raises the possibility that failure to give one's name could amount to the offence of obstruction of a peace officer, under appropriate circumstances.

129. See, e.g., *R. v. Page* (1965) 3 C.C.C. 293; *R. v. Peters* (1971) 17 D.L.R. (3d) 128n; *Harrison v. Carswell* (1976) 25 C.C.C. (2d) 187.

130. R.S.C. 1970, c.1-23.

131. See, e.g., *Re Adelphi Book Store Ltd. and The Queen* (1972) 8 C.C.C. (2d) 40; *Re Krassman and The Queen* (1972) 8 C.C.C. (2d) 45.

132. To the contrary, see *Re Purdy et al. and The Queen* (1972) 8 C.C.C. (2d) 52.

133. R.S.C. 1970, c. N-1. See *R. v. Goodbaum* (1978) 1 C.R. (3d) 152.

134. See. *R. v. Munn* (1966) 2 C.C.C. 137. See also Fontana, 1974, at pp. 19-21 and 38-40, and other cases cited therein, which seem to support these conclusions.

135. See *Re Laporte and The Queen* (1972) 8 C.C.C. (2d) 343.

136. In *Re McAvoy* (1971) 12 C.R.N.S. 56, a warrant was issued for the search, among other things, of an aircraft. See Fontana, 1974, at pp. 27-31 and 159-160 for a further discussion of this topic.

137. The most comprehensive is Fontana, 1974.

138. Section 25(1) of the *Code*, however, would presumably provide adequate protection to persons executing such warrants who were not peace officers. This Section of the *Code* is reproduced at p. 83 of this study.

139. R.S.C. 1970, c.N-1. An almost identical provision is to be found in S.37(2) of the Federal *Food and Drugs Act*, R.S.C. 1970, c.F-27.

140. See footnotes 102-105, above.

141. R.S.C. 1970, c.N-8.

142. R.S.O. 1970, c.395.

143. R.S.N. 1970, c.312.

144. R.S.O. 1970, c.249.

145. (1921) 36 C.C.C. 298, at pp. 301-302.

146. (1932) 59 C.C.C. 56, at p. 61.

147. (1949) 96 C.C.C. 97, at p. 101.

148. (1975) 30 C.R.N.S. 135.

149. More recently, it has been held that a suspect who tries to eat evidence when arrested commits the offence of obstructing justice, contrary to S.127 (2) of the *Criminal Code:* see *R. v. Andruszko* (1978 - Ont. C. A., as yet unreported).

150. (1975) 61 D.L.R. (3d), at p. 138.

151. (1975) 30 C.R.N.S. 135, at p. 142.

152. (1853) 6 Cox C.C. 329.

153. (1902) 21 N.Z.L.R. 484, at p. 491.

154. (1887) 17 Cox C.C. 245, at pp. 249-250, cited in *Reynen v. Antonenko et al.* (1975) 30 C.R.N.S. 135, at p. 141.

155. Bird, 1963, at p. 93.

156. (1929) 4 D.L.R. 751. For some discussion of this Subsection as it related to interrogation and the laying of charges by private persons making arrests, see Freedman and Stenning, 1977, at pp. 133-140 and 157-160.

157. See Paine, 1972.

158. Freedman and Stenning, 1977, at p. 122.

159. See, e.g., *Frey v. Fedoruk et al.* (1949) 95 C.C.C. 206; *R. v. Hills* (1924) 44 C.C.C. 329; *Attorney General of Saskatchewan v. Pritchard* (1961) 130 C.C.C. 61; and *Reid v. DeGroot et al.* (1963) 2 C.C.C. 327.

160. (1975) 30 C.R.N.S. 109.

161. *Ibid.*, at p. 117.

162. *Ibid.*, at p. 123.

163. *Ibid.*, at p. 114. See also *R. v. Dean* (1966) 47 C.R. 311.

164. See *Lebrun v. High-Low Foods Ltd. et al.* (1968) 69 D.L.R. (2d) 433; and *Hucul v. Hicks* (1965) 55 D.L.R. (2d) 267.

165. See *R. v. Dean* (1966) 47 C.R. 311.

166. *Ibid.*, at p. 313.

167. (1973) 22 C.R.N.S. 215.

168. It is noteworthy that S.449(1)(b)(ii) actually stipulates "persons", but no significance ever seems to have been attached to this rather inexplicable plural usage.

169. Dunfield, J., of the Newfoundland Supreme Court, in *Chaytor et al. v. London, New York and Paris Association of Fashion Ltd., and Price* (1972) 30 D.L.R. (2d) 527.

170. See e.g., *Conn v. David Spencer Ltd.* (1930) 1 D.L.R. 805.

171. He did not mean formally charged; the plaintiff had merely been accused of theft by the defendant store detective.

172. *Conn v. David Spencer Ltd.* (1930) 1 D.L.R. 805, at p. 808.

173. Again, an informal accusation is what is being referred to here, not a formal charge.

174. (1835) 6 C. and P. 737, at pp. 739-740.

175. The question of dress, of course, raises the whole matter of uniforms which are required to be worn by certain private security personnel. This matter is considered in more detail at pp. 92-95 of this study.

176. (1929) 4 D.L.R. 751, at p. 767. In his judgment in *R. v. Dean* (1966) 47 C.R. 311, at p. 321, Laskin, J.A., referred to this authority as "arresting authority given by the owner or by the person in lawful possession". His remark, however, was *obiter*.

177. See above, at p. 54.

178. For an example of this, see *R. v. Dean* (1966) 47 C.R. 311.

179. R.S.C. 1970, c.2 (2nd Suppl.).

180. The only way to avoid this anomaly would seem to be to interpret S.450 (2) as not applying to the exercise, by peace officers, of their citizen powers of arrest under S.449. Such an interpretation, however, would go a long way to defeat the objectives of the *Bail Reform Act* through which S.450(2) was enacted.

181. *Petty Trespass Act,* R.S.O. 1970, c.347, Section 2.

182. *Agricultural Abuses Act,* R.S.Q. 1964, c.130, Section 3.

183. *Petty Trespass Act,* R.S.A. 1970, c.273, Section 5.

184. *Petty Trespass Act,* R.S.M. 1970, c.P50, Section 3.

185. (1962) 30 D.L.R. (2d) 527.

186. Per Lord Atkin, in *Hillen and Pettigrew v. I.C.I. (Alkali) Ltd.* (1936) A.C. 65, at p. 69.

187. (1962) 30 D.L.R. (2d) 527, at p. 535.

188. The Supreme Court of Canada, in *Harrison v. Carswell* (1976) 25 C.C.C. (2d) 186 (discussed above at pp. 24-26), while it did not specifically reject, or even refer to, this interpretation, appears to have decided that case using different assumptions about the definition of trespass.

189. See *Harrison v. Carswell* (1976) 24 C.C.C. (2d) 186.

190. R.S.O. 1970, c.202.

191. These provisions cover such offences as: altering or defacing a number plate, use of incorrect number plate, failure to have one's driver's licence, unlawful possession of a permit or licence, driving while vehicle is suspended, careless driving, racing on a highway, failure to remain at an accident, removing highway signs or obstructions, etc.

192. R.S.O. 1970, c.249.

193. R.S.O. 1970, c.225, Section 30, Item 27.

194. It is noteworthy that similar power to arrest without warrant in Section 54 of Ontario's *Liquor Licence Act,* 1975, c.40, is limited to "police officers".

195. Canadian Committee on Corrections, 1969, at p. 62.

196. Canada, Law Reform Commission, 1978.

197. R.S.C. 1979, c.N-1.

198. See, e.g., *Scott v. The Queen* (1976) 61 D.L.R. (3d) 130.

199. See, e.g., Ontario, *Royal Commission on the Conduct of Police Forces at Fort Erie on the 11th May, 1974,* 1975, at pp. 57-63, and 70.

200. R.S.C. 1970, c.F-27.

201. R.S.O. 1970, c.249.

202. An almost identical power to this, but limited to "police officers", is to be found in Section 48(2) of Ontario's *Liquor Licence Act, 1975,* c.40.

203. See, e.g., *R. v. Erickson* (1978) 30 C.C.C. (2d) 447.

204. R.S.O. 1970, c.395.

205. Section 5 of the Act. This provision also allows a guard or peace officer to arrest without warrant a person who refuses or neglects to comply with such a request or direction, or who is found upon, or attempts to enter, a public work without lawful authority.

206. Section 1(c)(i) of the Act.

207. R.S.C. 1970, c.A-3.

208. By S.C. 1973, c.20.

209. See Section 5.1(9) of the Act.

210. See the *Civil Aviation Security Measures Regulations,* SOR/74-226, Section 3(1)(b).

211. *Ibid.,* Section 3(2).

212. *Ibid.,* Section 5. Identical provisions to these may be found in the *Foreign Aircraft Security Measures Regulations,* SOR/76-593.

213. See Subsection 5.1(7), and also 5.1(8).

214. There is some authority for the proposition that Sections of the *Code* such as Sections 38 and 39 do confer immunity from civil, as well as criminal, liability. See the discussion of this issue at pp. 54-55 of this study, above.

215. (1960) 129 C.C.C. 102, at p. 107.

216. *Ibid.,* at pp. 109-110.

217. As to the definition of a trespasser in such circumstances, see the discussion of this at pp. 74-75, above.

218. (1975) 30 C.R.N.S. 109. See the discussion of this case at pp. 65-66, above.

219. See, e.g., Sections 14, 140, 143, 149, 158, 247 and 249 of the *Code*.

220. See, e.g. *Conn v. David Spencer Ltd.* (1930) 1 D.L.R. 805, in which MacDonald, J., said, at pp. 807-808: "In order to determine this point you have to consider the surrounding circumstances and my opinion is the plaintiff being so accused of theft, by a person in authority, *felt that he was compelled* to give himself, as it were, into the custody or control of...(the store detective)...and her assistant." See also *Chaytor v. London, New York and Paris Association of Fashion Ltd. and Price* (1962) 30 D.L.R. (2d) 527.

221. Although the standard texts on criminal law and tort law are by no means clear on this point, the case most commonly cited in support of it is an old English case, *Christopherson v. Bare* (1848) 116 E.R. 554. In that case, Denman, C.J., said (at p. 556): "It is a manifest contradiction in terms to say that the defendant assaulted the plaintiff by his permission." See also Prosser, 1971, at p. 101, and cases cited therein.

222. The leading case with respect to criminal prosecutions is *Woolmington v. D.P.P.* (1935) All E.R. Reprint 1.

223. *Abraham v. The Queen* (1964) 26 C.R.N.S. 390.

224. Freedman and Stenning, 1977, at p. 73.

225. (1904) 8 C.C.C. 45.

226. (1881) 18 Ch. D. 199.

227. (1877) 2 C.P.D. 418, at p. 421.

228. *Ibid.*, at p. 423.

229. (1957) 1 All E.R. 35, at P. 42.

230. *Ibid.*, at p. 45.

231. *Weir*, 1970, at p. 282.

232. *See, e.g., Harrison v. Carswell* (1976) 25 C.C.C. (2d) 186; *Chaytor v. London, New York and Paris Association of Fashion Ltd., and Price* (1962) 30 D.L.R. (2d) 527. As we have noted above (see footnote 127), in four Provinces there is a right to arrest without warrant under such circumstances.

233. See also the English cases of *Robinson v. Balmain Ferry Co. Ltd.* (1910) A.C. 295, and *Herd v. Weardale Steel, Coal and Coke Co. Ltd., et al.* (1915) A.C. 67, which suggest that an occupier may impose reasonable conditions of exit on an invitee, even without his or her prior consent.

234. The following cases, which are all concerned with detention and/or search situations involving private security, illustrate the application of these factors by the courts: *Perry v. Woodwards Ltd.* (1929) 4 D.L.R. 751; *Conn v. David Spencer Ltd.* (1930) 1 D.L.R. 805; *Cochrane v. T. Eaton Co.* (1936) 65 C.C.C. 329; *Cannon v. Hudson's Bay Co.; Stephen v. Hudson's Bay Co.* (1939) 4 D.L.R. 465; *Whiffin v. David Spencer Ltd.* (1941) 2 D.L.R. 727;

Sinclair v. Woodward's Store Ltd. (1942) 2 D.L.R. 395; *Chaytor v. London, New York and Paris Association of Fashion Ltd., and Price* (1962) 30 D.L.R. (2d) 527; *Hucul v. Hicks* (1965) 55 D.L.R. (2d) 267; and *Lebrun v. High-Low Foods Ltd.* (1968) 69 D.L.R. (2d) 433.

235. Kakalik and Wildhorn, 1972, at p. 7.

236. Shearing and Farnell, 1978, Table 9:11, at p. 219.

237. Jeffries, 1977, at p. 94. Elsewhere, Jeffries comments that: "The tradition which over-rides loss prevention oriented mechanisms is a basic, unwavering belief in legal deterrence to an extent which would surprise if not shock even the most traditional criminologist" (at p. 89).

238. See, e.g., Section 49(2) of the *R.C.M.P. Act*, R.S.C. 1970, c.R-9, and Section 30(2) of Alberta's *Police Act, 1973*, c.44.

239. See Section 20(5) of Vancouver's *License By-Law No. 4450* (Private Patrol Agency By-Law).

240. See, e.g., Sections 25(3) and 27 of Ontario's *Private Investigators and Security Guards Act*, R.S.O. 1970, c.362.

241. An example of some of the more comprehensive of such regulations will be found in Sections 23 to 27 of Alberta's regulations under its *Private Investigators and Security Guards Act*, R.S.A. 1970, c.283, as amended, which are set out in Appendix C to this study, at pp. 153-173.

242. See, e.g., Section 19 of Alberta's *Private Investigators and Security Guards Act*, R.S.A. 1970, c.283, as amended by S.A. 1973, c.45, which is set out at pp. 50-51, above. For a review of such statutory provisions in licencing statutes, as well as provisions dealing with uniforms, see Stenning and Cornish, 1975, at pp. 113-138, 256 and 258.

243. Stenning and Cornish, 1975, at p. 141.

244. See Section 2(2) of the Bill.

245. Amirault and Archer, 1978, at p. 193.

246. *Ibid.*, at p. 195.

247. *Ibid.*, at p. 196. See *Sunbolf v. Alford* (1838) 150 E.R. 1135.

248. The recently reported case of *Carpenter et al. v. MacDonald et al.* (1978) 4 C.R. (3d) 311, amply illustrates the kinds of problems of order maintenance which can arise from an attempt to exercise this right of lien.

249. R.S.O. 1970, c.223.

250. Even the rights of entry, etc. of landlords with respect to property occupied by tenants — most of which are now enshrined in Provincial legislation — would appear to be merely variations on common law rights of property owners and occupiers, and do not include any special rights of search or seizure.

251. (1959) 125 C.C.C. 72.

252. See footnote 127, above.

253. See, e.g., the words of Atkin, J., in *Mousell Brothers v. London and North Western Railway* (1917) 2 K.B. 836, at p. 845: "I think that the authorities cited by my Lord make it plain that while prima facie a principal is not to be made criminally responsible for the acts of his servants, yet the Legislature may prohibit an act or enforce a duty in such words as to make the prohibition or the duty absolute; in which case the principal is liable if the act is in fact done by his servants."

254. See, e.g., *R. v. Fane Robinson Ltd.* (1941) 76 C.C.C. 196; *R. v. Andrews Weatherfoil Ltd.* (1971) Cr. App. R. 31; and *R. v. Waterloo Mercury Sales Ltd.* (1974) 18 C.C.C. (2d) 248.

255. Prosser, 1971, at p. 101, footnote 28. The leading English case is *Entick v. Carrington* (1765) 19 St. Tr. 1029.

256. See British Columbia's *Privacy Act, 1968,* c.39; Manitoba's *Privacy Act, 1970,* c.74; Saskatchewan's *Privacy Act, 1973-74,* c.80; and Quebec's *Charter of Human Rights and Freedoms,* 1975, c.6.

257. (1971) 2 W.W.R. 142, at pp. 146-147.

258. See, e.g., *R. v. Andsten and Petrie* (1960) 128 C.C.C. 311.

259. Freedman and Stenning, 1977, at p. 196.

260. A more complete discussion of this matter will be found in Chapter 4 of Freedman and Stenning, 1977, and at pp. 277-278 of their report.

261. See, e.g., *Re St. Catharines' Police Association and Board of Police Commissioners for the City of St. Catharine's* (1971) 1 O.R. 430; *R. v. Johnston et al.* (1966) 1 C.C.C. 226; and *Re The Metropolitan Toronto Board of Commissioners of Police and the Metropolitan Toronto Police Association* (1975) 4 O.R. (2d) 83.

262. Freedman and Stenning, 1977, at pp. 176-177. The authors note that the police statutes of British Columbia and Saskatchewan specifically provide for some joint financial responsibility of government agencies for the commission of torts by special constables. In Ontario's *Police Act,* provision is made for discretionary payments of damages and torts against a special constable, by a municipal council. See their report, at pp. 167 and 171.

263. (1946) 175 L.T. 417.

264. See, e.g., *Bahner v. Marwest Hotel Co. Ltd., Muir et al.* (1970) 75 W.W.R. 729; *McKinnon v. F.W. Woolworth Co. Ltd. et al.* (1968) 70 D.L.R. (2d) 280; *Lakotosh v. Ross and Victoria Hotel Ltd. etc.* (1974) 3 W.W.R. 56; and *Dendekker v. F.W. Woolworth Co. Ltd., et al.* (1975) 3 W.W.R. 429.

265. Freedman and Stenning, 1977, at pp. 181-182.

266. *Ibid.,* at pp. 182-185.

267. For a review of these requirements, see Stenning and Cornish, 1975, at pp. 98-99.

268. See, e.g., *R. v. Cottam* (1969) 7 C.R.N.S. 179.

269. For two contrasting cases on this point, see *Warren v. Henlys Ltd.* (1948) All E.R. 935, and *Allan v. Lee Sew and Victor Lee* (1952) 102 C.C.C. 264.

270. For a review of such provisions, see Stenning and Cornish, 1975, at pp. 138-143.

271. *Ibid.*, at p. 139.

272. *Ibid.*, at pp. 58-68. More recently see article entitled "Can't keep track of private eyes, OPP testifies", Toronto *Globe and Mail*, Thursday, 1st June, 1978, p. 5.

273. Shearing and Farnell, 1978, at pp. 50-51.

274. See, e.g., Section 17 of Ontario's *Private Investigators and Security Guards Act*, R.S.O. 1970, c. 362.

275. Stenning and Cornish, 1975, at pp. 161-162.

276. See Sections 27-35 of the Bill.

277. Stenning and Cornish, 1975, at p. 143.

278. As Shearing and Farnell put it, private security polices for profit rather than for justice: see Shearing and Farnell, 1978.

279. See, e.g., Jeffries, 1977, in which the author identifies seven environmental factors which affect the structure of in-house security forces.

280. See Shearing and Farnell, 1978.

281. See, e.g., Brownyard, 1974.

282. Shearing and Farnell, 1978, Table 10:14, at p. 261.

283. *Ibid.*, Table 10:15, at p. 261. For guards, 46% reported that such instructions came from their agency supervisor, 34% from the client, 15% from the agency and the client, and 5% indicated that they took it upon themselves to make such searches. For investigators, the figures were 57%, 29%, 0% and 14% respectively.

284. *Ibid.*, Table 10:13, at p. 260.

285. *Ibid.*, Table 9:25, at p. 226.

286. *Ibid.*, Table 9:26, at p. 227.

287. *Ibid.*, Table 9:27, at pp. 228-229.

288. *Ibid.*, Table 9:28, at p. 230.

289. *Ibid.*, Table 9:29, at p. 230.

290. *Ibid.*, Table 9:30, at p. 231.

291. *Ibid.*, Table 9:31, at p. 231.

292. *Ibid.*, Table 9:32, at p. 232.

293. *Ibid.*, Table 9:33, at p. 232.

294. *Ibid.*, Table 9:34, at p. 233.

295. *Ibid.*, Table 10:5, at p. 256. The questions dealt with powers to search persons, vehicles and purses, shopping bags, briefcases, etc., without consent. Correct answers were given by 91% of guards and 96% of investigators with respect to powers to search persons; 81% of guards and 87% of investigators with respect to powers to search vehicles; and 70% of guards and 83% of investigators with respect to searches of purses, briefcases, etc.

296. *Ibid.*, Table 7:2, at p. 164.

297. *Ibid.*, Table 10:12, at p. 260.

298. (1975) 30 C.R.N.S. 109. See the discussion of this case, and its implications, at pp. 65-66, above.

299. Shearing and Farnell, 1978, Table 10:7, at p. 257.

300. *Ibid.*, Table 10:9, at p. 258.

301. *Ibid.*, Table 10:10, at p. 259. It will be clear from our review of the law on this subject (see above, at p. 92) that in the great majority of these cases the courts would regard the suspect as having been involuntarily detained for the purposes of the tort of false imprisonment.

302. *Ibid.*, Table 10:11, at p. 259. Section 29 of the *Criminal Code* imposes a duty on persons making an arrest without warrant to give notice to the person being arrested, "where it is feasible to do so", of the reason for the arrest. See also *Christie v. Leachinsky* (1947) 1 All E.R. 567, and *Gamracy v. The Queen* (1972) 12 C.C.C. (2d) 209. In *R. v. Whitfield* (1970) 1 C.C.C. 129, the Supreme Court of Canada held that the mere pronouncing of words such as "you are under arrest" can only constitute an arrest if the person being arrested submits to the process. More recently, see " 'You're under arrest' not enough, judge rules", Toronto *Globe and Mail*, 8th December, 1978.

303. See p. 92, and the cases cited in footnote 234, above.

304. Such a limited power of detention has been recognized both by common law and through statutory provisions in certain states of the United States. For a brief review of these provisions, see Appendix D, at p. 175.

305. For a review of current licensing provisions, see Stenning and Cornish, 1975.

306. One set of "Standing Orders", consulted during the preparation of this study, contained the following instructions: "As security officers, once a warrant to search has been obtained, we do not have the authority to execute the warrant. This must be done by the (name of town) Police Department. We can, with their permission, attend as observers representing the Company." Every member of the in-house security force in this particular company holds a special constable appointment.

307. See Jeffries, 1977, at pages 96-97. One plant security director interviewed during the preparation of this report indicated that in his view management required search procedures to be imposed more vigorously around the time of contract negotiations. This, he felt, was done with the objective of ensuring that management had some "cases" with which to bargain during such collective bargaining. Lenient dispositions of such cases, he explained, could be promised in return for concessions from the negotiating workers on other matters.

308. A somewhat similar concern is commonly expressed by security directors at educational institutions such as colleges and universities.

309. *Garzilli v. Howard Johnson's Motor Lodges Inc.* (1976) 419 F. Supp. 1210.

310. Wallace and Sherry, 1978, at p. 80.

311. *Ibid.*, at p. 85.

312. The recent development of medical malpractice litigation is the most commonly cited example.

313. For an example of this, see the discussion of insurance practices with respect to burglar alarm systems, in Stenning, 1975, at p. 12.

314. See, e.g., *J. Nunes Diamonds Ltd. v. Dominion Electric Protection Co.* (1972) S.C.R. 769; and *Alliance Assurance Co. Ltd. v. Dominion Electric Protection Co. Ltd.* (1970) S.C.R. 168.

315. See *Re United Electrical Workers, Local 504, and Canadian Westinghouse Co. Ltd.* (1964) 15 L.A.C. 348. The union representative on the board in this case dissented, holding that such inspections "had not been made compulsory, has not been published as a plant rule, and in any event would be a violation of an employee's civil rights (except where there is clear reason to believe the employee to be involved in theft, which was not the case here)."

316. See *Re United Steelworkers, Local 2868, and International Harvester Co. Ltd.* (1962) 12 L.A.C. 285. See also *Re United Electrical Workers, Local 504, and Canadian Westinghouse Co. Ltd.* (1960) 10 L.A.C. 224, which seems to have been decided on the same principles.

317. See *Re United Automobile Workers, Local 444, and Chrysler Corporation of Canada Ltd.* (1961) 11 L.A.C. 152, at p. 153.

318. *Ibid.*, at p. 159.

319. *Ibid.*, at pp. 159-160.

320. *Ibid.*, at p. 160.

321. *Ibid.*, at pp. 160-161.

322. *Ibid.*, at p. 161.

323. *Ibid.*, at p. 162.

324. *Re Inco Metals Co. and United Steelworkers of America,* Sudbury, June 16th, 1978, at pp. 7-8 — as yet unreported. The union nominee on the board dissented from the award.

325. *Ibid.*, at p. 4.

326. At p. 179.

327. A psychological stress evaluator is a form of lie detector which purports to measure truthfulness according to variations in voice-patterns obtained from tape-recordings of the subject answering questions put to him by the examiner.

328. In some Provinces, under certain circumstances, such accommodation is not covered by the landlord and tenant legislation which applies to normal residential tenancies: see e.g., Section 1(c)(iii) of Ontario's *Landlord and Tenant Act,* R.S.O. 1970, c.236, as amended by Section 1 of S.O. 1975 (2nd Sess.), c.13.

329. This section is based on part of an unpublished paper, entitled "Court-Specific Functions and Objectives", prepared by L. Axon and P.C. Stenning for the Alberta Attorney General's Department in June 1978.

330. In practice, however, his choice is likely to be dictated by official company policy.

331. With reference to the recent *Inco* arbitration award, described above (see footnote 324, and pp. 129-30, above), I was told by one union official that the principal motivation of the union in pursuing the matter through arbitration was not so much dissatisfaction over the company's disposition of the individual case, as a desire to have the whole matter of safety and security procedures in relation to explosives at the mines publicly aired, and more effective measures (including search procedures), implemented. The arbitration hearings provided a forum for this, even though such matters were not within the board's official mandate. In its award, the board noted that: "The control over the distribution of explosives from magazines in the mines was criticized in some of the union evidence" (at p. 5 of the award).