

Strong arm of the law reaches out to bouncers

Contributed by Vawn Himmelsbach
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In October, the CBC aired a news report about three patrons who were allegedly beat up by bouncers at Toronto's Government night club. The patrons said they inadvertently wandered into a staff-only area when looking for a place to have a smoke, and the female patron was allegedly kicked in the head repeatedly, resulting in a loss of hearing.

These types of stories don't often make the news, since they're typically settled out of court, but it happens more than one might realize. The businesses that employ bouncers or door-staff whose behavior might be scrutinized tend to use generous settlements to victims as a way of ensuring adverse publicity doesn't ensue. "It's generally known that if you get a half-decent case of saying a bouncer has gooned you, that you should pursue it, because there's a good chance the establishment will settle," says Brian Robertson, president of Toronto-based Diligent Security Training and Consulting. "The victim is not to talk about the situation, [so] what you hear about is the tip of the iceberg."

But this situation is changing in Ontario, thanks to Bill 159 (along with similar legislation in other provinces). Under the Private Security & Investigative Services Act, for the first time bouncers will fall under the same legislative environment as the contract security industry. The legislation, which passed on August 23, gives security personnel one year to become certified.

"We were dealing with a piece of legislation that was over 40 years old and was in dire need of update and change," says Ontario Registrar Jon Herberman. "Fundamentally it's meant to help professionalize the industry and enhance public safety in this province."

A huge range of sectors were excluded under the old Act, including in-house security. Under the new legislation, if you're working as a security practitioner or private investigator, regardless of whether you're working for a licensed agency or in-house employer, you need to be licensed. Also, if you've committed any of 84 prescribed criminal offences, you will not be eligible to obtain a licence.

This legislation is a paradigm shift since the entertainment industry has never been exposed to that level of scrutiny before, says Steve Summerville, president of Stay Safe Instructional Programs based in Ajax, Ont.. "They have to understand the provisions of the power of arrest and the application of force," he says. "If you put your hands on someone, you're accountable."

Security personnel must be registered by August 22, 2008 (with annual re-certification), with mandatory training to follow. The training standards are still in development, but it's anticipated there will be a tiered training standard, where tier-two and tier-three will encompass use of force training, says Summerville, which could include handcuff and retention components, as well as ethical and moral components.

"It's how you speak to people, how you engage people, not how you control people," he says. "This is what this Ministry has caught on to and doormen are no longer exempt." He believes this is going to have a dramatic impact on the entertainment and hospitality industry — especially since there are stiff penalties for non-compliance. If an establishment is using a doorman who isn't licensed, for example, the doorman could be fined up to \$25,000 and the business could be fined up to \$250,000. There's also the possibility of jail time.

"You're looking for professional and appropriate behaviours for doormen," says Summerville. "And for those who don't comply, resistance will be futile."

Summerville has provided expert commentary when these types of incidents go to trial, and he's currently involved in two cases involving death in establishments serving alcohol. His job is to help describe the due diligence and practices in place to mitigate risks — and he has more work than he can handle.

In Owen Sound, for example, a doorman killed a man inside a bar by banging his head on the floor. The man was a dentist, with a family of three and a healthy, thriving practice, and for 30 minutes nobody called the police. When an ambulance finally arrived, the man's vital signs were absent.

Where behaviours are being critiqued, the overriding factor is how door-staff are being trained. And in many cases, there is no training. "It's pretty hard to articulate what you don't know," says Summerville. Training is also meant to protect bouncers. "It shows your behaviour was consistent with a training program. If injuries are being discussed, the injuries were consistent with resistance, not negligence."

Marlowe Restaurant & Wine Bar in Richmond Hill, Ont. is one of the first establishments to get on board. "I saw it in the newspaper about a month before its inception but I first heard of it from my head doorman," says owner Andrew Taranowski. "He works at a security firm downtown, and they mentioned they're going to get a training certificate."

While he says he's blessed with good security staff, he'd rather be proactive than reactive when it comes to the law, so he decided to enact a training program prior to the date that Bill 159 came into effect. "There are too many goons out there," he says. "Doormen need training. They're in a position of authority. Why throw a punch when you can talk to somebody?"

But he was still "blown away" by the legislation because it's so tough. "It's right along the lines of the terrorist laws in this country where they can come into the restaurant, [and] if you don't have paperwork, if you don't have detailed reports on an incident, they can close you down for a year. And there's no recourse."

Another problem is that few people in the entertainment industry seem to know about the legislation. "Getting close to August I would think and hope they'd have some people going to around to advise the bars of the legalities," he says.

Several Toronto night clubs were contacted repeatedly for this story, including the Government, but did not return any calls.

There are six jurisdictions that are at some stage of regulatory reform. Manitoba brought in an amendment to its legislation in January of this year — it extended the regulatory scope of the Act to cover the proprietary industry and introduced mandatory pre-employment training for security guards (though it's only classroom theory training). Quebec and Ontario have both brought in new legislation and in both cases they're regulating the proprietary industry and bringing in mandatory training. B.C. has had mandatory training for the contract side of the industry, and just this spring passed new legislation that will extend the act to cover the proprietary industry. In Nova Scotia and Alberta, bureaucrats are busy drafting new legislation; both will regulate the proprietary industry and introduce mandatory training.

This is happening because there has been an expansion in the roles played by private security personnel, where they've taken on a more frequent, more active and more visible role in doing the types of things that traditionally only police did, and that's largely around the area of power of arrest and use of force, says Robertson.

The contract industry has had to go through licensing and background checks, but it's the proprietary industry that's getting in the news most often because they're out there acting like cops, he says.

But there are some major challenges the legislators will face. "Because the bar industry has never been and never thought of itself as part of the private security industry, it's certainly been resistant to the idea of suddenly finding itself in the private security industry being regulated," says Robertson. What's worse is that the networks of communication aren't well established.

"We're doing this with intensive participation and consultation with the industry," says Herberman. "We have an advisory committee that largely encompasses the entire industry. We've done an awful lot of outreach including posting all of our draft regulations on our website for public comment."

But, says Robertson, although the Ontario Registrar has been sending out discussion papers and reports and posting draft regulations, and there have been seminars and discussions and newspaper articles, and this has been going on for five years, when the new legislation became law, public meetings were full of people from the security industry wondering what was going on. "That's in the actual security guard industry, so who knows what the level of awareness is in the bar industry, which is even more decentralized."

Then there's the matter of criminal charges. "The anecdotal belief of everyone I've ever talked to in security circles is that there will be a frightening number of bouncers currently working in this province who will have to admit they've been convicted of one or more of those offences in the past and as the law stands right now that means as of Aug. 23 of next year, they absolutely cannot work as a bouncer in this province and there is no grounds for appeal," he says.

Another problem is that there could be a collision once training begins next November. The bouncer industry is a cultural enclave and there are pockets of that enclave in which there is an understanding about what bouncers do and don't have the legal authority to do. And that doesn't always jive with what the law actually says.

And so training, or re-training, the bouncer industry is going to be fraught with challenges, especially since management isn't required to undergo the same training.

"It's tough enough to train ill-informed internalized misunderstandings of law and appropriate conduct out of officers themselves, but where their employers are in need of retraining in that respect, it can be particularly challenging," says Robertson.

It's also anticipated that people will be running around at the last minute trying to get licensed as the deadline looms. "There's going to be a run on the door to get people licensed," says Summerville. "And I know with confidence that this government is going to enforce and charge."