

# ***It's Good Business* has Changed**

*It's Good Business, Responsible Service and Safety Program* has been renamed as



Your current certification in *It's Good Business* is still valid. However, *Serving it Safe* combines the Manager's with Serving/Security training and provides additional information to help staff and patrons stay safe in licensed establishments.

If you have successfully completed the responsible serving training course approved by the commission, please review the following new information that has been included in the *Serving it Safe* Program.

## **Module 2 RESPONSIBILITIES, RISKS and LIABILITIES**

Has been amended to include the following updated case examples regarding alcohol provider's liability under common law.

### **Holton v. MacKinnon (2005)**

Holton and two friends had been drinking at Holton's residence before going to a lounge, where they became intoxicated. They were at the lounge from 9:00 p.m. to midnight. They then drove to a nightclub, where they each had at least 2 more drinks within 30 to 40 minutes.

No steps were taken by either establishment to limit their consumption of alcohol, or to prevent them from driving. The party returned briefly to Holton's residence, then drove away again, with MacKinnon at the wheel. The car crashed, leaving Holton a quadriplegic.

Holton sued MacKinnon, the lounge and the nightclub. MacKinnon's BAC at the time of the crash was between .177% and .218%. Witnesses described the trio as being intoxicated at both establishments. The staff at both the lounge and nightclub knew or ought to have known that all three were impaired, but did nothing. They did not put MacKinnon in the charge of a sober adult. It was

foreseeable that an intoxicated person, who happened to arrive home safely, will again drive drunk that same night. The fact that the impaired trio arrived home safely did not break the chain of causation, as it was foreseeable that they would continue to drive impaired.

The court found:

Mr. MacKinnon 40% liable

The lounge 15% liable

The Nightclub 15% liable

Mr. Holton 30% liable for his own "damages" (Contributory Negligence.)

### **Dashwood v. Pillars Club & Lounge Inc. (2002)**

The plaintiff had consumed several drinks before entering the defendant club, where she had an additional drink. When she went to the washroom, she fell on the slippery floor which was covered in water and urine. The ensuing injury to her arm required surgery.

The plaintiff sued the club as an occupier for failing to maintain its premises in a reasonably safe condition. The Court held that the club should have foreseen the potential harms resulting from failing to keep the bathroom floor dry and clean. The club should have had written guidelines on cleaning the bathrooms and kept a log book to document their ongoing maintenance.

The Court concluded that the club failed to meet expected standards of safety or maintenance for the washroom and awarded the plaintiff more than \$20,000 in damages.

### **Tardif v. Wiebe (1996)**

The intoxicated plaintiff got into a fight with another patron while leaving the defendant hotel. Even though the plaintiff agreed to leave, one of the bouncers pushed him out the door. When the plaintiff returned to the landing to find out who pushed him, one doorman restrained him while another punched him twice in the face knocking out one of his teeth. The plaintiff was propelled from the landing onto the sidewalk and suffered serious brain damage.

The court held that the plaintiff posed no threat whatsoever and that it was not necessary to use any force to prevent the plaintiff from re-entering. The court held the bouncers and the hotel liable to the plaintiff for well in excess of \$1.1 million.

### **Mellanby v. Chapple (1995)**

Mellanby was injured when slashed with broken glass in a brawl at the Muskoka Sands Hotel. This fight was preceded by a pushing and shoving match which

was broken up, and a verbal confrontation between several combatants. When the bar staff did not intervene in the increasingly ominous verbal confrontation, Mellanby went to the aid of his friend whom he believed to be at risk.

The court held that the Muskoka Sands Hotel should have ejected the combatants in the first confrontation and should have intervened to prevent the second from escalating from a verbal dispute into a brawl. Moreover, the court held that the Hotel provided no security and failed to react to prevent the brawl in which Mellanby was injured.

Mellanby, who was an NHL prospect, suffered permanent nerve damage in his arm and his total damages exceeded \$800,000.

The court found:

Mr. Mellanby's attacker 50% liable

Mr. Mellanby to be 35% at fault for his own damages (Contributorily Negligence)

The Hotel 15% liable

## **Module 2 RESPONSIBILITIES, RISKS and LIABILITIES**

The following information has been added under the heading **PROFESSIONALISM.**

- A professional image is important and sets the tone for your premises. Professionalism is expressed through your appearance, attitude, and conduct. It is important to be disciplined and show self-control. If you become angry, a negative situation can escalate. Remain clam in emergencies and show leadership and guidance to others. If you are disciplined you:
  - Show strong self control, even when challenged
  - Remain clam in stressful situations
  - Follow procedures with little or no supervision

## **Module 2 RESPONSIBILITIES, RISKS and LIABILITIES**

The following information has been added or amended.

### **Use of Force**

It is important to try to find non-physical ways to diffuse situations that are developing into a confrontation. Whenever possible use communication skills to de-escalate a situation. In Canada, you are not allowed to use physical force to end a verbal dispute.

Non-physical tactics may be used to avoid the use of physical force to solve a problem including:

- watching or following someone
- calling the police and having them take care of the situation rather than becoming involved yourself
- removing yourself from a situation that is escalating and calling the police
- calling for assistance from other security people prior to entering a situation that might escalate and become dangerous.

**The following are the sections of the *Criminal Code (Canada)* that refer to the Use of Force:**

### **Protection of Persons Acting Under Authority**

25. (1) Everyone who is required or authorized by law to do anything in the administration or enforcement of the law

(a) as a private person,

(b) as a peace officer or public officer,

(c) in aid of a peace officer or public officer, or

(d) by virtue of his office, is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

(2) Where a person is required or authorized by law to execute a process or to carry out a sentence, that person or any person who assists him is, if that person acts in good faith, justified in executing the process or in carrying out the sentence notwithstanding that the process or sentence is defective or that it was issued or imposed without jurisdiction or in excess of jurisdiction.

(3) Subject to subsections (4) and (5), a person is not justified for the purposes of subsection (1) in using force that is intended or is likely to cause death or grievous bodily harm unless the person believes on reasonable grounds that it is necessary for the self-preservation of the person or the preservation of any one under that person's protection from death or grievous bodily harm.

(4) A peace officer who is proceeding lawfully to arrest, with or without warrant, any person for an offence for which that person may be arrested without warrant, and every one lawfully assisting the peace officer, is justified, if the person to be arrested takes flight to avoid arrest, in using as much force as is necessary to prevent the escape by flight, unless the escape can be prevented by reasonable means in a less violent manner.

## **Excessive Force**

26. Every one who is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes that excess.

## **Use of Force to Prevent Commission of an Offence**

Everyone is justified in using as much force as is reasonably necessary

(a) to prevent the commission of an offence

(i) for which, if it were committed, the person who committed it might be arrested without warrant, and

(ii) that would be likely to cause immediate and serious injury to the person or property of anyone; or

(b) to prevent anything being done that, on reasonable grounds, he believes would, if it were done, be an offence mentioned in paragraph (a).

The previous sections deal with “Use of Force” by persons in authority. *The Criminal Code* (Canada) gives you the authority to use force if necessary; however you are also responsible for using too much force. Any force you use must be deemed to be reasonable and necessary.

## **The following sections deal with “Use of Force” by others who are not in a position of authority:**

494. (1) any one may arrest without warrant

(a) a person whom he finds committing an indictable offence; or

(b) a person who, on reasonable grounds, he believes

(i) has committed a criminal offence, and

(ii) is escaping from and freshly pursued by persons who have lawful authority to arrest that person.

2) Any one who is

(a) the owner or a person in lawful possession of property, or

(b) a person authorized by the owner or by a person in lawful possession of property, may arrest without warrant a person whom he finds committing a criminal offence on or in relation to that property

3) Any one other than a peace officer who arrests a person without warrant shall forthwith deliver the person to a peace officer. R.S., c. C-34, s. 449; R.S., c. 2(2nd Supp.), s. 5.

Owners, management and staff may use force but any force used must be reasonable and necessary.

### **Force may be used in the following circumstances:**

- to aid a police officer; for example stopping a riot or making an arrest including stopping someone from escaping
- in defense of yourself or someone else from serious injury or death
- to prevent someone from committing or continuing to commit an offence that may cause immediate and serious injury to a person or damage to property

The law states that you may use force that is reasonable and necessary for the purpose of doing what you are required or authorized to do. You must make wise decisions about what force is reasonable. If you cannot leave a situation and call police for help, you must assess the situation. Every situation is unique and requires quick thinking and decisions regarding whether force is necessary and how much force is reasonable.

Sometimes you will have to ask an angry or violent customer to leave in order to provide a level of safety and protection to the patrons, and the staff. It may also be sufficient to move an intoxicated person to another location to diffuse a potentially volatile situation.

If you need to remove a customer from the premises, or prevent entry of intoxicated or potentially volatile patrons, make sure you only use reasonable force. Any unnecessary force, especially that which results in injury, leaves you open to liability.

Make sure you are familiar with your establishment's procedures should you decide to remove a patron; and ensure you record the incident in a logbook. It is important that you understand what to do so you can act quickly and decisively.

### **Remember These Points:**

Identify yourself as a person who has the authority to ask a person to leave.

- Always ask the customer to leave.
- Give the person reasonable time to leave.

If the customer does not leave at this stage, he/she may be charged with an offence.

## Refusing to Leave

It is at this point that the police may be called and a charge laid. If you feel you cannot guarantee your safety or the safety of your customers, involving the police may be the preferred option.

You must always consider the following:

- size, age, strength and skills of both yourself and the subject
- is the subject under the influence of drugs or alcohol
- is the subject armed or have access to a possible weapon
- what is the emotional or mental state of the subject
- the number of security vs. the number of subjects

In using reasonable force make sure:

- you are reasonable and calm
- the amount of force is appropriate to the situation
- the force is not intended to injure. Try to hold, rather than hit
- you do only what is necessary to subdue a customer who is attacking you or other people
- you never use force to 'teach a lesson' or 'send a message'
- you never 'invite' a fight, e.g. 'Think you're tough, let's get it on'

If too much force is used you may be charged with assault or sued. Criminal code of Canada states that everyone that is authorized by law to use force is criminally responsible for any excess thereof according to the nature and quality of the act that constitutes the excess. ***It is very important to remain in control and not over-react.***

## Risks of Restraints

Any time when you restrict a person's freedom of movement by holding the person or by using a mechanical device, you are restraining that individual. Restraints can last for seconds, minutes or hours. If it becomes necessary to restrain an individual the following should be considered:

- the individual is an immediate danger to self or others
- other ways to manage the individual's dangerous behaviour have failed
- you have knowledge in the proper use of restraints
- you are following house policy and record all of your actions leading to the use of restraints.
- you must monitor the individual carefully – obtain medical assistance as required or upon request

All physical restraints involve some possibility of injury to the individual being restrained and to staff. There is less risk of injury when staff is well-trained and safer techniques are used, but there is always a chance that an injury will occur.

## **Positional Asphyxia**

Restraint related positional asphyxia occurs when a person being restrained is placed in a position in which they cannot breathe properly and is not able to take in enough oxygen. This lack of oxygen can lead to disturbances in the rhythm of the heart, and death can result.

Especially dangerous positions include face-down restraints, or any position in which a person is bent over in such a way that it is difficult to breathe (such as a position in which a person being restrained is bent over at the waist). Ensure no pressure is exerted on a person's chest. Never put someone face down, but if they end up that way put them on their left side and hold their arm and head. Always put a person in a seated position as soon as possible. Get help and always monitor a restrained person.

## **Warning Signs Related to Positional Asphyxia**

- An individual struggling or complaining of being unable to breathe
- Evidence or report of an individual feeling sick or vomiting
- Swelling, redness or bloodspots to the individual's face or neck
- Marked expansion of the veins in the individual's neck
- An individual becoming limp or unresponsive
- Noticeable changes in the individual's behaviour
- Loss of, or reduced levels of, consciousness in the individual
- The individual suffers respiratory or cardiac arrest

Contributing factors to positional asphyxia include obesity, extreme physical exertion prior to or during restraint, breathing problems such as asthma, heart disease, diabetes, or the use of alcohol or drugs.

## **Excited Delirium**

Occasionally people who are restrained may die suddenly or unexpectedly. These people may have displayed symptoms of excited delirium. Excited delirium is a severe disturbance in someone's mental state over a short period of time. It is the result of a serious medical condition. People suffering from excited delirium need medical attention.

If someone is showing signs of excited delirium, the chances of death are much higher.

People with excited delirium may seem normal until challenged. If possible, do not excite, confront or agitate people who are delirious.

## **People suffering from excited delirium:**

- have great strength
- do not seem to feel pain
- are agitated and excitable
- may be aggressive- showing violence toward themselves and others
- are paranoid
- are very hot, sweating excessively
- may remove clothing because of excessive body heat
- may show signs of disorientation
- may hallucinate
- may show hostility
- may show signs of panic
- may speak irrationally
- may swear or shout
- may show sudden quietness after a frenzy of activity

## **Causes of Excited Delirium**

- drugs – prescription or street drugs
- fever
- high blood pressure
- asthma
- high or low blood sugar
- heart disease

Physical restraints should never be used as a punishment, for convenience of staff, or as a way to inflict pain. A physical restraint should be used as a temporary, emergency measure to take control of another person only until that person has regained control of their own behaviour and is no longer a threat to themselves or others.

There is also a psychological danger in using restraints. Being restrained can be a frightening and traumatic experience. The best way to avoid restraint related injuries or positional asphyxia is to avoid the need to restrain in the first place. Avoid being drawn into physical intervention and treat everyone with dignity and respect.

## **Powers of Arrest**

The following are the Powers of Arrest sections of the *Criminal Code* (Canada):

Section 494(1) of the *Criminal Code* is the section that provides the authority for a citizen to arrest a person. A citizen can only arrest someone who they “find committing an indictable offence. Indictable offences are the most serious offences in the Criminal Code including offences such as murder, break and enter and sexual assault.

Subsection 2 of section 494 you will see that there is extended authority to owners of property and the agents of owners. Agents are people who have been given authority by the owner to protect the property and items thereon; e.g. Security officers, door staff, certain employees and managers.

Arrest happens when someone uses his or her authority to take away another person’s freedom.

In Canada, anyone can arrest someone found committing a “criminal offence”. A criminal offence is defined as any offence against the laws of Canada. So therefore an owner can arrest a person on his property for an offence of theft. The arrested person must be turned over to a peace officer without delay.

Although the *Criminal Code* (Canada) gives you the authority to arrest, your establishment should still have policies in place to decide if you should arrest. As well, consider the consequences of the arrest. You must hold onto the person until the police arrive.

Section 494 (3) states that anyone other than a Peace Officer, who arrests someone, shall deliver the person to a Peace Officer forthwith. In some jurisdictions this may be minutes or hours. The decision to arrest is a serious one and should only be used as a last resort.

## **Justification for Making an Arrest**

There are three situations in which you may arrest someone:

1. If you witness a person commit an indictable offence, you may arrest that person. An indictable offence can occur anywhere, but you must be able to provide evidence in court that you witnessed the person committing the entire offence. You must arrest the person immediately. If the person flees and you pursue them, an arrest may only take place if you have “continuous fresh pursuit”. You may arrest them if you continue to chase them and catch them. You do not have “continuous pursuit” if the person escapes and you observe them at a later time or place. You may still report the incident and details to the police,
2. As an employee, you are authorized by the owner to protect their property, you have the same rights of arrest as the owner and may arrest without warrant a person found committing a criminal offence on or in relation to that

property. You must catch someone in the act of committing a crime against the property you are authorized to protect.

You have the right to arrest someone who is trespassing on the property that you are authorized to protect. Trespassing is defined as going onto someone's property when you do not have the authority to do so, or when you are not wanted on the property.

If you find someone trespassing, you must make it clear to the individual that they are not welcome on the property. If you ask them to leave and they refuse, you can arrest them. However, if possible you should call the police and let them remove the trespassers.

3. If you have reasonable grounds to believe someone has committed a criminal offence, is escaping from, and is being chased by someone with the legal authority to arrest that person, you may assist in the arrest. When you see someone trying to escape and you have reasonable grounds to believe a crime was committed you may assist in the arrest. Reasonable grounds are defined as a set of facts, which would lead a person of ordinary and prudent judgment, to believe beyond a mere suspicion. Set of facts refers to evidence, both admissible and inadmissible including physical objects, observations, actions, etc. Beyond mere suspicion refers to a belief consisting of a reasonable degree of certainty.

## **Search and Seizure**

The Charter of Rights and Freedoms states everyone has the right not to be unreasonably searched or have things in their possession taken from them.

You may search someone if they give their consent. If the person changes their mind part way through a search and instructs you to stop, you must stop the search.

If you have lawfully arrested someone and you believe they may have a weapon, you may search them without consent for something the person might use to harm themselves or others.

You may need to search someone entering the premises. If they will not let you search them; you have the right to refuse to let them in.

## **Human Rights Code**

Everyone has a responsibility to treat all people with respect and dignity. In order to be able to respond to individuals' needs, you must observe people closely and listen to them actively. Adjust your responses to people with special needs, whether the needs be physical due to impairment or age; or individuals with mental illnesses or disorders.

### **Module 3 Alcohol Effects**

Has been amended to include the following information under the heading **FACTORS THAT AFFECT A PERSON'S BAC**

#### **Energy Drinks and Alcohol**

Mixing alcohol with energy drinks has become a common way for young people to party longer and harder than the human body would typically allow for. Additional caution must be exercised when patrons consume drinks containing a mixture of caffeinated beverages or Energy Drinks, and alcohol. New research suggests those who consume energy drinks with alcohol, drink more, take more risks and ultimately are more likely to get hurt while drinking, increasing liability for licensed premises and servers.

According to research from the Wake Forest University School of Medicine in North Carolina, students who mix energy drinks with alcohol were twice as likely to be injured during a bout of drinking, to need medical attention or to ride with a driver who was drunk.

Researchers believe high levels of caffeine in the mixture of energy drinks and alcohol can mask the signs of intoxication including stumbling, slurred speech and sleepiness. Symptoms of intoxication may be reduced but **intoxication is not**. In other words, a patron may be intoxicated but not realize it. The stimulant of high levels of caffeine when mixed with alcohol, a depressant, over ride the signals that tell you to go to sleep or that you are really inebriated, the normal cues that would tell you when to stop drinking.

### **Module 6 SAFETY AND AWARENESS**

Has been amended to include the following information under the heading **EMERGENCIES**.

If you are the first person to arrive at the scene of a crime:

- get medical attention for anyone who needs it
- take notes – record the time, everything you see, hear or smell, and draw diagrams if required to clarify your notes
- write down the names and addresses of any witnesses, and any information they provide you
- ask all witnesses to stay until the police arrive
- write a description of anyone suspicious in the area
- ensure no one enters the scene to remove or damage evidence
- set up a barrier or if possible keep a door closed

You may be called to provide evidence in court.