

## Refresher Bulletin

### Authority to Seize Photographic Equipment from Citizens or Media

With the proliferation of video surveillance equipment in public and private spaces, it has become standard investigative procedure to canvas for surveillance video that may contain images of evidentiary value. This evidence is often very powerful in providing an accurate record of an incident. Generally, this evidence is seized with consent, although occasionally a search warrant will be required.

Similarly, on some occasions, a citizen or media person will be at a crime scene and have captured still photographs or video of some portion of the actual incident. It is incumbent upon members to attempt to secure this evidence, which may be vital to determining the truth of what occurred. (There may be people who show up at the incident after the fact to take video/pictures. In most cases, there is no evidentiary need to seize such images.) However, there MUST be legal authority to seize such items. Our legal authorities are as follows:

1. With consent
2. As an incident to lawful arrest
3. Under s. 487.11 CCC and Common Law authority, which allow for seizure of evidence without warrant if grounds for a warrant exist, but it would be impracticable for police to obtain one based on "exigent circumstances."
4. With a s. 487 CCC search warrant

Exigent circumstances usually arise where "immediate action" is required for the "safety of the police or public" or to "secure and preserve evidence" of a crime. Other cases describe exigent circumstances as circumstances making seizure without warrant "necessary to prevent the imminent loss or imminent destruction of the evidence." There is no "blanket exception" permitting the application of the doctrine; rather, whether or not exigent circumstances exist must be determined on a case by case basis.

Exigent circumstances may allow the seizure of a civilian's camera IF the officer has reasonable grounds to believe it is necessary to do so in order to prevent loss or destruction of evidence in the camera. The officer would be required to articulate reasons specific to the situation to justify the warrantless seizure. This provision would generally be applicable with NON-MEDIA individuals where there are concerns that the person may not be locatable to serve a search warrant, or where there are concerns the evidence may be destroyed.

Where media personnel are concerned, they cannot ordinarily be expected to destroy evidence, so it is extremely unlikely police would be able to articulate grounds to seize it as "exigent circumstances," or that a court would uphold such a warrantless seizure. In fact, media premises (and persons) are afforded EXTRA protection from interference by the police, given their authority and obligation to disseminate the news. Media people are generally sophisticated and knowledgeable about those issues and will usually require the police to follow the appropriate, extra procedures for obtaining evidence from them, but they will not generally completely frustrate the police by destroying evidence. In other words, the added protections available to the media make warrantless seizures of media cameras particularly prohibited.

Exigent circumstances **can** apply to media persons who an officer has grounds to believe will destroy evidence despite their status as media camerapersons. Our willingness to abide by the special procedures available in law to media persons is premised on our mutual understanding/agreement with professional media personnel that the evidence will be available to police, in due course. If, on the other hand, the officer is dealing with a freelance and obviously hostile cameraman who leads the officer to believe that the evidence WILL be destroyed, the law would allow the officer to seize the camera, without first obtaining a warrant.

Furthermore, exigent circumstances also arise when there is a safety issue at play. For example, if a camera person, a reputable media representative or otherwise, had filmed evidence that was essential to the safety of a member of the public – for example, evidence that would serve to identify a vehicle involved in a kidnapping in progress – exigent circumstances would CLEARLY allow the police to seize the camera footage, without first obtaining a warrant.

Therefore, if members attend a scene where a citizen is photographing or videotaping and there is reason to believe the incident in question may have been captured, the following procedure should be followed:

1. Ask the citizen for consent to seize the equipment;
2. If the citizen refuses, attempt to determine whether the person can be located to be served a search warrant, and whether there are concerns that the evidence may be destroyed. If there are no such concerns, obtain the person's contact information, ask them to secure the evidence, and advise them that a search warrant will be applied for and they will be contacted later.
3. If there are reasonable grounds to believe that the person may not be locatable or will destroy the evidence, seize the equipment pursuant to the authorities provided to police for exigent circumstances. (A search warrant is not required later to search the seized item.)
4. Where the person identifies themselves as a legitimate media person, DO NOT seize their photographic equipment, unless there is an imminent public safety issue involved, or there are reasonable grounds to believe the evidence will be made unavailable to police (e.g., hidden or destroyed).
5. If photographic equipment is seized pursuant to the exigent circumstance authority or by way of a search warrant, and the evidence on the camera cannot be copied within a reasonable period of time, in order that the camera equipment can be returned to its lawful owner, consider s. 489 of the CCC and submit a Report to a Justice, Form 5.2, reporting the seizure of the camera equipment and seeking authorization for its detention until such time as the evidence can be secured.