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Filming The Police

A Basic Guide



**Network for the
Elimination of
Police Violence
(Toronto)**

A Basic Guide to Filming the Police

Introduction

Citizens filming the police can discourage police brutality and harassment - letting cops know that their actions are being recorded, and that they will be held accountable for acts of harassment and abuse.

Although it is important to resist police brutality by taking cops to court, filing complaints and holding demonstrations, it is also crucial for us to be prepared when police activity takes place, letting the police know that we will hold them accountable for their behaviour in our communities.

Citizen monitoring of police is a crucial first step towards building a movement capable of stopping police violence, and of challenging the increasingly powerful role of police in our society.

The **Network for the Elimination of Police Violence** is a network of organizations coordinating community-based responses to police violence. We stand behind the following:

1. We strive to build the capacity of communities to resist police violence.
2. We strive to build principled unity among communities to resist, fight and eliminate police violence.
3. We hold harassment, intimidation, surveillance, carding, planting of evidence, racial profiling, excessive force, police brutality, entrapment, provocation, concealment of evidence, and other repressive actions as acts of police violence.
4. We recognize racism as a system that shapes and informs police violence against and in racialized and indigenous communities.
5. We view police violence as a basic part of society because it is used to serve and protect the interests the dominant, privileged groups in society.

6. We stand opposed to police violence, which is typically based on race, gender, gender identities, class, sexuality, disabilities, mental health status, indigenous status, immigration status, political beliefs, and other grounds or bases of identity.
7. We believe that the elimination of police violence will come about with the end of all systems of oppression in society.

Facebook: <https://www.facebook.com/NEPVToronto>

Twitter: @NEPVToronto

Email: eliminatepoliceviolence@gmail.com

Copwatch App: “Cop Watch Toronto” on your favourite App Store

This booklet includes 'A Rough Guide to Filming', a 'Know Your Rights' section, info on the CopWatch phone app, and most importantly a section on 'Your Safety'. **Go out there, but stay safe!!**

Since most of us now have cameras on our mobile phones, more and more people are able and willing to film the actions of the police during an incident.

However, along with the significant safety concerns

that we'll outline later, here are a few basic suggestions that may help you to be better prepared, to decide that filming the police will make a difference, and also to ensure that your footage has genuine value as possible evidence.

Why stop and film?

Ordinary people stopping and filming the police can mean that officers behave differently than they would if no one was watching and recording their actions. This might make the experience for the person who has been stopped far less intimidating or threatening.

The more often police are filmed stopping people, the more officers may come to expect that they may be filmed in the future. This can influence the way they normally treat people and whether stop-and-search powers are routinely used indiscriminately. If police officers have acted unlawfully, filming them can help provide evidence if there is a formal complaint or if someone is arrested.

The effect on police violence may be gleaned from a wearable camera experiment carried out by the Rialto Police department in California:

The Rialto study began in February 2012 and will run until this July. The results from the first 12 months are striking. Even with only half of the 54 uniformed patrol

officers wearing cameras at any given time, the department over all had an 88 percent decline in the number of complaints filed against officers, compared with the 12 months before the study, to 3 from 24.

Rialto's police officers also used force nearly 60 percent less often — in 25 instances, compared with 61. When force was used, it was twice as likely to have been applied by the officers who weren't wearing cameras during that shift, the study found. And, lest skeptics think that the officers with cameras are selective about which encounters they record, Mr. Farrar noted that those officers who apply force while wearing a camera have always captured the incident on video.¹

Can I legally film the police?

There is no law stopping anyone filming in a public place, so if you are on the streets you can film without

¹ Randall Stross, "Wearing a badge and video camera." *New York Times*, April 6, 2013, http://www.nytimes.com/2013/04/07/business/wearable-video-cameras-for-police-officers.html?_r=0; Ian Lovett, "In California, a champion for police camera." *New York Times*, August 21, 2013, <http://www.nytimes.com/2013/08/22/us/in-california-a-champion-for-police-cameras.html?pagewanted=all>

asking permission.² See the "Know your Rights" section on page 13 of this booklet.

What to remember when filming

A police stop is already a humiliating experience for the person who has been stopped, so it is worthwhile asking the person who is stopped if it's ok to film, and assure them that you are just filming the actions of the police. Sometimes the police will try and stop you from filming by saying it "breaches the privacy" of the person being searched. If it is safe to do so, you can get around this simply by asking the person who has been stopped, "I'm here to make sure the police don't do anything to you they are not supposed to do. Is it ok if I film what the police are doing?"

² Karen Selick, "You have the right to remain silent...and film the proceedings." *The National Post*, August 17, 2012, <http://fullcomment.nationalpost.com/2012/08/17/karen-selick-you-have-a-right-to-remain-silent-and-film-the-proceedings/>; David T.S. Fraser, "Photographing and filming police officers in Canada." *Canadian Privacy Law Blog*, August 23, 2012, <http://blog.privacylawyer.ca/2012/08/photographing-and-filming-police.html>; William Kowalski, "Freedom to photograph under threat." *Toronto Star*, July 28, 2013, http://www.thestar.com/opinion/commentary/2013/07/28/freedom_to_photograph_under_threat.html; *R v Homer*, [2009] O.J. No. 4924 at para 70; *R v Zarafonitis*, 2013 ONCJ 570 at paras 24-26.

Taking pictures or videotaping can be a problem if the detainee doesn't want you to. Don't film people who obviously don't want to be filmed. Respect them. Let them know you are there to support them, but if this doesn't satisfy them, turn off the camera.

If there are two people with cameras, it is worthwhile for both people to be filming. Both should film the officers or one person can focus on filming the other person with the camera if the police are harassing the other camera-person.

Remember, police officers don't want incriminating footage of them if they are acting unlawfully. This can sometimes leave you as a target, so be mindful of this when you are recording in case they try to arrest you.³

Keep calm and focus on recording what you see.

Under no circumstances should you get involved in what you are filming. When you film, try not to record yourself getting into arguments with the police. We've all seen videos of cops violently arresting somebody, only for the person holding the camera to be shrieking hysterically that the police are pigs or

³ Joel Rose, "This is the police: Put down your camera." National Public Radio, May 13, 2011, <http://www.npr.org/2011/05/13/136171366/this-is-the-police-put-down-your-camera>

that they're going to end up on YouTube or that the person they're arresting didn't do anything illegal.

Keep in mind that your mouth is closer to the microphone than anybody else's mouth, so your voice is going to be magnified as it drowns out the relevant audio that needs to be captured. However, don't be afraid to inform viewers of what exactly is taking place on camera. Speak clearly and stick to the facts because you want the viewer to form the opinion of what is taking place. But it's more important to capture what is taking place and let the situation speak for itself.

If police officers tell you that you are obstructing them in their duties, simply **step back but hold your ground** and carry on filming. Remember that, legally, they have no power to stop you from doing so (see the "Know Your Rights" section). They can, however, set up a reasonable perimeter. You should always try to keep a safe distance, *never come within striking distance of a police officer*. Your first priority is your own safety. Consult **the "Your Safety" section** in this booklet.

Focus on the actions of the officers. Your second priority is to collect evidence. Make sure you record police abuse, threats or orders. If nothing interesting

is happening, it might still be important to keep the camera rolling, but keep it focused on the police.

Film the officers' names and badge numbers: police officers are supposed to wear name tags and badge numbers, which are usually on their shoulders and will help identify them. You can also read out their names and numbers on camera, which can help pin officers down later.

Don't film the person being stopped unless it is absolutely necessary to show what officers are doing to them. You want to avoid becoming a police evidence-gatherer, even inadvertently. Even if the person being stopped is happy for you to film them, it is best not to film their face or any identifiable clothing. It may not be in that person's interest to be identified on YouTube.

Don't film/upload anything that the police can use against the person being searched, such as swearing. Don't film criminal conduct if you see any. Focus on the police. No matter how a victim of police violence behaves, this does not permit illegal behaviour or excessive force by police.

It is important to **try and film some sort of landmark**, such as a street sign or major building after the

event but before turning off the camera. This will prevent the police from saying that your video is of a different event.

Using your camera / camera phone

Here are some really basic tips to remember that will help you capture better video footage.

Keep the camera still! Don't move it around all the time, you need a clear and steady shot of important events. If you are having problems with this, try focusing your eye on something in the top corner of the screen, this could help.

If you shoot video with your smartphone, then hold the phone horizontally so your videos come out horizontally. While it may be easier to hold the camera in the vertical position, you end up with a video that uses only a third of the available screen sandwiched by two black lines. Holding the phone horizontally usually requires the use of two hands, which prevents the camera also from shaking.

Don't zoom in and out all the time. However when you have filmed something important (like police numbers) make sure you zoom out afterwards and film landmarks around the incident, this will help prove exactly where the incident took place.

Practice shooting video because you want to be prepared when it is absolutely necessary to record. You don't want to mistakenly have your fingers over the microphone or think you're recording when you've actually stopped recording.

After you've finished filming

Keep the footage saved and back it up as soon as you can. When the person who has been stopped is hopefully let go by the police, it's worthwhile asking if they want to swap details so you can pass them the footage if they need it.

The Five W's

Think of yourself as a journalist. In addition to your video, make a note for yourself afterwards of the Five W's, the **who, what, when, where and why**.

Who – Write down the shoulder identification numbers of any officers involved, and names of witnesses or victims.

What – Simply what is happening, describe what the police is doing and how they react to the situation.

Where – Where did it happen? Junction of Lansdowne and Bloor, outside Coffee Time!

When – The time is essential! If your recording does not show the time and date, make an approximation of the time of the different events during the incident.

Why – Note your view of the events – but be sure not to write anything down that can incriminate the victim. If you are not sure, then it's better not to write this down.

Other things to note:

What the police say – Any explanations the police give of why they are doing what they are doing, anything that is said before they started using violence, or during an arrest can be crucial evidence. Write it down!

If you edit your video for the internet

If you want your video to go viral, you need to keep it short. People on the internet don't have time to sit through a ten minute video where nothing is happening waiting for something exciting to happen. A general rule would be to keep it under three minutes. If you have an exceptionally interesting video, then extend it to five minutes.

If you absolutely are compelled to make the video longer because you believe it is necessary to tell the entire story, then try to produce a shorter version but don't be surprised if the shorter version ends up with more views. Also, try to include the basic information in the headline and description of the video, the five W's as described above, or maybe a link to an article that provides more background.

No matter how cool you think it may sound, do not add music to the video. Just because you are a huge heavy-metal or hip-hop fan doesn't mean the people viewing the video will be, and music can be very distracting from what you want to show.

Remember to always keep your original, unedited footage to be usable as evidence in court.

If you are uploading video to YouTube or Vimeo, then let us know via email at

eliminatepoliceviolence@gmail.com

Know Your Rights

“...there is no prohibition against a citizen videotaping a police arrest. To the extent that the person doing the videotaping does not impede, interfere or obstruct the police in carrying out their duties, then the person is within his or her rights to videotape an arrest. That is part of the panoply of freedoms enjoyed by citizens in a democratic society.”

- Justice I.W. Andre (*R v Homer*, [2009] O.J. No. 4924 at para 70.)

In the absence of an overarching and tangible safety concern, such as telling a photographer at a fire scene to back away if there is a danger that the building will collapse on him, telling people not to record these interactions, whether they be a bystander or the person the police are dealing with, is not a lawful exercise of police power. An officer who conducts himself rea-

sonably has nothing to fear from an audio, video or photographic record of his interaction with the public. The public has a right to use means at their disposal to record their interactions with the police ... The existence of this form of objective "oversight" has great potential to minimize abuses of authority and to maintain peaceable interaction between police and the citizenry, all of which is very much in the public interest. Interference by a police officer in the public's exercise of that right is a significant abuse of authority.

- Justice F. O'Donnell (*R v. Zarafonitis*, 2013 ONCJ 570 at para 26.)

You're allowed to film the police when in a public space. If you can see them, you can record them. But you don't want to end up arrested for some unrelated matter just because the cop is looking for an excuse to keep you from recording. This can easily happen if you are standing on the street as opposed to the sidewalk, or getting too close to police where you end up physically interfering with their investigation.

Sometimes, the best way to handle the cops is to ask them where exactly they would like you to stand. There is, unfortunately, never a guarantee that you won't be arrested, but you can minimize those chances by informing the officer you know your rights while continuing to record.

When on private property

There are also times when you're allowed to film the police in a non-public space, provided you are there lawfully. For instance, in someone else's house, when they are executing a search warrant, if you have permission to be there, you can film them. You cannot be charged with trespass in Ontario if you have permission to be there from the occupier of the house according to the Trespass to Property Act, s. 2.

Please note that while you are on Toronto Community Housing property or any other private property where the police are acting as *agents of the landlord*, you may be forced to provide the officer with information to verify your identity and/or the reasons why you are on the property. For example, you may be a guest, or reside in the complex. Failing to provide that information may lead to a trespassing violation.

Shopping malls, office buildings, or storefront parking lots are all open to the public - but they are considered private property. Business owners or private security guards have every right to forbid you from recording on their premises, even if they are recording you with security cameras. They can forbid you from filming either by posting a sign or simply by telling you ("they" could include the owner or a security guard who is a representative of the owner [Trespass to Property Act, s. 4.]) But they have no right to force

you to delete your footage or confiscate your camera. The worst they can do is order you to leave the premises. If you refuse to leave after being asked, they can have you arrested for trespassing.

When in a public building owned by the government

We mean here the bus station, the subway, the library, school, or the local community centre. Sometimes, government property is considered public and sometimes it is considered private. These are currently subject to debate. Many of these buildings can have their own rules. For example, the police may prevent you from filming in a train station in order to protect the country from possible terrorist attacks. Public parks are governed by municipal bylaws. If you are breaking a bylaw (such as being in the park after hours) then the police have the right to give you notice to leave the park or escort you out. Refusal to leave could result in an arrest for obstruction.

We list below some possible charges the police might threaten you with in order to stop filming. Do not let this intimidate you. Even if they arrest you on these grounds they will have to prove these in court.

Possible charges arising from filming the police

Obstructing Police: While filming the police is not a crime, police might still charge you with "obstructing justice" anyway. The law (s. 129 of the *Criminal Code of Canada*) defines the crime of obstructing justice as:

Everyone who...

(a) resists or wilfully obstructs a public officer or peace officer in the execution of his duty or any person lawfully acting in aid of such an officer,

(b) omits, without reasonable excuse, to assist a public officer or peace officer in the execution of his duty in arresting a person or in preserving the peace, after having reasonable notice that he is required to do so, or

(c) resists or wilfully obstructs any person in the lawful execution of a process against lands or goods or in making a lawful distress or seizure.

If the police believe you are preventing them from carrying out their duty, you may be charged under this section, whether or not your actions are intentional (*R v Gunn* [1997] 113 C.C.C. [3d] 174). *Intent* to obstruct justice is also a criminal offence (*R v Tortolano, Kelly and Cadwell* [1975], 28 CCC [2d] 562 ON CA), whether or not your actions are preventing the police from carrying out their duty.

However, no lawful police order could require you to stop filming, except in very rare scenarios like those involving an undercover cop or a hysterical witness.

Harassment: If a police officer claims to fear for his/her safety, you may be charged under the Criminal Code with Harassment. S. 264 of the *Criminal Code of Canada* states that no person shall

... engage in conduct that causes another person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them. This conduct includes the following:

- (a) repeatedly following from place to place the other person or anyone known to them;
- (b) repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;
- (c) besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or
- (d) engaging in threatening conduct directed at the other person or any member of their family.

Public Nuisance: Public nuisance is any activity which unreasonably interferes with the public's interest in questions of health, safety, morality, comfort or convenience (*Ryan v Victoria (City)* [1999] 1 SCR 201). For example, blocking a lane of traffic (because it gives you the best filming angle) could cause cars to swerve into other cars, interfering with public safety. Section 180 of the *Criminal Code of Canada*:

- (1) Every one who commits a common nuisance and thereby
- (a) endangers the lives, safety or health of the public, or
 - (b) causes physical injury to any person,
- is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.
- (2) For the purposes of this section, every one commits a common nuisance who does an unlawful act or fails to discharge a legal duty and thereby
- (a) endangers the lives, safety, health, property or comfort of the public; or
 - (b) obstructs the public in the exercise or enjoyment of any right that is common to all the subjects of Her Majesty in Canada.

Restrictions on police power to seize your camera

“... from a personal standpoint I can understand Sergeant Parks' actions in deleting the picture. From a legal standpoint however it is unacceptable. The camera was never seized as evidence ... legal access to the contents of the camera would be permitted only through a search warrant. No warrant was ever obtained by Sergeant Parks, so he had no legal right to erase a picture from Mr. LeBlanc's camera.”

- Justice W. McCarroll (*R v LeBlanc*, [2006] NBJ No 514, at para 20.)

The police can only seize your camera/phone under the following circumstances:

- 1) With your consent
- 2) If you are arrested

3) If they have a warrant to seize it (s. 487 of the Criminal Code)

4) If there are “exigent circumstances” that make it impractical to get a warrant.

Police may claim that they had to seize your device for reasons of "immediate necessity" - in other words, to secure and preserve evidence, or to protect the safety of the public or police. For instance, if a police officer suspected that you would destroy the evidence of a crime (including footage of someone resisting arrest) before a warrant could be obtained, this could be grounds for the seizure of your camera or phone. This means that, if the cop has no reason to think that you would destroy the evidence, he or she cannot take your camera without your consent, arresting you, or having a warrant to seize it. **If your phone is seized, you should receive a property receipt.**

Assault/Mischief: No one, including the police, has the right to destroy, nor threaten to destroy, your phone, video camera, storage cards or other property, nor can they forcibly delete your video.

The *Criminal Code of Canada* s. 264.1(1) ("Assault") states:

every one commits an offence who, in any manner, knowingly utters, conveys or causes any person to re-

ceive a threat (a) to cause death or bodily harm to any person; (b) to burn, destroy or damage real or personal property;

Criminal Code of Canada, s. 430 (“Mischief”):

Every one commits mischief who wilfully (a) destroys or damages property; (b) renders property dangerous, useless, inoperative or ineffective; (c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; or (d) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

Note: In Ontario, if you are arrested and your phone is seized, and you have a password, you do not need to tell the police your password, though this decision is being appealed (*R v Fearon*, 2013 ON CA at para 75).

Canadian Charter of Rights and Freedoms: Search, seizure, detention

Section 8 of the *Canadian Charter of Rights and Freedoms* states that "everyone has the right to be secure against unreasonable search or seizure." The police cannot search or seize your property if you are not detained (or arrested). Section 9 states that "everyone has the right not to be arbitrarily detained or imprisoned."

If you cannot leave because a police officer has your ID, took your phone, has said “Stop,” or because of any other reason that would lead a reasonable person to believe they could not walk away from a police officer, then you are detained. Referring to “psychological detention” by police, the Supreme Court of Canada has stated that “serious weight should be given to the values and experience of the person *actually* stopped, including the experience of visible minorities” (*R v Grant*, 2009 SCC, at para 176), acknowledging unequal treatment of minorities by police during stops.

The police can only detain an individual for investigative purposes if there are reasonable grounds to suspect from all the circumstances that the individual is connected to a particular crime, and that such a detention is necessary (*R v Mann*, 2004 SCC, at para 45). This means that you need to be a suspect in a specific crime to be detained.

It’s very important to determine whether or not you are detained. You have rights either way, but they are not the same. If it is unclear as to whether or not you are detained, ask the officer. If he or she tells you that you are detained, you can ask what the reason for your detention is.

Section 10(a) of the *Charter* states that you have a right to be informed promptly of the reasons for your detention. Section 10(b) states that you have a right to retain and instruct counsel (a lawyer) without delay and to be informed of that right.

You do not have to answer any of the police's questions, and you can only be detained for a brief period. If you are not detained, you are not a suspect, you do not have to hand over your camera, and you are free to leave (and free not to leave as well).

In general (not just for filming), the police can only stop you in the following circumstances:

1. If they suspect that you have committed an offence.
2. If they actually see you committing an offence.
3. If they have a warrant.
4. If you are driving.
5. If they suspect you are breaking an immigration law.

If a cop asks you to identify yourself for one of these legal reasons, s/he is in “execution of his [her] duty” and by refusing, you may be charged with obstructing justice (*R v Moore*, 1979 1 SCR 195).

Learn How to Handle Police Intimidation

No matter how much you think you have prepared yourself, it can get downright scary when a big cop stands over you with a badge, gun, handcuffs, taser gun and pepper spray, ordering you to hand over your phone or camera. But you need to think of yourself as a journalist. You are there to do a job, even if you are not getting paid for it.

They will usually demand your identification, but they must have reasonable suspicion that you have committed a crime (or are about to) in order to require you to hand over your identification. If they insist on seeing your identification, ask them what crime they suspect you of committing. Recording police is not a crime, so they need to be more specific about an actual law being broken.

Do not seek out direct interaction with the police. If they address you, reply calmly and clearly. Do not shout or curse. Nor should you mumble or speak nervously. You should never provoke a confrontation by deliberately taunting, insulting, or aggravating a cop.

Move slowly and deliberately to avoid a panicked over-reaction by a cop that may compromise your safety and those of others present. Carry yourself with quiet assurance, but do not be aggressively over-confident. Making yourself an easy target for bullying will often invite further police intimidation.

Police officers may try to provoke you into a confrontation with their own taunts, insults, or aggressive behaviour: do not take the bait. Control the situation, and prevent it from escalating, by continuing to address everyone politely and respectfully at all times.

Know when it is time to leave. When the situation has calmed down, you can take the opportunity to talk to other witnesses and exchange contact information. But if there are still police officers on the scene than you might want to avoid drawing their attention and receive harassment over your footage. Therefore, **do not linger**.

You have nothing to prove: you need do everything necessary to stay safe and keep your evidence secure so that it can be seen by the public.

Your Safety

Remember that you have the right to watch the cops. You don't have the right to interfere. **Interfering with a cop might be seen as obstructions and lead to possible arrest or make you the target of police violence.**

When you observe police, remember that you don't want to make the officers more nervous than they already are. Remain visible to them at all times. Keep your hands visible at all times. Pay close attention to the officer (s) if you have to grab your phone out of your inside pocket. Only after you have assessed the situation should you consider to slowly remove your recording device while keeping an eye on the officers. Preferably, you would tell the police officer why you are reaching into your pocket. Don't approach a cop from behind or stand behind them. Don't make any sudden movements or raise your voice to the cop. Don't run to a scene. Walk. Try to keep the situation calm. You don't want to get the person in more trouble nor become a target yourself.

If an officer tells you to step back, tell the officer that you do not want to interfere, you simply wish to observe. You should always try to keep a safe distance of at least 10 feet, and never come within striking distance of a police officer.

Try to be helpful to the citizen being stopped without making her/his situation worse. The goal is to defuse the incidents of harassment and violence, not escalate them. However, do not assist in resisting arrest, assault resisting arrest, and escaping arrest.

Wherever possible, have a friend present when you decide to record community-police interactions. Be mindful that recording may draw the officer's attention to you, thus it is helpful to have a friend witness or record the interaction in the event that you become the subject of a police investigation or charges.

Make sure that you are not carrying anything illegal! No knives, drugs, etc. Do not give police an opportunity to arrest you and press charges on you. In addition, keep your cell phone *clean* - avoid keeping photos, videos or messages which contain illegal or questionable content. While under most circumstances it is unlawful, officers may seize your phone and search the contents.

In Case You Get Arrested

If you are arrested, you must remain calm. Do not get into arguments with the cops because at that point,

you've already lost the battle, so you need to be thinking ahead at how you're going to win the war.

Pay attention to all the cops who are dealing with your arrest and handling your camera. Read their name tags and memorize their names, faces and ranks. Figure out who is the commanding officer. Listen to their conversation, read their body language, pick up on any cues that they are trying to figure out what to charge you with (since there is no law in the books that forbids you from recording in public). You might want to remind them that deleting footage is a crime - destruction of evidence. Or you just may want to remain quiet.

After all, and crucially, **you have a right to remain silent**, and the Supreme Court of Canada is clear about this: “[u]nder the traditional common law rules, absent statutory compulsion, everyone has the right to be silent in the face of police questioning” - (*R v Turcotte*, SCC 50, [2005] 2 SCR 519, at para 41); “[i]n Canada the right of a suspect not to say anything to the police ... is merely the exercise by him of the general right enjoyed in this country by anyone to do whatever one pleases, saying what one pleases or choosing not to say certain things, unless obliged to do otherwise by law. It is because no law says that a suspect, save in certain circumstances, must say any-

thing to the police that we say that he has the right to remain silent, which is a positive way of explaining that there is on his part no legal obligation to do otherwise” (*Rothman v The Queen*, [1981] 1 SCR 640, at page 683).

You do not need to make a statement or make an account to the police of what happened. Many people believe they need to make statement, but above giving your name (and drivers’ license), there is nothing else you need to say before you talk to your lawyer.

According to the Canadian Civil Liberties Association, **you have the following rights when arrested:**

The Canadian Charter of Rights and Freedoms, which is part of Canada’s constitution, sets out the rights that individuals have when they have been arrested.

Will the police tell me why I am under arrest?

- You have the right to be informed promptly of the reason for your arrest. If you are unsure, you should politely ask the police officer why you are being arrested.

Do I have to speak to the police if I am arrested?

- If you are arrested, you have the right to remain silent. This means that you do not have to answer any questions asked by the police.

Can I speak to a lawyer?

- Once you are arrested, you have a right to speak to a lawyer, and the police must advise you of this right as soon as possible. **The police must also tell you about Legal Aid and your right to free legal services.**

If you wish to contact a lawyer, the police must provide you with a telephone. **They must also allow you to make more than one phone call in order to reach a lawyer, if necessary.** The police must also stop questioning you until you have been given an opportunity to contact a lawyer. You have the right to speak to a lawyer in private.

Once you have spoken to your lawyer, the police may continue to ask you questions. You do not have to answer these questions.⁴

⁴ Canadian Civil Liberties Association, “Know your rights: A citizen’s guide to rights when dealing with the police.” (Toronto, ON: Canadian Civil Liberties Association), <http://ccla.org/wordpress/wp-content/uploads/2010/04/Know-Your-Rights-Booklet1.pdf>

If they delete your footage, keep in mind that you can eventually recover it as long as you don't override the deleted footage by recording over it. One program for this is Photo Rec which is free, but a little complicated – see www.cgsecurity.org/wiki/PhotoRec. There are other programs out there as well that are more simple to use, but do not do such a great job in recovering entire video clips.

Disclaimer

This pamphlet contains general information only. It is not a substitute for legal advice and is not intended to replace legal advice from a qualified lawyer. Persons seeking legal advice or guidance with a particular problem should consult with a qualified lawyer.

Phone Apps

The CopWatch app has a very simple purpose, and therefore a very simple interface. The app provides the easiest way to create and upload videos about police-citizen interactions. The app also provides some handy reference material concerning your right to shoot these videos.

The app has four screens, Video, Library, Notes and Settings.

In its default mode, every time the app is opened, it begins capturing video.

Double-tapping on the screen stops the recording of the video and begins to an upload to the NEPV YouTube/Vimeo channel.

You can manually select videos from the Library, edit and upload or others share videos through various means.

The Notes section is holds documents explaining your Right to shoot video of police in public.

On the Settings tab, you can add identifying information should you wish to easily find your videos later on the NEPV web site video channel.

Case Law Cited:

- *R v Fearon*, 2013 ON CA
- *R v Grant*, 2009 SCC
- *R v Gunn* (1997) 113 C.C.C. (3d) 174
- *R v Homer*, [2009] O.J. No. 4924
- *R v LeBlanc*, [2006] NBJ No 514
- *R v Mann*, 2004 SCC
- *R v Moore*, 1979 1 SCR 195
- *Rothman v The Queen*, [1981] 1 SCR 640.

- *Ryan v Victoria (City)* [1999] 1 SCR 201
- *R v Tortolano, Kelly and Cadwell* (1975), 28 CCC (2d) 562 ON CA
- *R v Turcotte*, 2005 SCC 50 (CanLII), 2005 SCC 50, [2005] 2 SCR 519
- *R v Zarakonitis*, 2013 ONCJ 570

Note: if you are interested in reading the decisions of the court cases mentioned, please visit <http://www.canlii.org> (for all cases except for *Homer*). This website can be difficult to navigate, so it might be more useful to enter a section of a quote or key-word from above into its (or even a regular) search engine for more information.

Other Sources:

Ontario Civil Liberties Association (Ontario):
ocla.ca

Canadian Photography Laws (Federal, Provincial, Municipal): ambientlight.ca/laws/the-laws

Berkeley Copwatch Handbook (US):
www.berkeleycopwatch.org/resources/Handbook_06.pdf

Network for Police Monitoring (UK): netpol.org

Photography is Not a Crime (USA):

photographyisnotacrime.com

Coalition Opposed to Police Brutality (Quebec):

cobp.resist.ca

PhotoRec (video recovery software):

www.cgsecurity.org/wiki/PhotoRec

Network for the Elimination of Police Violence

www.nepv.org