

NOTES ON INDYMEDIA AND THE LAW

How independent media, including videographers, can support activists in the legal system

Video footage can be very helpful if activists are arrested and brought to trial. Such footage can be admissible in court if:

1. It is *relevant* – there must be a relationship between what is shown in the video and the facts in issue before the court.
2. It is *accurate* in truly representing the facts – the footage must be an accurate reproduction, agreeing with reality, including light, sound, space and time. Footage must be free of distortion and misrepresentation so that the physical facts which are at issue are not affected.
Imagine a video of a car accident: if the colour of the car is important, black and white footage is useless, but if the issue is timing then black and white is fine, although a sped-up or slow-motion film would be useless, and therefore inadmissible.
3. It is *fair* and there is no intention to mislead – this basically means that the footage is not falsified or fabricated. The big issues here are editing, retouching (of photos), or other similar methods which change the representation of the events. (Note also that this requirement generally means that the entire video or whole roll of film goes into evidence – be mindful not to mix footage you would never want to be seen in court with footage that could be helpful to activists in court.)
The way to deal with this issue is to ensure *continuity of possession*. This means that the ‘chain of custody’ of a particular tape should be known and should demonstrate that there has been no editing or other tampering. See the next point:
4. It is *verified under oath* by a person capable of doing so – evidence like videotape cannot just show up in court on its own. The lawyer can’t just pop it into a VCR and press play; you need a human being to take the stand and testify as to how and when the footage was shot, where it’s been since, and swear that it is footage of what you are claiming it is (whether what they saw then fits with what we see now on the footage in court). Obviously, the best person to do this is the videographer, but it can also be another person present at the scene when the footage was recorded or an expert witness (this usually applies more to automatic cameras, like security tapes, or specialized footage, like medical photos or X-rays).

Legal concerns as independent media and activists

Familiarize yourself with the basics on search and seizure law using the materials on the Québec City Legal Collective’s web site: www.quebeclegal.org. Click on the Legal Workshop and Offence/Defence Literature sections. If the police ask about your video equipment and why you’re filming, it is up to you to decide whether and how to answer, but do not lie. Do not consent to any search.

Generally, there are special processes which apply to search and seizure of the media, as a result of the guarantee of ‘freedom of the press’ in the *Canadian Charter of Rights and Freedoms*. What this means is that getting a search warrant to search a media office is harder for the police than a regular search warrant.

This does not mean that an independent media person who is arrested will be treated differently from other arrested persons in terms of search and seizure. You may wish to give up your right to remain silent and explain that you are an independent media worker and that you are not consenting to the seizure of your footage. It is very likely that your footage will be seized and/or viewed however. Seized footage can and will be passed on to Crown Attorneys (the prosecutors), who should in turn disclose it to defence lawyers. Whether/when you get seized items back (including equipment) will depend on a number of factors, and will most likely require the assistance of a lawyer.

Video activists have the right to film in public areas – there is no general right to privacy in Canadian law. There are restrictions on what you can do with the resulting images, especially if you use images for commercial use (i.e. to make \$) without the consent of the people pictured.

Video activists have the right to film police, as long as they do not interfere with the officers’ activities by getting in the way. While the corporate media worker is likely free from the risk of arrest, indymedia folks may be targeted – work together and support each other to approach these issues.