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## Talking to the media

*Debrief of introduction media role-play.* A good reason for working out answers in advance is that what we say to the press can be used in court against people who are arrested. Even if you yourself are prepared to accept the consequences of whatever you say, you may be changing the fate of others. We should be particularly careful about questions which imply that we believe we're doing something wrong, or that we're acting with ill-will or carelessness.

## Solidarity

Solidarity is taking care of each other and ourselves through group decision making. Solidarity is our power to act collectively and support people at high risk of abuse, harassment or targeting by the state. Solidarity is recognizing that activists are not unique in facing state oppression and working with other prisoners and detainees. Through solidarity we draw power from institutions designed to alienate and oppress us.

Legal solidarity is used when in contact, or potentially in contact with the legal system. Jails and courts are designed to make people feel powerless, but through Solidarity we can gain more control over what happens to us. One of the ways this is done is by making decisions as a group, acting in unity with each other, and committing ourselves to safeguard each other. Legal Solidarity has been used effectively for decades in the civil rights, peace, environmental, anti-corporate, and other movements to make protests more effective and to protect activists who were arrested.

Solidarity involves a broad range of behaviours and tactics to take care of each other and support one another using group decision making. Be aware of the time that may be involved after a mass demonstration, keep legal collectives active all of the time. Solidarity means having community support for individuals on an ongoing basis.

### Before arrest

Identify one person within your affinity groups that can act as a legal liaison. This person will have the role of be in ongoing communication with the legal team, inquiring of arrests, and the key individual to facilitate legal support within the group. Have an emergency contact prepared so that in the case of arrest that person can inform others and take care of any logistics for you such as calling your place of employment, or watering your plants.

- Discuss possible actions that your affinity group may be taking. Identify the levels of risks prior to the action. However also be prepared for the unexpected as things can change quickly.
- Also practice scenarios of arrest with your affinity group and be prepared and knowledgeable of the consequences. It is also useful to discuss non-cooperation tactics that your group may want to use in the case of arrest such as leaving identification with the point person, passive resistance etc.
- Identify the vulnerable persons within your affinity group and identify the ways that these individuals can be supported.
- Have the number of the legal collective and a lawyer written on your body in permanent marker.
- Have a plan for how your affinity group will re-group in the case of an arrest.

### During arrest

Focus on your external environment. Be alert and aware of what is happening around you. Have ways to support those who are being arrested, stay grounded, and help others to stay grounded as well. Take lots of photos and write down everything if this is possible. Remind individuals of their rights.

### After arrest

Contact the legal team as soon as this is possible, report that the arrest has taken place. Write down all of the information regarding the arrest such as time, circumstances, police badge numbers, charge, location etc.

### Before detention

Think about the environment that you may encounter during detention and what you may need such as medicine, who you need to contact, or things that need to be done. Remain calm and try to remember as many details as possible.

### During Detention

It is important to communicate with others who are detained with you for support. Once again it is crucial to identify vulnerable persons within the larger group and find ways that they can be protected from further oppression. Use consensus decision making to decide what tactics will be utilized in the jail setting. This means deciding if everyone will use non-cooperation tactics such as refusing to give identification, passive resistance, hunger strikes etc or other tactics. When discussing these options it is good to examine what the goals or strategy behind the tactics are. **IMPORTANT:** Do not pressure others in to using these tactics as many individuals have different reasons for not using them. Make decisions that protect and include everyone.

- For those who are not arrested it is important to do follow up on the arrest by providing additional information. It also means providing moral support for those who have been detained. This also means talking with your affinity group about who can stay for a longer period of time.

### After detention

**Relief Debrief.** It is important to talk about the experiences that took place in jail as they can be very traumatic. It is also important to debrief the whole demonstration even if there were no arrests. Be available to support others when they are released. Encourage ongoing discussions within your local communities. (see <http://www.ocap.ca/legalguide/posttraumalegal.htm> for information on post-traumatic stress disorder)

### Court solidarity

Going through the legal system can take a long, long period of time, particularly if you decide to plead guilty. It is crucial to support one another, even when it is months after the demonstration. Again it is important to develop solidarity mechanisms for the everyday and in every community. This may involve holding solidarity actions, raising money or awareness, keeping tabs on who is in the system, attending trials, sending messages of support, and writing articles for the media. Do not let anyone feel alone after they participated in a collective struggle.

Support the many individuals and groups targeted by police brutality. Work to organise consciousness-raising campaigns on laws that criminalize immigrants and political dissidents. Create broad based communities of resistance.

### Be proactive

Attend legal trainings in advance so you that you are well prepared assert yourself, and confidently know your rights and boundaries. Attend facilitating, consensus/group decision making, and anti-oppression workshops. Have a legal point person within your affinity groups, practice possible scenarios with others who are planning to go. Know how you react under stress, or fatigue. Know the laws and how they impact you everyday. Think about how the law is racist, sexist, and classist. Identify who are the most common targets of criminalization, examine and discuss this in your own communities. Organize cop watches, police monitoring groups, legal collectives, create rights information, be in solidarity. Know the laws of the country, province, or state that you are in.

### Consensus

Consensus is a process for group decision-making, in which an entire group of people can come to an agreement. Consensus is a vital part of solidarity, particularly in cases where the decisions of the group could put individuals at risk of physical violence or long term detention. The input and ideas of all are shared so that a decision can be made that is acceptable to all. Discussions continue until a resolution that works for all is decided. Consensus is more democratic and safer than majority rule, especially in high risk situations where the group is making a decision that will likely effect every person individually, especially if some people are at higher risk because of race, immigration status, sexual orientation or other reasons.

### Vulnerable Persons

We must be ready to use solidarity tactics to protect people with vulnerabilities. These people are likely to be given extra charges when arrested, be separated in jail, and be prosecuted more harshly in court.

Some examples of vulnerable persons include:

- non-Canadian citizens/immigrants/refugees
- people of colour
- visibly gay/lesbian/bi/pan/queer people
- transsexual/transgendered/genderqueer/intersexed people
- people with visible or invisible physical disabilities
- parents
- minors
- Muslims, Sikhs and other people who practice non-western religions
- people with criminal records
- people out on bail/probation/parole
- people with AIDS or HIV
- psych survivors and people with mental health issues
- people wearing all black or bright yellow/orange
- people wearing face masks and gas masks
- known leaders/organizers
- people who speak with accents
- punks
- people who lock down, have catapults, do visibly illegal and/or hardass things

### Vulnerable times

- When a crowd of individuals are dispersing and moving away from the area of intense activity
- The end of a demonstration is one of the most vulnerable times. Always leave in groups because this is the most vulnerable time for arrests. Have a pre-defined meeting place where you can find the others in your group if you lose one another.
- If you are in a crowd that is being dispersed involuntarily by the police, it is important to leave in larger groups so that you will have witnesses and support. Some tactics used by police are pepper spray, tear gas, water bombers etc.
- Always have a “buddy system” in place. Always be aware of where that individual is and how they are doing at all times.
- Be aware of what you are saying at all times. There may be undercover police officers amidst the crowd. Do not try to expose an undercover police officer yourself by shouting and pointing at him or her. You may be charged with obstruction of justice. However it is important to discreetly inform others around you, so they are aware of this. Take photos and document their identification.

**Remember: solidarity is a philosophy and an approach, not a set of tactics.**

## **Rights and Freedoms**

The following is quoted from the Charter:

*1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.*

*2. Everyone has the following fundamental freedoms:*

- a) freedom of conscience and religion;*
- b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;*
- c) freedom of peaceful assembly; and*
- d) freedom of association.*

7. *Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.*
8. *Everyone has the right to be secure against unreasonable search or seizure.*
9. *Everyone has the right not to be arbitrarily detained or imprisoned.*
15. (1) *Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability or sexual orientation.*

The law impacts us everyday. There are communities and individuals that face harassment and discrimination on a daily basis in the form of police brutality, and criminalization. As activists it is important to think of legal rights not only in a protest situation but everyday. The criminalization and recriminalization of dissent is a way that the law is used to instil fear in individuals and to decrease participation.

Obviously, there is a difference between our rights in theory and our rights in practice - it is up to you decide when and how you wish to assert and exercise your rights. It is a reality of the system we live under that those who are the most oppressed outside the legal system are also oppressed within the system, and there are no easy answers as to how to mitigate that oppression in the existing model (that is why we advocate revolution...). In general, when interacting with police or other agents of the state, it can be useful to assert your rights when you feel they are being violated, but fighting or arguing with them is often pointless and may make you the target of greater oppression. Sometimes the best time to fight the violations of rights is afterwards in the courtroom, or in the court of public opinion.

## **Speaking to Police**

Many demonstrators have a rule that they do not say anything to the police. The police may try to use the “good cop/bad cop” routine. They make promises that are not binding. They may tell you lies to intimidate you. Stay calm. Remember you have the right to remain silent.

Police are under obligation to identify themselves, at least by giving you their name and badge number. Do NOT hesitate to ask them to identify themselves, and write down their name and number (or try to memorize it, if you cannot write it).

In general, you are under no obligation to speak to police officers or to answer their questions. (certain exceptions, such as when driving...) ask if you are under arrest, if not, make it clear you wish to leave, try to walk away.

You have the right not to be arbitrarily detained or imprisoned.

You have the right to remain silent.

Remember: it is probably better to say nothing than to lie to the police —lying can lead to charges of obstruction. The police are trained professionals and have many techniques for gathering information that may not be obvious to you—any information you give them can and will be used against you (both in court and outside of court)—even seemingly unimportant comments help them to make connections between people and groups in our movements, or to become more familiar with our modes of communication. Even if, for whatever reason, you decide to talk to the police, **DO NOT TALK TO THE POLICE ABOUT OTHERS** —let other people decide if they want to share information about themselves with the police.

## **Identification**

There is no obligation to carry or show identification in Canada, EXCEPT:

- if you are driving a motor vehicle—must show your licence, insurance, registration. Passengers do not need to identify themselves

- if you have committed a by-law infraction or other ticketable offence, you are under obligation to identify yourself —refusal can lead to charges of obstruction and/or failure to identify and you can be arrested or detained until you identify yourself
- if you are in a location not accessible to minors (bar, restricted movie, etc...) you may have to show proof of age.

### Protecting your identity

There may be undercover police officers mixed in with the crowd and they often go unnoticed. Their main objective is to identify demonstrators, activists, organizers and speakers. It is important within your affinity groups to use pseudonyms with in a demo situation.

You can choose to wear a mask or other headgear to protect your identity. However there are some drawbacks to this. The first is that it is a criminal offence to be masked or disguised with, “the intent to commit a crime”. This may give police an excuse to target you even though you are not intending to commit a crime. Secondly, other protestors may be intimidated by you wearing a mask.

After an arrest you might decide not to identify yourself. Or you may decide to identify yourself but not to provide your home or work place address. There can be very practical reasons why you would not wish the police to have this information. If you refuse to provide this type of information then you will likely be held for a bail hearing in the court. **YOU SHOULD REMAIN SILENT. AND REQUEST TO SPEAK TO YOUR LAWYER IMMEDIATELY.**

Discuss with your affinity group and think about it for yourself, how you want to protect your identity.

## **Search and Seizure**

The police do not have the right to search you or take your stuff unless:

- you are under arrest
- they have a search warrant
- they have reasonable grounds to believe you have an illegal weapon or narcotics in your possession (the way you look, talk or dress and the company you keep are NOT reasonable grounds for a search).

Always refuse to give consent to a search —make it clear to the police and to any witnesses that you are refusing —if the police believe they have the right to search you, they will do it anyway, but your refusal may make anything they find inadmissible and may allow you to pursue sanctions against the officers for illegal search and seizure. Although you should always refuse a search (even if you think it might be lawful), it is rarely a good idea to physically resist a search. You technically have the right to defend yourself against unlawful searches, but police have the right to use necessary force to make you comply with a search if they have reasonable grounds to believe it is lawful. It is usually safer to let the police search you and then fight about this in court.

### Strip searches

In December 2001, the Supreme Court of Canada ruled that the police may not routinely strip-search people under arrest. The court ruled that, before such a "dehumanizing" intrusion may occur, the police need reasonable grounds to believe that a strip search will uncover weapons or evidence of the offence occasioning the arrest. The Court defined a strip- search as any removal of clothing such that a persons genitals or buttocks, or, in the case of females, breasts, are unveiled. This decision was made in the R. v. Golden trial. Remember this precedent and use it!! (For further information see Canadian Civil Liberties Association- [www.ccla.org](http://www.ccla.org)).

If you are strip searched, you have the right to be searched by the officer of the same sex, and in relative privacy. Strip searches should not be used as a form of intimidation or punishment.

In particular when it comes strip-searches, you have the right to be searched by an officer of the same sex, and in relative privacy. Strip searches should not be used as a form of intimidation or punishment.

## Arrest and detention

The police can arrest if:

- they have a warrant for your arrest or are aware that a warrant for your arrest is outstanding
- they have "reasonable grounds to believe" that you have committed an indictable offence

10. *Everyone has the right on arrest or detention*

*a) to be informed promptly of the reasons therefor;*

*b) to retain and instruct counsel without delay and to be informed of that right; and*

*c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.*

This right includes, according to the courts, the right to be informed of the availability of free duty counsel and to be allowed telephone calls in private to your own lawyer or duty counsel. Even though duty counsel is available, you have the right to talk to the lawyer of your choice. You also have the right to be informed that you have a right to remain silent and that anything you say may be taken down and used in evidence against you.

## Silence

### Magical words to Remember

I HAVE THE RIGHT TO REMAIN SILENT. And request to speak to a lawyer immediately.

DO NOT WAIVER.

DO NOT SIGN ANY DECLARATIONS.

DO NOT DISCUSS ANYTHING ABOUT YOUR CASE.

DO NOT EVEN DISCUSS AN ALIBI.

Choosing to exercise your right to remain silent will NOT be held against you by the court, although the police might try to convince you otherwise...

The police are trained professionals have many little tricks to try to make you talk. You have to insist that you do not wish to discuss anything about the charges. Moreover you will be unwise to get into discussions about other things. Don't assume that casual discussions are not a way to gather information about you or the charges. **IN THE CELLS DO NOT DISCUSS YOUR CASE WITH ANYONE.** Also, don't ask other people about their cases, and remind them not to talk if they start to tell you things you don't need to know. The police plant themselves in the cells posing as prisoners or they get other prisoners who are seeking some benefit for themselves to act as informers —Canadian courts have a long history of accepting testimony from such informants.

## Youth and the law

In Canada, the Young Offenders Act sets out how the criminal law applies to people between 12 and 17. The YOA applies to all federal offences – the Criminal Code, drug laws and offences under immigration law. Young people are charged with the same offences as adults, but the procedures and consequences are different. The YOA does not apply to provincial laws, like by-laws or traffic offences.

To be considered a young person under the YOA, you must be under 18 on the day of the alleged offence. If you turned 18 that day, you are not covered by the YOA. However, if you turn 18 after you are charged but before trial, you remain in youth court. People under the age of 12 cannot be charged with criminal offences at all.

One of the main goals of the YOA is to keep young people separate from adults in the courts and jails.

That means:

- Young people are supposed to be held separately from adults in detention centers and jails.
- Young people normally go to a youth court, right from the bail hearing to trial. People between the ages of 14 and 17 can be transferred to adult court if they are charged with serious indictable offences. 16 and 17 years olds charged with extremely serious offences will transferred automatically.

### In arrest situations

Under the YOA, police are supposed to treat young people somewhat differently than adults in arrest or detention situations. If you are a young person, the police are supposed to tell you:

- that you do not have to answer questions or give a statement
- that any statements may be used against you in court
- that you have the right to contact and get advice from a lawyer and a parent or other adult relative, and that you have the right to have one or both present if you do decide to answer questions

If you choose to give up these rights, you must do so in writing.

When a young person is charged with an offence or taken into custody, the parents will be notified in writing by the police. If the parents cannot be located, another adult relative will be contacted. The notice will include the charge and the court date. Although parents do not ordinarily have to come to court, the court can order them to do so if it is in the young person's 'best interest.'

The laws on bail which apply to adults also apply to young people, although the bail hearing will most likely take place in a youth court. Again, parents do not necessarily have to come to court. However, if a young person would not be released under the ordinary Criminal Code provisions (meaning that they have been denied bail after a hearing), the court can order that they be released into the care of an adult or other responsible adult, if the young person agrees.

The YOA states that every young person has a right to a lawyer and allows the court to order one to be appointed if the young person cannot get one on their own. The lawyer is supposed to be independent of your parents.

### Youth court records

Contrary to popular belief, a youth court record is not automatically destroyed at the age of 18. Your record will be destroyed after a specific amount of time, depending on the type of offence and what the outcome of the charges was:

- a. For less serious offences, where the disposition was other than a discharge, your record will remain for 3 years from the end of the disposition.
- b. For more serious offences, your record will be kept for 5 years from the end of your disposition.
- c. After the period of time specified, the record will be destroyed unless you commit another offence during that period. Then the time will start running again based on the new offence.

For more on youth and the law in Canada see [www.jfcy.org](http://www.jfcy.org).

## **The BIG BAD BILLS (C-35, C-36)**

### C-36

#### WHAT IS A TERRORIST ACTIVITY? WHO IS A TERRORIST?

It is important to read as much information as you can on these bills. There are lengthy analyses available that cannot be included in this information booklet.

However be aware that this bill allows for the further oppression of immigrant communities and all people of color. It also has the ability to define what is terrorist activity and with any definitions they are left open to broad interpretations.

Terrorist activity will be defined in the Criminal Code as: "an action that is taken or threatened for political, religious or ideological purposes and threatens the public or national security by killing, seriously harming or endangering a person, causing substantial property damage that is likely to seriously harm people or by interfering with or disrupting an essential service facility or system, whether public or private, other than as a result of lawful advocacy, protest, dissent or stoppage of work."(4)

Rather than focusing only on specific acts of terrorism, the government has adopted a generalized approach that is far-reaching and unwieldy.

The definition in Bill C-36 has three main elements

- an act or omission committed inside or outside Canada for political, religious or ideological purposes or cause AND
- with an intention to either: intimidate the public with regard to security, including its economic security, or to compel a person, government or national or international organization to do or refrain from doing any act AND
- with an intent to do ONE of the following:
  1. cause death or serious bodily harm,
  2. endanger life,
  3. cause a serious risk to the health or safety of the public,
  4. cause serious public or private property damage when that is also likely to disrupt an essential service, facility or system, or to disrupt an essential service intending to cause a serious risk to the health or safety of the public OR
  5. cause serious interference with, or serious disruption of, an essential service, facility or system EXCEPT as a result of lawful advocacy, protest, dissent or stoppage of work not intended to cause death or serious bodily harm, endanger a person's life or be a serious risk to the public's health or safety.

None of the key terms are defined in the Bill. What is the meaning of: a "political purpose," a "serious risk to health or safety," "serious interference," an "essential service, facility or system"? These and other terms in this section are open to differing interpretations. The Supreme Court of Canada, for example, has defined "serious bodily harm" as any hurt or injury, whether physical or psychological, that interferes in a substantial way with a person's physical or psychological well-being, health or integrity. This might include a bad scare. The ordinary meaning of the term "serious bodily harm" is more restrictive. (5)

The bill also creates new criminal offences of knowingly harbouring a terrorist; or participating in, facilitating, contributing to or instructing terrorist acts; or knowingly collecting or giving funds, either directly or indirectly, to terrorist organizations (Sections 83.18-83.27). A person may be convicted of an offence even without knowing the particulars of the terrorist act he or she has advanced. Penalties range from up to 10 to 14 years, to life imprisonment for instructing or committing a terrorist offence. Sentences imposed for each of the terrorism offences would be served consecutively, and the offender would be ineligible for parole for half of the sentence imposed. (6)

Bill C-35

While this bill has not yet become law, it is important to outline the overall content of this Bill and examine how it could impact activists within an action.

Overall this bill is meant to expand the definition of internationally protected persons. Bill C-35 defines internationally protected persons as, "representatives of a foreign state that is a member of or participates in an international organization. This definition is taken from the UN convention that grants diplomatic immunity but expands the definition to include foreign representatives attending meetings of any kind i.e) The G-8. The most important consequences of this bill is that it is cross-referenced with Bill C-36 to classify those actions taken against those protected persons to now be defined as terrorist activity. Bill C-35 outlines the nature of offences as being on the premises, private accommodation, or means of transport of an internationally protected person that is likely to endanger the life or liberty of that person. Then with Bill C-36 these actions taken against such a person are now defined as terrorism.

It may have been an offence prior to this bill to for example, blockade a road but now the seriousness of the offence is seen as terrorism and the consequences of that means up to 14 years in prison.

Once again this is the very basic information of this bill and it is important to read additional information.

## Observation

Here are some ideas and items that will help you to observe what is happening during the demonstration and to be recording as much information as possible.

### Paper And Pen

Use them to write down the names of arrested persons and their phone numbers, their friends phone numbers, their condition before they disappeared from the scene, the words spoken by police during their arrest, their words, the number of the car or wagon they are put into, etc., badge numbers and or descriptions of police involved in the arrest;

- write down police badge numbers (of those that are aggressive, those who make arrests or are just on the scene, since sometimes there may be testimony from police who were not in fact at the scene at all. Of course, photographs and sound recordings are also useful;
- record significant conversations;
- record licence plates of vehicles (and/or squad car numbers if police vehicles) and the description and location of vehicles.

You must anticipate, because once the action starts you will not necessarily have time to get enough down. As soon as possible after an incident or arrest (whether your own arrest or someone else's) —sit down and write out everything you remember about the incident—particularly details like times, locations, movements, statements or conversations, etc —you will be surprised how quickly you can forget details, and the trial may not be for another year or two.

### Cameras

There is no general right to privacy in Canada. You can take any person's picture without his or her permission. The camera is a powerful weapon. At rallies and demonstrations, etc. they are essential. Use them to:

- provide some deterrence to police brutality. The sound of shutters clicking in those tense moments sometimes can prevent the police from doing things which they might otherwise do;
- take pictures of the licence plates that you want to record;
- take pictures of the police, both plain clothes, "old clothes", and uniformed. Later witnesses may want to identify the officer who did the dirty deed;
- take pictures of those you only suspect are police. They may show up later in more interesting circumstances;
- take pictures of those who seem to be provocateurs;
- take pictures of any "incident", including arrests. These can be useful in the press and in court;
- get shots of the general lay out. This helps in court too.

Remember that cameras have a tendency to fall out of hands when they are capturing scenes that are damaging to the public image of the police. Often one finds that one obtains an excellent picture of a policeman's palm print rather than the scene one tried to photograph. However, when there are many cameras it is possible to get pictures of these "accidents" where cameras are destroyed or of the police officer posing his palm for a photograph.

Bring enough film! Preserving the photographic evidence for the court is critical. The main problem is that of "continuity". This means that in the court it is necessary to show a continuous chain of possession of the film, negatives and prints. This must be done to counter any suggestion that these items have been tampered with. It is necessary to have the negatives so that it can be established that the prints are in fact derived from the negatives etc. Also, it must be shown that the prints made were not selected to avoid the more damaging evidence (or to provide only the damaging evidence).

**Lawyer's Phone Number: Written in permanent marker somewhere on your body.**

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 Quebec City Legal Collective’s web site: [www.quebeclegal.org](http://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.

## Legal Observers

### General Definition

The goal of legal observers is to give people the most freedom to protest with the fewest possible legal consequences.

The observer collects information on incidents, arrests, misconduct of the forces of order, in order to become a credible witness in the case of a potential criminal court case. Nevertheless, the primary advantage of legal observers' presence in a protest is that the mere fact of their presence tends to reduce the probability of police abuses, or, at the very least, to enable arrests to be conducted in a less violent way.

The observer needs to adapt to the circumstances of each protest. In a case where police officers allow observers to talk with people who have been arrested, the observer may inform protesters of their rights – among others the right to remain silent. Otherwise, in the event that the protest became violent, and that there were mass arrests, the job of the observer becomes much more difficult and the risk of herself becoming arrested increases. It is possible also that the observer cannot take down specific information, but manages only to make a general statement of what happened.

The observer is not there to control the crowd, or to be the media spokesperson of any group. She may not disrupt the arrest procedure. Make clear to the media and/or the police that you are not a representative of the protesters, and that you do not want to speak in their name.

The observer must have rudimentary knowledge of the accusations which may potentially be leveled at protesters, and of the procedure which occurs when someone is arrested.

### Objectivity of the Observer

The observer must stay removed from the disorders, except when this becomes impossible; nevertheless she must remain close enough to collect information efficiently. The observer can be called upon to testify in court, in the cases of those who have been arrested. The material she accumulates is for the defense of the protesters; information which needs to be collected is that which will serve for the defense of protesters -- not incriminate them.

### Rights of the Observer?

The observer has the same rights as any demonstrator (but not more!). In the case of mass arrests, she is therefore just as liable to be arrested as demonstrators. Her notes can be confiscated, hence the importance of putting information in a safe place as soon as possible. In this respect, it is important to know one's rights well, and their limits.

Nevertheless, it must be noted that if there are accusations of illegal assembly, the observer *may* be able to prove that she did not belong to the common goal of the demonstration.

### Interaction with the Police

Except in order to obtain their name or badge number, avoid interacting with the police, either verbally or via sign-language.

If the observer *must* interact with the police, she should keep in mind these guidelines:

- \_ keep hands visible to police officer
- \_ avoid sudden movements
- \_ don't go behind officer
- \_ don't touch police equipment (car, flashlight, animals, etc.)

Also, make note of what was discussed between them.

### Collection of the Information

The observer must take notes on the general situation of an event as well as certain details pertinent to a violation of rights and liberties.

In order to convey a general portrait of any given situation, it is important to note the following:

### The Event

- The goal of the event
- the place and the start time.
- the number of people present
- the attitude of the participants.

### The Forces of Order

- The number of visible police officers
- their role (traffic control, identification cameramen, riot squad, etc.)
- their attitude
- are they wearing their identification badge?

### Incidents

- Get closer to incidents, while keeping sufficient distance to have a global view of the situation.
- Become familiar with [witness forms], so that you understand what needs to be taken into account and in order to be able to fill them out more quickly.

### Note

- time of the start of the incident
- number(s) of the police officer(s) (name and badge number – if these are unavailable, describe her physically – see witness sheet).
- what *type* of officer are present (municipal, provincial, federal) and approximately how many.
- who is commanding the operations
- what warnings are given, who is giving them, what she is saying, how many times they are repeated
- what is the protesters' reaction to them
- what parts of the city are blocked (streets and times)
- what media are present, if any, & how they are treated.
- what arrest methods are used (encirclement, individual interpolation, etc.)
- describe protester behaviour during the arrest
- record the number of protesters and policewomen, as well as their behaviour.
- Using a recorder can be more efficient than manual note-taking  
NB: to record someone, it is *not* necessary to ask their permission; the apparatus must simply be clearly visible to the person being recorded. (Have spare batteries)
- write down at which point the observer used binoculars or other instruments (to add credibility to the testimony)
- gather objects which could serve as evidence, such as rubber bullets, piece or shard of wood, gas can and conserve in *ziploc* bags. Pick up evidence with gloves or tissue paper, label bags, with date & time of pick-up.
- return to the site in order to complete notes while the incident is still fresh in your head.
- reread notes after the demo to be certain that they are understandable and that they will be clear even after several weeks or months, because it can be several months before the case is heard.

One has to remember the facts clearly.

### Material Preparation

Have on you the following documents:

- authorisation (if relevant)
- copies of witness forms
- identity card
- notebook and pens [crayons]-
- *ziploc* bags

Dress code - Very Optional -

- \_ clothing identifying you as an observer: [dossard], armband, or the cap which all observers wear
- \_ be dressed conservatively, to pass unnoticed and avoid provocation
- \_ raincoat (also effective for protection against gases)
- \_ coins to make phone call
- \_ telephone number of the Legal Committee [Collective?]

Useful stuff

- \_ binoculars
- \_ flashlight
- \_ first aid material

Witnessing an Incident

If you do not know the answer to any question on the incident form [?], leave that box blank.

Do not attempt to guess the answer. One single false statement can ruin the entire report, because it is in general taken for granted that if one answer is incorrect, they could all be.

Use of Photos and Videocameras

Pictures can be used in court to prove certain facts, and identify those responsible for abuses of power.

Taking pictures can discourage the police from acts which they might otherwise commit.

There is in Canada no general right to private life [?]. You may take pictures of anyone in a public place without her permission. Be visible however.

Always remember that if video footage in favour of demonstrators is to be taken as evidence before a judge, it cannot have undergone *any editing*. Therefore, it may be preferable under certain circumstances *not* to document...

Careful! The visual proofs you are collecting will not necessarily please everyone.. It is very probable that several protesters may be hostile to your presence: do not take this personally!

Announce your intention to film; in case of doubt, ask permission.

Camera equipment is fragile and, in these cases, liable to be 'accidentally' hooked onto... You may end up with many pictures obscured by the palm of a policeperson's hand...

Advice

- \_ be sure the camera is *in focus*
- \_ film the *streetnames* at the very beginning.
- \_ get closer and be visible when taking pictures
- \_ agree with the other photo or videocamera observers who are with you, so that one person is recording the general scene while the others cover from *another, closer point of view*.
- \_ regularly say what *time* it is.
- \_ take down the names or nicknames of the witnesses in order to be able to contact them to gather their version of the facts.
- \_ do not waste time trying to film helicopters
- \_ change tapes when you are filming police brutality [?]
- \_ Anticipate what is going to happen. Try to estimate when the police are going to act. Generally speaking, they regroup and do not act spontaneously.

Technical Advice for Cameras

- \_ Check batteries regularly
- \_ Let tape roll one minute before starting to film
- \_ be assured that the *date and time* on the camera are *correct*. If they are not on the image, say them regularly: for example, "Quebec City, it is April 20, 2001, 6:03 PM..."
- \_ Remember to record the *sound* while filming.
- \_ Label tapes with date, time, place, and your name. Do this immediately - don't wait and forget!
- \_ Have stamped envelopes (SASE's) in order to be able to mail yourself tapes, rolls of film.
- \_ Take a lot of film, videotapes and spare batteries...!!

### Capture

- license plates
- policepeople dressed as civilians and in uniform. This could be used to identify those who abused their power.
- people whom you think could be police officers. You might see them again under different circumstances.
- people who seem like they might be ‘professional’ agitators
- any incident, including arrests
- places, events in general.

### From a Legal Point of View

- Always remember that Crown lawyers may ask to have access to everything that was filmed on the tape, or to all photographs (with negatives).
- For a document to be usable in court the document’s author must be known, in order to identify the pictures.
- Ideally, one should film continuously in order to follow the series of events clearly. This enables the real people responsible for it to be identified.
- Therefore, first film the scene in general, identify the place, then film the incidents.
- In court, in order that visual proofs be taken into account, one has to demonstrate ‘continuity’. That’s to say that the person in possession of the ‘proofs’ (negatives, original videotape) between the moment they were taken and the time of the hearing did not falsify them.

### In the Event that an Observer Decides to leave her functions

It is possible for the observer to quit her functions, because she no longer feels safe in a situation or because she decides to commit an act outside of her functions as observer (for example, helping a protester). In this case,

- remove observer [dossard]
- hand in your notes to another observer in order not to lose the information

### Safety of the Observer

If you know you are going to observe an event which is likely to involve serious police muscle, the following advice could be useful. They are taken from the [www.action-medical.net](http://www.action-medical.net) website.

[www.montrealmedical.n3.net](http://www.montrealmedical.n3.net) is also a good source of safety and first aid tips:

- badminton or carpentry glasses can help protect eyes from projectiles. Diving goggles create suction which can help protect against gases.
- eat and drink well before a protest.
- have on you enough water so as not to become dehydrated – *i.e.* a lot!
- wear a hat or cap to protect from the sun
- Detergent causes the chemical products used by the police to adhere to clothing. It is therefore advisable to wash clothing with detergent-free soap.
- Natural oils trap chemical products close to the skin. It is important to wash before going to a protest, preferably with detergent-free soap. Avoid applying hydrating lotions, makeup, sun-creme (except water-based sun-creme), Vaseline, mineral oils or any other substance.
- Do not wear contact lenses. Chemical irritants get trapped between the lens and the eye and can cause permanent damage to eyes.
- Cover your body as much as possible. Wearing clothes that have an elastic waist, wrist, ankles and collar can help prevent chemical irritants from spreading across the entire skin. Waterproof materials (avoid Gore-tex) are preferable to natural fabrics or petrol-based ones.
- In the absence of a gas-mask, a scarf soaked in apple cider vinegar offers the respiratory system effective protection. A scarf soaked in water or lemon juice is also more effective than a dry scarf.

## What to Leave Behind

Even the innocent are arrested (and arrest includes the right to search) so:

- leave any illegal drugs behind;
- remember what might be construed to be a weapon ;
- make your decision on what I.D. to leave behind (if not all);

leave behind your address books and any other papers that you don't want the police to see. There is no need to help them complete their charts on who is connected with whom.

## Common Charges

- **Assault** —This offence involves any application of force on another person without their consent —mere touching is enough. It also includes attempting or threatening by acts or gestures to apply force to another person.
- **Assault Police** —This is an assault on a peace officer. The maximum penalties are the same as for assault, but sentencing tends to be higher.
- **Assault by Trespass** —Resisting the lawful use of force to eject you from private property.
- **Resisting Arrest** —Going limp is not resisting. Refusing to unlock is not resisting. Holding onto a pole or struggling against arrest is resisting. Locking down when the officer has placed you under arrest is resisting. As a general rule, anything you do more than you would do if you were unconscious that is not cooperating with the arresting officer is probably resisting arrest.
- **Assault to resist arrest** —The arrest may be your own or that of someone else. The arrest must be legal for this charge to be made out. However, this is also a hard one to beat, since the courts tend to lean over backwards to declare an arrest to be legal. One is allowed to use "reasonable force" to resist an illegal arrest of oneself. Certainly you have a right to assist someone where the police are using excessive force. The problem is convincing the courts that excessive force was being used.
- **Obstruct Police** —Anything you do to interfere with an officer in the lawful execution of their duty. This could include laying down in front of a police car or getting in the way of an arrest. You could also be charged with this offence if you uncover an undercover officer.
- **Mischief to property** —To be convicted of this offence you must wilfully destroy or damage property or render property dangerous, useless, inoperative or ineffective or obstruct, interrupt or interfere with the lawful use enjoyment or operation of property etc. This would include spraypainting or chaining doors shut, as well as blockading entrances, etc...
- **Breach of the Peace** —This gives the police the right to arrest you to prevent a breach of the peace but isn't a charge in itself. There is no record of the charge. They will usually release you soon after the event or action, and in any case within 24 hours. Sometimes you will simply be dropped off in the suburbs and left to make your own way back to town.
- **Causing a disturbance** —You have to do this in or near a public place and not be in a dwelling house. You can do it by fighting, screaming, shouting, swearing, singing (presumably the wrong songs) or using insulting or obscene language. Also this can be done by being drunk and as well by impeding or molesting other persons. There are other methods as well. This is the charge they trot out when they don't like the chants at your demonstration or they claim that your picket is impeding the traffic (pedestrian or vehicular).
- **Intimidation** —Blocking or obstructing something —for example, a highway. Also committed by threatening to commit violence against someone, or following them on a road in "disorderly manner". There is a special offence for intimidating an "internationally protected person" (all the leaders, and most of the delegates at the Summit would qualify).
- **Unlawful assembly** —You can commit this offence by getting together with 2 other people (at least) with intent to carry out some common purpose and you assemble in a manner that causes people near by to fear that (a) you will "disturb the peace tumultuously" or (b) you will needlessly and without reasonable cause provoke others to "disturb the peace tumultuously".

- **Riot** —This is an unlawful assembly that makes it. That is one that in fact "has begun to disturb the peace tumultuously". If a sheriff or sheriff's deputy etc., reads certain magic words after a riot has started and you are still around after 30 minutes you will have committed a much more serious offence. This is also true if you interfere with the reading of the magic words.

Note: both riot and unlawful assembly are crimes of mere presence. All the Crown needs to demonstrate is that you were part of the "common purpose" (e.g., you were participating in the demo or action), and that you stayed when it became an unlawful assembly. You don't actually have to have done anything to contribute to the "tumultuous" nature of the assembly. Although the police will usually announce that an assembly has become unlawful (usually by ordering you to disperse) it is not an essential part of the offence.

- **Conspiracy** —The essence of this charge is the making of the agreement to commit an offence. Nothing has to actually happen, the agreement itself is the crime. This is why you always need two people to accomplish this crime. You have to agree to commit a summary or indictable offence. You do not have to do anything other than make such an agreement. Be careful about where you talk, and who you talk with (try to exclude agents from your planning meetings—they have a way of hearing things that are not said) and what you say (do not agree to do anything unlawful).
- **Counselling offences** -They can get you for advising others to commit offences.
- **Being a party** —Sorry Kim Mitchell fans, if you even encourage someone to commit an offence you could be convicted of being a party to the offence (e.g., cheering someone on as they spraypaint a wall). The result is the same as if you had done the acts yourself. Certainly doing anything to assist in the commission of the offence will make you a party. Helping people after, to escape or hide, etc., can also get you in trouble. If you are merely passive, ie., do nothing to stop someone from committing an offence, you will not be found guilty as a party.
- **Disguise** —wearing a disguise (e.g., mask) with the intent to commit an offence is an offence in itself.

## **Weapons Offences**

- **Restricted and Prohibited Weapons.** - Restricted weapons are mainly various handguns and rifles, but prohibited weapons also include switchblade knives, spiked wristbands, blowguns, mini-handguns, brass knuckles and other things such as Mace, teargas, pepper spray, nunchaku sticks and other devices used in karate, dart guns, stun guns, electric probes, and crossbows, among other weapons, including a vast array of firearms. Mere possession in your home car, or on your person, of these weapons is sufficient to be prosecuted under the Criminal Code.
- **Carrying or being in possession of a weapon, or an imitation weapon,** "for a purpose dangerous to the public peace or for the purpose of committing an offence" is an offence under the Criminal Code. As mentioned above, a "weapon" is broadly defined in the Code so as to include many objects which are not designed as weapons and could include a kitchen knife, hockey stick or piece of broken glass.
- **While Attending a Public Meeting** —This offence describes a situation in which "every one who, without lawful excuse, has a weapon in his possession while he is attending or is on his way to attend a public meeting..." There is obviously a serious risk of arrest and conviction for activists who attend these gatherings while possessing prohibited or restricted weapons, but there is also a real danger of arrest and a possibility of conviction where a person is in possession of ambiguous objects like pocket knives, large rings or studded belts which might be found to be weapons. A picket sign attached to a stick would not normally be a weapon unless used as one, but signs attached to what might otherwise be considered heavy clubs or spears could be viewed by the police as weapons dangerous to the public peace.

## Consequences

Think through the consequences before hand, have discussions. Remember that the law impacts individuals differently and engaging in certain types of actions may have larger risks for different people. Be aware but do not be intimidated. The times when dissent is being repressed are the times we must continue participating.

The length of the process can be a killer —if you plead not guilty, your trial and appeals could last for years (literally!) —many people plead guilty just to save themselves the hassle... If you are found guilty:

- absolute/conditional discharge
- suspended sentence (you don't have to serve your sentence unless you commit another crime within a given amount of time)
- probation (with conditions...)
- community service
- fines
- prison
- any combination of the above...

If convicted, you will have a criminal record which is publicly accessible to anyone who asks.

Consequences of a criminal record:

- travel/immigration difficulties —getting visas to enter other countries may be more difficult —US immigration and border guards are particularly not impressed by records for political 'crimes'.
- may reduce chances of some kinds of employment (say goodbye to your dream job with CSIS or the RCMP) —although the Quebec Charter prohibits discrimination based on criminal records unless it has some relation to the type of employment. However, a conviction for civil disobedience might look good on resume for a job at Greenpeace...
- while you are serving your sentence, you cannot be a candidate in Quebec elections (in federal elections, you are only ineligible while you are in jail...).
- all else being equal, a criminal record could have an effect in a child custody battle

## Court Appearances

You must be brought before a Justice of a peace "as soon as practicable" and in any case within 24 hours. You might be released from the police station either by the "officer in charge" or by a justice of the peace if one is brought to the station.

You may be released in the following ways:

- by the police once you have identified yourself —a notice to appear will be sent to your house
- by the police once you have signed a promise to appear (maybe with conditions —up to you to decide if you can live with them)
- by the justice of the peace, possibly with conditions on your promise to appear (see Greenberg conditions)
- after a bail hearing in Court —you may have to post bail, have a surety sign for you or agree to conditions (curfew, limits on activities, travel, etc...)

Of course, you may also be held until your trial, but if you don't have a prior record and the charges aren't too serious, you will undoubtedly be released. You have a right to reasonable bail guaranteed by the Charter, and unless there are special circumstances (like you have a case pending for something else...) it is up to the Crown to demonstrate why you shouldn't be released. There are three reasons for refusing to release someone:

1. you are a danger to society
2. you will not show up for your trial
3. releasing you would bring the justice system into ill repute (we are not sure exactly what this means either...)

## More information

Midnight Special Law Collective: [www.midnightspecial.net](http://www.midnightspecial.net)

Quebec Legal Collective: [www.quebeclegal.org](http://www.quebeclegal.org)

Just Law Collective: [www.lawcollective.org](http://www.lawcollective.org)

R2K Law Collective: [R2K.philly.org](http://R2K.philly.org)

OCAP Legal Collective: [www.ocap.ca](http://www.ocap.ca)

NYC People's Law Collective: [www.tao.ca/~nycplc/](http://www.tao.ca/~nycplc/)

Law Union of Ontario: [www.lawunion.ca](http://www.lawunion.ca)

Canadian Bar Association: [www.cba.org](http://www.cba.org)

Canadian Civil Liberties Union: [www.ccla.org](http://www.ccla.org)

Colors of Resistance: [www.tao.ca/~colors/](http://www.tao.ca/~colors/)