

## Gotcha

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Police have more power over reporters than most of us realize. Whatcha gonna do when they come for you?

by Jay Somerset

On June 15, 2000, Citytv cameraman Don Neheli sets out to report on what looks to be a routine protest organized by the Ontario Coalition Against Poverty. Neheli arrives equipped with a two-way Motorola radio and video camera, and sees about 500 people marching in mob formation. Grandparents mingle with rave kids and councillors hang out with the homeless while others tote protest signs made with cardboard and wooden stakes. Surveying the crowd, Neheli notices something out of the ordinary: men and women in masks with swimming goggles covering their eyes, like kids on Halloween or Palestinian rebels.

Neheli radios back to chief assignment editor Peter Dworschak. After promising to meet Neheli, Dworschak gets three more reporters and a crew of security guards to come along. At Queen's Park, the mood is angry and violent as the protesters meet and greet an army of more than 250 officers. Clad in black riot gear, complete with helmets, plastic shields, batons and pepper spray, the public order unit lines up across from the crowd. Some cops ride horses; others stay in cars. Undercover cops in khakis and golf shirts, looking more Mansbridge than Fantino, roam through the crowd with cameras. The protesters respond by dropping marbles at the feet of the horses, throwing fist-size chunks of concrete and stones from the Queen's Park rock garden at the cops and smashing lightbulbs filled with paint and urine against the stately pink sandstone of the legislature. Cries of "Nazi! Pig! Fascist!" echo across the lawn.

By the time Dworschak gets there, just after two o'clock, the police are pushing protesters onto the south lawn. The police seem to have things back under control. As the protesters begin marching back to Allan Gardens, Constable Devon Kealey turns to Dworschak and says the police will want all of Citytv's footage. A week later, Detective Stephen Irwin calls Dworschak to say the police will be coming with a search warrant and to make copies of all raw and broadcast footage. On July 11, Irwin and another officer meet Dworschak in the lobby of Citytv to pick up a two-hour tape. He had no choice. A media organization facing a search warrant can cooperate and hand over the requested items or stand idle as police root through file after file, notebook after notebook, source list after source list, until they find the material they want. Either way, the police will get what they want. Civil rights lawyer Clayton Ruby sums up the police attitude as: "We want it, we need it, we'll get it, go fuck yourself."

After the Queen's Park demonstration, Toronto police served 13 other media organizations—including The Globe and Mail, The Toronto Star and the CBC—with search warrants. Several fought the warrants, arguing that searching press offices impairs the constitutional right to freedom of statement and freedom of the press. The National Post, The Toronto Sun, CFMT and three others didn't take part in the challenge.

Warrants allowing cops access to media offices aren't rare. According to Ruby, the problem has always existed, but lately, it's been getting worse. The police are eager to conscript the media to make it easier to investigate and prosecute criminals, but many journalists worry they can't do their job if the public views them as agents of the state. Worse, they fear that when the police can't take advantage of their notes, audiotapes and video footage, they try to shut down reporters with pepper spray, physical attacks or arrest.



## Masthead

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There's nothing wrong with the media helping cops identify felons. If a photographer happens to document a crime in progress and the police aren't there, then the reporter can legitimately hand over the photos. But when police use the media out of convenience, reporters lose their credibility. "We are the servants of the people and no one else," says Tim Knight. "It is a public trust." A journalist for more than 30 years, Knight helps train reporters around the world, including Germany, Russia and Zaire. His consulting firm, Tim Knight + Associates, trained South African Broadcasting Corporation reporters before that country's first democratic election. Knight believes one of the most important functions of the media is that of a watchdog: an observer of those who are entrusted with power, whether social, political, economic or legal—or, as he puts it, those with guns. "The key to a democracy is a mixture of voices, but there are legions of groups out there eager to lessen journalistic freedom, just a little bit and only for the greater good, of course. They understand that freedom is power."

In Canada, many officers assume they can just phone reporters to get the information they want. After the June 4 Organization of American States demonstration in Windsor, CTV lawyer Grace Shefron got a call from an officer demanding she hand over a videotape. "He wanted to have our footage," says Shefron, "and he seemed to think he could sort of phone up and I would send it by courier, and that is not the position we took." But Shefron's stance doesn't stop the police, it only delays the inevitable by making them apply for a warrant.

Ruby believes legislation is the problem. In the United States, the press enjoys heightened protection from police seizure via the First Amendment, but no such protection exists in Canada. Canadian courts view the media as any other member of society and the police can show up at a newsroom with a search warrant without warning. Most search warrants are issued ex parte—that is, without the party to be searched being able to argue his or her case. "The meeting between the police and justice of the peace takes place in a locked room. There is no one there from the public and no lawyer to attend and argue against the search warrant," says Ruby. And if one judge turns down the application, the police are free to go to another until they find a more sympathetic one.

The courts don't understand why the media make such a fuss. "In search warrant cases, I think the interests of the media are not given much weight, enough weight," says Toronto Star lawyer Bert Bruser. "The court won't give weight to the arguments being made by defence, and the predominant factor will be that there is evidence of a crime and that this is evidence that the police are entitled to have." In the Queen's Park case, for example, Superior Court Judge Frank Roberts didn't buy the argument that the press could be perceived as an investigative arm of the police. "There has to be more than this," said Roberts. "It must be chilling."

Gathering the best possible evidence of a crime is a cardinal right for cops, argues a former Toronto police superintendent, Bill Blair. "Where is privacy in a public place? If this stuff [photographs, videotapes] is so confidential, why was it broadcast?" he asks. "The community has an interest in bringing forth evidence of crimes. Police have a duty to obtain the best evidence possible, and this evidence may end up proving someone innocent or guilty." Blair also points out that police use legal means to obtain information from the media. If the media has an axe to grind, it should be with the courts, not the police.

But Tim Knight points his finger directly at judges, lawyers and the police. All of them, he says, serve the law, and their loyalties are to the system and its rules, not justice and freedom. They would be a lot more comfortable if journalists had a little less freedom, if journalists were kept from keeping a critical eye on them, if journalists were told to mind their own damn business. And this attitude goes beyond the desire for search warrants. Police execute their power over the press in the same manner they execute their dominance over common citizens.

In 1998, three Edmonton reporters had their phones tapped for more than two months after someone leaked police documents to three separate newsrooms. The papers contained evidence that a member of the Edmonton Police Commission was directly involved with organized crime, drugs and prostitution. Police came into the newsroom with search warrants

and seized the documents. Three months later, Attorney General Jon Havelock sent a short, one-paragraph letter to all three reporters that read: "Take notice that you were the object of an interception of private communications." The letter did not contain any specific details about how the wiretap was authorized. In fact, it did not even mention tapping at all. It just said surveillance. "The police chief wanted to find out who had leaked the document to a select number of reporters because it had a very small distribution list, and he figured it had to be an inside job by a police officer," says Janice Johnston, a CTV investigative reporter at the time. "The funny thing is none of us know to this day who leaked the document."

Johnston retained a lawyer in an effort to learn the details of the phone tapping, but she still doesn't know if police monitored her home phone, her office phone or her cell phone because she couldn't afford to spend \$10,000 of her own money to get the courts to open the sealed documents. "As a journalist, your responsibility is to the public, and any time you're perceived as an arm of the police you fail to do your job," says Johnston, who adds the intrusion by police was a factor in Johnston's decision to leave journalism and start her own media consulting firm, ThoughtWorks. "There were a lot of letters written to the editor. The public was firmly behind the journalists and very much against what the police had done. It smacks of a police state. It makes people nervous."

But longtime columnist and one-time Toronto Sun editor Peter Worthington doesn't see a problem. In his 22 years at the Sun, the police never showed up with a search warrant more than a handful of times. This hardly suggests a trend of police invading press offices, and when the police do come with a warrant it is because of unusual circumstances. "Journalists get very antsy about their precious integrity being violated and all that kind of stuff," said Worthington in a sworn affidavit on August 31, 2000. Worthington admits the Sun is a conservative paper that strongly supports the Toronto police. He doesn't believe the press should enjoy any special exemption from police searches; however, he says journalists, as moral and ethical beings, are duty bound to go to jail if ordered to produce confidential sources, a dilemma Worthington has never faced. While the Sun requires the police to produce a search warrant before handing over material, it also has a policy of not challenging search warrants in court. In a July 27, 2000, column, he characterized the arm of the state concern as "rhetorical hogwash." In his opinion, the demonstration just got a little bit out of hand. The danger felt by a reporter comes from the situation itself, not because he or she is a member of the media but because it's a dangerous setting.

Worthington's not alone in that belief. "People don't want their pictures taken at demonstrations, but this isn't because they think the media is working for the police," argued Crown lawyer Michal Fairburn during the Queen's Park search warrant hearings. "Rather, it's because they don't want their face on the six o'clock news. Someone who commits an offence can expect to see their face on the front of the paper. This is the chilling effect."

Whatever the reason, many reporters at the Queen's Park riot felt much of the hostility was directed straight at them. CTV cameraman Ross MacIntosh was attacked by a protester while photographing someone hitting a police officer on a horse. "Almost immediately, a masked protester approached me carrying a pointed wooden stake like a lance. He lunged toward me with the stake pointed at my chest, saying, "'Get out of here!' Rod [another CTV cameraman], who was to my immediate right, stepped forward and with both hands and sound boom, managed to push the stake away. The protester said, "Fuck you!" and walked away." Both cameramen wore press credentials dangling around their necks. "If they know that I have given my tape, then I am in danger because I have to face these people again and they're going to know that we're handing our tapes right over. We have to talk to them on issues other than riots."

While no one is openly threatening reporters now, protester Mike Coward, a member of the Ontario Coalition Against Poverty, says he no longer trusts the media. "In the past, many people from OCAP have viewed the press as a sort of insurance, so if they're there the police aren't going to be as likely to attack," he says. "Now there's a lot of distrust for the press. We have to deal with the press, but we're just more careful around them now." OCAP organizer John Clarke takes a stronger point of view on how he will deal with the press. On July 13,

2000, Clarke appeared on the Global Television show Focus Ontario to discuss the Queen's Park episode. When asked whether the seizure of tapes by police affects how he views the press, Clarke responded: "If you're in a situation that the police get to interpret according to their own set of rules, and there's a camera in your face and it happens to be from Global TV, you're going to feel much less enthusiastic about what's unfolding. You're going to feel a definite sense of wanting to shut that down." Clarke doesn't care whether a reporter wants to aid the police; what matters is the end result.

Journalists are left with few solutions save burning their notes and going to jail. In December 2000, a judge forced Kingston Whig-Standard reporter Rob Tripp to hand over notes and tapes he made with two men charged in the death of 48-year-old Jutta Weber. Lawyer Brian Rogers warned the court that forcing a reporter to hand over confidential notes will cause reporters to destroy their research once the story is published to protect sources. "I can tell you, in the U.S. and some other jurisdictions, it is routine," Rogers told Mr. Justice Rommel Masse of the Ontario Court of Justice. "When the story is published, destroy everything that you've got. Why leave evidence?"

Several newspapers have already changed archival practices because of cases like this. The National Post, for instance, uses only digital photos and routinely erases unused images. Only printed pictures are archived. When the police came to the Post with a search warrant after the Queen's Park demonstration, the paper had only 14 pictures to hand over. The Globe and Mail may adopt the same practice, to the dismay of former photography editor Lynn Ferrell. The Globe may only assign photographers using digital cameras to cover potentially controversial events; afterward, it will erase any photos not printed. "It is unfortunate that such an archival policy will have the effect of seriously depleting the photographs that are archived to preserve the history of events and news in Toronto and across Canada," says Ferrell. "I feel the loss of unpublished photographs as primary historical documents thwarts the larger role of news photographers as documentarians and historians." Nevertheless, Ferrell agrees the use of press photos for police investigations suggests the Globe is not a neutral observer.

Changing archival practices may limit what the police can find, but a larger problem looms: cops can allow reporters to witness events so photos and notes can be seized at a later date, or shut the media down before they start snapping photos or rolling tape. On May 1, 2000, during an anarchist demonstration in Montreal, police arrested 157 people, including 10 journalists, after rushing the crowd to bring everyone into a tight circle. A photographer from Ici managed to get a word with the officer in charge of media, but was sent back to the pack to relay the message that the police did not care who they were. Later, the police dropped the charges against all the journalists except freelance photographer Andrew Dobrowskyj, who was charged with participating in an illegal demonstration. He thinks that as a freelancer, he is more vulnerable. "Because the others were working for major papers, their charges were dropped in two weeks," he says. "They have experienced lawyers working on their behalf. Also, a friend of mine had the charges dropped against him because the police lost his file. It's pretty bad."

Freelance journalists lack both the money and time to fight cops and courts. Sue Careless found out how powerless independent journalists are on October 15, 1999. That's when she was arrested for obstructing a peace officer while covering the arrest of pro-life activist Linda Gibbons outside the Scott Abortion Clinic on Toronto's Gerrard Street. At 11 a.m., nine officers crossed the street and stood side by side, backs to the clinic, facing three protesters and three journalists. Standing alone on the sidewalk, Careless snapped pictures. She was far enough away that she couldn't hear Sheriff Jim Jurens read an injunction stating that anyone protesting within 18 metres of the abortion clinic would be arrested. With her eye to the viewfinder, Careless didn't notice a cop walking toward her. Cuffs in hand, he barked, "You have to leave."

"No, I'm a journalist," responded Careless, still clicking. The cop repeated his command and Careless agreed to leave. He grabbed her arm and camera, breaking the strap. He took the camera and film, saying he would need it for evidence. An officer threw her into the back of

the police van with the other journalists. Inside the van, Careless turned to an officer and said, "You just turned a non-story into a big one."

"Oh, I'm so scared," replied the cop, wearing sunglasses and a wide grin. At the station, the arresting officer asked Careless for her name. When he read it off her press card, it was the first time anyone actually acknowledged she was a reporter. Nobody asked her any other questions and Careless spent three hours in a cramped cell. No other journalists have been arrested for stepping within 18 metres of an abortion clinic during a demonstration since the injunction was put into place in 1994. "The police knew they were arresting journalists. They simply did not want us to see the arrest," says Careless. "They did not want the event documented. The fact that I was reporting on behalf of The Interim [an antiabortion newspaper] really has nothing to do with my arrest. If I'm covering an event as a reporter, then I am assuming the role of a journalist, and I am on equal par with any other journalist."

But even working for a mainstream media organization doesn't guarantee immunity from police harassment. Globe freelance photographer Deborah Baic discovered this during the Queen's Park demonstration when she began shooting pictures of an officer arresting a protester several metres away from her: "I was told by another officer to move back, but was immediately hit with the large plastic shield he was holding. I fell backward, and the flash unit and batteries from the flash unit were knocked out from the camera." Similarly, an RCMP officer attacked CBC cameraman Rob Douglas with pepper spray during the Asia-Pacific Economic Cooperation protests in Vancouver in 1997. These aren't cases of mistaken identity; rather, they are direct incidents of police intimidation, of police bullying.

On June 4, 2000, a group of student protesters is blocking a bus from moving forward into an Organization of American States pavilion in Windsor. Police line up, clad in black riot gear, helmets and plastic shields with pepper spray slung on their belts like revolvers on cowboys. They are in two lines, elbow to elbow, about 250 officers in total. About 25 kids sit down in front of the bus while a line of officers flanks the bus on each side, pushing everyone back. A knot of officers walks around to the front of the bus and hose down the remaining few with several canisters of pepper spray, as if they were dressing a salad. Everyone disperses except the journalists. Eleven photographers, wearing RCMP press passes around their necks and carrying cameras, struggle to see what is happening over the helmets and shields of the cops. They stand side by side, alone, behind the police barricade, about 50 metres from any protesters.

Ted Andkilde raises a camera to his eye as his Toronto Star identification dangles from his neck. In front of Andkilde an officer raises a can and points it at his face. The spray burns Andkilde as he covers his eyes with one hand and shoots blindly with the other, catching his assault on film. Around him other photographers begin coughing violently, frantically rubbing their eyes. They remain out of commission for several minutes. Ted Rhodes from The Windsor Star falls to the ground in pain. "I think they just didn't want us to take more photos," says Andkilde. "There was no warning from police that they wanted us out. They wanted to prevent us from getting pictures of what their colleagues were doing to the kids."

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