

FULL COMMENT

Karen Selick: You have the right to remain silent ... and film the proceedings



KAREN SELICK, SPECIAL TO NATIONAL POST | Aug 17, 2012 6:00 AM ET | Last Updated: Aug 17, 2012 11:01 AM ET
[More from Special to National Post](#)



A demonstrator takes a picture of police officers during the G20 summits on June 25, 2010 in Toronto, Ont.

Scott Olson/Getty Images

What have cops got against cameras these days? Increasingly, people are getting arrested, charged or even assaulted by police officers, merely for attempting to take photos or videos of officers at work. Often, police simply command people to stop photographing. Scared into thinking they must be breaking some law, citizens comply.

When Polish visitor Robert Dziekanski died after being tasered at the Vancouver airport in 2007, police seized the now famous video made by witness Paul Pritchard, who had to hire a lawyer and threaten court proceedings to get it back.

The American Civil Liberties Union has won numerous court cases against police who illegally harass photographers and videographers, but says nevertheless: "A continuing stream of incidents ... makes it clear that the problem is not going away."

The phenomenon struck close to home on August 2 when I got a phone call at 7:30 a.m. from my client Montana Jones telling me

that numerous officers were at her farm with a search warrant. Ms. Jones is suspected of complicity in making 31 rare Shropshire sheep disappear from her farm before they could be seized and killed by the Canadian Food Inspection Agency (CFIA) on suspicion of disease. (Incidentally, when 26 of the missing sheep were eventually found and killed two months later, all tested disease-free.)

Although Ms. Jones has not been charged with anything, the only phone call the police would let her make was to me, her lawyer. She asked me to call a couple of her friends who live nearby and have them come over to videotape the proceedings. Two friends arrived at separate times with their cameras, but an officer stationed at the farm gate denied them entry and forbade them to take photos. "I have my orders," was his only explanation.

One of the friends returned later carrying only a pen, her wallet and identification. After being threatened with arrest if she dared walk up the driveway, she was finally allowed entry by a more senior member of the investigation team, but was again warned that she had better not be carrying a cell phone or any other data recording device.

There is no law in Canada that prohibits people from openly photographing police. Section 129 of the Criminal Code prohibits "wilfully obstructing" police in the execution of their duty, but it is hard to imagine how standing by peacefully and videotaping as police searched the premises and piled up items for seizure could be considered obstructing. After all, the police themselves were videotaping on Ms. Jones' premises — but selectively. They probably didn't capture themselves ordering her friend to refrain from taking the pictures she was legally entitled to take.

That same day, three other search warrants were executed at the homes of other individuals the CFIA suspects of conspiring with Ms. Jones to save her healthy sheep. At Michael Schmidt's residence, all cell phones were immediately confiscated. When a visitor from outside arrived with his cell phone, Schmidt's wife borrowed it and took photos of police inside her home. Officers seized the phone even though it was clearly outside the scope of the warrant. They returned it three hours later, with the photos erased. When the victim of this apparently illegal seizure objected, police responded, "We can do whatever we want." But of course, that arrogant response was not permitted to be recorded.

That willful destruction of data by police probably constitutes the offence of mischief under section 430(1.1) of the Criminal Code. The possibility of the victim laying charges is being investigated.

Police must be made to understand that being on duty or executing a search warrant does not transform an officer into a petty dictator with carte blanche to issue arbitrary orders to everyone in sight. Police cannot do "whatever they want." Citizens have the right to hold them accountable for their actions. Personal cameras are important tools in implementing that right. Bullying people out of using them must cease.

The Baltimore City Police Department is being sued for allegedly seizing and deleting the contents of a man's cell phone after he recorded officers making an arrest. Recently, the U.S. Department of Justice — which appears to have intervened in the lawsuit — issued guidance to the Baltimore Police recommending that it affirmatively assert individuals' constitutional right to observe and record police while discharging their duties. Let's hope this triggers a sea-change in police attitudes not only south of the border, but here in Canada too.

National Post

Karen Selick is the litigation director for the Canadian Constitution Foundation.

Most Popular



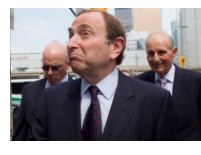
Scott Stinson: Ontario teachers lose the carrot, get the stick



Matt Gurney: How long does it take to beat a suspect in...



Chris Selley: Don't worry people, there is no Muslim Tide



Kelly McParland: NHL again wants players to save...



Karen Selick: You have the right to remain silent ... and...



Full Notebook: C on Ahmadinejad find the right wo

Topics: Full Comment, Police Misconduct, Robert Dziekanski

14 comments

1 Star



Leave a message...

Discussion

Community

**rattler** • 2 hours ago

Just a reminder, the police are not our friends. To them, we, innocent or guilty, are their natural enemies.

9 / 1 • Reply • Share ›

**Sushihunter** • 2 hours ago

Also, it should be noted that the police have no right to seize or view, or delete your photographs without a warrant or a court order.

7 / 1 • Reply • Share ›

**basicdude** • 4 hours ago

The police in Canada continue to show themselves to be itty-bitty-tiny-people with WAY too much ASSUMED power. It's WAY past time for them to be challenged and brought to heel when it comes to overrunning and/or ignoring civil liberties.

Unless, of course, we all dream of re-instating a 1930's Germany style society.... in which case, keep it up, mein herr....

14 / 1 • Reply • Share ›

**Anonymous66** • 5 hours ago

Police who try to pretend they have authority to stop people recording what they do on duty should be fired. If you're afraid of a recording being made, that's as good as an admission of misconduct in my book.

As for those who actually take cameras and phones away from people without a warrant to seize them, they should be fired AND charged with petty theft. That's no more acceptable than dirty cops helping themselves to merchandise from stores on their beat, and daring the owner to do anything about it.

This kind of thing is exactly what earns police the nickname of 'pigs' ... and I'm finding it increasingly difficult to believe that moniker is not justified.

14 / 1 • Reply • Share ›

**g.apleyll** • 2 hours ago

Most cops are cops because they have authoritarian personalities. They will permit themselves to be photographed only when their superiors order it, from the top down. Moreover, the sanctions for disobedience should be disciplinary and severe, because otherwise the taxpayers will just end up paying damages while the cops continue the illegal behaviour.

8 / 1 • Reply • Share ›

**Rick Bonsteel** • an hour ago • parent

Some are cops because they get to ride Harleys.

2 / 1 • Reply • Share ›

**Sushihunter** • 2 hours ago

Karen, thank you for this column! As a photographer who sometimes photographs police, it is nice to see this aspect of photography made public.

I follow a website in the US called Photography Is Not A Crime by photojournalist Carlos Miller who reports on this very subject, and is presently fighting in court his arrest for videoing the police in Florida.

It can not be stated too strongly that we are allowed to photograph or video anything that is in public or can be seen from a public area. There is no pretense of privacy in a public space.

5 / 1 • Reply • Share ›

**edredcanuck** • 4 hours ago

I certainly hope the message gets across to Canadian police forces to not interfere with photo documentation of their arrest and warrant procedures.. Transparency is the surest way to regain their shredded credibility.

10 / 1 • Reply • Share ›

© 2012 National Post, a division of Postmedia Network Inc. All rights reserved. Unauthorized distribution, transmission or republication strictly prohibited.

⌂