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## 1.7 Major Incidents

### 1.7.6(i) Seizure of Recording Equipment and/or Images at Crime Scenes

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(Effective: 2009.07.07)

#### POLICY

The police have a duty to secure crime scenes in order to prevent the potential destruction of evidence and to allow for thorough investigations. Therefore, it is necessary, and appropriate, to ensure that citizens and media personnel remain outside of established perimeters (1.7.6(1) (e) Major Crime Scene Responsibility). Members must also be cognizant that citizens and media have the right to observe, photograph, and audio or video record in a public place, as long as they remain outside of police perimeters.

Members have a duty to identify and collect evidence at crime scenes including photographic or video images where available. However, members must be certain that any seizure of evidence at a crime scene, including cameras, photographs audio recordings, or video images, is lawful and reasonable.

Members are reminded that “freedom of the press” is enshrined in the *Canadian Charter of Rights and Freedoms* and, therefore, seizure of equipment, images or audio recordings from media personnel will require a very high level of justification.

For the purposes of this policy, the legal authorities to seize such items are:

1. With consent;
2. As an incident to lawful arrest;
3. Pursuant to a Search Warrant obtained under s. 487 of the *Criminal Code*; and
4. In circumstances where grounds for obtaining a Search Warrant exist, however, it would be impracticable for the police to obtain one based on “exigent circumstances,” police have the authority under s. 487.11 of the *Criminal Code* and Common Law to seize evidence without warrant.

#### Definition of Exigent Circumstances

Exigent circumstances usually arise where immediate action is required for the safety of the police or public or to secure and preserve evidence of a crime. Case law extends this definition to include circumstances where making a seizure without warrant is necessary to prevent the imminent loss or imminent destruction of the evidence. There is no blanket exception permitting the use of this authority rather, whether or not exigent circumstances exist must be determined on a case by case basis.

Exigent circumstances may allow the seizure of a civilian's (non-media personnel recording device IF the officer has reasonable grounds to believe it is necessary to do so in order to prevent loss or destruction of evidence in the device. The officer would be required to articulate reasons specific to the situation to justify the warrantless seizure. This provision would generally be applicable with non-media

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individuals where there are concerns that the person may not be locatable to serve a search warrant, or where there are concerns that the evidence may be destroyed.

Where media personnel are concerned, they would not ordinarily be expected to destroy evidence, so it is extremely unlikely police would be able to articulate grounds to seize it pursuant to exigent circumstances, or that a court would uphold such a warrantless seizure. In fact, media premises (and persons) are afforded EXTRA protection from interference by the police, given their authority and obligation to disseminate the news. Media people are generally knowledgeable about those issues and will usually require the police to follow the appropriate, extra procedures for obtaining evidence from them, but they will not generally completely frustrate the police investigation by destroying evidence. In other words, the added protections available to the media make warrantless seizures of media recording devices particularly difficult to justify.

#### Definition of Recording Device or Equipment

For the purposes of this section, Recording Device or Recording Equipment refers to a device capable of capturing still images, video images, or audio recordings.

#### PROCEDURE

When members attend a scene where a citizen or the media is photographing, audio recording, or videotaping and there is reason to believe the incident in question may have been captured, members shall:

1. Ask the citizen for consent to seize the equipment;
2. If the citizen refuses, attempt to determine whether the person can be located to be served a search warrant, and whether there are concerns that the evidence may be destroyed. If there are no such concerns, obtain the person's contact information, ask them to secure the evidence, and advise them that a follow up investigator will contact them, and that a search warrant may be applied for.
3. If there are reasonable grounds to believe that the person may not be locatable or will destroy the evidence, seize the equipment under the authority provided to police pursuant to exigent circumstances. A search warrant is not required later to search the seized item.
4. When items are seized pursuant to the authority provided to police for exigent circumstances, members must ensure that the reasons for the seizure are fully documented in the GO report, just as they would have been in an Information to Obtain, had it been practicable to obtain a search warrant.
5. In situations where persons identify themselves as media personnel, members shall not seize their recording equipment unless there is an imminent public safety issue involved, or there are reasonable grounds to believe the evidence will be made unavailable to police (e.g., hidden or destroyed). If there are no such concerns, members shall obtain the media person's contact information, ask them to secure the evidence, and advise them that a follow up investigator will contact them and that a search warrant may be applied for.

If recording equipment is seized pursuant to exigent circumstances, or by way of a search warrant, members shall submit a Report to a Justice, Form 5.2, reporting the seizure of the camera equipment in compliance with s. 489.1(1)(a) of the *Criminal Code*. As noted in RPM Section 1.9.15, Return of Property to Property Owner, the 5.2 reporting the seizure is required even if the property is returned to

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the owner at the scene.

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