



Citizenship and  
Immigration Canada

Citoyenneté et  
Immigration Canada

# ENF 12

## Search, Seizure, Fingerprinting and Photographing

## ENF 12 Search, Seizure, Fingerprinting and Photographing

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## **ENF 12 Search, Seizure, Fingerprinting and Photographing**

### **Updates to chapter**

#### **Listing by date:**

**Date: 2006-01-25**

Numerous changes have been made throughout this chapter and any previous version of it should be discarded. Of particular note, amendments have been made to reflect the new designation of officers and delegation of authority resulting from the Citizenship and Immigration Canada (CIC) transfer of port of entry (POE) and enforcement functions to the Canada Border Services Agency (CBSA). Resulting changes to CIC's and the CBSA's responsibilities with respect to search, seizure, fingerprinting and photographing have been incorporated throughout the chapter.

**2004-05-18**

#### **Requirement to input FPS numbers in FOSS**

In order to further streamline the administration of fingerprints, all cases where a person has been previously fingerprinted for immigration purposes and a Fingerprint (FPS) number exists, the FPS number must be entered in FOSS. The FPS number must be included in any subsequent request to the RCMP for additional checks or for follow-up information.

Quoting the FPS number is the certified means to identify an individual. Referencing the Fingerprint (FPS) number enhances a fingerprint query, facilitates turnaround times and reduces the need to duplicate fingerprinting. For more information, see section 12.16.

**2003-09-26**

ENF 12 – Search, Seizure, Fingerprinting and Photographing – has been updated to reflect the authorities and procedures that govern how and when an immigration officer may seize documents and vehicles, conduct searches and take fingerprints and photographs of persons.

Major changes to this chapter includes:

Section 3 describes all relevant sections of the Immigration and Refugee Protection Act (IRPA), and Regulations, A140(2), which states that a document or a thing that is detained or seized under the Customs Act is no longer considered in the course of post.

Hyperlinks: Section 3 provides hyperlinks to other pertinent Sections of Law, including Section 99 and 101 of the Customs Act, which describes a Customs inspectorsinspectorCustoms inspector powers to examine the mail and detain goods, the importation of which is prohibited, controlled, or regulated by an Act of Parliament. Section 108 of the Customs Act describes disclosures of information by CCRA to CIC for the purposes of enforcing IRPA. Section 3 provides Charter protection against unreasonable search and seizure 8(2)(3) of the Privacy Act.

Section 4 describes the instruments and delegations of authorities as they stem from sections A6(1) and (2) of IRPA.

Section 7 details what constitutes lawful search and seizure while providing Charter protections.

Section 7.2, Section 7.3, Section 7.4, and Section 7.5 describe reasonable grounds to search; when searching in detention; right to counsel when a search constitutes detention, and the authority under A139(1)(b) to search any person seeking to enter Canada, including Canadian Citizens.

Section 7.6 describes the three types of Search: Level 1, Preliminary search; Level 2, Frisk search, and Level 3, Disrobement search, and the required consent from a Supervisor.

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Section 7.7, Section 7.8, Section 7.9 and Section 7.10 describe searches incidental to an arrest; officer safety in conducting searches; general search procedures, and completing Search form (IMM 5242B).

Section 7.11, Section 7.12, Section 7.13, Section 7.14, Section 7.15 and Section 7.16 describe specific instructions pertaining to conducting preliminary and full examination searches at Ports of Entry; searching luggage; conducting personal searches (including frisk searches and disrobement searches). Section 7.16 describes information pertaining to search and seizure of a vehicle.

Section 8 describes Search Warrant procedures including Charter considerations; when and how to apply for a Search Warrant; information required to obtain a Search Warrant, and procedures pertaining to the execution of a Search Warrant. Specific instructions pertaining to proper protocol when conducting searches; protection of evidence, and reports required following the execution of a search warrant is described in Section 8.8, Section 8.9, and Section 8.10. Section 9 updates Seizure Authority relating to Solicitor-client privilege. Caution should be taken to avoid conflict of confidentiality of solicitor-client privilege when seizing documents.

Section 9.4, Section 9.5, Section 9.6, Section 9.7, Section 9.8, Section 9.9, Section 9.10, Section 9.11 describe seizing documents both domestically and internationally; seizing documents from refugee claimants; seizing vehicles, and procedures for the notice and reporting of seized vehicles.

Section 10.1, Section 10.2, and Section 10.3 describe mail search and seizures including Customs procedures for international mail; and courier shipments.

Section 10.4, Section 10.5, Section 10.6, Section 10.7 and Section 10.8 describe the responsibilities of Immigration immigration officers pertaining to mail seizures, documenting and tracking seizures; security, storage and labelling seized items; split seizures, and partial seizures.

Section 10.9, Section 10.10, and Section 10.11 describe notification of the owner in event of full or partial mail seizures; returning items to the Customs process, and release of information in accordance to section 108 of the Customs Act.

Section 11 describes the disposition of seized objects as per the custody and protection of evidence, liability for damage of seized property, and return of seized objects as per R253.

Section 11.6, and Section 11.7 describe application procedures for the return of items in exchange for security as per R245 R245R254. This includes information on estimating market value of a seized vehicle or object. Section 11.7 provides application information by a lawful owner for the return of seized items.

Section 11.8, Section 11.9, Section 11.10, Section 11.11, and Section 11.12 describe conditions under which a seized vehicle may be returned or disposed of, and the forfeiture of security under R254(2)(b).

Section 11.13 and Section 11.14 describe conditions under which fraudulent documents can be disposed of.

Section 12 describes the Authority to Fingerprint. This section also describes the three (3) fingerprint forms used by immigration officers; the C-216, C-216C, and the introduction of the C-216R (refugee fingerprint form). Section 12 also describes the procedures for taking "ink roll" paper prints, and introduces procedures for the LiveScan automated fingerprint system that transmits fingerprint data electronically to RCMP/AFIS. The LiveScan User Guide and Standard Operating Procedures will be posted on the Web.

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## 1. What this chapter is about

This chapter describes the authorities and procedures that govern how and when CBSA and CIC officers may seize documents and vehicles, conduct searches and take fingerprints and photographs of persons.

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## 2. Program objectives

Officers are authorized to conduct searches and seizures, and take fingerprints and photographs for the following purposes:

- CBSA officers: to confirm the identity of persons seeking entry to Canada
- CBSA and CIC officers: to ensure compliance with the Act and Regulations;
- CBSA and CIC officers: to seize documents and other articles that may be used for enforcing the Act and the Regulations, including evidence for prosecutions;
- CBSA and CIC officers: to prevent the misuse of documents that were fraudulently or improperly obtained;
- CBSA officers: to seize vehicles and assets that may have been used in relation to an immigration offence;
- CBSA and CIC officers: to return and dispose of items to the lawful owners.

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## 3. The Act and Regulations

The authority for an officer to search, seize, and take fingerprints and photographs is found in the following sections of the *Immigration and Refugee Protection Act and Regulations*.

Authority for search and seizure	Section of Act or Regulations
Authority for an officer to: <ul style="list-style-type: none"><li>• board and inspect any means of transportation bringing persons to Canada;</li><li>• examine any person carried by that means of transportation and any record or document respecting that person;</li><li>• seize and remove any record or document to obtain copies or extracts;</li><li>• hold the means of transportation until the inspection and examination are completed.</li></ul>	A15(3)
Authority for an officer to require or obtain from a permanent resident or a foreign national who is arrested, detained or subject to a removal order any evidence, including photographic, fingerprint or otherwise, that may be used to establish their identity or compliance with the Act.	A16(3)
Authority and powers of a peace officer for authorized officers, including those set out in sections 487 to 492.2 of the <i>Criminal Code</i> , to enforce	A138(1)

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the IRPA, including provisions respecting the arrest, detention or removal from Canada of any person.	
Authority to search any person seeking to come into Canada, including their luggage and personal effects, and the means of transportation, if the officer believes, on reasonable grounds, that the person: <ul style="list-style-type: none"> <li>has not revealed their identity or has hidden documents relevant to their admissibility, or;</li> <li>has committed or possesses documents that may be used in the commission of an offence in relation to smuggling and trafficking in persons or other contraventions of the Act in relation to documents..</li> </ul>	A139(1)
Requirement that a search of a person be conducted by a person of the same sex.	A139(2)
Authority for an officer to seize and hold any means of transportation, document or other thing if the officer believes, on reasonable grounds: <ul style="list-style-type: none"> <li>that it was fraudulently or improperly obtained or used; or</li> <li>that seizure is necessary to prevent its fraudulent or improper use or to carry out the purposes of this Act. .</li> </ul>	A140
A document or a thing that is detained or seized under the <i>Customs Act</i> is no longer considered in the course of post for the purposes of the <i>Canada Post Corporation Act</i> ..	A140(2)
Authority for the detention, seizure or forfeiture of security provided by a transporter and any vehicle or other prescribed good if the transporter fails to comply with an obligation under this Act...	A148(2)
Requirement for an officer who seizes a thing under A140(1) to place it without delay in the custody of the CBSA or CIC .	R252
Requirement for an officer following a seizure of a thing under A140(1), to make reasonable efforts to identify any person who is the lawful owner and give notice of and reasons for the seizure.	R253(1)
Authority to return or dispose of a thing seized under A140(1).	R253(2)
Authority for a transporter to hold prescribed passenger documentation where there are reasonable grounds to believe that the documents may not be available for examination by an officer at a port of entry.	R260(1)
Authority to continue to detain a prescribed good seized under A148(2) until a transporter complies with its obligations or has its obligations discharged.	R285
Requirement to give notice of seizure with respect to the object seized under A148(2).	R286(1)
Authority to return or dispose of a thing seized under A148(2)	R286(2)

Provision	Act section number
CBSA officers powers to examine the mail and to detain goods, the importation of which is prohibited, controlled, or regulated by any Act of Parliament. For further information, go to: <a href="http://laws.justice.gc.ca/en/C-52.6/">http://laws.justice.gc.ca/en/C-52.6/</a>	Sections 99 and 101 <i>Customs Act</i>
Charter protection against unreasonable search and seizure. For	Section 8, <i>Charter of</i>

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further information, go to <a href="http://laws.justice.gc.ca/en/charter/">http://laws.justice.gc.ca/en/charter/</a>	<i>Rights and Freedoms</i>
Requirement for an investigative body to make a written request for information which specifies the purpose and describes the information to be disclosed. For further information, go to <a href="http://laws.justice.gc.ca/en/P-21/95414.html">http://laws.justice.gc.ca/en/P-21/95414.html</a>	Section 8(2)(e) <i>Privacy Act</i> .
The Canada Post Corporation Act provides that international mail arriving in Canada that contains or is suspected to contain anything, the importation of which is prohibited, controlled or regulated under the Customs Act or any other Act of Parliament, may be detained and is no longer described as being "in post". ( <a href="http://laws.justice.gc.ca/en/c-10/21397.html">http://laws.justice.gc.ca/en/c-10/21397.html</a> )	Section 42 <i>Canada Post Corporation Act</i>

### 3.1. Forms

The forms required are shown in the following table.

Form title	Number
Investigator's Notebook	IMM 5104B
Notice of Mail Seizure Under Subsection 140(1) of the Immigration and Refugee Protection Act	IMM 5079B
Search	IMM 5242B
Notice of Seizure	IMM 5265B
Notice of Mail Seizure	IMM 5079B
Record of Examination/Seizure of Documents from International Mail and Courier Services	IMM 5369B
Document Transit and Receipt	ADM 2491B
Information to Obtain a Search Warrant Form 1	Appendix A
Warrant to Search Form – 5	Appendix C
Report to a Justice Form – 5.2	Appendix E
Fingerprint Form	C-216
Fingerprint Form	C-216C

## 4. Instruments and delegations

The Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness designate persons or classes of persons to carry out any purpose or provision cited in the *Immigration and Refugee Protection Act*. These designations and delegations stem from A6(1) and A6(2). They are further described by the Instruments and are housed in IL 1. Peace officers are thus empowered to carry out any provisions, legislative or regulatory, on behalf of the Minister.

The instruments specify authorities geographically and are to be read regionally, nationally or internationally in accordance with the physical location of the officer.

To identify specific delegations and designations see IL 3.

## 5. Departmental policy

Nil.

## 6. Definitions

Nil.



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### 7. Procedure: Searches

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#### 7.1. Charter rights respecting searches

The *Canadian Charter of Rights and Freedoms* protects the basic rights of all persons in Canada, including foreign nationals. Sections 8 through 10 of the Charter govern an officer's authority to conduct searches and seizures.

##### **Protection against unreasonable search and seizure**

Section 8 of the Charter provides that everyone has the right to be secure against unreasonable search or seizure.

Before conducting a search, A139 requires that an officer must believe on *reasonable grounds* that the person:

- has not revealed their identity;
- has hidden documents relevant to their admissibility; or
- has concealed documents that may be or have been used for the purpose of smuggling or trafficking of persons into Canada or for other contraventions under the Act and Regulations. .

#### 7.2. Reasonable grounds to search

Case law has established that “reasonable grounds” is greater than mere suspicion or conjecture but less than the balance of probabilities. Reasonable grounds are grounds that, due to certain elements, facts, circumstances or available information, would lead an informed and experienced officer to believe that a violation of IRPA or its Regulations may have occurred or may occur.

For example, an officer may believe that an undocumented refugee claimant, who is under examination, had a travel document when boarding the aircraft, as it would have been required by the airline. This circumstance may constitute reasonable grounds to do a baggage search and a personal search. However, an officer who suspects that a foreign national, seeking entry to Canada as a temporary resident, intends to work without authorization – even though the foreign national has given consistent answers to the officer's questions – does not have reasonable grounds to conduct a baggage or personal search. In this instance, mere suspicion does not constitute reasonable grounds. The officer would require other grounds to support a search, such as a past history of untruthfulness or working without authorization and some indication that an immigration violation will occur.

#### 7.3. When search is detention

Section 9 of the Charter grants all persons in Canada the right not to be arbitrarily detained or imprisoned. When an involuntary personal search is being conducted, the person is considered to be detained because they cannot refuse to submit to the search and are not free to leave. The test of *reasonable grounds*, when met to justify search and seizure, is also met to justify detention for the purpose of that search and seizure.

Search of the baggage of a person seeking entry to Canada is not considered to be a detention: A full body search of a person (disrobement) is considered to be a detention. A disrobement search should rarely be required.

More information on arresting and detaining persons may be found in ENF 7, Investigations and Arrests.

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### 7.4. Right to counsel when search constitutes detention

Section 10 of the Charter requires that all persons being arrested or detained (including persons who are submitting to any type of involuntary personal search) be advised of the reason for the detention and of their right to retain and instruct counsel without delay.

An officer conducting an involuntary personal search is required to read the following to the person being searched:

“I have reasonable grounds to believe that you are carrying evidence or documents on or about your person and I am detaining you for the purposes of a personal search as authorized by section 139 of the *Immigration and Refugee Protection Act*. Do you understand?”

It is my duty to inform you that you have the right to retain and instruct counsel without delay. If you cannot afford counsel you may have access to legal aid counsel. In any event, you have the right to immediate advice from legal aid duty counsel. Do you wish to exercise this right”

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### 7.5. Searching Canadian citizens

A139(1)(b) authorizes an officer to search any person who is seeking to enter Canada, including Canadian citizens, where the officer believes, on reasonable grounds, that the person has committed an offence or possesses documents that may be used in the commission of an offence related to smuggling or trafficking in persons or other contraventions of the Act.

Canadian citizens have the right to enter Canada. Once an officer establishes that a person making an application for entry to Canada is Canadian, the officer must end the examination and authorize the person to enter Canada. Any delay in authorizing entry to a Canadian, including a personal search conducted for immigration purposes, would constitute detention and the person would have to be advised of their right to counsel.

A CBSA immigration officer who believes that a Canadian citizen is involved in smuggling documents or persons into Canada must arrange for the CBSA customs or the RCMP to conduct a search. Because charges may result, it is best to have these agencies involved at the outset. Individual ports of entry should have established procedures for liaising with the CBSA customs and RCMP officers in this type of matter.

At times, under extenuating circumstances where an RCMP or a CBSA customs officer is not readily available and the person intends to leave the area, a CBSA immigration officer may search a Canadian citizen pursuant to A139(1)(b), if they believe documents used to contravene sections A117, A118 and/or A122 are likely to be found on that person. If the Canadian does not voluntarily submit to the search, the officer will not detain the person, but will forward all relevant information to the RCMP.

Any documents found during a search will be seized under the authority of the Act under which the search was commenced. If the CBSA customs is conducting the search at a CBSA immigration officer's request, the documents will be seized under the *Immigration and Refugee Protection Act*. , If the search was initiated by the CBSA customs, the documents will be seized under the *Customs Act*.

Before questioning any person about possible immigration charges being laid, the officer must inform the person of their rights under section 10 of the Charter. If the officer questions the person concerning immigration offences, any information obtained before the person is informed of their Charter rights may not be admissible as evidence in subsequent prosecutions against the person.

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### 7.6. Types of search

A preliminary search involves the examination of all belongings that are with the person in the examination area, including purses, briefcases, baggage, personal effects and any vehicle. This examination is for the purpose of detecting documents or evidence that relate to identity, admissibility and offences under the Act.

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An officer may ask the subject of a preliminary search to empty their pockets and to remove a coat or jacket for examination. This type of search does not involve physical contact with the individual, and thus does not require approval from the Minister's delegate.

It is policy that all searches of baggage or vehicles being carried out for the interests of both customs and immigration legislation and requirements, should be conducted by a CBSA customs officer.

Level	Type of search	Explanation
Level 1	Preliminary search	An officer who has reasonable grounds to believe that a person is seeking to enter Canada, or is in Canada, and may have documents relevant to admissibility hidden on them, or that were or may be used in the commission of an offence, may conduct a preliminary search. No consent from a supervisor is required unless the search involves a minor child (see section immediately following this table). See also ENF 20 - Detention
Level 2	Frisk search	The frisk search, often called a "patdown", is a personal search that involves physical contact with the person, where an officer either pats the person's clothing or runs their hands along the clothing. This search requires the consent of a supervisor.
Level 3	Disrobement search	A disrobement search involves the full or partial disrobement of a person to detect or obtain documents or other evidence that the person has concealed on their person. A disrobement search should be a rare occurrence. Disrobement searches will be conducted by CBSA customs officers. This search requires the consent of a supervisor.

A Search form [IMM 5242B] must be completed in all cases. If no file is created for the person, the IMM 5242B should be retained locally for one year.

### Minor Children

An officer does not require approval from a supervisor to conduct a preliminary search unless the search involves a minor child. An officer conducting a search involving a minor child must demonstrate particular sensitivity for the emotional well-being of the child. The parent or adult accompanying the child should be present during the search. An officer must ensure that another officer is present throughout the duration of the search as both the witness and the activity should be well documented.

For information on fingerprinting minors refer to Section 12.3 below.

For information on photographing minors refer to Section 13.3 below.

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### 7.7. Search incidental to arrest

The authority to search is found in common law. The courts have ruled that a peace officer is authorized to conduct a search of an arrested person and to remove from that person any of the following three types of items:

- weapons or implements that might assist in the person's escape;
- anything with which a person might injure themselves or others;
- anything that can be considered as evidence of the offence for which the person has been arrested.

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In the case law of *Cloutier v. Langlois* (1990) and *R. v. Caslake* (1998), a precedent for search incidental to arrest was established. It ruled that a search is constitutional if conducted without the use of excessive force or constraint and for some valid purpose connected to the arrest, namely:

- to ensure the safety of the arresting officers;
- to protect evidence from destruction at the hands of the person under arrest; or
- for the purpose of discovery of evidence.

The authority to arrest and detain compels a detained person to comply with a search by an officer exercising that authority. Search incidental to arrest applies only to things in the possession or immediate surroundings of the person arrested.

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### 7.8. Officer safety in conducting searches

An officer should never assume that a detained person has been searched. The safety of the general public and of law enforcement personnel requires that search procedures be carefully observed and that appropriate documentation be completed in full. When custody of a detained person is being transferred from one officer or agency to another, search guidelines and clear communication are of critical importance.

An officer's personal safety is of utmost importance and caution should be exercised at all times when conducting a search. Before commencing a search, an officer should ensure that:

- the room is free and clear of projectiles or articles that may be used as a weapon;
- there is another officer available as a witness or for officer safety;
- there is a clear path of escape for the officers; and
- the room has proper lighting.

Two officers should be present during any search. One officer should be standing in the "ready position" in order to intervene if the person who is being searched becomes violent.

Officers should consider requesting police assistance before searching a person who has a history of violence or has displayed behaviour which indicates that violence or extreme physical resistance is likely.

Officers should consult the CBSA Use of Force/Officer Safety policy for more information on officer safety.

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### 7.9. General search procedures

It is imperative that officers make notes of all details of any examination that leads to a preliminary or personal search, as well as the items found during the search. Officers may be called on to testify in court as to the reasonable and probable grounds for the search. A second officer should witness a search and both officers should initial each evidence bag or container in which the seized items are held. This will assist in the event that allegations of impropriety regarding the officer's conduct are made. It may also assist in establishing the continuity of evidence.

Any information relevant to conducting a search must be recorded either in the Investigator's Notebook [IMM 5104B] or on the client's file. Officers are required to keep a written record of each personal search conducted. All relevant information, including anything out of the ordinary that occurs and any comments made by the client, should be noted. More information about note-taking procedures may be found in ENF 7, Investigations and Arrests.

## **ENF 12 Search, Seizure, Fingerprinting and Photographing**

Officers conducting a search must maintain a professional demeanour and refrain from responding to profanity or abuse. Profane or abusive language directed at an officer is not a ground for arrest but may constitute a ground for an obstruction charge.

In addition, the following guidelines must be observed in every search situation:

- The person being searched shall not be left alone until the search is completed.
- The person's belongings, particularly money and other valuables, should not be left unattended until the search is completed and the belongings have been secured.
- The person being searched shall first be asked to identify their goods or baggage and to confirm ownership. This will enable an officer to establish possession, should they find documents.
- The search of an individual's personal effects shall be conducted in a closed office or other area out of sight of the general public, but in the presence of the individual.
- Respect for the dignity and feelings of the person concerned must be demonstrated throughout the conduct of a search. This will help to alleviate some of the person's anxiety and help to prevent the heightening of tension or escalation of uncooperative or violent behaviour.
- Unnecessary conversation, personal remarks and humour are to be carefully avoided by officers conducting the search. Officers should be considerate of the fact that this is a serious matter and stressful for the person who is being searched.
- A Search form (IMM 5242B) must be completed in all cases. If no file is created for the person, the IMM 5242B should be retained locally for one year.

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### **7.10. Completing the Search form (IMM 5242B)**

An officer must complete the appropriate section of the Search form [IMM 5242B] for all searches. Part A of the form must:

- state the reasonable grounds for the search; and
- list the names of any officers assisting in the search in the "Individuals Involved" section.

Part B of the form must be completed in all instances where an officer requests a body search and must:

- state the reasonable grounds for conducting a body search which must be more compelling than those required for the search of personal effects.; and
- include the results of the search.

An alternate or second officer indicates their concurrence by signing the form as the authorizing officer. If an officer obtains concurrence over the telephone, this information should be noted on the form and a request made that the officer sign the document on their return to the office.

An officer should list on the reverse of the form all personal effects obtained from the individual during a frisk or disrobement search.

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### **7.11. Conducting preliminary and full examination searches at ports of entry**

When conducting a preliminary or full examination search at a port of entry, an officer should:

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- complete the applicable section of the Search form [IMM 5242B];
- explain to the person why their baggage or vehicle is being searched;
- arrange an interview if the person requests permission to speak to a senior officer;
- arrange, if possible, for a CBSA customs officer to conduct the search;
- be prepared to observe the search and make a note of any articles relating to immigration that are found;
- confirm ownership of all baggage by asking the following questions:
  - ◆ Is this your bag?
  - ◆ Did you pack it yourself?
  - ◆ Are you aware of the contents?
  - ◆ Did you, at any time after packing your bag, leave it unattended?
- ask the person for permission to search their bags; (even though an officer has the authority to conduct searches, a search will usually proceed more easily when an officer obtains the person's permission);
- ensure that the surface on which the examination is to take place is clean and dry, so that the passenger's baggage will not get wet or dirty;
- ask the person to open their briefcase or to empty the contents of a purse or wallet on the table;
- check the contents, then check the bag;
- handle only one bag at a time;
- examine the outside of the bag, then the inside;
- examine all pockets and check for false panels and bottoms;
- ask the person to empty their pockets and examine the contents; and
- remain courteous, discreet and tactful at all times.

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### **7.12. Conducting a search of carry-on luggage**

Officers will find it easier to search carry-on luggage if they develop a systematic approach. Officers should wear kevlar or other protective gloves for personal safety. To search luggage such as briefcases, purses, and flight bags, an officer should:

- Open the bag and look at the general contents and layout. Remove any loose items that could injure an officer and set them aside. These items may include razors, pointed scissors, knives or a glass container that may have broken in the bag. Most often the person has not left these items with the intention of causing harm to someone.

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- Inspect the inside edges all around the bag with the palm of the hand. Choose a starting point along the inside edge of the bag. Pull back the clothing or contents near the starting point with one hand. Place the other hand down the side of the bag at the starting point. Press a hand against the inside edge of the bag. Feel the lining for hidden documents or papers. Continue to work around the edge of the bag until the starting point is reached. If the entire surface being inspected is not visible, an officer should proceed slowly and cautiously.
- Search the contents of the bag, layer by layer. Remove and set aside any items that are in a container that cannot be seen through, such as a shaving kit. Clothing can be left in the suitcase. For larger suitcases, it may be desirable to set them aside on the table or the desk. An officer should observe the following steps:
  - ◆ lift one edge of the top layer of clothing and place one hand under it palm side up;
  - ◆ place the other hand on top, palm side down;
  - ◆ pat and squeeze the layer of clothing between both hands, feeling for objects such as an address book or passport;
  - ◆ unfold the articles of clothing and check any pockets;
  - ◆ continue to pat and squeeze across the entire top layer of the bag;
  - ◆ continue in this fashion for each layer of clothing in the bag, slowly squeezing rolled-up clothing and feeling for defined objects, while remaining vigilant for sharp objects that could cause injury.
- Search any pockets or zippered pouches that are inside the top lid of the bag. Proceed slowly because there may be sharp items inside the pockets. Check the lining in the bottom and top of the suitcase. Watch for false bottoms.
- Ensure that articles are opened and inspect the contents of all containers. Open all books and check for concealed documents. These may be cut into the cover or cut into the pages of the book. Confirm that engraving on jewellery matches the name or initials of the owner.

The CBSA customs should be called immediately any time an officer discovers what they suspect to be illegal substances or goods when checking a person's carry-on luggage. Once a search has begun, however, the subject of the search must never be left alone.

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### 7.13. Conducting personal searches

A139(2) requires that a search of a person be performed by a person of the same sex as the person being searched. If an officer of the same sex is not available, any suitable person of the same sex may be authorized by an officer to perform the search.

The first step in any personal search is to seek the person's co-operation by asking permission to conduct the search. An officer should attempt to obtain this authorization in writing before conducting a personal search.

If a person objects to being frisk-searched it is necessary for the officer to determine whether they have reasonable grounds to continue against the wishes of that person. If the decision is to continue, an officer must inform the person that they are detained and immediately advise them of their right to retain and instruct counsel without delay. The grounds for the detention should be explained to the person.

An officer should commence a personal search by:

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- explaining the reason for the search to the person concerned;
- explaining, if challenged, the legal authority under A139(1) for the designated officer to conduct the search;
- making arrangements, where the person is detained and wishes to exercise their rights under the Charter, for access to a telephone and to a telephone directory. An officer may observe the person but may not listen to their conversation with counsel; the officer should be prepared to intervene if the person is observed in attempting to destroy or conceal evidence.

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### 7.14. Conducting frisk searches

An officer conducting a frisk search should:

- ask, prior to the commencement of the search, if the person is concealing anything on their person, and if so, to surrender it;
- conduct a search for weapons using a metal detector wand, where available;
- ask the person to remove any outer garments such as a jacket, coat or sweater and all objects from their pockets;
- itemize any documents, money, jewellery, objects having monetary value or any personal effects that are not immediately returned to the person on the IMM 5242B to ensure their eventual return to the person after the search. The person should be asked to confirm the monetary amounts. The money should be counted by two officers. It should be placed in an envelope on which is written the denominations, currency and amounts. Officers should initial next to the total on the envelope before sealing it.
- carefully examine wallets, envelopes or other packages that could contain documents;
- check garments thoroughly, paying particular attention to collars, waistbands and sleeve cuffs;
- pass the hands over the entire body of the person concerned on the outside of the clothing, to detect any bulges that would indicate hidden items or documents; any unusual bulges should be examined carefully;
- record in an Investigator's Notebook [IMM 5104B] all information pertaining to the search; (charges may result and an officer may be required to testify in court. More information on using the notebook is available in ENF 7, Investigations and Arrests.)
- seize any documents or evidence that relates to identity or to the commission of an offence under the *Immigration and Refugee Protection Act*;
- provide a receipt for seized documents which describes them in detail; certified true copies of documents and receipt should be placed on file;
- return anything that was temporarily seized to the person immediately after the search and have the person sign for its return if no enforcement action is being taken;
- confirm in writing, before the person who was searched leaves the room, that the person is satisfied that they have received all their property. This will help prevent claims of theft. If the person claims to be missing items, the officer should review the search form with the person to determine what is missing and attempt to resolve the situation. Wherever possible, the



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officer should ensure that the person is satisfied that all their possessions have been returned and have the person sign the IMM 5242B to this effect.

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### 7.15. Conducting disrobement searches

As a result of the frisk search, it may be necessary to have the person disrobe so that an officer can search for or remove evidence.

Prior to a disrobement search, an officer must advise the person of their rights under the Charter and must give the person a reasonable opportunity to exercise those rights. The grounds for the detention should be fully explained to the person. Once the person has had an opportunity to contact counsel, the search can proceed. It is not necessary to delay a search until the arrival of counsel.

A disrobement search is a serious infringement of privacy and should be done only when an officer has reasonable grounds to believe that there is a high probability that an immigration violation has occurred or will occur. This should be a rare occurrence. At ports of entry, the CBSA customs officers conduct disrobement searches.

At detention centres, an officer may obtain the assistance of the detention centre staff to conduct a disrobement search. If an officer from another agency is conducting the search, the CBSA officer should inform them that the person has been advised of their right to counsel. The officer conducting the search may give the person a secondary caution.

Immediately after an officer cautions the person, or as a simultaneous action, but before the person enters the search room or has access to a telephone, the person should be frisked for weapons. This frisk is a precaution to ensure the safety of the officer and all persons in the inspection area and is not meant to discover evidence. An officer may use a metal-detector wand if one is available.

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### 7.16. Conducting a search of a means of transportation

Documents and papers that are in a vehicle or are in possession of the occupants sometimes offer clues regarding other parties who have a legal interest in a means of transportation. Those documents should be examined and may be copied. In the event that a means of transportation is seized, these documents may assist an officer in satisfying the requirement of R253 to identify any person who is a lawful owner of a thing seized under A140(1) and to provide that person with written notice of, and reasons for, the seizure.

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### 7.17. Removal of the contents of a means of transportation

An officer should ensure that any items of monetary or potentially sentimental value in a seized means of transportation are removed and returned to the transporter. While a seized means of transportation should not be stripped of all of its contents, officers should remove items to limit the Agency's liability. It may be prudent for the officer to allow the transporter to witness the search. If that person is disruptive or unruly, the officer should have another officer nearby to witness any items removed.

An officer should record or document items removed from the means of transportation and returned to the transporter, and should get that individuals signed acknowledgement that they have received the items. This may alleviate possible allegations of impropriety on the part of the officer.

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## 8. Procedure: Search warrants

A138 provides that an officer has the authority and powers of a peace officer – including those set out in sections 487 to 492.2 of the *Criminal Code* to enforce the *Immigration and Refugee Protection Act*. While the CBSA immigration officers are not peace officers, this gives officers

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authority to apply for and obtain search warrants under these sections of the *Criminal Code*. This section explains the process for applying for, obtaining and executing a warrant.

The CBSA immigration officers may ask a police officer to assist them in obtaining a search warrant. Police officers obtain many warrants in the course of their duties and usually have received specialized training in this area. When investigating a case jointly with a police service, it may be possible to have the police obtain the warrant; otherwise, a CBSA immigration officer can apply for and obtain a warrant themselves. Officers should review the decision to apply for a search warrant with their manager or supervisor before initiating the process. Police services are generally happy to assist the CBSA immigration officers who are less familiar with the process. More information on obtaining police assistance is available in ENF 7, Section 11.

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### 8.1. Charter considerations

The CBSA immigration officers seeking to obtain a warrant should be aware of a person's right under section 8 of the *Canadian Charter of Rights and Freedoms* to be secure against unreasonable search and seizure. Under section 24 of the Charter, anyone whose rights and freedoms have been infringed or denied may apply to a court to obtain an appropriate and just remedy. For example, improperly obtained evidence presented in a criminal proceeding may be excluded.

See section 24 of the Charter at the following Web site:

[http://laws.justice.gc.ca/en/charter/const\\_en.html#recours](http://laws.justice.gc.ca/en/charter/const_en.html#recours)

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### 8.2. When to apply for a search warrant

A CBSA immigration officer may apply to a judge or justice of the peace for a search warrant to obtain evidence relating to an immigration investigation. A CBSA immigration officer should make every effort to obtain information and evidence through publicly accessible sources before seeking to apply for a search warrant under the *Criminal Code*. Examples where an officer might need to obtain a search warrant would include:

- to obtain information to locate a person wanted on an immigration arrest warrant (e.g., telephone or credit records);
- to establish the identity of a person who is the subject of an inadmissibility report;
- to obtain evidence relating to an immigration inadmissibility investigation; and
- to obtain identity or travel documents to assist in effecting the removal from Canada of a foreign national subject to an enforceable removal order.

A judge or justice of the peace will issue a search warrant only if satisfied, by information sworn by a CBSA immigration officer, that there are reasonable grounds to believe there is evidence to be found in a building, receptacle, or place necessary to enforce the *Immigration and Refugee Protection Act*, including any of its provisions with respect to the arrest, detention or removal from Canada of any person.

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### 8.3. How to apply for a search warrant

Although the process of obtaining, executing and administering a search warrant is consistent across Canada, there are slight variances in protocol from jurisdiction to jurisdiction. The CBSA officers should liaise with local police agencies and justice of the peace offices to gain a better knowledge of how a warrant is obtained, executed and administered within their region. For more complicated cases, Legal Services should be consulted.

Two forms are necessary to apply for a search warrant:

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Form 1: Information to Obtain a Search Warrant (Appendix A);

Form 5: Warrant to Search (Appendix C).

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### 8.4. Information to Obtain a Search Warrant (Form 1)

It is a statutory requirement that an Information to Obtain a Search Warrant - Form 1 (Appendix A) be completed in full for each warrant requested. Failure to do so will result in the judge or justice of the peace rejecting the request.

Form 1 should be written in the third person, be easily understood, consist of a logical order of events, be factual in nature and be completed in as much detail as possible. It should not contain any unsupported assumptions or personal statements. It contains six primary sections that must be completed as follows:

**Part one** is opened by the statement, "This is the Information of" after which the informant records their full name and badge number.

**Part two** begins with, "The Informant says that there are reasonable grounds of believing that certain things to wit:" after which the informant records what it is they are looking for from the requested search. Where, for example, phone records are being sought from the telephone company to establish the location of an individual, the company's legal department may provide assistance by supplying the correct wording to complete this section.

**Part three** asks what has occurred during an investigation that would justify a warrant being issued. The informant should state what reasonable grounds exist to believe a specific offence under the Act took place on a specific date and at a specific location, and the outcome that would justify a judge or justice of the peace to authorize a warrant.

**Part four** asks the informant to describe the exact location of the thing sought. The informant should include very detailed information regarding detached dwellings, specific building floor or suite numbers and phone and fax numbers, where appropriate. Once again, a co-operative company will usually provide this information when requested.

**Part five** is of particular importance. The informant records here their reasons for believing that the thing(s) sought are in the location where the search is requested to occur and that there are grounds that would justify the lawful issuance of a warrant. This section of the form starts with the statement, "My grounds for belief are" after which the informant presents their reasonable grounds for seeking the warrant in a chronological and numerical fashion. This section should be written in the third person.

**Part six** is simply the conclusion portion of the warrant where the date and signature of the informant and either the judge or justice of the peace reviewing the form is made.

For more information on completing Form 1, refer to a sample Form 1 in Appendix B.

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### 8.5. Warrant to Search (Form 5)

Form 5 (Appendix C) is the actual Warrant to Search. The CBSA immigration officer applying for a search warrant must complete Form 5 and attach it to Form 1, Information to Obtain a Search Warrant. Failure to do so will result in rejection of the application.

Form 5 and Form 1 possess many similar fields.

**Part one** of Form 5 is slightly different in that on Form 1 the preamble states, "This Is the Information of" and on Form 5 the preamble states, "Whereas it appears on the oath of." On both Form 1 and Form 5 it is simply the name of the officer applying for the warrant and their badge number that is stated.

**Part two** of both Form 1 and Form 5 are the same with the exception that on Form 1 there is a preamble stating, "The Informant says that." Both forms state, "Certain things to wit:" after which both forms will include the identical thing that the informant is looking for.

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**Parts three and four** are identical in wording with regard to the description of the offence that took place and the reasonable grounds to believe that the thing is at the place to be searched.

**Part five** bears no relation to part five of Form 1. On Form 5, part five stipulates when the search is authorized to take place. In general a search warrant can be executed only during a normal work week, and then only between the hours of 6 a.m. and 9 p.m.

**Part six** of both forms are very similar in that on Form 5 the date and signature of either the judge or justice of the peace is noted, and on Form 1 there is space for the additional signature of the informant.

For more information on completing Form 5, refer to a sample Form 5 in Appendix D.

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### 8.6. Appearing before a judge or justice of the peace

Once the Information to Obtain a Search Warrant (Form 1) and the Warrant to Search (Form 5) have been completed, the CBSA immigration officer goes before the judge or justice of the peace to present the warrant application. This is a formal process and respect for the court is imperative. Officers should review the CBSA policy regarding the conduct of officers as witnesses (see ENF 7, Section 27.2). If the application is rejected, the judge or justice of the peace will provide reasons. Where the application is rejected due to lack of clarity, limited information or technical errors, the officer may have to re-do the application in its entirety.

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### 8.7. Execution of a search warrant

When executing a search warrant, the CBSA officers must:

- identify themselves;
- inform the keeper or guardian of the place being searched;
- advise that person of the estimated time that will be required for the search; and
- provide the person concerned with a copy of the Warrant to Search (Form 5).

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**Note:** Do not give a copy of the Information to Obtain a Warrant to Search (Form 1) to the person concerned.

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#### Police assistance

The CBSA officers may ask a police officer to assist them in executing a search warrant. If, during a search, items other than those required for immigration purposes are located (i.e., drugs, weapons, or other contraband), it is the responsibility of the police to seize and investigate non-immigration offences.

#### Searching dwelling houses

If the search is in relation to a dwelling house, police must be present to ensure officer safety. It is the legal obligation of the keeper or guardian of the place being searched to comply with the search warrant. It is an offence to impede, obstruct, or otherwise resist the lawful execution of a search warrant. If a person resists the execution of a search warrant, officers should let the police control the incident.

#### Search procedures

ENF 7, Section 20 provides guidelines on the proper procedure for searching a private residence.

ENF 7, Section 21 provides guidelines for seizing things which are also applicable to seizures made via a search warrant. However, officers should only use the Form 5.2 to document goods that are seized under the authority of a search warrant.

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A CBSA officer may use reasonable force, to execute a search warrant. When the use of force is required to execute a warrant, it is imperative that police assistance is utilized. Case law dictates that a peace officer may use whatever force is reasonable and necessary to execute a search warrant; however, officers should adhere to policy regarding officer safety and security. (See ENF 7, Section 5.12.)

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### 8.8. Protocol for conducting searches

Every time a search warrant is executed, there must be a set protocol that is followed to ensure that each step of the search is conducted in a diligent and lawful manner. There is a minimum of three functions required for every search:

1. primary search;
2. exhibit control;
3. security (always performed by the police when searching a dwelling house).

#### Primary search officer

The officer who swore the oath to obtain the search warrant always performs the primary search function and is ultimately responsible for the search. This officer is in charge of the search team and acts as the overseer of the entire search process.

#### Exhibit control officer

The exhibit control officer is responsible for securing, itemizing, documenting, storing, ensuring continuity of evidence, and finally returning, forfeiting or destroying the exhibits once they are no longer required. Once the search is complete, the exhibit officer has a tremendous responsibility to ensure all evidence is properly managed. The exhibit officer must have a secured locked area for storage of exhibits, complete the Report to a Justice, and ensure that all provisions of s. 490 to s. 490(2) of the *Criminal Code* are abided by. When a search warrant is used to obtain a small record from a third party such as a telephone company, the primary search officer and exhibit control officer may be the same person.

#### Security officers

When a dwelling is going to be searched, it is advisable to have enough officers present to secure the structure, conduct the search and ensure the occupants are controlled. The search team will often consist of police officers in addition to the primary search officer and the exhibit control officer. Where police are part of the team, the primary search officer will still be in charge of the search.

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### 8.9. Protection of evidence

For all searches, it is imperative that the officer protect evidence (see ENF 7, Section 21.4) and document the entire search process by taking detailed notes (see ENF 7, Section 14). Copies of Forms 1, 5, and 5.2 must be placed on file, and all evidence must be stored in a secure manner so as to maintain continuity.

Officers must be aware of their responsibilities under sections 490 to 492 of the *Criminal Code* to properly report, store, handle, transfer, forfeit and return goods seized from a search warrant.

If evidence is to be returned to the person or place from which it was seized pursuant to section 490 of the *Criminal Code*, the clerk of the court will assist the officer in completing this task.

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### 8.10. Report required following execution of a search warrant

Once a search warrant has been executed and/or has expired, the officer must submit to the clerk of the court:

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- a completed Report to a Justice (Form 5.2);
- the original warrant; and
- a certified copy of the evidence seized.

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### 8.11. Report to a Justice (Form 5.2)

Section 489.1 of the *Criminal Code* requires that a Report to Justice on Form 5.2 (Appendix E) be completed to report the outcome of a search warrant. This should be done by the officer who receives the search warrant (primary search officer) once the warrant has been executed. The form must also be completed when a search warrant has been issued but not executed. Failure to complete the form may result in the judge or justice of the peace finding that the search warrant has been executed in an unreasonable manner.

Form 5.2 is used to itemize things that were seized, the time and place where the things were seized, and the name and agency of the officer who executed the search warrant. Because most of the things seized by an officer will be documents or records, it is sufficient to make certified copies of these and attach them to Form 5.2.

For more information on completing Form 5.2, see a sample Form 5.2 in Appendix F.

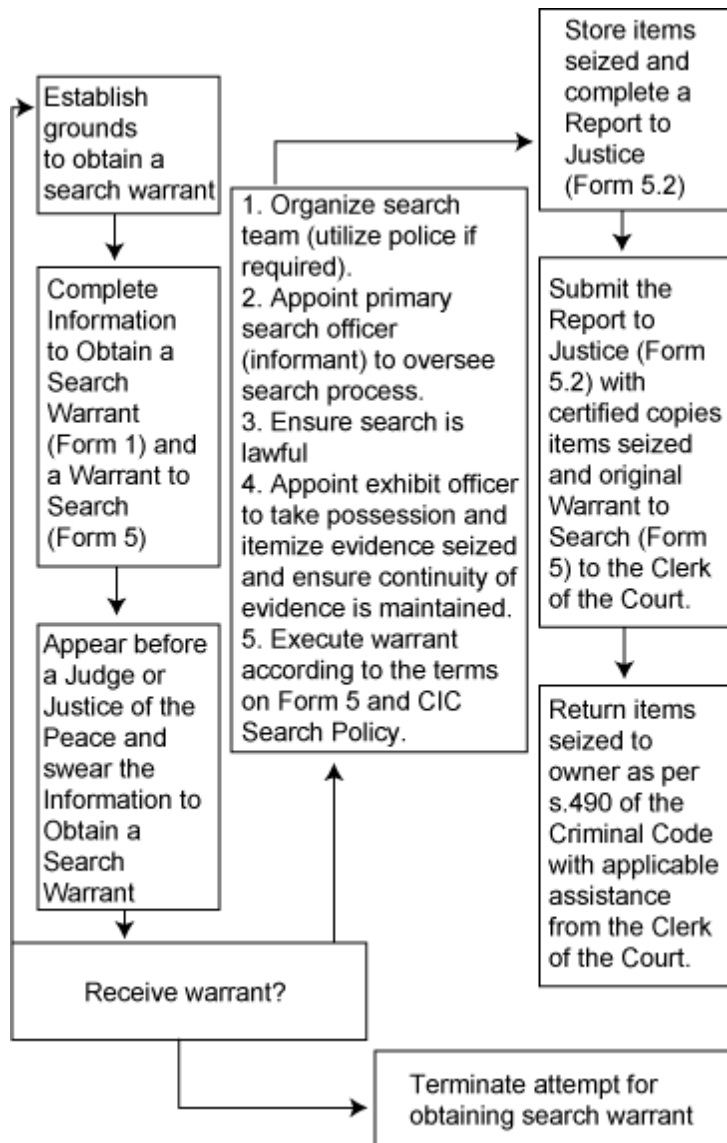
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### 8.12. Three-month limit on detention of objects seized under a search warrant

Under section 490(2) of the *Criminal Code*, if seized articles are to be detained for more than three months and no proceedings are instituted in which the things detained may be required, an application must be made to a justice for an order for further detention, before the expiration of that period. Failure to comply with this requirement will result in the articles being returned to the person concerned and that person may have cause for action against all parties involved in the seizure.

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### 8.13. Search warrant flowchart



## 9. Procedure: Seizures

### 9.1. Authority and grounds for seizure

A15(3) authorizes a CBSA officer to board and inspect any means of transportation bringing persons to Canada, examine any person carried by that means of transportation, and any record or document respecting that person, and to seize and remove the record or document to obtain copies or extracts.

A140 provides several authorities for an officer to seize documents, and other things. Both CIC and the CBSA are designated with the authority to seize documents, and other things. However,

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the CBSA officers have been designated with the sole authority to seize a means of transportation.

A140(1) authorizes a designated officer to seize and hold any means of transportation, document or other thing if the officer believes on reasonable grounds that it was fraudulently or improperly obtained or used or that the seizure is necessary to prevent its fraudulent or improper use or to carry out the purposes of the Act . The criteria for seizing under A140 are the same, regardless of the object being seized.

A148(2) provides authority for the detention, seizure or forfeiture of security provided by a transporter and any vehicle or other prescribed good if the transporter fails to comply with an obligation under the Act. For procedures relating to seizures made under the authority of A148(2), refer to ENF 15.

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### 9.2. Limitation period for seizures

R258 provides that no seizure may be made under A140(1) in respect of the fraudulent or improper obtaining or use of a thing more than six years after that obtaining or use.

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### 9.3. Solicitor-client privilege: *Lavallee* Supreme Court Decision

The Supreme Court ruled in *Lavallee* to protect the confidentiality of communication between a lawyer and their client(s), in the context of search and seizure. In the rare occasion when an officer is faced with a solicitor-client privilege scenario, where the officer is in possession of a document that may give rise to solicitor-client privilege, an officer should refrain from infringing on that right.

In order for the privilege to apply, certain conditions have to be met:

1. there must be a communication between a client (or their agent) and a legal advisor;
2. this communication entails the seeking or giving of legal advice; and
3. this communication is intended by the parties to be confidential.

There is an exception to solicitor-client privilege when the client seeks guidance from a lawyer in order to facilitate the commission of fraud or crime. An exception also exists where communication is not intended to be confidential. Nevertheless, caution should be exercised before examining or seizing documents that could be subject to solicitor-client privilege and Legal Services (or another appropriate section of the CBSA to be determined) should be contacted about these issues.

Frequently at POEs, CBSA customs officers will search clients for the CBSA immigration and will deal with any solicitor-client issues that may arise. CBSA immigration officers may have to deal with searches incidental to arrest, and seize material that is in plain view during an investigation.

An officer should:

- ensure another officer is available to witness and to sign the appropriate form (IMM 5242B);
- ensure the client understands and observes the process;
- have the client sign the appropriate form;
- ensure that notification is given to the lawful owner of the document;
- limit the contamination factor by sealing the item and not allowing others to view or handle the seized items;
- report procedures on file and/or update FOSS.



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In some cases, a client may manifest their intent to waive solicitor-client privilege. In such cases, it is recommended that the client sign a declaration to that effect, and that a credible witness, such as another officer, countersign the declaration.

In any of the above cases, an officer should:

- conduct background checks (FOSS/CPIC/NCIC/Interpol);
- determine admissibility;
- identify if there is a pattern of abuse of solicitor-client privilege;
- determine the rightful holder of the document;
- make every attempt to obtain consent from the privilege holder, i.e., the client, since the privilege belongs to the client;
- if the client manifests their intention to waive solicitor-client privilege, request that the client sign a declaration to that effect;
- seal the documents, if they are not sealed, and appropriately mark them;
- report to the manager/supervisor and update FOSS;
- make every attempt to obtain legal advice from another source (if one is not available, contact CBSA NHQ, Legal Services);

The officer should evaluate whether the examination of the document is necessary for the purposes of the Act. For example, if enough evidence exists to support an inadmissibility allegation or there are sufficient identity and travel documents to effect removal, then search and seizure of the document in question may not be necessary. The most cautious course of action may sometimes be for the CBSA immigration officer to seek a search warrant in relation to the documents, where reasonable grounds exist. A search warrant cannot allow the search and seizure of documents known to be protected by solicitor-client privilege.

CBSA immigration officers will not have to deal with a large volume of documents that could be subject to solicitor-client privilege. Moreover, in the mail examination context, procedures put in place to protect any potential solicitor-client privilege should be invoked as soon as an officer views documents to which solicitor-client privilege is attached and before a seizure is made under the *Customs Act* or IRPA.

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### 9.4. Seizing documents

A designated officer may seize and hold any travel or other documents which were fraudulently or improperly obtained or used, or where seizure is necessary to prevent its fraudulent or improper use or to carry out the purposes of the Act. CIC officers who suspect documents were fraudulently or improperly obtained or used may seize the document and turn it over to the CBSA to conduct further in-depth investigation. This could include the seizure of documents for the purpose of establishing identity, to determine whether a person may be authorized to enter Canada, as evidence, or to effect a removal, should the person become subject to an enforceable removal order.

Form IMM 5079B should be completed and all seized items included and described. Certified true photocopies of seized documents should be provided to the person from whom they were seized if they are genuine and the person is the rightful holder. Officers should not seize items which were not or will not be fraudulently or improperly used or required to carry out the purposes of the Act.

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Examples of persons from whom it is appropriate to seize documents in order to prevent their fraudulent or improper use are:

- a person who is in possession of documents (IMM 1000/Confirmation of Permanent Residence, Permanent Resident Card, Study Permit, Work Permit, Temporary Resident Permit, Temporary Resident Visa, travel documents, etc.) from a different individual and who does not have a valid explanation for the possession of such documents;
- a person who is in possession of a fraudulent document. This could be:
  - ◆ altered documents (for instance, photo-substitution, page substitution, and alterations of variable mentions such as date of birth or name or erasures);
  - ◆ complete counterfeit documents;
  - ◆ improperly obtained or issued documents;
  - ◆ fantasy documents.

Documents that may be seized to carry out the purposes of the Act may include, but are not limited to:

- travel documents (such as passports, certificates of identity, laissez-passer or refugee travel documents);
- personal identification such as U.S. social security cards, driver's licences or any other form of personal identification that may or may not contain the portrait of the holder;
- CIC-issued documents such as the Permanent Resident Card, IMM 1000 or IMM 5292, Citizenship card;
- airline tickets;
- itineraries;
- work records;
- inmate identification;
- criminal records documents, i.e., court transcripts, tickets, arrest reports;
- medical history, charts, prescriptions, receipts, notes;
- letters, pictures, video tapes;
- phone and address books; or
- purchase receipts.

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### 9.5. Seizing documents abroad

Following the examination of a travel document submitted to an officer overseas, it may be necessary for the officer to seize the document. A140(1) provides authority for an officer to seize documents, vehicles and other things.

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The delegations in IL3 give overseas officers the designated authority to determine whether there are reasonable grounds to believe that a document or other thing was fraudulently or improperly obtained or used, or that the seizure is necessary to prevent its fraudulent or improper use or to carry out the purposes of the Act and, if so, to seize and hold that document or other thing.

For authority and grounds for seizure refer to Section 9.1 above.

In regard to limitations to the power to seize documents and other items abroad, the laws of the receiving states do apply, and for this reason, both the legal content and the attitude of the receiving state in enforcing them are important considerations in determining the authority of officers to seize documents abroad.

Officers overseas also have the authority to seize documents that are not issued by a Canadian authority. They must ensure that the seizure is done lawfully which, in practice, means that reasonable grounds were present and the seizure is carried out in a reasonable manner.

For reasons reviewed above, the approach to the question of seizure of documents will vary from visa office to visa office. The approach will be determined by the environment in which the CBSA Migration Integrity Officers (MIOs) or the CIC visa officers work, and the type of partnership or arrangements they have with the local enforcement agencies, airlines and other foreign-based visa offices with whom they interact.

For examples of persons from whom it is appropriate to seize documents in order to prevent their fraudulent or improper use, and the documents that may be seized to carry out the purposes of the Act, refer to Section 9.4 above.

It is recognized that seizing documents may not necessarily be possible, depending on the situation, the type of documents or the type of arrangements with the local enforcement agencies. The potential to impair the host country's ability to repatriate a third-country national could, for example, be an important consideration. Canceling a valid and subsisting Canadian or foreign document obtained fraudulently or based on misrepresentations should be done in consultation with the issuing authority (e.g., the Canadian Passport Office, the officer who issued the temporary resident visa or the local visa office). In some circumstances, documents that have been identified as fraudulent or expired cannot or may not be seized. Considering the need to mark documents for the sake of security as a whole, and unless otherwise provided for in the legislation of the issuing country, a standardized means of marking such documents shall be used as per the procedures in IC 3).

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**Note:** In certain cases, genuine expired visas can also be annotated "Canceled without prejudice" in indelible black ink as per these same recommendations to deter re-use of visas as raw material for fraud purposes.

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Information regarding the return of seized objects is found in Section 11.5 below.

In many cases, the owner of documents seized overseas is the issuing authority. Before retiring a file, an officer should return these documents to the issuing authority, where possible. If not already done, visa offices should make arrangements with local foreign missions and/or local authorities for the return of these passports or other travel documents.

Where not otherwise disposed of, officers should send these fraudulent documents to their MIOs. The MIOs may keep these as training tools or should forward all known or suspected fraudulent documents, including documents containing counterfeit visas or stamps and all altered documents, by secure means to CBSA NHQ as indicated in Section 11.14 below.

In order to record the seizure of documents and for tracking purposes, officers should identify the lawful owner and issue a Notice of Seizure (IMM 5265B) and include the reasons for seizure. To satisfy R252 in regard to documents seized under A140(1), visa offices should take appropriate measures for the indexing, filing and safekeeping of these documents.

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### 9.6. Seizing documents from refugee claimants

The CIC and CBSA officers should, as a matter of routine, seize all pertinent identification or travel documents carried by refugee claimants. Certified true copies of documents provided to these individuals will still ensure access to federal and provincial requirements.

Seized documents will:

- expedite the identification of the person;
- assist in background checks;
- assist in identifying immediate family members;
- assist in verifying information provided in their Personal Information Form (PIF);
- ensure compliance;
- ensure that documents are not recycled;
- assist in removal should the refugee claim be unsuccessful.

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### 9.7. Seizing airline tickets

Officers should be cautious in seizing an unused airline ticket because it has a monetary value. In some cases, it may be appropriate to seize an airline ticket if it has been fraudulently or improperly obtained or used or in order to prevent its fraudulent or improper use. An example would be where an officer finds that the passport is also fraudulent and contains the same alias as on the ticket. In such a case an officer may reasonably conclude that the ticket is being used in order to gain illegal entry to Canada.

The officer should be aware that just because the name on the ticket and the name of the individual do not match, this does not necessarily mean that the ticket was fraudulently obtained. For example, the discrepancy between the name on the ticket and that of its holder can be the result of an error by the airline.

In all cases where documents are seized, an officer must issue the person a Notice of Seizure form [IMM 5265B].

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### 9.8. Seizing vehicles

The term “vehicle” is defined in the Regulations to include any means of transportation that may be used for transportation by water, land or air. This can include cars, trucks, tractors, buses, motorcycles, boats, airplanes and other modes of transportation.

Where the vehicle has more than one component (e.g., a car pulling a trailer), each is treated as a separate vehicle. If they are seized, separate notices (IMM 5265B) and reports are required for each vehicle. In the following scenarios, it may be appropriate for a CBSA officer to seize a vehicle:

- Where a vehicle is used to drop an undocumented, or otherwise inadmissible, person on the U.S. side of the border in order to assist the person in eluding examination, and subsequently picks up the person on the Canadian side without the person appearing for examination.
- Where, after primary examination, an undocumented person who has failed to appear for examination is discovered in the vehicle.

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- Where a vehicle is used to bring an undocumented person to Canada for the sole purpose of allowing that person to disembark without being presented for examination.
- Where the true status or intent of a person, who does not have a passport or a visa as required, is withheld or purposely misrepresented to prevent a proper examination.
- Where, during an examination, it is discovered that the driver of a vehicle allowed an undocumented person to exit the vehicle before the point of examination and that person walked to the port of entry to report separately for an examination; and where it is established that the driver was seeking entry to Canada but knowingly withheld documents and any connection with the arrival of the pedestrian who is inadmissible.
- Where the driver or owner of a vehicle knowingly brings refugee claimants to the border and receives remuneration for these services (lawyers, consultants, or others).

It may NOT be appropriate for a CBSA officer to seize a vehicle where the driver or owner knowingly brings refugee claimants to the border without receiving any remuneration for these services (family members, friends, NGOs).

Since a vehicle may be seized after the fact, officers should immediately take note of the vehicle's identity numbers and markings in case it leaves without permission or the seizure cannot take place because of danger. This information can subsequently be used to link the vehicle to a fraudulent or improper use if it is located at a later date. If the seizure cannot be completed, the officer should report the incident to the CBSA Regional Office and to the CBSA Regional Director. The matter should be turned over to the RCMP for investigation and appropriate action.

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**Note:** Only the CBSA is designated to seize a means of transportation under A140.

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### 9.9. Seizure of commercial vehicles

For information on the procedures relating to seizures of vehicles or assets of commercial transporters pursuant to A148(2), refer to ENF 15, Obligations of Transporters.

### 9.10. Notice of seizure

Following a seizure made by an officer, the officer is required by R253(1), in the case of seizures made pursuant to A140(1), and by R286(1), in the case of seizures made pursuant to A148(2), to make reasonable efforts:

- to identify any person who is a lawful owner of the object seized; and
- to give the person, who is a lawful owner of the object seized, written notice of, and reasons for, the seizure.

If the person from whom an object was seized is not the owner, the officer should ask the person from whom the object was seized to identify the owner or owners and request that they complete a declaration. An officer should document the steps taken to determine ownership and notify the owner and, where appropriate, may also consider completing a statutory declaration.

In the case of a seized means of transportation, the lawful owner could include:

- the registered owner who is not the person from whom the means of transportation is seized;
- the firm that owns the vehicle that has been leased or rented.

An officer who seizes an object is required to issue a Notice of Seizure [IMM 5265B] and to include the reasons for the seizure.

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If a person from whom an object has been seized desires to contact legal counsel, the officer should make every effort to facilitate this. This may be as simple as providing a phone and phone book.

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### 9.11. Reporting the seizure of a vehicle

CBSA officers should provide the following information in their report following the seizure of a vehicle:

- the name and other relevant biographical data of the driver and passengers;
- the role of all the persons involved in the case;
- the vehicle information (i.e., plates, description);
- information on the owner of the vehicle, including permission of use if the owner is not the operator (the facts will support the evidence in the courts);
- whether it is a rented vehicle (copy of the rental agreement);
- the point of disembarkation and entry as well as the destination in Canada;
- details about passengers disembarking immediately before arriving at the Canadian border;
- presentation of passengers and intent (i.e., failure to report for examination);
- misrepresentation, false or misleading information, deception, stealth;
- the status of the application on arrival;
- details about passport, visa, travel documents and other relevant documents or the lack of them;
- itinerary, plans or details of events;
- specific destination or addresses;
- estimate of the value of the vehicle or things seized.

The officer's report must be detailed and accurate as it may be used for evidence in courts. The officer's report may be also used for recommendations to the Minister regarding the disposition of the seized vehicle or to determine the value of the vehicle. The officer's notes should support the decision to seize. Reports that are inaccurate or are incomplete may lead to a decision to return the seized vehicle.

For information on note-taking refer to ENF 7, Investigations and Arrests.

The officer who seizes a vehicle should immediately report the basic information by e-mail to their Regional Director. This will allow the Minister's delegate to respond quickly to inquiries made within a day or two following the seizure. A written report and the documentary evidence that is available at the time should be sent by fax to the officer's Regional Director within three business days.

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### **10. Procedure: Mail search and seizures**

The objective of mail search and seizures is to take out of circulation counterfeit, altered and improperly obtained travel and identity documents. Documents found in international mail may be relevant to prosecutions or enforcement actions under IRPA. CBSA customs officers have the authority to examine and to detain such items and may do so for examination by CBSA immigration officers.

.Officers involved in examining, seizing and caring for items seized in mail and courier systems should strive for minimal impairment of privacy and be mindful of the responsibilities inherent in their authority.

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#### **10.1. CBSA customs inspection procedures for international mail**

International mail arrives in Canada from other countries by marine, rail, highway, and air modes of transport. The mail is received at Canada Post processing facilities where it is sorted for movement within Canada. International mail is then directed for CBSA processing to one of five CBSA customs mail centres, all located within Canada Post facilities in Vancouver, Calgary, Winnipeg, Toronto, and Montréal. CBSA customs reviews all classes of mail received from Canada Post to identify and segregate items that require further examination. The review includes priority post, first class, registered and parcel mail.

During primary inspection, the CBSA customs officers screen the mail items to determine which are duty-free and non-taxable. Mail items that require no further customs control are stamped "Cleared Customs" and are returned to Canada Post for delivery. Mail items that may contain goods that are prohibited, subject to control, subject to duties or taxes, or which require examination by another government department or agency are separated. A bar code label is then applied to the item and tombstone information is entered into the CBSA Postal Import Control System (PICS) in preparation for the CBSA customs secondary processing.

The CBSA secondary customs officers review mail items to determine whether they are subject to duties or controls requiring permits, certificates, enforcement measures, or inspection by another government department. Should the information on the customs declaration attached to a mail item be insufficient for this determination, CBSA customs officers may open it, retrieve the invoice information, or physically examine the contents. If the contents are being imported properly, the details of any assessment of duties, taxes, and a handling fee are printed on a Customs Postal Import Form (form E14) which is then affixed to the mail item. The item is then returned to Canada Post for delivery to the addressee and the collection of duties and taxes.

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#### **10.2. CBSA customs inspection procedures for courier shipments**

Due to the high-volume, low-value nature of goods imported in the courier stream, CBSA customs has streamlined the reporting, release, and accounting procedures for certain courier shipments. According to these procedures, authorized couriers are allowed to present a single report that lists all low-value shipments (i.e., valued at under \$1600) onboard a conveyance, instead of having to present separate cargo control documents normally required for each individual shipment. The single report, called a Cargo Release List (CRL), may be submitted to the CBSA either before the conveyance arrives in Canada or when it arrives.

Currently there are 45 courier companies authorized to use these procedures at 30 different points of entry. From the first point of entry, courier shipments are transported to the courier's warehouse, which is licensed by the CBSA to receive goods in bond.

The CBSA customs officers use the CRL to identify shipments that they wish to examine and communicate this information to the courier. The CBSA customs officers will then proceed to the courier's warehouse to conduct examinations that determine whether the imported items are subject to duties or controls requiring permits, certificates, enforcement measures, or inspection by another government department or agency. The CBSA customs officers may open the

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shipment, retrieve the invoice information, or physically examine its contents. At this stage, the CBSA customs officers can visually inspect and physically examine any other shipments not previously selected for examination, if they are still available in the warehouse. Once the examinations are completed, the officer will either release the shipment to the courier for delivery or issue a Form Y50, effectively removing the shipment temporarily from the courier flow. A courier shipment for which a Form Y50 has been issued will not be returned to the courier flow until any conditions for its importation, as specified on the Form Y50, are met. Such conditions may include examination of the shipment by another government department or agency.

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### 10.3. How mail seizures work

When a CBSA customs officer examines a parcel containing suspicious documents or other documents or thing that might be subject to seizure under A140, the CBSA customs officer will generally detain the parcel until it can be examined by a CBSA immigration officer. The CBSA immigration officer provides expertise with respect to document identification. When deciding whether there are reasonable grounds for a seizure under A140, the officer must take into account the totality of the circumstances including the following three points:

- Is the information upon which the grounds for seizure are based compelling?
- Is the information credible?
- Is the information corroborated?

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### 10.4. Responsibilities of CBSA immigration officers

**CBSA immigration officers are responsible for the following:**

- treating every seized document and/or any other item seized as a potential piece of evidence. The packaging itself may also constitute important evidence and is worthy of the same consideration;
- maintaining records of seizure, including officer notebooks, as they may ultimately be subject to scrutiny in court;
- justifying their actions in the examination and seizure of international mail in the event of a prosecution, enforcement measure, complaint, audit, investigation, or other review;
- notifying the lawful owner of seized documents and disposing of them in accordance with IRPA.

The CBSA officers participating in mail seizure exercises should:

- familiarize themselves in advance with the CBSA customs processes and expectations;
- familiarize themselves with their co-workers and the work environment;
- develop a professional and courteous rapport with co-workers;
- exchange information and share objectives;
- focus on safety and security;
- review the flow of international mail, courier systems and handling areas;



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- seek out expertise and experience whenever possible;
- promote awareness of the negative consequences of importing fraudulent documents or other items;
- possess and maintain extensive knowledge of authorities under the Act and Regulations (including duties, policy, and departmental processes);
- possess a thorough understanding of their responsibilities under the *Privacy Act*;
- be fully trained in document examination techniques;
- maintain knowledge of the latest trends in document forgery, concealment methods, forensic knowledge and forgery detection techniques;
- possess knowledge related to false declarations;
- limit contamination of the item seized;
- clearly document grounds for seizures;
- maintain open communication with key partner agencies;
- maintain record-keeping, security practices, safety practices, audit and analysis of results, and other activities; and
- ensure a minimal delay of packages referred for examination.

With respect to enforcement measures, the integrity of seizure procedures is paramount to ensuring proper control, accounting and continuity of evidence.

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### 10.5. Documenting and tracking seizures

It is imperative that officers maintain a detailed record of any seizure action taken. This information may be useful in the event of a complaint, litigation, prosecution or enforcement action. It may be used as evidence in immigration proceedings, admissibility hearings, appeals and refugee hearings, or to enforce removal orders.

Where the examination site does not have computer equipment available for use by the officer, work sheets and seizure forms should be completed manually. The information concerning seizures must be maintained so that information can be retrieved quickly. At a minimum, the information recorded in the case of a seizure should include the following:

- lawful owner (where it can be determined);
- person from whom the document was seized;
- date and time package referred by the CBSA customs;
- the CBSA customs referral information (e.g., log numbers, courier company labels);
- date, time, and place where examination of the package commenced;
- date, time, and place where examination of the package was completed;

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- number of items in package;
- description of all items seized;
- name and address of consignor;
- name and address of consignee;
- whether full or partial seizure;
- if a partial seizure, date/time/place package returned to the CBSA customs;
- details of action taken as a result of seizure;
- details of any representations received;
- final disposition of items seized; and
- the seizure control number.

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### 10.6. Security, storage, and labeling of items seized

Rigorous standards of control, including appropriate secure storage, labeling, and regular monitoring of any seizure is mandatory. Seized items stored locally will be subject to normal file control practices, including inventory, review and purging. Officers and support clerks should be able, at any time, to determine the location and responsible officer for any seized item. Appropriate receipts for transmittal of seized items must also be carefully maintained.

A copy of the Notice of Mail Seizure form [IMM 5079] and a copy of the Record of Examination form [IMM 5369B] should be securely attached to the envelope used to store seized items. The seized items should be placed within a secure envelope.

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### 10.7. Split seizures

Splitting seizures for any reason should generally be avoided. If a seizure consists of several items, they should all be kept together in the original seizure envelope until final disposition. There may be exceptions to this, such as where multiple documents are seized relating to several different case files. In this instance, the seized documents would be individually forwarded to the respective case files.

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### 10.8. Partial seizures

In a partial seizure, one or more items of contraband may be seized from a package, the rest of which is returned to the customs process. If one or more prohibited items are removed, the remaining goods should be re-sealed in the package and the officer can return them to the CBSA customs process. On release by a CBSA customs officer, the package may then be returned to the course of post. Where a partial seizure occurs, notification should be provided as per the Regulations.

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### 10.9. Notification of owner

IRPA requires that officers effecting a seizure, full or partial, of items from international mail must provide notification in all cases. For information concerning notification of the rightful owner refer to Section 9.10 of this chapter.

In cases where ownership of seized goods cannot be readily established, for example where the importer's or exporter's full name and address cannot be determined from the labels or other

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information accompanying the seized goods, officers should make reasonable alternative efforts to identify the owner. Efforts to locate the owner and the results at each stage should be recorded in detail on the seizure file and local mail seizure administrative databases. Where an owner is identified, written notification of mail seizures should be made using the IMM 5079B. Brief grounds for seizure specific to each item listed on the form should be included in the "Description" portion.

If the goods clearly constitute contraband, such as blank identity documents or counterfeit passports, the officer can conclude that there is no lawful owner. In some cases, state-issued documents such as passports should be returned to the issuing authority. Officers should not notify an issuing state in cases where a document was seized from a refugee claimant when such notification would alert the country to the presence of the refugee claimant in Canada.

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### 10.10. Returning items to the customs process

Where an officer does not establish reasonable grounds for seizure, the package should be returned without delay to the customs inspection process. An imported package is considered to be in the CBSA customs secondary process unless seized by a CBSA immigration officer.

There is no requirement to record reasons in support of a decision to return a package to the customs process. A minimum of information should be recorded about released packages as may be required for tracking the item, for measurement of workload or other legitimate administrative purpose. No photocopies, images, transcriptions or other record of the contents of such packages are to be retained.

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### 10.11. Release of information

Except as provided below, under no circumstances should an officer respond to requests from other agencies or departments to obtain information that may arise from the examination of detained mail. If an officer does not have reasonable grounds to make a seizure of detained mail, then there is no authority to disclose information about detained mail to a third party. Neither should an officer examine or seize mail on behalf of any other agency or department, unless legally authorized to do so.

Under some circumstances, there may be authority for an officer to release information obtained as a result of a seizure. CIC may release personal information obtained as a result of a seizure to the RCMP for investigations under the Act and Regulations. Such release is consistent with the purpose of subsection 8(2)(a) of the *Privacy Act*.

CIC and the CBSA may also release personal information to an investigative body specified in the *Privacy Regulations* for the purpose of enforcing any law of Canada or a province or carrying out a lawful investigation. The investigative body must make a written request, which specifies the purpose and describes the information to be disclosed pursuant to paragraph 8(2)(e) of the *Privacy Act*.

There may be other situations where the release of information obtained as result of a seizure may be authorized under the *Access to Information Act* and *Privacy Act*. The officer is encouraged to seek the advice of their regional Access to Information and Privacy (ATIP) coordinators before considering such options.

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## 11. Procedure: Disposition of seized objects

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### 11.1. Custody of seized items

R252 requires an officer who seizes a thing under A140 to place it without delay in the custody of the Department/Agency. CIC and CBSA immigration officers are designated to seize documents or other things under A140 while only the CBSA is delegated to seize a means of transportation under A140. If a document or other thing is seized by a CIC officer, it will be placed without delay

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into the custody of CIC. If a CBSA immigration officer seizes a means of transportation, document or other thing, it will be placed without delay into the custody of the CBSA. Objects should be stored in a protected holding area with restricted access. If a CBSA customs officer or the RCMP seize anything under the *Immigration and Refugee Protection Act*, they are required to turn it over to a CBSA immigration officer.

Storage of seized vehicles should be arranged locally in consultation with the regional CBSA office when necessary. The storage area should afford reasonable protection against damages, theft and accidents.

If a file transfer occurs between CIC and the CBSA, custody of the seized document or other thing will also change from one organization to the other. Means of transportation will always remain in the custody of the CBSA.

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### 11.2. Protecting evidence

An officer may be required to testify in court that a document or other object collected as evidence has remained unchanged since it came into their possession: in other words, that the continuity of evidence has been maintained. Whatever evidence comes into an officer's possession, the officer must note the date, time and place on the case file and in a notebook.

To maintain the continuity of evidence for the purposes of prosecution under IRPA or the *Criminal Code*, officers must ensure that seized documents are kept in a secure area and handled by a minimum number of persons. The officer should:

- make a photocopy of the document and stamp certified true copy on each page and write their initials, the time and the date;
- seal the evidence in an envelope, write their initials across the envelope seal and secure it with transparent tape;
- write a description on the envelope of the contents, the name and file number of the person concerned, the officer's initials and the time and date.

If an authorized officer needs to remove and examine evidence from the envelope, they must repeat the steps just described above when placing the evidence back in the envelope. If an officer only needs to refer to a document, they should refer to the certified true copy on file.

If a peace officer requires possession of the document from the immigration file for prosecution, an officer should:

- verify the contents of the envelope with the peace officer against the certified true copy on file; and
- complete a Document Transit and Receipt [form ADM 2491B] and place a copy on file.

An officer should make a note of these procedures, place the note on file for future reference and enter the information in the official notebook.

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### 11.3. Liability for damage to property

If a search results in damage to the traveller's vehicle or baggage, an officer must prepare a report indicating the extent of the damage and other relevant details of the examination. For regulations and policy for handling damage claims against the Crown, see part 41 of the Financial Management Manual. When a search brings no results, and the search caused damage to the person's belongings, it is policy to return the conveyance or item to its original state. When it is apparent that items may be damaged during a search because of their state of repair or fragility, the officer should take before and after photographs of the items, to avoid the CBSA from having to pay for damages unrelated to the search.

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### 11.4. CBSA liability for damage to a vehicle

CBSA officers who seize a vehicle should make a careful inventory of any damage that the vehicle has and should ask the person from whom the vehicle was seized or the owner to give written acknowledgement of the inventory, if they are present at the time.

A vehicle that is seized remains in the custody of the CBSA until all legislative requirements for its return or disposal have been complied with.

The CBSA may be liable for any damage caused to a vehicle in its custody depending on the factual circumstances of each case. Any damages caused to a vehicle while under immigration seizure should be reported to the Regional office and to the Regional Director for appropriate assessment. Owners of a damaged seized vehicle may seek redress under a number of different laws.

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### 11.5. Return of seized objects (R253)

R253(2) provides that the Minister shall return a seized object as follows:

Regulation	Explanation
R253(2)(a)	Fraudulently or improperly obtained objects shall be returned to their lawful owner (if known) unless the person from whom they were seized applies under R256 and demonstrates that the object was not fraudulently or improperly obtained or used.
R253(2)(c)(i)	Objects seized to prevent their fraudulent use shall be returned to their lawful owner if the seizure is no longer necessary for preventing their fraudulent or improper use.
R253(2)(d)	Objects seized to carry out the purposes of the Act shall be returned to their lawful owner if the seizure is no longer necessary to carry out the purposes of the Act.

R253(3) further stipulates that in all cases above an object shall be returned only if its return would not be contrary to the purposes of the Act.

The onus is on the Minister to return an object if any of these situations apply. It is not necessary for the person to make an application.

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### 11.6. Application for return of thing seized in exchange for security (R254)

R254 allows a lawful owner of a thing seized or the person from whom it was seized to apply for its return in exchange for security in the following circumstances:

- the object seized is not a document;
- the object was seized because it was fraudulently or improperly used;
- its seizure is no longer necessary to prevent its fraudulent or improper use or to carry out the purposes of the Act; and
- the applicant provides security equal to the fair market value of the thing at the time of the seizure.

R254(3) stipulates that the security taken replaces the thing seized. This provision allows a person to buy back a seized object by paying its full market value. In some cases, persons will use this provision to get immediate possession of their seized object while making a simultaneous application for its outright return under another section of the Regulations.

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### Estimate for market value of a vehicle for the purpose of R254

The estimated value of cars and small trucks can usually be established by using the *Canadian Older Car/Light Duty Truck Red Book* or an equivalent instrument of reference. If the value of the car or truck cannot be established with these instruments, a dealer may be consulted.

A bill of sale from a car dealer will usually be considered reliable since it should reflect the retail value of the vehicle. A bill of sale between private parties may reflect only the price agreed upon and not the value of the vehicle and, therefore, is less reliable. In these situations, the officer should confirm the value of the vehicle through some other means.

For other types of vehicles such as a bus, truck, van, airplane or ship, the officer may have to seek advice from a CBSA regional office or from the CBSA NHQ in order to identify a responsible expert on the matter.

The value of a vehicle declared in the registration of the transfer of ownership may not be reliable depending on where the vehicle was purchased. That value should be verified through other means. While it may not be difficult to establish an estimated value for some small boats or airplanes, it is more difficult in the case of large or commercial craft. Some cases may require expert advice.

### Estimate of the market value of a seized object

Items may be estimated by using:

- the Internet to locate the identical item or one of approximate value;
- reports from newspapers, flyers, or other adds;
- field experts (dealers, appraisers, sellers);
- phone calls to reputable shops.

An officer must consider that the value of an object will vary and that each assessment will differ to some degree..

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### 11.7. Application by lawful owner for return of thing seized (R255)

R255 allows for the return of an object seized, because it was fraudulently or improperly used, to its lawful owner in the following circumstances:

- the lawful owner makes an application in writing within 60 days after the seizure;
- the applicant was the lawful owner prior to the seizure and remains the lawful owner;
- the applicant did not participate in the fraudulent or improper use of the object;
- the applicant exercised all reasonable care to satisfy themselves that the person permitted to obtain possession of the thing was not likely to fraudulently or improperly use it; and
- the return of the object would not be contrary to the purposes of the Act

The burden of proof is on the applicant to demonstrate that these criteria are met.

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### 11.8. Disposing of a seized vehicle

R253 to R257 set out the conditions under which a thing that was seized under A140 may be returned or otherwise disposed of. The Instrument of Delegation and Designation (IL 3) describes the powers that have been delegated and identifies the level of delegation. Things that are seized

## ENF 12 Search, Seizure, Fingerprinting and Photographing

may be disposed of only as provided in the Regulations and following the decision of an officer who has been delegated to exercise that authority.

Because vehicles often have a high market value, many of the delegations for the disposition of seized vehicles are at the regional directors general (RDG) level. CBSA immigration officers may make decisions under R253 but the case must be sent to the CBSA RDG if a client applies in writing for the return of a vehicle under R254, R255 and R256. Many situations will require advice from the the CBSA's Legal Services.

Following the seizure of a vehicle, the officer will:

- place it in the custody of the CBSA;
- identify the owner;
- give written notice and reasons;
- prepare a report; and
- review the case in light of R253.

If the vehicle is not returned, the full report on the vehicle seizure is forwarded to the RDG. Samples of reports, memos and letters that may be used in these circumstances can be found in:

- Appendix G: (R254(2)) Sample memo to DG - Return of a vehicle on payment of security.
- Appendix H: (R255(2)) Sample memo to DG on application to return a rented car that was seized.
- Appendix I: (R255(3)) Sample memo to DG for decision on application for return of vehicle.
- Appendix J: (R256(2)) Sample memo to DG for decision on application for return of vehicle.

### **Sale or disposal of a seized vehicle**

If a vehicle is not returned under R253 and no application is received under R254, R255 or R256 or if an application under these sections is refused by the RDG, then the vehicle will be disposed of in accordance with R257.

---

### **11.9. Application for return of seized vehicle on payment of \$5000 fee**

R255(3) allows for the return of a vehicle seized because it was fraudulently or improperly used to its lawful owner in the following circumstances:

- the lawful owner makes an application in writing within 60 days after the seizure;
- the applicant pays a \$5000 fee;
- the applicant was the lawful owner prior to the seizure and remains the lawful owner;
- the applicant did not profit or intend to profit from the fraudulent or improper use of the vehicle;
- the applicant is unlikely to contravene the Act in the future; and
- the return of the object would not be contrary to the purposes of the Act. The burden of proof is on the applicant to demonstrate that these criteria are met. This provision can be used by

## **ENF 12 Search, Seizure, Fingerprinting and Photographing**

lawful owners who were party to the fraudulent or improper use of the vehicle if they can demonstrate that they did not profit or intend to profit and that they are unlikely to contravene the Act in the future. The \$5000 fee is a fine and, as such, is not refundable.

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### **11.10. Application to return a vehicle where there is no fraudulent or improper use [R255]**

R255 allows for the return of a thing, which was seized because it was fraudulently or improperly used, to the person from whom it was seized in the following circumstances:

- the person makes an application in writing within 30 days after the seizure; and
- the applicant demonstrates that the seized object was not fraudulently or improperly used.

The burden of proof is on the applicant to demonstrate that these criteria are met. The Minister will return the object if the person from whom it was seized demonstrates that the grounds for the seizure did not exist.

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### **11.11. Notice of decision**

An officer is required to notify the person in writing of the decision with respect to applications made under R253 or R255 for the return of seized objects and provide reasons.

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### **11.12. Decision by the Minister not to return a seized object**

If the decision following review made under R253, R254, R255 or R256 is not to return a seized object, then it remains in CIC or the CBSA custody (depending on the nature of the seizure and the item seized) or is disposed of in accordance with R257.

Examples of things that would not be returned are:

- fraudulent documents (photo-substituted passports, travel documents);
- lost or stolen items;
- altered documents (passports with illegal alterations, pages missing);
- counterfeit money;
- illegally obtained driver's licence, social security or credit cards.

#### **Sale or destruction of a seized object**

R257 provides for objects of monetary value (other than documents) to be sold. In cases where an object has no monetary value or the costs of the sale would exceed the monetary value of the object, the object is destroyed.

#### **Suspension of sale**

R257(2) provides that an object should not be sold during the 15-day period following notification that the object would not be returned, or before a final decision is made in any judicial proceeding in Canada relating to its seizure or return.

#### **Forfeiture of security given under R254(2)(b)**

R254(3) provides that if security has been given in place of a seized object under section R254(2)(b), this replaces the object seized. If section R257 applies to the object, any cash deposit is forfeited and the guarantees of performances become a debt owed to the Crown.



## ENF 12 Search, Seizure, Fingerprinting and Photographing

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### 11.13. Disposition of documents

When returning a document, an officer should record the details on the file and complete the reverse of the IMM 5079B or the IMM 5265B form to show that the document has been returned. For example:

“Passport number 12345 issued in Norway was returned to the holder John Doe, date of birth, on 27 February 2002.”

Section R257(3) requires that if a seized document is not returned, it shall be retained for as long as is necessary for the administration or enforcement of Canadian laws, after which it is governed by the applicable laws relating to the disposal of public archives.

Before retiring a file, an officer should return other documents (such as Social Insurance Number cards) to the issuing authority with a memorandum outlining how they came into the possession of CIC or the CBSA.

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### 11.14. Procedures for disposing of fraudulent documents

An officer should not return the following documents to the person from whom they were seized:

- altered documents (examples of alterations include photo-substitution and page substitution) and alterations of variable mentions (such as date of birth or name) or erasures;
- complete counterfeit documents;
- improperly obtained or issued documents; and
- fantasy documents.

Officers should send these fraudulent documents and suspect items to their Regional Intelligence Units.

The Regional Intelligence Units may keep some documents as training tools. Should they not be kept as training tools, all known or suspected fraudulent documents, including documents containing counterfeit visas or stamps and all altered or fantasy documents, should be forwarded by secure means to:

Deputy Director, Documents Section  
Control Division (RZC)  
300 Slater, 11th floor  
Ottawa, Ontario K1A 1L1

An officer sending a document to the Control Division should complete copy 2 of the IMM 5079B or the IMM 5265B form and include all available information regarding the circumstances of the seizure of the document.

#### **Sending documents for analysis**

If an officer needs an analysis of a document for evidence at an admissibility hearing or for any other purpose, an officer should complete copy 2 of the IMM 5079B or the IMM 5265B form and send the form and the document to the Control Division of Immigration Intelligence, Enforcement Branch, CBSA, which in turn will send them to the RCMP Central Forensic Laboratory. The Control Division will return the laboratory report to the officer, which in most cases will suffice as evidence at an admissibility hearing. If an officer needs the original document back, the accompanying report should clearly state the date on which it will be required.

The Control Division will retain documents that are not returned for training and examination purposes, or will dispose of them in accordance with R257(3).

## ENF 12 Search, Seizure, Fingerprinting and Photographing

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### 12. Procedure: Fingerprinting

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#### 12.1. Authority to fingerprint

A16 provides the legal authority to fingerprint foreign nationals making applications under the *Immigration and Refugee Protection Act*. This includes foreign nationals who are applying:

- to enter Canada;
- for visas or other documents at a visa office;
- for permanent residence in Canada;
- to vary or cancel conditions imposed; or
- for refugee protection.

A16(3) provides authority to fingerprint any permanent resident or foreign national who is arrested, detained or under a removal order.

It is departmental policy that all refugee claimants aged 14 and over should be fingerprinted.

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#### 12.2. Privacy notice

In accordance with Treasury Board Policy on Data Protection and Privacy, where a department collects personal information directly from individuals, it is required to inform individuals of the following:

1. the purpose of the collection;
2. whether the response is voluntary or required by law;
3. any possible consequences of refusal to respond;
4. that the individual to whom the information pertains has rights to access and protection under the *Privacy Act*; and
5. the registration number of the Personal Information Bank (PIB) in which the information is retained.

Accordingly, the following Privacy Notice must be posted at all LiveScan automated fingerprint systems sites.

#### **Privacy Notice**

To individuals who are required to submit fingerprints and photographs under the *Immigration and Refugee Protection Act*:

#### **Legislative authority to fingerprint:**

Where fingerprints and photographs of applicants seeking admission into Canada are requested, compliance is required by law. Failure to comply may result in inadmissibility. The legal authority to collect this personal information is section 16 of the *Immigration and Refugee Protection Act*.

#### **Purpose of the collection of fingerprints:**

The personal information you are required to provide will be used to assess your application in accordance with the *Immigration and Refugee Protection Act*. The

## ENF 12 Search, Seizure, Fingerprinting and Photographing

information may be shared with other law enforcement agencies in accordance with the *Privacy Act*.

### **Retention and disposal standards:**

Paper records are normally retained ten years after the last administrative action. RDA Number: 90/002 Related to PR# CIC ASB 001. TBS Registration: 005218 Bank Number CIC PPU 001 (formerly EIC PPU 270).

### **Access to personal information:**

Under the *Privacy Act* and the *Access to Information Act*, individuals have the right to protection and access to their personal information. Details on these matters are available at [www.infosource.gc.ca](http://www.infosource.gc.ca) and through the CIC Call Centre. Info Source is also available in Canadian public libraries. For further information contact:

Citizenship and Immigration Canada  
Access to Information and Privacy Coordinator  
Public Rights Administrator Division  
Narano Building  
360 Laurier Avenue, 10<sup>th</sup> floor  
Ottawa, Ontario K1A 1L1

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### 12.3. Taking fingerprints

Officers are to use LiveScan automated fingerprint systems wherever they are available. Ink and roll prints are only to be used when a LiveScan machine is not available.

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### 12.4. Fingerprinting (ink and roll method)

The ink and roll method should only be used when LiveScan is not available. To take a proper set of ink and roll fingerprints, an officer needs the following:

- a print take ink strip: an inked strip containing a special ink for fingerprinting (some offices use inkless pads);
- a print retainer pad: a rubberized pad to hold the ink strip flat;
- a print form holder: a holder that contains the fingerprint form;
- a pen; and
- a stand or table to hold the materials.

#### **Fingerprint forms**

**C-216C** (Civil Fingerprint Form): This form is green in colour and is designed for civil purposes such as visa applications, civil security checks and applications for permanent residence.

**C-216** (Criminal Fingerprint Form): This form is brown in colour and is designed for criminal record searches or charges.

**C-216R** (Refugee Fingerprint Form): This form is blue in colour and is designed specifically for refugee applicants. The C-216R incorporates the office RC number and the FOSS number. The bottom right-hand corner is designed to accept the client's photo.

#### **Loading the fingerprint form:**

## ENF 12 Search, Seizure, Fingerprinting and Photographing

Before inserting the fingerprint form into the holder, the form should be creased horizontally along three lines:

- the horizontal spaces designated for rolled impressions of the right hand;
- the spaces for the rolled impressions of the left hand; and
- the space for the plain impression.

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**Note:** Creasing fingerprint forms is only done for ink-roll procedures.

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By making these three folds, the form will lie flat and not bulge after it is inserted into the holder.

The fingerprint form should be inserted in the holder so that the spaces designated for the rolled impressions of the right hand are on the flat, horizontal surface.

The person to be fingerprinted should stand at forearm's length from the fingerprint stand. The officer may stand either to the left or the right (whichever is more convenient) and slightly in front on the person being fingerprinted. The person should be advised to relax. A completely relaxed position is most desirable because any tension in the hands interferes with the free movement of the fingers which is necessary for successful fingerprinting. It also prevents officers from gauging the amount of pressure needed when they ink and print the digits.

The hands of the person being fingerprinted must be clean. While normal washing with soap and water is all that is required, persons with fine, shallow friction skin ridges should, regardless of the cleanliness of their hands, wash in very warm water before being fingerprinted. Warm water has a tendency to swell the ridges and this technique results in clear, sharp impressions. The person's hands must be completely dry before fingerprinting. Persons whose hands perspire freely should wipe each digit dry immediately before printing.

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### 12.5. Fingerprinting the person (ink and roll)

To take ink roll fingerprint impressions, an officer should:

- beginning with the person's right hand and with the fingers closed, grasp the right thumb at the base with either the right or left hand (depending on which side of the person an officer is standing), supporting its tip with the thumb and index finger of the other hand;
- roll the thumb on the ink strip so that the entire bulbous portion (the fingerprint pattern area) is inked, from one edge of the nail to the other, and covering the area from the crease of the end joint to the tip of the digit as far as the rolling will permit;
- while still maintaining hold of it, roll the thumb firmly with a similar, continuous and even motion, on the designated right-thumb area of the fingerprint form, rotating the digit a full half turn, again from one edge of the nail to the other; this complete rolling is absolutely necessary to ensure that the entire pattern is reproduced for correct classification;
- ink each of the four fingers of the hand and reproduce them in their respective order in exactly the same manner, and then follow with the left hand.

When fingerprinting the thumb or any finger, it is important that the person holds their remaining digits in a clenched hand formation (a fist), so that they do not in any way interfere with the inking and printing movement.

#### **Requirements for good fingerprints:**

- Clearly defined rolled impressions (cores and deltas must be present).

## **ENF 12 Search, Seizure, Fingerprinting and Photographing**

- Clearly defined plain (slap) impressions.
- Clearly defined palm prints.
- Clearly defined ridges (no smears, smudging, broken lines or distortion).

### **Taking good fingerprints**

To take good fingerprints, an officer should:

- before taking the first set of prints, ask for a demonstration from an experienced officer;
- practice taking a colleague's prints;
- not roll the subject's fingerprint on the ink pad in the same place twice; re-attach the ink pad cover and rub it to smooth out the ridges in the ink;
- not apply too much pressure to the finger when taking the print; (The darkness of the fingerprint on the form is a result of the amount of ink used, not the pressure. If done properly, the weight of the finger should be sufficient to produce a good quality print as long as the officer inked the finger properly.)
- develop a routine by printing the fingers in the order in which they appear on the form; at all times, start with the right thumb, continuing with the right index through to the right little finger, and then following with the left thumb, and left forefinger through to the left little finger. (Misplaced rolled impressions on the fingerprint form would result in a non-existent classification, which could never be successfully searched in the fingerprint bureau.)
- roll thumbs inwardly and fingers outwardly. While there is no set rule governing the direction of rotation of the digits during the inking and printing process, experience has shown that there is a natural tendency for thumbs to yield to an inwardly rotating motion (rolling the right thumb counter clockwise and the left thumb clockwise) and for the fingers to an outwardly rotating motion (rolling the right hand fingers clockwise and those of the left hand counter clockwise).
- always centre the core area of the rolled impressions.

### **Plain impressions of hand**

To take plain impressions in the lower portion of the fingerprint form, the officer should:

- take the impressions with the four fingers of the hand extended;
- working with one hand at a time, place the fingers simultaneously on the ink strip, applying firm pressure equally to all to ensure even inking;
- place the hand on the appropriate space on the form, again exerting even pressure to ensure uniform simultaneous printing;
- allow for flattening of the inked fingers. The fingers should not be held together too tightly. This will ensure the reproduction of the greatest possible portion of the pattern in each finger. Ink and record the thumbs similarly in the appropriate spaces without rolling.

Plain impressions serve to verify the accuracy of the sequence of the rolled impressions for the classifier and searcher in the Fingerprint Section of the RCMP.

## ENF 12 Search, Seizure, Fingerprinting and Photographing

### 12.6. Completing the ink and roll fingerprint form

If a client is fingerprinted via the traditional ink and roll process, the officer should ensure the bottom half of the fingerprint form is completed as follows:

Field	Action required (ink and roll fingerprints)
Contributing Agency	Enter the complete mailing address of the CBSA or CIC office..
Contributor's Number	The Contributor's Number includes the file number and FOSS ID number. Do not use the upper right corner box of the fingerprint form. That is for RCMP use only.
Occupation	Enter subject's occupation.
Peculiarities, etc	Include only those that are obvious, as well as any physical abnormalities and mannerisms. Describe the person using specific observed physical characteristics.
Other names, aliases, nicknames, maiden name, etc.	If no known alias, leave this field blank.
Case Handled by	Complete only when the case is being handled by an officer other than the contributor of the fingerprints.
Charge and Disposition	Do not enter foreign convictions, or description of foreign convictions.

### 12.7. Requirement to record legal reason for fingerprint search

It is important that officers record the statutory authority, under the *Immigration and Refugee Protection Act*, for taking fingerprints. Stating the statutory authority gives the RCMP legal authority to search fingerprints on behalf of the Canada Border Services Agency (CBSA), and Citizenship and Immigration Canada. Fingerprints with no Statutory Authority will not be processed by the RCMP and will be returned to the issuing office for correction and resubmission.

Officers will stamp << Criminal Record Inquiry - Authority - Section 16 IRPA - CBSA/CIC >> in the bottom portion of the C-216 criminal fingerprint form.

**Note:** It is not necessary to enter the Canadian search reason when using the C216R refugee fingerprint form.

#### Sample stamp on C-216 fingerprint form:

Date and Place of Sentence Date et Lieu de la sentence	Charge-Exact Section-Statute Accution - article exact - loi	Disposition - Décision
	<div style="border: 2px solid black; padding: 10px; width: fit-content; margin: 0 auto;"> <p><b>Criminal Record Inquiry Authority - Section 16 IRPA CBSA/CIC</b></p> </div>	

## ENF 12 Search, Seizure, Fingerprinting and Photographing

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### 12.8. Requests for foreign searches with ink and roll fingerprints

Requests for foreign criminal background checks from foreign governments are submitted in writing to the RCMP. Response times for such requests can be lengthy and information may not always be obtainable.

Handwriting should be neat and legible.

Photographs should be retained on file and only sent to the RCMP upon their request.

All C-216 and C-216R ink and roll fingerprint forms should be sent to:

Commissioner, RCMP  
Attention: Officer in Charge  
Immigration and Passport Branch  
Room H-421  
1200 Vanier Parkway  
Ottawa, Ontario  
K1A 0R2

All ink and roll fingerprints submitted to the Immigration and Passport section of the RCMP are checked for registered convictions and charges and against the Refugee Data Bank. Requests for an FBI or Interpol search must be addressed in writing to the RCMP (for ink and roll prints).

All C-216C forms should be sent to:

Commissioner, RCMP  
Attention: Identification Services Directorate  
Civil Section  
P.O. Box 8885  
Ottawa, Ontario  
K1G 3M8

Fingerprints of Convention refugees will be destroyed when the person becomes a Canadian citizen. CIC will notify the RCMP when a person obtains citizenship.

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## 13. Photographing

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### 13.1. Authority to photograph

Section A16 provides the legal authority to photograph foreign nationals making applications under the Act. This includes foreign nationals who are applying:

- to enter Canada;
- for visas or other documents at a visa office;
- for permanent residence in Canada;
- to vary or cancel conditions imposed; or
- for refugee protection.

A16(3) provides authority to photograph any permanent resident or foreign national who is arrested, detained or under a removal order. Officers should be considerate of religious and cultural sensitivities when taking photographs. For example, photographing women who are obliged by their customs to wear a veil may only be permissible if carried out by another woman.

## ENF 12 Search, Seizure, Fingerprinting and Photographing

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**Note:** 18% gray backdrop is the internationally recommended standard.

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### 13.2. Taking photographs

When taking photographs, officers should:

- ensure there is clear or sufficient lighting;
- select a light background that will provide contrast and enhances the image;
- have glasses, sunglasses, excessive jewellery or anything that may impair the picture removed;
- ensure that hair does not cover the face;
- ensure the person's eyes are open;
- ensure the picture is taken from an appropriate distance;
- retake the picture making the appropriate adjustments if the quality of the photo is poor.

Officers should take as many pictures as they deem reasonable. Extra pictures should be taken and attached to the person's file to be used as necessary at a later date.

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### 13.3. Photographing minors

A16 provides authority to photograph foreign nationals making an application and this includes minor children. A photograph can be an important means of identifying a child.

An officer should keep in mind that the comfort level of the child is very important. It is usually best to photograph a child in the presence of a parent or guardian. A child who is not comfortable being photographed alone may be photographed in the arms of a parent or legal guardian.



# ENF 12 Search, Seizure, Fingerprinting and Photographing

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## Appendix A Information to Obtain A Search Warrant – Form 1

CANADA

~~Province of Alberta~~

Province de l'Alberta

*File No.*

*N° de référence*

*Form 1*

*Formulaire 1*

*Criminal Code Code Criminel*

*Section 487 Article 487*

### Information to Obtain A Search Warrant Dénonciation en vue d'obtenir un mandat de perquisition

***THIS IS THE INFORMATION OF  
LES PRÉSENTES CONSTITUENT LA DÉNONCIATION DE***

---

***a Peace Officer of THE CANADA BORDER SERVICES AGENCY  
un agent de la paix de L'AGENCE DES SERVICES FRONTALIERS DU CANADA***

***THE INFORMANT SAYS THAT THERE ARE REASONABLE GROUNDS OF BELIEVING THAT  
LE DÉNONCIATEUR DÉCLARE QU'IL A DES MOTIFS RAISONNABLES DE CROIRE QUE***

***Certain things, to wit:  
les choses suivantes (ci-après appelées « lesdites choses ») :***

---

---

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***HEREINAFTER referred to as the said "things", which will afford evidence,  
fourniront la preuve***

***THAT/QUE***

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***AND THAT he has reasonable grounds for believing that the things, or some part of them, are in the  
Le dénonciateur a également des motifs raisonnables de croire que lesdites choses ou une partie  
d'entre elles se trouvent dans***

***of/de***

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**ENF 12 Search, Seizure, Fingerprinting and Photographing**

*in the CITY OF CALGARY, in the Province of ALBERTA, hereinafter called "the location".  
dans la ville de CALGARY, province de l'ALBERTA (ci-après appelé « l'emplacement »).*

**MY GROUNDS FOR BELIEF ARE  
MES MOTIFS JUSTIFIANT LA PERQUISITION SONT**

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**WHEREFORE** the informant prays that a search warrant may be granted to search the said location for the said things.

**EN CONSÉQUENCE**, le dénonciateur demande qu'un mandat de perquisition soit accordé pour perquisitionner dans ledit emplacement en vue de trouver lesdites choses.

**SWORN** before me this  
Assermenté devant moi

\_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_\_, A.D.  
le \_\_\_\_\_ jour du mois de \_\_\_\_\_ 20 \_\_\_\_\_  
at / à Calgary, Alberta.

\_\_\_\_\_  
*Signature of informant  
Signature du dénonciateur*

\_\_\_\_\_  
*(Judge of the Provincial Court)  
(Justice of the Peace) In and for the  
Province of Alberta  
(Juge de la cour provinciale)  
(Juge de paix) dans et pour la  
province de l'Alberta*

## ENF 12 Search, Seizure, Fingerprinting and Photographing

### Appendix B Information to Obtain a Search Warrant – Form 1 (Sample)

CANADA

*Province of Alberta*

*Province de l'Alberta*

*File No.*

*N° de référence*

*4604-12345678*

*Form 1*

*Formulaire 1*

*Criminal Code Code Criminel*

*Section 487 Article 487*

### ***Information to Obtain A Search Warrant***

*Dénonciation en vue d'obtenir un mandat de perquisition*

***THIS IS THE INFORMATION OF***

***LES PRÉSENTES CONSTITUENT LA DÉNONCIATION DE***

Bill JONES (Badge#1234)

***a Peace Officer of THE CANADA BORDER SERVICES AGENCY***

***un agent de la paix de L'AGENCE DES SERVICES FRONTALIERS DU CANADA***

***THE INFORMANT SAYS THAT THERE ARE REASONABLE GROUNDS OF BELIEVING THAT  
LE DÉNONCIATEUR DÉCLARE QU'IL Y A DES MOTIFS RAISONNABLES DE CROIRE QUE***

***Certain things, to wit:***

***Les choses suivantes (ci-après appelées « lesdites choses » :***

Records of Acme Communications Inc., including all Subsidiaries, pertaining to all cellular towers that have received data from the cellular phone with number (403) 555-1234, between the dates of April 20th, 2002 to May 3rd, 2002. Further to this, the full name, date of birth, address, and any other contact information held by Acme Communications Inc., including all subsidiaries, regarding the lawful owner of the cellular telephone with number (403) 555-1234.

***HEREINAFTER referred to as the said "things", which will afford evidence,  
fourniront la preuve***

***THAT/QUE***

On April 20<sup>th</sup>, 2002, near Calgary, Alberta, Mr. John SMITH, a foreign national born in Portland, Oregon on September 4<sup>th</sup>, 1971, did come into Canada contrary to s.124(1)(a) by way of 27(1) of the *Immigration and Refugee Protection Act*, namely that s. 124(1)(a) states "Every person commits an offence who contravenes a provision of this Act for which a penalty is not specifically provided or fails to comply with a condition or obligation imposed under this Act", namely that Mr. Smith failed to appear without delay before an officer at a port of entry as obligated to do so pursuant to section 18(1) of the Act,"and, as per section 125 of the Act " is liable (a) on conviction on indictment, to a fine of not more than \$50,000 or to imprisonment for a term of not more than two years, or to both; or (b) on summary conviction, to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both." Furthermore, a warrant for arrest under section 55(1) of this Act was issued for Mr. Smith on May 3<sup>rd</sup>, 2002 in Calgary, Alberta as a result of the aforementioned offence.

## ENF 12 Search, Seizure, Fingerprinting and Photographing

*AND THAT he has reasonable grounds for believing that the things, or some part of them, are in the LE DÉNONCIATEUR a également des motifs raisonnables de croire que lesdites choses ou une partie d'entre elles se trouvent dans*

Records at Acme Communications Inc. (including all subsidiaries)

*of/ de*

3<sup>rd</sup> Floor (Security Wing), 123 – 1<sup>st</sup> Street SW, Calgary, Alberta, Canada, T1A 2B3

*in the CITY OF CALGARY, in the Province of ALBERTA, hereinafter called "the location".  
dans la ville de CALGARY, province de l'ALBERTA, ci-après appelé "l'emplacement".*

### **MY GROUNDS FOR BELIEF ARE**

### **MES MOTIFS JUSTIFIANT LA PERQUISITION SONT**

1. The informant, Bill JONES, is an immigration officer with the Canada Border Services Agency in Calgary, Alberta and was first sworn as an immigration officer on May 1<sup>st</sup>, 1998. In the course of employment as an immigration officer, the informant has received training on the tracking and apprehension of wanted persons during the 2002 Fugitive Conference held jointly between the Toronto Metropolitan Police Service and the United States Marshal Service in Toronto, Ontario. During this course, the informant received specific training on the use of cellular phone records to assist in establishing the whereabouts of wanted person. The informant can give an informed opinion on certain facts and circumstances as they relate to locating the whereabouts of wanted persons by utilizing cellular phone records.
2. On May 1<sup>st</sup>, 2002, the informant did interview in person one Sergeant Jim WILLIAMS of the Calgary Police Service in Calgary, Alberta. Sergeant Williams has served with the Calgary Police Service since 1997 and has authority and to access the Calgary International Airport security services, including access to all security surveillance camera equipment. Sergeant Williams told the informant that he personally reviewed the security surveillance camera data at the Calgary International Airport and has also reviewed the Watch-For posters received by the Calgary Police Service from the United States Marshal Service. During this interview the following was learned:
  - a) That on April 20<sup>th</sup>, 2002, a security surveillance camera at the Calgary International Airport arrivals terminal recorded a Caucasian male, approximately 6' tall with a slight build and short straight blond hair, and having a tattoo on his right arm. This male subject avoided the Primary Inspection Line at the Calgary port of entry by forcing an emergency door open and then leaving the secured arrivals area.
  - b) This male subject matched the description of a person known to the Calgary Police Service from a Watch-For poster as John SMITH, born in Portland, Oregon on September 4<sup>th</sup>, 1971. This poster stated that Mr. Smith is (was) wanted by the United States Marshal Service on a United States-wide warrant as a result of his failure to appear for a court sentencing hearing on April 18<sup>th</sup>, 2002 in Seattle, Washington. This hearing resulted from an assault causing bodily harm conviction entered on April 17<sup>th</sup>, 2001 by Judge Susan MILLER of the Supreme Court of Washington State, First District Court of King County.
3. On May 1<sup>st</sup>, 2002 the informant did interview by phone one Deputy Richard ADAMS of the United States Marshal Service in Seattle, Washington. Deputy Adams has been assigned the task of investigating the whereabouts of Mr. Smith. Through this investigation, Deputy Adams has developed extensive knowledge of Mr. Smith's biographical data, property retained during his incarceration, and criminal history. Deputy Adams is the author of the Watch-For poster that was forwarded to the Calgary Police Service. During this interview the following was learned:
  - a) that a Mr. John SMITH born in Portland, Oregon on September 4<sup>th</sup>, 1971 has an outstanding warrant for arrest in the United States for failing to appear at a court sentencing hearing on April 18<sup>th</sup>, 2002 in Seattle Washington.

## ENF 12 Search, Seizure, Fingerprinting and Photographing

- b) that the United States Marshal Service did issue a Watch-For poster to the Calgary Police Service due to their belief Mr. Smith may flee to Canada to avoid arrest.
  - c) that Mr. John Smith had in his personal effects at the time of his release from the King County Jail on April 17<sup>th</sup>, 2002, a cellular telephone with the number of (403) 555-1234; a number that bears an area code for Southern Alberta.
4. On May 1<sup>st</sup>, 2002, the informant did interview in person one Lisa MILLER of Acme Communications Inc. in Calgary, Alberta. Ms. Miller is employed in the security department of Acme Communications Inc. and through the course of her work has access to cellular phone account information and has technical training regarding how cellular phones operate. During this interview the following was learned:
- a) The cellular telephone with number (403) 555-1234 was active as of May 1<sup>st</sup>, 2002 and that this cellular phone is registered to a Mr. J. Smith of Banff, Alberta.
  - b) The location of the phone could be obtained by triangulating the signal of the cellular towers receiving the phones unique identification signal, and that Acme Communications Inc. possesses both the data and equipment that could be utilized to track the cellular phone with number (403) 555-1234.
5. The informant believes through his experience as an investigator, that a person who has a cellular phone normally keeps it on their person and that by locating the cellular phone, there is a high probability of locating the owner of this phone.
6. On May 2<sup>nd</sup>, 2002, the informant reviewed records held by the Canada Border Services Agency and learned that a warrant for arrest for Mr. Smith was issued by the Minister's delegate in Calgary, Alberta, on May 2<sup>nd</sup>, 2002 under the authority of section 55(1) of *the Immigration and Refugee Protection Act* and that Mr. Smith was ordered deported from Canada on September 14<sup>th</sup>, 1992 by Adjudicator Jill SUMMERS of the Immigration Adjudication Division in Calgary, Alberta. These same records show that Immigration Officer Brad ANDREWS confirmed the removal of Mr. Smith from Canada at the Calgary International Airport on September 15<sup>th</sup>, 1992.

***WHEREFORE the informant prays that a search warrant may be granted to search the said location for the said things.***

***EN CONSÉQUENCE, le dénonciateur demande qu'un mandate de perquisition soit accordé pour perquisitionner dans ledit emplacement en vue de trouver lesdites choses.***

***SWORN before me this***

***Assermenté devant moi***

***3rd Day of May 2002, A.D.***

***Fait le***

***at / à Calgary, Alberta.***

---

***Signature of informant***

***Signature du dénonciateur***

---

***(Judge of the Provincial Court)***

***(Justice of the Peace) In and for the  
Province of Alberta***

***(Juge de la cour Provinciale)***

***(Juge de paix) dans et pour la  
province de l'Alberta***

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Appendix C Warrant to Search - Form 5

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CANADA

*Province of Alberta*  
*Province de l'Alberta*

*File No.*  
*N° de référence*

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<i>Form 5</i>	<i>Formulaire 5</i>
<i>Criminal Code</i>	<i>Code Criminel</i>
<i>Section 487</i>	<i>Article 487</i>

*Warrant to Search*  
*Mandat de perquisition*

*To the Peace Officers in the City of Calgary, Province of Alberta :*  
*Aux agents de la paix de la ville de Calgary, province de l'Alberta :*

*WHEREAS it appears on the oath of*  
*ATTENDU QU'il appert de la déposition sous serment de*

---

*a Peace Officer of the Canada Border Services Agency, that there are reasonable grounds of believing that*  
*agent de la paix de L'Agence Des Services Frontaliers Du Canada, qu'il existe des motifs raisonnables de croire que*

*Certain things to wit:*  
*les choses suivantes (ci-après appelées « lesdites choses ») :*

---

---

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*HEREINAFTER referred to as the said "things", which will afford evidence,*  
*fourniront la preuve*

*THAT/QUE*

---

---

---

## ENF 12 Search, Seizure, Fingerprinting and Photographing

*AND THAT he has reasonable grounds for believing that the things, or some part of them, are in the  
ET QU'il existe des motifs raisonnables de croire que lesdites choses ou une partie d'entre elles se  
trouvent dans*

---

*of/de*

---

*in the CITY OF CALGARY, in the Province of ALBERTA, hereinafter called "the location".  
dans la ville de CALGARY, province de l'ALBERTA (ci-après appelé « l'emplacement »).*

*THIS IS THEREFORE to authorize and require you between the hours of  
À CES CAUSES, LES PRÉSENTES ONT POUR OBJET de vous autoriser et obliger à entrer, entre  
les heures de*

---

*to enter into the said location and to search for the said things and bring them before me or some  
other Judge or Justice.*

*dans ledit emplacement et de rechercher lesdites choses et de les apporter devant moi ou devant tout  
autre juge ou juge de paix.*

*DATED \_\_\_\_ Day of \_\_\_\_, 20 \_\_\_\_, A.D.  
Fait le \_\_\_\_ jour du mois de \_\_\_\_ 20 \_\_\_\_  
at / à Calgary, Alberta.*

---

*(Judge of the Provincial Court)  
(Justice of the Peace) In and for the  
Province of Alberta  
(Juge de la cour provinciale)  
(Juge de paix) dans et pour la  
province de l'Alberta*

## ENF 12 Search, Seizure, Fingerprinting and Photographing

### Appendix D Warrant to Search – Form 5 (Sample)

CANADA

*Province of Alberta.*

*Province de l'Alberta*

*File No*

*N° de référence*

*4604-12345678*

*Form 5*

*Formulaire 5*

*Criminal Code Code Criminel*

*Section 487 Article 487*

### *Warrant to Search Mandat de perquisition*

*To the Peace Officers in the City of Calgary, Province of Alberta  
Aux agents de la paix de la ville de Calgary, province d' Alberta*

*WHEREAS it appears on the oath of  
ATTENDU QU'il appert de la déposition sous serment de*

*Bill JONES (Badge #1234),*

*a Peace Officer of THE CANADA BORDER SERVICES AGENCY, that there are reasonable grounds of believing that  
un agent de la paix de L'AGENCE DES SERVICES FRONTALIERS DU CANADA, qu'il existe des motifs raisonnables de croire que*

*Certain things, to wit:*

Records of Acme Communications Inc., including all subsidiaries, pertaining to all cellular towers that have received data from the cellular phone with number (403) 555-1234, between the dates of April 20th, 2002 to May 3rd, 2002. Further to this, the full name, date of birth, address, and any other contact information held by Acme Communications Inc., including all subsidiaries, regarding the lawful owner of the cellular telephone with number (403) 555-1234.

*HEREINAFTER referred to as the said "things," which will afford evidence,  
CI-APRÈS APPELÉES lesdites choses fourniront la preuve,*

*THAT/QUE*

On April 20<sup>th</sup>, 2002 near Calgary, Alberta, Mr. John SMITH, a foreign national born in Portland, Oregon on September 4<sup>th</sup>, 1971, did come into Canada contrary to s.124(1)(a) by way of 27(1) of the *Immigration and Refugee Protection Act*, namely that s. 124(1)(a) states "Every person commits an offence who contravenes a provision of this Act for which a penalty is not specifically provided or fails to comply with a condition or obligation imposed under this Act", namely that Mr. Smith failed to appear without delay before an officer at a port of entry as obligated to do so pursuant to section 18(1) of the Act,"and, as per section 125 of the Act, "is liable (a) on conviction on indictment, to a fine of not more than \$50,000 or to imprisonment for a term of not more than two years, or to both; or (b) on summary conviction, to a fine of not more than \$10,000 or to imprisonment for a term of not more than six months, or to both." Furthermore, a warrant for arrest under



## **ENF 12 Search, Seizure, Fingerprinting and Photographing**

section 55(1) of this Act was issued for Mr. Smith on May 3<sup>rd</sup>, 2002 in Calgary, Alberta as a result of the aforementioned offence.

***AND THAT he has reasonable grounds for believing that the things, or some part of them, are in the ET QU'IL a des motifs raisonnables de croire que lesdites choses ou une partie d'entre elles se trouvent dans***

Records at Acme Communications Inc. (including all subsidiaries)

***of/ de***

3<sup>rd</sup> Floor (Security Wing), 123 – 1<sup>st</sup> Street SW, Calgary, Alberta, Canada, T1A 2B3

***in the CITY OF CALGARY, in the Province of ALBERTA, hereinafter called "the location". dans la ville de CALGARY, province de l'ALBERTA, ci-après appelé "l'emplacement".***

***THIS IS THEREFORE to authorize and require you between the hours of A CES CAUSES, LES PRÉSENTES ONT POUR OBJET de vous autoriser et obliger à entrer, entre les heures de***

6 am to 9 pm on May 6<sup>th</sup>, 2002, and each day thereafter during the same hours up to 9 pm on May 10<sup>th</sup>, 2002

***to enter into the said location and to search for the said things and bring them before me or some other Judge or Justice.***

***dans ledit emplacement et de rechercher lesdites choses et de les apporter devant moi ou devant tout autre juge ou juge de paix.***

***DATED 3<sup>rd</sup> Day of May 2002, A.D.***

***Fait le \_\_\_\_ jour de \_\_\_\_ 2002, A.D.***

***at / à Calgary, Alberta.***

---

***(Judge of the Provincial Court)  
(Justice of the Peace) In and for the  
Province of Alberta  
(Juge de la cour Provinciale)  
(Juge de paix) dans et pour la  
province de l'Alberta***

# ENF 12 Search, Seizure, Fingerprinting and Photographing

## Appendix E Report to a Justice – Form 5.2

CANADA  
Province of Alberta  
Province de l'Alberta

*File No.*  
*N° de référence*

*Form 5.2      Formulaire 5.2*  
*Criminal Code   Code Criminel*  
*Section 489.1   Article 489.1*

### *Report to a Justice* *Rapport à un juge de paix*

*I / Je soussigné \_\_\_\_\_ a Peace Officer of THE CANADA BORDER SERVICES AGENCY*  
*un agent de la paix de L'AGENCE DES SERVICES FRONTALIERS DU CANADA,*

Have pursuant to / conformément à

- Section 487 of the Criminal Code (Search Warrant) or*  
*l'article 487 du Code criminel (mandat de perquisition) ou*
- Section 487.01 of the Criminal Code (General Warrant) or*  
*l'article 487.01 du Code criminel (mandat général) ou*
- Section 489 of the Criminal Code (Additional Items Seized via Search Warrant) or*  
*l'article 489 du Code criminel (autres articles saisis en vertu d'un mandat de perquisition) ou*
- Otherwise in the execution of duties (Common Law) or*  
*autrement, dans l'exercice de mes fonctions (common law) ou*
- Other Statute (specify / préciser)*  
*en vertu d'une autre loi fédérale \_\_\_\_\_*

*Searched the premises situated at:*

*ai perquisitionné les lieux suivants : \_\_\_\_\_*

*On \_\_\_\_\_ and seized the following things and dealt with them as follows:*

*Le \_\_\_\_\_ et ai saisi les choses suivantes et en ai disposé de la façon suivante :*

*Type of Occurrence/Genre d'événement : \_\_\_\_\_*

Describe each thing seized. State whether it was returned to the person lawfully entitled to its possession, in which case the receipt therefore shall be attached hereto, or it is being detained to be dealt with according to law and the location and manner in which, or where applicable the person by whom, it is being detained.

Décrire chaque chose saisie. Indiquer si les choses ont été remises à la personne ayant droit à leur possession, auquel cas un reçu doit être joint au présent rapport, ou si les choses sont détenues pour qu'il en soit disposé conformément à la loi, l'endroit où elles sont détenues, la personne qui les détient et les modalités de la détention.

*Item No. / N° de l'article    Description    Date Seized / Date de la saisie*

## ENF 12 Search, Seizure, Fingerprinting and Photographing

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

### DISPOSITION/DÉCISION

*Item No. (s) / N° de l'article ou des articles*

- Returned to person lawfully entitled to have possession. \_\_\_\_\_*  
*Remis à la personne ayant droit à la possession*
- May return to person lawfully entitled to have possession. \_\_\_\_\_*  
*Pourrait être remis à la personne ayant droit à la possession*
- A person has been charged, retain as an exhibit for court purposes. \_\_\_\_\_*  
*Une personne a été inculpée; garder comme pièce à conviction à des fins judiciaires*
- No charges have been laid, hold pending further investigation. \_\_\_\_\_*  
*Aucune accusation n'a été portée; conserver pendant que l'enquête se poursuit*
- Application for forfeiture \_\_\_\_\_*  
*Demande de confiscation*

### ACCUSED/PRÉVENU

*Name/Nom                      Age/Âge                      Charge/Inculpation                      First Court Date/Première date de comparution en cour*

1. \_\_\_\_\_

*DATED \_\_\_ Day of \_\_ 20 \_\_\_\_, A.D.*

*Fait le \_\_\_ jour du mois de \_\_\_\_ 20 \_\_\_\_*

*at /à Calgary, Alberta.*

\_\_\_\_\_  
*CBSA Officer (Peace Officer)*  
*Agent de l'ASFC (Agent de la paix)*

## ENF 12 Search, Seizure, Fingerprinting and Photographing

Order of Justice / Ordonnance d'un juge de paix

Date : \_\_\_\_\_

Location / Emplacement : \_\_\_\_\_

*Pursuant to Section 490 of the Criminal Code of Canada, I hereby direct that the item(s) numbered on the face of this document and listed below be:*

*En vertu de l'article 490 du Code criminel du Canada, j'ordonne par les présentes que l'article ou les articles numérotés au recto de ce document et énumérés ci-dessous soient :*

*Item No. / N° de l'article ou des articles*

*(a) Returned to the person(s) lawfully entitled to have possession of them on production of satisfactory proof of ownership.  
a) Remis à la ou aux personnes ayant droit à leur possession sur production d'une preuve satisfaisante de propriété.*

*(b) Detained by the \_\_\_\_\_ for Court purposes.  
b) Retenus par (name enforcement agency/nom de l'organisme d'application de la loi) à des fins judiciaires.*

*(c) Held by the \_\_\_\_\_ pending further investigation.  
c) Conservés par (name enforcement agency/nom de l'organisme d'application de la loi) pendant que l'enquête continue.*

*(d) Forfeited to Her Majesty, to be disposed of as the Attorney General directs.  
d) confisqués par Sa Majesté, afin qu'il en soit disposé comme l'ordonne le procureur général.*

\_\_\_\_\_  
*Justice of the Peace in and for the  
Province of Alberta  
Juge de paix dans et pour la province  
de l'Alberta*

---

### SECTION 490(2) / ARTICLE 490(2)

*If seized articles are to be detained for more than three months and no proceedings are instituted in which the things detained may be required, an application must be made to a Justice for an Order for further detention, before the expiration of the period.*

*Si les articles saisis doivent être retenus durant une période excédant trois mois et que des procédures, au cours desquelles les choses retenues peuvent être requises, n'ont pas été intentées, une demande doit être adressée à un juge de paix pour qu'il ordonne la prolongation de la rétention, avant l'expiration de cette période.*

### ENDORSEMENT BY JUSTICE / VISA DU JUGE DE PAIX:

*On the application of \_\_\_\_\_ .  
Sur la demande de \_\_\_\_\_*

*I order a further detention of the item(s) listed above (or attached) to \_\_\_\_\_*

## ENF 12 Search, Seizure, Fingerprinting and Photographing

*J'ordonne la prolongation de la rétention de l'article ou des articles énumérés ci-dessus (ou joints à la présente)*

*( y/m/d a/m/j )*

*or I order the following item(s) be returned as follows:*

*ou j'ordonne que le ou les articles suivants soient remis de la façon suivante :*

- (i) List items and to whom they are to be returned. / Énumérer les articles et à qui ils doivent être remis.

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*DATED* \_\_\_\_ *Day of* \_\_\_\_\_, 20\_\_\_\_, *A.D.*

*Fait le* \_\_\_\_ *jour du mois de* \_\_\_\_\_ 20 \_\_\_\_\_

*at /à Calgary, Alberta.*

\_\_\_\_\_  
*Justice of the Peace in and for the  
Province of Alberta*

*Juge de paix dans et pour la province  
de l'Alberta*

# ENF 12 Search, Seizure, Fingerprinting and Photographing

## Appendix F Sample of a Report to a Justice – Form 5.2

CANADA  
Province of Alberta  
Province de l'Alberta

*File No.*  
*N° de référence*  
**4604-12345678**  
*Form 5.2*      *Formulaire 5.2*  
*Criminal Code*   *Code Criminel*  
*Section 489.1*   *Article 489.1*

### *Report to a Justice* *Rapport à un juge de paix*

*I / Je soussigné* Bill JONES (Badge # 1234 / insigne n° 1234) *a Peace Officer of THE CANADA*  
*BORDER SERVICES AGENCY*  
*un agent de la paix de L'AGENCE DES SERVICES FRONTALIERS DU CANADA,*

Have pursuant to / conformément à

- Section 487 of the Criminal Code (Search Warrant) or*  
*l'article 487 du Code criminel (mandat de perquisition) ou*
- Section 487.01 of the Criminal Code (General Warrant) or*  
*l'article 487.01 du Code criminel (mandat général) ou*
- Section 489 of the Criminal Code (Additional Items Seized via Search Warrant) or*  
*l'article 489 du Code criminel (autres articles saisis en vertu d'un mandat de perquisition) ou*
- Otherwise in the execution of duties (Common Law) or*  
*autrement, dans l'exercice de mes fonctions (common law) ou*
- Other Statute (specify / préciser)*  
*en vertu d'une autre loi fédérale* \_\_\_\_\_

*Searched the premises situated at: 3<sup>rd</sup> floor (Security Wing) , 123 – 1<sup>st</sup> Street SW, Calgary, AB*  
*ai perquisitionné les lieux suivants : 3<sup>e</sup> étage (Division de la sécurité), 123 – 1<sup>st</sup> Street SW, Calgary, AB*

*On* May 6, 2002 *and seized the following things and dealt with them as follows:*  
*Le* 6 mai 2002 *et ai saisi les choses suivantes et en ai disposé de la façon suivante :*

*Type of Occurrence/Genre d'événement :* Warrant for Arrest under Section 55(1) of the Immigration and Refugee Protection Act – Enquiry on the coming and going of Mr. Smith  
*Mandat d'arrestation aux termes du par. 55(1) de la LIPR – Enquête sur les allées et venues de M. Smith*

Describe each thing seized. State whether it was returned to the person lawfully entitled to its possession, in which case the receipt therefore shall be attached hereto, or it is being detained to be dealt with according to law and the location and manner in which or where applicable, the person by whom it is being detained.

## ENF 12 Search, Seizure, Fingerprinting and Photographing

Décrire chaque chose saisie. Indiquer si les choses ont été remises à la personne ayant droit à leur possession, auquel cas un reçu doit être joint au présent rapport, ou si les choses sont détenues pour qu'il en soit disposé conformément à la loi, l'endroit où elles sont détenues, la personne qui les détient et les modalités de la détention.

### *Item No. / N° de l'article Description Date Seized / Date de la saisie*

1. Mr. Smith's application for cellular phone service May 6, 2002
2. Cellular Tower Info regarding (403) 555-1234 May 6, 2002
3. Map of Cellular Tower Locations regarding (403) 555-1234 May 6, 2002

1. La demande de M. Smith pour l'utilisation d'un téléphone cellulaire, 6 mai 2002
2. Information provenant de la station de base pour le n° (403) 555-1234, 6 mai 2002
3. Emplacement des stations de base pour le n° (403) 555-1234, 6 mai 2002

### *DISPOSITION/DÉCISION Item No.(s) / N° de l'article ou des articles*

- Returned to person lawfully entitled to have possession. 1, 2 and 3 (copies kept on file)*  
*Remis à la personne ayant droit à la possession. 1, 2 et 3 (copies conservées au dossier)*
- May return to person lawfully entitled to have possession. \_\_\_\_\_*  
*Pourrait être remis à la personne ayant droit à la possession*
- A person has been charged, retain as an exhibit for court purposes. \_\_\_\_\_*  
*Une personne a été inculpée; garder comme pièce à l'appui pour fins judiciaires*
- No charges have been laid, hold pending further investigation. \_\_\_\_\_*  
*Aucune accusation n'a été portée; conserver pendant que l'enquête se poursuit*
- Application for forfeiture \_\_\_\_\_*  
*Demande de confiscation*

### *ACCUSED/PRÉVENU*

<i>Name/Nom</i>	<i>Age/Âge</i>	<i>Charge/Inculpation</i>	<i>First Court Date/Première date de comparution en cour</i>
1. Mr, John Smith	<u>30</u>	<u>Nil</u>	<u>Nil</u>

*DATED 7th Day of May 2002, A.D.*  
*Fait le 7e jour du mois de mai 2002*  
*at /à Calgary, Alberta.*

\_\_\_\_\_  
*CBSA Officer (Peace Officer)*  
*Agent de l'ASFC (Agent de la paix)*

## ENF 12 Search, Seizure, Fingerprinting and Photographing

Order of Justice / Ordonnance d'un juge de paix

Date : \_\_\_\_\_

Location / Emplacement : \_\_\_\_\_

*Pursuant to Section 490 of the Criminal Code of Canada, I hereby direct that the item(s) numbered on the face of this document and listed below be:*

*En vertu de l'article 490 du Code criminel du Canada, j'ordonne par les présentes que l'article ou les articles numérotés au recto de ce document et énumérés ci-dessous soient :*

*Item No. / N° de l'article ou des articles*

*(a) Returned to the person(s) lawfully entitled to have possession of them on production of satisfactory proof of ownership.  
a) Remis à la ou aux personnes ayant droit à leur possession sur production d'une preuve satisfaisante de propriété.*

*(b) Detained by the \_\_\_\_\_ for Court purposes.  
b) Retenus par (name enforcement agency/nom de l'organisme d'application de la loi) à des fins judiciaires.*

*(c) Held by the \_\_\_\_\_ pending further investigation.  
c) Conservés par (name enforcement agency/nom de l'organisme d'application de la loi) pendant que l'enquête continue.*

*(d) Forfeited to Her Majesty, to be disposed of as the Attorney General directs.  
d) confisqués par Sa Majesté, afin qu'il en soit disposé comme l'ordonne le procureur général.*

\_\_\_\_\_  
*Justice of the Peace in and for the  
Province of Alberta  
Juge de paix dans et pour la province  
de l'Alberta*

---

### SECTION 490(2) / ARTICLE 490(2)

*If seized articles are to be detained for more than three months and no proceedings are instituted in which the things detained may be required, an application must be made to a Justice for an Order for further detention, before the expiration of the period.*

*Si les articles saisis doivent être retenus durant une période excédant trois mois et que des procédures, au cours desquelles les choses retenues peuvent être requises, n'ont pas été intentées, une demande doit être adressée à un juge de paix pour qu'il ordonne la prolongation de la rétention, avant l'expiration de cette période.*

### ENDORSEMENT BY JUSTICE / VISA DU JUGE DE PAIX:

*On the application of \_\_\_\_\_ .  
Sur la demande de \_\_\_\_\_*

*I order a further detention of the item(s) listed above (or attached) to \_\_\_\_\_*



## ENF 12 Search, Seizure, Fingerprinting and Photographing

*J'ordonne la prolongation de la rétention de l'article ou des articles énumérés ci-dessus (ou joints à la présente)*

*( y/m/d a/m/j )*

*or I order the following item(s) be returned as follows:*

*ou j'ordonne que le ou les articles suivants soient remis de la façon suivante :*

- (1) List items and to whom they are to be returned. / Énumérer les articles et à qui ils doivent être remis.

---

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*DATED* \_\_\_ *Day of* \_\_\_\_, 20 \_\_\_\_, *A.D.*

*Fait le* \_\_\_ *jour du mois de* \_\_\_ 20 \_\_\_\_

*at /à Calgary, Alberta.*

\_\_\_\_\_  
*Justice of the Peace in and for the  
Province of Alberta*

*Juge de paix dans et pour la province  
de l'Alberta*

## ENF 12 Search, Seizure, Fingerprinting and Photographing

### Appendix G (R254(2)) Sample memorandum to DG - Return of a vehicle on payment of security

Departmental memorandum / Note de service interne

**To / À :** \*\*\*\*\*  
Director General  
----- Region

**From / De :** Officer  
Position  
Office

**SUBJECT / TITRE :** Return of a Seized Vehicle on Deposit of Security Under R254(2)

**FOR DECISION/POUR DÉCISION:** as soon as possible

A car owned by Mr. Robert Owner was seized from Simon Borrower at the port of Somewhere, Sask. on June 29, 2002. It is recommended that you return it if the owner provides security in the amount of \$10,000.00.

#### **Issue:**

The purpose of this memorandum is to ask you to decide, pursuant to subsection 254(2) of the *Immigration and Refugee Protection Regulations*, that Mr. Owner provide the sum of \$10,000.00 as security for the return of his car pending a decision on its disposal.

This is necessary because Mr. Owner wants his car back without delay and has indicated that he will make an application under R255 for the return of the vehicle. He said that he is willing to provide security for the full market value of the vehicle pending final disposition of the vehicle.

#### **Background:**

The car was seized pursuant to section 140 of the *Immigration and Refugee Protection Act* by an officer who had reasonable grounds to believe that it was improperly used. The evidence shows that the driver, Mr. Simon Borrower, used the car in connection with an offence under subsection 117(1) of the Act by aiding the coming into Canada of a person who was not in possession of a valid passport and visa as required. Please see the attached Case summary.

#### **Considerations:**

On July 2, Mr. Owner contacted me regarding the return of his car. I explained that you would consider his application to get his car now if he is willing to deposit a sum equal to the value of the car. He then decided to make an application under R254 so that his car could be returned without delay. He intends to make another application under R255(1) within the 60-day period and provide appropriate evidence for your consideration.

Mr. Owner alleges that he was away when Mr. Borrower used his car and that he learned about the seizure when he returned home three days later. He claims that he had not authorized Mr. Borrower to use his car, that he is innocent and that he should get his car back without penalty. He also alleges that Mr. Borrower took a spare set of keys without his knowledge. However, he includes no evidence to support his claims.

We have reasons to doubt Mr. Owner's statements. When the car was seized, Mr. Borrower informed the officer that Mr. Owner could not be contacted because he was away from home. He added that, two days before, Mr. Owner had asked him if he would go to the USA to pick up his friend, Mr. Passenger, who would arrive during his absence. He claimed that Mr. Owner gave him a set of his car keys as well as a copy of the registration and insurance forms. As well, Mr. Owner provided the identity documents that were used by Mr. Passenger.

## ENF 12 Search, Seizure, Fingerprinting and Photographing

Mr. Owner appears to meet the criteria set out in R254(2) because:

- it is not necessary that we keep this car because it will not be used as evidence with respect to the seizure or the offence; and
- Mr. Owner is well established and there are no risks that he will not pay a debt.

Since ownership of the car is not in dispute and Mr. Borrower said that he would not apply for its return, I recommend that you offer to return it if Mr. Owner deposits cash security equal to the value of the car, that is \$10,000.00.

The case will be sent back for a final decision after we receive Mr. Owner's application under R255 and the evidence that he plans to submit.

The value of the vehicle was established in consultation with Buick Sales Inc.

### **Recommendation:**

If you agree with this proposed action, please sign the attached decision. Mr. Owner will be informed accordingly.

Officer

Attachments: - Case summary

Decision to return a car

I concur

\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2002

Director General

## ENF 12 Search, Seizure, Fingerprinting and Photographing

### R254(2) - Sample of a summary/report for a vehicle that was borrowed.

#### Case summary

July 15, 2002

#### Automobile Seizure - A140 Simon Borrower / Robert Owner

**Date of seizure:** June 29, 2002

**Place of seizure:** Somewhere, Sask

**Vehicle data:** - 1998 Buick

**VIN #** 9898GM98AUTO989898

**Licence** - Sask ABC-123

**Estimated Value:**       **\$10,000.00** [Red Book and consultation with the local Buick Sales Inc.]

**Owner:**               Robert Owner,  
                              1478 Avenue F, Cee City, Sask.

#### The persons involved:

- **Simon Borrower.** He was the driver of the vehicle at the time it was seized. He is a Canadian citizen.
- **Andrew Passenger.** He is a citizen of Chile. Arrived without passport or visa. He presented himself as a Canadian citizen and, as evidence, produced documents that belonged to someone else. He claimed refugee status.
- **Alma Borrower.** She is Simon's wife. She is a permanent resident and was a passenger in the car when it was seized.

#### Circumstances relating to the seizure:

The three persons reported for examination at the port of Somewhere. The Borrowers properly identified themselves while Mr. Passenger claimed to be a Canadian citizen. They were referred for an immigration secondary examination. During the examination, Mr. Passenger admitted that he is a citizen of Chile and that he pretended to be a Canadian citizen when he presented documents of identity that were not his.

Mr. Borrower explained that he had agreed to help Mr. Passenger because he is Mr. Owner's friend. Mr. Borrower said that Mr. Owner supplied the identity documents that were to be used by Mr. Passenger. Mr. Passenger intended to remain permanently in Canada but had failed to qualify for a visa. Mr. Passenger's Chilean passport is with his sister in the USA. She was going to bring it to him during her next visit to Canada. During his examination, he claimed refugee protection.

## ENF 12 Search, Seizure, Fingerprinting and Photographing

### R254(2) – Sample decision to return a car on deposit of security

#### Decision in respect to a vehicle that was seized

#### Section 140 of the *Immigration and Refugee Protection Act*

Pursuant to subsection 254(2) of the *Immigration and Refugee Protection Regulations*, I have decided that the 1998 Buick, VIN # 9898GM98AUTO989898 and Saskatchewan licence – ABC-123 that was seized at Somewhere, Saskatchewan on June 29, 2002, should be returned to its owner, Mr. Robert Owner, if he provides cash security in the amount of \$10,000.00.

I am satisfied that the following conditions have been met;

- Mr. Owner is the lawful owner of this car;
- the fair market value of this car is \$10,000.00;
- the seizure is no longer necessary to prevent the improper use of the car or to carry out the purposes of the Act; and
- there is no significant risk in being able to recover a debt from Mr. Owner.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2002

\_\_\_\_\_  
Director General

\_\_\_\_\_  
Region

## ENF 12 Search, Seizure, Fingerprinting and Photographing

### R254(2)(b) – Sample letter - Request of security for seized car

Mr. Robert Owner  
1478 Avenue F  
Cee City, Saskatchewan  
X5A 2X8

Dear Mr. Owner:

Re: Seizure of: 1998 Buick  
VIN: 9898GM98AUTO989898  
Licence: Saskatchewan - ABC-123

Your letter of July 2, 2002 refers.

Further to subsection 254(2) of the *Immigration and Refugee Protection Regulations*, I am writing to notify you that the Director General, Region, decided that this vehicle may be returned to you on deposit of \$10,000.00 in cash as security pending a final decision regarding the disposition of your vehicle.

The car was seized pursuant to section 140 of the *Immigration and Refugee Protection Act* by an officer who had reasonable grounds to believe that the seizure was necessary because the car was improperly used. The evidence shows that the driver, Mr. Borrower, used the car in connection with an offence under subsection 117(1) of the Act by aiding the coming into Canada of a person who was not in possession of valid passport and visa as required.

Section 117(1) of the Act provides that

“No person shall knowingly organize, induce, aid or abet the coming into Canada of one or more persons who are not in possession of a visa, passport or other document required by this Act.”

In this case, the officer had reasonable grounds to believe that Mr. Simon Borrower drove your car to the United States in order to pick up a person who did not have a passport or visa as required and drove him to Canada. At the port of entry, the passenger attempted to come into Canada by falsely claiming to be a Canadian citizen. As evidence, he produced documents of identity that were not his.

A copy of the Director General’s decision and reasons is attached for your information. Please be advised that this decision on your application pursuant to R254 does not prevent you from applying for the return of the vehicle under R255. If the final decision is to return the vehicle, then this deposit will be returned. Otherwise, the \$10,000.00 deposit will be forfeited.

Your vehicle, or your deposit, may be returned under R255(2) if you demonstrate:

- that you did not participate in its improper use, and
- exercised all reasonable care to satisfy yourself that the person permitted to obtain possession of your car was not likely to improperly use the car, or

under R255(3), on payment of \$5,000.00 if you:

- did not profit or intend to profit from the improper use of the car, and
- are unlikely to contravene the Act in the future.

## **ENF 12 Search, Seizure, Fingerprinting and Photographing**

Pursuant to R256, a vehicle may also be returned to the person from whom it was seized who demonstrates that the vehicle was not improperly obtained or used.

Please contact this port of entry if you decide to retrieve your vehicle on payment of \$10,000.00.

Sincerely,

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Officer

## ENF 12 Search, Seizure, Fingerprinting and Photographing

### Appendix H (R255(2)) Sample memorandum to DG - Application to return a rented car that was seized

Departmental Memorandum / Note de service interne

To / À : \*\*\*\*\*  
Director General  
Region

From / De : Officer  
Position  
Office

SUBJECT / TITRE : Return of a Rented Car – R 255(2)

**FOR DECISION/POUR DÉCISION:** as soon as possible

A car owned by RENT-A-CAR Inc. was seized at the port of Somewhere, Sask. on June 29, 2002. It is recommended that you decide to return this car to RENT-A-CAR Inc.

#### **Issue:**

The purpose of this memorandum is to ask you to find, pursuant to subsection 255(2) of the *Immigration and Refugee Protection Regulations* that RENT-A-CAR Inc.

- was the lawful owner of the vehicle prior to its seizure and has remained the lawful owner;
- did not participate in the fraudulent or improper use of the car;
- exercised all reasonable care to satisfy themselves that the person permitted to obtain possession of the car was not likely to fraudulently or improperly use it

and to decide that the car should be returned to RENT-A-CAR Inc.

#### **Background:**

The car was seized pursuant to section 140 of the *Immigration and Refugee Protection Act* by an officer who had reasonable grounds to believe that it was improperly used.

The evidence shows that the driver, Mr. Simon Renter, used the car in connection with an offence under subsection 117(1) of the Act by aiding the coming into Canada of a person who was not in possession of a valid passport and visa as required. Please see attached Case summary.

#### **Considerations:**

Pursuant to subsection 255(1) of the Regulations, the lawful owner of a vehicle who was not in his possession at the time it was seized may, within 60 days, apply for its return.

RENT-A-CAR Inc. initiated this process by letter dated July 5, 2002 and, in support of their application, they attached a copy of the car registration form showing that it has been registered in their name. They also include a copy of the rental agreement signed by Mr. Renter. We are also assured that they were not aware of Mr. Renter's intention; had they been, they would not have rented the car to him. We have no reason to doubt their statements.

I have reviewed the evidence and believe that RENT-A-CAR Inc. meets the conditions imposed under Regulation 255(2) and that they are entitled to recover their car.

RENT-A-CAR Inc. will be informed of your decision and reasons as required under R255(5).



## ENF 12 Search, Seizure, Fingerprinting and Photographing

### Recommendation:

If you agree with this proposed action, please sign the attached letter and the DECISION document.

Officer

Attachments: - Case summary.

DECISION document.

I concur

\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2002

Director General

\_\_\_\_\_

Region

## ENF 12 Search, Seizure, Fingerprinting and Photographing

### R255(2) - Sample of a summary/report for a rented car

#### Case summary

July 15, 2002

#### Automobile Seizure - A140 Simon Renter

**Date of seizure:** June 29, 2002

**Place of seizure:** Somewhere, Sask

**Vehicle data:** - 2002 Buick

**VIN #** 9898GM98AUTO989898

**Licence** - Sask - ABC-123

**Estimated Value:** \$31,000.00 [Red Book]

**Owner:** RENT-A-CAR, Inc.,  
Cee City, Sask.

The persons involved:

- **Simon Renter.** He was the driver of the vehicle at the time it was seized. He is a Canadian citizen.
- **Andrew Passenger.** He is a citizen of Chile. Arrived without passport or visa. He presented himself as a Canadian citizen and, as evidence, produced documents that belonged to someone else. He claimed refugee status.
- **Alma Renter.** She is Simon's wife. She is a permanent resident and was a passenger in the car when it was seized.

#### Circumstances relating to the seizure:

The three persons reported for examination at the port of Somewhere. The Renters properly identified themselves while Mr. Passenger claimed to be a Canadian citizen. They were referred for an immigration secondary examination. During the examination, Mr. Passenger admitted that he is a citizen of Chile and that he pretended to be a Canadian citizen when he presented documents of identity that were not his.

Mr. Renter explained that he had agreed to help Mr. Passenger because he is a friend of his wife's family. Mr. Renter said that the identity documents belonged to his brother-in-law and were used without the owner's knowledge. Mr. Passenger intended to remain permanently in Canada but had failed to qualify for a permanent resident visa. He said that he left his Chilean passport with his sister in the USA. She was going to bring it to him during her next visit to Canada. During his examination, he claimed refugee status.

## ENF 12 Search, Seizure, Fingerprinting and Photographing

### R255(2) – Sample of decision to return a rented car

#### Decision in respect to a vehicle that was seized

#### Section 140 of the Immigration and Refugee Protection Act

I am satisfied that RENT-A-CAR Inc. meets the conditions of subsection 255(2) of the *Immigration and Refugee Protection Regulations* in that they have demonstrated that they:

- were the lawful owner of the vehicle prior to its seizure and have remained the lawful owner;
- did not participate in the fraudulent or improper use of the car; and
- exercised all reasonable care to satisfy themselves that the person permitted to obtain possession of the car was not likely to fraudulently or improperly use it.

I have decided that the 2002 Buick, VIN # 9898GM98AUTO989898 and Saskatchewan licence – ABC-123 that was seized at Somewhere, Saskatchewan on June 29, 2002, should be returned to its owner, RENT-A-CAR Inc.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2002

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Director General

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Region

## ENF 12 Search, Seizure, Fingerprinting and Photographing

### R255(5) - Sample – Notice of Decision and Reasons - Return of a rented car

Mr. Steve Jones

RENT-A-CAR Inc.

Cee City, Saskatchewan

X5A 2X8

Dear Mr. Jones:

Re: Seizure of: 2002 Buick

VIN: 9898GM98AUTO989898

Licence: Saskatchewan - ABC-123

Your letter of July 5, 2002 refers.

As required by subsection 255(5) of the *Immigration and Refugee Protection Regulations*, I am writing to notify you that the Director General, \_\_\_\_\_ Region, has decided that this vehicle should be returned to RENT-A-CAR Inc.

The car was seized pursuant to section 140 of the *Immigration and Refugee Protection Act* by an officer who had reasonable grounds to believe that the seizure was necessary because the car was improperly used. The evidence shows that the driver, Mr. Simon Renter, used the car in connection with an offence under subsection 117(1) of the Act by aiding the coming into Canada of a person who was not in possession of a valid passport and visa as required.

Section 117(1) of the Act provides that

“No person shall knowingly organize, induce, aid or abet the coming into Canada of one or more persons who are not in possession of a visa, passport or other document required by this Act.”

In this case, the officer had reasonable grounds to believe that Mr. Renter drove your car to the United States in order to pick up a person who did not have a passport or visa as required and drove him to Canada. At the port of entry, the passenger was presented as a Canadian citizen in order to mislead the examining officer and be allowed to come into Canada. Improperly obtained documents were presented in support of this claim to Canadian citizenship.

In view of the evidence that you presented and under the terms of subparagraph 255(2) of the Regulations, the Director General decided that the car should be returned to RENT-A-CAR Inc. A copy of his decision is attached for your information.

Please contact the port of entry of Somewhere, Saskatchewan in order to arrange for the return of this car.

Sincerely

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Officer

Enclosure: copy of the Decision.

## ENF 12 Search, Seizure, Fingerprinting and Photographing

### Appendix I (R255(3)) Sample memorandum to DG for decision on Application for return of vehicle

Departmental Memorandum / Note de service interne

To / À : \*\*\*\*\*  
Director General  
----- Region

From / De : Officer  
Position  
Office

**SUBJECT / TITRE :** Application under R255 for return of a seized vehicle

**FOR DECISION/POUR DÉCISION:** as soon as possible

A car owned by Mr. Owner was seized at the port of Somewhere, Sask. on June 29, 2002. It is recommended that you decide to return this car to Mr. Owner on payment of \$5,000.00.

#### **Issue:**

The purpose of this memorandum is to ask you to find, pursuant to subsection 255(3) of the *Immigration and Refugee Protection Regulations*, that Mr. Owner demonstrated that he

- was the lawful owner of the vehicle prior to its seizure and has remained the lawful owner;
- did not profit or intend to profit from its use;
- is unlikely to contravene the Act again; and

to decide that the car should be returned to Mr. Owner on payment of \$5,000.00.

#### **Background:**

The car was seized pursuant to section 140 of the *Immigration and Refugee Protection Act* by an officer who had reasonable grounds to believe that it was improperly used. The evidence shows that the driver, Mr. Simon Borrower, used the car in connection with an offence under subsection 117(1) of the Act by aiding the coming into Canada of a person who was not in possession of a valid passport and visa as required. Please see the attached case summary.

#### **Considerations:**

Pursuant to subsection 255(1) of the Regulations, the lawful owner of a vehicle who was not in possession of it at the time it was seized may, within 60 days, apply for its return.

Mr. Owner initiated this process by letter dated July 5, 2002 and, in support of his application, he produced a copy of the car registration form showing that it has been registered in his name since May 1998. He states that when his friend borrowed the car for the day he said the he was going to visit a sick relative in Bee City and that from there, he would go to the USA to help a friend come into Canada. He acknowledges that he refrained from questioning Mr. Borrower because he did not want to know what was going on. He assures us that this will not happen again because he will no longer lend his car to persons outside his immediate family. All parties agreed that Mr. Owner was not paid for the loan of his car.

## ENF 12 Search, Seizure, Fingerprinting and Photographing

I have reviewed the evidence and it appears that Mr. Owner does not meet the conditions of R255(2) for the return of his car because he failed to ensure that his car would not be used improperly. However, he meets the conditions imposed under Regulation 255(3) and is entitled to recover his car on payment of \$5,000.00.

### Recommendation:

If you agree with this proposed action, please sign the attached DECISION. Mr. Owner will then be informed of your decision and the reasons, as required under R255(5).

Officer

Attachments: - Case summary.

DECISION document.

I concur

\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2002

Director General

## ENF 12 Search, Seizure, Fingerprinting and Photographing

### R255(3) - Sample of a summary/report for a vehicle that was borrowed

#### Case summary

July 15, 2002

#### Automobile Seizure - A140 Robert Owner

**Date of seizure:** June 29, 2002

**Place of seizure:** Somewhere, Sask

**Vehicle data:** - 1998 Buick

**VIN #** 9898GM98AUTO989898

**Licence** - Sask ABC-123

Estimated Value: \$10,000.00 [Red Book]

Owner: Robert Owner,  
1478 Avenue F, Cee City, Sask.

The persons involved:

- **Simon Borrower.** He was the driver of the vehicle at the time it was seized. He is a Canadian citizen.
- **Andrew Passenger.** He is a citizen of Chile. He arrived without a passport or visa. He presented himself as a Canadian citizen and, as evidence, produced documents that belonged to someone else. He claimed refugee status.
- **Alma Borrower.** She is Simon's wife. She is a permanent resident and was a passenger in the car when it was seized.

#### Circumstances relating to the seizure:

The three persons reported for examination at the port of Somewhere. The Borrowers properly identified themselves while Mr. Passenger claimed to be a Canadian citizen. They were referred for an immigration secondary examination. During the examination, Mr. Passenger admitted that he is a citizen of Chile and that he pretended to be a Canadian citizen when he presented documents of identity that were not his.

Mr. Borrower explained that he had agreed to help Mr. Passenger because he is a friend of his wife's family. Mr. Borrower said that the identity documents belonged to his brother-in-law and were used without the owner's knowledge. Mr. Passenger intended to remain permanently in Canada but had failed to qualify for a visa. He said that he left his Chilean passport with his sister in the USA. She was going to bring it to him during her next visit to Canada. During his examination, he claimed refugee status.

The following documents belonging to Jimmy James were seized at the same time as the car and were returned to the owner:

- Medical card for the province of Saskatchewan;
- SIN card;
- Royal Bank Visa card – 1234 5678 9123 and a statement of the account for the period ending June 15, 2002.

## ENF 12 Search, Seizure, Fingerprinting and Photographing

### R255(3) – Sample of decision to return a borrowed car to owner

#### Decision in respect to a vehicle that was seized

##### Section 140 of the *Immigration and Refugee Protection Act*

I am satisfied that Mr. Owner meets the conditions of subsection 255(3) of the *Immigration and Refugee Protection Regulations* in that he has demonstrated that he:

- was the lawful owner of the vehicle prior to its seizure and has remained the lawful owner;
- did not profit or intend to profit from its use; and,
- is unlikely to contravene the Act in the future.

I have decided that the 1998 Buick, VIN #9898GM98AUTO989898 and Saskatchewan licence – ABC-123 that was seized at Somewhere, Saskatchewan on June 29, 2002, should be returned to its owner, Mr. Robert Owner on payment of a sum of \$5,000.00.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2002

\_\_\_\_\_  
Director General

\_\_\_\_\_  
Region



## ENF 12 Search, Seizure, Fingerprinting and Photographing

### R255(5) – Sample notice and reasons for decision to return a vehicle to its owner

Mr. Robert Owner

1478 Avenue F

Cee City, Saskatchewan

X5A 2X8

Dear Mr. Owner:

Re: Seizure of: 1998 Buick

VIN: 9898GM98AUTO989898

Licence: Saskatchewan - ABC-123

Your letter of July 5, 2002 refers.

As required by subsection 255(5) of the *Immigration and Refugee Protection Regulations*, I am writing to notify you that the Director General, \_\_\_\_\_ Region, decided that this vehicle may be returned to you on payment of a sum of \$5,000.00 as prescribed.

The car was seized pursuant to section 140 of the *Immigration and Refugee Protection Act* by an officer who had reasonable grounds to believe that the seizure was necessary because the car was improperly used. The evidence shows that the driver, Mr. Borrower, used the car in connection with an offence under subsection 117(1) of the Act by aiding the coming into Canada of a person who was not in possession of a valid passport and visa as required.

Section 117(1) of the Act provides that

“No person shall knowingly organize, induce, aid or abet the coming into Canada of one or more persons who are not in possession of a visa, passport or other document required by this Act.”

In this case, the officer had reasonable grounds to believe that Mr. Simon Borrower drove your car to the United States in order to pick up a person who did not have a passport or visa as required and drove him to Canada. At the port of entry, the passenger was presented as a Canadian citizen in order to mislead the examining officer and be allowed to come into Canada. Improperly obtained documents were presented in support of this claim to Canadian citizenship.

In your letter, you state that, when he borrowed your car, Mr. Borrower told you that he would drive to the USA to help a friend come to Canada. Knowing this, you decided not to question him because you did not want to know what was going on. As a result, you did not exercise all reasonable care to satisfy yourself that Mr. Borrower was not likely to improperly use your car.

In view of the above, under the terms of subsection 255(3) of the Regulations, the Director General decided that the car may be returned to you against payment of the sum of \$5,000.00. A copy of the decision is attached for your information.

Please contact this office to arrange for the return of your car.

Sincerely

---

Officer

Enclosure: copy of the Decision.

## ENF 12 Search, Seizure, Fingerprinting and Photographing

### Appendix J (R256(2)) Sample memorandum to DG for decision on application for return of vehicle

Departmental Memorandum / Note de service interne

**To / À :** \*\*\*\*\*  
Director General  
----- Region

**From / De :** Officer  
Position  
Office

**SUBJECT / TITRE :** Application under R256 for the return of a seized vehicle

**FOR DECISION/POUR DÉCISION:** as soon as possible

A car owned by Mr. Robert Owner was seized from Simon Borrower at the port of Somewhere, Saskatchewan on June 29, 2002. It is recommended that you decide that it cannot be returned to Mr. Borrower.

#### **Issue:**

The purpose of this memorandum is to ask you to decide, pursuant to subsection 256(2) of the *Immigration and Refugee Protection Regulations*, that a car owned by Mr. Owner was improperly obtained and used and that it cannot be returned to Mr. Borrower, the person from whom it was seized.

#### **Background:**

The car was seized pursuant to section 140 of the *Immigration and Refugee Protection Act* by an officer who had reasonable grounds to believe that it was improperly obtained and used. The evidence shows that the driver, Mr. Simon Borrower, took Mr. Owner's car and used it in connection with an offence under subsection 117(1) of the Act by aiding the coming into Canada of a person who was not in possession of valid visa as required and could not support his claim to permanent residence in Canada. Please see the attached case summary.

#### **Considerations:**

Pursuant to subsection 256(1) of the Regulations, the person from whom a car is seized may, within 30 days, apply for its return. Mr. Borrower initiated this process by letter dated July 2, 2002.

At the time of the seizure, Mr. Borrower could produce no evidence that he had permission from Mr. Owner, his neighbor, to use the car. We tried to contact Mr. Owner but his employer told us that he is on vacation and would not return for another three weeks. The employer told us that Mr. Owner should call the office in about 10 days and he assured us that he would ask Mr. Owner to contact us without delay. Mr. Owner has until August 27<sup>th</sup> to file an application for the return of his car under R255. He is expected to return home before then.

While Mr. Passenger claimed to be a permanent resident of Canada, he was in possession of a Chilean passport only and had no visa for Canada. He did not have a permanent resident card or other supporting document and he was unable to answer many key questions that were put to him for verification.

Mr. Borrower delivered his application to this office on July 2<sup>nd</sup> accompanied by Mr. Passenger. In support of his application, Mr. Borrower produced a sworn statement from Mr. Owner in which he says that Mr. Borrower used his car with permission in order to go to the USA to assist a Canadian friend who was stranded there. We have reasons to doubt this statement because Mr. Owner is not supposed to be in Canada but the statement shows that it was signed and dated in

## ENF 12 Search, Seizure, Fingerprinting and Photographing

Toronto. As for Mr. Passenger, he produced a photocopy of an IMM1000 that was made locally. It was not acceptable as evidence of his permanent resident status.

I have reviewed the evidence produced by Mr. Borrower and Mr. Passenger and I am not satisfied that it shows that the car was not improperly obtained and used. Mr. Borrower's application for the return of the car should be refused.

### **Recommendation:**

If you agree with this proposed action, please sign the attached DECISION. Mr. Borrower will then be informed of your decision and the reasons, as required under R256(3).

Officer

Attachments: - Case summary.

DECISION document.

I concur

\_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2002

Director General

## ENF 12 Search, Seizure, Fingerprinting and Photographing

### R256(2) - Sample of a summary/report for a vehicle that was borrowed

#### Case summary

July 15, 2002

#### Automobile Seizure - A140 Simon Borrower / Robert Owner

**Date of seizure:** June 29, 2002

**Place of seizure:** Somewhere, Sask

**Vehicle data:** - 1998 Buick

**VIN #** 9898GM98AUTO989898

**Licence** - Sask ABC-123

**Estimated Value:**           **\$10,000.00 [Red Book and consultation with the local Buick Sales Inc.]**

**Owner:**                   Robert Owner,  
                                  1478 Avenue F, Cee City, Sask.

#### The persons involved:

- **Simon Borrower.** He was the driver of the vehicle at the time it was seized. He is a Canadian citizen.
- **Andrew Passenger.** He claimed to be a permanent resident of Canada but did not have a permanent resident card. He presented a Chilean passport that had no visa for Canada and no evidence of a previous entry into Canada for permanent residence.
- **Alma Borrower.** She is Simon's wife. She is a permanent resident and was a passenger in the car when it was seized.

#### Circumstances relating to the seizure:

The three persons reported for examination at the port of Somewhere. The Borrowers properly identified themselves while Mr. Passenger claimed to be a resident of Canada. They were referred for an immigration secondary examination. During the examination, Mr. Passenger produced a Chilean passport but could not satisfy the officer that he is a permanent resident of Canada.

At the interrogation, Mr. Borrower reported that the car belonged to a neighbor, Mr. Owner, and that he was using it with his permission. However, he did not have the car registration documents or any other thing to support his claim. We tried to contact Mr. Owner at his place of work and we were told that he was out of the country for three more weeks. As a result, the officer was not satisfied that the car used by Mr. Borrower was properly obtained and used.

## ENF 12 Search, Seizure, Fingerprinting and Photographing

### R254(2) – Sample decision to return a borrowed car

#### Decision in respect to a vehicle that was seized

#### Section 140 of the *Immigration and Refugee Protection Act*

Pursuant to subsection 256(2) of the *Immigration and Refugee Protection Regulations* I have decided that the 1998 Buick, VIN #9898GM98AUTO989898 and Saskatchewan licence – ABC-123 that was seized at Somewhere, Saskatchewan on June 29, 2002, should not be returned to Mr. Simon Borrower, the person from whom it was seized.

I am not satisfied that Mr. Borrower demonstrated that:

- the car was not improperly obtained
- the car was not improperly used.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2002

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Director General,

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Region

## ENF 12 Search, Seizure, Fingerprinting and Photographing

### R256(2) – Sample letter – Return of a borrowed car

Mr. Simon Borrower

1482 Avenue F

Cee City, Saskatchewan

X5A 2X8

Dear Mr. Borrower:

Re: Seizure of: 1998 Buick

VIN: 9898GM98AUTO989898

Licence: Saskatchewan - ABC-123

Your letter of July 2, 2002 refers.

Further to subsection 256(2) of the *Immigration and Refugee Protection Regulations*, I am writing to notify you that the Director General, Region, decided that this vehicle cannot be returned to you.

The car was seized pursuant to section 140 of the *Immigration and Refugee Protection Act* by an officer who had reasonable grounds to believe that the seizure was necessary because the car was improperly obtained and used. The evidence that was available to the officer shows that you used a car that was not yours in connection with an offence under subsection 117(1) of the Act by aiding the coming into Canada of a person who was not in possession of a valid passport and visa as required.

Section 117(1) of the Act provides that

“No person shall knowingly organize, induce, aid or abet the coming into Canada of one or more persons who are not in possession of a visa, passport or other document required by this Act.”

In this case, the officer had reasonable grounds to believe that you were using Mr. Owner's car without his permission while he was out of the country. Further, you were bringing to Canada a person who claimed to be a permanent resident of Canada but could not prove this to the satisfaction of the officer. In addition, your passenger was in possession of a Chilean passport and was not in possession of a Canadian visa as required.

In light of the evidence that you produced at the time you applied for the return of the car, the Director General was not satisfied that the car had not been improperly obtained and used. He decided that the car cannot be returned to you. A copy of the decision and of its reasons is attached for your information.

This decision will not prevent Mr. Owner from applying for the return of his car.

Sincerely,

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Officer

Enclosure: Copy of the Decision.