

ENF 12: Search, Seizure, Fingerprinting and Photographing

Updates to chapter	3
1. What this Chapter is about.....	7
2. Program objectives	7
3. The Act, Regulations and Designation & Delegation of Authority.....	7
3.1. Forms	9
4. Departmental policy	10
5.0 Legislative provisions	10
5.1 Charter rights respecting search and seizure	10
5.2 Protection against unreasonable search and seizure.....	10
5.3 Right not to be arbitrarily detained or imprisoned.....	10
5.4 Right to counsel when search constitutes detention.....	10
5.5 Solicitor-client privilege: <i>Lavallee</i> Supreme Court Decision	11
6.0 Procedure: Searches	11
6.1 Authority and Reasonable Grounds to Search	11
6.2 Types of search pursuant to 139(1) of the IRPA.....	12
6.3 Minor Children.....	13
6.4 Search related to an offence under IRPA	13
6.5 Officer safety in conducting searches	14
6.6 General search procedures	14
6.7 Conducting Preliminary and Full Examination Searches at Ports of Entry.....	15
6.8 Conducting a search of carry-on luggage.....	15
6.9 Conducting personal searches	15
6.10 Conducting frisk searches.....	17
6.11 Conducting disrobement searches	18
6.12 Conducting a search of a means of transportation	18
6.13 Removal of the contents of a means of transportation	18
6.14 Completing the Search form BSF667	19
6.15 Examination of Digital Devices at the Port of Entry	20
7.0 Additional Types of Search	20
7.1 Search incidental to arrest	20
7.2 Conducting a Frisk Search Incidental to Arrest	20
7.3 Search warrants.....	21
8.0 Procedure: Seizures.....	21
8.1 Authority and grounds for seizure	21
8.2 Seizing documents.....	22
8.3 Seizing documents from refugee claimants.....	25
8.4 Seizing documents abroad	26
8.5 Documenting and tracking document seizures.....	26
8.6 Document seizure and referral under s.23.2 of the Citizenship Act and s.28 and 30 of the Citizenship Regulations	29
8.7 Sending documents for analysis.....	30
8.8 Seizing vehicles	31
8.9 Seizure of commercial vehicles	32
8.10 Notice of seizure	32
8.11 Reporting the seizure of a vehicle.....	32
9.0 Procedure: Mail search and seizures.....	33
9.1 CBSA inspection procedures for international mail	33
9.2 CBSA inspection procedures for courier shipments	34
9.3 How mail seizures work	34
9.4 Responsibilities of CBSA officers with respect to mail seizures	34
9.5 Documenting and tracking seizures.....	34
9.6 Security, storage, and labeling of items seized	35
9.7 Split seizures	35
9.8 Partial seizures.....	36
9.9 Notification of owner.....	36
9.10 Returning items to the customs process.....	36

ENF 12: Search, Seizure, Fingerprinting and Photographing

9.11 Release of information	36
10.0 Procedure: Custody and Liability of Seized Things	37
10.1 Custody of seized items	37
10.2 Protecting evidence	37
10.3 Liability for damage to property	38
10.4 CBSA liability for damage to a vehicle	38
11.0 Procedure: Disposition of seized things	38
11.1 Application by lawful owner for return of thing seized (R255)	39
11.2 Disposing of a seized vehicle	39
11.3 Application for the return of seized travel and/or identity documents	40
11.4 Notice of decision	40
11.5 Decision by the Minister not to return a seized thing	40
11.6 Sale or destruction of seized things other than a document	41
11.7 Suspension of sale or destruction	41
11.8 Return of documents	41
11.9 Disposing of fraudulent documents	41
12.0 Procedure: Fingerprinting and the Collection of Biometric Information	42
12.1 Authority to collect biometric information	42
12.2 Biometrics expansion	44
12.3 Taking fingerprints	45
12.4 Cardscanner	45
12.5 Fingerprinting (ink and roll method)	47
12.6 Fingerprinting the person (ink and roll)	48
12.7 Fingerprint search under the Migration Five High Value Data Sharing Protocol	49
13.0 Procedure Photographing	50
13.1 Authority to photograph	50
13.2 Taking photographs	51
13.3 Photographing minors	52
13.4 Photographing Tattoos	52
APPENDIX	53
(A) R254(2) Sample memorandum to DG - Application to return a car on deposit of security	53
(B) R254(2), R255(2), R255(3), R256(2) - summary/report for a vehicle that was borrowed/rented	55
(C) R254(2) Sample decision to return a car on deposit of security	56
(D) R255(2) Sample memorandum to DG - Application to return a rented car that was seized	57
(E) R255(2) Sample of decision to return a rented car	59
(F) R255(5) Sample – Notice of Decision and Reasons - Return of a rented car	60
(G) R255(3) Sample of decision to return a borrowed car to owner	61
(H) R255(5) Sample notice and reasons for decision to return a vehicle to its owner	62
(I) R256(2) Sample memorandum to DG for decision on application for return of vehicle	63
(J) R254(2) Sample decision to return a borrowed car	65
(K) R256(2) Sample letter – Return of a borrowed car	66

ENF 12: Search, Seizure, Fingerprinting and Photographing

Updates to chapter

Listing by date:

Date: 2021-02-09

Substantive and minor changes, as well as clarifications, have been provided throughout the chapter. Updates have been made to reflect an amended *BSF 667: Search under Section 139 of the IRPA* form.

Section 8.2 has been amended to provide guidance with respect to Enhanced Driver's Licenses (EDLs).

Updated guidance has been provided in Section 8.7 with respect to sending documents to the National Document Centre, the Forensic Document Examination Centre, as well as respective document analysis units.

An amended *Privacy Notice* can be found in Section 12.1 of the chapter ("Authority to collect biometric notice").

Date: 2013-04-01

3.1 The new CBSA forms *BSF 698: Notice of Seizure for seizures of all travel and/or identity document(s)* and *BSF 699: Application for the Return of seized identity document(s)* were added to the list of forms

9. This section was amended to reflect use of new CBSA form *BSF 698: Notice of Seizure for seizures of all travel and/or identity documents under subsection 140(1) of IRPA*. The section now also includes instructions for use of new CBSA form *BSF 699 Application for the Return of seized identity document(s)*.

Additional changes were made to improve the flow of the section.

11. This section was amended to reflect use of new CBSA forms *BSF 698* and *BSF 699* when returning seized documents. Contact information for the document centre was also updated.

Date: 2009-03-16

7.1 The section has been amended to better reflect the fact that searches pursuant to A139 relate to persons seeking to come into Canada.

7.2 A subsection on searches incidental to arrest has been added.

7.3 The section now includes a link to the Customs Enforcement Manual (EN) for additional information.

7.5 The table for search levels previously found at 7.6 has been modified. The reference to the Minister's Delegate has been replaced by supervisor to reflect policy.

7.6 Contains the information previously found at 7.7, Search incidental to arrest. Additional information has been included concerning searches beyond Level 1 and the Search form (IMM 5242).

7.7 Includes information previously found at 7.5. References to CBSA – customs and CBSA – immigration have been eliminated.

7.8 A link to the CBSA Use of Force/Officer Safety policy has been incorporated.

7.10 References to Level 2 searches and searches incidental to arrest have been integrated.

ENF 12: Search, Seizure, Fingerprinting and Photographing

7.11 The reference to CBSA – customs has been removed.

7.13 A reference to the Customs Act has been added.

8. References to CBSA immigration officers have been replaced throughout the section.

9.1 The description of the authorities has been modified to reflect CIC and CBSA instruments of delegations.

11.14 The address where seized documents should be sent to be disposed of has been changed.

11.15 Sending documents for analysis has been moved from point 11.14 to 11.15. A link has been added to the correct address for each region. Precisions have been added on the information to join to a request for analysis.

12.7 Typographical errors have been corrected.

Other minor changes have been made throughout the chapter.

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.

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 inspectors' powers to examine the mail and detain goods, the importation of which is prohibited, controlled, or regulated by an Act of

ENF 12: Search, Seizure, Fingerprinting and Photographing

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.

[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 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 R245, and R254. 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).

ENF 12: Search, Seizure, Fingerprinting and Photographing

[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.

ENF 12: Search, Seizure, Fingerprinting and Photographing

1. What this chapter is about

This chapter provides functional direction and guidance to Canada Border Services Agency (CBSA) and Immigration, Refugees and Citizenship Canada (IRCC) officials when applying the search, seizure, fingerprinting and photographing provisions of the *Immigration and Refugee Protection Act and Regulations*.

The content and guidance found in this chapter is specific to IRPA authorities. Officers (e.g. Border Services Officers) with mandates to enforce more than one Act of Parliament at the same time (e.g. during a POE examination) must ensure that they clearly know and understand which Act they are administering and/or enforcing as well as which authority they are relying upon.

2. Program objectives

The objectives of Canada's immigration program concerning search, seizure, fingerprinting and photographing are:

- To protect public health and safety and to maintain the security of Canadian society;
- To promote international justice and security by denying access to Canadian territory to persons who are criminals or security risks; and
- To facilitate the entry of visitors, students and temporary workers for processes such as trade, commerce, tourism, international understanding and cultural, educational and scientific activities.

The authorities to search, seize, fingerprint and photograph permit officers to:

- confirm the identity of persons seeking entry to Canada;
 - ensure compliance with the Act and Regulations;
 - seize and hold any means of transportation, document, or other thing that may be used for enforcing the Act and the Regulations, including evidence for prosecutions;
 - prevent the misuse of documents that were fraudulently or improperly obtained;
 - return and disposing of seized things;
 - collect biometric information from a foreign national.
-

3. The Act, Regulations and Designation & Delegation of Authority

The following legislative authorities for an officer to search, seize, take fingerprints and photographs are found in the *Immigration and Refugee Protection Act (IRPA)* and *Regulations (IRPR)*. Authorities may vary between POE and Inland and also between CBSA and IRCC officials.

These provisions represent general enabling authorities. As such, officers must ensure that they are applied in the proper circumstances and by the appropriate individuals. Both the CBSA and IRCC IRPA Designation and Delegation Instruments should be consulted in order to determine that an officer is granted the authority to exercise the provisions in question.

Pursuant to subsection 6(1) of the IRPA, both the Minister of Public Safety and Emergency Preparedness (PS) and the Minister of Immigration, Refugees and Citizenship Canada (IRCC) have the authority to designate any persons or class of persons to carry out any purpose of any

ENF 12: Search, Seizure, Fingerprinting and Photographing

provision of IRPA and have specified the powers and duties of the officers so designated. In addition, subsection 6(2) provides that anything that may be done by the Minister under the Act and Regulations may be done by a person that the Minister authorizes in writing. This is referred to as delegation of authority.

The Delegation of Authority and Designations of Officers instrument stipulates who has the authority to perform specific immigration related functions. There are two Designation and Delegation Instruments (D&D). One is made by IRCC and the other by CBSA. In each Instrument, IRCC and CBSA designate and delegate authorities to their own officials based on listed job title, as well as to officials in the other departments. This is referred to as cross-delegations and cross-designations. Therefore, it is important that officials read both documents to know all IRPA authorities linked to their positions.

The Instruments can be found on the CBSA Atlas page as well as the IRCC Connexion under Operational Manuals – [IL3 Designation of Officers and Delegation of Authority](#).

Provision:	Refer to:
A person who makes a claim, application or request under this Act must follow the procedures set out in the regulations for the collection and verification of biometric information, including procedures for the collection of further biometric information for verification purposes after a person's claim, application or request is allowed or accepted.	A10.01
For the purposes of an examination, authority for an officer to conduct an inspection, including the following: <ul style="list-style-type: none"> • 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; • seize and remove any record or document to obtain copies or extracts; and • hold the means of transportation until the inspection and examination are completed. 	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 an examination 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 to search any person seeking to come into Canada , including their luggage and personal effects, and the means of transportation that conveyed the person to Canada, if the officer believes on reasonable grounds, that the person: <ul style="list-style-type: none"> • has not revealed their identity or has hidden on or about their person documents that are relevant to their admissibility; or • 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. 	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"> • that it was fraudulently or improperly obtained or used; • that seizure is necessary to prevent its fraudulent or improper use or to carry out the purposes of this Act; or • to carry out the purposes of this Act. 	A140(1)

ENF 12: Search, Seizure, Fingerprinting and Photographing

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)
The collection and verification of biometric information as authorized under section 10.01 of the IRPA is only applicable to the claims, applications and requests as stipulated in this section of the IRPR.	R12.1
Exemptions from the requirement to provide biometric information	R12.2
The procedure for the collection of biometric information.	R12.3
Secondary disclosure by the RCMP of biometric information to other law-enforcement agencies	R13.11
Requirement for an officer who seizes a thing under A140(1) to place it without delay in the custody of the CBSA or IRCC.	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)
The lawful owner of a thing seized or the person from whom it was seized may apply for its return	R254(1)
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)

3.1. Forms

Forms required for search, seizure, fingerprinting and photographing are listed below and are accessible on IRCC [Connexion](#) under Forms or on [CBSA Atlas](#) under Forms and Templates.

Forms used for search, seizure, fingerprinting and photographing are both BSF forms and IMM forms. BSF forms may be accessed on CBSA Atlas and are to be used by CBSA officials. IMM forms may be accessed on IRCC Connexion and accessed by IRCC officials. If there is a BSF form available, CBSA officials shall use the BSF form instead of the IMM form.

Form title	Number
Notice of Seizure of Travel and/or Identity Document(s)	BSF 698E
Notice of Seizure of Travel and/or Identity Document(s) (Supplement)	BSF 698-2 E
Application for the Return of Seized Travel and/or Identity Document(s)	BSF 699E
Notice of Seizure of Travel and/or Identity Document(s) (Manual)	BSF 698-1 E
Notice of Mail Seizure Under Subsection 140(1) of the Immigration and Refugee Protection Act	IMM 5079B
Search under Section 139 of the Immigration and Refugee Protect Act	BSF 667
Notice of Seizure	IMM 5265E
Record of Examination/Seizure of Documents from International Mail and Courier Services	BSF 573
Fingerprint Form (Criminal Fingerprint Form)	C-216 (brown)
Fingerprint Form (Civil Fingerprint Form)	C-216C (green)
Fingerprint Form (Refugee Fingerprint Form)	C-216R (blue)

ENF 12: Search, Seizure, Fingerprinting and Photographing

4. Departmental policy

Searches under the IRPA are performed upon persons seeking entry into Canada in order to confirm their identity and ensure compliance with the Act.

Any means of transportation, document or other thing may be seized in order to prevent their fraudulent or improper use or to carry out the purposes of the Act.

Fingerprints and photographs are taken in order to ensure effective identity management and risk assessment, which are critical in combating fraud, managing the movement of people and protecting Canada's security interests.

5.0 Legislative provisions

5.1 Charter rights respecting search or seizure

The Canadian Charter of Rights and Freedoms (Charter) 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 seizure.

5.2 Protection against unreasonable search or seizure

Section 8 of the Charter provides that everyone has the right to be secure against unreasonable search or seizure. As such, officers can only search and seize in the course of their duties in a manner that meets this obligation under the Charter. Therefore, before conducting a search under the IRPA, an officer must establish that there are reasonable grounds to believe that a person seeking entry to Canada has not revealed their identity, has hidden documents relevant to their admissibility, or has concealed documents that may be used in the commission of an offence of smuggling or trafficking persons or for contraventions under the Act and Regulations..

5.3 Right not to be arbitrarily detained or imprisoned

Section 9 of the Charter provides that everyone has 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. When an officer believes on reasonable grounds that a search and seizure is appropriate, this also means that detention for the purpose of that search and seizure is appropriate as well. Search of the baggage of a person seeking entry to Canada is not considered to be a detention; however, a full body search of a person (disrobement) is considered to be a detention. A disrobement search should rarely be required.

5.4 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.

Officers must ensure that the person understands why a search is being conducted and necessary. Officers must take reasonable steps to provide an interpreter or other suitable person capable of speaking the language of the person when a language barrier is identified. Officers must also be mindful that the person appreciates the nature of what is taking place when dealing with vulnerable persons which include but are not limited to individuals with health, mental health or addiction issues, the elderly, minors and victims of trafficking.

ENF 12: Search, Seizure, Fingerprinting and Photographing

A personal (disrobement) search effectively places a person under detention. As such, the person must be advised of their rights and given an opportunity to contact counsel. Officers should provide a reasonable amount of time for the person to talk to a lawyer to obtain legal advice about their situation and must provide them with what legal aid services are available in the area.

5.5 Solicitor-client privilege: *Lavallee*¹ Supreme Court Decision

The Supreme Court of Canada ruled in *Lavallee* that the confidentiality of communication between a lawyer and their client(s), in the context of search and seizure, is protected. On 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 will need to refrain from infringing on that right.

In order for solicitor-client privilege to apply, the following conditions must 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, namely 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. Officers should consult with their manager first, then seek further assistance from CBSA Case Management HQ, if needed.

The officer should evaluate whether the examination of the document is necessary for the purposes of the IRPA and remain cognizant of the possibility that the documents may be subject to solicitor-client privilege. 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. Furthermore, if subject to solicitor-client privilege, officers will need to ensure not to infringe upon that right. It is not expected that 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 IRPA.

6.0 Procedure: Searches

6.1 Authority and Reasonable Grounds to Search

The authority to conduct a search of a person and their luggage, personal effects and the means of transportation that conveyed the person to Canada at a port of entry (POE) comes from A139(1), which requires that an officer must believe on **reasonable grounds** that the person **seeking to come into Canada**:

- has not revealed their identity;
- has hidden on or about their person documents that are 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.

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

¹ [Lavallee, Rackel & Heintz v. Canada \(Attorney General\); White, Ottenheimer & Baker v. Canada \(Attorney General\); R. V Fink](#), [2002] 3 S.C.R. 209, 2002 SCC 61.

ENF 12: Search, Seizure, Fingerprinting and Photographing

elements, facts, circumstances or available information, would lead an informed and experienced officer to believe that a violation of the 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 (frisk) 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. Officers must always document what led them to believe that a search was necessary.

NOTE: A139(1) only applies when an individual is seeking to come into Canada. Therefore, it does not authorize officers to conduct searches in Canada in the absence of evidence the person is seeking entry (e.g. inland).

6.2 Types of search pursuant to 139(1) of the IRPA

CBSA officers are authorized to search any person seeking to come into Canada (POE) as per subsection 139(1) of the IRPA. The purpose of this provision is to ensure that officers are able to conduct a search when they have reasonable grounds to believe that the person seeking entry may not be providing their genuine identity, has hidden documents relevant to their admissibility, has committed a contravention of the IRPA, or possesses documents that may be used in the commission of any contravention of the IRPA.

There are two types of search that an officer may pursue: a Preliminary Search and a Personal Search.

A preliminary search at the POE involves the examination of all belongings that are with the person in the examination area, including digital devices, 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.

An officer may ask the individual undergoing 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.

	Type of search	Explanation
Preliminary Search	Preliminary Search	An officer who has reasonable grounds to believe that a person is seeking to enter Canada and may have documents relevant to identity or to admissibility hidden on them, in their luggage and/or conveyance or that were or may be used in the commission of an offence, may conduct a preliminary search. A preliminary search is conducted on a person's luggage and personal belongings. This search may extend to the traveller's means of transportation or checked baggage. No consent from a supervisor is required unless the search involves a minor child (see section immediately following this table).
Personal Search	Frisk Search	A frisk search, also referred to as a "pat-down" is a search of a person and involves physical contact with the person, where an officer pats the person's clothing or runs their hands along the clothing.

ENF 12: Search, Seizure, Fingerprinting and Photographing

		Consent of a supervisor is required for a frisk search to be conducted under 139(1) of the IRPA.
	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 is considered a detention. A disrobement search should be a rare occurrence and must 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. This search requires the consent of a supervisor, in all cases.

6.3 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.

6.4 Search related to an offence under IRPA

Pursuant to A139(1)(b), a CBSA officer may search any person seeking to enter Canada, including Canadian citizens, if the officer has reasonable grounds to believe the person has committed, or possesses documents that may be used in the commission of, an offence referred to in sections A117, A118 or A122. Since criminal charges may follow, officers should contact CBSA Criminal Investigations from the outset.

Before searching or questioning any person about possible violations of the IRPA where charges may be 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 (sections 117 to 137 of IRPA), any information obtained before the person is informed of their Charter rights may be inadmissible as evidence in subsequent prosecutions against the person.

However, Canadian citizens, permanent residents, and registered Indians have the right to enter Canada if following an examination on their entry an officer is satisfied that the person is a citizen, permanent resident, or registered Indian. Therefore, once an officer establishes that a person is Canadian, permanent resident or a registered Indian, the officer must end the examination and authorize the person to enter Canada.

In the case of Canadian citizens, permanent residents or registered Indians, any delay in authorizing entry to Canada, including a personal search in the form of a disrobement search, conducted for immigration purposes, may constitute detention and the person would have to be advised of their right to counsel.

In the case where a group is travelling together and travellers have different immigration status (e.g. Foreign National, Permanent Resident, Canadian Citizen), and an officer has determined that any or all members of the group will be searched, the officer must ensure that reasonable grounds exist for each individual person who undergoes a search. Concerns related to one member of the group do not authorize the search of other members of the group in order to search for evidence related to first traveller in question.

ENF 12: Search, Seizure, Fingerprinting and Photographing

6.5 Officer safety in conducting searches

An officer should never assume that a person including one that is detained, has been searched. Officer and public safety 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.

The safety of the general public, as well as the officer's own personal safety, are of the utmost importance and caution should be exercised at all times when conducting a search.

6.6 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 grounds for the search. A second officer should witness the search and both officers should initial each evidence bag or container in which the seized items are held. This practice will assist in ensuring officer safety, as well as providing a witness in the event that allegations of impropriety are made against the officer. It may also assist in establishing the continuity of evidence.

Any information relevant to conducting a search must be recorded in the officer's Notebook [BSF 556] and 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.

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. Prior to arresting for obstruction (criminal offence), an officer should consult with Criminal Investigations.

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 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 (BSF667) must be completed in all cases at a POE and should be scanned and uploaded to GCMS to the 'Clients' screen at the following path: Clients>Documents>ID Supporting documents sub tab. Then select type: CDN Immigration Doc, sub-type: Client Submission and document #: (BSF667).

ENF 12: Search, Seizure, Fingerprinting and Photographing

6.7 Conducting Preliminary and Full Examination Searches at Ports of Entry

Pursuant to A139(1), officers may search any person seeking to come into Canada. However, officers should be aware that there are different circumstances in which a person is considered to be seeking entry. Subsection 27(2) of the IRPR states that “a person who seeks to enter Canada at a place other than a port of entry must appear without delay for examination at the port of entry that is nearest to that place.”

Therefore, in order to rely on POE examination provisions and related authorities, such as A139(1), officers will need to articulate that there is a geographic and temporal proximity to the border if, for example, a person crosses the border between ports of entry. This should be reflected in officer notes in GCMS and on the client’s file.

All searches are to be conducted in a courteous and professional manner in accordance with the [CBSA Code of Conduct](#).

When conducting a preliminary or full examination search at a POE, an officer should:

- take measures to ensure their own health and safety as well as that of fellow officers and the public;
- complete the applicable section of the Search form [BSF667];
- explain to the person why their baggage or vehicle is being searched;
- arrange an interview if the person requests permission to speak to a supervisor;
- make detailed notes in their notebook 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?

6.8 Conducting a search of carry-on luggage

While officers have the authority to search at the port of entry as per A139(1), it is imperative that the grounds to perform the search exist. Therefore, it is not enough that the luggage is at the POE. A139(1) only authorizes officers to conduct a search under IRPA, not for *Customs Act* or other reasons.

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.

Once a search has begun, the person being searched must never be left alone.

6.9 Conducting personal searches

Personal searches include frisk and disrobement searches. The first step in any personal search is to seek the person's co-operation by explaining to the person what is involved in a search.

ENF 12: Search, Seizure, Fingerprinting and Photographing

If a person does not comply with being frisk-searched, it may be necessary for an officer to determine whether detention is necessary in order for the examination to be completed. If an officer makes the decision to detain, the 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.

Prior to an officer conducting a personal search that involves disrobement, an officer is required to read the following to the person being searched:

“I have reasonable grounds to believe that you [have hidden documents on or about your person that are relevant to your admissibility/have not revealed your identity/have committed an offence related to human smuggling or trafficking/documents] and I am detaining you for the purposes of a search of your person as authorized by section 139 of the Immigration and Refugee Protection Act. Do you understand?”

You have the right to retain and instruct counsel of your choice, in private and without delay. You have the right to free and immediate legal advice from duty counsel. Duty counsel is available at _____: during the following hours: _____. You have the right to apply for legal assistance without charge through the Provincial Legal Aid program. The Legal Aid telephone number in this area is: _____. Their office is located at: _____ and office hours are from _____. Do you understand? Do you wish to call a lawyer now?

You need not say anything. You have nothing to hope from any promise or favour, or nothing to fear from any threat, whether or not you do say anything. Anything you do say may be used in evidence. Do you understand?”

A139(2) of the IRPA requires that a search of a person seeking to come into Canada 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. Officers should be aware that other considerations may arise, specifically in the context of transgender, non-binary or intersex individuals. Should a situation arise where a personal search is required on a transgender, non-binary or intersex person, the CBSA must provide the individual with a choice of the sex of the officer who will conduct the personal search. The options that will be available to the individual are:

- A. Male officers only;
- B. Female officers only; or
- C. A split search.

Although these options are specific to a person seeking entry into Canada, and mandated by IRPA, they are principles that should be applied in the Inland context (search incidental to arrest) whenever possible.

A split search is conducted by two sets of officers, the first set completes the search of the upper body followed by the second set of officers of the opposite sex that conducts the search of the lower body. The individual being searched will be fully observed at all times during the turnover from the first set of officers to the second set of officers to ensure that continuity of any potential evidence is maintained throughout the search process.

Once the individual has chosen the sex of the officers conducting the personal search, the choice will be recorded in the notebooks of all officers involved. Where an officer has serious reason to doubt an individual's self-identification as a transgender, non-binary or intersex person, absent any objective criteria that would cause the officer to believe the self-identification is true, the officer may engage in additional questioning, in private, to verify the individual's status. Where the officer continues to have serious reason to doubt the individual's self-identification, the officer shall defer to the supervising officer for a final determination.

ENF 12: Search, Seizure, Fingerprinting and Photographing

If not previously known that the person being searched is a transgender, non-binary or intersex person, but it becomes evident at any point during the personal search that this is the case, officers will immediately stop the personal search and offer the individual the choice of the sex of the officers who will continue the personal search.

An officer should commence a personal search by:

- explaining the reason for the search to the person concerned;
- explaining, if challenged, the legal authority under A139(1) for the officer to conduct the search; and
- 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. However, the officer should be prepared to intervene if the person is observed in attempting to destroy or conceal evidence.

6.10 Conducting frisk searches

An officer conducting a frisk search should:

- obtain consent from a supervisor to conduct a frisk search
- explain the reason for the search to the person concerned;
- explain, if challenged, the legal authority under A139(1) for the officer to conduct the search;
- recognizing that it may not always be possible, a person's privacy should be protected by conducting the search out of the view of the public whenever possible;
- 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. Before using the wand, persons must be asked if they are wearing a pacemaker or other similar heart device. Those who identify as wearing one should only be frisked manually;
- record in the BSO's notebook [BSF556] 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 and hold 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

ENF 12: Search, Seizure, Fingerprinting and Photographing

officer should ensure that the person is satisfied that all their possessions have been returned and have the person sign the BSF667 to this effect; and

- In cases where an officer discovers illicit contraband, such as weapons or drugs, they will immediately arrest, advise and caution the person. For more information related to the discovery of illicit contraband at the POE, refer to [CBSA Enforcement Manual – Part 6](#).

6.11. Conducting disrobement searches

Conducting a disrobement search while officers are enforcing the IRPA would only occur under exceptional circumstances. An officer must obtain consent from a supervisor in order to conduct a disrobement search. The purpose of a search under IRPA is to locate documents; consequently, it will be extremely rare that a person will hide documentary evidence in a location that would require disrobement.

There may be a situation where, 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.

A disrobement search constitutes a detention. As such, prior to commencing the search, an officer must advise the person of their rights under the Charter, specifically the right to retain and instruct counsel, 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.

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.

Officers must ensure that disrobement searches are properly documented, including notes to be kept on file. Resultant disrobement searches will also require proper documentation of any associated seizures.

6.12. Conducting a search of a means of transportation

Pursuant to A139(1), an officer may search a means of transportation that conveyed the person to Canada. In order for an officer at the POE to conduct a lawful search of a conveyance, there needs to be reasonable grounds to believe there are documents which reveal the person's identity, are relevant to their admissibility, or may be used in the commission of an offence, namely human smuggling, trafficking or to otherwise contravene the IRPA.

Documents and papers that are in a vehicle or are in the occupants' possession may 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.

6.13 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

ENF 12: Search, Seizure, Fingerprinting and Photographing

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 individual's signed acknowledgement that they have received the items. This may alleviate possible allegations of impropriety on the part of the officer.

6.14 Completing the Search form BSF 667

The BSF 667 is meant to ensure national consistency when documenting searches conducted under section 139(1) of the IRPA. Officers must complete the appropriate section(s) of the BSF 667 in the following circumstances:

1. Preliminary searches and full examination searches that are resultant require that the BSF 667 be completed. If a preliminary search and/or full examination is non-resultant, the BSF 667 is not required and a record of such a search in an officer's notebook is sufficient.
2. Personal searches, whether a frisk search or disrobement require that the BSF 667 be completed in addition to any record in an officer's notebook.

When completing the BSF 667, it is important to ensure the following:

Fully complete the top portion of the form labelled "Traveller identification".

Part A – Search must be completed in all instances where the BSF667 is being completed.

Note: In the case of non-resultant preliminary searches that do not require the completion of the BSF667, officers must still ensure:

- that the person being searched is informed of the authority to search found in section 139(1) of the IRPA;
- that the person being searched is informed of the reasonable grounds for the search;
- the times that the search commenced and ended are documented in the officer's notes; and
- whether the search was resultant or non-resultant is documented in the officer's notes

Part B – Preliminary Search: must be completed when a preliminary search and/or full examination is resultant and must include the results of the search and the location of where the documents or evidence were found;

Part C – Personal Search: must be completed in all instances that a person search is conducted, whether a frisk or disrobement search. This must include signatures of the searching officer(s) as well as the authorizing supervisor's signature indicating their concurrence where required. If the concurrence was provided by telephone, this information should be noted on the form.

Part D – Disrobement Search: must be completed in addition to Part C in all instances where a disrobement search is conducted as it constitutes a detention and requires further documentation specific to the right to counsel.

Part E – Return of Personal Effects: must be completed to ensure that if personal effects are returned, save for those seized, that the person signs for receipt of the items.

Part F – Interpreter declaration: must be completed in any instances where an interpreter was required to conduct the search.

ENF 12: Search, Seizure, Fingerprinting and Photographing

6.15 Examination of Digital Devices at the Port of Entry

Digital devices, media, documents, software and stored electronic data are considered “goods” under CBSA program legislation and are subject to examination by CBSA officers at ports of entry. For procedures related to the examination of digital devices for the administration and enforcement of the IRPA, please refer to the [CBSA Policy on Port of Entry Examinations of Travellers' Digital Devices](#) (Enforcement Manual (EN) Part 4, Chapter 16) on Atlas.

7.0 Additional Types of Search

7.1 Search incidental to arrest

In common law, a peace officer may carry out a search of a person who has been lawfully arrested. The existence of reasonable grounds is not a prerequisite to the existence of such a power.

The courts have ruled that when conducting a search of an arrested person a peace officer is authorized 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; or
- anything that can be considered as evidence of the offence for which the person has been arrested.

In the Supreme Court of Canada decisions [Cloutier v. Langlois, \[1990\] 1 S.C.R. 158](#) and [R. v. Caslake, \[1998\] 1 S.C.R. 51](#), precedents for searches incidental to arrest were established. In these decisions, the Supreme Court held 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; or
- to protect evidence from destruction at the hands of the person under arrest.

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. The power to search incidental to arrest is a discretionary one and need not be exercised where the peace officer is satisfied that the law can be effectively and safely applied in its absence.

Note: Searches conducted in the inland enforcement context can only be conducted incidental to arrest. The authority to search incidental to arrest is governed by common law. The authority to search under A139(1) cannot be relied upon in the inland enforcement context to conduct searches.

7.2 Conducting a Frisk Search Incidental to Arrest

When a designated CBSA officer has completed an IRPA arrest and detention of an individual, which includes informing the individual of their Charter rights to speak with counsel, as well as their rights under the Vienna Convention, the officer may conduct a frisk search of the person incidental to the arrest.

A search applies to anything in possession or within the immediate surroundings of the arrested person. Three conditions must be satisfied in order for the search of the person to be justifiable:

ENF 12: Search, Seizure, Fingerprinting and Photographing

- the arrest must be lawful;
- the search must be conducted as incidental to a lawful arrest; and
- the search must be carried out in a reasonable manner.

If during the search, an officer discovers any means of transportation, document or other thing that the officer believes on reasonable grounds to be 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 officer may seize and hold any of the aforementioned items as per section 140(1) of the IRPA. The officer must provide written notice of any seizure and otherwise follow the instructions as per section 8 of this chapter.

7.3 Search warrants

Outside of the authority to conduct searches incidental to arrest, inland enforcement officers are not permitted to search for evidence of an offence. Although A138(1) 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* (CC) to enforce the IRPA, the use of section 487 of the CC provisions is limited, by its own wording, to situations where there are reasonable grounds to believe that there is evidence in the specific place named in the warrant which would relate to an offence (i.e. **criminal** offence). Unlike section 43 of the *Customs Act*, the IRPA does not contain any provisions for compelling the production of records for administrative or non-criminal enforcement purposes.

Inland Enforcement Officers cannot rely on CC search warrants or production orders without reasonable grounds to believe that evidence of a criminal offence will be found in that place. So while CC warrants can be used to investigate a criminal offence under IRPA, these warrants cannot be obtained for purposes other than obtaining evidence of a criminal offence. Therefore, officers cannot rely on CC search warrants to gather evidence in support of an inadmissibility report under A44(1).

Where a CBSA inland enforcement officer suspects a criminal offence under IRPA has occurred and evidence in the form of documents or information relating to the offence may be found in a specific place, they should engage a CBSA criminal investigator.

Criminal investigators will assess the case specifics and, if a criminal investigation and search warrant/production order are warranted, will discuss with the referring officer.

Where it can be reasonably demonstrated that an IRPA criminal offence (pursuant to Part 3 – Enforcement of the IRPA) has occurred and that information at a specific place will afford evidence of that offence (potentially including information that may be used to locate an individual or a document), a search warrant or production order may be requested pursuant to s. 487 CC and s. 487.012, respectively. These search warrants must be prepared and obtained by CBSA Criminal Investigators, in the context of their investigation towards the laying of criminal charges.

8.0 Procedure: Seizures

8.1 Authority and grounds for seizure

A140 provides the legislative authority to seize any means of transportation, documents or other thing if an 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. Both IRCC and the CBSA officials are designated with the authority to

ENF 12: Search, Seizure, Fingerprinting and Photographing

seize documents and other things. However, only CBSA officers have been designated with the authority to seize a means of transportation.

A148(2) provides the legislative authority to detain, seize or forfeit all or part of any security provided by a transporter as well as any vehicle or other prescribed good owned or operated by a transporter. For procedures relating to seizures made under the authority of A148(2), refer to [ENF 15](#).

In the case of persons seeking entry in to Canada, A15(3) provides the legislative authority for an 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 and hold the means of transportation until the inspection and examination are completed.

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 thing was fraudulently or improperly obtained or used.

8.2 Seizing documents

While the ability to seize under the IRPA will primarily be completed within situations involving foreign nationals or permanent residents, this provision may be applicable to Canadian citizens if the conditions of A140(1) are met. In all cases, officers are required to articulate the grounds for the seizure.

IRCC officers who have reasonable grounds to believe that documents were fraudulently or improperly obtained or used may seize those documents and transfer custody to the CBSA for further examination and/or investigation. This includes seizure of identity, travel and/or other documents as evidence or to effect a removal, should an individual become subject to an enforceable removal order. Although it is not a Charter right, if a person from whom a thing has been seized wants to contact legal counsel, the officer should make every effort to facilitate this request if it is reasonable to do so. This may be as simple as providing the individual with opportunity and means to make a telephone call.

Following a seizure made by an officer pursuant to A140(1), the officer is required by R253(1), to make reasonable efforts:

- (1) to identify the lawful owner of thing seized; and
- (2) to give the lawful owner written notice of and reasons for the seizure

An officer who seizes a travel and/or identity document is required to issue a **Notice of Seizure of Travel and/or Identity Document(s) [BSF 698]** and to include the reasons for the seizure as well as information on how/where individuals may make an **Application for the Return of Seized Identity Document(s) [BSF 699]**.

For all other things seized (e.g. ticket stubs, employment information, conveyances, etc.) **Notice of Seizure [IMM 5265E]**, or **Notice of Mail Seizure [IMM5079]** must be used.

Note: In keeping with CBSA policy, officers should, for each document seized, provide the person from whom documents are seized with a copy of the seizure form, which will serve as a detailed *Notice of Seizure* receipt.

If documents are genuine and the individual from whom the document(s) is (are) seized is the rightful holder, officers will make colour copies, certify them as true copies and provide the certified true copies to the individual from whom the documents were seized.

ENF 12: Search, Seizure, Fingerprinting and Photographing

Examples of document seizures to prevent fraudulent or improper use include but are not limited to:

- Document(s) (Confirmation of Permanent Residence, Permanent Resident Card, Study Permit, Work Permit, Temporary Resident Permit, Temporary Resident Visa, travel documents, etc.) issued to an individual other than the individual who is in possession of the document(s) where the individual does not have a valid explanation for being in possession of the document(s) and the document(s) was/ were not used to enter or exit Canada or another country;

Examples of fraudulent documents, include, but are not limited to:

- altered documents (e.g. photo-substitution, page substitution, and alterations and/or erasure of information (e.g. date of birth, name, country of citizenship, and entry stamps);
- counterfeit documents;
- improperly obtained or issued documents;
- fantasy documents.

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

- travel documents (e.g. passports, certificates of identity, laissez-passer or refugee travel documents);
- personal identification (e.g. U.S. social security cards, driver's licences or any other form of personal identification that may or may not include a photograph of the holder);
- IRCC-issued documents (e.g. Permanent Resident Card, Confirmation of Permanent Residence/IMM 1000, 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; and/or
- purchase receipts.

There are different situations that may occur in which an officer will have grounds to seize and hold a means of transportation, a document or other thing. Officers should consider each case

ENF 12: Search, Seizure, Fingerprinting and Photographing

individually and assess if the seizure meets the grounds articulated in the IRPA. The following are potential circumstances when a seizure of a travel document may be appropriate.

Scenario 1

A foreign national has been charged with a criminal offence in Canada but has been released on recognizance to appear in a Canadian court. The foreign national left the country but is now seeking entry to Canada to appear in a Canadian court. An officer may decide to adjourn the examination as per A23, and determine there are reasonable grounds to seize the foreign national's passport as per A140(1) to carry out the purposes of the Act, namely to ensure the foreign national will appear to complete their examination as well as any other enforcement action (e.g. removal), in the event that the foreign national is convicted. If this occurs, the passport will be required to enforce the removal. The officer will complete and provide a BSF698: Notice of Seizure of Identity Document(s).

Scenario 2

A foreign national seeking entry to Canada at a POE and provides their travel document to an officer for examination. During the course of the examination, the officer examines the document and believes that there has been an alteration made to the photograph. If the officer believes that there are reasonable grounds the document has been fraudulently used, they may seize the travel document under A140(1). The officer should evaluate inadmissibility and consider additional enforcement options such as arrest and detention as appropriate, if they are not satisfied of the foreign national's identity. The officer should also consult with Criminal Investigations Division as the use of a fraudulent document is an offence under the IRPA. The officer will provide a BSF698: Notice of Seizure of Identity Document(s) to the individual.

Scenario 3

A Permanent Resident is convicted in Canada of a serious offence and is reported by an officer pursuant to A44(1). The report is referred to the Immigration Division for an admissibility hearing. The officer concludes that there are reasonable grounds to believe that the seizure of the permanent resident's passport is necessary to carry out the purposes of the Act as per A140(1). If a removal order is issued and becomes enforceable, CBSA requires the passport to enforce the removal order. The officer may provide a certified copy of the document in addition to the BSF698: Notice of Seizure of Identity Document(s). If, however, a referral for the admissibility hearing is later withdrawn or the PR is found not described (i.e. no removal order is issued), officers must return the seized document.

Scenario 4

A foreign national appears at the POE and makes a claim for refugee protection. They are in possession of a genuine passport and birth certificate. As per A140(1) and refugee processing policy, the officer will seize the passport and birth certificate in order to carry out the purposes of the Act. The seizure is necessary to ensure compliance with conditions, including the appearance of the refugee claimant for the hearing before the Refugee Protection Division, and for the removal process if their claim is refused, withdrawn or abandoned. The officer will provide colour certified copies to the claimant in addition to the BSF698: Notice of Seizure of Identity Document(s).

Scenario 5

A foreign national comes to the attention of CBSA as a result of an encounter with a local police service. During their investigation, the officer(s) learns that the foreign national has remained in Canada beyond the period authorized and has neither applied for nor received any extensions to

ENF 12: Search, Seizure, Fingerprinting and Photographing

their temporary resident status. During their interview with the foreign national, the officer(s) learn that the foreign national is in possession of his genuine passport. The officer(s) conclude that there are reasonable grounds to believe that the seizure of the foreign national's passport is necessary to carry out the purposes of the Act, as per A140(1). If a removal order is issued and becomes enforceable, CBSA requires the passport to enforce the removal order. The officer(s) will provide a certified copy of the passport in addition to the BSF698: Notice of Seizure of Identity Document(s). If no removal order is issued, officers must return the seized document.

Enhanced Driver's Licence

An Enhanced Driver's Licence (EDL) is a secure document which serves as both a licence to drive as well as an identity and Canadian citizenship document. The EDL is only valid as a Canadian citizenship document when travelling between Canada and the United States by land or water. When an individual presents an EDL at a POE, it is read by a radio-frequency identification (RFID) machine which then displays the status of the EDL. There is a possibility that the status displayed by the RFID machine contradicts information on the card (e.g. card appears valid, however RFID status states 'cancelled'). It is also possible that an individual is travelling with an EDL that they should not be travelling with (e.g. 'cancelled'). If this occurs, officers should advise the individual(s) to attend the issuing authority of the EDL in order to resolve any outstanding issues. If an officer has any further concerns with regards to the EDL and its status, they should investigate as necessary, including contacting the issuing authority in order to determine whether a seizure of the EDL is necessary and appropriate. If a seized EDL is not required for the enforcement or administration of Canadian laws, an officer should return the document to the issuing authority with a memorandum outlining how it came into the possession of IRCC or the CBSA.

There are currently two provinces in Canada that are administering an EDL program: British Columbia and Manitoba. The province of Ontario cancelled their EDL program in June 2019; as such it is possible that a traveller may be encountered with an Ontario EDL despite the province no longer issuing new EDLs. A traveller with a valid Ontario EDL may continue to use the document until it is expired or needs to be replaced.

8.3 Seizing documents from refugee claimants

The IRCC and CBSA officers should seize all passports, pertinent identification and travel documents carried by refugee claimants. Certified true copies of genuine documents will be provided to these individuals as they can be used when seeking to access federal and provincial programs.

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 Basis of Claim Form (BOC)
- ensure compliance;
- ensure that documents are not recycled;
- assist in removal should the refugee claim be unsuccessful.

ENF 12: Search, Seizure, Fingerprinting and Photographing

Documents, such as driver's license, may also be seized if it meets the criteria of A140(1). Officers must make three copies of all documentation seized and provide a copy to the Immigration Refugee Board. Officers must complete a BSF698 or the IMM 5265, or both depending on whether the document is a travel/identity document or any other document and provide a copy to the claimant.

8.4 Seizing documents abroad

Officers overseas may, following the examination of travel, identity and/or other document(s), have reasonable grounds to believe that the document(s) was/were fraudulently or improperly obtained or used, or that the seizure is necessary to prevent a document's fraudulent or improper use or to carry out the purposes of the Act.

However, Canadian officers may only enforce IRPA abroad to the extent that the host country has authorized it.

The Vienna Conventions on Consular and Diplomatic relations, impose an obligation on diplomats to respect the laws of the receiving state.

Therefore, CBSA officers may seize documents abroad only if the host country has agreed to allow Canada to exercise its legislative authority under subsection 140(1) of the IRPA within the host's territory.

Where officers overseas have the authority to seize documents, they may also seize documents that are not issued by a Canadian authority. The approach to the question of seizure of documents will vary from location to location depending on the local environment in which the CBSA Liaison Officers (LO) and IRCC migration officers work, and the type of partnership or arrangements they have with the local enforcement agencies, airlines and other foreign-based officials with whom they interact.

Officers should be aware that depending on local laws, the type of document or the type of arrangement with local agencies, officers may not have the authority to seize a document that was fraudulently or improperly used or obtained.

Officers overseas must ensure that their actions are based on Canadian law and are not prohibited under the foreign law of the host country. Canadian legislation is insufficient to authorize a seizure where the actions are prohibited by the law of the host country.

For example, documents should not be seized from an individual if the seizure impedes a host country's ability to repatriate a third-country national.

In the event a seizure is authorized, officers are instructed to complete form BSF698: *Notice of Seizure of Identity Documents(s)* for all travel and /or identity documents seized under subsection 140(1) of IRPA.

For all other items seized (e.g. ticket stubs, employment information, conveyances, etc.) IMM 5265E: *Notice of Seizure must be completed*.

Note: CBSA Liaison Officers (LO) should contact International Operations Division via CBSA.INS-SRI.ASFC@cbsa-asfc.gc.ca, if they require additional guidance.

8.5 Documenting and tracking document seizures

CBSA form BSF698 Notice of Seizure of Travel and/or Identity Document(s) will be used for all travel and/or identity document seizures made under A140(1). For all other items seized, (i.e. conveyances, ticket stubs, employment information, etc.), form IMM 5265E or IMM 5079B must be used.

Officers must 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

ENF 12: Search, Seizure, Fingerprinting and Photographing

evidence in immigration proceedings, admissibility hearings, appeals and refugee hearings, or to enforce removal orders.

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;
- description of all documents seized;
- name and address of consignor (if applicable);
- name and address of consignee (if applicable);
- details of action taken as a result of seizure;
- details of any representations received;
- final disposition of items seized; and
- record the seizure control in the upper right-hand corner of BSF 698. The seizure number should be constructed as follows: port code-year-sequential number (i.e. 914-2012-001)

Protecting Evidence

For information on maintaining the continuity of evidence for the purposes of prosecution under IRPA, refer to section 0 of this manual.

Global Case Management System (GCMS)

GCMS is designated as the CBSA's primary system for the tracking of travel and identity documents seized by the CBSA under A140(1). More specifically, seized documents must be tracked in the GCMS "Documents" tab.

The record of seized documents in the GCMS "Documents" tab and supplemented by notes in the "Notes" tab, if necessary, must include information such as the biographical details visible in a document, document number, seizure date, reason for seizure, seizure status, held-at location, return date and other relevant facts if deemed necessary by the officer.

A step-by-step guide can be accessed at the following wiki link:

<https://cbsawikiasfc.omega.dce-eir.net/display/FRPC/Document+Seizures+-+Saisir+un+document>

Secure System for Intelligence (SSI)

In addition to tracking all documents seized under A140(1) in GCMS, officers are required to capture all information related to the seizure of travel and/or identity documents in the SSI, without delay and without exception, in all cases described in the Policy on the Use of the Support System for Intelligence. For further details, please consult the [SSI Policy](#) as well as the CBSA [National Directive Controls for Seized Travel and Identity Documents](#).

- ◆ Officers must use SSI to enter all improperly documented travellers intercepted abroad (Intercepts), improperly documented travellers who have arrived in Canada (IDAs),

ENF 12: Search, Seizure, Fingerprinting and Photographing

claimants for refugee protection (whether properly documented or not when they arrived in Canada or when they initiated a refugee claim at inland offices), and other irregular migrants (stowaways and ship deserters).

- ◆ Officers who do not have access to SSI, should contact the following email address: SAM-GSA@cbsa-asfc.gc.ca. Please note approval from a manager is required.

For information on how to use the SSI, officers may refer to the user guide embedded within the system, once they have received access.

Canceling a fraudulent Canadian visa

A fraudulent Canadian visa may include a completely counterfeit document or an alteration of any part of a genuine document. It may also include an improperly obtained or improperly issued Canadian visa.

The proper handling of fraudulent Canadian visas intercepted in Canada or abroad is required to prevent the fraudulent use of these documents, while preserving the passport or travel document that they are attached to. Officers may encounter fraudulent Canadian visas in a number of different situations, including but not limited to the following examples:

- Foreign national making a refugee claim at a Port of Entry or Inland;
- Foreign national seeking entry to Canada;
- Foreign national is granted an Allowed to Leave;
- Permanent resident or foreign national arrested or detained under section 55 of the IRPA;
- Foreign national is intercepted internationally prior to entry to Canada.

Every effort must be made to preserve the travel document or passport that contains a fraudulent Canadian visa in its original condition, for evidentiary purposes, whether that be for a criminal investigation, an admissibility hearing or for removal purposes.

When possible and where A140 requirements are met, officers should always consider seizure of the entire document first. If the seizure of the document containing the fraudulent Canadian visa is not possible or if the travel document is required for the return of the person concerned to their country of origin or to a third country, subject to local laws of the country (if intercepted abroad), then officers may consider marking the fraudulent Canadian visa. Unless otherwise provided for in the legislation of the issuing country, a standardized means of marking such document shall be used, using the wording “**VOID**”.

Officers must record all events using SSI and GCMS and complete the BSF698.

If an Inland Enforcement Officer has reasonable grounds to believe that a document was fraudulently or improperly obtained or used, the officer may exercise their authority pursuant to A140(1) to seize the document, however, **should never mark the document** without first pursuing proper analysis, as doing so may render the document invalid and/or prevent future removal efforts.

In cases where it is not possible to seize a document that may have been fraudulently obtained or used, officers should, in consultation with the issuing authority (i.e. IRCC-Passport, the local issuing authority, the officer who issued the temporary resident visa or the local IRCC office, etc.), ensure that the document is cancelled promptly within the issuing system (i.e. GCMS).

Genuine expired (i.e. Temporary Resident and/or Permanent Resident) visas may be annotated “Canceled without prejudice” in indelible black ink to deter re-use as raw material for fraudulent purposes.

ENF 12: Search, Seizure, Fingerprinting and Photographing

8.6 Document seizure and referral under section 23.2 of the *Citizenship Act* and sections 28 and 30 of the *Citizenship Regulations*

Under section 23.2 of the *Citizenship Act* (CA), IRCC officers may seize and detain documents if it is believed they were fraudulently or improperly obtained or used, or that the measure is necessary to prevent their fraudulent use.

Pursuant to section 28 of the *Citizenship Regulations* (CR), the Minister may disclose to the CBSA information with respect to the seized document, including referral of the document itself to the Agency, for the purpose of the administration and enforcement of the IRPA. The CBSA may therefore retain the document for the period necessary to determine whether it is genuine or not.

Pursuant to section 30 of the CR, if the Minister determines that the document was improperly or fraudulently obtained or used, the seized document must be detained for as long as is necessary for the administration of the laws of Canada, after which it will be returned to the issuing authority or disposed of in accordance with Canadian law.

CBSA officers who receive documents from IRCC under the authority of section 28 of the CR should:

- Ensure that there is an IRPA nexus to the seized document;
- Transfer the documents to the appropriate area for further examination. Please refer to the [Document Examination Referral and Communication Tree \[PDF, 210 KB\]](#) (PRG-2018-63) for more information.
- Ensure proper handling of the documents as per [National Directive – Controls for Seized Travel and Identity Documents \(PDF, 390 KB\)](#) and that chain of custody is maintained by recording the seizure in the appropriate system(s).

In all cases and regardless of the outcome, the CBSA will return the document to the IRCC originator along with copies of the document analyst report and/or forensic examination report. They must also ensure a record of the transfer for continuity of evidence purposes is made and record the event in the applicable database(s).

Under the authority of section 30 of the CR, if the examination indicates the document in question is fraudulent (altered through photo-substitution, page substitution, alterations and/or erasure of information, counterfeit, improperly obtained or issued or fantasy), the document must be detained for as long as is necessary for the administration of the laws of Canada. The forensic document examiner or document analyst will contact IRCC to inquire if further enforcement action is required.

For clarity, there are a number of possible outcomes, as follows:

- Document is found to be fraudulent and document analyst or forensic document examination report(s) prepared. The CBSA & IRCC to be advised accordingly. Document is returned to IRCC for enforcement under the CA. The CBSA does not pursue IRPA enforcement.
- Document is found to be fraudulent and document analyst or forensic document examination report(s) prepared. The CBSA & IRCC to be advised accordingly. Document is returned to IRCC for enforcement under the CA. The CBSA pursues enforcement action under the IRPA once IRCC has completed enforcement action under the CA, and has released the document to the CBSA under S.30 of the CR.

ENF 12: Search, Seizure, Fingerprinting and Photographing

- Document is found not to be fraudulent and document analyst or forensic document examination report(s) prepared. The CBSA & IRCC to be advised accordingly. Document is returned to IRCC, no enforcement action occurs.

CBSA Seizures

Once IRCC no longer requires the seized document for enforcement actions under the CA, authorized CBSA officials may then seize and detain the document if the provisions of section 140 of IRPA are met. Officers are to provide the person who provided the document with a copy of the seizure receipt BSF698 "Notice of Seizure of Travel and/or Identity Document(s)." Officers must also ensure a record of the transfer for continuity of evidence purposes is made, if applicable.

8.7 Sending documents for analysis

If officers require analysis of a document for a determination of admissibility, investigation or for any other purpose, they should refer to the [Document Examination Referral and Communication Tree](#) found within CBSA intranet Atlas Operational Bulleting entitled, "[Document Examinations and Referrals](#)". For a list of document analysts or examiners by region, please refer to the [Document Examination Contact List](#).

Officers should contact their respective document analysis unit (DAU), the National Document Centre (NDC) or the Forensic Document Examination Section (FDES), as stipulated, for specific instructions for sending the document(s).

For referrals to the NDC, a referral form is required, that is available by contacting nat-intelligence-documents@cbsa-asfc.gc.ca

An email should be sent to the above-noted NDC email address in the case of documents requiring analysis from Northern Ontario Region and overseas Liaison Officers.

For the NDC and the DAUs, the following information is required (and is provided on the referral form):

- the details about the document being sent;
- the date when the document analysis report is required;
- the purpose of analysis;
- the reason for the return of the document;
- the date, if known, for the return of the document; and
- the return address.

If an officer requires that the original document is returned for a hearing or other purpose, the initial request for analysis should clearly state the date for which the document(s) is/are required.

The form along with the documents to be analyzed, should be sent by secure mail to the appropriate area for analysis.

Upon completion of analysis, the Document Analyst must return the document analysis report (BSF265) to the requesting officer. Documents that are determined to be fraudulent will be retained by the analyst, but if necessary may be made available to the officer who filed the request for analysis.

ENF 12: Search, Seizure, Fingerprinting and Photographing

8.8 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.

While A140(1) provides officers with the authority to seize a means of transportation, certain conditions must first be met. The officer must believe on reasonable grounds that the conveyance was fraudulently or improperly used or that the seizure is necessary to prevent the fraudulent or improper use or to carry out the purposes of the Act. For an officer to articulate the grounds to seize a means of transportation, there must be a logical purpose that is directly correlated with the IRPA, such as A44(1) report alleging an inadmissibility, an admissibility hearing, removal or criminal charges.

Certain circumstances should occur for a seizure of a vehicle to be reasonable. In most cases a seizure of a conveyance will arise at a port of entry while carrying out the purposes of the Act. Officers should be aware that seizing a means of transportation in the inland context will be rare and will typically happen when an offence has occurred that may lead to charges. Prior to the seizure of a vehicle in this situation, Criminal Investigations Division should be consulted.

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 5265E) 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.
- 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 in the vehicle, who does not have a passport or a visa as required, is withheld or purposely misrepresented at a Port of Entry 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 POE 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). Officers should consider all of the relevant information in each individual case and ultimately be mindful as to the purpose of any seizure and any potential enforcement action along the immigration enforcement continuum.

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

ENF 12: Search, Seizure, Fingerprinting and Photographing

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.

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

8.9 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.

8.10 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 a thing was seized is not the lawful owner, the officer should ask the person from whom it 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 lawful 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 a thing is required to issue a Notice of Seizure [IMM 5265E] and to include the reasons for the seizure as well as how/where to make an application for its return.

If a person from whom a thing has been seized desires to contact legal counsel, the officer should make every effort to facilitate this. This may be as simple as providing the individual the opportunity and means to make a phone call.

8.11 Reporting the seizure of a vehicle

Following the seizure of a vehicle, the officer will place the vehicle in CBSA's custody, provide notice of seizure pursuant to R253(1) and prepare a report. 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;

ENF 12: Search, Seizure, Fingerprinting and Photographing

- 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;
- details about passport, visa, travel documents and other relevant documents or the lack thereof;
- 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 also be 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 according to established regional procedures. 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 or encrypted email to the officer's Regional Director within three business days.

9.0 Procedure: Mail search and seizures

Subsection 42(1) of the *Canada Post Corporation Act* states that all mail arriving in Canada from a place outside 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 shall be submitted to a customs officer.

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 the *Immigration and Refugee Protection Act*.

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.

9.1 CBSA 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 three CBSA mail centres, all located within Canada Post facilities in Vancouver, Toronto, and Montreal. The CBSA 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.

For complete information on conducting a postal examination, see CBSA Enforcement Manual Part 4 Chapter 12.

ENF 12: Search, Seizure, Fingerprinting and Photographing

9.2 CBSA inspection procedures for courier shipments

Due to the high-volume, low-value nature of goods imported in the courier stream, the CBSA 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.

For further information pertaining to Courier Examinations, see CBSA Enforcement Manual Part 4 Chapter 13.

9.3 How mail seizures work

When a CBSA officer examines a parcel containing suspicious documents or other documents or thing that might be subject to seizure under A140, the CBSA officer will generally detain the parcel until it can be examined further. 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:

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

9.4 Responsibilities of CBSA officers with respect to mail seizures

CBSA officers conducting mail seizures 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 and/or other enforcement proceedings;
- 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 the *Immigration and Refugee Protection Act*.

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

9.5 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 also 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. Manually completed sheets and forms should be recorded in GCMS at the first available opportunity. The information concerning

ENF 12: Search, Seizure, Fingerprinting and Photographing

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 the package was referred by the initial CBSA officer for further inspection;
- the 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;
- 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 for customs processing;
- details of action taken as a result of seizure;
- details of any representations received;
- final disposition of items seized; and
- the seizure control number.

9.6 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 [\[BSF 573\]](#) should be securely attached to the envelope used to store seized items. The seized items should be placed within a secure envelope.

9.7 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.

ENF 12: Search, Seizure, Fingerprinting and Photographing

9.8 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 customs process. On release by a CBSA 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.

9.9 Notification of owner

The *Immigration and Refugee Protection Regulations* require that officers effecting a seizure, full or partial, of items from international mail must provide notification to the rightful owner in all cases.

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 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.

9.10 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 customs secondary process unless seized by a CBSA officer for immigration purposes.

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.

9.11 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. IRCC and CBSA 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*.

IRCC 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

ENF 12: Search, Seizure, Fingerprinting and Photographing

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.

10.0 Procedure: Custody and Liability of Seized Things

10.1 Custody of seized items

R252 requires an officer who seizes a thing under A140(1) to place it without delay in the custody of the Department/Agency. IRCC and CBSA 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 an IRCC officer, it will be placed without delay into the custody of IRCC. If a CBSA 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 the RCMP seize anything under the *Immigration and Refugee Protection Act*, they are required to turn it over to a CBSA 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 IRCC 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.

10.2 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 the *Immigration and Refugee Protection Act* or the *Criminal Code*, officers must ensure that seized documents are kept in a secure area and handled by a minimum number of persons.

Every effort should be made to preserve documentary evidence in the same condition as it was collected. It is also strongly advised to keep direct handling of original documents to an absolute minimum (if they are to be repeatedly referred to they should be individually placed inside copy safe sheet protectors or transparent sleeves.)

At no time should documentary evidence be placed beneath something on which writing can occur, such as on a desk or attached to a clipboard, etc. This will add indented impressions to the documents, which may not only impact the examination of the document(s) but risk leaving indentations of sensitive Agency information. Evidence containers should be marked for identification before the documentary evidence is placed inside to avoid the addition of indented impressions.

The evidence shall not be folded, torn, stamped, hole-punched, stapled, marked or touched unnecessarily. Avoid using staples, tweezers, binder clips and other such devices on the documents. Furthermore, no additional writing should be added to the evidence for record keeping purposes, the documents should not be fed through the automatic document feeder on a photocopier. Copies should be made by manual placement of documents on the glass plate.

ENF 12: Search, Seizure, Fingerprinting and Photographing

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; and
- 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, the officer 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, the officer 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.

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.

10.3 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 the [Guidelines on Claims and Ex Gratia Payments](#). 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.

10.4 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 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.

11.0 Procedure: Disposition of seized things

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.

ENF 12: Search, Seizure, Fingerprinting and Photographing

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.

11.1 Application by lawful owner for return of thing seized (R255)

For the purposes of paragraph R253(2)(b), R255 allows for the return of an object that was seized due to fraudulent or improper use 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.

11.2 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 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 managerial level. Many situations will require advice from 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 Regional Director of Enforcement, District Director or RDG. Samples of reports, memos and letters that may be used in these circumstances can be found in:

- [Appendix A](#): (R254(2)) Sample memo to DG - Return of a vehicle on payment of security
- [Appendix B](#): (R255(3)) Sample memo to DG for decision on application for return of vehicle

ENF 12: Search, Seizure, Fingerprinting and Photographing

- [Appendix D](#): (R255(2)) Sample memo to DG on application to return a rented car that was seized.
- [Appendix I](#): (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.

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

R255 allows for the return of a thing, 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 60 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.

11.3 Application for the return of seized travel and/or identity documents

R255 allows for the return of travel and/or identity documents to the lawful owner. Individuals may apply for the return of seized travel and/or identity documents provided they are the lawful owner by:

- making an application using form BSF 699: *Application for the Return of Seized Identity Document(s)* within 60 days of seizure.

R256 allows for return of travel and/or identity documents to the person from whom a document was seized on grounds that it was fraudulently obtained or used. Individuals may apply for the return of seized travel and/or identity document(s) provided they can show that the document(s) was (were) not fraudulently or improperly obtained or used by:

- making an application using form BSF 699: *Application for the Return of Seized Identity Document(s)* within 30 days of seizure.

Note: IMM 5265E should no longer be used to apply for the return of travel and/or identity documents.

11.4 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.

11.5 Decision by the Minister not to return a seized thing

If the decision following review made under R253, R254, R255 or R256 is not to return a seized thing, then it remains in IRCC or 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;

ENF 12: Search, Seizure, Fingerprinting and Photographing

- altered documents (passports with illegal alterations, pages missing);
- counterfeit money;
- illegally obtained driver's licence, social security or credit cards.

11.6 Sale or destruction of seized things other than a document

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.

11.7 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.

11.8 Return of documents

When returning a document, an officer should record the details on the file and complete the reverse of the form BSF 699, IMM 5079 or IMM 5265, as the case may be, 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 IRCC or the CBSA.

11.9 Disposing of fraudulent documents

R257(3) prescribes that the seized document is retained as long as it is necessary for the administration or enforcement of Canadian law. Therefore, 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, and unauthorized additions (counterfeit entry and/or exit stamps and/or visas);
- counterfeit documents;
- improperly obtained or issued documents; and
- fantasy or fictitious documents.

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 their

ENF 12: Search, Seizure, Fingerprinting and Photographing

Regional Document Analysis Unit: http://atlas/pb-dgp/res/bulletins/bsf-asf/2018/prg_2018_63_contact_eng.asp

For Northern Region and overseas Liaison officer, arrangements should be made to forward the document via secure means to:

Manager, National Document Centre
Traveller Operations Division
191 Laurier Avenue West, 10th Floor
Ottawa, Ontario K1A 0L8
613-219-0180 (for courier deliveries)

In all cases an e-mail should be sent to the National Document Centre (NDC) mailbox (Nat-Intelligence-Documents@cbsa-asfc.gc.ca) indicating that the document(s) are being sent.

For further information of the NDC including Alerts, Bulletins and Communiques, please refer to the Atlas page: http://atlas/tb-dgv/about-sujet/tp-pv/to-ov/ndc_cnd_eng.asp

12.0 Procedure: Fingerprinting and the Collection of Biometric Information

12.1 Authority to collect biometric information

A10.01 and A16(2) provide the legal authority to collect biometric information of foreign nationals making a claim, application or request under the *Immigration and Refugee Protection Act*. This includes but is not limited to 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 a permanent resident or foreign national who is arrested, detained, subject to an examination or a removal order that may be used to establish their identity or compliance with the Act.

These sections provide the authority for an officer to collect fingerprints and place an obligation on the individual to provide them; however, this does not provide the authority to use force to compel an individual to meet this obligation. If necessary, an officer may use reasonable force to effect an arrest or detention as described under A16(3) but this does not extend to the collection of fingerprints.

Although an officer cannot physically compel an individual to provide fingerprints, an officer may pursue administrative options under IRPA that are appropriate to the circumstances. Before pursuing these options, an officer should take steps to ensure the individual understands the legal obligation to provide fingerprints and the potential consequences for failing to meet this obligation. Should the individual continue to refuse to provide fingerprints, the administrative options available include:

- allowing the individual to withdraw their application to enter Canada at a POE as per R42
- preparing an inadmissibility report based on the individual's non-compliance and/or other inadmissibilities

ENF 12: Search, Seizure, Fingerprinting and Photographing

- authorizing entry into Canada for the purpose of further examination as per A23
- directing the person to leave Canada at a POE as per R42

The failure to provide fingerprints may constitute an offence under A124(1)(a) of the IRPA. If appropriate, an officer should consult with CBSA criminal investigations regarding the individual failing to comply with a condition or obligation imposed under the Act.

R12.1 specifies prescribed foreign nationals who make a claim, application or request under the Act that must provide biometric information as per A10.01.

R12.1(4) provides for the biometric information that is to be collected; photograph and fingerprints.

Biometric collection is mandatory for foreign nationals who are:

- applying for a temporary resident visa, work permit, or study permit;
- citizens of a country or territory on the prescribed country list; and
- 14 to 79 years of age.

Biometrics are collected from all applicants who are making an asylum claim in Canada and are 14 years of age and over.

Note: The Royal Canadian Mounted Police (RCMP) does not accept the fingerprints of any child aged 12 years or younger.

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 to the Canada Border Services Agency:

Legislative authority and purpose to collect fingerprints and photographs:

Where fingerprints and photographs are requested by a CBSA officer or investigator, compliance is required by law. The legal authorities to collect personal information are outlined below and include one or both of the following:

ENF 12: Search, Seizure, Fingerprinting and Photographing

- Sections 10.01 and 16 of the *Immigration and Refugee Protection Act* and section 12.1 of the *Immigration and Refugee Protection Regulations* for the purposes of assessing your claim, application or request under this Act or to establish your identity or compliance with this Act. Failure to provide this information may result in the refusal of your claim, application or request and/or finding of inadmissibility and/or criminal charges for failure to comply with this Act.
- Section 2 of the *Identification of Criminals Act* for the purposes of identifying persons who may have committed an offence against Canada's border legislation. Compliance will be enforced as per this Act.

The information may be disclosed with other law enforcement agencies pursuant to subsection 8(2) of the *Privacy Act*.

Retention and disposal standards:

Records will be retained for 15 years from the time of the most recent biometric collection and will be systematically destroyed after 15 years or upon granting of Canadian citizenship. For persons deemed inadmissible under sections 34-37 of the *Immigration and Refugee Protection Act*, the fingerprints will be retained until the person reaches the age of 100 and then are destroyed.

RDA Number: 2015/008.

Bank Number CBSA PPU 1203.

Access to personal information:

Individuals have the right to access and to make corrections to their personal information under the *Privacy Act*. The information collected is described within Info Source under the CBSA PPU 1203 which is detailed within the CBSA Info Source Chapter. Should you have concerns about the CBSA's handling of your personal information you have a right to file a complaint with the Privacy Commissioner of Canada.

Details on these matters are available at canada.ca. Info Source is also available in Canadian public libraries. For further information contact:

Access to Information and Privacy Coordinator
Strategic Policy Branch Canada Border Services Agency
333 North River Road Ottawa, Ontario K1A 0L8

12.2 Biometrics Expansion

The Biometrics Expansion program has expanded biometric (fingerprints and digital photographs) screening and verification to all temporary resident visa (TRV) applicants, work permit (WP), study permit (SP), temporary resident permit (TRP) applicants (excluding U.S. nationals) and all Permanent Resident (PR) applicants.

Individuals who have made an application overseas with IRCC on or after December 31, 2018 must provide biometrics before their application is processed and will be subject to biometric verification on entry to Canada. They will not be subject to biometric enrolment when their document is printed at a POE. However, BSOs will enrol the biometrics of travellers who make an application at a POE for a WP, SP or TRP (excluding US nationals)

Citizens of the United States are exempt from biometric verification unless they are applying for permanent residence. Also, foreign nationals issued a Visitor Record at a POE will not be subject to biometric enrolment.

ENF 12: Search, Seizure, Fingerprinting and Photographing

For further details, please refer to the [Biometrics Toolkit](#).

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.

LiveScan is an automated fingerprint system designed to capture fingerprints in an efficient and accurate manner without the use of ink. LiveScan records ten-print 'plain' fingerprint impressions, ten-print 'rolled' fingerprint impressions, palm prints, writer's palm prints (side of the hand), and client demographic information. LiveScan also records the subject's digital photo, which is electronically printed on the fingerprint form. The fingerprint information is then encrypted and transmitted to RCMP Automated Fingerprint Identification System (AFIS) for search of registered convictions and charges.

LiveScan is an enforcement initiative that enhances capacity to electronically transmit biometric fingerprint data to the RCMP/HQ, improve fingerprint quality, reduce response times, and safeguard fingerprint information.

Please refer to the following link to obtain LiveScan access, the quick reference guide and a list of regional coordinators: http://atlas/pb-dgp/res/system/livescan/livescan_eng.asp

12.4 Cardscanner

The RCMP no longer accepts ink and roll fingerprint submissions from the CBSA. As such, ink and roll fingerprint submissions will be dealt with in the following manner:

Criminal removal ink and roll fingerprints from Inland Enforcement Officers should be sent to the Fredericton Inland Enforcement Office:

Canada Border Services Agency
495 Prospect Street
Fredericton, NB
E3B 9M4
Attention: Manager of Enforcement and Intelligence

All CBSA offices conducting ink and roll fingerprints for all other reasons, such as refugee claimants and prints taken following arrests or convictions for criminal charges, will now send their C216 forms to a designated regional CBSA office for scanning and submission to the RCMP. [Regional LiveScan coordinators](#) will identify and inform your office as to where the C216 forms should be sent for scanning. All CBSA offices sending ink and roll fingerprints for scanning must include the [BSF725](#) and ensure all necessary fields are properly completed.

The CardScan application is used to scan fingerprint cards, palm prints, and photographs. Whether all of these functions are available depends upon the chosen workflow. CardScan allows you to scan the following cards:

- C-216 cards;
- Right palm print cards;
- Left palm print cards; and
- Photo

The Cardscanner contains the following 6 workflow options:

Criminal Record Check Workflow - *previously Criminal Record Inquiry Workflow (CAR-N CS)*

This workflow is a useful tool in determining identity or admissibility. Results obtained through the use of the Criminal Record check workflow are very accurate and conclusive because they are

ENF 12: Search, Seizure, Fingerprinting and Photographing

based on a biometric match as opposed to a simple name and date of birth match. The Criminal Record Check Workflow can be used to confirm a CPIC or NIRCC result.

Criminal Charges Workflow – *previously Criminal Workflow (CAR-Y CS)*

The Criminal Charges workflow is used when a person is charged with a **criminal offence**. Currently at CBSA, the Criminal Charges workflow is generally used by criminal investigators only. Officers may be required to use Criminal Charges when submitting prints on behalf of other law enforcement partners.

Deportee Workflow

This workflow is used when a person is being deported.

NOTE: Under this workflow, officers should be taking the fingerprints of all:

- Escorted removals
- deportees with a criminal record
- deportees who do not have fingerprints on file

Refugee Workflow

Refugee Workflow is used to fingerprint refugee claimants in order to search for registered convictions and/or charges and to search the RCMP/AFIS refugee database. The prints are retained by the RCMP on the Refugee Fingerprint Database on behalf of CBSA/IRCC.

The Refugee workflow is used to capture the biographic data, facial image and fingerprints of all refugee applicants over the age of 14. This information is captured for two purposes: to query the AFIS database for registered convictions/charges and/or a previous refugee claim and to store the fingerprint set in the AFIS refugee database. The RCMP retains refugee fingerprints until the claimant becomes a Canadian citizen.

Civil Workflow

All CBSA sites have the authority to submit cases using the **Civil** workflow. The civil workflow is used to capture fingerprints for civil purposes such as security clearances, employee background verifications, volunteer screenings, etc. All results will go to the Personnel Security Screening team at HQ in Ottawa.

Immigration Workflow

This workflow would be used to biometrically enrol eligible travellers through the collection and transmission of biographic information to RCMP for screening against the three (3) main repositories: Criminal, Immigration, and Legacy Refugee. It is also mandatory for all applicants over the age of 14 to be fingerprinted. The fingerprints serve two purposes: the first is to query the AFIS database for registered convictions/charges and/or previous refugee claim, the second is to store the fingerprint set in the AFIS IMM database.

Before gaining access to the cardscanner you must complete a form:

Step 1: The **LiveScan/Cardscanner Acceptance Form** located at:

<http://atlas/pb-dgp/res/system/livescan/pdf/livescan2.pdf>

Step 2: The Supervisor/Superintendent will email the following to the Regional Coordinator:

- First/Last name;
- User ID;
- Name of the site where access is required; and
- Scanned copies of the forms

ENF 12: Search, Seizure, Fingerprinting and Photographing

Step 3: The Regional Coordinator will contact the LiveScan Team at livescan@cbsa-asfc.gc.ca. Upon receipt of the required information, the LiveScan team will grant system access.

Note: To identify your Regional Coordinator, you can contact the LiveScan Project Team at livescan@cbsa-asfc.gc.ca

[LiveScan Regional Coordinators](#)

[Cardscanner User Guide](#)

12.5 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 UCI number. The bottom right-hand corner is designed to accept the client's photo.

Loading the fingerprint form:

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.

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

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

ENF 12: Search, Seizure, Fingerprinting and Photographing

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.

12.6 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).
- 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;

ENF 12: Search, Seizure, Fingerprinting and Photographing

- 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.

12.7 Fingerprint search under the Migration Five High Value Data Sharing Protocol

IRCC and CBSA officers may submit a request to have fingerprints searched against the immigration fingerprint holdings of a Migration Five (M5) partner country (Australia, New Zealand, the United Kingdom and the United States). In the case of requests to Australia, New Zealand and the United States, officers should use GCMS to initiate queries. If a query has not been auto-sent, an officer may manually initiate a query provided no exemptions apply. An officer may use GCMS to initiate queries as follows:

- For the United States, a query may be initiated as long as the application received date is post May 7, 2015.
- For Australia, a query may be initiated as long as the application received date is post April 2, 2017.
- For New Zealand, a query may be initiated as long as the application received date is post Feb 27, 2018.

ENF 12: Search, Seizure, Fingerprinting and Photographing

If the application received date precedes these dates, the High Value Data Sharing Protocol (HVDSP) as described below should be utilized. However, it may only be used in cases where ink and roll fingerprints exist and where clients have an 8 digit UCI.

Requests to the United Kingdom should also be conducted according to the HVDSP.

HVDSP:

Requests will be reviewed by the Migration 5 Units at IRCC and CBSA National Headquarters (NHQ). NHQ will decide whether or not to make a formal request under the Protocol.

Requests may be sent to IRCC or CBSA NHQ using the Request for Fingerprints Search form [IMM 5674](#) when both of the following conditions apply:

- There are grounds to believe that a refugee claimant or a person found to be a refugee by the RPD may have come into contact with the FCC partner country; and
- Confirmation of that contact would have an impact on any proceeding carried out under the IRPA.

Requests should not be made for persons who:

- Are known to be citizens of an M5 country;
- Are making a refugee claim against an M5 country; or

For requests to the UK specifically, the following technical limitation must be adhered to: within 30 days enrollment, any fingerprints can be sent to the UK. However, if more than 30 days but less than 90 days have passed, only ink and rolled fingerprints with an 8 digit UCI can be sent.

13.0 Procedure: Photographing

13.1 Authority to photograph

Sections A10.01 and A16(2) provide the legal authority to photograph foreign nationals making a claim, application or request under the Act. This includes but is not limited to 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, subject to an examination or a removal order that may be used to establish their identity or compliance with the Act. Officers should be considerate of religious and cultural sensitivities when taking photographs. For example, photographing women who wear a veil may only be permissible if carried out by another woman.

R12.1 lists the prescribed foreign nationals required to submit biometric information.

R12.3 specifically states that the prescribed biometric information to be collected is a photograph of the foreign national.

ENF 12: Search, Seizure, Fingerprinting and Photographing

13.2 Taking photographs

While it is recognized that photographs may not always be taken under optimal conditions, it is important that officers take the best quality photographs possible. Photographs are an asset when trying to locate an individual, issuing a warrant for arrest and for removal arrangements.

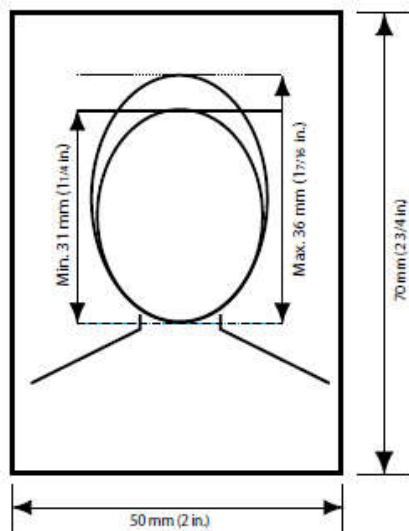
Officers are required to scan and upload photographs to GCMS (eDocs) in addition to placing them on the physical file. Circumstances may occur where the file cannot be physically transferred to another office, therefore granting access to the photo will assist in confirming identity.

When taking photographs, officers should:

- ensure there is uniform lighting and not show shadows, glare or flash reflections;
- select a plain white background with a clear difference between the face and the background;
- have, sunglasses, tinted eye glasses, excessive jewellery, hats and head coverings (unless they are worn daily for religious beliefs or medical reasons) or anything that may impair the picture removed;
- hair may be worn down however ensure that it does not cover the face or ears;
- glasses may be worn as long as the eyes are clearly visible and there is no glare in the glasses;
- ensure the photo is taken with a neutral facial expression (person's eyes are open and clearly visible, mouth closed, no smiling);
- ensure the photo is 50 mm wide X 70 mm high (2 inches wide x 2-3/4 inches long) and sized so the height of the face measures between 31 mm (1-1/4 inches) and 36 mm (1-7/16 inches) from chin to crown of head;
- ensure the photo is taken straight on, with face and shoulders centred and squared to the camera (i.e. the photograph must show the full front view of the person's head and shoulders, showing full face centred in the middle of the photograph);
- 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. An optimal photo should conform to the following sample:

ENF 12: Search, Seizure, Fingerprinting and Photographing



Note: Not actual size, refer to measurements above.

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 young child who is not comfortable being photographed alone may be photographed in the arms of a parent or legal guardian.

13.4 Photographing Tattoos

Photographing tattoos at a Port of Entry should only be done in exceptional cases when a photograph of the tattoo combined with other information could provide evidence of an IRPA inadmissibility on any grounds (e.g. criminal inadmissibility, organized crime, security, war crimes, etc.). In such cases that an individual must disrobe for a tattoo to be photographed, procedures outlined in section 7.5 on Conducting Disrobed Searches should be followed. If no link to an inadmissibility proceeding is being pursued or exists, officers should note a presence of tattoos with a description in GCMS as a personal identifier in the event the person is later subject to IRPA enforcement action.

ENF 12: Search, Seizure, Fingerprinting and Photographing

Appendix "A": 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, 2020. 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 _____ 2020

Director General

ENF 12: Search, Seizure, Fingerprinting and Photographing

Appendix "B"

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

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

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

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

Case summary

July 15, 2020

Automobile Seizure - A140 Simon Borrower / Robert Owner

Date of seizure: June 29, 2020

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; and
- 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

Appendix “C”: 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, 2020, 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 _____, 2020

Director General

Region

ENF 12: Search, Seizure, Fingerprinting and Photographing

Appendix “D”: 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, 2020 . 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, 2020 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 _____ 2020

Director General

Region

ENF 12: Search, Seizure, Fingerprinting and Photographing

Appendix “E”: 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 _____, 2020

Director General

Region

ENF 12: Search, Seizure, Fingerprinting and Photographing

Appendix “F”: 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, 2020 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,

Officer

Enclosure: copy of the Decision.

ENF 12: Search, Seizure, Fingerprinting and Photographing

Appendix “G”: 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, 2020, should be returned to its owner, Mr. Robert Owner on payment of a sum of \$5,000.00.

Dated at _____ this _____ day of _____, 2020

Director General

Region

ENF 12: Search, Seizure, Fingerprinting and Photographing

Appendix “H”: 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, 2020 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 "I": 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, 2020. 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, 2020

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 27th 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 2nd 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 _____ 2020

Director General

ENF 12: Search, Seizure, Fingerprinting and Photographing

Appendix “J”: 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, 2020, 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; and
- the car was not improperly used.

Dated at _____ this _____ day of _____, 2020

Director General,

Region

ENF 12: Search, Seizure, Fingerprinting and Photographing

Appendix “K”: 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, 2020 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,

Officer

Enclosure: Copy of the Decision.