

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

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### **Contents**

1. What this chapter is about .....	8
2. Program objectives .....	8
3. The Act, Regulations and Designation & Delegation of Authority .....	8
3.1. Forms .....	10
4. Departmental policy .....	11
5. Legislative provisions .....	11
5.1 Charter rights respecting search or seizure .....	11
5.2 Protection against unreasonable search or seizure .....	11
5.3 Right not to be arbitrarily detained or imprisoned .....	11
5.4 Right to counsel when search constitutes detention .....	12
5.5 Solicitor-client privilege: <i>Lavallee</i> Supreme Court Decision .....	12
6. Procedure: Searches .....	13
6.1 Authority and Reasonable Grounds to Search .....	13
6.2 Types of search pursuant to 139(1) of the IRPA .....	13
6.3 Minor Children .....	15
6.4 Search related to an offence under IRPA .....	15
6.5 Officer safety in conducting searches .....	16
6.6 General search procedures .....	16
6.7 Conducting Preliminary and Full Examination Searches at Ports of Entry .....	17
6.8 Conducting a search of carry-on luggage .....	18
6.9 Conducting personal searches .....	18
6.10 Conducting frisk searches involving physical contact .....	20
6.11. Conducting disrobement searches .....	21
6.12. Conducting a search of a means of transportation .....	21
6.13 Removal of the contents of a means of transportation .....	22
6.14 Completing the Search form BSF899 .....	22
6.15 Examination of Digital Devices at the Port of Entry and in the Inland Enforcement context .....	23
7. Additional Types of Search .....	24
7.1 Search incidental to arrest .....	24
7.2 Conducting a Frisk Search Incidental to Arrest .....	24
7.3 Search warrants .....	25
8. Procedure: Seizures .....	25
8.1 Authority and grounds for seizure .....	25
8.2 Seizing documents .....	26
8.3 Seizing documents from refugee claimants .....	30
8.4 Seizing documents abroad .....	30
8.5 Documenting and tracking document seizures .....	31
8.6 Document seizure and referral under section 23.2 of the <i>Citizenship Act</i> and sections 28 and 30 of the <i>Citizenship Regulations</i> .....	33
8.7 Sending documents for analysis .....	34
8.8 Seizing ankle monitors and other GPS enabled devices .....	35
8.9 Seizing vehicles .....	35
8.10 Seizure of commercial vehicles .....	36
8.11 Notice of seizure .....	36
8.12 Reporting the seizure of a vehicle .....	37
8.13 Release of information .....	38
9. Procedure: Mail and courier search and seizures under IRPA .....	38
9.1 CBSA inspection procedures for international mail .....	38
9.2 CBSA inspection procedures for shipments in the Courier Low Value Shipment Program .....	38
9.3 How mail seizures work .....	39
9.4 Responsibilities of CBSA officers with respect to mail seizures .....	39

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

9.5	Documenting and tracking seizures.....	39
9.6	Security, storage, and labeling of items seized .....	40
9.7	Split seizures .....	40
9.8	Partial seizures .....	41
9.9	Notification of owner .....	41
9.10	Returning items to the customs process.....	41
10.	Procedure: Custody and Liability of Seized Things .....	41
10.1	Custody of seized items .....	41
10.2	Protecting evidence .....	42
10.3	Liability for damage to property .....	43
10.4	CBSA liability for damage to a vehicle.....	43
11.	Procedure: Disposition and return of seized things .....	43
11.1	Return of seized things .....	43
11.2	Sale or destruction of seized things other than documents .....	45
11.3	Notice of decision .....	46
11.4	Decision by the Minister not to return a seized thing.....	46
11.5	Suspension of sale .....	46
11.6	Return of documents.....	46
11.7	Disposing of fraudulent documents .....	46
12.	Procedure: Fingerprinting and the Collection of Biometric Information .....	47
12.1	Authority to collect biometric information .....	47
12.2	Biometrics Expansion .....	49
12.3	Taking fingerprints .....	49
12.4	Obtaining access to LiveScan/CardScanner.....	49
12.5	LiveScan kiosk workflows .....	50
12.6	CardScanner .....	51
12.7	Fingerprinting (ink and roll method).....	51
12.8	Fingerprinting the person (ink and roll) .....	52
12.9	Fingerprint search under the Migration Five High Value Data Sharing Protocol.....	54
13.	Procedure: Photographing .....	54
13.1	Authority to photograph.....	54
13.2	Taking photographs .....	55
13.3	Photographing minors.....	56
13.4	Photographing Tattoos.....	56
	<b>Appendix A: Sample of a summary/report for a seized vehicle .....</b>	<b>57</b>
	<b>Appendix B: Sample memorandum to DG for decision on an application for the return of a seized vehicle.....</b>	<b>58</b>
	<b>Appendix C: Sample of a decision to return a seized vehicle .....</b>	<b>60</b>
	<b>Appendix D: Sample – Notice of decision and reasons - Return of a seized vehicle.....</b>	<b>61</b>

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

### **Updates to chapter**

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

**Date: 2022-11-18**

Substantive and minor changes, as well as clarifications, have been provided throughout the chapter.

Changes have been made throughout the chapter to provide officers with additional guidelines when dealing with minors and other vulnerable persons.

Updates have been made to reflect the use of the *BSF899: Search under Section 139 of the IRPA* which replaces the BSF 667 form.

Updates have been made to reflect the changes made to the *BSF698: Notice of Seizure of (a) Travel and/or Identity Documents and/or Other Thing(s)* to reflect the incorporation of the forms *IMM5079: Notice of Mail Seizure Under Subsection 140(1) of the Immigration and Refugee Protection Act* and *IMM5265: Notice of Seizure*.

Sections 3 and 8 include changes to reflect the amendments to Part 16 – Seizure of the *Immigration and Refugee Protection Regulations*.

Section 4 has been rewritten to better explain the departmental policy on searches, seizures, fingerprinting and photographing.

Section 6 has been modified to clarify the types of searches pursuant to subsection 139(1) of the *Immigration and Refugee Protection Act*.

Section 6.12 has been amended to provide details on an officer's authority under subsection 15(3) of the IRPA.

Section 6.15 has been modified to clarify the examination of digital devices in the Inland Enforcement context.

Section 8.1 has been amended to provide additional information on seizing means of transportation.

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

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

References to the Support System for Intelligence (SSI) have been removed in section 8.5 since SSI will be decommissioned.

Section 8.7 has been modified to reflect the updated procedures when sending documents for analysis.

Section 8.8 now refers to the seizure of ankle monitors and other similar devices issued by the American authorities.

Section 9 has been amended to reflect updated procedures for mail seizures under IRPA.

Section 11 has been rewritten to reflect the new regulatory changes in Part 16 of the IRPR.

Section 12 has been amended and updated. Some sections have been moved for greater clarity.

Section 13.4 has been updated to provide additional guidance on photographing tattoos.

The appendices have been rewritten to provide general sample letters that may be adapted to various situations.

### **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.

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

**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.

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.

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

**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 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

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

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).

[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**

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### **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 (IRPA) and Regulations (IRPR)*.

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.

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### **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.
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### **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 IRPA and 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 have the authority to designate any persons or class of persons to carry out any purpose of any provision



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

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 Designation of Officers and Delegation of Authority 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-designations and cross-delegations. 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](#).

<b>Provision:</b>	<b>Refer to:</b>
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.	<a href="#">A10.01</a>
For the purposes of an examination, authority for an officer to conduct an inspection, including the following: <ul style="list-style-type: none"> <li>• board and inspect any means of transportation bringing persons to Canada;</li> <li>• examine any person carried by that means of transportation and any record or document respecting that person;</li> <li>• seize and remove any record or document to obtain copies or extracts; and</li> <li>• hold the means of transportation until the inspection and examination are completed.</li> </ul>	<a href="#">A15(3)</a>
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.	<a href="#">A16(3)</a>
Authority to search any person <b>seeking to come into Canada</b> , 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"> <li>• has not revealed their identity or has hidden on or about their person documents that are relevant to their admissibility; or</li> <li>• has committed or possesses documents that may be used in the commission of an offence in relation to smuggling and trafficking in persons or other contraventions of the Act in relation to documents.</li> </ul>	<a href="#">A139(1)</a>
Requirement that a search of a person be conducted by a person of the same sex.	<a href="#">A139(2)</a>
Authority for an officer to seize and hold any means of transportation, document or other thing if the officer believes, on reasonable grounds: <ul style="list-style-type: none"> <li>• that it was fraudulently or improperly obtained or used;</li> <li>• that seizure is necessary to prevent its fraudulent or improper use; or</li> <li>• to carry out the purposes of this Act.</li> </ul>	<a href="#">A140(1)</a>

## **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> .	<a href="#">A140(2)</a>
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.	<a href="#">A148(2)</a>
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.	<a href="#">R12.1</a>
Exemptions from the requirement to provide biometric information	<a href="#">R12.2</a>
The procedure for the collection of biometric information.	<a href="#">R12.3</a>
Secondary disclosure by the RCMP of biometric information to other law-enforcement agencies	<a href="#">R13.11</a>
Requirement for an officer who seizes a thing under A140(1) to place it without delay in the custody of the CBSA or IRCC.	<a href="#">R252</a>
Requirement for an officer following a seizure of a thing under A140(1) to provide written notice to the person from whom it was seized, including the grounds of the seizure.	<a href="#">R253(1)</a>
Requirement for an officer following a seizure of a thing under A140(1) to make reasonable efforts to identify the lawful owner and give them a written notice of, and the grounds for, the seizure.	<a href="#">R253(2)</a>
Instructions and timelines for the return of seized items from the person from whom it was seized, including prevention of improper or fraudulent use.	<a href="#">R254(1) to R254(4)</a>
Instructions and timelines for the return of seized items from the lawful owner, including prevention of improper or fraudulent use.	<a href="#">R255(1) to R255(4)</a>
Obligation to process the lawful owner's application for return before the application for return from the person from whom the thing was seized in case of concurrent applications.	<a href="#">R256</a>
Requirement to provide in writing the decision and reasons following an application made under section R254 or R255 as soon as feasible.	<a href="#">R257</a>
Returning a seized thing if it is no longer necessary to carry out the purposes of the Act or if it was seized in error.	<a href="#">R257.1(1) and R257.1(2)</a>
Conditional return of a seized thing	<a href="#">R257.2</a>
Guidelines for the sale or destruction of a seized thing	<a href="#">R258(1) and R258(2)</a>
Guidelines for the return or disposal of seized documents	<a href="#">R258(3)</a>
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.	<a href="#">R260(1)</a>
Authority to continue to detain a prescribed good seized under A148(2) until a transporter complies with its obligations or has its obligations discharged.	<a href="#">R285</a>
Requirement to give notice of seizure with respect to the object seized under A148(2).	<a href="#">R286(1)</a>
Authority to return or dispose of a thing seized under A148(2)	<a href="#">R286(2)</a>

### **3.1. Forms**

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

<b>Form title</b>	<b>Number</b>
Notice of Seizure of (a) Travel and/or Identity Document(s) and/or Other Thing(s)	<a href="#">BSF 698E</a>

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

Application for the Return of (a) Seized Travel and/or Identity Document(s) and/or Other Thing(s) (Form accessible to the public, available on the CBSA's public website)	<a href="#">BSF 699E</a>
Search under Section 139 of the IRPA	<a href="#">BSF 899</a>
Record of Examination/Seizure of Documents from International Mail and Courier Services	<a href="#">BSF 573</a>
Fingerprint Form (Criminal Fingerprint Form)	C-216 (brown)
Fingerprint Form (Civil Fingerprint Form)	C-216C (green)
Fingerprint Form (Refugee Fingerprint Form)	C-216R (blue)

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### **4. Departmental policy**

The CBSA is responsible for providing integrated border services that support national security and public safety and ensures the security and prosperity of Canada by managing the access of people and goods to and from Canada. The CBSA facilitates the entry of genuine travellers who comply with the legislation while restricting the access of travellers who are in non-compliance or have not satisfactorily established their identity.

To achieve program objectives, the CBSA may search persons seeking entry into Canada in order to confirm their identity and ensure compliance with the Act. Officials may also seize documents or other things in order to prevent their fraudulent or improper use or to carry out the purposes of the Act.

Furthermore, fingerprints and photographs may be taken 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.

Officers are to support the objectives of the IRPA while ensuring that all decisions taken under the Act are consistent with the [Canadian Charter of Rights and Freedom \(Charter\)](#).

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### **5. Legislative provisions**

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#### **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.

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#### **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.

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#### **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.

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

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. It is not excepted that a disrobement search should often be required in the context of s. [139](#) IRPA search.

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### **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.

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 information on what legal aid services are available in the area.

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### **5.5 Solicitor-client privilege: *Lavallee*<sup>1</sup> 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 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

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<sup>1</sup> [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**

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.

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### **6. Procedure: Searches**

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#### **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 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, are occurring 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). This includes refugee claimants who were authorized to proceed in Canada for further examination pursuant to A23. Please refer to [section 6.7](#) for additional details.**

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#### **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.

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

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. For the examination of digital devices, please refer to section [6.15 – Examination of Digital Devices at the Port of Entry and in the Inland Enforcement Context](#).

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.

	<b>Type of search</b>	<b>Explanation</b>
Preliminary Search	Preliminary Search	<p>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.</p> <p>Preliminary searches may also involve the search of the outer layers of clothing of a person. When searching the outer layers of clothing, officers may ask the person to empty their pockets and may search the outermost layer of clothing to ensure that the pockets are empty and that no additional pockets exist. Officers may also ask the person to remove the outer layer of clothing. Outer layers of clothing include items that when removed, could not reasonably be expected to expose the person in a manner considered inappropriate. These searches are part of a routine processing and do not raise any Charter concerns</p> <p><b>Please note that a search of the outer layers of clothing and a frisk search done for officer safety are not the same and they each have their own purpose and legal authorizations.</b></p> <p>No concurrence from a supervisor is required unless the search involves a minor child (see section immediately following this table).</p>
Personal Search	Frisk Search involving physical contact	<p>A frisk search involving physical contact with the person in order to find documents hidden on or around their body is considered to be part of a personal search and therefore the person must be under arrest or detention.</p> <p><b>Please note that this is different from a frisk search done for officer safety.</b></p> <p>Approval from a supervisor is required for a frisk search to be conducted under 139(1) of the IRPA.</p>
	Disrobement search	<p>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</p>

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

		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 approval from a supervisor, in all cases.
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### **6.3 Minor Children**

Special consideration must be applied when dealing with minors, particularly in the case of unaccompanied minors. 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 the witness and the activity should be well documented.

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**Note:** If, when conducting a search, officers suspect that there may be a risk to the welfare of a minor child, whether the child is unaccompanied or not, provincial child protection authorities should be contacted. If a local child protection agency declines to become involved, officers should request this be put in writing and sent to them. All interactions with the child protection agency should be recorded in the officer notebook. Officers should also be alert to situations where it is possible that a child has been trafficked, smuggled or abducted. If they encounter such situations, officers should consult [ENF 21 Recovering Missing, Abducted and Exploited Children](#), [CBSA Enforcement \(EN\) manual, Part 2, Chapter 15 Trafficking in Persons](#) as well as IRCC's [Program Delivery Instructions for victims of trafficking in persons](#).

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### **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 persons registered as Indians under the *Indian Act* 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 person registered as an Indian. Therefore, once an officer establishes that a person is Canadian, permanent resident or a person registered as an Indian, the officer must end the examination and authorize the person to enter Canada.

In the case of Canadian citizens, permanent residents or persons registered as 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

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

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.

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### **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. However, officers should be cognizant that the authority to search does not impose a duty to search. If an officer believes that they can conduct their work safely without conducting another search, for instance in cases where the custody of a person is transferred and the officer is satisfied that the person has been searched and the search has been documented, they may decide that no further search is necessary.

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.

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### **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 in 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 Immigration Investigations and IRPA s.55 Arrests/Detention.

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;



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

- 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 ([BSF899](#)) 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 #: (BSF899).

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### **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 but is intercepted within a geographic and temporal proximity of the border and brought to a POE for an examination. This should be reflected in officer notes in GCMS and in the client's file.

Searches pursuant to subsection [A139\(1\)](#) are linked to the fact that the person crossed international borders, and as such they have a lower expectation of privacy. The BSO conducting the initial examination, before deciding if authorizing entry under [A23](#) is warranted, may perform a search if they feel it is necessary. However, once a person has been authorized to enter Canada under [A23](#) and presents themselves at a CBSA office, the officer cannot be reasonably certain that the person will have in their possession the same documents to support a determination of admissibility or eligibility, personal digital devices, or other items they had with them upon entry. The person is still under examination and the officer may ask or require certain information pursuant to section [A16](#), however this does not equate to a search under [A139](#).

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 ([BSF899](#));
- 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?

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

- ◆ 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 whose belongings are being searched must never be left alone.

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### **6.9 Conducting personal searches**

Personal searches include frisk and disrobement searches. Because these searches involve physical contact, they are of a more sensitive nature. When searching persons under IRPA, officers will encounter cases requiring sensitivity and careful considerations, such as when they are dealing with vulnerable persons.

#### **Searching vulnerable persons**

When conducting personal searches pursuant to subsection [139\(1\)](#) of IRPA, it is important for officers to identify vulnerable persons at the earliest opportunity in order to ensure that appropriate considerations are factored into decisions and/or any actions taken during the search.

The following are some examples of persons who may be identified as vulnerable:

- minors (under the age of 18)/ unaccompanied minors;
- elderly persons;
- individuals with severe medical conditions or physical disabilities;
- pregnant persons and nursing mothers;
- persons with a suspected or known mental illness (includes suicidal persons and persons who self-harm);
- victims/suspected victims of human trafficking or family related violence.

Other persons may display less obvious symptoms of a vulnerability, which may not become apparent until the person is searched:

- victims of gender-based violence may become distressed during a personal search. They may also show signs of distress at the prospect of being searched by an officer of a different gender;
- victims of trauma may have difficulty coping with the search because it is performed by persons in uniform or because they are confined in a closed room with officers.

#### **Personal searches**

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

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.

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\(2\)](#) 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 gender diversity, which includes all transgender, gender-fluid, non-binary, two-spirit, cisgender, and other gender identities. Please consult the [Internationally recognized sexual orientation or gender identity of expression \(SOGIE\) definitions](#) for additional information.

Should a situation arise where a personal search is required on a person who self identifies as gender diverse, 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 while leaving the lower body clothed. The individual is then permitted to fully dress, and is turned over to a second set of officers of the opposite sex to conduct the search of the lower body, while the upper body remains clothed. 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.

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

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.

If not previously known that the person being searched is a gender diverse 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.

Officers must follow all relevant guidelines and procedures related to handling cases concerning sexual orientation and gender identity and expression during IRPA searches. This includes being sensitive to gender-related issues when speaking to the person, and being careful to use gender terms that reflect the person's gender identification or gender-neutral terms when referring to the person in documents/notes or completing IRPA forms.

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.

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### **6.10 Conducting frisk searches involving physical contact**

An officer conducting a frisk search involving physical contact should:

- obtain supervisor's approval to conduct a frisk search;
- arrest and/or detain the person;
- 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 has anything on them that could harm them or the officer conducting the search, 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;
- ask the person to remove any outer garments such as a jacket, coat or sweater and all objects from their pockets;
- should circumstances require that the person being searched needs to be separated from their personal belongings, account for the personal items and ensure they are returned to the person at the end of the search, unless the items are being seized;

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

- 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 Immigration Investigations and IRPA s.55 Arrests/Detention.)
- 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*;
- in cases where the search was resultant and required a [BSF899](#) form to be filled out before the person who was searched leaves the room, ensure that they sign part E of the BSF899 and that they are satisfied that they have received all their property, unless it has been seized. 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; 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](#).

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### **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 a supervisor's approval prior to conducting 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.

Immediately after an officer advises the person of their Charter rights, 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.

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### **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 if necessary, may be copied. In the event that a means of transportation

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

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.

Under subsection [A15\(3\)](#), an officer has the authority to board and inspect any means of transportation and to examine and record documents pertaining to persons carried by that means of transportation. Although there is nothing in the wording of A15(3) limiting this authority to the POE, however, in order to rely on this provision to conduct a search, there must be some temporal and geographic connection to the POE. For example, if there is evidence that a conveyance was used to bring individuals into Canada, such as law enforcement agency observing this take place or it being captured on video, an officer with delegated authority under A15(3) could inspect the conveyance in the context described above. However, even if it is believed that a conveyance was used to transport persons into Canada, it may be difficult to justify the use of this provision some distance from the border.

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### **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 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.

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### **6.14 Completing the Search form BSF899**

The [BSF899](#) is meant to ensure national consistency when documenting searches conducted under subsection [139\(1\)](#) of the IRPA. Officers must complete the appropriate section(s) of the BSF899 in the following circumstances:

1. Preliminary searches and full examination searches that are resultant require that the BSF899 be completed. If a preliminary search and/or full examination is non-resultant, the BSF899 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 BSF899 be completed in addition to any record in an officer's notebook.

When completing the BSF899, it is important to ensure the following:

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

**Part A – Search:** This section must be completed in all instances where the BSF899 is being completed.

**Note:** In the case of non-resultant preliminary searches that do not require the completion of the BSF899, officers must still ensure:

- that the person being searched is informed of the authority to search found in subsection 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

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

- 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 when a personal search is conducted, whether a frisk involving physical contact or disrobement search. This must include the names and signatures of the searching officer(s) and the witness of the search, as well as the supervisor's signature indicating whether or not the search was authorized. If the authorization 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, 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.

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### **6.15 Examination of Digital Devices at the Port of Entry and in the Inland Enforcement context**

#### **Ports 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 at a Port of Entry, please refer to the [CBSA Policy on Port of Entry Examinations of Travellers' Digital Devices](#) (Enforcement Manual (EN) Part 4, Chapter 16) on Atlas.

#### **Inland Enforcement**

Inland Enforcement Officers should not rely on [A139\(1\)](#) to examine digital devices since A139(1) only allows for searches of persons seeking entry to Canada.

[A16\(3\)](#) of the IRPA allows an officer to require or obtain evidence from a permanent resident or a foreign national who is arrested, detained, subject to an examination or subject to a removal order, any evidence - photographic, fingerprint or otherwise - that may be used to establish their identity or compliance with the Act. That said, A16(3) should not be relied upon as an authority to conduct examinations of digital devices for inland investigative purposes. Furthermore, Inland Enforcement Officers cannot rely on *Criminal Code of Canada* warrants to search digital devices and gather evidence for inland investigations.

Officers may examine digital devices only if they obtain the person concerned's written valid consent (i.e. informed and voluntary). The person's written consent must be obtained and recorded on the [BSF 835](#) form. Officers may, with the foreign national's or permanent resident's valid consent, examine a digital device in support of the administration and enforcement of the IRPA for Inland Enforcement purposes. For additional information on the examination of digital devices in the Inland Enforcement context and valid consent, please refer to section 19.18 – Searching an arrested person of ENF 7.

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

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### **7. Additional Types of Search**

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#### **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. Immediate surroundings may be searched for the purposes previously listed. Because the jurisprudence that establishes the principle of search incidental to arrest is related to criminal cases and because arrests under [A55](#) are not made in connection with a criminal offence, any searches of the location in which the individual was arrested for the purpose of seeking evidence of an IRPA inadmissibility or a travel document may be held unreasonable and not in compliance of section 8 of the Charter.

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:

- the arrest must be lawful;



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

- 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.

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### **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.

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## **8. Procedure: Seizures**

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

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

[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 if they fail to comply with an obligation under IRPA.

Although a seizure under A148(2) may occur without a vehicle being detained first, seizures should be used as a last resort. A vehicle that is detained remains in the possession of the transporter, however, when the vehicle is seized, the CBSA takes possession of the vehicle and becomes liable for the costs of handling, maintaining and disposing of it. The vehicle is seized as soon as an officer delivers the notice of seizure. The delegated authority to seize a vehicle under subsection A148(2) can be found in the [Instruments of Designation and Delegation](#). For additional information relating to seizures made under the authority of A148(2), refer to [ENF 15](#).

In the case of persons seeking entry into 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**

There is no limitation period for seizures of things on the grounds that they were fraudulently or improperly obtained or used. These seizures may occur as necessary when lawful and appropriate.

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### **8.2 Seizing documents**

While the authority to seize under the IRPA will primarily be applicable to situations involving foreign nationals or permanent residents, this provision also applies 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 if necessary, 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. Officers should record in their notebook whether the person contacted legal counsel.

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

For travel documents, the notice of seizure given to the bearer should be sufficient to allow the officers to fulfill their obligations under R253(1) without having to notify the issuing country.

Officers seizing travel and/or identity documents as well as other things (e.g. ticket stubs, employment information, conveyances, etc.) must document the seizure on the [Notice of Seizure of \(a\) Travel and/or Identity Document\(s\) and/or Other Thing\(s\) \[BSF 698\]](#) and to include the reasons for the seizure as well as information on how/where individuals may make an [Application for the Return of \(a\) Seized Travel and/or Identity Document\(s\) and/or Other Thing\(s\) \[BSF 699\]](#).

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

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**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 *Notice of Seizure* receipt.

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Individuals may require certified true copies of genuine documents, for instance when seeking access to federal and provincial programs or services. In those cases, if the 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.

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;
- Blank identity or travel documents, such as a blank passport or national identity card.

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

- altered documents (e.g. photo-substitution and page substitution) and alterations of variable mentions (such as date of birth and name) or erasures, and unauthorized additions such as counterfeit entry and/or exit stamps and/or visas;
- 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;

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

- criminal records documents (e.g. 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 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 (a) Travel and/or Identity Document(s) and/or Other Thing(s)*.

### Scenario 2

A foreign national is 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 to believe that the document has been fraudulently obtained or 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 (a) Travel and/or Identity Document(s) and/or Other Thing(s)* to the individual. Officers may also refer the document to regional Document Analysis Units (DAUs) if appropriate. Please refer to [section 8.7](#) for additional details on sending documents for analysis.

### 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 (a) Travel and/or Identity Document(s) and/or Other Thing(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.

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

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**Note:** Admissibility hearings for released cases may be subject to lengthy time periods before being heard and Permanent Residents may reasonably require their passport to travel to and from Canada. Given that they have not yet lost their status per [A46\(1\)](#), officers should consider returning the travel document if requested. A good quality colour copy should be retained on file should it be needed later for enforcement purposes such as removal from Canada.

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### 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 (a) Travel and/or Identity Document(s) and/or Other Thing(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 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 (a) Travel and/or Identity Document(s) and/or Other Thing(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 be 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

Please note that not all provinces and territories have an EDL program. Some provinces/territories have discontinued their EDL programs and others have announced a

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

phasing out of their EDLs. As such, officers should confirm with the provincial or territorial authorities' website if they have any doubts whether the EDLs are still valid for land and water travel between Canada and the U.S.

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### **8.3 Seizing documents from refugee claimants**

Although IRPA does not require that all documents in possession of refugee claimants be seized, IRCC and CBSA officers should always consider seizing all passports, pertinent identification and travel documents carried by refugee claimants because the seizure may:

- 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.

Where a genuine document is seized, certified true copies will be provided to these individuals as they may be required when seeking to access federal and provincial programs and services.

Other documents, such as a 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 and provide a copy to the claimant.

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### **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.

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

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 (a) Travel and/or Identity Documents(s) and/or Other Thing(s)* for all travel and/or identity documents and/or other items seized under subsection 140(1) of IRPA.

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

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### **8.5 Documenting and tracking document seizures**

All things seized under [A140\(1\)](#) (e.g. travel and/or identity documents, conveyances, ticket stubs, employment information, etc.) must be recorded on the BSF698 *Notice of Seizure of (a) Travel and/or Identity Document(s) and/or Other Thing(s)* form.

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 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; and
- final disposition of items seized.

### **Protecting Evidence**

For information on maintaining the continuity of evidence for the purposes of prosecution under IRPA, refer to [section 10.2 of this manual](#).

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

### **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>

### **Voiding a fraudulent Canadian visa**

There are no authorities in IRPA or in the Regulations to cancel a visa. However, officers may consider voiding a visa under certain circumstances, for instance if they encounter a fraudulent 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 is arrested or detained under section [A55](#);
- 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 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.



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

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.

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### **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 \[PDF, 463 KB\]](#) (OBO-2021-081) 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:

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

- 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.
- 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 (a)Travel and/or Identity Document(s) and/or Other Thing(s)*. Officers must also ensure a record of the transfer for continuity of evidence purposes is made, if applicable.

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

Document examination in the CBSA is a shared responsibility between the regional Document Analysis Units (DAUs), the National Document Centre (NDC) and the Forensic Document Examination (FDE) section. If officers require analysis of a physical travel or identity 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 Operational Bulletin 2021-081 [Document Examinations and Referrals](#). For a list of document analysts or examiners by region, please refer to the [Document Examination Contact List](#).

For referrals to the NDC (from liaison officers or officers located in the Northern Ontario Region), a referral form is required and is available by contacting [nat-intelligence-documents@cbsa-asfc.gc.ca](mailto:nat-intelligence-documents@cbsa-asfc.gc.ca)

The referral form or the initial request for analysis to DAUs should contain the following information:

- 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 be returned for a hearing or other purpose, the initial request for analysis or referral form should clearly state the date for which the document(s) is/are required. Physical documents requiring analysis should always be sent through interoffice mail (if appropriate) or in a tracked courier package only after communicating with the NDC or the appropriate regional DAU.

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

Upon completion of analysis, the document analyst will return the document analysis report ([BSF265](#)) to the requesting officer. Documents that are determined to be fraudulent will be retained by the NDC or regional DAU but if necessary may be made available to the officer who filed the request for analysis.

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### **8.8 Seizing ankle monitors and other GPS enabled devices**

CBSA officers may encounter individuals in possession of an ankle monitor or other GPS enabled devices used to monitor the individual's whereabouts issued by the United States authorities. Officers may seize the device only if the seizure can be justified under [subsection 140\(1\) of the IRPA](#). If the device is seized, officers should fill out the BSF698 form to record and document the seizure.

Devices that are abandoned or found by officers may be returned to the US authorities under the [Statement of Mutual Understanding guidelines](#) **only if the individual who had the device did not make a claim for refugee status against the United States**. In such cases, or for any other cases where advising the United States would not be appropriate officers may hold the device on a [BSF 241 – Non-Monetary General Receipt](#) form.

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### **8.9 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 an [A44\(1\)](#) report alleging an inadmissibility, an admissibility hearing, a removal or criminal charges. In other words, there needs to be an intention to pursue an enforcement action.

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 enforcement context will be rare and will typically happen when an offence has occurred that may lead to charges under IRPA. 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 (BSF698 and reports) are required for each vehicle. In the following scenarios, it may be appropriate for a CBSA officer to consider seizing 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/or picks up the person on the Canadian side without the person appearing for examination.
- Where the status 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. However, BSOs should remember that not all misrepresentation will lead to a vehicle seizure. For instance, under section [R22](#), persons who have claimed refugee protection, if disposition of their claim is pending, and protected persons may be exempt from

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

the application of the misrepresentation provision. A vehicle seizure in those cases might not be warranted.

- 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 officer should report the incident to the CBSA Regional Office and to the CBSA Regional Director. The matter should be turned over to the RCMP for investigation and appropriate action.

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

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### **8.10 Seizure of commercial vehicles**

Subsection [A148\(2\)](#) provides CBSA officers with the authority to detain, seize or forfeit a vehicle of a transporter that fails to comply with an obligation under IRPA. The delegated authority to seize a commercial vehicle under A148(2) is identified in the [Designation of Officers and Delegation of Authority](#) manual.

For additional 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](#).

### **8.11 Notice of seizure**

The provisions related to the notice of seizure require that written notification be provided to the person from whom the thing was seized, and if this person is not the lawful owner, reasonable efforts must be made to identify and notify the lawful owner of the seizure. With regards to travel and identity documents, notification to the bearer of the document will likely be considered as a valid notice of seizure pursuant to subsection [253\(1\)](#) of the IRPR, without the need to notify the country of issuance.

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.

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

An officer who seizes a thing is required to issue a BSF698 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. Officers should record in their notebook whether the person contacted legal counsel.

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### **8.12 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;
- 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, Immigration Investigations and IRPA s.55 Arrests/Detention.

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.

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

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### **8.13 Release of information**

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 purpose and describes the information to be disclosed pursuant to paragraph [8\(2\)\(e\)](#) of the *Privacy Act*.

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

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## **9. Procedure: Mail and courier search and seizures under IRPA**

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 searches 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. Officers should not examine or seize mail on behalf of any other agency or department, unless legally authorized to do so.

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### **9.1 CBSA inspection procedures for international mail**

International mail arrives in Canada from other countries by marine, rail, highway, and air modes of transportation. 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](#).

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### **9.2 CBSA inspection procedures for shipments in the Courier Low Value Shipment Program**

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 via the Courier Low Value Shipments (CLVS) Program. According to these procedures, authorized couriers are allowed to present a single Cargo Release List (CRL) documenting all low-value

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

shipments (i.e., valued at \$3,300 CAD or less) onboard a conveyance, instead of having to present separate cargo control documents. The single report, the CRL, must be submitted to the CBSA before the conveyance arrives in Canada within specified modal timeframes.

For further information pertaining to Courier Examinations, see [CBSA Enforcement Manual Part 4 Chapter 13](#).

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### **9.3 How mail seizures work**

When a CBSA officer examines a parcel containing suspicious documents or other documents or things that might be subject to seizure under [A140\(1\)](#), 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(1), 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?

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### **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.

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### **9.5 Documenting and tracking seizures**

Officers at CBSA mail centres should document seizures pursuant to [A140](#) on the BSF698 form. According to local procedures, the BSF698 and the seized items may be sent to the appropriate inland enforcement office for further processing, such as entering the seizure information in GCMS. Officers should forward the items seized and form to the inland enforcement office using registered mail or Purolator. The tracking number and seizure information should be recorded according to existing procedures.

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

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

forms should be recorded according to local procedures at the first available opportunity. The information concerning seizures must be maintained so that information can be retrieved quickly. At a minimum, the information recorded in the case of a seizure should include the following:

- lawful owner (where it can be determined);
- person from whom the document was seized;
- date and time 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.

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### **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 BSF698 *Notice of Seizure of (a) Travel and/or Identity Document(s) and/or Other Thing(s)* should be securely attached to the envelope used to store seized items and the seizure should be recorded according to local procedures.

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### **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



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

different case files. In this instance, the seized documents would be individually forwarded to the respective case files.

While seized items under IRPA should be documented on the BSF698 form, items seized pursuant to the *Customs Act* should be recorded on the appropriate CBSA form.

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### **9.8 Partial seizures**

In a partial seizure, one or more document or other thing may be seized under IRPA while the rest of the items in the parcel may be returned to the customs process. If one or more documents or things 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.

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### **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 BSF698. Brief grounds for seizure specific to each item listed on the form should be included in the "Reason and/or details" portion.

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

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### **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.

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## **10. Procedure: Custody and Liability of Seized Things**

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### **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. It is sufficient for IRCC or CBSA officials to seize the items to consider them as being in the

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

custody of the respective Department/Agency. Seized items should be stored in a protected holding area with restricted access. If the RCMP seizes 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.

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### **10.2 Protecting evidence**

An officer may be required to testify in court that a document or other item seized 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 items 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.

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;
- 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; and
- seal the evidence in an envelope, write their initials across the envelope seal and secure it with transparent tape.

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, generally, this would be done under a subpoena or a production order issued by the Court. An

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

officer should verify the contents of the envelope with the peace officer against the certified true copy on file. Officers may contact [CBSA Case Management](#) should assistance be required.

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

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### **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.

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### **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.

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## **11. Procedure: Disposition and return of seized things**

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### **11.1 Return of seized things**

Sections [254](#) and [255](#) of the IRPR outline the requirements to determine when a seized thing can be returned to its lawful owner or to a person from whom it was seized.

Both the lawful owner and the person from whom the thing was seized have 60 days to submit an application for the return of the seized thing, and the timeline begins upon the notice of seizure (and not the date of the seizure itself). If the notification is sent by mail, it is deemed to have been provided seven days after the day on which the notice was mailed. Applications for the return of a seized thing can be made by using the [BSF699](#) form.

[R256](#) states that should both the lawful owner and the person from whom the thing was seized make concurrent applications, the lawful owner's application will be processed first. If the application of the lawful owner is granted, the application received from the person from whom the thing was seized will not be processed.

The regulations require that an application for return must be made if the thing was seized on the grounds of:

- being improperly or fraudulently obtained;
- being improperly or fraudulently used; and
- to prevent improper or fraudulent use.

Seizures made on the grounds of being necessary to carry out the purposes of the Act are the only types of seizure that cannot be returned upon application. A thing seized on the ground that

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

it was necessary to carry out the purposes of the Act can only be returned if the seizure is no longer necessary for those purposes.

Once an application for return has been submitted, the regulations require that a decision on the application for return be provided in writing to the applicant as soon as feasible which is understood as being [something that must be done soon, taking circumstances into account](#).

The regulations provide that the things seized shall be returned to the person from whom they were seized (R254) or their lawful owner (R255) as follows, provided an application for return has been submitted:

Regulations	Explanation
<a href="#">R254(2)</a> Return – Improperly or fraudulently obtained	Applicant must demonstrate that they were entitled to have that thing in their possession at the time of seizure and that they are still entitled to it.
<a href="#">R254(3)</a> Return – Improperly or fraudulently used	Applicant must demonstrate that they did not participate in the fraudulent or improper use of the thing. They must also demonstrate that they were entitled to have the thing in their possession at the time of seizure and that they are still entitled to it.
<a href="#">R254(4)</a> Return – Prevention of improper or fraudulent use	Applicant must demonstrate that the seizure is no longer necessary to prevent its fraudulent or improper use. They must also demonstrate that they were entitled to have the thing in their possession at the time of seizure and that they are still entitled to it.
<a href="#">R255(2)</a> Return – Improperly or fraudulently obtained	Applicant must demonstrate that at the time of the seizure they were the lawful owner and that they are still the lawful owner of the thing seized.
<a href="#">R255(3)</a> Return – Improperly or fraudulently used	The applicant must demonstrate that they did not participate in the fraudulent or improper use of the thing, and that at the time of seizure, they were the lawful owner and that they are still the lawful owner of the thing seized. They also need to demonstrate that they exercised all reasonable care to satisfy themselves that the person to whom they gave possession of the thing was not likely to fraudulently or improperly use it.
<a href="#">R255(4)</a> Return – Prevention of improper or fraudulent use	The applicant must demonstrate that the seizure is no longer necessary to prevent the fraudulent or improper use of the thing. They must also demonstrate that they were the lawful owner of the thing at the time of seizure and that they are still the lawful owner.

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

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**Note:** Following a seizure made under IRPA, a CBSA inland office may hold travel or identity documents of foreign nationals awaiting their permanent residency. Once the permanent residence application has received stage 2 approval, IRCC will contact the CBSA office where the documents are being held to request that the travel/identity documents be sent to the nearest IRCC office responsible for the foreign national's landing. After receiving this request, the CBSA inland office will release the documents to IRCC following established procedures. For additional information, please consult IRCC's operational bulletin [OB 553 – Obtaining passports or travel documents for landing from the Canada Border Services Agency and officer's discretion to waive the passport requirement for landing purposes](#).

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### **11.2 Sale or destruction of seized things other than documents**

[R258](#) sets out the conditions under which a thing that was seized under [A140](#) may be 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.

#### **Sale or disposal of seized vehicles**

Vehicles are to be processed as any other seized things and may be returned to the person from whom they were seized or their lawful owner if the criteria set out in [R254](#) or [R255](#) are met.

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 [R254](#) or [R255](#).

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

- [Appendix A](#): Sample for a summary/report for a seized vehicle (from the owner, borrowed or rented)
- [Appendix B](#): Sample memorandum to DG for decision on application for the return of a seized vehicle.
- [Appendix C](#): Sample of a decision to return a seized vehicle
- [Appendix D](#): Sample of a notice of decision and reasons – return of a seized vehicle

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

### **Sale or destruction of seized things other than a document**

[R258\(1\)](#) 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.

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### **11.3 Notice of decision**

An officer is required to notify the person in writing of the decision with respect to applications made under [R254](#) or [R255](#) for the return of seized objects and provide reasons.

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### **11.4 Decision by the Minister not to return a seized thing**

If the decision following review of an application for return 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 [R258\(1\)](#) for things other than documents, and [R258\(3\)](#) for seized documents.

Examples of things that would not be returned are:

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

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### **11.5 Suspension of sale**

[R258\(2\)](#) 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.

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### **11.6 Return of documents**

When returning a document, an officer should record the details on the file and complete the form *BSF 699 Application for the Return of (a) Seized Travel and/or Identity Document(s) and/or Other Thing(s)* 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 [R258\(3\)](#) 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 driver's licences) to the issuing authority with a memorandum outlining how they came into the possession of IRCC or the CBSA.

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### **11.7 Disposing of fraudulent documents**

[R258\(3\)](#) 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:

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

- 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 to a regional [DAU](#) via interoffice mail or a tracked courier package. Officers in the Northern Ontario Region should send the documents to the [National Document Centre \(NDC\)](#) by the same means. As for liaison officers, they should send fraudulent documents to the NDC by diplomatic bags. Please ensure to inform the [DAU](#) or the [NDC](#) by email that a package will be arriving and indicate whether or not analysis is required (see [section 8.7](#) of this manual for additional information on how to send documents for analysis).

For further information about the National Document Centre including its published alerts, bulletins and communiqués, please refer to the Atlas page: [http://atlas/tb-dgv/about-sujet/tp-pv/to-ov/ndc\\_cnd\\_eng.asp](http://atlas/tb-dgv/about-sujet/tp-pv/to-ov/ndc_cnd_eng.asp)

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## **12. 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 IRPA, while section [12.001](#) of the IRPR indicates where the collection of biometrics may be done.

The collection of biometric information 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 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 [A55\(2\)](#) or [A55\(3\)](#) but this does not extend to the collection of fingerprints.

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

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
- authorizing entry into Canada for the purpose of further examination as per [A23](#)
- directing the person to leave Canada at a POE as per [R40](#)

The failure to provide fingerprints may constitute an offence under [A124\(1\)\(a\)](#) of the IRPA. If appropriate, an officer should consult with CBSA's Criminal Investigations Division (CID) regarding the individual failing to comply with a condition or obligation imposed under the Act.

[R12.1](#) specifies the claims, applications or requests requiring the collection of biometrics.

[R12.3\(b\)](#) 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 collection 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. that the personal information is retained in a Personal Information Bank (PIB).

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



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

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### **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 and all Permanent Resident (PR) applicants.

**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.

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

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### **12.3 Taking fingerprints**

Officers are to use LiveScan kiosks wherever they are available. Ink and roll prints are only to be used when a LiveScan kiosk is not available and officers are processing applications in the Refugee or Criminal Charges workflows (please refer to [section 12.5](#) for the description of each workflow). For applications in the TR/PR Enrolment Workflow, the collection of fingerprints may be overridden. For information on where the biometrics may be taken, please refer to [section 12.001 of the IRPR](#).

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 the RCMP's 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 [LiveScan User Guide](#) or the [LiveScan Quick Reference Card](#) for additional information.

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### **12.4 Obtaining access to LiveScan/CardScanner**

Before gaining access to the LiveScan/Cardscanner you must complete a form:

**Step 1:** Obtain the **LiveScan/CardScanner Acceptance Form** by contacting your Regional Coordinator or the LiveScan team at [livescan@cbsa-asfc.gc.ca](mailto:livescan@cbsa-asfc.gc.ca).

**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

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

Please refer to the [LiveScan User Guide](#) or the [LiveScan Quick Reference Card](#) for additional information.

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

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### **12.5 LiveScan kiosk workflows**

The LiveScan kiosk contains the following workflows:

- **Criminal Record Check Workflow - (CAR-N)**

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

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

The Criminal Charges Workflow is used when a person is charged with a **criminal offence**. Currently at the 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 or removed.

**NOTE:** Officers should be taking the fingerprints of all:

- escorted removals (all escorted removals under a deportation order, including those under a deemed deportation order);
- deportees with a criminal record; **and**
- deportees who do not have fingerprints on file.

- **Refugee Workflow**

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 Unit at HQ in Ottawa.

- **TR/PR Enrolment Workflow**

This workflow is 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 PR applicants over the age of 14 to have their fingerprints collected. The fingerprints serve two main 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.

Furthermore, when a foreign national or a permanent resident has their fingerprints captured by a Canadian police agency, the CBSA will automatically receive an Unsolicited Criminal Notification (UCN) if they were previously biometrically enrolled by the CBSA or IRCC in the TP/PR or Refugee workflows, including foreign nationals who provided biometrics for their Temporary Resident Visa, Work Permit, Study Permit, or Temporary Resident Permit applications.

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

UCNs are only received from police agencies for individuals for whom biometrics were previously collected and ensure that interactions with Canadian police agencies are provided to CBSA/IRCC for consideration in future visa, permit, and admissibility decisions.

For additional information on UCNs, please refer to the [Biometrics Toolkit](#).

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### **12.6 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. To identify your Regional Coordinator, please contact the LiveScan Project Team at [livescan@cbsa-asfc.gc.ca](mailto:livescan@cbsa-asfc.gc.ca). 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

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### **12.7 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

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

- 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 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.

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

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### **12.8 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.

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

- Clearly defined ridges (no smears, smudging, broken lines or distortion).

### **Taking good fingerprints**

To take good fingerprints, an officer should:

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

### **Plain impressions of hand**

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

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

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

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

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### **12.9 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](#) under the [High Value Data Sharing Protocol \(HVDSP\)](#) provided no exemptions apply.

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 Headquarters (HQ). HQ will decide whether or not to make a formal request under the Protocol.

Requests may be sent to IRCC or CBSA HQ 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 claimed asylum in a Five Country Conference 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; or
- Are making a refugee claim against an M5 country.

Please note that any fingerprints sent to the UK must be sent within 30 days of enrollment. However, if more than 30 days but less than 90 days have passed, only ink and rolled fingerprints can be sent.

For additional details on information sharing and the HVDSP, please consult the [Biometrics Toolkit](#).

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## **13. Procedure: Photographing**

### **13.1 Authority to photograph**

Section [A10.01](#) and subsection [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.

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

[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 (e.g. photographing women who wear a veil) and try to accommodate the person being photographed whenever possible.

[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.

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### **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.

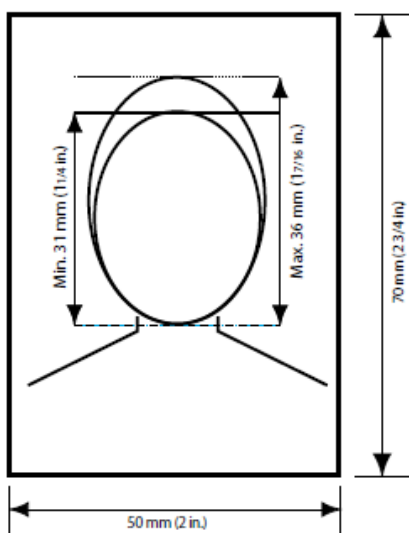
Officers are required to scan and upload photographs to GCMS (eDocs) in addition to placing them on the physical file. Circumstances may occur where the file cannot be physically transferred to another office, therefore granting access to the photo will assist in confirming identity.

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;
- ensure that if the hair is worn down it does not cover the face or ears;
- ensure that if glasses are worn, 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.

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### **13.3 Photographing minors**

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

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

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### **13.4 Photographing Tattoos**

Subsection [A16\(3\)](#) does not give officers the legal authority to conduct searches and take photographs of tattoos. Therefore, officers must rely on section [A139](#) if they wish to do so. This means that officers need to have reasonable grounds to believe that circumstances described in [A139\(1\)\(a\)](#) or [A139\(1\)\(b\)](#) apply in order to perform a search and be able to articulate why the search was done. It is only in the context of a legal search as described in [A139](#) and if an officer were to incidentally come across any tattoos, that may support information relating to an IRPA inadmissibility, that an officer may take a photograph. Therefore, 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 6.11 on Conducting Disrobement Searches](#) should be followed. If no link to an inadmissibility proceeding is being pursued or exists, officers may note a presence of visible tattoos with a description in GCMS as a personal identifier in the event the person is later subject to IRPA enforcement action. Officers should not, however, rely on [A139](#) IRPA search authority to collect information on tattoos merely for intelligence collection purposes.



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

### **Appendix A: Sample of a summary/report for a seized vehicle**

The following case summary may be modified depending on whether the vehicle is seized from its owner, has been borrowed, or is a vehicle owned by a rental company.

#### **Case summary**

[Date of case summary]

#### **Automobile Seizure - A140**

**[name of lawful owner, name of person who borrowed the vehicle if applicable, or name of rental company]**

Date of seizure: [date]

Place of seizure: [name of POE]

Vehicle data: [year and make/model]

VIN # [indicate vehicle's VIN number]

Licence: [enter vehicle's licence plate]

Estimated Value: [indicate the vehicle's estimated value and how you arrived at this amount, for example by consulting the Red Book and/or a dealership]

Owner: [name and address of the vehicle's lawful owner. This may also be the name of a car rental company]

The person(s) involved:

[identify the driver and the passengers in the vehicle, if applicable. Indicate their status in Canada and any documents provided in support.]

- 
- 
- 

#### **Circumstances relating to the seizure:**

[explain what happened during the primary and secondary examinations and what led the officer to seize the vehicle.]

Name and signature of officer

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

### **Appendix B: Sample memorandum to DG for decision on an application for the return of a seized vehicle**

Departmental Memorandum

**To:** \*\*\*\*\*  
Director General  
Region

**From:** Officer  
Position  
Office

**SUBJECT:** Application under [section of the Regulations] for the return of a seized vehicle

**FOR DECISION:** as soon as possible

A car [owned, borrowed or rented] by [name of owner/rental company or person from whom it was seized] was seized at the port of [name of port of entry and province where it is located] on [date of seizure]. It is recommended that you decide to [return/not return] this car to [lawful owner/rental company or person from whom it was seized].

#### **Issue:**

The purpose of this memorandum is to ask you to decide, pursuant to subsection [insert relevant subsection under R254 or R255] of the *Immigration and Refugee Protection Regulations*, that the vehicle [owned, borrowed or rented] by [insert name of lawful owner/rental company or name of the person from whom the vehicle was seized] that was seized because it was [explain why the vehicle was seized, e.g. because it was improperly obtained and used] and that it [should/should not] be returned to [lawful owner/rental company or to 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 [indicate the reason for the seizure. For example, it was improperly used].

**[In a few sentences, explain why the vehicle was seized and what elements led the officers to seize the vehicle].**

#### **Considerations:**

Pursuant to subsection [indicate which subsection applies] of the Regulations, the [lawful owner/rental company or the person from whom the vehicle was seized] may, within 60 days, apply for its return.

[Name of lawful owner/rental car company or person from whom the vehicle was seized] initiated this process by letter dated [date of letter] and, in support of their application, they provided [list all documents provided in support of the application for the return of the vehicle].

I have reviewed the evidence and believe that [lawful owner/rental car company or person from whom the vehicle was seized] meets [does not meet] the conditions imposed under Regulation [indicate which subsection applies] and that they are entitled [or not entitled] to recover the vehicle.

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

[Name of lawful owner/rental car vehicle or person from whom the vehicle was seized] will be informed of your decision and reasons as required under R257.

### **Recommendation:**

Given the evidence submitted, I recommend that the seized vehicle be [returned or not returned] to [lawful owner/rental car company or person from whom the vehicle was seized]. Please confirm if you agree with the recommendation by checking one of the boxes below and signing this letter and the decision document.

Officer name and signature

DG's response:

- I approve
- I do not approve

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20XX

\_\_\_\_\_  
Director General (name and signature)

\_\_\_\_\_  
Region

Attachments: - Case summary.  
- Decision document.

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

### **Appendix C: Sample of a decision to return a seized vehicle**

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

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

I am [satisfied/not satisfied] that [name of lawful owner/rental company or name of the person from whom the vehicle was seized] meets the conditions of subsection [indicate which subsection of R254 or R255 applies] of the *Immigration and Refugee Protection Regulations* in that they have [demonstrated/not demonstrated] that they:

[List what the applicant needed to demonstrate under the subsection previously mentioned. For example, the person who was the lawful owner of the vehicle prior to its seizure and has remained the lawful owner; the person did not participate in the fraudulent or improper use of the vehicle, etc.]

I have decided that the [year and make/model of the vehicle, VIN#, licence plate details] that was seized at [POE] on [date of seizure] [should/should not] be returned to [lawful owner/rental company or person from whom it was seized]

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 202X

\_\_\_\_\_  
Director General (Name and signature)

\_\_\_\_\_  
Region

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

### **Appendix D: Sample – Notice of decision and reasons - Return of a seized vehicle**

[Name of lawful owner/person from the car rental company or name of person from whom the vehicle was seized]

[Name of car rental company if applicable]

[Address]

Re: Seizure of [year, make and model of vehicle]

VIN#:

Licence: xxxxxxxx

Dear [Name]:

Your letter of [date of letter received for the return of a vehicle] refers.

As required by section 257 of the *Immigration and Refugee Protection Regulations*, I am writing to notify you that the Director General, \_\_\_\_\_ Region, has decided that this vehicle [should/should not] be returned to [lawful owner/car rental company or person from whom it was seized]

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 [add reason for seizure. For example, it was improperly obtained or used]. The evidence shows that [give the evidence that supports the decision to seize the vehicle. For example, the vehicle was used in connection with an offence under subsection 117(1) of the Act].

***[If you referred to a section/subsection of the Act in the previous paragraph, you may want to cite the particular section/subsection. For instance, subsection 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 [explain what happened during the examination and why the vehicle was seized]

In view of the evidence that you presented and under the terms of subsection [indicate which subsection of R254 or R255 applies] of the Regulations, the Director General decided that the car [should/should not] be returned to [lawful owner/car rental company or person from whom the vehicle was seized]. A copy of the decision is attached for your information.

Please contact [port of entry or contact person] in order to arrange for the return of this car. [If applicable]

***[If the application to return was made by the person from whom the vehicle was seized, you may add the following: The decision will not prevent (name of lawful owner) from applying for the return of their vehicle.]***

Sincerely,

\_\_\_\_\_  
Name and signature of officer

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

Enclosed: copy of the decision.