OPERATIONAL BULLETIN: PRG-2013-01

TITLE: Caution Statement – Using the Confirmation of Waiver of Right to Counsel

<table>
<thead>
<tr>
<th>Date of Issue:</th>
<th>Mode(s):</th>
<th>Target Audience:</th>
<th>Area of Interest:</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013-01-03</td>
<td>All</td>
<td>National</td>
<td>All</td>
</tr>
</tbody>
</table>

Details:

The purpose of this Operational Bulletin is to clarify the use and purpose of the Confirmation of Waiver of Right to Counsel and ensure CBSA officers are aware of when to administer the warning.

The Confirmation of Waiver of Right to Counsel, also referred to as a supplementary warning or the Prosper Warning, is a caution given to persons under detention who have not definitively waived their right to retain and instruct counsel without delay (10(b) of the Canadian Charter of Rights and Freedoms):

“You have already been advised of your right to contact a lawyer. You originally indicated that you wished to speak with counsel but now you have changed your mind (or you have not given me a clear answer on whether you want to speak to counsel). You have a right to a reasonable opportunity to contact a lawyer for advice and I have an obligation not to obtain evidence from you until you exercise or waive that right. Do you understand? Do you wish to waive your right to contact a lawyer?”

The warning is important because it ensures the person understands that he/she is waiving the constitutional right to contact counsel. It also confirms that the person has full knowledge of that right and an appreciation of the consequences of the waiver. A waiver must be a free, voluntary and informed decision.

Amendments to include the Confirmation of Waiver of Right to Counsel in policy are forthcoming. Changes will be reflected in the updated Officer Reference Booklet (ORB) and CBSA Enforcement Manual. Until such a time, officers are encouraged to use the wording provided in this Operational Bulletin or the wording available on the Police Services Card in use within their jurisdiction.

Actions required by CBSA officers dealing with a person under detention:

Officers must provide the Confirmation of Waiver of Right to Counsel when the detainee has been made aware of his/her right to counsel, but either:
a) the officer is having difficulty receiving a yes/no response from the detainee in regards to contacting a lawyer; or

b) the detainee indicates that he/she wishes to contact a lawyer but decides to change his/her mind before having spoken to a lawyer.

If circumstances indicate that the detainee does not understand, then additional steps must be taken to ensure that the detainee understands the rights provided to him/her and how to apply them. This may involve acquiring an interpreter.

Officers should note the information provided, the time, and any answer received in his/her notebook. If the detainee refuses to provide a response, officers should make note of the refusal and the steps taken to inform the detainee of his/her rights.

Supplementary warning is not to be confused with Secondary Caution which states: “If you have spoken to any police officer or to anyone with authority, or if any such person has spoken to you in connection with this case, I want it clearly understood that I do not want it to influence you in making any statement. Do you understand?”

Further Information


Contact Information:

Issued by Emerging Border Programs Division.

Any questions regarding this bulletin should be directed to CBSA-ASFC_EN_Manual-Manuel_de_l’exécution via your Regional Program Officer.

Approved by: Maria Romeo
Director
Emerging Border Programs Division

Effective Date: 2013-01-03

Updated: N/A

Additional bulletins: http://atlas/ob-dgo/bso-asf/bulletin/index_eng.asp
OPERATIONAL BULLETIN: PRG-2015-31

TITLE: Examination of Digital Devices and Media at the Port of Entry – Interim Guidelines

<table>
<thead>
<tr>
<th>Date of Issue:</th>
<th>Mode(s):</th>
<th>Target Audience:</th>
<th>Area of Interest:</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015-06-30</td>
<td>All</td>
<td>National</td>
<td>Port of Entry</td>
</tr>
</tbody>
</table>

Details:

- The purpose of this operational bulletin is to provide interim guidance on a CBSA officer’s authority to examine digital devices or media at ports of entry. Clarification will be provided on when such examinations should and can be performed, and will explain limitations to these authorities.

Authorities:

- Digital devices and media, along with digital documents and software, continue to be classified as ‘goods’ in the context of the border. A CBSA officer’s authority to examine goods is specified under the Customs Act and the Immigration and Refugee Protection Act (IRPA).

- Paragraph 99(1)(a) of the Customs Act provides CBSA officers with the legislative authority to examine goods, including digital devices and media, for customs purposes only. Although there is no defined threshold for grounds to examine such devices, CBSA’s current policy is that such examinations should not be conducted as a matter of routine; they may only be conducted if there is a multiplicity of indicators that evidence of contraventions may be found on the digital device or media.

- Subsection 139(1) of the IRPA allows for the search of digital devices and media at the ports of entry where there are reasonable grounds to believe that the person has not revealed their identity or has hidden, on or about their person, documents that are relevant to their admissibility; or has committed, or possesses documents that may be used in the commission of people smuggling, human trafficking, or document fraud. The purpose of this search must be confined to identifying the person, finding documents relevant to admissibility or that may be used in the specified offences, or finding evidence of the specified offences.

- Examination of digital devices and media must always be performed with a clear nexus to administering or enforcing CBSA-mandated program legislation.
that governs the cross-border movement of people and goods, plants and animals. CBSA officers shall not examine digital devices and media with the sole or primary purpose of looking for evidence of a criminal offence under any Act of Parliament. Officers must be able to explain their reasoning for examining the device, and how each type of information, computer/device program and/or application they examine may reasonably be expected to confirm or refute those concerns. The officer’s notes shall clearly articulate the types of data they examined, and their reason for doing so.

**Actions required by CBSA officers:**

- Where there is a multiplicity of indicators, or further to the discovery of undeclared, prohibited, or falsely reported goods, officers are authorized to conduct progressive examinations of digital devices and media for evidence of contraventions or to support allegations.

- Evidence may include, for example, electronic receipts for goods; information that refers to the acquisition or origin of the goods; or information that may afford evidence of a contravention to CBSA-mandated legislation that governs the admissibility of people and goods, plants and animals into and out of Canada. Such evidence may, for example, uncover the following: a confirmation of identity; receipts and invoices for imported goods; contraband smuggling; or, the importation of obscenity, hate propaganda or child pornography.

- Where the identity or admissibility of a traveller is in question, officers are justified in performing examinations of digital devices and media to discover the traveller’s true identity, evidence of false identities, or other documentary evidence pertaining to admissibility.

- Where evidence of a criminal offence is discovered during the examination process, officers must be cognisant of where the regulatory examination crosses over to the realm of a criminal investigation. Officers must determine on a case-by-case basis, through consultation with their supervisor, whether or not to continue the regulatory examination and identify any possible impacts on potential criminal investigations.

- Officers must follow the [CBSA Enforcement Manual Part 9](#) instructions on securing evidence and on referrals to Criminal Investigations, as well as following regional requirements for referrals to Inland Enforcement or Intelligence.

- CBSA officers shall conduct examinations of digital devices and media with as much respect for the traveller’s privacy as possible, considering that these examinations are usually more personal in nature than baggage examinations.
Examination Progression

- Prior to examination of digital devices and media, and where possible, CBSA officers shall disable wireless and Internet connectivity (i.e. set to airplane mode) to limit the ability of the device to connect to remote hosts or services. This will reduce the possibility of triggering remote wiping software; inadvertently accessing the Internet or other data stored externally; or changing version numbers or dates.

- Initial examinations of digital devices and media should be cursory in nature and increase in intensity based on emerging indicators.

- CBSA officers shall only examine what is stored within the device. Officers are not to read emails on digital devices and media unless the information is already downloaded and has been opened (usually marked as read).

- CBSA officers shall notate in their notebooks the indicators that led to the progressive search of the digital device or media; what areas of the device or media were accessed during the search; and why. This is to protect both the integrity of the information within the digital device and the officer.

Passwords and Enforcement

- With the exception of devices that are biometrically (i.e. fingerprint) protected, CBSA officers shall not allow a traveller to input a password into a digital device or media themselves. This practice reduces the risk of any contents being altered and allows for the continuity of evidence.

- In instances where access to digital devices and media are password protected, officers are to request the password to access the device and record it, as well as any alternate passwords provided, in their officer notebook.

- In cases where the device is biometrically protected, CBSA officers may allow the traveller to input the biometric information while the officer monitors and controls the device (for example, the officer may hold the device while the traveller allows the device to read their fingerprint). Should the CBSA officer find information that provides evidence of a contravention, they should then deactivate the password protection on the device or media.

- Passwords are not to be sought to gain access to any type of account (including any social, professional, corporate, or user accounts), files or information that might potentially be stored remotely or on-line. CBSA officers may only request and make note of passwords required to gain access to information or files if the information or file is known or suspected to exist within the digital device or media being examined.

- Conversely, a traveller may voluntarily provide information and passwords to access external data in certain circumstances in order to show compliance;
CBSA officers should advise travellers that they are not required to access or provide external information, but may voluntarily choose to do so. The login information or password shall not be compelled or recorded in these cases.

- If a traveller refuses to provide a password to allow examination of the digital device, media or the documents contained therein, or if there are technical difficulties that prevent a CBSA officer from examining the digital device or media, the device or media may be detained by the CBSA officer under the authority of Section 101 of the Customs Act, on the form K26, Notice of Detention, for examination by a CBSA expert trained in digital forensic examinations. For IRPA-related examinations, the device or media may be detained under the authority of subsection 140 (1) of the IRPA on the form IMM5265.

- Until further instructions are issued, CBSA officers shall not arrest a traveller for hindering (Section 153.1 of the Customs Act) or for obstruction (paragraph 129(1)(d) of IRPA) solely for refusing to provide a password. Though such actions appear to be legally supported, a restrained approach will be adopted until the matter is settled in ongoing court proceedings.

- At the conclusion of a non-resultant examination, the traveller shall be advised that though their password will be protected in accordance with privacy laws, they may nonetheless change it if they wish to do so.

Contact Information:

Program Compliance and Outreach Division, Traveller Programs Directorate

If you have any further questions, please forward them through the regional Corporate and Program Services Divisions, which (if required) will then send an email to the Port of Entry Operations’ generic inbox: CBSA-ASFC_Ops_Travellers-Voyageurs.

Approved by: Barry Kong, Director
Programs Compliance and Outreach Division
Traveller Programs Directorate
Programs Branch

Effective Date: 2015-06-30 | Updated: N/A

Additional bulletins: http://atlas/ob-dgo/bso-asf/bulletin/index_eng.asp
CUSTOMS ENFORCEMENT MANUAL

Part 4

EXAMINATION – GOODS AND CONVEYANCES

Chapter 3

PERSONAL BAGGAGE, GOODS, AND CONVEYANCE EXAMINATION
POLICY AND PROCEDURES

05/08/15
EN Part 4 Chapter 3    Personal Baggage, Goods, and Conveyance Examination

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to physically examine personal baggage, conveyances, and goods upon arrival in and departure from Canada when deemed necessary.

2. All examinations will be conducted in strict adherence to our core values; examinations will be proficient and discrete to the extent possible with respect to clients and their property.

DEFINITIONS

3. Refer to Part 11 – Glossary.

AUTHORITIES

*Customs Act*

Public's Obligation to Assist Customs

4. Subsection 13(b) – Requires persons reporting imported goods to answer truthfully questions respecting the goods, present, unload the conveyance and open and/or unpack any package or container.

Customs Controlled Areas

5. Section 11.2 – Allows the designation of areas as customs controlled areas. Section 11.3 – Owners or operators of customs controlled areas may grant access to authorized or prescribed persons only.

Examination of Goods

6. Subsections 99(1)(a), (b), and (c) – Authorizes customs officers to conduct examinations anytime up to the time of release of such goods, baggage, conveyances, or mail that are brought into Canada or anytime prior to their export from Canada.

7. Subsections 99(1)(d) and (e) - Allows customs officers to examine goods, baggage, or conveyances that have been released but are still in an area under Customs control if they suspect on reasonable grounds that errors have been made in the declaration, value, or classification or a contravention has occurred.

05/08/15
EN Part 4 Chapter 3  Personal Baggage, Goods, and Conveyance Examination

8. Subsection 99(1)(f) – Authorizes customs officers to stop, board, and search any conveyance or any goods it is carrying, and direct that the conveyance be moved to a customs office or other suitable location for search and examination where the officer suspects on reasonable grounds that the Act or any Act of Parliament they administer or enforce has been or might be contravened in respect of the conveyance or the goods.

9. Section 99.1 – Authorizes officers to stop and question a person and examine their imported goods whom they have reasonable grounds to suspect have entered Canada without presenting themselves to Customs.

Note: Examples of when officers might use this power are when monitoring a customs office after hours and at alternative reporting stations. This section also gives authorization to the Royal Canadian Mounted Police (RCMP) to deal with persons encountered away from Customs ports of entry.

10. Sections 111 & 112 – Provides for acquiring and executing a search warrant in order to conduct a customs examination away from a customs area or in places not subject to Customs control.

11. Subsection 115(1) – States officers may make one or more photocopies for evidentiary purposes of any record, book, or document that is seized under this Act.

Note: Photocopying documents constitutes a seizure within the meaning of section 8 of the Charter of Rights and Freedoms.

The Canadian Charter of Rights and Freedoms

12. Section 8 – States everyone has the right to be secure against unreasonable search or seizure.

13. In R. v. Simmons, the Supreme Court of Canada held that for persons entering Canada the degree of personal privacy reasonably expected at customs is lower than it is in most situations. It held that questioning and searches performed by customs officers are reasonable based on a standard of reasonable grounds to “suspect” and are considered a legal delay and not a detention. It divided the types of searches that customs officers perform into three categories based on the Charter issues that these searches raise. The first category of search involves the routine questioning of persons arriving in Canada, the inspection of baggage, pockets, wallets, and purses, and the pat down of the outer layers of clothing. The Court viewed these as part of routine processing, which does not raise Charter concerns.

2

05/08/15
EN Part 4 Chapter 3    Personal Baggage, Goods, and Conveyance Examination

Note: Refer to Part Six, Chapter Six, Personal Search for the second and third category of searches.

14. The Supreme Court of Canada in R. v. Monney re-affirmed the decision of R. v. Simmons and held that the types of searches that customs officers perform are divided into three categories based on the Charter issues that these searches raise.

15. In R. v. Jacoy, the Supreme Court of Canada held that examinations for the most part are to be conducted systematically and progressively, with increasing intensity as circumstances warrant, which include referrals for examination based on intelligence.

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

16. Subsection 12(1) – Requires every person or entity referred to in subsection (3) to report to an officer, in accordance with the regulations, the importation or exportation of currency or monetary instruments of a value equal to or greater than the prescribed amount.

17. Subsection 16(1) – Authorizes officers to stop, board and search any conveyance, examine anything in or on it and open or cause to be opened any package or container in or on it, if the officer suspects on reasonable grounds that there are currency or monetary instruments of a value equal to or greater than the amount prescribed for the purpose of subsection 12(1) and direct the conveyance to be moved to a customs office or other suitable place for the search, examination or opening.

18. Subsection 16(2) – Authorizes officers to search baggage, examine anything in it and open or cause to be opened any package or container in it, if the officer suspects on reasonable grounds that it contains currency or monetary instruments that are of a value equal to or greater than the amount prescribed for the purpose of subsection 12(1) and direct that baggage be moved to a customs office or other suitable place for the search, examination or opening.

19. Subsection 17(1) – Authorizes officers to examine any mail that is being imported or exported and open or cause to be opened any such mail that the officer suspects on reasonable grounds contains currency or monetary instruments of a value equal to or greater than the amount prescribed for the purpose of subsection 12(1).
EN Part 4 Chapter 3  Personal Baggage, Goods, and Conveyance Examination

20. Subsection 17(2) – Prohibits officers from opening or causing to be opened any mail that weighs 30 grams or less unless the person to whom it is addressed consents or the person who sent it consents or has completed and attached to the mail a label in accordance with article 116 or the Detailed Regulations of the Universal Postal Convention.

21. Subsection 17(3) – Authorizes officers to cause mail that weighs 30 grams or less to be opened in the officer’s presence by the person to whom it is addressed, the person who sent it or a person authorized by either of those persons.

PURPOSE AND SCOPE

22. The purpose of this policy is to provide guidelines to customs officers for conducting physical examinations of personal baggage, goods, which includes examining and photocopying personal papers and journals; and conveyances.

23. This policy also guides customs officers in pocket, purse, and wallet searches for evidence.

24. This policy applies to all CBSA officers.

POLICY GUIDELINES

Point of Finality

25. Officers will ensure the point of finality has been reached prior to undertaking any examination of personal baggage, goods, or conveyances.

Note: Refer to Part Three, Chapter Three, Reporting, Questioning, and Referral Policy and Procedures for more information pertaining to reaching the point of finality.

Reasons to Examine

26. Examinations of personal baggage, goods, and conveyances will be conducted if it is necessary to:

a) verify or determine that a person and their baggage, goods, and conveyance comply with the laws and regulations administered by customs and other government departments (OGD’s) (i.e. declaration verification, tariff classification, valuation);
EN Part 4 Chapter 3   Personal Baggage, Goods, and Conveyance Examination

b) conduct examinations of identified persons, baggage, goods, and conveyances such as those selected by enforcement systems or deemed as possibly suspect by an alert or lookout; and

c) confirm or negate officers’ suspicions based on reasonable grounds and indicators of non-compliance.

Note: If referring a person to secondary who is deemed to be of high-risk, officers must ensure that officers in secondary are informed of this risk. Accordingly, they should communicate their concerns orally, by radio or telephone, prior to the person’s arrival at secondary. Refer to the CBSA Policy on the Use of Force and the section dealing with the high-risk persons.

Conduct

27. All examinations are to be conducted in a courteous and professional manner.

    Note: Professional and courteous conduct extends to selecting, conducting, and reporting of examinations, as well as responses to inquiries by interested parties on examination matters, in addition to the treatment and respectful handling of goods.

28. Officers will not respond in kind to individuals who may be upset and/or hostile about having their goods, baggage, or conveyance examined.

29. All examinations will be conducted in a thorough, methodical, and proficient manner.

Health and Safety

30. When conducting examinations, officers will take measures to protect the health and safety of fellow officers, the public and themselves.

31. Officers will ensure conveyances cannot be moved, vehicles are turned off and keys are removed before and during examinations.

    Note: During examinations, officers must be aware of the danger of needles, broken glass, razor blades, knives, and other sharp or pointed objects, exhaust fumes, and the possible high temperatures associated to engine and exhaust components. Officers will not freely run their hands in pocket compartments or visually limited areas of vehicles or luggage without a visual examination.
EN Part 4 Chapter 3   Personal Baggage, Goods, and Conveyance Examination

Note: The use of contraband detection equipment such as inspection mirrors and flashlights, fibrescopes, probes, and/or X-ray equipment may assist in the examination of visually limited areas of vehicles and luggage.

32. The CBSA will support decisions to tactically reposition at any point in a situation and/or to elicit aid when an officer perceives an undue risk to their safety, that of another officer, and/or a member of the general public.

33. Officers will take the necessary preventative measures by wearing appropriate equipment to protect their health and safety during examinations, such as gloves, goggles, breathing masks, or other appropriate equipment.

General

34. Personal baggage, conveyances, and goods will be examined when deemed necessary at their point of entry or departure.

35. Officers will not be deterred from undertaking an examination based on a persons’ objections.

36. Officers will record in their notebook situations or incidents in which they deal with upset or hostile persons, such as the time, the person’s actions, statements, and physical condition, and any witnesses to an incident.

37. Officers may use contraband detection equipment and tools, including detector dog teams, to assist them in the examination of personal baggage, goods, and conveyances, when deemed appropriate.

Note: The use of contraband detection equipment such as inspection mirrors and flashlights, fibrescopes, probes, x-ray systems may assist in the examination of visually limited areas of vehicles or luggage.

38. Officers will familiarize themselves with indicators, concealment methods, and other related information by reading intelligence bulletins, alerts, and other relevant publications available.

39. Officers will request that all persons in a vehicle exit and stand at a safe distance until an examination is completed.

   Note: Discretion must be used when, for example, invalid persons, infants, and sleeping children are involved.

40. Persons will normally be allowed to view examinations of their baggage, goods, and conveyance but will be kept at a safe distance to avoid any intentional or incidental interference.

05/08/15
EN Part 4 Chapter 3   Personal Baggage, Goods, and Conveyance Examination

41. Officers will require Canadian residents to establish the origin of their goods when they appear to be new or there are indicators that the goods are in the process of being unlawfully imported.

42. In instances where proof of origin or lawful importation is unavailable, enforcement action (e.g. seizure) will only be taken when a customs officer has reasonable grounds to believe the goods are in contravention of the Customs Act.

Note: In these cases, reasonable grounds to believe are physical or documentary evidence, statements made by the person, or information received from intelligence sources.

Note: Refer to Part Five, Chapter Two, Travellers Seizure and Ascertained Forfeiture Policy and Procedures.

43. Enforcement action will not be taken if an officer does not have reasonable grounds to believe goods are in contravention of the Customs Act.

44. Regardless of the type of referral, examining officers must ensure each examination is well-focused without ignoring the possibility that a contravention exists that is unrelated to the reasons behind the initial referral.

Note: Refer to Part Three, Chapter Three, Reporting, Questioning, and Referral Policy and Procedures for information on referral types.

45. Officers will observe persons’ reactions to examinations, as they may indicate a more detailed examination is required.

46. Officers will progressively intensify the level of examination when indicators exist that lead to reasonable grounds to suspect that baggage, goods, or a conveyance contains contraband, undeclared or falsely reported goods.

47. Officers will progressively intensify the level of examination when contraband, undeclared or falsely reported goods or evidence is discovered.

48. All examinations will be treated as if the goods are potential evidence.

49. Examinations will terminate when suspicions have been negated or there are no grounds to suspect that further examination could lead to the detection of a contravention.

05/08/15
Pocket, Purse, and Wallet Examinations

50. Although, according to the Supreme Court of Canada, pocket, purse, and wallet examinations are part of a “routine examination”, they will not be conducted as a matter of routine unless prior indicators exist that evidence may be found.

Note: Officers must not confuse pocket searches as defined in these policies and procedures with frisks for officer safety as described in Use of Force training and Part Six, Chapter One, Arrest and Detention Policy and Procedures.

51. Where indicators exist or undeclared or falsely reported goods are discovered, officers are justified in performing searches for evidence in pockets, purses, wallets, envelopes, or any other reasonable container to discover evidence in the form of receipts, goods, or references to the goods discovered.

52. Pocket, purse, and wallet examinations will only be conducted when in the officer’s judgement it is safe to do so (i.e. the person is cooperative).

53. All examinations of pockets, purses, and wallets will be carried out with as much discretion and privacy as possible, as such examinations are more personal in nature than baggage examinations.

54. Officers may confirm that pockets that cannot be turned out (i.e. cargo, hidden, or security pockets) are empty by patting the pocket area.

Note: Touching a person to detect undeclared items, other than patting the pocket area, is considered to be part of a personal search and therefore the procedures in Part 6, Chapter 6, Personal Search must be followed (i.e. the person must be under arrest or detention). The intrusiveness of such a search intensifies until the reason for the search has been negated.

55. Where it is operationally viable, these types of examinations will be conducted in the presence of another officer to safeguard against any unwarranted allegations of wrongdoing and for officer safety.

Note: It is recommended that officers of the same sex as the person be used whenever possible to conduct pocket, purse, and wallet examinations.

56. Where a second officer is not available, officers will not touch a person of the opposite sex but will conduct an examination of purses and wallets and visually inspect those pockets that can be turned out or examined without touching the person (e.g. outside jacket pockets).
EN Part 4 Chapter 3  Personal Baggage, Goods, and Conveyance Examination

57. Officers will enter the details of all pocket, purse, and wallet examinations in their notebook in order to be ready and able to clearly articulate the reasons for conducting this type of examination.

Outer Clothing Examination

58. Under the Simmons decision, a customs officer may examine the outer most layer of clothing (i.e. pocket examinations) to discover evidence or indicators that a further examination is necessary.

59. Outer layers of clothing include items that when removed, could not reasonably be expected to expose the person in a manner considered inappropriate. For example, an officer may request the removal of hats, coats or footwear. The removal of such items must be relative to the suspected offence and not considered to be embarrassing.

60. Such articles as turbans, wigs and religious items will not normally be considered “outer clothing” for the purposes of this section. Officers will not request the removal of articles such as wigs, turbans or religious items as a matter of routine. The removal of these articles, and other similar items, could be considered demeaning to the person wearing them and not without stigma. The removal of such items must be relative to the suspected offence.

61. Searches of outer clothing may involve asking the person to remove the contents of their pockets and, when necessary, the officer patting the outermost layer of clothing to ensure that the pockets are empty and that no additional pockets exist. In addition, the officer may request that an outer layer of clothing be removed.

62. The officer must be able to articulate reasons for advancing a search to this extent.

63. When a person refuses to comply with an officer’s request to examine an article of outer clothing (i.e. modesty or culture) the officer will not compel the person to do so. If reasonable indicators exist an officer may request a personal search.

Note: Refer to Part six, Chapter six, Personal Search Policy and Procedures.

64. Searches of the outer most layer of clothing to uncover evidence should not be contemplated if an officer has health and safety concerns.
EN Part 4 Chapter 3  Personal Baggage, Goods, and Conveyance Examination

65. A search of the outer layers of clothing and a frisk search for officer safety are not one and the same. Each has its own distinct purpose and legal authorization. It is the responsibility of the customs officer to determine what type of search/examination is appropriate in each situation and proceed accordingly.

66. When possible an officer of the same sex as the person being examined will conduct searches of outer clothing.

67. Officers' requesting outer layers of clothing to be removed for examination should take persons to as private a location as the secondary area allows.

68. In the case of jackets and coats, officers must question persons to ensure that they are appropriately clothed underneath the item in question prior to requesting its removal.

69. Officers will enter the details of all outer clothing examinations in their notebook in order to be ready and able to clearly articulate the reasons for conducting this type of examination.

Recreational Vehicles

70. To prevent allegations of theft or misconduct while examining recreational vehicles such as trailers and motorhomes, officers may allow one of the occupants to observe the interior examination and, when necessary, assist in opening compartments.

71. When examining a recreational vehicle with none of the occupants present, it is recommended that two officers conduct the examination. Where this is not possible, the examining officer will document in their notebook the circumstances surrounding the examination.

Mandatory Referral Examinations

72. Persons referred to secondary for mandatory reasons, such as duty payment or form completion, will not have their baggage, goods, or conveyance examined as a matter of routine.

Selective Referral Examinations

73. Examinations as a result of a selective referral may be more comprehensive than a cursory examination of baggage, conveyances, and goods.
EN Part 4 Chapter 3  Personal Baggage, Goods, and Conveyance Examination

74. Examinations resulting from selective referrals will include a methodical examination of all baggage and in the case of conveyances, areas such as gas tanks, engine compartments, spare tire wells, tires, and undercarriage.

Note: The use of contraband detection equipment such as inspection mirrors and flashlights, fibrescopes, probes, and/or X-ray equipment may assist in the examination of visually limited areas of vehicles and luggage.

Intensive Examinations

75. Officers will conduct systematic and intensive examinations of personal baggage, conveyances, and goods when they are the subject of a lookout or a target, or where the reasonable grounds to suspect a contravention is occurring is based on a number of indicators.

76. Officers must have reasonable grounds and must be able to clearly articulate such grounds before cutting, drilling, and/or dismantling is undertaken during an examination.

Note: The use of contraband detection equipment such as inspection mirrors and flashlights, fibrescopes, probes, and/or X-ray equipment may assist in the examination of visually limited areas of vehicles and luggage.

77. Whenever possible, prior to proceeding with an examination that may involve disassembling, dismantling, or damaging baggage, goods, or conveyances, the examining officer will consult with their superintendent. Where this is not possible or not practical, the superintendent is to be notified of the examination and results as soon as possible.

78. Officers must keep detailed notebook entries of intensive examinations as they may be required to state the reasonable grounds more precisely than for lower intensity examinations.

79. When the examination is the result of a lookout, the officer will input a report to the "Add Exam Results" field of the Integrated Customs Enforcement System (ICES). The officer will also complete an Occurrence Reporting System (ORS) report for any intensive examination, including lookouts and targets, and, where applicable, forward the report in a timely manner to the responsible Regional Intelligence Officer (RIO) and/or Targeter.

Note: For non-automated ports the Examination Report must be completed manually.
EN Part 4 Chapter 3  Personal Baggage, Goods, and Conveyance Examination

Examination of Personal Papers and Journals

80. Private papers and personal journals will not be reviewed unless there is reason to believe that the papers or journals contain receipts for goods, refer to the acquisition of the goods, or may afford evidence of an offence.

81. Officers will only examine personal papers such as private correspondence and private journals when it is substantiated that there has been a contravention of the Customs Act.

Note: “Examining personal papers and journals” for evidence contained therein and “reading personal papers or journals” are not one and the same.

Photocopying and Electronic Scanning of Personal Papers and Journals

82. Under no circumstances, are documents of any nature unrelated to the administration or enforcement of the Customs Act to be photocopied unless they are seized for some other purpose under lawful authority, or permission to photocopy the document is received from the owner or person in possession of the document. For example, personal identification of persons entering Canada may not be photocopied and passed to the police for intelligence purposes. In all instances, individuals are to be advised when documents are photocopied.

83. Officers will photocopy or electronically scan only those passages of records, books, or documents, or items of relevance to a contravention.

84. If documents are found that are believed to be related to seized goods, officers will photocopy or electronically scan the pertinent portions and certify them as being true copies of the originals, provided that the copies are clearly legible and the officer is satisfied the matter will not result in the prosecution of a person. Otherwise, the originals will be held.

85. If the original documents are held, officers will provide the person with a receipt (Form E352 – Evidence Seizure Receipt) and photocopies of the original documents, and advise them the originals will be returned when the case is finalized.

Note: If copying facilities are not available, officers will advise the person that copies will be provided as soon as possible.
EN Part 4 Chapter 3   Personal Baggage, Goods, and Conveyance Examination

Examination Damages

86. Officers will take photographs before and after examinations when it is likely there will be a complaint as a result of conducting an examination, there is pre-existing damage, they suspect that damage may be caused as the result of an examination, or they are going to dismantle or remove permanent fixtures or parts, or drill, cut, or break an item to determine if it is concealing goods.

Note: Photographs taken prior to examination will record any existing damage. Photographs taken after examination will document the extent of the damage caused, if any.

87. Examining officers will photograph any unexpected accidental damage to personal baggage, goods, or conveyances resulting from an examination.

88. In cases of pre-existing damage or when damage is caused by an examination, officers will record all of the relevant information in their notebook.

89. When an examination causes damage, officers will prepare a report for management indicating the nature of the damage (e.g. scraped, broken, crushed, etc.), its extent, and its suspected or actual cause.

Examination Related Costs

90. Customs may pay for affected goods to be brought back to their original state or will make monetary amends when an examination is non-resultant and damage has occurred.

91. Customs will not normally pay for damages to baggage, goods, or conveyances when they are or have been used in contravention of and seized under the Customs Act. Goods seized by Customs belong to the Crown from the moment of seizure.

Note: The regulations and policy for handling damage claims against the Crown are contained in Chapter 19, Section 2, Finance Volume, Comptrollership Manual.

ROLES AND RESPONSIBILITIES

Customs Officers

92. Customs officers are responsible for:
EN Part 4 Chapter 3  Personal Baggage, Goods, and Conveyance Examination

a) adhering to this policy and procedures; and

b) maintaining in safe and good working order all contraband detection equipment used in examinations.

Customs Port of Entry Managers and Superintendents

93. Customs port of entry managers and superintendents are responsible for:

a) ensuring that the policy and procedures relative to the examination of personal baggage, goods, and conveyances are adhered to at their office;

b) providing direction and support to customs officers; and

c) taking appropriate corrective action on policy and procedure breaches.

Customs Contraband, Intelligence and Investigations

94. Customs Contraband, Intelligence and Investigations (CCII) is responsible for:

a) developing, modifying, and approving all enforcement policies related to the examination of personal baggage, goods, and conveyances;

b) monitoring adherence with this policy; and

c) providing guidance to regional managers and superintendents.

PROCEDURES

General

95. Confirm the existing primary report and ask all persons what goods comprise the value reported. For example, if a person has reported $100 worth of goods after an absence of 48 hours, it would be appropriate to ask the following:

“You have reported that you were absent from Canada for 48 hours and that you are importing goods worth $100. What are the goods that you are importing and what are their individual values?”

96. Ask the person(s) to identify their baggage, if they are aware of the contents and if they packed it themselves.
EN Part 4 Chapter 3 Personal Baggage, Goods, and Conveyance Examination

97. Ask the person(s) to place any suitcases, packages, or containers on the secondary counter and to open them.

    Note: In the case of baggage, it will suffice to have a person present, unlock, unzipped, or unclasp their suitcase(s) for examination. The officer will then remove what clothing or goods are necessary for the examination.

98. Take any necessary health and safety precautions (i.e. wearing of gloves, goggles, masks, etc.).

99. Conduct a thorough, methodical, and proficient examination of any baggage, goods, and conveyance based on the level of intensity dictated by the referral and indicators.

100. Ask persons clarifying questions, if necessary.

101. Watch for reactions and listen to any comments made by involved persons.

102. Arrest and remove any person from the area who you have reasonable grounds to believe is intentionally obstructing or hindering an examination.

    Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

103. When the officer is satisfied that the goods and conveyance match the persons' report, the officer will advise the person(s) that they are free to leave or where they must go to complete further processing. The traveller is responsible for re-packing his luggage. As a common courtesy, the officer should offer to assist travellers with the re-packing of bags once the contents have been inspected.

104. Progressively intensify the level of examination when indicators exist that lead to reasonable grounds to suspect that baggage, goods, or a conveyance contains contraband, undeclared, or falsely reported goods or when contraband, undeclared or falsely reported goods, or evidence is discovered.

105. In cases where undeclared goods are discovered, continue the examination until satisfied that all undeclared goods and evidence have been found.

106. Where an intensive examination is required, examine all compartments in the conveyance, baggage, seams of clothing, contents of bottles (i.e. lotion, liquor, etc.), cans and jars, gifts, etc.
EN Part 4 Chapter 3  Personal Baggage, Goods, and Conveyance Examination

107. Utilize contraband detection equipment (e.g., Ionscan, X-ray, probe, etc.) and any other appropriate equipment and tools (i.e., mirrors, screwdrivers, ratchets, etc.) to verify or negate suspicions.

Note: Refer to Part Four, Chapter One, Contraband Detection Equipment Policy and Procedures.

108. Employ detector dog teams to verify or negate suspicions.

Note: Refer to Part Four, Chapter One, Contraband Detection Equipment Policy and Procedures and the Detector Dog Service Operations Manual.

109. Immediately and discreetly take steps to ensure control is maintained over the goods, conveyance, and any persons involved, and alert the superintendent if you suspect or discover the presence of illicit contraband or that some other serious infraction is being committed.

110. If officers discover illicit contraband commodities, they will immediately arrest, advise, and caution any suspect(s) that are present.

Note: Refer to Part Six, Chapter One, Arrest and Detention Policy and Procedures.

111. Remove any involved persons from the area when illicit contraband is found, a conveyance seized, or a person is placed under arrest.

112. Notify the shift superintendent of the removal of persons from the normal stream of traffic.

113. Superintendents will take appropriate steps to provide any assistance that may be required.

114. Where an examination reveals undeclared or falsely reported goods or contraband imported for commercial purposes that meet the threshold for referral for prosecution, the superintendent will ensure that Investigations is advised.

Note: Refer to Part Nine, Chapter One, Investigations Referrals Policy and Procedures.

115. Record the details of intensive, resultant, or unusual examinations in your notebook.
EN Part 4 Chapter 3  Personal Baggage, Goods, and Conveyance Examination

116. Complete in full an ICES Examination Report and if necessary, an ORS report and, where applicable, forward it to the responsible Regional Intelligence Officer and/or Targeter for all intensive examinations and examinations conducted as the result of a lookout or target.

Note: For non-automated ports, the Examination Report must be completed manually.

Land Border

117. Request the driver of the vehicle to turn off the ignition and remove the keys.

118. Request all occupants exit the vehicle, remove all loose money, wallets and purses from the vehicle. Direct all occupants to stand at a reasonable distance where they can still view the examination until the examination is complete.

119. If there is concern for the safety of the officer examining a recreational vehicle, an assisting officer should be present. If the assistance of another officer cannot be secured, the examining officer may request that all persons wait outside the vehicle.

120. Ensure the examination area is safe including the positioning of the conveyance and that it cannot be moved during examination.

121. Ask the driver to remove any suitcases, packages, or containers from the vehicle, including the trunk, place them on the secondary counter, and open them.

122. Where a cursory examination is all that is dictated, conduct a systematic and methodical search of the conveyance including

123. Where an intensive examination is required, examine all areas of the conveyance including

Note: The use of contraband detection equipment such as inspection mirrors and flashlights, fibrescopes, probes, and/or X-ray equipment may assist in the examination of visually limited areas of vehicles and luggage.
EN Part 4 Chapter 3  Personal Baggage, Goods, and Conveyance Examination

124. When there are reasonable grounds to suspect that goods are concealed within a conveyance, the superintendent may approve that a qualified person (i.e. licensed mechanic) dismantle the conveyance.

Note: Detention of a traveller may also be necessary. Refer to Part 6, Chapter 1, Arrest and Detention, for information on detention procedures.

125. Obtain ignition keys from the driver as soon as you suspect that a conveyance will be seized.

126. When employing the services of a detector dog team, ensure only the dog and handler are in and around the conveyance unless the handler requests the assistance of another officer.

127. If a detector dog team is used in the examination of a motorhome and an occupant insists on being present, they may be permitted as long as it is safe to do so and they do not interfere with the search and stay out of the way of the dog and handler.

Pocket, Purse, and Wallet Examinations

128. Secure baggage and conveyance (where applicable).

129. Separate travelling companions and request another officer watch them closely to ensure that they do not destroy or discard evidence and do not communicate with one another.

130. Escort the person to a private area.

131. Whenever possible, request the assistance of another officer.

Note: It is recommended that officers of the same sex as the person be used whenever possible to conduct pocket, purse, and wallet examinations.

132. Ask the person to empty the contents of their pockets, purse, and/or wallet onto a counter or table.

133. Ask the person to count their currency out loud and note the information in your notebook.

134. Ask the person to turn out their coat, jacket, and trouser pockets.

135. Examine pockets, purse, wallet, and the contents.

136. Officers may confirm that pockets that cannot be turned out (i.e. cargo, hidden or security pockets) are empty by patting the pocket area.

18

05/08/15
EN Part 4 Chapter 3  Personal Baggage, Goods, and Conveyance Examination

137. If required, ask the person to lift their feet and display the bottom of their shoes.

138. Record the details of the pocket, purse, and wallet examination in your notebook.

Outer Clothing Examination

139. Take the person to as private a location as possible within secondary.

140. Ask the person to remove the outer layer of clothing (i.e. hat, jacket, coat, shoes, or boots) to be examined.

141. In the case of jackets and coats, ensure that the person is appropriately clothed underneath the item in question prior to requesting its removal.

142. Where a person refuses to comply with an officer’s request to remove an article of outer clothing for examination for reasons of modesty or culture, do not compel the person to do so.

143. Enter the details of the outer clothing examination in your notebook.

REFERENCES

144. Customs Act
   The Canadian Charter of Rights and Freedoms
   Finance Manual
   Detector Dog Service Operations Manual
CBSA ENFORCEMENT MANUAL

Part 6
SEARCHES AND ENFORCEMENT ACTIONS - PERSONS

Chapter 1
ARREST AND DETENTION POLICY AND PROCEDURES

9/12/2015
EN Part 6 Chapter 1  

Arrest and Detention

POLICY STATEMENT

1. It is the policy of the Canada Border Services Agency (CBSA) to arrest and detain suspect persons when the arrest and detention is lawful and is conducted in accordance with these policy guidelines.

DEFINITIONS

2. See Glossary.

AUTHORITIES

Criminal Code

3. Sections 25 and 27 – Provides officers with the legal authority to use as much reasonable force as is necessary in the administration and enforcement of their duties.

4. Section 26 – A peace officer may be held criminally liable for the use of excessive force. The pertinent sections of the Criminal Code of Canada are 25, 26, 27, 34, 35, 36, and 37. Failure to exercise sound judgement could lead to legal ramifications.

   Note: It is the officer who is responsible for the health and safety of persons who must be restrained.

5. Subsection 495(1) – Authorizes officers to arrest persons found committing or known to have committed a criminal offence.

6. Subsection 495(2) – Sets limitations on when an officer will arrest persons found committing or known to have committed a criminal offence.

7. Section 496 – Provides officers the authority to issue an Appearance Notice to a person who has not been arrested as per the limitations described in subsection 495(2).

8. Section 497 – Authorizes officers to release from custody persons arrested, with or without warrant, for an offence described in section 496 if public interest and court appearance are satisfied.

9. Subsection 503(1) – Authorizes officers who arrest a person with or without warrant, to detain the person in custody and requires them to take the person before a justice within twenty-four hours after their arrest.
EN Part 6 Chapter 1

Arrest and Detention

Charter of Rights and Freedoms

10. Section 9 – Everyone has the right not to be arbitrarily detained or imprisoned.

11. Section 10 – Everyone has the right on arrest or detention
   a) to be informed promptly of the reasons therefore;
   b) to retain and instruct counsel without delay and to be informed of that right; and
   c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

Note: The Supreme Court of Canada has said that the words “arrest” and “detention” both indicate some form of compulsory restraint.

Customs Act

12. Section 160 – Lists the particular sections of the Customs Act, that if violated are punishable by either indictment or summary conviction. Officers, therefore, may arrest for contraventions of those sections listed.

13. Subsection 163.5(1) – Authorizes designated officers, when at a customs office and performing their normal duties, to make an arrest for a criminal offence under any other Act of Parliament.

Note: See Appendix A for the relevant authorities, limitations, and a list of commonly encountered offences for which officers may arrest.

PURPOSE AND SCOPE

14. The purpose of this policy is to outline guidelines on arrest in accordance with section 495 and detention in accordance with subsection 503(1) of the Criminal Code any time an officer is in a legal position to make an arrest or detention, whether it is under the Customs Act, the Excise Act or the Criminal Code.

15. The policy also provides guidelines for the frisk of persons and the use and maintenance of handcuffs by officers.

16. This policy applies to all border services officers (BSO’s) in the performance of their duties under the Customs Act, the Excise Act or the Criminal Code.

2

9/12/2015
BACKGROUND

17. In the past, BSO’s as peace officers were accorded powers of arrest that were limited to enforcing the *Customs Act*.

18. In 1998, Bill C-18, *An Act to Amend the Customs Act and Criminal Code*, received Royal Assent. The legislation provides designated border services officers with the authority to arrest for any criminal offence encountered at a customs office while performing normal duties, or when acting in accordance with section 99.1 of the *Customs Act*. In particular, these offences include child abduction, possession of stolen property, and impaired driving. Designated officers also have the authority to enforce outstanding warrants for arrest under the *Criminal Code*.

Note: Refer to *Criminal Code* Offences Policy and Procedures for guidelines pertaining to designated and non-designated officers.

POLICY GUIDELINES

General

19. Except in exigent circumstances, officers will notify their superintendent of an arrest or detention as soon as possible.

20. Superintendents will review decisions concerning the detention or arrest of a person and discontinue the detention or arrest where it is evident that charges will not be laid or the person's presence at the CBSA office is no longer required.

21. Officers will caution importers or their agent concerning the making of statements when, during the course of a seizure or penalty action involving high value goods, it becomes apparent that the threshold for the initiation of prosecution action has been exceeded and criminal charges may also be laid.
Detention

22. Persons are deemed to be detained under the *Charter of Rights and Freedoms* and are entitled to all the provisions of section 10 of the Charter when they are not free to leave the confines of the CBSA area once all routine CBSA processing has been completed.

23. As soon as a decision to detain a suspect is made, as in the case of a personal search, a suspect must be informed that they are being detained, advised of the reason for the detention and cautioned.

24. Suspects must indicate they understand, be asked if they wish to contact counsel, and be informed that they will be provided with access to a telephone if they wish to do so.

 Arrest

25. Officers will make an arrest, subject to restrictions in 495(2) of the *Criminal Code*, in situations concerning serious infractions of the law and where the criteria found in the CBSA Prosecution Policy are met. These include offences involving:

a) narcotics;

b) firearms;

c) prohibited goods such as child pornography;

d) controlled or regulated goods, including all permit and Other Government Department (OGD) requirements;

e) evasion of revenues exceeding $1000.00 in commercial cases;

f) evasion of revenues exceeding $2000.00 in personal cases; and,

g) hindering an officer.

26. Designated officers will make an arrest, subject to restrictions in 495(2) of the *Criminal Code*, for *Criminal Code* infractions where the criteria found in the *Criminal Code* Offences Policy and Procedures are met.

Note: Refer to Part 6, Chapter 7, *Criminal Code* Offences Policy and Procedures.
EN Part 6 Chapter 1  

Arrest and Detention

27. Officers may arrest non-residents of Canada involved in smuggling goods into Canada in a wilful and premeditated manner and/or in instances involving the smuggling of high value goods.

28. Officers may arrest Canadian residents, subject to the restrictions in 495(2) of the Criminal Code, involved in the smuggling of high value goods.

29. Officers will not arrest a person under the age of 12, as they cannot be convicted of an offence.

30. For matters involving Customs Act offences, the Criminal Investigation Division (CID) will be contacted and apprised of the situation.

31. In cases of doubt relating to Customs Act offences, the CID will be consulted for guidance.

32. In cases of criminal prosecutions involving offences that are the primary responsibility of the CBSA such as the Customs Tariff, Export and Import Permit Act, etc. the regional Investigations office will be contacted and advised of the situation.

Rights of the Individual

33. When a person is not free to leave the custody of an officer or the confines of a customs office because they are the subject of enquiries, the person is considered detained and their rights under the Canadian Charter of Rights and Freedoms must be respected.

34. When a person is detained or placed under arrest, their rights under the Canadian Charter of Rights and Freedoms must be respected.

35. Persons must be informed promptly of the reasons for their arrest or detention, that they have the right to retain and instruct counsel without delay, and be cautioned regarding the making of statements.

36. A person who is detained in accordance with the Charter for customs purposes will be advised of their right to counsel and cautioned regarding the making of statements. This is regardless of whether the person is also considered detained in accordance with the Charter for immigration purposes.

37. Customs processing must be concluded before persons are removed for Immigration detention.

9/12/2015  

5
38. A person who is detained or arrested must be allowed the opportunity to contact counsel of their choice before any further action is taken (e.g., interview, search to recover evidence, etc.) except when a personal search is already underway. In these cases, persons will be given the opportunity to contact counsel as soon as the personal search is complete.

**Arrest of Foreign Nationals**

39. Officers will inform arrested persons identified as being a foreign national (a person who is not a Canadian citizen including a stateless person) of their entitlement to contact the embassy or consulate officials of their home country once all arrest formalities have been completed.

40. Officers will allow arrested foreign nationals to contact the embassy or consulate officials of their home country. This is in addition to being allowed to contact counsel.

   Note: In the case of an arrest for an impaired driving violation, the contacting of embassy or consulate officials will not delay any breath testing that must be performed.

   Note: Refer to Part 6, Chapter 7, *Criminal Code* Offences Policy and Procedures.

41. Officers will notify Citizenship and Immigration Canada (CIC) as soon as possible after the arrest of a foreign national, including foreign nationals temporarily residing in Canada (e.g. work or student visas, Minister’s Permit).

42. Officers will advise the CID or police when they arrive to take custody of a foreign national that they have been informed of their entitlement to contact embassy or consulate officials and whether contact has been made.

**Frisks**

43. It is strongly recommended that officers of the same sex as the person to be frisked conduct frisks.

   Note: It is recognized that in certain situations and at smaller ports this will not always be possible.

44. A frisk for weapons will always be conducted whenever a person is being detained or arrested, or if an officer has reason to suspect that a person is carrying a concealed weapon or the officer or public’s safety is at risk.

9/12/2015
EN Part 6 Chapter 1  

Arrest and Detention

45. Prior to placing an individual in a detention cell or secure area the person must be frisked for weapons, including but not limited to razor blades, lock picks, pins, and plastic explosives.

46. Evidence frisks are not to be conducted to solely disprove a person’s declaration unless there are indicators or other evidence to suggest the person has misstated or purposely concealed the truth.

47. A frisk for evidence will always also entail a frisk for weapons. A frisk for weapons, however, will not necessarily constitute a frisk for evidence.

48. Frisks, whether for weapons and/or evidence, will only be conducted by patting down the outer clothing that is covering a person’s body.

49. All frisks will be carried out with as much discretion and privacy as possible.

50. Frisks will be conducted in the presence of another officer to safeguard against any unwarranted allegations of wrongdoing.

51. Where available, officers will use a metal detector wand to augment a manual frisk.

   Note: Before using the wand, persons must be asked if they are wearing a pacemaker or other similar heart device. Those who identify themselves as wearing one should only be frisked manually.

52. In the event that a prohibited or restricted weapon is found, the person is to be immediately placed under arrest, advised, and cautioned.

53. Officers will discontinue personal searches when they find that because of a frisk for evidence and/or weapons their reasonable grounds for conducting a further personal search have disappeared.

Handcuffs

54. Based on risk, officers have the authority to handcuff persons who are lawfully arrested or detained. Officers must assess the risk and act on reasonable grounds when deciding to handcuff a person. Reasonable grounds may include, but is not limited to, threat posed to the officer, another officer, members of the public, protecting the person, potential flight risk, and/or preventing the destruction of evidence.

55. Officers will apply handcuffs using techniques learned in training.

56. Officers will not at any time, nor under any circumstances, handcuff a person to any object.

9/12/2015
57. Officers will not handcuff themselves to a detained or arrested subject.

58. Officers are authorized to carry only handcuffs that have been approved and issued by the CBSA.

59. Officers will carry their issued handcuffs on their person in an easily accessible manner while on duty.

60. CBSA approved handcuffs will be issued after officers have successfully completed approved training.

Use of Force

61. Officers may only use force in respect of the duties they are authorized to perform in the course of their duties as officers of the CBSA. The CBSA will not support officers who use force outside of the scope of their duties, employment and (legal) authority.

62. Officers will only use as much force as is necessary, i.e. the use of reasonable force to defend themselves and the public, to control subject behaviour, or to administer or enforce the law. The amount of force to be used will be that which is proportional to the exhibited behaviour.

63. Officers must select the use of force option(s) that is the most reasonable intervention option(s) based on their assessment of the risk, situational factors and exhibited behaviour. Use of force options range from officer presence to the use of deadly force and include the use of control techniques, intermediate devices (OC spray), impact weapons (baton) and firearms (duty-firearm) (refer to the IMIM in Appendix “A”).

64. The CBSA will support officers who use force so long as it is necessary to defend themselves, follow officers, employees of other government departments, persons in custody or members of the public, or to execute their duties, provided their actions are in accordance with the law and are justified, reasonable and consistent with CBSA policy and training.

65. Officers will attempt to control persons without jeopardizing their own safety.
Dispensing Prescription Medication

66. Officers will remove prescription medications from arrested persons and follow CBSA policy and procedures for dispensing them when necessary.

Note: Refer to Part 6, Chapter 2, Care and Control of Persons in Custody Policy and Procedures for detailed guidelines.

Taking of Notes and Completion of Documentation

67. Whenever an arrest is made, officers will take appropriate notes and record these notes in the BSF556 Officers Notebook.

68. Whenever an arrest is made, officers will complete the identification and arrest sections of the Personal Search and Arrest Report (BSF667) found in the Integrated Customs Enforcement System (ICES) and, for Criminal Code offences, the Criminal Code Incident Report (E641).

Note: Non-automated ports must complete a paper version of the Personal Search and Arrest Report (BSF667).

Note: Refer to the ICES User Reference Manual, Chapter 20 for procedures on completing the Personal Search and Arrest (BSF667) window contents.

Note: Refer to Criminal Code Offences Policy and Procedures, Appendix C for a sample of the E641.

Release from Arrest

69. Where a person has been arrested and it is subsequently determined that charges against the person will not be laid, the person will be released from arrest immediately upon completion of CBSA processes.

70. Persons who are arrested and against whom charges will be laid may be released from arrest by:

   a) compelling their appearance in court by way of a summons, which will be issued by the responsible police agency;

   b) the CID or responsible police agency; or

   c) a designated officer upon issuance of an Appearance Notice (Form 9).
EN Part 6 Chapter 1  

Arrest and Detention

Note: Refer to Part 6, Chapter 7, *Criminal Code* Offences Policy and Procedures and Appendix B of the same chapter for a sample of Form 9.

ROLES AND RESPONSIBILITIES

Border Services Officers

71. Border Services Officers (BSO) are responsible for:

a. enforcing the *Customs Act*, *Criminal Code*, and other federal statutes in accordance with legislative requirements, established policies, and standard operating procedures;

b. ensuring arrests and subsequent release of individuals are completed in accordance with legislative requirements and these policy and procedure guidelines;

c. notifying the superintendent as soon as possible when an arrest has occurred;

d) wearing their issued handcuffs at all times while on duty and ensuring that they are maintained and in good working order;

e) reporting arrests by completing a Personal Search and Arrest (BSF667) in ICES or, for non-automated ports, completing a paper copy of the BSF667 report;

f) completing a *Criminal Code* Incident Report (E641) when required;

Note: Refer to Part 6, Chapter 7, *Criminal Code* Offences, Appendix C for a sample of the E641.

i. completing a Use of Force Report (E642) if required;

Note: Refer to part 6, Chapter 5, Use of Force, Appendix B for a sample of the E642.

ii. maintaining an open line of communication with the police agency of jurisdiction for their area; and

iii. recording and maintaining detailed notes of an occurrence in the issued BSF556 Officers Notebook and preparing the necessary documentation for further investigation and prosecution.

9/12/2015
CBSA Superintendent

72. CBSA superintendents are responsible for:
   
   a) ensuring adherence with these policies and procedures;
   
   b) evaluating the reasonable grounds as presented by an officer and where warranted authorizing the use of urinalysis or monitored bowel movements; and
   
   c) taking appropriate corrective action on any breaches of this policy.

Intelligence Directorate and Criminal Investigations Division

73. Intelligence Directorate and Criminal Investigations Division (CID) is responsible for:

   a) developing, modifying, and approving polices in accordance with court jurisprudence, related to the administration of the detention and/or arrest of persons; and

   b) monitoring adherence with this policy by the regions.

PROCEDURES

Rights and Cautions

74. If possible, remove the person from public view prior to the detention or arrest.

   Note: This may not be possible with Criminal Code offence related arrests and detentions, as the prevention of the continuation of the offence takes precedents (i.e., impaired driving).

   Note: Refer to Part 6, chapter 7, Criminal Code Offences Policy and Procedures.

75. Conduct the detention or arrest in a calm professional manner.

76. Ensure that you have the person's attention. Do not touch them to gain their attention.

77. Confirm verbally that the person is paying attention.
EN Part 6 Chapter 1

Arrest and Detention

78. Inform the person that they are being detained or arrested and of the reason for it.

Note: Refer to Part 6, Chapter 7, Criminal Code Offences Policy and Procedures for statements relating to Criminal Code offences (i.e., I am arresting you for impaired driving).

a) When exercising powers of arrest use one of the following statements:

   “I am arresting you for:

i) failing to properly declare the goods in your possession as required by the Customs Act,

ii) smuggling or attempting to smuggle into Canada goods, the importation of which is prohibited, controlled, or regulated by or pursuant to the Customs Act or any Act of Parliament,

iii) under the provisions of the Criminal Code, assaulting/obstructing a peace officer,

iv) hindering or attempting to hinder or prevent me from carrying out my duties as authorized under the Customs Act.”

b) In cases of detention, modify the previous statement by substituting the words “I am arresting you for” with “I am detaining you for suspicion of”.

   Note: Officers are advised against quoting specific sections to arrested individuals as it is not necessary to do so until such time as a criminal charge is laid.

79. Confirm verbally that the person understands the enforcement action.

80. Note the time of arrest or detention and any answer received in your notebook.

81. Read the person the following statement concerning their right to counsel:

   “It is my duty to inform you that you have the right to retain and instruct counsel without delay.

   You have the right to obtain legal advice without charge 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
EN Part 6 Chapter 1  

Arrest and Detention

is: _____________. Their office is located at: _____________ and office hours are from: _____________.

Do you understand what has been said to you?"

Note: For Criminal Code offences such as impaired driving, it may be necessary for the officer to utilize the police agency of jurisdiction wording concerning the individuals right to counsel for court purposes.

82. If a person gives an indication that they do not understand the right to counsel, take steps to facilitate their understanding. This may require going beyond the mechanical recitation of the above notification.

83. If a language problem is identified, take all reasonable steps to obtain an interpreter or other person capable of speaking the language of the person.

84. Note the time right to counsel was read, understood, and any answer received in your notebook.

85. When satisfied that the advisement is understood, ask the person the following question:

"Do you wish to retain and instruct counsel or have access to legal aid?"

86. Note the information provided, the time, and any answer received in your notebook.

87. Allow the suspect to contact counsel of choice if requested.

  Note: If a call takes place in a closed or private room, the door to the room may be closed only if the suspect can still be observed (i.e., through a window). If a call takes place in an open room, all officers will maintain an appropriate distance so that the conversation is private and cannot be overheard.

88. To ensure that any statement or admission of guilt, etc. made by a person after detention or arrest is admissible evidence in court, caution the individual concerning such statements by reading the following caution immediately after notifying the person of the right to counsel:

"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?"

89. Note the time and any answer received in your notebook.

9/12/2015  

13
EN Part 6 Chapter 1  
Arrest and Detention

90. If a person has waived their right to counsel, frequently advise them that they may change their mind and invoke their right to counsel at any time in the process.

91. At any time when a person has admitted to unlawful conduct and has not been previously cautioned, immediately caution them concerning the making of any further statements.

Arrest of Foreign Nationals

92. Determine if in fact the person being arrested is a foreign national, in other words, a citizen of another country.

93. After arresting, advising of their right to contact counsel, and cautioning against making statements, advise foreign nationals that in addition to their right to contact counsel they are also entitled to contact the embassy or consulate of their home country. Foreign nationals may contact their embassy or consulate and counsel while under detention as well.

Note: In the case of an arrest for an impaired driving violation, the contacting of embassy or consulate officials will not delay any breath testing that must be performed.

Note: Refer to Part 6, chapter 7, Criminal Code Offences Policy and Procedures.

94. Allow the person to contact the embassy or consulate of their home country if they wish to.

Note: The embassy or consulate officials contacted will ensure that the arrested person's rights under Canadian law are protected and will, if requested, notify the person's family of the arrest. While embassy or consulate officials may assist the person in obtaining legal counsel, they will not, as a matter of course, make any arrangements for the person's release.

95. Record in your notebook who was called, if contact was made, and the time of the call.

96. Notify Citizenship and Immigration Canada (CIC) as soon as possible of the arrest of any foreign national.

97. Advise the CID or police if they attend to take custody that the person was advised of their entitlement and whether or not contact was made.

Frisk for Weapons
EN Part 6 Chapter 1  
Arrest and Detention

98. Immediately after a suspect has been advised of their rights or as a simultaneous action, frisk for weapons as a safety precaution.

Note: It is not necessary that a person be first cautioned before a frisk is performed. While it is preferable to provide the cautions in advance, the frisk may be performed as a simultaneous action.

Note: It is strongly recommended that officers of the same sex as the person to be frisked conduct frisks. It is recognized that in certain situations and at smaller ports this will not always be possible.

99. Prior to placing a person in a detention cell or secure area conduct a frisk by following these steps:

a) secure the baggage, conveyance, and, when deemed necessary, any travelling companions;

b) escort the person away from the public area and into an interview room or other private area;

c) request the assistance of another officer;

d) ask the person to remove any over coat, jacket, sweater, blazer, etc.;

e) pat down any removed article;

f) position the person and yourself in the most safe and secure manner possible;

g) lightly pat down with the palms of your hands the outer clothing of the person including:

i) sides, front, and back of arms and legs; and

ii) sides, front, and back of the torso.

h) ask the person to lift their feet to display the undersides of their shoes or boots;

i) be aware of the possible presence of plastic explosives;

j) where available, use the metal detector wand;

k) before using the wand, ask the person if they are wearing a pacemaker or other similar heart device and those who identify themselves as wearing one should only be frisked manually;

9/12/2015
EN Part 6 Chapter 1  
Arrest and Detention

l) set the wand to a low sensitivity so that razor blades and, in the event of handcuffing, pins and other small devices that could be used to pick the handcuff lock will be detected;

m) make light contact with the person’s clothing;

Note: The wand is sensitive along its length and circumference.

n) pass the metal detector wand over:

i) the sides of the arms and legs;

ii) their complete front and back profiles; and

iii) boots and shoes.

Note: Be aware that large metal belt buckles may make it difficult to detect a weapon hidden behind the buckle or near the waistband. In some cases, a weapon may be hidden within the buckle itself and for this reason metal belt buckles should be examined manually.

100. In the event that a prohibited or restricted weapon is found, place the person under arrest, advise and caution them.

Handcuffing

General

101. Handcuff arrested persons and detained persons in accordance with the policy guidelines.

102. Recognize and remember handcuffs:

a) have limitations;

b) do not fully immobilize the individual;

c) do not mean that a threat no longer exists simply because the person is restrained;

d) do not negate the possibility of an attempt at escape or an injury to an officer;

e) can turn into a dangerous weapon if not properly applied; and
EN Part 6 Chapter 1 Arrest and Detention

f) can be removed if:

i) a person has slender hands and wrists and can slide the handcuffs off;

ii) they are not double locked, as they can be opened by shimmying the device: or

iii) a person has not been properly frisked and/or observed and has access to a lock pick device.

103. Record in your BSF556 Officers Notebook the time, circumstances, and whether force was required whenever you place a person in handcuffs.

104. When an arrested person is going to undergo a personal search, remove handcuffs once in the search room.

Note: It is not advisable to remove handcuffs from a person who is violent. In such instances, delay a thorough search until sufficient aid has arrived (e.g., additional officers or police).

105. When turning an arrested person over to another agency, allow the receiving officer to place their handcuffs on the person before removing the CBSA issued handcuffs.

106. Do not leave a person in custody in handcuffs unguarded.

Note: Handcuffs are by no means foolproof and should be used as a temporary restraining device only.

107. In each instance where handcuffs are used, record the necessary information on the Personal Search and Arrest (BSF667) in ICES and in your notebook. For non-automated CBSA offices, the BSF667 report must be completed manually.

Note: Refer to the ICES User Reference Manual, Chapter 20 for procedures for completing the Personal Arrest and Search (BSF667) window contents.

108. Immediately report the loss of any handcuffs to the superintendent on duty.

Handcuff Application

9/12/2015
EN Part 6 Chapter 1  

Arrest and Detention

Note: The following are “general” guidelines only. The techniques taught in the approved training are constantly evolving and improving. Officers, therefore, will use the techniques taught in training when there is a discrepancy between these guidelines and the training techniques.

109. Ensure handcuffs are in the single lock position (pre-loaded) so that they are ready for immediate use.

110. Ensure you have the physical means to apply the handcuffs before attempting to do so, as the application of handcuffs may precipitate violence from the person.

111. When practical, approach the suspect from the side or rear and remain alert for any unexpected moves.

112. Frisk the person for weapons or objects that could be used to pick the handcuff lock.

113. Attempt to keep the person off balance when applying the handcuffs and keep yourself in a well-balanced position to control the handcuffing procedure.

114. Apply the handcuffs as quickly as possible to eliminate time for the suspect to resist being handcuffed.

115. Press the handcuffs onto each wrist, rather than striking them; this will reduce the potential for injury to the suspect’s wrist.

116. Close the jaw and conduct a visual inspection to ensure the skin is not pinched in the jaw and that circulation is not restricted.

Note: Never place your finger(s) between the jaws of the handcuffs and the individual’s wrist.

117. Ensure handcuffs fit snugly on a person’s wrists but, at the same time, are not overly tightened so as to restrict blood flow to the hands.

118. Once both wrists are secured, immediately double lock the handcuffs to prevent the suspect from tightening them or picking the lock.

119. Never handcuff a person to yourself, a fixed object, to a vehicle, or other mobile object.

120. Do not allow one end of the handcuffs to be secured to one wrist and the other end left loose. The loose cuff could be used as a weapon against you.

18  

9/12/2015
EN Part 6 Chapter 1  

Arrest and Detention

121. When removing handcuffs, keep the suspect off his/her balance to discourage escape or attack.

122. To ensure further safety when removing handcuffs, have another officer present.

123. When transferring custody of a person, allow the officer to place their handcuffs on the person before removing yours.

Handcuff Maintenance

124. Ensure that your issued handcuffs are:

   a) in good working order;
   
   b) inspected frequently, cleaned, and lightly oiled (recommended monthly);
   
   c) kept free of dirt and other foreign substances particularly in the ratchet and key hole where dirt may hinder handcuff functioning; and
   
   d) repaired or replaced if damaged.

Officer Safety

125. Use technical aids such as metal detector wands, goggles, and latex gloves as deemed appropriate.

126. Be aware of the location of First Aid Kits and what to do in cases of emergency.

127. Keep calm however provoked or difficult to maintain control in all situations.

128. When the potential for assault exists and you believe any attempts to use force to control a person would jeopardize your own safety:

   a) leave the immediate area or interview room as soon as possible;
   
   b) request assistance from the shift superintendent or others as appropriate;
   
   c) call the local police agency immediately; and
   
   d) follow police instructions.

129. If you are prevented from leaving the interview room or immediate area:
EN Part 6 Chapter 1  

**Arrest and Detention**

a) activate the alarm system or shout for help to nearby staff;

b) use force to defend yourself against an unprovoked assault, as long as you use no more force than is necessary to prevent the assault or the repetition of it. Do not attempt to apprehend or restrain the individual unless there is no other option.

Note: Refer to Part 6, Chapter 5, Use of Force Policy and Procedures.

130. Following the incident:

a) obtain a medical examination and report if you have been assaulted;

b) protect and preserve any physical evidence;

c) prepare a complete report of what you experienced or witnessed;

d) forward the medical report and incident report to your supervisor; and

e) record the details of the incident in your notebook.

131. Be aware of first aid and emergency arrangements that may be needed by colleagues or the travelling public.

**Contacting Counsel**

132. If a person is not permitted to contact counsel immediately after being arrested or detained, it is a *prima facie* violation of the *Charter of Rights and Freedoms*, therefore:

a) proceed with extreme care in continuing the investigation before allowing the person detained or arrested to contact counsel; and

b) make detailed notes of the circumstances in your notebook.

Note: If the arrest is made while a personal search is in progress, complete the search prior to allowing the person to contact counsel.

133. If the person elects to contact counsel, they will be permitted every reasonable opportunity to do so. If they get no answer, or a busy signal, they will be allowed to try again or to call someone else.

134. Officers will give the person as long as is necessary and as many attempts as are necessary to contact counsel.

20

9/12/2015
135. If a person’s attempt to contact counsel results in an unreasonable delay and they still wish to contact counsel, suggest that they attempt to contact a different lawyer or duty counsel.

136. If the person elects to contact counsel:

   a) do not suggest the name of counsel to the person;

   b) provide access to a telephone and a telephone book or list of lawyers in the area and ensure the list includes the local Legal Aid phone number;

   c) once the person has determined the counsel they wish to contact, dial the number and make the initial contact with counsel to confirm that this is in fact who is being contacted;

   d) pass the phone to the person and provide them privacy while maintaining careful observation of the person to ensure they do not dispose of any evidence;

   e) maintain an appropriate distance from the person to permit the call to be private and so that the conversation with counsel cannot be overheard; and

   f) record in your notebook the time that the attempt to contact counsel was made, the telephone number called, any conversation you had with counsels office, and whether or not the contact of counsel was successful.

137. If long distance charges are involved allow the call to be charged to the CBSA office.

138. Allow a person to telephone a family member to assist in contacting counsel if they request to do so. A call to a family member is not to be considered as an opportunity to retain and instruct counsel. In such cases, permit the person subsequent opportunities to contact counsel.

139. If during the person’s telephone call, counsel asks to speak to the arresting officer or the superintendent, accommodate the request. Limit these conversations with counsel to the reasons for the arrest or detention and any procedure that is expected to follow. Do not get involved in arguments or debates with counsel.

Contacting Police

9/12/2015
140. Once a person is under arrest and been advised of their rights and cautions, contact the CID or the local police agency of jurisdiction, depending on the offence, to advise of the:

a) situation;

b) time of arrest;

c) reason for arrest; and

d) approximate time the CBSA procedure is expected to conclude; and ask them to attend and take custody of the individual at that time.

Note: The law requires that the person be either released or taken before a justice of the peace within 24 hours of the arrest. It is therefore imperative that the officer advises the CID or police of the actual time that the arrest was made.

141. Make note of the time police were contacted and who was spoken to.

142. Pending the arrival of the CID or police and following the conclusion of the CBSA enquiries, place the arrested person in a detention facility or in a secure area of the CBSA facility, preferably out of public view, and monitor them carefully until the CID or police agency of jurisdiction assumes custody.

Note: Refer to Care and Control of Persons in Custody Policy and Procedures and follow the guidelines pending the arrival of the CID or police agency of jurisdiction.

143. When the CID or police arrive to take custody of an arrested person, do not delay the transfer of custody pending the arrival of counsel. If counsel does arrive, it is sufficient to advise them that their client is in the custody of the CID or police.

144. Except for matters referred to the CID, when an arrest is made for an offence under an Act other than the Customs Act (e.g. Criminal Code offence), notify the responding police agency of jurisdiction following procedures outlined in the local agreement/Memorandum of Understanding (MOU).

145. If the CID or police agency of jurisdiction will not take the case, release the person from arrest and complete normal CBSA processes and procedures, if applicable.
146. If the CID or police cannot attend but agree to lay the information for the charge (in other words, proceed with the offence), determine if it is feasible to issue an Appearance Notice (Form 9) to the accused.

Note: Refer to Criminal Code Offences Policy and Procedures for guidelines for the completion of Form 9 and Appendix B of the same chapter for a sample of Form 9.

147. Where the officer or their superintendent feels strongly that police should lay a criminal charge but they are unable or unwilling to respond, CID should be contacted.

Statements and Secondary Cautions

148. If counsel has advised their client not to make any statements until their arrival, refrain from attempting to obtain any further statements.

149. Make careful and complete notes of any spontaneous remarks that are made, including the time at which they are made in your notebook.

150. Gather information on the identification and possible actions of the person, such as:

   a) criminal record;
   b) the possibility that he or she may disappear if released;
   c) the potential destruction of further evidence; and
   d) whether or not it is in the public interest to release them.

151. If a person volunteers relevant information, record all discussions verbatim in your notebook to the best of your abilities.
EN Part 6 Chapter 1    Arrest and Detention

152. Notes taken during interviews should include:

a) periodic recordings of the time;

b) details of any questions asked;

c) answers given;

d) persons involved;

e) evidence found;

f) the condition of the accused at the time of the offence or investigation;
   (i.e., mental and physical health, any impairment, etc.);

g) the ability of the accused to understand the discussion and questions
   asked; and

h) a record of all persons who have contact with the accused.

153. Should another officer, superintendent, senior officer or other person in
      authority, who was not present during the original caution and questioning,
      enter the room where the person is held or where an interview is being
      conducted, this officer must immediately give a secondary caution upon
      entering the room. They will read the following caution:

      “If you have spoken to any border services officer, police officer, or to
      anyone in authority or if such a person has spoken to you in connection with
      this case, I want it clearly understood that I do not want it to influence you in
      making any statement.”

Documentation

154. Whenever an individual is arrested or detained, complete the Personal
      Search and Arrest (BSF667) in ICES or, for non-automated ports, complete
      a paper copy of the BSF667 report.

Note: Refer to the ICES User Reference Manual, Chapter 20 for
      procedures regarding completion of the Personal Search and Arrest
      (BSF667) window contents.
Detention in Custody

155. When an individual is arrested, hold them in custody until such time as the CBSA enquiries are complete and the person is either released or turned over to the CID or the police agency of jurisdiction.

156. Consider all persons under arrest as a potential threat to the safety of the public and staff at any CBSA facility, as well as to their own physical well being (e.g., suicide or attempted suicide).

157. Place persons under arrest in a sterile CBSA standard detention cell or, where a sterile CBSA standard detention cell is not available, in a secure area of the office, where possible out of public view, and follow the policies and procedures pertaining to the care and control of persons in custody.

Note: Refer to Care and Control of Persons in Custody Policy and Procedures.

REFERENCES

158. Customs Act
   Criminal Code
   Canadian Charter of Rights and Freedoms
   D and R Memorandum
   ICES User Reference Manual
Part 6

SEARCHES AND ENFORCEMENT ACTIONS - PERSONS

Chapter 1

ARREST AND DETENTION POLICY AND PROCEDURE

Appendix A

AUTHORITIES, LIMITATIONS, AND COMMONLY ENCOUNTERED OFFENCES FOR WHICH BORDER SERVICES OFFICERS MAY ARREST

9/12/2015
Authority for Arrest

**Criminal Code**

495(1) – A peace officer may arrest without warrant:

(a) a person who has committed an indictable offence or who, on reasonable and probable grounds, he believes has committed or is about to commit an indictable offence, or

(b) a person whom he finds committing a criminal offence, or

(c) a person in respect of whom he has reasonable and probable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found.

Limitations to Arrest

**Criminal Code:**

495(2) – A peace officer shall not arrest a person without warrant for

(a) an indictable offence mentioned in section 553,

(b) an offence for which the person may be prosecuted by indictment or for which he is punishable on summary conviction, or

(c) an offence punishable on summary conviction,

in any case where

(d) he believes on reasonable grounds that the public interest, having regard to all the circumstances including the need to

(i) establish the identity of the person,

(ii) secure or preserve evidence of or relating to the offence, or

(iii) prevent the continuation or repetition of the offence or the commission of another offence, may be satisfied without so arresting the person, and

(e) he has no reasonable grounds to believe that, if he does not so arrest the person, the person will fail to attend in court in order to be dealt with according to law.'

9/12/2015
# APPENDIX A

## Common Arrest Offences

<table>
<thead>
<tr>
<th>Act</th>
<th>Section</th>
<th>Offence</th>
<th>Procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customs Act</td>
<td>153 (a)</td>
<td>Making false or deceptive statements with respect to the importation of goods.</td>
<td>Dual</td>
</tr>
<tr>
<td></td>
<td>153 (c)</td>
<td>Wilfully evading or attempting to evade the payment of duties or compliance with the Act.</td>
<td>Dual</td>
</tr>
<tr>
<td></td>
<td>153.1</td>
<td>Hindering a border services officer.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>159</td>
<td>Smuggling goods subject to duties or goods prohibited, controlled, or regulated by an Act of Parliament.</td>
<td>Dual</td>
</tr>
<tr>
<td>Criminal Code</td>
<td>129</td>
<td>Obstructing a Peace Officer.</td>
<td>Dual</td>
</tr>
<tr>
<td></td>
<td>253(a)</td>
<td>Operating a vehicle, vessel, aircraft, or railway equipment while impaired by alcohol or a drug.</td>
<td>Dual</td>
</tr>
<tr>
<td></td>
<td>253(b)</td>
<td>Operating a vehicle, vessel, aircraft or railway equipment having consumed alcohol over .08</td>
<td>Dual</td>
</tr>
<tr>
<td></td>
<td>270(1)</td>
<td>Assaulting a Peace Officer.</td>
<td>Dual</td>
</tr>
<tr>
<td></td>
<td>279-283</td>
<td>Kidnapping, Hostage taking and Abduction</td>
<td>Indictable</td>
</tr>
</tbody>
</table>

*Kidnapping - Indictable, Hostage - Indictable, Taking – Indictable, Abduction – Indictable depending on*

2

9/12/2015
<table>
<thead>
<tr>
<th>Act</th>
<th>Section</th>
<th>Offence</th>
<th>Procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>270.1(1)</td>
<td></td>
<td>Disarming a peace officer.</td>
<td>Dual</td>
</tr>
<tr>
<td>354</td>
<td></td>
<td>Possession of Property Obtained by Crime</td>
<td>Dual when under $5000 CAD</td>
</tr>
<tr>
<td>357</td>
<td></td>
<td>Bringing into Canada Property Obtained by Crime</td>
<td>Indictable</td>
</tr>
</tbody>
</table>
Part 6
SEARCHES AND ENFORCEMENT ACTIONS - PERSONS

Chapter 1
ARREST AND DETENTION POLICY AND PROCEDURE

Appendix B
OFFENCES AGAINST A BORDER SERVICES OFFICER
EN Part 6 Chapter 1

Arrest and Detention

APPENDIX B

UNDER REVIEW