



**SOUTH COAST BRITISH COLUMBIA
TRANSPORTATION AUTHORITY
POLICE SERVICE**

SEIZURE

Effective Date: May 9, 2005

POLICY

1. Seizure will be undertaken only when clearly authorized by law or with express consent.
2. All seized items will be:
 1. kept secure and safeguarded,
 2. maintained in a manner that meets evidentiary requirements,
 3. reported and recorded as required by legal requirements, and
 4. disposed of as ordered by the court, directed by legislation or in accordance with established retention periods.
3. All Members, by the end of their shift, will account promptly and accurately for any property that comes into their possession in the course of a colleague's or their individual duty.
4. Any item, regardless of its value, coming into a Member's possession, during the performance of their duty, will be considered and treated as an "exhibit" or "property".
5. All "exhibits or property" will be handled in accordance with the relevant provisions of OF020 - Exhibit/Property Control.

REASON FOR POLICY

6. To ensure that seizure, as an aid to an investigation, is carried out in a manner that:
 1. complies with legal requirements, and
 2. will not compromise evidence seized in the search.

PROCEDURES

Seizure from Lawyer Claiming Solicitor-Client Privilege

7. A Member who has seized items under the authority of the Criminal Code of Canada (CCC), or any other Federal Act, from a lawyer claiming solicitor-client privilege regarding the items seized will:
 1. seal them in an envelope without examining them or making copies,
 2. convey the items without delay to the Justice who issued the Warrant, and

3. ensure the items are subject to any terms and conditions that might have been imposed by the Judge in the Warrant itself.
8. A Judge, on application, will subsequently examine the items and make a ruling regarding disclosure and detention.

FIREARMS

Search

9. When an offence has been committed in relation to a restricted weapon, firearm or ammunition, a Member acting on reasonable grounds may, without a Warrant, search a person or a vehicle or a place (other than a dwelling house) and seize such articles if there are exigent circumstances.

Search for Public Safety Reasons

10. A Member must have reasonable grounds to believe that:
 1. it is not desirable in the interests of safety of the person, or of any person, for the person to possess any weapon, prohibited device, ammunition, prohibited ammunition, or explosive substance (s. 117.04 (1) CCC).
11. If these grounds exist, an officer may apply to a justice for a Warrant to search for and seize:
 1. any weapon or other regulated item, and
 2. documents relating to these items (licenses, registration certificates, authorizations).
12. There are provisions for search and seizure without a Warrant because of a risk to public safety (s. 117.04 (2) CCC).

SEIZURE

Seizure on Failure to Produce Documents

13. A firearm or other regulated item may be seized if the person is in possession of the item and fails to produce for inspection documentation authorizing the possession of the item when asked to do so. This provision does not authorize a search of any kind (s. 117.03 (1) CCC).

DISPOSITION OF SEIZED ITEMS

Items Seized as Evidence of an Offence

14. A seized firearm or other regulated item must be dealt with as follows.
 1. if the item is not required for purposes of an investigation or court proceedings, and there is no dispute as to who is the lawful owner, the item must be returned to the owner and this reported to a justice, or
 2. if the item is required for purposes of an investigation or court proceedings, the

officer must Report to a Justice by way of a completed Form 5.2.

NOTE: *A seized item must be returned to the lawful owner unless a justice is satisfied that it ought to be detained (s.490 CCC).*

Items Seized for Public Safety Reasons

15. The Member must:

1. report the seizure to a justice (s. 117.04 (3) CCC), and
2. apply within 30 days of the seizure for an order for disposition of the seized item (s. 117.05 (1) CCC) by way of a completed Form 5.2.

16. If the Member fails to apply for a disposition hearing within the time period, the item must be returned to the person from whom it was seized (s. 117.06 CCC).

17. Any documentation that cannot be found and relates to an item that has been seized is automatically revoked as of the time of the seizure (s. 111.04 (4) CCC).

Items Seized on Failure to Produce Documentation

18. The Member must wait 14 days from the date of seizure to allow the person from whom the item was seized to claim the item and produce the documentation authorizing possession of the item. If the item is claimed and the documentation produced, the item must be returned without delay. If the item is not claimed or documentation is not produced, the Member must take the item before a provincial court judge (s. 117.03 CCC).

FORFEITURE OF SEIZED ITEMS

Subject–Matter of or involved in an Offence

19. These items will be forfeited unless the lawful owner satisfies the Court that they were not involved in the offence and had no reasonable grounds to believe that the item would or might be used in an offence (s. 491 CCC).

Items Seized for Public Safety Reasons

20. At the disposition hearing, the justice may order that the item be forfeited or disposed or it is not desirable in the interests of safety that the person from whom the item was seized possesses any regulated item. The justice may also make a prohibition order if the circumstances warrant doing so (s. 117.05 CCC).

Items Seized on Failure to Produce Documentation

21. If the item is unclaimed, the Member must bring it before a provincial court judge. The judge may return the item to the person from whom it was seized, or the owner, if they can show that they may lawfully possess the item. If no lawful possession can be established, the judge may order it be forfeited (s. 117.03 CCC).

TELEPHONE RECORDS

22. When executing a CCC Warrant, a Member may take notes and make photocopies of the original telephone subscriber records and tolls, and return them to the telephone company, immediately, upon completion of photocopying.
23. Telephone company records that are returned immediately will not be subject to a Detention Order.
24. If original records are subsequently required for Court, they must be subpoenaed.

DOCTRINE OF PLAIN VIEW

25. A Member may seize any item in plain view that may provide evidence of the commission of an offence if:
 1. there is a pre-existing lawful reason for intrusion upon the person or premises,
 2. the discovery of the item is inadvertent, and
 3. the item is apparently incriminating evidence.

PROPERTY SEIZED FROM ARRESTED PERSONS

26. Any personal property, including money, seized from an arrested person will be brought to the attention of the Member processing the arrested person who will make a note of it on the arrest report and ensure the security of the property.

[See also: OI030 - Care and Control of Prisoners]

DISPOSITION OF SEIZED ITEMS

27. A Member who has seized items under the authority of the CCC, or any other Federal Act will, as soon as practical:
 1. **Return Items** - return the seized items, on being issued a receipt, to the lawful owner/possessor, if there is no dispute regarding possession and continued detention is not necessary for investigation, preliminary hearing or trial, or
 2. **Detain Items** -
 - a. detain the seized items, where required, identifying and itemizing them as described in OF020 - Exhibit/Property Control, and
 - b. submit a "Report to a Justice (Following Seizure of Property and/or Warrant to Search) and Application for Detention" (Form 5.2) itemizing all seized items, to be taken before a Justice.

RETURN SEIZED ITEMS BEFORE TRIAL

Sample Photographic Evidence

28. With the approval of the Prosecutor, a Member may introduce sample or photographic evidence and return the property to the owner where:
 1. the evidence is in relation to theft, robbery, break and enter, possession of stolen

- property, false pretences or fraud,
2. the seized items cause storage problems,
3. the seized items are required by the rightful owner to maintain a livelihood,
4. the seized items are deemed essential to maintain the victim's lifestyle, or
5. the seized items are goods that are perishable or goods with a short shelf life.

Record the Evidence to be Returned

29. When seized property is returned, the Member will photograph the owner in possession of the property, displaying identifying features including, the date, exhibit numbers, file number and the Member's name.
30. All photographs taken to be entered as evidence must be accompanied by a Certificate or Affidavit and a Notice of Intention to Produce that has been given to the accused in a reasonable time before the trial. The Member will make a notation of the action in their notebook.

Receipt

31. A receipt will be obtained when property is returned.

DETENTION OF SEIZED ITEM

Report to Justice

32. As soon as practical after seizure, a Member must submit a "Report to a Justice (Following Seizure of Property and/or Warrant to Search) and Application for Detention" (Form 5.2) to be taken before a Justice and obtain direction from the Justice as to their detention.

Detention

33. The Justice may authorize detention of the seized articles for a period of three months.
34. Items detained beyond the 90 day limitation, without further detention order, will become unlawfully detained and be disallowed as evidence.

Extension of Detention

35. Upon application, before the expiration of the three-month period and provided charges have not been laid, a Justice may authorize further detention for a specified period not exceeding one year.
36. Where court proceedings are initiated within three months from the date of the property seizure, no further detention order is required.
37. All applications for extensions require three days notice to the person from whom the items were seized.

Not Reportable to a Justice

38. The following seizures of property are not reportable to a Justice, including:

1. property voluntarily given,
2. photocopies or photographs of original documents where the original document was not seized, and
3. items seized under the authority of a provincial statute.