



To: South Coast British Columbia Transportation Authority Police Service Designated Policing Unit Board (Police Board)

From: Chief Officer Suzanne Muir
South Coast British Columbia Transportation Authority Police Service Designated Policing Unit (Transit Police)

Date: October 23, 2023

Subject: Amendments to Transit Police Policy Chapters OD120 – Search and OD130 – Seizure [Board Report No. 2023-61]

Recommendation:

- A. THAT the South Coast British Columbia Transportation Authority Police Board approves amendments to Transit Police policy chapters OD120 – Search and OD130 – Seizure; and
 - B. THAT the South Coast British Columbia Transportation Authority Police Board requests the Transit Police to post the amended policy chapters to the Transit Police website, once the policies are vetted pursuant to the *Freedom of Information and Protection of Privacy Act*.
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PURPOSE

To amend Transit Police policy chapter OD120 – Search in order to incorporate recent amendments to the *Criminal Code*, to comply with BC Provincial Policing Standard 6.1.1 – Promoting Unbiased Policing, and to reflect updated best practices, as well as the deployment of Community Safety Officers (“CSOs”).

To amend Transit Police policy chapter OD130 – Seizure in order to comply with BC Provincial Policing Standard 6.1.1 – Promoting Unbiased Policing, to enable repeal of Transit Police policy chapter OD300 – Seizure of Camera Equipment and/or Images at Crime Scenes, and to reflect updated best practices, as well as the deployment of Community Safety Officers (“CSOs”).

BACKGROUND/DISCUSSION

General

Pursuant to s. 4.2(2)(c)(v) of the *Police Act*, the Police Board has a duty to make rules consistent with the *Police Act*, the regulations and the director’s standards with respect to:



- The standards, guidelines and policies for the administration of the designated policing unit;
- The prevention of neglect and abuse by the designated constables; and
- The efficient discharge of duties and functions by the designated policing unit and the designated constables.

The Police Board requires the Chief Officer to submit any new policy and policy section amendments to the Police Board, via the Governance Committee, for review and approval.

Public Access to Policies

Where possible, Transit Police will submit new/amended policy submissions to the public agenda. However, in some cases, the Transit Police may submit a new/amended policy In Camera to the Police Board to allow for: fulsome review/discussion of all policy content, including provisions that may be considered confidential and withheld pursuant to the *Freedom of Information and Protection of Privacy Act (FOIPPA)*; and sharing of legal advice or other confidential labour relations/financial/law enforcement information related to the policy amendment. For In Camera submitted policies, once the new/amended policy is approved by the Police Board, it is then vetted and any necessary information redacted in accordance with *FOIPPA* provisions, following which it is posted (as soon as is practicable) to the Transit Police website for ongoing electronic access by the public. Further, the policy approval will be referenced in the next public agenda of the Police Board.

Background and Review

Transit Police policy chapter OD120 – Search began review review in January 2023, led by Policy and Planning Advisor - Emmett Choi. Since then, a number of Transit Police staff were involved in development, review, and/or consultation. The list of those involved is attached as “[Appendix A](#)”.

Transit Police policy chapter OD130 – Seizure began review review in August 2022, initially led by former Policy and Planning Advisor – Deanna Manojlovic and replaced by Policy and Planning Advisor – Emmett Choi. Since then, a number of Transit Police staff were involved in development, review, and/or consultation. The list of those involved is attached as “[Appendix C](#)”.

For both policy chapters OD120 and OD130, there were proposed policy sections and procedures updates. (The Chief Officer has already signed off on the changes to the procedures.) The key changes to the policy sections of policy chapter OD120 are summarized below and the new policy is attached as “[Appendix B](#)”.

- (1) A number of definitions were added or amended, including:
 - a. “Dwelling-house”;



- b. "Member"; and
 - c. "Metro Vancouver Transit Police (Transit Police)".
- (2) Two sections were added under the "General and Authority" heading, reinforcing the principle that Members shall make best efforts to conduct searches in full compliance with applicable laws, policies, and procedures, both for the purpose of respecting individuals' rights as well as for maintaining the admissibility of any evidence seized in a resulting prosecution.
- (3) The section "Owner Present" was deleted. Previously, it said that "searches will, wherever possible, be conducted in the presence of the owner, lessee of the property, agency of the owner or lessee or a person whom the Member is satisfied has the authority to represent the owner or lessee." A survey of best practices revealed that having the owner or lessee of a property present during a search often presents officer safety issues.
- (4) The section "Damage" was moved from Policy to Procedures under "Part F: Executing Search Warrant" where there already existed another section guiding Members on what to do if property has been damaged during a warrant execution.

The key changes to the policy sections of policy chapter OD130 are summarized below, and the new policy is attached as "[Appendix D](#)".

- (1) A number of definitions were added or amended, including:
 - a. "*Canadian Charter of Rights and Freedoms*";
 - b. "*Court Liaison Unit*";
 - c. "*Criminal Code*";
 - d. "*Form 5.2 Report to a Justice*";
 - e. "*Found Property*";
 - f. "*Found Property as Evidence*";
 - g. "*Items obtained by consent*";
 - h. "*Member*";
 - i. "*Metro Vancouver Transit Police (Transit Police)*";
 - j. "*Relinquished Property*";
 - k. "*Regulated Item*";
 - l. "*Safekeeping Property*";
 - m. "*Seized Property*";
 - n. "*Seizure*"; and
 - o. "*Transit Police Personnel*".



- (2) Two sections were added under the “General” heading, elucidating the *Charter* rights against unreasonable search and seizure as well as the federal and provincial statutes governing detention, disposal, forfeiture, and return of seized property.
- (3) A section was added under the “General” heading stating that Special Provincial Constables (i.e. Exhibit Custodian and Court Liaison Unit) and Designated Law Enforcement Officers (“CSOs”) may assist in the care, custody, and control of seized items and evidence, as permitted within their respective legislative authority.

Policy Approval

The Police Board’s review and approval of the policy sections only of policy OD120 – Search and policy OD130 – Seizure are requested. The proposed edits for these policy sections were reviewed and endorsed by the Executive in October 2023. *Note: Under Chief’s authority, the Chief Officer has already approved the procedural sections within this policy chapter (text is grayed out).*

Chief Officer Suzanne Muir

Author: Emmett Choi, Policy and Planning Advisor

Submitting Senior Management Team Member: Stephen Crosby, Senior Manager
Strategic Services



TRANSIT POLICE

POLICY AND PROCEDURES MANUAL AMENDMENT – REVIEW SUMMARY

| | | |
|---|--|--------------------------------|
| POLICY CHAPTER: OD120 – Search | | DATE: November 21, 2023 |
| Prior to submission of Policy Manual amendment to the Police Board, the following persons reviewed or were consulted on the new or amended Policy Chapter | | |
| Endorsed by: | | Supported |
| 1. | Chief Officer | Yes |
| 2. | Deputy Chief Officer Operations | Yes |
| 3. | Deputy Chief Officer Administrative Services | Yes |
| Others Consulted: <i>(as applicable to the policy content/Executive direction)</i> | | |
| <ul style="list-style-type: none"> • Inspector Patrol Section • Inspector Administrative Support Section • Senior Legal Counsel • Senior Manager Risk and Analytics • Staff Sergeant Investigation Support Section • Sergeant General Investigation Unit x 2 • Corporal Community Engagement Team (Appendix only) • Constable Community Engagement Team x 3 (Appendix only) • Senior Policy and Planning Advisor • Policy and Planning Advisor (<i>Review Lead</i>) | | |



TRANSIT POLICE SEARCH

Effective Date: May 9, 2005

Revised Date: Proposed to Police Board - November 21, 2023

Reviewed Date:

Review Frequency: Annual¹

Office of Primary Responsibility: Deputy Chief Officer Operations

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¹ BC Provincial Policing Standard 6.1.1 – Promoting Unbiased Policing requires that procedures relating to seizure must be examined annually "to ensure consistency with legislative amendments and applicable case law related to right to equal treatment, protection and benefit under the law".

² Use **CTRL + HOME** to return to the Table of Contents from anywhere in this document.

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POLICY

Definitions

CDSA – *Controlled Drugs and Substances Act* (SC 1996, c. 19) and regulations, as amended from time to time; this includes the *CDSA (Police Enforcement) Regulation*, (SOR/97-234).

CFCSA – *Child, Family and Community Service Act*, RSBC, c. 46, as amended from time to time.

Criminal Code – *Criminal Code of Canada*, RSC 1985, c. C-46, as amended from time to time.

Dwelling-house – As defined in the *Criminal Code*, the whole or any part of a building or structure that is kept or occupied as a permanent or temporary residence, and includes: (a) a building within the curtilage of a dwelling-house that is connected to it by a doorway or by a covered and enclosed passage-way, and (b) a unit that is designed to be mobile and to be used as a permanent or temporary residence and that is being used as such a residence.

Member – For the purpose of this policy, Designated Constable (all ranks), Designated Law Enforcement Officers, Deputy Chief Officers, and Chief Officer of the Transit Police.

Metro Vancouver Transit Police (“Transit Police”) – The operating name of the South Coast British Columbia Transportation Authority Police Service (Designated Policing Unit and Designated Law Enforcement Unit).

General and Authority

1. Members will make best efforts to conduct searches in full compliance with the *Charter of Rights and Freedoms* (“*Charter*”) s. 8 right of individuals to be secure against unreasonable search or seizure, as well as federal and provincial statutes and authorities provided by common law, and ensure that their searches comply with Transit Police policy and procedures.
2. Searches and seizures by Members are to be conducted lawfully and in a reasonable manner so that evidence seized will be admissible in any resulting prosecution.
NOTE: The role of the Designated Law Enforcement Officer is limited and specific to their authority for search incidental to arrest.
3. When a search is undertaken without a warrant, the requirements of applicable legislation (i.e., *Criminal Code*, *CDSA*, *CFCSA*) and the common law will be met before the search is executed.

Coordination with JPDs for Searches of a Dwelling-house

4. In relation to searches of dwelling-houses, other than searches of TransLink property, Transit Police will notify the Jurisdictional Police Department (“JPD”) and when applicable, coordinate participation in a search.

Protection of Sources and Techniques

5. Confidential sources or sensitive operational techniques will not be revealed or compromised through the process of obtaining a judicial authorization.

Based On Substantiated Information

6. Searches will not be conducted based solely on an anonymous telephone tip or unsubstantiated information provided by a source of unknown reliability.

Search Participants

7. Participants in a search will be limited to
 - (1) The person named in the warrant, and
 - (2) Other peace officers necessary to conduct the search.
8. The conduct of Members carrying out a search will be of the highest order in terms of conduct, demeanour and respect for the individual and the individual's property.

Discontinuation of Search

9. A search will be discontinued when the grounds or belief upon which the search was initiated/warranted no longer exists, the warrant expires, or the items described in the warrant are seized.

[See also Transit Police policy chapter [OD130 – Seizure](#)]

PROCEDURES

PART “A” – SEARCHES – GENERAL

10. Section (“s.”) 8 of the *Canadian Charter of Rights and Freedoms* states “Everyone has the right to be secure against unreasonable search or seizure”. For a search to be reasonable:
 - (1) The search must be authorized by law;
 - (2) The law itself must be reasonable; and
 - (3) The manner in which the search is conducted must be reasonable.

Immunity from Search

11. Property of diplomatic missions, consular posts, representatives of the United Nations and certain international organizations may enjoy immunity from search.

PART “B” – SEARCHES WITHOUT WARRANT

Search of a Person Incident to Investigative Detention

12. Investigative detention provides the associated authority for a Member to search a detainee, if the following conditions are met:
 - (1) The underlying detention is lawful, i.e., based on the Member having a reasonable suspicion supported by a constellation of objectively discernible and articulable facts; and
 - (2) The Member has reasonable grounds to believe that the detainee may present an imminent risk to themselves, the Member, or the public (the resultant search to be limited to addressing the potential risk).

NOTE: See s. 78 of this policy for more on Protective Searches.

Search of a Person Incident to Lawful Arrest

[See also Transit Police policy chapter [OD080 – Arrests](#)]

13. Common law provides that Members may search an arrested person, or anything within their control and which is incidental to the offence, without the need for a Warrant. (For example, this may include items or bags in the arrestee's possession or under their control.)

NOTE: The scope of a vehicle search will depend on the reason for arrest and would only be limited to areas within reach of the arrested person. Most vehicle searches will require a warrant.

14. The valid objectives of the search incidental to a lawful arrest include:
 - (1) Ensuring the safety of the police and the public;
 - (2) Obtaining evidence; or
 - (3) The discovery of evidence related to the arrest, which can be used at the arrested person's trial.
15. Where an arrest is unlawful, any search conducted pursuant to that arrest (and evidence gathered) would be itself unlawful.
 - (1) Members are to be mindful that whether the scope of a search is reasonable is determined by the specific offence and the nature of the anticipated evidence to be found, and an unusually expansive search (including any significant disruptions causing a delay of the search) will require a detailed written explanation from the arresting Member to rebut the inference that the search was conducted in an unreasonable manner.

16. Subsequent to search incident to lawful arrest, the Member may seize:

- (1) Anything with which the arrested person may injure themselves or others;
- (2) Anything that may aid the arrested person's escape; and
- (3) Any evidence to support a contemplated charge.

NOTE: See s. 78 of this policy for more on Categories of Search of Persons (Protective Search, Frisk Search, Strip Search and Internal Cavity Search).

Search with Consent

17. A Member may with a person's consent search that person or anything under their control, including their vehicle and dwelling-house.

18. To be valid, the consent must be an informed and voluntary consent.

19. The person consenting must be informed by the Member, in language that the person can understand, of the following:

- (1) Their right to refuse consent;
- (2) Their right to revoke consent at any time;
- (3) The objective and scope of the search;
- (4) What is being searched for; and
- (5) Their foreseeable legal jeopardy should the search result in discovery of the item(s) subject to the search.

20. A consent does not confer any special authority beyond that which flows from it:

- (1) A consent cannot authorize the search for or taking possession of property over which the person consenting has no authority (e.g., a landlord cannot authorize a search of a tenant's bedroom); and
- (2) A consent does not authorize a search beyond the defined parameters of the consented search.

21. Members will document in the General Occurrence Report ("GO report") how the consent was obtained and all subsequent actions taken. The person consenting to the search must do so unequivocally, either verbally or in writing. (Consent obtained in writing and signed by the consenting person while not required by law may provide clear evidence of an informed and voluntary consent.)

- (1) Where possible, Members will complete and have the consenting person sign Transit Police [Form OZ0320 – Consent to Search](#). (If the form is not available, then the Member may have the person sign consent in the Member's notebook.)

- (2) Where consent is given verbally, the Member will record the person's verbal consent using the audio component of the Axon® "Capture App". Members will also record all of the details of obtaining the consent and subsequent actions in their notebook.
 - (3) A copy of the Member's notes and the consent form (if one was used) will be submitted as attachments to the GO report.
22. Where any person has consented to a search and subsequently revokes that consent, the Member will discontinue the search. Any evidence found while the search was authorized may be used for prosecution purposes or to obtain a judicial authorization.

Search without a Warrant or Consent

23. Search without a warrant or consent should only be undertaken when circumstances exist that makes obtaining a search warrant impractical or impossible and generally falls into two categories:
- (1) Protection of life; or
 - (2) Protection of property (evidence).
24. The reasons for conducting a search without a search warrant will be recorded in the Member's notebook, in the event that the search is challenged as unreasonable.
25. The Member undertaking this type of search must ensure that:
- (1) Prior to the search, there were reasonable grounds to believe that an offence had been committed and there was evidence to be found at the place of the search;
 - (2) It was not practicable to obtain prior authorization; and
 - (3) Authority to search exists pursuant to case law, common-law or statutory authority.

Search of Dwelling-house to Preserve Life and Prevent Serious Injury

26. A Member may force entry into a dwelling-house, to prevent death or serious injury if there are reasonable and probable grounds, to suspect an emergent situation exists where:
- (1) The circumstances involve the preservation of the life of someone within the dwelling-house or the prevention of serious injury to a person in the dwelling-house (i.e., a 911 call received that a person is in distress); and
 - (2) Proper announcement has been made by Members prior to entry, providing it is safe to do so. Proper announcement is defined as:
 - a. Presence,
 - b. Authority, and
 - c. Purpose.

Search to Preserve Evidence

27. S. 487.11 of the *Criminal Code* provides authority to enter a place, including a dwelling-house, for the purposes of preserving evidence (of an indictable offence), if conditions for obtaining a warrant under ss. 487(1) or ss. 492.1(1) exist but exigent circumstances make it impracticable to do so. Members are expected to be familiar with the provisions of these sections.
28. A Member conducting warrantless search on s. 487.11 authority, solely for the preservation of evidence, must advise their Supervisor prior to entry.
29. On the basis of the police common law and statutory duty to apprehend criminals, a Supervisor may authorize a Member to make warrantless and forced entry into a private place to search for and arrest an individual (after the Member has articulated why they cannot wait for a warrant), if the following conditions are met:
 - (1) The Member or Supervisor has reasonable and probable grounds to believe the individual sought can be lawfully arrested without warrant; and
 - (2) The Member or Supervisor has reasonable and probable grounds to believe the individual sought is within the premises, the premise is not a dwelling-house, and proper announcement is made prior to entry.

Statutory Powers of Search – Child Protection

30. A Member, having reason to believe that a child's health or safety is in immediate danger may, in accordance with s. 27(2) of the *Child, Family and Community Service Act*, and by force if necessary, enter any place to take charge of a child and must then immediately deliver the child to an authorized representative of the Ministry of Children and Family Development.

Fresh/Hot Pursuit and Emergent Situations Allowing Warrantless and/or Undeclared Entry into a Dwelling-House

31. 'Hot pursuit' is a common law power that authorizes a police officer in direct foot pursuit of a person, whom they may lawfully arrest, to use force to enter the dwelling-house in which the fleeing suspect has taken refuge, but Members may only exercise that authority if their pursuit is continuous and conducted with reasonably persistent diligence so that the pursuit and capture, including the entry into the dwelling-house, may be characterized as one continuing action. [Refer to Transit Police policy chapter [OA130 – Pursuits](#) regarding a vehicle pursuit.]
32. The 'hot pursuit' authority does not provide unqualified endorsement to force entry into a dwelling-house in every case, and before forcing entry the Member will need to consider the specific circumstances, including the gravity of offence, as well as an officer-safety risk assessment.

PART “C” – JUDICIAL AUTHORIZATIONS

Search Requiring Judicial Authorization

33. Members are required to obtain judicial authorization (i.e., warrant) to conduct a search that intrudes on a person’s privacy rights protected in accordance with s. 8 of the *Charter*, or as required by law, unless they are confident that a common law authority for search is available.
34. Members are to seek judicial authorization with statutory provisions provided by federal and provincial statutes that include, but are not limited to, the *Criminal Code*, the *CDSA*, the provincial *Offence Act* and *Liquor Control and Licensing Act*. (Examples include search warrants, entry warrants, bio-specimen warrants and production orders.³).
35. When determining whether a search will disturb a person’s reasonable expectation of privacy, a Member will, among other things, consider whether the person has:
 - a. Possession, control, and/or ownership of the property or place; and
 - b. The ability to regulate access to a place.
36. Members must ensure they are using the appropriate forms for each judicial authorization, and that those forms are up-to-date for the warrant or order being sought.

Considerations before Applying for a Judicial Authorization

37. When determining if a judicial authorization is required, Members are to consider the following:
 - a. Are there reasonable grounds to believe that an offence has been or will be committed;
 - b. Is a judicial authorization required, and in what form;
 - c. Will the judicial authorization advance the investigation;
 - d. What are the requirements of the particular warrant or order that is to be sought; or
 - e. Is further investigation needed to satisfy those requirements?

Ex Parte Applications and the Importance of Full and Fair Disclosure

38. An application for a warrant or other judicial authorization is made “ex parte”, meaning the individual whose privacy right will be disturbed by the warrant is not present; therefore it is essential that a Member swearing an Information to Obtain (“ITO”) provide full and fair disclosure of all relevant and material facts, including any fact or information adverse to the theory of investigation that may result in the Judge or Justice declining to issue the warrant.

³ For more types of Judicial Authorizations, refer to [Judicial Authorization Chart - Criminal Law Notebook \(criminalnotebook.ca\)](http://criminalnotebook.ca).

39. The ITO is a sworn statement that sets out the circumstances relied upon by the Member, establishing for the Judge or Justice's granting of a warrant, the Member's requisite belief and details of:
- a. The offence being investigated, the date when, and geographical location where, the offence occurred;
 - b. The evidence and/or information obtained to date supporting the Member's theory of the offence, including witness/suspect statements and admissions, confidential informant information, forensic/medical reports, and business records and other documents;
 - c. The scope of the anticipated search, including the legal address or geographic co-ordinates; and
 - d. Specifics as to the things sought, and reasons the things sought will be found within the anticipated scope of the search, and will afford evidence of the offence.
40. The ITO may be sworn before a Judge or Justice in-person or by telecommunication.
41. The Member will prepare and provide the Judge or Justice a draft authorization that contains the following recitation set out in Form 1 of the *Criminal Code*:
- a. That 'Police Officers of British Columbia' be authorized to conduct the search;
 - b. The specific location/legal address to be searched;
 - c. The items subject of the search;
 - d. The date and time-frame of the requested entry commencing the search; and
 - e. Any other information deemed necessary for the issuance of a warrant authorized by the specific statutory authority.

Confidential Informants

42. Members relying on the information provided by a Confidential Informant ("CI") in their ITO must have their ITO reviewed and approved in writing by the Transit Police Source Coordinator.
43. Members are required by the legal doctrine of "informer confidentiality" to protect the identity of a CI and will not provide any information that may either directly or indirectly reveal the identity of the CI.
44. Due to the CI's anonymity, Members must provide the authorizing Judge or Justice with information that will allow for an informed assessment of the CI's credibility and the reliability of the information provided. Members will follow Transit Police policy chapter [OD050 – Confidential Sources](#) on what to include or not in the ITO.

Crime Stoppers Tips

45. An ITO may include information provided by a Crime Stoppers tip; however, as the Crime Stoppers “tipster” provides information on an absolutely anonymous basis and the credibility of this type of informant is impossible to assess, the information the tipster provides adds little value to an ITO in the absence of compelling corroboration.
46. Members will not include the exact phraseology used by the tipsters in providing their information, as such duplication may compromise the tipster’s confidential identity, thus placing the tipster’s safety in peril.

[Refer to Transit Police policy chapter [OM090 – Crime Stoppers](#) for additional guidance, including applying to seal the information.]

Supervisory Approval

47. To ensure that all requirements are met before presentation to a Judge or Justice, the draft ITOs applied for by Members are to be reviewed by a Supervisor prior to application, with written approval to be documented digitally or in hard copy.
48. The Supervisor will document their approval by initialing and dating the file copy of the ITO digitally or in hard copy, or, at a minimum, note the approval in their notebook.

Warrant to Search

49. A search warrant under the *Criminal Code* may be issued for any offence described in the *Criminal Code* or any other Act of Parliament that does not provide specific legislation for obtaining a search warrant.
 - a. If an Act of Parliament has a specific provision authorizing the issuance of a search warrant, the specific legislation is to be used (e.g., *CDSA*).
 - b. A warrant to search is to correspond in all material respects with the wording on the ITO.

Subsequent Application

52. Where a previous application for a judicial authorization has been denied, a Member’s initial paragraph of a subsequent application will provide the following:
 - (1) The name of the Judge or Justice who denied the application and the date that the Judge or Justice did so;
 - (2) The reasons why it was denied;
 - (3) What, if anything, the Member has done to address those reasons;
 - (4) Any relevant updates in the investigation that may affect the prospect of the issuance of the judicial authorization being sought; and

- (5) The previously denied judicial authorization and ITO attached to the current ITO as an appendix.

Corrections

50. Any corrections to the warrant to search must be approved, amended and initialled by the issuing Judge or Justice, before execution.

PART “D” – SEALING A JUDICIAL AUTHORIZATION AND/OR INFORMATION TO OBTAIN A SEARCH WARRANT

Based On Substantive Grounds

51. Public policy is in favor of openness with respect to judicial acts; therefore, applications for sealing orders are to be based on substantive grounds, justifiable in Court.
52. The Member must base their Application to Seal on objectively-discernible detailed facts and not to non-specific generic concerns, and the *Criminal Code* s. 487.3 requirements for prohibiting access to and disclosure of any information relating to the issuance of the warrant on the basis that disclosure would:
 - (1) Compromise the nature and extent of an ongoing investigation;
 - (2) Compromise the identity of a CI;
 - (3) Endanger a person engaged in particular intelligence-gathering techniques and thereby prejudice the interests of an innocent person; or
 - (4) For any other sufficient reason.

Applying To Seal

53. At the time an ITO is sworn, the Member swearing the Information will need to inform the Judge or Justice that they will be applying to the Court to seal the search warrant and the ITO.
54. To facilitate the sealing of search warrants, the following guidelines are to be considered:
 - (1) The paragraphs in the “grounds for belief” section of the ITO should be numbered to facilitate editing, should a Judge or Justice determine that not all paragraphs warrant sealing; and
 - (2) Members should be prepared in advance to provide a list of those paragraphs that they wish sealed; and
 - (3) Members should be prepared to provide specific details of the substantive grounds on which it is believed the release of information would not be in the interests of the public.
55. Members should seek to draft their ITO in a form and manner that removes necessity of sealing orders to remain in force indefinitely.

56. Sealing orders may be granted for a limited duration; therefore, Members are to include any requested conditions on eventual access to and disclosure of the information. If the duration of a granted sealing order does not suffice, a Member will consult with Crown Counsel and make an application to vary the order.

Sealed Information Ordered Open

57. If at trial, Crown has not already sought and obtained an unsealing order for a sealed information, and has not then vetted the document, a Member appearing in court when an application by an accused is made to open a sealed information, is to request an adjournment to allow the Member's Supervisor to consult with Crown Counsel to determine how the matter should be resolved, including:
- (1) By way of vetting the sensitive information;
 - (2) A possible stay of proceedings; or
 - (3) If related to compromising the confidential identity of a source, considering a witness-protection approach.
58. Members must give paramount consideration to the fact that police have a trust relationship with any CI and the Supreme Court of Canada has stated that there are very few, if any, more important obligations imposed on police and the Crown than the protection of a CI, including maintaining an on-going prosecution.

PART "E" – EXECUTING WARRANT

Police Officer in Charge

59. During the search, the responsibilities of the police officer in charge will include:
- (1) Producing identification to the occupants involved as soon as practical;
 - (2) Serving a copy of the search warrant and Form 5.1 Notice of Execution ("Notice of Execution");
 - (3) Detaining all occupants of the premises, ensuring that they are all convened in one area until order is established; and
 - (4) Ensuring that all persons detained or arrested are advised of the applicable provisions under the *Charter* and allowed to place a telephone call as soon as practicable.
60. Under the *CDSA*, the Member swearing the information is the only one required to be named on the warrant. That same Member or their designate will also be the 'police officer in charge'.
61. In the event that Members are working with other peace officers from an outside agency and are searching under the authority of the latter's Warrant, the officer holding the warrant will be designated as the police officer in charge.

[Refer to s. 71 of this policy for additional requirements of the police officer in charge.]

Risk Assessment

62. Members wishing to execute a search warrant will be required to conduct a risk assessment and an operational plan where deemed necessary by the assessment.
63. Members will provide the completed risk assessment to the Supervisor, including an outline of the potential risks associated with the search and strategies to mitigate any risks, and appropriate tactical response. The assessment includes, but is not limited to:
 - (1) Number of occupants in the target premises;
 - (2) Occupants names and descriptions;
 - (3) Criminal record checks of the occupants;
 - (4) History of violence of the occupants, if any;
 - (5) Presence of weapons in the target premise;
 - (6) Information provided by informants or other sources;
 - (7) Whether surveillance information, informant information or any other information relied upon is recent or dated;
 - (8) Results of previous surveillance;
 - (9) Expected arrival or departure of other occupants;
 - (10) Expectation of dangerous circumstances, including the grounds for the expectation;
 - (11) Potential for the destruction of evidence;
 - (12) Whether the entry should be with or without weapons drawn;
 - (13) Whether the circumstances justify the use of extra force in terms of special weaponry or personnel;
 - (14) What factors affect whether entry should be announced or unannounced;
 - (15) The effect of the use of visible police identification, such as clearly lettered jackets or vests; and
 - (16) If the circumstances may require the assistance of the JPD.

Search Approval

64. The Supervisor will consider the risk assessment and may wish to consult with the Watch Commander, Duty Officer or Inspector(s) of applicable sections. The Supervisor will

document their directions and approval regarding the risk assessment and search warrant execution.

65. If the Member's Supervisor is unavailable, the Watch Commander will assume the role of the Supervisor in relation to consideration of the risk assessment and approval for the search warrant execution.
66. Prior to Transit Police execution of a search warrant in a dynamic or unannounced entry, the Supervisor or Watch Commander will consult with the JPD Duty Officer and their designated Emergency Response Team.

Preparation for Search

67. Prior to the search, the police officer in charge or designate will:
 - (1) Prepare an operational plan, using [Transit Police Form OZ090: Operational Planning Report](#), if a risk assessment has determined that there is a higher level of risk.
 - (2) Conduct a briefing session to ensure that all Members of the search team are familiar with:
 - a. the operational plan, if one has been prepared,
 - b. their specific duties,
 - c. Identified potential dangers, and
 - d. Areas requiring specific attention; and
 - e. Contingency plans as deemed appropriate (e.g., BC Ambulance standby, use of K9 units).
 - (3) Ensure that all Members:
 - a. Are wearing body armour and are suitably equipped for anticipated operational exigencies;
 - b. Can be visually identifiable as police officers (except where the risk assessment indicates that high visibility could pose a risk to the Members executing the Warrant);
 - c. Have the necessary equipment (e.g., exhibit containers, cameras, flashlights) required for the search;
 - (4) Designate one Member as the exhibit person; and
 - (5) Ensure that the Watch Commander is informed of the search and fully aware of the circumstances. (The Watch Commander will, as is appropriate, inform the Duty Officer and other Inspectors of applicable sections.)
68. Subject to exigent circumstances, a Supervisor is to ensure that no less than two hours of continuous pre-warrant surveillance is conducted up to the time of the execution of the warrant where a dynamic or no-knock entry is anticipated or where a Duty Officer or Inspector is required to approve the risk assessment and use of force required in executing a warrant.

Declared Entry

69. Before entering the place to be searched, Members are to make a proper announcement by:

- (1) Announcing presence and making a demand for entry (presence);
- (2) Identifying themselves as police officers (authority); and
- (3) Stating the purpose for which entry is demanded (purpose).

Use of Force

70. A Member may, when acting under a search warrant, or other lawful authority, use such force as is reasonably necessary to effect an arrest or to gain entry to a premises, receptacle, or other thing that is the subject of the warrant.

[See also Transit Police policy chapter [OH020 - Use of Force](#)]

Warrant On Hand

71. The Member must:

- (1) Have the warrant, a copy of it, as well as a Form 5.1 Notice of Execution, in their possession during the search; and
- (2) Produce the warrant and Notice of Execution, and allow the occupants or owner a reasonable amount of time to examine the document; or
- (3) Leave a copy of the warrant, Notice of Execution and business card of the police officer in charge of the search, in a visibly-prominent place within the premises, if the premises to be searched are unoccupied at the time of the search.

Seizure

72. Members may seize:

- (1) Articles described in the warrant to search; and
- (2) Articles not described in the search warrant, pursuant to the *Criminal Code*, where the Member believes on reasonable grounds that the articles have been obtained by, or used in, the commission of an offence.

[Refer to Transit Police policy chapter [OD130 – Seizure](#)]

Presence of Media

73. The presence of media has been determined to render a search unreasonable and may result in a stay of proceedings with respect to any resulting prosecution; therefore, Members will never advise media of an upcoming search execution. If media are aware of a search execution and are at the location, Members will remove them to a distance where they will

not interfere with the execution or be able to intrude on the privacy of the occupants of the premises.

Damage

74. If damage is caused to premises being searched and the owner or occupant wants to seek restitution, Members will inform the owner or occupant that the process to request restitution is to write a letter to the Chief Officer.
75. Any damage caused, or alleged to have been caused, during a search will be reported to the investigator's Supervisor:
 - (1) The Supervisor will submit a report through the chain of command to the Chief Officer or designate (if the information is included in the GO report, a copy will suffice);
 - (2) A photograph of the damage must be taken;
 - (3) If there is an immediate need to have the damage repaired (e.g., premise left insecure or door is inoperable), the investigators will notify their immediate Supervisor who may request the damage be repaired; and
 - (4) The Supervisor will hold a de-briefing session at the conclusion of the search.

Unexecuted Warrants

76. An unexecuted warrant to search will be returned to the issuing Judge or Justice for cancellation.

Search Warrant Execution – Special Considerations

77. Members will consult with Transit Police Senior Legal Counsel regarding any proposed search of a law office, media outlet or other special place (i.e., diplomatic missions, consular posts etc.).

PART “F” – SEARCH OF PERSONS

[See also Transit Police policy chapters [OD080 - Arrests](#), and [OI010 - Prisoner Care, Control and Transportation](#), and [SOP88 – Interactions with Gender Diverse Persons](#)]

Categories of Search

78. There are four categories related to searches of a person:
 - (1) Protective Search – A protective search involves patting down a person who has been detained by police when there are reasonable grounds to believe the person may be in possession of an item that poses a safety risk. The scope of the search is limited to exterior patting of clothing such as pockets, waistband or areas that may reasonably conceal such items. This search may also be described as a “safety search”, as that is the purpose and objective.

- (2) Frisk Search – A frisk search involves a thorough search of an arrested person's clothing, pockets, handbags or any other object in their possession that may contain a weapon or evidence related to the offence for which they were arrested. Police have the lawful authority to search all arrested persons and the area within their immediate control at the time of arrest. Frisk searches may be more expansive to the degree justified by the circumstances, which Members can support through thorough articulation of their reasoning.
- (3) Strip Search – *R. vs. Golden [2001]* established what constitutes a strip search, which is a thorough search of a person's clothing and body including the removal or rearrangement of some or all of the clothing of a person so as to permit a visual inspection of a person's private areas, namely, genitals, buttocks, breasts or chest, or undergarments. The Supreme Court notes that strip searches "represent a significant invasion of privacy and are often humiliating, degrading and traumatic" and therefore require "a higher degree of justification in order to support the higher degree of interference with individual freedom and dignity."

When considering whether a strip search is justified, the Supreme Court has stated, "*In addition to reasonable and probable grounds justifying the arrest, the police must establish reasonable and probable grounds justifying the strip search,*" and "*the police must establish they have reasonable and probable grounds for concluding that a strip search is necessary in the particular circumstances of the arrest.*"

- (4) Body Cavity Search – A body cavity search involves a search of bodily orifices and will only be conducted by a medical practitioner.

Precautionary Measures

79. Members who conduct a search of a person will take appropriate precautions to protect themselves and others from possible biohazards (e.g., wearing protective gloves, protective glasses and using appropriate search techniques). Refer to Transit Police policy chapter [OG040 - Communicable Diseases](#).
 - (1) Members will be mindful that, as of January 31, 2023, in accordance with the exemption granted to the province under the CDSA, when a Member arrests and detains an adult subject and transports them to the Jurisdictional Police detention facility, the Member will treat as property the personal drugs possessed by the subject at the time of arrest which fall under the exemption. The drugs will be processed and held for safekeeping according to the specific procedures of the Jurisdictional Police. This provision will continue until the exemption expires or is revoked by the federal government. Accordingly, Member wearing of protective personal equipment is important when conducting searches of persons.
80. Any Member who suffers a puncture wound or comes in contact with bodily fluids from a person suspected to be in a high-risk category will follow Transit Police policy chapter [OG040 - Communicable Diseases](#) regarding seeking of medical attention and reporting of the exposure.

Gender of Searcher

81. A Member will not search a person of another gender, other than protective or frisk searches, unless there is an immediate risk of injury or escape.
82. Where a person identifies as being gender diverse, or a Member has a reasonable belief that the person is gender diverse, the Members will ask the person about which gender of officer they would prefer to be searched by, and facilitate that request (assuming that the availability of the requested officer's gender is not an issue). The Member who conducts the search must then make a notation in their notebook of the stated gender preference.

NOTE: A gender diverse person may request that a split search be performed and may specify the gender of Members to search either the upper or lower portions of their body. For example, a female member to search the upper portions of their body and a male Member to search the lower portion of their body (or vice versa).⁴

Strip Searches

83. As set out in the definition above in s. 78(3), Members will only consider a strip search of an arrested person if they have formed reasonable grounds to suspect that the arrested person has weapons, contraband, or evidence that may be discovered by conducting such a search. Members will consider the following factors when deciding whether reasonable grounds exist to request or conduct a strip search:
 - (1) The reason for the arrest/charge and the legal grounds;
 - (2) Information received from other persons, including the arresting or transporting officers, witnesses, other prisoners etc.;
 - (3) The arrested person's demeanor and behavior;
 - (4) The arrested person's criminal history and information retrieved from police records;
 - (5) Information provided by the arrested person; and
 - (6) The likelihood of discovering weapons or evidence related to the offence for which the person was arrested.
84. Strip searches will only be conducted at a JPD detention facility. The Member will consult with the Officer in Charge of the detention facility to request and have authorized a strip search before it is conducted at the detention facility. Members will follow the protocol of the JPD detention facility regarding carrying out of a strip search.
85. A field strip search will only be conducted when exigent circumstances exist and a Member has reasonable grounds to believe that there is a demonstrated necessity and urgency to strip search in the field for weapons or objects that may be used to threaten the safety of the arrested person, Members or others.

⁴ In accordance with BC Provincial Policing Standard 6.1.1 – Promoting Unbiased Policing.
South Coast British Columbia Transportation Authority Police Service Policies and Procedures Manual

- (1) A field strip search must be authorized by the Watch Commander or Duty Officer.
 - (2) There is a limited exception to these exigent requirements described above in the case of field strip searches for drugs when:
 - a. A Member has reasonable grounds to believe an arrested person is in possession of a controlled substance; and
 - b. There is a demonstrated necessity and urgency to strip search in the field to prevent the destruction and/or loss of evidence, or ensure the health and safety of the arrested person.
86. Strip searches and field strip searches of arrested persons will follow these guidelines⁵, unless the policy of the JPD detention facility applies:
- (1) The search conducted in a manner that ensures the health and safety of all involved;
 - (2) Be conducted by Members of the same gender as the person being searched, limited to two Members being present (for Member safety), unless safety concerns create a necessity for additional Members to be present (consider direction for gender diverse person discussed earlier);
 - (3) Be conducted in private, in such a way that no member of the public is able to view the search, or no other Member can view the search who is not involved in conducting the search;
 - (4) The search must be minimally invasive (e.g., pulling back an article of clothing to recover evidence);
 - (5) Be conducted in phases so that only one portion of clothing is removed or adjusted at a time, to minimize the person's exposure and ensure the person is never fully naked;
 - (6) Offer the person the opportunity to remove their clothing in order to conduct the strip search. If the person declines, the reasonable force necessary is to be used by the Member to conduct the strip search;
 - (7) The search will only involve a visual inspection of the person's private areas, without any physical contact;
 - (8) When a person has been strip searched and the circumstances reveal that material located in or near a body cavity should be seized, the person being searched is to be given the opportunity to remove the material themselves or the advice and assistance of a qualified medical professional will be sought to ensure that the material can be safely removed (also refer to sections on Body Cavity Search that follow in this policy);
 - (9) Some gender diverse people wear certain items (i.e., breast forms, undergarments, wigs or prosthetics) to support their gender identity. This may include items that flatten, conceal, or otherwise alter private areas of the person's body. If a search of these items is necessary, then the items are to be returned to the person after the search

⁵ Consistent with R. v. Golden, S.C.R., 679, 2001 SCC 83 Para. 101 (1 through 11).

has concluded, provided that there is no evidentiary or reasonable safety reason to not do so (e.g., used for self-harm or as a weapon).

[See also Transit Police [SOP88 – Interactions with Gender Diverse Persons](#)]

87. Members will articulate the reason for the strip search or field search and document the details of any strip search or field strip search in their notebooks and GO report, including a request to a Supervisor/Duty Officer or the Officer in Charge of the detention facility (or other detention staff) in relation to a request for a strip search of a person being booked in by Transit Police, and associated authorizations granted.⁶

Body Cavity Searches

88. Body cavity searches (e.g., anal or vaginal searches) are a great intrusion of a person's privacy and dignity. This type of search will only be conducted by a qualified medical practitioner, in hospital, and in the following circumstances:

- (1) When there is a concern for the person's immediate medical well-being;
- (2) When there are reasonable grounds to believe that narcotics, weapons, or contraband are being carried in a body cavity of the person;
- (3) In cases of considerable significance and the merits of the case outweigh the intrusive nature of the cavity searches; or
- (4) There is a threat to the safety of Members or others⁷.

89. A body cavity search must be authorized by the Transit Police Duty Officer or higher rank and the Duty Officer or designate will coordinate with the JPD detention facility to have the search conducted, following the JPD policy.

- a. The Duty Officer will enter all pertinent details related to the request and authorization for the body cavity search into their notebook.

90. Where the criteria for conducting a body cavity search are not met, Members will not conduct any internal search as a "consent search".

91. Where Members have received authorization for a body cavity search the following procedures will apply:

- (1) Member will lodge the suspect in the detention facility (dry cell) under continuous observation by both a cell equipped with a monitor and by an officer (preferably of the same gender) instructed to maintain constant visual observation;
- (2) The detention facility Officer in Charge will verify the authorization of the body cavity search with the named Duty Officer;

⁶ In accordance with BC Provincial Policing Standard 6.1.1 – Promoting Unbiased Policing.

⁷ In accordance with BC Provincial Policing Standard 6.1.1 – Promoting Unbiased Policing.

- (3) The detention facility Officer in Charge will have the detention facility Nurse, if available, assess the prisoner if they are drug affected or have a medical concern;
 - (4) Members will provide the arrested person with the opportunity to remove the item themselves, if the detention facility Nurse deems it safe to do so;
 - (5) Members will inform the arrested person that a cavity search will be performed and why;
 - (6) The detention facility Officer in Charge (or designate) to contact the hospital that will conduct the procedure;
 - (7) Members will transport the arrested person via BC Ambulance, with an escorting Member in the ambulance, to hospital;
 - (8) Members will request the attendance of a physician of the same gender as the arrested person or as requested by the arrested person (if practicable);
 - (9) Members will advise the physician of the specific search requested and the specific grounds for the search (Members are reminded that medical practitioners are not obliged to conduct the search on behalf of the police and will only conduct searches if there is a bona fide medical reason to do so);
 - (10) Members will take all reasonable steps to avoid or minimize the intrusiveness of the search (e.g., explaining process, offering alternatives, and providing assistance in contacting counsel); and
 - (11) A Member of the same gender as the arrested person will be present for body-cavity searches (if practicable);
92. Special care is to be used for arrested persons who have recently undergone gender-affirming (formerly "sex-reassignment") genital surgery or chest augmentation or reconstruction, in order not to impair healing. Members should inform a physician conducting an internal cavity search of any suspected surgical issue related to a transgender prisoner, in a manner which protects the privacy of the prisoner as much as possible.
93. If a charge is recommended, Members will include in the Report to Crown Counsel ("RTCC") the particulars of the body cavity search and whether or not evidence or contraband were recovered.
94. Whether or not drugs were recovered, if an RTCC is not submitted, then the Member will submit a detailed GO report containing the following information:
- a. Name of the suspect;
 - b. Brief circumstances of the case, including the incident number and the grounds for the search;
 - c. Name of the person who authorized the search;
 - d. Name of the physician who conducted the search;
 - e. Date and time the prisoner was transported to the hospital;
 - f. Date and time the prisoner arrived at the hospital;
 - g. Time the search was commenced;

- h. Time the search was completed; and
- i. What, if anything, was found in the course of the search.

NOTE: There is also an expectation that the detention facility Officer in Charge will enter all pertinent details of a body cavity search on a prisoner in their custody in their Jail NCO Electronic Log, including: the name of the person authorizing the search; the incident number; the prisoner's name; and the items searched for and whether they were located. Since Transit Police does not operate the detention facility, Members should check with the Officer in Charge to ensure that such details are being captured by the JPD.

Searches of Cultural, Religious, or Personal Items and Clothing

- 95. Transit Police recognizes the many diverse cultures and religions that co-exist in the Transportation Service Region, each with unique customs, beliefs and traditions. This may include wearing special garments, carrying cultural or religious artifacts, or observing traditional ceremonies or practices. In the course of their duties, Members may be required to search arrested persons in possession of cultural, religious or spiritual items. These items may pose unique considerations for Members when balancing the need to ensure safety, enforce the law and conduct criminal investigations, with preserving the person's dignity and respecting the sanctity of their culture. Members should be cognizant that the manner of handling certain significant items may cause offense or compromise the sanctity of the item and steps can be taken to observe cultural sensitivities.⁸
- 96. As with any search of a person, officer and public safety is paramount during a search of a person, the Member is to conduct the search in the least intrusive means required to fulfill police duties.
- 97. When Members are required to search clothing or items of religious significance, they are to refer to **Appendix "A"** for guidance on **Cultural Considerations in Searches of a Person**.

[For more information about important beliefs and practices of various religious and spiritual communities, as well as the 2SLGBTQIA+ community, please see the [Religious and Cultural Guidebook prepared by the Peel Regional Police](#)]

References:

Transit Police [Policy OD080 – Arrests](#)
Transit Police [Policy OD130 – Seizure](#)
Transit Police [Policy OF020 – Exhibit/Property Control](#)
Transit Police [Policy OH020 – Use of Force](#)
Transit Police [Policy OI010 – Prisoner Care, Control and Transportation](#)
Transit Police [SOP 88 – Interactions with Gender Diverse Persons](#)
[R. v. Golden S.C.R. 679, 2001 SCC 83](#) (strip search case law)

APPENDIX "A" FOLLOWS

⁸ In accordance with BC Provincial Policing Standard 6.1.1 – Promoting Unbiased Policing.
South Coast British Columbia Transportation Authority Police Service Policies and Procedures Manual



METRO VANCOUVER TRANSIT POLICE

CULTURAL CONSIDERATIONS IN SEARCHES OF A PERSON

The Metro Vancouver Transit Police (“Transit Police”) recognizes the many diverse cultures and religions that are represented in the Transportation Service Region, each with unique customs, beliefs, and traditions. This may include wearing special garments, carrying cultural or religious items, or observing traditional ceremonies and practices.

In the course of their duties, Members may be required to search arrested persons in possession of cultural, religious, or spiritual items. These items may pose unique considerations for Members when balancing the need to ensure safety, enforce the law, and conduct criminal investigations, with preserving the person’s dignity and respecting the sanctity of their culture. Members should be cognizant that the manner of handling certain significant items may cause offense or compromise the sanctity of the item, and steps can be taken to observe cultural sensitivities.

The overlying philosophy of balancing officer safety, legal authority, and investigation with cultural sensitivity and respect prevails. Members are encouraged to explain what they must do and why to the arrested person, to elicit cooperation and a better understanding of police responsibilities. As with any search of a person, officer and public safety is paramount. Members may consider what steps they can take to minimize a person’s discomfort and uphold Transit Police core values.

The following information⁹ serves as a guide and resource but is not an exhaustive list, nor is it intended to be prescriptive or directive. As always, Members rely on common sense, compassion, and professionalism when carrying out their duties as a police officer.

⁹ This document was adapted from similar documents of the Victoria Police Department (2018) and the Vancouver Police Department (obtained in 2023).

Indigenous Medicine Bags

A medicine bag is a small pouch containing objects of spiritual significance to its owner, such as stones, herbs, and other objects intended to bring health, protection, or healing. The medicine bag is considered sacred and traditionally the objects within should only be handled by its owner or an Elder.

If a search of a medicine bag or other religious or spiritual articles is required, the examining officer should request the owner open the pouch and manipulate the objects for visual inspection if possible and if safe to do so. Many Indigenous cultures prescribe that women in particular should not touch the contents of a medicine bag due to the belief that women are far more spiritually powerful than men, and even simply viewing the contents of a bag will alter their efficacy. Therefore, Members should make efforts to have a male officer preside over the examination of the medicine bag.

The arresting officer, with approval of the officer-in-charge of the applicable detention facility, should allow the person to keep the medicine bag in their possession while in custody if it is deemed safe to do so. If the owner cannot be permitted to retain their medicine bag, the owner should place the medicine bag into a property bag separate from other possessions, and place the property bag into the larger property bag containing their remaining possessions. This is because a medicine bag should only be handled by its owner or an Elder, and should not be touched by others. When returning the item, the owner should be permitted to remove the medicine bag from the property bag so that no one else touches it.¹⁰



¹⁰ Section was reviewed by Transit Police Indigenous Liaison Officer Cst. Rattray

Searches of a Person of the Muslim Faith

The burqa, hijab, niqab, or other covering veil is a symbol of modesty and is worn by some women in accordance with their culture or religion. Many women of the Muslim faith feel that wearing such clothing allows the wearer to connect to her religion, present only her intellectual side to the public, and protects her from being sexualized or objectified. Depending on her particular beliefs, a Muslim woman may only reveal her face or hair to her close family, and non-related men may not view her hair or face, depending on the type of covering she wears.

Niqab

A veil covering the head and face, but not the eyes, usually worn with a loose black garment (abaya) that covers from head to feet.



Hijab

A general term meaning 'to cover' or 'veil', most commonly refers to a headscarf that covers the hair and neck, but not the face.



Burka

A veil that covers the entire body and face, with a mesh window or grille across the eyes for a woman to see out of.



Chador

A full-length cloak worn by many Iranian women, typically held closed at the front by the wearer's hands or under their arms.



Dupatta

A long scarf loosely draped across the head and shoulders, common in south Asia and often paired with matching garments.



If a Member should arrest and subsequently be required to search a Muslim woman, the search should be conducted by a female officer in private; this includes revealing her face to verify her identity. After verifying her identity and searching for weapons or evidence, the arrested person should be allowed to retain her head covering during the transport to the detention facility if it is safe to do so, taking into consideration her level of compliance and ensuring there are no concerns of self-harm or further concealment of contraband.

Additional Information: If a copy of the Quran is located during a search, it should be handled with care, and should not be placed on the floor or on other dirty surfaces.¹¹

¹¹ Section was reviewed and additional information was provided by Transit Police Cpl. Hanif.

Searches of a Person of the Sikh Faith

Traditional Sikhs hold several religious articles as sacred, commonly known as the “five Ks”:

1. Kacha – short legged undergarment
2. Kada – steel bracelet
3. Kanga – comb for grooming uncut hair
4. Kes – unshorn hair
5. Kirpan – sword or dagger



Wearing a turban is also a requirement for a baptized Sikh; it symbolizes discipline, integrity, humility, and spirituality. A turban is comprised of 15' of fabric that is carefully wrapped around uncut hair. A Sikh person may feel humiliated if asked to remove their turban in public, as doing so exposes an intimate part of their body.

If a Member should arrest and subsequently be required to search a person wearing a turban, the arresting officer may request the person to remove the article themselves, if it is safe to do so. The searching officer should ideally conduct the search in a private location to minimize discomfort, and when satisfied that there is no contraband concealed upon the person, and the length of fabric poses no safety risk to the wearer, they may allow the person to replace the turban before transport, without any pins or fasteners. If there are any concerns of suicidal behavior, the person must be carefully monitored.

An arrested person will not be permitted to possess their kirpan while in police custody.¹²

¹² Section was reviewed by Transit Police Cst. Kainth.

Searches of a Person of the Jewish Faith

If a Member should arrest and subsequently be required to search a person of the Orthodox Jewish faith, they may note the person has several religious articles or clothing.

Men of the Orthodox Jewish faith must cover their head at all times with a skull cap (kippah or yarmulke), and often a wide-brimmed hat. Depending on their sect, they may wear a prayer shawl called a tzitzit or talit. There may be strings or a fringe hanging from the man's clothing, which is a traditional observation of religious dress.

An Orthodox Jewish man may also be in possession of a phylactery or tefillin, a small leather box attached to the bicep by a strap which is tied with a special knot, is wound by the wearer seven times around the forearm and hand. The second is worn on the forehead at the hairline, with its straps going around the back of the head, connected at the top of the neck with a special knot, and hanging in front on each side. A tefillin contains parchment prayer scrolls and is a sacred item, should one be damaged or altered they are quite expensive to replace, and are a significant loss for the owner.

Should a Member search a person in possession of a tefillin, once they are satisfied that the item is safe and does not pose a risk to the wearer or others, the person may be allowed to keep the item in their possession, but should be observed continuously to ensure their safety if there are suicide concerns.



Married women of the Orthodox Jewish faith must cover their heads, particularly their hair, as a sign of modesty. They may do so with a veil or a wig, and no man but her husband should see her natural hair. Should Members be required to search a woman of the Orthodox Jewish faith, the search should ideally be conducted in private by a female Member and once the veil/wig is determined to contain no contraband, it may be returned to the woman to cover her head while in police custody.

Members should ask before touching persons of the Orthodox Jewish Faith, as some Orthodox Jews will not touch someone of the opposite sex that is not family.

Additional Information: In most synagogues or temples, it is considered a sign of respect for all male patrons to wear a head covering which are usually provided near the front door. If in a synagogue, Members may ask to speak to the Rabbi, who is the spiritual leader, for assistance.

Members are to avoid conducting interviews during prayers, Shabbat, or Jewish Holidays. Non-emergency crimes will not usually be reported until after the Shabbat/festival ends. Members are to be aware that Orthodox Jews will be unwilling to write statements or sign their names. Important days are the Shabbat, Rosh Hashanah, YK, Chanukah and Passover. Rosh Hashanah marks the beginning of the Jewish year and the period considered the High Holy Days. During Chanukah, it is permissible to go to work and attend school these days. Those who practice the Jewish faith will not carry ID on Holy Days and Orthodox Jews will not attend court if it conflicts with a Holy Day.

If a person passes away in the hospital, the family, and the family's rabbi should be notified. The deceased should not be left unattended after death, so it is customary for a friend or family member to accompany the body until burial. The deceased is to be buried within 24 hours, or as soon as possible. Mourners have a 7-day mourning period, devoted to remembering the deceased, so if there is a legal or investigative need during the week of shiva, the Member would need arrange for interview in the home of the mourners, if at all possible.¹³

¹³ Section was reviewed and additional information was provided by Nico Slobinsky, Vice President, Pacific Region, Centre for Israel and Jewish Affairs.



TRANSIT POLICE

POLICY AND PROCEDURES MANUAL AMENDMENT – REVIEW SUMMARY

| | | |
|--|--|--------------------------------|
| POLICY CHAPTER: OD130 – Seizure | | DATE: November 21, 2023 |
| Prior to submission of Policy Manual amendment to the Police Board, the following persons reviewed or were consulted on the new or amended Policy Chapter | | |
| Endorsed by: | | Supported |
| 1. | Chief Officer | Yes |
| 2. | Deputy Chief Officer Operations | Yes |
| 3. | Deputy Chief Officer Administrative Services | Yes |
| Others Consulted: <i>(as applicable to the policy content/Executive direction)</i> | | |
| <ul style="list-style-type: none"> • Inspector Patrol Section • Inspector Administrative Support Section • Senior Legal Counsel • Senior Manager Risk, Analytics and Emergency Preparedness • Manager Information Management Services • Supervisor Information Management Services • Court Liaison Officer Information Management Services • Sergeant General Investigation Unit • Senior Policy and Planning Advisor • Policy and Planning Advisor (<i>Review Lead</i>) | | |



TRANSIT POLICE

SEIZURE

Effective Date: May 9, 2005

Revised Date: Proposed to Police Board: November 21, 2023

Reviewed Date: 2011

Review Frequency: Annual¹

Office of Primary Responsibility: Deputy Chief Officer Administrative Services

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¹ BC Provincial Policing Standard 6.1.1 – Promoting Unbiased Policing requires that procedures relating to seizure must be examined annually "to ensure consistency with legislative amendments and applicable case law related to right to equal treatment, protection and benefit under the law".

² Use **CTRL + HOME** to return to the Table of Contents from anywhere in this document.

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POLICY

Definitions

Charter – *Canadian Charter of Rights and Freedom* [1982].

Court Liaison Unit – Any Transit Police Personnel assigned to the Court Liaison Unit to perform court notifications and help facilitate court related matters (i.e., Court Liaison Officer, Court Clerk).

Criminal Code – *Criminal Code of Canada*, RSC 1985, c. C-46, as amended from time to time.

Form 5.2 Report to a Justice – A Form 5.2 Report to a Justice is required to document and report the items seized by a peace officer during the execution of their duties, where either ownership is in dispute or the continued detention of the thing seized is required for the purposes of any investigation or court proceedings.

Found Property – Any property that is found by a Member to not be in possession of the lawful owner and is not linked to an investigation or required for future investigation.

Found Property as Evidence – Any property that is found by a Member to not be in the possession of the lawful owner but is linked to an investigation or required for an investigation.

Items obtained by consent – Items linked to or required for an investigation which are given voluntarily to Transit Police by the lawful owner, and documented (in writing) in accordance with s. 490 (3.1) of the Criminal Code of Canada.

Member – For the purpose of this policy, includes a Designated Constable (all ranks), the Chief Officer or a Deputy Chief Officer and, as authorized by the Chief Officer, a Designated Law Enforcement Officer of the Transit Police.

Metro Vancouver Transit Police ("Transit Police") – The operating name of the South Coast British Columbia Transportation Authority Police Service (Designated Policing Unit and Designated Law Enforcement Unit).

Relinquished Property – Any property voluntarily surrendered to Transit Police by the lawful owner (or person in lawful possession) knowing that the property will not be returned to them and will be disposed of by Transit Police.

Regulated Item – All firearms, firearms ammunition, prohibited devices, restricted weapons, and prohibited weapons as defined in the *Criminal Code* and *Regulations Prescribing Certain Firearms and Other Weapons, Components and Parts of Weapons, Accessories, Cartridge Magazines, Ammunition and Projectiles as Prohibited or Restricted*.

Safekeeping Property – Any property turned over to Transit Police for a temporary period

of time, with the expectation that it will be returned. This will also include a prisoner's property that is not taken by sheriffs when the prisoner is transported to court, as well as readily apparent valuables belonging to a deceased person whose death is under investigation, in accordance with Transit Police [Policy OB080 – Sudden Death](#).

Seized Property – Any property taken by a Member during the course of an investigation, and is not considered found property, relinquished property or safekeeping property. This includes property seized temporarily until it is determined not to have been used in or obtained through the commission of an offence, or until the rightful owner can be identified.

Seizure – To seize an item means to take it with lawful authority without consent, including instances when ownership is in dispute. [See case law: [R. v. Dymont, 1988 CanLII 10 \(SCC\)](#) and [R. v. Law, 2002 SCC 10 \(CanLII\)](#)]

Transit Police Personnel – Members and civilian professionals who work for the Transit Police.

General

1. The *Charter* guarantees a right against unreasonable search and seizure. Sections 489.1 to 490.1 of the *Criminal Code* and ss. 21 to 24.2 of the provincial *Offence Act* create a statutory framework for the detention, disposal, forfeiture, and return of seized property. Authorities and responsibilities of police with regards to seizure have also been affected by case law.
2. The *BC Provincial Policing Standards (BCPPS)*, established under the authority of the *Police Act*, require that police services in BC develop written policy governing procedures for assuring compliance with constitutional and other legal requirements regarding search and seizure, with or without warrant. [BCPPS Addendum D.8.1]
3. Seizure will be undertaken only when clearly authorized by law.
4. All seized items will be:
 - (1) Kept secure and safeguarded;
 - (2) Maintained in a manner that meets evidentiary requirements, where appropriate;
 - (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 and destruction/disposal policies.
5. All Members, by the end of their shift, will account promptly and accurately for any property seized.
6. Any seized item, regardless of its value, seized by a Member, during the performance of their duty, will be considered and treated as an exhibit or property.

7. Transit Police Personnel who are appointed as Special Provincial Constables (i.e. Exhibit Custodian and Court Liaison Unit) and Designated Law Enforcement Officers may assist in the care, custody and control of seized items and evidence, as permitted within their respective legislative authority.
8. All exhibits or property will be handled in accordance with the relevant provisions of [OF020 – Exhibit/Property Control](#).

PROCEDURES

IMPORTANT NOTE: *Within seven days or as soon as practicable after seizure of any item, a Member must submit to the Court Liaison Unit a “Report to a Justice” by way of a Form 5.2 in the prescribed RMS system. At 60 days after seizure, if the item is still held and required, a Member will apply for an extension of their authority to detain the items seized.*³

If a Member is uncertain whether an item is considered “seized”, the Member will seek clarification and direction from their Supervisor. For immediate assistance, consult the Report to a Justice Decision Tree in Appendix “A”, which may be amended from time to time.

PART “A” – SEIZURE OF FIREARMS AND REGULATED ITEMS

9. Firearms may be seized under one or more of several authorities in the *Criminal Code*:
 - (1) Seizure with reasonable grounds to believe there is a danger to self or public (no warrant if exigent) under s.117.04 of the *Criminal Code*;
 - (2) Seizure from a person without documentation under s.117.03 of the *Criminal Code*;
 - (3) General warrantless seizure powers under s. 489 of the *Criminal Code*;
 - (4) Warrant seizure powers under s. 487 of the *Criminal Code*;
 - (5) Exigent seizure powers when firearm believed to be involved in an offence under s. 117.02 of the *Criminal Code*.
10. Any time a Member seizes a firearm, they must complete a Report to Justice by way of a Form 5.2 and observe the 60-day renewal deadline. Members will be required to articulate in their PRIME General Occurrence Report (“GO report”), the reasonable and probable grounds leading to the seizure.
11. Any time a Member seizes a firearm, they will query the firearm’s serial number on the Canadian Police Information Centre (“CPIC”). If the firearm is not already listed on CPIC, the Member will make note of this fact on the GO report so that the Transit Police CPIC Coordinator can create a new entry for the firearm.

³ Although the legal requirement is for police to apply for an extension of detention at 90 days after seizure, it is Transit Police policy to apply for an extension of detention at 60 days after seizure.

- (1) After the new CPIC entry has been created, the Transit Police CPIC Coordinator may add diary dates to the CPIC entry in order to check the firearm's status annually and, if the firearm has been destroyed or returned to its lawful owner, will amend the entry to have the firearm removed from CPIC.

Seizure for Public Safety Reasons

12. A Member must have and articulate in their GO report, 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) of the *Criminal Code*).
13. 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).
14. There are provisions for search and seizure without a warrant because of a risk to public safety (s. 117.04 (2) of the *Criminal Code*). In such cases, the Member must:
 - (1) Report the seizure to a justice (s. 117.04 (3) of the *Criminal Code*) Form 5.2; and
 - (2) Apply within 30 days of the seizure for an order for disposition of the seized item (s. 117.05 (1) of the *Criminal Code*) using an affidavit with the completed Form 5.2 attached.
15. At the disposition hearing, the justice may order that the item be forfeited or disposed of if 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 of the *Criminal Code*).
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 of the *Criminal Code*).
17. Any documentation that cannot be found and relates to an item that has been seized due to a public safety reason (s.117.04 (1) or (2) of the *Criminal Code*) is automatically revoked as of the time of the seizure (s. 117.04 (4) of the *Criminal Code*).

Seizure on Failure to Produce Documentation

18. 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) of the *Criminal Code*).

19. Upon seizure, the Member must submit a Form 5.2 and 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 of the *Criminal Code*).

- (1) 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 of the *Criminal Code*).

Seizure as Evidence of an Offence

20. 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 circumstances⁴.

21. A seized firearm or other Regulated Item must be dealt with as follows.

- (1) If the item is no longer 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 (by way of a completed Form 5.2); or
- (2) If the item is required for purposes of an investigation or court proceedings, the officer must submit a Report to a Justice by way of a completed Form 5.2.

PART “B” – SEIZURE OF OTHER ITEMS

Doctrine of Plain View

22. 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 visual inspection of the person, premises, or vehicle;
- (2) The discovery of the item is inadvertent; and
- (3) The item is apparently incriminating evidence.

⁴ Police have ancillary powers in exigent circumstances to carry out a duty: a) where there is no statutory authority necessary to carry out that duty; and b) the public interest in carrying out that duty in the circumstance exceeds the adverse interference with individual liberty or property. This ancillary power should only be employed with considerable restraint and deliberation, and only in circumstances where there is an objectively compelling public interest to advance the investigation.

Seizure from Lawyer Claiming Solicitor-Client Privilege

23. A Member who, during the course of a warrant search, has seized items under the authority of the *Criminal Code* or any other federal law, from a lawyer claiming solicitor-client privilege regarding the items seized will:

- (1) Seal them in an envelope or other opaque container 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.

A judge, on application, will subsequently examine the items and make a ruling regarding disclosure and detention.

Subject-Matter of or involved in an Offence

24. These items will be forfeited unless the lawful owner satisfies the court that they were not involved in the offence and police had no reasonable grounds to believe that the item would or might be used in an offence (s. 491 of the *Criminal Code*).

Property Seized from Arrested Persons

25. 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.

Seizure of Witnesses' Electronic Devices in Order to Preserve Evidence

26. Members have a duty to identify, collect, and preserve evidence of crime, including photographic or video evidence, or other relevant data that may have been captured by a device possessed by a witness, including media personnel. The preferred method of collecting such evidence from a witness's device is to ask the witness to voluntarily provide it to the Member for the purpose of assisting a police investigation, or to obtain their contact information in order for the evidence to be obtained later by a follow-up investigator. The Member would then use the "Community Request" feature of the Axon® "Capture App" on their issued cellular telephone in order to invite the witness to send the evidence to the Member digitally.
27. If the Member has reason to believe that a witness has evidence of a crime on their device, and the witness refuses to voluntarily provide that evidence (as outlined above) to the Member and/or causes the Member to have reason to believe that the evidence will be lost or damaged if the Member does not seize the device immediately, then the Member will seize the device, citing their ancillary common law power to do so.⁵

⁵ Police have ancillary powers in exigent circumstances to carry out a duty: a) where there is no statutory authority necessary to carry out that duty; and b) the public interest in carrying out that duty in the circumstance exceeds the adverse interference with individual liberty or property. This ancillary power should only be

28. When items are seized pursuant to the authority provided to police for exigent circumstances, Members must ensure that the reasons for the seizure are fully documented in the GO report, just as they would have been in an Information to Obtain had it been practicable to obtain a search warrant.
29. If an electronic device is seized pursuant to exigent circumstances, or by way of a search warrant, Members will submit a Report to a Justice, Form 5.2, reporting the seizure of the device.

Seizure of Data from Electronic Devices

30. S.489.1 of the *Criminal Code* requires police to file a Form 5.2 for data seized from an electronic device pursuant to a warrant, even if that device was already lawfully in police possession and thus the subject of a separate Form 5.2 and s. 490 detention order. The main steps to follow for BC Prosecution Service are:
 - (1) Acquire a search warrant for the device;
 - (2) File a Form 5.2 for the device;
 - (3) Acquire a search warrant for access to the data on the device, and;
 - (4) File a Form 5.2 upon receipt of the data from the data extraction report. State "data was seized".
31. If the steps identified in s. 30 above are missed, the Member must seek a remedial warrant for when there was not a Form 5.2 for the data on the device, and then file a Form 5.2.

[See also Transit Police policy chapters [OI030 – Prisoner Care, Control and Transportation](#) and [OF020 – Exhibit/Property Control](#)]

PART "C" – ITEMS NOT REPORTABLE TO A JUSTICE

32. The following seized or otherwise acquired types of property are not reportable to a justice, including:
 - (1) Property that is not evidence and is voluntarily given or relinquished, such as for safekeeping; and
 - (2) Photocopies or photographs of original documents where the original document was not seized.

employed with considerable restraint and deliberation, and only in circumstances where there is an objectively compelling public interest to advance the investigation.

PART “D” – RETURN OF SEIZED ITEMS BEFORE TRIAL

33. Members are to refer to Appendix “A”.

References:

[BC Provincial Policing Standards](#) – Addendum 1 - Supplemental Policy Directives – Interim Continuation of Policing Standards Established by the Former British Columbia Police Commission [D1.1.1, D8.1.1, E4.1.3]

[Canadian Charter of Rights and Freedom \[1982\]](#)

[Criminal Code of Canada \[RSC 1985, c. C-46\]](#)

[Offence Act \[RSBC 1996, c 338\]](#)

Transit Police [Policy OF020 – Exhibit/Property Control](#)

Transit Police [Policy OI030 – Prisoner Care, Control and Transportation](#)

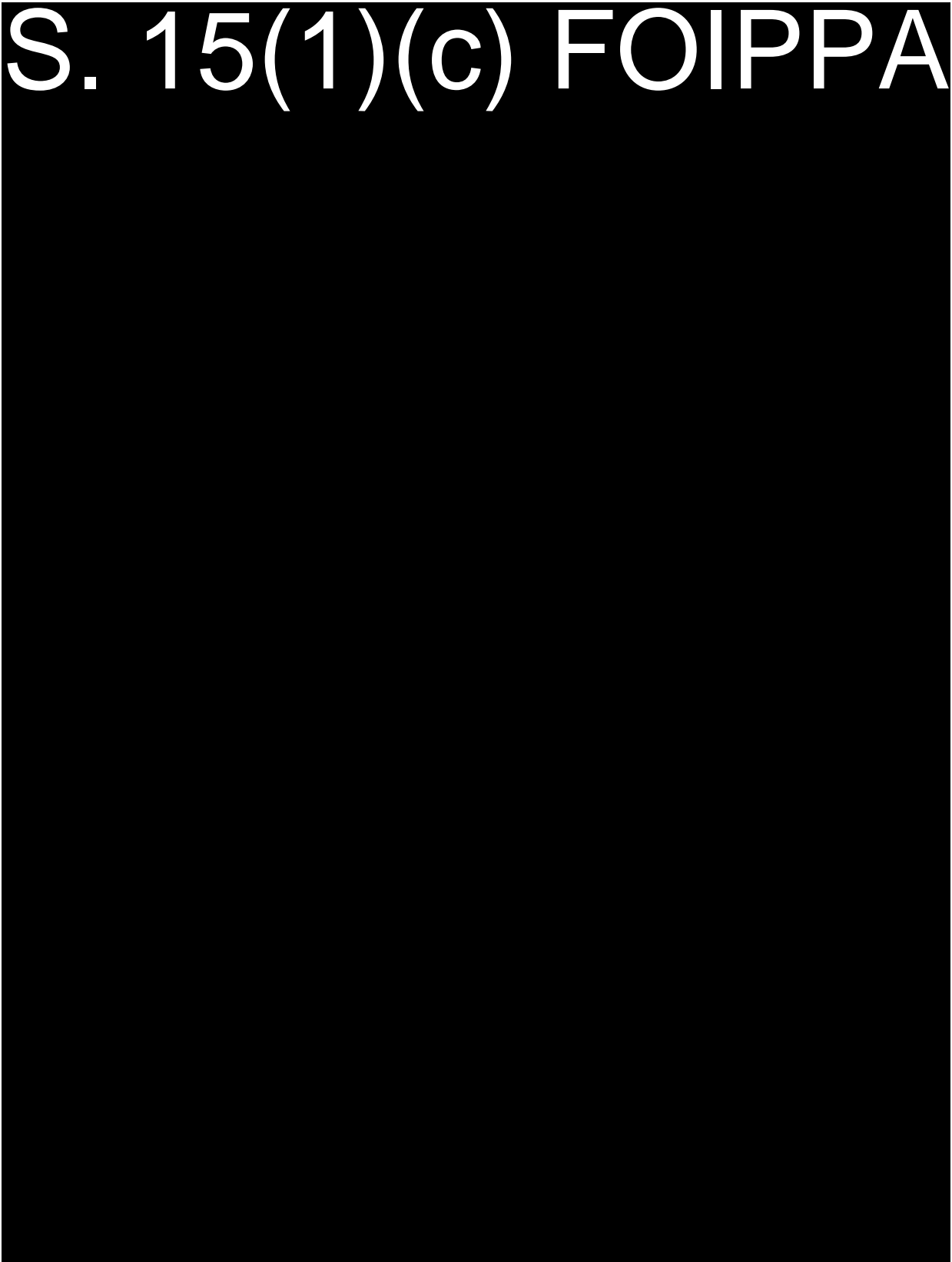
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APPENDIX “A”**DETENTION/FORFEITURE/RETURN OF SEIZED ITEMS – FORMS & RESOURCES****OVERVIEW**

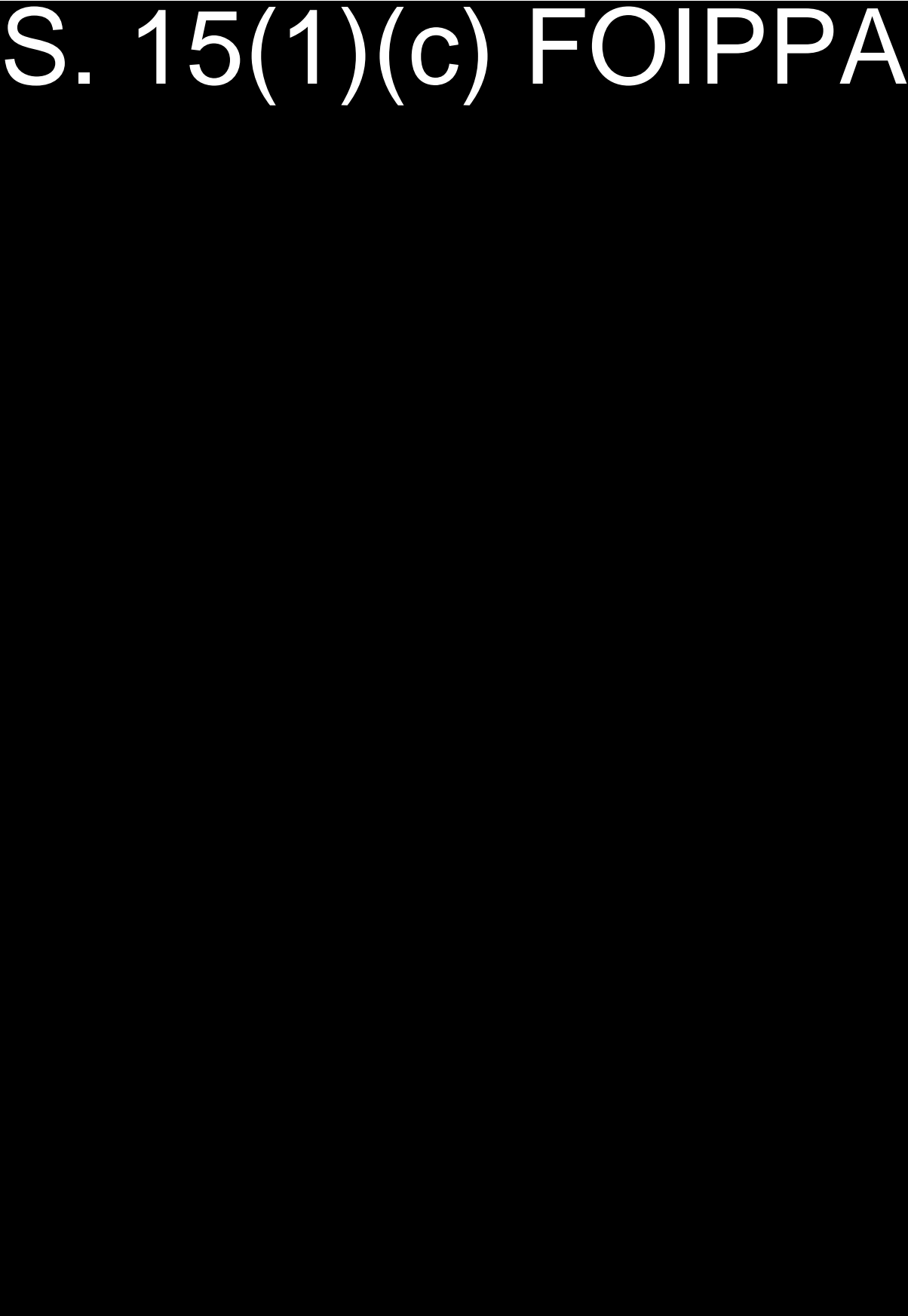
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| Seizures pursuant to federal legislation | <p>The <i>Criminal Code</i> sets out the requirement for police officers to “Report to a Justice” (using Form 5.2) a list of items seized and either: a) provide confirmation that the seized item was returned to the lawful owner (if not needed for an investigation or for trial); or b) apply to detain the item for 3 months (if it is needed for an investigation or for trial).</p> <p>Further to this, the <i>Criminal Code</i> sets out the requirement and process for police officers to request an extension beyond 3 months for a detained item, if the item is still needed for an investigation or for trial. This section also covers the process for police officers to apply for an order from the Court to either: a) return a detained item to the lawful owner (once it is no longer needed for investigation or trial); or b) forfeit a detained item to Crown/police for disposal.</p> |
| Seizures pursuant to provincial legislation | <p>The <i>Offence Act</i> sets out similar requirements and processes as noted in the <i>Criminal Code</i>. The <i>Offence Act</i> requires a “Report to a Justice” but uses a provincial court form (PCR815) instead of a Form 5.2, although both forms are very similar.</p> |

REPORT TO A JUSTICE – When it is required, what forms to use, and timeline

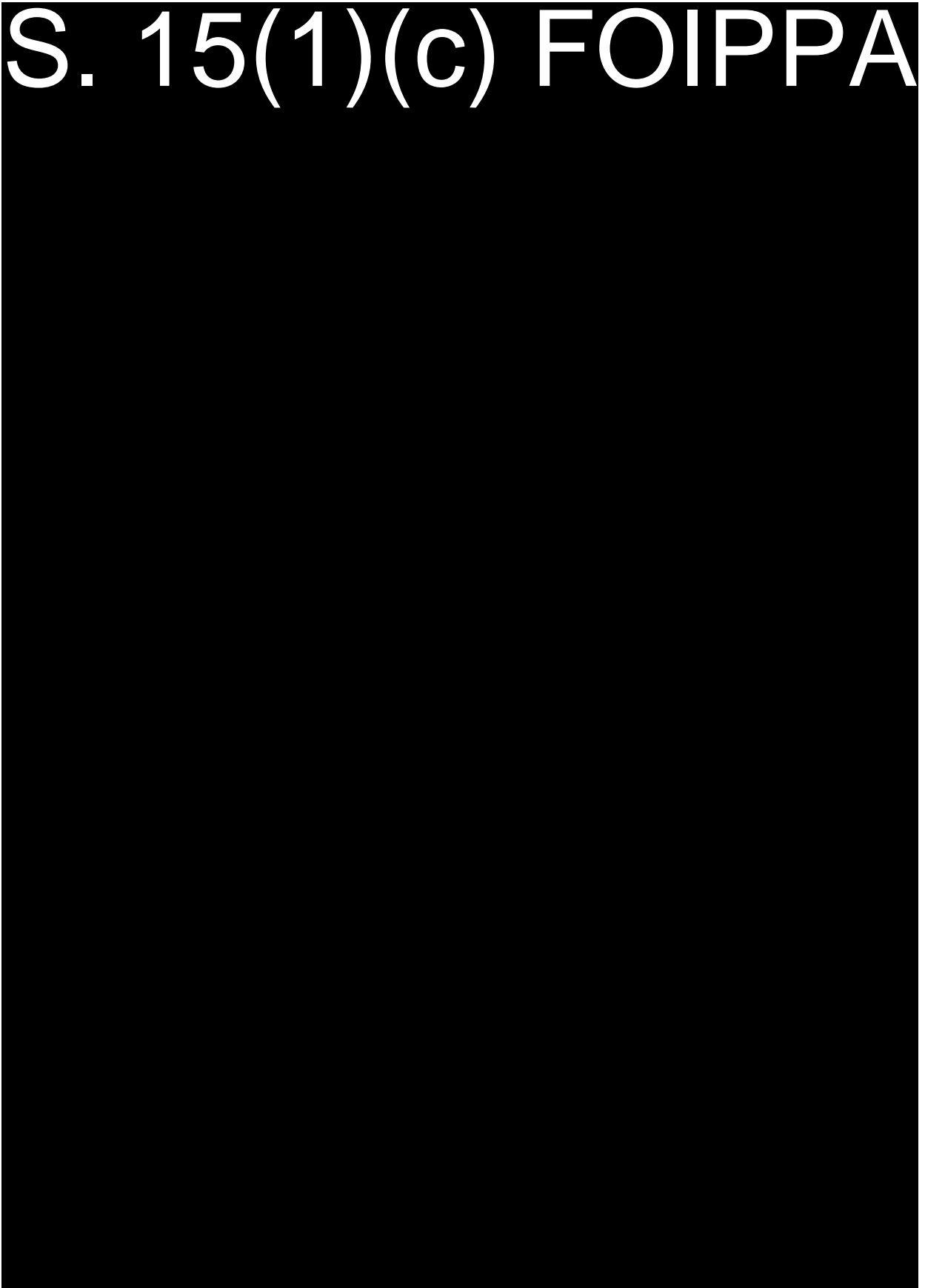
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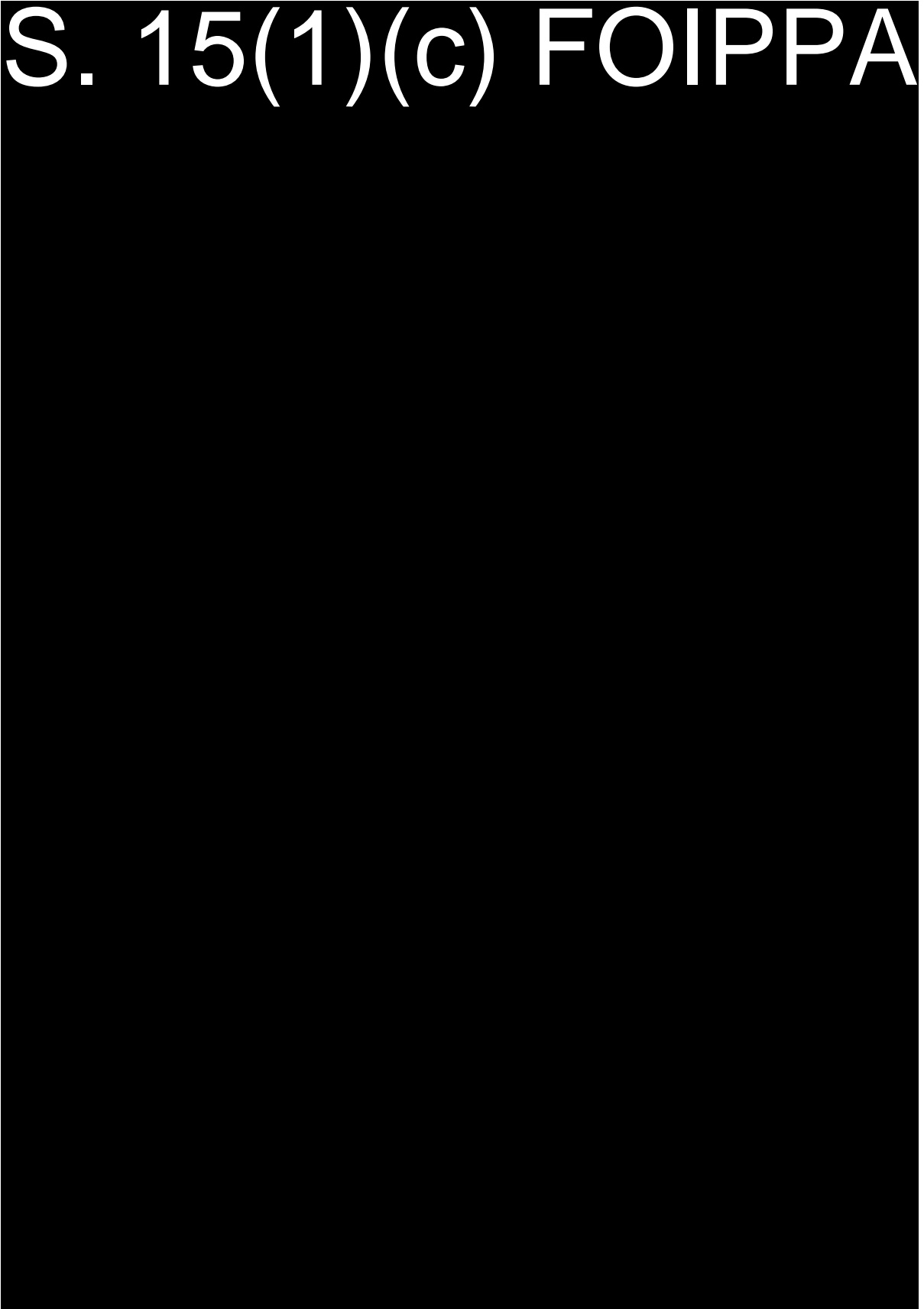
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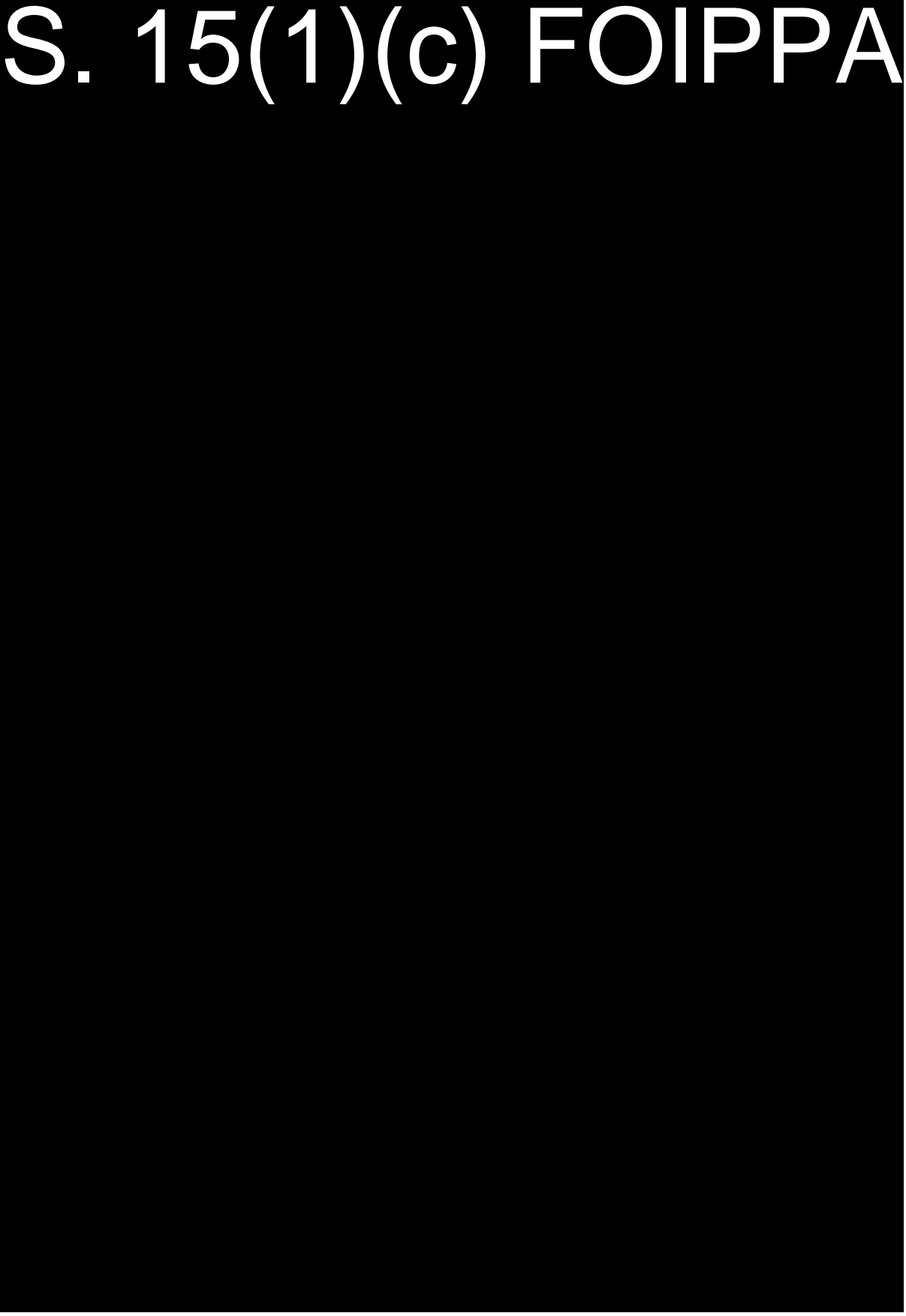
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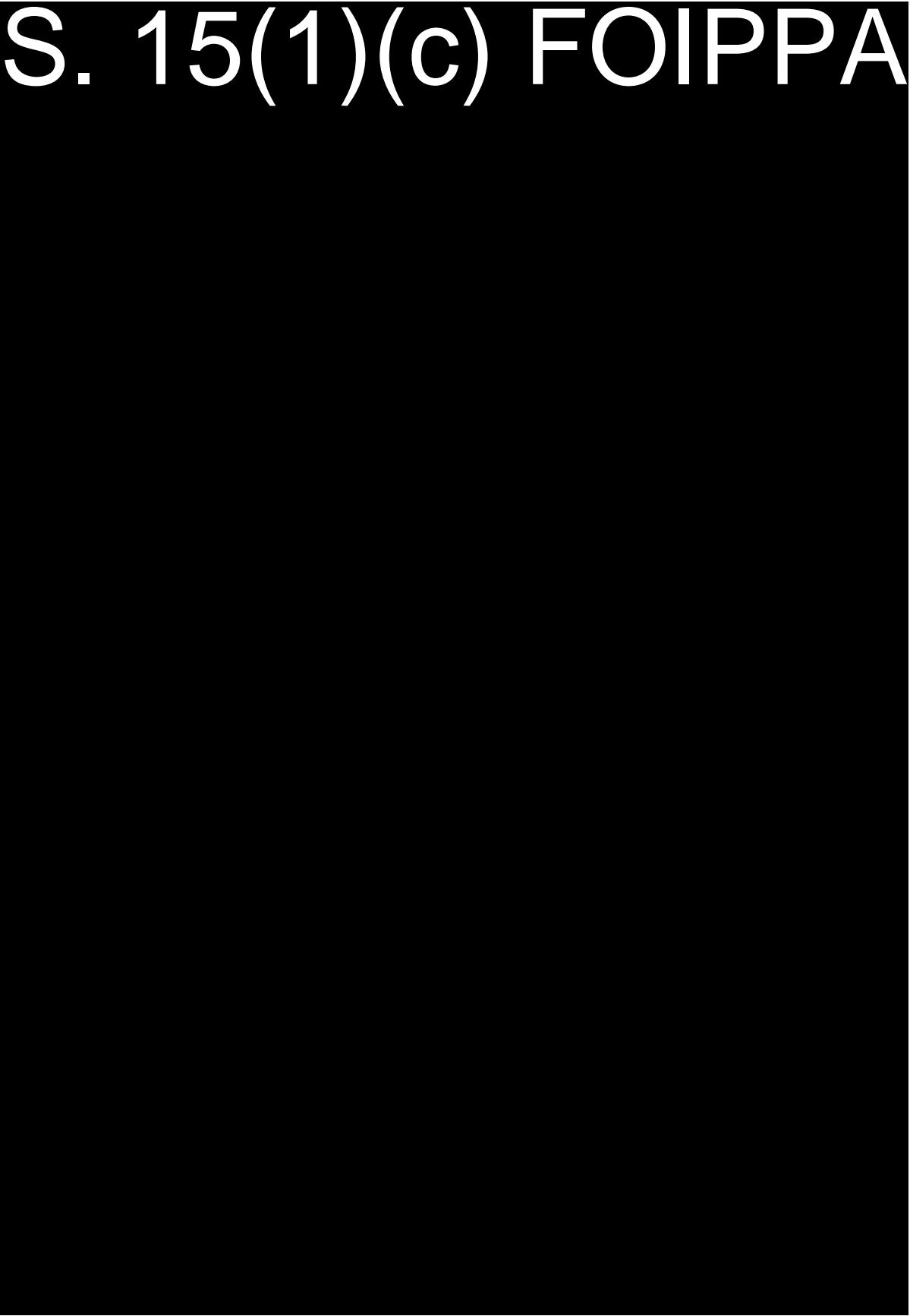
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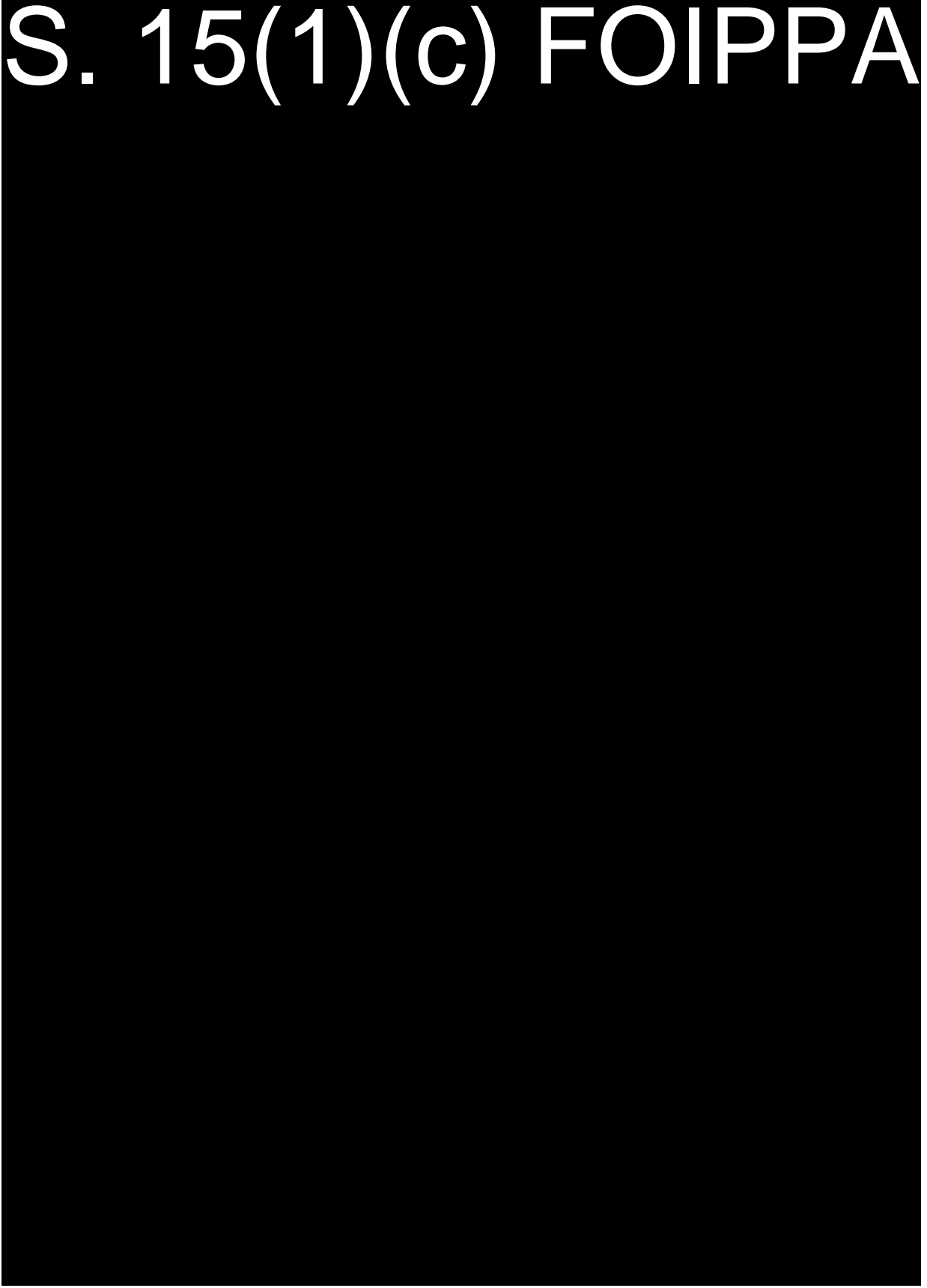
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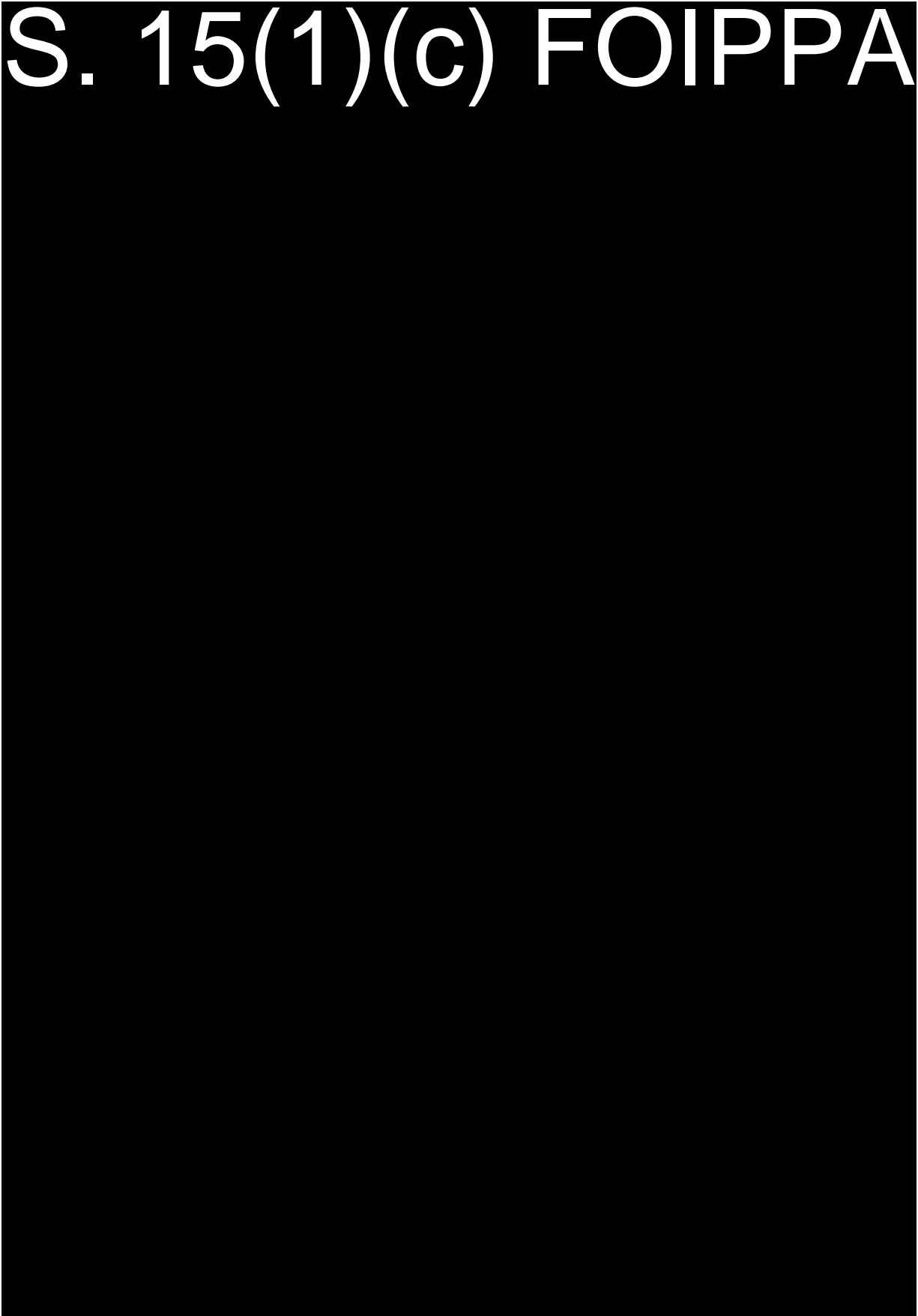
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OTHER INFORMATION

S. 15(1)(c) FOIPPA

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