



IP10

WARRENTLESS SEARCH & SEIZURE

IP10

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POLICY

1. Members of the Delta Police Department (Department) shall make best efforts to conduct all warrantless searches in full compliance with the *Charter of Rights and Freedoms* section 8 right of individuals to be secure against unreasonable search or seizure, as well as federal, provincial and municipal statutes, and the common law, and conduct warrantless searches in compliance with Procedures to this Policy.
2. The Chief Constable is to provide Procedures to members, to direct them in relation to the sometimes unclear and legally-nuanced common law authorities that may be applied to warrantless searches.



3. Confidence in the Department, in policing in general, and the greater public interest, are not served by members engaging in investigations resulting in 'no-case seizures,' based on a search that the member knows or ought to know is unlawful (e.g., a search on the mere hunch of seizing contraband, knowing that even if contraband is seized there would be no reasonable prospect of a successful prosecution), and such searches attract considerable legal jeopardy, including civil and criminal liability, and strong condemnation from the courts.

REASON FOR POLICY

4. To ensure that all warrantless searches and seizures conducted by members of the Department are conducted lawfully, in a reasonable manner; and that all evidence seized will be admissible in any resulting prosecution.

RELATED POLICIES

IC30 – Detention, Arrest & Post-Arrest Processing
IC32 – Search of Persons
IM10 – Criminal Investigations
IP11 – Warrants Search & Seizure
IP40 – Property & Exhibits

PROCEDURES

General Legal Considerations

5. The following Procedures describe common law authorities for a police officer to engage in a search, in the absence of a specific judicial or statutory authorization, and are very fact-dependent as to whether they will survive a s.8 Charter challenge in any resulting prosecution, and members must diligently provide full and effective articulation as to the facts upon which they relied to believe that their search was authorized by common law, and therefore reasonable.

Common Law Power of Search

Implied Invitation

6. Members are to be aware that the common law provides an 'implied invitation' for all members of the public, including the police and other public



- officers, to enter upon property to approach the door of a residence and knock, for the purposes of facilitating communication with the householder, but that this invitation does not extend beyond the plane of the entryway to the interior of the residence.
7. In the absence of hot pursuit or exigent circumstances (see below), members may not rely on 'implied invitation' to enter onto private property for investigative purposes including surveillance and/or a search for evidence.
 8. Members may enter onto private property to communicate with a suspect, to ask if they wish to provide a statement or where applicable exercise a duty-to-warn, but this implied invitation may be withdrawn at any time by the occupant of private property, either with the posting of "no trespassing" signage or by way of spontaneous verbal revocation.
 9. Once implied invitation has been revoked and members have no authority to lawfully remain on the property, and must vacate the property in a timely manner.
 10. A member who is lawfully on property by way of implied invitation and subsequently forms reasonable grounds to lawfully arrest the occupant, may arrest that person regardless of whether the occupant subsequently revokes the implied invitation.

Plain View

11. The plain view doctrine (codified under *Criminal Code* s. 489(2)) empowers members to make warrantless seizures of items observed in places where the member is lawfully present (including through implied invitation) and they have come to believe on reasonable grounds that the item:
 - a) has been obtained by the commission of an offence;
 - b) has been used in the commission of an offence; or
 - c) will afford evidence of an offence.

Abandonment

12. Members may seize and search items they find and have reasonable grounds to believe have been abandoned or discarded by a suspect.



13. Items that have been found, but by their very nature do not appear to be intentionally abandoned (e.g., luggage, shipping packages, laptops, cell phones and other data storage devices) and/or are in police custody as lost-and-found property, cannot be presumed to have been abandoned, and further investigation will normally be required to establish their status.
14. Items that cannot be determined to have been abandoned may attract a residual expectation of privacy by their owner, and careful consideration must be given to whether a search of such items, that goes beyond an attempt to identify the rightful owner, requires judicial authorization.

Vehicle Stop

15. During a traffic stop, lawfully conducted pursuant to authority under the *Motor Vehicle Act*, members may visually inspect (from the exterior) the interior of the vehicle for officer safety purposes, including using a flashlight or similar device to survey the interior.
16. On the basis of a visual inspection of the interior of a vehicle (from the exterior) the officer police is considered 'lawfully present' and the doctrine of plain view would be available to seize an item believed:
 - a) to have been obtained by the commission of an offence;
 - b) to have been used in the commission of an offence; or
 - c) to afford evidence of the commission of an offence.
17. If the vehicle stop or other engagement with the operator of a vehicle results in impoundment or for any other reason towing of the vehicle, a member may conduct an inventory search of the vehicle, to provide an account of items in the vehicle at the time the member took control of it; but, if a member has reasonable grounds to believe evidence of an offence may be contained in the vehicle, then the inventory search cannot be used as authority to search for such evidence and, except in exigent circumstances or incidental to lawful arrest, a warrant will be required.
18. While the vehicle's operator may be queried with respect to their driving record, and/or to confirm ownership and insurance, querying any passenger on CPIC or PRIME, in the absence of statutory authority or lawful arrest, because they look suspicious, may result in an unreasonable search.



Consent

19. A member may, with a person's informed consent, search that person or anything in the person's possession or control, including their vehicle and residence.
20. The person giving consent must have been informed by the member, in language that person can understand, of all of the following:
 - a) their right to refuse to consent;
 - b) their right to revoke consent at any time;
 - c) the object and scope of the search;
 - d) what is being searched for; and
 - e) their foreseeable legal jeopardy should the search result in discovery of the item(s) being search for.
21. A member may conduct a consent search under the following conditions:
 - a) the person consenting to the search does so in an informed and voluntary manner;
 - b) the person consenting to the search has authority over the area being searched and the right to provide the consent; and
 - c) the person giving consent must do so unequivocally, either by words, orally, or ideally in writing.
22. Members must document how the consent was obtained and all subsequent actions taken.

Search to Protect Life or Property in Exigent Circumstances

23. Police have a common law and statutory duty to protect life and property, and, as a result, members may undertake forced entry into a private premises, including a dwelling house, if an attending member has reasonable and probable grounds to suspect an emergent situation exists requiring action involving:
 - a) the preservation of life; or



- b) the prevention of serious injury.
24. The authority to conduct forced entry also applies to seeking to prevent an offence likely to cause death or serious injury.
 25. A member must make proper announcement prior to forced entry, including notice of their presence, purpose and authority.
 26. The basis, and therefore lawful authority, for conducting a search without warrant on exigent grounds diminishes with the passage of time, if a member could have conducted the search earlier but chose not to without good reason.
 27. In accordance with authority granted by the Supreme Court of Canada, members may enter and search a private premises, including a dwelling house, in response to a 911 call, but only if:
 - a) the 911 call provides reason to believe that loss of life or serious injury have occurred, are occurring, or may occur without police intervention;
 - b) the loss of life or serious injury cannot reasonably be ruled out by the information obtained through the 911 call;
 - c) the 911 call is abruptly disconnected, or the members are refused entry to the place to properly ascertain the physical well-being of any individual inside reasonably suspected to be at risk; or
 - d) no lesser means are available, having regards to all the circumstances known to the members.
 28. Section 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, and members are expected to be familiar with the provisions of these sections.
 29. A member conducting warrantless search on s. 487.11 authority, solely for the preservation of evidence, must advise their supervisor prior to entry.
 30. 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 (not a dwelling house) to search for and arrest an individual, if the following conditions are met:

- a) the member or supervisor has reasonable and probable grounds to believe the individual sought can be lawfully arrested with or without warrant; and
- b) the member or supervisor has reasonable and probable grounds to believe the individual sought is within the premises, the premises is not a dwelling house, and proper announcement is made prior to entry.

Fresh/Hot Pursuit Warrantless Entry into a Dwelling House

31. 'Hot pursuit' is a common law power that authorizes a police officer in direct 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.
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 should consider the specific circumstances, including the gravity of offence, as well as an officer-safety risk assessment.

Search Incident to [Investigative] Detention

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

Search Incident to Arrest

34. The common law grants members the authority to conduct a more expansive search incident to arrest which extends beyond ensuring officer



safety to a search for evidence related to the offence that resulted in the arrest.

35. Members arresting a person may conduct a physical search for evidence on the person, as well as a search of the immediate surroundings of the arrest location, which may include:
 - a) items or bags in the arrestee's possession or under their control; and
 - b) a vehicle in the arrestee's possession or under their control.
36. 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.

Citizen Recording Equipment

37. Members have a duty to identify and collect evidence at crime scenes including photographic and/or video images.
38. In collecting evidence at crime scenes, and in the absence of a specific statutory authority, member may rely on common law police ancillary powers (the 'Waterfield Doctrine'¹) to seize photographic or data-recording devices from by-standers, including media personnel, if the member believes they contain evidence of an offence, and a seizure from media personnel has, except in exigent circumstances, received supervisor approval.
39. Before seizing a data-recording device that a member has reason to believe contains evidence of an offence, the members are to first to provide the person in possession of the devices the opportunity to:

¹ The "Waterfield Doctrine" provides police 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. These ancillary powers should be employed with considerable restraint and deliberation and only in circumstances where there is an objectively compelling public interest to advance the investigation.



- a) voluntarily provide it to the member for the purposes of assisting an investigation; or
 - b) provide the member the opportunity to download the relevant content (if the member has the skills and resources to do so).
40. If a member is concerned that, by only downloading content and not seizing the actual data-recording device, the integrity of the media content might be compromised in a manner that will undermine an investigation and/or resulting prosecution, the member is to seize the device, citing their ancillary common law power to do so.
41. If there are no concerns about maintaining the integrity of the potential evidence, the member shall:
- a) obtain the person's contact information;
 - b) ask the person to secure the evidence; and
 - c) advise the person that a follow-up investigator will contact the person or entity, and that a production order may be served on them.

Reporting Requirements & Additional Powers

Report to the Justice of the Peace with Respect to All Items Seized

42. A member shall complete and submit a Report to a Justice (Form 5.2), as soon as practicable following any seizure without a warrant, including for items seized, held, returned to the owner or abandoned where there is no dispute as to ownership, and failure to comply with this requirement may result in the inadmissibility of the evidence.
43. Before the end of three months after submitting a Form 5.2, the member must apply to for an extension of their authority to detain the things seized, if no proceedings have been commenced and the things remain required to be detained for investigative purposes.

Statutory Powers of Search – Child Protection

44. A member having reason to believe that a child's health or safety is in immediate danger may, in accordance with section 27(2) of the *Child, Family, Community Services Act*, and by force if necessary, enter any place, including a dwelling house, to take charge of a child, and must then



immediately take the child to an authorized representative of the Ministry of Children and Family Development.

Statutory Powers of Search – Coroner’s Act

45. Separate from acting under other lawful authority, under section 11 of the *Coroners Act* a member may, if authorized by a coroner to exercise all or any of the coroner’s powers under the *Coroner’s Act*:
- a) view any dead body;
 - b) take possession of any dead body; and
 - c) enter and inspect any place where a dead body is and any place from which they have reasonable grounds to believe a body was removed from.

*Revised Dates:
N/A