

IDENTIFICATION OF CRIMINALS ACT

(R.S., c. I-1)

GUIDE & ACTIVITIES



Forensic Identification Training

Reprinted April 2001

Subject Co-ordinator

Graeme B. George

Forensic Identification Training Unit

Course Co-ordinator _____ **Date** _____

These materials are subject to the copyright of the Queen's Printer of Ontario. They cannot be used or reproduced in any form or manner without the prior written consent of the Ontario Crown. Any inquiries for use or reproduction should be addressed to the Director of the Ontario Police College. Any violation of this copyright will be rigorously pursued.

IDENTIFICATION OF CRIMINALS ACT

OBJECTIVE:

- Given written reference materials , at the end of the session the student will be knowledgeable of the Identification of Criminals Act to the extent that the student will be able to: explain the difference between consent and statutory authority to fingerprint a person; define ‘informed consent’; explain the conditions which must be met for statutory authority to apply; explain the provisions for the use of force contained within the Act; explain the restriction on publication of the information collected under the Act; and state the restrictions on taking fingerprints from a young person on consent, to the standard set by the facilitator.

RESOURCES

This study guide, which contains a copy of the Identification of Criminals Act, is the only resource for this module.

CHAPTER I-1

Amended 1992, c.47, ss. 73 to 76, brought into force January 1, 1996
Amended 1996, c.47, ss.39 and 40, brought into force July 31, 1996
Amended 1999, c.18, s.88, brought into force June 17, 1999

An Act respecting the identification of criminals

SHORT TITLE

1. This Act may be cited as the *Identification of Criminals Act*. R.S., c. I-1

1.1 This Act is binding on Her Majesty in right of Canada or a province.

IDENTIFICATION OF CRIMINALS

2. (1) The following persons may be fingerprinted or photographed or subjected to such other measurements, processes and operations having the object of identifying persons as are approved by order of the Governor in Council:

(a) any person who is in lawful custody charged with or convicted of

(i) an indictable offence, other than an offence that is designated as a contravention under the *Contraventions Act* in respect of which the Attorney General, within the meaning of that Act, has made an election under section 50 of that Act, or

(ii) an offence under the *Official Secrets Act*;

(b) any person who has been apprehended under the *Extradition Act*, or

(c) any person alleged to have committed an indictable offence, other than an offence that is designated as a contravention under the *Contraventions Act* in respect of which the Attorney General, within the meaning of the Act, has made an election under section 50 of that Act, who is required pursuant to subsection 501(3) or 509(5) of the *Criminal Code* to appear for the purposes of this Act by an appearance notice, promise to appear, recognizance or summons.

(2) Such force may be used as is necessary to the effectual carrying out and application of the measurements, processes and operations described under subsection (1).

(3) The results of the measurements, processes and operations to which a person has been subjected pursuant to subsection (1) may be published for the purpose of affording information to officers and others engaged in the execution or administration of the law.

3. No liability, civil or criminal, for anything lawfully done under this Act shall be incurred by any person

(a) having custody of a person described in subsection 2(1);

(b) acting in the aid or under the direction of a person having such custody; or

(c) concerned in the publication of results under subsection 2(3).

R.S., c.I-1, s.3; 1992, c.47, s.75

DESTRUCTION OF FINGERPRINTS AND PHOTOGRAPHS

4. Where a person charged with an offence that is designated as a contravention under the *Contraventions Act* is fingerprinted or photographed and the Attorney General, within the meaning of that Act, makes an election under section 50 of that Act, the fingerprints or photographs shall be destroyed.

THE AUTHORITY TO FINGERPRINT AND PHOTOGRAPH

Introduction

Fingerprints are a means of positively identifying an individual and are used in two ways.

First, they enable a criminal record, perhaps with entries from different parts of the province, country or even the world, to be linked to one individual, no matter what name may have been used.

Second, they permit comparisons to be made with crime scene impressions and so prove the presence of that individual at that location or connect him/her with certain objects.

Photographs are not a positive means of identification but they are used in photo line-ups and are circulated to other agencies which may be attempting to locate an individual.

The statutory authority for both fingerprinting and photography derives from the *Identification of Criminals Act (R.S.C. c. I-1)*.

Enacted in 1898, the *Identification of Criminals Act* did not originally mention fingerprinting or photography. These were authorized by Orders-in-Council of 1908 and 1911 respectively. Although courts had held for many years that they were simply part of the fingerprinting process, taking palmprints was not formally sanctioned until an Order-in-Council in 1992.

The *Identification of Criminals Act* was amended for the first time when the *Contraventions Act RSC c. 47* was assented to on October 15th, 1992. The latter Act and thus the amended *Identification of Criminals Act* came into force on August 1st, 1996.

The 1999 revision came about as a result of the changes to the Extradition Act and the repeal of the Fugitive Offenders Act.

CONSENT vs STATUTORY AUTHORITY

There are two options by which we can obtain fingerprints and photographs of adults.

(a) By Consent

On request, the individual permits the procedures to be performed. This also includes fingerprints taken for elimination purposes from persons having legitimate access to a crime scene.

The large majority of fingerprints are taken on "consent" of the subject. Note that this does not mean simply that the subject did not object to the procedures.

Casey Hill, in his paper "*The Right to Fingerprint*" states at p. 22:

"As with confessions and searches on consent the prosecution must establish the existence of a valid consent. Was the consent express? Silence does not generally evidence consent. Was the consent voluntary? Where there is duress or coercion there is no valid consent."

What this means in practice is that you must be able to assure the court that the subject did fully understand what you were planning to do and was aware that he/she was not required to consent and thus did have the right to refuse. This is known as 'informed consent'.

A finding that the consent was not valid could perhaps result in the fingerprints being declared inadmissible. This could seriously jeopardize a prosecution in which fingerprint evidence is of major importance.

If the person does refuse consent to the carrying out of the procedures then compliance can only be obtained by resorting to the second option:

(b) Statutory Authority

In this case the provisions of subsection 2(1) of the *Identification of Criminals Act* must be met. Once they are met, the Act becomes the authority for obtaining fingerprints and photographs without the consent of the individual.

To fully understand the extent of the authority provided by the Act it is necessary to study it carefully.

INTERPRETATION OF THE ACT

Despite its brevity there has been some confusion about the correct interpretation of the Act. To dispel the uncertainty the following is a phrase by phrase examination of the Act starting with Section 2.

2.(1) *The following persons may be fingerprinted or photographed or subjected to such other measurements, processes and operations having the object of identifying persons as are approved by order of the Governor General in Council:*

This section, while specifically mentioning fingerprints and photographs is general enough to include any future method of personal identification that might be developed. The "...processes and operations..." covers the taking of descriptions.

a) "... any person who is in lawful custody..."

"Lawful custody" simply means lawfully arrested and presently lawfully detained. It is the first of two conditions which must be satisfied and, of itself, is not sufficient to provide the authority to fingerprint and photograph.

As Casey Hill points out on page 17 of his paper "*The Right to Fingerprint*,"

"The Act, and the related Criminal Code provisions (sections 453.3(3) and 455.5(5)) (Now subsections 501 and 509) do not authorize the police to take fingerprints incident to arrest or at the time of initial detention."

The next words of the phrase in the sub-section give us the other factors, one or other of which must accompany the lawful custody:

"...charged with or convicted of..."

Police officers have long improperly used the word "charged" in place of the correct term "accused." This has caused some difficulty in interpretation of the word "charged" in ss.2(1).

Most frequently prisoners are fingerprinted long before they are formally charged and therefore the provisions of the Act do not come into effect.

Casey Hill went on to state at p. 18:

"...the information must be sworn and process confirmed before the citizen is "charged" within the meaning of the Act."

Trainor J., of the British Columbia Supreme Court in *R. v. Belcourt* 2 C.R.R. 40 at p. 42 stated:

"...it is my view that a person is charged with an offence when the justice before whom the information is laid issues process to compel the accused to answer the charge alleged."

Perhaps the most convincing argument is found in the *Charter of Rights and Freedoms*. In the discussion of s.11(b) the statement is made that

"A person is only charged with an offence within the meaning of s.11 when an information is sworn against him alleging an offence or where a direct indictment is laid against him when no information is sworn..."

Fingerprints taken before 'charged'.

In several cases from British Columbia it has become apparent that defence lawyers, in that part of the country at least, have become aware of the provisions of the *Identification of Criminals Act*. They are now attempting to have fingerprint evidence excluded on the grounds that the impressions were taken before the charge was laid and therefore contrary to constitutional rights. As you will see below the Court of Appeals has overturned the decisions so far but the lawyers are definitely aware of the possibilities.

In *R. v. Connors* (Jan.15, 1996, B.C.S.C. Scarth J.), the accused was fingerprinted after an arrest for impaired driving. He consented to be fingerprinted at the time rather than return later in answer to an appearance notice. The information had not been sworn so he was technically not at this time 'charged'. The charge was later proceeded with by way of summary conviction.

The fingerprints taken for this offence were searched on AFIS and matched with those found at an earlier robbery scene and, based on that identification, the accused was arrested for the robbery. He was then fingerprinted again.

It was admitted that, without the fingerprint search and match, the robbery case would have remained closed. The trial court held that the fingerprints taken on the hybrid offence were taken outside the parameters of the *Identification of Criminals Act*, not because the offence was a hybrid but because the

information had not yet been sworn.

The taking of these fingerprints therefore constituted a seizure within the meaning of s.8 of the *Charter of Rights* which was unlawful. Since the arrest and the fingerprint evidence on the robbery charge rested on the legality of the fingerprints from the impaired driving charge all of the fingerprint evidence in the robbery charge was excluded.

A short time later a second British Columbia case (*R. v. Lewis, June 5, 1996, B.C.S.C., Levine J.*) followed the Connors decision.

In this case the accused was fingerprinted upon an arrest for theft before the information was laid. He was then charged with a summary conviction offence that was ultimately stayed.

The defence argued that the accused was fingerprinted unlawfully because he had not been charged with an indictable offence at the time of fingerprinting.

The court followed the decision in the Connors case and ruled that the fingerprinting violated the rights of the accused under s.8 of the *Charter of Rights*. The fingerprints were therefore excluded.

In September of the same year the Supreme Court of British Columbia considered a third case on the point. (*R v. Mattu, September 25, 1996, B.C.S.C., Preston J.*)

Mattu had been fingerprinted at the time of his arrest on an assault charge that was formally laid the following day. Several months later a fingerprint found at the scene of a ransacked home was matched to these fingerprints. The defence argued that the fingerprints from the assault charge were taken without statutory authority and could not be used in evidence, thus negating the fingerprint evidence on the ransacking charge.

The Justice skirts the issue of whether they were taken without statutory or common law authority and concludes that to exclude the fingerprints would bring the administration of justice into disrepute. (He also makes interesting comments about the benefits of fingerprint databases)

B.C.C.A. overturns Connors.

The British Columbia Court of Appeal looked at the Connors case and in a judgement filed January

15,1998 all three justices agreed that the fingerprints were admissible, but for differing reasons.

In any event in this instance Connors consented to be fingerprinted at that time rather than have to come back later on an appearance notice. Therefore the question of whether the fingerprints were taken legally under the statute should not have come into question.

In this instance the attack by defence was not successful but the question will undoubtedly be approached from other directions in future. It is an indication that defence counsel are beginning to pay attention to small details and suggests that we should scrupulously follow correct procedures.

The sub-section continues:

(i)...an indictable offence, other than an offence that is designated as a contravention under the Contraventions Act in respect of which the Attorney General, within the meaning of that Act, has made an election under section 50 of that Act...

The designation of a contravention is found in subsection 8 (1) of the *Contraventions Act*.

8 (1) The Governor in Council may, for the purposes of this Act, make regulations

(a) designating as contraventions offences created by any enactment, other than offences for which an offender may be prosecuted only on indictment;

Thus the designation of a contravention can be given to an offence under any other federal Act except those offences that are strictly indictable. In August 1996 the first list of offences designated as contraventions was published. The list included offences against many Acts such as those dealing with ports, harbours, airports, migratory birds, national parks, railway safety and motor vehicle transport among others as well as Ontario Provincial Offences.

This simply means that such listed offences may, on election by the Attorney General, be dealt with by way of a ticket, the same as any provincial ticket.

A new authority to fingerprint and photograph is now given in subsection 2(1)(a)(ii);

...,or (ii) an offence under the Official Secrets Act;...

Part of the following sub-section is held over from the former *Identification of Criminals Act*.

(b) any person who has been apprehended under the Extradition Act

Note that under the Extradition Act the person is merely apprehended, not charged or convicted. The point here, of course, is to determine whether the right person has been apprehended so that the charge may then be laid.

The Fugitive Offenders Act was repealed in 1999 and has consequently been removed from this section of the Identification of Criminals Act.

Authority to fingerprint after release.

The next subsection deals with processing persons who have been released prior to being fingerprinted and who are required to return for that purpose at a later date.

(c) any person alleged to have committed an indictable offence, other than an offence that is designated as a contravention under the Contraventions Act in respect of which the Attorney General, within the meaning of the Act, has made an election under section 50 of the Act, who is required pursuant to subsection 501(3) or 509(5) of the Criminal Code to appear for the purposes of this Act by an appearance notice, promise to appear, recognizance or summons.

This section has clarified the authority to fingerprint a person appearing on an appearance notice, promise to appear, recognizance or summons by including it in the *Identification of Criminals Act*.

This now replaces the former provision, in subsection 501(3) of the *Criminal Code* prior to 1998, that stated that a person was deemed to be in lawful custody charged with an indictable offence when they appeared for the purposes of the *Identification of Criminals Act*.

Use of force.

2(2) Such force may be used as is necessary to the effectual carrying out and application of the measurements, processes and operations described under subsection (1).

If a prisoner refuses to co-operate and you decide to use force under this section, you must remember that the sub-section applies only if **all** of the requirements of subsection 2(1) have been met.

One of those requirements, that, as noted earlier is often not met when a prisoner is being fingerprinted, is that the information must have been sworn before a justice before the accused can be considered charged within the meaning of the Act.

Be aware that, if the prisoner refuses to co-operate at this time, you are not protected under subsection 2(2) of the Act if you use force.

One of the key words in this subsection is "*effectual*".

It is often difficult to obtain a high quality set of impressions, even from a willing subject. When the subject is determined not to allow fingerprints to be taken, it may be impossible to obtain a set suitable for filing or comparison purposes.

There has never been a legal test of subsection 2(2) in order to determine the degree of force that may be used. The subsection reads as though the force may be increased until the objective, a good quality set of fingerprints, is reached.

It is highly improbable, however, that use of force, sufficient to be likely to cause serious injury, would be acceptable in a social climate based on the Charter of Rights and Freedoms.

Use common sense in the application of this section. When the subject is made aware of the section, and that you would be within your rights to use force to obtain the fingerprints you require, the futility of continued resistance usually becomes apparent. To this end it may be useful to have an enlarged copy of the Act mounted on the wall in the fingerprint room so that subjects can read the section for themselves.

Publishing.

2(3) *The results of the measurements, processes and operations to which a person has been subjected pursuant to subsection (1) may be published for the purpose of affording information to officers and others engaged in the execution or administration of the law.*

The general definition of the word "publish" includes dissemination of information by any means.

Fingerprints, photographs and description sheets are circulated freely among law enforcement agencies, often electronically, but these are not accessible to the general public.

Subsection (3) has been interpreted to allow for passing the information on to media sources such as newspapers, radio and television but only in circumstances in which such publication may assist an investigation.

The most common scenario is to provide the media with a photograph and the name and general description of a wanted person or an escaped criminal. Releasing the information to the media merely for news value is not sanctioned under the provisions of this Act.

It is well to remember that once such information has been given to the media it is out of police control. It will be filed in their libraries or 'morgues' and could then be reused at a later date without further permission from the police service.

Protection.

Section 3 is straightforward and provides protection, in addition to that given in subsection 25 of the Criminal Code, for anything lawfully done in accordance with the Act.

3. *No liability, civil or criminal, for anything lawfully done under this Act shall be incurred by any person*
(a) *having custody of a person described in subsection 2(1);*
(b) *acting in the aid or under the direction of a person having such custody; or*
(c) *concerned in the publication of results under subsection 2(3)*

Note that the protection afforded by this section is only applicable if all of the provisions of subsection 2(1) have been fulfilled.

Destruction of records.

Until 1992 there had been no statement contained within the *Identification of Criminals Act* that would require destruction of the fingerprints, photographs and other records taken under the authority of the Act. In the amendments to the Act caused by the Contraventions Act there is now a limited requirement to destroy certain records.

4. *Where a person charged with an offence that is designated as a contravention under the Contraventions Act is fingerprinted or photographed and the Attorney General, within the meaning of that Act, makes an election under Section 50 of that Act, the fingerprints or photographs shall be destroyed.*

1992, c. 47, s.76: 1996, c. 7, s. 40

This is a new subsection that requires a police service to destroy fingerprints and photographs when the charge is proceeded with by ticket as elected by the Attorney General under S.50 of the *Contraventions Act*.

With indictable and hybrid offences, even though the Crown elects to proceed by way of summary conviction, there is still no requirement to destroy the fingerprints and photographs.

This means that there is no statutory authority requiring destruction of fingerprints of a person who had been fingerprinted for an offence which later proceeded by way of summary conviction, or for which there was no conviction registered. When that individual is believed to be involved in other criminal activities, the fingerprints can remain on file and be used for search against additional crime scene impressions.

FINGERPRINTING ON APPEARANCE NOTICE

Subsection 501(3) of the *Criminal Code* provides that when a person who is alleged to have committed an indictable offence is released by way of an appearance notice, promise to appear or recognizance entered into before an officer-in-charge, he or she may be required to report at a stated time and place for the purposes of the *Identification of Criminals Act*.

The subsection includes hybrid or dual procedure offences but excludes any that the Attorney General

may have elected, under subsection 50 of the *Contraventions Act*, to proceed by way of a ticket under that Act.

There are similar provisions in subsection 510 of the *Criminal Code* relating to summonses.

Subsection 502 of the *Criminal Code* states that if the person fails to appear, providing that the notice has been confirmed, a warrant to arrest may be issued for the offence for which he/she is charged.

Subsections 145(4) and (5) of the *Criminal Code* provide that the person who fails to appear is guilty of an indictable offence or an offence punishable on summary conviction.

COMMON QUESTIONS.

A few recurring questions, that cannot be answered by direct reference to the Act, have been dealt with by various courts. Some of them are outlined below.

How many sets of fingerprints may be taken?

In an unreported case before the Supreme Court of British Columbia, *R. v. Hubert Nelson Bone S.C.B.C. 17 February 1984*, the accused submitted that the Act authorized only one set of fingerprints to be taken. The court ruled that there is nothing in the Act that restricts the number of sets of fingerprints that can be taken. The court went on to state that no restriction should be read into the Act which would preclude a second fingerprinting (i.e. on a separate occasion) if there is a legitimate reason for it.

What about palmprints?

Police services have generally considered palmprinting as part of the regular process of fingerprinting a subject but the legislation did not specifically mention the topic. In 1992 an Order-in-Council was finally passed that consolidated the two old O I C's that dealt with photography and fingerprinting and added the process of palmprinting.

Fingerprinting, Palmprinting and Photography Order (SI/92-131)

P.C. 1992-1354 18 June, 1992

His Excellency the Governor General in Council, on the recommendation of the Minister of Justice and pursuant to paragraph 2(1)(b) of the Identification of Criminals Act, is pleased hereby

(a) to revoke Order in Council P.C. 1954-1109 of July 22, 1954; and
(b) for the purposes of the Identification of Criminals Act, to sanction the measurements, processes and operations of fingerprinting, palmprinting and photography.*

** C.R.C. 1955, p. 2025*

What about footprints?

In *R. v. Nielsen and Stolar (1984) 16 C.C.C. (3d) 39 (Man. C.A.)* the court stated that taking sample footprints was simply the normal course of a police investigation and did not violate the accused's right against self-incrimination as guaranteed by S. 11(c) of the Canadian Charter of Rights and Freedoms.

Must fingerprints be returned or destroyed in cases of acquittal, etc.?

We have noted above the provisions of the *Identification of Criminals Act* with respect to destruction of fingerprints when the Attorney General elects to proceed by way of a ticket.

The Act is silent on the matter of what to do with the fingerprints and photographs in the event of a non-conviction for an indictable offence or when the charge has been dealt with by summary conviction.

There are two decisions from the Province of Quebec, *LaPlante vs. A.G. Que., 32 C.R. (3d) 94* and *Rancourt vs. M.V.C. and A.G. Que., 35 C.R. (3d) 162*, that hold that prints and photos must be returned upon request in the event of an acquittal. These cases are not binding in Ontario but could be used as the basis of a defence argument.

It is interesting to note that the Law Reform Commission of Canada, in Working Paper 34 (1984) at pages 68-9, stated:

"...we are not persuaded that the retention of investigative test records or samples poses a threat to the rights of the individual which is of sufficient significance to require their destruction simply because the subject to whom they relate has been acquitted of, or not prosecuted with respect to, the offence charged. Rather, we are inclined to believe that the destruction of some records in these circumstances is more likely to hamper the legitimate function of the police in the detection of crime and the protection of society as a whole than to constitute a useful and valuable safeguard for the privacy of innocent individuals. Fingerprint records, for example, might be crucial in the investigation of serious offences committed by persons who for one reason or another have escaped conviction for other offences of which they were in fact guilty."

Unfortunately the legislators did not maintain this view when they wrote subsection 4 of the *Identification of Criminals Act*.

It would appear, from the scarcity of challenges on the issue, that there has been little complaint over the way in which police agencies have dealt with the question of destruction of records in cases of non-conviction for whatever reason.

On request, most police services forces voluntarily destroy fingerprints, photographs and description sheets of first time offenders when no conviction is registered, if the charge is of a minor nature, unless there is a good reason for keeping them.

The usual reason is that the individual is suspected of other crimes and the police service wants a set of fingerprints on file for later search of crime scene impressions. There is no legislation to prevent them from doing so.

When complying with such a request you must remember that it will take several days to obtain the set that is on file with the R.C.M.P in the AFIS system. Set your meeting with the subject or lawyer accordingly. Fingerprints etc. are not returned to the subject or lawyer but you could arrange to destroy the documents in their presence if desired.

Note that Section 40, and following, of the Young Offenders Act contains specific instructions pertaining to records of young persons.

What is the position regarding hybrid (dual procedure) offences?

It is the usual practice for a person accused of a hybrid offence to be treated as if the offence will be prosecuted by indictment. The Crown may later elect to proceed by way of summary conviction but we cannot make that decision at the time of fingerprinting.

In *R. v. Conliffe (Ont. S.C.) 28 November 1984 (unreported)* the accused failed to appear for fingerprinting in accordance with her Promise to Appear on a charge of Theft Under \$200.00.

She applied to the court for an order declaring the requirement to appear for fingerprints to be null and void.

The court upheld her request and stated that since the charge was one which, in that jurisdiction, ordinarily would be proceeded with summarily "...the principles of fairness included in the phrase fundamental justice..." would suggest that mandatory fingerprinting would be untenable in this case.

Casey Hill points out that the Crown is not in agreement, but will have to await another similar case in order to attempt to overturn the decision.

YOUNG OFFENDERS AND THE IDENTIFICATION OF CRIMINALS ACT

The *Young Offenders Act* now specifically precludes fingerprinting and photographing young offenders on consent once the charge has been laid.

44(1) Subject to this section the *Identification of Criminals Act* applies in respect of young persons.

44(2) No fingerprints, palmprints or photographs or any other measurement, process or operation referred to in the *Identification of Criminals Act* shall be taken of, or applied in respect of, a young person who is charged with having committed an offence except in the circumstances in which an adult may, under that Act, be subjected to the measurements, processes and operations referred to in that Act.

1980-81-82-83, c. 110, s. 44; R.S.C. 1985, c.24 (2nd Supp.), s.33; 1995, c.19, s.29. Brought into force August 1, 1996

The subsection now makes it clear that, once charged, a young person is to be dealt with in the same manner as an adult with respect to the provisions of the *Identification of Criminals Act*.

The big difference is that, whereas an adult can consent to be fingerprinted at any time, whether charged or not, the wording contained in s.44(2) of the Young Offenders Act precludes the fingerprinting of the young person on consent once charged.

In other words, if a young person is merely under investigation it is permissible to take fingerprints and photographs on consent but once the charge is laid mere consent is no longer acceptable. The young person must then meet the provisions of s.2 of the *Identification of Criminals Act*.

The situation has not changed with respect to fingerprints taken for elimination purposes. It is still perfectly acceptable to take impressions on consent for this purpose prior to a charge being laid.

It would be well to ensure that the youth has a full understanding that there is no legal obligation to provide those fingerprints, especially if it is possible that the youth will later be charged and that you will want to use the fingerprints as evidence.

As noted above the Young Offenders Act contains specific instructions in Sections 40 - 46 with respect to the maintenance and use of records. If you will be maintaining such records you must make yourself familiar with these provisions.

ACTIVITY ONE

IDENTIFICATION OF CRIMINALS ACT

The following scenarios are based on the material contained in the Guide. Using only the information given in the scenarios, answer the questions.

Do not read anything into the scenarios that is not explicitly stated.

In each case give the reasons for your answers. Yes or No answers alone are not sufficient.

1. The investigators have just completed their investigation of an automobile theft and have brought a prisoner to you to be fingerprinted and photographed. The information will be laid later. You walk him over to the fingerprint stand and at this point the prisoner states that he has no intention of allowing you to take his fingerprints. Can you rely on S.2(2) of the *Identification of Criminals Act* to force him to comply?

2. You found fingerprints at a crime scene. A short time later a subject is brought to you to be fingerprinted and photographed. The information will be laid in the morning on day shift. You take the person over to the fingerprint stand and, without any conversation, the subject permits you to take finger and palm prints. Later comparison determines that the crime scene impressions were made by this prisoner.

Could the procedure you followed when fingerprinting the prisoner have the potential for causing any difficulties at trial?

3. An arrest was made in a serious case in your community. A reporter from the local newspaper took photographs of the subject as he was taken from the police station for transportation to the central lock-up. A short time later the reporter tells you that her camera had malfunctioned and that she did not get the photographs. She then asks for copies of the police photographs to go with the news story.

Would you be justified, under S.3 of the Identification of Criminals Act, in giving her copies of the photographs you took?

4. A short time later the subject of Q.3 escapes from custody. The reporter again asks for a photograph.

What would your response now be?

5. While you are fingerprinting a prisoner he becomes uncooperative and in the ensuing struggle his finger is dislocated. You later hear from his lawyer who tells you that his client will be bringing suit against you and the police service for excessive use of force.

Under what circumstances will you be protected by the provisions of Section 3 of the *Identification of Criminals Act*?

6. On occasion a subject will refuse to continue after you have obtained one set of fingerprints.

(a) Assuming that the criteria of s.2(1) have been met, would you be legally justified in using force under s.2(2) of the *Identification of Criminals Act* to compel the subject to allow you to take the several sets that you require?

(b) Since you have one satisfactory set of fingerprints, what other actions could you take to satisfy your requirement for several sets?

7. The investigators are questioning a juvenile about the theft of an automobile that you have already examined and on which you found fingerprints. You are asked to take a set of fingerprints from the juvenile and make the comparison.

What would you want to know about the stage of the investigation before you complied with the request?

8. Several months ago you lawfully fingerprinted a first time offender for a minor theft charge. Today you received a letter from his lawyer stating that the charge had been withdrawn and demanding the destruction of all of the documentation associated with that charge. The investigators have told you that they believe the youth is involved with a gang responsible for a large number of break and enters in your city.

Do you have the authority to refuse the request to destroy the fingerprints, photographs and description sheets?
