

**UNRESTRICTED ACCESS: AN EXPLORATORY  
ASSESSMENT OF CANADA – U.S. CRIMINAL  
INTELLIGENCE AND INDIVIDUAL PRIVACY**

by

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## **ABSTRACT**

Canada and the United States maintain unparalleled international relations in terms of trade, governance and security. This study examines the creation, retention, dissemination and destruction of personal information related to criminal activity in Canada, as well as the subsequent transmission of this information to the United States. Among the issues considered in this study are the privacy implications related to the transmission of personal information by Canadian law enforcement, government and third party agencies to foreign states. Findings from a case study highlight significant backlogs in the uploading of criminal conviction data to CPIC, the national repository for criminal records in Canada. Quantitative results lay the foundation for a predictive framework whereby the administrative actions of the United States Customs and Border Protection towards Canadian citizens with criminal convictions can be reasonably anticipated on the basis of several key predictors. Qualitative input from affected Canadian citizens and justice system stakeholders has been presented in relation to the statistical outcomes of the study.

**Keywords:** privacy; mobility; CPIC; police records; criminal record; U.S. border

## **DEDICATION**

To my parents, who have offered me the unconditional love and support that made the completion of this thesis possible.

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# 1: INTRODUCTION

The terrorist attacks of September 11, 2001 and their immediate aftermath focused attention on border management strategies in ways previously unimaginable. Suddenly confronted by the fact that existing systems and processes were not particularly effective at upholding security or facilitating legitimate traffic, the United States, Canadian and Mexican governments demonstrated an unprecedented willingness to reconceptualize their approaches towards physical borders (Jacobs & Blista, 2008). While numerous advances have been made in the realm of international security and intelligence along these borders, some argue that a failure to address domestic policy in Canada has led to inconsistent treatment and undue hardship towards Canadian citizens along the 49<sup>th</sup> parallel (Davis, 1980).

Canadian laws governing the creation, retention, dissemination and destruction of criminal records continue to lag behind significant technological advances and legal developments between Canada and the United States which provide for the cross-border flow of criminal records and personal information related to criminal activity. Of primary concern for many Canadians is the transmission of unverified information related to criminal activity, including police reports, arrest records and court dockets that may wrongfully categorize innocent individuals as criminals to foreign law enforcement agencies; the general effect is that Canadians who have never been found guilty of any offence, neither in

Canada nor abroad, are encountering significant obstacles in gaining entry to the United States as a result of Canada's transmission of their personal records. It would appear as though the inclusion of unverified data in the total body of information transmitted to foreign law enforcement agencies is a frank admission that the presumption of innocence is too high a legal standard to maintain outside of the courtroom (Davis, 1980).

What duty, if any, does the Canadian government have to protect the dissemination of citizens' unverified criminal histories, knowing that such information can restrict mobility and create undue hardship? Furthermore, does the dissemination of Canadian police records and criminal records information to the United States adhere to the legislative provisions set out in the *Canadian Charter of Rights and Freedoms*, the *Privacy Act*, the *Criminal Records Act*, and the *Access to Information Act*? The consideration of these questions is essential for future developments involving the integration of Canada's criminal records databases with those of the United States, as well as other global allies. As international data sharing practices move forward through technological innovation, the privacy and protection of Canadian citizens should remain paramount at each stage of this inevitable progression.

A second and equal concern is raised when considering Canadian citizens with one or more criminal convictions who have been travelling the Canada -U.S. border freely for years, having their criminal convictions go unnoticed by U.S. Customs and Border Protection officials. This raises serious concern as to the efficiency with which criminal records and intelligence data are being transmitted

cross-border. It suggests that there is no singular central repository of criminal records and security related information, but rather, multiple points of access available that may or may not be referenced at the time of entry to a foreign state. This general pattern highlights major security and privacy concerns as well as the need for a singular, transparent and protected system of access to essential information.

This study will seek to identify trends in the cross-border sharing of criminal records and personal information that lead law-abiding Canadians towards difficulty at the United States border. Similarly, through an examination of cases involving legitimate grounds for denied entry to the United States, this study will seek to identify ways in which Canadian citizens with criminal convictions may better prepare themselves for travel, tourism and immigration to the United States. Finally, this study will consider the efficiency and efficacy of current data sharing practices as they relate to security concerns on both sides of the Canada-U.S. border. As the provisions governing the cross-border transmission of criminal records and personal information seek to strike a balance between domestic security and individual privacy, it will be essential that the researcher consider each of these aims equally and objectively.

What follows immediately is a review of relevant literature that will assist in the consideration of each of the above noted research questions within the broader contexts of international data sharing, Canada-U.S. relations and Canadian public policy. The primary goal of this discussion is to establish an informational and conceptual lens through which to interpret the conclusions and

recommendations presented in the latter sections of this report. A secondary goal is to elicit the consideration of current information management practices in light of recent technological and legal advances.

In order to meaningfully examine criminal records management policy in Canada as it relates to U.S. border travel, it is first necessary to develop a basic understanding of mobility rights, legal rights and the implied right to privacy under the *Canadian Charter of Rights and Freedoms*. These concepts are essential as they will be considered at each stage of the discussion to follow. An introduction to the legislative framework establishing the criminal grounds for inadmissibility to the United States will be provided in order to identify the range of implications for Canadian travellers. Privacy and access to information legislation in Canada will be considered at both the federal and provincial levels as there are significant conceptual distinctions that warrant recognition. Finally, an extensive overview of Canadian criminal records management systems will be provided in order to outline the various points of entry foreign law enforcement agencies may have to Canadians' police records and criminal records. As is the case with the discussion of privacy and access to information, the discussion of Canadian police records and criminal records systems will first be divided into provincial and federal jurisdictions; once individually established, it will then be possible to discuss federal and provincial data systems as they relate to one another.

## 2: CANADIAN CHARTER OF RIGHTS AND FREEDOMS

### 2.1 Section 6: Mobility Rights

Essential to the discussion of criminal records management policy in Canada as it relates to U.S. border travel is the consideration of mobility rights, namely the right to leave Canada, as provided for under Section 6 of the *Canadian Charter of Rights and Freedoms*:

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.

(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right

- (a) to move to and take up residence in any province; and
- (b) to pursue the gaining of a livelihood in any province.

(3) The rights specified in subsection (2) are subject to

- (a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and
- (b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who were socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

Section 6, like other *Charter* rights, is subject to s. 1 of the *Charter*, “The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be

demonstrably justified in a free and democratic society” (1982). Unlike other sections of the *Charter*, s. 6 is one of the privileged rights in that it is not subject to s. 33 of the *Charter*, known as the override or notwithstanding clause. Section 33 allows for Parliament or provincial legislatures to override certain portions of the *Charter*, namely sections 2, 7, 8, 9, 10, 11, 12, 13, 14 and 15.

While s. 6 provides for citizens to enter, remain within and leave Canada, this research is most concerned with s. 6 (1)’s provision with respect to leaving Canada. As it stands currently, there exists a paucity of case law related to s. 6 of the *Charter*. Most decisions that consider s. 6 are related to extradition – the forcible removal by one state of a suspected or convicted criminal to another state – and bear little relevance to the discussion at hand. Section 6 decisions are dwarfed by those related to Sections 7 and 8, both of which will be discussed in further detail below.

The right to enter Canada was recognized well before the enactment of the *Charter* in 1982; s. 95 of the *Constitution Act 1867* affords the unrestricted right to enter Canada for all Canadian citizens. The *Canadian Bill of Rights* (1960), although containing no guarantee like s. 6 of the *Charter*, included a prohibition on arbitrary exile. Alternatively, the right to leave Canada was not entirely clear before the *Charter*. No law inhibited foreign travel, however most foreign countries require a valid passport for gaining lawful entry and the absence of the right to a passport at the time was seen as an impediment to leave Canada (Hogg, 1997). The issuance of a passport was and still is a

function of the Secretary of State for External Affairs, one of the few remaining powers flowing from the royal prerogative. It is arguable that s. 6(1) of the *Charter* now confers a constitutional right to a passport.

While it is clear that Canadian citizens are not being forcefully withheld from exiting Canada as a result of prior encounters with the law, it can be argued that current data sharing practices between Canada and the U.S. have the potential to significantly inhibit law-abiding Canadians' ability to enter the U.S., and thus, leave Canada. In these instances, are the limitations imposed upon this *Charter* right justifiable within a free and democratic society? A further *Charter* consideration relates to the legal rights provided for under s. 11, namely, the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal. As was mentioned prior, some feel as though the inclusion of unverified data in the total body of information transmitted to foreign law enforcement agencies is a frank admission by the Canadian government that the presumption of innocence is too high a legal standard to maintain outside of the courtroom (Davis, 1980).

There is no question as to the utility and importance of cross-border intelligence sharing between Canada and the United States. Bilateral initiatives and legislation have resulted in countless improvements to the way in which people and goods flow between the two countries. What is noteworthy for the purposes of this research is that while increased informational capacities on both sides of the border have led to exponential advances in the volume of data available to each foreign state, the accuracy of the available data may often be

overlooked in favour of a 'quantity over quality' approach. There are negative impacts to be considered in this regard on either side of the law enforcement and civil liberties divide; border integrity is severely compromised when the transmission of unmanageable volumes of personal information result in the oversight of crucial details related to an intended traveler's past (e.g. criminal convictions, dangerous offender designations). Conversely, individual privacy is jeopardized when unverified or inaccurate personal information is transmitted in bulk without full appreciation of the potential and often negative consequences.

The purpose of investigating s. 6 of the *Charter* relative to the Canada – U.S. border is to highlight equally effective and potentially less imposing measures that would prevent Canadians from encountering unnecessary impediments at the United States border while upholding the mandates of security, intelligence sharing and law enforcement in both Canada and the United States. As such, it will prove worthwhile to weigh the benefit of cross-border transmission of unverified arrest records, police reports and other personal information related to criminal activity against the potential cost to Canadian citizens' s. 6 mobility rights. In knowing that foreign law enforcement agencies are interpreting arrest records and withdrawn charges as admissions of guilt to criminal offences, what role, if any, should the Canadian government play in intervening with foreign law enforcement agencies, restricting access to information, or at minimum providing legitimate justification of the status quo?

## 2.2 Section 8: Search & Seizure

Privacy as a subject of public policy refers to the possession and acquisition of knowledge about people and their associations. A highly disparate variety of laws, which are still increasing in number, restrict possession or dissemination of information about individuals, or conversely compel its dissemination (Stigler, 1980). With respect to the *Charter*, no case surpasses in importance the Supreme Court of Canada's decision in *Hunter v. Southam Inc.* According to Dickson, J. in *Hunter v. Southam Inc.*, the *Charter* is a "purposive document" that provides, "for unremitting protection of individual rights and liberties" (S.C.R. [1984] 145 at 156).

In *Hunter v. Southam Inc.*, the Supreme Court of Canada held that a power of search and seizure in the *Combines Investigation Act* was contrary to s. 8 of the *Charter* in that it authorized unreasonable searches and seizures. In this case, statutory power had been employed during a search of the premises of the Edmonton Journal newspaper as part of a Combines inquiry into the newspaper industry in Edmonton (Hogg, 1997). Investigative officers arrived on location at Southam Inc. in Edmonton, Alberta requesting to obtain and review all company files with the exception of files located in the news room, but including all files of J. Patrick O'Callaghan, publisher of the Edmonton Journal. Officers declined to give the name of any person whose complaint had initiated the inquiry, or to say under which section of the *Act* the inquiry had been begun. Officers also declined to give more specific information as to the subject matter of the inquiry than had been provided in the authorization to search (S.C.R. [1984] 145 at 150).

Southam Inc. subsequently served upon the officers of the Combines Investigation Branch a notice of motion for an interim injunction. The application was heard by Cavanagh J. who held that although Southam Inc. had raised a serious question as to whether the search was in violation of s. 8 of the *Charter*, the balance of convenience militated in favour of denying the interlocutory injunction pending trial of the matter (S.C.R. [1984] 145 at 150). At the hearing, the appellants maintained, unsuccessfully, that the Director of Investigation and Research, and his authorized representatives, acting pursuant to s. 10 of the *Act* were a “federal board, commission or other tribunal” within s. 2 of the *Federal Court Act* and that the Federal Court, not the provincial courts of Alberta, had jurisdiction. Southam appealed to the Alberta Court of Appeal. The appellants also appealed, from that part of the judgment which held that the Alberta Court of Queen’s Bench had jurisdiction. A unanimous five-judge panel of the Alberta Court of Appeal, speaking through Prowse J.A., held that s. 10(3), and by implication s. 10(1), of the *Act* were inconsistent with the provisions of s. 8 of the *Charter* and therefore of no force or effect. It is from this ruling that the appellants brought their appeal before the Supreme Court of Canada (S.C.R. [1984] 145 at 150). The Supreme Court of Canada upheld the decision of the Alberta Court of Appeal, finding that the *Combines Investigation Act* was contrary to s. 8 of the *Charter* in that it authorized unreasonable searches and seizures.

According to *R. v. Dyment*, Section 8 of the *Charter* – the right to be secure against unreasonable search and seizure – “must be interpreted in a broad and liberal manner so as to secure the citizen’s right to a reasonable

expectation of privacy against governmental encroachments” (2 S.C.R. [1988] 417 at 426). *Charter* jurisprudence further recognizes the broad interpretation of privacy and its multiple aspects; those aspects involving territorial or spatial privacy, those related to privacy of the person, and those that relate to privacy of personal records and information (Cohen, 2005). It is important to note that nowhere in the *Charter* is the word ‘privacy’ mentioned, however it is well established through relevant case law that s. 8 provides a reasonable expectation of privacy for all Canadians. To reiterate the decision in *R. v.*

*Dyment*:

Grounded in a man’s physical and moral autonomy, privacy is essential for the well-being of the individual. For this reason alone, it is worthy of constitutional protection, but it also has profound significance for the public order. The restraints imposed on government to pry into the lives of the citizen go to the essence of a democratic state.

Claims to privacy must, of course, be balanced against other societal needs, and in particular law enforcement, and that is what s. 8 intended to achieve.

(2 S.C.R. [1988] 417 at 426)

Therefore, it is the expectation of privacy, as well as the punishment for violations thereof that lie at the foundation of Canadian privacy legislation (Shaw, Westwood & Wodell, 1994).

Recent interpretations of s. 8 have characterized an individual’s reasonable expectation to privacy as being a protean concept located along a continuum, whereby contextual factors determine the location of one’s reasonable expectation to privacy under a particular set of circumstances.

Utilizing this analysis, it would appear as though an individual's reasonable expectation to privacy is dynamic rather than static, and may be moved up or down a sliding scale ranging from 'no expectation' to 'absolute expectation' depending on situational factors.

In *R. v. Law*, a locked safe belonging to the accused was reported stolen and subsequently recovered, open, in a field by the police. While conducting an investigation into the theft of the safe, an officer not involved in the investigation of theft but who had suspected the accused of tax violations, photocopied financial documents found within the safe without obtaining a warrant to do so. Copies of the documents were forwarded to Revenue Canada which resulted in prosecution by the Crown under the *Excise Tax Act* for contravention of the reporting requirements and of the obligation to remit taxes (*R. v. Law*, 1 S.C.R. [2002]) In this instance, the Supreme Court of Canada held that it was not reasonable to conclude that a person had abandoned something if it had been stolen and subsequently recovered by police (Boucher & Landa, 2005).

While *R. v. Law* addresses the use of police investigative techniques generally, subsequent jurisprudence has provided further specification when police investigations utilize advanced investigative tools and technologies. Prior to *R. v. Tessling* in 2004, the jurisprudence as to whether police could use certain investigative technologies without a warrant was inconsistent. Certain decisions inhibited the use of advanced technologies without a warrant (e.g. *R. v. Kelly* 1 S.C.R. [2001]) while others took a narrower view of how far privacy interests extend (Boucher & Landa, 2005).

In *R v. Tessling*, the RCMP used an airplane equipped with a Forward Looking Infra-Red (FLIR) camera to overfly properties owned by the accused. FLIR technology records images of thermal energy or heat radiating from a building. FLIR could not, at this stage of its development, determine the nature of the source of heat within the building or penetrate through the external surfaces of a building. The RCMP were able to obtain a search warrant for the accused's home based on the results of the FLIR in combination with intelligence obtained from two informants. In the house, the RCMP found a large quantity of marijuana and several guns. The accused was charged with a variety of drug and weapons related offences (*R. v. Tessling* 3 S.C.R. [2004]). In this case, the Supreme Court of Canada held that the use of FLIR technology did not constitute as an unreasonable search or seizure, and thus, did not violate the accused's constitutional right to be free from unreasonable search and seizure. The Court's approach to the determination of the reasonable expectation of privacy involved is appropriate for, and easily transferable to questions of whether other technologies violate privacy interests (Boucher & Landa, 2005).

The use of advanced technologies has been considered most recently in *R. v. Gomboc* where an officer with the Calgary Police Service Drug Unit informed the Southern Alberta Marijuana Investigative Team about a residence in Calgary that he believed might be involved in producing marijuana. Shortly thereafter, officers mobilized in the neighbourhood of the residence and made inquiries with local residents. Based on the observations of the officers and the details provided by the residents questioned, the police contacted the utility

company to request the installation of a digital recording ammeter (“DRA”) – a device that measures electrical power flowing into a residence – to be installed at the home of the accused. The results produced by the DRA evidenced a pattern consistent with a marijuana grow operation. On the basis of the DRA results and secondary investigations, a search warrant was obtained for the home of the accused. As a result of the search, the police seized 165.33 kilograms of bulk marijuana, 206.8 grams of processed and bagged marijuana located in a freezer, and numerous items relating to a marijuana grow operation. The accused was charged with possession of marijuana for the purposes of trafficking, production of marijuana and theft of electricity (*R. v. Gomboc* 3 S.C.R. [2010]).

It was determined in *R. v. Gomboc* that the decision in *R. v. Tessling* was not fully applicable. The actions of the Calgary Police Service were therefore determined to have infringed upon the accused’s s. 8 right to be free from unreasonable search and seizure.

Section 8 jurisprudence varies greatly as exemplified in the cases outlined above. The fundamental question posed by this research in relation to s. 8 of the *Charter* is as follows: is there a reasonable expectation of privacy for personal information related to alleged criminal activity where no conviction exists, particularly when considered in the context of transmission to a foreign state? While the *Charter* explicitly states that personal privacy must be balanced against broader societal needs, namely, law enforcement, does this provision apply equally in an international context, particularly where no mechanism exists whereby an informational inaccuracy may be corrected? In Canada, there are

numerous ways for a citizen to alleviate the stigma associated with a criminal record, be it through a Canadian pardon, a destruction of photos and fingerprints from police databases or a court records purge request. In an international context, no such mechanisms exist; once an individual has been categorized as a criminal to a foreign state, there are few, if any ways to 'right a wrong' in the event that the information transmitted was in some way inaccurate, incomplete or misleading. It will be important to consider and measure the effects of these occurrences, whereby an individual has been wrongfully categorized as 'criminal' to a foreign state.

### **2.3 Section 7: Life Liberty and the Security of Person**

By virtue of the *Charter's* broad interpretation, s. 8 is not the sole locus of the right to privacy; beyond the recognition of a right to privacy found within s. 8 of the *Charter* (most notably interpreted in *Hunter v. Southam Inc.*) a number of Supreme Court decisions have supported the concept of privacy within s. 7 (Cohen, 2005).

Section 7 of the *Charter* provides for the "right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice" (1982). The guarantees to individual liberty and security of the person have been linked in *R. v. Morgentaler* by Justice Wilson to the notions of human dignity and personal autonomy. Justice Wilson suggested that both liberty and the security of person must be afforded a broad range of meaning, and that s. 7 of the *Charter* requires that the right to liberty be extended

in order to grant every individual “a degree of personal autonomy over important decisions intimately affecting their private lives” (S.C.R. [1988] p. 171). In *Rodriguez v. British Columbia (Attorney General)* the above notion was supported when the Supreme Court observed that security of the person has an element of autonomy which protects the privacy of individuals relative to the decisions concerning their own body. Additionally, in *R. v. O’Connor*, Justice L’Heureux-Dube supported protecting informational privacy in a case pertaining to the sought-after disclosure of medical and therapeutic records (Cohen, 2005).

The key considerations for the current research with respect to s. 7 are the degree to which an individual’s personal autonomy is protected during the cross-border transmission of personal information related to criminal activity, the degree to which an individual can control this flow of information and the degree to which current practices impact the private lives of law abiding Canadian citizens.

*Charter* rights, including the implied rights to privacy noted throughout s. 7 and s. 8 case law, are not absolute. The ‘reasonable limits’ clause contained within s. 1 of the *Charter* subjects all rights to “reasonable limits prescribed by law as can be demonstrably justified within a free and democratic society” (1982). Claims to privacy must be balanced against broader societal goals, such as law enforcement. In applying s. 1 and considering this balance of interests, a court must ask itself the following questions:

- 1) Is the objective of the law important enough to warrant violation of the *Charter* right?
- 2) Is the law effective in reaching this objective?
- 3) Does the law violate the right as little as possible?
- 4) Does the goal in achieving the objective outweigh the harm caused by the violation of the right?

The infringement of a *Charter* right is justifiable as per s. 1 when the answer to each of the above-noted questions is 'yes' (Shaw et al, 1994).

The current research will consider each of the four questions noted above in relation to the laws and practices governing the creation, storage, retention and transmission of personal information related to criminal activity in Canada. With respect to the first question, it is clear that the national priorities of security, multilateral intelligence-sharing and law enforcement warrant restriction of our *Charter* rights in this regard. Canada must support these mandates in order to ensure the safety of its citizenry and to maintain international partnerships. To the second question, a similar answer would suffice; Canada and the United States cooperatively manage the largest political border in the world, allowing for the free and easy flow of goods and people without compromising security and surveillance measures. It is the third question, 'does the law violate the right as little as possible' that this research will engage with most critically. Having presented relevant case law and legal principles, the research will consider these provisions in relation to the empirical outcomes of the statistical analyses that

follow. Several conclusions and recommendations will be argued as being less restrictive and equally, if not more effective options versus the status quo.

### 3: CRIMINAL GROUNDS OF INADMISSIBILITY AT THE UNITED STATES BORDER

#### 3.1 Admissibility, Inadmissibility and the Visa Waiver Program

The United States *Immigration and Nationality Act* (INA) was created in 1952 and primarily governs immigration and citizenship within the United States. Before the INA, a variety of statutes governed immigration law but were not organized in one location. The McCarran-Walter bill of 1952, collected and codified many existing provisions and reorganized the structure of immigration law. The Act has been amended many times over the years, but is still the basic body of immigration law in the United States (INA, 8USC).

Andorra	Hungary	New Zealand
Australia	Iceland	Norway
Austria	Ireland	Portugal
Belgium	Italy	San Marino
Brunei	Japan	Singapore
Czech Republic	Latvia	Slovakia
Denmark	Liechtenstein	Slovenia
Estonia	Lithuania	South Korea
Finland	Luxembourg	Spain
France	Malta	Sweden
Germany	Monaco	Switzerland
Greece	Netherlands	United Kingdom

Figure 1 - Visa Waiver Program Countries

In considering the criminal grounds of inadmissibility at the United States border, it is important to establish the concept of admissibility along with the various provisions governing the flow human traffic into the United States. Figure 1 comparatively outlines the countries for which visas are waived for both Canada and the United States. The U.S. Visa Waiver Program (VWP) allows citizens of 36 countries to enter the United States without obtaining a visa in advance of their admission at a U.S. port of entry. Prior to July 1, 2009 Canadians were able to travel the U.S. border without a passport; although this is no longer the case, Canada and the United States continue to maintain a unique relationship through the North American Free Trade Agreement (NAFTA) allowing for the free-flow of people and goods across the Canada – U.S. border (Rekai 2002). Citizens of countries not included in the VWP must apply for a visitor visa at a U.S. Consulate or Embassy abroad. Canada waives Temporary Entry Visa requirements for citizens of 36 countries as well. Furthermore, visas are unnecessary for the following categories of people:

- Those people lawfully admitted to the United States for permanent residence who are in possession of their alien registration card (green card) or can provide other evidence of permanent residence.
- British citizens and British Overseas Citizens who are re-admissible to the United Kingdom.
- Citizens of British dependent territories, who derive their citizenship through birth, descent, registration, or naturalization in one of the British dependent territories of Anguilla, Bermuda, British Virgin

Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, St. Helena or Turks and Caicos Islands.

- People holding a valid and subsisting Special Administrative Region passport issued by the Government of the Hong Kong Special Administrative Region of the People's Republic of China.
- People holding passports or travel documents issued by the Holy See.

(Rekai 2002: 16)

It is important to note the connectivity of the U.S. and Canadian systems of immigration; restructuring and reform in Canadian immigration policy has a direct impact on the way in which the U.S. border is managed, and vice versa. One need look no further than the United States' security reaction to the events of September 11, 2001 to note how a perceived slackening of Canadian immigration standards and security can trigger border restriction by U.S. officials.

Of primary importance to the current discussion is INA §212(a)(2)(A) – criminal grounds of inadmissibility. Visitors to the United States who have been convicted of, or who admit to having committed, or who admit to committing acts which constitute the essential elements of a crime involving moral turpitude, other than purely political offences are excludable under INA §212(a)(2)(A)(i)(I). To be excludable based on an admission to a crime or criminal act, an alien must voluntarily admit all of the facts which constitute the crime and it must be considered a crime under the laws where it occurred. An attempt or conspiracy to commit such a crime is included in this ground.

Moral turpitude in the context of U.S. immigration refers to conduct which has been deemed by the United States government to be inherently base, vile or

depraved, contrary to the accepted roles of morality and the duties owed between fellow citizens or society in general. While many crimes deemed to involve moral turpitude are inherently severe in nature, others seem to be arbitrarily assigned this designation. A detailed breakdown of crimes involving moral turpitude can be found in Appendix A.

Neither the seriousness of the offence nor the severity of the sentence imposed determines whether or not a crime involves moral turpitude. Political offences are not included in this ground of exclusion. Political offences are generally considered to be acts taken with others as a part of war, insurrection or rebellion in an attempt to replace the legal authority. Two exceptions to this ground of exclusion appear in INA 212(a)(2)(A)(ii):

- 1) The ground does not apply where the alien has committed only one crime of moral turpitude, the crime was committed when the alien was under 18 years of age and the crime was committed (and the alien was released from confinement to prison or a correctional institution imposed for the crime) more than five years before the date of application for a visa or other documentation and the date of application for admission to the United States.
- 2) The ground does not apply where the alien has committed only one crime of moral turpitude, the maximum penalty possible for the crime for which the alien was convicted or to which the alien admits having committed or of which acts the alien admits having committed which constitute the essential elements of the crime did not exceed one year of imprisonment

and, if the alien was convicted of the crime, the alien was not sentenced to imprisonment for a term greater than six months, regardless of the extent to which the sentence was ultimately satisfied.

Crimes involving controlled substances are viewed separately by U.S. law enforcement agencies, including U.S. Customs and Border Protection. Under INA §212(a)(2)(A)(i)(II), aliens who have been convicted of, or who admit to having committed, or who admit to committing acts which constitute the essential elements of a violation or conspiracy to violate any law or regulation of a State, the United States or a foreign country relating to a controlled substance as defined in s. 102 of the Controlled Substances Act. An attempt or conspiracy to commit such a crime is included in this ground of exclusion.

Under INA §212(a)(2)(B), an alien who has been convicted of two or more offences, regardless of whether or not the convictions arose from a single trial or arose from a single scheme of conduct involving moral turpitude and whether or not the offences involved moral turpitude, is excludable if the aggregate sentence of confinement actually imposed is five years or more (INA, 8USC).

Finally, under INA §212(d)(3), an alien who is excludable other than for security and related grounds (with the exception of export violations), foreign policy grounds or participation in Nazi persecution or genocide may be admitted temporarily as a nonimmigrant despite his or her inadmissibility. In *Matter of Hranka* (16 I&N Dec. 491 [BIA 1978]) the Board of Immigration Appeals determined the criteria for an application under INA§212(d)(3). The three criteria considered are the risk of harm to society if the applicant is admitted, the

seriousness of the applicant's prior violation(s) of immigration or criminal law, if any, and the nature of the applicant's reasons for seeking entry.

INA §212(d)(3)(A)(ii) allows for temporary waivers of the crimes, acts or admissions that have led to an individual's inadmissibility to the United States. Prior to 2001, waivers of this type were issued permanently so long as the applicant had no further criminal involvement. Currently, waivers are issued for maximum periods of five years. Intended travelers to the United States who have been convicted of, or who admit to having committed, or who admit to committing acts which constitute the essential elements of a crime involving moral turpitude may request temporary permission to enter the United States through the U.S. Department of Homeland Security.

The U.S. Department of Homeland Security receives, reviews and renders decisions on waiver applications through the Admissibility Review Office located in Herndon, Virginia. In order to lodge a waiver application, an individual must complete Form I-192, Application for Advanced Permission to Enter as a Nonimmigrant, pay a filing fee of \$585 USD at a United States Port of Entry and submit several pieces of supporting evidence outlining their need to travel to the United States, the grounds of their inadmissibility, and their rehabilitation from past criminality. The current research analyzes the waiver application process and the numerous variables contributing to the approval or denial of an application, the processing time for an application as well as other key dependent variables.

### **3.2 Criminal Records at the United States Border**

Every year, thousands of Canadians are deemed inadmissible to the United States on the basis of one or more of the above noted grounds of inadmissibility. Often is the case that Canadians with one or more criminal convictions have previously gained entry to the United States without restriction, having their criminal convictions go unnoticed by U.S. Customs and Border Protection officials. This raises serious concern as to the efficiency with which criminal records data are being transmitted cross-border. It suggests that there is no singular central repository of criminal records and intelligence information between Canada and the United States, but rather, multiple points of access available that may or may not be referenced at the time of entry to a foreign state. This general pattern highlights major security and privacy concerns as well as the need for a singular, transparent and protected system of access to essential security related information.

It is well documented that Canadian pardons are not recognized at the U.S. border, although many Canadians still encounter difficulties that arise from misinformation regarding their duty to disclose their criminal histories when entering the United States. What is particularly troubling to some is the transmission of unverified information relating to criminal activity, including police reports, arrest records and court dockets that may wrongfully categorize innocent individuals as criminals to foreign law enforcement agencies. The general effect is that Canadians who have never been found guilty of any offence, neither in Canada nor abroad, are encountering significant obstacles in gaining entry to the

United States as a result of Canada's transmission of their personal records. U.S. Customs and Border Protection officials often interpret records of charge or records of arrest as an admission of guilt; this becomes very problematic for some, in that the United States deems aliens who have been convicted of, or who admit to having committed, or who admit to committing acts which constitute the essential elements of a crime involving moral turpitude as excludable under INA §212(a)(2)(A)(i)(I). Therefore, it is not necessary to have been convicted of a crime to be deemed inadmissible at the United States border; a simple admission (or interpretation thereof) can prevent entry. A further consideration when examining the relevancy of transmitting arrest records that have no related or subsequent charges is the nature of information contained within these reports. In addition to objective information such as an individual's name, date of birth, and physical characteristics, police reports often include subjective, unverified information such as persons related to the crime, possible gang affiliation, or suspicions of other violations.

It is worthwhile to note that a criminal conviction in Canada does not automatically deem one inadmissible to the United States. There are circumstances under which the U.S. provides exceptions for individuals with a single minor conviction – what is commonly known as the 'petty offence exception'. Under *Canadian Criminal Code* section 787, all cases that are processed summarily carry a maximum possible sentence of six months or less regardless of the maximum potential sentence under the original charging statutory section. There are exceptions to s. 787 within the *Canadian Criminal*

*Code*, as many charge sections include specific maximum potential terms of imprisonment (e.g. eighteen months, one year) for summarily proceeded convictions. A conviction is considered a 'petty offence' where the maximum potential penalty for the crime of which the alien was convicted did not exceed imprisonment for one year and the alien was not sentenced to a term of imprisonment in excess of six months. Therefore, with the exception of controlled substances violations, many criminal cases that are processed summarily qualify for the petty offence exception. Although often cited by U.S. Customs and Border Protection as justification for denial of applications under the petty offence exception, whether or not the offence in question was a crime involving moral turpitude is irrelevant to the determination of whether it qualifies for the petty offence exception. The petty offence exception considers only the maximum possible penalty imposed for the crime, which if proceeded summarily is often 6 months. While it is possible for a higher penalty to be imposed under summary proceedings, many of the most frequently cited charge sections carry maximum penalties of 6 months imprisonment.

Furthermore, where a state judge designates a case as misdemeanor and thereby lowers the maximum possible sentence to six months or less, even where the offence has a wide range of punishment, the BIA is bound by the judge's designation for purposes of the petty offence exception (*Garcia-Lopez v. Ashcroft*, 334 F.3d 840 [9th Cir. 2003]). The determination of whether an offence comes within the petty offence exception is based upon the status of the law at the time the alien seeks entry and not at the time of the criminal acts (*Squires v.*

INS, 689 F.2d 1276 [6th Cir. 1982]). An undesignated probationary sentence, unlike an indeterminate sentence, is not considered a felony punishable by more than one year imprisonment, where the court has designated it a misdemeanor punishable by a maximum term of imprisonment of 6 months. *Lafarga v. INS*, 170 F.3d 1213 (9th Cir. 1999).

### **3.3 United States Ninth Circuit Court of Appeals**

Recent decisions in the United States Court of Appeals for the 9<sup>th</sup> Circuit – a U.S. District Court that has jurisdiction over Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, and Washington – have provided more lenient interpretations of criminal convictions involving controlled substances. Decisions of the 9<sup>th</sup> Circuit are particularly important with respect to Canada-U.S. border travel, in that four of the states within the jurisdiction – Alaska, Idaho, Montana and Washington – have shared borders with Canadian provinces, more than any other U.S. Circuit Court. As the Canadian province of British Columbia will be frequently utilized as a reference point with respect to police records and privacy legislation throughout this study, the 9<sup>th</sup> Circuit Court of Appeal is further relevant since Canadian travelers from British Columbia most often travel to the United States through state borders falling under the jurisdiction of the 9<sup>th</sup> Circuit.

The Federal First Offender's Act (FFOA) is a United States statute that was implemented to lessen the undue consequences for a single simple controlled substance possession charge. In many cases involving a first offence, individuals are afforded a 'deferred adjudication'; a deferred adjudication is

analogous to a 'suspended sentence' or 'conditional discharge' in Canada. Under a deferred adjudication, no formal judgment of conviction or guilt is ever entered. Instead, after the defendant pleads or is found guilty, entry of conviction is deferred, and then during or after a period of good behavior, the charges are dismissed and the judge orders the defendant discharged (*Lujan-Armendariz v. INS*, 222 F.3d 728, 735n. 11 [9<sup>th</sup> Cir. 200]). Where the defendant pleads 'no contest', there is no formal admission to the essential elements of a crime of moral turpitude, and therefore, once the deferred adjudication has run its course, the defendant would not be deemed inadmissible to the U.S. on the basis of their conviction.

In *Lujan-Armendariz v. INS*, the 9<sup>th</sup> Circuit Court of Appeals held that as a matter of equal protection, state rehabilitative relief to eliminate a conviction (which would include California deferred adjudication, Proposition 36 or P.C. 1203.4) also will eliminate the immigration effect of a first conviction for simple possession of a controlled substance (*Lujan-Armendariz v. INS & Roldan-Santoyo v. INS joined*). In *Dillingham v. INS* the 9<sup>th</sup> Circuit reiterated its decision in *Lujan-Armendariz v. INS* further supporting its rule concerning the FFOA; "the FFOA, which applies exclusively to first-time drug offenders who are guilty only of simple possession, serves to expunge such convictions (after the successful completion of a probationary period) and was intended to lessen the hard consequences of certain drug convictions, including their effects on deportation proceedings" (*Dillingham v. INS* 9<sup>th</sup> Cir. 2001).

Taken together the cases discussed above suggest a possibility for more lenient interpretations of Canadian convictions that have been conditionally or absolutely discharged. Though there has yet to be any decision that would concretely impact the U.S. immigration effect of a conditional or absolute discharge from Canada, there certainly appears to be a trend within the 9<sup>th</sup> Circuit Court of Appeals towards leniency on first time misdemeanor offences, even when those offences involve a controlled substance. If a U.S. District Court of Appeal could interpret Canadian conditional and/or absolute discharges as sufficiently mirroring the provisions outlined in the FFOA regarding deferred adjudications, Canadians with a single conditional and/or absolute discharge may not be deemed inadmissible to the United States on the basis of that conviction, even when the offence involves a controlled substance. Some interpretations of *Dillingham v. INS* hold that a non-U.S. citizen is not inadmissible if his or her foreign conviction for a first-time controlled substances offence is expunged based on a foreign statute deemed to be analogous to the FFOA. If it is determined that the offence would have been eligible for FFOA expungement were the matter to have been proceeded with by a U.S. court, and where the matter is handled similarly in a foreign court, the conviction is no longer recognized in the 9<sup>th</sup> Circuit (Railton, 2010).

## 4: PRIVACY LAW IN CANADA

Privacy as a subject of public policy refers to the possession and acquisition of knowledge about people, and implicitly or explicitly also knowledge about associations. In Canada, privacy is addressed through constitutional interpretations as discussed in the above section on the *Charter*, as well as federal and provincial statutes that deal with privacy more concretely. The federal *Privacy Act* maintains jurisdiction over all federal government branches as well as other federal agencies including the Royal Canadian Mounted Police (RCMP). Generally, the *Privacy Act* sets out rules governing the collection, storage, protection, dissemination and destruction of citizens' personal information and provides avenues whereby citizens may access said information (Shaw et al, 1994). Specifically, the *Act* states that:

- No personal information shall be collected by a government institution unless it relates directly to an operating program or activity of the institution;
- A government institution shall, wherever possible, collect personal information that is intended to be used for an administrative purpose directly from the individual to whom it relates except where the individual authorizes otherwise;

- Every individual who is a Canadian citizen or a permanent resident of Canada has a right to and shall, on request, be given access to any personal information about the individual contained in a personal information bank, any other personal information about the individual under the control of a government institution with respect to which the individual is able to provide sufficiently specific information on the location of the information as to render it reasonably retrievable by the government institution;
- Personal information under the control of a government institution shall not, without the consent of the individual to whom it relates, be used by the institution except for the purpose for which the information was obtained or compiled by the institution or for a use consistent with that purpose;
- The government must take 'reasonable steps' to ensure the accuracy and completeness of the personal information held;

*(Privacy Act, 1985)*

This research is primarily concerned with the provision noted above regarding the Canadian government's responsibility to take 'reasonable steps' towards ensuring the accuracy and completeness of personal information. Subsequent analysis and discussion will centre on the accuracy with which criminal records and personal information related to criminal activity are transmitted to foreign states, namely the United States. There are important

provincial and federal divides in Canadian privacy law that determine how particular types of personal records and data are handled.

Whereas the *Privacy Act* holds jurisdiction over federal government departments and agencies such as the RCMP, separate but similar legislation outlines privacy standards for the private sector; the *Personal Information Protection and Electronic Documents Act (PIPEDA)* was enacted in 1999 to deal specifically with privacy concerns falling outside the jurisdiction of government bureaus and agencies. The motives for passing *PIPEDA* were twofold; first, it was viewed as being essential to establishing consumer trust in a rapidly growing electronic commerce industry which included the development of online banking, online shopping, electronic stock trading and the like. Second, *PIPEDA* was implemented in order to be compatible with similar legislation passed in the European Union (EU), namely, the EU *Privacy Directive* (Levine & Nicholson, 2005).

The principles of *PIPEDA* echo those of the *Privacy Act*; accountability, consent, limited use and disclosure, accuracy, procedural safeguards and individual access. These mutual principles have served as templates for subsequent provincial privacy legislation that oversee the collection, retention, dissemination and destruction of personal information by provincial government bureaus and agencies, as well as private sector enterprises falling under the jurisdiction of the provincial government. British Columbia serves as a useful example for the remaining discussion of provincial privacy legislation.

In 1996 the province of British Columbia enacted the *B.C. Freedom of Information and the Protection of Privacy Act (FOIPPA)*, which applies to provincial government branches and agencies. Subsequently in 2003, the *Personal Information Protection Act of British Columbia (PIPA)* was enacted, which applies to all private sector organizations operating in British Columbia. *FOIPPA* supersedes the *PIPA* for individuals or agencies conducting investigations on behalf of a provincial government body subject to that *Act*; WorkSafe BC and the Insurance Corporation of British Columbia would fall into this category. It should also be noted that the Canadian Standards Association (CSA) expectations on the handling of information were also established in 1996 and adopted worldwide by many governments and organizations reflecting global concerns over the amount, breadth and security implications of data collection in the burgeoning information age.

In addition to the *Charter* principles discussed prior, the current privacy and freedom of information regulations provide for new rights of access to information on the part of an individual whose information is being collected, the protection of third party personal information and restricted rules on disclosure to foreign states. The restrictions on information collection and use under *FOIPPA* prevent sharing between government agencies, even when the interests of those agencies are aligned. If the proposed use is not entirely consistent with the purposes of the initial collection of the information, sharing between government agencies is not permitted.

Though similar in principle and general application, there are important differences between federal and provincial privacy legislation. Most notably, whereas in British Columbia the Information and Privacy Commissioner has the power to order a public body to comply with the provisions outlined in *FOIPPA*, the federal Office of the Privacy Commissioner has no such power to order government to conform with the standards established by the *Privacy Act* or to give individuals access to their personal information. The federal Office of the Privacy Commissioner operates exclusively on the basis of recommendations to government bureaus and agencies, having little or no recourse should the bureau or agency refuse to comply (Shaw et al, 1994).

The provincial privacy legislation noted above is integral to the regional focus of this project, namely, the Province of British Columbia. While federal privacy legislation and *Charter* jurisprudence weigh heavily into the consideration of key issues discussed throughout, there are circumstances unique to British Columbia that must be viewed in the context of provincial privacy legislation. Most noteworthy in this regard is the unique policing environment found within British Columbia; unlike most other provinces, British Columbia has a mixture of municipal police forces (e.g. Vancouver Police Department, Abbotsford Police Department) as well as contracted RCMP presence in select municipalities (e.g. Burnaby, Surrey). Further to this, both the RCMP and municipal detachments operate from a joint province-wide policing database utilized only in British Columbia. This policing model presents unique privacy challenges from an informational standpoint that other provinces may not face, as RCMP and

municipal police forces in other provinces often consult different data sources as their primary gateway to personal information related to criminal activity.

## **5: CANADIAN POLICE RECORDS AND CRIMINAL RECORDS MANAGEMENT**

Much of the public debate around intelligence-sharing emphasizes the dangers of privacy intrusion that the gathering and storing of personal information for further use may represent. Intelligence sharing involves the cultivation of relationships between the agents of different security agencies as well as the integration of intelligence databases. The individuals create networks in which the exchange of information becomes circular, involving data sharing in bulk (Schellenberg, 1997). Such data-sharing is also characterized by the repetition of unverified information concerning individuals, even when a person's name has been cleared. Thus, by virtue of being exchanged, repeated and circulated, the shared information acquires legitimacy by means of self-referentiality which stands for truth (Cote-Boucher, 2008). Canada's system of criminal data management fits this template, as there are numerous levels through which data is recycled, repeated, and revised. Figure 2 represents a preliminary model of the federal and provincial flow of criminal records information within Canada, ranging from local municipal police detachments to the Canadian Police Information Centre (CPIC), the national criminal records databank.

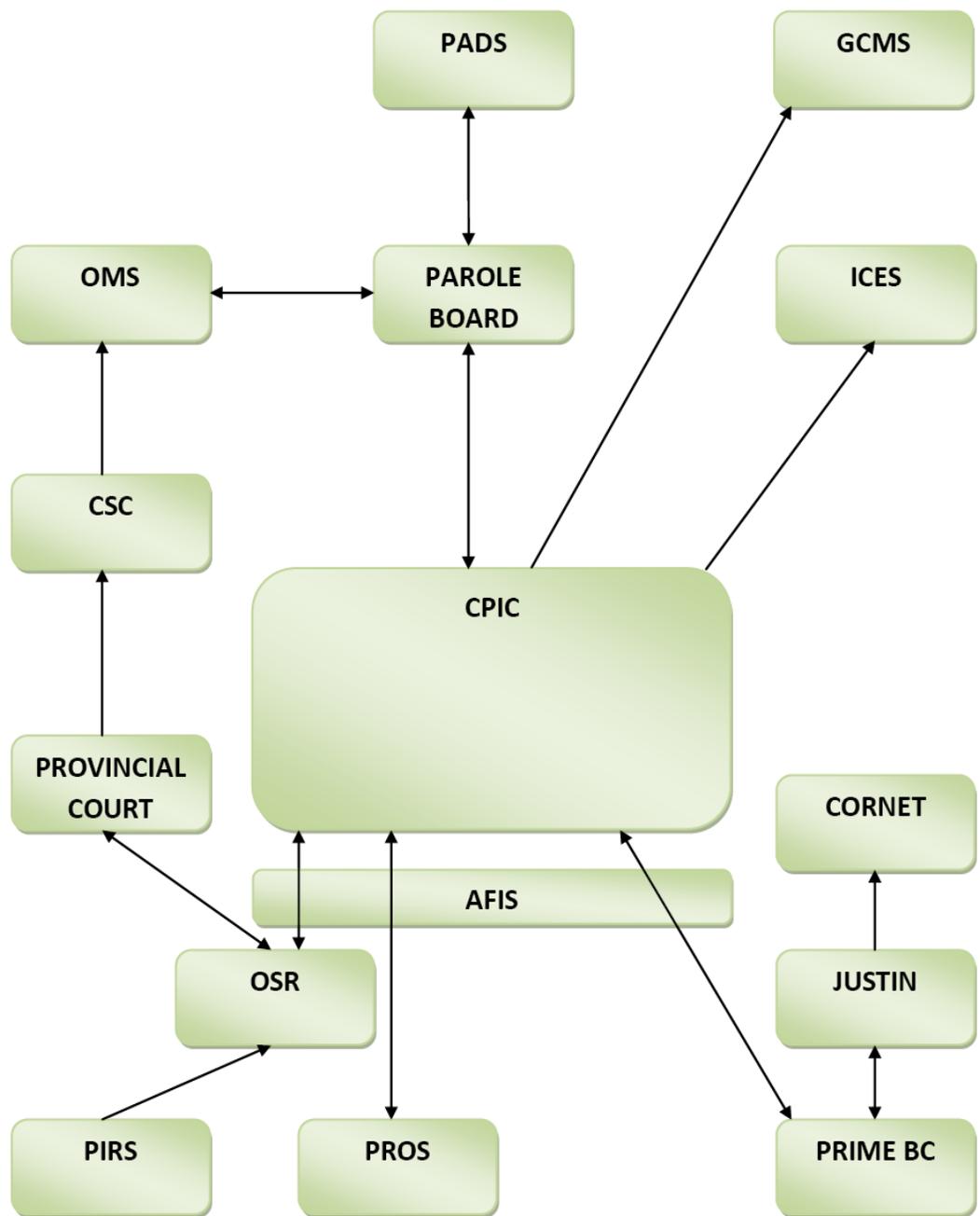


Figure 2 - Canadian Criminal Data Flow

Countless integrated federal databases that collectively create the network that is generally referred to in this report as 'Canada's system of criminal data management'; the Canadian Police Information Centre (CPIC), Police Information Retrieval System (PIRS), Operational Statistics Reporting System (OSR), Police Reporting and Occurrence System (PROS), DNA Convicted Offender Databank & DNA Crime Scene Index, Canadian Firearms Information System (CFIS), Financial Information Transactions and Reports Analysis Centre (FINTRAC), Offender Reintegration Management System (OMS), Integrated Police Information Reporting System (IPIRS), Pardon Application Decision System (PADS), Integrated Customs Enforcement System (ICES), Global Case Management System (GCMS), Sexual Offender Information Registry , Automated Fingerprint Identification System (AFIS), Violent Crime Linkage Analysis System (ViCLAS), CCRA Advanced Passenger Information/Passenger Number Record (API/PNR) and the Field Operations Support System (FOSS). Though each of the databases noted above are integral to the overall framework of Canadian criminal data management, only the most relevant to the current research will be discussed below.

Similar to the federal-provincial divide in Access to Information legislation discussed in sections prior, there exists a similar rift between federal and provincial police information and criminal records systems. For the purposes of this examination, it will be helpful to first distinguish between federal and provincial information systems, allowing for subsequent discussion on how these differing systems overlap and integrate. At the foundation of the national system

of criminal records management are the Operational Statistics Reporting System (OSR) and Police Information Retrieval System (PIRS).

### **5.1 Police Information Retrieval System (PIRS), Operation Statistics Reporting System (OSR)**

PIRS is an “investigative information recording and retrieval system containing detailed information on all events reported to the Royal Canadian Mounted Police. It is considered an indexing system of data fields and accommodates limited free text entry” (RCMP, 2010). OSR is the mechanism that collects statistical data from PIRS. The OSR is an incident based databank focused on the characteristics – both objective (location, date, time) and subjective (characteristics of accused, associated persons, complainants) – of a criminal incident (BC Attorney General, 2010). An ‘Occurrence Report’ is completed at the scene of an event involving the police, and a ‘Persons Report’ may also be created to record information related to persons being investigated. These written reports are used to create police files, serving as the informational basis for the PIRS database (Shaw et al, 1994). Taken together, PIRS and OSR process approximately 2.5 million occurrence files each year and are the central instruments used to support national, provincial and municipal law enforcement goals. PIRS and OSR are 19 and 17 years old respectively, having outlived initial lifecycle expectations and no longer meet the organizational requirements for the RCMP in the modern era of policing. The RCMP state that a robust occurrence/records management system is vital to support effective policing, and that a lack of such an application is an impediment to meeting the continually

evolving demands placed on a modern-day law enforcement agency (RCMP, 2010).

## **5.2 Police Reporting and Occurrence System (PROS)**

PROS is the RCMP's solution to its modern-day policing needs; through the ongoing development and implementation of PROS, the RCMP seeks to meet its strategic objectives by administering consolidated and timely information within a national policing framework. Over time, PROS is scheduled to replace the RCMP's legacy systems; PIRS and OSR. PROS will provide automated capabilities to "create, store, update, maintain, retrieve, sequester, purge and dispose of criminal records information" (RCMP, 2010). Authorized users with appropriate security clearances will have the ability to record and manage details of court proceedings from the time the original charges are laid through the disposition of charges. Furthermore, PROS will provide a common platform for sharing information to respond more effectively to privacy requests – a noted concern in a prior section of this review (RCMP, 2010).

PROS aims to enhance integrated policing through the exchange of strategic criminal intelligence and therefore lays the RCMP foundation that will seek to meet the requirements for an integrated justice information system. Provincial and municipal police forces outside of the RCMP have shown support for the concept of integrated policing and have requested the installation of PROS as their official Records Management System (RMS) in their respective locations. It is important to note that both municipal and federal police forces in

British Columbia use BC Police Records Information Management Environment (PRIME BC), as mandated by the province, and will not adopt PROS as their RMS (RCMP, 2010).

### **5.3 Canadian Police Information Centre (CPIC)**

The Canadian Police Information Centre (CPIC) was created in 1966 and approved by Treasury Board in 1967 as a computerized information system to provide all Canadian law enforcement agencies with information on crimes and criminals. CPIC is operated by the RCMP under the stewardship of National Police Services, on behalf of the Canadian law enforcement community (CPIC, 2010). CPIC is the only national information sharing system that comprehensively links the three branches of the Canadian justice system – the courts, corrections and law enforcement agencies – along with law enforcement partners in the United States. CPIC is connected with the U.S. National Crime Information Center (NCIC) along with individual state databases operated by the Automated Canadian/U.S. Police Information Exchange System (ACUPIES) interface (Cohen, 2005). The U.S. Federal Bureau of Investigation (FBI), along with branches of the U.S. Department of Homeland Security (DHS) (Immigration and Customs Enforcement [ICE], Customs and Border Protection [CBP], Citizenship and Immigration Services [USCIS]) therefore have both direct and indirect access to CPIC records (Shaw et al, 1994).

## **5.4 Automated Fingerprint Identification System (AFIS)**

Containing upwards of 2,700,000 individuals and 70,000 unsolved latent fingerprints from Canadian crime scenes, AFIS is a key transitional database within the larger framework of Canada's system of criminal records and personal information. AFIS is linked into workstations at nearly all police detachments throughout Canada. This system employs computer technology for screening purposes to match data files for comparison purposes (Cohen, 2005). Every police submission to CPIC must be accompanied by an AFIS fingerprint file as well. An individual's CPIC record can therefore be linked directly to their fingerprints, making possible efficient and accurate assessments of Canadian's criminal histories.

## **5.5 Pardon Application Decision System (PADS)**

First implemented in 2001, PADS is a computerized system that aims to shorten the processing time for Canadian pardon applications. The database is operated by the Parole Board of Canada (formerly the National Parole Board) at its national headquarters in Ottawa, Ontario. This automated system was designed to "streamline the pardon process in an effort to reduce the processing time while supporting quality decision-making and ensuring a productive use of technology for information sharing" (National Parole Board, 2003). A Canadian pardon effectively seals off personal and procedural information contained on the CPIC database, indefinitely housing the sealed record separate from active and accessible CPIC records. Subsequent convictions post-pardon would result in the sealed record being reinstated to the 'active' CPIC database.

## **5.6 Integrated Customs Enforcement System (ICES)**

ICES is maintained by Canadian Border Services Agency (CBSA) to provide a common repository for all customs reporting data. ICES contains direct linkages to CPIC along with other international law enforcement agencies, including U.S. Customs and Border Protection. The system aims to provide centralized real-time source of customs data that may be disseminated quickly in order to react to real or perceived risk at the border (Cohen, 2005).

## **5.7 Offender Reintegration Management System (OMS)**

The OMS is primarily a case management tool utilized by both the Parole Board of Canada as well as the Correctional Service of Canada (CSC). The system serves dual purpose in providing a case management tool in CSC operations, ensuring the appropriate management of inmates while in custody, and accurately tracking conditional release decisions made by the Parole Board of Canada (Cohen, 2005).

## **5.8 Global Case Management System (GCMS)**

An initiative of Citizenship and Immigration Canada (CIC), GCMS was created to phase out fourteen outdated case management systems, integrating the data contained within each to populate one comprehensive, modernized system. GCMS is currently being implemented in progressive steps in the hope that it facilitates more efficient and accurate communication between newly formed CBSA and other CIC partners (Cohen, 2005).

In addition to the federally managed databases noted above, there are numerous other provincially maintained databases that take part in the hierarchical flow of criminal records information in Canada. British Columbia remains a favorable example within the context of this study.

## **5.9 British Columbia Police Records Information Management Environment (PRIME BC)**

PRIME BC is a recently implemented system that links all municipal police forces with the RCMP, making it the first of its kind within Canada. As has been noted prior, police information sharing in British Columbia is uniquely challenging in that there are numerous forces operating within close proximity to one another. The lower-mainland region is exemplar, as many municipal forces (New Westminster, Vancouver, Delta, Port Moody) operate alongside RCMP detachments which have been contracted to hold jurisdiction in Burnaby, Surrey, Richmond and many other municipalities. PRIME BC has three major interlinking components that allow for cross-jurisdictional sharing of information – Computer Assisted Dispatch (CAD), Records Management System (RMS) and the Mobile Work Station (MWS). Together, these systems attempt to reduce duplicate data entry, increase data quality and enhance criminal analysis (RCMP, 2010). Police records located on PRIME BC are uploaded into the British Columbia Justice Integrated Network (JUSTIN) when formal charges are being pursued by the Crown.

## **5.10 Justice Integrated Network (JUSTIN)**

In December 2001, the Attorney General for the Government of British Columbia directed a common, provincial-wide, cross-jurisdictional Justice Integrated Network (JUSTIN) for submitting crown reports, court scheduling police officers and receiving court dispositions electronically. JUSTIN is an integrated case management system for the province's courts and criminal justice agencies and is interfaced with PRIME-BC (RCMP, 2010). JUSTIN is populated by information contained within the BC-PRIME system.

## **5.11 Corrections Network System (CORNET)**

CORNET is a central provincial repository for all data relating to youth and adult offenders engaged in corrections programs in British Columbia. The system tracks all offender activity from admission through to discharge and re-entry into the community. CORNET also allows related agencies (health services, police, courts and Crown prosecutors) to share and re-use information in accordance with inter-agency policies and security regulations (Sierra Systems, 2006).

The preceding discussion has attempted to situate the research questions posed at the outset of this review within the broader contexts of international data sharing, Canada – U.S. relations and Canadian public policy. The primary goal of this discussion was to establish an informational and conceptual lens through which to interpret the conclusions and recommendations that will be presented in the latter sections of this study. It is clear that rapid developments in law and technology have resulted in a convoluted system of cross-border information sharing that poses two considerable risks; the transmission of unverified criminal

records information that may wrongfully categorize Canadians as criminals to the United States, and the failure to accurately and efficiently identify legitimate security risks at the border. Each of these concerns will be addressed at length in the sections that follow, not only from the standpoints of Canadian rights to privacy and mobility, but from the broader contexts of national security and international diplomacy.

## **6: METHODOLOGY**

### **6.1 Research Outline**

Simply stated, this project is an exploratory assessment of criminal records management policy in Canada as it relates to U.S. border travel. The creation, retention, dissemination and destruction of criminal records in Canada were the primary focus of the preceding literature review and theoretical discussion provided above. Data analyses will centre on the creation of a predictive framework that will assist Canadians in anticipating treatment at the U.S. border based on their individual profiles. Data have been obtained via the following three methods:

- 1) A purposive sample (n = 104) drawn from client files at a U.S. immigration law firm located in Burnaby, British Columbia, Canada;
- 2) Purposive semi-structured interviews (n = 2) conducted with key justice system stakeholders in Canada;
- 3) Purposive semi-structured interviews (n=10) conducted with Canadian citizens who have been deemed inadmissible to the United States as a result of arrests, charges, and/or criminal convictions in Canada.

## 6.2 Research Questions

The initial inspiration for this project is rooted in the researcher's personal interactions with Canadians who have been deemed inadmissible to the United States as a result of a Canadian criminal record or related records classifying them as criminal to the United States law enforcement agencies. As an employee of the immigration law firm from which the sampled case files have been drawn, the researcher has an intimate and unique understanding of the concepts and variables presented throughout this thesis. Throughout the course of day-to-day interactions with clients and casework related to U.S. immigration law, several policy concerns have arisen from both the researcher and the affected clients of the firm. In an attempt to address these concerns, this report will consider the following research questions as the basis for analysis, discussion and recommendations:

- What is the effect of a Canadian criminal record on U.S. border travel?
  - What is the effect of a Canadian criminal conviction on U.S. border travel?
  - What is the effect of an arrest (no conviction) on U.S. border travel?
  - What is the effect of a single conviction versus multiple convictions on U.S. border travel?
  - What is the anticipated effect of each listed offence under the Canadian Criminal Code on U.S. border travel?

- What trends exist in the cross-border sharing of criminal records information that lead law-abiding Canadians towards difficulty at the United States border?
- How do police information management systems differ from criminal records systems?
- Does a Canadian pardon aid or impede travel to the U.S.?
- How are criminal records created, retained, disseminated and destroyed in Canada?
  - Are these practices uniform across national, provincial and municipal levels?
- How are Canadian criminal records retrieved by U.S. law enforcement agencies?
- What is the range of information accessible by U.S. law enforcement agencies?
- Do Canadian – U.S. criminal data sharing policies adhere to provisions set out in the *Canadian Charter of Rights and Freedoms*, the *Privacy Act*, the *Criminal Records Act*, and the *Access to Information Act*?

### **6.3 Research Hypotheses**

As this project is exploratory in nature, hypothesis testing is not a primary aim of the researcher. Emphasis has been placed on drawing conclusions and

practical recommendations based on the results provided, helping to add to this growing area of policy and research. That being said, the researcher has some general expectations as to the outcomes of the study. On the basis of the review of relevant literature, statistical analyses of both primary and secondary data sources, as well as the provisions of the *Canadian Charter of Rights and Freedoms*, the *Privacy Act*, the *Criminal Records Act*, and the *Access to Information Act*, it is expected that this study will reveal the following:

- 10% - 15% of sampled cases involving criminal grounds of inadmissibility to the United States result from the transmission of unverified criminal records and personal information, including arrest records, police reports, and court dockets where no criminal conviction exists.
- Multiple points of access exist for foreign law enforcement agencies (e.g. United States Customs and Border Protection) to retrieve Canadian criminal records and police records information.
- Canadian pardons ultimately impede U.S. border travel for Canadians with criminal records when obtained prior to filing a waiver of inadmissibility with the U.S. Department of Homeland Security.
- Controlled substances violations have the most negative impact on U.S. border travel of all offence categories for Canadians.

## **6.4 Research Design**

### **6.4.1 Case Study**

In February 2011, a purposive sample (n = 98) was drawn from client files at a U.S. immigration law firm located in Burnaby, British Columbia, Canada. The files sampled involve criminal inadmissibility to the United States, whereby the client has applied for Advanced Parole to Enter the U.S. as a Nonimmigrant (I-192 Waiver) through the above-noted firm. In each case, the client has been deemed inadmissible to the United States under INA §212(a)(2)(A) – criminal grounds of inadmissibility. In all cases, the individual client was refused entry, expeditiously removed or deported from the United States upon their application for admission at a United States port of entry. Many of the cases available through the above noted firm involving inadmissibility to the United States were not included in the current study. Inadmissibility to the United States can be triggered by a vast array of circumstances; misrepresentation, overstay, unauthorized employment, an admission to the essential elements of a crime involving moral turpitude, or in the case of the current project, criminal convictions in the most formal sense. This study is solely concerned with inadmissibility to the United States on the basis of criminal convictions in Canada, with the exception of those cases where a determination of inadmissibility has been made on the basis of incomplete, inaccurate or subjective police records information. Of the near 300 case files involving inadmissibility to the United States, only the most relevant to the scope of this research (n=98) were selected for review and analysis.

Sampled case files contain information relating to criminal convictions, charges and arrests in Canada along with information obtained through the United States *Freedom of Information Act* and Canadian *Access to Information* requests. Specifically included were CPIC fingerprint records, local police clearances, court dockets, court information sheets, probation orders, passport ID pages, immigration documentation, U.S. border interview transcripts, letters of support from community leaders, personal statements accounting for events leading to inadmissibility and completed forms I-192, I-212, G-325A and G-28 issued by the U.S. Department of Homeland Security. Files were evaluated, coded and input into Predictive Analytical Software (SPSS) by the researcher. Each hard file was scanned at a high resolution and converted into PDF format to be stored on a secure and independent server owned and managed by the law firm from which the files were drawn. Converting paper files into electronic format enabled the researcher to evaluate and examine relevant variables efficiently with the assistance of character recognition software. Each case was evaluated on the basis of at minimum 28 variables, with a maximum of 56 variable measures being accounted for. The range in assessment variables can be attributed to the corresponding range in the number of convictions contained within each case. Therefore, a case involving only one arrest, charge or conviction would be coded on the basis of 28 variables, whereas a case involving four convictions would be coded on the basis of 56 variables.

Of the 98 cases reviewed in the final analyses, all but two fell in the range between zero and four convictions. One case involved six convictions, while

another involved eleven separate convictions. The primary reason for including all convictions in the manner outlined above was to enable to researcher to track increases or decrease in the severity of offences for repeat offenders; in the two outlying cases, the individuals exhibited kleptomaniac tendencies and had multiple convictions for the same offence (theft). Both cases were candidates for deletion from statistical analyses and will be discussed at greater length in the results section of this study.

Due to the private nature of the case files it is important to briefly outline the operational definitions and coding schemes for each examined variable. Whereas many Master's theses are based on existing data and methodological frameworks, the current project's methodological model has been exclusively tailored by the researcher to fit the nature of the data. It is important to provide insight into the choice, construction and operationalization of these variables should there be a desire for replication in future studies. It should be noted that the inclusion of many variables in this study arose as a result of the research itself. A flexible research design was employed at the outset to allow for the analysis and consideration of new variables as they were uncovered by the researcher. The variables included in the final analyses can be found in Appendix B.

Based on the extraction of these 56 variables the researcher conducted appropriate analyses on the data in order to address the research questions outlined above with the objective of constructing a predictive framework that will

assist Canadians in anticipating treatment at the U.S. border based on their individual profile.

#### **6.4.2 Purposive Interviews – Vancouver Police Department & British Columbia Civil Liberties Association**

In addition to the above noted case study, purposive semi-structured interviews (n = 2) were conducted with relevant Canadian stakeholders and law enforcement agencies in order to establish a practical understanding of the ways in which data is created, stored, destroyed and shared both within and between nation states, namely Canada and the United States. Respondents from the following government bureaus and law enforcement bodies were contacted for the purposes of interviews:

- Royal Canadian Mounted Police
- Vancouver Police Department
- British Columbia Civil Liberties Association

These purposive interviews were seen as an opportunity to balance the perspectives of Canadians facing U.S. border difficulties with governmental interpretations and justifications on various data sharing practices. Respondents were asked to speak on behalf of their respective agencies as their positions within these organizations were entirely relevant and important to the research. While it is the RCMP and PRIME BC who are primarily responsible for the construction and maintenance of criminal records databases such as CPIC as well as police information databases such as PRIME BC, it was important to register the commentary of municipal police jurisdictions in the lower mainland with respect to their interaction with these databases. Also, as the current

research is concerned with inter-jurisdictional variation in the nature and extent to which these databases are utilized, input from the RCMP and municipal police detachments were equally essential to the research.

In approaching the RCMP and PRIME BC, the researcher was seeking to obtain insight into the mechanics of CPIC and PRIME BC, the specific types of information stored on each as well as the way ways in which these databases interact with foreign law enforcement agencies' information systems. In speaking with municipal police forces like the Vancouver Police Department, the researcher was seeking to acquire non-RCMP perspectives on the day-to-day use of CPIC and PRIME BC, their practicality and ongoing relevancy as well as similarities/differences in the perceived or real purpose of these databases. Finally, discussions with the British Columbia Civil Liberties Association were geared towards the broader policy implications of international data sharing with respect to the Canadian *Privacy Act* and *Charter*.

#### **6.4.3 Purposive Interviews – Affected Canadian Citizens**

Purposive semi-structured interviews (n=10) were conducted with Canadian citizens who have been deemed inadmissible to the United States as a result of arrests, charges, and/or criminal convictions in Canada. Sampled respondents were drawn from the larger sample of case files (n=98) used in the case-study outlined above. The group of potential respondents was purposively selected in an attempt to capture a broad range of criminal and immigration scenarios rather than highlighting one particular set of circumstances (e.g. denied entry to the U.S. on the basis of a single arrest). These interviews were

seen as an opportunity to balance the perspectives of Canadians facing U.S. border difficulties with governmental interpretations and justifications on various data sharing practices. Respondents were asked to share their thoughts, opinions and commentary on a number of issues ranging from their personal encounters with Canadian law enforcement agencies and U.S. Customs and Border Protection, as well as their stance with respect to the ways in which their personal information has been disseminated cross-border between Canada and the United States. In speaking with Canadian citizens who have felt the effects of a criminal record on U.S. border travel, the researcher sought to obtain a deeper context within which to view the results obtained through the case study. Of particular interest were individuals who had no criminal convictions in Canada but had been wrongfully categorized as criminal at the U.S. border; it is this group that created the inspiration for this research project, hence the researcher's desire to speak with a representative group of those affected in this way.

## **6.5 Ethical Considerations**

The confidentiality and anonymity of the individuals whose case files have been included within the sample (n = 98) for the case study were of primary ethical concern for the proposed research. As the identities of clients were of no interest to the researcher or the study as a whole, names, specific dates of birth and other key identifiers were excluded from all analyses. Case files were assigned corresponding numerical codes from a table of randomly generated numbers; each case file was recorded in SPSS using this randomly generated number, not by client name. Were the researcher needing to refer back to the

specific case file of an individual, a list of sampled client files with corresponding numerical code was kept at all times in a locked file storage cabinet, within a key-card accessible only office, within a 24 hour monitored secure office building. As an employee of the law firm from which the case files have been drawn, the researcher's academic ethical obligations are doubly covered by the obligation to attorney-client privilege. The law firm gave the researcher exclusive access to case files for the duration of the proposed study. All results of data analyses were presented in aggregate, so as to further protect the identities of clients whose files have been sampled.

Informed written consent was obtained from each member of the semi-structured interview (n=10) sample group of Canadian citizens who have been deemed inadmissible to the United States. Participants were assured both anonymity and confidentiality, as the research design attempted to include as many protections as possible in this regard. Respondents were informed that their willingness to participate in the research would have no bearing on their current or future standing with the law firm. The sample of respondents was drawn solely from clients who have resolved their border issues, in effect, making them past clients of the firm. Whereas a new client may feel pressure to engage in the research for fear that declining the interview offer may lead to inferior service and care, past clients who have resolved their immigration issues are probably less likely to feel compromised or coerced into participation.

In order to best separate the study from the legal services provided by the law firm, the client's attorney and primary partner of the firm sent a letter to the client/participant with a description of the study and the contact information of the principal investigator should the client wish to participate. The letter made clear that (a) the lawyer was not personally or professionally involved in the study, (b) the participant had no obligation to participate in the study, and (c) the decision of the participant was not to be known to the lawyer. It was emphasized in the letter that any decision to participate or not participate in the research would in no way have any bearing, consequence or effect on the client's dealings with the attorneys and staff of Millar & Smith, LLC.

As much of the information included in client files is publicly available (e.g. court documents, border interview transcripts, border crossing histories), should the confidentiality of the participant be compromised in this regard, the level of risk posed to the participant of having their criminal histories exposed would be relatively the same as it was before their participation in this study. Participation in this study would not affect the accessibility of these documents as a result of their public nature. Those documents that are not immediately accessible to the public can be obtained through freedom of information legislation in both Canada and the United States.

The interview participants would encounter a moderate degree of risk by engaging in an interview with the researcher. Were a breach of confidentiality to occur, the participant would face increased risk depending on the nature of their

responses given in the interview, and the nature of information that had been disseminated. Were their name to become attached to their responses given, the respondent may face negative repercussions in both their professional and personal life as a result of their past criminal histories that may be unknown to employers or family members. That being said, it is worthwhile reiterating that the safety and security of the affected Canadian citizen respondents has been the paramount consideration of this project. Confidentiality and anonymity provisions have been outlined above in great detail, indicating the logistical systems in place to protect the identity of each respondent. Further, it should be noted that this response group served as the inspiration for this study. Many affected individuals approached the researcher unbidden, asking that they be given a platform to have their voices heard. Numerous Canadians have experienced undue hardship as a result of current policy decisions and wish to have their experiences, voices and concerns raised through this research. The safety and protection of these individuals remained paramount at every stage of this project.

Semi-structured interview participants from the governmental/law enforcement agency sample (n=2) were provided with consent declarations prior to any official, 'on the record' communications. As their positions within their respective organizations are essential to the study, anonymity and confidentiality could not be assured to these respondents as a part of this research. Interview participants were fully informed that their names will be directly attached to their interview responses, and that direct quotes would be utilized throughout the research report. Ethical approval was applied for and obtained for this study.

## **7: RESULTS**

### **7.1 Case Study**

Before proceeding with any data analyses, all variables were screened for possible code and statistical assumption violations as well as for missing values and outliers with SPSS Frequencies, Explore, Plot, Missing Values Analysis and Regression procedures. In assessing the suitability of each variable for analysis, several factors were taken into consideration; normality, linearity and homoscedasticity are multivariate assumptions that must be tested for and considered before statistical analyses are warranted.

The first step was to look through the data itself and to determine whether there were any missing values, extreme values or coding errors. As the researcher had an intimate working knowledge of the files prior to sampling and review, variable construction was based on this understanding and resulted in low proportions of missing values on all variables. Having knowledge of the types of data contained within each file aided the researcher in constructing measurable variables that would allow for robust analyses. With the exception of v22 (measure in months of the processing time between filing and decision on an individual's waiver application ), v24 (year in which the client's current valid Canadian passport was issued) and v25 (year in which client's current valid Canadian passport expires), all continuous variables had less than 5% missing values and were therefore of little concern in this regard. Of the continuous

variables examined v22 had missing values on 29 cases while v24 and v25 had missing values on 18 cases. After re-examining the cases involving missing values on v22, it was determined that those cases where missing values were present were by and large instances where the client's waiver was currently processing. Were the dataset to be updated as decisions were rendered on applications, the missing values would be considerably reduced on this variable.

**Missing Value Analysis**

	N	Mean	Std. Deviation	Missing		No. of Extremes <sup>a</sup>	
				Count	Percent	Low	High
v2	94	1965.9255	11.01049	4	4.1	0	2
v22	69	7.5217	2.71493	29	29.6	0	0
v24	80	2006.7750	1.55062	18	18.4	0	0
v25	80	2011.7750	1.55062	18	18.4	0	0
v36	96	1992.0833	9.49423	2	2.0	0	0
v37	94	2007.2766	5.37498	4	4.1	8	0
v10	92			6	6.1		
v11	96			2	2.0		
v14	96			2	2.0		
v16	93			5	5.1		
v18	96			2	2.0		
v19	97			1	1.0		
v21	96			2	2.0		
v35	96			2	2.0		

a. Number of cases outside the range (Q1 - 1.5\*IQR, Q3 + 1.5\*IQR).

**Table 1 - Missing Value Analysis**

The cases where missing values occurred did not appear to differ significantly from cases where decisions had been rendered on the waiver application and thus completed. Considering the logical explanation for the missing values and the absence of significant departure from other cases on all

other variables, the missing values were replaced with a value based on an expectation-maximization algorithm using SPSS Missing Value Analysis.

With respect to v24 and v25, there did not appear to be any pattern to the missing values as those cases where missing values were present did not differ significantly in any way from those cases where values were recorded. The missing values in these cases can be attributed to gaps in filing; although a valid passport is required in order to file a waiver application with the U.S. Department of Homeland Security, applicants may either present a photocopy of their passport ID page to include in their correspondence or simply appear in person at a U.S. port of entry with their passport at the time of filing. Therefore, it is not always necessary for the law firm to collect an individual's passport ID page, particularly when applications are being handled remotely. Although the proportion of missing values on these measures were high at 18.4%, no mean imputation procedures were executed, but rather, those 18 cases where missing values had been recorded were excluded from analyses involving those variables (listwise deletion).

No significant proportions were discovered on any of the categorical variables. In the instances where missing values were present a secondary file inspection confirmed the missing values were the result of incomplete file data and had therefore been reflected accurately in the dataset.

Univariate outliers were detected on v6 (number of convictions), v7 (number of arrests), v36 (year of last offence) and v37 (year of border encounter), none of which were considered extreme or unusual enough to

require deletion. After inspecting the data set for univariate outliers, an assessment for multivariate outliers was in order. Multivariate outliers were screened by computing Mahalanobis distance for each of the nine continuous variables used in the final analyses. The Mahalanobis distance statistic measures the multivariate distance between each case and the group multivariate mean known as a centroid. Each case is evaluated using a chi square distribution, with degrees of freedom equal to the number continuous variables evaluated ( $n=9$ ) with a table of critical values for chi square at a stringent alpha level of  $p < .001$  (Meyers et al, 2006). In the present example, any case with a Mahalanobis distance value equal to or greater than 27.877 would be considered a multivariate outlier. As can be seen in Table 2, case 73 exhibited a critical value in excess of 27.877 making it a candidate for deletion.

The next step in the screening process was to gather some general information about the distribution of the data. A bar chart and histogram (with normal curve) for each quantitative variable gave a fairly clear picture as to the distribution of responses along the respective scale. Running statistics on these measures confirmed what was gathered from the histograms and bar charts; while a range in measures of skewness and kurtosis were identified, none fell outside of generally acceptable limits (Meyers et al 2006). In short, there does not appear to be any major concern regarding collinearity between the independent variables of this analysis. The 'Correlation' table located in the SPSS output displays the bivariate Pearson's  $r$  correlation value for the relationship between each of the independent variables as well as the dependent

variable; only the independent variables are of interest for this question. Meyers et al (2006) suggest that  $r$  values of .8 or .9 are indicative of multicollinearity, and should be a cause for concern.

			Case Number	Value
Mahalanobis Distance	Highest	1	73	42.62529
		2	5	24.87562
		3	54	24.70484
		4	24	19.60093
		5	28	15.54245
	Lowest	1	66	.89392
		2	17	1.25958
		3	37	1.50089
		4	86	1.61724
		5	87	1.86915 <sup>a</sup>

a. Only a partial list of cases with the value 1.86915 are shown in the table of lower extremes.

**Table 2 - Extreme Values**

The highest  $r$  value seen between independent variables is for the relationship between ‘number of arrests’ and ‘number of convictions (.815). Smaller  $r$  values were recorded for all other relationships, the greatest of which being the relationship between ‘number of convictions’ and ‘waiver processing time’ (.565) as well as ‘number of arrests’ and ‘waiver processing time’ (.552). All of these values are significant at or below the .01 alpha level. As none of these values exceed .8, there is no great cause for concern regarding collinearity of independent variables. With respect to the Pearson’s  $r$  correlation value for the relationship between ‘number of arrests’ and ‘number of convictions’, further

regression analyses of these variables with combinations of other independent and dependent variables confirmed the high proportion of shared variance. In some instances an individual was arrested multiple times but never convicted, while others were arrested only once but convicted of multiple offences, however, this would be the exception to the rule in that number of arrests were generally equal to the number of convictions. As a result of the high measure of multicollinearity between these two variables, only 'number of convictions' was utilized in final analyses. 'Number of arrests' remained an essential variable in that it identified cases where an arrest had been made with no related formal charges or convictions.

Beyond a simple inspection of the bivariate correlation matrices, SPSS offers several other diagnostic assessments of multicollinearity. Two of these diagnostic measures can be found in the 'Coefficients' table in the SPSS output; they are 'Tolerance' and 'Variable Inflation Factor' (VIF). Tolerance values range from 0 – 1; Meyers et al (2006) suggest that tolerance values of .01 or less indicate collinearity amongst independent variables. In the present analysis, the tolerance values for each of the nine continuous variables exceed the value of .01 and therefore cause little concern regarding collinearity. Meyers et al (2006) suggest that VIF levels greater than 10 are indicative of collinearity. The VIF values for each of the nine continuous variables all fall below 10, and add to the notion that collinearity between independent variables in this analysis is not a concern.

A final indication of collinearity can be found in the 'Collinearity Diagnostics' table in the SPSS output. Meyers et al (2006) suggest a 'Condition Index' value equal to or greater than 30 is indicative of collinearity. An inspection of the values associated with each continuous variable in the current analysis finds that no values are in excess of 30.

Confident that the assumptions of normality, linearity and homoscedascity have been upheld throughout the data screening process, a number of key relationships and distributions were explored. It is neither necessary nor practical to present all outputs, frequencies and correlation matrices for each of the 56 variables, but rather, to present only those most integral to the consideration of the issues presented in the theoretical portion of this study.

The average age of the sampled population was 46 years. The average date of last offence amongst the sampled population was 1990 with a probationary period being the most common sentence imposed by the court in Canada. While the average date of last offence was 1990, the average year in which their conviction was identified by U.S. Customs and Border Protection was 2007, an average span of seventeen years between last offence and border incident. As the sample was drawn primarily from residents of the lower mainland in British Columbia, most clients reported having travelled the border regularly prior to their withdrawn application for entry, expedited removal or deportation. Offence locations varied to some extent; however, most of the sampled cases involved charges initiated in the Greater Vancouver Area of British Columbia. In an attempt to identify any variation in the records practice of RCMP and

municipal policing detachments, offence locations were coded accordingly as seen in Table 3 below.

		Offence Loc 1			
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Municipal RCMP (Lower Mainland)	30	30.6	31.3	31.3
	Municipal Detach (Lower Mainland)	32	32.7	33.3	64.6
	Rural RCMP (BC)	18	18.4	18.8	83.3
	Rural Detach (BC)	4	4.1	4.2	87.5
	RCMP (Outside BC)	4	4.1	4.2	91.7
	Municipal Detach (Outside BC)	8	8.2	8.3	100.0
	Total	96	98.0	100.0	
Missing	System	2	2.0		
Total		98	100.0		

**Table 3 - Offense Location**

Of the ninety-eight cases included in the final analyses, fifty-two involved a single criminal conviction in Canada. Seventeen cases involved two criminal convictions, followed by cases involving three convictions (5), four convictions (6), five convictions (1) and six convictions (1). Most notably, sixteen cases (16.3%) were identified as having no criminal convictions in Canada; 16.3% of the sampled cases involved Canadians who have been categorized as ‘criminal’ by the United States and subsequently deemed inadmissible on the basis of information beyond records of conviction (e.g. arrest record, police report, person of interest). The researcher had initially hypothesized 10% - 15% of sampled

cases involving criminal grounds of inadmissibility to the United States result from the transmission of unverified criminal records and personal information including arrest records, police reports and court dockets. The figure of 16.3% in Table 4 suggests initially that this may be the case, in that these individuals have been deemed inadmissible as a result of personal information outside of formal records of conviction.

Conviction #					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	.00	16	16.3	16.3	16.3
	1.00	52	53.1	53.1	69.4
	2.00	17	17.3	17.3	86.7
	3.00	5	5.1	5.1	91.8
	4.00	6	6.1	6.1	98.0
	5.00	1	1.0	1.0	99.0
	6.00	1	1.0	1.0	100.0
	Total	98	100.0	100.0	

**Table 4 - Convictions**

The researcher hypothesized initially that some records of conviction may be delayed in reaching the national criminal records repository in Ottawa (CPIC). CPIC is the primary access point for foreign law enforcement agencies such as U.S. Customs and Border Protection for gathering criminal records information on Canadian border applicants. Table 5 outlines the number of cases where CPIC records were identified (36) along with the number of cases where a CPIC record was not located (46) through the submission of fingerprints. Taking into consideration the twenty-three cases involving criminal offences for which a

pardon has been granted by the Parole Board of Canada, there is a remainder of twenty-three cases (23.4%) involving Canadian criminal convictions where a pardon has not been obtained yet no CPIC record exists. It would appear as though a number of criminal convictions in Canada are failing to reach CPIC.

**Conviction Y/N \* CPIC Record Crosstabulation**

Count		CPIC Record		Total
		YES	NO	
Conviction Y/N	YES	36	46	82
	NO	0	16	16
Total		36	62	98

**Table 5 - Crosstabulation**

The highest proportion of cases sampled involved controlled substances violations (37.8%), followed closely by property related offences (34.7%) and crimes against the person (12.2%). Less frequent were cases involving offences against the public order (7.1%), financial or fraudulent offences (6.1%) and all other offence categories (2%). In 2009, the Uniform Crime Report Survey in Canada registered 1,376,895 property offences nationwide accounting for approximately 56% of all offences. Alternatively, controlled substances violations totaled 97,666, accounting for only 4% of all violations (Statistics Canada, 2009). It is widely known that the drug enforcement philosophies of Canada and the United States differ considerably – it would appear as though this discrepancy manifests itself along the 49<sup>th</sup> parallel as well. Controlled substances offences present serious immigration consequences for Canadians travelling to the United States, whereas other offences deemed serious and criminal in Canada (e.g.

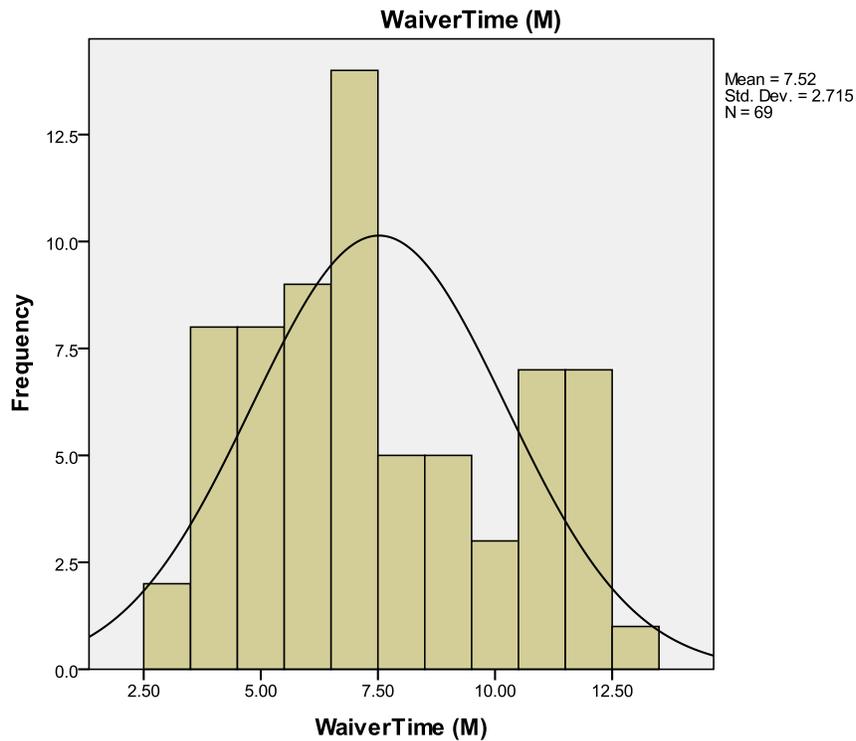
driving while impaired) are of little concern to U.S. border officials. The disproportionate number of controlled substances violations being identified at the U.S. border relative to their prevalence in Canada suggests specific screening protocol for controlled substances offences.

		Offence Type 1			
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	CRIME AGAINST PERSON	12	12.2	12.2	12.2
	PROPERTY	34	34.7	34.7	46.9
	CONTROLLED SUBSTANCE	37	37.8	37.8	84.7
	PUBLIC ORDER	7	7.1	7.1	91.8
	FINANCE/FRAUD	6	6.1	6.1	98.0
	OTHER	2	2.0	2.0	100.0
	Total	98	100.0	100.0	

**Table 6 - Offence Type**

It is important to note that cases not involving a criminal conviction in Canada were coded for offence type on the basis of the alleged crime cited at the U.S. border by customs officials. For instance, where an individual was arrested and subsequently released in relation to an assault, the offence type for that case would be coded as a crime against the person even in the absence of formal charges or a conviction. The researcher felt it important to record the justification for denied entry cited at the border to identify trends in this regard, as well as to differentiate between multiple instances (e.g. arrests) where formal charges or conviction were not registered.

The average length of time from initial filing to decision (approval or denial) on the sampled cases waiver applications was 7.52 months. The results on this measure were normally distributed with a standard deviation of 2.715.



**Figure 3 - Waiver Processing Time**

A Pearson's  $r$  correlation value of .565 was produced for the relationship between number of convictions and the dependent variable waiver processing time, while a similar Pearson's  $r$  correlation value of .552 was produced for the relationship between number of arrests and waiver processing time. According to Meyers et al (2006), these values can be considered as a strong correlations.

The positive Pearson's  $r$  values recorded in Table 7 suggest positive relationships between these two independent variables and the dependent

variable (the larger number of arrests and/or convictions results in longer waiver processing times). The *r squared* values of .32 (rounded to two decimal places) for number of convictions and .30 for number of arrests indicate that these variables respectively share 32% and 30% of their variance with the dependent variable.

		WaiverTime (M)	Arrest #	Conviction #
WaiverTime (M)	Pearson Correlation	1	.552**	.565**
	Sig. (2-tailed)		.000	.000
	N	69	69	69

**Table 7 - Correlations Matrix**

The Pearson's *r* correlation values noted above were significant at or below the stringent alpha level of .01. It can thus be asserted that the Pearson's *r* values differ significantly from a value of zero, and that a relationship in all likelihood does in fact exist between each independent variable and the dependent variable; the null hypothesis can therefore be rejected.

In testing subsequent relationships between independent variables with the dependent variable waiver processing time, it is worthwhile to note that two other variables of interest approached significant Pearson's *r* correlation values. Summary/Indictable offence – a determination of whether a case was proceeded summarily or by indictment by the Crown – was found to produce a Pearson's *r* correlation value of .231 at the alpha level of .06. Similarly, the date of last offence produced a Pearson's *r* correlation value of .236 at the alpha level of .054 with the dependent variable. The researcher initially hypothesized that significant relationships between the location of offence and type of offence

would be identified when examining their relationships with waiver processing time. During the course of the researcher's work at the law firm from which the cases had been sampled, it was thought that controlled substances violations had a tendency to incur longer waiver processing times, whereas property offences incurred shorter processing times. This does not appear to be the case as the number of convictions registers the strongest positive correlation at the stringent alpha level of  $< .01$  while neither the location or type of offence produce significant Pearson's  $r$  correlation.

## **7.2 Semi Structured Interviews**

Semi-structured interviews were seen as an opportunity to balance the perspectives of Canadians facing U.S. border difficulties with governmental interpretations and justifications on various data sharing practices. Some respondents were asked to speak on behalf of their respective agencies as their positions within these organizations were entirely relevant and important to the research.

Irrespective of numerous formal requests, the RCMP unfortunately declined to participate in this research. The researcher contacted RCMP "E" Division Headquarters in Victoria, British Columbia, the Canadian Police Information Centre in Ottawa, Ontario as well as the RCMP's national headquarters in Ottawa, Ontario multiple times. While initial conversations were encouraging with the RCMP "E" Division, communications ultimately broke down. The RCMP cited security clearance as a primary concern in its decision not to speak with the researcher. When informed that the researcher had obtained an

RCMP 'reliability status' security clearance prior to the interview request for an unrelated purpose, the RCMP failed to respond with any further justification for their decline to speak on the record. Several follow-up calls, emails and messages have been left with the RCMP, none of which have been responded to.

While it is the RCMP and PRIME BC who are primarily responsible for the construction and maintenance of criminal records databases (CPIC) as well as police information databases (PRIME BC), it was important to register the commentary of municipal police jurisdictions in the lower mainland with respect to their interaction with these databases. The Vancouver Police Department was accommodating in their acceptance to the terms of the researcher's interview request. Within one week of lodging a formal request with VPD's media and public relations division, Superintendent Daryl Wiebe agreed to speak on behalf of the VPD with respect to the current project. Micheal Vonn of the B.C. Civil Liberties Association (BCCLA) was equally accommodating in responding to the researcher's interview request, arranging for an appointment within a week of the initial request. The BCCLA was sought out to provide a counter point to the views espoused by the law enforcement community and to add balance to the perspectives presented within this project. Alternatively, it was important to register the thoughts, experiences and opinions of those Canadians who have first-hand knowledge of the ways in which Canadian data sharing practices can affect international travel. Early conversations with this group served as the initial inspiration for the research project.

Superintendent Daryl Wiebe is the head of Information Services within the Support Services Division of the Vancouver Police Department. The Information Services Division includes the Communications Section, the Court and Detention Services Section, the Information Management Section, the Information Technology Section and the Information and Privacy Unit. This diverse collection of work areas encompasses a broad spectrum of support work for operational policing, and is staffed by 248 sworn and civilian personnel.

Superintendent Wiebe was the implementation manager and training coordinator for Phase I of the PRIME BC Project. He returned to police operations in 2002, where he worked as a patrol supervisor for one year. He was then seconded to the Ministry of Public Safety and Solicitor General, where he returned to the PRIME BC project as a regional project manager for the five other municipal police departments located on the Mainland of British Columbia. Superintendent Wiebe is one of five designated Critical Incident Commanders within the VPD. He serves on an assortment of committees dealing with staffing, shifting, uniforms and the Strategic Plan, and most importantly to the scope of this research, he continues as the Vancouver Police Department representative on the PRIME-BC Governing Council.

Having been a member of the VPD for over 30 years, Supt. Wiebe communicated a clear understanding and appreciation for the evolution of police data systems within the lower mainland of British Columbia during the course of his career. When first hired in 1981, the VPD had just acquired MDT terminals

which allowed for relatively quick access to CPIC along with other provincial police records and criminal records databases. At this time, VPD was one of only three police departments in North America who utilized this mobile technology and were considered amongst the most advanced police forces in this regard. However, as new technologies emerged in the late 1980's and early 1990's, VPD was slowly relegated to the 'bottom of the pack' when it came to modern policing in an increasingly digital age. In 1999 three British Columbia police detachments – Vancouver Police Department, Richmond Police Department (RCMP) and the Port Moody Police Department – committed to resolutions that would address police records and information management concerns. This cross-section of detachments was seen as representative of the policing community in British Columbia on the whole, in that it included a large municipal detachment (Vancouver), a small municipal detachment (Port Moody) and an average sized RCMP detachment (Richmond). Having passed preliminary resolutions by 1999, an interagency committee including the three police detachments noted above along with E-Comm – the 911 emergency communication centre for Metro Vancouver, the Sunshine Coast as well as the Squamish and Whistler areas – were tasked with approaching vendors who market the types of informational platforms used by police forces to record, organize and dispense essential police data. Once researched and agreed upon, the Versadex platform marketed through Ottawa based company Versaterm (also responsible for the construction and sale of CPIC) became PRIME BC, an inter-jurisdictional platform that would connect all municipal and RCMP police detachments in British Columbia.

Between December 2000 and March 2003, the Port Moody Police, Vancouver Police and Richmond RCMP went 'live' on PRIME BC. Today, with the exception of the Nelson Police Department, all police detachments in British Columbia are connected through PRIME BC. Prior to PRIME BC several lower mainland police detachments addressed their informational and records needs through PIRS, a legacy RCMP system to PROS. Under PIRS there was no real-time sharing of information. From a structural standpoint, PIRS allowed for a 300 character text limit, whereas PRIME BC contains no limit on characters or text information. When asked if the unlimited character limit built into PRIME BC is superior to the limited character system under PIRS, Supt. Wiebe responded as follows:

“PRIME BC is structured in a user friendly way, allowing for further detail where necessary, but only the essentials when detail is not necessary. Within PRIME BC there are security layers and settings. Different users have different depths of access. Limited functionality, internal checks and balances and necessity are all primary considerations when determining individual access. If police officers or civilian staff don't need access to PRIME BC, they don't get it” (Wiebe, 2011).

While Supt. Wiebe suggests that the informational depth of PRIME BC creates a strategic advantage for police forces operating in British Columbia, some commentators suggest that the 'more is better' approach towards police information systems is not always favorable in that the supplemental data contained within PRIME BC may be inaccurate, superfluous or subjective in nature. Micheal Vonn, Policy Director for the British Columbia Civil Liberties Association does not support the notion that 'more is better' when it comes to police information systems, asserting that a greater depth of information often

leads to diluted, subjective and ultimately overwhelming amounts of inconclusive data:

“When looking for a needle in a haystack, what worse solution than to add more hay? This type of approach towards information management appears to be growing ever popular in government circles. The implications are catastrophic not only from a data efficiency standpoint but also from a data accuracy standpoint” (Vonn, 2011).

Ms. Vonn joined the BCCLA as Policy Director in the spring of 2004 shortly after being called to the British Columbia bar. Prior to this she was a member of the Board of Directors and Executive Committee of the BCCLA. Ms. Vonn is an Advisory Board Member of Privacy International, has been an Adjunct Professor of Law at the University of British Columbia and is currently an Adjunct Professor at the UBC School of Library, Archival and Information Studies.

Ms. Vonn went on to suggest that a role reversal has taken place as a result of advancements in police databases and information management capacity, in that freedom of information and privacy priorities have been detrimentally inversed from their intended purposes. When asked whether she felt freedom of information and privacy legislation in Canada are inherently opposed, Ms. Vonn responded as follows:

“I disagree with the position that freedom of information and privacy are inherently opposed. Freedom of information is for governments, privacy is for people. Freedom of information legislation should mandate governments to be transparent whereas individual citizens should be given the appropriate legislative protections in order to maintain their privacy. I would suggest that the opposite occurs, in that it is government which imposes legislative barriers to uphold governmental privacy while the private citizen grows increasingly transparent from an information

standpoint. We want to know everything about every citizen. The freedom of information/privacy divide has been flipped on its head” (Vonn 2011).

As PRIME BC has evolved and expanded its reach since 2001, the “entire province is now available to us”, noted Supt. Wiebe (2011). Beyond this, through the Police Information Portal (PIP) police detachments in British Columbia can reach out into other police databases across Canada to aid in investigations and reporting. Although information obtained through PIP is not available ‘live’ in the police car, queries can be radioed in to the detachment where a data clerk may pull the information requested. Supt. Wiebe did not view the increased data capacity of PRIME BC as a central concern for police forces in the lower mainland. When asked to comment on the major challenges police face in British Columbia from a records standpoint Supt. Wiebe pointed to the partial disconnect between PRIME BC and CPIC.

CPIC houses information on convictions, charges, court findings, wants and paroles. Additionally, it contains information related to ‘persons of interest’, flagged cars and high priority warnings. While it is touted as strictly a criminal records database, CPIC appears to overlap significantly with the types of information typically associated with police information systems. Supt. Wiebe noted that PRIME BC connects to CPIC in a “quasi-automated fashion” (2011) and that they are intertwined electronically. With respect to the disconnect noted above, Supt. Wiebe cites significant backlogs in the uploading of criminal records information provided to CPIC in transit through PRIME BC from JUSTIN:

“The problem we have is that the criminal records data in Ottawa is a couple years behind. The criminal records in Ottawa (CPIC) are not current, they are backlogged. Where that comes in to play is, suppose you

want to coach a baseball team and you need to get your criminal records check. Your criminal records check isn't done through PRIME BC. The vulnerable sector queries that go through Ottawa are drawing on information that is two years old. So if you have been charged with sexual assault and convicted four months ago, in all likelihood it's not on your CPIC record. PRIME BC will flag that information locally, however CPIC will not. There is a lag – it's not publically acknowledged, but it's there. The Ottawa piece is still too far behind" (Wiebe, 2011).

The two year lag in uploading criminal convictions into CPIC would help explain the staggering number of cases identified earlier in this report that involved criminal convictions but did not have a corresponding record located on CPIC.

Several respondents from the 'affected Canadian citizens' interview group felt uncertain as to their legal and informational status at the United States border, as some had been recently convicted while others were still involved in ongoing court proceedings. It was unclear to these respondents how and when information related to arrests, charges and/or convictions would be formally recorded in Canada and subsequently transmitted cross-border. As one respondent went on to say:

"I haven't a clue as to whether I'm able to cross the border or not. I was arrested last year, does that make me guilty? No. I'm in the middle of court proceedings, does that make me guilty? Certainly not. What happens when the charges are dropped and I'm exonerated? I just don't know" (Anonymous, 2011).

Other respondents from the 'affected Canadian citizens' interview group questioned the efficiency with which Canadian police records and criminal records are transmitted to the United States. Most interview respondents who had criminal convictions in Canada had travelled the border numerous times prior to being flagged or denied entry. In some cases, respondents had been travelling the U.S. border for more than thirty years having never been questioned about

their criminal pasts. Those individuals who had no criminal convictions in Canada but had been denied entry to the U.S. as a result of an arrest or acquittal raised pointed arguments regarding the transmission of their unverified or incomplete records to foreign governments. One such individual described an incident where he was present at a marijuana grow-operation raid at a residential home in the lower mainland of British Columbia. The respondent was parked outside of the home in his car waiting to pick up a friend who was inside, having never been present in the home himself or aware of the grow-operation inside. Shortly after being detained and questioned by police as a result of his proximity to the home, it was quickly determined that he had no knowledge of or involvement in the illegal activities being conducted inside. The respondent was promptly released by police, no charges were laid and no fingerprints were taken.

Two months later during an international vacation with family, the respondent had booked a flight that transited through a United States port of entry. Here, the respondent was asked whether he had ever 'been in trouble with the law'. Having not categorized his prior encounter with the police as a criminal matter, the respondent stated he had not had any prior criminal encounters with police. The respondent was swiftly informed of the information obtained by U.S. Customs and Border Protection relating to the grow-operation bust at which he had been present. He was subsequently denied entry to the United States and barred for a period of five years, as the police report obtained by U.S. Customs and Border Protection had the grow-operation address listed as his home address. When asked of his address at the time of the incident, he gave his

factual address. As the police report conflicted with his statement, he was charged with 'material misrepresentation' triggering an automatic five year travel bar to the United States.

“For some reason, and I think it was because I was then naïve to the differences between an arrest, a charge and a conviction, the incident was completely absent from my mind. It was truly a non-incident for me as I was so detached from it, so I said no” (Anonymous, 2011).

Reflecting on this incident, the respondent raised questions as to why the police in Canada had made erroneous representations about him to a foreign government that have negatively impacted his livelihood. Adding to this frustration, the municipal police detachment responsible for arresting the respondent was unable to produce any record of this event in their records.

In cases where charges had been brought against an accused but resulted in a stay of proceedings or acquittal, respondents reported similar barriers to obtaining the evidence necessary to establish the absence of conviction. One respondent, an electrician, used the analogy of an electrical circuit to describe his understanding of the United States' grounds for denying him entry on the basis of a prior charge that resulted in an acquittal:

“They probably see me the way I see an incomplete circuit. When electricity isn't making a complete circuit, that means there is a loose or missing connection; they see my arrest, they see my charge but they don't see any resolution to the matter. How is it that only information pointing to my guilt is shared, while information that might clear my name is withheld or inaccessible? Now I have to dig to fill in the blanks, which is proving way harder than I thought. This happened 23 years ago, I can barely remember the details and the courts are just as clueless about it as I am” (Anonymous, 2011).

This sentiment was repeated in a majority of the interviews. Although most respondents voiced their frustration with U.S. Customs and Border Protection

officer's adversarial position, they realized these officers were working with incomplete, inaccurate or misleading information. The respondents ubiquitously felt that the transmission of inaccurate or incomplete personal information related to criminal activity was a violation of their individual privacy and that the Canadian governmental bodies responsible for managing these transmissions ought to implement measures to prevent this type of treatment of others in the future. Even when the appropriate court information had been obtained, older records are often returned incomplete. The most essential piece of information to many border cases is whether the charge was proceed with summarily or by indictment in Canada. Failure by the court to indicate the method by which the case was tried can have a long-lasting impact on an individual's ability to travel the United States border.

When asked to comment on the purging practices of Vancouver Police Department, Supt. Wiebe noted that the retention schedule for files on PRIME BC is based on the severity of crime(s). A file involving sexual assault would have a much longer retention schedule than a file involving simple possession of a controlled substance. While the general principles of a retention schedule seem to apply equally across all police detachments in British Columbia, there appears to be differences in opinion as to what the specific guidelines should be:

“There is little agreement between the police agencies in British Columbia on what that retention schedule looks like. There are some distinct differences of opinions of what should be retained and what shouldn't” (Wiebe, 2011).

Supt. Wiebe went on to cite numerous cases where offenders have been caught as a result of old information. The retention timeline for PRIME BC files begins

when the file is administratively closed and resets when the file is re-opened. In theory, a police agency could manipulate the system to keep files accessible indefinitely; closing and re-opening each file on a periodic schedule. Taking into consideration the already limited staffing and resources of most police detachments in Canada, Supt. Wiebe suggested a scenario such as this would be very unlikely. While the PRIME BC retention schedule is automated, the actual purging of data from the system has to be completed manually. Some respondents in the 'affected Canadian citizens' interview group identified difficulties with obtaining a copy of their police report or record of arrest, whereas others were issued their requested documentation promptly. It appeared to be only a minority of cases where records that presumably should exist did not.

In outlining the details of the above scenario, Supt. Wiebe went on to confirm the accuracy of the organizational flow chart presented in Figure 2 of this paper. In British Columbia, information obtained by either RCMP or municipal policing detachments is uploaded to PRIME BC. Where criminal charges are proceeded with by the Crown, an electronic flow of police information is initiated from PRIME BC to JUSTIN, the provincial court records database in British Columbia. Currently, this is a one-way interface in that information flows electronically from PRIME BC to JUSTIN, but not from JUSTIN back to PRIME BC. When the court has rendered a decision or disposed a charge, a hard copy file is transmitted from the Provincial Court of British Columbia back to the Crown liaison to manually enter into PRIME BC. PRIME BC now includes both police records information and criminal convictions information, portions of which are

relayed on to CPIC in Ottawa. JUSTIN does not communicate directly with CPIC. PRIME BC is the sole interface by which conviction records are transmitted to CPIC, the national criminal records database in Canada.

Ms. Vonn agreed that a geographical approach was necessary in order to fully appreciate the interconnectivity of police records databases and criminal records databases in Canada. Ms. Vonn stressed the importance of delineating between 'push' and 'pull' systems, cautioning against the latter:

“A push system based on extracting relevant facts, pushing them from one stakeholder to another. This system is predicated on accountable individuals at each station or juncture along the way that help account and ensure that individual privacy is being upheld at each stage, and to ensure that the systems and pathways through which this information is being transmitted through are fully understood within the contexts of privacy. Alternatively, a pull system is one in which it attempts to pull in as much information from as many sources as possible or are as available. This informational model creates a data dump system, not much unlike that of PRIME BC” (Vonn, 2011).

The statement above reinforces Ms. Vonn's initial contention that the 'more is better' approach is inherently misguided.

When asked about the communication of Canadian police records and criminal records information to international law enforcement agencies, namely the United States Department of Homeland Security, Supt. Wiebe made explicitly clear that PRIME BC is a closed system: “unless you are a police officer in British Columbia, you don't have access to it” (Wiebe, 2011). In Canada, information sharing occurs between police forces through PIP, a database exclusively accessible by police officers. Supt. Wiebe would go on to mention that neither Canada Border Services Agency (CBSA) nor Canadian Security and Intelligence Service (CSIS) have direct access to PRIME BC. In order to access relevant

agency information for investigative purposes enforcement agencies such as CBSA and CSIS must gain access through the Independent Query Tool (IQT); this tool is provided to non-policing agencies and enforcement bodies that have a specific need for police information. The IQT acts as an intermediary database providing only skeletal information. Supt. Wiebe pointed to CPIC as the likely point of access for foreign law enforcement agencies to collect information concerning the criminal histories of Canadian citizens.

Respondents from the 'affected Canadian citizens' interview group cited family stress and loss of employment opportunities as the most notable negative effects associated with their inadmissibility to the United States. In cases where the basis for denial was unknown to others, the embarrassment of having their criminal encounters uncovered in front of family, friends or business associates was particularly damaging to respondents:

“Having to explain to my father-in-law why our family can't visit him during Christmas in the United States was one of the worst conversations I've ever had to have, not to mention repeating that same conversation with my wife and children. Having been denied entry on the basis of an arrest that went nowhere, no charge, no conviction, nothing, is just, well, frustrating and embarrassing to say the least. Having my past uprooted in front of my family like this makes me feel like I've done something wrong, even though that is not the case. I've never broken the law in my life, not so much as a parking ticket, yet I am now categorized in a foreign country as a criminal” (Anonymous, 2011).

It was apparent throughout many of the interviews that an inability to travel to the United States was a recurring theme of domestic arguments, particularly when there were family engagements taking place in the United States. Respondents reported missing important landmarks such as graduation ceremonies, birthdays, funerals, weddings and the birth of family members. In some extreme cases,

married couples were forced to be separated for extended periods of time as a result of inadmissibility issues on both sides of the border:

“My husband can’t come to Canada until he sorts out a DUI charge in the United States. I can’t travel to the U.S. until I can get my fingerprints back from Ottawa to show that I wasn’t convicted of that stupid charge from way back when. They told me the fingerprints could take four months. What am I supposed to do for four months without my husband?” (Anonymous, 2011).

The above noted couple have since resolved their immigration issues having received a CPIC criminal records check from Ottawa evidencing the absence of conviction. The criminal records check through Ottawa in this case took 143 days.

Supt. Wiebe echoed Ms. Vonn’s earlier sentiments, going on to say that the police have the monumental task of ensuring data accuracy to help minimize the chances of undue harm caused by inaccurate or misleading information:

“We as a police agency have to be very diligent with our records, and generally speaking I think we are, not that mistakes don’t happen. Making sure that a file is completed properly is probably the biggest risk area we have” (Wiebe, 2011).

Ultimately, it appears as though the bulk of the responsibility with respect to the cross-border sharing of police records and criminal records information lies in the hands of the RCMP; CPIC is, in all likelihood, the primary point of entry for foreign law enforcement officials accessing Canadian’s criminal records information. Unfortunately, the RCMP were unwilling to comment on these matters.

## **8: DISCUSSION**

Having independently presented the results of both the case study and interview components of this project, it is now feasible to consider these results not only in relation to one another, but also within the broader contexts of international data sharing, database management, privacy and mobility. Discussion will seek to fulfill the objectives stated at the outset of this project and to provide a foundation for subsequent policy recommendations.

Two of the initial questions posed at the outset of this project were ‘how are Canadian criminal records retrieved by U.S. law enforcement agencies?’ and ‘what is the range of information accessible by U.S. law enforcement agencies?’ From a municipal policing standpoint it is reasonable to conclude that PRIME BC is very much a closed information system with respect to cross-border information sharing. The Vancouver Police Department along with other municipal police detachments do not appear to be responsible or engaged in the cross-border sharing of police records and criminal records information. However, when factoring in the broad activities of the RCMP into this equation, mapping the flow of information contained within PRIME BC becomes much more difficult. The Integrated Border Enforcement Team project is comprised of five law enforcement agencies from Canada and the United States; the RCMP, CBSA, U.S. Customs and Border Protection (CBP), U.S. Bureau of Immigration and Customs Enforcement (ICE) and the U.S. Coast Guard. In this particular

shared intelligence model, Supt. Wiebe suggested that “there is an informal flow of information, albeit not a direct flow of information” (2011). Not only does the RCMP oversee the management of national criminal records (CPIC), but it participates in national police records management (PROS, PIRS) and provincial arrangements such as those within British Columbia (PRIME BC). It is easy to see that with the extent of overlapping intelligence information managed by the RCMP, it becomes very difficult to track the source, accuracy and relevancy of information being transmitted to foreign law enforcement agencies. The specific concern here being that although there are domestic mechanisms whereby a ‘wrong’ may be ‘righted’, once an incomplete or inaccurate piece of information is transmitted cross-border the potential to rectify that error ceases to exist. Taken together, the informal flow of police records and criminal records information that exists within the shared intelligence model of IBET’s and INSET’s along with the management of CPIC suggests that the RCMP are primarily responsible for Canadian criminal records and police records accuracy standards within the context of international data sharing.

Ms. Vonn agreed that if Canada is willing to engage in international accords such as the *Canada-U.S. Smart Border Declaration*, then government bureaus must act with a heightened sense of care in the transmission of citizens’ data, ensuring the accuracy of that information and identifying the potentials for undue harm. Canadians have the right to correct false information recorded about them in Canada, however no such right exists internationally; “Canada needs to take a more proactive rather than retroactive approach to data accuracy

in an increasingly digital age” (Vonn, 2011). While some would argue that Canada has no control over the unfavorable ways in which foreign law enforcement agencies interpret Canadian police records or criminal records, Ms. Vonn categorized this standpoint as “absurd, unjust and irresponsible” (2011). She would go on to stress that when balancing the interests of government and the individual citizen, there should be an increased standard for individual rights as a result of their relative vulnerability. Ms. Vonn felt as though the human elements of data inaccuracy are often overlooked in favor of bigger, ‘better’ intelligence.

When attempting to accurately map the flow of personal information in Canada, a key conceptual difference exists between police records databases and criminal records databases. At several points throughout this project the notion of separate systems of police data and criminal records data were reinforced by interview respondents, along with numerous informal conversations with justice system stakeholders not accounted for here. While this model may prove useful at a conceptual level, it does not exist in practice. PRIME BC is regularly touted as strictly a police records database in that only police maintain access to its content. This is true from a municipal policing standpoint, but when factoring in the RCMP’s broad influence domestically and abroad it is unclear as to the potential end points of information contained within this database. On the national level, PROS is known to operate in a similar capacity, maintaining both investigative police data along with more formal records of court proceedings. CPIC serves as the national criminal records database, housing records of

charges, convictions, acquittals along with other court orders. Additionally, CPIC houses information relevant only to police such as 'persons of interest'. It would appear as though CPIC, PRIME BC and PROS are housing relatively similar information, albeit to different extents. This begs the question as to whether this is an efficient model of data storage and communication, having multiple layers of overlap and redundancy. The numerous and often unaccounted for overlaps in these data systems pose problems with respect to ongoing accuracy and deletion where necessary.

Within the present context of cross-border transmission of criminal records and police records information, what is most concerning is the absence of clear, interjurisdictional guidelines with respect to the purging of personal information in Canada. These details shed light on an answer to preceding questions posed at the outset of this study, namely 'how are criminal records created, retained, disseminated and destroyed in Canada, and 'are these practices uniform across national, provincial and municipal levels?' To the first point, the results section above paired with the graphic overview and description presented in Figure 2 have established the linear flow of information from initial police encounter to judicial proceeding and onward through a web of intermediary databases. With respect to the second point, considering the competing philosophies on data retention found between and within British Columbia police detachments, there appears to be at least some degree of interjurisdictional variation with respect to purging practices and retention schedules.

Paired with the extensive overlap of information contained within the various databases outlined in Figure 2, it becomes very difficult to track, locate and purge personal information related to criminal matters where necessary. Alternatively, the lack of streamlining in data systems creates an increased potential for delayed access to completely relevant information in the context of international law enforcement. Evidenced in the statistical analyses and confirmed in the semi-structured interviews, numerous respondents had been travelling the U.S. border with serious criminal convictions for a number of years before being discovered; these results raise concern with respect to border security. Generally speaking, the aim of criminal intelligence at the international level is to reduce friction for low risk travellers and to restrict access to those travellers who present higher levels of risk. In an effort to uphold international treaties such as the *Canada-U.S. Smart Border Declaration*, both nations ought to consider the efficiency with which data is being transferred cross-border. Streamlining, simplifying and standardizing the police records and criminal records information transmitted between Canada and the United States may produce more accurate categorizations of potential threats to national security.

Two primary reasons exist for this lack of data efficiency between Canada and the United States; the first and most obvious is the reported two year backlog for uploading criminal convictions at the Canadian Police Information Centre. The second is the multiple points of access with which foreign officials may access only piecemeal information. From these two separate lines of reasoning stem the following five policy recommendations.

## **9: RECOMMENDATIONS**

### **9.1 Include Summary/Indictable Offence Information on CPIC**

There are circumstances under which the U.S. provides exceptions for individuals with a single minor conviction – what is commonly known as the ‘petty offence exception’. Under *Canadian Criminal Code* section 787, all cases that are processed summarily carry a maximum possible sentence of six months or less regardless of the maximum potential sentence under the original charging statutory section. There are exceptions to s. 787 within the *Canadian Criminal Code*, as many charge sections include specific maximum potential terms of imprisonment (e.g. eighteen months, one year) for summarily proceeded convictions. A conviction is considered a ‘petty offence’ where the maximum potential penalty for the crime of which the alien was convicted did not exceed imprisonment for one year and the alien was not sentenced to a term of imprisonment in excess of six months. Therefore, with the exception of controlled substances violations, many criminal cases that are processed summarily qualify for the petty offence exception. Although often cited by U.S. Customs and Border Protection as justification for denial of applications under the petty offence exception, whether or not the offence in question was a crime involving moral turpitude is irrelevant to the determination of whether it qualifies for the petty offence exception. The petty offence exception considers only the maximum possible penalty imposed for the crime, which if proceeded summarily is often 6

months. While it is possible for a higher penalty to be imposed under summary proceedings, many of the most frequently cited charge sections carry maximum penalties of 6 months imprisonment.

CPIC currently contains a wide variety of data ranging from convictions and acquittals to persons of interest to police. CPIC reflects the specific charge section under the Criminal Code for which an individual has been convicted, however there is no indication as to whether the Crown has proceeded by way of summary conviction or indictment. Including these details on CPIC would allow U.S. Customs and Border Protection officials to make an immediate determination as to a Canadian's admissibility in the presence of a minor conviction, eliminating the need for that individual to obtain an RCMP certified criminal record check via fingerprints (which currently incurs wait times in excess of 120 days where a conviction is present) as well as certified court documentation detailing the nature of the charge, the defendant's plea and whether the charge was proceeded summarily or by indictment.

## **9.2 Remove 'Person of Interest' from CPIC**

If Canada truly wishes to move towards separate systems of police records and criminal records, criminal records systems must reserve their informational capacity to objective court findings. CPIC has been described as strictly a criminal records database; however a great deal of subjective, unverified investigative material is nonetheless retained within its confines. When communicating information about Canadian citizens to foreign governments, it is important for Canada to uphold the standards of privacy and accuracy to the

greatest extent possible. A person of interest to Canadian police is far too broad a designation to be communicating internationally, particularly when such designations are knowingly being interpreted as indications of guilt by foreign law enforcement agencies.

There are indeed circumstances under which, for example, it would be incredibly useful for United States border officials to be notified of a likely suspect in a homicide where sufficient evidence was not present to lay charges or obtain a conviction. In circumstances such as these, CPIC offers a 'suspect chargeable' designation, which is a firm indication by police that there is a high likelihood of guilt, rather than a general hunch, suspicion or loose association.

The threat to Canadians' mobility is too great while the barrier to making appropriate administrative changes remains very low. The simple exclusion of this piece of information would speak volumes to Canada's commitment to the mobility rights of its citizens.

### **9.3 Standardize Police Data Retention Schedules**

Differing philosophies within the policing community exist with respect to data purging and retention schedules. While the PRIME BC retention schedule is automated, the actual purging of data from the system has to be completed manually. Fundamental to future investigative efficiency is the police's ability to retain relevant information as long as is needed. Countless examples exist where police were able to apprehend offenders on the basis of old information. That being said, there is an equal necessity to have clearly defined standards so that inconsequential interactions with police may be eventually purged from police

databanks. There is no question that Canadian police possess the knowledge to delineate between arrests, charges, convictions and acquittals in Canada; unfortunately, the results of the study suggest the same cannot necessarily be said of foreign law enforcement agencies. Keeping this in mind, it is important for Canadian police detachments to recognize the threats to individual privacy and mobility that are created when retention schedules are overlooked.

#### **9.4 Non-Police Management of National Criminal Records Database**

As noted above, CPIC has been described as strictly a criminal records database; however a great deal of subjective, unverified investigative material is retained within its confines nonetheless. Figure 2 illustrates the flow of police records and criminal records information within Canada. Surprising is the relatively small role of the provincial courts in the management of criminal records information, which is offset by the relatively large role of the police. In the United States, police records are housed by police agencies, criminal records are housed by jurisdictional courts who subsequently pass on relevant information to the Federal Bureau of Investigation for storage and transmission. While the police in the United States have access to criminal records information, they do not maintain control over the construction and transmission of the data itself; it is the responsibility of the court to transmit complete and accurate data to the FBI for subsequent purposes. A similar system may be worth consideration in Canada whereby police maintain control over police records databases, the courts aggregate and transmit complete judicial decisions to an independent third

party such as CSIS, giving CSIS dominion and control over Canada's national criminal records database.

Such is the case when Canadians encounter difficulty at the U.S. border that the information they require to establish their non-involvement in a criminal incident is sparsely located. Under these circumstances, an individual would need to obtain a CPIC criminal record check via fingerprints, obtain original court certified documentation in the event of a bona fide charge or conviction evidencing the way in which it was proceeded with or disposed of, and in some cases police records of arrest and/or detention. A more linear, hierarchical flow of police records and criminal records information would allow for greater efficiency in access to one's own personal information. Further to this objective is the consideration of efficient transfer of criminal records data between nations. Greater efficiency and accuracy in the cross-border transfer of criminal records information would improve domestic security initiatives; flagging those who present risk and easing friction on those who do not. Finally, there may be value in having similar organizations communicate with one another for the joint purposes of domestic security, intelligence and border management.

## **9.5 Canada-U.S. Criminal Records Repository**

One long-term extension of the recommendation above would be a single repository of criminal records information for the purposes of cross-border transfer between Canada and the United States. The current system of data transfer between the two nations appears to be a 'pull' system with multiple access points. To reiterate, a pull system is one in which information is routed or

'pulled in' from as many sources as possible or are as available. This informational model creates a data dump system whereby individual data elements can, over time, become increasingly difficult to pinpoint. Alternatively, a push system based on extracting relevant details and pushing them from one stakeholder to another. This system is predicated on accountable individuals at each station or juncture along the way to ensure that the information being transmitted is fully understood within broader legal and legislative contexts. In much the same way that the North American Free Trade Agreement regulates the international trade of goods and movement of people from one nation to another, a similarly structured accord speaking specifically to the transfer of criminal records information may prove useful as the social, economic and security priorities of Canada and the United States continue their convergence.

## **10: LIMITATIONS**

There are a number of important limitations of this research that should be considered when interpreting the results presented above. With respect to the case study, the sampled case files (n=98) come from a single law office within the Pacific Northwest Region of North America and do not necessarily represent similar case profiles of other law offices in the area, or other cross-border law practices in the field of U.S. immigration law. Further, these case files fail to represent individuals who have not sought legal assistance to resolve their border issues, or individuals who are unaware of their potential border issues at present time. The broader population of Canadians who have formal criminal records or who have been included in police records management databases may encounter treatment at the U.S. border that does not require or warrant legal assistance, or perhaps their records go unnoticed by U.S. law enforcement agencies altogether. It may be the case that many Canadians simply choose to avoid travel to the U.S. as a result of their criminal records.

With respect to the purposive interviews, the major limitation in this regard is that there is no input from Canada's federal policing agency, the RCMP. The RCMP is responsible for managing the primary data entry point of foreign law enforcement agencies, CPIC. Having not gathered input requires the current study to draw inferences and conclusions regarding RCMP practice that may be to some extent inaccurate or outdated.

The results from this study should be interpreted with caution while keeping the explicit purpose of exploratory investigation recognized during the presentation of results, discussion and recommendations. This project has been designed to expand the current knowledge base on the creation, retention, dissemination and destruction of criminal records and police records in Canada. Little has been published or examined in this growing area of importance.

As this is an exploratory study, generalizability and hypothesis testing were not primary goals of the proposed research, but instead to explore a range of practical policy applications that could emerge as a result of the data acquired from the study. By better understanding the ways in which criminal records management policy in Canada relates to U.S. border travel, Canadian practices may be developed, modified or created in order to better protect Canadian citizens from undue hardship during international travel.

## **11: FUTURE RESEARCH**

Future research examining the creation, retention, dissemination and destruction of personal information related to criminal activity in Canada should endeavour to register input from the RCMP regarding the operational mechanics of CPIC, the national criminal records repository. CPIC is the primary point of access for foreign law enforcement agencies seeking to retrieve personal information related to the criminal activity of Canadians.

While the current research has managed to highlight the flow of data cross-border between Canada and the United States, it will be important for subsequent studies to adopt a national approach by incorporating data from other provinces and major border crossings. Further to this, future research should seek to assume a global perspective on the cross-border transmission of personal information related to criminal activity, as there would be great utility in accurately mapping the course and trajectory of specific pieces of personal data worldwide.

## 12: APPENDIX A – CRIMES OF MORAL TURPITUDE

Category	Crimes (Moral Turpitude)	Crimes (Not Involving Moral Turpitude)
Crimes Against Property	<p><b>Fraud:</b></p> <ul style="list-style-type: none"> <li>• Making false representation</li> <li>• Knowledge of such false representation by the perpetrator</li> <li>• Reliance on the false representation by the person defrauded</li> <li>• An intent to defraud</li> <li>• The actual act of committing fraud</li> </ul> <p><b>Evil intent:</b></p> <ul style="list-style-type: none"> <li>• Arson</li> <li>• Blackmail</li> <li>• Burglary</li> <li>• Embezzlement</li> <li>• Extortion</li> <li>• False pretenses</li> <li>• Forgery</li> <li>• Fraud</li> <li>• Larceny (grand or petty)</li> <li>• Malicious destruction of property</li> <li>• Receiving stolen goods (with guilty knowledge)</li> <li>• Robbery</li> <li>• Theft (when it involves the intention of permanent taking)</li> <li>• Transporting stolen property (with guilty knowledge)</li> </ul>	<ul style="list-style-type: none"> <li>• Damaging private property (where intent to damage not required)</li> <li>• Breaking and entering (requiring no specific or implicit intent to commit a crime involving moral turpitude)</li> <li>• Passing bad checks (where intent to defraud not required)</li> <li>• Possessing stolen property (if guilty knowledge is not essential)</li> <li>• Joy riding (where the intention to take permanently not required)</li> <li>• Juvenile delinquency</li> <li>• Trespassing</li> </ul>
<b>Crimes Committed Against Governmental Authority</b>	<ul style="list-style-type: none"> <li>• Bribery</li> <li>• Counterfeiting</li> <li>• Fraud against revenue or other government functions</li> <li>• Mail fraud</li> <li>• Perjury</li> <li>• Harboring a fugitive from justice (with guilty knowledge)</li> </ul>	<ul style="list-style-type: none"> <li>• Black market violations</li> <li>• Breach of the peace</li> <li>• Carrying a concealed weapon</li> <li>• Desertion from the Armed Forces</li> <li>• Disorderly conduct</li> <li>• Drunk or reckless driving</li> <li>• Driving while license suspended or revoked</li> <li>• Drunkenness</li> </ul>

	<ul style="list-style-type: none"> <li>• Tax evasion (willful)</li> </ul>	<ul style="list-style-type: none"> <li>• Escape from prison</li> <li>• Failure to report for military induction</li> <li>• False statements (not amounting to perjury or involving fraud)</li> <li>• Firearm violations</li> <li>• Gambling violations</li> <li>• Immigration violations</li> <li>• Liquor violations</li> <li>• Loan sharking</li> <li>• Lottery violations</li> <li>• Minor traffic violations</li> <li>• Possessing burglar tools (without intent to commit burglary)</li> <li>• Smuggling and customs violations (where intent to commit fraud is absent)</li> <li>• Tax evasion (without intent to defraud)</li> <li>• Vagrancy</li> </ul>
<p><b>Crimes Committed Against Person, Family Relationship, and Sexual Morality</b></p>	<ul style="list-style-type: none"> <li>• Abandonment of a minor child (if willful and resulting in the destitution of the child)</li> <li>• Adultery (see INA 101** repealed by Public Law 97-116)</li> <li>• Assault (this crime is broken down into several categories, which involve moral turpitude): <ul style="list-style-type: none"> <li>○ Assault with intent to kill, commit rape, commit robbery or commit serious bodily harm</li> <li>○ Assault with a dangerous or deadly weapon</li> </ul> </li> <li>• Bigamy</li> <li>• Paternity fraud</li> <li>• Contributing to the delinquency of a minor</li> <li>• Gross indecency</li> <li>• Incest (if the result of an improper sexual relationship)</li> <li>• Kidnapping</li> <li>• Lewdness</li> <li>• Manslaughter: <ul style="list-style-type: none"> <li>○ Voluntary</li> <li>○ Involuntary (where the statute requires proof of recklessness, which is defined as the awareness and conscious disregard of a substantial and unjustified risk which constitutes a gross deviation from the standard that a reasonable person would observe in the situation. A conviction for the statutory offence of vehicular homicide or other involuntary manslaughter only requires a showing of negligence will not involve moral turpitude even if it appears the defendant in fact acted recklessly)</li> </ul> </li> <li>• Mayhem</li> </ul>	<ul style="list-style-type: none"> <li>• Assault (simple) (i.e., any assault, which does not require an evil intent or depraved motive, although it may involve the use of a weapon, which is neither dangerous nor deadly)</li> <li>• Bastardy (i.e., the offence of begetting a bastard child)</li> <li>• Creating or maintaining a nuisance (where knowledge that premises were used for prostitution is not necessary)</li> <li>• Incest (when a result of a marital status prohibited by law)</li> <li>• Involuntary manslaughter (when killing is not the result of recklessness)</li> <li>• Libel</li> <li>• Mailing an obscene letter</li> <li>• Mann Act violations (where coercion is not present)</li> <li>• Riot</li> <li>• Suicide (attempted)</li> </ul>

	<ul style="list-style-type: none"> <li>• Murder</li> <li>• Pandering</li> <li>• Prostitution</li>   <li>• Rape (including "Statutory rape" by virtue of the victim's age)</li> </ul>	
<b>Attempts, Aiding and Abetting, Accessories and Conspiracy</b>	<ul style="list-style-type: none"> <li>• An attempt to commit a crime deemed to involve moral turpitude</li> <li>• Aiding and abetting in the commission of a crime deemed to involve moral turpitude</li> <li>• Being an accessory (before or after the fact) in the commission of a crime deemed to involve moral turpitude</li>   <li>• Taking part in a conspiracy (or attempting to take part in a conspiracy) to commit a crime involving moral turpitude where the attempted crime would not itself constitute moral turpitude.</li> </ul>	<ul style="list-style-type: none"> <li>• N/A</li> </ul>

(U.S. Foreign Affairs Manual Vol. 9 FAM 40.21 [A] N2, 2010)

## **13: APPENDIX B – VARIABLES**

**v1, Case Number:** arbitrary number assigned from a table of random numbers to each case file. Corresponding name/case number filed and locked in fire safe box. Scale level variable, so no coding necessary.

**v2, Year of Birth:** client's year of birth. Scale level variable so no coding categories necessary.

**v3, Gender:** gender of client, male or female. All clients were documentarily identified as male or female. No transgendered clients were identified eliminating the need for third variable category.

**v4, Ethnicity:** ethnic classification as indicated on official police, court and border documentation. Clients were coded as either African American, Asian, Caucasian, First Nations/Aboriginal, Other or Unknown.

**v5, Conviction Y/N:** presence or absence of criminal conviction in Canada. Withdrawn charges, acquitted charges, stays of proceedings, arrests and other criminal records information do not qualify as a conviction. Absolute and conditional discharges however, do qualify as convictions even though records are terminated after a length of time in Canada. In order to obtain an absolute or conditional discharge, there is usually a determination of guilt before this designation. Canadian convictions that have been pardoned by the National Parole Board were coded as convictions since the United States does not recognize Canadian pardons and in many instances, criminal records information

remains accessible to foreign law enforcement agencies regardless of the pardoned record.

**v6, Conviction #:** number of criminal convictions in Canada.

**v7, Arrest Y/N:** presence or absence of arrest in Canada. Though there are varying definitions of what constitutes an arrest, this variable seeks to identify any arrests recorded by local police. For the purposes of this study, 'arrest' was limited to those cases where an arrest was documented by police in a police records system.

**v8, Arrest #:** number of arrests in Canada. The same logic noted in v7 applies here.

**v9, Offence Type 1:** starting with the client's first recorded offence, this variable categorizes the offence type for first conviction. Offence types derive from Statistics Canada Uniform Crime Report classifications. Offences were coded as either a crime against person, crime against property, controlled substance violation, offence against public order, finance/fraud, firearms/weapons violation, other or unknown.

**v10, Offence S/I 1:** determination as to whether 'Offence 1' was proceeded with summarily or by indictment.

**v11, CIMT 1:** determination as to whether 'Offence 1' is deemed to be a crime involving moral turpitude, as defined under INA §212(a)(2)(A)(i)(I).

**v12, Sentence1:** sentence imposed on 'Offence 1'. Sentence coding scheme was derived by Provincial Court of British Columbia 'Information Sheet'. Court Information sheets are used to classify a number of important details related to

an accused and their charge(s). Sentences were coded as either absolute discharge, conditional discharge, probation, fine, restitution, imprisonment, no sentence, other or unknown. Where multiple sentences were imposed (e.g. imprisonment and fine) only the most serious penalty was recorded.

**v13, Offence 1 Date:** year in which 'Offence 1' was committed.

**v14, Offence 1 Location:** municipal jurisdiction in which 'Offence 1' took place.

Offence location was coded as either Municipal RCMP (Lower Mainland), Municipal Detach (Lower Mainland), Rural RCMP (BC), Rural Detach (BC), RCMP (Outside BC), Municipal Detach (Outside BC), other or unknown.

**v15, AGFelony1:** determination as to whether 'Offence 1' is considered an aggravated felony, as defined by the U.S. 9th Circuit Court of Appeal.

**v16, Decision 1:** determination on 'Offence 1' by the criminal court in Canada.

Decisions were coded as either guilty, not guilty, dismissed, acquitted, mistrial, mental disorder, other or unknown.

**v17, Hybrid 1:** indication as to whether the Canadian Criminal Code section for 'Offence 1' is a hybrid offence class, in that the charge could be proceeded either summarily or by indictment.

**v18, Border:** characterization as to the nature and extent of the client's encounter, if any, at the United States border. Border encounters were coded as either being nonexistent (none), withdrawn application for entry, expedited removal, deportation, other or unknown.

**v19, POE:** the U.S. port of entry where the client was first deemed criminal or inadmissible to the United States. Sampled cases involved encounters at Blaine, WA, Sumas, WA or Vancouver International Airport ports of entry.

**v20, CDN Pardon:** presence or absence of a Canadian pardon for one or more criminal convictions in Canada.

v21, CPIC: presence or absence of criminal records information located on the Canadian Police Information Centre database.

**v22, WaiverTime (M):** length of time in months from the date of filing waiver to date of its approval or denial. Data were not recorded for those cases where a decision was still pending.

**v23, U.S. Visa:** presence or absence, at any point in time, of a U.S. visa (not including B-2 visitor visa, as Canada falls under the visa waiver program). Examples would include TN, L-1, E-2 or Permanent Resident Card status.

**v24, Passport Issued:** the date the client's current Canadian passport was issued. One hypothesis is that those with older passports, or those who had been travelling the border without a passport before the new Canada-U.S. regulation came into effect in 2009 were 'flying under the radar' so to speak. I would expect to see those who are now travelling the border with a passport and/or those who have recently renewed their passport (newer passports include newer, better security features) will be encountering issues with entry related to past criminal encounters in Canada.

**v25, Passport Expired:** date Canadian passport expires.

**v26, Offence Type 2:** this variable categorizes the offence type for a second conviction if present. Offence types derive from Statistics Canada Uniform Crime Report classifications. Offences were coded as either a crime against person, crime against property, controlled substance violation, offence against public order, finance/fraud, firearms/weapons violation, other or unknown.

**v27, Offence S/I 2:** determination as to whether 'Offence 2' was proceeded with summarily or by indictment.

**v28, CIMT 2:** determination as to whether 'Offence 2' is deemed to be a crime involving moral turpitude, as defined under INA §212(a)(2)(A)(i)(I).

**v29, Sentence 2:** sentence imposed on 'Offence 2'. Sentence coding scheme was derived by Provincial Court of British Columbia 'Information Sheet'. Court Information sheets are used to classify a number of important details related to an accused and their charge(s). Sentences were coded as either absolute discharge, conditional discharge, probation, fine, restitution, imprisonment, no sentence, other or unknown. Where multiple sentences were imposed (e.g. imprisonment and fine) only the most serious penalty was recorded.

**v30, Offence 2 Date:** year in which 'Offence 2' was committed.

**v31, Offence 2 Location:** municipal jurisdiction in which 'Offence 2' took place. Offence location was coded as either Municipal RCMP (Lower Mainland), Municipal Detach (Lower Mainland), Rural RCMP (BC), Rural Detach (BC), RCMP (Outside BC), Municipal Detach (Outside BC), other or unknown.

**v32, AGFelony 2:** determination as to whether 'Offence 2' is considered an aggravated felony, as defined by the U.S. 9th Circuit Court of Appeal.

**v33, Decision 2:** determination on 'Offence 2' by the criminal court in Canada. Decisions were coded as either guilty, not guilty, dismissed, acquitted, mistrial, mental disorder, other or unknown.

**v34, Hybrid 2:** indication as to whether the Canadian Criminal Code section for 'Offence 2' is a hybrid offence class, in that the charge could be proceeded either summarily or by indictment.

**v35, Petty Offence Entry:** whether or not entry to the United States was granted on basis of petty offence exception rule, which does not require the filing of a waiver document.

**v36, Last Offence (Y):** year of most recent criminal conviction in Canada.

**v37, Border Date (Y):** year of initial encounter at the U.S. border.

**v38, Offence Type 3:** this variable categorizes the offence type for a third conviction if present. Offence types derive from Statistics Canada Uniform Crime Report classifications. Offences were coded as either a crime against person, crime against property, controlled substance violation, offence against public order, finance/fraud, firearms/weapons violation, other or unknown.

**v39, Offence S/I 3:** determination as to whether 'Offence 3' was proceeded with summarily or by indictment.

**v40, CIMT 3:** determination as to whether 'Offence 3' is deemed to be a crime involving moral turpitude, as defined under INA §212(a)(2)(A)(i)(I).

**v41, Sentence 3:** sentence imposed on 'Offence 3'. Sentence coding scheme was derived by Provincial Court of British Columbia 'Information Sheet'. Court Information sheets are used to classify a number of important details related to

an accused and their charge(s). Sentences were coded as either absolute discharge, conditional discharge, probation, fine, restitution, imprisonment, no sentence, other or unknown. Where multiple sentences were imposed (e.g. imprisonment and fine) only the most serious penalty was recorded.

**v42, Offence 3 Date:** year in which 'Offence 3' was committed.

**v43, Offence 3 Location:** municipal jurisdiction in which 'Offence 3' took place. Offence location was coded as either Municipal RCMP (Lower Mainland), Municipal Detach (Lower Mainland), Rural RCMP (BC), Rural Detach (BC), RCMP (Outside BC), Municipal Detach (Outside BC), other or unknown.

**v44, AGFelony 3:** determination as to whether 'Offence 3' is considered an aggravated felony, as defined by the U.S. 9th Circuit Court of Appeal.

**v45, Decision 3:** determination on 'Offence 3' by the criminal court in Canada. Decisions were coded as either guilty, not guilty, dismissed, acquitted, mistrial, mental disorder, other or unknown.

**v46, Hybrid 3:** indication as to whether the Canadian Criminal Code section for 'Offence 3' is a hybrid offence class, in that the charge could be proceeded either summarily or by indictment.

**v47, Offence Type 4:** this variable categorizes the offence type for a fourth conviction if present. Offence types derive from Statistics Canada Uniform Crime Report classifications. Offences were coded as either a crime against person, crime against property, controlled substance violation, offence against public order, finance/fraud, firearms/weapons violation, other or unknown.

**v48, Offence S/I 4:** determination as to whether 'Offence 4' was proceeded with summarily or by indictment.

**v49, CIMT 4:** determination as to whether 'Offence 4' is deemed to be a crime involving moral turpitude, as defined under INA §212(a)(2)(A)(i)(I).

**v50, Sentence 4:** sentence imposed on 'Offence 4'. Sentence coding scheme was derived by Provincial Court of British Columbia 'Information Sheet'. Court Information sheets are used to classify a number of important details related to an accused and their charge(s). Sentences were coded as either absolute discharge, conditional discharge, probation, fine, restitution, imprisonment, no sentence, other or unknown. Where multiple sentences were imposed (e.g. imprisonment and fine) only the most serious penalty was recorded.

**v51, Offence 4 Date:** year in which 'Offence 4' was committed.

**v52, Offence 4 Location:** municipal jurisdiction in which 'Offence 4' took place. Offence location was coded as either Municipal RCMP (Lower Mainland), Municipal Detach (Lower Mainland), Rural RCMP (BC), Rural Detach (BC), RCMP (Outside BC), Municipal Detach (Outside BC), other or unknown.

**v53, AGFelony 4:** determination as to whether 'Offence 4' is considered an aggravated felony, as defined by the U.S. 9th Circuit Court of Appeal.

**v54, Decision 4:** determination on 'Offence 4' by the criminal court in Canada. Decisions were coded as either guilty, not guilty, dismissed, acquitted, mistrial, mental disorder, other or unknown.

**v55, Hybrid 4:** indication as to whether the Canadian Criminal Code section for 'Offence 4' is a hybrid offence class, in that the charge could be proceeded either summarily or by indictment.

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