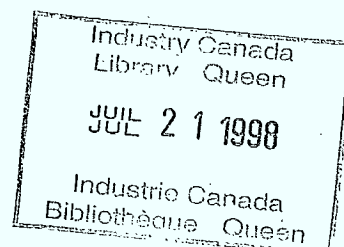


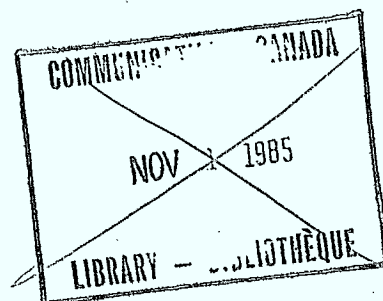
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INTERDEPARTMENTAL TASK FORCE  
ON  
TRANSBORDER DATA FLOW

a [REPORT  
ON  
DATA SHARING,  
DATA CLASSIFICATION,  
DATA RETENTION  
AND  
DATA STORAGE ]



prepared for the  
WORKING GROUP SOVEREIGNTY ASPECTS



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## I. INTRODUCTION

### A. Background

It is interesting to note that the earliest extent records are those relating to business transactions in the early Babylonian empire. Since then, whether written on clay tablets, papyrus or paper, individuals, business and governments have created, stored and exchanged or shared records. Throughout time such recorded information or data has been and remains vital to the decision-making process, exchange of ideas and the delivery of goods and services in both the public and private sectors. Until the advent of the new computer/communications/information technologies, records were basically managed and stored at the locality where they were first created. In some instances, records were created specifically to be carried or communicated to another destination.

The advent of printing, i.e. the first information revolution, in the fifteenth century followed by the discovery of new sea routes and development of new reliable and cost-efficient sailing vessels in the sixteenth and seventeenth century, the first transportation revolution, necessitated that the expanding trade networks be supported by transborder records flows. By the early eighteenth century, these transborder record flows in support of international trade became an activity of such volume as to lead to the creation of regularized postal services. The introduction of the telegraph in the mid-nineteenth century, and the telephone earlier this century marked another stage in this communication or transportation revolution.

Transborder record flows have thus existed ever since people started to communicate and trade with each other.

The questions raised in the context of transborder data flows relate to the fact that the converging computer-communications-information CCI revolution with its inherent disregard for national boundaries are the following:

- What factors have the new information technologies introduced with respect to data sharing, classification, retention and storage?
- To what degree can or should the technology used be a factor in policies on the sharing, classification, retention and storage of recorded information?
- What data sharing practices currently exist?
- Are, or can, or should data flows be classified or categorized?
- What are the current Canadian legislative and regulatory requirements concerning record retention? Do these distinguish between hard-copy or machine-readable data? Do they even "allow" for records to be retained in machine-readable form? Do they state or imply where records are to be stored?

## B. Purpose

The purpose of this project is to:

- identify current Canadian government law and policy which does, or may impact on transborder data flows or on activities associated with these flows in terms of data sharing, classification, retention and storage;
- examine some of the characteristics of data in terms of its purpose and use and propose draft schemas whereby different flows could be distinguished from each other; and,
- review specific laws and regulations of the Canadian government which require one to "keep or maintain records" with a specific focus on TBDF-related issues.

## C. Scope and Limitations

This study is one of several undertaken as a project for the Interdepartmental Task Force on Transborder Data Flows. Its basic purpose is to serve as input to the work of the Working Group on Sovereignty Aspects and the Task Force as a whole. The study benefited from the consultative process with officials from various government agencies involved with the Task Force and the members of the Industry Advisory Committee.

The computer/communications/information sector covers a very wide spectrum of activities even if the focus is on data or records. This project study is limited to records or recorded information which is created in support of decision-making, the delivery of goods and services and other economic activities. Other "data" issues related to transborder data flows are addressed in project reports of the Task Force on software, vulnerability, open market data processing, information retrieval, multinational enterprises, legal aspects, cultural issues, etc.1/

## D. Definition

For the purpose of this report, a number of working definitions of terms used in the report, should be stated:

- |                        |   |
|------------------------|---|
| "records"              | - hard-copy records such as paper, microfilm, etc.;   |
| "data"                 | - machine-readable information usually stored in digital form on magnetic or optical disks, magnetic tapes and drums, etc.; |
| "recorded information" | - any information that is recorded on or in a physical medium in any format;  |

"information"

- at times used instead of recorded information. It should be noted that as to the supposed distinction between information and data, one person's information is another person's data and vice-versa;

"retention" or "retention requirements"

- pertains to the obligation imposed on a business or person by a government to keep or retain records on a specific activity or action for a specified period of time; and,

"transborder data flows"

- electronic or machine-readable data or instructions which are transmitted or move across national boundaries for purposes of processing, storage, retrieval in most cases utilizing computer/communications system and interfaces. (This is the working definition of TBDF used by the Task Force.)

## II. DATA SHARING

It should be stated at the outset that it was not possible, within the time and financial constraints of this project, to undertake a review of data sharing arrangements of governments, corporations and individuals in Canada with their off-shore counterparts. The survey of multinational enterprises which forms another project of the TBDF Task Force should provide valuable insights into the contents of and reasons for the sharing or flow of data in a corporation operating in more than one country.<sup>2/</sup>

In the public sector, the newly introduced federal legislation on Access to Information and Privacy (Bill C-43), when it becomes law, will require government institutions to report annually on all their information holdings. In particular, the Privacy Act part of this legislation, requires government institutions to describe all the uses made of data in each personal information bank under their control. This would include identifying any transfer or sharing of personal information on Canadians with off-shore entities. Since privacy concerns form a major subcomponent in data sharing issues, it would be logical not to undertake a review of data sharing until Bill C-43 has been finalized and enacted.

From a TBDF point of view, the question that could be asked to government agencies would simply be, "In your review of uses of personal information required under the Privacy Act, would you please note those which involve transborder data flows of personal data?" The same type of question could be asked as part of any review of government information management practices resulting from a change in existing laws or regulations or the introduction of new legislation. The answers should provide a very comprehensive picture of TBDF practice and regulations in the public sector. Work has already begun on the private sector in the form of a survey of MNEs and briefs from industry.

Any review and evaluation of data sharing from a TBDF perspective requires an analytic structure for the results to be meaningful and useful for policy-making purposes. Common sense would thus dictate that the development of data flow categorization and classification schemas should precede any in-depth review of data sharing. Some ideas of what this might entail are presented in Chapter III below.

Before going on, it should be noted that currently, Canadian laws do exist which are construed by some to place restrictions on transborder data flows. However, closer inspection of these laws and regulations will indicate that the basic purpose of these laws is to restrict access to particular records of that government institution for very valid domestic reasons. Examples of such laws are: Canada Pension Plan Act, Criminal Records Act, Family Allowances Act, Income Tax Act, Statistics Act, etc.<sup>3/</sup> Many of these laws were in force well before the advent of the new CCI technologies, often by decades. The fact that government institutions are now using CCI technologies for reasons of cost-effectiveness, efficiency and improved program delivery does not mean that they are no longer required by law to restrict access to these records.

A good example of misunderstanding of domestic Canadian law in this area was a recent "TBDF incident" involving the computers of the Canadian Employment and Immigration Commission (CEIC) and the Burroughs Corporation (U.S.). The CEIC uses Burroughs computers for data processing. In 1981, Burroughs introduced the "Remote Support centres" concept, whereby it offers remote on-line diagnostic and repair services. When the CEIC computers suffered a malfunction, Burroughs requested on-line access to the CEIC computers in order to "diagnose and repair". CEIC, however, could not allow this since it was well nigh impossible to grant access to the computers without also, in effect, giving access to the data itself, which is not allowed under Canadian law. Burroughs cited this as an example of "Canadian transborder data flow restrictions". The fact of the matter is that under Canadian law only officers of CEIC authorized by the Minister may have access to CEIC data whether in hard-copy paper or machine-readable form. This domestic law applies equally to Canadian or foreign corporations or individuals.<sup>4/</sup> It is therefore not a TBDF restriction.

The point to be noted here is that, "If under current domestic law, access to or the sharing of hard-copy or paper records with third parties is not permitted, for what reasons should the same conditions not apply simply because the method for recording the information in question is now electronic filing cabinets instead of the former paper filing cabinets?"

There do, however, exist a very limited number of laws in Canada which do provide mechanisms for restricting transborder record flows. However, the main purpose of these laws is to protect Canadian companies and Canadian citizens from the extraterritorial application of laws of other countries or actions of foreign regulatory boards, quasi-judicial entities, senate committees, grand jury investigations, etc. The enactment of such laws usually was the result of an incident whereby a Canadian citizen or company was being pressured or forced to submit Canadian data or records to a foreign entity.

It is interesting to note that the legislation which does exist is several decades old and has as its focus hard-copy records. The laws worth citing are:

- the Ontario "Business Records Protection Act" enacted in 1948 specifically to prevent anti-trust authorities of the U.S. from obtaining access to records of Canadian business operations of Canadian pulp and paper companies. The purpose of this Act was not to restrict the flow of business data outside of the jurisdiction for business purposes but to protect Ontario business from having to comply with demands by foreign authorities for data on their business activities in Ontario; and,
- the Quebec "Loi des dossiers d'entreprises" (Business Concerns Records Act) been on the Statute Book since 1959 for similar reasons.

On the federal level, the recent case of the Canadian uranium industry and particularly the pressures put upon Westinghouse (Canada) to send data or documents on its uranium pricing policies and practices to its U.S. parent led to a similar reaction. As a result, the federal government introduced draft legislation titled the "Protection in Respect of Foreign Proceedings



and Judgements Act" (Bill C-41). It would, under specific circumstances, prohibit the production or the giving of recorded information to or for the purposes of a foreign tribunal.<sup>5/</sup> The Bill did not become law but illustrates now attempts at the exercise of extraterritorial powers with respect to recorded information residing in another jurisdiction can quickly lead the other jurisdiction to take defensive measures along the lines of Bill C-41. Of particular concern is that such actions to gain access to data residing in another jurisdiction is the possible rise of conflicting national sovereignty interests that a corporation (or individual) operating in more than one jurisdiction may have to face. For example, Jurisdiction A demanding that Company X produce recorded information Y held by Company X in Jurisdiction B which B requires X to keep confidential with both A and B threatening to enforce their will via penalties or fines on X with respect to the flow of Y.

The complexity of the situation and the difficulties which Company X may be facing is exacerbated by the use of CCI technologies. For example, if Company X now keeps its recorded information in machine-readable form (in a distributed data base mode in A and B) and X (in A) has online access to information Y (in B) and a judicial body orders X (in A) to produce Y residing in B, X (in A) is now capable of producing Y. Should X (in A) refuse, its officers could be cited for contempt of court since they are "able" to produce Y but "will not". Should X (in A) produce the information requested, X (in B) could be subject to penalties. Should X (in B) change the passwords whereby X (in A) accesses the Y database in B, it may well be that X as a whole will have difficulty in functioning. As a result, no matter what course of action X follows, it can no longer be a good corporate citizen in both jurisdictions A and B.<sup>6/</sup> Such Catch-22 situations should be avoided.

The question of the federal government's right of access to data relating to the affairs or property of Canadian businesses and persons extending beyond national boundaries receive attention as early as 1977 when the following amendment was proposed to the Combines Investigation Act whereby the proposed Competition Policy Advocate would be granted the power under Section 10(1)(1) to,

"examine, copy or take away...any thing on which information is recorded".

In addition, Section 10(2)(1) speaks of,

"Everyone who stores data in a computer data bank, wherever situated, data related to business carried out by him in Canada and who acquires premises in Canada" and later on "where data is retrieved by means of a terminal instrument located in Canada..."

Similarly, a new proposed draft of the Bankruptcy Act would give the Superintendent of Bankruptcies the power to, under Section 53(b) 8,

"may... require any one who stores in a computer data bank, wherever situated, data relating to a business carried on by him in Canada to supply the Superintendent... a print-out or other copy of any data so stored that it is retrieved by means of a terminal instrument, wherever located, in any form in which data can be retrieved and any print-out or other copy so supplied in intelligible written form..."



These two draft pieces of legislation, which have not become law, illustrate efforts to adjust Canadian law to meet the new realities arising from the use of CCI technologies. As such, these two proposed amendments merely ensure that records or data related to a Canadian business will remain available to the Canadian government under specific laws regardless of the CCI technology utilized or the location which may be the most cost-efficient to store or process the data in question.

### III. DATA CLASSIFICATION

The term "transborder data flow" is a generic concept and as such covers a very wide variety of types of data that could and do flow across frontiers and an equally wide spectrum of concerns about certain types of data that perhaps should not flow or only flow if certain access and use conditions are met. In both cases, the development of classification schemes which differentiate between the various categories of data that do flow might assist in the analysis of the issues raised and the formulation of policies.

First of all, with respect to sender and recipient of data flows, the three main players are governments, businesses and individuals. The basic combination of players and thus data flows are:

- intergovernment,           - i.e. between two governments or governmental bodies;
- intragovernment,        - i.e. between an agent or representative of a government in another country and the home country;
- intercompany,           - i.e. between two or more different companies in two or more different countries. (These would be open market transactions);
- intracompany,           - i.e. between various operating divisions and/or subsidiaries of a company operating in more than one country (these would normally be closed market transactions); and,
- interindividuals,       - i.e. between individuals in different countries, e.g. via two communicating microcomputers.

Additional possible combinations are:

- company - government,    e.g. reporting requirements;
- individual - company,    e.g. access by an individual to a financial service; and,
- individual - government, e.g. access by an individual to a government data base or information retrieval service.

Some other possible combinations are company-company-government or individual-company-government where the intermediary company acts as an exclusive on-line distributor for information of a government institution such a QL Systems for the Canadian Gazette or Infomart's Telidon-based Regulatory Agenda.

Secondly with respect to information content, the following categories might be a useful demarcation point for analysis,

- scientific, technical and social science information which already is in the public domain for free or for a fee now is made available on-line;

- economic, trade or commercial and financial information which would include publicly available information for free or for a fee. Services such as Reuters or LANDSAT would fall in this category;
- proprietary information which would include patents, information on technical, electrical, chemical, biological, etc. processes for the production of products and services;
- educational and cultural information which would include entertainment. While most of this information is currently in analog form, an increasing amount is now being produced in machine-readable or digital form, e.g. video disks, digital audio, computer based packages or "electronic textbooks" games (e.g. PACMAN), etc;
- government information which is mainly information exchanged between governments or government bodies for administrative and law enforcement purposes;
- security and military intelligence which relates to the national security of nation-states;
- personal information which could be defined as information on or about individuals being held by third parties: generic term for issues and concerns in this area is "privacy"; and,
- individual information which would be any information (opinions, ideas, concerns, facts, correspondence, etc.) created by individuals and communicated between individuals (in hard-copy or now digital form).
- corporate information which would be any information created and used by a business for the manufacture of a product or the provision of a service.

There may well be other categories as well. It should be noted that the above categories apply equally to information in hard-copy as well as machine-readable form. While the above sets provide some possible schemas for data flow categories, from a sovereignty perspective the development of a classification schema which addresses basic questions and concerns of governments and individuals alike would be of assistance in both defusing and focusing on transborder data flow issues.

In a simplified fashion, data could be classified as falling under one of the following four major categories:

- Category A     Data which cannot be allowed to exist outside of Canada or to which foreign access should not be granted.
- Category B     Data which must be maintained in Canada but which may be exported, that is, copies may exist outside of Canada if certain conditions are met.
- Category C     Data which may be exported, i.e. need not necessarily exist in Canada but which must remain accessible to Canadian
  - government(s); and/or
  - businesses; and/or
  - individuals.
- Category D     Data which is exempt from TBDF policies.

Under Category A would fall such data which government and business have identified as being vital to their operations. For government, this could be information which forms part of the Cabinet decision-making process ranging from Cabinet minutes to budget data. Provisions also exist in various Acts and regulations which impose restrictions on access to data, e.g. Census, unless one is legally entitled to access to such data. In most cases, access to data falling under Category A is severely restricted within Canada itself at various levels of government and within and between government agencies themselves. Restriction on access to such information, and therefore flows, are often time-sensitive, dissipating as the information ages.

In the private sector, industry does not wish to have data protected by Canadian law or which can remain private under Canadian law, become subject to access under foreign laws, regulations, investigating or legislative bodies. Information on market or pricing strategy, new product development, technical or production processes, mineral exploration test results, etc. are some examples of data which the private sector may label as Category A. Here also, the value of much of this type of data has a strong time-sensitive element.

Under Category B would fall all data of which the "primary or master" copy must remain in Canada but which can be shared with foreign entities if certain conditions are met. The revised Bank Act provides a good example of Category B data.<sup>7/</sup> In the public sector, there exist arrangements for the sharing of data related to such matters as defence, law enforcement, environmental and health matters, and with some countries on pension and unemployment insurance. In the private sector, there is the exchange of proprietary technical and production data under licensing arrangements, the sharing of copies of data as well as transfer of data within multi-nationals. In the public sector, laws or regulations or instructions from the appropriate level of government provide the guidelines for the manner and form of such data sharing arrangements while in the private sector such arrangements are enforced through the operation of private commercial law.

Under Category C fall such activities as the joint Canada-U.S. NORAD defence system where data gathered in Canada is transmitted to Colorado for processing and analysis but with access being ensured to the appropriate Canadian representatives. Similarly, Canada participates in the development and maintenance of international databases such as those related to atomic energy, agriculture, health, etc. In such cases, access is guaranteed to participants either through the receipt of copies or direct online access to the system in some foreign country. Two examples in private industry are the online system for airline reservations (SITA) and electronic fund transfers among banks (SWIFT). Individuals export data also usually in relation to the purchase of products, obtaining credit or participation in commercial ventures. In many cases, data falling in Category C are part of international activities of which the Canadian component forms only a minor part. A TBDF strategy of encouraging indigenous data processing and maintenance based on restrictions on data outflows might be counter-productive in that one effect could be cessation of participation in such international activities.

Data sharing and data access activities for data falling under both Categories B and C lend themselves to being covered by specific agreements, drawn up in accordance with a general set of principles or a code with subsections specifically addressing the differing natures of government, business or personal data. Such an approach would lessen the chance of the introduction of regulations or requirements of a "blunt hammer" nature and would identify specific problems which would be solved best by specific solutions. This is the approach currently being taken by multinationals in their voluntary adoption of the OECD Guidelines on Data Protection (Privacy). In this context, it might be useful to note that the International Chamber of Commerce, which recommended that OECD member states should ratify the OECD Guidelines, also stated that such guidelines or conventions at the international level should remain modest and flexible in approach until there is valid practical experience at the country level.

Following a more in-depth study of data retention and data sharing practices in the public and private sector than was carried out for this report, it might be necessary to revise this draft classification scheme.

#### IV. DATA RETENTION

##### A. Introduction

Both government and business need to retain data or have access to data. On the side of the federal government, it requires business and individuals to submit data or retain data in order to ensure compliance with its laws and regulations. In the context of TBDF, the question is raised of whether this data need be retained in Canada, i.e. "Does the existence of "Canadian" data outside of Canada affect the ability of the government to maintain "law and order", ensure compliance with financial, health and safety, environmental, tax, etc. legislation and regulations?"

One important reason organizations keep records, apart from their relevance and timeliness to the day-to-day operations, is to be in a position to submit these recordings as proof in legal or quasi-legal proceedings thereby supporting their case as plaintiff or defendant. The Canada Evidence Act, by stating the conditions under which information can be admitted as evidence in legal proceeding, in effect sets a basic benchmark or standard for the form in which records are to be kept. The longstanding problem of the admissibility of microfilm as legal evidence in Court has been exacerbated by the computer-communication revolution and digitized or electronic data which can take any shape and form according to the software used. A joint Federal-Provincial Task Force has come forward with a proposed Uniform Evidence Act. The proposed Act addressed the question of machine-readable data and online real-time database management systems. It puts forward a new definition of record which specifically includes machine-readable or electronic data and provides for its admissibility in court as evidence provided that certain criteria are met.

If, and when, the new Uniform Evidence Act is enacted or the present Canada Evidence Act is amended to allow for the submission as evidence in judicial proceedings of recorded information generated by micro-image or computer-based record keeping systems, this will greatly accelerate the trend in business to use computer-based records/information keeping systems instead of paper records.

##### B. Review of Records Retention Requirements on Business

Within the timeframe and level of Phase I, it was not possible to address all questions in detail. This involves a substantial amount of work which can best be carried out in the context of/or concurrently with other activities already underway or about to begin.

However, a good start could be made in one area because of government efforts on the reduction of paperburden. It was thought that work done already on paperburden reduction might be of assistance in identifying requirements from the point of view of the proposed TBDF data categories A through D (where applicable).



In order to determine paperburden the federal government was imposing on business and to reduce that burden, the Office for the Reduction of Paperburden in the Ministry of State for Small Business in 1978-1979 compiled a list of federal government rules and regulations regarding such records retention requirements and published them in 1979 in the form of a handbook titled, "Records Retention Requirements for Business" (RRRB) commonly known as the "Red Book".

An analysis was therefore carried out on the RRRB. The purpose of the analysis was three-fold, namely:

1. To determine what records the regulations require either explicitly or implicitly to be kept in Canada, i.e. is it primarily a question of "keeping records" or being able to produce such documents and records?;
2. To determine whether the regulations make provision for the maintenance of such records in machine-readable form; and,
3. To see whether any of the current records retention requirements provide legal precedents or analogies for TBDF policies or actions.

The combined effect of 1) and 2), are the TBDF implications of answers to the following questions:

1. Does the regulation specifically state that the records must be kept on-site or in Canada?
2. Does the regulation allow for the maintenance of records and documents in machine-readable form?
3. It is a question of "keeping records" or an ability to "produce required information during normal business hours"?

Should the regulation allow for the maintenance of the required information in machine-readable form, this would allow businesses to make use of the new technologies whenever their application becomes cost-effective. If it is simply a question of "being able to produce records on an "as-and-when" required basis, businesses and individuals would have the option of being able to make use of computer service bureaus. However, what is not clear at present is if the requirement to keep records "at the place of business at such place as designated by resolution of the Board of Directors" is met by being able to call-up the required records or documents in that office using a CRT or printer to access a data base in remote location (i.e. computer service bureau).

Further, should records retention regulations allow for the maintenance of machine-readable records at a remote location, the question then to be addressed is, "From the point of ensuring compliance with this regulation, does the location of this data outside of Canada impair compliance or enforcement?".



As part of the work for this project, a review of records retention requirements under federal regulations in light of TBDF was undertaken. The details can be found in Appendix A. The "Review" is not to be considered final and definitive statement in any sense and really should be viewed as "observations". Further, the authors of the Report on Records Requirements for Business (RRRB) made it clear that their (over 400-page) compendium did not cover all federal record retention requirements. (They considered it to contain 90-95% of all such requirements.) Finally, time and resources under this Phase I of the Task Force did not permit the verification of details through analysis of the regulations themselves or contacting the responsible officers in government agencies and asking them what their current practices are in light of Questions 1, 2 and 3 above.

Nevertheless, it is possible to present some findings.

1. The RRRB is intended to serve as a guide to the business community on the retention of records in the private sector. Specifically it states:

- what records must be kept;
- who must keep the records (in the generic sense);
- how long the records must be kept and the legal penalties for non-compliance; and,
- the relevant statute and/or regulation, the relevant section of each and the department and/or agency administering the Act.

It, therefore, does not specifically address the question of how records are to be kept and where. The handbook is divided by industrial sectors and does not contain any summary statistics.

2. The RRRB identifies 76 Acts and III regulations under the Acts which require businesses to retain records which led to 270 applications of retention. Of these, 131 did not state any specific retention period. For those that did have retention periods, there were 67 different time periods, political levels and operational levels used within the federal and provincial governments.
3. A majority of the regulations do not specify where records are to be kept but in most cases, one can assume that, although not stated explicitly, these records are to be kept in Canada (i.e. for all those regulations which allow for an inspector to enter the place of business and inspect, extract or copy records).
4. While acts such as the Unemployment Insurance Act, the Aeronautics Act or the Canadian Business Corporations Act and the Bank Act (copies only) do make specific allowances for the maintenance of data outside Canada and about one-fifth of the regulations state that the records must be kept at the office or workplace, a majority of the regulations simply require that "records must be made available" either when an inspector or officer enters the site or "at the request of... at any reasonable time". Putting aside for the moment the question of how records are to be kept, the basic requirement on business seems to be the ability to produce records or documents on request. Calling up the requested information on-line would seem to some to meet the "being able to produce" requirement.

5. The review of RRRB brought to light a number of current regulations and practices which by way of analogy might be of interest to TBDF related issues. Some of the items listed below have a direct relation to TBDF questions, others are more distantly related. For others there may be certain TBDF related principles at stake but the activities currently taking place cannot be considered to be of a TBDF nature while for others they are likely candidates for a switch from hardcopy to machine-readable records and therefore could have TBDF implications in the near future. Depending on the rate at which business adopts CCI technologies, TBDF-related problems could arise at some date in the future when the full conversion from hardcopy or machine-readable takes place. Once again, it must be stressed that the list presented below should not be considered an enumeration of examples of TBDF issues.

a. Income Tax Act

For certain types of data, the Minister may designate places outside of Canada where records are to be kept. The Act specifically addresses the question of storage and use of machine-readable or electronic data. Many large companies already submit the required data in machine-readable form.

b. Unemployment Insurance Act

Records may be kept at such places as designated by the Minister. This raises the question of whether the Minister has designated such places outside of Canada and whether industry has made requests of this nature.

c. Canadian Business Corporations Act

The Act allows for the retention of records "in any system of electronic or mechanical data processing or any other information storage device which is capable of reproducing stored information in intelligible or written form". The Act also allows for the maintenance of branch security registers at any place in or outside of Canada. It therefore seems to address questions which may arise in a TBDF context.

d. Livestock and Livestock Product Act

The larger operators of stockyards, feedlots and packers yards use automated support systems. The data on major livestock movements, sales and transactions which must be retained under this Act is also transmitted directly to Canadian (and U.S.?) commodity markets.

e. Broadcasting Act

The Act provides an example of allocation of (scarce) over-the-air transmission resources, i.e. the spectrum, resources which are allocated internationally in the context of WARC. (See also the Radio Act).

f. Foreign Insurance Companies Act

The Act does not apply to marine and nuclear insurance not available in Canada and certain fire insurance where the initial policy issue was to a non-resident. The Act is thus an example of a specific set of information being allowed to be retained outside of Canada.

g. Fisheries Act

The regulations under this Act apply to foreign vessels within the 200 mile economic zone. It could therefore be seen as an example of the application of Canadian law to foreign data which has to be retained in order for certain economic privileges to be granted.

If the 200 mile zone is considered to be Canadian territory, the regulations provide examples of the application of Canadian law to foreign data in Canada.

h. Northern Pacific Halibut Fisheries Convention Act

The Act applies to masters of all vessels fishing with license to fish for halibut in the territorial waters and high seas of the western coast of Canada and the U.S. The Act is an exercise in joint sovereignty and an example of joint international data collection from foreign entities as well as that of an international agency (bilateral) having rights to Canadian data.

i. Fish and Recreation Harbours Act

The Act applies to all those using Canadian harbours, wharfs, piers, marinas, etc. (used primarily by fishing and recreational boats). The Act provides an example of Canadian law applying to foreign data on foreign vessels temporarily within Canadian territory.

j. Food and Drug Act

Regulations under the Food and Drug Act require meticulous record keeping and retention on many sorts of drugs. Many hospitals and pharmacies are switching to automated support systems. Associations of pharmacists are sharing data on prescriptions or joining in time-sharing services. The Act explicitly recognizes "orders sent by computer". Insofar, this data is shared with foreign entities, or if the data ordering/processing services are provided by foreign service bureaus or the orders for drugs are forwarded directly to U.S. suppliers, there could be TBDF and privacy implications.

Further, regulations require a Canadian representative (known to the Department of Health and Welfare) to maintain satisfactory records of foreign manufactured drugs which are distributed in Canada. This is a TBDF example of a foreign manufacturer being required to keep data in Canada on products distributed here, such data being subject to the same powers of inspection as domestic data. The question posed in the TBDF context is whether a simple hook-up by the Canadian representative to the database of the foreign manufacturer will meet these requirements.

Finally, for certification of drugs, Canadian officials often accept foreign test data instead of requiring such tests to be done in Canada.

k. Narcotics Control Act

Most of the regulations under the Narcotics Control Act and their TBDF implications are similar to those of the Food and Drug Act. The enforcement is more thorough and the authority to collect data more powerful.

l. Fisheries Act - Pulp and Paper Effluent Regulations

If effluent flow through international waters go over a border and cause harmful effects on the other side of the border, what provisions are there for access to foreign data to those who seek redress for damages through litigation?

m. Motor Vehicle Tire Safety Regulations

The Act requires foreign manufacturers to provide written statements that the tires described (exported to Canada) comply with all Canadian safety standards in force as well as the date manufacturing was completed. A TBDF analogy would be that those exporting data to Canada for sale could under certain circumstances be asked to provide guarantees of data quality and integrity.

n. Explosives Act

The Act is noted since information to make certain explosives comes from the U.S. where under the Arms Export Control Act there are restrictions on the export of certain technical (high technology, computer-communications) data.

o. Radio Act

Regulations under the Act seek to minimize the TBDF impact of radio interference disturbances caused by equipment which omit radio noise.

p. Oil and Gas Conservation Act

Drilling regulations under the Act apply to any lands where Her Majesty retains mineral rights and offshore areas to a depth of 200 metres or to a depth to allow exploitation of the sea bed. The Act is an example of expansion of "Canadian territory" or Canadian sovereignty in accordance with advances in technology and implies an indefinite extension of borders for the retention of comprehensive records of drilling programs. Most of these records are in machine-readable or electronic form.

Records of logs of barges, vessels or any support craft, radio messages, location of standing vessels, persons visiting, etc., must also be retained. This is a TBDF example of the exercise of Canadian sovereignty over foreign-flag vessels and communications traffic.

q. Income Tax Rebate Accounting Act

The Act applies to any person who requires the right to a refund of tax from the person entitled to a refund. There could be TBDF implications if franchise operations such as H & R Block use off-shore online computers to process the tax data.

r. Customs Act and the Excise Act

The regulations include the requirement to keep very detailed records on all bonded goods on hand and on the movement of such goods in and out of warehouses. Both the industry itself and Revenue Canada (Customs and Excise) through COSTPRO are encouraging widespread use of computer processing and communications.

s. Petroleum Administration Act

The Petroleum Import Cost Compensation Regulations allow for machine-readable records or electronic data.

t. Aeronautics Act

The Act requires every carrier to retain an aircraft technical log and an aircraft journey log going back two years. The TBDF question is "Do aircrafts still carry these logs with them or do regulations (or their interpretation) allow for such practices as a KLM airplane at Edmonton International Airport that is being inspected under the Act to call-up the relevant data from the KLM master flight operations data base in the Netherlands?"

u. Livestock Feed Assistance Act and Feed Grain Transportation and Storage Assistance Regulations

The largest grain handling and grain elevator companies use computers to track grain type, volume flows and storage. From a TBDF point of view, it might be useful to know whether companies such as Carghill run their Canadian operations out of the U.S.

v. Atomic Energy Control Act

The regulations require nuclear facilities or any place handling prescribed substances to maintain detailed operational and personal medical (exposure) data. International agreements allow for access to this Canadian data by inspectors of the International Atomic Energy Agency. This is a TBDF example of a foreign entity having a right of access to Canadian data under a multilateral agreement.

The above items do indicate that there already exist Canadian laws with their pursuant regulations which do touch directly or by analogy on TBDF related issues but which in almost all cases were developed to meet domestic concerns. The introduction and increase in the use of computers for information and records management will increase the need for a TBDF related focus as one of the elements when records retention requirements for business are being reviewed. The recent case of the new Bank Act, current concerns about data of insurance companies indicate that TBDF questions related to data retention in Canada will become more frequent as data storage moves from the hardcopy to machine-readable mode.



The work begun by the Task Force on Paperburden Reduction has been continued by the Office of the Co-ordinator, Regulatory Reform within Treasury Board Canada. One of the steps taken by Treasury Board to facilitate the implementation of the Regulatory Reform Program has been its proposal of a Records Retention Omnibus Amendment Act (July 1981). A number of Acts (11) have already been targeted for amendments while 56 regulations are scheduled for revisions. Although the primary focus of this exercise of the Office of Regulatory Reform is on clearing up the confusion surrounding the length of time records are to be kept, i.e. how long?, it might be useful in view of the draft Uniform Evidence Act to review the manner in which records are to be kept, i.e. how? From a TBDF perspective, there are advantages to folding into the paperburden reduction/regulatory reform initiative, a review of whether the records or data in question must be retained in Canada, i.e. where? Those on the Industry Advisory Committee as well as the briefs by those responding to the draft Evidence Act indicated a strong desire by businesses to clarify or change the law so that records retention requirements and/or the definition of record be made technology-independent.

The federal government enacted, fall 1982, new legislation to clarify and standardize records retention requirements via Bill C-118, "An Act to Amend Certain Acts that Provide for the Retention of Records". The Act establishes classes of retention standards, i.e. time periods. In addition, the government also tabled Bill C-119 which proposed the repeal of 124 unused and unnecessary laws (or sections of laws) which require business to retain records but it has not yet become law. The RRRB has also not been updated since its publication in 1979.

The initiatives at regulatory reform and the proposed legislation on Access to Information and Privacy have had the side effect of encouraging government agencies to review their information inflow requirements including that provided by the private sector. At the same time in the private sector, experience with Freedom of Information (FOI) legislation in the U.S. led to industry reviewing the types of data that it supplied (under law or voluntarily) in order to discern the possible negative effects on the company of disclosure of such information following a third party request for access under the FOI Act. It is a reasonable assumption that such reviews of information flows will bring to light a number of information activities having TBDF implications.

C. "Keeping Books and Records of Account" Versus Data Processing

The review of current federal government records retention requirements on business as summarized in the preceding section and as presented in greater detail in Appendix A indicated that the record retention requirements basically fall into two categories:

1. the keeping (or maintaining) of records and books of account; and,
2. having records (on certain specified activities) available for inspection (by an authorized officer) at all reasonable times (usually this means during normal business hours).

The first category is basically one of a records creation and retention activity which normally takes place at the place of work. The second category is more of an ability to produce or make available certain information or records.

A number of retention requirements state explicitly that the records must be kept and maintained at the "workplace" or "place of business" while for others it could be at any place in Canada so designated by the Directors of a company. Until the advent of CCI technologies, business basically created and maintained their primary records at the workplace or place of business. It was just not economical to forward all the thousands of vouchers, sales slips, inspection records, health and safety reports, etc. elsewhere to be entered in the company's books and ledgers. Consequently, many of the records retention requirements do not specify where records must be kept because it was simply understood, based on everyday business practices, that the record keeping took place at the site of work.

The advent of CCI technologies has introduced a number of possibilities whereby business can reduce "paper" overhead and administrative costs. In response, new federal legislation often takes a "technology-free" approach to the recorded information requirements. A case in point is the revised legislation pertaining to banks. In 1980, Parliament passed "The Bank and Banking Law Revisions Act (1980)" whereby banks were now allowed to use any combination of CCI technologies to keep their records and books of accounts. In particular under section 157(1) "form of records" is defined as follow:

"All registers and other records required or authorized by this Act to be prepared and maintained by a bank including any entries, books, vouchers, paid instruments, signature cards, signing authorities and other documents and papers in the possession of the bank may be in a bound or loose-leaf form, or in a photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time and converted to any other form".

The Bank Act thus defines record in a technology independent fashion. The changing from one form of recorded information to another is allowed for with the provisions of the Act remaining equally applicable.

It has been claimed by many in the U.S. that the Bank Act is an example of Canadian law placing restrictions on transborder data flows because it requires Banks "to do their data processing in Canada". This is a serious misunderstanding, and an example of the failure to make the basic conceptual difference between the requirement to keep records and books of account and data processing.

The Bank Act simply continues to require the banks to prepare and maintain their ledgers and books of account in Canada in order to ensure that the Inspector General of Banks can effectively carry out his statutory responsibilities under the Act. This would include being able to inspect and verify how the banks keep their books which in CCI terms would include being able to inspect data entry procedures, operating software, data integrity checks, transaction logging, etc. The records covered under the Act are similar to the requirements on and practices of banks in most countries.



The Bank Act does allow the banks to export copies of their data for exchange with other banks, financial institutions, clients, etc., or for further processing and storage should they so desire as long as the minimum records keeping requirements have been met. The Bank Act therefore does not place a restriction on transborder data flows. It may be noted that banking in an abstract form is keeping track of information - entering it, tracking it, storing it and dispensing it. As the use of CCI technologies in the banking sector spreads, the banking industry, as defined, is starting to look more and more like the information processing and retrieval industry.

V. DATA STORAGE

The advent of the new CCI technologies have introduced a number of economic factors which require a business to make decisions on how and where they are going to maintain and store their data. These include great reductions in data processing costs, estimated at 20-30% annually, as well as the tremendous reduction in data storage costs. For example, Storage Technologies is almost ready to market a dynamic data storage system that will accommodate 4 gigabytes (or 4 billion characters) for as little as \$100,000. Shugart and Thomson-CFS France are working on a \$6,000 device to fit into microcomputers that records up to one gigabyte per disk with disks costing \$100. In addition, manufacturers are working on optical discs in a "jukebox" mode. One of the results of a pilot video disk project of the Public Archives of Canada in 1980-1981 estimated that if it put all of its record holdings (records, maps, manuscripts, photos, films, machine-readable, etc.) on optical disks, this would fill only two filing cabinets.

It is also interesting to note that a 1981 study carried out for the Public Archives of Canada estimated that the "electronic filing cabinet" of the federal government contained in terms of volume of information at least six to ten times more information than that stored in the traditional paper filing cabinets.<sup>9/</sup>

In the context of TBDF issues, the introduction of distance-insensitive communication rates, i.e. for packet-switched and/or satellite-based networks means that from an economic perspective, geography has been greatly reduced as a factor in determining where data should be stored. The result is that organizations are now faced with having to make decisions which involve deciding as to where data is to be processed and stored, and if the organization uses a data processing service bureau whether this should be a local company or one situated elsewhere but on the same communications networks.

The TBDF question of centralization versus decentralization of data processing by multinational corporations, i.e. distributed processing, is covered in the Multinational Report. It should be noted here that one new development which should be of great interest to the TBDF debate is that of distributed databases. Under this approach, the local data is stored physically at local nodes. Via a directory the system keeps track of what data is stored where. The user can have his own "user view" or logical database consisting of combinations of data elements in the various databases resulting in transparency of data location to the user.

The distributed data processing/distributed database approach would allow multinational corporations to meet national records retention requirements while at the same time benefiting from cost-efficiencies resulting from the use of CCI technologies.

Many of the record retention requirements seem to place the emphasis on an ability to "produce required information during normal business hours". In the past, such records were created and maintained on site or at the place of business as it was not practical and uneconomical to do otherwise. Consequently, until the new CCI technologies were coupled with

cost-distance insensitive communication charges, the question of where such records were to be kept simply did not arise as it was correctly assumed by the law-makers that business kept and maintained their records at (or near) their site of business and in hard-copy.

If the purpose of the retention requirement is simply a question of a business "being able to produce certain records" to an inspector "during normal business hours", the obligation under the law or regulation might be met by the ability call up, from a computer via a remote terminal at the site of business, the required "records", data, making a print copy if so desired. Not only could the data in question be located elsewhere, they could also be held at a computer service bureau.

Should changes in domestic law allow for records to be kept in machine-readable form, it will probably be necessary to specify whether or not the records or data in question ("original" or copy) must continue to be kept in Canada in order to ensure that Canadian laws and regulations can be enforced.

Another TBDF-issue relating to the location of data storage is one of a cultural nature. While the Cultural Report and Online Report deal with this subject in some detail, a few summary comments are in order here. The fact that it was (and still is) normal business practice to keep, maintain and store records on-site has led to the situation whereby the record of the development of Canadian society has been enriched by the archives of the Canadian subsidiaries of multinational companies which do or did business in Canada.<sup>10/</sup>

In some cases, the records of the multinational on its Canadian operations have even been transferred back to Canada, e.g. those of the Hudson Bay Company were transferred from London England to Winnipeg.

The concern from a cultural perspective is that if the data recording and storage function of Canadian subsidiaries of multinationals is reduced to a set of on-line terminals connected to a database residing outside of Canada, the prospects for a Canadian electronic cultural heritage might be seriously diminished unless copies of the "Canadian" data were archived in Canada.

One final concern respecting the TBDF-issue of location of data storage pertains to the fact that certain vulnerability and "essential or vital records" concerns arise out of the use of CCI technologies. The Vulnerability Report deals in some detail with the question of contingency or disaster planning for data processing and data communication activities. Organizations with significant computer installations and electronic data assets reduce the vulnerability of their computer systems and data to disruption or destruction by backing-up the data and storing it at some other site or by making sure that they can operate their systems on a computer located elsewhere. There are basically three approaches for providing back-up facilities and maintaining back-up or duplicate copies of essential data. These are,

- with a large corporation having two or more data centres there is usually some redundant capacity and the one centre can back the other centre up;
- the provision of back-up data processing and/or data storage facilities by companies specializing in such services; and,
- companies having similar hardware and software configurations agreeing to assist the other should emergencies arise.

Quite often for either cost, security, or systems compatibility reasons, the contingency plans involve data storage sites and computer installations in other countries. This is particularly true if the installation is that of an affiliate or business associate and provides the same type of computer environment. Further, a combination of technical, environmental and other factors may cause vulnerabilities to be reduced most significantly through the use of foreign back-up storage facilities. Both of these points are of particular importance for the Canada-U.S. environment due to the significant number of Canadian subsidiaries of U.S. parents and the fact that Canada and the U.S. share an integrated telecommunications network.

In view of the analysis of records retention requirements, it may become necessary to establish criteria and conditions whereby and under what conditions recorded information falling under Canadian law can be stored abroad for purposes of contingency planning and back-up storage. The criteria should be kept very simple, and basically relate to ensuring that Canadian companies and individuals do not lose their right of access to or protection of information granted under Canadian law when such data is stored abroad or data processing is done outside of Canada as part of such disaster contingency plans.

## VI. FINDINGS AND DIRECTIONS FOR FUTURE WORK

### A. Findings

1. The debate concerning TBDF-issues related to the sharing, classification, retention and storage of recorded information suffers from a lack of recognition, that in many cases, one is simply utilizing CCI technologies to continue carrying out a record-keeping activity that was formerly carried out by hand and that the law or regulation that applied to the information when created, processed and stored in hard-copy form also applies to the same information now created, processed and stored in machine-readable form.
2. During the course of this project, no law or regulation was uncovered which specifically places specific restrictions on any Canadian person or business wishing to share its data with those in other countries. Nor are there any restrictions which would impair the flexibility in using CCI technologies for such record or data flows. Restrictions on data flow that do exist are the normal set related to national security and defense, as well as a few provincial laws which seek to protect Canadian businesses from having to send, against their wishes, their records (or data) to another country. Other restrictions are more of the nature of limiting access to certain records or data of government. These restrictions, some of which have been in force for decades, form part of Canadian domestic law and apply equally to hard-copy and machine-readable records and usually to Canadians and non-Canadians alike.
3. It should be noted, however that a serious gap continues to exist in our knowledge of transborder data sharing practices in both the public and private sector. Information of this nature is not readily available and the short time limit did not allow for an extensive or in-depth survey to collect the data required. Specifically, in the private sector, a gap exists in our knowledge of transborder data sharing and data flow practices and volumes involving,
  - credit transactions/verifications;
  - electronic fund transfers;
  - network information services (of which public online databases are only one part); and,
  - satellite collected, processed and transmitted data.

Most of these are private sector activities and for credit transactions there exists a strong link with privacy concerns. Government efforts already underway on privacy protection in the public sector could be viewed as the first step to integrating privacy issues into TBDF considerations.

4. With respect to transborder data sharing practices (or flows), TBDF should not be "the tail that wags the dog" in the determination of national (or domestic) information policies and practices. The concerns of the government about TBDF might be served best by building in a distinct TBDF component in the review and revision of a number of information policies and practices (pertaining to information under the

control of government agencies) either currently underway or to commence in the near future. In particular, when the new Privacy Act comes into force, government institutions could be asked to report any TBDF-based data sharing flow activities as part of the legal requirement to list all uses of personal information under the control of government institutions.

5. Business suggests that the analysis and evaluation of transborder data sharing or data flows would benefit greatly if it could be carried out in the context of a data classification/categorization matrix. This would also allow policy-makers to concentrate on those particular types of data flows where concerns are the greatest and conversely identify those types of data flows for which there is little or no controversy.
6. The review of current records retention requirements on those doing business in Canada revealed that almost half of these requirements did not specify how long records needed to be kept by business. In addition, more than half of the retention requirements did not state the location(s) at which these records should or could be kept. Further, only a handful of the retention requirements or definition of records under the relevant statutes seemed to address the question of machine-readable data, i.e. they had a technology-free definition or interpretation of recorded information.
7. In view of the submissions made by business advocating changes in the Evidence Act to allow for the admissibility of computer-generated print-outs and their wish to be able to keep records in machine-readable form and still meet retention requirements, the current paperburden reduction or regulatory reform initiative of government might be expanded. In particular, the idea of adding the questions of "how" recorded information can be kept and "where" it could be stored to that of "what" records must be kept and for "how long" might be considered. Such an approach could offer the following payoffs,
  - reduced administrative overhead expenses for business;
  - an expansion of business opportunities for the Canadian data processing industry;
  - a clearer picture of the types of information which enable the government to maintain "law and order", ensure compliance with financial, health and safety, environmental, tax, etc., legislation and regulations; and,
  - whether the storage of this "Canadian" data abroad will compromise the ability of the government to govern in these areas.
8. The fact that the laws and regulations are being amended to allow business to use the new CCI technologies to reduce overhead costs and increase operational efficiency, i.e. making the records keeping requirement technology independent, is mistakenly construed by some as



a transborder data flow restriction. The debate on TBDF would benefit if record-keeping by business as required to be done under valid domestic law, whether done by hand or via computers, is not confused with TBDF concerns related to data processing.

9. Just as distributed processing offers an alternative with respect to centralization or decentralization of data processing, so a distributed database approach would see local data stored at the local node.

B. Directions for Future Work

1. The possibility of the new enactment of the Access to Information and Privacy legislation, provides an opportune moment to include TBDF concerns related to privacy in the identification process by government institutions of all their personal information holdings and review of the use of such information. In particular, government institutions, could be asked to identify as a separate element any transborder data sharing practices. This would provide a valuable insight into the reasons for these data flows and perhaps defuse some of the privacy concerns.
2. The development of an acceptable and practical data classification scheme requires further work as well as consultation with various sectors of Canadian society.
3. At such time as the Guide to Records Retention Requirements is updated, a review of the form in which records can be kept and where they should be kept would ensure that the "what, "how long", in what "form" and "where" questions on these retention requirements are covered. As it was not possible to poll government institutions on what their current interpretations and practices with respect to allowing records required to be retained to be kept in machine-readable form, such an exercise would be a useful project to undertake.
4. The development of a draft set of criteria whereby and under what conditions data falling under Canadian law could be stored abroad for purpose of contingency planning and back-up storage could assist in providing a clearer focus for concerns in this area.



## FOOTNOTES

1. These are:

- Report on Software Related Issues, December, 1981 (hereafter cited as Software Report);
- Report Vulnerability Issues, October, 1982 (hereafter cited as Vulnerability Report);
- Report on Marketing Data Processing, December, 1982 (hereafter cited as Open Market Report);
- Report on Public Online Information Retrieval Services, January, 1983 (hereafter cited as Online Report);
- Survey of Transborder Data Flows in Multinational Enterprises, February 1982 (hereafter cited as Multinational Report);
- Report on Legal Aspects of Transborder Data Flows, September, 1982 (hereafter cited as Legal Report); and,
- Report on Cultural Sovereignty and Transborder Data Flows: Online Public Information Retrieval Services and the Canadian Electronic Cultural Heritage, September, 1982 (hereafter cited as the Cultural Report).

2. For further details as to why multinationals need to share data and rely heavily on TBDF, consult the Multinational Report.
3. A more complete listing of federal legislation with strong restriction on access to records, and thus data sharing and data flow, can be found listed as Schedule II (Section 24) of the proposed Access to Information Act (Bill C-43).
4. For further details and discussions of the transborder data flow issues raised by remote on-line diagnostic and repair services, see the Vulnerability Report, Chapters E.2 and I.2.
5. For further details consult the Legal Report, Chapter A. ii.b. The Quebec law (Chapter 278, or 6-7 Eliz II, C.42) states that subject to a set of specified conditions "no person shall pursuant to or under any requirement issued by any legislative, judicial or administrative authority outside the Province, remove or cause to be removed, or send or cause to be sent, from any place in the Province to a place outside the Province, any document or resume or digest of any document relating to any concern".
6. That situations of this nature can and do occur is illustrated by the Dresser Industries incident in August 1982. President Reagan ordered Dresser (U.S. not to pass on its technology to the U.S.S.R. for the purpose of building a gas pipeline. The British and French authorities in return threatened to order Dresser (France) and Dresser (Britain) to release said technology. See further, Vulnerability Report, Chapter E.5.
7. For more details on the controversy surrounding the Bank Act, see below Chapter IV.C.

8. For the results of the survey, consult the Multinational Report.
9. The study is titled "Managing the Electronic Revolution, Archiving the Electronic Heritage: A Position Paper on Issues and Problems in EDP Records/Data Management", Public Archives of Canada, Ottawa, December 1981, 61 pp.
10. Consult Robert Sweeney's Guide to the History and Records of Selected Montreal businesses before 1947, (Montreal Business History Project, McGill University, 1978, for specific examples. A significant number of businesses maintain their own archival records even though the conditions of storage and retrieval may not be up to archival standards..

REVIEW OF RECORDS RETENTION REQUIREMENTS UNDER FEDERAL LAW AND  
PURSUANT REGULATIONS IN LIGHT OF TRANSBORDER DATA FLOW QUESTIONS

Appendix to the

REPORT ON DATA SHARING, CLASSIFICATION, RETENTION AND STORAGE

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### Explanatory Note

1. The order in which the various federal statutes and regulations appear are the same as the order in which they are presented in the 1979 Report of Records Retention Requirements for Business (RRRB). However, while the RRRB notes an Act or regulation more than once, i.e. under whatever industry sector is applicable, in this summary analysis each act or regulation is noted only once, i.e. at the time of its first occurrence.
2. For each of the record retention requirements, summary information is presented and broken down as follows:
  - Law or Regulation
  - Types of Records which must be retained.
  - Retention Requirement
  - Location of the Data (i.e. what is stated in the law or regulation which does or may indicate location)
  - Code a preliminary assessment as to whether
    - the records are to be retained on site - Code = 1;
    - the records are to be retained in Canada - Code = 2;
    - or if the retention requirement is not location specific but one should assume that the records should be retained in Canada on the basis of custom or convention - Code = 3; and,
    - the retention requirement does not seem to be location specific - Code = 4;
  - Data Sharing information if such is readily known or could be assumed; and,
  - Comments/Observations which came to mind as work on the Appendix was carried out by the author.
3. The RRRB provides a breakdown of acts and regulations under fifteen major headings. They are (and the Table of Contents for this Appendix are):

	<u>Page</u>
A. GLOBAL (Includes statutes and regulations that apply to all or almost all businesses, that can apply to any type of businesses and/or that apply to a minority of employers but in many types of businesses)	5
B. AGRICULTURE (Includes fruit and vegetable farms, livestock farms and incidental services)	10
C. COMMUNICATIONS (Includes radio and television)	16
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E. FINANCIAL (Aside from common requirements includes banks, cooperative association, grain exchanges/ clearing houses, insurance, investment, loan and trust companies and trustees in bankruptcy)	19
F. FISHING AND HUNTING (Includes services incidental fishing)	25
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I. MINING (Includes minerals, petroleum and natural gas)	42
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K. SERVICES (Includes amusement and recreational services, health and welfare services and others)	47
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M. TRADE (Aside from common requirements includes agricultural chemical, petroleum, coal and transportation products and others)	53
N. TRANSPORTATION (In addition to common requirements deals with the air, motor, pipeline, rail and water transport sectors)	56
O. UTILITIES (Focusses on atomic energy, electricity, natural gas and water)	58

Addenda

During the course of the preparation of this report, the efforts of the federal government to reduce the paperburden on business resulted in the drafting and passage of Bill C-118, "An Act to amend certain Acts that provide for the retention of records." The Act was passed on June 18, 1982, received Royal assent on 22 June, 1982. It came into effect 22 September, 1982. As a result seven statutes were amended. They are

1. Canada Pension Plan (National Health and Welfare and National Revenue, Taxation)

Retention period is now standardized at six years or until written permission for their prior disposal is given by the Minister.

2. Defence Production Act (Department of Supply and Services)

Retention period now until the expiration of six years from the end of the calendar year in which the contract is terminated or completed.

3. Excise Act

Retention period now until the expiration of six years from the end of the calendar year in respect of which they are kept or until written permission for their prior disposal is given by the Minister.

4. Excise Tax Act

Retention requirement now to keep records and books of account until the expiration of six years from the end of the calendar year in respect of which these records and books of account are kept or until written permission prior to their disposal is given by the Minister.

5. Income Tax Act

Every person required to keep records and books of account shall either keep such records and books of account for such a period as is prescribed or specified in a letter or demand by the Minister and for all other records and books of account retain these, until the expiration of six years from the end of the last taxation year to which the records and books of account relate.

6. Petroleum Administration Act

Records and books of account are now to be kept until the expiration of six years from the end of the calendar year in respect of which these records and books of account are kept.

7. Unemployment Insurance Act of 1971

Every employer shall keep records and books of account until the expiration of six years from the end of the year in respect of which those records and books of account are kept or until written permission for their prior dispersal is given by the Minister.

These major changes to records retention requirements have been added to Appendix A and these changes have been indicated with an "\*".

In addition, a significant number of regulations have been reviewed with the department involved. Amendments proposing to shorten or clarify retention requirements have been proposed.<sup>1</sup> The Office of the Coordinator of Regulatory Reform, Treasury Board Canada is responsible for carrying on the regulatory reform program of the federal government. It would be a worthwhile project to update the RRRB since four years have already elapsed since the preparation of the RRRB.

<sup>1</sup> For a detailed list see the Bulletin on Regulatory Reform, Issue No.4, August 1982, Office of the Coordinator of Regulatory Reform, Treasury Board Canada.



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Codes: 1 = retained on site; 2 = retained in Canada; 3 = not location specific but assume in Canada (convention or custom); 4 = not location specific.

## A. GLOBAL

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Canada Pension Plan*	records and books of account and supporting vouchers on contributions to CPP in sufficient detail on all employees engaged in "pensionable employment"	written permission to destroy from Minister of National Revenue  (6 years or written permission)*	every employer "must keep" "Minister may at any reasonable time, examine Minister may seize ... and retain	3	with Italy under 1977 Reciprocal Agreement	For MNE's government pension data could be part of company-wide data base on company's own pension plans.
Combines Investigation Act	does not require records to be kept	N/A	Director of Investigation and Research may enter premises, banks, etc.	N/A		Does this apply to company data which is accessed via online terminals connected to data bases located off-shore?
Income Tax Act also applies to foreign affiliates of taxpayers	<u>General</u> all records and supporting vouchers related to payment and collection of taxes  <u>Foreign-Individual</u> only records for computation of Foreign Accrual Property Income	minimum 5 years other permanently specifically allows for electronic data allowance is made for microfilming	Commission may order production of documents at place of business or residence in Canada.	1,2		Has the Minister designated places outside Canada where such income tax records may be kept?  Would seem to allow for such data being maintained off-shore.

\* Indicates Bill C-118 amendment

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## A. GLOBAL

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Income Tax Act (con't)	<u>Company Controlled Foreign Affiliate</u> adequate books for verification.	minimum 5 years other permanently specifically allows for electronic data allowance is made for microfilming	If information not readily available, Minister may demand less.			"If the taxpayer has a substantial interest in the affiliate and is able to make arrangements to obtain the required information, then the Minister would expect the same information to be available as there would be a foreign affiliate."
	Company-Other Foreign Affiliates	" "	" "			
Unemployment Insurance* Act (apply to all employees who are engaged in "insurable employment") including certain employment outside of Canada under contract of service.	Records re SIN, particulars on interruption of earnings, premiums.	Keep until received written permission to destroy from Minister of National Revenue.  (Until the expiration of six years from the end of the year in respect of which those records and books of account are kept or until written permission for their prior disposal is given by the Minister.)*	At employer's place of business or employer's residence or place designated by the Minister.	3	Special program sharing of UIC data with U.S. state agencies.	Has the Minister designated places outside of Canada?
Unemployment Insurance* Act (apply to all employees who are engaged in "insurable employment") including certain employment outside of Canada under contract of service. re: every deemed employer of a fisherman and every buyer.	Re: premiums payable by the employer, a buyer, crew declarations.	Keep until received written permission to destroy from Minister of National Revenue.  (Until the expiration of six years from the end of the year in respect of which those records and books of account are kept or until written permission for their prior disposal is given by the Minister.)*	At employer's place of business or employer's residence or place designated by the Minister.	2	Special program sharing of UIC data with U.S. state agencies.	Has the Minister designated places outside of Canada?

\* Indicates Bill C-118 amendment

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## A. GLOBAL

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Anti-Inflation Act		Only until June 30, 1980.				
Canada Business Corporations Act	Articles, by-laws and all amendments, minutes of meetings, resolutions of shareholders, etc.; a securities register; adequate accounting records must be maintained and made available for inspection by the Director at any time during business hours	Preserved indefinitely (except cancelled securities for 6 years after cancellation; expired warrants, option rights etc. after date of expiry)  Records may be entered or recorded in any system of electronic or mechanical data processing or any other information storage device which is capable of reproducing stored information in intelligible written form	Records must be kept at registered office of corporation or at such other place within Canada as the Directors may by resolution direct  Branch securities registers may be maintained at any place in or outside Canada	2  -		Allows for electronic data storage.  Allows for branch securities registers outside of Canada.
Regional Development Incentives Act (Regulations)	Payroll records in sufficient detail to allow verification of all wages and salaries paid.	As long as DREE has an open case file on contract (usually 24 months after contract completion).	Not specified  (By those receiving funding for project?)	3		No mention of electronic data storage explicitly mentioned. Can it be assumed?

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## A. GLOBAL

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Canada Labour Code - Labour Standard Regulations (all employers to whom Labour Code applies)	Records on employment including SIN, address, full name, occupational classification, rate of wages, hours worked, actual earnings, maternity leave, holidays, pay periods, etc.	36 months after date of termination of employment or performance of work.	Inspector may enter place of business and prospect, extract or copy records.	3	?	Large companies would automate these records. Are machine readable records (data bank print-outs) acceptable?
Canada Labour Code - Accident Investigations and Reporting Regulations (do not apply to running or operating trucks, aircraft loading/unloading ships, underground mine, motor vehicles on highway).	Record of any accident (disabling injury, electric shock, toxic, rescue, revival, explosion and anything that requires or leads to an accident report) special provisions for minor accidents, every employer must submit an Annual Report to the Director.	Two years.	On file at the workplace if regional officers approves.	1		

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## A. GLOBAL

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Canada Labour Code - Canadian Boiler and Pressure Vessel Regulations (applies specifically to those under Labour Code designing, installing, operating, maintaining, etc. certain boiler and pressure vessels and plants)	- records of inspections - records of all accidents or dangerous occurrences	ten years	must be available for inspection at all reasonable times for inspection by a safety officer	1,4?		
Canada Labour Code - Canada Confined Spaces Regulations	a) record of evaluation of hazardous confined spaces including pre-entry and other procedures, tests b) record of tests of atmosphere	a) as long as evaluation and procedures are valid b) as long as hazardous space may be entered by employee	all records must be available for examination by a safety officer or employee required to enter hazardous confined space	1		
Canada Labour Code - Canada Dangerous Substances Regulation	a) record of tests of atmosphere (sampling and testing) b) record of training in emergency procedures	a) 3 years from time tests are done b) 3 years				

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## B. AGRICULTURE

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Canada Agricultural Products Machinery Act - Ontario Apple Interprovincial and Export). Regulations	all those growing apples in Ontario for export must keep records (all information) relating to production, sale, purchase, transport, receiving or processing of apples	Not specified	all books and records must be produced for	1 (?)		
- Ontario Grapes for Processing Information (Interprovincial and Export) Regulations	-Records of all matters relating to the production or marketing of grapes -copies of dealer's original records of varieties, grades and weights of grapes and dealers weight slips/ log producers -records of the varieties, grades and weights (must be kept by dealers)	Not specified	must produce books and records in possession relating to the handling of grapes when required	1(?)		One would assume that the larger vineyards use automated support systems.



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## B. AGRICULTURE

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
-P.E.I. Vegetable Information (Interprovincial and Export) Regulations (re turnips)	-all who are engaged in producing or marketing turnips for outside P.E.I. shall keep all relating records	Not specified	information must be furnished and records produced for inspection on request	1(?)		
Canada Agricultural Products Marketing Act -B.C. Turkey Marketing Board (Interprovincial and Export) Order	re all turkey for egg or meat production destined for interprovincial or international trade must keep accurate books and records in English containing information on production, processing	Not specified	any authorized person may enter and inspect premises where turkeys are raised and demand production of information and records required to be kept	1		Larger operators may use automated support equipment. International trade probably still only "paper supported".
Animal Disease and Protection Act	certificate of bovine brucellosis tests	six months after bovine move from owner's premises	appropriate certificate must be produced to duly authorized inspector	1(?)		What about bovine imports and exports? A minor matter?

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**B. AGRICULTURE**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
-Animal Disease and Protection Regulations (all persons who operate animal semen production centre)	for each animal date animal admitted, name and address of person from from where animal was purchased and certificate re: tuberculosis, brucellosis, leptospirosis and if bovine also bluetongue, paratuberculosis, vit-rasis, and tricheme-niasis, and for a por-cine animal transmis-sible gastroenteritis, Anjerzky's disease and for a goat bluetongue and any other disease the Minister may specify and record of date animal released and date on which semen collected etc.	Not specified	records must be produced for examination by authorized inspector on request	1?	probably for research purposes	Large operations might use automated systems.

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## B. AGRICULTURE

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Livestock and Livestock Products Act -Hatchery Regulations	By hatcherymen with incubator capacity of over 1,000 eggs of each lot of eggs of chicks set for hatch and record of a) disposition of all unsold chicks and b) record containing names and addresses of all persons involved and number of chicks involved in above transactions	Not specified	inspector may require the production for inspection of all books and records pertaining to chicks and poultry	1, (2?)		Larger operators and b) requirements would encourage trend to automated support systems (small computers).
-Stockyard Regulations (every owner or operator of a packers yard)	record of origin, class, volume, quality and purchase price of all livestock received	Not specified	authorized inspector may require production for inspection of all books and records related to operation of the packers yard	1 (2?)		Large packers might have computer support systems (on-line?).

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**B. AGRICULTURE**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
(every owner or operator of a stockyard)	record must be kept of the origin, owner, number and kind of all livestock in each shipment and record of all sales and all orders for purchasers	Not specified	authorized inspector may require production of all books, records and documents related to conduct of the stockyard -every cooperative association or merchant operating a stockyard must produce for inspection upon request all orders for purchase of livestock	1 (2?)	stockyard transactions are used for commodity market news	Large stockyards (auction) use automated support systems. Direct tie-in to Winnipeg (and U.S.) commodity markets is possible.
- livestock products (all persons processing, grading, shipping or transferring any livestock product)	adequate records relating to operations re livestock products	Not specified	an inspector may require the production for inspection of all records relating to livestock product or its disposition	1		

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**B. AGRICULTURE**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Livestock Pedigree Act (apply to any livestock pedigree association)	- private breeding records for each member - secretary of each organization must keep a book at head office	Not specified		1		an export product
Maple Products Industry Act (all those engaged in production or marketing of maple (sap) products)	- each owner or operator must keep a record of all products and names and addresses of those who sold product and bought (vendors and purchasers)	Not specified	inspectors may enter manufacturing and packing plants to examine all books and records	1		an export product
Pest Control Products Act (all those who have a certificate of registration)	record all quantities of the product named in the certificate that have been stored manufactured or sold	Five years after record is made	records must be made available at request and in such manner as Director may require	1 (3?)		Do large pest product factories keep these records in machine readable form providing printout on request?
Weather Modifications Act (any person who carries out weather modification activity) (cloud seeding?)	a daily record of location and operation of any equipment used, meteorological observations and chemicals used	Not specified	records must be made available at any reasonable time	3		

## REPORT ON DATA SHARING, CLASSIFICATION, RETENTION AND STORAGE

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### C. COMMUNICATIONS

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Broadcasting Act - Radio (A.M.) Broadcasting Regulations (all persons licenced to operate an A.M. station)	a) each station must keep a program log according to Schedule I b) a record of continuities approved by NHW and CCA  c) a record of continuities for commercial announcements approved by NHW and CCA d) tape recordings or other exact copies of all matters broadcast	a) logs must be given to CRTC within seven days of the end of the week b) not specified  c) and d) for four weeks and for eight weeks if notified by CRTC	"records must be produced on request" to CRTC representative and record of continuities to inspectors under Food and Drug Regulations	1,2   1	Radio Station then Government of Canada (CRTC)	Large as well as smaller stations use computers for management and logs could be in machine readable form. Does CRTC accept paper only or will it accept mag tapes or logs via electronic mail? For all four radio, FM, cable TV, it states "in a form acceptable to CRTC".
- Radio (FM) Broadcasting Regulations (all persons licensed to operate an FM station)	a) each station must keep a program log according to Schedule I b) record of continuities for any commercial announcement approved by NHW and CCA c) records of all continuities approved and broadcast	a) logs must be given to CRTC within seven days of the end of the week b) tapes and continuities must be kept for four weeks and for eight weeks if notified by CRTC c) not specified	"records must be produced on request" to CRTC representative and record of continuities to inspectors under Food and Drug Regulations	1,2   1?	Radio Station then Government of Canada (CRTC)	



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**C. COMMUNICATIONS**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
- Cable Television Regulations (all licensees providing community programming on a community channel)	a) a program log in acceptable form for CRTC b) audio reproduction of all programming distributed	a) and b) logs must be kept for four weeks and for eight weeks if notified by CRTC	must be furnished to CRTC representative on request	1?		Large as well as smaller stations use computers for management and logs could be in machine readable form. Does CRTC accept mag tapes or logs via electronic mail? For all four radio, FM, cable TV, it states "in a form acceptable to CRTC".
- Television Broadcasting Regulations (apply to all television stations and networks as defined under the Radio Act)	a) a program log in acceptable form to CRTC b) the continuity of any program, commercial message or public service c) a manuscript or audio reproduction of any talk, interview, editorial, discussion etc. by station (originating if network) d) record of each continuity approved by NHW and CCA	a) log must be given to CRTC within seven days at end of each week b) and c) must be kept for four weeks unless instructed otherwise by CRTC d) not specified	d) must be shown on request to CRTC representative or inspector under Food and Drug Regulations			

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## D. CONSTRUCTION

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
National Parks Act - National Building Regulations (apply to all who have permit to build in a National Park)	- copy of the plans and specifications regarding the building permit	Not specified	must be available for inspection on construction site	1?		
Clean Air Act	- no specific record requirements	-	Inspectors may require any person to produce for inspection any books, documents or papers	1?		seems to rule out machine readable data
Fair Wages and Hours of Labour Act (applies to all who enter into a contract with the Government of Canada)	records showing names, addresses and classifications of employment and work of all workmen employed under contract and the rate of wages, wages paid and daily hours worked by these workmen	Not specified	book, records and premises must be open at all reasonable times for inspection	1?		

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## E. FINANCIAL INSTITUTIONS

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Investment Companies Act (all investment companies)	Same as those under Canadian Business Corporations Act - records under this Act must be kept separate from those of Canada Deposit Insurance Corporation Act.	- not specified Not specified. Examiner may at any time, enter offices and examine books, records and documents - permanent	offices of company	1?	?	Question of status. Records of share transfer of non-residents. One would assume extensive use of automated support systems.
Loan Companies Act (every loan company created by special Act of Parliament or letters patent from same)	- instrument of incorporation and amendments - a shareholder register (including name, address, occupation, number of shares held amount paid and unpaid on shares) - share transfer register - a director's register - a register and share transfer book for debenture stock and on debenture holders - books of account - a current record of registration, serial number or specific i.d. of every security	permanently - books and records open to inspection during normal business owners to shareholders and creditors - all Superintendent, all relevant books, records or documents	must be kept at head office or at agent's place of business	1,3	(by companies?)	One would assume that large companies use automated support systems.

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**E. FINANCIAL INSTITUTIONS**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Trust Companies Act (every trust company incorporated by special Act of Parliament or letters patent from same)	a) re: incorporation & laws b) a shareholder ledger (including name, address, occupation, No. of shares held and amount unpaid) c) a Stock Transfer Report Binder on all stock transfers d) list of directors	permanently Superintendent may inquire and inspect all relevant books, records and documents	must be kept at head office in Canada but b), c) and d) may be kept at branch officers and c) also at agent's place of business	1,3	(depended on business practice)	One would assume that large companies maintain b) and c) in machine readable form.
Bankruptcy Act	trustee must keep proper books and records of each estate (re: all monies, creditors, claims, notices, resolutions and court orders)	by trustee at least 6 years after discharge but all title papers to property for on additional 14 years		3		
National Housing Act (applies to all companies making loans under Act)	separate books, records and accounts relating to loans under Act)	not specified	access to records at any reasonable time to representative of CMHC	3	some off-shore data sharing must be assumed	one would assume that many if not most of the financial institutions keep this information in machine readable form.
Regional Development Incentives Act (all institutions that finance a development incentive, i.e., acts as a lender)	information included in loan agreement including advances, payments, amount due, amount and type of insurance	not specified	report must be furnished semi-annually to the Minister (DREE)	3	-	one would assume that many if not most of the financial institutions keep this information in machine readable form.

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**E. FINANCIAL INSTITUTIONS**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Bank Act (applies to all banks named in Schedule A)	a) register of shareholders b) register of transfers c) records of attendance at director's meeting d) all books, records, documents, vouchers, paid instruments and papers e) transfer of untrained balance to Bank of Canada f) corporate records	Inspector General examine at least once a year and have any information required  d) at least 15 years  until notified by Bank of Canada f) indefinitely	Canada     (Canada)	3     2	with other countries allowed     (allowed)	Heavily automated, substantial sharing of data on individual accounts for banking purposes. Banks must keep records and books of account in Canada. If the keeping of records and books of account is done with the assistance of computer/communications, this would of course include some data processing.
(Note: See discussion on new Bank Act in paper)						
Canada Cooperative Association Act (all incorporated under CCAA)	a) articles of incorporation or association and by-laws b) names and address of all members c) names, address and occupations of all directors d) shares, amount paid and unpaid of members e) register of transfers	permanent	all records to be kept at head office in Canada or at such other place as directors, by resolution specify	2 3?		

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## E. FINANCIAL INSTITUTIONS

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Cooperative Credit Associations Act (all credit associations incorporated under this Act)	f) register of mortgages, including charges and particulars	permanently		1? 3?		
	g) minutes					
	h) proper accounting records					
	a) a shareholder register (re: names, address, shares, amount paid and unpaid)					
Grain Futures Act	b) share transfer register	4 years	supervisor may examine books and records during normal business hours	1?	off-shore data sharing assumed	One would assume that a high percentage of these records are automated.
	c) a record of directors					
	d) current record of serial or registration number or specific i.d. of every security					
	all purchase and sale records and books relating to each transaction in grain futures					



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## E. FINANCIAL INSTITUTIONS (Insurance Companies)

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Canadian and British Insurance Companies Act s.123 (applies to all British Insurance Companies licensed to operate in Canada under part VIII)	- serial or registration number or other specific identification of every security - records of sufficient information to enable Chief Agent to prepare a statement of Canadian business	Permanent retention	Superintendent under Act may examine books and vouchers and other receipts of the companies relating to its business in Canada	2,3	some data sharing may be assumed between Canadian and British parent	needs to be investigated in detail one would assume that many of these are in machine readable form
Canadian and British Insurance Companies Act ss. 2.3 (applies to all insurance companies incorporated by special Act of Parliament)	- a shareholder register (names, addresses, occupation and number of shares and amount paid in and remaining unpaid on stock of each shareholder - a stock transfer register including particulars - a directors register - record of serial number, registration or other specific I.O. of every security	keep open for inspection during normal business hours for: - shareholders - directors - creditors - policyholders in case of life insurance companies Permanent retention period	at head office in Canada or place of business of agent	1,2	?	Assume most of this data already in machine readable form. Not clear as to whether this would allow for off-site data processing.
ss. 91(13), 118 applies to any company registered to transact the business of life insurance...	- register and records of offers for sale of shares (see above)	Permanent	at head office in Canada or place of business of agent	1,3	?	One would assume that many of these records are in machine readable form.

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## E. FINANCIAL INSTITUTIONS (Insurance Companies)

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Foreign Insurance Companies Act (apply to all foreign companies licensed under Act) (does not apply to marine insurance, nuclear energy insurance not available in Canada, certain fire insurance where initial policy issue was to a non-resident)	records and books of account (insurance written and in force, dividends or refunds on premiums of Canadian policyholders including losses incurred and paid) (re all assets in Canada)	Permanent	at chief agency in Canada	1,2	one would assume that some data is shared	needs to be investigated in detail

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**F. FISHING AND HUNTING**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Fisheries Act - Atlantic Coast Herring Regulations (apply to fishing for herring on east coast by masters of herring fishing vessel of over 25 gross tons)	- daily record of estimated weight of herring caught and area where caught	not specified	must on request provide a report of this information	3	copy of record to buyer	The large trawlers and companies may generate and keep these records in automated form.  - Seems to apply to foreign vessels in 200 mile zone. Therefore an application of Canadian law to foreign data in Canada (i.e. economic zone)
- Atlantic Crab Fishing Regulations (apply to master of every vessel engaged in commercial fishing for snow crabs on east coast)	a daily record of total estimated weight and area caught	not specified	copy of record to fishing officer at time of sale	4	copy to purchaser	" " " "
- Atlantic Fisheries Regulations (apply to masters of all vessels of more than 25 gross tons or 14 m. length fishing on Atlantic Coast for 29 varieties of fish)	- a fishing log book approved by Regional D-G of Dept. of Fisheries and Oceans	not specified	on vessel at all times  copy of purchase slip of this fish to be given by purchaser to Regional D-G or fishery officer	?	immediately on completion of fishing trip copy of complete log book must be forwarded or made available to Regional D-G.	The large trawlers and companies may generate and keep these records in automated form.  - Seems to apply to foreign vessels in 200 mile zone. Therefore an application of Canadian law to foreign data in Canada (i.e. economic zone).

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## F. FISHING AND HUNTING

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Coastal Fisheries Protection Act (applies to master of foreign fishing vessels)	a) record of fishing effort and catch of vessel b) record of fish taken aboard for transportation and processing operations - both in a form approved by Minister of F & O	not specified	assume on vessel when request must be given to Regional D-G of Fisheries Management or forwarded within sixty days upon expiry of license	4	with U.S.?	A TBDF example of a Canadian law which applies specifically to foreign data in Canada (i.e. 200 mile economic zone).  A TBDF example of international data collection/exchange agreement.
Northern Pacific Halibut Fisheries Convention Act (applies to master of a fishing vessel with a license to fish in the territorial waters and high seas of the Western Coast of Canada and the U.S.)	a) a record of all the fishing vessels operations including date, locality, amount of gear used and quantity taken b) anyone that buys or receives halibut must keep a record of purchase or receipt including date, place, seller's name, pounds of halibut in each trade category	two years	disclose to anyone authorized by the International Pacific Halibut Commission (IPHC) or authorized officer of Gov't of Canada b) any protection officer or representative of IPHC	4	with U.S.	A TBDF example of an international agency having rights to Canadian data.

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**F. FISHING AND HUNTING**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	COOE	DATA SHARING	COMMENTS/OBSERVATIONS
Fisheries Act - Pacific Coast Marine Plant Regulations (apply to all who harvest marine plants in coastal waters off B.C.)	record showing quantity of each species of marine plant harvested	not specified		3		
- Bluefin Sport Fishing Regulations (apply to anyone fishing for bluefin)	record of fishing activities and catch	not specified	during season give record to F&O district statistical branch	3		
Fish Inspection Act (applies to fish canneries that produce for human consumption)	record of sterilization treatment used for each batch of fish	12 months	at the cannery	1		
Fish and Recreational Harbours Act (applies to those using harbours, wharfs, piers, mariners, etc. used predominantly by fishing or recreational boats)		none	gives enforcement officers the right to go on board ship and examine log books, documents and papers	1		A TBDF example of Canadian law applying to foreign data on foreign vessels in Canada.

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**F. FISHING AND HUNTING**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Migratory Birds Convention Act (applies to all permit holders re migratory game birds, migratory insectivorous birds and migratory non-game birds)	a) scientific permit re number of birds, nests or eggs taken or destroyed b) avicultural permit re number and species and eggs of migratory birds c) taxidermist permit re names and numbers of species and eggs and circumstances received	not specified	holders of these permits must allow a game officer to enter premises of operations and inspect books and records kept	1		



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## G. FORESTRY

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Indian Act Indian Timber Regulations (apply to licencees to cut timber for commercial purposes on an Indian Reserve)	record of timber cut and of other timber products on a monthly basis	not specified	allow for free access and inspec- tion to anyone authorized	1?		

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## H. MANUFACTURING

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Excise Act* (applies to all who carry on a business subject to excise)	stock books and other books according to regulations	not specified  (Until the expiration of six years from the end of the calendar year in respect of which they are kept or until written permission for their prior disposal is given by the Minister.)*	within the licensed premises where business carried on allow examination of private papers and copies	1  1?		"No erasure may be made in these books". Large hotels use automated support systems. The restrictions against erasure ("can only put a line through words or figures") seems to exclude machine-readable data.  Large distilleries and breweriers will have this data in machine-readable form.
- Manufacturers in Bond Departmental Regulations (apply to manufacturers bonded under the <u>Excise Act</u> )	records on quantities of materials received, taken for use or removed; quantities of products manufactured and dispersed of and name of consignee	not specified				
Hazardous Products Act	no requirement	not specified	inspector may examine any book, records or other documents re hazardous products	1		Would seem to apply to machine-readable data also.
Clear Air Act (any area, place or premises that are part of a federal work, undertaking or business)	no requirement	not specified	inspectors may require any person to produce for inspection any books, papers or documents regarding requirements under this Act	1?		

Interdepartmental Task Force on Transborder Data FlowsWorking Group Sovereignty Aspects

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**H. MANUFACTURING**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Fisheries Act - Chlor-Alkali Mercury Liquid Effluent Regulations (apply to owner, operator or agent for production of chlorine and alkalimetal hydroxide using mercury)	composite samples each day of affluent and record of daily flows	12 months		1?		
Industrial Research and Development Incentives Act - Scientific R&D Regulations (apply to all corporations applying for a scientific R&D grant)	records in sufficient detail on capital expenditures, property acquired, eligible current expenditures, etc.	seven years or written permission of Minister	any person authorized by ITC may at a reasonable time examine	1?		
Food and Drug Act (applies to any dealer licensed to sell controlled schedule 9 drugs)	records on name, quantity drug received and supplied, name and address of person who supplied it name, date and quantity of any controlled used in manufacturing or placed in stock	two years	inspection at any reasonable time	1		Many pharmacists switching to automated support systems, some are sharing data on prescription (to prevent abuse). There are privacy implications here and possible TBDF.

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## H. MANUFACTURING

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Narcotics Control Act (applies to any person who holds a license for sale manufacture, production or distribution of a narcotic)	records on receiving, supplying or manufacturing including name, date and quantity of drug and name and address of person and name and quantity of each narcotic in stock at end of month	two years	records must be kept in a manner that will allow an audit any time and produce any books, records or documents		under Interpol? law enforcement?	Many pharmacists switching to automated support systems, some are sharing data on prescriptions (to prevent abuse). There are privacy implications here and possible TBDF.
Food and Drug Act - Food and Drug Regulations (apply to dealer licensed to sell and distribute restricted drugs (Schedule 4))	records of name, quantity and form of drugs received and sold by dealer, name date and address of suppliers and buyers name, quantity, form and date used in manufacturing or placed in stock	two years	kept in such a form to allow an audit to be made "enter any premises and inspect..."	1?		Pharmacists are starting to use computers for prescription control and in some provinces (Alberta) they are trying into a central data bank. Possible privacy and TBDF impacts.
(apply to any licensed dealer supplying controlled (Schedule 9) drugs to a licensed dealer, pharmacist, practitioner, hospital and any authorized person)	record of written order authorizing sale, an order as sent by computer and if verbal order name of hospital, pharmacist or authorizing physician	not specified	kept in such a form to allow an audit to be made "enter any premises and inspect..."	1?		Explicitly recognized computer communications. Order placed this manner oft-shore have TBDF implications.

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## H. MANUFACTURING

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Food and Drug Act (Continued) (applies to manufacturer who distributes drugs as a sample or drugs designed for parenteral use)	records showing name, address and description of the person to whom drug distributed, name, date, quantity and form of drug distributed and test records	2 years  5 years	enter any premises where drug manufactured, inspect any books or records	1		
(applies to everyone who manufactures certain vaccines or preparations from a human source)	a) records of viable organisms in each lot, clinical records of use of B.C.G. in humans b) detailed protocols of safety, sterility, identity, potency c) complete records of all donors	not specified	enter any premises where drug manufactured, inspect any books or records	1?		Blood plasma and vaccines exchanged internationally. What about the accompanying data?
(applies to every manufacturer selling a new drug for clinical testing)	a) adequate records of previous distributions and results of clinical testing including adequately indexed and organized files	not specified		4		For large research programs, this would be in machine-readable form. Considerable R&D and testing done off-shore therefore question of does this become Canadian or remain foreign data? e.g. under Bill C-43 (recent incident of NMW accepting U.S. laboratory test results which were falsified).

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## H. MANUFACTURING

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Food and Drugs Act (Continued) (applies to anyone manufacturing Schedule C drugs in or outside of Canada under a Canadian license)	record in satisfactory form on date and details and testing of each lot	not specified	may require inspection of records relevant to the drug at any time during normal business hours	3		A Canadian representative known to NHW must maintain satisfactory records of the distribution of the drug in Canada. TBDF Note: Requirement on off-shore manufacturer to keep data in Canada on product distributed here. Subject to the same powers of inspection. What if representative is simply hooked-up to the off-shore data base of the manufacturer.
Ditto for Schedule D Drugs	record for each lot of drug on manufacturing testing and distribu- tion	not specified	" "	3		" "

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## H. MANUFACTURING

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Food and Drugs Act (Continued) (applies to every manufacturer of Schedule E drugs)	records in satisfactory form on manufacturing, testing and distribution of sensitivity discs or tablets	not specified	inspector may enter	1?		
Pest Control Products (applies to every person in whose name a certificate is issued)	record of all quantities of product stored, manufactured or sold	5 years	record must be made available to Director in time and manner required	1?		
Animal Disease and Protection Act (applies to every holder of product license to manufacture veterinary biologic)	records respecting preparation, manufacture preservation, storage, testing sale and distribution of veterinary biologic)	at least 2 years after expiry date	make available for inspection upon request	1?		
Coastal Fisheries Protection Act (applies to master of a foreign fishing vessel)	(see under FISHING and HUNTING)					
Maple Products Industry Act (applies to anyone in maple syrup business)	(see under AGRICULTURE)					



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## H. MANUFACTURING

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Canada Agricultural Products Marketing Act - B.C. Turkey Marketing Board	(see under AGRICULTURE)					
National Revenue (Customs and Excise) - Departmental Brewery Regulations (apply to all carrying on business as a brewer)	records on quantities of raw and packaging materials used, bought or removed from brewery, quantity of each type of beer fermented, transferred, stored or disposed of, quantity of each type of beer packaged and details of this disposition and documentary evidence of export (if applicable)	not specified	within licensed premises at the request of the collector give an account in writing of the contents of these records			
- Distillery Departmental Regulations (apply to all carrying on business as a distiller)	record on quantities of raw materials or spirits brought or removed, sample strength records, quantities of age strip stamps received, used, removed or destroyed	not specified	within licensed premises at the request of the collector give an account in writing of the contents of these records	1		

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**H. MANUFACTURING**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Excise Act* - Denatured Alcohol Regulations (apply to distillers who manufacture denatured alcohol)	daily records to show production and grades of specially denatured alcohol; inventory; and denaturants used	not specified  (Retention period now until the expiration of six years from the end of the calendar in respect of which they are kept or until written permission for their prior disposal is given by the Minister.)*		1?		
Energy Mines and Resources Act - Petroleum Administration Act (applies to every person who holds a licence under the Act)	records and books of account at place of business in Canada (or elsewhere in Canada) on price paid by or to licensees	not specified	authorized person may enter any premises to examine, copy or take away any book, record, paper or other document and examine at reasonable times	1,2		Does this apply to machine-readable data bases e.g. inventory management systems? Wording seems to allow for this.
(applies to anyone who is required to pay charges under Part III) - deals with levies on domestic petroleum, and foreign petroleum and by products produced or consumed in Canada	records and books of account must be kept at place of business in Canada in such form and contain such information so that charges or others sums paid and collected including every account or voucher necessary to verify the information in records and books of account	until National Energy Board gives written permission for disposal	authorized person may enter any premises to examine, copy or take away any book, record, paper or other document and examine at reasonable times	1,2		Does this apply to machine-readable data bases e.g. inventory management systems? Wording seems to allow for this.

\* Indicates Bill C-118 amendment

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**H. MANUFACTURING**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Excise Tax Act* (Continued) - Gasoline Excise Tax Regulations (apply to any manufacturer, producer, wholesaler, jobber or dealer of gasoline)	suitable records to substantiate all sales made to permit holders that do not include excise tax paid	destruction requires written permission from Minister  (Retention requirements now to keep records and books of account until the expiration of six years in respect of which those records and books of account are kept or until written permission prior to their disposal is given by the Minister.)*		1?		
Territorial Lands Act - Canada Oil and Gas Drilling and Production Regulations (apply to any owner or operator of a scrubbing or absorption plant in the Yukon or NWT)	records must be kept of all gas received at a scrubbing or absorption plant, name and address of person from whom gas received, quantity and quality of gas and price payable	not specified		1?, 2?		
Petroleum Corporations Monitoring Act (applies to every corporation engaged in exploration, development, production, refining or marketing petroleum and products)	records and books of account in sufficient detail to allow verification of any information submitted under Act	until written permission from Minister, EMR	an authorized person may at all times reasonable enter the premises and examine, audit, seize, take away any documents, etc.	1	(duplicate copy in off-shore HQ)	Large oil companies tend to keep this in machine-readable form. Are they on an on-line time-sharing system at off-shore HQ?

\* Indicates Bill C-11B amendment

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**H. MANUFACTURING**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Fisheries Act - Pulp and Paper Effluent Regulations (apply to all mills that produce pulp, paper, etc.)	records of each mill's deleterious substances including effluent flow, amounts of suspended solids, pulp yields, etc.	not specified		1?		If effluent goes transborder via lake, river and affects off-shore parties who sue for damages these would try to obtain access to data.
Excise Act* - Tobacco Department Regulations (apply to cigar or tobacco manufacturers)	records on quantities of raw and refined tobacco products brought into, removed, destroyed, warehouse, duties paid, amount in bond, etc. and Canadian content	not specified (Retention period now until the expiration of six years from the end of the calendar year in respect of which they are kept or until written permission for their prior disposal is given by the Minister.)*	a request provide collector with an account in writing	1?		One would assume that computer print-outs would be acceptable.
Motor Vehicle Safety - Motor Act Vehicle Safety Regulations (apply to every manufacturer, assembler, distributor, import of motor vehicles and components)	record of testing conducted for or by manufacturer or assembler to comply with Motor Safety Vehicle Regulations	not specified	MOT inspectors may examine any books report, test data, make copies, extracts, etc. and enter any place where motor vehicles kept by manufacturer, assembler, etc.	3		

\* Indicates Bill C-118 amendment

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**H. MANUFACTURING**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Motor Vehicle Tire - Safety Regulations (apply to all manufacturers, and importers of motor vehicle re national safety tire mark)	records to determine if tires comply with safety standards or of tires imported and registration system and details	not specified	MOT inspectors may examine any books report, test data, make copies, extracts, etc. and enter any place where motor vehicles kept by manufacturer, assembler, etc.	3		Off-shore tire sources must provide written statement that the tire described complied with all safety standards in force on date manufacturing completed.
Explosives Act (applies to all licensed to operate a factory licensed under Section 6 except those under Minister of National Defense)	records of explosives (but not fireworks or Safety Cartridges) of manufactured or possessed of brand name, strength, size, lot number or where stored, name and address of person from whom received or send, federal license number, provincial or territorial permit, destination, method of transport, proof of identity of consignee, etc.	3 years after record was made	inspectors and peace officers may examine, take copies, extract, take away records, etc.			U.S. restrictions on export of technical data under Arms Export Control Act.

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## H. MANUFACTURING

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Criminal Code - Restricted Weapons and Fire Arms Control Regulations (apply to anyone who carries on a business that includes in some form restricted weapons or fire arms)	records of all transactions in form prescribed by RCMP inventory of weapons	5 years after date of transaction or inventory		1 1	with other countries as part of law enforcement	Master files kept in machine-readable form.
Radio Act - Radio Interference Regulations (apply to all manufacturer or importer, any machinery, apparatus or equipment for which limits of radio noise have been prescribed)	record of tests of machinery apparatus, equipment	5 years from test date	records must be made available for examination upon request	3		TBDF radio interference, disturbances minimized.
National Parks Act - National Park Electrical Regulations (apply to all who in National Park employ full-time electricians)	accurate record of all installations, extensions, alterations or repairs carried out in any establishment	1 year after inspection (disclosure)		1?		

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**I. MINING**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Indian Act - Indian Mining Regulations (apply to all mining operations under permit or lease for extraction of minerals on reserve or surrendered lands)	technical and financial records relating to exploration or production of minerals	not specified	inspector may require permit holder or lessee to produce these records	3		
Oil and Gas Conservation Act - Drilling Regulations (apply to all who explore for oil or natural gas or every well or test hole drilled in Yukon or NWT, any lands where HM retains mineral rights and off-shore areas to depth of 200 metres or to a depth to allow exploitation of seabed (but not provincial land))	comprehensive records of the drilling program (see p. 195)	not specified	a Conservation Engineer may at any reasonable time require production of any book, records or document	37, 4		Much of this in machine-readable form. Implies indefinite extension of borders for exercise of sovereign rights.



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## I. MINING :

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Oil and Gas Conservation Act (Continued) - (applies to every operator of a drill site)	daily records of persons employed or visits at drill site a large or ships log that records arrival or departure of any support craft, receipt of radio messages, location and deployment of standly vessel, details of emergency drills, particulars of any inspection of a hull	not specified	a Conservation Engineer may at any time require production of any book, records or document	1?, 3?, 4		Exercise of Canadian sovereignty re TBDF on logging requirements of TBDF's of foreign flag vessels and off-shore messages.
- (applies to every operator of any off-shore drilling operation)	information must be recorded on tour sheets re iceflows and iceberg movements, precipitation preceding 24 hrs, measurement of meteorological data, sea water temperature, swell movements, etc. emergency drill or tests, accidental spillages particulars on stimulations, recovery of samples	not specified	a Conservation Engineer may at any time require production of any book, records or document	4		Corporations tend to keep a lot of this information in machine-readable form and for a long time.

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**I. MINING**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Oil and Gas Conservation Act (Continued) (applies to every operator of any formation flow tests)	records on flow rates pressures, volumes, name of well, date, time, type, quantity and nature of fluids recovered	not specified		4	immediately upon completion of test, send copy of test record to Chief Inspection Officer	Corporations tend to keep a lot of this information in machine-readable form and for a long time.
Territorial Lands Act - Oil and Gas Drilling and Production Regulations (apply to every lessors of a well located in the territorial lands of Canada)	accurate records of amount, source and pressure of fluid injected into intake well	not specified	inspector may at any time enter the lease or permit area and examine all relevant books or records, etc.	1?		
(applies to those holding lease or permit to drill for oil or gas in territorial lands)	a) rig record books, etc.	not specified	a) must be available for inspection at all times	1		
	b) electric log, sonic log or radio activity log sufficient to determine oil and gas presence/zones, porosity, saturation, etc.	not specified			b) 3 copies of log should be sent to Oil Conservation Engineer within 30 days	b) these all tend to be in machine-readable (often analogue) form.

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**I. MINING**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Territorial Lands Act (Continued) (applies to every well producing or capable of producing oil or gas in territorial lands)	a) gas meter charts b) daily records of products of well and particulars in disposition				a)b) report must be filed each month for each well or group of wells	Date often kept by company in machine-readable form.
Petroleum Monitoring Corporations Monitoring Act (applies to all engaged in exploration, developments, production, refining or marketing of petroleum and products)	records and books of account of sufficient detail to allow verification of information under Act	until written permission to destroy, Minister, EMR	principal place of business in Canada	2		

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## J. PUBLIC ADMINISTRATION

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Financial Administration Act (applies to agency crown corporations and proprietary corporations of the Crown)	same as those required under Canada Corporations Act		auditor appointed by Governor in Council has right of access at convenient times to books, records, documents, accounts, etc.	2		
Defence Production Act* (applies to every person who enters into a defence contract with Government of Canada)	detailed accounts and records of cost of carrying out the contract	not specified  (Retain records until the expiration of six years from the end of the calendar year in which the contract is terminated or completed.)*	accounts and records must be produced to any person authorized by Minister (SSC) and audit, examine copy or extract	3		

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**K. SERVICES**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Criminal Code - Race Track Supervision Regulations (applies to associations incorporated for the purpose of conducting pari-mutual betting at horse races)	a) record of messenger betting transactions	a) 3 months from end of each race meeting	at the association	1		
	b) records of outstanding tickets	b) not specified		1		
	c) records of outstanding tickets cashed	c) until April 30th of following year or when destruction authorized		1		
	d) record of official samples of testing of horse	d) three months after test				
	e) record of abandoned tests	e) at discretion of Chief Supervisor		1		
Food and Drug Act (applies to any person in charge of a hospital re controlled drugs)	in a book or register name and quantity of any controlled drug received and name and address from when, in manufacturing name of patient and practitioner in prescribing and administering controlled drugs, date, form, name or quantity of drug prescribed	2 years	inspector may inspect and take extract of any book, record or document required under Act	1		Larger hospitals tend to use automated management systems.

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**K. SERVICES**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Narcotic Control Act (applies to any person in charge of a hospital (as defined))	in a book or register name and quantity of any controlled drug received and name and address from when, in manufacturing name of patient and practitioner in prescribing and administering controlled drugs, date, form, name or quantity of drug prescribed	2 years	note: records to be kept in such a form as to enable audits to be made from time to time	1		Larger hospitals tend to use automated management systems.
Food and Drugs Act (applies to every institution using restricted drugs)	records on amount of every restricted drug used, and detail name and qualifications of users, full clinical data on use of every restricted drug	not specified	records must be made available to Minister (NIHW) on request	1		
(applies to all institutions authorized to purchase thalidomide)	records showing amount received, use to which drug put, names and qualifications of investigator, full experimental data for each lot received	not specified	inspector may enter any premises, inspect any books, records or documents and may require furnishing of any information	1		

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**K. SERVICES**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Food and Drugs Act (Continued) (applies to any person authorized to receive a controlled from a practitioner or administer controlled drug to an animal for purpose of public interest or science)	records of kind, date and any controlled drug received or purchased, name and address of seller, use to which drug was put	not specified	inspector may enter any premises, inspect any books, records or documents and may require furnishing of any information	1		
(applies to any person authorized to receive a controlled from a practitioner or administer controlled drug to an animal for purpose of public interest or science)	records of kind, date and any controlled drug received or purchased, name and address of seller, use to which drug was put	not specified	inspector may enter any premises, inspect any books, records or documents and may require furnishing of any information	1		
Criminal Code Race Track Supervision Regulations (applies to chemists and veterinarians providing services to pari-mutuel betting associations)	a) record of horses treated by veterinarian b) record of official chemists all records, analytical reports, reference on a secure place	not specified	records must be made available upon request, etc.	1 1		



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**K. SERVICES**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Narcotics Control Act (requirements apply to all practitioners)	records of narcotic dispensing for self-administration to persons or to animals where dosage exceeds 3 times the manufacturers daily recommended dosage	2 years	in a form, place and manner which permits an inspector to easily examine and extract information	2		Would allow for machine-readable records.
Income Tax Debate Discounting Act (applies to any person who requires right to a refund of tax from the person entitled for a percentage of refund)	record including name and address of discounter, and tax payer and SIN, name of proprietor, tax account number, expected refund, discount (same, rate, percentage) etc.	3 years after documents sent	discounter's place of business	1		Increasing use of computers (and H.R. Block like networks).

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**L. STORAGE**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Canadian Dairy Commissions Act	does not require records to be kept		right of inspectors to enter place and examine books, records or documents			
Livestock Feed Assistance Act (applies to every person in receipt of a payment for storage of grain)	records of books of account, bills of lading, sales invoices	6 years	records may be inspected during normal business hours	1?		
Canada Grain Act (applies to every person licensed to operate a primary, terminal or transfer grain elevator)	record of grain received, delivered, stored, grades and whether stored, purchased or received for sale on commission	not specified	officer of Wheat Board may enter and inspect these records	1?		
Customs Act (applies to all helpers of bonded warehouses)	detailed records on all goods on hand and movements of goods in and out of warehouse documents to show goods lawfully stored and removed	not specified		1?		Heavily involved in movement of goods in and out of Canada. Large bonders/brokers use automated support systems.
Excise Act - Excise Warehouse Regulations (apply to excise bonded warehouses)	records of deposit and removal of any goods in the warehouse	not specified  (Retention period now until the expiration of six years from the end of the calendar year in respect of which they are kept or until written permission for their prior disposal is given by the Minister.)*	same as Excise Act	1?		Ditto

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## L. STORAGE

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Hazardous Products Act (applies to all manufacturers)	does not require records to be kept		inspector may enter and examine, etc.	1?		
Consumer Packaging and Labelling Act	"		"	1?		

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**M. TRADE**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Excise Tax Act* (apply to all who must pay or collect taxes or affix or cancel stamps under Act)	records and books of account in English or French in information re taxes collected, paid or calculated	until written permission from Minister (Rev. Canada) received  (Retention period until the expiration of six years from the end of the calendar year in respect of which they are kept or until written permission for their prior disposal is given by the Minister.)*	at place of business in Canada officers may enter and inspect, copy seize, etc.	1,2		
Canada Agricultural Products Marketing Act - Saskatchewan Hog Information (Interprovincial and Export) Regulations (apply to any person engaged in marketing of hogs raised in Saskatchewan and destined for interprovincial or export trade)	complete records of all matters relating to marketing of hogs	not specified	any authorized representative may inspect books and records	3?		
Animal Disease Production Act (applies to every person conducting a public sale, auction or market of livestock)	record containing name of consigner and purchaser of every animal sold at the sale, auction or market	not specified	authorized inspector may examine records	1?		
(applies to every holder of a product issued for the manufacture of a veterinary biologic)	records on manufacturing, preservation, testing, sale and distribution	2 years following expiration date of veterinary biologic	must be made available on request for inspection			

\* Indicates Bill C-118 amendment

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**M. TRADE**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Petroleum Administration Act* (applies to every person who sells, purchases or acquires crude oil outside its province of production - Petroleum Import Cost Compensation - Regulations (apply to every person who receives import compensation under regulations)	records and books of account as prescribed in regulations	not specified  (Records and books of account are now to be kept until the expiration of six years from the end of the calendar year in respect of which those records and books of account are kept.)*	at place of business in Canada Minister (EMR) may authorize any person to enter, examine, copy or take away, etc.	2		Many companies keep such records in machine-readable form.
(apply to all persons required to pay petroleum export cheques under Part I of Act)	documents, records and books of account which will allow N.E.B. to determine correctness of information supplied and eligibility of recipient records and books of account	until N.E.B. gives permission to destroy	at place of business in Canada	2		Allows for machine-readable data.
	form of and information in books and records of a account, vouchers, etc. in manner which will enable verification of charges or sum paid or should be paid	"	"	2		Allows for machine-readable data.

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**M. TRADE**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
National Energy Board Act (applies to every person who holds a license to export oil)	all records relating to export of oil	not specified	a member of N.E.B. or authorized person may at any time inspect, enter, examine, etc.	3		
(applies to all who import propane or butane)	information relating to importation	not specified		4	NEB must be furnished upon request with information	
(applies to those holding a license to export propane or butane)	information relating to exportations	not specified		4	"	
Canada Shipping Act (applies to every person who deals in bags or sells old anchors, cables, sails, junk iron or marine stores of any kind)	records of all such articles re time purchased, person from whom bought or received and his business and character or distinguishing marks of article	not specified	records must be produced on request to inspector	1?		

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## N. TRANSPORTATION

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Animal Disease and Protection Act	re: interprovincial or international transport of animals including name and address of shipper and consignee, time, date and place animals loaded and unloaded or fed and watered while in carriers custody and number and description of live stock or other animals for every aircraft and every shipment of animals	Not specified	"Copy of this record must accompany every shipment"	4	Yes	Are there international agreements to cover use/exchange of data?  Do Canadian carriers maintain the "original"?  Are automated systems involved?
Aeronautics Act	re: every air carrier a) aircraft journey log b) aircraft technical log	a) two years after last date of entry in log b) two years after aircraft destroyed	On aircraft all logs must be made available to an Inspector	4		Information very detailed. Do aircraft keep all historical logs on-board or does carrier maintain these? Are these automated? What if Inspector wants full set of logs on a KLM plane which is in Toronto? Will the data have to be called-up from Amsterdam?
Petroleum Administration Act*	Documentary evidence on any quality or kind of oil (interprovincial). re: price paid or to be paid is equal to prescribed price	Not specified  Records and books of account are now to be kept until the expiration of six years from the end of the calendar year in respect of which those records and books of account are kept*	may authorize any person to enter any premises to examine copy or take away for further examination any record back paper or other document	1	Is the gov't concerned about what the MNE does with this data?	One would assume that:  a) large companies use automated support systems  b) does this apply to mag tapes or disk packs?

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## N. TRANSPORTATION

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Petroleum Act, Part III, Regulations*	re: movement of gas (interprovincial) a separate set of documentary evidence showing that price paid or to be paid is not g.t. there set by NEB	Not specified  See above for change*	" "	1	(by private business)	" " " "
Livestock Feed Assistance Act and Feed Grain Transportation and Storage Assistance Regulations	re: transportation of feed grains - books of account - bills of lading - sales invoices	Six years	Records may be inspected and audited by an authorized member of Canadian Livestock Feed Board during normal business hours	2  1	(private business)	Some of the larger companies (Cargill or COOP) would use automated support systems.
Livestock and Livestock Products Act	re: livestock products all records relating to a livestock product or its disposition	Not specified	Inspector may require the production for inspection	1		
Canada Agricultural Products Marketing Act B.C. Turkey Marketing Board	Accurate books and records in English on production, processing, packing, storing, transporting or marketing turkeys	Not specified	Any information required to be kept must be produced on request			

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## O. UTILITIES

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Atomic Energy Control Act and Regulations	<ul style="list-style-type: none"> <li>- records on nature, form, quantity, location of substance</li> <li>- names of people involved in handling substance</li> <li>- particularly on disposal</li> <li>- all relating to dose of ionization inducing all medical examination</li> <li>- AEB may require maintenance of additional records re develop, safety or security</li> </ul>	Not specified	Inspector may inspect <ul style="list-style-type: none"> <li>- records at any nuclear facility</li> <li>- any place prescribed substance is located</li> </ul>	1	? of guarantee of privacy protection	Sensitive personal data banks involved.
Electricity Inspection Act	Verification of meters and supplier of electrical energy must keep records for each meter showing its location and date departmental test carried out	Not specified	Duly authorized inspector may examine these records any time during	3	?	One would assume that large distributors such as Hydro Quebec maintain these records in automated form.

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**0. UTILITIES**

LAW OR REGULATION	TYPES OF RECORDS	RETENTION REQUIREMENT	LOCATION OF DATA	CODE	DATA SHARING	COMMENTS/OBSERVATIONS
Gas Inspection Act and Gas Meter Regulations	Complete records on every meter and auxiliary device in a gas distribution system	Not specified. Meter register book or suitable and register No.	Inspector can demand production for inspection of any records required to be maintained	3	?	One would assume that large gas distributors would use automated support systems? What about direct monitoring? (Note: Fine only \$5-50)
Northern Inland Waters Act and Regulations	Detailed records and books on the quantity of water used under license or any process likely to result in waste being discharged	Not specified	Inspector may examine any books or records	3	(Wastes go into international waters. Need for off-shore entities to access records?)	Applies to "North" only.
Canada Evidence Act	Specifies what types of records and in what manner records are admitted as evidence in a legal proceeding	N/A				The proposed Uniform Evidence Act (S-33) addresses the question of machine-readable data and on-line real time data base systems. It provides for admissibility in court as evidence machine-readable or electronic data/information provided that certain criteria are met.