

Canadian Bar Association
2011 National Citizenship and Immigration Law Conference
From Application to Citizenship!

May 12-14, 2011
Gatineau, Québec

Afternoon Workshop 4-B



***From Ship's Manifest to GCMS:
The Secret Language of Immigration***

Vance P.E. Langford and Morgan W. Quinn

Burstall Winger LLP
Barristers & Solicitors
1600, 333 - 7th Avenue S.W.
Calgary, Alberta T2P 2Z1
<http://www.burstall.com>

Table of Contents

Acknowledgments	1
1. Introduction	1
2. Background	1
(a) A Brief History of Immigration Records in Canada	1
3. Development and Use of Immigration Databases	3
(a) Field Operations Support System (FOSS)	3
(i) Development and Uses of FOSS	3
(ii) Relevance of FOSS to the Immigration Practitioner	4
(iii) Scope of FOSS Report	4
(iv) How to Read a FOSS Report (Acronyms)	5
(b) Computer Assisted Immigration Processing System (CAIPS)	5
(i) Development and Uses of CAIPS	5
(ii) Relevance of CAIPS to Immigration Practitioner	6
(iii) Scope of CAIPS Report	6
(iv) How to Read a CAIPS Report (Acronyms)	7
(c) Global Case Management System (GCMS)	7
(i) Development and Uses of GCMS	7
(ii) Relevance of GCMS to Immigration Practitioner	8
(iii) Scope of GCMS Report	9
(iv) How to Read a GCMS Report (Acronyms)	9
GCMS replaces the acronyms and codes used in FOSS and CAIPS with plain language. No code manuals are required. A demonstration of GCMS will be provided in our Workshop.	9
4. How to Access Information Held in CIC Databases	9
(a) Requests for Information under the <i>Access to Information Act</i>	9
(b) Requests for Information under the <i>Privacy Act</i> , Advantages and Disadvantages	12
(c) Appealing Results Under the <i>Access to Information Act</i> or <i>Privacy Act</i>	14
(i) Complaint and Appeal Process – Access to Information Act	14
(ii) Complaint and Appeal Process – Privacy Act	15
(iii) Appeals of Complaints to the Federal Court of Appeal	16
5. Professional Ethics with Respect to Immigration Information	16
6. Conclusions	16
Exhibits “A” – “E”	17-135

Acknowledgments

The authors would like to acknowledge the following individuals for their invaluable contributions on a topic that is generating significant interest among immigration practitioners due to the current implementation of Global Case Management System, but difficult to research in the public domain; and for their collaboration on the presentation of Afternoon Workshop 4-B at the 2011 National Citizenship and Immigration Law Conference:

Alain Belleville

Manager, Access to Information and Privacy (ATIP) Division
Canada Border Services Agency

Raymond Gabin

Program Manager, Case Processing Pilot - Ottawa
Citizenship and Immigration Canada

Pemi Gill

Deputy Director, Reporting and Business Architecture GCMS
Citizenship and Immigration Canada

1. Introduction¹

The current implementation of Global Case Management System (GCMS) will replace several of the business systems of Citizenship and Immigration Canada (CIC) and the Canada Border Services Agency (CBSA) with an integrated, case management-based set of applications and components that will support the client operations of both organizations.

Nevertheless, understanding the historical development and uses of immigration records in Canada and at Canadian missions abroad remains relevant to the practice of immigration law. In particular, understanding the historical development of CIC information systems remains important in an organizational culture where specialized language and procedures will continue to evolve. It is equally important for the immigration practitioner to be able to access and interpret client data to effectively advise, represent and advocate.

This paper examines the development of immigration data gathering and use from the early ship manifests and border entry lists, to the development of the Field Operations Support System (FOSS), Computer Assisted Immigration Processing System (CAIPS) and other CIC legacy systems in the past 30 years. It provides the latest information on the status of GCMS, which is expected to revolutionize the Canadian immigration system. Finally, it reviews the legislation and procedures for accessing information in the Canadian immigration system, providing practical tips intended to enhance the abilities and effectiveness of immigration practitioners.

2. Background

As we strive to understand the latest methods of gathering, storing and retrieving information on the Canadian immigration system, it is important to understand the development of immigration records since people started coming to Canada.

(a) A Brief History of Immigration Records in Canada

Prior to 1865, there were no comprehensive records of immigrants arriving in Canada. Some passenger lists and other documents can be found at Library and Archives Canada, in French and British colonial materials, records kept by benevolent societies such as the Montreal Emigrant Society Passage Book,² and provincial sources, such as the Hawke Papers, the Toronto Emigrant Office Assisted Immigrant Registers Database and the Nova Scotia Archives & Records Management's BosaNova database.³

¹ Image on title page: "Sailing Ship", Artist unknown, ca. 1840, Library and Archives Canada, Acc. No. R9266-518V, Peter Winkworth Collection of Canadiana, online: <http://www.collectionscanada.gc.ca/databases/immigrants-canada/index-e.html> (date accessed: May 10, 2011).

² "Organizations such as the Montreal Emigrant Society were founded to help immigrants. This research tool provides access to 1,945 references to people who received aid from the Montreal Emigrant Society between May 12 and November 5, 1832." There is a virtual exhibition entitled "MOVING HERE, STAYING HERE. The Canadian Immigrant Experience", which is complete with official circulars to immigration officers, passenger lists, identity files. Online: <http://www.collectionscanada.gc.ca/immigrants/index-e.html> (date accessed: May 7, 2011).

³ "In 1803, the British Parliament enacted legislation to regulate vessels carrying emigrants to North America. The master of the vessel was required to prepare a list of passengers. Unfortunately, few such lists have survived and therefore, there are no comprehensive nominal lists of immigrants arriving in Canada before 1865." Library and

From 1865-1935, passenger lists (RG 76) were the official immigration records; there were no applications or files. "The lists contain information such as name, age, country of origin, occupation and intended destination.⁴ They are arranged by port and date of arrival, with the exception of some years between 1919 and 1924, when an individual Form 30A was used."⁵

From June 1, 1921 to December 31, 1924, the Department of Immigration and Colonization required that individual manifests (Form 30A, RG 76 C1j) be completed and submitted to the immigration officers at the ports of arrival, instead of the large sheet passenger list manifests previously in use. A form had to be submitted for each passenger, including children, except those in transit to the United States. Each form 30A usually included details such as name of ship, date of sailing, port and date of arrival, name, age, occupation, birthplace, race, citizenship, religion, destination and name of nearest relative in country of origin.⁶ At inland ports of entry, the Form 30 Border Entry List was used.⁷ The use of Form 30A was discontinued as of January 1, 1925, when the use of large sheet manifests was reinstated.⁸

From 1925-1935, the passenger lists contained more details such as the immigrant's place of birth, the name and address of the relative, friend or employer to whom they were destined, and the name and address of the nearest relative in their country of origin. These passenger lists are

Archives Canada, "Immigrants to Canada", online: <http://www.collectionscanada.gc.ca/databases/immigrants-canada/index-e.html> (date accessed: May 7, 2011).

⁴ For an example of an RG 76 Passenger Manifest, please see Exhibit "A" for a list of passengers on the Yorkshire, which sailed from Liverpool to Quebec and Montreal in 1898. "The Yorkshire brought 295 passengers, many of whom were immigrants, from Liverpool to Québec and Montréal. Name, age, sex, occupation, country of birth and destination were all recorded on the list. This information was used to interview or inspect prospective immigrants. To the dismay of government officials, many of those arriving in Canada were en route to the United States." Source: Library and Archives Canada, RG 76 C1b, vol. 1, p. 214, reel T-14823, online: <http://www.collectionscanada.gc.ca/genealogy/022-908.003-e.html> (date accessed: May 10, 2011).

⁵ Online: Canadian Genealogy Centre <http://www.collectionscanada.gc.ca/genealogy/022-908.004-e.html> (date accessed: May 7, 2011). This page contains an extensive list of databases on immigration to Canada prior to 1935.

⁶ The use of Form 30A was inconsistent. Some immigration offices were using them as early as 1919, while some offices continued to use the sheet manifests as late as 1922. The use of Form 30A was discontinued as of January 1, 1925, when the use of large sheet manifests was reinstated. For an example of Form 30A, see Exhibit "B" for Dmytro Zmendak, 1923. Source: Library and Archives Canada, RG 76 C1j, reel T-15248, online: <http://www.collectionscanada.gc.ca/genealogy/022-908.004-e.html> (date accessed: May 10, 2011).

⁷ For examples of the Form 30 Border Entry List, see Exhibit "C", being a Border Entry List: North Portal, Saskatchewan, 27 September 1913. Source: Library and Archives Canada, RG 76 C5a, reel T-5493; and Border Entry List: Kingsgate, British Columbia, May 1925. Source: Library and Archives Canada, RG 76 C5a, vol. 1, p. 274, reel T-14715, online: <http://www.collectionscanada.gc.ca/genealogy/022-908.005-e.html> (date accessed: May 10, 2011).

⁸ *Ibid.* The immigration forms and the questions asked were very different on each form. The transcriptions were made from the immigration forms, including the spelling of words as they appear in the actual column headings. All the forms were printed only in English. For those doing research on these records, the column headings from various immigration forms from 1865 to 1935 have been transcribed. See online: <http://www.collectionscanada.gc.ca/genealogy/022-908.012-e.html> (date accessed: May 12, 2011).

arranged by port and date of arrival and have been compiled in a database by the Pier 21 Society in Halifax.⁹

The Government of Canada did not keep records of people leaving the country; there are no passenger lists for departures from Canadian ports.

Since January 1, 1936, records of immigrants to Canada have been the responsibility of Citizenship and Immigration Canada.

3. Development and Use of Immigration Databases

(a) Field Operations Support System (FOSS)

(i) Development and Uses of FOSS

The Field Operations Support System (FOSS) database is a central repository of information on all persons who have had interaction with or are of interest to Citizenship and Immigration Canada or Canada Border Services Agency at a Canadian port of entry or within Canada. As such, FOSS remains the principal information system for immigration operations in Canada.

FOSS is used by all immigration personnel within Canada, including ports of entry, case processing centres, inland offices and specialized units such as the Case Management Branch, Query Response Centre, Social Insurance Registry, Immigration Health, Immigration Statistics, External Affairs Protocol, and Canadian consulates in the United States. In 2008, FOSS contained approximately 21.2 million client records and over 37.7 million document reference records.¹⁰

The principal functionality of FOSS includes:

- (A) Client Query: Search by name and date of birth or client identification number to view client history for a person appearing in person at a Canadian port of entry or inland office or subject to an application being processed within Canada for admission or to remain as a visitor, student, worker, permanent resident, refugee or citizen.
- (B) Status Entry: Input of new or additional information related to the client, such as the status of case processing, medical and security clearances and reports. Most
- (C) Document Creation: Data entry and printing of immigration documents at ports of entry, case processing centres and inland offices including Temporary Resident Permits, Study Permits, Work Permits, Confirmation of Permanent Residence, medical profiles and other documents and reports.

⁹ Library and Archives Canada, "Immigration Records (1925-35)", online:

<http://www.collectionscanada.gc.ca/databases/immigration-1925/index-e.html> (date accessed: May 7, 2011).

¹⁰ Government of Canada, Info Source, "Sources of Federal Government Information, 2008, Citizenship and Immigration Canada", online: <http://www.infosource.gc.ca/inst/imc/fed05-eng.asp> (date accessed: May 7, 2011).

- (D) Document Query: View and edit information on documents issued to clients, as well as lost, stolen and fraudulent documents by document number or client data.
- (E) Case Processing: Monitoring and recording information with respect to work in progress, decisions and appeals and enforcement actions for applicants and refugee claimants, such as security clearances, medical examinations, fulfillment of conditions and undertakings and other matters related to case processing.
- (F) Other Functions: Registration, statistics, quality assurance and records maintenance.

(ii) Relevance of FOSS to the Immigration Practitioner

Since FOSS is the principal operations support database for immigration in Canada, the immigration practitioner should understand how to access and interpret a client history on FOSS. This is a critical skill and provides the client with access to personal information that should be understood by the client and his or her counsel. With the ability to access and interpret a FOSS report, the practitioner is able to review remarks and status updates to determine what information has been received and what may be helpful for processing and to obtain a positive outcome. As such, FOSS records are a key element of your client's case.

(iii) Scope of FOSS Report

A typical FOSS report will contain the name and date of birth of the client, an identification number ("ID"), and a list of files, documents and events in chronological order from first to most recent.

The principal fields of data in a FOSS report include:

- (A) Client History: name, date of birth, identification number ("ID") and a list of files, documents and events in chronological order from first to most recent.
- (B) Personal Detail: name, date of birth, passport number, sex, country of birth, marital status, height, weight, photograph, fingerprints, eye colour, language preference, address, marks (i.e. tattoos, scars, etc.) and telephone.
- (C) Related Secondaries: persons related to the principal client, including family members, known associates, etc.
- (D) File Information: information specific to the client's file(s) including number, creation date, date charge-out date, last access date, date sent to archives and bring forward dates, by requestor.
- (E) Application Information: information specific to the client's application(s) including document number, file number, application category, fee payment status, date received, whether waiting for further information, location of file, whether approved in principal, and results of security, medical, criminality clearances and examination of dependant applicants.

- (F) Remarks: key information obtained during client examinations and interviews, application processing, file transfer, status enquiries, requirements to continue processing, specific concerns and counselling by Immigration Officers regarding compliance matters.
- (G) Work in Process: additional information about lines of business (i.e. types of applications in process), events such as file transfer, processing status, fee payments and remarks.
- (H) Client Address History: used to track clients for compliance and identification purposes. For example, if a person appears on a “hit list” based on a name and date of birth search, the Client Address History is one means of distinguishing among and identifying persons.

(iv) How to Read a FOSS Report (Acronyms)

We have attached an actual FOSS report with client identifiers removed as Exhibit “D”. Exhibit “D” also includes a 36-page list of acronyms most commonly used by Citizenship and Immigration Canada.¹¹

FOSS reports for an individual are accessed by entering name and date of birth or the Client ID created in a previous interaction between Citizenship and Immigration Canada (CIC) or Canada Border Services Agency (CBSA) and the person. Generally, the first screen on a FOSS report is the Client History. A person may have more than one Client ID, as a new client can be created on each interaction. Efforts are made to consolidate Client IDs to avoid confusion.

(b) Computer Assisted Immigration Processing System (CAIPS)

(i) Development and Uses of CAIPS

The Computer-Assisted Immigration Processing System is Citizenship and Immigration Canada’s automated system for processing applications outside Canada. Information is entered on CAIPS from application forms and supporting documentation submitted by applicants for temporary resident visas, study permits, work permits, travel documents, immigrant visas and other documents.

CAIPS started being used in some missions as a pilot project in the early 1980s. Another processing system, Stand Alone Immigration Reporting System (STAIRS), was also being used in other missions.¹² CAIPS won out. Prior to the development of CAIPS and STAIRS, there were other systems that have not been used since the 1990s.¹³

¹¹ Citizenship and Immigration Canada, “Acronymes les plus utilisés à Citoyenneté et Immigration Canada”. Another unofficial list of acronyms is available online: <http://immipedia.ca/Acronyms> (date accessed: May 11, 2011).

¹² See online: <http://www.caipsnotes.com/docs/IMTB.pdf> (date accessed: May 13, 2011).

¹³ Raymond Gabin, Program Manager, Case Processing Pilot – Ottawa, Citizenship and Immigration Canada by email dated May 13, 2011.

Prior to the development of databases and software to process visa applications, files were created and processed on paper. Some of the processes were included in CAIPS. For example, the Permanent Resident paper screening form was about 8 x 14 inches in size, and consisted of a number of pages of different lengths, separated by carbon dividers. The bottom sheet was 8 x 14, a middle one was about one third shorter and a top one shorter still. They were denoted T11, T12 and T13. CAIPS simply reproduced these forms with individual screens for Paper Screening (T11), Selection (T12) and Final Decision (T13). Notations on the T11 form were carbon copied onto T12 and T13, those on T12 onto T13, etc. This appears to explain why CAIPS includes references to the T11 screen, for example, in a guide about the paper screening stage in CAIPS.¹⁴

There is a CAIPS-FOSS Integration Module that facilitates the electronic transfer of CAIPS data to FOSS for processing of applications from within Canada and to provide real-time access to FOSS for CAIPS users in Canadian visa offices.¹⁵ Access to FOSS at visa offices is generally limited to read only, although it is possible to enter a “Watch For” on FOSS using CAIPS.

CAIPS manuals do exist for operators and managers to provide guidance on such specialized functions such as reporting and printing. However, there is no CAIPS training manual, *per se*. Instead, CAIPS training occurs on the job at Canadian visa offices. CAIPS has a limited capacity for client information. If information is updated, prior records are replaced and not retrievable. In addition, the quality and quantity of notes on a particular file varies and may contain acronyms unique to the local mission. As a result, there has been a concerted effort in recent years to use plain language in CAIPS notes.¹⁶

(ii) Relevance of CAIPS to Immigration Practitioner

Pending the implementation of the Global Case Management System (GCMS) and during any transition period, CAIPS will remain the database used to record information and process applications for Canadian visas around the world. Similar to FOSS, the ability to access and interpret CAIPS data is critical to being able to advise and represent a person with respect to an immigration application or an appeal of a decision by a Visa Officer.

(iii) Scope of CAIPS Report

Exhibit “E” contains an actual CAIPS report for an applicant for permanent residence being sponsored as the spouse of a Canadian citizen. It includes the case status, medical stage validity and assessment, summary of facts, interview notes, the decision of the Visa Officer and a copy of correspondence to the applicant stating the decision.

¹⁴ *Ibid.*

¹⁵ Citizenship and Immigration Canada, “Information Holdings: Institution-Specific Classes of Records”, online: <http://www.infosource.gc.ca/inst/imc/fed05-eng.asp> (date accessed: May 9, 2011).

¹⁶ Raymond Gabin, Program Manager, Case Processing Pilot – Ottawa, Citizenship and Immigration Canada by email dated May 10, 2011.

(iv) How to Read a CAIPS Report (Acronyms)

For a comprehensive but unofficial key to CAIPS codes, please see also Exhibit "E".¹⁷

(c) **Global Case Management System (GCMS)**

(i) Development and Uses of GCMS

The vision for GCMS is articulated in the Final Report of the November 2005 audit conducted on GCMS as a system under development:

The project has also served as a catalyst for business transformation. In identifying, defining and formalizing business requirements, the project has had to re-examine existing business processes and to develop consensus among departmental users. The result is a more consistent, standardized set of practices aimed at promoting greater uniformity, increased efficiency and improved client-centred service across both organizations.

CIC's business includes over 1.5 million client transactions a year, approximately two-thirds of which occur overseas in environments that can be characterized as challenging in terms of their complexity and the local infrastructure.

When completed, GCMS will support more than 7,000 users at CIC and the CBSA in some 125 points of service in Canada (offices, call centres, processing centres, citizenship courts and ports of entry) and more than 100 missions abroad.

GCMS is a critical element of a larger, client-centred service and business transformation vision that seeks to maximize the benefits associated with its citizenship and immigration programs in the years to come. By integrating the business functionality and information that now reside within more than a dozen of CIC's legacy systems built over the last three decades, the project aims to eliminate redundant data, improve the consistency and quality of that data and contribute to streamlining operations. It should also allow both CIC and the CBSA to further improve the delivery of their programs and services."¹⁸

The status of implementing GCMS is confirmed in a 2009-10 report:

GCMS is currently in the project implementation phase. GCMS was granted preliminary project approval by Treasury Board in 2001. In September 2004, it was successfully implemented for the Citizenship Program. The first

¹⁷ Online: Immipedia, "CAIPS Codes", online: http://immipedia.ca/CAIPS_Codes (date accessed: May 10, 2011).

¹⁸ Citizenship and Immigration Canada, "System-Under-Development Audit of the Global Case Management System, Final Report, November 2005", online: <http://www.cic.gc.ca/english/resources/audit/gcms.asp> (date accessed: May 7, 2011).

version of GCMS is currently being used to process more than 200,000 applications each year for Canadian citizenship and proof of citizenship.

Based on the results of independent reviews, GCMS underwent a project assessment, and a revised go-forward plan was developed with a reduced scope. In August 2008, Treasury Board granted approval to develop the next phase of GCMS, which focused on visa offices overseas where the majority of clients first seek CIC services.

An independent review completed in June 2009 confirmed that the project schedule is achievable, the technology is sound and the initiative is on track. Once fully implemented in March 2011, GCMS will provide a single, integrated processing capability for all citizenship and overseas immigration applications.

...

The GCMS project is within its approved budgetary estimate of \$387 million and deployed GCMS Release 2 (to its first international mission in June 2010) on schedule.¹⁹

(ii) Relevance of GCMS to Immigration Practitioner

GCMS will replace CAIPS as the system used at all Canadian visa offices. The method of file creation, data entry and uses are still being developed in GCMS. In CAIPS, the user first chooses which type of application is being created (e.g. Study Permit, Work Permit, Application for Permanent Residence), then assigns a principal applicant and dependents. In GCMS, the user first creates the clients (e.g. applicant and sponsor for family class applications) and third parties, such as paid or unpaid representatives, then assigns an application to the principal applicant. The amount of information which can be inputted is extremely large, but only a limited number of fields need to be complete to allow a file to be processed. For example, a principal applicant needs an address (dependents do not) to allow for a file to be assigned and processed for him or her, but the user can enter an exhaustive list of addresses and other information if it has been provided.²⁰

The advantage of GCMS approach is that, if the same client subsequently applies for another type of visa, the user simply retrieves the client information, updates it and assigns the new application. Overall, the client creation takes more time initially, but is extremely efficient with subsequent applications.

In GCMS, notes can be entered both under the client information and in the application itself. GCMS allows users to assign a tag to the notes. Some notes may

¹⁹ Treasury Board of Canada Secretariat, "Status Report on Major Crown / Transformational Projects", online: <http://www.tbs-sct.gc.ca/dpr-rmr/2009-2010/inst/imc/st-ts03-eng.asp> (date accessed: May 10, 2011).

²⁰ *Supra* note 13.

be general, others are about eligibility, medicals, etc. Notes are arranged in reverse chronological order, with the most recent appearing on top.

(iii) Scope of GCMS Report

GCMS generates Access to Information and Privacy (ATIP) and judicial review reports that are very large, with all of the information, including notes, in plain English. We have been advised that GCMS does not exempt or filter information as it generates reports.

(iv) How to Read a GCMS Report (Acronyms)

GCMS replaces the acronyms and codes used in FOSS and CAIPS with plain language. No code manuals are required. A demonstration of GCMS will be provided in our Workshop.

4. How to Access Information Held in CIC Databases

Having discussed the various database systems used by CIC, CBSA and other governmental agencies both domestically and abroad including FOSS, CAIPS, and GCMS, it is important to understand how an immigration practitioner can access information to effectively advise and represent clients.

Two federal statutes, the *Access to Information Act*²¹ and the *Privacy Act*,²² provide the framework for accessing personal information. This section will discuss these statutes, the differences in scope and procedure and provide practical tips on using them efficiently.

An immigration practitioner who understands the rights and procedures for accessing information under the Access to Information Act and the Privacy Act will be able to gather the necessary information from the government file, identify potential problems and reduce processing delays associated with outstanding information required to process an application.

(a) **Requests for Information under the Access to Information Act**

The Access to Information Act was introduced in 1983 in conjunction with the Privacy Act. The intent of the legislation was to allow access to any information, subject to certain exceptions, held by agencies of the Government of Canada. Individuals (the scope of such definition is addressed below) may apply for access to certain information, including but not limited to information regarding immigration matters prepared by CIC or the CBSA. Unless the requested information falls within the listed exceptions, the Access to Information Act requires the release of such information within specified time limits. The exemptions are set out in Sections 13 to 26 of the Access to Information Act and generally relate to individual privacy, commercial confidentiality, national security or policy grounds.

²¹ R.S.C. 1985, c.A-1, online: <http://laws-lois.justice.gc.ca/eng/acts/A-1/index.html> (date accessed: April 30, 2011).

²² R.S.C. 1985, c.P-21, online: <http://laws-lois.justice.gc.ca/eng/acts/P-21/index.html> (date accessed: April 30, 2011).

Section 4 of the Access to Information Act sets out the eligibility to request information:

4. (1) Subject to this Act, but notwithstanding any other Act of Parliament, every person who is

(a) a Canadian citizen, or

(b) a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act,

has a right to and shall, on request, be given access to any record under the control of a government institution.

Section 4 was extended by the *Access to Information Act Extension Order, No. 1*²³ (“**Extension Order**”) to broaden the scope of individuals eligible to utilize the Access to Information Act. This Extension Order states that:

The right to be given access under subsection 4(1) of the Access to Information Act to records under the control of a government institution is hereby extended to include all individuals who are present in Canada but who are not Canadian citizens or permanent residents within the meaning of the Immigration and Refugee Protection Act and all corporations that are present in Canada.

Effectively, Section 4 of the Access to Information Act and the Extension Order permits any individual or corporation present in Canada to make a request under the Access to Information Act. In addition, Canadian citizens and permanent residents have the right to make a request under the Access to Information Act from outside of Canada. However, an individual who is not a Canadian citizen or a permanent resident cannot make a request under the Access to Information Act from outside of Canada unless they have done so through a designated representative who is a Canadian citizen, Canadian permanent resident, or is physically present in Canada.²⁴

Practice Tip:

If requesting information regarding a client outside Canada, submit a request under the Access to Information Act, with written consent from your client and the \$5.00 application fee. Also provide written consent from any other person for whom information may be found in the records (i.e. spouse, adult children, bond person, etc.); as the ATIP office processing the request will have fewer exemptions to apply and be able to provide a fuller package and quicker response time.

Use CIC Form IMM 5475 “Authority to Release Personal Information to a Designated Individual” for requests to CIC & the CBSA under Access to Information Act or Privacy Act.

²³ Department of Justice: Access to Information Act, Extension Order, No. 1 SOR/89-207, online: <http://laws-lois.justice.gc.ca/eng/regulations/SOR-89-207/FullText.html> (date accessed: April 30, 2011).

²⁴ Citizenship and Immigration Canada has set up a website (which can be accessed at <http://www.cic.gc.ca/english/departement/atip/faq.asp>) that contains frequently asked questions concerning access to information and privacy.

Both CIC and the CBSA have established internal processes and procedures for handling requests under the Access to Information Act:

- Information on the CIC Access to Information and Privacy Department (“**CIC ATIP**”) is available online at: <http://www.cic.gc.ca/english/department/atip>.
- CIC ATIP has developed a custom form for requests made through CIC ATIP, which is available online at: <http://www.cic.gc.ca/english/pdf/kits/forms/IMM5563B.pdf>.
- Similar information regarding the Access to Information Act and the Privacy Act for the CBSA is available online at: <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/pia-efvp/atip-aiprp/> (“**CBSA ATIP**”).
- The CBSA ATIP utilizes a request for information form prepared by the Treasury Board of Canada Secretariat, which is available online at: <http://www.tbs-sct.gc.ca/tbsf-fsct/350-58-eng.asp>. However, rather than using the Treasury Board form, it is highly recommended that the practitioner uses the CIC form IMM5563 as this form is compatible with the CBSA holdings. It is less complicated than writing a letter and easier to interpret by the ATIP office.

For each agency governed by the Access to Information Act, a request for information held by that agency must be made by the requestor or their designated representative on either the designated form, or in writing, specifying the information sought by the requestor and enclosing a fee of \$5.00 which grants the requestor five (5) hours worth of research and compilation of data for their request. However, since the files are identified and readily available, it would be extremely unlikely for a client immigration file to warrant a search fee.

The Access to Information and Personal Information Request Form (IMM 5563) is designed to permit requests for FOSS notes, CAIPS notes, or a copy of the entire visa file. The following practical tips have been provided for the benefit of practitioners:

Pursuant to Section 7 of the Access to Information Act, requests for information must receive a response from the appropriate agency within 30 days. However, the time period may be extended in situations where the volume of information is excessive, or search requirements or third party consultations make it necessary. In such circumstances, the requestor must be notified of the extension and the right to make a complaint to the Information Commissioner. If the extension is greater than 30 days, subsection 9(2) of the Access to Information Act requires the head of the institution to inform the Information Commissioner.²⁵

²⁵ *Ibid.*

Practice Tip:

If you have submitted a request to CIC or the CBSA for information following the procedures outlined on the respective CIC ATIP or CBSA ATIP websites and have not received an acknowledgement or response within thirty (30) days, be proactive in contacting the respective ATIP department to seek a status update. Both the Access to Information Act and Privacy Act mandate a response time of thirty (30) days, subject to certain exceptions.

According to the Citizenship and Immigration Canada Access to Information Act, Privacy Act Annual Report 2009–2010, available online²⁶, during the reporting period being April 1, 2009 to March 31, 2010, the ATIP received 16,647 requests under the Access to Information Act. ATIP was able to achieve an approximately 95% compliance rate, with 9,763 requests processed in 30 days or less, 5,455 requests processed within 31 to 60 days, 1,157 processed within 61 to 120 days, and 181 requests requiring 121 days or more.

(b) Requests for Information under the *Privacy Act*. Advantages and Disadvantages

The Privacy Act was introduced in 1983 in conjunction with the Access to Information Act. From a practical perspective, utilizing the Privacy Act to access information is very similar to the Access to Information Act, and should result in the same material being obtained for your client. Both CIC ATIP and CBSA ATIP have been set up to handle requests for information under both acts, and the websites for each office contain helpful information relevant to applications under both the Access to Information Act and Privacy Act. However, immigration practitioners should be aware of the practical differences between these statutes.

First, it should be noted that while the Access to Information Act imposes a fee of \$5.00 for each access request, requests made under the Privacy Act are free of charge. The Privacy Act mandates that all eligible individuals have the ability to review information held about them by government agencies and be granted the ability to submit corrections if necessary. Eligible individuals and the rights granted to them are set out in Section 12 of the Privacy Act, which states:

12. (1) Subject to this Act, every individual who is a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act has a right to and shall, on request, be given access to

(a) any personal information about the individual contained in a personal information bank; and

(b) any other personal information about the individual under the control of a government institution with respect to which the individual is able to provide sufficiently specific information on the location of the information as to render it reasonably retrievable by the government institution.

²⁶ Online: Citizenship and Immigration Canada Access to Information Act and Privacy Act Annual Report 2009-2010 <http://www.cic.gc.ca/english/resources/publications/privacy/atip2009-10.asp> (date accessed: May 8, 2011)

Much like the Access to Information Act, Section 12(1) was expanded by order, being the *Privacy Act Extension Order, No. 2* (SOR/89-206) which states that:

(2) The right to be given access to personal information under subsection 12(1) of the Privacy Act is hereby extended to include all individuals present in Canada to whom that right has not been extended previously.

When dealing with CIC or CBSA, an individual or his or her representative can use the same form, being the Access to Information and Personal Information Request Form (IMM 5563), to submit the details of the request under the Privacy Act.²⁷

As an immigration practitioner, one key difference to keep in mind between the Access to Information Act and the Privacy Act is the eligibility for access to information. While both acts permit Canadian citizens and permanent residents to request information while inside or outside Canada, and both permit any individual present in Canada to make a request, only the Access to Information Act permits an individual outside of Canada to appoint a representative in Canada (or an eligible party outside of Canada) and provide written consent for an access request made on their behalf. This is distinguished from the Privacy Act, where individuals who are not citizens or permanent residents and are outside of Canada do not qualify to obtain information held about them in government records. For this reason, when dealing with overseas visa files or CAIPS notes for clients physically outside of Canada, it is important to remember that requests should be made under the Access to Information Act, which requires the \$5.00 application fee.

Between April 1, 2009, and March 31, 2010, CIC received 4,948 requests under the Privacy Act, of which 3,336 were completed in 30 days or less. It is interesting to note that of these 4,948 requests, only 1,587 were fully disclosed, with the rest having some information redacted or held back due to exemptions under the Privacy Act. The statistics indicate that individuals and their representatives are making requests for information far more often under the Access to Information Act versus the Privacy Act.

²⁷ The form is available online at: <http://www.tbs-sct.gc.ca/tbsf-fsct/350-58-eng.asp>.

Practice Tips:²⁸

- Always reference the file number and/or the Client ID as well as the location of the file.
- CBSA has two Managers with full delegation under both Acts and six Team Leaders with delegation under the Privacy Act. Processing times are driven by this allocation of resources. (2 officers to process requests under the Access to Information Act vs. 6 officers for the Privacy Act).
- Only request what you need. If you need only a particular document, then only ask for that (difference between a few pages vs. volumes to process).
- When making a subsequent request, only ask for the new information since your last request.
- There are limitations on access profiles within CBSA. It may be more expedient to request CAIPS and GCMS reports from CIC.
- CBSA and CIC do not accept Access to Information requests made by email or by fax, as the fee is not provided.
- Privacy requests will be accepted by fax or email, although these are not recognized as secure ways of transmitting personal information unless encrypted.
- For additional questions, CBSA has a generic ATIP email box on its website.²⁹

(c) Appealing Results Under the Access to Information Act or Privacy Act**(i) Complaint and Appeal Process – Access to Information Act**

The Access to Information Act and Privacy Act each contain provisions dealing with making a complaint concerning how a request under the application legislation was handled, and provide a framework and timeline for appealing the refusal by a government agency for the release of information sought under one of the acts.

Complaints regarding access under the Access to Information Act must be made to the Office of the Information Commissioner of Canada (“**OIC**”). Section 30 of the Access to Information Act outlines the types of persons that can register a complaint, being the following: (a) persons who have been refused access to a record requested under the Access to Information Act or a part thereof; (b) persons who have been required to pay an amount that they consider unreasonable; (c) persons who have requested access to records in respect of which time limits have been extended pursuant

²⁸ Alain Belleville, Manager, Access to Information and Privacy (ATIP) Division, Canada Border Services Agency, via email dated May 11, 2011.

²⁹ ATIP-AIPRP@cbsa-asfc.gc.ca. Online: <http://www.tbs-sct.gc.ca/dpr-rmr/2009-2010/inst/imc/st-ts03-eng.asp> (date accessed: May 12, 2011).

to section 9 where they consider the extension unreasonable; (d) persons who have not been given access to a record or a part thereof in the official language requested by the person under subsection 12(2), or have not been given access in that language within a period of time that they consider appropriate; (d.1) persons who have not been given access to a record or a part thereof in an alternative format pursuant to a request made under subsection 12(3), or have not been given such access within a period of time that they consider appropriate; (e) any complaint in respect of any publication or bulletin referred to in section 5; or (f) any complaint in respect of any other matter relating to requesting or obtaining access to records under the Access to Information Act.

Per Section 31 of the Access to Information Act, complaints relating to refusals to the release of information under the Access to Information Act must be made within sixty (60) days of the requestor receiving notice of the refusal, or when they are given access to all or part of the record or, in any other case, they become aware that grounds for the complaint exist. According to the statistics published by CIC for the reporting year 2009-2010, "eighty-seven complaint investigations were completed during the reporting period. Of these, 61 were abandoned, discontinued or deemed to be unfounded. A further 25 complaints were resolved to the satisfaction of the requester. Only one complaint concerning allegations of unreasonable delay was considered to be well founded by the OIC."³⁰

(ii) Complaint and Appeal Process – Privacy Act

Complaints regarding access under the Privacy Act must be made to the Office of the Privacy Commissioner of Canada ("**OPC**"). Section 29 of the Privacy Act establishes the criteria for complaint, being (a) individuals who allege that personal information about themselves held by a government institution has been used or disclosed otherwise than in accordance with section 7 or 8; (b) individuals who have been refused access to personal information requested under subsection 12(1); (c) individuals who allege that they are not being accorded the rights to which they are entitled under subsection 12(2) or that corrections of personal information requested under paragraph 12(2)(a) are being refused without justification; (d) individuals who have requested access to personal information in respect of which a time limit has been extended pursuant to section 15 where they consider the extension unreasonable; (e) individuals who have not been given access to personal information in the official language requested by the individuals under subsection 17(2); (e.1) individuals who have not been given access to personal information in an alternative format pursuant to a request made under subsection 17(3); (f) individuals who have been required to pay a fee that they consider inappropriate; (g) in respect of the index referred to in subsection 11(1); or (h) in respect of any other matter relating to (i) the collection, retention or disposal of personal information by a government institution, (ii) the use or disclosure of personal information under the control of a government institution, or (iii) requesting or obtaining access under subsection 12(1) to personal information.

Unlike the Access to Information Act, the Privacy Act does not expressly limit the time period for complaints to the Office of the Privacy Commissioner. According to the statistics published by CIC for the reporting year 2009-2010, "twenty-four complaint investigations were completed during the reporting period. Of these, 15 were deemed not well founded or discontinued, while 3 complaints were resolved to the satisfaction of the requester and 4 were settled during the

³⁰ Online: Citizenship and Immigration Canada Access to Information Act and Privacy Act Annual Report 2009-2010 <http://www.cic.gc.ca/english/resources/publications/privacy/atip2009-10.asp> (date accessed: May 8, 2011)

investigations. Only 2 complaints concerning allegations of unreasonable delay were considered to be well founded by the OPC.”³¹

(iii) Appeals of Complaints to the Federal Court of Appeal

Both the Access to Information Act and the Privacy Act expressly permit an applicant to apply to the Federal Court to review a matter, provided that matter was reviewed through the proper complaint channels outlined above. The limitation period under both acts is forty-five (45) days from the date that the complainant received a report from either the OIC or OPC outlining the findings of the office’s review of the complaint.

In the CIC reporting year 2009-2010, no appeals were filed under the Access to Information Act or Privacy Act based on a complaint made regarding CIC’s refusal to disclose certain information.³² CBSA’s 2008-1009 Annual Report (being the most recent statistics available) also indicates that there were no access to information appeals to the Federal Courts.³³

5. Professional Ethics with Respect to Immigration Information

Immigration lawyers are able to provide the benefit of solicitor-client privilege with respect to client information. Licensed barristers and solicitors are also subject to rules and codes of professional conduct with respect to personal information. Such duties include the duty of confidentiality and competence in dealing with confidential information.

To be a competent immigration practitioner, one should definitely have the ability and practice of obtaining immigration records with respect to clients. Otherwise, the practitioner may not have accessed key information related to a client, which in some cases could constitute negligence.

Section 4 of the Access to Information Act, which prohibits a person who is not a Canadian citizen or a permanent resident from making a request from outside of Canada unless the request is made through a designated representative who is a Canadian citizen, Canadian permanent resident, or is physically present in Canada.³⁴ Those practitioners who make access requests in circumvention of this rule are clearly in breach of the law and could seriously compromise their clients’ interests. Further, a Canadian citizen or permanent resident who makes request on behalf of an unauthorized party would clearly be acting contrary to the spirit and intent of the Access to Information Act.

6. Conclusions

GCMS is a critical element of a larger, client-centred service and business transformation with the objective of maximizing the benefits of citizenship and immigration programs by integrating business functions and enhancing the quality of data and enabling the use of progressive technologies such as biometrics. This is a significant transformation intended to ensure data integrity and the protection of sensitive information while promoting uniformity, efficiency and

³¹ Ibid.

³² Ibid.

³³ Online: Canada Border Services Agency Access to Information Act and Privacy Act Annual Report 2008-2009 http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/pia-efvp/aiapa_laiprp_20082009-eng.html (date accessed: May 8, 2011)

³⁴ Frequently asked questions concerning access to information and privacy issues are provided by Citizenship and Immigration Canada online: <http://www.cic.gc.ca/english/department/atip/faq.asp> (date accessed: May 12, 2011).

client service in both organizations. As GCMS is implemented as the global platform for Canadian immigration services, the immigration practitioner will be challenged to adapt to its structure, procedures, risks and benefits in order to effectively advise and represent clients.

Accessing information from FOSS, CAIPS and GCMS is a key tool for the immigration practitioner to understand a client's case and to effectively advocate within the Canadian immigration system. To that end, we have identified the procedures for access, complaints and appeals under the Privacy Act and Access to Information Act, with the benefit of practice tips received from the experts in the area. Hopefully the global implementation of GCMS will result in more efficient development and handling of Canadian immigration data.

Exhibits

See attached Exhibits "A" – "E".