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The Rise of Body-Worn Camera Programs in Canada and the United States: An Extension of the Surveillant Assemblage

by
Thomas Bud

A Thesis
Submitted to the Faculty of Graduate Studies
through the Department of Sociology, Anthropology, and Criminology
in Partial Fulfillment of the Requirements for
the Degree of Master of Arts
at the University of Windsor

Windsor, Ontario, Canada
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**The Rise of Body-Worn Camera Programs in Canada and the United States: An Extension
of the Surveillant Assemblage**

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AUTHOR'S DECLARATION OF ORIGINALITY

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ABSTRACT

This thesis examines the extent to which body-worn cameras programs in Canada and the U.S. befit the notion of counter-law. The research is theoretically based on Ericson's (2007a) framework of counter-law and the surveillant assemblage. The results indicate that body-worn camera programs can be considered an extension of the existing surveillant assemblage. In the U.S., numerous legislative amendments exempted body-worn cameras from certain legal requirements and thus facilitated their integration into existing surveillance networks. In Canada, legal amendments were not enacted through counter-law; nevertheless, the broadness and inconsistency of existing legislation allowed body-worn camera programs to become part of the surveillant assemblage. This thesis also contributes to refinements of counter-law I and the surveillant assemblage by analyzing variations in how these concepts apply to localized contexts of uncertainty.

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1. INTRODUCTION

The events that unfolded on August 9, 2014 in Ferguson, Missouri and July 17, 2014 in New York City involved extreme police brutality and misconduct (see Lieb and Zagier, 2014; Murray et al., 2014). Following these events, other videos of police misconduct have flooded the Internet that further highlight the extent of this problem. There are numerous incidents of police misconduct that have occurred in Canadian cities too (see Edwards, 2011; Hasham, 2013; Woodward, 2014). Two of the most infamous cases are the death of Robert Dziekanski in 2007 at the hands of RCMP officers and the shooting of Sammy Yatim in 2013 by a Toronto police officer (see Keller, 2015; Rogan, 2014). These high profile incidents of police brutality have created a public uproar for justice and a demand to increase police accountability. The Sammy Yatim incident sparked a nationwide push for body-worn cameras (Abid, 2014). These cameras are being proposed as the technology that will significantly enhance police transparency and accountability. These cameras are miniature audio and video recording devices that allow officers to record their daily interactions with citizens (Mateescu, Rosenblat and Boyd, 2015). Pilot projects are emerging at a rapid pace in several Canadian cities. For a pilot project, a small number of police officers from a given police service are equipped with body-worn cameras. The proposed aim of these projects is to test the effectiveness of body-worn cameras to monitor police officer conduct (Burgmann, 2015; Gillis, 2014; Kotsis, 2014; Mahoney and Hui, 2014; Nickel, 2015) Previous projects in the U.S. have claimed success by showing a drop in police misconduct and citizen complaints against police (Carroll, 2014).

There are enormous privacy concerns regarding the implementation of body-worn cameras. In Canadian police services, such as the Toronto Police Service, police officers would activate their body-worn cameras every time they respond to a call for service or when

investigating an incident (Mehta, 2015). These recordings are to be safely stored in a database and used if a case of misconduct should arise. These body-worn cameras may also be used to assist in police investigations such that the recordings will become evidence in court proceedings (Derosa, 2015). The mobility of the body-worn camera makes the acquisition of consent to be recorded from citizens very challenging because, unlike CCTV cameras, body-worn cameras are attached to the uniform of a police officer.

The widely touted aim of body-worn cameras is to increase police accountability and transparency by recording the conduct of a police officer who wears it (see Lorinc, 2014; Mehta, 2015; Van Rassel, 2013). However, given that the cameras are clipped onto the police officer uniform and pointed outwards, they also allow for the mass surveillance of the citizenry with whom the police officers are interacting on a daily basis. The technological potential is clearly present to surveil the public indiscriminately. Body-worn cameras can be considered a part of the surveillant assemblage. Ericson (2007a) explains that the surveillant assemblage may extend beyond the traditional standards of law that are considered obstacles to strategies of pre-emption. With the current lack of specific privacy legislation in Canada regarding body-worn cameras, the information acquired through such recordings may exceed the original scope of many pilot projects (see for example Monahan and Mokos, 2013).

To understand the emergence and nature of police body-worn cameras as well as their potential to extend a blanket of surveillance on the public and further extend the surveillant assemblage, this thesis used Ericson's (2007a) ideas of the precautionary logic and counter-law. The precautionary logic can be understood as the logic of uncertainty. It confronts the limits of science and technology as producers of knowledge regarding frequency and severity of risks. Science and technology become framed as producers of uncertainty with catastrophic potential.

The use of the precautionary logic leads to the eventual criminalization of actions through counter-law (Ericson, 2007a: 22). There are two kinds of counter-law. Counter-law I entails the formation of new laws against existing law. New laws are created and new uses of existing law are invented in order to eliminate or erode traditional principles and procedures of criminal law that act as obstacles to the pre-emption of imagined sources of harm (Ericson 2007a: 24). Counter-law II is the idea of surveillant assemblages (see also Haggerty and Ericson, 2000). The surveillant assemblage entails a loose collection of varying forms of information (Wilkinson and Lippert, 2012: 312). Essentially, the surveillant assemblage operates by abstracting human bodies from their settings and categorizing them into different information flows (Haggerty and Ericson, 2000: 606). These flows of information are then reorganized into distinct ‘data doubles’ (Haggerty and Ericson, 2000: 606). The resulting ‘data doubles’ can now be targeted for various purposes of intervention (Haggerty and Ericson, 2000: 606). Furthermore, Ericson (2007a: 24) explains that new elements are constantly being incorporated into the existing surveillant assemblage that in many cases result in the elimination of traditional principles of criminal law that block pre-emptive measures. This thesis was consequently guided by two research questions: First, how and to what extent are police body-worn camera programs consistent with a precautionary logic as well as with counter-law I and II? The mobility and surveillance potential of body-worn cameras bring about unique legal and social challenges unseen before with other video surveillance devices. Guided by this initial question, this thesis also asked: to what extent does the model of counter-law I and II need to be refined to account for body-worn camera programs and the unique challenges they pose?

2. LITERATURE REVIEW: RESEARCH ON BODY-WORN CAMERAS

Police body-worn cameras have recently entered the forefront of policing in North America; however, the current criminological literature lacks a coherent and in depth investigation of body-worn camera programs. Although there are existing studies that address the use of body-worn cameras, the majority of these studies focus on the effectiveness of these devices in reducing complaints against police. An experiment conducted in Rialto, California had 54 officers randomly assigned to wear body-worn cameras (or not) based on the officer's shift. The experiment lasted 12 months and the officers equipped with cameras showed a 59 percent reduction in use of force incidents and an 87.5 percent reduction in citizen complaints when compared to estimates for all officers prior to implementation (Barak, Farrar and Sutherland, 2014). While this experiment had clearly outlined control and experimental groups and had a randomized assignment of body-worn cameras, the drastic reductions in use of force and citizen complaints make it questionable whether or not all possible variables were considered. Aside from the questionable results, there is a very clear conflict of interest in the experiment. A co-author of the study, W. A. Farrar, is the police chief for the Rialto Police Department (Carroll, 2013). Given this, the results may have been biased towards the effectiveness of the body-worn cameras in this particular experiment.

Another experiment conducted in Mesa, Arizona revealed similar results. The Mesa Police Department studied body-worn cameras for a one-year period and compared 50 officers equipped with cameras to 50 other officers who did not have cameras. Their evaluation revealed a 48 percent reduction in citizen complaints and 75 percent reduction in use of force complaints against officers equipped with these cameras (Ready and Young, 2015). These reductions in complaints are argued to be due to officers being more mindful and cautious with their actions

when body-worn cameras are engaged. Officers are more likely to follow legal and constitutional standards of conduct when a body-worn camera is present (Harris, 2010; Jennings, Fridell and Lynch, 2014; Ready and Young, 2015). While these two studies are noteworthy, they have relied exclusively on randomized control trials focused on the effectiveness of body-worn cameras in reducing complaints against police. These studies provide an inadequate understanding of the greater implications of body-worn cameras programs within criminological theory. This research project intends to address these gaps and effectively situate body-worn camera programs within the larger counter-law framework and the surveillant assemblage.

Aside from previously discussed benefits of body-worn cameras to reduce complaints, these devices could reduce police exposure to litigation. Police officers equipped with body-worn cameras are claimed to potentially save a police department significant amount of resources on civil law suit damage payouts and legal costs (Ramirez, 2014). However, these claims have not been backed up by detailed reports of the costs involved. While body-worn cameras have the potential to assist in separating legitimate from meritless complaints, (see Roy, 2014), there is no research evidence of the benefits of body-worn cameras as a resource saving tool. Nevertheless, police departments across North America are rapidly initiating pilot projects despite the inconclusive research (Lorinc, 2014). While the widespread deployment of these cameras in the face of inconclusive research is problematic on its own, existing research is inadequate in conceptually framing body-worn camera programs as a resource saving tool. This research responds to this gap by examining how body-worn camera programs can be considered a type of precautionary response to recent police brutality incidents.

While the proposed aim of body-worn cameras is to increase police accountability and transparency, these devices may also be used for the collection of video evidence unrelated to

police misconduct incidents (Victoria Police Service, 2010). Although the usefulness of these cameras in evidence collection has not yet been conclusively demonstrated, there are a few isolated cases where they provided enhanced evidence useful during trials. For example, evidence gathered through the use of body-worn cameras at domestic violence incidents have been demonstrated to being useful in supporting witnesses through the court process in the UK (see Goodall, 2007). Although these cameras may provide supplemental information for legal cases (see also Fouche, 2014), it is unclear whether or not this information may be useful in all types of cases. The study conducted in the UK aimed to specifically test the effectiveness of body-worn cameras in the collection of evidence (Goodall, 2007). However, absent in this study is how the evidence that is collected may also be used for surveillance purposes and to monitor the citizenry. As an evidence gathering tool, body-worn cameras may record information that extends beyond that which may be useful for court trials. This research will address such gaps by examining how the collection of evidence through body-worn cameras may lead to the extension of the surveillant assemblage.

While the majority of the existing projects examined the overall effectiveness of body-worn cameras, Brucato (2015) attempts to conceptualize these devices in existing surveillance theory as a type of counter-surveillance technology. With the increasing of citizen recordings of police behaviour, these devices attempt to nullify citizen recordings by favouring the officer's point of view through the use of body-worn cameras. Brucato (2015) explains that police agencies are adopting these devices with the idea of protecting officers from frivolous complaints. While Brucato (2015) problematizes the presumed objectivity of body-worn camera recordings, he does not address that these devices may also be used to surveill the citizenry for

purposes of gathering information. This research attempts to bridge this gap by conceptualizing body-worn cameras as a new police surveillance tool part of the existing surveillant assemblage.

Aside from concerns for citizen surveillance, the adoption of body-worn camera programs creates numerous legal implications that remain inadequately addressed in existing research. Officers equipped with these cameras have the capability to record the inside of private residences, which in certain contexts may constitute an invasion of privacy at an intimate level (Ramirez, 2014; Stanley, 2015). In the U.S., numerous state legislatures enacted new legislation to regulate the use of body-worn cameras as a response to these concerns. Parts of these legislations intended to exempt body-worn camera footage from disclosure requirements within existing public records legislation (Newell, 2016). While public access to body-worn camera recordings is an important aspect of increasing police transparency, public disclosure of camera footage may jeopardize individual privacy rights. As a result, these exemptions become largely justified by the fact that they are intended to protect individual privacy rights (Newell, 2016). Despite such justifications, existing literature neglects to address the larger implications of these exemptions to existing standards of law. This research will examine how such exemptions facilitate the use of body-worn cameras as a new surveillance device through the criminalizing process of counter-law.

Body-worn cameras are being implemented at an alarming rate both in Canada and the U.S. whilst legislation on their use is either lagging behind or simply nonexistent (see Lorinc, 2014). Aside from the focus of body-worn cameras on creating better accountability and transparency of police interactions with the public, these cameras have the potential for other purposes that the current literature does not address and of which the public seem unaware. The lack of adequate legislation allows for the possibility of body-worn cameras to be moulded into a

new police surveillance device through function creep. Omitted from existing research is how the incoherence of existing privacy legislation facilitates the use of body-worn cameras further than their initially intended purpose. Existing research is ripe with the benefits of body-worn cameras; however, this is inadequate to understand the much larger implications of body-worn camera programs within counter-law and the surveillant assemblage (see Jennings, Fridell and Lynch, 2014; Miller et al., 2014).

The aim of this thesis was therefore to examine and critically analyze the legal and discursive frameworks that underlie the implementation of police body-worn camera programs through a counter-law and precautionary logic approach as well as to determine how and to what extent body-worn camera programs reflect Ericson's (2007a) counter-law framework and logic of uncertainty. Furthermore, the numerous privacy concerns involved with the use of body-worn cameras require careful examination in relation to Ericson's (2007a) counter-law framework.

3. THEORETICAL FRAMEWORK: ERICSON'S COUNTER-LAW REGIME

There has been an expanding shift in recent criminological literature towards examination and analysis of risk (see Goold, Loader and Thumala, 2010; Lentzos and Rose, 2009; O'Malley, 2002). The obsession with the predictability of risks and dangers through risk management techniques has become the centre point of the neoliberal risk society. Individuals, organizations, and environments are sorted into different categories that fit with the purpose of the institution that desires their increasing predictability (Ericson and Haggerty, 1997). Pre-emptive notions are apparent in anticipatory endeavours and actuarial predictions that are focused on minimizing loss (Zedner, 2007). As a result, current criminological inquiries have been entirely refocused, shifting away from the causes of crime and their prevention towards pre-emption (Zedner, 2007).

The notion of precautionary logic is central to Ericson's (2007a) notion of uncertainty. The focus of the precautionary principle is on uncertainties that have no calculable price, such as catastrophes. The idea of the precautionary logic has moved beyond the calculable loss prevention through risk management techniques (Ericson, 2007a). According to Lyon (2003), in the aftermath of the 9/11 terrorist attacks, suspicion became commonplace. The aftermath was marked by a time of crisis that generated extraordinary measures of pre-emption that relied on public feelings of insecurity and uncertainty. These measures go beyond the limits of the traditional principles of law and as a result risky populations become criminalized based on actuarial knowledge of potential harms. Risky populations are those individuals who are predicted, based on actuarial knowledge, to have the highest likelihood of being involved in problematic activities or behaviours (see Ericson, 2007a). In the aftermath of the 9/11 terrorist attacks, individuals that befit the descriptions of a terrorist were detained and interrogated simply on the basis of actuarial knowledge that they could be involved in terrorist activities (see Lyon, 2003). Nevertheless, these extraordinary responses are justified by the precautionary logic (Ericson, 2007a).

Risky populations are actively criminalized through applications of counter-law. Criminalization through counter-law I has occurred in numerous cases (see Ericson, 2007a; Ericson, 2007b; Levi, 2009). Counter-law I entails the creation of laws against law. New laws are created and new uses of existing laws are developed to eliminate traditionally enshrined principles, standards, and procedures of criminal law that act as obstacles for the effective pre-emption of imagined harms (Ericson, 2007a). With the application of criminalization through counter-law I, every imaginable sources of harm are reconceptualized as criminal acts. The counter-law regime is effectively designed to cast the net as widely as possible, identify the

suitable enemies, abandon any thought about false identification, eliminate any pretense of due process and ultimately to create summary justice through incapacitation, torture and elimination (Ericson, 2007a).

Part of the larger theoretical framework of counter-law, the surveillant assemblage, or counter-law II, is very closely interconnected with counter-law I (see Haggerty and Ericson, 2000). The surveillant assemblage operates by means of absorbing individuals from their contextual settings and then separating them into different categories. These categories are then sorted into 'data doubles', which become the targets of intervention (Haggerty and Ericson, 2000). Wilkinson and Lippert (2012: 312) refer to the surveillant assemblage as a loose collection of varying forms of information that temporarily converge to work together. As a visualizing device, the surveillant assemblage integrates various types of information about an individual's body and renders it more mobile and comparable (Haggerty and Ericson, 2000). Ultimately, the information that is gathered through the different flows of the surveillant assemblage becomes scrutinized with the purpose of creating different strategies for the governance and control of the human population (Haggerty and Ericson, 2000). As part of counter-law II, Ericson (2007a) explains that new elements are constantly being integrated into the existing surveillant assemblage that subsequently also eliminate traditional standards and procedures of criminal law that act as barriers to measures of pre-emption (Ericson, 2007a).

Contemporary techniques of surveillance have moved beyond the Foucaultian explanation of a disciplinary function of surveillance towards a security function (see Foucault, 1977). Apparatuses of discipline operate through methods of prevention, corrections as well as enforcement. Apparatuses of security on the other hand operate through varying thresholds of tolerance. As a result, security surveillance is aimed at the measurement at a distance of objects

and events to identify what is beyond a specified tolerance threshold (Deukmedjian, 2013). Ericson's (2007a) logic of uncertainty operates within neoliberal social imaginaries that heavily rely on conceptualizations of risk and the application of the precautionary logic. Given the dominance of risk taking over risk aversion in the neoliberal risk society today, Ericson's (2007a) counter-law regime is beyond the disciplinary function of surveillance, with the focus being on security through efforts of pre-emption by means of criminalization through counter-law.

There is an increasing convergence of discrete systems of surveillance and the past two decades are marked by an exponential proliferation of information and data gathering techniques (Hier, 2003). The notion of the surveillant assemblage marks the movement away from panoptic to post-panoptic systems of surveillance in which social control becomes deterritorialized (Bogard, 2006: 97). Within the post-panoptic era, CCTV surveillance for example loses its deterrent effect and instead becomes conceptualized as part of the surveillant assemblage (see Lippert, 2009). However, the criminalization process advanced by the surveillant assemblage encounters various forms of resistance. With the abundance of visual information due to the prevalence of CCTV surveillance, there are increasing levels of resistance from policing agents due to heightened levels of workload (see Wilkinson and Lippert, 2012). Resistance may take the form of technical, organizational, and social processes that consequentially hinder the movement of visual information through the police institution (Wilkinson and Lippert, 2012: 313). Technical limitations and the reliance on human labour leads to only a select few CCTV images becoming targets of intervention by the police institution, while filtering out the remaining majority (Wilkinson and Lippert, 2012: 324). However, resistance of the kind mentioned above will be thwarted through technological advancement enabled by the surveillant assemblage.

Increasing levels of technological sophistication, such as real time video analysis, will reduce dependence on human labour and ultimately overcome the resistance to new surveillance systems (see Wilkinson and Lippert, 2012: 320).

The notion of counter-law I and the surveillant assemblage have been refined numerous times since their initial conceptualization by Ericson (2007a) and Ericson and Haggerty (2000). Although Ericson (2007a) effectively conceptualized the counter-law framework within realms of national, social, corporate and domestic securities, new developments are constantly arising that incorporate varying applications of counter-law. Ericson (2007a: 208) points out that there is considerable variation across applications of counter-law and the surveillant assemblage dependent on the localized politics of uncertainty. His book is intended to illustrate areas that most effectively exemplify the overall presence of the counter-law regime. However, refinements to the counter-law framework are needed to account for these variations.

There are numerous refinements to the counter-law framework that have been put forward by scholars. Their intent was to exemplify variations across the theoretical application of counter-law. Lippert (2009) has refined the counter-law regime regarding CCTV camera configurations and their relationship with law. With an increasingly heavy reliance on CCTV signage, CCTV cameras lose their deterrent and panoptic effects and instead become part of the surveillant assemblage. CCTV signs become just as important as the cameras themselves because they expose the citizenry to a political subjectification through the surveillant assemblage.

Ericson (2007a) conceptualizes the function of counter-law I as a type of criminalizing force. The enactment of new laws erodes certain standards of law and ultimately criminalize a certain segments of the population or a type of activity. However, Levi (2009) further refined

this criminalizing force of counter-law with its application in the Gang Congregation Ordinance in Chicago during the 1990s to the counter-law regime. This Ordinance intended to criminalize certain perceived threats by expanding the interpretive and definitional limits of ‘harmful’ conduct. However, these laws were intentionally created to be very broad (Levi, 2009: 133). This inherent broadness exemplifies Ericson’s (2007a) counter-law framework very effectively because it shows how the Gang Ordinance intended to cast the net as widely as possible and to identify all the suitable enemies.

More recently, Chase (2012) refined the counter-law framework with its application in Canada’s peace bond regime. In Canadian law, peace bonds are orders put forward by a court that obligate a person to be on good behaviour for a predetermined amount of time. For the duration of the peace bond, the individual cannot be charged with other criminal offences (Chase, 2012). Although peace bonds do not put forward a criminalizing process, they ultimately illustrate tenets of Ericson’s (2007a) counter-law framework through their rampant erosions of due process by reducing the criminal burden of proof of “beyond a reasonable doubt”. Chase (2012) exemplifies that the peace bond program befits the counter-law framework because it allows for exceptions to take hold that ultimately erode traditional standards of law. As such, Chase (2012) illustrates that counter-law does not necessarily require a criminalizing force. Exceptions to traditional legal standards regarding peace bonds nevertheless exemplify the presence of counter-law.

By incorporating the understanding of the precautionary logic and counter-law, this thesis critically examined the extent of the presence of the precautionary logic and a counter-law regime within the development and subsequent use of police body-worn cameras by North American police. Given the unique aspects and variations within body-worn camera programs,

this thesis also looked at how and to what extent counter-law I and II are concepts that need to be refined in relation to police body-worn camera programs.

4. METHODOLOGY AND DATA SOURCES

To understand the discursive frameworks regarding body-worn camera programs as well as the extent to which these discourses on body-worn camera programs reflect Ericson's (2007a) precautionary logic and counter-law, five different data sources were examined. First, I examined the body-worn camera program policy texts of five different police services in Canada¹ that have had pilot projects or were in the process of implementing one during the time of this research. Given that police body-worn cameras are only starting to be implemented by Canadian police, I also looked 33 different police agencies from the U.S.² that have completed or were completing pilot projects during the time of this research. To determine the extent to which Ericson's (2007a) counter-law and precautionary logic is reflected, it was central to analyze how body-worn camera programs are conceptualized and justified by law enforcement authorities who are being equipped with these devices.

Second, in addition to police program texts that provide a law enforcement point of view, print media has a vast array of information regarding body-worn cameras that provide a different perspective. Well established news websites and newspapers have extensive reports on various issues concerning body cameras and their implementation. Similarly, with program texts, the print media documents I analyzed covered both Canadian and United States contexts. The purpose behind looking at print media was to get a better understanding of the overall public

¹ Canadian police services included: Amherstburg (ON), Calgary (AB), Edmonton (AB), Toronto (ON), Victoria (BC)

² U.S. police agencies included: Phoenix (AZ), Los Angeles (CA), Rialto (CA), New Haven (CT), Denver (CO), Washington (DC), Miami (FL), Atlanta (GA), Coeur d'Alene (ID), Chicago (IL), Greenwood (IN), Iowa City (IA), Wichita (KS), Louisville (KY), Baltimore (MD), Boston (MA), Ferguson (MO), Minneapolis (MN), Missoula (MT), Las Vegas (NV), New York (NY), Charlotte (NC), Cleveland (OH), Charleston (SC), Knoxville (TN), West Valley City (UT), Burlington (VT), Gordonsville (VA), Seattle (WA), Milwaukee (WI), Mills (WY)

perception surrounding the implementation of body-worn cameras. Well established news websites such as *The Globe and Mail* provided valuable insight into the public's opinion of body-worn cameras and the popular belief surrounding their use as well as problematic aspects of their use. The material published by print media was also be analyzed to determine how and to what extent it was reflective of Ericson's (2007a) counter-law regime.

Third, various body-worn camera manufacturers' websites provided a unique viewpoint on how these devices become marketed. These websites provided unique information about various technological features and also different purposes these devices may be useful for. Furthermore, the analysis of body-worn camera manufacturers' websites provided insight into the potential technological capacities of these devices and the extent to which they fit into the counter-law framework, and more specifically the notion of the surveillant assemblage (Ericson, 2007a).

Fourth, privacy guidelines and legislation contained information on the privacy concerns regarding body-worn cameras. The Office of the Privacy Commissioner of Canada was a crucial source for data regarding guidelines to be followed on the use of body-worn cameras. To determine how and to what extent privacy guidelines regarding police body-worn cameras reflect Ericson's (2007) counter-law framework, the recently published *Guidance for the Use of Body-Worn Cameras by Law Enforcement Authorities* by the Office of the Privacy Commissioner of Canada was analyzed. This guidance was at the time and currently still is the only document that addresses the privacy concerns that have recently come to light because of body-worn cameras. This guidance was simply intended to provide law enforcement authorities with different things to take into consideration when implementing body-worn cameras. Furthermore, other crucial legislation analyzed included: *Privacy Act*, Ontario's *Freedom of Information and Protection of*

Privacy Act, and the Canada Evidence Act. These pieces of legislation were analyzed and coded using Ericson's (2007a) counter-law approach based on their relationship to the implementation and use of body-worn cameras. I have also looked at various pieces of legislation for the U.S. that addressed the implementation of body-worn cameras. Given the extensive legislative autonomy of each state, I analyzed the legislative amendments regarding body-worn cameras of 32 different U.S. states³.

Lastly, I selected three police services in Canada that initiated pilot projects for body-worn cameras to focus upon in more detail. The focus was on the municipal police services of Amherstburg (Ontario), Calgary (Alberta) and lastly Edmonton (Alberta). I submitted freedom of information requests to each of these police services to access general records regarding the implementation of their specific pilot projects. The *Freedom of Information Act* was a valuable research tool on policing security related practices (see Lippert and Walby, 2012). The purpose of these requests was to provide crucial insight into the numerous considerations surrounding funding, cost, retention, as well as use of body-worn cameras and ultimately to supplement the earlier mentioned data sources. Gathering information through Freedom of Information requests helped to provide better insights into details and practices that would otherwise would have been hidden and as a result become rarely analyzed (see Lippert and Walby, 2012). Moreover, the requests requested information regarding the underlying rationale behind the decision to implement body-worn cameras and any measures of effectiveness.

To fully and critically answer the research questions, this thesis used discourse analysis as its method. "A discourse is a set of interrelated texts, in which the practices of their production, dissemination and reception bring an object into being" (Philips and Hardy, 2002: 3).

³ U.S. states: Arizona, California, Connecticut, Colorado, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Missouri, Minnesota, Montana, Nevada, New York, North Carolina, North Dakota, Ohio, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, Wisconsin, Wyoming

Texts are considered a discursive ‘unit’ and a material manifestation of discourse (Chalaby, 1996). Considering Ericson’s (2007a) counter-law framework, the analysis of text was the most crucial component of this thesis. For the purpose of this study, the discourse that was examined was the representation of police body-worn cameras in written texts, specifically police program texts, security magazines, print media, privacy legislation and freedom of information requests. This discourse was analyzed in relation to Ericson’s counter-law approach. To aid with the analysis of the police body-worn camera discourse, I coded for central themes that aimed to capture something important about the data (Braun and Clarke, 2006). In this case, the analysis of the body-worn camera discourse aimed to capture whether parts of Ericson’s counter-law were operationalized in the texts. The notion of precautionary logic was analyzed in its relation to body-worn cameras as a response to police brutality and misconduct. Legal aspects associated with body-worn cameras were also examined, such as the *Guidance for the Use of Body-Worn Cameras by Law Enforcement Authorities*. Although the guidance is not considered legislation, it nevertheless contained aspects of counter-law. I. Haggerty and Ericson’s (2000) surveillant assemblage was also operationalized in terms of the capabilities of extending surveillance networks and practices of police services through the use of body-worn cameras. These camera programs were examined for how they fit into the surveillant assemblage and whether their use extended beyond traditional procedures and principles of criminal law. While there may be similarities in body-worn camera programs across Canada and the U.S., I did not engage in any comparisons. As a result, I analyzed these programs separately for each country under separate subheadings. Ultimately, this analysis examined the discourse of police body-worn cameras in Canada and the U.S. to determine how and whether it befits Ericson’s (2007) counter-law approach and whether any refinement was required of this approach.

5. ANALYSIS

I. Presence of Precautionary Logic

The notions of risk and precaution regarding police body-worn cameras become pronounced when considering the reason behind their rise in policing and their proposed aim. Amongst the primary aims of increasing police accountability and transparency, one of the other purported aims of body-worn cameras is their potential ability to reduce police exposure to litigation and unwanted citizen complaints (Ramirez, 2014). Whether or not body-worn cameras can indeed reduce the unwanted citizen complaints against police and their exposure to civil litigation remains to be seen. Nevertheless, one of the major claims of police pilot projects both in Canada and the U.S. remains that these cameras have the potential to reduce complaints against police (see Barak, Farrar and Sutherland, 2014; Calgary Police Service, 2015a; Edmonton Police Service, 2015b; Ready and Young, 2015). The current body-worn camera program in place at Calgary Police Service identifies the reduction of complaints from citizens as one of the benefits that may come about as a result of body-worn cameras (Calgary Police Service, 2015a: 18).

The frequency of unwanted citizen complaints against police can be conceptually considered a risk to police legitimacy in the eyes of the public that police services consequentially have to deal with (see Kochel, 2015). Within conceptualizations of risk, the frequency of harmful occurrences and the severity of the harm caused are of paramount importance (Ericson, 2007a). As such, the frequency of complaints against police and the severity of these complaints become crucial factors in risk analysis. Although overall complaints against police have been decreasing (see Ontario Human Rights Commission, 2007; Shallwani and Dawsey, 2015; Williams, 2015), the frequency and severity of high profile police brutality incidents have been seemingly increasing and consequentially pose a risk to the legitimacy of the

overall police institution (see Wines and Cohen, 2015). As such, the widespread implementation of body-worn camera programs across North American police departments invoke a precautionary response to the uncertainties surrounding future police brutality incidents.

In the aftermath of 9/11, suspicion and surveillance intensified significantly. Everyone became the target of surveillance (Lyon, 2003). The *U.S. Patriot Act* was enacted following 9/11 and it aimed to give unlimited presidential authority to criminalize “unlawful enemy combatants”. The aim was to criminalize these suspects for an imagined future harm they might cause. However, the major consequence of the *U.S. Patriot Act* was the unprecedented powers of surveillance it gave to state authorities. Although foreign terrorist attacks the scale of 9/11 have not occurred since 2001, the main justification for intensified surveillance is the threat of future terrorist attacks. “The FBI justified electronic surveillance applications in the name of foreign threats to national security” (Ericson, 2007a: 56). The precautionary justifications of future attacks become the focal point for the intensification of surveillance.

The aftermath of the Ferguson, Missouri incident signified the start of a push for body-worn cameras. Similarly, to the terrorist threats to national security, incidents of police brutality and citizen complaints become conceptualized as threats to police legitimacy. Consequentially, police body-worn cameras can be regarded as a precautionary tool because of their focus on uncertainties, such as the future occurrence of more incidents of police brutality.

Police agencies are rapidly adopting these devices with the purpose of saving police resources from being spent on civil law suits. The proposed benefit as potential tools to save police resources by preventing future frivolous complaints does act as a major justification to move forward with their widespread adoption. Calgary Police Service (2015c: 2) states that “one of the purposes of using body-worn cameras is to reduce frivolous complaints about alleged

misconduct”. It remains inconclusive whether the reduction of frivolous complaints saves police resources. However, the widespread implementation of these cameras in face of such inconclusive research befits the notion of a precautionary response.

“The politics of uncertainty leads to enormous expenditures on risk assessment and management that reveal the limits of risk based reasoning and intensify uncertainty” (Ericson, 2007a: 1). After 9/11, surveillance of the public greatly intensified and enormous resources were appropriated for national security based on precautionary measures (Ericson, 2007a). Similarly, the politics of uncertainty is clearly present within the current body-worn camera discourses regarding their proposed costs and benefits. A few isolated success stories do show the ability of body-worn cameras to exonerate police officers of unsubstantiated citizen complaints that would have otherwise cost a police service a large amount of resources. The mere presence of these recordings in many cases leads to the alleged plaintiffs to simply drop the accusations (Calgary Police Service, 2015a). However, Edmonton Police Service’s 3-year pilot program reveals that these cameras made no statistical difference in resolving police complaints (Casey, 2016; Edmonton Police Service, 2015b). Despite the inconclusive results from Edmonton, a few particular success incidents act as a strong enough justification that the potential is there. This resulting uncertainty leads to the “enormous expenditures” that are currently being spent on the deployment of body-worn cameras. Calgary Police Service’s pilot program also reveals inconsistent results on whether body-worn cameras are effective in saving resources. Nevertheless, they plan to roll out 1,100 cameras by the end of 2016 regardless of the inconsistent results produced in the pilot study (Casey, 2016). This undoubtedly befits the conceptualization of a precautionary response.

Although there are no detailed statistical reports available that highlight the degree of police resources spent on police misconduct lawsuits, in the U.S. these resources are estimated to be in the millions (see Wing, 2015). Between 2011 and 2014, the city of Baltimore spent \$5.7 million on lawsuits involving allegations of false arrests, false imprisonment and excessive force. Moreover, these lawsuits were paid for through taxpayer funds (Puente, 2014). These figures covered a period of three years only for Baltimore, a medium sized U.S. city. Lawsuit costs may be proportionally higher across the U.S. for larger police agencies and larger cities. In Canada, a similar situation exists. Between 2000 and 2015, the Toronto Police Service has spent \$27 million on civil lawsuits (see Andrew-Gee, 2013). The majority of the settlement claims included allegations of use of force, false arrests and negligent investigations. It is clear that both in Canada and the U.S., police services spend a large amount of resources on civil lawsuits that are appropriated through taxpayer funds (Andrew-Gee, 2013).

Whether or not the widespread departmental adoption of body-worn cameras is considered an entrepreneurially wise risk taking endeavour to deal with police misconduct incidents becomes insignificant (see Deukmedjian, 2014). According to Ericson (2007a), uncertainty itself is what leads to expenditures on risk assessments that consequentially reveal the limits of risk based reasoning. As such, the conceptualizations of body-worn cameras clearly befit the theoretical confines of a precautionary tool within the larger politics of uncertainty and risk.

II. Counter-Law I: Law against Law

The notion of the precautionary logic and counter-law are conceptually linked. Precaution fuels suspicion, as was exemplified in the aftermath of 9/11 with the intensification of

surveillance (see Lyon 2003). As a result, the application of the precautionary logic progresses to the criminalization of certain activities through counter-law. There are numerous examples of previously legal activities that became criminalized with the enactment of counter-law (see Ericson, 2007a; Ericson 2007b; Levi, 2009; Lippert and Wilkinson, 2010; Wilkinson and Lippert, 2012). The process by which most of these activities became criminalized was the enactment of laws or legal reforms intended to counteract already existing laws. These new reforms or laws were essentially invented with the purpose of eroding or eliminating traditional principles, standards and procedures of existing law. However, counter-law I may also take the form of a “state of exception” (see Agamben, 2005). Under exceptional circumstances like a state of emergency, normal legal principles, standards and procedures may be suspended (Ericson, 2007a). The politics of uncertainty becomes a strong factor in justifying when such exceptional measures may be implemented.

A) United States

Body-worn camera programs have been introduced by police agencies across to the U.S. at a very rapid pace. However, legislation in some states has only caught up to this technology in the past year. To an extent, the legislative amendments that address body-worn cameras are very similar in each state; however, given the large degree of state autonomy in the U.S., there are some significant differences in some situations. When it comes to the deployment of body-worn cameras in general, the presence of uncertainty does not directly lead to the criminalization of certain activities through counter-law I as Ericson (2007a) conceptualized. The legislative amendments in the U.S. regarding body-worn cameras in many cases legally enabled these devices to be used in situations where under normal circumstances their use might have been

prohibited (see Georgia General Assembly, 2015; Nevada General Assembly, 2015; Utah General Assembly, 2015). In these cases, the presence of counter-law I is expressed through legislative amendments resulting in exemptions to privacy and public records law.

When it comes to privacy legislation in general, there is a two-fold divide in the U.S., the majority of the states allow only for single-party⁴ consent when recording audio and video communications (U.S. Department of Justice, 2012: 7). A single-party consent system entails the notion of consent only from the part of the officer. As such, when it comes to the use of body-worn cameras in these particular states, notification of recording is not required (U.S. Department of Justice, 2012: 7). Consequentially, the absence of any notification also entails the absence of being able to consent to the actual recording from the part of the citizen. The state of Iowa is a single party consent state and as a result notification of recording is not legally required under any existing legislation. Nevertheless, the Iowa General Assembly does address the notion of consent when it comes to body-worn camera recordings. Section 2(5) states that “a person shall inform a person when that person is being recorded by a body camera unless informing the person would be unsafe, impractical, or impossible” (Iowa General Assembly, 2015: 3). The acquisition of consent on part of the citizen also becomes desirable when entering a person’s residence without a warrant or where no exigent circumstances exist. In situations like that, section 2(5)(a) states that “the peace officer shall immediately ask whether the resident desires the peace officer to stop the body cameras recording while the peace officer is in the residence” (Iowa General Assembly, 2015: 3). While it may appear that consent is actually required from the citizen when the recording is occurring in their private homes, section 2(5)(a) does not

⁴ States with single-party consent systems: Arkansas, Colorado, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, Wyoming

address whether or not the officer is legally required to comply with the citizen's request to cease the recording. Consequentially, the police officer holds a significant amount of discretion whether or not to turn the camera off in such circumstances.

Other single-party consent states also amended their privacy legislation to facilitate the operation of body-worn cameras in general. In the state of Georgia, the acquisition of consent in public areas did not pose an obstacle to the operation of body-worn cameras given that Georgia is a single-consent state. Obstacles arose when the area where the recording occurred was inside of a private residence. The state of Georgia passed bill no. 94 that intended to amend existing legislation to allow body-worn camera recordings to occur inside a private residence without the acquisition of citizen consent if the officer's presence was lawful or was pursuant to an investigation (Georgia General Assembly, 2015). The American Civil Liberties Union (herein referred to as ACLU) opposed various parts of this bill. They proposed that in cases of non-emergency or where there is no reasonable suspicion of wrong doing, the police should be required to ask for consent to record in private places (Torres, 2015). Despite ACLU concerns, bill no. 94 received the signature of the governor and was passed into law at the start of April 2015. The act also specifically notes at the end in section 7 that "all laws and parts of laws in conflict with this Act are repealed (Georgia General Assembly, 2015: 5). As such, section 7 is intended to override existing laws that may be in conflict with bill no. 94. Under normal circumstances, operating a video/audio recording device inside a private residence would be considered unlawful on U.S. soil. However, this particular amendment legalizes such an activity specifically regarding body-worn cameras operated by police officers. The above discussed amendments effectively erode traditional standards of law because they exempt the use of body-worn cameras from certain legal requirements that are perceived as obstacles to their operation.

Although the majority of the states only allow for single party consent during video and audio communications, a few states are part of the two-party⁵ consent system and require all parties to consent to recording of video and audio communications (U.S. Department of Justice, 2012: 8). Under the two-party consent laws, police officers are legally required to inform the citizens when a recording is occurring and also to obtain the citizen's consent to record (Miller et al., 2014). The two-party consent system is a significant challenge to the operation of body-worn cameras because on many occasions, citizens would deny the consent to record and as a result police officers were legally required to turn the camera off. The state of Washington is a two-party consent state and required officers to obtain consent before initiating a recording. However, amendments were made to existing privacy legislation to eliminate this need to acquire consent when operating body-worn cameras. The Washington Supreme Court reassessed and reinterpreted the Washington Privacy Act that a conversation between a police officer and a member of the public that occurs during the officer's duties is not considered private. As a result, consent on part of the citizen is not required (Sullivan, 2014). The Seattle Police Department body-worn camera policy text also addressed the notion of consent. Their policy requirements similarly reinterpret the need for consent like the Washington Supreme Court. The policy clearly states that in private residences, officers will ask for the individual's consent to record with the body-worn camera. The request and the response must be recorded and if the request is denied by the individual, the officer must comply and turn the camera off during the time that they are in the private area (Seattle Police Department, 2015: 3). However, the policy text categorizes this requirement as an exception to the rule as being the only situation when the acquisition of

⁵ States with two-party consent systems: California, Connecticut, Delaware, Florida, Illinois, Maryland, Massachusetts, Michigan, Montana, New Hampshire, Pennsylvania, Washington

consent is required from the citizen. When an interaction is occurring in public areas, consent is no longer required and as such does not pose an obstacle to the operation of body-worn cameras.

The state of Washington is not the only state with a two-party consent system that amended its privacy legislation and subsequently created exemptions to the two-party rule regarding the use of body-worn cameras. In the state of California, there are numerous police agencies that have initiated body-worn camera pilot projects. One of them being Los Angeles Police Department which is in the process of deploying 7,000 body-worn cameras by the end of 2016 (see Markowitz, 2016). California being a two-party consent state, such consent requirements would significantly hinder the use of these 7,000 proposed body-worn cameras. Consequentially, the state of California legislature amended sections of its penal code and privacy legislation regarding the use of body-worn cameras. Existing law in California makes it a crime to intentionally record a confidential communication without the consent of all parties to the communication. The proposed amendments would exempt certain peace officers from this particular consent requirement if they were acting within the scope of their authority (California General Assembly, 2015). The amendment does not go into more detail about what constitutes a peace officer's scope of authority; nevertheless, the amendment effectively exempts body-worn cameras from consent requirements under the two-party consent system. The Los Angeles Police Department body-worn camera policy text reveals similar exemptions to the use of these devices. Although officers are encouraged (though not legally required) to inform the citizens whom they are interacting with that a recording is occurring, they are not required to obtain consent from the members of the public if the officers are lawfully in the area where the particular recording is taking place. This also includes private residences, given that the officers presence in someone's private home is considered lawful (Los Angeles Police Department, 2015). The notion of what is

to be considered a lawful presence for an officer is not elaborated on and as a result becomes very ambiguities and open to interpretation.

In all of the 12 states that are considered to be part of the two-party consent system, their privacy legislation was amended and exemptions were created that facilitated the operation of body-worn cameras in these states by removing the obstacles of citizen consent. Such exemptions are evidence for the presence of counter-law because the legislative amendments that were enacted eroded traditional principles, standards and procedures of privacy law (see Ericson, 2007a: 24). Although Ericson (2007a) addressed counter-law I with relation to the erosion of standards and principles in the area of criminal law, counter-law I can occur and does occur in other areas of law as well, as illustrated by these legislative amendments in privacy legislation and the subsequent exemptions they created.

Such legislative amendments regarding the operation of body-worn cameras are not only occurring in privacy legislation. Public records law has been amended in many states where body-worn camera projects have been initiated. Public records are defined as “all documents, papers, letters, maps, books, tapes, photographs, films, sounds recordings, data processing software, or other material, regardless of physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance in connection with the transactions of official business by any agency” (Florida General Assembly, 2015). Under this definition, body-worn camera recordings become interpreted as a public record that may be requested to be viewed by any member of the public. Although each state has its own public records law, the general outlines of what a public record entails is very similar across all states. With the advent of body-worn camera programs, many state legislatures amended their public records law to limit public accessibility to these recordings (see Table 1). The state of Louisiana amended its statutes

regarding body-worn cameras. Although Louisiana did not specifically amend sections of their public record law, bill no. 183 did make body-worn camera records completely exempt from the audio and video data requirements provided for in Louisiana's Public Records Law (Louisiana General Assembly, 2015). Similarly, the Utah General Assembly amended the Utah Code of Criminal Procedure and the Government Records Access and Management Act by interpreting a recording from a body-worn camera by a police officer as constituting a private record. This classification does run contrary to the definition of "public record" under section 103 of the Utah Code (Utah General Assembly, 2015). However, the Utah General Assembly repeals all other existing laws in conflict with this new amendment. Consequentially, body-worn camera recordings become an exception to the rule of what is to be considered a "public record" and become classified as a private record.

Some states⁶ do not yet have any legislation that governs and regulates the use of body-worn cameras. However, some police agencies have still initiated body-worn camera programs despite the absence of appropriate legislation (see for example Cleveland Police Department 2015; Missoula Police Department, 2014).

However, not all states completely exempted body-worn camera recordings from public records law requirements entirely (see Table 1). In some cases, the location where the recording occurred affected whether or not it could be released to the public and exempting such scenarios from public records requirements (see Table 1). In North Dakota, any image that was recorded by a police officer with a body-worn camera that occurred in a private place becomes exempt from public record requirements (North Dakota General Assembly, 2015). Individual privacy becomes the key justification for this particular exemption. However, the North Dakota General

⁶ States that currently do not have any legislation governing body-worn cameras: Arkansas, Idaho, Montana, New York, Ohio, Wisconsin, Wyoming

Assembly does not define what constitutes a “private place” and leaves the term open to a broad or restrictive interpretation by police agencies.

Although body-worn cameras are not explicitly purported to be a new police surveillance device, the majority⁷ of the U.S. police agencies examined do not prohibit use of these devices for surreptitious recordings. In the case of Nevada, existing state law does prohibit the use of surreptitious electronic surveillance on public grounds. However, Bill 111 of the Nevada General Assembly aimed at the governance of body-worn cameras, creates an exemption. “Sections 3 and 5 of this bill create an exception for peace officers employed by the Nevada Highway Patrol wearing a portable event recording device from certain provisions relating to unlawful surreptitious electronic surveillance” (Nevada General Assembly, 2015: 1). The justification for this exemption becomes framed in the context that body-worn cameras do not constitute a covert surveillance device with the purpose of surreptitious surveillance. Given the absence of any consent requirements in Nevada, this amendment exempted body-worn cameras from electronic surveillance laws and as such effectively eroded traditional principles and standards of law. Consequentially, these devices can now be used for police surveillance without any legal obstacles and as such befitting Ericson’s (2007) counter-law and surveillant assemblage framework.

The previously mentioned exemptions are no doubt evidence for the presence of counter-law in body-worn camera legislations. However, these exemptions are not the only way counter-law is created. As explained earlier, inherent broadness and ambiguity is clearly present within the newly enacted legislations that aim to govern how, where, and when body-worn cameras may be operated. As explained earlier with the Gang Congregation Ordinance in Chicago, expansive

⁷ With the exception of Phoenix Police Department who prohibit the use of body-worn cameras to surreptitiously record conversations of citizens and employees.

interpretive and definitional limits of newly enacted legislation constitute a form of counter-law (see Levi, 2009). In the case of antisocial behaviour ordinances, the lack of a proper legal definition allows for a broad legal interpretation, which consequentially allows for an expansive scope. For all the state legislations that were analyzed, they all show evidence of extreme vagueness and ambiguity, much like the definitional vagueness of anti-social behaviour laws and Gang Congregation Ordinance.

Interpretational broadness within these new laws becomes evident when considering how body-worn camera recordings become categorized as evidentiary data. Miami is the *only* police agency whose policy text clearly defines what constitutes evidentiary data. None of the other 31 police agencies analyzed for this thesis give any clear definitional or categorical guidelines. Thus, no guideline at all is the norm. For Miami, evidentiary data becomes defined as “footage of an incident or encounter that could prove useful for investigative purposes, such as a crime, an arrest or citation, a search, a use of force incident, or a confrontational encounter with a member of the public” (Miami Police Department, 2015: 2). The California General Assembly (2015) in section 5(b) defines evidentiary data as “data of an incident or encounter that could prove useful for investigative purposes, including, but not limited to, a crime, an arrest or citation, a search, a use of force incident, or a confrontational encounter with a member of the public”. Although most of the police agencies lack clear definitional guidelines, definitions like the one put forward by California may filter down and adopted at the police agency level. The definition put forward by the Miami Police Department is very similar to California’s. However, the California legislature lists a particular set of circumstances in which a recording may be useful for an investigation but it clearly states that the interpretive/definitional confines of “evidentiary data” is not strictly limited to the listed categorizations. As such, the legislative interpretation of

“evidentiary data” is intentionally left open. Not limiting what is to be considered “evidentiary data” befits Ericson’s (2007a) notion of legal vagueness in his discussion of anti-social behaviour laws. Consequentially, the absence of clearly defined limits allows for the possibility of broad legal interpretation in how body-worn camera recordings may be used.

In California, the newly amended definitional confines of “evidentiary data” does not only broaden how body-worn camera recordings may be used, but it also affects the retention period of these recordings. When a body-worn camera recording becomes categorized as having “evidentiary value”, it becomes governed by the specific state’s evidentiary laws (California General Assembly, 2015; Utah General Assembly, 2015). The broad interpretive limits of what can be considered as “evidentiary value” also extends the retention period limits. Under existing state evidentiary laws, retention periods for recordings of investigative value are unlimited or until all investigations involving that recording are concluded.

B) Canada

Body-worn camera programs are relatively recent in Canadian police services. Only a few police services have started testing these devices or are currently doing so. Consequentially, the legislation for body-worn cameras is also in its infancy. In fact, there is no legislation that is directly aimed at the governance of body-worn cameras. In 2015, the *Guidance for the Use of BWC by Law Enforcement Authorities* was published by the Office of the Privacy Commissioner of Canada. Currently, this is the only document that aims to guide how body-worn cameras should be used and considers what law enforcement authorities should take into account when implementing these devices. Privacy concerns are the biggest challenges to the implementation of body-worn cameras (Hager, 2015; Office of the Privacy Commissioner of Canada, 2015).

However, the acquisition of consent is not an obstacle to the operation of these devices because Canadian citizens do not legally have the option to refuse consent when they come in contact with an officer equipped with a body-worn camera. Moreover, informing citizens that a recording is taking place is also not legally required by police officers. The *Guidance* explains that police officers should make a reasonable effort to inform the public that officers are equipped with body-worn cameras and that the interactions are being recorded (Office of the Privacy Commissioner of Canada, 2015: 5). While there is a lowered expectation of privacy in a public place, body-worn cameras may be engaged inside a private residence where privacy becomes a significant issue. Although police accountability and transparency are the two of the main goals of body-worn cameras, the absence of enforceable legislation regarding citizen consent does not seem to address these aims.

Currently in Canada, none of the existing privacy legislation is in conflict with the operation of body-worn cameras by police services. Given this, the need for counteracting legislation to enable the operation of body-worn cameras is not required. There are imbedded aspects of broadness and ambiguity within existing privacy legislation that allow body-worn cameras to be operated by police services without any legal obstacles. Nevertheless, this still illustrates tenets of Ericson's (2007a) counter-law framework. The legal broadness present in existing legislation facilitates the use of body-worn cameras farther than their initially intended purposes and thus allows for its incorporation in the surveillant assemblage.

Body-worn cameras do record personal information when an interaction occurs between a police officer and a citizen. Consequentially, one particular provincial law that governs the use of personal information is the *Ontario Freedom of Information and Protection of Privacy Act* (herein referred to as FIPPA). Although these particular acts vary provincially, the sections that

are of significance to the use of body-worn cameras are the same for all the provinces. I chose to focus on Ontario freedom of information legislation as exemplary throughout this thesis. According to the *FIPPA*, “personal information” means recorded information about an identifiable individual. This encompasses things such as information relating to race, national or ethnic origin, colour, religion, age, sexual orientation and marital status. It also includes employment, medical and criminal histories, addresses, telephone numbers, and fingerprints. Despite the very clear list of what personal information entails, the list itself encompasses a wide range of information. Section 38(2) of the Act states that “no person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity”. If, however the “personal information” is being collected for law enforcement purposes, it becomes justified and lawful. Consequentially, the footage from body-worn cameras falls under the category of “personal information” and the collection of such information becomes justified and lawful because it is for the purpose of law enforcement. Although existing provincial privacy legislation gives a very expansive definition of “personal information”, it also provides an inadequate definition of “law enforcement”. According to *FIPPA*, the notion of “law enforcement” is defined as any policing practices or investigations that may lead to proceedings in a court. As such, the term “law enforcement” may include any action intended to enforce an act or regulation passed by either provincial or federal government. Nevertheless, this definition does not provide a clear understanding of what “law enforcement purposes” actually entails and thus leaves it open to a very expansive interpretation.

At the federal level, the *Privacy Act* is the highest level of privacy legislation in Canada and its purpose is to protect the privacy rights of individuals with respect to personal information

about themselves held by a government institution. The *Privacy Act* relies on the same definition of “personal information” and “law enforcement” as the *Ontario Freedom of Information and Protection of Privacy Act*. Although, the main point of the Act is to protect individual privacy, law enforcement authorities are given many exemptions under this Act. Section 4 of the *Privacy Act* explicitly prohibits the collection of personal information by a government authority. The only exceptional circumstance to Section 4 that justifies this is if the collection of personal information is directly related to an operating program or activity of a government institution. The Act also extends the limits of how personal information may be used and when such information can be disclosed by law enforcement purposes. Under normal circumstances, disclosure of personal information by a government institution is prohibited. However, Section 8(2)(e) exempts the enforcement of this rule if personal information is required for the purpose of enforcing any law in Canada or carrying out a lawful investigation. The *Privacy Act* also enables inter-agency sharing of body-worn camera footage if the recording contains evidence that may be needed for a lawful investigation.

The main purpose of privacy legislation like the *FIPPA* and *Privacy Act* is to protect individual privacy and the collection of personal information by government authorities. However, the terminology used in these acts is intentionally very broad and vague. “Personal information” is given a very expansive definition while “law enforcement” is left ambiguous under broad categorical terms. According to Lippert and Walby (2013: 10), the *Privacy Act* is considered semi-voluntary and as a result requires compliance on part of the governed. The collection of personal information for criminalization purposes becomes justified as long as privacy legislation is invoked (Lippert and Walby, 2013: 17). For example, CCTV signage that invokes privacy law effectively authorizes CCTV surveillance in particular areas (Lippert and

Walby, 2013: 18). Similarly, the use of body-worn cameras becomes authorized because they invoke privacy legislation, specifically the notion that they are being used for law enforcement purposes. This possible interpretation of these acts extend police powers in how they can use the personal information gathered through body-worn cameras, much like anti-social laws extended police powers to pre-empt people from congregating in groups (see Ericson, 2007a: 164). The inherent ambiguity and semi-voluntary nature of these privacy laws act as an enabling mechanism for the extension of surveillance.

Problems of legal broadness and ambiguity in Canada are not unique to body-worn cameras. Hier (2010) identifies similar problems with the rise of CCTV monitoring programs in Canada. There is an inconsistency in CCTV programs across Canada that is largely due to ambiguities and incoherence stemming from privacy protection principles. Hier (2010) explains that these privacy principles are unclear and incomprehensive which consequentially allows for numerous interpretations and adaptations of the program. Although body-worn camera programs have only been initiated by a handful of Canadian police services, program inconsistencies do exist as exemplified by the Calgary Police Service's attempt to integrate facial recognition technology with their body-worn camera program. Hier (2010) explains that CCTV advocates often cherry-picked which privacy protection principles to emphasize and which ones to ignore. Similarly, the legality of Calgary's facial recognition integration becomes emphasized as being within the confines of the existing provincial privacy legislation because it serves a law enforcement purpose. As mentioned earlier, existing privacy legislation does not adequately define what "law enforcement" entails. It collapses it under the broad umbrella term of "policing" and "investigations". Consequentially, this definitional incoherence and legal ambiguity allows for various adaptations and uses of body-worn camera programs that are

deemed to be within the confines of acceptable legal police practices, but nevertheless extend the surveillant assemblage.

Public police are considered to be a public institution and as such, members of the public may request access to body-worn camera recordings under the *Ontario FIPPA*. Section 1(a)(i) of the *FIPPA* addresses that one of the purposes of this Act is “to provide a right of access to information under the control of institutions in accordance with principles that, information should be available to the public”. Individuals may request access to part of a body-worn camera recording where their own person was recorded. Essentially, the main purpose of the *FIPPA* is to promote transparency and access to public information. However, there are numerous exemptions that are embedded into existing freedom of information laws where a public institution may reasonably refuse to disclose a request for access. Section 14(1) of the *FIPPA* lists numerous exemptions that are reasonable justifications to deny a request for access. Disclosure may be refused if it would interfere with law enforcement matter, interfere with an investigation by law enforcement, endanger safety of an officer, or reveal investigative techniques. These are only a few of the reasons why disclosure may be denied under Section 14(1) of the *FIPPA*. The list is very extensive and seemingly exhaustive because it covers a wide range of possibilities where request to access may be denied. Not only are these exemptions very broad and vague, but also they allow for interpretive flexibility in denying requests to access body-worn camera recordings. Although in Canada freedom of information laws were not amended with the advent of body-worn cameras, the existing exemptions do operate within Ericson’s (2007a) counter-law framework because much like the antisocial behaviour laws, these exemptions are also intentionally very broad. Consequentially, these exemptions run contrary to

the supposed aim of body-worn camera programs in general, which is to create greater police accountability and transparency.

The *Canada Evidence Act* indirectly governs the use of body-worn camera recordings when they become categorized as evidence. Although the Act does not directly address when body-worn camera recordings can become categorized as evidence, it does govern its use when the recordings become evidence. When these recordings become categorized as evidence their retention periods increase to an indefinite amount of time or until the investigation is concluded (Edmonton Police Service, 2015b). However, none of the existing laws, including the *Canada Evidence Act*, directly address when body-worn camera recordings become categorized as evidence.

Police services that initiated pilot projects provide some scenarios when recordings are assessed as having evidentiary value. Such scenarios include sexual assault or domestic violence investigations (Edmonton Police Service, 2015a; Calgary Police Service, 2015a). However, these scenarios are also left intentionally broad under the wide encompassing umbrella term of “criminal investigations”. When and to what extent a body-worn camera may be used during a sexual assault or domestic violence investigation is largely left up to discretion of the officer (Calgary Police Service, 2015a; Edmonton Police Service, 2015a). The interpretive broadness in what can be considered as evidence allows for extensive uses of body-worn camera recordings that go beyond their initial purpose.

III. Counter-Law II: Surveillant Assemblage

The second part of Ericson’s (2007a) counter-law framework is counter-law II or the surveillant assemblage. Much like counter-law I where new laws are enacted to erode traditional

principles, the surveillant assemblage takes a similar form in which new elements are constantly being into the existing assemblage which in many cases result in the erosion existing standards of law considered obstacles in the pre-emption of imagined sources of harm (Ericson, 2007a: 24). Body-worn cameras can be effectively considered a new element of Ericson's (2007a) surveillant assemblage. Although the main purpose of these devices is to monitor police conduct and increase accountability. There are numerous instances where these devices have been used for purposes beyond merely monitoring conduct. This extension of their use allows these devices to be incorporated as new part the surveillant assemblage that erode existing standards of law, as already demonstrated in the previous sections.

A) United States

As discussed in the previous section, privacy and public records legislations were amended to exempt body-worn cameras from certain requirements under these laws. Specifically, regarding two-consent states, amended legislations exempted body-worn cameras from this requirement, allowing officers to initiate recording without the need to obtain consent from the citizen. This exemption undoubtedly befits Ericson's (2007a) counter-law I because a traditional legal standard is suspended and removed from the legal order. However, these exemptions also allow body-worn cameras to become incorporated as a new element of the existing surveillant assemblage.

Amongst the already mentioned purposes of increasing transparency, accountability and monitoring police conduct, body-worn cameras are also considered to be an invaluable tool in the collection of evidence. In the U.S., most police agencies initiating body-worn camera programs, state in their policy text that one of purposes of these devices will be to collect

evidence for use in criminal investigations (see Las Vegas Metropolitan Police Department, 2015; Los Angeles Police Department, 2015). Some police agencies explain that these devices will be used to assist in the documentation of suspected crime or to capture crimes in-progress (see Denver Police Department, 2015; Mills Police Department, 2015). Most police agencies allow for a significant level of discretion in what situations are deemed appropriate for body-worn cameras to be used (see Table 2). Atlanta Police Department (2014: 1) states in their policy text that body-worn camera recordings may be used as evidence in the prosecution of criminal offenses, departmental investigations, and any other situations, which the department deems appropriate.

None of the analyzed police agencies from the U.S. extensively detail what the collection of evidence through body-worn cameras might entail, or the types of incidents that may be considered to be of evidentiary value. In fact, some U.S. police agencies state that all body-worn camera data may be categorized as evidence (see Miami Police Department, 2015). Nevertheless, the purpose of collecting evidence is the first sign of body-worn cameras being used as a possible surveillance device.

As a surveillance device, body-worn cameras are very unique. They are very flexible and mobile and as a result their surveillance capacities are much more extensive than other existing camera surveillance technologies. By attaching a body-worn camera onto an officer, the surveillance capacities of this device are greatly extended (Ramirez, 2014). Although officers equipped with body-worn cameras tend to be selectively distributed in specific neighbourhoods, anyone can become a subject of law enforcement surveillance simply being in the field of view of the cameras. As Johnson (2014: 9) explains, “the police are characterised by their surveillance of the civil population. They are empowered to see everything; nothing should be too small or

inconsequential enough to escape their gaze”. As a surveillance device, body-worn cameras empower police officers to monitor every citizen they interact with.

The unique mobility of body-worn cameras creates spatial implications unseen before with other surveillance devices. The inside of peoples’ homes is an area with the largest expectation of privacy where police powers are significantly reduced. Under normal circumstances, police surveillance inside a person’s home is considered unlawful. However, body-worn cameras become an exception to this rule because in the majority of the states these devices can be kept on when an officer is interacting with a citizen inside their homes. If the officer’s presence is lawful, body-worn camera recordings may proceed inside the home (see Denver Police Department, 2015: 3; Louisville Metropolitan Police Department, 2015: 323; University of Tennessee Police Department, 2015: 3). By allowing body-worn cameras to be used inside of people’s homes, its surveillance potential is greatly extended.

Biometric technology is becoming more commonplace with camera surveillance in general. Biometrics entails the use of biological information for the purposes of identification and verification (Magnet, 2011). Many U.S. police agencies have already started using facial recognition software to scan CCTV camera footage and crosscheck them with existing searchable databases (Mateescu, Rosenblat and Boyd, 2015). Combining digitized CCTV systems with searchable computer databases, the intensity of surveillance greatly increases (Ericson, 2007a: 52). Although biometric technology is already being used with CCTV cameras, incorporating biometric software with body-worn cameras is new. None of the examined body-worn camera program policies limit the use of biometrics and real-time data analytics. However, facial recognition systems have already started being tested on body-worn cameras (see Body Worn Video Steering Group, 2015; Gotfredson, 2014). Interestingly, none of the amended

legislative acts make the use of biometrics in conjunction with body-worn cameras illegal. Recent advances in technology however are making it possible to extract biometric information from video footage. The close up-images that body-worn cameras record provide the ideal scenario for the extraction of facial information through biometric systems (Mateescu, Rosenblat and Boyd, 2015). It is only a matter of time before such invasive biometric extraction practice become common place with body-worn cameras. Studies are already testing body-worn cameras with facial recognition software. These devices are being tested in real-life conditions and during law enforcement activities (Al-Obaydy and Sellaheewa, 2011).

The analysis of manufacturer websites and marketing materials revealed that camera manufacturers are increasingly marketing more sophisticated body-worn cameras that incorporate various data analytics and real time analysis (see Axon, 2016; Integrys, 2016; Reveal Media, 2016). These cameras are specifically being marketed as being highly efficient in data collection and security. Reveal Media is currently marketing their RS2-X2 body-worn cameras as being one of the most efficient cameras in data collection and management. Real time software allows the officer to categorize recordings as evidentiary right on the spot (Reveal Media, 2016). Other manufacturers also focus on efficiency in data management by combining numerous sources of video evidence into one single repository. The Verus Evidence Management system enables recordings from body-worn cameras to be synchronized with other video surveillance to procure a time-accurate recreation of events from multiple angles (Warner, 2015). Attempts to incorporate body-worn cameras with other video surveillance devices in a synchronized video management software is evidence for the extension of the surveillant assemblage. Such synchronization allows for efficient data retrieval and analysis in searchable databases. This is not a new idea within police institutions. In the past, police services have

looked for new ways to integrate and synchronize their numerous computer systems and databases. This was exemplified by the ongoing efforts of law enforcement authorities to effectively synchronize intelligence databases (see Chermak et al., 2013; Haggerty and Ericson, 2000; Taylor and Russell, 2012).

Most of the U.S. police agencies analyzed already engage in video data management and analysis (see Denver Police Department, 2015; Las Vegas Police Department, 2015; Seattle Police Department, 2015). Most policy texts state that body-worn camera recordings are to be uploaded to evidence.com. This website, which is managed by a company called Axon, allows for efficient retrieval, analysis and interagency sharing (Axon, 2016). According to Axon (2016), this website allows for interconnectedness among different police agencies through information sharing, which is ultimately justified by possible reductions in crime. Although the policy texts do not explain when body-worn camera recordings may be shared with other governmental agencies, state legislation does allow for this to occur with considerable discretion. Section 3(s) of bill no. 248 of the Florida General Assembly (2015) states that “a body camera recording may be disclosed by a law enforcement agency, to another governmental agency in the furtherance of its official duties and responsibilities”. Cloud storage of recordings and interagency sharing of information extends the uses of body-worn camera recordings within the surveillant assemblage.

Incorporating biometric technology with body-worn cameras falls beyond the originally stated purpose of these devices being used for monitoring police conduct. Incorporating real time analytics and facial recognition technology with body-worn cameras is undoubtedly evidence of function creep. The notion of function creep entails the gradual widening of use of a technology beyond the originally intended purpose (see for example Backman, 2012). With the evidence of function creep, body-worn cameras are becoming a new element of the existing surveillant

assemblage. Although Ericson (2007a: 24) explains that with the development of new surveillance networks and infrastructures, traditional standards of law are often eliminated, it is not the case for body-worn cameras regarding their surveillance potential. Existing legislation does not expressly prohibit the use of body-worn cameras as a police surveillance device or the incorporation of biometrics and real time video analytics. Consequentially, the use of body-worn cameras can easily be extended beyond simply for the purposes of monitoring police conduct. The absence surveillance governing legislation in the case of body-worn cameras, allows these devices to be used for citizen surveillance without much legal obstacle.

Although absent of legal challenges, body-worn camera programs are not without social consequences. Combining body-worn cameras with searchable databases based on biometrics show the possibility of social sorting. Surveillance a social sorting relies on particular categories by which personal information is categorized specifically with the intent to manage certain populations. The majority of existing surveillance devices equipped with biometric technology, all rely on searchable databases (Lyon, 2001). This would be no different with body-worn cameras. Body-worn cameras paired with facial recognition technology could easily become like police automated license plate scanner, constantly scanning faces, categorizing and matching them with databases (see Harvard Law Review, 2015; Warren et al., 2013). In the absence of effective legislation to regulate its surveillant limits, body-worn cameras run the danger of becoming yet another tool for police surveillance and social sorting.

Body-worn cameras are primarily intended for use by uniformed patrol officers. However, according to the IACP (2014), plainclothes officers may be issued body-worn cameras as well. Equipping plainclothes officers with these devices creates new social and legal consequences. The examined camera policy texts from the U.S. police agencies are primarily

aimed at the governance of body-worn cameras equipped by uniformed officers. The New Orleans Police Department (2015) policy text states that plainclothes officers may be issued body-worn cameras. Existing state legislation on body-worn cameras does not address the use of these devices by plainclothes officers. Body-worn cameras are generally intended for overt use, meaning that they cannot be hidden or out of sight. However, equipping plainclothes officers with these devices changes their meaning entirely. Officers wearing plain clothes instead of a uniform signify a shift in the meaning of their image. The plain clothes are intended to mask the image that they are police officers. Equipping these officers with body-worn cameras changes the conceptualization of the camera towards a covert device. Although these devices may still be used to monitor conduct, plainclothes officers do not interact with members of the public to the same extent as uniformed officers do. Also, plainclothes officers tend to be more involved in investigative and detective duties, thus changing the context of the body-worn camera recordings considerably. Given the absence of governing state legislation and appropriate police policy texts, equipping plainclothes officers with these cameras undoubtedly befits Ericson's (2007a) surveillant assemblage. Although equipping uniformed officers with body-worn cameras already constitutes an extension of the surveillant assemblage, plainclothes officers' use of these devices extends this even further.

B) Canada

The Canadian police services examined in this study also state that a purpose of their body-worn camera programs is to collect evidence. Victoria, BC was the first police service in North America to test body-worn cameras through a pilot project. Their policy text clearly states that the purpose of this technology was not surveillance or deterrence, but rather to capture the

“best evidence” of criminal behaviour for court purposes through video technology (Victoria Police Service, 2010: 8). During the pilot project, personal information was collected as evidentiary data to be used in prosecution. Interestingly, the enhancement of police accountability and transparency was not emphasized at all. In fact, the policy text states that body-worn cameras were adopted with hopes of increasing the effectiveness of information gathering for law enforcement purposes and not accountability or transparency. Victoria Police Service (2010) explain their body-worn cameras are not considered surveillance devices but instead are investigative tools used to gather the best evidence possible, a distinction that is entirely unclear. During their pilot project, body-worn cameras were supposedly only used to record evidentiary data useful for investigations and prosecution. The Calgary Police Service (2015a) and Edmonton Police Service (2015b) both emphasize the use of body-worn cameras for investigative purposes. Calgary Police Service (2015b) lists the collection of evidence as the first aim of the body-worn camera pilot project. Similarly, to Victoria, Calgary also explains that body-worn cameras are being used for providing additional evidence during prosecution and also improving evidence documentation. It is evident that the collection of evidence is a major objective of body-worn cameras programs in Canada.

Canadian police services allow for considerable discretion about when body-worn cameras may be turned on. Amherstburg Police Service (2015) lists numerous situations where body-worn cameras must be turned on; however, it does advise an officer to turn on cameras during all investigative contacts with the public for purposes of evidence gathering. Calgary Police Service (2015a) emphasizes that cameras should be turned on during all domestic violence and sexual assault investigations. The aim is to capture as much evidence as possible and witness statements. Although officers are advised to be sensitive to privacy concerns when it

comes to recording the inside of a private residence, there is still considerable discretion given to officers. The policy texts clearly outline when body-worn cameras should be used inside a private dwelling. By invoking provincial privacy legislation, police services become authorized to use body-worn cameras for very extensive purposes, including citizen surveillance.

Although unaddressed by U.S. police agencies, retention periods are of significant importance in Canadian police body-worn cameras pilot projects. There is considerable variance in how long recordings can be kept. Amherstburg Police Service (2015) states that body-worn camera recordings shall be retained for 6 months, unless deemed to be of evidentiary value, at which point the retention period increases. Although it is not stated in their policy text, retention periods increase to indefinite if recordings become categorized as evidence. Similarly, Calgary Police Service (2015c) states that body-worn camera recordings will be automatically deleted after 13 months, unless they become categorized as evidence. Evidentiary retention periods are also indefinite in Alberta. Currently there are no laws that regulate the retention period of body-worn camera recordings. As a result, police services allocate retention periods as they see fit, often dependent on available storage. Retention periods become of concern when considering the ambiguities involved with what content of body-worn camera recordings may be categorized as evidence.

On a given police service; only a certain number of officers are equipped with body-worn cameras. It would cost a considerable amount of resources to equip all the sworn members of a large police service. The body-worn camera pilot project initiated by the Toronto Police Service, lasting from May 2015 to June 2016 rolled out 100 cameras (Mehta, 2015). To effectively test these devices, the police service plans to rotate them throughout various units and analyze their use in varying contexts. In Toronto, these devices are intended to be used by the Rapid Response

Team, Traffic Services, 55 Division Primary Response Unit and the 43 Division Community Response Unit. According to the TPS, these units were chosen because of their frequent contact with the community. Similarly, in Edmonton body-worn cameras were selectively distributed in certain areas. Although frequency of contact with the community was a major deciding factor in where cameras were distributed, the concentration of cameras in specific area exposed certain groups to more intensified surveillance. Officers with body-worn cameras were heavily concentrated in the area of the West Edmonton Mall. This area includes various shopping and entertainment attractions. It also includes numerous concert venues and bars where alcohol and potentially other substances may be consumed. Although this area has a heavy concentration of CCTV cameras, infusing body-worn cameras into this context would provide supplemental data that CCTV cameras may miss (Edmonton Police Service, 2015a). This selective distribution of cameras reveals that one of their purpose is surveillance. Risky populations and undesirables often congregate in nightlife districts, such as the West Edmonton Mall area. As a result, these areas tend to be heavily securitized and surveilled (see for example Palmer and Warren, 2013). Ericson (2007a: 169) explains that targeted populations are often those deemed to be dangerous. Given this, concentrating body-worn cameras in the West Edmonton Mall area is largely for the purpose of watching and managing risky populations. Consequentially, body-worn cameras now become a police surveillance device, which befits Ericson's (2007a) surveillant assemblage model.

During their pilot project, Edmonton Police Service (2015a) decided to equip its Traffic Impaired Driving Countermeasures Unit (IDCU) with body-worn cameras. The IDCU coordinates and participates in roadside checkstops aimed at targeting impaired driving. Roadside checkstops may be problematic in and of themselves given that their constitutionality

remains in contention. Nevertheless, equipping officers with cameras placed at these checkpoints creates further social and legal issues. Although there is a high frequency of community contact within this context, the duration of contact is very low. As a result, body-worn cameras in this context may not be present for the sole purpose monitoring officer conduct; rather their main objective would be to collect information on a risky population.

None of the Canadian police services make reference to real time video analytics or biometrics in their body-worn camera policy texts. Although implementing biometrics with body-worn cameras does raise numerous privacy concerns, police services in Canada have very broad authority under the provincial *FIPPA* to collect, use and disclose personal information for law enforcement purposes (Doll and Sosiak, 2014). Calgary Police Service stated that only the names of suspects involved with criminal matters would be entered into the CPS facial recognition database. Regardless of the proposed limitation in what names get entered into the facial recognition database, the body-worn cameras could indiscriminately record everyone. Aside from the privacy implications, there are concerns around the accuracy and reliability of the facial recognition software. As Magnet (2011: 29) explains, biometric technology is rampant with technological failures of unreliability and inconsistency and these failures tend to harm disadvantaged groups disproportionately.

The selective distribution of body-worn cameras in certain areas and the adoption of biometric technology is evidence of function creep. Concentrating cameras in specific neighbourhoods is part of police profiling. Undesirables and other risky populations frequent these areas. Incorporating facial recognition technology within this context would undoubtedly extend the proposed objectives of body-worn camera programs. These devices now become used as a precautionary tool for surveillance and risk management, which befit Ericson's (2007a)

surveillant assemblage model. Although the occurrence of counter-law I regarding body-worn cameras is not effectively illustrated in existing Canadian legislation, existing legal vagueness and more importantly the absence of appropriate camera legislation does allow body-worn cameras to be incorporated as a new element of the existing surveillant assemblage.

IV. Encountering Resistance as part of the Surveillant Assemblage

The numerous legislative amendments in the U.S. created numerous exemptions that facilitated the use of these devices, which does befit the notion of the surveillant assemblage. Wilkinson and Lippert (2012: 312) explain that the criminalizing process brought about by the surveillant assemblage brings with it various forms of resistance. As body-worn cameras become part of the larger surveillant assemblage, their implementation also encounters various forms of resistance.

Although an increasing number of police services are adopting body-worn camera programs, there is considerable negativity surrounding these devices, mostly from officers forced to wear them. Many veteran police officers tend to dislike body-worn cameras, often labeling these devices as just another extra tool to worry about (Edmonton Police Service 2015b). Wilkinson and Lippert (2012) explain that increasing police workload can be considered a type of resistance to the otherwise seamless progression of the surveillant assemblage. In the case of body-worn cameras, the police officer has to upload the recordings from these devices onto a static or cloud storage unit. Front line officers may spend up to 3 hours uploading and tagging body-worn camera recordings from a 10-hour shift (Casey, 2016). This places an extra burden on police workload that can be conceptualized as a form of resistance.

Resistance within the surveillant assemblage may include various organizational, technical and social processes that prevent the flow of video images (Bogard, 2006: 98). Although the daily use of body-worn cameras places an extra burden on police workload, police resistance towards these devices can also be conceptualized within the notion of workplace surveillance. The Edmonton Police Service (2015b) reveals various different opinions about body-worn cameras coming from the officers who tested them during the pilot project. Although most do approve of body-worn cameras in general, they disagree with having to wear them because it may negatively affect their behaviour. As a veteran EPS police officer explains:

If I forget about the BWV and swear or am more aggressive in my attitude it concerns me afterwards. I think I shouldn't have done that and am afraid of complaints (Edmonton Police Service, 2015b: 47).

Some officers may forget about the presence of the body-worn camera and as a result use language during the citizen interaction that may not be deemed appropriate.

Officer safety is one of the key aspects that is heavily discussed when police services consider the adoption of body-worn cameras. The presence of the camera may affect how police officers act in certain situations and possibly jeopardizing their safety. As one EPS police officer reveals:

The activated BWV made me more hesitate to take control of the situation other than verbally. For example, there was a subject who began to gain the upper hand. Attempted to walk away in handcuffs. Eventually I got bitten by the subject and used level two use of force. Hesitation is an officer safety concern. Hesitation is an officer safety concern (Edmonton Police Service, 2015b: 47).

Being overly concerned with the presence of the body-worn camera and its surveillant effects may lead officers to act differently in certain situations and thus it could make them less effective in some contexts (Edmonton Police Service, 2015b: 47).

Officer resistance towards body-worn cameras become especially obvious when there are other responders on a particular scene whose activities may be recorded by another officer's body-worn camera. Other officers or first responders may become concerned if a colleague has a body-worn camera. As an EPS officer reveals, there is a considerable level of negativity towards the presence of body-worn cameras equipped on other constables:

But members don't like it. They don't like change and there is a lot of negativity towards it. I can tell other members it is on but they will not necessarily be as aware of it. Or they can change their behaviour and don't do what they should because of the BWC, don't use force or change how they police (Edmonton Police Service, 2015b: 48).

The concern for the presence of body-worn cameras from colleagues can also be framed to be part of the larger concern for workplace surveillance because inadvertently now their activities may also be scrutinized in the aftermath of an incident.

Officer concern for workplace surveillance and the increasing police workloads pose considerable resistance to the deployment of body-worn cameras and the subsequent extension of the surveillant assemblage. However, Wilkinson and Lippert (2012) explain that technological limitations may also inhibit the spread of the surveillant assemblage. Although video recording technology improved considerably since the rise of CCTV cameras, technological limitations still exist that can be conceptualized as barriers to the spread of the surveillant assemblage. Given that body-worn cameras are attached to an officer, these devices rely on battery life that is often very limited, in some cases only lasting 3 hours (see Integrys, 2016; Reveal Media, 2016). This limited battery life can be framed as a form of resistance because it essentially limits the duration of body-worn camera recordings.

Much like with CCTV cameras, body-worn cameras are limited in their field of view. Although body-worn cameras are unique in their mobility because they are attached to an officer, they are nevertheless limited on what they record. The direction in which an officer is facing is

essentially what a body-worn camera records. Although the point of view of the officer may change abruptly, the camera only records the direction the officer is facing and thus leaving out surrounding context (see Force Science Institute, 2014). This limitation can also be conceptualized as a technical form of resistance because it limits the collection of information by body-worn cameras and the subsequent extension of the surveillant assemblage.

Lastly, storage limitations pose significant challenges to the retention of body-worn camera recordings. Although technological advancements allow body-worn cameras to store a considerable amount of recording data, technological limitations of cloud storage become challenging (see Axon, 2016; Reveal Media, 2016). The majority of the police agencies with body-worn camera programs that I have analyzed rely on cloud storage units (see for example Phoenix Police Department, 2015; Rialto Police Department, 2015; Seattle Police Department, 2015). A cloud unit is still a finite storage unit and thus it still limits the amount of data that can be stored on it. In most cases old recordings need to be deleted to create space for the newer ones. Storage limitations can be considered a type of resistance to the spread of body-worn cameras within the surveillant assemblage because it inhibits information flow (see Wilkinson and Lippert, 2012). Finite storage only allows for a specific amount of information from body-worn cameras to flow through a police institution thus limiting the extent of the surveillant assemblage itself.

Resistance to body-worn cameras may not only come from the police institution itself, technical forms of resistance such limited battery life, point of view, and storage limitations also pose barriers. As mentioned earlier, the criminalizing process through the surveillant assemblage is filled with obstacles (see Wilkinson and Lippert, 2012). Even with the numerous legislative amendments and exemptions intended to facilitate the use of body-worn cameras, the above

mentioned examples of resistance make the integration of these devices within the existing surveillant assemblage “less than seamless” (see Wilkinson and Lippert, 2012: 312). I return to the significance of this resistance below.

6. CONCLUSIONS

Drawing on Ericson’s (2007a) counter-law framework, this thesis sought answers to two questions: how and to what extent are body-worn camera programs a form of counter-law? How and to what extent is Ericson’s counter-law framework in need of refinements in light of body-worn camera programs. To effectively answer the first question, I will summarize the results of this thesis to discuss how and to what extent each aspect of Ericson’s (2007a) counter-law framework is reflected in the discourse. To effectively answer the second question, I will summarize different parts of this thesis that did not directly benefit Ericson’s (2007a) original framework of counter-law, but show evidence for part of it. I conclude by discussing necessary refinements to Ericson’s (2007a) counter-law framework regarding body-worn camera programs and its effects.

I. How and To What Extent are Body-Worn Camera Programs a Form of Counter-Law?

Body-worn camera programs are found to be a form of counter-law because their representations in the existing discourse benefit the aspects of Ericson’s (2007a) counter-law framework. The politics of uncertainty is a crucial component of risk management, represented throughout the counter-law framework. According to Ericson (2007a), uncertainties with no calculable price become the focus of a precautionary response. The rise of body-worn camera programs in Canada and the U.S. benefit Ericson’s (2007a) conceptualization of a precautionary response. In the aftermath of the Michael Brown shooting in Ferguson, Missouri and the death of

Eric Garner in New York City, body-worn cameras became the focal point of discussion on how to deal with the uncertainties of police misconduct and brutality. Following these events, public opinion of the police, especially amongst African Americans, plummeted. The growing widespread lack of trust in police amongst the public poses a significant level of risk to the legitimacy of the police institution itself (Hawdon, 2008; Tyler et al. 2014). As such, body-worn cameras became portrayed as the tool that will significantly enhance police accountability and transparency. These devices would supposedly also achieve considerable reductions in unwanted citizen complaints and save police agencies significant amounts of resources that would otherwise be spent in civil lawsuits. Ericson (2007a) suggests that the politics of uncertainty leads to enormous expenditures on risk assessment and management that reveal the limits of risk based reasoning and intensify uncertainty. Body-worn camera programs befit the conceptualization of a precautionary tool because of the overwhelming monetary costs of these programs and the exaggerated response. Due to the absence of appropriate research, it is uncertain whether these devices can indeed increase police accountability and transparency or reduce complaints. Such an absence of conclusive research intensifies levels of uncertainty. With police legitimacy being challenged in the aftermath of seemingly increasing incidents of police brutality, body-worn camera programs become the precautionary response to increasing levels of uncertainty.

With the rise of body-worn camera programs across the U.S., existing laws were heavily amended to exempt body-worn cameras from certain legal requirements. Parts of the privacy legislation, such as the two-consent requirement in certain states, posed difficulties to the operation of body-worn cameras because citizens would often refuse to be recorded. Based on Ericson's (2007a) conceptualizations, the two-consent requirements can be considered a

traditional standard of law that stood in the way of pre-empting imagined sources of harm. For body-worn cameras to be used freely, amendments were made that exempted these devices from the two-consent requirements. These exemptions befit Ericson's (2007a) counter-law framework because they ultimately eroded existing standards of law.

Under existing public records law in the U.S., body-worn camera recordings are to be considered public information. However, certain states amended their public records law by exempting these recordings from public records disclosure requirements and as such limit public access to these recordings. These amendments to public records legislation also befit Ericson's (2007a) counter-law framework because they intended to counteract existing standards of law. These exemptions also go against the proposed aims of body-worn camera programs in general, which is to enhance police accountability and transparency. By exempting body-worn camera recordings from public records disclosure requirement, transparency does not occur. Similarly, police accountability becomes a difficult objective to accomplish.

Aside from these proposed aims of increasing accountability and transparency, these body-worn cameras can also be used for the collection of evidence. Dependent on what the camera recorded, some recordings may be categorized as having evidentiary value. However, it is unclear what types of recording may be categorized as such. Police body-worn camera policy texts do not provide clear guidelines; in many cases broadening interpretation to the point of anything that can be considered useful in an investigation. Similarly, legislative amendments are also vague and only address the use of body-worn camera recordings after it becomes evidence, they do not clearly address the process by which the categorization itself is decided. The existing broadness within these discourses befits Ericson's (2007a) because it allows for the scope of body-worn cameras to be expanded. Ericson (2007a: 160) explains that antisocial behaviour has

never been given a proper legal definition. This broadness provides a much more expansive scope for whatever may be defined or interpreted as problematic behaviour. The absence of clear legal or policy guidelines to what types of body-worn camera recordings can be considered evidence, allow for a very expansive use of these devices.

In the U.S., state legislations were heavily amended to allow body-worn cameras to be used in areas where otherwise they would be considered unlawful, such as a private residence. Policy discourses reveal that police agencies in the U.S. give a significant degree of discretion to individual officers to decide when to initiate body-worn camera recordings. Furthermore, the amended legislations back up this high level of police discretion by making the use of body-worn cameras lawful in areas where their use would otherwise be challenged by privacy rights. Police become empowered to use these devices to their discretion when they see fit. As mentioned earlier, police are empowered to see everything (Johnson, 2014: 9). Allowing body-worn cameras to be operated unhindered without any legal implications allows for these devices to be integrated as a new component in the existing surveillant assemblage. According to Ericson (2007a), new elements are constantly being added to the surveillant assemblage that often times result in the erosion of traditional standards and principles of law that pose an obstacle to pre-emption. Body-worn camera programs befit the framework of the surveillant assemblage, because the amended legislations allow these devices to be exempted from certain requirements and thus operate unhindered.

The integration of biometric technology with body-worn camera programs highlights how these devices are a new part of the surveillant assemblage. In the U.S., none of the examined police agencies adopted any biometric technology with their body-worn camera programs. However, none of the program policy texts or legislative amendments makes the

integration of biometrics with body-worn cameras unlawful. Similarly, in Canada, the Calgary Police Service integrated facial recognition technology with their body-worn camera programs. It is unclear how the integration of facial recognition technology helps with police accountability and transparency. Nevertheless, the integration of biometrics does benefit Ericson's (2007a: 52) surveillant assemblage. As Ericson (2007a) explains, the integration of digitized CCTV systems with computer databases results in the intensification of surveillance, which allows for the identification of people through their data doubles. To operate biometric technology, searchable databases are required where scanned faces are matched with data doubles. Integrating facial recognition technology with body-worn cameras also relies on searchable computer databases. Similarly, to the digitized CCTV systems, the surveillance potential of body-worn cameras are greatly intensified in this process, allowing for the surveillant assemblage to take root.

II. How and To What Extent is Ericson's Counter-Law Framework in need of refinements in light of Body-Worn Camera Programs?

Counter-law does not always manifest itself in obvious ways. Ericson (2007a: 208) argues that even with anti-social behaviour legislation, the laws are written to be used differently dependent on the local context of uncertainty. The counter-law regime is not an unstoppable monolithic process in and of itself. There is considerable variation across its manifestations. Ericson (2007a: 208) calls for comparative future research that extends and modifies his counter-law framework. Although I did not compare body-worn camera programs across different police agencies between Canada and the U.S., my analysis reveals variations across how counter-law is operationalized in body-worn camera programs within these two respective countries. Although each of the states I have analyzed amended parts of their legislation to facilitate the use of body-

worn cameras through legal exemptions, there is considerable variation across each state. These states possess a considerable amount of autonomy when it comes to legislative decision-making and this is undoubtedly illustrated through the variations in legislative amendments regarding body-worn camera programs. In some states, legislative amendments did not alter existing legislation to a considerable degree to facilitate the use of body-worn cameras (see Massachusetts General Assembly, 2015). Currently, Massachusetts remains one of a few states where officers equipped with body-worn cameras are legally obliged to obtain consent from a citizen, if practicable, before a recording can be initiated. Most of the other states I analyzed amended this consent requirement by creating an exemption for body-worn cameras. In some cases, an officer is not even required to notify a citizen when a body-worn camera recording is initiated. For example, the California General Assembly (2015) amended its two-consent laws by exempting body-worn cameras from these requirements. Exemptions were also created to allow these devices to be used in private spaces and to limit public access to recordings through public records legislation. These legislative amendments by the state of California illustrate the presence of counter-law and its intent to “cast the net as widely as possible” (Ericson, 2007a: 47). These efforts to address every imagined source of harm through criminalization end with the undermining of law (Ericson, 2007a: 208). The above mentioned legislative amendments exempted body-worn cameras from a broad range of legal requirements and thus undermined existing standards of law. While these exemptions eroded traditional principles of law, they also allowed for the criminalization of certain activities. By allowing body-worn cameras to be engaged inside a private residence, certain activities become visible and potentially criminalized. As an extension of the surveillant assemblage, body-worn cameras may render certain activities

visible that would have otherwise remained hidden and thus initiate a criminalizing process through counter-law.

Variations across the application of counter-law is not only apparent in the legislative amendments, but also the body-worn camera policy texts put forward by the different police agencies in the U.S. Variations in body-worn camera pilot projects illustrate differences in the extension of the surveillant assemblage. The extent to which the surveillant assemblage manifested itself in body-worn camera pilot programs was dependent on the state in which the respective police agency was located.

The legality of body-worn camera policy guidelines is generally supported by the legislative amendments put forward by State General Assemblies through broad exemptions given to body-worn cameras. There are clear variations in how body-worn camera may be operated in different states. Body-worn camera uses that may be considered lawful in one particular state, may be considered unlawful in another. These differences in the legislative amendments between states illustrate variations in how counter-law I manifests itself. The extent to which body-worn cameras become part of the existing surveillant assemblage is dependent upon localized state context. As mentioned earlier, counter-law varies contextually, often dependent upon the localized politics of uncertainty (see Ericson, 2007a: 208). Given the considerable degree of state autonomy in the U.S., body-worn camera program variations are to a degree dependent on the state specific politics of uncertainty.

These politics of uncertainty vary from one state to another. Given the legislative decision-making autonomy of states, the politics of uncertainty manifests themselves differently between states. The frequency and severity of police brutality incidents in a particular state become strong indicators of risk to police legitimacy. Precautionary measures are considered

exaggerated responses to existing uncertainties. As a precautionary response, body-worn camera programs are dependent on these localized politics of uncertainty that come about as a result of police brutality incidents in a particular area.

Counter-law I tends to manifest itself as a reaction to existing legislation that is perceived as an obstacle during the criminalizing process. Ericson (2007a) does not specifically address the effects of the absence of legislation and its relationship to the counter-law framework. Currently in Canada there is no legislation that governs and regulates the use of body-worn cameras. Existing privacy and freedom of information legislation aims to ameliorate privacy concerns similar to those that came about with the advent of body-worn cameras. My thesis revealed there is legal broadness within existing Canadian privacy and freedom of information legislation. Privacy legislations are typically expected to protect the privacy rights of individual citizens regarding their personal information. However, personal information can be collected by a governmental institution if it is issued for law enforcement purposes. The information body-worn cameras record fall into the definitional boundaries of “personal information” given by the *Privacy Act* and *Freedom of Information and Protection of Privacy Act*. However, neither of these two acts gives an appropriate and detailed definition of what “law enforcement purposes” entails. Given this, Canadian privacy legislation create the conditions of possibility for body-worn cameras to be used unhindered for surveillance purposes because legislation gives police services very broad authority to use personal information as they see fit.

In Canada, counter-law regarding body-worn camera programs as specified by Ericson (2007a) never took place. Existing privacy legislation had a built in enabling mechanism that allowed body-worn camera programs to take root within the existing surveillant assemblage without any legal consequences, as exemplified by the Calgary Police Service’s integration of

facial recognition technology within their pilot project. In the Canadian context, the absence of legislation to govern body-worn camera programs shows that there are no legal obstacles that need to be counteracted with new legislation. As mentioned earlier, the undermining of law is often the end result of efforts that aim to address imagined sources of harm through criminalization (Ericson, 2007a: 208). However, in Canada, existing law was not undermined through these typical terms with the deployment of body-worn camera programs. As such, body-worn camera programs can be effectively established as a new element in the existing surveillant assemblage without the need for counter-law. Ericson (2007a) explains that the new elements being constantly incorporated into the existing surveillant assemblage erode traditional standards and principles of law. In as much as body-worn camera programs in Canada generate privacy concerns, their general use is not inhibited by any privacy existing legislation. The broadness of existing legislation needs to be considered when applying Ericson's (2007a) counter-law framework to body-worn camera programs and undoubtedly other similar programs yet to be hatched.

While the integration of body-worn cameras programs into the existing surveillant assemblage is moving at an alarming pace, it is not a seamless process, encountering numerous forms of resistance along the way. As part of the larger counter-law framework, these resistances manifest themselves differently based on the localized politics of uncertainty. In the U.S., these variations in resistance are dependent on state context. In some states, legislative amendments excessively exempted body-worn cameras and thus facilitated their integration into existing surveillant networks without much resistance. In other states, exemptions were much less facilitating, and as a result limiting the extent to which body-worn cameras become part of the existing surveillance network.

In Canada, there is considerable variation in resistance across different police services. Officers from the Edmonton Police Service were generally against the adoption of body-worn cameras. While they did test these devices through a pilot project, after the conclusion of the project they decided not to equip their officers with cameras (see Casey, 2016). As such, this limits the extent to which body-worn cameras become part of the existing surveillant assemblage for Edmonton. In Calgary, resistance to body-worn cameras did not manifest itself to the degree that it did in Edmonton. After the conclusion of their pilot project, the Calgary Police Service decided to roll out 1,100 cameras and thus equip all their front line officers with these devices (see Casey, 2016). While Edmonton and Calgary are both situated in Alberta, there are differing localized politics of uncertainty that influenced the adoption of body-worn cameras.

In conclusion, body-worn camera programs both in Canada and the U.S. show the potential to be used for multiple purposes aside from simply monitoring officer conduct. As evidence shows, these devices are already starting to be used for intelligence gathering and surveillance. It will be interesting to see what the future holds for body-worn cameras considering that an increasing number of police services across Canada and the United States are initiating pilot projects. With the rapid pace of technological development, it is only a matter of time before body-worn cameras become a common police surveillance device.

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APPENDIX A: SUMMARY OF STATE LEGISLATIVE AMENDMENTS AND POLICE AGENCY BODY-CAM GUIDELINES

Table 1: Summary of State Legislative Amendments – (* indicates states with two consent systems)

State Legislatures (25)	“Amendments create exemptions that allow for BWC recording”	“Exemptions if BWC recording is evidentiary in nature”	“Amendments to public records request regarding BWC recordings”	“Legally bound to inform citizen of BWC recording”	“Legally bound to obtain consent to record from citizens”
California*	YES	YES	YES	NO	NO
Connecticut*	n/a	n/a	YES	n/a	n/a
Colorado	n/a	YES	n/a	NO	NO
District of Columbia	YES	YES	YES	NO	NO
Florida*	YES	YES	YES	YES	YES (only when inside someone’s home)
Georgia	YES	YES	n/a	NO	NO
Illinois*	YES	YES	YES	YES (only in some cases)	NO
Indiana	n/a	YES	YES	NO	NO
Iowa	YES	YES	YES	YES	YES (only when inside someone’s home)
Kansas	YES	YES	YES	YES	YES (only when inside someone’s home)
Kentucky	YES	YES	YES	NO	NO
Louisiana	YES	YES	YES	YES	NO
Missouri	NO	n/a	NO	YES	NO
Minnesota	YES	YES	YES	NO	NO
Maryland*	YES	YES	NO	YES	NO
Massachusetts*	NO	YES	YES	YES	YES
Nevada	YES	YES	YES	NO	NO
New York	n/a	n/a	YES	n/a	n/a
North Dakota	n/a	n/a	YES (if in a private place)	n/a	n/a
North Carolina	NO	YES	NO	NO	YES

South Carolina	n/a	YES	YES	NO	NO
Tennessee	n/a	NO	NO	n/a	n/a
Utah	YES	YES	NO	YES (only in private residence)	NO
Virginia	YES	YES	NO	YES (only in private residence)	YES (only in private residence)
Washington*	NO	YES	NO	YES	NO

Table 2: Summary of police agency body-cam guidelines (*indicates police agencies from states with two consent systems)

Police Departments (33)	“Exemption to stop/initiate recording in some cases”	“Evidentiary value of recordings”	“Considerable discretionary power given to officer”	“Obligated to inform citizen about camera”	“Must obtain consent from citizen during recording”
Phoenix, AZ	YES	YES	YES	NO	NO
Los Angeles, CA*	YES	YES	YES	NO	NO
Rialto, CA*	YES	YES	YES	NO	NO
New Haven, CT*	YES	YES	NO	NO	NO
Denver CO	YES	YES	YES	NO	NO
Washington, DC	YES	YES	YES	YES	NO
Miami, FL*	YES	YES	YES	NO	YES (only inside private residence)
Atlanta, GA	NO	YES	YES	NO	NO
Chicago, IL*	YES	YES	YES	YES	NO
Greenwood, IN	YES	YES	YES	NO	NO
Iowa City, IA	YES	YES	YES	NO	NO
Coeur d’Alene, ID	YES	YES	NO	NO	NO
Wichita, KS	NO	YES	YES	NO	NO
Louisville, KY	YES	YES	YES	NO	NO
New Orleans, LA	YES	YES	YES	NO	NO
Missoula, MT*	NO	YES	NO	NO	NO
Ferguson, MO	NO	YES	YES	NO	NO

Minneapolis, MN	YES	YES	YES	NO	NO
Baltimore, MD*	YES	YES	YES	YES	NO
Boston, MA*	YES	YES	NO	YES	YES
Las Vegas, NV	YES	YES	YES	NO	NO
New York, NY	YES	YES	YES	YES	NO
Grand Forks, ND	YES	YES	YES	NO	NO
Charlotte, NC	YES	YES	YES	NO	YES
Cleveland, OH	Yes	YES	YES	YES	NO
Charleston, SC	YES	YES	YES	NO	NO
Knoxville, TN	YES	YES	YES	NO	NO
West Valley City, UT	YES	YES	YES	NO	NO
Gordonsville, VA	NO	YES	YES	NO	NO
Burlington, VT	YES	YES	YES	YES (only in private residence)	NO
Seattle, WA*	YES	YES	YES	YES	YES (only in private residences)
Milwaukee, WI	YES	YES	YES	NO	NO
Mills, WY	YES	YES	YES	NO	YES

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