

**ARCHIVAL LAW FROM THE TRENCHES: THE IMPACT OF ARCHIVAL
LEGISLATION ON RECORDS MANAGEMENT IN COMMONWEALTH COUNTRIES**

by

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Abstract

Archival legislation in several Commonwealth countries provides the national archives with the statutory mandate to manage and preserve government records. The archival literature recognizes that archival legislation lags behind advances in technology and that it is often not robust enough to support the management and preservation of records. However, there is a lack of empirical research on how archival legislation is operationalized within specific socio-political, cultural, and juridical contexts, and on the perceptions of archivists and records managers about such operationalization.

This dissertation addresses how the operationalization of archival legislation in the UK, Canada, and Singapore influences its effectiveness in the implementation of records management programs. The study takes into account the common law system based on an intergovernmental organization, the Commonwealth, as well as the different socio-political and cultural contexts of the countries. To explore the shared and varying views that archivists and records managers have on archival legislation, the study largely employs interpretivist perspectives and hermeneutic principles to examine interviews conducted with archivists and records managers, selected legislation, normative sources, and other documentary sources related to the enactment of archival legislation.

The findings of this research suggest that archival legislation operates in the context of a patchwork constituted by other records-related legislation and normative sources, and that there are complexities involved in making amendments to such legislation. There are also organizational culture issues that stem from the institutional relationships between the national archives and government departments and the individual-level relationships of archivists and records managers. These issues can enable and constrain the delivery of a records management

program. Additionally, the joint responsibilities in recordkeeping and record preservation held by the national archives and other departments that have an interest in information management result in a collaboration constraint and have contributed to a perceived lack of leadership on the part of the national archives in records management. The study concludes with recommendations for the decoupling of archival national institutions from national archival legislation, and for a comprehensive regulation of all aspects of records creation, maintenance, and preservation in the public sector.

Preface

This dissertation is based on original, independent research carried out by the author, Elaine Mei Yee Goh. Some of the literature review discussed in Chapter 2 was presented by the author at the *Memory of the world in digital age: Digitization and preservation – An international conference on permanent access to digital documentary heritage* in Vancouver, Canada, September 2012. In addition, parts of Chapter 2 and Chapter 5 were drawn from two encyclopedia entries written by the author on archival legislation and organizational culture from the *Encyclopedia of Archival Science* published in 2015. The interviews discussed in Chapter 4 and 5 were covered by The University of British Columbia Behavioural Research Ethics Board Certificate H12-03267.

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List of Abbreviations

ACARM	Association of Commonwealth Archivists and Records Managers
AIA	Access to Information Act, Canada
APA	American Psychology Association
ATI	Access to Information, Canada
CIO	Chief Information Officer
CRGA	Constitutional Reform and Governance Act, UK
CSIS	Canadian Security Intelligence Service
DCMS	Department of Culture, Media and Sport, UK
DPA	Data Protection Act, UK
DRK	Directive on Recordkeeping, Canada
DRO	Department Records Officer
EDRMS	Electronic document and records management system
EIR	The Environmental Information Regulations, UK
e-registry	Electronic registry
FAA	Financial Administration Act, Canada
FCO	Foreign and Commonwealth Office, UK
FOI	Freedom of Information
FOIA	Freedom of Information Act, UK
GDS	Government Digital Service, UK
GTO	Government Technology Organization, Singapore
HIP	Hillsborough Independent Panel, UK
HMC	Historical Manuscripts Commission, UK
HMSO	Her Majesty's Stationery Office, UK
IAP	Independent Assessment Process, Canada
ICA	International Council on Archives
ICO	Information Commissioner's Office, UK
IDA	Infocomm Development Authority of Singapore
IM	Instruction Manual, Singapore

IM4L	Instruction Manual 4 Office Administration - Registry and Records Management, Singapore
IM8	Instruction Manual 8 Policy on Data Management, Singapore
InterPARES	International Research on Permanent Authentic Records in Electronic Systems
IRBV	Information resources of business value
IREV	Information resources of enduring value
IRSSA	Indian Residential Schools Settlement Agreement, Canada
ISO	International Organization for Standardization
LACA	Library and Archives Canada Act
LAC	Library and Archives Canada
LGRA	Local Government (Records) Act, UK
MAF	Management Accountability Framework
MLA Council	Museum, Libraries and Archives Council, UK
MOJ	Ministry of Justice, UK
MOU	Memorandum of Understanding
NACA	National Archives of Canada Act
NAC	National Archives of Canada
NARC	National Archives and Records Centre, Singapore
NARCA	National Archives and Records Centre Act, Singapore
NAS	National Archives of Singapore
NATR	National Centre for Truth and Reconciliation, Canada
NHBA	National Heritage Board Act, Singapore
NHB	National Heritage Board, Singapore
NLBA	National Library Board Act, Singapore
NLB	National Library Board, Singapore
OPSI	Office of Public Sector Information, UK
OSA	Official Secrets Act, Singapore
PAA	Public Archives Act, Canada
PDF	Portable Document Format

PRA	Public Records Act, UK
PRO	Public Record Office, UK
PROA	Public Record Office Act, UK
RCMP	Royal Canadian Mounted Police
SIRO	Senior Information Risk Owner
TB	Treasury Board, Canada
TBS	Treasury Board Secretariat, Canada
TDR	Trusted digital repository
TNA	The National Archives, UK
UNESCO	United Nations, Educational, Scientific and Cultural Organization

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Dedication

To my maternal grandmother and dad,

Who are no longer present in this world, but whose presence is always constant

To my mom,

One of the first generation of working women in Singapore, for providing me with the best
opportunities in education

Chapter 1: Introduction

1.1 Overview

This introductory chapter outlines the research problem, statement of purpose, and central research questions. It also describes the research context in the United Kingdom (UK), Canada, and Singapore. In addition, the chapter provides a brief outline of the methodology employed in this research. The chapter concludes with an overview of the dissertation.

1.2 Research Problem Statement

Archival legislation in a number of Commonwealth countries such as the UK, Canada, and Singapore provides national archives with the statutory mandate to manage and preserve government records.¹ However, as some archival scholars have observed, archival legislation in several Commonwealth countries lacks sufficient rigor to enable national archives to manage and preserve records throughout their entire lifecycle (Gibson, 1999; Lemieux, 1992; Roper, 1999). Archival scholars have described archival legislation as “permissive” in nature (Berry, 1996, p. 341; Knightbridge, 1983, p. 216; Simpson, 2002, p. 10) because it does not impose “statutory obligations” (Knightbridge, 1983, p. 216) on the roles and responsibilities of creating agencies, nor does it provide a system to ensure that agencies comply with recordkeeping requirements. Archival legislation also does not provide “statutory force” (Simpson, 2002, p. 10) as national archives are unable to impose sanctions on departments that infringe on specific provisions in the legislation, such as the unauthorized destruction of public records (Knightbridge, 1983). Another criticism of archival legislation is that it lags behind advances in technology and therefore it is not sufficiently robust to enable the management and preservation of digital records, especially

¹ This author would like to acknowledge that the UK is a unitary state that comprises four countries: England, Scotland, Wales, and Northern Ireland. Nevertheless, this dissertation will use the term “country” in a general manner, including when referring to the UK.

with regard to issues relating to the authenticity of records (Simpson, 2002; Gränström, 2002; Roper, 1999).

A 2003 paper examining a proposed national records and archives legislation by The National Archives (TNA) of the UK highlights some of the limitations of archival legislation. The paper argues that the *Public Records Act (PRA)* of 1958 was conceived in an analogue environment where “records were physical objects, needing physical processes and care to manage and preserve them.”² The existing provisions in the *PRA* are therefore insufficient to ensure the reliability and authenticity of records in a digital environment. The paper recommends a “strengthened legislative framework” that would replace the *PRA*.³ The paper received over 250 responses from various stakeholders, including central government, local government, professional groups, and private individuals who provided their comments on specific questions relating to the records and archives legislation in the UK.⁴ Approximately 76% of the respondents felt that there should be a new legislative framework to “establish a duty to keep and manage records that can serve as evidence of policies, procedures, actions and decisions.”⁵

Since the publication of this paper by TNA in 2003 and the subsequent report on responses to the paper in 2004, the UK has not changed the legislative provisions of the *PRA*. Instead, the *PRA* has been “substantially amended” by other statutes and statutory instruments (Tyacke, 2006, p. 46). One of the purposes of writing this dissertation was to complement the TNA paper and explore through empirical research how archivists working at the TNA and

² UK, The National Archives, *Proposed National Records and Archives Legislation – Proposals to Change the Current Legislative Provision for Records Management and Archives* (Consultation Paper No 01/03) (Crown copyright, 2003) at para 2.25.

³ *Ibid*, p. 6.

⁴ UK, The National Archives, *Report on Responses to the National Archives’ Consultation Paper CP03/01– Proposed National Records and Archives –Proposals to Change the Current Legislative Provision for Records Management and Archives* (Crown copyright, 2004).

⁵ *Ibid*, p. 21.

records managers from the various departments in the central government interact with each other with regard to their responsibilities as outlined in the archival legislation. The dissertation also is intended to provide insight into how those archivists and records managers fulfill the statutory obligations specified in the *PRA* in relation to other related pieces of legislation and codes of practice.

There are potential areas of tension when archival legislation interacts with other records-related legislation, as multiple pieces of legislation are involved in governing management and preservation of records as well as issues related to access. For example, questions arise as to which legislation overrides another on the specific issue of access to information requests (Cauchi, 2004; Schäfer, 2003).

The *Bronskill v. Canada (Minister of Canadian Heritage)*⁶ case is an example where the Canadian Federal Court took into consideration two related pieces of legislation, the *Access to Information Act (AIA)*, and the *Library and Archives Canada Act (LACA)*. The case centered on an access to information request made by Jim Bronskill, a journalist, to Library and Archives Canada (LAC). He sought records relating to Tommy Douglas, a former Canadian politician. Bronskill was specifically interested in the records created by the Royal Canadian Mounted Police's Security Intelligence Division, which subsequently became the Canadian Security Intelligence Service (CSIS). LAC had to respond to the Access to Information (ATI) request since some of the records sought by Bronskill were in LAC's custody. LAC was also required to consult with CSIS in reviewing the nature of the request and in assessing whether the records are exempted from release, as specified by the *AIA* and Treasury Board Policy.

⁶ *Bronskill v Canada (Minister of Canadian Heritage)*, 2011 FC 983 [2011] FCJ 1199 (QL), (available on Lexis) [*Bronskill*].

There were two issues in this case. Firstly, there was the ATI request by Bronskill for a “copy of the [Royal Canadian Mounted Police] RCMP Security Service Files(s) on Thomas Clement (Tommy) Douglas.”⁷ LAC interpreted the ATI request “literally” as a request for a single file, and claimed that the request by Bronskill “was not a request for access to all records related to Mr. Douglas in the possession or control of LAC.”⁸ Secondly, there were concerns about several pages that were missing from a report provided to Bronskill. The Access to Information and Privacy Coordinator for CSIS claimed that she was aware of the missing pages when she initially handled the ATI request. However, as the issue of the missing pages was not raised by Bronskill, the coordinator did not highlight it in her sworn affidavit. Subsequently, efforts were made by LAC to identify other missing pages. The court found LAC’s narrow interpretation of the ATI request and the incident of not mentioning the issue of missing pages constituted possible “breaches of the duty of utmost good faith.”⁹ Such a narrow interpretation of the ATI request was a matter of concern to the court, because LAC is the “custodian of Canada’s history and documentary heritage.”¹⁰ The court also considered LAC’s argument that “right of access is not to be confused with a right to the preservation of records” to be “troubling.”¹¹ The court was disturbed to learn that the sworn affidavit made by one of LAC staff stated that “LAC neither verifies the completeness of the record, the content of the record nor does it do a page count of the record.”¹²

One of the issues raised in this legal case was the mandate and role of LAC stipulated by the archival legislation. The court determined that LAC has a “dynamic mandate and

⁷ *Ibid* at para 29.

⁸ *Ibid* at para 89.

⁹ *Ibid* at para 98.

¹⁰ *Ibid* at para 90.

¹¹ *Ibid* at para 93.

¹² *Ibid* at para 96.

purpose” and that the “intrinsic value of documentary archives and access thereof, must be considered by any decision-maker when considering Access to Information requests as these fully complemented the objectives and spirit of the Act itself.”¹³ In fact, the court stressed that “Parliament considers access to information in Canada and document retention as essential components of citizens’ right to government information.”¹⁴ The court also highlighted that “[w]hether or not the records are in LAC’s possession or not is beside the point, all government institutions answer to the Librarian and Archivist and those with his delegated authority in terms of document retention.”¹⁵

Despite the significance accorded by the court to *LACA*, there are challenges for archival institutions to operationalize and meet their statutory obligations. LAC was the respondent for the ATI request because the records were transferred to it for preservation. LAC was also expected to consult with the department which created and maintained the records and to assess whether these records could be released for access. Consequently, LAC and its reporting Ministry, the Ministry of Canadian Heritage, had to bear the risk of legal action because the records were kept in the archives’ custody. *Bronskill* raises questions about the organizational dynamics between government departments and the national archives in terms of fulfilling their statutory obligations enshrined in the *LACA*. Such organizational dynamics and interaction between the departments and LAC are explored in this dissertation by examining the perceptions of records managers and archivists.

Unlike Canada and the UK, Singapore does not have access to information or freedom of information legislation. The archival legislation of Singapore has been criticized for being too

¹³ *Ibid* at para 25.

¹⁴ *Ibid* at para 17.

¹⁵ *Ibid* at para 21.

restrictive, resulting in a limiting access policy with regard to public archives. Dobbs (2010) claims that the archival legislation in Singapore has given creating agencies “control of access” to records even when they were more than 25 years old and had been transferred to archival custody (p. 75). Similarly, Huang (2010) asserts that the National Archives of Singapore (NAS) “overly deferred to the authority of almost all the creating or depositing agencies, while seemingly reluctant to commit enough of its own time and manpower to meet the international benchmark” (p. 35). Huang (2010) argues that the archival legislation has “granted the originating agency almost total discretionary power to impose any conditions or restrictions on public access” (p. 35). Huang (2010) urges the NAS to “seriously reflect” and review its archival legislation in order to fulfill its mandate (p. 34). More recently, Member of Parliament Loh has argued that researchers need to go through an arduous process of obtaining approval from the creating agencies in order to access records.¹⁶ Loh proposes a “structured de-classification system” for records transferred to archival custody and which are more than 25 years old.¹⁷

While archival legislation has a role in governing the roles and responsibilities of creating agencies and the archival institution which is the designated preserver for their records, the law is not an independent force governing recordkeeping responsibilities and recordkeeping culture. Archivists and records managers make sense of and internalize the meaning of archival legislation in the context of their business activities and are “not merely the inert recipients of law’s external pressures” (Sarat & Kearns, 1995, p. 29). Moreover, since legislation is issued within a larger socio-political and cultural context, there is a need to understand how stakeholders interact with the law, to draw out their perceptions of how the law is operationalized within the context of their country, and to uncover the gaps between the law and recordkeeping

¹⁶ *Parliamentary Debates Singapore: Official Report*, vol 93 (10 March 2015) (Mr Low Thia Kiang).

¹⁷ *Ibid.*

activities in the government. Archival legislation needs to be examined in light of the views and opinions of archivists working in the national archives and records managers from the various government departments. These professionals are tasked with the responsibility for the management and preservation of records and they are also involved in declassifying and providing access to archives.

1.3 Research Statement

The purpose of this research is to explore matters that support or hinder the effectiveness of archival legislation in implementing a records management program in Commonwealth countries. The research takes into account a shared juridical system based on common law and on an intergovernmental organization, the Commonwealth, as well as the different socio-political and cultural contexts of the three countries that constitute the study's focal points. The UK, Canada, and Singapore are identified as case study sites. The research participants in the study are archivists from the national archives and records managers working in various government departments of each country. The study aims to:

- a) Examine the ways in which archival legislation address the management of records,
- b) Identify gaps in archival legislation about the recordkeeping activities of each government, and
- c) Analyse the perspectives and interpretations of archivists from the national archives and records managers from government agencies on how archival legislation shapes the implementation of a records management program.

1.4 Research Questions

This study is guided by an **overarching research question**:

In what ways does the operationalization of the existing archival legislation in the UK, Canada, and Singapore influence its effectiveness in implementing a records management program?

This research question encompasses three primary research questions:

Research Question 1: To what extent and how effectively does the existing archival legislation in the UK, Canada, and Singapore, address issues related to the management of government records?

Research Question 2: How do archivists and records managers in the UK, Canada, and Singapore perceive the existing archival legislation, and how does this perception affect the way they interpret and apply the legislation in the management and preservation of records?

- a) What are the perceptions of archivists and records managers in the UK, Canada, and Singapore on the adequacy of the archival legislation in providing effective controls for the management of records?
- b) How do archivists and records managers in the UK, Canada, and Singapore deal with the perceived weaknesses/strengths of archival legislation in their respective countries?
- c) How do the perceived roles of the national archives in the UK, Canada, and Singapore affect the ability of each country's national archives to implement a records management program in their respective governments?
- d) How does the reporting structure of the national archives in the UK, Canada, and Singapore, and attitudes towards this structure, affect the ability of each country's national archives to implement a records management program in their respective governments?

Research Question 3: What are the similarities and differences among the UK, Canada, and Singapore with regard to factors that support and/or hinder the implementation of a records management program in the government? What are the reasons behind such similarities and differences?

1.5 Research Contexts

This study starts from the assumption that archival legislation is tied to the overall role of a country's national archives in managing and preserving public records. The UK, Canada, and Singapore are identified as research sites in this study – the UK as the headquarters of the Commonwealth Secretariat, and Canada and Singapore for their shared historical connection with the UK. The pieces of archival legislation which are the focus of the study are the *PRA*, the *LACA*, and the *National Library Board Act (NLBA)*. Sections 1.5.1 to 1.5.3 present a brief narration of the development of the legal context in which the national archives of the UK, Canada, and Singapore operate.

1.5.1 UK

Among the pieces of archival legislation of the three countries considered by this study, the *PRA* in the UK is the oldest. In fact, several Commonwealth countries model their archival legislation after the *PRA* (Parer, 2001; Roper, 1999). There are four constituent countries in the unitary state of the UK: England, Wales, Scotland, and Northern Ireland. While Scotland and Northern Ireland have their own national archives, known as the National Archives of Scotland and the Public Record Office of Northern Ireland respectively, TNA is the “official archive and publisher for the UK government and for England and Wales.”¹⁸

¹⁸ UK Government, *The National Archives*, online: < <https://www.gov.uk/government/organisations/the-national-archives>>.

TNA was formed by an amalgamation of four government bodies that took place during 2003-2006. These bodies were the Public Record Office (PRO), the Royal Commission on Historical Manuscripts, Her Majesty's Stationary Office, and the Office of Public Sector Information. The PRO was the "national archive of England, Wales and the United Kingdom government dedicated to preserving key public records,"¹⁹ while the role of the Royal Commission on Historical Manuscripts was to "perform the Historical Manuscripts functions in relation to private records."²⁰ Her Majesty's Stationary Office was the "holder of Crown copyright and official printer of all Acts of Parliament"²¹ and the Office of Public Sector Information "promote[d] the re-use of information produced and collected by public sector organisations."²² The merger of these four bodies was not effected through legislation or by any revisions to the *PRA*. In 2003, the PRO was merged with the Historical Manuscripts Commission (HMC) through an amendment to the Royal Warrant for the Royal Commission on Historical Manuscripts. The Royal Warrant allowed the "Office of Keeper of Public Records, and any persons who shall succeed [them] in that Office, for so long as they shall hold it, shall act as sole Historical Manuscripts Commissioner."²³ The merger of Her Majesty's Stationary Office (HMSO) and the Office of Public Sector Information (OPSI) was carried out through "administration action[s]" (email from staff in TNA, 10 Oct 2012). The Director of Information and Policy Services at TNA is tasked with "oversight of HMSO and OPSI" and "is formally appointed by Letters Patent to the office of Queen's Printer of Acts of Parliament" (email from staff in TNA, 10 Oct 2012). In addition, *The Transfer of Functions (Statutory Instruments)*

¹⁹ The National Archives, *Our History*, online: < <http://www.nationalarchives.gov.uk/about/our-role/what-we-do/our-history/>>.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ The National Archives, *Historical Manuscripts Commission Warrant*, online: <<http://www.nationalarchives.gov.uk/information-management/legislation/hmc-warrant/>>.

*Order*²⁴ moved the functions of the Minister for the Civil Service to the Secretary of State because of the merger of the OPSI, which was formally under the Cabinet Office, and the HMSO with TNA. In effect, TNA carries out the functions of four separate bodies and is governed by the *PRA*, the *Historical Manuscripts Commission Royal Warrant*, the *Re-use of Public Sector Information Regulations*, the *Statutory Instruments Act*, and the “responsibilities under Letters Patents.”²⁵ In 2012, TNA assumed the functions of the Museums, Libraries and Archives (MLA) Council²⁶ and took on the “leadership role for the archives sector” and the provision of “information and advice to Ministers on archives policy” (Kingsley, 2012, p. 138). Such a role is said to be largely an “extension” of TNA’s work on the archives sector after it assumed responsibility for the HMC (Kingsley, 2012, p. 136).

In mid-September 2015, the reporting authority of TNA changed from the Ministry of Justice (MOJ) to the Department for Culture, Media and Sport (DCMS). The reporting structure of the Information Commissioner’s Office (ICO) also changed from MOJ to DCMS. This change in reporting structure was announced through a statement issued by the British Prime Minister. The statement reads:

responsibility for data protection policy, sponsorship of the Information Commissioner’s Office, and sponsorship of The National Archives will transfer from the Ministry of Justice to the Department for Culture, Media and Sport, and that responsibility for government records management policy will transfer from the Ministry of Justice to the Cabinet Office. These changes will be effective from 17 September [2015]. The Lord

²⁴ *The Transfer of Functions (Statutory Instruments) Order 2006*, SI 2006/1927, Explanatory note.

²⁵ UK, The National Archives, *Executive Agency Framework Document for TNA* by Rt Hon Jack Straw (Crown copyright, 2009).

²⁶ The MLA was dissolved in 2012 and its functions were transferred to Arts Council England and to TNA. This was largely due to budget cuts in the public sector. See UK, Museums, Libraries and Archives, *The Museums, Libraries and Archives Council – Annual Report and Financial Statements for the Year Ended 31 March 2012* (HC 343) (London: The Stationery Office, 2012).

Chancellor's responsibilities under the Public Records Act 1958 and associated legislation will therefore be transferred as necessary to the Secretary of State for Culture, Media and Sport.²⁷

The transfer of responsibilities as outlined in the written statement took legal effect on 9 December 2015 with *The Transfer of Functions (Information and Public Records) Order (Transfer Order)*.²⁸ The Order resulted in some amendments to the statutory provisions in the *PRA* as “certain statutory functions relating to public records from the Lord Chancellor” were transferred to the Secretary of State.²⁹ The Order also transferred the “statutory functions relating to freedom of information from the Secretary of State to the Chancellor of the Duchy of Lancaster and provide[d] for certain functions to be exercisable concurrently.”³⁰

The 1967 *PRA* reduced the access to records from 50 years to 30 years (Shepherd, 2009). The 1967 Act was repealed by the *Freedom of Information Act (FOIA)*, which now governs access to records. The “presumption of openness”³¹ under the *FOIA* means that records transferred to archival custody are “presumed to be accessible” (Shepherd, 2009, p. 55). However, the 1958 *PRA* still functions as the “main archives legislation for central government” (Healy, 2003, p. 78). In addition, the *Constitutional Reform and Governance Act (CRGA)* amended the 1958 *PRA* by reducing the timeframe for the transfer of public records from 30

²⁷ UK, Parliament, *Machinery of Government changes: Data Protection Policy; Information Commissioner's Office; The National Archives; and Government Records Management Policy: Written Statement* (HCWS209) (17 September 2015). See <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2015-09-17/HCWS209/>.

²⁸ UK, The National Archives, *Access to Public Records* (Crown copyright, 2015), p. 5.

²⁹ *The Transfer of Functions (Information and Public Records) Order 2015*, SI 2015/1897, Explanatory note [Transfer Order].

³⁰ *Ibid.* The Chancellor of the Duchy of Lancaster is in “overall charge of the Cabinet Office” and part of his responsibilities include “advising the Prime Minister on how to implement government policy.” See UK Government, *Chancellor of the Duchy of Lancaster*, online: < <https://www.gov.uk/government/ministers/chancellor-of-the-duchy-of-lancaster> >.

³¹ UK, The National Archives, *Access to Public Records* (Crown copyright, 2015), p. 8.

years to 20 years. The reduction in time frame for the transfer of public records is implemented over a 10-year transition period starting in 2013, which TNA describes as a “manageable and affordable way, using a phased approach.”³² Section 46 of the *CRGA*³³ also amended the *FOIA* by reducing the period after which a record becomes a historical record from 30 years to 20 years and changed some of the exemptions to this rule in the *FOIA*.

1.5.2 Canada

The Library and Archives Canada (LAC) Act was enacted in 2004 with the merger of the National Archives of Canada and the National Library of Canada. LAC is said to be “the first worldwide establishment to successfully merge its documentary heritage institutions” (Caron, 2011, p. 69). One of the compelling reasons behind the merger was concern about the issue of scalability and efficiency, particularly since both the library and the archives had traditionally shared some services, such as finance and material management (Doucet, 2007; English, 1999). The merger was an initiative proposed by the former National Librarian and National Archivist, who firmly believed that the convergence of information technology and telecommunications required joint services and access to library and archival materials. Ian Wilson, the former National Archivist, stressed that the purpose of the merger was not the creation of an entirely new institution, or an “amalgamation of the library and archives” but the establishment of a “knowledge institution for Canada.”³⁴ He also emphasized that the roles of the two institutions would continue with the merger, including the role of LAC as the “centre of leadership and

³² The National Archives, *20-year Rule*, online: < <http://www.nationalarchives.gov.uk/about/our-role/plans-policies-performance-and-projects/our-projects/20-year-rule/>>.

³³ *Constitutional Reform and Governance Act 2010* (UK), c 25, s 46 [*CRGA*].

³⁴ House of Commons, Standing Committee on Canadian Heritage, *Bill C36 – An Act to Establish the Library and Archives of Canada, to Amend the Copyright Act and to Amend Certain Acts in Consequence* (3 June 2003) (Chair: Clifford Lincoln).

expertise on information management within the Government of Canada.”³⁵ The objective of the new legislation was thus viewed as providing a “wider mandate than the two existing bodies” had before, “with the stated goal of better providing easy and integrated access to Canada’s knowledge, information and documentary heritage.”³⁶ Much of LAC’s Act was based on the preceding *National Archives of Canada Act (NACA)*³⁷ and *National Library Act (NLA)*,³⁸ with attempts to “modernize the language and legal concepts.”³⁹

1.5.3 Singapore

The National Archives of Singapore (NAS) was legislatively transferred from the National Heritage Board (NHB) to the National Library Board (NLB) in 2012. Prior to this transfer, the NLB oversaw the National Library, public libraries, and special libraries in Singapore. The NAS was part of a larger body known as the NHB, which had jurisdiction over a number of museums, including the National Museum of Singapore (Ngian, 2013). Unlike Canada, where *LACA* determined a merger of library and archives, the NAS now reports to the NLB. The legislative transfer took place within the context of the restructuring of ministries. According to the Minister for Information, Communications, and the Arts, the reasons behind the legislative transfer were to “better” align the functions of NAS and to create “greater synergies and economies of scale in the protection and preservation of Singapore’s documentary records.”⁴⁰ In contrast to Canada, where there was an attempt to modernize and harmonize the language of the archival legislation, in Singapore there was hardly any change to the archival legislation. One of the main reasons for this was the tight three-month period from the time the

³⁵ *Ibid.*

³⁶ Parliamentary Research Branch, *Bill C-8: The Library and Archives of Canada Act*, (Library of Parliament, 2004).

³⁷ *National Archives of Canada Act*, RSC 1985, c 1 [NACA].

³⁸ *National Library Act*, RSC 1985, c N-12 [NLA].

³⁹ Parliamentary Research Branch, *Bill C-8: The Library and Archives of Canada Act*, (Library of Parliament, 2004).

⁴⁰ *Parliamentary Debates Singapore: Official Report*, vol 89 (15 October 2012) (Assoc Prof Dr Yaacob Ibrahim).

Prime Minister's Office made the press announcement on the restructuring of ministries to the time when the actual transfer of NAS to NLB was to take place. During the period of the transfer, the focus was largely on administrative aspects including the transfer of personnel, budgets, and assets (Ngian, 2013, p. 5). The legislation relating to public records and archives and the functions of the NAS under the *National Heritage Board Act (NHBA)*⁴¹ were in most instances carried over to the revised *NLBA*.⁴² Ngian (2013) notes that "the top priority was to ensure that the clauses relating to NAS in the NHB Act were properly transferred to the NLB Act. Both the NLB and the NAS were advised by the Ministry of Information, Communications, and the Arts that no other changes to the sections in the Act were to be made, as there was no time to do more than the changes to the legislative sections needed to enable the transfer of the NAS to the NLB" (Ngian, 2013, p. 3).

1.6 Summary of Methodology and Methods

This study is both exploratory and interpretive, drawing on hermeneutic principles and an application of Paul Ricoeur's (2007, 1981) theory of interpretation. It is exploratory because it is a "broad-ranging, purposive, systematic, prearranged undertaking" (Stebbins, 2001, p. 5) that is intended to lead to an understanding of the role and effectiveness of archival legislation with regard to records management activities. The study is also interpretative in nature, because it seeks to "understand the possible meanings" (Holland, 2006, p. 3) given and the constructions made by archivists and records managers regarding archival legislation. Furthermore, there is a dialectical process of interaction and engagement between this author's role as an interpreter and the data sources for her research. The data sources utilized in this study include texts from

⁴¹ *National Heritage Board Act* (Cap 196A, 1994, Rev Ed Sing) [NHBA].

⁴² This was confirmed by my interviews with archivists in Singapore and by a comparison of the old archival legislation under the 1993 *NHBA* with the 2014 *NLBA*.

various pieces of legislation, directives, policies, parliamentary debates, records, and interviews with archivists and records managers. These data sources supported the understanding of the impact of archival legislation on records management and elucidated the shared and varying experiences of archivists and records managers regarding how they make sense of archival legislation and how their perceptions influence their application of the legislation in the management and preservation of records.

1.7 Citation Style

This dissertation uses two citation styles – the Publication Manual of the American Psychology Association, or APA (APA, 2010), and the Canadian Guide to Uniform Legal Citation, which is also known as the McGill Guide (McGill, 2010). Bibliographic entries including journal articles, books, newspapers, and interviews are cited using the APA style. Legal documents including relevant pieces of legislation, case law, parliamentary reports, and government records are cited using the McGill Guide.

In order to facilitate fluency/flow and to preserve the anonymity of interviewees, this dissertation has made some minor deviations from the citation styles. Section 6.20 of the APA style states that personal communications in the form of interviews and emails should be cited in-text, with the name of the communicator, the phrase “personal communication” and the date of the interview (APA, 2010, p. 179). This dissertation has anonymized the names of the interviewees using the country code of the International Organization for Standardization and a numerical code. In addition, the phrase “personal communication” in the context of interview data will not be used because it can become very repetitive and may be distracting. Since email correspondence comprises only a small segment of the dissertation data, the term “email communication” will be used to distinguish it from the interview data.

The McGill Guide (2010) requires the use of *supra* and an accompanying footnote number to denote the “original full citation,” because the full citation is documented only the “first time a source appears” (E-9 – E-12). This dissertation will not use the *supra-plus-footnote-number* method, but will instead repeat the full citation to improve readability.

1.8 Overview of the Dissertation

This chapter introduced the research problem statement, the purpose of the study, the overarching research questions, and the guiding questions for the study, as well as the research context, which is based in the UK, Canada, and Singapore. Finally, the chapter provided a brief summary of the research methodology and methods employed. Chapter 2 covers the literature review and introduces the theoretical frameworks adopted for the research – Ricoeur’s theory of interpretation and Giddens’ structuration theory. It also addresses aspects of research question 1 regarding the legislative intent and statutory provisions of the archival legislation. Chapter 3 discusses the methodological framework informed by interpretivism and hermeneutical principles. It also explains how Ricoeur’s theory of interpretation is applied to the analysis of data sources and discusses how the author situates herself in the research. Chapter 4 presents the results of the research and analyses them. It outlines the major themes that cut across the three countries – the UK, Canada, and Singapore, and highlights the congruencies and variances among the different countries and within the same country. However, it does not include the analysis of the results of research question 3, which are better addressed in the context of a discussion, and thus located in Chapter 5. Chapter 5 discusses the research findings in response to the research questions and the implications of the study, and proposes future research directions.

Chapter 2: Literature Review and Theoretical Perspectives

This chapter begins with a presentation of the key concepts and definitions relevant to this study and a discussion of the literature relating to archival legislation. The sources for the literature review and the theoretical framework are limited to writings in English. The chapter also presents selected literature from law and organizational theory, which provides the lines of inquiry supporting this research study. Finally, the chapter covers two main theoretical perspectives – Ricoeur’s theory of interpretation and Giddens’ structuration theory, and explains how they provide the framework underpinning the dissertation.

2.1 Key Concepts and Definitions

For the purposes of this dissertation archival legislation is defined as “legislation that enables (brings into existence and assigns responsibilities to) an archival institution or repository” (Suderman, Foscarini, & Coulter, 2005, p. 4). Archival legislation is thus an enabling statute, because it establishes the overall mandate and functions of an archival institution and specifies the powers of the National Archivist. Records-related legislation “deals with records or information generally, such as evidence legislation, which is not in connection with a specific legislated activity like banking” (Suderman, Foscarini, & Coulter, 2005, p. 4). Records management is defined as a “field of management responsible for the efficient and systematic control of the creation, receipt, maintenance, use and disposition of records, including processes for capturing and maintaining evidence of and information about business activities and transactions in the form of records” (International Organization for Standardization, 2001, p. 3). The two groups of targeted stakeholders in this study are archivists and records managers. While the former are individuals “with responsibility for management and oversight of an archival repository or of records of enduring value” (Pearce-Moses, 2005), the latter are individuals

“responsible for systematically managing the recorded information generated and received by the organization” (Association of Records Managers and Administrators International, 2007).

Legislative intent refers to the “collective design or plan that the enacting legislature is positioned to have had for the application of a statute to specific situations that might arise” (Garner, 2014, p. 1039). The legislative intent or the objective of the legislation is discussed under section 2.2.2 and in Chapter 4. Organizational culture is defined as a “system of shared values, assumptions, and beliefs that may be explicit or implicit in nature; practices and ways of working; an organization’s sociocultural system, processes, and technology, and the interaction of values and assumptions of various stakeholders” (InterPARES 3 Project Terminology Database, n.d.).

2.2 Archival Science Literature

Archival science is the body of knowledge concerning records and archives and the context in which they are created, managed, and used. It also includes the various meanings persons “individually or jointly attribute to records and to their recordkeeping and archival operations” (Thomassen, 2015, p. 84). The sub-sections under section 2.2 will provide the background of modern archival legislation, a historical development of archival legislation in the UK, Canada, and Singapore, an overview of international and comparative studies on archival legislation, and an overview of case studies relating to archival and records-related legislation. The section will also discuss selected research studies relating to law and recordkeeping, and elaborate on some of the scholarly debates relating to archival concepts that are commonly used in the archival and records-related legislation.

2.2.1 Background on Modern Archival Legislation

This sub-section describes the close historical association between archival theory and the laws concerning archives in Europe. It will also illustrate how the French Revolution led to the birth of modern archival legislation and the establishment of modern archival institutions.

Early archival theory on the nature of archives, such as the definition of archives and the concept of unbroken chain of custody to attest to the authenticity of records, was based on the legislation of ancient Rome (Duranti, 1996). For example, the Justinian Code defines an archives as “the public place where records are deposited,” “so that they remain uncorrupted and serve as authentic evidence, and so that a continuing memory of the acts to which they attest be preserved” (Duranti, 1994, p. 41). The archives thus functions as a “place of preservation under the jurisdiction of a public authority” and imbues documents with the “capacity of serving as evidence and continuing memory of action” (Duranti, 1996, p. 243). The custodial role of the archives as a trusted third party serves to protect the authenticity of records since the archives is under the authority of a “public sovereign” (Duranti, 1996, p. 244). Moreover, the authenticity of the records is safeguarded when records are maintained by their respective records creators and legitimate successors, who in turn entrust the records to the archives. Specific rules on assessing the authenticity of records, including the use of signatures, seals, and the “requirement to produce documentary originals” are also reflected in the Justinian Code (MacNeil, 2000, p. 2). Since then, the archival concepts based on Roman laws spread to other countries in Europe and other parts of the world as the common law (Duranti, 1994; 1996).

In the 16th century and with the birth of modern nation states, laws and regulations on archives were passed to protect the preservation of records that were created by government offices (Duranti, 1996). There was no distinction between the records created and maintained by

government offices and what Duranti (1996) refers to as the “great archives,” which were part of the responsibilities of the chancery, or records office (p.2).

The French Revolution and the decree of 25 June 1794, which provided for the creation of a central repository for the preservation and access to archives for the citizens, were landmark events in the history of modern archives administration (Ducheyn, 1980; Duranti, 1996; Posner, 1940). One of the major outcomes of the decree was the establishment of a “nation-wide public archives administration” (Posner, 1940, p. 161). Countries such as the Netherlands and Belgium, which were influenced by the French Revolution, created their National Archives as newly established institutions. However, countries like the UK and Sweden, whose administrative structures were not dismantled, were able to develop their archival institution “in a more organic way,” and the national archives of these countries evolved from their existing government departments, like the chancery (Posner, 1940, p. 163).

Another outcome of the French Revolution was the state’s recognition of its duty to protect and preserve the documentary heritage on behalf of the citizens and for their use (Posner, 1984). During the initial years of the revolution, records associated with the *ancien régime* such as genealogies and feudal titles were destroyed in what Lokke (1968) refers to as the “records holocaust” (p. 28). These records were viewed as “relics or memorials which retained the original powers of the old order” (Klumpenhouwer, 1988, p. 19). Thereafter, the state took an interest in determining the value of the archives and in identifying archives that needed to be protected and preserved because of the “intense ideological importance which the revolutionaries attached to the control of France’s documentary records” (Klumpenhouwer, 1988, p. 17). The appraisal of records was shifted from the respective record creating offices to the centralized archives repository (Klumpenhouwer, 1988; Turner, 1992). Appraisal of records, as the “process

of assessing the value of records for the purpose of determining the length and conditions of their preservation” (InterPARES 2 Project Terminology Database, n.d.), became a core function of a centralized archival institution.

The biggest impact of the French Revolution was making archives accessible to the citizens. A conceptual and methodological distinction was made between administrative archives and historical archives (Duranti, 1989; Klumpenhower, 1988). The former were the current records kept in the various offices of the new administration, while the latter were the historical records created during the pre-Revolution period, and which were preserved in the newly formed national archives and departmental archives. These historical records were also made available to the public for consultation (Duranti, 1989). The segregation of historical archives from the office which created them corresponds to the “[A]nglo-[S]axon distinction between records and archives” (Duranti, 1989, p. 8). Such a conceptual distinction still continues in some Commonwealth countries, including Canada and Singapore, as illustrated in archival legislation and related policy instruments. This conceptual distinction will be discussed in Chapter 4.

During the 19th century, laws relating to archives that were enacted in Naples, Holland, Prussia, and France stipulated the core principles of archival science, such as the principle of provenance and the principle of original order. Such laws were enacted to preserve the documentary context of records in consideration of the fact that the archives of the administrative bodies that were previously kept separately in various government offices were centralized into one repository. The “juridical norms” later became the “historical core of archival science” (Duranti, 1996, p. 4). Such laws on archives show how law and jurisprudence of modern nation states continued to contribute to the legal foundation of archival theory. This theory is derived from the nature of archives and an “analysis of its relationship with the body producing it, with

that body's functions and activities, and with the rights and duties of the people interacting with it" (Duranti, 1996, p. 5). Consequently, early archival concepts and principles were based on laws relating to archives.

2.2.2 The Historical Development of Archival Legislation in the UK, Canada, and Singapore

The objectives of this sub-section are to situate this study in the historical context of archival legislation in the UK, Canada, and Singapore and to provide an historical insight into current archival legislation and the responsibilities it assigns for the management of public records in the three countries. The sub-section explains why the UK acquires and preserves mainly government records, whereas Canada and Singapore acquire both public and private records. The historical and political context on how a bill is tabled in Parliament also reveals that the process of amending the statutory provisions in archival legislation can be fraught with difficulties and uncertainties. In addition, the UK example shows that it can be difficult for archivists to obtain the necessary political buy-in and support in changing archival legislation. Since there have been specific studies done on archival legislation and records-related legislation in the UK, this author will draw upon these studies when discussing sub-section 2.2.2.1 about the UK. All three countries share a Commonwealth tradition, and Chapter 3 will explain the rationale for their selection as research sites among all Commonwealth countries.

2.2.2.1 UK

In the UK, there are several pieces of legislation governing the management and preservation of central and local government records, manorial and ecclesiastical records, as well as records from Northern Ireland and Scotland (Knightbridge, 1983 & 1985; Shepherd, 2009). Knightbridge (1983) attributes the disparate management of records in the UK to the "sporadic,

partial and specialized nature of the intervention of the State” (p. 215) There is also a clear separation between the management of central government records and local government records. As a result, there is a lack of centralized control and a division in “policy responsibility” among several government departments for the management of records and archives (Shepherd, 2009, p. 21).

The archival legislation for the central government in the UK is the *PRA*, which “applies to the records of all government departments, the central courts of law, the armed services, the National Health Service and some non-departmental public bodies” (Healy, 2003, p. 78). The archival legislation has a long history, going back to 1838, when it was proclaimed as *An Act for Keeping Safely the Public Records*. The Act is also commonly referred to as the *Public Record Office Act (PROA)*. The enactment of the *Public Record Office Act (PROA)* in 1838 was a landmark event because it was the “first legislation to protect public records by the creation of an official archive” (Coppel, 2010, p. 222). Prior to the enactment of the *PRAO*, records from the central government were scattered and stored in various locations, including the Tower of London and the Chapter House at Westminster (Coppel, 2010; Shepherd, 2009). These facilities were not well-equipped, and space was a constraint owing to the massive volume of paper. The Records Commission, which was appointed in 1800, brought up the issue of unsuitable storage facilities that caused records to become fragile (Coppel, 2010; Shepherd, 2009). A subsequent report prepared by the Parliamentary Committee in 1836 established the basis for the development and enactment of the 1838 *PROA*. The report recommended the establishment of a central archives repository for the preservation of public records because records were kept in “unsafe and unsuitable buildings,” and supervised by “a multitude of imperfectly responsible keepers” (Cantwell, 1984, p. 277). Despite the eventual implementation of archival legislation in

1838, work for the archives building did not commence until 1851 and there was a delay in the appointment of a Deputy Keeper of records (Cantwell, 1991; Shepherd, 2009). According to Cantwell (1991), the government was a “reluctant legislator” and only acted because of pressure from the Master of the Rolls (p. 1).

One limitation of the 1838 *PROA* was that records discussed therein were narrowly confined to legal and court records. The Act defines records as “all Rolls, Records, Writs, Books, Proceedings, Decrees, Bills, Warrants, Accounts, Papers, and Documents whatsoever of a public Nature belonging to Her Majesty, or now deposited in any of the Offices or Places of Custody before mentioned.”⁴³ However, records that fall outside the definition of the Act, such as administrative records from various executive offices of the central government, were subsequently transferred to the custody of the Public Records Office (PRO). The Deputy Keeper advised the Master of the Rolls of the need for legal reinforcement to address the informal transfer of administrative records that were not included under the archival legislation’s definition.⁴⁴ In 1852, the *Order in Council Placing Certain Records in the Custody of the Master of the Rolls* was passed. The objective of the order in council was to place records deposited in “any office, court, place, or custody,”⁴⁵ other than those indicated in the 1838 *PROA*, under the control of the Master of the Rolls. Despite the enactment of the order in council, a gap remained between what was stipulated in the law and how records are managed in practice. The Committee on Departmental Records states,

In law, all records of Government Departments, from the time they are created, are under the charge and superintendence of the Master of the Rolls and subject to his direction and

⁴³An Act for Keeping Safely the Public Records, 1838 (UK) 1 & 2 Vic, c 94 [*PROA*], s XX.

⁴⁴ UK, *Committee on Departmental Records Report* (London: Her Majesty’s Stationery Office, 1972).

⁴⁵ *Order in Council Placing Certain Records in the Custody of the Master of the Rolls*, SR & O 1852/5002.

eventual custody; in practice, they remain at the direction of Departments themselves even when housed in the Public Record Office.⁴⁶

Another limitation of the 1838 *PROA* was that the PRO had no power to destroy public records (Shepherd, 2009). Departments were also not obliged to transfer records to the PRO (Coppel, 2010). There were thus further amendments to the archival legislation. The 1877 *PROA* provided the Master of the Rolls with the authority to establish a system for the destruction of records dating after 1715. In addition, the Master of the Rolls, with the approval of the Treasury, could formulate rules regarding the “disposal by destruction or otherwise of documents which are deposited in or can be removed to the Public which are deposited in or are not of sufficient public value to justify their preservation in the PRO.”⁴⁷

There were some disagreements between the Master of the Rolls and the Treasury with regard to the interpretation of the 1877 *PROA*. The Master of the Rolls believed that the destruction of records applied only to records transferred to the PRO, and excluded records that were still kept by the departments. The Treasury, however, was of the opinion that the legislation “applied to all records.”⁴⁸ The Committee on Departmental Records expressed the opinion that the 1877 *PROA* provided the government with the authority to destroy records.⁴⁹ To clarify its meaning, the 1877 *PROA* was later amended by the 1898 *PROA*,⁵⁰ which allowed for the “disposal of valueless documents” created after 1660.

In 1952, the Committee on Departmental Records chaired by Sir James Grigg tabled a report known as the Grigg Report. The main objective of the Committee was to “review the

⁴⁶ UK, *Committee on Departmental Records Report* (London: Her Majesty’s Stationery Office, 1972), p. 15.

⁴⁷ *Public Records Office Act, 1877* (UK), 40 & 41 Vic, c 55, s 1 [*PROA*].

⁴⁸ UK, *Committee on Departmental Records Report* (London: Her Majesty’s Stationery Office, 1972), p. 18.

⁴⁹ *Ibid.*

⁵⁰ *Public Record Office Act, 1898* (UK), 61 & 62 Vic, c 22, s1 [*PROA*].

arrangements for the preservation of the records of Government Departments (other than the records of Scottish Departments and records transmissible to the Keeper of the Records of Scotland) in the light of the purposes which they are intended to serve; and to make recommendations as to the changes, if any, in law and practice which are required.”⁵¹ The terms of reference of the Committee were primarily about records of the central government, and excluded records of Scotland and the local government (Jarvis, 1955, p. 10). The terms of reference of the Committee partly explain why the current archival legislation in the UK primarily focuses on records of the central government.

The Committee acknowledged that the two world wars, the expanded role of the central government, and the use of the typewriter and the duplicator had dramatically increased the volume of records created by departments (Shepherd, 2009). The immediate concern of the Committee was to select records that “ought to be preserved” from the bulk of records generated by departments.⁵² The Committee also observed that there were differences between how the 1838 *PROA* defined specific terms and how these concepts were translated into practice. For example, the 1838 *PROA* defined records strictly in terms of legal documents (Jarvis, 1955). The Act also did not define the term “public,” which in the early 1800s was associated with the concept of promoting access to records for citizens (Jarvis, 1955). The rationale was that these records should be accessible to the citizens because they documented the legal rights and privileges of individuals and were considered the “people’s evidences.”⁵³ Over time, the term “records” became more than just legal documents, and included administrative documents.⁵⁴ The meaning of the expression “public records” also evolved. It was no longer confined to legal

⁵¹ UK, *Committee on Departmental Records Report* (London: Her Majesty’s Stationery Office, 1972), p. 5.

⁵² *Ibid*, p. 19.

⁵³ *Ibid*, p. 9.

⁵⁴ *Ibid*, p. 18.

records accessible to the public but extended to “documents accumulated by the central government, irrespective of whether there is any general right of access to them.”⁵⁵ The terms of reference adopted by the Committee and the evolution of the terminology explain why the current archival legislation focuses mainly on records of the central government, including records of courts, tribunals, and chancery. The management of public records also evolved, increasingly driven by pragmatic considerations rather than by archival theory.

One significant recommendation made by the Committee was that the “Public Record Office Acts, 1838 to 1898 should be repealed” and that a new legislation should be enacted.⁵⁶ The Committee recommended the establishment of an Advisory Council, with members from the legal profession and from universities to provide guidance on various aspects of archival activity, including the management and use of public records.⁵⁷ In addition, the Committee acknowledged the “ancient link” between the Master of the Rolls and his responsibility in managing records of the chancery and recommended that he assume the role of ex-officio chairman of the council (Cantwell, 1991, p. 490). The Master of the Rolls continued to hold the position of chairman of the council to the present. The Committee proposed that a Minister should oversee the administration of the PRO so that the PRO would be able to “influence other Departments regarding the destruction of worthless records and the transfer to the Public Record Office of those which should be preserved.”⁵⁸ It suggested that the Minister in charge of the PRO be either the Chancellor of the Exchequer, the Lord President of the Council, or the Home Secretary.⁵⁹

⁵⁵ *Ibid*, p. 9.

⁵⁶ *Ibid*, p. 80.

⁵⁷ *Ibid*.

⁵⁸ UK, HL, *Parliamentary Debates*, 5th ser, vol 206, col 1148 (16 December 1957) (Lord Chancellor).

⁵⁹ UK, *Committee on Departmental Records Report* (London: Her Majesty’s Stationery Office, 1972).

Most of the observations and recommendations made by the Committee laid the foundation for the development of the 1958 *PRA*. The main objective of the *PRA* was to “make modern and apt provision for public records, for their custody, for the collection and preservation of those which ought to be preserved, for the destruction of those which ought not to be preserved and for the access by the public to public records.”⁶⁰ The legislation was meant to resolve two specific issues – the appointment of a Minister to oversee the PRO and the creation of a statutory provision allowing for the destruction of records. The 1958 *PRA*⁶¹ entrusted the Lord Chancellor with the responsibility for the overall direction of the PRO and for the preservation of public records. One reason behind the government’s decision to appoint the Lord Chancellor was that he was viewed as the “most appropriate Minister to be responsible for legal records”⁶² due to his judicial duties. The Lord Chancellor would be assisted by the Advisory Council, chaired by the Master of the Rolls. The Keeper of Public Records, with the approval of the Lord Chancellor, was also given the authority to destroy public records. The Act also expanded the definition of public records beyond legal documents. Furthermore, the Act allowed the Lord Chancellor to establish a place of deposit outside the PRO for the “safe-keeping and preservation of records and their inspection by the public.”⁶³ Such a statutory provision means that there are places of deposit outside the PRO which preserve public records. For example, the British Library is considered a place of deposit⁶⁴ under the 1958 *PRA*. The Library preserves the India Office records, which used to be administered by a government body, the Foreign and

⁶⁰ UK, HC, *Parliamentary Debates*, 5th ser, vol 585, col 499 (26 March 1958) (Sir Harry Hylton-Foster).

⁶¹ *Public Records Act*, 1958 (UK), 6 & 7 Eliz II, c 51 [*PRA*], s 1(1).

⁶² UK, HL, *Parliamentary Debates*, 5th ser, vol 206, col 1148 (16 December 1957) (Lord Chancellor). col 1150.

⁶³ *Public Records Act*, 1958 (UK), 6 & 7 Eliz II, c 51, s 4(1).

⁶⁴ The National Archives, *Places of Deposit*, online:

<http://www.nationalarchives.gov.uk/documents/archives/10.12.2015_Approved_repositories_and_places_of_deposit.pdf>.

Commonwealth Office.⁶⁵ These records are considered public records, but the “specialist nature” of the records resulted in the British Library becoming the place of deposit (Cantwell, 1991, p. 491). The duties of the Lord Chancellor relating to public records were subsequently transferred to the Secretary of State with the enactment of *The Transfer Order* in December 2015, as discussed in Chapter 1.

The access provision in archival legislation has undergone a number of changes. Originally, the 1958 *PRA*⁶⁶ allowed access to only public records that were 50 years old. The 1967 *PRA*⁶⁷ reduced the time frame for the release of public records from 50 to 30 years. According to McDonald (1998), the change in the 1967 *PRA* was in part due to a public policy debate that supported the agenda of promoting a more open policy for access to public records, but was also the “product of political chance” (p. 27). During a Cabinet meeting in 1965, Harold Wilson, who was then the Prime Minister of the UK, needed a “filler paper” for discussion while waiting for two other Ministers to join the second half of the meeting (McDonald, 1998, p. 27). That “filler paper” happened to be the review of the archival legislation to facilitate access to public records. McDonald (1998) notes that “there can be no clearer statement of the low priority attached to public records than its selection to fill this role at the last Cabinet meeting before the summer recess” (pp. 27-28).

The 30-year access provision, also known as the 30-year rule, under the 1967 *PRA* was subsequently repealed by the *Freedom of Information Act 2000*, which came into effect between 2000-2005 (Shepherd, 2007 & 2009; Coppel, 2010). The *FOIA* applies to “information created

⁶⁵ British Library, *Help for Researchers*, online: <<http://www.bl.uk/reshelp/findhelptregion/asia/india/indiaofficerecords/indiaofficescope/indiaofficehistoryscope.html>>.

⁶⁶ *Public Records Act*, 1958 (UK), 6 & 7 Eliz II, c 51, s 5(1).

⁶⁷ *Public Records Act 1967* (UK), c 44, s 1 [*PRA*].

before and after the legislation was passed” and to public records in the custody of The National Archives, the successor of the PRO (Crockett, 2009, p. 193). With the implementation of the *FOIA*, records transferred from departments to TNA are assumed to be open to the public for consultation, unless the records fall under specific exemptions stipulated in the *FOIA* or in other pieces of legislation.

Another outcome of the *FOIA* is that it recognizes the need for “good records management to underpin statutory rights of access to information and to make explicit provision for this in the legislation” (Healy, 2009, p. 168). The *FOIA* provides the legislative basis for the establishment of Codes of Practice. This includes the provision of “guidance to public authorities on good practice in dealing with requests for information” and “guidance to relevant authorities on good practice in keeping, managing, and destroying records” (Coppel, 2010, p. 371). A Code of Practice differs from legislation as it does not have “statutory force” and is not enforceable in a court of law (Coppel, 2010, pp. 371-372). However, the UK government emphasizes that the “power of naming and shaming” can compel public authorities to meet the guiding principles stipulated in the Codes of Practice (Coppel, 2010, p. 372). The existence of the 1958 *PRA*, records-related legislation, and Codes of Practice governing records creation, management, and access shows a “complex web of legislative provisions, government policy instructions” (Coppel, 2010, p. 223) and Codes of Practices. According to Tyacke (2006), “it remains to be seen whether the patchwork of existing legislation gives the National Archives sufficient power to play a truly effective national role, enabling records managers and archivists in government, the wider public sector and private institutions to face the challenges of the digital age” (p. 53). Tyacke’s statement makes reference to other records-related legislation working with the archival legislation, a topic that will be discussed later in this dissertation.

The historical evolution of archival legislation in the UK shows an element of continuity in the current 1958 *PRA*. The 1958 *PRA* was a product of its time – it was enacted in an environment where paper dominated and where the primary concern was how to reduce the abundance of records. Owing to the historical context which led to its establishment, it is hardly surprising that the Act “makes no explicit provision for records management as we know today” (Healy, 2003, p. 79). In addition, the historical evolution of the legislation explains the previous role of the Lord Chancellor, who was named in the Act as responsible for its “execution” and for the “care and preservation of public records.”⁶⁸ The role of the Lord Chancellor in supervising TNA explains why TNA was until September 2015 under the Ministry of Justice (MOJ). The role of the Lord Chancellor has also changed over the years. Prior to 2005, the Lord Chancellor held a number of roles, which was a result of “historical accident” and “strategic logic.”⁶⁹ He held a number of positions, including the head of the judiciary in England, Wales, and Northern Ireland⁷⁰ and he also presided over the House of Lords, which is the “second chamber of the UK Parliament.”⁷¹ However, the enactment of the 2005 *Constitutional Reform Act* changed the role and responsibilities of the Lord Chancellor. He “ceased to be the head of the judiciary (or even a judge): and was replaced as presiding officer in the Lords by the new Lord Speaker.”⁷² The Lord Chancellor thus no longer needs to be a lawyer or to be a member of the House of Lords.⁷³ With the creation of the MOJ, the Lord Chancellor became the Secretary of State of Justice. The change in the reporting authority of TNA from MOJ to the Department for Culture, Media and

⁶⁸ *Public Records Act*, 1958 (UK), 6 & 7 Eliz II, c 51, s 1(1).

⁶⁹ UK, Parliament and Constitution Centre, *The Role of the Lord Chancellor* (SN/PC/2105) by Alexander Horne, (London: House of Commons Library, 2015), p.3

⁷⁰ *Ibid*, p. 8

⁷¹ UK, Parliament, *What the Lord Does*, online: < <http://www.parliament.uk/business/lords/work-of-the-house-of-lords/what-the-lords-does/>>.

⁷² UK, Parliament and Constitution Centre, *The Role of the Lord Chancellor* (SN/PC/2105) by Alexander Horne, (London: House of Commons Library, 2015), p.5.

⁷³ *Ibid*.

Sport (DCMS) as indicated in Chapter 1 means that the Secretary of State for Culture, Media and Sport⁷⁴ has now replaced the Lord Chancellor for the “care and preservation of public records.”⁷⁵

Even with the change in the reporting structure, the Master of the Rolls still continues to be the Chairman of the Advisory Council of Public Records, now known as the Advisory Council on National Records and Archives. However, the change in reporting structure means that the Advisory Council on National Records and Archives now advises the Secretary of State from DCMS. Under *The Transfer Order*, the role of the Council, is to “advise the Secretary of State on matters concerning public records” and on “aspects of the work of the Public Record Office which affect members of the public who make use of the facilities provided by the Public Record Office.”⁷⁶ In addition, the Council advises the Secretary of State on the “application of the Freedom of Information Act 2000 to information contained in public records which are historical records.”⁷⁷ In other words, the Council was given an advisory and independent role in advising the Secretary of State on the management and access of public records.

As discussed in Chapter 1, the PRO, the Royal Commission on Historical Manuscripts, Her Majesty’s Stationary Office, and the Office of Public Sector Information came together to form TNA between 2003-2006. The CEO of TNA assumes the dual role of the Keeper of Public Records and the Historical Manuscripts Commissioner.⁷⁸ The Keeper of Public Records is responsible for the “public records system,” while the Historical Manuscripts Commissioner

⁷⁴ The Secretary of State is a “title typically held by Cabinet Ministers in charge of Government Departments.” See UK, Parliament, *Glossary: Secretary of State*, online: < <http://www.parliament.uk/site-information/glossary/secretary-of-state/>>.

⁷⁵ *The Transfer of Functions (Information and Public Records) Order 2015*, SI 2015/1897, Explanatory note [Transfer Order], Schedule Consequential Amendments, s 1(3a).

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ UK, HC, “Freedom of Information Act 2000 – Progress Towards Implementation”, HC 79-II vol II (2004-05) Ev 58 (Chair: A J Beith).

provides advice for “all non public record holdings across the country.”⁷⁹ With the merger, TNA assumed the “leadership role for the archives sector” (Kingsley, 2012, p. 138). However, these private archives were not acquired by TNA, except in “a few, very restricted circumstances.”⁸⁰

After its creation, TNA prepared a paper reviewing the records and archives legislation in the UK and initiated a public consultation exercise. The paper states that, based on legal advice, there are “limits to the extent to which the Public Record Office and Historical Manuscripts Commission can merge their operations” and that there is a need for primary legislation.⁸¹ The paper asserts that the existing archival legislation is unable to keep up with the changes in technology and is “weak and outdated” and “inconsistent.”⁸² In this paper, TNA (2003) notes:

Yet the legislation which controls record keeping and archives services in this country is old and inconsistent. It takes no account of the crucial development in the past two decades of the universal use of digital records including emails...Huge and growing amounts of important digital records are at risk because the means to preserve them are not well understood, and many public sector organisations are not taking steps to provide for them.⁸³

TNA urged a revised archival legislation so as to protect the preservation of accurate, reliable, and authentic records. In addition, it requested a statutory requirement stipulating that individuals and organizations subjected to archival legislation “make and keep full and accurate

⁷⁹ *Ibid*, Ev 3.

⁸⁰ Norman James, *Keeping and Using Private Archives: A Wider Perspective* (December 2012), online: The National Archives < <http://www.nationalarchives.gov.uk/documents/archives/norman-james.pdf>>.

⁸¹ UK, The National Archives, *Proposed National Records and Archives Legislation – Proposals to Change the Current Legislative Provision for Records Management and Archives* (Consultation Paper No 01/03) (Crown copyright, 2003) at para 4.3.

⁸² *Ibid*, p. 9.

⁸³ *Ibid*.

records that can serve as evidence of their policies, procedures, actions and decisions.”⁸⁴ Despite the effort of TNA to initiate a review of archival legislation, there has been “no commitment” by the government to change it (Shepherd, 2007, p. 252).

The report prepared by TNA echoes some of the earlier observations made by archival scholars on archival legislation in the UK. Berry (1996), Simpson (2006), and Shepherd (2009) critique archival legislation in the UK as being “permissive” in nature. Apart from specifying the role of the department in selecting and transferring records to archival custody and outlining the mandate of the national archives, archival legislation does not impose statutory obligations on departments for the creation and management of records. Moreover, the legislation is not robust enough to support the management and preservation of digital records. This is confirmed by the legal advice given to the TNA, asserting that the legislation “will not be adequate” for the management of digital records (Simpson, 2006, p. 11). Knightbridge (1983) also points out that archival legislation does not impose penalties on individuals who contravene specific sections of the Act. Knightbridge (1983) laments: “I described the Public Records Act 1958 as an Act without teeth. It has no penalty clauses and it has never been tested in the courts” (p. 216). In addition, archival legislation has been criticized for being too limited in scope, as it excludes public and semi-public bodies “with national and regional responsibilities, including many quasi-governmental organizations, grant aided bodies and nationalised industries” (Berry, 1996, p. 337). Furthermore, the Act is inconsistent, because it includes probate but excludes ecclesiastical records (Hull, 1983, p. 228). Archival scholars like Hull (1983) had urged well before the creation of TNA for a “comprehensive” archival legislation that will “cover all essential classes of records in an adequate manner” (p. 228).

⁸⁴ *Ibid.* para 3.3a.

However, apart from the consultation paper prepared by the TNA, the studies conducted on archival legislation in the UK have not explored the perceptions of archivists and records managers of the adequacy of archival legislation in addressing issues relating to the management and preservation of records. This dissertation attempts to fill this gap in the literature by examining the perceptions of UK archivists and records managers about archival legislation and how they cope with the weaknesses of archival legislation.

In 2015, the Cabinet Office appointed Sir Alex Allan to conduct a review of the management of government digital records. According to Sir Allan, TNA felt that the crux of the issue for managing digital records was obtaining “high level buy-in across Whitehall,” rather than obtaining “additional powers to fulfil [TNA’s] remit.”⁸⁵ However, because the scope of Sir Allan’s review was not specifically on the *PRA* and because his report was administrative in nature, it did not sufficiently explore the perceptions of archivists and records managers about the adequacy of archival legislation.

2.2.2.2 Canada

Unlike TNA, which acquires and preserves records of the UK central government, LAC acquires and preserves records of the government and of private persons (individuals and organizations).⁸⁶ The national archives of Canada traces its roots to a historical society, known as the Literacy and Historical Society of Quebec, which lobbied the government to create and establish a national archives (English, 1999; Wilson, 1982). An Order of Council was passed in

⁸⁵ Alex Allan, *Review of Government Digital Records*, (August 2015), para 85, online: Government of UK < https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486418/Report_-_Digital_Records_Review.pdf>.

⁸⁶ The term “persons” refers to juridical persons and can apply to an organization that is “created by law and given certain legal rights and duties of a human being.” (Garner, 2014, p. 1325).

1872, which led to the creation of an archives branch in the Department of Agriculture.⁸⁷

Douglas Brymner was then appointed as the first Dominion Archivist and Henry Morgan as the Keeper of the Records in the Department of State. The latter appointment reflected the “British tradition” of a public records system (English, 1999, para. 2) but led to a duplication of resources for the preservation of records, and resulted in departmental rivalry and conflict between the archives branch and the Department of State.

Confederation, which was the union of four provinces to form Canada in 1867, resulted in a rise in national consciousness and identity. During the early and formative years in the national archives’ history, the Dominion archivists acquired copies of records preserved in archives outside of Canada, as well as records and even museum artefacts from private individuals and organizations within Canada (Wilson, 1982; Millar, 1998). The first Dominion Archivist did not pay attention to government records as he believed that the “real history” of Canada was to be found in British and French records (Millar, 1988, p. 108). The Keeper of the Records also paid scant attention to government records, and departments were slow in transferring records to both the archives branch and the Secretary of State. The early history of the national archives in Canada showed that the institution did not place emphasis on the management of records or on recordkeeping procedures, in contrast with the early historical roots of TNA, which were primarily in the management and preservation of public records.

In 1897, the outbreak of a fire at the West block in Ottawa where the archives were kept led to the appointment of a Commission (Wilson, 1982), which recommended the construction of a Record Office, that would provide the “unity of responsibility and control” for inactive

⁸⁷ Canada, Royal Commission on Government Organization, *Management of the Public Service: Paperwork and Systems Management*. (Ottawa: Queen’s Printer, 1962) (J. Grant Glassco).

archives,⁸⁸ similar to the Public Records Office in England. The Commissioners argued that archives which were kept by various government departments should be transferred to the central records office. They also proposed the appointment of a Deputy Keeper of the Records, who should also acquire private archives for the purpose of “building up and maintaining the continuity of the Archives of Canada.”⁸⁹ It was only in 1903 that the positions of Dominion Archivist and Keeper of the Records were merged. The new position, known as the Dominion Archivist and Keeper of the Records, was established under the Department of Agriculture (Atherton, 1979; Wilson, 1982). However, the government still did not follow up with the recommendations of the 1897 Commission relating to records management such as the transfer of inactive records to the central repository.

In 1912, the *Public Archives Act* (PAA) was passed, one of the earliest archival legislation of a Commonwealth country outside the UK (Burke, 1959). Section 3 of the PAA⁹⁰ establishes the position of Dominion Archivist, with “the rank and salary of a deputy head of a department, and who, under the direction of the Minister, shall have the care, custody and control of the Public Archives.” According to Atherton (1979), the enactment of the PAA recognized that the Dominion Archivist was a rank equivalent to that of the Deputy Minister. The Act also states that “public records, documents or other historical material” shall be transferred from any government department to the Public Archives.⁹¹ In addition, it specifies that the Public Archives can acquire copies of archival records.⁹² The “legislative confirmation and foundation” of the PAA thus recognized the dual mandate of the national archives of Canada to acquire both public

⁸⁸ Canada, Commissioners Appointed to Inquire into the State of Public Records, *Report of the Commissioners Appointed to Inquire into the State of Public Records 1897*, (Ottawa: S.E. Dawson, 1898) at p.11.

⁸⁹ *Ibid.*

⁹⁰ *Public Archives Act*, 1912, 2 & 5 Geo V, c 4 [PAA], s 3.

⁹¹ *Ibid.* s 8.

⁹² *Ibid.* s 9.

and private records (Berrigan, 2014, p. 6). Such a dual mandate implied “an acceptance of public responsibility for the preservation of a wide range of archival materials, in all media and from all sources, in order to preserve society’s documentary heritage” (Millar, 1998, p. 103). One limitation of the *PAA* is that there were no specific provisions relating to records management as the primary objective of the legislation was to “establish the archives under the authority of an act of Parliament and to give a certain status to the Dominion archivist” (Thomas, 1962, p. 104).

In 1914, a Royal Commission on the Records of the Public Departments had presented a report on the “state of records” kept in the various government departments, including the storage facilities and the conditions for the preservation of records.⁹³ The Committee made a number of recommendations including the establishment of a record office within the archives building for the storage of inactive records from government departments, the transfer of records that were more than 25 years old to the Public Record Office, and the assignment of responsibility to the Treasury Board (TB) for approving the destruction of records that were considered “useless.”⁹⁴ The outbreak of the First World War and the Great Depression prevented the government from implementing the Committee’s recommendations (Halliday, 1949; Thomas, 1962). In 1936, the TB assumed responsibility for the destruction of government records, while the Dominion Archivist’s main role became to identify records of historical value (Atherton, 1979). In the event of a disagreement between the respective departments on the disposition of records, the TB would make the final decision. Although the responsibility of TB in records management has evolved, the historical context shows that both the Treasury Board and the national archives have consistently played a role in records management, which has

⁹³ Canada, Royal Commission on the Records of the Public Departments, (1914) at p.14 (Joseph Pope).

⁹⁴ *Ibid*, p. 28.

continued until the present day. Chapter 4 will discuss the sharing of responsibilities between TB and the national archives in relation to information management.

World War II resulted in an increase in the volume of records generated. In 1945, the government issued an Order in Council that created a second Committee on Public Records. One of the recommendations of the Committee was that the “care and maintainance of records” and their disposition should be with departments.⁹⁵ Each department should have a senior officer responsible for reviewing public records and for submitting a proposal for the destruction or preservation of records to the Committee. The responsible officer would then transfer records of permanent value to the Public Archives.⁹⁶ Subsequently, the Committee also recommended that the role of the Dominion Archivist should “include responsibility for the custody of all federal government records not actually needed in the departments” (Atherton, 1979, p. 51). Thomas (1962) suggests that the 1945 Order in Council was instrumental in delineating the “responsibilities of the departments concerning the care of records and also enabled the Public Archives to serve more effectively as a public record office” (p. 104). However, the Order in Council also reveals that the government viewed the Public Archives as simply a place of custody for inactive records. Although the Public Archives was represented in the Committee on Public Records, the role of records management was limited to the appraisal, transfer, and custody of records and did not include control of their creation and management.

Between the 1950s and the 1980s, some of the commissions that examined the state of recordkeeping and preservation in the federal government recommended the revision of the Archives Act. For example, the Royal Commission on Government Organization, also known as

⁹⁵ *Public Records Order*, PC 1945-6175. s 6. Ottawa, Library and Archives Canada (RG2, Series A-1-a, Volume 1912, microfilm T-5181).

⁹⁶ *Ibid*, s 7.

the Glassco Commission, recommended that the Government should enact legislation that would provide “emphasis to the departmental responsibility to document activities” and to “establish a continuing control over the creation, maintenance, use, and disposition of records.”⁹⁷ The Glassco Commission recognized that the appraisal of records is an “archival and not a managerial responsibility” and that the Public Archives should approve the destruction of records.⁹⁸ Based on the recommendation of the Commission, the *Public Records Order*⁹⁹ gave the Dominion Archivist the authority to approve the destruction of public records and to provide “records-centre storage facilities.” The *Public Records Order*¹⁰⁰ also outlined the role of the TB in issuing “policy statements or guides aimed at the administrative improvement of records management in the public service of Canada, or assessing the effectiveness of any department or agency in these matters.” This role of the TB continues today as the TB Secretariat (TBS) issues directives and policies in information management and assesses departments’ performance in information management. Similar to the Glassco Commission, the Federal Cultural Policy Review Committee¹⁰¹ also recommended the revision of the *PAA*. The Committee emphasised that the authority of the Dominion Archivist in records management, such as approving the destruction of records, should be established through revising the *PAA* and not by relying on the *Public Records Order*.

It was only in 1987 that the *PAA* was repealed through the enactment of the *National Archives of Canada Act (NACA)*. Despite various commissions, organizations, and even the

⁹⁷ Canada, Royal Commission on Government Organization, *Management of the Public Service: Paperwork and Systems Management*. (Ottawa: Queen’s Printer, 1962) (J. Grant Glassco), p. 555.

⁹⁸ *Ibid*, p. 571

⁹⁹ *Public Records Order*, PC 1966-1749. s 4a & s 6. Ottawa, Library and Archives Canada (RG2, Series A-1-a, Volume 2357, microfilm T-5408).

¹⁰⁰ *Ibid*, s 3.

¹⁰¹ Canada, *Report of the Federal Cultural Policy Review Committee*, (Ottawa: Department of Communications, 1982).

former Dominion Archivist urging a revision of archival legislation, it took nearly 75 years for the government to do it. This illustrates how the process of obtaining government support in tabling and revising a bill in Parliament can be a lengthy political and legislative process. The complexity of tabling a bill is discussed in Chapter 4. The government recognized that the 1912 legislation was conceived in a predominately paper-based environment and did not address the challenges in the “new storing and information transfer technology.”¹⁰² The new legislation resulted from the need to ensure a legislative basis for the national archives to “play a leading role in the management of government records and encourage archival activities and the archival community.”¹⁰³

One of the objectives of the *NACA* was to provide clarity in the mandate of the National Archives of Canada (NAC) in terms of “conserving private and public records of national significance and facilitating access.”¹⁰⁴ The dual mandate of the archival institution in terms of preserving both public and private records continues until the present time. The *NACA*¹⁰⁵ also provided NAC with responsibility for records management entrusting it with the development of “standards and procedures,” the provision of storage facilities, reproduction and other services relating to the “care and control of records.”

In 2004, the *NACA* was replaced by the *LACA*, which operates as the current archival legislation in the federal government of Canada. The process of tabling the *LACA* was said to be

¹⁰² *House of Commons Debates*, 33rd Parliament, 1st Sess, Vol 10 (6 June 1986) at 14063 (Hon Marcel Masse).

¹⁰³ *Ibid.*, p. 14065.

¹⁰⁴ *Ibid.*

¹⁰⁵ *National Archives of Canada Act*, RSC 1985, c 1 [*NACA*], s 2f, 2g, 2h, 2i.

“contentious” mainly because it involved amendments to the Copyright Act.¹⁰⁶ Eventually, an agreement was reached for the period of protection for copyrighted works.

The purpose of the *LACA* was to merge the National Library of Canada and the NAC into a “unified institution.”¹⁰⁷ The Act “maintains the existing powers and responsibilities that were accorded to both the National Archives of Canada and the National Library of Canada under their respective statutes” and “harmonizes activities” under an integrated legislation.¹⁰⁸ It is noted that the merger of the national archives and the national library was not imposed by any political or external pressure. Rather, the new institution is said to result from the “vision” of Ian Wilson, the former National Archivist, and Roch Carrier, the National Librarian¹⁰⁹ to be the “first worldwide establishment [that] successfully merge[d] its national documentary heritage institutions” (Caron, 2011, p. 69). One result of the merger and the integrated legislation was that it provided LAC with an expanded mandate for acquiring and preserving documentary heritage by referring to “publications and records of interest to Canada.”¹¹⁰ The term “documentary heritage” was used to integrate the acquisition and preservation mandates of LAC. This study will later discuss how the terminology used in the *LACA* interacts with other pieces of legislation and policy as well as how archivists interpret and internalise the meanings of specific terms used in archival legislation.

In terms of records management, the new legislation maintains the existing role of the national archives in being the “sole authority with the power to authorize the disposition of any

¹⁰⁶ Parliamentary Research Branch, *Bill C-8: The Library and Archives of Canada Act*, (Library of Parliament, 2004) p. 2.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Debates of the Senate*, 37th Parl, 3rd Sess, Vol 141 (22 March 2004) at 2120 (Hon Yves Morin).

¹⁰⁹ House of Commons, Standing Committee on Canadian Heritage, *Bill C36 – An Act to Establish the Library and Archives of Canada, to Amend the Copyright Act and to Amend Certain Acts in Consequence* (29 May 2003) (Chair: Clifford Lincoln).

¹¹⁰ *Library and Archives Canada Act*, SC 2004, c 11 [*LACA*], s 2.

federal government records, including destruction.”¹¹¹ A new provision allows the Librarian and Archivist to request the transfer of records that are “at risk of serious damage or destruction.”¹¹² During the Committee hearing, concerns were raised about the responsibility shared by Treasury Board and LAC concerning information management. While TB has overall responsibility for information management across the government, LAC also acts as the “centre of expertise for the management of government information through its life cycle,” and is responsible for the disposal of records and the preservation of records of archival value.¹¹³ In effect, TB and TBS within it, act as one of the central agencies of the federal government. It sets a spectrum of mandatory policies regarding human resources, financial management, and information management, and “provides departments with advice on the interpretation of policies.”¹¹⁴ It also monitors the performance of departments and deputy ministers through the Management Accountability Framework (MAF), which is “an annual assessment of management practices and performance.”¹¹⁵ LAC has less influence than TB because it is a departmental agency under Canadian Heritage. It reports to Parliament through the Minister but the operations of LAC are directed by the Librarian and Archivist of Canada.¹¹⁶ The roles of TBS and LAC in relation to information management, based on the *LACA* and other related legislation, are discussed in Chapter 4.

¹¹¹ House of Commons, Standing Committee on Canadian Heritage, *Bill C36 – An Act to Establish the Library and Archives of Canada, to Amend the Copyright Act and to Amend Certain Acts in Consequence* (29 May 2003) (Chair: Clifford Lincoln).

¹¹² *Library and Archives Canada Act*, SC 2004, c 11 [*LACA*], s 3.

¹¹³ House of Commons, Standing Committee on Canadian Heritage, *Bill C36 – An Act to Establish the Library and Archives of Canada, to Amend the Copyright Act and to Amend Certain Acts in Consequence* (10 June 2003) (Chair: Clifford Lincoln).

¹¹⁴ Canada, Library of Parliament, *The Role and Responsibilities of Central Agencies*, Ottawa: Parliamentary Information and Research Services, 2009) at p. 8.

¹¹⁵ Government of Canada, *Management Accountability Framework*, online: Treasury Board of Canada Secretariat <<http://www.tbs-sct.gc.ca/hgw-cgf/oversight-surveillance/maf-crg/index-eng.asp>>.

¹¹⁶ House of Commons, Standing Committee on Canadian Heritage, *Bill C36 – An Act to Establish the Library and Archives of Canada, to Amend the Copyright Act and to Amend Certain Acts in Consequence* (3 June 2003) (Chair: Clifford Lincoln).

Recent studies have revealed that LAC has not effectively fulfilled its statutory mandate as enshrined in the preamble of the *LACA*. One of the recommendations made by the Royal Society of Canada in its 2014 report is that LAC needs to engage effectively with its stakeholders, including Canadian Heritage and TBS (Demers et al., 2014). The report states that LAC should:

review and revise if necessary the enabling policies and protocols that inhibit the fulfilment of the LAC mandate as expressed in the Library and Archives Act (2004), and which seem to prevent LAC from performing at a level in keeping with the expectations of Canadians and the best practices of similarly situated national libraries and archives (Demers et al., 2014, p. 49)

The report also notes that LAC needs to fulfil its leadership role in both the archives and library communities within Canada and internationally. The report by the Council of Canadian Academies (2015) stresses that memory institutions, which include archives, libraries and museums, should exercise “effective institutional leadership” so that they can meet the challenges of the digital environment (p. xii) . The report also observes there is a “leadership opportunity” for LAC in the area of government archives because creating agencies will “benefit from guidance from the archival community on the creation and keeping of reliable, accurate, and authentic digital records.” (Council of Canadian Academies, 2015, p. 93). The perceptions of archivists and records managers regarding the leadership role of LAC with regard to records management is discussed in Chapter 4.

2.2.2.3 Singapore

In contrast to UK and Canada, where archival institutions were established in the early

19th century, the historical roots of the preservation of archives in Singapore are in the library. During the early 19th century, the curator of the Raffles Museum and Library was responsible for the care and custody of archives (Chandy, 1978). In 1838, the position of archivist was created, even before the establishment of the national archives. The main responsibility of the archivist was to arrange and describe the pre-war records of the British colonial administration in Singapore (Ferroa, 1948); thus, the archivist played no role in the appraisal of government records. In 1955, the museum and the library were separated from each other to form two entities and archival materials came under the custody of the Librarian (Chandy, 1978). The *Raffles National Library Ordinance*¹¹⁷ stated that the National Library is to “receive, preserve and administer the official archives of the Colony and to arrange for the micro-filming of such archives.” A general order was also passed, which stipulated that “each head of department is responsible for ensuring that the records not required on administrative or historical grounds are destroyed, and that records of historical value are transferred to the Government Archives in the National Library” (Verhoeven, 1967, p. 4). The general order also stated the retention period for financial and personal records. Other categories of records were to be reviewed by the respective departments, and those records which were “not required for departmental or historical purposes” were to be destroyed (Verhoeven 1967, p. 4). Verhoeven (1967) argues that the general order had its limitations. The concept of government archives used in the general order is confined to the “pre-war holdings of archives” kept at the National Library (Verhoeven 1967, p. 4). In other words, archives were associated with historical documents or pre-war records and discussed only in terms of physical placement, as physical documents that are kept in the custody of the National Library. This concept of government archives excluded documents identified for

¹¹⁷ *Raffles National Library Ordinance* (No 31 of 1957, Sing), s 5d.

permanent preservation, which could be located in various government departments. Another limitation of the general order was that the “authority for destruction or preservation of records and archives was vested in administrative officers and not in the archivist” (Verhoeven, 1967, p. 4). The approval for the destruction of records in the departments varied widely and was inconsistently applied. Some departments allowed junior record keepers to authorize the destruction of records, while other departments required the approval of their Director (Verhoeven, 1967, p. 5).

Verhoeven (1967) proposed the establishment of a National Archives and Records Centre allowing for the authorized destruction of government records and ensuring the preservation of pre-war archival records that were in the custody of the National Library. The establishment of a dedicated archival institution would have enabled the acquisition and preservation of private records of businesses and prominent individuals. Verhoeven (1967) argued that the formation of an archival institution could help Singapore to become a “centre of scholarly research” and promote a sense of national heritage and national consciousness in a young and developing nation (p. 8). Verhoeven (1967) urged the enactment of an archives and records management legislation in Singapore, which would “provide the administrative and legal basis for the necessary development of an archives and records management system” (p. 24).

In 1967, the National Archives and Records Centre was formally established, with the enactment of the *National Archives and Records Centre Act (NARC)*¹¹⁸. With the passing of the Act, the national archives became an independent department and was placed under the Ministry of Culture. The objective of the *NARC* was to “provide a national Archives and Records Centre for Singapore where national archival services providing for the custody and preservation of

¹¹⁸ *National Archives and Records Centre Act* (Cap 310, 1967, Sing) [NARCA].

Government archives and records of high value and importance, historical research as well as to the administration can be undertaken.”¹¹⁹ In addition, it was acknowledged that the preservation of archives is a “public obligation” and that “well-considered decisions should be taken on the difficult and recurrent question of [the] disposal” of records.¹²⁰ The dual mandate given by the archival legislation to preserve both public and private records still continues. The Act stipulates the role of the NARC in implementing a “records management programme for the efficient creation, utilization, maintenance, retention, preservation and disposal of public records” as well as “acquir[ing] by purchase, donation, bequest or otherwise any document, book or other material which in the opinion of the Director is or is likely to be of enduring or historical value.”¹²¹ In addition, the Act provides a definition of public archives. Section 2 of *NARCA*¹²² states that

“public archives” means those public records which – (a) are more than twenty-five years old; (b) are specified by the Director as being of enduring national or historical value; and (c) have been transferred to the Centre or to such other place as the Director may from time to time determine”

The definition of public archives in the *NARCA* is similar to that in the current archival legislation known as the *NLBA*. However, under the *NLBA*,¹²³ the word “Board” is used to replace the words “Director” and “Centre,” which were used in the *NARCA*.¹²⁴ The former Director of the National Library explained in 1979 that the rationale for providing a definition of public archives is that “while all public archives are part of public records, not all public records

¹¹⁹ *Parliamentary Debates Singapore: Official Report*, vol 26 at col 228 (8 September 1967) (Inche Othman Bin Wok).

¹²⁰ *Ibid.*, at col 229.

¹²¹ *National Archives and Records Centre Act* (Cap 310, 1967, Sing) [*NARCA*], s 4e and s 4k.

¹²² *Ibid.*, s 2.

¹²³ *National Library Board Act* (Cap 197, 2014 Rev Ed Sing) [*NLBA*], s 2.

¹²⁴ *National Archives and Records Centre Act* (Cap 310, 1967, Sing) [*NARCA*], s 2.

are public archives. Records can only become public archives when they are at least 25 years old and should be available for inspection and publication by the public only then” (Verhoeven 1967, Annex II). Section 2.2.6 of this dissertation covers the scholarly debates on the use of the term “archives” in archival and records-related legislation.

In 1993, the *NARC* was repealed with the enactment of the *National Heritage Board Act* (*NHBA*). The National Heritage Board (NHB) is a statutory body that aims to “better preserve and promote Singapore’s heritage” and initially comprised the National Museum, the National Archives, and the Oral History Department.¹²⁵ By 2012, the NHB had expanded to include nine museums and NAS (Ngian, 2013). Part of the mandate of the NHB is to “promote the establishment and development of organisations concerned with the national heritage of Singapore,” to “provide a permanent repository of records of national or historical significance and to facilitate access.”¹²⁶ The Act includes statutory provisions relating to the NAS.¹²⁷ According to Kwa (2013), the issue of “professional compatibility of archivists and museum curators” was a significant challenge in the formation of NHB. In 2005, NHB conducted a review of its organizational structure and one of the issues examined was the organizational placement of the NAS. Various options were considered, including the separation of the NAS from the NHB, and the incorporation of NAS in the NLB. The Archives Advisory Board then made an argument that “archives are archives and libraries are libraries and never will the twain meet,” thus, NAS remained under the NHB (Kwa, 2013).

¹²⁵ *Parliamentary Debates Singapore: Official Report*, vol. 61 at col 137 (13 April 1993) (BG George Yong-Boon Yeo).

¹²⁶ *National Archives and Records Centre Act* (Cap 310, 1967, Sing) [*NARCA*], s 6c and s 6d.

¹²⁷ *Ibid*, part IV.

In 2012, the government announced a restructuring of Ministries and NAS was legislatively transferred from the NHB to the NLB. The Minister for Information, Communications and the Arts asserted,

The functions performed by NAS are very similar to some of the functions currently served by NLB, and require similar expertise and systems...By consolidating NAS' archives and oral histories with NLB's Singapore-related library materials, we will reap greater synergies and economies of scale in the protection and preservation of Singapore's documentary records.¹²⁸

The statement by the Minister also reveals the legislative intent of the *NLBA*. As noted in Chapter 1, there was a tight timeframe of three months between the time of the announcement of the restructuring and the date when the restructuring had to take effect (Ngian, 2013). This meant that there was no time for substantial changes to the legislation, apart from amending the relevant statutory provisions to facilitate the transfer of the NAS to the NLB. Thus, the specific context surrounding the restructuring of Ministries resulted in a revised archival legislation based on administrative expediency. During the period of the transfer, there was hardly any attention paid to the matter of how the reporting structure would affect the role of the national archives and its mandate in the management and preservation of records.

The top-down approach of the government in restructuring the NAS did not provide an avenue for archivists and librarians to harmonize the terminology in the revised Act. Consequently, the statutory provisions relating to NAS were simply transcribed from the 1994 *NHBA* into the 2014 *NLBA*. In contrast to Canada, where the term “documentary heritage” was introduced to refer to both published materials and records, there was no new terminology

¹²⁸ *Parliamentary Debates Singapore: Official Report*, vol 89 (15 October 2012) (Assoc Prof Dr Yaacob Ibrahim).

introduced in the 2014 *NLBA*. The 2014 *NLBA* continues to use the previous terminology of the 1996 *NLBA* and the 1994 *NHBA*. For example, the terms, “library materials,” “public archives,” and “public records,” which were previously used in the 1996 *NLBA*¹²⁹ and 1994 *NHBA*,¹³⁰ were incorporated in the 2014 *NLBA* without any change.¹³¹ The terms “public archives” and “public records” will be discussed in section 2.2.6, and specific terms used in the 2014 *NLBA* will be discussed in Chapter 4.

2.2.3 Overview of International and Comparative Studies on Archival Legislation

This section presents an overview of studies about archival legislation conducted by or under the sponsorship of various international archival professional organizations such as the International Council on Archives (ICA), United Nations, Educational, Scientific and Cultural Organization (UNESCO), Association of Commonwealth Archivists and Records Managers (ACARM) and the International Records Management Trust on archival legislation. Generally, these studies identify general or abstract principles of a model law for records and archives through a comparative analysis of the archival laws of various countries. Studies conducted on archival legislation by Carbone and Guêze (1972), Delmas (1975), Ketelaar (1985), McDonald (1997), Roper (1999), and Choy (2006) also focus their attention on the broad principles that are applicable across various juridical, social, cultural, and political contexts. Carbone and Guêze (1972) claim that the objective of their study is to develop a draft model law for archives that can “serve as the basis for the reform of existing legislation, which is unsatisfactory in many ways, and for the formulation of a law on archives in countries which have to organize their archives from the beginning” (p. 21). Ketelaar’s (1985) research, which refers to archival legislation of

¹²⁹ *National Library Board Act*, (Cap 197, 1996 Rec Ed Sing), [*NLBA*], s 2.

¹³⁰ *National Heritage Board Act* (Cap 196A, 1994, Rev Ed Sing) [*NHBA*], s 2.

¹³¹ *National Library Board Act*, (Cap 197, 1996 Rec Ed Sing), [*NLBA*], s 2.

120 countries, provides a set of recommended guidelines for the development of archival legislation. In the same vein, the ICA Committee on Archival Legal Matters asserts that its study covers “the most essential principles of archives and current records legislation” and enables countries to establish a state archives (McDonald, 1997, p. 111). Choy (2006) claims that her study “do(es) not intend to offer a model of a perfect Archives Act” (p. 11). Nevertheless, her study still covers the “most essential principles and practices” that archival legislation should cover, regardless of the background and socio-political context of a country (Choy, 2006, p. 11).

Most of the studies on archival legislation also tend to emphasize the principles of archival science in recommending statutory provisions for an archival law and do not attempt an in-depth analysis of how archival legislation is operationalized within a specific socio-political context. Couture and Lajeunesse (1994) acknowledge that archival legislation of each country is dependent on the legal context, and the specific “cultural, economic, or political realities” (p. 2). However, as their research covers 37 countries, it is not possible for them to explore issues and challenges encountered by each country. Roper (1999) also notes that the socio-political, economic, and cultural context of each country, the “existing records and archives legislation”, and the “general level of records and archival development” shape the form of the records and archives law (p. 3). Roper recommends “a new, comprehensive National Records and Archives Act” based on the lifecycle management of records and archives (p. 4). Similarly, Parer (2001) recognizes that archival legislation of each country is dependent on the “general political, economic, social, cultural and administrative environment,” the “existing records and archives legislation,” and the “general level of records and archival development” (p.7). Parer’s (2001) study involves an examination of archival legislation and public records laws in Commonwealth countries, including the freedom of information and privacy legislation. The study is wide

ranging and spans across Commonwealth countries in the seven regional branches of the ICA, including Africa, Southeast Asia, Europe and North America. Owing to the wide scope of her study and because the overall objective of the research is to identify the key principles in developing or updating a records and archives law, Parer was not able to elaborate on how archival legislation is operationalized within specific political and juridical-administrative context. This dissertation complements the existing research conducted by these international studies by focusing on how archival legislation is operationalized within the context of UK, Canada, and Singapore. The study aims to bridge the principles of archival science and the context in which individuals within these countries operate. It adopts the perspective of Duchein (1993) that it would be “unrealistic” to recommend a model archives law without an appreciation of the context of the country in which the archives law is to be applied (p. 58).

One issue discussed in the international studies on archival legislation is the recommended role of the national archives in relation to records management. Ketelaar (1985) asserts that “in only a few countries does the National Archives have statutory responsibility for the whole range of records management functions or the task of formulating standards for record systems and providing an advisory service” (p. 45). The role of the national archives is generally confined to the appraisal and disposition of records. However, Ketelaar (1985) does not recommend that the national archives should play a more active role in records management, except for developing standards, procedures, and guidelines and providing records management training to government departments. He argues that it is not “feasible” for the National Archives to have “statutory responsibility for the whole range of records management functions,” and recommends the use of regulations and circulars rather than the use of legislation to address records management issues, including the creation of records (Ketelaar, 1985, p. 109). In

contrast, Parer (2001) argues for better clarity in archival legislation with regard to the national archives' roles and responsibilities in records management. She states that the national archives need to play a more pro-active role in records management and that archival legislation needs to reflect the role of the national archives in setting standards and guidelines for managing records as well as for preserving and promoting access to archives. Choy's (2006) perspective is similar to Parer. She states that the archives and records legislation "should direct the National Archives to develop, approve and review advisory and mandatory standards and regulations for adequate and accurate recordkeeping and other management functions of records from creation to ultimate disposition to ensure their authenticity and integrity and usability" (p. 18).

These studies, however, do not address the issue of how the perceived roles of the national archives affect the ability of the archives to implement a records management program. As noted in section 2.2, the dual mandate of the national archives in the acquisition and preservation of both public and private records and the existence of central agencies that have a mandated role in establishing policies on information management can influence the manner in which archival legislation is operationalized in each country.

Closely related to the issue of the recommended role of the national archives in records management is the organizational placement of the national archives in the government bureaucracy. Most studies postulate that the national archives should ideally be placed in a department with influence and authority. Archival scholars such as Delmas (1980) state that "only placement at the highest level of authority can give to the archival administration a sufficient degree of legal and administrative effectiveness" (p. 59). One of the earliest studies conducted by UNESCO (1977) on legislation related to public records and archives states that the "statutory basis of the relationship of the National Archives to government departments and

other public bodies” determines the “success of a public archives policy” (p. 48). The UNESCO study recommends that the national archives report to a Minister who has a “considerable degree of inter-ministerial influence or authority” so that it can play a more active role in records management (p. 55). A subsequent UNESCO study conducted by Ketelaar (1985) echoes the recommendation of the earlier study and asserts that the national archives should report to a Minister “with a degree of inter-ministerial or supra-ministerial authority” (p. 38). In addition, the national archives should be ideally placed within the government administration, which prevents “competing interests” and “eliminates blurring of functions with other professional agencies and disciplines” (p. 107). Parer (2001) notes that the reporting structure of the national archives is dependent on whether the national archives wants to emphasize its heritage and cultural role or the recordkeeping role. However, she does not elaborate on the ideal reporting structure in countries where the national archives is mandated to fulfil the cultural and the heritage role, as well as promote recordkeeping and preservation in the government. Parer affirms that the national archives should be placed in an administrative structure that recognizes the “autonomy and independence given to an archives as an entity” (Parer, 2001, p. 11). One notable gap in these studies is that they do not elaborate on how the reporting structure of the national archives within the administrative framework shapes the implementation of a records management program in the government. The studies also do not discuss how the reporting structure is influenced by the role of the national archives in fulfilling both heritage and recordkeeping roles.

Another issue that is not sufficiently discussed by the international studies on archival legislation is the hierarchical relationship between a piece of archival legislation and other legal and policy instruments regulating archives. Bautier (1966) makes a distinction between an

archival law and an archival regulation. The archival law is formal in nature as it is enacted by the highest authority “through the collaboration of the legislative authority (Parliament) and the executive body (government)” (Bautier, 1966, p. 33). As any changes to the statutory provisions require an amendment of the legislation, Bautier (1966) recommends that the legislation be less prescriptive so that it can meet the baseline requirements of most government agencies. On the other hand, regulation is concerned with the “enforcement of the law” and is issued with the understanding that it is “likely to be modified, taking into consideration circumstances or experience” (Bautier, 1966, p. 33). Similarly, Parer (2001) distinguishes between law and regulation. Law is a form of primary legislation that is “enacted by parliament or some other supreme legislative authority,” whereas regulation is a form of secondary legislation and is usually passed by a Minister “under powers conferred by the primary legislation” (p. 1). Parer (2001) points out that there can be a primary legislation relating to records and archives which is supported by secondary legislation and other normative documents. However these studies do not provide specific contextual information on how primary and secondary legislation interact with each other. This dissertation will discuss how specific statutory provisions in archival legislation interact with other legal and policy instruments because this interaction affects the operationalization of archival legislation.

2.2.4 Overview of Case Studies on Archival and Records-related Legislation

There are several case studies of archives legislation in specific national or supranational contexts, including Australia, Europe, and Africa. Examples are: Hurley’s study of archival legislation in New South Wales (1998) and a general overview of archival legislation in Australia at both the state and federal level (Hurley, 1998; Ling, 2002), overviews of archival legislation in the UK and Scotland’s experience in revising its archival legislation (Berry, 1996;

Cantwell, 1984; Knightbridge, 1983, 1985; Longmore, 2013; Simpson, 2002), and studies of archival legislation in France, Africa and in Belize (Duchain, 1980; Enwere, 1996; Gibson, 1999; Olunlade & Adebayo, 1996). The case studies relating to the archival law in UK are discussed in section 2.2.2.1 in the context of the historical development of archival legislation in the UK. Though there are two studies on provincial and territorial archival legislation in Canada (Bryans, 1989; Lemieux, 1993), there is a lack of scholarly literature regarding archival legislation at the federal level in Canada. There is also a lack of scholarly literature on archival legislation in Singapore. This study addresses the gap in the literature by using Canada and Singapore as research sites, with the UK as the head of the Commonwealth.

Most of the existing studies tend to describe archival legislation, and highlight its weakness from the perspective of archival science. There are also studies that discuss the interaction of archival legislation with other pieces of legislation, highlighting some of the areas of contradictions and the possible conflicts when different pieces of legislation interact with each other. Schäfer (2003), for instance, calls attention to the areas of inconsistencies among the German archives law, the data protection law and the access law; Cauchi (2004) describes the areas where the archives law, the information act, and the privacy act in New Zealand are inconsistent with each other; and Guercio, Lograno, Battistelli, and Marini (2003) point out that the “fragmented legislation and regulation activity” in Europe has resulted in inconsistencies in the legislative framework for the preservation of digital resources (p. 7). Such studies focus on the text of the legislation rather than on how individuals perceive, interpret, and engage with the law. Consequently, there is a lack of empirical research on how different groups of stakeholders interpret the legislation. Bryans (1989) acknowledges that there could be different interpretations of the archival law. She argues there is a tension and disjuncture between the intended meaning

of the words as used by legislators, which is based on legal principles and the socio-political context of the time, and the meaning of the words as interpreted by readers (p. 13). Moreover, the different layers of meaning in a term can “lead to inconsistency, misconceptions and misinterpretation of the legislation” (p. 35). Bryan’s research methodology is based on content analysis of specific components of the provincial and territorial archival legislation. She thus analyzes the meanings of specific terms in archival legislation from the perspective of archival science. As her study was not concerned with how individuals interpret and internalize the legislation, she did not interview relevant stakeholders. This dissertation draws upon Bryan’s premise about the social meaning of legislative texts and expands on her study by providing an insight into how archivists and records managers interpret and apply the legislation within different socio-political and administrative contexts.

Most of the case studies on archival legislation acknowledge that there is a link between archival legislation and the mandate and role of the archival institution. Olunlade and Adebayo (1996) state that “archival legislation affects the development of archival institutions and their ability to act as the national memory of the countries in which they are established” (p. 169). The premise of Olunlade’s and Adebayo’s (1996) argument is that the “permissive” nature of archival legislation in West Africa has impeded the development of archival services in West Africa, particularly in Nigeria (p. 169). Lemieux (1993) also recognize that the “soundness” of archival legislation will influence the ability of the archival institution in fulfilling its mandate and functions (p. 153). Since archival legislation is an enabling statute, the organizational placement of the national archives is an important factor to consider in determining its authority in the management and preservation of public records and the scope of such authority. However, there are few writings discussing the organizational placement of the national archives.

The Heiner affair in Australia is one of the few examples cited in the literature which illustrates the challenges an archival institution can face in fulfilling its statutory responsibilities as defined in the archives law and withstanding political pressure. In 1990, the Queensland Government urgently sought the approval of the State Archivist for the destruction of investigation records on the Heiner inquiry relating to an abuse case at a youth centre. This was in line with the legislative requirements stipulated under the then Libraries and Archives Act, 1988, which stated that the destruction of public records could only be effected with the approval of the State Archivist (Australian Society of Archivists, 1999). However, the State Archivist was not informed that there were requests for access to records as a result of legal proceedings. The withholding of this information from the State Archivist raised the question of whether the State Archivist could make an independent and professional decision on the appraisal and disposition of records. Questions were raised as to whether “the role of State Archivist remains that of an employee of a Department and vulnerable to the budgetary control, direction and pressure of senior bureaucrats and ministers” (Australian Society of Archivists & Records Management Association of Australasia, 2010). The Heiner case is a well-documented affair within the context of Australia. However, there is a need for further research in other countries to discover how the organizational placement of the National Archives influences its ability to exercise control over the records management activities in the government. As noted by Eastwood (2010), an archival institution that comes under the executive branch of the government would have difficulties in “standing up against political, executive power to expose to public understanding poor recordkeeping or irresponsible destruction of records” (p. 154).

One specific theme which emerges from the archival literature is that most of the studies on records-related legislation tend either to focus on the legislation, or to view it as a variable

which influences the recordkeeping and record preservation processes in organizations. For example, there is a corpus of literature on the implications of the freedom of information acts on how organizations create, manage, dispose and provide access to their records (Badgley et al. 2003; Crockett, 2009; Gilbert, 2000; Holsen, 2007; Ozdemir, 2009; Peterson, 1980; Screene, 2005; Shepherd & Ennion, 2007; Shepherd, Stevenson & Flinn, 2011).

The archival science literature has also analyzed other legislation such as the Crimes (Document Destruction) Act, Personal Information Act, Uniform Electronic Evidence law and the impact and implications of these laws on the creation, management, use and preservation of records as well as the admissibility of electronic records in a court of law (Sinclair; 2010; Cook, 2002; Duranti, Rogers, & Sheppard, 2010). There are studies examining legislation affecting the private and commercial sectors, such as laws on electronic signatures, the Dodd-Frank Act, and the Sarbanes-Oxley Act, and its implications on recordkeeping and record preservation (Pulzello, 2011; Montana, 2001, 2006). In addition, there is an emerging body of literature which draws upon existing case law and analyses the implications of such cases on the record creation and recordkeeping process (Brown, 1995; Force, 2010; Force, 2014). Such studies tend to look at case law in the context of the common law tradition, where the “doctrine of precedent” affects the manner in which statutes are tested in a court of law and the court’s interpretation of the Act (Iacovino, 1998, pp. 226-227).

However, there is a paucity of research conducted in archival science about how archivists and records professionals interact with the law. Although these individuals are legal persons, they are also social beings with their own shared frames of understanding and sets of experiences, which affect the manner in which they interpret and internalize archival legislation in the course of carrying out their business activities and interacting with each other.

2.2.5 Research Studies Relating to Law and Recordkeeping

This section reviews three research studies relating to law and recordkeeping – the University of Pittsburgh Electronic Records Project conducted between 1993-1996, the International Research on Permanent Authentic Records in Electronic Systems (InterPARES 2) project conducted between 2002-2007, and Iacovino’s (2006) doctoral dissertation research on the legal and ethical frameworks of recordkeeping.

One of the objectives of the Pittsburgh project was to develop “recordkeeping functional requirements for electronic information systems” (Cox, 1994, p. 283). The project developed model functional requirements for recordkeeping and metadata specifications based on the concept of a literary warrant (Duff, 1996; Cox & Duff, 1997). The literary warrant is the “mandate from law, professional best practices, and other social sources requiring the creation and continued maintenance of records” (Cox & Duff, 1997; p. 224). Organizations need to be aware of the relevant laws, regulations, and best practices so that they can “comply with the legal and administrative requirements for the industry or business sector to which they belong” (Duff, 1996, p. 41). Cox and Duff (1997) recommend further research on the warrant for recordkeeping within specific industries, in national and organizational contexts, including testing the effectiveness of the warrant to support the mandate of an archival institution. The Pittsburgh project recognizes the importance of organizational culture, and states that particular dimensions of it can influence the effectiveness of the functional requirements for recordkeeping (Cox, 1994; Bearman, 1993). By investigating archival legislation within the context of the governments in the UK, Canada, and Singapore, this dissertation addresses some of the concerns of the Pittsburgh project, including those related to the organizational dynamics between the national

archives and other government departments and between archivists and records managers when they interpret and apply the archival legislation.

The InterPARES 2 Project aimed to develop principles and strategies for the creation, maintenance, and preservation of trustworthiness of digital records created in the artistic, scientific, and government sectors (Duranti, Suderman, & Todd, 2008). The research maintained primarily an archival science perspective, but analyzed the concepts of accuracy, reliability, and authenticity (i.e. trustworthiness) within the context of the arts, sciences, and e-government. One of the products of the project was a study of the relevant archival and records-related legislation from about 10 countries, such as laws relating to access and privacy, and the use of digital evidence in criminal and civil proceedings (Suderman, Foscarini, & Coulter, 2005). The study adopted a “records lifecycle lens” and examined whether the archival and records-related legislation addressed specific issues related to the creation, maintenance and disposition of records (Suderman et al., 2005, p. 25). Suderman et al (2005) critiqued the general “piecemeal treatment of the lifecycle in legislation” and stated that a records policy should include “all legislated requirements in a comprehensive and integrated way” (p. 25). Another product of the InterPARES 2 research was Foscarini’s study (2007) on legislation, policy, and regulations relating to the preservation of records in the European Union. Her research aimed to examine the “barriers and enablers to the preservation of digital records” (Foscarini, 2007, p. 121). These two studies analyzed legislation from the perspective of archival science, and used the records lifecycle concept to evaluate areas in which legislation is able to establish and/or is inadequate to bring about controls on records management activities. The studies also encompass what legislation ought to be. However, they do not cover the practical effects of legislation, such as how people interact with it. This dissertation discusses what is articulated in archival legislation

in relation to its ability to provide oversight on recordkeeping and record preservation in government, based on the perceptions of archivists and records managers.

Iacovino's research analysed the interrelationship among law, ethics, archival science and recordkeeping (Iacovino, 2006). She viewed the part of the juridical system affecting recordkeeping as comprising both legal and social relationships. Legal relationship is an encompassing concept, which includes the ethical dimensions of social relationships. For example, a relationship with one's spouse has both legal and personal dimensions. A legal relationship involves a "duty to another individual or legal entity which in turn creates a right in the other party" (Iacovino, 2006, p. 176). A social relationship involves forming communities of interest such as professional bodies that formulate standards and ethical guidance which affect recordkeeping requirements. Iacovino (2006) claims that studying "legal and social relationships" would provide a better insight into a "complex regulatory environment," rather than simply focusing one's attention on a specific enabling legislation (p. 212). She also argues that "recordkeeping, like law, cannot be understood in a social, cultural, economic or political vacuum" and that there is a need to understand the "legal recordkeeping requirements in specific organisational and professional contexts" (p. 218). In light of Iacovino's statements, this dissertation aims to provide insights regarding how archival legislation is operationalized and interpreted, based on specific juridical-administrative and socio-political contexts.

2.2.6 Archival Concepts in Relation to Archival and Records-related Legislation

This section discusses how archival concepts are used in archival and records-related legislation. Two concepts that have been extensively discussed in the context of archival legislation are those of records and archives. Records and archives in archival legislation are generally defined in terms of provenance, as by-products of activity, or in terms of ownership

and custody (Ketelaar, 1985; Couture and Lajeunesse, 1994). Some countries define records and archives in terms of evidential or informational value (Couture and Lajeunesse, 1994), while other countries provide no definition of records and archives, apart from listing the various forms of documents (Ketelaar, 1985). Both Parer (2001) and Ketelaar (1985) caution against adopting media-focused definitions because they would easily become obsolete due to changes in digital technology and urge the adoption of definitions based on provenance rather than on ownership. One example of archival legislation that defines records on the basis of ownership is the Australian one. The *Archives Act*¹³² defines “Commonwealth record” in terms of property. According to the Australian Law Reform Commission (1998), one disadvantage of such definition is that the national archives find it difficult to obtain public records that have fallen into the hands of private individuals because it is “impractical to establish that the Commonwealth still owns the records concerned.”¹³³

Ketelaar (1985) also emphasizes that the usage of the terms “records” and “archives” in association with each other changes from country to country. For example, some countries make a conceptual distinction between records and archives. However, countries like France, Italy, Netherlands, and Indonesia use the term archives to refer to both records and archives (p. 6). Foscarini (2007) explains that Latin countries in the European Union use the term “document” as a synonym for record, referring to “any content” regardless of its medium “falling within the Institution’s sphere of responsibility” (p. 125). The term “archives” as used in the European Union legislative texts refer to a “plurality of documents independently of their being current/active or non-current/inactive” (Foscarini, 2007, p. 125).

¹³² *Archives Act 1983* (Cth), s 3(1).

¹³³ Australia, Commonwealth, Australian Law Reform Commission, *Australia’s Federal Record: A Review of Archives Act 1983* (Report No 85) (Canberra: Commonwealth of Australia, 1998) at para 8.14.

Among archival scholars discussing legislation, some argue that the conceptual distinction between records and archives “denies the constant nature of archives or public records, as documents accumulated and preserved by a natural process in the conduct of affairs of any kind whether public or private, at any date” (Bryans, 1989, p. 14). In addition, the use of the term “archives” where the value of records is tied to the “physical placement in the archival repository” implies that archivists are mainly concerned with the preservation of records at the end rather than during the early stages of the lifecycle (Lemieux, 1993, p. 155-156). There is a need for a requirement for archivists to manage records proactively during the early stages of the lifecycle, particularly electronic records, so as to ensure that preservation requirements are addressed (Lemieux, 1993; Hackett, 2008). Furthermore, archivists should have the formal responsibility of engaging actively with the record creator so as to integrate recordkeeping and record preservation functionalities with their business requirements (Hackett, 2008). The *NLBA* is an example of a legislation which defines archives on the basis of their “physical placement” (Lemieux, 1993, p. 155): one of the criteria is that the records have been transferred to archival custody.

Lemieux (1993) proposes to use in legislation Duchein’s definition of archives, which is the “whole of the documents of any nature that every administrative body, every physical or corporate body, automatically and organically collects by reason of its function or its activity and which are kept for reference” (p. 156). Lemieux’s suggestion of using a definition of archives that recognizes its organic nature aligns with the arguments of Livelton. Livelton (1996) defines archives as records “made or received in the course of the conduct of affairs and preserved” (p. 83) and this definition supports the notion that “records are best considered as archives in the traditional understanding” (p. 141).

Liverton (1996) also proposes defining public records in terms of provenance and recommends that public records be defined as “documents made or received in the conduct of its functions by the sovereign or its agents” (p. 142). In contrast, Ketelaar (1985) adopts a more pragmatic approach by stating that archival legislation should define the scope of public records, which includes not only those resulting from the “legislative, judicial, and administrative functions of the State, but also those produced by State-controlled corporations and all other organizations directly or indirectly controlled by government” (p. 103).

The “migrated archives” in the UK illustrate how the lack of clarity over the status of a body of records as public records can potentially lead to a “legacy of suspicion” (Badger, 2012, p. 805) about a government’s intentions and its “veil of secrecy” (Banton, 2012, p. 333). The migrated archives were originally created by the colonial administration in the former colonies. Despite instructions for these archives from the former colonies to be destroyed in 1961 by the Colonial Office, some of them survived and were eventually kept in the custody of the Foreign and Commonwealth Office (FCO) in the UK. Until 2011, migrated archives were in “limbo”¹³⁴ because there was a “lack of clarity over ownership between departing colonial administrations and independent successor states” (Rawlings, 2015, p. 195). A report by Sir Anthony Cary who investigated the series of events surrounding the migrated archives reveals that FCO saw itself as a custodian rather than the owner of the records.¹³⁵ In addition, the national archives have “blown hot and cold”¹³⁶ over the status of the migrated archives, and changed its stance multiple times as to whether these records are public records. For example, in 1982, the PRO initially

¹³⁴ Anthony Carey, *The Migrated Archives: What Went Wrong and What Lessons Should We Draw?* (24 February 2011), para 18 <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255562/migrated-archives.pdf>.

¹³⁵ *Ibid*, para 16.

¹³⁶ *Ibid*, para 40.

assessed these records as the “records of the former Colonial Government Administration” and suggested that they should be “handed over to the incoming government on independence.”¹³⁷ Thus, PRO recognized the provenance of these records to be the colonial administration. Banton (forthcoming, 2016), who has conducted extensive research on the migrated archives at TNA, also notes that the provenance of such archives is “obscured” because “documents had routinely been removed from colonial governments to the governor’s or high commissioner’s office before being sent to London.”

In 2011, TNA claimed that the “migrated archive contains public records and that as records of historical interest [they] are likely to select them for transfer to TNA.”¹³⁸ This implies that the informational content of their records or their “historical interest”¹³⁹ influences TNA’s decision to treat migrated archives as public records. According to Banton (2016, forthcoming), TNA advised FCO to seek legal advice and the “legal opinion received was that the migrated archives are indeed UK public records.” The report by Carey also reveals that the FCO did not consider the migrated archives of Hong Kong as public records, and that these records do not fall under the purview of the Lord Chancellor. However, the migrated archives began to be treated as UK public records after they “passed into the ownership of the FCO” on 1 July 2007, which is the date when the sovereignty of Hong Kong was officially transferred from the UK to China.¹⁴⁰ Consequently, ownership of records rather than provenance was used by the FCO to determine whether the records of a colonial administration are considered public records.

¹³⁷ *Ibid.*, para 9.

¹³⁸ *Ibid.*, para 40.

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*, para 17.

In Canada, the *Fontaine v. Canada (Attorney General)*¹⁴¹ case illustrates how there can be different opinions on whether records are to be considered public or private. The case relates to whether the records resulting from the Independent Assessment Process (IAP) are public records. The IAP records are the written testimonies from former students who suffered abuse from the residential school system, as well as the application forms and compensation decisions regarding the survivors' claims. The supervising judge ruled that these are "not government records" and that they are "only under the control of the various supervisory bodies established by the IRSSA [Indian Residential Schools Settlement Agreement]."¹⁴² These records are thus not subjected to the *LACA*, *AIA*, and the *Privacy Act* and should be retained for 15 years. The survivors should also be allowed to make a decision on whether they can transfer the records relating to the IAP to the National Centre for Truth and Reconciliation (NCTR). The supervising judge stressed the private nature of the IAP records, which contain the "most private and intimate personal information" regarding the abuse suffered by the survivors.¹⁴³ However, the dissenting view claimed that, as the government has utilized public funds to make decisions regarding the IAP, these records should be "within the control of the government."¹⁴⁴ The argument is that these records "can only be destroyed with the written consent of LAC."¹⁴⁵ This case illustrates how issues like "who possess the records, the independence of the entity in possession of the records, [and] the nature and origin of the records"¹⁴⁶ can potentially affect a court's decision as to whether records are considered to be government records.

¹⁴¹ *Fontaine v Canada (Attorney General)*, 2016 ONCA 241 (available on CanLII) [*Fontaine*].

¹⁴² *Ibid* at para 70.

¹⁴³ *Ibid* at para 68.

¹⁴⁴ *Ibid* at para 281.

¹⁴⁵ *Ibid* at para 285.

¹⁴⁶ *Ibid* at para 141.

Archival scholars have observed that archival legislation does not pay sufficient attention to the appraisal of records (Gränström, 2002; Lemieux, 1993). For example, Lemieux (1993) refers to the “underdevelopment of provisions concerning archival functions” including appraisal in the Canadian provincial and territorial archival legislation. During the discussion by the Standing Committee on Canadian Heritage about the proposed LAC bill in 2003, Cook stressed that the bill did not specifically address the issue of appraisal, which is “one of the most difficult and certainly the most controversial function that archivists undertake.”¹⁴⁷

In terms of the transfer of records, there is recognition that records must be systematically transferred from the creating agency to archival custody (Choy, 2006, Parer, 2001). This is because the archival institution is seen as fulfilling the role of trusted custodian that is, a “neutral third party who must demonstrate that it has no reason to alter or to allow others to alter the records in its care, and that it has the knowledge required for attesting to, and ensuring the continuing authenticity of the records” (Duranti, 2009, p. 41). While Parer (2001) states that archival legislation should specify the “required times of transfer” based on the requirements of each country (p. 31), Choy (2006) disagrees. Choy (2006) asserts that specifying the number of years before transfer would not be ideal, particularly for electronic records, where there is a need to ensure that records are transferred as soon as no longer needed for the usual and ordinary course of affairs owing to technological obsolescence. Foscarini (2007) also critiques the “time-based” approach of the European Union regulations, which stipulates the number of years after which appraisal must be conducted and records transferred to the historical archives (p. 126). The *NLBA* is an example of an archival legislation that uses a “time based” (Foscarini, 2007, p.

¹⁴⁷ House of Commons, Standing Committee on Canadian Heritage, *Bill C36 – An Act to Establish the Library and Archives of Canada, to Amend the Copyright Act and to Amend Certain Acts in Consequence* (5 June 2003) (Chair: Clifford Lincoln).

126) approach because part of the definition of public archives is that records have to be more than 25 years old.

Another concept that is discussed in the archival literature and which has relevance to archival legislation is that of authenticity. In ancient Rome, citizens would deposit records in the Tabularium so that the records would be imbued with the quality of authenticity (InterPARES, 2001). Historically, archival institutions have performed the role of trusted custodian by attesting to the authenticity of the records. Bautier (1966) is one of the few archival scholars who state that archival legislation must address the authenticity and authentication of records.¹⁴⁸ He also stresses that a certificate of authentication issued by an archival institution does not “confer authenticity on a document which is not authentic” (Bautier, 1966, pp. 48-49). Choy (2006) also recommends that archival legislation should stipulate that the national archives can issue regulations and standards relating to “adequate and accurate recordkeeping and other management functions of records from creation to ultimate disposition to ensure their authenticity and integrity and usability” (p. 18).

2.3 Law and Technological Development

Both legal and archival literature acknowledge the inability of the law to keep up with technological change. Perry and Ballard (1993) stress that the law is reactive, and that, because of its reliance on the “sanctity of *stare decisis* and common law, [it] does not react quickly enough to what has become almost daily technological change” (p. 799). Similarly, Moses (2011) states that, while technology has transformed the way in which people interact with each

¹⁴⁸ Authenticity is the “trustworthiness of a record as a record i.e , the quality of a record that is what it purports to be and that is free from tampering or corruption.” Authentication is a “declaration of a record’s authenticity at a specific point in time by a juridical person entrusted with the authority to make such a declaration (e.g., public officer, notary, certification authority.” See InterPARES 2 Terminology Database, online: < http://www.interpares.org/ip2/ip2_terminology_db.cfm>.

other, “the law continues to be directed to solving old problems and is unable to keep up with the modern world” (p. 763). Archival literature also acknowledges that the law is reactive and does not sufficiently address issues relating to the creation, management and preservation of digital records. Duranti, Rogers and Sheppard (2010) argue that legislation can easily become out-of-date because of technological changes, and thus the law “requires continuous and sustained updating” (p. 100). The ICA Committee on Electronic Records (1997), Gränström (2002), and Simpson (2002) observe that most archival legislation was based on the traditional analogue paper environment. As a consequence, archival institutions are “constrained” by archival legislation, which does not cater to the management and preservation of records in a digital environment (ICA Committee on Electronic Records, 1997). There is a need to update archival legislation to reflect emerging issues in order to effectively address the creation, maintenance and preservation of trustworthy digital records.

2.4 Statutory Interpretation

This section draws upon the work of Sullivan (2008) on how “statutes should be read” (p. xi). While her work focuses on how judges and legal professionals interpret statutes, Sullivan’s argument on textual analysis and interpretation has relevance to this study because it relates to how individuals interpret the legislative text. According to Sullivan (2008), a text can become “detached” from the author and its original context. Readers can have “substantial control” on the interpretation of the text based on their prior knowledge and experience (Sullivan, 2008, p. 1). Sullivan’s premise is similar to Ricoeur’s theory of interpretation, which is discussed in section 2.6.1 and its supporting sub-sections. The meaning of the text is dependent on its context, and this context includes both the immediate and the external context. The immediate context includes the Act and its statutory provisions, title, preamble, and headings, as well as other

related legislation, that is, “legislation that deals with the same subject as the provision to be interpreted or legislation that has the same purpose” (Sullivan, 2008, p. 355). In this study, the immediate context refers to archival legislation in each of the examined countries, UK, Canada, and Singapore, as well as other records-related legislation identified by the interviewees. One important component of the Act is the preamble, and this is seen in the *LACA*, which is discussed in Chapter 4. The purpose of the preamble is to establish the “circumstances and considerations that gave rise to the need for legislation” (Sullivan, 2008, p. 381). The preamble also reflects the “legislative values and assumptions” (Sullivan, 2008, p. 384).

The external context refers to the “historical setting in which a provision was enacted – the relevant social, economic, and logical conditions existing at the time of enactment” as well as the “knowledge interpreters bring to a legislative text, consisting of their factual assumptions and values” (Sullivan, 2008, p. 356). In this study, the external context includes organizational culture issues as discussed in section 2.5 and in Chapter 4.

2.5 Organizational Culture

There are several empirical studies in the archival literature that uncover the organizational dynamics and processes behind record creation and recordkeeping. Lemieux’s (2001) case study research of recordkeeping practices in Jamaican commercial banks illustrates how the “organizational recordkeeping culture” (p. 97) - individuals’ personal interests, societal values, and professional values - influences the manner in which individuals create or deliberately choose not to create records. Trace’s (2002) analysis of the records created in law enforcement work explains how organizational and social factors shape the way in which records are created and kept and how such “records reflect practical organizational concerns.” (p. 151).

The research by Oliver and Foscarini demonstrates how organizational culture can provide a lens through which information management and recordkeeping issues can be critically analysed. Oliver (2008, 2007) utilizes a cultural dimensions theory developed by Hofstede, who is well known for his research on cross-cultural management studies, to examine information cultures within the context of three universities in Australia, Germany, and Hong Kong. Similarly, Foscarini's (2010, 2012) research on the development and implementation of records classification systems in four central banks utilizes aspects from Hofstede's model. Foscarini (2010) also advocates developing a three-level analysis comprising soft systems methodology, adaptive structuration theory, and genre theory to develop a "human factor-aware" framework and "culturally sensitive tools" (p. 403) in the design and implementation of a records management system and program. However there is a gap in the archival literature on the interaction between organizational culture and the legislation prescribing control on the management of records.

This study recognizes that, in order to "understand how laws are interpreted and implemented, we need to understand the functioning of organizations" (Heimer, 1996, p. 38), Lee McDonald, the former Chairperson of the Committee on Archival Legal Matters of the ICA states that archival legislation "is an expression of the principles held most firmly by a state. Archival legislation expresses values that a people have associated with recorded memory" (ICA, 1997, p. 111). While the existing archival legislation clearly articulates the "perceived institutional and social needs and values" (Maley, 1987, p.27), individuals also subscribe to an implicit set of values and norms that are neither expressed nor articulated in the codified system of legislation. As noted by Gregory (1983), "culture is only explicit as people express it: much of

the system must be considered as being made up of implicit meanings that motivate behaviour” (p.364).

Organizational culture is an interdisciplinary construct, which spans several disciplines, including organizational management, sociology, cultural anthropology, and information science. This largely explains why there is no universal agreement on the definition of organizational culture, and it is estimated that there are about 160 definitions of the term “culture” (Skyrme 1994). One perspective of organizational culture views it at a cognitive level in terms of a system of ideas, beliefs, and practices. For example, Hofstede (2001) defines organizational culture as the “differences in collective mental programming found among people from different organizations, or parts thereof, within the same national context” (p. 373). Hofstede (2001) views national and organizational cultures as being manifested at two different levels as “a nation is not an organization, and the two types of culture are of different kinds” (p. 393). Hofstede has been criticized because he views culture in deterministic terms, and also because he views organizational culture as a monolithic concept (McSweetney, 2002, 2013), though he had invited researchers to utilize other forms of research methods and to include or expand on his dimensions of national and organizational culture (Hofstede, 2001).

Oliver utilizes Hofstede’s approach of analyzing culture at different levels. She defines organizational culture in three layers: national, occupational, and corporate culture, and borrows from Hofstede’s definition of national culture as the “collective programming of the mind acquired by growing up in a particular country” (Oliver, 2011, p. 33). According to Oliver (2011), legislation is dependent not only on national culture but also on “employee awareness and acceptance of its provisions” (p. 3). Occupational culture is described as those “values and practices which have been learned in the course of vocational education and training,” while

corporate culture is defined by the “sector or industry that the organization is engaged in” and the “occupational groupings working inside the organization” (Oliver, 2011, p. 26). Oliver (2011) claims that there is a tendency to misconstrue corporate culture as comprising the entire culture of the organization. The corporate culture is reflected in terms of the management style, the use of specific language or jargon, as well as how the organization presents itself to the outside world.

Oliver’s layered approach of analyzing culture aligns with the multilevel perspective on organizational research adopted by Kozlowski and Klein (2000), and Chao (2000). The multilevel perspective recognizes that “micro phenomena are embedded in macro contexts and that macro phenomena often emerge through the interaction and dynamics of lower-level elements” (Kozlowski & Klein, 2000, p. 7). According to Chao (2000), organizational culture is a multilevel construct that can be studied at a group level, with respect to “a collectivity of people” (p. 311), and at an individual level, with respect to the individual-level manifestations of shared meaning systems which are learned from other members of the society” (p. 315). Organizational culture is also the process of interaction with individuals at a group and interpersonal level, which reveals the “integrative and fragmentary aspects” of organizational dynamics (Goh, 2012, p. 8). A multi-level analysis of organizational culture recognizes that culture is not a uniform and unitary concept since there are “different and competing value systems that create a mosaic of organizational realities” (Morgan, 2006, p. 132). This dissertation explores the perceptions of archivists and records managers on how they interpret and apply archival legislation in the course of interacting with each other on at interpersonal and institutional level (i.e between the national archives and other government departments).

Culture is also reflected in visible structures and symbols such as legislation and policies relating to recordkeeping and preservation. Symbols are the “words, gestures, pictures and objects that carry often complex meanings recognized as such only by those who share the culture” (Hofstede 2001, p. 10). Oliver and Foscarini (2014) emphasize that there are varying understandings and interpretations of archival concepts and terms like “records” not only among different professional groups but also within the records and archives communities. This is partly because the archival discipline has drawn from other disciplines, including diplomatics, law, and information science. Oliver and Foscarini (2014) also note that “even the most technical languages come from a complex history of negotiations of meanings and are subject to continuous renegotiation” (p. 80). Accordingly, this dissertation will explore the meaning making process as archivists and records managers internalize, interpret, and apply the archival legislation in relation with other records-related policy instruments.

2.6 Theoretical Perspective

The following section discusses the two theoretical perspectives largely employed for this study – the interpretation theory by Ricoeur and the structuration theory by Giddens. It outlines the rationale for the adoption of these two theoretical perspectives and the application of these perspectives to the study and to archival science.

2.6.1 Ricoeur’s Theory of Interpretation

According to Ricoeur, interpretation is the “work of thought which consists in deciphering the hidden meaning in the apparent meaning, in unfolding the levels of meaning implied in the literal meaning” (Ricoeur, Reagan, & Stewart, p. 98). Ricoeur’s theory of interpretation is based on hermeneutics, which he defines as the “theory of operations of understanding in their relation to the interpretation of texts” (Ricoeur, 1981, p. 43).

Hermeneutics does not involve the study of the “psychological intents” of the text or analyzing the intent of the author through the text (Ricoeur, 1981, p. 112). Instead, hermeneutics involves mediating the “internal dynamic of the text” in terms of its structure and codes and the “external projection” of the work (Ricoeur, 2007, pp. 17-18). The external projection involves the reader projecting the text inwardly to his or her experiences and understanding. In effect, there is a dialectic relationship between explanation and understanding along the hermeneutical arc (Ricoeur, 1981, p. 15). The theory of interpretation thus provides a useful framework for this study because the process of integrating explanation and understanding provides an insight to the multiple meanings of the text as manifested in the form of archival legislation and its relationship with other related pieces of text. The concept of a text and how a reader relates to the text is a seminal concept in the theory of interpretation, and is discussed in section 2.6.1.1. The other aspect of the theory of interpretation is the dialectic of explanation and understanding as outlined in section 2.6.1.2. Section 2.6.1.3 will discuss the application of the theory of interpretation to archival science and to this study.

2.6.1.1 Concept of a Text

According to Ricoeur (1981), a “text is any discourse fixed by writing” (p. 145). The act of writing introduces an element of fixity to a discourse, the “world in which it claims to describe, express, or represent” (Ricoeur, 1981, p. 133). In other words, a discourse can be manifested in the form of a speech and in a written work. However, unlike speech, which is a “fleeting event” (Ricoeur, 1981, p. 198) and is temporal in nature, a written work or text allows not only the fixity of a message and a medium, but also a commemoration of human achievements (Ricoeur, 1976). Such achievements include the establishment of juridical codes and of archives. The process of recording actions through records or carrying out juridical acts

through records results in a “sedimentation in social time” (Ricoeur, 1981, p. 207). Over time, the meanings and interpretations of individuals who read these texts “no longer coincide[s] with what the author meant” (Ricoeur, 1981, p. 139). These meanings can eclipse the original socio-cultural context of the text and be “re-enacted in new social contexts” (Ricoeur, 1981, p. 208). The “sedimentation in social time” over texts also results in a separation of the meaning of the text from the intention of the author (Ricoeur, 1981, p. 207). According to Ricoeur (1976),

Inscription becomes synonymous with the semantic autonomy of the text, which results from the disconnection of the mental intention of the author from the verbal meaning of the text, of what the author meant and what the text means” (pp. 29-30).

In a speech, there is an opportunity for the hearer to clarify his or her doubts with the speaker. Moreover, both the hearer and the speaker are placed within a common space and situation, and the speaker can rely on “ostensive indicators” (Ricoeur, 1976, p. 35) such as the use of gestures, intonation, or “demonstratives, the adverbs of time and place, and the tense of the verb” (Ricoeur, 1981, p. 201). In contrast, a text results in a split between the reader and the writer because of the lack of a shared situation and the inability of the reader to observe the tone, facial expressions, and the body language of the writer. As a result, there is a “double eclipse of the reader and the writer” because the “reader is absent from the act of writing [and] the writer is absent from the act of reading” (Ricoeur, 1981, pp. 146-147).

Another aspect of a text is that it is addressed to multiple readers whereas in a speech, it is limited to a specific audience. The author no longer has control over how his or her text is interpreted by the reader. Ricoeur (1976) notes,

Whereas spoken discourse is addressed to someone who is determined in advanced by the dialogical situation – it is addressed to you, the second person – a written text is addressed to an unknown reader and potentially to whoever knows how to read (p. 31). As a result, the text is subjected to “unlimited series of readings” (Ricoeur, 1981, p. 14) and multiple interpretations as it is “no longer bound to the particular time and place in which the dialogue occurred” (Allen & Jensen, 1990, p. 243). Ricoeur’s argument is similar to the position taken by Barthes. Barthes (1977) states,

A text is made of multiple writings, drawn from many cultures and entering into mutual relations of dialogue, parody, contestation, and there is one place where this multiplicity is focused and that place is the reader, not, as was hitherto said, the author (p. 148)

The separation of the text from its author and its original context leads to a hermeneutic problem, known as distanciation, which is defined as the “semantic autonomy of the text to bear meaning apart from the intentions of the author” (Kaplan, 2003, p. 33). Distanciation occurs because the fixity of the text results in a “threefold autonomy” as the text becomes independent from the intention of the author, the original addressee to whom the text is directed, and the specific socio-cultural context that created the text (Ricoeur, 1981, p. 91). In effect, fixity is only a physical manifestation of a text. More importantly, the inscription of a text results in a situation where the authorial intent of the text may not necessarily correspond to that of the reader. Ricoeur (1981) describes an aspect of distanciation as when the “textual meaning and psychological meaning have different destinies” (p. 139). Part of the process of interpretation thus involves uncovering the “matter of the text” or the “world of the work,” which is autonomous from the intent or consciousness of the author (Ricoeur, 1981, p. 143).

The study of diplomatics, which is at the core of archival science, involves the “analysis of the creation, form, status, and transmission of archival documents, or records, and their relationship with the facts represented in them and their creator in order to identify, evaluate, and communicate their true nature” (Duranti, 1998, p. 45). Traditional diplomatics was concerned with legal records, that is records whose written form is required by law, which fall under two main categories – dispositive and probative records. Dispositive records are records where the “written form was the essence and substance of the act” while probative records are records that “provide evidence of an act which came into existence and was complete before being manifested in writing” (Duranti, 1998, pp. 65-66). In the context of this study, the relevant pieces of legislation and policy instruments are regarded as dispositive records, while parliamentary debates and reports are regarded as probative records. The authors of the dispositive and probative records within the context of this dissertation are generally the governments of UK, Canada, and Singapore or specific public bodies, since they are the “physical or juridical person[s] having the authority and capacity to issue the record or in whose name or by whose command the record has been issued” (InterPARES Project, 2000, p. 2). The analysis of the intentions of the author of dispositive records would not be a meaningful endeavor since the written form constitutes an act in itself such as enacting the establishment of the national archives. Similarly, it is of little consequence to analyze the intent of the authors of probative records since the main purpose of the records is to document an act that has already taken place by public bodies. As it regards the transcribed interviews, the interview process involved the interviewee recounting an experience and the joint creation of meaning between both the interviewer and interviewee. Thus, they are records whose written form is not prescribed and to which both parties are authors and addressee. They can be regarded as narrative records (Duranti,

1998, p. 69). Based on Ricoeur's theory of interpretation, the text from these dispositive, probative, and narrative records should be decontextualized from its original context so that it can be recontextualized and open to multiple interpretations. The words and sentences from the dispositive and probative records as well as the utterances from the interviewees were therefore freed from their original context and then examined in relation to one another. At the same time, the text provided insights into the larger context in which the national archives of the three countries operate, including the reporting structure, the relationship with the key players in the government bureaucracy, and the interpersonal relationships between archivists and the records managers from government departments.

The other hermeneutic task in interpreting a text involves the act of appropriation of meaning, which comes from a German word, *aneignung*, which means to "make one's own which was initially alien" (Ricoeur, 1981, p. 185). Appropriation involves overcoming the "cultural distance" and the "system of values" articulated within the text and integrating textual interpretation with "self-interpretation" (Ricoeur, 1981, p. 159). Appropriation also involves an act of distancing from oneself and thus involves self-reflexivity as it aims to attain a form of "self-understanding mediated through the text" (Ricoeur, 1981, p. 19). Such form of self-reflexivity helps to reconcile the double eclipse and tension between the self and the text. Consequently, appropriation provides an avenue of sensemaking and meaning making as archivists, records managers, and even this author, need to "expose" themselves to the text, based on their own experiences (Ricoeur, 1981, p. 94).

2.6.1.2 Dialectic of Explanation and Understanding

According to Ricoeur (1976), explanation and understanding are not two distinct concepts but are rather part of a "complex and highly mediated dialectic" (p. 74). In this regard,

Ricoeur disputes the dualist concept of explanation and understanding. Under the dualist sphere of reality, explanation is associated with the natural sciences, while understanding is associated with the human sciences. Explanation involves the observation of laws and theories, while understanding involves the lived human experiences (Ricoeur, 1976, 1981). Ricoeur's theory of interpretation argues that explanation and understanding are not mutually exclusive, but are "relative moments in a complex process that could be termed interpretation" (Ricoeur, 2007, p. 126), where "to read is to interpret and to interpret is to understand and explain" (Kaplan, 2003, p. 67). The process of interpretation thus involves shuttling back and forth along the hermeneutical arc and understanding the text from "what it says, to what it talks about" (Ricoeur, 1976, pp. 87-88). Within the context of this study, the process of interpreting legislation involves moving from understanding what the text in the legislation says to what it really means in relation to other texts, such as the experiences and meanings internalized by archivists and records managers. Chapter 3 discusses how this author applied the dialectic of explanation and understanding to the interpretation of the data sources used in this study.

Explanation involves elucidating the codes and internal structure of the text while understanding is the "ability to take up again within oneself the work of structuring that is performed by the text" (Ricoeur, 2007, p. 18). Explanation also includes examining the whole-part relationship in a text and also among other related texts as "words acquire meaning in the context of sentences and sentences acquire meaning in the context of paragraphs" and paragraphs acquire meaning in relation to the entirety of the text and other related texts (Allen & Jensen, 1990, p. 243). The reader of the text follows along the grain of the text, identifying the relevant concepts, the hierarchy of themes, and analyzing the whole-part relationship of the meaning in the text as a "cumulative, holistic process" (Ricoeur, 1976, p. 76). The reader uses validation and

the logic of qualitative probability to “argue for or against an interpretation, to confront interpretations, to arbitrate between them, and to seek for an agreement, even if this agreement remains beyond our reach” (Ricoeur, 1981, pp. 212-213). The reader also reads against the grain of the text by looking for absences in the text or the lack of controls on the management and preservation of records. Evidently, the process of reading along and against the grain involves identifying commonalities and inconsistencies within archival legislation and among other related texts. The reader thus “move(s) between the two limits of dogmatism and skepticism” (Ricoeur, 1981, p. 213).

In terms of understanding the text, the reader mediates between himself or herself and the text so as to attain “fusion of horizons” where there is a “convergence of the world horizons” between the text and the reader (Ricoeur, 1981, p. 192). There is a rejection of objectivism where knowledge is revealed through the text and where an individual’s pre-understandings and assumptions are suspended. There is also the rejection of the concept of a “closed horizon” where the reader is not open to the meanings gleaned from the text (Ricoeur, 1981, p. 75). The dialectic process of explanation and understanding enables this author to interpret the text in the form of archival legislation, regulations, and policy instruments, as well as interview transcripts. The text underwent the process of distanciation as the meaning of the text was freed from its original context, including the “tutelage of the mental intention” of the author, and from the “situational discourse” (Ricoeur, 1976, p. 36). Appropriation, as the act of overcoming distanciation, also “expand(ed) the conscious horizon” of this author through “actualizing the meaning of the text” (Ricoeur, 1981, p. 18). The act of interpreting archival legislation provided a manner of revealing a new world of “plurality of constructions” which goes beyond the narration of facts or surface meaning (Ricoeur, 1976, p. 77).

2.6.1.3 Application to Study and Archival Science

Based on hermeneutics, Ricoeur's theory of interpretation is relevant to archival science and applicable to this study. Brown (1991) and Ricci (2008) call upon the application of hermeneutics theory and concepts in the appraisal of records, and in the concept of an original and the restoration of moving images, respectively. For example, both authors urge the use of hermeneutics interpretation to read the context of records' creation, including the acts involved in the creation of these records. Brown (1991) uses the term "archival hermeneutics" to refer to a "particular application to the physical and intellectual environment in which public records are created and encoded, of a philosophy of understanding and historical representation principally derived from the presumptive knowledge of and engagement with context" (p.39). The use of hermeneutics as a theoretical perspective and as a methodological framework in the study of archival legislation enables archival scholars to read the text of archival legislation and the context on how the legislation is operationalized, which shapes and impacts the delivery of a records management program. The meaning of the text provided from the various data sources also gives insight into the various layers of context in which the study of archival legislation is carried out. For example, reading the text to analyze the juridical-administrative context provides an insight into the "legal and organizational system" (Duranti, 2002, p. 18) of the national archives in relation to the government system in UK, Canada and Singapore. Researchers can read the text to understand the provenancial context in terms of the "mandate, structure, and functions" (Duranti, 2002, p. 18) of the national archives with respect to records management. In addition, the text provides an insight into the socio-political context of the country in which the national archives operates. The text allows researchers to read with and against the grain in order to interpret the various layers of context to the way archival legislation is operationalized.

Reading with the grain enables one to identify “regularities”, “consistencies of misinformation, omission, and mistakes” (Stoler, 2002, p. 100), while reading against the grain enables one to look at what is absent or silent in relation to specific archival concepts and issues relating to the management and preservation of records.

Another area of archival science to which Ricoeur’s theory of interpretation can be applied is how researchers can utilize hermeneutics to interpret archivists’ and records managers’ constructs and meaning making. Within the context of this study, Ricoeur’s theory provides an insight into how archivists and records managers interpret and internalize archival legislation and other related text. The reading of the text provides an understanding of specific concepts relating to archival science such as the definition of the record, as well as the functions and activities of the national archives and how they are carried out in real-life situations. However the concepts and the rules from archival legislation and the policy instruments are not objective facts governing the behavior of archivists and records managers in the management and preservation of government records. Archivists and records managers need to interpret and apply these concepts and rules in concrete situations. The meanings of the laws and rules are thus shaped by the experiences of archivists and records managers.

Finally, the theory of interpretation provides a framework in terms of reconciling normative and descriptive theory. Normative theory describes how things should be organized and achieved and “aims not so much to describe what we actually do as to help us decide what we ought to do” (Liverton, 1996, p. 11). It would include concepts such as the ontology of a record, and the attributes to determine the authenticity of a record. Descriptive theory explains “what we do and how the world works, rather than determine[s] what we ought to do” (Liverton, 1996, p. 11). Descriptive theories would include how specific archival concepts are articulated in

the various pieces of legislation and policies, and how archival legislation is operationalized. According to Livelton (1996), normative and descriptive theories are “two aspects of a unified approach to theory” and both theories work “conjointly like the blade of a scissors” (p. 42). The process of shuttling back and forth along the hermeneutical arc from explanation to understanding as described in section 2.6.1.2 helps to reconcile what the text says with what it really means as the rules and concepts articulated in archival legislation are put into practice. It also brings to light the gap between the legislation and the way it is operationalized and sets the path of what these rules and concepts ought to be.

2.6.2 Giddens’s Structuration Theory

Giddens’s structuration theory was developed as a response to the divide between the functionalist perspective and the interpretative or humanistic aspects of social science. The functionalist perspective was influenced by the natural sciences, where there was an emphasis on the collective and societal whole over individuals’ actions (Giddens, 1989; Giddens, 1984). The interpretative aspect of social science, on the other hand, focuses more on an individual’s actions, motivations, and interpretations over those of societal groups (Cohen, 1989; Giddens, 1989). Giddens (1989) views the debate between these two perspectives as “sterile,” since neither structure nor agency dominates social life (p. 252). Instead, Giddens (1984) postulates that the study of social sciences “is neither the experience of the individual actor, nor the existence of any form of societal totality, but social practices ordered across space and time” (p.2). Such social practices are recursively produced and reproduced by individuals or what Giddens (1984) refers to as agents. Both structure and agency are thus “two sides of the same coin” (Kebede, 2011, p. 643). The theory of structuration centres on three main aspects – the concept of structure as discussed in section 2.6.2.1, the concept of agent in section 2.6.2.2, and

the dualism of structure in section 2.6.2.3. Finally, section 2.6.2.4 discusses how structuration theory can be applied to this study.

2.6.2.1 Concept of Structure

Giddens (1984) defines structure as “rules and resources, recursively implicated in the reproduction of social systems” (p. 377). Rules are not something which is solely prescriptive in nature. It can refer to constitution of meaning (constitutive rules), means to sanction social conduct (regulative rules), and a generalized procedure that “applies over a range of contexts and occasions” (Giddens, 1984, p. 20). Giddens (1984) cites as an example of rules what constitutes checkmate in chess, or that all workers have to start work at a specific time. These two examples are both constitutive and regulative in nature. The rules of checkmate explain what chess means and also regulate the game of chess. Similarly, the rule about starting work at a specific time not only regulates the behavior of workers but also it is constitutive of an industrial bureaucracy (Giddens, 1984). An example of a rule as a form of generalized procedure is an individual mastering the rules of language and applying them to his or her daily activities (Giddens, 1979; Giddens, 1984). Consequently, rules are not just prescribed formulas but also “codified interpretations” (Giddens, 1984, p.21). In other words, individuals need to be aware not only of formal rules but also of how to “play according to the rule” (Giddens, 1979, p. 67). In this study, one aspect of structure is constituted of the formalized rules expressed in archival legislation and other related policy instruments as well as “informally applied sanctions” (Giddens, 1984, p. 24) exercised during interactions between archivists and records managers. Such informal sanctions co-exist with the codified rules.

The second aspect of structure are resources, that is, the “facilities or bases of power to which the agent has access and which she manipulates to influence the course of interactions

with others” (Cohen, 1989, p. 28). Resources fall under two broad categories – allocative and authoritative. Allocative resources involve “command over objects, goods, or material phenomena” such as raw materials, land, and technology (Giddens, 1984, p. 33). Authoritative resources are “capabilities that generate command over persons” and this includes the organization and coordination of individuals in various societal roles (Cohen, 1989, p. 28). Another component of authoritative resources is the “organization of social time-space” which includes activities bounded in time and space (Giddens, 1984, p. 260). Giddens (1984) cites the storage and retrieval of information as an example of an authoritative resource that involves control over space and time and contributes to the reproduction of institutions. In this study, the national archives in the three countries have the allocative and authoritative resources in terms of possessing the facilities and expertise for the preservation of archival records. However, the national archives also operate in a wider context within the government. The resources of the national archives are limited and there are also other government departments that have a stronger political influence and power than the archival institution.

The theory of structuration involves the production of both rules and resources, which are recursively reproduced through space and time. Structures exist owing to the existence of “memory traces” in terms of “how things are to be done (said, written), on the part of social actors” (Giddens, 1979, p. 64). These memory traces can be manifested in the form of records, such as pieces of legislation and policy instruments, and even the memory and experiences of individuals. Structures are also generated based on the reproduction of recurrent social practices. As a result, systems can develop owing to “reproduced practices” (Giddens, 1984, p. 377) and become institutionalized as they become “stabilized across time and space” (Giddens, 1984, p. xxxi). According to Giddens (1984), structures are not just understood as systems of rules and

resources, but also as “institutionalized features of social systems stretching across time and space” (p. 185). The institutionalization of social systems is not a “form of social organization” but rather refers to “routinized practices that are carried out or recognized by the majority of members of a collectivity” such as the use of procedures and specific conventions to guide events and social behavior (Cohen, 1989, p. 39).

The theory of structuration is of relevance to this study as it explores how structures as manifested in the form of archival legislation and other records-related policy instruments are recursively reproduced, establishing what Giddens calls legal institutions. The national archives also operate in a wider political environment where there are other departments within the government which have more allocative and authoritative resources than the national archives. This in turn affects how other forms of social relations are reproduced along with the formalized rules.

2.6.2.2 Concept of Agency and Agent

Agency is defined as “the capacity of an individual actor to control its own actions instead of being subjected to external forces and conditions” (Lippuner & Werlen, 2009, p.39). Giddens stresses the importance of understanding agency not in terms of individuals’ intentions but rather the ability of the agents in “changing the trajectory of their doing at any moment in a given sequence of conduct” (Lippuner & Werlen, 2009, p. 41).

Giddens outlines a number of characteristics of an agency or an agent. First, agents are knowledgeable about their social practices and can describe the societal conditions and consequences and of their activities (Cohen, 1989; Giddens 1979; Giddens, 1984). Second, agents are self-reflexive: there is a “reflexive monitoring of activity” of an individual’s activity, its context, and the reaction of other individuals (Giddens, 1984, p. 5). A large part of the

knowledge and self-reflexivity of an agent is derived from his or her practical consciousness, that is, “all the things which actors know tacitly about how to go on in the contexts of social life without being able to give them direct discursive expression” (Giddens, 1984, p. xxiii). Practical consciousness can be elevated to the level of discursive consciousness, which is the ability to “give verbal expression about social conditions” (Giddens, 1984, p. 374). Third, agency does not refer to intentional actions. Giddens emphasizes that actions of an agent can result in unintended consequences. A series of repetitive activities and social practices can lead to “cycles of unintended consequences” which will then generate and reproduce institutions (Giddens, 1984, p.14).

Fourth, agency refers to an individual’s “capability of doing things” (Giddens, 1984, p.9). Such capabilities in taking action suggest that the concept of agent is tied to the concept of power, which is “the transformative capacity” that enables an agent to do or to change things and to get “others to comply with their wants” (Giddens, 1979, p. 93). The two types of transformative capabilities are allocative and authoritative resources as discussed in section 2.6.2.1. These resources, which are the “structured properties of social systems,” are then “drawn upon and reproduced by knowledgeable agents in the course of interaction” (Giddens, 1984, p. 15). In other words, the exercise of power through the utilization of resources is not an independent force within social structures that govern the lives of individuals. Power should be understood in terms of the duality of the structure where an agent draws upon the resources during the course of his or her interactions and, at the same time, reproducing the structural properties of the system (Giddens, 1979; 1984). According to Giddens (1979, 1984), power is not solely controlled by agents who have access to resources. Agents who are in subordinate positions are also capable of influencing the activities of those who are in dominant positions and

influence the reproduction of social systems. Giddens describes the process of those who are in less dominant positions influencing social systems as “dialectic of control.” Dialectic of control demonstrates the “two-way character of the distributive aspect of power” and illustrates how the less dominant party can establish control in social systems.

The process of the dialectic of control by less dominant parties also illustrates that agents do not consistently reproduce existing institutional practices and that there are avenues for change in social reproduction. For example, the agent may make mistakes and breach cultural practices, or those who have the competence and authority may choose not to reproduce social practices (Cohen, 1989, p. 45).

Within the context of this study, this author has utilized the concept of agents with regard to records managers and archivists, who have the knowledge and experience in terms of operationalizing the archival legislation. These records managers and archivists exercise self-reflexivity in terms of being able to monitor the recordkeeping activities in their department and other departments, as well as other government initiatives, and this has an impact on recordkeeping and preservation. They have both practical consciousness and discursive consciousness in terms of being able to describe and share their experiences of what they do to fulfil their responsibilities as outlined in archival legislation. They can also describe the gaps between what is stated in archival legislation and how the legislation is operationalized within specific contexts. These archivists and records managers also exercise dialectic of control in terms of implementing other forms of organizational control and collaborating with more influential government departments so as to address the gaps in archival legislation.

2.6.2.3 Concept of Duality of Structure

The duality of structure is one of the central concepts in structuration theory. Giddens (1979, 1984) does not view structure and agency as dichotomous constructs. Structure is the “essential reclusiveness of social life, as constituted in social practices” and is the “medium and outcome of the reproduction of practices” (Giddens, 1979, p. 5). Agents enact and draw upon structure, which is manifested in the form of rules and resources as means to generate action. Such structure also becomes the outcome for the production and reproduction of social practices. Giddens calls the “intimate connection between production and reproductive” of social practices the “recursive character of social life” (Thompson, 1989, p. 58). As described in section 2.6.2.1, structures are reconstituted based on the memory traces and the knowledge of social agents. The continual repetition of social practices results in a routinization of activities which is the “habitual, taken-for-granted character of the vast bulk of the activities of day-to-day social life” (Giddens, 1984, p. 376). Over time, these “regularized social practices” are sustained through what Giddens refer (1984) to as position-practice relations of agents, which are the “normative rights, obligations, and sanctions” (p. 282). Cohen (1989) expands upon Giddens’s concept of position-practice relations and views it as part of the institutionalization of social life (p. 210). Cohen (1989) argues that position-practice relations are relationships that are not only governed by a set of prerogatives and obligations, but also by the identity of agents, such as their documented qualifications or unique attributes (p. 210). Position-practice relations as used in this study are the reporting structure of the national archives within government, and the institutionalized roles of the national archives and the departments. At the same time, there are also interpersonal relationships between archivists and records managers which complement these formal roles and position-practice relations.

However, the structuring properties of activities and the institutionalization of practices do not produce “docile bodies” (Giddens, 1984, p. 16). Individuals can transform social practices and conduct and through time, the “mutual knowledge of specific configuration of rules and resources associations with these practices begins to lapse and fade” (Cohen, 1989, pp. 46-7). Eventually, such memory traces are preserved in the form of records and archives or what Cohen (1989) refers to as “historical documentation” (p. 47).

Another aspect of the duality of structure is that structuring properties in social systems have both “enabling” and “constraining” aspects (Giddens, 1979, p. 69). They are not independent forces governing the reproduction of social practices, but “shape, channel, and facilitate system reproduction” by providing agents with the practical consciousness to facilitate the reproduction of systems (Cohen, 1989, p. 201). These systems and practices are institutionalized and reproduced by “succeeding cohorts or generations of agents” (Cohen, 1989, p. 201). However, there are also constraining aspects in structure. One type of constraint identified by Giddens (1984) is negative sanctions, that is, constraints “deriving from punitive responses on the part of some agents towards others” (p. 176). A second type is coupling constraints, that is, “activities undertaken jointly with others” (Giddens, 1984, p. 114). A third type is structural constraint, that is, the “institutionalized qualities of practices and relations” due to the reproduction of such practices over time (Cohen, 1989, p. 219). Structural constraints thus mean that the institutionalized nature of social systems limits the activities and behavior of agents. Within the context of this study, the negative sanctions can include both legal and administrative sanctions relating to non-compliance on recordkeeping issues. Some examples are benchmarking the performance of the departments and senior civil servants based on the department’s level of compliance with recordkeeping requirements. Coupling constraints include

the joint roles in recordkeeping and record preservation of the national archives and the departments, including those that are responsible for monitoring compliance with legislation and policies relating to information management or the protection of personal information. Structural constraints can include how the mandate of the national archives as articulated in the archival legislation and the institutionalized relationships between the national archives and other government departments can potentially limit the delivery of a records management program in the government.

2.6.2.4 Application to Study and Archival Science

In the archival literature, structuration theory and its variant, adaptive structuration theory, have been applied to the study of recordkeeping, the adoption of electronic records management systems, and the use of function-based records classification systems. For example, Upward (1997) utilized the adaptive structuration theory for developing the continuum model in recordkeeping and Foscarini (2010) utilized it to argue how the interaction between people and technology enables and limits human action.

Giddens's theory of structuration provides a lens to the study of archival legislation. Structures in the form of archival legislation, records-related legislation, policy instruments and other informal sanctions are not independent forces governing social practices and social systems: they exist because of the activities and actions of agents. These structures are instantiated as archivists and records managers apply and enact the archival legislation and records-related legislation and policy instruments. These formal rules and the "systems of interaction and social relationships" are then "reproduced across space and time" and become institutionalized (Giddens, 1989, p. 256). In addition, the unintended consequences of actions by agents can lead to the "reproduction of unacknowledged structural conditions" (Cohen, 1989, p.

55). For example, archivists may adopt other strategies to overcome the perceived weakness of the archival legislation, and this may lead to a series of unintended consequences and become the “unacknowledged conditions of further action” (Thompson, 1989, p. 59).

This study also provides an avenue to examine both the “enabling” and “constraining” (Giddens, 1979, p. 69) aspects of the archival legislation because the legislation itself can facilitate the reproduction of institutionalized systems and practices and also limit activities undertaken by agents. The enabling and constraining aspects of the archival legislation and the role of the national archives will be discussed in Chapters 4 and 5.

2.7 Summary

This chapter has provided an overview of the relevant archival literature and aspects of the organizational theory and legal literature that support the lines of inquiry of this study. It has also discussed the adoption and application of the interpretation theory by Ricoeur and the structuration theory by Giddens for the study and argued their relevance to archival science and to this study in particular.

Chapter 3: Methodological Framework and Methods

3.1 Introduction

This chapter discusses the methodological framework informed by the interpretivist perspective and hermeneutical principles. It also explains the rationale for the selection of cases and research participants, describes the research process, the data sources utilized for the study, and how the data was analyzed, as well as this author's position in the study. The chapter is concluded by a discussion of issues relating to the trustworthiness of the research.

3.2 An Interpretivist Perspective

Interpretivism or interpretive perspective is about the belief that human action is meaningful and that the task of the researcher is to uncover the various layers of meaning (Schwandt, 2007; Schwandt, 2000; Williamson, Burstein, & Kemmish, 2002). Interpretivism as defined by Crotty (1998) refers to the "culturally derived and historically situated interpretations of the social interpretations of the social life-world" (p. 67). While positivist modes of inquiry have been guided by the assumption that the methods of the natural sciences can be duplicated, such as explaining the causal relationship between independent and dependent variables, interpretivism in qualitative research carries with it a different set of assumptions (Flyvbjerg, 2005; Schwandt, 2000; Myers, 2009). Interpretivism is grounded in the view that meaning making cannot be simply reduced to an "analysis of variables and factors that avoid comprehension of the meaning of a situation or a process" (Bakker, 2010, p. 3). It rejects the premise that the researcher can observe the phenomenon in a "value-free" environment (Crotty, 1998, p. 67). Interpretivism emphasizes understanding the lived experiences of individuals and their "multiple and emergent meanings" through elucidating the context of such experiences (Myers, 2009, p. 40). The interpretivist perspective is relevant to this study because the research

questions focus on how archivists and records managers in the UK, Canada, and Singapore construct meanings based on their interpretations of archival legislation. In addition, this study aims to explicate how “these meanings are created, negotiated, sustained, and modified within a specific context of human action” (Schwandt, 1994, p. 120). An interpretivist perspective thus situates this author’s role as a researcher in terms of how she interacts and engages with documentary texts, such as archival and other records-related legislation, directives and policies. These documentary texts are not just objective facts operating independently as objects of inquiry. Their meaning is dependent on the “reflexive relationship” (Holland, 2006, p. 524) between this author’s role as a researcher and the text, her interactions with the research participants and their understanding of archival legislation, the theoretical framework adopted for the study and her personal experiences.

3.3 Hermeneutic Principles

Hermeneutics involves the study and interpretation of the underlying meanings of a text and its context (Prasad, 2005; Smith, 1989). The term hermeneutics is derived from a Greek verb, *hermeneuein*, which means “to express aloud, to explain or interpret and to translate” (Schmidt, 2006, p. 6). Hermeneutics is named after Hermes, one of the Greek gods who was responsible for transmitting and interpreting messages from the gods to the humans (Given, 2008; Leonardo, 2003; Prasad, 2005). Hermeneutics thus involves the “continual interpretation and reinterpretation of texts” (Bernard & Ryan, 2010, p. 255) so as to examine the “larger meaning of narratives,” including the context of these narratives (Bernard & Ryan, 2010, p. 248).

Hermeneutics originated from biblical exegesis and the study of text but later expanded beyond the study of written texts to the study of social phenomena, human actions, organizational and social practices, and even institutions (Crotty, 1998; Prasad, 2005; Holland, 2006). The term “text” refers to written discourse and as a metaphor used to analyze other forms of discourse, such as a conversation or event. Such texts are then interpreted in terms of their parts and elements as well as according to various layers of context, such as the socio-historical and cultural context (Prasad, 2005).

In this study, interpretation involves making sense of the shared and varied meanings archivists and records managers attribute to archival legislation and how their understanding of the legislation affects the manner in which they operationalize recordkeeping and record preservation. The process of sense making thus aligns hermeneutics with an interpretivist epistemology because there is a need for interpreting the “multiple significance(s)” (Ricoeur & Ihde, 2007, p. xiv) and the various layers in a text and for understanding the meaning constructs of individuals. Human beings are interpretive beings and develop their own meanings of social reality (Williamson, et al., 2002). The objective of interpretation is not the discovery of a universal truth or rule but to “explicate context and the world” (Rabinow & Sullivan , 1979, p. 13).

The methodological framework for this study is based on several hermeneutic principles. The first principle is that the overall objective of hermeneutics is not for the researcher to uncover the underlying motives and intentions of the author and the original context of the text, but to uncover what Ricoeur (2007) refers to as the “work of the text” (p. 18) and what Gadamer refers to as the “matter of the text,” which is independent from the intentions of the author (Ricoeur, 1981, p. 143). The text must be able to project itself internally and to attain a form of

“semantic autonomy” (Ricoeur, 1976, pp. 29-30). The term “semantic autonomy” means that the meaning of the text becomes independent from the original intent of the author (Ricoeur, 1976; Taylor, 1995; Valdés, 1991). Unlike a spoken discourse, a text has an element of fixity and it does not provide the reader with an opportunity to clarify its meanings with the author (Kaplan, 2008; Valdés, 1991). Because the text is accessed by various readers, it is open to “multiple readings” and “multiple interpretations” (Ricoeur, 2007, p. 32). The study of hermeneutics thus focuses on the text itself and a “rejection of author intentionality” (Prasad & Mir, 2002, p. 97). As noted by Ricoeur (Valdés, 1991), a “text is not an entity closed in upon itself; it is the projection of a new universe, different from the one in which we live” (p. 431). The text should also project itself externally and researchers should gain a form of self-understanding, not through imposing their “finite capacity for understanding” but by “exposing [themselves] to the text” (Ricoeur, 2007, p. 88). Interpretation is a key element of hermeneutics because the researcher attempts to “make sense of an object of study” and to “bring to light an underlying coherence or sense” (Taylor, 1979, p. 25).

The second principle is that the researcher needs to understand both the meanings of the parts of a text and the text as a whole. For example, the researcher needs to understand specific words within the context of individual sentences and paragraphs, because the meaning of the text as a whole is also dependent on the meaning of specific words (Smith, 1989, p. 134). In addition, the researcher needs to identify and understand the various themes and “hierarchy of topics” in the text (Ricoeur, 1981, p. 211). Interpretation fundamentally involves a discursive exercise, teasing out the relationships between the parts and the whole. Gadamer, Weinsheimer, & Marshall (2004) note that the process of interpreting a text involves a movement “from the whole to the part and back to the whole” so as to achieve the “harmony of all the details with the

whole” (p. 291). The iterative process of understanding the whole-part relationship and to move in “broader nested levels of context until an acceptable level of saturation is reached” constitutes the hermeneutic circle (Heracleous, 2008, p. 585). The section on data analysis in this chapter outlines how this author first worked to understand the whole of each interview transcript, analyze its component parts through thematic coding, and comprehended the whole of the interview transcripts by analyzing the themes collectively across several interview transcripts.

The hermeneutic circle comes into being when the researcher moves amongst personal assumptions, traditions, and beliefs, the meanings articulated in the text, and the response from interviewees during the course of the verbal exchange (Paterson & Higgs, 2005; Koch, 1996). The researchers’ assumptions and beliefs about themselves and their own work are also known as fore-understanding or pre-understanding (Gadamer, Weinsheimer, & Marshall, 2004; Ricoeur, 1981). Hermeneutics embodies the worldview that there is a “living relationship between the interpreter and the text,” and the interpreter’s “previous connection with the subject matter” (Gadamer, Weinsheimer, & Marshall, 2004, p. 327). Interpretation occurs when there is a “convergence of the world horizons” between the text and the world of the researcher (Ricoeur, 1981, p. 192). Similarly, the metaphor “fusion of horizons” is used by Gadamer, Weinsheimer, & Marshall (2004) to describe the convergence between the previously unfamiliar world of the text and the world of the interpreter (p. 367). At this stage of interpretation, there is no division between the text, as the “object of interpretation,” and the researcher, who acts as the “subject engaging in interpretation” (Prasad, 2002, p. 16). Consequently, this study does not subscribe to the concept of bracketing, which means that the researcher “set[s] aside, or suspend[s] common sense assumptions about social reality” in order to “investigate what is perceived and thought about without that assumption” (Schwandt, 2007, p. 25). Instead, this study recognizes that this

author's understanding of archival legislation, the perceptions of the interviewees, their experiences, and the tradition of the archival system cannot be divorced and detached from her prior experiences, background and practices (Blaikie, 2007; Schwandt, 2000). Such a form of "hermeneutically trained consciousness," which involves an awareness and engagement of one's prejudices and fore-meanings (Gadamer, Weinsheimer, & Marshall, 2004, p. 271) is discussed under section 3.6.

The third principle is that a hermeneutic form of inquiry recognizes that language is an important element in the hermeneutic experience (Blaikie, 2007; Dowling, 2004; Gadamer, Weinsheimer, & Marshall, 2004). Understanding interviewees does not mean "getting inside" the head of the interviewees and "reliving their experiences" (Blaikie, 2007, p. 456). Understanding a text being engaged in a hermeneutic conversation is analogous to translating a language. It requires a researcher to translate the meaning of a text or what a speaker said based on its context. The researcher, just like a translator, needs to overcome the "alienness" of the text, which is the divide between the meanings articulated in the text and the researcher's own opinion and understanding. (Gadamer, Weinsheimer, & Marshall, 2004, p. 389). The translator also needs to be aware of his or her own language, the language that s/he is translating, and the language of the text. In effect, "all interpretation takes place in the medium of a language" that allows the meaning of the text to come through and, at the same time, allows the researcher to express his or her thoughts and to understand the text (Gadamer, Weinsheimer, & Marshall, 2004, p. 390). In order for the interpretation of the text to be meaningful, the researcher has to articulate the text in his or her language as a way of demonstrating that s/he truly connects with the text based on his or her own experiences, to the "point that [the text] becomes one's own" (Gadamer, Weinsheimer, & Marshall, 2004, p. 400).

3.4 Methods Employed

This section describes the selection of cases and research participants, the data sources utilised for the research, and the research process.

3.4.1 Selection of Cases

In this study, the “unit of analysis” (Yin, 2009, p. 29) or the case is at the level of the nation-state – the UK, Canada and Singapore. All of these countries are member countries of the Commonwealth and with a shared historical link with the British Empire. They also have a common juridical system – the common law, which is a “body of law derived from juridical decisions, rather than from statutes or constitutions” (Garner, 2010, p. 334). This study does not approach the concept of case from the perspective of a research methodology but more in terms of identifying “a choice of object to be studied” in the form of a “specific, unique, bounded system” (Stake, 1994, pp. 237). There are two reasons why this author has chosen the UK, Canada, and Singapore as the cases for her research. The first reason is this author’s educational and professional background. Since she is a Singaporean, has worked in Singapore for a number of years, and has completed her Master of Archival Studies in Canada, she was drawn to utilizing both Singapore and Canada as cases for her research. The UK was selected as the third case because most Commonwealth countries base their archival legislation on the *PRA* (Roper, 1999). Furthermore, the UK operates as the headquarters of the Commonwealth Secretariat and Queen Elizabeth II functions as the “head of the Commonwealth” (The Commonwealth, 2016).

Second, the selection of the three cases is supported by Hofstede’s dimensions of national culture, which is defined as the “collective mental programming of otherwise similar persons from different organizations” (Hofstede, 2001, p. 71). The two dimensions in Hofstede’s model that are of relevance to the study are power distance and uncertainty avoidance. Power distance

“relates to the degree of centralization of authority and the degree of autocratic leadership” (Hofstede, 1983, p. 81). Uncertainty avoidance is the degree to which individuals “look for structure in their organizations, institutions, and relationships, which make events clearly interpretable and predictable” (Hofstede, 2001, p. 148). In effect, power distance relates to the “authority of the persons” issuing the rules while uncertainty avoidance relates to the “authority of rules” (Hofstede, 2001, p. 147). The formation and use of legislation and rules help societies and organizations to cope with uncertainty and this explains why “uncertainty-avoiding countries will have a greater need for legislation than will less uncertainty-avoiding countries” (Hofstede, 2001, p. 174). Hofstede (1983) categorized Great Britain and Canada as countries with a small power distance index and weak uncertainty avoidance whereas Singapore is identified as a country with large power distance and weak uncertainty avoidance. Among the three countries, Singapore has the lowest uncertainty avoidance index and technically, it should not have had many pieces of legislation and rules. In reality, Singapore is well-known as a country with a large number of rules and laws and is touted as a “fine city” (Aglionby, 2002; Duvall, 2012, p. 3). The term “fine city” denotes the penalties imposed by the government on various offences such as littering, spitting, and smoking in public spaces. However, it has been argued that Singapore has such a relatively large number of laws and rules “not because they have need for structure but because of high PDI [power distance index]” (The Hofstede Centre, n.d). Great Britain, with its low uncertainty avoidance index, has been singled out by Hofstede (2001) for not having a written constitution and for having less need for legislation. Canada was selected as another research site as it falls between the two cases of small power distance with weak uncertainty avoidance, and larger power distance with weak uncertainty avoidance. Among the three countries, Canada has the highest uncertainty avoidance index.

3.4.2 Selection of Research Sites and Research Participants

As a case operates in multiple contexts and there are embedded cases within a specific case, there is a need to narrow down the research sites and research participants identified in the three nation-states (Stake, 2006, Stake 1994). The targeted research sites in this study are the national archives and government agencies of the UK, Canada, and Singapore. As archival legislation in these three countries mentions the name of the archival institution, or the name of the body which the archival institution reports to, LAC, TNA and NAS were selected as the research sites for this study. Archivists dealing with the management of public records and records managers from various government agencies were selected as research participants.

As this study's research questions focus on how archival legislation is operationalized to implement a records management program in the government, the two groups – archivists and records managers – would be the most familiar with the management and preservation of government records. In addition, the two groups interact and coordinate with one another on issues such as the appraisal and transfer of records to the archives. Furthermore, retired archivists and records managers, as well as some senior managers and administrators, who were either involved in overseeing the management and preservation of government records or in drafting archival legislation, were included among the interviewees. This author has deliberately excluded archivists involved in the acquisition or preservation of private records, because these records are outside the scope of the research questions. Purposive sampling was used to identify interviewees who have knowledge of archival legislation and its application and who could provide the accounts and narratives needed to answer to the research questions (Bryman, 2004; Creswell, 2007).

3.4.3 Data Sources

The primary data sources utilized for this study are interviews with archivists and records professionals; archival legislation; related directives, policies, codes of practices, and instructional manuals on records management; minutes of parliamentary sessions regarding the enactment of the legislation; parliamentary reports or debates; and other related records relating to the enactment of archival legislation. In total, this author conducted face-to-face interviews with 54 individuals, and all the interviews were digitally recorded in audio form. The average duration of each interview session was one and a half hours. A total of 30 interviews were transcribed and selected as part of the data analysis because they provide “thick descriptive data” (Guba, 1981, p. 86) that allow a comparative analysis of the selected cases and research sites. While published sources, records, field notes, and memos written by this author on her insights about emerging themes about the data are clearly texts, that is, “discourse fixed by writing,” (Ricoeur, 1997, p. 106), the concept of a text also applies to the interviews, which were digitally recorded and transcribed into text. Ricoeur’s theory of interpretation, as outlined in Chapter 2, makes a distinction between speech and written text. However, the participatory nature of an interview and the hermeneutic conversation between the interviewer and the interviewee do not make an interview a speech. In a spoken discourse, “reference is ostensive” in the sense that the speaker can use gestures or, via the use of “demonstratives, the adverbs of time and place, and the tense of the verb,” convey an event that “surrounds the dialogue,” but this is less apparent during an interview (Ricoeur, 1981, p. 201). In fact, during an interview, interviewees are often asked to provide their perception of an event or to reflect on an event, thus distancing the “shared reality of the speech situation” (Ricoeur, 1981, p. 14). In addition, the deliberate process of interviewing a research participant and recording the interview, with the consent of the

interviewee, suggests that there is an element of intentionality to create fixity to the conversation (Honey, 1987). The awareness of such intentionality may explain why some interviewees requested this author either to switch off the digital recorder, when they felt that what they shared might be potentially confidential in nature, or to avoid providing the specificities of a described event in the study. The fixing of the interview into the form of a transcript also meant that there was the potential for the meaning of the text to be changed “by dissociating the meaning of the text from the meaning of the author” (Kaplan, 2003, p. 32). In other words, the transcribed text acts as a form of “spoken text,” which was one of the main data sources utilized in this study (Honey, 1987, p. 80).

3.4.4 Implementation of Study

Approval was sought from the Behavioural Research Ethics Board of the University of British Columbia before beginning the study, which was broadly divided into two phases: (1) a pilot study conducted with four archivists and records professionals from the provincial and municipal governments of British Columbia, located in Vancouver and Victoria, Canada, with both locations falling outside the targeted research sites, between December 2012 and January 2013; and (2) a full-scale study, which was conducted in Singapore, UK and Canada between February and July 2013.

Typically, pilot studies are “small-scale versions of the planned study” and as such, proceeding with the pilot study allows the testing of the interview protocol (Prescott and Soeken, 1989, p. 60). The pilot interviews allowed the author to revise specific interview questions that were confusing to interviewees (Berg, 2007; Bryman, 2004) and to add headers to the interview guide. The headers provided interviewees with an overview of the issues with which this author was concerned and enabled both the interviewees and this author to navigate through the issues

raised for discussion, in the event that the interviewee had a tight timeframe (see Appendix B and C for interview guides). In addition, the pilot study provided this author with the confidence to conduct interviews for her research and to improve the interview techniques (Bryman, 2004; Given, 2008; Kim, 2011).

For the full-scale study, the potential interviewees were contacted via email or through fax (see Appendix A for invitation to participate in study). The interviews were semi-structured because having a “set of predetermined but open-ended questions” provides the research participants with an element of structure and the topical areas of the research (Given, 2008, p. 810). A written interview guide facilitated the process of obtaining permission from specific organizations because it included a set of topics and questions for them to review. In addition, a semi-structured interview provides flexibility as the interviewer can change the order of the questions and make adjustments to the interview questions depending on the research participants’ perception of what are the most important issues (Berg, 2007; Robson, 2002). Such flexibility in questioning and the use of probing questions lend an element of spontaneity, as interviewees can elaborate on specific issues (Berg, 2007; Flick, 2014).

3.5 Data Analysis

This section highlights how data analysis is integrated in the data collection process and is not a “distinct phase” of research (Bryman & Burgess, 1994, p. 216). It discusses how meaning is jointly created by the research participants and the researcher, how data is interpreted during the transcription process, and how Ricoeur’s theory of interpretation is applied in analyzing the various data sources in the form of text. Interpretation is a dialectic process involving both explanation and understanding. It also involves situating this author in the research, interacting with the text based on her pre-understanding, and recognizing how her pre-

understanding can change in the course of her engagement with the text. Sections 3.5.4 to 3.5.6 explain how the data was analysed in three main stages – explanation, structural analysis of text, and an in-depth understanding. The process is summarized in Figure 1.

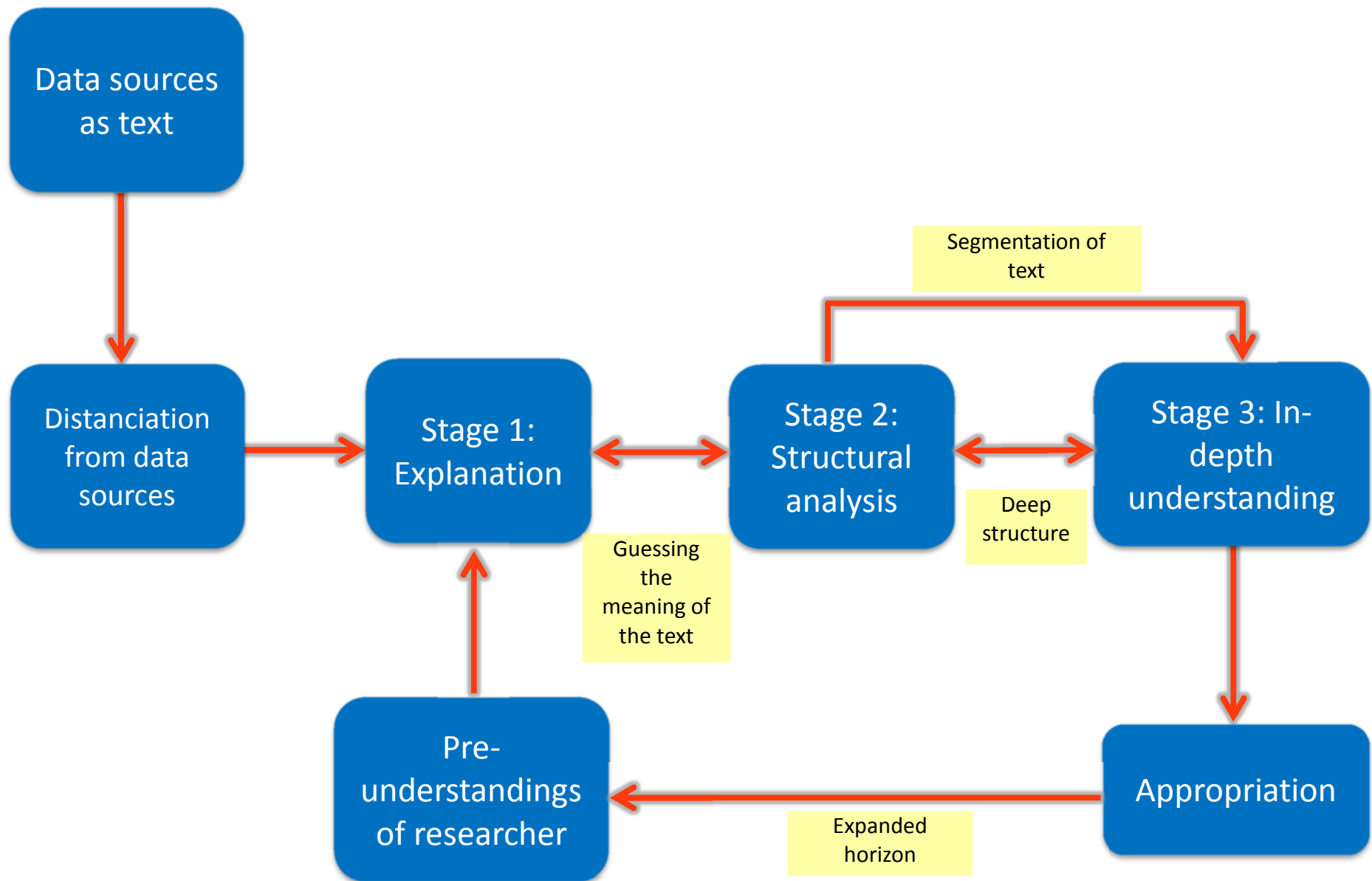


Figure 1 Data analysis using Ricoeur's theory of interpretation

3.5.1 “Meaning Making” during the Interview Process

The process of interviewing research participants is interpretive in nature as “meaning making [takes] center stage” (Warren, 2001, p. 5). From a hermeneutic perspective, meaning making does not mean interpreting the intentions of the author or, in the case of the interview, the intentions of the research participants. According to Gadamer, Weinsheimer, & Marshall (2004), “to understand what a person says is, as we saw, to come to an understanding about the subject matter, not to get inside another person and relive his experiences” (p. 385). The process of being engaged in a hermeneutic conversation does not involve understanding the interviewee as person, or empathizing with the interviewee, but understanding the “totality of the meaning” of “what is spoken” (Gadamer, Weinsheimer, & Marshall, 2004, p. 483).

The participation of both the researcher and the interviewee in a “narrative and interpretive dialogue” during the interview results in the co-creation of meaning (Wiklund-Gustin, 2010, p.36). For example, one of the interviewees from Singapore made a sudden comment: “To be honest, I didn’t know that there was a, what you called, a dedicated piece of legislation on archives, you know. But is there one?” (Interviewee SG-10, March 8, 2013). The interviewee’s remark caught this author a little off-guard as she assumed that the interviewee would know about the archival legislation before agreeing to be interviewed. This author proceeded to summarize the scope of the legislation. The interviewee later revealed that s/he relied on the government instruction manual on registry and records management. The dialogue and exchange between the interviewee and this author resulted in the interviewer informing the interviewee about the archival legislation. At the same time, this author learnt the main source of policy the interviewee relied upon for records management, and that the civil service in Singapore used to conduct examinations for civil servants on financial procedures, human

resources management, and office procedures, which includes records management. The interviewee felt that such examinations were useful as they forced civil servants to be aware of government policies relating to records management. The “dialogic intersection” (Vandermause & Fleming, 2011, p. 370) of ideas between the research participant and this author resulted in a “narrative text” (Freeman, 2007, p. 925), as both of them gained an understanding of a particular subject matter. In fact, as human beings are interpretive in nature, the process of being engaged in a dialogue is not to “figure out a person or looking to some central core of his being” but to enable those engaged in a conversation to have a deeper understanding of the issues discussed (Kimball & Garrison, 1996, p. 52). The interview process can potentially result in a “fusion of ideas” between the research participant and the researcher, where there is “integral interaction between two worlds, perceptions, or stances” (Vandermause & Fleming, 2011, p. 370), as illustrated in this author’s interaction with the interviewee from Singapore. The author also prompted the interviewees to elaborate on their responses and one of them even proceeded to draw a diagram to convey her understanding of what is a record and how it relates to archival legislation.

These two examples illustrate how the process of “meaning making” is a “continually unfolding process” (Holstein and Gubrium, 1995, p. 52) because interpretation takes place throughout the interview process. Some qualitative researchers view conducting a study as a “linear progression” (Kvale and Brinkmann, 2009, p. 102) where, after the interview, the researcher transcribes the recording of it into text and then proceeds to analyze the transcripts. However, interpretation of data is an on-going process and takes place also during the data collection stage (Lichtman, 2001). Consequently, the process of interpretation of data takes place even before the data is coded and analyzed. While engaging with the research participant in

a “participatory conversation” (Geanellos, 1999, p. 40), this author also made sense of and interpreted the utterances of the interviewee, as well as, within the context of the interview, her understanding of the literature, the supporting data sources, and the responses of other interviewees. The interview process also allows this author to clarify the meaning association of specific words or phrases used by the interviewee so as to elucidate the “meaning in language” utilized by the interviewee (Geanellos, 1999, p. 40). It also offered a way of understanding the “other person’s standpoint and horizon” “without necessarily agreeing” (Gadamer, Weinsheimer, & Marshall, 2004, p. 302) with the viewpoints of the interviewee.

3.5.2 Interpretation of Data during the Transcription Process

The interpretation of data also takes place during the transcription of the interviews. Transcription of the interview data is more than a mechanical process of listening and fixing the conversation into text. It also involves reviewing and making sense of the utterances of each interviewee in relation to other interviewees, and is thus an “interpretive act” (Lapadat & Lindsay, 1999, p. 81). For example, transcribing an interview allowed this author to immerse herself in the data, and to formulate some preliminary codes as part of her data analysis. During the process of transcription, this author also paid attention to the “emotional context” of the interview, including the “intonation of voice, pauses, sighs and laughter” and specific gestures, such as knocking on a table to emphasize a point (Poland, 1995. p. 292). However, it must be acknowledged that non-verbal cues such as the facial expressions of the interviewees cannot be captured in the audio recording and thus they are not documented in the transcripts.

3.5.3 Distanciation from the Data Sources

Data sources comprising relevant pieces of archival legislation, records management policies, and records distance the researcher from the text because the researcher was not

physically present when the discourse was written. Distanciation involves setting the text free from its original meaning and the psychological intent of the author and to open the text to “multiple and unlimited readings” (Wiklund, Lindholm, & Lindstrom, 2009, p. 116). As a researcher, this author became immersed in the text of the transcripts and other data sources in order to critically evaluate them. Thus, she became distanced from the transcripts, even though she personally interviewed the research participants (Tan, Wilson, & Olver, 2009). Interviewees can also become distanced from specific issues or events when they are asked to provide their perspective about archival legislation and reflect on their experiences. Interviewees can experience a "spatial and temporal gap" between themselves and the event (Ricoeur, 1976, p. 43).

3.5.4 Stage One: Explanation

The explanatory stage involves both a naïve understanding of the text and guessing the meaning of the text. A naïve understanding means a “grasping of the meaning of the text as a whole” and also involves an element of guessing (Ricoeur, 1976, p. 74). The texts of the relevant data sources were first read and taken at face value in order to acquire a “general sense of the text as a whole” (Dreyer and Pedersen, 2009, p. 67). Notes were also taken documenting initial observations and impressions strictly based on the information presented in the texts. The data was first coded with the use of qualitative software, NVivo, based on how they related to the research questions. The coded data were subsequently broken down into “component parts” and then grouped into various descriptive and explanatory nodes (Bryman, 2004, p. 537). Guessing the meaning of a text involves deciding on which segments of the text one should focus on and making a decision on how to name the initial coding categories. Guessing the meaning of the text also does not mean guessing the meaning intended by the author through the text but to

understand the text in itself. According to Wiklund et al. (2002), the term guess is a “synonym to understand” and is a “hint of the researcher’s pre-understanding” (p. 116). The pre-understandings that this author had this stage, which was influenced by her academic background and work experience, resulted in the creation of some preliminary categories. Ricoeur (1981) explains that guessing the meaning of a text involves a “onesidedness implied in the act of reading” (p. 212). Analyzing a text is analogous to viewing a cube “from several sides, but never from all sides at once” (Ricoeur, 1976, p. 77). This author adapted Ricoeur’s concept of one-sided reading in coding and understanding the data. After coding the data from various texts into the descriptive and explanatory nodes in NVivo, this author read the data under each node. The process of re-reading the data under each node provided her with a new perspective, as it enabled her to consider a segment of the text divorced from its original text and in relation to related segments of text from other sources. Such a process also allowed her to refine the coding structure and to group similar nodes together. Because of this, the process of coding is said to be “organic” and “dynamic” in nature (Schwandt, 2007, p. 33). For example, the nodes that were labelled as “authenticity,” “concept of an original,” and “multiple copies of records” were conceptually related, thus they were examined more closely so that they can be integrated. Codes that were labelled as “archival legislation as the lynchpin of archival activity” and “archival legislation is too vague” were also deemed to be conceptually related and integrated.

3.5.5 Stage Two: Structural Analysis of Text

The structural analysis of a text is an intermediate stage between explanation and understanding (Ricoeur, 1976). One aspect of structural analysis is “an interpretation of what the text says across data” (Dreyer & Pedersen, 2009, p. 68). This author examined all the quotes under the related codes, interpreted them, and derived themes. For example, she analyzed all the

quotations of the text relating to the codes on authenticity, and formulated a theme, which states that archival legislation is not expressly concerned with the authenticity of records. She also examined variances in the definition of the same term between two different pieces of text. For example, in the UK, the definition of record under the *PRA* differed from the *Lord Chancellor's Code of Practice on the Management of Records Issued under Section 46 of the Freedom of Information Act 2000*. This type of approach in interpreting data is analogous to what Ricoeur (1981) calls “segmentation of the work” (p. 156).

The other aspect of structural analysis is to examine the “various levels of integration of the parts of the whole (hierarchical aspect)” of the text (Ricoeur, 1981, p. 156) and to explore how words, sentences, and the meaning of the text relate to each other. In effect, structural analysis examines how the researcher can construct “architecture of themes” from the text (Ricoeur, 1981, p. 175).). This author raised questions on how interviewees interpret specific sections in the archival legislation. Interviewees shared how they and other individuals in their organization choose to emphasize different aspects of the text and at times, this resulted in disagreements and debates.

Finally, structural analysis obliges the researcher to look for “deep structures in the text” and to come up with metaphors in order to “grasp the underlying meaning of the narrative” (Wiklund et al., 2002, p. 121). The researcher looks beyond the literal meaning of the text and formulates a metaphor to represent a “meaning which emerges as the unique and fleeting result of a contextual action” (Ricoeur, 1981, p. 169). This author examined the interview data and was able to discern the metaphors that reflected the meanings implied in archival legislation, as experienced by the interviewees.

3.5.6 Stage Three: In-depth Understanding

This stage proceeds from a naïve understanding of a text to a “deeper understanding through recognition of the parts to the whole” (Geanellos, 2000, p. 114). At this stage, the researcher goes beyond the semantics and structural analysis of the text into what Ricoeur (1981) refers to as “depth interpretation” (p. 220). Understanding does not mean finding an emotional attachment with the author of the text but rather engaging with the meanings articulated in the text. Gadamer, Weinsheimer, & Marshall (2004) note that “the task of hermeneutics is to clarify this miracle of understanding, which is not a mysterious communion of souls but sharing in a common meaning” (p. 292). Unlike the earlier stages where the researcher is distanced from his or her data sources so that the text can be set free from its original context, stage three involves the “appropriation of textual meaning” (Ghasemi, Taghinejad, & Imani, 2011, p. 1626). As noted when discussing Ricoeur’s theory of interpretation, appropriation involves transforming what is initially distanced from the reader or researcher into something familiar to the researcher. It is similar to the concept of fusion of horizons where there is a merging of the “past horizon of the text with the present horizon of the one who understands” (Schmidt, 2006, p. 8).

One of the pre-understandings this author had was that Singapore’s archival legislation states that if a public office destroys public records without seeking the approval from the national archives, then the responsible person will be liable to fines, or imprisonment, or to both. Section 14H (1) of the *NLBA*¹⁴⁹ states that “no person shall – without the permission of the Board, take or send out of Singapore any public records; write on, mark, inscribe or otherwise deface any public records or mutilate, excise or otherwise damage any public records.” In addition, section 14H (2) states that “any person who contravenes subsection (1) shall be guilty

¹⁴⁹ *National Library Board Act* (Cap 197, 2014 Rev Ed Sing.), s 14 H(1).

of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.”¹⁵⁰ This author recalled that archivists at the NAS used to cite this clause to departments as part of their training sessions and mentioned that there were penalties involved if the department destroyed public records without seeking the approval from the National Archives. She shared her interpretation of section 14(H) in the *NLBA*, which in turn prompted interviewees to offer their various interpretations.

Such exchanges with the interviewees demonstrates how “words acquire meaning in the context of sentences and sentences acquire meaning in the context of paragraphs and of the text as a whole” (Allen & Jensen, 1990, p. 243). Initially, this author interpreted the word “damage” as articulated in the Act as encompassing the destruction of public records without seeking approval from the permission from the national archives.¹⁵¹ However, upon re-reading the transcripts and the legislation, she began to realize that the Act did not have specific provisions for the unauthorized destruction of public records. This example also illustrates how the horizon of this author’s world as a researcher expanded once she examined the nuances of language in the legislation and the differing perspectives. After reconciling her pre-understandings with the world presented by the text of the legislation and the transcripts of the interviews, she began to explore other possibilities with an “expanded horizon” (Schmidt, 2006, p. 8). For instance, she questioned whether there is even a need for penalties under archival legislation, and pondered on whether the archival institution can effectively enforce or monitor the unauthorized destruction of records. The expansion of her horizon led this author to question her initial assumptions and thus “open[ed] up the possibility of seeing things differently and of orienting oneself in other ways in the world” (Geanellos, 1999, p. 114).

¹⁵⁰ *Ibid* at s 14 H(2).

¹⁵¹ *Ibid*.

The process of moving through the various stages – from explanation, to structural analysis, and to in-depth understanding is an iterative process and this process is summarized in Figure 1. Explanation and structural analysis involve understanding the text within its immediate context, which is the “internal relations of the text (the parts)” (Geanellos, 2000, p. 114). In-depth understanding, on the other hand, involves interpreting the text within its larger context, including struggling with the values articulated in the text. In-depth understanding requires “overcoming cultural distance and [of] fusing textual interpretation with self interpretation” (Valdés, 1991, p. 59). The meaning of the text is then freed from its original context and “understanding is directed toward grasping the meanings the text discloses (the whole in relation to its parts)” (Geanellos, 2000, p. 114). Throughout her data analysis, this author had to examine segments of the text and quotations from interview transcripts and to constantly return to the whole by revisiting the overall thematic structure and the research questions. Thus, there was a constant process of shuttling back and forth between explanation and understanding or what is known as the hermeneutical arc (Ricoeur, 1981; Tan, Wilson, & Olver, 2009; Valdés, 1991). In fact, Ricoeur (1981) states that explanation and understanding are at “two different stages of a unique hermeneutical arc” and “it is this depth semantics which constitutes the genuine object of understanding and which requires a special affinity between the reader and the kind of things the text is about” (p. 218).

3.6 Situating This Author in the Research

As noted in section 3.5.6, interpretation of a text requires the researcher to engage with both the text and his or her pre-understandings. The same text can be interpreted differently by different researchers, partly because of their pre-understandings. Therefore, there can be a “plurality of constructions” in textual interpretation (Ricoeur, 1976, p. 77). This section describes

how this author's identity and concept of self is linked with her research and how the process of interpretation influences the "conceptualizing of [this] study" (Peshkin, 2000, p. 9).

Part of developing a "hermeneutically trained consciousness" is to be sensitive to one's own pre-understandings and prejudices (Gadamer, Weinsheimer, & Marshall, 2004, p. 271). The term "prejudice" does not imply something which is negative but rather is a "judgement that is rendered before all the elements that determine a situation have been examined" (Gadamer, Weinsheimer, & Marshall, 2004, p. 273). In the course of collecting data, this author was made aware of her prejudices when some interviewees causally asked her why she chose to study archival legislation. She also noted that part of the element of curiosity was due to the fact that some of the interviewees felt that archival legislation had largely become irrelevant for the management of records in the digital environment and that legislation served primarily to establish the mandate and scope of the national archives. The process of explaining to the interviewees why archival legislation was chosen as the focus of research made this author more conscious of how her identity as a doctoral candidate and as an archivist influences her research. It also heightened her level of hermeneutical consciousness by making her acknowledge that a "person seeking to understand something has a bond to the subject matter" or "acquires, a connection with the tradition from which the text speaks" (Gadamer, Weinsheimer, & Marshall, 2004, p. 295).

When she first embarked on data collection, this author initially perceived herself both as an insider and outsider. Although she spent about 10 years working as an archivist at the NAS, she was aware before commencing field work that the landscape and her views of it had changed due to her distance from the field and her engagement in scholarly research and teaching during her doctoral studies. However, she also found that it was impossible to suspend her pre-

understandings and that such pre-understandings had in fact infused her new lens and affected the manner in which she interacted with and interpreted her data.

Knies (2006) used the concept of nation to describe one's familiarity with one's traditions and worldview. A nation is not just a geographical space or political entity but it is the "home of specific mythical powers, gods, demons, and traditions" (Knies, p. 8). Throughout her research, this author was aware that her concept of a nation and role of insider and outsider were at times not distinct – she considers herself a doctoral candidate, a former archivist from the NAS, a Singaporean, and someone who spent a considerable part of her life in Canada, thereby absorbing aspects of its worldview. At times, one aspect of this identity emerges, especially when interviewees from Singapore ask for feedback on certain aspects of records management work conducted by the NAS. This author clarified that the feedback given was her personal opinion, and that it was best to consult NAS staff. At other times, she was struck by the familiarity of certain language and concepts used by some of the Canadian interviewees who shared similar background or of certain issues that were discussed in the Canadian archival community listserv. Being aware of her "community horizon," which poses "questions about who I am and what the world is" is critical to the research as it involves appropriating one's traditions and being engaged with the meanings articulated in the text (Knies, 2006, p. 8).

This author also found that her assumptions were "provoked" (Gadamer, Weinsheimer, & Marshall, 2004, p. 298) while engaging with the data sources and interacting with research participants who did not necessarily have a similar educational background or work experience. For example, the archivists interviewed in Canada, UK, and Singapore came from a varied educational background in the arts and social sciences, business management, library management, information management, and archival science. Some of those who held relatively

senior positions at the national archives had no prior experience in working in an archives or in a job related to information management, and also had varied educational backgrounds, including arts and social sciences, and law. This author recorded her reflections during the data collection and analysis stage. These notes enabled her to critically examine her “personal and theoretical commitments to see how they serve as resources for generating particular data” and “developing particular interpretations” (Schwandt, 2007, p. 261).

Besides being aware of her connection to the subject matter, this author was also cognizant that developing a sense of hermeneutical consciousness also meant that she should remain open to the “text’s alterity,” as well as situating and appropriating her prejudices and pre-understandings (Gadamer, Weinsheimer, & Marshall, 2004, p. 271). For example, she was initially quite surprised to discover that some records professionals in Singapore were disappointed that NAS did not exercise its leadership role in records management. Her prejudice was influenced by her previous knowledge that the NAS used to actively promote electronic document records management systems (EDRMS) for the civil service and regularly conducted records management training to departments. Similarly, several records professionals from various government agencies in the UK and Canada commented about the lack of leadership by the national archives in records management and lack of clarity in vision and strategy. The process of listening and later reading these utterances of some of the interviewees made her question her earlier assumptions. One’s set of prejudices is constantly being tested and challenged once we are confronted with meanings from the text and the “hermeneutical task becomes of itself a questioning of things” (Gadamer, Weinsheimer, & Marshall, 2004, p. 271). Similarly, Knies’ (2006) assertion that researchers’ “travel,” in terms of encountering something “foreign” and which is outside one’s tradition, helps to bring along a deeper level of

understanding and interpretation to one's research proved to be true, as one's "zone of familiarity stands out in its character of being unthinkingly accepted" (p. 8).

3.7 Establishing Trustworthiness in Research Study

The term trustworthiness refers to the "quality or goodness of qualitative research" (Schwandt, 2007, p. 299) and to the establishment of criteria that will result in "increased confidence in the rigorousness of findings" (Lincoln, 2004, p. 1145). Several qualitative researchers have expressed caution about using the criteria for positivistic research to judge the quality of research that is qualitative and interpretive in nature (Golafshani, 2003; Sandberg, 2005; Guba, 1981). Scholars such as Lincoln and Guba (1985) and Flick (2007) have developed specific criteria to evaluate the trustworthiness of qualitative research. The criteria for establishing trustworthiness of research include dependability, confirmability, transferability, and credibility (Schwandt, 2007; Lincoln, 2004; Lincoln and Guba, 1985). Section 3.7.1 to section 3.7.4 elaborate on the measures that this author has taken to meet the various criteria related to establishing trustworthiness.

3.7.1 Addressing Issues Relating to Dependability

Dependability or reliability refers to the stability and consistency of the research process (Guba, 1981; Guest, MacQueen, & Namey, 2012). Some qualitative researchers have argued that reliability is less applicable in a qualitative research, which does not aim for replicability of results (Guest et al., 2012). One common method of improving dependability is to implement intercoder reliability, which involves at least two researchers coding the data independently, and then discussing discrepancies in the coding structure (van den Hoonaard, 2008). This study did not employ intercoder reliability because understanding from a hermeneutics perspective did not mean coming to the "single or correct interpretation" (Bernstein, 1983, p. 148). Understanding a

text involves recognizing the researcher's historicity and context. The researcher engages with the meanings articulated in the text and also tests his or her own pre-understanding and prejudices. There can be no "objective understanding" out there waiting to be discovered but rather a researcher's understanding of a phenomenon can change through time, in light of the researcher's horizons and experiences (Bernstein, 1983, p. 150). As suggested by Lincoln and Guba (1985), this author deployed triangulation to strengthen the reliability of the results.

Section 3.7.4.1 elaborates on how triangulation was used.

3.7.2 Addressing Issues Relating to Confirmability

Confirmability is the process of anchoring the research findings and interpretation to the data collected (Schwandt, 2007; Lincoln, 2004). One technique this author applied was exercising reflexivity and documenting the emerging insights and reflections. Reflexivity involves reflecting on one's role as a researcher within the context of a given study, taking into account how one's values shape the insights that emerge while conducting the research (Bloor & Wood, 2006; Jupp, 2006). Section 3.7.4.3 describes the implications of exercising reflexivity throughout the research process.

3.7.3 Addressing Issues Relating to Transferability

Transferability involves the extent to which the findings from a study can be applied to other research contexts (Jensen, 2008; Schwandt, 2007). One measure taken to increase the transferability of research is to write thick description in terms of providing a "full and purposeful account of the context, participants, and research design" (Jensen, 2008). Chapter 1 of this dissertation provides the legal context of the research sites while this chapter provides information on how the study was carried out and how the data sources were analyzed. Chapter 4 will provide additional context about the accounts provided by the interviewees and the relevant

documentary texts. Another method for increasing transferability is to adopt purposive sampling in order to “maximize the range of information uncovered” (Guba, 1981, p. 86). In this study, archivists and records managers were identified who were involved in the management and preservation of government records, as well as senior managers and administrators who were involved either in overseeing the management and preservation of government records or in drafting archival legislation.

3.7.4 Establishing Credibility in the Study

Credibility means that the researcher has demonstrated that he or she has represented the multiple meanings and interpretations of the research participants and the specific data sources (Jensen, 1985; Lincoln & Guba, 1985). This author adopted triangulation and peer debriefing. She also exercised reflexivity through documenting her reflections in memos to enhance credibility in her research.

3.7.4.1 Triangulation

Triangulation involves using a variety of sources to enhance the richness of data and provides the research with the means necessary to check and cross-check emerging interpretations and themes (Janesick, 1994; Flick, 2007; Mathison, 1998). Section 3.4.3 of this chapter outlines the various data sources relied upon for this study. The primary data sources were the interview transcripts and archival legislation. In the course of the interviews, the research participants drew attention to other relevant pieces of legislation, directives, codes of practices, and policies that they relied upon to implement a records management program. These data sources were also analyzed as part of the study. In the course of interpreting the sources, this author looked for evidence which not only revealed communalities but also highlighted areas of contradictions to generate a nuanced understanding of how archival legislation is interpreted and

applied in the context of the UK, Canada and Singapore. As argued by Mathison (1998), “the value of triangulation lies in providing evidence – whether convergent, inconsistent, or contradictory – such that the researcher can construct good explanations of the social phenomenon from which they arise” (p. 15).

3.7.4.2 Peer Debriefing

Peer debriefing involves sharing with peers one’s evolving insights and the basis of one’s interpretations (Lincoln & Guba, 1985). This has been done by speaking with colleagues who are knowledgeable in the field of records management and archival studies, and students from this author’s doctoral program. She conducted her discussion with colleagues in a systematic manner by creating a document highlighting emerging themes and some of the supporting quotes from various interviews. These colleagues were only presented a limited snapshot of the data, and they did not have access to the larger context of the research sites. However, preparing such a document presented an opportunity for this author to clarify the emerging themes and to elicit responses and feedback from her colleagues. This author also presented her research to doctoral students and faculty from information schools outside of Canada.

3.7.4.3 Exercising Reflexivity

Hamdan (2009) highlights how reflexivity enables a researcher to “deconstruct one’s own work and the motives behind it” (p. 379). For instance, as discussed in section 3.6, one of the insights gleaned by this author through self reflexivity was that the boundary between being an insider and an outsider is at times porous and never static, and is dependent on the context of a researcher’s interaction with the research participants. This author realized during the research process that her experience and identity as an archivist influenced the manner in which research participants interacted with her and related their experiences, as well as the manner in which she

engaged with the data. She also found that it was impossible to suspend one's assumptions and that meaning making includes incorporating one's assumptions and experiences in the research process.

3.8 Summary

This chapter has highlighted the interpretivist research conducted for this study, which was informed by hermeneutic principles and the application of Ricoeur's theory of interpretation. It outlined the process of moving back and forth from explanation to structural analysis, and to in-depth understanding of the data sources. Finally, it examined how this author reflected on her role as a researcher in the study by examining her pre-understandings and narratives. The next chapter will discuss the data analysis and its results across the UK, Canada, and Singapore.

Chapter 4: Data Analysis and Results

4.1 Introduction

As discussed in Chapter 3, data analysis was an ongoing process of interaction with the data sources, as this author moved back and forth along the hermeneutic arc, from explanation to understanding. The main data sources in this study included interviews that were transcribed verbatim, and relevant pieces of legislation, regulations, directives, policies, codes of practice, standards, and guidelines, as well as related archival sources, such as parliamentary debates preceding the enactment of the archival legislation. Initial categories were developed in the course of data collection and during the transcription process, and were supported by relevant excerpts from the interview transcripts and documentary text. These categories were further examined based on reviewing the interview transcripts in order to construct themes that cut across the data sources and the three countries, the UK, Canada, and Singapore. This author identified variances, not only in terms of differences in themes among the three countries but also in terms of varying perspectives of archivists and records professionals within and across countries.

4.2 Themes

There are ten themes that emerge from the data; they are discussed in sections 4.2.1-4.2.10. In the process of doing so, this author will illustrate them with supporting quotations from interviewees across the three countries. The interviewees are referred to by alphanumerical codes – starting with an alphabetical code denoting the country, followed by a numerical code. In terms of the alphabetical code, UK refers to interviewees from the United Kingdom, CA to interviewees from Canada, and SG to interviewees from Singapore. The alphabetical codes are based on the International Organization for Standardization (ISO) 3166 standard, which defines

codes for countries.¹⁵² In this dissertation, the pronoun she or her refers to all interviewees. In order to ease reading, the dissertation will also use the term “normative sources” to refer to pieces of legislation, regulations, directives, codes of practice, policies, standards and guidelines.

The themes and sub-themes discussed in this chapter are:

1. Records management and preservation are expressed in a patchwork of normative sources.
 - Normative sources are not mutually exclusive and there is a hierarchical relationship among them.
 - The language of archival legislation lacks clarity and consistency with other normative sources.
2. There is no consensus about the comprehensiveness of archival legislation in its definition of a record [UK and Canada].
3. There is no consensus about the comprehensiveness of archival legislation in its definition of a public office [Singapore].
4. Archival legislation is not expressly concerned with authenticity of records.
5. The complexities of tabling a bill in Parliament impede changes to the archival legislation.
6. The scope of the mandate given by the archival legislation limits the national archives' role in records management.

¹⁵² International Organization for Standardization, online: International Organization for Standardization *ISO 3166* <<https://www.iso.org/obp/ui/#search>>. The country code for United Kingdom of Great Britain and Northern Ireland is GB. However, the code UK also refers to the United Kingdom and is said to be “reserved at the request of United Kingdom”. See <http://www.iso.org/iso/country_codes_glossary.html>. This study uses the country code UK since a number of the government websites are based on the domain name gov.uk.

7. The institutional relationships between the national archives and the government departments can limit the effective delivery of a records management program.
8. Interpersonal/professional relationships between archivists and records managers are the foundation of an effective records management program.
9. There is a perceived lack of leadership of the national archives in records management.
10. The status of the national archives' reporting structure affects its scope of influence in the government.
 - The reporting structure of the national archives is influenced by its dual role in preserving public and private records [Canada and Singapore].
 - The lack of sanctions for the destruction of public records is symptomatic of the perceived low status of the national archives within the government hierarchy and the low status accorded to records management.
 - The role and ability of the national archives to influence records management is dependent on the political and social context.

4.2.1 Records Management and Preservation are Expressed in a Patchwork of Normative Sources

According to the Oxford English Dictionary (2015), the word “patchwork” means “something composed of many different pieces or elements, especially when put together in a makeshift or incongruous way; a medley or jumble.” The term “patchwork” also denotes “miscellaneous pieces or elements” that come together to “form one article” (Oxford English Dictionary, 2015). The metaphor of a patchwork is used to suggest that each piece of legislation, regulation, directive, policy, code of practice, standard, and guideline has its own purpose, but it can come together with others to serve a separate objective, such as governing the management

and preservation of records. There is no single piece of legislation that comprehensively governs the management and preservation of records. There are also contradictions and inconsistencies in the definition of specific concepts as well as how in they are applied. The metaphor of a patchwork is best illustrated by interviewee UK-11. UK-11 states,

If you think of the word patchwork, there are two types of patchwork. For example the patchwork quilt which you have on your bed. It keep you warm, it is all encompassing. But patchwork, for someone like a beggar on the street, wearing some rags, ensure that he is physically decent. In other words, his skin is exposed to the air. That's clearly not adequate. And the trouble with the patchwork... is that there are too many gaps, too many holes. (April 25, 2013)

In other words, a patchwork of the normative sources can help to address issues related to the management and preservation of records. However, as noted by UK-11, the various elements in a patchwork may not necessarily fit neatly with each other, and there can be gaps in how to combine different elements in a coherent whole. Sections 4.2.1.1 - 4.2.1.2 will discuss how normative sources work with one another, and identify the gaps left by them within the context of the following sub-themes. The sub-themes are:

1. Normative sources are not mutually exclusive and there is a hierarchical relationship among them, and
2. The language of archival legislation lacks clarity and consistency with other normative sources.

4.2.1.1 Normative Sources are Not Mutually Exclusive and There is a Hierarchical Relationship Among Them

This sub-theme discusses how different normative sources have their own role within the legislative framework of each country and do not operate independently from one another. Since it is not possible to discuss each of them in detail, the discussion will be framed in terms of providing examples of how related normative sources interact with one another.

4.2.1.1.1 UK

Several interviewees observed that the 1958 *PRA* by itself was insufficient to provide the legislative basis for records management in the UK government. UK-1 states that the *PRA* by itself “doesn’t cover everything” and that archivists and records professionals have to rely on provisions from other pieces of legislation, regulations and codes of practices to “fill the gaps” and to “build on what you have” (April 10, 2013). Similarly, UK-10 claims that the *PRA* is “very much focused on archives” and, when it was first enacted, records management did not evolve as a “separate discipline” (April 8, 2013).

One example of a piece of legislation that provides the basis for the creation and maintenance of records is the *Freedom of Information Act 2000 (FOIA)*. Section 46(1) of the *FOIA* states that the “Secretary of State shall issue, and may from time to time revise, a code of practice providing guidance to relevant authorities as to the practice which it would, in his opinion, be desirable for them in connection with the keeping, management and destruction of their records.”¹⁵³ Both UK-12 and UK-10 feel that the *FOIA* provided the legal framework for records management in the government. UK-12 states that with the *FOIA*, the phrase “records management from the basement to the board room” is “bandied around government” (April 9,

¹⁵³ *Freedom of Information Act 2000 (UK)*, c 36, s 46(1) [*FOIA*].

2013). UK-12 also argues that such phrase is a good metaphor since it illustrates how *FOIA* “transforms the way information is being kept” by elevating records management, which is normally associated with “low status in the organization” (i.e. the basement), to the “very top of the organization” (i.e. the board room) (April 9, 2013). Similarly, UK-10 claims that “records management was in the doldrums before Freedom of Information [FOI]” but the Act allows archivists to “take the line to say, look, if you don't get your records straightened out, you got no chance of implementing FOI and you will be in trouble if you can't implement FOI” (April 8, 2013). Interviewee UK-10 also feels that the *FOIA* fills up the void for records management in the UK government left by the *PRA*, which is “very much focused on archives” (April 8, 2013). In effect, she feels that the *FOIA* provides “authority or weight” to the records management and archival community who are “trying to tell people how good records management is” (April 8, 2013).

One of the codes of practices issued under the *FOIA* is the *Lord Chancellor's Code of Practice on the Management of Records Issued under Section 46 of the Freedom of Information Act 2000*, referred to as *Section 46 Code of Practice*. The *Section 46 Code of Practice* provides guidance on records creation, maintenance, selection, destruction, and transfer to archival custody, and on access to records. According to UK-7, *Section 46 Code of Practice* contains the necessary “details” for records managers and archivists to carry out their responsibilities and duties, whereas the legislation is more about determining the “general principles” (April 2, 2013).

The *Section 46 Code of Practice* states that “good records and information management” underpins the *FOIA*, as “access rights are of limited value if information cannot be found when

requested or, when found, cannot be relied upon as authoritative.”¹⁵⁴ The Code was developed with the recognition that, since the enactment of the *FOIA*, digital technology had transformed the manner in which individuals create and disseminate records.¹⁵⁵ Although the Code is considered “discretionary” (UK-11, April 25, 2013), has “no statutory penalties” (UK-11, April 25, 2013), and is “not mandatory” (UK-12, April 9, 2013), it does adopt a strong wording. For example, *Section 46 Code of Practice* states that “all relevant authorities are strongly encouraged to pay heed to the guidance in the Code.”¹⁵⁶ According to UK-12,

Even then the Lord Chancellor's Code of Practice is not statutory: it is not you must, it is a kind of guidance and advisory. It is not you must, it is not mandatory, although it is strongly advised. (April 9, 2013)

In addition, *Section 46 Code of Practice* issues a cautionary statement:

Authorities should note that if they fail to comply with the Code, they may also fail to comply with legislation relating to the creation, management, disposal, use and re-use of records and information, for example the Public Records Act 1958, the Data Protection Act 1998, and the Reuse of Public Sector Information Regulations 2005, and they may consequently be in breach of their statutory obligations.¹⁵⁷

This statement acknowledges that even though the *Section 46 Code of Practice* is discretionary in nature, a department’s failure to comply with the Code might imply that it is unable to fulfil its statutory responsibilities. This is because the *Section 46 Code of Practice* incorporates the main principles covered in several pieces of legislation that govern record

¹⁵⁴ UK, Ministry of Justice & TNA, *Lord Chancellor’s Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000* (Crown copyright, 2009), para iv.

¹⁵⁵ UK, HL, Parliamentary Debates, vol 712, col WS113 (16 July 2009) (Lord Bach).

¹⁵⁶ UK, Ministry of Justice & TNA, *Lord Chancellor’s Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000* (Crown copyright, 2009), para vii.

¹⁵⁷ *Ibid.*, para viii.

creation, management, and access. As noted by UK-1, there is a “network of legislation feeding in” (April 10, 2013). For example, *Section 46 Code of Practice* states that though records containing personal data should not be retained other than for the original purpose of data collection, there are certain exemptions such as those for records that are to be “kept indefinitely for historical research purposes.”¹⁵⁸ Such an exemption from destruction is in line with the *PRA* and the *Data Protection Act (DPA)*. Section 3(4) of the *PRA*¹⁵⁹ states that “public records selected for permanent preservation” should be transferred to either the “Public Record Office or to such other place of deposit appointed by the Secretary of State under this Act as the Secretary of State may direct.” In other words, records identified for permanent preservation, regardless of whether they contain personal data must be retained and should be transferred to archival custody. Similarly, section 33(3) of the *DPA*¹⁶⁰ states that “personal data which are processed only for research purposes in compliance with the relevant conditions may, notwithstanding the fifth data protection principle, be kept indefinitely.”

The *Code of Practice for archivists and records managers under Section 51(4) of the DPA 1998* (also known as *Code of Practice on Data Protection*) complements the *DPA* by providing guidance to records managers and archivists on how to collect, protect, process, and acquire records with personal data. For example, it identifies conditions where archivists can process personal data for the purposes of archival preservation. Such conditions include data that are “not processed in such a way that substantial damage or substantial distress is, or is likely to

¹⁵⁸ *Ibid.*, para 12.3b

¹⁵⁹ *Public Records Act*, 1958 (UK), 6 & 7 Eliz II, c 51, s 3(4) [*PRA*].

¹⁶⁰ *Data Protection Act 1998* (UK), c 29, s 33(3) [*DPA*].

be, caused to any data subject.”¹⁶¹ The *Code of Practice on Data Protection* clearly states that it does not operate independently, but it is to be “used in conjunction with the [DPA], secondary legislation (such as Regulations) and guidance published by the Information Commissioner.”¹⁶² The existence and interplay of the *PRA*, *DPA*, *Section 46 Code of Practice* and the *Code of Practice on Data Protection*, in the words of UK-1, “all knits together” (April 10, 2013).

Both UK-7 and UK-5 share their views on how there is no one single piece of legislation governing the management and preservation of records. UK-7 feels that one of the difficulties is that there is “no single source” and that “it is quite difficult to work out” the various pieces of legislation that have an impact on the management and preservation of records (April 2, 2013). Similarly, UK-5 asserts that there is a “complex web” of pieces of legislation interacting with one another and that she is “not sure whether [her] understanding is complete” (March 26, 2013). One of the issues UK-5 grapples with is to identify the relevant pieces of legislation governing transfer and access to records. For instance, the enactment of the *Constitutional Reform and Governance Act (CRGA)*¹⁶³ changed the statutory provisions of the *PRA* governing the transfer of public records selected for preservation to either the Public Record Office or places of deposit from 30 to 20 years after the record’s creation.

The *CRGA* also amended the statutory provisions in the *FOIA*¹⁶⁴ by reducing the period when a record becomes a historical record from 30 to 20 years. However, the *PRA* also states there are some historical records that are still retained by the department for “administrative

¹⁶¹ UK, TNA, the Society of Archivists, the Records Management Society, & the National Association for Information Management, *Code of Practice for archivists and records managers of the Data Protection Act 1998* (Crown copyright, 2007), para 4.2.2.

¹⁶² *Ibid*, para 1.8.

¹⁶³ *Constitutional Reform and Governance Act 2010* (UK), c 25, s 45(1a) [*CRGA*].

¹⁶⁴ *Freedom of Information Act 2000* (UK), c 36, s 62 [*FOIA*].

purpose” or “for any special reason.”¹⁶⁵ Such records require permission from TNA’s Advisory Council, which is mandated to “advise the Secretary of State” on the “application of the *Freedom of Information Act 2000* to information contained in public records which are historical records within the meaning of Part VI of that Act.”¹⁶⁶

Conversely, there are historical records that are transferred to TNA’s custody and are not available to the public for consultation. Such records are exempted from release based on the *FOIA*, the *DPA*, or as falling into the category of “exception to disclosure” under *The Environmental Information Regulation (EIR)*.¹⁶⁷ The relevant departments have to conduct a review to assess the sensitivity of the information before transferring the records to TNA. If the record is exempted from release based on the relevant pieces of legislation, the department should cite the appropriate legislative exemptions in a closure application form.¹⁶⁸ The Advisory Council on National Records and Archives would then review and make a decision as to whether the information from the historical records can be exempted from release.¹⁶⁹

The “complex web” (UK-5, March 26, 2013) and “a bit of the mishmash” (UK-7, April 2, 2013) of the various pieces of legislation, regulations, and codes of practices in the UK mean that archivists and records managers need to know which legislative framework applies to their area of work, and how the various pieces relate to one another. While the various pieces of legislation provide the broad principles, statutory instruments such as regulations “provide the necessary detail that would be too complex to include in the Act itself.”¹⁷⁰ The codes of practice

¹⁶⁵ *Public Records Act*, 1958 (UK), 6 & 7 Eliz II, c 51 [PRA], s 3(4).

¹⁶⁶ *Ibid*, s 1(2A).

¹⁶⁷ *The Environmental Information Regulations 2004*, SI 2004/3391, s 12(1) [EIR].

¹⁶⁸ UK, The National Archives, *Access to Public Records* (Crown copyright, 2015).

¹⁶⁹ *Ibid*.

¹⁷⁰ UK Parliament, *Statutory Instruments*, online:< <http://www.parliament.uk/business/bills-and-legislation/secondary-legislation/statutory-instruments/>>.

are not mandatory but they provide specific guidance and best practices drawn from various pieces of legislation and regulation.

4.2.1.1.2 Canada

The main pieces of legislation governing information management in Canada are the *Financial Administration Act (FAA)*, the *LACA*, and the *AIA*, which have “requirements that hinge on information” (CA-9, June 18, 2013). The *FAA* specifies the roles and responsibilities of the Treasury Board (TB). Section 7(1) of the *FAA*¹⁷¹ states that TB is in charge of “financial management,” administration of lands by departments, “human resources management,” “internal audit” in the federal government, and “general administration policy”. Consequently, TB is charged with the responsibility of overseeing information management, which is part of “general administration policy.”¹⁷² The *FAA* also specifies that departments should manage and maintain financial records and records relating to the administration of land and public property.¹⁷³ The *FAA* states the role of TB in terms of providing the framework for information management as well as establishing “general administrative standards of performance” like the Management Accountability Framework (MAF).¹⁷⁴ The *LACA* complements the *FAA* by governing the disposition of records.¹⁷⁵ In addition, the *AIA* is meant to “provide a right of access to information in records under the control of a government institution.”¹⁷⁶ The enactment of the *Federal Accountability Act* has an indirect impact on information management because it

¹⁷¹ *Financial Administration Act*, RSC 1985, c F-11, s 7(1) [*FAA*].

¹⁷² *Ibid*, s 7(1a).

¹⁷³ *Ibid*, s 9.

¹⁷⁴ *Ibid*, s 10(b).

¹⁷⁵ *Library and Archives Canada Act*, SC 2004, c 11, s 12 [*LACA*].

¹⁷⁶ *Access to Information Act*, RSC 1985, c A-1, s 2(1) [*AIA*].

expands the scope of the *AIA* and brings a total of 70 institutions under the purview of the *AIA*.¹⁷⁷

These departments also come under the purview of the *LACA* because the definition of government institutions under the *LACA* is based on section 3 of the *AIA*.¹⁷⁸ As such, LAC is “really at the mercy to any changes to the *Access to Information Act*” (CA-7, June 25, 2013).

Some interviewees from Canada view the network of rules governing information management in terms of a hierarchy of relevant pieces of legislation, policies, directives, standards and guidelines. Legislation or a statute is a body of rules that provides a broad and “high level” framework (CA-9, June 18, 2013), a “waterfront” for a department’s mandate (CA-4, June 28, 2013), and for laying the foundation for the development of a relevant suite of policies. CA-4 elaborates,

If you don’t have the right legislation as your overarching framework, you are in trouble.

You will not be able to do your suite of policy; you will not be able to do the things that you need to do. You are challenged at every turn. (June 28, 2013)

Similarly, CA-2 describes a piece of legislation as being “mandated from Parliament” and empowering the relevant departments with “certain powers and authority” (June 17, 2013). The pieces of legislation, policies, directives, standards, and guidelines relating to information management provide increasingly detailed levels on how to manage and preserve information.

CA-9 explains:

So the policy itself is directed at deputy heads. And when you look at the requirements in the [*Policy on Information Management*], they are very much principal based. ...So the directives and the standards become much more specific. When you talk to departments,

¹⁷⁷ Canada, Office of the Information Commissioner of Canada, *Striking the Right Balance for Transparency: Recommendations to Modernize the Access to Information Act*, (Gatineau: Office of the Information Commissioner of Canada, 2015) at p. 8.

¹⁷⁸ *Access to Information Act*, RSC 1985, c A-1, s 3 [AIA].

the policy is fine. But for them, the focus is on the Directive because it gives them much more specificity in the direction ... to manage their information. And then the standards become much more specific after that. ... It becomes much more specific about what they can do or the things they have to put in place. And guidelines are non-mandatory, they are best practices, often based on the work that the Department has done that has worked very well. (June 18, 2013)

Interviewees describe a policy as a “mandatory instrument with the less rigorous authority” as compared to a piece of legislation (CA-2, June 17, 2013) and one which is “principle based” (CA-9, June 18, 2013). For example, the *Policy on Information Management*¹⁷⁹ outlines the responsibility of the department to “integrate information management requirements into development, implementation, evaluation, and reporting activities,” and security and privacy requirements within their information management infrastructure. The policy also describes the role of the Treasury Board Secretariat (TBS) in monitoring compliance with information management, including assessing the maturity of information management under the Management Accountability Framework (MAF) and the role of other government departments in information management, such as LAC.

Although policies are mandatory, CA-11 perceives policies as having “no detail at it” and “say[ing] the same thing” (June 27, 2013). She claims that the level of detail is “maybe at the directive level” and “definitely at the standards and guides level” (June 27, 2013). A comparison between the *Policy on Information Management* and the *Directive on Recordkeeping* indicates that the latter is more specific than the former. For example, the *Policy on Information*

¹⁷⁹ Treasury Board of Canada Secretariat, *Policy on Information Management*, 2007, para 6.1.1 & para 6.1.3.

*Management*¹⁸⁰ states that the deputy head is responsible for “designating a senior official to represent the deputy head to the Treasury Board of Canada Secretariat for the purposes of the policy.” The *Directive on Recordkeeping (DRK)* goes into the details in terms of stating the roles and responsibilities of the departmental senior information management (IM) official designated by the deputy head. The departmental IM senior official is responsible for developing and implementing “recordkeeping requirements throughout the information life cycle,” such as identifying and protecting information resources of business value.¹⁸¹ The *Directive on Recordkeeping* also goes beyond the *Policy on Information Management*, which highlights the role of the deputy head in establishing and reporting on measures taken to improve the information management framework in the department. The *Directive on Recordkeeping*¹⁸² elaborates on some measures that should be adopted to develop an information management framework such as establishing a file classification scheme and a retention schedule. It also stresses the need to identify risks in the information assets of the organization and to develop strategies to mitigate such risks.¹⁸³

Standards and guidelines are more specific than policies and directives (CA-9, June 18, 2013; CA-11, June 27, 2013). For example, TBS issues *Standards for Electronic Documents and Records Management Solution*¹⁸⁴ and specific guidelines such as *A Guideline for Employees of the Government of Canada: Information Management Basics*¹⁸⁵ on the basics of information management for employees. As noted by CA-9, “policies, directives, and standards are all

¹⁸⁰ Treasury Board of Canada Secretariat, *Policy on Information Management*, 2007, para 6.1.7.

¹⁸¹ Treasury Board of Canada Secretariat, *Directive on Recordkeeping*, 2009, para 6.1.3.

¹⁸² *Ibid*, para 6.1.3

¹⁸³ *Ibid*, para 6.1.2

¹⁸⁴ Treasury Board of Canada Secretariat, *Standard for Electronic Documents and Records Management Solutions (EDRMS)*, 2010.

¹⁸⁵ Treasury Board of Canada Secretariat, *Guideline for Employees of the Government of Canada: Information Management (IM) Basics*, 2015.

mandatory. Guidelines are not” since guidelines are based on “best practices” (CA-9, June 18, 2013).

4.2.1.1.3 Singapore

One of the main observations made by interviewees from Singapore is that the *NLBA* operates with other existing pieces of legislation. This author could not name the other pieces of legislation as the interviewees requested that the identity of the department, which is reflected in the title of the legislation, should not be revealed. SG-9 explains that one of the challenges with the archival legislation in Singapore is that access to records is in a “very restricted form” (SG-9, May 15, 2013). Section 14 E(2a) of the *NLBA* states:

Any person may, for the purpose of reference or research, inspect any public archives or recordings made available to the public subject to any conditions or restrictions imposed with the authority of the public office from which the public archives were acquired or the producer or distributor which provided the recordings.¹⁸⁶

The phrase “subject to any conditions or restrictions imposed with the authority of the public office from which the public archives were acquired” means that the NAS must consult the creating or transferring agency before releasing the public archives for access.¹⁸⁷

In one incident, NAS and the department concerned had differing opinions regarding access to a particular record series. The department claimed that under their legislation, permission from the owner was needed before the records could be released. NAS sought legal advice regarding the department’s interpretation of its legislation in relation to that of the relevant section of the archival legislation, which governs access to public archives. The legal advice given supported the department’s views (SG-1, February 22, 2013). In another incident,

¹⁸⁶ *National Library Board Act* (Cap 197, 2014 Rev Ed Sing), s 14E(2)(a) [*NLBA*].

¹⁸⁷ *Ibid.*

the department concerned was reluctant to transfer records to archival custody, even though the records had been appraised to be of archival value. The department felt that the transfer of records would compromise the non-disclosure provisions under a specific statute that governs the business activities of the department. The NAS sought a legal opinion, and was informed that the transfer of records to archival custody would not contravene the non-disclosure provisions under the department's legislation. The transfer of records would also not contravene the department's legislation (SG-1, February 22, 2013). These two examples illustrate how there can be differences in interpretation of the archival legislation in relation with other pieces of records-related legislation and how such differences can be mediated by seeking legal advice.

Interviewees such as SG-1 and SG-3 describe the archival legislation as being "very broad" (SG-3, February 15, 2013) and state that laws "don't cover that level of detail" (SG-1, February 22, 2013) as the *Government Instruction Manual* (IM). The IM is said to have the "meat and details" and provides "more clarity" to archival legislation (SG-3, February 15, 2013). S-1 also claims that the IM "incorporates the spirit" of the archival legislation (February 22, 2013). The IM is a suite of policies covering various aspects of public administration within the Singapore government, including procurement, human resource management, and records management. The two main IMs governing the management and preservation of records in the public sector are the *IM4L Office Administration - Registry and Records Management*, also known as *IM4L*¹⁸⁸ and the *IM8 Policy on Data Management*, also known as *IM8*.¹⁸⁹ Both SG-2 and SG-3 view the *IM4L* and the *IM8* as supporting archival legislation in the management and

¹⁸⁸ Singapore, Ministry of Finance, *IM4L Office Administration - Registry and Records Management*, 2010.

¹⁸⁹ The *IM8 Policy on Data Management* has been renamed *Policy on Data Management*. The dissertation will use *IM8* to refer to this policy since interviewees still refer to it by its former name.

preservation of records. SG-2 elaborates the relationship between the archival legislation and the IM:

At the end of the day, the IM must support the Act and cannot contradict it. I would say that if you want to argue it to its logical conclusion, having something set out in the Act is more compelling, more powerful than the IM... It [IM] is an internal rule: It is an internal public sector rule, which if you breach, there are disciplinary consequences. It is not legislation - definitely not legislation. Very clear - IM is not a legislation. It is not a regulation at all. It is a policy but in Singapore context, it is a fairly strong policy - meaning you can suffer grave consequences. In Singapore context, you can be sacked - that is an ultimate sanction, you lose your job and your reputation perhaps. (March 8, 2013)

SG-3 asserts that it is “not practical” to have legislation that is “too detailed” because “whenever there are changes, you got to go and change the Act” (SG-3, February 15, 2013). She claims that it is “easier to change the IM than the Act” and that the details for the IM can be “worked out later” (SG-3, February 15, 2013).

While *IM4L* covers mainly the management of analogue records, the *IM8* covers the management of electronic records. *IM4L* focuses mainly on issues governing the role and responsibilities of the registry in departments, the development of a file classification scheme, the management and custody of records when a government department is corporatized, as well as the disposal and preservation of public records. On the other hand, *IM8* covers various aspects of electronic records management, including data governance, data protection, data sharing, and the preservation and disposal of electronic records. The segregation of IMs on the management of analogue and electronic records illustrates how the management and preservation of records is

operationalized on the basis of a patchwork of related pieces of legislation and records-related policies. Some records professionals focus on one aspect of the IM, while not paying attention to the other. For example, SG-10 states that the *IM8* is “for IT,” (March 8, 2013) and she is more familiar with the requirements in *IM4L*, since it is directly related to her work on registry and records management. Similarly SG-11 states that she relies mainly on *IM4L* on specific registry and records management concerns such as implementing a records retention schedule (February 21, 2013). She only began to “zoom” in to specific sections of the *IM8* when her department started to develop an electronic registry (e-registry) system (February 21, 2013). In contrast to SG-10 and SG-11, SG-5 consults both *IM4L* and *IM8* in her work mainly because of her educational background and job responsibilities, which center on knowledge management (SG-5, March 1, 2013). SG-5 claims that most of her colleagues are more familiar with the *IM8* relating to digital records rather than the *IM4L* because her department does not have a centralized registry system (March 1, 2013). The way the two IMs work together is of concern to SG-3. SG-3 claims that it will be “more meaningful” to merge the *IM4L* and *IM8*, because “digital records is going to be the future, it is not just going to be paper records” (February 15, 2013).

Besides the relevant pieces of legislation and the IMs, there is also a suite of guidelines related to the management and preservation of records. According to SG-1,

The guidelines go into the details like what format you should do, whereas policy [referring to the IMs] don’t go into such detail. Policy will just say that you have to keep your records that kind of stuff. Guidelines probably addresses the more how to details. (February 17, 2013)

Compared to the IMs, which state the policy requirements, the guidelines are

specific in nature. For example, *IM8* states the responsibilities of the agencies in establishing the records retention for electronic records based on their department's "administrative, legal, financial and operational needs."¹⁹⁰ The agencies are also responsible for transferring electronic records that have been identified by NAS to be of "national and/or historical significance" and to ensure that the "transfer process, format and medium of the electronic records meets NAS' requirements."¹⁹¹ The *Guidelines on the Management, Appraisal, and Disposition of Electronic Records*¹⁹² provide more specific advice than the *IM8*. The *guidelines* go beyond stating the responsibilities of the agency in establishing records retention, and cover specific issues relating to appraisal such as when the appraisal of electronic records should be conducted, and the process of appraisal. The *guidelines* also include a list of file formats that are accepted for transfer to the custody of NAS and provide more specific advice than the *IM8* regarding the type of file formats that are acceptable for transfer to archival custody.¹⁹³

4.2.1.2 The Language of Archival Legislation Lacks Clarity and Consistency with Other Normative Sources

The sub-theme on the lack of clarity and consistency in the language of archival legislation is manifested in two main areas. First, the archival legislation focuses mainly on appraisal and transfer of records to archival custody and provides very little direction and clarity on the creation and maintenance of records. As a result, records managers and archivists must rely on a patchwork of normative sources to complement the gaps in the archival legislation and must deal with inconsistencies in how the archival legislation and other normative sources apply

¹⁹⁰ *Ibid.*, para R6.1.

¹⁹¹ *Ibid.*, para R6.11-6.12.

¹⁹² Singapore, National Archives of Singapore, *Guidelines on the Management, Appraisal, and Disposition of Electronic Records*, 2012.

¹⁹³ *Ibid.*, para 8.4.

to specific government bodies. Second, there are specific terms and concepts used in archival legislation, which are different from and inconsistent with those used in other normative sources. In Canada, there are also differences in interpretation as to whether the preamble in the archival legislation takes precedence over specific statutory provisions.

4.2.1.2.1 UK

The *PRA*, as noted by both UK-11 and UK-14, does not cover the management of records during their active stage. Section 3 of the *PRA*¹⁹⁴ covers the selection, transfer, and preservation of public records, but there is nothing specific in the Act regarding the creation and maintenance of records. For example, the Act states the responsibilities of public records bodies to “make arrangements for the selection of those records which ought to be permanently preserved and for their safe-keeping”¹⁹⁵ and to transfer records identified for preservation to archival custody. Section 3(2) of the *PRA*¹⁹⁶ also states that “every person shall perform his duties under this section under the guidance of the Keeper of Public Records and the said Keeper shall be responsible for coordinating and supervising all action taken under this section.” However there is nothing specific in the archival legislation regarding the role and responsibility of the department in the creation and maintenance of records. UK-11 comments,

I would say that most government agencies are absolutely ignorant of the Public Records Act. They don't see it as being relevant to them. And to be fair, when you look at section 3, there is very little about our obligations about how they should manage their records.
(April 25, 2013)

¹⁹⁴ *Public Records Act*, 1958 (UK), 6 & 7 Eliz II, c 51, s 3 [*PRA*].

¹⁹⁵ *Ibid*, s 3(1).

¹⁹⁶ *Ibid*, s 3(2).

In the same vein, UK-14 argues that “the records management aspects of this aren’t really in this [PRA]” (April 11, 2013). According to UK-14, section 3 of the *PRA*¹⁹⁷ suggests that the department, although under the guidance of the Keeper of Public Records from TNA, “pretty much had to manage their records anyway” (April 11, 2013). UK-14 adds that as the section is “very, very thin,” records professionals and archivists rely on *Section 46 Code of Practice*, which provides more guidance than the *PRA* (April 11, 2013).

While the *PRA* is notably silent about the role of public officers to create and document actions and decisions carried out as part of their business activities, *Section 46 Code of Practice* states that public authorities should indicate in their records management policy the “responsibility of individuals to document their work in the authority’s records to the extent that and in the way that, the authority has decided their work should be documented, and to use those records appropriately.”¹⁹⁸ However, *Section 46 Code of Practice*, as mentioned earlier, is discretionary, and in the words of UK-11, “it is deliberately non-prescriptive” (April 25, 2013). The *Civil Service Code*¹⁹⁹ specifies the behaviour expected of civil servants in the UK, requiring that they “keep accurate official records and handle information as openly as possible within the legal framework.” While the *Civil Service Code*²⁰⁰ highlights the duty of civil servants to “keep accurate official records,” the code does not specifically mention that civil servants need to create records in the first place.

¹⁹⁷ *Ibid.*, s 3.

¹⁹⁸ UK, Ministry of Justice & TNA, *Lord Chancellor’s Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000* (Crown copyright, 2009), para 7.2d.

¹⁹⁹ UK, Civil Service, *The Civil Service Code* (Crown copyright, 2015).

²⁰⁰ *Ibid.*

Additionally, there is inconsistency in the definition of records between the *PRA* and *Section 46 Code of Practice*. The *PRA*²⁰¹ includes in the definition of records “not only written records but records conveying information by any other means whatsoever.” However, *Section 46 Code of Practice*²⁰² utilizes the British Standards Institution (BSI) definition of records, which is “information created, received, and maintained as evidence and information by an organization or person, in pursuance of legal obligations or in the transaction of business.”

One of the main reasons why *Section 46 Code of Practice* uses the definition of records from the BSI and not from the *PRA* is that the definition in the Act is too general and broad. UK-1 explains,

Because this is a code which applies to the entire public sector ... you couldn't just use Public Records Act definition which a) doesn't say very much anywhere but is central government, applying to central bodies subject to under this Act...It makes much more sense to use a reputable definition from a British standard²⁰³ and international standard than the Public Records Act... I mean doctor's surgery, dentist surgery, local government; the Public Records Act doesn't apply to them. So why would they? They are not public records bodies, they may be public body but not public records body, not subject to Public Records Act. So, this is makes much more sense to use the definition, the British standard. Because you then get immunity, you get street credibility... I think we got a lot of hostility from the records management community if we haven't used that.

(April 10, 2013)

²⁰¹ *Public Records Act*, 1958 (UK), 6 & 7 Eliz II, c 51 [*PRA*], s 10(1).

²⁰² UK, Ministry of Justice & TNA, *Lord Chancellor's Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000* (Crown copyright, 2009), para 3.

²⁰³ Although UK-1 states that the definition of a record is derived from the “British standard,” this definition originates from the ISO standard or more specifically, *ISO 15489-1 – Information and Documentation – Records Management*, which has been endorsed as a national standard in a number of countries.

In other words, *Section 46 Code of Practice* is meant not only for bodies that fall under the *PRA* but also for a larger collective known as relevant authorities. Relevant authorities refer to “not only public authorities but also to other bodies that are subject to the Public Records Act 1958 or the Public Records Act (Northern Ireland) 1923.”²⁰⁴ UK-1’s quote also implies that the definition of records provided by the *PRA* is not as credible to the records management community, as compared to the BSI.

While Section 4.2.1.1 discusses how the various pieces of legislation and codes of practices complement each other, there are also inconsistencies in terms of how the various pieces of legislation apply to specific bodies. The *PRA* applies to public records bodies as defined under the first schedule of the Act. More specifically, public records are the “records of, or held in, any department of Her Majesty’s Government in the United Kingdom, or records of any office, commission or other body or establishment whatsoever under Her Majesty’s Government in the United Kingdom.”²⁰⁵ The Act also lists the bodies and establishments whose records are considered public records “whether or not they are records belonging to Her Majesty.”²⁰⁶ In addition, the records of courts and tribunals as listed in the *PRA*²⁰⁷ are also defined as public records. However, the *FOIA*²⁰⁸ applies to public authorities, which include the offices listed in Schedule 1 of the said Act, those that are “designated by order” and publicly owned companies. The Secretary of State or the Chancellor of the Duchy can also designate an office as a public authority if it “appears to the Secretary of State or the Chancellor of the Duchy to exercise functions of a public nature” or if the office is “providing under a contract made with

²⁰⁴UK, Ministry of Justice & TNA, *Lord Chancellor’s Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000* (Crown copyright, 2009), para ii.

²⁰⁵ *Public Records Act*, 1958 (UK), 6 & 7 Eliz II, c 51 [*PRA*], First schedule, s 2(1).

²⁰⁶ *Ibid*, First schedule, s 3(1) & Table, Part I.

²⁰⁷ *Ibid*, First schedule, s 4.

²⁰⁸ *Freedom of Information Act 2000* (UK), c 36, s 3(1) [*FOIA*].

a public authority any service whose provision is a function of that authority.”²⁰⁹ There are thus organizations that are subject to the *FOIA* but are not considered public records bodies under the *PRA*. These organizations also do not come under the purview of the *Local Government (Records) Act (LGRA)*, which provides local authorities with the discretion to acquire and to make available records for public access.

One such organization excluded from the *PRA* and the *LGRA* is the police force outside of the Metropolitan police. The records of the police forces however fall within the scope of the *FOIA*. UK-7 observes,

Well you know at the moment, the Metropolitan police, their records are public records. But records from police forces across the country are not... I think it was one of the recommendations that records of the non-Metropolitan police should be public records. I suppose it is a bit of a mishmash with all the legislation drawing out. But it was one of those things that has never been put right. (April 2, 2013)

UK-7’s observation coincides with *The Report from the Hillsborough Independent Panel (HIP)*.²¹⁰ The *HIP* notes that “with the exception of the Metropolitan Police, police forces in England and Wales are not subject to the Public Records Acts. Neither are police force documents parts of the record of local government. In many cases the documentary evidence they hold is poor.”²¹¹ The *HIP* also recommends that the police force records should be brought under the legislative authority of the *PRA*.

²⁰⁹ *Ibid*, s 5(1).

²¹⁰ UK, Hillsborough Independent Panel (HIP), *Hillsborough - The Report of the Hillsborough Independent Panel* (London: The Stationery Office, 2012).

²¹¹ *Ibid*, para 3.27.

Although the first schedule of the *PRA*²¹² defines public records, there is at times a lack of clarity as to whether an organization's records fall under the purview of the Act and whether these organizations are considered public records bodies. This is especially so for bodies that are "on the fringe of government" (UK-10, April 8, 2013). UK-10 (April 8, 2013) states that archivists have to rely on a guideline entitled *Public Records Bodies: Determination and Change of Status*. The guideline²¹³ includes a decision tree that enables archivists and records professionals to make an assessment as to whether an organization is considered a public records body and is subjected to the *PRA*. UK-10 also highlights that there were times when TNA sought legal opinion from the Lord Chancellor or the Attorney General's Department. Such legal opinion is in accordance with the *PRA*²¹⁴, which states that "a question whether any records or description of records are public records for the purposes of this Act shall be referred to and determined by the Secretary of State." UK-10 further elaborates,

And every so often, a body was added to that list by secondary legislation sometimes.

Because obviously 1958, a lot of the government departments that exists now didn't exist in 1958 and so they were added to the list of public records bodies (April 8, 2013).

UK-11 mentions that there are cases where an organization volunteers to be a public records body because the Chief Executive or the board has decided that the organization "[should] like to be treated as public records bodies" (April 25, 2013). Even though such cases are now less common, UK-11 still views the process where an organization willingly decides to be a public records body as "very idiosyncratic" (April 25, 2013).

4.2.1.2.2 Canada

²¹² *Public Records Act*, 1958 (UK), 6 & 7 Eliz II, c 51, First schedule [*PRA*].

²¹³ UK, The National Archives, *Public Records Bodies: Determination and Change of Status* (Crown copyright, 2012), p. 10.

²¹⁴ *Public Records Act*, 1958 (UK), 6 & 7 Eliz II, c 51, First schedule, s 7(2).

While the *LACA* has specific clauses governing the disposition of records, the Act has no statutory provisions governing the duty of public servants to document actions and to create records. CA-3 feels that the “requirements, the commitment, to create and maintain full record” should be reflected in the values and ethics code of the Canadian public sector (June 23, 2013), because including such an ethical responsibility helps to shape the culture of the civil service. However, she believes that it would be difficult to include the duty to document under the value and ethics code as she observes that “there are parts of government that is becoming an oral culture” and that “they [public servants] are avoiding creating records, they are nervous about records” (June 23, 2013). CA-3’s comment echoes the observation made by the former and current Information Commissioners in Canada, John Reid, who asserts that there is a “troubling trend toward an oral culture in government as a means of avoiding the accountability rigors of oversight and access to information laws.”²¹⁵ Reid thus recommends that archival legislation should include provisions stating that there should be proper documentation in the government.²¹⁶ More recently, Suzanne Legault, the current Information Commissioner of Canada has stated that there is a risk that decisions are not documented because there is currently no existing legislation that “sets out a comprehensive and enforceable legal duty to create and preserve records documenting decision-making processes, procedures or transactions.”²¹⁷

In Canada there are inconsistencies in the definitions of the same term among different pieces of legislation, directives, and policies. For example, the *AIA* states that a record is “any

²¹⁵ House of Commons, Standing Committee on Canadian Heritage, *Bill C36 – An Act to Establish the Library and Archives of Canada, to Amend the Copyright Act and to Amend Certain Acts in Consequence* (10 June 2003) (Chair: Clifford Lincoln).

²¹⁶ *Ibid.*

²¹⁷ Canada, Office of the Information Commissioner of Canada, *Striking the Right Balance for Transparency: Recommendations to Modernize the Access to Information Act*, (Gatineau: Office of the Information Commissioner of Canada, 2015) at p. 14.

documentary material, regardless of medium or form.”²¹⁸ The definition is similar to the *LACA*’s²¹⁹ definition of a record, that is, “any documentary material other than a publication, regardless of medium or form.” Differing from the *AIA*’s definition, the definition of a record in the *LACA* makes a clear distinction between records and publications. The *DRK*²²⁰ and the *Policy on Information Management*²²¹ define a record as “information created, received, and maintained by an organization or person for business purposes, legal obligations, or both, regardless of medium or form.” According to CA-2, the definitions of records in both the *DRK* and the *Policy on Information Management* are more closely aligned with the definition used in the *ISO 15489-1 – Information and Documentation – Records Management – Part 1: General* (ISO, 2001). There are also inconsistencies in the use of related terms in both the *LACA* and the *DRK*. Besides defining the terms “record” and “publication,” the *LACA*²²² also uses the term “documentary heritage” to refer to “publications and records of interest to Canada.” According to CA-3, the term “documentary heritage” was specifically created in the *LACA* because “we needed words to cover both library and archives, [so] we use documentary heritage and use that to develop that concept” (June 23, 2013). In effect, documentary heritage is a term that is used to integrate the language and mandate of a merged library and archival institutions while still “maintaining distinct definitions” for the materials they are primarily responsible for.²²³

²¹⁸ *Access to Information Act*, RSC 1985, c A-1, s 3 [AIA].

²¹⁹ *Library and Archives Canada Act*, SC 2004, c 11, s 2 [LACA].

²²⁰ Treasury Board of Canada Secretariat, *Directive on Recordkeeping*, 2009, Appendix – Definitions.

²²¹ Treasury Board of Canada Secretariat, *Policy on Information Management*, 2007, Appendix A: Definitions.

²²² *Library and Archives Canada Act*, SC 2004, c 11, s 2.

²²³ House of Commons, Standing Committee on Canadian Heritage, *Bill C36 – An Act to Establish the Library and Archives of Canada, to Amend the Copyright Act and to Amend Certain Acts in Consequence* (29 May 2003) (Chair: Clifford Lincoln).

In contrast to the *LACA*, the *DRK* does not use the term “documentary heritage”. In fact, it uses the term “information resources,” which encompasses both records and publications.²²⁴ One possible reason why the *DRK* does not use the term “documentary heritage” is that the term is associated with records and publications that are of potential interest for acquisition by LAC or comprise the holdings of LAC. The *DRK* is more concerned about issues relating to the management of records, while records are still in their active stage, before they are appraised and transferred to LAC. Information resource as defined by the *DRK*²²⁵ is as “any documentary material produced in published and unpublished form regardless of communications source, information format, production mode or recording medium.” The *DRK* also makes a distinction between information resources and information resources of business value (IRBV). The latter term refers to “published and unpublished materials, regardless of medium or form, that are created or acquired because they enable and document decision-making in support of programs, services and ongoing operations, and support departmental reporting, performance and accountability requirements.”²²⁶ Thus, information resources are all the documents of a department, including records and publications, current and not, identified for archival preservation or not. Information resources of business value refer specifically to those records and publications that are needed to support the business requirements of the departments and accountability.

CA-2 claims that it was difficult for her to “figure out” the different definitions used in both the *LAC* and the *DRK*, and that she struggles to “parse this thing, the definition and try to

²²⁴ Treasury Board of Canada Secretariat, *Directive on Recordkeeping*, 2009, para 3.3.

²²⁵ *Ibid*, Appendix – Definitions.

²²⁶ *Ibid*.

find the difference between this and that” (June 17, 2013). CA-13 agrees with CA-2’s assessment that terminology is a problem. She elaborates,

Because [the LAC Act] refers to historical and archival value and records. And with the shift to the Directive on Recordkeeping, - yes, broaden the scope to talk about information resources at large which includes both published and unpublished records. So we are constantly looking at how to use those terms interchangeably and explain the difference between the two...I think when our legislation was written in 2004, what [LAC] really focused on was just merging National Library and the National Archives Act together and ensuring that it encompasses all the roles and responsibilities of the two. But they [LAC] were not at the point of thinking about the new terminology. That came about later. So the challenge we now face is that we have conflicting terminology out there that creates confusion. (CA-13, June 26, 2013)

This quote reveals that, when the *LACA* was written, the primary focus was on the merger of the two institutions, rather than on terminology. After the enactment of the *LACA*, there has been a change in thinking about language in LAC. CA-13 asserts then, when LAC uses the term “information resources,” they are “thinking about the whole gamut,” which includes “published information,” and “records – the unpublished information resources” (June 26, 2013). In other words, the term “records” is used synonymously with unpublished information resources or unpublished materials. The comments of CA-2 and CA-13 reveal the need for better clarity and harmonization of terms such as “records” and “information resources” in the *LACA* and the *DRK*. CA-13 also suggests that LAC needs to review its legislation “to potentially change the terminology in the Act or to better clarify the scope of the Act” (June 26, 2013).

In addition, the term “historical or archival value” used in the *LACA* is not consistent with other related terms, such as “information resources of enduring value” as employed in LAC’s guidelines and procedures. For example, the *LACA* uses the term “historical or archival value” three times. First, the Act highlights that one of the objectives of *LAC* is “to be the permanent repository of publications of the Government of Canada and of government and ministerial records that are of historical or archival value.”²²⁷ Second, the Act states that governmental or ministerial records that are of historical or archival value will be transferred to the custody of *LAC*.²²⁸ Third, the Act stipulates that “if a recording that was made available to the public in Canada has historical or archival value,” the Librarian and Archivist can request its deposit for preservation.²²⁹ An analysis of the *Guidelines on File Formats for Transferring Information Resources of Enduring Value* reveals that the term “historical or archival value” is not used in that context. Instead, the guidelines employ the term “information resources of enduring value” (IREV), which is “information resources that have long-term importance and relevance to Canadian society.”²³⁰ CA-2 points out that *LAC* has replaced the phrase “archival value” with “enduring value” to refer to those records identified for permanent preservation and transferred to archival custody. CA-1 claims that the terms “enduring value” and “archival value” “are the same thing” (July 3, 2013). CA-1 elaborates,

In the last 3 years during our modernization, the term archival value has been, to a certain extent has fallen out of favour. Part of the reason why it has fall out of favour was that archival value is very much tied to records. That’s not how librarians talk about published

²²⁷ *Library and Archives Canada Act*, SC 2004, c 11, s 7(c) [*LACA*].

²²⁸ *Ibid*, s 13(i).

²²⁹ *Ibid*, s 11(i)

²³⁰ Library and Archives Canada, *Guidelines on File Formats for Transferring Information Resources of Enduring Value*, 2014, Appendix A.

works. So, the term enduring value - To my mind, enduring value and archival value are the same thing. So, when I say archival value, I am specifically referring to, I think, I say archival value and I deliberately use the terminology from the Act. But if I say enduring or archival, it's the same thing. I hardly ever say historical value because historical value is a little too antiquarian and I personally, think it's something in the Act just to make it easier for people to understand what archival value means. Historical refers to more to the general public than to the specialized audience such as us. (July 3, 2013)

CA-1's description illustrates that the terms "archival value," "enduring value," and "historical value" are used interchangeably. She reflects on how language can change over time and how certain terms such as "archival value" can be "fallen out of favour" within an institution that has undergone organizational changes (July 3, 2013). CA-1 also views the term "historical value" as a separate term from archival value when in reality the *LACA* uses "historical or archival value" as a single expression. The use of the term "historical value" in the opinion of CA-1 is directed to the general public who may not have an understanding of archival science and its terminology (July 3, 2013).

Besides inconsistencies in the use of specific terms between the *LACA* and the *DRK*, there are also inconsistencies in how the various pieces of legislation and the *DRK* apply to specific government departments. CA-7 notes,

There is a little bit of a disconnect between the Directive on Recordkeeping and LAC Act. The institutions that cover don't match up one-to-one. So it is a little bit cumbersome for us because the LAC Act covers schedule to institutions that are subject to the Access to Information and Privacy Acts whereas the directive [*DRK*] covers

institutions that are subject to the *Financial Administration Act*. And they don't quite match up one for one (June 25, 2013).

CA-7's remarks indicate that departments that are subjected to the *LACA* are also subjected to the *AIA* and the *Privacy Act*. However, there are departments, such as some crown corporations, that are subjected to the *DRK*, but they do not necessarily fall under the purview of the *LACA*. The *LACA* states that "government institution has the same meaning as in section 3 of the Access to Information Act or in section 3 of the Privacy Act or means an institution designated by the Governor in Council."²³¹ The term "government institution" as defined by the *AIA*²³² and the *Privacy Act*²³³ refers to "any department or ministry of state of the Government of Canada, or any body or office, listed in Schedule I" and "any parent Crown corporation, and any wholly-owned subsidiary of such a corporation within the meaning of section 83 of the *Financial Administration Act*." The *DRK* applies to departments defined under section 2 of the *FAA*.²³⁴ There are also departments that are not subject to both the *LACA* and the *DRK*. Some of these departments have approached LAC for a disposition authority for their records. CA-1 explains such a scenario,

So you can end up with a situation where the institution comes and say: You know what. We are not completely subject to the Directive but we really like to follow the spirit and the intent of the Directive because at some point, the Directive may be expanded to cover other things... We want to follow the spirit and intent. And although we don't need to seek a disposition authority from you, could you do one for us anyways? And we have done that. And we would probably continue to do that. (July 3, 2013)

²³¹ *Library and Archives Canada Act*, SC 2004, c 11, s 2 [*LACA*].

²³² *Access to Information Act*, RSC 1985, c A-1, s 3 [*AIA*].

²³³ *Privacy Act*, RSC 1985, c P-21, s 3.

²³⁴ *Financial Administration Act*, RSC 1985, c F-11, s 2 [*FAA*].

While some departments that are not covered by the archival legislation approach LAC on their own accord to look for a disposition authority, LAC sometimes also take a proactive stance and negotiates an agreement with certain departments that are not covered under the *LACA* to acquire records that are “of interest to LAC” (CA-7, June 25, 2013). LAC thus engages with a number of departments that are technically not covered under the *LACA*. LAC is able to capitalize on the argument that it is part of “good recordkeeping,” and that LAC can help by preserving records of archival value (CA-7, June 25, 2013). CA-7 explains that for departments that are subjected to the *LACA* but are not covered under the *DRK*, LAC persuades the department to institute measures in accordance with the Directive. The argument is that “even if [the department is] not subject to the Directive, those are the elements of good record keeping that [LAC] want[s] to have in place in order to issue [the department] an authority” (June 25, 2013).

In addition, there are certain pieces of legislation that override the statutory provision from the *LACA*²³⁵ that no government records can be destroyed without the “written consent” of LAC. For instance, the *Ending the Long-gun Registry Act*²³⁶ permits the Commissioner of Firearms and each chief firearms officer to destroy records and all copies relating to the “registration of firearms that are neither prohibited firearms nor restricted firearms.” Another example is the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.²³⁷ Relevant reports relating to suspected money laundering or financing of terrorist activities identified in the Act will be destroyed after 15 years “despite the *Library and Archives of Canada Act*.”²³⁸ These two examples illustrate how statutory provisions from other pieces of legislation can “override

²³⁵ *Library and Archives Canada Act*, SC 2004, c 11, s 12(1) [*LACA*].

²³⁶ *Ending the Long-gun Registry Act*, SC 2012, c 6, s 29.

²³⁷ *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17.

²³⁸ *Ibid*, s 54(i)(e).

existing legislated information processes”²³⁹ as stipulated under the *LACA*. Archivists and records managers are expected to “understand which legislation applies to them and in what ways” (CA-13, June 26, 2013) and to navigate the complex web of the records-related legislation *vis a vis* archival legislation.

The lack of clarity of the 2004 LAC Act can also be seen by the perception that the preamble of the Act is not consistent with the statutory provisions. CA-8 argues,

... My opinion would be that, if you asked that question last year to somebody in a position of authority here, they would have said the preamble doesn't mean anything. If LAC was supposed to collect private archives, there would be a specific chapter in the body of the Act that said collect the private papers of individuals, in the same way that [sections] 12 and 13 explicitly said that the information management and the disposition functions for government records. Whereas the community was saying actually the preamble is the essence, is the spirit of the legislation. (June 26, 2013)

CA-8's statement indicates that there are perceived incongruences between the preamble and the statutory provisions in the Act. While the archival community emphasizes the preamble of the legislation, the management in LAC believes that the statutory provisions take precedence over the preamble. CA-8's observation is also in line with the observations made by various witnesses when the *LACA* was debated in Parliament and by the Standing Committee on Canadian Heritage. Members from various professional associations have commented that the “objectives of the merged institution did not live up to the promise of the preamble.”²⁴⁰ In the same vein,

²³⁹ Letter from Loryl MacDonald, President, Association of Canadian Archivists to Vic Toews, Minister of Public Safety (8 November 2011). < http://archivists.ca/sites/default/files/Attachments/Advocacy_attachments/acarebill-c-19-nov8-11.pdf>.

²⁴⁰ Parliamentary Research Branch, *Bill C-8: The Library and Archives of Canada Act*, (Library of Parliament, 2004) at p. 9.

Reid, the former Information Commissioner, believes that LAC cannot claim to fulfil the preamble in its legislation such as to be “the continuing memory of the government of Canada.”²⁴¹ This is because there is no statutory provision in the legislation stating that public servants should create records and document decisions and actions.

In contrast to CA-8 and the witnesses from the Standing Committee on Canadian Heritage who are concerned about the inconsistencies between the preamble and the statutory provisions, both CA-3 and CA-4 feel that the preamble provides a shared common vision and direction for LAC. CA-3 claims that the preamble “appeals to the common values” of both archivists and librarians working in an integrated institution (June 20, 2013). Similarly, CA-4 views the language in the preamble as providing the “resonance” so as to “create a buy-in for the staff and the archival and library community.” CA-4 adds that the preamble provides LAC with the “breadth and depth and sustainability” of its mandate, and that should LAC ever be questioned by Treasury Board regarding its mandate, the legislation will demonstrate that “it’s not something [LAC] invented” (June 28, 2013). CA-4 also clarifies that the preamble “is like a context to interpret the legislation,” and that “it is something that the courts will come to if they need to interpret the provisions” (June 28, 2013). Even though CA-4 acknowledges that the preamble can serve as a unifying symbol for both the archives and library professions within LAC and provide a direction to the institution, the preamble is also subject to multiple interpretations by the very same community that it claims to unify. There is thus disagreement in the profession as to whether the statutory provisions within the Act adequately capture the spirit and aspirations of LAC as encapsulated in the preamble.

²⁴¹ House of Commons, Standing Committee on Canadian Heritage, *Bill C36 – An Act to Establish the Library and Archives of Canada, to Amend the Copyright Act and to Amend Certain Acts in Consequence* (10 June 2003) (Chair: Clifford Lincoln).

4.2.1.2.3 Singapore

Interviewees from Singapore comment that the archival legislation contains “very general motherhood statements” (SG-1, February 17, 2013) and that it “would not have the details” (SG-3, June, 20, 2013). The *NLBA* does not contain specific statutory provisions governing the creation and management of records. Instead, the Act focuses more on the transfer of records that are “of national and historical significance” to the custody of the national archives “in accordance with such schedules or other agreements for the transfer of records as may be agreed on between the Board and the public office responsible for the public records.”²⁴² SG-3 claims that most of the enquiries she receives from records managers relate to the Government IM and not the *NLBA*. SG-3 refers to the IM as the “bible for the civil servants” (February 15, 2013). In other words, SG-3 suggests that the IM contains more prescriptive requirements relating to records management than the archival legislation. As mentioned in section 4.2.1.1.3, the IM relating to the management of records is split between analogue records as outlined in *IM4L Office Administration - Registry and Records Management* and the *IM8 Policy on Data Management*.

The archival legislation, the *IM4L Office Administration - Registry and Records Management*, and the *IM8 Policy on Data Management* do not contain specific provisions or policy requirements that public officers should document their actions and create records for the purposes of decision-making and accountability. For example, the underlying assumption in *IM4L* is that a public officer creates and captures the records within the department’s registry system. The *IM4L* states that it is the responsibility of a public officer to “safeguard government

²⁴² *National Library Board Act* (Cap 197, 2014 Rev Ed Sing), s 14C [*NLBA*].

information” and to ensure the “safe custody of the government records under his charge.”²⁴³ The *IM4L* also stresses the role of the Permanent Secretary,²⁴⁴ who, as the most senior civil servant, is “responsible for the proper creation, use, maintenance, retention, preservation and disposal of public records.”²⁴⁵ In addition, the *IM4L* highlights the duty of the Department Records Officer (DRO)²⁴⁶ in each public office that has a “sufficiently senior officer.”²⁴⁷ The DRO is tasked with the responsibility of maintaining the records in the department, including overseeing the registry, and implementing a records retention schedule. Such provisions operate on the basis that the records have already been created as part of the department’s activities.

Although the *IM4L* does not contain requirements on accuracy, reliability and authenticity of records, it does address some aspects governing the creation, maintenance, and preservation of records. It outlines the requirements relating to the registration and classification of records, the security of information, and the management of records when government entities become corporatized and privatized. It also covers the responsibility of the departments to develop retention schedules and to transfer records identified by NAS that are of “national or historical value.”²⁴⁸

The *IM8 Data Management* has some policy requirements relating to the accuracy, reliability, and authenticity of data and records. For instance, it covers issues relating to the

²⁴³ Singapore, Ministry of Finance, *IM4L Office Administration - Registry and Records Management*, 2010, para 1A.

²⁴⁴ In Singapore, the Permanent Secretary is a “public officer appointed by the President to head a ministry” and “takes charge of the implementation of policies and programmes of his ministry, under the general direction and control of the Minister responsible.” See Parliament of Singapore, *Parliamentary Glossary*, online:

<<https://www.parliament.gov.sg/publications/p>>. In both Singapore and UK, Permanent Secretaries are the most senior civil servants. The equivalent in Canada is a Deputy Minister.

²⁴⁵ Singapore, Ministry of Finance, *IM4L Office Administration - Registry and Records Management*, 2010, para 89.

²⁴⁶ Both Singapore and UK use the term “Department Records Officer” (DRO). In both countries, DROs are responsible for the management of records within their department and for liaising with the national archives for the selection and preservation of records. In Singapore, a DRO is expected to be a “sufficiently senior officer,” which in the opinion of SG-1 should have a supervisory role in the department, equivalent to the level of an Assistant Director or head of a unit or division.

²⁴⁷ Singapore, Ministry of Finance, *IM4L Office Administration - Registry and Records Management*, 2010, para 3.

²⁴⁸ *Ibid*, para 90.

quality and accuracy of data, which supports records management. It states that the quality of data should meet the following criteria: accuracy, consistency, timeliness, relevance, and completeness.²⁴⁹ The section on electronic records appraisal, retention, and disposal states that “agencies are responsible for ensuring that their electronic records are accurate, reliable, and authentic before they are transferred to NAS.”²⁵⁰ The *IM8* also recognizes the importance of coordinating data governance in the public sector to facilitate the development of “more informed and targeted policies to more and better quality data” and to “enhance agencies’ productivity and efficiency through improved data sharing.”²⁵¹ The segregation of policies for paper records and electronic data suggests that there is framework made up of a patchwork of policies supporting the archival legislation in Singapore.

The disparate policies for the management of paper records and electronic data also result in a lack of coherence in the use of specific terms in relation to the *NLBA*. For instance, the *IM8* defines data as “representation of information that can be re-interpreted for communications or processing.”²⁵² Data includes both structured data, which is defined as “data that is stored in the form of fields, and has a data model that describes how the data is represented,” and unstructured data which is defined as “data that is not in fielded form and not captured in a database or in a system.”²⁵³ The *IM8* also cites examples of unstructured data including “word processor documents, presentation slides, videos, and audios.”²⁵⁴ The definition of data and the specific examples of unstructured data cited in the *IM8* overlap with the definition of public records under the *NLBA*. The Act defines “public records” as “papers, documents, records, registers,

²⁴⁹ Singapore, Ministry of Finance, *IM8 Policy on Data Management*, 2014, para R2.14.

²⁵⁰ *Ibid.*, para R6.13.

²⁵¹ *Ibid.*, para G1.2.

²⁵² *Ibid.*, Definitions.

²⁵³ *Ibid.*

²⁵⁴ *Ibid.*, para 3.

printed materials, books, maps, plans, drawings, photographs, microforms, videotapes, films, machine readable and electronic records, sound recordings and other forms of records of any kind whatsoever, that are produced or received by any public office in the transaction of official business, or by any officer in the course of his official duties, and includes public archives.”²⁵⁵ There is thus a lack of harmonization of the terms data and records between the IM8 and the archival legislation.

The incongruence of the *IM* in relation to the archival legislation is also illustrated by the overall structure of *IM8*. There is some attempt to link electronic records with the definition of public records as stated in the *NLBA*. The *IM8* defines “electronic records” as records that are “created, received, processed and stored in electronic or digital form as the official public records of the agency in the course of its official business transactions.”²⁵⁶ As these electronic records are “considered public records according to the National Library Board Act, they should be managed in the same way as paper records.”²⁵⁷ However, the term “electronic records” is used predominately only in the sections on the preservation and disposal of electronic records, while the term “data” is used consistently throughout the *IM8* policy such as the sections on data governance, data protection, and data sharing. There is incongruence within the *IM8* because the section on initial stage of the life cycle talks about the capture, use, and maintenance of data, while the section on the end of the lifecycle talks of the preservation and disposal of records. The association of the term records with the end of the lifecycle rather than the early stages of the lifecycle also reflects the absence of provisions in the archival legislation concerning the creation and maintenance of accurate, reliable, and authentic records.

²⁵⁵ *National Library Board Act* (Cap 197, 2014 Rev Ed Sing), s 2 [*NLBA*].

²⁵⁶ Singapore, Ministry of Finance, *IM8 Policy on Data Management*, 2014, Definitions.

²⁵⁷ *Ibid.*

4.2.2 There is No Consensus about the Comprehensiveness of the Archival Legislation in Its Definition of a Record [UK and Canada]

Section 4.2.1.2 covered inconsistencies in terminology between the archival legislation and other normative sources. This section focuses on interviewees' varying perceptions regarding the comprehensiveness of the definition of record in archival legislation. This theme is discussed only with reference to UK and Canada, as there is no data about it from the interviews in Singapore. There are interviewees from the UK and Canada who believe that the definition of record in the archival legislation is broad and sufficient to encompass records generated in the digital environment. Other interviewees adopt the view that the current definition of record needs to be reconsidered in light of the inconsistent definitions in other related directives and policies. There is also the perception that the digital environment has obscured the need to distinguish between records and publications.

4.2.2.1 UK

The *PRA* definition of a record “includes not only written records but records conveying information by any other means whatsoever.”²⁵⁸ According to UK-6, the definition covers records in all media. In her opinion, the archival legislation was written in a manner that “never mentioned the format” and thus “there was no need to change the legislation” (April 19, 2013). However, UK-13 views the legislation as being “so outmoded” because it was “developed way before digital information” and “everything is a public record” (March 28, 2013). She also feels that the legislation assumes that a record is stored neatly in a folder, which is not the case in the digital environment. She cites the case of her organization where “information relating to the same activity [is stored] in three or many different repositories” such as “stuff” stored in the

²⁵⁸ *Public Records Act*, 1958 (UK), 6 & 7 Eliz II, c 51, s 10(1) [*PRA*].

electronic document records management system (EDRMS), “stuff in their shared drive,” emails kept in Outlook, and “stuff maybe on their desktop” (March 28, 2013). She states that the EDRMS system used in her organization allows users to keep track of multiple versions, but when the users have made the final amendments to a draft, they often fail to declare it as a record, or to “make it a final record” (March 28, 2013). She comments that “it’s just an extra click but as far as they [the staff] are concerned, they put it into the system” (March 28, 2013). UK-13’s use of the words, “stuff,” “information,” and “final record” suggests that the current definition of a record in the archival legislation is not precise enough (March 28, 2013).

UK-8 adopts the perspective that the digital environment has “blurred” the distinction between records and information. This is especially so since a number of organizations have stopped printing hard copies of publications and publish them online. From UK-8’s perspective, archivists and records management are “less concerned with the semantics” and more with what the organization “needs to be able to sustain and continue to make available in the future” (March 27, 2013). One could argue that it is critical for archivists to make a distinction between records and publications because they need to be managed differently. Understanding the attributes of a record enables archivists and records professionals to identify components relating to its identity and integrity and to protect the authenticity of a record over time. Section 4.2.4 will discuss how the authenticity of records is not addressed in the archival legislation.

4.2.2.2 Canada

Section 4.2.1.2.2 highlighted the inconsistencies in the definition of the term “record” between the *LACA* and the *DRK*. Because of such inconsistencies, some interviewees believe that the terminology in the archival legislation needs to be revisited. For example, CA-2 claims that there are “some fundamental conceptual problems” with the definition of a record in the

archival legislation (June 17, 2013). She points out that while the *LACA*²⁵⁹ states that record is “other than a publication,” the *DRK* uses the terms “information resources” and “IRBV” which include both records and publications. She also notes that the term “record” does not appear anywhere in the *DRK*, except in the appendix (June 17, 2013). Unlike CA-2, CA-9 feels that there is no conceptual difference between the definition of record in the *LACA* and the use of the term “IRBV” in the *DRK* because “they are the same thing” (June, 18, 2013). CA-9 explains, “We started talking about information resources of business value, which for all intents and purposes are records” (June, 18, 2013). CA-9 elaborates that the term “IRBV” has been created because of the need to “shift the language” and to change the mindset of departments (June, 18, 2013). The term focuses the attention of departments on identifying and managing records that are important to the organization rather than to spend time in identifying and destroying transitory records, which are of limited business value to the organization.

The inconsistencies in the definition of “record” in the *LACA* and the *DRK* and the “shift in language” with the use of the term “IRBV” reveal the need for greater precision in the definition of a record (CA-9, June, 18, 2013).

4.2.3 There is No Consensus about the Comprehensiveness of Archival Legislation in Its Definition of a Public Office [Singapore]

This theme applies to Singapore, where there are varying perspectives regarding the comprehensiveness of archival legislation in its definition of a “public office.” Interviewees have different perspectives on whether the judiciary constitutes a public office as defined in the archival legislation. There are also different opinions regarding the management and preservation of records from departments creating and maintaining sensitive records, which fall under the

²⁵⁹ *Library and Archives Canada Act*, SC 2004, c 11, s 2 [*LACA*].

purview of the archival legislation but are administered separately from records that are transferred to archival custody.

4.2.3.1 Singapore

The *NLBA*²⁶⁰ defines a public office as “any department, office, institution, agency, commission, board, local authority or statutory body or any other office of the Government or branch or subdivision thereof, and any other body that the President may, by notification in the Gazette, declare to be a public office.” Some interviewees claim that the judiciary does not fall under the definition of a “public office” but other interviewees disagree. Both SG-1 and SG-12 state that, based on their understanding of the archival legislation and their interaction with the judiciary, records from the judiciary are excluded from the archival legislation because the court is “independent of the government” (SG-1, February 17, 2013). SG-12 explains,

I mean... We can deal with it administratively. We don't have to go through legislation to address the issue. It is an administrative arrangement within the authority of the National Archivist. (February 13, 2013)

SG-12's claims that there is no need to resort to the law or to “emphasize too much on archival legislation” because “at the end of the day, you must tell the other party how are [they] going to benefit” in terms of managing their records or transferring their records to archival custody (February 13, 2013). SG-12 also says that it is unnecessary for the legislation to be prescriptive so that archivists have “some leeway” to “implement strategic and action and tactic to achieve different level of goal” (February 13, 2013). In contrast, SG-1 prefers for the archival legislation to be more explicit and to “say court records are public records” so that “there will be no ambiguity for such stuff” (February 13, 2013).

²⁶⁰ *National Library Board Act* (Cap 197, 2014 Rev Ed Sing), s 2 [*NLBA*].

SG-2 and SG-9 disagree with the perspective that the judiciary are excluded from the definition of public office under the archival legislation. SG-2 states,

My own view is frankly, the courts do belong to the Government as well, at least from a Singapore standpoint. If you look at the Government Contracts Act, the court also abides by the Government Contracts Act. So, that itself is one indication in Singapore context. The courts are part of the government and therefore for us, at least, there is no need to perhaps specify that the courts are also subject to our Act.” (March, 8, 2013)

SG-2 argues that there is no need for the archival legislation to be changed with regard to the definition of “public office.” She perceives that the definition of “public office” is comprehensive because the legislation states that the President can declare any part of the government and body as a “public office” (March, 8, 2013). Similarly, SG-9 expresses her conviction that the judiciary is considered part of the public office as defined by the archival legislation. SG-9 asserts,

The courts are public office as understood traditionally. Judges are all holders of the offices of the monument in the public service. Traditionally that has always been the case. So I got no doubt that courts are public office. They are independent of the political government - they are independent of the executive. But they are public officers. (May, 15, 2013)

An examination of the archival sources in the form of email correspondence supports both SG-2 and SG-9’s stances. This author consulted relevant files from NAS relating to her research on archival legislation and the access condition was that there should be no direct quotation or identifications of persons from the files. The archival sources reveal that one of the departments under the judiciary is independent of the government from the perspective of the constitution.

However, for the purposes of archival preservation, it was decided that department will be considered a public office under the archival legislation.²⁶¹

The varying perceptions on what constitutes a public office affect the manner in which the archival legislation is operationalized. SG-1 and SG-12 use the terms “administrative convenience” (SG-1, February 17, 2013) and “administrative arrangements” (SG-12, February 13, 2013) to describe two categories of departments and the special working arrangements between the archives and the department. The records from such departments fall outside the standard procedure on how records are usually appraised and transferred to archival custody. The first category of departments comprises those that are perceived to be excluded from the definition of public office, as stated in the archival legislation. This would include the judiciary whose records are deposited with the NAS for preservation. The second category comprises departments that fall under the definition of public office, but do not transfer their records to archival custody because they have “more sensitive records” or records that are classified (SG-1, February 17, 2013). According to SG-1, such departments tend to keep “living archives,” which SG-1 defines as records that these departments have a continuing need to rely on for their business activities (February 17, 2013). In these cases, the NAS “delegate[s] the function” of managing and preserving their records to the respective departments (SG-12, February 13, 2013). The national archives is responsible for providing advice on preservation issues, “to discuss [with the department] on the best way to keep the records” and to invite the departments to relevant training sessions and seminars organized by the NAS (SG-1, February 17, 2013). SG-2 and SG-12 believe that such administrative arrangements for the management and preservation of records are the most feasible approach since the national archives does not need to be saddled

²⁶¹ Email correspondence between NAS and the department (30 April 2002), Singapore, National Archives of Singapore (file NAS 01/007 – Legislation – NHB Act).

with the burden of instituting measures to manage and handle classified information for records that can never be made available to the public for research. SG-12 elaborates,

Because I cannot imagine one government department fight with another government department... We delegate the function to you, you can seek advice from us, but take care of this thing, you are responsible... All these are administrative arrangements. Again, you don't have to violate, no party is violating the Act – it is a win-win situation. And my reason is that if you cannot provide access to the [sensitive] records ... and all that, why ...do you want to take on? We might as well delegate to you and you are responsible. So, this is a football strategy – never, never hold the ball under you. Just kick the ball back.

(February 13, 2013)

In contrast, SG-2 believes that such administrative arrangements are “not how it ought to be run” and that she “[doesn’t] think anything outside the law has been - anything that the law doesn't already allow” (March, 8, 2013).

4.2.4 Archival Legislation is Not Expressly Concerned with Authenticity of Records

The archival legislation in all three countries contains provisions stating that the national archives can certify a true copy of the record that is preserved in the archives' holdings.

However, interviewees from all three countries have expressed concerns that the authenticity of digital records has not been adequately addressed in the archival legislation.

4.2.4.1 UK

Section 9(2) of the *PRA*²⁶² states that “a copy of or extract from a public record in the Public Record Office purporting to be examined and certified as true and authentic by the proper officer and to be sealed or stamped with the seal of the Public Record Office shall be admissible

²⁶² *Public Records Act*, 1958 (UK), 6 & 7 Eliz II, c 51, s 9(2) [*PRA*].

as evidence in any proceedings without any further or other proof thereof if the original record would have been admissible as evidence in those proceedings.” While such a statutory provision addresses the certification of copies in the paper environment, there are difficulties in applying the certification of copies for digital records. UK-14 highlights that the certification of copies of records as “true and authentic” cannot be used for digital records because there has to be a “wet signature on a digital artefact” (April 11, 2013). UK-14 elaborates,

...Because we have legal advice to say that it doesn’t work unless it is a physical signature. So, we can’t sign – the Keeper can’t sign the digital record, ...because the lawyers have advised that the power to certify in the Public Records Act doesn’t work with digital records. It has got to be a wet signature on a digital artefact, otherwise it doesn’t work. And although the government has introduced in 2000, something called an Electronic Communications Act to enable the amending of provisions in English law that required a wet signature on a digital artefact to be changed without primary legislation, the way that it was done can’t be applied to public records for particular technical reasons. (April 11, 2013)

UK-14 expects that should a record from the archives be submitted as evidence in court, an official will be called as a witness and to answer questions from the court as to how the records are kept in the department before they are transferred to the archives. Although UK-14 states that it is “pretty rare” for TNA to produce records from their holdings as evidence during legal proceedings, she anticipates that it would be “quite onerous” for TNA to provide digital evidence in court to attest to records’ authenticity (April 11, 2013).

The *PRA*²⁶³ also contains a provision stating that an “electronic copy of, or extract from a public record in the Public Record Office which (a) purports to have been examined and certified as true and authentic by the proper officer, and (b) appears on a website purporting to be one maintained by or on behalf of the Public Record Office, shall, when viewed on that website, be admissible as evidence in any proceedings without further or other proof if the original record would have been admissible as evidence in those proceedings.” UK-8 claims that such a provision does not address the management and preservation of records in the digital environment where “it is so easy to alter information” and for records to become “corrupted” (March 27, 2013). In addition, it is easy to generate multiple copies in the digital environment and this makes it difficult to ascertain which record is the authentic copy. UK-8’s perspective aligns with the views of UK-6, who mentions a situation where the department transfers the electronic record to the archives, but there are still copies of the record kept in the department. In such a scenario, UK-6 ponders on the question “Which was the original?” and concludes that the “digital world has suddenly overtaken anything that was envisaged under the 58 Act” (April 19, 2013). The difficulties in ascertaining whether a record is authentic lead interviewees like UK-8 to recommend that archival legislation “set down the criteria by which something is considered an authentic copy of any electronic record” so that “you can trust the copy that you have here is exactly the same as the copy which the archives hold down here” (March 27, 2013).

4.2.4.2 Canada

The *LACA*²⁶⁴ stipulates that the Librarian and Archivist can certify a copy of a record “and produce that copy, which is receivable in evidence in the same manner as the original

²⁶³ *Ibid.*, s 9(3).

²⁶⁴ *Library and Archives Canada Act*, SC 2004, c 11, s 19(1) [*LACA*].

without proof of the signature or official character of the person or persons appearing to have certified it.” CA-1 claims that LAC never had to provide original records in court and that, for paper records, LAC staff would stamp the copy of the record to certify it as a true copy (July 3, 2013). Although authenticity of record is “not overt” in the archival legislation, it is both assumed and is recognized as part of the work processes in LAC. CA-1 elaborates,

We sort of assume that the government institution produces it, they ship it to us and it’s obvious that we’re going to preserve it. We are the guardians, we are the archives of the Government of Canada so what we produce, what we safeguard was what was produced by the institution. And that we would never alter it or change it – we regard it as it is and implicitly, a lot of our processes and procedures are working to preserve, for example, the authenticity of the digital holdings that we have. So, it’s there but we don’t make it overt. It’s not overt in our Act but it’s definitely there because we based our practices on proper archival theory. Thou shalt never add anything to a closed paper file; you don’t do that. (July 3, 2013)

CA-1’s statement illustrates that there is an assumption of authenticity of a record as there is a chain of custody from the creating agency to the trusted third party. Given that the authenticity of digital records is at risk over time, one cannot assume that the reproduced digital record is similar to the record that was first accepted into archival custody. The assumption that the archival institution would never “alter” or “change” (July 3, 2013) the record is not applicable in digital preservation. The concept of authenticity not only needs to be addressed by the procedures and work processes of the archival institution but also needs to be underpinned by the archival legislation.

CA-11 laments that there is nothing definitive to state that the “electronic record is the choice” (June 27, 2013). She notes,

...Everyone has been circling the elephant in the room, which is - we all want to scan it, and we all want to get rid of the paper. And none of us are comfortable to do that because there is no definitive line in the sand that says, the electronic record is the choice. Now, there are lots of attempts on it. There are all kinds of set pieces - if you scan a record and it meets the ISO standard, this, if you have a database where it is scanned into and you can prove the authenticity, you can do all this peripheral measures. Then maybe you can get rid of paper. But there is nothing definitive that the piece of legislation could actually state - which is cut and dry - no, it is the electronic. I don't care what you do but it is electronic. (June 27, 2013)

CA-11's comments can be analyzed at a deeper level because beyond just stating that the archival legislation should categorically affirm that the electronic record is the record, her implied point is that the concepts of reliability and authenticity of a record need to be addressed in archival legislation. This is especially so since LAC has notified government departments that “information resources of enduring value that are created after 2017 will be accepted by LAC in digital format only.”²⁶⁵ There is thus an impetus for departments to move to the digital environment and an urgent need for them to ensure that the reliability and authenticity of the record can be maintained and preserved over time. The comments from CA-11 echo some of the observations made by CA-10.

CA-10 states that she and her colleagues have sought advice from a number of departments including Treasury Board, LAC, and the Department of Justice regarding “what will

²⁶⁵ Library and Archives Canada, *New Service Model and the Directive on Recordkeeping* (March 2012), online: <<http://www.bac-lac.gc.ca/eng/news/Pages/new-service-model-and-the-directive-on-recordkeeping.aspx>>.

hold up in court as an authentic [and] reliable record” and have not received a definitive answer (June 19, 2013). CA-10 shares her experience,

So we’ve gone up to Treasury Board and Library and Archives Canada and asked what are your digitization standards, the standards constituted for a digital copy? And depending on whom you talk to, you get very inconsistent messages. Well, what would Justice say? Because our question is always - what will hold up in court as an authentic reliable record? And they say, is whatever Justice says. And Justice says - look at what the Standards Council of Canada say and Standards Council of Canada says: here is what we have. But you should really be checking with Treasury Board and Library and Archives Canada. So it is a very, very strange environment right now. And we are just risk managing... I think that there should be some legislative change and there should also be some policy and directives - very clear benchmark. Because right now, there is an awful lot of ignorance, particularly in operational areas within our institution that sees digitization, scanning and creating electronic records as a panacea. (June 19, 2013)

The quotation from CA-10 illustrates that the concepts of reliability and authenticity of records are not adequately addressed within the Government of Canada. Since LAC is entrusted with the responsibility of being the “permanent repository” of “government and ministerial records that are of historical or archival value,”²⁶⁶ the concept of authenticity needs to be enshrined in the archival legislation.

²⁶⁶ *Library and Archives Canada Act*, SC 2004, c 11, s 7(c) [LACA].

4.2.4.3 Singapore

The *NLBA*²⁶⁷ states that “any copy of a public record which is certified by the Director of National Archives as a true copy of the original document shall be admissible in a court of law.” There is thus an assumption that any public record accepted into archival custody is authentic. However, both SG-5 and SG-8 express concerns about the need to attest to the authenticity of records in the digital environment. SG-5 states that one of the information systems used in her department was meant to facilitate collaboration among users and it is “not a proper records management system” (March 1, 2013). The system does not lock down the records and it is possible for users to edit the records after they are finalized. The department also has a network drive and databases that contain records. SG-5 admits that there is a “problem to identify which one is the original copy” because there are multiple copies residing in the department’s information management systems (March 1, 2013). For example, the department accepts online submissions from the public but also receives records in hard copy. The latter are then scanned into the system and are retained and stored in a warehouse. As such, the department is encountering issues relating to the reliability and authenticity of records. SG-5 is more concerned about identifying which record is the “original copy” (March 1, 2013). SG-5 comments,

I found very difficult - even if you want to share, there may be some duplicate information, some even in the portal. Some I still print out. Now print out and go to warehouse. Which one is the original copy? Because we want to know which one is the original - sometimes they say both, because they just print out. Because for records management, original is the one - let's say if you get approval, the one with the signature is the original right? (March 1, 2013)

²⁶⁷ *National Library Board Act* (Cap 197, 2014 Rev Ed Sing), s 14F [*NLBA*].

In the case of another department, concerns about maintaining and preserving the authenticity of records has led the department to spend a considerable sum of money to engage the services of an external auditor annually. The role of the auditor is to certify the processes of their records management system and their business processes, as well as to check for security breaches. SG-8 stresses that the records in her department support public safety and have legal ramifications. There are also concerns that “there are no loop holes where staff or outsider could adulterate or steal or do something to the document” (SG-8, March 11, 2013). SG-8 adds that the department “must make sure that our documents are certified under the *Evidence Act*” (March 11, 2013). SG-8 is most likely referring to section 116A(5) of the *Evidence Act*²⁶⁸ which states that “the Minister may make regulations providing for a process by which a document may be recorded or stored through the use of an imaging system, including providing for the appointment of one or more persons or organisations to certify these systems and their use.” Under the 2012 amendments to the *Evidence Act*,²⁶⁹ there is no longer a specific provision under section 35 (i) stating that a computer output is admissible “where the output is produced in an approved process” (Low, 2012). The provision was repealed because of the belief that “technological improvement and sophistication over time” have addressed issues regarding the reliability of electronic evidence and that there should not be a “higher threshold” for the admission of electronic evidence.²⁷⁰ Furthermore, digital records are now so commonly used that it is now recognized that “computer output evidence should not be treated differently from other evidence.”²⁷¹ SG-8 nevertheless is concerned that the records the departments create and maintain

²⁶⁸ *Evidence Act* (Cap 97, 1997 Rev Ed Sing), s 116A(5).

²⁶⁹ *Ibid*, s 35.

²⁷⁰ Ministry of Law, *Proposed Amendments to the Evidence Act* (16 January 2012), online: <<https://www.mlaw.gov.sg/news/press-releases/proposed-amendments-to-the-evidence-act.html>>.

²⁷¹ *Parliamentary Debates Singapore: Official Report*, vol 88 at p. 1127 (14 February 2012) (Mr K Shanmugam).

“must be admissible in court” as there are implications for “life, damage of properties, or non-compliance to standards” (March 11, 2013). There is also the dimension of trust as senior management and staff expect that the issue of “how can I trust your document” is addressed and that “there should not be a second opinion” (SG-8, March 11, 2013).

SG-8 highlights an issue that is currently being discussed between both the auditor and her team. Originally, one of the auditors wanted to impose a system where before a user files into the system as a record, there should be another person to “check that the record is authentic or genuine” (March 11, 2013). SG-8 feels that it was unrealistic and imposes unnecessary demands on users. SG-8 elaborates:

Then, how do you authenticate the creation of a document? Are you saying that this document is a true, original copy? And one of the suggestions is that you must have somebody counter checking. So I told my officer - You must be a bit crazy to have this idea. [The auditor proposed the idea]. You cannot ask me to create this document and ask somebody to check. This is nonsensical. *Kiasu*²⁷² number one. Cannot work on this basis. The whole system will totally be rejected by all users right? Therefore, you can't work on this basis. You got to identify what documents need to be captured first. Then, the creator of the document must be responsible to classify the document as what we always have said, right. Now, if you want to make sure that the documents are created as authentic, by default, all his IDs [are] captured in the PC when he sent out – date, time, everything is already there. If you *kiasu*, you can also use digital signature. (March 11, 2013)

In other words, SG-8 associates the creation of metadata and the use of authentication technology as a means for assessing the authenticity of the record. The experiences of both SG-5

²⁷² *Kiasu* is a Chinese dialect word used in Singapore. It means the fear to lose out.

and SG-8 illustrate that there are concerns about attesting the authenticity of records in the digital environment even before the records are appraised and transferred into archival custody.

However, the concept of authenticity for records that are reformatted and reproduced for preservation and reference is not adequately addressed in the archival legislation.

4.2.5 The Complexities of Tabling a Bill in Parliament Impede Changes to Archival Legislation

Interviewees from the three countries emphasize that there are administrative and political difficulties in tabling a bill in Parliament. In Singapore, the legislative transfer of the NAS from the NHB to the NLB provided an opportunity for the National Archives to review its legislation. Despite such an opportunity, time pressures and the complexity involved in tabling a bill in Parliament did not enable the introduction of new provisions into the archival legislation.

4.2.5.1 UK

In 2003, TNA prepared a public consultation paper to revise the current *PRA* and to propose revised national records and archives legislation.²⁷³ Since then, there has been no active discussion within the UK government regarding the legislation. Interviewees cite the lack of interest and support from Ministers and administrators for the initiative of revising the archival legislation. There was a change in the Minister at the Ministry of Justice, and the issue “lapsed” because the Minister had no interest in archival legislation (UK-1, April 10, 2013). During the period when TNA first proposed the revision of the archival legislation, both the central and the local governments were implementing the *FOIA*, which was seen to be “very resource intensive” (UK-1, April 10, 2013). The UK was also currently facing a period of “budget austerity” and there were also other competing issues that take up Parliamentary time (UK-14, April 11, 2013).

²⁷³ UK, The National Archives, *Proposed National Records and Archives Legislation* (Consultation Paper 01/03) (The National Archives, 2003).

UK-1 also reflects on the low status of the national archives within the Government and as a result, the national archives “struggle to get any new kind of legislation” (April 10, 2013). UK-1 elaborates,

Government has only limited Parliamentary time available to it, it is going to concentrate on the things it need to do and if archives, and this is where archives services struggle to get any new kind of legislation because we are not important enough in the great scale of things to be allocated in sufficient Parliamentary, debating time. And that is a reality.

Your bill has to be important or completely non-controversial kind of thing, a stocking filler when they can just put it through very simply because it is so... Everyone will agree with it, there is no need for any great debate, there might be a couple of questions asked and that's it, half an hour and that's it. And some bills are like that, they are just non-controversial and they can be referred to as the stocking fillers. (April 10, 2013)

UK-1's use of the metaphor “stocking fillers” or “Christmas stockings” to refer to some bills that are “nice to have” and “quite easy to get through” reflect her perception that the bill has to be something which is “not controversial” and can be easily passed through (April 10, 2013). The difficulties in advocating for a new archives legislation within the government bureaucracy and within Parliament led interviewees to conclude that it is pointless to “irritate your Minister with things that they wouldn't want to hear” (UK-14, April 14, 2013) and it is far more efficient to “work on the system that you got at the moment.” (UK-11, April 25, 2013).

4.2.5.2 Canada

At the time of the creation of LAC, the Department of Canadian Heritage and the then National Archives disagreed on how the archival legislation should be tabled in Parliament. The Department of Canadian Heritage wanted to add provisions relating to copyright to the proposed

bill that would merge the former National Library and the National Archives of Canada as a single entity. However, the National Archives was reluctant because it felt that it would derail the intent of the legislation and “stop the legislation in its tracks” (CA-4, June 28, 2014). Despite such objections, the bill contained clauses that aimed to extend the copyright protection of deceased authors. The relevant section of the bill relating to copyright is referred to as the “Lucy Maud Montgomery Copyright Amendment Act”²⁷⁴ or “Lucy Maud Montgomery provision” (Tuck, 2003). The proposed provisions relating to copyright stirred up public debate and led to an “outpour[ing] of outrage” in the archives and library communities (CA-4, June 28, 2014). Critics argued that the extension in copyright protection would undermine the larger interest of the public who wish to access the materials as opposed to the “private interests of the relatively few who would benefit by financially exploiting [the] work.”²⁷⁵ The debate about copyright also derailed the overall objective of the bill which was to amalgamate the National Library and the National Archives of Canada.

Despite the efforts of archivists and librarians to keep the bill “focused on the key mandate of the National Library and the National Archives,” the copyright aspects of the bill resulted in a delay in the enactment of the archival legislation (CA-3, June 20, 2013). The Chair of the Standing Committee on Canadian Heritage commented that “all committee members, including opposition members thought there was no problem with this bill” and that most of the objections centered on the copyright issue.²⁷⁶ CA-4 highlights the challenges in tabling a bill in

²⁷⁴ Parliamentary Research Branch, *Bill C-8: The Library and Archives of Canada Act*, (Library of Parliament, 2004), p. 17.

²⁷⁵ *Ibid.*, p. 16.

²⁷⁶ House of Commons, Standing Committee on Canadian Heritage, *Bill C36 – An Act to Establish the Library and Archives of Canada, to Amend the Copyright Act and to Amend Certain Acts in Consequence* (12 June 2003) (Chair: Clifford Lincoln).

Parliament and stresses that a piece of legislation needs to be sufficiently broad so that one need not “tinker” with the legislation. CA-4 explains,

To have to depend on the will of the government, to entertain the idea and find time in the House and being in competition with other pieces of legislation, this is a scenario from hell. You don’t want that. Actually, you want to keep as much flexibility as you want... The political process is heavy, it’s full of pit-falls, it’s uncertain... It’s... You don’t want that. (June 28, 2014)

As such, the process of tabling a bill can be a highly politicized affair and terms like “moving into the swamp” and “saga” were used to describe the contentious process of enacting changes to the archival legislation (CA-4, June 28, 2014).

4.2.5.3 Singapore

In Singapore, the public announcement about the restructuring of ministries and the Cabinet took place in July 2012.²⁷⁷ As part of the restructuring exercise, the NLB came under the Ministry of Communications and Information. The NAS, which used to be part of a statutory body known as the NHB, became part of the NLB in November 2012.²⁷⁸ The short window from the time that the public announcement was made to the legislative transfer of the NAS to the NLB meant that there was time pressure involved in terms of meeting the deadline of the legislative transfer. As a result, interviewees claimed that it would be “very difficult” to make changes to the archival legislation (SG-2, March, 8, 2013) and that the archives component from the previous *NHBA* “was taken lock stock and barrel” (SG-1, February 17, 2013) and transferred

²⁷⁷ Singapore, Prime Minister’s Office, *Press Statement from the Prime Minister on Changes to Cabinet and other Appointments* (31 July 2012), online:< <http://www.pmo.gov.sg/mediacentre/press-statement-prime-minister-changes-cabinet-and-other-appointments-3>>.

²⁷⁸ *Parliamentary Debates Singapore: Official Report*, vol 89 (15 October 2012) (Associate Professor Dr Yaacob Ibrahim).

to the *NLBA*. Moreover, there is an expectation in the Ministry that the archival legislation should reflect issues that are crucial to the immediate needs for the legislative transfer process rather than introduce new powers for the NAS or impose responsibilities onto public agencies. The introduction of new statutory provisions would also require further discussion with other Ministries.

One of the issues discussed internally within the NAS concerned the inclusion of statutory provisions that would enable the NAS to audit public offices on the management of records. Eventually, it was decided that such a statutory provision would not meet the tight timeframe for the legislative transfer of the NAS to NLB. SG-2 is of the opinion that it is best to include the auditing of public records in the *Government IM* rather than in the archival legislation because there are “far less hoops to jump through” in order to effect a change in the IM as compared to making changes to the legislation (March, 8, 2013). According to SG-2, there are a “lot more uncertainties” involved in making changes to the archival legislation because “other issues will come up and may sidetrack the whole process” (March, 8, 2013). SG-2 was referring to situations where the NAS may have specific provisions in mind whereas Parliament may have other concerns and “debate 50 other [provisions]” and you can be “sidetracked by a lot of other issues” (March, 8, 2013). In contrast, making changes in the IM is viewed to be “more straightforward” and more “controlled” since it will involve keeping the Ministry updated about the changes and the NAS can focus on specific goals on what they want to achieve (SG-2, March, 8, 2013).

4.2.6 The Scope of the Mandate Given by the Archival Legislation Limits the National Archives' Role in Records Management

The statutory provisions in all three countries do not provide the national archives with a strong mandate in records management. The legislation is notably silent with regard to the creation and maintenance of records and the existing provisions mainly govern the disposition of records and the transfer of records that are of archival value to the national archives. In Singapore, there is concern that the absence of the phrase “national archives” or “archives” in the title of the archival legislation will erode the authority of the NAS with regard to records management. An examination of records related to the issuing of the archival legislation, such as parliamentary debates, also indicates that records management issues were not the primary objective of the archival legislation.

4.2.6.1 UK

Sections 2(4) and 3(2) of the *PRA*²⁷⁹ outlines the role of the Public Record Office, which involves making records and finding aids available to the public for research, as well as “co-ordinating and supervising all action” relating to the selection and preservation of public records. However, there is nothing specific in the *PRA* relating to the creation and keeping of records such as the responsibility of the departments in establishing a recordkeeping system.

As noted by UK-11,

The issue here is that the Public Records Act is not about the management of active records, or giving criteria for the creation and management of those records. It is all about the end of the pipe (April 25, 2013).

²⁷⁹ *Public Records Act*, 1958 (UK), 6 & 7 Eliz II, c 51, s 2(4) & s 3(2) [*PRA*].

UK-14 concurs with UK-11's assessment that the Act makes a number of assumptions in relation to the creation and maintenance of records. For example, the *PRA* assumes that the record will be created and captured according to established policies, standards, and procedures and "it doesn't state clearly any regulation environment for records management" (UK-14, April 11, 2013). In effect, the archival legislation's primary focus is the disposition and transfer of records to archival custody, which is geared towards the end of the record's lifecycle. The records that are of interest to TNA comprise only a small segment of the total number of records, or "less than 1% of the records" (UK-11, April 25, 2013).

The observations made by UK-11 and UK-14 are substantiated by documentation in the archives. The Committee on Departmental Records, which provided a number of recommendations for the development of the current *PRA*, did not specifically address issues relating to the creation and maintenance of records. This was because the Committee was formed in the 1952, during a period when only paper was used. One of the primary concerns of the Committee was to reduce the quantity of records within the government that are "valueless" and to ensure the transfer to the Public Records Office (now known as TNA) of records that are "worthy of permanent preservation."²⁸⁰ The Committee focused its attention on the selection and disposal of public records. It recommended that the "responsibility for the selection and transfer of records to the Public Record Office must rest on Departments themselves" and that the Public Record Department "should be responsible for coordinating these arrangements and should supervise, on behalf of the Government as a whole, the way in which they are carried out by Departments."²⁸¹ In other words, the Committee recognized the shared responsibility of the national archives and the departments but only in the areas of selection and preservation of

²⁸⁰ *Committee on Departmental Records Report*, (London: Her Majesty's Stationery Office, 1972), p. 80.

²⁸¹ *Ibid.*

records. This is also reflected in the written evidence submitted by TNA to the House of Commons. TNA states that the *PRA* lacks the framework for the management of digital records and that the legislation does not provide the “basis for increased accountability requirements and public access rights.”²⁸²

4.2.6.2 Canada

One of the mandates of LAC is to “facilitate the management of information by government institutions.”²⁸³ CA-5 thinks that the word “facilitate” reflects the “weakness” of the LAC Act, as it does not adequately explain the role of LAC in information management (July 18, 2013). CA-5’s comments were similar to the statement made by Reid, the Information Commissioner. Reid asserts that the term facilitate does not explain “where the primary responsibility lies in government for ensuring records management.”²⁸⁴ Section 8(1)(g) of the *LACA*²⁸⁵ also states that LAC is to “advise government institutions concerning the management of information produced or used by them and provide services for that purpose.” However, there is nothing specific in the Act indicating the extent of LAC’s advisory role in terms of information management.

The *LACA* focuses on the disposition of records and the transfer of records to LAC’s holdings. According to CA-1, sections 12 and 13 of the *LACA* define the work of archivists who manage government records. Section 12(1) of the Act states that “no government or ministerial record” will be destroyed “without the written consent of the Librarian and Archivist or of a person to whom the Librarian and Archivist has, in writing, delegated the power to give such

²⁸² UK, HC, “Freedom of Information Act 2000 – Progress Towards Implementation”, HC 79-II vol II (2004-05) Ev 60 (Chair: A J Beith).

²⁸³ *Library and Archives Canada Act*, SC 2004, c 11, s 7(d). [*LACA*].

²⁸⁴ House of Commons, Standing Committee on Canadian Heritage, *Bill C36 – An Act to Establish the Library and Archives of Canada, to Amend the Copyright Act and to Amend Certain Acts in Consequence* (10 June 2003) (Chair: Clifford Lincoln).

²⁸⁵ *Library and Archives Canada Act*, SC 2004, c 11, s 8(1)(g) [*LACA*].

consents.”²⁸⁶ Section 13(1) of the *LACA* stipulates the transfer of records that are of “historical and archival value” based on agreements “made between the Librarian and Archivist and the government institution or person responsible for the records.”²⁸⁷ CA-1 asserts that the Act is the “single linchpin for everything that the government records archivist does” and calls the Act the “Bible” because it is the “entire *raison d’être*” of their work (July 3, 2013). CA-1 also adds that sections 12 and 13 of the Act are “the point from which everything else flows” (July 3, 2013). CA-11 concurs with CA-1’s observation and claims that the *LACA* is the “spine of our business” and that what distinguishes LAC with other organization is that the Act enables LAC to “broker disposition” (CA-11, June 27, 2013).

However the statutory provisions governing the management of government records are “more towards the end of the lifecycle” since LAC’s mandate is to select and preserve records that are of “enduring value.” (CA-9, June 18, 2013). TBS on the other hand is responsible in the “upfront piece” of the lifecycle in terms of “ensuring accountability and transparency [and] ensuring that the records are there to support and inform decision-making.” (CA-9, June 18, 2013). As mentioned in 4.2.1.2.2, the *FAA* provides TB with the authority to regulate information management in the Government of Canada, such as issuing a suite of information management policies. Although LAC has an interest in ensuring that records are managed throughout the record’s lifecycle, their statutory mandate confines their role in terms of selecting and preserving records that are of archival value. CA-13 believes that LAC has taken an effort to play a “proactive role in trying to push the agenda of the digital office” and being “involved in supporting effective recordkeeping throughout the lifecycle” (June 26, 2013). She acknowledges that LAC has a “vested interest” in making sure that there are proper controls of the front end of

²⁸⁶ Ibid, 12(1).

²⁸⁷ Ibid, s 13(1).

the lifecycle because that will ultimately affect disposition and preservation of records. Despite LAC's efforts in being actively involved in initiatives that support the creation and maintenance of such policies such as drafting the *DRK*, the language in the archival legislation regarding LAC's role with regard to the front-end of the record's lifecycle is vague.

Andree Delagrave, the former Assistant Deputy Minister of the National Library of Canada and National Archives of Canada, clarified the objective of the *LACA*. She stated that the Act was not meant as a "broad reform of government information laws," nor was it a "reform of the activities of both institutions."²⁸⁸ The overall objective of the archival legislation was to amalgamate and harmonize the mandates of the National Library and the National Archives of Canada, and to modernize the language of the legislation in order to accommodate changes in technology.

4.2.6.3 Singapore

The *NLBA* states that NLB "shall conduct a records management programme for the efficient creation, utilization, maintenance, retention, preservation, and disposal of public records."²⁸⁹ In addition, the Act also states that NLB "shall advise public offices concerning standards and procedures pertaining to the management of public records."²⁹⁰ The statutory provisions relating to records management is mainly confined to two main areas. First, the *NLBA*²⁹¹ states that no individual shall destroy public records without authorization of the Board. Second, the Act states that the transfer of records that are of "national or historical significance"

²⁸⁸ House of Commons, Standing Committee on Canadian Heritage, *Bill C36 – An Act to Establish the Library and Archives of Canada, to Amend the Copyright Act and to Amend Certain Acts in Consequence* (10 June 2003) (Chair: Clifford Lincoln).

²⁸⁹ *National Library Board Act* (Cap 197, 2014 Rev Ed Sing), s 14A(2)(d) [*NLBA*].

²⁹⁰ *Ibid*, s 14A(2)(e).

²⁹¹ *Ibid*, s 14D.

is based on schedules and agreements between the Board and the public office.²⁹² SG-1 feels that the archival legislation would be strengthened if the NAS were able to audit the recordkeeping system of public agencies. She also believes that it would be beneficial if agencies can submit an annual records plan to the NAS so that the NAS can identify records that are of archival value which are still kept by the departments.

One notable theme among interviewees from Singapore is the perception that the role of the NAS in terms of records management is “a bit hidden and underground,” especially considering that the title of the *NLBA* does not have the word archives in it (SG-2, February, 22, 2013). SG-4 remarks that several departments were initially confused as to why the NAS came under the NLB, as they could not associate the function of records management with the library. In addition, they associated the library with “public access” and inquired whether their department’s records would be made available in the public libraries (SG-4, June 3, 2013).

SG-1 asserted that, although the title of the earlier archival legislation did not have the term “national archives” in it, the term “heritage board” was broad enough to encompass all the various museums, the NAS, and various other entities (February 17, 2013). There is no single institution that dominates under the previous piece of legislation. However, the term *NLBA* specifically mentions the library and NAS is the only institution under the NLB. Consequently, public officials and even members of the public would have difficulties associating the archives with the library. SG-12 offers a different perspective. She believes that the “archives act was lost” when the NAS became part of the NHB (SG-12, February 13, 2013). These interviewees believe that the role of the NAS, including the records management component, will be better recognized if the national archives appears in the title of the archival legislation.

²⁹²*Ibid*, s 14C.

Similar to the legislation establishing LAC, the archival legislation in Singapore did not have as primary objective to strengthen the national archives' role in records management. The main objective of the legislation was to transfer the functions of the NAS to the NLB where the functions are said to be "better aligned" since both institutions require "similar expertise and systems."²⁹³ The former Minister for Information, Communications, and the Arts also claimed that the legislative transfer of the NAS to the NLB would "reap greater synergies and economies of scale in the protection and preservation of Singapore's documentary records."²⁹⁴

4.2.7 The Institutional Relationships between the National Archives and the Government Departments Can Limit the Effective Delivery of a Records Management Program

The existence of institutional relationships between the national archives and government departments in the UK such as the relationship among TNA, Cabinet Office, the Information Commissioner's Office (ICO), and other government departments that are subjected to the *PRA* does not imply that these institutions are working effectively for the purposes of information management. In Canada, there is a perceived lack of clarity of roles in information management between LAC and TBS. Interviewees relate that while LAC was involved in developing and writing some of the suite of policy instruments relating to information management, it was TB that issued the instruments and was responsible for enforcing the policies. In Singapore, there is a perception that the NAS' method of reaching out to departments in the form of seminars and training sessions is not effective, and that more could be done to assist government departments in records management.

²⁹³ *Parliamentary Debates Singapore: Official Report*, vol 89 (15 October 2012) (Assoc Prof Dr Yaacob Ibrahim).

²⁹⁴ *Ibid.*

4.2.7.1 UK

TNA and the ICO signed a Memorandum of Understanding (MOU)²⁹⁵ to formalize their working relationship and to outline how they will promote the two codes of practices issued under the FOIA. The MOU recognizes that TNA and ICO have “complementary expertise and overlapping interest” and that they will consult each other “especially when one organisation’s work may have some bearing on the responsibilities of the other organisation.”²⁹⁶ Both UK-11 and UK-14 emphasize that the codes of practice are not statutes and are therefore discretionary. Both *Section 46 Code of Practice* and the *Secretary of State for Constitutional Affairs’ Code of Practice on the Discharge of Public Authorities’ Functions under Part I of the Freedom of Information Act 2000, Issued under Section 45 of the Act*, referred to as *Section 45 Code of Practice*, complement each other. The former provides guidance on the “keeping, management, and destruction”²⁹⁷ of records by relevant authorities whereas the latter provides guidance relating to requests for information and disclosure of information.²⁹⁸ UK-11 acknowledges that, although the “Information Commissioner takes quite a hard view of large organizations who ignore the code [*Section 46 Code of Practice*], the Information Commissioner has not been sufficiently vicious to take action with it” (April 25, 2013). This is because the Information Commissioner has to demonstrate that the breach of *Section 46 Code of Practice* results in a failure to comply with the *FOIA* or in the *DPA*.

²⁹⁵ UK, *Memorandum of Understanding between the Information Commissioner and the Chief Executive of The National Archives/Keeper of Public Records* (2015). The MOU was first signed on 18 July 2012 and was subsequently renewed in 2015.

²⁹⁶ *Ibid.*, para 4.1 & 4.2.

²⁹⁷ UK, Ministry of Justice & TNA, *Lord Chancellor’s Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000* (Crown copyright, 2009), para 2.

²⁹⁸ UK, *Secretary of State for Constitutional Affairs’ Code of Practice on the Discharge of Public Authorities’ Functions Under Part I of the Freedom of Information Act 2000, Issued under Section 45 of the Act* (London: The Stationery Office, 2004).

UK-14 notes that a breach in *Section 46 Code of Practice* “isn’t the same as finding a breach of the FOIA” because a department “can’t actually be in breach of that specific duty under FOIA for having bad records management” (April 11, 2013). The ICO is more concerned with the *Section 45 Code of Practice* because departments who breach the code are more likely to breach the *FOI* and the *DPA* (UK-14, April 11, 2013). UK-14 elaborates,

That is to explain, why [sigh], although theoretically FOI ought to be sorting some of this end out now, but actually, in practice, it is quite rare that you get really big, really big stuff about section 46. It is because it is almost in-built into the system that his priorities, that the Information Commissioner’s priorities of FOI, and that it’s not criticizing him, it’s just explaining how it works, because a simple records management failure will not have breached the FOI Act. ...Now, that doesn’t mean that if we have an organization that have indeed some serious problems, that eventually might not get out, you know, journalists or freedom of information campaign[ers] might not make a thing out of it because sometimes, they do. (April 11, 2013)

The words of UK-14 reflect the perception that the focus of the ICO was ensuring compliance with *Section 45 Code of Practice*, where the staff are the domain experts, whereas TNA’s priority was in promoting records management practices in accordance with *Section 46 Code of Practice*. UK-14 acknowledges that the ICO does occasionally highlight records management issues but “not as often as we [archivists from TNA] would like” because the “primary regulatory duty [of the ICO] is almost skewed away from regulating the records management part of it” (April 11, 2013). Another aspect of the difficulties in the institutional relationship between TNA and the ICO is that the *PRA* does not enable TNA to take action against departments when there is a failure in records management. TNA is thus dependent on

the ICO to play an enforcement role particularly when records management issues result in a failure to disclose information or to protect personal information. The MOU between TNA and ICO clearly states that “the final decision as to whether a Practice Recommendation should be issued and its contents will be taken by the ICO.”²⁹⁹ The practice recommendation is basically a written recommendation by the ICO specifying the steps that the department needs to take to conform to the requirements under *Section 45 Code of Practice* and *Section 46 Code of Practice*. Although a practice recommendation is not “legally binding,”³⁰⁰ departments generally take steps to adhere to recommendations, which are published (UK-6, April 19, 2013; UK-7, April 2, 2013).

The Cabinet Office in the UK has been driving the overall government information and communications technology (ICT) strategy including the move towards cloud computing. Interviewees express concern that there are issues with the management and preservation of records in the cloud, including the management of personal data and the retention and disposition of records. UK-14 feels that the “main decisions are made on the short term business need rather than the PRA” (April 11, 2013). UK-13 also points out the conflicting messages from the Cabinet Office as one part of the Cabinet Office strongly recommends the use of cloud service “because it’s cheap and is what government wants us to do at the moment” (April 28, 2013). On the other hand, another section of the Cabinet Office dealing with national security takes a more cautious stance and advises departments that they cannot entrust their records to the cloud (UK-13, April 28, 2013).

²⁹⁹ UK, *Memorandum of Understanding between the Information Commissioner and the Chief Executive of The National Archives/Keeper of Public Records* (2015), para 5.4.

³⁰⁰ UK, Information Commissioner’s Office, *What happens when someone complains?* online: <<https://ico.org.uk/for-organisations/guide-to-freedom-of-information/complaints/>>.

Interviewees from the UK also relate their experiences with TNA in conducting information assessments. These assessments determine how departments manage record keeping and how they identify and mitigate risks associated with information management. These interviewees feel that TNA has a “gold plated” standard with regard to information management and that it does not take into account the climate of fiscal restraint in the departments that are allocated “a very small budget” for information management (UK-6, April 19, 2013). There is also the perception that TNA does not take into account other priorities of the departments. For example, UK-13 remarks that her department has less than a year to replace its EDRMS system and that she will not be able to fulfil part of the action plan recommended by TNA. UK-13 feels that she is “not going into trouble” with her senior management because they are aware that she has an urgent task to move into a new EDRMS rather than completing the action plan that was recommended by TNA (April 28, 2013). UK-6 describes the experience of her department undergoing the information assessment process as follows:

I was doing all those things, was keeping us out of the courts. I was keeping the records. I was aware of when there are risks...And I was staying within the very small budget. So, what is there not to like? Why was The National Archives getting upset?...If I was breaching the current Act by holding records for ridiculous amount of time, if I was not providing records at all, of course, I'll be in trouble and quite ready to...The Act doesn't get in my way – the National Archives sometimes does. But I want to remain in good terms with them. But I think following their bruising discussion with us, they are well aware that we have absolute support for our stance from our Chief Information Officer,

our SIRO [Senior Information Risk Owner] and our Permanent Secretary.³⁰¹ (April 19, 2013)

UK-6 also claims that usually a senior civil servant would meet the CEO of TNA about the outcome of the information assessment, but this responsibility was given to the department's SIRO who had to be persuaded to attend the meeting (April 19, 2013). Similarly, UK-13 shares that the Permanent Secretary from her department, who is the most senior civil servant in her department, postponed the meeting with the CEO on the outcome of the information assessment exercise three times (April 28, 2013). Eventually, the Director-General from her department met the CEO from the TNA. Both UK-6 and UK-13 infer that the senior civil servants in their departments regard the independent information assessment done by TNA was not an item that ranked highly in the department's agenda. Interviewees also think that some of the recommendations are too frivolous for a senior civil servant to take note of, such as branding of the organization's internal intranet and providing more training to information managers (UK-13, April 28, 2013).

The experiences with TNA shared by interviewees UK-6 and UK-13 highlight the institutional tensions between the department and TNA. TNA's priority is to assess the departments' "ability to meet legal and policy obligations in relation to their information and records, with particular emphasis on the Public Records, Freedom of Information, and Data Protection Acts."³⁰² However, the department may have other pressing priorities and perceive that it is managing risks fairly well, despite limited resources. For example, UK-6 claims that

³⁰¹ The Permanent Secretary in the UK is the "most senior civil servant in a department," "supports the government minister who heads their department," and "is accountable to Parliament for the department's actions and performance." See UK Civil Service, *Our Governance*, online: UK Civil Service <<https://www.gov.uk/government/organisations/civil-service/about/our-governance>>.

³⁰² UK, The National Archives, *Information Management Assessment – A Review of Lessons Learned from the IMA Programme 2008-2014* (Crown copyright, 2015), p. 2.

TNA staff told her that her department has been “lucky” for not having any information loss. UK-6 asserts that this was not due to luck but to the fact that the department has developed procedural and technological solutions, despite limited resources and manpower (April 19, 2013). The “numerous discussions” that took place between the department and TNA about the information assessment report also reflect the department’s concern on how it is ranked in various aspects of information management (April 19, 2013). The concerns expressed by the department could be attributed to the reports that are made publicly available on TNA’s website, which can potentially affect the department’s reputation.

4.2.7.2 Canada

Some interviewees raise the issue that the responsibility in information management of both LAC and TBS can result in a perceived lack of clarity of roles as to who is ultimately responsible for information management within the government. The head of TBS is viewed as the “CIO [Chief Information Officer] for the government of Canada” (CA-11, June 27, 2013) because “they are the ones that are creating the big picture” (CA-14, June 25, 2013). LAC on the other hand, is seen as “the implementers” (CA-11, June 27, 2013). CA-13 concurs with CA-14’s perspective and notes that the *LACA* “doesn’t have teeth to really apply consequences” (CA-13, June 26, 2013). LAC has to work in partnership and is thus dependent on TBS to “manage compliance and enforcement” (CA-13, June 26, 2013). For example, TBS is the lead agency and enforcer for the Management Accountability Framework (MAF), which is an annual review of each department’s management capacity and practices.³⁰³ MAF comprises various elements in evaluating a department’s performance, and one of the key components is information management. It is in the interest of the department to receive a good or at least acceptable rating

³⁰³ Treasury Board of Canada Secretariat, *Management Accountability Framework*, online: Treasury Board of Canada <<http://www.tbs-sct.gc.ca/maf-crg/index-eng.asp>>.

in information management because the performance of the department and the senior civil servants like the Deputy Ministers are tied to the MAF's ratings (CA-13, June 26, 2013; CA-14, June 25, 2013).³⁰⁴ Consequently, there is a "bit of shuffle or dance" between TBS and LAC, because while LAC plays an advisory role in information management, TBS has the authority to issue directives and policies on information management and decides whether the department complies with the MAF (CA-1, July 3, 2013).

The division of responsibilities between TBS and LAC in information management can be seen in how the *DRK* was developed and issued. The *DRK* was written by LAC, which has the "penmanship" on information management, but it was TBS who issued the directive (CA-11, June 27, 2013). In effect, the *DRK*, though written by LAC, was seen to be "owned" by TBS (CA-5, July 18, 2013). In addition, it is TBS that will "monitor compliance with all aspects" of the *DKR*.³⁰⁵ Although there is a closer working relationship between LAC and TBS in recent years, there is the perception that LAC does the work, while TBS "takes credit" for the work (CA-14, June 25, 2014). CA-14 explains:

Because we often get those brainy act ideas - go to Treasury Board and Treasury Board said - sure, do the work and we take credit for it. So there is that back and forth kind of thing. I think it may be Treasury Board's benefit to keep those boundaries blurry because we feed an awful lot into the policy. So, we are not setting the policy but they are certainly contributing to the policy because when it comes out, it got Treasury Board's name on it. (June 25, 2014)

³⁰⁴ Deputy Ministers in Canada are "professional, non-partisan public servants" and their role is to "undertake the day-to-day management of the department on behalf of their Minister." Canada, Privy Council Office, *Accountable Government A Guide for Ministers and Ministers of State*, (Privy Council Office) at E.1.

³⁰⁵ Treasury Board of Canada Secretariat, *Directive on Recordkeeping*, 2009, para 6.2.2

The quotation from CA-14 illustrates that the bifurcated responsibility between TBS and LAC in information management can limit the effective delivery of a records management program. TBS performs the administrative function of TB and has a larger mandate than information management. It is in LAC's interest to ensure that there are adequate controls in the creation and maintenance of records in order to acquire records of enduring value. Both CA-14 and CA-11 view LAC as having the expertise to write the suite of directives and policies on information management as its employees are the "thinkers" in information management (CA-11, June 27, 2013). However, LAC is limited to facilitative and advisory roles because it is TBS who acts as the "director" and can monitor the department's level of compliance in information management (CA-11, June 27, 2013). There is thus a lack of clarity as to where the "line" is drawn between LAC and TBS (CA-14, June 25, 2014). For instance, concerns have been expressed on how TBS assesses the department's level of compliance with the *DRK* since LAC has a "stake in the results" and would need to consider on how best to leverage its interests with TBS (CA-14, June 25, 2014).

4.2.7.3 Singapore

Archivists in Singapore generally view training in records management as part of their overall strategy to conduct a records management program in the government. Such training sessions enable them to reach out to the newer agencies and to alert them that they need to seek approval from the NAS before destroying public records (SG-3, February 15, 2013). NAS also offers seminars conducted by invited archivists, records professionals, and academics from other countries, who share their knowledge about the latest developments on issues affecting the management and preservation of records. However, some records professionals claim that they have either heard of such issues discussed in previous training sessions—they are not new, or

that the issues raised are not relevant to their organization (SG-11, February 21, 2013).

Interviewee SG-8 comments that there were “a couple of seminars that [went] on and on and on” and states there was nothing substantial and “fast tracking” from the NAS (March 11, 2013). She cites a particular training session where the NAS showcased an EDRMS, which was developed in partnership with a vendor to capture and store emails and other digital records in the office environment. However, SG-8 found that the training session was “superficial” and that the real issues, such as resistance among users and the organizational culture of the department, were glossed over (March 11, 2013).

The comments of SG-8 and SG-11 highlight the need for the NAS to go beyond the standardized briefing sessions and seminars to departments. Even though these training sessions are “oversubscribed,” there is a need for the NAS to actively engage with selected departments on an individual basis rather than using a one-size-fits-all approach (SG-3, February 15, 2013). For example, SG-3 recommends that the NAS do more briefings covering issues that specifically address the needs of specific government departments (SG-3, February 15, 2013). Such briefing sessions also provide an opportunity to understand the nature of the recordkeeping system of the departments.

4.2.8 Interpersonal/Professional Relationships Between Archivists and Records Managers are the Foundation of an Effective Records Management Program

In the three countries, interviewees speak of the need for “building up a personal relationship” (UK-10, April 8, 2013),” a “strong human relationship” (CA-10, June 19, 2013) and for both archivists and records professionals to have that “human touch” (SG-11, February 21, 2013). In TNA and LAC, there are efforts to streamline processes in order to provide consistency in the level of service to departments. In LAC, organizational restructuring and

change in processes have led to the perception that LAC is less efficient and less helpful than the previous National Archives used to be because of the lack of interpersonal contact between the archivists from LAC and the records managers from the various government departments. In Singapore, records professionals rely on their interpersonal relationship with archivists from NAS to clarify and interpret policies relating to recordkeeping and other issues relating to the management and preservation of records. There is also a growing sense that potentially the rate of staff attrition can affect the interpersonal relationships that have developed over the years between archivists and records managers.

4.2.8.1 UK

Interviewees from the UK stress the importance of archivists from TNA and records managers from various government departments in establishing a “good working relationship” (UK-7, April 2, 2013). UK-13 values the “bouncing of ideas” with her information management consultant from TNA, such as determining the functionalities of an EDRMS that will meet the requirements of her department (March 28, 2013). UK-10 stresses the importance of trying to “persuade departmental records officer to do what we [the archivists from TNA] want them to do” (April, 8, 2013) because the *PRA* by itself does not specify the roles and responsibilities of the departmental records officer (DRO). UK-10’s way of interacting with the DROs is to “try to make friends” or at least “keep it on a polite level” (April, 8, 2013). She believes that her technique of keeping things on a “friendly basis” enables her to get her job done and to make the archival legislation more effective (April, 8, 2013). In addition, UK-10 speaks of building a “community of practice” by networking with DROs during conferences (April, 8, 2013).

While on an institutional level TNA values the importance of archivists persuading and negotiating with records managers in the departments, TNA as a whole is cautious in letting

personal relationships interfere with its work processes. UK-5 states that there is a danger when information management consultants from TNA become “almost friends” with the DROs because there is a tendency to be less stringent on what is expected from the departments (March 26, 2013). As a result, TNA has to bear the burden of allocating manpower and resources to complete the tasks that the departments are supposed to do. TNA has taken a “very strong management line” and started rotating archivists who previously dealt with specific departments to other departments so as to “start a new relationship on a new basis” (March 26, 2013). UK-5 elaborates,

We used to condone differences of behaviour between government departments. Ministry of Defence has always done it that way... Not anymore. .. And it has taken very strong management line. And what does that mean is that it allowed us to be flexible in our allocation of resources. So, previously, one transfer adviser who always worked with the Ministry of Defence knew exactly how they prepared their records, another transfer adviser worked with the Foreign Office and they prepared their records just a little differently. You have to know how they work. Stop all that. We moved the transfer advisers where they are most needed so if Ministry of Defence is busy, we put three transfer advisers on it. (March 26, 2013)

Records managers from departments do not perceive any change in the quality of service of TNA, with one interviewee commenting that “there is much more direct contact with TNA and departments than perhaps it used to be ” (UK-7, April 2, 2013).

4.2.8.2 Canada

Interviewees reveal that the National Archives used to adopt a portfolio model where archivists were assigned to specific departments. However, CA-13 states that such a model was

not sustainable as LAC “could not keep up with the demand and couldn’t reprioritize as easily” (CA-13, June 26, 2013). Under the revised system, records managers from various government departments who have specific enquiries have to contact LAC’s liaison centre, which in turn channel their enquiries to the relevant subject matter expert. However, records professionals claim that the liaison centre model reduces the level of face-to-face contact with archivists and that it can be extremely frustrating. CA-10 claims that her questions, which are “very basic” and previously called for a “five minute” answer turned out to be “a multi-month process” under the liaison center model (June 19, 2013). Similarly, CA-5 laments the lack of interpersonal contact and argues,

Today, you go to a generic box, you put in your question, you don’t know who is answering it. Like we don’t even have an archivist assigned to [our department] for a long time...And somewhat I think, I really don’t think they are very efficient anymore. To be honest with you, if you don’t have that contact with that archivist, I don’t have the confidence that there is somebody there who knows [our department] anymore...I don’t think they are as helpful as they were 10 years ago. You don’t have that person-to-person contact that you have with the portfolio manager. ...There is kind of a generic box that you go to and they are behind that box. And what happens behind that box, we don’t really know how they are structured or how things are happening back there. (July 18, 2013).

There was an acknowledgement that LAC has “gone through a lot of organizational change” and “suffered as an institution in trying to do the things that [they] are supposed to do in [their] mandate” (CA-14, June 25, 2013). However, there was also a sense that the increasing institutionalization of the work processes has led to the erosion of interpersonal relations, and

this can have a negative effect on the delivery of a records management program. The words of CA-1 speak to the importance of fostering interpersonal relationships between archivists and records managers:

What I think, what I personally think is absolutely crucial, that at the working level, archivists and their counterparts, information managers, there should be a good, strong relationship, because so much of what we do is based on communication and information gathering and research analysis. And that requires quite a bit of consistency, requires face-to-face and the ability to be able to ask your counterpart questions throughout the entire process. What's frustrating right now is that we [have] gone to the team approach for a lot of things and we have had staff turnover, that there isn't that strong human relationship officially now between our clients... A lot of difficulties can also be avoided if you have that strong professional, working relationship at the working level because it is easier to identify potential problems and issues early in the process before they get to the stage of you know, you are seeing your officials, actually negotiating and looking at your terms and deciding to call in legal advice... But, I think we really miss that direct contact with our clients. I think we are somewhat weaker for that. (July 3, 2013)

CA-1's words reveal that having a "strong human relationship" allows records managers to identify with someone working within LAC and strengthens the overall records management program (July 3, 2013). In other words, records managers are able to put a "face" on LAC's advice (CA-14, June 25, 2013) rather than having the perception that records managers are interacting with a "generic box" (CA-5, July 18, 2013).

4.2.8.3 Singapore

Interviewees from Singapore acknowledge the importance of the archival legislation and guidelines in terms of providing an overall direction to recordkeeping and preservation.

However, there is a perceived need for reliance on interpersonal interaction between archivists and records professionals. SG-12 argues that relying too strongly on the law is not effective and prefers to persuade departments and develop an interpersonal relationship with records managers so that they understand the value of transferring records to NAS (February 13, 2013). SG-12 explains,

In that context, to emphasize too much on archival legislation and for that matter, records management legislation will not help because at the end of the day, you must tell the other party how are you going to benefit from all those things that I ask you to do...It is none of their business because they can never think beyond today's world, because their priority is today. Am I going to be scolded by my Minister because I cannot find the information now? What if I give it to you [the archives] and then I can't find? .. You have to think from the record holder, I mean, record creator point of view... So archives legislation, to me, it's good to be there. It's just like a Bible but you can still survive without reading the Bible. When you need the Bible, you read it. Correction, once a week or once in seven years. I mean when you look at it this way, then my strategy of getting them to comply the legislation is not a cold partner (February 13, 2013).

SG-12 compares the archival legislation to the Bible. From her standpoint, the Bible provides the framework for the establishment of the NAS but it is not something that needs to be frequently referred to and archivists and records professionals "can still survive" without emphasizing the archival legislation (February 13, 2013).

Records professionals rely on specific archivists within NAS, whom they frequently consult because of their expertise and their knowledge of the overall recordkeeping environment of the departments. Some of the issues departments discuss with archivists are how to transfer records between agencies because of organizational restructuring (SG-11, February 21, 2013) and how to interpret the *IM4L* and *IM8* (SG-8, March 11, 2013). SG-11 admits that she has not read the archival legislation and believes that she can obtain most of the information from either the *IM4L* or the *IM8*, as well as specific advice from the NAS (February 21, 2013). SG-6 views herself as a mediator between the NAS and her department. She cites an incident where NAS requested the database structure and data dictionary of her department's information management system. However, her department's IT team expressed concerns about releasing information to NAS because of security considerations. SG-6 feels that she is able to have a "bridging" role because she understands both the IT team and NAS's perspectives (March 18, 2013). She also feels that she is able to translate NAS's concerns effectively to her IT team such as the need for NAS to understand how records are captured in the system and how the records can be extracted for preservation. One limitation of depending on interpersonal relationships is the concern that staff turnover and retirements will require building new interpersonal relationships. SG-11 mentions that there is a need for NAS to "train some younger officers to take over" because some of the archivists in NAS will most likely retire from service (February 21, 2013).

4.2.9 There is a Perceived Lack of Leadership of the National Archives in Records Management

In all three countries, there is an expectation that the national archives will assume a leadership role in records management. Although TNA produces a number of guidelines for

digital recordkeeping and preservation, records professionals are disappointed that TNA has not demonstrated sufficient leadership in terms of providing strategies for the transfer and preservation of digital records. In Canada, there is a perception that TBS has assumed the leadership role in information management, and that organizational changes within LAC have considerably weakened LAC's position in the information management landscape. Interviewees from Singapore also express their wish to see the NAS play a greater leadership role by charting a vision for a model electronic registry system for the whole of government. There is also the desire for NAS to coordinate and establish fora to facilitate discussions on recordkeeping.

4.2.9.1 UK

Interviewees believe that there is a “void” in records management in the UK government (UK-13, March 28, 2013) and express their wish for TNA to “show a little more leadership” (UK-7, April 7, 2013). There is an expectation that TNA should play a leading role in digital recordkeeping and preservation. TNA has provided the *Requirements for Electronic Records Management Systems*³⁰⁶ and issued a number of guidelines, such as *Managing Digital Records Without an Electronic Record Management System*.³⁰⁷ It has also produced an assessment about *Records Management in Sharepoint 2010 – Implications and Issues*.³⁰⁸ However, UK-13 claims that TNA is “not really taking ownership” of the development and implementation of EDRMS in the government and “nobody has come up with anything yet” (March 28, 2013). UK-13 states that TNA's leadership claims that EDRMS are “not necessarily fit for purpose because they are very expensive, they are very complex, and they are based on paper records management”

³⁰⁶ UK, Public Record Office, *Requirements for Electronic Records Management Systems* (Surrey: Public Record Office, 2002).

³⁰⁷ UK, The National Archives, *Managing Digital Records Without an Electronic Record Management* (The National Archives, 2012).

³⁰⁸ UK, The National Archives, *Records Management in SharePoint 2010 - Implications and Issues* (The National Archives, 2011).

(March 28, 2013). There is an expectation that departments may need to move away from EDRMS and “do something different,” but there is no concrete guidance from TNA (UK-13, March 28, 2013). UK-7 argues that differing expectations between departments and TNA could lead to departments feeling that “they were let down by the TNA” (UK-7, April 7, 2013). From TNA’s perspective, the functional requirements on an EDRMS are not meant as an endorsement of particular systems. However, departments believe that the systems they selected based on TNA’s requirements are “difficult to deliver and change behaviour” within the departments (UK-7, April 7, 2013). As such, there is a “a lot of naiveté and a lack of understanding” on what the systems can do, as well as confusion on TNA’s role with regard to the development and implementation of digital recordkeeping systems in the government (UK-7, April 7, 2013).

Although TNA has provided guidelines on digital continuity, and outlined steps for departments to ensure that their information is “complete, available, and therefore usable for [their] business needs,”³⁰⁹ there is the perception that TNA has not done enough for digital records. UK-7 claims that there is no infrastructure in place for the appraisal of digital records and that TNA works on the assumption that records are being “stored neatly in a folder, labelled up as it would be, [like] in paper folders” (April 7, 2013). UK-5 admits that TNA archivists “are not really taking digital records in” because they are inundated with the transfer of legacy paper records with the enactment of the *CRGA* (March 26, 2013). Under the *CRGA*,³¹⁰ records selected for preservation shall be transferred to TNA’s custody 20 years after the records’ creation instead of the previous 30-year rule. TNA will thus be “kept busy with paper for some years” owing to the bulk transfer of records, and anticipates digital transfers from 2017 (UK-5, March 26, 2013).

³⁰⁹ The National Archives, *What is Digital Continuity?* online: < <http://www.nationalarchives.gov.uk/information-management/manage-information/policy-process/digital-continuity/what-is-digital-continuity/>>.

³¹⁰ *Constitutional Reform and Governance Act 2010* (UK), c 25, s 45 (1a) [*CRGA*].

Departments, however, still expect guidance from TNA for developing the digital infrastructure and procedures to appraise and transfer digital records as well as how to conduct sensitivity review of digital records (UK-7, April 7, 2013). TNA is aware of the challenges involved in conducting a sensitivity review of digital records that involves “terabytes of information or large megabytes of information that nobody can go through document by document” (UK-4, March 26, 2013). TNA is exploring the use of research and search tools to facilitate the process of departments reviewing digital records and redacting them before they are released to the public.

4.2.9.2 Canada

Interviewees feel that organizational changes within LAC have weakened the organization’s role in records management. CA-5 provides her perspective,

There is one constant in the Library and Archives Canada, there is only one - is that they change every three or four years. They are changing the way they are doing their appraisal. They have been working on it for a long time... We implemented something in the backend that meets Library and Archives Canada’s requirements. And they have all that material. They had it for over a year and we haven’t heard back from them. So, again, I think because they are going through a lot of changes, internally they got to figure things out and maybe, they come back to us. I don’t know... In the sense, when they reorg [reorganized], it’s their business, but it’s definitely impacting departments. (July 18, 2013).

This quotation illustrates that changes in the manner in which LAC conducts appraisal, as well as internal organizational restructuring, have affected the institutional relationships between LAC and the departments, and led to feelings of frustration among record professionals. CA-14’s observation that “organizational changes” within LAC have affected the nature of their work and

their level of interaction with departments corroborates the quotation from CA-4. There is a sense that archivists are placed in a “rigid box” because of the manner of how the organization and the work processes are structured, which affects their sense of professionalism, and in turn their productivity (CA-14, June 25, 2013).

One area of work within LAC that has undergone change is the appraisal process. A decision was made to “full stop” some of the work done on macro appraisal with departments and to “break” agreements with departments because LAC intended to change appraisal methodology and implement the Disposition and Recordkeeping Program (CA-13, June 26, 2013). The program aims to help a department “effectively deliver on its responsibilities towards disposition” and to “support the goal of achieving effective recordkeeping aligned with the TBS Directive on Recordkeeping”.³¹¹ There was a development phase before LAC embarked on the Disposition and Recordkeeping Program during which LAC worked with some departments, known as early adopters, to “streamline the process” (CA-14, June 25, 2013). There was some confusion because the initial work involved “a lot of extra work on departments,” some of which required the use of “extensive templates” that were “not clearly presented, and in some cases there was a lack of clarity in what was being asked for” (CA-13, June 26, 2013). In effect, LAC was undergoing an “evolution in thinking,” experiencing a budget reduction exercise, as well as trying to develop the methodology for the Disposition and Recordkeeping Program (CA-13, June 26, 2013). As a result, there was some level of frustration among departments that experienced long delays in renewing their records disposition authorities.³¹²

³¹¹ Library and Archives Canada, *Disposition and Recordkeeping program*, online: < <http://www.bac-lac.gc.ca/eng/disposition-recordkeeping-program/Pages/disposition-recordkeeping-program.aspx>>.

³¹² Disposition authorities “enable government institutions to dispose of records which no longer have operational utility, either by permitting their destruction, by requiring their transfer to LAC, or by agreeing to their alienation from the control of the Government of Canada.” Library and Archives Canada, *Multi-Institutional Disposition*

The interviewees' experience of long delays in renewing their records disposition authorities (CA-5, June 18, 2013; CA-12, June 24, 2013) is confirmed by the Office of the Auditor-General of Canada (2014) report. This report found that a number of the disposition authorities issued by LAC were "out of date because they do not account for the records of new programs or changes to existing program activities."³¹³ The report also notes that the trusted digital repository (TDR)³¹⁴ in LAC, which cost a sum of \$15.4 million to develop and implement over a five-year period, was "shut down," and "without documentation from management on the rationale of the decision."³¹⁵ The observation about the shutdown of the TDR is also supported by interview data, which claims that the TDR "was disbanded" (CA-8, June 26, 2013). An interviewee claims that decisions were made that were perceived as "arbitrary, without getting a sense of the overall vision for replacement" (CA-8, June 26, 2013). The lack of leadership exercised by LAC has resulted in the perception among interviewees that "LAC no longer has finger on the pulse" (CA-11, June 27, 2013) and "I really don't think [LAC is] efficient anymore" (CA-5, July 18, 2013).

4.2.9.3 Singapore

Interviewees believe that there is a void in leadership in records management in Singapore, as compared to finance and data management, and that NAS should "play a more leadership role" (SG-8, March 11, 2013). For example, SG-7 admits that she and her senior manager were initially not aware of the existence of IM in the government, when she first

Authorities (MIDA), online: Library and Archives Canada <https://www.bac-lac.gc.ca/eng/services/government-information-resources/disposition/multi-institutional-disposition-authorities/Pages/introduction.aspx>.

³¹³ Office of the Auditor General of Canada, *Report of the Auditor General of Canada*, ch 7 (Office of the Auditor General of Canada, 2014) at 7.12.

³¹⁴ The Office of the Auditor-General of Canada (2014) defines a trusted digital repository (TDR) as an "electronic archival system for storing and preserving digital records" and describes it as "a facility or institution that provides these services." See Office of the Auditor General of Canada, *Report of the Auditor General of Canada*, ch 7 (Office of the Auditor General of Canada, 2014), para 7.26.

³¹⁵ *Ibid*, para 7.37.

assumed the role of overseeing registry operations in her department. She only realized the existence of the IM upon consulting with the NAS staff (March 13, 2013). Both SG-7 (March 13, 2015) and SG-5 (March 1, 2013) claim that there are regular fora and activities conducted by the Ministry of Finance and the Infocomm Development Authority of Singapore (IDA) on procurement and data management issues, including the sharing of best practices among departments. There are also attempts to engage directly with senior staff from various government departments and proper processes to monitor the implementation of activities. For example, there are emails and circulars addressed to the Permanent Secretaries and Chief Executive Officers from various government departments and statutory boards requiring that an individual with particular level of seniority be appointed as a Chief Data Officer. SG-5 notes that there is no formal correspondence from the NAS directed to the senior civil servants regarding the appointment of a DRO, even though the appointment is specified in the IM (March 1, 2013). She claims that her department does not have a person with the role of a DRO, and when she broached the subject with her supervisor, she was told there was “no need” (SG-5, March 1, 2013). The experiences cited by the interviewees show that there are no mechanisms in place to monitor a department’s adherence to the IM relating to records management.

There is the perception that individual departments are left to their own devices to select an EDRMS system, and that NAS did not provide the functional requirements for the system (SG-8, March 11, 2013). The NAS was perceived as lacking the “vision of what is the central registry for civil servants for the public sector” and as a result, individual departments had to take ownership of the system (SG-8, March 11, 2013). There is also a perceived lack of guidance from the NAS and the IM governing the preservation of records captured in social media sites,

some of which involve engagement between the government and the public (SG-5, March 1, 2013).

In addition, there are doubts as to whether NAS has the necessary expertise and resources to develop a digital preservation program. According to SG-6, NAS initially advised her department to transfer the records from their EDRMS system in Portable Document Format (PDF) format. This was also in line with the guidelines issued by NAS. Subsequently, there was a “change in direction” and NAS informed the department that they had to transfer the records both in PDF format and in microfilm (SG-6, March, 18 2013). The argument made by the NAS was that microfilms are “still a proven method for preservation” (SG-6, March, 18 2013). The NAS was willing to convert the digital records onto microfilm in its premises, provided that the department bore some of the costs. SG-6 explains that as her department has already incurred costs in converting the records into PDF, they are unwilling to incur additional expense to convert digital records into microfilm. Moreover, she thinks that it is “chaotic” to access records in microfilm and that “PDF is already good” (SG-6, March, 18 2013). Since both the department and the NAS could not come to an agreement, the department decided to halt the transfer of digital records to NAS’ custody. To the best of SG-6’s knowledge, her department has not transferred any digital records to NAS. The example cited by SG-6 illustrates how disagreements over a viable preservation strategy result in the risk that the NAS may not be able to fulfil its statutory mandate of acquiring and preserving records that have already been appraised.

4.2.10 The Status of the National Archives’ Reporting Structure Affects its Scope of Influence in the Government

The reporting structure of the national archives in the three countries has some similarities and differences. Both TNA and LAC report to a department with a mandate in

culture and heritage. TNA reports to the Department for Culture, Media and Sport (DCMS) while LAC is a departmental agency under the Department of Canadian Heritage. The NAS reports to a statutory body, the NLB, which falls under the umbrella of the Ministry of Communications and Information, mandated to “oversee the development of the Infocomm technology, media and design sectors, the national and public libraries, as well Government’s information and public communication policies.”³¹⁶ Among the national archives in the three countries, TNA has a larger scope of influence because it is placed under the same Ministry as the ICO. Sections 4.2.10.4 to 4.2.10.6 cover three supporting sub-themes relating to the status of the reporting structure of the national archives. The sub-themes are:

1. The reporting structure of the national archives is influenced by its dual role of preserving public and private records, which is applicable to the Canadian and Singapore context,
2. The lack of sanctions for the destruction of public records is symptomatic of the perceived low status of the national archives within the government hierarchy, and the role and ability of the national archives to influence records management is dependent on the political and social context,
3. The role and ability of the national archives to influence records management is dependent on the political and social context.

4.2.10.1 UK

As mentioned in Chapters 1 and 2, the reporting structure in TNA changed from the Ministry of Justice (MOJ) to DCMS in September 2015. Subsequently, the “machinery of

³¹⁶ Singapore, Ministry of Communications and Information, *Formation of Ministry of Communications and Information*, (31 Oct 2012), online:< <http://www.mci.gov.sg/web/corp/press-room/categories/press-releases/content/formation-of-ministry-of-communications-and-information>>.

government changes”³¹⁷ was implemented with the enactment of the *Transfer Order* in December 2015.³¹⁸ Since this change in reporting structure took place after the data collection period, this author will cite interviewees’ perceptions when TNA was under the Ministry of Justice. Nevertheless, this author has supplemented the research with an analysis of legal and government records and discussed the current reporting structure of TNA under the culture department.

Interviewees feel that the TNA is “fortunate” (UK-14, April 11, 2013) and “quite effective” (UK-10, April 8, 2013) while being situated under the MOJ. This is because the ICO is under the MOJ. The ICO’s mandate is to “uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.”³¹⁹ It also regulates a number of information related pieces of legislation³²⁰ including the *DPA*, *FOIA*, and is responsible for regulations such as *The Privacy and Electronic Communications (EC Directive) Regulations*, and the *EIR*. Being in the same Ministry as the ICO enables TNA to raise and discuss issues relating to information management (UK-14, April 11, 2013). Moreover, the MOJ involves TNA in various government initiatives by recommending that TNA join working groups in the government that has an information management component (UK-1, April, 10, 2013).

In addition, TNA could “leverage” the Lord Chancellor, who is the Minister of the MOJ. TNA publishes data on the number of records transferred from various government agencies, the

³¹⁷ UK, Parliament, *Machinery of Government changes: Data Protection Policy; Information Commissioner’s Office; The National Archives; and Government Records Management Policy: Written Statement* (HCWS209) (17 September 2015). See <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2015-09-17/HCWS209/>>.

³¹⁸ *The Transfer of Functions (Information and Public Records) Order 2015*, SI 2015/1897, [Transfer Order].

³¹⁹ UK, Information Commissioner’s Office, *About the ICO*, online: <<https://ico.org.uk/about-the-ico/who-we-are/>>.

³²⁰ UK, Ministry of Justice & Information Commissioner’s Office, *Framework Agreement* (Ministry of Justice & Information Commissioner’s Office, 2013), para 1.

statistics on records that still reside in departments, and the number of records that are overdue for transfer. (UK-5, March 26, 2013). UK-5 claims that, as a “last resort,” the Lord Chancellor could write to specific departments that may not channel adequate resources to facilitate the transfer of records under the 20-year rule (March 26, 2013).

While interviewees were generally supportive of TNA being organizationally placed under the MOJ, but they were cautious about TNA being part of the Cabinet Office, as the office is too closely associated with the government and with the Ministers. UK-2 claims that it is “most unwise” for TNA to be organizationally placed with the Cabinet Office, because the archives will be “driven by the policy issues of the day” rather than to be focused on the “historical perspective” (UK-2, April 19, 2013). Furthermore, she stresses the importance of TNA having a face within the government, so that departments “trust” the institution and are willing to deposit records in the archives (UK-2, April 19, 2013). At the same time, there is also a need for TNA to have a face with the public, since the records will be accessed by the general public. UK-7 argues that there are benefits for TNA not to be directly associated with the Cabinet Office, because TNA can provide a “dynamic challenge and rebuttal” to the initiatives by Cabinet Office (April 2, 2013). She considers the possibility of the archives being an independent body in its own right, and comments:

I think [TNA] is probably in the right place - warts and all. I think TNA probably needs to challenge more and show greater leadership than Cabinet office, than feeding into those initiatives. Maybe they need to be independent of Justice and independent of Cabinet office, I don't know. It is checks and balances actually. (UK-7, April 2, 2013)

There is also the perception that TNA will face a greater challenge if it is situated under a culture portfolio in the government, because “few cultural organizations have the profile and

clout to act as an effective regulator of the activities of much larger and more political organizations” (UK-14, September 25, 2013). The latest change in the reporting structure means that both TNA and ICO now report to the same ministerial department, and as such, both institutions can still continue to collaborate on information management issues.³²¹ The Information Commissioner claims that the current change in the organizational placement with the DCMS allows the ICO to “deal with very many arm’s-length bodies,” so that the ICO “remains free to advise and to warn as necessary and to bring both the privacy and transparency perspectives to policymaking in key areas.”³²² At the same time, TNA will remain as a “non-ministerial department”³²³ under DCMS, which is under the auspices of the Secretary of State. Consequently, the Secretary of State has replaced the Lord Chancellor in supervising the “care and preservation of public records”³²⁴ as well as overseeing the “policy responsibility” for data protection.³²⁵ The Advisory Council on National Records and Archives will also provide advice to the Secretary of State. Although the Lord Chancellor had traditionally occupied a senior position in Cabinet, the responsibilities of the Lord Chancellor have been reduced with the enactment of the *Constitutional Reform Act*, as discussed in Chapter 2. Effectively, both the Lord Chancellor and the Secretary of State for DCMS occupy the position of Cabinet Ministers. One potential area of concern with regard to the change in reporting structure is that DCMS has never played an active role in records management. In fact, DCMS has received unfavourable reports

³²¹ In contrast with the ICO in the UK, the Office of the Information Commissioner of Canada is an independent department that directly reports to Parliament.

³²² UK, Information Commissioner’s Office. *Sponsorship of ICO moves into DCMA*, online: < <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2015/09/sponsorship-of-ico-moves-to-dcms/>>.

³²³ UK Government, *The National Archives*, online: < <https://www.gov.uk/government/organisations/the-national-archives>>.

³²⁴ *The Transfer of Functions (Information and Public Records) Order 2015*, SI 2015/1897, Explanatory note [Transfer Order], Schedule Consequential Amendments, s 1(3a).

³²⁵ UK, Information Commissioner’s Office. *Sponsorship of ICO moves into DCMA*, online: < <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2015/09/sponsorship-of-ico-moves-to-dcms/>>.

from TNA on its information management program in the past.³²⁶ Therefore, it is conceivable that there might be initial difficulties to align the mandates of TNA, ICO, and DCMS on information management.

However, there seems to be a better alignment of interest between TNA and the Cabinet Office in terms of records management, particularly because the former is known for its expertise on records management while the latter plays a leading role in information technology within the government. As stipulated in the *Transfer Order*, the Secretary of State from DCMS has to consult with the Chancellor of the Duchy from the Cabinet Office in revising and issuing *Section 46 Code of Practice*.³²⁷ Since TNA is one of the authors of *Section 46 Code of Practice*, they would have to work closely with the Cabinet Office in revising the Code. Furthermore, an independent review by Sir Alex Allan recommended that the Government Digital Service (GDS), which is part of Cabinet Office, and TNA should work closely together on digital records management, such as email management, and sensitivity review of digital records.³²⁸ The report noted that the mandate of GDS is to lead the “digital transformation of government and making public service digital by default, with responsibility for choosing the right technology for government.”³²⁹ TNA’s role is to ensure that departments incorporate records management requirements into their systems. While Sir Alex Allan claims that he is “agnostic” as to whether digital records initiative is best spearheaded by the MOJ or the Cabinet Office, he asserts that departments will look for leadership on IT issues from the GDS and on records management

³²⁶ Alex Allan, *Records Review*, (August 2014), pg. 33, online: Government of UK <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370930/RECORDS_REVIEW_-_Sir_Alex_Allan.pdf>.

³²⁷ *The Transfer of Functions (Information and Public Records) Order 2015*, SI 2015/1897, Explanatory note [Transfer Order], Schedule Consequential Amendments, s 2(3h) & s 2(5b).

³²⁸ Sir Alex Allan, *Review of Government Digital Records*, (August 2015), para 81, online: Government of UK <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486418/Report_-_Digital_Records_Review.pdf>.

³²⁹ *Ibid*, para 79.

issues from TNA.³³⁰ He also emphasizes that “TNA needed some higher-level backup within Whitehall,”³³¹ so that records management is accorded a high priority within the government. Although it is still too early to assess as how TNA, ICO, their sponsoring department under the DCMA, and the Cabinet Office can work together on information management, one can anticipate that there would be challenges because multiple stakeholders are involved.

4.2.10.2 Canada

Interviewees perceive that LAC’s position as a departmental agency within the Department of Canadian Heritage places it in a disadvantageous position within the government structure. Interviewees claim that “heritage never understood the legal role of Library and Archives Canada” (CA-3, June 20, 2013) and that “Canadian Heritage couldn’t care less about Library and Archives” (CA-4, June 28, 2013). CA-3 claims that the Department of Canadian Heritage has no interest in LAC “because it is not their priority” and that the department is more concerned with the promotion of heritage activities (June 20, 2013). As a result, LAC ends up “dealing with the Deputy Minister” since “the Minister never has time to deal with Library and Archives” (CA-3, June 20, 2013). Despite recognizing that the Department of Canadian Heritage has little interest in LAC, an interviewee expresses her reservations about LAC becoming an independent entity. CA-4 explains,

Now, there is a universal tendency to want to be God. ..So every institution likes to report directly to the Prime Minister. This is not a good model for government, as we know.
(June 28, 2013)

There is also the viewpoint that the LAC is a much smaller player compared with a central agency like the Treasury Board. CA-8 asserts that TB is a “much bigger enforcer, a much

³³⁰ *Ibid*, para 81.

³³¹ *Ibid*, para 77.

stronger institution” as compared to LAC (June 26, 2013). One major reason is that TB is a central agency and has “formal or informal authority over other departments and often direct their actions.”³³² The TBS in particular, acts as the “administrative arm” of TB,³³³ issues and interpret policies on various administrative issues, including information management.³³⁴ In contrast, LAC as a departmental agency is said to operate “at arm’s length from the government under the leadership of the Librarian and Archivist of Canada, and is responsible for their day-to-day operations.”³³⁵

The stance adopted by the Department of Canadian Heritage over the controversy on LAC’s 2013 code of conduct is indicative of the “visible lack of support in government for LAC” (CA-8, June 26, 2013). The controversy centred on LAC labelling professional activities such as speaking at conferences and teaching as “high risk” activities.³³⁶ During the House of Commons debate, the former Minister of Canadian Heritage and Official Languages asserted that “Library and Archives Canada operates at arm’s length from the government. It does not consult [the government] on its code of conduct. Internally, [LAC] has made this decision.”³³⁷ CA-8 argues that the statement made by the former Minister of Canadian Heritage reflects “the weakness of the legislation, the weakness of LAC’s position or something” because “no minister is going to stand up for LAC” (June 26, 2013).

³³² Canada, Library of Parliament, *The Roles and Responsibilities of Central Agencies*, (Ottawa: Parliamentary Information and Research Services, 2009) at p. 1.

³³³ Treasury Board of Canada Secretariat, *About the Secretariat*, online: < <http://www.tbs-sct.gc.ca/tbs-sct/abu-ans/tbs-sct/abu-ans-eng.asp>>.

³³⁴ Canada, Library of Parliament, *The Roles and Responsibilities of Central Agencies*, (Ottawa: Parliamentary Information and Research Services, 2009) at pp. 5-6.

³³⁵ Department of Canadian Heritage, *Statement by the Honourable Shelly Glover, Minister of Canadian Heritage and Official Languages, on the 2014 Fall Report of the Auditor General*, online: Department of Canadian Heritage < <http://news.gc.ca/web/article-en.do?nid=908209>>.

³³⁶ Letter from Loryl MacDonald, Association of Canadian Archivists, to Dr Daniel Caron, Deputy Head and Librarian and Archivist of Canada (18 March 2013) <http://archivists.ca/sites/default/files/Attachments/Advocacy_attachments/lacrecode_of_conduct.web_.pdf>.

³³⁷ *House of Commons Debate*, 41st Parl, 1st Sess, No 223 (18 March 2013) at 1500 (Hon James Moore).

4.2.10.3 Singapore

Some interviewees express concern that the reporting structure of the NAS under a statutory board will undermine its scope of influence and authority. SG-10 feels that the extra layer of reporting to the NLB before issues are surfaced to the Ministry shows that the NAS “lack(s) the teeth and the muscle and the clout” (March 8, 2013). SG-10 elaborates,

A stat [statutory] board in a hierarchy will report to a parent Ministry. In your case, will be MCI [Ministry of Communications and Information]. But unfortunately, [the] National Archives office is not actually directly reporting to MCI. [They] are subsumed under National Library Board. So, I mean, if you all have to give instructions from, let’s say, you all have certain very cogent instruction or advisory that you all wanted to issue to Ministry for compliance or update Ministry for awareness, I think there will be a problem. There will be a problem because first of all, don’t forget, you must get through National Library Board first. After National Library Board agrees then go to MCI, you know. The Ministry will have to issue... But even then, Archives still have to go through your National Library Board. (March 8, 2013)

SG-12 claims that the archives “cannot command the same respect” because they are “a lowly statutory board” (February 13, 2013). In contrast to SG-10 and SG-12, SG-11 feels what matters to her is not whether the NAS is part of the civil service or a statutory board but the role of NAS. She claims that NAS has the “expertise” in records management and archives preservation, and that she will still approach NAS for “guidance” and “look up” to NAS, even though the NAS is technically not part of the civil service (February 21, 2013).

There appears to be no consensus on the ideal organizational placement of the NAS. SG-

1 is of the opinion that the NAS should be an independent entity or organ of state, reporting directly to Parliament (February 22, 2013). She recognizes that the NAS is a very small entity within the government, but prefers that the national archives remain a separate entity by itself. She laments that if the NAS becomes a statutory board its resources will be pulled in all different directions based on the priorities and agendas established by the Ministry and the statutory body the archives directly reports to. SG-1 uses the metaphor of a sparrow to describe the ideal organizational placement of the archives as an independent entity (February 22, 2013). She explains,

To be an organ of state is like what ... said. Even though you are a sparrow, you have all the organs. And you can fly... Our future is never ever secure in the archives.... The sparrow has heart, kidney everything. It has brains – bird brain. But it still has entity by itself and it can fly. So, no matter how small you are, you are still an entity by yourself... We cannot fly as freely as we want to *lah* [a slang word used in Singapore to punctuate a statement.] We always *hatam* [Malay word meaning “hit”] a ceiling and then take a look, look a bit dazed, see where we go and *hatam* again. Look a bit dazed, see where we go. That kind of effect *lah* [referring to the current organizational placement of the archival institution.] (February 22, 2013)

In contrast with SG-1, SG-3 feels that there are opportunities for the NAS to leverage under the new reporting structure. For example, NAS can tap into the NLB’s experience on digital preservation, its IT infrastructure, and its financial capacity (SG-3, February 15, 2013). SG-3 is of the opinion that the NAS must put up a business case and profile itself more aggressively if the institution wants more funding and resources (SG-3, February 15, 2013). However, SG-12 expresses her apprehension of the legislative transfer of the NAS to the NLB. SG-12 believes

that the real litmus test will be as to whether the archives and the library can achieve “real integration” (February 15, 2013). She categorically states that the library and the archives profession “serve different purpose” owing to the “differences in principles, and the methodology” and views the NAS’ organizational placement with NLB as a step in the wrong direction (February 15, 2013).

4.2.10.4 The Reporting Structure of the National Archives is Influenced by Its Dual Role in Preserving Public and Private Records [Canada and Singapore]

One of the sub-themes which emerge from the data is that there are interviewees from Canada and Singapore who feel that the archives should be part of the cultural or heritage portfolio because of the dual role of the national archives in preserving both public and private records. Both CA-1 and CA-9 subscribe to the belief that LAC has the “cultural side” (CA-9, June 18, 2013) and the “government records side” (CA-9, June 18, 2013) and thus, they are not in favor of LAC reporting to TB. CA-1 thinks that placing LAC under TB would be “dangerous” because it would result in LAC having closer links with the “machinery of the bureaucracy” and being in “grave danger” of losing its role in acquiring and preserving private records (July 3, 2013).

In Singapore, both SG-3 and SG-2 view the role of the archives in preserving public and private records as being complementary. SG-3 feels that there may be issues if the NAS reports to the Prime Minister’s Office because the archives still have a cultural role to play in terms of preserving private records and promoting awareness of Singapore’s heritage (February 15, 2013). SG-2 claims that the legislative transfer of the NAS has not resulted in a huge impact on public records because it is an area that NAS has “guarded very jealously” (March 8, 2013). She acknowledges that there is a need to “iron out large duplication” between the national archives

and the national library because the definitions of “public records” and “library materials” are “crafted very widely” (March 8, 2013). In addition, the *NLBA* states that the Board “may acquire by purchase, donations, bequest or otherwise any document, book, or other material which, in the opinion of the Board, is or likely to be of national or historical significance.”³³⁸ Such a “catch-all” phrase in the archival legislation means that the national archives has a role in acquiring private records.

The dual role of the national archives in acquiring and preserving public and private records thus indirectly influences the perception of interviewees on the ideal organizational placement of the national archives in the government. Interviewees recognize that the national archives cannot be too closely associated with the activities of the government because this might adversely undermine the cultural role of the archives.

4.2.10.5 The Lack of Sanctions for the Destruction of Public Records is Symptomatic of the Perceived Low Status of the National Archives within the Government Hierarchy and the Low Status Accorded to Records Management

Interviewees from all the three countries emphasize the lack of statutory provisions within the archival legislation to prosecute public officials who destroy or remove public records. The lack of sanctions in the legislation is epitomized by the statement from UK-1. She states,

This thing about enforcement powers are difficult – we don’t have any teeth, if somebody turns around and say, ‘ we are not doing it’, - there is not much that we can do, partly because we need to keep working with these people and partly because they can ignore it.
(April 10, 2013)

³³⁸ *National Library Board Act* (Cap 197, 2014 Rev Ed Sing), s 14a(2h) [*NLBA*].

The data from the interviews reveal that the lack of sanctions in the archival legislation for the destruction of public records is a symptom of a much larger issue, which is the perceived low status of the national archives within the government hierarchy and the low status accorded to records management. CA-1 admits that most archivists recognize that the archival legislation is “very strong” because departments have to refer to LAC to identify records that are of archival value (April 10, 2013). However, CA-1 expresses her doubts as to whether LAC should take on the role of stating that the department “violated the Act” by destroying records without the archivist’s permission because LAC is “very, very low in the chain of command” (April 10, 2013). Similarly, UK-14 points out that a number of the departments that TNA is dealing with are “much bigger and more politically connected” than TNA (April 11, 2013). SG-9 also raises the issue of the difficulty of prosecuting a department should it choose not to comply with the archival legislation. If the departments destroy public records without seeking the approval of the national archives, there was “very little possibility of prosecution being launched” since the statutory provision regarding the destruction of public records are meant more for wilful acts of destruction (May 15, 2013). SG-9 questions whether the NAS is prepared to “prosecute a Minister” given its current organizational placement within the government hierarchy (May 15, 2013).

Interviewees observe that there are difficulties in prosecuting a public officer for the destruction of public records. Such difficulties are partly a manifestation of the low status accorded to records management in the public sector. For example, public servants provide a dollar value to office furniture and IT equipment but there is no dollar value tied to the theft or loss of public records (CA-3, June 20, 2013). SG-8 argues that the work of a registry is not on

the “dashboard” of senior management and that it is associated as a “backend process” or as a “housekeeping activity” (March 11, 2013).

There are also interviewees from Canada and Singapore who argue that active engagement with departments negates the need to impose sanctions in the archival legislation. For example, CA-4 argues that relying on prosecution is a “very narrow view of how legislation is applied” (June 28, 2013). She proposes a number of options including bringing to the TB’s attention records that are at risk of being damaged or destroyed and relying on “strong persuasion” with departments (CA-4, June 28, 2013). The premise of CA-4’s argument is that LAC is in the “environment of public servants who are trying to do their job” and that these individuals “may never understand the rules but they are not a disobedient lot” (CA-4, June 28, 2013). SG-2 also argues that there is a need to “think less about compulsion and more about working together.” SG-2 states that the law is useful in terms of acquiring records such as recordings from the private sector, where there is “no hold” on them (March 8, 2013). Section 14I(1) of the *NLBA* states that “the producer or distributor of a recording, shall, within 6 months after a request in writing is made by the Board, provide without charge the Board with a copy of the recording in such form as may be specified in the request.”³³⁹ If the producer or distributor fails to provide a copy of the recording to the NLB, then they could be liable to a “fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.”³⁴⁰ SG-2 in explaining the difference between the use of penalties for private broadcasters and the lack of penalties for the unauthorized destruction of public records states,

³³⁹ *National Library Board Act* (Cap 197, 2014 Rev Ed Sing), s 14I(1) [*NLBA*].

³⁴⁰ *Ibid.*, s 14I(2).

For private organisations [referring specifically to private broadcasters], you can charge them and fine them. But for government, you have the IM route - to say that [they] will obey the IM. (March 8, 2013)

In other words, SG-2 perceives the IM to be an effective tool for the public sector because there are “disciplinary consequences” and that there is no need to retort to penalties in the archival legislation to govern the management of public records (March 8, 2013).

4.2.10.6 The Role and Ability of the National Archives to Influence Records Management is Dependent on the Political and Social Context

Interviewees from the three countries stress the importance of understanding the political and social context in which the national archives and the archival legislation operate. UK-2 stresses the importance of understanding the larger context of how each country manages records and archives (April 19, 2013) while SG-2 argues that one “can’t transplant every single idea that emanates from somewhere to every other country in the world” (March 8, 2013).

In UK and Canada there is a great emphasis on openness and transparency, which supports recordkeeping initiatives. In the UK, the change to the 20-year rule under the *CRGA*, which enables the transfer and release of records when they are 20 years old, is a result of the government’s transparency agenda. The Lord Chancellor and Secretary of State for Justice states that the 20-year rule will “provide greater openness and accountability, strengthening democracy through more timely public scrutiny of government policy and decision-making.”³⁴¹ Another aspect of the transparency agenda is open data, “improving the quality and quantity of data”

³⁴¹ UK, HC, *Written Ministerial Statements*, col 85WS (13 July 2012) (Mr Kenneth Clarke).

provided by the government and making them accessible to the citizens.³⁴² UK-14 highlights one major challenge with the open data initiative and elaborates,

...Some of the politicians themselves are more interested in the open data agenda – publishing open data sets and calling that transparency, which it is, but it is only a part of it rather than in any long term transparency and accountability that we do with archives in the public records system. (April 11, 2013)

UK-14's statement illustrates that politicians equate open data initiatives with making datasets publicly available, whereas archivists are concerned with ensuring accountability and preserving the authenticity of records over time. Nevertheless, instituting controls for the management and preservation of records to support decision making supports transparency, accountability, and the open government agenda.

Similarly, Canada's commitment to an action plan on open government aligns with records management as it promotes the "availability of high quality, authoritative information, ultimately enabling departments to be more responsive and accountable to Canadians."³⁴³ The *Directive on Open Government* states that "strong information management practices are the cornerstone of the Government activities."³⁴⁴ The directive also supports other policy instruments issued by TBS, including the *DRK* and the *Policy on Information Management*. CA-13 notes that there has been an evolution in thinking in terms of viewing information resources as "strategic assets," because of an increase in emphasis on accountability and open government (June 26, 2013). As a result, LAC's work on recordkeeping and disposition has become more visible within the government.

³⁴² UK, Cabinet Office, *Open Data Strategy* (London: Knowledge and Information Unit, 2012), para 6.1.

³⁴³ Treasury Board of Canada Secretariat, *Directive on Open Government*, 2014, para 3.3

³⁴⁴ *Ibid.*

In contrast to UK and Canada, Singapore has a more restrictive policy in terms of access to information and records. For example, Singapore does not have a FOI legislation. The Prime Minister of Singapore, who is not in favor of a FOI legislation, has expressed his concern that the legislation “will lead to more opaqueness and avoidance of records” and that “a lot of things are not going to be written down” (Yong, 2013). The lack of written documentation is attributed to the fear that the information will be made public. Social commentators like Ho Kwon Ping also question the viability of implementing a FOI within the Singapore context. Ho acknowledges that the FOI supports the system of checks and balances and has “redressed information asymmetry” in Western democratic countries but “exacerbates the adversarial relationship between civil society and government” (Ho, 2015). Ho implies that the FOI legislation may not be entirely applicable to the Singapore context since it “does not encourage a collaborative governance style” (Ho, 2015). SG-9 points out the different societal values between Singapore and other countries that have a fully developed FOI regime. She comments:

I am just wondering how useful the UK experience is to us [Singapore]. There they have very different values of government. Theirs is an FOI regime, which they see as important for transparency and accountability of an elected government. Ours is an OSA [*Official Secrets Act*]³⁴⁵ regime, mainly for political considerations (SG-9, April 8, 2013).

SG-9 asserts that the absence of substantial change from the previous *NHBA* to the current *NLBA* is indicative that “the value system has not changed” and that the value system reflects the need to protect the confidentiality of information (May 15, 2013). Although NAS has taken steps to declassify records in its custody, it is still constrained by a culture that is protective of its information. As such, the *NLBA* states that access to records is “subject to any conditions

³⁴⁵ *Official Secrets Act* (Cap 213, 2012 Rev Ed Sing).

or restrictions imposed with the authority of the public office from which the public archives were acquired.”³⁴⁶ There is also the recognition that the value system in Singapore is not static and that Singapore appears to be at a “crossroad” (SG-2, March 8, 2013). If there is an evolution or change in the value system, the archival legislation will correspondingly change to reflect the new values.

4.3 Summary

This chapter has highlighted the major themes discerned in the interviews that are common to the three countries and has emphasized aspects that are unique to specific countries. The chapter has situated the analysis of the pieces of archival legislation in the UK, Canada, and Singapore by examining the provisions in the archival legislation, the relationships with other related pieces of legislation, regulations, and policy instruments, and the complexities involved in making statutory amendments to the archival legislation. As the archival legislation operates within a particular socio-political and cultural context, the chapter analyzed how the perceived institutional relationships among various players in the government and interpersonal relations between archivists and records professionals can both enable and constrain the effective delivery of a records management program. The chapter has examined how the role and reporting structure of the national archives affects their scope of influence in records management, and has discussed how the larger political and social context of the country can align with the implementation of a records management program. The ten themes presented in this chapter center on three thematic areas. The first area comprises the statutory provisions of the archival legislation and the relationship between the archival legislation and other records-related legislation, regulation, directives, policies, codes of practice, standards, and guidelines. It is

³⁴⁶ *National Library Board Act* (Cap 197, 2014 Rev Ed Sing), s 14E(2)(a) [NLBA].

supported by the themes under sections 4.2.1, 4.2.2, 4.2.3, 4.2.4, and 4.2.6. The second area is constituted by the organizational culture as manifested by the dynamics between the national archives and public agencies, on the one hand, and the interpersonal relationships between the archivists and records managers, on the other hand. It is underpinned by the themes under sections 4.2.5, 4.2.7, 4.2.8, and 4.2.9. Finally, the last thematic area covers the role of the national archives in relation to records management and the national archives' reporting structure within the government. Section 4.2.10 supports the last thematic area. The next chapter will discuss the results presented in the broad thematic areas in light of the literature and the research questions.

Chapter 5: Discussion of Findings and Conclusion

This chapter elaborates upon the responses to the research questions and related findings. It discusses the significance of the study, its limitations, and its implications in relation to theory, practice, and future research. It then summarizes the key findings and provides some concluding thoughts.

5.1 Discussion of Findings

The findings of this study are discussed in relation to three thematic areas: (1) the statutory provisions of the archival legislation and the relationship between archival legislation and other normative sources; (2) the organizational culture as manifested by the dynamics between the national archives and public agencies on one hand and the interpersonal relationships between the archivists and records managers on the other; and (3) the role of the national archives with regard to records management and the national archives' reporting structure within the government. In addition, research question 3 is addressed through a discernment process and a meta-analysis of the thematic areas. These areas are also discussed in relation to the literature review and theoretical perspectives.

5.1.1 Research Question 1

To what extent and how effectively does the existing archival legislation in the UK, Canada, and Singapore, address issues related to the management of government records?

This question has been addressed by the literature review in Chapter 2 and linked thematically to the statutory provisions of archival legislation and the relationship between archival legislation and other normative sources. As discussed in Chapter 2 and illustrated in Chapter 4, archival legislation in the UK, Canada, and Singapore does not address all aspects relating to the comprehensive management of records.

In the UK, archival legislation is primarily concerned with the selection and appraisal of records, including determining which records are to be acquired by the archival institution and which records are of no significant value for acquisition. The *PRA* was a product of a paper-based environment. It was conceived during the post-World War II period, when the use of the typewriter and the duplicator resulted in the creation of voluminous records. Initially, an intent of archival legislation was to address access to public records by stipulating a time frame after which they will be open to public consultation. However, the statutory provisions relating to access to public records were subsequently repealed by the 1967 *PRA* and the *FOIA*. As a result, public access to records is primarily addressed by the *FOIA* rather than by the archival legislation.

There have been no significant changes in the archival legislation since then, even considering the amalgamation of the PRO with other public bodies to form TNA. The merger of other public bodies with TNA, which occurred between 2003 and 2006, was effected through a Royal Warrant, by administrative action, and also by delegated legislation, entitled *The Transfer of Functions (Statutory Instruments) Order*. Even the change in the reporting structure of TNA from the MOJ to the DCMS was effected through delegated legislation, entitled *Transfer of Functions (Information and Public Records) Order (Transfer Order)*, rather than by making substantive changes to the archival legislation. In contrast to the UK, archival legislation in Canada and Singapore was amended due to mergers and changes in the organizational placement of the national archives, rather than to address specific issues relating to the management and preservation of records. While there was an attempt to harmonize the terminology used by the archives and the library community in Canada, there was no such attempt in Singapore. For example, the term “documentary heritage” was introduced in the *LACA* to refer to both

publications and records.³⁴⁷ In Singapore, the tight deadline for the transfer of NAS to the NLB essentially meant that most of the specific statutory provisions relating to NAS under the previous *NHBA* were simply copied over to the *NLBA*.

Archival legislation from all three countries does not adequately address the management of records, particularly during the creation and maintenance stages. Archival legislation thus needs to operate in tandem with other records-related legislation and normative sources. The metaphor of a patchwork, as discussed in Chapter 4, best describes how the various pieces of legislation and normative sources operate to address issues relating to the creation, maintenance, disposition, and access to records. It was Tyacke (2006) and an interviewee cited in Chapter 4 who used the analogy of a patchwork to make reference to records-related legislation working with the archival legislation. A patchwork can be a well-made piece of embroidery, with the various pieces tightly sewn together to form a harmonious and enduring tapestry. But a patchwork can also be a piece of poorly executed embroidery, with the various pieces not tightly woven to each other. Normative sources, if working together harmoniously, can complement each other to address issues relating to the management of records. However, the research conducted by this author demonstrates that, although there is a hierarchy of relevant pieces of legislation and normative sources addressing the management and preservation of records, there is still a lack of coherence in the overall legislative framework. A patchwork, with “too many gaps, too many holes” (UK-11, April 25, 2013) can result in lack of clarity and inconsistencies in terminology as well as in how the archival legislation and other normative sources apply to specific government bodies. For example, in the UK, there are inconsistencies in the definition of a record between the *PRA* and the *Section 46 Code of Practice*. In Canada, there are

³⁴⁷ *Library and Archives Canada Act*, SC 2004, c 11, s 2 [*LACA*].

inconsistencies in the definition of a record between the *LACA* and the *DRK* and there is a need to harmonize terms such as “record,” “information resources,” “historical or archival value,” and “information resources of enduring value.” In Singapore, there is a need to harmonize the use of the terms “public records,” “electronic records,” and “data” as used in the *NLBA* and *IM8*.

The archival legislation and normative sources in the three countries do not adequately address the obligation of government to create accurate, reliable, and authentic (i.e. trustworthy) records. In the UK and Canada, there are concerns about the prevalence of “sofa government”³⁴⁸ and “oral culture”³⁴⁹ in government. For example, there was a well-publicized case of a former Education Secretary in the UK, Michael Gove,³⁵⁰ using a private email account named “Mrs. Blur” to discuss government matters with his advisers. Gove claimed that the information from his private email account was exempted from the *FOIA*. It was also discovered that the special advisers from the Department of Education “had been encouraging colleagues to use private email accounts to circumvent FOI requests [because] it has been thought that if government email accounts were not used, FOI legislation would not apply” (Wintour, 2011). Subsequently, the Information Commissioner published guidelines which state that “all information which is held by someone who has a direct, formal connection with the public authority is potentially subject to FOIA regardless of whether it is held in an official or private email account.”³⁵¹ Most

³⁴⁸ According to Savoie (2008), the term “sofa government” was first coined by a journalist in the UK in reference to the informal nature of decision making taken by Cabinet Ministers and the lack of documented minutes (p. 427). See also Brian Wheeler, “Curtains for Blair’s sofa cabinet” *BBC News* (15 July 2004), online: BBC News <http://news.bbc.co.uk/2/hi/uk_news/politics/3895921.stm>.

³⁴⁹ House of Commons, Standing Committee on Canadian Heritage, *Bill C36 – An Act to Establish the Library and Archives of Canada, to Amend the Copyright Act and to Amend Certain Acts in Consequence* (10 June 2003) (Chair: Clifford Lincoln).

³⁵⁰ Michael Gove was appointed Lord Chancellor and Secretary of State for Justice, in May 2015. See UK Government, *Lord Chancellor and Secretary of State for Justice*, online: <<https://www.gov.uk/government/people/michael-gove>>. Subsequently, in September 2015, the sponsoring department of TNA and ICO changed from MOJ to DCMS.

³⁵¹ UK, Information Commissioner’s Office, *Official information held in private email accounts – Freedom of Information Act*, (London: ICO, 2011), p. 2.

recently, the Ministerial Code issued by the Cabinet Office specifies that “Ministers must record in writing what action had been taken, and provide the Permanent Secretary and the independent adviser on Ministers’ interests with a copy of that record.”³⁵² Although this is a step in a positive direction, such an obligation to create and maintain trustworthy records should be included in the archival legislation and extended to all public bodies. As discussed in Chapter 4, *Section 46 Code of Practice* encourages public authorities to stipulate in their records management policy the obligation of individuals to document their work as part of the business activities of the authorities. However, a code of practice does not have “statutory force” (Coppel, 2010, pp. 371-372) and is considered to be “discretionary” (UK-11, April 25, 2013). The *Civil Service Code* also does not explicitly state that civil servants must create records.

In Canada, previous and current Information Commissioners have emphasized the need to institute a legal obligation for the government to create records, as discussed in Chapter 4. More recently, federal, provincial, and territorial Information and Privacy Commissioners have issued a joint resolution urging their respective governments to “create a legislated duty requiring all public entities to document matters related to their deliberations, actions and decisions.”³⁵³ They also have asserted the importance of establishing a legislative requirement to create records so that there is a “full accurate and complete record of important business activities” and that records “remain authentic, reliable and easily retrievable when subject to access to information requests.”³⁵⁴ In Singapore, the underlying assumption in the *Government IM* is that public officers have already created the records in the first place. However, unlike

³⁵² UK, Cabinet Office, *Ministerial Code*, (London, Cabinet Office, 2015), para 7.4.

³⁵³ Office of the Information Commissioner of Canada, *Statement of the Information and Privacy Commissioners of Canada on the Duty to Document*, online: < http://www.oic-ci.gc.ca/eng/resolution-obligation-de-documenter_resolution-duty-to-document.aspx>.

³⁵⁴ Office of the Information Commissioner of Canada, *Background on the Duty to Document*, online: < http://www.oic-ci.gc.ca/eng/communique-de-presse-news-releases-2016_4.aspx>.

Canada and the UK, there are concerns among politicians in Singapore that the freedom of information legislation will result in a chilling effect and greater opacity, as civil servants will be reluctant to document their decisions. This is discussed in Chapter 4 and in section 5.1.3.

Chapter 2 outlined how early archival theory was based on Roman law, which eventually spread to other parts of the world as the common law (*ius commune*). Over time, the archival legislation has not been able to keep up with changes in the recordkeeping environment caused by the advent of digital technologies. This author postulates that the legislation also began to depart from some of the core archival principles and concepts enshrined in the juridical norms. Chapter 2 mentions that the Justinian Code has specific rules on assessing the authenticity of records. However, as discussed in Chapter 4, the authenticity of records is not adequately addressed in the archival legislation. This is because there is an implicit assumption that the records are authentic once they are transferred to archival custody. Such an assumption needs to be questioned, particularly in the digital environment where multiple copies of records abound. There are situations where departments have transferred digital records to archival custody but also kept copies for their reference. The national archives may also reformat records for preservation and access. While the national archives fulfils the role of a trusted custodian and has the authority to certify that the record is a true or authentic copy, this does not imply that the certificate of authentication confers authenticity on a record. “Clearly, the archivist cannot certify that something is a copy of an authentic record (neither could s/he in the paper environment), but s/he can certainly certify that something is a true or authentic copy of whatever the archives holds, authentic or not” (Luciana Duranti, Email communication, January 5, 2016). However, an archivist can attest that a record is authentic by providing “documentation relating to the manner in which [the archives] has maintained the records over time as well as the manner in which it

has reproduced them” (InterPARES 1, 2001, p. 20). In other words, the archival institution has to take measures to assess the authenticity of records during the appraisal stage, at the point when the records are transferred to archival custody, and every time the records are reproduced or reformatted for the purposes of preservation and access. Some interviewees in this study have associated the production of certification and the use of authentication technology with the maintenance of the authenticity of records over time. Consequently to minimize this sort of misunderstanding, archival legislation should address the authenticity and the authentication of records in separate provisions.

Archival legislation, in all three countries considered by this dissertation, is notably silent about the appraisal of records, even though appraisal is a core archival function. In the UK, archival legislation addresses the responsibilities of the creating department and of the national archives in the selection and preservation of records. However, there is no definition of the term “selection” as used in the legislation. Arguably, one can rely on a dictionary definition of the term “selection” but there is a technical component associated with terms such as “selection” and “appraisal” used by the archival community and it is best to define them in archival legislation, rather than to rely on the dictionary meaning. In Canada, changes in appraisal methodology are addressed at the level of the Disposition and Recordkeeping Program and its supporting toolkit. In Singapore, appraisal of records, though not mentioned in the archival legislation, is dealt with by means of guidelines. In Canada and Singapore, archival legislation states that departments should seek permission from the national archives before destroying public records. Such a statutory provision assumes that appraisal of records only takes place at the end of the lifecycle, when records become inactive, although appraisal of records, particularly in the digital environment, should begin during the active stage of the record’s lifecycle, thereby enabling

archivists to obtain documentation about the recordkeeping and technological environment of the creating agency (InterPARES 2001; Hackett, 2007).

Another limitation of the existing archival legislation in the countries under consideration is that it states that records should be transferred to archival custody several decades after they become inactive. This lengthy time-frame for the transfer of records is not an effective strategy to address the management of digital records, whose preservation requirements should be “incorporated and manifested in the design of record-making and recordkeeping systems” (Duranti, Suderman, & Todd, 2008, p. 19). In the UK, it was acknowledged that TNA and the creating departments have been overwhelmed by the bulk transfer of paper records when the reduction of the transfer time from 30 years to 20 years was implemented. There are also concerns about the sensitivity review of records, which is due to take place in 2017, as discussed in Chapter 4. Sir Alex Allan noted that sensitivity review of digital records would be more time consuming compared to analogue records because of the sheer volume of records, and that the “physical effort of scanning documents on a screen would reduce the productivity of sensitivity reviewers significantly.”³⁵⁵ The preoccupation with handling the deluge of paper records resulting from the reduction of the transfer timeframe diverted the attention and resources of TNA from formulating effective strategies for the preservation and access of digital records. Creating departments and TNA have separately explored the use of e-discovery and data analytics tools and evidenced a need for a “coordinated approach across departments.”³⁵⁶ In Singapore, the definition of public archives as records with “more than 25 years” of “national or historical significance” which “have been transferred to the Board or to such place as the Board

³⁵⁵ Alex Allan, *Review of Government Digital Records*, (August 2015), para 76, online: Government of UK < https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486418/Report_-_Digital_Records_Review.pdf>.

³⁵⁶ *Ibid*, paras 36-38.

may from time to time determine” is limiting.³⁵⁷ This is because it conceptually divides the management of active and inactive records and reflects the mindset of the analogue environment, where preservation of records is typically addressed at the end of the lifecycle, rather than during its early stages.

5.1.2 Research Question 2

How do archivists and records managers in the UK, Canada, and Singapore perceive the current archival legislation, and how does this perception affect the way they interpret and apply the legislation in the management and preservation of records?

- a) What are the perceptions of archivists and records managers in the UK, Canada, and Singapore on the adequacy of the archival legislation in providing effective controls for the management of records?
- b) How do archivists and records managers in the UK, Canada, and Singapore deal with the perceived weaknesses/strengths of archival legislation in their respective countries?
- c) How do the perceived roles of the national archives in the UK, Canada, and Singapore affect the ability of each country’s national archives to implement a records management program in their respective governments?
- d) How does the reporting structure of the national archives in the UK, Canada, and Singapore, and attitudes towards this structure, affect the ability of each country’s national archives to implement a records management program in their respective governments?

Research question 2 is discussed based on the three thematic areas outlined in section 5.1. Archivists and records managers have common and varying perspectives on the adequacy of the archival legislation for managing and preserving records. A metaphor which aptly describes the

³⁵⁷ *National Library Board Act* (Cap 197, 2014 Rev Ed Sing), s 2 [NLBA].

gap between what the law stipulates and what archivists and records managers perceive it stipulates is that there is a gap between the letter and spirit of the law, as highlighted in Chapter 4. According to the *Black's Law Dictionary*, the letter of the law is the “strictly literal meaning of the law, rather than the intention or policy behind it” (Garner, 2014, p. 1045) while the spirit of the law is the “general drift of the statute” (Garner, 2014, p. 1619). In the UK, some interviewees perceive that the definition of “record” in the archival legislation assumes that every information is a record if neatly stored in a folder. Arguably, one could state that the definition of record in the *PRA* makes the assumption that everything is a record if it is also “conveying information by any other means whatsoever.”³⁵⁸ However, the interviewee’s interpretation goes beyond the text of the legislation by evoking a mental image of materials organized in folders, when in reality the definition in the legislation includes materials distributed in disparate systems. Thus, the perception is that archival legislation lags behind changes in technology and is unable to address issues relating to the management of digital records. There are also interviewees who have closely examined the text of the legislation and feel that the spirit of the legislation is still applicable to present times because the definition of a record is broad enough to encompass born-digital records. In addition, there are different interpretations of the roles and responsibilities of departments as stated in the *PRA*. Some interviewees claim that the provisions of the *PRA* state that departments fulfil their responsibilities for the selection and preservation of records under the “guidance” of TNA,³⁵⁹ implying that departments are generally left on their own to manage their records. Even though TNA produces codes of practice and guidelines to fill the gaps in archival legislation, departments are ultimately responsible for managing their records. Other interviewees, however,

³⁵⁸ *Public Record Act*, 1958 (UK), 6 & 7 Eliz II, c 51, s 10(1) [*PRA*].

³⁵⁹ *Public Record Act*, 1958 (UK), 6 & 7 Eliz II, c 51, s 3(2) [*PRA*].

believe that the text conveys the spirit of a shared responsibility between TNA and the departments and that both parties need to take each other's views into consideration. There is also a perception that the lack of statutory provisions in the *PRA* on the roles and responsibilities of departments is an indication that the legislation is of very little relevance to departments. Furthermore, archival legislation is viewed as governing archives, being primarily concerned with the end of the lifecycle, that is, with the selection and preservation of archives. Given such a perspective on the archival legislation, some interviewees consider the *FOIA* as filling up the legislative gap about records management because it provides the legislative basis for *Section 46 Code of Practice* and *Section 45 Code of Practice*. These two codes of practice govern the creation, maintenance, disposal of, and access to, records.

In Canada, the tension between the letter and the spirit of the law is epitomized by the interviewees' perceptions regarding the objective of the preamble. As noted by Sullivan (2008), the preamble provides immediate context to the legislation by stating the overall purpose of the legislation and the legislative values. While there are interviewees who believe that the preamble encapsulates the spirit of the legislation by specifying the common vision of LAC, and embraces the common values of the archival and library professions, others have pointed out that the members of the professional community believe that the statutory provisions in the *LACA* do not adequately support the spirit of the preamble. Consequently, the preamble is perceived as a source of both strength and weakness to the mandate of LAC.

According to Sullivan (2008) and Ricoeur (1976, 1981), analyzing a text, such as legislation, involves analyzing its context. There are many layers of context to be analyzed. For example, some interviewees focus on sections 12 and 13 of the *LACA*, which provide the framework for the management and preservation of government records. The relevant sections

basically state that no government record can be destroyed without seeking the approval of LAC and that the transfer of records that are of “historical or archival value” is based on agreements between LAC and the relevant creating departments. However, although interviewees acknowledge that the archival legislation provides direction to the work of LAC, they have also pointed out that other related pieces of legislation, such as the *Ending the Long-gun Registry Act* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, override the statutory provisions in the *LACA*. These interviewees consider these exemptions from the *LACA* as a weakness. Furthermore, there are interviewees who focus on the statutory provisions relating to the objects and powers of LAC but feel that the other statutory provisions within the Act do not support the overall authority of LAC. For example, one of the objectives of LAC is to “facilitate the management of information by government institutions.”³⁶⁰ However, to “facilitate” is perceived as a weak term, because it does not clearly specify the extent of LAC’s role in information management.

In Singapore, interviewees stress the importance of understanding the spirit of the legislation rather than focusing on its specific rules. There is a sense that *IM4L* and *IM8* incorporate the spirit of the archival legislation and essentially provide more concrete guidance than the archival legislation to departments on how to manage their records. In fact, some records managers admitted that they have not read the archival legislation, and one of them did not even know of its existence. They primarily relied upon the *IM4L* and *IM8* for directions on how to manage their departments’ records.

Interviewees from Canada and Singapore use the concept of a “bible” to illustrate their point regarding the perceived strengths and weaknesses of archival legislation. CA-1 refers to the

³⁶⁰ *Library and Archives Canada Act*, SC 2004, c 11, s 7(d). [*LACA*].

LACA as the Bible, as it provides the *raison d'être* of the archival institution (July 3, 2013).

Similarly, SG-12 compares the archival legislation to the Bible. She elaborates that it is a useful source because it defines the work of the archival institution, but it is not something that one needs to constantly refer to (February 13, 2013). SG-12 thus implies that the archival legislation has adequately captured the spirit of the functions of the archival institution, but it is more important to utilize other instruments for guidance than to rely on the archival legislation. The comparison of archival legislation with the Bible means that interviewees perceive archival legislation as an authoritative and definitive text which specifies the mandate of the national archives. The legislation is thus an enabling statute, as it assigns powers to the national archives to “carry out various delegated tasks” (Garner, 2014, p. 1634). However, such an enabling statute also limits the role of national archives in records management, as it does not adequately address issues relating to the creation and maintenance of records. Thus, in contrast to SG-12, SG-3 refers to *IM4L* and *IM8*, rather than to archival legislation, as the “Bible for the civil servants,” because it contains more prescriptive requirements on how to manage their records (February 15, 2013).

As discussed in Chapter 2, organizational culture can be analyzed through a multilevel perspective, which can be applied to this study. The micro level analyzes the individual interactions between archivists and records managers. The meso level examines interactions among groups of people, or more specifically the institutional relationships between the national archives and the creating agencies, and between the national archives and other agencies that have a vested interest in records management, such as the ICO in the UK and TBS in Canada. The meso level also looks at the reporting structure of national archives and the roles of national archives and other agencies in relation to records management. The macro level analyzes the

political and social context of each country. In addition, there are interactions among the elements from the various levels of analysis, which constitute parts of the position-practice relations – the “normative rights, obligations, and sanctions” (Giddens, 1984, p. 282) – and contribute to the institutionalization of social practices. The position-practice relations are mainly manifested at the meso level, in the form of the reporting structure of national archives within government, and the institutionalized roles and relationships between national archives and the departments. At the same time, such institutionalized roles and relationships at the meso level can be influenced by the micro level – the interpersonal relationships between archivists and records managers. Finally, the activities and relationships at the micro and meso levels are also influenced by the political and social context of each country on a macro level.

At the micro level, one strategy adopted by archivists and records managers to deal with the perceived weaknesses/strengths of archival legislation is to develop an interpersonal relationship with each other to complement the institutional relationship between national archives and departments. In all three countries examined in this dissertation, interviewees stress the importance of establishing a “strong human relationship” (CA-10, June 19, 2013), which is critical in forming a community of practice, and of discussing problems at a working level before issues escalate at the management level. These interpersonal relationships co-exist with the formalized rules expressed in archival legislation and other normative sources.

At the meso level, the national archives offer their expertise in recordkeeping and preservation to departments and, at the same time, leverage other influential departments that can play an enforcement role in information management. This is clearly seen in both the UK and Canada. The *PRA* does not provide TNA with regulatory powers to conduct an audit on information management assessment. Departments are thus not legally obliged to undertake the

information assessment program, and TNA cannot penalize departments if they do not meet specific standards. However, TNA encourages departments to undergo the information management assessment program as part of a risk analysis of whether the departments can “meet legal and policy obligations in relation to their information and records,” and of a “robust and independent assessment of an organisation’s information management capability.”³⁶¹ (p. 2). The data analysis in Chapter 4 revealed that there were “bruising discussions” between departments and TNA regarding the outcome of the information assessment exercise (UK-6, April 19, 2013). Such disagreements indicate that the departments were concerned about their performance in the information assessment program, because the report would be publicly available in TNA’s website and could potentially attract the attention of the media.

Besides offering expertise on recordkeeping to departments, TNA also worked closely with ICO on policy development relating to information management and on “co-ordination of audit and assessment work.”³⁶² The working relationship between TNA and ICO is formalized through a MOU, which outlines how the two organizations will “work together to achieve their separate and common goals” and this MOU is renewed every two years.³⁶³ Unlike TNA, which has no enforcement powers under the archival legislation, the ICO has regulatory and enforcement roles in the area of data protection. Section 41A(1) of the *DPA* allows the ICO to issue an assessment notice to a data controller for the purposes of conducting an audit and to “determine whether the data controller has complied or is complying with the data protection

³⁶¹ UK, The National Archives, *Information Management Assessment – A Review of Lessons Learned from the IMA Programme 2008-2014* (Crown copyright, 2015), p. 2.

³⁶² UK, *Memorandum of Understanding between the Information Commissioner and the Chief Executive of The National Archives/Keeper of Public Records* (2015), para 1.2.

³⁶³ *Ibid.*, para 1.1.

principles.”³⁶⁴ The *DPA* also enables the Information Commissioner to “lay annually before each House of Parliament a general report on the exercise of his functions under this Act.”³⁶⁵ Thus, TNA leverages the enforcement powers of the ICO by sharing the results of the information assessments, so that the ICO “may refer to these assessments in the Information Commissioner’s annual report to Parliament.”³⁶⁶ Additionally, the ICO can approach TNA to conduct an assessment on a public authority’s records management practices.³⁶⁷ In effect, the information assessment program is a form of what Giddens refers to as “informally applied sanctions” (Giddens, 1984, p. 24). Despite the advantages of TNA collaboration with the ICO, interviewees have pointed out that there were limitations on how the ICO can exercise influence with departments. This is because the ICO’s primary interest is not in records management but in matters relating to access to information and to breaches in the collection, keeping, and use of personal information. Therefore, unless specific issues relating to records management practices result in a failure to provide access to information or in breaches in data protection, the ICO is generally unable to take effective action against a department.

In Canada, LAC collaborates closely with the TBS, which is one of the central agencies in the federal government. One of the key responsibilities of the TBS is “setting management policies and monitoring management performance”³⁶⁸ through the Management Accountability Framework. This framework involves assessing and benchmarking departments’ and deputy ministers’ performance in specific areas such as information and financial management. Unlike TNA, which assesses the departments’ state of information management, LAC relies upon the

³⁶⁴ *Data Protection Act 1998* (UK), c 29, s 41A(1) [*DPA*].

³⁶⁵ *Ibid.*, s 52(1).

³⁶⁶ UK, *Memorandum of Understanding between the Information Commissioner and the Chief Executive of The National Archives/Keeper of Public Records* (2015), para 6.2.

³⁶⁷ *Ibid.*, para 6.4

³⁶⁸ Canada, Library of Parliament, *The Roles and Responsibilities of Central Agencies*, (Ottawa: Parliamentary Information and Research Services, 2009) at p. 7.

TBS to conduct the MAF and to make a decision as to whether departments comply with specific indicators relating to information management. In fact, the *DRK* states:

The Treasury Board Secretariat will monitor compliance with all aspects of this directive and the achievement of expected results in a variety of ways, including but not limited to assessments under the Management Accountability Framework, examinations of Treasury Board submissions, Departmental Performance Reports, audit results, evaluations, and studies.³⁶⁹

LAC plays an active role in establishing policies relating to records management and is the agency that authored the *DRK*. However, the *DRK* was not issued by LAC, but by the TBS, because the latter is in charge of the “general administrative policy in the federal public administration” and can make regulations “for the purpose of ensuring effective coordination of administrative functions and services among and within departments.”³⁷⁰ Chapter 4 discusses how the bifurcated responsibility of TBS and LAC in information management can result in a lack of clarity of roles between the two institutions. Despite such challenges, LAC has to turn to the TBS, because the TBS has more resources and capabilities to control departments when compared to LAC. In effect, the *FAA* provides the TBS with the authority to issue policies relating to recordkeeping and to assess departments’ level of compliance with the *DRK*, whereas the archival legislation does not empower LAC to play an enforcement role in recordkeeping. However, interviewees acknowledge the expertise of LAC employees, who are regarded as the “thinkers” in information management (CA-11, June 27, 2013).

In Singapore, NAS works closely with the Ministry of Finance to update the *IM4L*, and with the IDA to update the *IM8*, since the Ministry of Finance and the IDA coordinate with other

³⁶⁹ Treasury Board of Canada Secretariat, *Directive on Recordkeeping*, 2009, para 6.2.2.

³⁷⁰ *Financial Administration Act*, RSC 1985, c F-11, ss 7(1a) and 10(a) [*FAA*].

government agencies to update the relevant sections in the Government IM. Although NAS directly interacts with departments, there needs to be a greater level of engagement between NAS with the Ministry of Finance and the IDA on records management issues. One of the key Ministry of Finance's strategic objectives is to ensure "effective and efficient use of resources" and that government departments be "held accountable for the use of their resources."³⁷¹ As records management involves the systematic control and utilization of records to support decision-making and to promote accountability, NAS should leverage some of the Ministry of Finance's initiatives in government to fulfil their recordkeeping objectives. Recently, it was announced that the IDA and the Media Development Authority (MDA) are to be merged into one entity, the Infocommunications Media Development Authority (IMDA), effective April 2016. The merger aims to address the "converging infocommunications and media sectors in a holistic way" (Kwang, 2016). In addition, a new statutory body known as the Government Technology Organization (GTO) will be established with effect in April 2016 and will take over the functions of the IDA in the area of "digital transformation in the public sector," including robotics and big data (Kwang, 2016). In view of the upcoming restructuring exercise, it will be timely for NAS to collaborate with IDA and GTO, since both of these departments plan the roadmap for Singapore's information technology development. Consequently, it is in NAS's interest to find mutual areas of cooperation with these two departments to address the management and preservation of digital records.

This study shows that there can be tensions not only in the context of the same level of analysis but also when the elements from the different levels interact with each other. Though archivists and records managers feel that interpersonal relationships provide a foundation for the

³⁷¹ Singapore, Ministry of Finance, *Our Mission*, online: <<http://www.mof.gov.sg/About-Us/Our-Mission>>.

effective delivery of a records management program, when the institutions they work for imposes rules, these can affect interpersonal relationships, as happened at LAC, when it changed the existing portfolio system to a team-based approach. Previously, LAC archivists were in charge of specific departments and directly liaised with them. However, this close relationship changed with the move toward a team-based and liaison-centre approach. Records managers from the departments now have to contact the liaison centre, which in turn channels their requests to the relevant archivists. Some archivists and records managers feel that these new processes have undermined the face-to-face interactions and see themselves as placed in a “rigid box” (CA-14, June 25, 2013). In addition, there is a perception that the organizational changes in LAC and the increasing institutionalization of the operational processes have led to the erosion of interpersonal relations, thus undermining the effective delivery of a records management program.

In Singapore also, there are areas of tension due to the organizational restructuring of the NAS under the NLB. Some interviewees express their concern about archivists losing their professional identity, especially since the archives is a small entity compared to the NLB, which includes the National Library and public libraries. The current organizational structure of the NLB indicates that NAS comes under the National Library and Archives and that the Director of NAS reports to the Deputy Chief Executive and the Chief Librarian.³⁷² This internal reporting structure may cause NAS to lose professional integrity and identity. Although the National Library and NAS are maintained as two separate entities, there is ongoing restructuring of NAS’s operations, and this may influence the manner in which NAS conducts its records management program.

³⁷² Singapore, National Library Board, *Organisational Structure*, online: <<https://www.nlb.gov.sg/About/OrganisationStructure.aspx>>.

Furthermore, there are examples of complexities when the interests of the reporting Ministry or the government machinery differ from the perspectives of the national archives regarding the revision of specific provisions in archival legislation. These examples illustrate that organizational culture is not a unitary concept and it can be manifested at all levels: micro, meso, and macro.

At the meso level, the perceived reporting structure of the national archives and its role in records management can both enable and constrain the effective delivery of a records management program. In the UK, interviewees are generally supportive of TNA being organizationally placed within the MOJ, since the ICO reported to the same ministry. Moreover, being placed under the MOJ ensured an element of historical continuity, because the PRO used to report to the Lord Chancellor, who was a senior member in the government. As pointed out in Chapter 2, the role of the Lord Chancellor subsequently evolved, and he no longer holds the position as the head of the judiciary, nor does he hold the position of presiding officer in the House of Lords. The Lord Chancellor is now a Cabinet Minister for the Ministry of Justice. This position is somewhat similar to the Secretary of State for Culture, Media and Sport, which is also a Cabinet Minister position. Consequently, TNA did not report to the lower rank Minister. The main challenge is that the DCMS's main mandate is to "protect and promote the cultural and artistic heritage" of the UK.³⁷³ As the British Library and a number of museums also report to the DCMS, there is a possibility that the resources and priorities of TNA will be aligned to support culture and heritage activities. This is particularly so because TNA has assumed a leadership role in the archives sector, particularly after assuming the role of the Royal Commission on Historical Manuscripts. However, the presence of the ICO within the DCMS may mitigate the risk of TNA

³⁷³ UK, Department for Culture Media and Sport, *What We Do*, online: <<https://www.gov.uk/government/organisations/departments-for-culture-media-sport>>.

being directed to concentrate solely on the cultural and heritage aspects of archives. In addition, there is a corresponding shift in responsibility for government records management from the MOJ to the Cabinet Office. This means that TNA has to work not only with its reporting Ministry, the DCMS, but also with the Cabinet Office on records management issues. Although it is too early to assess the full implications of the new reporting structure on the implementation of records management programs, it will be challenging for TNA to work with a number of departments, including its own reporting Ministry, the DCMS, and two other departments that have a vested interest in records management – the ICO and the Cabinet Office.

In Canada, interviewees perceive the role of LAC in preserving both public and private records is one of the reasons why LAC is organizationally placed under the Department of Canadian Heritage. Interviewees do not like the idea of placing LAC under the Treasury Board, because they think that this would undermine LAC's role in acquiring and preserving private records. However, some interviewees have also raised concerns about the Department of Canadian Heritage's lack of interest in understanding the mandate of LAC with regard to records management, since the Department of Canadian Heritage is primarily interested in promoting cultural and heritage activities, such as celebrating the 100th anniversary of the First World War (CA-3, June 20, 2013).

Similarly to Canada, there is a lack of consensus in Singapore on the ideal organizational placement of the NAS, primarily because of its dual role in acquiring and preserving public and private records. Some interviewees have raised concerns about the status of NAS after being subsumed under the NLB, which is a statutory board. In Singapore, statutory boards are technically “not part of the civil service,” yet they have “more autonomy and flexibility in performing their functions as they are responsible for their law suits, agreements and contracts,

as well as the acquisition and disposal of property in their own names” (Quah, 2010, p. 42). Consequently, there is a perception among some interviewees that the NAS is too low in the hierarchy and lacks the political clout to exercise influence on the government. At the same time, the NAS also has to align its strategy to the directions established by the NLB and the Ministry of Communications and Information, and this can strain the manpower and resources of the NAS. While there are also concerns about whether the NAS can maintain its professional identity under the NLB, some interviewees believe that being under the NLB would allow NAS to collaborate on mutual areas of concerns, such as digital preservation. One notable characteristic of Singapore’s archival legislation is that the name of the national archival institution in Singapore has been gradually lost with the changes in reporting structure. The phrase “national archives” was included in the title of the first archival legislation, known as the *NARCA*, but “national archives” was lost under the *NHBA* and the *NLBA*. The absence of the words “national archives” or even “archives” in the current archival legislation leads to the perception that the identity of the archival institution has been undermined with the changes in the reporting structure.

At the macro level, the socio-political context that supports freedom of information laws and open government initiatives in the UK and Canada can strengthen records management initiatives. Despite the lack of a freedom of information legislation in Singapore, the national archives can leverage specific national initiatives, such as the need to support decision-making in territorial disputes with other countries. This will be discussed further in section 5.1.3.

Nevertheless, institutionalization of social practices as manifested at the micro, meso, and macro level is not static. For example, changes at the meso level, like the reporting structure of the national archives, can affect not only institutional relationships between the national archives

and departments, but also the interpersonal relationships – the micro level – between archivists and records managers. Internal processes and controls of the national archives on how they should interact with departments, and external arrangements between the national archives and departments that play an enforcement role in information management can also interact with each other and result in structural constraints over time. This is because such administrative decisions and arrangements can become institutionalized over time, affecting interpersonal relationships between archivists and records managers as well as influencing the archival system of the country. Finally, archivists and records managers are not “docile bodies” (Giddens, 1984, p.16) entirely helpless in the face of changes at the meso level, because their role as mediators can also influence the manner in which the archival legislation and other normative sources are operationalized.

5.1.3 Research Question 3

What are the similarities and differences among the UK, Canada, and Singapore with regard to factors that support and/or hinder the implementation of a records management program in the government? What are the reasons behind such similarities and differences?

One similarity among all three countries considered by this dissertation is that the national archives have aligned themselves with departments that have a common interest in information management to promote their records management program. This is illustrated by TNA’s MOU with ICO, and the Canadian *DRK*, which is written by LAC and issued by TBS. In Singapore, the NAS liaised with the Ministry of Finance and IDA to update the *IM4L* and *IM8* respectively. However, such a strategy also reflects weakness of the archival legislation. This is primarily because archival legislation is not about recordkeeping. It does not have any statutory provisions governing the creation and maintenance of records, apart from requiring that public

records need to be selected by the national archives and those of archival value transferred to the custody of the national archives. Consequently, the national archives in the three countries have to rely on a patchwork of other records-related legislation and normative sources to address the management and preservation of records. Joint responsibilities in recordkeeping and record preservation held by the national archives and the departments that have an interest in information management can result in collaboration constraint. This is because the national archives are reliant on other departments to play an enforcement role since they do not have the authority to do so under archival legislation.

Another area of similarity among the three countries is that their archival legislation serves mainly to empower the national archives to fulfil its mandate. This is particularly the case for Canada and Singapore, where the objectives and responsibilities of the national archives are clearly stated. In the UK, the archival legislation states the main responsibilities of the PRO, even though the PRO “now functions as part of The National Archives and the Keeper is also Chief Executive.”³⁷⁴ However, there is no consolidated piece of archival legislation outlining the various functions of the TNA, even with the amalgamation of various government bodies. As discussed in section 5.1.1, the close association of archival legislation with the national archives is both enabling and constraining. On one hand, it empowers the national archives to fulfil its statutory function. On the other hand, it is limiting because archivists and records managers are unable to decouple archival legislation from the national archives. This implies that any attempt to review archival legislation is framed in terms of strengthening the mandate of the national archives in records management. For example, some interviewees think that the lack of sanctions and penalties in archival legislation reflects the low status of the national archives in the

³⁷⁴ The National Archives, *Public Records Act –frequently asked questions* online: < <http://www.nationalarchives.gov.uk/information-management/legislation/public-records-act/pr-faqs/>>.

government bureaucracy. They expressed concern about how the national archives can enforce the legislation, particularly when they have to deal with departments that are more influential.

One key difference among the three countries is that the political and social context of UK and Canada support open government and transparency, which facilitate the implementation of a records management program. Despite the danger of associating open government and transparency with making data sets and information publicly available, there is a recognition that part of facilitating open government is to ensure the proper creation, maintenance, and preservation of trustworthy records. For example, one of the manifestos for open government in the UK is to “ensure the integrity, usability, and sustainability of government information.”³⁷⁵ There is even a call for the government to “enact a new Public Records Act that empowers The National Archives to lead on information management.”³⁷⁶ Similarly, in Canada, there is a recognition that “strong information practices” provide the “cornerstone” for open government initiatives.³⁷⁷ Furthermore, freedom of information legislation in both UK and Canada supports the records management programme since instituting controls on records can facilitate timely access to information. Both the *FOIA* in the UK and *AIA* in Canada have provisions on criminal offences for the deliberate attempt to conceal or destroy information requested for access. In contrast, Singapore has a restricted regime with regard to access to information. Mr. Lawrence Wong, the former Senior Minister of State for Communications and Information in Singapore, claims that other countries have “gone somewhat overboard with freedom of information legislation” and that this “has not always led to better governance.”³⁷⁸ He asserts that

³⁷⁵ UK Open Government Civil Society Network, *Open Government Manifesto*, online: <<http://www.opengovernment.org.uk/engage/open-government-manifesto/>>.

³⁷⁶ *Ibid.*

³⁷⁷ Treasury Board of Canada Secretariat, *Directive on Open Government*, 2014, para 3.3.

³⁷⁸ *Parliamentary Debates Singapore: Official Report*, vol 91 at p. 44 (10 March 2014) (Mr Lawrence Wong).

Singapore's approach "is not transparency for transparency sake" but "transparency that leads to good governance." The statements made by the Prime Minister of Singapore as revealed in Chapter 4, and the statement by Mr. Wong illustrate that the political culture of Singapore does not support the freedom of information legislation. There are however other ways in which the NAS can facilitate records management. For example, NAS had consistently stressed how records management can support government's decision-making and policies. This can be seen in the International Court of Justice case between Singapore and Malaysia relating to the sovereignty of Pedra Branca, where archival records identified and preserved by the NAS supported the legal team's argument (Jayakumar & Koh, 2009). The court gave weight to Singapore's claim because it had consistently maintained the island, such as conducting investigation of shipwrecks and granted permission to Malaysian officials to survey Pedra Branca.³⁷⁹ Such examples have been cited by the NAS to stress the importance of recordkeeping to departments.

Another notable difference among the three countries is that both the national archives of Canada and Singapore have a mandate to acquire and preserve public and private records. In contrast, TNA operate as the "official archive" for the government.³⁸⁰ As highlighted in Chapter 2, TNA also took on the "leadership role for the archives sector" (Kingsley, 2012, p. 138), but it does not acquire or preserve private records in its holdings. In fact, the Chief Executive Officer of TNA still keeps the title of Keeper of Public Records as stated in the *PRA*. To some extent, TNA's role as the custodian of public records explains why it is the only national archives among the three countries that conducts information assessment audits. However, the

³⁷⁹ The Hague Justice Portal, *ICJ: Judgement in the Malaysia/Singapore Case*, online: <<http://www.haguejusticeportal.net/index.php?id=9226>>.

³⁸⁰ The National Archives, *Our Role*, online: <<http://www.nationalarchives.gov.uk/about/our-role/>>.

information assessment program is considered a “voluntary” exercise.³⁸¹ There are also concerns as to whether TNA can effectively play a supervisory role on records management within government, as Sir Alex Allan has pointed out that TNA needs to have “higher-level backup within Whitehall.”³⁸² With the Cabinet Office taking the lead in records management and TNA providing expertise on records management, one can anticipate that the information assessment program will become an important exercise to benchmark departments’ performance in information management. Furthermore, TNA is the only national archives among the three countries that has a formal agreement with the ICO to address issues of mutual interest. TNA is thus able to address gaps in archival legislation by working with an authority that oversees access and protection of information, as supported by the *FOIA* and the *DPA*. In contrast to TNA, LAC relies on TBS to conduct an information management assessment as part of the MAF. It is TBS that assesses and monitors MAF results “to track progress on government-wide management priorities and transformative initiatives.”³⁸³ As LAC also has a role to acquire and preserve private records, the Department of Canadian Heritage is perceived as the most logical placement for LAC. However, this also limits the ability of LAC to play a more active role in information management, such as working with the Information Commissioner, because of the perception that LAC is a cultural and heritage department. In Singapore, there is currently no agency tasked with assessing a department’s level of compliance in information management. However, there are plans for NAS to audit public offices on the management of records by incorporating such a requirement in the *Government IM*. The archival legislation in Singapore

³⁸¹ Alex Allan, *Records Review*, (August 2014), para 14, online: Government of UK < https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370930/RECORDS_REVIEW_-_Sir_Alex_Allan.pdf>.

³⁸² *Ibid.*, para 16.

³⁸³ Treasury Board of Canada Secretariat, *MAF Assessment Process*, online: < <http://www.tbs-sct.gc.ca/hgw-cgf/oversight-surveillance/maf-crg/ap-pe-eng.asp>>.

specifically mentions that the NLB “shall conduct a records management programme for the efficient creation, utilisation, maintenance, retention, preservation and disposal of public records.”³⁸⁴ Although such an objective suggests that the NLB, and more specifically the NAS, is responsible for conducting and implementing a records management program in the government, such an objective is not supported by relevant statutory provisions governing the creation and maintenance of records, and there is a reliance on the *Government IM* to address these gaps in archival legislation. Furthermore, the organizational restructuring exercise in NAS suggests that the immediate priority is more on internal alignment of functions and operations within the NLB than on the collaboration between NAS and external agencies such as the GTO.

5.2 Significance of the Study

This study firstly contextualizes the way in which archival legislation is operationalized in each of the three examined countries. The study reveals that archival legislation does not operate in a vacuum and is not an independent force governing the management and preservation of records. It also shows how the archival legislation operates within each specific juridical-administrative context, for example, how it works in conjunction with other normative sources and in collaboration with other agencies within the government. It examines the provenancial context of each national archives as well as other related agencies that have a vested interest in records management. This study also provides insights into the socio-political context of each country where the national archives operates, which in turn influences how archival legislation is put into practice with other normative sources.

Secondly, this study attempts to fill a gap in the existing literature by examining how archivists and records managers perceive and interact with archival legislation in relation to other

³⁸⁴ *National Library Board Act* (Cap 197, 2014 Rev Ed Sing), s 14a(2d) [NLBA].

normative sources. It demonstrates the various conceptualizations of specific terms used in archival legislation, such as “record”. Furthermore, it reveals how archivists and records managers interpret and apply archival legislation when interacting with each other at the interpersonal and institutional levels.

Finally, this study highlights enabling and constraining aspects of archival legislation in the UK, Canada, and Singapore. The provisions in archival legislation enable the national archives to carry out their mandate and support the reproduction of the archival system over time. In addition, the work practices and the relationships between the national archives and other departments support the framework of archival legislation in relation to other normative sources, and such practices and relationships can become institutionalized over time. However, archival legislation also constrains the effective delivery of a records management program because it only addresses issues pertinent to the mandate of national archives, rather than wider concerns relating to the management and preservation of records in the government.

5.3 Limitations of the Study

One limitation of this study is that examination of the perceptions of archivists and records managers is limited to the interviewees who participated in the research. The findings thus relate to the experiences of these interviewees, their interaction with the archival legislation and other normative sources, and their views of the interpersonal and institutional relationships between the national archives and records-creating departments. However, the construction of themes and experiences of archivists and records managers together contribute to the existing body of research by elucidating how archivists and records managers put into practice archival legislation in fulfilling their mandate, and how they leverage other normative sources and

working relationships at multiple levels to compensate for what they perceive as gaps in the archival legislation.

Another limitation is that this study is confined to the period of data collection. Therefore, the perceptions of the interviewees may change based on new experiences and changes in their environment. For example, the recent changes in the reporting structure of TNA to DCMS and the restructuring exercise of NAS' operations may continue to affect organizational dynamics beyond the analysis of this study. Finally, the study is exploratory in nature and there are limitations in the generalizability of the findings to other countries in the Commonwealth. Despite this, the findings of this study can still be useful for a comparison with other studies on archival legislation in different countries.

5.4 Implications of the Study

This section will examine the implications of this study for archival theory, practice, and research.

5.4.1 Implications for Theory

This study largely utilized Ricoeur's theory of interpretation and Giddens' structuration theory, which can be useful theoretical perspectives on future studies that aim to examine archival and records-related legislation within a specific context. These two theoretical perspectives bridge the divide between normative and descriptive theories. They do not simply explain how the law ought to be by articulating the various components of a model archives law or describing how structures in the form of archival legislation shape recordkeeping practices. Neither do these two perspectives examine the provisions of archival legislation in isolation, or accord primacy to individuals' actions and interpretations of the archives law over that of various societal groups and institutions. In other words, archival legislation is not viewed as an

independent variable that affects the implementation of the records management program, but it is rather examined in a holistic manner. The rules specified in the archival legislation along with the various administrative and social relationships supporting the legislative framework are recursively reproduced over time and contribute to the institutionalization of social structures, which can both enable and hinder the manner in how archival legislation is operationalized.

This study shows how a multi-level framework from organizational research can provide a theoretical framework to explain the interactions of archivists and records managers at interpersonal and institutional levels, the context in which a national archives is situated within government bureaucracy, and the socio-political context of the country. There are avenues for change within the multi-level framework, which can also affect implementation of a records management program within the context of the archives law and normative sources. Such a framework can be potentially used for other studies that examine how individuals and organizations interact with the law or even recordkeeping and record preservation standards.

Additionally, Ricoeur's theory of interpretation, which is based on hermeneutics, can be employed as a theoretical and methodological framework for how archival scholars explain and understand the process of meaning making as various stakeholders make sense and internalize the meaning of a text. As noted in Chapter 2, there are only a few studies in archival literature that employ hermeneutics theory, and, as argued by Brown, there is potential for further developing archival hermeneutics as both a theory and a methodology in archival science. Ricoeur's theory recognizes that archival legislation is not to be viewed only as a mean of uncovering the intent or mindset of legislators who drafted the archival legislation, but rather it is open to multiple readings and interpretations based on the experiences of archivists and records managers, as well as the experience of the archival scholar who conducts the research.

Consequently, the theory can be expanded for future studies on how individuals interpret other forms of text such as records-related legislation, recordkeeping standards, and archival finding aids.

5.4.2 Implications for Practice

The results of this study strongly suggest that records-related legislation and other normative sources have gradually addressed the creation and maintenance of records, while archival legislation primarily focuses on the selection and transfer of records to archival custody. Access to records is primarily covered by *FOIA* in the UK and *AIA* in Canada. The lack of a comprehensive freedom of information law in Singapore means that access to records is either governed by records-related legislation or by archival legislation. Consequently, there is a danger that archival legislation becomes increasingly irrelevant, especially for the beginning of the lifecycle. For example, the study has illustrated how archival law does not include any statutory provisions for public offices to create and maintain records.

The study has implications for the recommendations proposed for revising archival legislation in the three countries considered by this dissertation. This author argues that there is a need to include an express duty to create and maintain records in archival legislation as this will not only support accountability but also address the gap in the archival legislation about the creation and maintenance of records. Such a statutory requirement would also provide the legislative framework to strengthen the records-related legislation and other records related normative sources. As argued by federal, provincial, and territorial Information and Privacy Commissioners of Canada, “the duty to document must be accompanied by strong records management practices and standards, and independent oversight with sanctions for non-

compliance.”³⁸⁵ There are other Commonwealth countries that have incorporated the duty to document in archival legislation. For example, the *Public Records Act* in New Zealand states that “it is the duty of the head of every Government office to ensure that a full and accurate record is made and kept of all the business of the office in accordance with recordkeeping standards issued by the Chief Archivist.”³⁸⁶ Thus, it might be useful to examine in future studies why and how a statutory requirement to create and maintain records is included in archival legislation of Commonwealth countries.

This study demonstrates that, while the archival legislation of the three countries examined provides the national archives with the authority to fulfil their mandate, the scope of the mandate limits the national archives’ role in records management. Despite this, departments still look to the national archives for leadership on records management because of their expertise. The national archives also rely on other departments that can play an enforcement role, though joint responsibilities in information management can result in collaboration constraints. This is particularly the case for the UK and Canada, as TNA is reliant on both ICO and the Cabinet Office and LAC is dependent on the MAF established by TBS. The fact that the national archives cannot take the lead in records management without working closely with these departments has partly contributed to the perception that they do not have much impact on records management.

The national archives of all three countries considered by this dissertation are subsumed under a culture, heritage or information department, and the priorities of such a department can potentially be an obstacle to the effective delivery of a records management program. In

³⁸⁵ Office of the Information Commissioner of Canada, *Background on a duty to document*, online: <http://www.oic-ci.gc.ca/eng/communique-de-presse-news-releases-2016_4.aspx?pedisable=true>.

³⁸⁶ *Public Records Act* 2005 (NZ), 2005/40, s 17(1).

Singapore, although the archival legislation states that one of the key responsibilities of the national archives is to “conduct a records management programme for the efficient creation, utilisation, maintenance, retention, preservation and disposal of public records,”³⁸⁷ the reporting structure of the NAS does not allow it to operate independently from the NLB. As the title of the archival legislation does not include the name of the national archives, NAS is not a legal entity in its own right, but only as part of the NLB. The NAS involvement in records management initiatives for the public sector requires multiple levels of approval, including endorsement from the NLB and its reporting Ministry. Consequently, this author argues for an archival legislation that does not focus on a national archival institution but on a comprehensive regulation of all aspects of records creation, maintenance, and preservation in the public sector.

5.4.3 Implications for Future Research

Several research projects can build upon this study. The analysis can be expanded to other countries of the Commonwealth, including those that have successfully revised their archival legislation, such as New Zealand and Australia, which stipulates the duty of government offices to create and maintain records. Another potential research site is Scotland, which revised its archival legislation in 2011 due to the lack of recordkeeping in residential schools (Longmore, 2013). It will also be useful to examine whether the revisions to the archival legislation contributed to a cultural change in recordkeeping within the government.

Chapter 4 and section 5.1.2 reveal that there are administrative and political difficulties in tabling a bill to Parliament. This is partly due to the differing perspectives of various stakeholders about the legislation, including the department which oversees the national archives, and partly to concerns raised by committee members and parliamentarians regarding

³⁸⁷ *National Library Board Act* (Cap 197, 2014 Rev Ed Sing), s 14a(2d) [NLBA].

any proposed bill. Thus, it would be useful to investigate how archival legislation has been reviewed and revised, including the various stages of the legislative process, and the perceptions of stakeholders involved in drafting the revisions, including government officials and legislators, on the reasons why specific statutory provisions were to be included or excluded

There also needs to be further research to address other records-related legislation, such as the freedom of information legislation, and its impact on records management. As noted in this study, the *FOIA* in the UK is perceived as the legislation that addresses the gaps in archival legislation about records management. Such research would also analyze the perceptions of other stakeholders, such as Information and Privacy analysts and senior civil servants, on how effective is the freedom of information legislation in addressing records creation and management issues.

Furthermore, the study affords an opportunity to utilize organizational theory to further inform future research relating to the organizational placement of the national archives. For example, the works by Max Weber and other organizational theorists on modern bureaucracies and post-bureaucracy forms of organization and management provide a theoretical lens for examining how the reporting structure of the national archives affects its scope of influence within the government (Weber; Gerth; & Mills, 1958). Organizational theorists such as Höpfl (2006) argue that the Weberian model of bureaucracy is an abstraction and that there can be “adaptations of bureaucracy” to take into account the heterogeneous nature of organizations (p. 8). Such models of bureaucracy can be applied to the reporting structure of the national archives in relation to other departments that have a vested interest in information management.

5.5 Conclusion

The operationalization of the archives law and the perceptions of stakeholders on how

they engage, interpret, and apply the law are not sufficiently explored in the archival literature. Archival legislation is not conceived or regarded as a legislation on records management and lags behind changes in technology. As a result, there are significant gaps in the legislation, including the lack of statutory provisions to create and maintain records and to address the authenticity and authentication of records. In addition, the legislation is notably silent about appraisal as a core archival function. In the UK and Singapore, the imposition of a “time-based approach” (Foscarini, 2007, p. 126) in the archival legislation for the transfer of records to archival custody does not effectively address the need for pro-active management and preservation of digital records. Furthermore, organizational dynamics, as manifested by the multi-level framework, can both enable and constrain the effective delivery of a records management program. Another issue is that archival legislation is perceived as articulating the mandate of the national archives instead of addressing wider concerns regarding record management in government. Ultimately, there is a need to envision the archival legislation as an instrument for establishing a regulatory environment that supports recordkeeping and preservation as a public good.

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Appendices

Appendix A Invitation to participate in study

Dear [Name],

Invitation to Participate in Doctoral Research Study

I am a doctoral candidate at the School of Library, Archival and Information Studies at the University of British Columbia, under the supervision of Dr. Luciana Duranti. I am writing to ask whether you would be willing to participate in my research study by sharing your experience in an interview. My dissertation research investigates the impact of archival legislation on records management in Commonwealth countries or more specifically, in the United Kingdom, Canada, and Singapore. For the purpose of my study, archival legislation is the *Public Records Act*, *Library and Archives Canada Act*, and the *National Library Board Act*.

As part of my research, I will be interviewing archivists from the national archives and records managers from various government departments in the United Kingdom, Canada and Singapore. The interview would take approximately one to two hours and can be arranged at your convenience.

Thank you for considering my interview request. I look forward to your reply, and I would be very honoured to have your participation in my research. Your knowledge and experience on information management in your department would be very beneficial to the advancement of the field of records management and archival studies.

I look forward to your participation in my research. Please contact me by email at [email address redacted]

Elaine Goh
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School of Library, Archival and Information Studies
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Appendix B Interview guide for archivists

A Introductory questions

- 1) Can you summarize your current scope of duties?
- 2) What is your professional education?
- 3) Can you summarize your work experience?

B Interview Questions

Scope and Purpose

- 1) How have you used the archival legislation to fulfil your institution's responsibilities?

Strengths and Weaknesses

- 2) What do you perceive as the strengths and weaknesses of the archival legislation in relation to the management and preservation of records?

Application of Legislation

- 3) What do you perceive as gaps between the intent of the legislation on the management and preservation of records and how the legislation is effected into practice?
- 4) What challenges do you encounter in:
 - a) advising government agencies on the capture, registration and classification of records?
 - b) selecting and appraising public records?
 - c) facilitating the transfer of records from government agencies?
 - d) the preservation of records?
 - e) the retrieval and access of records by the creating and/or transferring agencies?
- 5) To what extent does the archival legislation resolve those challenges?
- 6) What are some of the challenges in the digital environment? How adequate is the archival legislation in addressing issues in the digital environment?

Perception and Interpretation of the Law

- 7) In what circumstances do you think government agencies draw upon the archival legislation for records management?
- 8) How would you describe the perceptions and attitudes from government agencies with regard to the archival legislation?

- 9) What are the strategies you employ to ensure that government agencies understand and comply with the archival legislation in relation to records management?
- 10) What are the strategies you employ in enforcing the archival legislation with government agencies?
- 11) How do you deal in situations when the archival legislation conflicts with a separate legislation or when there are exceptions to the archival legislation?
- 12) Could you describe situations where you and the representative from the creating agency had a different understanding and/or interpretation of the archival legislation in relation to the management and preservation of records? What strategies did you adopt to reconcile the differences in understanding and/or interpretation?
- 13) Could you describe cases where you and your colleagues at the archival institution had different understanding and/or interpretation of the archival legislation in relation to the management and preservation of records? What strategies were adopted to reconcile the differences in understanding and/or interpretation?

Role and Organizational Placement of the Archival Institution

- 14) How has the archives' dual role of preserving the nation's heritage/culture and promoting records management affects the archives' ability to provide oversight on records management?
- 15) Where is the archives currently placed in the government bureaucracy? How does the organizational placement of the archives in the administrative hierarchy impact the effectiveness of the archival legislation in providing oversight for records management?
- 16) What is the ideal organizational placement of the archives in order to facilitate and oversee the records management program in the government?

Recommendations

- 17) Do you have any recommendations to improve the archival legislation?

Conclusion

- 18) Do you have anything else to add?

Appendix C Interview guide for records managers

A Introductory questions

- 1) Can you summarize your current scope of duties?
- 2) What is your professional education? How did you learn about records management?
- 3) Can you summarize your work experience?

B Interview Questions

Scope and Purpose

- 1) Could you describe situations where you had to draw on the archival legislation to fulfil your job responsibilities?

Application of Legislation

- 2) What challenges do you encounter in your work :
 - a) on the capture, registration, and classification of records?
 - b) in liaising with the national archives in selecting and appraising public records?
 - c) in facilitating the transfer of records to the national archives?
 - d) in the preservation of records?
 - e) in the retrieval and access of records?
- 3) To what extent does archival legislation resolve those challenges?
- 4) What are some of the challenges to the management and preservation of records in the digital environment? How adequate is the archival legislation in addressing the management and preservation of records in the digital environment?

Perception and Interpretation of the Law

- 5) How would you describe the level of awareness among staff and senior management in your organization in relation to the archival legislation?
- 6) Could you describe the circumstances where you approached the national archives for advice and/or assistance in developing and implementing a records management program for your organization?
- 7) Could you describe whether and how archivists from the national archives raise awareness about the archival legislation?

- 8) Could you describe whether and how archivists from the national archives enforced the archival legislation in relation to records management in your organization?
- 9) How do you handle situations when the archival legislation conflicts with a separate legislation, or when there are exceptions to the archival legislation?
- 10) Could you describe situations where you and the staff within your organization had a different understanding and/or interpretation of the archival legislation with regard to the management and preservation of records? What strategies were adopted to reconcile the differences in understanding and/or interpretation?
- 11) Could you describe situations where you and the archivists from the national archives had a different understanding and/or interpretation of the archival legislation in with regard to the management and preservation of records? What strategies did you adopt to reconcile the differences in understanding and/or interpretation?

Role and Organizational Placement

- 12) Where is your organization currently placed in the government bureaucracy? How does the organizational placement of the national archives in the administrative hierarchy in relation to that of your organization impact the effectiveness of the archival legislation in providing oversight for records management?

Recommendations

- 13) Do you have any recommendations to improve the archival legislation?
- 14) Do you have anything else to add?