ACCESS AND ACCESSIBILITY TO CANADIAN VITAL EVENT RECORDS

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ABSTRACT

The transfer of copies of vital event records into a government archives repository is necessary not only to ensure their ongoing preservation, but also to provide access and accessibility to them for all researchers in an appropriate setting. At present all vital event records gatekeepers in Canada, except two, do not have in place a system providing for such regular transferral. The central reason for this lack of process is the assumption that vital event records are somehow different in kind, and not just in type, from other public records that contain personal information. This thesis evaluates that assumption through an analysis of the history of vital statistics legislation and a comparative study of the privacy regime of that legislation with the legislative regime of access to information and privacy. Having done these two studies, the thesis then recommends a way in which legal transfer from the gatekeepers to the repository can be achieved. That recommendation is, first, that all discussion regarding access must be accomplished before their acquisition. Secondly, their acquisition and accessibility must be based upon the expiration of time–limits.

TABLE OF CONTENTS

ABBREVIATIONS

Provinces

Alta . . . . . Alberta
BC . . . . . British Columbia
Man . . . . . Manitoba
NB . . . . . New Brunswick
Nfld . . . . . Newfoundland and Labrador
NS . . . . . Nova Scotia
NWT . . . . . Northwest Territories
Ont . . . . . Ontario
PEI . . . . . Prince Edward Island
Que . . . . . Quebec
Sas . . . . . Saskatchewan
Yuk . . . . . Yukon

Acts

AA . . . . . Amendment Act
RS . . . . . Revised Statute
SLA . . . . . Statute Law Amendment
VSA . . . . . Vital Statistics Act

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INTRODUCTION

The goal of this thesis is to recommend a method for the legal transfer of Canadian vital event records into archives repositories. This study is timely for a number of reasons. First, the new information regime that is being put in place across Canada through access to information and privacy (ATIP) is forcing all government agencies to re–evaluate their access policies. With the creation of ATIP, pressure is being applied to vital event records gatekeepers[1] to justify the long–standing habit of considering vital event records as different from other public records containing personal information. In exposing the issues involved in making vital event records open and accessible to the public and accessible, this study should be valuable to both gatekeepers and archivists as they struggle with the implementation of ATIP statutes and regulations.

Second, because few vital event records have actually been transferred to archives repositories there is a need to establish the access status of these records in order to facilitate their legal transferral and archival accessibility. Finally, this study fills a gap in archival knowledge because this question has

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[1] Reinier Kraakman, Gatekeepers: The Anatomy of a Third–Party Enforcement Strategy, Law and Economics Workshop Series: no. WSXII–3. 16 October 1985, ([Toronto]: Law and Economics Programme, Faculty of law, University of Toronto, [1985]). Kraakman defines gatekeepers as persons who control access (the gate) to either physical items such as controlled substances or non–physical items such as information. With the use of this term to describe generally those who control access to vital event records we include vital statistics divisions in every jurisdiction and specifically to the head of those divisions variously named as directors, division registrars, or registrars general.

never been carefully examined from an archival perspective.

In fact, the only Canadian study that has been done examines the administration of Ontario's system of registration of vital events up to 1926.[2] Historians in Britain have been similarly interested in the origins of the systematic civil registration of vital events and the larger significance of the movement to garner population statistics beginning in the nineteenth century.[3]

The primary source for materials to produce this study is vital statistics legislation in Canada from all jurisdictions.[4] There is also some important material available through the Vital Statistics Council for Canada, which has existed since July 1945.[5] The Council's unpublished minutes of its yearly meetings and reports of its conferences have proved most useful. Various articles and books, particularly from legal literature, have been used wherever a connection was seen that would illuminate a particular point. One other helpful source of information was a 1991 survey undertaken by the British Columbia Archives and Records Service (BCARS) of disposition practises for

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[2] George Emery, "Ontario's Civil Registration of Vital Statistics, 1896–1926: The Evolution of an Administrative System." Canadian Historical Review LXIV, no. 4 (1983): 468–493.

[3] For example: John M. Eyler, Victorian Social Medicine: The Ideas and Methods of William Farr (Baltimore: Johns Hopkins University Press, 1979) and W.M. Frazer, A History of English Public Health, 1834–1939 (London, England: Bailliere, Tindall and Cox, 1950).

[4] By "jurisdiction" is meant legislative jurisdiction. This definition includes provinces, territories and the federal government.

[5] See: Canada, Privy Council 4851, July 31, 1945. Privy Council Office Records, R.G. 2, vol. 1907, National Archives of Canada.

vital events records in Canada. One major source of information that would have been helpful for the thesis was unavailable. This was the administrative records of the gatekeepers. If they had been available, the thesis would have been able to confirm in a direct way the reasons for legislative changes, especially during the crucial period of the 1940s.

This study first examines the history of vital statistics legislation in order to determine the character of past access policies and attitudes of gatekeepers towards access. This historical examination determined the questions or issues to pursue in the next two chapters which discuss the challenges presented by ATIP and the question of disposition of vital event records.

What then are vital event records and why are they important? These records are created in the following manner.[6] Using Carol Couture and Jean–Yves Rousseau's diagram[7] of the life of a document we can show the process at work that creates, for example, a birth registration (record). The process is as follows.

Birth Registrations

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[6] The process of such creation may not be precisely the same in all jurisdictions. This particular presentation is based upon the process as it occurs in the system created by the gatekeepers of British Columbia's vital event records.

[7] Carol Couture and Jean–Yves Rousseau, The Life of a Document (Montreal: Vehicule Press, 1987), p. 51.

1) Analysis: What is needed? Registration of births.
2) Conception: Idea: need multi–user form.
3) Composition: development of form with questions.
4) Print/reproduction: multiplication of copies of the form
5) Storage: Blank forms waiting to be filled out
6) Distribution: registrants pick up blank forms
7) Receipt: birth registration form sent to a vital statistics office
8) Filing:
(a) Placed in sequential order as received (per year) (b) and form and accompanying records microfilmed.
(c) reference placed in computer and microfiche index
(d) paper original sent to permanent storage
9) Utilization: Used by either state or subject(s) in the record for evidential reasons. For example, proving citizenship.
10) Retrieval: possible changes (adopted child, change of name, legitimated through marriage).
11) Permanent retention: paper original, microfilm, computer index

Permanent retention of these records at the present time includes retention of paper originals, the microfilm copy and the machine–readable index.

However, permanent preservation of all copies of such records will continue to be unrealistic due to the expense of holding such records in storage. The paper originals, once they have been clearly and properly analyzed and examined by a records analyst or archivist and then microfilmed according to appropriate standards, can be destroyed. Three copies of each microfilm roll needs to be made. Two of these copies can be given to the repository: one for access by users in the repository and one held as a security copy in a secure, environment–controlled vault. The third copy is necessary for on–going use by the vital statistics office itself.

Vital events are specific events that are recognised by the state as

events which provide evidence for the eligibility of rights for a person living in a specific country. By vital event records is meant operational records. These records include core records (births, marriages and deaths), secondary (also called amendments) records (stillbirths, adoptions, divorces, changes of names) and supporting or tertiary records. The latter include hospital returns, physicians or nurses notifications of birth, school returns, periodic checks of marriage registrations, coroner's reports, motor–vehicle accident reports, cemetery returns, statutory declarations and any other evidential records used to procure either a core vital event registration or an amendment to those records.[8] Each of these classes of vital event records is a separate series.

These records are important not only for the individual but also for the state. The state needs correct and up–to–date information about the status of inhabitants in order to provide for the rights allowable to each person (such as universal health care, education, pensions and so on) whether citizen, landed immigrant, or other. According to the first Dominion Bureau of Statistics Report in 1921, vital statistics are "needed [not only] in the prevention of crime and in facilitating the transfer of property, but they lie at the basis of public hygiene and of all study of the most important asset of any community–

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[8] See British Columbia, Provincial Board of Health, Vital Statistics of the Province of British Columbia Seventy–sixth Report for the Year 1947, (Victoria: Provincial Board of Health, 1947), D37.

its people."[9] The importance of these records for both citizens and the state is quite clear. Since their importance is not in doubt, what are the two issues of access and accessibility with which this thesis is concerned?

The thesis is ultimately concerned with describing, first, how an archives repository can be involved in providing for the right of access to these records and secondly how public availability or accessibility to vital event records in an archives repository can be achieved. The argument against access and accessibility has usually been formulated in the following manner. Custody of vital event records cannot be given to an archives repository because the personal information contained in the records is of a special nature. It is different from all other personal information because it is considered to be part of an 'inviolable sphere' around every person and such a sphere would surely be punctured or even exploded by allowing transfer to archival custody and open access. The working out of a transfer and access regime for these records as similar to those for other public records thus needs to address this argument.

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[9] Canada, Dominion Bureau of Statistics, Vital Statistics 1921: First Annual Report (Ottawa: F.A. Acland, Printer to the King's Most Excellent Majesty, 1923).

CHAPTER ONE

History of Vital Statistics Legislation

The history of access to vital event records may be divided into three phases: 1864–1918, 1918–1947 and 1947 to the present. The first two phases featured open access to the core vital event records of births, marriages, and deaths, whereas in the last phase access became restricted. The first phase begins with the first civil registration system in Canada outside Quebec. Nova Scotia has this distinction in that its legislation was passed prior to Confederation in 1864. This act gave broad rights of access in the following terms.

> All persons shall be entitled at all seasonable [sic, reasonable] hours to search these records, and to require and to receive extracts duly certified by the financial secretary, which shall be evidence of the entry certified and prima facie evidence of the facts asserted or claimed in the entry.[1]

This access statement was the basis for all other access provisions in other jurisdictions in Canada[2] except Quebec and Newfoundland. The basis

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[1] NS, VSA, 1864, c. 120, sec. 44. Each act and jurisdiction from which an act comes that is listed in a footnote will be designated by abbreviations (p. iv). In the interests of brevity the year of the reign of a particular monarch will not be listed in the footnotes. Full bibliographic notes can be found in the bibliography.

[2] Ont, VSA, 1868–69, c. 30; BC, VSA, 1872, no. 26; NB, VSA, 1887, c. V; Yuk and NWT, VSA, 1888, no. 6; Man, VSA, 1890, c. 29; Sas, VSA, 1898, c. 14; PEI, VSA, 1906, c. 6; Alta, VSA, 1907, c. 13.

for public access to these records in Quebec was, and remains, this statement from the civil code: "The depository of either of the registers [in a church or with government] is bound to give extracts thereof to any person who may require the same; and such extracts, being certified and signed by him, are authentic."[3] In Newfoundland, while the wording is similar to the 1864 Nova Scotia provision, access to vital event records has not followed the same progress toward restrictiveness that is seen elsewhere in Canada. Even after 1949, Newfoundland has retained a more open access policy regarding these records than the rest of Canada.[4]

Only Manitoba in 1912 and Alberta in 1916 moved to restrict rights by requiring petitioners to produce "satisfactory evidence that it is not for any unlawful or improper purpose"[5] that the petitioner seeks access. This is the first hint in legislation that this kind of information might be used against individual or collective interests. The usual procedure at this time was to provide petitioners with extracts from the registrations or to allow them to search through the registers and registrations themselves, and presumably make their own recordings. This procedure eventually gave way to one in which the search was done for the petitioner. Generally speaking the unfettered right of access and the right to obtain certified attestations of registrations existed in all

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[3] Que, Le Code Civil Annote, 1866, art. 50.

[4] Nfld, VSA, 1892, c. 28; Nfld, AA, 1977, c. 101.

[5] Man, VSA, 1912, c. 97, sec. 6(1); Alta, VSA, 1916, c. 22, sec. 38(1). For Manitoba's repeal of this clause see Man, VSA, 1933, c. 51, sec. 7.

provinces from confederation until the second decade of the twentieth century.

The need to coordinate vital statistics legislation first came to light in 1893 when the matter was discussed in the context of a cholera epidemic, but it received no serious consideration until 1912. In that year, one of the recommendations of a departmental commission of investigation in the federal Department of Trade and Commerce, in which the Census and Statistics office was placed, proposed that a conference be held to discuss mutual concerns about vital statistics in Canada.[6] The conference was not actually held until 1918, but it marks an important departure point as regards access to vital event records.

This 1918 conference was the first of five such conferences which culminated in the adoption of a model vital statistics act in 1947. R.H. Coats, the Dominion Statistician, characterized the purpose of the meeting as "completing plans for a system of vital statistics for Canada."[7] In Coats' view, the streamlining of administration and establishment of standards was

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[6] Ernest H. Godfrey, "History and Development of Statistics in Canada," in John Koren ed., The History of Statistics: Their Development and Progress in Many Countries, (New York: Macmillan, 1918): 195–196. Canada, Dominion Bureau of Statistics, Report of the Conference on Vital Statistics Between Representatives of the Dominion and Provincial Governments, 1918 (Ottawa: Dominion Bureau of Statistics, 1918): 19.

[7] R.H. Coats, "Co–ordination of Vital Statistics in Canada," Opening Address to the 1918 Conference, Dominion of Canada, Report of the Conference on Vital Statistics Between Representatives of the Dominion and Provincial Governments. Ottawa: Dominion Bureau of Statistics, p. 5. Hereafter cited as Report (1918).

needed to protect civil rights and to assist in the administration of public sanitation and the prevention of crime.[8] To satisfy these needs, the gatekeepers drafted a model vital statistics act which, it was hoped, most jurisdictions would enact.

The access provision of this model act maintained the principles first adopted in the 1864 Nova Scotia act, but stated them more clearly. The model act's provision for access was:

> Any person shall be entitled at all reasonable hours on payment of the prescribed fee and on signing an application in the prescribed form, to have search made of the record of a birth, marriage or death kept in the Office of the Registrar–General. (2) The Registrar–General shall, when requested, give a certificate of the details of any birth, marriage or death of which there is a record in his office on payment of the prescribed fee.[9]

In particular, this provision made it clearer that a certificate would contain all the information recorded on the original registration.[10] In fact, Ontario, Manitoba and British Columbia already had a provision like this in their acts. Nova Scotia, Saskatchewan, Prince Edward Island, and Alberta would follow suit soon after the conference, while New Brunswick and Quebec did not

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[8] Coats, "Vital Statistics in Canada," pp. 5–7.

[9] Report (1918), "Model Vital Statistics Act," section 3(1,2), p. 26.

[10] Report (1918), pp. 37–44.

change their legislation.[11]

Along with this restatement of public and open access to vital event records, the model act contained a provision designed to increase the accessibility of vital event records in the custody of private organizations, many of whom had done the registration of vital events in the absence of government involvement. Organizations such as churches, cemeteries, companies, and historical societies were given the opportunity to file their records with the registrar–general. Any entity:

> in possession of any record of marriages, births or deaths which may be of value in establishing the genealogy of any resident of this province...may file without expense to them such record or a duly authenticated transcript thereof with the Registrar–General, and it shall be the duty of the Registrar–General to preserve such record or transcript and to make a record and index thereof in such form as to facilitate the finding of any information contained therein. Such record and index shall be open to inspection by the public, subject to such reasonable conditions as the Registrar–General may prescribe.[12]

Manitoba was the first to adopt a provision like this one in 1887. Five other provinces followed Manitoba's lead the year following the 1918 conference and British Columbia was the last in 1933.[13] Alberta, Newfoundland, New Brunswick and Quebec had no need of such a provision

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[11] Ont, VSA, 1908, c. 28, sec. 7; Man, VSA, 1912, c. 97, sec. 6; BC, VSA, 1913, c. 81, sec. 6; NS, VSA, 1919, c. 3, sec. 8; PEI, VSA, 1919, c. 10, sec. 5; Sas, VSA, 1919–20, c. 11, sec. 7; Alta, RSA, 1922, c. 24, sec. 38.

[12] Report (1918), section 5(5), pp. 26, 27.

[13] Man, AA, 1887, c. 14, sec. 2,3; PEI, VSA, 1919, c. 10; Ont, VSA, 1919, c. 23, sec. 12; NS, VSA, 1919, c. 3, sec. 9(5); Sas, VSA, 1919–20, c. 11, sec. 12(1); BC, VSA, 1933, c. 73, sec. 20.

because the procedure in those jurisdictions had always prescribed that a copy of all vital event records be given to government.[14]

Interestingly, the first hint of restrictiveness occurred in the section dealing with vital event records created by bodies other than government, copies of which were given over to government. The model act stated that "Such record . . . shall be open to inspection by the public, **subject to such reasonable conditions as the Registrar-General may prescribe.**"[15] Four jurisdictions, Ontario, Saskatchewan, Nova Scotia and Prince Edward Island enacted this part of the model 1918 act.[16] It is not clear why these records are the first to have any restrictions attached to them instead of those referred to in the general access section. Perhaps it was felt that it was appropriate to have the capability to set restrictions if the organizations holding them could convince the gatekeepers of the need.

Between the drafting of the model act in 1918 and its complete restructuring in 1947, concern arose over giving access to vital event records that are changed by secondary vital events. These events cause changes to the original registrations. These include occurrences of stillbirths, illegitimacy, divorce or annulment of marriage, adoptions, and change of name. Change of

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[14] Que, Civil Code, 1866, Arts. 45–47; Nfld, VSA, 1892, c. 28, sec. 5,6; NB, RSNB, 1903, c. 54, sec. 7; Alta, VSA, 1907, c. 13, sec. 11.

[15] Report (1918), sec. 5(5), p. 27. My emphasis.

[16] Ont, VSA, 1919, c. 23, sec. 12(2); Sas, VSA, 1919–20, c. 11, sec. 12(1); NS, VSA, 1919, c. 3, sec 9(5); PEI, VSA, 1919, c. 10, sec. 6(e).

name may occur when a child is adopted or when a person voluntarily chooses at some point to change his or her name. Recording secondary events altered the original record in some way. The gatekeepers began to realize that some of this information and, in order to solve these problems, several provinces enacted restrictions on access. The cases of illegitimacy and adoption best illustrate the problems, but complications also arose for stillbirth and divorce.

No restrictions applied to records of stillbirth and divorce prior to 1948. The 1918 model act did not mention the records of divorces. Saskatchewan made records of divorce explicitly accessible. British Columbia maintained a publicly searchable register of divorces, and noted the event of "divorce" on the original marriage license.[17] In Ontario and Alberta, a provision was made in the act simply for the receiving of information of whatever sort concerning divorces "as the Registrar General required."[18] Stillbirths were mentioned in the model act of 1918. By that time, it was

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[17] Sas, AA, 1921–22, c. 16, sec. 4; BC, AA, 1935, c. 87, sec. 2 and BC, RSBC, 1948, c. 357, sec. 33(1). For British Columbia's register of divorces see also Department of Trade and Commerce, Dominion Bureau of Statistics: Vital Statistics Division, Verbatim Report of the Fifth Dominion–Provincial Conference on Vital Statistics (Ottawa: Published by the authority of the Hon. James A. MacKinnon, M.P., Minister of Trade and Commerce, 1948): 253. The author of the thesis was not able to locate the reports of the other conferences. This particular report was found in the Legislative Library in Victoria.

[18] Ont, AA, 1931, c. 21, sec. 2; Alta, AA, 1924, c. 28, sec. 8.

generally agreed to register stillbirths as both births and deaths.[19]

The treatment of information about the marital status of parents constitutes the first major step toward restrictive access to vital statistics records. The fact of marital status, or lack of it, was considered an important aspect of birth information for many years both before and after the drafting of the 1918 model act. The model act included the already quite common statement "the Division Registrar shall write the word 'illegitimate' in the column for the name of the child immediately under the child's name."[20] After 1918 many jurisdictions required the gatekeeper to re–register births as legitimate if the parents subsequently married. A notation was made that the child had been registered under that section of the act, thus more subtly recording the fact of illegitimacy.[21] Before 1948, some jurisdictions adopted a policy that no certificates would be given out to "casual inquirers or busybodies," who had "no objective in view other than that of annoying the

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[19] Man, VSA, 1912, c. 97, sec 27; NS, AA, 1914, c. 44, sec. 1; Alta, VSA, 1916, c. 22, sec. 29; PEI, VSA, 1919, c. 10, sec. 36; Ont, VSA, 1919 c. 23, sec. 28; Sas, VSA, 1924–25, c. 6, sec. 56.

[20] Report (1918), section 31, p. 30. See: Ont, VSA, 1875–76, c. 2, sec. 11; Alta, VSA, 1907, c. 13, sec. 15; NS, RSNS, 1908, c. 1, sec. 16.

[21] Examples: BC, VSA, 1913, c. 81, sec. 7; Alta, VSA, 1916, c. 22, sec. 18; Sas, RSS, 1940, c. 36; NS, VSA, 1952, c. 8.

parties concerned," by revealing the fact of illegitimacy.[22]

Like the question of illegitimacy, adoptions were also dealt with at different times and in different ways by the different jurisdictions. For example, British Columbia and Saskatchewan simply made a notation on the original birth registration that a child had been adopted.[23] Manitoba made a similar notation but also registered the adoption in a separate register,[24] while Ontario made the notation but also received certificates or court orders from another department altogether.[25] British Columbia granted access to registrations of adoptions for a brief time between 1933 and 1936. Nova Scotia made no statements regarding adoption records until after 1948.[26] In 1930, Saskatchewan enacted a clause that demanded that no certificate be given out that revealed the names of the natural parents, and Alberta enacted a similar clause in 1942.[27]

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[22] British Columbia. Sixty–Sixth Report of Vital Statistics of the Province of British Columbia (Victoria: Charles F. Banfield, Printer to His Majesty, 1937), p. J24. British Columbia. Sixty–Seventh Report of Vital Statistics of the Province of British Columbia (Victoria: Charles F. Banfield, Printer to His Majesty, 1938), p. I124. Examples: Sas, AA, 1930, c. 14, sec. 8; BC, AA, 1938, c. 64, sec 7.

[23] BC, AA, 1921, c. 70, sec. 3; Sas, RSS, 1940, c. 36, sec. 51(3).

[24] Man, AA, 1931, c. 55, sec. 10.

[25] Ont, SLA, 1941, c. 55, sec. 42.

[26] BC, VSA, 1933, c. 73, sec. 31; BC, RSBC, 1936, c. 302, sec. 32; NS, AA, 1951, c. 56.

[27] Sas, AA, 1930, c. 14, sec. 8; Alta, AA, 1942, c. 21.

While these sorts of restrictions were applied to access to records of secondary vital events, only two kinds of restriction were applied before 1948 to the core vital events records of births, marriages and deaths. On the one hand, certain pieces of information would be given out on certificates such as date and place of birth in the case of birth records.[28] On the other hand, many jurisdictions followed the lead of Manitoba and Alberta by including a provision that "in every case the applicant [for a certificate] shall satisfy the Registrar–General that the search is not being made for any unlawful or improper purpose."[29] Nova Scotia adopted a provision like this in 1908 but repealed it in 1919.[30] Of course, in every jurisdiction petitioners had to pay a prescribed fee.[31]

The problems which had accumulated before the Second World War could no longer be ignored as the war drew to a close. Realizing this, the federal government established the Vital Statistics Council of Canada whose purpose was "to provide opportunity for provincial and federal officials to discuss jointly problems of registration and of the collection and compilation of vital statistics, with the object of securing greater uniformity and

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[28] Ont, SLA, 1927, c. 28, sec. 34; NS, AA, 1941, c. 21, sec. 1; PEI, AA, 1945, c. 35.

[29] Sas, AA, 1932, c. 6, sec. 2(1); PEI, VSA, 1932, c. 11, sec. 5(a).

[30] NS, VSA, 1908, c. 1, sec. 31; NS, VSA, 1919, c. 3.

[31] Report (1918), section 3, p. 26.

comparability."[32] Post–war efforts of the members of the Council would also address access questions.

In May 1947[33], the Vital Statistics Council asked the Minister of Trade and Commerce to call a fifth conference on vital statistics. The Minister, J.A. MacKinnon, did so but also called upon the Vital Statistics Division of the Dominion Bureau of Statistics to draft a working copy of a new model vital statistics act for the conference. The final version of the reworked act, with the help of the Uniform Law Commission of Canada was completed in 1949.[34]

The conference aimed at a total restructuring of the earlier model act, and therefore concerned itself with adopting uniform language, procedures and

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[32] Canada. Department of Trade and Commerce, Dominion Bureau of Statistics, Vital Statistic Division, Fifth Dominion–Provincial Conference on Vital Statistics, December 1–4. 1947, "Draft Model Vital Statistics Act," Introduction, Appendix C (Ottawa: Pub., by the authority of Hon. James A. MacKinnon, M.P., Minister of Trade and Commerce, 1948), p. 347.

[33] It was in 1947 that the delegates met and made their changes to the legislation. It was not until 1949 that the model act was finalized in terms of legal language and it was officially promulgated as the new model act for vital statistics legislation. Hence the designation in this paper of the years 1947–1949 when referring to the foundation event for the development of this legislation up to the present. This date shall be used wherever the entire process of formulation and legal editing is referred to while when the conference itself is referred to the year 1947 will be used.

[34] Conference of Commissioners on Uniformity of Legislation in Canada, "An Act Respecting The Registration of Births, Marriages, Deaths and Other Vital Events," in Proceedings of the Thirty–first Annual Meeting of the Conference of Commissioners on Uniformity of Legislation in Canada, Appendix G (Calgary, Alberta: 1949), 46–70. See Appendix A for an extract of this Act regarding searches and issuance of certificates and copies.

requirements for registration of vital events. A large part of their concern was devoted to a wholesale altering of the access policy for vital event records. This conference in effect approved placing more severe restrictions on public access than had consciously been done up to that point. Unconsciously, many of the gatekeepers had been struggling with the new problems associated with secondary event records, but alone were unable to come up with entirely adequate solutions. One such effort was to assume a two–tiered access system in the vital statistics legislation. For example, British Columbia's attorney–general had proffered the opinion that in answer to requests the registrar could simply state that a record existed. If the searcher sought actual information from the record, he or she would have to go through a second process of applying for a certificate.[35]

The conference participants heard the British Columbia proposal, and eventually adopted it. They also decided to continue reliance on the ad hoc measure of denying access to persons who could not give enough information on the application forms when they made their requests. One delegate wanted to delete the access provision altogether.[36] Several delegates expressed concern about the sensitive nature of the information contained in vital event records. There was general agreement that vital event records must be treated as confidential records to protect the interests of the subjects of the records.

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[35] Verbatim Report, (1948), p. 228.

[36] Verbatim Report, (1948), p. 227, 228.

There appears to have been no public outcry for tighter restrictions. Rather, these persons who administered the law took it upon themselves to make the changes in order to protect records subjects from possible abuse of information contained in the records. Where once vital event records were considered to be public records in the sense of openly accessible to the public, growing concern about the potentiality for harm to personal and private affairs by such open access brought about a severe change in the rules for access.[37]

Ultimately, the redrafted model law adopted by the conference contained the two–tier British Columbia procedure to distinguish conditions for searches in one provision and for issuing certificates and copies of registrations in another. The rules governing searches required persons to furnish satisfactory information to the gatekeeper, pay a fee, and satisfy him or her that they had no "unlawful or improper purpose"[38] in mind. If these conditions were met, the gatekeeper would provide confirmation of registration of birth, stillbirth, marriage, death, adoption, change of name, dissolution or annulment of marriage, baptism, or burial, and give the registration number. In effect, then, the petitioner had to give sufficient information to allow the gatekeeper to conduct a search, satisfy the gatekeeper that the reasons for the

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[37] Verbatim Report, (1948), pp. 226–228.

[38] Model Act, (1949), sec. 30. A copy can be found in the Proceedings of the thirty–first meeting of the Uniform Law Commission, 1949. See Appendix A for an extract of this Act regarding searches and issuance of certificates and copies.

search were proper, and pay a fee, and in return would merely know that said event was registered, and no more. A very large measure of discretionary power remained with the gatekeeper. Indeed, these proposals fell little short of arbitrariness.

This process of having gatekeepers search for merely the fact that a certain event occurred might have been used by persons to apply for certificates or for copies of the registrations, but usually that process was distinct from the rules for certificates and copies of registrations. A proposal at the conference to provide separate rules for short and long form certificates won favour.[39] The short forms applied only to registrations of births, marriages, and deaths. The proposed rules prescribed the precise pieces of information to go on the short form,[40] which was in effect like the old extracts produced in many jurisdictions. As in the first set of rules, petitioners had to furnish sufficient information for a search to be conducted, satisfy the gatekeeper that the reasons for the request were lawful and proper, and pay a fee.

The delegates decided that long form certificates were not really certificates at all, but rather certified copies of the actual registration, whether

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[39] Verbatim Report, (1948), p. 236 ff.

[40] Model Act, (1949), sec. 31.(1),(3),(5). See Appendix A for an extract of this Act regarding searches and issuance of certificates and copies. See also British Columbia, Department of Health and Welfare, Vital Statistics of the Province of British Columbia, Eightieth Report for the Year 1951 (Victoria: Provincial Board of Health, 1951): C45.

the certificate disclosed the full information in the registration or was a photograph of the original. Access to certified or photographic copies was severely limited to persons needing the copy to comply with adoption legislation, officers of the crown requiring it in the discharge of duties, or persons given authority by the competent minister or judge of a court.[41] These rules covered birth, marriage, and death records. Death certificates would only include the cause of death upon the order of the appropriate minister or a judge, and so certified or photographic copies were subject to the same requirements. It was also proposed that vital event records held by churches and other non–governmental bodies should be subject to the same conditions. Furthermore, the records of adoptions, changes to names, dissolution and annulment of marriage were not searchable at all under tier one procedures and no certificate would be issued under those in tier two.[42]

Every jurisdiction in Canada, except Quebec and Newfoundland, eventually enacted the terms of the model vital statistics act.[43] As a result, no one could search records of adoptions, divorces, name changes or any other information that was not explicitly identified in the act or that officials deemed

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[41] Model Act, (1949), sec. 31.(2),(4),(7). See Appendix A for an extract of this Act regarding searches and issuance of certificates and copies.

[42] Model Act, (1949), sec. 31. (9). See Appendix A for an extract of this Act regarding searches and issuance of certificates and copies.

[43] Ont, VSA, 1948, c. 97; PEI, VSA, 1950, c. 31; Sas, VSA, 1950, c. 13; Man, VSA, 1951, c. 66; NS, VSA, 1952, c. 8; NWT, VSA, 1952 second session, c. 6; Yuk, VSA, 1954, c. 38; Alta, VSA, 1959, c. 94; BC, VSA, 1962 second session, c. 66; NB, VSA, 1979; c. V–3.

should not be disclosed. But concerns about the secondary events strongly coloured the rules regarding access to information about births, marriages and deaths such that the former right of access to the records of core vital events was severely restricted. Most remarkably, this situation has existed in most jurisdictions without substantial change to the present day.[44]

There was one attempt to make some major changes to the legislation. In 1976, British Columbia delegates to the annual Conference of Commissioners on Uniform Law in Canada proposed that the model vital statistics act "be reviewed and revised from the point of view of today's problems but also to bring the language and forms of the Act up to date."[45] The British Columbia Commissioners were asked to present a report regarding the issue, which they eventually did in 1982. They based much of their report on a study made between 1978 and 1982 by an official of the Division of Vital Statistics in Victoria, W.D. Burrowes, for the Vital Statistics Council of Canada and Statistics Canada.[46] The report of the Commissioners called for

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[44] There have been minor changes to parts of the entire act by various jurisdictions. Most of these minor changes have not been related to the access issue. See Appendix B for the most up–to–date version (1986) of the access provisions of the model legislation.

[45] Uniform Law Conference of Canada, Proceedings of the Fifty–Eighth Annual Meeting (Yellowknife, Northwest Territories, Uniform Law Conference, 1976), 34.

[46] British Columbia Commissioners, "Amendments to the Uniform Vital Statistics Act: Report," Appendix EE, in Uniform Law Conference of Canada, Proceedings of the Sixty–Fourth Annual Meeting (Montebello, Quebec: Uniform Law Conference, 1982), 509–517.

a complete review of existing access provisions. It argued that some of the restrictions were no longer viable "and probably **untenable** for long in the face of 'freedom of information' legislation and the Canadian Charter of Rights and Freedoms."[47] Continuing on from this first report, a second committee made up of Commissioners from British Columbia and the federal government presented another more detailed report with recommendations one year later.[48]

This second report recommended relaxing the provision prohibiting the disclosure of the cause of death.[49] It recommended maintaining wide discretionary powers for officials administering the act to avoid fraudulent use of information.[50] But, most importantly, the report advised that the highly restrictive conditions clashed with the spirit of access to information legislation and deterred use of vital event records to trace family lineage. Finally, after stating that vital event records are public records, the report declared that considerable thought must be given to relaxing the restrictive access conditions because of freedom of information, to the question of whether the minister

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[47] British Columbia Commissioners, "Report, 1982," p. 515. Their emphasis.

[48] British Columbia and Canadian Commissioners, "Vital Statistics Report," Appendix O, in Uniform Law Conference of Canada, Proceedings of the Sixty–Fifth Annual Meeting (Quebec, Quebec: Uniform Law Conference, 1983), 277–291.

[49] British Columbia and Canadian Commissioners, "Report, 1983," p. 289. The restriction was relaxed. See sec. 31. (6)(a) of Appendix B.

[50] British Columbia and Canadian Commissioners, "Report, 1983," p. 290.

should be required to make certain decisions on access or allow the gatekeeper to make all such decisions, and to recognising the fact that a growing number of people wish to trace their lineage.[51]

Few jurisdictions accepted these suggestions from the 1983 report. Some jurisdictions have accepted the form, but not the substance of the 1986 amended model vital statistics act,[52] which had been produced through cooperation between the jurisdictions and the Uniform Law Commission. Others have not accepted either the form or the substance of the 1986 amended act and have retained the amended versions of the 1949 model vital statistics act.[53] Some jurisdictions have recognised as legitimate a category of search called genealogical,[54] but have not relaxed the rules to encourage such searches.

Two jurisdictions have made minor changes to their acts by adopting some of the provisions suggested by that report. First, Alberta accepted a slight relaxation by allowing next of kin to acquire information about the cause

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[51] British Columbia and Canadian Commissioners, "Report, 1983," p. 290.

[52] For example: Man, RSM, 1987, c. V60, secs. 31,32; NS, RSNS, 1989, c. 494; Yuk, RSY, 1986, c. 175; PEI, RSPEI, 1988, c. V4.

[53] NWT, RSNWT, 1974, c. V4; Sas, RSS, 1979, c. V7; BC, RSBC, 1979, c. 425; NB, VSA, 1979, c. V3.

[54] For example: NB, Vital Statistics Act, Reg. 83–104, sec. 3(f); BC, Vital Statistics Act, Reg. 375/90, sec. 9. "For a certified copy, photostatic copy or photographic print of a registration under section 30(3),(4),(7) or (10) of the Act, where the copy is provided for genealogical research approved in accordance with an order made under sec 30(12) of the Act."

of death.[55] Perhaps the most interesting aspect of the Alberta act is that it allows that certificates, photo–prints, or certified copies to be given out to any person if "(a) in the case of subsection (2), 100 years has elapsed since the date of birth, (b) in the case of subsection (4), 75 years has elapsed since the date of the marriage, and (c) in the case of subsections (6) and (7), 50 years has elapsed since the date of the death or stillbirth as the case may be."[56]

Ontario also made changes to its law. It is noteworthy that Ontario is the only province in Canada to allow searches of the change–of–name registers under the same conditions as for births, marriages and deaths. Prior to 15 July 1987, a person could only have the indices to these registers searched. For changes of name taking place after that date, a certificate with this information on it would be given to any person.[57] Ontario is also the only jurisdiction, outside of Quebec, that actively transfers all original records, not just indices, to the provincial archives after a certain period of time. It also has a legislated statement for guiding such transfer:

> (2) The Registrar General may cause those registrations and records that are prescribed, and related indexes and documents to be transferred to the Archives. (3) The Archivist is authorized and directed to receive and maintain the registrations, records, indexes and documents transferred under subsection (2) as if

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[55] Alta, RSA, 1980, c. V4, sec. 32(6).

[56] Alta, RSA, 1980, c. V4, sec. 32(7.1).

[57] Ont, AA, 1986, c. 9, sec. 11(2) and Ont, RSO, 1990, c. V4, sec. 44(4) and 48(1),(2).

they were transferred under the Archives Act.[58]

Systems of vital event registration serve to protect the rights of citizens. The access policy applying to these systems of record keeping must take account a complexity of apparently conflicting rights. Adoptions, illegitimacy, divorces and so on, illustrate the problem with the open access policy that existed until the late 1940s and they tipped the balance away from access in favour of concern to protect sensitive personal information. Since then, Canadian governments have widely instituted access to information and privacy legislation to address the very problems with which the gatekeepers of vital event records have had to struggle. It is therefore necessary to put the question of access to vital event records in the wider societal concern about access to information and the protection of privacy.

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[58] Ont, AA, 1990, c. 12. Under sec. (4) the Registrar General retains privilege of full access to such transferred records and under sec. (5) the Registrar General and the Provincial Archivist are empowered to enter into agreements regarding such transfers. See Appendix C re. questionnaire.

CHAPTER TWO

VITAL EVENT RECORDS AND ACCESS TO INFORMATION AND PRIVACY

In the preceding chapter we saw that the history of vital statistics legislation reveals a strong concern amongst the gatekeepers of vital event records to protect the privacy of individuals named in those records. That history also reveals that the legislation has not changed substantially since 1947–1949 in response to changing needs and attitudes of both government and private individuals in Canada. The legislation was completely overhauled in 1947 to take account of a particular view of privacy, which shall be discussed in this chapter, that still colours the legislation and the attitudes of the gatekeepers.

We need to discuss this particular view of privacy in the light of recent implementation of ATIP legislation at provincial and federal levels. However, before this can be done, we need first to discuss ATIP and to make clear a number of definitions. Through a discussion of these two different legislative regimes, ATIP and vital statistics, we can answer two important questions. First, is the personal information in records created by vital statistics legislation substantially the same as personal information created in any other records of government? To put it another way, is the personal information supplied in records created by vital statistics legislation the same kind of personal information as that which persons divulge to government under

provisions of other legislation? The second important question is how do the two legislative regimes deal with the issues of access and privacy? We can use the results of this discussion as the basis for a discussion of access to vital event records in a repository in the third chapter.

What, then, is "personal information"? Before the passage of ATIP legislation in the 1980s, privacy provisions in any legislation did not explicitly include information such as birth–date, marital status, or sex. ATIP legislation now lists these items as part of the definition of "personal information". Vital statistics legislation does not provide definitions of this nature. We shall have to look to another source for adequate definitions. The federal Privacy Act defines "personal information" as "information about an identifiable individual that is received in any form including, without restricting the foregoing, (a) information relating to the race, national or ethnic origin, colour, religion, age or marital status of the individual..."[1]

According to the act, such information "shall not, without the consent of the individual to whom it relates, be disclosed by the institution except in accordance with this section."[2] Provincial legislation often states the same principle. For example, Ontario's legislation says that officers shall "refuse to disclose personal information to any person other than the individual to whom the information relates except, (a) upon the prior written request or consent of

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[1] Canada, Privacy Act, 1980–81–82–83, c. P21, sec 3.

[2] Canada, Privacy Act, 1980–81–82–83, c. P21, sec 8(1).

the individual."[3] The ATIP legislation in British Columbia, Quebec, Nova Scotia, Newfoundland and Manitoba have similar provisions.[4]

ATIP legislation regards as subjects any person(s) whose personal information is in a record. ATIP legislation makes this point positively rather than negatively when it says that all citizens and permanent residents (as defined by the Immigration Act) have a right of access[5] to records that contain their personal information. These persons can have access to "(a) any personal information about the individual contained in a personal information bank; and (b) any other personal information about the individual under the control of a government institution...".[6] Access to government records in ATIP is governed by access rules. These rules are either mandatory or discretionary. Discretionary rules are "introduced by the phrase 'the government may refuse to disclose' which means information may be released by a government

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[3] Ont, Freedom of Information and Protection of Privacy Act, 1990, c. F31, sec 21. My emphasis.

[4] Que, Statutes of Quebec, 1982, c. 30, sec. 53; BC, Freedom of Information and Protection of Privacy Act, Bill 50, 1992 41 Eliz. II, Passed Third reading 23 June 1992, sec 23; Man, Freedom of Information Act, 1985–86, c. 6, sec. 41(3)(a); NS, Freedom of Information, c. 11, 1990, sec 5(1)(b); Nfld, Freedom of Information and Privacy Act, 1981, c. 5, sec. 10(2)(e).

[5] Such access was first guaranteed in legislation by the Human Rights Act. Canada, Human Rights Act, 1976–1977, c. 33, secs 49–62. Those sections in the Act regarding such access were repealed in 1980 when the new Access to Information law came into being and reworked to fit that new Act (1980–81–82–83, c. 111).

[6] Canada, Privacy Act, 1980–81–82–83, c. P21, sec 12(1).

institution when no injury would result..."[7] The former "are introduced by the phrase 'the government institution shall refuse to disclose' and gives the institution no discretion in invoking an exemption."[8] An example of these mandatory rules in the federal Privacy Act is "a government institution shall not, without the consent of the individual release information..."[9] An example in access to information legislation is "a government institution shall refuse to disclose any record requested under this Act that contains personal information..."[10] Mandatory rules for access always occur in the context of class tests while those for discretionary rules always occur in the context of injury tests.[11]

These mandatory rules are in place in ATIP legislation in order to guard the privacy of the individual as well as to provide for access to records. The fundamental principle that lies behind this legislation is the notion of control. In some sense individuals are given control over records which contain information about them. In principle, individuals have full access to records that contain such information. No third party can have such access

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[7] Robert J. Hayward, "Federal Access and Privacy Legislation and the Public Archives of Canada," Archivaria 18 (Summer 1984): 51. His emphasis.

[8] Hayward, "Federal Access and Privacy," p. 51. His emphasis.

[9] Canada, Privacy Act, 1980–81–82–83, c. P21, sec. 8(1). My emphasis.

[10] Canada, Access to information Act, 1980–81–82–83, c. A1, sec. 19(1). My emphasis.

[11] Hayward, "Federal Access and Privacy Legislation," pp. 50, 51.

without the consent of the individual concerned. Thus, the individuals have control over these records in two ways. First, they can control the accuracy of the records. Second, they have a limited control over others who might want to access their personal information.

This notion of control over an individual's privacy interests, stemming first from Warren and Brandeis[12] and expressed more recently by scholars such as Alan F. Westin,[13] is precisely how legislators in Canada have defined privacy in Canadian statutes.[14] As one scholar stated the definition in use in current Canadian law:

> It is a kind of censorship which allows others to learn about an individual only that which he desires them to know. Without privacy, however, the control over information is impossible. The fact that information about a person is known only to himself initially and that it can remain private as long as he desires not to reveal it to others is the basis of privacy. If the right to refuse information is lost and the control over who may have access to personal data is diminished, privacy no longer exists, and one is no longer in control of one's public image.[15]

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[12] Samuel D. Warren and Louis D. Brandeis, "The Right to Privacy," Harvard Law Review 4, no. 5 (1890–91): pp. 198, 205 and 218. On p. 218, the authors list as one of their six principles that legislators need to take into account that information about an individual should not be published without the person's consent.

[13] Alan F. Westin, Privacy and Freedom (New York: Atheneum, 1967), p. 7. Privacy of the individual is defined as "the claim of individuals, groups, and institutions to determine for themselves when, how and to what extent information about them is communicated to others."

[14] Lori Ferman, "Protecting the Privacy of Personal Information," (Thesis, Master of Laws, York University, Ontario, April 1987).

[15] Ferman, "Protecting the Privacy of Personal Information," p. 9.

A study that led to the development of privacy statutes in Ontario stated: "the essential concern of the individual is to maintain the right to limit the disclosure and subsequent use of information concerning himself [or herself]."[16]

It should also be noted that ATIP legislation has certain confidentiality provisions which exclude parts of other acts or the whole of other acts from the scope of ATIP legislation. For example, the federal Access to Information Act in its schedule 2 excludes the entire Statistics Act and the Quebec Freedom of Information Act excludes the acts and registers of civil status. Ontario, on the other hand, includes a confidentiality provision with respect to the vital statistics but only regarding adoptions. Otherwise, vital statistics fall within ATIP's scope in Ontario. British Columbia's ATIP legislation includes all ministries under its act, which includes the vital statistics division. It remains to be seen precisely how the legislation will be applied with respect to vital statistics in British Columbia. The law at the federal level and in Ontario, Saskatchewan, Newfoundland and Nova Scotia has a provision limiting the statutory right of privacy to a specified period after which information can be

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[16] Ontario, Commission on Freedom of Information and Individual Privacy, Public Government for Private People: Protection of Privacy, The Report of the Commission on Freedom of Information and Individual Privacy, vol. 3 (Toronto, Ministry of Government Services: printed by J.C. Thatcher, Queen's Printer, 1980), p. 500.

made accessible.[17] What this means is that after a prescribed time personal information is no longer private and may be released.

At the beginning of this chapter it was implied that vital statistics legislation has certain principles of privacy that lie behind its original creation in 1947 which are out of step with current developments in ATIP legislation. Consequently, the legislation and the attitudes of the gatekeepers of the records created through vital statistics legislation are out of step with current developments. What, then, is the view of privacy that lies behind the current vital statistics legislation?

In order to address this question adequately we need to turn once again to the past before we can go forward. We need to examine more closely the delegates' debate about access and privacy in 1947. First, however, we need to take the definitions from the ATIP legislation discussion above and apply them to vital statistics.

Clearly vital event records contain personal information under ATIP definition of the term. The facts of birth, marriage, death, adoption, and divorce would all fall under the category of personal information which the law assumes it is in the public interest for the objects of records to control.

Certain complications arise when applying ATIP's distinction between

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[17] Ont, Access to Information Act, 1990, c. F31, sec. 2(2); Sas, Privacy Act, 1978 c. P24, sec. 10; Nfld, Privacy Act, 1981, c. 6, sec. 11; NS, Freedom of Information Act, 1990, c. 11, sec. 5(1)(e); Man, Freedom of Information Act, 1985–86, c. 6, sec. 41(3)(c).

subjects and third parties to the question of access to vital event records. It is easy enough to see that any person whose personal information is contained in a vital event record is a subject in ATIP's terms. But difficulties arise because in many classes of vital event records more than one person is a subject in these terms. For instance, the birth record of a child who is adopted would record the names of the birth parents and the facts of adoption. This record has not been accessible in every regard to the subjects of the record, i.e., the birth parents, the adoptive parents, and the child in order to protect certain privacy concerns of the subjects, each of which may not want some of the facts to be known to the others, to say nothing of to third parties. The fact that these documents constitute a massive network of interconnected records about the vital events on Canadian soil means that such complications will regularly arise. It would appear, then, that from this perspective at least ATIP legislation does not easily cover the needs of administering access to vital event records.

Furthermore, it will be recalled that ATIP also lays down guidelines as to a subject's access to his or her own records and control over third party access. This is the point at which there is the greatest divergence between ATIP and vital statistics legislation. The philosophical principles underlying access under ATIP legislation demands that access control lies in the hands of the subject(s) in a record. In vital statistics legislation access control lies elsewhere, namely with the government body responsible for the creation of

vital event records. It has been the gatekeepers who decide who has access to the records as well as when and how such access shall be granted.

Since that control lies elsewhere, the rules for access and the tests applied to vital statistics records are different from those of ATIP. Access rules governing vital statistics legislation are discretionary and the tests applied are injury tests. At no point does vital statistics legislation describe or define what types of injury are at issue. There is no section of vital statistics acts that prescribes that "the factors of the injury test [be] specific, current, and probable."[18] This is the second important divergence from ATIP. We shall have more to say about these points in the following discussion of access and privacy in the work of the delegates at the 1947 conference on vital statistics.

The principle of access which the delegates used to form the legislation can be stated quite simply. Access was to be restricted as tightly as possible to allow persons to have certificates for legal reasons. Of the two major concerns addressed by ATIP legislation, access and privacy, it is the issue of privacy that most significantly commanded the delegates' attention. Thus, it was the issue of privacy that had to be addressed first and primarily; access was a secondary concern that derived its significance only with respect to the conclusion reached about privacy. The delegates at the 1947 conference never overtly stated the concept of privacy under which they were working. Their

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[18] Hayward, "Federal Access and Privacy Legislation," p. 50.

view, rather, must be derived from the way in which they describe the need for restrictive access to vital event records. They believed that vital event records contained private information and therefore that access by persons had to be rigorously controlled. As one delegate said

> I do not think any person should have the blanket right to search the records. In our own Act it says that any person furnishing satisfactory evidence that it is not for any unlawful or improper purpose shall be entitled to have a search made of the records. After all, the records of these births, marriages and deaths are the personal history of the citizens of the country; and a person should not be allowed to get all the information he may require concerning the family affairs of other people. These are personal records, and in that sense, are strictly guarded with great secrecy; and some measure of that protection should be extended to them as Vital Statistics records. If anybody has the right to search the records, they can get information for all kinds of purposes; for commercial purposes, to sell things to people; for debt collection, and all kinds of what might be considered improper purposes."[19]

In the past, apparently, third parties had been able to procure information from the records and caused embarrassment, mischief or even harm to others. The delegates believed that all persons had a right to not be intruded upon. A way of describing this right is as a kind of sphere in which each person has a space that must not be violated.

The first persons to attempt to lay a legal foundation for and thereby clearly enunciate this view of privacy of the individual were Samuel D.

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[19] Verbatim Report, (1948), p. 225. Mr. A. Packford, Alberta Deputy Registrar–General, Department of Vital Statistics.

Warren and Louis D. Brandeis, in their article "The Right to Privacy,"[20] which became the foundation–stone for all further discussion on the topic in North America.[21] Since Warren and Brandeis, of course, there have been other attempts to define privacy, beginning most importantly with Frederick Davis and William Prosser in 1959 and 1960, respectively.[22]

In their article, Warren and Brandeis argued that due to the changing technology of their day, a new understanding of privacy had to be formulated. An example of the new technology that was so disturbing to them was photography. At that time cameras became portable instruments that could be

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[20] Warren and Brandeis, "The Right to Privacy," pp. 193–220.

[21] The specific influence of Warren and Brandeis' article on the practise of Canadian law is hard to estimate. Certainly when Brandeis died in 1941 Canadian jurists praised his work as much as their American counterparts. See: W.P.M.K, "Justice Louis D. Brandeis," University of Toronto Law Journal 4 (1941–1942): 402–403 and I.C. Brand, "Louis D. Brandeis," Canadian Bar Review 25 (1947): 240–250. Warren and Brandeis' article as also referred to as "classic" Cecil A. Wright, "The Law of Torts: 1923–1947," Canadian Bar Review 26 (1948): 93, note 228.

Because of the influence of their enunciation of the right of privacy or personality, Wright's faith "in the ability of the common law to recognise new interests and cloak them with the dignity of a legal right" was confirmed (p. 94).

Another example of the influence of the notion of a right to an inviolate personality as the right to privacy is the view taken of vital event records by the delegates at the 1947 conference.

[22] See David M. O'Brien, Privacy, Law, and Public Policy (New York: Praeger Publishers, 1979), pp. 5–15 and Arthur Schafer, "Privacy: A Philosophical Overview," in Dale Gibson, Aspects of Privacy Law: Essays in Honour of John M. Sharp (Toronto: Butterworth and Co., 1980), pp. 4–14. A study of privacy from an archival point of view has been done by Heather Marie MacNeil in "In search of the Common Good: The Ethics of Disclosing Personal Information Held in Public Archives" (M.A.S. thesis, University of British Columbia, 1987), 14–59.

used anywhere and at any time and without consent being granted from the subject. In the past a person had to actually go to a studio and "sit" and thereby give consent for the photograph to be taken.[23] While it is true that Warren and Brandeis had no obvious precedents for their argument,[24] they argued that privacy was not so much an existing law, but rather a principal element in much current law and precedents. They believed that this principle was in the mind of the creators of such legislation and precedents when they drafted laws or made judicial decisions. They specifically used examples of such precedents taken from the laws relating to slander, libel, and literary and artistic property.[25]

Using the precedents used by legislators to form these laws, Warren and Brandeis concluded that

> the right of property in its widest sense, including all possession, including all rights and privileges, and hence embracing the right to an inviolate personality, affords alone that broad basis upon which the protection which the individual demands can be rested.[26]

Such a broad basis included ownership over all that is "one's own" and which

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[23] Warren and Brandeis, "The Right To Privacy," p. 211.

[24] O'Brien, Privacy, Law, and Public Policy, p. 5.

[25] Warren and Brandeis, "The Right To Privacy," p. 204–205, 214.

[26] Warren and Brandeis, "The Right To Privacy," p. 211. See also p. 205.

can be identified, either as incorporeal or corporeal, in any way.[27] This broader basis, they held, could be found in the recently articulated but long recognised[28] right to privacy. As they stated:

> the principle which protects personal writings and any other products of the intellect or of the emotions, is the right to privacy, and the law has no new principle to formulate when it extends this protection to the personal appearance, sayings, acts, and to personal relation, domestic or otherwise . . . If casual and unimportant statements in a letter, if handiwork, however inartistic and valueless, if possessions of all sorts are protected not only against reproduction, but against description and enumeration, how much more should the acts and sayings of a man in his social and domestic relations be guarded from ruthless publicity.[29]

Thus, for Warren and Brandeis, the right to privacy is a matter of ownership in that an individual owns all of those attributes, acts and personal relations that make him or her a unique individual in the same way that he or she may own any physical thing. Any person who attempts to make use of such attributes, acts and personal relations without express permission violates a subject's privacy. This formulation of privacy closely approximates that of the delegates at the 1947 conference both because of internal evidence of their conference proceedings and because the Warren–Brandeis view was, while not unquestioned, very influential and had no serious competitors, or further

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[27] Warren and Brandeis, "The Right To Privacy," p. 206, in footnote.

[28] See the way they use then–existing laws to devise rules for future privacy legislation. Warren and Brandeis, "The Right To Privacy," pp. 214–219.

[29] Warren and Brandeis, "The Right To Privacy," p. 213, 214. My emphasis.

insight added to it, until the 1960s. Certainly by the 1940s, however, the Warren–Brandeis thinking about privacy as a sphere around an individual made up of their attributes, best defined as an "inviolate personality," was known quite widely, including in Canada.

By applying this principle of privacy to vital event records, the delegates had to develop various layers of access to the records. For example, access to birth records had to be restricted because a particular birth may have been illegitimate or an adoption may have taken place following the birth and the child and the natural parents had to be protected from what the delegates considered as prying eyes, that is anyone who did not have a legitimate interest in the information. One delegate said:

> We have not only to safeguard the identity of an adopted child . . . [or an] illegitimate child . . . but there are also the . . . women who will have to leave the father's side of the registration blank, and the implication is there that it is an illegitimate child, no matter how technical we try to be about it. So from the very beginning I think we would like to see persons safeguarded.[30]

Thus, any prescribed information contained in birth records to which legitimate access could be granted was to be restricted to updated versions of those records. Thus, for an adoption the adopting parents names would appear in the space in the birth registration reserved for birth parents. Such information does not include information contained in the original registrations (certified

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[30] Verbatim Report, (1948), p. 226. Miss K.M. Jackson, secretary of the Family Welfare Division of the Canadian Welfare Council.

copies or long–form certificates).

Information about marriages was similarly restricted because no one, not even the bride's or bridegroom's parents or the children themselves, in the view of the delegates, should be allowed to discover if an illegitimate child was born before the couple were married. One delegate stated the case in this way "I do not agree with the principle of the parents of one of the parties, or a child of the marriage getting it [the certificate], because the child might wish to find out if he was born before his parents were married."[31]

Death registrations were also restricted but only to the extent that the cause of death was not to be revealed under any circumstances[32] because, as a Quebec delegate put it "You cannot imagine how far this protects the family itself. Perhaps for psychological reasons it is better in some cases that the cause is not known to the family."[33]

One of the delegates, A. Packford, the Alberta deputy registrar general, stated what is at least part of the operative distinction that guided the delegates in how they thought about access restrictions concerning these records. He said "If a parent is inquiring about a child who may have gone off and got married, that is a very legitimate reason; but if they want to know something

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[31] Verbatim Report, (1948), p. 248. Mr. D.M. Treadgold, Ontario Senior Solicitor, Attorney–General's Department.

[32] Verbatim Report, (1948), pp. 251–252.

[33] Verbatim Report, (1948), p. 251. Dr. P. Parrot, Demographer, Ministry of Health, Quebec, also chairman of conference.

about their neighbours, that is not legitimate."[34] Thus, one of the most important reasons for the restrictions hinged upon this distinction between subjects and third parties. Third persons were persons whose personal information was not in a specific vital event record. Subjects were therefore all those whose personal information did appear in a specific vital event record. Other delegates talked in a similar vein in discussing third parties who want information about other persons. Warren and Brandeis were motivated in writing their article precisely because of such third party intervention.[35] In their article, they describe their view of such intervention in terms similar to those used by the delegates at the conference.

> Gossip is no longer the resource of the idle and of the vicious, but has become a trade, which is pursued with industry as well as effrontery. To satisfy a prurient taste the details of sexual relations are spread broadcast in the columns of the daily papers. To occupy the indolent, column on column is filled with idle gossip, which can only be procured by intrusion upon the domestic circle . . . Each crop of unseemly gossip, thus harvested, becomes the seed of more, and, in direct proportion to its circulation, results in a lowering of social standards and of morality. Even gossip, apparently harmless, when widely and persistently circulated, is potent for evil.[36]

One delegate at the conference described such persons as "busybodies" and another said that they "go out and talk." Still another commented on the

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[34] Verbatim Report, (1948), p. 229.

[35] The motivation stemmed directly from overt, and obviously unwanted, press coverage of the marriage of Warren's daughter. See: Public Government for Private People. Vol 3., p. 496.

[36] Warren and Brandeis, "The Right To Privacy," p. 196.

possibility of unscrupulous persons using the information to sell products to people or for debt collection or for "all kinds of what might be considered improper purposes."[37]

While neither the delegates nor the legislation provides precise guidelines to assist gatekeepers in administering access, it is clear that the delegates to the conference had a general idea of the need to protect the subjects of records from disclosure of information about them in circumstances that conceivably might harm them. They simply evolved their own administrative rules to cover the situation. This way of operating is congenial from a number of points of view. As two observers of these kinds of rules put it: "Such rules inexpensively and swiftly routinise the exercise of discretion; they provide easy justifications for the use of statutory powers; they 'get the job done' whilst offering something to critics...they give a flexibility that primary legislation does not offer; and they are largely immune from judicial review."[38]

The access regime in vital statistics legislation in 1947–1949 covers

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[37] Verbatim Report, (1948), p. 228. J.T. Marshall, acting director of the Vital Statistics Division of the Dominion Bureau of Statistics, Mr. Treadgold on p. 253 and Mr. Packford on p. 225.

[38] Robert Baldwin and John Houghton, "Circular Arguments: The Status and Legitimacy of Administrative Rules," Public Law (Summer 1986): 239–240.

searches and issuance of certificates and certified copies.[39] Generally access is granted in two steps. First, a person can request a search for a particular record. Access at this level is entirely discretionary; that is, it is in the hands of the registrar–general. Once a person has filled out the prescribed form and paid the prescribed fee the person may have a search made for the existence of a particular record. The registrar–general then makes a report giving no other information than that the record exists, and perhaps (depending upon the jurisdiction) the registration number. Following this procedure, persons may apply for a specific record and receive a certificate.

It is clear that gatekeepers evolved different rules for core records and for secondary records. Core records of births, marriages, and deaths had to be protected from falling into the hands of those who did not have a legitimate reason to receive these records. Thus, third party access was to be carefully watched over by means of the discretion of the gatekeepers and the use of a standard certificate bearing only certain specified information given out to legitimate inquirers.

By contrast, secondary records, or amendments to the original or core registrations, could not be accessed by anyone. For example, no person could

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[39] Most jurisdictions provide for access under these two headings. See for example; Sas, Vital Statistics Act, 1978, c. V7, secs. 39, 40; NWT, Vital Statistics Act, 1974, c. V4. Nfld and Ont are somewhat different in their form of stating the requirements of access but the requirements themselves are essentially the same. Nfld, Vital Statistics Act, 1990, c. V–6, sec. 26. Ont, Vital Statistics Act, c. V4, secs. 43–45, 48.

get access to any original records that reveal facts such as illegitimacy, adoption, the names of birth parents, the original names of adopted children, or the cause of death. Not even subjects whose personal information was in the records could get access to these records. They were permanently buried and hidden from view in the vital event records. Any core records that contained any of these sorts of amendments or secondary records would only be released under certain circumstances, namely by order of the supreme court, a provincial court or an attorney–general's office.

What then was the notion of privacy upon which the delegates at the 1947 conference were making decisions on access? Since the delegates never directly stated their presuppositions, we shall have to try to infer their understanding of privacy from their statements. If they had spoken more precisely their notion of privacy might be something like the following. Privacy is a set of borders that distinguishes one person's informational "space," or inviolate personality, from that of another person.

While this description of their notion of privacy might be accurate, it is even more important to point out that the delegates at the conference were highly practical men and women. Their central concern was how to deal effectively with the practical problems of regulating access to the records and information in their care. Their notion of privacy is therefore best derived from those practical circumstances. Their conception of privacy did not include the notion of a subject of a record having any influence over access to

his or her records by a third party. A mechanism was needed to uphold the privacy rights of subjects. The mechanism that they chose was that of an unsigned, unspoken and unrecognised, as such, contract between persons living in Canada established and regulated unilaterally by the state whereby prescribed vital event information is supplied to prescribed persons under prescribed circumstances or conditions. They practised a kind of ad hoc injury test with which they could regulate access to the records at their own discretion.

For perhaps the first time in Canadian legislative history, a group of civil servants at a specific time and place and as a single body determined that the records for which they were responsible had to be thought about in terms of privacy. That is, the records produced by government must be protected from misuse by persons who were not subjects, that is, those named in the records. The state had to protect subjects from third parties, those not named in the records, by protecting the records.

The view of privacy that the gatekeepers used and which coloured vital statistics legislation has enabled them to avoid all the legal suits and arguments that have occurred in the United States and in Great Britain in recent years.[40] It is another question, however, to ask about the need for the stringent application of their principle of privacy to the extent that it completely overshadows access.

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[40] More shall be said about these cases at the end of chapter three.

For example, there is simply no indication in Canadian law journals and court case lists that any person has used vital event records in a malicious way and thereby violated or harmed any persons who had been involved with any vital event. As well, there is no indication that any vital statistics delegates at any of their meetings either prior to or after 1947 knew of the existence of such articles, journals, or cases. In other words, there are no documented cases where such interference in the lives of persons had actually occurred.[41]

The gatekeepers' ideas were based solely upon practical observation and upon the assumption, since the absence of evidence leaves nothing but assumption, that open public access would be detrimental to the privacy of all persons. The ATIP regime has forced[42] vital event records gatekeepers in

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[41] The author has checked The Canadian Abridgement, both the Case Law Digests and the Canadian Legal Literature, and was unable to find a single case prior to 1947. There was only one case after that time concerning disclosure of records and that case simply confirmed the intent of the vital statistics act. [cited 37 Can. Abr. (2nd)] Love Estate, Re (1968), 64 W.W.R. 190 (Alta. T.D.).

[42] This word in used here to imply that without such pressure very little progress would be made towards archival access if the gatekeepers were left to their own discretion because legislative rules allow too much freedom from primary legislation and they are therefore open to exploitation. Baldwin and Houghton, "Circular Arguments," p. 240. One of the results of such overuse of rules for discretion has been the unwillingness of gatekeepers to relinquish total control over "their records", an attitude that has existed in the civil service for some time. See Canada, Task Force on Government Information. To Know and Be Known: The Report of the Task Force on Government Information, vol. 1 (Ottawa: Task Force on Government Information, 1969), p. 13. A second hidden, and even more important, argument against archival access from a gatekeeper's administrative perspective is the fact that vital

some jurisdictions[43] and will force others in different jurisdictions to re–think the legislation that governs the collection and use of such personal information. For example, British Columbia's gatekeepers will soon be forced to deal with the demand of ATIP legislation in that province, which covers all ministries. At present records schedules covering vital event records have been drawn up and approved, although nothing has yet been done about implementing their provisions.

Certainly definitions will be needed such as defining clearly "personal information" under the terms of ATIP, as well as defining "persons" more clearly. There is no difference between the "personal information " that ATIP is concerned about and the personal information that is contained in vital event records. Thus, there is no difference between the personal information that is in vital event records and other government records.

More substantive than definitions is the way in which the two regimes understand and address the issues of access and privacy. It is clear that there is a substantive difference in the approach of ATIP and the approach of vital event legislation to these two issues. ATIP's approach is, or at least attempts

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event records generate considerable revenue. This point cannot be proven short of having access to gatekeeper's administrative records and reports. The point is made here simply to recognise that this administrative value does exist for the gatekeepers.

[43] Ontario has since 1990 moved to allow complete transferral of vital event records to the provincial repository, as is evidenced by the inclusion of the legal right to do so in its vital statistics act itself. Ont, Vital Statistics Act. c. V4 sec. 5(3).

to be, balanced in the sense that legislators attempt to examine the two issues more or less at the same time and try to balance the one right with and against the other. Vital event legislation on the other hand approached the two issues from a linear perspective. That is, the first and primary issue to have been dealt with was the right of privacy. The second right, of access, is dealt with only secondarily and as a result of dealing with the first issue.

As a consequence there is an over–emphasis on the right of privacy in vital event legislation and the access right is down–played. There have been attempts by the gatekeepers of these records to deal with ATIP legislation but these attempts have been haphazard and they have not taken into account the full impact of the demand for access and accessibility to records by researchers in the context of ATIP legislation. It is the concern of the third chapter to examine that need for researcher access and accessibility to vital event records in the context of an archives repository.

CHAPTER THREE

ACCESS AND ACCESSIBILITY TO VITAL EVENT RECORDS

Having examined the history of vital statistics legislation and pointed out its underlying emphasis on privacy, as opposed to access, through a comparison with the present ATIP legislative regime, the discussion can begin considering access and accessibility of these records in an archives repository. The two important terms of "access" and "accessibility" can now be defined.

Access can be defined as the "Right, opportunity, or means of finding, using, or approaching documents and/or information."[1] Accessibility is defined as "The availability of archival materials for consultation. Accessibility can be determined by such factors as legal authorization, proximity of materials to researchers, usable formats, and the existence of finding aids."[2] The question to be answered in this chapter, then, is: what might access and accessibility to vital event records look like? We shall offer an answer to this question by examining questions such as when and how transfers of these records from the gatekeepers might be made and with questions around why such access is necessary.

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[1] Lewis J. Bellardo and Lynn Lady Bellardo, compilers, A Glossary for Archivists, Manuscript Curators, and Records Managers, s.v. "Access," (Chicago: The Society of American Archivists, 1992).

[2] Bellardo and Bellardo, A Glossary for Archivists, Manuscript Curators, and Records Managers, s.v. "Accessibility."

Vital event records are a class of public records. Public records may be defined as "all documents made or received and preserved in the legitimate conduct of **governance** by the sovereign or its agents."[3] The "sovereign" in any given state is understood to be all those parts that make up the structure of a governing system. In a democratic society such as Canada the people are ultimately sovereign. They express their sovereignty through the system of governance; that is, through the executive, legislative and judicial organs of the state.

As well, citizens are subjects of the civil power they themselves establish. In the case of vital event records the civil power requires registration of vital events of all subjects in order to conduct governance: to establish the rights and obligations of persons. The civil power provides the forms for the registrations and requires that each vital event be recorded. These records are therefore public records as to their provenance. Since the late 1940s they have not been public records in the sense of being open for inspection. With the creation of the ATIP regime, all public records, in the first sense, have been increasingly seen to be records that must at some point be made open to inspection.

These records are not, therefore, the property of the transitory

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[3] Trevor Livelton, "Public Records: A Study in Archival Theory," (Master of Archival Studies Thesis, University of British Columbia, 1991), 139. His emphasis. See Livelton's further discussion following this definition for his analysis of practical situations while using this definition as a yardstick.

individuals in the bureaucracy, the gatekeepers. Nor are they in any sense owned by the civil power of the day. Rather, they are "owned by the people in the same sense that the citizens own their own courthouse or town hall, sidewalks and streets, funds in the treasury. They are held in trust for the citizens by custodians—usually the heads of agencies in which the records have been accumulated."[4]

The ATIP regime demands that vital event records as public records in the above two senses of being open to the public and available for use be made to mesh together more closely in reality. That is, citizens have a right of access to vital event records because they were created by the civil power which the citizens constitute and then once access has been achieved, establish a regime whereby the records can be used or made accessible. Interestingly, some of the delegates at the vital statistics conference in 1947 recognised that vital event records were in fact public records,[5] that is, records that should be open for inspection.

Almost forty years later, members of vital statistics committees were saying precisely the same thing, that vital event records must be considered as

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[4] H.G. Jones, Local Government Records: An Introduction to their Management, Preservation and Use (Nashville Tennessee: American Association for State and Local History, 1980), p. 23.

[5] Verbatim Report, (1948), p. 227. Mr. D.M. Treadgold, Ontario Senior Solicitor, Attorney–General's Department.

records to which public access must be given.[6] Certainly since 1980, vital statistics representatives from across the country have become increasingly concerned about ATIP and its effect on vital event records and have discussed the issue of access at annual meetings of the Vital Statistics Council for Canada.[7] How can the issue of archival access to vital event records be dealt with? That is, how can the rights of privacy and of public access be mediated?

One approach is to have archivists act as the intermediaries between the two rights of privacy and access, between subjects and third parties and between the records and the researcher, in effect act as gatekeepers. As one gatekeeper wrote in response to the BCARS survey[8] "[Once transfers have been formalized by agreement] I would expect that these records would be accessed only by archives staff." Therefore, according to this person, archivists would administer third party access assuming that there is a continuing need for confidentiality. This approach is clearly unacceptable

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[6] British Columbia Commissioners, "Amendments to the Uniform Vital Statistics Act: Report," Appendix O, in Uniform Law Conference of Canada, Proceedings of the Sixty-Fifth Annual Meeting (Quebec, Quebec: Uniform Law Conference, August 1983), 290.

[7] See: Vital Statistics Council For Canada. Minutes of the 37th Annual Meeting. Ottawa, Ontario, May 28–30, 1980: p. 3 of W.D. Burrowes Report, Appendix H; 39th Annual Meeting. June 1–3, 1982, Lord Beaverbrook Hotel, Fredericton, New Brunswick, pp. 8,9; 40th Annual Meeting. June 7–9, 1983. R.H. Coats Building, Tunney's Pasture, Ottawa, Ontario, p. 17.

[8] This survey was originally sent out by the BCARS to every gatekeeper in each jurisdiction in the spring and summer of 1991. It was sent out a second time by the author in January 1993 to update the forms. Very little had changed between the two mailings. A copy of the questionnaire and a collated list of the answers can be found in Appendix C.

because it demands that the repository staff act in the stead of the gatekeepers in applying the same or similar discretionary rules for access.

Another version of this approach is to devise and apply a number of standards or guidelines that would regulate access and privacy interests to the records once they are being transferred on a regular basis to the repository. A number of persons have developed such standards.[9] One proponent of this view, H. MacNeil, argues that archivists "are uniquely qualified to play the role of 'honest broker' between today's citizens and tomorrow's researchers."[10] The archivist, she says, has "a particular obligation to alert those whose occupations involve systematic breaches of others' privacy...to the fact that, although some invasions of privacy are inevitable, a cavalier attitude toward such losses, may corrupt the invader as well as harm the victim."[11] In other words archivists must act as gatekeepers to the records in his/her care.

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[9] Robbin suggests a number: Responsibility for maintaining balance between researcher's needs and the demands of privacy. Competence: recognises his/her own and when that is lacking seek out the competence of others in the decision–making process. Moral and legal standards: adheres to legal and administrative standards. Confidentiality and restrictions: nondisclosure and protection of confidentiality and establishes data security measures. Alice Robbin, "Ethical Standards and Data Archives," New Directions for Program Evaluation 4 (1978): 14–17.

[10] Judith S. Rowe, "Privacy Legislation: Implications for Archives," Archivists and Machine–Readable Records: Proceedings of the Conference on Archival Management of Machine–Readable Records, February 7–10, 1979, Ann Arbor, Michigan; ed. Carolyn L. Geda, et al. Chicago: Society of American Archivists, 1980, p. 194. Cited by MacNeil, "In Search of the Common Good," p. 117.

[11] MacNeil, "In Search of the Common Good," p. 49.

She agrees with H. Jenkinson that the moral defence[12] of archives requires the archivist to be loyal first to the records under his/her care in terms of protecting the integrity of the records. However, she seeks to step beyond Jenkinson's formulation of the moral defence and add another element. She suggests that archivists must be concerned about the release of any records containing personal information, or, rather, about the effect of premature disclosure of information affecting an individual's privacy.[13] Rules are needed to guide the release of records containing personal information. She suggests that archivists need to be involved,

> in the establishment of policies governing the collection, maintenance and dissemination of personal information held in government agencies. We need to know how personal information is collected and for what purpose; and we need to increase our understanding of the environment in which such records are created.[14]

She goes on to argue that four sets of questions[15] need to be asked about the records in order to establish appropriate access policies:

> First, what details are available about the existence of records containing personal information: what kind of information

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[12] Hilary Jenkinson, A Manual of Archival Administration (London: Percy Lund and co., ltd., first published 1922, 1937), pp. 83 ff.

[13] MacNeil, "In Search of the Common Good," pp. 137, 138.

[14] MacNeil, "In Search of the Common Good," pp. 145, 146. My emphasis.

[15] MacNeil, "In Search of the Common Good," p. 146.

> should be collected about the existence of records and by whom? To whom should such information be made available, for example, to government agencies, the public, and for what purpose? Secondly, which records are to be kept and for how long? Who will decide and how are decisions to be documented, made known and accounted for? Thirdly, when, if ever, can an embargo on access other than by the provider of the information and by the original agency be lifted and for what purpose? If it is lifted, should it be lifted in favour of other agencies or parties for management purposes? In favour of the general public? Finally, where are the records to be kept? In what circumstances are they to be held by a custodial organization? What safeguards exist for protecting personal information? How are they assessed and by whom?[16]

These are entirely appropriate questions to ask of the records but it is important to determine not just what questions need to be asked but also when they need to be asked.

The first set of questions concerns the compilation and dissemination of information about records containing personal information. In Canadian ATIP regimes, all government agencies, including the creating agency, custodial agencies, and repositories, are responsible for compiling this information and making it available to citizens so that they can exercise their rights under access and privacy laws. In other words, it is the agency having custody of the records that is responsible for these tasks. Assuming that access and privacy legislation applies to vital event records no matter what agency has custody of the records, whether the creating agency, a custodial agency or a repository, in principle their administration under access and privacy laws

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[16] MacNeil, "In Search of the Common Good," p. 146.

should not be affected.

The second set of questions asked by MacNeil relate to the issue of disposition. There is no question either by the gatekeepers or by archivists and records analysts over the importance of vital event records. All of the core, secondary and tertiary records must be kept permanently for their probative and archival or historical values. It would be preferable that only microfilm, or some other machine–readable, copies be kept permanently but at present only archivists argue against retaining originals plus copies of these records, especially in paper format.

When vital event records may be transferred to a repository is the issue addressed by the third set of questions. If restrictions on access while these records remain in the creating agency expire at some future point[17] that point marks the moment at which, or at least after which, transfer may appropriately take place. If concerns to protect privacy no longer exist, the repository can concentrate on making the records accessible by facilitating reference through production of finding aids and so on. The separate question of whether at

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[17] The gatekeepers have established a vague limit themselves by taking account of a new inquirer after vital event records. Genealogists have become so significant that new fee structures and new forms have had to be created to deal with them. See Appendices C and E. A further accessibility question is that of fee versus free. That is, if some vital event records have reached such an age that genealogists can have access to the records, then those records have reached their optimum level of administrative use. Therefore they could be transferred to a repository where citizens could access them without payment and without the added workload on the gatekeepers. Ellen Detlefsen, "User Costs: Information as a Social Good Vs. Information as a Commodity," Government Publications Review 11 (1984): 387.

some point government agencies may use the personal information in these records for purposes formerly restricted is not relevant to the present discussion, but it might be noted that neither the legislation nor administrative rules affecting vital event records currently state precisely the rules under which vital event records are used internally in government. The vague undertakings in the legislation and the discretion of gatekeepers are the only guarantees persons have that their privacy will be protected in government's use of the information in vital event records.

The final set of questions merely looks at the same issue as the first. In an ATIP regime, where the records are or who has custody of them is immaterial. The law applies in all cases. However, it is precisely the sense that this is becoming the case that makes the gatekeepers of these records are becoming concerned. They can see that they can no longer use arguments specific to vital event records to maintain their discretionary regime, nor can they claim that reasons of access demand their own continuing custody of these records. As a result, the opportunities for determining transfer to archival repositories is becoming more timely than it has ever been.

There remains the question of what archivists' role should be in setting the rules for access. In ATIP, some of the rules are established in law and some in regulations and procedures to administer the law. Clearly, archivists may offer advice in the former realm and may have to develop rules in their own sphere where the latter is concerned. In any event, under ATIP, it can no

longer be argued that all records in repositories have to be completely open. When records are no longer needed for administrative purposes, their disposition may result in transfer to a repository before restrictions on access have expired. The access rules in place will still apply. It is a matter of administering them until they expire. Of course, in administering the rules there is often no escape from exercising discretionary judgement on the basis of rules, not on the basis of individual archivist's inclinations or judgement of the purposes of the petitioner for access, or any consideration of any other factors not determined by the law. In this sense, archivists unavoidably become gatekeepers in some circumstances.

It is, however, very unlikely that vital event records will be transferred to archival repositories while restrictions on access still apply, because administrative use of the records will probably last as long as the need for restrictions. In fact, it is arguable that if these records are considered too sensitive for a researcher to see them in a repository before their time–limits have expired, then it may well be that these records are too sensitive to be held in a repository in the first place.[18] When there is no longer any need to administer matters in relation to the persons who are the subjects of vital event records, it will probably be found that privacy concerns begin to expire. The difficult question is to determine when that expiration occurs.

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[18] Helen Yoxall, "Privacy and Personal Papers," Archives and Manuscripts: The Journal of the Australian Society of Archivists 12, no. 1 (May 1984): 42.

One approach is to set a standard term after which all vital event records are open. This method has been used in Canada and the United States, to name two instances, for census records. The federal privacy law sets a limit of eighty years after the death of the person for operation of restrictions on access to personal information. A report written in 1983 for adminstration of vital event records suggested that "after a period, all records should be freely photocopied for release, because beyond this period secrecy achieves nothing. A suggested period is 100 years."[19]

This statement is interesting from two points of view. First, it assumes that copies of the original records will have to be made in order to facilitate public accessibility, just as are now made to facilitate administrative use. However, it is ridiculous from a cost and preservation point of view to photocopy individual records on demand for public inspection in archival repositories. Moreover, it is not helpful to confuse these issues of accessibility with the question of access, or right to consult the records and use the information they bear. Second, it is not clear what the report means by one hundred years. Is it from the creation of the record, the death of the individual, or what? And is one hundred years reasonable for all classes of vital event records? It may be proposed that it is not. If the goal is to

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[19] British Columbia and Canadian Commissioners. "Vital Statistics Report." Appendix O, in Uniform Law Conference of Canada. Proceedings of the Sixty-Fifth Annual Meeting. Quebec, Quebec: Uniform Law Conference, 1983: 290. They did not make a clear statement as to from what point that 100 years would be numbered.

determine when privacy concerns expire, we are in effect seeking a regime in which each class of vital event records can be made accessible in archival repositories without restriction and without the exercise of discretion on the part of archival custodians of the records. In effect, we want to transform an injury test, discretionary regime into a class test mandatory regime such that, eventually, all records of every class of vital event will be open.

To open each class means demonstrating that the possibility of injury which restricts access will expire at some determinable point in time. So, determining when records can be opened to disclosure means demonstrating that harm can no longer occur to any interest formerly protected. This inevitably involves looking at the information contained in the record and whether its release can do harm to the subjects of the records.

The issue of time–limits has been addressed in some jurisdictions as early as 1981 and 1983.[20] More recently, a survey performed by the BCARS[21] in 1990 provides a relatively accurate account of what has happened so far. Of those jurisdictions who answered the survey, five (Prince Edward Island, Newfoundland, Yukon, Saskatchewan, and Nova Scotia) did not transfer original registrations of any kind to a government repository.

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[20] See Vital Statistics Council for Canada. Minutes of the 38th Annual Meeting. Toronto, Ontario, May 26–29, 1981, p. 25; and Vital Statistics Council for Canada. Minutes of the 40th Annual Meeting. R.H. Coats Building, Tunney's Pasture, Ottawa, Ontario, 1983, p. 17.

[21] The collated results of the survey, with the questions asked, can be found in Appendix C.

Manitoba and New Brunswick have not given up their legal possession of copies to their respective repositories and therefore retain control over access. British Columbia, despite having gained legislative approval for ongoing records schedules as of 29 June 1992 must also be placed in this category because the gatekeeper in that jurisdiction has not given up legal control over access. Only two jurisdictions (Ontario and Quebec) indicated that they have an ongoing system of transferral for access of the records themselves, and not merely indices as is the case with Alberta, to their repositories under protocol agreements or legislation.

A possible source for help in determining appropriate time–limits for release of vital event records are their gatekeepers. However, this source is not as helpful as one might hope. Each agency in the different jurisdictions has a different time–limit for the same records and it is not clear from what event these time–limits are to be calculated, whether from the actual vital event date or the death of the subject(s) involved.

For example, Alberta has a time–limit of one–hundred years on birth registrations, seventy–five years on marriage registrations and fifty years on death registrations. Ontario has a time–limit for birth records of ninety–five years, for marriage and divorce records of eighty years, and for death records of seventy years. Quebec has a time–limit of one–hundred years for all records while New Brunswick also has a time–limit of one–hundred years but only for indices. The recommended limit for all records by the most recently

revised model vital statistics act is also one–hundred years.[22] British Columbia, in its ongoing vital statistics records schedules, has a time–limit of twenty years across the board but access is determined solely by the director. Manitoba also allows access solely at the discretion of the director.

Other jurisdictions (Nova Scotia, Saskatchewan, Yukon, Prince Edward Island, and Newfoundland) do not transfer records and therefore do not have access policies.[23] What makes matters more difficult in using the gatekeepers as a source for determining time–limits is the fact there seems to be no particular reason for the limits assigned by them to particular classes of records.

In order to marshall some reasoned arguments about appropriate time–limits, it will be useful to look at actual cases of contention over access to vital event records. It should be noted that there exist very few cases that can be directly applied to the problem of establishing time–limits to vital event records. In fact, in Canada, as has been pointed out, there are no such cases. Therefore, such cases as do exist shall be used wherever possible and where none exist for a particular set of vital event records, a scenario will be proposed that will be an aid to the discussion. Whether real cases are used from outside Canada or a scenario is created for discussion does not reduce the

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[22] Uniform Law Commission of Canada, "Model Vital Statistics Act," Sixty–eighth Annual Meeting, Appendix N, 1986, sec. 31(12).

[23] See Appendix C.

significance of the argument. All that we want from a discussion of case–histories is information about how untimely release of records will affect subjects.

The establishment of such time–limits must be based upon an examination of such cases in the context of an invasion–of–privacy test.[24] This test is designed to apply four interrelated issues, by means of questions, to each set of records: expectations of the individual, sensitivity of the information, probability of injury and the context of the file. We shall discuss the four elements separately and then apply whatever parts we think is necessary to vital event records such as those for births, marriages and deaths. The secondary and tertiary records related to the core records need not be dealt with here because they will likely simply be released at the same time as the core records with which they are connected.

The first of the four parts of the test to be discussed is the context of the file. Context of the file simply refers to personal information in the registration form and its relationship to the file as a whole. That file includes both a particular registration form's relationship with other registrations in its series as well as to other series, secondary and tertiary. Since registrations are filed and microfilmed one after another, they cannot be released for public scrutiny until after the expiration of a time–limit from the date of the event.

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[24] This test was developed by the National Archives of Canada. Relevant sections of the Test have been copied and included in Appendix D.

Upon that expiration they will become available. At this time any secondary or tertiary information that is related to the registrations can also be released. The file context will not allow the release of individual records. Therefore, the entire file will have to be made accessible at the same time, so there is no problem with the context of a particular registration.

The second part of the test to be applied to vital event records is that of the expectations of the individual when vital event information was placed into the hands of government. The civil power in legislation and regulations simply states what undertaking it will provide to ensure the protection of privacy interests on behalf of citizens, regardless of whether the citizen knows either the relevant legislation or regulations. There is only one statement of the undertaking by the civil power regarding privacy, access and accessibility in either the blank registration forms[25] or in the vital statistics legislation and regulations.

That one instance simply states that: "No person employed in the administration of this Act shall (a) communicate or allow to be communicated to any person not entitled to it any information obtained under this Act, or (b) allow any person not entitled to, to inspect or have access to any records

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[25] See for example any search application forms from any of the jurisdictions. See also regulations concerning the VSA of Alta, Reg. 304/85; Man, Reg. 308/88, and Ont, Reg. 942/80.

containing information under this Act."[26] The expectations of the individual therefore with regard to this guarantee is simply that the state will not allow personal information to be widely disseminated.

The final two parts of the test are sensitivity of the information and probability of injury. These two parts of the test are more applicable to vital event records. They shall be discussed as a single question because sensitivity of information is directly related to possibility of injury. This test can be legitimately applied to vital event records when it is tied to time–limits. The test must be used to somehow determine injury and sensitivity. These in turn can be determined by the use of cases. If the information contained in the records is considered sensitive "can it be surmised that the particular disclosure carries with it the probability of causing measurable injury? Injury is to be interpreted as any harm or embarrassment which will have direct negative effects on an individual's career, reputation, financial position, health or well–being."[27]

This statement from the invasion–of–privacy test reveals an important perspective: the privacy interest in personal information dies with a decedent. As the Supreme Court of the United States expressed it: "the right of privacy

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[26] Uniform Law Commission, Model Vital Statistics Act, Appendix N, sec 37(1). Winnipeg, Manitoba.

[27] See Appendix D.

must be asserted by the person holding that right..."[28] Twenty years are allowed before the lapse of privacy to take action on legal post–mortem effects. Those who have created ATIP legislation in Canada hold the same view. For example the federal definition of personal information excludes information about someone who has been dead for more than twenty years.[29] Of other jurisdictions that have ATIP legislation (those that do not are Alberta, Northwest Territories, Prince Edward Island and New Brunswick), four have explicit references to a time–limit applied to the records of decedents. Manitoba limits the time to ten years[30] and Saskatchewan places the time–limit at twenty–five years.[31] British Columbia places the limit at twenty years for all records[32] but its vital statistics records schedules provide that that limit be administered by the BCARS (with the consent of the director). Ontario places the limit at thirty years.[33]

Jurisdictions that have ATIP legislation but no explicit reference to this

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[28] Emily E. Garrard, "Administrative Law: Death Certificates are not exempt from Disclosure Requirements of the Freedom of Information Act," South Carolina Law Review 37, no. 1 (Autumn 1985): 2.

[29] Canada, Privacy Act, 1980–81–82–83, c. P21, sec 3.

[30] Man, Freedom of Information Act, 1985–86, c. 6, sec. 41(3).

[31] Sas, Freedom of Information and Protection of Privacy Act, 1990–91, c. F22.01, sec. 30(1).

[32] BC, Freedom of Information and Protection of Privacy Act, Bill 50, 1992, sec. 36(c).

[33] Ont, Freedom of Information and Protection of Privacy Act, 1990, c. F31, Sec 2(2).

principle of personal information not applying to a decedent after a certain time are Quebec, Yukon, Nova Scotia and Newfoundland. Of these four only the latter has a reference in its separate (from access legislation) privacy act which implies the same principle: "A right of action for violation of privacy is extinguished by the death of the individual whose privacy is alleged to have been violated."[34] Ontario's ATIP legislation explicitly states[35] that it does not apply to the vital event records transferred to the provincial archives.

Of all vital event records, death registrations are the least sensitive because they contain only one item of personal information that can be considered sensitive, and certainly not by the decedent. That one item is how the individual died. This one item may affect the decedent's survivors. It is possible that someone's death, from AIDS, for example, if discovered sometime after the event may harm the family or loved ones of the person who died because of some individual gaining access to such information. Even though this probability of injury is low, it is suggested by this thesis that a lower time–limit be applied to death registrations. Such a time–limit is ten to twenty years from the event.

It might be suggested that all proposed time–limits be measured from the date of the death of a subject of a record. This would be a simpler

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[34] Nfld, Privacy Act, 1990, c. P22, sec. 11.

[35] Ont, Freedom of Information and Protection of Privacy Act, 1990, c. F31, sec. 65.

approach if only one subject were always involved but since there are often multiple subjects in vital event records, it will not work. For example, if a child dies, a person might gain access to its birth registration after twenty years. The privacy of the parents, especially if the child were adopted or illegitimate, might be violated. This is an unacceptable risk of invasion of privacy for these other subjects.

Once access is established for death registrations after a period of between ten to twenty years, a researcher can find a number of items of personal information which would lead to other registrations, such as birth registrations. As it turns out, birth registrations are by far the registrations that are most affected by the issue of sensitivity/ possible harm. Two cases that show this involve transsexualism and adoptions.

A number of cases have arisen in recent years over transsexualism where an individual born either male or female chooses to obtain the biological and social attributes that they felt more closely matched their psychological attributes and therefore switched from male to female or from female to male. A major concern by such persons was that their original birth registrations, and therefore all future certificates, be made to declare their new status. Two cases in Britain, in 1982 and in 1990 were considered by the European Court of Human Rights.[36] The complaint of the person in each case was that the

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[36] John Andrews and Ann Sherlock, "Transsexual rights in the United Kingdom," European Law Review 16, no. 3 (1991): 262–266. See also Commonwealth Secretariat, "Right to respect for private life–sex change–

law of the United Kingdom in choosing to not alter original birth registrations interfered with the private activities of these two individuals.

The problem for transsexuals is not just that birth certificates need to be produced at different times (i.e. insurance companies, universities, government employment) but also that birth records in Britain are public records (in the sense of open to the public) and as such can feasibly cause serious problems for the individuals involved.[37] Not only can it cause unwarranted embarrassment when it is necessary to produce a birth certificate, it can also cause the loss of opportunity in seeking work positions, getting insurance and so on because of the ignorance or even prejudice of those who discover the original registration. One important way in which these persons are harmed is in the inability to marry another person legitimately. Once a birth certificate is supplied, the marriage is cancelled because it would not be recognised as such by the law. Therefore, serious harm can be caused to a person's ability to find work, enter university, get insurance or get married if an original birth registration is not changed or if others have access to the original information.

It has to be remembered that, at least in Canada, all information or events that affect vital event records remain in the records. Nothing is ever

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whether refusal to change birth certificate a violation of the European Convention on Human Rights," Commonwealth Law Bulletin 17, no. 1 (1991): 268–270.

[37] Andrews, "Transsexual rights in the United Kingdom," pp. 263, 264.

expunged or destroyed. Therefore, from the example of this case study, birth registrations should not be released into the care and control of archival repositories for one–hundred years following the date of the event. It is possible to argue that this limit could be brought down to eighty years because it is unlikely that an individual if they go through such surgery at age twenty will live beyond one–hundred years.

The second example that proves the validity of a lengthy time–limit for the retention of birth registrations by the gatekeepers is the quantitatively more significant event of adoption. In Great Britain, adopted children can receive copies not just of their amended birth record but also the original with particulars of biological parents, when such children reach the age of eighteen and have received mandatory counselling. The Registrar–General has occasionally denied access to an adopted person on the basis of criminal intent or the possibility of harm coming to the biological parents. As a result, some adopted persons so affected have attempted to sue for release of the records on the basis of denial of their statutory rights.

The court upheld the original decision of the Registrar General because there was clear evidence that disclosure of the information might cause possible harm to the biological mother or other members of the plaintiff's natural family. In one case,[38] the adopted child, having become an adult,

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[38] A.P. Le Sueur, "Public Policies and the Adoption Act," Public Law (Autumn 1991): 326–331.

murdered one person in a park, without motive, and then a second person in a jail cell who he thought was his biological mother. Suggestions were also made of other possible reasons as to why the Registrar General might deny statutory access, including the possibility that an unscrupulous adoptee might blackmail his or her biological parent(s) and protection of the biological parent(s) from having the knowledge that, as in the above case, their offspring was a double–murderer.[39]

The need for the debate that raged in Britain[40] between those on the one hand who argued that all persons should have total access because of the statutory right to such information and those on the other side who argued that this right had to be limited in some way cannot occur in Canada because of the total ban on access to all information related to adoptions, including birth registrations. It is precisely because of these types of possibilities that the Canadian system was put into place and precisely why birth records cannot be made publicly accessible in an archives for an appropriately long period of time. The suggested time–limit is eighty to one–hundred years from the event

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[39] Le Sueur, "Public Policy and the Adoption Act," pp. 329, 331.

[40] Similarly, the argument in the United States that revolves around release of such adoption information into the hands of adopted persons, bypassing in some states sealed records statutes and in others upholding them, could also not occur in Canada for the same reasons. See Marilee C. Unruh, "Adoptees' Equal Protection Rights," UCLA Law Review 28, no. 6 (August 1981): 1314–1364 and Carol Gloor, "Breaking the Seal: Constitutional and Statutory Approaches to Adult Adoptees' Right to Identity," Northwestern University Law Review 75, no. 2 (April 1980): 316–344.

because in all likelihood, the individuals involved in the adoption will be dead or at least the issue of sensitivity will not be important at that late date.

In effect, then, this method of attempting to find types of examples provides us with a relatively rational means of determining time–limits, which is much better than the ad hoc method employed by the gatekeepers. We can use this same method for all other registrations.

Let us consider marriage registrations. The problem with discussing this set of registrations using the method we have described above is that there do not seem to be any cases where the issue of harm due to early release of such information into a public environment exists. For example, if a marriage subsequently ended in divorce and a notation is made on the original marriage registration to that effect, it is possible that some person might gain access to the information and use it to harm the reputation, job prospects and so on of the individuals involved but this is stretching the point of privacy to a ridiculous degree. Since therefore there is a very low possibility of harm coming from the release of these records at an earlier stage of their existence it is suggested that a reduced time–limit is more acceptable for release into a repository, for example, from twenty to forty years from the event.

It is necessary to proceed with the method of reasoning illustrated in the previous pages when considering access to records subject to injury tests and for establishing time–limits. It will facilitate transfer to repositories and open accessibility. The method requires an understanding of the nature of the

records and the information they contain in each class as well as the nature of injuries which might occur to the subjects of the records from early disclosure. Time–limits will probably have to be established in the negotiations between archivists and gatekeepers. This procedure might very well reveal that the time–limits in ATIP legislation are incompatible with the most reasonable regime for vital event records. If that turns out to be the case, either the limits will have to be adjusted to conform with the law or the law will have to be changed.

CONCLUSION

The importance of establishing open access and facilitating accessibility to vital event records in an archives repository cannot be underestimated. These records are an important source of information for all researchers an it is information that cannot be found elsewhere. Despite these facts these records are among the most under–used and under–accessed records created by government. Researchers as a whole have not been able to use these records since their establishment as a tool of the civil power in governing Canadian society. Open access to these records on the basis of annual transfers is important because only open access will allow professional researchers such as historians and amateur researchers such as genealogists to make full use of the records.

It has only been in the last few years that the gatekeepers have allowed access to some researchers. That access has been granted in part because of the pressure put upon the gatekeepers from some researchers such as genealogists, and in part due to the influence of ATIP. In fact, it is interesting to note that Ontario, one of the two sets of gatekeepers in Canada that has regular transfers of vital event records to their respective repositories, the other being Quebec, have allowed annual transfers of vital event records to repositories has done so only in the last few years and primarily because of the influence of ATIP.

Access has been so limited due to both discretionary rules established by the gatekeepers over time and the influence of that discretionary attitude colouring the vital statistics legislation. As a result, only some researchers gained access. For example, at the one end of the researcher scale only some genealogists might be granted access and others no access. At the other end of the scale, for example, the gatekeepers in British Columbia have long had a relationship with the University of British Columbia whereby its medical researchers and sociologists make use of vital event records, without of course disclosing any personal information. Researchers at Simon Fraser University and the University of Victoria have not had such extensive access. The discretion of the gatekeepers has played a large part in deciding issues of researcher access. This problem of unequal access would be solved by open access to records transferred annually because all researchers would then have equal opportunity for access to the same set of records.

In the history of its deliberations about all issues of vital event records, the gatekeepers did not ask the question about access except to either deny it altogether or occasionally acknowledge the issue with the result that no change was made in the prevailing attitude. Since the question has never been asked, it is hardly surprising that there has been no answer sought to the problem. With ATIP regimes being established across the country the question has come up once again and there is no way to escape it. Once the question is confronted, however, it is likely that the answer to the access problem must be

tied to a determination of when each class of records ceases to have a great deal of administrative value and no longer carries the risk of possible harm if released earlier.

An archives repository is the most appropriate place to allow such open access and facilitate accessibility to the records because it is the mandate of a repository to insure that access and to facilitate that accessibility. While all government agencies have to have mechanisms in place to deal with researchers due to the demands of the ATIP regime facilitating researchers is not the prime goal in their mandate. An essential part of the repositories mandate is to ensure the physical preservation of all records in its care for future use. The agency creating records do so for administrative use. Once that use has diminished or faded entirely, the agency has no further ongoing use for the record and the record or a copy of it can be transferred to an archives for non–administrative use and preservation. An archives repository can be a significant help to the gatekeepers in this respect by reducing some of the workload, once vital event records are being regularly transferred.

It remains important to mention the need for uniformity of action regarding the establishment of access to vital event records. The history of vital statistics legislation has revealed the concern of the gatekeepers for country–wide uniformity of legislation and rules that govern the creation of vital event records. Such uniformity cannot be less important for the establishment of access to these records as well.

A final point to make is that the solution of different time–limits applied to different classes of vital event records established through a reasoned method of examining cases can be used beyond this thesis for other records. In fact, such limits and reasoning would be applicable to any records created by government to which access is granted only on the basis of the discretion of gatekeepers or on the basis of injury tests that limit disclosure. For example, census records have lengthy time–limits fixed to them for similar reasons that vital event records are subject to such limits. It is worth investigating whether those limits attached to the census records were established on the basis of a method of reasoning, such as that advocated here, or whether those limits were chosen at random or on an ad hoc basis, as they were by vital event records gatekeepers.

The past arguments of the gatekeepers regarding access to vital event records cannot be sustained. Under the regime established by ATIP, the personal information contained in vital event records is not substantially different from personal information contained in any other government records. Vital event records can be treated in the same manner as other records are treated under ATIP. This thesis has addressed the legitimate concern of the gatekeepers for the privacy of subjects and attempted to balance it in some acceptable manner with the right of access to these records. Gatekeepers and archivists together can establish this balance through using a method such as that advocated here, thereby establishing mandatory rules for the release of

whole classes of records for public access by means of examining cases of law where issues related to vital events have arisen.

APPENDIX A

Extract from, "An Act Respecting The Registration of Births, Marriages, Deaths and Other Vital Events," in Conference of Commissioners on Uniformity of Legislation in Canada, Proceedings of the Thirty–first Annual Meeting of the Conference of Commissioners on Uniformity of Legislation in Canada Appendix G (Calgary, Alberta: 1949), pp. 63–65.

SEARCHES

30. (1) Any person, upon applying, furnishing information satisfactory to the Director and paying the prescribed fee, may, if the Director is satisfied that the information is not to be used for an unlawful or improper purpose, have a search made by the Director,

(a) for the registration in his office of any birth, stillbirth, marriage, death,adoption, change of name, or dissolution or annulment of marriage; or

(b) for the record of any baptism, marriage or burial placed on file in the office of the Director under section 20 [church records].

(2) The Director shall make a report on the search which shall state whether or not the birth,stillbirth, marriage,death, adoption, change of name, or dissolution or annulment of marriage, baptism or burial is registered or recorded and, if registered, shall state the registration number thereof, and shall contain no further information.

ISSUANCE OF CERTIFICATES AND COPIES

31. (1) Any person, upon applying, furnishing information satisfactory to the Director and paying the prescribed fee, may, if the Director is satisfied that it is not to be used for an unlawful or improper purpose, obtain a certificate in the prescribed form in respect of the registration of the birth of any person, which certificate shall contain the following particulars only of the registration:

(a) the name of the person;
(b) the date of birth;
(c) the place of birth;

(d) the sex of the person;
(e) the date of registration; and
(f) the serial number of the registration.

(2) A certified copy or photographic print of the registration of a birth may be issued only,

(a) to a person who requires it to comply with The Adoption Act;
(b) to an officer of the Crown in right of the province who requires it for use in the discharge of his official duties; or
(c) to a person upon the authority in writing of the Minister or upon the order of a judge of a court,

and only upon application in the prescribed form and upon payment of the prescribed fee.

(3) Any person, upon applying, furnishing information satisfactory to the Director and paying the prescribed fee, may, if the Director is satisfied that it is not to be used for an unlawful or improper purpose, obtain a certificate in the prescribed form in respect of the registration of a marriage of any person, which certificate shall contain the following particulars only of the registration:

(a) the names of the parties to the marriage;
(b) the date of the marriage;
(c) the place where the marriage was solemnized;
(d) the date of registration; and
(e) the serial number of the registration.

(4) A certified copy or photographic print of the registration of a birth may be issued only,

(a) to a party to the marriage;
(b) to a person upon the authority in writing of the Minister; or
(c) to a person upon the order of a judge of a court,

and only upon application in the prescribed form and upon payment of the prescribed fee.

(5) Any person, upon applying, furnishing information satisfactory to the Director and paying the prescribed fee, may, if the Director is satisfied that it is not to be used for an unlawful or

improper purpose and subject to subsection (6), obtain a certificate in the prescribed form in respect of the registration of a death.

(6) No certificate shall be issued in respect of the registration of a death shall be issued in such a manner as to disclose the cause of death as certified on the medical certificate, except,

(a) upon the authority in writing of the Minister; or
(b) upon the order of a judge of a court.

(7) A certified copy or photographic print of the registration of a death may be issued only,

(a) to a person upon the authority in writing of the Minister; or
(b) to a person upon the order of a judge of a court,

and only upon application in the prescribed form and upon payment of the prescribed fee.

(8) Any person, upon applying in the prescribed form and paying the prescribed fee, may, with the approval of the Director and subject to the same limitations as those respecting certified copies and photographic prints set out in subsections (2), (4) and (7), obtain a certificate in the prescribed form in respect of the record of a baptism, marriage or burial placed on file under section 20 [church records].

(9) No certificate, certified copy or photographic print shall be issued under this Act in respect of the registration of an adoption, change of name, or dissolution or annulment of marriage.

APPENDIX B

Extract from, "Uniform Vital Statistics Act," in Uniform Law Conference of Canada, Proceedings of the Sixty–Eighth Annual Meeting Appendix N (Winnipeg, Manitoba: August 1986): 499–502.

SEARCH OF RECORDS

30. (1) Any person, on applying, furnishing information satisfactory to the director and paying the prescribed fee, may, if the director is satisfied that the search information is not to be used for an unlawful or improper purpose, have a search made by the director

(a) for the registration of any birth, stillbirth, marriage, death, change of name or annulment of marriage, or
(b) for the record of any baptism, marriage or burial placed on file in the office of the director under section 27.

(2) The director shall make a report on the search which shall state only the following information:

(a) whether or not the birth, stillbirth, marriage, death, change of name, annulment of marriage, baptism or burial is registered or recorded;
(b) if registered, its registration number.

ISSUE OF CERTIFICATES AND COPIES

31. (1) A certificate of birth or marriage may be issued by the director, on application in the prescribed form and on payment of the prescribed fee, only to

(a) a person named in the certificate,
(b) a parent whose name appears on the registration form which the certificate is to be issued,
(c) a spouse of a person whose name appears on the registration form which the certificate is to be issued,
(d) a person on the authorization in writing of the person named in the certificate or of the parents or

spouse of the person named in the certificate,
(e) a lawyer acting for the person named in the certificate or for the parents or spouse of the person named in the certificate,
(f) a person on the order of a court,
(g) a public officer who requires it for use in the discharge of official duties, or
(h) a person on the authority in writing of the Minister.

(2) A birth certificate shall contain
(a) the name of the person,
(b) the date of birth,
(c) the place of birth,
(d) the sex of the person,
(e) the date of registration, and
(f) the registration number,

and may contain the names of the parents.

(3) A copy or certified copy of the registration of a birth may be issued by the director on application in the prescribed form and on payment of the prescribed fee only to

(a) the person to whom the registration applies, if that person is an adult,
(b) a person who is shown on the registration as the mother or father of the person in respect of whom the registration applies,
(c) a person who requires it to comply with the **(Adoption Act)**,
(d) a public officer who requires it for use in the discharge of official duties,
(e) a person on the order of a court, or
(f) a person on the authority in writing of the Minister.

(4) A copy or certified copy of the registration of a marriage may be issued by the director on application in the prescribed form and on payment of the prescribed fee only to

(a) a party to the marriage,

(b) a person on the authority in writing of a party to the marriage,
(c) a lawyer acting for a party to the marriage,
(d) the legal representative of a party to the marriage,
(e) a person on the order of a court, or
(f) a person on the authority in writing of the Minister.

(5) Any person, on applying, furnishing information satisfactory to the director and paying the prescribed fee, may, subject to subsection (6), obtain a certificate in the prescribed form in respect of the registration of a death.

(6) No certificate issued in respect of the registration of a death shall be issued in a manner that discloses the cause of death as certified on the medical certificate, except

(a) to the mother, father, brother, sister, spouse or common law spouse of the deceased or to the adult child of the deceased,
(b) on the authority in writing of the Minister, or
(c) on the order of a court.

(7) A copy or certified copy of the registration of a death or stillbirth may only be issued on application in the prescribed form and on payment of the prescribed fee to a person

(a) on the authority in writing of the Minister,
(b) on the order of a court, or
(c) who satisfies the director that it is required to accompany an application to disinter a body.

(8) The director may refuse to issue a certificate, copy or certified copy under this section if the director has reason to believe that the document is to be used for an unlawful or improper purpose.

(9) Any person, on application in the prescribed form and on payment of the prescribed fee, may, with the approval of the director and subject to the same limitations as those set out in subsections (1), (3), (4), (6) and (7), obtain a certificate in the prescribed form in respect of the record of a baptism, marriage or burial placed on file under section 27 [church records].

(10) In respect of the issuance of the certificates, copies or certified copies, or any of them, mentioned in subsections (1),(3),(4),(6),(7) and (9), the Minister may in writing dispense with the authority required form him by those subsections or may dispense with that authority in cases and circumstances specified by him.

(11) No certificate, copy or certified copy shall be issued under this Act in respect of the registration of an adoption, change of name or annulment of marriage.

(12) Notwithstanding subsections (1),(3),(4),(6),(7) and (9), any person, on application in the prescribed form and on payment of the prescribed fee, may obtain a copy or certified copy of

(a) a registration of birth, stillbirth, marriage or death, or
(b) the record of a baptism, marriage or burial placed on file under section 27

after 100 years after the event that was registered or recorded.

APPENDIX C-BCARS QUESTIONNAIRE[1]

A copy of the questionnaire with its questions follows this collated list. Only the Northwest Territories did not respond to the questionnaire. Nor were the answers to the questions for that jurisdiction found in any other way.

	1. Microfilm?	2. Original hard-copy?	3. How long?
Alta	X	X	Permanently
Man	X	X	Permanently
NB	X	X	Permanently
NS	X	X	Permanently
Ont	X[2]	X	Permanently
Sas	X	X	Permanently
Yuk	No[3]	–	–
BC[4]	X	X	Permanently
PEI	X	X	Permanently
NFLD	X[5]	X	Permanently
Que[6]	X	X	Permanently

[1] Used with permission of the British Columbia Archives and Records Service.

[2] No longer microfilming–since April 1990. Now use imaging process.

[3] Has a computer database since 1985.

[4] BC, PEI, and Nfld filled out same questionnaire sent by the author to them in February 1993. BC data in square brackets added by author from vital event ongoing records schedules. Only NWT did not supply information.

[5] Has implemented a computerized microfilm retrieval system in 1992.

[6] Que data was taken from an information sheet put out by the Registre de reference a l'etat civil called "Genealogical Searches of Quebec records".

	4. Transfer?	5. Agreement type	6. If Not transferred–indices opened to public?[7]
Alta	Indices	Legislation	B–1905–81/M–1922–82/D–1903–79
Man	Originals	Protocol	N/A
NB	Originals (B,M,D)	Protocol	100 yrs from date of event and once transferred administered by Archives Act
NS	No	N/A	N/A
Ont	Originals (all)	Legislation	N/A
Sas	No	N/A	N/A
Yuk	Pending	Protocol	Not open
BC	No [yes–m/f]	Protocol (if done) [approval of Director]	N/A
PEI	Yes	N/A	Not open
NFLD	Yes	Protocol	100 yrs–B
Que	Yes	Legislation	N/A

7. If transferred, what access restrictions?

Alta	B–100yrs/M–75yrs/D–50yrs
Man	Vital Statistics Office approval
NB	B,M,D,Indices–100yrs
NS	N/A
Ont	A–100yrs/B–95yrs/M and Divorce–80yrs/D–70yrs
Sas	N/A
Yuk	N/A
BC	Adoption records–never [All–20yrs–paper originals, M/F]
PEI	N/A
NFLD	N/A
Que	All registers–100yrs

[7] Only NB clearly states when the time–limit would begin. All others do not explicitly state that the limit would begin as of the date of the vital event.

VITAL EVENT RECORDS QUESTIONNAIRE

1 Do you microfilm vital event records?

YES _____ NO _____

If no, do you use any other form of imaging/preservation system for these records?

YES _____ NO _____

If yes, please describe.

_____

_____

_____

2 If you do microfilm vital event records, what happens to the original hardcopy records upon completion of microfilming?

Do you keep them?	YES	_____	NO	_____
Do you destroy them?	YES	_____	NO	_____
Other?	YES	_____	NO	_____

If other, please elaborate.

_____

_____

_____

3 If your agency retains the original hardcopy records after microfilming, for what length of time are they kept?

Number of days	_____
Number of months	_____
Number of years	_____
Permanently	_____
Other	_____

If other, please elaborate.

_____

_____

_____

4 Do you ever transfer vital event records into archival custody?

YES _____ NO _____

If yes, which vital event records are transferred?

adoption records	YES	_____	NO	_____
birth records	YES	_____	NO	_____
marriage records	YES	_____	NO	_____
death records	YES	_____	NO	_____
divorce records	YES	_____	NO	_____
indices	YES	_____	NO	_____

What media format of the records is transfered? (i.e. microfilm, magnetic tape, etc.)

Original hardcopy records	YES	_____	NO	_____
Computer printouts	YES	_____	NO	_____
Electronic records	YES	_____	NO	_____
Microfilm/Microfiche	YES	_____	NO	_____

5 If you do transfer vital event records to archival custody is this arranged through a protocol agreement with the archives or through legislation?

_____

_____

6 If vital event records are not transfered to archival custody, is there a point at which the records or the indices are opened to genealogists and other researchers for general research purposes? Conditions imposed on use/access?

_____

_____

_____

_____

_____

_____

7 If vital event records are transfered to archival custody, what access restrictions are imposed? (i.e. How long before the general public can access this material? If indices are created, are there different access restrictions imposed for them?)

Adoption records	_____	years	Index _____	years
Birth records	_____	years	Index _____	years
Marriage records	_____	years	Index _____	years
Death records	_____	years	Index _____	years
Divorce records	_____	years	Index _____	years

If there are any other access restrictions imposed, please describe.

_____

_____

_____

_____

_____

Completed By: _____

Title: _____

APPENDIX-D

3.2 Privacy Regulations

The regulations relevant to subsection 8(3) of the Privacy Act may be found in Order–in–Council P.C. 1983–1668, and cited as the "Privacy Regulations." The conditions for disclosure of archival or historical personal information for research or statistical purposes are set out in section 6 of the regulations as follows:

> Personal information that has been transferred to the control of the Public Archives by a government institution for archival or historical purposes may be disclosed to any person or body for research or statistical purposes where:
>
> (a) the information is of such a nature that disclosure would not constitute an unwarranted invasion of the privacy of the individual to whom the information relates;
>
> (b) the disclosure is in accordance with paragraph 8(2)(j) [that no other way can the research be done without disclosure of individuals and a written statement that the person(s) will not be identified] or (k) [to any aboriginal group seeking any kind of redress of grievances] of the Act;
>
> (c) 110 years have elapsed following the birth of the individual to whom the information relates; or
>
> (d) in cases where the information was obtained through the taking of a census or survey, 92 years have elapsed following the census or survey containing the information.

4.1 Unwarranted Invasion of Privacy and the Invasion-of-Privacy Test

Regulation 6a states that the Public Archives may disclose personal information for research purposes if "the information is of such a nature that disclosure would not constitute an unwarranted invasion of the privacy of the individual to whom the information relates." Discretion to differentiate between those types of personal information which would or would not constitute and unwarranted invasion of privacy is given to the Dominion Archivist. An invasion–of–privacy test is used to determine whether disclosure of personal information for historical research constitutes or does not constitute an unwarranted invasion of privacy.

Unwarranted invasion of privacy is a situation whereby after applying the invasion–of–privacy test described below, the disclosure of personal

information would clearly result in harm or injury to the individual to whom it pertains. Personal information would in the custody of the Public Archives will not be disclosed for research purposes under clause 8(3) of the Privacy Act if that disclosure constitutes an unwarranted invasion of privacy of the individual to whom it pertains. Personal information about one person may include incidental personal information about another person whose privacy must be taken into account before disclosure.

There are four interrelated factors which must be taken into account in the invasion–of–privacy test. These are as follows:

(a) Expectations of the individual. The conditions which governed the collection of the personal information and the expectations of the individual to whom it relates are important criteria in any test. Was the information compiled or obtained under guarantees which preclude some or all types of disclosures? Or, on the other hand, can the information be considered to have been unsolicited or given freely or voluntarily with little expectation or being maintained in total confidence? Has the individual himself or herself made a version of the information public and thus waived the right to privacy?

(b) Sensitivity of the information. The degree of sensitivity of the information must be determined. Is it of a highly sensitive personal nature or is it fairly innocuous information? Is the information very current and for that reason more sensitive or confidential, or has the passage of time reduced that sensitivity or confidentiality so that disclosure under specific circumstances would lead to no measurable injury to the individual's privacy?

(c) Probability of Injury. If the information is considered sensitive, can it be surmised that the particular disclosure carries with it the probability of causing measurable injury? Injury is to be interpreted as any harm or embarrassment which will have direct negative effects on an individual's career, reputation, financial position, health or well–being. As well, the Dominion Archivist must consider if a disclosure of personal information will make that information available for a decision–making process by a government institution.

(d) Context of the file. The personal information must be assessed in relation to the entire file and not in isolation in order to determine that disclosure of the information does not form part of a crucial segment of a larger picture that could reasonably be expected to be injurious to the individual.

Guidelines for the Disclosure of Personal Information For Historical Research at the Public Archives of Canada. Public Archives of Canada. Ottawa, 1985, Minister of Supply and Services. pp. 3,4.

BIBLIOGRAPHY

LEGISLATION AND CASES

Alberta. Amendment Act. 1924. 14–15 Geo. 5, c. 28.

Alberta. Amendment Act. 1942. 6 Geo. 5, c. 21.

Alberta. Revised Statutes of Alberta. 1922. 12–13 Geo. 5, c. 24

Alberta. Revised Statutes of Alberta. 1980. 29 Eliz. 2, c. V4.

Alberta. Vital Statistics Act. 1907. 6–7 Ed. 7, c. 13.

Alberta. Vital Statistics Act. 1916. 6–7 Geo 5, c. 22.

Alberta. Vital Statistics Act. 1959. 7–8 Eliz. 2, c. 94.

Alberta. Vital Statistics Act. 33–34 Eliz. 2, Reg. 304/85.

Alberta Vital Statistics Act. 40–41 Eliz. 2, 195/92.

British Columbia. Amendment Act. 1921. 11–12 Geo. 5, c. 70.

British Columbia. Amendment Act. 1935. 25–26 Geo 5, c. 87

British Columbia. Amendment Act. 1938. 2 Geo. 6, c. 64.

British Columbia. Freedom of Information and Protection of Privacy Act. Bill 50. 1992. 41 Eliz. II. Passed Third reading 23 June 1992.

British Columbia. Revised Statutes of British Columbia. 1936. 1 Edw. 8, c. 302.

British Columbia. Revised Statutes of British Columbia. 1948. 12 Geo. 6, c. 357.

British Columbia. Revised Statutes of British Columbia. 1979. 28 Eliz. 2, c. 425.

British Columbia. Vital Statistics Act. 1872. 35 Vict, no. 26.

British Columbia. Vital Statistics Act. 1913. 3–4 Geo 5, c. 81

British Columbia. Vital Statistics Act. 1933. 24 Geo 5, c. 73.

British Columbia. Vital Statistics Act. 1962, second session. 10–11 Eliz. 2, c. 66.

British Columbia. Vital Statistics Act. 38–39 Eliz. 2, Reg. 375/90.

British Columbia. Vital Statistics Act. 39–40 Eliz. 2, Reg. 11/91.

Canada. Access to Information Act. 1980–81–82–83. 29–32 Eliz. 2, c. 111.

Canada. Human Rights Act. 1976–77. 25–26 Eliz. 2, c. 33.

Canada. Privacy Act. 1980–81–82–83. 29–32 Eliz. 2, c. P21.

Canada. Privy Council 4851. July 31, 1945. 9–10 Geo. 6. Privy Council Office Records, R.G. 2, vol. 1907, National Archives of Canada.

[cited 37 Can. Abr. (2nd)] Love Estate, Re (1968), 64 W.W.R. 190 (Alta. T.D.).

Manitoba. Amendment Act. 1887. 50–51 Vict, c. 14.

Manitoba. Amendment Act. 1931. 22 Geo. 5, c. 55.

Manitoba. Freedom of Information Act. 1985–86. 33–35 Eliz. 2, c. 6.

Manitoba. Revised Statutes of Manitoba. 1987. 35–36 Eliz. 2, c. V60.

Manitoba. Vital Statistics Act. 1890. 53 Vict, c. 29.

Manitoba. Vital Statistics Act. 1912. 2 Geo. 5, c. 97.

Manitoba. Vital Statistics Act. 1933. 24 Geo. 5, c. 51.

Manitoba. Vital Statistics Act. 1951. 14–15 Geo. 6, c. 66.

Manitoba. Vital Statistics Act. 36–37 Eliz. 2, Reg. 308/88.

Manitoba. Vital Statistics Act. 40–41 Eliz. 2, Reg. 62/92.

New Brunswick. Revised Statutes of New Brunswick. 1903. 3 Ed. 7, c. 54.

New Brunswick. Vital Statistics Act. 1887. 50–51 Vict, c. V.

New Brunswick. Vital Statistics Act. 1979. 28 Eliz. 2, c. V3.

New Brunswick. Vital Statistics Act. 32 Eliz. 2, Reg. 83–104.

Newfoundland. Amendment Act. 1977. 26 Eliz. 2, c. 101.

Newfoundland. Freedom of Information Act. 1981. 30 Eliz. 2, c. 5.

Newfoundland. Privacy Act. 1981. 29–30 Eliz. 2, c. 6.

Newfoundland. Privacy Act. 1990. 38–39 Eliz. 2, c. P22.

Newfoundland. Vital Statistics Act. 1892. 55–56 Vict, c. 28.

Newfoundland. Vital Statistics Act. 1990. 38 Eliz. 2, c. V6.

Northwest Territories. Vital Statistics Act. 1974. 23 Eliz. 2, c. V4.

Northwest Territories. Vital Statistics Act. 1952, second session. 1–2 Eliz. 2, c. 6.

Nova Scotia. Amendment Act. 1914. 4–5 Geo. 5, c. 44.

Nova Scotia. Amendment Act. 1941. 5 Geo. 6, c. 21.

Nova Scotia. Amendment Act. 1951. 15 Geo. 6, c. 56.

Nova Scotia. Freedom of Information Act. 1990. 38–39 Eliz. 2, c. 11.

Nova Scotia. Revised Statutes of Nova Scotia. 1908. 7 Ed. 7, c. 1.

Nova Scotia. Revised Statutes of Nova Scotia. 1989. 37–38 Eliz. 2, c. 494.

Nova Scotia. Vital Statistics Act. 1864. 27–28 Vict, c. 120.

Nova Scotia. Vital Statistics Act. 1919. 9–10 Geo. 5, c. 3.

Nova Scotia. Vital Statistics Act. 1952. 1 Eliz. 2, c. 8.

Ontario. Access to Information Act. 1990. 38–39 Eliz. 2, c. F31.

Ontario. Amendment Act. 1931. 22 Geo. 5, c. 21.

Ontario. Amendment Act. 1986. 34–35 Eliz. 2, c. 9.

Ontario. Freedom of Information and Protection of Privacy Act. 1990. 38–39 Eliz. 2, c. F31.

Ontario. Revised Statutes of Ontario. 1990. 38–39 Eliz. 2, c. V4.

Ontario. Statute Law Amendment Act. 1927. 17 Geo. 5, c. 28.

Ontario. Statute Law Amendment Act. 1941. 5 Geo. 6, c. 55.

Ontario. Vital Statistics Act. 1868–69. 31–32 Vict, c. 30.

Ontario. Vital Statistics Act. 1875–76. 38–39 Vict, c. 2.

Ontario. Vital Statistics Act. 1908. 7 Ed. 7, c. 28.

Ontario. Vital Statistics Act. 1919. 10 Geo. 5, c. 23.

Ontario. Vital Statistics Act. 1948. 11–12 Geo. 6, c. 97.

Ontario. Vital Statistics Act. 29 Eliz. 2, Reg. 942/80.

Ontario. Vital Statistics Act. 38–39 Eliz. 2, Reg. 1094/90.

Prince Edward Island. Amendment Act. 1945. 9–10 Geo. 6, c. 35.

Prince Edward Island. Revised Statues of Prince Edward Island. 36–37 Eliz. 2, 1988. c. V4.

Prince Edward Island. Vital Statistics Act. 1906. 6 Ed. 7, c. 6.

Prince Edward Island. Vital Statistics Act. 1919. 9–10 Geo. 5, c. 10

Prince Edward Island. Vital Statistics Act. 1932. 23 Geo. 5, c. 11.

Prince Edward Island. Vital Statistics Act. 1950. 14 Geo. 6, c. 31.

Quebec. Access to Documents. 1982. 31 Eliz. 2, c. 30.

Quebec. Le Code Civil Annote. 1866. 29–30 Vict.

Saskatchewan. Freedom of Information and Protection of Privacy Act. 1990–91. 38–40 Eliz. 2, c. F–22.01.

Saskatchewan. Amendment Act. 1921–22. 11–12 Geo. 5, c. 16.

Saskatchewan. Amendment Act. 1930. 20–21 Geo. 5, c. 14.

Saskatchewan. Amendment Act. 1932. 22–23 Geo. 5, c. 6.

Saskatchewan. Freedom of Information and Privacy Act. 1990–91. 38–39 Eliz. 2, c. F22.01.

Saskatchewan. Privacy Act. 1978. 27 Eliz. 2, c. P24.

Saskatchewan. Revised Statutes of Saskatchewan. 1940. 4 Geo. 6, c. 36.

Saskatchewan. Revised Statutes of Saskatchewan. 1979. 28 Eliz. 2, c. V7.

Saskatchewan. Vital Statistics Act. 1898. 62–63 Vict, c. 14.

Saskatchewan. Vital Statistics Act. 1919–20. 10–11 Geo. 5, c. 11.

Saskatchewan. Vital Statistics Act. 1924–25. 14–15 Geo 5, c. 6.

Saskatchewan. Vital Statistics Act. 1950. 14 Geo. 6, c. 13.

Saskatchewan. Vital Statistics Act. 1978. 27 Eliz. 2, c. V7.

Yukon. Access to Information Act. 1986. 34–35 Eliz. 2, c. 1.

Yukon. Revised Statutes of Yukon. 1986. 34–35 Eliz. 2, c. 175.

Yukon. Vital Statistics Act. 1954. 3 Eliz. 2, c. 38.

Yukon and Northwest Territories. Vital Statistics Act. 1888. 51 Vict, no. 6.

SECONDARY SOURCES

Andrews, John and Ann Sherlock. "Transsexual Rights in the United Kingdom." European Law Review 16, no. 3 (1991): 262–266.

Baldwin, Robert and John Houghton, "Circular Arguments: The Status and

Legitimacy of Administrative Rules," Public Law (Summer 1986): 239–284.

Bellardo Lewis J. and Lynn Lady Bellardo. Compilers. A Glossary for Archivists, Manuscript Curators, and Records Managers. Chicago: The Society of American Archivists, 1992.

Brand, I.C. "Louis D. Brandeis," Canadian Bar Review 25 (1947): 240–250.

British Columbia. Sixty–Sixth Report of Vital Statistics of the Province of British Columbia. Victoria: Charles F. Banfield, Printer to His Majesty, 1937.

_____. Sixty–Seventh Report of Vital Statistics of the Province of British Columbia. Victoria: Charles F. Banfield, Printer to His Majesty, 1938.

British Columbia. Provincial Board of Health. Vital Statistics of the Province of British Columbia: Seventy–sixth Report for the Year 1947. Victoria: Provincial Board of Health, 1947.

British Columbia. Department of Health and Welfare. Vital Statistics of the Province of British Columbia Eightieth Report for the Year 1951. Victoria: Provincial Board of Health, 1951.

British Columbia Commissioners. "Amendments to the Uniform Vital Statistics Act: Report." Appendix EE, in Uniform Law Conference of Canada. Proceedings of the Sixty–Fourth Annual Meeting. Montebello, Quebec: Uniform Law Conference, 1982: 509–517.

British Columbia and Canadian Commissioners. "Amendments to the Uniform Vital Statistics Act: Report." Appendix O, in Uniform Law Conference of Canada. Proceedings of the Sixty–Fifth Annual Meeting. Quebec, Quebec: Uniform Law Conference, August 1983: 277–291.

Canada. Department of Trade and Commerce. Dominion Bureau of Statistics: Vital Statistics Division. Verbatim Report of the Fifth Dominion–Provincial Conference on Vital Statistics. Ottawa: Published by the authority of the Hon. James A. MacKinnon, M.P., Minister of Trade and Commerce, 1948.

_____. Verbatim Report of the Fifth Dominion–Provincial Conference on Vital Statistics, December 1–4. 1947, "Draft Model Vital Statistics Act," Introduction, Appendix C, Ottawa: Pub., by the authority of Hon. James A. MacKinnon, M.P., Minister of Trade and Commerce, 1948:

347–367.

Canada. Dominion Bureau of Statistics. Report of the Conference on Vital Statistics Between Representatives of the Dominion and Provincial Governments. Ottawa: Dominion Bureau of Statistics, 1918.

_____. Vital Statistics 1921: First Annual Report. Ottawa: F.A. Acland, Printer to the King's Most Excellent Majesty, 1923.

Canada. Task Force on Government Information. To Know and Be Known: The Report of the Task Force on Government Information. Vol. 1. Ottawa: Task Force on Government Information, 1969.

Coats, R.H. "Co–ordination of Vital Statistics in Canada." Opening Address to the 1918 Conference on Vital Statistics, Dominion of Canada. Report of the Conference on Vital Statistics Between Representatives of the Dominion and Provincial Governments. Ottawa: Dominion Bureau of Statistics, 1918.

Commonwealth Secretariat. "Right to respect for private life–sex change–whether refusal to change birth certificate a violation of the European Convention on Human Rights." Commonwealth Law Bulletin 17, no. 1 (January 1991): 268–270.

Conference of Commissioners on Uniformity of Legislation in Canada. Proceedings of the Thirty–First Annual Meeting. Calgary, Alberta. August 23–27, 1949.

_____. "An Act Respecting The Registration of Births, Marriages, Deaths and Other Vital Events." In Proceedings of the Thirty–first Annual Meeting of the Conference of Commissioners on Uniformity of Legislation in Canada. Appendix G. Calgary, Alberta. 23–27 August 1949: 46–70.

Couture, Carol and Jean–Yves Rousseau. The Life of a Document. Montreal: Vehicule Press, 1987.

Detlefsen, Ellen. "User Costs: Information as a Social Good VS. Information as a Commodity." Government Publications Review 11 (1984): 385–394.

Dominion of Canada. "Model of Vital Statistics Act for Uniform Legislation in the Provinces of Canada." Report of the Conference on Vital Statistics Between Representatives of the Dominion and Provincial

Governments. Ottawa: Dominion Bureau of Statistics, 1918: 26–36.

Emery, George. "Ontario's Civil Registration of Vital Statistics, 1896–1926: The Evolution of an Administrative System." Canadian Historical Review LXIV, no. 4 (1983): 468–493.

Eyler, John M. Victorian Social Medicine: The Ideas and Methods of William Farr. Baltimore: Johns Hopkins University Press, 1979.

Ferman, Lori. "Protecting the Privacy of Personal Information." Thesis, Master of Laws, York University, Ontario, April 1987.

Frazer, W.M. A History of English Public Health, 1834–1939. London, England: Bailliere, Tindall and Cox, 1950.

Garrard, Emily E. "Administrative Law: Death Certificates are not exempt from Disclosure Requirements of the Freedom of Information Act." South Carolina Law Review 37, no. 1 (Autumn 1985): 1–4.

Gloor, Carol. "Breaking the Seal: Constitutional and Statutory Approaches to Adult Adoptees' Right to Identity." Northwestern University Law Review 75, no. 2 (April 1980): 316–344.

Godfrey, Ernest H. "History and Development of Statistics in Canada." In John Koren ed., The History of Statistics: Their Development and Progress in Many Countries. New York: Macmillan, 1918.

Hayward, Robert J. "Federal Access and Privacy Legislation and the Public Archives of Canada." Archivaria 18 (Summer 1984): 47–57.

Jenkinson, Hilary. A Manual of Archival Administration. London: Percy Lund and co., ltd., first published 1922, 1937.

K, W.P.M. "Justice Louis D. Brandeis." University of Toronto Law Journal 4 (1941–1942): 402–403.

Jones, H.G. Local Government Records: An Introduction to their Management, Preservation and Use. Nashville Tennessee: American Association for State and Local History, 1980.

Kraakman, Reinier. Gatekeepers: The Anatomy of a Third–Party Enforcement Strategy. [Toronto]: Law and Economics Programme, Faculty of law, University of Toronto, [1985]. Law and Economics Workshop Series: no. WSXII–3. 16 October 1985.

Le Sueur, A.P. "Public Policies and the Adoption Act." Public Law (Autumn 1991): 326–331.

Livelton, Trevor. "Public Records: A Study in Archival Theory." Master of Archival Studies Thesis, University of British Columbia, 1991.

MacNeil, Heather Marie. "In search of the Common Good: The Ethics of Disclosing Personal Information Held in Public Archives." M.A.S. thesis, University of British Columbia, 1987.

O'Brien, David M. Privacy, Law, and Public Policy. New York: Praeger Publishers, 1979.

Ontario. Commission on Freedom of Information and Individual Privacy. Public Government for Private People: Protection of Privacy, The Report of the Commission on Freedom of Information and Individual Privacy. Vol. 3. Toronto, Ministry of Government Services: printed by J.C. Thatcher, Queen's Printer, 1980.

Robbin, Alice. "Ethical Standards and Data Archives." New Directions for Program Evaluation 4 (1978): 7–18.

Rowe, Judith S. "Privacy Legislation: Implications for Archives." Archivists and Machine–Readable Records: Proceedings of the Conference on Archival Management of Machine–Readable Records. February 7–10, 1979, Ann Arbor, Michigan. Ed. Carolyn L. Geda, et al. Chicago: Society of American Archivists, 1980.

Schafer, Arthur. "Privacy: A Philosophical Overview." In Dale Gibson. Aspects of Privacy Law: Essays in Honour of John M. Sharp. Toronto: Butterworth and Co., 1980: 1–20.

Uniform Law Conference of Canada. Proceedings of the Fifty–Eighth Annual Meeting. Yellowknife, Northwest Territories. 1976.

_____. "Model Vital Statistics Act." Proceedings of the Sixty–Eighth Annual Meeting. Appendix N. Winnipeg, Manitoba. Ottawa: Uniform Law Conference, 1986.

Unruh, Marilee C. "Adoptees' Equal Protection Rights." UCLA Law Review 28, no. 6 (August 1981): 1314–1364.

Vital Statistics Council For Canada. Minutes of the 37th Annual Meeting. Ottawa, Ontario, May 28–30, 1980. Held by Statistics

Canada, Ottawa.

_____. W.D. Burrowes Report. Appendix H. Minutes of the 37th Annual Meeting. Ottawa, Ontario, May 28–30, 1980. Held by Statistics Canada, Ottawa.

_____. Minutes of the 38th Annual meeting. Toronto, Ontario, May 26–29, 1981. Held by Statistics Canada, Ottawa.

_____. Minutes of the 39th Annual Meeting. Lord Beaverbrook Hotel, Fredericton, New Brunswick. June 1–3, 1982. Held by Statistics Canada, Ottawa.

_____. Minutes of the 40th Annual Meeting. R.H. Coats Building, Tunney's Pasture, Ottawa, Ontario. June 7–9, 1983. Held by Statistics Canada, Ottawa.

Warren, Samuel D. and Louis D. Brandeis. "The Right to Privacy." Harvard Law Review 4, no. 5 (1890–91): 193–220.

Westin, Alan F. Privacy and Freedom. New York: Atheneum, 1967.

Wright, Cecil A. "The Law of Torts: 1923–1947." Canadian Bar Review 26 (1948): 46–94.

Yoxall, Helen. "Privacy and Personal Papers." Archives and Manuscripts: The Journal of the Australian Society of Archivists 12, no. 1 (May 1984): 38–44.