CANADIAN PROVINCIAL AND TERRITORIAL ARCHIVAL LEGISLATION: A CASE STUDY OF THE DISJUNCTION BETWEEN THEORY AND LAW

by

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B.A., The University of Toronto, 1985

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF

THE REQUIREMENTS FOR THE DEGREE OF

MASTER OF ARCHIVAL STUDIES

In

THE FACULTY OF ARTS

School of Library, Archival and Information Studies

We accept this thesis as conforming

to the required standard

THE UNIVERSITY OF BRITISH COLUMBIA

November 1989

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The University of British Columbia
Vancouver, Canada

Date November 30, 1989

ABSTRACT

This thesis is an inquiry into the nature of current provincial and territorial archival legislation in Canada. It provides an analysis of archival legislation as a form of written communication and argues that the legislation suffers from the same deficiencies inherent in other forms of communication as a result of external social influences on its meaning. Chapter one therefore traces the evolution of the legislation from 1790 to the present and shows how the meaning of current legislative texts emerged neither from objective legal considerations nor archival theory, but as an ad hoc response to a variety of social influences. The remaining chapters are based on a detailed content analysis of the three main components of current provincial and territorial archival legislation: provisions establishing definitions of key terms, provisions establishing the scope and authority of administrative structures for archival programmes and provisions establishing programme elements. They elaborate on the argument advanced in chapter one that the social production of meaning, arising from the manner in which current provincial and territorial archival legislation has developed, adversely affects its ability to promote the preservation of documents in two ways. First, this process

of development has meant that wording in legislative texts carries overtones of outdated attitudes and assumptions about archives. Second, it has led to inconsistency, conflict, vagueness and ambiguity in the meaning of the texts. These chapters also put forth prescriptive ideas regarding how the adverse affects of social influences on the meaning of current provincial and territorial archival legislation might be overcome.

CONTENTS

ACKNOWLEDGEMENTS

I would like to express my appreciation to all provincial and territorial archival institutions that responded to my initial written inquiry about their current legislative framework. I would also like to thank Bernice Chong and Anne Maclean, fellow Masters of Archival Studies students, for their assistance in testing the design of the content analysis in this thesis. I am particularly grateful, as well, to Terry Eastwood, my thesis supervisor, and David Leonard, Senior Government Records Archivist at the Provincial Archives of Alberta for their useful suggestions and insightful criticisms. Finally, I owe special thanks to my husband, Bret, for his help and understanding.

For Mom

INTRODUCTION

Almost as long as there has been written communication, there has been some form of regulation by public powers concerning the preservation of documents.*1 The first legislation governing the management and use of archives arose in 1794, when, during the French Revolution, the government of the new regime passed a decree regarding archives.*2

Most jurisdictions have followed the French example and given legislative legitimacy to their public archives. In Canada, however, public archives often existed historically before their existence was actually sanctioned in legislation.*3 The National Archives of Canada, for example, emerged long before an act was passed legally establishing it, as did the Archives Nationales in Quebec. The Provincial Archives of British Columbia still has no legislative authority for its existence. These cases might suggest that archival laws are perhaps useful but not necessary.

This thesis springs from a deeply held conviction that archival legislation is essential to any well-developed archival programme and is an important determinant of how

well that programme can carry out the preservation of documents. Many years ago, few public organizations had comprehensive legislation governing the administration of personnel or finances. A gradual increase in the complexity of these activities led to a need for a legislative framework within which these activities could be performed. Similarly, archives administration grows more complex. As the importance of recorded information to society increases in the so-called information age, the need for comprehensive legislation governing the care and management of information throughout its life cycle will become more evident.

Archival legislation, if properly designed, can provide a framework for archival activity by outlining the archives' or archivist's functions. It can play a role in educating the public and resource allocators about the responsibilities of archives, and in doing so, make archives more accountable. As policy sanctioned at the highest level, legislation will legitimize the position of the archives in the eyes of administrators, politicians, and the public and encourage them to see archival work as a normal feature of their society. Finally, because legislation is sanctioned by bodies that command ultimate political authority, it can stimulate the preservation of documents by enshrining rights and setting down obligations.

Despite the necessity and usefulness of archival legislation, there is little archival literature touching

upon the subject. Lewis H. Thomas wrote a pioneer article on archival legislation in 1962. John Archer's thesis on the history of archival institutions in Canada, completed in 1969, provides the most comprehensive overview of the legislative framework of provincial public archival programmes to date.*4 Both of these sources are now obviously outdated. A more recent article by Jerome O'Brien, entitled "Archives and the Law: A Brief Look at the Canadian Scene", is unfortunately all too brief.*5 Like Brown and Archer before him, O'Brien does not discuss legislation in the territories. Other than this recent general survey, there are only a few scattered accounts which touch upon the subject of provincial and territorial archival legislation.*6 It is this gap in the literature that this study hopes to fill.

This thesis will describe the current status of provincial and territorial archival legislation, evaluate its effectiveness and develop prescriptive ideas about how it might be improved in order to assist archivists in reviewing and drafting archival legislation. It does not examine the implementation of provincial and territorial archival legislation. Rather, it examines archival legislation on a theoretical level as a form of written communication. As one jurist expresses it:

> As with human language, legal discourse is only a tool to express the thought of the speaker, in order that the listener may adequately comprehend the contents of his message. Since law is the result of the conscious and premeditated activity

> of its author, he will be deemed not only to have carefully formulated in his own mind the exact rule he wishes to establish, but also to have chosen, with reflection and premeditation, the words that best serve to express his ideas and intention. Thus in construing an enactment we must first look at its wording.*7

To this end, this thesis concentrates on the analysis of archival legislation as written text by focusing, in particular, on three main components of archival legislation: provisions establishing definitions of important terms, provisions establishing the scope and authority of administrative structures for archival programmes and provisions establishing the basic elements of archival programmes.

Chapter one discusses the development of current provincial and territorial archival legislation from 1790 to the present. Essentially, this chapter argues that the meaning of Canadian archival legislation arises neither from objective legal considerations nor from archival theory, but rather as a response to political, administrative, and social traditions and conditions. Appendix C provides a chronological sysnopsis of this developmental process for each jurisdiction.

The remaining chapters, based on a detailed content analysis of the three main components of the legislative texts, elaborate on the argument advanced in chapter one that the manner in which the legislation has developed adversely affects its ability to promote the preservation of documents

in the present social and technological context. These chapters also put forth prescriptive ideas regarding how these adverse affects might be overcome.

A few words of explanation are needed about the content analysis used in this thesis. Content analysis itself has been defined in several ways. Ole Holsti describes it in his book on content analysis for the social sciences and humanities as "any technique for making inferences by objectively and systematically identifying specified characteristics of messages."*8 Holsti presents content analysis as a multipurpose research method developed specifically for investigating any problem in which the content of communication serves as the basis of inference.*9 A definition by Berelson in 1952 states that "content analysis is a research technique for the objective, systematic, and quantitative description of the manifest content of communication."*10 Another writer on the subject, Klaus Krippendorff, defines it as "a research technique for making replicable and valid inferences from data in their context."*11 The key factors in all three of these definitions are the ability to draw inferences from the content of communications in a objective, systematic and replicable manner.

The idea for conducting a content analysis of provincial and territorial archival legislation came from a study of American state archival law done by George Bain in 1983.*12

However, while Bain's study of state archival law serves as a basic guide, the structure of this analysis differs from that carried out by Bain in several ways.

First of all, the grouping of content categories differs from that of Bain. Bain's groupings consist of three concept groups, legal, administrative, and standard. Within each of his groups there are several categories as follows:

GROUP 1: LEGAL

Public record
Public agencies
Legal custodian
Delivery of records to successor
Legal evidential value
Access
Replevin
Sanctions for violations
Time/Privacy limitations
State Archival/Records Management Agency

GROUP 2: ADMINISTRATIVE

Powers and duties of the State Archivist
Powers and duties of the State Records Manager
Agency assistance
State Records scheduling procedures
Vital records

GROUP 3: STANDARD

Standards for materials
Fireproof

While the use of Bain's categories would have yielded interesting comparisons between archival legislation of the Canadian provinces and territories and the American states, this study uses different groups of categories which correspond to existing Canadian provincial and territorial legislative texts. For the purposes of this study, the

various categories of content elements were divided into three broad groups corresponding to the three basic components of archival legislation: 1) provisions establishing definitions, 2) provisions establishing administrative structures, and 3) provisions concerned with programme elements.

Another difference between the structure of Bain's analysis and this analysis is in the level of detail. In Bain's analysis, each category consists of components, which are used to define categories but are not themselves measured.*9 In this analysis, categories were divided into measurable components, subcomponents and choices, where necessary, as follows:

A. GROUPS

I Categories

1. Primary components of categories

1.1 Secondary components of categories

1.1.1 Tertiary components of categories

1.1.1(1) Subcomponents of categories (where needed)
(a) primary choices
(i) secondary choices

The content of legislative texts was searched to assess the rate of appearance for whichever unit or units formed the lowest level in the structure of each category, for example, a subcomponent or a choice.

Coverage of each of these categories in current

provincial and territorial archival legislation was assessed by searching all relevant legislative texts. This search included any provincial statutes, territorial ordinances, regulations, and orders-in-council relating to the preservation of documents in a general sense. Legislation which establishes an archival repository and bestows powers upon a provincial or territorial archivist is considered to be primary legislation. Legislation concerned with the general care and management of public records is considered to be secondary legislation. In addition, statutes, ordinances or regulations which limit or otherwise directly affect the application of a section of a province's or territory's primary or public records legislation is considered secondary. In most cases, this legislation can be identified by the fact that it refers to the provincial or territorial archivist or archives, or is referred to in a jurisdiction's archives act. Access to information laws provide an example of a type of legislation that is often alluded to in primary or public records legislation. A complete listing of the titles of all relevant texts appears as Appendix A of this thesis.

This study does not embrace legal instruments created to deal with a specific situation: for example, an order-in-council passed to permit the disposal of a group of records. In addition, directives and policy statements are purposely excluded because they are more concerned with the implementation of programmes than with their establishment.

A disadvantage of excluding directives and policy statements is that some jurisdictions use them to enact provisions that other jurisdictions enact by statute or regulation. Laws indirectly affecting the work of archivists, such as those that specify retention periods of public records, are excluded from this study.*13 This study excludes federal statutes, such as the Copyright Act, as well, since they are outside provincial and territorial legislative jurisdiction and affect provincial and territorial archival activity uniformly.

The appearance of a category, or component, sub-component or choice, whichever was the lowest level in the hierarchical structure of each category, in primary legislation, secondary legislation or regulations was indicated by a "P", "S", or "R" respectively. The use of these symbols revealed the type of legal instrument in which content elements appeared. Use of the letter symbols in this analysis is different from that of Bain in that it provides quantifiable data about the form of archival legislation over and above its content.

Although the structure of the content analysis provides a fairly precise instrument of measurement, its accuracy largely depends on the interpretation of the legislation. In order to increase the level of consistency and reliability in assessing the legal texts, this study relies on guidelines for interpretation loosely based on rules for the interpretation of statutes. The same guidelines apply to Quebec as to other

jurisdictions although, in reality, there are differences in Quebec as to the methods of drafting and interpreting statutory instruments. As a result, Quebec's legislation, which is not written in the context of the common law legal system, does not suit either the grammatical form of interpretation that this study uses or the structure of the content analysis as well as legislation written in the context of a common law legal system. In this study, the following guidelines apply:

1) The act, ordinance or regulation as a whole is to be read in its entire context meaning the law as expressly enacted by words and the relationship between the act and legislation in pari materia. Therefore, before coding each individual act, first read through all archival legislation for a particular juridiction to gain a sense of how the enactments relate to one another.

2) Words in the act are to be read in their grammatical and ordinary sense in the light of the whole context unless some other definition is provided.

3) The same words in an act carry the same meaning unless otherwise specified.

4) When technical words appear in the act, they are to be read in their technical sense.

5) If words are disharmonious within the act or legislation in pari materia then a less grammatical and ordinary meaning is to be given them.

6) If obscurity, ambiguity or disharmony cannot be resolved objectively by reference to the meaning of the act as expressly enacted by words or the relationship between the act and legislation in pari materia, then comparisons with the archival legislation in other jurisdictions may be drawn for the purpose of clarification.*14

In addition to the above general instructions, more detailed instructions appear under each category where necessary (see

Appendix B).

To further ensure the consistency and reliability of results, coding of legislation for the province of British Columbia was compared with coding of the same legislation done by two other individuals. There was an average 92 percent level of agreement between results. Where necessary, definitions were clarified or more specific instructions provided in order to reduce ambiguity. All content data was also coded three times to assure consistency of results over time. Nevertheless, as with all forms of communication, where the interpretation of legislation is involved there will always remain a certain level of ambiguity.

This analysis also adopted a system of measurement which differs from Bain's. Bain based his method on ranking state laws comparatively from zero to three on how well they scored in each category. A zero rating signified no coverage of the category while three signified detailed and explicit coverage.*25 Bain's system of measurement required that he make value judgements about the detail or explicitness of coverage. Since these judgements could influence the results, this study employs a system of measurement based simply upon the appearance of the content elements in the legislative texts.

The method of enumeration rests on a simple 0-1 principle. If no letter symbols appeared next to a category,

it scored a zero. If a "P", "S", "R" or any combination of these symbols appeared, it scored a one. No attempt was made to judge the relative merits of the three types of legal instruments by assigning a range of values. Therefore, all symbols equal a score of one except in category C/II/3.3, concerning the transfer of public records, and category C/III/2, concerning the transfer or deposit of special classes of records, where letter symbols equal .5 under each type of document in order to avoid recording content attributes twice. The data sheet for the content analysis, showing scores by jurisdiction for all categories, appears as Appendix B.

CHAPTER ONE

THE DEVELOPMENT OF CANADIAN PROVINCIAL AND TERRITORIAL ARCHIVAL LEGISLATION

In legislation, as in all language, there is often a tension between the meaning legislators intend the words they choose to convey and the meaning those words actually convey to the reader. This tension arises from the fact that the meaning of language, even when it seems natural or obvious, is subject to cultural influences. As the legal theorist C. von Savigny expressed it, "a people's law resides in its own peculiar customs."*1 Savigny's statement points to the fact that the intended meaning of the law is derived from diverse legal principles, dominant social attitudes, human will, and political circumstance. The language used in Canadian archival legislation conveys far more of these influences than of archival principle. This thesis argues that the intended meaning of the legislation, arising from the manner in which it has developed, adversely affects its ability to promote the preservation of documents in two fundamental ways. First, this process of development has meant that the words of legislative texts often carry overtones of outdated social attitudes and assumptions about archives. Second, it

has led to inconsistency, conflict, vagueness, and ambiguity in the form of expression or use of particular words in the legislative texts. This chapter explores through historical analysis the social conditions which gave rise to the meaning of current provincial and territorial archival legislation. It concludes by examining recent legislation in Quebec and arguing that only legislation developed by a methodical consideration of the principles and concepts of archival science, not by purely pragmatic forces, will avoid the problems found in those legislative provisions with meanings that are entirely socially produced.

The use of key terminology, such as the words "public records" and "archives", is one of the primary factors contributing to the legislation's inability to promote the preservation of documents. This problem lies in the very use of two separate words to describe what is essentially one thing. Public records is the term generally used in Canadian legislation to refer to the records accumulated by government agencies, while archives is the term applied to "those records of any public or private institution which are adjudged worthy of permanent preservation for reference and research purposes and which have been deposited or have been selected for deposit in an archival institution."*2 Essentially, the problem arises from the fact that the use of two separate terms denies the constant nature of archives, or public records, as documents accumulated and preserved by a natural process in the conduct of affairs of any kind,

whether public or private, at any date. Thus, the two words, as they are used in much of the current legislation, carry overtones of outdated ideas about the nature of archives and archival institutions as purely historical and unrelated to the administration of records creators. The implications for archival legislation of using separate terms will be discussed in more detail in the following chapters. This chapter will now examine how the two terms as they are commonly used in Canadian provincial and territorial archival legislation.

The schism evolved out of the circumstances shaping Canadian archival legislation in the late-nineteenth and early-twentieth centuries. At this time, Canadian provincial and territorial archives emerged as repositories for the raw material of history; that is, both public and archives illustrative of national and regional historical development. This view of archives as repositories of a broad range of materials reflecting the growth and development of the nation was bound up with the rise of nationalism and a heightened historical consciousness culminating in notions of "scientific" history. This movement led many historians to call for the creation of archival repositories to serve as "arsenals of history." It was under these circumstances that there developed a perceived need for a separate term in Canadian law and the term archives came to refer to documents of historical interest, whether public or private, deposited

in an archival repository, without reference to the precise nature or origins of these documents.*3 Since the purpose of early archives acts was to establish archival repositories on a legal footing, archival legislation naturally strove to sanction the existing situation with respect to those institutions that were already established. Thus, early archives acts concentrated on legitimizing an existing archives, appointing an archivist, and empowering the archivist to act. As a result, the legislation had a highly institutional focus rather than one which emphasized the principles of managing archival records, or what will be referred to in chapter four as "programme elements."

The use of two separate terms in the legislation has created two solitudes, the one for active and semi-active documents held by the creating agency and the other for inactive records of historical value held by the archival institution. The result of these two solitudes has been the passage of separate and loosely related enactments concerning the management and disposition of public records and concerning the establishment of archival respositories, such as one finds in Nova Scotia and New Brunswick. In other jurisdictions, one finds enactments that both establish an archival institution and provide for the care and management of public records. Enactments serving this dual purpose came to pass because the desire to establish archives on a legal footing has, by itself, not so frequently led to the passage of legislation. More often than not, legislation only came

to pass for administrative reasons, when the government perceived a need to regulate the care and management of vast quantities of public records.

Such enactments initially paid little attention to the role of the archives or archivist in the care and management of records or to the broader purposes of archives in serving administration or the public, since archives were, by definition, concerned only with outdated records. Thus, in early enactments, the archives' or archivists's link with records creators was neglibible. In later enactments the process of public records management and the archives' acquisition mandate met awkwardly at the time of disposition. Only since the early 1970s have events forced a closer link between the role of the archives and the care and management of current public records. This trend clearly emerges when one examines the historical development of certain provincial and territorial archival legislation.

In Ontario, passage of an act legally establishing the archives was deferred, despite the historians' lobby, until Colonel Alexander Fraser, the Provincial Archivist, came to the realization that he had very little control over the transfer and destruction of material from government departments and the courts. Even his control over records already transferred to the care of the archives was tenuous; he was once forced to return minutes of the General Sessions for the United Counties of Leeds and Grenville after they had

already been transferred to the Archives. In order to "remove any doubts in the minds of Deputy Ministers and Heads of Branches . . .as to their right to transfer material to Archives . . .", Fraser began to campaign for an archives act in April of 1922.*4

While the impetus for an archives act came from the desire to control the disposition of public records, many diverse interests supported the adoption of legislation. W.C. Cain, Deputy Minister for the Department of Lands and Forests, felt that the archives required legislation to establish its permanency beyond "paradventure." F.V. Johns of the Assistant Provincial Secretary's Office believed an archives act would stimulate public trust in the Archives and lead to acquisitions of valuable private papers. G.M Wrong, founder of the Department of History at the University of Toronto, argued that legislation, by providing sources for the study of Ontario history, would prevent the exodus of students to the United States for study.*5 It is possible that the United Farmers of Ontario Party saw in the Archives Act an opportunity to introduce uncontroversial and relatively popular legislation at a time when confidence in their government was faltering.*6 The marriage of these diverse interests resulted in a bill which passed into law on 27 March, 1923.

In addition to establishing the archives' role in collecting historical records and prescribing the powers of

the provincial archivist, who was made a Deputy Minister as in the 1912 Public Archives of Canada Act, the act specified that "all original documents, parchments, manuscripts, papers, records and other matters in the executive and administrative departments of the Government . . . shall be delivered to the [archives] for safekeeping and custody within twenty years from the date on which such matters cease to be in current use."*7 This provision was vague owing to the lack of any definition in the act for such terms as records or documents. The meaning of the word archives also was not defined in the act; but, implicitly, it carried the traditional meaning. Determination of when the current value of records expired resided with government departments, for the archives was seen only as a storehouse for documentary sources about the past that had long since ceased to be of value to the creator of the records. As a result, government departments made no logical connection between the records in their offices and those in the archives. Consequently, transfers to the Archives under this system remained sporadic. Nevertheless, it implicitly allowed the Archivist to intervene to preserve public records by specifying that departments possessing public records which they wished removed or disposed of must inform the Archivist and obtain his approval. The Ontario Archives Act of 1923 established a closer relationship between government departments and the Archives than had previously existed in the province. The relationship was far from perfect, however, as the Act, like

all provincial and territorial archival legislation until the early 1970s, focussed on the archives' role as a repository for outdated historical records, but did not provide for a formal means of ensuring that these records would be regularly transferred from government departments to the archives. Nor did it promote an active role for the archives in managing the systematic disposition and regular identification of permanently valuable records.

In Saskatchewan and Alberta initial acts governing public records, established in 1920 and 1925 respectively, did not bring archives and government administration closer together for the simple reason that neither province had an archival programme. As in Ontario, Alberta and Saskatchewan demonstrated no strong public support for legislation which would serve as a means of assisting the archives to acquire records of historical interest. Consequently, both pieces of legislation were developed from the point of view of government administration, which was more interested in purging offices of accumulations of documents than in facilitating archival acquisitions. Both of these acts provided that documents could be transferred to the nonexistent archives or destroyed ten years after their creation by order of the Lieutenant Governor in Council. In one way it might appear that this provision improved upon Ontario's Archives Act in that all records were "scheduled" for destruction or preservation in ten years rather than

twenty years after an undetermined date of expiration of current use.*8 However, without an archives and a process by which historically important material might be identified, the time limit proved to be arbitrary and encouraged irresponsible destruction. From the time that Saskatchewan implemented its Act in 1920 to its repeal in 1948, the government issued 78 orders for destruction as against two for transfer to the Archives, which was established in 1937.*9

The British Columbia Document Disposal Act of 1936, which closely resembled legislation in Saskatchewan and Alberta, also did not establish a formal relationship in law between government agencies and the Archives. Yet, the province had had a nascent archival programme in the 1890s, appointed an archivist in 1908, and had by 1919 a well established archives department in the Legislative Library. Again, the legislation was drafted to meet administrative needs with no apparent contribution from the Archives. At a meeting of the Canadian Historical Association's Archives Committee, W.K. Lamb, Provincial Librarian and Archivist, remarked that, as a result of the legislation:

> It [the Archives]...cannot be regarded at present as a full-fledged Public Records Office, as there are no regulations in effect requiring the government departments to forward their non-current files to the archives. Some departments have transferred their records with some regularity, others have not. One department has destroyed almost everything. At present, destruction of Public Records is permitted only with the approval of the Printing Committee of the

> Legislature, the meetings of which the Provincial Librarian is privileged to attend. This checks wholesale destruction.*10

Thus, the Provincial Librarian and Archivist was left to compensate for deficiencies in the legislation by facilitating the selection and transfer of public records to the archives through informal means.

In 1938 the Chairman of British Columbia's Select Standing Committee on Printing proposed regulations to formalize the Archives' role in the destruction and selection for preservation of public records. He suggested that no document be destroyed without the written authority of the archivist and that the archivist have authority to claim and preserve any documents. The Solicitor for the Attorney General's Department, however, felt that this might "unduly hamper" the destruction of documents.*11 As a result, changes in the law did not transpire until much later, in 1953.

Although the circumstances surrounding the emergence of early enactments concerning the care and management of public records meant that little attention was paid to specifying the archives' or archivist's responsibility in this process, the post-World War Two increase in the amount of records being produced by government agencies led to the need for change. Older archival legislation which scheduled all documents for retention in government agencies for set time periods was too inflexible to meet the needs of

administrators whose storage rooms were filled. From the archivist's perspective, it was increasingly difficult to separate valuable records for transfer to the archives from those that could be destroyed. Consequently, changes were needed in the legislative framework governing the disposition of public records.

Saskatchewan was the first province to adopt legislation that responded to the post-war situation. This landmark enactment of 1949 was actually the province's second archives act, succeeding one passed in 1945. The enactment read:

> (a) that any public document or any class or series of public documents. . . be transferred. . . forthwith or upon the expiration of such periods after the dates at which they were created as are specified in the order;
>
> (b) that any public document or any class or series of public documents. . . be destroyed forthwith or upon the expiration of such periods after the dates at which they were created as are specified in the order; and
>
> (c) that any public document or any class or series of public documents. . . be destroyed or transferred forthwith or upon the expiration of such periods after the dates at which they were created as are specified in the order.*12

With these provisions there was no longer a rigid time frame for the disposition of public records. The Lieutenant Governor in Council could order that different records be disposed or transferred to the Archives at different times; however, a separate order was still required for each disposal. These provisions, being the most flexible mechanism for handling the disposition of public records at

the time, were widely copied by other jurisdictions, such as British Columbia and Prince Edward Island.

The responsibility of the archivist in the appraisal of public records came to be formally recognized by this date as well. In the 1945 Saskatchewan Archives Act, there was a provision stating that no document could be destroyed without the recommendation of the Provincial Archivist and the Legislative Librarian. However, the 1949 Act, by calling for the additional recommendations of an official of the Attorney General's Department, reflected the fact that decisions about the disposition of public records were being made much sooner after the creation of the records. Thus, not only were their archival values in question, but also their administrative, fiscal and legal values. A subsequent amendment to the Saskatchewan Archives Act in 1951 formalized the 1949 arrangement by establishing a Public Documents Committee.*13 Other jurisdictions soon borrowed this idea from Saskatchewan.

Public records continued to increase both in number and in complexity in the 1960s and 1970s. Archivists, who wanted to select records of value from masses of available documentation in an array of media, and administrators, who wanted efficient and cost-effective means of disposing of inactive records, soon realized that the method of seeking a one-time approval to dispose of public records as the need arose was no longer practical. They required planned

disposition of public records on a continuing basis.

Planned dispositions of public records clearly emerged as a goal by the late 1960s. For instance, one of the criticisms levelled against the Alberta Archives Act of 1966, leading up to the enactment of new legislation, was that the wording of certain of its provisions cast doubt on the Public Document Committee's authority to formulate continuing, as opposed to one-time, authorities for the disposition of public records. A new Public Documents Act, which gave the Public Documents Committee the additional powers it felt it lacked under the earlier Act, was passed in 1970.*14

The development of Alberta's archival legislation also provides an example of the difficulties arising from the use of the separate terms archives and public records, which carry in their meaning the lingering perception that the care and management of public records and archives were distinct and functionally unrelated activities. Departmental reorganizations frequently necessitated an alteration in the content and form of archival legislation. When the 1966 Archives Act was replaced in 1970, because the government was phasing out the Department of the Provincial Secretary, a new Alberta Heritage Act provided the legislative foundation for the provincial archives; however, it did not provide for the preservation and disposition of public records which was dealt with in a separate enactment. Yet another change took place in the legislation in 1973, when provisions

establishing the archives were once again united with provisions regulating public records. This union did not last long as another departmental shuffle took place in 1975, resulting in a division of archival and records management functions. Responsibility for records management went to the Department of Government Services, while provisions concerning the functions of the Archives remained under the Alberta Heritage Act.*15 Hence, the legislation authorizing the establishment of Alberta's provincial archives, because it deals exclusively with the cultural role of the archives, builds a barrier between the care and management of records in the archives and the care and management of records in government departments.

In the early 1970s a new goal emerged. Records management had by this date become a well-developed field with its own methodologies for the systematic control of active and semi-active public records. Systematic control of public records in the earlier stages of their life cycle meant that their disposition could be more effectively planned. Thus, the Alberta Heritage Act of 1973, which reunited archives and records management functions, contained provisions that broadened the responsibility of the Public Records Committee from overseeing the disposition of public records to overseeing the management of active and semi-active public records.*16

The methodologies which records managers had developed

for managing active and semi-active records were increasingly technical and subject to change. This led legislative draftsmen to place provisions concerning the operation of records management programmes in regulations rather than statutes in order to permit frequent amendments. As a result, statutory provisions concerning regulatory power had to be expanded. Such was the case in the 1973 Alberta Heritage Act where a provision concerning regulatory powers allowed the Lieutenant Governor in Council to make regulations concerning the documents to be considered public records, the preservation and destruction of public records, the designation of public bodies required to preserve their records, and access to public records.*17

Over the course of several decades, recently enacted or amended legislation has exhibited a trend towards a gradual increase in the archives' responsibilities for the care and management of public records, despite the lingering affects of the use of the separate words archives and public records on the meaning of the legislation. In Newfoundland, for example, the archives is an active, even controlling agent, in the care and management of public records. In jurisdictions with older enactments, such as Ontario, the focus remains on the archival institution as passive recipient of records of historical interest.

The trend towards closer links between the archives and the creators of records is likely to continue into the future

because of the changes brought on by the information age. In particular, the rise of electronic records has compressed the life cycle of the document. Whereas before, documents proceeded through their creation, use, storage and disposal in an orderly, step-by-step fashion, documents now are created and recreated almost simultaneously through information processing technologies. This has lead archivist Jay Atherton to suggest that archivists do away with the life cycle concept altogether and adopt the idea of a continuum as a paradigm.*18 Atherton's approach suggests that archivists will be expected to relinquish the role of passive recipient of records and adopt a more active stance in their acquisition strategies lest valuable records be lost. This will bring archivists into direct contact, perhaps conflict, with systems analysts, the new information professionals and with records managers. It is not only the information processing capabilities of computers that has given rise to the need for closer links between archives and their sponsoring agencies, but the fact that the new medium of storage is so unstable compared to what has been dealt with in the past. Minute particles of dust can render entire archives of data stored in electronic form irretrievable in moments. No one is certain of the life span of technology such as optical disks. The problem of the instability of the medium is compounded by the rapid rate of technological obsolescence. Even if an optical disk survives, there is no guarantee that twenty years from now the data will be

accessible given that new versions of software are often unable to read files created using earlier versions and given the lack of standards for hardware.

Computers have also lead to an increase in the ability to collect and process intrusive information which, in the past, was regarded as private and totally inaccessible. Managing the entire life cycle of public records as a key objective of archival legislation in the last decade has been linked to the assertion of public rights of access to information and the protection of personal privacy and to the passage of legislation enshrining these rights. The archives has become the agency charged with responsibility for the care and control of public records throughout their life cycle in order that access to information and privacy legislation can be implemented. For example, in the Yukon Territory, the Access to Information Act came into force on 3 November 1983. Implementation of the access law, particularly the preparation of an access register, required that the jurisdiction have adequate control over its active, semi-active and inactive public records; thus, the Yukon Territorial government passed a new records management regulation in 1985.*19

These developments, pointing to the need for closer links between archival institutions and their sponsoring agencies, only serve to illustrate the weakness of legislation which by the use of the two separate terms public

records and archives inherently distances archival institutions from the creators of the records they hold. Even on its own, the term public records adversely affects the legislation owing to the vagueness and ambiguity surrounding its meaning. This is a direct result of the manner in which it has evolved over time in response to changing social influences, as an examination of the history of its development reveals.

The desire to establish and protect public rights has traditionally been a strong impetus for preservation of the records of government. This impetus lay behind the establishment of Canada's first enactment concerning the preservation of documents. The enactment, passed in 1790, was entitled an Act or Ordinance for the Better Preservation and Due Distribution of the Ancient French Records.*20 Its passage came on the heels of a war between France and Britain that ended in the British conquest of New France. These events saw elements of old French law replaced with English law pursuant to the Proclamation Act of 1763.*21 English law did not entirely replace French law, however, as the Governors of the new British colony feared alienating the French population if they insisted on its adoption. They even restored old French law with the passage of the Quebec Act in 1774. The English population in the colony was against this reinstatement, having been promised the adoption of the common law, and, from 1774 to 1791, continually

pressured the government to once again impose English law. It is a measure of both their success in lobbying the government and the extent to which the English dominated the colony's administration that the 1790 act concerning the ancient French records bore the marks of English law in its use of the terms "public" and "records."*22

The act specified that the Governor or Commander-in-Chief could make orders "touching the arrangement, removal, digesting, printing, publishing, distributing, preserving and disposing of papers, manuscripts and records."*23 It used the word records in one of its earliest common law forms by defining the word functionally in terms of the act of recording or "memorializing" an event. Such memorials were customarily entered on a roll or a register thus making them true records. Conversely, unregistered papers or manuscripts were not considered to be records.

At this time, the word "public" usually meant "publicly accessible", an early common law usage. The act stated that "there are several hundred volumes of papers, manuscripts and records, very interesting to such of the inhabitants of this Province . . . which ought to be disposed of as to give a cheap and easy access to them."*24 Further on in the enactment this same material was referred to as "public papers, manuscripts and records."*25 Thus, one may assume that the intention of the act was to make records, papers and manuscripts publicly accessible for the purpose of

establishing the rights of the French population.

The original English common law concept of public records as publicly accessible official memorials of transactions documenting rights and privileges of the citizens has not been static. By 1861, when the Public Records Act of Nova Scotia came into existence, the meaning of the term had been altered. In this act one finds the first evidence of the slow evolution of the notion of public records as accessible memorials documenting rights and privileges into the notion that public records are documents owned by the crown and created in the course of public administration. Section one of Nova Scotia's act referred to records "kept by or in the custody of any provincial or municipal officer in pursuance of his duties as such officer . . . vested in Her Majesty the Queen and her successors."*26 This definition reflected the colonial situation where executive power rested with the sovereign and where accessibility to the records of executive administration was a royal prerogative exercised by the governor.

By the 1920s, the meaning of public records had undergone further transformation in response to changing societal circumstances. By this date, there was a need to dispose of or preserve a growing volume of records by some regulated means. The term public records, therefore, came to refer to all manner of documentary material created in

the administration of public affairs in order that a broad range of administrative records might be disposed of. Saskatchewan's 1920 act concerning public documents disposal is illustrative of this development. It defined the term public documents as "certificates under the Great Seal of the province, legal documents, securities issued by the province under any Saskatchewan Loans Act, vouchers, cheques and accounting records and all other documents created in the administration of the public affairs of Saskatchewan."*27 Rather than referring to crown custody, this definition rested on the notion of public records as those records created in the course of government business.

The rising volume of documentation in the post-World War Two period led to the final shift in the meaning of the term public records from the notion of accessibility to that of creation in the course of public administration. With the establishment of modern records management programmes to control the mass of records held by government agencies, the selection of valuable records for transfer to the archives began earlier in the life cycle of those documents. As the age of the records being transferred to the archives decreased, concern about public access to them increased. Consequently, archival legislation began to place limits on the general right of access to public records held in archival institutions. The 1959 Newfoundland Historic Objects, Sites and Records Act, for instance, was the first piece of legislation to

allow for the limitation of access to public records in the provincial archives, in a provision which said: "Public documents and court records . . . are subject to such restrictions respecting their subsequent use as the Lieutenant-Governor in Council, upon the recommendation of the Minister having jurisdiction over the department concerned, may by order prescribe."*28 Archival legislation had abandoned older notions of accessibility inherent in the word public. As it is now used in archives laws, the term public refers strictly to the provenance of the records as being created in the course of government business, not accessibility.

In conjunction with clarification of the definition of public records, the question of the accessibility of public records has been transformed to encompass all records created by government, not just a select few documents transferred to the archives. This change has taken place as a result of the need to protect individuals' rights to personal privacy and society's demand for the right to have access to public documents in order to make governments more accountable. The growth of the public sector's role in society, the growth of an educated citizenry with the skills to exercise their rights, and the growth of computerization to compile personal information about citizens, have led to the emergence of notions of the right to privacy and access.*29

The term public record as it is used in provincial and territorial archival legislation has, therefore, gradually been broadened to encompass all manner of documentary forms created and accumulated in the course of the government's administration of public business. The actual statement of this broad definition in legislation often provides little insight into the purpose of public records and is therefore vague. Moreover, although the legislative definition of the term does not imply accessibility, common law definitions of the term still exist which do imply this. The layers of meaning of the term public records found in both legislation and common law can potentially lead to inconsistency, misconceptions and misinterpretation of the legislation.

There is an additional problem with the definition of public records as it is used in most current provincial and territorial archival legislation, and this is that it has become a catalogue of types of material. Such catchall definitions have a tendency to become quickly outdated. In addition, in archival doctrine and for the practical purposes of dealing with records in the information age, the form of the record is increasingly immaterial. It is its nature as a documentary source of information created by an agency or person as a natural course of carrying out business that is fundamental to the effectiveness of the legislation.

Again the origins of this problem lie in the manner in which the term evolved in response to various broad cultural influences. The shift from a functional definition of the term record as official memorials of transactions documenting rights and privileges of citizens to a descriptive catalogue of types of documents created in the course of carrying out public administration began in the 1920s with the need to dispose of accumulations of records created by government. The term records, therefore, was broadened to permit the disposal of specific types of documents. One may assume that it was to ensure that government bureaucrats knew which documents were subject to the legislation that legislators listed the various types in the original public disposition laws of Saskatchewan and Alberta of the 1920s.

Such descriptive definitions of the term record or document were in constant need of revision. For example, when provincial governments found they needed legislation to deal with the disposition of masses of records that had emerged as a result of administrative activity during the Second World War and the period immediately thereafter, they broadened the term record to include maps and photographs.*30 By this date, the meaning of the term records had become so inclusive and the documents in government agencies so voluminous, chiefly because of modern reprographic technology, that many provinces needed

to exclude certain classes of material from the formal disposition process. The term record was therefore narrowed. Saskatchewan, for example, excluded material such as surplus copies of mimeographed, multilithed, printed or processed circulars and memoranda.*31 Alternatively, new forms of record material continued to emerge throughout the 1960s and 1970s. Once all-encompassing definitions required the addition of phrases such as "machine readable records" or "computer cards."*32 The pragmatic practice of listing types of material in definitions of the term record or document to inform bureaucrats of which material is subject to public records legislation can be misleading, even when the lists are used to illustrate a broader statement that records include all documents created in the administration of public affairs, now that information and the medium upon which it is recorded are not inseparately linked. Today, more so than ever, the form of the information is not as important as the information itself.

The conceptual problems in all areas of current provincial and territorial archival legislation arising from the socially produced meaning of certain key terms adversely affects the legislation of most jurisdictions. In addition to these general problems, an examination of the specific provisions of current provincial and territorial archival legislation reveals particular peculiarities of expression illustrative of how these

enactments arose as practical solutions to local problems rather than as statements of archival principle. Individual will, administrative practicality, local conditions and past practices concerning the preservation of documents of enduring value helped shape the various provisions of the legislation. Today, however, these provisions are often anachronisms which, at best, are irrelevant and, at worst, lead to misconceptions. A number of examples of this phenomenon can be found.

In the Ontario Archives Act of 1923, provisions outlining the archives' mandate reflected the interests of the first Provincial Archivist, Colonel Alexander Fraser. As Donald Macleod observes in an article on early priorities in collecting the Ontario archival record:

> far more indicative of Fraser's interests than acquisitions relating, for instance, to contemporary social movements [sic] were militia lists dating from 1812, a patriotic history of Fenian Raids, prints and photos of leading Six Nations Indians, a pamphlet for militiamen employed in suppressing the rebellions, and a town plan for Niagara-on-the-Lake containing 'detailed outlines' of fortifications.*33

Consequently, the Ontario Act empowered the Archives to collect and preserve "pamphlets, maps, charts, manuscripts, papers, regimental muster rolls and other matters of general or local interest historically in Ontario" and conduct research "with a view to preserving

the memory of pioneer exploits and the part taken by them in opening up and developing the Province."*34 Thus, Fraser's own interests seem to have leant a particular cast to the law.

Several decades later, in 1971, when the Yukon Territory enacted an archives ordinance, the law resembled the Ontario Archives Act almost word for word, except that provisions outlining the Archives' mandate were slightly modified to reflect the Archives' setting in a northern resource community. For example, subsection (g) of section 6 of the Yukon Archives Ordinance included mining in the list of subjects about which information on the early settlers could be collected. Similarly, subsection (i) stated that one of the Archives' functions was "the conducting of research with a view to preserving the memory of the indigenous peoples in the Territory and their mode of living and customs."*35

The specific circumstances under which Nova Scotia's Archives Act came into existence also affected its content. Premier E.N. Rhodes persuaded a wealthy benefactor, one W. H. Chase of Wolfville, to present the province with an archives building. Once Chase had agreed to construct what would become the first provincial archives building in Canada, the government then introduced legislation to place Nova Scotia's public archival programme, and the proposed archives building, on firm legal ground.*36 As the

government required a site on which to construct the new archives building, it included a provision in the 1929 Public Archives Act which stated that "the Board [of Trustees of the Public Archives of Nova Soctia] may acquire a site in the city of Halifax and erect thereon a Public Archives building or buildings . . ."*37 Dalhousie University later donated the land upon which the building was constructed. The desire to protect the province's archives from the vissitudes of party politics may have motivated the establishment of a Board of Trustees for the Public Archives of Nova Scotia. In an effort to strike a balance in the composition of the Board between important public officials and those most interested in the history of the province, the act as amended in 1930 and 1931 made the Chief Justice, the President of Dalhousie University, the Premier and Leader of the Opposition, and the President of the Nova Scotia Historical Society all ex officio members of the Board.*38

Local rivalries played a part in shaping Saskatchewan's legislation, enacted on March 30 1945. The Archives Act set up two repositories for archival records under the supervision of its Archives Board. The underlying reason for establishing two repositories was, as George Simpson, former Provincial Archivist of Saskatchewan explained:

> In Saskatchewan the situation was somewhat [sic] unique. The capital of the Province is Regina. The provincial university is in

> Saskatoon about two hundred miles to the north-west. The chief source of public records is at the seat of government, the chief interest in their permanent preservation and study was at the seat of learning. It was decided therefore in 1945 when a comprehensive Archives Act was passed to set up an Archives Board which would be composed of respresentatives of the Government and representatives of the university. The Provincial Archivist was to be appointed by the University with the approval of the Archives Board.*39

During second reading, some members of the legislature charged that the government was seeking to centralize the programme in Regina and demanded the programme be centred in Saskatoon. A compromise was reached. The final bill specified that the Archives Board would consist of two members appointed by the Lieutenant Governor in Council, two members appointed by the Board of Governors of the University of Sasktachewan, and the Legislative Librarian. Later, offices of the Board or Provincial Archives were established in Regina and Saskatoon.*40

As the above examples show, current provincial and territorial archival legislation is frought with problems arising from the pragmatic manner in which it has developed. The result has been that key terms convey outdated and inappropriate attitudes about the nature of archives and archival institutions in their meaning and that many of the legislative provisions are irrelevant, ambiguous, vague or inconsistent making it impossible for the legislation to promote a global

approach to the care and management of public records and archives, even when this may have been its legislative intent.

In contrast to the other jurisdictions, Quebec stands out as a province with legislation that does not suffer from the problems identified above. Its legislation does promote a global approach to the care and management of public records or archives.

The broad cultural influences leading up to the adoption of new legislation are not what sets Quebec apart from the other jurisdictions. In Quebec, as in the Yukon Territory, passage of access to information and privacy legislation in 1983 had a profound affect on archival legislation when it became apparent to the provincial government that the right to access was meaningless without the tools to manage government documents throughout their life cycle. Consequently, Quebec drafted new archival legislation which it intended to be a tool for the effective management of "les archives québecoise actuelle et a venir, et a en faciliter l'acéss et l'utilization."*41 This enactment became law on 21 December 1983.

What set Quebec's legislation apart from legislation in other jurisdictions was the searching criticisms it received in the early stages of its

drafting from the archival community in Quebec. These criticisms eventually led to the legislation's reformulation on the basis of European archival theory. It was the fact that legislators, listening to the archival community, did not simply re-enact the outdated concepts inherent in the provisions of past laws but developed completely new provisions based on the principles of modern archival science that has led to the such a strong piece of archival legislation.

Initially, the bill included a definition of archives based essentially on the notion of public records as it appeared in legislation elsewhere in Canada. However, several Quebec archivists criticized the bill's limited vision of archives.*42 As a result of their criticism, the government revised the bill so that the definition of public archives included not just inactive documents of historical interest, but also active and semi-active documents. The Act defines public archives functionally as a "body of documents of all kinds, regardless of date, created or received by a person or body in meeting requirements or carrying on activities. . . ."*43 Quebec's use of the term public archives, as opposed to public records, makes no distinction between the government documents in the archives and those in public agencies, and links legislative provisions concerning the care and management of records in the archives with those

concerning the care and management of records held by public agencies. Moreover, the Act defines the term document as "any medium of information, including the data on it, legible directly or by machine."*14 This definition differs from other definitions found in current provincial and territorial archival legislation in that it is constructed irrespective of the form or medium of record and therefore does not require constant updating when new forms of material emerge.

The conclusion that can be reached from the Quebec example is that the principles and concepts of archival science need to be clearly enshrined in legislation to overcome the adverse affects that external social influences have had on the meaning in current provincial and territorial archival legislation. However, it is highly unlikely that new legislative provisions will be based on archival theory unless the archival community understands the limitations of current legislation, develops a theoretical base from which to draw upon, and initiates change by taking an active part in the legislative process. It is to providing a greater understanding of the adverse affects of the social production of meaning on provisions defining key terms, provisions establishing the scope and authority of administrative structures for archival programmes, and provisions outlining the basic elements of archival

programmes that this thesis now turns.

CHAPTER TWO

THE IMPACT OF THE DISJUNCTION BETWEEN THEORY AND LAW ON DEFINITIONS OF KEY TERMS

Some of the most important provisions found in archival legislation are those which define key terminology, such as public records or archives. It is from these definitions that archival legislation derives the boundaries of its application and that its other provisions derive their meaning. Yet, definitions found in current archival legislation have the potential to severely limit the ability of the archives to realize the main objective of the legislation, the preservation of documents. This chapter examines how and why these limitations occur.

Given the importance of the term record or document to legislation which has as its basic goal the care and management of public records, one would expect all current provincial and territorial archival legislation to include a definition of one or the other term. This is not the case. Ontario's Archives Act lacks a definition of either term, although the word document is used several times throughout. Ontario's failure to define a term so basic to interpreting the provisions of its Archives Act causes an inherent ambiguity in its legislation. Such an omission must be seen as a

serious flaw in any archival legislation.

All other jurisdictions have a definition of either the term record or the term document. Most include such a definition as part of a broader definition of public records. On the other hand, British Columbia, Quebec, and Newfoundland provide definitions which are independent of the broader term. Independent definitions of records or documents have an advantage over those that are subsumed in the term public records, since they may be used to interpret provisions in archival legislation respecting both public records and records of private origin.

The content analysis reveals great variety in the type of enactment in which definitions of the term record or document appear. British Columbia's legislation includes a definition in secondary legislation, the province's Interpretation Act. In New Brunswick's legislation, part of the definition appears in primary legislation, the Archives Act, and part appears in secondary legislation, the Public Records Act. Only in Alberta does the definition of this important term appear in a regulation; although, a portion of the operative definition in Quebec appears in a regulation. The majority of jurisdictions, therefore, define the term record or document in primary legislation. Given that the terms are essential for the interpretation of all statutes, regulations and other legal instruments concerned with the care and management of public records,

primary legislation is a more suitable locus for such a definition than any other legal instrument. Regulations, which are intended to give effect to the broad brush strokes of statutory provisions, are a much less suitable place for defining such basic terminology.

Chapter one discussed the development of new forms of record material and the consequent adaptation of the terms record and document. The newest media are those upon which electronic data are stored. The content analysis shows that British Columbia, Prince Edward Island, Alberta, New Brunswick, the Northwest Territories, Quebec and Newfoundland have attempted to adapt their definitions to the new media by the addition of the phrase "machine readable records". Nevertheless, the majority have ultimately failed to come to grips with the real nature of the changes brought on by computerization.

The current descriptive definitions are adequate as long as information, which is what the legislation must really seek to protect, and the medium upon which it is recorded are inseparably linked. Now, however, information can easily be switched from one medium to another. Laws with media-based descriptive lists for definitions are clearly inadequate, as they refer only to the medium of information, not the information itself.

Prince Edward Island's definition of a record, which

was enacted in 1975, serves as an example of the inadequacies of media-based definitions. The definition includes magnetic tapes, discs, microforms and all other documents and machine-readable records.*1 Prince Edward Island's definition, and all those in other jurisdictions that are similar to it, could conceivably allow a government agency to schedule its tapes and discs without actually scheduling the data stored thereon.

Even the definition of a record in the new National Archives Act does not offer a model. This act defines a record as any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine-readable record and any other documentary material regardless of physical form or characteristic and any copy thereof."*2

Electronic records demand that old approaches to defining records and documents be rethought. Archival legislation requires definitions capable of allowing for the scheduling of both traditional and non-traditional media. Such a definition must pay equal attention to the medium of the information and the information itself. It must go beyond mere description to explain the purpose for which a record exists.

The definition of a document in Quebec's Archives Act serves as an example of what is required under the present

circumstances. It defines a document as "any medium of information, including the data on it, legible directly or by machine."*3 Thus, computer tapes and discs, as well as the information recorded thereon, fall within the purview of the law. A definition of a record or document such as Quebec's, which explains, rather than describes, will outlast a descriptive list because while new media may emerge, the essential characteristics of a record or document will remain constant.

As discussed in chapter one, the gradual widening of the term record and document to include different forms of material led, ironically, to the need to exclude certain types of material from the definition. Without these limitations legislation can become difficult to implement. For instance, in British Columbia's Document Disposal Act, a document is defined as including "books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by any means whether graphic, electronic, mechanic, or otherwise."*4 Thus, the definition includes worthless duplicate photocopies and computer printouts. If the province's ministries abided by the letter of the law with respect to every document they would either submerge themselves in duplicate copies or cause the province's disposition process to grind to a halt.

Most jurisdiction's have limited their definitions,

although their approaches have differed. The content analysis shows that Saskatchewan, Prince Edward Island, New Brunswick, Quebec and Newfoundland explicitly specify in their legislation that certain classes of material are not considered to be records or documents, and therefore are not subject to provisions concerning the disposition of records or documents. There are drawbacks to this approach to limiting the scope of the term. Government agencies can interpret the exemptions too broadly and use them as a justification to avoid scheduling records. It can be difficult to rectify the improper use of such exemption clauses, for it must be done by an amendment to the legislation.

A slightly more flexible approach to limiting the scope of the term record or document is used in Alberta, which exempts certain types of record material, such as duplicate copies of unaltered documents, calculations or drafts of completed documents, printer's proofs of printed documents, and letters or memos of an ephemeral nature, from the standard disposition process in its public records regulation. This approach, too, has its drawbacks, since changes to regulations are still subject to a fairly complex and time consuming approval process.*5

A more flexible approach to qualifying the definition of records or documents is to pass a general schedule authorizing, on a continuing basis, the destruction of

certain classes of records after they have become superceded or obsolete. British Columbia has adopted this approach and now has a general schedule for both "transitory" hardcopy and electronic records.*6 The advantage of the general schedule is that it is more easily amended than a statute or regulation. This kind of flexibility is desirable now that computers are changing traditional concepts of what constitutes record and non-record material. An additional advantage of the general schedule is that it may be applied selectively to those agencies that are not likely to use it improperly.

There is one further consideration concerning the definition of a record or document. In the past, recorded information was directly accessible; now, however, information must often be made accessible by computer software and hardware. Future definitions of the terms record or document will have to take into consideration that random bytes of data are of no use without the means of making them intelligible. The definition of a record used in the Manitoba Freedom of Information Act addresses this issue. It states that a record includes a transcript of the explanation of a record where the record cannot be understood on its own.*7 Thus, definitions of the future might encompass both the record and a means of making it intelligible, such as software documentation and computer indices. Computer hardware should not be included, however,

as this would turn archives into museums. Instead, provisions should require that the data be in a "transferable" form.

The definition of the term archives is also of central importance to understanding and implementing archival legislation. Yet, the results of the content analysis, which reveal that only five of twelve jurisdictions have any kind of definition of the term, leave the opposite impression. Why do so few jurisdictions include a definition of what should be the most important term in archival legislation?

The answer to this question lies in the origin of the first archives acts in Canada and in the entry of the word archives into Canadian law. As discussed in chapter one, the first archives acts were enacted to establish archival institutions which would house records valuable as sources of evidence of the past. Definitions of archives, meaning institutions, were not essential because such institutions were usually described in the course of outlining their mandate to collect historical records. Nor were definitions of archives, meaning records, necessary, since it was understood that they were simply the records found in archival institutions or under the care of the archivist. A provision in the Northwest Territories' Archives Ordinance, however, states this implied meaning more explicitly; it reads: the "Northwest Territories Archives . . . shall consist

of all public records and other documentary material under the care, custody, and control of the archivist."*8

This definition of archives has become inadequate. Definitions of archives in most current provincial and territorial archival legislation, whether explicit or implicit, conflict with the intention of legislative provisions concerning the care and management of public records in that the meaning of the term suggests a view of archival institutions as concerned solely with the acquisition and preservation of historical records and not in any way linked to the creator of the records it preserves through its responsibility for the management of active and semi-active records. Archives can no longer afford to be, and are no longer, passive recipients of inactive records as this definition implies. In many jurisdictions, legislative provisions establish the archives as an active agent in the care and management of public records. In three jurisdictions the archives has direct legislative authority over the management of active and semi-active records. With the effects of computerization on archival activity, archives will continue to become more actively involved in the care and management of records throughout their life cycle. However, the implementation of a coordinated policy for managing records throughout their life cycle becomes difficult if legislation uses the word archives in its conventional sense. In focussing on archival institutions rather than on archival records, the traditional definition

of archives creates an artificial distinction between records of enduring value stored in archival repositories and those same records at an earlier stage of their life cycle as records created and maintained by an agency to fulfill its own administrative requirements. Hence, the link between archival records and their administrative origins is severed, as is the vital connection between archival institutions and their sponsoring agencies.

Not only does such a definition marginalize the role of archives, it also marginalizes the legislation which establishes them. Consequently, archival legislation is seen as unrelated to the care and management of records throughout their life cycle despite the fact that archives acts now provide for both the establishment of archival institutions and for the care and management of public records in seven out of twelve provinces and territories.

A 1986 judicial decision involving Manitoba's archival legislation demonstrates how the traditional meaning of archives can marginalize and render ineffective both archives and archival enactments. In this case, a Manitoba Court of Appeal Judge ruled that the Legislative Library Act was "nothing more than an Archivist's Act", and denied that it had any application to current records despite the fact that Part II of the act applies to the care and management of public records still held by government departments. The case involved an attempt by Canadian Newspapers Company

Limited, the owner of the Winnipeg Free Press, to obtain copies of offers of compensation to landowners whose land was being appropriated for redevelopment by the provincial government. The lawyer for Canadian Newspapers Company Limited argued that the offers of compensation should be made publicly accessible because the Manitoba Legislative Library Act defines them as public records and public records are, by legal custom, open to the public. Initially, a Manitoba Queen's Bench Judge decided in favour of granting access; however, the Court of appeal later reversed this decision. In the opinion of Chief Justice Monnin, "the offers were current records [and therefore] the Manitoba Legislative Library Act had no application."*9 The Chief Justice reasoned that, owing to the definition of archives given in the act, the definition of public records applied only to records transferred to the Archives and Public Records Branch, even though several of the act's provisions deal with the care and management of current records. In the words of one archivist, "it was clearly apparent from his attitude . . . that we archivists have not concluded our battle with the perception of archives being the dump at the end of the line."*10

Quebec's definition, however, is unique in Canada in that it encompasses documents at all stages of their life cycle. The province defines archives "as the body of documents of all kinds, regardless of date, created or

received by a person or body in meeting requirements or carrying on activities, preserved for their general informational value."*11 Ironically, this definition, which comes from European archival science, is a definition widely used by North American archivists to describe "fonds"; yet, it is not a definition found in the legislation which forms the structural basis of archival work. The value of this definition lies in the fact that as long as documents are created or received in meeting administrative requirements and preserved for their informational value, they are archives, whether they are physically held by the creating agency or have been transferred to an archival repository. This definition focuses on the functional link between the records in an archival institution and their administrative origins, as well as that between the archival institution and its sponsoring agency. Since archives, by Quebec's definition, are not necessarily inactive records or situated in an archival repository, its Archives Act is less likely to be narrowly interpreted as legislation concerned solely with the care and management of non-current records, as was the Manitoba Legislative Library Act.

The Manitoba Legislative Library case not only demonstrates how archival legislation can be marginalized by its own definition of archives, but also reveals confusion surrounding the meaning of the term public records. The lawyer for Canadian Newspapers Company Limited based his argument on a meaning of the term, derived from the common

law, as any records which are publicly accessible. Current legislation defines the term with reference to their ownership or custody. The content analysis reveals that the legislation of New Brunswick, Prince Edward Island, Newfoundland and Nova Scotia define the term as records which are vested in Her Majesty. Quite often, legislation will define public records as records created in, or received by, a public officer in the course of carrying out his official duties, as in the case of the legislation of Nova Scotia, Saskatchewan, Manitoba, Alberta, the Northwest Territories and Newfoundland. As chapter one has shown, layers of meaning have been built up over the decades. It should also be noted that although these definitions have gradually drawn closer to the European idea of archives expressed in Quebec's legislation as natural accumulations of records, they still differ in conception from Quebec's definition of archives in that they do not include the additional notion of the preservation of records of any age for general informational value. Thus, the term public record continues to be used in reference to active or semi-active documents and the term archives to refer to inactive documents preserved in an archives.

Given the confusion surrounding the meaning of the term public records, one must question the usefulness of using it in archival legislation at all. Why do ten out of twelve jurisdictions include a definition of the term in their

legislation? In most cases they do so because special rights inhere in public records which assist in the preservation of these records; that is, their inalienability and imprescribility. Inalienability is the quality of public records derived from their relationship to the sovereignty of the government and establishes that they may not be removed, abandoned or alienated in any way from government. Imprescribility is the idea that, owing to their inalienability, government has the right to recover public records that have gone astray, a process known as replevin.*12

It is not always necessary to use the term public records in legislation to establish their inalienability and imprescribility. The same rights may be established by a provision in a statute; for example, in some jurisdictions archival legislation includes provisions to prohibit the destruction and alienation of public records. The content analysis reveals that Nova Scotia, the Yukon Territory, New Brunswick, Quebec and Newfoundland all have provisions in their legislation to authorize replevin and, with the exception of the Yukon Territory, set out procedures for the recovery of records. If these types of provisions exist in the legislation, then there is no compelling need to use the term public records.

Given the fact that there is no compelling need to use the term public records, it might be discarded in favour of

an encompassing definition of archives, such as that found in Quebec. Such a definition would eliminate the inherent vagueness of some of the legislation caused by the term public records, overlaid as it is with several meanings rooted in the common law and legislation, and would establish a desirable functional link between records held by creating agencies and records preserved in archival institutions. Ultimately, this definition would lead to less splintering of traditional archival and records management functions, which would become the single function of archives management, and less splintering of archival legislation into enactments which establish archival repositories for the preservation of historical records and those which concern the care and management of public records. The use of Quebec's functional definition of archives would also bring Canada into line with most other western countries, including Belgium, France, Italy, the Netherlands and Spain.*13 It would also bring archival legislation into line with accepted archival theory.

Adopting a definition of public archives such as Quebec's would be a dramatic departure from tradition for most jurisdictions. Thus, other means of eliminating the confusion surrounding the meaning of public records should be taken into consideration. Most jurisdictions use the term public records in their legislation to refer to the records held by government agencies. The same meaning could be conveyed with the combined use of the terms "record",

"government agency", and "held". This approach has been adopted at the Federal level where the National Archives Act avoids the often problematic term public records in favour of the phrase "records of government institutions." The legislation defines both the term record and government institutions.*14

The only ambiguity that remains in the federal approach is that it is not absolutely clear what the word "of" means in the phrase "the records of government institutions." It could mean all records created by government institutions, but could possibly include those received by them as well. A definition of the word "of" or some other suitable term, such as "held", would reduce the level of ambiguity. For example, British Columbia's Document Disposal Act provides a definition of "deposit" which "includes filed, registered, recorded and kept."*15 The 1984 English Data Protection Act takes a similar approach, where, in section 1(5), "data user" is defined as a person who holds data, and a person "holds" data if:

> (a) the data form part of a collection of data processed or intended to be processed by or on behalf of that person...
>
> (b) that person (either alone or jointly or in common with other persons) controls the contents and use of the data comprised in the collection; and
>
> (c) the data are in the form in which they have been or are intended to be processed as mentioned in paragraph (a) above or (though not for the time being in that form) in a form into which they have been converted

> after being further so processed on a subsequent occassion.*16

The approach taken in this act is similar to that taken in British Colubmia's Document Disposal Act; however, the language used is more in keeping with the manner in which records, particularly electronic records, are now handled. Thus, three simple components: a definition of a record, a definition of government agencies, and a definition of the term held, would help eliminate the ambiguity in archival enactments resulting from use of the term public records.

Archival legislation must provide a definition of government agencies to give the term public records meaning, since current definitions of public records in Canadian provincial and territorial archival legislation are based on provenance, or the origins of the records. The content analysis indicates that, in provincial and territorial archival legislation, these definitions tend to be lists of categories of government agencies. The analysis indicates that all jurisdictions include the administrative branch of provincial or territorial government, such as departments. Also common in these lists of agencies are boards and commissions that are not part of a department and which are established either by an act of the legislature or by order in council. Legislation in several of the provinces, but neither of the territories, includes the judicial branch of government in lists of agencies whose records are subject to legislative provisions. Ontario (access to information and

privacy legislation only), Manitoba, the Yukon Territory, Alberta, New Brunswick, Quebec and Newfoundland include crown corporations in the list. The legislative branch of government is less often included; it is listed in only Ontario, Nova Scotia (access to information and privacy legislation only), New Brunswick, the Yukon Territory, the Northwest Territories and Quebec. In addition, several jurisdictions mention provincial government agencies not found in the legislation of other jurisdictions, such as associations or persons appointed by an act of the legislature, by order in council, or who are directly responsible to the crown.

Beyond the records created by provincial or territorial government agencies, definitions of public agencies in Canadian provincial and territorial archival legislation sometimes include the records of other levels of government. This is the case in Nova Scotia, the Yukon Territory, New Brunswick and Quebec where definitions encompass municipal government records. Quebec's legislation has the broadest scope, as it also includes school boards, universities, and health care facilities. In all other jurisdictions the status of these records is unclear, although they might be subject to special legislative provisions concerning their care and management.

The content analysis shows a diversity of definitions of public agencies in current provincial and territorial

archival legislation. Quebec's definition, however, offers a model. Its breadth provides for the care and management of records from many agencies; although, critics may argue that such a broad definition places a strain on the resources of archives. Nevertheless, there are means of surmounting this difficulty. One of the ways in which this difficulty may be overcome is by enumerating, in regulation, those public agencies which fall within the compass of the law. This is an improvement over defining public agencies in a statute, since regulations are more easily amended. Another means of alleviating the demands on an archival institution's resources is by allowing for designated repositories in legislation, as, for example, in the English Public Record Act. In this Act, the Lord Chancellor may appoint a place outside the Public Records Office as a place of deposit if it "affords suitable facilities for the safekeeping and preservation of records and their inspection by the public."*17 Thus, rather than having only one official repository, England has several repositories conforming to official standards. The Quebec Archives Act offers another, very innovative, solution to the difficulties posed by definitions of public agencies. The various public bodies are grouped into seven classes listed in a schedule to the act. The public archives of each class of bodies are subject to varying degrees of control over their care and management. For example, the Minister of Cultural Affairs must adopt a management policy for the

active and semi-active documents of the Conseil executif, the Conseil du tresor, and the government departments and bodies to which the government appoints a majority of members. On the other hand, municipalities, school boards, and health and social services councils must take responsibility for the management of their own active and semi-active documents, although the Keeper of the Archives Nationales may advise them on policy.*18 Quebec's use of what may be referred to as a tiered approach is a flexible, yet practical, means of accommodating a broad range of agencies within its definition of public bodies. It also recognizes the need of some public bodies for integrated archives management programmes of their own while promoting the development of such programmes within a province-wide framework for the care and management of records throughout their life cycle.

The results of the content analysis reveal that in Ontario and Nova Scotia lists of public agencies in access to information and privacy legislation do not always correspond to those in primary archival legislation. To argue that the definitions in these acts must match word for word would be to deny the different purposes for which they are created. Nevertheless, each of the acts affects the implementation of the other. Thus, the effect of a definition used in one enactment upon the provisions of other related enactments must be taken into consideration. Ideally, definitions in access to information and privacy

acts and other archival legislation should not conflict with one another and should agree in scope; that is, agencies that are encompassed in the definitions of public records in archives acts should also be encompassed in the definitions found in access legislation. Frequently, however, these acts are drafted without regard for how they will function together.

If the definition of public agencies, or the scope of the archives act, is narrower than that of the access to information and privacy acts, it can become difficult to implement the provisions of the access and privacy law, since adequate control cannot be established over the records of agencies not mentioned in the archives act. Access to information and privacy legislation affects the functioning of provisions in archives acts as well. This legislation can have implications for the accessibility of material held in a provincial or territorial archives if the archives falls within the legislation's definition of a public agency. For example, the definition used in the province of New Brunswick's Access to Information Act includes the records of the provincial archives, which would encompass both the records the archives creates to meet administrative and operational responsibilties, and those it receives from both public and private sources. There was some uncertainty about the status of the archives' holdings prior to the passage of an amendment to the

Archives Act which states that "all public records transferred to the Archives and in the possession, care, custody and control of the Provincial Archivist are available for public inspection", with certain exceptions. This provision had the effect of excluding private material held by the archives from the provisions of the access and privacy legislation.*19 In Manitoba, rather than passing an amendment to the province's archives act, the government included a provision in its Access to Information Act which specifically exempts material of private origin owned by the government.*20

The analysis of provisions establishing definitions for such key terms as record or document, archives, public records and public agencies upholds the claim that these provisions place limitations and even thwart the ability of archives to achieve the objectives of archival legislation; that is, the preservation of documents. The problem with these definitions is twofold. One the one hand, the definitions reflect an ideological perspective on archives that, although accurate at the time these definitions entered into Canadian archival law, is now outdated and unrealistic in the present social and technological context. On the other hand, the inexactness of the definitions, or in some cases the lack of a definition, causes inflexibility, vagueness and inconsistency in the legislative provisions. These inherent flaws can, in turn, be attributed to the inherent deficiencies of all language arising from the

effect of external social influences on the meaning of archival legislation. This social production of meaning creates a contradiction between the intention of the legislation, or what it means to say, and what the legislation is actually capable of achieving, or what it actually says. With an understanding of the adverse affects that the socially produced meaning of these key terms can have upon the ability of provincial and territorial archival legislation to operate effectively, archivists are in a much better position to correct these deficiencies by becoming actively involved in the legislative process and ensuring that new legislation includes definitions derived from the principles of modern archival theory, which increasingly emphasizes the global approach to the management of records throughout their life cycle. Unless archivists learn to master the legislation by understanding the subtler influences it has upon their ability to carry out the preservation of documents in the present information environment, the conceptual problems created by present definitions of key terms will continue to adversely affect the other major components of archival legislation, since all other provisions draw upon the basic concepts expressed in these definitions for their interpretation. Unfortunately, as the next chapter will show, the negative consequences of inadequate definitions can be far-reaching.

CHAPTER THREE

THE IMPACT OF THE DISJUNCTION BETWEEN THEORY AND LAW ON ADMINISTRATIVE STRUCTURES

Provisions setting forth the legal authority for the establishment of administrative structures to carry out archival work have traditionally been a major component of current provincial and territorial archival legislation. This chapter will examine these provisions and assess how they affect the ability of archives to attain the overall objectives of archival legislation.

The body or person responsible for the general management of the provincial or territorial archives, or of the act establishing the archives, is an important determinant of the archives' ability to fulfill its mandate. Archival legislation in all jurisdictions except the Northwest Territories and the Yukon Territory, specify the body or person responsible for the archives', or act establishing the archives', general management. This content attribute appears in primary legislation in seven out of ten jurisdictions. In Saskatchewan and Nova Scotia, general management of the province's archives is the responsibility of an archives board. In all other provinces, general management of the archives falls to a

minister who may be responsible for culture, government services, tourism, education or some other portfolio.

Over the years, debates have occurred regarding the relative merits of conferring responsibility for the archives' general management upon an archives board as opposed to a minister of a government department or ministry. Advocates of the board structure argue that boards, being at arms length from government, are less politicized and, therefore, in a better position to acquire a broad range of politically sensitive records. Archives boards also allow the archives to attract greater public support from non-government sources. Moreover, they permit greater flexibility in the day to day operations of the archives; for example, administrators can establish job qualifications calling for an appropriate level of education and experience.*1

On the other hand, the content analysis clearly shows that only two jurisdictions maintain a board structure governing the archives and none have moved in that direction since the establishment of the Saskatchewan Archives Board in 1944. Archives boards have become an anachronism because, while they are well suited to realizing the objectives of early archives acts, which focussed on the cultural mandate of archival institutions, they are not well suited to the present social and technological environment. This environment demands that

administrative structures established in archival legislation promote a close link between archives and their sponsoring agencies in order to ensure the effective management and preservation of public records by placing archives within the executive hierarchy of government, preferably within a central department or ministry which can deal independently with all branches of government in carrying out its functions. Any advantages attributed to archives boards are largely fictional given the fact that boards rely on government funding and are accountable to government for how those funds are spent.

Traditionally, one of the main objectives of archival legislation has been the establishment of the legal authority for the existence of archival institutions. Provisions establishing this legal authority help to ensure that the legislation can be properly implemented. One would, therefore, expect all provincial and territorial archival legislation to include a provision establishing the archives, or in the case of second generation legislation, continuing the existence of the archives. British Columbia, the Yukon Territory and New Brunswick, however, do not have such a provision in their legislation, although archival institutions exist in all three jurisdictions. Lack of legislative authority for the existence of these three archives can have at least two

possible negative consequences for the archival programme. First, because such provisions legitimize the existence and activities of archives, jurisdictions without them may find it more difficult to justify increased funding, or even the continued existence of the archives. Second, because a provision establishing the archives usually guarantees the existence of the archives as a separate entity, there is a possibility that another agency, such as a museum, could be made to serve as an archives or that the archives could be made subordinate to another cultural agency.

Another important provision is that which establishes the archives as the jurisdiction's official repository for public records; yet, only Saskatchewan, Prince Edward Island, and Newfoundland include such a provision in their archival legislation. Without this provision, however, there is a danger that government departments could establish their own records repositories and that the provincial or territorial archives would not have authority to intervene in cases where the records were not properly preserved or made accessible.

If current provincial and territorial archival legislation establishes the legal authority for the existence of archives, it is logical to expect that the legislation will also provide for the appointment of an individual to act as head of the archival institution. The appointment of such an individual is also a requirement if,

in any of its provisions, the legislation confers special powers upon the head of the archives. The content analysis reveals that nine out of the twelve jurisdictions include such a provision in their legislation. Only British Columbia and Alberta do not specifically mention the appointment of a provincial archivist, although the provincial archivist is mentioned in the legislation and has specific powers and duties under the laws of both jurisdictions. In addition to providing for the appointment of a provincial archivist, seven jurisdictions out of the nine give this individual a proper legal title, such as "Provincial Archivist", and eight specify the individual's manner of appointment.

Some authorities on the subject of archival legislation also suggest that archival laws should contain some provision for the training or professional qualifications of the "chief archivist."*2 To include a provision of this type, however, decreases the flexibility of the legislation, particularly in the Canadian context where standards for archival education and training continue to be debated. Nevertheless, if archivists are given special powers, duties and responsibilities, it may not be unreasonable to expect that their professional qualifications and the level of their training be set forth in law; however, in the provincial and territorial context, this is usually dealt with in regulations and policy statements concerning the recruitment, appointment, and

qualifications of public servants. As more archives are established by private organizations, it is not inconceivable that archivists could follow other professions in setting out qualifications in a separate statute governing the profession. Quebec, where a proposed regulation, if passed, will require that private archives provide information about the qualifications of their archivists as a prerequisite for accreditation, presents another possibility.*3

A threat of inflexibility exists where the law provides for the appointment of other archives' employees. In their draft model law, however, European archivists Carbone and Guêze include detailed provisions on the subject of personnel, such as qualifications, hiring procedures, education and promotion.*4 This level of detail concerning archives personnel is unsuitable in the present Canadian context. Again, it assumes a more formalized method of training than exists in this country. It could also lock the archives into an inflexible administrative structure which it might later outgrow. For the time being, such matters are best left up to the provincial or territorial archivist.

There are, however, circumstances in which it is beneficial to specify the appointment of an individual who is not the provincial or territorial archivist. Individuals who are essential to the proper implementation

of the provisions in archival legislation but who do not work directly under the provincial or territorial archivist are ideally included in legislation, as the statute can later be used to ensure that such individuals are actually appointed. Alberta's Public Records Regulation which provides for the appointment of "public records officers" is an example of this type of provision.*5 It might also be prudent to specify the individual's level of education and classification to ensure that standards are met concerning these subjects.

As mentioned in the previous chapter, provisions which set forth the mandate of the archives, or the duties of the archivist, often take the place of definitions of the term archives in current provincial and territorial archival legislation. Consequently, the content analysis shows that most jurisdictions include such provisions. Only Nova Scotia, British Columbia and the Northwest Territories do not outline the functions of the archives or the duties of the archivist. While some jurisdictions may have both a definition of archives and provisions outlining the archives' mandate or the archivist's duties in their legislation, it is rare for neither provision to be included. In fact, British Columbia is the only jurisdiction without either provision, which can be explained by the fact that the jurisdiction has no primary

legislation to establish the legal authority for the existence of its archives.

In Ontario, Prince Edward Island, Manitoba, Alberta and the Yukon Territory, general provisions concerning archival functions are formulated as an enumeration of the objects of the archives or the act legally establishing the archives. When one is reminded of the original purpose of archives acts, which was to establish archival repositories to preserve all manner of documentary sources of the past, it is not surprising that older enactments use a form of expression which enumerates the objects of the archives or the objects of the act establishing the archives. Provisions setting out the archives' functions in such enactments, like the enactments themselves, focus more on archives as cultural institutions than on the care and management of public records, including archival records. For example, the content analysis shows that provisions outlining the archives' functions in these jurisdictions include traditional archival activities and may even, as in the case of Ontario, the Yukon Territory and Prince Edward Island, mention extra-archival functions, such as research and archeological investigation, associated with the broad cultural purpose of the legislation.

In New Brunswick, Quebec and Newfoundland, on the other hand, such provisions are formulated as an enumeration of the duties or powers of the archivist, or

the archivist's appointee. In this legislation, which has been enacted more recently, the focus is less on the institution and more on giving the archivist authority over the care and management of public records throughout their life cycle. Therefore, the functions listed in these provisions go beyond traditional archival activities to include activities associated with the management of active and semi-active public records, such as records scheduling and the provision of semi-active storage space.

The intention of provisions outlining the duties of the archivist is the same as for provisions setting forth the mandate of the archives; that is, to establish the mission of the archives. This being the case, the question arises as to whether it is appropriate to express the mission statement of the archives in terms of the archivist's duty. To answer this question, it is necessary to examine the use of language to express legal relationships.

In his analysis of fundamental legal relationships, Wesley Newcomb Hofeld created a scheme for the lowest common denominators of actual legal relations.*6 According to his scheme, rights and duties, privileges and no-rights, powers and liabilities, and immunities and disabilities comprise the most basic legal relationships of the law.*7 Rights, duties, powers and liabilities are the ones that most often appear in archival legislation.

What is a right? According to the legal philosopher Austin, quoted by Hofeld, a right is "any advantage conferred or protected by law."*8 Hofeld maintains that each legal concept has a jural correlative so that if a legal advantage or burden concerning a particular subject-matter is observed to inhere in one person, the correlative may be observed to inhere in some other person. The correlative to a right is a duty. For example, if a creditor has a right to be paid, it is the debtors' duty to pay him. The legal relationship is an imperative one which tells others what they absolutely must do. In statutory language the word "shall" denotes this type of legal relationship.

For example, in the archival legislation of New Brunswick, the provision outlining the archivist's role concerning the care, custody and control of archives, the preparation of records schedules, the provision of storage facilities and the provision of other records management functions, establishes an imperative legal relationship through the use of the term duties. A case can be made for the use of a term which denotes an imperative legal relationship in such a provision, since the legislation is concerned with the care and management of valuable records which, it may be argued, society has a right to see protected. On the other hand, this form of expression can be inflexible and inadvertently place a burden on the

archives resources because it implies that all of the functions enumerated must be carried out all of the time. Thus, it might be concluded that provisions which are intended to state the purpose or mission of the archives, such as to acquire public or private records, are best expressed in terms of the functions of the archives, not the duties of the archivist. Such provisions are also best couched in general terms in order to allow for the addition of new functions and to prevent limiting interpretations.

The other legal relationship commonly found in archival legislation is that which exists between a power and a liability. A power, according to Hofeld, is "an ability conferred upon a person by the law to determine, by his own will directed to that end, the rights, duties, liabilities and other legal relations either of himself or of other persons."*9 The jural correlative to a power is a liability, which does not exist in one individual until power is exercised by another. Since the exercise of power is discretionary, the statutory verb that denotes this relationship is "may".

This is the legal relationship established in section 30 of Quebec's Archives Act, which outlines the provincial archivist's powers. Use of words that denote this legal relationship are more appropriate in provisions involving the activities of the provincial or territorial archivist, since this relationship establishes that the archivist is

expected to perform certain functions, such as certifying copies as true, from time to time without penalty for failing to perform any one function. Clearly, this type of legal relationship is more flexible than an imperative one, as it operates on a discretionary basis.

In some jurisdictions, the legislation goes beyond establishing the legal authority for the existence of the provincial or territorial archives and setting forth its mission, to establish its relationship to other agencies. It is significant that only those jurisdictions which have enacted legislation more recently contain provisions which deal with a wider community of interests. Quebec's Archives Act scored the highest in this category, as it allows the provincial archivist to negotiate agreements with public and private bodies regarding the deposit of archives, to accredit private archival repositories, and to provide financial and technical assistance to accredited private archival institutions. Unlike centralized countries such as France, Italy, Spain, Finland, Sweden and the German Democratic Republic, Canada, being a more federal state, cannot establish a National archival system in federal legislation; however, federal, provincial and territorial archival legislation can include provisions, such as the ones in Quebec's Archives Act, which recognize and promote an archival system.

In addition to authorizing the establishment of

provincial and territorial archives, most enactments authorize the establishment of public records committees. All of the committees established under current provincial and territorial archival legislation are responsible for either reviewing and approving records schedules, recommending or authorizing one-time dispositions of records, or both. In several jurisdictions these committees also take on additional responsibilities. For instance, in Nova Scotia and Manitoba the committees are responsible for overseeing the classification of records, while in Alberta and the Northwest Territories, they decide on issues of access to records. Initially conceived of as bodies which would provide a means of protecting the interests of government through a consideration of the legal, financial and other values of records ready for disposition, the purpose of public records committees now varies from one jurisdiction to another.

The composition of public records committees also varies from one jurisdiction to another. In all cases, the legislation refers to the provincial or territorial archivist, but only in Manitoba, Prince Edward Island, and the Northwest Territories is the archivist the chairman of the committee. The Yukon Territory, the Northwest Territories and Newfoundland include a provincial or territorial records manager. Nova Scotia and the Yukon Territory include a representative of the public body whose records are under consideration. Several jurisdictions

include a member with financial or audit expertise. Of all the jurisdictions, the Yukon Public Records Committee offers the broadest range of opinions, as it includes the Archivist, the Records Manager, the Secretary to Cabinet, one representative from each of systems and computing services, the Department of Finance, and the Department of Justice, and other public servants from time to time.*38 Other jurisdictions would do well to include systems representation on their committees given the highly technical nature of contemporary records.

Only Ontario and Quebec do not establish public records committees in their archival legislation. Ontario does not establish a public records committee as its legislation, enacted in 1923, predates the establishment of the first public records committee in the 1951 Saskatchewan Archives Act. Quebec, on the other hand, does not establish a public records committee as its legislation provides necessary oversight and scrutiny of the records disposition process in other ways. In contrast to jurisdictions which enacted legislation when public records committees provided the only source of expert opinion regarding a request for a one-time disposal of records, usually long since inactive, Quebec has a progressive records management programme which allows those involved in the drafting of records schedules to seek out expert advice

concerning records at the time of their scheduling. If the provincial archivist requires additional expert advice, he may obtain the opinion of the Commission des biens culturels. The Commission, as laid out in the Cultural Property Act, consists of twelve members appointed by the government for up to three years to provide advice on any matter relating to the conservation of cultural property.*10 As in the case of the Archives Advisory Council of the National Archives of Canada, Quebec's commission consist of both creators and users of archives.*11 By establishing an archives advisory council, Quebec has managed to eliminate the need for a public records commmittee.

The establishment of an archives advisory body in archival legislation has become popular as is witnessed by the number of countries, such as Australia, Belgium, Czechoslovakia and France, that have established them.*12 As well, authorities on the subject of archival legislation, namely Carbone and Guêze and R-H. Bautier, recommend them.*13 An advisory body, such as the one established in Quebec law, has two main advantages over public records committees. First, the minister is not obliged to seek the opinion of this body in cases of routine records disposition, thus considerably expediting the records disposal process. Second, as this body is comprised of individuals both from within and outside of government, it is conceivably less isolated and inward-

looking than a committee which is comprised solely of government officials. Jurisdictions with legislation that provides for scheduling need not retain their public records committees, as they are a throw-back to one-time disposals, but could instead establish advisory committees.

As in the case of definitions of key terms, provisions establishing administrative structures in current provincial and territorial archival legislation limit, even work against, the realization of the ultimate goal of archival legislation. The philosophical grounding of the legislation, which is itself anachronistic, establishes anachronistic administrative structures, such as public records committees or archives boards. The form of expression used in provisions concerning the archives' mandate or the archivist's duties conveys more about the attitudes which underlie the legislation than of the actual legal relationships such provisions are intended to establish and leads to inflexibility and vagueness in the legislation. These inherent problems, which arise out of the effect of external social influences on the meaning of the legislation, lead to the same tension as exists in provisions establishing definitions of key terminology between the intented meaning of the legislation and the meaning its provisions implicitly convey.

CHAPTER FOUR

THE IMPACT OF THE DISJUNCTION BETWEEN THEORY AND LAW ON PROGRAMME ELEMENTS

There can be no question that provisions establishing administrative structures are an important part of archival legislation. Provisions bestowing the legal authority for the establishment of administrative structures are needed to implement other legislative provisions. If the structures are non-existent or inadequate, they prevent the effective preservation of documents. Nevertheless, it is provisions establishing basic elements of archival and records management programmes for the preservation of documents that should be the focus of archival legislation.

In Ontario, Prince Edward Island, Manitoba, Alberta and the Yukon Territory, one finds that legislation focuses more on establishing administrative structures than on establishing the programme elements that the administrative structures are designed to implement. Indicative of this focus is the fact that, in most of these jurisdictions, provisions establishing archival institutions or public records committees appear at, or near, the beginning of archival legislation as well as the fact that average scores in the content analysis under Group B, Administration, were

higher as a percentage of the total score (42.6%) than they were in Group C, Programme Elements (33%).

Legislation that focuses on the establishment of administrative structures derives from an outdated philosophical perspective which sees archives as purely cultural institutions. As already mentioned, this perspective is linked to the emergence of early archives acts out of the desire to establish repositories for records, of both private and public origins, documenting the past. Although the social context has changed, recent enactments still reflect this perspective, despite efforts to modernize them by including provisions that establish records management, because legislative definitions of archives in these enactments, either explicit or implied, remain institution-based.

Quebec's archival legislation does not focus excessively on the establishment of administrative structures at the expense of programme elements. Although, its score under Group B, Administration, is among the highest at 61%, its score under Group C, Programme Elements is also among the highest. A provision for the appointment of a provincial archivist appears close to the end of the enactment, after provisions setting forth policies concerning the management of active, semi-active and inactive archives.*1 Quebec's legislation properly takes the focus away from administrative

structures, which should only be established to facilitate the implementation of programme elements, and, in combination with the use of a functional definition of archives, places it on programme elements for the protection and management of documents throughout their life cycle.

As discussed in chapter two, the institutional focus of the definition of archives militates against the kind of integrated approach to the care and management of records throughout their entire life cycle in that it creates an artificial barrier between records of enduring value preserved in an archival repository and those same records at an earlier stage of their life cycle. It is not surprising, then, that many early enactments based either explicitly or implicitly on the traditional definition of archives do not include records management provisions, since the definition precludes the legislation from focussing on the care and management of active and semi-active public records that have not been transferred to an archival repository. As chapter one has shown, the fact that records management provisions appear in archival legislation at all can be linked to a change in the volume and complexity of public records. This change gradually necessitated closer ties between archives and their sponsoring agencies and led to an increased involvement of the archives in programmes to systematically control records

throughout their life cycle. Thus, archival legislation in some jurisdictions establishes the legal authority for the existence of a records management programme, while, in other jurisdictions, no such programme is established by law. The content analysis reveals that it is only legislation which has been enacted within the last ten years that includes such provisions. Therefore, only five of the twelve jurisdictions include records management provisions in their legislation. Of these, Newfoundland scored the highest, as its legislation expressly provides for the establishment of a records management programme, defines records management, outlines the role of the provincial archivist in the administration of records management, appoints a provincial records manager, outlines the duties of the provincial records manager, and provides for the creation of semi-active storage facilities. The comprehensiveness of Newfoundland's provisions concerning records management accounts for at least some of the praise it currently receives from archivists. Alberta and the Yukon Territory scored second highest overall, Alberta having passed legislation relating to records management in 1983 and the Yukon Territory in 1985. New Brunswick and Quebec scored third highest.

Most of the jurisdictions with records management provisions include them in primary legislation, except for

Alberta and the Yukon Territory, where these provisions appear in regulations. In Alberta, the records management regulation is provided for pursuant to the Public Works, Supply and Services Act while the archives is established pursuant to the Historical Resources Act. The fact that Alberta establishes these two integrally related programmes under separate acts reveals the prevalence of a limited cultural view of archives and does nothing to promote the efficient implementation of the province's records management programme or the fulfillment of the archives' mandate. Records management provisions are most logically placed in the same enactment as provisions which establish the legal authority for the existence of archives, as these activities are functionally related. However, without an encompassing definition of archives, it is difficult for legislators to understand the functional relationship between these activities.

The degree of control exercised by the archives over records management varies from one jurisdiction to another. An archivist has statutory responsibility for the records management programme in three of five jurisdictions. In other jurisdictions, the archivist's responsibility for records management is limited to involvement in, or control over, the disposition process. In these cases the archivist is a member of a committee responsible for coordinating records management. In Quebec, the archivist's responsibility for records management depends on the public

body; for example, the archivist coordinates and supervises the records management programmes of the Executive Counsel, Treasury Board and government departments, but only advises municipalities, school boards or public health and social services agencies on their records management programmes. Where the archives and records management programmes do not fall under the same general management, there is a danger that the two programmes will lack coordination of both financial and human resources.

The emphasis on the archives as an institution housing sources of the past in much existing provincial and territorial archival legislation has also led to the underdevelopment of provisions concerning traditional archival functions, such as appraisal, selection, acquisition, conservation, and arrangement and description, since the inherent assumption in such legislation is that once the institution is established everthing else will fall into place.

Archival legislation deals with the mechanics of appraisal, the methods by which appraisal decisions will be carried out, but not the difficult question of which records should be kept. The results of the content analysis uphold a statement made by Jerome O'Brien in 1984 that archival legislation "fails to specify, except in a general way, which classes of records must be kept permanently."*2 It

also fails to specify the reasons for which material must be kept. As O'Brien notes, "archivists are left to apply whatever appraisal and selection criteria they deem appropriate."*3 O'Brien goes on to say that "as archivists become more accountable to the public for the conduct of their affairs, particularly when supported with tax dollars, internal administrative methods and procedures become subject to outside scrutiny."*4 His statement has proved to be prophetic in the wake of a Royal Commission of Inquiry into the destruction of immigration files pertaining to Nazi war criminals, during which the appraisal and selection criteria of the National Archives came under attack. As O'Brien warns, "well-intentioned laxity concerning requirements is one thing; defending informal, inadequate, or non-existent archival procedures or selection standards before a judge is quite another."*5 Clearly, archival legislation needs to address this issue.

Legislation need not include provisions outlining appraisal and selection criteria in detail. Most archivists agree that there is a strong element of "fingerspitzegefuhl", or scholarly intuition, involved in the appraisal process, too elusive to set down in law. Instead, the answer may lie in having provisions stating that archivists must set down in writing the appraisal and selection criteria they use in specific cases and that these criteria must meet with the approval of a higher authority, such as the provincial archivist. Unfortunately, there is

no legal precedent in the texts examined for this study upon which the wording of such provisions might be based, which is in itself a commentary upon the deficiencies of archival legislation in this area.

Archival legislation makes extensive provision for the acquisition of public records through provisions which set forth methods for carrying out appraisal decisions, or the disposition of public records. Current provincial and territorial archival legislation provides for the disposition of public records by setting forth the approval process for either records schedules, which provide ongoing authority for disposal, or for one-time requests.

Scheduling of public records is provided for in the legislation of all jurisdictions, with the exception of Ontario, Saskatchewan and the Northwest Territories; although, provisions in Saskatchewan and the Northwest Territories can be interpreted in such a way as to make scheduling possible. The quantitative analysis reveals a correlation between legislation which has been recently amended or enacted and the appearance of provisions allowing for the scheduling of public records. Scheduling is now the preferred method of acquiring public records because it allows archivists to become involved in the appraisal and selection of public records much earlier in the life cycle than they formally did.

The approval process for schedules varies from jurisdiction to jurisdiction. Public records committees have some responsibility for recommending or approving schedules in Nova Scotia, British Columbia, Manitoba, the Yukon Territory, Prince Edward Island, Alberta, New Brunswick, and Newfoundland. In Nova Scotia, British Columbia, Manitoba and the Yukon Territory, authority to review and approve schedules is also vested in the agency that created the records. Final approval of schedules must come from the Legislative Assembly in British Columbia. In Quebec, the Minister of Cultural Affairs has final authority to approve schedules. In the Yukon Territory and New Brunswick, the provincial archivist gives final consent.

In most jurisdictions, as the content analysis shows, the approval process for records schedules remains involved, perhaps much more so than it needs to be. Since schedules allow for consultation with experts at the time of their development, which takes place before the records are ready for disposal, there is little need to have them reviewed and approved by a public records committee in addition to, in British Columbia's case, the Legislative Assembly. In most jurisdictions, the schedule approval process is no more than an administrative habit. Under most circumstances, the approval of the provincial or territorial archivist, or the minister charged with the general management of the archives, should suffice. Review by another body, such as an advisory council, should only be required in the case of

a dispute or uncertainty on the part of the archivist or minister.

The role of the provincial or territorial archivist in the scheduling process also varies from jurisdiction to jurisdiction. In Nova Scotia, British Columbia, Prince Edward Island, Manitoba, Alberta and Quebec, the provincial archivists are indirectly involved in the process by virtue of the fact that they sit on a public records committee which is charged with responsibility for overseeing the scheduling of public records. In the Yukon Territory and New Brunswick, the provincial archivist is directly involved in overseeing the scheduling of public records, although not solely responsible for reviewing and approving schedules. In Quebec, the provincial archivist's involvement in the scheduling of public records varies; for example, the archivist oversees the scheduling of public records in government departments, but may only advise municipalities on the scheduling of their records. Oversight of, if not direct involvement in, the scheduling process is desirable, as it puts the archivist in a position to use the schedule more effectively as an acquisition tool.

Records schedules are only likely to be an effective means of acquisition if the retention periods and final dispositions they set out are abided by; however, not all jurisdictions explicitly state that approved schedules are binding. Such a provision exists only in the archival

legislation of British Columbia, Alberta, New Brunswick, Manitoba, Quebec and Newfoundland. Nova Scotia's Public Records Disposal Act serves as an example of a provision concerning records scheduling that does not use the imperative to make the transfer of records, in accordance with approved records schedules, obligatory. Section 5(3) states that "the minister appointing the documents committee may authorize the public records to which the schedule and the report or memorandum, if any, refers to be disposed of in the manner set out in the schedule."*6 While it may be appropriate to give the minister with responsibility for the general management of the archives or records management programme veto power over records schedules, to give other ministers veto power might jeopardize the implementation of a government-wide policy concerning the care and management of public records. Occasionally, however, disputes concerning retention periods or final dispositions arise. New Brunswick and Newfoundland deal with these situations by including procedures for the resolution of disputes in their legislation.*7

Although archival legislation in Ontario, Sasktachewan and the Northwest Territories makes no provision for records scheduling, it does specify the approvals required to dispose of records on a one-time basis. In Ontario, the provincial archivist must approve the disposal of records. In Saskatchewan, the Public Records Committee and the

creators of the records review all requests, and the Lieutenant Governor approves them. In the Northwest Territories, this authority rests with the Public Records Committee and the Territorial Commissioner.

Archival legislation in British Columbia, Prince Edward Island, the Yukon Territory and Newfoundland outline separate approval processes for both records schedules and one-time authorities, demonstrating the piecemeal evolution of many archival enactments. British Columbia's Document Disposal Act, for example, was amended in 1953, 1964, 1965, 1977 and 1983. The development of British Columbia's legislation has lead to an overly complex method of disposal in which the Public Document Committees, the records creator and the Legislative Assembly must all review both requests to dispose of records less than seven years of age and records schedules. Records seven years of age and older must be reviewed and approved by the Public Documents Committee and the Lieutenant Governor.*8

In addition to laying out methods for implementing appraisal decisions, archival legislation may also contain provisions respecting the form of disposition that has been approved, either in a schedule or a one-time authority.

Detailed procedures for the controlled destruction of public records exist primarily in regulations. In the Northwest Territories, however, the procedure is outlined in the Archives Ordinance and calls for the announcement of

pending destructions in the Northwest Territories' Gazette.*9 This practice, which is unique to the Northwest Territories, aims at permitting public response to appraisal decisions. Although consistent with the origins of current archival legislation in those enactments which sought to protect records concerning individual and public rights, this procedure lengthens the destruction process and is therefore unlikely to be copied by other jurisdictions.

As well as providing for controlled destruction of public records, archival legislation in Nova Scotia, British Columbia, Manitoba and Quebec specifically provides for photoreproduction or microfilming as a form of disposition. The purpose of these provisions is to ensure the quality of microfilm copies as evidence. In Manitoba and Quebec, the legislation gives detailed procedures for disposing of records after the production of microfilmed copies. In Manitoba, these procedures appear in regulations passed pursuant to the Legislative Library Act, while in Quebec they appear in secondary legislation, the Photographic Proof of Documents Act.

Transfer of records to provincial or territorial archives is also dealt with in legislation. There is a definite connection between provisions concerning the transfer of public records to archives and the non-appearance of scheduling provisions in the legislation. Where the legislation allows scheduling to take place and

states that schedules must be followed, transfer provisions are no longer necessary because the schedule sets out the final disposition of the records and ensures their transfer to archives. Two exceptions to this pattern are the Yukon Territory, because the primary legislation came into force before its regulation on scheduling was passed, and Quebec, because of its tiered approach to the management of public archives.

In Ontario, Saskatchewan and the Northwest Territories, where legislation does not explicitly provide for scheduling of public records, legislative provisions specify that transfer is to take place no sooner than seven years after the records cease to be in current use. This type of provision reflects the attitudes towards archives of an earlier age, when archivists could afford to take a less proactive approach to acquisition. Now, archivists increasingly feel the need to accept transfers immediately after current administrative needs have been met to ensure the preservation of information stored in unstable formats.

In Ontario, the Northwest Territories and the Yukon Territory, the transfer clauses are not permissive. Public bodies must transfer their records. Conversely, in Saskatchewan, the provision is permissive and public bodies are not obliged to transfer records. As noted earlier, Quebec uses both permissive and non-permissive provisions, depending on the public body. Under most circumstances, the

imperative legal relationship is preferable. Use of the verb shall in provisions where the transfer of records is contingent upon the elapse of a certain time period causes inflexibility in the legislation because it implies that valueless records cannot be destroyed nor can valuable records be transferred after, or even before, the specified number of years has elapsed. This limitation occurs in the legislation of both Ontario and Saskatchewan.

Evidence of the ad hoc fashion in which provincial and territorial archival legislation developed exists in provisions dealing with the appraisal, selection and acquisition of special classes of records, such as court records, municipal records, school board records and election records. The very fact that these classes of records fall outside the definition of public records in some jurisdictions, while in others they fall within, is itself evidence of the pragmatic evolution of archival laws.

In jurisdictions where these classes of records fall outside the definition of public records, provincial and territorial archives do not have the same authority and responsibility to preserve these records or, in Quebec's case, to make the creators of these records preserve them, as they do in jurisdictions where these records are considered to be public records. Consequently, several jurisdictions have felt it necessary to establish legislative provisions to ensure the preservation of such

records.

The creators of the records are most often given authority, in secondary legislation, over the disposition of such records. For example, Saskatchewan's legislation states that only municipal councils may recommend the disposal of municipal records.*10 In Ontario, only a school board can determine the final disposition of its records.*11 In Manitoba, the Chief Electoral Officer must authorize all disposals of election records, although the Provincial Archivist and the Legislature Librarian must also be consulted.*12

Several jurisdictions also have deposit provisions for special classes of records. In Saskatchewan and Prince Edward Island, court records may not be transferred to the archives sooner than twenty-five and fifteen years respectively, from the date the court record is filed. Legislation in British Columbia, Saskatchewan, Manitoba, and Prince Edward Island includes provisions allowing for the deposit of municipal records in provincial archives. In the archival laws of Ontario, British Columbia, Saskatchewan, and Prince Edward Island, school board records may be deposited in the archives with the consent of the Provincial Archivist. In Manitoba, Alberta and New Brunswick, laws relating to elections state that certain types of election

records, such as election writs and returns, must be transferred to the archives. Other such transfer or deposit provisions include Ombudsman's investigation files (Alberta), registry records (New Brunswick), Executive Council records (Newfoundland) and Sheriff's records (Ontario). These provisions, drafted after the enactment of primary legislation, appear in either secondary legislation, the subject matter of which relates primarily to the function for which the records were created, or related regulations.*13 The difficulty with these provisions is that they are usually not drafted with the overall archival programme in mind and therefore may impede its development. It is preferable to include these categories of records in a definition of public records so that they may be given equal protection, rather than have them dealt with in legislative loose ends. If some differentiation between these and other records is necessary, the Quebec tiered approach provides a model which may be used.

Since Canadian provincial and territorial archives are "total" archives, meaning that they acquire material from private as well as public sources, the content analysis also measures the appearance of provisions concerning the appraisal, selection and acquisition of private records. Eleven out of twelve jurisdictions have provisions covering the acquisition of private records, British Columbia being

the only jurisdiction that does not. Eight out of twelve outline the methods by which private material might be acquired, such as by gift, bequest or loan, and specify that the archives may negotiate the terms and conditions of deposits with donors. In Ontario, Nova Scotia, Saskatchewan, Manitoba, Prince Edward Island, Alberta and the Northwest Territories, the legislation also outlines the types, by physical form, of private material that the archives may acquire. Only Ontario, the Yukon Territory and Nova Scotia specify in detail the subjects to which the private material that the archives acquires may relate. Most other jurisdictions leave acquisitions mandates for private material quite broadly defined within provincial or territorial geographic boundaries, the exception being Nova Scotia, where the archives' acquisitions mandate actually extends beyond the province's boundary. Overall, the results of the content analysis reveal that most provisions in archival legislation relating to the acquisition of private material, in keeping with provisions concerning the acquisition of public records, exist to facilitate the transfer of ownership and physical custody of the records, rather than outline collections policies or appraisal criteria in detail.

Due to the fact that publicly funded provincial and territorial archives face fiscal restraint and increased pressure to care for the records of their own sponsoring

agencies, one might question whether current archival legislation should encourage the acquisition of private material by provincial or territorial archives. A better approach, given the present environment, might be that taken by Quebec, where archival legislation gives the archives authority to acquire material of private origin, but also encourages the development of local repositories that are, perhaps, in a better position to care for locally created records.*14 Legislation that allows the provincial or territorial archivist to regulate private archival agencies is an alternative method of ensuring the preservation of documents that do not fall within the meaning of the term public records, and makes provisions requiring the deposit of private records less necessary. Administrators of local archives can help to ensure the preservation of documents by providing a legal foundation for the acquisition of records of their own sponsoring agency. Private agencies that have no archival program or no private repository in their locality should still have the option of using the provincial or territorial archives as a repository for their records, provided the records have provincial or territorial significance.

One drawback to encouraging the development of local repositories is the possibility of decreased control over such matters bearing on the preservation of documents as environmental controls and descriptive standards; however, physical decentralization does not have to imply

decentralized control. For example, Quebec's provisions for the accreditation of private agencies, under section 22 of the Archives Act, ensures the preservation, to acceptable standards, of those private records that are not deposited in the provincial archives. Quebec may soon pass regulations pursuant to this section which require that private archives meet a certain minimum level of standards.*15

Turning to conservation, current provincial and territorial archival legislation provides for preservation, or the preventative aspects of conservation, in general provisions, rather than the treatment or restoration aspect.*16 For example, Saskatchewan, Prince Edward Island, Alberta, and New Brunswick state that public records must be preserved until their transfer to the archives. Where the legislation does not contain a general clause concerning preservation, it usually prohibits such harmful activities as unauthorized destruction, removal, or mutilation of records. Such provisions appear in primary legislation in Ontario, Manitoba, the Yukon Territory, New Brunswick, the Northwest Territories, Quebec and Newfoundland. In addition, sanctions for the violation of these provisions are often laid out in the legislation, as for example, in New Brunswick, the Northwest Territories, Quebec and Newfoundland.*17

While these provisions prevent intentional destruction

of documents, they do not prevent neglect of records or provide general standards and guidelines concerning conservation. Thus, many permanently valuable public documents lie in basements, attics or parking lots of government buildings because government agencies refuse, or have not bothered, to provide for their preservation or their transfer to archives. Examples of legislative provisions which set out standards concerning preservation do exist. In the 1940s, the Society of American Archivists published a series of model laws in which they referred to standards for paper, ink and fireproofing.*18 More recently, the new Brunswick Registry Act provided that:

> 15(1) When in any registry office any book, records, plan or instrument, from age or use, is becoming obliterated, unfit for further use or is in need of repair, the Minister of Justice...may order such book, record, plan, or instrument to be recopied or repaired...
>
> 15(2) Every original shall be carefully preserved, notwithstanding that a copy thereof has been made, either by keeping such an original in a place of safe custody in the Registry Office or by placing the original in the Provincial Archives.*19

New Brunswick's Registry Act obligates the registry to maintain its permanently valuable records in good repair and in safekeeping, or transfer them to the archives. The application of this type of provision could well be extended to all government agencies that create records of permanent value and invoked whenever necessary to ensure the preservation of such material.

New Brunswick's Registry Act addresses the neglect of records held by government agencies, but not the neglect of records held in archives themselves. This is of concern because government cutbacks have affected the ability of many archives to preserve their records under proper conditions or to carry out treatments, such as deacidification, reprography and restoration. To improve the situation, provincial and territorial archival legislation needs to be strengthened by including provisions which specify, in detail, the responsibilities of the archives for conservation. Most statutes only call on the archivist or the archives to preserve records, without laying out exactly what standards, if any, must be met. The language used in the National Archives Act is somewhat more emphatic, stating that the Archivist may "take such measures as are necessary to . . . preserve and restore records."*20 However, the addition of a phrase such as "under conditions that meet accepted archival standards" is all the more emphatic. The Swedish General Archives Ordinance goes even further. It prescribes that "Archives shall be kept and handled with care. Special care shall be taken to ensure that they are protected from moisture and fire."*21 Such a provision would, perhaps, oblige resource allocators to provide funds for the proper care of records within the archives.

Unfortunately, the content analysis of current Canadian provincial and territorial archival legislation upholds,

without question, the statement made in the 1985 RAMP study on archival and records management legislation that "the attention paid by current archival legislation to preservation is inversely proportional to the importance of this basic archival function."*22

As with provisions concerning conservation, provisions regarding arrangement and description bear strengthening. Current archival legislation touches upon the arrangement and description of records only briefly in mentioning the duties of the archivist or the objects of the archives. The National Archives Act, which states that the National Archivist may take any steps necessary to arrange and describe records, again provides an example to be followed.*23 In this case the National Archives Act is probably sufficient because, unlike preservation, arrangement and description is more or less subject to the control of provincial or territorial archivists who will ensure that the function is carried out in accordance with professional standards. However, more detailed provisions concerning arrangement and description could be dealt with in a regulation; for example, in the legislation of the Dominican Republic and Greece.*24

While archivists abide by the two cardinal principles of arrangement and description, provenance and respect for original order, government agencies often divide "fond" and disturb original order. To prevent the disturbance of fond

and original order, future archival legislation could include provisions similar to those found in Quebec's Archives Act, which state that the documents of a public body that ceases its operation must be transferred to the provincial archivist if its rights and obligations are not assumed by another body and that archives must not be dispersed for commercial purposes. This last provision is reinforced by penalties of up to $25,000.*25

Public access to records in archives has been a basic tenet of archival legislation since the French Revolution. Current provincial and territorial archival legislation deals with both the intellectual and physical aspects of the access issue. Seven out of twelve jurisdictions have legislation which establishes a general right of access to public records. In Ontario, Nova Scotia, the Yukon Territory, Prince Edward Island and Quebec, this statement is found in access legislation and therefore applies to all public records, whether or not they have been transferred to the Provincial Archives. Nevertheless, in Ontario, Manitoba and Quebec, the legislation states that private records deposited in the archives are not subject to access and privacy provisions. In New Brunswick and the Northwest Territories, it appears in primary legislation and applies only to records transferred to the archives. Provisions establishing a general right of access appear in both

primary and secondary legislation in the Yukon Territory and Newfoundland.

The general right of access is accompanied by some limitations in all cases. If the jurisdiction has access and privacy legislation, it will include provisions outlining specific classes of restricted material, usually for reasons of personal privacy or national security. In New Brunswick, only, do detailed provisions concerning limitations on access appear in primary legislation. Legislation in Ontario, Manitoba, New Brunswick, Quebec and Newfoundland provides that specific classes of records, having reached a certain age, may be made accessible, although the release date varies between different categories of records and different jurisdictions.

Jurisdictions with provisions restricting access to certain categories of records also specify whose approval must be sought in order to temporarily lift restrictions. Procedures for obtaining access are also often outlined. Legislation may even, as in the case of Ontario, Manitoba and New Brunswick, outline the information that must be provided in requests for access to restricted categories of records. In the Yukon Territory, the Territorial Archivist evaluates all such requests for access, while in Nova Scotia, New Brunswick and Quebec, provincial archivists only evaluate requests to view records in the archives. In Ontario, Manitoba and the Northwest Territories, the

archivist's responsibilities are not specified.

As original documents cannot be removed from the archives, legislation provides for the right to request copies of documents. Ten jurisdictions state that the archivist may certify copies of records in the archives as being true. In every case but British Columbia this provision appears in primary legislation. In Saskatchewan, the Yukon Territory and New Brunswick, there are also regulations which set out terms and conditions surrounding physical access to archival material.

Many provisions concerning basic archival and records management programme elements are inadequate; however, regulations can serve as a mechanism to allow inadequate statutory provisions to respond to the needs of changing social and technological circumstances. For example, the Yukon Archives Ordinance does not provide for modern methods of records disposition, as it makes no mention of scheduling. The Territorial Commissioner does, however, have the authority, pursuant to the ordinance, to pass regulations regarding the manner in which public records should be disposed. Consequently, the Yukon Territory was able to pass regulations in 1985 permitting records scheduling. Since it is becoming more difficult to replace outdated archival statutes, regulations may be increasingly relied upon to update outmoded legislative provisions.

It is most common to find legislation allowing for the promulgation of regulations relating to administrative structures, the definition of public records, the public records disposal process, the transfer and deposit of public records and access to records. Less common are provisions permitting the passage of regulations concerning records management, the designation of public bodies the records of which are subject to the legislation, scheduling, disposal procedures and preservation.

Quebec and Newfoundland have the widest regulatory powers. Of the two, Newfoundland has the widest powers owing to its greater number of regulatory provisions defining the subject upon which a regulation might be passed. These provisions normally begin with phrases, such as "in relation to" or "in respect to". Quebec, on the other hand, uses more prescriptive language, such as the words "prescribing" and "setting". Such language, although not as broad as the language used in Newfoundland's act, can be used quite effectively to expand or contract the application of the law, as, for example, in the case of a provision which allows for regulations prescribing classes of public records or government agencies subject to the act.

The broadest form of expression is denoted by the use of such phrases as "for the purposes of" or "in order to". The only limitation on this type of provision is that the regulation must exist for the prescribed purpose.*26 It is

important to note, however, the difference between the use of these phrases and the power to make regulations "for the purpose of the Act", as the latter has a much more limited meaning and gives the power to pass regulations of only an administrative or procedural character.*27

Current provincial and territorial archival legislation, owing to the outdated attitudes and assumptions that linger on in the definition of archives upon which the legislation is based, focuses too narrowly on the establishment of archival institutions. The focus in many provincial and territorial archival laws on archives as institutions rather than on the records themselves as documents of any age accumulated as a natural course of carrying out business and preserved for their informational value leads to inadequacies in provisions concerning such basic archival functions as appraisal, selection, acquisition, conservation, and arrangement and description. Moreover, it militates against an integrated programme for the care and management of records throughout their life cycle. The lack of adequate provisions dealing with basic programme elements concerning the care and management of records throughout their life cycle can only be perceived as a serious flaw in legislation which is intended to set forth policy to encourage the care and preservation of all documents.

CONCLUSION

Current provincial and territorial archival legislation suffers from the same deficiencies inherent in other forms of communication. These deficiencies arise from the effect that external social influences have on the meaning of archival legislation or, put another way, the ad hoc manner in which the meaning of legislation has evolved in response to regional circumstances and broader issues concerning government administration or society.

This process of development has meant that the words which comprise current provincial and territorial archival legislation derive their meaning, even when that meaning seems natural or inherent, from the social and technological context of the period when these words first entered into the corpus of archival law. Consequently, they carry overtones of past attitudes and assumptions about archives which can have a profoundly negative impact upon archives' ability to realize the intention of the legislation, the care and preservation of documents.

For example, as this thesis has shown, current definitions of the term record or document grew up in response to the need to physically manage the vast

accumulations of records in government offices. At the time, information and the medium upon which it was recorded were closely linked. Thus, definitions of the term record or document became descriptive lists of various media. Now, however, information is less closely associated with the medium upon which it is recorded. The media-based definition of the term record or document can conceivably render archivists powerless to preserve information because it is based on an outdated assumption about the nature of records.

The conventional use of the word archives in most current provincial and territorial archival legislation in conjunction with the use of the separate term public records to describe what is essentially one unified thing is perhaps the best example of the far-reaching impact that past attitudes and assumptions about archives, inherent in the language of legislative texts, can have upon the realization of the objective of archival legislation. The word archives commonly refers to archives as institutions concerned solely with the preservation of inactive records documenting the past. This definition of archives, which arose in the late-nineteenth century in response to historians' desire to establish "arsenals of history", fails to recognize the functional link between the care and management of records in archives and the care and management of these same records at an earlier stage of their life cycle due to their nature as documents naturally accumulated as a result of doing business. Consequently, the definition implicitly denies

that archives have responsibility for the care and management of active and semi-active public records. However, in many jurisdictions, the legislation explicitly gives the archives authority over this function. Thus, a contradiction arises between the intended meaning of the legislation, that the archives has responsibility for the care and management of public records both in the archives and in public agencies, and the socially produced meaning of the word, which implies that archives are responsible only for the preservation of records transferred into their custody. In addition, the traditional definition of archives gives the legislation an institutional focus which has lead to a lack of emphasis in its provisions on such basic elements of an archival programme as appraisal, conservation, and arrangement and description.

The ad hoc fashion in which current provincial and territorial archival legislation has developed over time has also led to inconsistency, conflict, vagueness and ambiguity in the corpus of archival law. The phrase public records, for example, which entered into archival law meaning publicly accessible written memorials of official transactions, has now emerged with several meanings, rooted in both the common law and legislation, that create an inherent ambiguity in present legislative texts, as the Manitoba Legislative Library case very clearly illustrates. The introduction of access to information and privacy legislation in several

jurisdictions has only served to further complicate the meaning of the term. The meaning of the word public records as it is now used in current provincial and territorial archival legislation is based upon provenance, or the creator of the records. Definitions of those public agencies, the records of which are subject to provisions concerning public records, varies widely from one jurisdiction to another. The fact that many public agencies and their records were excluded from the protection given to public records under the law, has resulted in the piecemeal establishment of enactments to provide for the protection of special classes of records. These enactments, often drafted with no regard for related legislation, have undermined the development of a coordinated policy for the preservation of documents. The current disposition approval process outlined in the legislation of several jurisdictions, particularly that of British Columbia, is yet another example of how the ad hoc evolution of current provincial and territorial archival legislation has given rise to ambiguity and inconsistency.

Of the current provincial and territorial legislative texts examined in this thesis, Quebec's Archives Act comes the closest to providing a model archival enactment. Through adopting a functional definition of archives, drawn from the theory of European archival science, as those documents of any age created and received by a body in meeting its own administrative requirements, Quebec has been able to overcome the limitations imposed by the conventional, institution-

based definition of archives. Moreover, its definition of a document, which encompasses both data and the medium upon which it is recorded, abandons the past assumption that information and its medium are inseparable in conceptual terms. The definitions of these two terms form the basis upon which Quebec is able to establish an efficient and functionally unified programme for the care and management of active, semi-active and inactive public archives. The legislation ensures the preservation of the records of a wide range of public agencies without over-burdening the archives through the use of its flexible tiered approach. It also avoids over-burdening the archives by encouraging the development of private archives. The Quebec Archives Act places the establishment of administrative structures in their proper perspective as a means of implementing programme elements and abolishes obsolete structures, such as public records committees. The only major defect of the legislation is that in abandoning the traditional institutional focus of provincial and territorial archival legislation, Quebec has not gone far enough towards including detailed provisions concerning basic archival functions. Nevertheless, other jurisdictions would do well to consider Quebec's legislation when revising or redrafting their own legislation.

Quebec's archival legislation overcomes some of the difficulties inherent in the legislation of other jurisdictions because archivists proposed the adoption of

legislation based on a clearly articulated conceptual framework derived from archival science rather than opting for variations on traditional concepts found in past enactments. Quebec was thus able to free itself of outdated attitudes and assumptions about archives found in conventional definitions of key terms and administrative structures and of the peculiarities of legislative form and content that had inevitably emerged over time to create inconsistency and ambiguity in the legislation.

As the problems of current provincial and territorial archival legislation originate in its nature as a form of written communication, it is imperative that archivists understand its nature and the subtler influences that it can have on the ability of the legislation to fulfill its intended purpose. Without such an understanding, external social influences will continue to adversely affect the meaning of archival legislation in ways unintended by archivists. Archivists need to bring both this understanding and a well-defined theory about archives and archival work to the regular process of reviewing and redrafting current archival legislation. If archivists take a more proactive approach to developing archival legislation in their jurisdictions, as did the archivists in Quebec, they can then begin to take control of the effects of the legislation upon their work by introducing contemporary conceptual ideas firmly grounded in archival theory into Canadian provincial and territorial archival legislation. Only then will

archivists truly realize how necessary and useful archival legislation can be.

NOTES

Collections of provincial statutes and territorial ordinances frequently cited in the notes have been identified by the following abbreviations:

c.	chapter
ONT	Ordinances of the Northwest Territories
OYT	Ordinances of the Yukon Territory
RSBC	Revised Statutes of British Columbia
RSC	Revised Statutes of Canada
RSNS	Revised Statutes of Nova Scotia
RSO	Revised Statutes of Ontario
s.	section
SA	Statutes of Alberta
SBC	Statutes of British Columbia
SM	Statutes of Manitoba
SN	Statutes of Newfoundland and Labrador
SNB	Statutes of New Brunswick
SNS	Statutes of Nova Scotia
SO	Statutes of Ontario
SPEI	Statutes of Prince Edward Island
SQ	Statutes of Quebec
SS	Statutes of Saskatchewan

NOTES TO INTRODUCTION

1. See Ernst Posner, Archives in the Ancient World (Cambridge, Mass.: Harvard University Press, 1972), 14.

2. Ernst Posner, "Some Aspects of Archival Development since the French Revolution, " in Maygene F. Daniels and Timothy Walch, eds. A Modern Archives Reader (Washington, D.C.: National Archives and Records Administration, 1984),3-14.

3. See the volume "Archival Legislation 1970-1980," Archivum 28 (1982).

4. Lewis H. Thomas, "Archival Legislation in Canada," Canadian Historical Association Report 1962:101-115 and John Archer, "A Study of Archival Institutions in Canada," (PhD Thesis, Queen's University, 1969).

5. Jerome O'Brien, "Archives and the Law: A Brief Look at

the Canadian Scene," Archivaria 18 (Summer 1984):38-46.

6. See John Archer, "The Public Records of Saskatchewan," Journal of the Society of Archivists 2 (1960-64):16-22; Marc-Andree Leclerc, "L'implantation de la loi sur les archives: bilan d'une experience réussie," Archives 18,2 (Septembre 1986):15-40; Marion Beyea, "Records Management: the New Brunswick Case," Archivaria 8 (Summer 1979):61-77; C. Bruce Fergusson, "The Public Archives of Nova Scotia," Acadiensis 2,1 (Autumn 1971):71-79; John P. Greene, "Provincial Archives in Newfoundland," Acadiensis 3,1 (Fall 1973):72-77; W. Brian Speirs, "Yukon Archives - A Regional Experiment," Canadian Archivists 2(4) (1973):26-37; David W. Leonard, "Establishing the Archives of the Northwest Territories: A Regional Casel Study in Legality," Archivaria 18 (Summer 1984):70-83.

7. F. Gény, Méthode d'interpretation et sources en droit privé positif, Volume I (Paris: L.G.D.J., 1954) quoted in Pierre A. Coté, The Interpretation of Legislation in Canada (Cowansville, Quebec: Les Editions Yvon Blais Inc., 1984), 194.

8. Ole Holsti, Content Analysis for the Social Sciences and Humanities (Massacheusetts: Addison Wesley Publishing Co., 1969),14.

9. Ibid, 2.

10. B. Berelson, Content Analysis in Communications Research (Glencoe, Illinois: Free Press, 1952) quoted in Hosti, Content Analysis for the Social Sciences and Humanities, 15.

11. Klaus Krippendorf, Content Analysis (Beverly Hills, California: Sage Publications, 1980), 21.

12. George W. Bain, "State Archival Law: A Content Analysis," American Archivist 46(2) (Spring 1983):158-174.

13. There are numerous pieces of provincial and territorial legislation which set out requirements whereby public agencies or private individuals or organizations must keep specific types of records and/or information. One example of this type of legislation is Alberta's Financial Administration Act, Revised Statutes of Alberta, 1980, c.F-9, s. 12(3), 22(1)(d), 23(1) and 23(3) in which the Provincial Treasurer of Alberta is given the authority to prescribe the form and content of all financial records and the accounting systems which are to be maintained by all crown and provincial agencies, to make regulations or issue directives

regarding the records which must be maintained by individuals with responsibility for public funds, to inspect those records which must be maintained by revenue officers and to sieze or make copies of all records concerning financial matters within the government.

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1. Quoted in J.W. Harris, Legal Philosophies (London: Butterworths, 1980),219.

2. T.R. Schellenberg, Modern Archives (Chicago: The University of Chicago Press, 1956), 16.

3. Ernst Posner, "Some Aspects of Archival Development since the French Revolution," in Maygene F. Daniels and Timothy Walch, eds. A Modern Archives Reader (Washington, D.C.: National Archives and Records Services, 1984),3-14; Carl Berger, The Writing of Canadian History: Aspects of English-Canadian Historical Writing: 1900-1970 (Toronto: Oxford University Press, 1976), 1-32.

4. Macleod, "'Quaint Specimens of the Early Days,': Priorities in Collecting the Ontario Archival Record, 1872-1938," Archivaria 22 (Summer 1986): 29.

5. Ibid, 30.

6. Joseph Schull, Ontario Since 1867 (Toronto: McClelland and Stewart Ltd., 1978): 250-256.

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8. Saskatchewan, Preservation of Public Documents Act, SS 1920, c. 17, s. r; Alberta, Preservation of Public Documents Act, SA 1925, c. 31, s. 4.

9. Archer, "The Public Records in Saskatchewan," Journal of the Society of Archivists 2 (1960-64): 19.

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11. Provincial Librarian and Archivist, W. Kaye Lamb, to the Departmental Solicitor, Department of the Attorney General, 29 November 1983, file number 4966, Legislation Files, Department of the Attorney General, Victoria, British Columbia.

12. Saskatchewan, An Act to Amend the Archives Act, SS 1949, c. 119, s. 9.

13. Saskatchewan, Archives Act, SS 1945, c. 113, s. 9-10; Saskatchewan, An Act to amend the Archives Act, SS 1949,

c. 119; Saskatchewan, An Act to Amend the Archives Act, SS 1951, c. 101.

14. See file entitled "1969 Provincial Archives of Alberta", Box 1, Accession 81.5, Administrative Files of the Provincial Archives of Alberta, Provincial Archives of Alberta, Edmonton, Alberta; Alberta, Public Documents Act, SA 1970, c. 90.

15. Alberta Heritage Act, SA 1970, c. 7; Alberta, Heritage Act, SA 1973, c. 5; Alberta, Department of Government Services Act, SA 1975, c. 11. The 1973 Alberta Heritage Act was renamed due to a name conflict with the Alberta Heritage Savings Trust Fund and the Department of Government Services Act, because of another departmental reorganization which took place in 1983.

16. Alberta, Heritage Act, SA 1973, c. 5.

17. Ibid.

18. Jay Atherton, "From Life Cycle to Continuum: Some Thoughts on the Records Management-Archives Relationship," Archivaria 21 (Winter 1985-86): 43-52.

19. Yukon, Access to Information Act, OYT 1983, c. 13, s. 5(3); Yukon, Archives Ordinance, Order-in-Council 1985/17, Yukon Territory Gazette, Part II.

20. Quebec, An act or Ordinance for the Better Preservation and Due Distribution of the Ancient French Records, Revised Acts and Ordinances of Lower Canada 30 George III, c. 8.

21. Edgar McInnis, Canada: A Political and Social History, Fourth Edition (Toronto: Holt, Rinehart and Winston of Canada, 1982), 145.

22. Ibid, 154-160.

23. Quebec, An act or Ordinance for the Better Preservation and Due Distribution of the Ancient French Records, Revised Acts and Ordinances of Lower Canada 30 George III, c. 8.

24. Ibid.

25. Nova Scotia, Public Records Act, SNS 1861, c.23.

26. Nova Scotia, Public Record Act, SNS 1861, c. 23, s. 1.

27. Saskatchewan, Preservation of Public Documents Act, SS 1920, c.17, s.1.

28. Newfoundland, Historic Objects, Sites and Records Act, SN 1959, c. 76, s. 28(7).

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30. Saskatchewan, Archives Act, SS 1955, c. 84, s.3.

31. Ibid.

32. See for example, Manitoba, Legislative Library Amendment Act, SM 1966, c. 31; Nova Scotia, Public Records Act, RSNS 1967, c. 253; Newfoundland, Archives Act, c. 33; Yukon, Archives Ordinance, OYT 1971 (1st), c. 2.

33. Newfoundland, Public Records Act, SN 1951, c. 68.

34. Ontario, Archives Act, RSO 1980, c. 28, s. 5(q) and (i).

35. Yukon, Archives Ordinance, OYT 1971 (1st), c. 2, s. 6(g) and (i).

36. Fergusson, "The Public Archives of Nova Scotia," Acadiensis 2,1 (Autumn 1971): 75.

37. Nova Scotia, Public Archives Act, SNS 1929, c. 1, s. 7.

38. Nova Scotia, An Act to Amend the Public Archives Act, SNS 1930, s. 56 and SNS 1931, c. 63.

39. George Simpson, "Archives in Canada," American Archivist 1,14 (October 1948): 264.

40. Archer, "A Study of Archival Institutions in Canada," (PhD Thesis, Queen's University, 1969), 240; Saskatchewan, Archives Act, SS 1945, c. 113, s. 6(2).

41. Quebec, An Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Privacy, SQ 1982, c. 30; "Allocution Du Ministre Des Affaires Culturelles," Archives 15,1 (Juin 1983): 7-13.

42. Denys Chouinard, Carol Couture and Jean-Yves Rousseau, "Memoire relatif au project de loi n[uméro] 3 intitule loi sur les archives," Archives (Juin 1983):26.

43. Quebec, Archives Act, SQ 1983, c. 38.

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1. Prince Edward Island, Archives Act, SPEI 1975, C. 64, s. 1.

2. Canada, National Archives of Canada Act, 1987, Statutes of Canada, 36 Elizabeth 2, c. 1, s. 2.

3. Quebec, Archives Act, SQ 1983, c. 38., s. 2. Emphasis added.

4. British Columbia, Document Disposal Act, RSBC 1979, c. 95, s. 1; British Columbia, Interpretation Act, RSBC 1979, c. 206, s. 29.

5. Alberta, Public Works, Supply and Services Act. Public Records Regulation, Alberta Regulation 373/83, Alberta Gazette Part II, s. 5(2).

6. The general schedule for "transitory" EDP records includes such information as transitory input records, processing records and output records as well as user views of master files and convenience copies of COM or tapes. This material is scheduled for retention by the ministry until superseded or obsolete; the final disposition is destruction.

7. Manitoba, Freedom of Information Act, SM 1985, c. 6.

8. Northwest Territories, Archives Ordinance, ONT 1981 (3rd), c. 2, s. 4.

9. Bob Tapscott, "Access and Archives: The Manitoba Experience," paper presented at the Association of Canadian Archivist's Conference, Hamilton, June, 1987; Canadian Newspapers Company Ltd. v Government of Manitoba Queen's Bench," Western Weekly Review 2 (1986):393; "Canadian Newspapers Company Ltd. v Government of Manitoba Court of Appeal," Western Weekly Review 2 (1986):673.

10. Tapscott, "Access and Archives," 6-18.

11. Quebec, Archives Act, SQ 1983, c. 38, s. 2.

12. Eric Ketelaar, Archival and Records Management Legislation and Regulations: A RAMP Study with Guidelines (Paris: UNESCO, 1985), 16.

13. Ibid, 6-10. For details about the use of the term archives in French or "archivio" in Italian see Ronald

J. Planchan, ed., "The International Scene: News and Abstracts," American Archivist 43(3) (Summer 1980): 392-4 and Ernst Posner, Archives in the Ancient World (Cambridge, Mass.: Harvard University Press, 1972):4.

14. Canada, National Archives of Canada Act, 1987, Statutes of Canada, 36 Elizabeth 2, c. 1, s. 2 and 4.

15. British Columbia, Document Disposal Act, RSBC 1979, c. 95.

16. England, Data Protection Act, 1984, Statutes of England, 33 Elizabeth 2, c. 35, s. 1(5).

17. England, Public Records Act, 1958, Statutes of England, 6&7 Elizabeth 2, c. 51, s. 4.

18. Quebec, Archives Act, SQ 1983, c. 38.

19. New Brunswick, Right to Information Act, SNB 1978, c. R-10.3; New Brunswick, An Act to Amend the Archives Act, SNB 1986, c. 11, s. 10.

20. Manitoba, Freedom of Information Act, SM 1985, c. 6. s. 61(c).

NOTES TO CHAPTER THREE

1. On the pros and cons of the board structure see John Archer, "A Study of Archival Institutions in Canada," (PhD Thesis, Queen's University, 1969): 554 and "The Provincial Archives of Alberta: A Preliminary Reprt on the Nature of the Programme and a Plan for Development," November 25, 1965, Box 1, Accession 88.239, Provincial Archives of Alberta, Edmonton, Alberta.

2. See Salvatore Carbone and Raoul Gueze, Draft Model Law on Archives: Description and Text (Paris: UNESCO, 1962), 35-39; R-H Bautier, "Principles of Archival Legislation," in A Manual on Tropical Archivology, edited by Yve Perotin (Paris: Mouton and Co., 1966), 39.

3. Quebec, Archives Act, SQ 1983, c. 38, Projet de reglement sur l'agrement d'un service d'archives privees, Gazette Officiel du Quebec, Le 16 Aout, 1989, s. 2(12).

4. Carbone and Guêze, Draft Model Law on Archives, 35-39.

5. Alberta, Pulbic Works, Supply and Services Act. Public Records Regulation 373/83, Alberta Gazette Part II.

6. Wesley Newcomb Hofeld was a professor of law at Stanford University and the Southmayd Professor at Yale University. On the Hofeldian Scheme see R. Stone, The Province and Function of the Law (Buffalo: William S. Hein and Co. Inc, 1968): 115-139.

7. Hofeld's scheme is set out by Stone, Ibid, 17, as follows:

Jural Opposites

Right	Privilege	Power	Immunity
No-Right	Duty	Disability	Liability

Jural Correlatives

Right	Privilege	Power	Immunity
Duty	No-Right	Liability	Disability

8. Op Cit, 115.

9. R. Stone, The Province and Function of the Law, 116.

10. Quebec, Archives Act, SQ 1983, c. 38, s. 2.

11. Canada, National Archives of Canada Act, 1987, Statutes of Canada, 36 Elizabeth 2, c. 1, s. 9(1).

12. Eric Ketelaar, Archival and Records Management Legislation and Regulations: A RAMP Study with Guidelines (Paris: UNESCO, 1985), 39-44.

13. Carbone and Guêze, Draft Model Law on Archives, 37; Bautier, "Principles of Archival Legislation," 37.

NOTES TO CHAPTER FOUR

1. Quebec, Archives Act, SQ 1983, c. 2, s. 29.

2. Jerome O'Brien, "Archives and the Law: A Brief Look at the Canadian Scene," Archivaria 18 (Summer 1984):43.

3. Ibid.

4. Op Cit.

5. O'Brien, "Archives and the Law," 44.

6. Nova Scotia, Public Records Disposal Act, RSNS 1967, c. 254, s. 5(3). Emphasis added.

7. New Brunswick, Archives Act, RSNB 1977, c. A-11.1, s. 7(2); Newfoundland, Archives Act, SN 1983, c. 33, s. 7.

8. The Document Disposal Act reads:

> 3(1) No document shall be destroyed except on the written recommendation of a committee to be known as the Public Documents Committee...
>
> 3(2) No document shall be destroyed before the expiration of 7 years from the date on which it was created unless (a)2 years have expired from the date on which it was created and there is available to the officer who would, but for the destruction have charge or custody of the document a microfilm copy of it, (b)a recommendation under subsection (1) has been approved by the Legislative Assembly on the recommendation of the Select Standing Committee of the Legislative Assembly on Public Accounts and Economic Affairs; or
> (c) it is (i)listed in a records schedule approved by the Select Standing Committee of the Legislative Assembly on Public Accounts and Economic Affairs, and
> (ii) destroyed in accordance with the instructions in the records schedule.
>
> 3(3) Subject to subsections (1) and (2), the Lieutenant Governor in Council, may on the recommendation of the minister having jurisdiction over the ministry concerned, [order the destruction or transfer of records].
>
> 3(4) No document desposited in a record office shall be destroyed without the approval of the

> Attorney General, and, in the case of an office of the Court of Appeal, without the further approval of the Chief Justice of British Columbia, and, in the case of an office of the supreme Court, without the further approval of the Chief Justice of the Supreme court.*46

(British Columbia, Document Disposal Act, RSBC 1979, c. 95, s. 3)

9. Northwest Territories, Archives Ordinance, ONT 1981 (3rd), c. 2, s. 5(6).

10. Saskatchewan, The Rural Municipalities Act, RSS 1978, c. R-26, s. 78; Saskatchewan, The Urban Municipalities Act, RSS 1978, c. U-10, s. 23; Saskatchewan, The Jackfish-Murray Lake Resort Municipality Act, RSS 19878, c. J-1, s. 69.

11. Ontario, The Education Act, RSO 1980, c. 129, s. 150(34).

12. Manitoba, The Election Act, RSM 1970, c. E30, s. 119(3).

13. Alberta, Ombudsman Act, RSA 1980, c. O-7, s. 29(3); New Brunswick, Registry Act, RNB 1973, c. R-6; Newfoundland, the Archives Act. The Archives (Executive Council Records) Regulation, Newfoundland Regulation 1/85, The Newfoundland Gazette Part II; Ontario, The Sheriff's Act, RSO 1982, c. 6, s. 5(1) and schedule.

14. Quebec, Archives Act, SQ 1983, ss. 21-28.

15. Ibid; Quebec, Archives Act. Projet de règlement sur l'agrément d'un service d'archives privées, Gazette Officiel du Québec, Le 16 Aout, 1989.

16. Mary Lynn Ritzenthaler describes conservation as a three phase function: 1) examination, 2) preservation; that is retarding or preventing deterioration and 3) restoration; that is, returning the document to as close to its original state as possible (Mary Lynn Ritzenthaler, Archives and Manuscripts: Conservaton [Chicago: Society of American Archivists, 1983]).

17. The Quebec Archives Act, for example, states that persons who unlawfully alienate or destroy public documents are liable to fines of up to $3,000 and persons who destroy fonds created or received by a person in the course of carrying out his or her duties are liable to a fine of up to $25,000, providing a strong rationale for adhering to the archival principle of resect des fond (Quebec, Archives Act, SQ 1983, c. 38, ss. 12, 13, 15, 28, 31).

18. SAA Committee on Uniform Legislation, "The Proposed Uniform State Public Records Act," American Archivist 3(2) (April 1940):107-115; Saa Committee on Uniform Legislation, "A Proposed Model Act to Create a State Department of Archives and History," American Archivist 7(2) (January 1944):130-134; Saa Committee on Archival Legislation, "Model Bill for a State Archives Department," American Archivist 10(1) (January 1947): 47-49.

19. New Brunswick, Registry Act, SNB 1978, c. 48, ss. 15(1) and 15 (2).

20. Canada, National Archives of Canada Act, 1987, Statutes of Canada, 36 Elizabeth 2, c. 1, s. 2(b).

21. Eric Ketelaar, Archival and Records Management Legislation and Regulations: A RAMP Study with Guidelines (Paris: UNESCO, 1985), 75.

22. Ibid, 77.

23. Canada, National Archives of Canada Act, 1987, Statutes of Canada, 36 Elizabeth 2, c. 1, s. 2(b).

24. Ketelaar, Archival and Records Management Legislation, 80.

25. Quebec, Archives Act, SQ 1983, c. 38, ss. 17 and 38.

26. E.A. Driedger, The Construction of Statutes (Toronto: Butterworths and Co., 1974), 199-201.

27. Ibid, 199.

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Canada, National Archives of Canada Act, 1986, Statutes of Canada, 35 Elizabeth 2, c.1.

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APPENDIX A

LIST OF CURRENT PROVINCIAL AND TERRITORIAL LEGISLATION*

Alberta

Acts

1. Historical Resources Act, 1980, c. H-8
2. Department of Public Works, Supply and Services Act, 1983, c. D-25.5
3. Election Act, 1980, c. E-2, s. 149.1
4. Ombudsman Act, 1980, c. O-7, s. 29(3)

Regulations

1. Department of Public Works, Supply and Services Act, Regulation 373/83, Alberta Gazette Part II.

British Columbia

Acts

1. Document Disposal Act, Revised Statutes of British Columbia, 1979, c. 95.
   Amendments
   Revised Statutes Correction Act(No.2), 1980, c. 50, s. 34.
   Miscellaneous Statutes Amendment Act, 1983, 32 Elizabeth 2, c. 20, s. 8-11.
2. Interpretation Act, Revised Statutes of British Columbia, 1979, c. 206, s. 29.
3. Ministry of Provincial Secretary and Government Services Act, Revised Statutes of British Columbia, 1979, c. 279, s. 2,3 and 7.

Regulations

none

Manitoba

Acts

1. The Legislative Library Act, Revised Statutes of Manitoba, 1970, c. L120.
   Amendments

* Current as of August, 1989. Statutes cited are from the most recent provincial consolidation of statutes or, in the case of statutes which came into force after the latest consolidation, from the sessional volume for the year that the statute came into force.

An Act to Amend the Legislative Library Act, 1972, c. 2.
The Statutes Amendment Act, 1975, c. 42, s. 34(1).

2. The Elections Act, Revised Statutes of Manitoba, 1970, c. E30, s. 119(3).
3. The Municipal Act, 1970, c. 100, s. 98.
4. The City of Winnipeg Act, 1971, c. 105, s. 658
5. Freedom of Information Act, 1985, c. 6.

Regulations

1. The Legislative Library Act. A Regulation Respecting the Preservation of Public Records, Manitoba Regulation L120 - R1, Manitoba Gazette Part II.

New Brunswick

Acts

1. The Archives Act, 1977, c. A-11.1
   Amendments:
   An Act to Provide for the Merger of the Supreme and County Courts of New Brunswick, 1979, c. 41, s. 5.
   Statute Law Amendment Act, 1982, c.3, s.3
   An Act to Amend the Executive Council Act, 1983, c. 30, s. 3.
   An Act to Amend the Archives Act, 1986, c. 11, An Act to Amend the Financial Administration Act, 1984, c. 44, s. 11
2. Elections Act, Revised Statutes of New Brunswick, 1973, c. E-3, s. 98
3. The Registry Act, Revised Statutes of New Brunswick, 1973, c. R-6.
   An Act to Amend the Registry Act, 1980, c. 47, s. 1
   An Act to Amend the Registry Act, 1978, c. 46, s. 1
4. The Public Records Act, Revised Statutes of New Brunswick, 1973, c. P-24
5. The Financial Administration Act, Revised Statutes of New Brunswick, 1973, c. F-11.
   An Act to Amend the Finincial Administration Act, 1975, c. 22, s. 1

Regulations

1. Archives Act. General Regulation 86-121, New Brunswick Gazette Part II.
2. The Finincial Administration Act. General Regulation 83-227, New Brunswick Gazette Part II.
3. The Financial Administration Act. General Regulation 85-27, New Brunswick Gazette Part II.

Newfoundland and Labrador

Acts

1. The Archives Act, 1983, c.33.
2. An Act Respecting Labour Relations in the Province, 1977, c. 64, s. 114(3).
3. The Privacy Act, 1981, c. 6.
4. An Act Respecting Freedom of Information, 1981, c. 5.
5. Department of Culture, Recreation and Youth Act, 1973, c. 18

Regulations

1. The Archives Act. The Archives (Executive Council Records) Regulations, Newfoundland Regulation 1/85, The Newfoundland Gazette Part II.

Northwest Territories

Acts

1. Archives Ordinance (Act), 1981(3rd), c. 2.
2. Historical Resources Ordinance, 1970(2nd), c.9, s. 8(d).*

Regulations

none

Nova Scotia

Acts

1. Public Archives Act, Revised Statutes of Nova Scotia, 1967, c. 246.
2. Public Records Act, Revised Statutes of Nova Scotia, 1967, c. 253, s. 6.
3. Public Records Disposal Act, Revised Statutes of Nova Scotia, 1967, c. 254.
4. Freedom of Information Act, 26 Eliz II, 1977, c.10.
5. The Culture,Recreation and Fitness Act, Statutes of Nova Scotia, Revised Statutes of Nova Scotia, 1967, c. 14, s. 7(k).

Regulations

none

* Since section 8(d) of this Act has fallen into disuse it will not be included for the purposes of the content analysis.

Ontario

Acts

1. The Archives Act, Revised Statutes of Ontario, 1980, c. 28.
2. The Education Act, Revised Statutes of Ontario, 1980, c. 129, s. 150(34).
3. The Sheriff's Act, Revised Statutes of Ontario, 1980, c. 470, s. 24.
4. An Act to Establish the Ministry of Citizenship and Culture, 1982, c. 6, s. 5(1) and schedule.
5. Freedom of Information and Protection of Privacy Act, Statutes of Ontario 1987, c. 25.

Regulations

1. The Executive Council Act. Assignment of Powers and Duties - Minister of Citizenship and Culture, Ontario Regulation 134/82, Ontario Gazette Part II.

Prince Edward Island

Acts

1. Archives Act, 1975, c. 64.
2. Archeological Investigations Act, 1970, c.3

Regulations

none

Quebec

Acts

1. The Archives Act, 1983, c.38 (ss. 58, 63-67, 69-73, 78-82 not yet proclaimed).
2. An Act Respecting the Bibliotheque Nationale du Quebec, Revised Statutes of Quebec, 1977, c. B-2 (limits the definition of a 'document' in the Archives Act)
3. The Cultural Property Act, Revised Statutes of Quebec, 1977, c. B-4 and amendments assented to July 8, 1972, c. 19*
4. An Act Respecting Access to documents held by public bodies and the Protection of personal information, Revised Statutes of Quebec, 1977, c. A-2.1.*

   An Act to Amend Various Legislation, 1984, c. 27, s. 1-8

   An Act to Amend Various Legislation, 1985, c. 30, s. 1-16

   * Only those general amendments affecting the provisions of these statutes have been included.

5. Photographic Proof of Documents Act, Revised Statutes of Quebec, c. P-22.*

Regulations

1. The Archives Act, Regulation respecting retention schedules, transfer, deposit and disposal of public archives, O.C. 1894-85, 18 September, 1985, Gazette Officielle du Quebec, October 22, 1985, Vol. 117, No. 44.

Saskatchewan

Acts

1. The Archives Act, Revised Statutes of Saskatchwan, 1978, c. A-26.
   Amendments
   Queen's Bench Consequential Amendment Act, 1979-80, c. 92, s. 7.
   Government Reorganization Consequential Amendment Act, 1983, c. 11, s. 7.
2. The Rural Municipalities Act, Revised Statutes of Saskatchewan, 1978, c. R-26, s. 78.
3. The Urban Municipality Act, Revised Statutes of Saskatchewan, 1978, c. U-10, s. 23.
4. The Jackfish-Murray Lake Resort Municipality Act, Revised Statutes of Saskatewan, 1978, c. J-1, s. 69.
5. The Liquor Act, Revised Statutes of Saskatchewan, 1978, c. L-18, s. 199.
6. The Education Act, Revised Statutes of Saskatchewan, 1978, c. E-0.1, s. 371.

Regulations

1. The Archives Act. Regulations of the Saskatchewan Archives Board

Yukon

Ordinances

1. Archives Ordinance, 1971(1st), c.2.
2. Access to Information Act, 1983, c. 12.

Regulations

1. Archives Ordinance. Commissioner's Order 1979/84, Government of the Yukon Territory Regulations, Volume 6.

2. Archives Ordinance. Order-in-Council 1985/17 (which establishes Records Managment Regulations), Government of the Yukon Territories Regulations, Volume 6.
3. Access to Information Act. Schedule of Fees Respecting Access to Information Act. Order-in-Council 1984/60, Government of the Yukon Territories, Volume 6.

APPENDIX B: DATASHEET	ONT	NS	BC	SASK	MAN	YUK	PEI	AB	NB	NWT	QUE	NFLD
A. DEFINITIONS OF KEY TERMS												
I. DEFINITIONS OF ARCHIVES(total score=1) i.e. what the archives of the province/territory include					P				P	P	P	P
II. TYPES OF MATERIAL(total score=3)												
1. Definition of record/document												
(a) part of public records		P		P	P	P	P	R	P/S	P		
(b) separately			S								P/R	P
2. EDP mentioned			S				P	R	P	P	P	P
3. Types of non-records				P			P		P		S	P
III. PUBLIC RECORDS/ARCHIVES(total score=2)												
1. Definition		P/S		P	P	P	P	R	P/S	P	P	P
2. Official transaction		S		P	P		P		P		P	P
IV. PUBLIC AGENCIES(total score=9) The legislation provides a definition of departments and/or other public agencies, or indicates those public agencies the records of which are subject to the provisions of the Act												
1. Branches												
1.1 Administrative	P/S	S	S	P	P	P/S	P	S	P/S	P	P/S	P/S
1.2 Legislative	P	S/							P	P	P/S	
1.3 Judicial		S/	S	P			P	S	P		P	P
1.4 Board/commission	P/S	S		P	P	S	P	S	P	P	P/S	P/S
1.5 Crown corporation	S	S/			S	S		S	P		P/S	P
1.6 Appointed bodies	S	S			P/S			S			P/S	P/S
2. Political levels												
2.1 Prov/Territorial	P/S	S	S	P	P	P/S	P	S	P/S	P	P/S	P
2.2 Municipal	S	S				P			S		P/S	
2.3 Other											P/S	

APPENDIX B: DATASHEET	ONT	NS	BC	SASK	MAN	YUK	PEI	AB	NB	NWT	QUE	NFLD
V. ARCHIVES RECORDS CROWN PROPERTY(total score=1)		P					P		S			P
TOTAL=16	7	12	5	8	9	7	10	9	14	8	15	13
PERCENT	43%	75%	31%	50%	56%	43%	62%	56%	87%	50%	93%	81%
AVG=9.75												

APPENDIX B:DATASHEET	ONT	NS	BC	SASK	MAN	YUK	PEI	AB	NB	NWT	QUE	NFLD
B. ADMINISTRATION												
I GENERAL MANAGNENT(total score=1)												
The legislation specifies the person(s) or body(ies) responsible for the general management of the Provincial/Territorial archives, or for the administration of an Act establishing a Provincial/Territorial archival programme.												
(a) Minister	S		S		P		P	P	P		P	S
(b) Board		P		P								
II ESTABLISHMENT OF ARCHIVES(total score=2)												
1. Establishment/Continuation	P	P		P	P		P	P		P	P	P
2. Official repository for public records				P			P					P
III ARCHIVIST(total score=3)												
1. Appointment of official	P			P	P	P	P		P	P	P	P
2. Legal title of official	P			P			P		P	P	P	P
3. Manner of appointment This provisions may refer to a public service act	P			P	S	P			P	P	S	P
IV OTHER EMPLOYEES(total score=1)		P		P	P			P			P	
V DUTIES/OBJECTS SPECIFIED(total score=8)												
The legislation outlines the duties of the person(s) responsible for the provincial/ territorial archives or outlines the objects of the provincial/territorial archives												
1. Archival functions												

APPENDIX B:DATASHEET	ONT	NS	BC	SASK	MAN	YUK	PEI	AB	NB	NWT	QUE	NFLD
1.1 Care/custody/preservation					P	P	P	P	P			P
1.2 Arrangement/description	P				P	P	P		P			P
1.3 Dissemination of info						P						P
1.4 Acquisition (private)	P				P	P		P	P		P	P
1.5 exhibition/display						P		P				
1.6 Printing/publication	P				P	P		P	P		P	P
2. Extra-archival functions												
2.1 Research	P					P						
2.2 Archeological functions							S					
VI RELATIONSHIP TO OTHER AGENCIES(total score=4)												
1. Negotiate agreements				P						P	P	
2. Accreditation											P	
3. Provide assistance i.e. technical, financial											P	
4. Cooperation												P
VII RECORDS/DOCUMENTS COMMITTEE(total score=15)												
1. Establishment												
(a) Permanent			S	P	P	R	P	R	P	P		P
(b) Ad hoc		S										
2. Membership												
2.1 Archivist		S	S	P	P	R	P	R	P	P		P
2.2 Records manager						R				P		P
2.3 Public body		S				R						
2.4 Legal		S		P	P	R	P	R	P			P
2.5 Financial		S		P	P	R	P	R	P			P
2.6 Other		S	S	P	P	R	P	R	P	P		P
3. Manner of appointment			S	P	P		P	R	P	P		
5. Duties/purpose												
5.1 Classification		S			P							
5.2 Establish schedules		S			P			R				P
5.3 Review of schedules		S			P	R	P		P			P
5.4 Disposition recommendations			S	P	P		P	R	P	P		P

APPENDIX B:DATASHEET			ONT	NS	BC	SASK	MAN	YUK	PEI	AB	NB	NWT	QUE	NFLD
5.5 Access										R		P		
5.6 Records management policy								R		R				
7. Archivist is Chairman							P	R						
TOTAL=34	9	12	6	15	20	19	16	17	16	12	11	21		
PERCENT	26%	35%	26%	44%	59%	56%	47%	50%	47%	35%	32%	61%		
AVG=14.5														

APPENDIX B: DATASHEET	ONT	NS	BC	SASK	MAN	YUK	PEI	AB	NB	NWT	QUE	NFLD
C. PROGRAMME ELEMENTS												
I. RECORDS MANAGEMENT(total score=7)												
1. Establishment of program						R		R	P		P	P
2. Definition of program								R				P
3. Role of archivist in program												
(a) Administered by archivist									P		P	P
(b) Supervision of committee												
(i) Archivist is chairman						R						
(ii) Archivist is secretary								R				
(iii) Archivist is a member												
4. Appointment of records manager						R						P
5. Appointment of records officers						R		R				
6. Records Manager's duties outlined						R		R	P		P	P
7. Records centre									P		P	P
II. APPRAISAL, SELECTION, ACQUISITION OF PUBLIC RECORDS(total score=22)												
1. Schedules												
1.1 Approval process												
The legislation specifies the person(s) with authority to recommend and approve of schedules.												
1.1.1 Archivist						R			P			
1.1.2 Minister/board											P	
1.1.3 Lieut. Gov.		S										
1.1.4 Legislative Assembly			S									
1.1.5 Public records committee		S	S		P	R	P	R	P			P
1.1.6 Records creator		S	S		P	R						
1.2 Role of Archivist in scheduling												
(a) Direct control						R					P	
(b) Indirect control		S	S		P			R	P		P	P
1.3 Schedules binding			S		P	R		R	P		P	P

APPENDIX B: DATASHEET	ONT	NS	BC	SASK	MAN	YUK	PEI	AB	NB	NWT	QUE	NFLD
The legislation states that records shall be dealt with in accordance with schedules												
1.4 Schedules defined			S			R	P		P			
1.5 Content and form					R	R					R	
The legislation specifies the information that shall be included in schedules and/or provides a sample form												
1.6 Amendment provision		S			P	R					P	
1.7 Dispute provision									P			P
The legislation includes procedures for resolving disputes regarding schedules												
2. One-time disposal approval process												
2.1 Archivist	P					P						
2.2 Minister/board												P
2.3 Lieut.Gov./Commissner.			S	P			P			P		
2.4 Public records committee			S	P			P			P		P
2.5 Records Creator			S	P								
3. Methods of Disposition of Public Records												
3.1 Destruction												
3.1.1 Procedures outlined					R			R		P		R
3.1.2 Public body may dispose of no permanent value			S		R			R				
3.2 Photoreproduction												
3.2.1 Means of disposal		S	S		P						P	
3.2.2 Procedures outlined					R						S	
3.3 Transfer												
3.3.1 Future Date												
(a) not specified												
(b) less than 7 yrs											P	
(c) more than 7 yrs	P			P		P				P		
3.3.2 Authority												
(a) permissive				P								
(b) not permissive	P					P				P	P	
III. APPRAISAL, SELECTION AND DISPOSITION OF SPECIAL CLASSES OF RECORDS(total score=16)												
The legislation includes provisions concerning the care and management of special categories of records not included in the definition of												

APPENDIX B: DATASHEET	ONT	NS	BC	SASK	MAN	YUK	PEI	AB	NB	NWT	QUE	NFLD
public records.												
1. Disposition approval process												
1.1 Court records												
1.1.1 Archivist				P			P					
1.1.2 Lieut.Gov.				P			P					
1.1.3 Public records committee			S									
1.1.4 Legal			S	P			P					
1.1.5 Records creator												
1.2 Municipal records												
1.2.1 Records creator				S								
1.3 School records												
1.3.1 Records creator	S											
1.4 Election records												
1.4.1 Archivist/LegLibr				S								
1.4.2 Records creator					S							
2. Transfer and deposit												
2.1 Court records												
2.1.1 Future date												
(a) not specified												
(b) less than 7 yrs												
(c) more than 7 yrs				P			P					
2.1.2 Authority												
(a) permissive				P			P					
(b) not permissive												
2.2 Municipal records												
2.2.1 Future date												
(a) not specified			S	P	P/S		P					
(b) less than 7 yrs												
(c) more than 7 yrs												
2.2.2 Authority												
(a) permissive			S	P	P/S		P					
(b) not permissive					S							
2.3 School board records												
2.3.1 Future date												
(a) not specified	S		S	P/S			P					
(b) less than 7 yrs												
(c) more than 7 yrs												
2.3.2 Authority												
(a) permissive	S		S	P/S			P					
(b) not permissive												
2.4 Election records												

APPENDIX B: DATASHEET	ONT	NS	BC	SASK	MAN	YUK	PEI	AB	NB	NWT	QUE	NFLD
2.4.1 Future date												
(a) not specified												
(b) less than 7 yrs					S			S	S			
(c) more than 7 yrs												
2.4.2 Authority												
(a) permissive												
(b) not permissive					S			S	S			
2.5 Other records												
2.5.1 Future date												
(a) not specified									S			
(b) less than 7 yrs								S				R
(c) more than 7 yrs	S											
2.5.2 Authority												
(a) permissive								S	S			
(b) not permissive	S											R
IV. APPRAISAL, SELECTION AND AQUISITION OF PRIVATE RECORDS(total score=4)												
1. Methods of aquisition		P		P	P	P	P		P	P		P
2. Terms and conditions		P		P	P	P	P		P		P	P
3. Types of records	P	P		P	P		P	P		P		
4. Subject areas specified	P	P				P						
V PRESERVATION OF PUBLIC RECORDS (total score=4)												
1. Preservation by public bodies				P			P	R	S			
2. Prohibition												
2.1 Destruction	P			P	P				P	P	P	P
2.2 Alienation	P			P	P				P	P	P	P
2.3 Mutilation											P	
VI REPLEVIN(total score=3) The legislation includes a procedure for the recovery of unlawfully alienated records												

APPENDIX B: DATASHEET	ONT	NS	BC	SASK	MAN	YUK	PEI	AB	NB	NWT	QUE	NFLD
1. Replevin authorized		S				P			P/S		P	P
2. Recovery/restoration procedures		S							P/S		P	P
3. Replevin authority												
(a) Minister											P	
(b) Attorney General		S							S		P	
VII. ACCESS(total score=16)												
1. Statement of general right of access	S	S			S	S			P	P	S	P/S
2. Limitations on access	S	S			S	P			P	P	S	P/S
3. Restricted records outlined	S				S				P		S	S/R
4. Time limitations outlined	S				S				P		P	R
5. Access approvals	S				S				P		S	S
6. Access procedures	S	S			S	S			P		S	S
7. Content of request/appeal forms	S				S				R			
8. Appeal procedures	S	S			S	S			P		S	S
9. Acess register/index/guide	S				S						S	R
10. Definition of personal info	S	S			S				P		S	S
11. Definition of info		S				S					S	S
12. Private material not subject to access provisions					S				P			
13. Role of archivist in reviewing requests for access												
(a) receives all requests						S						
(b) receives requests for records in archives only		S							P		S	
(c) receives no requests/	S				S					P		

APPENDIX B: DATASHEET	ONT	NS	BC	SASK	MAN	YUK	PEI	AB	NB	NWT	QUE	NFLD
not specified												
14. Certified copies as evidence	P		S	P		P	P	P	P	P	P	P
15. Fees for services (e.g. photocopying)				P					P			
16. Terms/conditions for use of archives				R		R			R			

APPENDIX B: DATASHEET	ONT	NS	BC	SASK	MAN	YUK	PEI	AB	NB	NWT	QUE	NFLD
VIII. REGULATIONS(total score=9)												
Regulations may be established pursuant to the Act. The following components include any activities mentioned in the functional groups or in individual categories. Choice (a) indicates broad regulatory powers; choice (b) respresents fairly wide regulatory authority; and chocie (c) signifies more limited powers												
1. Administration												
(a) Purposes				P								
(b) Subject	P					P				P		P
(c) Prescriptive							P		P			
2. Records management												
(a) Purposes												
(b) Subject												P
(c) Prescriptive								S			P	
3. Public records												
(a) Purposes												
(b) Subject		S			P							
(c) Prescriptive	P		S			P		S			P	P
4. Public agencies												
(a) Purposes												
(b) Subject												
(c) Prescriptive								S			P	P
5. Scheduling												
(a) Purposes												
(b) Subject		S			P							P
(c) Prescriptive			S								P	
6. Disposal												
(a) Purposes					P					P		
(b) Subject			S					S				P
(c) Prescriptive	P	S				P					P	
7. Transfer and deposit												
(a) Purposes												
(b) Subject		S	S		P				P			
(c) Prescriptive	P							S		P	P	
8. Preservation												
(a) Purposes												
(b) Subject										P		P

APPENDIX B: DATASHEET	ONT	NS	BC	SASK	MAN	YUK	PEI	AB	NB	NWT	QUE	NFLD
(c) Prescriptive								S			P	
9. Use and access												
(a) Purposes	P					P						
(b) Subject										P		
(c) Prescriptive		S		P					P		P	P
TOTAL=81	25	24	21	23	36	29	18	20	36	14	38	38
PERCENT	30%	29%	26%	28%	44%	36%	22%	24%	44%	17%	47%	47%
AVG=26.8												

APPENDIX C

Chronological Synopsis of Provincial and Terrritorial Archival Legislation*

I Alberta

1925 S.A., c.31: The Preservation of Public Documents Act scheduled all public documents for a period of ten years.

1944 S.A., c.17: The Registered Documents Destruction Act allowed for the destruction of non-current registered documents of more than twenty years.

1961 S.A., c.60: An Act to Amend the Preservation of Public Documents Act reduced the time limit before which destruction of public documents could take place from ten years to five years.

1966 S.A., c.73: The Provincial Archives Act replaced The Preservation of Public Documents Act and The Registered Documents Destruction Act.

1970 S.A., c.7: The Alberta Heritage Act replaced The Provincial Archives Act and established the Provincial Museum and Archives of Alberta.

S.A., c.90: The Public Documents Act which provided for public records management.

1973 S.A., c.5: The Alberta Heritage Act replaced The Alberta Heritage Act, 1970 and The Public Documents Act.

Orders-in-council no longer required for the destruction of records.

1974 S.A., c. 63: The Alberta Heritage Amendment Act provided that public records would include records "owned by and in the possession of a department".

1975 S.A., c.11: The Department of Government Services Act transferred responsibility for records management to the Department of Government Services. The administration of the Provincial Archives of Alberta remained under the Heritage Act.

* This synopsis includes only those statutes that made subsubstantial changes to the nature, the organization or the services of provincial and territorial public archival programmes.

1977 S.A., c.3: The Alberta Historical Resources Amendment Act outlined the mandate of the Provincial Archives of Alberta.

1978 S.A., c.4: The Alberta Historical Resources Amendment Act added publication and public exhibition to the mandate of the Provincial Archives of Alberta.

S.A., c.29, s.11: The Ombudsman Act Amendment Act provided for the transfer of Ombudsman's records to the Provincial Archives of Alberta.

1983 S.A., c.D-25.5: The Department of Public Works, Supply and Services Act which replaced The Department of Government Services Act.

S.A., c.75, s. 18: The Election Act Amendment Act which established that the chief electoral officer shall provide copies of election writs and official results to Provinicial Archives.

II British Columbia

1899 S.B.C., c. 59: Provincial Secretary's Act.

1936 S.B.C., c.43: The Public Documents Disposal Act.

1953 S.B.C., c.27: The Public Documents Disposal Act Amendment Act established the Public Documents Committee and strengthened the authority of the Provincial Archivist over the disposition of public documents.

1964 S.B.C., c.46: The Public Documents Disposal Act Amendment Act provided for the destruction of microfilmed records over two years old.

1965 S.B.C., c.40: The Public Documents Disposal Act Amendment Act made the Comptroller General a permanent member of the Public Documents Committee.

1977 S.B.C., c.75, s.74: Ministerial Titles Amendment Act which replaced the definition of a "departmental office" in the Document Disposal Act with a new definition of a "ministerial office".

1983 S.B.C., c. 20, s. 8-11: Miscellaneous Statutes Amendment Act defined records schedules and established a process for their approval.

III Manitoba

1939 S.M., c.38: The Legislative Library Act. Part II of the Act entitled "Public Records and Archives" was never proclaimed.

1955 S.M., c.57: The Public Records Act.

1966 S.M., c.31: The Legislative Library Amendment Act which replaced The Public Records Act and enacted Part II of the 1939 Act.

1972 S.M., c.2: An Act to Amend the Legislative Library Act expanded the scope of the Act to include court records.

1985 S.M, c. 6: The Freedom of Information Act.

IV New Brunswick

1929 S.N.B., c.54: The Public Records Act.

S.N.B., c.53: The New Brunswick Museum Act

1930 S.N.B., c.47: amended The New Brunswick Museum Act by changing the Museum's legal name from the "Provincial Museum" to the "New Brunswick Museum".

1942 S.N.B., c.39: amended The New Brunswick Museum Act. This amendment changed the membership of the Museum Board, the Board's regulatory powers, and gave the Board authority to acquire public records.

1943 S.N.B., c. 28: amended The New Brunswick Museum Act to provide for the transfer of public records to the custody of the Museum Board.

1963 S.N.B., c.9: The Public Documents Disposal Act was modelled on the Saskatchewan Archives Act of 1955 and provided for a Documents Committee and approvals for the disposition of public documents.

1967 S.N.B., c.9: The Elections Act provided for the transfer of Election records to the Provincial Archives of New Brunswick.

1968 S.N.B., c.2: The Archives Act which replaced The Public Documents Disposal Act.

1975 S.N.B., c. 22: An Act to Amend the Financial Administration Act which provides for the definition of "department" under The Archives Act.

1977 S.N.B., c. A-11.1: The Archives Act which replaced The Archives Act, 1968.

1978 S.N.B., c.46: An Act to Amend the Registry Act provided for the preservation of original registry books through transferring them to the Provincial Archives of New Brunswick.

S.N.B., c. R-10.3: The Right to Information Act.

1986 S.N.B., c. 11: An Act to Amend the Archives Act.

S.N.B., c. 44: An Act to Amend the Financial Administration Act which provides for the definition of "department" under The Archives Act.

V Newfoundland and Labrador

1951 S.N., c. 68: The Public Records Act established a Board of Trustees of Public Records.

1959 S.N., c. 76: The Historic Objects, Sites and Records Act was modelled on the Saskatchewan Archives Act of 1955 and replaced The Public Records Act. This Act established a precedent by limiting access to public records in the Provincial Archives and renamed the Board of Trustees.

1973 S.N., c. 85: The Historic Objects, Sites and Records Act replaced the Historic Objects, Sites and Records Act, 1959 gave responsibility for archives to the Minister of Tourism and broadened the scope of the Act to include active and semi-active public records.

1981 S.N., c. 6: The Privacy Act.

S.N., c. 5: The Freedom of Information Act.

1983 S.N., c. 33: The Archives Act.

VI Northwest Territories

1970 O.N.T., 2nd session, c. 9: Historical Resources Ordinance gave the Commissioner the power to create a Territorial Archives.

1981 O.N.T., 3rd session, c. 2: Archives Ordinance.

VII Nova Scotia

1861 S.N.S., c. 23: The Public Records Act stated that all county and municipal records as well as records of quarter sessions and the inferior court of common pleas were provincial public records.

1914 S.N.S., c. 6: An Act in Respect to the Preservation of Court Records.

1929 S.N.S., c. 1: The Public Archives Act.

1930 S.N.S., c. 56: changes membership composition of Board of Trustees.

1931 S.N.S., c. 63: changes membership composition of Board of Trustees.

1944 S.N.S., c. 44: establishes allowance for sums appropriated by the Legislature to defray the expenses of Board members and states that Board members are employed in the Public Service.

1958 S.N.S., c. 12: The Public Records Disposal Act established a Document Committee and approval process for the disposition of public records.

1973 S.N.S., c.14: Culture, Recreation and Fitness Act refers to the role of the department in advising the Archives.

1977 S.N.S., c. 10: Freedom of Information Act.

VIII Ontario

1923 S.O., c. 20: The Archives Act.

1968 S.O., c. 118, s. 1: An Act to Amend the Sheriff's Act provided for the transfer of Sheriff's records to the archives.

1972 S.O., c. 77, s. 18(5): The Education Act provided for the scheduling of school board records and for their transfer to the Provincial Archives of Ontario.

IX Prince Edward Island

1947 S.P.E.I., c. 40, s. 35: The Treasury Act allowed for the destruction of financial records.

1964 S.P.E.I., c. 26: The Archives Act was modelled on the Saskatchewan Archives Act of 1955.

1965 S.P.E.I., c. 20: An Act to Amend an Act to Establish the Public Archives of Prince Edward Island allowed the Provincial Archivist to limit access to public records in the Provincial Archives.

1970 S.P.E.I., c. 4, s. 7: The Archeological Investigations Act which amends The Archives Act gives the Provincial Archivist responsibility for administering archeological investigations conducted in the province.

1975 S.P.E.I., c. 64: The Archives Act which replaced The Archives Act, 1964 abolished the Archives Board and created the Prince Edward Island Archives and Record Office.

X Quebec

1790 Revised Acts and Ordinances of Lower Canada, 30 George III, c. 8: An Act or Ordinance for the better preservation and due distribution of the Ancient French Records.

1867 S.Q., c. 11: The Provincial Secretary's Act reaffirmed the 1790 Act.

1969 S.Q., c. 26, s. 19: An Act to Repeal the Provincial Secretary's Department Act and to amend other legislative provisions.

1977 S.Q., c. 52., article 10: The Cities and Towns Act The Municipal Code, article 161a as enacted by 1977, c. 53, s. 16 provided for the disposition of municipal records.

1982 S.Q., c. 30: An Act respecting access to documents held by public bodies and the Protection of personal information.

1983 S.Q., c. 38: The Archives Act which replaced An Act Respecting the Ministere Des Affaires Culturelles.

XI Saskatchewan

1920 S.S., c. 17: The Preservation of Public Documents Act schedules all public documents for a period of ten years.

1945 S.S., c. 113: The Archives Act.

1946 S.S., c. 95: The Registered Documents Destruction Act scheduled all registered documents for a period of twenty years.

1947 S.S., c. 112: An Act to Amend the Archives Act.

1949 S.S., c. 119: An Act to Amend the Archives Act.

S.S., c. 108, s. 200a: an amendment to the Liquor Act provides for the disposition of election records.

1951 S.S., c. 101: An Act to Amend the Archives Act.

1955 S.S., c. 84: The Archives Act replaced The Archives Act, 1945.

1956 S.S., c. 23, s. 408: An amendment to the Rural of Municipalities Act which contained a section dealing with the preservation of public records.

1970 S.S., c. 78, s. 231: The Urban Municipalities Act which contained a section dealing with the preservation of public records.

1973 S.S., c. 52, s. 69: The Jackfish-Murray Lake Resort Municipality Act contained a section dealing with the preservation of public records.

1978 S.S., c. 17, s. 37: An Act Respecting Elementary and Secondary Education in Saskatchewan contained a section dealing with the preservation of school board records.

1979 repeal of The Registered Documents Destruction Act, 1946.

XII Yukon

1971 S.Y.T., 2nd session, c. A-3: Archives Ordinance.

1983 S.Y.T., c. 12: Access to Information Act.