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ARCHIVAL LEGISLATION IN CANADA *

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Archival legislation may be said to include the statutory law and administrative regulation which govern the preservation and disposal of public records and the establishment and functions of a public archives agency. In other words, the objective of archival legislation is to provide for two distinct, but interrelated types of administrative activity, viz. the care and management of public records and, secondly, the creation of a special agency which will permit this, and possibly other duties which are in the public interest, to be discharged as effectively as possible. A model archives act should possess these two features. But if only one is present in a statute, that statute may still properly be regarded as archival legislation. Thus we must regard Alberta's *Preservation of Public Documents Act*¹ enacted in 1925, as a species of archival legislation even though it does not provide for a public archives and simply prevents the destruction of public records except by formal cabinet authorization through an order in council. Similarly, the *Public Archives Act*² of Canada would be covered by this definition despite the fact that it contains no specific provision for the care and preservation of records in federal government offices.

In any realistic definition of archival legislation one must also include executive orders, and perhaps even administrative usage or practice, for the simple reason that in some jurisdictions they create archival services which elsewhere are provided under an act of the legislature. Thus, for example, the Government of Canada in 1914 partially implemented the recommendations of the Royal Commission on the State of the Records of the Public Departments, by an Order in Council (P.C. 1163 of May 4, 1914) which required the preservation of public records unless their destruction were authorized by the Treasury Board, and also authorized the screening of records and the transfer of historically valuable material to the Public Archives.³ In 1945 another federal Order in

* This paper was read before the Archives Section of the Canadian Historical Association at McMaster University, Hamilton, on June 6, 1962. I am grateful for comments by Dr. W. K. Lamb, Dr. Geo. Spragge, and Messrs. G. W. Hilborn, H. Bowsfield, and B. Weilbrenner which have contributed to the accuracy of the citations.

¹ R.S.A., 1955, Chap. 254.

² R.S.C., 1952, Chap. 222.

³ See C. P. Stacey, "Canadian Archives" in *Royal Commission Studies* (Ottawa, 1951), p. 239. I am indebted to Mr. B. Weilbrenner of the Public Archives of Canada for drawing my attention to the federal Order in Council of July 5, 1890 which established a schedule for the disposal of part of the non-current records of the Post Office Department; this Order was based on the practice followed in Great Britain.

Council (P.C. 6175 of Sept. 20, 1945) established the Committee on Public Records whose authorization, in addition to that of the Treasury Board, is required before public records can be destroyed.⁴

Since executive orders and administrative usage or custom are usually not publicized, this form of archival legislation cannot be easily analyzed and assessed. The task is made more difficult because of the lamentable absence of well organized public archives in three of ten provinces (Prince Edward Island, New Brunswick, and Alberta), and the failure of some provincial archives to publish reports on their activities as public records offices. Let us hope that both these conditions will be rectified in the near future.

The present paper, therefore, is mainly based on the information contained in the various federal and provincial archives acts and related legislation, supplemented wherever possible by the contents of executive orders available to the author.

The earliest archival legislation in Canada is the ordinance relating to old French records, passed by the Governor and Legislative Council of Quebec in 1790.⁵ It empowered the Governor in Council to regulate the preservation, arrangement and publication of "Papers, Manuscripts and Records, very interesting to such of the inhabitants of this Province, as hold property under Titles acquired prior to the conquest"; this ordinance also provided for the recovery of such public records as had passed into private hands. The archival activity authorized by this enactment was carried on after Confederation by a branch of the Provincial Secretary's Department⁶, prior to the formal organization of Le Bureau des Archives de la province de Quebec in 1920.

The first statute creating and constituting an archival organization is the aforementioned federal act of 1912, and the most recent is the Newfoundland *Historic Objects, Sites and Records Act* of 1959.⁷ Between these two dates the legislatures of most of the provinces have enacted some form of archival legislation. The following table is reasonably complete:

NEWFOUNDLAND

The Public Records Act, 1951, replaced by *The Historic Objects, Sites and Records Act*, 1959.

⁴ Printed in *Report of the Royal Commission on National Development in the Arts, Letters and Sciences, 1949-1951* (Ottawa 1951) pp. 491-92. This Order in Council has been replaced by one passed on Feb. 16, 1961 (P.C. 212).

⁵ See *Ordinances made and passed by the Governor and Legislative Council of the Province of Quebec and now in force in the province of Lower Canada* (Quebec, 1825), Cap. VIII.

⁶ See Report of the Secretary and Registrar of the Province of Quebec, 1886-87, *Quebec Sessional Papers*, Vol. 21, 1888.

⁷ *Statutes of Newfoundland*, 1959, No. 76.

NOVA SCOTIA

The Public Records Act, 1861, amended in 1914, (R.S. 1954, Chap. 239).

The Public Archives Act, 1929, amended in 1931 and 1944, (R.S. 1954, Chap. 232).

The Public Records Disposal Act, 1958.

PRINCE EDWARD ISLAND

There is no general legislation relating to archives or public records; *The Treasury Act*, R.S. 1951, Chap. 165, establishes a procedure for the destruction of non-current Treasury records.

NEW BRUNSWICK

The Public Records Act, 1929, amended 1939, (R.S. 1952, Chap. 184).

The New Brunswick Museum Act, 1929, amended 1930, 1934, 1942, 1943, and 1950, (R.S. 1952, Chap. 158).

QUEBEC

An Act or Ordinance for the better preservation and due distribution of the Ancient French Records, 1790, now part of *The Provincial Secretary's Department Act* (R.S. 1941, Chap. 57).

ONTRARIO

The Archives Act, 1923, (R.S. 1960, Chap. 21).

The Municipal Amendment Act, 1946 (R.S. 1960, Chap. 249, s. 377).

MANITOBA

The Legislative Library Act, 1939, Part II, "Public Records and Archives", (R.S. 1954, Chap. 142). Not yet proclaimed.

An Act to amend the Government Liquor Control Act, 1945.

The Public Records Act, 1955.

An Act to amend the Municipal Act, 1955.

SASKATCHEWAN

The Preservation of Public Documents Act, 1920, replaced by *The Archives Act*.

The Archives Act, 1945, amended in 1947, 1949, 1951 and 1955.

The Registered Documents Destruction Act, 1946, (R.S. 1953, Chap. 363).

An Act to amend the Rural Municipality Act, 1956.

ALBERTA

The Preservation of Public Documents Act, 1925, amended 1961.

The Registered Documents Destruction Act, 1944, (R.S. 1955, Chap. 281).

BRITISH COLUMBIA

The Public Documents Disposal Act, 1936, amended 1953, (R.S. 1960, Chap. 314).

The Public Archives Act of Canada is a brief statute of ten sections as compared, for example, with the longest provincial statute — the thirty-four section Newfoundland act. It remains unchanged since its passage in 1912, save for a minor amendment in 1913. It was designed, as Sir Robert Borden said on the second reading of the bill, "to establish the archives under the authority of an act of Parliament and to give a certain status to the Dominion archivist". "The work of the archives", he continued, "has been carried on in a somewhat systematic and effective way during recent years, but there seems some need of legislative provisions being enacted in connection with it."⁸ This federal statute established the position of Dominion Archivist and defined his duties. It enabled him to acquire "historical material of every kind, nature and description" (sect. 6), and provided that "The Governor in Council may order and direct that any public records, documents or other historical material of any kind, nature, or description shall be taken from the custody of any department of the Government having control thereof and removed to the Archives Building" (sect. 7). While it certainly made the Public Archives of Canada a public record office, it did not explicitly ensure the preservation of public records in offices of origin; nor did it provide for their orderly disposal under the supervision of archives staff.

As already noted, the provisions of this act were supplemented by Orders in Council in 1914, 1945 and 1961. The 1945 Order defined the responsibilities of the departments concerning the care of records, and also enabled the Public Archives to serve more effectively as a public record office than had been possible during the nearly seventy-five years

⁸ *House of Commons Debates*, 1911-12, col. 1440.

since the institution was first organized. One section of the Order reads as follows:

"6. The primary responsibility for the care and maintenance of records and for seeing that the policies of government in respect to disposition of public records be carried out so as to ensure that material of permanent value be not unwittingly destroyed will rest with departments and agencies of government concerned."⁹

As a result of suggestions made by the Massey Commission and by a records management survey committee, a revised Order in Council was issued in 1961, which now governs the care and disposal of federal government records. In addition to vesting control over the destruction of records in the Committee on Public Records, the Order authorizes the Departments to "schedule their records for retirement and eventual destruction or long term retention". The Committee's members include the Dominion Archivist, who is the chairman, ten departmental representatives, and two profession historians recommended by the Canadian Historical Association. The Public Archives supplies the Secretary. It is apparent that as a result of the Order in Council of 1945 there has been a growth of direct and fruitful contacts between the Public Archives staff and the various departments. This illustrates an important point, viz., that when any government archives possesses adequate quarters and competent staff, many departments are quite willing to solve their burgeoning problems of records management in collaboration with the archives.

Because of its national importance the various aspects of federal archival legislation have been described as a unit. It would be both tedious and ineffective to consider provincial legislation in the same way. Instead, we will examine provincial archival legislation under several distinct headings as follows:

- (1) The form of archival organization or administration.
- (2) The types of records preserved in the archives.
- (3) Provisions for public records management and the relation of the archives thereto.
- (4) Miscellaneous provisions of an archival character.
- (5) Non-archival responsibilities imposed on the archives organization.

(1) The Form of Archival Organization

In four of the ten provinces an independent board with corporate status serves as the custodian of the public archives. In Newfoundland it

⁹ See footnote 4 above.

is the Board of Trustees of Historic Objects, Sites and Records, composed of from five to nine members, appointed by the provincial government. The government names the chairman, and the secretary is the Deputy Minister of Provincial Affairs, an *ex-officio* member. The Board of Trustees of the Public Archives of Nova Scotia consists of eight members, six of them *ex-officio* and two appointed by the Board; the *ex-officio* members are the Lieutenant-Governor, the Chief Justice of the Supreme Court, the Premier, the Leader of the Opposition, the President of Dalhousie University and the President of the Nova Scotia Historical Society. In New Brunswick, the Board of the New Brunswick Museum is the custodian of such portions of the public records as the Lieutenant-Governor in Council may transfer to it. It should be noted, however, that by administrative practice the Legislative Library shares with the Board the custody of non-current public records. The Board consists of eight *ex-officio* members, and not more than ten others appointed by the government. The former include two cabinet ministers, the Leader of the Opposition, the Presidents of New Brunswick, Mount Allison and Saint Joseph universities, the President of the provincial Teachers' Association, and the Mayor of Saint John. The Saskatchewan Archives Board is the smallest of the four. It consists of five members, two named by the Board of Governors of the provincial university, and an *ex-officio* member — the Legislative Librarian; since its establishment in 1945 the government appointees have been cabinet ministers, and the university appointees have been faculty members.

In only one of these four provinces, Saskatchewan, is the Provincial Archivist named in the statute; there he is described as being "in charge of the archives", and is also designated secretary of the Archives Board, though he is not a voting member. In Nova Scotia, the Provincial Archivist possesses the same responsibilities by virtue of administrative practice.

There is an interesting divergency in the legislation of these four provinces regarding the appointment and status of archives staff. In Nova Scotia and New Brunswick the employees are appointed and their salaries determined by the Boards; in the former case they have civil service status so far as superannuation is concerned. In Newfoundland all employees are appointed by the Lieutenant-Governor in Council, and the government may bring some or all under the provisions of *The Civil Service Act*. In marked contrast to Newfoundland, Saskatchewan archives staff are appointed by the Board of Governors of the University with the approval of the Archives Board; the latter Board fixes their salaries but they have the status of university employees rather than civil servants.

The variations which we have observed in those provinces where the governing body is an independent board are paralleled in those provinces where the archives is a branch or department of government. In Quebec

the provincial archives is a branch of the Department of Cultural Affairs, in Manitoba and British Columbia it is a division or branch of the Provincial Library. In both Alberta and New Brunswick the Legislative Library has custody of some public records. Prince Edward Island does not possess an organized public archives at present and the situation in Alberta is more or less the same. Of the provinces just mentioned, none has an archives with a statutory foundation, although in the case of Manitoba this could be achieved by proclaiming a part of *The Legislative Library Act* to be in force.

The Archives Act of Ontario resembles the federal act more closely than does any other provincial statute. It establishes the Department of Public Records and Archives as a separate department of government, headed by an officer with the title "Archivist of Ontario". The act confers on the Archivist the status of a deputy minister, and he reports directly to the member of the cabinet to whom the department is from time to time assigned. Like deputy ministers in all jurisdictions he is appointed by the Lieutenant Governor in Council.

Whether they are under the jurisdiction of a board or not, the eight organized provincial archives agencies all derive either their sole or chief financial support from annual appropriations by the legislatures. At the present time these appropriations appear in the estimates of the Department of Education in New Brunswick, Saskatchewan and British Columbia, of the Department of Provincial Affairs in Newfoundland, of the Provincial Treasury in Nova Scotia, of the Department of Cultural Affairs in Quebec, of the Department of Travel and Publicity in Ontario, and of the Executive Council in Manitoba.

In concluding this examination of the form of archival organization two points may be made. In the first place it is quite apparent that a successful archives agency can exist without the benefit of a statutory foundation, as the British Columbia, Manitoba, and Quebec Archives bear witness. Nevertheless a statutory foundation is to be desired since it confers an official status, a measure of public recognition, and a suggestion of permanence, all of which are vital for an archival institution. Secondly, it is apparent that the independent board form, as well as the government branch or department form, both work well. The choice seems to have been the result of local circumstances in each province and it would be rash to suggest that one is better than the other. Where the independent board form has been adopted, the objective has been four-fold. It elicits interest and support from the public or from non-governmental organizations, it provides a degree of independence from political pressures and prejudices, and it permits the acquisition of financial support from non-governmental sources. The independent board also has the advantage of greater flexibility in operation, in contrast to a branch of government; an example would be the freedom to establish

the qualifications of archives employees and their salary scales, without being bound by the relatively inflexible rules of the public service. On the other hand, the branch of government form has the advantages of a less complicated administrative structure, and a freedom from the vagaries of opinion sometimes displayed by the members of an independent board.

(2) *Types of records preserved in the archives.*

Most of the provincial archives acts follow the example set by the federal act of 1912 in defining the types of records to be collected and preserved. They make it clear that these institutions are to function both as depositories of public records and as recipients of private papers and miscellaneous historical material, both published and unpublished. The Ontario *Archives Act* contains the most extensive listing of varied types of records which the Archives may acquire.¹⁰ In most of the other acts this objective is achieved by a brief general clause. In Saskatchewan, for example, the Archives may acquire "printed documents, manuscripts, records, private papers and any other material . . . having a bearing on the history of Saskatchewan".¹¹ Similar clauses are to be found in the Newfoundland, Nova Scotia and New Brunswick acts.

With regard to municipal or local government records, the provincial governments in Nova Scotia and New Brunswick are empowered by identical *Public Records Acts*¹² to take possession of such records for historical purposes, and all municipal records in these two provinces are vested in the Crown. Both municipal and school district records may be acquired by the provincial archives under legislation in Newfoundland, Ontario, Saskatchewan and British Columbia.

Court records figure in archival legislation in four provinces. The records of the Court of Sessions and the Inferior Court of Common Pleas may be acquired for historical purposes by the aforementioned *Public Records Acts* of Nova Scotia and New Brunswick. The preservation of court records in the Archives is more adequately guaranteed in the Saskatchewan and Newfoundland legislation, which provides for the transfer of records originating in any court in the province.

While it is doubtless true that municipal, school district, and court records can be secured by any provincial archives without the benefit of specific legislation, the aforementioned provisions are nevertheless useful. The original custodians of such records are not infrequently indifferent to their historical value, and in some cases resist efforts to prevent loss or

¹⁰ R.S.O., 1960, Chap. 21, s. 5.

¹¹ *Statutes of Saskatchewan*, 1955, Chap. 84, s. 10.

¹² R.S.N.S., 1954, Chap. 239, and R.S.N.B., 1952, Chap. 184.

deterioration. This can be avoided where the hand of the Provincial Archivist is strengthened by statutory authority.

In connection with the acquisition of private papers, the Saskatchewan *Archives Act* contains the following provision:

"11. The Saskatchewan Archives Board may, by agreement with the donor of private papers, place such restrictions on the use of the papers as may be stipulated in the agreement, and the restrictions shall be binding on all persons during the term of the agreement."¹³

The Newfoundland legislature adopted a similar provision in *The Historic Objects, Sites, and Records Act* of 1959, but also extended it to loans of records. In both cases, of course, the objective was to enable the Archives to give firm guarantees to nervous owners of confidential private papers. Again, we can assume that similar contracts could be negotiated without legislative authorization, but there is a distinct advantage in being able to reassure prospective donors or lenders in these specific terms. It will be recalled that the Massey Commission considered this problem, and recommended that the Dominion Archivist "be authorized to receive papers with such restrictions on their use as the owners propose and as he may find reasonable; and that legislation be introduced to give all protection possible under the constitution to such restrictions".¹⁴ So far, however, federal legislation on this subject has not been enacted.

(3) *Provisions for public records management and its relation to the Archives.*

That public records are Crown property, and that they may be recovered from any person wrongfully in possession of them, is a principle of obvious archival significance; it first appeared in pre-Confederation legislation of Nova Scotia and Quebec.¹⁵ In 1914 the Nova Scotia statute was amended to empower the provincial government "to take proper measures" for the permanent preservation of all public documents or records "and for placing them where they will be available for investigation and to students of history".¹⁶ Identical legislation was later enacted in New Brunswick. That certain public records may have passed into private hands is naturally a much greater possibility in the older provinces, whose history dates back to the 17th and 18th centuries. The most recent effort to cope with this problem is the section of the Newfoundland *Historic Objects, Sites and Records Act* which confers on the Board of Trustees the power to "replevin any document, wherever found,

¹³ *Statutes of Saskatchewan*, 1955, Chap. 84.

¹⁴ *Report of the Royal Commission on National Development in the Arts, Letters and Sciences*, 1949-1951, p. 341.

¹⁵ See footnote 5 above and *Statutes of Nova Scotia*, 1861, Chap. 23.

¹⁶ *Statutes of Nova Scotia*, 1914, Chap. 6, s. 1.

which has once been or should properly be part of the records of the Government of Newfoundland" (section 27).

One might assume that the problem of coping with the steady growth of government files would first become acute in the older eastern provinces, and would produce pressure for legislation sanctioning the destruction of records which had no further administrative value. But, paradoxically, it was in the three young, westernmost provinces that this type of legislation first appeared. Is this evidence of a greater expansion of government services, and hence of paperwork, in the West? Or is the Westerner verbose and the Easterner sparing of words? Or do Eastern officials relieve the pressure in their vaults by less formal procedures? The explanation is not readily apparent, and perhaps must await the development of comparative studies of provincial administration.

Saskatchewan, whose recent archival legislation has been widely praised by archivists, enjoys the dubious honour of having at an earlier date introduced the first Canadian legislation for the destruction of public records. In 1920 *The Preservation of Public Documents Act* was passed, which required that all public documents should be preserved by the department to whose business they belonged until, if they were over ten years old, their transfer to the archives or their destruction was ordered by the Lieutenant-Governor in Council. Legislation in identical terms was passed in Alberta in 1925. In 1936 the British Columbia legislature passed the *Public Documents Disposal Act* which provided a method for the destruction of non-current records. Despite the word "preservation" in its title, the effect of the Saskatchewan statute of 1920 was to facilitate the destruction of records, some of them of historical value, particularly correspondence files.¹⁷ No organized archives which could receive non-current public records existed, and the decision to retain or destroy documents was made by departmental officials exclusively from the viewpoint of administrative convenience. It appears that a similar practice was followed in Alberta.

It was in part because of this unfortunate experience that the Saskatchewan *Archives Act* of 1945 included as one of its terms the repeal of *The Preservation of Public Documents Act*, and the substitution of a procedure whereby the consent of the Provincial Archivist must be secured before any public document is destroyed. This was not, however, the first such provision in Canadian archival legislation. The Ontario *Archives Act* of 1923 had required all public records to be transferred to the archives within twenty years after they had ceased to be in current use and, what was more important, it specified that no record "shall be destroyed or permanently removed without the knowledge and concurrence of the Archivist" (section 6). This was the first occasion in Canada when

¹⁷ See *First Report of the Saskatchewan Archives 1945-46*, pp. 15-16.

by statute the control over the disposal of public records was shared by the cabinet and departmental officials with a professional historian, in the person of the Archivist.

Meanwhile in Saskatchewan it was found desirable to modify the 1945 disposal procedures, which had placed the onus for sanctioning the destruction of documents on the Provincial Archivist and departmental officials. An amendment to the *Archives Act* in 1949¹⁸ created a permanent Public Documents Committee, whose five members represent the specialized knowledge and judgement of the archivist, librarian, accountant, legal counsel, and records management expert. It is this committee which advises the cabinet and the legislature on records disposal programs. This feature of the Saskatchewan *Archives Act* has been adopted, with minor modifications, in British Columbia (1953), Manitoba (1955), and Newfoundland (1959). It is, in my judgement, unfortunate that the documents committee provided by the Nova Scotia *Public Records Disposal Act* of 1958 does not include the Provincial Archivist in its membership.

In Saskatchewan in 1946, on the initiative of the Attorney-General's Department, the legislature enacted *The Registered Documents Destruction Act*,¹⁹ which provides for the destruction or transfer to the Archives of chattel mortgages, lien notes, and similar registered documents over twenty-five years old. These records were creating a space problem in the court houses where they are filed. Archival practice in Saskatchewan has been to select extensive samples of these documents for permanent preservation. Similar legislation had been enacted in Alberta two years earlier,²⁰ but with the significant difference that it did not allow the transfer of any documents to the Archives.

An important aspect of modern public records management is the use of the "scheduling" procedure. This procedure has been defined in one provincial archives report as follows:

"The scheduling of records involves a systematic examination and analysis of files with a view to establishing a date when they may be either destroyed or transferred to the archives. Such a schedule, when approved by the proper authorities, becomes a continuing authorization for the retirement of documents, and stimulates the adoption of better filing methods."²¹

Precedents for adopting this procedure could be found in the records management programs of the British Government, and of the national

¹⁸ *Statutes of Saskatchewan*, 1949, Chap. 119, by which a four-member committee was created, increased to five members by section 5 of Chap. 101 of the *Statutes of Saskatchewan*, 1951.

¹⁹ *Statutes of Saskatchewan*, 1946, Chap. 95.

²⁰ *Statutes of Alberta*, 1944, Chap. 17.

²¹ *Fourth Report of the Saskatchewan Archives*, 1948-50, p. 9.

and some state governments in the United States. In 1949 the Saskatchewan *Archives Act* was amended²² to permit the introduction of the "scheduling" procedure; hitherto the act had only permitted the disposal of accumulations of non-current records by the repeated issuance of special recommendations and Orders in Council. Under the Saskatchewan act a schedule is prepared in the first instance by the officials of a department, whereupon it is submitted to the Public Documents Committee for careful scrutiny. The terms of a typical schedule include directives that after the expiration of specified periods certain classes of departmental records be destroyed and that others be permanently preserved or be transferred to the Archives. Upon approval by the Committee, the schedule comes into effect after adoption by Order in Council, or by resolution of the Legislative Assembly. (If the schedule involves retention periods of less than ten years the Assembly must give its approval).

Since 1949 the scheduling of public records is permitted under legislation adopted in British Columbia (1953), Manitoba (1955), Nova Scotia (1958), and Newfoundland (1959). In Manitoba a special schedule for the Government Liquor Control Commission was enacted in 1945,²³ and in 1955 an amendment to the *Municipal Act* provided a schedule for all municipal corporations in the province.²⁴ In 1956 Saskatchewan provided for the scheduling of the records of rural municipalities;²⁵ to date, however, this excellent principle has not been extended to the records of cities, towns and villages in that province.

Summing up the situation regarding public records management, it can be said that active programs sanctioned either by statute or by executive order exist in the federal government, and in the governments of Newfoundland, Nova Scotia, Ontario, Manitoba, Saskatchewan, and British Columbia; secondly, it appears that the Archives is directly involved in the formulation of these programs in all cases except Nova Scotia.

(4) *Miscellaneous provisions of an archival character.*

As one reviews Canadian archival legislation as a whole, one finds several interesting or unique provisions which do not fit exactly into the categories already discussed. One of these is the section of the Newfoundland act which permits restrictions on the use of public records comparable to those which can be inserted in a contract with a donor of private papers. The section reads as follows:

"28. - (7) Public documents and court records transferred to the archives under this section are subject to such restrictions respecting

²² *Statutes of Saskatchewan*, 1949, Chap. 119.

²³ *Statutes of Manitoba*, 1945, Chap. 20.

²⁴ *Statutes of Manitoba*, 1955, Chap. 46, s. 15.

²⁵ *Statutes of Saskatchewan*, 1956, Chap. 23, s. 18.

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.”²⁶

This problem of giving access to historians to any or all public records was considered by the Massey Commission, which made the following recommendation:

“i. That the Archivist be authorized to accept for preservation records which he considers of permanent national importance, and to maintain restrictions on their use which may be requested by the department concerned and which the Archivist considers reasonable; and that, if he should consider restrictions proposed by a department unreasonable, he have the right to refuse the files, which would then be retained by the department.”²⁷

The Commission felt that a distinction could be made “between the degree of access to be granted to the public generally and that to be accorded to qualified students of history and public affairs”. The report very properly emphasized the contribution to the democratic process which the qualified scholar can make by his investigations of modern administrative and political history; these are only possible when reasonable access is given to public records. One would hope, therefore, that this part of the Newfoundland act is administered in a liberal spirit.

A second provision of some importance is the section of the Manitoba *Public Records Act* of 1955 which governs the practice, which is becoming increasingly widespread in Canada, of reducing the bulk of government files by destroying the original papers after a microfilm copy has been prepared. The Manitoba statute regulates the procedure for the certification of a photographic print, and also declares that “a print from the photographic film is admissible in evidence in all cases, and for all purposes, in or for which the public record so photographed would have been admissible...”²⁸ A comparable statute, the Nova Scotia *Public Records Disposal Act* of 1958, simply sanctions the preparation of photographic copies of public records as a space saving technique; this province follows the common practice of relying on the provisions of the provincial *Evidence Act* to guarantee the admissibility of photographic copies of documents in judicial proceedings.

(5) *Non-archival responsibilities imposed on the archives organization.*

It is quite common for a state historical agency in the United States to be a composite institution, functioning as a public record office and also as the administrator of an historical museum, an historical site and marker program, or sometimes even of an archæological program. This

²⁶ *Statutes of Newfoundland*, 1959, No. 76.

²⁷ *Report of the Royal Commission on National Development in the Arts, Letters and Sciences 1949-51*, p. 338.

²⁸ *Statutes of Manitoba*, 1955, Chap. 57, s. 6, ss. (4).

pattern of organization is much less common in Canada. The New Brunswick Museum might be regarded as an example, were it not that it has functioned as a public record office only to a very limited extent. Newfoundland, however, has adopted this common American pattern of organization and function; the Board of Trustees of Historic Objects, Sites and Records, in addition to its archival duties, has extensive and important responsibilities for maintaining an archæological, historical, and ethnological museum; for preserving and marking historic sites; and for preventing the removal of historic objects from the province. These are all very worthy activities, but in most provinces it has seemed preferable that they be carried on by distinct and separate agencies, with the Provincial Archivist participating, if at all, only as an advisor or consultant.

The essential problem, of course, is to ensure that each of these historical services is carried out at a proper level of efficiency and adequacy, and to prevent one service from flourishing at the expense of the other. Serious financial and administrative problems are involved where these varied functions are combined in a single agency, and on the basis of Canadian experience one can give only very qualified approval to such a combination. The Dominion Archivist, it is true, successfully administers Laurier House, but the character of this historic structure, and the financial provision for its upkeep made by Mr. King, render it a rather special case. Again, the Public Archives of Canada administers an historical museum, as do the Provincial Archives of Nova Scotia and British Columbia. But it is significant that the Massey Commission recommended that for the purpose of creating an adequate national historical museum, the museum in the Public Archives be transferred to the custody of a separate organization. It should be noted that the Public Archives of Canada has never administered the national historic sites and monuments program, although the Dominion Archivist has always been a member of the advisory board which frames policy on this subject. All in all, therefore, developments under the Newfoundland legislation will be watched with great interest, particularly since it appears that the province of Alberta is establishing an institution along similar lines. It is understandable that a composite or multi-function agency should be favoured in an area where financial resources and professional historical assistance are at a premium. But archivists have a well-founded fear that the unspectacular but vital archives function can too easily be sacrificed in a composite historical agency.

From this review of archival legislation in Canada one can draw several general conclusions. First, the pattern of legislation is as diverse as the country itself; its features reflect the differing historical traditions, governmental practices, and degrees of public interest in history, which characterize the several provinces and regions of the nation. This

diversity should not be regretted. One advantage of the federal system of government is that it encourages different experiments in legislation and administration. So far as archival legislation is concerned, it is obvious that this has taken place, and that the results of innovations have been scrutinized from one end of the country to the other; this is beginning to produce elements of uniformity, particularly in the field of public records management. It is unlikely, however, that this uniformity will ever extend much beyond the more "technical" aspects of archival activity.

One must also conclude that, viewing the country as a whole, the most serious deficiencies in existing legislation continue to be in the field of public records management; in some provinces no adequate legislation on the subject exists, and in others the Provincial Archivist is not given a sufficient opportunity to influence policy. Though it has been possible for governments to create an archives institution without a legislative foundation, it requires a carefully developed statute to establish such an institution as a public record office, with a proper role in public records management.

One final thought. A great variety of centenary projects are being discussed throughout the country. It would be most appropriate for both federal and provincial governments, as a contribution to this celebration, to review the existing state of their archival legislation. The objective should be to make appropriate changes, where necessary, to give all public archives institutions the fullest opportunity to serve Canadian society.