

An Act to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence

S.C. 2004, c. 11

Assented to 2004-04-22

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Preamble

WHEREAS it is necessary that

- (a) the documentary heritage of Canada be preserved for the benefit of present and future generations;
- (b) Canada be served by an institution that is a source of enduring knowledge accessible to all, contributing to the cultural, social and economic advancement of Canada as a free and democratic society;
- (c) that institution facilitate in Canada cooperation among the communities involved in the acquisition, preservation and diffusion of knowledge; and
- (d) that institution serve as the continuing memory of the government of Canada and its institutions;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the [*Library and Archives of Canada Act*](#).

INTERPRETATION AND APPLICATION

Definitions

2. The definitions in this section apply in this Act.

“documentary heritage”

« patrimoine documentaire »

“documentary heritage” means publications and records of interest to Canada.

“government institution”

« institution fédérale »

“government institution” has the same meaning as in section 3 of the [Access to Information Act](#) or in section 3 of the [Privacy Act](#) or means an institution designated by the Governor in Council.

“government record”

« document fédéral »

“government record” means a record that is under the control of a government institution.

“Librarian and Archivist”

Version anglaise seulement

“Librarian and Archivist” means the Librarian and Archivist of Canada appointed under subsection 5(1).

“Minister”

« ministre »

“Minister” means the member of the Queen’s Privy Council for Canada who is designated by the Governor in Council as the Minister for the purposes of this Act.

“ministerial record”

« document ministériel »

“ministerial record” means a record of a member of the Queen’s Privy Council for Canada who holds the office of a minister and that pertains to that office, other than a record that is of a personal or political nature or that is a government record.

“publication”

« publication »

“publication” means any library matter that is made available in multiple copies or at multiple locations, whether without charge or otherwise, to the public generally or to qualifying members of the public by subscription or otherwise. Publications may be made available through any medium and may be in any form, including printed material, on-line items or recordings.

“record”

« document »

“record” means any documentary material other than a publication, regardless of medium or form.

- 2004, c. 11, s. 2;
- 2006, c. 9, s. 179.1.

Application

3. This Act binds Her Majesty in right of Canada.

ESTABLISHMENT AND ORGANIZATION

Establishment

4. There is hereby established a branch of the federal public administration to be known as the Library and Archives of Canada presided over by the Minister and under the direction of the Librarian and Archivist.

- 2004, c. 11, ss. 4, 54(E).

Appointment of Librarian and Archivist

- **5.** (1) The Governor in Council shall appoint an officer, to be called the Librarian and Archivist of Canada, to hold office during pleasure and to have the rank and powers of a deputy head of a department.

Acting Librarian and Archivist

(2) If the Librarian and Archivist is absent or incapacitated or if the office of Librarian and Archivist is vacant, the Minister may appoint a person to act as Librarian and Archivist, but the term of such an appointment shall not exceed six months except with the approval of the Governor in Council.

Establishment of Advisory Council

6. The Minister may establish an Advisory Council to advise the Librarian and Archivist with regard to making the documentary heritage known to Canadians and to anyone with an interest in Canada and facilitating access to it.

OBJECTS AND POWERS

Objects

7. The objects of the Library and Archives of Canada are

- (a) to acquire and preserve the documentary heritage;
- (b) to make that heritage known to Canadians and to anyone with an interest in Canada and to facilitate access to it;
- (c) to be the permanent repository of publications of the Government of Canada and of government and ministerial records that are of historical or archival value;
- (d) to facilitate the management of information by government institutions;
- (e) to coordinate the library services of government institutions; and
- (f) to support the development of the library and archival communities.

Powers of Librarian and Archivist

- **8.** (1) The Librarian and Archivist may do anything that is conducive to the attainment of the objects of the Library and Archives of Canada, including
 - (a) acquire publications and records or obtain the care, custody or control of them;
 - (b) take measures to catalogue, classify, identify, preserve and restore publications and records;

- (c) compile and maintain information resources such as a national bibliography and a national union catalogue;
- (d) provide information, consultation, research or lending services, as well as any other services for the purpose of facilitating access to the documentary heritage;
- (e) establish programs and encourage or organize any activities, including exhibitions, publications and performances, to make known and interpret the documentary heritage;
- (f) enter into agreements with other libraries, archives or institutions in and outside Canada;
- (g) advise government institutions concerning the management of information produced or used by them and provide services for that purpose;
- (h) provide leadership and direction for library services of government institutions;
- (i) provide professional, technical and financial support to those involved in the preservation and promotion of the documentary heritage and in providing access to it; and
- (j) carry out such other functions as the Governor in Council may specify.

Sampling from Internet

(2) In exercising the powers referred to in paragraph (1)(a) and for the purpose of preservation, the Librarian and Archivist may take, at the times and in the manner that he or she considers appropriate, a representative sample of the documentary material of interest to Canada that is accessible to the public without restriction through the Internet or any similar medium.

Destruction or disposal

- **9.** (1) The Librarian and Archivist may dispose of any publication or record under his or her control, including by destruction, if he or she considers that it is no longer necessary to retain it.

Restriction

(2) Any such disposition is subject to the terms and conditions under which the publication or record has been acquired or obtained.

LEGAL DEPOSIT

Deposit of publications

- **10.** (1) Subject to the regulations, the publisher who makes a publication available in Canada shall, at the publisher's own expense, provide two copies of the publication to the Librarian and Archivist — who shall acknowledge their receipt — within
 - (a) in any case other than one referred to in paragraph (b), seven days after the day it is made available; or

- (b) in the case of a publication that is in a class prescribed under paragraph (2)(d), seven days after receiving a written request from the Librarian and Archivist or any longer period specified in the request.

Regulations

(2) The Minister may make regulations for the purposes of this section, including regulations

- (a) defining “publisher”;
- (b) respecting any measures that must be taken to make the publications that use a medium other than paper and their contents accessible to the Librarian and Archivist;
- (c) prescribing the classes of publications in respect of which only one copy is required to be provided; and
- (d) prescribing the classes of publications in respect of which the obligation under subsection (1) applies only on a written request from the Librarian and Archivist.

Property

(3) Publications provided to the Librarian and Archivist under this section belong to Her Majesty and form part of the collection of the Library and Archives of Canada.

Each version, edition or form of a publication

(4) For the purposes of this section, every version, edition or form of a publication shall be considered a distinct publication.

OBTAINING ARCHIVAL QUALITY RECORDINGS FOR PRESERVATION PURPOSES

Providing archival quality copy

- **11.** (1) If the Librarian and Archivist determines that a recording that was made available to the public in Canada has historical or archival value, he or she may by a written request require any other person who is legally entitled to provide such a copy to provide to the Librarian and Archivist, in accordance with the terms specified, a copy of that recording in the form and quality that the Librarian and Archivist determines is suitable for archival purposes and specifies in the request.

- Definition of “*recording*”

(2) In this section, “*recording*” means anything that requires a machine in order to use its content, whether sounds, images or other information.

Payment for copy

(3) The Librarian and Archivist shall reimburse the person, other than Her Majesty in right of Canada or one of Her agents, who provides a copy under subsection (1) for the actual cost of making that copy.

Binding on Crown in right of a province

(4) This section binds Her Majesty in right of a province.

Property

(5) Copies provided to the Librarian and Archivist under this section belong to Her Majesty and form part of the collection of the Library and Archives of Canada.

GOVERNMENT AND MINISTERIAL RECORDS

Destruction and disposal

- **12.** (1) No government or ministerial record, whether or not it is surplus property of a government institution, shall be disposed of, including by being destroyed, without the written consent of the Librarian and Archivist or of a person to whom the Librarian and Archivist has, in writing, delegated the power to give such consents.

Right of access to records

(2) Despite anything in any other Act of Parliament, the Librarian and Archivist has a right of access to any record to whose disposition he or she has been asked to consent.

Exception

(3) For the purposes of this section, the Librarian and Archivist may have access to a record to which subsection 69(1) of the [Access to Information Act](#) applies, only with the consent of the Clerk of the Privy Council and to a government record that contains information the disclosure of which is restricted by or pursuant to any provision set out in Schedule II to that Act, only with the consent of the head of the government institution in question.

Right to give access

(4) Despite anything in any other Act of Parliament, any officer or employee of a government institution may grant to the Librarian and Archivist access to any record to whose disposition the Librarian and Archivist has been asked to consent.

Security requirements

(5) The Librarian and Archivist and every person acting on behalf or under the direction of the Librarian and Archivist shall, with respect to access to records, satisfy any security requirements applicable to, and take any oath of secrecy required to be taken by, persons who normally have access to those records.

Transfer of records

- **13.** (1) The transfer to the care and control of the Librarian and Archivist of government or ministerial records that he or she considers to have historical or archival value shall be effected in accordance with any agreements for the transfer of records that may be made between the Librarian and Archivist and the government institution or person responsible for the records.

Regulations

(2) The Governor in Council may, by regulation, prescribe terms and conditions governing the transfer of records under subsection (1).

Government records at risk

(3) If government records referred to in subsection (1) are, in the opinion of the Librarian and Archivist, at risk of serious damage or destruction, the Librarian and

Archivist may require their transfer in the manner and at the time that the Librarian and Archivist specifies.

Records of former government institutions

(4) Except as otherwise directed by the Governor in Council, the Librarian and Archivist shall have the care and control of all records of a government institution whose functions have ceased.

Application

14. Sections 12 and 13 do not apply in respect of records that are library or museum materials kept by a government institution for reference or exhibition purposes.

Restricted access to Privy Council confidences

15. The Librarian and Archivist shall not provide access to confidences of the Queen's Privy Council for Canada to which subsection 69(1) of the [Access to Information Act](#) applies without the consent of the Clerk of the Privy Council.

Public opinion research

15.1 Every department, as defined in section 2 of the [Financial Administration Act](#), shall, within six months after the completion of any data collection done for the purposes of public opinion research carried out under a contract at the request of the department and for the exclusive use of Her Majesty in right of Canada, send to the Librarian and Archivist the written report referred to in subsection 40(2) of the [Financial Administration Act](#).

- 2006, c. 9, s. 180.

SURPLUS CROWN ASSETS ACT

Surplus publications

16. Despite the [Surplus Crown Assets Act](#), all publications that have become surplus to the requirements of any government institution shall be placed in the care or control of the Librarian and Archivist.

[Surplus Crown Assets Act](#) not to apply

17. The [Surplus Crown Assets Act](#) does not apply to any record or publication that is in the care or control of the Librarian and Archivist.

FINANCIAL PROVISIONS

Account

- **18.** (1) There shall be an account in the accounts of Canada called the Library and Archives of Canada Account to which shall be credited all amounts received for the Library and Archives of Canada including by way of gift.

Amounts payable out of Account

(2) Any amounts required for the purposes of this Act may be paid out of the Library and Archives of Canada Account.

Use of funds

(3) Amounts referred to in subsection (1) shall be used in accordance with any terms and conditions attached to them.

GENERAL

Production of certified copy

- **19.** (1) Subject to subsection (2), if the Librarian and Archivist is compelled to produce a record or publication that is under his or her control, the Librarian and Archivist may certify a copy of it and produce that copy, which is receivable in evidence in the same manner as the original without proof of the signature or official character of the person or persons appearing to have certified it.

Production of original

(2) If the court, tribunal or other entity under whose authority the Librarian and Archivist may be compelled to produce a record or publication is satisfied that it is necessary, taking into account the risks implicit in the production of the original and the importance of its preservation and of continued access to it, to order that the original of the record or publication be produced, the court, tribunal or other entity shall ensure that any measures that are required to protect and preserve it are taken and that it is returned to the care and control of the Librarian and Archivist as soon as it is no longer needed for the purposes of the matter in question.

OFFENCES AND PENALTIES

Offence and punishment

- **20.** (1) Every person who contravenes subsection 10(1) or the regulations or fails to comply with a request of the Librarian and Archivist under subsection 11(1) is guilty of an offence and liable on summary conviction
 - (a) in the case of an individual, to the fine referred to in subsection 787(1) of the [Criminal Code](#); and
 - (b) in the case of a corporation, to the fine referred to in paragraph 735(1)(b) of that Act.

No imprisonment in default of fine payment

(2) Despite subsection 787(2) of the [Criminal Code](#), a term of imprisonment may not be imposed for default of payment of a fine imposed under subsection (1).

Recovery of fines

(3) A fine imposed under subsection (1) is a debt payable to Her Majesty in right of Canada and may be recovered as such in any court of competent jurisdiction or by any manner provided for in any Act of Parliament.

AMENDMENTS TO THE COPYRIGHT ACT

21. [Amendments]

CONSEQUENTIAL AMENDMENTS

Access to Information Act

22. [Amendment]

23. [Amendment]

24. [Amendment]

Copyright Act

25. [Amendment]

26. [Amendment]

Department of Veterans Affairs Act

27. [Amendment]

Excise Tax Act

28. [Amendment]

Financial Administration Act

29. [Amendment]

30. [Amendment]

Historic Sites and Monuments Act

31. [Amendment]

Income Tax Act

32. [Amendment]

Injured Military Members Compensation Act

33. [Amendment]

Nunavut Land Claims Agreement Act

34. [Amendment]

Parliament of Canada Act

35. [Amendment]

Pension Act

36. [Amendment]

Privacy Act

37. [Amendments]

38. [Amendment]

39. [Amendment]

40. [Amendment]

41. [Amendment]

Proceeds of Crime (Money Laundering) and Terrorist Financing Act

42. [Amendment]

Public Sector Compensation Act

43. [Amendment]

44. [Amendment]

Public Service Staff Relations Act

45. [Amendment]

46. [Amendment]

War Veterans Allowance Act

47. [Amendment]

Youth Criminal Justice Act

48. [Amendment]

49. [Amendments]

Yukon First Nations Land Claims Settlement Act

50. [Amendment]

Yukon First Nations Self-Government Act

51. [Amendment]

TRANSITIONAL PROVISIONS

No continuation in office

- **52.** (1) The persons who were the National Archivist of Canada and the National Librarian immediately before the coming into force of section 55 cease to hold those offices on the coming into force of subsection 5(1).

Transfer of existing holdings

(2) The records and publications that constituted the collections of the National Archives of Canada and the National Library immediately before the coming into force of section 55 are transferred to the Librarian and Archivist subject to any terms and conditions that were applicable to those records and publications.

Continuation of personnel

(3) Every person who was, immediately before the coming into force of section 55, an employee employed in the National Archives of Canada or the National Library is an employee of the Library and Archives of Canada.

Transfer of funds

(4) All amounts that were in the accounts of Canada called the National Archives of Canada Account and the National Library Special Operating Account immediately before the coming into force of section 55 are transferred to the Library and Archives of Canada Account.

References

- (5) Unless the context requires otherwise, “National Archives of Canada” and “National Library” are replaced by “Library and Archives of Canada” in
- (a) any regulation, as defined in section 2 of the [Statutory Instruments Act](#); and
 - (b) any other instrument made
 - (i) in the execution of a power conferred by or under an Act of Parliament, or
 - (ii) by or under the authority of the Governor in Council.

References

- (6) Unless the context requires otherwise, “National Archivist of Canada” and “National Librarian” are replaced by “Librarian and Archivist of Canada” in
- (a) any regulation, as defined in section 2 of the [Statutory Instruments Act](#); and
 - (b) any other instrument made
 - (i) in the execution of a power conferred by or under an Act of Parliament, or
 - (ii) by or under the authority of the Governor in Council.

References

(7) Unless the context requires otherwise, a reference in any contract or other document to

- (a) the “National Archives of Canada” or the “National Library” shall be read as a reference to the “Library and Archives of Canada”; and
- (b) the “National Archivist of Canada” or the “National Librarian” shall be read as a reference to the “Librarian and Archivist of Canada”.

COORDINATING AMENDMENTS

53. [Amendment]

54. [Amendments]

REPEALS

55. [Repeal]

56. [Repeal]

COMING INTO FORCE

Order

^{*}57. The provisions of this Act, other than sections 21, 53 and 54, come into force on a day or days to be fixed by order of the Governor in Council.

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RELATED PROVISIONS

- — 2011, c. 25, s. 57

Library and Archives of Canada Act

57. Despite sections 58 and 63, the *Library and Archives of Canada Act* continues to apply to the Corporation but only in respect of government records, as defined in that Act, that were under the control of the Corporation on the day before the day on which this Part applies.