

Establishing the Archives of the Northwest Territories: A Regional Case Study in Legality

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As the perception of Canada's public archives has evolved over recent years from storehouses of outdated documents to more advanced centres of information control, the need to predicate public archival activity from a foundation in legislation has become increasingly pressing.¹ In particular, the enhanced profile of an archives within the framework of government administration, from both a depository and a research point of view, has made it virtually mandatory to have the role of archives, as performed within an administrative superstructure, defined in law. This legislation must ensure the recognition of an archives' functional role while at the same time deflecting bureaucratic pressures to have the archives serve non-archival ends, such as general information services or a repository for semi-current, alienable records. Furthermore, there is a need for codification of the basic purposes of a public archives since the increasing use of archives by non-historians is altering the popular perception from repositories for historic documents towards centres of information on various subjects.

When the Northwest Territories undertook to establish a public archival programme in 1978, the initial concern was simply to put the Territories on a footing comparable to the Yukon and the provinces. The initial experience of the NWT Archives to attempt to function without an ordinance exacerbated the almost universal misunderstanding on the part of other colleagues in heritage resource administration, other government officials, and the public at large as to what the repository should do. The necessity of enshrining in law the fundamental precepts of public archival activity in the Territories became the overwhelming priority of myself as Archivist, simply in order to maintain the institution as a recognizable archives.

In stressing the need for an archives ordinance, I pointed to the existence of archival legislation in almost every other province and territory in Canada. I also referred to the recommendations of the International Council on Archives which in 1970 concluded a contract with UNESCO for the preparation of a draft model law on archives to serve all nations and their political infrastructures. The result was the first in a series of UNESCO publications on "Documentation, Libraries and

1 By way of definition, "public archives" are taken to mean those government-sponsored and government-serving institutions which are open to the public; "public records" are taken to mean those records created by the sponsoring government.

Archives,” entitled *Draft Model Law on Archives: Description and Text*, coauthored by Salvatore Carbone and Raoul Gueze of Italy and published in 1972.² The authors not only point out the great necessity for archives legislation, but also allude to the deficiencies in existing legislation around the world. They maintain that

freer and greater access, increasing use of archives for public administration and national development, and the introduction of modern reprographic processes ... have so changed the conception of archives and their management that it has become necessary to establish a new legal basis, and revise the legislation relating to archives in such a way as to bring it into line with the political, legal and technical exigencies of modern development.³

The authors drafted 234 articles intended for both national archives and regional public archives. The articles cover practically every conceivable function of a public archives, including even education and the recruitment of staff. Only certain of these articles are reflected in Canadian archival legislation, and indeed the advisability of codifying training and general administrative activity as law is highly questionable. Nevertheless, many of the model law’s precepts are viable in Canada, especially given that Canadian legislation is inconsistent and largely in need of revamping. These range from the case of Quebec where 86 articles are set down to that of British Columbia where archives legislation is non-existent.⁴ In Nova Scotia, the *Public Archives Act* includes responsibility for “structures, erections, monuments and objects,” while in Alberta archives legislation is included as part of the more general *Historical Resources Act*, with records management responsibilities encompassed in a different statute.⁵ In Prince Edward Island, archives responsibilities are included in the *Archaeological Investigation Act* as well as the *Archives Act*.⁶ In Saskatchewan and Nova Scotia public archival authority is vested in provincial boards of governors, while in Ontario the Provincial Archivist is given the status of a Deputy Minister.⁷ In Quebec the *Archives Act* encompasses the operation of private as well as the National Archives.⁸

As the last region in Canada to develop a public archives, the Northwest Territories was seemingly in the enviable position of drawing strength from eleven other Canadian regional examples. However, the vicissitudes of the existing acts and ordinances, coupled with the enormous detail of UNESCO’s *Draft Model Law*, rendered the initiation of a Northwest Territories archives ordinance largely a creative experience.

2 Salvatore Carbone and Raoul Gueze, *Draft Model Law on Archives: Description and Text* UNESCO, (Paris, 1972).

3 *Ibid.*, Preface.

4 The *Archives Act* of Quebec was passed in the National Assembly on 20 December 1983, and, as of this writing, has yet to be proclaimed.

5 *Public Archives Act, Revised Statutes of Nova Scotia*, 1967, c. 246, p. 3731; *Historical Resources Act, Revised Statutes of Alberta*, 1980, c. H-8; *Department of Public Works, Supply and Services Act, ibid.*, c. D-25.1.

6 See the *Archaeological Investigation Act, Revised Statutes of Prince Edward Island*, 1976, c. 3, pp. 17-18; and *Act To Establish The Public Archives of Prince Edward Island, ibid.*, c. 26.

7 See *Public Archives Act, RSN.S.*

8 See above, footnote 4.

Before addressing the details of the NWT ordinance and the legal pitfalls encountered in establishing this regional public archives, some account must be made of archival activity in the Territories prior to the passage of the ordinance in December 1981. The evolution of the NWT Archives was, in fact, a long, undulating process, fraught with much uncertainty and misconception. Concerns about the disorganization, deterioration, and dispersal of documentary materials relating to the North were invariably associated with the concept of heritage resource control. The first Territorial Archives was actually established in Ottawa, then the Seat of the Territorial Council, in 1962. An archivist, John Bovey, was appointed to organize and inventory the minutes, correspondence, reports and other non-current records in their custody. The Council was then largely an appointed advisory body to the Territorial Commissioner, who in turn reported to the federal Department of Northern Affairs and National Development. Therefore, governmental records relating to much of the administration of the Territories, whether in Ottawa or in several locations in the North, were still under federal jurisdiction.

In 1964, a brief by the Yellowknife Museum Society, "On Territorial Public Archives," was submitted to the Commissioner. It urged the creation of a publicly financed territorial archives in Yellowknife which would control the historical records in its custody and strive for the repatriation of archival materials, including government records, then located elsewhere.⁹ However, as Yellowknife had not yet been named as the capital of the Northwest Territories, the Commissioner was not at liberty to designate this or any other community as the location of the territorial repository. Indeed, the possibility existed that the seat of government would be Fort Smith, where a greater extent of public and private archival material was then located.¹⁰ With the official designation of Yellowknife as the capital in 1968 however, and the consequent creation there of a territorial administration — self directing, but answerable to the Commissioner, who continued to report directly to the Minister of Indian Affairs and Northern Development, but who also now received advice from a fully elected Council — made the establishment of a territorial archival programme in Yellowknife a viable option.

Indeed, pressure to do so soon came from the Department of Indian Affairs and Northern Development, which was undertaking to transfer a series of Northern Branch records to the custody of the Territorial government. Upon learning that the Territorial Department of Planning and Program Evaluation was proceeding to microfilm the series and destroy the original documents, two "consultants" were quickly dispatched from Ottawa to investigate the situation and make recommendations for future activity. Their report strongly recommended that the microfilming project cease because there was no supervision by a qualified archivist, and that "the Northwest Territories should take necessary steps to appoint a territorial archivist immediately."¹¹ The legal basis to create a territorial archives had been provided by the *Historical Resources Ordinance* of 1970, which allowed the

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- 9 A copy of this "Brief" is held in the administrative files of the Archives of the Northwest Territories, and by the author.
- 10 The Northern Life Museum in Fort Smith had been operating under the guidance of the Oblate Fathers there for several years. Its collections include a vast number of photographs and some textual records. The records of the Oblates themselves are held in the Cathedral next door.
- 11 "Survey of Territorial Records in the Northwest Territories," 1971, in the administrative files of the Archives of the Northwest Territories.

Commissioner to “create a Territorial Public Archives and provide for the orderly destruction of government files and for the preservation, classification and indexing of all public documents.”¹² This ordinance called for the establishment of a Northwest Territories Historical Advisory Board to oversee the broad range of heritage resource control, including “the creation and administration of a Territorial Public Archives.”¹³

The following year, the Territorial Council expressed official concern about the absence of any control over museums and heritage resources in general in the Territories.¹⁴ As a result, the Commissioner appointed an *ad hoc* Museum Committee charged with reviewing museum policy and recommending the most feasible approach to heritage resource control. Their report, approved by Council on 28 January 1972, recommended the establishment of a central museum complex in Yellowknife, with an archives component and a strong extension orientation. An official and more detailed proposal, arguing more for centralization, was adopted and made public the following year by the Commissioner.¹⁵

In the meantime, the Yukon Territory, acting upon the stipulations of its *Archives Ordinance* passed in February 1971, was proceeding upon a full and “total” archival programme which included responsibility for directing records management. Brian Speirs was appointed Territorial Archivist there in the spring of 1972 and the archives facility in Whitehorse was opened to the public the following December.¹⁶ The Yukon experiment had the strong personal backing of the Commissioner of the Yukon as well as the Director of the Yukon Regional Library. In 1970, the Provincial Archivist and Librarian of British Columbia, Willard Ireland, had been commissioned to undertake a feasibility study on the establishment of a territorial archival programme. The resulting operation drew heavily upon Ireland’s report and was closely tied to the Yukon Territorial Library system and the Whitehorse Public Library, with which it shared facilities.

In Yellowknife, however, the impetus was continuing for the inclusion of an NWT archives as part of a territorial central museum programme. The 1973 report, accepted by Council, argued that

The location of a central museum in Yellowknife has two additional advantages. The first is that the Government of the Northwest Territories must maintain archives of public documents in Yellowknife and these could be located in the central museum if it was established in the Capital. The second is that the location of the museum in Yellowknife would give the museum staff access to all the resources of the Territorial Government and particularly those of the Department of Education.¹⁷

12 *An Ordinance Relating to Historic Sites, Museums and Archives, Revised Ordinances of the Northwest Territories*, 1974, c. H-2, p. 784.

13 *Ibid.*

14 See Motion 25-744 in *Council of the Northwest Territories Debates*, session 45, 7th Council (17th February 1971).

15 See “Territorial Museum Program,” 6 February 1973, in the administrative files of the Archives of the Northwest Territories, or in the possession of the author.

16 For an account of the development of the Yukon Archives, see Brian Speirs “Yukon Archives — A Regional Experiment,” *The Canadian Archivist* 2, no. 4 (1973), pp. 26-37.

17 “Territorial Museum Program.”

The acceptance of this report as the basis of a territorial archival programme marked the beginning of a series of professional complications which, as of this writing, have yet to be resolved. These problems stem from the concept that a territorial public archives can be administered as an integral part of a museum programme. In 1974, the Right Reverend Henry G. Cook, former Bishop of the Diocese of Mackenzie River, was appointed to oversee the incipient stages of the Heritage Centre. Two years later, this responsibility, as well as the direction of the Territories' heritage resource control in general, was assigned to Dr. Robert Janes, who administered it from within the Department of Natural and Cultural Affairs.¹⁸

In the meantime, a separate department, that of Planning and Program Evaluation, was assigned responsibility for records management in the Northwest Territories. In 1976, this department undertook an evaluation of the "Central Registry," an accumulation of federal records transferred to the custody of the Territorial government and stored in the basement of a business block in downtown Yellowknife. It concluded that "responsibility for storage and disposal of historical records has not been delegated to the proper officials."¹⁹ Later that year, a Territorial Records Manager, Harry Verge, was appointed and assigned to the Department of Finance. In January 1977 the Director of Finance issued a recommendation, subsequently adopted by the Commissioner, that "[the Department of] Natural and Cultural Affairs be delegated the authority and responsibility for the identification, classification and storage of historical records."²⁰

With the approval of this recommendation, it was now possible to create the position of a Territorial Archivist under the aegis of the Northern Heritage Centre. In the summer of 1978, the advertisement for "an NWT Archivist" stated that

The Prince of Wales Northern Heritage Centre is a newly completed museum... This experienced archivist participates as part of the management team ... Close liaison with the curatorial staff of the museum is essential.²¹

The following December, I was appointed Archivist with the responsibility of developing a "total" archives programme along the lines of those operating in the Yukon and the provinces. However, obviation of full development of a territorial archives was foreshadowed by my designation as simply "the Archivist of the Prince of Wales Northern Heritage Centre," and not the "Territorial Archivist," on the grounds that such distinction would disrupt the unity of the Heritage Centre.

As previously stated, the passage of an archives ordinance was my initial concern. Others were the formulation of a detailed policy statement, and the physical transformation of the now allotted space of approximately six thousand square feet within the Heritage Centre and the historic records therein, into a workable archives

18 A special consultant to the project was Raymond O. Harrison, former Director of the Provincial Museum and Archives of Alberta, when the Alberta Provincial Archives functioned as a division of the Provincial Museum.

19 See "The Evaluation of the Central Registry," July 1976, in the administrative files of the Archives of the Northwest Territories.

20 A. Gordon, Director, Department of Finance, to the Assistant Commissioner of the Northwest Territories, 7 July 1977, in the administrative files of the Archives of the Northwest Territories, or in the possession of the author.

21 This ad appeared in the major Canadian newspapers during the first week of September 1978.

and library. This facility was to be open to the public immediately upon the official opening of the Heritage Centre the following April by his Royal Highness, the Prince of Wales. Time limitations dictated foremost attention to the latter priority. As no professional archivist had been consulted with regard to the physical development beforehand, the task proved doubly arduous. Indeed, the basic allocation of space did not account for a reference room, an archival processing area, or library, even though the Archives was assigned responsibility for maintaining a rare book collection and a heritage reference library. Approximately one-half of the remaining space had been set aside as an archivist's office, darkroom, and conservation laboratory. The other half was designated for the storage of historic records. Hurried redesign saw the transformation of the conservation laboratory into a library and archival processing section, and a large adjacent office into a reference room. Furnishing the archives with shelving and providing it with the equipment and supplies necessary for a modern repository engaged most of my time for the following three months.

With the official opening of the Northern Heritage Centre, the Northwest Territories Archives began serving the public.²² A staff of one Archivist and one archives assistant, with secretarial help from within the Heritage Centre, set out to process collections, provide reference service, and fulfill other assigned Heritage Centre responsibilities. The collections consisted of approximately 130 cubic feet of material sealed in various sorts of containers at one end of the storage area. The "central registry" of federal Northern Branch records, some 350 linear feet, would be subject to transfer and processing at a later date. Prior to the preparation of a draft ordinance, however, there were many clarifications and definitions of purpose to be worked out bearing on the legality of the operation now begun.

First, there was the question of the very viability of a Territorial central repository in the largest geographic (1,304,903 square miles), but most under-populated (41,000 people) region in Canada. Should public and private records bearing on the history of two other government administration centres — Inuvik (750 miles away) and Frobisher Bay (1,400 miles away) — be sent to Yellowknife for storage? Logic, at first hand, would have said "no." Nonetheless, as time soon proved, most scholarly research on northern history and culture was being undertaken by parties outside the Territories altogether. Most of these research projects did not relate solely to specified locations, but rather encompassed larger regions, if not the Territories, or the North as a whole. It was only proper, therefore, that such needs be addressed by a central repository.

In facilitating the search for primary information on Territorial history, the Archives was soon able to provide a credible reference and copy service to researchers on the North who either visited Yellowknife or, as was more often the case, submitted written requests for information or copied material. This, coupled with service to government personnel and residents in Yellowknife, the largest community (population 11,000) in the Territories, soon dispelled most questions about decentralization of the Territorial archival programme. Nevertheless, as the Northern Heritage Centre did possess a mandate to encourage and provide

22 For an account of the early functioning of the NWT Archives, see David Leonard, "Focus — Northwest Territories," *Archives Bulletin* 5, no. 1 (February 1980).

assistance for the development of museums in the various regions of the Territories, so too did the Archives undertake a similar responsibility with such centres as the Northern Life Museum in Fort Smith and the Inuit Cultural Institute in Baker Lake. As in most provinces, therefore, when allocation of particular archival spoils of private origin came into question, their proposed destination would depend on their nature as either reflecting Territorial or strictly local history, as well as, of course, on the existence of approved repositories in the given locales.

The second question to face the Archives was the legality of its maintaining custody over Territorial government records. The records received from the first Territorial Archives were no problem as they were the archives of the Territorial Council, which had now legislatively sanctioned the NWT Archives. The federal Northern Branch records of the "Central Registry" in Yellowknife were also little problem, as the Department of Indian Affairs and Northern Development had formally transferred these to the Territorial administration with instructions that they eventually be deposited in a Territorial archives.²³ However, the records currently being created by the Territorial administration were the responsibility, albeit indirect, of the federal government, which appointed the Commissioner and directly financed his administration. The Territorial Council was still only an advisory body, although its ordinances were almost unanimously adopted by the Commissioner. Could the records of the administration, therefore, be legitimately alienated from federal provenance given the overriding statutory prerogative of the Public Archives of Canada? This question is still unanswered, and probably will require the official sanction of the Dominion Archivist in addition to the newly proclaimed *Archives Ordinance*.

A complication involving the alienation of federal records to the NWT Archives without due authority did occur in 1980. Among the private holdings discovered in the Archives storage area was a series of RCMP patrol reports, these being brief, descriptive accounts of conditions noted by officers on patrol from such outposts as Fort MacPherson and Arctic Red River during the 1920s and 1930s. They had been transferred to the incipient Heritage Centre directly by the Yellowknife detachment of the RCMP. When reviewing the holdings of the NWT Archives, Dr. Terry Cook, the federal archivist responsible for the Department of Indian and Northern Affairs, made note of the RCMP material and reported to his colleagues in the PAC responsible for military and police records. Efforts were duly initiated to repatriate this collection to federal provenance. Hurried diplomatic activity ensued, the upshot of which determined that since the records were regional in nature, the Dominion Archivist was willing to sanction their continued storage in Yellowknife, provided that they were not deemed sensitive.²⁴

The case of the RCMP patrol reports reflected a third problem area, and one of great concern to any party seeking to establish a public or private archives. This involved the right of any such institution to declare ownership, or custody, and facilitate public research of documents which had earlier been acquired by another

23 See above footnote 11. The Dominion Archivist, Dr. Wilfred Smith, also sanctioned this transfer. See Dr. Smith to David Leonard, 9 September 1980, in the administrative files of the Archives of the Northwest Territories and in the possession of the author.

24 See J. W. O'Brien, Chief of State and Military Records, to David Leonard, 31 October 1980, in the administrative files of the Archives of the Northwest Territories and in the possession of the author.

agency from private sources. The majority of the private holdings in the NWT Archives had either been acquired by the Commissioner several years earlier, or were purchased from the long since defunct Yellowknife Museum Society. In either case, there was sparse documentation to substantiate the initial deposits, most of which had presumably been accepted with little more than a handshake. Did the Archives have the right to treat such records as donations unto itself? Practicality and convenience would, in many cases, have said "yes," given the maxim of possession being nine-tenths of the law. However, for an institution of Territorial magnitude, soon to be operating from a basis in Territorial law, such casual treatment could hardly be condoned.

As it turned out, many of the more recent depositors were identified, located, and proved amenable to signing official donation agreements. For the earlier acquisitions, which had been purchased from the old Yellowknife Museum Society, the situation was more tenuous. A registration list revealed some of the initial donors, many of whom had long since departed, either southward or to the beyond. In either case, locating them was outside the regional and corporeal limitations of the Archivist. A way out, however, was found in the constitution of the Society, which maintained that it held its artifacts and archival documents as a trust to the people of Yellowknife, to display them and ensure their safe storage.²⁵ When he purchased the holdings of the Society in 1974, it was arguable that the Territorial Commissioner also received responsibility for the "trust" in which the historic collections were initially held, a trust subsequently assumed by the Northern Heritage Centre. If certain of the records had earlier been acquired for purposes outside this trust, it was unknown to the Heritage Centre and contrary to the constitution of the Society. The inherited trust, however, obligated the Archivist to process the archival collections and, subject to conditions such as possible libel, make them available for public research.

Other questions to face the NWT Archives were more administrative than legal. Their consideration was nonetheless an important factor in delineating features of a draft ordinance. The difficulty of operating a public archives from within the framework of a museum-oriented "heritage centre" has been mentioned, and stemmed basically from the position of the Archives as the least publicly visible of all programmes encompassed by the Northern Heritage Centre; its support service to the rest of the Heritage Centre was a major responsibility. There was also a prevailing tendency on the part of other professional staff, trained as museum curators, to see archival records more as paper artifacts than as primary sources of information. Although responsibility to make judgments on strictly archival matters was left to the Archivist, the archival priorities were frequently reversed to serve museum ends, particularly in terms of exhibitions and public events. The Archives was also required to store certain items, such as display materials and memorabilia, which were of interest to the Heritage Centre as a whole, but which were not particularly archival. In drafting an ordinance, clear authority would ideally be given to the Archivist not only to set, but also to arrange archival priorities. Would these, however, encompass other museological services required by the Archivist's

25 See a copy of this constitution in the administrative files of the Archives of the Northwest Territories.

administrative superior? Would the existence of an ordinance strengthen the position of the Archivist sufficiently to allow for the setting and arranging of priorities?

In contrast to "in-house" concerns, the NWT Archives, as a major public research centre in Yellowknife, encountered pressure from the public and government personnel alike to serve more general research needs.²⁶ In 1976, the Northwest Territories Historical Advisory Board had begun a project of acquiring copies of significant historic documents pertaining to the North held in the Public Archives of Canada. It was assumed that the Archivist would continue this project, and seek out material to copy from other repositories. The ethics of such a project by an archives was questionable, although from the standpoint of a general research centre quite acceptable, provided that adherence was paid to copyright agreements and the law. Much of the research in Yellowknife, however, required information on contemporary matters and, as a result, the Archives library came to hold many scientific and cultural serials and monographs relating to the North, including copies of all archaeological reports. The Archives itself came to hold records pertaining to current mining and oil exploration activity. It also became the official northern repository for the papers of the Drury Commission on Constitutional Development in the Northwest Territories, and held copies of the reports and transcripts of the Berger Commission on the proposed Mackenzie Valley pipeline. If the NWT Archives was to serve more general research interests, should these be indicated in legislation?

The question of a reference as opposed to a research service, facing all archivists, was probably more acutely felt in Yellowknife than elsewhere, for, as mentioned, most serious research was undertaken from a distance. Even from within the Northwest Territories, many information requests were received from outside Yellowknife. In deference to these, the Archives staff was found to be spending a greater amount of time than usual in checking information and fulfilling photocopy orders. Orders for photographic prints were often quite vague with selection left to the Archivist's discretion. Conversely, a major museum and facility for public events, the Heritage Centre proved very attractive to certain members of the public who, when visiting the Archives, devolved into so many "casual" researchers so accursed by reference archivists everywhere. During the summer months, their numbers quadrupled. Should the nature and extent of reference/research undertaken by the Archives be set down in legislation?

Another question to face the Archives involved the establishment of an oral history programme. This now widely questioned archival activity was carried on as an important part of the NWT archival programme due mainly to the heavy preponderance in the Territories of native peoples, Indian and Inuit (66 per cent). As the indigenous peoples had not, until recent times, created textual records, an urgent need was felt to preserve as many of their remembrances and oral traditions as possible. As this activity involved the Archives as creators as well as preservers of documents, should it be spelled out in legislation?

26 In addition to the Archives, the Territorial government library provided information on current issues, either Territorial or national.

The final, but most important issue was the question of the relationship between Archives and the Territorial records management programme. In March 1979, records scheduling and inventory procedures, designed to facilitate the proper organization, orderly control, and historical evaluation of the Territorial government's current records, as well as the preservation and destruction of its non-current records, were established by the Territorial Records Manager in consultation with the Archivist.²⁷ They called for the creation of a public records committee, of which the Archivist was to be the chairman and the Commissioner "or his agent" the final approving authority for all schedules. However, at this point in time, the Records Management Branch, like the Archives, was a fledgling operation with but two employees, a makeshift records centre in the basement of a Yellowknife office building, and responsibility for a variety of operations, including forms management. The guidelines would, of course, remain in limbo. In view of this, was it appropriate to enunciate details of a combined archives/records management programme in legislation at this time, when no one knew in what direction it would eventually develop? Would, for example, expediency later dictate that departmental records officers be assigned to the Records Management Branch or that they be identified from within and report directly to particular departments?

Such were some of the questions for consideration when work began on establishing a legal basis for the NWT's archival operation. Although a commissioner's directive would have provided such a basis for the records of the Territorial administration, it was considered more appropriate to seek a legislative ordinance which, when signed by the Commissioner, would encompass both administrative and legislative materials. It would also be more binding as it would be more difficult to alter or rescind than a directive. In initiating this, the situation was propitious.

Numerous and varied examples of Canadian legislation were in existence to draw upon, and most of the public records in the Territories were of recent origin. Indeed, the NWT could prove exemplary in providing an archives/records management interrelationship at an earlier stage of administrative development than any other province or territory in the country. The Public Archives of Canada was proving most cooperative, identifying several series of federal records in Yellowknife as having regional rather than national significance, and thus warranting eventual deposit in the NWT Archives. CBC Mackenzie was also supportive, and agreed to deposit their audio tapes, provided these would be inventoried with copy tapes and inventories supplied back to the studio.

Another positive factor was the sense of trust developing between the Archives and other parties in the Territories. The Yellowknife City Council, for example, agreed to deposit their minutes and other records, while the Métis Association of the Northwest Territories undertook to deposit their "archives."²⁸ A feeling of mutual purpose was likewise developing in many outlying communities as the Archives undertook to sponsor oral history projects involving younger Dene interviewing the elders of their respective bands. A happy working relationship was likewise

27 See "Records Retention and Disposal Schedules," 1 March 1979, in the administrative files of the Archives of the Northwest Territories, or the possession of the author.

28 For an account of the Archives of the Métis Association of the Northwest Territories, see Susan Jackson, "Métis Archive Project," *Archivaria* 8 (Summer 1979), pp. 154-57.

developing between the Archives and the Territorial Government Library, the NWT Library System, and the Yellowknife City Library. The Archives, for example, was designated the Territorial repository for all non-current, hard-copy newspapers, and was to undertake their microfilming, with copies to be made available to other parties.

Responsibility for initiating a draft law was assigned to the Archivist, who was to seek the input of the Territorial Records Manager and liaise with the Director of the Northern Heritage Centre prior to submission to Legislative Counsel. Copies of the Yukon's archival ordinance and various provincial statutes were obtained for consultation, along with UNESCO's *Draft Model Law*; legal terminology would be heavily borrowed from these. In addition to the above noted questions, the main issue was the extent to which the Territorial archival programme should be codified, and to what degree such enshrinement could guarantee positive results. Consideration was thus given to an all-inclusive "omnibus" bill, detailing as many of the Archives' functions and the Archivist's responsibilities as possible. Given the ambiguous role of the Archives within the structure of the Northern Heritage Centre, this could prove a substantive mechanism in maintaining the proper direction of archival activity.

The argument for a detailed bill was, however, outweighed by the limited resources at hand and, as it turned out, the very existing administrative status of the Archives as a section of the Heritage Centre. A detailed ordinance would not only have locked the Archives into a set of operations which, with an existing staff of three, might prove ungovernable, but it would also have identified its place within the administrative structure of the Heritage Centre. Since it was hoped that the Archives would one day soon be placed on a self-administering basis, it was decided to lay out a general draft with enough "clout" so as to leave no doubt in anyone's mind of the status of the NWT Archives as the official Territorial repository for non-current records pertaining to the history of the Territories. Therefore, none of the specified programmes then being undertaken or contemplated, such as oral history, the role of the heritage resources library, the acquisition of copied in addition to original material, the nature and extent of reference/research services, or even the records management programme were spelled out at this time. Such details, it was felt, would be best left to regulation. Nevertheless, provision for all of these activities would be accounted for in more generally stated clauses.

The first draft of the proposed ordinance was presented to the Legislative Counsel on 7 July 1980. In it, by way of definition, the "Archives" was designated as "The Archives of the Government of the Northwest Territories," and the "Archivist" as the officer appointed to administer the ordinance. Deferral of such terms as "Territorial Archives" and "Territorial Archivist" was made in compliance with terminology earlier set down. "Public records" were termed to be

all original documents, manuscripts, inventories, books, pamphlets, periodicals, plans, maps, photographs, films, letters, copies of letters, tape recordings, photographic slides, micrographics, video cassettes, electronic data printouts, or other documentary materials regardless of physical form, held by the Legislative Assembly of the Northwest

Territories and by the executive and administrative departments of the Government of the Northwest Territories or by any commission, office or branch of the public service of this Government.

Such listing of the media types of public records is a standard feature of most Canadian provincial acts, though usually with less detail. Nova Scotia was the only instance at this time where machine readable archives was specified.²⁹ This was considered for the Northwest Territories, but left out, quite frankly, by the existing uncertainty in the area and the unlikelihood that machine readable archives could be handled in Yellowknife for many years to come.

The generally stated objectives of the Archives were set down as follows:

- a) the classification, safekeeping, indexing and cataloguing of all matters transferred to the Archives;
- b) the discovery, collection and preservation of original manuscripts, records, maps, plans, photographs, tape recordings, micrographics and other documents produced by parties outside the Government of the Northwest Territories that have a bearing on the history of the Northwest Territories;
- c) the collection and storage of information reflecting the history of the Northwest Territories;
- d) the conducting of research with a view to preserving the memory of the indigenous peoples and pioneer settlers of the Northwest Territories;
- e) the facilitating of research by the public into the history of the Northwest Territories.

Deviating somewhat from the standard objectives of a public archives was clause "c," which would allow for the continued acquisition of photocopies for research purposes, but which would not, as in the case of the Yukon, spell out such activity as an official objective by referring to "the copying and printing of important public documents relating to the legislative or general history of the Territory."³⁰ Likewise unique was clause "d," which was largely borrowed from the Yukon ordinance, and would facilitate, though not specify, the undertaking of oral history.

Sections 4 and 5 of the draft would ascribe to the Archivist large, but standard and desirable powers in that:

Subject to the regulations, all public records deemed by the Archivist to have historic value shall be delivered to the Archives for safekeeping and custody upon declaration by the Commissioner or his authorized officer that they are non-current records.

and:

Subject to the regulations, all public records must be considered by the Commissioner or his authorized officer for transfer to the Archives within thirty years of their creation.

²⁹ See *Public Archives Act, RSNS*.

³⁰ *Archives Ordinance, Revised Ordinances of the Yukon Territory, 1971, c. A-1/J-3, p. 17.*

These clauses would have effectively placed the onus for demonstrating the “current” or “semi-current” nature of public records upon the government agency controlling them, and would have required that all public records be at least scheduled, though frequently not transferred within thirty years of their creation. As was the case in the Yukon, authority to restrict public access to records was to rest with “the Commissioner or his authorized officer.”³¹

Before consideration and revision of the draft ordinance by the Legislative Counsel was complete, I had left the Northwest Territories and been replaced by Dr. Edwin Welch. Under Dr. Welch’s guidance, with significant and, in certain respects, unfortunate input from the Counsel, two more drafts were prepared prior to consideration and passage by Territorial Council in December 1981. The end result saw much major revision, some of it good, some questionable, some bad if not unworkable. The greatest change involved the entire elimination of all stated objectives, and Sections 5, 6, 7, and 12, which outlined details of the responsibility and authority of a Public Records Committee. Apparently, even those objectives couched in general terminology were considered too pointed for inclusion as legislation, possibly in recognition of the incapacity for fulfilment. The ordinance therefore provides little guidance as to purpose or direction, but stands rather as a blanket statement of legal authority. Nine areas are identified which would require separate regulation.

The most fortunate feature of the *Archives Ordinance* was the elevation of the position of Archivist to that of “Territorial Archivist” with full authority; the most questionable were the following paragraphs from section 5, which state:

- 1) Every public record shall be transferred to the Archivist within 30 years of the date upon which the record came into existence.
- 5) Where a public record has been transferred to the Archivist under this section, the government body from which the record was transferred, may apply to the Public Records Committee, in the prescribed form, to have the public record returned to it for its use.
- 6) Where the destruction of a public record is ordered pursuant to this section, the Committee shall ensure that notice of the destruction is published in the Northwest Territories Gazette, and such other publication as the Committee considers appropriate, at least 15 days prior to the destruction.

To get around the impossible strictures of paragraph 1, a separate regulation would be required for each series of records either 30 years old or historically insignificant. Section 5 gives tacit recognition to the view that archival documents are alienable from provenance upon request, and leaves open to question the status of public records as part of the permanent historic record of the Northwest Territories. Paragraph 6 is followed by another paragraph stating that “the Committee shall review the objection prior to destroying the record;” nonetheless, the inclusion of

31 The Yukon Legislative Assembly has since passed an *Access to Information Ordinance* and updated the related section of the *Archives Ordinance*. Furthermore, assurances were given by the federal Treasury Board that territorial records were not covered under its provisions unless specifically referred to.

paragraph 6, which does not appear to have a precedent in provincial legislation, does allow for a public questioning of the judgement of the Public Records Committee and could easily lead to a series of unwarranted and unjustified complications. Also unique to regional archival legislation was the stipulation of a fine "not exceeding one thousand dollars or to imprisonment for a term not exceeding one year or to both" for any person "who unlawfully damages or mutilates any public record."

The effect which the ordinance will have on the future of the Territorial Archives is difficult to determine. Its passage signalled a clear commitment by Territorial Council towards a "total" archives programme; however, a corresponding unwillingness to provide an adequate staff and facility to carry out its legislated mandate may render such legislation superfluous. As with many Territorial government programmes, the establishment of a Territorial Archives featured an attempt to mirror operations undertaken by most provincial governments. However, an absence of resources results in an over-extension of scope and, consequently, in a vitiation of projects undertaken. Legally, the Territorial Archives exists with all the responsibility and authority of its counterparts in the provinces and in the Yukon; administratively, it continues to function as a division of a museum-oriented "heritage centre."