By Whose Warrant? Analyzing Documentary Form and Procedure

by TOM BELTON

A number of writers have recently emphasized the value of analyzing records in the context of the procedures governing their creation and form. All of these writers agree that understanding the rules of procedure governing document creation can be beneficial to both archivists and researchers. Whether used to establish standardized terms for forms of material, to analyze electronic record systems, or even to set appraisal criteria, the study of procedural context provides a deeper knowledge of the nature of the records being examined. A procedure may be defined as "...the formal sequence of steps, stages or phases whereby a transaction is carried out." A completed transaction results in the creation of a record, the purpose of which is to represent and record that transaction. Supporting documents illustrate the procedure followed to complete the transaction.

The objective of this paper is to identify and analyze a record known as a "Lieutenant-Governor's warrant" and the procedure out of which it originated. I hope to reveal the form and content of the warrant, to reconstruct the procedure followed to create it, and to clarify responsibility for the warrant and the procedure. Also explored will be the relationship of the warrant to "medical" records and procedures. Finally, I would like to generalize by briefly considering some of the descriptive tools through which this understanding of procedure may be communicated to users. The method of analysis is borrowed from Luciana Duranti's series of articles on diplomatics published in Archivaria between 1989 and 1991. Special attention has been paid to her description of the procedure of document creation. The records to be studied are held by the Archives of Ontario, Toronto.

The Lieutenant-Governor's warrant belonged to a category of royal orders used to authorize the detention of persons who were thought to be "dangerously insane." These provisions were first enunciated in Great Britain by the Criminal Lunatics Act of 1800. Such persons were committed to jail by a justice until "His Majesty's pleasure" was known. In practice, this meant indefinite detention. In British North America, this authority was delegated to the monarch's representative. Over time, the concept of royal "pleasure" evolved into the right to confine such "dangerously insane" individuals in asylums until sanity was restored. In the Province of Canada, Governor-General's warrants for the removal of "lunatics" from jail to asylums were
authorized by the 1851 Act authorizing the confinement of lunatics considered to be dangerous to the public while at large. After Confederation, this responsibility passed to the Lieutenant-Governors of the provinces.

Between 1867 and 1906, the Lieutenant-Governor of Ontario authorized the removal of thousands of insane persons from jail to asylums. That this occurred so frequently was largely due to the continued existence of legislation allowing justices to commit such individuals to jail as an alternative to admitting them directly to an asylum by a physician’s certificate. No individual confined in jail could be removed for treatment in an asylum without the intervention of the Lieutenant-Governor. Finally, in 1906, a new Act to amend the Act respecting Lunatic Asylums, and the Custody of Insane Persons required that no “...insane person be committed as a disorderly person to any prison, gaol or lock-up for criminals, unless he be violent and dangerous and there is no other suitable place for his confinement, nor shall he be confined in the same room with a person charged with or convicted of a crime.” At the same time, the statutory authority to remove insane persons from jails to asylums was transferred from the Lieutenant-Governor to the Inspector of Prisons and Public Charities. These changes drastically reduced the number of Lieutenant-Governor’s warrants issued in ensuing years. In addition to removing insane persons from jails to asylums, Lieutenant-Governor’s warrants were used in Ontario between 1867 and 1906 to transfer such individuals from one asylum to another, or to discharge them from custody. For the purposes of this article, I have chosen to analyze an 1892 warrant for removal. The early 1890s represented the peak in the number of Lieutenant-Governor’s warrants issued. For example, 544 were issued in 1891, and 410 in 1892. Of the latter, 263 warrants authorized removals. The procedure was thus quite structured for this period. As a result, I hope to provide the most meaningful analysis of this particular document and the procedure out of which it originated.

The Warrant

This warrant (figure 1) and related documents may be found in the admission files of the Asylum for the Insane, Toronto. The name of the individual in this case has not been removed because she died more than thirty years ago and is thus no longer subject to the Ontario Freedom of Information and Protection of Privacy Act.

Diplomatic Analysis of the Document in Figure 1

Intrinsic Elements:

*Protocol:* “The Province of Ontario...Greeting:”
entitling: “The Province of Ontario”
superscription: “By His Honour...Province of Ontario”
inscription: “To the Sheriff...Toronto”
salutation: “Greeting:”

*Text:* “Whereas the insanity...Warrant and authority”
exposition: “Whereas the insanity...complied with,”
disposition: “Now by these Presents...lawful authority”
clause of injunction: “And for...and authority.”

Eschatocol: “Given, under...Assistant Secretary”
corroboration: “Given, under...Fifty-sixth”
attestations: 2 signatures
qualifications of signature: Lieutenant-Governor, Assistant Secretary

Persons: author of the act: George A. Kirkpatrick
author of the document: George A. Kirkpatrick
addressee of the act: Lottie Edwards
addressees of the document: Sheriff, Medical Superintendent
writer: George A. Kirkpatrick
countersigner: G.E. Lumsden, Assistant Secretary

Type of act: compound act on procedure
Name of act: removal of a lunatic from jail to asylum

Relationship between document and procedure: warrant concluding the execution phase of a compound act on procedure

Type of document: 1 warrant, public, dispositive, copy
Diplomatic description: 1892, December 20, Toronto.
The Lieutenant-Governor of Ontario directs the removal of a lunatic from jail to asylum.
Figure 1

Lieutenant-Governor's warrant for removal of a lunatic: Archives of Ontario, Queen Street Mental Health Centre Records, Admission Orders and Histories, RG 10-20-B-1, #7394/92--The warrant documents the circumstances leading up to, and the act of, removal. The Lieutenant-Governor signs at the top, next to his Privy Seal. The Assistant Secretary countersigns at the bottom.

This brief diplomatic analysis concludes that the Lieutenant-Governor of Ontario issued this warrant (the form of which was verified by the Assistant Secretary), under
his Privy Seal,\textsuperscript{10} to the Sheriff of the City of Toronto and to the Medical Superintendent of the Asylum for the Insane at Toronto. This was done in order to remove an insane individual from jail to asylum. The exposition section of the document informs us that this act could take place because the person’s insanity had been certified in accordance with statute.

A closer analysis of the disposition section of the document reveals, however, the presence of subordinate and related acts which together made up the act of removal. The Lieutenant-Governor first directs that the overall act of removal take place. Following are the subordinate acts comprising the larger one. The Sheriff is commanded to \textit{deliver} the person to “...such of the Provincial Bailiffs as shall produce to you a warrant from the Inspector of Prisons and Public Charities, authorizing such Bailiff or Bailiffs to receive and convey...” the person. Finally, the Lieutenant-Governor commands the Medical Superintendent to receive the individual at the asylum.

\textbf{Figure 2} is the reverse side of the warrant being examined in this case. The warrant was registered on 20 December 1892 (coincident with its execution) by the Deputy Registrar, a subordinate of the Provincial Secretary (who was also Registrar).\textsuperscript{11} This side carries other annotations: “7394” (the registration number assigned by the Toronto Asylum), “No. 5268/1892” (the registration number of the relevant docket in the Provincial Secretary’s Office), “Died March 14, 1901,” “casebook Lib 1 Fol 382,” “Admitted Dec. 22 1892.” These annotations confirm the provenance of the warrant (the Toronto Asylum) and link it to the documentary evidence of the removal procedure.
Lieutenant-Governor’s warrant for removal of a lunatic verso-- The reverse side of the warrant documents the events (registration, admission to asylum) following removal.

This act directed the removal of the “lunatic” from jail and authorized her reception by the asylum. However, the act did not authorize her physical transfer from one institution to the other. This separate, related, and subsequent act required a transfer warrant (figure 3) from the Inspector of Prisons and Public Charities to the Provincial
Bailiff. The disposition of this warrant indicated clearly that the “…removal to such Asylum has been directed by the Lieutenant-Governor.” The use of this transfer warrant was, in turn, authorized in the disposition of the Lieutenant-Governor’s warrant of removal. The transfer warrant is dated 22 December 1892, the same as the date of admission to the Asylum noted on the back of the earlier warrant.

Figure 3
Transfer warrant--RG 10-20-B-1, #7394/92--This related warrant authorized a Provincial Bailiff to transfer the lunatic from jail to asylum.

The Committal, Removal, and Transfer Procedures

The act and procedure was clearly identified in this period as that of “removal.” The term “committal” referred to the previous act of confining the person in jail. Both committal and removal were regulated almost entirely by Chapter 245 of the Revised Statutes of Ontario, 1887, otherwise known as the Act Respecting Lunatic Asylums and the custody of insane persons. Sections 12 through 25 of this act provided for the committal of “dangerous lunatics” to jail by a Justice’s warrant (Form “D” under the Act) “…until the pleasure of the Lieutenant-Governor is known.”

Section 33 of the Act provided for the removal of an insane person from jail to an asylum. Sub-section 33 (1) specified the procedure relating to the removal of an insane prisoner. Upon receipt of certificates of insanity (Forms “G” and “H” under
the Act of two medical practitioners and the County Judge (or two Justices), the Lieutenant-Governor would “...through the Provincial Secretary, direct that the prisoner...be removed to such asylum for the insane, or other place of safe custody, as may by the Lieutenant-Governor be deemed fit.” Section 33 (2) required that each medical practitioner specify in his certificate “...the facts upon which he has formed his opinion.”

The transfer of any individual from jail to a provincial institution, including an asylum, was governed at this time by Chapter 242 of the Revised Statutes of Ontario, 1887, otherwise known as the Act respecting the removal of persons from County Gaols to Provincial Institutions. The procedure was very clearly described in sections 2 and 4 of the Act. The Inspector of Prisons and Public Charities issued two copies of his warrant to the Provincial Bailiff, an official “...employed for the purpose of conveying any person from time to time confined in any of the common gaols of the Province...and liable to be thence lawfully removed to any asylum....” One copy of this warrant was left with the Sheriff, the other with the Medical Superintendent of the relevant asylum.

An examination of the office procedure relating to removals reveals differences from the statutory procedure, helping to specify and clarify responsibility. Figure 4 is the jacket of file docket #5268/1892 from the Secretary’s Office pertaining to the removal of Lottie E. to the Asylum for the Insane, Toronto. The jacket documents the procedure from beginning to end. It began with a request from the Sheriff of the City of Toronto for the removal of an individual from jail to asylum. The Sheriff included Forms “G” and “H” (described above) as well as the several documents required earlier to commit the individual to jail: a copy of the Justice’s warrant of commitment to jail, and the “Schedule 2” (Information to be elicited upon enquiry by the Committing Justice...concerning any person who has been apprehended and who is adjudged by him...to be insane and dangerous at large).
Figure 4

File docket jacket--Archives of Ontario, Provincial Secretary's Office Records, Commissinal and Discharge Files, RG 8-1-2, #5268/1892--The jacket documents the Sheriff's application, the reports of the Deputy Attorney-General and Inspector of Prisons, and the execution of the warrant.

The Assistant Secretary referred the request to the Attorney-General to ensure its compliance with the Statute (as described above). Upon receipt of the Deputy Attorney-General's approval, the request was referred by the Secretary to the Inspector of
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Prisons and Public Charities (in reality, the Inspector of Asylums) for his opinion as to whether or not the person was a suitable subject for treatment in an asylum. The final stage in the procedure was the issuance of the Lieutenant-Governor’s warrant, as noted in a memo “to the file.” Also noted is the transmission of the file to the Medical Superintendent for his information.

According to the jacket, the warrant was issued “to the Inspector of Prisons and Public Charities.” At first glance, this would seem to contradict the fact that the warrant itself is clearly addressed to the Sheriff and Medical Superintendent. However, this note is, in reality, documenting the transmission of the warrant to the Inspector. He could then issue his transfer warrant to the Provincial Bailiff. The removal warrant was then sent on to the Sheriff and the Medical Superintendent. In the meantime, the docket, with all of its relevant legal and medical forms, was sent from the Secretary’s Office to the Medical Superintendent for his information.

The phases of this documentary procedure may be categorized in the following manner, again based on the classification proposed by Luciana Duranti.15 The Sheriff’s application constituted the initiative phase, characterized by those acts which “start the mechanism of the procedure.”16 The Sheriff sent along the documents (principally the Physicians’ and Judge’s certificates) necessary for the inquiry phase, “...constituted by the collection of the elements necessary to evaluate the situation.”17 The referrals to, and subsequent reports from, the Attorney-General’s Office and the Inspector’s Office comprised the consultation phase, characterized by “the collection of opinions and advice after all the relevant data have been assembled.”18 The recommendation of the Inspector, formally embodied in the decision to issue the warrant, constituted the deliberation phase. The deliberation control phase ensued. The draft of the warrant was prepared by the Assistant Secretary and its completeness approved through his signature. The execution phase consisted of three actions which gave “...formal character to the transaction.”19 The Lieutenant-Governor signed the warrant. Following was its registration by the Deputy Registrar. Finally, the Assistant Secretary issued the warrant to the Inspector, who, in turn, sent it along to the Sheriff and the Medical Superintendent.

Responsibility for the Act and the Procedure of Removal

We may conclude that the Lieutenant-Governor was the juridical person responsible for the act of removal. The Inspector, having made the key recommendation and being responsible for the related act of transfer, acted as the administrative authority representing the statutory authority, (i.e., the Lieutenant-Governor through the Provincial Secretary). Responsibility for the procedure of removal clearly rested with the Provincial Secretary’s Office and, to a lesser extent, the Attorney-General’s Office. The Inspector himself, in his 1892 report, identified these roles and responsibilities:

... the documents [authorizing removal] are...forwarded to the Department of the Provincial Secretary, when if they are found to be in proper form and legally executed, they are then transferred to the Inspector of Asylums who recommends the issue of a warrant for the transfer of the patient to the asylum.”20
The Inspector’s interpretation of the procedure thus correctly places administrative responsibility squarely on his own shoulders. The preceding actions are seen to provide him with the statutory and formal authority. The determination that the documents were in “proper form and legally executed” belonged to the Offices of the Provincial Secretary and the Attorney-General.

Responsibility for the documentation of the removal procedure clearly lay with the Office of the Provincial Secretary and Registrar. Additionally, because a legal removal to asylum required evidence of a legal committal to jail having taken place, responsibility for documenting this earlier procedure belonged to that office as well. Consequently, the central files of the Secretary’s Office relating to removals were, somewhat confusingly, identified as “committal” files. Though these files formed part of the office’s central registry, they were listed separately in a Lunatic Index. This index tracked removals (and therefore committals), transfers, and discharges of all warrant patients.

While documentary evidence of parts of the removal procedure appears (or would appear, had the records survived) in the records of the Inspector, Provincial Registrar, the Attorney-General, the Sheriffs, and the Medical Superintendents, it is clear from the analysis above that the whole procedure is documented (until 1900) in the records of the Provincial Secretary’s Office. There is no significant evidence of the procedure in the records of the Lieutenant-Governor, the Assistant Secretary acting for him in this official capacity, nor is there in the records of the Inspector (before 1901), with whom real decision-making responsibility rested. Indeed, the Secretary’s reports to the Lieutenant-Governor identify the procedure as one of many comprising the office’s work.

Relevant Functions of the Provincial Secretary’s Office

Responsibility for documenting committals and removals arose out of the Provincial Secretary’s function as secretary and record-keeper for the Lieutenant-Governor in official, statutory matters. By 1892, this responsibility, along with its related responsibility for countersigning all documents issued under the Great and Privy Seals, had been delegated to the Assistant Secretary. However, the Provincial Secretary was also the Minister responsible for asylums and jails. This subtle, but significant, functional distinction within the Secretary’s Office explains the mysterious absence of the Secretary himself in the recommendations and decision to remove an insane person. The Lieutenant-Governor executed the act of removal, acting on the advice of the Inspector, who was an unelected official. The Assistant Secretary, another unelected public servant, was responsible for procedure and form only.

This apparent lack of elected authority for such a serious restriction of liberty led to the addition of another stage in the consultation phase of the procedure in the late 1890s. After the Inspector’s recommendation, the Provincial Secretary’s recommendation was now required. Figure 5 shows us that the Minister signed this 1900 recommendation not as “Provincial Secretary” but as “Minister in Charge of Lunatic Asylums.” However, the Assistant Secretary still countersigned the warrant and controlled the procedure.
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Figure 5

File docket jacket—Archives of Ontario, Provincial Secretary’s Office Records, Commitment and Discharge Files, RG 8-1-2, #4829/1900—The jacket records the recommendation of the Minister in charge of lunatic asylums, a new addition to the procedure in order to satisfy concerns about elected authority for the act of removal.

Greater advisory authority for the Secretary was followed, ironically, by a loss of procedural and documentary responsibility for his Assistant. After 1900, responsibility for documenting committals and removals was transferred to the Inspector of
Asylums. However, there was no corresponding increase in the Inspector's statutory authority until 1906. The shift in procedural and documentary responsibility was, in all likelihood, due to a decline in the secretarial, record-keeping function within the office of the Provincial Secretary and its gradual decentralization. With respect to the removal procedure, the Secretary was now seen as Minister of Asylums, the constitutionally responsible (i.e., elected) link in the approval chain. Having lost responsibility for documenting the procedure, the Assistant Secretary was left with the strictly formal duty (until the middle part of the twentieth century) of countersigning warrants. The Inspector was now seen as author of the procedure and the records.

**Relationship with Asylum “Medical” Records**

The Lieutenant-Governor's warrant was the result of the statutory procedure of removal, but also one of the causes of the administrative procedure of admission. If the committal file within the Provincial Secretary's Office documented one committal and one removal, then the admission file within the Toronto Asylum records was equally intended to document one admission. The admission procedure was an administrative one, carried out by the Asylum, and chronologically documented in bound registers. Following registration, treatment was documented in casebooks. The reverse side of the warrant described above reveals that this case was documented in a register (number 7394) and a casebook (lib. 1, folio 382, which has not survived).

A closer examination of the admission file reveals that it carries other items (unsent letters, a notice of death) documenting later occurrences and characteristic of the record eventually to be known as the "case file." Consequently, the warrant and the copies of the supporting documents represent the meeting point between many acts and procedures: removal, admission, and treatment. In addition, there were two other possible acts and procedures not documented in this file. These were transfer to another asylum and discharge, both of which required (in the case of warrant patients) recommendations of the Medical Superintendent of the Asylum, the Inspector, and, ultimately, warrants of the Lieutenant-Governor.

The removal procedure required the inclusion of copies of documents from the committal file which, while not medical records, carried medical information relevant to administrative and medical procedures at the Asylum itself. For example, returning to file number 7394, some of the information captured within Forms "G," the Certificates of the Medical Practitioners, was copied into her asylum admission file. This information consisted of "the facts upon which the certificate is based," in short, the patient's mental status at the time of examination. Moreover, her file contains a copy of Schedule 2, "Information to be elicited..." because it served both a legal and a medical purpose. Returning to the 1900 example in figure 5, we note the stamp "Certificate and Schedule copied" indicating the routine nature of this action at the asylums.

**Understanding and Describing Procedure**

What is the value of understanding the procedure governing document creation? Agencies create records because they possess certain functions which result in records
created under rules of procedure. The benefit of such study is a deeper understanding of the whole context of records creation. Procedure does not replace provenance as the context of records creation, rather it reinforces and clarifies provenance as something more than mere organizational context. According to Luciana Duranti, "This kind of study does not displace the traditional archival inquiry into records creators, organizational structures and subjects, but accompanies and complements it."30 David Bearman and Richard Lytle similarly urge archivists to "...capture the full richness of provenance information--the structures, processes, and activities of organizations."31 If an understanding of documentary forms and procedures adds to such richness, the results of such analyses should be accumulated using tools similar to those (such as authority files) used to store information about organizations, functions, and subjects.

Archivists also have an obligation to communicate this information to users. It is first necessary to standardize terms about form and procedure in order that information is communicated in a consistent way. Ideally, standardized terms about procedure should appear in descriptions of all the record-creating bodies involved. Terms about form should appear in the description of the records in which they accumulate. Beyond that, J. Peter Sigmond has described that it would be useful for archivists to create guides to procedures and their forms.32 "Virtual" guides could be created in a hypertext environment. Form and procedure terms could be highlighted and linked to separate descriptions of the form and procedure. These descriptions could in turn contain highlighted references to all the groups of records and organizations linked to the procedure.

This article has attempted to provide an example of an analysis of a particular form, the Lieutenant-Governor's warrant, and its procedure, that of removal. This carefully recorded nineteenth century form and its procedure was relatively simple to analyze from the "bottom-up." All the same, a thorough understanding of the procedure required research into the statutory, organizational, and functional context of the records (the "top-down" analysis) in order to make it complete. According to Heather MacNeil,

The illumination of the provenancial and documentary relationships embodied in organizational structures and bureaucratic procedures, and embedded in documentary forms, depends upon an analysis that continually mediates between acts and the documents that result from them.33

These two approaches revealed the rules and, more importantly, the reality of procedure. That is closer to the truth of what the records represent.

Notes
3 Ibid., pp. 10-23.
5 Statutes of the Province of Canada, 1851, Chapter 83.
7 The Lieutenant-Governor was still required to commit convicted prisoners who became insane, or who were found not guilty of an offence by reason of insanity. This latter circumstance continued, of course, until quite recently under the *Criminal Code of Canada*.


9 Archives of Ontario, Ministry of Health Records, Queen Street Mental Health Centre, Admission Orders and Histories, RG 10-20-B-1, #7394/92.

10 The identification of seals, of course, properly belongs in an analysis of extrinsic elements which, with the exception of annotations noted below, I have not undertaken.

11 No such registration books exist at the Archives of Ontario. It is assumed that they have been destroyed.


13 Archives of Ontario, [Provincial] Secretary’s Office, RG 8-1-2, #5268/1892. This is the number on the back of the Warrant.

14 In reality, Robert Christie was the “Inspector of Asylums.” The 1883 *Act Respecting the Office of the Inspector of Prisons and Public Charities* provided for the existence of two inspectors, one for asylums, the other for prisons and public charities.


16 Ibid.
17 Ibid.
18 Ibid.
19 Ibid.
21 Archives of Ontario, [Provincial] Secretary’s Office Records, Lunatic Index, RG 8-11.
22 *Ontario Sessional Papers*, 1893, no. 90, pp. 5-7.
23 Ibid.
24 For a brief period between 1896 and 1899, the Treasurer was “Minister in Charge of Lunatic Asylums” and, consequently, recommended removals.
25 Archives of Ontario, [Provincial] Secretary’s Office Records, Committal and Discharge Files, RG 8-1-2, #4829/1900.
26 Archives of Ontario, Inventory #8, Records of the Department of the Provincial Secretary, Series Description for RG 8-1-2.
27 A notable exception to this decline was in the area of registration of companies, which assumed a great importance after 1900.
28 Archives of Ontario, Ministry of Health Records, Queen Street Mental Health Centre, Registers and Rolls, RG 10-20-B-3.
29 Case files were not introduced into Ontario psychiatric hospitals until 1907. For more on such matters, see Barbara L. Craig’s series, “Hospital Records and Record-Keeping, c. 1850 - c. 1950,” *Archivaria* 29 (Winter 1989-90) and 30 (Summer 1990).