
NATIONAL ASSEMBLY

THIRTY-SECOND LEGISLATURE

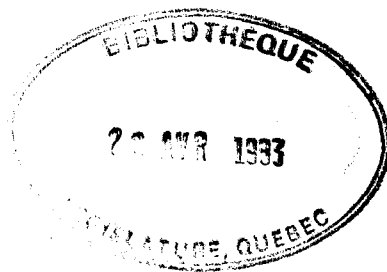
FOURTH SESSION

Bill 3

Archives Act

First reading

Introduced by
Mr Clément Richard
Minister of Cultural Affairs



Québec Official Publisher

1983

EXPLANATORY NOTES

The object of this bill is to ensure the preservation, putting to advantage and accessibility of public archives, provide technical and financial assistance to private archives services and control the removal from Québec of ancient documents of historical interest.

For those purposes, the bill requires public bodies to establish a retention schedule for their documents and to deliver certain classes of public archives to the Minister of Cultural Affairs.

With respect to private archives, the bill provides for the recognition on demand of a private archives service. Such a service will be required to preserve its archives in accordance with the Act and to make them accessible for public examination.

Lastly, the bill enacts provisions respecting the administrative and regulatory powers of the Minister, civil and penal recourses, transitional matters and concordance.

ACTS AMENDED BY THIS BILL

- (1) The Act respecting the Ministère des Affaires culturelles (R.S.Q., chapter M-20)
- (2) The Cultural Property Act (R.S.Q., chapter B-4)
- (3) The Cadastre Act (R.S.Q., chapter C-1)
- (4) The Cities and Towns Act (R.S.Q., chapter C-19)
- (5) The Photographic Proof of Documents Act (R.S.Q., chapter P-22)
- (6) The Act respecting Access to documents held by public bodies and the Protection of personal information (1982, chapter 30)
- (7) The Municipal Code

Bill 3

Archives Act

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

APPLICATION

1. This Act applies to public and private archives.

2. The following archives are public:

- (1) inactive documents of historical interest received or created by a public body in carrying on its activities;
- (2) the documents listed in section 16;
- (3) the documents contemplated in section 19.

All other archives are private.

3. The public bodies contemplated in this Act are listed in the schedule.

4. In this Act, the delivery of a document, unlike the filing thereof, transfers the ownership of the document.

CHAPTER II

ACTIVE AND SEMI-ACTIVE DOCUMENTS

5. A document is active within the meaning of this Act if it is in current use by the public body having received or created it.

A document is semi-active if it is in only occasional use by the public body having received or created it.

6. Every public body must establish and keep up to date a retention schedule for the active and semi-active documents held by it, whether in written, graphic, sound, visual, computerized or other form.

7. The retention schedule must determine the retention period of active and semi-active documents and must identify the series of documents that will become public archives at the end of the retention period.

8. The public body must submit its retention schedule and every modification made to the Minister of Cultural Affairs for approval.

The Minister shall approve the schedule with or without modification. For that purpose, he may obtain the opinion of the Commission des biens culturels established by the Cultural Property Act (R.S.Q., chapter B-4).

Upon written notification of the approval of the Minister, the retention schedule binds the public body.

9. Where the Minister is of opinion that a computerized index of a public body contains information the preservation of which is of historical interest, the Minister may require a copy of all or part of the information.

10. Every person who ceases to hold a non-elective office in a public body must leave every document he received or created in that capacity in the custody of the public body.

The first paragraph does not apply to an elected person who holds a non-elective office in a public body.

11. No person may dispose of an active or semi-active document of a public body before the end of the period fixed in the retention schedule.

CHAPTER III

PUBLIC ARCHIVES

DIVISION I

DELIVERY AND DEPOSIT

12. At the end of the retention period provided for in the retention schedule, every public body referred to in paragraph 1, 2 or 3 of the schedule must, subject to section 17, deliver to the Minister the documents which have been identified so that they may be preserved as public archives.

13. Every public body referred to in paragraphs 4 to 7 of the schedule shall assume the preservation of the public archives which it holds, in conformity with the rules prescribed by regulation.

14. The Minister, after obtaining the advice of the Commission des biens culturels and on the condition he determines, may deposit public archives with a public body or private archives service recognized under this Act.

The body or service shall then assume the preservation of the archives in accordance with the rules prescribed by regulation.

15. Where several public bodies referred to in paragraphs 1 to 3 of the schedule are interested in the preservation of the same public archives, the Minister, after obtaining the advice of the Commission des biens culturels, shall designate which of those bodies will be authorized to preserve them.

16. The following documents are deemed to be public archives:

- (1) the original of an Act;
- (2) the original of a decree or order;
- (3) the authentic copy of an appointment and the original of a proclamation and of a letters patent issued under the Great Seal;
- (4) cadastral plans, the related books of reference and the copy of the cadastre that must remain in the hands of the commissioners under the Seigniorial Act of 1859 (22 Victoria, chapter 48);
- (5) the original of the report submitted by an inquiry commission or an investigation commission set up by a body referred to in paragraph 2 of the schedule and the documents delivered to such commission;

(6) the original of a report submitted by an inquiry commission or an investigation commission set up by a body referred to in paragraph 1 or 3 of the schedule as well as the documents delivered to such commission;

(7) the original of an intergovernmental agreement;

(8) the registers of civil status and the records of land surveyors and notaries delivered to the prothonotaries of the Superior Court;

(9) the documents of the registry offices.

17. The public archives referred to in paragraphs 1 to 5 of section 16 may be deposited with the Minister.

18. The public archives referred to in paragraphs 6 to 8 of section 16 must be delivered to the Minister in accordance with the modalities prescribed by regulation.

Delivery must be made,

(1) in the case of paragraph 6, as soon as the report is made public or, failing that, within one year after the end of the work of the commission;

(2) in the case of paragraph 7, within two years after the date of signing of the agreement;

(3) in the case of paragraph 8, not later than 100 years after the date of closing of the record or register.

19. Documents delivered to a minister by any Member of the National Assembly who sees fit to do so after ceasing to hold office are also deemed to be public archives.

20. The documents of a public body which terminates its activities must be delivered to the Minister so far as the rights and obligations of the body are not assumed by another public body.

DIVISION II

DISPOSAL

21. No person may dispose of or alter public archives. However, the Minister may authorize the disposal of public archives he considers to be irremediably damaged.

The Minister may also authorize the disposal of public archives if he considers that their preservation has ceased to be of historical interest.

DIVISION III

ACCESS

22. Public archives not rendered accessible by the Act respecting Access to documents held by public bodies and the Protection of personal information (1982, chapter 30) may, notwithstanding that Act, be disclosed 100 years after their date or, if they contain nominative information, 30 years after the death of the person concerned.

23. Notwithstanding the Act respecting Access to documents held by public bodies and the Protection of personal information, the right of access for rectification may be exercised, in respect of public archives, only during the lifetime of the person concerned.

CHAPTER IV

PRIVATE ARCHIVES

24. The Minister, after obtaining the advice of the Commission des biens culturels, may on the conditions he determines accredit a private archives service that applies to him therefor.

25. The Minister may grant a subsidy to an accredited private archives service.

26. Every accredited private archives service must preserve its archives in accordance with the regulations of the Government and render them accessible.

27. If an accredited private archives service ceases its operations or fails to comply with the Act or the applicable regulations, the Minister may take any necessary measures to ensure the preservation of the archives of the service.

28. Every person who has the custody or the possession of private archives recognized or classified under the Cultural Property Act must

(1) make an inventory of the archives and send a copy of it to the Minister;

(2) allow the Minister to reproduce or to restore the archives;

(3) unless otherwise agreed, give access to the archives for research purposes;

(4) inform the Minister, within 30 days, of any damage to or destruction of the archives;

(5) inform the Minister of any removal of the archives to any other place in Québec, not later than 30 days before the removal.

29. Every person having possession of private archives may ask the Minister to assume their preservation. The Minister may assume their preservation or deposit the archives with a public body or an accredited private archives service.

30. Private archives deposited with the Minister do not constitute documents of a public body for the purposes of the Act respecting Access to documents held by public bodies and the Protection of personal information.

31. A person who entrusts private archives to the Minister may make a written agreement with him on a period during which the archives are not accessible. Failing such an agreement, the Minister may determine the period.

In no case may the period be longer than 100 years from the date of the documents or, in the case of nominative information, 30 years from the death of the person concerned.

32. The Minister may issue a copy of accessible private archives deposited with him or authorize their examination in the manner provided in sections 10 and 11 of the Act respecting Access to documents held by public bodies and the Protection of personal information.

33. No person may for commercial purposes disintegrate an archives group consisting of documents received or created by a person in the course of his duties.

CHAPTER V

ANCIENT DOCUMENTS

34. Every person who possesses documents created or held before 1 July 1867 by a public body contemplated in paragraph 1, 2 or 3 of the schedule or by a body to which such a body has succeeded must remit them to the Minister.

35. No person holding the original or an authentic copy of an ancient document 100 years old or more, in whatever form, may validly remove it permanently from Québec unless he sends a prior written notice of at least 60 days to the Minister.

36. The notice must contain the description of the ancient document, an estimate of its value, the identity of its owner or holder and, where such is the case, the name of the person interested in acquiring it and the name of the place to which it is to be removed.

37. On receiving the notice, the Minister may acquire the ancient document by preference over any other person by notifying the holder in writing of his intention within the 60 days prescribed in section 35.

CHAPTER VI

ADMINISTRATION

DIVISION I

MANAGEMENT

38. The Minister of Cultural Affairs shall devise a public archives management policy, propose it to the Government, coordinate its implementation and supervise its administration.

Within the framework of the policy, the Minister is responsible for advising the public bodies on the management of their active and semi-active documents.

39. The Minister shall assume the management of the archives delivered to him or deposited with him in accordance with this Act.

He shall, in particular, classify, describe and, where necessary, restore the archives.

He is also responsible for making the archives accessible.

40. The Minister is responsible for promoting the preservation and accessibility of private archives.

For such purpose, he may provide technical assistance to any accredited private archives service.

41. The Minister may

(1) require any information necessary for the administration of this Act or the regulations thereunder;

(2) revendicate public archives possessed without right;

(3) take possession of public archives the preservation of which is endangered;

(4) acquire archives or copies of archives;

(5) reproduce archives;

(6) alienate public archives on the favourable opinion of the Commission des biens culturels;

(7) enter into an agreement with a public body contemplated in paragraphs 4 to 7 of the schedule to assume management of the public archives of the body.

42. The Minister may make copies of public archives that have been delivered to him and certify them as true copies.

A copy issued by the Minister is proof of its tenor and existence with the same force as the original.

In the case of public archives deposited with the Minister, only the depositor may issue a certified true copy.

43. The Minister may delegate in writing and to the extent he indicates, to any person or the holder of any office he may designate, the powers conferred on him by this Act.

DIVISION II

REGULATIONS

44. The Government may, by regulation,

(1) exempt from the application of a provision of this Act or a regulation categories of persons and classes of public bodies and archives that it indicates;

(2) determine, according to the classes of public bodies or inactive documents or public archives, the standards and conditions of management, preservation, restoration, alienation, delivery to or deposit with the Minister, or the removal, alteration and disposal of such documents or archives;

(3) determine the standards and conditions of preservation of the archives of an accredited private archives service.

45. After obtaining the advice of the Commission des biens culturels, the Minister shall publish a draft regulation in the *Gazette officielle du Québec* with a notice that it may be adopted, with or without amendment, on the expiry of 30 days from that publication.

46. Regulations made under this Act come into force ten days after their publication in the *Gazette officielle du Québec* or on any later date determined therein.

CHAPTER VII

SANCTIONS

DIVISION I

CIVIL RECOURSES

47. The alienation or removal of archives or ancient documents and the disintegration of an archives group in contravention of this Act are prohibited.

48. If public archives are altered contrary to this Act, the person who has custody of them is bound to restore them to their former state, at his own expense.

On a motion by the Attorney General, a person authorized by him for that purpose or any interested person, the Superior Court may order the person who has custody of the altered public archives to restore them to their original state or allow the Minister of Cultural Affairs to do so at the expense of that person.

DIVISION II

OFFENCES

49. Every person who contravenes section 6, 8, 18, 28, 34, 36 or 60 is guilty of an offence and liable, in addition to costs, to a fine of \$50 to \$500.

50. Every person who contravenes section 9, 10, 11, 12, 13, 14, 20, 26 or 61 is guilty of an offence and liable, in addition to costs, to a fine of \$300 to \$3 000.

51. Every person who contravenes section 21, 33 or 35 is guilty of an offence and liable, in addition to costs, to a fine of \$500 to \$25 000.

52. Every person who hinders or attempts to hinder the Minister, or a person designated by him under section 43, in the exercise of his duties, or deceives him by concealment or false declaration is guilty of an offence and liable, in addition to costs, to a fine of \$300 to \$3 000.

53. Every person who prescribes or authorizes the commission of an offence against this Act, consents thereto or acquiesces therein is deemed a party to the offence and is liable to the same penalty as that provided for the offender, whether or not such person has been prosecuted or convicted.

54. Proceedings for any offence against this Act are brought in accordance with the Summary Convictions Act (R.S.Q., chapter P-15) by the Attorney General, by a person authorized by him for that purpose or by any interested person.

The proceedings must be brought within two years after the commission of the offence or one year after the Minister has become aware of the offence.

CHAPTER VIII

TRANSITIONAL AND FINAL PROVISIONS

55. The regulations made under Division V of the Act respecting the Ministère des Affaires culturelles (R.S.Q., chapter M-20) or by a public body which relate to matters provided for in this Act are deemed to have been made under this Act, to the extent that they are consistent with it.

56. The documents acquired by the Keeper of the Archives nationales or entrusted to his custody in accordance with section 20 of the Act respecting the Ministère des Affaires culturelles are deemed to have been acquired by the Minister of Cultural Affairs or entrusted to his care under this Act.

57. The Keeper of the Archives nationales and the functionaries and employees under his direction in office on (*insert here the date preceding the date of the coming into force of this bill*) become, without other formality, officers and employees of the Ministère des Affaires culturelles.

58. In any Act, proclamation, regulation, by-law, order in council, order, directive, contract or other document, the expression "Keeper of the Archives nationales" designates the Minister of Cultural Affairs and any reference to Division V of the Act respecting the Ministère des Affaires culturelles or to any of its provisions is deemed a reference to this Act or to the corresponding provision of this Act.

59. Every person who (*insert here the date of the coming into force of this bill*) holds documents contemplated in section 34 must, notwithstanding that section, deliver them to the Minister on or before (*insert here the date occurring one year after the coming into force of this bill*).

60. Every public body in existence on (*insert here the date of the coming into force of this bill*) must, notwithstanding section 8, submit its retention schedule to the Minister before (*insert here the date occurring one year after the coming into force of this bill*) or a later date fixed by agreement with the Minister.

61. Every public body contemplated in paragraph 1 of the schedule which on (*insert here the date of the coming into force of this bill*) is in possession of inactive documents must forward a list of them to the Minister before (*insert here the date occurring three years after the coming into force of this bill*) and deliver them to him on demand.

62. Section 7.5 of the Cultural Property Act (R.S.Q., chapter B-4) is amended by inserting, after the second paragraph, the following paragraph:

“The functions conferred on the Commission under the Archives Act (1983, chapter *insert here the chapter number of this bill*) are exercised on its behalf by a committee composed of three persons designated by the Commission.”

63. Section 7.6 of the said Act is amended by replacing the first paragraph by the following paragraph:

“**7.6** The Commission must give its advice to the Minister on any question he refers to it. It may also make recommendations to the Minister on any matter relating to the conservation of cultural property contemplated in this Act and the management of the public and private archives contemplated in the Archives Act.”

64. Section 21 of the Cadastre Act (R.S.Q., chapter C-1) is replaced by the following section:

“**21.** The duplicate of the cadastre of each seigniority which, under the Seigniorial Act of 1859 (22 Victoria, chapter 48), should have remained in the hands of the seigniorial commissioners, is entrusted to the Minister of Energy and Resources, as also all plans, maps and other like documents.”

65. Section 89 of the Cities and Towns Act (R.S.Q., chapter C-19) is repealed.

66. Section 4 of the Act respecting the Ministère des Affaires culturelles (R.S.Q., chapter M-20) is replaced by the following section:

“**4.** The Minister shall have charge of the provincial libraries and museums, and control of the conservatories of music and dramatic art and of artistic, literary and scientific competitions.

He shall also have charge of the management of archives delivered to or deposited with him.”

67. Division V of the said Act is repealed.

68. Section 2 of the Photographic Proof of Documents Act (R.S.Q., chapter P-22) is amended by replacing the second paragraph by the following paragraph:

"In the case of documents in the custody or possession of the Government, they must be photographically reproduced and destroyed, at the time of such reproduction or subsequently, in the presence of a least two civil servants designated by the Minister of Cultural Affairs."

69. Section 3 of the said Act is amended by replacing the second paragraph by the following paragraph:

"With respect to documents in the possession of the Government, one copy of such declaration shall be remitted to the Minister having the custody of the document and the other to the Minister of Cultural Affairs; in every other case, one copy shall be preserved by the institution concerned and the other shall be deposited in the office of a notary practising in Québec."

70. Section 4 of the said Act is amended by replacing the second paragraph by the following paragraph:

"Any extract or copy of the declaration certified true by the Minister of Cultural Affairs or the person specially authorized by him for that purpose in the case of documents in the custody or possession of the Government or, in all other cases, by the notary in whose records a copy has been deposited in Québec or, as the case may be, by the notary to or with whom such records have been transferred or deposited, may be received in evidence on the same footing as the original."

71. Section 2 of the Act respecting Access to documents held by public bodies and the Protection of personal information (1982, chapter 30) is amended by adding the following paragraph:

"(4) the private archives contemplated in section 30 of the Archives Act (1983, chapter *insert here the chapter number of this bill*)."

72. Section 59 of the said Act is amended by replacing paragraph 6 by the following paragraph:

"(6) to the Minister of Cultural Affairs, in accordance with the Archives Act (1983, chapter *insert here the chapter number of this bill*);".

73. Section 73 of the said Act is replaced by the following section:

"**73.** When the object for which nominative information was collected has been achieved, the public body shall destroy the document, subject to the Archives Act."

74. Section 79 of the said Act is amended by replacing the first paragraph by the following paragraph:

“79. Sections 64 to 77 do not apply to documents delivered to the Minister of Cultural Affairs in accordance with the Archives Act.”

75. Article 161*a* of the Municipal Code is repealed.

76. The Minister of Cultural Affairs is responsible for the administration of this Act.

77. This Act shall operate notwithstanding the provisions of sections 2 and 7 to 15 of the Constitution Act, 1982 (Schedule B of the Canada Act, chapter 11 in the 1982 volume of the Acts of the Parliament of the United Kingdom).

78. This Act has effect from (*insert here the date of the tabling of this bill*).

79. This Act comes into force on the day of its sanction.

SCHEDULE

PUBLIC BODIES

(1) The Government, the Conseil exécutif, the Conseil du Trésor, the government departments and the governmental bodies not contemplated in paragraphs 3 to 7 to which the Government or a minister appoints at least the majority of its members, to which by law the civil servants or employees are appointed or remunerated in accordance with the Civil Service Act (R.S.Q., chapter F-3.1) or whose capital stock is part of the public domain;

(2) The Lieutenant-Governor, the National Assembly and any person designated by the latter to perform duties under its jurisdiction or any body to which the National Assembly appoints the members;

(3) The courts and the investigation commissioners;

(4) The Communauté urbaine de Montréal, the Communauté urbaine de Québec, the Communauté régionale de l'Outaouais, the bodies and agencies established by the Acts incorporating the Communities, a municipality whether incorporated by a general law or a special Act, a county municipality, a regional county municipality and any body constituted as an agency of any of the municipalities or otherwise coming under their authority, and the Kativik Regional Government;

(5) Municipal and intermunicipal transport corporations;

(6) Regional school boards, school boards and corporations of trustees governed by the Education Act (R.S.Q., chapter I-14), the Conseil scolaire de l'Île de Montréal, general and vocational colleges, universities, institutions declared to be of public interest or recognized for purposes of grants under the Act respecting Private Education (R.S.Q., chapter E-9) and establishments of higher education more than one-half of whose operating costs are paid out of appropriations appearing in the estimates tabled in the National Assembly;

(7) Public health or social services establishments contemplated in sections 10 and 11 of the Act respecting health services and social services (R.S.Q., chapter S-5), regional health and social service councils established under the said Act, hospital centres which are private establishments under agreement within the meaning of the said Act and the Corporation d'hébergement du Québec.