



# InterPARES 2 Project

International Research on Permanent Authentic Records in Electronic Systems

## Policy Cross-domain

# Archival Legislation in Canada Federal Government

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### Scope

This report includes information found from an examination of federal legislation available on-line which relates to records preservation in Canada. Legislation examined includes:

- National Archives Act of Canada<sup>1</sup> (August 31, 2004)
- Personal Information Protection and Electronic Documents Act<sup>2</sup> (April 13, 2000)
- Access to Information Act<sup>3</sup> (April 13, 2000)
- Privacy Act<sup>4</sup> (August 31, 2004)

The National Archives Act was used to answer the six bullet points under the Examination of Statutes in the Study Definition document. PIPEDA, ATIA and the Privacy Act were examined to identify any possible areas which may have an impact on preservation (i.e., definitions of records, references to authentication of electronic records, and retention and disposition requirements). Direct quotes from the legislation have been included where most appropriate, with citations provided to applicable sections.

## National Archives Act of Canada

### 1. Definition of Record Section 2 Definitions<sup>5</sup>

“record” includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy thereof.

<sup>1</sup> <http://laws.justice.gc.ca/en/N-2.5/84326.html#section-2>.

<sup>2</sup> [http://www.privcom.gc.ca/legislation/02\\_06\\_01\\_01\\_e.asp](http://www.privcom.gc.ca/legislation/02_06_01_01_e.asp).

<sup>3</sup> <http://www.infocom.gc.ca/acts/default-e.asp>.

<sup>4</sup> <http://laws.justice.gc.ca/en/P-21/index.html>.

<sup>5</sup> <http://laws.justice.gc.ca/en/N-2.5/84326.html#section-2>.

## 2. Assignment of Responsibilities for Preservation

### Section 4 Objects and Functions<sup>6</sup>

This section assigns responsibilities for preservation to the National Archives of Canada.

4 (1) The objects and functions of the National Archives of Canada are to conserve private and public records of national significance and facilitate access thereto, to be the permanent repository of records of government institutions and ministerial records, to facilitate the management of records of government institutions and of ministerial records, and to encourage archival activities and the archival community.

4 (2) The Archivist may do such things as are incidental or conducive to the attainment of the objects and functions of the National Archives of Canada and, without limiting the generality of the foregoing, may

(b) take such measures as are necessary to classify, identify, preserve and restore records;

## 3. Governance Structure

### Section 3 Establishment<sup>7</sup>

This section establishes the National Archives of Canada, presided over by the Minister and under the direction of the National Archivist of Canada. The National Archivist of Canada is appointed by the Governor in Council.

## 4. Scope of Acquisition

The National Archives is mandated to acquire both public and private records. See Section 4 Objects and Functions referred to above under assignment of responsibilities.

## 5. Life Cycle References

### Section 6 (1) Transfer of Records<sup>8</sup>

The records of government institutions and ministerial records that, in the opinion of the Archivist, are of historic or archival importance shall be transferred to the care and control of the Archivist in accordance with such schedules or other agreements for the transfer of records as may be agreed on between the Archivist and the government institution or person responsible for the records.

## 6. Reference to Standards

### Section 4 (2) Objects and Functions<sup>9</sup>

The Archivist may do such things as are incidental or conducive to the attainment of the objects and functions of the National Archives of Canada and, without limiting the generality of the foregoing, may...

(f) advise government institutions concerning standards and procedures pertaining to the management of records;

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<sup>6</sup> <http://laws.justice.gc.ca/en/N-2.5/84326.html#section-4>.

<sup>7</sup> <http://laws.justice.gc.ca/en/N-2.5/84326.html#section-3>.

<sup>8</sup> <http://laws.justice.gc.ca/en/N-2.5/84326.html#section-6>.

<sup>9</sup> <http://laws.justice.gc.ca/en/N-2.5/84326.html#section-4>.

## Personal Information Protection and Electronic Documents Act

### Part 1 Protection of Personal Information in the Private Sector<sup>10</sup>

#### 1. Definition of Record

"record" includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine-readable record and any other documentary material, regardless of physical form or characteristics, and any copy of any of those things.

#### Division 1 Protection of Personal Information<sup>11</sup>

5. (1) Subject to sections 6 to 9, every organization shall comply with the obligations set out in Schedule 1.

#### 7. Collection without knowledge or consent

(3) For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may disclose personal information without the knowledge or consent of the individual only if the disclosure is...

(g) made to an institution whose functions include the conservation of records of historic or archival importance, and the disclosure is made for the purpose of such conservation;

#### Schedule 1<sup>12</sup>

##### 4.5 Limiting Use Disclosure and Retention

##### 4.5.3

Personal information that is no longer required to fulfil the identified purposes should be destroyed, erased, or made anonymous. Organizations shall develop guidelines and implement procedures to govern the destruction of personal information.

### Part 2 Electronic Documents<sup>13</sup>

The summary states that:

“Part 2 sets out the legislative scheme by which requirements in federal statutes and regulations that contemplate the use of paper or do not expressly permit the use of electronic technology may be administered or complied with in the electronic environment. It grants authority to the appropriate authorities to make regulations about how those requirements may be satisfied using electronic means.

<sup>10</sup> [http://www.privcom.gc.ca/legislation/02\\_06\\_01\\_01\\_e.asp#002](http://www.privcom.gc.ca/legislation/02_06_01_01_e.asp#002).

<sup>11</sup> [http://www.privcom.gc.ca/legislation/02\\_06\\_01\\_01\\_e.asp#003](http://www.privcom.gc.ca/legislation/02_06_01_01_e.asp#003).

<sup>12</sup> [http://www.privcom.gc.ca/legislation/02\\_06\\_01\\_01\\_e.asp#013](http://www.privcom.gc.ca/legislation/02_06_01_01_e.asp#013).

<sup>13</sup> [http://www.privcom.gc.ca/legislation/02\\_06\\_01\\_01\\_e.asp#008](http://www.privcom.gc.ca/legislation/02_06_01_01_e.asp#008).

Part 2 also describes the characteristics of secure electronic signatures and grants authority to make regulations prescribing technologies or processes for the purpose of the definition “secure electronic signature.””

### Definitions

"electronic document" means data that is recorded or stored on any medium in or by a computer system or other similar device and that can be read or perceived by a person or a computer system or other similar device. It includes a display, printout or other output of that data.

"secure electronic signature" means an electronic signature that results from the application of a technology or process prescribed by regulations made under subsection 48(1).

Sections 33-47 cover the stipulations for electronic records to be able to be considered equal to paper records. Of note are the following sections:

**36. Documents as evidence or proof** A provision of a federal law that provides that a certificate or other document signed by a minister or public officer is proof of any matter or thing, or is admissible in evidence, is, subject to the federal law, satisfied by an electronic version of the certificate or other document if the electronic version is signed by the minister or public officer with that person's secure electronic signature.

**37. Retention of documents** A requirement under a provision of a federal law to retain a document for a specified period is satisfied, with respect to an electronic document, by the retention of the electronic document if

(a) the electronic document is retained for the specified period in the format in which it was made, sent or received, or in a format that does not change the information contained in the electronic document that was originally made, sent or received;

(b) the information in the electronic document will be readable or perceivable by any person who is entitled to have access to the electronic document or who is authorized to require the production of the electronic document; and

(c) if the electronic document was sent or received, any information that identifies the origin and destination of the electronic document and the date and time when it was sent or received is also retained.

**39. Seals** A requirement under a provision of a federal law for a person's seal is satisfied by a secure electronic signature that identifies the secure electronic signature as the person's seal if the federal law or the provision is listed in Schedule 2 or 3.

**42. Original document** A requirement under a provision of a federal law for a document to be in its original form is satisfied by an electronic document if

- (a) the federal law or the provision is listed in Schedule 2 or 3;
- (b) the electronic document contains a secure electronic signature that was added when the electronic document was first generated in its final form and that can be used to verify that the electronic document has not been changed since that time; and
- (c) the regulations respecting the application of this section to the provision have been complied with.

## Access to Information Act

**Definition of Record** – Is the same as in the *National Archives of Canada Act*

“Record” includes any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microform, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy thereof;

## Privacy Act

### **Section 6 Retention of Personal Information used for an Administrative purpose**<sup>14</sup>

(1) Personal information that has been used by a government institution for an administrative purpose shall be retained by the institution for such period of time after it is so used as may be prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the information.

(3) A government institution shall dispose of personal information under the control of the institution in accordance with the regulations and in accordance with any directives or guidelines issued by the designated minister in relation to the disposal of that information.

### **Section 8 Disclosure of Personal Information**<sup>15</sup>

(2) Subject to any other Act of Parliament, personal information under the control of a government institution may be disclosed

(i) to the National Archives of Canada for archival purposes;

(3) Subject to any other Act of Parliament, personal information under the custody or control of the National Archivist of Canada that has been transferred to the National Archivist by a government institution for archival or historical purposes may be disclosed in accordance with the regulations to any person or body for research or statistical purposes.

<sup>14</sup> <http://laws.justice.gc.ca/en/P-21/94799.html#section-6>.

<sup>15</sup> <http://laws.justice.gc.ca/en/P-21/94799.html#section-8>.

**Conclusions and Observations**

- The definitions for a record in the *National Archives Act of Canada*, *Personal Information Protection and Electronic Documents Act*, and *Access to Information Act* are all very similar, if not identical.
- Both public and private privacy legislation may have an impact on records preservation as they require destruction of records, but do make exceptions for archival institution.
- References to retention and destruction, and life cycle, are most commonly in the form of references to the creation, approval and application of records schedules.

**Part 2 of PIPEDA has a lot to say about electronic records, most of the clauses refer to the presence of electronic signatures.**