# 2004

# CHAPTER A-26.1

## An Act respecting the Archives of Saskatchewan and making consequential amendments to other Acts

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(Assented to June 17, 2004)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

## PART I
## Short Title and Interpretation

**Short title**

**1** This Act may be cited as *The Archives Act, 2004*.

**Interpretation**

**2** In this Act:

(a) **"approved records schedule"** means a records schedule approved by the Public Records Committee;

(b) **"Archives Board"** means the Saskatchewan Archives Board continued pursuant to section 3;

(c) **"board of directors"** means the board of directors of the Archives Board appointed pursuant to section 12;

(d) **"court"** means the Court of Appeal, the Court of Queen's Bench or the Provincial Court of Saskatchewan;

(e) **"court record"** means a record of the office of any court and any document filed in any court;

(f) **"government institution"** means a government institution within the meaning of *The Freedom of Information and Protection of Privacy Act*;

(g) **"minister"** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;

(h) **"ministerial record"** means a record of a member of the Executive Council that pertains to that office and is created in the administration of the public affairs of Saskatchewan, but does not include:

(i) a record that is of a personal or political nature;

(ii) a record that pertains to constituency business;

(iii) a record that is under the control of a government institution; or

(iv) a surplus copy of a record or a copy of a record created only for convenience of reference;

(i) **"Provincial Archivist"** means the Provincial Archivist appointed pursuant to section 16;

(j) **"public record"** means a record created in the administration of the public affairs of Saskatchewan and includes:

(i) a ministerial record; and

(ii) a record of the Legislative Assembly Office or of an officer of the Legislative Assembly;

but does not include:

(iii) a surplus copy of a record or a copy of a record created only for convenience of reference; or

(iv) a court record;

(k) **"Public Records Committee"** means the Public Records Committee established pursuant to section 18;

(l) **"record"** means a record of information in any form and includes information that is written, photographed, recorded or stored in any manner, but does not include computer programs or other mechanisms that produce records;

(m) **"records schedule"** means a formal plan that identifies the public records that are subject to the plan, establishes a classification system and retention periods for those records, and provides for their disposition.

## PART II
## Archives Board

**Saskatchewan Archives Board continued**

**3** The Saskatchewan Archives Board is continued as a corporation pursuant to this Act.

**Objects and functions**

**4** The objects and functions of the Archives Board are the following:

(a) to acquire and preserve public records and private records of significance to Saskatchewan and to facilitate access to those records;

(b) to be the permanent repository of public records and court records;

(c) to facilitate the management of public records and court records;

(d) to encourage and support archival activities and the archival community.

**Offices**

**5** The Archives Board shall maintain offices at any place or places in Saskatchewan designated by the Lieutenant Governor in Council for the safe-keeping, classification, indexing and public use of all public records, court records and other materials that have been deposited with or acquired by the Archives Board pursuant to this Act.

**Operations**

**6** Subject to the approval of the minister, the Archives Board may enter into agreements with any person, body or organization inside or outside Saskatchewan respecting the operations of its offices and its administrative affairs, including agreements respecting the following matters:

(a) office space;

(b) accounting and auditing services;

(c) personnel services, including payment of salaries and pensions.

**Transfer of public records**

**7**(1) All public records are to be transferred to the care and control of the Archives Board:

(a) pursuant to any agreement for the transfer of records between the Archives Board and the government institution or the minister responsible for the records; and

(b) in accordance with an approved records schedule.

(2) Except as otherwise directed by the Lieutenant Governor in Council, the Archives Board shall have the care and control of all public records of any government institution, the functions of which have ceased.

(3) Public records and court records that have been transferred to the care and control of the Archives Board are the property of the Crown.

**Power to receive other historical material**

**8** The Archives Board may acquire by gift, devise or in any other manner printed documents, manuscripts, private papers and any other record or material, to whomsoever belonging, having a bearing on the history of Saskatchewan.

**Custody of transferred records**

**9** The Archives Board is the custodian of all records that are transferred to it pursuant to this Act or any former *Archives Act*.

**Power to make grants**

**10**(1) Subject to subsection (2), to support archival activities and the archival community, the Archives Board may make grants, on any terms or conditions that it considers appropriate, to any person, agency, organization, association, institution or body within or outside Saskatchewan.

(2) The Archives Board shall obtain the approval of the Lieutenant Governor in Council before making any grant pursuant to subsection (1) that is in excess of $50,000 in any fiscal year of the Archives Board.

**Power to charge fees, accept gifts, etc.**

**11** The Archives Board may charge fees for services rendered by it, and may accept and receive gifts, devises and bequests for the purposes of the Archives Board, and, subject to the terms of any trust imposed by the testator or donor of real or personal property, may sell, lease, convey or otherwise dispose of and convert into money any real or personal property given, devised or bequeathed for those purposes.

## PART III
## Administration

**Board of directors**

**12**(1) Subject to subsection (2), the Lieutenant Governor in Council shall appoint a board of directors for the Archives Board consisting of not more than nine persons.

(2) Of the persons appointed pursuant to subsection (1):

(a) one must be the nominee of the University of Saskatchewan;

(b) one must be the nominee of The University of Regina; and

(c) two must be members of the public service of Saskatchewan.

(3) A person appointed pursuant to subsection (1):

(a) holds office for a term not exceeding three years and until a successor is appointed; and

(b) is eligible for re-appointment.

(4) No member of the board of directors shall hold office for more than two consecutive terms.

**Chairperson and vice-chairperson**

**13**(1) The Lieutenant Governor in Council shall designate one member of the board of directors to be chairperson of the board of directors and another to be vice-chairperson.

(2) If the chairperson is absent or unable to act or the office of chairperson is vacant, the vice-chairperson may exercise all the powers and shall perform all the duties of the chairperson.

**Responsibilities of board of directors**

**14** The board of directors is responsible for supervising the archives of Saskatchewan and the work of the Provincial Archivist.

**Remuneration and reimbursement**

**15** The members of the board of directors are entitled to:

(a) other than the members described in clauses 12(2)(a) to (c), remuneration for their services at the rates approved by the Lieutenant Governor in Council; and

(b) reimbursement for their expenses incurred in the performance of their responsibilities at the rates paid to members of the public service of Saskatchewan.

**Provincial Archivist**

**16**(1) The board of directors shall appoint a person to be in charge of the archives of Saskatchewan, to be known as the Provincial Archivist.

(2) The board of directors may appoint an Assistant Provincial Archivist and any other employees that may be required for the operation of the Archives Board, and the persons so appointed shall work under the direction of the Provincial Archivist.

(3) The Provincial Archivist:

(a) shall exercise the powers and perform the duties assigned to the Provincial Archivist by this Act and by the board of directors; and

(b) subject to the direction of the board of directors, is responsible for the general supervision and direction of the operation of the Archives Board.

**Powers of Provincial Archivist**

**17**(1) The Provincial Archivist may carry out any activity that is incidental or conducive to the attainment of the objects and functions of the Archives Board.

(2) Without limiting the generality of subsection (1), the Provincial Archivist may do all or any of the following:

(a) on behalf of the Archives Board, acquire records or obtain the care, custody or control of records;

(b) take any measures that the Provincial Archivist considers necessary to classify, identify, preserve and restore records;

(c) subject to any lawful restriction that applies, provide access to records;

(d) provide information, consultation, reference, research and other services related to archives;

(e) advise government institutions, ministers' offices, the Legislative Assembly Office, officers of the Legislative Assembly, and the courts concerning standards and procedures pertaining to the management of records;

(f) determine which non-current public records are of historic interest and are to be transferred to the care and control of the Archives Board;

(g) provide professional and technical support for archival activities and the archival community;

(h) make known information concerning archives by means of publications and exhibitions;

(i) subject to any term or condition pursuant to which a record has been acquired or obtained, destroy or otherwise dispose of any record under the care and control of the Archives Board.

## PART IV
## Management and Preservation of Records

**Public Records Committee established**

**18**(1) The Public Records Committee is established.

(2) The Public Records Committee consists of:

(a) the Provincial Archivist;

(b) the Legislative Librarian;

(c) the Deputy Minister of Finance or his or her delegate;

(d) the Deputy Minister of Justice or his or her delegate; and

(e) the head of any other government institution that may be designated in the regulations.

(3) The Public Records Committee is to review and approve records schedules for all public records.

**Management and preservation of public records**

**19**(1) Subject to subsections (2) and (3), all public records must be preserved by the government institution whose possession or control they are in until the records are:

(a) transferred to the Archives Board pursuant to this Act; or

(b) destroyed pursuant to this Act.

(2) Cabinet records and the public records of the Office of the Executive Council are to be transferred to the Archives Board:

(a) pursuant to a written agreement between the Archives Board and the Premier in office when the agreement is signed; and

(b) in accordance with an approved records schedule.

(3) Ministerial records are to be transferred to the Archives Board:

(a) pursuant to a written agreement between the Archives Board and the member of the Executive Council to whose office those records pertain; and

(b) in accordance with an approved records schedule.

(4) Records of a member of the Executive Council of the type described in subclauses 2(1)(h)(i) and (ii) are the private property of the member and may be disposed of in any manner that the member considers appropriate.

(5) Without restricting the generality of subsection (4), the member may offer the records mentioned in that subsection to the Archives Board for permanent preservation pursuant to a written agreement between the Archives Board and that member.

**Destruction of public records pursuant to approved records schedule**

**20** No public record shall be destroyed unless its destruction is authorized pursuant to an approved records schedule.

**Management of public records by government institution**

**21**(1) Every government institution shall prepare one or more records schedules respecting the management of all public records that are in the custody or under the control of that government institution.

(2) Every government institution shall submit each of its proposed records schedules to the Public Records Committee for review and approval.

(3) The Lieutenant Governor in Council may fix a date by which a government institution shall submit each of its proposed records schedules to the Public Records Committee for review and approval.

(4) If requested to do so by the Public Records Committee and within the time set by the Public Records Committee, a government institution shall make changes to its proposed records schedule and submit the amended records schedule to the Public Records Committee for review and approval.

(5) Every government institution shall:

(a) implement every approved records schedule that is applicable to that government institution; and

(b) protect and maintain all public records that are in its custody or under its control so that those public records are, considering the purposes for which they are being maintained:

(i) usable and accessible;

(ii) transferable;

(iii) legible and understandable; and

(iv) maintained in a format and in a condition that ensures their retention and preservation in accordance with the applicable approved records schedule.

(6) Subject to subsection (7), no government institution shall destroy a public record that is in its custody or under its control without first obtaining the approval of the Provincial Archivist.

(7) A government institution may destroy any public record:

(a) that is administrative in nature and is addressed in a common administrative records schedule approved by the Public Records Committee; and

(b) that is in the custody or under the control of the government institution.

(8) For the purposes of carrying out its responsibilities pursuant to this section, a government institution may request the advice of the Provincial Archivist as to the nature of any public record that is in the custody or under the control of the government institution.

**Ministerial records and records of the Office of the Executive Council**

**22**(1) In accordance with the regulations, the Archives Board may develop forms of agreements to receive and manage ministerial records and records of the Office of the Executive Council.

(2) Subject to *The Freedom of Information and Protection of Privacy Act*, access to ministerial records and records of the Office of the Executive Council shall be made pursuant to the terms and restrictions of the written agreements governing those records.

**Transfer of public records to Archives Board**

**23** Any public record or any class or series of public records may, on the expiration of 25 years after the date on which the public record was created, be transferred by a government institution, by the Legislative Assembly Office, or by an officer of the Legislative Assembly, as the case may be, to the Archives Board.

**Order for transfer or destruction of public records**

**24** Notwithstanding section 20 or 23, on the recommendation of the minister responsible for the government institution concerned, the Lieutenant Governor in Council may order:

(a) that any public record or any class or series of public records then in the charge of the government institution be transferred to the Archives Board immediately or on the expiration of any period specified in the order;

(b) that any public record or any class or series of public records then in the charge of the government institution be destroyed immediately or on the expiration of any period specified in the order; and

(c) that any public record or any class or series of public records thereafter in the charge of the government institution be destroyed or transferred to the Archives Board on the expiration of any period specified in the order.

**Court records**

**25**(1) Subject to subsections (2) and (3), the Lieutenant Governor in Council may order that any court record or class of court records be transferred to the Archives Board or be destroyed.

(2) An order pursuant to subsection (1) may be made on the recommendation of the Minister of Justice after he or she receives a descriptive list of the court records proposed for disposal that has been approved:

(a) by the Provincial Archivist; and

(b) by:

(i) where the Court of Appeal is concerned, a judge of that court;

(ii) where the Court of Queen's Bench is concerned, a judge of that court; or

(iii) where the Provincial Court of Saskatchewan is concerned, a judge of that court.

(3) No document filed in the office of any court before, on or after the coming into force of this Act shall be transferred or destroyed pursuant to this section unless 25 years have elapsed since the date on which it was filed with the court.

**Municipal and school records**

**26** With the consent of the Provincial Archivist, any municipality or school district in Saskatchewan may deposit any of its non-current records with the Archives Board for preservation.

**Restriction on use of certain records**

**27**(1) By agreement with the donor of private records, the Archives Board may place any restrictions on the use of those records as may be stipulated in the agreement, and the restrictions shall be binding on all persons during the term of the agreement.

(2) Notwithstanding clause 16(2)(a) of *The Freedom of Information and Protection of Privacy Act*, if a record that would otherwise be subject to section 16 of that Act was transferred to the Archives Board before April 1, 1992 pursuant to an agreement between the donor and the Archives Board, the restrictions respecting access to and use of the record contained in the agreement prevail in the case of a conflict between those restrictions and clause 16(2)(a) of that Act.

**Evidence of record**

**28** A copy or photographic reproduction of any record in the custody or under the control of the Archives Board, certified under the hand of the Provincial Archivist to be a true copy, is proof, in the absence of evidence to the contrary, of the authenticity and correctness of the copy or reproduction, without proof of the appointment or signature of the Provincial Archivist.

## PART V
## Financial Matters

**Appropriation**

**29** There shall be paid annually to the Archives Board any sums that may be appropriated by the Legislature for the purposes of the Archives Board.

**Fiscal year**

**30** The fiscal year of the Archives Board is the period commencing on April 1 in one year and ending on March 31 in the following year.

**Audit**

**31** The Provincial Auditor or any other auditor or firm of auditors appointed by the Lieutenant Governor in Council shall audit the records, accounts and financial statements of the Archives Board:

(a) annually; and

(b) at any other times that the Lieutenant Governor in Council may require.

**Annual report**

**32**(1) The Archives Board, in each fiscal year, in accordance with *The Tabling of Documents Act, 1991*, shall submit to the minister:

(a) a report on the business of the Archives Board for the preceding fiscal year; and

(b) a financial statement showing the business of the Archives Board for the preceding fiscal year, in any form that may be required by Treasury Board.

(2) In accordance with *The Tabling of Documents Act, 1991*, the minister shall lay before the Legislative Assembly each report and financial statement the minister receives pursuant to this section.

## PART VI
## General

**Regulations**

**33** The Lieutenant Governor in Council may make regulations:

(a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;

(b) respecting the form of agreements that the Archives Board may enter into for the purpose of receiving and managing records;

(c) for the purposes of subsection 18(2), designating any other government institution, the head of which shall sit as a member of the Public Records Committee;

(d) prescribing any other matter or thing required or authorized by this Act to be prescribed in the regulations;

(e) respecting any other matter or thing the Lieutenant Governor in Council considers necessary or advisable to carry out the intent of this Act.

## PART VII
## Repeal, Transitional, Consequential and Coming into Force

**R.S.S. 1978, c.A-26 repealed**

**34** *The Archives Act* is repealed.

**Transitional**

**35**(1) The persons acting as members of the Archives Board pursuant to section 3 of *The Archives Act* on the day before the coming into force of this Act constitute the board of directors until new appointments are made pursuant to section 12 of this Act.

(2) The person acting as Provincial Archivist pursuant to section 4 of *The Archives Act* on the day before the coming into force of this Act continues as the Provincial Archivist until a new Provincial Archivist is appointed pursuant to section 16 of this Act.

(3) Notwithstanding the repeal of *The Archives Act*, any records schedule approved pursuant to that Act that was in effect on the day before the coming into force of this Act is continued pursuant to this Act and remains in effect until the earlier of:

(a) the date on which that records schedule expires; and

(b) the date on which that records schedule is replaced by an approved records schedule pursuant to this Act.

**S.S. 1990-91, c.F-22.01, section 23 amended**

**36 Clause 23(3)(b) of *The Freedom of Information and Protection of Privacy Act* is repealed and the following substituted:**

**"**(b) section 27 of *The Archives Act, 2004*"**.**

**S.S. 1999, c.H-0.021, section 25 amended**

**37 *The Health Information Protection Act* is amended by adding the following subsection after subsection 25(3):**

**"**(3.1) Subsection (3) does not apply to personal health information collected by the Saskatchewan Archives Board for the purposes of *The Archives Act, 2004*"**.**

**Coming into force**

**38** This Act comes into force on assent.

Regina, Saskatchewan
Printed by the authority of
The Queen's Printer
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