Some Archival Legislation of the British Commonwealth

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National Archives of Rhodesia and Nyasaland

THIS survey is not intended to cover the archival legislation of all Commonwealth countries. Enough is included, however, to give a general picture of the way in which this legislation has evolved; all the significant evidence is exhibited.

After examining some 20 or 30 acts one begins to wonder why legislation for the conduct of an archives service is necessary at all. Certainly it is the common practice to seek statutory authority, but there are a number of cases of well established services operating without it. Indeed it has been quite usual at the initiation of a service for it to run for a number of years with no act behind it; the legislation follows later. On the other hand at least one of the Commonwealth governments has legislation with no service.

It would seem that, fundamentally, the approval of the legislature is necessary for two things that an archives service needs — the financing of its existence and the conferment of powers and duties on its chief officer. A third reason for the intervention of a parliament may occur if the transfer of court records is contemplated. This was of importance in the first British act, that of England in 1838. Its whole machinery was designed for the records of the ancient Chancery of England. The necessity of preserving the proper custody of court records and of making sure that no rights of the individual were abrogated by transfer to the new Public Record Office was paramount.

The first idea of the French revolutionaries was to burn the documentary relics of feudalism; it was only on second thought that the great French National Archives was established to preserve the rights of individuals. Here archives became linked with an emergent nationalism, and this same linkage has become evident in the rising countries of the Commonwealth. Archives serve effectively, and with a measure of greatness, as a focus of national consciousness. Examples might be given of their misuse for this purpose, but not within the Commonwealth. The creed of the im-

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partiality and inviolability of archives is an inheritance of the Anglo-Saxon world, one which is a part of the greater inheritance of the laws and proper use of evidence.

In the East, India, Ceylon, and Mauritius were among the first parts of the Commonwealth to have archival institutions, that of Mauritius indeed being an acquisition from France; but the first archival legislation in the Commonwealth overseas from England was that of Canada in 1912. It was the ancestor of all the archives legislation outside England; simple, direct, and owing really very little to the London model.

When the Union of South Africa first appointed a Chief Archivist he was sent on a tour of Europe and North America. South Africa's act of 1922 — the next in the Commonwealth — owed much to Canada. Thirteen years later the South African act was in turn a model for Southern Rhodesia, and the Rhodesian act was used as an example for that of Ghana in 1955.

All these acts as first passed were essentially simple. They did little more than establish a repository, appoint a chief officer, and define his powers and duties. But with changing ideas of the nature of the service that should be given by an archives and with further responsibilities added by administrative fiat, the legislation has had to be amended and in the process has become more complicated and detailed. Canada's 1912 act survives, surprisingly, but South Africa replaced her 1922 act in 1953, and the Southern Rhodesia act of 1935 was repealed by a Federation of Rhodesia and Nyasaland act of 1958. There was a newcomer in 1957, when New Zealand passed its first archives act, which in its composition profited considerably from the experience accumulated elsewhere in the Commonwealth.

These legislative developments are good evidence of the growth of our profession. On a wider canvas they show that English archival ideas have, for better or worse, been exported to influence a very wide area. In the recent acts there are remarkable similarities; local conditions have demanded very little local adaptation.

By generalizing from the details that follow, we may consider what it is proper — or at any rate usual — for an archives act to include. First comes the establishment of the office, the appointment of the chief officer, and a designation of the authority to whom he is responsible. His duties and his powers must be clearly defined. Apart from the ordinary business of his office, he may be charged with giving advice to departments on "the care, custody and control" (a favorite expression) of their records. Advice is usually the most he can give; advice without power to ensure that it is adopted. He

may be the ultimate authority for the destruction of records, though this is rarely the case; more usually there is a higher authority. He may be permitted to acquire such historical material as he thinks fit, he may demand the return of material in unlawful possession, he may advise holders of other than public archives on the care and use of their collections.

Expansion of services and the modern ideas of record management involve a distinction between "public archives" and "records" — for these are the most favored terms. It is usual to constitute the former as a select class chosen from the latter. In the older acts such matters as the transfer of records, the machinery for the selection of public archives and for the disposal of the remaining records, and the rights of the public to access were left to subsidiary legislation — to determination by a Minister who issued the appropriate regulation or rule. The later acts have elevated these matters by specific inclusion so that they have been the subjects of attention and discussion in Parliament. The act may include a prohibition on the export of historical documents without license; but, whether there is this prohibition or not, there must be penalties for failure to comply with the act's general provisions.

One aspect of practice, general in Australia, needs special mention. The central and state governments show a distinctive pattern of linking their archives with their libraries. In effect the government gives the library such material as the latter wishes to take. This seems to result in a "jewel-box" attitude toward the contents of the archives branch of the library. A change of practice, however, seems now about to occur in Australia.

England and Wales

The "Act for keeping safely the Public Records" received assent 121 years ago, on August 14, 1838. It used the expressions "records" and "public records" interchangeably and defined the former as "all rolls, records, writs, books, proceedings, decrees, bills, warrants, accounts, papers and documents whatsoever of a public nature belonging to Her Majesty, or deposited in any of the offices or places of custody mentioned in the Act."

It is generally accepted that this definition was intended to cover purely legal records and that departmental papers were not taken into consideration by the draftsmen. "Papers and documents . . . of a public nature" referred to such material as, through being held in a court of record, was therefore of a public nature and in fact constituted public evidence.

The first section of the act placed the whole body of legal records under the "charge and superintendence" of the Master of the Rolls. In early medieval times the Master of the Rolls was principal clerk in the Chancery and carried out the duties his name implies. By the sixteenth century, however, he had lost his curatorial functions and had become a judicial officer. The second section enabled Her Majesty by order in council to put records that were in any other custody than the offices listed in the act under the same charge and superintendence. The third section required the Master of the Rolls to take delivery and custody of those legal records of which the charge and superintendence was vested in him, this to be done by his own warrant, countersigned by the Lord High Chancellor. There were certain restrictions on this power, notably that no records might be removed from any of the superior courts of common law or the Court of Admiralty unless they were more than 20 years old or unless the transfer had been requested by the respective chief judge.

The fourth section empowered the Master of the Rolls to conduct those services on which the present rather narrow English conception of an archivist's duties is based — cleaning, repairing, preserving and arranging, and making calendars, catalogs, and indexes. It also clarified a quality of legal custody that is again of general English acceptance. The transfer of any legal record

> . . . shall not in any manner affect the legal authenticity of such record . . . the place where any such record shall be deposited . . . under the authority of the Master of the Rolls shall be taken to be for the time its legal place of deposit, and every such record shall, after any removal under this Act, and in its new place of deposit, be of the same legal validity, and be received or rejected as evidence in all courts or proceedings, in the same manner as if such record had remained in the custody in which it is at the time of the passing of this Act.

The rest of the act was devoted to three purposes, the establishment, staffing, and organization of the Public Record Office; the publication of calendars, catalogs, and indexes; and the making and authentication of copies of records in the custody of the Master of the Rolls. A copy bearing the seal of the Public Record Office and certified as true by a member of the staff was as one with the original in its validity as evidence in any court or before Parliament. The penalty for counterfeiting the seal or for fabricating the certificate was, when the act was passed, transportation for life. Thus evidence was to be obtained from the Public Record Office in the same way as from the court of origin; the public lost no rights by the transfer.

So far, to repeat, departmental papers had not been mentioned; but neither had they been specifically excluded. Problems of space

and storage for files are no modern phenomenon. One can fairly suspect that between 1838 and 1852 the act was read with care to see whether or not departmental papers could be brought within its scope, for in the latter year an omnibus order in council "relating to Her Majesty's Public Documents" placed all of them under the charge and superintendence of the Master of the Rolls and made them entirely subject to the provisions of the act.

The Royal Commission on Public Records of 1910 commented in its report on the position that had developed after 1852:

> . . . the whole of the archives of our State departments in England are now . . . in the charge and superintendence of the Master of the Rolls. It follows that he can at any moment assume custody of all or any of them by issuing warrants under his hand as provided by the act; and this without any exception for documents in current use in their respective Departments, or of a specially confidential nature, and without any requirement of approval by the heads of Departments, or even any provision for consulting them. In other words, it is possible, as a matter of strict law, for the Master of the Rolls, by a stroke of the pen, to dislocate the whole executive machinery of the State.

The same report commented feelingly later that the situation was tolerable only because "in this as in many other cases the work of English public servants is more intelligent than the letter of their official rules."

Further legislation was enacted in 1877 (40 and 41 Victoria, c. 55) and 1898 (61 and 62 Victoria, c. 12). The main purpose of the first amending act was to establish a procedure for the disposal of documents, by destruction or otherwise, and in this act the word "documents" is used with deliberate meaning to specify both records in the sense of legal records and papers in the sense of departmental papers. The second amending act merely altered the procedure on a point of detail.

The procedure, which was detailed in rules made by the Master of the Rolls, permitted the consideration by an inspecting committee of schedules of records for disposal. The committee consisted of members of the Public Record Office staff, one of whom had to be a barrister of 7 years' standing; and the schedules might cover documents in the Public Record Office, documents in the possession of departments, or documents that in the ordinary course would be created by departments. This last possibility allowed disposal instructions of continuing effect — in other words, standing instructions — to be drawn up. The schedules were prepared by the departments concerned, agreed to by the committee, and then laid before both Houses of Parliament for 4 weeks. No documents

earlier in date than 1660 could be disposed of; and, curiously, although Parliament had to see the schedules, neither House had any power to vary them.

This committee procedure may be traced back to 1859, when on a Treasury proposal a body of three men — one representing the Treasury, another the department concerned, and the third the Public Record Office — met to examine the papers sent in by each department and to report what should be kept and what destroyed. It is from these beginnings that the present practices in many Commonwealth countries in regard to the disposal of records have stemmed.

The terminology that evolved in the Public Record Office Acts is clear. The words "archives" or "public archives" are unknown; "records" or "public records" are the legal evidence of the courts; and "documents" are inclusive of "records" and departmental papers.

But all this is now changed. The Grigg Report contained some not unexpected criticisms of the legislation and a number of recommendations aimed at the removal of their sources. It advocated, among other things, the repeal of the Public Record Office Acts, the transfer of the headship of the Office from the Master of the Rolls to a Minister, and a new system of selection for preservation.

The report is dated May 1954; an act embodying its main recommendations was introduced in the House of Lords in November 1957, came to the Commons in March 1958, and received the Royal Assent on July 23, 1958. The direction of the Public Record Office is transferred to the Lord Chancellor, who becomes generally responsible for the care of public records. This choice of officer was not envisaged by the Grigg Report and is at variance with its suggestions. Indeed it was the subject of criticism when the bill was under discussion, criticism on the grounds that the Lord Chancellor was relatively inaccessible to the questions of members of the Commons. It is, however, a choice that reflects the traditional allocation of responsibility for the public records to a high judicial officer rather than to the civil administration. The act has shifted the headship of the Public Record Office from the Master of the Rolls, who does not sit in Parliament, to his superior officer, who does.

The Master of the Rolls, however, is not completely divorced from responsibility for records, as distinct from that for the Public Record Office. He continues "to be responsible for and to have custody of the records of the Chancery of England" and can determine where they are to be deposited. But after they are deposited in

the Public Record Office they become subject to the directions of the Lord Chancellor as are the other records there.

"Public records" are now defined at length. Basically they are the records of, or those held in, any Government department in the United Kingdom, or the records of any office, commission, or other body or establishment under H. M. Government in the United Kingdom other than those mainly concerned with Scottish affairs. The definition includes the legal records of the courts in England and Wales but not those of Scotland and Northern Ireland; nor does it include the records of local government authorities.

Before the passing of this act the public had access to the records of most departments up to the end of the year 1902, a matter of declaration by each department. The act introduces a right of access generally to records 50 years old. There are certain safeguards; the Lord Chancellor may vary this age for any particular class of records and further

> . . . if it appears to the person responsible for any public records which have been selected by him . . . for permanent preservation that they contain information which was obtained from members of the public under such conditions that the opening of those records to the public . . . would or might constitute a breach of good faith on the part of the Government or on the part of the persons who obtained the information, he shall inform the Lord Chancellor accordingly and those records shall not be available.

The public is also denied access to records the disclosure of which is prohibited by statute. Seventeen such statutes are listed in a schedule, ranging from the Statistics of Trade Act to the Defence Regulations.

This age of 50 years for record access came under fire in the Commons; and the Opposition moved, with strong argument, that it be reduced to 40. When the matter went to a vote, however, the motion was defeated, 38 to 22. It will be noted that the interest of the House in the act was limited — the total House membership is 630.

Departments are to transfer their records before they have reached the age of 30 years unless they are needed for administrative purposes, and the Lord Chancellor is allowed to decentralize storage by appointing places other than the Public Record Office as repositories. The effect of this will be that county or municipal record offices may be invited to accept national records of purely local interest.

The arrangements for selection for preservation become "the duty of every person responsible for public records." The ma-

chinery of these arrangements is not stated, nor does the act indicate what principles are to be applied to selection, but by administrative action the recommendations of the Grigg Report are already being followed under the general supervision of the Lord Chancellor. Records actually within the Public Record Office that no longer seem worth keeping may be destroyed subject to the approval of the Lord Chancellor and that of the "Minister or other person, if any, who appears to the Lord Chancellor to be primarily concerned with public records of the class in question."

Scotland

The Scottish Record Office has the distinction of being the oldest Government department in Scotland, with a line of descent that originates in the thirteenth century and an existence that was especially confirmed in the Act of Union of 1707. Its springs are in those of the office of Lord Clerk Register, and until 1879 the Register had charge — either active or nominal — of the public records. In that year all but a few of the functions of the Lord Clerk passed to a Deputy Clerk Register, who supervised a Deputy-Keeper of Records and a Curator of Historical Records. In 1919 the position of Deputy Clerk lapsed on the death of the last incumbent and the Deputy-Keeper of Records was left in an administrative vacuum.

In 1928 the Deputy-Keeper's activities were merged with various other keeperships to form a post known as the Keeper of the Registers and Records of Scotland, but in 1948 a separation was made between those who create records and those responsible for keeping them. The Public Registers and Records (Scotland) Act, 1948, divided the duties between the Keeper of the Registers of Scotland, who receives and records deeds, and the Keeper of the Records of Scotland, who preserves the registers, records, and rolls of Scotland. The Curator of Historical Records continues to deal with inquiries of a historical nature and with the publication of calendars and indexes.

The Scottish Record Office holds all public records of the pre-Union Kingdom of Scotland and accepts private and commercial records of historical value. It receives in regular flow the volumes compiled in the Department of the Registers. Records and processes of the Court of Session also go to the Record Office, and under certain recent acts the records of several sheriff courts and nine burgh courts are deposited there. Besides these, departmental records are received from the Scottish Government departments; and under the Reorganisation of Offices (Scotland) Act, 1928, the Rec-

ord Office has the duty of preparing the elections of Scottish representative peers. This duty arises from the continued link between the Lord Clerk Register and the Scottish Record Office. The Record Office is the Lord Clerk Register's department for the purpose of the few executive duties that yet remain to him.

The Keeper is appointed by the Secretary of State in consultation with the Lord President, and the Secretary of State has at his service the Scottish Records Advisory Council to assist him on archival matters.

The duties of the Keeper are laid down in the Public Records (Scotland) Act, 1937, which also specifies the records to be transmitted to his custody.

Northern Ireland

With the partition of Ireland under the Anglo-Irish Treaty of 1921 the Public Record Office of Ireland, situated in the Four Courts in Dublin, became the archival institution of the Irish Free State. The Government of Ireland Act, 1920, however, authorized the setting up in Northern Ireland of an office "for the reception and preservation of public records appertaining to Southern Ireland or Northern Ireland which otherwise would be deposited in the public Record Office of Ireland."

Thus the Public Record Office of Northern Ireland, established at Belfast in January 1924, receives some documents that, under various enactments, would formerly have gone to Dublin. These enactments controlling deposit are the Public Records (Ireland) Acts, 1867 and 1875, and the Parochial Records Act, 1876.

Northern Ireland shares in the loss caused by the total destruction of the Public Record Office of Ireland in 1922, when the Four Courts were blown up in the course of revolutionary fighting.

Australia

The formation of the Commonwealth of Australia in 1900 left archival matters in the hands of the several State governments. The Commonwealth Government has no law in respect to its own archives. They are, however, a responsibility of the Prime Minister's Department, which issues administrative instructions that serve in lieu of legislation.

In 1942 the Prime Minister formed an interdepartmental committee to suggest, and then to supervise, steps for the preservation of war records. It came to the conclusion that no distinction between war records and other records was possible and hence that all rec-

ords of value, whether related to the war or not, should be preserved. Two institutions were already carrying out this function in a limited way — the National Library and the Australian War Memorial. Both were now designated Archival Authorities, the National Library for the civil departments and the Australian War Memorial for the service departments. A department could destroy its records only with the permission of the appropriate Archival Authority, but the latter became responsible for working with the departments in the preparation of disposal lists, which authorize the destruction of valueless records without further ado.

At the end of the war the War Archives Committee became the Commonwealth Archives Committee and continued to exercise general supervision over policy. Early in 1952 a conference between the Public Service Board, the Committee, and the two Archival Authorities recommended that in future there should be one Authority only and that this should be the National Library.

Under the Commonwealth Archives Committee a very extensive system of archives and record management is conducted by the National Library. Its control is still provisional. Although the necessity for giving it statutory authority has been recognized, the final form still awaits decision on control of the system.

New South Wales

Here there is as yet no legislation for the control of the State's archives, although a draft bill is under consideration and may be brought before Parliament during 1958. At present archival matters are the subject of recurrent instructions, issued by the Premier's Department or the Public Service Board, the first of which dates from 1912. Under the terms of these instructions no department may destroy noncurrent records, printed books, or published documents without reference to the principal librarian of the Public Library of New South Wales. In this way the Library has acquired by negotiation most of the important records of the Government for its Archives Section and is *de facto* the State's archival institution.

The Public Service Board has required that each department appoint a liaison officer to take the initiative in examining noncurrent records and to work with the Library in arranging transfers. The responsibility for selecting records for preservation, however, remains in the departments.

Queensland

In Queensland the Libraries Act, 1943, has as part of its title "making better provision . . . for the conservation of the Public

Records of the State." The machinery for effecting this purpose is detailed in part 4 of the act but with the preface that the operation of this part shall take effect only on a date to be proclaimed by the Governor-in-Council. The act received assent in November 1943; but, though now 15 years old, part 4 has not yet been proclaimed. The necessary storage accommodation is not available at the Public Library of Queensland in Brisbane. Briefly, the intent is that public records may not be disposed of without notification to the State Librarian, who may take custody of such as he wishes to preserve.

South Australia

In 1916 the Government agreed that the Public Library Board (now the Libraries Board) of South Australia should undertake the preservation of the State's archives. Legislation followed in 1925 and was replaced by part 3 of the Libraries and Institutes Act, 1939, which sets the present practice in the South Australian Archives.

Officials having the custody of Government records must give a month's notice of an intention to destroy any; and the Board's officers may within that month examine the records and take possession of what they think fit. The act provides machinery for recovering any Government records that have found their way into unauthorized hands: the person having possession of them must surrender them upon demand, and if he fails to do so the Board may complain to a court of summary jurisdiction. In any such proceedings the burden of proof is on the defendant to show that they are not improperly held.

A family resemblance can be detected between this act and Tasmania's act of 1943; the draftsman of the latter seems to have had the South Australian act before him.

Tasmania

Tasmania's Public Records Act, 1943, is the most detailed in Australia. Public records are defined as all manuscripts, papers, etc., of or pertaining to any public authority or made by, or deposited with, any officer of any public authority in pursuance of any law of the State. A public authority may be a government department, a statutory body, a local authority, or "any body, corporate or unincorporate, which has at any time been subsidized by the state."

The procedure for transfer follows the general Australian pattern. Public records may be deposited with the Archives Officer and may not be destroyed unless the person having control of them has given him notice and the opportunity of taking any he requires. The Ar-

chives Officer may demand the return of any public records improperly held. As in South Australia, the act provides for the support of such a demand by appeal to the courts, the burden of proof resting on the defendant.

The act contains two unusual features. One compels the chief officer of every public authority to maintain "complete and accurate records" and vests their custody in him. The other enables the person having control, possession, or custody of any public records to apply for compensation if the Archives Officer takes possession of them. The Archives Officer then pays what he thinks just and reasonable, but if the applicant is dissatisfied the matter can be referred to two arbitrators or their umpire. The financial valuation of records for the assessment of this compensation would seem to present very considerable difficulties.

Victoria

The State of Victoria has no legislation in regard to its archives, but the Public Library of Victoria, at Melbourne, has become the unofficial repository for them. A Premier's instruction of 1928 prohibited the destruction of any records without their first being offered to the trustees of the Public Library, and the instruction was repeated in 1940, 1943, and 1949.

Western Australia

The following notes are taken from a paper by M. F. Lukis, Librarian of the J. S. Battye Library and State Archivist.

There is as yet no public records act, and the Archives Branch of the State Library (at Perth), set up in March 1945, is not legally established as a repository although, by direction of the Premier's Department, it is treated as such. The Archives Branch exercises authority only through the Premier's Department, which sends out to other departments circulars drafted in the Archives regarding the transfer and preservation of records, calls meetings of record officers as required, and applies pressure if the necessary cooperation is not being given by a particular department.

The responsibilities of the State Archivist in relation to Government departments fall into three categories:

Advice and assistance as required in the management of current records.

Advice on the disposal and transfer of records. (It is the practice for a department to obtain the approval of the Executive Council before any records are destroyed, but this approval is not given unless the application bears a certificate by the Archivist that the records have been examined and are not considered of sufficient value to warrant their preservation. The Archivist's

decision is reached after discussion with the department concerned and, where applicable, consultation with university staff members interested in research in the social sciences.)

Preservation of permanently valuable records and the production of them, or of information from them, as required by departmental officers.

Conditions of access are laid down by the department at the time of transfer. Some records, for instance Police and Convict Departments' records, are under a degree of restriction.

CANADA

When the Canadian territories were federated in 1867, archival affairs remained a matter for provincial legislation. The archives office of the Dominion Government was founded in 1872, but it was not until 1912 that it was supported by legislation, in an act that is the earliest of its kind in the Commonwealth outside England.

The Public Archives Act, 1912, (cap. 222 of the Revised Statutes, 1952) established the office of Dominion Archivist. Since 1950, when the Ministry of Citizenship and Immigration was created, the Archivist has been responsible to the Minister with the rank of a Deputy Minister.

The Canadian definition of "public archives" is one that has since been adopted in other countries. They are, first, those "public records documents or other historical material of any kind, nature or description" that are transferred from the custody of any department to that of the Dominion Archivist and, second, those original records and other material that he may deem necessary to acquire, perhaps by gift, perhaps by purchase. Transfer from departments is conducted by order in council.

The act is brief, with no specification of conditions of access and no provision for approval for weeding and destruction. Matters relating to disposal are a function of the Treasury Board, which since 1933 has circularized departments for schedules of material recommended for destruction and has issued corresponding authorities. These authorities have prescribed the retention of documents of historical value and have required consultation with the Dominion Archivist.

A third Canadian body must be mentioned, as it has relations with the other two. This is the Public Records Committee, established in 1945 by order in council. Its varied tasks include promoting the writing of narratives on departmental war activities, determining requirements for microfilming, and establishing standard procedures for the disposal of records. It guides and explores record

policy, and one of its first tasks was the planning of an office for the centralization of semiactive and inactive records — what was in fact and later in name a Records Centre. The idea dated from a Royal Commission that between 1912 and 1914 surveyed the field and recommended the creation of such a center. Nothing happened, however, until 1949, when definite plans were formulated by the Dominion Archivist. The Records Centre, specially built for the purpose, was opened in 1956.

Federation of Rhodesia and Nyasaland

The interest in their archives shown by the various territories forming the Federation is evidenced by the extent of their legislation. Since 1935 there have been three archives acts in Southern Rhodesia, two in Northern Rhodesia, and one in Nyasaland, together with one by the Federal Parliament.

When the Colony of Southern Rhodesia was granted responsible government in 1923 archival matters were a specified responsibility of the Colonial Secretary. No other formal action was taken until 1935, when the Government Archives was established by the Archives Act of that year. This act drew extensively on the then current legislation of the nearest neighbor, South Africa, whose own Public Archives Act had been framed in 1922. The definition of public archives as "all such public records, documents and other historical material of every kind, nature and description as are in the custody of any of the Government departments or as may . . . be transferred to or acquired by the archives office" is similar to the definition adopted in South Africa and can be traced back to that used in Canada in 1912. The Government Archivist might examine any public archives and advise departments on their care, custody, and control. Transfer was controlled by regulation. All such original records, documents, and historical papers, or copies of them, as the Government Archivist thought fit might be acquired by purchase or gift and they might be transcribed, bound, or repaired as necessary.

The public archives in the archives office were, subject to regulation, open to the public. Up to 1958, when the Act was repealed, no regulations on the subject had been issued; but as a *modus operandi* access had been given freely to records of earlier date than 1923. A commission, established to advise the Minister of Internal Affairs on archival affairs, had other functions similar to those of South Africa's Archives Commission.

In 1946 an extension of duties necessitated new legislation to authorize them. The neighboring Territories of Northern Rhodesia

and Nyasaland were anxious to have an archives service, and after considerable negotiation it was arranged that the Southern Rhodesia office should provide one on repayment of costs. Both Northern Rhodesia and Nyasaland in 1946 passed archives ordinances that established the Southern Rhodesia office as the archives office of the Territories. The Government Archivist of Southern Rhodesia was given access to departments and could advise them on care, custody, and control, while the Archives Commission was empowered to advise the Governor of each Territory. In no way did the two Territories relinquish any jurisdiction over their own public archives; for the "care, custody, and control" over them entrusted to the Government Archivist of Southern Rhodesia was exercised "under the direction" of the Governor of Northern Rhodesia and the Governor of Nyasaland respectively. Thus the Government Archivist was nominally in the position of having three masters. In practice, coordination in administrative problems was effected through the Central African Council.

The assignment of powers and duties to an officer of one government by legislation of other governments required legislation enabling him to accept them. This was the Southern Rhodesia Archives Amendment Act, 1946, which provided that:

> The Government Archivist may exercise such powers and shall perform such duties as may be conferred and imposed upon him in regard to the public archives of Northern Rhodesia and Nyasaland by the laws of those territories.

So that normal discipline might apply the act added:

> Any duties which the Government Archivist or any member of his staff may be required to perform in regard to the public archives of Northern Rhodesia and Nyasaland by the laws of those territories shall be deemed for the purposes of the Public Services Act to be duties of office of the Government Archivist or such member.

At the same time the name of the Southern Rhodesia archives office was changed to Central African Archives and the Archives Commission (renamed the Central African Archives Commission) was remodeled to be a representative body for all three Territories.

In 1947, during the visit of Their Majesties King George VI and Queen Elizabeth, royal approval was given to change the name of the Commission to the Royal Commission for Central African Archives (Archives Amendment Act, 1947). Then in 1950 Northern Rhodesia revised its own legislation with a new ordinance (Archives and Judicial Records Ordinance, 1950), in order to clarify the position of the Central African Archives as a repository for court records. Thus the legislation had by 1950 established a pattern of

procedure that seemed to be satisfactory in most respects and likely to endure for many years. But change was in the air. The three territories came together as the Federation of Rhodesia and Nyasaland in 1953; and on July 1, 1954, the administration of archives was taken over by the Federal Government. It was not until 1957 that pressure of business resulting from the establishment of a new government relaxed enough to permit an archives bill being put before the House, and in the meantime the archives were administered under the provisions of the respective territorial laws, suitably amended to provide for Federal control. The records of the Federal Government itself were in this interim handled with no statutory authority at all.

The Central African Archives became the National Archives of Rhodesia and Nyasaland; and the National Archives Act, 1958, enshrined the principle that each Government was the owner and disposer of its own property. By this act a record committee is established for the Federation and each of its three constituent Governments, with the duty of making recommendations on all matters affecting the selection of documents for preservation or disposal, conditions of access, and conditions under which they may be published. The Government concerned weighs these recommendations, approves or amends them, and issues instructions; the Director acts accordingly in relation to that Government's records. Thus the Committees are of great importance in the administrative structure of the service, and much depends on the way in which they do their work and on the liberality of their views. They are small, consisting only of an archivist appointed by the Director and two other members appointed by the Government concerned.

The new act distinguishes between "records" and "public archives." The former are any records or documents in Government custody, and the latter a select class created from them. The necessary qualifications for promotion from records to public archives are an age of 30 years, transfer to the National Archives, and selection for permanent preservation. Additionally any document, book, or other piece of material that the Director acquires by gift or purchase because he thinks that it is, or is likely to be, of historical value is also a public archive.

Access is now defined; all public archives are open except as the owner-Government decrees otherwise or as a donating private owner imposes limitations on access at the time of his gift. In practice, then, most records are open at the age of 30 years in the case of Southern Rhodesia and up to 1903 in the case of Northern Rhodesia

and Nyasaland, which are controlled in this matter by Colonial Office policy.

At first glance it might well seem that the Federal Government, having been established in 1953, could have no public archives of an official nature until 1983. On a strict interpretation, however, it holds records dating from the 1890's; for as a Department "went Federal" it took its property — including its records — with it. If, as many did, it then transferred most of them to the National Archives, those that were selected for permanent preservation and were over 30 years of age became at once Federal archives!

The right of publication is subject to the approval of the owner-Government, and application has to be made in each case. There is an adequate penalty for infringement — a fine of up to £200, imprisonment up to 12 months, or both.

The Royal Commission has been discontinued, the need for it having fallen away when the archives service became a unified Federal responsibility.

GHANA

The National Archives of the Gold Coast (now Ghana) was established by the Public Archives Ordinance, 1955, which came into operation on August 1, 1956.

The ordinance seems to have been patterned largely after the Southern Rhodesia Archives Act of 1935; a number of the sections are similar in wording and sequence, and the general conception of archives is the same. The ordinance uses the Southern Rhodesia definitions of "public archives":

> all such public records, documents and other historical material of every kind, nature and description, as are in the custody of any Government office, or as may after the date of the coming into operation of this Ordinance be transferred to or acquired by the National Archives of the Gold Coast.

The Archivist is charged with the usual duties in regard to custody, preservation, arrangement, repair, and rehabilitation, and specifically with publication, exhibition, description, and the production of finding aids. He may also acquire such documents or historical material as he thinks necessary, either by gift or by purchase.

"Public archives" by this definition include material in Government offices as well as that transferred to the Archives, and the Archivist must advise such offices on their care, custody, and control. Transfer is controlled by regulations made under the ordinance.

The act contains a number of significant extensions going beyond its Southern Rhodesian model. The Archivist must "make available

for use to the Government, or the public, information in records and other materials in the National Archives," either by furnishing the originals, providing copies, or collecting the information itself. There is an official seal for the authentication of copies, and there is a committee to control the disposal of documents. This committee, including archives, legal, audit, and university representatives, is expected to examine requests from Government offices for the disposal of public archives and has itself the power to order destruction or temporary or permanent retention. The committee is responsible for safeguarding the legal, financial, and historical interest of the Government; and its orders are mandatory.

The exportation of any public archives from Ghana without license from the Minister of the Interior is prohibited; the same prohibition applies to any documentary material of historical value relating to the country. The penalty for infringement is a fine of £25.

New Zealand

A Controller of Dominion Archives, who doubled as Parliamentary Librarian, was appointed in 1926. In 1945 the Department of Internal Affairs, seeking the development of a definite policy, called a conference to plan for the future. In 1954 a program was adopted. There followed the development of a record management service, surveys of records in many departments, and a plan for record disposal and selection for preservation; and the whole movement culminated in a very carefully developed Archives Act.

New Zealand's Archives Act received royal assent on October 4, 1957, and is, with its 26 extensive sections, the longest of all the acts here under review. Its comprehensiveness and its relation to modern developments in archival work will no doubt cause it to be studied whenever such legislation has to be drafted.

This and the act of the Federation of Rhodesia and Nyasaland were simultaneous in their planning and won final assent within a few weeks of each other. There was no consultation between the two countries, but the two pieces of legislation bear strong resemblances. There are also similarities between certain sections of the New Zealand act and similar provisions in South Africa's recent act.

The definitions draw a distinction between "public records" and "public archives." Public records are defined as all documents of any kind officially made or received by any Government office in the conduct of its affairs or by any employee of the Crown in the course of his official duties. The latter part of this definition is of interest in the suggestion that letters addressed to a person by name but re-

lating to official business are equally public records. The tendency to carry on correspondence on a semiofficial basis between individuals is not new but appears to be increasingly common, and this is the first recognition of it in legislation. Public archives are made a select category of public records — being those not in use, whatever their age and wherever they are. If they are over 25 years old, and if the Chief Archivist thinks they are worth preserving, they must be transferred to the National Archives. There are certain exceptions where transfer may be deferred — for instance, if the records are secret or confidential or if they "contain information the release of which may adversely affect the national security of New Zealand or relations between the Government of New Zealand and the Government of any other country." If transfer is deferred, the Chief Archivist may prescribe conditions for the safekeeping of the archives by the department concerned. When any transfer is made the conditions of public access to the material are those that may be agreed on from time to time by the Chief Archivist and the head of the department.

Public archives less than 25 years old may be accepted if the Chief Archivist thinks they are worth it, and he may also accept any private records of any kind provided they are of a historical nature.

The act is unique in stating the criteria to be borne in mind by the Chief Archivist in assessing worthiness of preservation. They are:

Evidence of the organization, functions, and transactions of the Government office in which the public records were originally made or received.
Evidence of public or private personal or property rights or civic rights.
Historical or general information.

The Chief Archivist of New Zealand has unusually wide though definite powers. In addition to those that flow from the ordinary control of his department he may demand that a private person in possession of a public archive hand it over to the National Archives. He may inspect any public records or public archives in the possession of departments and issue "instructions as to their safe preservation and such advice as to their efficient and economical administration and management as he considers necessary." This power must take him intimately into the field of office administration, into "Organisation and Methods," and it shows the ultimate extension of the Archivist's duties toward Government paperwork. He can only give advice, however; and like all advice it can be heard, noted, and ignored. He may assist any body or person having control of archives that are not private archives with inspection and advice.

The Chief Archivist alone is the key authority in the machinery for the disposal of public archives. There are two methods of procedure, one applicable to "routine public archives," which are by their nature of no enduring value as archives, and the other applicable to archives not of a routine nature but not worth keeping. For the routine archives the department prepares lists of classes stating the retention period. This must result in standing instructions, which, after approval or amendment by the Chief Archivist, are effective. For the second type the Chief Archivist prepares a description, advertises it in the official *Gazette*, and gives the public a month in which to lodge any objection.

Access to any public record in the National Archives is automatic, subject to conditions agreed on with the department at the time of deposit and to the power of the Minister of Internal Affairs to direct that access be withheld on the grounds of public policy or of another Government's request with respect to records affecting its interest. Such a case comes to mind at once in the connection between the Colonial Office records in the Public Record Office, access to which is restricted if they are less than 50 years old, and the other end of the correspondence in Auckland. Presumably this part of the correspondence, too, would be restricted if less than 50 years old.

Publication of any archives is conditional on approval by the Minister; and, as in the Federation of Rhodesia and Nyasaland, there is no suggestion that access and the right to publish go hand in hand; indeed, they are specifically separated.

Finally, wilful or negligent damage to public records or public archives, or their improper destruction, or any failure to comply with the provisions of the act entails a fine of up to £100.

South Africa

In the Colony of the Cape of Good Hope the first "Officer in charge of Colonial Archives" was appointed in 1879 after a commission had inquired into their state. In the Transvaal an Archives Branch of the Colonial Secretary's Department was set up in 1902, on Milner's reorganization of the country after the Boer War. In Natal there were no special arrangements for archives before the Union, and in the Orange Free State a Government Librarian and Keeper of Archives operated briefly between 1903 and 1908.

These four colonies came together as the Union of South Africa in 1910; and, unlike Canada and Australia, they made archives affairs a matter for the central government. A Chief Archivist for the Union was appointed in 1919 and as a first step was sent on a tour

of Europe, America, and Canada. A Public Archives Act followed in 1922; it was short and derived something from the Canadian act of 10 years earlier. It defined public archives as all such records, documents, and other historical material of every kind, nature and description as were in the custody of any Government department; and it gave the Chief Archivist power to supplement these by purchase or the acceptance of gifts. Public archives not required for administrative purposes were transferred periodically to archives depots, of which there was one for the Union Government and one for each province. The public was allowed access to them except that the Chief Archivist could "in his discretion withhold access to any particular document or a document relating to any particular event," subject to a right of appeal to the Minister. An Archives Commission was established to advise the Minister on archival affairs.

This act was replaced by the Archives Act, 1953. When introducing the bill to the House of Assembly the Minister of Education, Arts, and Science said there were two main reasons for putting it before the members. It was desirable to clarify and enlarge the authority of the Chief Archivist and the Archives Commission, particularly in regard to the disposal of worthless documents; and it was necessary to provide for the archives of the Territory of South-West Africa. With the adoption of the act of South-West Africa, the Chief Archivist for the Union doubles as archivist of that Territory, responsible in his first capacity to the Minister for the archives of the Union and the four provincial Governments, and in his second capacity to the Administrator of South-West Africa. He is permitted, in consultation with the officer in charge of any Government office in the Union or in South-West Africa in which records or documents are kept, to inspect them and to advise on their safe custody and preservation; nothing, however, ensures that his advice will be taken. The Chief Archivist's powers are enlarged so that he may advise on request, or by consent, on the keeping and management of archives other than public archives. This provision is especially aimed at local authorities and statutory bodies.

The Commission's powers are enlarged, too. It authorizes the destruction of valueless records, supervises the publication of public archives or of theses or other works based on public archives, recommends to the Minister on the acquisition of material of historical value, and generally advises him. There is no limit to the number of the Commission's members, and in practice it works through a series of subcommittees. Its constitution came under fire in the com-

mittee stage of the bill on the grounds that its membership was politically biased.

Under the 1922 act access was dealt with by regulation and the reserved period was 37 years. In 1953 terms of access were prescribed in the act itself, and the reserved period was changed to 50 years but with the saving clause that all documents are available up to 1910 (the date of Union) in the archives depots in South Africa, and up to 1915 (the end of German rule) in South-West Africa. Some members urged that the 50-year period be shortened to meet the needs of modern research in many fields; but the Minister refused any concessions on the ground that "the longer period is more conducive to accuracy and objectivity in historiography." The Minister may direct the withholding of access to particular parts of the public archives on the ground of public policy, but on the other hand he may allow access within the closed period in special cases.

The 1922 act recognized all records and documents in Government custody as "public archives" and left the details of transfer to regulation. The 1953 act defines "archives" as any records or documents that have, during the conduct of affairs of any kind, been preserved for reference purposes, and then distinguishes as "public archives" any archives accumulated in a Government office and any material of historical value acquired for an archives depot. Transfer from departments, formerly controlled by regulation, is now prescribed in the body of the act. It is compulsory after 30 years although the Chief Archivist may defer a transfer for convenience or may permit the deposit of more recent documents if he thinks fit.

One of the difficulties of a survey such as this is the speed with which it gets out of date. The author would be glad to hear of changes that may be made and asks that readers will regard this essay as a step towards a more comprehensive guide that will include the countries and states now omitted.