

Pot-Pourri

Keeping Safely the Public Records: The PRO Act of 1838

by **WILMA MacDONALD***

On 14 August 1838, an Act which led to the establishment of the Public Record Office (PRO) was proclaimed by the British government in London, England ("An Act for keeping safely the Public Records," The Public Record Office, 1 & 2, Vic. C. 94, pages 777-784). The purpose behind the establishment of "One Record Office" was to provide "better Custody" of the government's records, which were scattered among many "unfit Buildings." It was deemed a matter of expedience to establish one central office, and to bring them "under the Charge and Superintendence" of one person, "the Master of the Rolls." The act also provided for the appointment of a Deputy Keeper and Assistant Keepers of the Records. This new legislation would "allow the free Use" of the records belonging to Her Majesty, "as far as stands with their Safety and Integrity, and with the Public Policy of the Realm."

The language of the PRO Act of 1838 strikes a responsive chord in an archivist employed at the National Archives of Canada (NA) in 1989. The need for a new archives building to be erected in the National Capital Region has been acknowledged by the government of Canada, and approval of resources for a modern facility to be built in the Gatineau area has been granted in 1988. The task of protecting those records of the NA, now "temporarily" stored in over thirteen buildings in the cities of Ottawa, Hull, and other areas, has been a priority of the National Archivist of Canada since he assumed office in June 1985. The new National Archives Act, proclaimed in June 1988, expanded the collections mandate of the NA to include a larger number of government agencies, and ministerial papers, adding to the list of departments whose records are scheduled for deposit in the archives on a regular basis. This anticipated increase in extent of records being deposited in the NA, and ultimately their custodianship by the National Archivist, only adds to the demand for safe accommodation.

The Act states that from time to time the Master of the Rolls shall by Warrant under his Hand "appoint a fit Person or fit Persons" to visit the various places in which records of the Chancery of England resided "to receive and take charge" of them. A Warrant required first the approval of, and then the counter-signature of the Lord High Chancellor, in addition to that of the Master of the Rolls. In certain instances, for example, records belonging to Her Majesty's Superior Courts of

Common Law, and the Court of Admiralty, could not be removed unless the records described in such Warrant were "the Age of Twenty Years from the making thereof."

Orders for the preservation of the records could be made by the Master of the Rolls "for cleaning, repairing, preserving, and arranging all the Public Records under his Charge and Superintendence, and for making Calendars, Catalogues, and Indexes to the same." If, for the purpose of carrying out such orders, the records were required to be removed from their "present Place of Custody" and deposited in the care of persons in other "safe Place or Places as the Master of the Rolls may order," such actions again were to be covered by the issuance of a Warrant. Warrants guaranteed the "legal Authenticity" of such records during the period they were removed from their "legal Place of Deposit." In addition, records so removed for processing purposes retained their "legal Validity" and were "received or rejected as Evidence in all Courts and Proceedings, in the same Manner as if such Record had remained in the Custody" in which they were at the time of the passing of the act.

The PRO Act of 1838 gave the Master of the Rolls the authority to appoint "a fit Person duly qualified by his Knowledge of Records to be Deputy Keeper of the Records," subject to Her Majesty's approval. The duties of the Deputy Keeper were to act as Chief Record Keeper under the Master of the Rolls and to "superintend all Persons employed" in the PRO. The responsibility for the hiring and firing of Assistant Record Keepers, to assist the Deputy Keeper in executing the provisions of the PRO Act, rested with "the Lord High Treasurer, or any Three or more of the Commissioners" of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland. The Lord High Treasurer, or any three or more commissioners, were also authorized to "provide such suitable and proper or additional Building or Buildings as may be required for the Reception and safe Custody of all the Public Records" in the legal custody of the Master of the Rolls. While the PRO Act of 1838 brought "intellectual control" over the records of the nation, it was not intended physically to provide one big central repository. The sheer extent of the public record in its many forms, would dictate that from time to time "the Lord High Treasurer, or any Three or more of the Commissioners of Her Majesty's Treasury" provide "such suitable and proper or additional Building or Buildings as may be required for the Reception and safe Custody of all the Public Records" in the legal Custody of the Master of the Rolls. In addition, the PRO Act of 1838 stated that every person employed in the "Care of the Records in the Custody of the Master of the Rolls, wheresoever the same may be at any Time deposited" were "taken to be employed in the Public Record Office." Until such time as a building or buildings were established, "every Office or Place where Public Records" were deposited were "deemed and taken to be a Branch or Part of such Public Record Office."

The PRO Act of 1838 also gave the Master of the Rolls "Power to make Rules for the Management of the said Public Record Office" and "in like Manner for the Management of the present Record Offices, and the Duties to be performed therein." The Act also gave the Master of the Rolls control over the "Admission of such Persons as ought to be admitted to the Use of the Records, Calendars, Catalogues, and Indexes in his Custody." In addition, the Act permitted the Master to "fix the Amount of Fees (if any)" which he thought "proper to be paid for the Use thereof respectively, and for making Copies of Records." Every such Rule had to be laid by the Master

of the Rolls “before both Houses of Parliament within Six Weeks” after it was made, “or after the next Meeting of Parliament.” Such fees as were collected for the “Use of the records” were deposited “monthly into the Bank of *England* to the Credit of the Exchequer” into an “Account of the Consolidated Fund” which was subject to audit by a Public Accountant. Copies made of records in the custody of the Master of the Rolls could be certified as true and authentic by the affixing of “the Seal of the Record Office” by the Deputy Keeper of the Records, or one of the Assistant Record Keepers, and could be “received as Evidence in all Courts of Justice, and before all legal Tribunals, and before either House of Parliament, or any Committee of either House.”

The PRO Act of 1838 declared it lawful for “any One of Her Majesty’s Principal Secretaries of State to cause to be printed, from Time to Time, such Calendars, Catalogues, and Indexes of the Records,” and “also such Records in the Custody of the Master of the Rolls, as the Secretary of State may select.” The estimate of the cost of such printing was required to be laid in every case before Parliament, and “no such Expenditure” incurred until the payment of such sum had been voted by Parliament. In addition, those materials approved for printing would be “published and sold” for “reasonable Sums,” with the proceeds “paid into the Bank of *England*, to the Credit of the Exchequer.” The Secretary of State was obliged under the legislation to present such printed materials “gratuitously to Public Offices, Institutions, and Libraries in this or any other Realm or Country.”

The PRO Act of 1838 was very practical legislation, and dealt with operational issues. Such things as disposition of any fees received or compensation for losses incurred by virtue of the [new] legislation, and the “Salary or Emolument” of persons appointed to be employed in the Public Record Office were addressed. The second last clause in the 1838 Statute defined the word “records” under the Act as meaning “all Rolls, Records, Writs, Books, Proceedings, Decrees, Bills, Warrants, Accounts, Papers and Documents whatsoever of a public Nature belonging to Her Majesty, or now deposited in any of the Offices or Places of Custody before mentioned.”

By way of concluding this brief look at the PRO Act of 1838, readers may be interested in the following extract. The PRO Act made provision for personnel who stepped outside the law:

XIX. And be it enacted, That every Person belonging to or employed in the said Public Record Office who shall certify any Writing as a true and authentic Copy of a Record in the Custody of the Master of the Rolls, knowing the same to be false in any material Part, and every Person who shall counterfeit the Signature of an Assistant Record Keeper for the Purpose of counterfeiting a certified Copy of a Record, or shall forge or counterfeit the Seal of the Public Record Office, shall be guilty of Felony, and being duly convicted thereof, shall be liable, at the Discretion of the Court, to be transported beyond the Seas for Life, or for any Term not less than Seven Years, or to be imprisoned for any Term not exceeding Four Years.

We await with interest the publication of the official history of the Public Record Office now being written by one of the former Assistant Keepers, which is expected to be completed in 1990.

Notes

- * The author is grateful to Kelvin J. Smith, Head of Repository and Reprographic Services, Public Record Office, London, England, for responding to a request for information regarding the 150th anniversary of the proclamation of The Public Record Office Act (1838). A celebratory conference was held at Inner Temple, London, 8-10 August 1988, entitled "The Records of the Nation." A full guide to the contents of the PRO is available in microfiche form, at a cost of £8.50 (letter from K.J. Smith to the author, 8 April 1988). The statute cited was printed in London by George Eyre & Andrew Spottiswoode, Printers to the Queen's most Excellent Majesty, 1838.