

Legal Deposit in Canada

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Origins of Deposit

The requirement to deposit published materials with libraries has deep roots in Canada. Traditions and practices have been inherited and interpreted from France which implemented a requirement for a legal deposit in 1537 with the *Ordonnance de Montpellier* and from England which replaced a voluntary deposit scheme between the Company of Stationers in London with the Library at Oxford University dating from 1610 with a legal requirement in 1662¹.

The *Ordonnance de Montpellier* of François 1er set out some objectives of this legislation which included “la nourriture des bonnes lettres” and that these works deposited would be preserved and made available for future use (“de fortune ils étoient cy après perdus de la mémoire des hommes, ou aucunement immués, ou variés de leur vraye et première publication”).² The reasons for deposit were stated with the 1610 agreement³ in England:

“the said master wardens and Cominaltie out of the zeale to the advancement of good learning and at the special request of the present publique Librarie of the Universitie of Oxford being readie to manifest their willing desires to further a work of so much pietie and benefit to the generall state of the Realme.”

Copyright Deposit in Canada

Deposit of published materials in what is now Canada has had many incarnations from its origins with the *Act for the Protection of Copyright* in Lower Canada in 1832 to the most recent revisions to the *National Library Act* and the *Book Deposit Regulations* in 1995. The legislation of 1832 required the deposit of a printed copy of the title of the book, map, chart or print in order to secure copyright. In 1836, *An Act to prevent the mischief arising from the printing and publishing books, newspapers, and papers of a like nature by persons unknown and to regulate the printing and publishing the same* was passed in Newfoundland. In 1841, the United Provinces of Canada approved *An Act for the protection of Copy Rights in this Province* which unlike the 1832 legislation required the deposit of two copies of published materials (books, map, chart, musical composition, print, cut or engraving), together with the payment of a fee of five shillings for registration. One copy was deposited in the office of the Registrar of the Province while the other copy was deposited with the Library of the Legislative Assembly of the Province. This early period set the pattern for legal deposit in Canada, a requirement for

¹ Partridge, R.C. Barrington. *The History of the Legal Deposit of Books throughout the British Empire*. London, Library Association, 1938. p. 17.

² Ibid. p. 287.

³ Ibid. p. 289.

registration of a range of publications, links with copyright and protection of published materials, access through libraries, preservation and legislation in different jurisdictions.

Copyright Deposit with the British Museum

In 1842, the British *Copyright Act* required the deposit of one copy of every new book to be delivered to the British Museum from all parts of the British Empire. While apparently a successful measure in other parts of the British Empire, the lack of compliance by the Canadians and by Newfoundland was addressed first by legislation in Newfoundland in 1887, *An Act to provide for the preservation of copies of books printed in Newfoundland and for the registration of such books*, and then in Canada in 1895, with the *Copyright Amendment Act*. Both pieces of legislation provided for the deposit of three copies of publications, one of which was to be sent to the British Museum. This legislation remained in force until 1912 in Newfoundland and until 1925 in Canada. For Canadian publications, this requirement resulted in materials registered for copyright purposes from 1895 to 1925 being preserved and kept at the British Museum, now the British Library.

Copyright Deposit at Canadian libraries

Copyright deposit in Canada and in Newfoundland required the deposit of varying numbers of copies at different periods in the 19th century. As we have seen with deposit at the British Museum for periods of time, there was also a requirement for a copy to be deposited beginning in 1841 with the Library of the Legislative Assembly of the United Provinces of Canada (*An Act for the protection of Copy Rights in this Province*). In 1868, Canadian legislation required deposit with the Library of Parliament in Ottawa together with the Minister of Agriculture. In Newfoundland, the 1887 legislation required the “remaining copy ...be deposited in a Library” (later clarified as the Legislative Library of the Colony) and “A Catalogue of Books printed in Newfoundland” to be maintained⁴ as well as the production of a receipt for the copies delivered. The Canadian legislation of the 19th century required the deposit of books, maps, charts, musical compositions, photographs, prints, cuts or engravings and in the case of paintings, drawings, statuary and sculpture, a written description⁵. Similarly, the Newfoundland legislation applied to books, maps, charts, musical compositions, photographs, prints, cuts or engravings⁶. In 1912, the adoption of the *Imperial Copyright Act* by the Newfoundland Legislature removed the requirement for deposit for copyright protection. In 1921, *The Copyright Act* of Canada was revised to conform with the Imperial Copyright Act and made no provision for the deposit of materials with the Library of Parliament. In 1931, *The Copyright Amendment Act* was passed to bring Canadian copyright legislation into conformity with the Rome Convention of 1928. A Section was added to ensure the preservation of a copy of every book published in Canada with the Library of Parliament. According to Partridge⁷, a special note in the Bill stated that these materials were to form

⁴ Ibid. p. 181.

⁵ Ibid. p. 176

⁶ Ibid. p. 179

⁷ Ibid. p. 178

the nucleus of a Canadian National Library to coincide with the practice in England and in the United States.

Copyright Deposit with the Copyright Office

As mentioned, copyright legislation required the deposit of a copy which remained with various copyright authorities in Canada, namely beginning with the Registrar of the United Provinces of Canada (1841), the Minister of Agriculture (1868) and then the Copyright Office which remained a part of the Department of Agriculture for many years. In 1938, however, an Order in Council⁸ was approved by the Governor General which directed that the one copy of materials previously received by the Copyright Office be offered to the library of the Secretary of State, then to the Public Archives and that the Copyright Office dispose of what remained. Some 40,000 pieces are assumed to have been destroyed⁹ because of a lack of storage space.

Copyright deposit with the Library of Parliament also has resulted in an incomplete collection of Canadian materials registered for copyright being preserved. Major fires in 1916 and 1952 and the resulting water damage had a major impact on the Library of Parliament's collections. After the National Library was established in 1953, some 300,000 volumes were transferred by the Library of Parliament in the 1950s, including many materials received under the terms of the *Copyright Act*. Individual items from the Library of Parliament's collections which bear the stamps of copyright deposit continue to be transferred to the National Library. Unfortunately for major periods of Canadian publishing, there is no comprehensive collection based on copyright deposit except that of the British Library.

Legal Deposit in Newfoundland, Manitoba and Quebec

In parallel to the deposit requirements of copyright legislation, Newfoundland also had legislation in place which required deposit unrelated to copyright. Newspapers had been required since 1836 to be deposited with the *Act to prevent the mischief arising from the printing and publishing books, newspapers and papers of a like nature by persons unknown and to regulate the printing and publishing the same*¹⁰ with the Colonial Secretary. In 1926, this legislation was revised with the Newspaper and Book Act to require the deposit of newspapers to be deposited within ten days of publication of each issue. These newspapers are now deposited with the Provincial Resource Library with a provision that half of the costs of subscription are paid by the Minister of Tourism and Culture¹¹. In 1919, the Province of Manitoba implemented a legal requirement for deposit

⁸ *Deposition of volumes and documents now in storage in buildings rented for the use of the Copyright Office* (PC1938-2952).

⁹ O'Neill, Patrick and Ettlinger, John R.T. "Copyright Canada 1895-1924" in *Canadian Library Journal* June 1983 p.144.

¹⁰ Partridge, p. 183.

¹¹ An Act Respecting Newspapers and Books. *Revised Statutes of Newfoundland, 1990*. Volume 7, Chapter N-4. 1990. p. 4.

which now stipulates that one copy of “every book, newspaper, pamphlet, magazine, review, report, or publication of any kind, prepared, printed or published in Manitoba” be deposited with the Legislative Library¹². This measure is unrelated to copyright which has always been a responsibility of the federal government in Canada. In 1968, the Government of Quebec put in place a requirement for the legal deposit of books, pamphlets, artists’ books, newspapers, periodicals, and sheet music with the Bibliothèque nationale du Québec (BNQ) which had been established in 1967. In 1980 legal deposit was extended to maps. Since 1992, deposit with the BNQ has required the deposit of posters, post cards, prints, lithographs, sound recordings, microforms, electronic publications (diskettes, CD-ROMs, videodiscs). When materials are priced up to \$250, two copies are required for deposit, from \$250 to \$5,000, one copy is required. Above \$5,000, only the completion of a form is required¹³. In October 1998 the BNQ issued a discussion document on the legal deposit of on-line networked publications¹⁴ and has begun the systematic acquisition of Quebec government networked electronic publications as a pilot project.

The National Library Act

The creation of a national library for Canada had been discussed and debated since Confederation. Sir John A. Macdonald stated in 1883 “we ought really to have - the Dominion of Canada really ought to have - a National Library containing every book worthy of being kept on the shelves of a library”.¹⁵ The efforts of the Canadian Library Association and the learned societies, the Government’s planning around Canada’s emergence from the Second World War and the Massey-Lévesque Royal Commission’s recommendations to amass “the most comprehensive collection of books in the world relating to Canada”¹⁶ as well as the urging by UNESCO for nations to organize bibliographic control of their publishing¹⁷ all contributed to the decision to establish a National Library. In 1950, a Canadian Bibliographic Centre was established by the Government to compile a national catalogue of the holdings of Canadian libraries and to publish bibliographies of current and retrospective Canadian publications and publications of Canadian authorship or subject published abroad. Between the establishment of the Canadian Bibliographic Centre and the National Library in 1953, efforts were made to acquire Canadian publications for listing in the national bibliography, *Canadiana*, by a variety of methods, primarily by the gift of books from trade publishers but also by using the copies deposited with the Library of Parliament. At the October 5, 1951 meeting of the National Library Advisory Committee, this method of acquisition was assessed as follows:

¹² Manitoba. *Legislative Library Act = Loi sur la Bibliothèque de l’Assemblée législative*.

¹³ Bibliothèque nationale du Québec. *Dépôt légal*. <http://www2.bibliat.gouv.qc.ca/texte/t0024.htm>

¹⁴ Bibliothèque nationale du Québec. *Dépôt légal des publications électroniques*.
<http://www2.bibliat.gouv.qc.ca/texte/t0410.htm>

¹⁵ Donnelly, F. Dolores. *History of the National Library of Canada*. Ottawa, Canadian Library Association, 1973. p.19.

¹⁶ Royal Commission on National Development in the Arts, Letters and Sciences 1949-1951. *Report*.

¹⁷ Donnelly, p. 107.

“At present some publishers send all new publications of Canadian interest to the Centre promptly and free of charge. Some send free copies of material they themselves publish in Canada, but refuse to send books that are imported. Others furnish materials free only very occasionally or not at all. The overall result is a state of uncertainty that frequently leads to long delays in the listing of a particular title.”

When Parliament approved the National Library Act in 1952, it was clear that the legal deposit provisions that it included were not based on copyright, the model being adopted was close to that of the French *dépôt légal*¹⁸. At the same time, however, the copyright deposit requirements remained in place but were amended whereby publishers who complied with the *Copyright Act* (Section 52) were deemed also to have complied with the National Library’s *Book Deposit Regulations*. The last link with the *Copyright Act* and deposit was ended in 1969 when the *National Library Act* and the *Copyright Act* were amended to remove this requirement for deposit for copyright purposes.

The *Book Deposit Regulations* took effect February 1, 1953 and were amended a number of times in the next few years. Two copies of all books, annual publications, sheet music and pamphlets bearing a Canadian imprint offered for public distribution or sale were required for deposit. One copy only was required when the retail value exceeded \$25. Two copies were required, one copy for preservation purposes and one to be made available for loan. While originally the Regulations had required the deposit of books imported into the country with a Canadian connection (author or subject) to be deposited, this was changed in a series of amendments in 1953, 1954 and 1958. Receipts were (and continue to be) produced for each title received under the terms of the *National Library Act*. The definitions of ‘book’ and ‘published in Canada’ used in the first Act were as follows:

“‘book’ includes library matter of every kind, nature and description;
 “‘published in Canada’ means released in Canada for public distribution or sale, otherwise than by Her Majesty in right of a province, any agent or servant of Her Majesty in right of a province or any municipality.”

With the construction of the Library’s Headquarters Building at 395 Wellington underway thereby providing sufficient space to house its collections, the National Librarian extended legal deposit in 1965 to include one copy of Canadian periodicals. In 1969 the National Library Act was revised, removing the references and relationship to copyright and raising the monetary values cited in the Act. The retail value above which only one copy was required for legal deposit was raised to \$50. The time for delivery was shortened from one month to one week. The coverage of legal deposit was expanded to include two copies of periodicals as well as one copy of Canadian sound recordings with a ‘Canadian connection’. In 1970, the Library began a policy of purchasing second copies of artists’ books and limited edition books whose value exceeded \$50 and in 1972 began to pay for the non-print portions of educational kits which were being acquired comprehensively.

¹⁸ Donnelly p.124.

Within the Library there were a number of studies recommending the extension of legal deposit to microforms bearing the imprint of Canadian publishers and to multi-media materials and acquisition of the publications of municipal governments. In 1977, the constitutionality of the *National Library Act* and deposit regulations were upheld in the Supreme Court of New Brunswick and subsequently in 1980 by the Federal Court in response to a case involving a New Brunswick based publisher. Deposit was extended to educational kits of non-book materials in 1978. The *Future of the National Library of Canada*¹⁹ recommended the extension of deposit to microforms and to maps while also recommending the development of a nation-wide decentralized plan for the preservation of newspapers, not their legal deposit.

In 1986, the Nielsen Task Force report recommended the removal of the \$50 figure from the National Library Act. Also in 1986 the National Library hosted a national Colloquium on Availability of Publications in Canada in Quebec City which resulted in a number of recommendations including one that legal deposit be extended to cover special format materials (i.e. large print, talking books and Braille)²⁰. The Universal Availability of Publications (UAP) Programme of the International Federation of Library Associations and Institutions (IFLA) has as its objective “the widest possible availability of publications to users anywhere who need them” based on a national system providing all national imprints²¹. In 1988, legal deposit was extended to microforms by request of the National Librarian and in 1993, to videos and CD-ROMs. In 1988, the National Library established the Preservation Collection of Canadiana which put aside one copy of all Canadiana materials acquired after that date to be housed in the best and most secure environments it could provide and to be used under limited circumstances²².

Changes were made to the *National Library Act* by Parliament and to the Regulations in 1995. Any publishing done by Federal government departments or agencies became subject to the Act. In addition to requiring the legal deposit of electronic publications issued in physical formats (diskettes, software), legal deposit became based on the number of copies produced rather than on the selling price of publications which had previously been the case. When 101 or more copies are made, two copies must be deposited. When more than three but less than 101 copies are made only one copy must be deposited.²³ Legal deposit does not apply if three or fewer copies are made.

¹⁹ National Library of Canada. *Future of the National Library*. Ottawa, National Library, 1979.

²⁰ National Library of Canada. *Availability of Publications in Canada: Colloquium on Availability of Publications in Canada, June 17 and 18, 1986 Quebec City*. Ottawa, National Library, 1987

²¹ Vickers, Stephen. “Universal Availability of Publications: the National Dimensions of an International Program” in *National Library of Canada. Availability of Publications in Canada: Colloquium on Availability of Publications in Canada, June 17 and 18, 1986 Quebec City*. Ottawa, National Library, 1987. p8.

²² National Library of Canada. *Preservation Collection of Canadiana*. <http://www.nlc-bnc.ca/services/epreserv.htm>

²³ National Library of Canada / Bibliothèque nationale du Canada. *Legal deposit: preserving Canada's published heritage = Le dépôt légal: pour conserver les publications du patrimoine canadien*. Ottawa, 1999. pp 4-5.

Conclusion

The requirement to register and deposit copies of publications has played a fundamental and essential role in the building of a national collection of materials published in Canada. The collections of the National Library of Canada together with those of other libraries in Canada with deposit privileges are critical cultural and heritage resources for Canadians now and in the future. From the 1836 legislation in Newfoundland, *An Act to prevent the mischief arising from the printing and publishing books, newspapers, and papers of a like nature by persons unknown and to regulate the printing and publishing the same*, Canadians have come a long way in systematically and comprehensively building and ensuring access to a national collection of their published heritage.

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