

Chapter 49

Records Retention Scheduling: Records Retention Schedule Development*

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*Disclaimer: The information provided in this chapter does not, and is not intended to, constitute legal advice. It is provided for general informational purposes only. The reader is encouraged to consult with legal counsel in the relevant jurisdiction(s) to obtain advice with respect to the legal aspects of records retention and disposition. Further, the information in this chapter, links to resources in the endnotes, and the content of the cited resources were correct at the time they were published. It is possible that there may have been subsequent changes which make the information outdated at the time you are accessing it.

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§ 49:1 Introduction

This chapter addresses records retention schedule development, including the research of Canadian legislated records retention requirements, limitation periods, and broader legislated records management requirements such as a requirement to create records or to keep records in a specified location. These requirements are often lesser known and more complex than the effects of operational, organization-specific requirements for retaining or otherwise managing records. Operational considerations for retaining records are discussed in the records appraisal section of this chapter (§ 49:5).

This chapter is the second in a series of three chapters on the topic of records retention scheduling. The first chapter (§§ 47:1 et seq.) introduces records retention scheduling terminology and concepts, illustrates how records retention scheduling is records and information management best practice, highlights the benefits of records retention scheduling, and discusses records retention policy. The third chapter will address approving, implementing, and maintaining a records retention schedule.

The guidance in these chapters is aimed at records and information professionals in all organizations, including the private sector, government and the broader public sector, and the not-for-profit sector. The chapters are also relevant to positions or committees responsible, indirectly or directly, for records and information management outcomes.

§ 49:2 Records Retention Schedule Development Process

This section describes the five steps in developing a records retention schedule. The steps are understanding the organization's business, identifying the organization's records, appraising the value of each record series, completing the research (legislated requirements and limitation periods and, potentially, non-legislated requirements and guidance), and designing and populating the records retention schedule template.

Note: §§ 47:1 et seq. defines several records retention scheduling terms and concepts used in this section.

§ 49:3 Records Retention Schedule Development Process—Understand the Organization's Business

Having a good understanding of an organization's business and the environment in which it operates will enable a records and information management professional to identify the applicable legislation and other documents which may prescribe, recommend, or suggest records retention requirements and broader records management requirements and identify the applicable legislation to be researched to identify limitation periods. The information to be gathered (if/where applicable) is listed below.

1. **Business activities conducted:** Determine what the organization does, e.g., what goods does the organization produce and/or sell, what services does the organization provide, or what programs does the organization offer. Understanding an organization's business activities is a pre-requisite for completing items 5 and 6 below.
2. **Business location(s) and nature of business at each location:** Identify the Canadian provinces and territories and any foreign countries in which the organization conducts business and the type of business conducted in each jurisdiction. For example, a manufacturing company may have its head office in Ontario, manufacturing plants in British Columbia and Quebec, and sales offices in each province plus in the states of New York, Texas, and California in the United States of America. Making this identification will identify the focus of the legislative requirements research and alert the records and information management professional to the potential need to reconcile differences in legislated records retention requirements and limitation periods across different

jurisdictions, including different countries. As discussed in § 49:10, legal counsel should be asked to propose suitable retention periods when such differences apply.

3. **Unionized workforce:** Determine whether any of the organization's employees are represented by a union because some collective agreements contain broader records management requirements (e.g., a requirement to create and maintain a specified type of record such as a seniority list) and/or records retention requirements (e.g., a requirement to keep a record of employee discipline for only 24 months from the date on which the record was created provided no other instance(s) of discipline have occurred in the interim).
4. **Incorporation status:** A business corporation may be incorporated under a federal law (e.g., *Canada Business Corporations Act*, R.S.C. 1985, c. C-44) or a provincial or territorial law (e.g., British Columbia's *Business Corporations Act*, S.B.C. 2002, c. 57). For an incorporated business entity, it is important to determine the law under which incorporation occurred because the applicable corporations legislation will address records such as articles of incorporation, by-laws, minute books and securities register.
5. **Canadian federal versus provincial or territorial regulation:** Determine whether the industry in which the business operates is regulated by the Canadian federal government (e.g., an interprovincial ferry service) or at the provincial or territorial level (e.g., a hospital). Making this determination will identify the focus of the legislative requirements and limitation periods research that will be completed, bearing in mind that some types of records (e.g., records regarding taxation) are covered by both federal and provincial or territorial legislation. Note: See § 49:13 of this chapter for a discussion of the powers of the Parliament of Canada, the provincial legislatures, and the territorial legislative assemblies and see § 49:30 of this chapter for information about statutes of limitation.
6. **Overarching legislation:** In some cases, one law prescribes an entity's governance and operations. For example, the Canadian federal *Bank Act*, S.C. 1991, c. 46, applies to the banks listed in Schedule I or II of the Act while the *Municipal Act, 2001*, S.O. 2001, c. 25 applies to all municipalities in Ontario. It is recommended that a records and information management professional identify and research any applicable overarching legislation prior

to developing a records retention schedule because completing that research will assist in identifying the entity's records and also likely identify records retention and/or broader records management requirements and limitation periods. It is important to remember, however, that it will also be necessary to research all other statutes and regulations which apply to the organization.

7. **Requirement to use an existing records retention schedule:** Public sector organizations at the federal level and in some provinces and territories are required to use existing records retention schedules. In some provinces or territories, local or municipal government associations have published records retention guidance for the municipal organizations in their geographic jurisdiction. A records and information management professional is encouraged to determine whether a records retention schedule or retention guidance exists prior to beginning the development of a retention schedule for a public sector entity.

- (a) At the **Canadian federal level**, Library and Archives Canada published *Multi-Institution Disposition Authorizations (MIDAs)*¹ to:

. . . provide direction to government institutions subject to the Library and Archives of Canada Act regarding the disposal of records managed by all or an identified group of government institutions. MIDAs . . . are designed to eliminate the need for government institutions individually to request disposition authorization from Library and Archives Canada for records which have similar administrative or operational status.

MIDAs have been published for common administrative records (e.g., records of the real property management function) and for some types of operational records commonly found in government institutions (e.g., operational case file records). The applicability of some MIDAs is time-limited. Conversely, *Institution-Specific Disposition Authorizations (IS-DAs)* apply to the records managed by single government institutions. This means that a government institution is required to develop and secure approval

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¹Library and Archives Canada, *Multi-Institution Disposition Authorizations (MIDAs)* <https://www.bac-lac.gc.ca/eng/services/government-information-resources/disposition/Pages/mida.aspx> (accessed March 15, 2021).

of ISDAs to manage the retention and disposition of its unique, operational records.

Recently, Library and Archives Canada published the *Generic Valuation Tools (GVTs)*² to “provide Government of Canada institutions with a starting point for meeting two key requirements of the Treasury Board of Canada Secretariat (TBS) *Directive on Recordkeeping* (2009), namely the identification of information resources of business value (IRBV) and the establishment of retention specifications”. It must be stressed, however, that the *GVTs* provide recommendations only and do “not provide Government of Canada institutions with the authority to dispose of information. *GVTs* are not Records Disposition Authorities (RDAs) and do not replace the Multi-Institutional Disposition Authorities (MIDAs).³

- (b) At the **provincial or territorial level**, government ministries, agencies, Crown corporations, and other government entities may be required to use a records retention schedule created by the branch or ministry of the government responsible for the government’s records. These retention schedules are typically limited to the records of the administrative functions common to all government entities (e.g., finance, human resources, materials and equipment), meaning that an individual government entity will be required to develop a retention schedule for its operational records. For example, the Province of Alberta published the *Administrative Records Disposition Authority (ARDA)*⁴ which “must be used as a records retention and disposition schedule for common administrative records in Government of Alberta departments and agencies”. The Alberta government also published a guide, *Developing Record Retention*

²Library and Archives Canada, *Generic Valuation Tools (GVTs)* <https://www.bac-lac.gc.ca/eng/services/government-information-resources/guidelines/generic-valuation-tools/Pages/introduction.aspx#a> (accessed March 15, 2021).

³Library and Archives Canada, *Generic Valuation Tool: Information Management*, p. 1 https://www.bac-lac.gc.ca/eng/services/government-information-resources/guidelines/generic-valuation-tools/Documents/GVT_InformationManagement.pdf (accessed March 15, 2021).

⁴Alberta Government, *Administrative Records Disposition Authority (ARDA) 1986/050-A018*, p. 5 <https://imtpolicy.sp.alberta.ca/guidelines/Supporting%20Documents/im-administrative-records-disposition-authority-schedule.pdf> or accessible from <https://www.alberta.ca/managing-government-information.aspx#jumplinks-10> (accessed March 15, 2021).

and *Disposition Schedules*,⁵ which includes information about developing a retention schedule for operational records.

Conversely, the Province of British Columbia developed classification and retention schedules for its administrative records (the *Administrative Records Classification System (ARCS)*) and its operational records (the *Operational Records Classification System (ORCS)*) in addition to special schedules for the records of commissions of inquiry, defunct programs and voice mail records.⁶

- (c) At the **municipal level**, some associations have published records retention schedules for local or municipal government records such as the *Records Management Manual for Local Government Organizations* published by the Local Government Management Association (LGMA) in British Columbia⁷ and the *Records Management Manual Nova Scotia Municipal Units* published by the Association of Municipal Administrators Nova Scotia (AMANS). While use of such retention schedules is not mandatory, they provide a useful best practices resource for retention schedule development by the municipalities in the province or territory for which the retention schedule was developed. Further, when an association-developed records retention schedule is used by many local or municipal governments in a given province or territory, the retention periods in the schedule may be perceived by some as *de facto* requirements.
- (d) **Regulatory bodies:** Determine whether a regulatory body governs the organization and/or any of its employees because a regulatory body may prescribe or recommend records retention periods and/or

⁵Alberta Government, *Developing Records Retention and Disposition Schedules* https://www.alberta.ca/assets/documents/IM-Developing-Schedule_s.pdf (accessed March 15, 2021).

⁶The *Administrative Records Classification System (ARCS)*, the *Operational Records Classification System (ORCS)*, the special schedules and background information about the systems and schedules are accessible from <https://www2.gov.bc.ca/gov/content/governments/services-for-government/information-management-technology/records-management/information-schedules> (accessed March 15, 2021).

⁷Information about the *Records Management Manual for Local Government Organizations* is available at <https://www.lgma.ca/manuals1#RecordsManagementManual> (accessed March 15, 2021).

broader records management requirements. Some regulatory bodies in Canada are government agencies, commissions or boards which regulate an industry such as the Ontario Energy Board, which regulates the electricity and natural gas sectors in that province. Other regulatory bodies are self-governing organizations typically established by a provincial or territorial government to protect the public by enforcing the legislation and codes of conduct that oversee a specific profession such as architecture, engineering, law or nursing. Some self-regulatory organizations oversee both companies and their employees as, for example, in the case of the Investment Industry Regulatory Organization of Canada (IIROC) which oversees all investment dealers in Canada (currently 175 investment dealer firms) and their employees (currently more than 30,000 registered employees) and their trading activity in Canada's debt and equity markets.

- (e) **Industry associations:** Identify the association(s) for the industry (or industries) in which the organization operates because those bodies may also recommend records retention periods and/or broader records management requirements. An industry association may be pan-Canadian or specific to a province or territory. Industry associations are not established by federal, provincial or territorial legislation, and are themselves typically not-for-profit organizations. Association membership (usually paid) is voluntary. Examples of industry associations include Alberta Urban Municipalities Association, Canadian Manufacturers & Exporters, and Women in Trucking Association. It is not uncommon for an industry association to strike a committee or working group to address records management, including records retention, and publish records management guidance. For example, a sub-committee of the Law Enforcement Records (Managers) Network (LEARN) (which is itself a committee of the Ontario Association of Chiefs of Police) recently published a records retention toolkit to provide municipal police services in Ontario with minimum retention periods based on legislation and best practices.
- (f) **Retention periods in the organization's policies or procedures:** Determine whether retention peri-

ods are stated in any of the organization's policies or procedures. For example, a Privacy Policy may prescribe a retention period for personal information and an E-mail Management Procedure may prescribe a retention period for e-mails. As discussed in § 49:7, it is recommended that any such retention periods be documented, discussed with stakeholders and considered during the records appraisal.

§ 49:4 Records Retention Schedule Development Process—Identify the Organization's Records

As stated in §§ 47:1 et seq., a records retention schedule is: "A document that identifies and describes an organization's records, usually at the series level, [and] provides instructions for the disposition of records throughout their life cycle." Thus, the next step in the development of a records retention schedule is to identify the organization's records and then group those records into series, i.e.: "A group of related records filed / used together as a unit and evaluated as a unit for retention purposes (e.g., a personnel file consisting of an application, reference letters, benefit forms, etc.)."

It is records and information management best practice for a record series to be media-independent, with one retention period applying to all records in the series regardless of their physical format. For example, if an organization receives accounts payable invoices in hard copy by mail and electronically as attachments to e-mail messages and retains the invoices in both formats, the same retention period would apply to the physical and electronic invoices. However, an exception to the media-independent best practice occurs when records in a series are converted from one format to another, with the source records being disposed of after conversion and the records in the new format being kept as the organization's official records. For example, an organization that scans physical accounts payable invoices upon receipt would dispose of the physical invoices at a set time after conversion and completion of quality assurance testing (such as 30 days) and then retain the images for as long as they are required to satisfy operational, fiscal and/or legal or regulatory requirements. In this case, there would still be one record series (i.e., accounts payable invoices) but the records retention schedule would indicate a different retention period for the physical invoices as opposed to the electronic invoices.

An organization that has developed a records classification

scheme can usually expand that document to include records retention and disposition information, thus creating an integrated records classification scheme and retention schedule as in the Province of British Columbia *Administrative Records Classification System (ARCS)* and *Operational Records Classification System (ORCS)* examples in § 49:3.

An organization that does not have a records classification scheme will need to conduct an inventory to identify its records and then group those records into series, the retention and disposition of which will be governed by the records retention schedule that the organization will then develop. There are various records inventory methodologies and data collection methods which may be used alone or in combination, e.g., physical inventory, surveys or questionnaires, and interviews with employees. A records and information management professional who has not previously planned or completed a records inventory may find it helpful to consult a records and information management textbook such as *Records and Information Management: Fundamentals of Professional Practice*.¹ An Internet search will also uncover resources that address the planning and execution of a records inventory and provide sample records inventory forms, e.g., the Government of Newfoundland and Labrador's Office of the Chief Information Officer published *Guideline—Records and Information Inventory*² and the National Archives (United States) published *Guide to the Inventory, Scheduling, and Disposition of Federal Records*.³ While resources such as these are specific to the records inventory requirements, procedures and data collection tools of individual government entities, they may prove useful.

Once the inventory has been completed, the next step is to group the records into series. As discussed in §§ 47:1 et seq., it is records and information management best practice for the

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¹William Saffady, *Records and Information Management: Fundamentals of Professional Practice*, 4th edition. This book is scheduled to be published in May 2021. For more information, visit <https://rowman.com/ISBN/9781538152539/Records-and-Information-Management-Fundamentals-of-Professional-Practice-Fourth-Edition> (accessed March 15, 2021).

²Office of the Chief Information Officer, Government of Newfoundland and Labrador, *Guideline—Records and Information Inventory* <https://www.gov.nl.ca/exec/ocio/files/im-practitioners-guideline-docs-3-1-records-inventory.pdf> (accessed March 15, 2021).

³National Archives, *Guide to the Inventorying, Scheduling, and Disposition of Federal Records* <https://www.archives.gov/records-mgmt/scheduling> (accessed March 15, 2021).

records in a series to have the same retention period, for example, an organization may keep bank statements and reconciliations for six years after the end of the organization's fiscal year. Occasionally, it may be necessary to keep some records in a series for a different length of time, for example, an organization may keep personnel or employee files until two years after termination of employment but dispose of records of employee discipline after 24 months in compliance with the terms of a collective agreement. In such cases, the retention period exception would be noted in the records retention schedule for records of employee discipline alongside the retention period which applies to the balance of records in the personnel / employee files records series or an organization may elect to create "employee discipline records" as a sub-series of the personnel or employee files record series so that the event plus 24-month retention period for the discipline records is clearly identified.

**§ 49:5 Records Retention Schedule Development
Process—Appraise the Value of Each Record
Series**

As stated in §§ 47:1 et seq., records appraisal is: "The evaluation of a records series or an individual record's value for retention or archival purposes, based upon its current or predicted use(s) for administrative, legal, regulatory, fiscal, research, evidentiary, or historical purposes." The content and context of a record series (or individual record) determines its business value for retention scheduling purposes and one series (or record) may have more than one value. There are four records values: administrative / operational value, fiscal value, legal / regulatory value and archival (or historical) value which are briefly summarized in Table 1 below and discussed in greater detail in §§ 47:1 et seq.

Table 1: Records Values

Value	Definition
Administrative or Operational Value	Records that document and facilitate the execution of an organization's current business, including its primary business functions
Fiscal Value	Records used to conduct financial or tax business (both current or future) and/or records (e.g., daily production logs or sales contracts) which provide evidence to support an organization's financial, tax or audit activities

Value	Definition
Legal or Regulatory Value	Records which comply with statutes and regulations, provide proof of business transactions, protect the interests of an individual or organization, or serve as evidence in legal proceedings
Archival or Historical Value	Records of continuing usefulness or significance in documenting an organization's history

Records appraisal should not be performed solely by a records and information management professional. A records and information management professional must consult with stakeholders to ensure an accurate and comprehensive understanding of how a record series is used and its value to the organization. Table 2 identifies the stakeholders a records and information management professional should consult to appraise the value(s) of each record series.

Table 2: Records Appraisal Stakeholders Values

Value	Stakeholders
Administrative or Operational Value	<ul style="list-style-type: none"> ● Representative employees (management and staff)¹ who create or receive the records and who use the records to conduct business
Fiscal Value	<ul style="list-style-type: none"> ● Representative employees (management and staff) who create or receive the records and who use the records to conduct financial or tax business (both current and future) ● Auditors (internal and/or external) who consult the records for evidence to support an organization's financial, tax or audit activities
Legal or Regulatory Value	<ul style="list-style-type: none"> ● Legal counsel (in-house and/or external) who rely on the records to demonstrate compliance with statutes, provide proof of business transactions, or protect the interests of an individual or organization ● Legal counsel (in-house and/or external) who will use the records as evidence in legal proceedings

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¹Particularly when appraising administrative or operational value, and fiscal value, it is not necessary (or advised) to consult with every employee who creates or receives the same type of records. Instead, representative employees should be consulted. For example, it will be sufficient to consult with the supervisor or manager of each accounting function such as budgeting, payables, receivables and payroll instead of consulting with every employee in accounting.

Value	Stakeholders
Archival Value	<ul style="list-style-type: none"> ● Archivist (in-house or external) who identifies a record's continuing usefulness or significance in documenting an organization's history

Meeting any fiscal, legal or regulatory requirements is a baseline criteria for records retention, but it is equally important that a records retention schedule meets the ongoing operational needs of the organization. Having records available when they are needed and not destroying them prematurely must be balanced with the wasted cost and labour associated with keeping records unnecessarily. However, the duration of a record series' administrative or operational value is often challenging to determine because employees are often reluctant to dispose of records for fear that they may be needed at some unknown point in the future.

In addition to the stakeholders identified in Table 2, a records and information management professional should also consult with the organization's Privacy Officer (or equivalent position) regarding the retention of personal information. If the organization has a compliance function, the records and information management professional should also consult with the Compliance Officer (or equivalent position) regarding the retention of records for compliance purposes. Privacy and compliance stakeholders as well as stakeholders consulted regarding fiscal value (e.g., Chief Financial Officer, Auditor, etc.) and legal or regulatory value (i.e., Legal Counsel) can also assist the records and information management professional to identify applicable legislation, the regulatory bodies which may prescribe retention periods for the organization's records and (industry) associations whose records retention guidance is considered best practice.

Table 3 illustrates how the value(s) of selected records may be appraised using the example of a privately held clothing manufacturer doing business in the Province of British Columbia.

Table 3: Records Appraisal Examples

Record Series	Record Series Description	Administrative or Operational Value	Fiscal Value	Legal or Regulatory Value	Archival or Historical Value
Accounts payable invoices	Invoices from suppliers for goods or services received and which have been approved for payment and for which payment has been issued	Current year invoices until payment made and year-end audit completed	Records of financial transactions including taxation Auditors spot check invoices for evidence to support company's financial and tax transactions	Considered "vouchers" by <i>Income Tax Act</i> , R.S.B.C. 1996, c. 215, s. 58, and subject to legislated event + 6 year retention requirement (event = end of taxation year to which they relate unless exception applies) <i>Business Corporations Act</i> , S.B.C. 2002, c. 57, s. 196(1), states: "A company must keep adequate accounting records for each of its financial years and must retain the accounting records kept for a financial year for the prescribed period."	No
Annual reports	Annual reports (one per year) describing the company's operations and finances during the preceding year	Recent reports (last 1-5 years) sometimes referenced to quickly locate facts or figures	No (official record of audited financial statements kept separately)	No legislated requirement to prepare this type of annual report	Document the company's history

Record Series	Record Series Description	Administrative or Operational Value	Fiscal Value	Legal or Regulatory Value	Archival or Historical Value
Employee files (Personnel files)	Employment history (e.g., resumes, applications, performance evaluations, accident reports, etc.) excluding payroll records	Used to administer the employer-employee relationship until termination of employment Referenced for up to 2 years after employment termination to provide references upon request or information required by pension plan administrator	No	Protect company's and employee's interests Potential evidence for legal proceedings	No
Equipment inspections	Records of specific tests and checks carried out to assess the condition of equipment, identify any defects and recommend any necessary repairs	Used to order parts and schedule repairs	No	Protect company's interests Potential evidence for legal proceedings (e.g., claims against equipment manufacturer)	No

A records and information management professional should document (and keep) the records appraisal results for each series. This information will be needed to support the rationale for a series' proposed records retention period and to provide a record (audit trail) for the benefit of the records and information management professionals who will update the records retention schedule in the future. The records appraisal findings may be documented on a records inventory form or on a separate form to be appended to and kept with the inventory form.

§ 49:6 Records Retention Schedule Development Process—Complete the Research and Document the Findings

This section discusses determining the scope of the legal and other research, the research process, the research challenges that may be encountered, the role of legal counsel, and how to document the research findings.

§ 49:7 Records Retention Schedule Development Process—Complete the Research and Document the Findings—Determine the Scope of the Legal and Other Research

At minimum, it will be necessary to research all of the following:

1. Applicable statutes and regulations to identify legislated requirements to retain the organization's records for specified time periods (see Table 1 in § 49:28 for examples).
2. Applicable statutes and regulations to identify legislated records retention requirements for which the duration of retention is not specified. These requirements are often expressed using phrasing such as "shall keep" or "must maintain" (see Table 2 in § 49:28 for examples).
3. Applicable statutes and regulations to identify limitation periods for the legal actions to which the organization may be a party in the future (see § 49:30 for more information on limitation periods, including limitation period examples in § 49:32).
4. The organization's own documents to identify any requirements to retain records for a specified time period (e.g., a collective bargaining agreement which specifies a retention period for employee discipline records).
5. When applicable, the website and publications of a regulatory body which governs the organization and/or any of its employees to identify requirements for retaining the organization's records for specified time periods. This research may reveal qualifications to and expansions of a legislated records retention requirement as with the pharmacy records example in Table 1 as compared to the following, relatively brief, records retention requirement in Ontario Regulation *General*, O. Reg. 264/16, s. 21: "Subject to the Act, documents relating to the care of a patient shall be maintained for a period of at least 10 years from the last recorded pharmacy service provided to the patient, or until 10 years after the day on which the patient reached or would have reached the age of 18 years, whichever is longer."¹ Identifying requirements set by applicable regulatory bodies to

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¹*General*, O. Reg. 264/16, <https://www.ontario.ca/laws/regulation/160264> (current to March 10, 2021 and accessed March 15, 2021). This is a regula-

retain records for specified retention periods will further ensure that an organization is aware of all of its legal obligations for retaining records before developing a records retention schedule.

Table 1: Examples of Retention Requirements Set by Regulatory Bodies

Regulatory Body	Citation	Records	Records Retention Requirement (Verbatim Text from the publication; italicized, bold text added by author)
Law Society of British Columbia	<i>Closed Files—Retention and Disposition</i>	Original wills and all wills files	<i>100 years, or, if a will of the client has been probated, 10 years after final distribution of the estate</i> ²

tion under Ontario's *Drug and Pharmacies Regulation Act*, R.S.O. 1990, c. H.4.

²Law Society of British Columbia, *Closed Files—Retention and Disposition*, 2017, Appendix B, p. 30 accessible from <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/your-clients/> (accessed March 15, 2021). This publication includes a minimum retention and disposition schedule for specific records and files.

Regulatory Body	Citation	Records	Records Retention Requirement (Verbatim Text from the publication; italicized, bold text added by author)
Ontario College of Pharmacists	<i>Records Retention, Disclosure and Disposal Guideline</i>	Records and documents relating to the care of a patient	<p>“All records and documents relating to the care of a patient, including the original prescriptions, <i>shall be maintained for a period of at least 10 years from the last recorded professional pharmacy service provided to the patient, or until 10 years after the day on which the patient reached, or would have reached, the age of 18 years, whichever is longer.</i> While an audit or inspection is being performed by or on behalf of the College, involving either a registrant or pharmacy, <i>no record or document shall be destroyed until the audit or inspection is completed unless approved by the Registrar.</i> The pharmacy must <i>retain records for longer than the general retention period if a request for access to personal health information has been received</i> until such time as the record may no longer be required to respond to that request for access.”³</p>

Completing the minimum research described above will ensure the organization is aware of its obligations to retain records for the time periods prescribed in statutes or regulations and, when applicable, for the time periods required by the organization’s own documents. Completing the minimum research will also identify requirements to keep records for unspecified durations, thereby expanding the organization’s awareness of its obligations to retain the records required by law. It will also provide an opportunity for applicable limitation periods to be considered when records retention periods are being proposed. When applicable, the organization will also be aware of its obligations to comply with the requirements set

³Ontario College of Pharmacists, *Records Retention, Disclosure and Disposal Guideline*, 2014 <https://www.ocpinfo.com/regulations-standards/practice-policies-guidelines/records/> (accessed March 15, 2021).

by a regulatory body to retain specific records for specified retention periods.

Depending on the results of the records appraisal (see § 49:5), an organization may adopt a retention period prescribed by law or, if applicable, the retention period required by a regulatory body. Alternatively, the organization may decide to keep the records for a longer period, viewing the legislated requirement or the regulatory body's requirement as the minimum records retention obligation. Of course, any decision to keep records for longer than a legislated retention requirement or for longer than the retention period required by a regulatory body should only be made after consulting with legal counsel regarding the risks of longer retention, including potential limitation period implications.

A review of the organization's own documents may uncover retention periods as discussed above. In the case of a legal agreement (as in the employee discipline record example discussed previously), it is not advisable to not implement a prescribed records retention requirement because doing so would result in the organization breaching the agreement's terms. However, caution is recommended when a review of the organization's own documents uncovers records retention periods in policies, procedures, or other documents (but not legal agreements) previously approved at the enterprise level or by individual lines of business. Given that those retention requirements were implemented prior to the records retention schedule project, it is highly unlikely that a records appraisal was completed. Further the records retention requirements may have been approved without input from records and information management. Consequently, when a records and information management professional encounters this, it is recommended that the retention periods be documented, discussed with stakeholders and considered during the records appraisal. This may result in a retention period being carried forward as a proposed retention period in the records retention schedule or it may prove appropriate to propose a different retention period with the expectation that the organization's document (e.g., policy) will be updated accordingly following approval of the records retention schedule.

As part of the research scoping, it will also be necessary to decide whether any of the following **additional requirements or guidance** will be researched:

1. Applicable statutes and regulations to identify broader records management requirements such as obligations to

create records or make records available for inspection (see Table 1 in § 49:29 for examples). Many consider these requirements to be implied records retention requirements. Researching statutes and regulations to identify broader records management requirements will increase the time required to complete the research; however, this will be time well spent because an organization is often unaware of all such requirements, meaning that the organization may not be in full compliance with the law. Further, because broader records management requirements often speak to specific records, completing this research will enable an organization to cross-check the research findings against its records inventory or records classification scheme, identify any missing records and take corrective action.

2. Records retention recommendations or guidance published by an applicable regulatory body which governs the organization and/or any of its employees. While not requirements as discussed under minimum research above, a regulatory body's records retention recommendations or guidance serve as a baseline and are often viewed as a minimum obligation within the industry or profession over which the regulatory body has oversight.
3. Records retention recommendations or guidance, sometimes including model records retention schedules, published by industry associations or records and information management (RIM) associations. While not legislated obligations, these recommendations or guidance are often considered (or positioned as) best practices and are adopted by many organizations if/where applicable. See Table 2 for examples. While additional time will be required to complete this research, the identification of records retention recommendations or guidance published by RIM associations or by applicable industry associations will provide a minimum starting point for proposing records retention periods and provide an organization with an opportunity to consider how its proposed retention periods align with those of its peers. A records and information management professional may also benefit from seeing the different formats and level of content in model records retention schedules.

Some organizations will elect to complete all of the additional research discussed above while others may only research applicable statutes and regulations to identify the broader records management requirements and research the records

retention recommendations or guidance of an applicable regulatory body. Prior to beginning to research any of the additional research sources discussed above, it is recommended that a records and information management professional consult with legal counsel to determine the optimum amount of additional research to be completed given the organization's industry and other circumstances.

Table 2: Examples of Industry Association or RIM Association Records Retention Recommendations or Guidance

Association	Publication	Records Retention Recommendation(s) or Guidance
ARMA International	<i>U.S. Record Retention Requirements: A Guide to 100 Commonly Encountered Record Series</i> ⁴	This publication provides retention guidance for organizations subject to the laws of the United States of America for records in 14 functional areas such as finance and accounting, human resources, and fleet management. Among other things, this publication discusses the following for each record series: the legal considerations (i.e., laws, regulations, statutes of limitations), business needs and archival requirements that determine how long the series should be kept.
Association of School Business Officials of Alberta (ASBOA)	<i>Model Records Retention Guidelines and Toolkit</i> ⁵	Alberta school jurisdictions can customize the model records retention schedule "to reflect their individual culture, language and practices." The Toolkit also includes a Citation Information List which provides information about the legislated records retention and broader records management requirements (Canadian federal and Province of Alberta) which are mapped to individual series in the records retention schedule.

⁴William Saffady, *U.S. Record Retention Requirements: A Guide to 100 Commonly Encountered Record Series*, 2018. For more information or to purchase the book, visit the ARMA International online bookstore at <https://www.arma.org/store/ListProducts.aspx?catid=636275> (accessed March 15, 2021).

⁵Association of School Business Officials of Alberta (ASBOA), *Model Records Retention Guidelines and Toolkit*, <https://asboalberta.ca/page/model-records-retention-guidelines-and-toolkit> (accessed March 15, 2021).

Association	Publication	Records Retention Recommendation(s) or Guidance
Canadian Medical Protective Association (CMPA)	<i>Electronic Records Handbook</i> ⁶	The chapter on records retention and disposition states: “The CMPA recommends that physicians maintain clinical records for at least 10 years from the date of the last entry, or for at least 10 years from the age of majority in the case of minors. In some jurisdictions where limitation periods extend beyond 10 years, the College may require records be retained for a longer time. Physicians should consult with their College’s policy on records to determine the appropriate length of time to retain records.” ⁷
International Council on Archives	<i>Guidelines for Developing a Retention Schedule for Records Management and Archival Professional Associations—Including a Model Retention Schedule</i> ⁸	Retention periods are proposed in the function-based model retention schedule.

§ 49:8 Records Retention Schedule Development Process—Complete the Research and Document the Findings—The Research Process

Armed with an understanding of the legislative process (§ 49:23), the division of powers between the federal and the provincial and territorial levels of government (§ 49:15), and an understanding of an organization’s business and the environment in which it operates (§ 49:3), a records and information management professional is well-prepared to complete the minimum research and as much of the additional research as the organization has deemed to be in scope (§ 49:7).

The research of legislated requirements to retain records for specified or unspecified time periods and the research of limita-

⁶Canadian Medical Protective Association, *Electronic Records Handbook*, 2014, accessible from <https://www.cmpa-acpm.ca/en/advice-publications/browse-articles/2014/electronic-records-handbook> (accessed March 15, 2021).

⁷Canadian Medical Protective Association, *Electronic Records Handbook*, 2014, p. 24 accessible from <https://www.cmpa-acpm.ca/en/advice-publications/browse-articles/2014/electronic-records-handbook> (accessed March 15, 2021).

⁸International Council on Archives, *Guidelines for Developing a Retention Schedule for Records Management and Archival Professional Associations—Including a Model Retention Schedule*, n.d. <https://www.ica.org/en/guidelines-developing-retention-schedule-professional-associations-including-model-retention> (accessed March 15, 2021). The publication is available as a free download in English and Spanish.

tion periods can be completed using the free, online statutes and regulations resources identified in § 49:23. Alternatively, an organization may complete this research by using a third-party, fee-based research tool such WestlawNext Canada¹ or Lexis Advance Quicklaw² which provides access to Canadian statutes and regulations. The free, online resources or the fee-based research tools can also be used to research broader records management requirements such as obligations to make records available for inspection should the organization deem such additional research to be in scope.

Instead of researching individual statutes and regulations, an organization may decide to use the fee-based Records Retention Compliance Centre (a USB product) which researches and regularly updates records retention requirements and limitation periods as well as some records management requirements in Canadian federal, provincial and territorial statutes and regulations. An organization needing to research only Canadian federal and Province of Ontario legislation may alternatively use the looseleaf, fee-based subscription service *Records Retention: Statutes and Regulations (Federal)*³ and *Records Retention: Statutes and Regulations (Ontario)*.⁴ Records retention requirements in Canadian federal, provincial, and territorial statutes and regulations are also included in some fee-based retention management software products such as Virgo.⁵ Another option is to engage an outside expert to conduct the research, either a records and information management consultant or legal counsel. Because a records and information management consultant is not typically a lawyer, it is recommended that an organization's legal counsel vet the consultant's research unless the scope of the consulting engagement

[Section 49:8]

¹For more information or to purchase this service, visit <https://www.westlawnextcanada.com/> (accessed March 15, 2021).

²For more information or to purchase this service, visit <https://www.lexisnexis.ca/en-ca/products/lexis-advance-quicklaw-overview.page> (accessed March 15, 2021).

³For more information or to purchase this publication, visit <https://store.thomsonreuters.ca/en-ca/products/records-retention-statutes-and-regulations-federal-30843490> (accessed March 15, 2021).

⁴For more information or to purchase this publication, visit <https://store.thomsonreuters.ca/en-ca/products/records-retention-statutes-and-regulations-ontario-30843082> (accessed March 15, 2021).

⁵For more information or to purchase the product, visit <https://www.esscorp.com/en-ca/information-management/virgo/> (accessed March 15, 2021).

includes the consultant's provision of a legal opinion from external legal counsel regarding the research's accuracy and completeness. In Canada, a few lawyers in solo practice specialize in these matters while some law firms (or practice areas within firms) also specialize in these matters.

Using any of these alternatives to the free, online resources for researching statutes and regulations will increase the cost of records retention schedule development so an organization will need to plan accordingly. Note: If an organization has a Legal Department, it is recommended that the records and information management professional check with legal counsel before purchasing a fee-based subscription because the organization may already have an account.

A records and information management professional would research the websites and publications of any applicable regulatory body to identify requirements to retain the organization's records for specified time periods. In some cases, the necessary resources may be behind a firewall for which (paid) membership is required.

Understanding the organization's business and the environment in which it operates will also prepare a records and information management professional to complete any additional research with respect to regulatory bodies and associations which the organization has deemed to be in scope, that is:

- Consult websites to identify the records retention recommendations or guidance published by an applicable regulatory body which governs the organization and/or any of its employees. This information is sometimes kept behind a firewall for which (paid) membership or registration is required.
- Consult websites to identify the records retention recommendations or guidance, sometimes including model records retention schedules, published by records and information management associations and applicable industry associations. This information may also be kept behind a firewall for which (paid) membership is required and fees may apply to purchase publications.

§ 49:9 Records Retention Schedule Development Process—Complete the Research and Document the Findings—Research Challenges

Apart from the time and cost required to complete the research, a records and information management professional may encounter challenges during the research process. Examples of the challenges include:

1. **Reconciliation of record (series) names with the terminology in a statute, regulation or other document.**

It can be time-consuming (and frustrating) to reconcile the terminology used to name documents or records in a statute, regulation or other document (e.g., a bulletin published by a regulatory body) with an organization's record (series) names. For example, a records and information management professional may anticipate that the *Income Tax Act*, R.S.C. 1985, c. 1, 5th Supp., addresses the retention of "accounts payable invoices" because those records document amounts payable, including taxes. Searching the Act for "accounts payable invoice" or simply "invoice" will prove fruitless because the Act does not use those terms. Instead, the Act uses the generic terms "records and books of account" and "vouchers". Fortunately, the ability to search a statute or regulation online makes it relatively easy (although time-consuming) to search for multiple terms to determine the Act's terminology and then map those terms to an organization's record (series) names. Similarly, the ability to search on verbs such as "keep", "retain" or "maintain" will help identify legislated records retention requirements while searches on verbs such as "create", "inspect" and "post" will help locate broader records management requirements.

2. **Differences in the currency of legislation.** As discussed in § 49:23, Canadian federal, provincial, and territorial statutes and regulations are available on the Internet. However, the currency of legislation varies across the jurisdictions. For example, the legislation of some jurisdictions is very current as in the case of the Province of Ontario's e-Laws website (<https://www.ontario.ca/laws>) in which consolidated laws are usually current to within five calendar days of a search, the Department of Justice's Justice Laws Website (<https://laws-lois.justice.gc.ca/eng/>) in which consolidated Canadian federal statutes and regulations are generally updated every two weeks, and the Province of Newfoundland and Labrador's statutes and regulations site (<https://www.assembly.nl.ca/legislation/>) where consolidated laws were current to February 1, 2021 as of the initial writing of this chapter (March 15, 2021). Conversely, the currency of the legislation on some websites such as the Province of Prince

Edward Island's statutes and regulations website (<http://www.princeedwardisland.ca/en/legislation/all/all/a>) varies by statute and regulation.

3. **Not all online legislation is considered to be official.** The statutes and regulations websites of some jurisdictions provide access to “official” copies of statutes and regulations as in the case of Ontario's e-Laws website which states “e-Laws provides online access to official copies of Ontario's statutes and regulations”.¹ Similarly, the Canadian federal Justice Laws Website says it “provides an official consolidation, or updated version, of the federal Acts and regulations maintained by the Department of Justice as a convenient way for the public to view the state of the law, without having to carry out research and put together the various amended provisions”.² The Justice Laws Website further states:

As of June 1, 2009, all consolidated Acts and regulations on the Justice Laws Website are “official”, meaning that they can be used for evidentiary purposes. This is the result of the coming into force on that date of amendments made to the *Statute Revision Act*, which has been renamed the *Legislation Revision and Consolidation Act*. For more information see the Important Note page and section 31 of the *Legislation Revision and Consolidation Act*.³

Conversely, some jurisdictions state that the legislation provided online is not official as in the case of Nunavut's Current Consolidated statutes and Regulations website (<https://www.nunavutlegislation.ca/en/consolidated-law/current?title=A>), which states (bolded text is from the website): “Not all the legislation of Nunavut is available as an up-to-date consolidation. **A consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only.** See Help for instruction on how to find the documents you need.”⁴ The Yukon Legislation Website explains at great length that the legislation on its site is not official by

[Section 49:9]

¹<https://www.ontario.ca/laws/about-e-laws> (accessed March 15, 2021).

²<https://laws-lois.justice.gc.ca/eng/acts/> (accessed March 15, 2021).

³*Are the consolidated Acts and regulations the official versions?* <https://laws-lois.justice.gc.ca/eng/regulations/> (accessed March 15, 2021).

⁴<https://www.nunavutlegislation.ca/en/consolidated-law/current?title=A> (accessed March 15, 2021).

providing a very lengthy disclaimer⁵ while also stating: “This website provides free public access to current side-by-side bilingual versions of Yukon legislation (Acts and Regulations). Please note that although every effort is made to ensure accuracy, the legal materials on this site have been prepared for convenience of reference only and are not the official versions. For more details, please see the Legislation Disclaimer and Copyright Notice.”⁶

The statute and regulations websites of other jurisdictions are silent with respect to the legislation’s legal status, e.g., Newfoundland and Labrador (<https://www.assembly.nl.ca/legislation/>) and Prince Edward Island (<https://www.princeedwardisland.ca/en/legislation/all/all/a>), while other jurisdictions do not provide a clear statement of legal status. For example, the Nova Scotia Legislature’s website states the following regarding the consolidated public statutes provided on the site: “These electronic versions of the statutes are provided for your convenience and personal use only and may not be copied for the purpose of resale in this or any other form. Formatting of these electronic versions may differ from

⁵The legislation disclaimer reads: “The versions of laws on the Yukon Legislation Website are not official and have been generated for convenience only. While every effort has been made to ensure the timeliness and accuracy of the information available on this site, the Government of Yukon, including the Department of Justice and the Queen’s Printer, makes no representation or warranty, express or implied, and assumes no legal liability or responsibility for the completeness, accuracy or usefulness of any of the information. In some cases, changes have been made to the online versions of the laws to correct clerical, grammatical or typographical errors that appear in the text of the official versions. For all purposes of interpreting and applying the law, users should consult the official versions of the laws—the Statutes of Yukon and Regulations of the Yukon—which are printed and published by the Queen’s Printer. They are available from the Queen’s Printer or may be viewed at the Yukon Public Law Library. The Government of Yukon, including the Department of Justice and the Queen’s Printer, makes no representation or warranty, express or implied, in respect of the completeness, accuracy or usefulness of any information that may be accessed through this site by way of links to other sites. Information on this site may be changed or updated without notice. By making this information available, the Government of Yukon, including the Department of Justice and the Queen’s Printer, is not engaged in providing legal advice. Users should contact their own lawyer regarding any questions they may have with respect to the information provided.” <https://legislation.yukon.ca/disclaimer.html> (accessed March 15, 2021).

⁶<https://legislation.yukon.ca/> (accessed March 15, 2021).

the official, printed versions. Where accuracy is critical, please consult official sources.”⁷

4. **Legislation websites of varying degrees of user-friendliness.**

Some statutes and regulations websites such as the Department of Justice’s Justice Laws Website (<https://laws-lois.justice.gc.ca/eng/>) provide a hyperlinked table of contents for each statute and regulation and provide each statute and regulation in three formats: HTML, XML and PDF (bookmarked and searchable PDF). An Act’s table of contents includes the name of and a link to each regulation under the Act and there is a link to the Act from each of its regulations. Conversely, other statutes and regulations websites are less user-friendly. Prince Edward Island’s site (<https://www.princeedwardisland.ca/en/legislation/all/all/a>), for example, only provides a searchable PDF of each statute and regulation. Some jurisdictions such as Manitoba maintain statutes (http://web2.gov.mb.ca/laws/statutes/index_ccsm.php) separately from regulations (<https://web2.gov.mb.ca/laws/regis/index.php>) within one website while providing links between the two sites (e.g., in the statutes site, a hyperlinked ‘R’ (for regulation) box appears beside the name of an Act for which there is at least one regulation) while other jurisdictions such as Nova Scotia maintain two separate websites which are not linked (statutes are published on the Nova Scotia Legislature site (<https://nsl.egislature.ca/legislative-business/bills-statutes>) while regulations are kept on the Office of the Registrar of Regulations site (<https://www.novascotia.ca/just/regulations/index.htm>)). The good news is that a frequent researcher will become accustomed to the quirks of each site, learning relatively quickly how to navigate and search for the information they need.

5. **Out-dated publications from regulatory bodies, industry associations, or records and information management associations.**

Sometimes a search of the website of a regulatory body or association will uncover records retention and/or broader records management requirements or guidance that was published several years (or decades) ago, leaving the researcher to question the validity of the findings.

⁷<https://nsl.egislature.ca/legislative-business/bills-statutes/consolidated-public-statutes> (accessed March 15, 2021).

For example, a search of the Investment Industry Regulatory Organization of Canada (IIROC)'s website reveals that IIROC last updated its *Guide to Records Retention Requirements for Members*⁸ in 1996. If additional Internet searches fail to locate a more current edition, a records and information management professional may wish to contact the regulatory body or association for more information.

Records and information management professionals who are developing records retention schedules for organizations with operations in the United States and/or other countries will likely encounter additional challenges such as lack of familiarity with a country's legislative process, language barriers, and lack of free and/or current online resources for researching legislation. Consequently, an organization may decide to engage local legal counsel or a records and information management consultant with the necessary expertise and language skills to conduct the research bearing in mind that it may be challenging to find suitably skilled legal counsel or RIM consultants in some countries. Alternatively, an organization may use a third-party, fee-based research tool such as Retention Manager⁹ or HeinOnline.¹⁰ Again, using any of these options will increase the cost of records retention schedule development so an organization will need to plan accordingly. Note: If an organization has a Legal Department, it is recommended that a records and information management professional check with legal counsel before purchasing a fee-based subscription because the organization may already have an account.

Records and information management professionals who wish to find out more about the laws of other countries or who plan to conduct some (or all) of the foreign (i.e., non-Canadian) legal research required by their organization will find the legal research manuals and other guides published by university libraries or university law libraries a helpful starting point. Examples include:

⁸Investment Industry Regulatory Organization of Canada, *Guide to Records Retention Requirements for Members*, 1996 https://www.iiroc.ca/Rulebook/CIBulletins/C-104Attach_en.pdf#search=records%20retention (accessed March 15, 2021).

⁹For more information or to purchase this software, visit <https://irch.com/retention-manager/> (accessed March 15, 2021).

¹⁰For more information or to purchase this service, visit <https://home.heinonline.org/> (accessed March 15, 2021).

1. Georgetown Law Library publishes several foreign and international law research guides for countries such as France, Mexico and South Africa (<https://guides.ll.georgetown.edu/home/foreign-law>).
2. Law Library of Congress publishes *Guide to Law Online: Nations* (<https://www.loc.gov/law/help/guide/nations.php>) which includes links to constitutions, executive, legislative and judicial branches, legal research guides, and other useful sources for more than 200 countries and territories.
3. New York University's Hauser Global Law School Program GlobaLex publishes guides to researching laws in more than 160 countries (<https://www.nyulawglobal.org/globalex/index.html#>).
4. Queen's University publishes three legal research manuals (accessible from <https://guides.library.queensu.ca/legal-research-manual>) on researching United Kingdom law, United States law, and international and foreign law.

§ 49:10 Records Retention Schedule Development Process—Complete the Research and Document the Findings—The Role of Legal Counsel

It will be invaluable for a records and information management professional to have access to legal counsel when developing a records retention schedule. A records and information management professional will rely on legal counsel to advise on various matters such as how records retention and other records management requirements have been dealt with in case law¹ and to answer questions during the legislated requirements research process, e.g., questions about the applicability of legislation.

Chapter 1, § 1:9, of this publication states:

Business records may be relevant to the pursuit or defence of a claim, so regard should be had to potential actions and their limitation periods before records are destroyed.

[Section 49:10]

¹The process of investigating how courts have dealt with a piece of legislation is referred to as “noting up a statute” or looking for “statutes judicially considered”.

If a business destroys records at the end of a statutory retention period but before the end of a limitation period, it may have destroyed the records it needs to pursue or defend a lawsuit.²

Consequently, access to legal counsel will be crucial for identifying the records which may be relevant to a potential legal action, assessing the records retention implications of limitation periods, advising on retention periods and advising how to proceed when a limitation period is of a longer duration than a legislated records retention requirement as in the example discussed in § 49:33.

For organizations that operate in more than one province, territory or country, a records and information management professional will look to legal counsel to conduct a risk assessment and advise whether the same records held across more than one jurisdiction (e.g., employee personnel files) should be kept for differing amounts of time as per the requirements of each jurisdiction or whether one, organization-determined retention period should be applied regardless of the jurisdiction. If the latter, legal counsel would be instrumental in proposing the duration of the organization-determined retention period.

Legal counsel should be required to review a records and information management professional's legislated and regulatory body records retention requirements and statute of limitations research to ensure the findings are accurate and complete before work is undertaken to map the requirements and limitation periods to the organization's individual record series. Completing this review will also enable legal counsel to assess the legal implications of any differing requirements (e.g., jurisdictional differences in the retention of the same records such as employee personnel or payroll records) and any situations where the duration of a records retention requirement is not aligned with an applicable limitation period.

Consideration should be given to engaging external legal counsel if an organization does not have in-house legal counsel, if in-house legal counsel does not have the bandwidth to participate fully in the records retention schedule project, or if in-house legal counsel identifies a need for legal expertise in records retention and other records management matters. In Canada, a few lawyers in solo practice specialize in these matters while some law firms (or practice areas within firms) also offer this specialty. The use of external legal counsel will increase the cost of records retention schedule development so an organization should plan accordingly.

²See § 1:9.

§ 49:11 Records Retention Schedule Development Process—Complete the Research and Document the Findings—Documenting the Research Findings

It is necessary to document the research findings so they can be consulted when appraising the value of records and proposing retention periods. It is also necessary to document the findings to provide a record (audit trail) of the legislation and other resources such as best practices published by industry associations that should be monitored and updated if/as applicable to support future revisions to the records retention schedule.

A records and information management professional needs to plan for how the research findings will be documented and mapped, if/as applicable, to individual record series in the records retention schedule. There are various ways to accomplish this, for example:

1. Some records retention schedules do not indicate the source of any research findings, i.e., the minimum research findings or, if in scope, the minimum research findings plus the additional research findings. While sources were presumably captured during the research process, they are kept separately from the records retention schedule and are not published.
2. Some records retention schedules include a “citation” column in which a citation is provided to the source of the research findings, again the minimum research findings only or both the minimum research findings and the additional research findings if the organization elected to conduct additional research. Armed with this information, and assuming a source is publicly available (e.g., a statute or regulation), a reader can then proceed to locate the source and ascertain the details.
3. Some records retention schedules go one step further, providing a citation to the source of the findings of the in scope research plus the details. The details may be provided verbatim from the source or as a paraphrase.

Option 2, and particularly option 3, increases both the amount of detail in and the length of a records retention schedule, characteristics which many readers find off-putting. Further, the provision of citations or citations plus verbatim or paraphrased text is of no benefit to the typical reader who, frankly, could care less about the sources of the research findings. The typical reader is solely focused on determining a record’s retention period and trusts that others in the organi-

zation (e.g., records and information management, legal counsel, audit and management) have taken all applicable requirements and other criteria into consideration before approving the retention periods.

While an Internet search for sample records retention schedules will uncover retention schedules (particularly older schedules) which address citations as described above, it is best practice to prepare and maintain a citation table separately from the records retention schedule to capture applicable citations and potentially verbatim or paraphrased text as identified during completion of the in scope research (i.e., the minimum research only or the minimum research plus the additional research). A numbering system unique to each jurisdiction (statutes and regulations) and, if/as applicable, to each internal document, regulatory body and association should be developed to differentiate between the citations in the table. Alternatively, one citation table can be prepared for each jurisdiction and, if in scope, for each regulatory body and each association along with one citation table for internal documents. Again, a unique numbering system would be developed to differentiate between the citations in each table.

It is records and information management best practice to publish the citation table(s) which contain the details of the citations mapped in a records retention schedule. The table(s) are published separately from the records retention schedule (e.g., as an appendix or a series of appendices depending on the number of citation tables).

Mapping citations to series in the records retention schedule will benefit records and information management professionals and be of interest to stakeholders such as legal counsel; however, the retention schedule approver will likely be interested only in citations for the minimum research findings while the typical user will not be interested in any citations as discussed above. Consequently, an organization may elect to create two citation columns in the records retention schedule to differentiate between the citation groups, i.e., one column labelled “Records Retention Requirements and Limitation Periods” for citations to the minimum research findings and a second column labelled “Other Citations” for citations to the additional research findings. An organization would then maintain a master records retention schedule containing all of the citations mapping (as captured in both of the citation columns) and generate for approval and publication an iteration of the schedule containing only the “Records Retention Requirements and Limitation Periods” citation column.

Citation numbers or codes from the citation table(s) are mapped, if/as applicable, to individual record series in a records retention schedule. See Tables 2 and 3 in § 49:12 for examples of citation mapping.

§ 49:12 Records Retention Schedule Development Process—Design and Populate the Records Retention Schedule Template

As discussed in §§ 47:1 et seq., it is records and information management best practice for a records retention schedule to provide the following minimum information for each record series:

1. Unique code used to identify the record series. If an organization already has a records classification scheme, this code is typically the code used to identify the series in the classification scheme.
2. Record series name.
3. Scope note describing the purpose or function of the series and, sometimes, the types of records in the series or at least representative examples of the records included in the series.
4. Retention period (which some retention schedules divide into “active” and “inactive” phases of retention).
5. Disposition method.
6. Office of record identifier (i.e., the department / division, function, or other organizational unit designated to maintain the record).

In addition to providing retention and disposition direction, a records retention schedule sometimes includes additional descriptive information about a record series such as information security classification, personal information (bank) indicator and vital records indicator.

It is the responsibility of the records and information management professional to provide the minimum information for each record series after having identified the organization’s records and consulted with stakeholders. The records and information management professional will also propose a retention period for each series based on the records appraisal and research findings. The records and information management professional, again after consulting with stakeholders, will also provide any of the additional descriptive series information deemed to be in scope for the organization’s records retention schedule.

A table is a visually appealing way in which to format a records retention schedule because the columns in a table help to differentiate the fields of information for each record series. Searching for records retention schedules on the Internet will provide numerous examples, allowing a records and information professional to avoid formatting pitfalls such as crowded layouts, excessive white space in individual table cells, or overly small fonts.

Historically, records retention schedules were typewritten or prepared in word-processing software. It is now best practice to prepare a records retention schedule in spreadsheet software (such as Microsoft Excel) to facilitate uploading the schedule into an enterprise content management (ECM) system or other system. A records retention schedule formatted as a spreadsheet can also be exported to word-processing software to facilitate the production of a document to be circulated for approval or included in a meeting agenda as when a municipality may present its records retention schedule to the municipality's council for adoption.

It is also best practice to develop a citation table template to capture the citations to the legislation and other resources. See § 49:11 for more information on citation tables.

Table 1 provides a sample records retention schedule template which includes the minimum record series information discussed above plus a citation column. A legend of retention period codes (e.g., CY for current calendar year) and disposition method codes (e.g., ER for erase, SH for shred) would be appended to a hard copy of the records retention schedule or appear in a footer in a hard copy of the retention schedule. In the spreadsheet version of the retention schedule, those codes and their meanings would appear in a drop-down list for the corresponding column.

Table 2 provides a sample citation table template populated with some examples of records retention requirements of specific durations, records retention requirements of unspecified durations and limitation periods (three of the mandatory research items discussed earlier) while Table 3 has been populated with a few examples of broader records management requirements (one of the additional research items discussed earlier). A unique, alpha-numeric code has been given to each citation in each of the two tables. If/as applicable, a citation has been mapped to record series in the records retention schedule (Table 1) by inserting the applicable citation code into the "Citation" column. Alternatively, as discussed earlier, the

records retention schedule could have been formatted with two citation columns, one column labelled “Records Retention Requirements and Limitation Periods” for citations to the minimum research findings and a second column labelled “Other Citations” for citations to the additional research findings. If that were the case, citations in Table 2 would be mapped to series in the records retention schedule by completing the “Records Retention Requirements and Limitations Periods” citation column while citations in Table 3 would be mapped to series in the schedule by completing the “Other Citations” column.

Note: The record series and citation examples in Tables 1, 2 and 3 are for an organization in Ontario which is subject to the *Canada Not-for-Profit Corporations Act*, S.C. 2009, c. 23. In Tables 2 and 3, the jurisdiction of the applicable statute or regulation is identified by the numerical prefix in the citation number whereby “1-” indicates the Canadian federal jurisdiction and “2-” indicates the Province of Ontario. The alphabetical characters in a citation number are an abbreviation of the name of the statute in which the requirement is found (e.g., in the citation code 2-ITA-2, “ITA” stands for Ontario’s *Income Tax Act*, R.S.O. 1990, c. I.2). When one statute contains several requirements (as in the case of the *Canada Not-for-Profit Corporations Act*), each citation is uniquely identified by adding a numerical suffix to the citation number (e.g., the “-5” suffix in citation number 1-CNFPC-5 indicates the 5th citation to the *Canada Not-for-Profit Corporations Act*). Tables 2 and 3 also include the verbatim text of the requirement or limitation period (see the italicized text in the Records Retention Requirement or Limitation Period column in Table 2 and in the Records Management Requirement column in Table 3).

Table 1: Sample Records Retention Schedule Template

Record Series Code	Record Series Name	Record Series Scope Note	Office of Record	Citation (if any)	Retention Period			Disposition Method / Instructions
					Active	Inactive	Total	
FIN-001	Accounts Payable Invoices	Paid invoices and supporting documents (e.g., cheque stubs, purchase orders, copies of contracts, etc.).	Accounting	1-CNFPC-2 1-CNFPC-20 1-ITA-2 2-BRPA-1 2-ITA-2 2-TA-1	CY+1	5	CY+6	SH / ER
CORP-002	Board Meetings—Minutes and Resolutions	Minutes of Board meetings and resolutions	Secretary	1-CNFPC-2 1-CNFPC-7 1-CNFPC-8 1-CNFPC-9 1-CNFPC-11	CY+10	E+2 (E = organization dissolved)	E+2	OT—Transfer to archives

Record Series Code	Record Series Name	Record Series Scope Note	Office of Record	Citation (if any)	Retention Period			Disposition Method / Instructions
					Active	Inactive	Total	
HUM-013	Departing Employee Checklists	Checklists documenting removal of departing employee's computer system and telephone system access	IT		E (E = when complete)	0	E	OT— Transfer to departing employee's personnel file when completed

Table 2: Sample Citation Table Template: Records Retention Requirements and Limitation Periods

Citation Number	Citation and Records	Records Retention Requirement or Limitation Period
1-CNFPC-2	<p><i>Canada Not-for-Profit Corporations Act, S.C. 2009, c. 23, ss. 21(3), (4), (6) to (9)</i></p> <p>Accounting records, meeting minutes / resolutions</p>	<p>Prepare, maintain, and retain records for prescribed period at registered office of corporation or other director designated place and provide records for inspection</p> <p><i>21(3) A corporation shall prepare and maintain adequate accounting records and records containing minutes of meetings of the directors and any committee of directors as well as resolutions adopted by the directors or any committee of directors.</i></p> <p><i>(4) Subject to any other Act of Parliament or of the legislature of a province that provides for a longer retention period, a corporation shall retain the accounting records referred to in subsection (3) for the prescribed period.</i></p> <p><i>(6) The records described in subsection (3) shall be kept at the registered office of the corporation or at any other place that the directors think fit.</i></p> <p><i>(7) The records described in subsections (1) and (3) shall at all reasonable times be open to inspection by the directors. The corporation shall, at the request of any director, provide them with any extract of the records free of charge.</i></p> <p><i>(8) If accounting records of a corporation are kept outside Canada, accounting records adequate to enable the directors to ascertain the financial position of the corporation with reasonable accuracy on a quarterly basis shall be kept at the registered office or any other place in Canada designated by the directors.</i></p> <p><i>(9) Despite subsections (1) and (8), but subject to the Income Tax Act, the Excise Tax Act, the Customs Act and any other Act administered by the Minister of National Revenue, a corporation may keep all or any of its corporate records and accounting records referred to in subsection (1) or (3) at a place outside Canada, if (a) the records are available for inspection, by means of any technology, during regular office hours at the registered office or any other place in Canada designated by the directors; and (b) the corporation provides the technical assistance to facilitate an inspection referred to in paragraph (a).</i></p>
1-CNFPC-7	<p><i>Canada Not-for-Profit Corporations Act, S.C. 2009, c. 23, ss. 127(6), 140(2), 166(2)</i></p> <p>Directors / reso-</p>	<p>Keep records as prescribed</p> <p><i>127(6) A copy of the resolution shall be kept with the minutes of the meetings of directors.</i></p> <p><i>140(2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the meetings of directors.</i></p>

Citation Number	Citation and Records	Records Retention Requirement or Limitation Period
	<p>lutions in lieu of meetings</p>	<p>166(2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the meetings of members.</p>
<p>1-CNFPC-8</p>	<p>Canada Not-for-Profit Corporations Act, S.C. 2009, c. 23, s. 141(7)</p> <p>Conflict of interest disclosures</p>	<p>Provide for examination during corporation's usual business hours</p> <p>141(7) The members of the corporation may examine the portions of any minutes of meetings of directors or of committees of directors that contain disclosures under this section, and of any other documents that contain those disclosures, during the corporations usual business hours.</p>
<p>1-CNFPC-9</p>	<p>Canada Not-for-Profit Corporations Act, S.C. 2009, c. 23, s. 145(5)</p> <p>Limitation period—claims against directors for resolutions</p>	<p>Event + 2 years (Event = Resolution authorizing the action complained of)</p> <p>145(5) An action to enforce a liability imposed by this section may not be commenced after two years from the date of the resolution authorizing the action complained of.</p>
<p>1-CNFPC-20</p>	<p>Canada Not-for-Profit Corporations Regulations, SOR/2011-223, s. 4, under the Canada Not-for-Profit Corporations Act</p> <p>Accounting records</p>	<p>Event + 6 years (Event = End of financial year to which the records relate)</p> <p>4. For the purpose of subsection 21(4) of the Act, the prescribed period is six years after the end of the financial year to which the accounting records relate.</p>
<p>1-ITA-2</p>	<p>Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.), s. 230; as am. S.C. 1994, c. 21, s. 105; as am. S.C. 1998, c. 19, s. 227; as am. S.C. 2011, c. 24, s. 70; as am. S.C. 2013, c. 34, s. 352(F)</p> <p>Taxpayer records</p>	<p>Event + 6 years (Event = End of last taxation year to which the records and books of account relate, or year return filed provided no other exceptions apply)</p> <p>230(1) Every person carrying on business and every person who is required, by or pursuant to this Act, to pay or collect taxes or other amounts shall keep records and books of account (including an annual inventory kept in prescribed manner) at the person's place of business or residence in Canada or at such other place as may be designated by the Minister, in such form and containing such information as will enable the taxes payable under this Act or the taxes or other amounts that should have been deducted, withheld or collected to be determined.</p> <p>(2) Every qualified donee referred to in paragraphs (a) to (c) of the definition "qualified donee" in subsection 149.1(1) shall keep records and books of account—in the case of a qualified donee referred to in any of subparagraphs (a)(i) and (ii) and paragraphs (b) and (c) of that definition, at an address in Canada recorded with the Minister or designated by the Minister—containing (a) information in such form as will enable the Minister to determine whether there are any grounds for the revocation of its registration under this Act; (b) a duplicate of each receipt containing prescribed information for a donation received by it; and (c) other information in such form as will enable the Minister to verify the donations to it for which a deduction or tax credit is available under this Act.</p> <p>(2.1) For greater certainty, the records and books of account required by subsection 230(1) to be kept by a person carrying on business as a lawyer (within the meaning assigned by subsection 232(1)) whether by means of</p>

Citation Number	Citation and Records	Records Retention Requirement or Limitation Period
		<p><i>a partnership or otherwise, include all accounting records of the lawyer, including supporting vouchers and cheques.</i></p> <p><i>(3) Where a person has failed to keep adequate records and books of account for the purposes of this Act, the Minister may require the person to keep such records and books of account as the Minister may specify and that person shall thereafter keep records and books of account as so required.</i></p> <p><i>(4) Every person required by this section to keep records and books of account shall retain (a) the records and books of account referred to in this section in respect of which a period is prescribed, together with every account and voucher necessary to verify the information contained therein, for such period as is prescribed; and (b) all other records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the end of the last taxation year to which the records and books of account relate.</i></p> <p><i>(4.1) Every person required by this section to keep records who does so electronically shall retain them in an electronically readable format for the retention period referred to in subsection 230(4).</i></p> <p><i>(4.2) The Minister may, on such terms and conditions as are acceptable to the Minister, exempt a person or a class of persons from the requirement in subsection 230(4.1).</i></p> <p><i>(5) Where, in respect of any taxation year, a person referred to in subsection 230(1) has not filed a return with the Minister as and when required by section 150, that person shall retain every record and book of account that is required by this section to be kept and that relates to that taxation year, together with every account and voucher necessary to verify the information contained therein, until the expiration of six years from the day the return for that taxation year is filed.</i></p> <p><i>(6) Where a person required by this section to keep records and books of account serves a notice of objection or where that person is a party to an appeal to the Tax Court of Canada under this Act, that person shall retain every record, book of account, account and voucher necessary for dealing with the objection or appeal until, in the case of the serving of a notice of objection, the time provided by section 169 to appeal has elapsed or, in the case of an appeal, until the appeal is disposed of and any further appeal in respect thereof is disposed of or the time for filing any such further appeal has expired.</i></p> <p><i>(7) Where the Minister is of the opinion that it is necessary for the administration of this Act, the Minister may, by registered letter or by a demand served personally, require any person required by this section to keep records and books of account to retain those records and books of account, together with every account and voucher necessary to verify the information contained therein, for such period as is specified in the letter or demand.</i></p> <p><i>(8) A person required by this section to keep records and books of account may dispose of the records and books of account referred to in this section, together with every account and voucher necessary to verify the information contained therein, before the expiration of the period in</i></p>

Citation Number	Citation and Records	Records Retention Requirement or Limitation Period
		<p><i>respect of which those records and books of account are required to be kept if written permission for their disposal is given by the Minister.</i></p>
<p>2-ITA-2</p>	<p><i>Income Tax Act, R.S.O. 1990, c. I.2, s. 39; as am. S.O. 1993, c. 29, s. 2; as am. S.O. 2004, c. 16, s. 3</i></p> <p>Income tax accounting records and books of account</p>	<p>Event + 6 years (Event = End of last taxation year to which the records relate)</p> <p>Retain records as described at place of business or residence in Ontario or at Provincial Minister's designated place</p> <p>(R.S.O. 1990, c. I.2, s. 39.(2); incorporating <i>Income Tax Act Canada</i>, s. 230(4))</p> <p><i>39(1) Every person carrying on business in Ontario and every person who is required, by or pursuant to this Act, to pay or collect taxes or other amounts shall keep records and books of account (including an annual inventory kept in prescribed manner) at the person's place of business or residence in Ontario or at such other place as is designated by the Provincial Minister; in such form and containing such information as will enable the taxes payable under this Act or the taxes or other amounts that should have been deducted, withheld or collected to be determined.</i></p> <p><i>(2) Subsections 230(2.1), (3), (4), (4.1), (4.2), (5), (6), (7) and (8) of the Federal Act apply for the purposes of this Act and, in the application thereof, any reference to subsection 230(1) of the Federal Act shall be read as a reference to subsection (1).</i></p>
<p>2-TA-1</p>	<p><i>Taxation Act, 2007, S.O. 2007, c. 11, Sched. A, s. 141</i></p> <p>Businesses in Ontario / records and books</p>	<p>Event + 6 years (Event = End of last taxation year to which records and books of account relate)</p> <p>Retain records as described at place of business or residence in Ontario or at Provincial Minister's designated place</p> <p><i>141(1) Every person carrying on business in Ontario and every person required under this Act to pay or collect taxes or other amounts shall keep records and books of account, including an annual inventory kept in the manner prescribed in Part XVIII of the Federal regulations, at the person's place of business or residence in Ontario or at such other place as may be designated by the Ontario Minister and the records and books of account must be in such form and contain such information as will enable the determination of the taxes payable under this Act or the taxes or other amounts that the person is required under this Act to deduct, withhold or collect.</i></p> <p><i>(2) Subsections 230(2.1), (3), (4), (4.1), (4.2), (5), (6), (7) and (8) of the Federal Act apply for the purposes of this Act.</i></p>

Table 3: Sample Citation Table Template: Records Management Requirements

Citation Number	Citation and Records	Records Management Requirement
1-CNFP-11	<p><i>Canada Not-for-Profit Corporations Act, S.C. 2009, c. 23, s. 147(3)</i></p> <p>Director's dissents</p>	<p>Director's dissent to be placed with the meeting minutes</p> <p><i>147(3) A director who was not present at a meeting at which a resolution was passed or action taken is deemed to have consented to the resolution or action unless, within the prescribed period after becoming aware of the resolution or action, the director (a) causes a dissent to be placed with the minutes of the meeting; or (b) sends a dissent by registered mail or delivers it to the registered office of the corporation.</i></p>

Citation Number	Citation and Records	Records Management Requirement
2-BRPA-1	<p><i>Business Records Protection Act, R.S.O. 1990, c. B.19, s. 1</i></p> <p>Removal of business records from Ontario</p>	<p>Prohibition to remove from Ontario any account, balance sheet, profit and loss statement, or inventory or any resume or digest thereof or any other record, statement, report, or material relating to business carried on in Ontario unless exceptions apply</p> <p><i>1. No person shall, under or under the authority of or in a manner that would be consistent with compliance with any requirement, order, direction or summons of any legislative, administrative or judicial authority in any jurisdiction outside Ontario, take or cause to be taken, send or cause to be sent or remove or cause to be removed from a point in Ontario to a point outside Ontario, any account, balance sheet, profit and loss statement or inventory or any resume or digest thereof or any other record, statement, report, or material in any way relating to any business carried on in Ontario, unless such taking, sending or removal, (a) is consistent with and forms part of a regular practice of furnishing to a head office or parent company or organization outside Ontario material relating to a branch or subsidiary company or organization carrying on business in Ontario; (b) is done by or on behalf of a company or person as defined in the Securities Act, carrying on business in Ontario and as to a jurisdiction outside Ontario in which the securities of the company or person have been qualified for sale with the consent of the company or person; (c) is done by or on behalf of a company or person as defined in the Securities Act, carrying on business in Ontario as a dealer or salesperson as defined in the Securities Act, and as to a jurisdiction outside Ontario in which the company or person has been registered or is otherwise qualified to carry on business as a dealer or salesperson, as the case may be; or (d) is provided for by or under any law of Ontario or of the Parliament of Canada.</i></p>

§ 49:13 Legislated Requirements

This section discusses the differences between “statutes” and “regulations”, and the differences in the regulatory responsibilities of the Canadian federal jurisdiction versus those of the provinces and territories. It also describes the legislative pro-

cess by which a bill becomes a law (a statute) at the federal, provincial or territorial levels and how regulations are enacted. Examples of legislated records retention requirements and broader records management requirements in Canadian federal, provincial and territorial legislation are also provided.

§ 49:14 Legislated Requirements—Statutes and Regulations

A “statute” is a law that is made by the elected representatives of the federal level of government or by the elected representatives of a provincial or territorial level of government; thus, a statute is enacted by the legislative branch of a government. Statutes are also called “Acts”, such as the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5. A statute may clarify or modify an existing law or create a new law.

A “regulation” is: “A law on some point of detail, supported by an enabling statute, and issued not by a legislative body but by an executive branch of government.”¹ Generally, regulations are rules which address the details and practical applications of a law. It is often in a regulation that you find a records retention requirement, a broader records management requirement or a form template for creating records. A regulation has the force of law, just like a statute.

In Canada, federal statutes are enacted by the Parliament of Canada, provincial statutes are enacted by Provincial Legislatures and territorial statutes are enacted by Legislative Assemblies. (This chapter provides information about the federal, provincial and territorial legislative processes for law-making in § 49:23.) Conversely, the power to enact regulations related to an Act is delegated or assigned within that Act to a particular minister, to cabinet or to an administrative body. Some regulations prescribe records retention or broader records management requirements. For example, s. 247 of the Canadian federal *Bank Act*, S.C. 1991, c. 46, states: “The Governor in Council may make regulations respecting the records, papers and documents to be retained by a bank and the

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¹*Duhaime’s Law Dictionary* <http://www.duhaime.org/LegalDictionary/R.aspx> (accessed March 15, 2021).

length of time those records, papers and documents are to be retained.”²

Some statutes have one or more regulations; however, it is not mandatory to enact a regulation under a statute and a regulation is only enacted if/when necessary. Regulations are sometimes referred to as delegated or subordinate legislation³ because they are made under the authority of an Act (an enabling statute). Therefore, a regulation cannot exist in the absence of an enabling statute.

For Canadian organizations, statutes and regulations have become all important—they set out the specific rules governing business activities in all jurisdictions. Although judge-made law still forms the foundation of the common law system,⁴ it is statutes and regulations that control and restrict what we do and determine what we must do to carry on business in Canada today. Consequently, a thorough review of applicable, in force statutes and regulations is recommended when developing a records retention schedule.

Note: Government agencies and regulatory bodies sometimes publish information and guidance to aggregate and provide explanatory information about the records retention requirements in Canadian statutes and regulations. These publications may be called “advisories”, “bulletins”, “guides”,

²*Bank Act*, S.C. 1991, c. 46, s. 247 <https://laws-lois.justice.gc.ca/eng/act/s/B-1.01/page-42.html#docCont> (current to February 24, 2021 and accessed March 15, 2021).

³“Subordinate legislation” is the broad term used to describe rules, regulations, orders, by-laws or proclamations made by an authority such as Governor-in-Council, a Minister, or a government department under the terms of a federal, provincial or territorial statute.

⁴Department of Justice, *Canada’s System of Justice*, p. 4 <https://www.justice.gc.ca/eng/csj-sjc/just/img/courten.pdf> (accessed March 15, 2021) states: “Canada’s legal system is based on a combination of common law and civil law. The common law is law that is not written down as legislation. Common law evolved into a system of rules based on precedent. This is a rule that guides judges in making later decisions in similar cases. The common law cannot be found in any code or body of legislation, but only in past decisions. At the same time, it is flexible. It adapts to changing circumstances because judges can announce new legal doctrines or change old ones. Civil codes contain a comprehensive statement of rules. Many are framed as broad, general principles to deal with any dispute that may arise. Unlike common-law courts, courts in a civil-law system first look to a civil code, then refer to previous decisions to see if they’re consistent. Quebec is the only province with a civil code, which is based on the French *Code Napoléon* (Napoleonic Code). The rest of Canada uses the common law. The *Criminal Code* is also considered a code, and it is used throughout Canada.”

“memorandums”, or “information circulars” as in the Canada Revenue Agency example below.

The introduction to *Books and Records Retention / Destruction* (IC78-10R5)⁵ states:

1. This circular gives information and guidance to persons who are required by law to keep books and records according to sections 230 and 230.1 of the *Income Tax Act*, section 87 of the *Employment Insurance Act*, and section 24 of the *Canada Pension Plan*. It does not reflect the requirements imposed by other statutes, whether federal, provincial/territorial, or municipal, to maintain adequate books and records. Information Circular 05-1R, *Electronic Record Keeping* contains information related to keeping electronic books and records. 2. The sections and subsections referred to in this circular are from the *Income Tax Act*. Parallel provisions for most of these matters exist in the *Employment Insurance Act* and the *Canada Pension Plan*. Where significant differences do exist, they are indicated. The *Excise Tax Act* has similar requirements and information concerning Books and Records in a GST/HST environment can be found in the GST/HST Memoranda Series 15.1 and 15.2. The *Excise Act, 2001*, also has similar requirements and can be found in Excise Duty Memoranda Series 9.1.1.

§ 49:15 Legislated Requirements—Regulatory Responsibilities

The *Constitution Act, 1867* (formerly the *British North American Act, 1867*) established two levels of government in Canada: federal and provincial, with each level exercising “full legislative power over the matters within its jurisdiction” while “Constitutional law, as elaborated by court decisions, defines what these matters are, as well as their limits”.¹

§ 49:16 Legislated Requirements—Regulatory Responsibilities—Powers of the Parliament of Canada

The exclusive legislative authority of the Parliament of Canada (the federal level of government) concerns matters of

⁵This information circular, last updated in June 2010, is available at <https://www.canada.ca/en/revenue-agency/services/forms-publications/publications/ic78-10/books-records-retention-destruction.html> (accessed March 15, 2021).

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¹Privy Council Office, *Guide to Making Federal Acts and Regulations*, Part 1—Law-making Framework, Chapter 1.2—Legal Considerations accessible from <https://www.canada.ca/en/privy-council/services/publications/guide-making-federal-acts-regulations.html> (accessed March 15, 2021).

national interest. Those powers, as stated in ss. 91 and 92(10) of the *Constitution Acts, 1867 to 1982*,¹ can be summarized as follows:

- Public debt and property, including the borrowing of money on the public credit.
- Regulation of trade and commerce.
- Unemployment insurance.
- Direct and indirect taxation.
- Postal service.
- Census and statistics.
- Defence.
- Salaries and allowances of civil and other officers of the Government of Canada.
- Navigation and shipping, including beacons, buoys, lighthouses and Sable Island.
- Quarantine and marine hospitals.
- Fisheries (seacoast and inland).
- Ferries (interprovincial and international).
- Currency, coinage and legal tender.
- Banking, incorporation of banks and the issue of paper money.
- Weights and measures.
- Bills of exchange and promissory notes.
- Interest.
- Bankruptcy and insolvency.
- Copyrights and patents.
- Indians and Indian reserves.²
- Naturalization and aliens.
- Marriage and divorce.
- Criminal law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
- Penitentiaries.³
- Local works and undertakings connecting Provinces or

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¹<https://laws-lois.justice.gc.ca/eng/Const/index.html> (accessed March 15, 2021).

²*Constitution Acts, 1867 to 1982*, s. 91 states “Indians, and lands reserved for the Indians.”

³Penitentiaries (federal) deal with adult offenders (18 years and older) who have been sentenced to two or more years of imprisonment. Prisons (provincial / territorial) deal with adult offenders serving a term of less than

extending beyond the boundaries of one Province (lines of steam or other ships, railways, canals, telegraphs and other works and undertakings).

- Local works and undertakings within a Province which are declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more Provinces.

§ 49:17 Legislated Requirements—Regulatory Responsibilities—Powers of the Provincial Legislatures

Conversely, the exclusive powers of Provincial legislatures concern matters of a local nature. Those powers, as stated in ss. 92, 92A and 93 of the *Constitution Acts, 1867 to 1982*,¹ can be summarized as follows:

- Direct taxation within the Province to raise revenue for Provincial purposes.
- Borrowing of money on the sole credit of the Province.
- Shop, saloon, tavern, auctioneer and other licenses in order to raise revenue for Provincial, local or municipal purposes.
- Management and sale of public lands belonging to the Province, including the timber and wood thereon.
- Prisons.
- Hospitals, asylums, charities and eleemosynary institutions other than marine hospitals.
- Municipalities.
- Solemnization of marriage in the Province.
- Property and civil rights in the Province.
- Administration of justice in the Province, including Provincial courts (civil and criminal) and Procedure in Civil matters in those courts.
- Imposition of punishment by fine, penalty or imprisonment for enforcing any law of the Province made in relation to any matter for which a Province is responsible.
- Education.
- Incorporation of companies with Provincial objects.
- Non-renewable natural resources, forestry resources, and generation and production of electrical energy.

two years and young offenders.

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¹<https://laws-lois.justice.gc.ca/eng/Const/index.html> (accessed March 15, 2021).

- Establishment and tenure of Provincial offices and the appointment and payment of Provincial officers.
- Local works and undertakings, excluding those for which the Parliament of Canada has exclusive powers.
- Matters of a merely local or private nature in the Province.

§ 49:18 Legislated Requirements—Regulatory Responsibilities—Concurrent or Shared Federal and Provincial Powers

Three concurrent or shared powers—old age pensions, agriculture and immigration—are specified in ss. 94A and 95 of the *Constitution Acts, 1867 to 1982*.

Regarding old age pensions, the Act precludes any law made by the Parliament of Canada “in relation to old age pensions and supplementary benefits, including survivors’ and disability benefits irrespective of age”¹ from affecting “the operation of any law present or future of a provincial legislature in relation to any such matter”.²

Regarding immigration and agriculture, the Act empowers the Parliament of Canada to make laws in relation to agriculture in all or any of the Provinces and to make laws in relation to immigration into all or any of the Provinces. The Act also empowers the Legislature of a Province to make laws in relation to agriculture in the Province and to immigration into the Province; however, any law of the Legislature of a Province regarding agriculture or immigration “shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of the Parliament of Canada”.³

§ 49:19 Legislated Requirements—Regulatory Responsibilities—Powers Not Identified or Assigned in the Constitution Act, 1867

The *Constitution Act, 1867* does not specifically identify and assign some matters to one or both levels of government. Examples of this include health and the environment.

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¹*Constitution Acts, 1867 to 1982*, s. 94 <https://laws-lois.justice.gc.ca/eng/Const/page-3.html#docCont> (accessed March 15, 2021).

²*Constitution Acts, 1867 to 1982*, s. 94 <https://laws-lois.justice.gc.ca/eng/Const/page-3.html#docCont> (accessed March 15, 2021).

³*Constitution Acts, 1867 to 1982*, s. 95 <https://laws-lois.justice.gc.ca/eng/Const/page-3.html#docCont> (accessed March 15, 2021).

§ 49:20 Legislated Requirements—Regulatory Responsibilities—Powers of the Territorial Legislative Assemblies

The *Constitution Act, 1867* does not provide for the territories (Northwest Territories, Nunavut and Yukon) or for their status within the union of Canada except in s. 146 which allows—upon address from the Houses of the Parliament of Canada—for the admission of Rupert’s Land¹ and/or the North-western Territory into the union “on such Terms and Conditions in each Case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the Provisions of this Act”.² Because the territories were created by the federal government,³ they have no entrenched constitutional status or legislative powers under the Canadian Constitution. Conversely, as discussed earlier, the provinces all have equivalent status and are fully autonomous within their sphere of exclusive legislative powers.

By statute—the *Northwest Territories Act*, S.C. 2015, c. 2, the *Nunavut Act*, S.C. 1993, c. 28, and the *Yukon Act*, S.C. 2002, c. 7—the Parliament of Canada devolved some of its constitutional powers to the territorial administrations. The enactment of those laws granted the territorial legislative assemblies extensive powers of self-government which are mostly equivalent to the legislative powers granted to the provinces by the *Constitution Act, 1867*. The Parliament of Canada may, in principle, revoke this devolution at any time.

[Section 49:20]

¹Rupert’s Land was not part of the public domain, having been granted to the Hudson’s Bay Company. The Hudson’s Bay Company surrendered Rupert’s Land to the British Crown in 1869. Upon the July 15, 1870 admission of Rupert’s Land and the North-Western Territory to the Dominion of Canada, the North-Western Territory became known as The North-West Territories.

²*Constitution Acts, 1867 to 1982* <https://laws-lois.justice.gc.ca/eng/Constitution/page-4.html#h-31> (accessed March 15, 2021).

³In 1880, the British territories and possessions in North America not already included within the Dominion of Canada and all islands adjacent to such territories or possessions (excluding Newfoundland) were annexed. Over time, the provinces of Manitoba (1870), Alberta (1905) and Saskatchewan (1905) were created, and the provinces of Manitoba, Ontario and Quebec expanded further into the land occupied by the North-West Territories. Two new territories were also created from the North-West Territories: Yukon (1898) and Nunavut (1999). The North-West Territories became known as the Northwest Territories (no hyphen) with the 1906 passing of the *Northwest Territories Act*, R.S.C. 1986, c. 62.

§ 49:21 Legislated Requirements—Regulatory Responsibilities—Powers of Municipal Governments

Municipalities are established by Provincial Legislatures and Territorial Assemblies which delegate some of their powers to municipal governments; therefore, a municipal government is not a constitutional order of government.

Some Provincial Legislatures have, however, passed laws specific to individual municipalities. For example, the Ontario Provincial Legislature enacted the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A, to:

. . . create a framework of broad powers for the City which balances the interests of the Province and the City and which recognizes that the City must be able to do the following things in order to provide good government:

1. Determine what is in the public interest for the City.
2. Respond to the needs of the City.
3. Determine the appropriate structure for governing the City other than with respect to the composition of city council and the division of the City into wards.
4. Ensure that the City is accountable to the public and that the process for making decisions is transparent.
5. Determine the appropriate mechanisms for delivering municipal services in the City.
6. Determine the appropriate levels of municipal spending and municipal taxation for the City.
7. Use fiscal tools to support the activities of the City.¹

§ 49:22 Legislated Requirements—Regulatory Responsibilities—Records Retention Scheduling Implications

A thorough understanding of the differences in the legislative authority or power of the Canadian federal jurisdiction versus those of the provinces and territories is a prerequisite for accurately identifying the laws (both statutes and regulations) that apply to an organization seeking to develop a records retention schedule.

When researching legislated records retention requirements, limitation periods, broader records management requirements,

[Section 49:21]

¹*City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A, s. 2 <https://www.ontario.ca/laws/statute/06c11#BK2> (accessed March 15, 2021).

it is important to keep the division of powers in mind but also to remember that some types of records are covered by both federal and provincial or territorial laws. Financial records regarding taxation are a good example because both the federal and the provincial and territorial levels of government assess various types of taxes (e.g., corporate and personal income tax, retail sales tax, etc.). Private sector privacy laws are also a good example of overlap as discussed below.

Although it may not address every permutation, a records and information management professional may find the following criteria a helpful starting point in identifying the laws to be researched given the division of powers between the federal jurisdiction and the provinces and territories.

1. **An organization whose business falls under the federal jurisdiction** (as identified in § 49:16 above)
 - Research the applicable, in force federal statutes and their regulations.
2. **An organization whose business falls under the provincial or territorial jurisdiction** (as identified in § 49:17 above for provinces and in § 49:20 for territories)
 - Research the applicable, in force statutes and regulations of each province or territory in which the organization operates.
 - Research the applicable, in force federal statutes and regulations for business activities such as taxation.
 - Research the in force *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, for a private sector organization in Manitoba, Ontario, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Saskatchewan, or a territory (Northwest Territories, Nunavut and Yukon) that collects, uses or discloses personal information in the course of commercial activities.
 - Research the applicable substantially similar in force provincial private sector privacy law for a private sector organization in Alberta,¹ British Columbia² or Que-

[Section 49:22]

¹The substantially similar Alberta Act is the *Personal Information Protection Act*, S.A. 2003, c. P-6.5.

²The substantially similar British Columbia Act is the *Personal Information Protection Act*, S.B.C. 2003, c. 63.

bec³ that collects, uses or discloses personal information in the course of commercial activities *and* research the in force *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, which applies to transactions involving personal information transferred across the borders of those provinces and to federal works, undertakings or businesses such as banks, telecommunications and transportation companies operating in those provinces.

The three examples below further discuss how the division of powers affects the statutes and regulations that one would research.

Example # 1: A Canadian airline.

Aviation is federally regulated in Canada so a records and information management professional would research in force federal laws to determine applicable records retention requirements and limitation periods and broader records management requirements if the latter have been deemed in scope for developing the records retention schedule. That means, for example, researching the *Canada Labour Code*, R.S.C. 1985, c. L-2, instead of the employment standards and workplace safety laws in the provinces or territories in which the airline operates.

Example # 2: A municipality in British Columbia.

Because a municipality is provincially or territorially regulated (i.e., it is given its authority by a provincial or territorial government), the laws of the province or territory in which a municipality is located would be the focus when researching applicable records retention requirements and limitation periods and, if in scope for the requirements research, broader records management requirements. Therefore, for a municipality in British Columbia one would research in force laws such as the *Local Government Act*, R.S.B.C. 2015, c. 1, the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 and the *Workers Compensation Act*, R.S.B.C. 2019, c. 1. Applicable in force Canadian federal laws such as the *Income Tax Act*, R.S.C. 1985, c. 1, 5th Supp. and *Canada Pension Plan*, R.S.C. 1985, c. C-8, would also be researched because those laws apply to all municipalities in Canada (and to many other business entities in Canada).

³The substantially similar Quebec Act is the *Act Respecting the Protection of Personal Information in the Private Sector*, R.S.Q., c. P-39.1.

Example # 3: A credit union in Alberta.

Because a credit union is regulated by the province or territory in which it operates, the laws of the province or territory in which the credit union operates would be the focus when researching applicable records retention requirements and limitation periods and broader records management requirements if researching the latter requirements has been deemed in scope for developing the records retention schedule. This means, for example, that in force Alberta laws would be researched such as the *Credit Union Act*, R.S.A. 2000, c. 32, the *Employment Standards Code*, R.S.A. 2000, c. 9 and the *Personal Information Protection Act*, R.S.A. 2003, c. P-6.5. The in force federal *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, would be researched if the credit union performs transactions involving personal information transferred across borders. In addition, in force Canadian federal laws such as the *Income Tax Act*, R.S.C. 1985, c. 1, 5th Supp. and *Canada Pension Plan*, R.S.C. 1985, c. C-8, would be researched because those laws apply to all business entities in Canada.

For records and information management professionals working for provincially regulated organizations that do business in more than one province or territory, it will be necessary to become familiar with the records retention requirements and limitation periods and, if in scope for the requirements research, the broader records management requirements of each jurisdiction in which business is conducted and address any discrepancies that are identified. While there is some similarity between the laws of the different provinces and territories, they are empowered to set their own requirements for records management (including records retention) and other matters in the areas under their jurisdiction.

Records and information management professionals should also be aware of any municipality-specific laws enacted by a province or territory. The governance and operations requirements in these laws make them a key legislative resource for municipal records and information management professionals because these laws identify many of the records a municipality creates or receives and also often include records retention and broader records management requirements. For example, ss. 199 to 201 of Ontario's *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A, address the inspection and retention of the City's records.

A municipality-specific law may also be of interest to records

and information management professionals employed by businesses which operate in the municipality because the law may prescribe records requirements. For example, s. 114(5) of the *City of Toronto Act, 2006* describes in detail the plans and drawings which must be submitted and approved prior to undertaking any development in a site plan control area within the municipality.

The elected representatives of a municipality also enact laws (typically called by-laws) which apply within the municipality's geographic boundaries. Municipal by-laws are a form of delegated legislation because municipalities are non-sovereign bodies, deriving their authority from another governing body (i.e., the legislature of the province or the legislative assembly of the territory in which the municipality is located). The governing body specifies the activities that a municipality may regulate through by-laws such as animal control, business licensing, noise, vehicle parking and zoning.

A municipal by-law will be of interest to the municipality's records and information management professionals because it may identify records to be created or received by the municipality, thus assisting in the identification of the records to be included in the municipality's records retention schedule. In some jurisdictions, such as Ontario, a municipality's records retention schedule is itself a by-law.

§ 49:23 Legislated Requirements—The Legislative Process

Before a statute is enacted, it goes through the process of a bill becoming a law. This is true both for new legislation and for amendments to existing legislation. It is important to track proposed new legislation and proposed amendments to existing legislation that may affect the retention and/or management of records and the applicable limitation periods so an organization can prepare early for the implications of new or changed laws. It is similarly important to track bills which propose to repeal existing legislation.

For example, the federal *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, also known as *PIPEDA*, enacted requirements for the collection, use and disclosure of personal information in the course of commercial activities. As *PIPEDA* was moving through the legislative process, it was important to track the legislation and keep abreast of the requirements early, rather than waiting until the Act came into force. Similarly, it was important to be aware that

Quebec's existing private sector privacy law was to be deemed substantially similar to *PIPEDA* while other provinces and territories had the opportunity to enact their own substantially similar legislation as Alberta and British Columbia did. Organizations subject to a substantially similar provincial privacy law are generally exempt from *PIPEDA* with respect to the collection, use or disclosure of personal information that occurs within that province. *PIPEDA* and the substantially similar private sector privacy laws as well as regulations under those acts have been amended over the past 20 years, again necessitating that organizations keep abreast of pending changes.

Therefore, it is important for records and information management professionals to understand the legislative process for enacting statutes (and regulations) at both the federal level and at the provincial or territorial level. The following sections discuss the legislative process for the enactment of federal and provincial or territorial statutes. The process whereby regulations are enacted at the federal level and at the provincial or territorial level is also discussed.

§ 49:24 Legislated Requirements—The Legislative Process—Statutes—Federal

Before a statute is enacted, it goes through the process of a bill becoming a law. This is true both for new legislation and for amendments to existing legislation. The same process is followed to repeal legislation.

A bill can be either public or private. In general, public bills are considered to be in the public interest and relate to public policy, while private bills affect only an individual or a small group of people such as a bill to incorporate a company or to secure an exemption from the provisions in another statute.

Public bills can be introduced by the government (called a government bill when introduced in the House of Commons or in the Senate) or by a private member (called a private member's bill in the House of Commons and a public bill in the Senate). Most government legislation is initiated in the House of Commons. A private bill is called a private bill in either House, although private bills originate almost exclusively in the Senate.

Table 1 illustrates the bill numbering system used by the House of Commons and by the Senate, with the number of a bill originating in the House of Commons having a "C" letter prefix and the number of a bill originating in the Senate hav-

ing an “S” letter prefix. In either house, bills are numbered in chronological order based on when they are introduced. Bills C-1 and S-1 are symbolic bills introduced at the start of every parliamentary session.

Table 1: Federal Bill Numbering

Bill Number	Bill Letter: C	Bill Letter: S
1	At the start of each session, Bill C-1 is always called <i>An Act respecting the Administration of Oaths of Office</i>	At the start of each session, Bill S-1 is always called <i>An Act relating to Railways</i>
2 to 200	House of Commons government bills	Senate government bills
201 to 1,000	House of Commons private members’ bills	Senate public bills
1,001+	House of Commons private bills	Senate private bills

Regardless of where a bill originates, it must be passed by both Houses in identical form before it can receive Royal Assent and become law. The stages in the legislative process are discussed below with the first House (either the House of Commons or the Senate) being the House in which a bill was introduced.

In the first House:

1. **1st Reading:** The bill is introduced to the House.
2. **2nd Reading:** The bill is debated in terms of its general principles and scope. If the bill passes this stage, it is referred to a committee for further study.
3. **Referral to Committee:** The committee reviews the bill clause by clause. The committee may make amendments to the bill. The committee may invite witnesses or other input during this process. The committee then votes on the bill.
4. **Report Stage:** The chair of the committee reports to the House, recommending that the bill be accepted in its 1st reading state, or with amendments, or that the bill not proceed further. During debate, members of the House can propose further amendments to the bill.
5. **3rd Reading and Adoption:** The House reviews and debates the bill in its final form. If the bill is passed, it goes to the second House.

In the second House: The bill must pass through the five stages as described above. Any amendments made by the second House must be agreed to by the first House or the bill does not become law. The Senate is often the second House. Although the Senate usually passes most bills, it may amend, delay or refuse to pass a bill. A bill which does not pass through all stages in both Houses during a session of Parliament does not become law and is said to have “died on the order paper”. A bill that has died on the order paper can be reintroduced as a new bill, with a new bill number, in the next session of Parliament.

After a bill is passed by the second House, the next step in the legislative process is Royal Assent. A bill may receive Royal Assent in one of two ways: by the Governor General or his/her deputy in a formal ceremony held in the Senate before an assembly of both houses or by written declaration. When Royal Assent is given by written declaration, the Act is deemed to be assented to on the day on which the two Houses of Parliament were notified of the declaration.

Unless otherwise specified in the Act, an Act comes into force on the date of Royal Assent. Different sections of an Act may come into force at different times as was the case with the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, parts of which came into force on three different dates over nine years (i.e., Parts 2, 3 and 4 came into force on May 1, 2000, Part 1 came into force on January 1, 2001, and Part 5 came into force on June 1, 2009).¹

It is important to understand what stage a bill has reached, the amendments made during the process, and the likely timeline before it will be passed and come into force. Unfortunately, there is currently no centralized service which tracks federal bills affecting records management or retention issues, so records and information management professionals should keep their eyes open for all bills with a potential records management impact and, particularly, a records retention impact for their organizations. LEGISinfo (<http://www.parl.gc.ca/LegisInfo/>) is a helpful site for tracking federal bills. It provides information on every session of Parliament since 1994 and information on bills at every stage of the legislative process.

[Section 49:24]

¹*Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, s. 72 <https://laws-lois.justice.gc.ca/eng/acts/P-8.6/page-10.html#h-417653> (accessed March 15, 2021).

All federal Acts (and their regulations) are consolidated on the Department of Justice's Justice Laws Website (<http://lois.justice.gc.ca/eng>). They can also be accessed through CanLII (<https://www.canlii.org/en/>). Queen's University Library maintains a list of additional, fee-based subscription resources for researching Canadian statutes, both federal statutes and those of the provinces and territories (<https://guides.library.queensu.ca/legal-research-manual/westlaw-statutes-considered>).

§ 49:25 Legislated Requirements—The Legislative Process—Regulations—Federal

Regulations have the same force as statutes under the law. Unlike statutes, however, regulations are not passed by Parliament. Instead, they are created by bodies appointed by Parliament, such as a government minister or special committee. The process for developing a federal regulation is as follows:

1. **Proposal:** Following analysis, regulatory proposals are developed.
2. **Stakeholder Engagement:** Input on the proposals is invited from key stakeholder groups and experts.
3. **Refined Proposals:** After consideration of stakeholder input, proposals are refined and further comment is invited.
4. **Draft Regulation and Approval:** The proposals are submitted to the Department of Justice, whose staff then develops a draft regulation. The draft regulation is reviewed and approved for publication, either with or without further changes.
5. **Publication of Draft Regulation:** The draft regulation is published in the *Canada Gazette, Part I*. The Government of Canada publishes all public notices, appointments, etc. in that part of the Gazette.
6. **Comment Period and Updates:** After publication, additional comments are taken for a period of time and further updates are made as a regulation is finalized.
7. **Publication of Final Regulations:** The final regulation is approved by the appropriate Minister or Governor General, whichever is appropriate. The approved regulation is published in the *Canada Gazette, Part II* and comes into effect on the date specified in the regulation.

As with federal statutes, there is currently no centralized service which tracks the development of regulations affecting

records management or retention issues. Records and information management professionals who wish to monitor federal regulations are encouraged to consult the *Canada Gazette* (<https://canadagazette.gc.ca/accueil-home-eng.html> for the English version and <https://canadagazette.gc.ca/accueil-home-fra.html> for the French version) which publishes draft and final regulations as described above.

The Justice Laws Website (<http://lois.justice.gc.ca/eng>) consolidates all federal statutes and regulations as mentioned in the preceding section. Queen's University Library maintains a list of additional, paid subscriber-based resources for researching Canadian federal regulations and provides information on historical federal regulations (<https://guides.library.queensu.ca/legal-research-manual/regulations-sources>).

§ 49:26 **Legislated Requirements—The Legislative Process—Statutes—Provincial or Territorial**

In general, the process whereby a bill becomes a law in the provinces and territories is quite similar to the federal process, except that provinces and territories have only one house so the Senate part of the Canadian federal legislative process does not apply.

Each province has a provincial legislature (which is the counterpart to the House of Commons in the federal system) and responsibility for providing Royal Assent falls to the province's Lieutenant Governor instead of the Governor General of Canada.

The territories also follow a similar process, but a territory's legislative body is called a Legislative Assembly and the Commissioner of the territory grants final assent.

Below are the steps for the Ontario Legislature as an example. The process for other provinces and territories will not be discussed here, as the differences are minor.

1. **Introduction and first reading:** The purpose of the bill is explained.
2. **Second reading:** The bill is debated in principle.
3. **Review by Committee:** The committee may seek public input and make amendments to the bill.
4. **Report:** The committee reports back to the house and amendments are presented.
5. **Third Reading:** The bill is voted on in its final form.
6. **Royal Assent:** The Lieutenant Governor signs the bill and it comes into force

As with federal statutes, it is up to the records and information management professional to be aware of upcoming legislation affecting retention or other aspects of recordkeeping. Stakeholders from operating departments and functions such as legal and privacy, along with the organization's Records and Information Management Committee (or similar) can assist the records and information management professional in identifying upcoming legislation that will likely affect the retention of the organization's records or other aspects of the organization's recordkeeping practices.

Records and information management professionals are encouraged to track provincial and territorial bills using the website of the corresponding legislature. For example, the website of the Ontario Legislative Assembly (<https://www.ola.org/en/legislative-business/bills/current>) is the main repository for information on the current Ontario legislative agenda and the *Ontario Gazette* (<https://www.ontario.ca/search/ontario-gazette>) provides notice of all new or revised statutes (and regulations). Ontario statutes and regulations are published on the e-Laws website (<https://www.ontario.ca/laws>).

For other provinces, the following websites may be helpful in researching statutes and regulations. In addition, law firms, legal departments in organizations, and university or other large libraries may have access to paid subscription-based research services and databases which provide access to statutes and regulations.

- **All Provinces:**

- CanLII (<https://www.canlii.org/en/> for the English version and <https://www.canlii.org/fr/> for the French version)
- Georgetown Law Library (<https://guides.ll.georgetown.edu/CanadianLegalResearch/provincial-statutes>).
- **Alberta:** Laws Online/Catalogue (https://www.qp.alberta.ca/Laws_Online.cfm).
- **British Columbia:** BC Laws (<https://www.bclaws.gov.bc.ca/>).
- **Manitoba:** Manitoba Laws (<https://web2.gov.mb.ca/laws/>).
- **New Brunswick:** New Brunswick Acts and Regulations (https://www2.gnb.ca/content/gnb/en/departments/public-safety/attorney-general/content/acts_regulations.html).
- **Newfoundland and Labrador:** Consolidated Statutes and Regulations (<https://www.assembly.nl.ca/legislation/sr/consolidation/>).
- **Northwest Territories:** Legislation of the Northwest Territories (<https://www.justice.gov.nt.ca/en/legislation/>).

- **Nova Scotia:** Legislation (<https://nslegislature.ca/legislative-business/bills-statutes>).
- **Nunavut:** Current Consolidated Statutes and Regulations (<https://www.nunavutlegislation.ca/en/consolidated-law/current>).
- **Prince Edward Island:** Statutes and Regulations (<http://www.princeedwardisland.ca/en/legislation/all/all/a>).
- **Quebec:** LegisQuebec (<http://www.legisquebec.gouv.qc.ca/en/BrowseChapter?corpus=statutes>).
- **Saskatchewan:** Acts with Associated Regulations (<http://publications.saskatchewan.ca/#/freelaw/acts>).
- **Yukon Territory:** Legislation (https://legislation.yukon.ca/legislation/page_a.html).

§ 49:27 Legislated Requirements—The Legislative Process—Regulations—Provincial or Territorial

The process for establishing regulations at the provincial and territorial level is (as with statutes) quite similar to the federal process. As with federal regulations, a provincial or territorial regulation has the same force as a provincial or territorial act within the province or territory. Regulations are developed by a government appointed body, usually a government ministry, and occasionally by a government board or commission.

Steps in the approval and consultation process vary somewhat from province to province (or territory to territory), as do public reporting requirements; therefore, the step-by-step process will not be listed here. As with the federal process, the provincial or territorial process includes the development of a regulatory proposal (generally originating in a government ministry or department), stakeholder consultation(s), drafting of the regulation into legal language, and presentation to appropriate committee and then the full cabinet for amendments and approval. Once approved, a regulation is published.

It is suggested to consult a lawyer to understand the nuances for individual provinces or territories if needed. Unlike the federal system, not all provinces or territories require draft regulations to be published, which can make tracking draft regulations difficult unless one is active in a relevant stakeholder group.

Resources for monitoring or researching Ontario regulations are:

- *Ontario Gazette* (<https://www.ontario.ca/search/ontario-g>)

azette) which publishes final regulations as well as statutes and other notices.

- e-Laws website (<https://www.ontario.ca/laws>) which is an online repository of Ontario’s consolidated statutes and regulations.

For other provinces, the relevant provincial or territorial gazette should be used. The websites listed in § 49:26 of this chapter can be used to access provincial and territorial regulations.

§ 49:28 Legislated Requirements—Examples— Legislated Records Retention Requirements

A legislated retention requirement obligates an organization to keep specified records. The duration of the retention period may (or may not) be specified as shown by the examples in this section. These requirements may be found in statutes or regulations.

Sometimes a statute will speak generally to the retention of records while specific direction is provided in a regulation under that statute. For example, s. 30(1) of Ontario’s *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, states: “Personal information that has been used by an institution shall be retained after use by the institution for the period prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the personal information”¹ while specific requirements for retaining personal information are stated in a regulation under that act, i.e.:

An institution that uses personal information shall retain it for the shorter of one year after use or the period set out in a by-law or resolution made by the institution or made by another institution affecting the institution, except if

- (a) the individual to whom the information relates consents to its earlier disposal; or
- (b) the information is credit or debit card payment data.²

There are two types of legislated records retention

[Section 49:28]

¹*Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, s. 30(1) <https://www.ontario.ca/laws/statute/90m56#BK41> (current to March 9, 2021 and accessed March 15, 2021).

²*General*, R.R.O. 1990, Reg. 823, s. 5 <https://www.ontario.ca/laws/regulation/900823> (current to March 9, 2021 and accessed March 15, 2021). This is a regulation under Ontario’s *Municipal Freedom of Information and Protec-*

requirements: 1) a requirement to keep records for a specified duration; and 2) a requirement to keep records for an unspecified duration.

Requirements to keep records for a specified duration:

These requirements obligate an organization to keep records for a set period.

Some of these retention requirements are time-based as in the joint work site health and safety committee meeting minutes example in Table 1 while others are event-based as discussed below. A minimum period of retention may apply to a time-based retention requirement as in the example of information statements for mortgagees in Table 1 or to an event-based retention requirement as in the example of fire drill records in that table.

When a (minimum) time-based or event-based retention requirement applies, an organization should appraise the value(s) of the records before an appropriate retention period. This may result in some organizations keeping the records for the (minimum) legislated time period while other organizations will decide to keep the records for a longer period of time. Keeping records for less than the (minimum) time specified in a statute or regulation would result in non-compliance with the law. Any decision to keep records for longer than a legislated retention requirement should only be made after consulting with legal counsel regarding the risks of longer retention, including potential limitation period implications.

When a retention requirement is event-based, the law may require the records to be kept for a set period after the event has occurred (as in the payroll records example in Table 1) or require the records to be kept only until the specified event has occurred (as in the election ballots example in Table 1). In other cases, the duration of an event-based retention requirement depends on the currency of the records as in the pilot examinations and the excavation and drilling records examples in Table 1. Further, an event-based retention period may be conditional, with the then-prevailing circumstances determining the duration of retention as in the magazine logbook example.

tion of Privacy Act, R.S.O. 1990, c. M.56.

Table 1: Examples of Specified Duration Records Retention Requirements

Jurisdiction	Citation	Records	Records Retention Requirement (Verbatim Text from the statute or regulation; italicized, bold text added by author)
Canada federal	<i>Canadian Aviation Regulations</i> , SOR/96-433, s. 702.77(3)	Pilot examinations	An air operator shall retain a copy of the most recent written examination completed by each pilot for each type of aircraft for which the pilot has a qualification. ³
Alberta	<i>Occupational Health and Safety Act</i> , S.A. 2017, c. O-2.1, s. 27(6)	Joint work site health and safety committee meeting minutes	The employer or, if there is a prime contractor, the prime contractor shall maintain a copy of the minutes for 2 years and have them readily available for inspection by a joint work site health and safety committee member or an officer. ⁴
British Columbia	<i>Mortgage Brokers Act</i> , R.S.B.C. 1996, c. 313, s. 17.2	Information statement for mortgagee	A mortgage broker required to provide an information statement under section 17.1 must retain a copy of the information statement for a period of at least 7 years. ⁵
New Brunswick	<i>General Regulation—Occupational Health and Safety Act</i> , N.B. Reg. 91-191, s. 175(1)	Magazine logbook	An employer shall ensure that an employee in charge of a magazine maintains a logbook for the magazine and records the amount of blasting explosives by type, detonators by period, leg wire length and series that are or have been stored in the magazine from the time the magazine was first used or for the three years previous to the date of the most recent entry, whichever is the shorter period. ⁶
Ontario	<i>Fire Code</i> , O. Reg. 213/07, s. 2.8.3.4	Fire drill records	(1) A record shall be prepared of every fire drill conducted under Article 2.8.3.2. (2) The record shall be kept for at least 12 months after the fire drill. ⁷
Nova Scotia	<i>Occupational Therapists Act</i> , S.N.S. 1998, c. 21, s. 11 (as am. 2008, c. 3, s. 9; 2012, c. 48, s. 36)	Election ballots	The ballots used at an election shall not be destroyed until all petitions pursuant to section 12 in respect of the election have been decided and, until that time, the ballots shall be retained by the Registrar together with all other papers in connection with the election. ⁸

³*Canadian Aviation Regulations*, SOR/96-433 <https://laws-lois.justice.gc.ca/eng/regulations/SOR-96-433/index.html> (current to February 24, 2021 and accessed March 15, 2021). These are regulations under the Canadian federal *Aeronautics Act*, R.S.C. 1985, c. A-2.

⁴*Occupational Health and Safety Act*, S.A. 2017, c. O-2.1, s. 27(6), accessible from https://www.qp.alberta.ca/Laws_Online.cfm (current to December 9, 2020 and accessed March 15, 2021).

⁵*Mortgage Brokers Act*, R.S.B.C. 1996, c. 313, s. 17.2 https://www.bclaw.s.gov.bc.ca/civix/document/id/complete/statreg/96313_01 (current to March 10, 2021 and accessed March 15, 2021).

⁶*General Regulation—Occupational Health and Safety Act*, N.B. Reg. 91-191 <http://laws.gnb.ca/en/ShowTdm/cr/91-191/> (current to March 10, 2021 and accessed March 15, 2021). This is a regulation under New Brunswick's *Occupational Health and Safety Act*, S.N.B. 1983, c. O-0.2.

⁷*Fire Code*, O. Reg. 213/07 <https://www.ontario.ca/laws/regulation/070213> (current to March 9, 2021 and accessed March 15, 2021). The *Fire Code* is a regulation under Ontario's *Fire Protection and Prevention Act*, 1997, S.O. 1997, c. 4.

⁸*Occupational Therapists Act*, S.N.S. 1998, c. 21, is accessible from

Jurisdiction	Citation	Records	Records Retention Requirement (Verbatim Text from the statute or regulation; italicized, bold text added by author)
Prince Edward Island	<i>Employment Standards Act</i> , R.S.P.E.I. 1988, c. E-6.2, s. 5.6 (as am. S.P.E.I. 2009, c. 5, s. 9; S.P.E.I. 2016, c. 7, s. 1), s. 5.6(1)	Payroll records	Every employer shall, in respect of each employee of the employer, <i>make and keep</i> at the employer's principal place of business in the province, <i>for a period of 36 months after the employee performs work for the employer; complete and accurate records</i> of (a) the name, address and social insurance number of the employee; (b) the date of birth of the employee; (c) the employee's wage rate and net pay for each pay period; (d) the number of hours the employee works in each day and week; (e) the gross earnings of the employee per pay period; (f) the deductions from the employee's gross earnings and the nature of each deduction; (g) the date the employee started employment and the date the employee's employment terminated; (h) the type of work performed by the employee; (i) any period during which the employee was on vacation; (j) any vacation pay due to be paid to the employee; (j.1) any paid holiday pay due or paid to the employee; (j.2) any period during which the employee was on a leave of absence and the reason for the leave of absence; (k) the number of overtime hours the employee has accumulated and used; and (l) the dates of dismissals, suspensions or layoffs of the employee and the dates of all notices thereof. ⁹
Quebec	<i>Mining Act</i> , C.Q.L.R., c. M-13.1, s. 225 (as en. S.Q. 1987, c. 64, s. 225; as am. S.Q. 2013, c. 32, s. 81)	Excavation and drilling records	The holder of mining rights and the operator <i>shall keep up to date plans and registers relating to the work as prescribed by regulation</i> . The holder of mining rights who performs any other exploration work <i>shall keep an up to date record of excavation and drilling in accordance with the regulations</i> . ¹⁰

Requirements to keep records for an unspecified duration: These requirements obligate organizations to keep specified records but do not prescribe retention periods as shown in the examples in Table 2.

Historically, these requirements have usually been expressed using the verb “shall” plus a verb indicating possession (e.g., “shall have” or “shall keep”) or a verb indicating maintenance (e.g., “shall maintain” or “shall preserve”). However, because “shall” is sometimes interpreted to mean “may” instead of “must”, some Interpretation Acts clearly state that “shall” is an imperative as in the Canadian federal *Interpretation Act*, R.S.C. 1985, c. I-21.¹¹ Interpretation Acts in other jurisdictions, such

<https://nslegislature.ca/legislative-business/bills-statutes/consolidated-public-statutes#0> (current to February 2, 2021 and accessed March 15, 2021).

⁹*Employment Standards Act*, R.S.P.E.I. 1988, c. E-6.2, accessible from <https://www.princeedwardisland.ca/en/legislation/all/all/e> (current to July 14, 2020 and accessed March 15, 2021).

¹⁰*Mining Act*, R.S.Q., c. M-13.1, s. 225 <http://legisquebec.gouv.qc.ca/en/S howDoc/cs/M-13.1> (current to October 20, 2020 and accessed March 15, 2021).

¹¹Section 11 of the *Interpretation Act*, R.S.C. 1985, c. I-21, states: “The

as Alberta,¹² British Columbia¹³ and Quebec,¹⁴ eliminate any potential ambiguity by stating that both “shall” and “must” are imperatives.

In the absence of a specified duration of retention, an organization would conduct a records appraisal to determine the value(s) of the records before determining an appropriate retention period. Failing to keep the records is not recommended.

Table 2: Examples of Unspecified Duration Records Retention Requirements

Jurisdiction	Citation	Records	Records Retention Requirement (Verbatim Text from the statute or regulation; italicized, bold text added by author)
Alberta	<i>Food Regulation</i> , Alta. Reg. 31/2006, s. 21(2)	Pest control measures records	<i>A written record</i> of all pest control measures used in the commercial food establishment and surrounding area, premises and facilities referred to in subsections (1) and (1.1) must be maintained. ¹⁵
British Columbia	<i>Occupational Health and Safety Regulation</i> , B.C. Reg. 296/97, s. 5.97(1) (as am. B.C. Reg. 185/99, s. 41)	Workplace emergency plan	A workplace must have a written emergency plan , appropriate to the hazards of the workplace, that addresses the requirements of sections 5.98 to 5.102. ¹⁶

expression ‘shall’ is to be construed as imperative and the expression ‘may’ as permissive.” <https://laws-lois.justice.gc.ca/eng/acts/i-21/FullText.html> (current to February 24, 2021 and accessed March 15, 2021).

¹²Section 28(2)(d) of the *Interpretation Act*, R.S.A. 2000, c. I-8, states: “‘must’ is to be construed as imperative” and s. 28(2)(f) states “‘shall’ is to be construed as imperative”. The *Interpretation Act* is accessible from https://www.qp.alberta.ca/Laws_Online.cfm (current to July 23, 2020 and accessed March 15, 2021).

¹³Section 29 of the *Interpretation Act*, R.S.B.C. 1996, c. 238, states “‘must’ is to be construed as imperative” and “‘shall’ is to be construed as imperative”. https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96238_01 (current to March 10, 2021 and accessed March 15, 2021).

¹⁴Section 51 of the *Interpretation Act*, R.S.Q., c. I-16, states: “Whenever it is provided that a thing ‘shall’ be done or ‘must’ be done, the obligation is imperative; but if it is provided that a thing ‘may’ be done, its accomplishment is permissive” <http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/I-16> (current to October 20, 2020 and accessed March 15, 2021).

¹⁵*Food Regulation*, Alta. Reg. 31/2006, accessible by searching for the *Public Health Act*, R.S.A. 2000, c. P-37, and its regulations at https://www.qp.alberta.ca/Laws_Online.cfm (accessed March 15, 2021). The *Food Health Regulation* is a regulation under Alberta’s *Public Health Act*.

¹⁶*Occupational Health and Safety Regulation*, B.C. Reg. 296/97 <https://www.bclaws.gov.bc.ca/civix/content/complete/statreg/901199259/1241438022/1054711402/520925942/?xsl=/templates/browse.xsl> (accessed March 15, 2021).

Jurisdiction	Citation	Records	Records Retention Requirement (Verbatim Text from the statute or regulation; italicized, bold text added by author)
Newfoundland	<i>Legal Aid Regulations</i> , C.N.L.R. 1010/96, s. 59	Legal aid solicitor's records	A solicitor employed by the commission on either a full or part-time <i>basis shall maintain the records of his or her time and activities as prescribed by the provincial director</i> and shall, when requested by the provincial director or an area director, provide information with respect to his or her employment that the provincial director or an area director may require. ¹⁷
Northwest Territories	<i>Public Pool Regulations</i> , R.R.N.W.T. 1990, c. P-21, s. 37(3)	Emergency procedures in-service training log	37(3) Emergency procedures must be practised regularly by all pool staff and <i>an in-service training log shall be kept indicating the procedures covered during these practices.</i> ¹⁸
Saskatchewan	<i>Business Corporations Act</i> , R.S.S. 1978, c. B-10, s. 151(1) (as am. S.S. 1979, c. 6, s. 35)	Financial statements of a subsidiary body corporate	A corporation <i>shall keep</i> at its registered office <i>a copy of the financial statements of each of its subsidiary bodies corporate and of each body corporate whose accounts are consolidated in the financial statements of the corporation.</i> ¹⁹
Yukon	<i>Tobacco Tax Act</i> , R.S.Y. 2002, c. 219, s. 8 (as am. S.Y. 2008, c. 11; S.Y. 2012, c. 14; S.Y. 2017, c. 2)	Tobacco tax transaction books and records	8. Every dealer <i>shall (a) maintain books and records in respect of their tobacco transactions in sufficient detail</i> to permit examination and calculation of the tax; and <i>(b) preserve the books and records for any period of time that may be prescribed.</i> ²⁰

§ 49:29 Legislated Requirements—Examples— Legislated Records Management Requirements

There is an important distinction between legislated requirements to keep records for a specified or unspecified duration (records retention requirements as discussed earlier) and legislated requirements to do something with records other than retaining them (hereafter referred to as records manage-

This is a regulation under British Columbia's *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

¹⁷*Legal Aid Regulations*, C.N.L.R. 1010/96, s. 59 <https://www.assembly.nl.ca/Legislation/sr/regulations/rc961010.htm#59> (current to February 1, 2021 and accessed March 15, 2021). These are regulations under Newfoundland and Labrador's *Legal Aid Act*, R.S.N.L. 1990, c. L-11.

¹⁸*Public Pool Regulations*, R.R.N.W.T. 1990, c. P-21, s. 37(3), accessible from <https://www.justice.gov.nt.ca/en/legislation/#gn-filebrowse-0/p/public-health/> (current to March 30, 2015 and accessed March 15, 2021). These are regulations under the Northwest Territories' *Public Health Act*, S.N.W.T. 2007, c. 17.

¹⁹*Business Corporations Act*, R.S.S. 1978, c. B-10 <https://publications.saskatchewan.ca/#/products/398> (current to October 4, 2018 and accessed March 15, 2021).

²⁰*Tobacco Tax Act*, R.S.Y. 2002, c. 219, s. 8, is accessible from https://legislation.yukon.ca/legislation/page_t.html (current to March 12, 2021 and accessed March 15, 2021).

ment requirements). Records management requirements, like records retention requirements, may be found in statutes or regulations.

A legislated records management requirement may require an organization to things such as:

- (a) Create a record.
- (b) Display or post a record.
- (c) Provide access to a record, including making a record available for inspection and/or allowing the record to be copied.
- (d) Submit a record to a government or other entity.
- (e) Keep a record in a specified format or location.

Table 1 provides examples of legislated records management requirements. Many consider these requirements to be implied records retention requirements.

Table 1: Examples of Legislated Records Management Requirements

Jurisdiction	Citation	Records	Records Management Requirement (Verbatim Text from the statute or regulation; italicized, bold text added by author)
Alberta	<i>Natural Gas Royalty Regulation, 2009</i> , Alta. Reg. 221/2008, s. 26	Reports, documents, or other information	(1) A person who is or was required or permitted by this Regulation, the 1994 Regulation or the 2002 Regulation to submit or furnish to the Minister any report or other document or information shall keep all records that come or came into that person's possession or the possession of any of that person's agents and that are, were or could be used for the purpose of preparing the report, document or information. (2) If information furnished to the Minister by one or more persons for the purposes of this Regulation is inconsistent with information furnished to the Minister by any other person or persons for the purposes of this Regulation, the Minister may disclose the information to any or all of those persons to the extent the Minister considers necessary to resolve the inconsistency. (3) A person required by subsection (1) to keep records <i>must keep those records in the form of paper documents or store them in an electronic medium.</i> ¹
Manitoba	<i>Workplace Safety and Health Regulation</i> , Man. Reg. 217/2006, s. 10(3)	Posting of harassment prevention policy	An employer <i>must post a copy of the harassment prevention policy in a conspicuous place at the workplace.</i> ²

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¹*Natural Gas Royalty Regulation, 2009*, Alta. Reg. 221/2008, accessible by searching for the *Mines and Minerals Act*, R.S.A. 2000, c. M-17, and its regulations at https://www.qp.alberta.ca/Laws_Online.cfm (accessed March 15, 2021). This is a regulation under Alberta's *Mines and Minerals Act*.

²*Workplace Safety and Health Regulation*, Man. Reg. 217/2006, acces-

Jurisdiction	Citation	Records	Records Management Requirement (Verbatim Text from the statute or regulation; italicized, bold text added by author)
Newfoundland and Labrador	<i>Co-operatives Act</i> , S.N.L. 1998, c. C-35.1, s. 90	Financial statements and auditor's report	The financial statements and where applicable, the auditors report, <i>shall be made available to members who request a copy</i> , not less than 10 days immediately before the annual general meeting. ³
Nova Scotia	<i>Embalmers and Funeral Directors Act</i> , R.S.N.S. 1989, c. 144, s. 32C(1)(c) (as en. S.N.S. 2018, c. 30, s. 13)	Human and cremated remains documentation	Every person who holds a funeral home licence shall . . . <i>create</i> and follow a <i>documented standardized process</i> to ensure that human remains and cremated remains are continuously identified, from when the remains are picked up by a third-party transport service or are received by the funeral home and until the remains are released to the next of kin. ⁴
Northwest Territories	<i>Public Utilities Act</i> , R.S.N.W.T. 1988, c. 24 (Supp.), s. 16 (as am. S.N.W.T. 2011, c. 28, s. 9)	Annual report of Public Utilities Board	The Board shall by March 31 in each year <i>submit to the Minister a report of its activities for the previous year</i> . (2) The Minister shall lay the report before the Legislative Assembly as soon as possible after its submission. ⁵
Quebec	<i>Dam Safety Act</i> , C.Q.L.R., c. S-3.1.01, s. 21 (as en. S.Q. 2000, c. 9, s. 21)	High-capacity dam register	A register for every high-capacity dam must be established, and kept current, in which the results of the observations and monitoring performed under section 20 and all other information as may be required by the Government by regulation are recorded. <i>The register for the dam must remain available for inspection by the Minister.</i> ⁶
Saskatchewan	<i>Business Corporations Act</i> , R.S.S. 1978, c. B-10, s. 20(1)(b), (3) (as am. S.S. 1992, c. 44, s. 12; S.S. 2005, c. 6, s. 4; s. 21(1))	Various records to be kept at a specified location	A corporation <i>shall prepare and maintain, at its registered office or at any other place in Saskatchewan designated by the directors</i> , records containing: (a) the articles and the bylaws, and all amendments thereto, and a copy of any unanimous shareholder agreement or amendment to a unanimous shareholder agreement; (b) minutes of meetings and resolutions of shareholders; (c) copies of all notices required by section 101 or 108; (d) a securities register complying with section 46; (e) the financial statements of the corporation required by subsection 149(1); and (f) the statements of disclosure made by the directors pursuant to section 115.

sible under the “Regulations” tab at <https://web2.gov.mb.ca/laws/statutes/ccsm/w210e.php> (current to March 11, 2021 and accessed March 15, 2021). This is a regulation under Manitoba’s *Workplace Safety and Health Act*, R.S.M. 1987, c. W210.

³*Co-operatives Act*, S.N.L. 1998, c. C-35.1 <https://www.assembly.nl.ca/Legislation/sr/statutes/c35-1.htm> (current to February 1, 2021 and accessed March 15, 2021).

⁴*Embalmers and Funeral Directors Act*, R.S.N.S. 1989, c. 144, accessible from <https://nslegislature.ca/legislative-business/bills-statutes/consolidated-public-statutes#e> (current to February 2, 2021 and accessed March 15, 2021).

⁵*Public Utilities Act*, R.S.N.W.T. 1988, c. 24 (Supp.) <https://www.justice.gov.nt.ca/en/legislation/#gn-filebrowse-0:/p/public-utilities/> (current to December 6, 2018 and accessed March 15, 2021).

⁶*Dam Safety Act*, C.Q.L.R., c. S-3.1.01 http://legisquebec.gouv.qc.ca/en/s_howdoc/cs/S-3.1.01 (current to October 20, 2020 and accessed March 15, 2021).

§ 49:30 Statutes of Limitation

This section defines “statute of limitations” and “limitation period” and provides examples of limitation periods in Canadian law. This section also discusses the challenges of applying limitation periods to an organization’s records.

Note: The Province of Quebec operates under a civil law system whereas the other jurisdictions in Canada operate under a common law system. Due to the generality of this section, it does not discuss the Quebec legal system.

§ 49:31 Statutes of Limitation—Definitions

A “statute of limitations” is “A procedural rule which limits the time in which a party may bring an action for a right which has already accrued.”¹

A “limitation period” is the period of time during which a legal proceeding may be initiated. Various limitation periods are prescribed by legislation and limitation periods vary according to the type of legal action being brought.

§ 49:32 Statutes of Limitation—Limitation Period Examples

Each province and territory has one limitation of actions (or similar) statute which prescribes deadlines for the bringing of legal actions. Some limitation statutes prescribe basic and ultimate limitation periods as shown in Table 1 for Ontario’s *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B, while others prescribe limitation periods for different types of actions as shown in Table 2 for the Yukon’s *Limitations of Actions Act*, R.S.Y. 2002, c. 139.

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¹*Duhaime’s Law Dictionary* <http://www.duhaime.org/LegalDictionary/S-Page3.aspx> (accessed March 15, 2021).

Table 1: Limitation Periods in Ontario's *Limitations Act, 2002, S.O. 2002, c. 24, Sched. B*¹

Section of the Act	Type of Limitation Period	Limitation Period (verbatim from the Act; italicized, bold text added by author)
4	Basic limitation period	Unless this Act provides otherwise, a proceeding shall not be commenced in respect of a claim <i>after the second anniversary of the day on which the claim was discovered.</i>
15(1) to (3)	Ultimate limitation period	<p>15(1) Even if the limitation period established by any other section of this Act in respect of a claim has not expired, no proceeding shall be commenced in respect of the claim after the expiry of a limitation period established by this section.</p> <p>(2) No proceeding shall be commenced in respect of any claim <i>after the 15th anniversary of the day on which the act or omission on which the claim is based took place.</i></p> <p>(3) Despite subsection (2), no proceeding against a purchaser of personal property for value acting in good faith shall be commenced in respect of conversion of the property <i>after the second anniversary of the day on which the property was converted.</i></p>

Note: Refer to the Act for exceptions to the limitation periods in Table 1. For example, there is no limitation period for an environmental claim that has not been discovered. Also refer to the Act for actions for which no limitation period applies (e.g., a proceeding by a debtor in possession of collateral to redeem it, a proceeding based on sexual assault, and a proceeding to recover money owing to the Crown in respect of fines, taxes, and penalties or interest that may be added to a tax or penalty under an Act).

Table 2: Limitation Periods in the Yukon's *Limitations of Actions Act, R.S.Y. 2002, c. 139*²

Section of the Act	Cause of Action (verbatim from the Act)	Limitation Period (verbatim from the Act; italicized, bold text added by author)
2(1)(a)	Actions for penalties imposed by any Act brought by an informer suing for himself or herself alone or for Her Majesty as well as for himself or herself, or by any person authorized to sue for such penalties, not being the person aggrieved	<i>Within one year after the cause of action arose</i>

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¹*Limitations Act, 2002, S.O. 2002, c. 24, Sched. B* <https://www.ontario.ca/laws/statute/02l24> (current to March 10, 2021 and accessed March 15, 2021).

²*Limitations of Actions Act, R.S.Y. 2002, c. 139*, accessible from https://legislation.yukon.ca/legislation/page_1.html (current to March 15, 2021 and accessed March 15, 2021).

Section of the Act	Cause of Action (verbatim from the Act)	Limitation Period (verbatim from the Act; italicized, bold text added by author)
2(1)(b)	Actions for penalties, damages or sums of money in the nature of penalties given by any Act to Her Majesty or the person aggrieved, or partly to one and partly to the other	<i>Within two years after the cause of action arose</i>
2(1)(c)	Actions of defamation, whether libel or slander	<i>Within two years after the publication of the libel or the speaking of the slanderous words</i>
	Where special damage is the gist of the action	<i>Within two years after the occurrence of the special damage</i>
2(1)(d)	Actions for trespass to the person, assault, battery, wounding or other injury to the person, whether arising from an unlawful act or from negligence, or for false imprisonment or malicious prosecution	<i>Within two years after the cause of action arose</i>
2(1)(e)	Actions for trespass or injury to real property or chattels, whether direct or indirect, and whether arising from an unlawful act or from negligence, or for the taking away, conversion or detention of chattels	<i>Within six years after the cause of action arose</i>
2(1)(f)	Actions for the recovery of money, except in respect of a debt charged on land, whether recoverable as a debt or damages or otherwise, and whether on a recognizance, bond, covenant or other specialty or on a simple contract, express or implied, and actions for an account or for not accounting	<i>Within six years after the cause of action arose</i>
2(1)(g)	Actions grounded on fraudulent misrepresentation	<i>Within six years after the discovery of the fraud</i>
2(1)(h)	Actions grounded on accident, mistake or other equitable ground of relief not specifically dealt with in paragraphs (a) to (g)	<i>Within six years after the discovery of the cause of action</i>
	Actions on a judgment or order for the payment of money	<i>Within 10 years after the cause of action on the judgment or order arose</i>
2(1)(j)	Any other action not specifically provided for in this Act or any other Act	<i>Within six years after the cause of action arose</i>

Note: Refer to the Act for exceptions to the limitation periods in Table 2. For example, regarding s. 2(1)(d), there is no limitation period for sexual assault in certain situations.

In addition to the limitation of actions (or similar) statute of a province or territory, miscellaneous other statutes in each province and territory prescribe limitation periods for various actions. For example, the Yukon’s *Limitations of Actions Act*, R.S.Y. 2002, c. 139, does not address securities offence proceedings. Instead, an event plus six years limitation period for securities offence proceedings is prescribed in the territory’s *Securities Act*, R.S.Y. 2007, c. 16, i.e., s. 145 of the Act states: “Except where otherwise provided in this Act, no proceeding under this Act shall be commenced in a court or before the Su-

perintendent later than six years from the date of the occurrence of the last event on which the proceeding is based.”³

Unlike the provinces and territories, there is no limitation of actions statute for the Canadian federal jurisdiction. Instead, limitation periods are prescribed in many individual federal statutes. For example, the *Canada Labour Code*, R.S.C. 1985, c. L-2, specifies an event plus two years limitation period for offence proceedings under the Act. Section 149(4) of the Act states: “Proceedings in respect of an offence under this Part may be instituted at any time within but not later than 2 years after the time when the subject-matter of the proceedings arose.”⁴

It is necessary to determine at the outset of any action whether the limitation period has expired. If the limitation period has expired, the action will be barred (also called “statute-barred” or “time-barred”) and the claimant may be prevented from bringing a claim against the alleged wrongdoer. The evidentiary burden will rest with the claimant to prove that the action was commenced within the applicable statutory period.

§ 49:33 Statutes of Limitation—Challenges in Applying Limitation Periods to Records

It is important to emphasize that a limitation period is not a records retention requirement. No organization is required by law to keep records for the duration of a limitation period; however, because an organization will typically rely on records when initiating a legal action or when defending itself against a legal action, an organization may decide to keep records for the duration of a limitation period after having assessed the risks of not doing so. To support completion of the risk assessment, an organization should identify the applicable limitation periods and apply (map) them to the applicable records (record series). However, as discussed below, limitation periods present several challenges from the records and information management perspective.

Challenge # 1: Mapping limitation periods to record series.

A limitation period prescribes the deadline for initiating

³*Securities Act*, R.S.Y. 2007, c. 16, s. 145 accessible from https://legislation.yukon.ca/legislation/page_s.html (current to March 12, 2021 and accessed March 15, 2021).

⁴*Canada Labour Code*, R.S.C. 1985, c. L-2, s. 149(4) <https://laws-lois.justice.gc.ca/eng/acts/L-2/page-34.html#docCont> (current to February 24, 2021 and accessed March 15, 2021).

legal action but does not identify the record(s) which may be needed to initiate the legal action or to defend against it. Consequently, consultation with the business and legal counsel is required to identify the records which would most likely be needed in the event that legal action occurs. Let us look at an example.

Section 17(1) of Ontario's *Real Property Limitations Act*, R.S.O. 1990, c. L.15, prescribes the following limitation period for the maximum arrears of rent or interest recoverable or of any damages in respect of the rent arrears or interest (italized, bold text added by author):

No arrears of rent, or of interest in respect of any sum of money charged upon or payable out of any land or rent, or in respect of any legacy, whether it is or is not charged upon land, or any damages in respect of such arrears of rent or interest, shall be recovered by any distress or action but ***within six years next after the same respectively has become due, or next after any acknowledgment in writing of the same has been given to the person entitled thereto or the person's agent, signed by the person by whom the same was payable or that person's agent.***¹

The written, signed acknowledgement (which may or not be made) is the only record referenced by the limitation period. This means an organization (landlord) seeking to recover arrears of rent or interest and/or damages would need to identify the records needed to support its claim. Those records would include, at minimum, correspondence with the person (tenant) or the person's agent regarding the arrears, payment records and the rental agreement. The organization would also need to determine the format of the records (physical and/or electronic) and their storage location(s). The records may be in one record series (e.g., tenant files) or in several series such as tenant files, agreements and accounts receivables depending on how the organization has chosen to organize its records.

An organization would need to follow the same process for each applicable limitation period, recognizing that it may not be possible to anticipate all potentially relevant records that may be needed in the event of legal action. For example, it may be impossible to predict the record(s) which would be relevant to a claim for slander (i.e., a published false statement that is

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¹*Real Property Limitations Act*, R.S.O. 1990, c. L.15, s. 17(1) <https://www.ontario.ca/laws/statute/90l15#BK16> (current to March 10, 2021 and accessed March 15, 2021).

damaging to a person's reputation) because the slander may be alleged to have occurred in a letter, report, social media post or other record of the organization.

Challenge # 2: Determination of when a limitation period begins to “run”.

Generally, a limitation period begins to run when a duty is breached, when all the essential facts occur on which a claim is based, or at the date of “discoverability”, i.e. when a claimant knows, or reasonably ought to know, that he/she has a potential claim. Some laws provide specific direction, as for example s. 5(1) in Ontario's *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B, which states:

- 5(1) A claim is discovered on the earlier of,
- (a) the day on which the person with the claim first knew,
 - (i) that the injury, loss or damage had occurred,
 - (ii) that the injury, loss or damage was caused by or contributed to by an act or omission,
 - (iii) that the act or omission was that of the person against whom the claim is made, and
 - (iv) that, having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and
 - (b) the day on which a reasonable person with the abilities and in the circumstances of the person with the claim first ought to have known of the matters referred to in clause (a).

(2) A person with a claim shall be presumed to have known of the matters referred to in clause (1)(a) on the day the act or omission on which the claim is based took place, unless the contrary is proved.

(3) For the purposes of subclause (1)(a)(i), the day on which injury, loss or damage occurs in relation to a demand obligation is the first day on which there is a failure to perform the obligation, once a demand for the performance is made.

(4) Subsection (3) applies in respect of every demand obligation created on or after January 1, 2004.²

While determining when a duty was breached may be relatively straightforward, it may be challenging to determine when all the essential facts occurred on which a claim is based or when the date of discoverability occurred.

Determining when a limitation period begins to run is fur-

²*Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B, s. 5(1) <https://www.ontario.ca/laws/statute/02l24#BK6> (current to March 10, 2021 and accessed March 15, 2021).

ther complicated when a legal action involves a minor. Statutes usually state that a limitation period does not run during any time in which the person with the claim is a minor (i.e., under the age of 18 years); however, some statutes allow a limitation period to run if a minor is represented by a guardian in relation to the claim. It may be possible for an organization to determine the age of a minor who may be involved in a potential, future legal action and to track when the minor will turn 18 years of age, thus allowing the organization to determine when the limitation period involving the minor will begin to run and to schedule a retention period accordingly. For example, a municipality which operates a swimming pool may segregate accident claims involving minors along with any records attesting to the age of the minors when the accidents occurred (e.g., aquatics program registrations) in order to track when the minors reach the age of majority and administer an event-based retention period whereby the records will be kept for a specified time after the age of majority is reached. The applicable limitation period will likely determine the duration of the retention period after the age of majority has been attained.

Determining when a limitation period begins to run is also further complicated when a legal action involves an incapacitated individual. Statutes usually state that a limitation period does not run during any time in which the person with the claim is incapacitated due to a physical, mental or psychological condition; however, as in the case of minors, some statutes allow a limitation period to run if an incapacitated person is represented by a guardian in relation to the claim. The timing of a determination of incapacity will be random and it is highly unlikely that any organization will have records that would enable incapacity to be determined in advance.

Challenge # 3: Limitation period of longer duration than a legislated records retention requirement.

Researching applicable statutes and regulations may reveal instances in which legislated records retention periods and applicable limitation periods are of different durations. This may occur in the same statute or in different statutes. Table 1 provides an example of a limitation period of longer duration than a legislated records retention requirement in the same act, i.e., the *Alberta Corporate Tax Act*, R.S.A. 2000, c. A-15. Differences such as these should be documented and discussed with legal counsel who will assess the legal implications and propose an appropriate retention period.

Table 1: Example of Differing Durations of Legislated Records Retention and Limitation Periods

Citation	Records Retention Requirement or Limitation Period	Verbatim Text from the Statute (italicized, bold text added by author)
<i>Alberta Corporate Tax Act</i> , R.S.A. 2000, c. A-15, s. 61(3)	Records retention requirement	Every corporation required by this section to keep records and books of account shall retain (a) the records and books of account in respect of which a period is prescribed, together with every account and voucher necessary to verify the information in any record or book of account, for the prescribed period, and (b) all records and books of account other than those referred to in clause (a), together with every account and voucher necessary to verify the information contained in any record or book of account, <i>until the expiration of 6 years from the end of the last taxation year to which the records and books of account relate.</i> ³
<i>Alberta Corporate Tax Act</i> , R.S.A. 2000, c. A-15, s. 81(3)	Limitation period	An information or complaint in respect of an offence under this Act may only be laid or made <i>on or before a day 8 years from the time when the matter of the information or complaint arose.</i> ⁴

Challenge # 4: Applying non-statutory limitation periods.

The parties to a contract may agree to a limitation period other than the limitation period prescribed in a statute. For example, the parties may agree that the time limit for commencing legal action will be shorter than the period prescribed in the applicable statute. Similarly, the parties may enter into a standstill agreement to postpone or lengthen the running of time under the applicable limitation statute.

This means that contracts should be carefully reviewed to identify any instances in which a limitation period applies other than the period prescribed by legislation. The review may reveal that it is not the organization's practice to agree to different limitation periods, thus eliminating this challenge. Alternatively, the review may reveal that the organization will agree to a different limitation period only in special circumstances or only involving a particular type of contract (e.g., a professional services contract). In those cases, the organization

³*Alberta Corporate Tax Act*, R.S.A. 2000, c. A-15, accessible from https://www.qp.alberta.ca/Laws_Online.cfm (accessed March 15, 2021).

⁴*Alberta Corporate Tax Act*, R.S.A. 2000, c. A-15, accessible from https://www.qp.alberta.ca/Laws_Online.cfm (accessed March 15, 2021).

will need to identify the contracts for which different limitation periods apply so those periods will be considered when managing the retention and disposition of the contracts.

Challenge # 5: Temporary suspension of limitation periods.

A government may suspend limitation periods in an emergency or other situation. For example, six provinces (Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Ontario, and Quebec) and one territory (the Yukon) suspended limitation periods in civil matters (with some exceptions) while their courts were closed beginning on various dates in 2020 due to the COVID-19 pandemic. In some cases, limitation periods continued to be suspended after the courts resumed their operations. For example, British Columbia's limitation periods are not scheduled to resume until March 25, 2021 meaning that they will have been suspended for one year while the January 14, 2021 90-day extension of the state of emergency in the Yukon means limitation periods in that jurisdiction were still suspended as of the writing of this chapter.

Each jurisdiction that temporarily suspended limitation periods due to the pandemic has announced (or in the case of the Yukon, will announce) how the limitation periods which expired during the suspension will be handled. For example, New Brunswick announced that the March 19, 2020 to September 18, 2020 period shall not be counted in calculating a limitation period that was set to expire after March 19, 2020. This means that a period of six months has been added to the original expiration date of those limitation periods. Conversely, Newfoundland and Labrador decided that all limitation periods set to expire between March 14, 2020 and September 14, 2020 have expired unless a claim was already filed no later than September 14, 2020.⁵

An organization which approved retention periods in consideration of applicable limitation periods which were temporarily suspended would be advised to revisit and adjust the records disposition dates depending on how the suspended limitation periods are being handled in the applicable jurisdiction(s).

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⁵Marie-Pier Nadeau, *Limitation Periods and COVID-19: Where Do Things Stand?* <https://www.weirfoulds.com/limitation-periods-and-covid-19-where-do-things-stand> (accessed March 15, 2021) provides information on the handling of suspended limitation periods elsewhere in Canada.

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Sheila has developed (or updated) records retention schedules for numerous public, private, and not-for-profit organizations. For more than fifteen years, she taught the Records Inventory, Records Retention Scheduling, and Law for Records Managers courses in the RIM certificate programs offered by the Professional Learning Centre at the University of Toronto's Faculty of Information (iSchool).

Sheila's articles and book reviews have appeared in publications such as *Association Magazine*, *Information Management Journal*, and *Municipal World* and she blogs at <http://impress.eimc.ca>. She is also the (co-) author of five additional chapters in *Records and Information Management*.

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