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First Nations Information Governance Centre  
Le Centre de gouvernance de l'information des Premières Nations

# A FIRST NATIONS GUIDE TO THE LIBRARY AND ARCHIVES OF CANADA ACT



## **About the Artist**

The cover and interior art for this publication was done by Tsista Kennedy (aka Hotdog Water Art), an Anishinaabe Onyota'a:aka artist from Southern Ontario. Born in 2001, Kennedy is a self-taught artist who works primarily in digital, but also creates work with ink on watercolour and sketchbook paper.

Kennedy's love of art began in his early childhood, when his teachers would often find more doodles on his classwork than answers and equations. At 14-years-old he created his first Woodland Art piece, a style which his art had followed ever since.

Kennedy's unique variation of the Woodland style is marked by semi-bold black lines, intricate patterns, and vibrant colors, all of which combine to make the artwork flow elegantly across the canvas. Because of his ability to convey stories and messages through his artwork, Kennedy has been commissioned by many organizations, universities, and businesses.

Kennedy's artwork isn't solely rooted in Indigenous traditionalism or Indigenous modernism, rather, it's a merging of the two. With his personal experiences and stories thrown into the mix, combining these two perspectives provides the inspiration behind some of his artwork today. Being a frequent daydreamer however, many of his best art pieces simply begin as an image popping up in his head.

## **About the Art**

Kennedy's cover art for the FNIGC series of First Nations guides to federal legislation are meant to illustrate First Nations knowledge and information, and data sovereignty. These ideas have been conceptualized through flowers and strawberries which emerge from the hands of the First Nations people signifying the essential connection between the two.

The illustrations found within these guides are meant to represent the collection, storage, and access to First Nations data and how these legislations impact First Nations Data Sovereignty.



## About FNIGC

The First Nations Information Governance Centre (FNIGC) is an incorporated, non-profit organization committed to producing evidence-based research and information that will contribute to First Nations in Canada achieving data sovereignty in alignment with their distinct world views. FNIGC is strictly technical, apolitical, is not a rights-holding organization, and does not speak directly for First Nations. Mandated by the Assembly of First Nations' Chiefs-in-Assembly (AFN Resolution #48, December 2009), FNIGC's Mission is to assert data sovereignty and support the development of information governance and management at the community level through regional and national partnerships. We adhere to free, prior, and informed consent, respect Nation-to-Nation relationships, and recognize the distinct customs of First Nations, to achieve transformative change. Our work includes research and analysis of the technical elements of First Nations data sovereignty.

This Guide is not intended to be legal advice and should not be relied upon as such.

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## INTRODUCTION

This guide to the *Library and Archives of Canada Act* provides the basic details of the legislation and is intended to help First Nations understand and navigate the federal Information Management regime. It also reflects on the impact of the *Library and Archives of Canada Act* on First Nations data sovereignty.

### *What is First Nations data and data sovereignty?*

*First Nations data sovereignty is an inherent, Treaty, and Constitutional right essential to the exercise of rights to self-determination and self-government. First Nations data sovereignty means First Nations data is governed by First Nations laws no matter where in Canada the data is located. It incorporates the First Nations principles of OCAP® - ownership, control, access, and possession of data. 'Data' is defined in this paper to mean information in any form:*

- 1. About First Nations people like health, jobs, and housing;*
- 2. From First Nations like languages, patterns, songs, or dances; and*
- 3. About First Nations reserve and Traditional Lands, Waters, Resources, and the Environment*

## WHAT IS THE LIBRARY AND ARCHIVES OF CANADA ACT?

Adopted in 2004, the *Library and Archives of Canada Act* is intended to provide “easy and integrated access to Canada’s knowledge, information, and documentary heritage.”<sup>1</sup> This Act brings together two pre-existing federal institutions, the National Library of Canada and the National Archives of Canada, to create one organization called Library and Archives Canada.

While much of the new legislation repeats the existing language from the earlier *National Library Act* and *National Archives of Canada Act*, some powers have been expanded. For example, the National Archivist has the power to request government institutions transfer materials at risk of loss or destruction in order to preserve it in the national archive.<sup>2</sup>

<sup>1</sup> Banks, S., & Hébert, M. (2004). Legislative summary: Bill C - 8: The Library and Archives of Canada Act. <https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/LegislativeSummaries/PDF/37-3/c8-e.pdf>

<sup>2</sup> Ibid.

The Preamble to the Act describes the purpose of the legislation:

WHEREAS it is necessary that

- (a) the documentary heritage of Canada be preserved for the benefit of present and future generations;
- (b) Canada be served by an institution that is a source of enduring knowledge accessible to all, contributing to the cultural, social and economic advancement of Canada as a free and democratic society;
- (c) [the] institution facilitate in Canada cooperation among the communities involved in the acquisition, preservation, and diffusion of knowledge; and
- (d) [the] institution serve as the continuing memory of the government of Canada and its institutions.<sup>3</sup>



<sup>3</sup> *Library and Archives of Canada Act*, <https://laws-lois.justice.gc.ca/eng/acts/L-7.7/page-1.htm-#h-345210>








## HOW DOES THE LAW WORK?

This law sets out the powers of the Chief Librarian and Archivist to acquire and preserve the documentary heritage of Canada. It appoints Library and Archives Canada as the permanent repository of the Government of Canada and ministerial records. It requires two copies of every publication made available in Canada be submitted to Library and Archives Canada by the publisher. The Chief Librarian and Archivist may also require a copy of any recording made available to the public that is deemed to be of historical or archival value be provided to Library and Archives Canada. The Act also gives direction on the preservation of government and ministerial records. The Act was updated when it was adopted in 2004 to include more technologically neutral terms, for example the term “book” was changed to “publication”.<sup>4</sup>

### Canada’s Documentary Heritage

The Act defines “documentary heritage of national significance” as anything that:

-  demonstrates the Canadian experience, federal or pan-Canadian,
-  has influenced the development of Canada,
-  has a broad national scope,
-  has or has had an impact on national trends and events, or,
-  illustrates Canadian impact and perspectives on international trends and events.<sup>5</sup>

In other words, any publications and records under the control of a federal government body or institution that are of interest to Canada constitutes its documentary heritage (s.2). This includes all administrative and general business records as well. This means every Band Council Resolution, housing request, application for on-reserve income assistance, family and child service interaction, and all records at the First Nations Inuit Health Branch at Indigenous Services Canada, etc., can be defined as documentary heritage.

Further, none of this material may be disposed of or destroyed without the written consent of the Chief Librarian and Archivist (s.12). The

<sup>4</sup> Ibid.






<sup>5</sup> Library and Archives Canada, 2016, *Evaluation and Acquisition Policy Framework* retrieved from: <https://www.bac-lac.gc.ca/eng/about-us/policy/Pages/evaluation-acquisition-policy-framework.aspx#b>



Chief Librarian and Archivist has discretion about how to interpret what constitutes documentary heritage and may issue a Records Disposition Order (RDO) from the National Archivist. This provision is rarely used however, thus all government records are kept as permanent records eventually made open to the public.





## **Responsibilities of Library and Archives Canada**







Sections 4-6 of the Act create the new institution called Library and Archives Canada (LAC). The duties of LAC are the collection, preservation, and dissemination of Canada's documentary heritage. The objectives of LAC are:

-  to make that heritage known to Canadians and to anyone with an interest in Canada and to facilitate access to it,
-  to be the permanent repository of publications of the Government of Canada and of government and ministerial records that are of historical or archival value,
-  to facilitate the management of information by government institutions,
-  to coordinate the library services of government institutions, and
-  to support the development of the library and archival communities (s.7).

## **Powers of the Chief Librarian and Archivist**

Sections 8 and 9 set out the powers of the Chief Librarian and Archivist. This includes the power to do anything that helps the Library and Archives of Canada achieve its goals, including:

-  get publications and records or get control of them;
-  list, classify, identify, preserve, and restore publications and records;
-  put together a national bibliography and a catalogue of national unions, among other resources;
-  provide information, consultation, research, or lending services, as well as any other services for the purpose of making it easier to access holdings of LAC;

-  establish programs exhibitions, publications, and performances, to shine a light on the documentary heritage;
-  enter into agreements with other libraries, archives, or institutions in and outside Canada;
-  advise government institutions on the management of information produced or used by them and provide services for that purpose;
-  provide leadership and direction for library services of government institutions;
-  provide professional, technical, and financial support to those involved in the preservation and promotion of the documentary heritage and in providing access to it; (s.8) and,
-  destroy or otherwise dispose of any publication or record under control of the Archivist, if he or she considers that it is no longer necessary to retain it (s.9).







In addition to government information, the Act also requires publishers to submit to the Chief Librarian and Archivist two copies of any publication made available to the public. The Chief Librarian and Archivist may also require a copy of any recording made public be submitted to LAC. Once submitted, the copies of the publications or recordings belong to the Crown and form part of the collection of LAC (s.10(3)).

The Chief Librarian and Archivist must keep personal information private until 20 years after the death of the person to whom the information relates. This is not the case, however, for First Nations community information, aggregate data, or reports about communities. There is no protection of, or respect for, First Nations collective privacy. Thus, absolutely everything about First Nations except personal information is open and available immediately upon its deposit with the Chief Librarian and Archivist.

## Indigenous Advisory Circle

Section 6 permits the creation of an Advisory Council to “make documentary heritage known to Canada and facilitating access.” The only Council in existence at present is an Indigenous Advisory Circle<sup>6</sup> established to “help guide and prioritize” the Indigenous Documentary Heritage Initiatives.<sup>7</sup> The Indigenous Advisory Circle is purely advisory, with no decision-making authority. At the time of writing there are some First Nations individuals representing First Nations governments or organizations participating in the Advisory Circle including Enoch Cree Archives, Union of BC Indian Chiefs, Chippewas on the Thames First Nation, and First Nations University of Canada.

## WHAT DOES THE LIBRARY AND ARCHIVES OF CANADA ACT MEAN TO FIRST NATIONS DATA SOVEREIGNTY?

The Auditor General has estimated that each First Nation submits approximately 168 reports annually to the federal government, while Indigenous Services Canada collects 60,000 reports annually from First Nations.<sup>8</sup> Canada collects more information on First Nations people

<sup>6</sup> Library and Archives Canada, 2020a, Indigenous Advisory Circle, Retrieved from: <https://www.bac-lac.gc.ca/eng/about-us/Pages/Indigenous-Advisory-Circle.aspx>

<sup>7</sup> Library and Archives Canada, 2020b, Indigenous Documentary Heritage Initiatives <https://www.bac-lac.gc.ca/eng/discover/aboriginal-heritage/initiatives/Pages/default.aspx>

<sup>8</sup> Office of the Auditor General, 2011, *June 2011 Status Report* “Chapter 4: Programs for First Nations on Reserve”, Retrieved from: [https://www.oag-bvg.gc.ca/internet/English/parl\\_oag-201106\\_04\\_e\\_35372.html#hd5j](https://www.oag-bvg.gc.ca/internet/English/parl_oag-201106_04_e_35372.html#hd5j)



than any other Canadian, and thus LAC holds more information on First Nations people than anyone else in Canada.

All government records pertaining to First Nations that the Chief Librarian and Archivist deems to be of interest to Canada can be considered as “documentary heritage” and therefore become part of the permanent record with the intention of making it public. This includes personal information in addition to information about First Nations’ lands and waters, Traditional Knowledge, records of any meetings between First Nations and the Crown, First Nations’ presentations at pipeline hearings or environmental assessments, and so on.

Warehousing of this information within LAC means it is not under the control or possession of First Nations, nor is it owned by First Nations nor access determined by First Nations. The ways and means by which collections of First Nations data and information are held by LAC are contrary to the First Nations principles of OCAP®. This threatens First Nations data sovereignty.

You can learn more about First Nations data sovereignty at [www.FNIGC.ca](http://www.FNIGC.ca)



