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FILE NO. 97/022 - [REDACTED]

**REPORT WITH RESPECT TO THE APPLICATION
FOR REVIEW OF [REDACTED] WITH RESPECT TO INFORMATION
REQUESTED FROM THE SASKATCHEWAN ARCHIVES BOARD**

[REDACTED] applied to the Saskatchewan Archives Board pursuant to *The Freedom of Information and Protection of Privacy Act* (the "Act") for access to "ministerial papers" which he described as:

"all records held at or by the board of the minister of justice/attorney general of Saskatchewan for the years 1970, 1971 and 1972 (to Mar." 31st).

By letter dated April 29, 1997, the Saskatchewan Archives Board advised [REDACTED] as follows:

"Papers of Ministers of the Crown come to the Saskatchewan Archives by private agreement with the donor. Section 3(1)(c) of The Freedom of Information and Protection of Privacy Act (the F.O.I. Act) states that the act does not apply to "material that is placed in the custody of the Saskatchewan Archives Board by or on behalf of persons or organizations other than government institutions". Section 2(2) of the F.O.I. Act states that "government institution" does not include "offices of Members of the Assembly or Members of the Executive Council". Therefore, the papers in question are not governed by the F.O.I. Act and are not available through an Access to Information request."

As indicated by the Board in its letter, the papers of Darrel Heald, who was Attorney General until June, 1971, are available for public examination and they are not in issue in this review.

The Board has custody of records which it acquired from the Honourable Roy Romanow from June 30, 1971 to 1982 and therefore fall within the request made by the Applicant.

These records were acquired from Premier Romanow (as he now is) pursuant to an agreement in writing dated April 30, 1982 made between the Honourable Roy J. Romanow, Attorney General, (as he then was) and the Board. The Board has provided me with a copy of the said Agreement and it includes by its terms restrictions on the access to these records which, unlike the restrictions contained in the agreement with Mr. Heald, are still in full effect, and accordingly under Section 13(1) of *The Archives Act* access to these records is restricted except with the consent of the donor and the Provincial Archivist.

A preliminary questions must be considered with respect to jurisdiction.

The Act provides, as mentioned in the Board's letter:

- 3(1)** This Act does not apply to:
- (c) material that is placed in the custody of the Saskatchewan Archives Board by or on behalf of persons or organizations other than government institutions."

While the definition of "government institution" in the Act extends to "the office of Executive Council or any department, secretariat or other similar agency of the executive government of Saskatchewan..." there is a specific exception:

"2(2) "Government institution" does not include:

- (b) the Legislative Assembly Office or offices of members of the Assembly or members of the Executive Council..."

Consequently, even though the Agreement in question is, on the face of it, made by Mr. Romanow in his capacity as Attorney General, I am unable to conclude that the records in question were donated to the Board by a "government institution". Rather, it would appear to me in this case the Attorney General was acting in his capacity as a member of Executive Council and not as the head of a department of government or government institution.

Accordingly, it is my conclusion that the Act does not apply to the records in question and that consequently I have no jurisdiction to deal with this matter which is outside the purview of the Act.

Dated at Regina, Saskatchewan this day of July, 1997.

**Derril G. McLeod, Q.C.,
Commissioner of Information and
Privacy for Saskatchewan**