



**Multi-Institutional
Disposition Authority
No. 2009/001**

issued to

**Government Institutions subject to the
*Library and Archives of Canada Act***

for

**the disposal of records provided in
confidence to a government institution
for the purpose of prosecuting or
defending the interests of the
Government of Canada
in dispute resolution**

The Librarian and Archivist of Canada, pursuant to subsection 12(1) of the *Library and Archives of Canada Act* (Act), consents to the disposition of records provided in confidence to a government institution for the purposes of prosecuting or defending the interests of the Government of Canada, whether by destruction, return to the Originating Party, or by other means, when a government institution subject to the Act decides that these documentary materials are no longer required for operational or legal purposes.

Appendix

Terms and Conditions

**Autorisation pluriinstitutionnelle
de disposer des documents
n° 2009/001**

délivrée aux

**Institutions fédérales assujetties à la
*Loi sur la Bibliothèque et les Archives
du Canada***

pour

**la disposition des documents fournis, à
titre confidentiel,
à une institution fédérale aux fins de
poursuite du gouvernement du Canada
ou de défense de ses intérêts dans le
cadre d'un règlement de conflits**

Conformément au paragraphe 12(1) de la *Loi sur la Bibliothèque et les Archives du Canada* (Loi), le Bibliothécaire et Archiviste du Canada autorise la disposition des documents fournis, à titre confidentiel, à une institution fédérale aux fins de poursuite du gouvernement du Canada ou de défense de ses intérêts, soit par destruction, par retour à la partie initiale ou par d'autres moyens, lorsqu'une institution fédérale assujettie à la Loi décide que ces documents d'information ne sont plus nécessaires aux fins opérationnelles ou juridiques.

Annexe

Modalités

Original signed by | Original signé par

Ian E. Wilson

Librarian and Archivist of Canada / Bibliothécaire et Archiviste du Canada

20090213

Date

APPENDIX I

TERMS AND CONDITIONS

FOR THE DISPOSAL OF RECORDS PROVIDED

IN CONFIDENCE TO A GOVERNMENT INSTITUTION

FOR THE PURPOSE OF PROSECUTING OR DEFENDING THE INTERESTS

OF THE GOVERNMENT OF CANADA IN DISPUTE RESOLUTION

APPENDIX I

TERMS AND CONDITIONS FOR THE DISPOSAL OF RECORDS PROVIDED IN CONFIDENCE TO A GOVERNMENT INSTITUTION FOR THE PURPOSE OF PROSECUTING OR DEFENDING THE INTERESTS OF THE GOVERNMENT OF CANADA IN DISPUTE RESOLUTION

A. SCOPE OF THE *RECORDS DISPOSITION AUTHORITY*

A.1 Coverage

Multi-Institutional Disposition Authority (MIDA) 2009/001 applies to records received in confidence by a Government Institution from:

- a) an adverse party in the resolution of a dispute where the responsible tribunal has directed that such records be destroyed or returned to such adverse party once no longer required for the Dispute Resolution; or
- b) a third party, including a foreign or other government in Canada (whether provincial, territorial, regional, municipal or first nation including any public authority or agent of such government) for the purposes of prosecuting or defending the Government of Canada's interests in Dispute Resolution.

More specifically, MIDA 2009/001 **applies only** to records, received in confidence by a government institution, or otherwise subject to privilege, the return or destruction of which, once no longer needed for the purposes of prosecuting or defending the interests of the Government of Canada in Dispute Resolution, is required by:

- an order or direction of a court or tribunal of competent jurisdiction;
- an express provision in any other federal or provincial enactment or regulation; or
- an express written request from the Originating Party that the records be destroyed, returned or otherwise disposed of.

A.2 Exclusions

- a) MIDA 2009/001 **does not apply** to any records received by government institutions in support of national security functions.
- b) MIDA 2009/001 **does not apply** to records incorporated in whole or in part within records of a government institution unrelated to the Dispute Resolution at issue.

A.3 This *Records Disposition Authority* has no impact upon any previous Institution Specific Disposition Authorities and is without prejudice to record retention obligations that may arise from legislation other than the *Library and Archives of Canada Act*.

- A.4 This *Records Disposition Authority* provides for on-going disposition of records as described in Section A.1; records may be returned to the Originating Party, destroyed or otherwise disposed of once they are no longer required for the purposes of prosecuting or defending the Government of Canada's interests in Dispute Resolution.
- A.5 Government Institutions, as a condition for using and applying this MIDA 2009/001 and at the moment of applying this *Records Disposition Authority*, **shall thereby agree** to all other terms and conditions of the *Records Disposition Authority*.
- A.6 This *Records Disposition Authority* applies to records in all media unless otherwise specified.

B. OBLIGATIONS FOR THE USE OF MIDA 2009/001

- B.1. Any Government Institution seeking to apply these Terms and Conditions to the records described in Section A (Scope of the *Records Disposition Authority*) shall ensure that:
1. a copy of the order, a copy of the written request or a signed copy of a confidentiality undertaking is filed in the government institution's records;
 2. an appropriate notation in the government institution's records is made that the records provided in confidence were received;
 3. an appropriate notation in the Government Institution's records is made that the records provided in confidence were reviewed for purposes of the prosecution or defence of the interests of Canada in Dispute Resolution. The notation will indicate where and how the information was used; and
 4. an appropriate notation in the Government Institution records is made that the records received in confidence have been returned, destroyed otherwise disposed of pursuant to a confidentiality agreement, order or direction.
- B.2 Nothing in this MIDA shall be taken or deemed to authorize the retention, the transfer, destruction or other disposition of any government record in contravention of a rule or order of a court or tribunal or in contravention of an express provision in any other Act (e.g. *Canadian International Trade Tribunal Act, Federal Court Rules, Access to Information Act, Privacy Act*).
- B.3 Government Institutions shall convey the provisions of this MIDA to all those responsible for its application in order to ensure the integrity of its application.

C. DEFINITIONS

“Arbitration” means any form of Dispute Resolution involving a mutually acceptable, neutral third party, other than a judge or other judicial official presiding in a court or tribunal, making a decision on the merits of the case, after an informal hearing. The process has four main variations (creating numerous permutations): binding or non-binding; voluntary or compulsory; private, statute authorized or court-annexed; one arbitrator or panel.

“Dispute Resolution” includes all possible processes for resolving a conflict, from consensual to adjudicative, from negotiation to litigation including mediation, arbitration and international dispute settlement.

“Mediation” means a process involving some degree of intervention in a dispute or negotiation by an impartial, neutral third party who has no decision-making power. The third party assists disputing parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute by structuring the negotiation, maintaining the channels of communication, articulating the interests of each party, identifying the issues and, on occasion, if appropriate, making recommendations on disputed issues. It includes facilitation and conciliation. The process may be voluntary or mandatory, private or court-connected.

“Originating Party” means the adverse party or the third party who has provided the documentary materials to the Government of Canada.

“Record” as defined in section 2 of the *Library and Archives of Canada Act*, means any documentary material other than a publication, regardless of medium or form.