

If by our account of the Evolution and Transmission of Archives we have accomplished anything, we should have made it clear that *the only correct basis of Arrangement is exposition of the Administrative objects which the Archives originally served*; we need hardly stop therefore to say that such a basis cannot be found in the subject interests they may possess for modern students, in chronology, or even in the form in which they are cast.²⁶

And if that makes me a “traditionalist”, then I am proud of it.

Terry Cook
Federal Archives Division
Public Archives of Canada

26 Jenkinson, *Manual of Archive Administration*, p. 97. Original emphases.

A Defence of the A.C.A. Copyright Committee

In her recent article on copyright,¹ Gina La Force makes a number of criticisms of the A.C.A. Copyright Committee's *Response* to the Keyes-Brunet Working Paper. Some of these comments are fair but many are not. La Force certainly does not understand what the A.C.A. Committee was attempting to do, and in several places she does not seem to understand the basic situation concerning copyright in Canada.

The objective of the A.C.A. *Response* was to comment on those aspects of the Keyes-Brunet Working Paper that presented the most serious problems for archivists.² A basic principle of lobbying is that comments should be brief and to the point, because the reviewing committee will probably not have time to read a voluminous study. It is therefore surprising to read La Force's comment, “. . .one twelve-page paper is not sufficient to alert the Canadian archival and scholarly communities to the implications of revision.”³ It was never intended to do so. At another point, La Force implicitly criticizes the A.C.A. Committee for failing to comment on theories that Keyes and Brunet did not advance. (See her comments on the possible broadening of the definition of “publication”.⁴) Towards the end of her article, she states, with apparent amazement, that the A.C.A. *Response* is just what its title says it is, “a reaction”.⁵ Surely the consumer has no complaint if the product is exactly what it claims to be, and nothing more.

La Force complains that the A.C.A. *Response* was “hastily prepared, inadequately researched, and at times, weakly argued.”⁶ No one would deny that it was hastily pre-

1 Gina La Force, “Archives and Copyright in Canada: An Outsider's View”, *Archivaria* XI (Winter 1980-81): 37-51.

2 The brief was written by a committee consisting of Laurenda Daniells of the University of British Columbia Archives, Jean Dryden of the Provincial Archives of Alberta, and myself. Most of the final writing was done by me, and I am responsible for the shortcomings of the brief.

3 La Force, 39.

4 La Force, 40.

5 La Force, 50.

6 *Ibid.*

pared. The Copyright Committee consisted of three members, one in Vancouver, one in Edmonton, and one in Ottawa. All three had been studying the subject of copyright for a number of years, and therefore had a considerable basic knowledge, but the geographical distance between them was inevitably a hindrance to their work. They were not able to meet together at any time during the preparation of the brief; everything had to be done by correspondence or by telephone. Furthermore, the time was quite short. Only ten months were allowed from the publication of the Working Paper until the deadline for comments. Nevertheless, opinions were collected from the committee members and from the general membership; differences within the committee were resolved by telephone; copies of the final text were mailed to the five members of the A.C.A. Executive for their approval; and, when this approval had been obtained, the brief was forwarded to the Minister of Consumer and Corporate Affairs. The schedule was so tight that the paper probably reached its destination exactly on the deadline (31 January 1978). Under the circumstances, it is hardly surprising if the style fell somewhat short of Jeffersonian eloquence. Nevertheless, the committee felt that the major concern of archivists had been adequately addressed.

The charge that the A.C.A. brief was "inadequately researched" is unfair. It reflects La Force's personal opinions as to what the A.C.A. ought to have said, and it discounts the value of the research that the brief contains. La Force uses the details of the *British Oxygen vs. Liquid Air* case from the A.C.A. paper, and implicitly admits that the information was not readily available elsewhere, but she does not give the A.C.A. any credit for this research and analysis.⁷

La Force's comments on the duration of copyright indicate some lack of understanding of the basic principles concerning copyright and Canadian archivists. In her first footnote, she mentions the two international conventions to which Canada adheres, and then states, "... provided proposals do not transgress the two conventions, neither is central to the issue of copyright in Canadian archives."⁸ Thereafter, she ignores these conventions. She also ignores the very important fact that Canada adheres to the Berne Convention but the United States does not. Therefore, certain options which the Americans have chosen are not available to Canadians.

For archivists, one of the most important provisions of the Berne Convention is that the minimum duration of copyright is the life of the author plus fifty years.⁹ Obviously this formula has its drawbacks, because dates of death are often difficult to establish. At an earlier stage of negotiation with Keyes and Brunet, the archivists suggested a term of 50 or 75 years after the writing of a document, on the grounds that any formula which required the establishment of dates of death of individuals who were not well known would be impossible to administer. Keyes and Brunet stated that Canada's international commitments made a "life plus" system mandatory. To head off the suggestion that the best solution would be to withdraw from the Berne Convention, the Keyes-Brunet Working Paper provided a detailed discussion of the penalties Canada would face if she chose this route.¹⁰ Under the circumstances, the A.C.A. Committee felt that

7 *British Oxygen vs. Liquid Air* had nothing to do with archives or research, but the decision in this case has been interpreted as meaning that "fair dealing" can never apply to unpublished material. A representative of the Department of Consumer and Corporate Affairs told a meeting of the Eastern Ontario Archivists Association in September 1979 that this interpretation is now under review. Since archivists made a major issue of this matter, they feel their brief may have had a beneficial influence.

8 La Force, 37.

9 Berne Convention, article 7. A shorter term is possible in countries where the domestic law provided a shorter term at the time of accession, but Canada is not in this category.

10 A.A. Keyes and C. Brunet, *Copyright in Canada: Proposals for a Revision of the Law* (n.p., Consumer and Corporate Affairs Canada, 1977), pp. 20-21.

their best plan of action was to accept "life plus fifty" and seek exemptions for archival and research purposes through a clearer definition of "fair dealing".

The A.C.A. recommended the following terms of copyright: for private papers, the life of the author plus fifty years; for government records, fifty years after creation; and for corporate records, 100 years after creation. In the case of private papers and government records, this would put unpublished papers on the same footing as published material with regard to copyright. The A.C.A. did not feel qualified to challenge the whole concept of Crown copyright, and opted instead to request a time limit and certain other provisions to make the concept manageable. For corporate records, a period of 100 years seemed to provide a reasonable amount of protection for the company. "Life plus fifty" did not seem applicable, because corporations do not really die, and mergers would lead to further confusion of copyright status. It was also felt that too short a period of copyright protection might discourage corporations from allowing their papers to be consulted by researchers. The A.C.A. should probably have explained its reasons more fully, but nevertheless La Force's analysis is seriously misleading. In the first place, it is not clear that she understands the difference between "life plus fifty" and "fifty years after creation." Once Canadians accepted the "life plus" concept, discrepancies of the type she mentions became inevitable. It is extremely unlikely that all the people involved in a certain issue would die in the same year, and therefore the primary sources relating to the issue would necessarily be subject to varying terms of copyright. This does *not* mean that "the scholar would find himself with a publishable interpretation he could not fully document in published form."¹¹ At worst he would have to paraphrase documents instead of using direct quotations. The copyright holder does not have the right to prevent the use of footnotes referring to his (or his relative's) writings. The suggestion that material covered by copyright may not be referred to in any way, indicates a substantial misunderstanding of the basic problem.

La Force's discussion of how a Canadian copyright tribunal might work is interesting, but it should be pointed out that Keyes and Brunet did suggest something similar and the A.C.A. did approve this recommendation.¹² Keyes and Brunet did not go into much detail, and the A.C.A., realizing that such systems require considerable study, simply commended the suggestion and asked to be involved in working out the mechanics.

The La Force article contains a number of good points, notably concerning photographs,¹³ but her attack on the A.C.A. Copyright Committee is too extreme to be justified. Her main objections to the A.C.A. brief are that it does not contain sufficient analysis of the copyright laws of other countries, it does not demand the abolition of Crown copyright, and it is not aggressive enough in demanding the enhancement of users' rights over the rights of authors and artists. These points are matters of opinion. When attempting to reply clearly and concisely to a complex document like the Working Paper, different individuals will naturally have different opinions as to what should be included and what left out. The A.C.A. felt that the Working Paper reflected a lack of understanding of archival concerns, and one of the major objectives of its *Response* was to explain the basic situation of archivists with respect to copyright, as clearly as possible. To write a summary of the laws of other countries, or to challenge the idea of Crown copyright, would distract the review committee's attention from archivists' principal concerns. On the matter of users' rights, the A.C.A. felt that archivists, as custodians of literary material, have a responsibility to copyright owners as well as to users, and that it would be in the best interests of archivists to be fair to both sides. Un-

11 La Force, 43.

12 Keyes and Brunet, p. 165; Association of Canadian Archivists, Copyright Committee, *Response to the Working Paper on Copyright* (n.p., n.d.), p. 9.

doubtedly the A.C.A. brief was far from perfect and it was written under pressure of time. However, it drew on the work of three archivists who had been studying the question for several years, it included opinions gathered from other professional archivists across the country, and it was approved by the 1977-78 A.C.A. Executive. In her scathing condemnation of this work, did Ms La Force have a similar mandate?

Grace Maurice Hyam
Manuscript Division
Public Archives of Canada

13 La Force, p. 44.



The Way Things Were. . .

Photo taken by a Consolidated Woodlands clerk, S. Graham, in the 1920's.

While this young man obviously considers having his picture taken serious business, his fellow travellers are getting ready for the ride home. They may not have a good road nor a train, but the truck and supply trailer have been adapted to the needs of the era in a typically imaginative frontier fashion.



Montreal, Québec