

“Working in Thin Air”: Of Archives and the Deschênes Commission

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Except for the setting in the ornamental art-deco chamber of the Supreme Court and the presence on the high moroccan-leather bench of an internationally respected jurist, it could have been a lecture on the history of the Second World War. Yet this lecture was taking place before a federally appointed commission of inquiry. And the events being examined were not historical abstractions, but war crimes committed by persons possibly still resident in Canada.

Wartime events of forty years ago and the information in archives relating to them have recently received public attention. On the international level, the wartime records of Philippine President Ferdinand Marcos were located in the U.S. National Archives.¹ The files documented Marcos' wartime activities as a guerilla fighter in the Philippines and contained conclusions that many of Marcos' wartime claims were fraudulent. This revelation came as Marcos was in the midst of fighting an election campaign, the results of which are now themselves history. A *New York Times* editorial of 27 January 1986 reveals the power this revelation had at the time of its disclosure. The editorial stated that “no one has explained why the crucial documents were protectively sealed for so long ... Americans cannot assure a fair and free election, but they can perhaps give the Philippine people *the evidence* they need to judge the character of Ferdinand Marcos.”²

Another case is that of Kurt Waldheim, in Canada from 1956 to 1960, including two years as Austrian ambassador, and subsequently Secretary General of the United Nations, 1972 to 1982. Waldheim was accused by the World Jewish Congress of attempting to cover up his actions as an officer in the German Army during its brutal campaigns in the Balkans during the Second World War.³ Here again, records found in archives were brought forth to establish that Waldheim had been less than candid in providing details about his activities from 1942 until the end of the war. Once again the main character in the story was running for elected office, in this case the presidency of Austria. Waldheim's position internationally was certainly diminished by these “archival” revelations. In April 1987 the American Justice Department announced that Waldheim's role in Nazi activities as a lieutenant in the German Army in the Second World War made him legally ineligible to enter the United States.

Archival material also formed a critical part of a major report prepared by a commission of archivists and historians charged by the Austrian government to look into

Waldheim's record. The commission reported that Waldheim must have been aware of atrocities committed around him and did nothing about them and that he tried to conceal his military past. Unfortunately for the Austrian president the memory of those events preserved in archival holdings reached forward in time and called upon him to account for his wartime actions.⁴

Closer to home is the proposal to redress Japanese Canadians for their dispersal and relocation during the Second World War. Archival records were again involved, and their availability to and use by Price Waterhouse, the accounting firm asked by the National Association of Japanese Canadians to estimate total economic loss sustained by the community after 1941, was seen as a critical element by the Association in its efforts to seek compensation from the Federal Government.⁵ The fourth example took place forty years ago and began with actions outside of Canada. The archival legacy of those events is extensive. I refer to the activities of Nazi Germany during the Second World War, and the recent work of the Commission of Inquiry on War Criminals, also known as the Deschênes Commission.

In this paper I will deal with the Commission, its work and its relationship to archives, the records management aspects of the Commission's investigations, the response of the National Archives of Canada to its exposure before the Commission, and finally offer some conclusions about the role of the National Archives in the Commission's work.

On 7 February 1985, the Governor in Council established the Commission of Inquiry on War Criminals by Order in Council PC 348, which stated the following mandate:

to conduct such investigations regarding alleged war criminals in Canada, including whether any such persons are now resident in Canada and when and how they obtained entry to Canada ... (and) to report to the Governor in Council ... recommendations and advice relating to what further action might be taken in Canada to bring to justice such alleged war criminals who might be residing within Canada....⁶

The Commission was established, in part, because of claims that Josef Mengele may have entered, or attempted to enter, Canada in 1962.⁷ According to Solicitor General Elmer MacKay, the Prime Minister instructed him to investigate the matter. MacKay "thought there was some merit in looking very carefully in a comprehensive way through *all the records* that we could find, going back to when the last war ended and people started coming to Canada."⁸ The Government appointed Justice Jules Deschênes of the Quebec Superior Court to act as Commissioner, and the Commission's first public hearings were held in April 1985. Its report was tabled in the House of Commons some 23 months later, in March 1987.⁹

Before the Commission began to hold public hearings, the Government of Canada established an interdepartmental working group chaired by a member of the Department of Justice. It was not until this group, consisting of representatives from nine government agencies directly involved in the Commission's work, had met on several occasions that its existence became known to the Public Archives.¹⁰ Shortly thereafter, the membership of the group was expanded to include a representative from the Archives. This was a frequent problem, and advantage, during the entire course of the Commission's work — awareness (or lack of it) of the Public (now National) Archives. Though the events that formed the basis of the Commission's work were very much "steeped" in history, the

thought of having an Archives representative had not entered any of the discussions on the membership of the working group. However, once involved with the Commission, the Archives was able to participate and to bring archival concerns and perspectives to government officials unfamiliar with dealing with this *rara avis*. Of particular value was the opportunity for consciousness-raising which the occasion afforded to archivists. For example, it was instructive for senior government officials to learn that *not* all records were available at the Public Archives, and that access to most archival information was governed by the same statutes in force at all other government institutions, namely the Access to Information Act and the Privacy Act. Participation on the committee also permitted the Archives to become aware of issues as they developed in such matters as access to government information by the Commission.¹¹

At the outset the Commission viewed the Archives merely as a storehouse, requesting assistance in the identification of government records and private papers relevant to the mandate of the Commission. Working under severe time constraints, archivists analyzed the records and produced a guide¹² to the sources concerning, among other subjects, post-war immigration, the handling of military investigations into war crimes against Canadian servicemen and Canada's relations with postwar Germany. This guide to federal government records, which was made available to the general public, was originally seen as a starting point for the investigations of the team of researchers hired by the Commission. Of the nine institutions most directly involved in the Commission's work, only three can be identified as having transferred to the Archives substantial quantities of relevant records.¹³ One would assume that the remaining six still retained, under their control, records of interest to the Commission.

The first public sessions of the Commission had as their focus the historical setting of Europe during the Second World War and the role played by the Canadian military in the prosecution of war crimes committed against Canadian military personnel. The archival contribution at this stage consisted of entering into evidence lists of accused war criminals as found in the records of National Defence and External Affairs. These lists were created by the Central Registry of War Criminals and Security Suspects (CROWCASS) and the United Nations War Crimes Commission. Canada, as a participant in the war, was involved in the activities related to postwar reconstruction, including the bringing to justice of those individuals accused of crimes against Canadian military personnel. As a consequence of this participation, Canada, represented by External Affairs as well as National Defence, received lists of accused individuals prepared by U.S. military authorities. According to Louis St. Laurent who in 1946 was Secretary of State for External Affairs, it was "not the practice to distribute [the UN War Crimes Commission's lists] to any other Canadian authorities."¹⁴ Canadian immigration and visa control officers did not have access to this information in the screening of immigrants to prevent the entry into Canada of war criminals. By 1947 Canada transferred to the British authorities the responsibility for prosecuting outstanding Canadian war crimes cases. From the lists that Canada received, it appears clear that, once direct Canadian participation ended, so did its receipt of the lists. All lists held by the Archives were identified, copied, and entered as public exhibits before the Commission.¹⁵ To my knowledge, this is the first time that the Archives has directly submitted, as evidence, copies of archival documents to a Royal Commission. However, the utility of this mound of paper to the Commission's research was limited.¹⁶

Having dealt with the European theatre of war and the involvement of the Canadian military in prosecuting war criminals, the Commission began to focus its attention on the flow of European immigrants to Canada in the period after 1945. Testimony on the roles and responsibilities of the different government institutions involved in the immigration process required the use of the Archives as an institutional memory. The use of the Archives by government institutions in researching their past activities was in direct proportion to the volume of their records transferred to its control. The Department of External Affairs used a “strip-mining” approach to research, identifying broad research topics by using the departmental KWOC index and requesting copies of all such identified records. Even with limitations imposed upon copying by Archives staff, thousands of pages were xeroxed and taken back to External Affairs’ war crimes documentation centre. Immigration used their archival deposits to produce a hundred-plus-page public exhibit entitled “Evolution of Policy and Procedures Security Screening 1945 to 1957” as a basis for testimony given over a series of days.¹⁷ The records of the Department of National Defence were examined by officials from the Office of the Judge Advocate General who came looking for specific documents and left without finding them. The remaining six institutions did not have cause to consult the archival holdings of the Public Archives, because relevant records had never been created, or if they had, they were either still with the agency or had been destroyed.

It is of interest to note that departmental historians, whether from National Defence, External Affairs, or the RCMP, did not become actively involved in the Commission’s work. One possible explanation is that they were reluctant to become involved in what could be seen as a current operational matter rather than a purely historical inquiry. This was unfortunate, as there were occasions when the departmental historian, in his or her role as public historian, could have provided much needed context to the oral testimony of witnesses.

This brings me to the matter which, from the Archives’ perspective, generated the greatest media interest and was the focus of the Commission’s attention for one full day of public testimony: the retention and disposal of immigration records. This testimony, relating to the disposal of records, can be seen as the other role of archives, the management of information practices, as opposed to the traditional role of archives as storehouse.

The matter was first raised before the Commission by Mr. Sol Littman in public testimony on 25 April 1985.¹⁸ In answer to a question from Mr. David Matas, representing the League for Human Rights of B’nai Brith, on the availability of government records and the suggestion that many had been destroyed, Littman replied:

Now, those forms (Stage ‘B’ IMM. O.S. 8) were normally destroyed shortly after — within a couple of years after they had been used. The Canadian Government in its peculiar wisdom decided that it did not have room to store that volume of paper and that this sort of thing was a temporary thing and therefore could be disposed of as it had no meaning. Only the landing form, the form which was issued when a person finally arrived in the country, would be preserved.

... Much to my surprise when I was working at the archives in Ottawa I discovered that those forms had been listed for destruction but had not actually undergone physical destruction until at least 1982....

At that time, I don't think they were totally destroyed, I think samples of them were retained and are now under certain restricted files which I have not been able to gain access to. Certainly at the time when Corporal Fred Yetter was giving evidence, in 1982, on the witness stand during the Rauca trial and in all innocence made the statement that these forms had been destroyed, the destruction of these forms had just begun in one of the basements in one of the federal buildings in Ottawa.¹⁹

Following that testimony, an event which went unreported in the media, the matter was not further pursued. What followed over the next months, along with many other subjects, was testimony by representatives of the various departments concerning their records retention and disposal activities from the end of the War to the present.²⁰ In order to give context to the testimony of others, I testified in May 1985 on the overall scheduling process followed by government departments from the 1940s onwards. The Public Records Committee, the Public Records Order of 1966, and the current Treasury Board administrative policy *Chapter 460* were all discussed and supported with documentation. The application of this administrative process of records scheduling was illustrated by the disposal process followed by Immigration for the same period of time, with emphasis on the disposal of case files and the O.S. 8 immigrant application forms.²¹

Commission counsels' rationale for asking questions about the continued existence of certain information would appear to be obvious. Any documents relevant to the mandate of the Commission had to be accounted for, particularly if they related to the admission of individuals into Canada who were now alleged to be Nazi war criminals. Less immediately obvious was the interest shown in the immigration form "Application for Admission to Canada" (IMM. O.S. 8). This form, completed and signed by the immigrant at a foreign post, contained questions concerning his or her activities including employment or military service during the recent past. If it could be proven that an immigrant, who had subsequently become a Canadian citizen, had lied about his activities in answering these questions, fraud could be alleged and, if proven, citizenship could be withdrawn and the individual deported. Without the form, this approach, which has been used in the United States in cases involving alleged Nazi war criminals, could not be used in Canada.²² It should be noted that another form, the IMM. 1000 landing form, was preserved but contained no question concerning the immigrant's military history.

Departmental representatives were called to explain the process of "R&D" (retention and disposal), as it came to be called by Commission counsel and witnesses alike. Without exception, reference was made to the Dominion Archivist's approved disposal authorities.²³ All records had been "correctly" put through the life-cycle process of creation, retention and disposal. The Royal Canadian Mounted Police even entered a 250-page exhibit of their policy "concerning (their) filing system and disposition of any records in those filing systems."²⁴ Assistant Commissioner Wylie, then Director of Informatics, stated: "Every amendment is there since the 1940's."²⁵

The matter of R&D did not attract attention until 9 October 1985 when, during the course of his testimony, Mr. Robert Kaplan, the former Solicitor General, stated that, in 1984, when he was informed that immigration files had been destroyed "in the very recent past"²⁶

We were absolutely furious about it (the destruction). It just seemed incomprehensible at that particular time that my officials and the RCMP would be

foiled that way, if I can put it in that expression, by a file destruction policy working in thin air.²⁷

Tabled as public exhibits were internal departmental memoranda and correspondence between the RCMP and Immigration dated May 1984 in which the destruction of the files in 1982 was characterized by the RCMP as involving “a culpable act, or ... ‘simply’ a monumental blunder.”²⁸ The media now had its necessary flash and hook. The resultant newspaper headlines were: “Missing files hinder search for Nazi war criminals”²⁹ and “Nazi inquiry told vital files were destroyed ‘mysteriously’.”³⁰ It is of interest to note that not until the correspondence was filed as a public exhibit did the Public Archives become aware that attention to file disposal activities of 1982 had been the subject of such interest and attention by the Solicitor General, the Deputy Solicitor General, the Commissioner of the RCMP, and the Deputy Minister of Immigration.

When Mr. Kaplan was subsequently asked if there was any evidence of a conspiracy or any culpable act which led to the destruction of the records, he had to agree that he knew of none.³¹ Nevertheless the allegation produced something rare in the annals of Canadian judicial proceedings, extensive testimony dealing with the subject of records retention and disposal. This indeed was only the second instance of such testimony in the history of Royal Commissions.³² The Records Manager of Employment and Immigration, and the Employment and Immigration Canada Retention and Disposal Officer, among others, were called to give evidence. The Chief of the Ottawa Federal Records Centre was called as a witness, as was archivist Dr. Terry Cook, who in 1982, when the disposal took place, was just taking up his duties as Chief, Manpower and Social Development Records Section, Federal (now Government) Archives Division. The transcript of the day's proceedings extends to some three hundred pages, and I would recommend it as reading for all archivists and records managers.

What emerged with striking clarity from the testimony of 3 December 1985 was that there was no conspiracy involved in the 1982 disposal of immigration case files.³³ The disposal was carried out according to the current authorities approved by the Dominion Archivist which, seen in perspective, were part of an ongoing disposal programme dating back to the 1930s.³⁴ What did make the 1982 disposal unique was the fact that a conscientious records manager, being aware of proposed changes in selection criteria which would permit the sampling of case files, brought the actual pending authorized destruction process to the attention of the immigration specialist at the Public Archives. At that point, the archivist identified an interest in the material beyond the selection criteria in the approved disposal authority, and subsequently conducted the Public Archives' first statistically valid sample of 'ordinary' case files from the case file system of any federal agency.

Fortunately for all concerned, every action in this case taken by Archives officials was adequately documented: notes to file, memoranda, copies of forms, letters exchanged with the Department. The transfer from Immigration to the Public Archives of nineteen boxes of case files and the process of accessioning were detailed. The accession notification form for the records, the resultant accession control record form and the selective retention entry, a memorandum to divisional management, and the Public Archives Records Centre Accession Form relating to the records were all submitted by the Archives as exhibits.³⁵ Such attention to detail was acknowledged by Commission Counsel as “overkill” but was justified “because this issue gathered such prominence earlier this year.”³⁶

The arcane, bureaucratic and dull records retention and disposal process lacks the headline-grabbing appeal of either "government incompetence" or "conspiracy." Thus the media reports following the one-day marathon "R&D" session were based on only the first part of the day's testimony. Reference was made only to the keeping of immigration files for "social history."³⁷ Nothing was reported on the authorized procedures followed in the Immigration records office and Federal Records Centre, nor on the mass of government information created and disposed of during the period since the Second World War, nor the lack of any evidence of a grand-scale conspiracy between records officers and archivists to destroy files, nor the conclusion of a junior counsel to the Commission that the files contained nothing of interest to the Inquiry.

I find it unfortunate that such concentration was placed on a single disposal of records as if it were the "motherlode" for documentation on war crimes. The use, in the selective retention entry, of *inclusive* dates, c.1945-1975,³⁸ that old archival helpful indicator, may have drawn undue attention to these records. The combination of the dates and overly descriptive appraisal statement with the fact that several hundred boxes were destroyed misled some to conclude that all immigration case files for the period were involved. Not so. When the 1093 files are analyzed in detail, one learns that most of the records were for a much more recent period, namely the 1960s and 1970s. Further, all pre-1950 files made available to the Archives in 1982 were acquired. Immigration case files had been routinely destroyed over the course of the past forty years. The files of individuals who immigrated to Canada during the immediate postwar period without assistance, or any form of government support, who were not infirm, and who created "no problems" immediately after their arrival would have been destroyed more than twenty-five years ago.³⁹ Not to have disposed of these records would have meant keeping all immigration O.S. 8 application forms, all forty to fifty million of them.⁴⁰ This would have required space far in excess of what the National Archives now has for all other government records from Confederation to the present. To have microfilmed them would have required financial and person-year resources that no government has yet been willing to make available for any government-wide records management programme.⁴¹

Assessing the 1982 disposal with the knowledge of how immigration files were created would also have led one immediately to dismiss the idea that this particular disposal was "critical." The vital O.S. 8 form which involved questions of activities during the war never came to Canada; it was kept overseas. Thus the information, seen by some as critical for deportation proceedings, was never part of these files, which had been created and disposed of in Canada.⁴²

The RCMP's investigative policy concerning alleged Nazi war criminals dates from 1962, following their investigation of the possible presence in Canada of Josef Mengele. Surely the names of accused war criminals would have come to the attention of government officials before 1982. One would assume that as part of any good police investigation, all possible sources would have been checked, including Immigration Branch records. This leads one to assume that there were no relevant records in the 1982 disposal. While not wishing to impugn the motives of the RCMP or the Deputy Solicitor General, one wonders why the RCMP was so critical of the destruction of the O.S. 8 forms by the Immigration Branch. The Security Service of the Force (now the Canadian Security Intelligence Service) had been destroying, in a similar disposal programme, their copy of the form, which, in fact, would have contained additional details concerning the security clearance review of each prospective immigrant.

The Public Archives' original archival/historical evaluation of the case file records was established in the schedule authorized by the Dominion Archivist. The department, which is responsible for establishing the administrative and operational need for records, concluded that there was no need to keep the case files beyond the period needed for the operating programme or activity of the institution. The archival appraisal of the long-term administrative, legal, financial, proprietary, and historical value of the records established that few records needed to be retained permanently. Moving away from archival concerns to a legal perspective, did the case files contain "crucial" documents? There are differing views on this matter, but one legal opinion expressed by an official in the Department of Justice (Christopher Amerasinghe, Counsel, Criminal Prosecutions, Department of Justice) and supported by the League for Human Rights of B'nai Brith outlined the matter as follows:

Each case of a Nazi war criminal who gained admission to Canada will have to be examined carefully and the evidence assessed against him. The sufficiency or insufficiency of evidence in each case would vary. However, as a broad general principle the worst case that we could have is a case where there was no Immigration Application Form signed by the person but proof of landing in Canada only. In such a case it is my view that it should still be possible to establish on a balance of probabilities that the person gained admission to Canada by suppressing material facts, and/or by fraud and/or by false representations, and that he was not lawfully admitted to Canada and that therefore he did not fulfill the requirements necessary to obtain Canadian citizenship.⁴³

In summary, the disposal of the case files in 1982 and earlier was done with due concern for their archival value, which is not an absolute. The destruction of the O.S. 8 forms will not thwart efforts to bring to justice alleged war criminals who might be residing within Canada. Was there much sound and fury signifying nothing?

The conclusions of Commissioner Deschênes with regard to the file destruction are of interest. First, he concluded that the files did not contain material which would have been very helpful in the hunt for Nazi war criminals. Mr. Justice Deschênes based this finding on what he called "a self-evident reason," namely, "those files did not contain documents or information relating to the immigrant's landing in Canada or concerning his past military or criminal history."⁴⁴ Second, on the basis of the evidence, the Commission found that:

The destruction of a substantial number of immigration files in 1982-1983 should not be considered as a culpable act or as a blunder, but has occurred in the normal course of the application of a routine policy duly authorized within the federal administration. In any event, if a blunder there was, it arose out of the failure of the higher authorities properly to instruct of an appropriate exception the employees entrusted with the duty of carrying out the retention and disposal policy in their department.⁴⁵

In his legal prose, this is as close as the Commissioner ever came to pointing the finger and declaring someone at fault. Finally, the Commissioner recommended and the government agreed that the immigration screening process and interview procedures be tightened so that an applicant answers questions on past military, para-military, political and civilian activities which is reduced to writing and signed by the applicant. Where the

application is granted, the forms should be kept until either it is established or it can be safely assumed that the applicant is no longer alive.⁴⁶ The necessary administrative action is being taken by the agencies involved to change the procedures and to amend the file disposal arrangements with the approval of the National Archivist.

This summary of the direct impact on the National Archives of the Deschênes Commission hearings still leaves three important topics I wish to examine: the impact of the Commission upon the continuing operations of the National Archives; the use of the National Archives as a source of documentation for future prosecution of alleged Nazi War Criminals; and finally, the degree of success of the National Archives in explaining through the Commission hearings what it does and how.

I will turn first, then, to the impact of the Commission upon the operating procedures of the National Archives. Viewing the records schedule as an agreement negotiated between two parties, one can readily see the benefit to all concerned, particularly when questions on disposal get asked. Departments can point to a neutral second party and say "They approved our destruction of these records." Archivists are then called upon to say that "Yes, the records were destroyed with our authority." The destruction is thus authorized, normal, routine. Departmental representatives repeatedly used the process to explain why information no longer survived. How much more convenient to say that an objective system with neutral review and approval is working, rather than to have to justify destruction on the subjective self-interest of the agency concerned. Playing by the rules of the bureaucratic book, particularly rules authorized by someone else, is critical when administrative decisions are questioned. Archivists should realize just how important their decisions are, not only for the records involved but also for the integrity of the entire scheduling process.

Judicial proceedings can influence, and alter, on-going disposal authorities approved by the National Archivist. Because concerns were expressed that important records might be destroyed during the course of the Commission's mandate, the Government of Canada, through the Department of Justice, undertook not to destroy:

- (a) any files identified by the Commission as relevant to war criminals; and
- (b) any files which the Government identifies through its on-going review of records as relevant to the work to the Commission.

For one institution, the RCMP, this meant the extension of an understanding entered into in 1979 with the McDonald Royal Commission. Because of these two understandings, the RCMP had not disposed of any records for over seven years.⁴⁷ While the National Archivist may be responsible for authorizing disposal authorities, there are other actors, namely, the Courts which can amend and limit such authorities.

The Government Archives Division, the place where the *archival* records of greatest potential interest to the Commission are located, directly felt the impact of the Commission's work, not only for the federal government records the Commission, departments, and other interested parties wished to examine and have copied, but also because it was there that the archival decisions of retention and disposal had been made. Two Government Archives Division Management meetings were held dealing with the fallout from the Commission.⁴⁸ As a result, action is now being taken in a number of areas relating to the scheduling and disposal of records. The Commission forced the division to look carefully at what it was doing and sharpen its focus on how improvements could be

made. For the National Archives, and Government Archives Division in particular, the Commission and the attendant headlines, like Samuel Johnson's proverbial prospect of hanging, had the virtue of wonderfully concentrating the mind. Speaking personally, I think that we felt our work was open to public examination and we were being held accountable for our actions, and that we should take whatever measures were needed to improve our selection and scheduling of government records. The Commission of Inquiry acted as a catalyst in that term's purest scientific sense. Linkages are beginning to be made between a particular schedule and records received subsequently as a result of its application, a particular concern of the Commission. Further, a divisional document dealing with selection standards has taken on increased meaning and importance, as indeed has another divisional initiative on developing sampling criteria for textual case files. For it is to such documents that archivists, in the future, will turn to explain their archival acquisition policy. Finally, the Commission underlined the crucial importance of both carefully justifying appraisal decisions and recording all acquisition activity, and divisional archivists are increasingly aware of the necessity of leaving clear paper (audit) trails to document their actions in these areas.

But what about the National Archives as a source of documentation for any future prosecution of alleged Nazi war criminals in Canada? Should one go hunting for the 214 Nazis and Nazi-collaborators identified in Deschênes' report in the National Archives of Canada?⁴⁹ I think not. Yes, the National Archives has information documenting the federal government's immigration policy in the immediate postwar period. Yes, the National Archives has information relating to the Canadian government's security policy concerning the screening of immigrants for the years 1946 to 1952.⁵⁰ Yes, the Archives does have records created by CROWCASS and the United Nations War Crimes Commission. And yes, the Archives has documentation dealing with the admission to Canada of German scientists and technicians. But it does not have the evidence required by a court of law in deportation or extradition hearings. For example, the review of the documentation used by Immigration officials searching for evidence of the possible entry into Canada of Josef Mengele in 1962, did not involve analysis of any records at the National Archives. The relevant landing records, passport data, and citizenship details are still held by the departments involved. All the records of the 1962 RCMP investigation into the matter have been destroyed, and the corresponding Department of Justice file is still held by Justice.⁵¹

A clearer indication that one does not go hunting for Nazis at the National Archives is found in the evidence submitted before the extradition hearing of Helmut Rauca.⁵² The evidence submitted from federal government sources in the Rauca trial came from files still with the appropriate government institutions (landing records — Employment and Immigration; citizenship records — Citizenship Branch, Secretary of State; passport details — Passport Office, External Affairs) and not from the Archives. I do not want to give the wrong impression about the value of archives when one is seeking details concerning war criminals. The importance of the holdings of the Berlin Documentation Centre, Yad Vashem (the Holocaust museum in Jerusalem), and the U.S. National Archives and Records Administration, which holds millions of pages of captured German documents, has been shown not only in the Rauca case but also in the prosecution undertaken by the American Department of Justice's Office of Special Investigations.⁵³ More recently the archives of the United Nations have been used in the Waldheim affair. Clearly archives are important in the investigation and prosecution of alleged war

criminals, but one does not go hunting for them in government records at the National Archives of Canada.⁵⁴

The question of the validity of evidence taken from certain archives, particularly those located in Eastern Bloc countries, raised a number of interesting issues about the admissibility in future court proceedings of records from within our own archives. The issues are legal and complex, but that should not deter archivists from exploring the ramifications of admissibility of archivally-supplied evidence and its weight as best evidence.⁵⁵ The importance of the issue is reflected in Justice Deschênes' decision concerning the taking of foreign evidence. Access to original documents was one of six conditions he set in collecting evidence in foreign countries.⁵⁶

Issues relating to the balance between access to information and the privacy of individuals in an archival setting were played out during the life of the Commission. The media and various interest groups attempted to parallel the Commission's investigations. Armed with the Archives' source guide, these intrepid investigators sought information from such archival holdings as 1970s immigration policy files. Some of these contained the names of accused war criminals. The information had to be carefully examined and severed from the documents prior to release. On the other hand, files concerning the Galicia Division and German scientists and technicians, replete with names and other personal information, which had been made available for research prior to 1983 when the federal access and privacy legislation came into force, remained open for research. This situation created an embarrassing anomaly: similar information was not available for research simply by its date of acquisition by the Archives. The situation was further exacerbated when this open material subsequently was quoted in reports prepared by the Commission which, in turn, were requested under the access legislation. Some of the information was severed from the reports, yet it was available on microfilm across Canada. One word describes this situation well — bizarre!

A primary purpose of establishing a Royal Commission is that of public education. A commission is able to accept briefs and call witnesses with opposing or competing points of view. Seen from this perspective, testimony by witnesses concerning records, records management, and archival selection standards have all aided in educating the public on matters that archivists take as self-evident truths. For those who espouse the view that any publicity is good for business, the Commission certainly gave the Archives exposure. Never before have Canadian archivists been called upon to explain publicly the way they do their job. Never before have editorials been written calling into question the work most of us have grown to consider as routine and commonplace. Editorials entitled "Answers needed on Nazi records" or "The vanishing files" are not everyday occurrences.⁵⁷ The work of archivists, in deciding what records to keep and what records to destroy, is important and should be taken seriously. Destruction is an absolute act; perhaps archivists need jolts, like those provided by the Commission and the media, to keep their selection criteria honed.

But did we get our own message out about the work archivists do? Did we alter that mindset which associates the word "dusty" with archives? Much still has to be done in this area, and the message must get to some we would normally consider our allies. Take for instance a recent statement attributed to Professor Jack Granatstein, a consistent and assiduous user of archives. When asked to comment on the apparent destruction of some security service files, Granatstein is quoted as saying, "It's an appalling state of affairs

when files get destroyed either by clerks performing their normal duties or by administrative fiat.”⁵⁸ These are the words of a frequent user of archives throughout Canada and elsewhere and a former member of the Archives Committee of the Canadian Historical Association. How do we get through to a person like Professor Granatstein? How also do we change the media’s understanding of who and what we are? The editor of the *Ottawa Citizen*, Keith Spicer, continues to refer to the disposal of routine immigration records as the destruction of “the Nazi immigration files” or, more conspiratorially, files that “simply disappeared.”⁵⁹ How do we get ourselves understood by our sponsors and people at the senior levels of our bureaucracies? In Ottawa, archives should mean more than just that building on the road to Hull.

In an effort to address some of the lack of understanding, a recent issue of *The Archivist* carried, as a lead article, a piece by archivist Terry Cook entitled “Archival appraisal and federal government records.” Cook, in discussing the general appraisal process of government records and the difficult decisions made by archivists, notes that “some commentators have charged recently that the destruction of the immigration case files undermined attempts to bring Nazi war criminals to justice.”⁶⁰ Dressed up a bit for popular consumption, a similar piece was carried on the op-ed page of *The Globe and Mail* on 11 August 1986 entitled, very archivally, “For the record: archivists honorable.”⁶¹ Will government officials, members of the media, and the general public read these articles and be reassured? Will these articles have an impact on the public perception of archives which remained unaffected by the 300 pages of archivally-related testimony? I leave it for you to decide. I also leave it for you to decide what the underlying reasons are for the lack of understanding of archives, and to suggest solutions.

The traditional view of archives as the cultural storehouse of the nation’s heritage was, I hope, enhanced by the Commission’s work. The vital role archives and archivists play in the whole life-cycle process of information management was revealed and discussed during the Commission’s hearings. I think the evidence clearly shows that decisions on what records are kept and what destroyed are not made “by a file destruction policy working in thin air”⁶², to use Mr. Kaplan’s rather fanciful description. Sound, rational choices are made and, in this case, they *were* made and were, fortunately, extremely well documented. Could other retention and disposal authorities stand such close scrutiny? I have my doubts.

Notes

- * An earlier version of this paper was given at the annual meeting of the Association of Canadian Archivists, Winnipeg, 1986. I wish to thank Terry Cook and Bennett McCordle for their comments on this earlier version.
- 1 Seth Mydans, “It isn’t going as Marcos had planned,” *New York Times*, 26 January 1986, p.E1; “In Brief ...,” *Access Reports*, 29 January 1986, p. 8.
- 2 “The Truth and Ferdinand Marcos,” *New York Times*, 27 January 1986, p. A26. Emphasis added.
- 3 The story first broke on 3 March 1986 with the publication in the *New York Times* of information found among German military documents and in the archives of the Austrian Justice Ministry and the Foreign Ministry. See John Tagliabue, “Records show Waldheim belonged to Nazi groups,” *The Citizen*, 4 March 1986, p. A16. Robert Herzstein, professor of European history at the University of South Carolina, was commissioned by the World Jewish Congress to carry out research into Waldheim’s career in the German Army. It was his research at the U.S. National Archives which uncovered records of Waldheim’s wartime service as a German officer in the Balkans and documents implicating him in the transportation of thousands of Italians in 1942. See Mark Hosenball, “Waldheim: new link to Nazi atrocities,” *The Sunday Times*, 11 May 1986, p. 1.

- 4 Aaron Epstein, "U.S. should bar Waldheim: Justice official," *The Citizen*, 25 April 1986, p. A1; "Justice's Waldheim File," *New York Times*, 11 May 1986, p. 42; "On Barring Waldheim," *New York Times*, 30 April 1987, p. A28.
- 5 Ross Howard, "Japanese Canadians embittered by Ottawa's haste," *Globe and Mail*, 20 January 1986, p. A5; Joe O'Donnell, "Japanese Canadians' loss said \$443 million," *Toronto Star*, 9 May 1986, p. A1; Price Waterhouse, *Economic Losses of Japanese Canadians after 1941*. Mimeograph. May 1986.
- 6 Order in Council PC 348, 7 February 1985.
- 7 Commission of Inquiry on War Criminals (hereafter Commission), *Transcript*, vol. VI, 3 May 1985, p. 668; 4 December 1985, pp. 3301-3308.
- 8 Interview by Robert MacDonald, "Spies, Nazis, Cops, and Killers. The Daily Chores of Elmer MacKay," *Influence*, April/May 1985, p. 38. Emphasis added.
- 9 Commission, *Report*, Part 1: Public (Ottawa, 1986).
- 10 The institutions seen as having a direct concern with the Commission's mandate were: Privy Council Office, Justice, External Affairs, National Defence, Solicitor General, Secretary of State (Citizenship), Canadian Security Intelligence Service, Royal Canadian Mounted Police, Employment and Immigration.
- 11 SOR/85-345.
- 12 "Research guide prepared for the Commission of Inquiry on War Criminals," (Federal Archives Division: Ottawa, 1985). The Manuscript Division prepared a report on a search of its holdings containing information of potential relevance to the Commission as set out in its terms of reference.
- 13 The three institutions are National Defence, Employment and Immigration, and Privy Council Office.
- 14 Letter from Secretary of State for External Affairs to Acting High Commissioner for Canada, London, 9 September 1946, Commission, Exhibit P-94.
- 15 Commission, Exhibit P-12. Some 5,800 pages were copied and entered as exhibit P-12. For reaction to the exhibit see "Commission given lists on Nazis," *The Citizen*, 12 April 1985, p. A4 and David Matas, *Justice Delayed: Nazi War Criminals in Canada* (Toronto, 1987) pp. 26-28. The United Nations' lists and related records took on increased attention during the Kurt Waldheim affair. See "UN's master lists of war criminals has Waldheim wanted for murder," *The Citizen*, 14 May 1986, p. A1; Chuck Ashman, "Secret Nazis," *Sunday Sun*, 1 November 1987, p. 30.
- 16 Commission, *Report*, pp. 60-63.
- 17 Commission, Exhibit P-35.
- 18 Commission, *Transcript*, vol. IV, 25 April 1985, pp. 442-443.
- 19 *Ibid.*
- 20 For example Employment and Immigration gave testimony. See Commission, *Transcript*, vol. VI, 3 May 1985, p. 743 and following, vol. X, 14 May 1985, p. 1212 and following. RCMP's testimony is found in *Transcript*, vol. XIV, 9 July 1985, p. 1802 and following. For External Affairs see *Transcript*, vol. XIV, 9 July 1985, p. 1734 and following.
- 21 Commission, *Transcript*, vol. X, 14 May 1985, p. 1147 and following.
- 22 Alan A. Ryan, Jr., *Quiet Neighbors. Prosecuting Nazi War Criminals in America* (New York, 1984). Commission, Exhibit P-77, Discussion Paper entitled "Alleged War Criminals in Canada," p. 13.
- 23 For example, Assistant Commissioner Schramm stated in reference to destruction of RCMP files "There was a normal and routine destruction policy, which is approved by the Dominion Archivist and files would be destroyed consistent with those instructions." Commission, *Transcript*, vol. VI, 3 May 1985, p. 832. L. Sabourin, Employment and Immigration, stated "We have the records retention and disposal schedules as approved by the Dominion Archivist. These schedules are applied to our case files, both in Ottawa and in our field offices and overseas on a continuous basis." Commission, *Transcript*, vol. X, 14 May 1985, p. 1233. Finally, Assistant Commissioner Wylie, RCMP, stated "We have the authority to have that retention schedule, et cetera, from Archives ..." Commission, *Transcript*, vol. XIV, 9 July 1985, p. 1809.
- 24 Commission, Exhibit P-73.
- 25 Commission, *Transcript*, vol. XIV, 9 July 1985, p. 1803.
- 26 Commission, *Transcript*, vol. XX, 9 October 1985, p. 2608.
- 27 *Ibid.*, p. 2609.
- 28 Commission, Exhibit P-118, Memorandum Deputy Solicitor General to Solicitor General, 12 May 1984.
- 29 *Globe and Mail*, 10 October 1985, p. A4.
- 30 *Toronto Star*, 10 October 1985, p. A1. See also "Was 81 crucial year in exposing Nazis?" *Canadian Jewish News*, 7 November 1985, p. 1.
- 31 Commission, *Transcript*, vol. XXI, 10 October 1985, p. 2823.

- 32 Commission, *Transcript*, vol. XXIII, 3 December 1985. The destruction of files by the RCMP was discussed before the McDonald Commission on RCMP activities. See Commission of Inquiry concerning certain activities of the Royal Canadian Mounted Police, *Third Report* (August 1981), pp. 361-68.
- 33 Under oath each of the witnesses who had been involved with the 1982 disposal was asked: "In the course of your work, have you ever given, received or heard of instructions to destroy Immigration files out of the ordinary routine R&D destruction schedule or any files which may relate to the presence in Canada of Nazi criminals." All answered "no." See Commission, *Report*, p. 211.
- 34 Commission, *Transcript*, vol. X, 14 May 1985.
- 35 Commission, Exhibits P-130 to P-133.
- 36 Commission, *Transcript*, 3 December 1985, p. 2968.
- 37 *Globe and Mail*, 4 December 1985, p. A8.
- 38 National Archives of Canada, Government Archives Division, Records of the Immigration Branch, RG 76, Accession 81-82/198.
- 39 Commission, Exhibit P-77, Discussion Paper entitled "Alleged War Criminals in Canada," (by Martin Low), paragraph 46. The simple fact of when files were destroyed was difficult for even the Commission's research staff to grasp. See Alti Rodal, "Nazi War Criminals in Canada: The Historical and Policy Setting from the 1940s to the Present," Appendix 4, "The Destruction of Records, 1982-1983," pp. 1-6.
- 40 Commission, *Transcript*, vol. XXII, 3 December 1985, p. 2894.
- 41 Robert Kaplan appears to support this proposition for he is quoted as saying "We can't afford the vast public archives you find in the United States." Kaplan as quoted in Sol Littman, *The Rauca Case. War Criminals on Trial* (Markham, 1984), p. 157.
- 42 Commission, *Transcript*, vol. XXII, 3 December 1985, p. 2879 and following, Testimony of George O'Leary, Chief of Program Guidelines, Immigration Consultative Committee, Employment and Immigration.
- 43 Commission, Exhibit P-101, memorandum to D.H. Christie and D.J.A. Rutherford from Christopher A. Amerasinghe, 27 May 1983. A similar view is expressed in Exhibit P-119, "Government Inaction on Nazi War Criminals in Canada," by David Matas, Counsel, League for Human Rights of B'nai Brith Canada, p. 11.
- 44 Commission, *Report*, p. 209. Some commentators object to this conclusion. See Matas, *Justice Delayed*, pp. 86-87.
- 45 Commission, *Report*, p. 214.
- 46 *Ibid.*, pp. 226-30.
- 47 Commission, *Transcript*, vol. VI, 3 May 1985, p. 833; vol. XIV, 9 July 1985, p. 1807.
- 48 National Archives of Canada, Government Archives Division, "Record of Meeting," 13 December 1985; 26 February 1986.
- 49 For an American view see Ben Franklin, "Hunting for Nazis in U.S. archives," *Globe and Mail*, 19 April 1986, p. A9.
- 50 These are to be found in Commission, Exhibit P-76.
- 51 Commission, *Transcript*, vol. XXIII, 4 December 1985, p. 3154.
- 52 Littman, *War Criminals on Trial*, also Cpl. W.F. Yetter, "Alleged War Criminal Extradited," *The Royal Canadian Mounted Police Quarterly*, 49 (Fall, 1984), pp. 21-26.
- 53 Ryan, *Quiet Neighbors*.
- 54 This impression is confirmed by the Commission's *Report* and the study of its researcher Alti Rodal. The possibility does exist that valuable information on the activities of individuals may be present in the private papers held in the Manuscript Division. See Rodal, "Nazi War Criminals," pp. 434-36. It would appear that records were at one time created by the Privy Council Office on Nazi collaborators and Count Jacques de Bernonville. These files which were never transferred to the National Archives were the subject of a newspaper article. See: D. Vienneau, "Ottawa's files missing on Nazi collaborators," *Toronto Star*, 26 December 1985, p. 1. It should be noted that a file on de Bernonville created by Immigration is still under that institution's control. Efforts to have it made available under the *Access to Information Act* have not been successful. See D. Vienneau, "Ottawa refuses to release file on slain Nazi," *Toronto Star*, 17 March 1986, p. A2 and subsequent editorial "Cover-up on Nazis," *Toronto Star*, 18 March 1986, p. A20. See also: *Brief* presented by The Centre for Investigative Journalism/Centre pour le journalisme d'enquête to the Parliamentary Review Committee on the Access to Information Act, (March 1986) p. 22. The matter is now before the Federal Court.
- 55 Some of the issues were explored at the 1983 annual meeting of the Association of Canadian Archivists. A selection of the papers from that meeting later appeared in *Archivaria* 18 (Summer 1984).
- 56 Commission, *Report*, pp. 869-92.

- 57 "Answers needed on Nazi records," *The Citizen*, 11 October 1985; "The vanishing files," *Globe and Mail* 14 October 1985, p. A6; "The vanishing files," *Winnipeg Free Press*, 15 December 1985, p. 6.
- 58 David Vienneau, "Top-secret files were destroyed spy service says," *Toronto Star*, 4 April 1986, p. A10.
- 59 Keith Spicer, "Wanted: a freedom tiger that roars," *The Citizen*, 30 April 1986, p. A8; "Why study the history of horror?" *The Citizen*, 29 April 1987, p. A8.
- 60 Terry Cook, "Archival appraisal and federal government records," *The Archivist*, 13, no. 2 (March-April 1986), pp. 1-3.
- 61 Terry Cook, "For the record: archivists honorable," *Globe and Mail*, 11 August 1986, p. A7; see also Terry Cook, "Those Vanishing Nazi Files and the Records Management Community," *Records Management Bulletin*, 2, no. 3 (October-December 1986), pp. 1-3.
- 62 Commission, *Transcript*, 9 October 1985, p. 2609.