

CONFERENCE COVERAGE: CANADIAN HISTORICAL ASSOCIATION:

Archives Section

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DONORS, TAXMEN AND ARCHIVES

My remarks will be brief and informal. I am concerned with this problem along with most of you, but I do not pretend to be an expert. I can ask questions, but I do not know the answers, except in a general way.

A. One obvious question is How important is the matter of tax benefits to donors of archival material? It is important for several reasons.

1. It is an incentive for donors. It is a method of giving a financial advantage without the stigma of a sale. It is a weapon in the arsenal of recognized archival repositories in the escalating war with private collectors in Canada and abroad. It is a device to acquire archival material without imposing a drain on the limited financial resources of these repositories.
2. It is a legal right of donors, since it is provided for by legislation. Perhaps it is a moral obligation to inform potential donors of this provision. In any case, we should be able to answer questions and to explain what it means to compare the effects of outright sale, gifts without tax benefits and gifts with tax benefits. It is a part of our business which we can be expected to understand.
3. It is apparent that procedures for the application of tax benefits must be developed and immediate attention should be focussed on such procedures, without which tax benefits cannot be obtained. It is embarrassing to say that tax benefits are legal, but we don't know how to make them effective. If there are benefits for all concerned then we should capitalize on these benefits without delay.

B. Another obvious question is What practical experience has Canada had in the field of tax benefits to donors of archival material? The answer seems to be that there is little experience, and this is confirmed by the answers of the Department of National Revenue to our questions. They are familiar with the donations of money to charitable institutions. Concerning gifts "in kind", they are familiar chiefly with gifts of paintings and perhaps books, for which evaluation procedures are relatively familiar. The proposition that private papers have intrinsic value is a revelation to our taxmen, and they are sceptical about it. Mr. Lunan confessed to me that he thought it impossible to evaluate such material. In his letter, he refers to "accumulated junk". In his answers to our questions, he quotes liberally from Publication 561 of the United States Internal Revenue Service, entitled "Valuation of Donated Property".

C. This brings us to a final question How useful to us is the experience of the United States in regard to tax benefits for archival material? The answer is that it seems to be the best information available: the American legislation governing tax benefits is roughly similar to our own; there has been an evaluation of practices and principles which can permit

us to profit from mistakes and perhaps benefit from their experience; in any case, we can expect the same problems and it is well to be aware of them.

1. The most serious problem (one that is recognized by our Department of National Revenue) is that of evaluation. Originally in the United States, an evaluation was made by the officers of the receiving repository. This led to a tendency to escalate the amount of evaluation by competing repositories. Finally the Internal Revenue Service insisted that the gift must be completed before evaluation, and that an independent assessment was desirable.

A second problem is in determining commercial or market value, which is not always the same as research value. A routine letter signed by George Washington may have a considerable market value, but it may be virtually useless for research purposes. Yet tax benefits are based on market value at a particular time. It led to an initial reliance on professional dealers and to the eventual appearance of professional archival evaluators who were aware of research values and whose chief stock in trade was a record of sales. The principal method of determining value is to select comparable sales and to make adjustments according to differences in content, physical condition, volume, rate of inflation of prices and other factors.

2. Another doubtful feature concerning tax benefits is the transfer of collections by instalments, each being considered as a separate gift. This practice is fairly normal at present in the United States, and it may be acceptable in Canada.
3. Another feature of tax benefits which is of concern at present in the United States is the eligibility for tax purposes of the papers of elected or appointed government officials. The papers of President Johnson have been evaluated at several million dollars, but is this a legitimate deduction for tax purposes?

There are other features of the American experience with which others here are more familiar than I. The question was examined at a session of the Society of American Archivists at Wisconsin last fall. I was the Chairman of another session at the same time, but Bob Gordon and others were able to attend and to obtain valuable information.

In conclusion, let us consider some of our original questions in the light of American experience.

1. Are tax benefits an important incentive to donors?

Yes, custodians of American archival institutions assure me that it is a vital feature of their acquisition programs, and, indeed, that it would be difficult to maintain a significant volume of acquisitions from the private sector without it. Certainly, the total annual assessment of manuscript collections in the United States is most impressive.

2. Is there a moral obligation to inform donors?

American archivists believe that it is fair and, indeed, that it would be dishonest not to do so. As knowledge spreads about the legal provision for tax benefits, we should be vulnerable to

criticism if we did not inform potential donors about these provisions.

3. Can satisfactory evaluation procedures be developed?

Yes, American experience shows that archival material, like any other property, can be evaluated, but that it should be done by experts, either singly or as a committee. The most useful evidence is the record of sales and assessments of similar material. The scepticism of our Department of National Revenue is not justified.

4. Are there problems involved in the application of tax benefits to gifts of archival material?

Yes, and they are more serious in Canada because of the lack of a body of experience and precedents which can be followed. This is complicated further by the probable interpretations of the White Paper on Taxation in regard to taxable income, estate tax, etc. I hope that John Archer is more familiar than I am with this area.

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Surely I am the least directly involved of any of the panel participants in an archival sense, and yet I find myself deeply involved as a university administrator in the whole gamut of ideas on donors, resource collections, appraisers and archivists. With all due apologies to my friends in the Public Archives of Canada, I cannot apologize for maintaining a deep interest in archives, even though I have left the field to younger brethren. Nor can I declaim that I am no longer interested in university archives. It is not that I am unrepentant; it is rather that I am unsatisfied. But as a university administrator, I can be somewhat more detached seeking by indirection, I suppose, what is not readily available by direction.

We often look back on the old days as the golden age of archival acquisitions. Papers were accumulated by the great families of Europe and America. Papers flowed into archival institutions and libraries as gifts. The British Museum and the Library of Congress and the Public Archives of Canada, each in its own sphere accumulated valuable cultural resources for the scholars who did research in these great storehouses. This makes for a splendid picture, but of course, it isn't the whole story. The British Museum was filled in the main from the purchases and prizes made by sons of the Empire who scoured the Americas, Asia and Africa for cultural treasures to send home to the heart of the Empire. By purchase, by force of arms, by negotiation, vast stores of books, manuscripts, objects d'art, other treasures were gathered and carried home in triumph over the placid seas, guarded by the Imperial Navy. For something like two hundred years, British noble families and British institutions have been bidding on the world market, centred in London, for private collections, papers, manuscripts, pictures and maps.

Our American neighbours have had the same appetite. Their privateers raided Charlottetown and carried away the records of the colony. The

Library of Congress holds treasures from Tripoli, Morocco, Spanish America, the Phillipines, Europe, Asia, Africa. Some were acquired by conquest, many by purchase, many by gift. The American financier and magnate has not hesitated to back with gold his bid to make his national library or his alma mater the rich cultural centre he was persuaded it should be.

The Canadians have not been so flamboyant. We lacked a navy! Even two world wars saw Canadian soldiers bring back little that was cultural when they returned home. But the Public Archives of Canada has purchased books, manuscripts and maps as a matter of policy since the year 1873. Of course, in the meantime, McGill, as early as 1850, was purchasing manuscripts and books as funds would allow.

I set out the above that we may get some perspective on the common problem we face today. And while I have emphasized only one aspect, I admit openly that I do so for a purpose. We have sinned less in Canada, if the purchasing of manuscripts is a sin, but we have only sinned less because we have been less tempted.

Of course, while archival institutions, and libraries, purchased papers, the bulk of materials flowing into Canadian archival institutions came in the form of donations. Purchases were the exception. Time was, indeed, when the ordinary businessman, barrister or publican burned or discarded his correspondence, receipts, newspapers and other ephemeral holdings. Only individuals who worked in concerns where records were used as the memory of the company deliberately kept records. Of course, historians and archivists and public men accumulated papers systematically. Political figures amassed papers of various kinds and these found their way into the local museum or perhaps the public archival institution, if there was an energetic curator or archivist to make the first move. Such universities as McGill and Queen's gathered in the papers of illustrious alumni more as a respectful gesture than from deeper motivation.

That was all in the long ago, in a pre-war world when archivists and librarians were thought of as the curators of our cultural heritage. In the public mind, these public servants were restful and learned folk doing restful and interesting, if unproductive, tasks. In this pre-war world, the tradition in Canada developed that people in public life, whether federal or provincial or civic, donated their papers to a public institution. In universities a tradition grew up that former faculty members and administrators, and to some extent, alumni, gave their papers to their alma mater. Sometimes a cash bonus was paid on one pretext or another - a library, an unpublished article, or other literary item - where the person had been inadequately rewarded during his service years. Yet the overriding principle was this - men and women who had lived off the public purse, whether in government or university, donated their papers. They did not sell them.

The world changed drastically and rapidly after the Second World War. Universities proliferated. Libraries expanded enormously. Graduate studies expanded as rapidly. The appetite for resource material on the part of all educational institutions became insatiable. As a consequence, in Canada as in the United States and in Britain, the price of unique materials soared. In Canada, the market price of core Canadiana quadrupled in the period 1948 to 1968. In Britain the scions of noble families, the sons of famous literary figures, and the dealers in antique materials turned to the auction houses as vehicles to convert papers, manuscripts, paintings, curios, into cash. Book auction houses flourished in London,

Amsterdam, New York, Montreal and Toronto.

In the immediate post-war years, the family papers offered were, in the many, papers of great historical import. But if "great historical import", why not "lesser historic import?" Not so much through public auction, but rather through book dealers, other papers came on the market. The papers of Bertrand Russell, sold to a Canadian institution, caused raised eyebrows in Britain. This was an exceptional case, perhaps. The usual case saw papers of writers, artists, and poets consigned to a dealer for sale on a commission basis. University librarians were the buyers, in the main, as developing graduate schools in the humanities reached for new resources. The price of materials soared and archivists, in the main, opted out of the bidding for few archival institutions in Canada are geared, financially, for such ventures. The field was left in the main to university librarians and to collectors. Because Canadian libraries were also chronically short of funds, there was a considerable drain of Canadian papers to university libraries in the United States. This drain is a continuing factor in the rising price of materials, and the unsatisfied demands of Canadian resource centres.

It seems obvious to me that one cannot turn back the clock. Archivists can refuse, stolidly, to enter the auction arena, and may criticize Canadian librarians for bidding prices still higher. The end result will be as it is now - the papers of Canadian contemporary writers will go to Texas, Yale, Chicago, and other places which have newly developed graduate schools in North American literature. We may importune the Canadian government to legally prevent the export of manuscript material. Britain has taken some steps to this end. I suspect that our vaunted undefended border would mean that arrangements which could not be made by direction would be made by indirection. It appears that we must seek a more direct and more productive approach.

It is at the beginning of an offensive that the experienced captain scans his battle line seeking to parade his veteran and experienced troops; and to disguise the less steady green units. If we are to make any concerted effort to gain ground, we must present a united front. Let us then put aside for the local council meeting the question of where materials ought to go in Canada. There can be no question about public records - they are defined in law and their disposition can be legally controlled. But there is an area open for negotiation in the disposition of private papers. The cause of the archivist will be immensely strengthened, it seems to me, if he stands on broad principles and seeks broad support. Speaking generally of archival institutions, it would be politic, if not sagacious, were all archivists to agree that so long as accessions were handled professionally, and expeditiously, made secure, made available, and reported to other institutions that all such institutions acting in this manner should be accepted as fraternal institutions, and their directors accepted as professional colleagues.

I take this broader approach, I suppose, because I have recently moved from a position related directly to the archival profession to one where I am made much more aware of other related professions and the needs of a combined field rather than a specific area. The demands on archival institutions and on libraries in the coming decades will be unrelenting. The responsibilities of universities and colleges in the knowledge network will be particularly heavy. There can be no retiring from the field without loss of reputation. Of all the frustrations faced by the student and research of today, the greatest is the lack of sufficient resources.

Frustration is the more compounded when known resources are inaccessible. At the same time, there is a growing restlessness on the part of the public who bear the cost of archival institutions, libraries, research buildings. Governments have become the major partner in university support at least. The private donor has been squeezed out and has now come to the belief that any donation he may offer will simply replace that which would normally come from a government. A new method must, therefore, be adopted if Canada is to attract donors of cultural resources.

To address the line of battle once more. What we seek is some leverage to persuade donors that their higher instincts will be served by donating materials to an archival institution while their other instincts are served in the form of cash credit, or tax rebate, on the gift. This is going to be a tricky field for one can imagine the furor in the treasury temple if a member of Parliament or a Senator were to donate the Public Archives of Canada his papers, and to seek a tax rebate on these. But if an impecunious Canadian poet - I am given to understand that all Canadian poets are impecunious though honourable - if this poet should donate his manuscripts and papers to the University of Saskatchewan, Regina Campus, should he not expect some quid pro quo, for he knows that put to auction, or to sale, he will receive a cash reward, the amount arrived at through a competitive market process.

I am not here to express an opinion as to the legal position of gifts, or the feasibility of gifting in this way. I merely express the need for some such procedure and point out the bad effects which we presently face, and will continue to bear, if nothing is done. If I may be permitted, I would like to raise some points which are commonly discussed when archivists talk about the gifting of papers.

Curators of manuscripts in the United States have had experience in this field. The twentieth century has seen a broadening of the types of donors to libraries and to archival institutions. Some donors express a primary interest in preservation; others sense tax deduction possibilities. The matter of literary rights is important, particularly in such contemporary subject areas as communications and the performing arts. It is unrealistic to expect donors involved in creative careers to surrender their literary rights. Gifts of contemporary papers usually carry some clause concerning the retention of literary rights by the donor. The legal aspects of such situations would have to be clarified, but it would be my opinion that since the archivist's chief interest in acquiring such papers is for research purposes, retention of literary rights by the donor would impose little, if any, restriction on the use of the papers for research. On the other hand, in the United States the regulations of the Internal Revenue Service stipulate that a gift must be unrestricted if it is to qualify for a tax advantage. The only legal case that I recall dealing with this particular aspect of the matter ruled that literary rights limits, but does not restrict, access to the material.

There are other features of twentieth century donors that interest archivists. One of these is the practice of donating materials in segments. A gift may extend over a period of years. Another feature is the closeness of the contemporary donor to the materials donated. There are the constant factors of confidentially, copyright and libel. Still another feature is the additional problem of preparing an incomplete, expanding collection for research before the full career of the donor is delineated, or completed.

For all that, the possibility of taking a tax deduction for a gift of manuscripts has been a persuasive argument in the hands of American archivists. It is an argument both for a donation of materials, and for unrestricted use of materials. For the institutions that must rely primarily on gifts, the tax deduction benefit has been a great asset in building twentieth century collections. It has made non-savers pause before discarding. It has prompted would-be donors to donate rather than store. It has helped preserve the integrity of collections for prospective donors are less inclined to diminish the whole collection by pulling and selling individual letters.

Of course there are problems. There are bound to be disputes and disappointments over the appraised value of collections. The governmental agency most directly involved is bound to be interested in the appraisal process for evaluating collections. One question which will arise early is that of the place of libraries in the overall arrangements. Will libraries qualify as recipients - if they do, how may the archival profession ensure that collections consigned to libraries are arranged and made available to researchers according to archival principles. If arrangements can be made for some standard appraisal process, what will be the reaction on the auction market or the book dealers' market for, undoubtedly, the market for manuscript material will continue to function, and to expand.

As an administrator, I have raised a number of problems hoping that someone will have the answers. As an historian, I have avoided forecasting the future. As an archivist, betimes I am directly concerned. I look to my colleagues with confidence - expecting that they may have the answers!

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In the discussion which followed, the following points were made:

Tax relief resulting from gifts to the Crown (whether at a Federal or Provincial level) can be spread over a period not greater than two years. The machinery for relief is there, and all that is needed now is a precedent. Some papers may have research value rather than market value, and the American experience is that the cost of microfilming them has been taken as a minimum valuation, in this case. If valuation appears to the tax authorities as exorbitant, they can always have the collection reappraised by appraisors appointed by them. Appraisors do not reveal their systems of appraisal. There are problems in the area of public records created by public people and whether they are not already the property of the Crown. Valuations must be made at the time of the gift. Cost of appraisal is usually born by the donor.

In general, the sale of manuscripts is, at present, a capital gain and, at present, remains untaxed; however, sales by professional artists of their creations are regarded as their income, and this may well apply to a writer selling the manuscripts of his work; the sale by an artist of other peoples' work, however, would be capital gain. The increasing monetary value of manuscripts may present problems to archivists holding collections on a deposit or "permanent loan" basis since the danger of their withdrawal by the owners may be increased.

Correspondence between Dr. W. I. Smith and Mr. K. D. Lunam, Registrar-Examiner of Charitable Organizations, Department of National Revenue, Ottawa, contains further guidance on this subject and is published in the first issue of the Archives Section Bulletin, January, 1971.

#### ORAL INTERVIEWS

##### York University's Oral History Programme

Why do oral history? It is curious that such a question would even be credible in 1970. Oral history has been widely and skillfully used for almost two decades in the United States, and there are great projects, such as that at Columbia University, that have collected indispensable materials. But in Canada there are very few historians, archives, or universities involved in this field. To the best of my knowledge, only one scholarly book has been published that makes extensive use of materials collected by this technique - Victor Hoar's The Mackenzie-Papineau Battalion - and significantly the author is an American. But the need for oral history is present and increasing, and Canadian historians, political scientists and archivists will have to become expert in this method.

The reason is very simple. Until now our history has been largely prepared from manuscript sources, from the letters of politicians and their friends, and from the memoranda and documents of organizations and government departments. Today, in an age of conference telephone calls and easy jet travel, the letter is dead or dying. Everyone of the politicians in Parliament today has free telephone service and virtually unlimited travel to his constituency. In such circumstances and without their traditional sources, how will historians be able to discover what the policy-makers and politicians were doing? Very simply, they won't. In sum, that is the rationale for an oral history programme, but it must be added that this technique also allows historians to create and have access to the history of the people. This is a potential breakthrough to a new kind of history - a true story of the events and their participants.

We know, of course, that human memory is distressingly fallible. People remember what they choose, and men in public life, in particular, often tend to portray themselves in the best light possible. Notwithstanding these drawbacks, oral history gives the historian of the present access to a source he would not otherwise have. As with all sources he uses, of course, he must exercise care, but imagine what historians could do with oral interviews with the participants in the Charlottetown or Quebec Conference, with the men involved in the conscription crisis of 1917, or with the men who served with and turned against John Diefenbaker.

This last project is the one with which I am involved. In 1968, York University's Institute for Behavioural Research agreed to establish an Oral History Programme. The first project was a study of the Progressive Conservative Party in the Diefenbaker Years (1956-1967). The project was interesting and important in itself, and the interviewers involved (Professors Paul Stevens, Peter Oliver and J. L. Granatstein) knew many of the participants and were all Canadian historians with research