

Difficult Access to the CBC Archives (Toronto)

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As we were recently reminded when operating hours at the Library and Archives of Canada (LAC) in Ottawa were reduced, free access to archives can be seriously compromised. Efforts by the CHA and its students committee to have the hours of service and operations reinstated are praiseworthy.

Another case that was and is of concern is that of the CBC Archives in Toronto. Since September 2007, implementation of the *Privacy Act* within this public institution has seriously compromised the right to access the archives. I have myself been victim of the CBC Archives' arbitrary implementation of this legislation.

In March 2006, the director of documentary production at the CBC (Toronto) authorized me to access the archives group from the production *Canada: A People's History (Le Canada, une histoire populaire)*. During my preliminary research, I discovered the richness of this documentary resource, which consists of over 300 three-ring binders, in addition to a few boxes from Montreal that remain to be classified.

Back at the CBC Archives a year later, in August 2007, the situation had changed. The Archives were then obliging me to obtain written authorization from all of the almost 100 historians who had submitted comments to the series' directors and producers. The CBC Archives cited the *Privacy Act* to prevent me from accessing the *Canada: A People's History* archives group. As of that date, August 3, 2007, the CBC was not yet subject to this legislation. However, it was considered advisable for me to be bound by this legislation prior to its September 1, 2007 effective date since my archival work would extend well beyond the month of August. I therefore set to complete the colossal task of obtaining authorizations from these historians. After a three-week exercise, approximately 30 of the historians I had been able to contact by e-mail had given me their authorization.

Due to its complexity, the file was transferred to the CBC's legal counsel in Ottawa. On August 24, 2007, the institution's senior legal counsel advised me that, although the *Privacy Act* authorized me to access the archives group pursuant to principle 8(2)j (http://www.privcom.gc.ca/index_e.asp), the CBC Archives did not have the necessary human resources to maintain the confidentiality of the personal information contained in the documents. It could not therefore grant me access to the entire *Canada: A People's History* archives group. My sole internal recourse was the CBC Ombudsman. Unfortunately, the CBC Archives in Toronto fell outside his mandate.

I was referred to the Office of the Privacy Commissioner of Canada, the only organization able to satisfactorily advise the CBC. After long discussions involving the CBC's senior legal counsel, a legal counsel from the Office of the Commissioner and me, the agency came to the conclusion that the CBC was not yet subject to the *Privacy Act* (the former *Privacy Act* did not apply to the CBC) and that the legislation that should apply was the *Access to Information Act*. I was therefore referred to the Office of the Information Commissioner of Canada. A representative of this agency advised me that the CBC was under no legal obligation to grant me access to the *Canada: A People's History* archives group since journalistic productions fall outside the scope of the *Access to Information Act*. I thus found myself in a legal "no man's land" and forced to face a team of experienced lawyers on my own.

After a month-long process and after limiting my request to four binders out of the 300, I was finally granted limited access to the archives in September 2007. However, this outcome clearly failed to meet the scientific requirements of my thesis. I therefore reapplied in January 2008 to obtain broader access to the archives group. The argument concerning the CBC Archives' limited human resources still applied and was used to justify the imposition of fees to hire an employee whose main duty would be to remove documents containing personal information. The CBC demanded that I pay this employee - who was already on the CBC's payroll - \$20 an hour for 16 hours of work, failing which it would not grant me access to its archives.

The story of my archival adventure does not bode well for future researchers wishing to study the development of CBC/Radio-Canada or of Canadian television as a whole and the context in which television programs devoted to history were produced. A piece of work such as historian Paul Rutherford's *When Television was Young* would clearly not be feasible under the current legal framework. It is therefore crucial for the Canadian Historical Association to get involved in this matter, if only to ensure that the history profession can be practised freely despite the arbitrariness currently reigning at CBC headquarters in Toronto.

More broadly, since it is a public institution and accountable to all Canadian taxpayers, CBC/Radio-Canada should take researchers' interests into account. While CBC/Radio-Canada itself makes extensive use of historians for its own programming, as consultants or as media personalities, it is time for the corporation to ask whether this relationship is only benefitting one of the two parties.