

‘The De-access of Information’’: Culture, Privacy and Using Ministerial Papers in Quebec’s Archives Nationales

Conference: ‘Balance between Historical Research and Privacy’

Agència Catalana de Proteccio de Data

Parlament de Catalunya

Barcelona 20 January 2009

Brian Young – McGill University

(Draft Paper: citation with permission of author)

On the 6th of October 2008, I came off the 800 bus at Laval University crossing to the Archives to pick up my research after an absence of a couple of weeks. Hunkering down with one’s boxes in archival research is as close to heroin as most university researchers get! On that morning however, my boxes had disappeared from the reading-room shelves and I was told to wait. Archivist Régnald Lessard, universally appreciated as the researcher’s best friend, soon appeared with the downcast look of a dog whose bone has been stolen. My access to the collection of former Minister of Culture Denis Vaugeois, he told me, was frozen awaiting an application to the collection under the Access to Information Act: my research on the origins of Quebec’s Musée de la civilisation was at full stop. Over two years down the road, this brief paper is an attempt to understand what happened.

My presentation has three parts. In the first, I reconstruct the history of Quebec’s Archives and Access to Information legislation. I present the origins of the laws and their relationship to the larger social and cultural transformation of Quebec and Canada across Quebec in the second half of the twentieth century. To give human face to my story, I pause over the role of Denis Vaugeois, former Minister of both Culture and Communications, and a prime actor in the construction of the legislation and of Quebec cultural policy in the late 1970s. The second element in my paper is anecdotal in that I relate legislation and administrative practice to the particular archival experience which Michael Gauvreau, a researcher from McMaster University, Ontario and myself underwent in the fall of 2008. I narrow my presentation here to our particular concern with ministerial papers donated to the Archives as part of private collections. The paper then makes no attempt to treat larger questions of access and privacy dealing for example, with archival holdings of medical, criminal, or census data bases. In the final section, I concentrate on documents, interviews with researchers, politicians, and archivists, and the larger academic literature to provide perspective and some concluding and comparative questions to the Quebec example.¹

In its present form, the National Archives of Quebec is best understood as integral to the expansion of the Quebec institutional state, a process that can be roughly dated from the election

¹ I interviewed Michael Gauvreau, Denis Vaugeois, and in a joint interview in the National Archives (Montreal) 12 January 2010, Normand Charbonneau, directeur du centre d’archives de Montréal et des archives privées, judiciaires, et civiles, Estelle Brisson, coordonnatrice, section de la diffusion, and François David, archiviste, section des archives privées, judiciaires et civiles.

of Jean Lesage's Liberal Government in 1960 to the defeat of René Lévesque's Parti Québécois government in 1985. While always characterized as secular and liberating, this institutionalization was also what I call 'virtuous'. For the archivists, intellectuals, and administrators who shaped archival institutions in this period, this meant sharing an implicit – and often explicit - moralization of the Past: the more that was known of Quebec History, the stronger would be the resulting People. Specifically, the professionalization of archivists occurred in 1967 with establishment of the Association des Archivistes du Québec, with the founding of their professional review, *Archives* (1969), and with the Laval University History Department's establishment of a graduate program in archival science in the same period. A 1969 law (Loi abrogeant le Secrétariat de la Province) transferred archives from the Provincial Secretary to the jurisdiction of the recently-established Ministry of Cultural Affairs. La Loi sur les biens culturels (1972) also served to strengthen the cultural mandate of the Archives.² This development a half century ago is entirely relevant to the issues under discussion today. Into 2010, the National Archives continues to reiterate Quiet Revolution principles of openness to its citizenry, transparency in administration, and concern for the Québécois identity: its mission, summarized in the 'Loi sur bibliothèque et archives nationales', is to 'offrir un accès démocratique au patrimoine documentaire constitué par ses collections, à la culture et au savoir...'³ The National Archives, we are reminded in 'La Déclaration québécoise sur les archives', 'jouent un rôle essentiel dans le développement de la société...les archives servent la transparence administrative, concourent à la constitution de l'identité québécoise...'⁴ Quebec proudly sees its archival legislation as an innovative flagship. Now director-general of the National Archives, Carol Couture notes that the Archives Act "has served, and continues to serve, as a model for other archival legislation throughout the world".⁵

But even as these professional, training, and archival institutions were being set in place, their founding principles of openness, collective action, and national virtue were sideswiped by developing concepts of individual rights and privacy. Here again, Quebec prides itself in its originality in protecting the privacy of its citizens from abuse by the big state and big corporations: Quebec's leadership in privacy issues includes professional codes, professional

² Carol Couture, 'Taking Stock : The Evolution of Archival Science in Quebec', *Archivaria* 59, (spring 2005) 29-33.

³ L.R.Q., chapitre B-1.2, 'Loi sur bibliothèque et archives nationales du Québec', au jour 1 déc 2009, section 14.

⁴ *Archives*, 38, no.1, 2006-2007, p. 65, 'Notre mémoire et nos droits. La Déclaration québécoise sur les archives', Préambule. These goals can be compared to a somewhat different and more 'rights' oriented definition given by John Carlin, archivist of the United States in 1998. He defined the National Archives as "a public trust on which our democracy depends...It ensures continuing access to essential evidence that documents the rights of American citizens: the actions of federal officials, the national experience". Cited in Menzi Behrnd and Peter Wosh, *Privacy and Confidentiality Perspectives: Archivists and Archival Records* (Chicago: The Society of American Archivists, 2005) 159.

⁵ Carol Couture, 'Taking Stock : The Evolution of Archival Science in Quebec', *Archivaria* 59, (spring 2005) 35.

secrets, and, of particular importance in the archives' dossier, the confidentiality of personal information:⁶

«Véritable pionnier en Amérique du Nord en matière d'accès à l'information de protection de la vie privée, le Québec a bâti au cours de trois décennies, un modèle législatif original qui a tracé la voie à la mise en place de mesures similaires à travers le Canada. Incarné par la Commission d'accès à l'information du Québec, ce modèle original se veut, vingt-cinq ans après sa mise en place, une référence incontournable à travers l'ensemble des pays occidentaux en matière d'accès à l'information et de protection de la vie privée.»⁷

It is important to step back and consider the origins of Quebec's access and privacy legislation. In both Quebec and Ottawa, concepts of privacy were affected by fundamental change, first in technology and then in definitions of human rights. Computer technologies, permitting the organization and sharing of large data bases, had huge effects for issues of privacy between the citizen and the corporation and the state. Historians and archivists, albeit bit players in the larger chess-game of privacy and changing information technologies, did see the research potential in quantifying masses of personal data available for example, in manuscript-census returns, in city directories, tax registers, criminal or bank records, or in Quebec's rich parish registers. In Quebec, archivists observed Jacques Henripin and Hubert Charbonneau use the techniques of demography in startling ways and sociologist Gérard Bouchard musing about using archival data to follow 'each family (if not each individual) in time and space'.⁸

This revolution in data, including that held by government archives, coincided with a second phenomena, the re-structuring of citizens' rights, a process summarized by the term a 'société de droit'. Measures such as the federal Omnibus Bill (1968-69) brought homosexuality, abortion, the bedroom, and things 'done in private' into public debate over individual rights. Both the Quebec Charter of Rights and Freedoms (1975) and the Canadian Charter of Rights and Freedoms (1982) introduced new concepts of individual rights, including the right to privacy and the protection of personal information. The Quebec Charter for example, enshrined the individual's right 'to the safeguard of his...reputation' (Article 4) and the right to secrecy, described by the Charter as the 'right to non-disclosure of confidential information' (Article 9).⁹ All of this was part of a global sea change in conceptions of human rights over the past four decades and the fact, as Ronald Dworkin was insisting as early as the 1970s that "the language of rights now dominates political debate": individual rights, he suggests, "trump" utility.¹⁰

⁶ Ibid., 'Les lois professionnelles comme le Code des professions consacrait des principes comme le secret professionnel et le caractère confidentiel des renseignements personnels.'

⁷ <http://www.cai.gouv.qc.ca/>, Commission d'accès à l'information, 'historique'.

⁸ Bouchard (1977) cited in Chad Gaffield, 'Theory and Method in Canadian Historical Demography', *Archivaria* 14, p.132.

⁹ <http://www.cdpedj.qc.ca/en/commun/docs/charter.pdf>

¹⁰ *New York Review of Books*, 15, no. 11, 17 December 1970, and Heather MacNeil, *Without Consent. The Ethics of Disclosing Personal Information in Private Archives* (Metuchen N.J.: Society of American Archivists, 1992) 173.

Established in 1982 under the Access to Information Act, the Access to Information Commission was also rooted in the Quiet Revolution, in social democracy, in journalistic traditions of free speech and independence exemplified for example, in the long history of the Montreal daily, *Le Devoir*, and in innovative consumer-protection legislation such as that of 1971 ensuring citizen access to credit information held by financial institutions. The seeds of a paradox and of tensions within archival institutions were set then by the legislator in two acts, 1982-83. On one side, the National Archives, many legislators and intellectuals, and the archival profession based their procedures for access to records containing personal information on unwritten principles reaching back to F.W. Maitland and English Common-law concepts around trust, personal information as property, and the public right to know: archivists spoke with a certain “institutional altruism” seeing themselves as mediators in what Heather MacNeil has called “a trust relationship in a democracy”, that between the researcher and the documentary memory held in archival vaults.¹¹ The National Archives developed autonomous institutional procedures, often unwritten, and a mission fixed on cultural objectives around national identity rather than issues of freedom or privacy. By the Access to Information Act on the other hand, the legislator established liberal priorities that gave primacy to individualism and freedom. To enforce access to information and, increasingly, to protect the privacy of the citizen, it established a written legal order universal in its application across public institutions, including the National Archives. Its civil-law procedures, what the act calls “codification administrative”, would be applied by legal officials and would apply to documents from across the cultural domain: written, graphic, sonar, visual, and digitalized.¹² It is the tension within the archival institution between these two pieces of Quiet Revolution legislation with their entwinement of the cultural vs the jurisdictional, common law vs civil law, and institutional openness vs protection of the private, that, a quarter of a century later, would set the fox among the chickens and lead to the disappearance of my boxes in October 2008.

The original *Loi des Archives* (December 1983) was drafted during the tenure of Denis Vaugeois as Minister of Culture (1978-81). An historian trained in archival research, Vaugeois was keenly interested in the documentary history of Quebec and its preservation. His tendency was entirely in the direction of openness and identity. Concerned with what he called ‘alienation’, Vaugeois undoubtedly saw the archives as part of the larger social and cultural crisis identified in the White Paper of 1978:

“ils étaient culturellement minoritaires et plongés dans un monde dont les grands instruments de production, de communication et de diffusion viennent d’ailleurs et parlent un autre langage, voire une autre langue. Selon la logique du sous-développement et du colonialisme, la collectivité semble obligée de multiplier les emprunts de toutes sortes.”¹³

¹¹ Heather MacNeil, ‘Information Privacy, Liberty, and Democracy’ in Menzi Behrnd and Peter Wosh, *Privacy and Confidentiality Perspectives: Archivists and Archival Records* (Chicago: The Society of American Archivists, 2005) 72, 67.

¹² L.R.Q., c.A-2.1, *Loi sur l’accès aux documents des organismes publics et sur la protection des renseignements personnels*, 13 septembre 2006, introduction, cap. 1.1. The 2006 law exempted

¹³ Québec. *La politique québécoise du développement culturel* [White Paper] (Québec: Éditeur officiel, 1978) vol. 1, p. 54; for Vaugeois’ use of ‘alienation’ his *Union des deux Canadas. Nouvelle Conquête?* (Trois-Rivières: Éditions du Bien Public. Éditions du Soc, 1962) xvi.

Among the officials in his cabinet office and Ministry who influenced the drafting the Act and the structuring of archival and museal institutions, many were fellow travelers from Trois-Rivières, from his seminary and then pedagogical milieu, or historians trained by Jean Hamelin at Laval or Maurice Séguin at the Université de Montréal. These included André Juneau, student of Hamelin, René Milot, M.A. in History, Noël Valleyrand, his partner in a record store and vice dean of letters at UQAM; and François Beaudin, a close friend and chief archivist of the National Archives. Vaugeois was instrumental in opening six regional archives outside Montreal and Quebec and in assisting the move of the National Archives central depository in Quebec from the old Quebec prison on the Plains of Abraham to a research-oriented site on the campus of Laval University. He has also insisted on keeping the Archives within the jurisdiction of the Ministry of Culture protecting it from capture by records-management and administrative-archives oriented officials in Public Works and the Treasury Board.¹⁴ This emphasis on the National Archives' cultural mission, on liberal access policies, on societal and collective goals, and the Archives as a building-block in the study of the Quebec identity and as a democratic and transparent institution were part in fact of the Ministry of Culture's larger goal to protect Quebec's material patrimoine. Vaugeois, for example, discussed establishment of a 'mobilier national' on the French model with a national inventory of museum collections and protocols, 'inspectors', and 'museum counselors' to safeguard endangered regional collections.¹⁵ . And while professional historians of his generation, trained in the social sciences, moved to seize the potential of medical, welfare, and census data bases for the study of class, workers and women, Vaugeois' focus, and he was an ongoing researcher in History, remained on the political and archival documents so instrumental in Quebec's national history. There was something quite apt then in my 2008 research project of studying the origins of a National Museum through the ministerial papers of the principal legislator of the Archives Act – and something quite ironic in the freezing of access to these ministerial papers under an Access Bill first shepherded by the same legislator!

Drafting the Archives Act with deputy minister Noel Vallerand, Vaugeois's primary intention was to oblige government institutions to preserve and make accessible their documents. In his original Bill - and this is critical for the events of 2008-09 - all holders of public office, including Ministers, would have been obliged to leave in their Ministry public documents accumulated during their mandates. 'À mon avis, he wrote much later, 'les documents d'un ministre appartiennent à l'État tout comme ceux des hauts fonctionnaires'.¹⁶ However, the 1983 Bill, passed by the Parti Québécois government, but and after Vaugeois' dismissal from the Cabinet in April 1981, added a clause exempting members of the National Assembly from clauses applied to other holders of public office. Vaugeois understood the significance of this exemption:

moi, j'échouais dans mes efforts pour convaincre mes collègues du conseil des ministres d'introduire l'obligation de remettre à l'État leurs propres 'archives ministerielles'. Il y a

¹⁴ <http://www.septentrion.qc.ca/denisvaugeois/>, blog, 'BAnQ. Un siècle d'histoire', 17 mai 2009. In Italy for example, as late as 1975, National Archives were in the purvey of the Ministry of the Interior.

¹⁵ ANQQ, Fonds Denis Vaugeois, P655-195, 'Le Musée du Québec', Dossier 'Ventes d'articles au Musée du Québec', Vaugeois à Noel Valleyrand, 14 août 1978, 23 janvier 1979.

¹⁶ Vaugeois to author, e-mail, 14 January 2008.

un livre à écrire sur cette seule question. Mon successeur, Clément Richard, a cédé et a fait voter la loi.¹⁷

This exemption was apparently done to block political exploitation by new ministerial officeholders of the documents left by their predecessors. Its effect was demonstration of how legislative approaches to balancing individual rights with larger societal rights ‘usually offers less than ideal solutions’.¹⁸ The 1983 act served to exempt legislators from legal responsibilities flowing from their executive functions, a contradiction in the British constitutional system. Ministers and other members of the Assembly were simply encouraged (by appeals to their sense of public service and to their pockets by means of tax credits) to deposit their documents with the National Archives. Individual donors, in consultation with archival officials, were permitted to establish conditions such as delays in accessibility.¹⁹ The significance of this exception became evident in 1985, the passage to a Liberal régime, and the departure of Ministers, including Claude Morin, Jacques Parizeau, and Vaugeois himself, with papers that included ministerial documents. Since passage of the Act in 1983, 88 former ministers have deposited private collections with the BANQ that include ministerial papers.²⁰ The hook of a future archival crisis was set. Private collections containing ministerial documents - “documents publics”²¹ in archival discourse – had access set by influential donors, an access that continued to be administered by archivists operating in their historic common-law frame of ‘trust’. Containing “public documents”, the same collections were subject to the Access to Information Act. From 1985 to 2008, this ambiguity persisted.

Vaugeois is again a useful pole for understanding the ideological and political dimensions of the first Access to Information legislation in Quebec. Supported by Premier Lévesque, this legislation should logically have originated in the Ministry of Justice. However, with the Minister of Justice lukewarm on such legislation and then absent through illness, Lévesque gave Vaugeois, then Minister of both Culture and Communications, responsibility for the dossier. In 1980, Vaugeois named the Paré Commission, and its report would form the basis of the 1982 legislation²² Vaugeois was not in the Ministry for preparation of the final bill which wrapped

¹⁷ <http://www.septentrion.qc.ca/denisvaugeois/> blog, ‘BANQ. Un siècle d’histoire’, 17 mai 2009.

¹⁸ Heather MacNeil, Without Consent. The Ethics of Disclosing Personal Information in Private Archives (Metuchen N.J.: Society of American Archivists, 1992) 62.

¹⁹ L.R.Q., cap A-21.1, Loi sur les Archives, cap.12, 13.

²⁰ Phone interview with Denis Vaugeois, 6 January 2010; ‘Liste des 88 fonds de ministres (cotes “P” et “MSS”) conservés à la DGA et nécessitant une restriction’, BANQ, comité sur les archives privés, 4 novembre 2008.

²¹ Term used by Normand Charbonneau, “Présentation”, 18 mars 2009.

²² Phone interview with Vaugeois, 6 January 2010; Vaugeois to author, e-mail, 14 January 2008; Paré was part of the Quiet Revolution generation, a journalist at the Quartier latin, Radio Canada, and several Montreal newspapers, editor of McLeans (1972) and founder of l’Actualité in 1976; Québec (Province). Commission d’étude sur l’accès du citoyen à l’information gouvernementale et sur la protection des renseignements personnels (1981). The place given here to Vaugeois’s role should be compared to the interpretation of Paul-André Comeau: ‘C’est l’impulsion d’un ministre Robert Burns, et l’intervention personnelle du chef du gouvernement René Lévesque, qui permettent de comprendre la création de la commission d’étude

access to information and protection of privacy in the same bill. Vaugeois was replaced by Clément Richard as Minister of Communications in November 1980 and in Culture in April 1981. The Bill's results according to Vaugeois were unfortunate:

Le plus triste c'est que ceux qui étaient visés par la protection des renseignements personnels ont vite trouvé les moyens de contourner la loi. Les victimes : les chercheurs. Cette loi d'accès et de protection a été un cauchemar pour moi jusqu'à l'intervention de Paul Bégin dans un bill omnibus qui a limité les dégâts.²³

In its first years, the Access to Information Commission seems to have acted in a mediative way giving priority to 'the right to know' over that of the protection of privacy.²⁴ At least, the political sensitivities of the first commissioners was suggestive of this. The first Commissioner was Marcel Pepin (1982-87), a graduate of Georges-Henri Lévesque's social-science school at Laval and a former president of the CSN, Quebec's most important labour federation; Paul-André Comeau, Commissioner from 1990-2000, trained in political science, was a journalist at Radio-Canada, and editor of *Le Devoir*. His successor, Jennifer Stoddart (2000-03), was the first commissioner who was primarily a jurist as opposed to the syndicalist or journalist community. With an M.A. in History, she is a member of the Quebec bar, and was on the Quebec Human Rights Commission before appointment to the Access Commission. In 2003, she was named Canada's Privacy Commissioner.

Archivists were aware of the potential contradictions within their institution. For example, in somewhat bureaucratic language, Carol Couture, now director-general of the National Archives, described the evolution of archival sciences in Quebec to 2005 as:

“the positioning of archival practice at the heart of public institutions and scholarly research; the contribution of archival science in Quebec to the application of the access to information law and the scope of the Archives Act”.²⁵

[Commission Paré], l'élaboration et l'adoption de ce projet de loi, le tout en moins de vingt mois', 'Accès à l'information : perspectives internationales' dans *Le droit à l'information: Le droit de savoir* (Cowansville: Éditions Yvon Blais, 2006) 40.

²³ Vaugeois to author, e-mail, 14 January 2008.

²⁴ Canada's Privacy Act (1983) had its roots in clauses of the 1978 Canadian Human Rights Act (part IV). Early reports of the federal privacy commission emphasized its role as an 'ombudsman'. The Human Rights Act balanced 'the privacy of individuals and their right of access to records...to the greatest extent consistent with the public interest'. The Privacy Act (1983) changed the wording in significant ways dropping the phrase 'public interest' emphasizing instead a mission to 'protect the privacy of individuals with respect to private information about themselves held by a government institution and that provide individuals with a right of access to such information'. www.priv.gc.ca/information/ar, Annual Report, Privacy Commissioner, 1983-84, both on p.2.

²⁵ Carol Couture, 'Taking Stock : The Evolution of Archival Science in Quebec', *Archivaria* 59 (spring 2005) p. 39.

For its part, the Association des archivistes du Québec in a 1997 memoir to the National Assembly's parliamentary Commission on culture (Commission parlementaire de la culture de l'Assemblée nationale du Québec), complained about the lack of recognition given to the expertise of archivists in protecting personal information. Referring presumably to the increasing power of the juridical in archives, the Association asked legislators to ensure that their expertise was 'mise à profit dans l'application de la Loi sur l'accès'. The association also emphasized the "devoir social" to render accessible private information of use to the community.²⁶

Let's return to the anecdotal, to 2008, and to my Vaugois boxes in the National Archives salting my experience with that of McMaster University historian Michael Gauvreau. Like most historians of my generation, I shared the dominant archival 'Common-law' sense of the balance between the societal benefits of archival research and individual rights to privacy. I was also like most historians, and this is pointedly remarked by archivists, in having only a cursory understanding of privacy legislation in Quebec and Canada.²⁷ Indeed, one of the major attractions in undertaking my study of the Ministry, national museums, and the writing of popular history in the 1970s, was the fact that Vaugois had deposited his 40 meter collection with the Archives Nationales with no restrictions as to their use. I assumed I would have full access, a situation that was true until September 2008. The collection had been divided into two with constituency materials sent to the National Archives office in Trois-Rivières and the rest of the collection deposit in the Quebec section. Archivists in the first months of 2008 acted very much in the 'trustee' custodial tradition of their profession, offering full collaboration and access, arranging use of a private office, and according photocopy rights. Access to the collections was extended to a research assistant. In Quebec, I would be granted permission to record documents by use of a digital camera.

As is often the case, archival policy, which in this case resulted in the freezing of my access and that of Michael Gauvreau, was the result of a crisis.²⁸ Although no one explained it at the time, I later learned that it was the result of a journalist's publication in September 2008 of e-mails emanating in the office of former Environment Minister Thomas Mulcair. The e-mails, implying political interference in the granting of environment subsidies by Hydro-Quebec, were written in January 2006, a month before Mulcair left office. He later deposited his papers in the National Archives as a private collection, including his ministerial papers. His 25 m collection, included those from his functions as a lawyer for the Conseil de la langue française, as president

²⁶ 'Mémoire de l'Association des archivistes du Québec à la Commission de la Culture', *Archives*, 30, no.1, 1998-99, section 1.4 and 1.6.

²⁷ Interview with Normand Charbonneau, François David, and Estelle Brisson, BAnQ, 12 January 2010. David Flaherty is a major exception to the fuzziness of most historians. From early work in privacy issues in American colonial history, he moved to a specialization in contemporary privacy issues, treating access to census data and research and statistical uses of Ontario government personal data (1979). He served as British Columbia's first Information and Privacy Commissioner (1993-99) and as advisor to the Canadian government on legislation concerning privacy and electronic documents.

²⁸ See Menzi Behrnd, *Navigating Legal Issues in Archives* (Chicago: Society of American Archivists, 2008) 112.

of the Office des professions du Québec, in the Justice Ministry, and as Minister of Environment.

²⁹ In breaking the story, *Le Devoir* put it this way:

Ces courriels ont été déposés aux Archives nationales lorsque Thomas Mulcair a perdu son poste de ministre de l'Environnement, le 27 février 2006. Certains documents qui émanent du bureau d'un ancien ministre sont classés secrets et ne peuvent être consultés avant plusieurs années, mais, dans d'autres cas, la documentation est accessible après quelques mois.³⁰

This explanation makes clear that the journalist, his professional ethics, and his 'right to know', were entirely determined by a juridical reading of the Access law and not at all by traditional concepts of trust that had predominated decisions concerning access to ministerial papers since 1983. The effect of this publication on historian researchers and on traditional practice was immediate. Normand Charbonneau, archivist in charge of private collections, told me that, reading the *Le Devoir* article of 15 September 2008, he immediately knew that the proverbial was about to hit the fan and that the ambiguous archival practices of the past years about to change.³¹ The Mulcair affair brought Cabinet attention and scrutiny of archival practice at the highest state level.³² Private collections with ministerial or public documents were closed pending a successful application under the *Lois sur l'accès*, and access would only be granted once documents 'à risque' had been identified. Article 12 of the *Loi sur les archives* would be applied.³³ New protocols giving much greater place to written law and the Archives' legal branch were grafted onto the existing common-law trust practices of archivists. The private collections of former ministers would henceforth be treated under the Access to Information Law in the same way as ministerial papers themselves. This led to the obvious closing of nominative files indexed by an individual's name but also to the closing of diaries and other personal material. The crisis can in fact be seen as part of a rapidly increasing sensitivity to the safeguard of privacy across the BAnQ. For example, as part of institutional instruction by the Comité sur la protection des renseignements personnels, 300 library and archives staff members who served the public (services aux usagers) were given special training by the BAnQ's judicial branch. Director-General Lise Bissonnette reiterated to senior management the importance of the protecting private information.³⁴

With my Vaugois research shut down and my application under the Access to Information Act being officially treated by the Director of Judicial Affairs in Montreal, the archivists themselves continued in their informal, individual approach. Normand Charbonneau, archivist in charge of private collections, met with me in Quebec City, explained the process, and assured me that archivist Christian Drolet was moving at full speed to review dossiers for clearance. In fact, all of the dossiers of interest to me in Quebec City were opened. The process was longer with Vaugois' constituency papers in Trois-Rivières. I made formal application for access on 11 May 2009. On 29 May, Isabelle Lafrance, director of the BAnQ judicial branch, wrote that the Archives could not treat my application within the twenty days prescribed by the law asking for a delay (provided by the law until 11 June). Archivist Sophie Morel, working in

²⁹ <http://www.assnat.qc.ca/FRA/members/archives/m-n/multi-ar.shtml> Thomas Mulcair Archives

³⁰ *Le Devoir*, 15 septembre 2008.

³¹ Phone interview, 6 January 2010.

³² Normand Charbonneau, "Présentation", 18 mars 2009.

³³ Normand Charbonneau, "Présentation", 18 mars 2009.

³⁴ Annual Report, BAnQ, 2007-08, p.71.

conjunction with Lafrance, examined the boxes I had applied to see. 38 boxes were opened to me in Trois-Rivières on 12 June and 2 July 2009. In return for access to material which contained ‘informations personnelles et confidentielles non structurées’, I and my research assistant signed confidentiality agreements to respect article 19 of the Loi sur les archives.³⁵ Access to seven other boxes, organized nominately by Vaugeois and his riding staff, was denied since they contained ‘renseignements qui sont structurés de façon à être retrouvés par référence au nom d’une personne’.³⁶ The Claude Ryan collection, entirely open to Michael Gauvreau until September 2008, was more problematic. Notebooks kept by Ryan were determined to contain sensitive personal information as were police dossiers and letters to the editor sent to Ryan as editor of *Le Devoir* and organized nominately. At this writing, his appeal is pending. Since the new policy was applied, archives’ officials have dealt with 18 applications to consult the collections of nine former ministers.³⁷

Perspectives:

1) At least in public interviews, archivists seem at ease with the present situation concerning access to private collections containing ministerial papers. They feel that they have dealt expeditiously with the eighteen applications for access they have received and have combined the archivist’s traditional sense of democratic access with protection of the privacy of donors and private information held in the collections.³⁸ On the other hand, they say little of the Janus-face presented to the research public: a human and personalized archival service operating alongside a bureaucratic legal service part of what Pierre Bourdieu calls a “processus de dépersonnalisation, d’universalisation, [et] de départicularisation.”³⁹ There is a certain lack of transparency in the archivists’ insistence on preferring a visit from the researcher and face-to-face explanations to web-site presentations. This preference is compounded for the researcher by the obscurity of phone numbers and responsible officials on the BANQ website. And do researchers really understand the ‘hand-off’ that occurs in the transfer from archival to juridical personnel within the same institution, a process remindful of being transferred within the same hospital from urology to cardiology. While the same body (to use Foucaultian language) of research is in question, the discourse, personnel, and instruments change radically. Forms, bureaucratic procedures explained through the website, and communications only in written form, give an entirely different visage to the same project within the same institution. The appeal process, entirely impersonal for example, has left researcher Gauvreau demoralized and his project in peril.⁴⁰

2) Is the Archives’ cultural mission, so carefully constructed by Quiet Revolution seniors in the 1970s and 1980s, threatened in fundamental ways by the revolutions in information

³⁵ Isabelle Lafrance, directrice des affaires juridiques, BANQ à Young, 12 juin, 2 juillet 2009.

³⁶ Ibid., 2 juillet 2009

³⁷ ‘Demandes d’accès. Fonds d’archives des ministres’, Working document provided by BANQ archivists in meeting, 12 January 2-10.

³⁸ Interview with Charbonneau, Brisson, David, 12 January 2010.

³⁹ *Science de la science et réflexivité. Cours de Collège de France* (Paris : Raisons d’Agir Éditions, 2001)149.

⁴⁰ Gauvreau to author, 4 January 2008.

technology and human rights of the past decades. Quebec culture may in fact be challenged, not only by easily-perceived foreign forces but by worms of liberal ideology and charter rights introduced by the very same fathers of the Quiet Revolution:

The traditional insensitivity of the State of Law of liberal origins, as regards cultural belonging, expressed itself in three ways: individualism, the primacy of freedoms, and the restriction of the exigencies of equality within the sole framework of state action...⁴¹

In this regard, it is interesting, albeit perhaps an oversimplification, that our historical research was challenged, not by the actions of an historian or social scientist, but by a journalist. In its scoop, Le Devoir paid little attention to the institutional culture of the BANQ (then directed ironically by its former editor) giving priority instead to ‘the primacy of freedoms’, to strict application of Access laws, and to journalistic ethics – and thus fragilizing an entire domain of contemporary historical research based on the papers of former Ministers.

3). Would there be place, and I gather this is the case in constituencies such as Australia, to exempt Archives from the Loi sur l’Accès relying instead on a revised Loi des Archives and traditional trust relationships? Given the particular place of History and ‘Je me souviens’ in Quebec society and the Quiet Revolution tradition of social democracy and government openness after La Grand Noirceur, there is something unfortunate in the close association of the Archives Nationales with a fellow government organization whose motto is the Padlock. There may be something amiss in the present situation, a sense of the careful balance described by Edward Shils:

The respect for privacy rests on the appreciation of human dignity, with its high evaluation of individual self-determination, free from the bonds of prejudice, passion and superstition. In this, the respect for human dignity and individuality shares an historical comradeship with the freedom of scientific inquiry, which is equally precious to modern liberalism. The tension between these values, so essential to each other is so many profoundly important ways, is one of the antinomies of modern liberalism.⁴²

4) Finally, how do these tensions within the National Archives – all rooted in the 1970s - between privacy and scientific transparency, between broad concepts of common and civil law definitions of rights, and between a collective civic culture and individual freedoms, fit into a world of 2010, Facebook, changing technologies, and evolving concepts of privacy among young Québécois. From this perspective, is the entire archival debate over privacy an anachronism and the fact that some archivists spend up to 80% of their time on jurisdictional matters a useful disposition of limited social resources?⁴³

⁴¹ Pierre Blache, ‘La charte canadienne: obstacle postmoderne à l’émergence d’un Québec moderne et rassembleur’, Thémis 28 (2-3) : 335-70, cited in translation in Michael Dorland and Maurice Charland, Law, Rhetoric, and Irony in the Formation of Canadian Civil Culture (Toronto: UTP, 2002) 246.

⁴² Edward Shils cited in Heather MacNeil, Without Consent. The Ethics of Disclosing Personal Information in Private Archives (Metuchen N.J.: Society of American Archivists, 1992) 4-5.

⁴³ Cited in interview with Charbonneau, Brisson, David, 12 January 2010.