

Archivists and Accountability

Chris Hurley

Abstract

The author is a former Keeper of Public Records for the Public Records Office Victoria, Australia, and Acting Chief Archivist at Archives New Zealand. In 2003, he won the Archives and Records Association of N.Z. (ARANZ) Michael Standish Prize for his 2002 essay "Recordkeeping, Document Destruction, and the Law" covering the "Heiner Affair" (a long-running dispute concerning destruction of records of a Queensland State Government inquiry) and other matters, published in the Australian Society of Archivists' journal *Archives & Manuscripts*. He presented this paper at the 2004 annual conference of the Australian Society of Archivists (ASA). In it, he summarises his mature reflections on the "Affair" and responses to it by the ASA, of which he had been a member for 30 years. His criticism of the Society over its response is well known to readers of the Society's (now defunct) "Aus-archivists" listserv. These views had previously been aired in *Archives and the Public Good* (2002) edited by Richard Cox and David A Wallace and at the International Council of Archives Congress in Malaysia a few months before this paper was delivered in Canberra. Here, he suggests ways forward for the Society and the profession generally to set the recordkeeping house in ethical and disciplinary order.

The paper exists in several versions. Initially, the Society refused to include it *Conference Proceedings* – allegedly on legal grounds. The author offered some amendments to overcome this objection but the ASA persisted in its refusal to publish. Feeling that this was defamatory of him and detrimental to his professional reputation, the author obtained his own Queen's Counsel opinion. Counsel concluded emphatically that he "could not conceive" how any legal action taken against the author or the Society could succeed. This version of the paper was bravely put up by Mike Steemson on his New Zealand based RIMOS website. After further acrimonious communication between the author and the Society, a similar version was eventually published in the Society's journal, *Archives & Manuscripts*, in 2006 (vol.34, no.2). It has never been restored to its place amongst the *Proceedings* of the 2004 Conference. The author has not subsequently presented a paper to an ASA Conference or published in the Society's journal.

Near where I work, there is a building that has been undergoing reconstruction for the last 18 months. A sign on the hoarding reads: "In an age of accountability, this building stands tall!" I have no idea what that means. I suspect that those who wrote the sign do not know what accountability means either. Let me begin, therefore, with my definition. Being accountable means being:

- Clear about your **role** (who is accountable and to whom);
- Clear about your **function** (for what are you accountable);
- Measured (having standards or **bench-marks**), and
- Monitored (some method of punishing or **correcting deviance**).

This paper is not about how good recordkeeping supports accountability. It is about the accountability of those who set the recordkeeping rules. It is about **our** accountability. What is our role and function? How is our performance measured? How are we monitored and corrected when we go astray? My answer to these questions is: we don't understand our role and function, we don't have bench-marks against which our actions are judged, and there is nothing to correct or punish us when we deviate. We ourselves are, in short, unaccountable.

As agents of accountability, recordkeepers themselves must be accountable for what they do and how they do it. Most of us are probably accountable employees - just like everyone else. Employers make us accountable through performance agreements, key results areas (KRAs), service level agreements (SLAs), etc. Suppose we were also accountable professionals? What if a professional obligation conflicts with an employment obligation? Can a professional obligation over-ride any of the terms of a contract of employment? If archivists have professional

accountabilities outside the terms of their employment, to whom are they accountable and for what?

I was asked to comment on papers from yesterday, in particular a paper dealing with the destruction of evidence in advance of legal proceedingsⁱ- a key issue in the McCabe Case and the Heiner Affair. The only comment I would wish to make is that Camille Cameron deals, quite properly and I have no doubt competently, with the legal issues.

The point that must always be made about Heiner and about appraisals which involve this kind of issue is that the role of the recordkeeper is not limited by the legal requirements (whatever they may be) around the destruction of evidence. Moreover, the recordkeeper has no special duty to enforce the laws concerning obstruction of justice. That is not our accountability. Our accountability lies in appraising records on more general grounds, taking the law on obstruction of justice into account, certainly, but not being limited by that aspect of the matter. If we have the power to prevent destruction, and we do so on the grounds that records may be needed in legal proceedings, it will be on a larger view of probabilities and what is likely than can be satisfied by a simple inquiry about whether or not proceedings are currently on foot. Our consideration of the matter will not stop with the question "Can it be destroyed?" We must also ask: "Should it be destroyed?"

Some archivists have a statutory discretion to allow or forbid the destruction of documents. That discretion should not be exercised in ignorance of the legal requirements regarding the destruction of evidence (certainly not in defiance of any such requirement applying to the particular instance), but the archivist's role and function is not to ensure that the law regarding the destruction of evidence is complied with. We have neither the mandate nor the powers needed to police legal obligations resting on others.

The archivist's role and function is different. In the exercise of the archivist's role and function, while we must consider whether a breach of the law will occur, there may also be found other reasons (besides the breach of a law) which would result in permission being denied to destroy documents. I would simply caution, therefore, that we must not allow the archivists' roles and responsibilities in appraisal to be limited by legal requirements applying to the destruction of documents. What we know, what we have always said, is that legal requirements are only one factor to be taken into account when reaching appraisal decisions.

"When we campaign for greater access ... we must at the same time campaign for improved records management ... There seems little point in having access to information that is chaotic and unreliable."

Transparency International, *Global Corruption Report 2003* p.19.

Are we accountable for preventing chaos and unreliability? Where does it say that? What do we do to ensure the prevention of chaos and unreliability? Is it to be accomplished by technically competent recordkeeping or by accountable recordkeeping? How do I recognise chaos and unreliability is when I see it? What keeps me up to the mark in my accountability to prevent it? Supposing that is my role and function, is there a mark to be kept up to? If so, who or what keeps me up to it and how?

Are we accountable for good recordkeeping (if at all) only in relation to access - the focus of Transparency's comment? Are there other uses of records which require professional intervention so that chaos and unreliability are prevented? Is all of that subsumed by "access"? Is it only in relation to access "rights"? What about access needs? If rights based, does it pertain only to the public sector? Is there a different set of accountabilities for Archivists in the private sector?

Are there different accountabilities in relation to:

- **technical** proficiency (as providers or enablers);
- **policing** (as monitors or enforcers);
- **support** (as ordainers or educators);

- **auditing** (as assessors of performance)?

Are we accountable for setting standards that apply to others and for the kind of standards we set for them? Who sets the standards by which we ourselves are bound? Are we accountable to our Nazi employers for building a better recordkeeping system to count heads as they pass into the gas chamber? If we refuse, is that a professional act, or merely an act of individual conscience, or is it a duty we owe to society?

What happens when an appraisal goes bad? Who, if anybody, has the job of doing something about our professional failures? Are we self-regulating? Do we as a body of professionals punish or correct transgressions within our own ranks or do we simply call someone else's attention to it? After their attention has been called to it (whoever they are), so what? What prevents it happening again? And again, and again, and again? Before you can even try to answer that, you have to know (to have it clearly stated and understood) what the Archivist's job is.

Is each archivist's accountability limited to his or her own actions? Are we collectively responsible for each others' actions? Does accountability extend to setting up systems that prevent (or at least detect and correct) lapses by professional colleagues? Whose job it is to punish and prevent deviation? How do we know when we have deviated (or when another archivist has deviated)? If it's someone's job to punish and prevent professional lapses, are they doing it? If not, why aren't the agents of our accountability being shamed and blamed for it? If it's nobody's job, what are we doing to change that?

Exposure of recordkeeping lapses (by means of representations made to those who have lapsed) is not much use (if that's all you do) because there are well-established stakeholder management programmes for dealing with letter writers. What is needed is data on how well (or badly) a clearly articulated and clearly assigned role in recordkeeping is being carried out - or not, as the case may be. The only way to get action in a modern democracy is to avoid, at all costs, becoming a stakeholder. As a minimum, if you want accountability to be policed, interested parties have to become a pain in the behind and expose serial recordkeeping failures as evidence of systemic problems. This can be done, even when the authority to police individual lapses is not vested in the profession. First, however, roles must be clearly articulated and clearly assigned. Prevent wiggling. Then start documenting lapses.

Is it clear:

- **Who** we are accountable to (employers, society, third parties, or the profession)?
- **What** we are accountable for (ordaining, providing, mentoring, monitoring, policing, etc)?
- **How** our performance should be measured (conformance to process or quality of outcome)?
- **By whom** (or how) performance can be monitored and corrected (courts, tribunals, ourselves, other third parties, the Independent Commission Against Corruption)?

What is it that we, as a professional group, want? Does anybody else want the same thing? Are we outraged only when recordkeeping doesn't occur "by the book"? What is it that upsets us when we read about recordkeeping lapses? Are we upset only because archivists are side-lined and treated of no account, or are we are upset because recordkeeping standards which should have upheld accountability were violated? How do we know those standards would have been effective even if the Archivist had been involved? How can we be sure that the archivist is not complicit in failures of accountability? Would it be OK if lapses occur with the blessing of the archivist regardless of whether the outcome was good or bad?

No one cares if archivists are side-lined, nor should they be, unless the involvement of the Archivist adds value to the result. People should only be upset if standards which would have supported accountability are not maintained. If the maintenance of those standards is our accountability, there must be bench-marks which can be used to tell people what should (or shouldn't) have happened - whether we've done our job, not just whether we were involved. How does anyone know we are doing our job unless there are measures to tell them when we fail?

Do we care only about process or about outcomes? Is any monitoring process in place to gather information about how we are performing?

Confusion and uncertainty exist over the role of the archivist. Is it support or policing? Are we proactive or reactive? Do we ordain, advise, or veto? There is ambiguity over which role or roles (if any) archivists are actually assigned. Comfortable and self-serving claims are made about archives programmes supporting accountability, but all too often these disappear into a fog of ambiguity and obfuscation when concrete action is required to remedy specific lapses. There is a lack of benchmarks by which to measure and evaluate our performance in that role (whatever it may be). There is a lack of correctives to remedy identified shortcomings in our performance.

What does accountable behaviour mean for us? It means having effective standards or benchmarks - measures of behaviour that tell us what to do and what not to do in professional matters. This is not the same as a standard for good recordkeeping. It is about defining our accountabilities in implementing and upholding standards of good recordkeeping - especially where those standards give us a discretion (where best practice involves submitting outcomes to our judgement). If our role is to make professional judgements but nothing limits, controls, or directs what we decide, then we are carrying out what Barbara Reed has derisively called the god-archivist role. But we are not gods, are we?

<p>UNCODIFIED BEHAVIOUR</p> <p>Conflicting or Disputed Expectations</p>	<p>WHISTLEBLOWING</p> <p>Interfering; Renegade; Troublesome; Loose Cannon; Busybody; Courageous; Heroic; Unpredictable</p>	<p>ACTS OF JUDGEMENT</p> <p>Personal; Idiosyncratic; Odd Man Out; Live & Let Live; Doesn't Bother Me; Moral; Principled; Bigoted; Wowser</p>	<p>UNCERTAIN OR DISPUTED ROLE</p> <p>Not Assigned, Enforced, or Bench-Marked</p>
<p>CODIFIED BEHAVIOUR</p> <p>Agreed or Shared Expectations</p>	<p>LAW ABIDING BEHAVIOUR</p> <p>Enforcement; Compliance; Punishment; Good Citizen; Prohibition; Policing; Predictability; "Certainty"</p>	<p>ACCOUNTABLE BEHAVIOUR</p> <p>Conformity; Reliability; Credibility; Ethical; Standards; Bench-marks; Auditing; Monitoring</p>	<p>ASSIGNED OR AGREED ROLE</p> <p>Understood, Enforced, and Bench-Marked</p>
	<p>SOCIETAL RESPONSIBILITIES</p> <p>Universal Application; Wide Impact (Applies to Everyone)</p>	<p>INDIVIDUAL (OR GROUP) RESPONSIBILITIES</p> <p>Particular Application; Specific Focus (Applies to Some)</p>	

Accountable & Related Behaviours

Individual behaviour emanates from a moral or professional sense which may be shared but which certainly cannot be monitored or bench-marked in human terms. A bench-mark stipulates in advance of action professional behaviours which are collectively approved as good practice (whatever we may think as individuals) or behaviours which are collectively condemned and are therefore disallowed even if individually we do not agree with that. Without professional codes of ethics, standards of behaviour, and bench-marks of performance to guide and control us, we have only our individual morality to govern our response to difficult situations. We may well choose to act out of conscience, but this must not be confused with acting accountably in a professional sense.

Law-abiding behaviour has a wide or universal application. The responsibility or obligation applies to everyone. The rule that every man is equal before the law means that everyone is subject to the same rules (not that everyone gets an even break). Even where only some of us are involved (in a contract of employment, for example) the principles apply to all. The way

employment contracts are interpreted and applied in accordance with statutory or common law rules whose application is universal.

The same applies to whistle blowing. Whistleblowers are do-gooders who point out when others are breaking the law or failing in a legal obligation. They're not arguing for their own moral preferences, they are pointing out that someone is breaching a code or law that applies to everyone. It's not a matter of expressing a personal preference but of highlighting a breach of rules that everyone should be following – even when the rest of us are prepared to wink at the “minor” infraction. That is what makes them a pain in the neck and not simply a nuisance.

Once bench-marks are established two different kinds of accountability failures will arise:

1. Breaches of those bench-marks.
2. Unforeseen lapses needing new bench-marks to prevent a recurrence.

Bench-marks have to be renewed and updated to take account of unforeseen problems.

Following the "Children Overboard" scandal, the lack of accountability surrounding the relationship between ministers, their advisers, and the bureaucracy and armed forces was identified in a Senate Report as a problem. The Director-General of the National Archives of Australia (NAA) was required to say what recordkeeping standards applied to ministerial advisers. Reference was made to some general and unspecific standards but in my view no satisfactory answer was forthcoming to the key question.

What had or could NAA do to prevent a recurrence of the recordkeeping failures identified in the review of these events? Suppose the Director-General had come away from the subsequent inquiry and issued a media release saying: " This case reveals serious flaws in our procedures which will be remedied immediately. I am issuing at once a new set of guidelines designed to ensure that dealings between ministers and elements of the public service and the armed forces for which they are responsible are properly documented when carried on through the medium of advisers."

Would such action lead to dismissal or merely to him/her being sidelined in the good old bureaucratic way? Could he/she have got away with it? If it had been done, would it have been an act of personal judgement on the part of the individual concerned or an instance of accountable professional behaviour? Not, I think, the latter.

The reason is simple: there is no professional statement obliging archivists to act in response to exposures of recordkeeping failures by using their position to eliminate the possibility of a recurrence of such failures in the future. If there had been, a Director-General acting in this way could have defended him-/herself by pointing out that he/she had a professional obligation to take remedial action in these circumstances. Indeed, the failure to take such action might have placed the Director-General in violation of professional codes of conduct.

Some wrongs in which professionals become involved cannot be dealt with otherwise than by resolving the conflict between what they are being asked to do and standards of behaviour required of them by the profession to which they belong. Consider how medical professionals have spoken out over the Children in Custody issue. Sometimes this has been in violation of restrictions on them as employees. But they have done it anyway and been protected to some degree by the fact that they have professional obligations that go beyond the narrow legal obligations of employee to employer.

Where is the statement of professional obligations for archivists that might afford us a similar measure of protection? To say nothing of the compulsion such a statement might place us under to do the right thing even if we didn't want to.

Can other examples be found which should, on this precedent, have been condemned and weren't? Would we recognise other instances of professional failure if we saw them? Would we publish them if we did recognise them? What tests would be used to establish professional failure? On what grounds was the Heiner appraisal condemned? Who initiates consideration of

such cases? Who decides? In over 25 years, has ASA ever acted (before or since) to condemn any other incident of professional failure? Is it likely ever to do so again?

DO ARCHIVISTS ACT WELL?

In 1999, the Australian Society of Archivists (ASA) issued a public statement answering this question in the negativeⁱⁱ. The ASA publicly condemned the Heiner appraisal undertaken in 1990 by Queensland State Archives. Is this the only instance of a professional failure that has been condemned by our professional body? It appears to be.

The 1999 ASA Statement followed protracted and furious debates on the Australian listserv while the ASA floundered from one position to another. The ASA Council eventually stated that the Heiner appraisal by QSA violated the standards of good appraisal and that it was wrong to go about appraisals in an ad hoc way. Because there were not (and arguably still aren't) any clearly articulated standards of a good appraisal, Council of the day apparently saw the need (if you are going to condemn someone's appraisal) to have some empirical standards by which to make a judgement the next time a decision by an archivist is called into question.

The Heiner Affair is the most important case of alleged recordkeeping failure in Australia in my lifetime because the failure the ASA claimed had occurred is a failure on the part of the archivist at the Queensland State Archives (QSA). I am mindful of other recordkeeping failures: Western Australia Inc., the British America Tobacco (BAT) Case, and similar instances in which it was alleged that failure amounting to a breach of recordkeeping requirements occurred. I am mindful even of the White Board Affair which some people regard as more significant. It is not because Heiner is another one of these controversial public issues involving the destruction of records that it is important to us. There are many such cases. What makes it important to us is that, unlike the others, the propriety of the archivist's actions is in question by our own professional association.

Whistleblower Kevin Lindeberg and lawyers acting on his behalf have argued before Parliamentary Inquiries that the actions of the Queensland Cabinet in ordering the destruction of the Heiner records to prevent their being obtained in prospective legal proceedings amounted to obstruction of justice. That is a serious matter. In dealing with it before a Senate Committee, the Queensland Criminal Justice Commission (CJC) advanced, in defence of the Government's action, an argument that the Queensland State Archivist's role was to consider only historical value and it was for that reason that she did not need to be told that the records whose destruction she was being asked to allow were wanted in support of legal action. This defence of the Queensland Government's actions raised the stakes from our point of view because it brings into contention the nature of our accountabilities and makes assertions about our role that ASA hotly denied on our behalf.

The Heiner Case has since been linked to allegations about systemic child and juvenile inmate abuse in Queensland (specifically, cover-up of inmate abuse in Queensland child detention centres). The Forde Royal Commission found that there had been systemic abuse inside the State's institutions, a system involving staff, unions, and the bureaucracy. While no inference can be drawn, it is legitimate to ask the question: was the Queensland Government's destruction of the Heiner records part of a systemic cover-up of that abuse also involving successive Queensland Governments which, knowing of the abuse, did nothing to correct it?

If this is even a possibility, then the question of what an archivist's accountabilities are, when involved in such matters, must be of central concern to us. The discharge of the archivist's responsibilities (whatever they are) in a fair, consistent, and impartial manner – irrespective of whether or not he/she is entangled in a cover-up – is the only bench-mark by which we can justify our professional engagement.

Without proper definition of role and function, absent adequate bench-marks and correction, we have nothing to guide us in considering alleged faulty practice besides individual opinion. Unless we (like other professions) identify lapses in professional behaviour when they occur and accept collective responsibility for them, until we take steps to correct them and prevent them from recurring, everything else we say about accountability is hollow, and mean, and false. To learn lessons from our mistakes, we have first to admit the mischief when it occurs and rectify it.

In Heiner, a recordkeeping regime was in place and still the mischief occurred.

If the appraisal was bad, as ASA concluded it was, the case screams out into the faces of the smug, the self-serving, and the comfortable amongst us: "Even when recordkeeping is taken care of it still doesn't matter. The mischief still occurs. The system fails."

Explain that.

It is, of course, important to learn the right lessons. The provisions of the Queensland Libraries & Archives Act provided, in my view, an adequate basis for sound recordkeeping regulation of the Queensland Government's actions at the time of the Heiner appraisal. Nevertheless, Heiner came to be used by the profession in a grotesquely inappropriate and self-serving way to argue a case for new legislation. And when it came, the provisions of the new Queensland Act turned out to be even less satisfactory in some respects than the old one.

Was ASA's condemnation of the QSA appraisal an instance of a robust programme of professional self-regulation? Did it inaugurate a regime of standards-based oversight by the profession of appraisal activity? Has no ad hoc appraisal been done since then? Well, yes it has.

I did some when I was Acting Chief Archivist of NZ. The NZ Archives Actⁱⁱⁱ is unusual because it has been read as requiring the holder of the office of Chief Archivist to personally approve all disposals and this cannot be delegated - so there can be no question there of lack of clarity over assignment. I was therefore personally responsible because every appraisal during my two-plus years in the job was approved by me and no one else and I did it, by and large, in an ad hoc manner.

I'm sure I'm not the only one who has violated that principle in the period since it was enunciated for us by ASA in 1999. In my own defence (and in defence of Archives NZ) I can say that in over 30 years of professional activity, including nearly 10 years as the final arbiter of disposal in the State of Victoria, I have never seen such detailed and considered appraisal reports as I did during my time in New Zealand.

Would today's ASA Council agree that despite the association's 1999 condemnation of ad hoc appraisal (reaffirmed in 2001) it is still going on? Why has Council not issued subsequent condemnations of these practices – at least in general terms, if not case by case? Is it the ASA's position that the alleged professional failure in Heiner is the only such lapse to have occurred, the only one serious enough to warrant professional condemnation? Has Council taken any steps to discover the facts, to identify other cases of professional lapses? Has it even asked? If this evil practice of ad hoc appraisal persists, if it is widespread, what is ASA doing about it? Is the draft appraisal policy currently under consideration intended to revoke a principle they wish had never been promulgated?

Condemnation shouldn't be ad hoc, any more than appraisal itself. The profession demonstrated that it was willing, in this instance, to identify and condemn a practice it decided was bad and that it had the capacity to do so. It had begun establishing the bench-marks by which such judgements can be made. But, I am unaware that, in the five years since, ASA Council has commented on any other appraisal by an archivist for failing to abide by the bench-mark it set for us all in 1999 condemning ad hoc appraisal.

There are recurring themes here: how can we feel secure about recordkeeping if archivists are not found out and corrected for violating the standards of their profession? How can we know whether archivists are acting well if there is no process for evaluating their performance? How can anyone evaluate their performance if there are few or no standards or bench-marks by which to measure it? How could such bench-marks (if they existed) be applied if the role and function of archivists is unclear (i.e. if their responsibility for conforming their behaviour to professional bench-marks is not established)?

The lessons we claim to learn and teach to the world arising from recordkeeping failures of all kinds is that they occur because good recordkeeping practices are not in place or, if in place, that they are subverted or by-passed. This is the smug, self-serving, comfortable little sermon we preach to others.

Our archives laws confer the god-archivist role. They mandate that key recordkeeping decisions must be made by the archivist. By implication, accountability lies in submitting decisions to the judgement of a trusted professional. You have to assume that the god-archivist is benign and incorruptible because there are no professional standards by which our discretionary actions can be measured, controlled, limited, or condemned – only the much more limited standards of administrative law.

Archivists seek to control the actions of others through the exercise of discretions conferred upon them, but can they be trusted to do so? What controls the actions of the god-archivist? What appeals are there against our judgements? What punishments and corrections are inflicted on us when we err? How may our actions be measured and judged? What are the checks and balances that ensure a predictable outcome? What benchmarks can be used to measure, evaluate, and (if necessary) condemn our performance? Who punishes and corrects us when go astray? To quote Plato: “Who guards the guardians?”

To put it in its bluntest form: what is the use of a professional standard or code of ethics which is so elastic that it cannot possibly ever bring the professional employee into conflict with his or her employer or under censure from whoever it is who acts as the watch-dog over our professional integrity? In this regard, the violation of a procedure or technique is only one aspect of the matter (and that the least). Of far more weight are questions of outcome and purpose - directed to the issue of what we are responsible for (and to whom).

The government archivist might be considered to be in a special position by virtue of exercising statutory functions and discretions (which some doctrines of administrative law hold cannot be "controlled" by their political masters). Such legal doctrines are seldom appealed to and their legal basis (at least in Australia and New Zealand) is very shaky since most of the leading cases do not exclude having regard for government "policy" from the exercise of statutory discretion. Whether there is scope for the operation of professional standards and ethics is a problem for the profession at large and the special rules of law governing the actions of government archivists (while they must be taken into account) are not the essence of the issue.

DID THE ASA ACT WELL?

I leave aside the question of whether ASA acted well during the long years of indecision up until its Council, after one false start, made a ruling on the Heiner appraisal. While this paper was being written, the ASA made a submission^{iv} to the Senate Select Committee on the Lindeberg Grievance. In it, the ASA refers to the Heiner Affair as a "notable example of failed recordkeeping".

Instead of tentative, focussed, and limited condemnation of aspects of the Affair, of the kind we have become used to from ASA Council, this is a full-blooded and aggressive attack on what is claimed to be the violation of professional standards that Heiner, as it is now viewed by the ASA, represents. But were there, at the time of the Heiner appraisal, or at the time of the ASA's 1999

condemnation of it, any professional standards to be so violated, such that the ASA's conclusion in retrospect that the Affair represents a notable recordkeeping failure could be justified?. Are there any such standards now? The ASA Submission implies that there were then and are now. This latest submission repeats key points made in public statements issued by earlier ASA Councils in 1999 and 2001 - viz. that the Queensland Criminal Justice Commission (CJC) misrepresented the role of the Archivist before a Parliamentary Committee when the CJC said her role was to be concerned only with historical values when conducting an appraisal, that the Queensland State Archives (QSA) appraisal in Heiner was professionally unsound, and that it and all other ad hoc appraisals were professionally unacceptable.

A disillusioned and disgusted *Dreyfusard* reflects on those who became committed to the cause after the battle had been won:

"Everything, everything begins with a *mystique* and ends in politics. Founders come first, but the profiteers come after them."

Charles Péguy

This account of the profession's evolving attitude to ad hoc appraisal generally and to the Heiner appraisal in particular is deeply misleading, however, and amounts to a rewriting of the history of the Affair that can only be described as *profiteering*. The submission says on the ASA's behalf that archivists act consistently "with international best practice" and concludes that the Heiner appraisal should have been "less hurried and more considered". It states that "sound appraisal regimes, consisting of records disposal authorities, appraisal criteria, and disposal rules and policies should be put into place".

The ASA's 2004 Submission on Heiner makes no reference to:

- The prolonged inaction of the ASA in the Heiner matter.
- The false start blaming officials and clearing the Archivist.
- The reluctance to accept collective responsibility.
- Dissentions with government archivists over ad hoc appraisal.

Instead it tries to make out that archivists always:

- Understood that the Heiner appraisal was flawed;
- Condemned it;
- Had robust standards to stop ad hoc appraisal occurring;
- Were being led in this by State Records Office, New South Wales, (SRONSW) and the National Archives of Australia (NAA).

You don't avoid ad hoc appraisal by slowing the process down or having disposal schedules. To suggest *that* to a group of amateurs sitting on a Senate Committee is to confuse and obfuscate not to enlighten. Anyone really anxious to enlighten the laity on this issue would be much simpler and to the point. Appraisal criteria, rules, and policies have appeared since the Heiner appraisal, but ASA Council still does not seem to have learned (or is still unwilling to acknowledge) the fundamental lesson.

Being consistent with "international best practice" means nothing unless international best practice itself establishes the basis upon which to condemn and disavow (or else approve and justify) what the QSA archivists did in 1990. Saying you conform to best practice is no defence if what you are doing stinks. If what you are doing is satisfactory, it doesn't matter whether it conforms to best practice or not.

Good appraisal practice (as distinct from international best practice) means consistently applying your own policies and procedures - and if this is not international best practice then international best practice stinks. Nowhere in the ASA's submission can be found the one, clear, unambiguous statement that would show that Council, speaking on our behalf, has yet grasped the essential point about what is wrong with ad hoc appraisal.

We have to guarantee that all records will be appraised in the same way and in accordance with the same rules - consistently, reliably, and predictably. No amount of best practice, policies, procedures, rules, statements, assertions, or submissions can substitute for a simple assurance that this is how we do and will behave - archivists can be relied on to treat every appraisal the same way using the same methods, and according to the same bench-marks.

The submission gives reassurances (not to be found in the ASA's previous statements on Heiner) about the reliability of archivists as guardians of accountability, referring the Senate Committee to "criteria" for appraisal contained in AS 4390 and in statements issued by the State Records Office of New South Wales and National Archives. Reading this submission, the uninformed could be forgiven for concluding that the Heiner Affair is a triumph for a profession which detected and denounced errors in the Queensland Archivist's appraisal when she acted in violation of abiding professional standards - fearlessly enunciated for us by our two leading government archives authorities. This is tosh. In 1990, Lee MacGregor had to conduct her appraisal in the absence of such standards. That is our failure not hers but this is not what the ASA is now saying.

I believe these assertions by the ASA about standards and appraisal criteria are threadbare. They afford no such satisfaction of the kind asserted by the ASA in its submission. The standards and criteria referred to are simply not bench-marks against which our accountability can be measured.

As a distortion of history, this self-serving, triumphalist tosh is nothing short of *profiteering* - unworthy even of government spin doctors. It is the old, old story told by vested interests: There was no systemic failure, just an individual lapse. That's been put right, so everything is all right.

Don't you worry about that. The system is fundamentally sound.

It is good that some appraisal criteria now exist (irrespective of their merit). The progress made in establishing recordkeeping standards post Heiner is to be welcomed. Criteria are about having grounds for appraisal decisions. Bench-marks are about monitoring, measuring, and if necessary condemning the application of those criteria. The standards contain no such bench-marks and can point to none because none exist.

Having criteria exposes you to nothing more threatening than a debate about matters of judgement. Having performance bench-marks is about removing your discretion and replacing it with measurable and enforceable standards of behaviour. For years, a mature professional approach to the problems raised by the Heiner appraisal has been thwarted by opposition to (or denial of the need for) the introduction of performance bench-marks designed to prevent the kind of flaws identified by the 1999 ASA Statement. Now, without recantation or acknowledgement of any kind of failure on the profession's part, a claim is advanced by our governing Council that transforms our own history by making out that there never was a problem and that appraisal criteria can be substituted for performance bench-marks. This is odious.

Council even found a word to characterise the last ten years.

You know what we were doing all that time? We were "monitoring" the situation.

"Monitoring" was it? Some people have no shame.

All those years of silence and inaction, followed by more years of denial, disputes, ill-feeling, and disagreement :

- The false start when we tried to blame the Queensland Government for misleading our colleague.
- The disgrace of seeing her fellow government archivists congratulating her.

- The disputation over whether or not her appraisal was flawed and the un-repudiated refusal by the government archivists to accept our stand on ad hoc appraisal.
- The failure to come up with a draft appraisal policy worthy of the name.

All this, you will be surprised to hear, was "monitoring" the situation.

By ignoring some parts of our own recent past, the ASA Council gives a context that is false and misleading to its version of the professional response to Heiner. So what? Well, apart from the injustice this does to Lee McGregor, it suggests to the unwary reader that archivists were prepared for Heiner and that no subsequent remedial action was required (and is still not required). It uses the subsequent development of standards and criteria (much of which would probably have happened anyway) to insinuate that archivists know – and always have known – how to deal with such affairs.

The truth is that we weren't prepared for Heiner and I submit we still aren't prepared for a future similar episode. The *profiteers* would have you and, what is worse, others think otherwise.

The submission suggests that we had it right all along. We always knew the Queensland appraisal was wrong. There was no dissension and debate in the five or six years leading up to the 1999 ASA Statement. How could there be? We had State Records and National Archives to guide our steps. There was no false start shifting responsibility from the Queensland Archivist to the Queensland Government. We have criteria to prevent this kind of thing from happening.

Where does all this leave Lee McGregor? Well, in logic, if her appraisal was "flawed", as the ASA has been saying it was since 1999, the fault must be hers individually. If archivists had criteria and the National and New South Wales government archives authorities had enunciated them for us all why didn't Lee McGregor use them? The inference would seem to be that she let us down. No congratulations for her now. She seems to be the fall guy.

While continuing to condemn her actions, however, the ASA also continues to put some of the blame back onto the Queensland Government by accusing it of "misleading" the Archivist over the likelihood of legal proceedings. But how could this clear her from the implication that she is personally responsible for the flaws in her appraisal if that appraisal was undertaken in violation of clearly articulated bench-marks designed to ensure that such errors do not occur?

If the appraisal took place according to worthwhile bench-marks, it should have been proof against a dishonest government. The whole point of outlawing ad hoc appraisal is to guard against the archivist being misled or having incomplete information.

It is as irresponsible for the ASA to blame her now by implication as it was for her government-archivist colleagues to exonerate her then by proclamation. The significance of the Heiner appraisal is not that it marks an individual failure as claimed by the ASA. The significance is that it marks a systemic failure for which we are collectively responsible because in 1990 we hadn't yet established the bench-marks for professional behaviour which would have guided her or anyone else in her position into a correct course of action. We still haven't and we mustn't let *profiteering* get in the way and disguise that fact behind criteria and standards which post-date the events and are not adequate anyway.

The ASA Council is still avoiding the central issue. Its submission leads the unwary and the uniformed to a false conclusion that this was an individual lapse from collective standards. In truth, this was a collective failure to provide bench-marks needed to prevent things of which we subsequently came to disapprove from happening or, if they happened, were needed to provide the basis for a condemnation of them.

My theme today is that even if robust appraisal criteria had been in place then (and they were not) and the recordkeeping standard had been set (and it had not), the clarity of role and the necessary bench-marks of performance are still lacking today which would give substance to the kind of assurances the ASA Council is now giving to the Australian Senate.

I think the ASA's submission to the Committee is self-serving. It makes no reference to the prolonged inaction of the ASA in the Heiner matter, to the false start in the first public statement

which tried to pass all blame onto officials and relieve the archivist of any responsibility, of the profound reluctance on the part of the profession at large to accept collective responsibility for what it claims to be a professional failure, or to the internal dissensions not yet resolved within the profession (between the ASA and the government archivists) over the question of ad hoc appraisal. Instead, it tries to make out that archivists understood from the first that the Heiner appraisal was wrong, have several times condemned it, have robust standards in place which ensure ad hoc appraisal shouldn't happen, and are being inspired by appraisal criteria statements from the State Records Office of NSW and the National Archives

A better submission would say:

- We now think the Heiner appraisal was flawed.
- There were no standards or bench-marks at the time.
- We didn't understand the issues at first.
- We resisted the hard lessons for us as a profession.
- That has now changed.
- We have started to make amends and establish bench-marks.
- We want to stop something like this happening again.
- We still have a long way to go.
- We are sorry.

It is deeply ironic that the profession seems to have moved from trying to protect Lee McGregor's name from the odium that an admission of professional failure entails to letting her personally bear the blame for what was rightly a collective failure. We cannot say that Lee McGregor's actions were "flawed" because she violated the robust standards and criteria which guide all our actions professionally or that she would not have erred if she had heeded them. We cannot say that she was therefore individually to blame.

The lesson is that we were (and still are) collectively at fault. The lesson is that when Lee made her appraisal we were professionally immature and that hers was an action any one of us could have taken because the more sophisticated professional understanding of the "flaws" in ad hoc appraisal - which we have subsequently developed, in part, as a result of what we finally came to learn about ourselves from Heiner - were not then appreciated.

On 13 December, 2001, in answer to a request from me, the ASA stated (cf. Aus-archivist listserver archive at <http://lists.archivists.org.au/pipermail/archivists.org.au/aus-archivists/>) that the ASA Council "reaffirms" its 1999 statement on Heiner. The statement went on to say that ASA would make no further comment about any issue arising out of the Heiner Affair unless a Royal Commission was established.

It said, in effect, that the statements already issued were ASA's last word on Heiner unless a Royal Commission was established. The society had condemned the actions of the Queensland Government in their dealings with the Archivist, had condemned Queensland State Archives for its handling of the Heiner appraisal and had condemned ad hoc appraisal in principle.

Yet, within three months of that declaration, the ASA Council initiated (February 2002) a process leading to a draft appraisal policy (eventually issued as a draft in April 2003) – cf. posting by Bruce Smith on behalf of Colleen McEwan. As ASA President Stephen Yorke acknowledged at the Adelaide Conference last year in response to a question from me, this policy would, if promulgated, extinguish the 1999 statement of principle against ad-hoc appraisal – a condemnation reaffirmed as part of the ASA's last word on Heiner barely three months before this process of review was initiated. It is germane to ask, therefore: with what statement of principle will the proposed policy replace the one we already have?

The draft appraisal policy has no statements of principle by which the next dodgy appraisal by an archivist could be judged and its promulgation (as we now know) would extinguish from the record the one such statement ASA has ever made. To embark on that course of action, by means of that draft, in the same three-month period in which it is announced that an earlier

statement of principle is the last word on the Heiner Affair is not the action of a profession that understands accountability.

The record affirms one instance (Heiner) in which ASA has said an appraisal was "flawed" and set out a standard for right behaviour. Where is the evidence that, as a profession, we are concerned about professional failure on a continuing basis, condemning them (in general terms, if not case by case), and taking steps to eliminate them? Has Council taken any steps to discover the facts?

Then follows the same catalogue of questions. If failures are in fact occurring still, would we recognise them if we saw them? What tests would be used? What standards would apply? Who would consider such cases? Who would decide? Can any profession with a credible claim to being an agent of accountability operate without such assurances of its own accountability?

Is it the role of the ASA to approve or disapprove the conduct of archivists and archives institutions? The government archivists have refused to accept the basis for the only disavowal of malpractice ever made by the ASA when it tried. Perhaps the ASA should avoid making judgements in particular cases and seek instead to establish professionally endorsed benchmarks, urging each government to establish a bench-marking regime by which misbehaviour by their own government archivists can be judged (e.g. by other agents of accountability such as auditors and ombudsmen). Or should the profession simply establish the standards of professional behaviour, leaving it to someone else (in a position to monitor and compel archivists to behave) to establish bench-marks based on those standards? Could we then credibly be regarded as a profession?

We should remember that it was the establishment of a bench-mark by which everyone's behaviour could be measured, not the criticism of their colleague's work, to which the Council of Federal, State and Territory Archivists (COFSTA) objected.

In short, is it the role of our professional body to establish standards and then join in a campaign to get governments and other employers to adopt (or legislate for) performance bench-marks for the archivists they employ in conformance to those standards (leaving to employers the "right": to reject professional standards if they wish and the role of enforcing them)? Should we be lobbying to have some statutory basis given to professional standards? Alternatively, is it the role of the professional body to enforce professional standards (regardless of the performance standards required by their employers or by law) as well as enunciating them. We can't have it both ways. Is it all too hard and should we just walk away from it?

DID OTHER ARCHIVAL BODIES ACT WELL?

I have here referred again to my dissatisfaction with the draft ASA Appraisal Policy. Can this charge be broadened to other standards? Apparently, ICA is in the process of drafting something (which may or may not be intended to cover this territory). We must wait and see. Closer to home, there is an appraisal standard issued by Archives New Zealand in 1998.

Though it was originally my job to approve this, I do not now have to endorse or recommend it. I think its contents are still very much open to debate and I would not necessarily agree with all it says, what it includes, or what it leaves out. The point is that it is in the right ball park. It is discussing issues that matter and which are relevant to principled appraisal outcomes.

There's a good deal of repetition and some internal contradictions in it. The wording is sometimes awkward and convoluted. I don't think it is anywhere near precise enough or comprehensive enough. There are many more rules I think it needs to incorporate and they need to be more explicit and concrete.

When all that is said, it remains (I repeat) an illustration that these matters can be dealt with in a principled way and not simply as a set of procedural rules. Unavoidably, progress can only be

achieved through professional discourse. I cannot give you the commandments on appraisal emblazoned on tablets of stone, nor can anyone else. The development of standards for principled appraisal can only come through professional engagement and discourse. There will never be a last word. We'll finish one statement and move straight on to improving it as a result of experience and discussion. It's not a matter of writing a standard, saying "Phew!" and moving on to something else.

Excerpts from Archives NZ Appraisal Standard (paraphrased)

2. Purpose : Consistency - the same outcome regardless of who does it.

- ♦ **2.1 Effectiveness:** Application of criteria
- ♦ **2.2 Efficiency:** Recommendations "generally applicable"; not targeted.
- ♦ **2.3 Good records management:** Keep costs to a minimum.

3. Ethics:

- ♦ The **integrity** of appraised records should be maintained.
- ♦ Appraisal reports should be **full & accurate**.
- ♦ Information must be treated **confidentially**.

4. Principles: These inform thinking behind requirements and criteria

- ♦ **4.1 Application Principle: Decisions should apply to widely**

7 Criteria (in ascending order of importance)

Recommendations must be:

- ♦ **Justified** (reasons given; criteria used stated)
- ♦ **By precedent** (consistent with similar appraisals or explain why not)
- ♦ **Complete** (both retention & destruction must be justified)

etc, etc, etc.

For the full text go to the Archives New Zealand website at www.archives.govt.nz/.

How well we do is some part of judging whether we, as a profession, understand accountability and act accountably. But we can give ourselves a break. If we don't get it right the first time, it's OK to go back and do it again. What can't be forgiven is an unwillingness to make the effort. By that, I mean an unwillingness to do the right thing. Not knowing that a standard must support principled appraisal, or worse not wanting one which does so, that is what can't be forgiven. Since these words were written the ASA Council notified the Aus-archivists listserv that adverse comments on the draft standard had been taken into account and that a new draft supporting "principled appraisal" and condemning ad hoc appraisal would be issued. This is good news. An accountable profession is one that can learn from its mistakes. We, as a profession, may be capable of learning after all.^v

The record of the Council of Federal, State, and Territory Archivists (COFSTA) - now the Council of Australasian Archives and Records Authorities (CAARA) - in Heiner amounts to this :

The government archivists of Australia publicly:

- **"Supported"** their colleague's actions in Heiner and her escape from censure on legal grounds;
- **Opposed** the profession's censure of her appraisal methods; and
- **Repudiated** the statement of principles by which ad hoc appraisal was condemned by the profession.

In due course, the Heiner Affair reached the agenda of an ICA Committee dealing, inter alia, with recordkeeping practice. When this happened, the ICA Secretariat intervened to have it removed from the agenda and instructed that it was a matter for Australia and should not be considered by ICA. The ICA decided that the profession was responsible nationally - not internationally. But

how if the national archival establishment cannot be trusted to act accountably? What to do then?

The purpose of all this is not simply to rake over the past - it is to demonstrate serial failures of professional accountability when it comes to public issues.

A respected international colleague has suggested that the solution to this dilemma^{vi} is to recognise that the archival establishment consists of a variety of structures: some representative of archival institutions and others of the profession. He argues that we should look to the latter, acting independently of the institutions, to articulate and support standards of accountable and ethical behaviour. The institutions must then be made to become subservient (willingly or otherwise) to those standards.

CAARA and the ICA represent (exclusively in the one case and predominantly in the other) government archives programmes - institutions. If government archives are to be agents of accountability, they must be controlled by external review based on monitoring of their behaviour against predetermined standards and bench-marks, in the promulgation of which they themselves have no part. We see how they behaved in the Heiner case. What can be done to establish professional standards of behaviour embodying or providing the source of bench-marks for the government archives programmes by which their shortcomings can be measured irrespective of what they (individually or collectively) think of them?

Ultimately, the same question exists outside of government. Can professional standards bind an enterprise and prohibit their misuse of professionals in a way that violates the standards or bench-marks of that profession? This is precisely the same issue facing legislators and the accounting profession post-Enron which led to alterations in professional accounting standards. It was precisely the issue facing legislators and the legal profession when reviewing the advice solicitors gave British American Tobacco regarding document destruction in the McCabe Case leading to changes in Victoria to the rules governing the professional behaviour of solicitors. Can a situation arise in which the professional obligations of an archivist or recordkeeper take precedence over their duties to an employer or client?

There is a lot of dead wood to be cleared away. There needs to be clarity over the range of possible roles and functions: support vs. policing is just the start of it. Then roles and responsibilities would need to be clearly assigned. Standards would have to be developed. Bench-marks would have to be figured out based on those standards. Then a system would need to be established to monitor and enforce those bench-marks upon government archivists and others. Realistically, all of that would need to take place within each jurisdiction. As far as I'm aware, the only things Australian governments have so far become excited enough about to put in place cross-jurisdictional mechanisms are corporate regulation and competition policy.

Professionally, I think we can start by defining roles and functions for ourselves, at least to our own satisfaction, and by establishing standards of behaviour for archives programmes.

All we have at the moment in a very preliminary way is the commencement (hardly more than that) by the ASA of appraisal standards - viz. a condemnation of ad hoc appraisal. Even that is under threat from the draft appraisal "policy" ASA has sponsored which would simultaneously invalidate that standard and replace it with an unprincipled, process-focussed so-called "policy" statement. The only bench-marks which could be based on that "policy" would be ones which measured whether government archivists followed the approved steps, regardless of the appraisal outcome of their work. These are hardly bench-marks worth having - it was the gassing at Auschwitz, not the process by which people were brought there, that mattered most. They are certainly not bench-marks by which to measure the accountability of appraisers.

Is this an area in which the past cosy relationship between ASA and COFSTA (with the ASA President attending COFSTA meetings) was hostile to a satisfactory outcome? If so, the absence of any apparent formal connection between ASA and the new CAARA is to be welcomed. Some have argued that the category of institutional member is inimical to the professional integrity of ASA. I disagree.

As members, employing institutions have the clear obligations of membership and these include having regard to any bench-marks of professional behaviour set by the ASA. No such constitutional clarity existed around the ASA's informal (yet close) association during the 1990s with the largest employers in the industry when issues arose in which COFSTA had other than professional interests to sustain (both as employers of archivists and as the representatives of governments whose actions archivists were statutorily empowered to control).

The interests of governments are potentially, if not actually, unfriendly to the development of new standards of accountability for archivists. In view of COFSTA's record on Heiner, how could they have credibly been part of a process for establishing professional standards of appraisal? Even now, it is possible to ask: How can the government archivists be our trusted partners in the development of professional bench-marks on recordkeeping? And even if they could, why should they be included when other employers of archivists (outside of government) are not?

A year or so ago, Terry Cook posted the ACA submission on the merger of the National Archives and Library in Canada. It was generally favourable. I posted to the Canadian list saying that I could see little merit in the merger. I may have expressed surprise that there had been so little discussion about it on their list. There was no public response, but I received a small flood of private emails from Canadian colleagues thanking me and saying that few Canadians dared speak out publicly against it. The "heavies" of the profession (many of them employers) were for it and there was a climate of fear that prevented the expression of contrary opinion. Some people said that their archival employers in Canada virtually forbade their staff from participating in public discussion of professional issues, even when it involved no direct criticism or even direct comment on the affairs of their employer.

One of the adverse results of collaborative action amongst the government archivists here is that they can plausibly argue that any comment on areas dealt with by CAARA now comes within the prohibition on employees commenting adversely (or even commenting at all) on the affairs of their employer. I have been told that a similar climate of fear now exists in some archives institutions here and that some archivists with opinions they know to be unwelcome to their employers dare not express them.

We are seeing examples (one example, at least, that I know of) where professional staff are being prevented from participating in professional dialogue deemed unworthy, unwholesome, subversive, or dangerous by their employer. If even some of this is true, it represents, apart from its inherent disgracefulness, the most serious single challenge the profession faces in developing a mature approach to its own accountability. Employers inhibiting or impeding full participation by their staff in the professional discourse is itself an assault on professional accountability.

Before anything else, I would urge ASA to begin work developing agreed guidelines with CAARA and other employers which would enable the freest possible expression of professional opinion by their employees and that would make any actions by employers outside those guidelines an act of professional misconduct on the part of the employers. Remember, many employing institutions are members of the Society and they are obliged to have regard to the requirements of professional behaviour articulated by the ASA just like any other members. If CAARA and the other employers will not come to the party, I would urge ASA to issue such guidelines unilaterally.^{vii}

DOES THE PROFESSION KNOW HOW TO BEHAVE?

An enterprise which encompasses accountable and ethical behaviour is a learning enterprise. Accountability is a sanctioned mechanism for ensuring you learn from mistakes. If such a mechanism does not exist, if learning from mistakes is not sanctioned, then individuals are compelled to respond to wrong-doing, flaws, and systemic failures by acts of conscience and by whistleblowing. Needless to say, in such a scenario, enterprises respond by denial and counter-attack instead of learning and improving.

Well enforced whistleblower laws are desirable to protect this last line of defence against recordkeeping lapses, but I would argue that whistleblowing (or any act of exceptional courage) is not enough. What we need are systems that make exceptional acts of courage unnecessary. I'm not against whistleblowing. I would just add the caution that too much emphasis on whistleblowing as 'our last line of defence' can distract the eye from the main game - viz. systemic solutions which provide safeguards against recordkeeping failures.

Accountable professionals have:

- **properly defined roles and functions**
- **clear assignment of those roles and functions**
- **standards and benchmarks to go by**
- **checks to ensure behaviour conforms to code**

The lack of clarity around the definition and assignment of recordkeeping roles and functions in relation to accountability makes it all too easy for recordkeepers to become confused, bamboozled or, worse, to use the confusion to slip out of responsibility. To avoid this clear accountability must be clearly assigned. I won't say much more about roles and functions here because I deal with this extensively in my chapter in a forthcoming book^{viii}. Look there and you will find a table of the sometimes-conflicting roles and functions which I am developing.

The lack of bench-marks and check mechanisms makes it impossible to judge recordkeepers in the performance of their assigned role and function (if any). Some people point to the codes of ethics in this regard. I invite you to examine those that are up on the websites of the professional bodies (ICA, ASA & RMAA). They fail for want of certainty. An ethical code must be sufficiently detailed, specific, and unambiguous that - in a particular instance - it determines an outcome that is different from the one that would otherwise occur. Otherwise it is just good advice.

Precision is all the more desirable if you accept the proposition I have already made that a distinction has to be drawn between professionally ethical behaviour and moral issues. Ethical behaviour is agreement on a predictable professional response to ambiguous and difficult issues, not an individual instinct to do good. The litmus test for this proposition, well known in any discourse on professional ethics, is the potential for conflict between ethical behaviour and private conscience.

At the end of the day, who am I or the ASA to say whether Lee McGregor did a bad appraisal? Where does it say that? What standards are written down that can be appealed to and say "Look, there it is, in black and white: it says you shouldn't do an ad hoc appraisal in 24 hours". The ASA might very well think that, COFSTA may disagree with them, but (until the ASA itself laid it down as a principle in 1999) there was no professional statement, benchmark, or standard that said it.

The problem with the 1999 ASA statement condemning ad hoc appraisal – which would have been expunged if we had let the ASA Council promulgate their draft Appraisal Policy as circulated - is that it was formulated in relation to the Society's condemnation of a particular action. The ASA answered the wrong question - viz. did Lee McGregor do right? The question they should have dealt with was - what standards or bench-marks exist to let us answer that question?

We need a raft of such principles articulated in advance so that future actions can be measured by reference to them. They must be drafted in precise and unambiguous terms to limit dispute over their applicability in particular circumstances. The course of action required should be clear and unambiguous as far as possible; there will always be litigation. The standard we have condemning ad hoc appraisal - fairly unambiguously I am glad to say - was briefly under threat from the ASA draft Appraisal Policy. We don't need fewer such principles, we need more of them.

Our next task, in my view, is to set about clearly articulating recordkeeping roles and responsibilities. We then need to lobby to make sure they are clearly understood and clearly assigned. How often do we wring our hands and bewail the fact that our role (and, we believe, its

importance) is not widely understood? How often do we reflect that this may be because we ourselves are confused and disunited about it? Is it the case that we cannot enlighten others about our role (and its importance) because we cannot give an intellectually coherent account of what we do – much less evidence of the fact that we do it?

Then we should lobby to make sure roles and responsibilities are clearly assigned. This is not just about compelling archivists to act accountably. It also about protecting them from improper blame if they are held accountable for evils in which their role and responsibility was neither clearly articulated nor clearly assigned. We need to decide what constitutes good practice, whether it be in a support role, a policing role, or whatever other clearly articulated role has been clearly assigned. We need to say that there must be standards or benchmarks based on those standards and an adequate system for checking that those standards are being met.

I can now hear the nay-sayers grumbling "it isn't *praaatical*" as all this passes along the wind tunnel between their ears triggering an automatic response button^{ix}. But this debate should not, initially, be about whether any of this will actually be implemented. It is about creating a grammar – a vocabulary – in which the issue of our accountability as agents of accountability can be intelligently discussed. It involves thinking about what it would mean if we were to make the claim - as some already do of themselves or on behalf of others - that we are agents accountability.

What would be involved if we were actually invited to undertake that role - instead of simply appropriating it unilaterally? If a consideration of these matters leads us to certain conclusions about what is requisite for us to credibly make the claim that we carry out a role as agents of accountability (or credibly to have it conferred upon us), then we will know how to discuss such claims (or such offers) should they arise. However unlikely some of this may be implemented, that doesn't excuse confusion of thought or wishful thinking.

There is an element of self-blame in most of what I have said. In a paradoxical way, this is (if anything) an exoneration – humiliating, but an exoneration all the same. Archivists? Tut, tut! No use asking them, poor dears. They don't know what accountability means. Which, when you think about it, is not so very far from an answer to the question posted by the original announcement of the theme of this conference. If you don't understand accountability, and there are good grounds for saying we don't, you won't ever be able to act accountably yourself. You are certainly unfit to be an agent of accountability.

In response to my own question then "Is it all too hard and should we just walk away from it?" my reply is: "Certainly not!"

I do not raise all this to give comfort to those who want us to abandon our role as agents of accountability. In a confused and unsatisfactory way, archivists are, whether they like it or not, already carrying out that role. In a stumbling and incoherent kind of way, we reached a view on how to resolve our dilemmas in Heiner (thanks to Adrian Cunningham and his 1999 ASA Council).

But things can't rest there. The *profiteers* are forever busy. They cannot now be allowed to rewrite our history. Archivists cannot credibly act as agents of accountability unless we really make amends. This is no longer just about whether or not Heiner represents a "notable example of failed recordkeeping" as the ASA put it in its latest submission to the Senate. It goes way, way beyond that.

I am still (thanks be to Heiner) thinking through what is involved for archivists in being agents of accountability and I am keen that a sophisticated understanding of the implications should prick the bubble of self-satisfaction puffed up by those who claim without justification to be fulfilling that role already. We still have some way to go, but my view is we shouldn't give up trying

If anyone has followed me thus far, you will have noted that I have ranged (in a fairly undisciplined way) within the boundaries of this debate (personal responsibility vs. professional standards vs. ethics) and around roles based on employment, social responsibility, and agents of

accountability. This is allowable (and indeed necessary) while the terms of the debate are so confused. If this conference succeeds in clarifying those terms somewhat I think this will be a good thing and, in that task, I wish it well.

END-NOTES

ⁱ Camille Cameron, "The duty to retain documents when litigation is anticipated".

ⁱⁱ The sources upon which this analysis of the "Heiner Affair" is based include:

1. A report to the Queensland Premier and Cabinet by Messrs J.H. Morris, QC, and Edward J.C. Howard (1995).
2. A motion of the Council of Federal, State and territory Archives (COFSTA) in December 1996 (reprinted in the *ASA Bulletin*).
3. My critique of the COFSTA motion in an email to the aus-archivists listserv of 21 April 1997.
4. A public statement by the ASA published on pp.140-142 of the *ASA Bulletin* for August 1997.
5. A position statement published by the ASA on pp.43-51 of the *ASA Bulletin* for March 1999.
6. A letter from COFSTA to the ASA President of 18 March 1999 published in the same issue of the *ASA Bulletin*.
7. The draft ASA Policy Statement on Appraisal published on pp.28-35 of the *ASA Bulletin* for April 2003.
8. A submission (see http://www.aph.gov.au/senate/committee/lindeberg_ctte/submissions/sub02.pdf) by the ASA to the Senate Select Committee on the Lindeberg Grievance under cover of a letter dated 28 May 2005.

ⁱⁱⁱ New Zealand Archives Act 1956 now superseded by the Public Records Act 2005.

^{iv} ASA submission to the Australian Senate Select Committee on the Lindeberg Grievance under cover of a letter dated 28 May 2005, see http://www.aph.gov.au/senate/committee/lindeberg_ctte/submissions/sub02.pdf

^v "But not for long. On page 11 of the August 2005 *ASA Bulletin*, the Council reported that it had decided not to issue the revised standard any time soon because engagement had been "minimal". Yet in the June 2005 *Bulletin* (p.24) we were told that comment received on the first draft had been "extensive". In any normal consultation process, if you get "extensive" adverse comment on a draft and "minimal" comment on the redraft responding to the adverse comment, it would be concluded that the redraft was what people wanted. Apparently not for the ASA Council."

^{vi} That is, the preponderance of influence of employers in the structures that govern the profession.

^{vii} After I delivered this paper, the ASA Council asked me to put this proposal in writing. The response (p.23 of the *ASA Bulletin* for June 2005) omitted to note that my argument was set out in this paper and stated that my case was instead to be found in an email I had sent to the aus-archivists list summarising the argument. The Council said my proposal would involve "changes to the Rules of the Society" and "potentially significant changes to how the Society functions and how it is organised". This is nonsense. I publicly challenged them to say what rules would need to be changed and what new rules would need to be enacted. I asked what the difference was between a standard on professional behaviour regarding disposal and one regarding professional speech. There has been no reply.

^{viii} Sue McKemmish, Michael Piggott, Barbara Reed & Frank Upward (eds) *Archives : Recordkeeping in Society* (Centre for Information Studies, 2004) Topics in Australasian library and information studies, no. 24 ISBN 1-876938 84-6

^{ix} I am indebted to F E Smith who was pleading in court when the judge said: "It's no use, Mr Smith, all this is going in one ear and out the other." To which F E replied: "Owing, no doubt, to the fact that it encounters no obstacle there, m'lud."