Archivists & Accountability

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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)
♦ 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, KRA's, SLA's, etc. Suppose we were also accountable professionals? What if a professional obligation conflicts with an employment obligation? Can a professional obligation over-ride the terms of a contract of employment? If archivists have professional accountabilities outside the terms of their employment, to whom 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 proceedings\(^1\) - 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 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 appraisal on general grounds, taking account of the law on obstruction of justice, 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 what is needed than what is lawful. Our consideration will not stop with the question, "Can it be destroyed?". We must also ask: "Should it be destroyed?".

\(^1\) Camille Cameron, "The duty to retain documents when litigation is anticipated"
The Archivist may 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, but the archivist's role and function is not to ensure that the law regarding the destruction of evidence is complied with. The archivist's role and function is larger than that. In the exercise of the archivist's role and function, there may 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. 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”.

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?

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 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 to society?

What happens when, as in the Heiner Case, 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 transgressors 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 punish) lapses by professional colleagues? Whose job it is to punish and prevent deviation? How do we know when we have deviated (or when any other 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) 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 to police accountability, you 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. Your first job, therefore, is to get the roles clearly articulated and clearly assigned. Prevent wriggling. 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, ICAC).

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 because archivists are side-lined and treated of no account, or are we 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? Is that, in essence, what happened in the Heiner Case?

No one cares if archivists are side-lined, nor should they be. 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 when we
do - 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 also ambiguity over which role or roles (if any) archivists are actually assigned. Comfortable and self-serving claims are made about archives 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?

### 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. 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 is 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 needs to follow.

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/armed forces
was identified as a problem. The Director-General of National Archives was
required to say what recordkeeping standards applied to ministerial advisers.
Reference was made to some general and unspecific standards but no satisfactory
answer was forthcoming. Suppose the D-G had come away from that 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 those 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 sidelining in the good old
bureaucratic way? Could he/she have got away with it? If it had been done, it would
have been an act of judgement on the part of the individual concerned, not an
instance of accountable behaviour. 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 D-G acting in this way could have
defended him/her self by pointing out that he/she had a professional obligation to
take remedial action in these circumstances. Indeed, the failure to take such action
would have placed the D-G in violation of professional codes of conduct.
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 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 similar protection? To say nothing of the compulsion such a statement might be on us to do the right thing even if we didn't want to.

**Art. 1 of My Indictment: We Know Archivists haven’t Acted Well**

In 1999, the ASA condemned the Heiner appraisal undertaken in 1990 by Queensland State Archives. Is this the only instance of professional misbehaviour condemned by our professional body? Can other examples be found which should have been condemned and weren't? Would we recognise other instances of professional misbehaviour if we saw them? Would we publish them if we did recognise them? What tests would be used to establish professional misconduct? 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 misbehaviour? Is it likely ever to do so again?

As I have said elsewhere, the Heiner Affair is the most important recordkeeping failure in Australia in my lifetime. I am mindful of W.A. Inc, BAT, etc. I am mindful even of the White Board Affair which (astonishingly) some people seem to regard as more significant. It is not the wrong that lies at the heart of Heiner that makes it important, however, it is the fact that in this case our own accountability was at stake.

> In Heiner, a recordkeeping regime was in place and still the mischief occurred. Unless we condemn the Heiner appraisal, the Case screams out into the faces of the smug, the self-serving, and the comfortable - “Even when recordkeeping is taken care of it still doesn’t matter. The mischief still occurs. The system fails. Explain that.”

Initially, it raised the possibility that the Queensland Cabinet was guilty of obstructing justice. That was serious enough. Then the Queensland Criminal Justice Commission advanced, in defence of the Government’s action, an argument that archivist-appraisers should consider only historical value. That raised the stakes, from our point of view.

It has since evolved into one of the cases linked to systemic child and juvenile inmate abuse in Queensland (specifically, cover-up of inmate abuse in Queensland child detention centres). A system of covering up such abuse inside and outside the centres, a system involving staff, unions, and the bureaucracy, has gradually and painfully been exposed. Last year, the Beattie Government finally admitted that the bureaucracy was at fault. The last guilty secret, the one still awaiting closure, the one that remains a suspicion only (not yet an established fact), and one which Heiner (if it was ever properly investigated) might finally help to expose is that the systemic cover-up of abuse also involved successive Queensland Governments which, there is
reason to surmise, knew of the abuse and (prior to the Forde Inquiry) did nothing to correct it systemically.

But none of that is what makes Heiner important to us. The lessons we claim to learn and teach to the world arising from the other recordkeeping failures is that they occurred because good recordkeeping practices were not in place or, if in place, that they were subverted or by-passed. This is the smug, self-serving, comfortable little sermon we preach to others. Heiner exposes the lie in all of that.

Archivists who are still in denial about Heiner can’t explain it. The only explanation is that friends and colleagues got it wrong. Admitting that would be painful enough at a personal level, but it would also involve examining what went wrong professionally and what has to be done to prevent it happening again. As one senior archivist is said to have remarked about his Queensland colleague's blunder: "There, but for the Grace of God, go I." Yes, without proper definition of role and function, absent adequate bench-marks and correction, we have nothing to guide us but individual opinion. Until we admit the error and our collective responsibility for it, until we take steps to correct it, everything else we say about accountability is hollow, and mean, and false. So, to those archivists who say to me, “move on”, I reply that I think I have moved on. I am now in a post-Heiner phase, analysing the lessons to be learned. To learn those lessons you first have to admit the mischief and face it down. Those in denial haven’t done that. I don’t think they ever will.

It is, of course, important to learn the right lessons. The provisions of the Queensland Libraries & Archives Act were a perfectly adequate basis for sound recordkeeping regulation of the Queensland Government's action (well, perhaps not perfect, but certainly adequate). The failure lay in not carrying out the Act's provisions rather than any flaw in the statute itself. 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.

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 Act is unusual because it has been read as requiring that the office holder of Chief Archivist must personally approve all disposals and this cannot be delegated - so there can be no question there of lack of clarity over assignment. I am personally responsible because every appraisal during my 2+ years in the job was personally approved by me. I’m sure I’m not the only one who has violated that principle in the period since it was enunciated.

Would Council agree that despite the ASA’s 1999 condemnation of ad hoc appraisal (reaffirmed in 2001) it is still going on? Why has Council not issued a subsequent
condemnation of these practices – at least in general terms, if not case by case? Has Council taken any steps to discover the facts? Has it even asked? If this evil practice persists, what is ASA doing about it? Perhaps subsequent Councils regret the 1999 statement of principle and (without openly saying so) they are now seeking to erase it instead of applying it - cf. article 2 of the Indictment to follow. 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 bad practice 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 using 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 punished 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 benchmarks by which to measure it? How could such benchmarks (if they existed) be applied if the role and function of archivists is unclear (i.e. if their responsibility for conforming their behaviour to the benchmarks is not established)?

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 standards by which our actions can be measured, controlled, limited, or condemned. Archivists seek to control the actions of others 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?

This is not a problem unique to the public sector. 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? 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 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 (which some doctrines of administrative law hold cannot be "controlled" by their political masters). Such 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 a 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 governing the actions of government archivists (while they must be taken into account) are not the essence of the issue.

**Article 2 of My Indictment: We Know the ASA hasn't Acted Well**

I leave aside the charge that ASA didn’t act well in the long years it took to get Council (after one false start) to make an appropriate response to Heiner. This article of indictment rests on what is still unfolding.

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

While this paper was being written, the ASA made a submission to the Senate Select Committee on the Lindeberg Grievance. It refers to the Heiner Affair as a "notable example of failed recordkeeping". Instead of tentative, focussed, and limited condemnation of aspects of the Affair, this is a full-blooded and aggressive attack on the violation of professional standards that Heiner represents. But were there, at the time of the Heiner appraisal, any professional standards to be so violated. Are there any now? The ASA Submission implies that there were and are.

This Submission repeats key points made in public statements issued by earlier ASA Councils in 1999 and 2001 - viz. that the Queensland CJC misrepresented the role of the archivist by saying she was concerned only with historical values when conducting an appraisal, that the QSA appraisal in Heiner was professionally unsound, and that it and all other ad hoc appraisals were professionally unacceptable. To have done any less would have been seen as a slide backwards from the courageous position eventually taken by their predecessors in 1999.

The ASA's 2004 Submission on Heiner makes no reference to:
- the prolonged inaction of 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 wrong
- condemned it
- had robust standards to stop ad hoc appraisal occurring
- were being led in this by SRONSW and NAA.

Council's representation of the profession's attitude to the flaws in ad hoc appraisal generally and in the Heiner appraisal in particular is deeply misleading, however, and their attempts to rewrite the history of the Affair can only be described as profiteering. The submission says on our 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".

You don't avoid ad hoc appraisal by slowing the process down or having disposal schedules. To suggest this to a group of amateurs in a Senate Committee is to confuse and obfuscate. 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 the fundamental lesson. Being consistent with "international best practice" means nothing unless international best practice establishes the basis upon which to condemn and disavow 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 following 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. 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.

The Submission raises inferences (previously unheard of) about the reliability of archivists as guardians of accountability by referring 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 the errors of the Queensland Archivist who acted in violation of our cherished professional standards - fearlessly enunciated for us by our two leading government archives authorities. Tosh. Heiner, it appears, is a matter for satisfaction and congratulation rather than one of our darkest and most shameful episodes. I suspect that this misleading impression may have been precisely what those profiteers who drafted this document meant to convey.

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 some rotten apples. They've gone now, so everything is all right.

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

I believe these assertions 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. 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.

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, the prevailing professional view came from people who spent years thwarting a mature professional approach to Heiner and who opposed (or denied the need for) the introduction of performance bench-marks designed to prevent Heiner happening again. Now, without recantation of any kind, the prevailing view - as expressed by our governing council - is transforming itself by proclaiming that there never was a problem and that appraisal criteria can be substituted for performance bench-marks. This is odious.

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 the condemnation of her actions and the unrepudiated 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.

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.

By ignoring the time line, Council gives in its version of the professional response to Heiner a context that is false and misleading. So what? Well, apart from the injustice this does to Lee McGregor, it suggests to the unwary reader that archivists were prepared for Heiner. It uses the subsequent development of standards and criteria (much of which would probably have happened anyway) to insinuate that archivists know how to deal with such Affairs. We weren't prepared for Heiner 1 and I submit we still aren't prepared for a future Heiner 2. The profiteers would have you think otherwise.

The Submission tries to make out that we had it right all along. We always knew the Queensland appraisal was wrong. There was no dissension and debate. How could there be? We had State Records and National Archives to guide our steps. There was no false start. We have criteria to prevent this kind of thing from happening. Where does all this leave Lee McGregor? Well, in logic it's obvious. She must be a rogue and a villain. We have criteria. The National and New South Wales government archives authorities have enunciated them for us. Why didn't Lee use them? It's those Queenslanders again, letting us all down - uncivilised brutes. No congratulations for her now. She's the fall guy.
But even now, the ASA is unwilling to go that far. We are still repeating the line that the Archivist was "misled" by the Queensland Government (over the likelihood of legal proceedings). Once and for all, this is no defence. 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 would be just as irresponsible to blame her now as it was to exonerate her then. The failure was not hers individually, it was ours collectively because 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 the profiteers get away with disguising that fact behind their criteria and standards. Council is still avoiding the central issue. This was not an individual lapse from collective standards. This was a collective failure to provide bench-marks needed to prevent such a thing from happening or, if it happened, needed to provide the basis for a condemnation of it.

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 which would give substance to the kind of assurances the ASA Council is now endeavouring to pass off. Indeed, I would regard the ASA's Submission to the Committee as typically self-serving. It make no reference to the prolonged inaction of 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 blame, of the profound reluctance on the part of the profession to accept collective responsibility for the professional failure, or to the internal dissentions 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:
- our Queensland colleague acted wrongly
- she had no standards or benchmarks to guide her
- we didn't understand at first
- we resisted the hard lessons of Heiner for us as a profession
- that has now changed
- we have started to make amends and establish benchmarks
- 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, having tried unsuccessfully to protect Lee McGregor's name from the odium that an admission of professional failure entails and from an honest appreciation of what went wrong in Heiner, the profession's latest position statement (made on our behalf by Council) now writes her out of the picture and, by implication, lets her personally bear the blame for what was rightly a collective
failure. The lesson from Heiner is not that Lee McGregor got it wrong by violating the robust standards and criteria which guide all our actions professionally and that she would not have erred if she had heeded them. The lesson is not 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 fatal appraisal we were professionally immature and that her error was one any one of us could have made because the more sophisticated professional understanding of the evils of ad hoc appraisal - which we have subsequently developed, in part, as a result of what we have learned from Heiner - were not then realised.

On 13 December, 2001, ASA President Yorke refused my request that ASA make a statement to mark the wind-up of the Queensland Criminal Justice Commission by repeating the earlier Council's condemnation of their misrepresentation of the archivist's mission. Yorke stated (cf. List archive) that the ASA Council “reaffirms” the 1999 statement on Heiner. He 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. ASA said, in effect, that the statements already issued were ASA’s last word on Heiner unless a Royal Commission is established. They had condemned the actions of the Queensland Government in their dealings with the Archivist, they had condemned Queensland State Archives for its handling of the Heiner appraisal, they had condemned ad hoc appraisal in principle. They said that was as far as they were prepared to go.

Yet, within three months of that declaration, Council initiated (February 2002) a process leading to a draft appraisal policy (eventually issued in April 2003) – cf. posting by Bruce Smith on behalf of Colleen McEwan. As President Yorke acknowledged at the Adelaide Conference last year, 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 3 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, as I pointed out in a posting last year, 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 3 month period in which you are pronouncing that the earlier statement of principle is your last word on the Heiner Affair is not the action of a group of people who understand accountability.

The record affirms one instance (Heiner) in which ASA has condemned misbehaviour by an archivist and set out a standard for right behaviour. Where is the evidence that, as a profession, we are concerned about professional malpractice, condemning it (in general terms, if not case by case), and taking steps to eliminate it? Has Council taken any steps to discover the facts?

Then would follow the same catalogue of questions. If malpractice is in fact occurring still, would we recognise it if we saw it? 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 thumbed their noses at the ASA when it tried (cf. Art 3 of the Indictment to follow). Perhaps the ASA should avoid making judgements in particular cases and seek instead to establish professionally endorsed benchmarks, urging each government to establish a benchmarking 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 benchmarks based on those standards?

We should remember, though, that ultimately it was the establishment of a benchmark, not the condemnation of their colleague, that COFSTA objected to.

**Extracts from the Archives NZ Appraisal Standard (paraphrase)** -

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 ArNZ site at - http://www.archives.govt.nz/

In short, is it the role of the professional body to establish standards and then join in a political campaign to get governments and other employers to adopt (or legislate for) performance benchmarks 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?

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 NZ 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.

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 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.

To interpolate a second time. Since these words were written, John Roberts, on behalf of the ASA Council, notified the aus-archivists list 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.

Article 3 of My Indictment: COFSTA & ICA didn't act well

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

<table>
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<th>The government archivists of Australia –</th>
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<td>◆ banded together to support and defend their colleague (as I suppose they would want and expect to be supported in similar circumstances)</td>
</tr>
<tr>
<td>◆ congratulated her when she escaped censure on legal grounds opposed the profession's condemnation of her</td>
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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 is corrupt and can't be trusted to act accountably? What to do then? Nothing, I suppose, if the international establishment is also corrupt and can't be trusted.

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 is to recognise that the 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 benchmarks, 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 benchmarks 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 issue facing legislators and the accounting profession post-Enron. Can a situation arise in which the professional obligations of an archivist or recordkeeper outweigh 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. Benchmarks would have to be figured out based on those standards. Then a system would need to be established to monitor and enforce those benchmarks 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

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2 That is, the preponderance of influence of employers in the structures that govern the profession.
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, 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 lousy 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 benchmarks worth having – it was the gassing at Auschwitz, not the process by which people were brought there, that mattered most. They are certainly not benchmarks by which to measure the accountability of government 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 benchmarks 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 and as the representatives of governments) 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 - 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 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 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.

**Article 4 of My Indictment : The Profession Doesn’t yet Know How**

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.

![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](image)

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.

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 or 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 the forthcoming book. Look there and you will find a table of the (sometimes conflicting) roles and functions which I am developing.

The lack of benchmarks 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 (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.

At the end of the day, who am I or the ASA to say that 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 and I might very well think that, 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 condemnation of a particular action. What we need is 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. 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.

3 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
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. 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 conferred upon us), then we will know how to discuss such claims (or such offers) should they arise. However unlikely some of this may to be implemented, that doesn’t excuse confusion of thought or wishful thinking.

There is an element of blame in arts. 1, 2, and 3 of my Indictment. In a paradoxical way, art. 4 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 already (whether they like it or not) carrying out that role. In a stumbling and incoherent kind of way, we reached a sort of half-right resolution of our dilemmas in Heiner (thanks to Adrian Cunninghame and his Council).

But things can’t rest as there. The profiteers are forever busy. They cannot now be allowed to rewrite our history. Archivists can’t credibly act as agents of accountability unless we really make amends. This is no longer just about getting the profession to acknowledge that Heiner represents a notorious recordkeeping failure - 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

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4 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."
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.

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