

SASA Keynote Address
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Good morning. I would like to thank the organizers for inviting me to speak to you – I am delighted to do so, and looking forward to this conference.

I'd like to tell you just a bit about myself to begin. Although I grew up in Canada and my parents were American citizens, my mother and her sister were both born here in Cape Town, so it is doubly exciting for me to be here. I have been able to explore the city a bit in the past four days, and it is absolutely stunning – even in winter! My mother left when she was a toddler and never was able to return, so I have considered these past days something of a pilgrimage. Now I live in Vancouver – often considered similar in climate and geography to Cape Town – where I teach digital diplomacy and digital preservation as an adjunct professor in the School of Library, Archival and Information Studies at the University of British Columbia, and I am the Project Coordinator for InterPARES Trust – and I will say a bit more about that later.

The title of my talk as it is listed in the program is “Information ethics and the application of digital forensics in archival practice.” I hope you won't consider this false advertising, because the focus of my talk is on archival ethics more broadly in this time of always-on, networked communications and records systems, on the challenges facing archivists and records managers who must deal with records in these systems as well as paper-based systems, and some of the guidance and recommendations available to us that are the results of an international research project based at the University of British Columbia in Canada, InterPARES Trust.

I am going to touch on the social and organizational disruptions in our field arising from the rapid development of digital technologies and the role of records, the ethical implications and role of codes of professional ethics; I will introduce InterPARES Trust – an international and multi-disciplinary research project that is exploring issues of trust in records and data created, managed, and preserved in online environments, and some of the resources resulting from that research, and will give details of a case study as an example.

At the beginning of June I attended the Association of Canadian Archivists conference in Ottawa, Ontario. The theme of that conference was “Archives, Disrupted” and papers explored topics ranging from developing technologies like blockchain for recordkeeping, to linked open data, to the changing social epistemology, including growing concerns with preservation of indigenous records, and disruptions in archival practice in description and access. Disruption is on all our minds these days, within and outside the archival profession, and it can also be seen as a thread running through this conference in sessions reporting on

implementation of various digital technologies and digital records management, curriculum development, record audits, e-government, and more.

I would like to talk about the disruptions that affect our work as archivists and records managers, and our thinking about archives and records, and how these intersect with archival ethics and the codes of ethics that guide us. These disruptions arise from the ubiquitous and rapidly changing technology of record creation, communication, distribution, and storage – specifically the affordances of the Internet and cloud computing.

Disruptions brought about by changing technology are not new – What are some of the disruptions in communications technologies? Perhaps the first disruption is the invention of writing itself and the rise of city-states of ancient Sumaria, or the use of elaborate sequences of knots in the Incan civilization as a way of collecting data and keeping records. This means of recording information is thought by current scholars to be a binary system of communication strings – not that we can access that knowledge today – it is technologically obsolete! Then there is the major mechanical disruption of the printing press and movable type, that ultimately participated in a change in our sense of personal identity, and finally the development of electronic communications devices, the most pervasive of which today is digital computing technology.

Today's disruption is brought about by the convergence of information recorded in digital representation, computational technologies that manipulate that digital information, huge storage capacity, and new transmission capabilities. Ronald Deibert of the Citizen Lab at U of T has identified two effects of changes in communications technologies: the first is distributional change. He describes distributional change as the realignments and shifts of power in the monopoly or oligopoly of knowledge – we see this played out in digital communications lack of capacity for long-term archival preservation that leads to organizations keeping their digital records and data indefinitely, without applying retention and disposition schedules common in paper-based recordkeeping systems, and theoretical ways – for example in the ambiguity about authorship and ownership of social media or citizen engagement records that are co-created and in the process of continually becoming.

The second effect is a change in the social epistemology that can be seen in our shifting understanding of the meaning and role of archives – that is, the many ways in which records – and the absence of records – can be understood and interpreted, and how we see this manifested in an increasing focus on records addressing human rights and archives of trauma. This is the rise of the concept of pluralism, which put most simply, is the recognition that there are many roads to truth.

The power of records through the ages is undeniable and uncontested, regardless of the technology of communication and recordkeeping. Records for millenia have served as evidence and memory of actions. Society relies on records for proof of

rights and entitlements, and our legal system depends on records to hold our leaders to account. Not only do we need to create and keep trustworthy records, we may be required to produce them when questioned. Records must be created authentic, reliable and accurate, and demonstrated to be so over time and across technological change.

Historically, we have trusted archives for their custodial role in maintaining physical and intellectual control over records, including chain of custody. In traditional archival theory records have been described variously as arsenals of history, as arsenals of administration, and as arsenals of law. Terry Eastwood explains: The notion of archives as arsenals of history is at the root of our archival institutions and profession, fuelling and supporting our memory of the past. Even older is the understanding of archives as arsenals of administration and of law. For millennia, archives have supported rights and entitlements of the governing and the governed; they embody accountability and continuity parallel to historical memory. This is the view of archives as arsenals of administration and law. The preservation of records and the use of archives in a democratic society, says Eastwood, is an historical, administrative, and legal exercise in evaluating evidence.

Eastwood wrote this in 1989, and it espouses a traditional view of archives as the residue of administration. I would suggest that today we are increasingly highlighting another potential for archival influence – archives as arsenals of human rights and social justice from the perspective of the citizenry, as opposed to the government. In his address to the International Council on Archives here in Cape Town in 2003, Desmond Tutu recounted the role of records and record policy in acts of vicious repression in South Africa under apartheid, and the subsequent role of records not only in shining a light on these human rights abuses and holding the perpetrators accountable, but to giving voice to trauma of the dead and the living, the disenfranchised and marginalized, to form a more complete and holistic historical record.

To paraphrase Terry Cook, the concepts and practices of evidence, testimony, witnessing, and records are not inanimate characteristics or neutral repositories of past acts and historical facts, but social and political constructs, subject to mediation, interpretation, bias, and power relationships. Records tell not one but many stories, and espouse many truths.

Professions are inherently ethical practices because of their orientation to service, and the public's acceptance of a professional is based on twin concepts of responsibility and trust. We have an implicit understanding that a professional is someone who is responsible, adheres to a set of principles, and so can be trusted. Professions are guided by codes of ethics that set out these principles for ethical behaviour within the discipline.

If we agree that records and archives support history, administration, law, human rights and justice, then arguably, **every aspect of archival work and records**

management has an ethical component. Underpinning the work of protecting the evidential value of records must be a strong foundation of clear ethical principles and actions. These principles and actions link archival theory and legal requirements in an ethical framework.

Among archives and records management professionals there is general agreement on core principles: to uphold intellectual freedom and resist censorship; to protect privacy and confidentiality; to recognize and respect intellectual property rights.

Although the emphasis and articulation of ethical codes differ from one organization to the next, the archival ethical framework has common themes:

- A duty to protect the integrity of the records throughout their life cycle,
 - This includes all the records management and archival functions from creation and management of records whose authenticity can be shown and integrity can be demonstrated, right through archival accession, description, preservation, and access
- Commitment to the professional community,
 - Professional competencies, education
 - Respect for colleagues
 - No competition
 - Ongoing education and research, and a
- Commitment to social justice, including
 - Protection of privacy and confidentiality
 - Respect for all intellectual rights and human rights,
 - And increasingly an acknowledgement of the plurality of the records

All English-speaking archival organizations became aware of the need to codify ethical behaviour in their professional work during the 1990s, with some earlier beginnings:

- SAA first proposed a code of ethics in 1955, revised 1980, 1992, 2005
- AAQ 1991
- ACA 1992, revised 1999, in revision 2017
- Association of Australian Archivists 1993
- Association of New Zealand Archivists 1993
- SASA 1993 – [look at it]
- Society of Archivists (UK & Ireland) 1994
- ICA 1996
- Quintana Report 1997 (with ICA) on the archives of security services of oppressive regimes, which brought human rights issues fully to the fore and made recommendations for codes of ethics

Not surprisingly, these codes look quite similar and are by necessity very general, organized around the themes mentioned previously, and addressing the professional/ethical requirements of archival functions: appraisal, selection, description, preservation, access.

Digital technologies have changed the way we communicate, allowing near-instant and liquid communication across international boundaries – everything we do with our digital devices leaves a trail – a trace. This is the disruption, and disruption creates tension, and tension demands control. Control is exercised through legislation, policy, procedures, and codes of ethics. Our ethical codes are necessary as part of our professional identity, but are they sufficient in 2017 to meet new social and technological challenges?

Digital records may serve the same purposes as their paper predecessors, but they have significant quantitative and qualitative differences. What do I mean by that? Information communications technologies, or ICTs, have brought about quantitative increases in number of records and the amount of data created, used, and whose authenticity and reliability must be safeguarded and demonstrated, and in the speed with which they are transmitted and shared. ICTs have brought qualitative changes in the manner in which records are created and in the variety of digital objects we create and rely on. This is sometimes referred to as the Three Vs – volume, velocity, and versatility.

Cloud computing has raised concerns for archivists in two general areas: transmission and third party control. The nature of the internet is such that data – and records – are transmitted very quickly over long distances. This raises problems of jurisdiction – in which jurisdiction are records considered to be at any given time? And when we use cloud services, whether for data processing, business tools, analytics, or storage, we have to ask who has access to our records and who has control – can chain of custody be proven if necessary?

Social media raises issues of control as well. If social media is used, for example in a process of participatory democracy, whose records are they? Should they be preserved? And if so, how? A considerable ethical concern is our ability to preserve digital records – not just social media. Benign neglect, which has worked in the past for analog records, is not a possibility. Preserving the bitstream may be easy, but preserving context and the ability to access the records in the future are still problems being grappled with.

Another challenge is big data – this is a challenge of volume, but also of volatility and versatility. And of course with the technical challenges come social challenges of identifying the author, or authors of records, protecting privacy, and providing access.

A few specific issues archivists need to consider include:

- Online finding aids being accessed outside the repository,

- Digital holdings are remotely accessible – also outside the repository – what is the guarantee of security of those transactions,
- Re-use even of anonymized data may be for purposes other than originally collected,
- Re-use may include re-contextualization and re-identification of personal or sensitive information,
- Metadata that preserves the context and meaning of records may be insufficient or non-existent.

The most prominent of the changes in the juridical environment facing archives and records management professionals at the present are those arising from:

- New legislation, particularly governing Data Protection, Environmental Information, Freedom of Information and Intellectual Property – in the UK this has led to an expansion of archives and records management work – implementation has involved government in initiating measures to guide practice, including appointing independent officials; governments are starting to take records management more seriously; new standards of records management show signs of being written with ethical concerns in mind – we see this in government programs to establish accountability and effectiveness
- Accountability and effectiveness, and responsiveness for public services include awareness of the
 - Right of public to know criteria for access
 - Their choice of means of access
 - The right to information about services
 - The right to redress
 - The right of representation
 - Quality management
 - Audit
 - And more

The records and traces of complex networked, real-time communications present fundamental challenges to longstanding presuppositions about the nature and character of trustworthy records and record systems. InterPARES Trust is a 5-year, international research partnership funded by the Social Sciences and Humanities Research Council of Canada – SSHRC and led by Dr. Luciana Duranti at the University of British Columbia. The project, now in its fifth year, has been researching issues of trust and trustworthiness of records and data created, maintained, used, and stored in networked data centres. The project asks:

What is the impact of always-on, networked communications technologies and cloud computing services on records management and recordkeeping, maintaining trustworthy records and supporting client and citizen perceptions of trustworthiness of records?

Research into global networked communications requires a global and interdisciplinary partnership, and InterPARES Trust comprises partners in a variety of disciplines around the world, including:

- National libraries and archives
- Government departments at the national, regional, and municipal level
- Universities and academic departments
- International organizations
- Private industry, and
- Not-for-profit consortia

Partners are organized in regional teams spanning 6 continents

- North American Team
- Latin American Team
- European Team
- Asian Team
- African Team
- Australasian Team
- Transnational Team

The researchers identified the challenges inherent in creating, managing, and preserving records in digital systems that transcend national or jurisdictional boundaries, and organized the research questions according to domains and cross domains: these include issues related to access – both rights of access of individuals to public information, and ability of organizations to access their own data; control – both intellectual and physical; security – from internal and external threats, as well as security of private, confidential, or classified information; issues related to infrastructure, legal and policy issues, and of course social issues related to user perceptions of trust in records and waning levels of confidence in government and industry.

The InterPARES partnership defines trust as:

N. 1. Confidence of one party in another, based on alignment of value systems with respect to specific actions or benefits, and involving a relationship of voluntary vulnerability, dependence, and reliance, based on risk assessment.

By defining trust in records as based on an alignment of value systems, we recognize the plurality of value systems and therefore the existence of many truths. This in turn raises ethical concerns for how archivists interact with their societies: Eric Ketelaar said that archives are becoming “spaces of memory-practice, where people can try to put their trauma in context by accessing the documents, not primarily seeing *the* truth or searching *the* history, but transforming their experiences into meaning... Archives as a space of shared custody and trust.” Our shared past is not just genealogical or a preservation of traditions, but a moral imperative for our belonging to a community.

One of the studies conducted by the North American team of InterPARES has investigated the role of records and archives policy in negotiating plural conceptions of trust in multi-cultural contexts of digital archives of traumatic collections. The researchers asked: how do existing socio-technical arrangements and designs support or conflict with policies that aim to advance pluralism in these archives? Quoting from the study: “Pluralism is a strong conceptual tool for professionals who esteem the work of generations of archivists, while they recognize significant inequalities, silences, and absences in previous professional approaches” (InterPARES Trust 2017). The concept of pluralism has been gradually making its way into the archival literature. Michelle Caswell defines pluralism as “an aspirational concept that is not easily achieved and, perhaps, is not even achievable. Like social justice, it is always out of grasp... contingent, contextual, and culturally informed, ... a process rather than a product” (Caswell 2013). It is not about diversity alone, but about finding multiple sets of values worth pursuing, without prioritizing one over another.

The researchers chose the National Centre for Truth and Reconciliation in Canada as a case study to explore the role of plurality in the development of policy.

In Canada we are engaging our history through the process of redress and reconciliation with Aboriginal citizens, and records play a crucial role. Canada’s residential school system was created for the purpose of separating Aboriginal children from their families in order to minimize and weaken family ties and cultural linkages, and indoctrinate them into the culture of the legally dominant Euro-Christian Canadian society. These schools were in existence for more than a century – their roots began in the 1820s, and the last school of closed in 1996 – and they have created generational and intergenerational trauma and dislocation in what has been recognized in Canada as cultural genocide.

While the ethical dimensions of the policies enforced by governments and carried out by the churches are legion, I want to touch on the ethical imperative of archives. Under the terms of the Settlement Agreement, the federal government and the churches were obliged to turn over relevant documents in their possession to the Commission, but initially the government, and Library and Archives Canada, refused to comply, offering access to their records but not production of the records. A number of judicial rulings resolved this and many other challenges to production and preservation of historical records and current witness testimony, and in 2015 the National Centre for Truth and Reconciliation opened as the permanent home for all statements, documents, and other material gathered by the Commission. The goals of the NCTR meet many of the suggested statements to be included in professional ethical codes identified by the Quintana Report published by UNESCO and the ICA in 1997 addressing issues of collective and individual human rights. Through the NCTR,

- Survivors and their families have access to their own history,
- A full record is available for educators, researchers, and the public, so that

- The history and legacy of the residential school system will never be forgotten

The TRC has presented 94 Calls to Action as part of Canada's attempt to redress the legacy of residential schools and advance the process of reconciliation. While all calls to action are important to Canadians, four of them address museums and archives directly. These include calling on Library and Archives Canada to fully adopt and implement the *United Nations Declaration on the Rights of Indigenous Peoples* and the *United Nations Joint-Orentlicher Principles*, as related to Aboriginal peoples' inalienable right to know the truth about what happened and why, with regard to human rights violations committed against them in the residential schools; to ensure that its record holdings related to residential schools are accessible to the public, and to commit more resources to its public education materials and programming on residential schools. Furthermore, the federal government is called to provide funding to the Association of Canadian Archivists to undertake, in collaboration with Aboriginal peoples, a national review of archival policies and best practices to determine the level of compliance with the UN Declaration and Principles, and produce a report with recommendations for full implementation of these mechanisms as a reconciliation framework.

Many questions were raised through this study:

- Who should own and maintain records in the NCTR database
- How to negotiate privacy and accuracy to sensitive records
- What is the balance between competing information needs of researchers, survivors, affected communities, and the general public
- What are the affective impacts on archivists and archival work
- How to promote plural cultural understanding

Our task as archivists is not simple. We are faced with the upheavals of social conscience, seen in a qualitative change in how we view and understand records. The NCTR case study is one example of the way in which our social epistemology is changing, influenced and facilitated by digital communications technologies. These have profound ethical consequences for archival and records management work.

InterPARES Trust is also researching the distributional changes influenced by digital technologies – that is, the changes in power between, for example, citizens and governments, or between citizens or governments and multinational corporations. These changes affect our notions of identity, privacy, authorship, and intellectual rights as well as security and jurisdiction.

In the technical and popular literature, including industry publications, most of the challenges facing organizations and enterprises with respect to cloud computing are identified as present concerns with current data for the purposes of maintaining business advantage.

Questions include things like is data secure, can personal information be protected, what regulations and laws are in effect over data that may be stored across jurisdictions, are compliance requirements met, what are the parameters of continuity of service, and how are data breaches handled? This is data-centric thinking.

Record-centric thinking leads us to look beyond the immediate present and the primacy of data. Record-centric thinking reaches into the past and considers the future, asking questions like: how can we protect the context of records? How can we capture and demonstrate provenance? Can retention and disposition schedules be applied? Can access to records and their usability be assured over time and across technological change? And how can intellectual rights be respected across national boundaries?

When we use social media, interact with government online, or place our records or archival holdings in the cloud, do we do so under the terms of *caveat emptor*, or buyer beware, or *caveat venditor*, under the protection of the vendor?

Another research team in InterPARES Trust undertook a study of boilerplate contracts of several major service providers – they looked at the various contractual documents available – called Terms of Service, Service Level Agreements, as well as Privacy policies, acceptable use policies, and security terms.

In reviewing the boilerplate contracts documents they found little standardization of content and terms across contracts. The documents are “often incomprehensible to the majority of users”, most contain wide-ranging exclusions of liability that favour the providers, and most contain a clause saying that terms may change, often without providing notice.

We are by no means alone in identifying problems with cloud service contracts. The 2012 the Public Records of Victoria, New Zealand, put out guidelines to using the cloud, and in 2013 the European Commission established a subgroup as part of the Cloud Strategy to look at standardizing service contracts. However, as with much of the discussion of cloud computing, the focus is on data, rather than records, and is heavy on issues of performance and security.

Few legal cases have been decided, but there are several legal tenets involved that make litigating complex, including the intersection of contract law, privacy and access law, confidentiality and security of data, data jurisdiction and conflict of laws regulations. And this complexity is furthered by jurisdictional and industry differences.

Regardless of jurisdiction, sector, or industry, common risks to records exist:

- Unauthorized access
- Privacy breach

- Loss of access, control
- Lack of transparency of service
- Lack of ability to negotiate service
- Location ambiguity
- Contract ambiguity

As well, there are considerations specific to, or determined by the organization:

- Data ownership
- Availability, retrieval and use
- Data storage and preservation
- Data retention and disposition
- Security, confidentiality, privacy
- Data location and cross-border data flow
- End of service; contract termination

Each of these issues requires the archivist or records manager to consider the ethical implications to the records creators, the users, and her own role in management and preservation.

This and other studies in InterPARES Trust have produced recommendations and guidance in various aspects of trust and trustworthiness of records and data online. I invite you to visit <https://interparestrust.org> - these tools are freely available on the dissemination page.

Let's embrace the new challenges of our work, considering fully the ethical implications of advocating for our records in support of good governance, transparency, accountability, access and human rights.

Thank you.