

Archives Division (DGA)

Acquisition Process for Private Archives

(For staff use)

1. *The role of Bibliothèque et Archives nationales du Québec (BAnQ) in relation to private archives*

The role of BAnQ in relation to private archives is defined in four documents: the *Archives Act* (L.R.Q., c. A-21.1), the *Act respecting Bibliothèque et Archives nationales du Québec* (L.R.Q., c. B-1.2), the *Politique sur les archives privées* (1989)¹ and the *Politique d'acquisition des archives privées de BAnQ* (2006). Pursuant to the *Archives Act* and its policies, BAnQ supports a sharing of responsibilities in the matter of acquiring private archives.

2. *Basic administrative instructions*

The basic administrative instructions can be summarized as follows:

- The archivist must follow the steps of the acquisition process as outlined in the document entitled *Acquisition of private archives in the DGA*.
- Throughout the acquisition process, the archivist must exercise discretion. Until such time as the transfer of property has been confirmed by an *agreement*, or the period of *acquisitive prescription* has expired, no information about the contents of the donation can be divulged.
- If the offer of a donor is refused, the archivist should try to redirect it to a department or an organization that is capable of responding in a more appropriate manner to the offer.
- No private archival material should enter the DGA unless the donor has already signed a donation *agreement* or a *receipt*.
- All acquisition proposals for private archives must be channelled through the regional archivist or the person responsible for private archives acquisitions in the Québec and Montréal centres. Thus, when a donor brings documents to donate them, he must be directed to the appropriate archivist, who will then initiate the acquisition process.
- Documents sent without the coordinates of the sender are kept for a period of three years. If no owner can be identified before the end of this period, BAnQ becomes the legal owner. BAnQ can then dispose of the documents or keep them in its collections pursuant to sections 916, 921, 930, 947, 2910, 2929 and 2920 of the Québec Civil Code. In this respect, it is advisable to refer to the procedure for applying the *rules governing acquisitive prescription*.

¹ Decree no 0289, April 21, 1989, Ministère de la Culture et des Communications du Québec.

3. *Offer of archival material*

When archival documents are offered to BAnQ, the archivist must provide some information to the donor:

- The archivist explains, in simple language, the concept of an archival fonds or collection. Following this, the archivist explains to the donor what constitutes archival documents. As a starting point, the archivist may use various types of information available in the Pistard database, including unpublished textual documents (manuscripts, correspondence, reports, etc.), photographic materials (negatives, prints, slides, etc.), cartographic documents, non-commercial moving pictures (films, videos, etc.) and non-commercial audio materials (magnetic tapes, cassettes, disks, etc.).
- If a large amount of records is offered in bulk, the archivist may suggest that the donor arrange the documents in an orderly manner and prepare a list of files. It can be suggested that he use our template for lists, entitled Description Form for Private Archives [*Bordereau de description des documents d'archives privées*].

4. *Meeting with the donor*

- If the documents are of interest to the DGA, the archivist makes an appointment to meet with the donor to review the documents being offered and record relevant information. The archivist takes advantage of this meeting to give the donor the information document entitled *Acquisition Process and Monetary Appraisal of Private Archives (Document for the use of donors)* as well as a *donation agreement sample form*.
- When dealing with the donor, the archivist must never lead him to believe that his archival collection might be accepted. As a general rule, only the private archives acquisitions committee of the DGA has authority in such matters.
- Throughout the acquisition process, the archivist may inform others of the offer of archival material, e.g. accredited agencies in concerned regions and archival centres sharing areas of expertise in the matter of acquiring private archives. The donor should be informed of this approach, which conforms to the private archives policy of the DGA.

Following the meeting with the donor, the archivist must fill in the *Projet d'acquisition d'archives privées* form, which will be submitted to the private archives acquisition committee.

5 *Decision-making and the private archives acquisition committee*

- Acquisition proposals are reviewed during a meeting of the DGA's private archives acquisition committee, which meets 5 or 6 times a year, based on a pre-established schedule. During these meetings, committee members verify that:
 - the proposal falls within our *acquisition policy*;
 - the proposal remains within our fields of expertise and our development plans;
 - the proposal does not conflict with the acquisitions policy of another archives service;
 - the material is of interest;
 - the conditions of the *donation agreement* are acceptable.

Committee members recommend that the offer of archival material be accepted, redirected to other heritage institutions (archives, historical societies, museums, libraries, etc.) or refused².

6. *Negotiating the agreement*

All agreements must be negotiated within certain parameters:

- During the negotiations, the archivist must use the *donation agreement template* and the *various options* offered by BAnQ. All donation agreements must be ratified by the Division of Legal Affairs (Direction des affaires juridiques or DAJ) of BAnQ.
- During the negotiations, the archivist must explain to the donor that the DGA prefers to acquire intellectual property to facilitate its management. If the donor wishes to retain the property rights, in whole or in part, for the donation, he is entitled to negotiate the conditions.
- If the donor wishes to place certain restrictions on access, reproduction or publication, he must accurately designate the documents concerned, the types of restrictions to be placed on them and the period of time covering the restriction. If required, the DGA will suggest that restrictions be placed on certain documents or groups of documents.
- It is important to make it clear to the donor that the role of the DGA is mainly the safekeeping and dissemination of the materials it conserves. Except in exceptional circumstances, if the proposal is to close all or a very large part of a private archival fonds for a very long period of time, the DGA could decide to defer its acquisition.

² The minutes of the private archives acquisition committee are available on the BAnQ intranet.

- If a donor wishes to discuss conditions that require a financial commitment on the part of the DGA (exhibitions, digitizing, microform, restoring, etc.), the archivist can only commit to presenting the conditions requested by the donor to his superiors.
- The donor has the right of access to all materials he gives to BAnQ, regardless of restrictions. He must, however, comply with the institution's rules and hours of consultation.
- At the time of signing the agreement, the archivist should explain to the donor that he must sign both copies of the agreement and put his initials on all pages of the document and its appendixes. Following this, the donor receives one of the two signed originals for his files.

7. *Monetary appraisal*

Cases involving monetary appraisal require a special procedure:

- To carry out monetary appraisals, BAnQ's DGA prefers to use the services of an independent outside organization: the National Archival Appraisal Board (NAAB). The NAAB is an organization dedicated to monetary appraisal that is recognized by the Canadian Cultural Property Export Review Board (CCPERB), which issues tax credits for donations of cultural property (federal form T-871). It is also recognized by the bodies responsible for both the federal and provincial income tax.
- NAAB appoints a committee of three people, usually an archivist, a researcher and a dealer, that determines the fair market value of an archival donation. Fair market value is defined as the "the **highest** price an asset might reasonably be expected to bring if sold by the owner in the normal method applicable to the asset in question in the ordinary course of business in a market not exposed to any undue stresses and composed of willing buyers and sellers dealing at arm's length and under no compulsion to buy or sell³."
- When a donor requests the names of experts in evaluating archival materials, it is preferable to direct him to the person responsible for the region for the NAAB.
- Nevertheless, according to its instructions on internal monetary appraisal of documents worth less than \$1,000, BAnQ's DGA can also have monetary appraisals done by qualified members of its staff for monetary appraisals of archival collections deemed to have a value of less than \$1,000. BAnQ ensures that these employees have no personal financial interest in the acquisition of these archival donations and that they are not in any conflict of interest with the donors. However, BAnQ certifies that these employees take no part in negotiating the donation that leads to the acquisition.

³ Definition of Mr. Justice Cattanach in the Estate of A.M. Collings Henderson, Bank of New York v. Minister of National Revenue, (1973) C.T.C. 636 at p. 644 and affirmed in two Court of Appeal Hearings in 1975.

- BAnQ covers the cost of monetary appraisals.
- If the donor wishes to contest the monetary appraisal established by the NAAB or BAnQ, the donor must then defray the cost of any new monetary appraisal.
- The archivist must caution the donor against taking for granted that a previous monetary appraisal sets a benchmark for the appraisal of later additions. This information may help to reduce any monetary expectations the donor might have.

8. *Tax benefits*

The donor must be made aware of the following information:

- As a general rule, BAnQ's objective is to issue the tax receipt in the year following the signing of the donation agreement. However, a number of factors can affect the timing of the issuing of the tax receipt, including the quantity and the state of classification and conservation of the documents that make up the archival fonds, the availability of NAAB appraisers and the work schedule of the CCPERB. In cases where the one-year time frame cannot be adhered to, the archivist should inform the donor as quickly as possible and explain the reasons for the delay. It goes without saying that the application should be treated as a priority and finalized as quickly as possible.
- Citizens can consult a tax expert to better understand the impact of tax benefits on their personal finances. It is best to keep to general information on the subject. For further information, the archivist should direct the donor to his tax expert or advise him to consult the publications of various services related to taxation or information published by the CCPERB.
- Nevertheless, the archivist can inform the donor that there are two types of tax deduction in this area: a tax credit for a donation of cultural property (federal form T-871) and a charitable donation.
- The donor must be advised of the fact that the benefits of the two systems are very much the same for documents valued at \$5,000 or less. For such donations, BAnQ has decided to produce only a **tax receipt** for charitable donations. For archival donations greater than \$5,000, BAnQ will submit a **request to the CCPERB for certification** as cultural property in order to obtain a tax certificate.

The period for which the tax credit for a donation of cultural property applies begins with the year of the property transfer, regardless of the date of the monetary appraisal of the property or the date of issue of federal form T-871 or any other receipt. The donor can spread the credit for any part of the donation that was not used for the year of the donation over the five years following the donation⁴.

⁴ Canada Revenue Agency, *Donations and taxes*, P113 (F) Rev. 05, p. 13.

9. *Relations with the CCPERB*⁵

Relations with the CCPERB are subject to certain rules:

- The CCPERB meets four to five times a year. Applications must be sent to them at least two months before the date of the targeted meeting. If this is not the case, applications are held over until the following meeting. The work schedule of the CCPERB is available on the Board's Web site: http://www.patrimoinecanadien.gc.ca/progs/cebc-cperb/index_f.cfm.
- The CCPERB only accepts original and complete requests. A **model for a certification request** that meets the requirements of the CCPERB is available on the intranet.
- From the **request for certification as cultural property** to the receipt of the copy of the letter accompanying federal form T-871, the archivist responsible for the application should endeavour to be the sole intermediary with the CCPERB. As soon as the donor receives certification, the administrative role of the archivist responsible for the application is over. Nevertheless, the archivist can direct the donor to the appropriate services to complete the process (CCPERB or services related to taxation).
- If the archival donation contains documents created during the three years preceding the date of a potential request for certification as cultural property by the CCPERB, these documents will only be considered by the Board if they represent "outstanding significance" or "national importance." In this case, an additional justification must be provided in relation to the donation's interest and the importance of the person who created the documents, to show that it satisfies these criteria.
- If the donor questions the monetary appraisal accepted by the CCPERB, the archivist responsible for the application will ask the donor to contact the board to advise them of his disagreement. The donor then must follow the CCPERB's administrative procedure and pay the cost of any subsequent monetary appraisal.⁶

10. *Protection of personal information*

- Throughout the acquisition process, the archivist responsible creates a file made up of documents that might contain personal information.
- These documents mainly include the **receipt or the agreement** (donation, loan, deposit, sale), the monetary appraisal report, **tax receipts**, the **private archives acquisition project**, inventories and other research tools.

⁵ All information and procedures concerning requests for certification are subject to change. By consulting the Web site on a regular basis, you can remain aware of the latest changes: (http://www.patrimoinecanadien.gc.ca/progs/cebc-cperb/index_f.cfm).

⁶ Canadian Cultural Property Export Review Board, Information and procedures concerning requests for certification as cultural property for purposes of income taxes, revised October 1997 – in force since 2002.

- In a spirit of transparency, the archivist could provide access to these documents. However, personal information must first be removed. The main elements of personal information are the names, coordinates and identification numbers of donors and appraisers of monetary value. For example, a citizen could obtain a copy of the **donation agreement** of the Lucien Bouchard fonds as well as its monetary appraisal. However, the personal address of Mr. Bouchard would first be removed. It is the same for the names of appraisers entered on the monetary appraisal reports.

11. Sources available on the intranet

Finally, we would like to remind all staff involved in the process of acquiring private archives that the working documents highlighted in this text can be found on BAnQ's intranet at «documents des Archives» under «Navigation».
