

Electronic and Print Information: Active Distribution and Passive Retention in Relation to a Murder—A Case Study

Frances K. Groen

Within the context of a belief in individual freedom and the right to know, this article describes the McGill University Libraries' response to the court ban on access to information regarding details of a murder trial in Ontario, Canada. It reviews attempts to ascertain how Canadian research libraries dealt with this issue. It contrasts the policy of the Computing Centre, McGill University, and that of the McGill University Libraries, and looks at what constitutes publishing in an electronic environment. The article examines the values of librarians as they relate to questions of censorship and access to information, and concludes with a discussion of the right to know in the electronic age.



The right of the individual to know in a changing information environment can lead to dilemmas for the library. Library staff traditionally place significant value upon free access to information and have a proud history of opposing censorship. Evidence of these efforts is seen in the American Library Association's *Intellectual Freedom Manual*, now in its fourth edition and in the recent draft code of ethics of the Canadian Library Association, which stipulates that librarians uphold the Canadian Library Association Statement on Intellectual Freedom.^{1,2} Librarians hold a trust in the eyes of the public for the protection of intellectual freedom and have accepted the consequences of maintaining that trust.

The electronic information environment, where information may be available in print, electronic, or both formats, creates new challenges for the librarian.

The right of the individual to access electronic information must take into consideration the storage and distribution of information as well as its traditional availability. As electronic information becomes part of daily life, the relationship between technology and access issues on the one hand and the individual's right to know on the other are becoming critical concerns. Librarians are committed to upholding intellectual freedom and the individual's right to know in this changing information environment. But at times this commitment may be in conflict with institutional requirements. Are there essential differences in the provision of print and electronic information? A recent development at McGill University may provide some insight into this issue.

A CASE STUDY

A grisly multiple murder case came to trial in Ontario in late spring 1993. Two

Frances K. Groen is Associate Director of Libraries at McGill University, 3459 McTavish Street, Montreal, Quebec, Canada H3A 1Y1.

separate trials of a husband and wife accused of these murders needed to occur. Prosecutors had to guarantee that the evidence presented in the first trial of the wife, Karla Homolka, did not influence the subsequent trial of the husband, Paul Teale/Bernardo, scheduled for some eighteen months later. For this reason Ontario Justice Francis Kovacs imposed the following order on July 5, 1993:

There will be no publication of the circumstances of the deaths of the victims referred to during the trial and they shall not be revealed directly or indirectly to a member of the foreign press.

While allowing reporters into his courtroom, Kovacs sought to limit details severely in the media. Foreign press representatives were banned completely from the courtroom since the court ruling could not control publications outside of Canada. As a reminder of the ban and an indication of the seriousness with which it should be taken, the Ministry of the Attorney General of Ontario issued a news release on December 2, 1993, on the importance of respect for the publication ban. In the words of this communiqué:

The Ministry is continuing to apply its policy of reviewing all potential breaches of the publication ban and all potential contempts of court. It views any potential breach very seriously.

The publication ban imposed in July 1993 regarding details of the trial of Karla Homolka was to have implications for libraries. It required that librarians focus on the issues of dissemination and publication in the light of this court order, with respect to printed as well as electronically published information. Although issues of publication and dissemination of information arise daily in the work of librarians, the ban created an environment in which the differences among the publication, dissemination, and possession of information in print and electronic form began to be defined more precisely. Universities, especially those at which the Computing Centre acted as a feeder for newsgroups over the Internet, formulated institutional policy and created precedent. In the case

of McGill University, a clear distinction evolved between active dissemination by the Computing Centre, on the one hand, and mere possession by the Libraries on the other.

Although issues of publication and dissemination of information arise daily in the work of librarians, the ban created an environment in which the differences among the publication, dissemination, and possession of information in print and electronic form began to be defined more precisely.

The Computing Centre of the University reacted first to the availability of the news discussion group called "alt.fan.karla.homolka," believing that the provision of this service constituted a violation of the publication ban. An interim decision was made to withdraw this news group, pending a legal interpretation of the responsibility of the university with respect to the ruling of the Ontario Court of Justice. The Ontario Court ban was considered to "reach" outside that province "as a result of federal jurisdiction over the administration of the criminal justice system."³

By failing to observe the ban, the university would have been, in the opinion of McGill's legal advisor, Raynald Mercille, punishable for a criminal contempt of court charge. The legal advisor also developed a working definition of *publication* which, in the context of the court ban, meant "the dissemination of information to any number of individuals in whatever form and through any medium." This definition is similar to that provided by Elizabeth Davenport in a recent publication of the National Federation of Abstracting and Indexing Services: "a document may be any item which has an owner or author on a network, not necessarily a finished textual item (report or article) released for publication, and those who participate in the network may be individuals, groups, or organizations, in the commercial, aca-

demic or government sectors."⁴ Both definitions attempt to describe publication in print and electronic formats.

Since the university policy to ban the newsgroup was confirmed to be not only proper but mandatory, it became essential to have legal advice on the appropriate action to be taken by the Libraries. A Montreal newspaper had announced that the *Washington Post* would be publishing the details banned by the Ontario court, and it was essential that the library administrators formulate policy for staff dealing with published materials. On December 2, 1993, McGill Library administration consulted member librarians of the Canadian Association of Research Libraries (CARL) with the following concerns:

Senior administration at McGill University has suspended the posting of the newsgroup "alt.fan.karla.homolka" on the McGill system as long as the court ordered ban is in effect. The Library position on documents containing this information is being defined, and we would find it most helpful to know what is happening at other CARL institutions. . . . Our concerns are both intellectual and practical. . . .

Although not all CARL directors responded, those who did provided an interesting variety of responses. Most responded only regarding actions taken at computing centres, although a few formulated library policy as well. Most interesting were responses from libraries in the Province of Ontario—the province where the publication ban originated. Direct quotations, without attribution, follow:

From the Province of Ontario:

- "I have been informed by the Secretary of the University that the Computing Centre Director was asked to cancel access to the Newsnet two or three weeks ago."
- "... the newsgroups on Internet (and Freenet) have been blocked. We are looking into what to do about printed publications and commercial online services. We don't subscribe to the *Washington Post* . . ."

- "I have heard nothing here so far. The Director of Computing Services tells me we do not have the newsgroup on our Newsnet feed."
- "... we have never monitored or censored any materials coming from the Internet and we aren't now. A . . . reporter asked . . . Reference to help him find the newsgroup. After conferring with University Counsel, I decided that until there is greater clarity about what constitutes 'publication' we should not help users find the newsgroup on the Homolka case. . . ."
- "I am aware that the Library has received at least one newspaper which contains article(s) which violate the publication ban . . . the law is quite clear and the University is placed at risk of being charged and prosecuted if material which breaches a Court Order is received and distributed by the University. By this memo I am directing you to take whatever steps are necessary to remove the material from the Library and the network . . ." [memo quoted by the library director]. From other provinces:
- "... this group has been deleted."
- "Access to the newsgroup . . . is being withdrawn for the duration of the ban. I note that other universities have taken similar steps with their library materials. . . ."
- "This newsgroup was removed . . . by our network manager without consultation. It in fact amounts only to being a gesture insofar as news/discussion regarding the case is available in many other newsgroups which do not boldly announce the contents in their titles. If legally we believe we are obligated to remove or deny access to such files we are opening ourselves up to becoming network policy—a prospect I do not relish and which goes against all my natural instincts as a librarian and information provider. In this case it would appear the courts have demonstrated that they have some way to go towards becoming more technologically literate."
- "The group is banned in Canada and not forwarded by the CA*Net sites. . . ."

People are cross-posting the items into other groups as a defiance, some of the talk groups have the material."

- "Today we cut out the article from the November 23 *Washington Post* and put the issue on the shelf with photocopy of material on reverse of [the] cut out portion and attached a notice that we are required to remove the material due to a court ban."

The McGill University Libraries operated within the law as understood and interpreted by legal experts.

It is clear that, although these responses vary, many interpreted the court order as covering possession of information, not only publication and distribution. Library administration approached McGill's legal counsel for advice on library policy.

It was surprising, therefore, to note comments in recent publications describing McGill University Libraries' response. For example, *Feliciter*, the news publication of the Canadian Library Association noted, "With exception of McGill University, library staff and administration contacted by *Feliciter* indicated a willingness to comply with the publication ban."⁵ At the opposite end of the debate, yet equally erroneous, a paper presented at the recent meeting of the Canadian Association of Information Science claimed, "Several academic and public libraries, fearing they would be in violation of the publication ban, initially removed copies of newspaper articles that covered the case . . . later, on legal advice . . . McGill University restored the publications."⁶

The McGill University Libraries operated within the law as understood and interpreted by legal experts. What they did not do, and this is at the very heart of the matter, was jump to the conclusion that merely receiving printed publications in the normal course of activities was a criminal act. The concepts of publication and distribution, implicit in the decision regarding the withdrawal of the

newsgroup by the Computing Centre, were not assumed to transfer directly to library policy. In formulating an appropriate institutional response, basic issues, both practical and philosophical, were examined carefully. Factors that helped to shape library policy were: (1) the reality that distribution of the alt.fan.karla.homolka usergroup was in violation of the court order, (2) the variety of institutional responses received from directors of Canadian libraries, (3) the complexity of screening information as it arrived in libraries, (4) the variety of formats in which information was available, and most significantly, (5) the librarians' value system as expressed in the statement of the Canadian Association of Research Libraries and in discussion with McGill librarians.

Values in Conflict

Professional practitioners express their values in the code of ethics of their professional associations. These are clear statements of the ethics of the profession to which the practitioners adhere in exercising their responsibilities. But it is not unusual to find that institutional and professional responsibilities are not fully homologous. The statement by the Canadian Association of Research Libraries, a group of some forty directors of Canadian university libraries, expresses the collective view of library administrators who hold overall accountability to senior university administrators for the functioning of libraries at their institutions. Its preamble acknowledges the right of research libraries to hold controversial materials but also stresses the responsibility of the library to express a range of views on a topic, not only the received opinion. Most relevant to the question of banning publications in the library was the following statement:

It is the responsibility of research libraries to facilitate access to all expressions of knowledge, opinion intellectual activity and creativity from all periods of history to the current era including those which some may consider unconventional, unpopular, unorthodox or unacceptable.—Canadian

Association of Research Libraries, *Freedom of Expression in Research Libraries*, 1986.

Librarians have fostered a sympathetic professional public image as the defenders of access to information. Society and users have applauded this image, and, in a profession in which the public image is still less than attractive, it has been appealing to polish it. It is this self-definition that has made it difficult for librarians to confront rationally the dilemmas involved in the economics of the information industry and the issue of charging for library services. The commonality of values in the library and health care professions emphasizes the tendency of practitioners in both groups to operate on principles of universality:

Librarians define values abstractly, with phrases such as "intellectual freedom," "free flow of information," and "freedom of access to information." Physicians, nurses, and other health care providers use similar abstract phrases to define their fundamental values, substituting the word "health" for information. Thus, ironically, in both information services and health care, professionals have come to accept a value framework that places high quality service to the individual client or a patient ahead of all else and also assumes that the resources needed to provide these services are, or should be, unlimited and freely accessible to all.⁷

Buoyed by a code of ethics and a professional image that supports a liberal and egalitarian view of access to information, librarians are vigilant against any form of suppression of information within their organizational environments. However, library administrators holding responsibility as senior officers in their organizations may find their values as professionals in conflict with their responsibilities within the organization. Professor Ann Curry of the University of British Columbia's School of Library, Archival, and Information Studies researched the potential for a conflict in values for library administrators. She found in interviewing library directors

in Canada and Britain "a disturbing willingness . . . to restrict display or simply not stock books that had been deemed objectionable. . . ."⁸

It is not surprising, given this potential for dissonance, that librarians welcomed the advice of McGill University's legal assessor on the responsibility of the Libraries in the possession of information in the Homolka trial. In the opinion of the legal advisor there was a prohibition against publication and distribution of banned material, but not against possession. In his words, "merely placing the newspapers on the shelves of the periodicals room would not constitute a prohibited act." However, if the library staff were to make multiple copies of the articles in question for distribution, this would constitute a prohibited act. Placing such material on reserve in the library was also interpreted as a violation of the court order, since this was interpreted as the dissemination of banned material. The fundamental logic hinged on the fact that the passive receipt as part of standard procedure of foreign newspapers containing articles which would contravene the ban on publication if they were printed in Canada did not contravene the law. Mr. Mercille concluded his review with the following statement:

Theoretically, the police could come and seize the offending newspapers from the shelves; this would not mean that we have acted in breach of the ban, and, on a practical note, it is virtually impossible for the University to monitor the content of each and every periodical and newspaper it receives each day.⁹

The resulting library policy satisfied librarians, administrators, and almost all users who were aware of the controversy. For the record, as soon as the issue of the *Washington Post* appeared containing the detailed account of the murders, it disappeared, then was placed "behind the desk" to guarantee that it would not be missing from the library. After all it contained other articles that might be needed! On a more serious note, librarians acting in defense of access to information

brought credit to their institution and their profession. Canadian librarians have not been challenged in the same way, as for example, librarians in China during the cultural revolution when they slept in their libraries to protect from destruction the books they had so carefully collected. Although the situations are certainly not similar, the librarians' response at one institution made it clear that they too would defend access in extraordinary circumstances.

SOME GENERAL CONCLUSIONS

The Right to Know in the Electronic Age

The McGill experience provided practical experience in balancing individual rights and institutional responsibilities in the information age. The experience also confirmed some general insights. Just as lawyers specializing in civil rights cases may find themselves defending perpetrators of acts which they personally deplore, so librarians may need to provide access to information which they personally find distasteful. The case study emphasized also the importance of reasoning from first principles. It reinforced the importance of a value system, as articulated in codes of ethics. The value

placed upon the right to know is a constant. Printing cut the ground from under oral and scribal cultures, although scriptoria and the printing press coexisted for a period. If electronic information plays a similar role with respect to the print culture, information professionals must possess a strong and defined value system. Without values, the information market will become precisely that, and liberal discourse could go the way of scriptoria. Without the active support of libraries, the ideals of classical liberal democracy are threatened. The right to know supported by librarians is a cornerstone of a free society:

Classical liberal models of democracy were premised upon the assumption that knowledge is a social resource, a public utility or a collective good. For this reason free public libraries have been regarded as cornerstone of democracy. Even the most criticized utilitarian image of "a free market of ideas" protects the belief that access to information is a right rather than a privilege; it assumes free entry of diverse ideas into a public market place which is open to all citizen/shoppers who seek knowledge.¹⁰

REFERENCES AND NOTES

1. American Library Association, *Intellectual Freedom Manual*, 4th ed., comp. Office for Intellectual Freedom (Chicago: ALA, 1992).
2. Richard Ellis, "Responsible Practice: A Review of CLA's Code of Ethics." *Feliciter* 40, no.4 (1994): 40-49.
3. Raynald Mercille, legal advisor, letter to Vice-Principal (Planning and Resources) McGill University, Nov. 15, 1993.
4. Elizabeth Davenport, *Changing Roles in Information Distribution*, ed. Ann Marie Cunningham and Wendy Wicke (Philadelphia: National Federation of Abstracting and Indexing Services, 1993), 4.
5. "Homolka Publication Ban Raises Questions about Electronic Dissemination." *Feliciter* 40, no.1 (1994): 29.
6. Leslie Regan Shade, "Desperately Seeking Karla: The Case of alt.fan.karla.homolka." (Montreal, 1994), 114.
7. Gary D. Byrd, "The Ethical Implications of Health Sciences Library Economics." *Bulletin of the Medical Library Association* 79, no.4 (1991): 382.
8. Ashok Chandwani, "For Librarians, Cultural Diversity Poses Unique Challenges," *Gazette (Montreal)* May 16, 1994, A2.
9. Raynald Mercille, legal advisor, letter to author, Dec. 3, 1993.
10. Sue Curry Jansen, *Censorship, the Knot That Binds Power and Knowledge* (Oxford: Oxford Univ. Pr., 1991): 167.