



Ottawa, 12 January 2018

Honourable Scott Brison
Treasury Board of Canada Secretariat
President's Office
90 Elgin Street
Ottawa, Ontario, KIA OR5

Dear Mr. Brison:

The Canadian Historical Association is writing to express our concerns with Bill C-66, “An Act to establish a procedure for expunging certain historically unjust convictions and to make related amendments to other Acts,” which passed third reading on 13 December 2017. Our concern is not for the broad goal of the legislation, but with two particular aspects of the bill that have implications for historical scholarship and research in the present and the future: that it was prepared without the expected consultation with relevant experts, including historians, and, most significantly, that in its current form Bill C-66 overrides the Library and Archives of Canada Act and puts critical decision-making about historical records out of the hands of the institutions and offices best prepared for that important work.

The implications of Bill C-66 for archival records and historical research are significant. Bill C-66 provides for the destruction of certain historical records. Sections 17 and 19 of the Bill clearly and expressly override both the Library and Archives of Canada Act and the Privacy Act. We are also concerned that Bill C-66 empowers the Parole Board to make decisions about historical records. The Parole Board is part of the criminal justice system, and making it responsible for decisions to expunge and destroy archival records is highly unusual. In overriding both the Archives of Canada Act and the Privacy Act and empowering the Parole Board to make decisions about historical records, Bill C-66 sets a dangerous precedent.

We would suggest that the government find a way to preserve historical records while also pursuing Bill C-66's goal of addressing the injustice of certain historical laws. The preservation and archiving of government records is a hallmark of democratic and open governments. The question of how archival records that document difficult and unjust histories, including around sexuality, can be best preserved and managed is something that demands careful and nuanced public policy.

Historians have expertise that might be drawn on to develop those kinds of policies. In the past three decades historians have carefully documented how Canada criminalized same-sex practices. Historians Gary Kinsman, Steven Maynard, Patrizia Gentile, Tom Hooper, and others have documented the range of ways that, from 1890 onwards, the Canadian state regulated and not infrequently criminalized same-sex practice, particularly between men. This research has no doubt informed your government's recent efforts to address Canada's history of prosecuting those whose sexual behavior fell outside of social norms and, importantly, the law.

Bill C-66 was prepared with insufficient opportunities for input from scholars and researchers who know this history so well. The Parliamentary Committee responsible for the Bill did not hear witnesses or accept written briefs. Historians who have devoted their careers to studying the laws and lives addressed in Bill C-66 have a great deal of expertise to offer, and it is unfortunate that the government did not avail themselves of that knowledge in preparing Bill C-66.

The CHA would like to express our willingness to work with government to develop policies that reflect expert knowledge and ensure that scholars in the present and the future are able to examine Canada's past in all its complexity. We would also like to reiterate the enormous importance of preserving archival records, even when they document complex and difficult histories. In its present form, Bill C-66 presents significant risks to the preservation of the archival record and sets dangerous precedent by over-riding legislation and placing decision making powers about historical records in a body ill-equipped to make them.

Sincerely,



President
Canadian Historical Association