



## Release of the Historical Censuses

### Background and Official Position of the Association of Canadian Archivists

On 2 November 2004, the Government of Canada tabled Bill S-18 in the Senate to amend the *Statistics Act*, and thereby release the historical censuses of Canada to researchers. This is a significant victory for archivists, historians, genealogists, and very much welcomed by the ACA.

The ACA has lobbied hard for almost a decade for the release of post-1901 historical censuses of Canada. Those for 1871 to 1901 have been under the control of Library and Archives Canada (LAC) for many years and, via widely diffused microfilm copies, used by many thousands of researchers without a single *Privacy Act* complaint being filed. The ACA in this effort was not looking for any special privileges or concessions; it has long recognized and supported the need for a balance in public policy between the right to access government information for accountability and the right to the protection (for a period of time) of sensitive personal information found in such records.

The principal issues precluding the release of the post-1901 censuses on the same basis as their predecessors were twofold: 1) an alleged promise of “confidentiality” made to Canadians by early census takers (never proven, nor supported by documentation); and 2) an alleged ambiguity in the wording of the 1918 *Statistics Act* regarding the release of all subsequent censuses. StatsCan took the position that improper release of historical censuses, in light of these two alleged factors, would break faith with Canadians and consequently undermine completion and accuracy rates with current census-taking. The ACA has addressed these and other claims in its past lobbying.

ACA has presented briefs to Parliament and testified before Parliamentary committees; articles have been written for the media; senators, MP's, and senior bureaucrats have been personally lobbied; Annual General Meeting resolutions passed; and letters sent to cabinet ministers. Much of this work has been carried on in close partnership with the Canadian Historical Association (CHA), and in liaison with Canadian genealogists. Almost all this work for ACA has been done by Terry Cook (Archival Studies, University of Manitoba). As a result, the 1906 western census was released to the care and control of LAC and made available to all researchers in Ottawa and via its web site around the world.

Major efforts were made last year by ACA to respond to Senate Bill S-13, which addressed release of historical census data (1911-2001) **and** consent for release of all future censuses from 2006 onwards. The great champion of this cause is Senator Lorna Milne, who has heartily welcomed ACA input, and the ACA hereby pays tribute to her long fight on our behalf. That bill, however, contained very serious flaws. Although the 1911 census would have been released on the same basis as the 1871 to 1906 censuses (92 years after the census is taken, which is the formal regulation in the *Privacy Act*), the censuses from 1921 to 2001 (that is, those following the allegedly restrictive clauses in the *Statistics Act* of 1918) would have been subject to an additional 20-year period (92 + 20) of only limited access and use where one could consult, but

could not publish, census return information, with a heavy archival bureaucratic control and overlay on researchers. (By way of comparison, it should be remembered that the United States has long made its census data available without restriction after 70 years.) Moreover, the threat was real that Canadians, following a single unhappy Australian precedent, could check a “consent” box to have their census return destroyed or made permanently inaccessible. The ACA, with the CHA, strongly opposed these clauses in a joint written brief and joint personal testimony before the Senate Committee. Bill S-13 died with the election call.

Now Bill S-18 has been introduced. Insider reports suggest that the Government very much wants this issue resolved, without ambiguity, for past and future censuses, as it is tired of endless petitions and thousands and thousands of letters and e-mails (thanks to the genealogists!), and tired too of the internal bureaucratic squabbling, pitting StatsCan and the Privacy Commissioner on one side *versus* the Access Commissioner and Library and Archives Canada on the other.

The Bill represents a compromise and is, we believe, the best possible deal obtainable at this time for archivists and their users. Compared to the previous 2003 bill, Bill S-18 represents three significant victories for archivists and one important setback:

1) Release of the historical census data for 1911 immediately, on the same basis as the censuses of 1871 to 1906, through Library and Archives Canada (LAC) = a victory for ACA, although almost inevitable after the precedent of the release of the 1906 Western census.

2) Release of all historical censuses from 1921 to 2001 on the same basis as 1871 to 1911. The clauses in the old Bill S-13 about a 20-year additional limbo period are gone, which would have been a research barrier and a bureaucratic nightmare for researchers and archivists = a major victory for ACA, and not at all inevitable given the disputed interpretations of 1918 *Statistics Act*.

3) Removing any mention or implication of citizens controlling the destruction (unlike the often-cited Australian precedent in 2001) of sensitive personal information they submit to government. ACA fought against this very hard last time; if extended (as naturally it would be over time) across all government databases (think taxation, immigration, pensions, aboriginal registration, RCMP, and thousands of case-file series far more sensitive than the census), such a clause would gut the evidence of the archival record, destroy the possibility of holding government accountable for its actions, and preclude much “bottom up” social history research = an important ACA victory.

4) The price for these victories is an opt-in clause for all censuses from 2006 onwards whereby Canadians indicate (as they now do about being included on the electoral list on their income tax form) whether they wish access to be allowed to their census form after 92 years: the form will be preserved (not destroyed -- see #3 above), but access denied. The default (someone not checking the box) position means no, and thus denial of access = a significant loss.

ACA has argued first for no consent clause at all, or, if forced to accept one, for an opt-out version (where the default no-answer position would mean access permitted). Modification has

been explored in governmental and political circles, and there is no chance for change. Bill S-18 is the hard-fought compromise offer, as a package, all four points above, or none.

This pill is sweetened by two factors: 1) a promise in the bill sought by ACA (see section 2) for a review of the operation of this clause by Parliament after two censuses have been taken (2006, 2011) in light of the results of how many Canadians decline access to their census record; and 2) a commitment by StatsCan (see the 2 November 2004 press release from its parent, Industry Canada) that “Statistics Canada, in conjunction with Library and Archives Canada, will, as part of the 2006 Census public communications campaign, encourage Canadians to allow future access to their census records to preserve Canada's history for future generations.” ACA and its members should join in that campaign.

The ACA has also made representations that the opt-in clause must be consistent with the best privacy practice of "informed consent" (which Industry Minister David Emerson champions). This means that the consequences of refusing consent be made clear to the citizen filling in the form; they are not just presented with a box to tick or not tick with a bare explanation, but a box accompanied by a clear explanation that checking the box allows one's descendants, and the descendants of all others enumerated on the form, the ability to do family and genealogical research, and for their family's experience to be part of the accessible historical and archival record of the nation a long 92 years later, and thus part of Canadian history.

The ACA President, Marc Lerman, and his Executive Board have carefully considered this compromise position on behalf of ACA and its members, in light of the past decade of struggle to gain access to the historical censuses. Despite hesitations in principle over any access clause for any government form, they concluded that there are major gains in law to be made for archivists and their clients in Bill S-18. They have decided that the ACA accepts the compromise as presented in the bill and will not lobby as an organization against it, save for clear wording of the “informed consent” clause. The ACA will also monitor census returns for 2006 and 2011, in light of the consent results. The ACA commends the bill to its members and hopes that they will support it as well.