

FEDERAL COURT

BETWEEN :

THE INFORMATION COMMISSIONER OF CANADA

Applicant

- and -

THE MINISTER OF INDUSTRY

Respondent



**NOTICE OF APPLICATION FOR REVIEW
UNDER THE ACCESS TO INFORMATION ACT**

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Ottawa.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Court Rules, 1998* and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Court Rules, 1998*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE
GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

DATED at Ottawa, this 26th day of February 2004.

Issued by:
Address of
local office


Federal Court of Canada
90 Elgin Street
Ottawa, Ontario K1A 0H8

Peter L. Hébert
Registry Officer
Agent du greffe

APPLICATION FOR REVIEW UNDER THE ACCESS TO INFORMATION ACT

This is an application for review by the Information Commissioner of Canada pursuant to paragraph 42(1)(a) of the *Access to Information Act*, R.S.C. 1985, c. A-1 (the "Act") before the Federal Court of Canada.

This application is made with the consent of the requester, Mr. Peter Di Gangi, who received on January 13, 2004, the report on the investigation of his complaint by the Information Commissioner of Canada (in file 3100-16580/001) with respect to the refusal by the Minister of Industry, Science and Technology (the "head of the government institution") to disclose information requested by Mr. Di Gangi on November 2nd, 2001 with respect to census returns for specific districts in the provinces of Quebec and Ontario for the years 1911, 1921, 1931 and 1941, and which for convenience will hereafter be referred to as the "Census returns".

The applicant makes an application for:

an order directing the respondent to disclose to the requester the Census returns or portions thereof with respect to "Census Returns for districts of Nipissing, Renfrew and Temiskaming in the province of Ontario and Pontiac, Temiscanigue, Wright and Yamaska in the province of Quebec for the years 1911, 1921, 1931 & 1941" which do not qualify for exemption from disclosure under the provision relied upon by the respondent, being section 24 of the Act and section 17 of the *Statistics Act*, or such further and other order as the Court deems appropriate.

The grounds for the application are:

1. The respondent erred in relying upon section 24 of the *Access to Information Act* and section 17 of the *Statistics Act* to refuse to disclose the Census returns.
2. The respondent has the burden of establishing in fact and in law before the Federal Court that the information in dispute qualify for exemption from disclosure under the provision relied upon by the respondent.

Without restricting the generality of the aforementioned:

3. The respondent erred in fact and law in relying upon section 24 of the Act and section 17 of the *Statistics Act* because the withheld information is not subject to section 17 of the *Statistics Act*.
4. Moreover, in the case where the information is subject to section 17 of the *Statistics Act*, the respondent did not properly exercise his discretion under subsection 17(2) of the *Statistics Act*.
5. Notwithstanding the aforementioned, the respondent erred when he failed to apply subsection 19(2) of the Act.

6. More specifically, the respondent erred in fact and law when he determined that:
 - i) That the 1911 Census returns are not deemed to be publicly available pursuant to 19(2)(b) of the Act; and
 - ii) access to the Census returns of 1911, 1921, 1931 and 1941 is not authorized pursuant to paragraph 19(2)(c) of the *Access to Information Act* by reference to subsections 8(2)(k) and 8(3) of the *Privacy Act* and s. 6 of the *Privacy Regulations*.
7. The respondent failed to comply with the provisions of section 25 of the *Act*, which requires that all non-exemptible portions of requested records, be severed and released if severance is reasonable.
8. Such other grounds as counsel for the applicant may advise.

The statutory provisions and rules relied on include: the *Access to Information Act*, R.S.C. 1985, c. A-1, generally and particularly, ss. 2, 19, 24, 25, 41, 42(1)(a), 48 and 49 of the Act, sections 3 and 8 of the *Privacy Act*, R.S.C. 1985, c. P-21, section 6 of the *Privacy Regulations*, SOR/83-508, section 17 of the *Statistics Act*, R.S.C. 1985, c. S-19, *An Act Respecting the Census and Statistics*, R.S.C. 1906, c. 68, *Instructions to Commissioners and Enumerators*, Canada Gazette, May 21, 1906, *Instructions to Commissioners and Enumerators*, Canada Gazette April 22, 1911, Order in Council March 31, 1911, and Parts 5 and 9 of the *Federal Court Rules (1998)*.

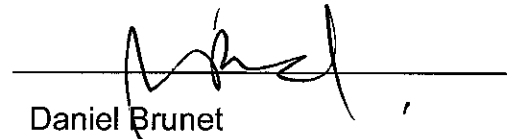
This application will be supported by the following material:

- a) the Affidavit of Mr. Dan O'Donnell, an investigator with the Office of the Information Commissioner sworn February 25, 2004, to which will be appended as Exhibits, documents relevant to the subject matter of the application;
- b) the Affidavit of Mr. Peter Di Gangi, Director of the Algonquin Nation Secretariat, sworn February 20, 2004;
- c) the Affidavit of Mr. Steve Talbot, archivist, sworn February 20, 2004;
- d) the Affidavit of Mr. James Morrison, research consultant and ethnohistorian sworn February 25, 2004;
- e) the Affidavit of Mr. John Leslie, currently research consultant sworn February 25, 2004; and
- f) such other material as counsel may advise and this honourable Court may permit.

The applicant's address is Place de Ville, Tower B, 112 Kent Street, 22nd floor, Ottawa, Ontario, K1A 1H3, and the name and business address of the applicant's solicitor is:

Daniel Brunet
General Counsel
Place de Ville, Tower B
112 Kent Street, 22nd floor
Ottawa, Ontario K1A 0H3
Telephone: (613) 943-2411
Fax: (613) 947-5252

DATED at Ottawa, this 26th day of February, 2004.


Daniel Brunet
Solicitor for the Information
Commissioner of Canada

NOTICE TO THE COMPLAINANT
(Subsection 42(2) of the *Access to Information Act*)

TO: Mr. Peter Di Gangi
609 Redwood Avenue
Ottawa ON
K2A 3 E8
Canada

Take notice that the Information Commissioner of Canada has made an Application for Review to the Court pursuant to paragraph 42(1)(a) of the *Access to Information Act* for a review of the refusal. You have the right to apply independently to the Minister of Industry, Science and Technology to give you access to the records you requested.

Paragraph 42(2) of the Act also gives you the right to appear as a party to the Information Commissioner's Application for Review. If you wish to appear as a party to the Information Commissioner's Application for Review, you must prepare a Notice of Appearance as a Party and serve it on the applicant's solicitor, and upon the respondent within 10 days from the date you were served with this Application for Review.

TO: The Registrar
Federal Court of Canada

AND TO: The Minister of Industry Canada
C.D. Howe Building
235 Queen Street
Ottawa, Ontario
K1A 0H5

Court File No. T- -04

FEDERAL COURT

B E T W E E N :

**THE INFORMATION
COMMISSIONER OF CANADA**

Applicant

- and -

THE MINISTER OF INDUSTRY

Respondent

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