

FEDERAL COURT

BETWEEN:

THE INFORMATION COMMISSIONER OF CANADA

Applicant

- and -

THE MINISTER OF INDUSTRY

Respondent



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

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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 7<sup>th</sup> day of November 2004.

**Original signed by  
SYLVIE GALLO  
Original signé par**

Issued by:  
Address of  
local office

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

## **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. Arnold V. Weirmeir, who received, on October 13, 2004, the Information Commissioner's report on the investigation of the requester's complaint (in file 3201-01164/001) concerning the refusal by the Minister of Industry (the "head of the government institution") to disclose information requested on June 2, 2003 and described as schedules of the 1911 National Census (the "1911 Census records").

Between July 7, 2003 and October 5, 2004, the Information Commissioner also received complaints from 95 other individuals who had requested and been refused access to the 1911 Census records. As of November 9, 2004, 79 of these requesters had consented in writing to the Information Commissioner, applying for a review of the matter with respect to each related refusal.

### **The applicant makes an application for:**

An order directing the respondent to disclose to the requesters the records relevant to the requests or portions thereof that 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 Act and section 17 of the *Statistics Act* to refuse to disclose the 1911 Census records.
2. The respondent has the burden of establishing in fact and in law before the Federal Court that the information in dispute qualifies 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. Further, to the extent that 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 by failing to apply subsection 19(2) of the Act.
6. More specifically, the respondent erred in fact and law when he determined that:
  - i) these records are not deemed to be publicly available pursuant to paragraph 19(2)(b) of the Act; and/or
  - ii) access to these records is not authorised pursuant to paragraph 19(2)(c) of the *Access to Information Act* by reference to subsections 8(2)(j) 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, 24, 25, 41, 42(1)(a), 48, 49; sections 3 and 8 of the *Privacy Act*, R.S.C. 1985, c. P-21; *Privacy Regulations*, SOR/83-50, s. 6; *Statistics Act*, R.S.C. 1985, c. S-19, s. 17; *An Act Respecting the Census and Statistics*, R.S.C. 1906, c. 68, *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.

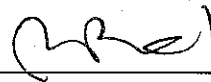
**This application will be supported by the following material:**

- a) the Public Affidavit of Mr. Dan O'Donnell, an investigator with the Office of the Information Commissioner, to be sworn at a later date, to which will be appended as exhibits documents relevant to the subject matter of the application;
- b) 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, 22<sup>nd</sup> floor  
Ottawa, Ontario  
K1A 0H3  
Telephone: (613) 943-2411  
Fax: (613) 947-5252

**DATED** at Ottawa, this 9<sup>th</sup> day of November 2004.



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Daniel Brunet  
Solicitor for the Information  
Commissioner of Canada

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

**TO:** Mr. Arnold V. Weirmeir  
RR.#1  
Apsley, Ontario  
K0L 1A0

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*. You have the right to apply independently to the Minister of Industry 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  
C.D. Howe Building  
235 Queen Street  
Ottawa, Ontario  
K1A 0H5

I HEREBY CERTIFY that the above document is a true copy of the  
original issued out of / filed in the Court on the 9<sup>th</sup>  
day of November A.D. 20 04  
Dated this 9<sup>th</sup> day of November 20 04  
S. Gallo

**S. Gallo**  
Registry Officer  
Agent du greffe

**FEDERAL COURT**

**BETWEEN:**

**THE INFORMATION  
COMMISSIONER OF CANADA**

**Applicant**

**- and -**

**THE MINISTER OF INDUSTRY**

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Solicitor for the Information  
Commissioner of Canada