



Algonquin Nation Secretariat

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Memo.

To: National Claims Research Workshop
From: Peter Di Gangi, Director, Algonquin Nation Secretariat
Date: September 18, 2000
Re: Access to federal records.

This note is to give you a brief update on developments. As you know, a couple of years ago the research directors convened an ad hoc committee on access to federal records, in direct response to problems which had been occurring in certain regions. This committee consists of Paula Caird and Peter Havlik, BC; Denis Brassard and myself from Quebec.

Officials at the Department of Indian Affairs have been working with us cooperatively over the past two years to begin addressing these problems, and, as reported at last year's workshop, we have been making significant progress in a number of areas.

This past year, we have been dealing with the following issues:

- ATIP: consistent forms for informal access requests
- ATIP: Training of DIAND staff re: processing requests and dealing with First Nation researchers
- ATIP: Federal Review of Access to Information Act
- Access to materials at Federal Records Centres (quite often these involve documents in the "grey zone" between DIAND and the Archives)
- National Archives: photocopying issues
- RIMS implementation: DIAND is computerizing their file-finding systems, and the issue of access for researchers is being dealt with.
- Joint Research: procedures for access to federal files: are joint researchers given preferential access?
- Federal Census records: An expert panel was struck to provide recommendations to the Minister responsible for Statistics Canada about opening up access to census records less than 90 years old.

Enclosed, please find some documents which will provide additional information on these issues, to add to the oral presentations that will be given during the workshop itself.

SEP 19 2000

Attachments:

1. "Federal record keeping 'a crisis'", *Ottawa Citizen*, 8 April 2000.
2. "The Government Establishes an Access to Information Review Task Force", Press release from Treasury Board Canada, 21 August 2000.
3. Excerpts from a speech by Minister Anne McLellan, Dept of Justice, to the Canadian Bar Association, Halifax, 21 August 2000.
4. "Minister Manley announces members of the Expert Panel on Access to Historical Census Records", press release, Statistics Canada, 12 November 1999.
5. Terms of Reference for Expert Panel on Access to Historical Census Records.
6. Algonquin Nation Secretariat submission to Expert Panel, February 2000.
7. Richard Van Loon, Chair, Expert Panel, to Minister John Manley, 31 May 2000.
8. E-Mail on status of Expert Panel's Report, 14 September 2000.

Federal record keeping 'a crisis'

New law needed to police perennially lax departments, commissioner says

BY KATHRYN MAY

Canada's information watchdog says the federal government is facing an "information management crisis" that requires a new, tougher law to ensure departments keep and track their records.

Information Commissioner John Reid is calling for an information management act to put into law Treasury Board guidelines governing the keeping and managing of information that he argues departments have largely ignored for years.

Mr. Reid, who has strongly chastised Treasury Board for failing to enforce those guidelines, argues the job grants fiasco at Human Resources Development is symptomatic of a record-keeping breakdown across government. The HRDC crisis erupted over an audit that found shoddy record-keeping and administrative chaos.

"If records cannot be located and produced with ease, the right of access is of scant value," said Mr. Reid. "I cannot overstate the point. Information management in government is in crisis."

"The crisis not only threatens the viability of the right of access, it also threatens to undermine national archival requirements and the ability to deliver good government to the citizenry."

Mr. Reid said the act would return the public service to the "hallmark of their professionalism," which is to document the functions, policies, decisions, procedures and transactions of government. Records are key to protecting the government's legal and financial interests, but are also critical to reconstructing Canada's history, he said.

The government currently has several acts to regulate the management of information, but no comprehensive law that governs the "life cycle of government-held information." Mr. Reid contends the big gap in the information "life cycle" are the guidelines governing what records should be created, filed and indexed for retrieval. The access to federal records is governed by the Access to Information Act and Privacy Act. The disposal of information and subsequent conservation of records with historical value are regulated by the Archives Act.

But Mr. Reid says these acts are meaningless if the government doesn't know what records it has or how to find and retrieve them — or worse, records were not kept at all.

"I don't know if information is being kept but I do know it's not being filed," said Mr. Reid.

Mr. Reid said his office routinely finds instances of poor information management: records not created where they should be; and records not properly indexed, filed, retained or disposed of according to the guidelines. In many cases, departments can't locate records for a specific subject either because they weren't kept or not filed. And, he says, the problem is getting worse, not better, with technology.

The government has yet to get a handle on how to effectively manage e-mail. The inter-departmental meeting has been replaced by e-mail and voice mail.

Mr. Reid said his office finds more cases of decisions being made with no documentation.

With e-mail, bureaucrats decide on their own what to keep and when, as well as where and how to file what they keep.

Digital records aren't as easy to store and retrieve as expected. Archivists and record managers are forced to keep warehouses of outdated computer hardware and software to retrieve and read obsolete hard drives and floppies.

Mr. Reid is hoping the HRDC mess, which he calls an information management "horror story," will force the problem on the political agenda.

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The Government Establishes an Access to Information Review Task Force

[2000 News Releases] [Biographical Notes]

August 21, 2000

OTTAWA – The Honourable Lucienne Robillard, President of the Treasury Board of Canada, Minister responsible for Infrastructure and Member of Parliament for Westmount – Ville-Marie, and the Honourable Anne McLellan, Minister of Justice, Attorney General and Member of Parliament for Edmonton West, today announced the establishment of the government's Access to Information Review Task Force.

"We are committed to the principles of openness and transparency inherent in the *Access to Information Act* and believe that a review of the *Act* and the policies and practices associated with it will support our ongoing efforts to improve access to government information for all Canadians," said Madame Robillard.

The Interdepartmental Task Force will be chaired by Madame Andrée Delagrave. The Task Force will have a mandate to review all components of the Access to Information framework, including the *Act*, Regulations, policies and procedures. A final report will be released in the fall of 2001, which will analyze the administrative and legislative aspects of Access to Information and provide recommendations for improvement.

The Task Force will report progress on a regular basis to the Secretary of the Treasury Board and the Deputy Minister of Justice so that when pressing needs or concerns of an administrative nature are identified during the course of its deliberations, appropriate changes can be made immediately. Any interim measures identified will be reported publicly.

An Advisory Committee will be established to offer practical advice and support to the Task Force. The Advisory Committee will be made up of individuals from outside government, including academics, journalists, historians and other users of the *Act*.

The Task Force work will enhance the information management exercise already undertaken by the Treasury Board Secretariat and the National Archives and will take into account concerns that have been raised about the need to ensure the protection of personal information.

"The Government recognizes the contributions of the Information Commissioner, Members of Parliament and members of the public in suggesting how the *Access to Information Act* could be improved. The Task Force will consider all of these proposals in the course of its work," said Madame Robillard.

"Access to information is essential if we are to continue to have an open and transparent government. The work of the Task Force will provide valuable advice to Parliamentarians to ensure that any legislative changes to the *Access to Information Act* better reflect the expectations of the public while protecting the privacy of individuals," said Minister McLellan.

-30-

For more information, contact:

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TTY (Telecommunications device for the hearing impaired) – (613) 957-9090

Biographical Notes

Andrée Delagrave

Andrée Delagrave, was appointed as Chair of the Access to Information Review Task Force on August 21, 2000.

Prior to this appointment, she was Director General of Policy Integration and Coordination, with the Department of Justice. She has also held positions with Employment and Immigration Canada, the Department of Natural Resources, the Office of the Commissioner for Federal Judicial Affairs, and the Public Service Commission.



Ms Delagrave is a member of the Quebec Bar and the Law Society of Upper Canada. As well as degrees in Civil Law, Common Law, and Legislative Drafting, she holds a Bachelor's degree in education and a Masters degree in Public Administration.

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EXCERPTS FROM AN ADDRESS BY
THE HONOURABLE ANNE McLELLAN
MINISTER OF JUSTICE AND
ATTORNEY GENERAL OF CANADA

TO

THE CANADIAN BAR ASSOCIATION

AUGUST 21, 2000
HALIFAX, NOVA SCOTIA

Public confidence in Government

Access to Information

Most of what I have had to say today relates to public confidence in the justice system. There is of course a broader context, that of public confidence in government generally.

Maintaining public confidence in our system of government depends, in part, on meeting the growing expectations of citizens that they will have effective input into government decision-making.

Providing timely, effective access to government information is of course a crucial element in this. As Minister of Justice, I am committed to reviewing and modernizing the legal framework for the management of the government's information holdings.

This morning my colleague the President of the Treasury Board and I jointly announced the establishment of an Access to Information Review Task Force. This interdepartmental Task Force will review the legislative and administrative components of the access to information regime, with a view to revising the Access to Information Act to reflect the expectations of the public while protecting its legitimate interests.

The Task Force will be advised by a committee of individuals from outside of government, such as lawyers, academics, journalists and other users of the Access Act who will serve as a sounding

board for ideas and proposals.

The Task Force will report on its progress on a regular basis with a final report to be released next fall.

Privacy Review

At the same time, it is important to look at the balance between providing access to information held by government and protecting the privacy of personal information held by government. Both of these issues deal with the relationship of citizens to government information, but the values they protect are different.

In his recent report to Parliament, Privacy Commissioner Bruce Phillips sets out a compelling case that the information environment has been transformed by the Internet, DNA testing, biotechnology, data warehousing and data matching. These are all innovations that challenge the very foundation of the Privacy Act.

As I said in the House of Commons earlier this year, we need to look at the Privacy Act in the context of technological change to ensure its continued relevance. To that end, I have asked my officials to begin a comprehensive review of federal privacy legislation. We will examine proposals for reform that have been made by the Privacy Commissioner, Parliamentarians and concerned Canadians. We will also look at how other countries deal with privacy. And we will consult Canadians on the best approaches to reform in this important area.

I know that Privacy and Access to Information issues are important to the CBA and I look forward to your active involvement in these reviews.

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Census

FOR IMMEDIATE RELEASE
November 12, 1999

Minister Manley Announces Members of the Expert Panel on Access to Historical Census Records

Ottawa – John Manley, Minister of Industry and Minister responsible for Statistics Canada, today announced the appointment of members to the Expert Panel on Access to Historical Census Records. The Panel will provide independent, expert advice on the legal, privacy and archival implications of releasing historical census records.

"The members of the Expert Panel are highly regarded Canadians who have been appointed on the basis of individual merit and are well known for their expertise and long-term interest in historical research and privacy issues" said Minister Manley.

The five-member Expert Panel will be chaired by Dr. Richard Van Loon, President of Carleton University in Ottawa. The members will participate in the work of the Panel in their personal capacity and not as representatives of groups or organizations.

The Expert Panel on Access to Historical Census Records has been asked to recommend by May 31, 2000, an approach which seeks to balance the need to protect personal privacy with the demands of genealogists and historians for access to historical census records by:

- examining the elements of the difference of opinions between Canadians who would seek to maintain the protection of personal information, and those who would like to examine personal or community histories.
- determining what options exist to provide access to historical census records.

The members of the Expert Panel are:

- Richard Van Loon, President, Carleton University
- Chad Gaffield, Director, Institute of Canadian Studies and Professor of History, University of Ottawa
- The Honourable Gérard La Forest, retired Supreme Court Judge
- The Honourable Lorna Marsden, President and Vice-Chancellor, York University
- John McCamus, Professor of Law, Osgoode Hall Law School, York

University

To find out more about the Expert Panel on Access to Historical Census Records, please visit the web site at www.statcan.ca.

For further information, please contact:

Jennifer Sloan
Press Secretary
Office of the Minister of Industry
(613) 995-0001

Pamela White
Secretariat
Expert Panel on Access to Historical Census Records
(613) 951-3255

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Census

Terms of reference

Expert Panel on Access to Historical Census Records

The inability to access individual census returns for censuses taken after 1901 has generated considerable public debate and interest over the past several years on the part of genealogists, historians and archivists.

Canada's census records up to and including the 1901 Census are publicly available through the National Archives of Canada. The legislation authorizing these censuses did not contain confidentiality protections having the force of law. In accordance with the regulations under the *Privacy Act* these historical censuses were released to the National Archives 92 years after the collection date and made available to the public. Access to these early census records has permitted the analysis of past personal and community histories by genealogists and historians.

The *Privacy Act*, however, also stipulates that where other acts provide specific protection to personal records, the provisions of such other acts must prevail. It is this provision which, according to a legal opinion received by Statistics Canada prevents the release of the post-1901 Census micro records. In fact, the 1911 and later censuses were taken under a legally valid guarantee that the information would not be shown to any other person. Moreover, these legislative stipulations have no time limitation.

The Expert Panel is asked to report to the Minister Responsible for Statistics Canada, the Honourable John Manley by May 31, 2000 regarding the legal, privacy and archival implications of providing access to historical census records. It is asked to examine the following issues:

1. **What are the elements of the difference of opinions between Canadians who would seek to maintain the protection of personal information and those who would like to examine personal or community histories?**

On the one hand, the assurance of confidentiality of individual responses to the census was a promise made by the government to Canadians at the time of the 1906 and subsequent censuses and it is, apparently, a legally binding commitment. Furthermore, the legally binding assurance of confidentiality is an important element of public communication every time Statistics Canada asks Canadians to respond to the census or to any one of the Agency's surveys.

On the other hand, the public release of census information some 92

years after collection would allow historians, researchers and genealogists to shed light on personal and community histories of Canadians. The National Archivist has declared that Canada's census is a national treasure which must be preserved. It may well be that Canadians' sense of privacy would not be threatened by the imposition of time limits on the promise of confidentiality protection.

2. What options exist to provide access to historical census records?

Statistics Canada has already developed two options: the first option contemplates amending the *Statistics Act* to allow records, starting with the 2001 Census and carrying on from there, to be transferred to the National Archives of Canada to be subsequently made available to the public; the second option is to retroactively change the confidentiality provisions of the *Statistics Act* to the 1911 and all censuses taken thereafter to be eventually placed in the public domain. Either of these options have implications that the Panel is asked to explore. A third option that others have identified would involve securing informed consent.

Finally having considered the issues and options, the Panel is asked to recommend an approach which seeks an appropriate balance between the need to protect personal privacy and the demands of genealogists and historians for access to historical census records.

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**[Algonquin Nation Secretariat submission
to Expert Panel on Access to Historical Census Records, 8 February 2000.]**

Ms. Pamela White,
Secretariat,
Expert Panel on Access to Historical Census Records,
25th Floor, RH Coats Building,
Statistics Canada,
Ottawa, Ontario,
K1A-0T6.

February 8, 2000

Re: Access to Federal Census records.

Dear Ms. White,

This letter is intended as a submission to the Expert Panel regarding access to historical federal census records.

By way of background, the Algonquin Nation Secretariat represents the rights and interests of three Algonquin First Nation communities located in northwestern Quebec: Barriere Lake, Wolf Lake, and Timiskaming. There are a number of reasons why census records are of particular value to the member Bands of the Algonquin Nation Secretariat, and why access to them is important.

Our members are in the process of documenting their history, for community purposes, and also to conform to the requirements of federal land claims policies; in particular, the Comprehensive Claims policy.

The Comprehensive Claims policy contains specific criteria related to proof of use and occupancy, and proof of community continuity through time. Our three member communities must meet these criteria to demonstrate that there is a factual basis for negotiations related to Algonquin Aboriginal title.

Unfortunately, surviving records relating to these issues are rare. Until well into the 20th century, the Algonquins of Abitibi Temiscamingue lived in what were regarded as unorganized districts, meaning that there are few if any government records relating to them - with the notable exception of census returns. Many of the communities rarely even received visits from the Indian Agent - except at census time (in this part of Quebec, the early censuses were often conducted by the local Indian Agent).

With the exception of Timiskaming and Maniwaki, the Department did not maintain Band lists for the Algonquin Bands of the area until 1951, which makes the collection of genealogical data very difficult. Most communities never resided on a reserve, adding to the lack of Indian Affairs documentation relating to their affairs.

As we have indicated, DIAND's Comprehensive Claims policy requires evidence of community continuity through time - in terms of membership and in terms of land use & occupancy. In the absence of Band lists and other Departmental files relating to their history, the census records are one of the only sources we can turn to meet these tests.

The 1901 census, for example, has proven to be a treasure trove of very detailed data on identity, occupancy, language, occupations, etc. From this we can tell who was living where, with who. A thorough review of the 1901 census, combined with previous census returns, mission records and the records of the Hudson's Bay Company, has enabled us to provide a clear picture of community composition, location, and membership at the turn of the century. This has been of inestimable assistance in the preparation of genealogical data and occupancy analysis.

However, lack of access to subsequent census records has presented us with significant obstacles in meeting the federal government's criteria for Comprehensive Claims with respect to the first half of the 20th century. As already mentioned, during this period Indian Affairs had very little contact with most Algonquin Bands. By this time, the fur trade was on the wane, and not much information is contained in their records, where they exist at all. Therefore, the census records increase in importance as a potential source of material.

The most significant gap is between 1901 and 1951 (when the federal government began keeping regular Band lists of Algonquin communities). Of particular interest, from our point of view, are the census returns for 1911, 1921, 1931 and 1941.

We have enclosed some numerical results from census records collected by Indian Agents in Quebec, apparently for the 1921 census, to give you an idea of the richness of the data which they contain. You will see that for the Abitibi District, the list contains very detailed information for the watershed north and west of Maniwaki, indicating that the Agent went up the Gatineau to Barriere Lake, across to Grand Lac and over to Durnoine by canoe. It is clear that the Agent stopped at many camping places, occupied by specific Algonquin families. However, without access to the actual returns, we have no way of identifying those families.

We understand the challenge before the Expert Panel, which is to try and find a way of balancing concerns related to privacy with the legitimate needs of researchers. However, as First Nations, we bring another range of concerns to the discussion.

On the one hand, the federal government is one of the only agencies which holds information related to our history. As we have shown, this is particularly true with respect to census data, which, however, we are barred from reviewing in the period following 1901.

On the other hand, the federal government's policy criteria related to Comprehensive Claims requires us to provide detailed information related to genealogy and occupancy - which is contained in same the same census records which we are prevented from reviewing.

We should also point out that the Courts have found on numerous occasions that the federal Crown owes a fiduciary ("trust-like") duty to First Nations. It seems rather odd that the fiduciary would require certain information from the beneficiary, but at the same time withhold it - yet this is precisely the situation which our member communities find themselves in regarding the census records. The ancestors of the Secretariat's current members provided information to the census takers, but now the Bands are prevented from benefiting from that information, even if it is to satisfy policy criteria developed by another federal agency.

It is important to highlight the fact that we are not pressing for complete access to all census records for all years. We are simply requesting access to census records which relate to our member communities and their ancestors.

The Expert Panel may want to take a look at the measures that were taken in connection with the federal Access to Information and Privacy legislation which was adopted in the 1980's. At that time, it was acknowledged that the requirement for privacy had to be balanced with the need to provide access for legitimate purposes.

It was also acknowledged that Native researchers had particular needs, many of them the direct result of the federal government's own land claims policies. To balance these interests, a specific provision - 8(2)k - was included in the relevant legislation to provide an opportunity for specific requests from Native researchers to be considered. This did not provide blanket access, but simply provided a structured mechanism for research requests to be assessed, and, if required, for conditions to be attached to access.

We believe that such an approach may be of some benefit to your deliberations on this issue as it relates to historical census records. At the same time, you should consider the implications of the federal Crown's fiduciary duty to the First Nations, since it would seem that this also has some bearing when First Nations request the release of relevant information for legitimate purposes.

Hopefully these comments will be of some assistance to the panel in their work, and we want to thank you for the opportunity to voice our concerns. If you require any clarification, please do not hesitate to get in touch.

Yours truly,

Peter Di Gangi, Director,
Algonquin Nation Secretariat

c.c. Grand Chief Carol McBride, Timiskaming
John Leslie, Chief, Claims & Historical Research Centre, DIAND

Attachment.

Excerpt from NA RG10 Vol. 3161 File 365,009-2A re: 1921 Census.



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2000 05 31

The Honourable John Manley, P.C., M.P.
Minister of Industry
Room 607 Confederation Building
House of Commons
Ottawa, Ontario K1A 0A6

Dear John:

I am writing as Chair of your Expert Panel on the release of historical census data.

The Panel has essentially completed its work and is conducting the final preparations of the report. However, given the requirements for formatting, translation and the like we will not be able to submit the report to you by May 31 as we had originally hoped. We will be able to submit by the end of June and we hope and trust that this delay will not create problems for you and the Government.

I will be in touch with you again prior to our final submission.

We thank you for your patience in this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Richard J. Van Loon'.

Richard J. Van Loon
President

c.c. Panelists
P. White, Secretary

Subject: RE: Expert Panel re: Census records

Date: Thu, 14 Sep 2000 10:35:38 -0400

From: "White, Pamela - DACS/SACD" <pamela.white@statcan.ca>

To: "digangi@sympatico.ca" <digangi@sympatico.ca>

CC: "Morton, Joann - ASD/DSC" <joann.morton@a.statcan.ca>

Dear Peter Di Gangi:

Your e-mail of September 11, 2000 was forwarded to me for reply. The Report of the Expert Panel on Access to Historical Census Records was sent to The Honourable Mr John Manley, Minister Responsible for Statistics Canada, on June 30, 2000. Mr Manley is now examining the Report and once the Report is made public it will be posted on the Statistics Canada web-site at www.statcan.ca.

Yours sincerely,

Pamela White
Director, Data Access and Control Services Division
Statistics Canada

.-----Original Message-----

From: Morton, Joann - ASD/DSC

Sent: September 11, 2000 12:53 PM

To: 'digangi@sympatico.ca'

Cc: White, Pamela - DACS/SACD

Subject: *X* RE: Expert Panel re: Census records

Your inquiry has been forwarded to our Access to Information section for follow up.

Thank you!

-----Original Message-----

From: Peter Di Gangi [<mailto:digangi@sympatico.ca>]

Sent: Monday, September 11, 2000 11:36 AM

To: Comments

Subject: Expert Panel re: Census records

The following was committed to the English WWW Comments form:

From: Peter Di Gangi <digangi@sympatico.ca>

Date: Mon Sep 11 11:36:25 EDT 2000

Using: Mozilla/4.7 [en] (Win98; I)

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Good morning. I am Director of the Algonquin Nation Secretariat, which represents three Algonquin communities in NW Quebec. We have been following with interest the work of the expert panel on CEnsus records, and in fact, we submitted a brief to the panel some months ago. I was writing to find out when you expect that the panel's report will be made public? Thanks, Peter Di Gangi, Director, Algonquin Nation Secretariat.

