



## The Release of Canada's Historic Census

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### **Abstract**

*From 1998 to 2005 historians, genealogists and researchers from across Canada fought a long battle to preserve a critical component of Canada's history – the original records of Canada's historic censuses. Exaggerated privacy concerns rooted in the Statistics Canada confidentiality promise were about to force the destruction of the archival records of the 1911 and subsequent Canadian censuses. Lorna Milne, who is both a federal Senator and an amateur genealogist, helped lead the fight in Parliament to defend them. In her paper Senator Milne provides an inside look at the political struggle to enshrine in law both the preservation of this key historical record and public access to it. She also draws conclusions on how genealogy and local history librarians and researchers, as well as librarian advocates for access to information, can succeed in similar battles in other countries.*

As many of you are aware, from 1998 to 2005 historians, genealogists and researchers from across Canada fought a long battle to preserve a critical component of Canada's history – the original records of Canada's historic censuses.

I want to provide you with an inside look at the battle that was fought to ensure the safety of this key historical record. It is a story of frustration, bureaucratic intransigence, and an army of grey-haired volunteers from across Canada. As a Senator in the Canadian Parliament I had the honour to help lead the fight for the release of the census. And it is an insider's perspective from up on Parliament Hill that I want to share with you.

I am an amateur genealogist and like most genealogists, medical researchers, demographers and historians, I rely heavily on the use of the historic census records in Canada, the United States and the United Kingdom to conduct my research. Census records are a unique snapshot into the lives of ordinary Canadians. In fact, they are the only public record of individual Canadians in their family groups. Although other records may have one or two relatives mentioned in them (such as a birth certificate or marriage record), no document exists that can touch the historic census for recording the lives of Canadians in their family groups.

In the early 1900s, Canada's population was well over 90 per cent rural and much less mobile than we are today. Most rural families lived in the same place for generations, and census records provided critical clues for those looking for their ancestors. It is even possible to look at these records county by county and build family trees by looking at the entries for adjacent farms. Young men did tend to marry the proverbial 'girl next door'. These census records provide critical clues for those hunting for their personal history.

For decades the Canadian government regularly released historic census records 92 years after the date of the census. But in 1998 I learned that the government had decided that it would refuse to release the 1906 census on the basis that privacy guarantees had been given to Canadians at the time that would prevent the census from being released.

This troubled me for a number of reasons. The 1906 census was only an interim census, the first that was not scheduled on the usual ten year cycle, a so-called 'Agricultural Census' taken because it would be the first opportunity to record the population of the Canadian prairies and the brand new provinces of Alberta and Saskatchewan, newly formed in 1905 and heavily populated by new immigrants from eastern and northern Europe.

In addition, the 1911 census, the next complete census of all of Canada was also the last to be taken before so many thousands of young Canadians died in the trenches overseas during World War I. They died in the muddy trenches of France and Flanders, and thousands of their bodies were never identified or even recovered.

Another exacerbating factor was the deep rooted suspicion among many Canadians with Ukrainian ancestry that the new 'secret forever' approach to the historic census data was a deliberate attempt by the government to hide the fact that so many Ukrainian men were locked up in concentration camps during that war --- an attempt to exonerate the government for that bleak chapter in Canadian history.

I thought that the refusal to release the 1906 and all subsequent censuses was a simple bureaucratic glitch and would easily be corrected. After all, Canada had already released all its census records back to the very first census taken here 235 years earlier. As I am sure you all know far better than I, the USA releases its historic census

72 years after it was recorded, and makes quite a splash about the release, parading the actual forms across to the National Archives. Great Britain releases theirs after 100 years and Canada has always released our census after 92 years.

But for Statistics Canada this was no laughing matter. Statistics Canada has staked quite a bit of its reputation on the fact that information that it gathers from a wide variety of sources is kept strictly confidential and only released in the aggregate. In the case of the historic census they relied on a strict interpretation of the 1918 Statistics Act that, in part, stated in section 15:

*No individual return, and no part of an individual return made, and no answer to any question put, for the purposes of this Act, shall, without the previous consent in writing of the person ... be published.*

I eventually learned that the Department of Justice had told Statistics Canada, based on this section of the Statistics Act and a small number of other pieces of information, that the historic census was subject to privacy protection and could not be released.

However that analysis from the Department of Justice was fundamentally flawed. I did not know this at the time, but in its original evaluation of this issue, the Department of Justice was not given access to the instructions to Census takers that governed the 1906 census. Section 34 of those instructions stated:

*The enumerator is required to make all entries on the schedules in ink of good quality, and every name, word, figure or mark should be clear and legible. If a schedule can not be read, or if the entries are made with a poor quality ink, or in pencil, or if they are blurred or blotted, the work of the enumerator may be wholly wasted. The census is intended to be a permanent record, and its schedules will be stored in the Archives of the Dominion.*

It is quite clear that the secrecy provisions were meant to restrain the census takers of the time from repeating any of their neighbours' private information. There was no mention of perpetual secrecy in any record of Hansard, the record of parliamentary debates, of the time, nor in any in any other contemporary documents or newspaper reports. None whatsoever, and the Library and Archives have done an intensive search for any such evidence.

For me, nothing could be clearer than that last sentence in the instructions to enumerators. It was common knowledge in those days that all materials in the Archives were available for the public to view. The Archives of the Dominion have always been the repository of Canada's history – not a place where critical historical documents go to die. It is a clear legal principle that seemingly conflicting laws must be interpreted in such a manner as to synchronize them. My reading of the competing laws was quite simple: discretion and secrecy in the short run, and open historic research in the long run. Unfortunately it was an opinion that was not shared in official Ottawa.

My initial discussions with Statistics Canada went nowhere. They had decided that their hands were tied and since discretion was fundamental to their public credibility they would firmly oppose releasing the 1906 census and all censuses after that.

The battle was on.

There were two distinct fronts to this battle. While I was waging war on the floor of the Senate and inside the caucus of my party, two retirees had taken up the battle and formed a lobby group to put pressure on the government.

Doing the background research, introducing an Inquiry in the Senate Chamber, writing a bill to introduce in Parliament, and my ever on-going discussions with the National Archivist, the Privacy Commissioner and the head of Statistics Canada took up the entire spring, summer and early fall of 1999. I tabled my bill for First Reading in the Senate of Canada in December of 1999. It not only amended the Statistics Act but also the National Archives Act to ensure that Statistics Canada would be forced by law to turn their data over to the Archives for every past and future census.

Introducing the bill in Parliament was critical to my efforts to put pressure on the Chief Statistician, Dr. Ivan Felegi, and John Manley, the Minister of Industry, who was responsible for Statistics Canada. Each time the bill progressed a little further in the Senate it would put more pressure on the government to at least respond to my concerns, if not act.

The first cabinet minister to look at this issue was John Manley. In response to my bill Minister Manley appointed an Expert Panel in the fall of 1999 to look at the issue of the release of the historic census and provide recommendations. The panel included Professor Chad Gaffield of the University of Ottawa, Professor John McCamus of Osgoode Hall Law School, the Hon. Gerard La Forest, retired Justice of the Supreme Court of Canada, and the Hon. Lorna Marsden, President and Vice-Chancellor of York University. It was a group that appeared at first glance to be rather biased against opening up the census data.

So for the better part of a year I pushed my bill through the various stage of debate in the Senate while the expert panel did its work. It was a time of quiet plodding.

Meanwhile, the group led by those two retirees was not so quiet. Muriel Davidson, a feisty octogenarian from Brampton, Ontario, and Gordon Watts of Port Coquitlam, British Columbia, got in touch with a group of historians and genealogists from across Canada and eventually formed the Canada Census Committee (the CCC). Gordon kept up the public pressure through his website and writing. Muriel had just recently discovered computers and the internet. She quickly became expert in its use to keep in touch with her many genealogical groups, newspaper friends and contacts across the country to organize petitions to parliament. Hardly a month went past without my presenting several petitions in the Senate, while Murray Calder, MP for Wellington Grey did the same in the House of Commons.

Gordon also kept a 'Census Scoreboard' on his website, listing which MPs were in favour of the bill, who was against it and which ones were still on the fence. Soon many of parliamentarians were keeping a close eye on the scoreboard, because those who were still on the fence were constantly being contacted by irate constituents.

I must add here that I later discovered that the previous Archivist had "signed off" on the destruction of the historic census data. It was only because my bill was 'a matter before parliament' that Dr. Ian Wilson, our new National Archivist, could argue that destroying them would be in 'contempt of parliament' and so was able to stop such wanton destruction. We came so close to losing these invaluable historic records forever!

I finally saw the report of the Expert Panel in August 2000 and its conclusions were stark. The panel was "persuaded that perpetual confidentiality was not likely either assumed or intended by lawmakers." I was pleasantly surprised. I thought that this would certainly press the government into quick action, and to an extent it did. Minister Manley ordered Dr. Felegi to sit down with me and reach a compromise.

While negotiations were ongoing with Dr. Felegi, my bill moved at a snail's pace through Senate. Although it was approved in principle, I was still waiting for the Standing Senate Committee on Social Affairs, Science and Technology to hear witnesses on the bill when November 2000 rolled around and Prime Minister Jean Chretien called an election. Fortunately for my census cause he won, and the Liberals were back in power. But this is where I ran into a very serious setback. Although my party again formed the government, Prime Minister Chrétien chose to shuffle his Cabinet. John Manley was out and Brian Tobin became the Minister responsible for Statistics Canada. All of the progress that had been made on my bill was lost and I would have to start all over again.

In February of 2001 I reintroduced my Private Senator's bill and started in on the process of educating a new minister. This would have usually been a fairly quick process of updating a colleague on what was going on in one of his new files. But even with the report of the Expert Panel clearly stating that the documents should be released, Dr. Felegi took the opportunity of a new minister being on the job to consolidate his original position and negotiations went nowhere.

This certainly surprised me because Minister Tobin was a Newfoundlander. When Newfoundland joined Confederation in 1949, all their census records were transferred to 'the Archives of the Dominion of Canada' from Great Britain and were almost immediately made public. This meant that in 1951 anyone could access the Newfoundland census taken in 1941, just a decade earlier without waiting for another 82 years.

I want to emphasize here that this extremely early release of census data has never produced any complaints about invasion of any individual's privacy. In fact there have NEVER been any complaints about the release of the historic census data in Canada, in the USA or in Great Britain.

With both Dr. Felegi and me entrenched in our positions, my private bill plodded along.

In October 2001 the Senate Committee began hearings on my bill. Dr. Felegi did not appear in person but sent his officials from Stats Can. When asked, the officials agreed to provide the committee with all the legal opinions they had received about the release, since they had constantly referred to them during their testimony. What an unprecedented bonanza of information that turned out to be. You must understand that legal opinions provided to departments by the Department of Justice are NEVER made public. However any document received and tabled by a Standing Committee of either the House of Commons or the Senate is ALWAYS on the public record.

It was as a result of this release of information that we were finally able to understand that the Department of Justice had not taken into account the instructions to enumerators when determining whether the census could be made public.

I was furious, and I demanded that the government take immediate action to release the records. In the face of all of this, Minister Tobin decided that more work had to be done, and he set up a series of public consultations to determine what actions the Canadian public could swallow.

The CCC sprang into action, with local members attending the meetings and reporting on just what happened. The participants in each of ten capital cities across the land let those in the next city just what to expect. As it turned out, those town Hall meetings were completely dominated by very vocal participants demanding that the census be released, and some of the stories they told on the public record were heart-wrenching. How families had been united after years of separation or how orphan children sent off to Canada from Great Britain had only been able to find their roots and sometimes get in touch with living relatives through use of the historic census. The outpouring was so completely one-sided that the organizing company was reduced to privately pleading with known privacy advocates in each city to attend and voice the other side of the story. Eventually the group running the consultations had no choice but to release a report that generally supported the release of the records.

But just as momentum had built up again, political life twisted once again. In January 2002 Brian Tobin decided that he could no longer remain in public life and resigned from Cabinet. Alan Rock was chosen to replace him as industry minister, now my third minister on the file. The merry-go-round continued. Once again Dr. Felegi reverted to his original position, and once again I had to fight to make my own colleague understand how wrong he and Statistics Canada were. This was even more difficult to understand since we now had been clued-up to the fact that Dr. Felegi himself had been informed as far back as **1981** that Stats Can was required **by law** to release the historic census to the National Archives.

Once again I spent another year plodding back up the same hill that I had climbed twice before. This time I managed to get a little further.

The Senate Committee studying my bill approved it. And after dozens of meetings, phone calls, briefings, much arm twisting, and more than a few thousand emails and faxes from the CCC to the minister, Minister Rock promised me that he would present a solution to cabinet. Once it became clear that the Minister had made up his mind that we were right, there was great upheaval behind the scenes. I have heard that all during the summer and fall of 2002 a battle royal went on between the Library and Archives Canada and Statistics Canada on just how the 1906 census should be released, and what kind of limitations would be put on other releases. That fight took months to resolve.

Finally in December 2002 a joint Cabinet meeting approved Minister Rock's proposal for the release of the 1906 census. The matter was put on Prime Minister Chretien's desk for approval, which finally happened in January 2003.

January 24<sup>th</sup> 2003 was a day of great jubilation, but also another setback. The 1906 census was released to the Canadian public in its entirety. It was on-line and available for research around the world. Also the government introduced a bill to govern the release of census records in the future. Genealogists were elated, and hundreds of people emailed me to express their jubilation.

But the release of the 1906 census came with a poison pill.

To settle the battle between the National Archives and Statistics Canada, a number of concessions were made in order to allow the census to be released. Among them were the requirements that historians have their research peer reviewed before they could see the census schedules; genealogists were limited to researching their own family or the family of those people from whom they received consent; and only publishing so-called 'tombstone' type data for another 20 years. Local historians would have to have their research approved by an MP or Senator or other community leader. Everyone accessing the data would have to sign a form agreeing to these restrictions, so I can only imagine the burden this would place, not only on the Archives but on every librarian in Canada. The historic censuses would become open to everyone with no restrictions at all after that arbitrarily chosen additional 20 years. It also required that future censuses would ask each individual for their permission to release their personal information after 92 years, and only those returns where permission was granted would be released. I accepted these concessions very reluctantly, believing that they were the only way that the historic census would ever see the light of day.

The reaction from the CCC lobby group that had been so loyally in my corner was swift and harsh. They were not at all pleased with the restrictions. Some called me a sell-out and a liar. Some thought I was just another politician who could not be trusted. It was a painful period because I knew that I had done all that I could. I believed at the time that these concessions were absolutely necessary. But no matter how many times I explained this to the thousands of genealogists and historians who had been backing me, they could not see why they would have to settle for anything less than perfection.

Of course I knew they were right and I was already working behind the scenes to amend the bill to remove the most egregious parts. Initially I was told that the government would allow amendments to go through and that, if I could convince my Senate colleagues that amendments were necessary, Cabinet would not stand in my way. But as soon as I started to speak publicly about amending the bill, Minister Rock did an about face and said that he would oppose amendments because he thought we had a deal.

So I suddenly found myself between Minister Rock and a hard place. The Minister was mad at me for reneging on a deal, and genealogists and historians were furious with me because they were only getting half a loaf. I spent all of 2003 trying to find a way to get the bill amended to deal with the unacceptable conditions that it contained. Relations between Minister Rock and me deteriorated dramatically. His office wouldn't return my office's calls. There was no coordination of effort whatsoever.

Meanwhile, Muriel Davidson, my neighbour in Brampton, kept the petitions pouring in. In the end I presented petitions with over 26,000 signatures to the Senate of Canada and arranged for about the same number to be presented in the House of Commons. It was an extra-ordinary campaign, not only through presenting endless petitions, but through contacting individual MPs and Senators by fax and e-mail to keep the pressure on.

When the bill had passed second reading in the Senate and moved on to committee, Terry Cook, a retired and highly respected former civil servant and senior advisor to the National Archives, proposed three amendments to the Committee and it quickly became clear that the members of the Committee were deeply divided on the issue. His clear and sensible amendments were defeated in committee. When the bill got to third reading in the Senate it was the subject of even more heated debate pitting the advocates for privacy against those who agreed with the release of the data.

Fortunately (in hindsight) although the bill did pass the Senate and debate had started in the House of Commons, political fate intervened again. Mr. Chretien retired and Paul Martin was elected leader of the Liberal Party. Canada's parliament was prorogued, thus killing the bill before it could be finally approved.

So we were back into familiar territory in January 2004 when Prime Minister Paul Martin unveiled his new cabinet. We had been able to secure the release of the 1906 census, but the release and even the safety of all future censuses was still in doubt. I had a new minister to deal with who had to be brought up to speed. And I knew very well that that Dr. Felegi again would retrench his position and try his very best to ensure that the records would never be released.

Lucienne Robillard had been appointed Minister of Industry and her staff did an admirable job getting her up to speed. She was quite sympathetic to the census cause, but the first 5 months of 2004 were focused on getting Prime Minister Martin's government up and running in preparation for a possible election. The matter of the



historic census was on the back burner and I did not find much more than a sympathetic ear from the new minister.

In July 2004, after the Martin government had been elected, David Emerson took over as the fifth minister responsible for this file, and he turned out to be my favourite. From the outset Minister Emerson took a much different approach. He firmly supported the release of census records right from the beginning and he was willing to move the machinery of government behind the cause. He was willing to tell Statistics Canada exactly what was going to happen, and able to make them live up to it.

The Minister agreed to remove virtually all of the restrictions to access to the historic census records. The only remnant of the restrictions from Alan Rock's bill that would remain was the requirement that on future census forms people would have to choose whether or not to allow their returns to be released after 92 years. This was absolutely essential if the bill was to receive Cabinet approval. But even this proposal bothered me greatly. If too many people opted out of ever releasing their own historic record, the census would become a useless research tool. But without that provision, I was reliably told that Cabinet would refuse to back a bill that would settle this issue once and for all.

I proposed that the bill also contain a provision so that the 'opt in' provisions would be reviewed after two censuses. That proposal was rejected out of hand by both Statistics Canada, and by the Minister's staff. But there is a reason why it is politicians and not bureaucrats who have responsibility in the Canadian political system. Minister Emerson agreed to put the review provision in the proposed bill, finally giving us a government bill that I could fully endorse. Not only that, he persuaded Dr. Felegi to agree to an intensive advertising campaign to educate Canadians why it was so important that they allow the eventual release of their census data.

In October 2004 the bill allowing for the release of census records was introduced in the Senate. And after 8 months of debate and discussion in both houses of parliament, on June 28, 2005 the historic census records were permanently protected in law, seven long years after the battle began.

Some victories are very sweet. That vitally important data from the 1911 historic census, the only existing official record of so many of those fine young Canadians who died in France and in Flanders during the First World War, was released later the same year, only two years behind schedule.

Although we were opponents all through this drawn-out battle, I must say in Dr. Felegi's defence that he is a highly regarded statistician and has received awards for the excellence of Statistics Canada's data from around the world. He was particularly concerned about the issue of perpetual privacy because there is absolutely no question that many of the questions that the one in ten households in Canada which receive the 'long form' of the more recent censuses, and are required by law to answer, have become increasingly more intrusive over the years. He has just recently retired with high honours from Statistics Canada.

To sum up; what can we learn from this entire sorry story?

1. The census is one of most valuable tools that researchers in so many different fields can have.
2. Countries must protect and eventually make census records public. Even countries such as Australia that have traditionally destroyed their census records have come to realize belatedly the historic value of this data.
3. The internet is one of the most powerful motivators the world has ever known. It can be a remarkable force for either good or bad.
4. Editorial support in various national newspapers helped a great deal, and;
5. An army of eager volunteers is essential for a cause such as this.

However the battle is not yet over. Statistics Canada did not follow through with its promise of an intensive advertising and educational campaign. As a result, only 50% of respondents filled in the 'opt-in' check-off box. In addition anyone who lived in a group home, a nursing home, a jail or any other large institution was not even given the option of deciding for themselves. None of them could consent to later public access to their records. This means that future access to these records will always be incomplete and perhaps not even statistically valid. Only 50% of future genealogists will be able to find their ancestral families when the 2006 census is released in 2098.

Also, I am uncertain about the accuracy of the present census data as far as our aboriginal population is concerned. I know that the entire Six Nations Reserve in southern Ontario near Brantford (at best estimate about 6,000 people) has traditionally refused to take part in the census. I do not know how many other reserves or bands across the country take the same attitude. I do know that the historic census data is absolutely essential to anyone who is of Metis descent and wants to be able to prove that fact.

As I said, the battle continues, but that is life in politics. Sometimes you plod along. Sometimes there are setbacks. But with determination and perseverance you can still achieve great things.