



July 28, 2010

Via email: [minister.industry@ic.gc.ca](mailto:minister.industry@ic.gc.ca)

The Honourable Tony Clement, P.C., M.P.  
Minister of Industry  
C.D. Howe Building  
235 Queen Street  
Ottawa, ON K1A 0H5

Dear Minister:

**Re: Mandatory Long-Form Census Questionnaire**

I am writing on behalf of the Canadian Bar Association to join the growing list of statisticians, academics, economists, business associations, minority language associations and others who are raising concerns about the government's recent decision to abolish the mandatory long-form census questionnaire. The CBA's mandate includes improvement in the law and the administration of and access to justice. From this perspective, we have serious concerns about the impact of the proposed change to the census for public policy and for individual Canadians.

**Justice for Individual Canadians**

Census data is used extensively in personal injury claims. The information is particularly important in major loss cases involving injured children, and is the source of much of the consensus of opinion among experts on quantum of loss of future earnings. It is also used in claims involving young to middle aged adults without a long work histories, and women who, for various reasons, may have absent or hard to interpret work histories. The fact that census data is gathered by a neutral body through a mandatory questionnaire is one of its strong points in court. Judges are more willing to accept census data over information gathered through industry or professional associations. Precisely because the long-form census survey is mandatory, courts needn't worry about perceived or real response bias in the information.

**Good Public Policy**

In many of our past submissions we have urged the government to make a fact-based assessment of the costs and benefits of proposed laws, noting the existence of Statistics Canada data to assist in this analysis. For example, in 2008, we urged your government to extend maternity and parental leave benefits to the self-employed, and commissioned an economic report demonstrating the very reasonable expenditure for the program. This study was based, in part, on Statistics Canada long-form census economic data. We were pleased to see the government adopt these changes in 2009.

Because of the large sample size and the mandatory response requirement, the census long-form questionnaire provides rich data about Canadians, facts that are reliable both on the local level and nationwide. If responses are voluntary, sample size and representativeness will be affected. A voluntary survey is unlikely to yield similarly high quality information across sub-groups of the population and geographically. The circumstances of indigenous peoples, recent immigrants, visible minority groups, persons with disabilities, and other vulnerable segments of the population are less likely to be reflected reliably in voluntary data. Data on use of official languages may be too small to be statistically reliable, particularly in areas where English or French is spoken by a minority of the population. Even when governments conduct other surveys, they rely upon census data to ensure representativeness.

Without statistically reliable long-form data we will be unable to determine important information about official language use, employment, education, immigration, housing and income levels.

Empirical facts about these dimensions of Canadian life are necessary for government to make the best policy decisions possible about access to justice, the rule of law and conditions affecting the justice system, the legal profession as well as Canadian residents generally. The long form census provides not just good information for academic interest but also tools that support and facilitate the operation of Canadian democracy. Without solid census data, it will be hard for governments, advocacy groups, service providers and health districts to respond effectively to people's needs or to introduce appropriate changes.

The legal profession has also benefitted from the work of experts who use this statistical data to sketch out the demographics of the legal profession and the accessibility of legal education and the profession to those from diverse communities.<sup>1</sup> This data is necessary to assess how the profession reflects the community we serve, and assess our continuing efforts towards diversity and inclusion.

### **Privacy Protection**

Confidentiality of census responses is mandated by the *Statistics Act* and there have been very few complaints to the Privacy Commissioner about the census in the last decade. The questions are intrusive on their face, but necessary for many reasons, and responses are kept confidential. Any privacy concerns can be readily addressed by revising the process, rather than abolishing the long form entirely.

We ask that you engage in thorough consultation with statistical experts about the ramifications of this decision before taking decisive steps to implement it.

Yours very truly,

*(Original signed by D. Kevin Carroll)*

D. Kevin Carroll, Q.C., L.S.M.

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<sup>1</sup> See, for example, the April 2010 report by Professor Michael Ornstein for the Law Society of Upper Canada entitled, "Racialization and Gender of Lawyers in Ontario" ([http://www.lsuc.on.ca/media/conyapril10\\_ornstein.pdf](http://www.lsuc.on.ca/media/conyapril10_ornstein.pdf)). An analysis of available census data on lawyers was also used to inform the CBA's report, *Crystal Clear: Strategic Directions for the CBA* (Ottawa: Canadian Bar Association, 2006), online: [http://www.cba.org/CBA/futures/pdf/crystalclear\\_2006.pdf](http://www.cba.org/CBA/futures/pdf/crystalclear_2006.pdf)