



**SUBMISSION TO THE PRINCE EDWARD ISLAND
ELECTORAL BOUNDARIES COMMISSION**

On behalf of the City of Charlottetown, His Worship, Mayor Clifford Lee

September 7, 2004

TO: Mr. Justice John McQuaid, Chair
John Mitchell, Q.C., Commissioner
Roberta Hubley, Commissioner
Electoral Boundaries Commission
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I. INTRODUCTION

The following supplementary written submission is in response to the Proposed Provincial Electoral Districts Interim Report (“Interim Report”) of the PEI Electoral Boundaries Commission (“Commission”).

The City is pleased to report that on August 9th, 2004, the City of Charlottetown (“City”) unanimously adopted a resolution endorsing the proposed Provincial Electoral Districts Interim Report.

The City endorses the Commission’s 17 enumerated goals, principles and facts, as well as its stated reasons for the proposed revisions. Specifically, the City shares the Commission’s respect for the goal of maintaining “relative parity in the number of electors in each district,” but also respecting the basic constitutional “right of individual electors to effective representation in the Legislative Assembly and their right to play a meaningful role in this electoral process.”

The City shares the opinion of the Commission that “if the deviation from absolute equality interferes with the right of a citizen in one part of the province to effective representation, in the sense that it dilutes their voice in deliberations of the Legislature or reduces access to their representative, the deviation is not justified and the citizen’s constitutional right to vote is violated.”

The City agrees with the Commission’s interpretation of relevant authorities, “that any deviation from the electoral quotient must be justified,” and that Constitutional principles impose upon us and the Legislature, the burden of minimizing any variation or deviation, wherever possible.” Quite simply, to countenance any recommendation that does not support these principles would be unconstitutional.

The City shares the Commission’s view that having seven City districts would allow for the City’s continued rate or pace of growth, while avoiding an inequitable situation whereby City’s electoral districts’ plus or minus deviations from the electoral quotient could not be said to provide effective representation and meaningful participation in the electoral process.

The City also submits that based on geographic features, communities of interest, existing GIS mapping technology, common Canadian districting practice, and considering PEI’s unique size and population density profile, the Commission should recommend that the Province lower the existing threshold variance as permitted by the *Electoral boundaries Act* (“Act”), to plus or minus 15%.

II. Charter of Rights and Freedoms

The City endorses the Commission’s detailed and thoughtful analysis of applicable *Charter* Jurisprudence, and highlights the following for the Commission’s further consideration:

- The right to vote is enshrined in Section 3 of the *Charter of Rights and Freedoms* as one of the most basic rights in a free and democratic society. The Supreme Court of Canada has clearly established that **the right to vote for individual citizens entails not only the right to effective representation, but also the right to play a meaningful role in the electoral process** [See *Reference re Electoral Boundaries Commission Act* (1991), 81 D.L.R. 4th 16, commonly referred to as the “*Carter*” decision, and *Figueroa v. Canada* (Attorney General), [2003] SCC 37].
- In the *Carter* decision, the leading Canadian authority on electoral boundary reform, the Supreme Court of Canada held that **“Deviations from absolute voter parity may be justified on the grounds of practical impossibility or the provision of more effective representation [but that] beyond this, dilution of one citizen’s vote as compared with another’s should not be countenanced.”**
- Prior to but in keeping with the *Carter* decision, the Supreme Court of British Columbia in *Dixon v. British Columbia (Attorney General)* (1989), 59 D.L.R. (4th) 247, held that **deviations from absolute parity can only be permitted when justified on the ground that they contribute to better government, giving weight to regional and geographic issues within the territory governed.** The Court in *Dixon* also noted that **a plus or minus 25 % deviation from the electoral quotient was justified in British Columbia “given the vast and sparsely populated regions” found in that Province.**
- In *The City of Charlottetown v. The Government of Prince Edward Island* (1998) 168 D.L.R. (4th) 79, the court of appeal upheld an earlier trial decision which had held that the allowable plus or minus deviation of 25 % under Section 17 of the *Act* was constitutionally valid. However, in his dissenting opinion, Justice Mitchell stated, *inter alia*, that:
 - **The only valid considerations which can justify deviations from voter parity are those that are necessary to provide better government.**
 - **In the PEI context, the evidence does not support the conclusion that our rural districts are more difficult to serve than our urban ones.**
 - **The deviations among districts in the current map are not explained by the need to accommodate geographic barriers.**
 - **The county lines in P.E.I. do not demark the borders of any distinct communities of interest. As political divisions in this Province, counties are historical anomalies that ought to be abandoned rather than traditions that deserve preservation.**

III. Enumeration Data and Polling Divisions

The City endorses the Commission's present and intended approach to determining the number of electors in each district across the Province, and also endorses its position with respect to polling divisions from the most recent general election.

V. Geographic Features

The City agrees with the Commission's position that "there are no geographical features of the province which make it particularly difficult to lay out the area and boundaries of the electoral districts."

In this light, the City also encourages the Commission to re-consider the practical need for the Province to legislate a plus or minus 25% deviation from the electoral quotient. In *Dixon*, the need for such an extensive deviation was specifically supported by the "vast and sparsely populated regions found in British Columbia." By contrast, deviances of such magnitude in Prince Edward Island's electoral map can not be supported by any need to accommodate geographic barriers.

Accordingly, the City submits that, based at least on geographical features alone, maintaining a legislated deviation of plus or minus 25% would be inappropriate for this Province and a maximum deviation of plus or minus 15% is much more reasonable in a Prince Edward Island context.

VI. Population Patterns and Communities of Interest

The City endorses the Commission's position that the electoral map should, as much as reasonably possible, respect municipal boundaries. These boundaries truly represent existing communities of interest (unlike, for example, County lines).

The City continues to take the position that deviations by population in the present electoral map drawn from the Young Plan do not provide an adequate degree of protection for either the right to vote as enshrined in the *Charter*, or the right to "effective representation and meaningful participation in the electoral process" as recognized by Canadian jurisprudence.

The City also continues to take the position that the current map provides for over-representation of rural interests at the expense of representation of urban interests without justification, and is in violation of both the right to "effective representation," and "the right to play a meaningful role in the electoral process."

While there is no hard and fast definition of the term "communities of interest" listed in Section 7(1)(g) of the *Act*, common districting practice in both Canada and the United States informs that where possible, local governmental units should be used as district boundaries.

Decisions about electoral boundaries in Prince Edward Island have traditionally favored rural ridings as opposed to urban. Urban citizens are frequently under-represented in their Provincial and Federal Parliaments. Voting in such circumstances does not reflect a justifiable democratic purpose. Moreover, systemic over-representation of rural interests at the expense of urban interests, does not result in, or contribute to, “better government of the populace as a whole”.

Considering the foregoing, the City submits that, based at least on the factor of “communities of interest,” there is no justification for the present deviations that exist between districts, and that maintaining a legislated maximum deviation of plus or minus 25 % is unnecessary.

VI. Number of City Districts

The City endorses the Commission’s position with respect to the proposed number of City districts. The information available shows that, Island wide, the increase in the number of Provincial electors from 2000 to the 2003 was 3093.

At the City of Charlottetown level, the number of electors grew by 2928 over approximately the same time frame. Clearly, the City’s population is in a growth phase, relative to rural PEI, which reflects the rapid pace of the overall urbanization of Canadian society. Therefore, the City strongly urges the Commission to continue to recommend seven Provincial electoral districts wholly within Charlottetown.

Having these seven districts would allow for the City’s continued rate or pace of growth, while avoiding the situation where the City’s electoral districts’ plus minus deviation from the Provincial quotient are again driven beyond levels which reasonably, in a PEI context, be said to provide “effective representation” and “meaningful participation in the electoral process” to all of the citizen of the City and the Province.

VI. Districting Practice

The City endorses the Commission's proposed electoral map forming part of its Interim Report. By our calculations, **the Commission's electoral map achieves a mean percentage variance of 3.55 % for the 27 proposed districts. Moreover, all 27 districts have a plus or minus deviation below 10 %.**

DISTRICT #	DISTRICT NAME	% VARIANCE	ESTIMATED # OF ELECTORS
1	Tignish	-2.61	3,505
2	Bloomfield	-0.42	3,584
3	Inverness	-0.47	3,582
4	Evangeline	-1.08	3,560
5	Greenwood	-1.94	3,529
6	Le Furgey	-0.75	3,572
7	Wilmot	-0.22	3,591
8	Kensington	+8.95	3,921
9	Albany	+7.81	3,881
10	South Shore	+8.28	3,897
11	Cavendish	+8.89	3,919
12	Stanhope	+8.92	3,920
13	Cornwall	+0.31	3,610
14	Winsloe	-9.17	3,269
15	Belvedere	-4.39	3,441
16	Brighton	+0.06	3,601
17	Great George	-1.36	3,550
18	Parkdale	-1.42	3,548
19	Sherwood	+3.42	3,727
20	Hillsborough	-8.67	3,282
21	Stratford	-5.39	3,405
22	Pownal	-0.56	3,579
23	Hopefield	-2.47	3,510
24	Montague	+1.42	3,650
25	Martinvale	-2.42	3,512
26	Canavoy	-0.53	3,580
27	East Point	-3.97	3,456
AVERAGE % VARIANCE = 3.55			

The City also wishes to highlight that the Commission's results are consistent with accepted Canadian districting practice.

- In 1994, Dr. Theodore S. Arrington, Ph.D, expert witness for the City in *MacKinnon v. Prince Edward Island*, presented a boundary plan on behalf of the City. **By applying modern mapping technology, including GIS mapping, Dr. Arrington had no difficulty in following all of P.E.I.'s major hydrological features, keeping all of the districts relatively equal in proportion, and achieving an average deviation of plus or minus 1.2 %.**
- **In 1995, the Provincial Electoral Boundaries Commission's final report, which presented an electoral map with an average % deviation of 8.4%.**

- **In 2003, the City of Charlottetown passed a resolution to adopt the principle of a variance of no more than plus or minus 10% within the City's Municipal Ward Boundaries. In creating its latest electoral map, the City was successful in achieving deviations of less than 10 % for all Municipal Wards.**

We note that the Interim Report does not propose to recommend any change to the plus or minus 25% variance permitted by the *Act*. The City appreciates the Commission's observation that our Province's unique size and population density is such that, "based on the present electoral quotient, only 360 voters constitute a 10% change in each electoral district".

Nevertheless, considering the aforementioned common districting practice in achieving a mean deviation at or below plus or minus 10% for electoral districts within this Province, we submit that maintaining the legislated maximum allowable limit of deviations at plus or minus 25 % is unnecessary.

VI. Conclusions

City wishes to reiterate its overall endorsement of the Interim Report, and takes the position that:

- **Electoral district boundaries should be drawn according to laudable goals, facts, and principles, and should not be drawn for the sake of administrative convenience or partisan political advantage.**
- **Any deviation from the electoral quotient must be demonstrably justified, and Constitutional principles impose upon the Commission and the Legislature, the burden of minimizing any variation or deviation, wherever possible. Quite simply, to do otherwise would be unconstitutional and could not be countenanced.**
- **In contrast to the Commission's Interim Report, the current electoral distribution within the area covered by the City provides systemic, unjustified, and unnecessary overrepresentation of rural interests at the expense of the urban population representing the community interest of the City.**
- **Governing constitutional jurisprudence, applicable GIS technology, and common districting practice informs that the Commission should make a continued effort to minimize existing inequities of electoral distribution.**

- **Having seven City districts would allow for the City's continued rate or pace of growth, while avoiding the situation where the City's electoral districts' plus or minus deviation from the electoral quotient are driven beyond reasonable and acceptable levels which, in a PEI context, could be said to provide effective representation and meaningful participation in the electoral process.**
- **Based on geographic features, communities of interest, existing GIS mapping technology, common Canadian districting practice, and considering PEI's unique size and population density profile, the Commission should recommend that the Province lower the existing threshold variance as permitted by the *Act*, to plus or minus 15%.**

IV. RECOMMENDATIONS

- **The City supports the overall direction and proposed electoral boundaries for the Province as contained in the Interim Report of the Commission. While it is recognized that as a result of the second public consultation process there may be some small changes that result, the City is fully of the view that any significant changes to the map as presented that result in a failure of the Commission, or the Government, to continue to recognize the principles adopted and applied by the Commission, would not be supported by the City, and indeed, would, in the City's view, give rise to serious consideration of the constitutionality of a revised electoral district map.**

Specifically,

- **The City recommends that the Commission propose that the Province move expeditiously to repeal Sections 3, 4, and 5 of the *Act*.**
- **The City recommends that the Commission propose that the Province move expeditiously to enact a new Section 3 of the *Act* as described in the Interim Report.**
- **The City recommends that the Commission propose that the Province move expeditiously to amend S-s. 2(1) of the Electoral Boundaries Act as described in the Interim Report.**
- **The City recommends that the Commission propose that the Province move expeditiously to amend S-s. 17(2) of the Electoral Boundaries Act, such that it reads as follows:**

17(2) The number of electors of a proposed district shall not be more than 15 per cent above, nor more than 15 per cent below the average number of electors of all the proposed districts.

- **Finally, the City recommends that the Commission propose that the Province move expeditiously to adopt the Commission's proposed electoral map as described in the Interim Report.**

ALL OF WHICH is respectfully submitted this 7th day of September, A.D. 2004

His Worship, Mayor Clifford Lee

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