

# **Submission to Boundaries Commission**

*By: Residents of District # 8 Tracadie - Fort Augustus.*

**September 8, 2004**

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Dear Commission Members, the residents of District 8 Tracadie - Fort Augustus thank you for giving us an opportunity to make this presentation.

The concerned residents advertised a meeting to discuss your report and four subsequent meetings were also held.

This Submission is the result of the concerns of the residents who met at these meetings.

Our submission is based on previous court decisions such as: Carter case, Dixon case, MacKinnon case and the 1998 case Charlottetown vs Government of P.E.I.

**1. Response to your question on page 13 - 14( Area between Summerside and Charlottetown).**

In your report on page 14 you request a response to the situation in the rural area between Summerside and Charlottetown.

A chart taken from the 1998 Carruthers Report ( Charlottetown vs PEI) showing the 27 districts divided into 16 rural districts and 11 urban districts. This showed an acceptable difference of five percent from absolute voter parity.

	ELECTORS	DISTRICTS	DIFFERENCE
Rural Electors	54.3%	59.3%	5.0%
Urban Electors	45.7%	40.7%	5.0%

1998 Carruthers Report ( Charlottetown vs PEI) [48], [49].

[48] This difference is, in my opinion, well within the tolerances accepted by Madam Justice McLachlin in the *Carter* case and represents a very marked reduction in the over representation of rural districts and the under representation of urban districts that was present in the electoral map that was before Mr. Justice DesRoches.

[49] These figures show that the effect of the new redistribution is to allocate more districts to the urban areas which reflect the population increase in those areas and gives due weight to the principle of relative voter parity. However, it is also worthy to note there are at least three rural districts with more electors than at least eight of the urban districts, and two of these rural districts are in Queens County. Any additional district for Queens County would in all likelihood be a rural district and not an urban district as the appellant seemed to suggest it should be.

The tolerance referred to as acceptable by Madam Justice McLachlin are found in [41] and [42].

[41] In the *Carter* case Madam Justice McLachlin had to decide whether deviations within  $\pm 25\%$  of the provincial quotient could be justified on the basis of valid considerations. She found that the electoral map showed a tendency for "urban" seats to have more voters than "rural" seats with the urban seats generally being over the provincial quotient and the rural ridings generally being under the provincial quotient. She found the discrepancies were not great. She makes the following comment on this situation at p.192:

The actual allocation of seats between urban and rural areas is very close to the population distribution between those areas. The rural areas have 53.0 percent of the seats and 50.4 percent of the population. Urban areas have 43.9 percent of the seats and 47.6 percent of the population.

[42] She found these deviations to be relatively small and to closely approximate the actual split between urban and rural population. She held that any variances were justified on one or more of the following factors: more difficult to represent rural ridings than urban, geographic boundaries, growth projections and community interests.

Para [41] Figures mentioned by Madam Justice McLachlin

	electors	districts	difference
rural electors	50.4 %	53.0 %	2.6 %
urban electors	47.6 %	43.9 %	3.7 %

Justice McLachlin in this case accepts a difference between 2.6 and 3.7 percent from absolute voter parity.

The distribution recommended in the current Report is shown in the following chart "NEW 2004".

The 27 districts are distributed into 12 urban and 15 rural districts. The elector percentages are taken from page 3 para[6] of your Report.

NEW 2004

	electors	districts	difference
rural electors	56 %	55.6 %	0.4 %
urban electors	44 %	44.4 %	0.4 %

The lack of any significant difference, say 3 to 5 percent, between the distribution of electors and the distribution of districts between urban and rural areas suggests the only criteria used in determining the boundaries was voter parity. Voter parity is not a criteria listed in section 17 of the Election Act.

Carruthers in para [49] of the 1998 report drew attention to the fact that there were at least three rural districts with more electors than at least eight of the urban districts and went on to say that any additional district for Queens would in all likelihood be a rural and not an urban district.

Your report creates five rural ridings between Summerside and Charlottetown each of which have more voters than any of the twelve urban ridings. Is the variance of a certain percentage from the electoral quotient not there to allow rural ridings to have a lower number of voters?

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→ We are suggesting that an additional riding be added in rural Queens County. A calculation would show that the ridings created would have a very low variance from the electoral quotient.

200/100  
200/100

We close this section with some words of Madam Justice McLachlin as included by Justice Carruthers in his 1998 report, Justice McLachlin's opinions in the **Carter** and **Dixon** cases:

[17] The Supreme Court of Canada has dealt with this issue in *Reference Re Prov. Electoral Boundaries (Sask.)*, [1991] 2 S.C.R. 158 (S.C.C.), commonly referred to as the "**Carter**" case. Madam Justice McLachlin, who gave the majority opinion for the court, states on p.183:

It is my conclusion that the purpose of the right to vote enshrined in s.3 of the Charter is not equality of voting power per se, but the right to 'effective representation.'

[18] Madam Justice McLachlin rejects the concept of absolute voter parity in the Canadian context. She states there is little in the history or philosophy of Canadian democracy to suggest that the framers of the Charter in enacting s.3 had as their ultimate goal the attainment of voter parity. She goes on to say that such a purpose would have represented a rejection of the existing system of electoral representation in this country and notes that the circumstances leading to the adoption of the Charter negate any intention to reject existing democratic institutions. She described the Canadian tradition in *Dixon v. British Columbia (Attorney-General)* (1989), 59 D.L.R. (4th) 247 (B.C.S.C.) at p.262 as follows:

What is that tradition? It was a tradition of evolutionary democracy, of increasing widening of representation through the centuries. But it was also a tradition which, even in its more modern phases, accommodates significant deviation from the ideal of equal representation. Pragmatism, rather than conformity to a philosophical ideal, has been its watchword.

## 2. We now address minority representation:

We firmly believe the Acadian district (Evangeline - Miscouche) should keep its current boundaries. A Government committed to supporting the Acadian culture and language on PEI should insist on having an MLA dedicated solely to this area.

Justice Carruthers refers to the Madam Justice McLachlin's ruling in his 1998 report:

[19] Madam Justice McLachlin does, however, state that relative parity of voting power is the first condition of effective representation and the value of a citizen's vote should not be unduly diluted. Other factors which may justify departure from absolute voter parity include geography, community history, community interests and minority representation. She then states on p.185:

... only those deviations should be admitted which can be justified on the ground that they contribute to better government of the populace as a whole, giving due weight to regional issues within the populace and geographic factors within the territory governed.

[20] It is obvious then that Madam Justice McLachlin defines the scope of s.3 of the Charter as affirming the right to effective representation by means of a system which does not rely on absolute voter parity but which gives due weight to relative voter parity and admits other considerations as well. She makes this very clear on pp.188-189 where she states:

In summary, I am satisfied that the precepts which govern the interpretation of Charter rights support the conclusion that the right to vote should be defined as

guaranteeing the right to effective representation. The concept of absolute voter parity does not accord with the development of the right to vote in the Canadian context and does not permit of sufficient flexibility to meet the practical difficulties inherent in representative government in a country such as Canada. In the end, it is the broader concept of effective representation which best serves the interests of a free and democratic society.

### 3. Rural district voter allocation:

Should rural districts be allocated fewer voter than urban district? We believe that the difficulties in representing a rural district justify fewer voters per rural riding. We present the words of Hon. Angus MacLean on this matter from the MacKinnon case of 1993:

[63] Mr. MacLean expressed the view that the demands on members who represent rural areas are greater than their urban counterparts because many facilities which are available in urban areas are not available in rural areas, and the elector turns to his member. He did comment, however, that an MLA in Prince Edward Island is not over-worked. He was aware of the fairly wide variations in the current distribution system but believed that to ignore balancing county representation would not be fair, equitable, or reasonable. According to Mr. MacLean, the protection of rural interests in Prince Edward Island requires that representation for rural areas not be reduced. The Island is almost dependent on farming and fishing, the basic industries on which the Island society exists. It is important, therefore, that these industries be protected and developed. Mr. MacLean felt that if a "little bit" of over-representation is required, then it should be allowed. He stated there should not be a wholesale change in boundaries and the matter should be approached with great caution. He acknowledged, however, he was not saying that everything should necessarily remain the same. He thinks, for example, that the City of Charlottetown does have a valid argument that City boundaries should coincide with riding boundaries. He cautioned, however, that effective representation involves more than equality by district.

*Mr. Justice La Plante*  
In the MacKinnon case 1993 ~~Madam Justice McLachlin~~ comments on the difficulties in representing rural districts are also mentioned:

[93] I now turn to the matter of the inherent difficulties in representing rural districts. In her reasons in Carter, McLachlin, J., makes the following comments at pp. 43-44

"Before examining the electoral boundaries to determine if they are justified, it may be useful to mention some of the factors other than equality of voting power which figure in the analysis. One of the most important is the fact that it is more difficult to represent rural ridings than urban. The material before us suggests that not only are rural ridings harder to serve because of difficulty in transport and communications, but that rural voters make greater demands on their elected representatives, whether because of the absence of alternative resources to be found in urban centres or for other reasons. Thus the goal of effective representation may justify somewhat lower voter populations in rural areas."

*Mr. Justice La Plante*  
We agree with ~~Madam Justice McLachlin~~ and note that we place greater demands on our rural representative because she or he is the only one we have.

#### 4. The participants at our meetings had questions to present to you:

##### Question 1:

In making your decision to allocate twelve districts to the urban areas what consideration was given to the fact that there are already several other levels of government in these urban areas? In Charlottetown for example there are: one Member of Parliament, one Mayor and ten councillors.

In Summerside there are: one Mayor and eight councillors.

In Stratford there are: one Mayor and six councillors.

In Cornwall there are: one Mayor and six councillors.

Total of the above representatives is thirty five.

##### Question 2:

What consideration caused the boundaries in the eastern end of the province to run in an east - west direction and those in the western end to run in a more north - south direction?

##### Question 3:

Was it outside of your mandate to add districts in order to clear up the dilemma stated on page 14 of your report?

##### Question 4:

Would you be opposed to the legislature making further changes to the distribution of districts after it receives your final report in October?

We give the following statements on judicial deference by Madam Justice McLachlin in the *Dixon* and the *Carter* cases as they appear in the Carruthers 1998 report:

[51] Another matter which plays an important role in the determination of this issue is Judicial Deference. Madam Justice McLachlin makes this very clear in the *Dixon* case where she points out that deference must be accorded to the Legislature in answering the question. She states at p.266:

In determining the amount of deviation permissible, deference must be accorded to the legislature. It is in a better position than the courts to determine whether deviation is required. However, in making that determination, the legislature must act in accordance with such legal principles as may be found to be inherent in the Charter guarantee of the right to vote.

[52] Madam Justice McLachlin makes the following statement on deference in the *Carter* case at p.189:

It is important at the outset to remind ourselves of the proper role of courts in determining whether a legislative solution to a complex problem runs afoul of the Charter. This court has repeatedly affirmed that the court must be cautious in interfering unduly in decisions that involve the balancing of conflicting policy considerations.

**Question 5:**

How large a factor was Community of interest in determining the boundaries of districts east of Charlottetown?

For example Donagh Regional School will have students attending from four different districts.

**Question 6:**

Are you concerned that the concentration of MLA's in urban districts creates a power that attracts more rural people to live in the City?

**Finally:**

We are suggesting that a lower number of voters be allowed in rural districts as compared to urban districts. Application of Section 17 (2) of the Electoral Boundaries Act with the variance of +/- 25 percent would cause very few changes in the current boundaries.