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

On Behalf of the City of Charlottetown, His Worship, Clifford Lee, Mayor
for the City of Charlottetown

March 9, 2004

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

A. IMPORTANCE OF COMMISSION'S MANDATE

The following written submission pertains to the recent appointment of the Prince Edward Island Electoral Boundaries Commission (“Commission”), whose general mandate is to provide recommendations on the electoral districts in Prince Edward Island. The City of Charlottetown (“City”) recognizes that the periodic re-examination and redistribution of electoral districts is a very important consultative process and the City appreciates the opportunity to participate in this important initiative.

The City also recognizes the laudable goal of establishing, conducting, and administering elections in Prince Edward Island in a fair and equitable manner. We encourage the Commission to move expeditiously within its mandate to enable all provincial electors, both urban and rural, to exercise their democratic right to vote and effective representation as entrenched in the Canadian Charter of Rights and Freedoms (“*Charter*”).

The City also encourages the Commission to act expeditiously within its legislated time frame under Section 18 of the Electoral Boundaries Act, R.S.P.E.I. 1988, Cap. E-2.1 (“*Electoral Boundaries Act*”), to submit its report to the Speaker of the House such that electoral boundaries of the Province may be redrawn prior to the next Provincial election.

B. THE CITY

The former City was originally incorporated in 1855. The present City was incorporated in 1995 following the former City's amalgamation with Hillsborough Park, East Royalty, West Royalty, Winsloe, Sherwood, and Parkdale. With an annual budget of \$35,517,901.00 (2003), Charlottetown is the capital and largest City in Prince Edward Island, housing a population of 32,245 (2001 census) and covering an area of 42.6 sq km.

C. PURPOSE OF SUBMISSION

The right to vote contained in Section 3 of the *Charter* is one of the most fundamental of rights in a free and democratic society. It enables each person, free from governmental or other forms of interference, to ensure expression as the ultimate sovereign authority in guiding common community interests. The purpose of this written submission is to provide the Commission with insight and recommendations regarding the examination of Provincial electoral reform, such that the Commission may move expeditiously toward fair and effective application of every citizen's right to vote on PEI, and in particular in this submission, those citizens who live in the City of Charlottetown.

Accordingly, the City wishes to highlight for the Commission the importance of fair representation for all our citizens, whether rural or urban, and to uphold their right to vote and to be accorded "effective representation" as enshrined in Section 3 of the *Charter*. As a beginning point, it is the City's view of the section 3 Charter right to vote that no one identifiable group (i.e. urban or rural) or

“community of interest” on PEI should be under or over represented, unless doing so contributes to more effective or fair representation of all citizens on PEI.

II. RECENT HISTORY OF ELECTORAL REFORM IN PEI¹

1974 The Provincial Government established a legislative committee, the Electoral Boundaries Committee, which recommended rearranging the electoral boundaries to provide for better geographical and population representation. No action was taken by the Province at that time as a result of the report filed.

1982 The *Charter* was adopted by Government of Canada, including Section 3 of the *Charter*, which states:

Every Citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

1985 The Electoral Review Commission submitted a Report to the Mayor of the City recommending that, taking into consideration other criteria, **population be the primary criterion for realignment of City wards**, and proposed the creation of five (5) wards with an average deviation of +/- 7.2%.

¹ Adopted in part from the Government of Prince Edward Island Web Site, Elections PEI.

1989 In *Dixon v. British Columbia* (Attorney General) (1989), 59 D.L.R. (4th) 247 (B.C.S.C.) (“*Dixon*”), the Supreme Court of British Columbia per Madame Justice MacLauchlan concluded that:

- “Relative equality of voting power is fundamental to the right to vote,” and that
- **Deviations from “absolute parity” should be permitted, but only those “which can be justified on the ground that they contribute to better government of the populous as a whole, giving due weight to regional issues within the populous and geographic factors within the territory governed.”**
- **A plus or minus 25 percent deviation from the quotient** (i.e. percentage deviation or variance occurs when the population, or the number of electors, in one electoral district is compared with the average population, or number of electors, of all electoral districts) **in that case was tolerable “given the vast and sparsely populated regions to be found in British Columbia.”**

1991 The Supreme Court of Canada in *Reference Re Prov. Electoral Boundaries* (Sask), [1991] 2 S.C.R. 158 (S.C.C.) (“*Carter*”), established that:

- The **right to vote enshrined in Section 3** of the Charter is the right to **“effective representation”**

- **“Deviations form 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.”**
- Relevant factors include both “geography” and “community of interest.”

1992 Mr. Donald Mackinnon (“*MacKinnon*”) filed application with Supreme Court of Prince Edward Island asking that electoral boundaries descriptions under Sections 147 to 151 of the provincial *Election Act*, R.S.P.E.I., 1988, Cap. E-1.1 (“*Election Act*”) to be declared null and void as contrary to the *Charter*.

1993 The City joined MacKinnon as intervenor during hearings held by Mr. Justice DesRoches.

1994 Dr. Theodore S. Arrington, Ph.D, expert witness for the City in the *MacKinnon* case, presented a boundary plan on behalf of the City, containing the following percentage deviation from representation by population:

Largest District	2.2%
Smallest District	-2.7%
Total Deviation	4.9%
Average deviation	1.2%

(see Appendix: Dr. Theodore S. Arrington’s Expert Report)

1994 Justice DesRoches ruled sections 147 – 151 of the *Election Act*, to be contrary the Charter, and ordered legislative action to remedy the *Charter* breach within a reasonable period.

1994 John Eldon Green, commissioned by the then Minister of Government Reform, submitted a report to the Province of Prince Edward Island confirming the City’s completion of proposed distribution of electoral seats within the new City, and that the City was able to remain within a +/- 10% deviation from the average.

1995 After calling for submissions from the public in 1993, the newly established **Provincial Electoral Boundaries Commission** presented its final report to the Prince Edward Island Legislative Assembly (“Legislative Assembly”) recommending 30 single member districts. The electoral boundary plan submitted by the Commission contained the following percentage deviation from representation by population:

- Largest District 13.8%
- Smallest District -11.9%
- Total Deviation 25.7%
- **Average deviation 8.4%**

(see Appendix: Dr. Theodore S. Arrington’s Expert Report)

1994 Ross Young presented a private members bill, Bill no. 100, the *Electoral Boundaries Act*, R.S.P.E.I. 1988, Cap. E-2.1 (“Electoral Boundaries Act”), to the Legislative Assembly, receiving second reading and royal assent that same year, and from which the present electoral map of 27 single member districts has been drawn. The electoral boundary plan submitted by Young, from which the present electoral map has been drawn, contained the following percentage deviation from representation by population:

- Largest District 21.1%
- Smallest District -19.9%
- Total Deviation 41.0%
- **Average deviation 14.4%**

(see Appendix: Dr. Theodore S. Arrington’s Expert Report)

1996 The City and other urban centres filed Notice of Application to the Supreme Court of Prince Edward Island alleging the *Electoral Boundaries Act* to be contrary the *Charter*, and that the process determining the *Electoral Boundaries Act* was flawed.

1997 Chief Justice K.R. MacDonald heard and dismissed the City’s Application.

1998 The City filed an application to the Supreme Court of Prince Edward Island Court of Appeal with respect to Chief Justice MacDonald’s decision.

1999 Supreme Court of Prince Edward Island Appeals Division [Carruthers C.J. P.E.I. (as he then was), Mitchell J.A. (as he then was), and McQuaid JJ.A] issued a split decision supporting the earlier trial court decision. In his dissent, Mitchell J.A, the present Chief Justice of the Supreme Court of Prince Edward Island, made the following findings of law and fact:

- “Just because the applicant in a Charter case bears the ultimate burden does not mean they bear this burden at every turn on every relevant issue. In practice, the burden of persuasion tends to shift back and forth between the parties depending on what the issue is and who is seeking to rely on it In my view, the evidence adduced by the appellant was sufficient to meet the threshold for shifting the burden of persuasion to the respondent to justify the deviances.”
- Based on figures from the 1996 general election, four (14.8%) of the twenty-seven districts have variances exceeding the provincial quotient by +/- 25%; 9 (33.33%) exceed +/- 20%; 15 (55.5%) exceed +/- 15%; and 21 (77.77%) exceed +/- 10%; the largest exceeded the quotient by 27.28%; the smallest fell 25.42% below the quotient; finally, four districts exceeded the limit that a commission established under the Electoral Boundaries Act is even permitted to recommend (See s-s. 17(2) of the Act).
- **Comparatively, the proportion of PEI districts in the +/- 15 to 20% range was an “overwhelming” 55.55%, while New Brunswick had**

only 18%, Nova Scotia had only 2%, and the Federal average in 1997 was 10%, placing Prince Edward Island “truly in a class by itself when it comes to variances in this range.”

- **“It seems common ground that that deviation is appropriate in the case of district 24, Evangeline-Miscouche, because of its distinctive Acadian culture. The question is whether the deviations from voter parity in the various remaining districts can also be justified on the basis of valid considerations.”**
- **“It must be remembered 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. Distances are not great. Roads are plentiful. Communication is easy. There is not a community that is as much as a hundred miles away from the capital. Compared to other provinces, the Island is quite densely populated. The population is relatively homogeneous in racial and ethnic terms. The deviances 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.**

- **Apart from the Acadian district of Evangeline-Miscouche, no adequate justification has been advanced for any of the deviations among the districts elsewhere in the Province.**

1999 Leave to the Supreme Court was filed, but denied.

2003 **City Council passed a resolution to adopt the principle of a variance of no more than a $\pm 10\%$ within the City's Municipal Ward Boundaries when a review of the City's Wards is undertaken in 2004.**

2003 Retired Chief Justice of the Supreme Court of Prince Edward Island, Honourable Norman H. Carruthers, was appointed to head the Prince Edward Island Commission on Electoral Reform.

2004 Prince Edward Island Electoral Boundaries Commission appointed.

III. POSITION

A. INTRODUCTION

The City's position is that deviations by population in the present electoral map, drawn from the Young Plan, do not provide an adequate degree of "effective

representation” as enshrined in the *Charter* right to vote for all citizens of Prince Edward Island.

Within the area covered by the City, there are presently seven (7) whole or partial electoral districts. Five (5) of these districts are entirely within the City’s boundaries. Two (2) of these districts include areas outside the City’s boundaries. All of these districts are named and described as follows under the *Electoral Boundaries Act*:

1. Electoral District No. 9 Stanhope - East Royalty (Mixed)
2. Electoral District No. 10 Sherwood – Hillsborough
3. Electoral District No. 11 Parkdale – Belvedere
4. Electoral District No. 12 Charlottetown - Kings Square
5. Electoral District No. 13 Charlottetown - Rochford Square
6. Electoral District No. 14 Charlottetown - Spring Park
7. Electoral District No. 15 Winsloe - West Royalty (Mixed)

The City continues to take the position that the current map provides for overrepresentation of rural interests at the expense of representation of urban interests without justification, and in violation of the principle of “effective representation” enshrined in the Charter. That is to say, there is no justification for the deviations that exist between districts, nor is the allowable limit of deviations of +/- 25% as between districts on PEI necessary to provide more

effective representation to the citizens of PEI. Furthermore, the City takes the position that the electoral map should respect municipal boundaries, as these boundaries truly represent existing communities of interest (unlike, for example, county lines).

It is submitted that county lines have long since ceased to have any relevance in terms of where people choose to live or what communities of interest they share, not just for Charlottetown, but for all municipalities including Summerside, Stratford, Cornwall, and Montague.

B. LEGAL PRINCIPLES

The City encourages the Commission to respect the legal obligation to uphold the right to vote of Prince Edward Island citizens as enshrined in Section 3 of the *Charter*. Moreover, the City encourages the Commission during its mandate to follow closely applicable legislation and jurisprudence regarding the interpretation of the right to vote:

Electoral Boundaries Act

Section 2 of the *Electoral Boundaries Act*, divides the Province for the purposes of election of members of the legislative assembly, into 27 districts. Prince County is

divided into nine (9) districts, Queens County is allocated thirteen (13) districts, and Kings County is divided into five (5) districts.

Section 7(1) of the *Electoral Boundaries Act* set out the following criteria in determining the area to be included in, and in fixing the boundaries of a district:

- (a) the Canadian Charter of Rights and Freedoms;
- (b) enumeration date from the most recent general election;
- (c) polling divisions from the most recent general election;
- (d) geographical features;
- (e) population patterns;
- (f) community of interest;**
- (g) municipal boundaries,**

and may consider such other factors as it regards as relevant.

Charter

The *Charter* was adopted by the Government of Canada, including Section 3 of the *Charter* that states:

Every Citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

Common Law

The right to vote enshrined in Section 3 of the *Charter* is the right to “effective representation.” (See *Carter* case, Supra) Relative equality of voting power is fundamental to the right to vote (See *Dixon* case, Supra).

Moreover, while deviations from “absolute parity” may be permitted, such deviation would be justified only “on the ground that they contribute to better government of the populous as a whole”, (See *Dixon* case, Supra) on grounds of “practical impossibility or the provision of more effective representation” (See *Carter* case, Supra). However, beyond these necessary deviations, “dilution of one citizen’s vote as compared with another’s should not be countenanced” (See *Carter* case, Supra).

C. RELEVANT FACTORS

In accordance with applicable legislation, common districting practice, and governing jurisprudence, the City wishes to highlight **geographical features** and **community of interest** as two particularly relevant factors for the Commission to

consider during its mandate of examining electoral reform in Prince Edward Island:

Geographical Features

Rural Areas

While an important justification for mal-apportioned districts in Canadian practice is the presence of **sparsely populated rural areas over vast geographical regions**, this justification simply is not applicable to Prince Edward Island. **Prince Edward Island is the most densely populated province in Canada, providing for small and readily accessible districts in terms of both population and geography.**

Physical Barriers

Geographic barriers can create problems in drawing districts and may impede effective representation when communities of citizens are separated by impassable physical barriers such as a mountain range or a large body of water. **Prince Edward Island suffers no physical barriers that would necessitate deviations of electoral boundaries in terms of population or community interest.**

Community of Interest

There is no hard and fast definition of “communities of interest.” Nevertheless, not only is it a logical and traditional interpretation that communities of interest include local government units, this interpretation is also explicitly recognized in Section 7(1)(g) of the Electoral Boundaries Act. Furthermore, **common distributing practice in both Canada and the United States is that where possible, local governmental units should be used as district boundaries.**

Traditional Under-representation of Urban Interests

Decisions about electoral boundaries in Prince Edward Island have traditionally favored rural ridings as opposed to urban. Urban citizens are frequently underrepresented in their Provincial and Federal Parliaments and voting in these circumstances does not reflect a justifiable democratic purpose.

Accordingly, the City submits that any significant deviations from representation by population regarding the aforementioned factors are not justified. **Any such deviations would risk providing systemic overrepresentation of rural interests at the expense of urban interests, which does not result in, or contribute to, “better government of the populace as a whole”.**

D. REASONABLE TIME FRAME

The City wishes to offer the results of its latest electoral map with deviations less than or equal to 10% as an example of successful electoral reform to which, at a minimum, the Province should aspire.

Moreover, the City encourages the Commission to consider the advantage of existing data and technology, including satellite geomatic information systems (“GIS”), which allow very accurate electoral mapping to be done quickly, effectively, and economically.

By applying such technology, including GIS mapping, Dr. Theodore S. Arrington, Ph.D had no difficulty in following all of P.E.I.s major hydrological features where necessary while at the same time keeping all of the districts relatively equal in proportion, with an average deviation of 1.2%.

Current enumeration data from the most recent general Provincial and Municipal election is now available to the Province. According to the 2003 Report of the Chief Electoral Officer of Prince Edward Island (“CEO”) for the 2003 Municipal election, the number of electors in the City is 24,236 (up from 21,308 in the 2000 Municipal Election). Also, the Electoral Districts Variance (+25%) to (-25%) General Election Enumeration Data indicates that for the 2003 Provincial

Election, the Province had 97,180 electors (up from 94,087 in the 2000 Provincial election).

Applying the current election data, the provincial district quotient would be $97,180/27 = 3599$.

If the City were divided into 5, 6, or 7 districts, the number of City electors divided equally into these districts would be as follows:

Number of City Districts	# of Electors/ City District	Deviation of City district from Provincial quotient
5	4847	$3599/4847 \times 100 = 74.25\%$ $74.25\% - 100\% = -25.75\%$
6	4039	$3599/4039 \times 100 = 89.1\%$ $98.14\% - 100\% = -10.89\%$
7	3462	$3599/3462 \times 100 = 103.95$ $114.49\% - 100\% = +3.959\%$

A simple calculation of the current electoral data suggests that seven (7) whole districts for the City would result in a deviation from the quotient for each district of approximately +3.9%.

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 recommend seven (7)

Provincial electoral districts wholly within Charlottetown. Having these seven (7) districts would allow for the City's continued rate or pace of growth, while avoiding the situation where the City's electoral districts' +/- deviation from the Provincial quotient are again driven beyond levels which reasonably, in a PEI context, be said to provide "effective representation" to all of the citizen of the City and the Province.

Considering the available data, existing examples of successful districting practice at the municipal level, and currently available districting technology and expertise, the City encourages the Commission to move expediently to develop an electoral model which represents the interests of all urban and rural communities in the Province, including the City. **The City requests that the undeniable community of interest that exists within the City not be diluted, where no justifiable contribution to better government on PEI results.**

E. CONCLUSIONS

In calling for more effective representation for all residents of Prince Edward Island, including urban residents, the City takes the position that:

- **Population should serve as the primary factor in setting and adjusting electoral districts under any system of electoral reform, including one that may incorporate certain elements of proportional representation.**

- Electoral district boundaries should not be drawn for the sake of administrative convenience or partisan political advantage.
- **Electoral boundaries should respect municipal boundaries.**
- **No substantial deviation from voter parity in terms of representation by population in the current electoral map is justified by either geography or community interest.**
- **Furthermore, the current electoral distribution within the area covered by the City (and the Province's other urban areas) provides systemic, unjustified, and unnecessary overrepresentation of rural interests at the expense of the urban population representing the community interest of the City.**
- Governing jurisprudence, current GIS technology, and common Canadian districting practice dictates that **the Commission should move without delay to rectify the inequities of electoral distribution.**

IV. RECOMMENDATIONS

The City recommends that the Commission move expeditiously to recommend in its Report that the Province adopt before the next Provincial election, an electoral map with a variance of no more than $\pm 10\%$ for each Provincial Electoral District.

Moreover, the City recommends that the Commission move expediently to recommend in its Report that the Province adopt before the next Provincial election, an electoral map consistent with the most recent census data that comprises only whole districts within the area covered by the City (and other municipalities).

ALL OF WHICH is respectfully submitted this 9th day of March, A.D. 2004

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IV. APPENDIX

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