

“Legislators Represent People, not Trees or Acres”

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This brief presentation will focus on three issues related to the work of this commission. They are:

1. The anomalous nature of the Electoral Boundaries Commission here on Prince Edward Island;
2. The direction of re-drawn electoral boundaries in other provinces, particularly as it pertains to the equality of voting power or voting parity, and;
3. A reference to pertinent judicial decisions which should affect the decisions of this Commission.

My judgments with respect to these issues is influenced by my years years as a Professor of Political Science and information and opinions contained in the below publications.

The Prince Edward Island Commission on Electoral Reform. 2003

2003 Electoral reform Commission Report, 2003.

John Courtney. “Drawing Electoral Boundaries,” Chapter 15 in A. Brian Tanguay and Alain-G. Gagnon, eds., **Canadian Parties in Transition** (Nelson Canada, 1996).

------. Reforming Representational Building Blocks: Canada at the Beginning of the Twenty-First Century,” Chapter 8 in William Cross, ed., **Political Parties, Representation and Electoral Democracy in Canada** (Oxford University Press, 2002).

------. **Commissioned Ridings: Designing Canada’s Electoral Districts** (McGill - Queen’s University Press, 2001).

Richard Price and Maureen Mancuso. “Ties That Bind: Members and Their Constituencies,” Chapter 11 in Robert M. Krause and R. H. Wagenberg, eds., **Canadian Government and Politics** (Copp Clark Ltd., 1995).

1 PEI’s Electoral Boundaries Act and Commission: A Canadian Anomaly.

There is no doubt that governments and legislatures have struggled to retain control over the structure and mandate of boundary commissions. Most, however, have grudgingly

come to accept the value of independent commissions. Courtney considers this the key accomplishment over the past 50 years, particularly so when at the end of the day the decisions of the commissioners are final. As we know this is not the case here on Prince Edward Island.

Judge Carruthers recommended five (5) amendments to the Electoral Boundaries Act of 1988. I agree with the Carruthers' recommendations but will comment on two more.

First, our Act provides for the establishment of a Commission after every third general election. The trend elsewhere in Canada is to redraw district boundaries either every 10 years or after every second general election.

Our provision allows for "silent gerrymandering", that is a process where variations in district populations which change over time discriminate against areas with growing populations and discriminate in favour of areas with stable or declining populations.

I believe the Elections Act should be amended to provide for a reconsideration of district boundaries every 10 years.

Second, without any reference to the Commissioners present, the trend elsewhere in Canada is to provide for Electoral Commissions which are more independent and/or non-partisan.

I particularly like the Manitoba example. The Boundaries Commission in Manitoba is composed of the Chief Justice, the Chief Electoral Officer and a University President. Thus, commissioners are selected because of the position they occupy and, hence, when the incumbents of these positions change so does the composition of the Boundaries Commission.

If applied to Prince Edward Island, which I recommend, future Commissions would consist of the Chief Justice, Chief Electoral Officer and either the President of UPEI or Holland College.

2. **Re-drawing Electoral Boundaries in Other Provinces: the illusion of the +/- 25% formula.**

Judge Carruthers noted correctly that most other provincial jurisdictions have, at first blush, adopted the federal formula of permitting a deviation from the population norm of 25%. This formula, hopefully to be avoided by Commissioners present today, obscures some contrary evidence.

In the Prince Edward Island Commission on Electoral Reform (not the December 18, 2003 Report) Judge Carruthers described the recent report of the Federal Electoral Boundaries Commission. This commission proposed that our four (4) federal ridings have populations ranging from 32,245 persons to 35,208 persons. The actual variances

were 2.82% for Cardigan, -4.67% for Charlottetown, 4.09% for Egmont and -2.25% for Malpeque.

Implicit in the low populations differences between the 4 ridings is, I believe, a recognition that differences in Island culture, history, geography and diversity are sufficiently small not to warrant special recognition. Phrased differently, the Commission placed a premium on voter parity, a principle I believe this Commission should adopt.

Provincial Electoral Boundary Commissions have found that social, geographic and historic considerations are more important than absolute voter equality, but not more important than the principle of voter equality. If one examines the incidence of or level of inequality in district populations (over time) in the same jurisdiction one finds that commissions (especially independent commissions) are giving increasing importance to absolute voter equality.

Gini Index Scores are used to measure district inequality. During the 1990's the degree of inequality of provincial seats declined from the range of .16-39 range to a range of .02-.11, with most provinces clustered between .07 and .09.

In conclusion, given the above testimony and evidence from other provinces, I concur with Judge Carruthers that this commission should adopt a deviation quotient not to exceed +/- 15% from the norm.

3. **The Evolution of Judicial Precedent.**

Three judicial precedents (Dixon v. British Columbia, 1989; The Carter case, 1991, and the MacKinnon case her on PEI, 1993) all lead to one conclusion—namely that the first principle is that of equality of voting power. The second principle is that only such deviations from the ideal of equal representation as are capable of justification on the basis of some other valid factor may be admitted. (Dixon, 1989)

Two years later Chief Justice McLachlin wrote that “It emerges therefore that deviations from absolute voter parity may be justified on the grounds of practical impossibility or the provision of more effective representation. (Carter, 1991).

Finally, in the MacKinnon case (1993) Chief Justice DesRoches said “He found that some deviations could be tolerated to give effect to rural concerns but that major deviations would not be justifiable.” He also found that the goal of effective representation does not justify any appreciable lower voter populations in rural areas based on perceived difficulty to represent rural ridings.

If this Commission observes legal precedent outlined in the Carruthers Report the existing variance of +/- 25% cannot be justified. Thus, as suggested earlier, the Commission should implement a formula of +/- 15% or smaller.

4. **Conclusion.**

I am very worried that the Government's failure to amend the Election Boundaries Act will lead to trouble. For example:

- * If the Legislative Assembly does not accept any Boundary Commission Report the issue of population inequality resulting from silent gerrymandering will result in swift legal action, clearly from a resident of Queen's County.
- * If the Legislative Assembly accepts or amends a Commission Report, and in the process violates the principle of equality of voting power, swift legal action will also occur. We know that Chief Justice Mitchell is on record (City of Charlottetown v. The Government of Prince Edward Island) stating that "deviations in voter populations among the individual districts, other than District 24, Evangeline-Miscouche, could not be justified on the basis of valid considerations." (Carruthers Report, 2003)

Finally, permit me one professional observation. The issue of absolute voter equality or voter parity is the critical legal issue but not the critical political issue.

Representation,

or rather "responsiveness" or access to members, is the real issue. All Islanders deserve absolutely the same opportunity to influence their member, ask for help from their member or even receive a favour from their member. Significant variations in district populations, I believe, violate this key principle of representation.

Richard Price
Cardigan