THE RIGHT TO FAIR AND EFFECTIVE REPRESENTATION: ELECTORAL BOUNDARIES COMMISSIONS IN NOVA SCOTIA

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Electoral Boundary Commissions in Canada: A Short History

As in all jurisdictions utilizing the Single Member, Simple Plurality ('First Past the Post') electoral system (mainly former colonies of Great Britain), the boundaries drawn around electoral districts are a crucial part of ensuring fair and democratic elections. Historically, the basic principle of 'one person, one vote' (including the notion that each vote should be of equivalent value) was gradually established as the foundation of political equality. This constituted a major advance, as parliamentary elections in Britain were tainted by the prevalence of 'rotten boroughs', whereby some ridings (alternatively referred to as constituencies, seats or districts) had very few voters, virtually guaranteeing the election to Parliament of the wealthy landowners or members of the nobility who controlled these ridings.

Eliminating rotten boroughs did not guarantee that elections would be fair and impartial, free of manipulation aimed at ensuring a pre-determined outcome. The most common and persistent of these manipulative practices was (and still is) 'gerrymandering', named for an infamous 19th century congressional district in the US that was twisted into the shape of a salamander to ensure its incumbent of electoral victory. The purpose of such contortions of electoral district boundaries was to gain a partisan advantage over the electoral outcome by combining areas known to favour one party or candidate into a single constituency. This could be done because sitting politicians were left in control of the process of periodically re-drawing electoral boundaries, a practice made necessary by population changes that otherwise would undermine the principle of 'one person, one vote, one value' (otherwise known as 'voter parity').

There are some jurisdictions, notably the United States, that continue to leave boundary adjustment in the hands of elected politicians, and therefore continue to be plagued by gerrymandering. Canada, however, ended this practice in 1964 when Parliament adopted the innovation of independent electoral boundary commissions, one for each province and chaired in each case by a federal judge, established to undertake a non-partisan review of boundaries after each decennial census. Eventually all provinces would follow suit with their own versions of independent electoral boundary commissions that would review and adjust the boundaries of provincial electoral districts, based on the most recent census data.

The legal context for ensuring fair and democratic elections in Canada was entrenched with the adoption in 1982 of the Charter of Rights and Freedoms. Section 3 of the Charter reads as follows: "Every citizen of Canada has the right to vote in an election of the members of the House of Commons or of a legislative assembly and to be qualified for membership therein." In case law since the Charter's inception, the courts have interpreted the full meaning and import of this right for Canadian citizens by ruling on such issues as acceptable restrictions on the right to vote (eg, age of eligibility). However, the most pertinent ruling for the boundary adjustment process was the Carter decision, handed down by the Supreme Court in 1991. At issue in Carter, or *Reference re Provincial Electoral Boundaries (Sask.)*, was the question of variance in the size of voter populations between constituencies, and whether the sec. 3 Charter right of some citizens had been infringed by proposed changes to Saskatchewan electoral boundaries which treated urban, rural and northern ridings differently. In its ruling, the Court held 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".

"The right to vote therefore comprises many factors, of which equity is but one. The section does not guarantee equality of voting power. Relative parity of voting power is a prime condition of effective representation. Deviations from absolute voter parity, however, may be justified on the grounds of practical impossibility or the provision of more effective representation. Factors like geography, community history, community interests and minority representation may need to be taken into account to ensure that our legislative assemblies effectively represent the diversity of our social mosaic. Beyond this, dilution of one citizen's vote as compared with another's should not be countenanced."

In Carter, the Supreme Court found that a violation of sec. 3 of the Charter had not been established. More important in a general sense, though, was the meaning given to sec. 3 of the Charter: a citizen right not to *equal* representation but to *effective* representation, with due consideration given to several factors, including community interests and minority representation.

Carter was a game-changer for the electoral boundary adjustment process in Canada, and Nova Scotia was no exception. The province was exposed to the possibility of a constitutional ruling that would strike down electoral boundaries that did not conform to sec. 3 of the Charter. When Carter was handed down, there was particular concern in Nova Scotia about excessive deviance in relative voter parity (or 'malapportionment') due in part to past practices of legislative gerrymandering. This led to an all-party agreement in May 1991 to the establishment of the province's first "non-partisan" Electoral Boundaries Commission. The terms of reference for the Commission (chaired by political scientist Dr. Ron Landes) cited minority representation as one of the criteria to be considered in achieving effective representation, and explicitly cited the need to ensure effective representation for the Acadian, Black and Mi'kmaq peoples of Nova Scotia. The Commission was further directed to establish a 52-member legislative assembly with an additional member to represent the Mi'kmaq people of the province.

While the Carter decision changed the legal context for the process of reviewing and adjusting electoral boundaries (or 'redistricting'), the political context, both provincial and national, helps to explain the form and character of the Nova Scotia response. Provincially, political sentiment had shifted strongly toward the need for reform of the province's political system and governance practices. The new Premier in 1991, Donald Cameron, promised to move the province away from traditional politics (including patronage, corruption and fiscal laxity). Reform of the electoral process, including the manner in which constituency boundaries were determined, was included in this reform agenda. At the same time, the national political context was dominated by the urgent consultations, negotiations and proposals to reform the Canadian constitution after the failure of the Meech Lake Accord, in order to stave off the surging movement toward secession in Quebec. These negotiations would lead to the Charlottetown Accord in the spring of 1992 (proposals that were later defeated in a national referendum). Prominent on the constitutional agenda was the status of Quebec and Aboriginal Peoples, prompting heated debates across the country about minority rights and the need to recognize and accommodate minorities whose history and identity generated claims to 'distinct society' or 'nation' status within Canada.

Of course, to some extent official bilingualism and minority language education rights already acknowledged the co-equal status of French-speaking Canadians, while treaty and aboriginal rights had already been entrenched in section 35 of the 1982 Constitution. However, the various proposals culminating in the Charlottetown Accord would have gone much further in terms of constitutional recognition and accommodation of Quebec and Aboriginal difference. This may help to explain why special consideration of Acadian and Mi'kmaq representation was included in the Terms of Reference for Nova Scotia's first Electoral Boundaries Commission (EBC). The reason for singling out African Nova Scotians (referred to as 'Blacks' in the Terms of Reference) was perhaps less obvious, though they had been the province's major racial minority for two centuries, dating back to Nova Scotia's establishment as a British colony in the 18th century.

The Entitlement System

The approach adopted by the 1992 Electoral Boundaries Commission to arrive at its determination of new boundaries was the Entitlement System. Briefly summarized, the entitlement system creates an index indicating the extent to which each constituency is either above or below the provincial average. The latter is arrived at by dividing the provincial population or number of electors (citizens of voting age) by the number of seats in the legislature. A constituency that meets the provincial average would have an entitlement index of 1.00. An entitlement index of 1.20 means the constituency is 20 percent above the average, while an entitlement index of .85 indicates the constituency is 15 percent below the provincial average. The same formula can be used to create an index for provincial counties and/or regions. The application of the entitlement system reveals whether a constituency meets the principle of relative parity of voting power, as defined in the Carter decision.

With a plus-or-minus factor of 25 percent (+/-25%), the Commission could establish constituencies whose entitlement numbers ranged from .75 to 1.25. Any entitlement below or above this variance would have to be justified on the basis of "extraordinary circumstances" in relation to minority representation, as defined in the Commission's Terms of Reference. Accordingly, the seat entitlement for each county was calculated as follows. The province's total population or total electors was divided by 52, which produced the average number of people or electors for each constituency, a number referred to as the 'electoral quotient'. Then, the number of people or electors in each county or region was divided by the average population or elector size to produce that county or region's seat entitlement.

In its 1992 Report, the Commission recommended that there be five protected constituencies. After consultation with the province's Mi'kmaq communities, there was no consensus on how or whether a designated 'native' seat should be constituted, so the Commission recommended that no action be taken in this regard. One constituency, Victoria, was accorded protected status for geographic reasons. Of the other four protected constituencies, three ridings with relatively large populations of French-speaking Acadians and one with a significant African Nova Scotian population were set aside as exceptional electoral districts (in terms of their small population) in order to generate more effective representation for these groups. Strictly speaking, these were not "designated seats" that would guarantee the election of an Acadian or African Nova Scotian representative. However, they would greatly increase the likelihood of this outcome and at a minimum guarantee greater influence for the minority community on the election result, with the expectation that this would produce greater political sensitivity to the community, and therefore more effective representation.

The 2002 Electoral Boundaries Commission

A decade later, the province's second Electoral Boundaries Commission was established. The Terms of Reference for this Commission, chaired by Dr. Colin Dodds, differed in two important respects from its predecessor. The Commission was directed to draw boundaries for a 52-seat legislature, as previously, but without mention of an additional, designated Mi'kmaq seat. Secondly, a maximum variance of 25% (+/-) from the average number of electors per constituency was set, except for extraordinary circumstances, including the desire to promote minority representation of the Acadian and Black communities. While in its Interim Report the Commission recommended only three ridings retain their protected status (Clare, Argyle and Preston), after public hearings the Commission in its Final Report once again included Richmond as a fourth exception to the 25% variance rule. It seems that there was also some uncertainty or doubt on the Commission's part about continuing with this approach, as the Final Report also recommended that the next Commission re-evaluate the approach to encouraging effective representation for specified minority communities, "based on considerable public comment".

The changes to constituency boundaries recommended by the 2002 Commission reflected the shift of population from rural areas of the province to the Halifax region, as well as pronounced population decline in

Cape Breton County. Overall population growth in the province between 1991 and 2001 was only 8,107, with only five counties recording population increases: Halifax, Colchester, Hants, Kings and Antigonish. Halifax was by far the fastest growing county (+9.8 percent), with Kings second (+7.0 percent) and Hants third (+5.5 percent). Thirteen counties recorded population decreases, with Cape Breton experiencing by far the largest in absolute terms. The four counties experiencing relative population decreases of greater than 10 percent were Cape Breton, Guysborough, Queens, and Digby. Based on its seat entitlement analysis, the Commission recommended no change for 25 electoral districts. It was determined, however, that Halifax County was underrepresented and Cape Breton Island overrepresented, leading to the recommendation of a reduction of one seat for Cape Breton and an increase of one seat for Halifax County. As well, many Halifax seats continued to be at the higher end of the variance tolerance (toward 1.25), with many rural constituencies at the lower end (toward .75). Besides the four 'extraordinary circumstance' ridings (which all fell between .50 and .60 of the average constituency size), the variance for electoral districts ranged from .78 (Guysborough-Sheet Harbour) to 1.20 (Bedford and Hants East).

The 2012 Electoral Boundaries Commission

The 2012 Electoral Boundaries Commission, chaired by Dr. Teresa MacNeil, found itself at the centre of a political controversy when its Interim Report to the government was invalidated (declared null and void) by the provincial Attorney General. The Terms of Reference to the 2012 Commission differed in three key aspects from previous commissions. They stipulated an assembly of "not more than" 52 seats, freeing the Commission to reduce the number of ridings; further, the Terms of Reference released the Commission of any constraint imposed by county or municipal boundaries. The most significant difference, however, was section 2d), inserted at the very end of the Select Committee's deliberations before the legislature's Christmas recess in December, 2011, and triggering the dissent of the Select Committee's opposition members. This was the stipulation that there should be a maximum variance in constituency population of 25%, with no exceptions permitted. If followed, this would exclude the possibility of maintaining the four special ridings that had been in place since 1992.

The key issues confronting the 2012 Commission were essentially those that also challenged the two previous commissions, namely, the status of the 'protected constituencies', achieving relative voter parity, and adjusting boundaries to accommodate an ongoing population shift toward Halifax Regional Municipality (HRM). Leaving aside the 'protected' constituencies (a term revived by the Commission in its Interim Report), and using an adjusted seat entitlement index, it was found that a number of electoral districts fell below the .75 cutoff at the low end of allowable variance. In total, six ridings fell into this category: Guysborough-Sheet Harbour, Victoria-the Lakes, Cape Breton Nova, Queens, Digby-Annapolis, and Cumberland South. At the top end, there were four ridings, all in Halifax Regional

Municipality, that were above 1.25: Halifax-Clayton Park, Bedford-Birch Cove, Hammonds Plains-Upper Sackville, and Dartmouth South-Portland Valley. In order to achieve relative voter parity, while continuing to maintain the protected ridings, the Interim Report recommended a 52-seat legislature which removed one seat from Cape Breton Regional Municipality and one from the Central Nova region of mainland Nova Scotia, while adding two seats to Halifax (bringing the latter's total to 20).

Historical Minorities and Protected Ridings

In an opinion rendered in *Reference re Secession of Quebec (1998)*, the Supreme Court of Canada identified the recognition and accommodation of minority rights as one of the defining features of the Canadian constitutional order. Nova Scotia has had its own history of accommodating its distinctive Acadian and African Nova Scotian communities, though in a form that has been less sweeping and legally binding than its neighbouring province's entrenchment of the equality of the French and English-speaking communities. Still, Nova Scotia's more modest attempts to recognize the unique role and place of its historic minorities in the province's history and within its present cultural diversity remains both politically important and culturally significant.

As we have seen, between 1992 and 2012 Nova Scotia extended protection to four provincial constituencies that have a special significance, both for the minorities represented by these constituencies in the legislature and for the province as a whole. In three of these ridings – Clare, Argyle and Richmond – the Acadian population is either dominant or numerically very important. The fourth is the riding of Preston, where African Nova Scotians comprise a key component of the voting population. This special protection provided a means of avoiding the political dilution of the minority Acadian and African Nova Scotian voting population within the surrounding majority, when their overall provincial numbers would otherwise justify their proportionate representation in the legislature. It was argued before the 2012 EBC that more than two decades of special protection of these minorities had established a convention that should continue, and that a moral if not legal covenant had been made between the province of Nova Scotia and the minority populations in the affected constituencies.

Like the Mi'kmaq, the Acadian and African Nova Scotian communities have a particular cultural uniqueness and territorial basis in Nova Scotia that supports their argument for special treatment in the redistricting process. This status follows from the fact that they constitute minority cultural communities that are *indigenous to Nova Scotia*, and further can be said to have fairly well-defined territorial 'homelands' in this province that have been continuously occupied for hundreds of years. Their distinctiveness derives from their long evolution as ethno-linguistic (Acadian) or racial (African Nova Scotian) minorities within an English-speaking majority of predominantly Anglo-Celtic heritage, but also,

just as importantly, from their distinctive, indigenous cultures that have developed over centuries of relative isolation as coherent communities (due to remote rural locale and/or social exclusion). In short, these minority cultures are both distinctively Nova Scotian *and* deeply rooted in specific, territorially-based communities.

While Nova Scotians of Acadian and African heritage now reside throughout the province, this does not diminish the importance of the historical communities that nurtured their cultural distinctiveness, nor the ongoing role that these communities play in preserving these minority cultures. In effect, elected representatives from the protected ridings perform a dual role both within and outside the legislature: they are constituency representatives like other members of the legislature, but also cultural representatives for the whole of the extended cultural community they represent. Acadians across the province depend on these regions and the elected representatives they send to the legislature to play an important role in preserving a distinctive Acadian language, culture and tradition. Similarly, a strong African Nova Scotian voter presence within the boundaries of the protected constituency of Preston gave its elected representative a special role to play on behalf of that cultural community.

It is worth noting that there are parallels here with the special status that has been accorded to the Mi'kmaq, in the form of a designated 'native' seat in the legislature, though to date this seat has not been occupied. This speaks to the fact that minority cultures indigenous to Nova Scotia – Mi'kmaq, Acadian, or African Nova Scotian – depend for their continued vitality on the traditional, territorially-based communities that have provided the physical, social and cultural context for their formation and development.

In its deliberations, the 2012 Electoral Boundaries Commission recognized that there are a number of legal, constitutional and political factors relevant to the question of protected constituencies. French is one of Canada's official languages, given effect by the Official Languages Act (1969), amongst other laws and programs. Further, constitutional protection for minority language rights is entrenched in Sections 16-23 of the Charter of Rights and Freedoms. Provincially, the French Language Services Act and the creation of the Acadian school board are measures taken to preserve and promote the linguistic rights French-speaking Nova Scotians. The protection offered to the three Acadian constituencies was an additional measure taken to recognize and protect the indigenous Acadian communities from whence the vast majority of Nova Scotia's French-speaking population derives. The Constitution also explicitly acknowledges – in section 15(2) protecting the constitutionality of affirmative action programs – that equality for minorities needs to be understood as something other than 'sameness' of treatment; different treatment is sometimes necessary to achieve a form of equality that equates more closely with *fairness* for minorities, especially those that historically have been discriminated against.

Taking these facts into consideration, and hearing extensive testimony in the affected ridings during the public hearings process, the Commission recommended that there be an exemption for the four protected ridings of Clare, Argyle, Richmond and Preston from the maximum variance rule provided to the Commission in its terms of reference. Accordingly, in its Interim Report it recommended that the electoral boundaries of these districts remain unaltered, basing its decision on the constitutional right of the minorities in question (Acadians and African Nova Scotians) to effective representation in the legislature. Dr. Jill Grant, a Commission member who strongly disagreed with this position, resigned in protest on the day the Interim Report was submitted.

Confronted with the Commission's non-compliance with section 2d) of the Terms of Reference, which he considered legally binding, the provincial Attorney General ordered the Commission to prepare a new report, one that eliminated the four special ridings. After extensive internal discussion of its options, the Commission ultimately complied with this directive, producing in its Final Report a 51-seat legislature with all ridings compliant with the 25% variance rule. As in the Interim Report, Halifax would gain 2 seats, while Cape Breton would lose 1 seat (going from 9 to 8). Central Nova Scotia would retain its 5 seats, though left with the lowest regional seat entitlement (.85). With the removal of protection for the Acadian ridings, Southwest Nova Scotia would lose 2 seats (going from 6 to 4). Other recommendations included consultation with minority communities on alternative forms of representation and study of electoral system reform, including public consultations on this issue. A final recommendation was that there should be an initial draft of proposed changes to electoral boundaries before the first round of public hearings, as a means of stimulating public response and participation in the process.

Also included in the Final Report was a formal letter of dissent (appended to this document) from one of the Commission members, Mr. Paul Gaudet, due to his inability to agree (in good conscience) to boundary recommendations that would spell the end of the protected Acadian ridings. His dissent recognizes that the task given the Commission by the conflicting and irreconcilable terms of reference (2c and 2d) that required the Commission to protect minority representation while respecting the Select Committee directive on minimum riding size, was ultimately an impossible one. The letter of dissent also contains an eloquent plea for the Acadian people: that their uphill struggle for the survival of their culture and identity not be made even more difficult by losing their distinctive voice in the House of Assembly. As viewed by Gaudet, the Acadian constituencies – proud geographical and political symbols of Acadian historical and cultural presence in Nova Scotia – were nothing less than "vital cornerstones of resilience over adversity".

Reference re the Final Report of the Electoral Boundaries Commission (2017)

In September, 2016, the Nova Scotia Court of Appeal (NSCA) heard a case on the electoral process that was unprecedented. Entitled *Reference re the Final Report of the Electoral Boundaries Commission*, the court case arose from a Nova Scotia government Order-in-Council asking the NSCA for its opinion on the constitutional legality of the electoral boundaries recommended by the 2012 Electoral Boundaries Commission. There was a two-step question referred to the Court for a ruling. Did the actions of the Nova Scotia government toward the 2012 Electoral Boundaries Commission violate Section 3 of the Charter of Rights (the right to effective representation)? And if the Court answered 'yes' to this question, was the 'impugned legislation' that implemented the new electoral boundaries 'saved' by Section 1 of the Charter (the limits clause[1])? In its decision, the Court answered YES to question 1 and NO to question 2. In effect, this judicial ruling placed in question the legality of provincial elections conducted on the basis of what were now (or potentially could be) invalidated electoral boundaries. While such a ruling was in itself highly unusual, adding further to the uniqueness of the case was the fact that the electoral boundaries in question were intended as a form of 'affirmative gerrymandering' to promote the effective representation of two historically significant minority communities: Acadians and African Nova Scotians. Indeed, it was as the result of legal action taken by the Fédération acadienne de la Nouvelle Écosse (FANE) that the provincial government decided to refer the case to the Nova Scotia of Appeal for its opinion.

In handing down its decision, the NSCA argued that the Attorney General's intervention had thwarted the 2012 Electoral Boundaries Commission in the performance of its constitutional mandate as required by Section 3 of the Charter, resulting in a Final Report that was not the *authentic view* of the Commission. In effect, the Court ruled that the Government must allow an Independent Commission to carry out its work in an unimpeded fashion, to submit its recommendations in a Final Report, and the latter introduced unaltered into the House of Assembly in the form of a bill. The opinion raised two serious issues related to the 2012 Electoral Boundaries Commission. The first relates to the *process* by which the new boundaries were established. The Court objected to the manner in which the government intervened in the working of an independent commission. In effect, the Attorney General, by rejecting the Commission's Interim Report and ordering a new one that strictly complied with the Terms of Reference, had undercut the independence of the Commission. This contravened Section 5 of the House of Assembly Act (the legislation establishing Electoral Boundaries Commissions and the boundary review process). Moreover, through his intervention the Attorney General had prevented the Commission from conveying its

[1] Section 1 of the Charter of Rights and Freedoms reads as follows: "The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

"authentic view" of an electoral boundary map that would best achieve the balance between voter parity and other considerations (such as minority representation) that is required by Section 3 of the Charter of Rights and Freedoms. The Court also expressed its misgivings about the *substantive* outcome of this intervention, which was the dilution of the protected ridings such that the political influence of the affected minorities was reduced to the point of ineffectiveness. This raised the distinct possibility that the Section 3 Charter right of the minorities in question to effective representation had been unjustifiably limited or denied.

The Keefe Commission

In response to the opinion registered by the Court in *Reference re the Final Report of the Electoral Boundaries Commission*, the Nova Scotia government appointed the Commission on Effective Electoral Representation of Acadian and African Nova Scotians. The Commission was chaired by former Deputy Minister of Justice Doug Keefe, with Sharon Davis-Murdoch and Dr. Kenneth Deveau as the other members. The Commission was given the task of providing recommendations to the government on how best to achieve effective representation for Acadian and African Nova Scotians, in a manner consistent with the principles enunciated in the Carter decision. The Commission was further directed to seek the advice and support of Acadians and African Nova Scotians on this issue, and to consider various options including designated seats similar to section 6(1) of the House of Assembly Act (pertaining to the provision for a Mi'kmaq seat).

In its Report, the Keefe Commission recognized the tendency of the electoral system to submerge minority voters and the importance of allowing deviation from voter parity in order to draw boundaries that would counteract this. They also engaged in a discussion contrasting substantive and descriptive representation (the latter referring to some shared characteristic between representative and voter, such as language or ethnicity), and the importance of both. Finally, since a proportional representation electoral system with a minimum threshold requirement does not guarantee effective representation for Acadians and African Nova Scotians (unless this included designated seats for these minorities), the recommendations are based on the current electoral system. In fact, it was discussion of the pros and cons of designated or reserved seats that generated the most intense Commission analysis and its most difficult decision, based on conceptual and practical grounds, not to recommend designated or reserved seats.

With the options of electoral system reform and designated seats eliminated from consideration, two general strategies shaped the Commission's approach: 1) improve the chances of electing Acadians and African Nova Scotians to the legislature under the current electoral system and 2) strengthen other means of representing these minorities through reforms to government organization and practices. The first

strategy yielded a number of key recommendations. First, Electoral Boundary Commissions should be permitted to create more ridings in order to increase flexibility in crafting boundaries that meet the principle of effective representation. Second, a standard deviation (or variance) from voter parity of 25% (+/-) should be maintained. Third, discretion should be restored to EBCs to recommend exceptional ridings that exceeded this standard deviation. Fourth, the possibility should be admitted of non-contiguous ridings that might connect small, minority communities. Notably, the Commission did not recommend restoring the exact boundaries for the four protected ridings; nor did it recommend against this approach. Instead, it argued that the EBC should exercise its independent judgement in this matter, after taking into account population changes and public consultation on boundaries. It was further suggested that there may be an opportunity to *improve* representation for Acadians and African Nova Scotians in communities other than the four protected ridings that existed prior to 2012.

In a section of its report entitled "The Gathering Storm", the Keefe Commission reflected on the steadily growing population gap between urban and rural areas of the province. Given the need to adhere to the fundamental principle of relative parity of voting power, the result of future electoral redistricting exercises is likely to be ever-larger and more unwieldy rural constituencies. In this connection, the Commission recommended that the next EBC prepare two electoral maps: one that reflected the status quo in terms of number of constituencies (51) and a second map with a higher number of total constituencies. The purpose of this approach is to provide the basis for a discussion about whether a 51-seat legislature is adequate to meet the principle of effective representation in rural areas of the province where more constituencies are likely to fall short of the 25% variance standard. To quote directly from the Commission's Report:

"We recommend the boundaries commission be authorized to produce two or more maps, one at the current 51 seats and another at a higher number, to inform a discussion about whether 51 seats will adequately provide effective representation for Nova Scotians in the future. The more ridings there are, the more flexibility boundaries commissions will have to craft boundaries in accordance with the principles of effective representation" (7).

In other words, electoral maps for each option could have the salutary effect of clarifying the representational consequences of each, while moving the debate away from the simplistic trope of "no to more politicians".

The 2018 Electoral Boundary Commission

With the submission of the Keefe Report, the Provincial Government moved to establish a special Electoral Boundaries Commission (ECB), chaired by Dr. Colin Dodds, to recommend boundary changes congruent with the principles enunciated in the Supreme Court's *Carter* decision and with the opinion of the NSCA in *Reference re the Final Report of the Electoral Boundaries Commission*. The Terms of

Reference (TOR) for the 2018 Commission closely reflect the recommendations in the Keefe Report. The TOR, by which the Electoral Boundary Commission is to be bound, maintains the 25% standard for allowable variance or deviance from the constituency average population, but discretion has been restored to the EBC to create *exceptional electoral districts* that exceed this standard. As well, for the first time, the TOR explicitly allow for the creation of non-contiguous constituencies. Finally, in accordance one of the recommendations of the 2012 EBC, the 2018 Commission is directed to prepare a draft of proposed boundary changes prior to its first round of public hearings. Following this, two Preliminary Reports are to be submitted to the government, no later than November 30, 2018. One of these reports should be based on 51 provincial ridings and the second on a different number. However, preparation of the Final Report, after a second round of public hearings, will recommend only one option in terms of total number of ridings.

Adjusting Electoral Boundaries: Strategies and Approaches

Exceptional Electoral Districts

Given the NSCA opinion in *Reference re the Final Report of the Electoral Boundaries Commission* and the recommendations contained in the Keefe Report, the 2018 EBC has no reasonable option but to prepare boundary changes that, at a minimum, restore some version of the four protected constituencies (or exceptional electoral districts). However, as the Keefe Report argues, these boundaries – aimed at ensuring effective representation for Acadians and African Nova Scotians – need not be precisely those that existed between 2002 and 2012, though this is certainly one alternative. A second option is to make modifications of a minor nature to the boundaries of the exceptional electoral districts, based on population shifts and public consultation. A third approach would be to recommend a major modification to the electoral boundaries of one or more constituencies, with the intention of not merely restoring but *enhancing* effective representation for the historic minority in question, primarily by encapsulating previously excluded individuals or communities. This approach was contemplated by the Keefe Commission when it suggested the possibility of one or more non-contiguous ridings that would link together two or more ‘islands’ of minority population.

The most obvious situation to which the third (non-contiguous) approach might be applied is the Acadian population on Cape Breton Island, which is divided between two main communities far removed geographically from one another: Isle Madame (and its environs) and Cheticamp (and its environs). While the former constitutes the Acadian core of the former protected riding of Richmond, the Cheticamp region (defined here as north of Margaree Harbour and south of Cape Breton Highlands National Park) has always been included within the constituency of Inverness, with its overwhelmingly non-Acadian

population. Merging these two regions to create a majority Acadian voter base would be a radical departure from the tradition of geographically contiguous ridings, the universal norm in countries utilizing the single member, simple plurality (First Past The Post) electoral system. Should such a change be proposed by the EBC, it should expect a strong reaction from the public since one community interest and identity (shared by Inverness County residents) would be 'sacrificed' to another (Acadian heritage). Even the Director of the FANE, though lamenting the exclusion of the Cheticamp region from 'protected district' status, objected to the non-contiguous approach in her submission to the Keefe Commission. On the other hand, besides their ethno-linguistic and cultural affiliation, the two Acadian communities on Cape Breton also share a common interest in that the predominant local industry in both cases is the fishery. Regardless, finding a way to include the Cheticamp region within an exceptional electoral district would be the best way of actually enhancing effective representation for Acadians *qua* Acadians.

In fact, a range of choices exist that would meet the objective of including the Cheticamp region within a new exceptional electoral district, only one of which involves creation of a non-contiguous constituency. However, to begin with the latter option, a non-contiguous district could involve detaching the Cheticamp region from Inverness and merging it with Richmond County (thereby strengthening the position of Acadians within the new riding); alternatively, the Cheticamp and Isle Madame regions could both be detached from their respective counties in order to create a small, non-contiguous, predominantly Acadian constituency. Another option, one that would maintain geographical compactness and contiguity, is to restore the 'exceptional electoral district' of Richmond but also create a new exceptional electoral district in North Inverness. If the boundaries of the latter sufficiently enhanced the numerical weight of the minority Acadian community such that its representation it received would be 'effective', then it is not strictly necessary that an Acadian be the constituency representative. Yet another option is to revert to the old tradition of a dual-member constituency, but with the stipulation that one of the two elected representatives be a French-speaking Acadian; in effect, a designated Acadian seat within a dual-member riding. (It would be the responsibility of the parties to nominate two candidates each; voters would elect two representatives, one of whom would be from a list of Acadian candidates.) With the guarantee of an Acadian representative, this approach would allow electoral boundaries to be drawn that complied with the maximum +/-25% variance requirement. It would, however, raise other concerns, such as large geographical size and issues related to non-exclusive representation (two elected representatives responsible for the same population).

Number of Electoral Districts

A second major issue concerns the total number of electoral districts. This question is placed squarely on the agenda of the Commission by its Terms of Reference, which in turn reflect another recommendation

made in the Keefe Report. Accommodating the restoration of the four protected ridings within the current 51-seat legislature would require that the remaining 47 constituencies have a higher seat entitlement (electoral quotient) number. The redistricting implications of this are clear. More rural constituencies will fall below the minimum variance tolerance (-25%), and will have to be increased in size. Boundary changes will be extensive and adherence to the principle of relative voter parity will mean reduced representation (further seat loss) outside Halifax Regional Municipality (HRM). Nonetheless, the Commission is required to complete this exercise in boundary revision as one of two electoral maps to be included in its Preliminary Report.

Although not articulated in the Terms of Reference, the logic of the Keefe Report on this issue was that voters should be presented with a clear choice between electoral maps that would highlight the implications for rural ridings of maintaining the status quo in terms of total number of constituencies. A second electoral map with a different (higher) number of electoral districts must also be prepared. While no number is specified in the Keefe Report, a legislature of 54 seats is offered as an example. Presumably, the Keefe Commission did not want to pre-empt the work of the Electoral Boundary Commission by advocating in a detailed way for a particular increase in total number of districts. However, depending on the latest census numbers to be used in the boundary revision process, the 54-seat example mentioned in the Keefe Report can be read as the kind of modest increase that would accommodate restoration of the protected ridings as well as continued population growth in HRM. This approach, one might surmise, would also reduce the likelihood of significant public opposition arising to what some will perceive as an unwarranted expansion of the legislature, while maintaining the current level of political representation in rural Nova Scotia, distinct from the separate question of exceptional electoral districts.

Rural-Urban Differences and Effective Representation

Given the evident concern of the Keefe Commission about the representational implications of the ongoing population shift from rural to urban areas (specifically HRM), and the related question of the appropriate number of seats in the legislature, it is worthwhile reviewing here the reasoning of the 2012 Electoral Boundaries Commission on this matter. The Commission was restricted by its Terms of Reference to a redistricting process that would result in a legislature of *not more than* 52 seats. By implication, an electoral map with a smaller number of districts, perhaps substantially so, was a distinct possibility. Much deliberation, as well as many public presentations to the Commission, revolved around this question. Though the ill-fated Interim Report recommended maintenance of the 52-seat status quo (including the four protected constituencies), disagreement with this position triggered the resignation of one commissioner, Dr. Jill Grant. Ultimately, after being directed by the Attorney General to impose the

25% deviation standard on all ridings (eliminating the protected ridings), the Commission's Final Report recommended 51 electoral districts.

A primary aspect of the discussion about urban-rural differences was the physical distance that many rural representatives had to travel to effectively represent their constituents (and, conversely, that their constituents had to travel to access their representatives). A second major difference concerned the greater scope of representation required of rural members of the legislature, especially regarding the issue of road repairs and other public services that fell within the responsibility of municipal governments in urban areas. As a result, the 2012 EBC erred on the side of somewhat higher numbers of electors in urban districts and somewhat lower numbers in rural areas. Where factors such as geography and community interest and identity suggested only minor deviance from voter parity, the proposed electoral boundaries of both rural and urban constituencies reflected this congruence.

As well, again after debate on the issue, the Commission decided not to anticipate future population changes in the electoral redistribution process. The proposed boundaries would only use population statistics drawn from the 2011 census, and no other data (current or projected). Adopting this position implied acceptance that the geographic distribution of electoral districts would lag behind actual population movements. The Commission was of the opinion (though not unanimous) that this delay in translating population movement to seat redistribution was warranted, slowing down and 'cushioning' to some extent the ramifications (in terms of representation) of the population shift from rural to urban areas.

With regard to the appropriate number of electoral districts, the Commission considered whether, and to what extent, a reduction would be practical and prudent from a political, administrative, and geographic perspective. It was cognizant of the central importance of effective political representation and mindful of the demands of the parliamentary system in terms of providing sufficient numbers of elected representatives to make possible the formation of a capable government and an adequate opposition. It also took into account that a reduction in seats would see some rural constituencies becoming more unwieldy in terms of geographic size and raise concerns about fair and effective representation for citizens in those districts.

There were a number of public presentations advocating a reduction in number of seats in the House of Assembly, some of which pointed to the reduction in HRM council seats mandated by the Nova Scotia Utility and Review Board. They argued that this should be a model followed by the Electoral Boundaries Commission and applied to the whole province. The most common justification for doing this was the idea that 'smaller government' was self-evidently a good thing, not least because it would lessen the financial burden on taxpayers. The Commission considered these points but remained unconvinced that

they were of sufficient merit or validity to justify a reduction in the number of seats in the House of Assembly. While for various reasons smaller municipal councils might be consistent with the goal of good governance, these considerations are very different for the provincial legislature. Since the province is the level of government primarily responsible for providing most public and social services, it is crucial that Nova Scotian electors have representation in the legislature that is adequate to the needs of the parliamentary form of democracy. In particular, voters must have the capacity to hold their government accountable for its policies, programs, and governance practices, the essence of "effective representation" that the Supreme Court identifies as the right of all Canadian citizens.

While the Commission registered its respect for the views of those who argued that fewer elected representatives would not detract from effective representation, it did not share this point of view. Furthermore, no submission on this issue demonstrated that the related cost benefit justified the reduced representation. Relative to the overall cost of government, the financial burden of maintaining a legislator is very small. There was also a tendency to conflate the House of Assembly (the legislature) with "government," as some submissions tended to do. This confuses different parts of the political system that serve divergent purposes in a democracy. The purpose of the legislature is to give the people influence or control over the political executive (Premier and cabinet), who in turn are charged with managing the government, comprised of the various bureaucratic and administrative agencies of the state.

Given these considerations, the Commission concluded in its Interim Report that there should be no reduction in the number of seats in the House of Assembly and any recommendation on its part to do so would compromise the capacity of the legislature to provide fair and effective representation to all Nova Scotians.

APPENDICES

Appendix I: Gaudet Letter of Dissent

Dissenting Member of the Commission
by Paul Gaudet

"Ménager la chèvre et le chou!"

I dissent from the other Commission members who recommend the elimination of the three protected Acadian constituencies in the Final Report.

The formidable task assigned to the NS Electoral Boundaries Commission is reminiscent of the old story of the farmer who had to carry a wolf, a goat, and his cabbage across the river, one at a time, while attempting to keep all three from consuming or being consumed by the others *Ménager la chèvre et le chou! (Manage the goat and the cabbage!)* In short, manage the challenge of conflicting and irreconcilable interests: "Protect minority representation while respecting the rules on average riding sizes," as was summarized in the August 20, 2012, *Chronicle Herald* editorial.

The Commission, tossed on the horns of a dilemma from the outset, realized that there were conflicting guidelines in the terms of reference. In particular, subsections 2(c) and 2(d) became the source of much anguish. And use of the term "notwithstanding" did not clarify the issue. I, personally, struggled with the reference to the ± 25% variance factor.

Two letters enlightened me. (Copies of these letters were attached to the brief presented by the Clare Municipality to the Commission on August 14, 2012, at its public meeting in Church Point.) One, dated January 27, 2012, was from Premier Dexter to Mr. Gérard Thériault. A second was from former Finance Minister and Minister of Acadian Affairs Graham Steele, in response to Père Maurice LeBlanc's article in *Le Courrier de la Nouvelle-Écosse* on February 3, 2012. In my understanding, these letters stated that the independent Commission could make recommendations that included the two extremes of maintaining the status quo or eliminating the protected ridings. I, of course, chose the status quo option.

It made a travesty of the Commission's legitimate "independent" consultation when the Commission's recommendation to maintain the protected ridings was rejected by the Attorney General of Nova Scotia. The convoluted nature of the process by which the terms of reference for the Commission were finally defined effectively eliminated transparency from the process and, in my view, discouraged public understanding of, and confidence in, the Commission's role. To add insult to injury, the Final Report of the Commission recommends the elimination of the existing four protected ridings by direct order of the Attorney General on the grounds that they are too small. They were small in 1991 and 2001; small, in fact, since 1836, when the first Acadian was elected to the Nova Scotia House of Assembly.

Did the Attorney General have the mandate, at that time, to reject or accept the first report? The final term of reference stipulates that "for greater clarity the Commission is bound by Section 5,

subsections 5(4) and 5(5), of the House of Assembly Act":

(4) The commission shall prepare, for approval by the House, a report recommending the boundaries and names for the electoral districts comprising the House.
(5) The terms of reference of the commission shall provide that:
(a) the commission is broadly representative of the population of the Province;
(b) the commission prepare a preliminary report and hold public hearings prior to preparing the preliminary report; and

(c) following the preparation of the preliminary report the commission hold further public hearings prior to preparing its final report. (House of Assembly Act, RSNS 1989 (1992 Supp, c 1)

Nowhere in Section 5 of the act does it state that at any point during the proceedings of the independent. Commission that an arbitrary ministerial ruling may be made that would, in fact, prematurely set the only possible outcome and circumvent the recommendations of the Commission before it had completed its task! The stated procedure is this:

(6) The final report of the commission shall be laid before the House, if the House is sitting, and the Premier, or the Premier's designate, shall table the report in the House on the next sitting day.
(7) If the House is not sitting when the final report of the commission is completed, the final report shall be filed with the Clerk of the House and the Premier, or the Premier's designate, shall table the final report in the House within ten days after the House next sits.
(8) Within ten sitting days after the final report of the commission is tabled in the House pursuant to subsection (6) or (7), the Government shall introduce legislation to implement the recommendations contained in the final report of the commission.
(R S 1992 Supp, c1, s. 5, c 34, s. 2.)

The previous (2001) Electoral Boundaries Commission had terms of reference similar to the current review, including the ±25 per cent variance factor, but was permitted to recommend that the minority representation be exempt from that numeric requirement, based on an "extraordinary circumstances" clause, which was "the desire to promote minority representation by Nova Scotia's Acadian and Black communities." (*Just Boundaries: Recommendations for Effective Representation for the People of Nova Scotia.* August 2002, p. 13). After studying the Supreme Court decision in the Carter case [*Reference re Prov. Electoral Boundaries (Sask.), 1991*], they discussed the issue at length and concurred that the principle of "'effective representation' …comprises many factors, of which equity is but one." Another key phrase from that landmark decision with relevance to the current Nova Scotia dilemma is this one:

Effective representation and good government in this country compel that factors other than voter parity, such as geography and community interests, be taken into account in setting electoral boundaries Departures from the Canadian ideal of effective representation, where they exist, will be found to violate s. 3 of the Charter.

As Acadians, we are in danger of losing our identity. It is a daily struggle for each and every one of us to be fully Acadian. The French Acadian language, a beautiful and gentle language with a direct link to the *langue de Molière*, is in peril. Expulsion, assimilation, and now the threat of losing our voice in the Nova Scotia House of Assembly leads me to believe that the slow and painful extinction of the Acadian people is in the works.

The Acadian constituencies are much more than an *enclos* where ballots are counted on election day. They have become a proud and patent symbol, geographically and politically, of the significant Acadian historical and cultural presence in Nova Scotia. These ridings are the places Acadian citizens call home; where their language is spoken and their traditions practiced. They are also the bases for securing and sustaining social and economic prosperity. This vital cornerstone of resilience over adversity cannot be dismissed lightly. What I heard, saw, and read in relation to our work on the Commission over the period from January 2012 to the present convinces me that the Commission was justified in recommending in the Interim Report the continued protection of the minority ridings.

Are we to accept that the outcome for sustaining protected ridings does not rest in the hands of the citizens of Nova Scotia, or those with special expertise in these matters, or indeed with the citizen members of the Commission? The legislated protection was granted for valid reasons and requires considerably more in-depth study and review than this process allowed. No explanation has been given for decreeing elimination, and not one of the many public presenters suggested that it would be of any benefit to their constituencies to have the minority ridings eliminated. The citizens are the only rightful source of political power, and they made their wishes known. So did the members of an independent public commission. It appears that the answers will now descend from the hard realm of political calculation and action, where many sparrows fall. The heavy-handed intervention by the Attorney General represents, for me, a dark day in the history of Nova Scotia, especially for the Acadians. The many relevant substantive issues have not been addressed. True democracy is not served in the presence of oppression of minorities by the majority.

I cannot comprehend that the long-standing rationale for protected ridings in Nova Scotia is so completely misunderstood and disrespected by the government that elimination was initiated by the simple stroke of a pen, which established the so-called independent Commission, during the 2011 Christmas holidays. The requirement for absolute adherence to the ±25 per cent notwithstanding clause was a top-down decision made behind closed doors, in a scenario that discouraged public scrutiny and appreciation of the complex issues at stake. Has political will become so degraded that it can be controlled by "first-past-the-post" leaders and fed by perceptions churned out by spin doctors?

Some background information on effective representation should be looked at. One point to be studied is raised in the following quotation from the distinguished academic Dr. John C Courtney:

Is it a coincidence that the concept of effective representation came along and was taken up in various quarters at roughly the same time that prevailing conceptions of representation and citizenship were being challenged by identity groups such as Aboriginals, Acadians, and Nova Scotian Blacks? Almost certainly not. Their claim to representation in an elected assembly rested on the premise that they could most adequately be represented by members of their own group. In this sense, what was being argued was precisely the blending of districts constructed in a certain fashion and the subsequent representation of their constituents …Implicit in their argument was the recognition that effective representation brings together both elements of differentiated citizenship as it applies to electoral district – that is, who is entitled to vote in specially designed ridings and what is expected after the vote in terms of representing the interests of the constituents.

In Carter, the Supreme Court of Canada signalled its acceptance of something amounting to a "politics of difference." According to the court, relative parity of voter power could be tempered by minority representation and effective representation when the application of those concepts was justified on the grounds of contributing to better government "

— Commissioned Ridings: Designing Canada's Electoral Districts (2001), p. 246

Governments come and go; politicians come and go. On the other hand, Nova Scotia is more than a political construct. Its history is deeply rooted in the soil and toil of l'Acadie since the 17th century Rejection of protected ridings will have far-reaching consequences that I dare say will negatively affect the political and social landscape of Nova Scotia for generations to come.

Against my better judgment, I participated in the exercise of writing a revised interim report, knowing full well it wouldn't protect existing protected minority representation. It was a mistake to think we could adequately address the conundrum imposed by guidelines 2(c) and 2(d) in submitting a revised interim report. The public outcry, predominantly in the Southwest Nova Scotia ridings, demonstrated that the revised interim report did not reflect the will of the people. The decree by the Attorney General left no middle ground for compromise. Any trade-off suggested or accepted by the citizens in the protected ridings would effectively condone the disappearance of their ridings, and would not be compromise but political suicide.

I honestly submit that if this perceived abuse of the impartial, non-partisan electoral boundary review process continues unchecked, it will require full-scale parliamentary reform to get it back on track.

In closing, I again make reference to the words of author John C. Courtney, who in his book *Commissioned Ridings: Designing Canada's Electoral Districts* was helpful in my understanding of the issues related to boundary review. I quote a passage that summarizes well my frame of mind as I write this dissenting position from the other Commission members. Courtney states:

The uniqueness of Canada's process of readjusting electoral boundaries is an obvious and consistent theme in the court decisions. That is also true of the value that the courts have attached to the concepts of effective representation and relative parity of voting power. Both of those principles have, through the courts' generous interpretation of the charter's guarantee of the right to vote, emerged in little more than a decade as basic to designing constituencies in Canada. (p. 152)

Finally, my conscience and my judgment will not allow me to recommend the elimination of the protected constituencies. I therefore dissent from the other Commission members who felt legally compelled to recommend the elimination of the three protected Acadian constituencies in the Final Report.

I formally and firmly stand by the recommendation in the Commission's Interim Report to maintain the constituencies of Clare, Argyle, Preston, and Richmond as they are presently designed.

Appendix II: Alternatives to Exceptional Electoral Districts

The problem of ensuring effective representation for minority populations that are not territorially concentrated is a vexing one. Indeed, the working of the electoral system makes it unlikely that a territorially fragmented minority population (such as the Acadians or African Nova Scotians) will succeed in electing one of their community members to represent them in the legislature. As previously indicated,

to some extent this bias in the electoral system was overcome in Nova Scotia (at least over the past 20 years) by protecting selected ridings from redistribution based on voter parity in order to encourage minority representation in the legislature. Under its legally binding terms of reference, the Electoral Boundaries Commission is no longer able to maintain this special dispensation for four protected constituencies. Given this reality, are there alternative ways to address the representation needs of the special populations that have been protected in the last two boundary drawing exercises?

Administrative Districts

One means suggested to the Commission as a way to ensure representation in the legislature for the Acadian and African Nova Scotian minorities was the idea of "at-large seats" or "administrative districts" to be determined by ballots cast from separate voter lists. Acadian and African Nova Scotian voters would have a choice: they could cast their ballot for a constituency representative or vote for a candidate contesting one of several designated "at-large" seats. It was suggested to the Commission that there be three designated Acadian seats (one each for Southwest Nova, Mainland Nova Scotia, and Cape Breton) and one African Nova Scotian seat. Accomplishing this would require the compilation of four additional voter lists, one for each of these designated seats. It was suggested that these be compiled through voluntary subscription.

The Commission, after considering this suggestion, decided that it could not positively recommend it, for several reasons. The compilation of several alternative voter lists, the voluntary nature of voter subscription to these lists, and the need to ensure no overlap between each of these lists would present a considerable administrative burden and challenge. Second, the voluntary nature of the lists and the voter option to instead remain on constituency voter lists would likely mean very small electorates for these seats relative to the average number of electors in constituencies, even compared to the number of electors in the four currently protected ridings. As well, removing some or most minority voters from their territorial constituencies would virtually guarantee that that those constituencies would return a non-minority representative, who would be elected by a reduced (perhaps significantly so) number of electors. Indeed, it is possible that both certain territorial constituencies and the at-large ridings would have fewer than the required minimum number of electors. Third, this proposal would require increasing the number of seats in the legislature above the maximum of 52 as directed in the Commission's terms of reference. Fourth, the non-exclusivity of legislative representation that would inevitably result from four at-large seats would mean that some voters would enjoy a form of double representation in the legislature, since voters for these seats also would continue to reside in one of the non-designated constituencies represented by an elected MLA.

Finally, there was a general concern on the part of Commissioners that departing from the parliamentary tradition of territorially based representation might have certain unforeseen consequences for the effective functioning of the legislature. Under some circumstances, it could raise questions about the legitimacy of the designated seat-holders to speak on behalf of the communities they claimed to represent. It could stimulate demands from other groups not so favoured, that they too should have their specific group interest and identity represented in the legislature. Representative democracy as practised in Nova Scotia has been based on the principle that elected members of the legislative assembly have the mandate and responsibility to represent all their constituents, without bias or prejudice based on political, cultural, racial, or other differentiating characteristics. While this form of representation certainly has not been without flaws in its operation, at this time the Commission is not willing to recommend an alternative basis of political representation in the legislative assembly.

A Designated Acadian Seat

The history of the Acadians is one of the great stories of tragedy and redemption in western civilization. Their expulsion from Nova Scotia from 1755 to 1760 (Le Grand Dérangement) was one of the early instances of "ethnic cleansing" in the western world. Acadians were deprived of their homes and property, families were rent asunder, and many lives were lost during transit to regions far from the Acadian homeland. That some Acadians were able to return and re-establish themselves as minority communities in Nova Scotia and New Brunswick, against improbable odds, has become the central touchstone of Acadian history and identity. Nova Scotian Acadians today represent not only the remnants of the Acadian diaspora returned to the region, but an internal diaspora as well, forced into a fragmented and peripheralized geography of settlement within the province by the alienation of their ancestral lands and by their marginalized political status. This diasporic geography is particularly unsuited to effective political representation in the House of Assembly under the first-past-the-post electoral system. So, while in New Brunswick their greater numbers and relative geographic concentration has enabled the Acadian community to attain a political, cultural, and linguistic status of equality with the anglophone majority, in their traditional homeland of Nova Scotia—again because of numbers and geography—they are today poised on the knife-edge of assimilation.

Considered in this context, the loss of the protected Acadian seats can be perceived as a further reduction in the means and instruments available to Nova Scotia's Acadians to protect their fragile linguistic and cultural position within the province. Under these circumstances, some compensatory measure to ensure French-speaking, Acadian representation in the legislature seems both reasonable and appropriate. The problem is the difficulty of accomplishing this within the Boundary Commission's terms of reference,

which forbid the small districts (a form of affirmative gerrymandering) that over the past 20 years made the three protected Acadian seats possible.

A modest alternative, though not unproblematic, would be for the Nova Scotia legislature to designate a single seat in the House of Assembly to be chosen by using the existing balloting procedures for the election of members to the Acadian school board, the Conseil scolaire acadien provincial (CSAP). Voters who already self-identify as Acadians/French-speakers in order to elect members of the province-wide school board would simultaneously constitute the electorate for this designated seat in the House of Assembly. In effect, a new provincial constituency would be created that would constitute the 52nd seat in the legislature, consistent with the limits imposed by the terms of reference. The individual chosen to represent this 52nd electoral district would have the same voting rights and privileges as the other elected members of the legislature. Presumably, candidates from each of the major political parties, as well as independent candidates, would contest this seat.

While this proposal would satisfy some of the legitimate representational concerns and clear some of the present legal obstacles that hinder the previous proposal for four administrative districts, there is still a reasonable objection that can be raised on voter equality grounds: since electors would have the option to cast a ballot in *both* the general election *and* the CSAP electoral process, they effectively would exercise a double franchise by participating in the election of two different MLAs. It should be noted, however, that in voter parity terms, the "weight" of a ballot for the provincial Acadian seat would be less than the equivalent of a second vote. With approximately 35,000 Nova Scotians who claim French as their home language, any ballot cast in a single, province-wide Acadian electoral district would have approximately one-third the weight of a regular constituency ballot. This additional voting weight could be viewed as a form of "political insurance" for Acadians, since it would guarantee them a minimum of one distinctively Acadian voice in the legislature. Further, it would recognize the shared cultural and linguistic concerns of all Acadians and minority French-speakers, regardless of where they live in the province. Finally, in a modest way it would constitute symbolic recognition of the unique and important place of the Acadian people in the history of Nova Scotia, the province that is their ancestral homeland and the cradle of Acadian culture.

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