



Working to Improve Democracy in BC

Fair Voting BC Argues Boundaries Alone Won't Make Voters Equal

Primacy of Principle of Voter Equality

Fair Voting BC accepts and holds dear the core constitutional principle that all citizens are entitled to equal, effective representation. This right has been established through a number of court cases, most notably the Saskatchewan Boundaries Reference Case heard by the Supreme Court of Canada (1991). While the Court allowed for some deviations in riding size, arguing that absolute parity was generally not possible and did not allow for sufficient flexibility to accommodate other constraints on representation arising from the specific geographical context of Canada (ie, a sparsely populated northern region), nonetheless, it was clear that such deviations were only to be permitted when specifically justified to allow for improved effectiveness of 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.**"*

Likewise, in the 1994 Alberta Court of Appeal regarding the Electoral Divisions Statutes Amendment Act, the Court affirmed that "**there is no permissible variation if there is no justification.** And the onus to establish justification lies with those who suggest the variation." In the previous paragraph, the Court said that such a suggestion requires "specific reasons and specific facts."

Assessment of Current Commission Proposal

Overall, we wish to congratulate the Commission on adhering to this principle in drawing up the new set of proposed boundaries. We note that all but one proposed district (Skeena-Bulkley Valley) lies within 10% of the provincial average, and even this region lies within 15% - a deviation that the Supreme Court deemed justifiable in the Saskatchewan Reference Case. In contrast, the current riding boundaries have ten of 36 outside a range of 10% from the provincial average, and four beyond 15%.¹

¹ Measured in terms of 'voting weight' (the ratio between the influence a voter in a given riding has relative to the provincial average), currently the least represented district in BC is Fleetwood-Port Kells at 75.5% and the most represented districts are Skeena-Bulkley Valley and Kootenay-Columbia at 134.4% and 136.6%, respectively.

We are therefore satisfied that the Commission has properly respected the principle of voter equality in its work to date, at least insofar as equality is assessed under our current Single Member Plurality voting system (i.e., by riding size); we will have more to say about this in the following section.

Prior to discussing this issue, we note that we have read the detailed legislative and legal history provided by the BC Civil Liberties Association and endorse their call to the Commission to keep this history in mind when considering any requests to alter local boundaries; while minor alterations may well be appropriate, we caution the Commission to avoid making larger scale adjustments that may threaten the fine balance and notable improvement in equity already achieved in the preliminary proposal.

Request to Broaden Scope of Recommendations

Under section 3.2 of the Election Boundaries Readjustment Act, "The ten commissions established pursuant to subsection (1) shall consider and report on the readjustment of the representation of the provinces in the House of Commons required to be made on the completion of each decennial census."

While we recognize that the focus of the Electoral Boundaries Commission is to determine the most appropriate boundaries given the constraints of our current Single Member Plurality voting system (colloquially known as First Past the Post), we would like to take this opportunity to point out that some of the most knotty problems faced by the Commission are due to these very constraints. We call on the Commission to include in its final report at least a brief discussion of the implications our current electoral system has on the boundary-setting process and to point out some alternative approaches to our electoral system that would make the boundary-setting process far simpler than it is at present.

For the record, we note that the Nova Scotia Provincial Electoral Boundaries Commission addressed precisely this issue in their recently issued report (September 25, 2012), stating: "There appear to be significant democratic benefits to be gained from incorporating some measure of proportional representation into the current FPTP electoral system" and recommending "that the Nova Scotia Legislature initiate a process involving both extensive critical examination and public consultation on the current electoral system as well as possible alternatives to it." We therefore believe there is good precedent for our request. For the Commission's reference, we have appended the full text of the NS-EBC's discussion and recommendation relating to electoral reform to our submission (see Appendix).

In particular, we would like to suggest that the Commission consider two main ideas which, taken together, could substantially satisfy the twin core principles of equality and effectiveness of representation in Canada's Parliament: proportional representation and representation by population (or "One Voter = One Vote", not "One MP = One Vote").

1. Proportional Representation

Proportional Representation Produces Voter Parity: The first main idea we propose the Commission consider is proportional representation. Under our current system, over half of Canadians are forced to accept representation in Parliament by a representative whom they have not voted for.² The deficiencies of our current Single Member Plurality voting system have been articulated elsewhere (for example, in the 2004 Law Commission Report) and we will not repeat them in detail, but we wish to point out that any of a variety of alternative voting systems (e.g., the Mixed Member Proportional or Single Transferable Vote voting systems) could ensure that upwards of 90% of all voters could easily have a representative of their own choosing in the House of Commons.

Voter Parity Should Only Be Infringed to Improve Representation: It is important to note that, in the Saskatchewan Reference Case, Justice McLachlin argued that "*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.*" That is, the Court argued that the principle of voter parity (i.e., voter equality) may only be infringed in order to **improve** the effectiveness of representation of the diversity of our social mosaic in our legislative assemblies.

Ironic That Single Member Plurality Both Violates Parity and Impairs Representation: It is thus deeply ironic that Canada currently uses a voting system that **prevents** effective representation³ of over half the voters (in each riding in the country, on average over 50% of voters are required to be represented by an MP who they specifically felt was not the person best able to represent their interests and who they therefore did not vote for). Our current Single Member Plurality voting system dramatically impairs diversity of representation (e.g., of groups characterized by gender, ethnocultural, religious, age, linguistic and political ideological factors, amongst others) by only electing representatives from the group with the largest plurality of support. This consistently denies representation to large fractions of voters and thereby makes it virtually impossible for minority elements in our social mosaic to win representation of their choice in the legislature - the very outcome that Justice McLachlin said was the quintessential type of good that might be used to justify a departure from the principle of strict voter equality in the first place. Indeed, we have the worst of both possible worlds - a marked disproportionality in representation (in which half the voters have twice the average level of representation and the other half have zero), with no offsetting enhancement of minority representation (indeed, such representation is often virtually completely suppressed,⁴ and many have argued - with good reason - that such suppression is intentional).

² E.g., 50.4% nationally in the 2011 federal election, 51.1% in the 2008 election.

³ We note that we are specifically concerned here with effective representation in terms of the legislative function of MPs. MPs in Canada have the dual responsibilities of acting as legislators and offering constituency service. Constituency service is in principle supposed to be non-partisan, so plays a much smaller role than party affiliation in affecting a voter's decision as to which candidate to support.

⁴ Among other examples, consider how few women, younger people or visible minorities sit in the House of Commons. Also consider the near total exclusion of Conservatives from major urban areas, Liberals west of Ontario, the NDP across the west and the Green Party almost everywhere.

Call on Commission to Comment: We therefore call upon the Commission to comment on this irony in its final report, as the Nova Scotia Provincial Commission has recently done, and to suggest to the government that the principle of equal and effective representation of voters might be far better served by considering the implementation of some form of proportional representation voting system.

Proportional Representation Mitigates Variation: We further note that most forms of proportional representation include the notion of a multimember district. By averaging the population of multiple single-member ridings over a larger number of representatives, the deviation is reduced. For example, suppose a two member riding was comprised of two formerly single-member ridings with 90% and 110% of the provincial average population, respectively. The deviation of the new two-person riding would be zero. In all cases, this averaging process would reduce the maximum deviation⁵, which would give future Electoral Boundaries Commissions more leeway in setting district boundaries to reflect natural civic and geographic features, and we believe this desirable characteristic should be noted by the Commission in their report.

2. Representation by Population

Current Principle: "One MP = One Vote": The second main idea we wish to propose is *true* representation by population. Under our current Single Member Plurality voting system, we assume that equality means that each member of Parliament must nominally represent the same number of voters, despite the fact noted above that individual MPs are actually supported on average by less than half their constituents (and it can be substantially lower than that - e.g., 31% in Vancouver Centre in 2011 and under 27% in Saskatoon-Humboldt in 2004). Given the extreme heterogeneity of population density across Canada, this principle requires that the area of ridings in sparsely populated parts of the country be extremely large, which can pose a challenge to constituency service.

Leads to Difficulty Matching Natural Boundaries, Accommodating Population Shifts: In addition, ridings are supposed to respect both natural and political boundaries such as mountain ranges and city limits, respectively. However, since populations in different regions rise and fall over time, boundaries must be constantly adjusted as new census information is obtained. Each time the boundaries are set, a fresh compromise must be made between the principle that each riding must contain the same population and the principle that natural and political boundaries must be respected. Riding boundaries are therefore routinely re-arranged and renamed, and voters often cannot say from one election cycle to the next which electoral district they reside in. This lack of constancy in representation (in marked

⁵ To give another specific, non-hypothetical example: in 2007, the BC Electoral Boundaries Commission released their preliminary recommendations for both Single Member Plurality and STV boundaries in BC's north. They recommended eight northern ridings with 'electoral quotients' ranging from 45.6% (North Coast) to 100.2% (Prince George) of the provincial average. After grouping these ridings into three STV districts with either two (Northwest, Northeast) or three (North Central) seats, the electoral quotients ranged from 60.4% (Northwest) to 85.7% (North Central). The variability in representation power between voters in these ridings was therefore reduced from a factor of over 2:1 (100.2%/45.6%) to under 3:2 (85.7%/60.4%). While all of these variations were considerably larger than what the federal Electoral Boundaries Commission is currently considering, the fact that variation is attenuated by averaging was clearly demonstrated.

contrast to the consistency in actual municipal boundaries) produces a disconnect between voters and their federal representatives that undermines the representative relationship that ideally should exist - how can it help foster a close connection with government for a citizen to learn that, through no action of their own (i.e., without moving or otherwise altering their situation), they are now suddenly in a new riding with a new MP and a substantially different set of constituents?

Alternative: "One Voter = One Vote": This tension between the two principles of equal population per riding and observing natural boundaries presents significant challenges to Electoral Boundary Commissions, and the resulting trade-offs can lead to significant inequalities in the degree of representation of voters from different regions of the country. However, if we are willing to entertain the notion that the fundamental voting unit in the House of Commons is not the MP, but rather the voters that each MP represents (i.e., not 'one MP = one vote' but 'one voter = one vote'), then we have an obvious solution: set the boundaries in the places that make most sense from a natural and political perspective, and allow MPs to cast votes in the House of Commons that have a weight equal to the number of voters in their riding (or, equivalently, to cast votes equal in number to and on behalf of their constituents). Such an approach might be considered a form of proxy voting - MPs would be seen as being charged with the responsibility of casting votes on behalf of those who elected them.

Would Simplify Boundary-Setting Processes: Such an approach would overcome the first concern of the Supreme Court in the Saskatchewan Reference Case that ensuring absolute voter parity under our current 'one MP = one vote' system is impossible, and could significantly simplify the task of all future Electoral Boundary Commissions, as they would likely find it acceptable to entertain deviations of greater than 10-15% in riding population if each voter's voting weight in the House of Commons remained constant despite these deviations. Boundaries could therefore remain stable for longer intervals (especially if coupled with a proportional voting system in which additional MPs could be added to or removed from regions in the future as population changes). At most, there would be minor variations in the level of constituency service a given MP would be able to provide, and this could be easily addressed by adjusting constituency staffing levels. In particular, this 'one voter = one vote' approach potentially could offer a solution to the vexing problem of how to provide adequate representation in the most northern communities - northern ridings could intentionally be made somewhat smaller than southern ridings to reflect the difficulties involved in traveling about the riding, but individual voters' influence in the House of Commons would not thereby be artificially magnified. By reconceiving the voting principle in the House of Commons, we see that there is no logically necessary trade-off between the principles of voter parity and respecting natural community boundaries.

Summary

Fair Voting BC fully affirms its commitment to and support of the core principle of voter equality, commends the Commission for its preliminary recommendations, and advises the Commission to be extremely cautious to avoid significant changes in the population distributions already determined.

Furthermore, we urge the Commission to explicitly discuss the link between the difficulties it faces in setting and continually readjusting electoral boundaries and our current Single Member Plurality voting

system. In particular, we ask that the Commission point out that two simple expedients - a shift to proportional representation and a shift towards having an MP's voting weight be proportional to the number of constituents they represent - would dramatically improve the equality of voter representation (from about 50% represented now to potentially close to 100% represented) and significantly simplify the tasks of future Electoral Reform Commissions. This would have the added beneficial effect of stabilizing electoral district boundaries and enabling voters to develop a more enduring familiarity with (and perhaps pride in) their electoral district.

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Background:

Fair Voting BC is a non-profit society which works to promote fair, accountable and transparent democratic processes at all levels of government in BC. We served as the official proponents in the 2009 BC-STV referendum campaign.

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Appendix - Excerpt from Nova Scotia Provincial Electoral Boundaries Commission Report Relating to Electoral Reform (Report Issued September 24, 2012)

Note: We have highlighted in bold-face below the Commission's noting of the fact that our current Single Member Plurality voting system fails to achieve either voter parity or minority representation.

Electoral System Reform

Though it is not part of the Commission's mandate to study electoral reform or to recommend changes to the current electoral system, there were a number of submissions on this topic in the public consultation process. Reforming the first-past-the-post (FPTP) electoral system was suggested as a means of improving Nova Scotia's representative democracy, by more accurately translating voter preferences into seats in the legislature. The distortions introduced by the current system, whereby only one member can be elected per constituency, with no allowance made for popular vote totals, can be a disincentive to political participation. This happens because **all votes for losing candidates are, in effect, "thrown out," and only those cast for the winning candidate in each riding count in terms of electing a representative.** Some element of proportional representation is recommended as a means to "make every vote count."

Another rationale for electoral system reform concerns the **difficulty of ensuring minority representation under the FPTP system.** As noted above, this has become clear in the current electoral redistribution process with regard to Acadian and African Nova Scotian representation. The same point could be made for the small number of women elected to the legislature. Comparative literature on this topic clearly shows that political systems using some form of proportional representation perform better than FPTP systems in terms of minority and female representation in elected legislatures. The use of party lists, quotas, designated seats, and other mechanisms in proportional systems largely accounts for these differences. As well, the dynamics of the system, which tend toward coalition

building, would promote more co-operation and accommodation among parties in terms of the legislative agenda.

There appear to be significant democratic benefits to be gained from incorporating some measure of proportional representation into the current FPTP electoral system. This no doubt explains why this option has been recommended by commissions and assemblies in a number of provinces over the past decade. The most popular recommendation in Canada has been to replace the FPTP electoral system with some form of mixed-member proportional (MMP) system, which combines some of the advantages of the existing single-member constituencies with greater proportionality.

Recommendation: The Commission is aware that the serious consideration and recommendation of alternative electoral systems is beyond its mandate. It is also cognizant that the adoption of a new electoral system represents a dramatic change to one of Nova Scotia's key political institutions. It therefore suggests that the Nova Scotia Legislature initiate a process involving both extensive critical examination and public consultation on the current electoral system as well as possible alternatives to it.

Reference: <http://www.nselectoralboundaries.ca/pubs/Electoral-Boundaries-Report-en.pdf>