



Commission on Effective Electoral Representation of Acadian and African Nova Scotians

Commission's Mandate

The Government of Nova Scotia established the Commission on Effective Electoral Representation of Acadian and African Nova Scotians (the Commission) to recommend ways to best achieve effective representation for Acadians¹ and African Nova Scotians. The Commission is not an electoral boundary commission. It will consider options to improve the effective representation of these groups, including, but not limited to, those regarding the provincial electoral map.

The Commission will conduct a series of consultations in the Acadian and African Nova Scotian regions of the province (The schedule is here). Meetings in the Acadian regions will be conducted in French, with English language translation provided for those requiring it.

We are seeking your opinions and suggestions. Although the Commission's focus is on the effective representation of Acadians, francophones and African Nova Scotians, the invitation to participate is open to all Nova Scotians. Those unable to attend public consultations are invited to submit written submissions through our website or engage with us on social media at [facebook.com/ceeraans](https://www.facebook.com/ceeraans) and twitter.com/ceeraans.

The following pages frame the concept of effective representation and present some options, including an overview of recent applications of the concept in Nova Scotia. The final section presents a series of questions aimed at soliciting the opinions of the public. Our purpose is to encourage and help expand public input in our work. The concepts, examples and questions presented are not all-inclusive and are in no way intended to limit ideas or suggestions.

Effective Representation

Every Canadian citizen has a right to vote in free and fair elections. The Supreme Court of Canada determined that this right, guaranteed in section 3 of the *Canadian Charter of Rights and Freedoms*, includes a right to "effective representation". What is effective representation?

Unfortunately, there is no formula for effective representation. As with democracy itself, effective representation is an ideal, not an exact science. However, it does have a starting point. According to the literature, the first and most important factor to be considered in effective representation is elector parity. Each person's vote is as important as any other person's vote. However, the principle of effective representation allows other factors to be considered and adjustments made where strict parity is either not possible or would produce inequitable results.

For example, geographic features and political boundaries are routinely considered when setting electoral boundaries. It would not be just to divide a village or community in two simply to assure an equal number of voters in two adjacent constituencies. Also, special measures can and should be taken to assure the effective representation of specific geographic, ethnic, racial, or linguistic communities that would otherwise be submerged in a larger community.

Voting is not the only means of representation or form of political participation. Political participation also involves the freedom to speak; assemble; associate; take part in public affairs; volunteer for political causes and campaigns; contribute to a party or candidate; lobby; complain directly and through media; run as a candidate; and hold political office.

Effective representation is critical to more equitable outcomes for Nova Scotians across their diversity. It is not a zero-sum game where one group is promoted at the expense of others. When done well, the increased diversity of voices and perspectives that accompany effective representation provides a better, more responsive government for everyone.

What is Representation?

Carbert & Black's research on women in government, including a recent study conducted in Nova Scotia,ⁱⁱ identifies two distinct kinds of electoral representation: *descriptive and substantive*. Descriptive representation occurs when a group elects one of its members to the Legislature. Substantive representation is when these elected officials represent the values and interests of the electors and can effect change. Both are good. They can be complementary and are certainly not mutually exclusive. Descriptive representation, for instance, is good because the members of the group see themselves mirrored in their government. However, it does not guarantee profound change in government culture and policy toward the group. Margaret Thatcher is often cited as an example of descriptive representation of women, but many women would say she did not represent their values. One could conclude that many politically subordinate groups, including women, have made important strides in descriptive representation in Western democracies in recent years, but few (including women) have made significant gains in substantive representation.

Effective Representation in Nova Scotia

There are many ways to improve representation but it is significant that the principle of effective representation was enunciated by the Supreme Court of Canada in *Carter*ⁱⁱⁱ, an electoral boundaries case, in 1991. Nor was it a coincidence that, later that year, Nova Scotia seized the opportunity to improve the effective representation of Acadians and African Nova Scotians through electoral boundaries. So, we will start there.

Provincial Electoral Boundaries and Protected Constituencies

Since 1992, electoral boundaries in Nova Scotia have been drawn by the Legislature based on the advice of an independent Electoral Boundaries Commission.

The 1992 electoral boundaries

The terms of reference for 1992 Electoral Boundaries Commission stipulated that parity of voter power through constituencies of equal population, where reasonably possible, was of prime importance. However, it also required that geography, community history, minority representation and population growth trends be considered to ensure effective representation^{iv}.

The Commission concluded that the best way to improve the effective representation of Acadians and African Nova Scotians was to create four "protected ridings" in areas where Acadian and African Nova Scotian populations are concentrated. It called them "protected ridings" because their populations were between 50 % and 66% the average population of constituencies in order to "encourage, but not guarantee, minority group representatives in the House of Assembly".^v The Legislature adopted the commission's recommendations and voted to maintain the Acadian ridings of Argyle, Clare and Richmond; designed a Preston riding with an African descended population of between 25-30% of the riding; and protected Victoria for geographic reasons.

The 2002 electoral boundaries

The 2002 Commission recommended that the protected ridings be maintained, though the populations of these constituencies had declined, at least in relative terms, since 1991^{vi}. Perhaps with this trend in mind, the Commission also recommended that "during the next electoral redistribution, the Provincial Electoral Boundaries Commission re-evaluate the method of encouraging minority representation."^{vii} Unfortunately, this recommendation was not acted on until our Commission was established.

It also adopted the term "exceptional" instead of "protected" when referring to these ridings.

The 2012 electoral boundaries

The third boundaries commission process was different in two, tightly related, ways: the Select Committee setting the terms of reference split bitterly along party lines over the degree of discretion that would be afforded to the Commission and, as a consequence, its discretion was narrower than 2002. The government members used their majority on the Select Committee to remove the discretion the two previous Commissions had enjoyed, to exceed the +/- 25% standard – effectively eliminating the exceptional ridings. All four opposition members dissented. The Commission initially interpreted its terms of reference as “guidelines” and recommended retention of the exceptional ridings. The Attorney General rejected the report asserting that the Commission’s terms of reference were binding.

The Commission thus submitted a final report that recommended boundaries within the +/-25% tolerance, as directed, but also suggested “a process for consulting with key minority groups, in particular the Acadian and African Nova Scotian communities, for the purpose of determining alternate means for achieving fair and effective minority representation in the House of Assembly.”^{viii} Of note, the only member of the Commission from one of the two directly affected communities wrote a dissenting opinion.

The Fédération acadienne de la Nouvelle-Écosse (FANE) challenged the electoral map on constitutional grounds. In response, the new government referred the matter to the Nova Scotia Court of Appeal. In a decision released in January 2017 the Court stated that the Attorney General’s intervention was unconstitutional because it “prevented the Commission ... from expressing its authentic view of effective representation for electors”.^{ix} The FANE’s constitutional arguments pertaining to the protection of minorities and linguistic rights were however not addressed in this decision.

In April 2017, the Government appointed our Commission to consult and examine means of effective representation, and it promised to initiate a new electoral boundaries commission in January 2018. We believe this to be an exceptional opportunity to consider ways to improve effective representation for Acadians, Francophones, African Nova Scotians and, in the process, improve the overall governance of the province.

Opportunities for Effective Representation

Attempting to assure the representation of minorities is as old as Canada. The Canadian Senate was originally intended as a way of promoting the representation of smaller provinces and communities, whose voice might not otherwise be heard. Regardless of one’s views on the Senate today, it does not alter the fact that, from the beginning, Canada has sought to temper domination by the majority, give voice to minorities, and build unity through diversity. Our record is not perfect but we continue to seek new ways to do that.

Obviously, restoration of the four exceptional constituencies is one option that must be considered. There are also other ways of achieving effective representation of Acadians and African Nova Scotians; some have been adopted here already. We need to examine all options.

Other Means of Effective Representation

Canada and Nova Scotia are not alone in examining minority representation. The European Union’s Lund recommendations^x, set out a framework for promoting the participation of minorities in the public affairs of their country, including measures at the local level and in areas of specific interest such as school boards, and for widening the scope of effective representation. Here are some examples.

Governance

Some countries have allocated the governance of institutions in areas such as culture, media, education and health, that are critical to minorities seeking to maintain themselves as distinct and vital entities.

A Nova Scotian example is the Conseil scolaire acadien provincial (CSAP), established in 1996, to provide Acadian self-governance in the key area of primary and secondary education. This separate school board elected by members of the Acadian community, in accordance with their *Charter* rights as members of an official languages minority, manages a school system comprising of 22 schools and 5000 P to 12 students throughout the province.

Measures can also be taken to improve representation in majority dominated governance structures. For example, each regional school board in Nova Scotia has one seat reserved for an African Nova Scotian representative.^{xi}

New Brunswick accorded francophones a degree of self-governance in health by establishing a francophone managed health authority, Réseau de santé vitalité^{xii}, to run health services in both official languages in northern and southeastern regions of that province.

Are there key areas (health, justice or other) in which governance structures could be ameliorated or new governance structures be established to improve the effective representation of Acadian or African Nova Scotians in Nova Scotia?

Municipal government

The municipalities of Argyle, Clare and Richmond each have significant concentrations of Acadians. Respectively, the proportion of French speakers in each of these municipalities was 47%, 66% and 24% in 2012. These municipalities all offer services in French to a varying extent. Clare, the only municipality with a majority francophone population, offers the most. Although no law requires this practice, the council meetings in this municipality are conducted in French (with simultaneous translation provided in English).

In fact, many municipalities are home to significant Acadian and francophone or African Nova Scotian populations. The emphasis placed on the importance of local governance in the Lund recommendations points to municipalities as a promising means of promoting the effective representation of Acadians and African Nova Scotians. We have been told of an African Nova Scotian district in at least one municipality. Because municipal districts are smaller than provincial constituencies, there can be more opportunities to draw boundaries that would enable these communities to elect representatives at this level.

How might this be achieved in Nova Scotia?

Administrative & institutional

The Lund Report cites the designation of key and strategic management positions for a minority in the public service, boards or agencies as providing direct participation in decision making. Indirect forms of participation through established and permanent consultative or advisory structures, although weaker by nature, can also promote effective representation. In fact, this requirement to consult official languages minorities in Canada in matters that might affect them has been affirmed by the courts, most notably in the *Arsenault-Cameron* (2000) and *Monfort* (2001) cases.

Acadian Affairs and Francophonie

Acadian Affairs and Francophonie, established 2004 as a separate office and now under of the Department of Communities, Culture and Heritage (CCH), is a key institution for Acadians in the government of Nova Scotia. Its primary mandate is to help all government departments agencies, offices and crown corporations deliver services in French. Its role is also to maintain an ongoing dialogue with the Acadian and francophone community and encourage their participation in government consultations. In so doing, it promotes the effective representation of these communities.

Changes made to this office in 2011, without consultation, were seen by the Acadian community as a dilution of its status, role and responsiveness of the Office. As a result, a new Minister of Acadian Affairs formed a committee in 2016 tasked with identifying ways of increasing the role of Acadian Affairs in government.^{xiii} In all, the Committee made 13 recommendations. The Committee's report, a series of recommendations submitted by the FANE to the Premier, as well as a written response by the Minister can be found on the Office's website.^{xiv} Of note, both the FANE and the Committee recommended that an advisory body consisting of members of the Acadian and francophone community be created within Acadian affairs.

African Nova Scotian Affairs

Created in 2003 African Nova Scotian Affairs (ANSA) works with government and the African Nova Scotian community to enhance cultural understanding and assist in the delivery of services that meet the unique needs of African Nova Scotians. ANSA contributes to government decision-making and facilitates positive change on behalf of African Nova Scotians. It also works in partnership with departments, agencies and other organizations to develop solutions that support the ongoing well-being of African Nova Scotians.

ANSA is the result of consultations held with the African Nova Scotian community that acknowledged the long-standing reality that the pressing needs and issues of importance to African Nova Scotians have not been fully addressed or resolved.

ANSA was also moved under the Department of Communities, Culture and Heritage in 2011, without consultation in the African Nova Scotian community. This led the African Nova Scotian community to feel a loss of identity. ANSA having to align its work to the priorities of CCH led to confusion in the community about the merger and ANSA. It also raised concerns about ANSA's ability to work on issues of importance to the African Nova Scotian community.

Like the Acadian community, the African Nova Scotian community requested a taskforce to explore the role of African Nova Scotian Affairs in government. This request was not acted on. Never the less, ANSA understands the current realities and continues working on behalf of the African Nova Scotian community in government.

The establishment of such a structure to both Acadian affairs and Francophonie and African Nova Scotian Affairs could provide an important means of participation, albeit indirect, for these communities and serve as a means of promoting the effective representation of members of this community.

Electoral Systems

First past the post

One of the factors affecting representation of minorities in the Legislature is our electoral system. Canada, the United States and the United Kingdom share a similar single member plurality (SMP) model usually referred to as "First-Past-the-Post" (FPTP) or "winner-take-all" electoral system. The voter is presented with candidates by political parties. The winner is the person who gets the most votes (a plurality and not necessarily a majority) who then represents a defined geographic area called a constituency.

FPTP is simple and tends to produce stable majority governments. In the last federal election, the Liberals won 54.4% of the seats on 39.5% of the votes. Of the 1,309,257 votes in Atlantic Canada, 58.7% went to Liberals, 21.8% went to Conservatives, 17.9% to the New Democrats, and 3.5% to the Greens. Yet, the Liberals swept all 32 seats. This happens for the same reason that a sports team that scores consistently over the whole season will be higher in the standings than one that wins only a few games by wide margins.

There is evidence that "ethnic and racial minorities across the world are far less likely to be represented in legislatures elected by FPTP."^{xiv} If, for example, the United Kingdom House of Commons reflected the population, there would be 117 Black and minority ethnic (BME) MPs. Instead, there are only 27.

Under FPTP locally, only six African Nova Scotians have been elected in the history of the province – five provincially and one federally – all since 1993. Getting nominated, running a campaign, and winning an election is a significant achievement for anyone. All the more remarkable given the historical marginalization of African Nova Scotians. Further, of the individuals elected provincially, two served as Cabinet Ministers, and one is currently serving.

Whether these individuals were elected to specifically represent the views and aspirations of African Nova Scotians, they had, and have, the opportunity to influence and initiate policy decisions on matters of importance to African Nova Scotians.

The exceptional ridings for Acadians and African Nova Scotians were an attempt to mitigate the majoritarian tendencies of FPTP by increasing the chances of minority representation. The concentration of African Nova Scotians within the exceptional Preston riding, for example, did not guarantee election of an African Descended MLA. Preston was held by African Nova Scotians from 1993 until July 1999 but not since. On the other hand, three African Nova Scotian MLAs represent or represented standard provincial constituencies.

Proportional representation

In the United States FPTP is considered by many observers and academics to be at the heart of the systemic disempowerment of minorities and the poor. FPTP is seen by some to be inherently unjust and undemocratic, simply because candidates representing political minorities have enormous difficulty amassing a majority or a substantive plurality of the vote utilizing that electoral system. This problem is compounded (where there is no independent boundaries commission), by racial gerrymandering, which is the strategy of "spreading minorities across voting districts, leaving them too few in number, in any given district, to elect their preferred candidates."^{xvi} History shows that these maneuvers tend to disadvantage the Democratic Party in those areas, since African Americans are generally thought to favour that Party. For this reason, many people support proportional representation (PR).

PR is a family of electoral systems in which legislative seats more closely match votes cast than in FPTP.^{xvii} The Law Commission of Canada concluded that Canada should consider adding an element of proportionality to the system.^{xviii} It has been said that if PR were adopted in the UK, it would likely "enable minority voices to be heard, and give them a seat at the table."^{xix} On the other hand it is argued that support for PR is "based on a misunderstanding of the role of an election". Critics of PR say the purpose of an election is to pick a government and give it the power to govern. They argue that PR tends to produce weak governments, and demonstrate the political divisions in a society.^{xx}

There are also doubts about whether the populations of Acadians and African Nova Scotians are sufficient to benefit from PR. In a paper prepared for our Commission, Dr. Andy Knight,^{xxi} while not opposed to PR in principle, cautions that “it is unclear which PR version would actually result in effective political representation for the African Descended populations there.”^{xxii} Similar skepticism has been expressed about the practical benefits of PR to the Acadian communities.

What is the Opportunity for Change?

African Nova Scotians and Acadians have a foundational place in Nova Scotia’s history and culture. There must be opportunities for them to build both political strength and capacity to influence policy in ways that ensure the continued growth and development of their communities.

Aspiring to robust, unique to Nova Scotia measures may pave the way for intentional, effective representation that would bolster existing practices of representation in Nova Scotia’s democracy.

Questions for Discussion

This section provides questions the Commission is asking itself about the effective representation of Acadians and African Nova Scotians. Issues and answers will vary from community to community. One size will not fit all so there will not be “silver bullet” but likely an array of options and opportunities. These, questions are provided as a means of framing the discussions. However, submissions need not address these questions directly and additional questions may be introduced.

1. What does effective representation mean in the context of the Acadian or African Nova Scotian community? Are there examples of when you have felt effectively represented, or not, in your community?
2. What was the impact, if any, when the exceptional ridings were eliminated? Did the Acadian and African Nova Scotian communities lose something? If so, what was it?
3. Are there other electoral methods of encouraging minority representation?
4. Are there other means (that is, other than electoral) of promoting the effective representation of Acadians and African Nova Scotians in Nova Scotia? What other ways can your voice, and that of your community, be heard and listened to?
5. How can African Nova Scotians Affairs better promote the effective representation of African Nova Scotians?
6. How can Acadian Affairs and Francophonie better promote the effective representation of Acadians in Nova Scotia?

End Notes

The Commission has adopted the open and inclusive vision of the Acadian community of Nova Scotia embodied in definition found on the website of Université Sainte-Anne. This definition states that “The Acadian community of Nova Scotia includes all individuals, organizations, and institutions working to encourage and develop the French language, the Francophone culture, and the Acadian and francophone communities in Nova Scotia (including Acadians, other francophones, anglophones, and allophones).” See <https://www.usainteanne.ca/plan-strategique>.

ⁱCarbert, L. & Black N. (2013). *Doing the work of representation, Nova Scotia style* in *Mind the gaps: Canadian perspectives on gender & politics* Eds R. Lexier & T. Small, (18-33).

ⁱⁱⁱSaskatchewan v Carter [1991] 2 SCR 158.

^{iv}Effective Political Representation in Nova Scotia: The 1992 Report of the Provincial Electoral Boundaries Commission.

^vIbid. p. 33.

^{vi}Just Boundaries: Recommendations for Effective Representation for the People of Nova Scotia, 2002 Commission Report, Aug. 2002, Table Two p.28.

^{vii}1992 Report p. 37.

^{viii}Final Report of the 2012 Provincial Electoral Boundaries Commission, p. 51.

^{ix}Reference re the Final Report of the Electoral Boundaries Commission, 2017 NSCA 10, Para 136.

^xLund Recommendations on the *Effective Participation of National Minorities in Public Life* (1999). Available at <http://www.osce.org/hcnm/32240?download=true>

^{xi}Education Act (NS) s.42A.

^{xii}<http://www.vitalitenb.ca>

^{xiii}*The Acadian reality in Nova Scotia: It's time to act!* (2016) Report of the Committee responsible for making recommendations to enhance the role of Acadian Affairs in government, available at <https://acadien.novascotia.ca/en/reports>.

^{xiv}<https://acadien.novascotia.ca/en/reports>

^{xv}ACE, The Electoral Knowledge Network, “Electoral Systems,” <http://aceproject.org/ace-en/topics/es/onePage>

^{xvi}Kim Soffen, “How racial gerrymandering deprives black people of political power,” *The Washington Post* (9 June 2016), https://www.washingtonpost.com/news/wonk/wp/2016/06/09/how-a-widespread-practice-to-politically-empower-african-americans-might-actually-harm-them/?utm_term=.153b0056ae1b

^{xvii}Hannah Crouch, “Voting Shake up. What is Proportional Representation, why don't we use the voting system in the UK, and where is it used? *The Sun* (8 June 2017).

^{xviii}Ibid., p. 172.

^{xix}Sophie Cartwright, “Proportional representation can offer democracy to all, not just to the majority,” *Open Democracy UK* (17 August 2016), <https://www.opendemocracy.net/uk/sophie-cartwright/proportional-representation-can-offer-democracy-to-all-not-just-to-majority>

^{xx}Don't waste your best asset by Bernard Owen and Guy Lardeyret* <https://aceproject.org/ero-en/regions/europe/GB/united-kingdom-dont-waste-your-best-asset>

^{xxi}Dr. Andrew Knight, “The Political Representation of African Descended People - the UK, the US and Canada”, prepared for the Commission.

^{xxii}Ibid.

Accessibility considerations are made as part of the planning process. The Commission for Effective Electoral Representation would like to ensure that all Nova Scotians are able to visit and participate in the public engagement sessions. If you are faced with accessibility issues, please contact the Commission for arrangements to participate and be involved in our sessions.